

Ombudsman's Determination

Applicant	Mr D
Scheme	Teachers' Pension Scheme
Respondent	Teachers' Pensions

Outcome

1. I do not uphold Mr D's complaint and no further action is required by Teachers' Pensions.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr D has complained that Teachers' Pensions refused in 2012 to reinstate the ill health pension that he had been receiving.
4. Mr D had also complained about the fact that his ill health pension was stopped by Teachers' Pensions in 2005. However, he was informed that we are unable to investigate this part of his complaint because he did not bring it to us within three years of this date.

Background information, including submissions from the parties

5. Mr D had been in receipt of an ill health pension since 2002, but payment of this pension was stopped in February 2005.
6. Regulation E13 of the Teachers' Pensions Regulations 1997 (as amended) (the **1997 Regulations**) says that a pensioner under the Scheme ceases to be incapacitated if he takes up employment, on or after 30 March 2000, as described in Schedule 2, or as a teacher in an accepted school or with an accepted function provider. The 1997 Regulations also says that, in such a case, the pension ceases to be paid, but may become payable again from the person's 60th birthday, or earlier from the start of any renewed incapacity.
7. In January 2012, Mr D contacted Teachers' Pensions asking why his pension had been stopped. In an email Teachers' Pensions explained:

- He had been informed during a telephone conversation in February 2005, that they had received a letter dated 5 November 2004, alerting them to re-employment he had undertaken. This information was forwarded to the Department for Education (**DfE**) for their review.
 - The DfE reviewed his case and established that he had been barred from teaching on medical grounds. However, the bar was revoked following an appeal to the Care Standards Tribunal. By being successful in the tribunal, he confirmed that he was fit to teach.
 - They wrote to him in December 2004, asking for details of any re-employment he had undertaken after he started to receive his pension in 2002. He replied that he had done no work in the UK. Nevertheless, as discussed on the telephone, they required details of all employments undertaken, overseas as well as in the UK.
 - In a letter dated 11 October 2005, he confirmed that he had done casual work as a PC technician and was backpacking around the world. On the telephone, he indicated that he had undertaken some work as a tutor.
8. On 6 January 2012, Mr D responded to Teachers' Pensions saying that the Care Standards Tribunal (**CSL**) had not cleared him from teaching. CSL said that he could teach if he was cleared from depression. He had not worked as a teacher in the UK or anywhere overseas. The pension he was granted from the Scheme was on the basis that he was unfit to teach, not perform any other work. Tutoring was a completely different proposition to a class full of 30 children. He did some English as a Second Language (**ESOL**) work with very small groups of children.
9. Mr D made a complaint about the refusal to re-instate his pension and the matter was dealt with under the Scheme's internal dispute resolution procedures (**IDRP**). The decision given under IDRP by Teachers' Pensions, was:
- His pension was stopped after they received information in November 2004, from an anonymous source that he had obtained employment abroad as a teacher. The information provided included a copy of the first page of a medical report form he had completed in March 2002, and documentary evidence of possible teaching employment in 2003 and 2004, in two foreign countries. One letter from an employer indicated that he had started his employment on 6 January 2004.
 - When he wrote to them in October 2005, and October 2006, requesting reinstatement of his pension, they informed him that his pension was stopped because it was considered that he was no longer incapacitated based on the information they had received.
 - After further enquiries on 29 January 2007, they received information direct from Cambridge International School in Berlin that he was employed by them from 1 September 2003 to 16 July 2004, as a Business Studies teacher.
 - The provisions of the Scheme are designed to pay retirement benefits where a person is permanently incapacitated and remains so. But they also recognise that where a person recovers and returns to teaching in the UK the entitlement to a

pension must cease. The available evidence supports the decision that he is no longer incapacitated and therefore not entitled to a pension.

- If, as he claims, he continues to suffer from depression, it is open to him to make an entirely new application for ill health retirement at any time before age 60.
10. Teachers' Pensions say that if Mr D applied for his pension to be reinstated, his health would be assessed against the Teachers' Pensions Regulations 2010 (**2010 Regulations**). Regulation 68(5) of the 2010 Regulations states that when assessing a person's ability to carry out work, for a pension to be re-instated the person's health must be impaired by more than 90%.

Adjudicator's Opinion

11. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by Teachers' Pensions. The Adjudicator's findings are summarised briefly below:
- Any question of Mr D's ill health being reinstated is subject to the 1997 Regulations.
 - He had been informed by Teachers' Pensions that if he suffered from depression then he could apply for ill health retirement at any time before his 60th birthday. As Mr D had made no application for ill health retirement, there was nothing for Teachers' Pensions to consider and therefore no maladministration on their part.

Ombudsman's decision

12. I agree with Teachers' Pensions that if he was to apply for reinstatement of his pension, then he would be assessed against the 2010 Regulations.
13. I also agree that as Mr D has made no application for his pension to be reinstated, Teachers' Pensions have no case to answer.
14. Therefore, I do not uphold Mr D's complaint.

Anthony Arter

Pensions Ombudsman
10 June 2016