

Ombudsman's Determination

Applicant	Mr R
Scheme	Northern Ireland Police Injury Benefit Scheme (the Scheme)
Respondent	Northern Ireland Policing Board (the Board)

Outcome

1. I do not uphold Mr R's complaint and no further action is required by the Board.

Complaint summary

2. Mr R's complaint against the Board concerns the delay between January 2017 and October 2020 in dealing with his appeal against the decision not to award him a disablement gratuity award (**DGA**) under the Scheme. Specifically, Mr R argues that:-
 - The Board has failed to agree to his appeal for reconsideration of its decision.
 - The Board has failed to send his appeal to the Department of Justice (**DOJ**).

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the key points in my Opinion. I acknowledge there were other exchanges of information between all the parties.
4. Mr R's application for a DGA is regulated by Regulation 11 Disablement Gratuity Award (**Regulation 11**) under the Police Service Northern Ireland and Police Service Northern Ireland Reserve (Injury Benefit) Regulations 2006 (**the Regulations**). The appeal process is regulated under Regulation 30, 31(2) and 35 of the Regulations. Relevant extracts from the Regulations are in the Appendix.
5. On 25 May 2016, Mr R applied for a DGA. His case was referred to the selected medical practitioner (**SMP**), who in December 2016 concluded that Mr R did not meet the criteria for a DGA.
6. On 23 December 2016, the Board sent Mr R a decision letter declining his award. It provided Mr R with his right to appeal the decision under Regulation 30 within 28 days.

7. In December 2016, under Regulation 30, Mr N initially completed an appeal form against the Board's decision to the independent medical referee (**IMR**) of the DOJ, under Regulation 30. In his appeal form, under the section "I attach- or will provide within the next 6 weeks", he said "all will be supplied with the detailed submissions".
8. In an email to the Board dated 13 January 2017, Mr R said:

"As part of essential preparation for my forthcoming Appeal or a Regulation 31(2) reconsideration, it is important I obtain a copy of the SMP's original contemporaneous notes recorded during my at home Regulation 11 application assessment."
9. Mr R raised a formal complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**) raising concerns with inaccuracies in the SMP's report.
10. Mr R was informed by the Board that his appeal under Regulation 30 would not be processed until his IDRP complaint was first dealt with.
11. In February 2017, the Board wrote to Mr R saying:

"The Board is of the view that all officials...should be treated with courtesy and respect and will not tolerate unacceptable behaviour towards any member of staff. Unacceptable behaviour is defined in the attached policy as aggressive or abusive, unreasonable demands and unreasonable persistence. Since February 2016 Board Officials across a range of branches, have received over 100 emails and a number of letters and telephone calls from you...Board Officials have engaged with you in a professional and courteous manner at all times and have sought to address all queries as they arise however you appear to have an expectation of a near immediate response to your correspondence which, if not received, prompts further emails from you...I must advise that the behaviour that you have demonstrated in terms of unreasonable demands and unreasonable persistence is deemed to be unacceptable. With immediate effect the Board will not accept or respond to any further emails from you and will not accept any telephone calls or personal visits. Should you wish to correspond in respect of your Regulation 11 award or any other matter, please do so in writing."
12. The Board also emailed Mr R on 13 February 2017 informing him that his Regulation 31(2) appeal submissions would be accepted up to 28 days after the decision of the IDRP.
13. In March 2017, Mr R wrote to the Board to appeal against the Board's decision regarding restrictions.
14. In April 2017, the Board's Director wrote to Mr R saying he had considered his March 2017 appeal letter, against the restrictions placed on his correspondence. He concluded that having considered Mr R's previous "inflammatory statements and

unsubstantiated allegations made in respect of Board Officials”, he dismissed the appeal and upheld the Board’s decision to restrict correspondence with Mr R.

