PO-4006

Ombudsman’s Determination

Applicant	Mrs R Curtis
Scheme	NHS Injury Benefit Scheme
Respondent(s)	NHS Business Services Authority (**NHS BSA**)

Complaint summary

Mrs Curtis has complained that the NHS BSA have not considered her eligibility for a permanent injury benefit (**PIB**) correctly.

Summary of the Ombudsman's determination and reasons

The complaint should not be upheld against the NHS BSA because they reached their decision in a proper manner, taking into account all of the available evidence and in accordance with the requirements of the Scheme Regulations.

DETAILED DETERMINATION

Relevant Scheme Regulations

1. The relevant Regulations are the National Health Service (Injury Benefit) Regulations 1995 (SI1995/866) (as amended). Regulation 3 provides,

   "Persons to whom the regulations apply

   (1) ... these Regulations apply to any person who ...
   ... sustains an injury, or contracts a disease, to which paragraph (2) applies.

   (2) this paragraph applies to an injury which is sustained and to a disease which is contracted in the course of the person's employment and which is wholly or mainly attributable to his employment and also to any other injury sustained and similarly, to any other disease contracted, if -

   (a) it is wholly or mainly attributable to the duties of his employment;
   ..."

2. Regulation 4 sets out the scale of benefits which may be paid and provides that a PIB shall be payable to any person to whom regulation 3(1) applies whose earning ability is permanently reduced by more than 10% by reason of the injury or disease.

Material Facts

3. Mrs Curtis worked as a staff nurse for an NHS Trust until March 2003. She had been on sick leave from November 2002 until January 2003 with neck problems. Mrs Curtis returned to normal duties in February 2003. She has provided a copy of a statement she gave, on 23 February 2003, explaining the incident when a patient pulled her hair causing her pain in her neck where she had previously experience problems. Mrs Curtis stated that she reported the matter to her manager who advised her to see her GP. She stated that she saw her GP and was signed off on sick leave. An incident report was completed at the time which stated that Mrs Curtis was suffering pain in the left side of her neck after having had her hair pulled by a patient.

4. Mrs Curtis submitted her resignation on 19 February 2003. Her notice period was extended to allow an application for ill health retirement to be considered. Mrs Curtis' application for ill health retirement was declined on the grounds that her incapacity was not permanent.

5. In July 2003, Mrs Curtis was seen by a Psychiatrist, Dr Pieczora, on referral by her GP. He wrote to the GP,

> "In terms of precipitants the clear identified precipitant of [Mrs Curtis'] mental state is the stress which she has suffered at work and the lack of a supportive environment that she has experienced. This also appears to be the most important maintaining factor of her present mental state. I felt that she was likely to be experiencing some continuing symptoms while the process of negotiation with the Trust is unresolved.
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> In summary, I did not feel that [Mrs Curtis] was mentally ill or likely to benefit from mental health services input. She is obtaining appropriate support from her union representative and also from her family and boyfriend. I did not feel that she would be particularly well served by referral to the psychotherapy service either. I did feel that the prognosis for her mental state was good and that hopefully as the matters with the Trust get resolved she should be able to consider once more attempting a withdrawal of her … I did not feel that this was particularly the best time to be attempting this but suggested that she reconsider the matter in approximately six months time depending on her personal circumstances then. When the time comes I would suggest reducing the does more gradually than she has previously …"

6. In September 2003, in connection with a claim to Friends Provident, Mrs Curtis was seen by a Consultant Rheumatologist, Dr Hickling. He concluded,

> "[Mrs Curtis] worked … in a unit dealing with patients with severe learning disabilities when one of her clients assaulted her on 10th February 2003, exacerbating neck symptoms which had been troubling her since the previous July. Since that time she has felt unable to return to work …
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> [Mrs Curtis] continues to complain of significant neck symptoms, these being present now for over 2 years and were certainly present at the time of the assault which appears to have exacerbated them. I have not seen any radiographs in this case, and the exact diagnosis of her neck symptoms is difficult to ascertain given the evidence we have available. I am also struck by her peripheral joint symptoms, and it may well be that she has low grade

inflammatory arthritis which could be affecting her neck. I think it is significant that she had had pain in her feet for some 18 months and that this developed more or less at the same time as her initial neck symptoms, which developed spontaneously and acutely one morning after a nights rest.

