PO-20440

Ombudsman's Determination

Applicant	Mr K
Scheme	Civil Service Injury Benefits Scheme
Respondents	MyCSP
	The Cabinet Office

Outcome

1. I do not uphold Mr K's complaint and no further action is required by MyCSP or the Cabinet Office.

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

Complaint summary

Complaint summary

3. Mr K has complained that his permanent injury benefit (**PIB**) has not been calculated correctly. In particular, he disagrees with the level of impairment which has been used. He has also complained that his appeal was not handled in an appropriate manner.

Background information, including submissions from the parties

Background

4. Mr K was employed by the Ministry of Defence until February 2014, when he retired on the grounds of ill health.

5. The relevant rules are the Civil Service Injury Benefits Scheme Rules (as amended). These were made, on 22 July 2002, under section 1 of the Superannuation Act 1972, and came into force on 1 October 2002. Rule 1(ii) provides that benefits are paid at the discretion of the Minister.

6. Part 1 of the Scheme Rules contains the provisions for "Persons employed in the Civil Service". Rule 1.1 states that "This part of the scheme applies to persons serving in … the Civil Service … who: are injured … in any of the circumstances set out in Rule 1.3 …". Rule 1.3 then sets out the "Qualifying conditions" for a PIB. It states:

> "… benefits in accordance with the provisions of this part may be paid to any person to whom the part applies and
>
> (i) who suffers an injury in the course of official duty, provided that such injury is wholly or mainly attributable to the nature of the duty; or
>
> (ii) … or
>
> (iii) who contracts a disease to which he is exposed wholly or mainly by the nature of his duty …"

7. Rule 1.5 provides that reference to "injury" in the following provisions of the scheme should be taken to include a reference to "disease". Rule 1.6 provides:

> "Subject to the provisions of this part, any person to whom this part of this scheme applies whose earning capacity is impaired because of injury and:
>
> (i) whose service ends before the pension age … may be paid an annual allowance and lump sum according to the Scheme Medical Adviser's medical assessment of the impairment of his earning capacity, the length of his service, and his pensionable earnings when his service ends; …"

8. Rule 1.7 provides that the annual allowance referred to in Rule 1.6 will, when added to certain other benefits, provide an income of not less than a guaranteed minimum (**GMI**). The guaranteed minimum incomes are set out in a table and vary according to length of service and level of impairment to earning capacity. There are four levels of impairment: slight (>10% but not >25%); impairment (>25% but not >50%); material (>50% but not >75%); and total (>75%).

9. In June 2014, MyCSP determined that Mr K had suffered a qualifying injury. He was initially assessed by the Scheme Medical Adviser (**SMA**) as being in the 25% to 50% impairment band. This was increased to 50% to 75% on appeal.

10. Mr K is also in receipt of a War Disablement Pension (**WDP**) under the War Pensions Scheme. In 2014, MyCSP included Mr K's WDP in its calculation of the offset against his GMI. As a result, it determined that no injury benefit was payable.

11. In April 2017, Mr K contacted MyCSP because he was no longer receiving Employment Support Allowance. MyCSP reviewed Mr K's case and discovered it had incorrectly taken the WDP into account. It wrote to Mr K notifying him of this. MyCSP recalculated Mr K's injury benefit, including annual increases which had applied since February 2014. It paid him arrears of £20,937.22 in May 2017. Mr K queried whether he would receive interest on the arrears. MyCSP subsequently offered Mr K an ex-gratia payment of £1,319.49, which he accepted. The payment was calculated on the basis of simple interest at the rate of 4%, from the date Mr K's injury benefit was due to the date it was paid. Mr K signed a form confirming that he was willing to accept

this sum in full and final settlement of any claim regarding backdated interest in relation to his injury benefit.

12. It had also been decided that Mr K's impairment of earnings capacity should be reviewed. His case was, therefore, referred back to the SMA. At the time, this was Health Assured Limited (**HA**). HA requested a report from Mr K's consultant psychiatrist, Dr Tandon, who responded on 26 January 2017. With regard to Mr K's diagnosis and previous treatment, Dr Tandon said he did not feel able to add to what was documented in his medical records. He suggested HA make a subject access request for these. With regard to the likelihood of future treatment leading to improvement in functionality, Dr Tandon said he did not feel in a position to comment.

13. Mr K's case was then reviewed by Dr Collins at HA. She drafted a report on 15 February 2017. A copy was sent to Mr K. He raised a number of issues with the report. A summary of Dr Collins' report, together with other medical evidence relating to Mr K's case, is provided in Appendix 1.

