



FREEDOM OF INFORMATION REQUEST

FOI Reference number: 03/2017

Date: 14 February 2017

Request:

1. Why are the NIPB insisting that a process that has already been scrutinised independently and deemed fit for purpose be changed?
2. Is the NIPB aware that it has no authority to instruct or ask the SMP to alter process or procedure and can you confirm this is your understanding also?
3. What training has the SMP and the Independent Medical Referee (IMR) received and who provided this?
4. What information have you received from the Home Office regarding Injury on Duty (IOD) assessment process?
5. Have you benchmarked/spoken with other UK policing boards about this process?
6. If so, how do other UK policing boards and SMP's assess disablement?
7. Can you explain the new process of disablement calculation?
8. Can you confirm that this new process is fit for purpose?
9. Can you confirm that this new process is compliant with the statutory pension regulations. That is that disablement equates to loss of earnings capacity?
10. Can you confirm the using the Annual Survey for Hours and Earnings (ASHE) is both legal and fit for purpose?
11. Did Blackwell Associates meet with all of the required criteria in the initial tender proposal when the NIPB awarded the contract to them?
12. Why was a representative from Edwards and co solicitors involved in the process to review the assessment method?

13. Does the policing board consider that Edwards and co are an independent stakeholder?
14. What has been the over all cost of IOD payments paid out in the last ten years?
15. What is the projected cost of maintaining current IOD payments for the next ten years?
16. Is there a budget for these payments or is the process financially open ended?

Answer

1. In July 2013, due to concerns around the efficacy of the legislation supporting the Injury on Duty (IOD) process, the Policing Board agreed to engage Senior Counsel to review the administrative process within the current statutory and policy framework. Mr David Scoffield QC was appointed to carry out the review. Mr Scoffield QC completed the review in November 2014 and his report was considered at the Board meeting on 4 December 2014. Members agreed to adopt the report's recommendations, including Recommendation 8 – to abandon the method of calculating percentage disablement using the ASHE survey in favour of a more basic approach based on the medical practitioner's best judgement of the impact of the duty injury on earning capacity. A copy of the full (redacted) report is available on the Board's website at <https://www.nipolicingboard.org.uk/sites/nipb/files/media-files/redacted-version-of-scoffield-report.pdf>
2. The Policing Board's Selected Medical Practitioner (SMP) must determine an individual's entitlement to an award in response to the questions referred to them, in line with the PSNI and PSNI Reserve (Injury Benefit) Regulations 2006 (the 2006 Regulations). The 2006 Regulations are silent on the method of determining degree of disablement and therefore as the administrator of the scheme the Policing Board has consulted on and produced an assessment method policy and guidance for medical practitioners acting on its behalf to use. Both documents are based on case law and Pensions Ombudsman rulings.
3. Training was provided to the Board's current SMPs on 27 September 2016 by a Board Official responsible for the administration of the scheme. The training comprised a half-day session providing guidance on the PSNI Ill Health Retirement process, the role and responsibilities of the Board's SMP and associated policies. Each SMP must be an Occupational Health Practitioner with a minimum of 2 years qualification (i.e. an Associate, Member or Fellow of the Faculty of Occupational Medicine (AFOM, MFOM or FFOM or EEA equivalent)). Training for Independent Medical Referees (IMR) is a matter for the Department of Justice, who is responsible for the appointment of IMRs.
4. The Policing Board has receives copies of Home Office circulars, guidance and correspondence issued to police services in England and Wales in

relation to the Injury on Duty (IOD) assessment process. However the Department of Justice is responsible for issuing circulars, guidance and correspondence specific to the Northern Ireland IOD assessment process.

5. Yes. Policing Board Officials working in this area keep informed of developments in this field.
6. The Policing Board received responses from 4 police services in England. A copy of the documents is attached at Appendix 1. Where redactions have been made this is to remove third party data in line with the Data Protection Act.
7. When assessing the effect of the duty/qualifying injury on the officer/former officer's earning capacity the Medical Practitioner is not being asked to measure how disabled the officer/former officer is i.e. the extent to which they can partially perform the ordinary duties of an officer.

The Medical Practitioner is instead to make a judgment on the extent to which the officer/former officer's disablement affects their earning capacity i.e. the consequences of the duty/qualifying injury for the officer/former officer's capacity to earn money. In order to do so, the Medical Practitioner should compare the situation with the injury present to a notional situation where it has not occurred i.e. a hypothetical person of the same age and sex without any injuries. The loss of earning capacity will then be the difference between these two situations.

As part of the assessment the Medical Practitioner should take into account the officer/former officer's medical condition and the level of their skill/experience. The Medical Practitioner should then determine which of the bandings best describes the officer/former officer's ability to work.

