

Ombudsman's Determination

Applicant	Mrs N
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	Teachers' Pensions (TP) Department for Education (DfE)

Outcome

1. I do not uphold Mrs N's complaint, and no further action is required by TP or the DfE.

Complaint summary

2. Mrs N's complaint concerned TP's decision to decline her application for ill health early retirement (**IHER**).

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. In 2006, by virtue of her employment as a teacher, Mrs N joined the Scheme, a defined benefit occupational arrangement.
5. The relevant regulations in Mrs N's case are the Teachers' Pensions Regulations 2010 (SI2010/990) (as amended) (**the Regulations**), which came into force on 1 September 2010. The Regulations were subsequently amended on 5 April 2015.
6. If a Scheme member leaves their teaching post, due to ill health, the Scheme affords them two years, from the date they left pensionable employment, to submit an in service IHER application for an enhanced ill health benefit (**EIHB**). The two-year limit provides additional time for those who left employment due to "slow-to-develop or difficult to diagnose conditions, or conditions where it is difficult to access suitable treatment". Any applications received after the two-year period are treated as out of service and are ineligible for an enhancement.
7. Schedule 7 of the Regulations outlines the conditions that need to be met for a member to qualify for IHER. That is:

- condition 1 – the applicant is incapacitated¹ and is likely to be incapacitated permanently;
 - condition 2 – immediately before satisfying condition 1, the applicant was:
 - in pensionable employment;
 - paying pension contributions under regulation C9 of the Teachers' Pension Regulations 1997; or
 - with the consent of the applicant's employer, on a period of non-pensionable sick leave, family leave, a career break, following on immediately after a period of pensionable employment.
 - condition 3 – an application for IHER, under regulation 107, is submitted no later than two years after the end of a period of pensionable employment.
8. If conditions 1, 2 and 3 are not met, a fourth condition needs to be met which is:
- condition 4 – the member's ability to carry out any work is impaired by more than 90%, and it is likely to be more than 90% permanently.
9. If an IHER application only met the fourth condition detailed in paragraph 8 (an out of service application) the applicant is entitled to accrued ill health benefits (**AIHB**). That is, the accrued value of the applicant's benefits paid without a reduction. This is again known as total incapacity, but without the enhanced in-service aspect.
10. Regulation 133 states:
- “The Secretary of State may in any particular case extend, or treat as extended, the time within which anything is required or authorised to be done under these Regulations.”
11. On 31 August 2011, Mrs N opted out of the Scheme and stopped paying contributions.
12. On 27 January 2017, Mrs N went onto a period of sick leave.
13. On 28 February 2017, Mrs N left teaching employment.
14. On 29 August 2017, Mrs N submitted an application for IHER and explained that she suffered from complex post-traumatic stress disorder (**PTSD**), insomnia, anxiety and she had an eating disorder. Recently, she had undergone two periods of inpatient hospitalisation. The demanding and stressful nature of being a teacher meant that, after a recovery period of one to two years, she would seek less stressful alternative forms of employment.

¹ Incapacitated is defined by the Regulations to mean “unfit by reason of illness or injury and despite appropriate medical treatment to serve as a teacher, organiser or supervisor.”

15. On 5 October 2017, Dr Chapman of OH Assist, the Scheme appointed medical adviser (**the MA**), provided her opinion on Mrs N's IHER application. In reviewing Mrs N application, Dr Chapman considered:
- employment support allowance (**ESA**) and personal independence payment (**PIP**) award letters;
 - the IHER application form completed by Dr Smith, Mrs N's GP;
 - a report by Dr Perera, an associate in specialist psychiatry, dated 24 August 2017;
 - a report by Dr Stoll, community mental health nurse, dated 18 May 2017; and
 - a report by Dr Theodossiadis, a consultant psychiatrist, dated 9 January 2017; and
16. Dr Chapman said that Mrs N suffered from complex PTSD, with recurrent anxiety and depression and explained that:-
- The Regulations did not provide a definition for "Incapacitated permanently", however, she understood it to mean: "incapacitated in either a full or part-time capacity at their existing establishment or in any teaching post elsewhere and that this is likely to remain up to the person's normal pension age."
 - Mrs N had taken several types of medication, undergone specialist psychological therapy and regularly received support from the community mental health team.
 - She was awaiting eye movement desensitization and reprocessing therapy (**EMDR**), as well as psychological therapy to treat her PTSD.
 - The evidence indicated that Mrs N was "unlikely to be medically fit for any teaching duties in the future", although it was more likely than not that Mrs N would be capable of returning to work with minimal responsibilities, pressure or targets, before her Normal Retirement Age (**NRA**).
 - Mrs N, at the date of the IHER application, was permanently unfit to teach, as defined under the Regulations. However, Mrs N's ability to carry out any work was not permanently impaired by more than 90%. Mrs N did not meet the criteria for total incapacity.
17. On 6 October 2017, TP wrote to Mrs N and provided her with a copy of Dr Chapman's opinion, and said that:-
- To be eligible for an IHER benefit, it needed to be accepted that her conditions were severe enough, taking into account appropriate treatment, that she was unable to continue in her teaching role.
 - It also needed to be accepted that she would be unable to undertake any other form of gainful employment until her NRA.