14. Mr K submitted a complaint about the way in which HA had handled his case. A timeline of the process is provided in Appendix 2.

15. Mr K also submitted a complaint under the two-stage internal dispute resolution (**IDR**) procedure. Stage one is dealt with by MyCSP. It issued a decision on 15 September 2017. MyCSP did not uphold Mr K's complaint insofar as it related to the assessment of impairment to earnings capacity. It said it considered HA to have followed the correct procedure. MyCSP did uphold Mr K's complaint insofar as it related to delays after he had given consent for the release of Dr Collins' report and the error in calculating his injury benefit in 2014. It said it considered any financial loss to have been remedied but offered Mr K £1,000 for non-financial loss. It also apologised for any distress and inconvenience Mr K had experienced.

16. Mr K did not accept the offer of £1,000. MyCSP has confirmed that it is still open.

17. Mr K progressed his complaint to stage two of the IDR procedure. Stage Two is dealt with by the Cabinet Office. It issued a decision on 4 June 2018. It did not uphold Mr K's complaint on the grounds that suitable redress had been offered for the maladministration identified at stage one.

Mr K's position

18. Mr K submits:-

- His ill health retirement certificate related to both his physical and mental health.
- Veterans UK has awarded him a benefit based on an assessment of 80% disability. This has not been taken into consideration by MyCSP or HA.
- Although he was assessed as having an impaired earning capacity, he did not receive any money until he made enquiries in 2017. If he had not made

enquiries, the failure to calculate his award correctly would have gone on indefinitely. Had he been paid his PIB in 2014, he may have made different decisions.

- HA provided incorrect information and a poor report. This was provided by a doctor whose expertise is in occupational medicine. At no time was he contacted by or examined by a doctor for HA. He views this as someone sitting in an office making a decision without seeing the impact of his condition.
- He made a complaint to HA but it failed to respond to him. He was the initiator of the complaint and the response should have come to him.
- He has been under the care of a mental health team since 2014. Prior to this, he was receiving in-depth counselling. Veterans UK has agreed to therapeutic earnings of around £120 per week[1]. The mental health team agreed and allowed him to become involved in engagement activities which attracted reimbursement well below this allowance.
- Some of his disabilities and health issues have been discounted by HA. When he asked what health issues were being considered, he did not receive a reply.
- The IDR procedure was fraught and the number of problems caused him extreme distress. He was told by MyCSP that a manager from its Scheme Compliance Unit (**SCU**) would oversee his case but this did not happen. He was subsequently told that the IDR team worked in isolation. He asked to speak to the lead of the IDR team and SCU but they failed to engage with him. The Cabinet Office was not interested in investigating the many errors he had identified and simply looked at whether process had been followed.
- Correspondence was undelivered and the IDR responses were sent via normal surface mail. He suggested such correspondence should be 'signed for' but this was not taken up.
- He did not accept the offer of £1,000 because he was concerned that this would bar him from pursuing failings by MyCSP, HA and the Cabinet Office.
- HA asked Dr Tandon impossible questions about his employability. Dr Tandon attempted to contact HA but they failed to or did not want to talk to him.
- MyCSP manipulated the complaint response letter from HA.
- He should be awarded Total Impairment because his earning ceiling is considerably less than it would have been if he had remained at the MoD.
- MyCSP, HA and the Cabinet Office should be reviewed because of the level of discrepancies and failings related to his impaired earnings assessment.

[1] Mr K has pointed out that he has not earned £120 per week.

19. Mr K was provided with an opinion by one of our Adjudicators (see below). He made the following further comments:-

- The MoD has accepted that it caused stress induced injuries on more than one occasion. He is unemployable and has been since retiring on health grounds.
- He suffered supplementary stress because of the way in which his application for Total Impairment was dealt with.
- When the non-payment error was discovered, he was refused interest at the legal rate of 8%.
- He raised a number of concerns about HA. He was not confident that all the medical evidence was being reviewed. Given that HA's contract was coming to an end, he feels it was just going through process.
- It was "a complete travesty" for MyCSP to say that HA followed the correct procedure. HA's failure to respond to him is just one example of not following procedure.
- The Cabinet Office was not interested in dealing with the many failings by MyCSP and HA. It was only concerned that process had been followed.
- He was not assessed as 80% disabled in 2009. The cumulative deterioration in his mental and physical health is directly caused by MoD failings. HA should have considered the MoD's admissions of causing workplace stress, which aggravated his accepted conditions.
- The MoD undertook a risk assessment prior to appointing him. It therefore failed to follow prerequisites in his contract.
- Dr Collins was not qualified to comment on his holistic health issues which caused him to be retired on health grounds.
- The chronic nature of his mental health condition is sufficient for him to be deemed unemployable. He is categorised as disabled both mentally and physically as per the Equality Act 2010.
- His conditions are chronic and permanent. They have progressively deteriorated. Therefore, his assessments in 2009 and 2014 are permanent and there is no scope for improvement.
- He should have been assessed by reference to qualifying injuries; not qualifying injury. The qualifying injuries aggravated known injuries which the MoD accepted when it appointed him.
- Dr Tandon is an NHS employee. It is not within his remit to give an opinion of the kind requested by Dr Collins. If she had spoken to Dr Tandon, it is likely that he would have given a more open view.

