

Ombudsman's Determination

Applicant	Ms Angela McLoughlin
Scheme	Police Pension Scheme (the Scheme)
Respondent(s)	West Yorkshire Police Authority (WYPA) West Yorkshire Police Fund (WYPF)

Complaint Summary

Ms McLoughlin's complaints against WYPA, (now known as the Police and Crime Commissioner for West Yorkshire), and WYPF are about:

- the delay in considering her claim for injury benefit from 2004;
- the level of injury benefit that she was awarded pre 2007;
- negligence in not reviewing her injury benefit for approximately 20 years following her original benefit award in 1984;
- the offsetting of her Industrial Injuries Disablement Benefit, (**IIDB**), against her last injury benefit award.

Summary of the Ombudsman's determination and reasons

The complaint should be partly upheld only in relation to WYPA's delay in reviewing her injury benefit award.

Detailed determination

Material Facts

1. The Scheme provides for injury benefit award payments at different levels (or "Bands") dependent on the degree of loss of earnings capacity. The benefit payable may be adjusted to take account of the extent to which the incapacity is attributable to an injury received in the execution of duty.
2. Ms McLoughlin joined the police force in 1977. She was injured whilst on duty on 31 January 1982.
3. Ms McLoughlin made a claim for IIDB to the DHSS in 1982 and she was awarded a disablement gratuity.
4. Ms McLoughlin was retired on the grounds of ill health from WYPA on 18 December 1983. She was awarded an injury benefit in January 1984 by WYPA because of her injury sustained whilst on duty on 31 January 1982. The Selected Medical Practitioner (SMP) determined that because of her resultant anxiety that this prevented her from continuing in her role as a police officer. The SMP said in his report dated 12 January 1984 that he had considered her medical history and had examined her on 7 December 1983. He determined that the degree to which her earning capacity had been altered was 25%, band 1. He indicated that he did not recommend that the Police Authority should again consider whether her degree of disablement had altered.
5. WYPA wrote to Ms McLoughlin on 18 January 1984 saying,

“Thank you for your letter regarding your claim for an injury award in respect of your retirement from the Force. Another report has now been obtained, and further consideration given to the matter and a recommendation is being made that you should be granted an award within the 25% or less disability category (Police Pensions Regulations).”
6. WYPA deducted the IIDB she was receiving from the DHSS from her injury benefit award.
7. Ms McLoughlin made a second application to the DHSS for IIDB on 27 October 2003. She received a disablement pension in respect of the disability caused by the injury of 31 January 1982.
8. WYPA wrote to Ms McLoughlin on 24 May 2004 saying that they would be reviewing her injury benefit. They said,

“As part of the review process you will be asked to complete a questionnaire...You will also be requested to complete a medical consent form...As a result of the re-assessment your injury award may increase,

decrease or remain the same...it is important that you provide all relevant information when requested...

At the relevant time, you will receive the questionnaire and other forms detailed within this letter. However, if you have any questions regarding this process, please do not hesitate to contact... ”

9. Ms McLouglin chased WYPA regarding their letter of 24 May 2004 and they then sent her the required forms for completion on 17 September 2004.
10. Ms McLouglin sent signed copies of the consent forms to WYPA in February 2005.
11. WYPA offered Ms McLouglin an appointment date of 26 May 2005 for a medical assessment. This appointment date and two further appointments dates of 23 June 2005 and 24 April 2006 put forward by WYPA were cancelled by Ms McLouglin.
12. Ms McLouglin contacted WYPA on 28 September 2006 saying that she wanted to proceed with the review process. WYPA say that due to the lapse of time since 26 May 2005 that they requested fresh consent forms from Ms McLouglin.
13. Ms McLouglin returned the fresh consent form to WYPA on 16 October 2006.
14. WYPA say that the request for medical information had been overlooked by Ms McLouglin's GP and after chasing for it and then receiving it sent it to the SMP on 23 January 2007.
15. Ms McLouglin was medically examined by the SMP on 30 March 2007. WYPA say that their contract with Capita Health Solutions (WYPA's previous medical advisers) ended shortly after this date and before the SMP had completed the assessment. A temporary medical adviser was subsequently appointed by WYPA.
16. WYPA say that they were informed on 2 July 2007 that it was not possible to complete the assessment without the newly appointed specialist medical adviser undertaking his own assessment of Ms McLouglin. She was offered an appointment date for medical examination of 16 August 2007. This date was rejected by Ms McLouglin and a subsequent appointment was rearranged for 5 September 2007.
17. Ms McLouglin's injury benefit was reassessed on 1 November 2007 by the SMP who certified that her earning capacity had altered from 25 % to 15.42 %.
18. Ms McLouglin lodged an appeal against the decision on 18 December 2007.
19. By January 2008 Ms McLouglin had not supplied evidence to WYPA in support of her appeal and they gave her further time in which to do so. WYPA still had not received any fresh evidence from Ms McLouglin in April 2008. The appeal proceeded on the basis that there was no further evidence and WYPA offered Ms McLouglin a date of 30 September 2008 for the appeal hearing.

