CHAPTER 1

INTRODUCTION, TERMS OF REFERENCE AND EXECUTIVE SUMMARY

Introduction

1.01 I have been instructed by the Crown Solicitor's Office, on behalf of the Northern Ireland Policing Board ('the Board'), to conduct a review of the present arrangements for the payment of ill-health pensions and injury on duty awards to former police officers.

1.02 When initially approached about this work, it was suggested to me that the nature of the review would be a 'health check' of the operation of the arrangements, with particular regard to their legality and procedural effectiveness. It soon became clear, however, that there was and is a considerable degree of contention and disenchantment on the part of a range of interested parties in relation to the operation of the present arrangements by the Board and other bodies involved; and that it was hoped that the review I have been asked to undertake would deal, in some way, with some of the concerns which had arisen.

1.03 To this end, the Board was keen that I should meet with a range of parties or 'stakeholders' who had an interest in the administration of the arrangements for the payment of ill-health pensions and injury on duty awards. I duly did so and found the contributions of those I met to be both interesting and of assistance.

1.04 It is important at the outset of this report, however, to understand clearly the nature of the present review and, in particular, the limitations of the exercise I have been asked to conduct. I have already sought to explain these in the course of consultation with interested parties where this was appropriate, or where I felt that expectations of the outcome of the process may be unrealistic.

1.05 I am a senior counsel practising in Northern Ireland in the field of public law. I am not a policing expert, a pensions expert, an expert in occupational health, nor even an expert in employment law. The nature of the task I have been set must accordingly be viewed in this light.

Primarily, the following report consists of legal advice to the Board on a number of questions or issues which have been raised with me. It concerns the nature and effect of the present statutory arrangements and how they can and should, in my view, be operated. This is essentially a matter of legal analysis.

1.06 Inevitably, an exercise of this kind will involve questions of interpretation and judgment. Where this may be so, rather than the mere giving of uncontentious legal advice, I have sought to make this plain in the interests of transparency. There are areas where the statutory scheme permits different approaches to be taken or where it might be viewed in different ways. Where that is so, I have sought to make suggestions where I feel this appropriate; but recognize that, ultimately, these issues are matters for the Board, or other relevant body, to determine for itself in the exercise of any relevant statutory function, subject ultimately to the oversight of the High Court in the exercise of its supervisory jurisdiction.

1.07 As appears below, the terms of reference which have been set for me also permit me, or on occasions may be thought to require me, to stray into areas which are properly matters of policy. This is particularly so because I have been asked to identify "limitations in the legislative framework and policy guidelines". Plainly, I am not a policymaker in this area, much less a legislator. It is not for me (nor, for that matter, for the Board) to re-write the law on the issues which are the subject of this review.

1.08 Accordingly, I have generally sought to confine comments on this aspect of my terms of reference to instances where the statutory scheme, or some policy approach on the part of a relevant public body, appears to me to be thwarting the existing statutory purposes[1]; or where the existing arrangements have given rise to widespread dissatisfaction or undue difficulties in their operation which ought obviously, in my view, to be addressed by some legislative or policy intervention. What use is made of any such comment on my part is a matter for others; but I am aware from consultation with representatives of the Department of Justice that it is continuing to keep the operation of the present arrangements under review and is open to dialogue, including with the Board, about further legislative development.

[1] Although recognizing, as discussed in further detail below, that discernment of the statutory purposes themselves may be a contentious issue.

Terms of reference

1.09 The terms of reference which were set for me and provided to parties interested in the review are set out at Appendix A to this report. They contain an introductory section which gives some background to injury on duty awards and identifies a number of the central issues which have emerged for consideration in the course of consultation with stakeholders (namely, the use of reviews and, in particular, their nature and effect where the former officer concerned attains the age of 65).

1.10 The operative part of the terms of reference is in the following terms:

> "In July 2013 the Board agreed to engage Senior Counsel to review the Board's existing administrative process within the current statutory and policy framework.
>
> Mr David Scoffield QC was appointed to carry out the review.
>
> The review will include:
>
> 1. Consultation with stakeholders;
>
> 2. An examination of the legislative landscape and regulatory policy framework for the administration of injury on duty awards, including any limitations;
>
> 3. Consideration of recent Pension Ombudsman and Medical Appeal Tribunal decisions;
>
> 4. Analysis of the processes and procedures followed by the Board in accordance with legislation and policy; and
>
> 5. Identification of any limitations in the legislative framework and policy guidelines."

1.11 In addition, my attention was drawn by the Northern Ireland Retired Police Officers' Association to a letter which had been sent from the Chief Executive of the Policing Board to Mr Jim Allister QC MLA, dated 12 November 2013, in which he indicated that I had been "authorized… to assist the Board in a *root and branch review* of how [injury on duty] applications, reviews and appeals should be administered". I do not understand this particular wording to represent any

extension of my terms of reference set out above but, rather, merely to represent a short-hand description of them (and within the limitations I have identified at paragraphs 1.04 to 1.08 above).

1.12 I expressly make clear, however, that my understanding of the Board's instructions to me is that I am free, entirely as I see fit, to make comment upon, including criticism of, any element of the arrangements or the Board's administration of them; and that I am to approach my task entirely independently.

The views of interested parties

1.13 I have listed the interested parties with whom I consulted in Appendix B to this report. Several of those consulted[2] provided detailed written representations, as well as meeting with me. I have found these extremely helpful.

1.14 I have not set out a comprehensive statement of the various representations made to me but refer throughout the body of this report to several of the points made by the various consultees. The following is an extremely brief summary of the nature of each of the bodies consulted and the general position adopted by each:

(a) **The staff of the Policing Board**. I had an opportunity to speak to a range of staff at the Policing Board, ranging from the Chief Executive, the Director of Policy and Head of the Police Administration Branch to staff involved in the day-to-day administration of the injury benefits schemes.

A central issue raised by them was the administrative, staffing and financial burden of the operation of the present system – particularly given the level of challenge to Board decisions through a variety of mechanisms[3] – which it is thought simply cannot be maintained. A related factor is that the Regulations are modelled on English provisions but not at all tailored for the specific issues raised by policing in Northern Ireland[4]. Staff are

[2] For instance, the Police Federation of Northern Ireland (PFNI), the Northern Ireland Retired Police Officers Association (NIRPOA), and the Disabled Police Officers' Association (DPOA).

[3] Various appeal routes; judicial review challenges; and complaints to the Pensions Ombudsman.

