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[1] Mr Cree appeals against a Review Decision dated 11 July 2022 (the Review Decision) upholding the Accident Compensation Corporation’s (the Corporation’s) decision dated 10 January 2022 (the Decision) that Mr Cree was eligible for \$368.19 of interest on his backdated weekly compensation under section 114 of the Accident Compensation Act 2001 (the Act).¹

[2] Counsel have helpfully agreed a summary of facts and issues.

Agreed Issue

[3] The issue on appeal is what is the correct date for the payment of interest on backdated weekly compensation.

[4] The answer turns on the correct interpretation of the words “all information necessary” in s 114(1) of the Act.

¹ All statutory references are to provisions of the Accident Compensation Act 2001 unless otherwise stated.

Agreed Facts

[5] On 24 April 2015, Mr Cree suffered an injury to his neck in a motor vehicle accident. Cover was granted for a neck sprain on 23 May 2017. After this, Mr Cree continued to suffer neck pain and headaches.

[6] On 5 September 2015, Mr Cree suffered a neck sprain because of a scooter accident. Cover was approved on 11 January 2016.

[7] An application for weekly compensation with respect to the scooter accident was filed with ACC on 29 June 2016. The Corporation made a decision on 7 September 2016 declining the claim for weekly compensation.

[8] On 22 January 2017, Dr Grant Thompson, a musculoskeletal physician, advised the Corporation of his opinion that Mr Cree was suffering from somatic pain, not radicular pain. Dr Thompson indicated that he thought that this pain might be caused by zygapophyseal joint trauma in the neck but that a diagnostic nerve block would be required to confirm this.

[9] Over the course of the following years, Mr Cree filed a number of reviews and appeals relating to his claim for cover as a result of the motor vehicle accident and the scooter accident.

[10] Most relevant to this appeal is the Corporation's decision dated 3 June 2020 declining cover for the zygapophyseal injury and the central neural sensitisation arising from the motor vehicle accident.

[11] On 8 June 2020, Mr Cree applied (successfully) for review of this decision. He asserted that the zygapophyseal joint strain was the most likely injury and was a material cause of his central neural sensitisation arising from the 24 April 2015 motor vehicle accident.

[12] The review hearing commenced on 10 September 2020. Following adjournments to enable further diagnostic testing to occur, it was completed on 17 February 2021.

[13] On 29 March 2021, the reviewer released his decision that:

- (a) ACC's decision of 3 June 2020, declining to provide cover for a zygapophyseal joint injury and central neural sensitisation was partially incorrect; and
- (b) Granting Mr Cree cover under the Act for a zygapophyseal joint injury, but not for the central neural sensitisation.

[14] On 8 April 2021, the Corporation made a new decision accepting cover for the zygapophyseal joint injury.

[15] On 26 May 2021, Mr Cree's lawyer wrote a letter to the Corporation claiming weekly compensation on behalf of Mr Cree. This included the paragraph:

I understand that Mr Cree has previously provided medical certificates in relation to his incapacity. His employer will have a record of his earnings for the 12 months prior to incapacity.

[16] Over the following months, the Corporation investigated Mr Cree's incapacity, including the correct dates of incapacity.

[17] On 6 September 2021, the Corporation received from the Inland Revenue Department (IRD) Mr Cree's earnings details for the period of incapacity and for the year prior to his incapacity.

[18] On 9 November 2021, the Corporation made a decision on weekly compensation granting Mr Cree an entitlement to backdated weekly compensation of \$110,101.53 (before tax) for the period 22 April 2016 to 18 July 2021. The Corporation calculated weekly compensation for this period, which was the period of incapacity determined by the Corporation. That was in part based on an ACC18 medical certificate completed by Mr Cree's General Practitioner on 25 August 2021 stating that Mr Cree was unfit to work from 22 April 2016.

[19] On 10 January 2022, the Corporation made its decision that Mr Cree was eligible for \$368.19 of interest on his backdated weekly compensation. The Corporation had calculated this from one month after 6 September 2021 as the date when the Corporation received all the

information² required to make the interest payment. The Corporation's 10 January 2022 letter stated:

The amount of interest we're paying covers the period from 06/9/2021, the date ACC received your earnings information from IRD to 12/11/2021, the date we paid your backdated weekly compensation for 22/04/2016 to 18/07/2021.

