

Dear Members,

## **INJURY ON DUTY AWARDS.**

Herewith is the latest information regarding the above that I have been able to formulate as a result of a seminar that I recently attended at Wakefield. I do hope that you find it beneficial to you. The Whittles Solicitors information is correct and up to date but I have to inform you that the firm have been taken over by Thompsons Solicitors now and any reference to Whittles should now read Thompsons.

The notes and information have been produced by Thompsons Solicitors and Clint Elliott, Deputy Chief Executive at NARPO.

F. Gregory,  
SECRETARY, Derbyshire Branch.

## **POLICE INJURY BENEFITS .INJURY AWARD RE-ASSESSMENT**

### **INTRODUCTION**

The legislation covering police injury awards appears to give the local Police Authority a duty to review those in receipt of injury awards from time to time. It does however not define the periods between reviews and thus allows a great deal of discretion to Police Authorities in the regularity and timing of such reviews.

Over recent years the Home Office has been very actively encouraging all Police Authorities to be more pro-active in their attitude to police injury award reviews in general and has issued specific advice about reviews at retirement ages. That is police retirement or maximum age limits and state pension age. You may be well aware of the advice in Home Office circular 46/2004 on this particular subject but it is only part of the pressure on Police Authorities in respect of injury awards.

Both the Police Federation and NARPO have obtained a series of legal advice on a wide range of issues surrounding injury awards and specifically about reviews of injury awards. This paper is based both on my own experience of police pension and injury benefit issues and takes into account my understanding of the advice received to date.

### **WHAT IS A RE-ASSESSMENT**

It is important to remember the basics when considering member's approach to any injury award assessment or review. The benefits associated with any injury award are determined by several factors; degree of disablement, length of service and average pensionable pay at time of retirement.

A key factor in deciding the benefits associated with an injury award is 'degree of disablement'. This can alter with time. It is however extremely important to remember that 'degree of disablement' in police injury benefit terms is defined as the loss of earning potential associated with the injury received on duty. It is not a straight measure of faculty loss but of the loss of potential earnings associated with the loss of faculty resultant from the injury on duty.

In any assessment or re-assessment of an injury award, the doctor appointed by the force, called the Selected Medical Practitioner (SMP) should be looking at the ability to work and how that is affected by the injury on duty. It is therefore important that members seek to present evidence to the doctor on this aspect not just 'that their condition is worse', although this could be important in any consideration of any potential job capability. In effect what the SMP is supposed to do is taking into consideration the member's skills, qualifications and experience and the loss of faculty associated with the injury on duty, identify a job the member is capable of doing and put a value to that job. The difference in the salary of this job (loss) when seen in relation to the appropriate comparator (appropriate police wage/ASHE) gives the degree of disablement. That is, the potential earning loss when expressed as a percentage of the comparator wage is the 'degree of disablement'.

It is also important to note that in our view, it is the member's right to have a face to face interview/examination with the SMP, whose responsibility it is to make a decision about 'degree of disablement' so that the member can make representations to the SMP about their individual case. Each case needs to be considered on its own individual merits by the SMP.

## **PREPARING FOR A REVIEW**

Members in receipt of an injury award should be aware that they could be subject to a review of that award at any time dependant on the attitude of their local Police Authority.

They should consider building up a portfolio of their experiences with the injury/illness, which forced their early retirement, with particular reference to its potential effect on job opportunities. This might include any medical records or reports about the injury/illness, records of any state benefits claimed in relation to it, results of any medical examination conducted in respect of such claims, any work done since retirement including the restrictions on that work resultant from the injury/illness, the level of earned income since retirement, any general physical or mental problem that restrict the member from obtaining or retaining employment.

In considering these aspects it is likely to be important, if the work done by members since retirement was restricted, say to part time or occasional work, because of the limiting factors of their disability, or within a certain radius of their home, because of difficulties with travel resultant from their condition. So far as other restrictions are concern, these may include the inability to walk long distances or to sit for long periods, no or limited ability to lift, an inability to drive for any length of time/distance, problems with sight or hearing or an inability to concentrate, no ability to remember facts or an inability to make even relatively simple decisions. These are not exhaustive reasons.

As this document has been at pains to point out the 'loss of faculty' is only part of the equation in any review process. The SMP should also be considering members individual skills,

qualifications and experience. It is therefore important that members themselves give some consideration to this aspect of any review.

