

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

<b>Applicant</b>	Mrs Susan Thompson
<b>Scheme</b>	Teachers' Pension Scheme ( <b>the Scheme</b> )
<b>Respondent(s)</b>	Teachers' Pensions ( <b>TP</b> ) Department for Education ( <b>DfE</b> )

**Subject**

Mrs Thompson disagrees with the decision not to pay her benefits early on the grounds of ill health. She is of the view that her application has not been considered properly.

**The Pensions Ombudsman's determination and short reasons**

The complaint should not be upheld against TP and DfE because it cannot be said that it was perverse, based on the medical evidence available, for TP to have decided that Mrs Thompson was not permanently incapacitated and that the criterion for ill health early retirement benefits in the Scheme Regulations had therefore not been met.

## DETAILED DETERMINATION

### Regulations

1. The relevant regulations are the Teachers' Pensions Regulations 2010 (SI2010/990) (as amended) (**the Regulations**) which came into force on 1 September 2010. Under Regulation 60, retirement benefits become payable if a 'Case' applies to the individual's reckonable service. The Cases are set out in Schedule 7 to the Regulations and ill health retirement is covered by Case C.
2. In order to fall within Case C, Mrs Thompson had to make an application for retirement benefits on that basis and satisfy the conditions that she was "incapacitated and [was] likely to be incapacitated permanently" and also that her "ability to carry out any work [was] impaired by more than 90% and [was] likely to be impaired by more than 90% permanently".
3. The definition of "incapacitated" is "unfit by reason of illness or injury and despite appropriate medical treatment to serve as a teacher, organiser or supervisor".
4. According to Regulation 107 if a teacher was in pensionable employment immediately before he became incapacitated, his/her application should be made within six months after the end of the pensionable employment in order to be treated as an "in-service" application. For such applications, early access to Scheme benefits is awarded if the applicant is determined to be incapacitated for teaching, whereas enhanced benefits are granted if he/she is deemed to be incapacitated for all work.
5. Those that are "out of service" at the time of the application are required to be in total incapacity in order to qualify for early retirement Scheme benefits without enhancement.

### Material Facts

6. Mrs Thompson is a teacher of home economics and textiles. She was teaching pupils aged 13 to 18. She is a member of the Scheme which has a normal pension age of 60.
7. Mrs Thompson tendered her resignation in February 2011 and left her post on 31 August 2011 when she was 53 and applied for ill health retirement benefits on 25 September 2011 on the grounds that she suffers from "extreme hypersensitivity to electro-magnetic radiation." Mrs Thompson's former employer completed part B of the form indicating that Mrs Thompson had no

previous involvement with an occupational health provider. References on the form to re-deployment and other measures having been undertaken were crossed out and the following comment was inserted “Information only received after leaving Farrington School employment”.

8. Part B of the Medical Information Form was completed by Mrs Thompson’s GP on 8 November 2011. He said Mrs Thompson had suffered from electromagnetic hypersensitivity since 2010 (he actually said 2000, presumably in error) but there were no diagnostic tests to confirm this. In response to the question asking about the likelihood of improvement in functional ability before age 60 he stated “Unlikely to improve as patient is convinced that symptoms relate to electromagnetic exposure and there is no treatment for this”. He concluded that it would not be practical for Mrs Thompson to return to her normal duties and she “Would only be able to carry out regular employment in an electromagnetic free environment.”
9. To support her application Mrs Thompson provided a copy of a report from a Consultant Neurologist, Dr Nees, addressed to her GP. The report, which was dated 29 May 2011, said:
 