Review Decision and Appeal

[20] On 10 March 2022, Mr Cree applied for review of the Corporation's decision of 10 January 2022 on the calculation of interest.

[21] The grounds of review were that the interest should be paid from one month after 23 May 2017, the date of the Corporation's decision accepting cover for a neck sprain caused by the motor vehicle accident on 24 April 2015.

[22] Mr Cree sought:

- (a) Payment of interest from one month after 23 May 2017; and
- (b) Costs of the review application.

[23] The Corporation maintained its position that the "all information necessary" date was 6 September 2021, which is the date that it received the necessary earning details from IRD.

[24] The Reviewer upheld the Corporation's decision about the interest payment in the Review Decision.

[25] This appeal is against that Review Decision.

Submissions for Mr Cree

[26] It was submitted for Mr Cree that the Corporation's liability to pay interest under s 114 is not limited to cases where weekly compensation has been suspended.

² The necessary earnings details from IRD for the relevant period from 1 March 2016 to 5 September 2021.

[27] If delay in obtaining financial or any other necessary information is because of an error on the Corporation's part, the claimant should be paid interest from the date when the information was available.

[28] The delay in paying weekly compensation arose out of a dispute about the scope of cover.

[29] In cases where cover is in dispute, interest is payable from one month after the date when the Corporation should have made a decision accepting cover and when weekly compensation *should* have been paid. This follows from a purposive approach to interpretation of s 114(1). The relevant statutory purposes are to compensate claimants for delays in payment of weekly compensation and to incentivise good decision making and administrative efficiency. It also follows from the text of s 114(2)(a) which states that interest is payable "from the date on which payment should have been made".

[30] In this case, interest is payable from one month after 23 May 2017, the date the Corporation made its decision accepting cover for a neck sprain caused by the motor vehicle accident on 24 April 2015. At that time the Corporation could and should have paid weekly compensation had it accepted the advice from musculoskeletal physician Dr Grant Thompson (in a report dated 22 January 2017) that Mr Cree had likely suffered a zygapophyseal joint injury (whiplash) that caused his neck pain. An ACC18 General Practitioner's medical certificate available at the time (dated 25 July 2016) indicated that he was incapacitated from work from 27 June 2016).

[31] As at 23 May 2017 the Corporation had sufficient evidence to accept the claim for whiplash and Mr Cree had lodged a claim for weekly compensation. The Corporation had the necessary information to enable it to take the remaining steps to pay weekly compensation, including gathering financial information, but it chose not to do so – because of the view it had that was ultimately found to be incorrect. I record that Mr Schmidt in submissions was not critical of the Corporation's view of the medical evidence at the time and acknowledged that it was reasonably open, although it was subsequently found to be incorrect.

[32] The phrase “all necessary information” should be interpreted to mean information that enables the Corporation to progress the payment of weekly compensation. It does not include information that the Corporation, in error, chose not to obtain.

[33] After a lengthy review and appeal process, a reviewer issued a decision granting cover for a zygapophyseal joint injury. Following this, the Corporation funded radiofrequency neurotomy. This treatment was successful, confirming that the source of Mr Cree’s pain was his whiplash injury. Mr Cree returned to work and backdated weekly compensation was paid. Mr Cree’s claim was ultimately successful on the same basis as his original claim for compensation.

[34] Section 114 should be interpreted to include financial information concerning a claimant who has given the Corporation permission to access that information. This includes earnings information held on the IRD database, which the Corporation can access under an information sharing agreement between the IRD and the Corporation for the purpose of obtaining earnings information.

[35] Section 114 should be interpreted to mean that any information that is easily obtainable on request, including a person’s earnings and bank account details are not vital or “necessary to enable” the Corporation to pay weekly compensation and should be treated as always being available to the Corporation.

The Corporation’s submissions

[36] It was submitted for the Corporation that s 114 of the Act requires the Corporation to have both the medical information and the financial information necessary to calculate and make the interest payment.

