

## Ombudsman's Determination

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| <b>Applicant</b>     | Mrs Joan Hill  |
| <b>Scheme</b>        | Teachers' Pension Scheme (the <b>Scheme</b> )                    |
| <b>Respondent(s)</b> | Department for Education (the <b>DfE</b> )<br>Teachers' Pensions |

### Complaint Summary

Mrs Hill's complaint is that her application for an ill health pension was not considered correctly.

### Summary of the Ombudsman's Determination and reasons

The complaint should not be upheld against TP or DfE because it cannot be said that it was perverse, based on the medical evidence, for TP to have decided that Mrs Hill 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 Hill 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/she 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 Hill is a lecturer in child education. She was on sick leave from 23 August 2011 to 18 May 2012.
7. Mrs Hill applied for ill health early retirement on 26 May 2012. As her application was made with six months of the end of her employment, it was an "in service" application.
8. Part B of the Medical Information Form was completed by Mrs Hill's GP, Dr Craven, on 20 July 2012. She said that Mrs Hill had suffered from stress related problems since February 2011. She added that she felt that Mrs Hill's symptoms are significant and therefore prevented a return to teaching duties, and she had significant doubts as to Mrs Hill's safety within the classroom environment or workplace. In response to the question as to whether with normal therapeutic intervention it was likely that there would be an improvement in Mrs Hill's functional abilities before age 60 she said: "Dependent on external circumstances as a stress trigger". She concluded that Mrs

Hill's incapacity was likely to prevent her from teaching either part-time or in an alternative establishment.

9. Mrs Hill's application was referred to the Scheme's medical adviser, Atos Healthcare. The assessment was carried out by Dr Ewan who concluded:

"The GP does not give a medical diagnosis, but rather refers to a vague term, a stress related problem from February 2011. There is reference to anxiety, panic and depression in other parts of the report. However, by referring principally to the problem as stress, and the stressor is work as a teacher, the GP is taken as seeking to convey that the issue is relatively recent it is puzzling that the presentation does not include any input from occupational health to explain why a work related problem of short duration has already resulted in dismissal on the grounds of incapacity.

Evidence to show that the work related problem has been identified and assessed, appropriately treated and adjusted for with medication, therapy and specialist involvement, work adjustments and support, phased rehabilitation/return to work plan, and even the consideration of wider issues such as reemployment, is insufficient to allow an assessment that this applicant is permanently incapable to age 60 of serving as a teacher.

**Concluding advice:**

It is advised that the medical evidence in this case does not meet the criteria for incapacitated for teaching as set out in the above regulations."

10. On 16 August 2012 Mrs Hill was informed by TP that her application was not accepted. TP said that according to the Scheme's medical adviser her health was such that it should not prevent her from continuing her profession until her normal retirement age.
11. Mrs Hill appealed against the decision not to grant her an ill health pension. She said that she had discussions with her GP who believed that due to her emotional and depressive state it would be impossible for her to continue in education or function in any form of employment. She provided a letter from Dr Craven, dated 7 December 2012, who stated that Mrs Hill had undergone regular review and had ongoing medication and counselling. Dr Craven added that she believed Mrs Hill to be unfit to work as a teacher and in a work environment in the future.
12. The matter was once again referred to Atos Healthcare and they considered both Mrs Hill's appeal and a letter from her GP dated 7 December 2012. The assessment was carried out by Dr Wladyslawska who concluded:

"The evidence provided is still insufficient to advise that appropriate therapeutic interventions have been exhausted in this case. She is still undergoing counseling [sic] and it is expected that with this ongoing treatment, and depending on her response, with further adequate modifications of her

therapy, she should achieve better control of her symptoms to allow her, with careful workplace adjustments, return to less mentally demanding, and preferably part time teaching role, before her retirement age, in more than 7 years time.

Concluding advice:

It is advised that the medical evidence in this case **does not meet the criteria** for Incapacitated for teaching as set out in the above regulations.”

13. TP informed Mrs Hill that the original decision to reject her application was correct. They said that the decision was based on the advice they received from Atos Healthcare. She was informed that under the Scheme’s internal dispute resolution procedures (**IDRP**) she had a right to lodge a second appeal.
14. In June 2013 Mrs Hill’s husband appealed on her behalf. Atos Healthcare once again considered the matter taking into account the appeal letter and a letter dated 7 June 2013 from Dr Craven. Dr Craven said that although there had been some improvement in Mrs Hill’s condition, she still suffered from symptoms of depression and anxiety. Dr Craven added that Mrs Hill was still receiving medication, cognitive behaviour therapy and counselling; however, given that the symptoms of anxiety and depression persisted despite leaving the workforce, she did feel that Mrs Hill was unable to return to teaching duties, undertake educator responsibilities or any other employment in the future.
15. Once again, Atos Healthcare concluded that Mrs Hill did not meet the criteria for an ill health pension. This time the matter was assessed by Dr Colvin who concluded:

“Dr Craven’s medical report confirms that some clinical improvement or recovery is noted although Mrs Hill continues to suffer from significant physical and mental health symptoms related to her diagnosed conditions of anxiety and depression. Overall there appears to have been only a partial response from the treatment and support that has been provided to date and Mrs Hill clearly remains unfit to work in any capacity at present.

However although the evidence suggests that Mrs Hill remains medically unfit for any work at present due to her symptoms she could still benefit from specialist referral for further psychiatric and/or psychological assessment and support. Further time may also allow further recovery to become evident.

