PO-10128

Ombudsman's Determination

Applicant	Mrs S
Scheme	NHS Pension Scheme
Respondents	NHS Business Services Authority (**NHS Pensions**) Torbay and South Devon NHS Foundation Trust (**the Trust**)

Outcome

1. Mrs S' complaint against NHS Pensions is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) NHS Pensions should adjust the amount of overpayment they are seeking to recover to allow for a change of position defence. They should also allow Mrs S to submit a hardship claim in respect of the remaining overpayment.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

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3. Mrs S has complained that she has not been awarded Tier 2 ill health retirement benefits. She was awarded Tier 1 benefits retrospectively and believes she should have been awarded Tier 2 benefits at this time.

4. Mrs S says the Trust did not put her forward for ill health retirement in 2011.

5. Mrs S has also complained that NHS Pensions are seeking to recover an overpayment of £838.20 (net). She has explained that she spent the money on refurbishments to her home to accommodate her disability.

Background information, including submissions from the parties

Tier 2 benefits

6. Mrs S was employed by the Trust until June 2011. Her contract of employment was terminated on the grounds of "capability resulting from ill health".

7. At the time Mrs S' employment was terminated, the National Health Service Pension Scheme Regulations 1995 (SI1995/300) (as amended) applied. Extracts from the relevant regulations are provided in Appendix 2.

8. Mrs S was seen by the Trust's occupational health physician, Dr May, in May 2011. He advised that Mrs S' symptoms were "likely to continue for the foreseeable future", but there may be other treatment modalities which could improve her pain control. Dr May said Mrs S would not be able to carry out a large proportion of the tasks required of her in her current role. He said redeployment could be considered, but she would need a job which did not require her to use her wrists repetitively or in a forceful way. He also said Mrs S would have difficulty with very fine tasks or dexterity. Dr May said he could not think of any jobs with the Trust which would be suitable. He suggested a receptionist's role where Mrs S could wear a headset and would only be required to write or use a computer for short periods. Dr May then said he did not think an ill health retirement application would be successful.

9. The Trust discussed Dr May's opinion with Mrs S in a meeting to discuss her future employment. In a follow up letter to Mrs S, the Trust said they had discussed ill health retirement with her. They said the decision to apply was hers. They also said that, if Mrs S applied for ill health retirement, she would be saying she was unable to return to work and her contract of employment would be terminated. The letter recorded Mrs S having said, at the meeting, that she would not be pursuing ill health retirement.

10. In July 2011, Mrs S was awarded Disability Living Allowance (care component) (**DLA**). In September 2011, she was awarded Employment and Support Allowance (**ESA**).

11. In January 2012, an employment tribunal issued a decision in respect of Mrs S' claims for disability discrimination and unfair dismissal against the Trust. The tribunal decided the claim for disability discrimination was not well founded and the claim for unfair dismissal was dismissed.

12. In 2012, Mrs S applied for the early payment of her deferred benefits on the grounds of ill health. Her application was declined, in September 2012, on the grounds that she was considered capable of regular employment of like duration.

13. Having passed age 60, Mrs S applied for payment of her benefits in January 2014. In her covering letter, Mrs S said she believed she should have been entitled to ill health retirement in 2011. Mrs S' benefits were put into payment in January 2014. She reiterated her request to be considered for retrospective ill health retirement.

14. NHS Pensions dealt with Mrs S' request to be retrospectively considered for ill health retirement under the internal dispute resolution (**IDR**) procedure. They obtained copies of her job description, occupational health records and a report from her GP. Mrs S' case was then referred to the Scheme's medical advisers (**OH Assist**). Summaries of the medical evidence considered in Mrs S' case are provided in Appendix 1.

15. NHS Pensions wrote to Mrs S, in October 2014, informing her that her appeal had been successful and she would be awarded Tier 1 benefits. Mrs S appealed the decision to award Tier 1 benefits. NHS Pensions issued a stage two IDR decision, on

16 March 2015, declining her appeal on the basis that their medical adviser was not of the opinion that the Tier 2 condition had been met.

16. Mrs S contacted NHS Pensions because she was still unhappy with the decision. She thought the medical advisers had not considered all of the medical evidence. They agreed to refer her case back to their medical advisers. In June 2015, NHS Pensions wrote to Mrs S saying their medical advisers were still of the opinion that the Tier 2 condition had not been met.

