

## Ombudsman's Determination

Applicant: Mr AD

Scheme: Police Injury Benefit Scheme

Respondent: North Wales Police (**NWP**)

## Outcome

1. I do not uphold Mr AD's complaint and no further action is required by NWP.

## Complaint summary

2. Mr AD has complained that NWP has refused to agree to a reconsideration of his injury on duty (**IOD**) claim. He is represented by his father, **Mr DD**.

## Background information, including submissions from the parties

### Background

3. Mr AD was a special constable until 2009. He sustained a broken ankle whilst on duty in 2006. In 2008, Mr AD applied for an IOD award. In 2009, Mr AD was seen by a Selected Medical Practitioner (**SMP**). NWP declined Mr AD's application on the grounds that the SMP was of the view that, although his ability to continue in his ordinary employment had been adversely affected, he would be able to continue in his ordinary employment in a reduced capacity. In 2010, Mr AD's case was referred to a Police Medical Appeal Board (**PMAB**). The PMAB declined Mr AD's appeal.
4. Summaries of and extracts from the medical evidence relating to Mr AD's case are provided in Appendix 1.
5. The Scheme provisions referred to are The Special Constables (Pensions) Regulations 1973 (SI1973/431) (as amended) (the **1973 Regulations**) and The Special Constables (Injury Benefit) Regulations 1987 (SI1987/159) (as amended) (the **1987 Regulations**). Extracts from these regulations and others referred to in this Opinion are provided in Appendix 2.
6. Mr DD wrote to NWP, on 10 March 2016, asking that the matter be considered under the internal dispute resolution procedure (**IDRP**).

7. NWP responded on 27 April 2016. It said:-

- Mr AD had submitted a claim for an IOD award as a result of an injury sustained on duty on 23 December 2006.
- He had been assessed by an SMP who had concluded that he did not meet the requirements for an IOD award.
- He had appealed and the matter had been considered by a PMAB on 27 July 2010. Mr AD had been legally represented at the PMAB.
- The PMAB had concluded:

“... whatever might be the reason for [Mr AD’s] reported symptoms and perceived disability, they are not the result of any recognisable medical pathology related either to the fractured ankle or any wider argument due to any subsequent DVT<sup>1</sup>.”

“... [Mr AD] is neither permanently disabled from carrying out his pre-injury occupation as a consequence of an injury received in the execution of his duty and nor is [he] permanently disabled from any form of work.”
- The PMAB had unanimously rejected Mr AD’s appeal.
- It was possible to appeal the PMAB’s decision, but the grounds of appeal were extremely limited. It had received specialist legal advice to the effect that there were no grounds for appeal in Mr AD’s case. Any appeal would have to be made to the Crown Court within 21 days of the PMAB’s decision. Any appeal in Mr AD’s case would now be out of time.
- Neither the 1973 Regulations nor the 1987 Regulations allowed for the IOD award process to be reactivated on the basis that the individual’s medical condition had deteriorated. In any event, the PMAB had concluded that there was no link between the injury which Mr AD had sustained in 2006 and his subsequent symptoms.
- Any complaint under the IDRP had to be made within six months of being notified of the decision which was the subject of the complaint; unless there were special circumstances which justified accepting a complaint out of time. Mr AD’s complaint was not accepted because it was out of time and there were no special circumstances which would justify extending the time limit.
- The matter was now considered closed and it would not enter into any further correspondence with Mr AD or his father. Mr AD was free to pursue his complaint with the Pensions Ombudsman.

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<sup>1</sup> Deep vein thrombosis

8. On 20 March 2018, solicitors representing Mr AD asked NWP to agree to his case being reconsidered under Regulation 32 of The Police (Injury Benefits) Regulations 2006 (SI2006/932) (as amended) (the **2006 Regulations**).
9. NWP responded to Mr AD's solicitors on 4 April 2018. It referred to the PMAB's decision of 6 August 2010. NWP said Mr AD was bound by the PMAB's decision. It said, for the avoidance of doubt, it would not agree to the PMAB's decision being reconsidered under Regulation 32 of the 2006 Regulations.
10. In November 2018, Mr AD applied to The Pensions Ombudsman (**TPO**) in relation to NWP's decision to refuse his request for a reconsideration. TPO explained that his complaint should be submitted to NWP under the IDRP in the first instance. Mr DD subsequently wrote to NWP requesting that the matter be considered under the IDRP.
11. In its response, NWP referred Mr DD to its letter of 26 April 2016. It said the decision to decline to reconsider Mr AD's claim for a pension/IOD award had been made on the basis that the evidence before the PMAB had been accurate and adequate and no reconsideration was necessary. NWP reiterated that a complaint under the IDRP had to be made within six months of being notified of the decision which was the subject of the complaint; unless there were special circumstances which justified accepting a complaint out of time. It said it did not believe that there were any special circumstances which would justify extending the time limit.
12. Mr DD submitted a copy of NWP's response to TPO. He said that his son disputed that the evidence before the PMAB had been accurate and adequate. Mr DD said there had been no mention of Post Thrombotic Syndrome<sup>2</sup> (**PTS**), which had been documented in Mr AD's medical records in October 2008. He said he found it difficult to accept the PMAB's decision that Mr AD's symptoms and his IOD were not related. Mr DD said it was well documented that PTS was caused by deep vein thromboses and the SMP had said Mr AD's DVTs had been caused by his IOD.

### **Mr AD's position**

13. Mr DD has made a comprehensive submission on his son's behalf. What follows is, of necessity, a summary of the main points:-

#### *The Regulations*

- The regulations are confusing and NWP failed to administer the process in a proper manner.
- Mr AD is seeking agreement from NWP to reconsider his case under Regulation H32(*sic*). He is seeking a fair hearing taking account of all of the relevant information.

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<sup>2</sup> Damage to a vein following a DVT.

- In *R (on the application of Haworth) v Northumbria Police Authority* [2012] EWHC 1225, Mr Justice King said:

“... regulation 32(2) should be construed as a free standing mechanism as part of the system of checks and balances in the regulations to ensure that the pension award, either by way of an initial award or on a review ... has been determined in accordance with the regulations and the retired officer is being paid the sum to which he is entitled ... It must be the overall policy of the scheme that the award of pension reflects such entitlement and I see no reason why regulation 32(2) should be construed simply as a mechanism to correct mistakes which might nonetheless be able to be corrected by some other means.”