A specialist psychiatric opinion would have been helpful in this appeal to help confirm the longer term prognosis for further recovery and functional improvement. However, my opinion, based on all of the available medical and other evidence is that it is premature to conclude that Mrs Hill can be considered to be permanently medically incapacitated for return to any teaching or other role, in some capacity in the future.”

16. On 19 July 2013 Mrs Hill was given a second stage decision under IDRP by the DfE. The decision was their medical adviser had considered all the information, but was unable to recommend that she was permanently incapable of continuing to work as a teacher, organiser or supervisor. Therefore, she could not be awarded ill health retirement benefits.

### **Summary of Mrs Hill's position**

17. She is now 55 years old and could access her pension even though it would be reduced. She does not feel that anyone has actually considered that after this length of time she is not really employable in the classroom or another workplace.
18. Her health has not improved as she is still experiencing difficulty in communicating with others.
19. With the guidelines on safeguarding children, it appears that Dr Craven's statement regarding her safety within the classroom environment or workplace was not taken into account.

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

20. Mrs Hill believes that her condition is such that she is unable to work in a teaching or any other capacity, now, or in the future. However, the Scheme's medical adviser concluded that she did not meet the criteria, as set out in the Regulations, to be granted retirement on the grounds of ill health.
21. They are unable to comment on the findings of the Scheme's medical adviser. They are not medical experts and therefore there is no discretion over the adviser's advice, unless they feel they have not taken into account all the medical evidence provided in support of an application or have made an administrative oversight.
22. It is up to the applicant to determine if and when an application is submitted for ill health retirement. Having said that, the most appropriate time to submit an application would be once the nature of the incapacity has been identified, treatment considered and, if appropriate, tried, and the extent and likely duration of incapacity established. It is up to the applicant to provide sufficient medical evidence to confirm the position of their health.
23. The notes accompanying the application form completed by the applicant explains that it is up to the applicant to obtain all the information they, their employer and their medical practitioner agree is necessary to confirm incapacity. The notes also say that the Scheme's medical adviser relies exclusively on what is submitted and only request further medical evidence in exceptional circumstances.

## Summary of DfE's position

24. Mrs Hill's application for ill health retirement and her two subsequent appeals have all been considered by different officials and different medical advisers, in line with their commitment to provide a fresh decision at each stage, and they have all concluded that she does not meet the necessary criteria for ill health benefits in accordance with the Regulations.
25. The fact is that her application has failed to meet what is a high test, that she is effectively permanently incapable of teaching and of employment in any other capacity.

## Conclusions

26. To be eligible for ill health retirement benefits under the Scheme, Mrs Hill 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 Hill 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.
27. 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.
28. 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 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 themselves, could come to in the circumstances.
29. Mrs Hill'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 Scheme's medical advisers had before them the comments made on the application form by Dr Craven, Mrs Hill's GP, who said that with normal therapeutic intervention the likelihood of improvement in her functional abilities before age 60 was dependent on external circumstances and concluded that her incapacity was likely to prevent her from teaching part-time or in an alternative establishment. The Scheme's medical adviser concluded that the evidence was insufficient to say that Mrs Hill was permanently incapable of working as a teacher until the age of 60.

30. At the first stage of the appeal in December 2012, TP and the Scheme's medical adviser had before them a letter from Dr Craven who said that Mrs Hill was receiving ongoing medication and counselling, but she believed Mrs Hill to be unfit to work as a teacher and in a work environment in the future. The Scheme's medical adviser once again concluded that there was insufficient evidence to show that therapeutic interventions had been exhausted, and, depending on her response to ongoing counselling, she should return to a less mentally demanding, and preferably part-time, role before her retirement age.
31. At the second stage of the appeal, the Scheme's medical adviser had another letter from Dr Craven in which she said that there was some improvement in Mrs Hill's condition. However, she felt that Mrs Hill was unable to return to teaching or any other employment in the future. The Scheme's medical adviser concluded that, based on the evidence, it was premature to say that Mrs Hill could be considered to be permanently incapacitated from returning to teaching or another role in some capacity in the future.
32. Dr Craven's opinion throughout has been that Mrs Hill would be unable to work as a teacher or in any other capacity in the future, but that is not quite the same as saying that Mrs Hill will be incapacitated until her normal retirement age, ie age 60. The Scheme's medical adviser says that, based on the evidence, it is not possible to say that Mrs Hill is permanently incapacitated and that future treatment was likely to be effective. Both TP and DfE are allowed to put more weight on the opinion of the Scheme's medical adviser.
33. I find that in considering the initial application, and the first and second stage appeals, both TP and DfE have asked themselves the right question and had taken relevant, and no irrelevant, matters into account. In addition, they obtained advice from the Scheme's medical adviser and considered the test as set out in the Regulations and therefore I am satisfied that they have applied the Regulations properly.
34. TP correctly say that it is for Mrs Hill to obtain the information that confirms that she is permanently incapacitated.
35. On the basis of the medical evidence that was available at the time of the initial application and the first and the second appeals, in my judgment it was not perverse for TP to have decided that Mrs Hill was not permanently incapacitated and that the criterion for ill health early retirement benefits in the Regulations had therefore not been met.
36. For the reasons given above, I do not uphold the complaint against TP and DfE.

**Tony King**

Pensions Ombudsman  
13 April 2015