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IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
BUSINESS AND PROPERTY  
COURTS OF ENGLAND & WALES  
APPEALS (ChD)



No. CH-2016-000157

(on appeal from the Pensions Ombudsman)

**[2019] EWHC 3108 (Ch)**

Rolls Building  
Fetter Lane  
London, EC4A 1NL

Tuesday, 29 October 2019

Before:

MR JUSTICE NUGEE

B E T W E E N :

SPEED

Appellant

- and -

TEACHERS' PENSIONS & Ors.

Respondents

\_\_\_\_\_  
THE APPELLANT appeared in Person.

MS N. LING (instructed by the Government Legal Department) appeared on behalf of the Respondents.  
\_\_\_\_\_

**J U D G M E N T**

MR JUSTICE NUGEE:

1 I propose to give a short judgment. You will have to excuse me because I have not written it out. It may not come out in entirely polished form but I will try and deal with the points of law that seem to me to arise.

2 I have before me an appeal from a determination of the Pensions Ombudsman. The Pensions Ombudsman is regulated by the Pensions Schemes Act 1993 and by s.151(4) of that Act an appeal from his determinations lies on a point of law to the High Court. Those appeals require the permission of the High Court in order to be brought. In this case, as I will explain, permission was granted but limited to one ground.

3 I will say at the outset that Mr Speed, who has appeared in person, has explained at some length and with great eloquence the difficulties that he finds himself in. All litigants in person face difficulties dealing with complex areas of law and pensions are undoubtedly complex. Mr Speed, who tells me that he suffers from depression, has undoubtedly not found the technicalities easy but he has been very clear as to what it is that he wishes and what he sees has gone wrong in this case.

4 There is now quite a long history to it which I will try and summarise as briefly as I can. Mr Speed, who was born in 1969, was formerly employed as a teacher. In 2002 as a result of matters which I need not refer to in any detail he was first suspended and then left his employment and, indeed, the Secretary of State directed that his name be included on the list of those barred from relevant employment as a teacher or as a worker with children or young persons pursuant to some statutory powers. That was something which he appealed to a tribunal called the Care Standards Tribunal (“CST”) and they allowed an appeal in March 2003. The upshot of that, therefore, is that he is not now on the list of barred persons but it is apparent from the decision of the CST that they had before them a number of items of medical evidence including, in particular, a report from a Dr Mendelson, which I have not seen because it has not been possible to find a copy. Dr Mendelson, as Mr Speed explained to me, took the view that with structured support it might be possible for Mr Speed to re-enter the profession. Indeed, at para.11 of the CST’s ruling they say this:

“Dr Mendelson had said in his report that he would want to reassess DS [that is Mr Speed] before making a judgment on his suitability to return to teaching. He considered that six months of vigorous community treatment would result in significant improvement.”

5 The other thing that happened in 2002 was that Mr Speed applied for and was granted an ill-health pension under the pension scheme which applies to teachers. That is the Teachers’ Pension Scheme, administered by a body called Teachers’ Pensions, which is the first respondent to this appeal. He made an application in 2002, supported by evidence from his own doctor, Dr Ali, and that application was granted.

6 The regulations which then applied to the grant of ill-health early retirement to persons in the position of Mr Speed were the Teachers’ Pensions Regulations 1997 (SI 1997 No. 3001). Regulation E4 set out when a member of a scheme became entitled to payment of retirement benefits. It deals in the usual way, firstly, with retirement at normal pension age and then at E4(4) dealt with ill-health early retirement as follows (I should read E4(1):

“... a person qualified for retirement benefits becomes entitled to payment of them in any of the Cases described in this regulation.”

Then (4):

- “(4) In Case C the person—
- (a) has not attained the age of 60,
  - (b) has ceased after 31st March 1972 and before attaining the age of 60 to be in pensionable employment,
  - (c) is incapacitated and became so before attaining the age of 60.”

There was no doubt that Mr Speed satisfied requirements (a) and (b) because he had not attained the age of 60 and he had ceased before that age, but after 31 March 1972 to be employed as a teacher.

- 7 So far as condition (c) is concerned, “incapacitated” is a defined term. It was defined in Schedule 1 to the Regulations as follows:

“A person is incapacitated—

- (a) in the case of a teacher, an organiser or a supervisor, while he is unfit by reason of illness or injury and despite appropriate medical treatment to serve as such and is likely permanently to be so ...”