[4] So, for instance, in very round figures, in England and Wales where there are over 40 police forces, there may be around 100 cases *per* year (with 30-40 of those in the largest force, the Metropolitan Police Service); whereas in Northern Ireland there may be as many as 10-20 cases *per* week.

overwhelmed both by the volume of cases being dealt with and by the expectations of, and engagement[5] with, former officers involved in the process.

Two key issues which were identified as being highly contentious and on which advice would therefore be of assistance were (i) the precise role of the SMP in reviewing the initial injury where a review is held and (ii) the approach to officers in receipt of an injury on duty award who reach age 65.

In addition, concerns were indicated in relation to two important areas where it was thought that the Department could be of greater assistance than it is at present, namely (i) the provision of more detailed guidance as to whether, and if so how, reviews at compulsory retirement age or age 65 should be occur in light of the withdrawal of the previous guidance after the *Simpson* and *Slater* cases; and (ii) the encouragement of IMRs to provide implementation dates in cases with which they deal on appeal.

(b) **The members of the Policing Board** with whom I consulted were extremely interested in the issues raised in this review but were also unclear about what precisely the Board *members'* role was, given that the administration of injury benefits is generally dealt with on a case-by-case basis and by Board officials. A view was expressed that the Board members had never been presented with the central issues raised in this review in a comprehensive way for consideration (although it is clear that a number of them have fallen for consideration by the Board, particularly through its Human Resources Committee, in recent years in some fashion or other). Hopefully the provision of this report will provide an opportunity for this to occur insofar as Board members consider this is appropriate. Various aspects of the detail of the administration of the statutory scheme were discussed.

(c) **The Police Federation for Northern Ireland (PFNI)** represents serving and retired police officers in Northern Ireland. They attended the consultation meeting with me accompanied by a representative from Edwards & Company, a firm of solicitors which often

[5] This engagement being sometimes emotional or even aggressive or abusive; and often persistent. In this context, it is to be recalled that many officers have genuine concerns about their own financial position; many are frustrated by delays within the system, which they legitimately view as having reached an unacceptable level, or are seriously aggrieved at perceived unfairness in how they have been treated by the establishment generally; and many are, regrettably, suffering from mental health difficulties related to their injury on duty or other factors.

acts for the Federation or its members and which has a high degree of knowledge and experience of the injury benefit and IOD arrangements.

Although a variety of issues were raised by the Police Federation, in relation to several aspects of the system, the Federation was principally concerned with the issues of reviews and, especially, those conducted for former officers at age 65. The Federation felt that it was proper for reviews to be held and accepted that a 5 year interval was a 'decent benchmark' in terms of allowing time for any significant change in an officer's circumstances; but argued strongly that reviews should *not* be carried out automatically at age 65, nor should there be automatic 'zero-rating' or reduction to Band 1 (which produced the same practical result). This was thought to be especially unfair in relation to officers who had been told that their particular banding was "for life" (or words to that effect).

(d) **The Northern Ireland Retired Police Officers' Association (NIRPOA)** specifically represents retired police officers in Northern Ireland. It plainly has a keen interest in the matters which are the subject of this review concerning, as they do, former officers. There was a high degree of overlap between the concerns raised and points made to me on behalf of PFNI on the one hand and those made on behalf of NIRPOA. In addition to the issues of whether and how the review system ought to operate, the NIRPOA submissions also focused on an alleged lack of consistency in approach on the part of the Board and a suggestion that, whilst the Board was maintaining that it was *not* automatically zero-rating officers aged 65, its direction to the appointed SMPs nonetheless had this purpose and effect.

(e) **The Disabled Police Officers Association of Northern Ireland (DPOANI)** has around 150 members, I was told, who meet the Association's criteria for membership. Membership is open to both serving and retired officers who have sustained serious injuries which account for disablement of 35% or more or an industrial injury award of 20% or more. The Association's representations also focused on the issue of reviews. Their particular concerns related to (i) how often reviews should be conducted in general; (ii) whether there should be review of officers at age 65, which the Association contended amounted to age discrimination; and (iii) whether there should be reviews of those who had been told that their award was "for life" or words to that effect. The Association suggested that an officer should not be reviewed unless their injury had substantially altered and that there

should be an obligation on the Board to show this before the officer was called for review. The Association also provided me with the results of a survey of its members it had undertaken in February 2013 in relation to issues concerning injury on duty awards.

(f) **The Police Service of Northern Ireland** representatives with whom I met had a number of perspectives on the issues raised in this review. It was emphasized to me that the issue of IOD awards was a very significant financial issue for the police and that, in particular, there were difficulties with its lack of predictability, which hampered business planning. A lack of control on the part of the PSNI was also identified as a potential issue, since in other forces such pensions issues are delegated to the Chief Constable but in Northern Ireland these are dealt with by the Policing Board. Issues around the management of medical retirement generally were discussed; as were the arrangements for initial awards and reviews. The PSNI was critical of the appeals system and told me they were on record as having said it is not fit for purpose.

Again, the pressure on Human Resources staff by reason of the sheer amount of applications was mentioned as a concern; and the inter-relationship of the PSNI and the Board in relation to the administration of the scheme was discussed.

It was particularly helpful to have the input of Dr Crowther of the PSNI Occupational Health and Welfare Unit (OHW), who has considerable experience of police injuries of all kinds. He candidly expressed the view that it was difficult for a doctor to assess an issue such as earning capacity, since this is really an actuarial (rather than medical) question. He also expressed the view that it can be very difficult for an SMP to determine the factual question of whether the injury is a qualifying injury under the Regulations. He felt that the doctor's role should be limited to commenting on loss of function. As appears below, this was a theme echoed by the SMPs themselves in their consultation meeting.

It was also helpful to have the input of Ms Karen Todd, the Head of Police Pensions Branch, who again has considerable experience over several years in this area. Some of the general policy issues around the Regulations which were discussed included: the view that the current Regulations reward longer service where an officer is medically retired, whereas there is a strong case for saying that this is the wrong way round, *i.e.* that an officer whose service has been cut very short by injury should be treated more favourably; and a

potentially fundamental difficulty with the Regulations in that they do not permit an injured officer to continue to be employed by the police but with reasonable adjustments made to their work or working conditions to enable them to remain as police officers even though they may not be able to perform all of the ordinary functions of a police officer.