… Given that her musculoskeletal symptoms are persisting and given the physicality of her previous job … I do not believe she would be able to return to her previous employment. There are also other issues which clearly trouble her, eg, her feeling of vulnerability in her previous workplace, however I do not feel competent to comment on these feelings and you may care to take further advice …

In summary, from the point of view of her persisting peripheral joint symptoms, I do not believe [Mrs Curtis] will be able to return to her previous employment …"

7. Mrs Curtis had also been referred to the local orthopaedic centre by her GP. She was seen by a Consultant Orthopaedic Surgeon, Mr Chan. He wrote to Mrs Curtis' GP on 9 October 2003,

"… I understand that [Mrs Curtis] has been complaining of pain since July last year and has pain all around the base of her neck and in the back of her neck. I understand that this was exacerbated by having been yanked by a violent client at work … She also said that she started complaining of pain in her joints, running into both wrists and now the joints in her toes and the base of her fingers, however the main symptom is in her neck …

I understand that she has tried physiotherapy, which did not help, and she has been having chiropractic treatment for several months, she is also on … and uses a hot and cold pack and also uses a collar … Initially when her neck was yanked backwards, last August, I understand that she did have an X-ray in casualty but this is not actually available, it did not show any bony injuries. I cannot comment whether it shows any other abnormalities …

Clinically this lady's main complaint is neck pain, initially I was not so clear that her symptoms had dated before the incident of her neck being wrenched but regardless of whether there was an incident involved, when the symptoms are predominantly in that of axial neck pain, without any clear cut neurological features, I can only explain to her that anatomical localisation of the source of the pain remains very difficult. This clearly restricts what can be done for neck pain of this nature …"

8. Mr Chan went on to explain that he had discussed surgical intervention with Mrs Curtis and that she had expressed the view that she should have been referred to the rheumatology clinic. He said that he could not disagree.

9. Mrs Curtis also applied for a PIB in October 2003. She had received a temporary injury benefit for her last month of employment because she was due to go onto half pay. Mrs Curtis' application was declined on the grounds that the incident had caused a temporary aggravation of her neck symptoms. It was considered that her ongoing symptoms were due to constitutional factors. Mrs Curtis was notified of this decision on 3 March 2004.

10. In May 2004, Mrs Curtis was seen by a Consultant Rheumatologist, Dr Haigh. He wrote to Mrs Curtis' GP,

> "… In July 02 [Mrs Curtis] had some difficulties with work … and she became quite distressed and she feels that's when her neck pain came on. She then had a crick in her neck but this was much more prolonged associated with diffuse neck pain, stiffness and occasionally some numb feelings in both upper limbs but no consistent neurological symptoms. She has tried a lot of treatments … She was then assaulted on the ward and had a major flare up giving rise to this current fairly severe symptoms.
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> I think as a separate issue she has had some painful hands and feet … On a detailed systems enquiry I could find nothing else to suggest autoimmune connective tissue disease and no extra-articular features or clues …
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> She has soft tissue neck pain without any sinister features …
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> The separate issue of lupus … It is not quite all adding up to lupus though clearly she could be developing it. I think we will have a watch and wait policy …"

11. Mrs Curtis requested a review of her eligibility for a PIB in 2012. Her case was referred to the NHS BSA's medical advisers, Atos Healthcare (**Atos**).

12. Mrs Curtis' Chiropractor, Ms Crane, wrote to her GP on 8 October 2012. She said that Mrs Curtis had come to them in March 2012 complaining of right sided neck pain with paraesthesia radiating into her right arm, scapula, forearm and hand. Ms Crane said the onset of Mrs Curtis' symptoms had been insidious in nature and

developed several years previously. She said that Mrs Curtis had explained that her symptoms had manifested after an assault in 2003. Ms Crane also mentioned that Mrs Curtis had complained of pain in her right hip. She said that Mrs Curtis had been aware of experiencing these symptoms as a child, but the pain had been exacerbated following the 2003 assault. Ms Crane said that Mrs Curtis had a working diagnosis of chronic, insidious, severe right sided C7 disc herniation and nerve entrapment and chronic, insidious, severe right sided lumbar facet syndrome and right hip irritation.