15. On 2 May 2017, the Board administrator wrote to Mr R reiterating the point from its email of 13 February 2017 and saying it looked forward to receiving his submission and further supporting evidence regarding an appeal under Regulation 30, that he had submitted in December 2016.
16. On 1 June 2017, the Board sent Mr R a response under the IDRP. It addressed Mr R’s concerns with the SMP’s report and said there would be a separate letter sent to him addressing his concerns to the Board’s Chief Executive.
17. On 7 June 2017, Mr N’s solicitor, formally submitted a substantial number of submissions to the Board administrator saying that Mr N disagreed with the SMP’s decision.
18. On 20 June 2017, the Board administrator wrote to the solicitor acknowledging receipt of the submissions. The Board administrator said there was a delay currently and this would affect the date of submission of Mr N’s appeal under Regulation 30, which was being processed in chronological order, but additional resources had been made available to deal with the submissions.
19. On 6 August 2017, Mr R wrote to the Board expressing dissatisfaction regarding delays, a lack of responses from it and requesting a definition of a word “tone”.
20. On 22 August 2017, the Board wrote to Mr R saying that on review of his submissions, it identified that some information did not relate to the SMP’s decision under the Regulations therefore it would not be included in the referral to the DOJ. The other points raised regarding the Scheme’s Regulations could not be answered by the Board as it was outside of its jurisdiction. It had asked the DOJ to respond to those.
21. On 25 August 2017, the Board sent Mr R an update saying his case was now referred to its legal team for advice.
22. In November 2017, the Board wrote to Mr R addressing the issues raised in his letter dated 6 August 2017. It said that Mr R demonstrated “unreasonable persistence” and “demands” on the Board. It referred to some of his language used and said although it was impossible to “make judgment on the intent of the language”, it was possible to make judgment on the impact the language used was having on the Board. It was of the opinion that Mr R’s behaviour had not changed.
23. In December 2017, Mr R wrote to the Board’s Chief Executive expressing dissatisfaction with the delays in dealing with his appeal. In January 2018, the Board acknowledged his letter.
24. In March 2018, Mr R wrote to the Board’s Chief Executive raising a concern with ongoing delays. He said he had not had a reply to his December 2017 letter to the Chief Executive.

25. In April 2018, Mr R requested information regarding appeals processed under the Freedom of Information Act 2000.
26. On 9 April 2018, the Board wrote to Mr R that “the arrangements in place [restricting methods of communication] should continue to operate for a further period of 4 months” and “this position will be reviewed again in 4 months’ time.”
27. In May 2018, the Board sent a letter to Mr R saying that it was dealing with all his submissions in chronological order, and it was aware of his letters to the Chief Executive.
28. On 26 May 2018, Mr R wrote to the Board to request a subject access request (**SAR**) regarding the appeal under Regulation 31(2).
29. In July 2018, Mr R’s solicitor sent a letter to the Board regarding other issues which had contributed to Mr R’s retirement.
30. In August 2018, Mr R wrote to the Board saying he had “no desire of intention to continue corresponding with [the Board] as of before”.
31. The same month, Mr R wrote to the Board challenging the fact that it was dealing with his correspondence in a chronological order. The Board replied that it would continue to deal with his enquiries in a chronological order.
32. In September 2018, the Board wrote to Mr R informing him of its review of his communication with the Board relating to the Unreasonable Behaviour Policy. It noted the volume of his correspondence remained high, but a reduction was apparent. It said it received 23 items of correspondence between January and August 2018 and 48 items of correspondence between June and December 2017. It noted various complex issues raised by Mr R and said it was not possible for the Board to deal with those wider issues at this stage.
33. In October 2018, the Board wrote to Mr R, apologising for the delay and said the timescale for responses depended on further information to be provided by his solicitor.
34. Between October 2018 and February 2019, there was further correspondence between Mr R and the Board regarding his appeal under Regulation 30.
35. On 1 February 2019, the Board wrote to Mr R addressing his concerns and said in summary :-
 - Even though Mr R’s case was of “paramount importance”, it referred to “the operational challenges that continue to exist in Police Administration Branch.”
 - It referred to the volume of submissions, SAR and ongoing general queries made by Mr R which required attention.
 - As a result of the overall workload the office had not been able to respond in a timely manner.

