

Ombudsman's Determination

Applicant	Ms N
Scheme	Teachers' Pension Scheme (the Scheme)
Respondent	The Department for Education (the DfE)

Outcome

1. Ms N's complaint is partly upheld. The DfE did not follow a reasonable process when it decided not to exercise discretion and extend, or treat as extended, the relevant time within which Ms N could make an application for ill health retirement. My Directions are set out in paragraph 46 below.

Complaint summary

2. Ms N's complaint concerns the DfE's decision not to exercise discretion and treat her ill health retirement application on "in service" terms. Specifically, it failed to follow a correct decision-making process when reviewing her case.

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 many other exchanges of information between the parties.
4. The Teachers' Pension Scheme Regulations 2010 (SI2010/990) (as amended) (**the 2010 Regulations**) apply in this case. The relevant extracts from the 2010 Regulations are set out in Appendix One.
5. Ms N was in pensionable service under the Scheme in connection with her employment with South Staffordshire College (**the College**) and was on long term sickness absence.
6. On 11 June 2012, Dr Baxendine, the College's Occupational Health Physician, provided a report to the College (**the Report**). She said that the long-term prognosis for Ms N's condition was "guarded". She considered that Ms N was unfit to return to any work for the foreseeable future.

7. In July 2012, the College wrote to Ms N (**the July Letter**). It said that:

“The final part of the [Report]... stated that due to your length of service with the Teachers’ Pension Scheme, plus the fact that not all treatment options have been exhausted, ill health retirement is not currently a financially beneficial option to consider.”
8. On 4 October 2012, Ms N’s employment was terminated on the grounds of ill health.
9. Under Regulation 7(2)(b) of the 2010 Regulations, a period of sick leave is not considered pensionable employment where the member is entitled to less than half their salary.
10. Ms N’s pensionable employment in the Scheme ended on 31 December 2011.
11. Paragraph 3(4) Schedule 7 of the 2010 Regulations, required an application for ill health retirement to be made within six months of the end of pensionable employment or before the date on which non-pensionable sick leave ends (“**Condition 3**”). This was subsequently amended with effect from April 2015, to require the application to be made within two years of the end of pensionable employment.
12. Regulation 133: Extension of time, of the 2010 Regulations provides that:

“... 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.”
13. In November 2013, in response to a request from Ms N, Teachers’ Pensions issued the relevant forms and guidance notes so that Ms N could make an application for ill health retirement. It referred Ms N to its website for further information.
14. The notes on page one of the application form (**the Notes**) explained the circumstances where a member’s service would be enhanced for pension purposes. The Notes also explained that, if the member was no longer employed as a teacher, and had been out of pensionable employment for six months, their benefits would not be enhanced.
15. On 29 September 2015, Ms N applied for ill health retirement and was awarded retirement benefits on ill health terms in October 2015. Ms N’s benefits were not enhanced because her application had been treated as “out of service”. In other words, she had not met the conditions under paragraph 3(4) Schedule 7 of the 2010 Regulations.
16. In the period that followed, the former Pensions Advisory Service (**TPAS**) contacted Teachers’ Pensions on Ms N’s behalf.
17. The views expressed by Teachers’ Pensions’ medical adviser Dr Chapman in February 2017, in connection with Ms N’s case are set out in Appendix Two.

