



FREEDOM OF INFORMATION REQUEST

FOI Reference number: 56/2017

Date: 25 October 2017

Request:

1. What year did the ASHE method to calculate earning capacity commence.
2. What was the Policy Documents to give effect to introduction of ASHE into the regulations.
3. What Policy has the NIPB implemented to carry out a review of identifying all officers under 65 who were assessed under ASHE.
4. How do you intend in light of above to reinstate officers back to their position prior to the ASHE assessment.

Answer:

1. The ASHE method to calculate earning capacity was introduced in 2006.

The Board can confirm that the *NIPB Guidance on Medical Pensions and IOD Awards 2011* in relation to ASHE (referenced in the request) was withdrawn in July 2013.

In line with Recommendation 8 of the Scofield report, the Board drafted a new policy on the assessment of degree of disablement. The new policy was introduced for all assessments conducted with effect from 12 August 2015. This is available on the Board's website at:

<https://www.nipolicingboard.org.uk/sites/nipb/files/media-files/board-policy-on-the-assessment-of-degree-of-disablement-2006.pdf>

2. The introduction of the ASHE method was agreed at the Human Resources Committee meeting on 24 February 2006. A copy of the briefing paper is attached, along with a letter to the Board's (then) Selected Medical Practitioner, NIO Circular 06/2007 and Home Office Circular 46/2004.
3. The Board does not hold the information requested.
4. As at point 4 above.

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:-

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

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.

NORTHERN IRELAND POLICING BOARD

HUMAN RESOURCES COMMITTEE – 24 FEBRUARY 2006

SELECTED MEDICAL PRACTITIONER – CALCULATION OF INJURY ON DUTY PENSION AWARD

Purpose of Paper

To bring to the attention of Members the Annual Survey of Hours and Earnings (ASHE) for 2005 and how this has the potential of impacting on the calculation of an ex officer's injury on duty percentage pension .

Background

In the calculation of an ex police officer's injury on duty pension the SMP uses figures provided as a result of an Annual Survey of Hours and Earnings (ASHE) compiled by the Department of Trade and Industry.

To illustrate how the ASHE survey is currently used in the calculation of an injury on duty awards by the SMP, the following example is provided:

Example

If the ex officer had still been a serving officer, his/her current basis salary has been determined, using current pay scales, as £26,367 per annum.

The SMP assess that the ex officer is still capable of undertaking a skill level 2 occupation. The ASHE survey indicated that a skill level 2 occupation will result in a potential average earnings of £14,542 per annum.

The calculation is therefore as follows:

$$£26,367 - £14,542 \times 100 = 45\% - \text{Band 2 pension award}$$

The current system in place is that the SMP takes the average potential earnings for male and female workers as indicated by the 2004 ASHE survey. The percentage may be reduced as a result of non-work related conditions, incidents and/or factors which the SMP considers have contributed.

Members should also note that the percentage injury on duty loss of earnings awarded is used to determine the pension payable within four bands. These pension bands are as follows:

0 – 25% = Band 1

26 – 50% = Band 2

51 – 75% = Band 3

Over 75% = Band 4

An ex officer awarded a percentage which places him/her in Band 4 receives the highest injury on duty pension.

Detail

In a letter dated 7 February 2006 received from the SMP, we are advised that the SMP has now obtained a split of earnings by skill level and gender as a result of the ASHE 2005 survey. See copy letter at Appendix A.

From the figures provided by the survey, the SMP has advised that, to base the injury on duty calculation using the ASHE survey figures by gender, would result in an advantage for ex female officers within three of the four skill categories. Using the gender ASHE survey, figures shows lower potential civilian earnings for females in skill levels 1, 2 and 4. This would result in female ex officers being awarded a higher percentage than male ex officers. Copy of 2005 abstract from the ASHE survey is attached at Appendix B.

Examples of three possible police salaries have been used to illustrate the impact of using the male, female and average potential earnings as provided by the ASHE 2005 survey. The results are as follows:

Example 1 Based on £26,367 police salary

- (a) Ex officer with a possible police salary of £26,367 (skill level 1).
Percentage Awarded: Male 52%, Female 54%, Average 52%.
All ex officers would receive a Band 3 pension.

- (b) Ex officer with a possible salary of £26,367 (skill level 2).
Percentage Awarded: Male 43%, Female 48%, Average 45%.
All ex officers would receive a Band 2 pension.

- (c) Ex officer with a possible police salary of £26,367 (skill level 3).
Percentage Awarded: Male 21%, Female 19%, Average 20%.
All ex officers would receive a Band 1 pension.