- It noted that Mr R's volume of correspondence had reduced, hence it was able to relax the restrictions that were currently in place regarding unreasonable behaviour. However, should circumstances change and "the frequency and volume of correspondence received from [Mr R] escalate to previous levels", it reserved the right to review the position again at any stage.
36. On 19 February 2019, the Board wrote to Mr R saying it had been dealing with various correspondence items in chronological order. It understood that the matter had been ongoing for some time and appreciated that significant stress may have been caused to Mr R. It needed to clarify further points with Mr R such as which information he would and would not like it to provide to the SMP regarding the appeal under Regulation 31(2).
 37. On 22 February 2019, Mr R wrote to the Board with further information regarding invoking an appeal for reconsideration of the SMP's decision due to the SMP's conclusions made regarding non-medical evidence and the quality of some medical evidence retained on his file. Mr R also sent further emails to the Board in February 2019, outlining the information he wished to send to the IMR.
 38. In March 2019, the Board wrote to Mr R acknowledging further information in the form of 12 documents for the IMR and 22 documents for the SMP. It acknowledged that Mr R also asked for a review of further internal documents regarding his occupational health notes and work training. It was also fast tracking and receiving further legal advice.
 39. On 25 March 2019, the Board wrote to Mr R saying due to further information provided by him, there was a delay expected as it continued to "catalogue" and respond to outstanding issues. It also said:

"Please be advised, this is not sufficient information for the Board to consider your reconsideration request. In order for any [SMP] or IMR to reconsider an earlier decision they must be provided with information not available to them at the date on which the earlier decision was made...Please be advised, as the [SMP] has now retired, any reconsideration of his decision dated 23 December 2016 will be returned to one of the currently contracted SMPs...Your reconsideration request...relates to the same decision which you are also seeking to appeal to the IMR. Please be advised that a reconsideration under Regulation 31(2) and an appeal to the [IMR] cannot run concurrently."
 40. On the same day, the Board wrote to Mr R saying that it needed further information from him to ascertain whether the matter could be progressed by way of reconsideration to the SMP under Regulation 31(2) or by appeal to the IMR under Regulation 30. Mr R replied that he would not respond until he received a letter from the Board's Chief Executive.
 41. On 2 April 2019, the Board wrote to Mr R addressing further queries raised by him in an undated 2017 letter to the Board administrator. It reiterated that Mr R was not able

to refer the matter back to the SMP for reconsideration. The Board was happy to review the decision if he was able to provide further new evidence. However, if he was unable to do so the matter could now be progressed to the DOJ.

42. On 9 April 2019, the Board's Chief Executive wrote to Mr R addressing points raised by Mr R in a letter dated 5 October 2018. It confirmed that his two appeals could not run concurrently and that the Board must first deal with his appeal request for reconsideration under Regulation 31(2). On the same day, the Board wrote to Mr R saying he had still not provided sufficient information for it to reconsider his case.
43. On 6 May 2019, the Board wrote to Mr R saying as per his request, it did not send any letters to him between 9 April and 3 May 2019, because he confirmed he would not be at home. It referred to outstanding correspondence from Mr R dated between 2017 and 2019 that still required the Board's reply. It said it would respond and that it had designated a single contact person for Mr R to send his correspondence to, to make the process easier. It also notified Mr R of further delays due to the volume of submissions.
44. On 9 May 2019, the Board provided Mr R with information regarding his request under the Freedom of Information Act 2000. It said Mr R's case was among 23 other appeals that were currently being processed that had been ongoing for more than two years. However, there were more appeals being dealt with under two years.
45. In emails dated 8 May 2019 and 13 May 2019 to the Board, Mr R confirmed he would be providing further information, not previously considered by the SMP. He also said that he had not been "adequately appraised of the current status" of his case and "that requests for information have been ignored."
46. On 15 May 2019, the Board wrote to Mr R acknowledging receipt of further information and informed him it would now progress his appeal for reconsideration to the SMP. It also informed Mr R that within the last three months it had issued a total of 36 letters to him, therefore it disagreed that it had not kept him informed on the current status of his case.
47. On 20 May 2019, the Board administrator wrote to Mr R saying a caseworker had now been appointed to progress his appeal for reconsideration and asked him to confirm whether he would attend his assessment in person and proposed available dates.
48. On 14 June 2019, the Board wrote to Mr R regarding his SAR. It said due to the volume of correspondence it would not be possible to send it by Royal Mail Special Delivery but he or his representative might collect the information or it could arrange a courier.
49. In July 2019, the Board emailed Mr R saying that as his appeal for reconsideration of the decision was ongoing it was unable to conduct the IDR process until the appeal was concluded.