13. On 9 October 2012, the counselling services which Mrs Curtis had attended provided an open letter in which they confirmed that she had attended 48 sessions between February 2005 and January 2007.

14. The NHS BSA treated Mrs Curtis' request for a review as an application under their internal dispute resolution (**IDR**) procedure. They referred her case to Atos. On 17 January 2013, Atos wrote to the NHS BSA saying that they could not recommend a PIB because they were unable to conclude that Mrs Curtis had suffered an injury which was wholly or mainly attributable to her NHS duties. Atos quoted from the medical adviser (**MA**) who had reviewed the case,

> "The relevant incident took place on 10/02/03 when she had her neck jerked by a patient. She was absent from work and had exercises and acupuncture treatment. A report from her GP … dated 30/04/2003 indicates that she had a history of neck pain prior to this and was absent from 23/08/02 to 13/01/03. At the time she was being treated for Depression and 'stress' related to 'work/life balance' and child care issues. Her neck pain was attributed to 'tension'.
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> She attended her GP on 11/03/04 with Stress at work, on 14/05/04 with Soft Tissue neck pain and on 4/11/05 with a Stress related problem. There were then no attendances with neck pain until 12/10/11 when she consulted with neck pain and several family stressors. She then had low back pain and hip pain on 13/03/12 and 25/04/12 after the birth of a child in 2011 and was attending a chiropractor in March 2012 with Neck, back and hip pain.
>
> It is considered that her ongoing neck pain is related to 'tension' and to her ongoing Anxiety/Stress and not wholly or mainly due to the duties of her NHS employment.

She also alleges that there was stress at work relating to interpersonal relationships and work practices and she alleges 'bullying'. However, there is no corroboration of these allegations and she did not make any formal complaint. There is a history of Depression dating back to 1995 after the birth of her son and a report from a Psychiatrist Dr Pieczora on 8/07/03 did not find any ongoing underlying mental illness and described her as having an 'adjustment disorder' relating to balancing her work and home life.

It is therefore considered that there is no evidence that work-related issued were wholly or mainly the cause of her ongoing Anxiety/Stress but that there is sufficient evidence that she has had an underlying Anxiety/Depression that commenced in 1995 in the form of post natal Depression."

15. Mrs Curtis was seen at her local orthopaedic centre in January 2013. An Extended Scope Practitioner, Ms Challinor, wrote to Mrs Curtis' GP saying that her symptoms were in keeping with discogenic degenerative change at C5/6 or C6/7 level. She said that she had requested an MRI of Mrs Curtis' cervical spine. Ms Challinor went on the say that Mrs Curtis had described an injury sustained 10 years previously when her neck had been jarred by a client. She went on to say that, over the last 10 years, Mrs Curtis had experienced episodes of neck pain and had received treatment from chiropractors, physiotherapists and massage. Ms Challinor said that, the previous summer, Mrs Curtis had experienced a new symptom; right arm tingling and anaesthesia in her right arm.

16. The NHS BSA notified Mrs Curtis that they were not upholding her appeal. They quoted from the Atos MA (as above) and said that, in coming to his recommendation, he appeared to have fully taken account of all the relevant medical evidence and information. The NHS BSA said that the rationale offered by the MA appeared reasonable to them in the context of the Scheme's legislative requirements.

17. On 14 March 2013, Ms Challinor wrote to Mrs Curtis saying that she had reviewed the results of a recent MRI scan. She said that the scan had shown two levels of disc change in Mrs Curtis' cervical spine. She explained that there was a disc bulge at C6/7 which correlated with Mrs Curtis' right arm pain, weakness and tingling. The orthopaedic practitioner went on to say that Mrs Curtis might be suitable for surgery and she would put her on the surgeon's waiting list.

18. On 10 June 2013, Mrs Curtis' orthopaedic surgeon wrote to her GP saying that he was willing to proceed with surgery, but that it would not mean that she would not have problems in the future. He explained that it was unlikely to address Mrs Curtis' neck pain in the longer term because she had other areas which showed degenerative changes. Mrs Curtis underwent surgery on 13 June 2013.