“There are no acute focal lesions identified and no MRI findings to explain the patient’s symptoms... I assumed you [the GP] had checked the ESR and CRP at your practice considering a possible diagnosis of temporal arteritis. Another consideration that I thought was worth mentioning was “Building Disease” or electromagnetic sensitivity. This patient has done some research on her own initiative on the internet regarding this condition and she found that changing exposure from higher to lower levels of electromagnetic radiation did have an impact on the symptoms...the mainstay of treatment for this condition is as far as I can see would be an adjustment of the workplace if feasible...”
10. TP referred Mrs Thompson’s application to Atos Healthcare for an independent assessment. The assessment was provided by Dr McLean who completed his report on 6 December 2011. His report sets out the Scheme criteria for “The Teachers’ Pensions Regulations 1997” (rather than 2010) and says he has considered the report dated 8 November 2011 from Mrs Thompson’s GP, the report dated 29 May 2011 from the Consultant Neurologist, reports from the internet provided by Mrs Thompson and an electromagnetic field study report dated 14 March 2011.

11. Dr Mclean concluded that “The applicant claims to suffer from the effect of electromagnetic radiation...This is not a recognized medical condition and it is more likely she has a psychological disorder. With appropriate psychological therapy she can be expected to improve. The date of the report that leads to this conclusion is 1 July 2011.”
12. Mrs Thompson was advised that her application had been declined in a letter from TP dated 7 December 2011. She was provided with a copy of Dr McLean’s report and given details of her right to appeal the decision.
13. Mrs Thompson appealed the decision on 18 March 2012. In support of her appeal Mrs Thompson provided:
  - Information she had been sent by ES-UK a registered charity which supports people in the UK who are affected by the effects of pulsed microwave radiation emitted by wireless technologies.
  - An open letter written by a GP (Dr Tresidder) in Somerset about electromagnetic sensitivity. The letter was dated January 2012 and sets out in some detail the symptoms said to be associated to Electromagnetic Sensitivity. The letter said “...Please note the above are all short term effects – the jury will be out for some time on long term effects...Treatment is problematic - but essentially includes avoidance of EM fields...”.
  - A letter dated 21 December 2011 from another Consultant Neurologist who said there was no neurological cause for Mrs Thompson’s symptoms and “I agree with Dr Nees’ opinion regarding Mrs Thompson’s modification/adjustment of workplace/lifestyle in order to avoid EMR.”
14. TP referred the matter to Atos Healthcare for a second independent assessment. The assessment was provided by Dr McElearney who completed his report on 5 April 2012. His report also sets out the Scheme’s criteria for “The Teachers’ Pensions Regulations 1997” and concludes “From the initial application we can see that she was referred to and investigated by a Neurologist. He found nothing abnormal and prescribed an antidepressant. Unfortunately there is no supporting evidence of an ill health effect in this case.”

15. Mrs Thompson was advised by TP in a letter dated 10 April 2012 that her appeal had been rejected. Mrs Thompson was provided with a copy of the medical adviser's report and advised of her right to appeal to the Department for Education (**DfE**).
16. Mrs Thompson appealed again on 5 October 2012. In support of her appeal she submitted:
  - Reports dating back to December 2000 from her Consultant Rheumatologist.
  - Further information she had been sent by ES-UK s.
  - A report, dated 27 May 2012, from Dr Tresidder, who Mrs Thompson had by now consulted about her symptoms. Dr Tresidder concluded that Mrs Thompson has electrosensitivity of a severe degree and said "there is no current other medical treatment for this other than avoidance of exposure, and so she is likely to remain unfit for the foreseeable future."
  - A report dated 11 July 2012 from her GP which said that it would be helpful if Mrs Thompson could avoid electromagnetic radiation.
17. The matter was referred once more to Atos Healthcare for an independent assessment. The assessment was provided by Dr Wladyslawska who completed her report on 29 October 2012. Her report sets out the Scheme criteria for "The Teachers' Pensions Regulations 2010" and concludes:
 

"Her current main disabling complaints are symptoms related to electrohypersensitivity. It is noted that in 2009 she started to experience pains, nausea palpitations and chest pains. Her symptoms became worse over time and have been accompanied by tingling sensation, fatigue, disturbed vision, dizziness and problem with concentration. She underwent MRI scan of her head with SCFG study and was assessed by neurologist however no neurological abnormality was found. She was seen by Consultant Cardiologist who recommended further investigations however the outcome of these tests has not been provided...

