

Ombudsman's Determination

Applicant: Mr E
Scheme: Civil Service Injury Benefit Scheme
Respondent: Cabinet Office

Outcome

1. Mr E's complaint is upheld and, to put matters right, the Cabinet Office shall seek further advice from a medical adviser, review the date to which his increased injury benefit award is backdated and pay him £1,000 for serious non-financial injustice.

Complaint summary

2. Mr E has complained that the Cabinet Office has declined to backdate his uplifted injury benefit award further than May 2015.

Background information, including submissions from the parties

Background

3. Mr E's injury award was the subject of a previous complaint by him which was determined by the Pensions Ombudsman in November 2016¹. Mr E's complaint was upheld and the Pensions Ombudsman directed the Cabinet Office to review his injury benefit award. This investigation cannot reopen any matters which were the subject of the previous Determination. It will, therefore, only cover events which happened after the 2016 Determination.
4. Mr E was employed in the Prison Service from 1973 until he retired in January 1997. He was awarded injury benefits at the "Impairment" level (see paragraph 7 below). He has appealed this decision on a number of occasions since. In 2010, Mr E's injury benefit was upgraded to "Material Impairment", backdated to November 2008 (the date of his then most recent application for reassessment).

¹ PO-8837

5. Before October 2002, injury benefit provisions were contained in section 11 of the Principal Civil Service Pension Scheme (**PCSPS**) rules. Mr E's injury occurred before 2002 and section 11 applies. Rule 11.3 provided:

“... benefits in accordance with the provisions of this section may be paid to any person to whom the section applies and

 - (i) who suffers an injury in the course of official duty, provided that such injury is directly attributable to the nature of the duty or arises from an activity reasonably incidental to the duty; or
 - (ii) who suffers an injury as a result of an attack or similar act which is directly attributable to his being employed, or holding office, as a person to whom this section applies ...”
6. Mr E's injury also occurred before the 1997 amendment to rule 11.3(ii) which changed “directly” to “solely”.
7. The scale of benefits is set out in rule 11.7. It provides for a guaranteed minimum income, which is a proportion of pensionable pay, depending upon length of reckonable service and impairment of earning capacity. There are four levels of impairment: Slight Impairment (more than 10% impaired but not more than 25%); Impairment (more than 25% impaired but not more than 50%); Material Impairment (more than 50% but not more than 75%); and Total Impairment (more than 75% impaired). In Mr E's case², the guaranteed minimum income for Impairment is 70%; for Material Impairment it is 80%; and for Total Impairment it is 85%.
8. Rule 11.10³ provides for a review of an award if (amongst other things) the beneficiary's condition deteriorates and he appeals. Appeal for a review by a beneficiary now only applies in respect of an injury sustained before 1 April 2003.
9. Following the 2016 Determination, the Scheme administrators, MyCSP, asked the Scheme Medical Advisor (**SMA**) to review Mr E's case. At this time the SMA was Health Management Limited (**HML**). The Pensions Ombudsman had directed the Cabinet Office to ask the SMA to obtain a specialist's opinion as to the contribution made by pre-morbid and post-employment factors to Mr E's condition. The Pensions Ombudsman also directed that, if the SMA was of the view that Mr E's injury benefit award should have been revised to Total Impairment, the Cabinet Office should consider the date from which a revised award should be paid.
10. Mr E was seen by a consultant psychiatrist, Dr Vincenti, in May 2018. Dr Vincenti sent a report to HML on 22 June 2018. Extracts from and summaries of this and other medical evidence relating to Mr E's case are provided in the Appendix.
11. On 3 July 2018, the SMA issued a report indicating that the impairment of Mr E's earning capacity was in the Total Impairment category. They advised that “natural

² As a prison officer, Mr E's reckonable service counts as double after 20 years.

³ Now Rule 1.10 in the Civil Service Injury Benefit Scheme Rules.

justice” suggested that Mr E’s award should be revised from the date he had applied to The Pensions Ombudsman (**TPO**) regarding the previous decision; May 2015.