- TP said: “your health is such that it should not prevent you from continuing in the profession, or in any other gainful employment until your normal pension age”.
 - Under the Regulations, she was not eligible for an IHER benefit.
18. On 11 October 2017, Mrs N wrote to TP and said that Dr Chapman’s report said: “is the person permanently unfit to teach at the date of the application? Yes”. However, TP’s letter contradicted this and said: “The [MA] has advised that your health is such that it should not prevent you from continuing in the profession”. She accepted that she did not meet the criteria for an EIHB as she hoped to work again in the future. That being said, based on Dr Chapman’s opinion, she was eligible for an AIHB award.
19. On 24 October 2017, TP explained that:-
- From 1 April 2015, amendments were made to the Regulations regarding what criteria needed to be met for an IHER application to be classed as “in service”. That is: the application was submitted during a period of pensionable service; the applicant’s entitlement to paid sick leave had been used; or an IHER application was made within two years of leaving pensionable service.
 - Mrs N had opted out of the Scheme on 1 September 2011. Even though she was still employed as a teacher, she was not in pensionable service, and the two-year period ended in September 2013. So, her application was “out of service”.
 - To qualify for IHER as an “out of service” applicant it had to be determined that she was permanently unable to continue working as a teacher, and that she was unable to undertake any other work. If this criterion was met, she was eligible for an AIHB.
 - If she wished to appeal the decision to decline her application, it suggested that she contact her doctors or specialists to request additional evidence to support the appeal.
20. On 30 October 2017, Mrs N appealed the decision to decline her IHER application as she believed she met the criteria for an AIHB. She said:-
- There was no dispute that she opted out of the Scheme in 2011; however, the amendments to the Regulations were not introduced until 1 April 2015. She described this as “changing the goal post after the fact and therefore retrospectively discriminates on the basis of my withdrawal from the scheme”.
 - Between 2002 and 2013, she was in an abusive relationship which extended to financial abuse. By 2011, her now ex-husband had control of her finances and forced her to withdraw from the Scheme so that he could use the value of her monthly contributions for his own disposable income. These events were reported to the police.

- She applied for IHER outside of the two-year period due to the sustained effects of her PTSD. Completing the IHER paperwork further added to her PTSD by forcing her to relive her past and its continued impact on her mental health.
- She was hospitalised between 2012 and 2013, and she was only recently discharged from the care of Stepped-Up UK, a mental health treatment service. She was currently under the care of a psychiatrist, an eating disorder service, and she was undergoing psychotherapy.
- It had been too traumatic for her to complete an IHER application up until this point. TP should exercise discretion in the re-consideration of her IHER application and award her an AIHB as she was permanently incapable of undertaking a teaching role.

21. On 14 November 2017, TP provided its response to Mrs N's appeal and explained that:-

- One of the first criteria that was assessed, when reviewing an IHER application, was whether the applicant was considered to be "in or out of service".
- It provided a copy of the Regulations, as they were on 1 September 2011, which provided that for an application to be classed as in service, the applicant must satisfy three conditions, which were that:
 - they were permanently incapacitated;
 - they were in pensionable service before their sustained permanent incapacity; and
 - an IHER application was received within six months of leaving pensionable employment.
- The changes to the Regulations, on 1 April 2015, meant that the six-month period was extended to two years.
- Her application was received outside of the two-year period; consequently, her application would have been considered as "out of service", unless it qualified under a fourth condition. That is, her ability to carry out any work needed to be impaired by more than 90%, and it was likely to remain so permanently. This condition saw no amendments in April 2015 and remained the same.
- It understood that she was under duress when she made the decision to opt out of the Scheme in 2011. However, her marriage ended in 2013, and since then she opted out of the Scheme, again, in 2015 and on 1 September 2016. She then sought a transfer of her Scheme benefits in March 2016 as well. It did not appear that she wished to be a member of the Scheme.
- Her Scheme benefits were deferred, receiving an annual increase in April of each year. The earliest she could claim her benefits was age 55, with 60 being her

NRA. Her benefits would be actuarially reduced if she claimed them between 55 and 60, to account for the benefit being paid for a longer period.

