

## Ombudsman's Determination

Applicant	Mr D
Scheme	Police Pension Scheme
Respondent	Gwent Police

### Outcome

1. Mr D's complaint is upheld and to put matters right Gwent Police Pensions should cease the deduction of Employment and Support Allowance (**ESA**) from Mr D's Injury Pension and refund to Mr D all ESA deductions that have been made to date with interest.
2. My reasons for reaching this decision are explained in more detail below.

### Complaint summary

3. Mr D's complaint is that Gwent Police have deducted ESA from his Injury Pension since November 2011.

### Background information, including submissions from the parties

4. Schedule 3 (7) of the Police (Injury Benefit) Regulations 2006 is provided in the Appendix.
5. Until 2 November 2011 Mr D was in receipt of Incapacity Benefit, which under Schedule 3(7)(c)(i) is an additional benefit deductible from an Injury Pension. As such Mr D's monthly Injury Pension was reduced by the amount of the Incapacity Benefit he was receiving.
6. On 3 November 2011 Mr D's Incapacity Benefit was replaced by ESA. Gwent Police proceeded to deduct ESA from Mr D's Injury Pension.
7. On 10 June 2016 the Home Office wrote to the National Association of Retired Police Officers (NARPO):

"We were made aware of the inconsistent approach being adopted by forces regarding the deduction of Employment and Support Allowance (ESA). As a result

we confirmed that the Police (Injury Benefit) Regulations 2006 will be amended to make it express on the face of legislation that ESA payments are to be deducted.

I can confirm that the changes will not be made retrospective and will come into force on the date of implementation. Further information regarding the implementation date will be provided in due course.”

8. Gwent Police say:

- ‘Parliamentary Intent’ was that ESA would replace Incapacity Benefit as a deductible benefit.
- Mr D has not suffered a financial loss because of the change in regulations; his pension remains at the same indexed linked monetary amount.
- They will continue to deduct ESA until the Home Office issues further guidance confirming the date of the legislative amendment and clarifying the treatment of ESA deductions taken.

### **Adjudicator’s Opinion**

9. Mr D’s complaint was considered by one of our Adjudicators who concluded that further action was required by Gwent Police. The Adjudicator’s findings are summarised briefly below:

- The 2006 Regulations came into force on 20 April 2006. ESA started in October 2008.
- Schedule 3(7)(c)(i) of the 2006 Regulations refers specifically to Incapacity Benefit. It could have said ‘or any replacement for’, but it does not.
- The intent of Parliament is only referred to when the meaning of legislation is unclear and you are looking to understand what it meant. In this case the 2006 Regulations are not unclear. They allow the reduction of an Injury Pension if the claimant is in receipt of an Incapacity Benefit.
- While it seems likely that the 2006 Regulations were simply overlooked when ESA began, that does not give Gwent Police the right to ignore what the legislation says. This is also presumably why the Home Office is intending to amend the 2006 Regulations, but not retrospectively.

10. Gwent Police now accept that ESA should cease to be deducted (and have agreed to do so in the August payroll) and say they will make the ESA repayments in the September payroll. However they do not accept that interest should be added to the repayments and the complaint was passed to me to consider. Gwent Police provided their further comments which do not change the outcome. I agree with the Adjudicator’s Opinion, summarised above, and therefore, I will only respond to the key points made by Gwent Police for completeness.

## **Ombudsman's decision**

11. Gwent Police say they have no intention of paying interest on the repayments of deducted ESA on the grounds that:
  - the Police (Injury Benefit) Regulations 2006 do not mention the requirement to pay interest on amounts due; and
  - the payment of interest is not mentioned the Home Office's letter to NARPO of 10 June 2016.
12. Neither argument prevents me from awarding interest.
13. The incorrect deduction of ESA from Mr D's Injury Pension has denied Mr D income that he would otherwise had available to use. My view is that interest should be paid by Gwent Police on the repayment sum as directed below.
14. Therefore, I uphold Mr D's complaint.

## **Directions**

15. In the August payroll Gwent Police will cease the deduction of ESA from Mr D's Injury Pension.
16. In the September payroll Gwent Police will pay Mr D the total amount of ESA deducted from his Injury Pension, plus simple interest at the rate for the time being declared by the reference banks from the date each deduction was made to the date of payment to Mr D.

**Anthony Arter**

Pensions Ombudsman  
3 August 2016

## Appendix

### The Police (Injury Benefit) Regulations 2006

17. Schedule 3(7) says:

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

(2) Where the provisions governing scales of additional benefits have changed after the person concerned ceased to be a member of a police force, the amount of the reduction in respect of any week on account of a particular benefit shall not exceed the amount which would have been the amount thereof in respect of that week had those provisions not changed, it being assumed, in the case of such benefit as is mentioned in sub-paragraph (3)(a)(ii), that it would have borne the same relationship to the former maximum amount thereof.

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

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

(i) any increase in such pension by way of unemployability supplement under Part 1 of Schedule 7 to that Act or so much of any such increase as is proportionate to the relevant part of that pension so, however, that where the person concerned is entitled to an unemployability supplement which is increased under Part 1 of the said Schedule, the unemployability supplement shall be deemed not to have been so increased,

(ii) any increase in such pension under section 94 of that Act (reduced earnings allowance) or so much of any such increase as is proportionate to the relevant part of that pension, and

(iii) so long as the person concerned is receiving treatment as an in-patient at a hospital as a result of the relevant injury, any increase in such pension under Part 3 of Schedule 7 to that Act (hospital treatments).

(b) any reduced earnings allowance under section 94 of that Act in respect of the relevant injury or so much of any such allowance as relates to that injury;

(c) until the first day after his retirement which is not, or is deemed not to be, a day of incapacity for work within the meaning of section 30A, or, as the case may be, a day

**PO-7328**

on which he is incapable of work within the meaning of sections 68 and 69, of that Act-

(i) any incapacity benefit under section 30A of that Act,

(ii) any severe disablement allowance under sections 68 and 69, including, in each case, any increase under any provision of Part 4 of that Act (dependants).”