(g) The officials from **the Department of Justice (DOJ)** with whom I consulted were happy to discuss matters generally but seemed to me to be reluctant to either express candid views about the operation of the present system or any firm policy proposals for reform. I mean this observation as no form of criticism. As to the first issue, there are valid reasons why the Department, or certainly Departmental officials, may wish to avoid commentary on the exercise by the Board, which is independent of the Department, of its functions. One matter of which the Department was acutely aware, and emphasized, is that the Board is the decision-maker under the Regulations (subject to the referral of certain medical questions). In relation to the IMR appeal system, it was also suggested that the Department hosts this simply to ensure the independence of the IMRs from the Board and its appointed SMPs; but that the IMR system could just as easily be hosted by, for instance, the Department of Health, Public Safety and Social Services. As to the second issue, policy reform, I have no doubt that the Department would not wish to prejudge any consultation it might itself undertake on such matters at a later date and that it will also be aware that reform in this area could potentially be politically contentious. Possible reforms in line with amending legislation which might be brought in in England and Wales were discussed in general terms[6].

(h) **The Selected Medical Practitioners (SMPs)** were able to describe the operation of the system from their perspective, as the doctors to whom important questions under the statutory scheme are referred for consideration and determination. I formed the view that they were plainly conscientious and professional. However, they indicated that there were a number of areas where they felt that additional support and advice would be of assistance to them and/or where the legislative scheme was difficult to administer as an SMP. In particular, the SMPs felt that their task was, or had become, 'quasi-legal' in character and that greater training and guidance in relation to legal developments (such as

[6] And this is an issue I return to in further detail in Chapter 13.

new case-law which was relevant) would be of benefit to them[7]. A strong view was expressed that the whole process of actually calculating awards is foreign to the SMPs acting, as they are, as clinicians.

On the medical side, one practical and discrete complaint the SMPs had is that the histories provided to them in hearing loss cases is often vague and of little value; as are those where the injury is a very old one in a retrospective claim. This was used as an illustration of the practical difficulty in assessing, for instance, precisely when or how the injury occurred and[8] what the officer's condition was at the time of retirement. The view was also expressed that it is often an extremely difficult judgment to make as to whether or not a condition is permanent.

The SMPs also indicated that they would appreciate clear guidance on the issue which has come to be termed 'revisiting causation' and whether the recent Pension Ombudsman cases mean that it is not possible to look at the issue of apportionment in reviews.

The high number of applications and pressure on PBNI staff and resources

1.15 I have recently been provided with some additional information from the Board about the staff pressures mentioned in paragraph 1.14(a) above. In particular, I have been furnished with some figures which show the extent of the level of IOD applications in Northern Ireland as compared with police forces in England and Wales. The statistics available suggest that most police forces in England and Wales have fewer than 10 IOD applications *per* year. By far the highest figure was for the Metropolitan Police which, with well over 30,000 officers, has had an average of 22 IOD applications *per* year in recent years. By contrast, the PSNI, with less than 7,000 officers, has had between 780 to 1040 IOD applications *per* year in recent years[9]. The difference in these numbers is staggering.

[7] That is not to say that they were not appreciative of the existing mechanisms for this – particularly SMP training provided nationally by the National Police Improvement Authority – which they considered extremely valuable; as well as the regular meetings they have with the Board, at which I understand they are provided with copies of relevant cases.

[8] Even if it was clear how the injury was caused.

[9] With well over 90% of those processed relating to hearing loss.

1.16 There are three principal results of this. Firstly, and obviously, the injury awards system in Northern Ireland costs much more than it does in other parts of the United Kingdom[10]. Secondly, there is very much greater pressure on the PBNI staff who administer the scheme, and the clinicians acting as SMPs, than one might usually expect. And, thirdly, any flaw in the operation of the scheme is magnified to a much greater degree than will be evident in the application of equivalent Regulations elsewhere in the United Kingdom, where relatively few cases are involved.

1.17 In relation to the second of these factors, the current burden of dealing with IOD applications, particularly retrospective applications and reviews, has reached a critical position as far as the Police Administration Branch of the Board is concerned, with some PAB staff themselves being affected by work-related illness as a result[11]. There is a small cohort of staff within PAB to deal with an increasingly unrealistic workload[12].

1.18 I am aware, for instance, that concerns about the resourcing of PAB to meet present and future demand was raised in correspondence in late May 2014 from the Chief Executive of the Board to the Director of Safer Communities within the Department. The correspondence indicated that, on the basis of current demand and resources, an applicant may have to wait a number of years to have an application processed. This is obviously not acceptable.

1.19 The correspondence also set out some figures to illustrate the difficulties. In the last financial year, the PAB processed 325 cases. However, it held approximately 500 applications and 160 appeal cases in a queue to be processed. In addition there are approximately 500 cases awaiting review. Over the past six months, the Board had received an average of 15 new cases *per* week, equating to approximately 750 applications *per* year. Although the Board had increased its resources in the Branch, the Chief Executive was able to indicate frankly that it will remain the case that the Board will receive more IOD applications than it could process. These difficulties are only likely to increase if further potential budget cuts are brought into effect.

[10] Both to administer and also to fund. There was no information available from the Metropolitan Police as to how many IOD awards they presently have in payment but no other police force in England and Wales in respect of whom such information was available had more than 650 IOD awards. By contrast, the PSNI has over 2,300 in payment, with that likely set to rise significantly with the high number of applications in recent times.

[11] Indeed, Dr Crowther, the Board's Chief Medical Adviser, has indicated that "the current difficulties with the administration of police pensions are well known to management and this has been impacting on the well-being of several members of the admin team".

Executive summary

1.20 Throughout this report, and particularly in Chapter 14, I have set out some more specific thoughts as to how reform of the present system might be taken forward; and also, assuming that no such reform occurs or that it takes a considerable period of time, more detailed recommendations about how the Board should be approaching its functions under the scheme as it currently stands. In this summary, I have identified only some very general recommendations on each of these themes. The complexity of the issues at hand is perhaps evident from the length of this report, running to some 300 or so pages. The following synopsis is no substitute for consideration of some of the more detailed reasoning contained elsewhere in this report. However, I hope it is of assistance in providing a high-level overview of my conclusions on some of the key issues.

1.21 My terms of reference encouraged me to identify any limitations in the legislative framework and policy guidelines. In my view, there are four severe limitations within the present statutory scheme, particularly as it relates to former officers, which have given rise to some of the difficulties which directly prompted this review. The fourth of these is really a lacuna within the statutory scheme, which I find difficult to understand.

1.22 In addition, I have identified a significant limitation in the policy guidance available to those operating the scheme; and a further practical limitation which is hindering the administration of the scheme by the Board, exacerbating the inherent difficulties already present.