Adjudicator's Opinion

20. Mr K's complaint was considered by one of our Adjudicators who concluded that no further action was required by either MyCSP or the Cabinet Office. The Adjudicator's findings are summarised below:-

- There were essentially two elements to Mr K's complaint: the level at which the impairment of his earning capacity had been assessed; and the way in which his appeal was handled.

- With regard to the assessment of earning capacity impairment, the Adjudicator explained it was not the role of the Ombudsman to review the medical evidence and come to a decision of his own as to the appropriate level of impairment. The Ombudsman was primarily concerned with the decision-making process. The issues considered included: whether the relevant Rules had been correctly applied; whether appropriate evidence had been obtained and considered; and whether the decision was supported by the available relevant evidence.

- Medical (and other) evidence was reviewed in order to determine whether it supported the decision made. However, the weight which was attached to any of the evidence was for the SMA to decide (including giving some of it little or no weight). Under Rule 1.6, MyCSP had to apply the SMA's assessment of impairment; unless there was a cogent reason why it should not or should not without seeking clarification. For example, an error or omission of fact or a misunderstanding of the relevant Rules by the medical adviser.

- It would not be appropriate for MyCSP to apply a level of impairment which was obviously incorrect simply because Rule 1.6 placed the assessment role with the SMA. In addition, the Cabinet Office, as the scheme manager, had a general responsibility to oversee the application of the Scheme Rules. If the evidence indicated that there was a flaw in the SMA's assessment, either MyCSP or the Cabinet Office (on appeal) could be expected to refer the case back for review.

- Mr K had been assessed at the material (>50% but not >75%) level of impairment. This was on the basis of the report prepared by Dr Collins (see Appendix 1). Mr K had raised a number of issues relating to Dr Collins' assessment:-

  - His ill health retirement was as a result of both his mental and physical health.

  - Veterans UK has assessed him as 80% disabled.

  - Dr Collins is an occupational health specialist.

  - At no time did any doctor at HA contact him or examine him.

- Dr Collins asked Dr Tandon impossible questions and failed to speak to him.

- In her response to Mr K, Dr Collins had said consideration of PIB related only to the permanent effects of the qualifying injury which, in his case, was work related stress.

- In order to determine the correct approach, it was necessary to look at Rule 1.6 in the context of Part 1 of the Scheme Rules as a whole. Part 1 only applied if the individual had suffered a qualifying injury (see Rule 1.1); that is, if he or she was injured in the circumstances set out in Rule 1.3. On that basis, the reference, in Rule 1.6, to impairment of earning capacity because of injury was to the impairment arising from the qualifying injury.

- There was no specific reference in Part 1 to a requirement for permanency. In a previous determination[2], the then Deputy Ombudsman had noted that Rule 1.6a provided for a temporary injury allowance and Rule 1.6 provided for a PIB to be abated, suspended and/or revised but not ceased or reduced. She concluded that, by implication, the permanence of impairment to earning capacity was intended to be considered for the purposes of Rule 1.6.

- In view of the above, Dr Collins' approach in assessing the level of permanent impairment to Mr K's earning capacity arising solely from his qualifying injury was correct.

- The Adjudicator noted Mr K's reference to the fact that Veterans UK had assessed him as 80% disabled. However, this assessment was undertaken in relation to Mr K's eligibility for benefits under an entirely separate scheme with its own criteria. The SMA was required to come to an independent assessment for the purposes of Rule 1.6.

- In view of the fact that an assessment of Mr K's earning capacity was called for under Rule 1.6, it was not inappropriate that the SMA should be an occupational health specialist. Dr Collins had not questioned Mr K's diagnosis or the treatment he had been receiving. Her assessment was based on her view of the likely long-term impact of Mr K's condition on his ability to work. As an occupational health specialist, she was in a position to make such an assessment.