22. On 15 February 2018, Mrs N referred her appeal onto the DfE and said:-

- Before she applied for IHER she spoke with a TP representative over the telephone, on 2 February 2017, who told her that she was eligible for IHER depending upon the outcome of a review. As it was explained to her, she would receive either an EIHB, or an AIHB, depending upon the severity of her incapacity.
- She completed the IHER application and enclosed a GP report which confirmed that she was permanently incapable of teaching due to her conditions. However, it was hoped that with suitable treatment, she could undertake alternative employment in the future. Her previous employer confirmed that it could not facilitate any reasonable adjustments.
- Dr Chapman's report agreed with the GP in that she was permanently incapable of undertaking any teaching role in the future. However, TP's letter of 6 October 2017 misquoted Dr Chapman's report and said that she was fit to continue teaching. It took a number of lengthy and stressful telephone calls to receive a corrected letter.
- In her appeal to TP she explained, at length, the circumstances that had led up to her request to opt out of the Scheme in 2011. TP's response to this was, in her view, dismissive, insensitive, inappropriate and condescending in tone given the sensitive nature of what she had explained. TP failed to take her personal circumstances into account.
- During her IHER application and appeal there had been excessive delays. She was only sent a copy of TP's letter of 14 November 2017, on 10 January 2018, when she telephoned TP and it was found that the letter was not uploaded to her TP personal account or posted to her.
- TP's letter of 14 November 2017 explained that she was not incapacitated by more than 90%. However, it did not appear that at any point during the process a proportional incapacity calculation had been undertaken. On most days she was unable to feed herself, wash, dress or get out of bed, and so she was not just incapacitated in regard to her ability to work.
- None of TP's responses, or its decision, had taken into account the relevant factor of the abuse she suffered from her ex-husband, and how he forced her to opt out of the Scheme. Nor was her condition of PTSD taken into account when looking at her ability to apply for IHER within the two-year period.
- In addition to considering her appeal, she also wished to submit a complaint about the handling of her IHER application, and subsequent appeals which had resulted in her suffering non-financial injustice.

23. On 7 March 2018, TP wrote to Mrs N and said that the DfE was in receipt of her appeal, which would be dealt with under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). Subsequently, DfE asked TP to conduct a further review, in regard to her IDRP appeal and re-iterated the criteria that needed to be met for an application to be considered as "in service" or "out of service". TP went on to explain that:-

- After she opted out of the Scheme, her employment between 1 September 2011 and 28 February 2017, was treated as "excluded employment". Consequently, upon receipt of her IHER application, she already did not satisfy conditions 1-3 of Schedule 7 of the Regulations.
- She applied for IHER on 29 August 2017, six months after her employment ceased, and subsequent excluded employment, had finished. So, her application was considered under the fourth condition, which she did not meet, as she was not permanently incapable of undertaking alternative gainful employment. This was the reason why her IHER application was declined.
- It listened to the telephone call between her and the TP representative on 2 February 2017. It was noted that she was not specifically informed of the 'permanently incapable of gainful employment' criteria, however, she was told that "it was harder to qualify for [IHER] out of service".
- At the time of the telephone call, she had been out of pensionable service for more than two years. Even if she were informed about the gainful employment criteria, this would not have affected the outcome of her application.
- It apologised for the error in its letter of 6 October 2017, which should have said that she was permanently incapable of teaching, but not incapable of undertaking gainful employment. It provided an amended copy of the letter.
- If she was dissatisfied with TP's response, she still had the opportunity to write to DfE, under IDRP, within six months of 7 March 2018.

24. On 12 November 2019, Mrs N wrote to TP and said that she had referred her complaint about the decision to decline her IHER application to The Pensions Ombudsman (**TPO**). However, TPO had informed her that it was unable to review her complaint until she had received a response under the Scheme's IDRP. She said that:-

- It was her belief that the Regulations had been unfairly applied in her case and were "potentially illegal". TP was aware of the circumstances that led to her opting out of the Scheme and having to eventually leave her teaching career permanently.
- She was repeatedly told by psychiatrists, specialist therapists, community mental health nurses, and her GP, that she was unfit to continue working as a teacher. After telephoning TP, to discuss an application for IHER, her most recent

employer completed the necessary paperwork and confirmed that she left employment due to ill health.

- Her GP, via their section of the IHER application form, commented that Mrs N would never be able to return to teaching. However, her GP also echoed Mrs N's own comments that she hoped to be able to return to a devolved form of work in the future.
- Her current diagnosis and condition remained the same as when she first submitted her IHER application. She attended weekly PTSD therapy sessions; however, she was advised that it may take several more rounds of PTSD therapy, to help effectively manage the symptoms associated with PTSD. This could take years, and even after this, she would still only be able to undertake work with low levels of responsibility and stress.
- Once her PTSD therapy had concluded, she was then due to start eating disorder therapy, as neither therapy could be concurrently undertaken. She was undertaking a non-standard trial depression medication, as her depression was classed as "treatment resistant". She also took medication to help manage her sleep, nausea, and anxiety.
- TP's letter of 6 October 2017, accompanying Dr Chapman's opinion, incorrectly said that she was able to continue working as a teacher. This was in direct contradiction to the opinion of Dr Chapman and her own doctors. It took several weeks of corresponding with TP for an amended version of its covering letter to be issued.
- During the consideration of her IHER application, she was awarded ESA, as well as the highest level of PIP. This, in her view, acted to strengthen her eligibility for an IHER benefit. At present, she was under the care of a colorectal surgeon, due to unexplained rectal bleeding. She was on the waiting list for treatment at the Liverpool women's hospital for endometriosis, for which she took two types of prescription painkillers, and used a TENS machine along with a heated compress, daily, due to pelvic, abdominal and back pain.
- In spite of the fact that it was agreed that she was unable to work as a teacher again, TP declined her IHER application on a technicality. This was because she opted out of the Scheme on 31 August 2011. TP appeared to have completely ignored the reasons why she opted out of the Scheme between 2011 and 2017. That is, the significant domestic and financial abuse she suffered from her former husband whereby he controlled her finances and coerced her into opting out of the Scheme.
- She opted out of the Scheme between 2014 and 2017 as, upon return to several teaching roles, her monthly salary was depleted by having to repay debts incurred due to her ex-husband. She also had to pay rent and buy food for herself. She

had explained her circumstances to TP, in the process causing herself more trauma, and TP showed little to no compassion for her situation.