1.23 The **first** limitation is the extremely cumbersome decision-making process imposed by the statutory scheme, which splits issues into medical questions and non-medical questions, each with separate decision-making processes and appeal routes. Such a process builds into the system a significantly increased risk of delay, confusion and/or conflict between the various limbs administering the scheme. This system seems to me to be unduly complicated. It can operate extremely inefficiently, particularly when one has regard to the opportunity for different appeals of different issues at different times and the option of referring matters back to either medical authority for further consideration. This can give rise to an almost interminable process to reach a final decision in a contested case, at which stage other available routes of challenge also potentially come into play. It is no wonder that both officers and those administering the scheme feel over-burdened by the process when, certainly in contentious cases, it can seem never-ending.

1.24 The difficulties are particularly exacerbated, however, by the fact that the dichotomy between medical questions and non-medical questions seems to me to be poorly drawn. The present system sees SMPs and IMRs having to grapple with legal issues, factual disputes and essentially accountancy assessments, which are plainly not issues of medical judgment. On the other hand, the determination of the date when an officer became permanently disabled, which does seem to me to be an exercise of medical judgment, is left to the Board.

1.25 I recommend that there be a wholesale reconsideration of the way in which IOD award decisions are made. This would plainly need legislative amendment and would have to be taken forward by the Department, after consultation with relevant parties. However, it seems to me that there should be a body with sufficient expertise to deal with all aspects of an application (or review) at the one time, whose decision would then be subject to appeal on one occasion only, whatever the nature of the appeal.

1.26 The **second** major limitation is the failure of the legislation to grapple expressly with the nature and purpose of police officer's injury awards and, in particular, whether their character is primarily an award for life in compensation for an injury sustained *or* more in the nature of a temporary facility to off-set a loss of earnings up to the date when the officer would have been expected to retire. The running sore which the issue of age 65 reviews presently represents is a direct consequence of an ambiguity within the appropriate Regulations as to this issue. Attempts have been made to address this in the draft proposed Regulations which are currently under consideration in England and Wales and which are discussed in further detail in Chapter 13.

1.27 For the moment, the *Simpson* judgment appears to resolve this question clearly in favour of the former interpretation mentioned in paragraph 1.26 above; but there is also support within the Regulations for the converse. The cost to the public purse of the former, more generous type of system is likely to be considerably greater than the latter. It might well be that this is what the Department (and the Executive and Northern Ireland Assembly) wish to provide; but it seems to me that this is an important policy question which it is for elected representatives to determine on its merits, rather than a position which should have been reached on the basis of judicial interpretation of provisions which do not appear to have expressly addressed this issue, much less in the particular context of Northern Ireland policing. This is an issue which should be grappled with head-on in my view by those ultimately responsible for the allocation of public funds for these purposes.

1.28 In the absence of reform expressly addressing (in the legislation itself) how these issues should be dealt with, and therefore on the basis of the statutory scheme and the law as it stands at the moment, my conclusions on the key issues of contention between the Board and those representing former officers which gave rise to this review are as follows:

(a) The Board is required to reconsider a pensioner's degree of disablement at suitable intervals. On the basis of the present Regulations, any such reconsideration requires a reference to the SMP to consider the matter. The determination of what is a suitable interval should, in the first instance, be guided by medical advice provided by the SMP (or IMR, as the case may be). There should be a move away from automatic review for all cases at any fixed interval set in policy.

(b) It ought to remain open to an officer to request a review himself[13] at any time; and the Board should also retain the right to initiate a review at any time if information comes to its attention identifying an apparent relevant change in circumstances.

(c) More limited legislative amendment to that outlined in paragraphs 1.26 to 1.27 above should be considered more urgently to permit a review to be dealt with, at least in the first instance, on the basis of medical evidence provided *without* a reference to an SMP (for example, by the officer's general practitioner or other appropriate clinician). This would avoid the costly and cumbersome process of involving an SMP in cases where the review could adequately be dealt with in a more summary fashion.

(d) Unless and until there is a material legislative amendment or the *Simpson* judgment is held (by a superior court or a competent court in Northern Ireland) to be incorrect or inapplicable, there should be no automatic reviews of officers at age 65 or other compulsory retirement age; nor should any such officer's banding be reduced on the basis of a calculation taking into account that, had he not been injured, he would in any event have ceased to be a police officer.

(e) Those officers who were told in clear terms that they would not be subject to review, or words to that effect, should not be further reviewed in the absence of a request from them

[13] I should say that, for convenience, I have consistently referred to police officers (and SMPs/IMRs) as males in this report, rather than using a formulation such as 'he or she'; but any such reference should obviously be taken to include females also, as appropriate.

or some compelling reason why a review is considered appropriate (such a reason not to include merely their attainment of a particular age). SMPs and IMRs should not be precluded in future from designating a case as one for no further review but this should occur only very rarely and guidance should be formulated for them as to when this may be appropriate.

1.29 In light of these conclusions, my recommendations in relation to the currently suspended reviews or appeals, or reviews which took place shortly before the suspension, are as follows:

(i) Any suspended reviews which were prompted merely by the officer's attainment of age 65 or other compulsory retirement age should be abandoned.

(ii) Any suspended reviews which were prompted merely by the 5-yearly review policy should also be abandoned. In the absence of a present culture of the SMP or IMR recommending a time for further review in their report, it may be appropriate to carry out a review in such cases, simply as a matter of checking the present position and to enable medical advice on when further review might be appropriate to be provided. However, in order to alleviate the current pressure on the system, this category of review should not be progressed at present until some legislative amendment is made, or further policy guidance issued, to simplify and speed up the review process.

(iii) Where an officer has had his banding reduced on review as a result merely of his attainment of a particular age, that is to say in a *Simpson*-type case, whether that is subject to appeal or not, this should be looked at again. The appropriate mechanism for doing so is discussed in further detail in Chapter 9. It may be that the Office of the Pensions Ombudsman or an application for judicial review could be used as an appropriate mechanism for referring these cases back to an SMP for further consideration, since without some formal legal intervention the certificate and report provided by the SMP on the review continues to have legal effect and is 'final' under the terms of the Regulations. Again, ideally, such a referral back should not occur until some legislative amendment is made, or further policy guidance issued, to simplify and speed up the review process going forward.

1.30 The **third** major limitation in the statutory scheme is the absence of any time limit on when retrospective IOD applications can be made. This means that it is possible for those administering the scheme to be flooded with applications from former officers in relation to events which occurred many years ago and which can be, accordingly, extremely difficult to assess. It is a quite remarkable feature of the scheme that applications can be made retrospectively with no limitation at all. I note that there is a proposal in the present draft Regulations under discussion in England and Wales for such a time limit to be introduced. I recommend that a time limit[14] be introduced restricting the ability of former officers to make applications many years after both the relevant events and when the permanent disablement is said to have arisen.