20. Ms McLoughlin declined the hearing date offered of 30 September 2008 as she said that she was going on vacation. She supplied further medical evidence in support of her appeal to WYPA in July 2008.
21. Ms McLoughlin's injury benefit award was subsequently reviewed by the SMP on 22 August 2008 who concluded that he did not feel that the fresh medical evidence provided would alter the decision on the case.
22. Ms McLoughlin requested an appeal against the last decision on 3 September 2008 and a hearing date of 13 January 2009 was offered to her. She rejected this hearing date because she said she needed more time.
23. WYPA wrote to Ms McLoughlin in March 2009 proposing an alternative date for the hearing of 26 May 2009. Her injury benefit award was then reviewed by the Police Medical Appeals Board (**PMAB**), on 26 May 2009 and they decided that her degree of disablement had changed to 88%.
24. WYPF then calculated her injury benefit award taking into account the IIDB that she was receiving. The award was backdated to the date of her reassessment in November 2007.
25. WYPF wrote to Ms McLoughlin on 25 November 2011 saying,

“according to the information supplied by you on retirement the only “relevant” DWP benefit you received at that time was the disability gratuity of £481.50. As you were not receiving... IIDB at the time then no account was taken of this in calculating the amount of injury pension payable.

The injury pension of £1188.13 per annum ...remained in payment. Until 27 October 2003. This is the date Jobcentre Plus confirmed you started to receive payment of industrial injuries disablement benefit from them.

From 27 October 2003 West Yorkshire Police Fund recalculated your injury pension taking your IIDB payment into account...”

26. WYPA considered Ms McLoughlin's complaint under stages one and two of the Scheme's internal disputes resolution procedure, (**IDRP**). In their stage one IDRP response letter to Ms McLoughlin of 5 July 2012 they said:

“1. The delays in considering your claim for your injury benefit from 2004

From the time the ...letter in May 2004 ...it is accepted that you misunderstood the contents of the letter and were awaiting further contact....With the exception of the initial confusion and the switch over of providers no other delays can be attributable to West Yorkshire Police...

2. The level of your injury award pre November 2007 and possibly going back to retirement

...there is no contemporaneous medical evidence to corroborate the fact that your condition was the same back then as it is today.

5. Interest on the back payment of monies from a Band 1 to Band 3 between September 2009 and November 2007.

...After reviewing your case it is noted that there were considerable delays caused by the PMAB but also that you were not able to attend your appeal on a number of dates offered to you. ...as a gesture of goodwill I would like to offer you interest on this money...at the rate of 2.75%

6. Interest on the back payment of monies from a Band 3 to Band 4 between January 2012 and November 2007.

Upon receipt of your request for reconsideration in March 2010, all cases were put on hold because we were anticipating the outcome of a further case that could also have legitimately been taken into account...work in respect of injury award cases was recommenced but due to the high volume of similar cases we were unable to deal with your case until January 2012...

Due to the incorrect application of the law and the extensive delays it is my opinion that you should be entitled to interest on the back payment of this money at the rate of 2.75%...as above...you should receive a cheque under separate cover...

I hope you will accept my sincere apologies for the unacceptable delays in processing your reconsideration request and any inconvenience caused...

