PO-5477

Ombudsman's Determination

Applicant	Ms E
Scheme	Police Injury Benefit Scheme
Respondents	Thames Valley Police (**TVP**)

Outcome

1. Ms E's complaint against Thames Valley Police is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) Thames Valley Police should pay Ms E £750 for distress and inconvenience.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Ms E has complained about the level of injury benefit awarded to her. She disagrees with the initial decision to apportion her award (from 100% to 50%). She feels that this issue has not been addressed by the appeal process.

Background information, including submissions from the parties

Background

4. Ms E joined the police force in 1989. She retired on the grounds of ill health in February 2014. She was also considered for an injury benefit. The Police (Injury Benefit) Regulations 2006 (SI2006/932) (as amended) apply. Extracts from the relevant regulations are provided in Appendix 2.

5. As provided for in the regulations, Ms E's case was referred to Selected Medical Practitioners (**SMP**). Dr Leeming-Latham provided a report on 28 November 2013. Summaries of the medical evidence for Ms E's case are provided in Appendix 1. Dr Leeming-Latham certified that Ms E was permanently disabled from performing the ordinary duties of a member of the police force. He certified that her condition was the result of an injury received in the execution of duty. Dr Leeming-Latham then certified that the level of injury award should be set at 50% "after apportionment".

6. Ms E submitted an appeal on 15 January 2014. In March 2014, Ms E's Police Federation representative, Mr W, wrote to TVP on her behalf. Amongst other things,

he pointed out that the decision to apportion Ms E's injury benefit had been based on a single entry in her GP's notes dating from 1988 (stating "Depressional neurosis"). He asked that the decision be reviewed on the basis that Dr Leeming-Latham had misdirected himself and that the information in her GP's records could not be relied upon.

7. Mr W referred TVP to *R (on the application of South Wales Police Authority) v Anton* [2003] EWHC 3115 Admin and *South Wales Police Authority v Morgan and Davidson* [2003] EWHC 2274 Admin. Mr W said, Ms E's current GP had said that, given the 1988 diagnosis, it would have been incumbent upon the GP to identify a course of treatment, which had not been the case. Mr W said Ms E would like her case to be referred back to Dr Leeming-Latham. He said she was aware that, having submitted an appeal form, a PMAB or the internal dispute resolution (**IDR**) procedure were options. He said, since it appeared that Dr Leeming-Latham had made a procedural error, the IDR procedure would seem more appropriate.

8. Dr Leeming-Latham retired in April 2014. Ms E's case was referred to another SMP, Dr Cheng. She was offered an appointment with Dr Cheng and asked TVP to clarify why she was being asked to see him when she had already been assessed by Dr Leeming-Latham. Ms E said she had understood Dr Cheng's review would be a paper based review. She subsequently attended the appointment with Dr Cheng accompanied by Mr W. In correspondence with TPAS, Mr W said TVP had not written to Ms E or provided details of the appointment and he had had to provide these.

9. Dr Cheng reviewed Ms E's case in September 2014. He agreed that a 50% apportionment was reasonable. He also commented that "general formal grievances that were not upheld and disciplinary proceedings should not be classified as an injury on duty". Ms E contacted her TPAS adviser after her meeting with Dr Cheng. She was concerned that Dr Cheng had not been provided with all the relevant information. She also mentioned (amongst other things) that Dr Cheng seemed to think that she had a problem with her wrist, which was incorrect. Ms E expressed concern that her papers might have been mixed up with someone else's. She also said that Dr Cheng had told her he never gave 100% disablement.

10. TVP wrote to Ms E, on 12 September 2014, notifying her that Dr Cheng considered a 50% apportionment to be reasonable. TVP said there was no right of appeal under the regulations against Dr Cheng's review and, instead, Ms E's should proceed to an appeal board (**PMAB**). Ms E re-submitted her appeal. Her case was referred to a PMAB in October 2014.