18. TPAS provided a copy of a report from Ms N's Consultant, Professor Spiller, which was dated 3 May 2017. TPAS asked for Ms N's case to be considered under the Scheme's Internal Dispute Resolution procedure (**IDRP**). An extract from Professor Spiller's report is set out in Appendix Two.
19. In response, Teachers' Pensions referred to the Report. It explained that if Ms N had applied for ill health retirement by 30 June 2012, it would have been considered as an "in-service" application.
20. On 26 June 2017, after TPAS appealed the decision to treat the application as "out of service" on Ms N's behalf, the DfE issued a response under stage two of the IDRPs (**the Stage Two Response**). In summary, it said:-
 - For the application to be treated as in-service, Ms N would have needed to submit it within six months of leaving pensionable service or before the date her employment was terminated.
 - The DfE was not a party to the discussions Ms N had with the College. The Report said that treatment options had not been exhausted. A member applying for ill health retirement had to be permanently incapacitated despite appropriate medical treatment.
 - There was no evidence that Ms N was advised to delay her application for ill health retirement during a telephone conversation with Teachers' Pensions. If the conversation had taken place, it would have been after 4 October 2012. Consequently, it would have no effect on the outcome of her case.
 - The DfE could not confirm whether Ms N would have met the criteria for enhanced benefits if she had applied while still in service. The member has to demonstrate that they met the relevant criteria at the time of their application for ill health retirement. In Ms N's case, no application was made at the relevant time. Consequently, her application could not be treated as an in-service application. The DfE was satisfied that Teachers' Pensions had followed the correct process.
 - The DfE had asked its medical adviser to review Ms N's case to see if any of the key medical evidence could have been available within the relevant timeframe as this would support her application for an in-service award.
21. Ms N subsequently complained to The Pensions Ombudsman (**TPO**) and named the College, Teachers' Pensions and the DfE, as respondents on her complaint. She highlighted that the 2010 Regulations, contained provisions for the Secretary of State to extend the time limit by which an application for enhanced ill health retirement benefits must be made.
22. On 13 February 2019, the Adjudicator assigned to the case (**the First Adjudicator**) issued her Opinion on the complaint. She said that there was insufficient evidence to conclude that the College, or Dr Baxendine, actively advised Ms N not to apply for ill health retirement in 2012. The First Adjudicator concluded that the July 2012 Letter

was misleading, if read in isolation. However, it was not the only information available to Mrs N at the time and it must be read in that context. The First Adjudicator highlighted that Mrs N had seen a copy of the Report “and would have seen that she had been reported as not considering ill health retirement as financially beneficial. In addition, Mrs N would have had access to the scheme literature.”

23. The First Adjudicator also said there was no record that Ms N was advised by Teachers’ Pensions, in 2013, to wait until the timeframe for ill health retirement applications had been extended to two years. The First Adjudicator explained that the timeframe was not extended until April 2015. So, it was unlikely that Teachers’ Pensions would have discussed this with Ms N.

24. However, the First Adjudicator noted that, in the Stage Two Response, there was no indication that the DfE had considered whether there were grounds for extending the application period under Regulation 133. She acknowledged that the power to extend the time period was discretionary and the Ombudsman could not exercise discretion on the DfE’s behalf. She said that the complaint should be partly upheld to the extent that the DfE had failed to consider whether it was appropriate to exercise its discretion in Ms N’s case.

25. The First Adjudicator emphasised that:

“... I am not expressing any opinion as to whether or not it would be appropriate for the DfE to extend the time within which Ms N could apply for enhanced benefits. It may be, on due consideration, the DfE decides that it would not be appropriate to allow further time for her application. This remains one of the possible legitimate outcomes of a proper consideration of its discretionary power. However, any decision would have to be supported by appropriate evidence and Ms N should be given a properly reasoned decision.”

26. The parties to the complaint accepted the Opinion. On reviewing the matter, the DfE notified Ms N on 10 April 2019 (**the April Letter**), that it had chosen not to exercise discretion in her case. The DfE explained that:

“...Our process for deciding whether to exercise discretion to allow an out of service [ill health retirement (**IHR**)] application to be treated on “in service” terms is to determine whether the member was prevented from making the application within the prescribed timeframe, i.e. that they were deprived of their opportunity to apply on, “in service” terms. In your case you were still in service in 2011 at the time that you became ill, and in 2012 you discussed the possibility of applying for ill health retirement with your employer[’s] occupational health advisor, and were therefore aware that IHR was a possible option. However, you did not make an application for IHR until 2015 at which point you were both out of teaching service and outside of the period designated to be treated as “in service... the ... Adjudicator has determined that you were not misadvised... I agree with this conclusion”.

