

## Ombudsman's Determination

<b>Applicant</b>	Mr Bruce Lightfoot
<b>Scheme</b>	Police Pension Scheme ( <b>the Scheme</b> )
<b>Respondent(s)</b>	West Yorkshire Police Authority ( <b>WYPA</b> )

### Complaint summary

Mr Lightfoot has made a number of complaints about the way WYPA handled his injury benefit. He says that WYPA:

- acted outside of the law;
- made intimidating and misleading statements;
- failed to exercise proper care in carrying out procedures and acting unfairly;
- misused highly confidential financial information contained within his GP's medical file;
- placed his GP's medical file with an insurance company and failed to return this to his GP after use;
- withheld the repayment of his pension for an excessive period;
- invaded his privacy by obtaining information on the purchase price of his home;
- failed to heed the request of his solicitor not to correspond with him direct.

### Summary of the Ombudsman's determination and reasons

The complaint should be not be upheld against WYPA as they have already reinstated Mr Lightfoot's injury benefit and offered compensation for any distress and inconvenience caused.

## Detailed Determination

### Relevant Scheme Documents

1. Home Office Circular 46/2004 (**HOC 46/2004**) is guidance issued by the Home Office. Annex C of the circular addresses matters concerning the review of police injury pensions. In January 2012 the circular was deemed to be unlawful in part by His Honour Judge Behrens. A further judicial review hearing, before Mr Justice Supperstone at Leeds High Court in February 2012 held that part of HOC 46/2004, concerning "Review of Injury Pensions once Officers reach 65", and paragraph 20 of section 5 of the Home Office 'Guidance on Medical Appeals under the Police Pensions Regulations 1987 and the Police (Injury Benefit) Regulations 2006' are inconsistent with the Police (Injury Benefits) Regulations 2006 and therefore unlawful Material Documents.

### Material Facts

2. Mr Lightfoot retired from WYPA on medical grounds in 1987 and was in receipt of a Scheme pension and an injury benefit award.
3. WYPA wrote to Mr Lightfoot on 7 April 2009 to inform him that the HOC 46/2004 said:

“that once a former officer receiving an injury benefit reaches age 65 they will have reached their State Pension Age and in the absence of a cogent reason should be placed in the lowest band of Injury Award because at age 65 there is an expectation that they would no longer be earning a salary in the employment market.”
4. The letter also said that as Mr Lightfoot was then aged 64 WYPA was giving him 12 months' notice of the reduction in his injury award and this would take effect 12 months later on 7 April 2010 unless there were exceptional reasons. The letter also quoted the potential reduction in Mr Lightfoot's injury award from £4,540.99 a year to £476.10 a year.
5. A review of Mr Lightfoot's injury award commenced in February 2010 but before the review was completed WYPA paused all reviews pending clarification of HOC 46/2004. The review recommenced in April 2011 and the medical adviser concluded that as Mr Lightfoot's condition had improved his injury award should be reduced to Band 1 from 5 May 2011.
6. Mr Lightfoot appealed the decision and attended a meeting with WYPA's medical adviser in December 2011 who reported on the meeting on 5 December 2011 and said:

“It is apparent that he does have degenerative changes in his neck...

In my opinion there appears to have been a substantial deterioration in the symptoms and signs he is displaying.”

7. On 9 May 2012 WYPA wrote to Mr Lightfoot to inform him that following recent legal cases it had adopted the position that HOC 46/2004 was fundamentally flawed and that his recent reassessment was invalid. His injury benefit would be returned to its original level.
8. Mr Lightfoot’s injury benefit was restored to its former level in November 2012 and interest was added to the back payments.