11. The PMAB met in March 2015. The report of the meeting lists the following reports and documentation as having been submitted: grounds of the appeal; appeal notification from TVP; Ms E's submission; TVP's submission; Ms E's occupational health records; a further submission from Ms E; a submission from TVP on job roles; and a further submission from Ms E. TVP have provided the Pensions Ombudsman with a bundle of documents which they consider represent: the papers submitted by

TVP to the PMAB; a copy of occupational health notes relating to Ms E's service with TVP; and papers provided for the PMAB by Ms E's representative.

12. The PMAB report records that the basis for the appeal was that Ms E disputed Dr Cheng's opinion that her disablement placed her in Band Two for an injury award.

13. As required by the regulations, one member of the PMAB was a mental health specialist, Dr Rajput. Ms E was interviewed by Dr Rajput and he provided a report for the PMAB. The PMAB referred to *Doubtfire & Anor, R (on the application of) v West Mercia Police Authority & Anor* [2010] EWHC 980 Admin, *Merseyside Police Authority v Police Medical Appeal Board & Ors* [2009] EWHC 88 Admin (*Hudson*) and *Anton*. From these cases, the PMAB drew the following points:-

    - The SMP was not bound by any conclusions reached on the question of disablement when considering causation. The SMP was required to answer the causation question by applying the provisions of regulation 6. The SMP or the PMAB were required to decide whether the disablement was caused by (a) an injury and (b) received in the execution of duty. The SMP or the PMAB were to arrive at an independent diagnosis.

    - Regulation 7(5) defined the degree of disablement.

    - The courts had found that the task in assessing earning capacity was to determine what the person was capable of doing and thus capable of earning. It was not a question of whether an employer would actually pay that person to do what he or she was capable of.

    - The courts had found that the determining degree of disablement is a two-stage process: firstly, the loss of earning capacity is to be assessed; and, secondly, the SMP should determine the degree to which the loss is the result of a qualifying injury.

    - Before apportionment can arise, each factor must separately have caused some degree of loss of earning capacity on its own.

14. The PMAB's report then contains a detailed discussion of Ms E's case. Amongst other things, the PMAB said a majority of its members considered Ms E to have sufficient function for more than basic administrative roles at 20 hours per week. It noted that the remaining member was of the view that Ms E could undertake more hours. The PMAB went on to say,

    "In considering the degree of disablement, the Board also has to answer the apportionment question. This is a causation question and in accord with *Doubtfire v Williams* [*sic*] … the Board is entitled to reach its own determination of the medical diagnosis and undertake its own analysis of factors considered to be contributory to disablement. The relevant factors identified to be potentially contributory to permanent disablement include:

- Perceptions of work-related events.
- Non-work stressors in terms of the breakdown of her marital relationship.
- A pre-existing vulnerability due to psychological impairment in 1988/89.

The Board does not consider that the events surrounding the entry by the GP in 1988/89 had any substantial contribution to her eventual disablement. There is insufficient evidence to support the proposition that she had a pre-existing vulnerability to mental illness prior to joining the police force."

15. The PMAB went on to consider the breakdown in Ms E's relationship and decided there was a lack of persuasive evidence that this had had a significant impact on the later breakdown of her resilience. It did not find it to be a substantial contributor to Ms E's permanent disablement. The Board went on to say,

"It is indeed arguable that the perceptions of work events and unsubstantiated grievances, where there has not been demonstrable failing in the care of the individual should not have been considered to be contributory to permanent disablement as Dr Cheng argues; Dr Leeming-Latham's report makes it clear that he considered these perceptions to have substantially contributed to permanent disablement.

Whilst the Board has considerable concern over the evidence base underpinning such a conclusion, the Board must ignore that concern. Although mindful of *Doubtfire v Williams* [*sic*] above, the Board understands that it does not have the freedom to reach a different conclusion on whether the psychological impairment arising from perceptions of work events are indeed an injury received in the execution of duty. The Board do [*sic*] agree with Dr Leeming-Latham that her illness is contributed to by perceptions of workplace events, but may have come to a different conclusion on whether psychological impairment arising from these perceptions could be regarded as injury received in the execution of duty. Mindful of the earlier legally binding decision, the Board has to conclude that this is the only factor contributing to permanent disablement and apportionment is not appropriate. This is more a legal issue than a medical one."

