

Ombudsman's Determination

Applicant	Ms O
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	Teachers' Pensions (TP) Department for Education (DfE)

Outcome

1. I do not uphold Ms O's complaint and no further action is required by TP or the DfE.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Ms O's complaint is that she has been incorrectly refused ill health retirement.

Background information, including submissions from the parties

4. TP is the administrator of the Scheme. DfE is the Scheme Manager. The responsibility for decision making in ill health cases is divided between the two. At the initial application stage and also at the first stage of the internal dispute resolution (**IDR**) procedure, it is the responsibility of TP to make a decision taking into account a recommendation from the Scheme's medical adviser appointed by DfE, **OH Assist**. If a further appeal is made at the second stage of IDR it is then the responsibility of DfE to make a decision, again after receiving the advice from OH Assist.
5. Ms O was a full time teacher. In 2010 she was on sickness absence for work related stress and erratic high blood pressure. She returned to work but her condition recurred and in 2014 she went on long term sickness absence. Her pensionable employment ceased on 31 August 2015. On 10 September 2015 Ms O applied for ill health retirement. She was then 57, just under two months short of her 58th birthday. Her normal retirement age is 60.
6. At the time of Ms O's application, the Teachers' Pensions Regulations 2010 (SI2010/990) (as amended) (**the 2010 Regulations**), applied. Extracts from the relevant regulations are provided in Appendix 2.

7. Part B of Ms O's application was completed by Dr Hough (Ms O's GP). Dr Hough listed Ms O's diagnosed medical conditions as: hypertension/ Raynaud's syndrome (high blood pressure), posterior vitreous detachment (**PVD**) and work related stress. A summary of this and other medical evidence relating to Ms O's case is provided in Appendix 1.
8. Ms O's case was referred to OH Assist. Dr Chapman, an OH Assist doctor, provided a report, dated 11 November 2015, advising that Ms O was not permanently incapacitated for teaching and did not meet the criteria for total incapacity as her ability to carry out any work was not permanently impaired by more than 90 per cent.
9. TP duly wrote to Ms O, on 12 November 2015, explaining that OH Assist had advised that her health would not prevent her from continuing in the profession until normal pension age. TP said it was unable to accept her application. A copy of the advice from OH Assist was provided and she was advised she could appeal.
10. Ms O invoked the Scheme's IDR procedure. At stage one Ms O said she believed she was both permanently unfit to teach and incapable of gainful employment at the date of her application. Ms O enclosed sick notes, dated 31 July and 26 October 2015, and said she was currently receiving Employment and Support Allowance (**ESA**). Ms O said while it was correct that she was now using natural remedies and yoga to manage her symptoms, she was still on medication and in July 2015 had been prescribed a different blood pressure tablet (Losartan) and a stronger dose and was being monitored on it.
11. Responding to Dr Chapman's statement that there was no evidence that she had seen a specialist for treatment of her eye condition, Ms O said she had seen an eye consultant (Dr Jay) in January 2015 who had diagnosed PVD in her left eye and had explained that there was no treatment for the condition. After experiencing problems with her other eye she had seen another eye consultant (Mr Marota), in September 2015, who had diagnosed PVD in her right eye.
12. Disputing Dr Chapman's comment that it was unclear whether her stress related symptoms were specific to the school she had worked at or if they related to the wider field of teaching, Ms O said Dr Hough had clearly stated that the stress and high blood pressure related to teaching in general and that she was unable to teach in any school.
13. With her appeal Ms O enclosed psychological reports from Ms Picknett (Talking Therapies), dated 21 May 2015, and Ms Hartland (Psychological Wellbeing), dated 3 July 2015.
14. Ms O's case was referred back to OH Assist for review by another of its medical advisers. Dr Wladyslawska provided a report, on 23 November 2015, advising that Ms O was not permanently incapacitated for teaching. In December 2015, TP informed Ms O that her appeal had been unsuccessful. She was provided with a copy

of Dr Wladyslawska's report and informed that she could submit a further appeal with the DfE.