1.31 The **fourth** limitation I mentioned in paragraph 1.21 above, the lacuna, arises as follows. Regulation 22 of the 2006 Regulations reflects a principle against double recovery, whereby damages or compensation received by an officer in respect of an injury are subtracted from certain awards payable to him under the Regulations as a result of that injury. Strangely, although this is the case where a disability gratuity is payable under regulation 11, it is *not* presently the case where a police officer's injury award (consisting of a gratuity and injury pension) is payable under regulation 10.

1.32 In certain circumstances a police officer, or former police officer, in Northern Ireland may bring a civil claim for compensation arising out of an injury he has sustained in the execution of his duty[15]. The most common example – and by far the most common type of IOD claim – relates to hearing loss which service in the police has either caused or to which it has contributed. Under the Regulations as they presently stand, the officer could be paid a significant sum from public funds in compensation for sustaining this injury in satisfaction of his legal claim, including an element for loss of earnings or loss of earning capacity, and then proceed to make a claim for an IOD award under the 2006 Regulations in respect of exactly the same injury[16]. This effectively results in the

[14] Not necessarily the same as that proposed in England – that is a matter for consultation and discussion.

[15] This may be against the Chief Constable or some other party who has in some way caused or contributed to the injury in breach of some duty owed to the plaintiff officer.

[16] This is a matter which would no doubt feature in any political debate, such as is proposed in paragraph 1.27 above, about whether the present scheme is overly generous. Few would seriously dispute that a police officer, or retired officer, is entitled to be compensated where he has been injured as a result of negligence on the part of his employer; nor that the public purse should compensate an officer where he is injured in the execution of his duty, without his own default, in circumstances where he can no longer continue in police employment and no-one is liable to compensate him under the ordinary rules of civil liability. However, where there are officers – and perhaps a considerable number of officers – who have voluntarily retired with a generous severance package under the Patten scheme, and who have been compensated though an action

officer being compensated twice in respect of the same injury in a way which is not permissible where he would be entitled to a disablement gratuity but, on the current wording of the Regulations, is permissible where he seeks an injury award (including a gratuity and injury pension). It seems highly unusual that the Regulations would prohibit this in some circumstances but permit it in others; and it seems to me difficult to justify. I would accordingly recommend that the legislation be amended to prohibit such double recovery in respect of regulation 10 awards also. Further discussion of this is contained in Chapter 12.

1.33 The **fifth** major limitation I have identified is the present state of policy guidance in Northern Ireland for those administering the ill-health retirement and IOD schemes. At one and the same time there is an absence of relevant guidance at the moment in the key area of contention, namely the approach to reviews at compulsory retirement age or state pension age, following the withdrawal of such guidance in the light of the *Simpson* and *Slater* litigation; and also a plethora of potentially relevant policy guidance on other aspects of the system, not all of which is consistent or up-to-date, issued by a range of bodies throughout the UK.

1.34 It seems to me that one authoritative Northern Ireland specific document should be issued, agreed at least between the Board and the Department (but preferably also with the staff side), to be used as the basis for the Board and medical authorities operating the scheme. Ideally, this would occur after any legislative amendment of the scheme, whether major or more limited; but, in the absence of such amendment, clear and appropriate policy guidance may also assist to streamline the operation of the system in the meantime.

1.35 I also recommend that, in the course of such a further review of Northern Ireland specific policy guidance in this area, serious consideration should be given to abandoning the currently recommended method of calculating percentage disablement, including detailed reliance on the ASHE survey and comparison with the officer's notional uninjured police salary, in favour of a much more basic approach, whereby the relevant medical authority would simply make a judgment in the round as to the severity of the impact of the duty injury on the officer's earning capacity, so as to select the officer's appropriate band without the need to calculate a specific percentage disablement figure.

---

against the Chief Constable for hearing loss, there is an important debate to be had as to whether it is an appropriate use of public funds to further compensate them for the same injury on the basis that it permanently disabled them from continuing in police employment.

1.36 The **sixth** major limitation I would identify with the operation of the injury awards system – which is not, in fact, a limitation in either the legislative framework or policy guidelines – is the familiar issue of resources. I have referred at paragraphs 1.14(a) and 1.15 above to the pressure the Board is under at the moment in terms of coping with the sheer weight of applications, reviews and appeals and the related enquiries and correspondence, which has become intolerable.

1.37 Dr Crowther has expressed the view that, "… ultimately the current pressures on the staff in pensions admin [in the Police Administration Branch of the Board] will only be dealt with when the process is clearly mapped, supported with appropriate IT, staff and management at all levels commensurate with the legal obligations in the Police Pension Regulations". I wholly endorse this sentiment. A review of policy guidance as referred to immediately above should hopefully assist with the clear 'mapping' of the process; and the other steps recommended within this report will, I hope, if implemented, ultimately result in a more easily shouldered burden for NIPB staff[17] administering the ill-health retirement and injury benefits schemes.

1.38 However, at least in the short to medium term, it seems to me that there is an urgent need for additional staff support in this area. I am all too aware that there is a very challenging budgetary position within the Board at the moment, as with many other areas of public service and administration, and that there are many competing priorities of which I am completely unaware. It is also obviously not my function to advise the Board as to how to direct its limited resources; however, I have been asked to identify limitations with the present operation of the system and this seems to me clearly to be one such limitation.

1.39 Moreover, the difficulties which NIPB staff have processing and dealing with applications, reviews and appeals has a knock-on effect, leading to dissatisfaction on the part of the officers concerned, further complaint, additional pressure and loss of morale on the part of the Board staff and therefore a spiral of the problems. Relatively modest additional funding for staff in PAB may in fact have a significant effect in reducing some of these difficulties; and, conversely, even relatively modest budget cuts may have a significant effect in increasing them. I am conscious that this is a matter already under discussion within Board management.

1.40 The question of resources is a matter which factors into the discussion of whether the administration of injury on duty awards for former officers should remain with the Board at all or

[17] And, for that matter, other stakeholders.

whether it might more appropriately be dealt with by the Chief Constable. This is a question which I believe warrants serious consideration, which I touch upon in Chapter 12 of this report.

1.41 In summary, the circumstances giving rise to the review which I have been asked to undertake, and the broad limitations I have identified above in the operation of the present statutory scheme, have led me to the conclusion that the arrangements are buckling under their own weight in Northern Ireland. This is largely because of the massive number of applications in Northern Ireland, which in turn arises from the peculiar nature of policing in this jurisdiction over many years, but which has resulted in the Board being unable to cope with the burden of administering the system. Given that successful applications must be kept under review pursuant to regulation 35, and that unsuccessful applications tend to be the subject of challenge, leading to reconsiderations and various levels of appeal, it is difficult for the Board to ever really 'clear' a case from its workload permanently. Consequently, the workload simply continues to build.