16. The PMAB noted that it had not been provided with examples of jobs which Ms E could undertake. Its final decision was deferred for this information to be provided. TVP submitted:

- Ms E's salary at the time her employment ceased was £41,451.00;
- Jobs outside the police commensurate with her uninjured earning capacity were:
- Environmental Crime Officer £25,023 - £26,340

- Trainee Enforcement Officer £30,000
- Intelligence Officer £35,000
- The Office for National Statistics figures for average earnings for public and private sector workers was £22,584 and £24,908 respectively.

17. Ms E's solicitors obtained a report from an employment consultant. He concluded Ms E had a strong portfolio of skills, knowledge and experience. He said she would have been able to compete for senior management roles and would likely have achieved the rank of Inspector before retirement. The consultant said Ms E would have had the prospect of achieving earnings of between £39,000 and £62,000. He went on to say he was of the view that she was likely to be limited to relatively routine, predictable employment, such as general administration and could access part-time earnings of around £11,300 to £11,600 or around £18,000 to £20,000 if she could sustain full-time employment.

18. On reviewing Ms E's case, the PMAB referred to *Anton* and noted that, in that case, the court had determined that a labour market assessment was not required. The PMAB said it was not persuaded that the subsequent judgment in *Metropolitan Police Authority v Laws & Anor* [2010] EWCA Civ 1099 now required it to undertake a labour market assessment.

19. The PMAB noted that Ms E argued for total incapacity and the employment consultant had suggested she could only do basic administrative roles. It went on to say it considered Ms E capable of more than basic administrative roles but would be more suited to an office-based part time role. It considered the bailiff and serious crime role would be too challenging for Ms E at that time but the environmental crime officer role should be possible with appropriate adjustments.

20. The PMAB took a median salary for the environmental crime officer role and calculated a part time rate (20 hours out of 37) of £13,882. It then compared this with Ms E's police salary and calculated a loss of earning capacity of £27,569. The PMAB said this translated into a 67% loss of earning capacity, putting Ms E in Band 3 for an injury award.

21. On 29 July 2015, the scheme administrators wrote to Ms E informing her that TVP had advised them that her injury benefit had been re-assessed to level 3 backdated to her retirement. Ms E was paid at the revised rate from 1 September 2015, together with arrears from February 2014 and interest.

Ms E's submissions

22. Ms E expressed concern about the way in which the PMAB was conducted. In particular, she mentions time delays, a medical, the lack of female presence, the lack of support, and the choice of case law. In response to TVP's assertion that part of the delay arose when they were waiting for her to provide medical evidence, Ms E says they did not need this information to proceed.

23. With regard to the evidence provided for the PMAB, Ms E says documents were "cherry picked". She has cited examples of documents which were not provided: reports from Dr Logsdail, her personal development reviews, papers relating to her grievances, newspaper articles criticising her, and emails from senior staff criticising her. She says there is no mention of her being put under surveillance while on sick leave or the withholding of information requested under data protection provisions. Ms E has also said that she was not provided with copies of the full reports provided for TVP by their SMP. Ms E feels that there is scope for the PMAB to manipulate the evidence so that a level 4 award is never given. She cites comments by Dr Cheng to the effect that he would never sanction a level 4 award in any circumstances.

24. With regard to the PMAB decision, Ms E says they concluded that she qualified for a level 3 award on the basis of a 15 minute chat; to which she was not allowed to bring her supporter and which was a year and a half after the original decision. She notes that the PMAB stated her case should not have been apportioned but did not provide any detail to clarify this in financial terms.

25. Ms E says the Force Doctor recommended referral to an SMP in February 2013 but TVP attempted to stop her obtained ill health retirement. She says this included initiating disciplinary proceedings whilst she was on sick leave and trying to require her to attend a hearing. She says TVP failed to assist her to seek medical treatment and she had to pay privately for her psychiatric assessments at a time when her pay had been reduced to half.