12. On 24 July 2018, MyCSP wrote to Mr E notifying him that his injury award would be increased from level 1 to level 2 with effect from May 2015.
13. Mr E submitted an appeal under the two-stage internal dispute resolution procedure (**IDRP**). MyCSP wrote to Mr E on 11 September 2018. It said Mr E’s injury award had been increased and backdated to the date of the Pensions Ombudsman’s Determination on the basis of the SMA’s opinion. MyCSP said its IDRP team was not medically trained and had to rely on the SMA’s opinion. It said it could not overturn a medical decision by the SMA; it could only determine whether the correct process had been followed and whether all available medical evidence had been reviewed. MyCSP said, because Mr E’s case had previously been through the IDRP and been referred to TPO, it had sought assistance from the Cabinet Office.
14. MyCSP issued a stage one IDRP decision on 30 November 2018. It declined Mr E’s appeal. MyCSP gave the following reasons for its decision:-
 - Mr E’s current complaint was that he believed that his injury award should be uplifted to Total Impairment with effect from January 1997.
 - This had been the subject of Mr E’s previous application to TPO. TPO had stated that, because Mr E’s complaint had already been determined, it could not be re-opened.
 - It considered that Mr E’s complaint was now outside the Pensions Ombudsman’s jurisdiction.
 - It had reviewed Mr E’s case and the earlier decisions.
 - Following the Pensions Ombudsman’s 2016 Determination, the SMA had been asked to consider the level of impairment to his earning capacity and whether it should be backdated to 2003.
 - Based upon the SMA’s report of 3 July 2018, the level of impairment was increased to Total Impairment and backdated to May 2015. It agreed that natural justice meant the award should be backdated to the date Mr E had raised a dispute with TPO. As this decision was based upon a consideration of fresh medical evidence, it could not be determined that the Total Impairment should be backdated to 1997.
15. Mr E submitted a stage two appeal in January 2019. The Cabinet Office issued a decision, on 25 October 2019, declining Mr E’s appeal. It gave the following reasons for its decision:-
 - The Pensions Ombudsman’s 2016 Determination clearly stated that Mr E’s appeal for backdating of a higher injury benefit award to 1997 was out of time. It had,

therefore, not considered his appeal with regard to benefits before the first increase in impairment level.

- Mr E had disagreed with the assessment of his impairment since the SMA's original assessment. The original assessment of impairment had stood for a long time. After numerous reviews, the SMA had sufficient evidence to increase the impairment level on two occasions; in 2009 to Material backdated to 2008, and in 2018 to Total backdated to 2015.
- Strictly speaking, there was no formal appeal process for contesting the assessment of impairment level. The SMA could, and did, review cases only when someone produced new medical evidence. The decision rested entirely on there being sufficient new medical evidence to support a change in impairment level.
- In 2010, the SMA had suggested it was reasonable to take a natural justice approach when deciding when an increased impairment level should take effect. On that basis, it agreed with the SMA's advice that it was reasonable to make the increase from the time at which Mr E had asked for the latest review; May 2015.

Mr E's position

16. Mr E submits:-

The medical evidence

- He had not had a face-to-face consultation with a medical adviser and the Cabinet Office did not take all of his doctors' comments into account.
- He asked for a copy of the report from the Scheme doctor he did see and was told that it had been lost. He had been sent two incomplete documents prepared by this doctor and these indicated that the Scheme doctor agreed that he was 100% disabled as a result of incidents associated with his work. This would qualify him for a level 1 award.
- Another Scheme doctor interfered with the decision and lowered his award to level 2.
- Dr Vincenti had not been provided with appropriate documentation. He had decided to take some medical reports with him to the consultation with Dr Vincenti and was able to provide copies.
- The SMA had ignored points in Dr Vincenti's report. They agreed with the main thrust of Dr Vincenti's report, that he has chronic PTSD, but ignored Dr Vincenti's view that he had been suffering from this prior to events in 2002.
- Dr Vincenti's report shows that the original assessment upon which the decision to award him level 3 benefits was based was overly optimistic. The decision not to backdate his injury award further than 2015 is perverse.

- MyCSP ignored reports prepared by the Department for Work and Pensions (**DWP**) relating to his work capabilities. He has had to claim sickness benefit since his retirement and has had to attend regular work capability assessments. He has been deemed unfit for work at all such assessments, but MyCSP does not accept the DWP assessments.

Delay

- The Pensions Ombudsman issued his Determination in October 2016, but the medical consultation did not take place until June 2018. The delay was not his fault.
- Between April 2017 and April 2018, he was contacted by MyCSP and asked to supply medical reports from specialists he had seen since 1997. He questions why these reports were not already on his file with MyCSP.
- He appealed the decision to backdate his award only to 2015 in January 2019 and did not receive an IDRPs stage two decision until November 2019. The IDRPs decision did not address all of the points he had raised.