It can be seen that in the case of a teacher such as Mr Speed he would have qualified as incapacitated if his illness, which was depression, rendered him unfit to serve as a teacher and was likely permanently to do so, the ill-health early retirement evidently being intended for those who were unlikely to work again as teachers.

- 8 Consistently with that the Regulations provided for circumstances in which someone did work again as a teacher in the UK or otherwise ceased to be incapacitated and that was in Regulation E13 as follows:

“(1) This regulation applies where a person’s entitlement to payment of a teacher’s pension by virtue of regulation E4(3) took effect on or after 1st April 1977 under regulation R4(8) of these regulations or regulation E4(9) of the 1988 Regulations and:

- (a) he takes up employment on or after 30<sup>th</sup> March 2000 in a capacity described in Schedule 2 or as a teacher in an accepted school or with an accepted function provider; or
- (b) otherwise ceases to be incapacitated.

(2) On the person seeking to be incapacitated the pension ceases to be payable ...

- (3) Subject to paragraph 4 and Regulation E33(2) (application for payment) the pension becomes payable again:
  - (a) from the person's 60<sup>th</sup> birthday; or
  - (b) if earlier from the start of any renewed incapacity.
- (4) Paragraph 3 does not apply if the person has been in pensionable employment at any time after he first became entitled to payment of the pension.”

- 9 Under that regulation regulation E13(1)(a) applied to those who became employed again in UK schools and regulation 13(1)(b) applied to anybody else who ceased to be incapacitated. The effect of that, as can be seen, was that the pension ceased to be payable and under regulation E13(3) the pension could become payable again if there were any renewed incapacity before the person concerned became 60.
- 10 In 2005 Teachers' Pensions came to the conclusion that Mr Speed had ceased to be incapacitated and so applying Regulation 13(2) ceased paying his pension. That is a matter which Mr Speed has consistently challenged. The original basis for the Teachers' Pensions decision was that they had had brought to their attention evidence that Mr Speed had been working as a teacher abroad, in particular in Berlin and in Kuwait, and was registered for teaching in New Zealand, both of which Mr Speed contended were not in fact the case.
- 11 Before me Mr Speed has explained that his depression has never got better and that there was no event in 2005 or at any time since 2002 which could be characterised as him becoming other than incapacitated and ceasing to be incapacitated. As I will come to, the permissible scope for considering these matters on appeal is constrained by the way in which matters have come before this Court and, as I will explain, it is not possible for me on this appeal to go into the question whether the decision in 2005 to take away Mr Speed's pension under Regulation E13 was the right decision or not; so it is not necessary for me to go into the detail of the evidence that Mr Speed challenged but that Teachers' Pensions relied on.
- 12 Mr Speed explained to me that without his ill-health pension he needed to find some other source of income and in New Zealand he attempted to return to teaching and, indeed, he was employed as a teacher between 2006 and 2010 in New Zealand. That he said came to an end in June 2010 when the principal of the school he was teaching at came to the conclusion that he was still depressed and should not be teaching.
- 13 From time to time Mr Speed corresponded with Teachers' Pensions challenging the decision to take away his pension in 2005. I need not detail all the correspondence. He was told on 24 February 2005 that the Department for Education had concluded “that you could no longer be considered incapacitated from teaching” and that his pension would stop from 27 February 2005. He challenged that in October 2005, saying he would like the pension reactivating. Again, in January 2007 he said, “I would like to know on what basis my pension has been disallowed as a matter of urgency”, which was replied to to the effect that the DfE, based on information received, had concluded that he could no longer be regarded as incapacitated.
- 14 He raised it again in August 2011 and he telephoned in January 2012 and there is a note of a telephone conversation between him and a Mr Stephen Fry at Teachers' Pensions dated 6 January 2012 in which Mr Fry notes:

“I returned Mr Speed's call. He wants the ill-health pension previously paid to him up to 2005 to be reinstated ...”

and then explained why it had been stopped and that was followed up by an email the same day.

15 Among other things, Mr Fry asked Mr Speed for details of all the employments undertaken overseas as well as in the UK. Mr Speed said he was not able to provide details for his employment but did say he was unfit for teaching due to severe depression; and he did say, which he accepted before me was inaccurate, “I have not worked as a teacher in Great Britain or anywhere overseas.” Before me, as I say, he has accepted that he worked in New Zealand.