26. Ms E has referred to a previous determination by the then Deputy Pensions Ombudsman (PO-103). She says the Deputy Ombudsman had found that the applicant's injury benefit should not have been apportioned and that he should receive a 100% injury award. She says, in that case, the applicant had gone to the Pensions Ombudsman before the PMAB and she wonders if this might have made a difference in her own case.

27. Ms E feels there is the potential for a conflict of interest to arise because TVP's Pensions Manager and Dr Cheng sit on the national HR board for the PMAB. She says the Pensions Manager represented TVP at the PMAB, and both he and Dr Cheng would be acquainted with members of the PMAB from previous meetings.

28. Ms E has explained that she continues to live in the area and it is unlikely that her condition will improve while she does. She says a level 4 award would enable her to fund her medical treatment and relocate.

TVP's submissions

29. TVP have confirmed that the PMAB did take longer than the allocated 14 days to provide a written report of their decision. They say this was because the PMAB requested additional information about jobs and salaries. They say they complied with the PMAB's request for additional information within the two weeks specified.

30. TVP have explained that Health Management Ltd, as PMAB administrators for the Home Office, manage the PMAB. They have proposed sharing information from Ms E's case with Health Management Ltd for them to consider when arranging future PMABs so that the concerns raised about the lack of female presence and the lack of support can be taken into account.

31. With regard to delay, TVP point out that the original SMP retired and it was necessary to appoint another. They say Dr Cheng wanted to see Ms E and this resulted in further delay because she wanted a paper review. They point out that Health Management Ltd arrange the PMAB and they understand that they did so within the Home Office time limits; with the exception of the delay for additional information to be provided.

32. TVP say they provided copies of all the relevant paperwork for the PMAB and a further copy was sent to Ms E's representative. They point out that Ms E has not specified which documents she considers were missing. They also point out that Ms E was provided with copies of Dr Leeming-Latham's report and Dr Cheng's report.

33. TVP have referred to regulation 31(3) and point out that the PMAB's decision is final. They say they took legal advice (internally) with regard to challenging the PMAB's decision. They decided that the potential cost of a legal challenge outweighed the additional cost of uprating Ms E's injury award. On the basis of cost and the fact that they have the right to review her award in two years' time, they decided not to challenge the decision.

Adjudicator's Opinion

34. Ms E's complaint was considered by one of our Adjudicators who concluded that further action was required by Thames Valley Police. The Adjudicator's findings are summarised briefly below:

- On the question of apportionment, the Adjudicator referred to *Anton* and noted the judge had said that, for appointment to arise, each factor must separately cause some degree of loss on its own. The Adjudicator was of the view that Dr Leeming-Latham had not taken the correct approach and that TVP should have asked him to reconsider his decision. On the basis that Dr Cheng took the same approach as Dr Leeming-Latham, the Adjudicator was also of the view that the first stage of the review process did not provide redress.

- With regard to the PMAB's decision to award a level 3 benefit, the Adjudicator said they were entitled to come to a decision as to Me E's loss of earning capacity. She said, in the absence of a flaw in the PMAB's reasoning or an error in the evidence underlying it, TVP were required to adopt that decision. She was of the view that the evidence did not support finding that TVP should not have acted on the PMAB's decision.

- The Adjudicator took the view that, had TVP picked up on the flaws in Dr Leeming-Latham's approach, the appeal process could have been reduced by approximately eight months. She recommended that TVP pay Ms E £750 for distress and inconvenience. TVP have indicated their willingness to do so.

35. Ms E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms E provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Ms E for completeness.

Ombudsman's decision

36. Ms E has referred to a decision by the former Deputy Ombudsman. That case concerned a review of an injury benefit already in payment. The courts have decided that, on review, the SMP and the PMAB (where applicable) should confine themselves to determining whether there has been a change in the degree of the individual's disablement; this does not include apportionment. Ms E's case concerns an initial award decision. Therefore, the previous case does not help her.