19. Mrs Curtis submitted an appeal against the IDR decision. She said that the neck tension and spasm she had been on sick leave for prior to the 2003 incident had been wholly or mainly attributable to her employment. Mrs Curtis also said that she had visited her GP on 18 March 2009 about her neck. She said that she would have visited the GP more often, but they were only giving her pain relief which she could purchase for herself. Mrs Curtis said that she had also been visiting a chiropractor and receiving massage which she paid for privately. She said that she had received counselling for a year and a half as a result of the bullying and stress at work. Mrs Curtis disagreed that she had not raised the issue at the time. Mrs Curtis also submitted a paper on the role of work stress in causing muscle spasms in the neck and one on whiplash injuries.

20. The NHS BSA referred Mrs Curtis' case back to Atos. In particular, they asked:

- Had Mrs Curtis sustained an injury during the course of her NHS employment which was wholly or mainly attributable to that employment?
- If the answer was yes, had Mrs Curtis suffered a permanent loss of earning ability as a result of that injury?
- If it was accepted that Mrs Curtis had sustained an injury which was wholly or mainly attributable to her NHS employment, they needed to consider the effects of that injury in isolation. They must disregard the effects of any pre-existing or underlying conditions when deciding if the injury had given rise to any permanent incapacity and any permanent loss of earning ability.
- If there was evidence of degenerative changes, were these consistent with Mrs Curtis' age or was the degeneration more than would be expected in a woman of her age? If it was more than expected, was it wholly or mainly attributable to her NHS employment?

21. Atos requested a report from Mrs Curtis' Orthopaedic Surgeon, Mr Hutton. Having explained the eligibility criteria for a PIB, Atos asked Mr Hutton to comment specifically on:

    - Her diagnosed condition.
    - Investigation findings, objective clinical findings and any impairment of function/life function.
    - His opinion on the aetiology of her neck condition.
    - All relevant therapeutic intervention to date, together with the nature of the treatment, date, duration, compliance, response and any adverse effects.
    - What further interventions were available and which were planned.
    - With full reasonable available therapeutic intervention, what was the likely future course of Mrs Curtis' health and function over the following 22 years to her 65th birthday.

22. Mr Hutton responded that he did not feel that he was in a position to answer Atos' questions. He did confirm that he had treated Mrs Curtis for C7 nerve root impingement secondary to cervical disc prolapse. Mr Hutton also commented,

    "… in the vast majority of cases cervical disc prolapse is not related to occupation and is not related to injury.
    At the last clinic [Mrs Curtis] reported herself to have had her arm pain abolished and a great deal of improvement following the surgery. I would like to think that she is able to continue working to a pensionable age although she is at slightly increased (5%) of developing an adjacent segment problem, a consequence of her neck condition/the fact that she has had previous surgery."

23. Atos also wrote to Mrs Curtis' GP and asked him to provide a copy of her medical records.

24. Atos wrote to the NHS BSA on 15 November 2013 setting out the advice from their medical adviser. They quoted the medical adviser as saying,

    "In order for the applicant to be successful it must be accepted that the applicant has an injury which is sustained or a disease contracted in the course of the person's NHS employment and which is wholly or mainly

attributable to that NHS employment, AND that a permanent loss of earnings ability (PLOEA) of more than 10% has arisen in consequence of that injury or disease. Permanent means to age 65.

The extent of any relevant PLOEA is assessed with reference to the effects of the attributable condition only. Relevant PLOEA is evaluated as a percentage [of] the pensionable pay at the time employment ends or the time the successful applicant moves to a lower paid employment.
… Mrs Curtis was assaulted at work on 10/02/2003; the incident report indicates that patient pulled her hair causing pain of left side of her neck.

It is noted that prior to the index accident she suffered from neck pain/stiffness. The medico legal report completed by … Dr Hickling … confirms that significant neck symptoms were already present for over 2 years and certainly were present at the time of the assault which exacerbated them. She had two spells of sickness absence since July 2002 due to neck problem. The etiology of her preexisting neck condition is not fully clear and there are no investigation results available, presumably the neck x-ray performed at the time of her accident did not show any bony injuries. Dr Hickling states that she woke up in July 2002 feeling as though she had “clicked her neck”. The occupational health reports and clinical records from 2002 and 2003 indicate that her neck spasm/tension was stress related.