[37] All the necessary information was not available to the Corporation as at the date when cover, which was disputed by the Corporation, could have been granted for the zygapophyseal injury.

[38] Following the grant of cover and after Mr Cree’s incapacity had been assessed, the Corporation obtained Mr Cree’s earnings-related information. Generally the quantification of weekly compensation is investigated after cover and entitlement have been determined and not before. The Corporation received the details of Mr Cree’s earnings on 6 September 2021.

[39] Interest was correctly payable one month after 6 September 2021 and the Corporation's 10 January 2022 decision is correct.

Law

[40] The circumstances when interest can be paid on backdated weekly compensation is governed by s 114 of the Act, the relevant part of which states:

(1) The Corporation is liable to pay interest on any payment of weekly compensation to which the claimant is entitled, if the Corporation has not made the payment within 1 month after the Corporation has received all information necessary to enable the Corporation to calculate and make the payment.

...

[41] The correct interpretation of this provision is settled by decisions of the Court of Appeal and High Court.

[42] The leading case is *Accident Compensation Corporation v Miller*³ where a claimant was initially paid compensation from 1974 for a workplace injury. Payment of compensation was suspended four years later in 1978 when medical and other information available to the Corporation suggested that the incapacity was caused by disease rather than a workplace injury. The Court of Appeal accepted that all the available medical evidence supported the Corporation's decision to suspend payments of weekly compensation. An Accident Compensation Appeal Authority decision 25 years later in 2003 concluded that the claimant's incapacity was due to a combination of disease and workplace injury. The result was that the claimant was entitled to weekly compensation which should have been paid continuously since 1974. The claimant was paid backdated compensation. The issue was from what date was interest payable under s 114?

[43] Applying well-established general principles of statutory interpretation, the Court of Appeal interpreted the text of s 114 in the light of its purposes and statutory context.⁴ One aspect of this approach to interpretation is that the starting point is the text, which should always be crosschecked against the statutory purpose or purposes. Subsequent cases have added the qualification that where the text is clear, Parliament's purpose cannot override the

³ *Accident Compensation Corporation v Miller* [2013] NZCA 141, [2013] 3 NZLR 312.

⁴ Mandated by s 5(1) of the Interpretation Act 1999 and the Supreme Court decision in *Commerce Commission v Fonterra Cooperative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767 at [22].

text to justify judicial interpretation that is inconsistent with, or stretches the text beyond breaking point.⁵

[44] The Court of Appeal surveyed relevant Select Committee Reports, Parliamentary Debates and other Parliamentary materials and found nothing to indicate Parliament's intention and purpose when enacting s 114 or its statutory predecessors. It determined the relevant statutory purposes comprised the dual purpose of compensating claimants for delays in processing their entitlements while at the same time seeking to deter the Corporation from unnecessary delay. Those twin purposes are not mutually exclusive.

[45] *Miller*⁶ confirmed the well-established position that interest will run from the first date on which it can be said that the Corporation holds "all information necessary". The focus is not on the date of review or appeal, or even the date of the accident,⁷ but rather on the date when it can be said that the Corporation is first in possession of all the necessary information to make the same decision as that eventually reached on review or appeal.⁸ This includes both the requisite medical and financial information.⁹ The Court noted that this interpretation "draws on the plain meaning of the section."¹⁰

[46] The Court also noted that its interpretation is consistent with the statutory context that includes administrative provisions emphasising the importance of provision of information to the Corporation:¹¹

It is also consistent with the statutory context. As was submitted to us by Mr Corkill, the 2001 Act contains numerous administrative provisions. These include a number of sections which emphasise the importance of provision of information to the Corporation. For example, s 55 imposes broad obligations on the claimant to assist in the establishment of cover and entitlements, including the responsibility to provide medical certificates, to undergo medical assessments, and to provide "any other relevant information that the Corporation requests". Likewise, s 72 provides that claimants who receive entitlements are subject to ongoing responsibilities to provide relevant information upon request.

⁵ For example, *Clearspan Property Assets Ltd v Spark New Zealand Trading Ltd* [2017] NZHC 277 at [54], [55].