### **Summary of Mr Lightfoot’s position**

9. Mr Lightfoot says that the prolonged maladministration by WYPA has had an effect on both his physical and mental health. The initial letter of 7 April 2009 caused him severe distress at the thought that he would have to sell his home because of the reduced income he would receive. He had to visit his doctor on two occasions in April 2009 and the doctor confirmed that he was suffering from stress and heart palpitations.
10. Mr Lightfoot also says that it has been established that a number of pensioners were drastically misled by letters similar to the one he received on 7 April 2009. He had it confirmed in a freedom of information request that 80 (52%) of the 153 pensioners sent similar letters had signed the agreement slip attached to the letter saying that they had no cogent reason to remain on the current level of award.
11. Mr Lightfoot also had the inconvenience and expense of having to travel to Leeds on two separate occasions to attend medical examinations. He has also written numerous letters throughout the review period, all sent by recorded delivery.
12. Mr and Mrs Lightfoot found themselves in late April 2011 in the position that they would have to sell their family home in order to reduce their monthly outgoings. Fortunately although the house was on the market for many months they did not find a buyer and decided to defer the sale until the outcome of the review was known. Mr and Mrs Lightfoot did however incur marketing costs of £474.
13. Mr Lightfoot also suspected that at one point his entire confidential GP’s file was being held without his authority by the insurance company employed to provide medical advice to WYPA. He did make a payment of £10 for a Data Protection request and discovered that the file did contain his complete medical history from the age of 4.
14. Mr Lightfoot was informed on 9 May 2012 that his injury benefit would be restored to its original position. It took however over 5 months to restore which was in sharp contrast to the 21 days it took from notification of the reduction to actual implementation. This

delay was excessive and inexcusable given the absence of thousands of pounds from his income and caused him financial hardship.

15. Mr Lightfoot also says that WYPA acted intrusively and invasively by obtaining a valuation of his current home and obtaining documents in respect of his previous home. WYPA also used financial information from his medical file to build up a picture of his financial standing and used to reduce his pension. He had only given his consent for access to his medical file in respect of medical information only.
16. Mr Lightfoot has said that the £600 offer of compensation made by WYPA only recognises the anxiety and distress he suffered during the 18 month period of his pension reduction. There is no recognition of the effect that WYPA's actions had on his mental and physical health from April 2009 when he was notified of the intended pension reduction up to the time of the pension reduction in May 2011.

### **Summary of WYPA's position**

17. WYPA have a duty to maintain an efficient and effective Police Force and it would be at fault if it did not take care to ensure that it heeded HO circulars created to promote the efficiency and effectiveness of the Police. In the absence of any obvious legal flaw in the guidance, or any other good reason to depart from the guidance, it was perfectly reasonable for WYPA to follow the guidance. Accordingly the decision was made to review Mr Lightfoot's pension.
18. The HOC 46/2004 was not the operative factor in reducing Mr Lightfoot's pension. The reason for the reduction was the substantial alteration in his medical circumstances and the effect that had upon his capacity to earn. However his circumstances also fell within the criteria set out in HOC 46/2004 and so it was necessary to take into account any impact it might have, once the concerns regarding the guidance were resolved by the Appellate Court.
19. Throughout this period Mr Lightfoot was kept informed and apologies were given. It is of course regrettable that HOC 46/2004 was found wanting, but WYPA acted in good faith and provided full restitution.
20. The purpose of the 7 April 2009 letter was to warn Mr Lightfoot that the effect of the guidance could mean that he would be financially worse off, and indeed a financial estimate was attached to the letter so that the extent of the loss was evident. The warning gave Mr Lightfoot 10 months' notice of the change in order that he could take advice on his position and make alternative financial planning arrangements.
21. It is not accepted that the letter of 7 April 2009 is misleading or bears the interpretation Mr Lightfoot places upon it. Far from trying to deceive Mr Lightfoot, the letter provided

the contact details of the Police Federation for independent advice and support on the matter and also confirmed that NARPO could be contacted for support.

22. Mr Lightfoot has not provided examples or instances of failing to exercise proper care or unfairness so WYPA is unable to comment.
23. The medical consent forms allow the patient to indicate to what extent consent is being given. The forms specifically state that the patient is not obliged to give consent. The form for release of the records from the patient's own medical adviser specifically invites the patient to seek advice from the Medical Appeals Team or Federation if in any doubt about the form. The release of OHU records form specifically highlights that a patient can ask for particular documents not to be released.
24. Mr Lightfoot signed the medical consent form authorising his GP to provide his medical records to WYPA. It would have been apparent to Mr Lightfoot, but not WYPA, that those records contained financial data. Mr Lightfoot could have asked his GP to withhold the particular record containing the financial data or otherwise redact the document. In addition if in any doubt he could have contacted the Medical Appeals Team or the Police Federation for clarity/advice. The consent form concerns medical records and does not limit consent to only medical data contained within those records.
25. Once the records were received and read, WYPA could not unknow the information they contained. If the data was relevant to the issues under consideration and consent to see it was freely given, there was nothing to put WYPA on notice that Mr Lightfoot considered the data highly confidential and had concerns about its disclosure.
26. it is regrettable that the problems that arose from HOC 46/2004 caused delays and uncertainty to those pensioners affected. WYPA endeavoured to keep those affected informed and the sheer volume of the cases concerned inevitably impacted on the amount of time it would take to consider each individual case.
27. It was recognised from the outset that the adoption of the HOC 46/2004 could cause hardship in some cases. It was the intention to review such instances where there were cogent reasons as to why HOC 46/2004 should not be adopted. Mr Lightfoot stated in due course that his case involved financial hardship and in order to consider this fully WYPA sought details of income and expenditure .Mr Lightfoot provided the information including details of mortgage payments. WYPA obtained information concerning the value of Mr Lightfoot's home to complete the information from data held on publicly available websites.