- Mr K had pointed out that he was not contacted by or examined by a doctor from HA. In his response to Mr K's complaint, Dr Evans had explained that it was not felt that a consultation with Mr K would yield suitable information about his prognosis. To a large extent, the information required by the SMA was a matter for his or her professional judgment. In exercising that judgment, the SMA was subject to his or her own professional code of conduct and was not

[2] Bloomer 84612/1 July 2012

subject to the Ombudsman's jurisdiction. There was no specific requirement under the Scheme Rules for there to be a consultation by the SMA. That being said, if it was obvious that the SMA had made an assessment on the basis of inadequate or incorrect data, either MyCSP or the Cabinet Office could be expected to query this.

- In the Adjudicator's view, the evidence did not indicate that this was the case here. Dr Collins had access to a number of specialists' reports dating from 2012 to 2017. She acknowledged that Dr Collins did not have an up to date opinion from Dr Tandon, but this was because he had expressed the view that he was not in a position to provide one. It was then up to Dr Collins to decide whether she felt she had sufficient appropriate evidence upon which to base her assessment.

- With regard to the questions asked of Dr Tandon, these related to diagnosis and treatment, and the likelihood of treatment leading to an improvement in functioning such that Mr K would be capable of some form of gainful employment. In the Adjudicator's experience, these were questions commonly addressed to an individual's treating physician in the context of an eligibility assessment for pension or injury benefit. Dr Tandon responded by saying he did not feel in a position to comment. That was, of course, for him to decide. It did not, however, indicate that Dr Collins was asking him impossible questions. The Adjudicator noted that, in his letter of 14 December 2017, Dr Tandon had commented on the likelihood of Mr K being able to sustain paid employment in the short to medium term.

- Having reviewed Dr Collins' report, the Adjudicator said she had not identified any error or omission of fact or misunderstanding of the relevant Rules which should have prompted MyCSP and/or the Cabinet Office to query her assessment. She fully accepted that there was a difference of opinion between Dr Collins and Dr Tandon (on the basis of his letter of 14 December 2017). However, a difference of opinion was not, in and of itself, sufficient to find that MyCSP should not have applied Dr Collins' assessment of the impairment of Mr K's earning capacity.

- The Adjudicator then considered the way in which Mr K's appeal had been handled. It was clear that there was some confusion between the various parties as to the correct procedure to adopt. In part, this appeared to have arisen because the Cabinet Office was trying to help Mr K progress his complaint. It sent him forms to complete which should have been completed by MyCSP on his behalf. The Adjudicator said, whilst she could understand Mr K's frustration when this happened, she was not of the view that it could be said to amount to maladministration.

- Mr K was of the view that HA's response to his complaint should have been sent directly to him. At the time, HA had been appointed to provide medical

advice to the Scheme. It did not have a direct relationship with Mr K. In the circumstances, it was not inappropriate for HA to respond to MyCSP in the first instance. Having said this, the Adjudicator was of the opinion that this position could have been made clearer to Mr K at the outset.

- The Adjudicator said she had reviewed both Dr Evans' response of 12 May 2017 and MyCSP's letter of 19 May 2017. She was of the view that the latter provided a reasonable summary of the former.

- MyCSP did not refer to Dr Evans' query as to whether it wished HA to specifically review Mr Conrad's letter. Nor did it include Dr Evans' comments on the appropriate next steps under the complaints procedure. Dr Evans had expressed the view that it was not appropriate for Mr K's original case to remain open indefinitely. He asked that MyCSP communicate the outcome of his investigation to Mr K and, if Mr K and MyCSP felt the matter was not resolved, to escalate the complaint as appropriate. He said he would leave the case open for four weeks and, if HA had not heard from MyCSP or Mr K, then close it without providing advice. Dr Evans said, if Mr K were to authorise the release of Dr Collins' report subsequently, HA would release it. This proposed approach was not included in MyCSP's letter.

- Since these were matters for MyCSP to take forward, the Adjudicator did not consider it unreasonable for them to be omitted from the 19 May 2017 letter to Mr K. She said she could understand why Mr K was concerned when he saw Dr Evans' reference to closing his case after four weeks. However, Dr Evans had also said that, if Mr K provided authorisation subsequently, HA would release Dr Collins' report. It was not the case that the four-week deadline was a final end to Mr K's application. Indeed, Dr Collins' report was subsequently released on Mr K's authority.

- There was a delay between Mr K agreeing to the release of Dr Collins' report and MyCSP notifying him of the outcome. There was no obvious reason for this and, in the Adjudicator's opinion, it could be said to amount to maladministration. The delay did not, however, affect the outcome of Mr K's case.