7. Offsetting of your IIDB against your newly backdated award since 2003

On 19 December 1983 you were medically retired from the force. This was as a result of an injury received in the execution of your duties 31 January 1982.

The nature of your injuries as recorded on the "Report of Injury" form were;

- Lacerations to upper lip
- Bruising to nose, left eye and face
- Two upper front teeth loosened

You were ultimately retired due to "confusion and anxiety state" which was linked to the injury you sustained on 31 January 1982. At the time of the medical retirement, you...received a disablement grant of £481.50.

You provided a copy of correspondence...from the...DHSS confirming your entitlement to the award. The DHSS ...reported that the conditions rendering your entitlement to the gratuity were;

Facial injuries with pre-existing depressive tendencies

The affect of this condition as cosmetic defect, nasal obstruction, nervousness

On the basis of this information, the West Yorkshire Pension Fund converted the disablement gratuity into an annuity in accordance with the relevant regulation.

From the information available I am satisfied that the conditions that precipitated your medical retirement entitlement to an injury award are the same as those for which you receive IIDB for and are both as a result of the same injury..”

Scheme Provisions

27. The Scheme is governed by the Police (Injury Benefit) Regulations 2006, (**the Regulations**)

28. Regulation 7(5), :

“where it is necessary to determine the degree of a person's disablement it shall be determined by reference to the degree to which his earning capacity has been affected as a result of an injury received without his own default in the execution of his duty as a member of a police force”.

29. Regulation 30(2), ,

“... where the police authority are considering whether a person is permanently disabled, they shall refer for decision to a duly qualified medical practitioner selected by them...”

30. Regulation 37(1),:

“the police authority shall, at such intervals as may be suitable, consider whether the degree of the pensioner's disablement has altered, and if after such consideration the police authority find that the degree of the pensioner's disablement has substantially altered, the pension shall be revised accordingly.”

31. Part 2 - AWARDS ON INJURY OR DEATH

“Police officer's injury award

11.—(1) This regulation applies to a person who ceases or has ceased to be a member of a police force and is permanently disabled as a result of an injury received without his own default in the execution of his duty (in Schedule 3 referred to as the “relevant injury”).

Disablement gratuity

12.—(1) This regulation applies to a person who—

(a) receives or received an injury without his own default in the execution of his duty,

(b) ceases or has ceased to be a member of a police force, and

(c) within 12 months of so receiving that injury, becomes or became totally and permanently disabled as a result of that injury”

32. Schedule 3

7.—(1) The amount of the injury pension in respect of any week, calculated as aforesaid, shall be reduced on account of any such additional benefit as is mentioned in sub-paragraph (3) to which the person concerned is entitled in respect of the same week and, subject to sub-paragraph (2), the said reduction shall be of an amount equal to that of the additional benefit or, in the case of benefit mentioned in sub-paragraph (3)(a) or (b), of so much thereof as is there mentioned.

(3) The following benefits are the additional benefits referred to in this paragraph—

(a) any industrial injuries benefit under section 94 of the Social Security Contributions and Benefits Act 1992 (a) in respect of the relevant injury or so much of any such pension as relates to that injury (referred to in this sub-paragraph as the relevant part of the pension)...”

Summary of Ms McLoughlin's position

- 33. Ms McLoughlin has made detailed and substantial submissions. Some concern matters that have been put right. Others concern the motives behind what she received from WYPA and how they dealt with her case. I do not set them all out in detail below, though I have had regard to them.
- 34. In WYPA's IDRPs response letter they admitted to a delay from May- September 2004. This delay cost her income of £750 a month for the period of the delay.
- 35. WYPA acted in bad faith in reducing her injury benefit award by ignoring clear and contrary medical evidence.
- 36. The way WYPA conducted the review of her injury benefit during 2004-2009 was perverse.