Overpayment

17. In October 2014, NHS Pensions wrote to Mrs S saying her retirement lump sum had been overpaid by £838.20. She was asked to repay the overpayment. In subsequent correspondence, NHS Pensions said, when Mrs S had applied for the payment of her benefits on age grounds, they had calculated cost of living increases up to August 2013. They said, because backdated ill health retirement had been agreed, the cost of living increase for the period June 2011 to August 2013 had been overpaid.

18. When Mrs S' benefits were authorised for payment on the grounds that she had passed her 60th birthday, NHS Pensions calculated her annual pension should be £1,775.48 and her lump sum should be £11,836.51. When a backdated ill health retirement award was agreed, NHS Pensions calculated Mrs S' annual pension should be £2,003.34 (with cost of living increases) but her lump sum should be £10,732.17.

19. Mrs S has provided receipts dated between January and August 2014 for work she had done amounting to around £9,900, together with a further undated receipt for £700. Mrs S has explained that she spent a further £500 for which she is unable to provide a receipt. She has also provided receipts for remedial work done on her new kitchen which she has attempted to recover from the fitter.

20. NHS Pensions have confirmed that Mrs S has not yet been given the option of submitting a hardship claim. However, they make the point that hardship should not be confused with inconvenience and that claims should be supported by reasonable evidence that the recovery action would be detrimental to the welfare of the debtor or their family. They have provided an income and expenditure form for Mrs S to complete.

Mrs S' Submission

21. Mrs S has explained that she was unable to do any kind of work because of the condition affecting her hands and wrists. Mrs S says she has been unemployable and unable to work since July 2010. She has explained that she lives in constant pain.

22. Mrs S also says the Trust did not put her on their redeployment register, did not try and find an alternative post for her, or find someone to do those parts of her job which she could not do. She asks why, if the NHS BSA think she is capable of some work, she was not put on the redeployment register. Mrs S says her employment was

terminated whilst she still had a current sick note which meant she did not receive her full entitlement to half pay. She says this also meant that she lost another year of pensionable employment which would have added £1,000 to her lump sum.

23. Mrs S says she applied for a voluntary role at an animal charity but was unsuccessful because of her limitations.

24. Mrs S has provided information relating to tenosynovitis, arthritis, and repetitive strain injury.

25. Mrs S has explained that she has had to live on little money since her employment ceased. She says she was without heating or hot water for three years and finds it difficult to afford healthy food.

Submission by NHS Pensions

26. The submission received from NHS Pensions is summarised briefly below:

- They properly considered Mrs S' application; taking into account and weighing all relevant evidence and nothing irrelevant. They took advice from proper sources; that is, the Scheme's medical advisers. They considered and accepted this advice and, as a result, came to a decision which they do not believe to be perverse.
- They accept that Mrs S meets the Tier 1 condition for ill health retirement. However, they have accepted the Scheme's medical adviser's advice that she does not meet the Tier 2 condition.
- The Scheme's medical adviser's recommendation was based on the correct interpretation of the relevant regulations, took into account the relevant evidence, and was not perverse.
- In medical matters, there may be a range of opinion from various sources. The fact that Mrs S does not agree with their conclusions and the weight they attached to various pieces of evidence does not mean that their decision was flawed.
- It is regrettable that the cost of living increases had been incorrectly applied. However, they have a duty to protect the public purse and benefits which have been incorrectly paid must be recovered. They are guided by the HM Treasury "Managing Public Money" guidance in this.

Submission by the Trust

27. The submission received from the Trust is summarised briefly below:

- Mrs S attended a meeting, in May 2011, to discuss her sickness absence. The nature and outcome of this meeting were recorded in their letter of 10 June 2011. It was made clear to Mrs S that it was the employee's right and decision to apply for ill health retirement. They believe they gave Mrs S every opportunity to apply for ill health retirement, but she chose not to at the time her employment was terminated.

Adjudicator's Opinion

28. Mrs S' complaint was considered by one of our Adjudicators who concluded that further action was required by NHS Pensions. The Adjudicator's findings are summarised briefly below:

Tier 2 Benefits

- At the time Mrs S' employment ceased, regulation E2A applied (see Appendix 2). To be entitled to Tier 2 benefits, Mrs S would have to have been "permanently incapable of regular employment of like duration". In Mrs S' case, that was part-time employment for the same number of hours; 25.5 hours per week. The employment does not have to be of the same or similar type to that which Mrs S undertook for the NHS; it can be any kind of employment for the same number of hours per week.