- There is no time limit for requesting a review under Regulation 32(2).
- The SMP issued two reports in 2009. Mr AD was not provided with a copy of the first report. The SMP issued the second report without having seen Mr AD again. In the five months between the two reports, Mr AD's health had deteriorated. The SMP had increased his assessment of Mr AD's capacity for work without seeing him. The regulations state that a report can be provided without the SMP having seen the officer but this requires the officer's consent. Guidance on medical appeals states:

“The SMP will normally be required to examine the officer, but he or she may exercise discretion to consider the case on the papers if management, the officer and the FMA are all content with this. In all cases the SMP should complete a report to the police authority which is separate from the advice from the FMA and which confirms that he or she has not dealt with the case before.”

The SMP had dealt with the case before.

- In his first report, the SMP referred to the 1987 Regulations, but Mr AD had applied under the 1973 Regulations. The SMP's reference to the wrong regulations made all the difference to the outcome. The 1973 Regulations refer to the officer not being able to follow his pre-accident occupation; whereas the 1987 Regulations refer to the ability to do other work.
- Many of the documents relating to Mr AD's case quote his occupation as “driver”. This suggests that NWP was trying to use the 1987 Regulations, instead of the 1973 Regulations. Under the 1973 Regulations, a special constable is entitled to a pension if he cannot continue with his pre-accident occupation. The pension would then be on the same basis as that of a regular officer under the 1987 Regulations for process and payment.
- In correspondence with Mr AD's MP, in 2009, NWP said:



“The definition of “disablement” as it applies to special constables is set out in the [1973 Regulations]. This provides that “Disablement means inability occasioned by infirmity of mind or body, in the case of a special constable, to follow his/her ordinary employment”.

A slightly different definition is provided in the [1987 Regulations]. There “totally disabled” means “incapable by reason of the disablement in question of earning any money in any employment”.

Therefore, in order to obtain an award, either in the form of an injury gratuity or injury pension, a special constable must be either unable to continue in their ordinary employment or unable to continue in any employment.”

### *The medical evidence*

- In response to Mr AD’s request for reconsideration, NWP said the decision to decline his request had been made on the basis that the evidence before the PMAB had been accurate and adequate. Mr AD strongly disagrees that the evidence before the PMAB had been accurate and adequate. The PMAB failed to take into account his complete medical evidence, which caused his health problems to be wrongly diagnosed.
- Mr AD is unable to work and relies on State benefits. He was a self-employed chauffeur with his own business but he was unable to continue with this and the business closed. In addition to the pain and side-effects from medication which Mr AD suffers, he is suffering financial distress.
- The SMP’s report contradicts the PMAB’s findings. The SMP certified that Mr AD was permanently disabled from performing his ordinary duties as a member of the police force by reason of DVT and that this condition was as the result of an injury received in the execution of his duty. The certificate stated that: “Boards of doctors must use the same report.”
- He has been unable to find any mention of the SMP’s certificate at the PMAB hearing. The PMAB would not have been able to refuse Mr AD an IOD award under the 1973 Regulations if it had been given sight of the SMP’s certificate.
- NWP states that Mr AD is able to continue with part of his pre-accident employment. Guidance on medical appeals states:

“An officer, who because of infirmity (as defined) is able to perform the relevant activity only to a very limited degree or with great difficulty, is to be regarded as disabled.”
- Mr AD’s pre-accident employment involved all elements of the chauffeur’s role. He would not be able to carry luggage because he uses crutches and a mobility scooter. He can only drive short distances for up to 25 minutes at a time and his medication causes a lack of concentration.

- Neither the SMP nor the PMAB mentioned Mr AD's PTS despite it being documented in his medical records. This important diagnosis appears to have been completely overlooked. Mr AD only became aware of the diagnosis of PTS in 2015 when he saw Professor Braithwaite, a vascular surgeon. Professor Braithwaite said:

"... he had severe Post Thrombotic Syndrome ...

[Mr AD's] current symptoms of swollen leg, shooting pains and immobility are all complications of Post Thrombotic Syndrome.

The Post Thrombotic Syndrome occurs in patients who have had a Deep Vein Thrombosis.

On the balance of probability the fractured ankle was therefore the cause of [Mr AD's] current symptoms.

I could not find any other cause for his symptoms of shooting pains and feeling of the leg giving way. I have considered problems with his back, but on balance, it is my opinion that his venous problems are the most likely cause of these nerve like symptoms."

- It is quite clear that Mr AD is entitled to a pension because he is unable to continue in his pre-accident employment; that is, he is unable to carry out all the elements of the role of chauffeur.

### **NWP's position**

#### **14. NWP submits:-**

- Mr AD submitted a claim for a pension and IOD award as a result of an injury sustained on duty on 23 December 2006. He was assessed by an SMP who concluded that he did not meet the requirements for a pension or an IOD award.
- Mr AD appealed the SMP's decision and the matter was considered by a PMAB on 27 July 2010. The PMAB concluded:

"Whatever might be the reason for [Mr AD's] reported symptoms and perceived disability, they are not the result of any recognisable medical pathology related either to the fractured ankle or any wider argument due to any subsequent DVT. [Mr AD] is neither permanently disabled from carrying out his pre injury occupation as a consequence of an injury received in the execution of his duty and nor is he permanently disabled from any form of work."

- The PMAB unanimously rejected Mr AD's appeal.
- It is possible for an individual, or someone acting on their behalf, to appeal a PMAB's decision, but the grounds of appeal are extremely limited. It obtained specialist legal advice that there were no grounds of appeal. Further, any appeal

against the decision of the PMAB would have to be made to the Crown Court within 21 days of the decision. Mr AD did not take this route to appeal.

- Neither the 1973 Regulations nor the 1987 Regulations allow for the process to be activated on the basis that an individual's medical condition has deteriorated.
- On 10 March 2016, a complaint was submitted under the IDRP concerning the decision not to pay Mr AD a pension or IOD award. Any complaint under the IDRP must be made within six months of the decision, which is the subject of the complaint, unless there are special circumstances which would justify accepting it out of time. There were no special circumstances in Mr AD's case and the complaint was not accepted.
- On 4 April 2018, a request was made for Mr AD's claim for a pension and/or IOD award to be reconsidered. This was refused on the basis that the evidence before the PMAB was accurate and adequate, and no reconsideration was necessary.
- In accordance with the IDRP, a complaint about the decision not to reconsider Mr AD's claim had to be made within six months of 4 April 2018. Mr AD was aware of this time limit.

## **Adjudicator's Opinion**

15. Mr AD's complaint was considered by one of our Adjudicators who concluded that no further action was required by NWP. The Adjudicator's findings are set out below:-

- 15.1 The complaint which had been accepted for investigation in Mr AD's case concerned the April 2018 decision by NWP not to review his claim for an IOD award. The Adjudicator explained that there was a time limit for bringing a complaint to TPO<sup>3</sup> and the original decision not to pay an IOD award would fall outside this time limit. She explained that the current investigation could not look at the original decision not to make an award. However, because Mr AD's request for a reconsideration was based upon the premise that the PMAB's decision, in 2010, was not reached in a proper manner, it would not be possible to avoid considering the previous decisions altogether. If the 2010 decision had been flawed, this would be a factor which NWP could be expected to take into account when deciding whether to accede to Mr AD's request.
- 15.2 The Adjudicator said she thought it would be helpful to begin by considering which set of regulations applied in Mr AD's case, since this had been the cause of some confusion over the years. It formed part of Mr AD's argument for a review of the 2010 decision.