15. On 5 January 2016, Ms O wrote to the DfE saying she wished to proceed to the next level of appeal. Commenting on Dr Wladyslawska's report, Ms O said:-
 - She was 57, not 58, at the time she made her initial application.
 - Her stress symptoms had not improved since leaving teaching. She was still taking medication and had attended Talking Therapies and her blood pressure tablets had been changed to Losartan.
 - If there had been any improvement in her condition, it was because she had left teaching and was on stronger medication.
 - She could not go back into teaching in any establishment and Dr Hough had supported this. But even if it was feasible it was unlikely that a Head Teacher would employ a 58 year old woman at the top of the teaching scale who needed many adjustments or had a significant absence due to work related stress.
16. Additionally, Ms O asked that consideration be given to a further problem which she was suffering from at the time of her initial application, but at the time had not realised was related to stress, namely stress related eczema.
17. Another OH Assist doctor, Dr McElearney provided a further report, on 10 February 2016. The medical adviser expressed the view that Ms O was not permanently incapacitated for teaching. DfE duly turned down Ms O's final appeal.
18. Ms O complained to the Pensions Advisory Service (**TPAS**):-
 - She was 57 not 58 at the time of her initial application.
 - Contrary to Dr McElearney's comment that no additional medical evidence had been submitted, she had submitted a medical document from her doctor which showed that as well as taking Losartan she had been prescribed Clobetasol (for stress related eczema).
 - Dr McElearney was incorrect to say that her blood pressure was well controlled on Nifedipine. Her medication had been changed to Losartan in August 2015 and at a stronger dose. While in December 2015 her recorded blood pressure had reduced it was still quite high at 180/110 and was being closely monitored.
 - Contrary to Dr McElearney's comment that a stress risk assessment had not been done, it had been discussed with a School Representative on Welfare visits to her home.
 - She had not found Talking Therapies helpful.
 - It was incorrect to say that she had had no medication for anxiety and depression.
 - She had tried all treatment offered, including: Occupational Health, Talking Therapies, Citalopram, Nifedipine, Losartan, Yoga and Clobetasol cream, but was still suffering from high and erratic blood pressure and stress related eczema.

19. TPAS asked DfE to reconsider Ms O's application:-

- Referencing Dr Wladslawska opinion (that Ms O should be able to cope with some teaching work) and citing previous Ombudsman determinations, in particular Pearce (7168/1)* and Hill (K00909)**, the TPAS adviser said too wide an interpretation of "to serve as a teacher" may have been taken.

**In the 2009 case of Pearce the Ombudsman at the time said the test for incapacity was not whether the applicant was so unfit that they could not serve in any conceivable teaching post, but should take account of the normal range of teaching duties.*

*** In the 2001 case of Hill, the Ombudsman at the time said to serve as a teacher should not be interpreted as serving as "any type of teacher". Rather it should be interpreted with regard to the way schools up and down the country operate.*

- The OH Assist doctors did not appear to have addressed the fact that Ms O had less than two years to her normal retirement age and at the time of her application had been off sick for more than a year.
- Dr Hough's opinion on the permanency of Ms O's incapacity (as stated in Ms O's initial application) and the inaccuracies in Dr McElearney's report, previously raised by Ms O, were reiterated.

20. DfE sought the further advice of Dr McElearney in light of TPAS' comments. Dr McElearney said he could not advise that the evidence led to a conclusion that Ms O was incapacitated to teach.

21. DfE duly notified TPAS that the original decision continued to apply:

"I note that at the time of [Ms O's] application, considered on 30 November 2015, the evidence submitted did not show that [Ms O] met the ill-health criteria, because it was not clear that she was incapacitated for teaching at that time and that her incapacity would persist to normal pension age despite appropriate medical treatment.

The further advice I have received from our consultant occupational health medical advisor, is that this was a reasonable conclusion to reach based on the information available at the time of the application. It goes on to make clear that nothing subsequently submitted as part of her appeals, or indeed with your letter, has demonstrated that this decision was wrong and should be overturned."