37. Ms E has raised concerns about the conduct of the PMAB. In particular, she is concerned that the PMAB could take the approach that a level 4 award should not be granted under any circumstances. She suggests the evidence could be tailored to this approach. The conduct of the medical professionals in coming to their decision is not within my jurisdiction; they are governed by their own professional bodies and codes of conduct. Having said this, the evidence in Ms E's case does not suggest that there was anything untoward in the conduct of the PMAB which should have been challenged by TVP. In the circumstances, TVP were required to accept the PMAB's decision.

38. I do find that the whole process, from Dr Leeming-Latham's decision to the PMAB, was unnecessarily prolonged because TVP failed to pick up the flaws in the initial decision. This will have caused Ms E unnecessary significant additional stress in an already stressful situation. Therefore, I uphold Ms E's complaint to this extent.

Directions

39. Within 14 days of the date of this determination, TVP shall pay Ms E £750 for the distress and inconvenience arising out the delays in dealing with her appeal.

Anthony Arter

Pensions Ombudsman
18 October 2016

Appendix 1

Medical evidence

40. This appendix contains brief summaries of the key medical reports relating to Ms E's case. The Pensions Ombudsman has been provided with copies of other medical reports obtained for various purposes. Whilst this evidence has been reviewed in the course of investigating Ms E's case, it is not summarised here simply in the interests of brevity.

Dr Tehrani (chartered psychologist), 17 January 2013

41. Dr Tehrani saw Ms E for the purpose of assessing whether she would be able to return to work and how TVP might facilitate this. At the end of her detailed report, Dr Tehrani said,

> "Given the history it seems unlikely that [Ms E] will ever regain her trust in [TVP] … Whilst it may be possible to reduce her symptoms it seems likely to me that she will not be able to get over her loss of trust and this will cause her to relapse if she returns to work.
>
> I believe it is likely that she could find some employment outside [TVP] but it is my view that she would not be able to work in a role which involved her dealing with trauma, abuse or confrontation."

Dr Logsdail (consultant psychiatrist), 6 February 2013

42. Dr Logsdail wrote to Ms E's GP. He said there was no evidence of substantial improvement in Ms E's mental state since he had seen her in 2009. He also said that it seemed highly unlikely to him that there would be any substantial change over the coming few months.

Dr Logsdail, 14 March 2013

43. Dr Logsdail wrote to the Force Medical Adviser following a request for clarification regarding Ms E's condition and treatment. Amongst other things, he confirmed that she had a primary psychiatric condition. Dr Logsdail said he thought Ms E would recover and would be able to get back to work in a different set of circumstances and a different management style. On the question of treatment, Dr Logsdail said (amongst other things) the current protocol for the treatment of resistant depression would take between two and five years to complete. He also noted the treatment offered under the NHS would be restricted.

Dr Leeming Latham (occupational health physician), 28 November 2013

44. In his report, Dr Leeming Latham set out (amongst other things) a medical history for Ms E. He noted the entry in her GP records, for 4 May 1988, stating "Depressional neurosis". He noted a further entry, on 10 February 1992, in which Ms E was said to have complained of tiredness and the record stated "post-viral probably". Dr Leeming

Latham went on to note that the GP record showed that Ms E had denied depression. He said this left the diagnosis as a query and noted that the GP had said Ms E's case should be reviewed if her symptoms persisted. He also noted that this entry coincided with an absence from work for seven days attributed to influenza. Dr Leeming Latham then noted an entry in the GP records, for 22 September 1997, stating "Stress and anxiety symptoms. Pressure at work. Insomnia. Looks flat. Prob [*sic*] depressed." The next GP entry noted by Dr Leeming Latham was for 2005. Dr Leeming Latham also made reference to Ms E's sickness absence record. He concluded,