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<sup>3</sup> Regulation 5, The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 (1996/2475) (as amended)

- 15.3 There were two sets of regulations which related to the payment of IOD awards to special constables: the 1973 Regulations and the 1987 Regulations. It appeared that some confusion had arisen when the PMAB was considering Mr AD's claim because it had not been clear which set of regulations it should be referring to. Regulation 3(1) of the 1987 Regulations stated that "these Regulations shall be construed as one with" the 1973 Regulations (emphasis added). In other words, the 1987 Regulations did not revoke or replace the 1973 Regulations; rather both sets of regulations had to be read together. The situation was not helped by the fact that the 1973 Regulations referred across to The Police Pensions Regulations 1973 (SI1973/428) and the 1987 Regulations referred across to The Police (Injury Benefit) Regulations 1987 (SI1987/156).
- 15.4 The Police Pensions Regulations 1973 had been revoked by The Police Pensions (Supplementary Provisions) Regulations 1987 (SI1987/256). The Police (Injury Benefit) Regulations 1987 had been revoked by the 2006 Regulations. Regulation 9 of the 2006 Regulations provided that they:
- "... shall have effect as if anything done, or treated as done, under or for the purposes of the Police (Injury Benefit) Regulations 1987 ... had been done under or for the purposes of the corresponding provision of these Regulations."
- Thus, at the time of Mr AD's application for a pension or IOD award, the relevant injury benefit provisions were to be found in the 2006 Regulations. References to The Police Pensions Regulations 1973 and The Police (Injury Benefit) Regulations 1987 contained in the 1973 Regulations and the 1987 Regulations had to be read accordingly.
- 15.5 Whereas the methodology for calculating an injury benefit had been contained in Regulation 22 and Part V of Schedule 2 in The Police Pensions Regulations 1973, it was now to be found in Schedule 3 to the 2006 Regulations. This contained the table, setting out the injury benefit payable, depending upon length of service and degree of disablement, which had been set out in Part V of Schedule 2 in The Police Pensions Regulations 1973. There were four levels of "degree of disablement" ranging from 25% or less (slight) to more than 75% (very severe).
- 15.6 Regulation 3(3) of the 1973 Regulations defined "disablement" as the "inability occasioned by infirmity of mind or body ... to follow his ordinary employment". Regulation 4 provided:
- "(1) This Regulation shall apply to a person who ceases or has ceased to hold the office of special constable and is permanently disabled as a result of an injury received without his own default in the execution of his duty as a special constable.

- (2) Subject to the provisions of these Regulations, a person to whom this Regulation applies shall be entitled to a gratuity and, in addition, to an injury pension and Regulations 22, 66 and 67 of the principal Regulations<sup>4</sup> shall apply as if he had been an auxiliary policeman at the time that the [sic] received the injury.”

Thus, a special constable who satisfied the conditions set out in Regulation 4(1) of the 1973 Regulations was entitled to a gratuity and an injury pension as now provided for in the 2006 Regulations.

15.7 Regulation 3(2) of the 1987 Regulations provided:

- “(2) Notwithstanding Regulation 3(3) of the principal Regulations<sup>5</sup>, in these Regulations “totally disabled” means incapable by reason of the disablement in question of earning any money in any employment and “total disablement” shall be construed accordingly.”

15.8 Regulation 4 of the 1987 Regulations referred across to the provision for payment of a disablement gratuity contained in The Police (Injury Benefit) Regulations 1987; now found in Regulation 12 of the 2006 Regulations. Thus, if a special constable satisfied the conditions set out in Regulation 4(a) of the 1987 Regulations, they could be paid a disablement gratuity as now provided for in Regulation 12 of the 2006 Regulations.

15.9 The 2006 Regulations also contained Regulation 32(2) under which Mr AD had submitted his request to have his claim for an IOD award reviewed.

15.10 The fact that a referral for reconsideration under Regulation 32 was “by agreement” limited the extent to which the Pensions Ombudsman (or the Courts) could interfere with NWP’s decision. In such circumstances, the Pensions Ombudsman’s role was limited to ensuring that the decision-making process had been undertaken in a proper manner. If the decision-making process was found to be flawed, the Pensions Ombudsman could direct NWP to retake its decision. He could not, however, direct NWP to agree to refer Mr AD’s case for reconsideration under Regulation 32.

15.11 NWP’s role when it received a request to refer a claim for reconsideration under Regulation 32 had been clarified by the Courts<sup>6</sup>. NWP was not obliged to accede to such a request. However, it had to act reasonably, take relevant factors into account and exclude any irrelevant matters. The weight to be attached to the relevant factors was for NWP to decide.

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<sup>4</sup> The Police Pensions Regulations 1973

<sup>5</sup> The Special Constables (Pensions) Regulations 1973

<sup>6</sup> *Boskovic v Chief Constable of Staffordshire Police* [2018] EWHC 14 (Admin); *Boskovic v Staffordshire Police* [2019] EWCA Civ 676

- 15.12 NWP had declined Mr AD's Regulation 32(2) request on the grounds that the evidence before the PMAB, in 2010, had been accurate and adequate, and no reconsideration was necessary.
- 15.13 There were essentially two elements to the arguments put forward on Mr AD's behalf:
- the evidence before the PMAB had not been accurate or adequate; and
  - NWP and/or the PMAB had misapplied the relevant regulations.
- 15.14 Mr DD had argued, on Mr AD's behalf, that the PMAB had failed to take into account his complete medical evidence, which caused his health problems to be wrongly diagnosed. In particular, Mr DD said neither the SMP nor the PMAB had mentioned Mr AD's PTS. He also pointed out that the SMP had issued a second report without having seen Mr AD again. Mr DD said, in the five months between the two reports from the SMP, Mr AD's health had deteriorated, but the SMP had increased his assessment of Mr AD's capacity for work.
- 15.15 Mr DD had suggested that the SMP's reference to the wrong regulations had made all the difference to the outcome. He had pointed out that the 1973 Regulations referred to an officer not being able to follow his pre-accident occupation; whereas the 1987 Regulations referred to the ability to do other work. Mr DD had pointed out that, contrary to the PMAB's findings, the SMP had certified that Mr AD was permanently disabled from performing his ordinary duties as a member of the police force by reason of DVT and that this condition was as the result of an IOD. He believed that the PMAB would not have been able to refuse Mr AD an IOD award under the 1973 Regulations if it had been given sight of the SMP's certificate.
- 15.16 Mr DD had pointed to references to Mr AD's occupation being a "driver". He suggested that this indicated that NWP had been trying to use the 1987 Regulations, instead of the 1973 Regulations. He pointed out that, under the 1973 Regulations, a special constable was entitled to a pension if he could not continue with his pre-accident occupation.
- 15.17 It was not a question of deciding which set of regulations should apply; the 1987 Regulations were intended to be construed "as one with" the 1973 Regulations. In fact, the two sets of regulations covered slightly different aspects of the IOD awards which might be paid to a special constable; the 1987 Regulations provided for enhanced benefits on total disablement.
- 15.18 The question for the Pensions Ombudsman was whether the PMAB had assessed Mr AD's claim by reference to the correct regulations and, if not, whether this had impacted on the outcome of his claim. The Adjudicator