Injustice

- If he had been sent to see a psychiatrist in 1997, he would have been awarded a level 1 injury benefit from the date of his retirement. He would not have had to go through the stress and anguish of appealing. A level 1 award would have helped to alleviate his loss of income and additional expenses.

The Cabinet Office's position

17. The Cabinet Office has referred to the stage one and two IDRPs decisions. It states that it is satisfied that it, MyCSP and the SMA completed the directions set out in the Pensions Ombudsman's 2016 Determination.

Adjudicator's Opinion

18. Mr E's complaint was considered by one of our Adjudicators who concluded that further action was required by Cabinet Office. The Adjudicator's findings are summarised below:-
 - 18.1 Mr E's current complaint concerned the decision to backdate his revised injury benefit award to 2015.
 - 18.2 Mr E's injury benefit award had been the subject of a number of appeals and a Determination by the Pensions Ombudsman. It was, therefore, important to be clear about the extent of the current investigation.
 - 18.3 The original decision, in 1997, to award Mr E an injury benefit at the Impairment level was clearly outside the time limits for a complaint to the Pensions Ombudsman; as was explained in the 2016 Determination. The

2016 Determination dealt with the decision, in 2012, to backdate Mr E's revised Material Impairment award to 2008.

- 18.4 In the 2016 Determination, the Pensions Ombudsman had agreed that the Cabinet Office could not be asked to look back further than the SMA's February 2003 report. He had directed the Cabinet Office to review the 2012 decision, having first obtained a specialist's opinion as to the contribution made by pre-morbid and post-employment factors to Mr E's condition. The Pensions Ombudsman had directed the Cabinet Office to ask an SMA to consider whether Mr E's injury benefit should have been revised to Total Impairment; rather than Material. If the SMA was of the opinion that Mr E's benefit should have been revised to Total Impairment, the Cabinet Office was to consider the date from which the revised award should be paid. In any event, the Cabinet Office was to consider whether Mr E's revised award (either at the Material or Total Impairment level) should be backdated to 2003. The current investigation concerned the Cabinet Office's subsequent review of Mr E's injury benefit award.
- 18.5 Following the 2016 Determination, the Cabinet Office had obtained a report from Dr Vincenti. With regard to the contribution made by pre-morbid and post-employment factors to Mr E's condition, Dr Vincenti had said Mr E's condition was entirely attributable to his former service in HM Prisons and there were no other relevant factors in its aetiology. Mr E's case was then reviewed by an SMA.
- 18.6 The question for the SMA should have been whether Mr E's injury benefit should have been revised to Total Impairment in 2012, rather than Material Impairment. This was on the basis that, in 2003, a previous SMA had expressed the view that the contribution made by pre-morbid and post-employment factors amounted to 25% of Mr E's impairment of earnings capacity, but had given no reason for this. That assessment had then simply been adopted in subsequent reviews.
- 18.7 The SMA had agreed with Dr Vincenti's assessment. However, they had said the advice from Dr Vincenti was sufficient to demonstrate that Mr E's current incapacity was solely attributable to the effect of his qualifying injury. This did not address the veracity of the previous assessments, which was the purpose of the review. Nor was it entirely logical. If Dr Vincenti was saying that the aetiology of Mr E's condition was entirely attributable to his employment, and no other factors, that assessment was a historical one; not simply a current assessment. Moreover, it cast doubt on the 2003 assessment as to the contribution from pre-morbid and post-employment factors. This was not addressed by the SMA.
- 18.8 The SMA had acknowledged that they were required to give an indication of the date from when the revised award should be paid. They had said that the increase in award from Material to Total Impairment had been based on Dr

Vincenti's report dated 22 June 2018, but suggested that "natural justice" would indicate that the revised award be backdated to 2015; the date of Mr E's previous complaint to TPO. Again, this did not address the issue of the 2012 decision or the previous SMA assessments upon which that had been based.