- She believed that the Scheme's policies and Regulations were discriminatory towards someone in her situation.

25. On 17 December 2019, TP responded to Mrs N's IDRPs complaint and provided her with a copy of its letter of 7 March 2018, and reiterated why her IHER application was declined. Its letter of 7 March 2018 also explained that if she wished to appeal the decision to decline her IHER application, she had to submit an IDRPs appeal to DfE within six months of the date of the decision, which she did not. She may be able to submit a late IDRPs appeal to DfE, explaining why she was unable to do so within the six-month period.

26. In January 2020, TP corresponded with its own technical team, and DfE about how to deal with Mrs N's IDRPs appeal. It was agreed that Mrs N had not actually made a formal appeal before, so her latest letter should be treated as the first stage of an IHER appeal. Subsequently, Mrs N's IDRPs appeal was referred back to OH Assist to review.

27. On 22 January 2020, Dr Wladyslawska, an OH Assist appointed MA, provided their opinion on Mrs N's IDRPs appeal. In considering the appeal, Dr Wladyslawska reviewed Mrs N's IHER application, Dr Chapman's opinion, and Mrs N and TP's appeal correspondence. Dr Wladyslawska said:-

- At the time of the IHER application, Mrs N was suffering from anxiety, panic attacks, flashbacks, low mood, insomnia, an eating disorder and suicidal ideation. These were all symptoms associated with her PTSD.
- She was receiving medication, completed psychological therapy and was awaiting EMDR.
- Her GP, Dr Smith, suggested that Mrs N would experience an improvement in her symptoms with further therapies, which would allow her to undertake part-time work, though, expected residual symptoms would prevent her from teaching again.
- Mrs N's letter of 11 October 2017, said that she accepted that she did not meet the criteria for an EIHB, as she hoped to undertake alternative work in the future. She expressed this sentiment with her GP and psychiatrist.
- Mrs N was still permanently incapable of undertaking her role as a teacher; however, she was expected to be able to undertake less demanding alternative employment. This would preferably be on a part-time basis that was adequately adjusted to accommodate any residual symptoms.

28. On 23 January 2020, DfE wrote to Mrs N and said that there appeared to be some confusion in regard to the Scheme's IHER appeals procedure and the IDRPs. It explained how the process worked for IHER appeals and said that once this process

was exhausted she was able to complain under the IDRP. It said that TP would write to her shortly with the outcome for her stage one IHER appeal.

29. On the same day, TP wrote to Mrs N and provided her with a copy of Dr Wladyslawska's opinion. It explained that following the advice of Dr Wladyslawska, the decision to decline her IHER application was correct. It said that if she did not agree with the outcome, she could escalate her appeal to DfE under stage two of the IDRP.
30. On 25 February 2020, Mrs N wrote to TPO and the DfE and provided a detailed timeline of her communication with TP. She said that TP continued to ignore her comments about her personal circumstances at the time she opted out of the Scheme in 2011. Each of the MAs both agreed that she was permanently incapable of returning to teaching, yet TP still declined her IHER application when she should be eligible for an AIHB. TP had again confused the IHER appeals process with IDRP, despite instructions from the DfE on what to do.
31. On 4 March 2020, the DfE issued its IDRP response to Mrs N's appeal and said:-
 - It apologised for any inconvenience that she had suffered following any errors in the correspondence that TP had issued. That being said, TP had set out the correct position in its letter of 7 March 2018. This letter advised her of her right to make a complaint under the Scheme's IDRP, within six months of the decision to decline her IHER application.
 - It did not agree that TP had engaged in victim blaming or that there had been discrimination in favour of her abuser. It had no further comments to offer on the matter.
 - An IHER application was considered on "in-service" terms if the applicant was in pensionable employment, or if they left pensionable employment due to ill health, but applied for IHER within two years. If these conditions were met, and it was agreed that they were permanently incapacitated from teaching employment, they were eligible for an EIHB.
 - Mrs N opted out of the Scheme in 2011, so her IHER application could only be considered on "out of service" terms. Consequently, it needed to be agreed that she was permanently incapacitated from teaching employment, in addition to being permanently incapacitated from any gainful employment.
 - Upon commencing two separate periods of teaching employment in 2015 and 2016, she elected to opt out of the Scheme. Each of her employers at the time would have informed her of the consequences of doing so. Her most recent opt out election included the following statement:

"By opting out of the TPS for the employment I will forfeit the right to the following scheme benefits in respect of future service in this employment:

Access to ill-health benefits, should I become permanently unable to teach.”

- It apologised for any confusion she had suffered in regard to the Scheme appeals process. She had now received the outcome of her IHER application from TP, as well as TP’s response to her first appeal, and the DfE had now provided a response to her appeal under IDRP.