1.42 The difficulties with the legislation itself, and the lack of clear policy guidance to those administering it (which it must be admitted were hugely exacerbated by the litigation in England and Wales in recent years which has thrown the operation of the review system into some disarray), have multiplied this problem. Whilst the huge number of applications in Northern Ireland may be able to be dealt with if the procedure was straightforward and quick and easy to administer, and whilst the problems with the scheme and lack of clear policy guidance may have been able to have been overcome if the number of applications was very small[18], the combination of these factors has resulted in a critical situation.

1.43 I accordingly recommend that steps are taken, along the lines suggested for consideration above, to ameloriate the situation as expeditiously as possible – in the interests of both the former officers concerned and those administering the scheme[19]. There are some immediate actions recommended at paragraph 1.29 for the Board. However, the burden of improving the system more generally now seems to me to really rest with the Department, as the body ultimately responsible for the Regulations and their amendment, for the issue of any central guidance in Northern Ireland relating to the Regulations, and indeed for the funding of the injury benefits scheme. In the first instance, however, I commend this report to the Board for its consideration.

[18] As elsewhere in the United Kingdom.

[19] Principally the Board staff and the SMPs but also the Departmental officials dealing with appeals and their appointed IMRs.

CHAPTER 14

CONCLUSION AND RECOMMENDATIONS

14.01 As I stated in the opening Chapter of this report[20], it is not for me to set policy in the area of police injury benefits nor, in fact, was that the task which was set for me. I was asked, however, to identify shortcomings in the present arrangements, which necessarily includes some consideration of how any shortcomings may be addressed.

14.02 As with the Executive Summary set out in Chapter 1, the summary of conclusions and recommendations set out below is not a substitute for the more detailed discussion of the various issues touched upon in the preceding chapters of this report.

14.03 The following conclusions and recommendations are provided to the Board for its consideration, in the expectation that it will review and reflect upon them and reach its own conclusion on which, if any, should be taken forward. In many instances, where it is determined that a particular recommendation should be taken forward, this will simply be the start of the process, which will involve consultation and engagement with other stakeholders. Of course, responsibility for any legislative change ultimately lies with the Department, subject to the oversight of the Executive and Assembly.

Consideration of major reform (long term)

14.04 I would not go as far as to say that the present arrangements are not fit for purpose; but they are certainly very far from satisfactory. As I have already commented, the shortcomings in the present Regulations, both substantive and procedural, would not be a cause for really significant concern were it not for the huge number of IOD applications made and IOD awards payable in Northern Ireland, arising out of the particular nature of policing in this jurisdiction over the period of the Troubles. It is principally this factor, along with the obligation to keep awards under review under regulation 35 of the 2006 Regulations, which has led to the present situation in which the administration of the system is crippled.

[20] See, for instance, paragraph 1.07.

14.05 Hopefully these pressures will ease with time, as policing in Northern Ireland continues to normalize. However, for the foreseeable future the Board and the Department are presently left with the prospect of administering a scheme which does not, and has not in my view, served either the officers concerned nor the authorities administering the scheme well, at least over the last number of years. The scheme of the regulations appears to have been devised several decades ago in the context of England and Wales and there has never been a truly Northern Ireland specific scheme, tailored to our own needs and context.

14.06 I would accordingly recommend that consideration be given to major reform of the 2006 Regulations and their replacement with a much more simple scheme, perhaps along the lines of a tariff scheme with minimal requirements for review (such as the Armed Forces Compensation Scheme). A new scheme of this nature would be both easier to administer and would promote certainty and clarity for injury award recipients, who would no longer live with the constant prospect of reviews which might exacerbate their injury (in the case of PTSD) or radically alter the financial position on the basis of which they had made life plans. This certainty and clarity would also give budget predictability to the paying parties, who would be also be freed from the vagaries of the current system with endless reviews.

Recommendation 1: That the Board and Department, in consultation with other relevant stakeholders, consider major reform of the injury award system and replace it with a simpler scheme.

Recommendations for legislative reform broadly within the present statutory framework (medium term)

14.07 In the absence of a completely new legislative scheme, I still consider that the existing arrangements require substantial overhaul. That is to say, if the decision is taken to retain a scheme broadly in accordance with the current arrangements, there are a number of significant flaws in the scheme which, in my view, ought to be rectified. Some of these issues are addressed, to a greater or lesser degree, in the current draft of Regulations which are being considered for introduction in the near future.

14.08 The first of these flaws is the failure of the legislation to grapple expressly with the nature and purpose of police officer's injury awards and, in particular, whether their character is primarily

an award for life in compensation for an injury sustained *or* more in the nature of a temporary facility to off-set a loss of earnings up to the date when the officer would have been expected to retire. As I have noted in the course of this report, the *Simpson* judgment appears to resolve this question clearly in favour of the former interpretation, although this is at odds with how the Home Office and Department (and, accordingly, the Board) saw the scheme for some time. New Regulations should deal expressly with how, if at all, there is to be a difference between awards payable to those respectively over and under CRA and SPA, this being a policy issue as to the type of provision the scheme is designed to provide.

14.09 In addition, any amendment to the Regulations in this regard would require to specify clearly the extent (if at all) to which it is retrospective. My recommendation is that it should be prospective only; that is to say, if it affects the entitlement of officers presently in receipt of IODs at all, their entitlement should only be affected from a date after the introduction of the new regulations.

Recommendation 2: New Regulations should deal expressly and unambiguously with how the injury awards scheme is intended to apply to those reaching compulsory retirement age and/or state pension age.

14.10 The cumbersome decision-making process imposed by the statutory scheme, which splits issues into medical questions and non-medical questions, each with separate decision-making processes and appeal routes, ought to be radically simplified. Such a process builds into the system a significantly increased risk of delay, confusion and/or conflict between the various limbs administering the scheme and seems to me to be unduly complicated.

14.11 The difficulties are particularly exacerbated by the fact that the dichotomy between medical questions and non-medical questions seems to me to be poorly drawn. As pointed out by Latham J in *Ex parte Yates* some 15 years ago[21], this is an unsatisfactory approach to decision-making. It sees SMPs and IMRs having to grapple with legal issues, factual disputes and essentially accountancy assessments, which are plainly not issues of medical judgment. On the other hand, the determination of the date when an officer became permanently disabled, which does seem to me to be an exercise of medical judgment, on the wording of the present Regulations, is left to the Board.