16 In July 2012 Mr Speed wrote again to Mr Fry among other things saying, “I’m still suffering from severe depression and would respectfully suggest an examination by a doctor.” He also, later in July, requested that his pension be reinstated immediately. That was responded to on 14 August 2012 in a lengthy and formal letter from Mr Crick, a Legislation Manager, who said this:

“I refer to your email dated 19 July requesting the immediate reinstatement of your pension. This is being treated as an appeal under Stage 1 of the internal disputes resolution procedure operated by the Teachers’ Pension Scheme (TPS).”

17 There is then a lengthy examination of the history and on the fourth page of the letter Mr Crick says:

“The ill-health pensions of the TPS are designed to pay retirement benefits where a person is permanently incapacitated and remains so but they also recognise that where a person recovers and returns to teaching in the UK or is otherwise not incapacitated, the entitlement to a person must cease. It is quite clear that the available evidence supports the decision that you are no longer incapacitated and not entitled to pension. I must advise you, therefore, that your request to have the pension reinstated must be denied.

You have referred to the fact that you continue to suffer from depression and for the sake of completeness I should point out that it is open to you to make an entirely new application for ill-health retirement at any time before the age of 60. For an application to be successful it must be demonstrated that the person’s ability to carry out **any** work is impaired by more than 90% and is likely to be impaired by more than 90% permanently.”

18 On 18 September 2013 Mr Speed sent an email to Mr Crick in which he said:

“It seems I should reapply as well as appeal. The problem is that I am not in the UK. That will probably change soon though as I cannot pick up work here. The reason I left teaching was due to depression caused directly by teaching. The diagnosis was reactive depression and I am still suffering acute symptoms. How is any medical report to be paid for?”

19 In November 2013 a Mrs Oyston described as a Technical Analyst with Teachers' Pensions, sent an email to Mr Speed in which among other things she said:

“In the absence of any documentary evidence of continued incapacity and that you have not undertaken any employment as a teacher since 21 March 2002, no pension will be paid to you until you either (a) reach age 60 and apply for an award of retirement benefits on the grounds of age or (b) make a successful fresh application for ill-health retirement benefits.”

20 The next stage was a submission of a request by Mr Speed dated 13 February 2014 in the form of a Stage 2 appeal under the internal review procedures and that, again, went over quite a lot of the history and ended up:

“My current medical advice is that I am still depressed and prone to angry outbursts during times of stress. This is very important. Given the fact it is the same diagnosis as 12 years ago there is no basis for making a decision under Regulation E12(1)(b). I request that the pension is reinstated and backdated to February 2005.”

21 The Stage 2 decision was sent to Mr Speed on 12 March 2014 and it concluded (this is from the DfE) that:

“The Department is satisfied that the correct process has been followed by TP. Your appeal therefore must be turned down.”

22 In July 2014, a Mr Andrew Leech of the Pensions Policy Team at the DfE sent an email to Mr Speed saying:

“It remains open to you to submit a new application for ill-health retirement and you may do so by accessing the application form on the Teachers' Pensions website [and it gave the address] and competing/submitting this as per the instructions.”

23 Subsequently in 2016 Mr Speed did complete a medical information form in support of an application for ill-health retirement but that on 19 August 2016 was responded to with a confirmation that Teachers' Pensions had received the medical form but that there was no application form attached and invited him to complete and return the application form. That was not done until quite a bit later in November 2017, by which stage the medical advice to Teachers' Pensions was that the medical evidence was over one year old and so for that and other reasons the advice was that Mr Speed did not meet the criteria for being permanently incapacitated for teaching.

24 Meanwhile, however, in November 2014 Mr Speed had applied to the Pensions Ombudsman, that application being dated 4 November 2014. Although the application form is before me, I have not seen the underlying documents which were sent with it and attempts to retrieve them from the Ombudsman's Office have been unsuccessful, so the details of the complaint are not entirely before me but it is plain from the complaint that what Mr Speed wanted was that the pension should be restored from February 2005 or, alternatively, from January 2011.

25 The complaint to the Ombudsman was initially looked at by Mr Tony Krishna, a senior investigator in the Ombudsman's office. He provided an opinion. He summarised the complaint as follows:

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

Having then set out the background, he sets out Mr Speed's position and then he set out his findings as follows:

“17. As stated above we are unable to investigate Mr Speed's complaint that his ill-health pension was stopped in 2005, therefore, the issue I have to consider is whether his request for reinstatement of his pension was properly considered.