27. On 28 May 2019, Ms N complained under the IDRP.

28. On 18 June 2019, the DfE issued its response but did not uphold the complaint (**the June Letter**). The DfE said that it was for members to decide whether they should apply for ill health retirement and arrange for supporting evidence to be provided. It also said that discretion was intended to be exercised in exceptional cases. Namely, where it had been shown that the member had been prevented from applying within the prescribed timescales.

29. **Ms N's position:-**

- She was gravely ill at the time. There is sufficient evidence from medical professionals to confirm that she was too ill to manage her personal affairs.
- She considers that the College “deprived and prevented” her from applying for ill health retirement at the time. It had a duty of care to ensure that information was given to her in writing and in a “true light” to ensure that she was “safeguarded” to apply for the relevant pension benefits. The College’s failure to do so has caused her financial loss and hardship.
- She was given conflicting information on the 2010 Regulations and the relevant timelines. This prevented her from applying for ill health retirement on enhanced terms at an earlier date.

30. **The DfE's position:-**

- The DfE still considers that it is not reasonable to award Ms N ill health retirement benefits on enhanced terms.
- While the DfE has discretion to extend the time, within which activity is required to take place under the 2010 Regulations, this is intended to be used in exceptional circumstances. Specifically, to correct a failing that would otherwise stop the relevant policy intention being applied.
- The policy intention is that individual members decide if and when to apply for ill health retirement. If they apply while still in service, or within the relevant period in which they are entitled to be treated as “in service”, then their application is treated on these terms.
- The DfE’s process, for deciding whether to exercise discretion, is to determine whether the member was prevented from making the application within the prescribed timeframe. Namely, whether they were deprived of their opportunity to apply on in service terms.
- The First Adjudicator concluded that Ms N had not been misadvised by the College. Consequently, the DfE does not accept that there are grounds for discretion to be exercised in her case.

Adjudicator's Opinion

31. Ms N's complaint was considered by one of our other Adjudicators who concluded that the DfE did not consider Ms N's state of health during the period concerned. So it should make a new decision on whether to exercise discretion under Regulation 133. The Adjudicator also concluded that Ms N had suffered non-financial injustice in connection with this matter which would merit an award. The Adjudicator's findings are summarised below:-

- The First Adjudicator had noted that there had been some confusion concerning when Ms N could have applied within time to satisfy "Condition 3". Nonetheless, Ms N could have satisfied Condition 3, if she had applied before her employment ended in October 2012.
- The Adjudicator said that the reasonableness of the DfE's decision, not to exercise discretion under the 2010 Regulations and extend the relevant timeframe, turned on the specific facts of the case. The Adjudicator also said that it is not for the Pensions Ombudsman or, by extension, an Adjudicator, to agree or disagree with the DfE's decision.
- The Adjudicator explained that the Ombudsman would only intervene if the DfE had taken into account an irrelevant factor, ignored a relevant one, otherwise misdirected itself or reached a "perverse" decision.
- The Adjudicator explained that the DfE must be able to demonstrate that it applied its discretionary powers consistently with the 2010 Regulations. It must also be able to demonstrate that it considered the particular merits of Ms N's case, rather than applying a blanket policy. One of the specific obligations on decision-makers is to consider all relevant information which is available to them and ignore all irrelevant information.
- The Adjudicator said that it is reasonable for a decision-maker to have regard to any established and/or published policies. However, it should not be completely fettered by them, unless the relevant rules or regulations expressly allow for this.
- The Adjudicator highlighted that the DfE's decision should have resulted from a process where all relevant factors had been considered. The Adjudicator considered that those relevant factors should include the particular circumstances of Ms N's case and any medical evidence that had been made available to the DfE. On reviewing the case, the Adjudicator was not satisfied that the DfE's decision was reached in the correct way.
- The Adjudicator noted that the DfE had applied a policy to exercise discretion where a member had been prevented from applying within the prescribed timescales. The Adjudicator said that Ms N's state of health during the period concerned should have been a relevant consideration given the nature of her case. The DfE's failure to consider this amounted to a procedural error.