[21] See the discussion of this case at paragraphs 7.74 to 7.78 above.

14.12 It is a matter for the Department how a new decision-making process could be streamlined. However, I recommend that there be a wholesale reconsideration of the way in which IOD award decisions are made. For my own part, I would favour the use of one body with sufficient expertise to deal with all aspects of an application (or review) at the one time, whose decision would then be subject to appeal on one occasion only, whatever the nature of the appeal. There are various ways in which this could be achieved but it may be by the creation of a board or panel with both medical and legal expertise and the power to make factual findings as well as assessing the officer's medical condition. Importantly, however, one composite decision would be taken rather than various elements of the decision making being separated off to distinct decision-makers[22].

Recommendation 3: New Regulations should radically simplify the decision-making process for IOD awards. In particular, they should remove the distinction between decision-makers, and separate appeal routes, for medical and non-medical questions.

14.13 I also consider that there plainly ought to be a time limit introduced limiting the date on which retrospective IOD applications can be made. Although this might be of limited significance in the short term (since officers aware of the new time limit will rush to submit applications in advance of it[23]), this should be an important safeguard against those administering the scheme being flooded with applications from former officers in relation to events which occurred many years ago and which can be, accordingly, extremely difficult to assess. The absence of such a time limit is one of the key reasons why the present difficulties with processing applications has arisen, given the large number of applications submitted relating to historic hearing loss.

14.14 It is a quite remarkable feature of the scheme that applications can be made retrospectively with no limitation at all. Time limits are one of the major legal tools deployed to ensure certainty and finality, which have been emphasized in the authorities as an important interests in this field. I recommend that a time limit be introduced restricting the ability of former officers to make applications many years after both the relevant events and when the permanent disablement is said to have arisen.

[22] Although the draft Regulations, which propose to remove the question of whether the injury is a qualifying injury from the SMP and have this determined by the Board, are an improvement on the present situation in my view, they still suffer from the frailty that no one decision-making body has a full overview of all aspects of the case (factual, legal and medical), bearing in mind that there is likely to be an obvious overlap between these aspects in many cases.

[23] Which, in fairness, they ought to be permitted some reasonable opportunity to do.

Recommendation 4: A time limit should be introduced restricting the ability of former officers to make retrospective applications many years after the relevant events.

14.15 I also consider that there is a lacuna in the present Regulations, whereby damages or compensation received by an officer in respect of an injury are subtracted from certain awards payable to him under the Regulations as a result of that injury, but not the most common type of award (a police officer's injury award payable under regulation 10). I see no reason why a police officer of former police officer should effectively receive double compensation in relation to the one injury where he is able to achieve compensation through a civil action against the police and also qualify for an injury on duty award.

14.16 I would accordingly recommend that any new Regulations provide that compensation recovered in relation to the injury which later forms the basis of an IOD application be subtracted from any IOD award payable. I have considered in Chapter 12 above whether such a provision could go further, removing the entitlement to an IOD award in circumstances where a claim has been made. I consider that there are difficulties with such a proposal but that this may be an issue which would benefit from further consideration.

Recommendation 5: New Regulations should provide that compensation recovered in relation to an injury which later forms the basis of an IOD application be subtracted from any IOD award payable.

14.17 As I have discussed in some detail in Chapter 12 above, there is also a serious debate to be had about whether the administration of IOD awards for former officers should fall to the Policing Board at all, rather than (as is the case in other parts of the United Kingdom), the Chief Constable. In my view, there may be a number of benefits to this function being passed back to the Chief Constable, perhaps with the Board hosting the appeal function currently undertaken by the Department.

Recommendation 6: Serious consideration should be given to legislative amendment moving the responsibility for administering IOD awards for former officers away from the Policing Board and to the Chief Constable.

Recommendations assuming no significant legislative change (short term)

14.18 In the absence of any significant legislative change, what steps should be taken within the present statutory framework in order to simplify or improve the administration of IOD awards and the process of review, including making attempts to clear the present backlog of cases? (I address the issue of over 65 reviews separately below.) Much of the reasoning behind the following recommendations is set out elsewhere in the discussion sections of this report.

14.19 As I have indicated, another major limitation I have identified is the present state of policy guidance in Northern Ireland for those administering the ill-health retirement and IOD schemes. At one and the same time there is an absence of relevant guidance at the moment in some of the key areas of contention, particularly in relation to reviews and the assessment of percentage disablement, following the withdrawal of such guidance in the light of the *Simpson* and *Slater* litigation; and also a plethora of potentially relevant policy guidance on other aspects of the system, not all of which is consistent or up-to-date, issued by a range of bodies throughout the UK. Accordingly, I would make the following recommendations:

Recommendation 7: One authoritative, Northern Ireland-specific guidance document should be issued to assist SMPs and IMRs to interpret and apply the Regulations in a consistent manner (and to enable applicants to understand how this will be done). This should be agreed at least between the Board and the Department, although ideally also with officers' representatives.

Recommendation 8: In the course of development of this further guidance, serious consideration should be given to abandoning the currently recommended method of calculating percentage disablement, including detailed reliance on the ASHE survey and comparison with the officer's notional uninjured police salary, in favour of a much more basic approach, whereby the relevant medical authority would simply make a judgment in the round as to the severity of the impact of the duty injury on the officer's earning capacity, so as to select the officer's appropriate band without the need to calculate a specific percentage disablement figure.

Recommendation 9: In such guidance, given the approach of the case-law such as the *Simpson* case, the word "permanent" should be taken to mean for the rest of the officer's life, rather than simply until at least the attainment of compulsory retirement age for their rank.

Recommendation 10: The guidance should also provide SMPs and IMRs with more detailed assistance, in as straightforward language as possible and drawing upon recent case-law, on how to avoid impermissibly revisiting matters finally determined in previous certificates and applying the concept of apportionment.

14.20 The present approach to reviews has proven to be particularly controversial. Although there is an obligation to keep a pensioner's degree of disablement under review, there is some discretion on the part of the Board as to when to do this, since it is for the Board to determine what are suitable intervals at which reviews should take place. My recommendations as to how these should be dealt with are as follows:

Recommendation 11: There should be a move away from automatic review for all cases at any fixed interval set in policy. The judgment as to when a review is appropriate should be made on a more case-sensitive basis, driven particularly by medical advice on this issue from the SMP and/or IMR (although it ought to remain open to an officer to request a review himself at any time and the Board should also retain the right to initiate a review at any time if information comes to its attention identifying an apparent relevant change in circumstances). SMPs and IMRs should expressly be asked to provide the Board with advice on this issue in their completion of reports.