Mrs Curtis has been suffering from psychological problems which originally started in early 1990s and have been triggered/maintained by various factors (childbirth, bereavement, relationship/personal problems, work difficulties and more recently infertility/IVF treatments). She has been using various antidepressive medications for many years. The consultant Psychiatrist … in a report dated 08/07/2003 confirms that Mrs Curtis has a diagnosis of adjustment reaction … Her prognosis was good …

Mrs Curtis has consulted her GP regularly between 2002 and 2004 because of neck symptoms. Her next attendance due to cervicalgia was in 2009 (once) and subsequently in 2011 (twice). It is noted that in 2012 she developed new symptoms – right shoulder pain and right arm parathesia.

Mrs Curtis underwent MRI scan of her neck in early 2013 which showed discogenic degenerative changes at the C5/6 and C6/7 levels with disc bulge at level C6/7 … She underwent C6/7 anterior cervical decompression and fusion …

> … According to the Spinal Surgeon on the vast majority of cases cervical disc prolapse is not related to occupation or to injury. It was indicated that at the last clinical appointment Mrs Curtis reported significant improvement of her arm pain … Mr Hutton confirms that she should be able to continue working to a pensionable age.
>
> Considering the nature of her neck injury it is advised that the index accident resulted in temporary exacerbation of her preexisting neck symptoms. Her continuing/more recent neck problems are due to constitutional degenerative changes.
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> Her psychological problem has been multifactorial in terms of etiology and maintaining factors and cannot be fully or mainly attributable to the duties of her NHS employment."

25. The medical adviser concluded,

> "It is my opinion that, on the balance of probabilities, the evidence in this case confirms that the neck injury was contracted in the course of the person's NHS employment and is wholly or mainly attributable to that NHS employment. However, any PLOEA is likely to be caused by a constitutional degenerative process which cannot be attributable to the duties of her NHS employment."

26. The NHS BSA wrote to Mrs Curtis, on 28 November 2013, saying that they were upholding her dispute in part. They said they accepted that she sustained an injury to her neck in February 2003 and that it was wholly or mainly attributable to her NHS employment. However, the NHS BSA went on to say that they did not accept that the neck condition from which Mrs Curtis now suffered and which incapacitated for work was wholly or mainly attributable to her NHS employment. They said they considered that this was due to constitutional degenerative changes and not connected to her NHS employment. With regard to Mrs Curtis' psychological condition, the NHS BSA said that this was multifactorial in terms of cause and maintaining factors and they did not accept that it was wholly or mainly attributable to her NHS employment.

27. The NHS BSA went on to explain that they considered that the 2003 incident could not have caused more than a temporary exacerbation for Mrs Curtis' pre-existing neck symptoms. They said that the condition from which now suffered was unconnected and was due to a constitutional degenerative condition. The NHS BSA

explained that, by this, they meant a condition which was part of her body's make up and would have happened irrespective of lifestyle or work activities. They accepted that such conditions could be permanently or temporarily exacerbated/aggravated by work activities, but that this was not the same as being attributable to those activities. The NHS BSA said that taking into account only the effects of the accepted injury and ignoring all other conditions, there was no reason why Mrs Curtis could not return to her former job on the same earnings

28. The NHS BSA quoted the advice from the Atos medical adviser and went on to say that they could see nothing in the adviser's rationale which would cause them to disagree with it.

Summary of Mrs Curtis's position

29. Mrs Curtis submits that she had a period of sickness absence due to work stress, which had manifested itself as a severe spasm in her neck. She says that she returned to work and sustained a severe neck injury from a patient. Mrs Curtis says that this led her to resign.

30. Mrs Curtis says that she was a registered nurse earning approximately £15,000 for 22.5 hours per week and is now a dispenser earning £5,000 for 14 hours per week. She says that she would have had scope to increase her hours as a nurse to full time if her circumstances had been different.

31. Mrs Curtis says that she is only 43 years of age and knows of no-one else within her social or work associates who suffers from degenerative neck problems. She disagrees that her neck issues are to do with the normal aging processes.