22. TP, responding for itself and on behalf of DfE, says all evidence was taken into account and it showed that Ms O was not permanently incapacitated. Consequently, she was not entitled to ill health retirement.

23. Ms O says:-

- If her symptoms had improved it was because her stress was work related.
- Her blood pressure was not controlled and nothing indicated it was. She had provided copies of prescriptions from her GP showing the change in her medication to Losartan and at a higher dose.
- A stress risk assessment was not done in 2015 because it needed to be done at work, but she did not go back to work. Besides she and her doctor knew that work was the source of her stress.
- An assessment was done in 2010 which indicated that if she could relinquish form tutor work it would help her to manage her condition and Occupational Health reported at that time that she felt the pressure would ease if she did not have a form class.
- TP while happy to accept its own doctors' thoughts had taken little notice of her GP's advice.
- She had not attended CBT because the doctors/experts decided that the therapy she received was the most appropriate.

24. If she had gone back to work, as she had in 2010, the same thing would have happened and her GP advised her not to do so.

Adjudicator's Opinion

25. Ms O's complaint was considered by one of our Adjudicators who concluded that no further action was required by TP or the DfE. The Adjudicator's findings are summarised briefly below:-

- Under regulation 107, it is for Ms O to obtain the information that confirms that she is permanently incapacitated.
- TP and DfE gave consideration to all of the medical evidence and had applied the relevant Scheme regulations.
- To be eligible for ill health retirement, Ms O must be, on the balance of probabilities, permanently (that is to age 60) "unfit by reason of illness or injury and despite appropriate medical treatment to serve as a teacher, organiser or supervisor", or her ability to carry out any work must be permanently impaired by more than 90 per cent.
- The OH assist doctors were of the opinion that Ms O was unfit to teach at the date of leaving pensionable service but not permanently incapacitated. Each noted her age and normal retirement age.
- Dr Chapman said there was insufficient evidence to advise that Ms O was permanently unfit to teach in any capacity at any school, but failed to explain why she considered Ms O's health was likely to improve to a sufficient extent to mean that she was likely to be capable to teach before age 60.

- Dr Wladyslawska went further noting that Ms O's symptoms of stress had improved outside of work and that she did not have significant symptoms of anxiety/depression. Dr Wladyslawska concluded that Ms O would be able to cope with some teaching work, preferably part time, in a different establishment and significantly less stressful and demanding with provision of adequate adjustments.
- Following TPAS' submission Dr McElearney specifically addressed its argument that the short period of time remaining to Ms O's normal retirement age had not been taken into account when considering her various conditions. Dr Elearney said the evidence did not support that Ms O's eye condition impaired her day to day activity. Although high blood pressure was a permanent condition there were a large number of treatment options that would be appropriate and likely to be effective well within the two year time frame. This left incapacity from work related stress. While Dr Hough was of the opinion that a return to teaching was unlikely, evidence that teaching itself caused Ms O stress had not been presented. The evidence showed that Ms O did not like some elements of her work. Occupational Health had suggested a stress risk assessment (**SRA**) to identify these, but this had not happened. Her low levels of anxiety and depression, as measured on PHQ9 and GAD7, meant that medical treatment was not indicated, so her intolerance of Citalopram was not really relevant. She had not had CBT. For her level of stress, CBT (which takes six to eight weeks to complete) and a SRA (which takes less than two hours) would have been appropriate. If the SRA identified factors that related to her former teaching post that would still not lead to advice that Ms O was permanently incapacitated as in a different establishment, or if Ms O decided to undertake home tutoring, those factors would not apply.
- Dr McElearney gave adequate consideration to Ms O's capability to teach before age 60. It does not matter if such work is available or offered to Miss O, only that she is capable, on balance, of such work before her normal retirement age. The fact that Ms O is in receipt of ESA does not automatically qualify her for ill health retirement under the Scheme, as the criteria are not the same. Nevertheless, TP's/DfE's decision is not bound by that award.
- The term 'to serve as a teacher' is not defined in the 2010 Regulations, but has been considered by previous Ombudsman in relation to the 1997 Regulations, which used the same expression in a similar definition of incapacity. In 2001 the then Ombudsman commented, in the case of Hill (K00909), that the expression needed to be interpreted in a common-sense way having regard to the way in which schools up and down the country operate. In 2009, another Ombudsman commented, in the case of Pearce (71681/1), that the test of incapacity did not take into account the actual job being undertaken and was not whether the teacher was so unfit that they could not serve in any conceivable teaching post, however light and unstressful the duties, but should take into account the normal