- The decision was for NHS Pensions to make. They should consider all the available relevant evidence. However, it is for them to determine how much weight they give to any of the evidence and it is open to them to prefer the advice they receive from their own medical advisers; unless there is a good reason why they should not or should not without seeking clarification. Such reasons might include errors or omissions of fact, or a misunderstanding of the regulations on the part of the medical advisers.

- There did not appear to be any error or omission of fact in the opinion given by OH Assist nor had they misunderstood the relevant regulation.

- There was a disagreement between Mrs S and the medical advisers as to the diagnosis of bilateral tenosynovitis. The opinion offered by OH Assist was supported by the medical evidence from Mrs S' own doctors. Neither Mr Rahimtoola nor Dr Young referred to a diagnosis of bilateral tenosynovitis in their correspondence. Dr Miller did refer to bilateral tenosynovitis, in her letter to Jobcentre Plus, but this seemed to be the only reference to this diagnosis. It was not sufficient to find that NHS Pensions should have queried OH Assist's opinion before relying on it to reach their decision.

- There were various references in the correspondence to Mrs S' decision not to take conventional medication. Her preference was to use natural remedies. The advice given by OH Assist was that Mrs S' capacity for employment was capable of improvement through treatment which she had not yet received and which "would be reasonable for her to receive". Regulation E2A specifies that one of the factors which must be taken into account is "whether the member has received appropriate medical treatment in respect of the incapacity". "Appropriate medical treatment" is then defined as "such medical treatment as it would be normal to receive in respect of the incapacity". However, it does not include treatment which, in the opinion of the Secretary of State, it would be reasonable for the member to refuse.

- Regulation E2A asks a slightly different question to that addressed by the OH Assist medical adviser; that is, whether it is reasonable for the member to refuse the treatment in question. The question addressed by the OH Assist medical adviser was whether it would be reasonable for Mrs S to receive the treatment. This did not affect the outcome of Mrs S' case because the OH Assist medical adviser was of the view that she would be capable of regular employment of like duration provided it did not involve heavy lifting. His reference to traditional pain relief was in the context of helping her accomplish this more easily.

- Regulation T1 requires a written application from a person claiming to be entitled to benefits. Mrs S was required to make an application if she wanted to be considered for ill health retirement. In their letter following the meeting to discuss Mrs S' future employment, the Trust said the decision to apply was hers. The Trust were not required to do more than this. Regulation T1 requires the Trust to provide certain evidence once a claim has been made; it does not require them to initiate a claim.

Overpayment

- The starting point for any case which relates to the overpayment of pension benefits is that the paying authority is legally entitled to seek recovery of the overpaid sum, regardless of whether or not it arose through an error on their part. Mrs S is only entitled to receive the amount of benefit provided for under the Scheme rules. Because of the backdating of her Tier 1 award, Mrs S has been paid more than she was entitled to receive under the Scheme rules.

- There are circumstances in which the person who has received an overpayment may not be required to repay all or part of the money; these are commonly referred to as defences against recovery. The defence which arises most often in cases relating to the overpayment of pension benefits is called a change of position.

- In Mrs S' case, the overpayment arose because of the way in which her benefits were revalued by the cost of living. This is not something which a lay member could be expected to know. Mrs S received the £838.20 in good faith.

- Mrs S had explained that she used her lump sum to refurbish her home to provide for her disability. The evidence she provided supported this. It might, therefore, be argued that Mrs S did not take any action she would not otherwise have done on receipt of her lump sum, including the £838.20. However, the evidence indicated that Mrs S stayed within the funds she thought were available to her. Had she received the lower lump sum, it was likely that she would have adjusted her expenditure accordingly. The amount which she could be said to have spent which she would not otherwise have done is the difference between the amount she did spend and the Tier 1 lump sum; £377.31. Mrs S had established a change of position defence for this amount. The remaining overpayment would be £460.89. This part of Mrs S' complaint could be upheld to this extent.

- Other defences against the recovery of the overpayment were considered. The other possibility is the legal defence referred to as estoppel. However, this would require there to have been an unambiguous representation/promise by NHS Pensions that Mrs S would receive £11,836.51 regardless of any change in her circumstances. The payments made by NHS Pensions were paid on the basis that they complied with the Scheme regulations. In the circumstances, it would be difficult to show that there had been the kind of unambiguous representation required for this kind of defence to succeed.

29. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs S for completeness.

Ombudsman's decision

30. I acknowledge that Mrs S feels very strongly that she met/meets the Tier 2 condition. She has clearly spent some time researching her condition in order to provide me with additional information.

31. However, my role is primarily to consider whether or not there was maladministration in the way in which NHS Pensions reached their decision; rather than review the medical evidence and come to a decision of my own as to Mrs S' eligibility. The medical evidence is reviewed, along with any other relevant evidence, in order to determine whether there was any maladministration. I have not, therefore, given detailed consideration to the additional evidence provided by Mrs S because it was not before NHS Pensions when they made their decision.

32. In coming to a decision, NHS Pensions may decide what weight they give to any of the evidence and it is open to them to prefer the opinions of their own doctors to, say, those of Mrs S and her doctors. They may choose to accept the advice from their own doctors unless there is a good reason for them not to do so; such as an error or omission of fact or a misunderstanding of the relevant regulations by the doctor in question. That was not the case here.

33. Mrs S also feels that the termination of her employment was not dealt with in a proper manner. In particular, she has raised issues related to redeployment and sick pay. These issues are more properly considered employment matters and they are not within my jurisdiction. I will not, therefore, comment any further on them.

34. Therefore, I uphold Mrs S' complaint to the extent indicated above.

Directions

35. NHS Pensions are, therefore, able to seek to recover the remaining £460.89. However, they should allow Mrs S to submit a hardship claim in the first instance. I understand that they are quite willing to consider such a claim. Should Mrs S' hardship claim not succeed, she should be allowed to repay the remaining overpayment over the same period as it arose; nine months.

Anthony Arter

Pensions Ombudsman
16 December 2016

Appendix 1

Medical evidence

Mr Rahimtoola (consultant orthopaedic hand surgeon), 20 December 2010

36. In a letter to Mrs S' GP, Mr Rahimtoola gave a diagnosis of generalised mild arthritic, bilateral, carpal joints and degeneration and mild ulna abutment syndrome. He discussed the results of MRI scans on Mrs S' wrists. He said these had proven a mild ulna abutment syndrome and very mild arthritic degeneration. He said he could not explain Mrs S' symptoms with the MRI scans. Mr Rahimtoola noted there was not a huge amount of synovial thickening or inflammation and her FCU and ECU tendons were entirely normal. Mr Rahimtoola said he found it difficult to relate Mrs S' symptoms to the objective pathology noted on the MRI scans and suggested a referral to the rheumatology department for further investigation.

Dr Young (consultant rheumatologist), 3 March 2011

37. In a letter to Mrs S' GP, Dr Young referred to diagnoses of degenerative change in Mrs S' wrists, with a fibrocartilage tear and ulnar abutment syndrome, and chronic pain. She noted there was no evidence of inflammatory arthritis. Dr Young said Mrs S had been using natural remedies with some mild benefit but no great help. She said Mrs S was not keen on an operative intervention. Dr Young commented that, on examination, there was no clinical synovitis but there was some synovial thickening of the left wrist.

38. Dr Young concluded by saying Mrs S definitely had some degenerative change and a chronic pain component which limited her movement. She said she had discussed medication for the chronic pain but Mrs S was not very keen. Dr Young said she understood Mrs S' desire to use natural remedies and she was not against this. She noted Mrs S had been using splints and said these were useful for support but she hoped Mrs S would be able to reduce her requirement for them.

Dr Miller (GP), 5 April 2011

39. In a letter to Jobcentre Plus, Dr Miller said Mrs S had had problems with bilateral tenosynovitis affecting both wrists. She said Mrs S had undergone orthopaedic and rheumatological assessments and that she enclosed copies of the consultants' reports. Dr Miller said there was very little they could do to improve Mrs S' condition.

Dr Miller (GP), 14 July 2011

40. Dr Miller provided an open letter in July 2011. She explained Mrs S had first presented with pain in her wrists in August 2010. She said Mrs S' symptoms were ongoing despite physiotherapy and assessment by both an orthopaedic team and a rheumatology team. Dr Miller said MRI scans had shown generalised mild arthritic degeneration and mild synovitis, which were the causes of Mrs S' symptoms. She said treatment had been unable to improve Mrs S' symptoms. Dr Miller said Mrs S

continued to have pain in both wrists, for which she wore splints. She said Mrs S used natural topical therapies in preference to traditional analgesia. Dr Miller concluded by saying there were no further interventions which would improve Mrs S' symptoms, and her pain and impaired functioning were chronic and not expected to improve.