- Mr K had also referred to the fact that he was not paid his PIB in 2014 because MyCSP had, incorrectly, taken his WDP into account. Mr K had been paid arrears of PIB dating back to 2014, together with a payment of £1, 319.49. In the Adjudicator's view, this addressed any financial loss arising out of the failure to pay Mr K's PIB in 2014. Mr K had also been offered £1,000 for non-financial loss arising out of this error and the delay in informing him of the outcome of the level of impairment review.

- This offer was in line with the Ombudsman's current guidelines and represented an appropriate level of redress. Accordingly, in the Adjudicator's view, there was no injustice remaining for which no appropriate redress had

been offered. In other words, there were no grounds which would warrant Mr K's complaint being upheld. It was, of course, for Mr K to decide whether he accepted MyCSP's offer.

21. Mr K did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr K provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr K for completeness.

Ombudsman's decision

22. Under Rule 1.6, Mr K may be paid an annual allowance and a lump sum according to, amongst other things, "the Scheme Medical Adviser's medical assessment of the impairment of his earning capacity". It is, therefore, the SMA who decides at which level to place the individual's impairment of earning capacity.

23. In so far as the SMA's medical opinion of Mr K's capacity for employment is concerned, he or she is not within my jurisdiction. Instead, the SMA must meet the professional standards set by the General Medical Council (**GMC**) under the Medical Act 1983. Complaints about the SMA's medical opinion are more properly directed to the SMA themselves or possibly to the GMC, depending on the nature of the complaint and its gravity.

24. MyCSP is required to calculate Mr K's PIB by reference to the impairment of his earning capacity as it has been assessed by the SMA. It has no discretion to apply a different level of impairment. However, this being said, it would not be appropriate for MyCSP to proceed on the basis of a level of impairment which it could see had been arrived at incorrectly. That is to say if MyCSP was aware of errors or omissions of fact by the SMA or that there had been a misunderstanding of the requirements of Rule 1.3, it should not proceed regardless. It would be expected to seek clarification. It would not, however, be expected to challenge a purely medical opinion as to Mr K's capacity for earning. The same expectation would apply to the Cabinet Office in its capacity as Scheme manager.

25. It is clear that Mr K fundamentally disagrees with Dr Collins' assessment of his earning capacity. In particular, he disagrees with her approach in assessing the effect of his mental health on his earning capacity.

26. As discussed in paragraph 20 above, Rule 1.6 cannot be read in isolation. It must be read in the context of Part 1 as a whole. Rule 1.1 makes it clear that Part 1 only applies when an individual has been injured "in any of the circumstances set out in Rule 1.3". Rule 1.3 provides for benefits to be paid to an individual "who suffers an injury in the course of official duty, provided that such injury is wholly or mainly attributable to the nature of the duty". This is referred to as the qualifying injury. The payment of a PIB is linked to the occurrence of a qualifying injury and intended to compensate for the effects of that injury on the individual's capacity for earning. It

follows that, in Rule 1.6, the reference to an individual's "impairment of earning capacity because of injury" is to the impairment arising from the qualifying injury.

27. In her letter of 22 March 2017, Dr Collins said her consideration related only to the permanent effects of Mr K's qualifying injury. She identified this as work-related stress. I do not find that this represents a misunderstanding of the requirements of Part 1 on Dr Collins' part. It did not require MyCSP or the Cabinet Office to seek clarification from Dr Collins before accepting her assessment of Mr K's earning capacity.

28. Mr K is also of the opinion that Dr Collins did not take appropriate steps to obtain evidence before coming to her conclusions. For example, he has pointed out that there was no face-to-face consultation and some of the reports referred to dated back to 2012.

29. I note that a report was requested from Dr Tandon, Mr K's psychiatrist. Dr Tandon responded by saying he said he did not feel able to add to what was documented in Mr K's medical records. With regard to the likelihood of any future treatment leading to improvement in functionality, Dr Tandon said he did not feel in a position to comment. Mr K has suggested that the questions asked of Dr Tandon were impossible for him to answer. They were, however, the standard questions asked of an individual's treating physician in such cases.

30. Mr K has suggested that Dr Collins should have spoken to Dr Tandon and that he would then have given a more open view. Mr K appears to be suggesting that Dr Tandon should have been given the opportunity to speak 'off the record'. This is not, however, the appropriate approach to take. Medical evidence must be documented.

31. It is not clear why Dr Tandon did not feel able to comment on Mr K's future likely functionality when he did just that in his letter of 14 December 2017. It would have been helpful if he had provided such an opinion when first asked to do so. That being said, Dr Collins was required to come to her own view as to Mr K's employment capacity. Although, some of the reports referred to by Dr Collins dated back to 2012, she reviewed a range of reports dating up to 2017. I do not find that the range of evidence referred to by Dr Collins should have prompted MyCSP or the Cabinet Office to query her assessment of Mr K's earning capacity.