18. Any question of Mr Speed's ill-health pension being reinstated in 2012 was subject to the 1997 Regulations. He had to show that he was permanently incapable of discharging efficiently the duties of the relevant appointment until normal retirement age. In addition, in a Stage 1 IDRPs decision, Teachers' Pensions informed him that if he suffered from depression then he could apply for an ill-health retirement any time before his 60<sup>th</sup> birthday. There is nothing to show that he had made an application in 2012 for ill-health retirement.

19. In the absence of any application for ill-health retirement from Mr Speed there was nothing for Teachers' Pensions to consider. Therefore I am unable to find maladministration on the part of Teachers' Pensions and do not consider that the complaint against them can be upheld.”

That was dated 6 January 2016.

26 In due course the matter was put before the Ombudsman himself, Mr Anthony Arter, and he made a determination dated 10 June 2016, having set out the background and having summarised Mr Speed's complaint in the same form as Mr Krishna had done, he referred to the fact that Teachers' Pensions said that if Mr Speed applied for his pension to be reinstated his health would be assessed against the Teachers' Pensions Regulations 2010, that is the 2010 Regulations rather than the 1997 Regulations. He then summarised Mr Krishna's opinion and then he gave his decision as follows:

“12. I agree with Teachers' Pensions that if he was to apply for reinstatement of his pension then he would be assessed against the 2010 Regulations. I also agree that as Mr D [that is a reference to Mr Speed] has made no application for his pension to be reinstated, Teachers' Pensions have no case to answer, therefore, I do not uphold Mr D's complaint.”

That is the decision which is under appeal.

27 The application for permission to appeal initially came before Henderson J. (as he then was) on paper and he refused permission to appeal on the basis that the main relief which the

appellant appeared to seek was judicial review which could not be granted on appeal and then he said:

“The Ombudsman was in my view clearly correct not to uphold the appellant’s complaint for the reasons which he gave in his decision.”

28 Mr Speed was entitled to and did renew his application for permission at an oral hearing and that came before me on 27 October 2016. Mr Speed was not in fact present but having heard from counsel for the Ombudsman, I granted permission in the following terms:

“It is ordered that the application for permission to appeal be granted but limited to the question as to whether regarding paragraph 13 of the Ombudsman’s judgment and his decision to regard Mr Speed as not having made any application for his pension to be reinstated, the Teachers' Pensions have a case to answer.”

29 The effect of permission being limited in that way is to refuse permission for any other grounds of appeal. That means that the question whether Teachers' Pensions were right in 2005 to stop Mr Speed's pension and the question whether the Ombudsman was right in 2016 to conclude that that was not something that he could investigate because it was out of time, are not matters that are before me. The only aspect of Mr Speed's case that I can properly investigate and decide on this appeal is the one for which limited permission has been granted, which is whether the Ombudsman was right to say, as he did in paragraph 13, upholding Mr Krishna’s view, that Mr Speed had made no application for his pension to be reinstated.

30 On that it is not now possible for me to remember why I granted that permission but I suspect, having seen the file, that what I had in mind was that there are communications from Mr Speed which in terms say, “I want my pension to be reinstated.” There was, as I have already referred to, a telephone call between Mr Speed and Mr Fry in which Mr Fry’s note of the telephone call on 6 January 2012 was, “He wants the ill-health pension previously paid to him up to 2005 to be reinstated.”

31 There was on 19 July 2012 an email from Mr Speed to Mr Fry saying, “I request that my pension is reinstated immediately.” I suspect that it was those documents which caused me to grant permission because on the face of it it looked as if the conclusion that Mr Speed had never asked for his pension to be reinstated was a difficult one to have reached in the light of that correspondence.

32 However, the much fuller examination of the documents that has been possible on this hearing reveals that there is an unfortunate ambiguity in the use of the word “reinstate”. It seems to me perfectly plain both from the terms of the correspondence and from what Mr Speed told me today, that when Mr Speed asked for his pension to be reinstated what he really meant was that he wanted it back to 2005, or if not to 2005 at least to 2011, on the basis that it should not have been taken away. I add that the reason he said 2011 was because he was working in New Zealand until 2010, as I understood it.