OH Assist (scheme medical advisers), October 2014

41. In their covering letter, NHS Pensions quoted from their medical adviser. The medical adviser noted Mrs S had reported upper limb symptoms from August 2010. He noted her GP had recorded Mrs S had had physiotherapy, and orthopaedic and rheumatology involvement. He noted MRI scans had shown mild arthritic degeneration and mild synovitis. The medical adviser referred to a consultant hand surgeon, Mr Rahimtoola, writing in December 2010 that MRI showed generalised mild arthritic degeneration (bilateral carpal joints) and mild left ulna abutment. He said Mr Rahimtoola had been unable to explain Mrs S' symptoms with the MRI results. He noted that, at a subsequent assessment, a consultant rheumatologist had expressed the view that Mrs S had degenerative change with a chronic pain component. He said Mrs S had not been keen to use medication for her pain and had been using splints. He noted Mrs S had been using aids and appliances for opening jars and writing, and avoided tasks requiring manual dexterity.

42. The medical adviser referred to an opinion given by Mrs S' GP that there were adverse psychosocial factors present; for example a marriage split and money problems. He quoted the GP as being of the opinion that Mrs S was not medically fit to carry out her role, which involved significant manual handling. He said the GP had thought there were other roles which Mrs S could do; for example, working in out-patient. The medical adviser also referred to Dr May's report.

43. The medical adviser concluded that, in June 2011, Mrs S had been permanently incapable of the duties of her NHS employment – the Tier 1 condition.

44. With regard to permanent incapacity for regular employment of like duration, the medical adviser said,

> "It is considered that permanent incapacity for less physically demanding regular employment (25.50 hours per week) was not demonstrated to be established at that time. The occupational physician advised on possible alternative work within the NHS and she is more likely than not to have been capable of suitable work outside the NHS. This is especially so with compliance with 'appropriate medical treatment' for her reported symptoms and with address of her psychosocial issues (which are important factors in modulation of perceived pain and coping).
>
> Due regard has been given to the member's physical capacity, mental capacity, previous training, experience, type and period of rehabilitation and type and period of training that may be undertaken …"

OH Assist, March 2015

45. NHS Pensions quoted from their medical adviser in their decision letter. The medical adviser said the diagnosis in Mrs S' case was mild arthritic degeneration in her left wrist. He said this had been referred to as tenosynovitis but it was not. He said Mrs S' hand hurt when she did anything heavy and this would be the case with either condition. The medical adviser noted Mrs S had been offered pain relief but had declined this. He agreed that a role involving any heavy lifting would be beyond Mrs S' capability. He said Mrs S would be capable of a range of non-manual handling roles and mild pain relief would help her accomplish them more easily. He advised the Tier 2 condition was not met because Mrs S was capable of alternative work of like duration.

OH Assist, June 2015

46. In their response to Mrs S, NHS Pensions quoted from their medical adviser. The medical adviser referred to Mr Rahimtoola's assessment of Mrs S in December 2010. He noted the results of the MRI scans showed no evidence of ECU or FCU tenosynovitis and the rest of Mrs S' extensor tendons appeared to be within normal limits. He noted reference to a tear in the Triangular Fibro-cartilage with associated local swelling. He noted mild synovitis or inflammation of Mrs S' distal radio-ulnar joint. The medical adviser said that, from this, he could say that the problem was not tenosynovitis but that there were problems of a degenerative nature. He said Mr Rahimtoola had confirmed that Mrs S did not have tenosynovitis but had mild ulnar abutment syndrome and very mild arthritic degeneration. He noted that Mr Rahimtoola had been unable to relate Mrs S' symptoms to the objective clinical findings. The medical adviser went on the refer to Dr Young's findings. He said Dr Young had confirmed there was no synovitis but she definitely had some degenerative change. The medical adviser noted that Dr Young had discussed medication with Mrs S but she preferred natural remedies.

47. The medical adviser noted that Dr Miller had advised both the Trust's occupational health physician and Jobcentre Plus that Mrs S had tenosynovitis. The medical adviser then referred to Dr May's report.