- The Adjudicator recommended that the DfE reconsider the matter and in more detail. She also recommended that the DfE pay Ms N a distress and inconvenience award of £500, in recognition of the significant non-financial injustice she had suffered in connection with this matter.
32. The DfE did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms N and the DfE provided their further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points they have raised.
33. The DfE's comments are summarised below:-
- The DfE does not accept that it made a procedural error by not considering a potential ground for discretion that was neither raised by Ms N, nor evident to the DfE.
 - Discretion is exercised when justified "and not by exclusion". Ms N did not claim that her illness rendered her incapable of completing her application within the regulatory deadlines. So discretion was not considered as justified in this case.
 - Furthermore, the medical evidence Ms N submitted to the DfE did not indicate that her illness prevented her from completing her application within the regulatory deadlines. Ms N asserted that she was too unwell to understand "pension information", and that she relied on the College to provide correct information.
 - Ms N also asserted that, had she received appropriate information from the College, she would have completed her application sooner, or nominated a representative to make an application on her behalf. This was addressed by the First Adjudicator in her Opinion.
 - The First Adjudicator was of the view that there was insufficient evidence that the College had misadvised Ms N. The First Adjudicator also observed that information was available to Ms N on Teachers' Pensions website, including the application form "regarding eligibility for enhancement."
 - The April Letter and June Letter outlined the circumstances in which the DfE will exercise discretion "reasonably and consistently". Namely, where "the intended regulatory outcome would not be achieved, and the member [is] disadvantaged due to circumstances beyond their control". It was open to Ms N to confirm, and provide supporting evidence, that the circumstances were beyond her control.
 - Teachers' Pensions and the DfE considered whether discretion should be exercised, without the member requesting this. The DfE will proceed on this basis where clear and compelling evidence had already been provided that the member was prevented from applying in time. Decisions are taken by the DfE on the balance of probability, based on the evidence available. The member, or their nominated representative, is expected to provide this evidence in accordance with Regulation 132.

- The DfE is willing to reconsider the matter. However, the application will be judged against the same “reasonable and consistent criteria”. It is open to Ms N, or her nominated representative, to provide the evidence necessary to show that discretion should be applied in this case.

34. Ms N’s additional comments are summarised below:-

- Her case concerns the principle of employers caring and supporting teaching staff that become unwell and have to place their trust in the professional competency of the teams that manage ill-health at work. While she accepts that she could have appointed a representative at the time, her employer had a duty of care to protect her financial interests and to ensure that she understood her employment and pension rights.
- She could not have submitted an application without knowing when the relevant period expired; she queried the position over the years. Teachers’ Pensions did not discuss the relevant “timelines/dates” with her, or the fact that late applications could be considered in certain circumstances. Until a few years ago, neither the College nor Teachers’ Pensions were able to provide consistent information on when the six month time period started or ended. Teachers’ Pensions eventually confirmed the dates. She questions how the DfE could expect her to have been aware of the position in the circumstances.
- There is sufficient medical evidence to apply discretion in her case: “inside” and “outside” the timeframe. She would not have been able to manage her personal affairs due to her illness. In his report to Teachers’ Pensions, Professor Spiller explained how unwell she was at the time and that she would have been eligible to claim ill health retirement. She questions why the DfE did not consider it appropriate to exercise discretion after reading the report.
- There are complex contributing factors in her case. Namely, a series of “procedural errors and maladministration” over the period of 10 years this matter has been going on. During this time, she has been given conflicting information. She would like the DfE to confirm that it has looked at this evidence and for it to exercise discretion in the circumstances.