32. In summary, I do not find that there was any reason for MyCSP not to proceed to apply Dr Collins' assessment of Mr K's earning capacity.

33. I move now to consider the way in which Mr K's case has been dealt with by MyCSP and the Cabinet Office.

34. The error in taking Mr K's WDP into account in calculating his PIB does amount to maladministration on MyCSP's part. However, it has now paid Mr K arrears dating back to 2014. It has also paid Mr K £1,319.49 in interest.

35. Mr K argues that he should have been paid interest at the rate of 8%. He is referring to the rate of post-judgment interest set under the Judgments Act 1838, which currently stands at 8%. This applies to, for example, High Court judgments.

36. There is no provision for the payment of interest in the Scheme Rules themselves. However, this does not mean that interest cannot be paid. There is legal authority for interest to be payable when a trustee pays arrears of pension. This is to acknowledge and compensate for the fact that the member has been kept out of money which they should have had sooner. The issue was recently considered in the case of *Lloyds Banking Group Pensions Trustees Limited v Lloyds Bank Plc and others* [2018] EWHC 2839 (Ch).

37. Where appropriate, in cases of late payment, I may direct the payment of interest either under Section 151 or Section 151A of the Pension Schemes Act 1993. This is simple interest at the base rate quoted at the time.

38. Mr K accepted the payment of £1,319.49 in full and final settlement of any claim to backdated interest on the arrears of his injury benefit. He cannot now claim that the interest should have been calculated on a different basis.

39. Mr K's appeal against the level of earnings impairment used in the calculation of his PIB did not run smoothly. In part, this appears to have been the result of various parties becoming involved and a lack of coordination between them. For example, Mr K was sent forms which MyCSP should have completed.

40. Mr K is particularly concerned that HA did not respond directly to him and that the letter he received from MyCSP did not include everything which Dr Evans had said. At the time, HA had been appointed to act as the Scheme Medical Adviser. It did not have a direct relationship with Mr K. In the circumstances, it was not inappropriate for Dr Evans to write to MyCSP. However, this should have been explained to Mr K.

41. MyCSP provided Mr K with a summary of Dr Evans' response. Whilst MyCSP did not include everything Dr Evans had said, I do not find that this amounts to a distortion of his response. There were elements of Dr Evans' response which were intended for MyCSP and there was no particular need to pass these on to Mr K; for example, whether the complaint required escalation.

42. The appeal process, insofar as it related to Dr Collins' assessment, took around four months; February to June 2017. During that time, there was no undue delay on the part of MyCSP or the Cabinet Office in responding to Mr K's queries. There was an element of confusion as to who should be taking the appeal forward. The Cabinet Office appears to have become involved at an earlier stage than it would normally and, in trying to help Mr K, issued forms to him instead of MyCSP. I do not find that this amounted to maladministration.

43. There was a delay of around two and a half months between the release of Dr Collins' report and MyCSP notifying Mr K that his level of impairment remained at 50% to 75%. There is no obvious reason for this and, in the circumstances, it does

amount to maladministration. MyCSP would have been aware that Mr K was finding the whole process very stressful and a prompt notification was called for. Having said this, for me to uphold Mr K's complaint, I would have to find that he has suffered injustice for which no appropriate redress has been offered. MyCSP offered Mr K £1,000 in recognition of the stress caused by the delay in notifying him of the outcome of his case. I find this to be an appropriate offer in the circumstances and that further directions from me are unnecessary.

44. Therefore, I do not uphold Mr K's complaint.

Anthony Arter

Pensions Ombudsman
20 March 2019

Appendix 1

Medical evidence

45. Mr K provided a copy of the notes from the War Pension medical examination he underwent in December 2016. This included details of his physical conditions and functional limitations.

Mr Conrad, 21 March 2017

46. Mr Conrad wrote to Mr K outlining the treatment he had received to date. He noted that Mr K had had 38 sessions of cognitive behavioural therapy since August 2018 and a further 10 to 15 sessions had been agreed. Mr Conrad noted that Mr K was expecting to begin a course of treatment at a pain clinic which was likely to include some psychological treatment. He said he would aim to coordinate his work with this.

Dr Collins, 22 March 2017

47. In her letter of 22 March 2017, Dr Collins was responding to issues raised by Mr K in relation to her draft report of 15 February 2017. She responded to four points:-

- Mr K's ill health retirement certificate had included other conditions than his depression/anxiety.