Many forces are now using the members force records both in terms of their in-force sickness/medical record and any record of member's in-force training. The latter records are used to assist the SMP to establish a 'skills' base for the member. It is my view that members should ask for any information of this nature, which is to be provided to the SMP as part of that their review, to be provided to them before the review and in time for them to use it to properly prepare for that review.

Asking for these records has two main purposes. The first is to check that they refer to them, are correct and relevant in terms of current qualifications/skills. The second is to assist the member in considering their 'skills profile' and to consider themselves, how the restrictions imposed on them by the injury, impact on that skills profile from a job prospect point of view.

At some stage in the process the SMP should identify the 'job' he/she thinks the member is capable of doing. Members should try to ascertain exactly what job the SMP thinks them capable of doing so that the member can carefully consider whether he/she has both the skills and physical/mental capabilities to do that job. There is also an opportunity to research the salary applicable to that job as part of any proposed challenge to the SMP findings.

## **COGENT REASON**

The term 'cogent reason' used in the Home Office Circular is not defined. The Home Office will not be moved to define the term despite our efforts to get them to do so except that they appear to concede that it might be a cogent reason not to reduce some to Band 1 at 65 if the individual retired early in service and that the injury award is a very significant part of total income. This appears to be a concession that in some cases financial difficulties can be a cogent reason.

I have considered the term in both contexts in which it is used within the circular.

At age 60 unless there are cogent reasons the earnings capacity should be compared to the ASHE figure rather than the appropriate police wage. It could in my view be a cogent reason if the member's peer group, either on a rank or skill basis, whether police related or none police related skills, where in employment, earn above or well above the average earning figure. Perhaps the average working retired Chief Inspector or Superintendent can earn higher wages because of their managerial experience. Certain police skills may attract higher than average earnings for example road traffic accident reconstruction or firearms skills. Qualifications gained outside the police, degrees or financial services qualifications for example, may also attract higher salaries. Individuals will need to look at their own qualifications to be able to argue this point. It is important in arguing these circumstances as 'cogent reasons' that the condition resultant from the injury on duty prevents the member from using these skills to obtain employment.

At age 65 a different set of circumstances apply. The Home Office argument behind the circular is that at 65, whether injured/ill or not people stop working and take the state pension. So a different set of cogent reasons could apply.

As the Home Office appear to accept that in certain circumstance financial hardship applies as a cogent reason, it could be possible to make this argument in a wider range of circumstance. This will depend on individual personal circumstances.

It may also be relevant, if it is the case, that members were led to believe that they would not be reviewed again and have planned future finances accordingly.

It could also be a cogent reason that the member was likely to have worked or have had to work beyond 65. Evidence in support of this could include peer or family attitude to work beyond retirement age, the availability of work for those above retirement age and Government policy which is looking to people working to an older age or the possession of certain skills or qualification which would have enable the member to work beyond 65. Naturally the member would need to show that their condition resultant from the injury on duty has prevented them working, including working beyond 65.

I should point out that none of these reasons have been tested in law. Members should offer as many 'cogent reasons' they think applicable to their personal circumstances but only offer their 'cogent reasons' directly to the SMP at the time of a face to face review.

## **DURING/POST REVIEW**

It should be obvious from this paper that I am advocating a much more 'professional' approach to re-assessments on behalf of members. This includes preparing as well as is possible for the review but does not stop there. It is I believe a good idea for members to take a friend along to the review with them. They should notify the force of their intention to do so.

At the review the member should present his/her case with the assistance of the friend, if required. Notes on the review including the comments made by the SMP, in particular, any reference to any job it is thought the member is capable of doing, should be taken. This can be either during or immediately post the interview/examination.

Members should be informed by the force, in writing, the result of the review which can be subject to appeal. Notices of the outcome of reviews can be brief and it may be worthwhile if members are considering a challenge to the SMP decision to seek specific answers from the SMP to some of the key issues involved, if these are not already known or included in the notice, including what job the SMP thinks the member capable of doing, the salary assigned to that job and the specific reasoning behind denying any or all 'cogent reasons' offered by the member.

It should however be remembered that time limits involved in appeals are limited and generally strictly adhered to.

I hope this helps but should you require anything further or an explanation of any of the points raised please NARPO house.

Clint Elliott