Example 2 Based on £32,025 police salary

- (a) Ex officer with a possible police salary of £32,025 (skill level 1).
Percentage Awarded: Male 60%, Female 62%, Average 61%.
All ex officers would receive a Band 3 pension.

- (b) Ex officer with a possible police salary of £32,025 (skill level 2).
Percentage Awarded: Male 53%, Female 57%, Average 55%.
All ex officers would receive a Band 3 pension.

- (c) Ex officer with a possible police salary of £32,025 (skill level 3).
Percentage Awarded: Male 35%, Female 34%, Average 34%.
All ex officers would receive a Band 2 pension.

Example 3 Based on £61,800 police salary

- (a) Ex officer with a possible police salary of £61,800 (skill level 1).
Percentage Awarded: Male 80%, female 81%, Average 80%.
All ex officers would receive a Band 4 pension.
- (b) Ex officer with a possible police salary of £61,800 (skill level 2).
Percentage Awarded: Male 76%, Female 78%, Average 77%.
All ex officers would receive a Band 4 pension.
- (c) Ex officer with a possible police salary of £61,800 (skill level 3).
Percentage Awarded: Male 65%, Female 66%, Average 66%.
All ex officers would receive a Band 4 pension.
- (d) Ex officer with a possible police salary of £61,800 (skill level 4).
Percentage Awarded: Male 47%, Female 55%, Average 50%.
In this calculation the ex female officer would be placed in Band 3 and using the male and average survey figures, the ex officer would be placed in Band 2.

The policy of the Home Office for England/Wales is also to use a national survey of earnings covering England/Wales. In the guidance used by the Home Office for the calculation of injury on duty pensions, the Home Office states that the average figures should be used in the calculation and neither gender nor regional fluctuations should be taken into account.



Decision

Based on the information provided, Members are requested to make the decision to continue to use the average potential earnings figure contained in the ASHE survey when the SMP is calculating future injury on duty percentage awards in line with Home Office policy for England/Wales.

Members are also requested to approve the application of the ASHE 2005 survey figures, by the SMP, with effect from 1 March 2006.

Police Administration Branch

February 2006

File Ref: ADM 31/05

ADM 32/05

Our Ref: ADM 32/05

ADM 31/05

Date: 24 February 2006

Capita Health Solutions
6th Floor, Premier Business Centre
20 Adelaide Street,
BELFAST BT2 8GD

Dear Dr

RE: ANNUAL SURVEY OF HOURS AND EARNINGS

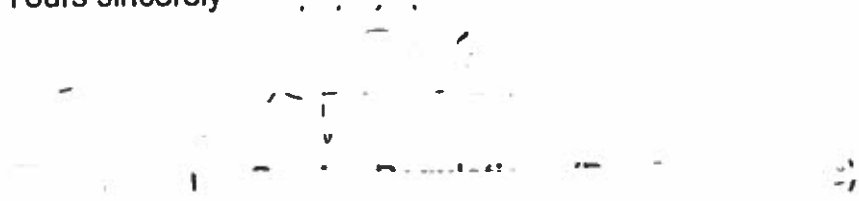
I refer to your letter dated 7 February 2006 regarding the 2005 ASHE survey figures.

Having discussed the issue with the Home Office I would advise you that the Home Office also approves the use of the ASHE survey figures for England/Wales in the calculation of IOD awards. The Home Office guidance also states that the average figures must be used and that neither gender nor regional deviations should be considered.

I referred the matter also to the Board's Human Resources Committee meeting this morning. Members approved to continue to use the average figures, in keeping with Home Office policy, available for Northern Ireland, and that the 2005 ASHE survey figures should be used for IOD pension calculations with effect from 1 March 2006.

I will also advise the NIO of the introduction of the 2005 ASHE survey figures.

Yours sincerely



Copy to: - NIO



1. NORTHERN IRELAND OFFICE

Policing Division
Block B, Level 4
Castle Buildings
BELFAST
BT4 3SG

POLICING DIVISION CIRCULAR 6/2007

POB 6/2007

Date of Issue: 30 May 2007

THIS CIRCULAR contains guidance regarding the role of the selected medical practitioner (SMP) and the Independent Medical Referee (IMR) in the consideration and review of Injury on Duty (IOD) as set out in the RUC Pensions Regulations 1988, and the PSNI and PSNI Reserve (Injury Benefit) Regulations 2006

FROM: Policing Policy Branch, NIO

IMPLEMENTATION DATE: Immediate

EXPIRY DATE: N/A

THIS CANCELS: N/A

INFORMATION CONTACT:

Policing Division
Northern Ireland Office
Block B, Level 4
Castle Buildings
BELFAST BT4 3SG

telephone:

fax:

e-mail:

THIS CIRCULAR IS ADDRESSED TO: Northern Ireland Policing Board

COPIES ARE BEING SENT TO: Chief Constable
Association of Chief Police Officers
Superintendents' Association (NI)
Police Federation (NI)
Police Negotiating Board

Dear Chief Executive

Role of the Selected Medical Practitioner (SMP) and the Independent Medical Referee (IMR) in the consideration and review of IOD

In August 2004 the Home Office issued a circular to Chief Officers of the Police in England and Wales and the Clerks to the Police Authorities regarding the role of the SMP and IMR in the consideration and review of IOD. The Home Office issued this circular to bring uniformity and standardisation amongst all the police forces in England and Wales in the way that they processed applications. When the Home Office issued this circular it was decided that the Northern Ireland Policing Board (the Board) did not need a Northern Ireland version as they had only one police service and did not have the same inconsistency problems as England and Wales forces.

The NIO in conjunction with the Board and PSNI have been recently reviewing the payment of an enhanced pension after ex-officers have reached pensionable age and following further representation from NIPB for clarity it was agreed that a circular should be issued in Northern Ireland to provide greater clarity on this matter. The attached circular will help the Board develop appropriate policies in this area, in line with practice in police forces and authorities across the United Kingdom.

Regulations covering police medical appeals, disablement and police injury pension reviews can be found in Regulations 29, 33 and 35 of the PSNI and PSNI Reserve (Injury Benefit) Regulations (Prior to 2006 the relevant legislation can be found in the RUC Pensions Regulations 1988).

For further copies of this Circular please contact:

Policing Division
Northern Ireland Office
Block B, Level 4
Castle Buildings,
Belfast BT4 3SG

Telephone: 0300 060 0000

E-mail: iod@psni.gov.uk

ROLE OF THE SELECTED MEDICAL PRACTITIONER (SMP) AND THE INDEPENDENT MEDICAL REFEREE (IMR) IN THE CONSIDERATION AND REVIEW OF IOD

The Home Office* issued guidance to Chief Officers and Police Authorities in England and Wales to ensure uniformity throughout England and Wales when dealing with injury on duty claims. Northern Ireland Office Ministers agree that the Police Service of Northern Ireland and the Northern Ireland Policing Board should follow similar guidance.

2. The purpose of this circular is to draw attention to the current legislation and provide guidance.

Please find attached NIO Circular.

Annex A describes the new disablement guidance.

** In the form of a circular reference HOC 46/2004*

ROLE OF THE SELECTED MEDICAL PRACTITIONER (SMP) AND THE INDEPENDENT MEDICAL REFEREE (IMR) IN THE CONSIDERATION AND REVIEW OF IOD

LEGISLATION

The relevant legislation concerning this circular can be found in Regulation 29, 30 and 35 of the PSNI and PSNI Reserve (Injury Benefit) Regulations 2006 (286) (Prior to 2006 the relevant legislation can be found in the RUC Pensions Regulations 1988 Regulations H1, H2, H5 and K2). That legislation provides an ex-officer to the right to apply for injury on duty award, and appeal against the SMP's decision. The legislation (K2) also provides for the Board to reassess the award the award. A brief overview of the regulations is given below:-

Regulation 29~

Allows the NIPB (the Board) to refer an injury on duty request to a Selected Medical Practitioner (SMP) to determine whether to grant an injury on duty pension and if so the degree of disablement and for the certificate and report to be forwarded on to the person concerned.

Regulation 30~

Allows an officer or person claiming an award in respect of an officer to appeal the SMP's decision, and details the processes.

Regulation 33~

Allows an officer to appeal to the Secretary of State for a tribunal if they are dissatisfied with the decision made by the Board about an award.

Regulation 35~

Requires the Board to review and reassess injury pensions and provides guidance.

Police Medical Appeals

1. Guidance is held and issued by the NIO to provide greater detail for Independent Medical Referees (IMR) on the following areas:-

- how to assess degree of disablement in an injury award, including how to apply apportionment. Guidance has been drafted to include how to assess the degree of disablement in cases where the former officer is above the compulsory retirement age for his or her last-held rank (see Annex A below); and
- the IMR should consider the question of permanent disablement on the evidence before them at the time of the appeal, not whether the appellant was permanently disabled at the time the selected medical practitioner (SMP) made the decision under appeal (contained within Regulation 29~).

2. The Board will also wish to know that the courts in GB have also held that an appeal about degree of disablement should be considered on the basis of the evidence at the time of appeal, and not on the basis of the circumstances at the time the SMP made the Regulation 29 decision under the appeal. It is therefore important to keep the time-lag between the Regulation 29 decision and the appeal hearing as short as possible.