48. The medical adviser concluded,

> "In her letter to you she has written that she suffers from Bilateral Tenosynovitis. Again this is not confirmed in the medical evidence as above.
>
> She has a degenerative condition that would prevent her from being able to undertake heavy lifting. It is correct that she could not do the work of a Healthcare assistant.
>
> Her condition has received only whatever treatment she has decided to self administer. It is capable of improvement with treatment that would be reasonable for her to receive. But this would not reverse the degeneration. So Tier 1 would remain met.

She was capable of alternative work as advised and did not meet Tier 2 as advised.

With appropriate treatment the direction of travel in this case is for improvement. So I did not think that she would progress to Tier 2 before her NBA or within the next 3 years."

Appendix 2

The National Health Service Pension Scheme Regulations 1995 (SI1995/300) (as amended)

49. At the date Mrs S' employment terminated, regulation E2A provided,

"E2A Ill health pension on early retirement

(1) This regulation applies to a member who -

(a) retires from pensionable employment on or after 1st April 2008;

(b) did not submit Form AW33E (or such other form as the Secretary of State accepted) together with supporting medical evidence if not included in the form pursuant to regulation E2 which was received by the Secretary of State before 1st April 2008, and

(c) is not in receipt of a pension under regulation E2.

(2) A member to whom this regulation applies who retires from pensionable employment before normal benefit age shall be entitled to a pension under this regulation if -

(a) the member has at least 2 years qualifying service or qualifies for a pension under regulation E1; and

(b) the member's employment is terminated because of physical or mental infirmity as a result of which the member is -

(i) permanently incapable of efficiently discharging the duties of that employment (the "tier 1 condition"); or

(ii) permanently incapable of regular employment of like duration (the "tier 2 condition") in addition to meeting the tier 1 condition.

…

(14) For the purposes of determining whether a member is permanently incapable of regular employment under paragraph (2)(b)(ii), the Secretary of State shall have regard to the factors in paragraph (16) (no one of which shall be decisive) and disregard the factors in paragraph (17).

…

(16) The factors to be taken into account for paragraph (14) are -

(a) whether the member has received appropriate medical treatment in respect of the incapacity; and

(b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's -

(i) mental capacity;

(ii) physical capacity;

(iii) previous training; and

(iv) previous practical, professional and vocational experience,

irrespective of whether or not such employment is actually available to the member;

(c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such rehabilitation is undergone) having regard to the member's -

(i) mental capacity, and

(ii) physical capacity:

(d) such type and period of training which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such training is undergone) having regard to the member's-

(i) mental capacity,

(ii) physical capacity,

(iii) previous training, and

(iv) previous practical, professional and vocational experience, and

(e) any other matter which the Secretary of State considers appropriate.

(17) The factors to be disregarded for paragraph (14) are -

(a) the member's personal preference for or against engaging in any particular employment; and

(b) the geographical location of the member.

(18) For the purpose of this regulation -

"appropriate medical treatment" means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Secretary of State considers -

(a) that it would be reasonable for the member to refuse,

(b) would provide no benefit to restoring the member's capacity for -

(i) efficiently discharging the duties of the member's employment under paragraph (2)(b)(i), or

(ii) regular employment of like duration under paragraph (2)(b)(ii),

before the member reaches normal benefit age; and

(c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches normal benefit age;

"permanently" means the period until normal benefit age; and

"regular employment of like duration" means -

(a) …

(b) in all other cases, where prior to retiring from employment that is pensionable the member was employed -

(i) on a whole-time basis, regular employment on a whole-time basis;

(ii) on a part-time basis, regular employment on a part-time basis,

regard being had to the number of hours, half-days and sessions the member worked in that employment."

50. Regulation T1 provided,

"(1) A person claiming to be entitled to benefits under these Regulations ("the claimant") shall make a claim in writing to the Secretary of State in such form as the Secretary of State may from time to time require.

(2) Pursuant to such a claim, the claimant and the member's employing authority (including any previous employing authority of the member) shall provide such -

(a) evidence of entitlement,

(b) authority or permission as may be necessary for the release by third parties of information in their possession relating to the member or, where relevant, the claimant, and

(c) other information the Secretary of State considers is relevant to the claim,

as the Secretary of State may from time to time require for the purposes of these Regulations …"