- 18.9 The SMA's advice had been adopted by MyCSP and the Cabinet Office. When Mr E had challenged the decision to backdate his award to 2015, MyCSP had said its IDRPs team was not medically trained and had to rely on the SMA. It had said it could not overturn a medical decision by the SMA; it could only determine whether the correct process had been followed and whether all available medical evidence had been reviewed. The Adjudicator acknowledged that neither MyCSP nor the Cabinet Office could be expected to challenge a medical opinion as such. However, both could have been expected to ensure that the review of Mr E's award complied with the Pensions Ombudsman's directions.
- 18.10 In the Adjudicator's view, the review of Mr E's injury benefit award had failed to follow the Pensions Ombudsman's directions because:-
- The SMA had failed to review the previous decision to reduce Mr E's award from Total to Material, which had been based on an assessment that the contribution by pre-morbid and post-employment factors amounted to 25% of his impairment of earnings capacity.
 - The Cabinet Office did not, therefore, have sufficient, appropriate evidence to consider the date from which the revised award of Total Impairment should be paid.
 - The Cabinet Office had also failed to consider whether the 2009 award should, in any event, have been backdated to 2003.
- 18.11 The purpose of reviewing Mr E's injury benefit award was to address issues arising out of the previous SMA's assessment of the effect of the qualifying injury on the impairment of his earning capacity. In the Adjudicator's view, the review conducted by the SMA, MyCSP and the Cabinet Office had failed to achieve this. In particular, it had failed to address the difference between the SMA's 2003 assessment of the contribution by pre-morbid and post-employment factors and Dr Vincenti's advice as to aetiology.
- 18.12 Mr E had also complained about the length of time taken to complete the review. In his 2016 Determination, the Pensions Ombudsman had acknowledged that it would be difficult to set a firm deadline for completion of the review because of the need to obtain medical advice. However, the 2016 Determination had been issued in November 2016 and Mr E was not provided with the review decision until July 2018; nearly 19 months later. Even allowing for the challenges of identifying and appointing a suitable external specialist to assess Mr E, this was far from ideal.

18.13 When Mr E challenged the review decision, it had taken over a year for the IDRPs to be completed. The Adjudicator acknowledged that this timeframe would not have been entirely within MyCSP's or the Cabinet Office's control. However, she said she had not identified any undue delay on Mr E's part. The greater part of the time taken appeared to have been with the Cabinet Office at stage two. Mr E had appealed in January 2019 and had received a decision in October 2019; nearly 10 months later. There was no obvious reason for this; for example, no further evidence appeared to have been sought at this time. The time taken would have caused Mr E distress and inconvenience.

19. The Cabinet Office accepted the Adjudicator's Opinion. However, Mr E submitted further comments and the complaint was passed to me to consider. Mr E's further comments are summarised below. I have considered Mr E's comments, but I find that they do not change the outcome. I agree with the Adjudicator's Opinion.

Mr E's further comments

20. Mr E submits:-

20.1 Dr Vincenti concluded that he had been suffering from chronic PTSD for many years and that this was entirely attributable to his service with HM Prisons. Dr Vincenti had said there were no other relevant factors in the aetiology of his PTSD and he would not work again.

20.2 He cannot argue with Dr Vincenti's opinion because it concurs with all of the previous medical reports which he had submitted since 1994.

20.3 The SMA ignored the previous medical reports and has ignored Dr Vincenti's report. In particular, they have ignored Dr Vincenti's comments about his PTSD being long-standing and pre-dating Dr Sheard's 2003 report.

20.4 He was given a level 3 award in 1997. He was told that this was a normal assessment for someone who could not work in the prison service environment but who should be able to return to a non-confrontational office type environment. On the basis of the then available evidence, this would appear to be a reasonable assessment.

20.5 In October 1998, a clinical psychologist, Ms Saper, expressed the view that he was suffering from chronic PTSD. She said his symptoms were very long-standing and she was not sure how much improvement could be achieved. This assessment contained a degree of prognosis. Looking back, Ms Saper's assessment was probably the correct one.

20.6 He appreciates that there are time limits for applying to TPO. He contacted The Pensions Advisory Service in 2006. They should have advised him to forward his complaint to TPO. Unfortunately, 2005 to 2007 was a bad time for him, which is explained in Dr Vincenti's report.