35. I agree with the Adjudicator’s Opinion and note the additional points raised by the parties.

Ombudsman’s decision

36. Ms N has raised an issue concerning the alleged failure on the part of the College to provide her with correct information, an issue which formed part of her initial complaint to TPO. This Determination only deals with the new complaint that has been accepted for investigation. I am not considering any matters that fall outside the scope of that complaint.

37. In the absence of independent evidence to substantiate that Ms N was misinformed in 2012 or in 2013, I am satisfied that the First Adjudicator came to the correct conclusion. I note that Ms N accepted the First Adjudicator's Opinion.
38. It is worthwhile highlighting that the Courts have been reluctant to impose a wider duty on the employer to take care of the economic well-being of staff and include a positive obligation to advise on how best to exercise valuable rights under the employment contract [University of Nottingham v Eyett [1999] ICR 721]. In *Outram v Academy Plastics* [2000] IRLR 499, the court ruled that there was no general implied duty on an employer to provide information and/or advice to an employee about a pension scheme in order to prevent economic loss.
39. The 2010 Regulations, provide that 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 those Regulations. This gives the DfE discretion to extend the time limits, independently of any view held by TPO on how discretion should be exercised. Consequently, the extent to which I can interfere with the decision the DfE made in this case is limited. My role is to consider whether the procedure it followed was reasonable.
40. In cases involving the exercise of discretion, there are some well-established principles which a decision-maker is expected to follow. Broadly, it must consider and weigh all the relevant evidence, but the weight to attach to any piece of evidence is for the decision-maker to decide. In fact, a decision-maker could, if it wished, attach no weight at all to a piece of evidence. The only requirement is that the evidence is considered. I can only intervene if the decision-maker failed to take something relevant into account or took something irrelevant into account, failed to ask the correct questions; or failed to construe and follow the relevant rules or regulations correctly.
41. It follows that the DfE, in its capacity as the decision-maker, must consider and weigh all the relevant evidence it had in its possession.
42. Where the exercise of discretion concerns an application for ill health retirement, a reasonable course of action would be for the decision maker to consider the relevance of any medical evidence. The medical evidence available to the DfE included the reports from Dr Chapman and Professor Spiller.
43. I find, on reviewing the evidence, that the DfE restricted itself to considering whether Ms N had been misadvised. In doing so, the DfE failed to consider and weigh all the relevant evidence. This constitutes a procedural failing on the part of the DfE and amounts to maladministration.
44. Consequently, the DfE shall look at the matter again and consider whether it would be appropriate to exercise discretion to extend, or treat as extended, the relevant timeframe in this case. The maladministration identified in paragraph 43 above, has unduly delayed this matter. I am mindful that Ms N faces a further period of

uncertainty while the DfE reviews her case. I agree that Ms N is entitled to an award in recognition of the significant non-financial injustice this matter has caused her.

45. I partly uphold the complaint.

Directions

46. Within 28 days of the date of this Determination, the DfE shall:

- I. pay Ms N £500, in recognition of the significant distress and inconvenience which she has suffered,
- II. invite Ms N to make further representations to support her application for ill health retirement benefits on enhanced terms,
- III. within a further 28 days of receiving Ms N's representations, make a new decision on whether to exercise discretion under Regulation 133,
- IV. notify Ms N of that decision and explain in detail how it was reached; and
- V. should the DfE exercise its discretion in this case, it shall arrange for Teachers' Pensions to recalculate Ms N's ill health retirement benefits accordingly and notify her in writing of her revised award. Any arrears of retirement benefits shall be paid with interest calculated at the base rate for the time being quoted by the Bank of England. Or, if higher, the rate of late payment interest provided under the Scheme Regulations.

Anthony Arter CBE

Deputy Pensions Ombudsman
25 January 2023

Appendix One

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

47. On 31 December 2011, Schedule 7 provided that:

- “3 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, ...,
- (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, ... 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, ... 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.”