> "[Ms E] has Anxiety and Depression. The medical record shows that her mental health difficulties date from at least 1988, a period of some 25 years. Specifically, this pre-dates her police career, which started in 1989. There have been several significant absences with mental health difficulties since 1988, and these absences have been progressively longer each time the problem has arisen. The majority are related to perceptions about her work situation …
>
> It appears that [Ms E's] mental health condition has been aggravated substantially by experiences and perceptions in police work, and, therefore, it appears to be appropriate to accept the disablement as the result of an injury received in the execution of police duty.
>
> There is a clear previous history of mental health issues in the medical record, although [Ms E] denies any recollection of the entries that have been demonstrated. With a previous history of mental health issues, this provides a hypothesis for the occurrence of mental health difficulties associated with the workplace in later years. It appears to be likely that [Ms E] might not have been vulnerable to mental health issues in the workplace if she had not suffered with a pre-existing mental health condition. Conversely, if she had no relevant previous medical history, then one could postulate that she would have been likely to survive the circumstances of the working environment without a breakdown of her health, as is the case for the great majority of police officers.
>
> Therefore, the level of the injury award should be apportioned between the previous history of mental health issues, and the injury on duty. I consider it fair and appropriate in this case to make that apportionment by 50% to previous mental health issues and 50% to an injury on duty …"

Dr Kapoor (GP), 9 April 2014

45. In an open letter, Dr Kapoor said he had been asked, by Ms E, to comment on an entry in her medical records for 4 May 1988. He said Ms E had been coming to see him as a patient since January 2013. Dr Kapoor said the May 1988 entry recorded a diagnosis of depressional neurosis but there were no other notes or a signature with this entry. He said he was unable to state with any degree of certainty whether this was an accurate entry. He went on to say,

> "I would however, make the following observations. There are no other entries recorded regarding psychological symptoms either preceding or following this entry up until 10th February 1992. There is no record of any treatment being given for the alleged diagnosis of depressional neurosis. There is no signature attached to the record. There was no follow up of the patient and crucially this is something I would have expected to have occurred following a diagnosis of depression in a patient.
>
> For these reasons I believe that there is some doubt about how much one can rely on this entry …"

Dr Cheng (consultant in occupational medicine), 5 September 2014

46. In a letter addressed to TVP's Head of Corporate Health, Dr Cheng said he had been asked by TVP to establish whether Ms E qualified for a higher injury benefit. He said he had had access to her occupational health file, GP records, and personnel file.

47. With regard to the GP entry of 4 May 1988, Dr Cheng said this was a "contemporaneous entry irrespective of whether it was an evidence-based clinical diagnosis". He referred to Dr Kapoor's letter and reiterated it was a contemporaneous entry. He went on to say there were related entries dated 7 January 1989, 10 February 1992 and 22 April 1997. Dr Cheng concluded,

> "Having carefully reviewed all the documents available and clinically assessed [Ms E], I conclude that the recommendation of 50% apportionment made by Dr Leeming-Latham … was reasonable. Generally, formal grievances that were not upheld and disciplinary proceedings should not be classified as an injury on duty."

48. Dr Cheng provided a further (longer) report dated 7 November 2014. This was largely a copy of the letter provided in September 2014. In addition, Dr Cheng listed the documents he had been provided with and provided a section headed "Extracts from Relevant Documents". In this section, Dr Cheng quoted extracts from correspondence between TVP and their medical adviser relating to Ms E's dispute with them about her performance. He also quoted from reports provided by Dr Logsdail in 2009 and 2013, a mental health practitioner in 2010, and Dr Tehrani in 2013. Dr Cheng also quoted from a letter written by TVP to an individual who had complained about Ms E.

Dr Rajput, 13 March 2015

49. In his report to the PMAB, Dr Rajput set out the results of his interview with Ms E. He concluded by saying,

> "[Ms E] currently fills the criteria for recurrent depressive disorder …
>
> She must have had a difficult time during the relationship breakdown and separation however, she also must have had some resilience as she was able

to continue in her career following this. She was able to conduct herself without any difficulty and understandably and expectedly became tearful at various points when difficult subjects were covered.

The term of “depressional neurosis” found within the GP records does not seem to have any real substance. There is no associated description of a mental health condition.

In 1992, GP record it mentions the word depression, within the context of the paragraph it fits in with “denies depression”, rather than “discuss depression”. So this entry does not indicate a formal episode of depression either. Instead it points towards possible stress symptoms but no evidence of depressed mood.