B. Degree of Disablement Guidance

4. Following consultation with the Board, PSNI, the Police Federation, and the Superintendents Association guidance has now been produced on reviews of injury awards. A copy of this guidance is provided at **Annex A**. This guidance is intended to help ensure a standardised and consistent approach in line with that taken by the English and Welsh forces when reviewing injury awards for former officers who are above the compulsory retirement age for their last-held rank.

D. Police Injury Pension Reviews under Regulation 35~

5. Under Regulation 35~ NIPB have a duty to keep existing injury pensions under review at such intervals as may be suitable. In planning a programme of reviews involving a number of former officers, account should be taken of the need to ensure that any appeal against an SMP's decision can be processed satisfactorily, both in terms of there being a timely appeal hearing and in terms of the NIPB having the necessary paperwork and representatives sent to the NIO for onward transmission to the IMR.

6. It is requested that when NIPB plan to undertake such a programme of reviews they should give adequate notice to Capita Health Solutions (CHS). A large-scale programme of reviews should entail at least 3 months' notice to CHS so that they can ensure that the cases can be heard as quickly as possible and to a manageable timetable.

NORTHERN IRELAND OFFICE GUIDANCE FOR THE PSNI AND NIPB ON REVIEWS OF INJURY AWARDS

This Guidance is being issued in line with similar guidance issued by the Home Office to help ensure a fairer, a standardised and consistent approach is taken to the payment of injury benefits to ill-health retired officers who have reached the compulsory retirement age in PSNI.

After consultation, the following Guidance has been agreed:

NIPB have the duty to keep all current injury pensions under review at such intervals as they consider appropriate, including where the former officers concerned are now above the compulsory retirement age.

Review of Injury Pensions once Officers reach Compulsory Retirement Age

Once a former officer receiving an injury pension reaches what would have been his compulsory retirement age under the RUC Pension Regulations 1988, Regulation A16 and Regulation A18 (55, 57, 60 or 65 if under the pre October 2006 CRA's and 60 or 65 if under the post October 2006 CRA's depending on the person's force and rank at the point of leaving the police service) the Board should consider a review of the award payable, since it is no longer appropriate to use the former officer's police pay scale as the basis for his or her pre-injury earning capacity.

In the absence of a cogent reason for a higher or lower outside earnings level, it is suggested that the new basis for the person's earning capacity, had there been no injury, should be the figures arising from the Annual Survey of Hours and Earnings (ASHE)* at the time of the review. The ASHE figure is based on salaries in Northern Ireland and is taken as the average for the population overall, separate figures for males and females are not considered. The loss of earning capacity for the purpose of establishing Degree of Disablement should therefore be assessed by reference to the % proportion the person's actual earning capacity bears to ASHE.

This procedure should help to ensure that former officers are treated in a consistent way across the PSNI and across the UK. They will be placed on an equal financial footing with others in the employment market at a time when they could not have been assumed to be earning a police salary.

After a review at compulsory retirement age the Board should determine the need and date for the next review. In some cases there may be particular circumstances which make it undesirable to conduct a further review.

Review of Injury Pensions once Officers reach Age 65

Once a former officer receiving an injury pension reaches the age of 65 they will have reached their State Pension Age irrespective of whether they are male or female. The Board then has the discretion, in the absence of a cogent reason otherwise, to advise the SMP to place the former officer in the lowest band of Degree of Disablement. At such a point the former officer would normally no longer be expected to be earning a salary in the employment market.

A review at age 65 will normally be the last unless there are **exceptional** circumstances which require there to be a further review.

Suitable Intervals for Review

In line with practice in the Home Office, we believe it is reasonable for most cases to be reviewed at the compulsory retirement age stage; not all such cases need to be reviewed again at age 65. NIPB would, after concluding the review at compulsory retirement age, be entitled to judge it reasonable not to review a case further where the injury award is already small. This will normally be the case with former officers who were retired injured early in their career. In line with Home Office thinking we do not think we can create a specific "minimum" income guarantee under the Regulations~ in their present form. Each case will have to be considered on the basis of its individual circumstances.

New Cases

Applications received for injury awards from former officers who are already over 65 should not normally be referred to the SMP for consideration.

*The ASHE figure used should be the one, not inclusive of overtime, in the most recent New Earnings Survey. This is an annual pounds figure calculated by using National Insurance contributions. It is validated and produced each year and is, in our opinion, the most robust method.