range of teaching duties. Dr McElearney's opinion on Ms O's capability to teach before age 60 was in relation to the normal range of teaching duties.

- While Ms O is of the view that TP had taken little notice of her GP's opinion, consideration was given to Dr Hough's opinion. But the weight attached to any of the evidence is for TP to decide, including giving some of it little or no weight.
- Clearly there is a difference of medical opinion between Dr Hough and the OH Assist doctors. But that is not sufficient for the Ombudsman to say that TP's/DfE's preference for the opinion of its medical advisers means that its decision was not properly made.

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

Ombudsman's decision

27. Ms O refers to the reasons and examples cited by TPAS when it asked DfE to reconsider its IDR stage 2 decision. She says the Adjudicator did not address the examples sufficiently. I do not agree.
28. TPAS suggested that Dr Wladyslawska's comment that Ms O "should be able to cope with some teaching work...", which TP subsequently accepted to turn down Ms O's IDR stage 1 appeal, seemed to have taken too wide an interpretation of "to serve as a teacher". To support its argument TPAS cited two previous Ombudsman determinations, *Pearce (7168/1)* from 2009 and *Hill (K00909)* from 2001. As relevant the Adjudicator referred to both cases (in paragraph 25 above). I agree with the Adjudicator that Dr McElearney's later opinion on Ms O's capability to teach before age 60, which DfE accepted following TPAS's comments, was in relation to the normal range of teaching duties.
29. TPAS also argued that the decision makers had failed to take into account the timescale before Ms O reached her NRA. But Dr McElearney clearly considered this following TPAS' comments.
30. Ms O says Dr Hough knows her best and that TP/the DfE should have given her GP's opinion credence above that of the OH Assist doctors who she never saw. However, I am satisfied that Dr Hough's opinion was considered. As the Adjudicator said, the weight attached to any of the medical evidence, including giving it little or none, is for TP/the DfE to decide. And it was for the OH Assist doctors to decide whether they needed to see Ms O before giving their opinions.
31. Ms O points out that she is four months away from her NRA, continues to take a stronger dose of medication for high blood pressure and has not been able to go back to teaching, despite this being financially difficult for her. But of course Ms O is

applying the benefit of hindsight. The extent to which Ms O's capability to teach has changed, if at all, since she was refused ill health retirement does not mean that that decision was not made in the proper manner. I am satisfied that it was properly made.

32. Ms O refers to inaccuracies during each of her appeals. I am satisfied that these were addressed by the DfE when it obtained a second report from Dr McElearney in response to TPAS comments on inaccuracies with his first report.
33. Therefore, I do not uphold Ms O's complaint.

Anthony Arter

Pensions Ombudsman
18 July 2017

Appendix 1

Medical Evidence

Mr Oakes, Occupational Health Adviser, typed 2 November 2010

34. Mr Oakes noted that Ms O had been off work since 16 September 2010, due to high blood pressure and hypertension and her GP had prescribed appropriate medication to reduce Ms O's blood pressure, albeit this had caused unpleasant side effects which were now reducing.
35. Mr Oakes said Ms O felt her blood pressure was related to her role in the school and that she strongly felt she would benefit from not having a form class. He said that management were exploring ways in which support could be given to Ms O on her return to work, which had been approved by her GP for next week. Mr Oakes recommended a phased return to work.