37. Had her injury benefit been reviewed properly by WYPA since the date of her retirement, she would have qualified for a band 4 injury benefit pension.
38. WYPA had not made her aware prior to May 2004 of the different levels of injury benefit award.
39. Injury benefit awards should be considered for review after a period of 5 years. WYPA did not make her aware prior to 2004 that her Injury benefit award could be reviewed at any time. Her injury benefit award should have been reviewed earlier as she was retired and suffered from a serious head injury.
40. Her IIDB awards were not connected to the relevant index injury and therefore should not be deducted from her injury benefit. She received two separate injuries assessments of her injuries after the index event.
41. Her IIDB award cannot legally be deducted from her injury award because her first injury was assessed in July 1982 by the IIDB administrators and was not within 12 months of her retirement as stated under Part 2 section 12 (1)(c) of the Regulations. Also her IIDB payment was not awarded because of a permanent injury.
42. She is satisfied that she is currently been placed in the correct banding for injury benefit following the final review of her injury award on 26 May 2009. However, it could have been backdated to January 1982.
43. The SMP's used by WYPA for their review of her injury benefit award who were Occupational Health Therapists were not duly qualified under the Regulations to conduct the reviews into her medical condition as they deal with physical and not psychological conditions.

Summary of WYPA's position

44. In reaching each decision regarding Ms McLoughlin's injury benefit award, WYPA took the appropriate steps and acted in a timely fashion in dealing with her claim.
45. Ms McLoughlin's degree of disablement was assessed at all times by specialists in Occupational Health. It is entirely appropriate for SMP's to be Occupational Health Specialists.
46. The opinions reached by the SMP's in respect of the medical issues were valid and were based on their examination of Ms McLoughlin and her medical history.
47. There is no explanation in the Regulations for a suitable interval in which WYPA should review the injury benefit award. The Regulations makes references to the SMP's decision being final, limits reconsideration to "substantial alterations" only. The individual circumstances of each case must also influence when an interval is suitable. In Ms McLoughlin's case, in 1984 there was no information from which WYPA could predict the symptoms and conditions which she subsequently appeared to have been suffering. In the years between the original injury benefit of 12 January

1984 and the review in 2004, Ms McLoughlin did not update the WYPA as to her condition, which might have prompted an earlier review. The suitability of the interval also must include consideration of the resources and priorities of the WYPA.

48. The respondents had acted appropriately and had not breached the Regulations in deducting Ms McLoughlin's IIDB from her injury benefits before payment.

Conclusions

49. I begin by saying that my concern is not whether there has been maladministration on its own. In effect, for Ms McLoughlin's complaints to be upheld, she must have suffered injustice as a result of maladministration. Although she feels very strongly that WYPA have behaved improperly – in some respects in bad faith – the real issue is whether she has been adequately compensated for the totality of what happened. I do not think it is necessary to make findings as to allegations of fraud, ulterior motives and deceit in order to do that.

The delay in considering Ms McLoughlin's injury benefit from 2004

50. Regarding the delay between 2004 and November 2007, WYPA say that their letter to Ms McLoughlin of 24 May 2004 had caused initial confusion. They also say that the change in their medical providers shortly after March 2007 caused some delay but that no other delays could be attributable to them. WYPA said in their letter of 24 May 2004 that they would send the relevant forms to Ms McLoughlin. I take the view that the onus was on WYPA to have initiated contact with Ms McLoughlin following the letter. Their failure to do so caused the delay of almost 4 months in getting the required consent forms to her. Ms McLoughlin submits that WYPA's delay cost her an income of £750 a month for the period of the delay. However, I note that Ms McLoughlin had turned down several medical appointment dates arranged by WYPA between 2005 to 2009. It is apparent that these cancellations significantly delayed the process of considering her injury benefit award. There was also a delay by her in 2008 in submitting evidence to WYPA in support of her appeal. I find that although WYPA were at fault for the delay of four months in sending Ms McLoughlin the required consent forms for completion, I do not think that the delay actually had any significant effect overall. It was Ms McLoughlin who subsequently caused significant delays by declining numerous medical appointments. I therefore do not consider her claim for loss of income is justified.
51. I note that WYPA have paid Ms McLoughlin Interest at 2.75% on the back payment of monies on her injury award for their admitted delays between September 2009 and November 2007 and similarly on the injury award for their admitted delay during the period November 2007 to January 2012(the date they commenced the reconsideration of your injury benefit award). I consider that WYPA have provided Ms McLoughlin with appropriate compensation for their admitted delays between November 2009 and January 2012.