50. Between July 2019 and December 2019, the Board further engaged with Mr R regarding the preparation for reconsideration of the SMP decision.
51. On 9 December 2019, Mr R had an assessment with the SMP in person. The outcome of the assessment was sent to Mr R on 20 December 2019.
52. On 23 December 2019, Mr R lodged a Notice of Appeal under Regulation 30. Between December 2019 and March 2020, Mr R provided a further 28 items of correspondence as part of his submissions to the Board. It included a complaint against the SMP, the way his assessment was conducted, further complaints to various Board officials and other legal issues.
53. In March 2020, due to the Covid-19 pandemic, all Regulation 30 appeals were suspended by the DOJ.
54. Between April and September 2020, there was further correspondence between Mr R and the Board. The Board kept Mr R informed of the ongoing delay regarding the suspension of appeals and that officials were working remotely. In April 2020, the Board wrote to Mr R saying it had been informed that he had made “numerous unsolicited and unwarranted approaches” by way of email to one of the SMPs. It said:
- “This is **wholly inappropriate** and has caused significant anxiety and distress to the SMP...There is no situation whatsoever whereby you, or any applicant, is permitted to contact the SMP directly. This is especially the case when the SMP’s contact details have been sourced illicitly. This is egregious overstepping of establishing boundaries and the Board is immediately investigating same under its Unacceptable Behaviour Policy. In light of the anxiety and distress caused to the SMP the Board has also referred this matter to both the PSNI and its legal advisors.”
55. On 21 September 2020, the Board’s Chief Executive telephoned Mr R to emphasise that the Board was working with the DOJ to assist it with resuming the appeals process. On the same day, the Board wrote to Mr R informing him that no police investigation was initiated by the Board or the SMP.
56. In October 2020, the appeals process was resumed, and the Board forwarded Mr R’s appeal to the DOJ as part of the first two cases waiting to be sent.
57. **Summary of Mr R’s position:-**
- His dealings with the Board have been ongoing for some 10 years and he found it necessary to engage with it regarding his injury benefit award application.
 - Serious “time lags” have been allowed to develop within the Board and for a number of requests, acknowledgments have been absent and procedural time not met. His service from the Board can be described as “third class.”

- He waited over a year to be provided with SAR documents. Whilst this is not a matter for the Pensions Ombudsman's Office (**TPO's Office**), he has referred the matter to the Information Commissioner for investigation.
- His complaint regarding reconsideration embraces the Board's failure to agree to his reconsideration coupled with the inordinate and unjustified time it has taken to make decisions.
- The Board was not being responsive to his follow up correspondence regarding his appeal for reconsideration.
- Its failure to forward his appeal to the DOJ amounts to serious "intentional" maladministration.
- He respectfully suggests that the Ombudsman should uphold his complaint and award him "substantial compensation" for the stress and inconvenience caused by the Board.
- Decisions issued by previous Ombudsmen, PO-2769, PO-7548 and PO-643, were all upheld against the Board and related to similar issues regarding reconsideration under Regulation 31(2).
- The Board initially refused his application saying the Regulations did not provide for it. It took a year and six months, from December 2017 to May 2019, for the Board to agree to his reconsideration appeal.
- The Board accepted in its letter dated 19 February 2019 that "this matter has been ongoing for some time and appreciate the significant stress that this will have placed on you."
- The Board refused to deal with his IDRP appeal following requests from TPO's Office.