⁶ *Accident Compensation Corporation v Miller*, above n 3, at [41].

⁷ It is clear from other references in the *Miller* judgment that other points in time when the Corporation may not necessarily have all necessary information include the point when determining whether there is cover and the point when determining eligibility and entitlement to compensation.

⁸ *Accident Compensation Corporation v Miller*, above n 3, at [41].

⁹ *Accident Compensation Corporation v Miller*, above n 3, at [44].

¹⁰ *Accident Compensation Corporation v Miller*, above n 3, at [41].

¹¹ *Accident Compensation Corporation v Miller*, above n 3, at [42].

[47] The Court then confirmed that several pieces of information are necessary to make or calculate a payment of interest under s 114.¹² Such information is generally required in situations where a claimant does not have cover and has never received weekly compensation, as well as in suspension situations.¹³ The necessary information includes:

- (a) that there had been incapacity due to a personal injury;
- (b) the personal injury was caused by an accident;
- (c) the date of the accident;
- (d) that the appellant was an earner during the relevant period; and
- (e) the appellant's relevant earnings during the period.

[48] *Miller* involved a factual situation where the original medical advice provided to the Corporation conclusively supported the suspension of compensation but later advice reached a different conclusion. In that situation the Corporation did not have “all information necessary” to calculate payment of interest¹⁴ because all medical evidence available to the Corporation did not support continued cover. Although in a suspension case the necessary financial information may be known (because weekly compensation will usually have been calculated and paid), the availability of financial information alone would not be sufficient.¹⁵

[49] A Corporation decision to suspend or cancel compensation that is later overturned could involve circumstances where the Corporation had “all information necessary” to calculate payment at the time the suspension decision was made.¹⁶ These will generally be situations where compensation has previously been paid, and it is likely (although not certain) that the Corporation will have all the necessary financial information on file.

¹² *Accident Compensation Corporation v Miller*, above n 3, at [43]-[44].

¹³ *Wilson v Accident Compensation Corporation* [2017] NZACC 125 at [102].

¹⁴ *Accident Compensation Corporation v Miller*, above n 3, at [47], [50], [55], [56].

¹⁵ *Accident Compensation Corporation v Miller*, above n 3, at [55].

¹⁶ *Accident Compensation Corporation v Miller*, above n 3, at [47], [48], [49], [54].

[50] There may be situations where interest has to be paid from the date coinciding with the start of the period of which the applicant is entitled to weekly compensation.¹⁷ However, the Corporation would need to have ascertained all of the financial information required to make this determination at a date prior to the start of the entitlement for weekly compensation.¹⁸ The Court in *Miller* set out a non-exhaustive list of 4 possible scenarios that could arise where suspension of compensation is overturned on appeal and when it could be said the Corporation had “all necessary information”.¹⁹ These scenarios do not apply to situations where a claimant is yet to obtain cover, has never received any weekly compensation, or has not applied for it.²⁰

[51] The test in s 114 for when interest is payable does not invoke considerations of fault by the Corporation other than in the particular way recognised in *Kearney* – that is, where there is a failure by the Corporation to ask the claimant for relevant information in a timely way. Generally, apart from the *Kearney* exception, considerations of who is “at fault” and a general concept of fairness do not form part of the test under s 114:²¹

[57] Similarly, we find the statement that whether or not interest is payable is dependent on considerations of fault to be unhelpful. Section 114 does not contain reference to any such test; rather, the test is simply whether “the Corporation has received all information necessary to enable the Corporation to calculate and make the payment”...

[52] This echoes the observation in an earlier case, *Jones v Accident Compensation Corporation* where the Court said:²²

However, interest is payable where the Corporation has received “all information necessary” and not when the Corporation could have received “all information necessary”. Issues of fairness simply do not affect whether the interest provision has been satisfied.

[53] The first date when the Corporation has all necessary medical, financial and other information necessary to make the payment of interest is a question of fact to be determined with reference to all of the relevant circumstances.²³ That requires factual findings as to the

¹⁷ *Accident Compensation Corporation v Miller*, above n 3, at [47]-[50].