The Medical Practitioner should set out in the report and certificate whether the officer/former officer's loss of earning capacity is:

- **slight disablement;**
- **minor disablement;**
- **major disablement; or**
- **very severe disablement.**

8. Yes, the new assessment method is fit for purpose. Following completion of the Scofield Review the Policing Board progressed a consultation exercise regarding the new arrangements and their effectiveness. In essence this returns the Policing Board to the pre 2006 position (when the use of ASHE was introduced) of seeking the medical practitioner's judgement on the most appropriate banding.
9. Yes, the new assessment method complies with the 2006 Regulations. The degree of disablement is defined in the 2006 Regulations as the impact of the injury on duty on the individual's earning capacity. Mr Scofield QC clarified

that loss of earning capacity should not be confused with loss of earnings i.e. wages.

10. The use of ASHE has not been challenged in the courts and the Policing Board is therefore not able to confirm whether or not it is legal. In relation to whether it is fit for purpose I would refer you to Mr Scofield QC's comments in Chapter 4 (page 65 onwards) and in particular paragraph 4.55 where he concludes the ASHE assessment method was highly artificial and a broad judgment on banding is probably a fairer approach for cases within the margin of two bandings.

11. Yes

12. Edwards & Co. Solicitors were not involved in the process to review the Policing Board's draft assessment method policy.

13. See point 12.

14. Injury pensions are paid from the Police Service of Northern Ireland's budget. As at 23 November 2016 there were 2625 IOD awards in payment. The Policing Board holds the following information on the costs of IOD payments up to 30 November 2014:

| | PENSION¹ | GRATUITY² | TOTAL SPEND | NEW AWARDS³ |
|------------------------------|----------------------------|-----------------------------|--------------------|-------------------------------|
| 2007/08 | 14,408,371 | 709,254 | 15,117,626 | N/K |
| 2008/09 | 17,039,525 | 627,331 | 17,666,855 | N/K |
| 2009/10 | 16,209,273 | 349,869 | 16,559,142 | 56 |
| 2010/11 | 17,744,164 | 420,092 | 18,164,256 | 75 |
| 2011/12 | 20,152,920 | 447,430 | 20,600,350 | 64 |
| 2012/13 | 22,061,613 | 765,287 | 22,826,900 | 123 |
| 2013/14 | 24,431,862 | 673,318 | 25,105,180 | 108 |
| 2014/15 (to 30/11/14) | 16,712,943 | 352,321 | 17,065,263 | 58 |
| TOTAL | 148,760,670 | 4,344,902 | 153,105,572 | |

¹ Referred to as an IOD award this comprises an annual injury pension paid on a monthly basis.

² This is a one-off lump sum payment made to the claimant and is in addition to the injury pension.

³ These were new awards granted during the time period and would have accounted for total spend along with previous awards in payment.

15. The Policing Board does not hold this information. However we identified that the PSNI may hold this type of information. You can contact the PSNI Freedom of Information Team by post at the address below;

Freedom of Information Team
Corporate Development
Brooklyn
65 Knock Road
Belfast, BT56 6LE

Or by e-mail;

foi@psni.pnn.police.uk

If you would like to speak directly to someone in the PSNI FOI Team you can also call them on 028 9070 0164.

16. The Chief Constable is responsible for determining the policing budget and submitting the bid to the Policing Board for approval. There is a legislative responsibility to meet IOD award entitlements determined under the PSNI and PSNI Reserve (Injury Benefit) Regulations 2006.

If you have queries about this request or the decision, please contact the Board quoting the reference number above. If you are unhappy with the service you have received and wish to make a complaint or request a review you should write to the Board's Chief Executive at the following address:

Northern Ireland Policing Board
Waterside Tower
31 Clarendon Road
Clarendon Dock
Belfast BT1 3BG

email: foi@nipolicingboard.org.uk

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner. Generally, the Information Commissioner's Office cannot investigate or make a decision on a case unless you have exhausted the complaints procedure provided by the Board. The Information Commissioner can be contacted at:-

The Information Commissioner's Office – Northern Ireland
3rd Floor
14 Cromac Place
Ormeau Road
Belfast
BT7 2JB.

Telephone: - 0303 1231114
Email: - ni@ico.org.uk

Please be advised that Policing Board replies under Freedom of Information may be released into the public domain via our website @ www.nipolicingboard.org.uk.

Personal details in respect of your request have, where applicable, been removed to protect confidentiality.

[REDACTED]
From: [REDACTED]@cambs.pnn.police.uk>

Sent: 04 November 2015 16:52

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: URGENT QUERY: Assessment of injury benefits ~[NOT PROTECTIVELY MARKED]~

Our policy is very specific that it is down to the SMP to determine this, however he so chooses. However, the normal practice is for him to provide details of any limitations on functionality and we then provide various local jobs that the person could do with those limitations. He then does do a calculation based on the salaried provided compared to the earnings they would have had if they had remained in Force at whatever rank (no assumption of promotion in this comparator). The percentage loss then drives the banding.

In relation to the other query, given that in theory you could continue reviews until a person dies, I cannot see that your OH team can do other than keep the medical records they have at least until that point (and possibly later).

