

NATIONAL ATTENDANCE MANAGEMENT FORUM

Procedural Guidance Notes for Assessing and Re-assessing the Degree of Disablement as a Result of an Injury Received in the Execution of Police Duties.

Police (Injury Benefit) Regulations 2006

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Note – References in the Regulations to the now defunct Police Authorities are shown in this document as 'Police Pensions Authorities' (PPA)

1. INTRODUCTION

- 1.1 The aims of these procedural guidance notes are to highlight the key provisions within The Police (Injury Benefit) Regulations 2006 which relate to “Injury on Duty” (IOD) awards and to suggest how those provisions may be administered. References to the “Regulations” in these notes are references to the 2006 Regulations unless stated otherwise.
- 1.2 These notes are intended as a framework to assist Forces in adopting their own individual policies.
- 1.3 They do not replace or supersede the Regulations.
- 1.4 It should be noted that, once appointed, the Selected Medical Practitioner’s (SMP’s) role is outlined in the Regulations and they will reach their decisions independently on an individual basis when undertaking assessments. As such they are entitled to apply their own processes having regard to relevant case law.
- 1.5 It is recommended that Forces instruct SMP’s on the legal tests and the necessary procedures to follow when granting awards. This should include guidance on causation, apportionment and resolving disputes of fact.
- 1.6 These guidance notes reflect the Regulations and in particular the most common issues which relate to the initial granting of an award, and periodic reassessments. The guidance brings together the key sections and incorporate the procedures to be followed in such circumstances. Reference should be made to the Regulations if issues are not covered in this guidance.

2. APPLICABILITY

- 2.1 The Regulations make provision for payments to police officers who are permanently disabled as a result of an injury received without their own default in the execution of duty as a police officer (an IOD). The Regulations also contain provisions in respect of the death of an officer following an IOD and also extend to other allowances e.g. for dependent relatives.
- 2.2 Regulation 11(1) states that a police officer’s injury award applies to a person who ceases or has ceased to be a member of a police force and is permanently disabled as a result of an injury received without his own default in the execution of his duty.
- 2.3 An officer must be guilty of serious and culpable negligence or serious and culpable misconduct for default to be an issue. (see 4.7)
- 2.4 These procedural guidance notes do not apply to Special Constables who may have an entitlement but have separate arrangements. Reference should be made to National Police Improvement Agency Circular NPIA 04/2010.

3. **GUIDANCE ON PROCESS**

3.1 **Payment**

Payment of gratuities and pensions will be made in accordance with the Regulations.

3.2 **“Police Officer’s Injury Award”**

3.2.1 Regulation 11(2) explains that an IOD award comprises a gratuity (a one off payment) and an ongoing injury pension. Both are calculated in accordance with Schedule 3 of the Regulations.

3.2.2 Any revision of the injury pension under Regulation 37 would require a substantial change in the degree of disablement. Any forfeiture under Part K of the 1987 Regulations would reflect the cessation of the disability. (Note - within 25 years reckonable service)

3.3 **Initial Granting of an IOD Pension Award**

3.3.1 Regulation 30(1) states that the question as to whether an officer is entitled to any, and if so what, awards, shall be determined in the first instance by the Pensions Authority. Before consideration can be given an entitlement to an injury award the individual must first be deemed to be permanently disabled from performing ordinary police duties and have exited the Police Force or confirmed about to exit.

3.3.2 Regulation 30(2) states that where the Pensions Authority are considering whether a person is permanently disabled, they shall refer for a decision to a duly qualified medical practitioner (SMP) selected by them the following questions-

a) *whether the person is disabled;*

b) *whether the disablement is likely to be permanent.*

3.3.3 Forces should ensure that SMP’s have a clear understanding of the relevant tests for ‘disablement’ and ‘permanence’. Importantly disablement means disabled from executing any of the normal duties of a Police Officer, and permanence means long-lasting. (see Court cases of Walther (2010) and Scardfield (2013). Assessments are made on the balance of probabilities.