32. Mrs Curtis says that she suffered severe neck spasms because of work stress and then suffered an injury. She says that her employer failed to provide training suitable to her working environment. She says that this led to significant on-going pain and probably an acceleration of degeneration in her neck.

33. Mrs Curtis says that her problems are on-going and she has provided additional evidence relating to recent developments in her condition, including the fact that she has had to change to an automatic car.

34. Mrs Curtis refers to the comment by the NHS BSA to the effect that she could return to her former employment. She points out that her former role was physically demanding and involved exposure to aggressive and challenging behaviour from clients. She disagrees that she would be able to undertake this type of employment since her neck surgery.

Summary of the NHS BSA's position

35. The NHS BSA say they have concluded that the injury sustained by Mrs Curtis on 10 February 2003 was wholly or mainly attributable to her NHS employment. However, they do not accept that she suffered a permanent loss of earning ability as a result.

36. The NHS BSA say that the injury resulted in a temporary exacerbation of Mrs Curtis' pre-existing neck symptoms. They say that the Scheme does not extend to catering for the aggravation or exacerbation of an already present condition.

37. The NHS BSA submit that they have applied the correct eligibility test and taken relevant evidence into account whilst ignoring irrelevant evidence. They say they have sought and accepted advice from their medical advisers. The NHS BSA say that the fact that they have weighed the evidence differently and/or come to a different conclusion to Mrs Curtis' own is a finding for them to make.

38. The NHS BSA say that the effects of the 2003 injury were self-limiting and, on their own, would not result in a permanent loss of earning ability. They consider that the reason for Mrs Curtis' on-going incapacitating neck condition is a degenerative constitutional condition which is not wholly or mainly attributable to her NHS employment.

39. With regard to Mrs Curtis' psychological condition, the NHS BSA say that the evidence shows that she had a history of depression dating back to the early 1990s which was multifactorial in origin.

40. The NHS BSA say that, taking the effects of the 2003 injury into account alone, there is no reason why Mrs Curtis could not have returned to her original role and earned at the same level.

Conclusions

41. The first question the NHS BSA must ask is whether Mrs Curtis has sustained an injury (or contracted a disease), in the course of her employment, which is wholly or mainly attributable to her employment or to the duties of her employment. If that is the case, they must then go on to ask if the injury has resulted in a permanent loss of earning ability of greater than 10%.

42. Mrs Curtis suffers from chronic neck pain which she attributes to work stress and the 2003 incident when a patient pulled her hair. The 2003 incident is documented and Mrs Curtis attended her GP afterwards and went on sick leave. She resigned from her NHS post shortly afterwards.

43. The NHS BSA took advice from Atos and they are entitled to rely on this advice in coming to a decision unless there is good reason why they should not. In saying this, I have in mind reasons such as an error of fact or a misunderstanding of the requirements of the injury benefit regulations on the part of the medical adviser. There is nothing to suggest that either of these reasons existed in Mrs Curtis' case.

44. The first Atos adviser said that Mrs Curtis had a history of neck pain prior to the 2003 incident and expressed the view that her ongoing pain related to "tension". With regard to Mrs Curtis' mental health, the adviser again said that she had a history of depression which pre-dated the 2003 incident. This view is not inconsistent with the medical advice dating from 2003/04. Dr Hickling commented that Mrs Curtis' neck symptoms had been present for over two years in September 2003. He said that they had been exacerbated by the incident. Dr Hickling suggested that Mrs Curtis may have been suffering from low grade inflammatory arthritis. Mr Chan noted that Mrs Curtis had been experiencing pain since July 2002 and that it had been exacerbated by the incident in 2003. In 2004, Dr Haigh noted that Mrs Curtis' neck pain had come on in July 2002 and that she had experienced "a major flare up" after an assault on the ward.

45. The second Atos adviser had the benefit of further medical evidence and, in particular, the MRI scan undertaken in 2013. Atos had also asked Mr Hutton to comment; although his comments were less comprehensive than perhaps they had hoped. Ms Challinor had reported that the MRI scan had indicated degenerative

changes in Mrs Curtis' neck and a disc bulge at level C6/7. Mrs Curtis subsequently underwent surgery on her neck.