32. On 5 March 2020, Mrs N wrote to the DfE and TPO and explained:-

- She was provided with contradictory information by TP and DfE about the appeals and IDRP process.
- DfE did not explain why it believed that TP had not engaged in victim blaming due to the circumstances that led to her having to opt out of the Scheme nor were there any details of anyone that she could contact for further insight on this comment.
- DfE’s IDRP response did not answer the two substantial elements of her complaint:
 - she is permanently unable to continue in her role as a teacher, as supported by her own specialist and two MA’s, so she is entitled to an AIHB; and
 - she only opted out of the Scheme due to the abuse she suffered from her ex-husband; this was the only reason she was not entitled to an EIHB.
- What she has asked to be considered is that she did not have the mental capacity to make her own decision when she opted out of the Scheme in 2011.
- She suffered economic and financial abuse at the hands of her ex-husband. She took note that she would have been informed of the negative consequences of opting out of the Scheme; however, this was wholly irrelevant in the context of her wider circumstances at the time. This should not be held against her as it acted to undermine her appeal for support.

33. On 12 March 2020, the DfE wrote to Mrs N and expressed empathy for the traumatic experiences she had suffered. It explained that the Scheme was a statutory arrangement governed by regulations set down by parliament, so there was limited scope for discretion. The Regulations were clear in stating that if a member opts out of the Scheme and then applies for IHER, their application is treated as “out of service”. Irrespective of the reason why she opted out of the Scheme, she had not paid any contributions into the Scheme since 2011, so her application was correctly treated as “out of service”. If her health declined further, she was able to submit a fresh IHER application.

Adjudicator's Opinion

34. Mrs N'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 below in paragraphs 35 to 57.
35. The relevant scheme rules or regulations will determine whether a member can take early retirement due to ill health. These rules or regulations will also determine the circumstances in which members are eligible for ill health benefits, the conditions which they must satisfy, and sometimes the way in which decisions about ill health must be taken.
36. Schedule 7 of the Regulations provides the criteria for the payment of an IHER benefit. This is dependent upon the severity of an applicant's incapacity, and whether or not their application is considered as either "in service" or "out of service". To qualify for an IHER pension an applicant must satisfy conditions 1, 2 and 3; however, if the applicant does not satisfy one or more of these conditions they must satisfy condition 4.
37. If an applicant satisfies conditions 1 to 3, their application is considered as "in-service". Thereafter regulation 65 of the Regulations then provides that an "in-service" application is considered against conditions A and B. That is:
- "Condition A - is satisfied if the member's ability to undertake any work is impaired by 90% and is likely to be so permanently; and
- Condition B – is satisfied if immediately before satisfying Condition A: the member was in pensionable employment; paying pension contributions covering an absence from pensionable employment; or a period of non-pensionable sick leave followed immediately after a period of pensionable employment."
38. If conditions A and B are met, then the applicant is entitled to the payment of an EIHB. If a member does not satisfy any one of conditions 1 to 3, but they satisfy condition 4, which is that their ability to undertake any work is impaired by more than 90%, permanently, their application is treated as "out of service" and they are entitled to an AIHB.
39. TP and DfE explained that Mrs N's application was considered as "out of service" as she did not submit her application within two years of the end of her pensionable employment. Mrs N's pensionable employment ended on 31 August 2011 when she opted out of the Scheme.
40. Regulation 133 provides TP and DfE the discretion to extend the two-year time limit to submit an IHER application. TP and DfE explained that this discretion was not exercised as, after Mrs N opted out of the Scheme, she continued to work as a teacher until February 2017, when she left due to incapacity. Mrs N was not immediately incapacitated when she opted out of the Scheme in 2011.

41. The Adjudicator understood that Mrs N explained to TP, on several occasions, the reasons why she initially opted out of the Scheme, and then did not opt back in at any other time. While the Adjudicator was extremely sympathetic regarding what was clearly a deeply traumatic period of Mrs N's life, after she opted out of the Scheme, she remained in employment for five years. To extend the two-year period so significantly would be unreasonable given that Mrs N had not been a contributing member of the Scheme for five years. TP's decision was reasonable when considered alongside the relevant Regulations.
42. Mrs N's application was considered by the appropriate decision maker, which was TP, after it received the opinion of the Scheme appointed MA, OH Assist. So, the application could not be challenged on this basis.
43. Mrs N's IHER application was considered on "out of service" terms. So, she either met condition 4 under schedule 7, or she did not. This was a finding of fact, as opposed to an exercise of discretion. OH Assist was required to provide an opinion on whether or not Mrs N's ability to carry out "any" work was impaired by more than 90% and that it was likely to be so permanently.
44. The decision had to be made without the benefit of hindsight. So, any progress in Mrs N's condition, after her teaching employment ceased, was not a relevant consideration for the purposes of the decision. However, this did not preclude the MA, or TP, from considering reports that provide further insight into any medical conditions, or symptoms, which were present at the time.
45. Where treatment is ongoing or yet to be tried, the MA was expected to comment on its likely efficacy. That is, the likelihood of it improving the member's health to a sufficient extent to enable them to be capable of discharging efficiently the duties of their employment.
46. Dr Chapman, an OH assist MA, noted that Mrs N suffered from PTSD, anxiety, depression and an eating disorder, for which she had taken several types of medication, undergone specialist psychological therapy and regularly received support from the community mental health team. She was awaiting EMDR, as well as psychological therapy to treat her PTSD.
47. Dr Theodossiadis' report of 9 January 2017 said that receiving EMDR would likely lead to sufficient improvements in Mrs N's symptoms. This would then allow her to undergo psychological therapy with a specialist in complex PTSD. Dr Theodossiadis believed that with the benefits of these treatments, Mrs N would see a substantial improvement within two to three years.
48. Dr Perara's report of 24 August 2017 explained that Mrs N was "not suitable for work related activities at present". Dr Smith, Mrs N's GP, wrote in the IHER application that he did not anticipate that Mrs N would ever be able to return to teaching. However, with the benefit of treatment, he was hopeful that she would be able to undertake part-time employment.