Note 1 - *In the case of an officer who is under retirement age but has already left the service for reasons other than ill-health retirement, it is suggested that the comparator used should still be equivalent police salary. This is because, even if the ex-officer had been dismissed, the Board would still have discretion to re-employ and he or she could therefore still be deemed capable of earning that salary.*

Note 2 - *It is clear that ASHE will not be a suitable benchmark in all cases - especially on occasion with higher ranking officers who may claim to be capable of earning substantially more than this figure. It was suggested that this Guidance should contain some kind of formulae to proportionately enhance ASHE to the level of the higher ranked salary. We would advise PSNI and NIPB to use their discretion as to whether they would like to adopt this approach.*



HOME OFFICE GUIDANCE FOR FORCES ON REVIEWS OF INJURY AWARDS

This Guidance is being issued to help ensure a fairer, more cohesive approach to the payment of injury benefits to ill-health retired officers who have reached the compulsory retirement age with their Force. A recent survey found that practice in this area was diverse. Some forces automatically reduced degree of disablement benefits to the lowest banding when this age had been reached - others continued to pay benefits at the same rate until the death of the Officer concerned.

It is clear that a more standardised approach is needed to safeguard the rights of the Officer and ensure fair treatment across Forces. After consultation, the following Guidance has been agreed:

Forces have the duty to keep all current injury pensions under review at such intervals as they consider appropriate, including where the former officers concerned are now above the compulsory retirement age.

Review of Injury Pensions once Officers reach Compulsory Retirement Age

Once a former officer receiving an injury pension reaches what would have been his compulsory retirement age under the Police Pensions Regulations (55, 57, 60 or 65 depending on the person's force and rank at the point of leaving the police service) the force should consider a review of the award payable, since it is no longer appropriate to use the former officer's police pay scale as the basis for his or her pre-injury earning capacity.

In the absence of a cogent reason for a higher or lower outside earnings level, it is suggested that the new basis for the person's earning capacity, had there been no injury, should be the National Average Earnings (NAE)* at the time of the review. The NAE figure taken should be the average for the population overall. Separate figures for males and females, and regional fluctuations should not be considered. The loss of earning capacity for the purpose of establishing Degree of Disablement should therefore be assessed by reference to the % proportion the person's actual earning capacity bears to NAE.

This procedure should help to ensure that former officers are treated in a consistent way across forces. They will be placed on an equal financial footing with others in the employment market at a time when they could not have been assumed to be earning a police salary.

After a review at compulsory retirement age a force should determine the need and date for the next review. In some cases there may be particular circumstances which make it undesirable to conduct a further review.

Review of Injury Pensions once Officers reach Age 65

Once a former officer receiving an injury pension reaches the age of 65 they will have reached their State Pension Age irrespective of whether they are male or female. The force then has the discretion, in the absence of a cogent reason otherwise, to advise the SMP to place the former officer in the lowest band of Degree of Disablement. At such a point the former officer would normally no longer be expected to be earning a salary in the employment market.

A review at age 65 will normally be the last unless there are exceptional circumstances which require there to be a further review.

Suitable Intervals for Review

It seems to us that whereas it is reasonable for most cases to be reviewed at the compulsory retirement age stage, not all such cases need to be reviewed again at age 65. A police authority would, after concluding the review at compulsory retirement age, be entitled to judge it reasonable not to review a case further where the injury award is already small. This will normally be the case with former officers who were retired injured early in their career. We do not think we can create a specific "minimum" minimum income guarantee under the Police Pensions Regulations in their present form. Each case will have to be considered on the basis of its individual circumstances.

New Cases

Applications received for injury awards from former officers over 65 should not normally be referred to the SMP for consideration.

* . *National Average Earnings figures available from National Office of Statistics (www.statistics.gov.uk). Look under Labour Market and NES (New Earnings Survey) Streamlined Analyses. .*

The NAE figure used should be the one in the most recent New Earnings Survey - Streamlined Analysis. This is an annual pounds and pence figure calculated by using National Insurance contributions. It is validated and produced in October of each year and is, in our opinion, the most robust method.

Note 1 - In the case of an officer who is under retirement age but has already left the service for reasons other than ill-health retirement, it is suggested that the comparator used should still be equivalent police salary. This is because, even if the ex-officer had been dismissed, forces would still have discretion to re-employ and he or she could therefore still be deemed capable of earning that salary.

Note 2 - It is clear that NAE will not be a suitable benchmark in all cases - especially on occasion with higher ranking officers who may claim to be capable of earning substantially more than this figure. It was suggested that this Guidance should contain some kind of formulae to proportionately enhance NAE to the level of the higher ranked salary. We would advise Forces to use their discretion as to whether they would like to adopt this approach.