33 That type of reinstatement is really challenging the decision in 2005 that he had ceased to be incapacitated and, as I have already referred to, Mr Speed made it very clear to me that his position is that he never did cease to be incapacitated, that he has suffered from the same depression ever since 2002, that he has been consistently advised that the depression was caused by the stresses of teaching and that going back to teaching was itself likely to cause him difficulties and that, indeed, his experience in New Zealand when he was teaching was



precisely that. Those are all grounds why he says that the decision in 2005 to take away his pension was a flawed decision and, as I have already sought to explain, those are not matters which I can go into on this appeal.

- 34 There is another use of the word reinstate which is that when someone's ill-health pension has been granted and then later removed on the grounds that he has ceased to be incapacitated, it can be regranted in the event that the applicant shows that he has again become incapacitated. It is that which the correspondence refers to as a fresh application for an ill-health pension and it reflects the form of the Regulations initially under the 1997 Regulation, Regulation E13(3)(b) as I referred to earlier.
- 35 It seems to me plain that both Mr Krishna and the Ombudsman, Mr Arter, were using the term "reinstate" in this sense, of a fresh application for the pension to start again rather than a challenge to the removal of the pension in the first place and that when Mr Arter said that Mr Speed had made no application for his pension to be reinstated, what he meant was there had been no application under the equivalent to Regulation E13(3)(b) for the pension to become payable again. I say the equivalent of Regulation E13(3)(b) because by the time that Mr Speed might have made such an application, the 1997 Regulations had been repealed and replaced by the 2010 Regulations, which are the Teachers' Pensions Regulations 2010 (SI 2010/990), and as will appear from the Ombudsman's decision, as I referred to earlier, the Ombudsman accepted a submission by Teachers' Pensions that the application for the pension to be reinstated would be assessed against the 2010 Regulations rather than, as Mr Krishna had thought, the 1997 Regulations.
- 36 Before me Mr Speed challenged that point of law saying that because his pension had originally been granted under the 1997 Regulations subject to the terms of what was then Regulation E13, the same should continue to apply to him. I have been addressed on that point by Ms Ling who appears for the respondents, both Teachers' Pensions and the DfE and I will briefly say that I am satisfied that Ms Ling is correct and that the Ombudsman was right to take the view that an application for an ill-health pension which has ceased to start again is after 1 September 2010 to be assessed by reference to the 2010 Regulations. That sufficiently appears from Regulation 68 of the 2010 Regulations which is the current equivalent of what was E13 under the 1997 Regulations. Regulation 68 reads as follows:

"Cessation and reinstatement of ill-health pension (application received before 6th January 2007):

(1) This regulation applies to –

- (a) an ill-health pension which became payable to a person (P) following an application received by the Secretary of State before 6th January 2007, and
- (b) a pension which becomes payable in accordance with paragraph (5).

(2) A pension to which this regulation applies ceases to be payable if P –

- (a) enters full-time employment in a capacity mentioned in Schedule 2, where the pension became payable before 1st April 1997,
- (b) enters full-time or part-time employment in a capacity mentioned in

Schedule 2, where the pension became payable on or after 1st April 1997, or

(c) otherwise ceases to be incapacitated.

(3) Paragraph (2) does not apply if P has reached the age of 60.”

Paragraph (4) I need not read.

“(5) Where –

(a) a pension has ceased to be payable in accordance with paragraph (2), and

(b) P has not been in pensionable employment at any time after the pension first became payable

the pension becomes payable again from the day on which P reaches the age of 60 or, if at an earlier date P satisfies condition 4 in paragraph 3(5) of Schedule 7 (ability to carry out work impaired by more than 90%), from that date.”

- 37 It seems to me that it is entirely plain from the terms of Regulation 68 itself that this applies to people who were granted ill-health pensions such as Mr Speed was under the 1997 Regulations. The 1997 Regulations remained in force until September 2010 when they were repealed by the 2010 Regulations. Regulation 68 only applies to ill-health pensions which became payable before 6 January 2007 and so by definition could only apply to pensions which became payable under the 1997 Regulations or, indeed, earlier Regulations because, as Regulation 68(2)(a) envisages, it applies even to those whose pension became payable before 1997 under whatever then were the appropriate Regulations.
- 38 The argument which otherwise one might have some sympathy with, that if your pension was originally granted in 2002 the terms on which it was granted should continue to apply for the rest of your life, is not an argument which I think is open. It seems to me that the very purpose and effect of Regulation 68 of the 2010 Regulations is to ensure that whenever your pension was granted, once it is taken away because you have ceased to be incapacitated you can only get it back again if you satisfy the requirement in subsection (5). That cross-refers to Schedule 7, paragraph 3(5) and Schedule 7, paragraph 3(5) says that condition 4 is that “P’s ability to carry out any work is impaired by more than 90% permanently.” As referred to earlier, the emphasis there is on the word “any” and the effect is that you cannot once the pension is stopped receive an ill-health pension under this Regulation if you are capable of doing any work, unless your ability to carry out any work is impaired by 90% or more.
- 39 The 2010 Regulations also include Regulation 107. That reads so far as relevant as follows:
- “(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... 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."