48. Regulation 7(2) provided that:

“An employment is not pensionable employment unless the person (P) in that employment is entitled to be paid -

- (a) P's salary in full, or
- (b) where P is on sick leave or on adoption, maternity, parental, paternity or additional paternity leave, not less than half P's salary, ...”

49. Regulation 65 sets out the conditions for payment of total incapacity benefits. On 31 December 2011, it provided that:

“(1) This regulation applies where -

- (a) an ill-health pension becomes payable to a person (P) because P satisfies Conditions 1, 2 and 3 set out in paragraph 3 of Schedule 7 (Case C: ill-health retirement), and
 - (b) P satisfies Conditions A and B.
- (2) P satisfies Condition A if P's ability to carry out any work is impaired by more than 90% and is likely to be impaired by more than 90% permanently.
- (3) P satisfies Condition B if immediately before satisfying Condition A -
- (a) P was in pensionable employment,
 - (b) P was paying contributions under regulation C9 of TPR 1997 or regulation 19 (election to pay contributions by a person serving in a reserve force), or
 - (c) P was taking a period of non-pensionable sick leave, ... which, in every case, followed on immediately after a period of pensionable employment.
- (4) A total incapacity pension is payable to P from the entitlement day.
- (5) Except as otherwise provided in these Regulations, the total incapacity pension is payable for life.
- (6) Where P is a pre-2007 entrant, a total incapacity lump sum is payable to P on the entitlement day.
- (7) The annual rate of the pension and the amount of the lump sum are to be calculated in accordance with regulation 66 (annual rate of total incapacity pension and amount of total incapacity lump sum).
- (8) The entitlement day is the date on which the ill-health pension mentioned in paragraph (1) becomes payable to P.”

50. Briefly, regulation 66 provides for the member's reckonable service to be increased by one-half of the period between the entitlement day and NPA.

51. Regulation 107 provided that:

- “(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 ...”

Appendix Two

Dr Chapman's report dated 8 February 2017

52. Dr Chapman said it was clear that Ms N was unwell from at least 2011 with symptoms of abdominal pain, fatigue and possibly depression. She referred to a letter from a mental health team dated 30 August 2011. Dr Chapman noted that Ms N's GP had referred her to a rheumatologist in April 2013 and, in the referral letter, had stated that she had not worked for almost two years. Dr Chapman said it was unclear why Ms N had been advised not to make an application for her pension when her contract ended.
53. Based on Dr Chapman's opinion, if Ms N had made an application for an enhanced pension, within six months of the termination of her contract, her application would have been successful.

Professor Spiller's report dated 3 May 2017

54. Professor Spiller said he had met Ms N, on 25 July 2012, when she had been referred by Queens Hospital, Burton upon Trent. He also said that Ms N had informed him that she had been awarded high-rate care and mobility benefits due to her daily living issues in 2011/12. He said his assessment at that point was that Ms N had total incapacity for work. Professor Spiller said:

“At the time I noted the comorbidities of chronic fatigue, fibromyalgia and somatisation and raised the issue of abnormal pain pathways following surgery. Management thereafter was fluctuating, but dominated by pain and incapacity. As I stated before the exact mechanism of pain is unclear but postsurgical distortion of pain processing is well recognised.

There seems to be some debate as to when her disability began. At the time of meeting [Ms N], she had had months of ill-health and investigations at Queens Hospital and was referred to myself for specialist digestive disease expertise.

I would certainly say that [Ms N's] disability was well established at that point and has been consistent since this period, where she continues to receive pain management and appointments at the Digestive Disease Unit.

I did write in support of her ill-health retirement on this basis. As mentioned above, I understand [Teachers' Pensions] awarded the pension with a total incapacity to work for the foreseeable future in her teaching job or any other gainful employment. I also agree this was the same time in July 2012 and [Ms N's] poor health has been consistent since.”