The 1997 record does indicate occurrence of a significant mental health episode.”

Appendix 2

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

50. At the relevant time, regulation 6 provided,

> "(1) A reference in these Regulations to an injury received in the execution of duty by a member of a police force means an injury received in the execution of that person's duty as a constable ...
>
> (2) For the purposes of these Regulations an injury shall be treated as received by a person in the execution of his duty as a constable if -
>
> (a) the member concerned received the injury while on duty or while on a journey necessary to enable him to report for duty or return home after duty, or
>
> (b) he would not have received the injury had he not been known to be a constable, or
>
> (c) the police pension authority are of the opinion that the preceding condition may be satisfied and that the injury should be treated as one received in the execution of duty or
>
> (3) In the case of a person who is not a constable but is within the definition of "member of a police force" in the glossary set out in Schedule 1 by reason of his being an officer or employee there mentioned, paragraphs (1) and (2) shall have effect as if the references to a constable were references to such an officer or employee …"

51. Regulation 7 provided,

> "(1) … a reference in these Regulations to a person being permanently disabled is to be taken as a reference to that person being disabled at the time when the question arises for decision and to that disablement being at that time likely to be permanent.
>
> …
>
> (4) Subject to paragraph (5), disablement means inability, occasioned by infirmity of mind or body, to perform the ordinary duties of a member of the force ...
>
> (5) 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 …

(6) Notwithstanding paragraph (5), "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 …"

52. The method by which an injury benefit is calculated is set out in Schedule 3. Paragraph 3 contains a table setting out the amount of minimum income guarantee against four levels of degree of disablement. Level 1 corresponds to a degree of disablement of 25% or less; level 2 corresponds to more than 25% but not more than 50%; level 3 corresponds to more than 50% but not more than 75%; and level 4 corresponds to a degree of disablement of more than 75%.

53. Regulation 30 provided,

"(1) Subject to the provisions of this Part, the question whether a person is entitled to any, and if so what, awards under these Regulations shall be determined in the first instance by the police pension authority.

(2) Subject to paragraph (3), where the police pension authority are considering whether a person is permanently disabled, they shall refer for decision to a duly qualified medical practitioner selected by them the following questions -

(a) whether the person concerned is disabled;

(b) whether the disablement is likely to be permanent,

except that, in a case where the said questions have been referred for decision to a duly qualified medical practitioner under … regulation 69 of the 2006 Regulations, a final decision of a medical authority on the said questions under … Part 7 of the 2006 Regulations shall be binding for the purposes of these Regulations;

and, if they are further considering whether to grant an injury pension, shall so refer the following questions -

(c) whether the disablement is the result of an injury received in the execution of duty, and

(d) the degree of the person's disablement; …

(6) The decision of the selected medical practitioner on the question or questions referred to him under this regulation shall be expressed in the form of a report and shall, subject to regulations 31 and 32, be final.

(7) A copy of any such report shall be supplied to the person who is the subject of that report."

54. Regulation 31 provided,

> "(1) Where a person is dissatisfied with the decision of the selected medical practitioner as set out in a report under regulation 30(6), he may, within 28 days after he has received a copy of that report or such longer period as the police pension authority may allow, and subject to and in accordance with the provisions of Schedule 6, give notice to the police pension authority that he appeals against that decision.
>
> (2) In any case where within a further 28 days of that notice being received (or such longer period as the police pension authority may allow) that person has supplied to the police pension authority a statement of the grounds of his appeal, the police pension authority shall notify the Secretary of State accordingly and the police pension authority shall refer the appeal to a board of medical referees, appointed in accordance with arrangements approved by the Secretary of State, to decide.
>
> (3) The decision of the board of medical referees shall, if it disagrees with any part of the report of the selected medical practitioner, be expressed in the form of a report of its decision on any of the questions referred to the selected medical practitioner on which it disagrees with the latter's decision, and the decision of the board of medical referees shall, subject to the provisions of regulation 32, be final."