Recommendation 12: More limited legislative amendment to that recommended above should be considered more urgently, if possible, to permit a review to be dealt with, at least in the first instance, on the basis of medical evidence provided *without* a reference to an SMP, where this is appropriate.

Recommendation 13: For the moment, there should be no automatic reviews of officers at age 65 or other compulsory retirement age; nor should any such officer's banding be reduced on the basis of a calculation taking into account that, had he not been injured, he would in any event have ceased to be a police officer.

Recommendation 14: Those officers who were told in clear terms that they would not be subject to review, or words to that effect, should not be further reviewed in the absence of a request from them or some compelling reason why a review is considered appropriate (such a reason not to include merely their attainment of a particular age).

Recommendation 15: SMPs and IMRs should not be precluded in future from designating a case as one for no further review but this should occur only very rarely and guidance should be formulated for them as to when this may be appropriate.

14.21 Although I recognize that this is a particularly difficult issue in the present state of public finances generally, I have also identified as a major limitation in the administration of the IOD award system at present a lack of resources on the part of the PAB within the Board which deals with applications and reviews. Accordingly, whilst recognizing that this involves difficult questions for others as to the allocation of scarce financial resources, I am compelled to make the following recommendation:

Recommendation 16: Additional staff should be provided to the Police Administration Branch within the Policing Board to assist it with its present case-load relating to applications for, and reviews of, IOD awards.

Recommendations relating to the suspended reviews or recent over-65 reviews (immediate)

14.22 My recommendations in relation to the currently suspended reviews (or reviews which took place shortly before the suspension), particularly relating to those called for review because of their attainment of age 65, the rationale for which is set out in more detail in Chapter 9, are as follows:

Recommendation 17: Any suspended reviews which were prompted merely by the officer's attainment of age 65 or other compulsory retirement age should be abandoned.

Recommendation 18: Any suspended reviews which were prompted merely by the Board's five-yearly review policy should also be abandoned.

Recommendation 19: Where a completed review has resulted in an officer having had his banding reduced by virtue of his attainment of a particular age, that is to say in a *Simpson*-type case, this should be looked at again, with a view to restoring the officer to the banding he was on before the review (with consequential backdating of any payment) unless and until a lawful review has been conducted.

14.23 In relation to this last recommendation, I recognize that the appropriate mechanism for doing this (which is discussed in some further detail in Chapter 9) may be complicated; and that it may, in particular, differ depending upon whether the review decision is, or is not, subject to appeal (and whether the officer does, or does not, wish to proceed with the appeal). Further discussion and consideration of the appropriate mechanism to give effect to this recommendation is therefore likely to be required, especially since the certificate issued by the SMP on the review is

presumptively lawful and has legal effect pursuant to the terms of the 2006 Regulations. Initially, it was thought that a collective referral of all of these concluded reviews could be made to the Pensions Ombudsman for the purpose of quashing the SMPs' decisions; but, upon tentative exploration of this option with the Pensions Ombudsman's Office, this now seems unrealistic.

14.24 It may well be that, if this recommendation is accepted by the Board, the appropriate course is for this to be conveyed to the officers' representative organization(s) and an effort made to agree a mechanism for giving effect to it.

Conclusion

14.25 The review I was asked to conduct into the arrangements for the payment of ill-health pensions and injury on duty awards to former police officers has proven to be an extremely challenging task. I do not purport to have all, or perhaps many, of the answers to the difficult issues which have been highlighted to me in the course of this review; nor even to have discussed them all. I am conscious that the recommendations set out above will now have to be considered by the Board, and perhaps others, in determining how best to proceed and how to seek to meet some of the difficulties which have presented themselves in the administration of the relevant Regulations over the last number of years.

14.26 As I said in the Preface to this report, I hope that it will clarify a number of issues which have been raised with me by the Policing Board for consideration. Perhaps more than anything, the report (and the recommendations set out above) point up that there is further work to be done at the legislative, policy and administration levels. I have no doubt that further challenges lie ahead before the administration of ill-health pensions and, especially, injury on duty awards for former officers in Northern Ireland is restored to an even keel. I nonetheless repeat my hope that this report will make at least a modest contribution to the progress towards that goal.

APPENDIX A

TERMS OF REFERENCE

Background on Injury on Duty Awards

The Board has a statutory duty under the RUC Pensions Regulations 1988; the PSNI and PSNI Reserve (Injury Benefit) Regulations 2006; and the Police Pension (NI) Regulations 2009 to administer applications for ill health retirement, injury on duty awards and other awards in respect of serving and former police officers.

Home Office Circular 46/2004, published August 2004, instructed police forces to place former officers who had reached compulsory retirement age for the service (i.e. over 65) in the lowest band of Degree of Disablement upon review of their injury on duty award. The Northern Ireland Office issued similar guidance (Circular 06/2007) to the Board in 2007. The Board did not apply this guidance.

In light of the *Simpson* judgment in February 2012[24], Home Office Circular 46/2004 and the reciprocal Northern Ireland Office Circular 06/2007 were withdrawn. The Board's policy at that time was to continue to calculate loss of earnings, with the exception that police salary would no longer be used in the calculation. This approach was afterwards approved by the Department of Justice (policing and justice powers were devolved from the Northern Ireland Office in 2010) in June 2012.

Following a number of concerns raised by former officers and various representative groups a decision was taken by the Board in March 2013 to suspend the review of injury on duty awards. A working group chaired by the Board's Chief Executive and comprising of various stakeholders was also established to consider the current policies and procedures for the review of injury on duty awards and make recommendations to the Board and Department of Justice on present policies and procedures.

[24] In *Simpson* Mr Justice Supperstone found that the section in Home Office Circular 46/2004 "Review of Injury Pensions Once Officers Reach Age 65" and paragraph 20 of the Guidance on Medical Appeals which instructed police forces to place the former officer in the lowest band of Degree of Disablement as they would not normally be expected to be earning a salary in the employment market was unlawful.

Senior Counsel Review

In July 2013 the Board agreed to engage Senior Counsel to review the Board's existing administrative process within the current statutory and policy framework.

Mr David Scoffield QC was appointed to carry out the review.

The review will include:

1. Consultation with stakeholders;

2. An examination of the legislative landscape and regulatory policy framework for the administration of injury on duty awards, including any limitations;

3. Consideration of recent Pension Ombudsman and Medical Appeal Tribunal decisions;

4. Analysis of the processes and procedures followed by the Board in accordance with legislation and policy; and

5. Identification of any limitations in the legislative framework and policy guidelines.