49. Dr Chapman said that Mrs N was, at the time of her application, permanently incapable of returning to her role as a teacher. However, her ability to undertake any other form of employment was not permanently impaired by more than 90% as she would likely be fit for work with minimal responsibilities, time pressures and targets before her NRA. TP accepted Dr Chapman's opinion and informed Mrs N that her application was unsuccessful.
50. The Adjudicator was satisfied that TP and OH Assist were in receipt of sufficient information to form a view on the outcome of Mrs N's IHER application. At the time, Mrs N was 34 years old and 26 years away from reaching her NRA. Subsequently, the bar for satisfying condition 4 was high. It was not unreasonable for Dr Chapman to reach a view that Mrs N's complex PTSD, depression and eating disorder would likely improve, within the next 26 years, with the available treatments.
51. Dr Chapman understood, and acted in accordance with the relevant Regulations. However, the Adjudicator did not agree that they had sufficiently explained whether the treatments Mrs N was receiving, or due to receive, were likely to improve her conditions to the extent that she could undertake alternative part-time employment before her NRA.
52. Upon receipt of Dr Chapman's report, TP should have sought clarification about the efficacy of Mrs N's treatments. If this information were sought, and included within TP's decision, and Dr Chapman's report, it would likely have helped Mrs N to better understand the reason as to why she was not eligible for IHER and also to help her make a more informed appeal.
53. Dr Wladyslawska, another OH Assist MA who had no prior involvement in Mrs N's application, reviewed Mrs N's IHER appeal. Dr Wladyslawska noted that Mrs N, her GP, and treating specialists all agreed that, with the benefit of future treatment, Mrs N would be able to undertake alternative part-time work in the future. Taking this into consideration, Dr Wladyslawska agreed that Mrs N was permanently incapable of teaching, but not of alternative work of a less stressful nature. Dr Wladyslawska said that she placed considerable weight on Dr Theodossiadis' opinion in reaching her decision.
54. Overall, Dr Wladyslawska understood and acted in accordance with the relevant regulations though, the Adjudicator was disappointed that she did not provide an overview on the efficacy of Mrs N's current treatments. In spite of this, the view reached by Dr Wladyslawska was reasonable based on the evidence available to her.
55. The process followed by TP, in arriving at the outcome of Mrs N's IHER application, and the subsequent appeal, based on the quality of the MA reports, was adequate. While it would have been beneficial for additional information, about the efficacy of the treatments, to be sought from the two MAs, it is unlikely that it would have changed the outcome.
56. It was evident that Mrs N suffered from a number of complex conditions. However, the overall view reached by the MAs, supported by the evidence provided by Mrs N's

doctors, was that with the benefit of future treatment, it was likely that she would be able to undertake part-time work, before she reached her NRA.

57. Mrs N did not meet the criteria under condition 4, schedule 7 of the Regulations. So, she was not eligible for an AIHB. While there are deficiencies in the information provided within TP's decision, that is in regard to the efficacy of the treatments, there was no basis on which the decision should be remitted back to TP to reconsider, as it is unlikely to change the outcome.

58. Mrs N did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mrs N provided her further comments which do not change the outcome. I note the additional points raised by Mrs N, which are:-

- Her continued employment as a teacher should not be used as a reason to undermine her application for IHER. Her ex-husband did not allow her to leave her role as a teacher as part of the continued physical and financial abuse that she was subject to over a number of years.
- She collapsed at work which resulted in hospitalisation; however, she was made to return to work immediately after she was discharged from the hospital. She developed sepsis, which lead paramedics to challenge her ex-husband's refusal to call for emergency assistance, or allow her to stay at home and recover.
- Her movements were restricted by her ex-husband as he would drive her to and from work. He even obtained a job at the school she worked at, at one time, to monitor her. This was in addition to him siphoning her wages. She was not fit for work at the time, and she should not have been working.
- If the abuse that she suffered was less severe than it was, she may have been able to leave the marriage sooner than she did, and apply for IHER at an earlier date. She believed that her continued employment was "effectively penalising me for the severity of the abuse and control I endured, and for all of the days that I was forced into work despite being ill". When any of her previous periods of employment were a risk of being terminated, due to extensive absences, her husband would ensure that she moved to a new school.
- Her employer recognised the severity of her ill health and implemented reasonable adjustments to her workplace. These included, a reduced timetable, extended deadlines, additional supervision, additional rest breaks and all non-essential duties were removed. At times, she was told to rest in the school nurse's office.
- There was an additional delay in completing her IHER application due to the continued affects of her PTSD and mental health conditions. In completing the IHER forms she was made to revisit previous traumatic experiences.
- TP did not apply the proportionality incapacity assessment correctly. That is, her daily struggle to feed, wash, dress and get out of bed were not assessed in

relation to the 90% incapacity threshold. Both Dr Chapman and Dr Wladyslawka failed to provide detailed commentary on the treatments she was undergoing, and due to undergo.