explained that the Courts<sup>7</sup> had found that a procedural irregularity would not necessarily require a decision to be set aside. Similarly, in order to uphold a complaint, the Pensions Ombudsman would have to find that Mr AD had sustained injustice as a consequence of any maladministration he might identify. Thus, if the PMAB had erred in its application of the relevant regulations but this had not affected the outcome of Mr AD's case, he would not have sustained any injustice.

- 15.19 The PMAB had sought clarification from both NWP and Mr AD as to which of the various regulations applied in Mr AD's case. It was agreed that the PMAB was to determine whether Mr AD was permanently disabled from being able to carry out his pre-accident employment and/or permanently and totally disabled from carrying out any employment at all as a result of the index injury.
- 15.20 Regulation 3 of the 1973 Regulations applied to a person who was permanently disabled from following his "ordinary employment". If Mr AD satisfied this condition, he would be entitled to a gratuity and an injury pension as provided for in the 2006 Regulations. The IOD award would depend upon Mr AD's degree of disablement as set out in the table in Schedule 3 of the 2006 Regulations. Regulations 3 and 4 of the 1987 Regulations applied if a person was "totally disabled"; that is, permanently incapable of earning any money in any employment. Since both sets of regulations applied in Mr AD's case, the PMAB had taken the correct approach in considering whether he was permanently unable to undertake his pre-accident (ordinary) employment and/or any employment at all.
- 15.21 The PMAB had accepted that Mr AD's reported symptoms were such that he would not be able to undertake a long-distance driving job. However, it had also expressed the view that there was no clinical evidence or pathology to support Mr AD's symptoms. The PMAB had concluded that Mr AD's symptoms were not the result of a recognisable medical pathology related to his fractured ankle or subsequent DVT. In other words, it had accepted that Mr AD's symptoms meant that he was incapable of undertaking his ordinary employment, but took the view that this was not a consequence of his IOD.
- 15.22 Because Regulation 3(1) of the 1973 Regulations referred to permanent disablement "as a result of" an IOD, it had been appropriate for the PMAB to consider whether there was a causal link between Mr AD's symptoms and his IOD. This was a clinical judgment which the PMAB was entitled to make.
- 15.23 The Adjudicator acknowledged that there had been confusion around the application of the various sets of regulations in Mr AD's case. However, it was her opinion that the PMAB had applied the correct eligibility tests in considering Mr AD's case and had not misapplied the regulations.

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<sup>7</sup> *Batt v Royal Mail* [2011] EWHC 900 (Ch)

- 15.24 The second element of Mr AD's case concerned the medical evidence. NWP took the view that the evidence before the PMAB had been accurate and adequate. Mr AD disagreed.
- 15.25 Mr DD submitted that the PMAB had failed to take Mr AD's complete medical evidence into account, which had caused his health problems to be wrongly diagnosed. In particular, Mr DD said neither the SMP nor the PMAB had mentioned Mr AD's PTS.
- 15.26 The Adjudicator acknowledged that there was no specific reference to PTS in the PMAB report. However, in her view, this would not support a finding that Mr AD's health problems had been wrongly diagnosed. It was clear that the PMAB had considered both Mr AD's ankle fracture (the IOD) and his subsequent DVTs. His PTS was a sequela of his DVTs. The Adjudicator noted also that the PMAB had included both an orthopaedic surgeon and a vascular surgeon and that both of them had examined Mr AD. The PMAB's report had confirmed that it had seen the report prepared by Mr James.
- 15.27 The PMAB had also taken evidence from the SMP. The Adjudicator noted that Mr DD had raised some concerns relating to the role of the SMP and the approach they had taken in Mr AD's case. It was her view that the matter of the SMP issuing a second report without having reviewed Mr AD fell outside the scope of the current investigation on the grounds of time. It was not a matter which could reasonably be said to relate to the conduct of the PMAB and, thereby, to NWP's decision not to agree to a Regulation 32(2) review.
- 15.28 Mr DD had suggested that the PMAB had not been given sight of the SMP's certificate because it would not have been able to refuse Mr AD an IOD award under the 1973 Regulations if it had been. Mr DD had pointed out that the SMP had certified that Mr AD was permanently disabled from performing his ordinary duties as a member of the police force by reason of DVT and that this condition was as the result of an IOD.
- 15.29 However, the PMAB was not bound by the SMP's certificate. Although the various regulations had referred to an SMP's decision as final, this was subject to an appeal to a PMAB. The Adjudicator noted that the Courts had considered the extent to which a PMAB could reconsider a previous decision on a number of occasions. However, this had largely been in the context of a Regulation 37 review of an IOD award in payment. If the SMP's certificate was binding in the way in which Mr DD had suggested, it would render the PMAB redundant.
16. Mr AD did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr DD provided further comments which are summarised below. I have considered Mr DD's comments, but I find that they do not change the outcome. I agree with the Adjudicator's Opinion.



**Mr DD's further comments**

17. Mr DD submits:-

*Management of Mr AD's application for an IOD and his appeal*

- The SMP's first report did not state that it was an interim report. The only difference between the first and second reports appears to be that the SMP increased Mr AD's capacity for work. They did so without seeing him again, which breaks the rules.
- If NWP had sent Mr AD a copy of the SMP's report to comment on, the outcome of his case might have been different. Mr AD only received a copy of the report with the letter informing him of the decision not to award him an IOD. NWP broke its own rules in denying Mr AD an opportunity to comment.
- Section 9.5 of the Guidance on Police Medical Appeal Boards issued by the Home Office states:

"It is to be hoped that in most cases the time between the decision of the SMP and the appeal hearing will be too short for the appellant's condition to have changed. However, this cannot be guaranteed. The board should therefore note that the courts have held, most recently in April 2004, that the appellate authority is required to consider whether the appellant is permanently disabled at the time of the appeal. The board must therefore assess the appellant's current state of health in order to determine whether he or she is permanently disabled at the time of its appeal decision, not at the time of the SMP's decision."

