

## Ombudsman's Determination

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|-------------|--|
| Applicant   | Mr S   |
| Scheme      | Police Pension Scheme (Northern Ireland) – <b>(the Scheme)</b>                           |
| Respondents | Northern Ireland Policing Board <b>(the Board)</b><br>PSNI Pensions Branch <b>(PSNI)</b> |

## Outcome

1. I do not uphold Mr S's complaint and no further action is required by the Board or PSNI.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr S has complained that Employment Support Allowance (**ESA**) has been wrongly deducted from his injury pension.

## Background information, including submissions from the parties

4. Mr S contends that, in accordance with The Police (Injury Benefit) Regulations 2006 **(the Regulations)**, ESA cannot legally be deducted from an injury pension as it is not listed as an additional benefit under Schedule 3 -The Police Officer's Injury Award.
5. Mr S qualified for an injury pension, also referred to as an injury on duty award, in October 2002. The Board retrospectively granted this with effect from 11 September 1988.
6. On 6 March 2002, Mr S received industrial injuries disablement benefit, a government benefit, and reduced earnings allowance.
7. ESA started to replace incapacity benefit from 2008, but according to the Board, due to transitional protection, ESA would have applied to Mr S from June 2013.
8. On 15 January 2015, Mr S wrote to the Department of Justice for Northern Ireland **(DOJNI)** and asked whether the deduction of ESA from an injury pension is lawful, as the matter did not appear to be defined in the current legislation.

9. On 11 February 2015, DOJNI emailed Mr S saying that the current injury benefit legislation did not include any reference to ESA. This was being considered for new injury benefit regulations. The Board and PSNI were administrators of the Pension and Injury Benefit Schemes, therefore issues regarding payments and deductions was a matter for them.
10. Following several enquiries, Mr S formally complained to the Board under its Internal Dispute Resolution Procedure (**IDRP**) about ESA being deducted from his injury pension.
11. On 2 September 2015, the Board responded to Mr S's complaint under stage one of the IDRP. It accepted that the Regulations do not detail ESA as a deductible benefit but said there was a clear intention to review this; ESA would probably be detailed as a deductible benefit. It said the main question was whether the change would be retrospective. The letter also said that in any case, the outcome of the review would not affect Mr S as his industrial injuries benefit outweighed his injury pension.
12. On 19 October 2015, Mr S wrote to the Board asking it to appeal their decision. He said that the Board had admitted that ESA was not listed as a deductible benefit in the Regulations, and instead had used assumptions and probabilities as a justification for their decision to deduct this benefit.
13. On 23 December 2015, the Board responded under stage two of IDRP. It said that a decision on an amendment to the Regulations, and whether it will be retrospective, belonged with the Department of Justice, whom the Board had pressed for a final decision. It said the Board was aware that some police services in England and Wales had taken the decision to cease the deduction of ESA until an amendment to the Regulations was introduced, but such a decision would have a disproportionately higher impact on PSNI's budget compared with other police services.
14. The complaint was referred to this Office. In its formal response dated 4 August 2016, the Board said:-
  - Mr S is not currently in receipt of any payment for his injury pension.
  - Mr S was granted an injury pension in October 2002.
  - Under Schedule 3 of the Regulations, the amount of an injury pension must be reduced by three quarters of any other pension.
  - Mr S's injury pension entitlement is £7,591.22 per annum and his ill health pension is £7,591.22.
15. Therefore, although Mr S has been granted an injury pension, as it stands, he is not in receipt of any payment for this.
16. On 24 August 2016, Mr S commented that:-
  - The Board's formal response detailed that his industrial injuries award exceeded his injury pension, but that was not the issue.