¹⁸ *Accident Compensation Corporation v Miller*, above n 3, at [47]-[50].

¹⁹ *Accident Compensation Corporation v Miller*, above n 3, at [47]-[50].

²⁰ *Wire v Accident Compensation Corporation* [2017] NZACC 115 at [163].

²¹ *Accident Compensation Corporation v Miller*, above n 3, at [57].

²² *Jones v Accident Compensation Corporation* DC Auckland 196/08, 26 August 2008 at [43].

²³ *Accident Compensation Corporation v Miller*, above n 3, at [53].

dates the Corporation received and had a reasonable opportunity to assess any further necessary information.²⁴

[54] The key principle stemming from the earlier Court of Appeal decision in *Accident Compensation Corporation v Kearney*²⁵ is that the Corporation cannot rely on its own error in failing to ask in a timely way for information as a reason for declining to make interest payments. The Court held that it was implicit in the s 114 requirement for the Corporation to receive all necessary information that it would ask for it in a timely way and could not seek to benefit from its own wrong. On the facts in *Kearney* it was held that the Corporation had all “information necessary” to calculate and make the weekly compensation payment on 1 July 1992 (12 years prior to the entitlements being reinstated).²⁶ This was because Mr Kearney, prior to his entitlements being cancelled, had been receiving compensation payments and therefore the Corporation had the information necessary to calculate the weekly compensation payment for the entire period that Mr Kearney was entitled to backdated weekly compensation.²⁷

[55] Cases which are more closely comparable with Mr Cree’s circumstances include:

- (a) *Wardle v Accident Rehabilitation and Compensation Insurance Corporation*:²⁸ In *Wardle*, the appellant lodged a claim for cover in 1992. This claim was not accepted until 1999. After accepting cover, the Corporation requested Mr Wardle’s pre-accident earnings, which were received on 24 August 1999. The Court held that interest runs from one month after the financial information was received, namely 24 September 1999.
- (b) *Kirk v Accident Compensation Corporation* [2016] NZACC 313:²⁹ After a motorcycle accident on 18 December 1977 Mr Kirk initially received weekly compensation from the Corporation, but this ceased some time before

²⁴ *Accident Compensation Corporation v Miller*, above n 3, at [59], [61].

²⁵ *Accident Compensation Corporation v Kearney* [2010] NZCA 327.

²⁶ *Accident Compensation Corporation v Kearney*, above n 25.

²⁷ *Accident Compensation Corporation v Kearney*, above n 25.

²⁸ *Wardle v Accident Rehabilitation and Compensation Insurance Corporation* HC Wellington AP134/02, 18 October 2002.

²⁹ *Kirk v Accident Compensation Corporation* [2016] NZACC 313.

31 March 1978 when Mr Kirk returned to his preinjury employment as a sales assistant. In 2008, Mr Kirk sought treatment for his head injury and this eventually resulted in an investigation which concluded Mr Kirk had in fact been incapacitated from the time weekly compensation ceased. Weekly compensation was ultimately backdated for the period between 1978 and 2010. The Court considered Mr Kirk's entitlement to interest on this backdated weekly compensation and found that while the Corporation had all the medical information necessary on 30 June 2010, because it did not receive the necessary financial information until 26 August 2010, interest was payable from one month after that date. The case illustrates that medical evidence alone is not enough to be able to say that the Corporation has obtained all necessary information for the purposes of payment of interest under s 114.

Analysis

[56] The date from which interest is payable in Mr Cree's circumstances turns on the correct interpretation of the words "all information necessary" in the context of s 114(1) of the Act.

[57] The correct interpretation of s 114 has been well established for some time and the relevant principles are summarised in the section "Law" above. Interest runs 1 month from the first date on which it can be said that the Corporation holds "all information necessary". The focus is not on the date of review or appeal, or even the date of the accident, but rather on the date when it can be said that the Corporation is first in possession of all the necessary information to make the same decision as that eventually reached on review or appeal.³⁰ This includes both the requisite medical and financial information. Fault of the Corporation is not a relevant factor except in the narrow sense described in *Kearney*. The "all necessary information" date is not necessarily the same as the dates of establishing cover or entitlement to compensation.