3.3.4 When considering disablement the SMP should be aware that being asymptomatic but vulnerable to recurrence may not fulfil the test for disablement. Similarly, being symptomatic with a probability of recovery, which may or may not leave the officer asymptomatic within his or her lifetime, may not fulfil the criteria for permanence.

3.3.5 The SMP may request whatever medical records or other information he adjudges to be necessary to reach a decision and this must be set out in a report. There is a right of appeal to the PMAB against any of the formal determinations of the SMP. There may also be a right of challenge to the Pensions Ombudsman. An appeal to the PMAB is against clinical findings of SMP. The case of ‘Yates’ case sets out other avenues of appeal.

- 3.3.6 Most requests for awards emanate from officers who are in the process of being retired on medical grounds or have recently so retired. However, any former officer (who may not have left on health grounds) can apply for consideration of an IOD award. In these latter cases entitlement is established by use of all relevant questions contained in Regulation 30(2) mentioned above.
- 3.3.7 Where permanent disability is not established the SMP should not move on to consider questions (c) & (d). All requests for consideration will need to be supported by appropriate evidence to show that the permanent disability may have been the result on an injury received in the execution of police duties. Despatch of a claim questionnaire is the normal means of obtaining this information.
- 3.3.8 On receipt of the completed questionnaire, Human Resources (HR) (or another department nominated by the PPA) will establish if there are sufficient grounds for the Pensions Authority to authorise a referral to the SMP. Internal records such as accident reports may often be of use in this process. Further contact with the applicant may be required to clarify any details in order to equip the SMP with the information they will require at the medical examination. The PPA may also need to undertake their own investigation into any issues of non medical fact before referring the matter to the SMP.

3.4 Degree of Disablement

- 3.4.1 Where the SMP has determined that the claimant's permanent disablement was the result of an injury sustained in the execution of their police duties, they must then consider question (d), the degree of disablement. Regulation 7(5) defines degree of disablement as follows:

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.

- 3.4.2 It will be for the SMP to assess the degree of disablement in terms of a percentage. However, where specific conditions are met the Regulations lay down that the degree of disablement could be assessed as 100% receiving treatment as a hospital inpatient. (See Regulation 7(5) & (6))
- 3.4.3 The degree of disablement is classified in the Regulations as slight, minor, major or very severe. Referring to these levels as Band 1 to Band 4 respectively, has become commonplace. (See Schedule 3. 3)
- 3.4.4 The degree of disablement relates to the loss of earning **capacity**. It is therefore a quantum assessment reached by considering the disabling effects of the injury and how this impacts on the individuals' loss of earnings potential. It is not a test, however, of whether the individual is actually earning a wage, whether he or she wants to work, or whether or not they would be offered a job in competition with others. In most cases the degree decided upon will be a theoretical estimate based on the information available.

- 3.4.5 In order to assess the degree to which earning capacity has been affected the SMP may decide to determine two values, namely
- a) the former officers uninjured earning capacity but for the relevant injury and
 - b) the former officers injured earning potential with the relevant injury.
- 3.4.6 The injured earning capacity will be calculated through consideration of what the person concerned could earn at the time the consideration takes place. The individuals' uninjured earning capacity '*but for the relevant injury*', will be determined through assessment of what the person concerned would have been able to earn if the relevant IOD injury was not present. Both will involve consideration of their skills, knowledge, experience (either gained within or without of the police service) qualifications and any actual earnings, if currently working. The impact of other medical conditions or circumstances may also potentially be relevant and may be determinative of the issue, for example, if another medical condition means the former officer has no earnings capacity whatsoever. (See paras 3.7.4 &.5 below)
- 3.4.7 When determining earning capacity, the SMP may consider specifying the type of work activities (eg manual/sedentary/indoor/outdoor etc) or kind of job, full or part time, that the person concerned potentially could or would be able to do. These details could then be passed to the Force to identify jobs to match the kind of work described by the SMP and the earnings that these would attract. The SMP will thereafter consider the research and decide which job or jobs (and the connected earnings potential) the person concerned could or would be able to do. This will enable the percentage degree of disablement to be determined.
- 3.5 Reports of the SMP**
- 3.5.1 Whilst Regulation 30(2) sets out the four questions, which may be referred to the SMP, Regulation 30(6) states that the decisions made by the SMP shall be expressed in the form of a report, a copy of which shall be supplied to the individual applying for the IOD award.
- 3.5.2 The assessment process will not be complete until the PPA has received a copy of the report.
- 3.5.3 In his report the SMP should endeavour to explain the medical assessment in plain terminology so that the person concerned may better understand it. The report should nevertheless be as explicit in medical terms as possible, recognising that it will form the basis for any appeal or subsequent review, particularly a reassessment under Regulation 37(1) which looks for any alteration of the degree of disablement.
- 3.5.4 The SMP's report should contain reference to the information used to determine the degree of disablement, including any salary or job comparisons and why they are considered appropriate.