58. Summary of the Board's position:-

- There were inevitable yet unavoidable delays encountered by the Board as it began to deal with Mr R's correspondence in a chronological order, which was communicated to him in February 2017.
- In June 2017, it created a spreadsheet to log all the correspondence and telephone calls to and from Mr R. The spreadsheet demonstrated the Board was progressing his case on a chronological basis. Many other issues were raised by Mr R which added to the delays.
- The spreadsheet recorded between 1 June until November 2020, when the appeal was forwarded to the DOJ, 250 items of correspondence, emails, telephone calls lodged and dealt with by various Board officials.

- The spreadsheet does not show other various correspondence sent by Mr R since May 2016. This correspondence relates to multiple other issues raised by Mr R.
- Mr R could either (i) appeal against the SMP's decision under Regulation 31(2) submitting his appeal directly to the SMP; or (ii) request a reassessment under Regulation 30 to DOJ and ask for an IMR; or (iii) appeal under IDRP for SMP's reconsideration under Regulation 35.
- Once Mr R's appeal under Regulation 30 has been concluded, he can still appeal against the IMR's decision, for the IMR's reconsideration. However, if Mr R decided to first appeal under Regulation 30, he would not be able to appeal under Regulation 31(2) against the SMP's decision.
- The Board wanted to make sure that before Mr R utilised his appeal under Regulation 30, he first appealed under Regulation 31(2), however he could only do so when he provided new medical evidence not previously considered by the SMP.
- While a Regulation 30 appeal is an automatic statutory entitlement, appeal for reconsideration under Regulation 31(2) is not an automatic entitlement. These two appeals cannot run concurrently, and two different reports are created.
- Once Mr R's appeal for reconsideration has been concluded, it can then consider his appeal under the IDRP. This is because, Mr R's complaint under the IDRP was that his appeal for reconsideration had not been concluded. The Board could not conclude his IDRP request as it was in the process of dealing with his reconsideration appeal.
- It respectfully asks that due consideration is given to the volume and intricacies of the correspondence received from Mr R together with its "demonstrable effort" to resolve all issues and respond to all correspondence.
- Mr R's file comprised of approximately 7,500 pages of correspondence which required some redacting of sensitive information.
- The Board kept Mr R updated throughout this process on a regular basis, explained extended timescales and informed him that considerable resources had been "deployed" to deal with his requests.
- Mr R was initially unclear whether he was invoking an appeal under Regulation 30 or Regulation 31(2) which can be demonstrated in his email of 13 January 2017.
- Throughout this process, Mr R has continued to "confuse" the Board by "conflating his request for an appeal and his request for a reconsideration." As of May 2019, Mr R was still using these terms interchangeably.
- On completion of the IDRP process, the Board asked him to provide his appeal documentation in May 2017. Mr R did not provide submissions until 8 June 2017,

after the required six weeks for submission had elapsed, but the Board still accepted it.

- Mr R's submissions on 8 June 2017, was the turning point in the direction of this case. Since then, the issues and queries "have continued unabated".
- Mr R's complaint regarding the Board's failure to forward his complaint to the DOJ cannot be upheld because it is statutorily unable to refer his case to the DOJ until the completion of his reconsideration appeal under Regulation 31(2).
- As of September 2019, when it provided a response to Mr R's complaint to TPO's Office, Mr R was still to confirm what information he would like the Board to refer to the SMP for reconsideration.
- Mr R's statutory right of appeal under regulation 30 has not been prejudiced in any way as this matter can still be referred to the DOJ once his reconsideration appeal has been concluded.
- It was not possible to forward Mr R's appeal to the DOJ between March and October 2020 because of the DOJ's suspension of all appeals due to the Covid-19 pandemic. However, once the appeals were resumed in October 2020, Mr R's appeal was forwarded as part of the first two cases awaiting consideration.