[58] It is common ground that the liability under s 114 to pay interest is not confined to suspension cases. It applies generally, including in situations where a claimant is yet to obtain cover, has never received any weekly compensation, or has not applied for it. That is clear from a plain reading of the section.

³⁰ *Accident Compensation Corporation v Miller*, above n 3 at [41].

[59] The basis of Mr Cree's appeal is that:

- (a) The Corporation had all of the information necessary to calculate and make the payment on 23 May 2017 because this was the date when the Corporation had all of the medical information necessary to make the payment for weekly compensation.
- (b) The Court should adopt a purposive approach to interpreting s 114 because "a strict approach to what constitutes necessary information rewards poor decision making and encourages administrative inefficiency."
- (c) Mr Cree acknowledges that the Corporation requires the financial information to make and calculate payment but submits that this information was always available to the Corporation - it just did not ask for it.

[60] The argument for Mr Cree is that the "all information necessary" date in this case is 23 May 2017, the date the Corporation issued its decision accepting cover for a neck sprain caused by a car accident on 24 April 2015. Mr Cree's position is that the Corporation could and should have paid weekly compensation on this date, had it accepted Dr Grant Thompson's advice, outlined in a report dated 22 January 2017, that Mr Cree's pain might be caused by zygapophyseal joint trauma in the neck. This is the injury that was ultimately covered by the Corporation some four years later, following a review decision granting Mr Cree cover for a zygapophyseal joint injury. Accordingly, Mr Cree's position is that interest should accrue from one month after 23 May 2017.

[61] The argument for Mr Cree's is in effect that s 114 is to be interpreted as meaning the Corporation is liable to pay interest from one month after the Corporation could (or should) have accepted cover (i.e. prior to the date when cover was in fact granted).

[62] This is completely contrary to the well-established meaning of s 114.

[63] Section 114 of the Act requires the Corporation to have both the *medical* information and the *financial* information necessary to calculate and make the payment.³¹ The Corporation

³¹ *Accident Compensation Corporation v Miller*, above n 3.

received the details of Mr Cree's earnings on 6 September 2021. This is after Mr Cree applied for weekly compensation, after the grant of cover and after his incapacity had been assessed. It is only after cover and entitlement are determined that it becomes necessary for the Corporation to obtain Mr Cree's earnings-related information.

[64] The liability to pay interest does not begin from the date of a cover decision found years later to have been in error. That would require the Court to imply words into s 114 that are at odds with the plain meaning of the text of the provision as interpreted in *Miller* by reference to the statutory purposes and statutory context identified in *Miller*. If Parliament had intended interest to accrue from the time when a claimant is accepted as covered or at a time prior to when cover was in fact granted, then it would have said so.

[65] The statutory purposes advanced for Mr Cree are expressed in similar terms to those articulated by the Court of Appeal in *Miller*. But the submissions for Mr Cree otherwise overlook the textual meaning of s 114(1) and statutory context as identified in *Miller*. There are dual statutory purposes of compensating claimants for delays in processing their entitlements while at the same time seeking to deter the Corporation from unnecessary delay. The statutory purposes were consistent with the plain meaning of the text and the broader statutory context. Fault of the Corporation is not a relevant factor except in the narrow sense described in *Kearney*. The statutory purpose of deterring the Corporation from unnecessary delay is served by the implicit obligation recognised in *Kearney* that the Corporation would ask for information it needed in a timely way.

[66] Further, the Court of Appeal in *Miller* clearly recognised that "all necessary information" may not be available to the Corporation at the time when a cover decision is made or at other points in the decision-making process. The same must apply to the time when a claimant asserts that a decision ought to have been made.

[67] The text of s 114(2)(a) stating that interest is payable "from the date on which payment should have been made" does not assist the argument for Mr Cree. The reference to payment in subsection (2) is clearly referring to the payment of interest within the meaning of subsection (1) as interpreted by the Court of Appeal in *Miller*.