- 20.7 In 2007, he was advised to obtain a medical report to address the questions of the degree and longevity of his incapacity. He was told that, if he succeeded in obtaining a higher award, he could ask for this to be backdated.
- 20.8 He acknowledges that some of the delay has been down to him and was the result of his poor health. He completed the required processes as quickly as he was able.
- 20.9 Dr Saravolac suggested that natural justice would suggest that his revised award be backdated to 2015, but passed the decision back to the delegated authority. This suggests that she did not agree with this approach.
- 20.10 Dr Vincenti's report is new significant evidence which was not available in 2015. It should be taken into account in order to assess whether it is sufficient to justify backdating his level 1 award to 1997.
- 20.11 There was never any basis for Dr Sheard's opinion. Natural justice would suggest that any decisions based upon his report should be set aside.
- 20.12 Dr Vincenti's report indicates that the medical assessments of his degree of incapacity dating back to 1996 have been discredited and should also be set aside. His level 1 award should, therefore, be backdated to 1997.

Ombudsman's decision

21. While the essence of Mr E's case is relatively straightforward, it has been complicated by the length of time over which it has been in dispute and the number of appeals, including applications to my Office. As my Adjudicator explained, the original decision, in 1997, to award Mr E an injury benefit at the Impairment level is now outside the time limits for a complaint to me. My 2016 Determination dealt with the decision to backdate Mr E's increased award to 2008. I found that the Cabinet Office could not be asked to look back further than Dr Sheard's 2003 report.
22. I am not unsympathetic to Mr E's desire to have his injury benefit award backdated further than 2003. However, as I have said before, the time limits are there for the very good reason that the greater the elapse of time, the harder it becomes to gather the necessary evidence to come to a safe and proper decision. I accept that the intervening years have been difficult for Mr E, but he was clearly able to engage with his case in 2006, when he contacted the then Pensions Advisory Service. He could have brought his case to me then. He has suggested that the Pensions Advisory Service should have advised him of the time limits. I note that its February 2006 letter to Mr E enclosed a leaflet, which it said explained its role and mine. It urged Mr E to read this leaflet and "in particular the section relating to the Ombudsman's time limits". Mr E must accept that there are time constraints on the redress which can now be provided for him.

23. I find that the review of Mr E's injury benefit award undertaken in 2018 was not carried out correctly because:-
- The SMA failed to review the previous decision to reduce Mr E's award from Total to Material Impairment. This had been based on an assessment that the contribution by pre-morbid and post-employment factors amounted to 25% of his impairment of earnings capacity.
 - The Cabinet Office did not, therefore, have sufficient, appropriate evidence to consider the date from which the revised award of Total Impairment should be paid.
 - The Cabinet Office also failed to consider whether the 2009 award should, in any event, have been backdated to 2003.
24. I also find that the time taken to complete the review and the subsequent IDRPs was too long. I am well aware of the difficulties of managing review and appeal cases and I acknowledge that not all of the time taken was within the Cabinet Office's control. Nevertheless, I think the delays do fall within the broad scope of "maladministration" and Mr E will have sustained serious distress and inconvenience as a consequence.
25. Therefore, I uphold Mr E's complaint.

Directions

26. Within 28 days of the date of my Determination, the Cabinet Office shall ask an SMA to comment specifically on the matter of the contribution by pre-morbid and post-employment factors to Mr E's impairment of earning capacity. If it is the SMA's opinion that the 2003 assessment of a 25% contribution can still stand, the Cabinet Office shall ask them to explain why their opinion differs from that of Dr Vincenti.
27. If it is the SMA's opinion that, in the light of Dr Vincenti's advice, the 2003 assessment can no longer stand, the 2012 decision to uplift Mr E's injury benefit award shall be adjusted accordingly. Without the application of a 25% reduction for pre-morbid and post-employment factors, Mr E's award would have been uplifted to Total Impairment, rather than Material Impairment. The Cabinet Office shall decide whether the uplift should be backdated to 2008, as previously decided, or 2003, the date of the SMA's assessment of a 25% contribution from pre-morbid and post-employment factors.
28. I acknowledge that it is difficult to set a timeframe within which the further review should be completed. However, on the basis that no external medical advice is required this time, the Cabinet Office shall refer the case to an SMA within 28 days of the date of my Determination. It shall provide Mr E with its decision within a further 28 days of receipt of the SMA's opinion. That decision should include a copy of the SMA's opinion and the Cabinet Office's reasoning for its decision.

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29. In addition, within 28 days of the date of my Determination, the Cabinet Office shall pay Mr E £1,000 for the serious distress and inconvenience he will have sustained as a consequence of the failure to review his case as required and the time taken for both the review and the IDRPs.