While electrohypersensitivity has been put forward as an explanation of her symptoms it cannot be accepted as a diagnosis of recognized medical condition and therefore cannot be considered as permanently incapacitating illness. It is advised that the medical evidence in this case does not meet the criteria for incapacitated for teaching..."

18. Mrs Thompson was informed by DfE, in a letter dated 31 October 2012, that her application for ill health benefits had been declined.
19. During the period after Mrs Thompson resigned from her last teaching post she was receiving Employment and Support Allowance (**ESA**). ESA is a state benefit which offers financial support for people who are unable to work as a result of illness or disability. The ESA Regulations provide that ESA is awarded where the individual has “a limited capability for work”. ESA is reassessed on a regular basis.
20. On 31 July 2012 the Department for Work and Pensions decided to supersede Mrs Thompson’s ESA award and her payments were stopped. Mrs Thompson appealed this decision and on 25 June 2013 her appeal was upheld by the First Tier Tribunals Service. The Judge said “Were it not for her EMR the appellant would lead a normal life with little or no functional impairment...the condition described was not one commonly found but the Tribunal considered the reality of life...Considerations included the fact that the appellant would be unable to work in a ‘normal working environment or outside anywhere there was wi-fi, mobile phones or mobile phone masts...Taken together the prospects of the appellant being able to work...were effectively nil.”

### **Summary of Mrs Thompson’s position**

21. TP and Atos Healthcare have no experience or understanding of her condition which has only become prevalent in society in recent years due to the widespread introduction of pulsed microwave radiation emitted by mobile technologies that are now common place in all work and public areas. Most medical advisers have not been trained to identify her condition.
22. She did not receive the letter dated 5 April 2012 until 4 May 2012. The time for her to appeal had therefore been shortened to barely five months. She told TP that she needed more time, in her letter dated 1 May and 3 September 2012, but this was refused.
23. The conditions from which she suffers should be regarded as total incapacitation and is contrary to the safeguarding of children which makes TP’s decision perverse.

24. There are now 20,000 pieces of independent research confirming the effects of pulsed microwave radiation. TP do not have a list or set of criteria by which to judge a 'recognised medical condition'. It is therefore perverse that they have not accepted the opinion of the doctors who have treated her.
25. Her GP has confirmed that she does not have a psychological condition. She has not been prescribed a anti-depressant. The medication she was prescribed is also used for treating nerve pain.
26. There is no treatment for her condition. The only way to prevent it is by complete avoidance of pulsed microwave radiation.
27. She brought her suspicions to the attention of the school nurse and IT advisor who both said they would bring it to the attention of the Health & Safety Officer but this never happened. She was told that "it was a load of rubbish" and she should not mention it again. A forensic examination of the school's computers would reveal the deleted emails confirming she had brought this to the attention of the school.
28. TP have failed to take into account the letter dated 27 May 2012 from Dr Tresidder.
29. She has won an appeal in HM Courts and Tribunal Service stating that she is unfit to work because of special circumstances. Atos Healthcare has ignored this information.

### **Summary of TP's position**

30. Mrs Thompson has not provided evidence that she is suffering from a recognised medical condition. The documentation that she has provided has largely been obtained from the internet and relates to research, findings and opinions from medical professional in other countries.
31. TP was not a respondent in Mrs Thompson's case at HM Courts and Tribunal Service and do not know under what circumstances her claim was brought.
32. The Scheme is a statutory scheme bound by the Regulations and decisions relating to the payment of ill health pensions by the Scheme are made by medical advisors appointed by the DfE. The medical advisors can only consider the evidence provided with the application or subsequent appeal.

33. Mrs Thompson's case has been considered by three different medical advisers who all, in isolation, reached the same decision that because she is not suffering from a recognised medical condition for which all reasonable treatment has been completed, and which renders her incapable of teaching and will continue to do so until her normal retirement age, she is not eligible to receive an ill-health pension from the Scheme.