[68] In any event, in this case where cover and entitlement to weekly compensation was not established at the outset, I am not satisfied that the Corporation necessarily “should” have made a decision on 23 May 2017 granting cover for the zygapophyseal injury. It is by no means clear that the Corporation had all the necessary medical information on 22 January 2017 as suggested in submissions for Mr Cree. Mr Cree’s case involved a complicated assessment. The 22 January 2017 report merely indicated that Dr Thompson thought that Mr Cree had suffered from a zygapophyseal joint injury but that further diagnostic testing was required to confirm this. Further medical investigation occurred after 23 May 2017 and before the 2021 review decision. The 46-page review decision ultimately given on 29 March 2021 was favourable to Mr Cree in respect of one out of two claimed conditions. The decision describes a complex and nuanced medical history and numerous differing expert medical opinions.

[69] The balance of the submissions for Mr Cree were directed at dealing with the flow on effects if the primary submission – that the “all necessary information” date was 23 May 2017 – was accepted. That primary submission has been rejected but I nevertheless address the balance of the submissions to the extent necessary:

- (a) As *Miller* confirms, the phrase “all necessary information” does not mean information that enables the Corporation to progress decisions on cover and payment of weekly compensation, excluding information that the Corporation chooses not to obtain for reasons ultimately found to be in error on review or appeal.
- (b) The Corporation’s ability to rapidly access certain earnings-related information of claimants and held by the IRD under a Corporation/IRD information sharing agreement applies only to such information obtained by IRD after April 2019 when payday filing became mandatory for businesses. In Mr Cree’s case only some of this category of information could have been obtained by this method. Some of Mr Cree’s relevant information had to be obtained by request from the Corporation to IRD or former employer(s) and involved a slower process.
- (c) Financial information to make and calculate payment of interest was always available to the Corporation, it just did not ask for it. This fails to acknowledge

that weekly compensation does not automatically flow from the Corporation accepting cover for a personal injury. A claimant is only entitled to weekly compensation for loss of earnings where the claimant:³²

- [i] has an incapacity resulting from a personal injury for which he or she has cover; and
- [ii] was an earner immediately before his or her incapacity commenced.

As the Court held in *Kirk v Accident Compensation Corporation* it is entirely appropriate after the Corporation receives an application for weekly compensation for the Corporation to satisfy itself that the claimant is still incapacitated as a result of his covered injury, and that he has in fact been incapacitated from the point at which weekly compensation ceased.³³ Once cover was accepted on 8 April 2021, the Corporation then had to investigate Mr Cree's incapacity, including the correct date of incapacity.³⁴

- (d) Submissions for Mr Cree challenged the Corporation's practice of obtaining financial information at the end of the process. But it is entirely logical for the Corporation to work through each stage in the process to ensure that a claimant is entitled to weekly compensation before setting about obtaining the information that is required to calculate such a payment. This is consistent with the principle that the Corporation should only collect information if it is *necessary* for a lawful purpose connected with a function or an activity of the agency.³⁵ The Corporation has to first consider whether a claimant has cover for a personal injury prior to investigating a claimant's entitlements. If a claimant is not entitled to weekly compensation (ie the personal injury has not resulted in a period of incapacity) then it is not necessary for the Corporation to obtain earnings information.
- (e) There is no statutory basis in s 114 as interpreted in *Miller* to treat a claimant's earnings and bank account details as always available to the Corporation and not

³² Section, s 32(1).

³³ *Kirk v Accident Compensation Corporation* [2016] NZACC 48 at [16].

³⁴ Sections 100 and 103.

³⁵ Privacy Act 2020, s 22, information privacy principle 1.

“necessary to enable” payment of weekly compensation. It was not disputed that by 6 September 2021 the Corporation had received all necessary financial information and no issue was raised about the time of requesting this information after receipt of the claim for compensation dated 26 May 2021. Availability of Mr Cree’s bank account details is not an issue on the evidence.

[70] In Mr Cree’s case, the Corporation obtained the information that it needed in a timely way. The Corporation received from Mr Cree’s solicitors his application for weekly compensation in a letter dated 26 May 2021. This contains the statement:

I understand that Mr Cree has previously provided medical certificated in relation to his incapacity. His employer will have a record of his earnings for the 12 months prior to incapacity.