- Incapacity benefit had legally been deducted from his injury pension. However, ESA could not be legally deducted, therefore PSNI could not continue to replace the legal deduction of incapacity benefit with a deduction of ESA.
17. On 14 December 2016, in response to information requested as part of my investigation, the Board clarified that:-
- Mr S qualified for an injury pension in October 2002, which was retrospectively implemented from 11 September 1988.
  - Arrears were not paid for the period 11 September 1988 to 20 January 1991, as Mr S was in receipt of incapacity benefit, which was a deductible benefit according to the Regulations.
  - Mr S was paid an injury pension for the period 21 January 1991 to 5 March 2002.
  - Since 6 March 2002, Mr S has been in receipt of industrial injuries disablement benefit and reduced earnings allowance.
  - As this benefit outweighed the amount of injury pension which Mr S was entitled to, he stopped receiving injury pension from this time.
  - There has never been any deduction made in respect of Mr S's ESA payments, which commenced in June 2013, as there hasn't been any payment from which it can be deducted.
  - The Board had recently been advised that the Justice committee of the Northern Ireland Assembly had agreed to the Department of Justice's amendment to the Regulations. The amendment provides for the deduction of ESA from an injury pension. The amendment will be laid in the Northern Ireland Assembly 2017 and if agreed, implemented as soon as possible thereafter.
18. On 23 December 2016, in a telephone conversation with Mr S, my Adjudicator explained the Board's position. Mr S maintained that he was receiving an injury pension, from which ESA was being deducted. The Adjudicator asked Mr S to provide evidence of this.
19. On 30 January 2017, Mr S provided information in support of his belief that ESA was being deducted from his injury pension. As part of this, Mr S provided a letter from the Board dated 13 December 2006 which detailed what his injury on duty award was based on.

### **Adjudicator's Opinion**

20. Mr S's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Board or PSNI. The Adjudicator's findings are summarised briefly below:-
- The Board said that Mr S stopped receiving an injury pension in 2002. Accordingly, it said that Mr S could not have been affected by ESA deductions,

which came into place later, as there was no appropriate benefit to make this deduction from.

- Although Mr S was strongly of the opinion that he was in receipt of an injury pension, or that he had been in recent years after ESA came into existence, he had not provided any evidence which demonstrated that ESA was being deducted from his benefits.
- Mr S had, however, provided a letter dated 13 December 2006, from the Board which said that Mr S was receiving an Injury on Duty Award.
- The adjudicator at this point clarified that the term injury pension was sometimes interchanged with an injury on duty award, so they are the same benefit. As the 13 December 2006 letter contradicted the Board's statement that Mr S's injury pension ceased being paid in 2002, this was queried.
- The Board said that while it was responsible for assessing an individual's entitlement to an injury pension, it was PSNI which processed the payment of this thereafter. Therefore, at the time of issuing the letter, it was not aware that this benefit was no longer being paid to Mr S, despite it having been granted to him. The Board acknowledged the confusion this letter may have caused but confirmed that Mr S's injury pension ceased being paid in 2002.
- In conclusion, there was no evidence that ESA was being deducted, wrongfully or otherwise, from Mr S's benefits.

21. The Board and PSNI accepted the Adjudicator's Opinion. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments and a letter dated 22 August 2016 sent to him by the Board; both of which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr S for completeness.

### **Ombudsman's decision**

22. Mr S maintains that he is in receipt of an injury pension and says he always has been. In support of this, Mr S provided a letter of 22 August 2016 sent to him by the Board. This letter, in reference to Mr S's injury pension, said that as Mr S's case had been marked as "permanent/no further review" it did not intend to carry out a reassessment. It also said that Mr S had the right to request a reassessment of his injury pension at any stage in the future.
23. I acknowledge that this letter refers to an injury pension and does so specifically in relation to Mr S. However, I consider that this letter purports to Mr S having been granted an injury pension, which needs to be distinguished from this benefit being in payment.
24. The Board and PSNI have not disputed that Mr S has been granted an injury pension, but have said that due to the other benefits he receives and the rules concerning this, his injury pension is not actually in payment.

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25. The Board and PSNI are confident that Mr S is no longer being paid an injury pension, and I agree. Mr S has not provided any evidence to persuade me that an injury pension is being paid or that ESA has been deducted from it.
26. Therefore, I do not uphold Mr S's complaint.

**Anthony Arter**

Pensions Ombudsman  
28 March 2017

## Appendix

### The Police (Injury Benefit) Regulations 2006

#### Regulation 11 - Police officer's injury award

(1) This regulation applies to a person who ceases or has ceased to be a member of a police force and is permanently disabled as a result of an injury received without his own default in the execution of his duty (in Schedule 3 referred to as the "relevant injury").

(2) A person to whom this regulation applies shall be entitled to a gratuity and, in addition, to an injury pension, in both cases calculated in accordance with Schedule 3; but payment of an injury pension shall be subject to the provisions of paragraph 5 of that Schedule and, where the person concerned ceased to serve before becoming disabled, no payment shall be made on account of the pension in respect of any period before he became disabled.

#### Schedule 3.

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(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(a) 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 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).