By the time of the PMAB, the SMP's report was 18 months old.

- The PMAB was not given adequate or accurate advice by NWP. Many of the submissions by NWP were taken from the SMP's report and it quoted incorrect information about Mr AD's capacity for work from the wrong SMP's report.

*Medical evidence*

- Mr AD has been denied a pension because the PMAB did not realise that his symptoms were due to PTS caused by the IOD.
- The vascular surgeon's report was not comprehensive. They did not make any comment on Mr James' opinion that Mr AD's symptoms were signs of PTS. No scans were suggested at that time. It appears that the four medical doctors did not recognise Mr AD's symptoms.
- Mr AD's GP notes record, on 3 September 2007, that he had had a DVT in his groin which the consultant thought had been there since he had been in plaster.

- He refers to a previous Pensions Ombudsman's Determination<sup>8</sup>, which he suggests shows that an assault can cause a DVT. He suggests that this supports a causal link in Mr AD's case.
- He acknowledges that Professor Braithwaite's 2015 report post-dates the PMAB's decision, but it gives full details of the history of Mr AD's PTS.
- The SMP contradicted themselves in the evidence given to the PMAB. In their certificate dated 16 January 2009, the SMP said Mr AD's DVT had been caused by an IOD. In evidence to the PMAB, they said it was reasonable for a diagnosis of DVT to occur following a period of immobilisation in plaster, but that subsequent DVTs may or may not have been related to that.
- No account was taken of the fact that Mr AD was taking medication for pain at the time of his assessment, or that he was receiving industrial disablement benefit and Incapacity Benefit. NWP was aware of this at the time.

## **Ombudsman's decision**

18. I think it is appropriate to begin by reiterating that the complaint which has been accepted for investigation concerns NWP's decision to decline Mr AD's request for reconsideration of his case under Regulation 32(2). The original decision and the PMAB's consideration of Mr AD's appeal fall outside the scope of my investigation on the grounds of time. However, some consideration of the events of 2010 will be necessary. This is because NWP's decision to decline Mr AD's request for a reconsideration was based upon its view that the evidence before the PMAB had been accurate and adequate and no reconsideration was necessary.
19. As explained by my Adjudicator, a reconsideration under Regulation 32(2) is by agreement between the police pension authority and the claimant. The Courts have made it clear that the police pension authority is not obliged to accede to a request for reconsideration. My role is to consider whether NWP reached its decision not to accede to Mr AD's request in a proper manner. For example, I will look at whether NWP considered all of the available, appropriate evidence before making its decision and whether its decision was supported by the evidence. If I find that the decision was not made in a proper manner, I can direct NWP to retake its decision, but I cannot take the decision myself.
20. Mr AD's position, as submitted by Mr DD, is that the evidence before the PMAB, in 2010, was not accurate or adequate.
21. The PMAB comprised four medical professionals: two occupational health physicians, a vascular surgeon and an orthopaedic surgeon. Mr DD takes issue with the opinion expressed by the vascular surgeon. He points out that they did not comment on Mr James' opinion that Mr AD's symptoms suggested PTS nor did they obtain any

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<sup>8</sup> Mr DD quoted the reference L7300 relating to an NHS case in 2003. Case L00733 appears to match the description of the case.

scans. I acknowledge that the record of the vascular surgeon's assessment of Mr AD is brief. However, as a member of the PMAB, their view also informed the joint conclusions reached by the PMAB. The PMAB had sight of Mr James' report and had considered it. I note that Mr James' comments, as to the likelihood of Mr AD's ongoing left lower limb symptoms being related to possible post-phlebotic syndrome, were made in the context of recommending review by a vascular surgeon. Mr James was not, himself, a vascular surgeon.

22. When it comes to a medical opinion provided by a doctor, I can only look at it from a lay perspective. The kind of things I might look for are errors or omissions of fact or a misunderstanding of the relevant regulation or rules on the part of the doctor. This is also the approach NWP can be expected to take. Neither I nor NWP are able to comment on the veracity of a medical opinion as such. I note that the General Medical Council, in its advice to doctors acting as expert witnesses, states that a doctor must only give expert testimony and opinions about issues which are within their professional competence or about which they have relevant knowledge. In my view, the vascular surgeon who assessed Mr AD for the PMAB did just that. Any apparent difference of opinion between the vascular surgeon and Mr James is not sufficient for me to find that the PMAB's decision was not reached in a proper manner.
23. My Adjudicator explained that the approach taken by the PMAB was to assess whether Mr AD was permanently disabled from being able to carry out his pre-accident employment and/or permanently and totally disabled from carrying out any employment at all as a result of the index injury. This approach meant that, despite the confusion surrounding the regulations, the PMAB considered both the 1973 and the 1987 Regulations' eligibility conditions. Mr AD was not, therefore, disadvantaged by the confusion.
24. The PMAB concluded that Mr AD's symptoms were not a consequence of a recognisable medical pathology related to his fractured ankle or subsequent DVT. It accepted that Mr AD's symptoms meant that he was incapable of undertaking his ordinary employment, but took the view that this was not a consequence of his IOD. This is the crux of the matter. Because Regulation 3(1) of the 1973 Regulations refers to permanent disablement "as a result of" an IOD, the PMAB had to consider whether there was a causal link between Mr AD's symptoms and his IOD. This was a clinical judgment for the PMAB to make.
25. Mr DD has referred me to Section 9.5 of the Guidance on Police Medical Appeal Boards issued by the Home Office. His concern is with the age of the SMP's report at the time of the PMAB. I acknowledge that the Guidance calls for a PMAB to consider an applicant's state of health at the time of the appeal, but this is not the issue for Mr AD. His appeal failed on the question of causation; not on his capacity for work per se. The PMAB decided that Mr AD's symptoms were not related to his IOD.