  Dr Collins said consideration of PIB related only to the permanent effects of the qualifying injury which, in Mr K's case, was work related stress.

- Dr Tandon's letter of 26 January 2016 had not been listed in her draft report.

  Dr Collins said she had not listed the letter because it did not include any medical evidence. Dr Collins acknowledged that Mr K had understood that another report was to be commissioned. She said Dr Tandon had made it clear that he was unable to provide an opinion. Dr Collins referred to Dr Tandon's suggestion that HA make a Subject Access request for Mr K's medical records. She said she understood that this could only be done by an individual.

- References to alcohol were out of date.

  Dr Collins said Dr Tandon's comments were relevant to the perpetuation of symptoms and the response to treatment. She suggested that, if this was no longer an ongoing issue, it would be a positive prognosticator.

- The War Pension medical assessment.

  Dr Collins said she had considered this and had listed it in her report. She said the assessment related to the effects of Mr K's physical conditions which were not eligible to be included in the consideration of his PIB. She apologised for a typographical error in the date of the report.

48. Dr Collins acknowledged receipt of a report from a clinical nurse specialist dated 25 January 2017. She said she had considered this and listed it in her revised report. She enclosed a copy of the revised report.

49. In her report, Dr Collins listed the medical evidence she had considered. This included: reports from two psychiatrists dating from 2013 and 2014; reports from therapists dating from 2012, 2013 and 2015; reports from Dr Tandon dating from 2016 and 2017; the assessment by Veterans UK relating to Mr K's war pension; a report from a consultant anaesthetist dating from 2016; and the clinical nurse specialist's report.

50. Dr Collins indicated that the degree to which Mr K's general earnings capacity had been impaired fell in the "material impairment" band (50%-75%). Her reasons are summarised below:-

    - Mr K's symptoms of work related stress had been recognised as a qualifying injury and he was appealing the level of impairment given by Dr Evans previously.

    - Mr K had given his consent for HA to approach Dr Tandon, but he had indicated that he did not feel able to give advice. Dr Tandon had suggested that information about Mr K's symptoms be obtained by other means.

    - HA already had copies of Dr Tandon's previous reports and Mr K had provided a copy of a report from October 2016. This was the most contemporaneous advice regarding Mr K's mental health.

    - Her understanding was that she should assess the application on the basis of the available evidence.

    - Consideration of a PIB related only to the extent to which earnings had been permanently impaired as a result of the qualifying injury; not as a result of other medical conditions.

    - There was a very significant body of medical evidence relating to Mr K's health. It was too extensive to document in its entirety and she had limited her list to those reports which related to Mr K's mental health.

    - Several of the reports were new and submitted in support of Mr K's appeal. A number of diagnostic formulations had been made but there was little discussion of the prognosis.

    - Dr Tandon had indicated a diagnosis of paranoid personality traits underpinning Mr K's symptoms. His previous reports had discussed a significant consumption of alcohol, which was likely to have aggravated Mr K's symptoms, which had failed to respond to medication. Dr Tandon was of the opinion that psychological intervention should be the mainstay of treatment.

This was consistent with advice from the consultant anaesthetist; albeit in the context of pain management.

- Veterans UK had mentioned Mr K's continued focus on feelings of grievance with his former employer. This was likely to perpetuate his symptoms and was best treated with psychological therapy.

- With the benefit of psychological treatment and a reduced alcohol intake, together with treatment from a multi-disciplinary team for his pain, it was not unreasonable to foresee that Mr K's mood was likely to improve over time.

- Dr Evans had estimated Mr K's impairment of earnings capacity to be in the 50%-75% range. This was on the basis that Mr K would be able to sustain a salary at the bottom end of the range for basic administration roles. Within the 50%-75% range, there was significant potential for less than full-time employment.

Dr Tandon, 14 December 2017

51. In an open letter, Dr Tandon confirmed that Mr K was under the care of his local mental health team. He provided an outline of Mr K's symptoms and diagnoses.

52. Dr Tandon said Mr K had been working with an involvement team, which worked with service users and carers. He said Mr K found this enabled him to get a better perspective on his own situation and, as a result, he had a better awareness of the triggers for his anxiety and paranoia. Dr Tandon said Mr K had informed the mental health team that Veterans UK accepted his unemployability and approved therapeutic earnings of around £120 per week[3]. He explained that the activities Mr K undertook for the involvement team were very part-time. He said it was recognised that there would be times when he was not well enough to perform his duties.