[71] The Corporation accepted that it had most of the necessary medical information at the time the application was made for weekly compensation on 26 May 2021. Over the following months, the Corporation investigated Mr Cree’s incapacity, including the correct dates of incapacity, in order to confirm entitlement to weekly compensation.

[72] The Corporation received an ACC18 medical certificate completed by Mr Cree’s General Practitioner on 25 August 2021 stating that Mr Cree was unfit to work from 22 April 2016. Mr Cree’s extended period of incapacity was accepted as the period from 22 April 2016 to 18 July 2021. There is no dispute about this period of incapacity and although there is no specific evidence explaining how the incapacity end date of 18 July 2021 was arrived at, I infer that the Corporation needed a reasonable period of time after 18 July 2021 to confirm that as the end date of incapacity.

[73] I am satisfied on the evidence from the Corporation that in Mr Cree’s case the Corporation acted in a reasonably timely way to request the necessary financial information. As a matter of practice, when a claimant applies for weekly compensation, the Corporation takes it that the claimant gives implied consent to obtain pre-incapacity earnings information. Express formal consent is not sought. For the years prior to April 2019 there is no reliable way for the Corporation to obtain a claimant’s earnings under the Corporation/IRD information sharing agreement. The Corporation obtains pre-April 2019 claimant earnings information by sending an ACC003 form earnings certificate to the claimant’s employer.

[74] In April 2019 pay day filings with the IRD became mandatory for employers. Under an information sharing agreement between the Corporation and IRD, from April 2019 the Corporation can obtain an electronic report from IRD giving a claimant's earnings information. The Corporation may access the IRD information for the purposes of confirming that a claimant is eligible to receive weekly compensation payments, to obtain claimant earnings information to calculate the amount of earnings-related compensation, and to obtain details of any Ministry of Social Development benefits received (to calculate abatement of compensation).

[75] On 6 September 2021, (approximately three months after the claim for weekly compensation had been lodged) the Corporation obtained Mr Cree's earnings information, including details of Ministry of Social Development benefit payments, from 21 March 2015 to 5 September 2021. It was not suggested in submissions for Mr Cree that the period of approximately 3 months between claim and receipt of the necessary financial information was unreasonable.

[76] In any event, although there is no specific evidence confirming the date when the Corporation requested the information from IRD, I infer that a mix of earnings information accessible only by IRD and electronically accessible by the Corporation was required and was probably not requested until after 7 July 2021 (when eligibility was established) or after 18 July 2021 (the incapacity end date). On that basis, the necessary financial information was probably requested after cover, incapacity and eligibility was confirmed and approximately six to eight weeks prior to receipt from IRD. I am satisfied that the Corporation asked for the necessary information in a reasonably timely way.

[77] On 9 November 2021, the Corporation made its decision on weekly compensation granting Mr Cree an entitlement to backdated weekly compensation for the period 22 April 2016 to 18 July 2021. I consider that this time frame was reasonable to allow the Corporation a reasonable opportunity to assess all the necessary information after the "all information date" of 6 September 2021.

[78] Even if 23 May 2017 were the date that the Corporation had all of the *medical* information necessary to make payment for weekly compensation, it did not receive the necessary financial information until 6 September 2021 when it received Mr Cree's earnings

information for the relevant period. Applying the test in *Miller* for the “all information necessary” date, the date that the Corporation received the “appellant’s relevant earnings” was 6 September 2021. The Corporation therefore correctly calculated that the date that interest should be backdated to is one month after 6 September 2021.

Conclusion

[79] The Corporation’s Decision dated 10 January 2022 and the Review Decision dated 11 July 2022 are both correct and there is no lawful basis for any additional payment of interest to Mr Cree.

Result

[80] The appeal is dismissed.

Costs

[81] Although Mr Cree is unsuccessful on appeal, I make no order for costs.



I C Carter
District Court Judge

Solicitors: Schmidt & Peart Law, Ellerslie, Auckland, for appellant
Meredith Connell, Auckland for respondent