- The medical evidence available consistently said that she was permanently unable to return to teaching employment. While there was some hope that she might be able to return to alternative employment in the future, this was not guaranteed. A letter dated 14 March 2024 from the Department of Work and Pensions confirmed that she was on the highest-level personal independence payments (**PIP**) for daily living activities and mobility. She has been in receipt of the PIP since 2017 confirming that her level of needed/incapacity has remained unchanged.
- It was not her decision to opt out of the Scheme. This decision was made while she was under significant emotional, physical and financial abuse. TP and DfE should take into consideration all of the exceptional circumstances she has outlined and allow for the extension of the two-year time-limit under regulation 133.

Deputy Ombudsman's decision

59. Mrs N's complaint concerned the handling of her IHER application and the decision to treat it as an out of service application. Mrs N believed that TP should exercise the discretion available to it under regulation 133, to extend the two-year deadline. This would allow for her IHER application to be treated as in-service.
60. I have carefully considered Mrs N's comments in relation to her circumstances at the time she opted out of the Scheme. I have every sympathy for what Mrs N has suffered during a deeply traumatic period in her life. However, TP can only pay pensions in accordance with the Regulations.
61. Regulation 65 provides that a member may receive an EIHB (which includes an enhancement for prospective pensionable service) if the member satisfies all of conditions 1, 2 and 3 in paragraph 3 of Schedule 7 of the Regulations and also satisfies condition A and condition B in regulation 65. Condition 1 is that the member left pensionable employment because of illness or injury. Condition 2 is that the member made their application within 2 years of leaving pensionable employment. Condition 3 is that immediately before making the application the member is incapacitated, which means that they are "unfit by reason of illness or injury and despite appropriate medical treatment to serve as a teacher, organiser or supervisor" and such illness or injury must be the same or connected to the illness or injury that caused the member to leave pensionable employment.
62. Regulation 60 and paragraph 3 of Schedule 7 provides that a member may also qualify for an AIHB (essentially early receipt of accrued pension without actuarial reduction) if the member meets either:

- conditions 1, 2 and 3 under paragraph 3 of Schedule 7 (“in service”) but without meeting conditions A and B of regulation 65; or
- condition 4 under paragraph 3 of Schedule 7.

63. Condition 4 is that the member’s “ability to carry out any work is impaired by more than 90% and is likely to be impaired by more than 90% permanently”. A member may satisfy condition 4 without being in service and the application does not need to be made within 2 years of leaving service.
64. I agree with the Adjudicator that Mrs N did not meet conditions 1 and 2 and could not qualify on an “in service” basis for an AIHB. Mrs N had left pensionable employment for a reason other than illness or injury when she opted out and therefore did not meet condition 1. This is notwithstanding that she may have been coerced by her ex-husband into opting-out when she originally did so in 2011; indeed, it appears that the reason for her opting-out may have been his coercion and desire to avoid pension contributions to increase her available income, not illness or injury. The Regulations provide no discretion in respect of the requirement under condition 1 that the member must have left pensionable service because of illness or injury. As such, TP and DfE have acted in accordance with the Regulations in treating the application as “out of service” because she did not meet at least one of the “in service” conditions, namely condition 1.
65. Mrs N had also left pensionable employment more than 2 years before making her application for IHER and therefore did not meet condition 2. This was a second reason why Mrs N did not meet the “in service” conditions.
66. While regulation 133 permitted the DfE on behalf of the Secretary of State, in its discretion, to extend the time for making an application so as to enable Mrs N to meet condition 2, even such an exercise of discretion would not have brought Mrs N within the “in service” conditions as she did not meet condition 1. There is therefore no need for me to consider whether the DfE should have considered such discretion. However, so far as relevant, I note that the DfE did consider its discretion under regulation 133 and that in arriving at the decision not to extend the two-year period, DfE considered the reasons why she opted out of the Scheme in 2011, that her marriage ended in 2013, that she chose not to opt back into the Scheme in 2015 and 2016 and that she remained in teaching employment up until 2017. The DfE considered relevant factors and its decision not to extend the two-year period in Mrs N’s case cannot be said to be perverse. As Mrs N had not been a contributing member of the Scheme, since 2011, when she submitted her IHER application, in 2017, she could only be considered for an AIHB on an “out of service” basis, under condition 4.
67. In regard to the IHER application itself, it is important to highlight my role within the IHER process. I am not tasked with reviewing medical evidence and deciding whether Mrs N should in fact receive an ill health pension, that decision is made by TP, on

behalf of DfE, in accordance with the Regulations. Rather, my role is to look at the process followed by TP.