26. It is for this reason that any consideration of Mr AD's medication or the fact that he was in receipt of industrial disablement benefit and Incapacity Benefit would not have assisted the PMAB in reaching its conclusions.
27. I note Mr DD's comments concerning the evidence or advice provided to the PMAB by NWP. However, I note also that Mr AD was given the opportunity to provide evidence to the PMAB.
28. I do not find that the evidence considered by the PMAB, in 2010, was inaccurate or inadequate. Mr DD may disagree with aspects of the evidence submitted by NWP, but there was adequate opportunity for Mr AD to present evidence himself. The PMAB was suitably comprised, including specialists in the two fields appropriate to Mr AD's condition. They considered the medical evidence available at that time, including Mr James' report, but they were entitled to come to their own professional opinions.
29. Professor Braithwaite's report was not available at the time of the PMAB. I understand why Mr DD would like Professor Braithwaite's opinion considered. However, as I have mentioned, a difference of opinion between doctors is not sufficient for me to find that the PMAB's decision was not reached in a proper manner. Professor Braithwaite has come to a different view as to the cause of Mr AD's current incapacity but, in and of itself, this does not invalidate the view of the PMAB and its vascular surgeon.
30. In the circumstances, I find that NWP's position is supported by the relevant evidence. Its decision to decline Mr AD's request for reconsideration under Regulation 32(2) is within the range of possible decisions which a reasonable decision-maker, properly advising itself, could come to. There are no grounds for me to direct NWP to re-take its decision.
31. I do not uphold Mr AD's complaint.

**Anthony Arter**  
Pensions Ombudsman  
7 June 2022

## Appendix 1

### Medical evidence

32. Dr Walsh, Consultant Occupational Physician, 22 June 2009<sup>9</sup>

Dr Walsh was appointed as SMP to consider Mr AD's case.

In his report, Dr Walsh noted that there was some uncertainty as to which regulations applied in Mr AD's case because he was a Special Constable. He explained that his strategy was to assess whether Mr AD had a permanent disability. He said, if he deemed Mr AD to have a permanent disability, he would assess whether or not this was as a result of an injury received in the execution of duty and estimate his degree of disablement. Dr Walsh said that, in this way, he was acting in line with Part H of the Police Pensions Regulations 1987 and Part 4 of the 2006 Regulations; as well as covering the provisions of the Special Constables Regulations 1965 (as amended), the 1973 Regulations and the 1987 Regulations.

Dr Walsh said he had received copies of: the Force Medical Adviser's report of 18 November 2008; Mr AD's occupational health records; a report from Mr Calderwood, Vascular Surgeon, dated 30 November 2007; a report from Mr AD's GP dated 1 August 2008; and correspondence from Dr Wright at an Intermediate Services (Musculoskeletal Clinic) dated 21 November 2008.

Dr Walsh set out the background to Mr AD's case. He noted that Mr AD had been a volunteer special constable for approximately 17 years, the last six years being with NWP, and had contributed between eight and 16 hours per week prior to his injury. He noted that Mr AD had been a driver for approximately 20 years and had been self-employed in his own business for the past six years. Dr Walsh noted Mr AD's description of the events surrounding his injury.

Dr Walsh concluded:

"I believe that [Mr AD] has a permanent disability. [Mr AD] has clearly sustained an injury on duty. He fractured his left ankle on the 23 December 2006 and went into plaster. Subsequent to that he developed an extensive above knee deep vein thrombosis. As a result of further events he is now on lifelong Warfarin and wears a compression stocking.

His symptoms of discomfort and dependent leg oedema are the result of the DVT(s). There is no surgical intervention which could relieve his symptoms.

I expect that [Mr AD] will experience a slight improvement with conservative measures such as physiotherapy but he will remain with a permanent disability. There is a chance that he could develop venous insufficiency or varicose veins in the future as a result of the DVT(s). There is also the

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<sup>9</sup> Dr Walsh provided an interim report in January 2009.

possibility that he may develop osteoarthritis as a result of his fracture. It is not possible to predict the degree of future problems with any accuracy.

[Mr AD] is no longer able to undertake the full ordinary duties of a Special Constable. In particular, his ability to run is impaired and he would need to be restricted from roles involving the exercise of reasonable force in control and retention in custody. I believe his skills could still be retained in a non-confrontational office-based role such as teaching or administration if such a role is available.

It is likely that [Mr AD's] prospects of employment in an open market have been affected, even taking into account the Disability Discrimination Act 1995. [Mr AD] was working as a self employed driver. His ability to continue in this type of employment has been adversely affected. I believe he would be able to continue vocational driving on a restricted basis. Due to his condition he would have to reduce his hours of driving and he would need more flexibility in his role. I think he could manage to sit and drive for a maximum of 90 minutes at a time but journeys of 45 minutes to an hour would be more manageable. I think his limit would be 3-4 hours in total per shift. However, his ability to sit and drive for reasonable lengths of time will be dependent on his comfort, quality of sleep and side effects of medication.

I believe that [Mr AD] could perform an office based role, where I estimate he could manage to work between 30 hours per week and full-time, particularly in a role with flexible hours.

In order to give a figure for percentage disability it would be useful to have information about his previous earnings and potential future earnings. Although requested, this information has not been made available to me. In the absence of this information I can only estimate the percentage disability falls somewhere in the slight disablement category (25% or less)."

33. Mr James, a consultant in trauma and orthopaedic surgery, 18 May 2010

In the "Opinion" section of his report, Mr James said Mr AD's description of experiencing significant pain for the first two to three weeks following the fracture of his left ankle was entirely consistent with the injury sustained. He noted that Mr AD's records indicated that he had been immobilised in plaster for approximately six weeks; not the three months he recalled. He noted that Mr AD had been seen on an out patient basis and his fracture had been healing satisfactorily. Mr AD had been referred for physiotherapy in February 2007. Mr James said Mr AD had not been seen with any complaints of ankle injury until August 2007; when he was noted to have left leg swelling but his ankle was "o.k.". The GP notes recorded a diagnosis of DVT in September 2007.

Mr James expressed the view that Mr AD's ongoing symptoms of left ankle pain, worse with activity, and swelling around the ankle could not be directly attributed to his fracture. He noted that the symptom around the ankle was said to have improved

with an injection into Mr AD's third tarsometatarsal joint; an area unrelated to the site of the original injury. He also noted that an MRI scan of Mr AD's left ankle in 2009 had been reported as normal.

Mr James said the management of Mr AD's fractured ankle had been complicated by the development of a proximal DVT in his thigh. He said it was probable that there was cause and effect with regard to the management of Mr AD's fractured ankle and the development of the proximal DVT. He noted that one of the known complications of plaster immobilisation was DVT. He said Mr AD was unlikely to have spontaneously developed a DVT in the absence of the fracture of his left ankle.

Mr James expressed the view that the majority of Mr AD's ongoing left lower limb symptoms appeared to be directly related to leg swelling and possibly post-phlebotic syndrome. He suggested that a vascular surgeon would be able to opine on the cause and effect of Mr AD's symptoms and determine if there were any other pre-disposing factors in his development of DVTs.

Mr James commented that Mr AD's development of DVT was likely to be partly related to the management of the fracture of his lateral malleolus. He said Mr AD had gone on to demonstrate some features consistent with a post phlebotic leg (pain and swelling). He recommended Mr AD be evaluated by a vascular surgeon, who would be able to provide prognostic information regarding potential resolution of his symptoms and offer suggestions for the management of his symptoms.