40 It follows from my conclusion that the Ombudsman was right that the application is to be made under the 2010 Regulations, that the application had to comply with those provisions of Regulation 107, in other words there had to be a written application for payment and it had to provide such information as the Secretary of State might specify in writing and it had to be accompanied by all the medical evidence necessary to enable the Secretary of State to determine whether the person's ability to carry out work was impaired by more than 90%.

41 That is the framework against which I must decide this appeal. As I said before, an appeal under s.151(4) only lies on a point of law and the relevant point of law is whether there was any material before the Ombudsman which entitled him to reach the conclusion that Mr Speed had not made an application for his pension to be reinstated.

42 The only material which had taken place before the Ombudsman's decision, indeed, before the complaint to the Ombudsman which could possibly qualify as an application for a new pension or for the pension to be restarted was, it seems to me, the email of 18 September 2013 which I previously referred to. I will read it again:

"It seems I should reapply as well as appeal. The problem is that I am not in the UK. That will probably change soon though as I cannot pick up work here. The reason I left teaching was due to depression caused directly by teaching. The diagnosis was reactive depression and I am still suffering acute symptoms. How is any medical report to be paid for?"

43 I asked Ms Ling as to her submissions as to whether that was or was not a written application within the meaning of Regulation 107. She said that it was not itself an application. It was an acknowledgment that one course open to Mr Speed was to make an application but it was not itself an application.

44 Having given the matter due consideration I have come to the conclusion that she is right about that and that the Ombudsman was right, or at the very least entitled to take the view, that no application for the pension to start again had in fact been made. Whatever the position would have been had the sentence, "It seems I should reapply as well as appeal" stood on its own, it seems to me that reading the email as a whole the message that Mr Speed at that stage was communicating was that there were difficulties and he was not in a position at that stage to make a fresh application. He was not in the UK and he was not in a position to pay for a medical report.

45 In those circumstances, strictly speaking I say no more because, as I have sought to explain, the only matter which I can consider on this appeal is whether that paragraph in the

Ombudsman's determination is open to challenge as one that could not properly be reached by him and I have come to the conclusion that it was a decision that was open to him and that in those circumstances the appeal must be dismissed.

- 46 I would not, however, wish to leave the case without expressing my sympathy for the predicament in which Mr Speed finds himself. He told me eloquently that he has had difficulty for a number of reasons, one of them being that those who are depressed do not recognise their own illness, another being that he is not currently being seen by a GP, another being that he is not currently accessing mental health services. It does seem to me that it is unfortunate that he has not been able to get himself into a position to make a fresh application, properly supported, on the proper form, properly supported by the requisite medical evidence to have his pension start again because if he is right (and I have no reason to think that he is not right) that he is still in a position where his depression means that he is not capable either of teaching or doing any other employment, then he would be entitled on the requisite material being provided to Teachers' Pensions to have his pension start again.
- 47 But that is not something that I can deal with on this appeal. It is not something that I can deal with at all. It is not for me to tell the parties how to take the matter forward. Mr Speed said on more than one occasion that it should be Teachers' Pensions and the DfE who commission psychiatric reports. That was linked to some extent to the fact that Dr Mendelson back in 2002 and 2003 had been the one who suggested that if duly supported he might have a prospect of being re-employed. I have to say that I do not think I can see in the Regulations any requirement on Teachers' Pensions or the DfE to pay for or commission medical reports. The Regulations quite plainly put the burden on the applicant to provide evidence that his ability to carry out work is sufficiently impaired to justify the resumption of payment of pension and I cannot go behind that but it would obviously be a shame if Mr Speed's medical condition was in fact such as to entitle him to have his pension restarted but that he could not access it through no fault of his own. I do not think that I can say any more about those matters.
- 48 For the reasons I have sought to give, it seems to me that this appeal must be dismissed.

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**CERTIFICATE**

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**This transcript has been approved by the Judge**