Dr Andrews, Consultant Occupational Health Physician, report dated 29 October 2014

36. Dr Andrews said that Ms O was not taking any prescribed medication in relation to her current period of sickness absence and had not had access to counselling. She said Miss O was currently unfit for her normal work duties and it was difficult to predict when she would be able to return to work as it depended on a sustained improvement in her symptoms.
37. Dr Andrews recommended a phased return to work and said that Ms O might benefit from counselling. She additionally recommended a stress risk assessment and that management address any concerns identified by the assessment as far as reasonably practical.
38. Dr Andrews gave her opinion that if medication was started and access to counselling was promptly arranged a return to work over the next 4-6 weeks may be possible assuming no significant problems or difficulties arose in the meantime.

Dr Burton, Occupational Health Physician, report typed 12 March 2015.

39. Dr Burton noted that Ms O had a physical condition affecting her left eye, which was causing intermittent symptoms of blurred vision and flashing lights. Dr Burton reported that Ms O had said she had seen a specialist who had advised that the symptoms may resolve, remain unchanged or deteriorate and that she should make contact if her symptoms increased.
40. Dr Burton noted that Ms O was also suffering from hypertension of erratic severity related to her work and said she had encouraged Ms O to see her GP again to discuss further treatment, which Ms O had been reticent to take.
41. Dr Burton said Ms O's general anxiety symptoms had gradually improved and currently gave her no functional restrictions outside of work. Nevertheless, Ms O

continued to feel anxious about a return to work and some of the issues, which she perceived around relationships within her department, workloads and expectations – Ms O had reported increased stress from what she considered an excessive number of observations of her teaching.

42. Dr Burton said she had discussed with Ms O the potential of out of hours visits into the school to open channels of communication prior to and in preparation for a return to work following the Easter break, by when Ms O would be fit to return to work.
43. Dr Burton recommended a phased to return to work, a monitoring of Ms O's workload over this period and a stress risk assessment of her duties, with any issues arising being addressed as far as reasonably practicable. Dr Burton recommended that observations of Ms O's teaching be kept to a minimum.
44. Dr Burton said Ms O was receiving appropriate treatment for her anxiety and stress. She had work related stress and her previous anxiety was resolving. There was no evidence of depression.
45. In relation to her eye condition it did not appear to be interfering with Ms O's daily living. Ms O did not anticipate interference with her work duties, but should she have difficulties or experienced a change in her symptoms, she had recommended to Ms O that she alert management at the earliest opportunity.

Dr Hough's completion of Part B of Ms O's application for ill health retirement, dated 29 September 2015.

46. Dr Hough listed Ms O's diagnosed medical conditions as: hypertension, Raynaud's syndrome, PVD and work related stress. Describing how the conditions affected Ms O's general health and capability Dr Hough said:

"Stress caused anxiety and a worsening of blood pressure. It is clear that she can no longer work in a teaching capacity in a teaching environment as she is unable to tolerate the work related stress. She has attended talking therapies, a wellbeing course and is unable to tolerate medication for this. She is using natural therapies. There is no clinical indication for psychiatric referral."

47. Dr Hough gave her opinion that Ms O would not be able to return to her job or any teaching role before normal retirement age, but that non-stressful, non-teaching work may be possible at some point.

Dr Chapman (OH Assist doctor), report dated 11 November 2015.

48. Dr Chapman noted the applicable 2010 Regulations, the definition of 'incapacitated' and 'total incapacity', Ms O's normal pension age of 60, and that Ms O was a "58 year old teacher of art and gifted and talented coordinator".

49. Dr Chapman said whilst 'incapacitated permanently' was not defined in the 2010 regulations it was taken to mean incapacitated in either a full or part time capacity at the teacher's existing establishment or in any teaching post elsewhere and that this was likely to remain the case up to their normal pension age.

50. Dr Chapman listed the medical evidence considered as:-

- Form 18 completed by Dr Hough, 29 September 2015
- Report by C Oakes dated 2 November 2010.
- Report by Dr Andrews dated 29 October 2014.
- Report by Dr Burton dated 12 March 2015.
- Information provided by Ms O.

51. Dr Chapman gave his opinion that Ms O was currently unfit to teach but not permanently and was not permanently incapable of any gainful employment.