Mr James said Mr AD's reported knee symptoms could not be directly related to the injury he had sustained in December 2006. He suggested that Mr AD might have had some muscle wastage following immobilisation and, in the short term, this might have been responsible for a period of knee instability. Mr James noted that Mr AD reported no change in his symptoms since and that an MRI scan in July 2009 had demonstrated no abnormality. He said he was unable to attribute Mr AD's ongoing symptoms to the injury sustained in December 2006.

Mr James said Mr AD's symptoms of activity related back pain were unlikely to be directly related to the December 2006 injury. He recorded that a clinical examination on the day had demonstrated no abnormal neurology. Mr James said the examination had demonstrated some impairment of sensation in Mr AD's lower left limb, but said that this could not be attributed to the 2006 injury.

Mr James concluded:

"[Mr AD's] case represents a complex intermix of symptoms that could be reasonably directly attributed to the injury sustained on 23 December 2006 and persistent symptoms that can be indirectly related to the sustained fracture of 23 December 2006. Currently, [Mr AD] is severely disabled. The degree of disability cannot be explained on the basis of his bony injury. It may, in part, be explained by having suffered a number of deep vein thromboses in the left lower limb. This requires further evaluation by a Vascular Specialist.

I do not feel that [Mr AD] is at any increased risk of degenerative changes in [his] ankle as a direct consequence of the injury sustained on 23 December 2006. However, [Mr AD] is unlikely to return to any form of gainful employment in the open job market in the medium to long term ... Impairment in his ability to work cannot be directly attributed to the fracture of his lateral malleolus ... However, there is likely to be some indirect causal effect due to the subsequent development of deep vein thrombosis. The majority of [Mr AD's] ongoing left lower limb symptoms is likely to be due to his deep vein thrombosis and so is likely to be responsible for his impairment in the open job market. His reported left knee and back symptoms are also contributing to his impairment in the open job market but cannot be attributed to the injuries sustained on 23 December 2006."

34. The PMAB report, July 2010

The PMAB comprised two consultant occupational health physicians, a consultant orthopaedic surgeon and a consultant vascular surgeon. Both NWP and Mr AD were represented by solicitors.

The report recorded that the PMAB had sought clarification from both parties as to which of the various regulations applied in Mr AD's case. It was agreed that the reason for the appeal was to determine whether Mr AD was permanently disabled from either being able to carry out his pre-accident employment, and/or whether he was permanently and totally disabled from carrying out any employment at all, as a result of the index injury.

The report noted that Mr AD spent eight to 16 hours per week as a Special Constable and was also a self-employed chauffeur. This role was described as involving driving, sometimes long distances, and carrying luggage and other items, such as golf clubs.

The PMAB noted that Mr AD had suffered an injury to his left ankle, in December 2006, which was found to be a fracture of the lateral malleolus. It said Mr AD had received appropriate treatment for this and that subsequent investigation had shown that the fracture had healed completely and satisfactorily.

The PMAB noted that, some time between February and June 2007, Mr AD had reported that his left knee was giving way and his left leg was swollen. He was diagnosed with a deep vein thrombosis (**DVT**). The PMAB was unclear when the diagnosis was made. It recorded that Mr AD had received anti-coagulants, which it considered normal in such cases, and that this had been satisfactory.

The PMAB recorded that Mr AD had fallen down stairs at his home and sustained a fracture of the fifth metatarsal in his left foot and sprained his left ankle. It said it was thought that Mr AD also suffered further DVT. The PMAB noted that Mr AD had continued on anti-coagulants and wore a compression stocking to reduce the swelling in his left leg. He also took analgesia.



The report set out the answers provided by Mr AD to questions put to him by the PMAB. It then summarised the submission from NWP. The PMAB also took evidence from the SMP.

The consultant orthopaedic surgeon provided a report of his assessment of Mr AD. They said the diagnosis was of: “a past undisplaced left lateral malleolar fracture, with no significant residual orthopaedic findings, but with some sequelae from his deep vein thrombosis”.

The consultant vascular surgeon provided a report of his assessment of Mr AD. They concluded:

“[Mr AD] has clearly had a DVT in the left leg and there is evidence of moderate venous hypertension. It seems unlikely that the venous hypertension could be responsible for the pain and weakness of the left leg.”

The PMAB referred to Regulation 3(3) of the 1973 Regulations and Regulations 3(2) and 4 of the 1987 Regulations. It commented that the legislative background against which the appeal was heard was unclear; that is, both parties accepted that it was unclear whether the 1973 Regulations, the 1987 Regulations or the 2006 Regulations should apply.

The PMAB said Regulation 3(3) of the 1973 Regulations provided that disablement in the case of the special constable meant: “inability occasioned by infirmity of mind or body to follow his ordinary employment”. It noted that the 1987 Regulations provided that, notwithstanding Regulation 3(3), totally disabled meant: “incapability by reason of the disablement in question of earning any money in any employment”. The PMAB noted that Regulation 4 of the 1987 Regulations provided that they should apply to a person who had ceased to be a special constable and within 12 months became incapable of any employment whatsoever. The PMAB said: “It does not state that the 1987 Regulations either replaced or repealed the 1973 Regulations”.

The PMAB then referred to the 2006 Regulations. It noted that there was provision for an additional award (a Disablement Gratuity) to be paid in the event that a former officer received an injury on duty and, within 12 months, became totally and permanently disabled. The PMAB commented: “It appears ... that the 1987 Regulations in respect of special constables is very much akin to this situation, although nowhere is it written as such”. It noted that NWP’s solicitor had researched the point and had been unable to shed any clarity on the matter. It said it had received advice from the NPJA<sup>10</sup> that the 1987 Regulations were the ones to follow.

Whilst acknowledging that it might not be the best arbiter for the legal position, the PMAB said it had been able to concentrate on the medical evidence in order to ascertain whether Mr AD was permanently disabled from carrying out his pre-injury

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<sup>10</sup> National Policing Improvement Agency. This was a non-departmental public body established to support the police by providing expertise in areas such as information technology, information sharing and recruitment. It has since closed and its functions redistributed.

occupation or all work. It noted that both parties agreed that these were the proper and appropriate questions for it to address.

The PMAB said it had been unable to identify a clinical/pathological cause for Mr AD's reported symptoms. It noted that Mr AD's ankle was stable and his range of movement was within normal limits. It noted that there was no muscle wastage and no evidence of a complex regional pain syndrome. The PMAB said examination of Mr AD's left knee and his back had failed to reveal any significant abnormality. It said there did not appear to be any significant swelling of his left leg, but noted a slight difference in measurements between left and right commensurate with a history of DVT.