55. Regulation 32 provided,

> "(1) A court hearing an appeal under regulation 34 or a tribunal hearing an appeal under regulation 35 may, if they consider that the evidence before the medical authority who has given the final decision was inaccurate or inadequate, refer the decision of that authority to him, or as the case may be it, for reconsideration in the light of such facts as the court or tribunal may direct, and the medical authority 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, shall be final.
>
> (2) 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 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.

(3) If a court or tribunal decide, or a claimant and the police pension authority agree, to refer a decision to the medical authority for reconsideration under this regulation and that medical authority is unable or unwilling to act, the decision may be referred to a duly qualified medical practitioner or board of medical practitioners selected by the court or tribunal or, as the case may be, agreed upon by the claimant and the police pension authority , and his, or as the case may be its, decision shall have effect as if it were that of the medical authority who gave the decision which is to be reconsidered.

(4) In this regulation a medical authority who has given a final decision means the selected medical practitioner, if the time for appeal from his decision has expired without an appeal to a board of medical referees being made, or if, following a notice of appeal to the police pension authority, the police pension authority have not yet notified the Secretary of State of the appeal, and the board of medical referees, if there has been such an appeal."

56. Regulation 33 provided,

"If a question is referred to a medical authority under regulation 30, 31 or 32 and the person concerned wilfully or negligently fails to submit himself to such medical examination or to attend such interviews as the medical authority may consider necessary in order to enable him to make his decision, then -

(a) if the question arises otherwise than on an appeal to a board of medical referees, the police pension authority may make their determination on such evidence and medical advice as they in their discretion think necessary;

(b) if the question arises on an appeal to a board of medical referees, the appeal shall be deemed to be withdrawn."

57. Further requirements relating to an appeal to a PMAB are contained in Schedule 6,

"1 Every notice of appeal under regulation 31(1) and statement of grounds under regulation 31(2) shall be in writing.

2 On receiving a notice of appeal against a report issued under regulation 30 and the appellant's statement of grounds for appeal, the police pension authority, … shall forward to the Secretary of State and a board of medical referees copies of those documents and all other documents determined as necessary by the Secretary of State.

3 (1) The board of medical referees shall consist of not less than three medical practitioners appointed by, and in accordance with, arrangements approved by the Secretary of State, provided that -

(a) at least one member of the board of medical referees shall be a specialist in a medical condition relevant to the appeal; …

(2) The board of medical referees shall appoint a time and place for hearing the appeal, at which it may interview or examine the appellant, … and shall give not less than two months' notice, or such shorter period as the police pension authority and appellant may agree, thereof to the appellant and police pension authority …

4 (1) Where either party to the appeal intends to submit written evidence or a written statement at a hearing arranged under paragraph 3 that party shall, subject to sub-paragraph (2), submit it to the board of medical referees and the other party not less than 35 days before the date appointed for the hearing.

(2) Where any written evidence or statement has been submitted under sub-paragraph (1), any written evidence or statement in response may be submitted by the other party to the board of medical referees and the party submitting the first-mentioned evidence or statement at any time not less than seven days before the date appointed for the hearing.

(3) The board of medical referees may postpone or adjourn the date appointed for the hearing where any written evidence or statement is submitted in contravention of sub-paragraph (1) or (2) or it appears necessary to do so for the proper determination of the appeal.

(4) References in sub-paragraphs (1) and (2) to periods of days shall include weekends and public holidays.

5 (1) Any hearing (including any examination) may be attended by -

(a) the selected medical practitioner; and

(b) a duly qualified medical practitioner appointed for the purpose by the appellant,

although they may only observe any examination.

(2) If the selected medical practitioner does not attend any examination then a duly qualified medical practitioner appointed for that purpose by the police pension authority may attend the examination as an observer.

(3) If any hearing includes an examination then only medical practitioners may be present for that part of the hearing.

6 The board of medical referees shall supply the police pension authority, the appellant and the Secretary of State with a written statement of its

decision. Where the board of medical referees disagrees with any part of the selected medical practitioner's report, the board of medical referees shall supply a revised report …”