### **Summary of DfE's position**

34. Alongside the regulatory requirements, the Scheme's procedures require that, if an ill-health retirement applicant is still employed, the employer has before endorsing the application, made the appropriate referral to Occupational Health and any necessary workplace adjustments.
35. From the amount of sick leave taken by Mrs Thompson it would seem her employer was unaware of the state of her health, so was unable to attempt to make any workplace adjustments to facilitate her continued employment, or to refer her to Occupational Health.
36. Dr Tresidder's letter of 27 May 2012 was taken into consideration as can be seen from the document 'Medical Advice to Teachers' Pensions' dated 29 October 2012.
37. Dr Tresidder's letter is at variance with previously stated facts. He said that at the time of her resignation Mrs Thompson had not made the connection between her ill health and her workplace. However, Mrs Thompson had previously submitted the dispatch note for the accoustimeter that she purchased on 7 March 2011, and the results of the tests she conducted at her home and workplace on 14 March 2011. Mrs Thompson could therefore have discussed her health concerns with her employer before she resigned in summer 2011, in the hope of receiving some workplace adjustments and the involvement of Occupational Health.
38. Mrs Thompson's GP states that she has suffered from electro-magnetic sensitivity since 2000 but there is no diagnostic test available to confirm this. The consultant's letter submitted with her second appeal relate mainly to Mrs Thompson's orthopaedic problems, although some of the doctors accept her diagnosis of electro-magnetic sensitivity. However, their suggestions of workplace modifications have not been investigated by Mrs Thompson (although



it is accepted that Dr Metta's suggestion to Dr Nees' came after Mrs Thompson had left her post).

39. Unfortunately, for Mrs Thompson, although she clearly feels unwell, she is not suffering from a recognised medical condition, and so her application for ill-health retirement benefits does not meet the criteria for acceptance under the Regulations.

## Conclusions

40. To be eligible for ill health retirement benefits under the Scheme, Mrs Thompson had to be permanently unfit, by reason of illness or injury and despite appropriate treatment, to serve as a teacher, organiser or supervisor. In addition Mrs Thompson had to meet a further requirement, that her ability to carry out any work be permanently impaired by more than 90%, in order to receive an enhancement. In order for Mrs Thompson's application to be treated as an "in-service" application her application had to be made within six months after the end of her pensionable employment.
41. DfE as the manager of the Scheme and TP are responsible for its administration. 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 Disputes Resolution Procedure (**IDRP**), it is the responsibility of TP to make a decision taking into account a recommendation from the medical adviser employed by DfE. If a further appeal is made at the second stage of IDRP it is then the responsibility of DfE to make a decision, again after receiving expert advice from their medical advisers.
42. There are certain well-established principles that TP and DfE are expected to follow in making their decisions. Briefly, they must ask the right question(s), they must not misdirect themselves as to the law or the Scheme Regulations, they should not come to a perverse decision and should take account of all relevant matters but no irrelevant ones. In this context, a perverse decision is one which no reasonable decision maker, properly advising itself, could come to in the circumstances.
43. Mrs Thompson's application for ill health early retirement benefits was considered three times in total; first at the initial application and twice more on appeal. At the outset TP and its medical advisers had before them the comments

made on the application form by Mrs Thompson's GP who said "Mrs Thompson had suffered from electromagnetic hypersensitivity since 20[1]0 but there were no diagnostic tests to confirm this" and "...patient is convinced that symptoms relate to electromagnetic exposure and there is no treatment for this" and a report from her Consultant Neurologist who said "This patient has done some research on her own initiative on the internet regarding this condition and she found that changing exposure from higher to lower levels of electromagnetic radiation did have an impact on the symptoms". TP's medical adviser concluded that "...electromagnetic radiation...is not a recognized medical condition and it is more likely she has a psychological disorder."