28. Messrs Thompsons were instructed on the appeal and correspondence was exchanged with them concerning the appeal. No notification was received as to whether they were instructed in the reconsideration. Mr Lightfoot did not make WYPA aware that they should correspond with his solicitors about the reconsideration and took an active part in the communications making no objection at the time.
29. Whilst WYPA do not accept that there has been any acts of maladministration in the handling of Mr Lightfoot's pension, the regrettable difficulties created by the HOC 46/2004 are acknowledged. WYPA have offered Mr Lightfoot further recompense in an attempt to achieve an amicable resolution to the complaint.
30. WYPA have offered to pay Mr Lightfoot £640.00 being comprised of £600 for anxiety and distress, £10 disclosure fee, £10 for 2 trips to Leeds, £20 correspondence & miscellaneous costs.

## **Conclusions**

31. The review of injury benefits under Regulation 37 was the subject of a number of court cases and Ombudsman determinations over the past few years. There is now a considerable body of authority indicating how such a review should properly be conducted.
32. Whilst the Home Office is responsible as a whole for the Scheme's regulations they deem each Police Authority to be the Scheme Manager at a local level. WYPA was responsible for ensuring it interpreted the 2006 Regulations correctly when carrying out a review.
33. As has been found by my office in other cases (for example, Ayres 27979/2 and Sharp 80008/1) it is not appropriate to try and impose a meaning on the relevant Regulations which they do not hold simply because the Home Office (or the WYPA) think that logically they should. This was an error of law, albeit that WYPA was following Home Office guidance and was acting in good faith.
34. It is not disputed by WYPA that they incorrectly reviewed Mr Lightfoot's injury benefit under the Regulations and wrote to him on this basis. This amounts to maladministration. In other cases, we have directed the respondents to re-assess the applicant. I would, in the normal course of events, direct WYPA to reinstate Mr Lightfoot's injury benefit and pay him arrears with interest. However, as WYPA have now reinstated his benefits to the required level this is not necessary.
35. Mr Lightfoot says that during the process of reviewing his injury benefit that WYPA sent him misleading information. He also says that they mishandled his medical records. These contentions are disputed by WYPA. Mr Lightfoot is in receipt of the correct

amount of injury benefit and I do not think he has established his claims or that any significant injustice has flowed from these alleged failings by WYPA.

36. Mr Lightfoot has also raised concern about WYPA's use of confidential financial information in the assessment of his injury award. The Regulations do not prescribe a set method for WYPA to follow in assessing a person's injury claim or for the assessment of financial hardship. In my view, it was open to them to decide how they assessed Mr Lightfoot's particular case. I therefore do not consider the use of available information on Mr Lightfoot's medical file or other publicly available information on house prices to be inappropriate.
37. Finally I do not find that the failure to heed the request of Mr Lightfoot's solicitor not to correspond with him has led to any injustice as no doubt the solicitor would have passed the information to Mr Lightfoot.
38. WYPA have made an offer to compensate Mr Lightfoot for the distress and anxiety he has suffered as well as the costs of his other expenses. Mr Lightfoot has said that WYPA's offer of compensation does not recognise the anxiety and distress he suffered prior to the reduction of his pension. I have taken WYPA's offer of compensation to be an award for all of the anxiety and distress that Mr Lightfoot has suffered and do not consider it necessary to distinguish between periods in time. The award is also in line with any award I would make for all the anxiety and distress that Mr Lightfoot has suffered and I do not feel there is any need to increase this. I therefore make the following direction.

### **Direction**

39. I direct that within 28 days of the date of this determination WYPA are to pay Mr Lightfoot £640 in compensation for the distress and anxiety he has suffered and the expenses he has incurred.

**Jane Irvine**

Deputy Pensions Ombudsman  
20 March 2015