52. Under the heading 'Rationale', Dr Chapman said Ms O had been absent from work since September 2014 due to work related stress. He noted the factors that had contributed to Ms O's symptoms were reported to be increasing expectations and high workload. He went onto to say:

"[Ms O] states that her blood pressure levels were high due to the stress she felt and states that she has been prescribed three different anti-hypertensives to control her blood pressure.

She was prescribed one type of antidepressant medication but did not feel that it helped and she attended three sessions of counselling. She is now using natural remedies and yoga to manage her symptoms.

She states that she has posterior vitreous detachments in both eyes, causing visual disturbance and flashing lights.

There is no evidence that she has been referred to a specialist for treatment for this condition.

It is unclear if stress related symptoms are related to the specific school in which she worked or if they relate to the wider field of teaching.

At present there is insufficient evidence to advise that [Ms O] is permanently unfit to teach in any capacity at any school.

If Ms O wishes to dispute this an independent psychological report to address the above issue would be helpful."

Ms Picknett, Talking Therapies, report to Dr Hough dated 21 May 2015.

53. Ms Picknett said the questionnaires showed sub-clinical scores, however felt this was attributable to Ms O being away from the source of stress. She said as Ms O was

currently sub-clinical the only treatment it could currently offer her was a Wellbeing Course.

Ms Harland, Psychological Wellbeing Practitioner, report to Dr Hough dated 3 July 2015

54. Ms Hartland said that Ms O had attended the course teaching skills and techniques based on Cognitive Behaviour Therapy to help recognise and manage depression and anxiety problems. She said Ms O had been offered the opportunity to explore further treatment options and it had been agreed that time to consolidate the techniques learned during the course would be valuable.
55. Ms Hartland said Ms O had been discharged and that she may be re-referred or refer herself if required in the future.

Dr Wladyslawska, OH Assist doctor, report dated 23 November 2015

56. Dr Wladyslawska noted the applicable 2010 Regulations, the definition of 'incapacitated' and 'total incapacity', Ms O's diagnosed conditions, her normal retirement age of 60, that she was a 58 year old teacher of art and the medical evidence she had considered, as submitted by Ms O at IDR stage one, and stated that this had been considered together with all of the previous evidence.
57. Dr Wladyslawska reiterated the meaning of 'incapacitated permanently' that Dr Chapman had used.
58. Dr Wladyslawska gave her opinion that Ms O was unfit to teach when her pensionable service ended but not permanently and she was not permanently incapable of any gainful employment.
59. Under the heading 'Rationale' Dr Wladyslawska said:

"[Ms O] has been absent from work since September 2014 with work related stress. It is noted that changes to the profession and increasing pressures regarding monitoring of performance adversely affected her psychological wellbeing.

She has been attending Consultant Ophthalmologist who diagnosed [PVD] of her left eye in January 2015 and subsequently, in September 2015, of her right eye. She experiences intermittent, lasting a few seconds, episodes of blurred vision and flashing lights. She was told that her condition will require further monitoring however is not causing significant impairment at this stage. Her blood pressure is treated/controlled with single medication at this stage.

It is noted that her symptoms of stress have improved outside of work, without use of medications, and have not been adversely affecting her general functioning. She was recommended, during Occupational Health assessment in March 2015, to consider a potential of phased return to work following the Easter break and advised on appropriate adjustments that should be beneficial in this process.

She has attended talking therapies and wellbeing course based on Cognitive Behavioural Therapy. It is noted that her PHQ-9 and GAD-7 questionnaires showed subclinical scores in May and July 2015 suggesting that she does not have significant symptoms of anxiety/depression.

It is understood that [Ms O] feels unable to cope with demands of teaching work. The opinion of her GP that [Ms O] will not be able to return to teaching is also acknowledged. It is noted however that GP suggested possibility of undertaking non stressful alternative employment in the future.

Given the fact that [Ms O] improved and does not experience any significant mental health symptoms, despite lack of medication treatment, indicates that she should be able to cope with some teaching work, preferably part time, in a different establishment and significantly less stressful and demanding, with provision of adequate adjustments to support her and accommodate any potential psychological vulnerability in the future.”