The PMAB confirmed that it had considered Mr James' report. It noted that he had confirmed the history of a fracture which was well healed with normal ankle mobility and that any symptoms relating to Mr AD's left knee or back could not relate to the index incident. It noted that Mr James had not found any obvious swelling of Mr AD's leg, but he had accepted that a DVT was possible and a likely outcome of immobilisation in plaster. The PMAB said Mr James' findings mirrored its own but there was disagreement on the interpretation of those findings. It concluded:

"Whilst the Board accept that [Mr AD's] reported symptoms and perceptions of his capability would be such that he would not be able to do a long distance driving job, there is no clinical evidence/pathology to support his stated symptoms.

Therefore the Board concludes that whatever might be the reason for [Mr AD's] reported symptoms and perceived disability, they are not the result of a recognisable medical pathology related either to the fractured ankle or in the wider argument due to any subsequent DVT.

The injury on duty has not caused any long term condition which would interfere with the Appellant being able to drive, carry suitcases or work in an office environment as he had done prior to the index incident.

As a consequence he would not meet the 1973 Regulations definition, of being incapable of undertaking his ordinary pre-injury work as a consequence of his injury.

Certainly he would not meet the definition of the 1987 Regulations that he be permanently and totally disabled for all work again as a consequence of the index event."

## Appendix 2

### Regulations

#### **The Special Constables (Pensions) Regulations 1973 (SI1973/431) (as amended)**

35. As at the date of Mr D's application for an IOD award, Regulation 3(3) provided:

"Subject to Regulation 13(3) of the principal Regulations<sup>11</sup>, in these Regulations disablement means inability occasioned by infirmity of mind or body ... to follow his ordinary employment ..."

36. Regulation 4 provided:

- "(1) This Regulation shall apply to a person who ceases or has ceased to hold the office of special constable and is permanently disabled as a result of an injury received without his own default in the execution of his duty as a special constable.
- (2) Subject to the provisions of these Regulations, a person to whom this Regulation applies shall be entitled to a gratuity and, in addition, to an injury pension and Regulations 22, 66 and 67 of the principal Regulations shall apply as if he had been an auxiliary policeman at the time that the [sic] received the injury."

#### **The Special Constables (Injury Benefit) Regulations 1987 (SI1987/159) (as amended)**

37. Regulation 3 provided:

- "(1) Subject to the following provisions of these Regulations, these Regulations shall be construed as one with the Special Constables (Pensions) Regulations 1973 (hereinafter referred to as "the principal Regulations").
- (2) Notwithstanding Regulation 3(3) of the principal Regulations, in these Regulations "totally disabled" means incapable by reason of the disablement in question of earning any money in any employment and "total disablement" shall be construed accordingly.
- (3) In the case of a person who is totally disabled, Regulation 13(1) of the Police Pensions Regulations 1973, as applied by Regulation 3(2) of the principal Regulations, shall have effect, for the purposes of these Regulations, as if the reference to "that disablement being ... .. likely to be permanent" were a reference to the total disablement of that person being likely to be permanent."

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<sup>11</sup> The Police Pensions Regulations 1973 (SI1973/428) (as amended). Regulation 13(3) stated: "Where it is necessary to determine the degree of a person's disablement, it shall be determined by reference to the degree to which his earning capacity has been affected as a result of an injury received without his own default in the execution of his duty as a member of a police force".

38. Regulation 4 provided:

“The Police (Injury Benefit) Regulations 1987<sup>12</sup> (as amended by the Police (Injury Benefit) (Amendment) Regulations 1987<sup>13</sup>) shall apply, subject to the necessary modifications, in relation to:

- (a) a person who -
  - (i) receives or received an injury without his own default in the execution of his duty, whether before, on or after 25th November 1982; and
  - (ii) on or after that date ceases or has ceased to hold office as a special constable; and
  - (iii) within 12 months of so receiving that injury, becomes or became totally and permanently disabled as a result thereof; and
- (b) a special constable who -
  - (i) receives or received an injury without his own default in the execution of his duty, whether before, on or after 25th November 1982; and
  - (ii) was holding office as such on or after that date; and
  - (iii) within 12 months of so receiving that injury, dies or has died as a result thereof,

as they apply in the case of a person such as is mentioned in Regulation 4(1) or, as the case may be, Regulation 5(1) of those Regulations, and as if references in those Regulations to any of the provisions of the Police Pensions Regulations 1973 included references to those provisions as applied in relation to special constables by the principal Regulations.”

39. The Explanatory Note to the 1987 Regulations stated:

“EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for enhanced benefits in case of death or total disablement resulting from an injury received by a special constable in the execution of duty similar to that made in relation to members of police forces by the Police (Injury Benefit) Regulations 1987.

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<sup>12</sup> SI1987/156

<sup>13</sup> SI1987/341

The Regulations come into force on 17th March 1987 and have effect as from 25th November 1982 (retrospection is authorised by sections 12 and 15 of the Superannuation Act 1972)."

**The Police (Injury Benefit) Regulations 1987 (SI1987/156) (as amended)**

40. Regulation 3(1) provided that these regulations should be construed as one with The Police Pensions Regulations 1973. This was amended, by The Police Pensions (Supplementary Provisions) Regulations 1987, so that they were to construed as one with The Police Pensions Regulations 1987.

41. Regulation 4 provided:

"Disablement gratuity

(1) This Regulation shall apply to a person who -

- (a) receives or received an injury without his own default in the execution of his duty, whether before, on or after 25th November 1982; and
- (b) on or after that date ceases or has ceased to be a member of a police force; and
- (c) within 12 months of so receiving that injury, becomes or became totally and permanently disabled as a result thereof.

(2) Subject to the following provisions of these Regulations, the police authority for the force in which a person to whom this Regulation applies last served shall pay to him a gratuity of an amount equal to whichever is the lesser of the following amounts, namely -

- (a) five times the annual value of his pensionable pay on his last day of service as a member of a police force;
- (b) the sum of four times his total remuneration during the 12 months ending with his last day of service as a member of a police force and the amount of his aggregate pension contributions in respect of the relevant period of service."

**The Police (Injury Benefit) Regulations 2006 (SI2006/932) (as amended)**

42. Regulation 32(2) provides:

"The police pension authority and the claimant may, by agreement, refer any final decision of a medical authority who has given such a decision to him, or as the case may be it, for reconsideration, and he, or as the case may be it, shall accordingly reconsider his, or as the case may be its, decision and, if necessary, issue a fresh report, which, subject to any further reconsideration under this paragraph or paragraph (1) or an appeal, where the claimant

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requests that an appeal of which he has given notice (before referral of the decision under this paragraph) be notified to the Secretary of State, under regulation 31, shall be final.”