53. Dr Tandon concluded:

> "Unfortunately, there hasn't been a significant improvement in [Mr K's] mental state during the course of his treatment and he continues to report feeling agitated, distressed and anxious which further contributes to his sense of paranoia. Based on my discussions with those involved in [Mr K's] care it is felt that he is unable to work at a standard much higher than he is currently managing as a service user involvee … More specifically it is felt that [Mr K] is unlikely to be able to successfully sustain any form of permanent paid employment in the short to medium term. I understand that [Mr K] is due to begin sessions of cognitive analytical therapy, although it remains to be seen if this would lead to sufficient improvement in his mental state as well as functioning and improve his future work prospects."

[3] Mr K has stated that he did not earn £120 per week.

Appendix 2

Timeline

5 January 2017	HA informed Mr K it had written to his consultant psychiatrist, Dr Tandon, requesting a report.
16 January	There was a telephone conversation between HA and Mr K.
26 January	Dr Tandon responded.
17 February	HA sent Mr K a copy of Dr Collins' report.
21 February	Mr K emailed HA raising concerns about Dr Collins' report.
24 February	HA acknowledged Mr K's email and said Dr Collins would be asked to review his case.
6 March	Mr K emailed HA and asked that it let him know if Dr Collins required further evidence of his employability.
22 March	Dr Collins wrote to Mr K responding to the issues he had raised.
31 March	The Cabinet Office wrote to Mr K enclosing a Med 9 form for him to complete and send to HA to raise a complaint.
4 April	Mr K notified HA that he was completing the Med 9 and said he did not give permission for Dr Collins' report to be released. Mr K also wrote to MyCSP enclosing Med 9 supporting material, which he had sent to HA. He said he wished to raise a formal complaint about the conduct of HA.
6 April	HA notified Mr K that his injury benefit case was "on hold" pending the outcome of his complaint.
11 April	HA wrote to the Cabinet Office. It said it had been unable to identify a request from Mr K for details of the complaints procedure. It said he had raised issues with Dr Collins' report and it had been suggested that he put these in an email for her consideration. It said it had received this on 24 February. HA said it had reviewed a telephone conversation with Mr K on 16 January. It acknowledged that this may have given rise to a misinterpretation on Mr K's part as to the actions which would be undertaken by HA.
16 April	Mr K sent HA a letter from his therapist, Mr Conrad, and asked how long the complaints process was likely to take.
21 April	HA's clinical lead for the Civil Service Pension Scheme contract, Dr Evans, wrote to the Cabinet Office. He said he understood that an applicant should first raise any concerns with the employer or MyCSP,

	who would complete a Med 9 form and send it to HA. He noted the Cabinet Office wished HA to correspond with MyCSP. Dr Evans said he needed Dr Collins' comments before he could respond.
24 April	Mr K emailed the Cabinet Office raising concerns about the way in which HA was dealing with his case.
25 April	HA emailed Mr K and the Cabinet Office with details of the complaints procedure taken from the Civil Service website. It said the correct procedure would have been for MyCSP to complete the Med 9 and submit it on Mr K's behalf. It said this is why its response had been sent to the Cabinet Office. HA said it did not provide responses directly to applicants. It also said that it would provide a response by 15 May, depending upon clinical availability. HA said its purpose was to provide medical advice only. Mr K asked for his complaint to be escalated. The Cabinet Office asked MyCSP to complete the Med 9 form.
12 May	Dr Evans wrote to the Cabinet Office with an 8-page response to Mr K's issues with Dr Collins' report. Amongst other things, Dr Evans said HA would leave Mr K's case open for four weeks to allow MyCSP to liaise with him and let HA know if further action was required. Dr Evans said, if he did not hear from MyCSP or Mr K, he would close the case without providing advice. He said Dr Collins' report would be released if Mr K subsequently provided authorisation.
19 May	MyCSP wrote to Mr K including a summary of Dr Evans' response.
2 June	The Cabinet Office wrote to Mr K. It acknowledged that there had been mistakes by HA in the appeal process; in that HA had addressed its response to the wrong party. The Cabinet Office provided copies of the correspondence between HA and MyCSP, together with the letters it had received. The Cabinet Office then provided an outline of the appeal and IDR procedures.
8 June	Mr K emailed MyCSP, the Cabinet Office and HA. Amongst other things, he said MyCSP had left out key data from Dr Evans' response.
20 June	MyCSP received Mr K's consent for the release of Dr Collins' report.
7 September	MyCSP informed Mr K that his level of impairment remained in the 50% to 75% band.
15 September	MyCSP issued a stage one IDR decision.
4 June 2018	The Cabinet Office issued a stage two IDR decision.