Dr McElearney, OH Assist doctor, report dated 10 February 2016

60. Dr McElearney noted the applicable 2010 Regulations, the definition of ‘incapacitated’ and ‘total incapacity’, Ms O’s normal retirement age of 60 and that she was a 58 year old teacher. Dr McElearney reiterated the same meaning of ‘incapacitated permanently’ that had been stated by Drs Chapman and Wladyslawska.
61. Dr McElearney gave his opinion that Ms O was currently unfit to teach but not permanently and was not permanently incapable of any gainful employment:

“[Ms O] does not provide any additional medical evidence, but disputes the previous advice.

[Ms O] developed high blood pressure in 2010. She attributes this to stress at work. She had an initial reaction to the first medication but was switched over to different medication. Her blood pressure is currently well controlled on Nifedipine.

There is evidence that she also suffers from Reynaud’s syndrome and that she has had [PVD]. There is no evidence that these conditions impair her capacity to teach or undertake any other work.

The [m]ain issue has been work place stress. Having read the various letters from the GP, Consultant Occupational Physician and talking therapist, the only clue we have is that the source of her stress relates to changes in teaching that have taken place over recent years.

The Occupational Physician recommended a Stress Risk assessment, which would have indicated which source of pressure was contributing to the stress, but this was not actually done.

Instead [Ms O] went on long term sick with work related stress. She was referred for talking therapy. The initial PHQ9 and GAD7 assessment tools for anxiety and depression did not indicate there was a problem. She had a course that introduced her to CBT techniques, this is not CBT itself. After the course her scores were improved.

[Ms O] has had no medication, and with such low scores for anxiety and depression there is actually no clinical indication for any.

Yet [Ms O] insists that she is incapable of teaching and this is supported by her GP who completed the application.

My assessment relates to her capacity to teach and her capacity for any other work. However I am unable to find evidence of permanent incapacity due to a medical condition.”

Dr McElearney, report dated 3 January 2017

62. Asked to comment on TPAS’ submission, Dr McElearney said:

- It was for the applicant to provide evidence of their incapacity and not for the Scheme’s medical advisors to seek out evidence that supported or refuted any case.
- The basic facts were that Ms O had a history of high blood pressure since September 2010 (Reynaud’s Syndrome), a PVD detachment in January 2015 and work related stress since September 2014.
- Dr Burton had advised that Ms O’s blood pressure control was inadequate and had noted her reluctance to take additional medication and had encouraged her to discuss this with her GP.

Dr Burton noted that Ms O’s eye symptoms were minimal and not impairing day to day activity and that her stress symptoms had improved on no medication and that her anxiety was centred on work and advised a phased return to work.

- Dr Hough stated that Losartan had been added to the hypertension regimen. He did not state that Ms O’s blood pressure remained uncontrolled. He stated that Ms O had tried Citalopram which she did not tolerate.
- The talking therapy assessment showed normal levels of depression and anxiety and subsequent correspondence stated that Ms O had attended a course and it had been decided if she needed further work to reconsider it later

63. Dr McElearney went on to say:

“Taking into account there being 2 years remaining which of [Ms O’s] conditions could be said to cause permanent (to age 60) incapacity?

The evidence does not support the eye condition impairs her day to day activity.

High blood pressure is a permanent condition but there are a large number of treatment options and even if Losartan did not keep the pressure in check there are other treatment options, individual and in combination that would be appropriate for the condition and likely to be effective well with[in] the two year time frame.

This leaves the incapacity from the work related stress. Whilst her GP says that a return to teaching is not likely, evidence that teaching itself is stressful is not presented. The evidence is that [Ms O] did not like some elements of her work. [Occupational Health] had suggested that a stress risk assessment be undertaken to explore which elements of her role were the problem. But this did not happen.

With such low levels of anxiety and depression as measured on PHQ9 and GAD7 medical treatment was not indicated. So the fact that she could not tolerate Citalopram is not really relevant.