X Like Dr [REDACTED] our SMP requires a full medical history before he will make any decision – initial or review, and this seems to be because it is normal practice to have the full picture before making a decision.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

From: [REDACTED]@humberside.pnn.police.uk>
Sent: 05 November 2015 09:03
To: [REDACTED]
Subject: RE: URGENT QUERY: Assessment of injury benefits
Attachments: Sample Potential Earnings Report.doc; Recent Case Law - (Ill Health Injury Sickness Mgt) August 2015.doc

Hi [REDACTED] (For NI Policing Board use only)

I have been dealing with injury awards for many years and have seen systems come a go. The system that has stood the test of time in our force is as follows;

The Selected Medical Practitioner will assess the retired officer to determine if their condition as claimed is the result of an IOD.

If this is the case they will write to HR with details of their medical restrictions relating only to the qualifying injury and request potentially suitable employment possibilities and their earning to be supplied. This may be quite brief dependant upon the injury concerned.

Attached is a recent response given to the SMP with the calculations done for them and the job descriptions attached. (We often speak with colleagues in other forces re any recent jobs that they have found) As can be seen we use jobs internal and external to the service as many officers who leave go back to previous trades or elsewhere in the private sector.

The SMP then considers the jobs and either selects one or asks for further examples. He will indicate on the JDs why he thinks any jobs are not suitable bearing in mind the effects of the qualifying injury and the expectation that a potential employer must make reasonable adjustments.

The NAE figures can be used as shown in the attached update that I put to the NAMF in September. Police cases no 2. I would only use the NAE figures as supporting evidence as a general rule.

Hope that helps.

Kind Regards

[REDACTED]
[REDACTED]
[REDACTED]
Operations Delivery Team

HR Services

Tel: [REDACTED]

Tel (Direct Line) [REDACTED]

Mobile [REDACTED]

From: [REDACTED]@nipolicingboard.gsi.gov.uk]

Sent: 04 November 2015 16:22

To: [REDACTED]

From:
Sent:
To:

[REDACTED]
05 November 2015 09:18

@northumbria.pnn.police.uk>

[REDACTED]

Subject:

RE: URGENT QUERY: Assessment of injury benefits

Hello [REDACTED]

To reach the figure for degree of disablement we use a calculation and use a comparison of roles from the open job market. This will cover a sample of police staff roles from Forces across England and Wales as well as roles in the public/private sector.

We ask the SMP to detail in their interim report the effect of any qualifying injury on the functional capabilities of the pensioner, and also the effect of any other medical conditions which are not linked to an injury on duty so the difference can be compared, we ask the SMP if they think there is no difference then it is appropriate to assess degree of disablement as 0% and an earnings comparison is not necessary. If they do think there is a difference then we will look at civilian roles compatible with injured earnings and civilian roles compatible with uninjured earnings and compare whether there is any difference. We then put it to the SMP to consider whether the sample roles are appropriate and to calculate the degree of disablement using the following calculation:

$$\frac{\text{Uninjured Earnings Capacity} - \text{Injured Earnings Capacity}}{\text{Uninjured Earnings Capacity}} \times 100 = \% \text{ Degree of Disablement}$$

Uninjured Earnings Capacity

Uninjured Earning Capacity: taking into consideration the effects of medical conditions but *ignoring* the qualifying injury.

Injured Earning Capacity: taking into consideration the effects all of medical conditions have on functional capability and earning potential *including* the qualifying injury.

Hope this helps

Thank you

[REDACTED]
[REDACTED]
Human Resources Department, 2nd Floor, Forth Banks
[REDACTED]
[REDACTED]

<http://www.northumbria.police.uk>

[REDACTED]

From: [REDACTED]@gmp.police.uk
Sent: 09 November 2015 08:51
To: [REDACTED]
Subject: RE: URGENT QUERY: Assessment of injury benefits
Attachments: POLICE PENSIONS REGULATIONS Earnings assessment -blank template.doc

Hello [REDACTED]

We look at Police Staff roles within the Force and in the open Marketplace and provide an earnings assessment for the SMP to consider.

The earnings assessment is sent to the ex officer for comments prior to going to the SMP so that the SMP can take their comments in to consideration when making a decision on whether they could medically undertake the roles provided.

We do ask the SMP to review the roles together with the ex officers comments and if they feel that medically they would be unable to do the role to advise on why and what kind of role we should be looking at. If the SMP does not feel that they could do the role they provide advice and we look at different roles and provide these via the ex officer for comments.

The SMP then takes an average of the roles and then calculates the loss of earnings.

Please find a copy of the Earnings Assessment Form attached.

Hope the above is of assistance.

Kind regards

[REDACTED]

[REDACTED]

[REDACTED]

Greater Manchester Police
HR Branch
5th Floor, Force Headquarters.
c/o Openshaw Complex, Lawton Street, Openshaw, Manchester M11 2NS
Mobile [REDACTED]
Follow us on Twitter @gmpo

[REDACTED]