Anthony Arter
Pensions Ombudsman

8 June 2022

Appendix

Medical evidence

30. Dr Vincenti, consultant psychiatrist, 22 June 2018

Dr Vincenti said, in addition to information provided by Mr E in the consultation, he had sight of some medical records and correspondence. He then provided an account of the information provided by Mr E relating to his personal life and employment history. Dr Vincenti said that much of the documentation he had been provided with was not of great value to him because they did not contain any clinical information. He then summarised those documents which had had some bearing on his conclusions.

In his conclusions, Dr Vincenti said Mr E had chronic PTSD. He said there was no reason to add any additional diagnosis, such as anxiety or depression, because patients with PTSD almost always had symptoms of an anxious or depressive nature. Dr Vincenti said Mr E had first developed PTSD in 1983. He noted that Mr E's family history would have meant he possessed a vulnerability factor towards PTSD, but said that Mr E's experiences at work in 1983 would have been a sufficient trigger for PTSD in any event. Dr Vincenti explained that other psycho-social stress could delay the recovery process and increase the likelihood of chronicity. He referred to incidents in Mr E's personal life in 2000 which he thought would not have helped Mr E. Dr Vincenti said Mr E had been suffering from PTSD for well over a decade by then and it was already well-entrenched, with a poor prognosis.

Dr Vincenti explained that PTSD normally had quite a good spontaneous recovery rate, with 50% of patients reporting improvement in symptoms in the first year without treatment. He said only 30% of patients reported persisting symptoms at the end of the second year. He said most patients did well with treatment and success rates could be as high as 70% to 75%. Dr Vincenti explained that, once patients had had treatment and PTSD had persisted beyond three to four years, the prognosis became much worse. He said Mr E fell into this category and had done so before the events in his personal life in 2000.

Dr Vincenti concluded:

"In summary, [Mr E] has for many years suffered from chronic PTSD. This is entirely attributable to his former service in HM Prisons. There are no other relevant factors in its aetiology. He will not work again. The personality change, which is part of his PTSD syndrome, has rendered him too volatile and impulsive, and his mood too labile, to cope with an ordinary work environment. In my opinion he merits the highest award it is possible to acquire for pension purposes in relation to an Injury Award.

With regard to future treatment, [Mr E] has exhausted all evidence-based psychological treatments for PTSD, and it is psychological treatment that forms the mainstay for the management of the condition. There is evidence

that pharmacological measures can assist. [Mr E] has clearly tried the bulk of these already. He is currently taking ... which is a useful agent, and I would advise that he perseveres with this treatment. [Mr E] needs to keep his alcohol consumption to a minimum, which he is doing currently. Moderate exercise can help. If anxiety levels mount, ... can assist, as long as this does not cause any problems with his cardiology function.

[Mr E] will require long-term maintenance treatment with antidepressants. It is unlikely that he would be able to cope without such treatment.”

31. Dr Saravolac, SMA, 3 July 2018

Dr Saravolac confirmed receipt of Dr Vincenti's report and outlined the background to Mr E's case. They said the assessment of earnings impairment related only to the effects of the injury sustained through the causal incidents.

Dr Saravolac summarised Dr Vincenti's report and concluded:

“I reviewed all the medical evidence that was available and as listed above together with new medical evidence that has been provided by Dr Vincenti, Consultant Psychiatrist ... It is my opinion that the new medical evidence provided by Dr Vincenti is sufficient to demonstrate that on the balance of probabilities [Mr E's] current incapacity is solely attributable to the effect of his qualifying injury so the estimate of the degree to which the general earning capacity has been impaired only by the effect of the injuries sustained to the causal incident is likely to be over 75% (total incapacity).

As noted above it is my understanding that should the Scheme Medical Advisor provide an opinion that the level of impairment is to be total impairment then the Scheme Medical Advisor should give an indication as from what date the revised award should be paid. As noted above my advice, following new medical evidence is to increase [Mr E's] impairment from material impairment to total impairment. This opinion is based on the medical report produced by Dr Vincenti on 22/06/2018. This new medical evidence was available to me at the time of today's assessment. However as per previous instructions from the Scheme Medical Advisor (a letter from [Dr] Stuckey dated 01/02/2010) natural justice would suggest that [Mr E's] impairment to earnings assessment is revised from the date he requested to the Pensions Ombudsman's appeals against the previous decision and that date was 18/05/2015. However I would like to point out that it is for the delegated authority to form that opinion.”