She did not have CBT which would have been helpful, and merely attended a wellbeing course.

In my opinion it would have been appropriate for this level of stress to have a stress risk assessment and to have offered CBT.

CBT takes six to eight weeks to complete and a SRA less than 2 hrs.

Again there was adequate time remaining for both of these to occur prior to Normal Benefit Age.

Further if the factors uncovered at the SRA related just to that employment, that would still not lead to advice that the member was permanently incapacitated and in a different establishment those factors do not apply, [nor] would the[y] apply if [Ms O] decided to undertake home tutoring.

I cannot advise that the evidence leads to a conclusion that [Ms O] was incapacitated to teach."

Appendix 2

The Teachers' Pensions Regulations 2010 (SI2010/990) (as amended)

64. Schedule 7, paragraph 3, 'Case C: ill-health retirement', says:-

- “(1) ... a person (P) falls within this paragraph if -
- (a) P was in pensionable employment at any time after 31st March 1972,
 - (b) P ceases to be in pensionable employment, excluded employment, on non-pensionable sick leave, on non-pensionable family leave or on a career break,
 - (c) P satisfies either Conditions 1, 2 and 3 or Condition 4, and
 - (d) P makes an application under regulation 107 ...
- (2) Condition 1 is that P is incapacitated and is likely to be incapacitated permanently.
- (3) Condition 2 is that immediately before satisfying Condition 1 -
- (a) P was in pensionable employment,
 - (b) P was paying contributions under regulation C9 of TPR 1997, or
 - (c) P was, with the consent of P's employer, on non-pensionable sick leave, on non-pensionable family leave or on a career break which, in every case, followed on immediately after a period of pensionable employment.
- (4) Condition 3 is that P's application under regulation 107 -
- (a) is made within 6 months after the end of pensionable employment, within 6 months after the end of the period in respect of which the contributions mentioned in sub-paragraph (3)(b) are paid or before the date on which, under the arrangements made with P's employer, the non-pensionable sick leave, non-pensionable family leave or career break ends, and
 - (b) except where P satisfies Condition 2 because P falls within sub-paragraph (3)(b), is signed by P's employer.
- (5) Condition 4 is that P's ability to carry out any work is impaired by more than 90% and is likely to be impaired by more than 90% permanently ...”

65. “Incapacitated” is defined as:

“unfit by reason of illness or injury and despite appropriate medical treatment to serve as a teacher, organiser or supervisor.”

66. Regulation 107 says:-

“107 Payment of benefits on application to Secretary of State

- (1) Benefits under these Regulations are payable by the Secretary of State.
- (2) Despite any provision of these Regulations according to which a benefit becomes payable at a certain time, no benefit is to be paid unless paragraphs (3) to (5) have been complied with.
- (3) A written application for payment must be made to the Secretary of State.
- (4) The applicant must provide the Secretary of State with such relevant information in the applicant's possession or which the applicant can reasonably be expected to obtain as the Secretary of State may specify in writing.
- (5) An application for ill-health retirement benefits, or for a short-service serious ill-health grant, must be accompanied by all the medical evidence necessary for the Secretary of State to determine that the applicant is entitled to the benefit ...”

67. Regulation 65 provided for “Total incapacity benefits” as follows:-

- “(1) This regulation applies where -
- (a) an ill-health pension becomes payable to a person (P) because P satisfies Conditions 1, 2 and 3 set out in paragraph 3 of Schedule 7 (Case C: ill-health retirement), and
 - (b) P satisfies Conditions A and B.
- (2) P satisfies Condition A if P's ability to carry out any work is impaired by more than 90% and is likely to be impaired by more than 90% permanently.
- (3) P satisfies Condition B if immediately before satisfying Condition A -
- (a) P was in pensionable employment,
 - (b) P was paying contributions under regulation C9 of TPR 1997 or regulation 19 (election to pay contributions by a person serving in a reserve force), or
 - (c) P was taking a period of non-pensionable sick leave, a period of non-pensionable family leave or a career break which, in every

case, followed on immediately after a period of pensionable employment ...”