Adjudicator's Opinion

59. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Board. The Adjudicator's findings are summarised below:-

- The Board agreed that there were delays in dealing with Mr R's appeals. However, the Adjudicator needed to establish whether the delays amounted to maladministration and whether Mr R had been disadvantaged as a result.
- Mr R argued that the Board failed to forward his appeal under Regulation 30 to the DOJ and refused to consider his appeal under regulation 31(2).
- The Adjudicator appreciated that this whole process had taken since January 2017, when Mr R lodged his appeal. Essentially, there were three paths for Mr R to take after receiving the SMP's report. He could either: (i) appeal under Regulation 30 directly to the DOJ, by asking an IMR to consider his case; (ii) appeal under Regulation 31(2) to the same SMP; or (iii) appeal against the SMP's decision through the IDRP under Regulation 35.
- The Adjudicator noted that the Regulations were silent in terms of the timescales and the amount of medical evidence that could be submitted to support an appeal. It meant that there was no limit regarding the time or amount of correspondence Mr R could submit. The Adjudicator also noted that the Board had said that the statutory Regulations were currently being reviewed in order to change this

process. The Adjudicator's view was that the fact that Mr R was allowed to continuously provide information and raise queries on various other issues, was one of the contributing factors why the whole process had taken so long.

- The Adjudicator considered the timeline of events and considered evidence provided by both Mr R and the Board. The Adjudicator noted that Mr R had issued a substantial number of correspondences since June 2017, when he started providing submissions, amounting to approximately 250 items recorded in the spreadsheet. The Adjudicator also noted there were approximately 7,500 pages in Mr R's case file which dated back to around 1998.
- The Board confirmed that it operated on paper-based files and its office's resources were put under significant strain by Mr R's submissions and requests. The Adjudicator appreciated that this exercise must have been very difficult for the Board to undertake and to review all the correspondence. The Adjudicator noted that the Board informed Mr R in June 2017, that it had created a spreadsheet specifically for his correspondence and that it had started dealing with it in chronological order. The Adjudicator's view was that this approach was reasonable under the circumstances.
- The Adjudicator noted that the Board kept Mr R regularly updated throughout his appeals process. In the Adjudicator's view, it was not surprising that a time lag had occurred with the Board responding to Mr R's vast number of enquiries and to issues not always related to his main appeal request. But the Board was regularly providing responses and dealing with Mr R's other complex queries. The Adjudicator did not see any evidence of the Board deliberately delaying or ignoring Mr R's queries.
- Another contributing factor to the delays, in the Adjudicator's view, was the fact that the Board had put restrictions on the way it communicated with Mr R. This was due to its Unreasonable Behaviour Policy. As a result, Mr R was not allowed to send emails or make telephone calls to the Board, instead he was only allowed to send postal correspondence. The Adjudicator noted that the Board allowed Mr R to appeal against the decision regarding restrictions, it issued an appeal decision and issued a reconsideration decision to keep the restrictions in place because Mr R's behaviour remained unchanged. In the Adjudicator's view, the Board had acted reasonably given the circumstances.
- The Adjudicator noted that the Board said Mr R continued to confuse it regarding which regulation he was appealing under. Mr R initially lodged an appeal under Regulation 30 in December 2016, but later in January 2017 he said he was appealing under Regulation 31(2). The Adjudicator appreciated that this confused the Board, but did not see any evidence of the Board not assisting or refusing Mr R's appeals throughout the process. The Adjudicator noted that as of April 2019, the Board was still telling Mr R that his two appeals could not run concurrently, which was what Mr R wanted to happen. At that point, the Board was still waiting for Mr R to let it know what information he wanted it to forward to the SMP. Until

Mr R submitted new evidence, not previously considered by the SMP, the Board could not progress his Regulation 31(2) appeal any further. The Adjudicator noted that the appeal for reconsideration was concluded in December 2019, so was of the view that the Board had not refused to deal with the appeal under Regulation 31(2), therefore this part of Mr R's complaint could not be upheld.