The level of injury benefit awarded to Ms McLoughlin pre 2007

52. My role in connection with this case is to establish if the process followed by the respondents in reviewing Ms McLoughlin's injury benefit award was correct and whether the decision reached by them was made properly. It is not to decide the level of injury benefit award that was appropriate to Ms McLoughlin.
53. WYPA's original 1984 decision to award Ms McLoughlin an injury benefit was based on the SMPs recommendation who had considered her medical history and had examined her before determining that her injury benefit fell in band 1. I do not consider that the process followed by WYPA was perverse. For WYPA to favour the opinions of the SMP against others is not in itself, evidence of any perversity in the decision. It simply represents the weighing of one set of evidence against another.
54. Ms McLoughlin says that the SMP's used by WYPA for their review of her injury benefit award who were Occupational Health Therapists were not duly qualified. However, under the Regulations WYPA were entitled to make their decisions regarding applications for injury benefit by obtaining medical advice from appropriate medical practitioners. I do not consider that there are any justifiable reasons to find that the SMP's used by WYPA in assessing her case were not suitable.
55. Ms McLoughlin alleges that the way that WYPA conducted the review of her injury benefit during 2004-2009 was perverse. However, she accepts that her current injury benefit award is correct and that she has been placed in the correct banding following the final review of her injury award on 26 May 2009. I note that the award was backdated to November 2007, so I do not think that she has suffered any injustice resulting from her allegations in this regard.
56. Ms McLoughlin submits that WYPA failed to make her aware prior to May 2004 of the different levels of injury banding. However, the letter from WYPA to her of 18 January 1984 refers to her award being within the 25% or less disability category. I take the view that she should have questioned it further if she had any doubts about the category she was to be placed and sought further information from WYPA. She had a duty to herself to ensure that she fully understood what she was claiming and the provisions as laid out in the Regulations. The relevant information would have been available from WYPA in 1984 had she asked for it.

Negligence by WYPA in not reviewing Ms McLoughlin's injury benefit for approximately 20 years following her original benefit award in 1984.

57. Whilst WYPA were entitled to review Ms McLoughlin's injury award, they do not appear to have a consistent policy on when reviews are carried out or how or when they notify individuals that their benefits may be reviewed. The fact that the review came after an interval of more than 20 years during which there had been no mention of a review will have caused Ms McLoughlin considerable distress. WYPA failed to make Ms McLoughlin aware at the outset that her injury benefit award was subject to

review. The failure to give Ms McLoughlin any information over a 20 year period or alert her to what might happen in this regard was maladministration by WYPA. This should be recognised and appropriately compensated. I have made directions for the payment of a modest sum in recompense.

The offsetting of Ms McLoughlin's IIDB against her newly backdated injury award.

58. I think that WYPA had acted correctly within the scope of schedule 3 part 7 of the Regulations and had not breached the Regulations in deducting Ms McLoughlin's IIDB from her last injury benefit award before payment. Ms McLoughlin contends that she received two separate injuries assessments of her injuries after the index event on 31 January 1982. However, the evidence that WYPA received from the DHSS which was provided by Ms McLoughlin indicated that the conditions that caused her entitlement to an injury award were the same as those for which she received IIDB were both as a result of the same injury. I therefore do not find that the respondents were guilty of any wrong doing in this regard. Ms McLoughlin asserts that her IIDB award cannot legally be deducted from her injury award. This is because her first injury was assessed in July 1982 by the IIDB administrators so it was not within 12 months of her retirement as stated under Part 2 section 12 (1)(c) of the Regulations. Also her IIDB payment was not awarded because a permanent injury. However, it think that Ms McLoughlin has misunderstood the application of the Regulations in this regard. Part 2 section 12 of the Regulations relate to the conditions applicable to the injury award payment under Scheme. It does not relate to the conditions for which her IIDB award became payable - which is determined by the DHSS.

Directions

59. I direct that within 28 days of this determination WYPA shall pay Ms McLoughlin £150 for the distress and inconvenience caused to her by their maladministration as identified above.

Jane Irvine

Deputy Pensions Ombudsman
30 March 2015