68. When considering how a decision has been made by TP, I will look at whether:
- The appropriate evidence has been obtained and considered;
 - The applicable scheme rules and regulations have been correctly applied; and
 - If the decision was supported by the available relevant evidence.
69. I agree with the Adjudicator's assessment of the decision-making process undertaken on Mrs N's IHER application. There was insufficient information provided on the efficacy of the treatments Mrs N was undergoing/due to undergo. However, I am satisfied that the MA's, and TP, at each stage of Mrs N's application and appeals were in receipt of sufficient information, about Mrs N's conditions and their treatments to reach a reasonable outcome. This is in conjunction with the MA's being qualified specialists in occupational health.
70. I note that Mrs N has highlighted that, in her view, the MA's and TP did not adequately apply the 90% capacity test (condition 4). I do not agree. In reviewing Mrs N's application, Dr Chapman and Dr Wladyslawka agreed that Mrs N was permanently unable to return to teaching. However, she would likely be able to return to some form of gainful employment before her NRA.
71. The recommended alternative forms of employment needed to be part-time, with minimal responsibilities and pressure. Based on the evidence, at the time, Mrs N's incapacity was not permanently more than 90% due to the expectation she would recover sufficiently, within the next 26 years, to undertake alternative gainful employment. This is also in line with Mrs N's own view and the view of her GP that she might be able to undertake alternative employment in the future. I find that condition 4 of the Regulations was considered and applied appropriately by the MA and TP.
72. I have taken note of the PIP letter which Mrs N has provided as proof of her continuing incapacity. The criteria for a PIP award and that of an IHER pension under the Regulations are different and the fact that Mrs N is in receipt of a PIP award does not necessarily mean she is eligible for an IHER pension.
73. I appreciate that Mrs N's conditions/symptoms may not have improved to the extent that the MA's believed that they would. However, at the time, the MA's could only make a forward-looking assessment based on the evidence available. To view the matter as Mrs N is now, is only possible with the benefit of hindsight.
74. I understand that this outcome will not be one that Mrs N was hoping for. While there were some insufficient aspects to the way in which her IHER application was handled, there is no reason to remit the decision back to TP. I understand that Mrs N's circumstances, regarding her health, do not appear to have improved since 2017.

CAS-35667-N6N7

In light of this, Mrs N is free to re-apply for IHER, this will allow her to provide fresh medical evidence about her current health and circumstances for TP to consider.

75. I do not uphold Mrs N's complaint.

Camilla Barry

Deputy Pensions Ombudsman

07 January 2025

Appendix

Medical evidence

Dr Theodossiadis' (Consultant Psychiatrist) report dated 9 January 2017

“ ...

4.2 The nature of any future treatment envisage and prospects this may offer by way of improvement.

According to the relevant medical literature, the treatment of choice in the first instance is EMDR. This type of treatment can lead to such an improvement which could allow the Claimant to benefit from additional psychological therapy from a Consultant Clinical Psychologist or a Psychotherapist who has expertise in the treatment of complex PTSD and who is able to use a client centred approach that it is both evidenced based and flexible enough to accommodate the Claimant's individual needs related to her complex traumatic stress experience and reaction.

In my opinion, it is more likely than not that the treatment stated in the previous paragraph would lead to a substantial improvement two or three years after the treatment is commenced.

...

4.3 Prognosis

In my opinion, it is more likely than not that her vulnerability to having episodes of depression in the future during exposure to stressful life events could decrease if she receives the treatment I described in section 4.2 of this report.

Based on my clinical experience, the Claimant's symptoms of Complex PTSD could diminish if she receives the treatment I recommended in Section 4.2 of this report. In my opinion, any exposure to future trauma and/or stressful life events could lead to an exacerbation of her complex PTSD throughout her life but if she were to receive the treatment I recommended in section 4.2 then it is more likely than not that she would have a range of appropriate coping skills to deal with this more effectively. The opinion of an expert in the treatment of Complex PTSD on the long-term prognosis would be invaluable (please see section 4.9).

4.5 Working capacity

In my opinion, her working capacity has been restricted to a very significant extent and she is also at a disadvantage on the labour market as a result of the negligence which has been detrimental upon her career resulting in a considerable loss of earnings since the spring of 2013 and

damage to her future employment prospects/future earning potential; in my opinion she is at a disadvantage in the labour market for the foreseeable future.

4.9 Would a report from another specialist be useful?

I strongly recommend a report from a specialist in the treatment of Complex Post Traumatic Stress Disorder who could advise on three specific issues, firstly on the treatment of the Complex PTSD, secondly on her psychological rehabilitation, and thirdly on the long-term prognosis.”

Dr Perea’s (Associate Specialist Psychiatrist) report dated 24 August 2017

“[Mrs N] gives a history of a traumatic past...More recently she was having [EMDR] treatment with Talk Liverpool which unexpectedly got disrupted due to service issues. We then referred her to our psychology service for continuation of EMDR and she underwent an assessment by their service, and she is now on their waiting list for recommencement of EMDR...”

In my opinion she is not suitable for work related activities at present.”