- Another contributing factor was a suspension of appeals by the DOJ between March and October 2020. As soon as the appeals process was resumed in October 2020, the Board prioritised and forwarded Mr R's appeal to the DOJ. It was unfortunate that the suspension of appeals took place, however, in the Adjudicator's view, the Board could not be held responsible for this delay as it was outside of its control. As the Board had now forwarded Mr R's appeal to the DOJ, the Adjudicator's view was that this part of Mr R's complaint could not be upheld.
- Mr R also raised an issue that the Board did not deal with his IDRP appeal. But the Board explained that the IDRP could not be completed until his other appeal under Regulation 31(2) was completed. This was because he was complaining that the Board had failed to deal with this appeal. In the Adjudicator's view, the Board had acted reasonably regarding this matter and it was not expected to deal with his IDRP appeal while his other appeal was ongoing.
- Mr R referred to Determinations issued by previous Ombudsman. However, every case is different and is considered on its own merits.
- Overall, the Adjudicator appreciated that Mr R had experienced delays with the Board in dealing with his correspondence and responding to his enquiries. But the Adjudicator had not seen any evidence of any periods of time when there was inactivity by the Board, or it not replying, or it not providing updates. Further, there were a few contributing factors to specific delays as has been explained, which in the Adjudicator's view were outside the Board's control, so it should not be held liable for these issues. Although, the Adjudicator appreciated Mr R's frustration with the time he waited for the Board to conclude his appeal, the delays he experienced did not amount to maladministration and no award for distress and inconvenience was warranted. It was the Adjudicator's view that the complaint should not be upheld.

60. Mr R did not accept the Adjudicator's Opinion and in response has made the following points:-

- There is a significant amount of subject matter in the Adjudicator's Opinion that is either wrong or not relevant. It contains many errors, mistakes and misinformation which do not support the Adjudicator's decision.
- Specifically, paragraphs 52 to 56 are not relevant to his complaint. His appeal under Regulation 30 "has no relevance to the complaint", he initially brought to TPO's Office.

- The main issue is that the Board failed to deal with his appeal against the initial SMP's decision.
 - It took the Board seven months from accepting his request for an appeal under Regulation 31(2) until another SMP issued his decision in December 2019. Overall, the Board took two years and eight months to deal with his appeal which amounts to serious maladministration.
 - The restrictions put in place on the way he communicated with the Board is not relevant.
 - Suspension of appeals between March and October 2020 is not relevant.
 - The blame seems to be placed on him for the delay which he does not accept.
61. The complaint has now been passed to me to consider. I have noted Mr R's further comments, but they do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman's decision

62. Mr R has argued that the Adjudicator's Opinion contains many errors. I have considered the timeline of events carefully and I do not find any errors in the Adjudicator's Opinion. I have not seen any evidence to show otherwise.
63. Mr R has specifically said that his appeal under Regulation 30 is not relevant to his complaint. But on the complaint form to my Office, Mr R argues that the Board failed to consider his appeals under Regulation 31(2) and Regulation 30. So, I find that consideration of Regulation 30 is relevant to Mr R's complaint. The matter has progressed since Mr R submitted his complaint, but his concerns over the delay ultimately remain the same. I therefore address the complaint regarding both routes of appeal.
64. I appreciate Mr R believes the suspension of appeals by the DOJ between March and October 2020, is not relevant to his complaint, but I must consider the whole period of time the Board took from when he first raised an appeal to when his appeal was either concluded or passed to the DOJ. The suspension of appeals is a contributing factor to the delays up to this point. Had there been no suspension, the Board may have passed Mr R's appeal to the DOJ in March instead of October 2020.
65. I also find that the restrictions imposed on the method in which Mr R communicated with the Board was a contributing factor to the delays. Inevitably it takes longer to receive postal correspondence than an email or a telephone call. This caused a time lag, with the Board responding to Mr R's vast number of enquiries and issues not always related to his main appeal request.
66. In considering the whole process, I find there were a few factors that contributed to the delays. I appreciate it took the Board over two years to deal with Mr R's appeal, however the contributing factors were outside of the Board's control. Even though,

the Board accepted there were delays, I am unable to reasonably say it is responsible for the delays. I have seen no evidence of the Board refusing or not supporting Mr R with his appeal process. There were no periods of inactivity by the Board. On the contrary, I find the Board to have been very supportive and responsive to Mr R's various complex queries.

67. I find that the Board dealt with Mr R's enquiries in a pragmatic way, specifically by dealing with them in chronological order. Even though some delays occurred, I find this does not amount to maladministration and no award for distress and inconvenience is merited given the circumstances.
68. I do not uphold Mr R's complaint.