46. The Atos adviser said that Mrs Curtis had been experiencing significant symptoms prior to the 2003 assault. He commented that the aetiology of her neck problems was not clear. The adviser noted that Dr Hickling had reported Mrs Curtis as saying she had woken up feeling as if her neck had "clicked" in 2002 and he attributed this to stress. He then referred to the results of the MRI scan which had shown up degenerative changes in Mrs Curtis' neck and to Mr Hutton's comments. The Atos adviser took the view that the 2003 incident had caused a temporary exacerbation of pre-existing symptoms, but that Mrs Curtis' ongoing symptoms were the result of degenerative changes in her neck which were constitutional in origin.

47. The NHS BSA decided to accept the advice from Atos and declined Mrs Curtis' application for a PIB. Whilst they accept that she suffered an 'injury' to her neck at the time of the 2003 incident, they consider it to have caused a temporary exacerbation of a pre-existing condition. They do not consider it to have resulted in a permanent loss of earning ability and that Mrs Curtis' ongoing loss of earning ability is attributable to constitutional degenerative changes in her neck. Mrs Curtis disagrees. Amongst other things, she does not accept that her symptoms are the result of "the normal aging processes" and points out that other people of her age do not suffer the same symptoms.

48. It is for the NHS BSA to weigh up the available evidence and come to a decision. They can give more weight to some of the evidence and, as I have said, they can rely on the advice they receive from Atos. I find that the decision reached by the NHS BSA is not inconsistent with the available evidence. They accept that the incident in 2003 caused Mrs Curtis to experience symptoms in her neck, but they take the view that this was a temporary exacerbation of her neck pain; what Dr Haigh described as a flare up. The Scheme only provides for payment of benefit where there has been a *permanent* loss of earning ability as a result of an injury which is wholly or mainly attributable to the NHS employment.

49. The NHS BSA take the view that Mrs Curtis' ongoing problems with her neck are the result of the degenerative changes identified by the MRI scan and these they

consider to be constitutional in origin. In coming to this view, they are relying on the advice from Atos who, in turn, relied on Mr Hutton's comments. Mr Hutton said that "in the vast majority of cases" cervical disc prolapse was not related to occupation or to injury. In the absence of medical advice to the contrary in Mrs Curtis' case, it was not inappropriate for Atos and the NHS BSA to find that Mrs Curtis' neck problems were not wholly or mainly attributable to her NHS employment. The fact that Mrs Curtis has noted that work associates of a similar age do not suffer the same kind of degenerative changes tends to support the view taken by Atos and the NHS BSA. That is, the degenerative changes seen in Mrs Curtis' neck are a function of her constitution rather than external factors.

50. Mrs Curtis does not accept the view expressed by the NHS BSA to the effect that she could return to her former role; particularly in view of her neck surgery. I think she may have slightly misunderstood the point the NHS BSA were trying to make. I take them to mean that the 2003 incident caused a temporary exacerbation of Mrs Curtis' neck pain and, *on its own*, would have resolved and she would have been able to return to work. However, they take the view that it was overlain by an underlying condition and it is this which prevents her from continuing in her former role.

51. Much of the focus has been on Mrs Curtis' neck problems, but the NHS BSA have also considered her mental health also. The only recent medical evidence relating to Mrs Curtis' mental health was the letter from the counselling services. This confirmed that she had been attending sessions with them until 2007. Mrs Curtis was not under the care of a mental health specialist at the time Atos and the NHS BSA reviewed her case. There was, therefore, no reason for them to seek a specialist report in the same way as they had with Mr Hutton. The advice from Atos was not inconsistent with the available medical evidence and there was no reason why the NHS BSA should not have relied on it in reaching a decision.

52. Mrs Curtis has mentioned that she was not given the training she feels she should have received. This is more properly considered an employment matter and I do not propose to comment any further.

53. In summary, I find that the NHS BSA have reached their decision in a proper manner, taking into account all of the available evidence and in accordance with the requirements of the Scheme Regulations. I do not uphold Mrs Curtis' complaint.

Jane Irvine
Deputy Pensions Ombudsman

23 January 2015