44. At the first appeal in April 2012, TP and its medical advisers had before them an open letter written by Dr Tresidder about electromagnetic sensitivity and its effects generally. They also had a further report from a Consultant Neurologist who said there was no neurological cause for Mrs Thompson's symptoms and "I agree with Dr Nees' opinion regarding Mrs Thompson's modification/adjustment of workplace/lifestyle in order to avoid EMR." TP's medical adviser advised that "...there is no supporting evidence of an ill health effect in this case..."
45. By the time of the second appeal, in October 2012, Mrs Thompson had consulted Dr Tresidder who said in his report of 27 May 2012, that Mrs Thompson has electrosensitivity of a severe degree and said "there is no current other medical treatment for this other than avoidance of exposure, and so she is likely to remain unfit for the foreseeable future." The medical adviser on this occasion said "While electrosensitivity has been put forward as an explanation of her symptoms it cannot be accepted as a diagnosis of a recognized medical condition and therefore cannot be considered as permanently incapacitating illness."
46. TP and DfE say that although they accept that Mrs Thompson feels unwell as she is not suffering from a recognised medical condition her application for ill-health retirement benefits does not meet the criteria for acceptance under the Regulations. Mrs Thompson argues that TP and Atos Healthcare have no experience or understanding of her condition.

47. It would have been necessary for TP to decide that Mrs Thompson was unlikely to recover before August 2018. As Mrs Thompson has pointed out, the possible effect of electromagnetic sensitivity has only emerged in recent years. Hers is not a recognised disease, though one day it may be. At present a decision as to its permanence and the likelihood of recovery, including whether there is any treatment which, on the balance of probabilities, is likely to result in sufficient recovery, cannot be based on substantial evidence of similar cases.
48. On the basis of the medical evidence that was available at the time of the initial application and the first and second appeals, in my judgment it was not perverse for TP to have decided that Mrs Thompson was not permanently incapacitated and that the criterion for ill health early retirement benefits in the Scheme Regulations had therefore not been met.
49. Mrs Thompson says that she receives ESA because she is unfit to work because of her special circumstances. She contends that TP's medical advisers have ignored this information. TP were obliged to reach their decision based on the evidence available at the time the decision was made. The information to which Mrs Thompson refers to was not available until June 2013, some six months after the final decision had been made, so clearly could not have been ignored. But anyway, the criteria are completely different – in particular there is no requirement for ESA purposes that the ailment should be likely to last until age 60.
50. At the initial consideration and also at the first review both medical advisers considered the application against the criteria set out in the Teachers' Pensions Regulations 1997. That was strictly incorrect. Mrs Thompson left the Scheme on 25 September 2011 and therefore her application should have been considered in accordance with the Teachers' Pension Scheme Regulations 2010 which came into force on 1 September 2010. However the test is the same under both sets of regulations and therefore even had the correct regulations been used the outcome would likely have been the same.
51. In any event, although the error in the regulations was not recognised by DfE at the time of the second review in October 2012, the medical adviser on that occasion properly considered the case under the Teachers' Pension Scheme Regulations 2010.

52. Mrs Thompson says she is aggrieved that the school where she worked did not take notice of her symptoms. That is not, however, relevant to the decision about her pension, which was not a matter for the school.
53. For the reasons given above I do not uphold Mrs Thompson's complaint.

**Tony King**  
Pensions Ombudsman

24 September 2014

## APPENDIX

The Teachers Pensions Regulations 1997 applicable at the time provide:

- E4 Entitlement to payment of retirement benefits
- 4) In Case C the person-
  - (a) has not attained the normal pension age,
  - (b) has ceased after 31st March 1972 and before attaining the normal pension age to be in pensionable employment,
  - (c) is incapacitated, became so before attaining the normal pension age, and
    - (i) immediately before he became incapacitated-
      - (aa) was in pensionable employment, or
      - (bb) was taking a period of unpaid sick leave, maternity, paternity or adoptive leave (taken with the consent of the person's employer) or a career break which, in each case, followed on immediately after a period of pensionable employment, or
      - (cc) was paying additional contributions under old regulation C9 or regulation C10, or
    - (ii) made an application for payment under regulation E33 (2) such that it was received by the Secretary of State before 6th January 2007, or
    - (iii) (where neither paragraph (i) nor (ii) applies) his ability to carry out any work is impaired by more than 90% and is likely permanently to be so.
- E8 A Total incapacity benefit where application received on or after 6th January 2007
  - (1) This regulation applies to a person who has become entitled to payment of retirement benefits by reason of his having become incapacitated and where, immediately before he became incapacitated-
    - (a) he was in pensionable employment, or
    - (b) he was taking a period of unpaid sick leave, maternity, paternity or adoptive leave (taken with the consent of the person's employer) or a career break which, in each case, followed on immediately after a period of pensionable employment, or
    - (c) he was paying additional contributions under old regulation C9 or regulation C10,
 and whose application for payment under regulation E33(2) is received by the Secretary of State on or after 6th January 2007 and who satisfies the condition in paragraph (2)(a) and

either the condition in paragraph (2)(b) or the condition in paragraph (2)(c).

(2)The conditions are-

(a)that (in addition to being incapacitated) the person's ability to carry out any work is impaired by more than 90% and is likely permanently to be so, and

(b)where the person falls within paragraph (1)(a) or (1)(c), that the application for payment required by regulation E33(2) is made within 6 months after the end of the pensionable employment or within 6 months after the last payment of additional contributions under old regulation C9 or regulation C10 as the case may be, or

(c)where the person falls within paragraph (1) (b) that the application for payment required by regulation E33 (2) is made-

(i)where the person was on unpaid sick leave, before the period of sick leave ends, and

(ii)in any other case before the date on which, under the arrangements made with the person's employer, the leave or career break is due to end.

(3)The person becomes entitled (subject to regulation E32 (2) (limitation of effective reckonable service to 45 years)) to payment of a total incapacity pension and (where applicable) a total incapacity lump sum calculated in accordance with regulation E5 or (where applicable) E6 but with the amount of effective reckonable service calculated in accordance with paragraph (4).

"Incapacitated"

A person is incapacitated-

(a)in the case of a teacher, an organiser or a supervisor, while he is unfit by reason of illness or injury and despite appropriate medical treatment to serve as such and is likely permanently to be so..."

The Teachers Pensions Regulations 2010 (as amended) provide:

#### 60 Retirement benefits

- (1) A person (P) falls within this paragraph if P satisfies either the condition for retirement or the condition for retirement following further employment.
- (2) P satisfies the condition for retirement if

(a)P is qualified for retirement benefits, and

(b)a Case applies to P's reckonable service or, if P is a person with mixed service, to part of P's reckonable service.

(3) P satisfies the condition for retirement following further employment if

(a)P is qualified for retirement benefits following further employment,

(b)a Case applies to P's reckonable service or, if P is a person with mixed service, to part of P's reckonable service,

(c)where P is under 75, P makes an application under regulation 107 (payment of benefits on application to Secretary of State) for benefits under this regulation, and

(d)after making the application, P does not re-enter pensionable employment before the day which would be the entitlement day if P were to satisfy the condition for retirement following further employment.

#### 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 or benefits including, where applicable, evidence that the person's ability to carry out work is impaired by more than 90% and is likely permanently to be so.
- (6) Where a person ceases to be in further employment ("the earlier further employment") and subsequently re-enters further employment ("the subsequent further

employment") without making an application under this regulation for retirement benefits in respect of the earlier further employment, no application may be made under this regulation for retirement benefits solely in respect of the earlier further employment during the subsequent further employment.

## **Schedule 7**

### **Case C: ill-health retirement**

- (1) Except as provided in paragraph 4, 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 for retirement benefits on the basis that Case C, and no other Case (apart from Case A), applies to P's reckonable service.
- (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."



