

CASE SUMMARY

Complaint Against the Social Welfare Department (SWD) for Delay in the Release of the Second Payment of the Criminal Injuries Compensation

In February 1991 the complainant sustained injury resulting from a crime of violence at his working place. He applied to the SWD for criminal injuries compensation (CIC) under the Criminal and Law Enforcement Injuries Compensation Scheme (the Scheme) and was granted an interim payment in July 1991. He had signed an undertaking to the effect that he would repay the CIC that the SWD had paid him in case he received other compensations. However, he was finally granted the balance of the CIC after some five years in May 1996, and confirmation that he was unsuccessful in his other claims.

2. The complainant had also applied for Employees' Compensation (EC) and sued for common law damages against the culprit of the criminal act. According to SWD's Administrative Document (AD) and the Manual of

Procedures (MP) which govern the administration of the Scheme, normally, where there is a prima facie case for EC, the applicant will be given 50% of the assessed *full award* of CIC in the first instance, whether or not such a claim is pursued by the applicant, and the Criminal Injuries Compensation Board (the board) will approve the remaining award due to him when EC subsequently received is less than 50% of assessed *full award*. The amount of remaining award is the difference of the 50% assessed *full award* and the EC. It follows that if the applicant is unsuccessful in the subsequent EC claim, he should be paid the remaining 50% of the *full award*.

3. CIC under the Scheme is payable on an *ex-gratia*, non-means-tested basis to applicants who sustained personal injury directly attributable to a crime of violence. In the case of injury only, three types of compensation payments may be applicable, i.e., a Disability Grant (DG), an Injury Grant (IG) and an Interim Maintenance Grant (IMG), depending on the circumstances of each case. More than one type of payments may be made to the same applicant. The complainant was assessed by the SWD to be eligible for a maximum IG of \$12,000 shortly after he sustained injury and 50% of it, i.e., \$6,000 was paid in July 1991 to him. Assessment of the DG and IMG was pending medical assessment and the outcome of claim for EC respectively. IMG was determined to be not payable as the complainant had continued to

receive salaries while on sick leave.

4. In early December 1993, the complainant informed SWD that the Legal Aid Department (LAD) was assisting him in claiming EC and common law damages. Some \$2.3 million in common law damages was subsequently awarded to him by the court. The LAD however confirmed to SWD that there was no hope of success in claiming EC and to recover the common law damages from the defendant's assets in July 1995 and March 1996 respectively. In April 1996, the SWD recommended and the board approved the release of the balance of IG of \$6,000 and the full amount of DG of \$28,000 to the complainant. The total amount of \$34,000 was paid to him in early May 1996.

5. Given that there was prima facie case for the complainant to claim EC, it would be proper for SWD to recommend to the board to pay 50% of the *total award* in the first instance i.e. 50% of IG & DG. However, SWD only recommended the payment of 50% of the IG in June 1991 while the full amount of DG was recommended to the board in April 1996, almost five years after the first payment was made.

6. The SWD confirmed that the assessed *total award* should include all

types of payments that an applicant is eligible for. Although the SWD officer who handled this case stated that she had obtained the complainant's consent at the end of 1993 that the board should be asked to approve the second payment to him at one go, this Office considers that it was unreasonable for the SWD to withhold the payment of full amount of DG until the question of EC claim was cleared as the complainant had produced the Certificate of Assessment in January 1994 to confirm that he was suffering from 46% disability. Half of the DG should have been paid to the complainant upon this confirmation.

7. The Ombudsman considers that, whilst the SWD had followed the AD and MP in withholding the second payment of the IG until LAD confirmed that the complainant's other claims were unsuccessful and that it had not delayed payment upon LAD's confirmation, it was unreasonable for SWD to also defer the payment of the DG until LAD's confirmation. It had taken some five years before final payment of compensation could be made in this case and this might have defeated the very purpose of the Scheme to provide urgent relieve to victims of violent crime. The Ombudsman concludes that this complaint is partially substantiated.

8. The Ombudsman recommends that the Director of Social Welfare (DSW) should apologize to the complainant and review the AD and the MP of the Scheme with a view to setting out precisely what constitute assessed *total award* for the purpose of calculating the exact amount of part payment of compensation under similar circumstances. The review should also cover the aspect of whether the present practice of withholding 50% of the assessed *total award* if there is prima facie case of EC claim is reasonable, equitable and effective in providing urgent relief to victims of violent crimes as the Scheme intended to provide.

9. DSW generally accepted the recommendations and would take them into account in the overall review of the Scheme which the department was undertaking.

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