Appendix

POLICE SERVICE OF NORTHERN IRELAND AND POLICE SERVICE OF NORTHERN IRELAND RESERVE (INJURY BENEFIT) REGULATIONS 2006

69. Disablement gratuity

“11.

(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 police officer, and

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

(2) Subject to the provisions of regulations 21 and 22 (abatement), the Board shall pay to him a gratuity of an amount equal to whichever is the lesser of the following amounts, namely—

(a) five times the annual value of his pensionable pay on his last day of service as a police officer;

(b) the sum of four times his total remuneration during the 12 months ending with his last day of service as a police officer and the amount of his aggregate pension contributions in respect of the relevant period of service.”

70. Appeal to independent medical referee

“30.

(1) Where a person is dissatisfied with the decision of the selected medical practitioner as set out in a report and certificate under regulation 29(5), he may, within 28 days after he has received a copy of that report and certificate or such longer period as the Board may allow, and subject to and in accordance with the provisions of Schedule 6, give notice to the Board that he appeals against that decision.

(2) In any case where within a further 28 days of that notice being received (or such longer period as the Board may allow) that person has supplied to the Board a statement of the grounds of his appeal, the Board shall notify the Secretary of State accordingly and the Secretary of State shall appoint an independent medical referee to decide.

(3) The decision of the independent medical referee shall, if he disagrees with any part of the report and certificate of the selected medical practitioner, be expressed in the form of a report and certificate of his decision on any of the questions referred to the selected medical practitioner on which he disagrees

with the latter's decision, and the decision of the independent medical referee shall, subject to the provisions of regulation 31, be final."

71. Further reference to medical authority

"31.—(1) A tribunal hearing an appeal under regulation 33 may, if they consider that the evidence before the medical authority who has given the final decision was inaccurate or inadequate, refer the decision of that authority to him for reconsideration in the light of such facts as the tribunal may direct, and the medical authority shall accordingly reconsider his decision and, if necessary, issue a fresh report and certificate which, subject to any further reconsideration under this paragraph, shall be final.

(2) The Board and the claimant may, by agreement, refer any final decision of a medical authority who has given such a decision to him for reconsideration, and he shall accordingly reconsider his decision and, if necessary, issue a fresh report and certificate, which, subject to any further reconsideration under this paragraph or paragraph (1) or an appeal, where the claimant requests that an appeal of which he has given notice (before referral of the decision under this paragraph) be notified to the Secretary of State, under regulation 30, shall be final.

(3) If a tribunal decide, or a claimant and the Board agree, to refer a decision to the medical authority for reconsideration under this regulation and that medical authority is unable or unwilling to act, the decision may be referred to a duly qualified medical practitioner selected by the tribunal or, as the case may be, agreed upon by the claimant and the Board, and his decision shall have effect as if it were that of the medical authority who gave the decision which is to be reconsidered.

(4) In this regulation a medical authority who has given a final decision means the selected medical practitioner, if the time for appeal from his decision has expired without an appeal to an independent medical referee being made, or if, following a notice of appeal to the Board, the Board has not yet notified the Secretary of State of the appeal, if there has been such an appeal."

72. ART 5 REVISION AND WITHDRAWAL OR FORFEITURE OF AWARDS

Reassessment of injury pension

"35.—(1) Subject to the provisions of this Part, where an injury pension is payable under these Regulations, the Board 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 Board find that the degree of the

pensioner's disablement has substantially altered, the pension shall be revised accordingly.

(2) Where the person concerned is not also in receipt of an ordinary, ill-health or short-service pension under the 1988 Regulations, if on any such reconsideration it is found that his disability has ceased, his injury pension shall be terminated.

(3) Where payment of an ill-health pension is terminated in pursuance of regulation K1(4) of the 1988 Regulations, there shall also be terminated any injury pension under regulation 10 payable to the person concerned.

(4) Where early payment of a deferred pension ceases in pursuance of regulation K1(7)(**15**) of the 1988 Regulations, then any injury pension under regulation 10 payable to the person concerned shall also be terminated.”