3.6 Reassessment of Injury Pension

3.6.1 Regulation 37(1) states:

“...the police authority shall, at such intervals as may be suitable, consider whether the degree of the pensioner’s disablement has altered; and if after such consideration the police authority find that the degree of the pensioner’s disablement has substantially altered, the pension shall be revised accordingly.”

Such consideration must be undertaken by referring question 30(2) (d) *‘the degree of the person’s disablement’* to the SMP. Any alteration will affect only the injury pension and not the ill health pension or one off gratuity.

3.6.2 It shall be for the Pensions Authority to determine the intervals at which such reviews might take place. Reasons may include a recommendation made by the SMP at an earlier assessment, information coming to the Authorities attention indicating that a change in circumstances may have occurred or the individual requesting a review.

3.6.3 Information for a review is usually obtained by the head of HR or other person acting with the delegated authority of the Pensions Authority asking the individual to complete a questionnaire and medical consent forms. (See appendices). On receipt of these completed documents the medical records should be requested (where authority to obtain these has been given) and any other information obtained researched. A report should be prepared for the SMP giving information regarding the history of the award, the reason for which it was granted, the degree of disablement, any current activities or earnings of the individual or apparent changes in their circumstances. Completed questionnaires and the medical records should accompany this document.

3.6.4 The matter shall then be put to the SMP asking him to consider whether (from the information provided) there has been a change in the degree of disablement. In rare instances it may be immediately apparent to the SMP that there has been no change in which case the matter should be closed (unless the individual requests full reconsideration) and the individual informed of the outcome. In most cases the SMP will want to call the individual for medical examination in order to give proper consideration to the question posed.

3.6.5 The following is the recommended process that should be followed by the SMP;

The overriding issue is to assess how, if at all, has the officer’s degree of disablement consequent upon the duty injury changed from the time of the previous determination rather than what is the officer’s current condition. Thus, the SMP must consider:

- a. whether there has been any alteration, be it improvement or deterioration, in the condition consequent upon the injury on duty; and
- b. whether there has been any alteration, be it improvement or deterioration, in the underlying health, fitness or condition of the former officer.

He must then determine whether such alterations as he may find to have occurred have led to an alteration (from the time of the previous determination):

- c. in the jobs the former officer would have had the skills to perform if he had not been injured; or
- d. in the jobs the former officer is in fact able to do.

(He should also consider whether by the acquisition of new skills the former officer's earning capacity has altered).

ie Has there has been alteration in the jobs that the officer would have been able to do but for the injury, when compared with what he/she would have been able to do but for the injury at the time of the earlier review, or in the jobs that s/he is now able to do, when compared with what he/she was able to do at the time of the earlier review.

The SMP's role is to measure degree of disablement using admissible evidence. On receipt of his decision it is for the PPA to decide whether any identified change in the degree of disablement represents a substantial alteration and if so they shall revise the IOD pension accordingly.

- 3.6.6 It should be noted that the reviewing SMP cannot impose new decisions in relation to issues of causation and/or apportionment that have previously been determined. Whether or not the SMP agrees with the original diagnosis of permanent disablement giving rise to the injury award entitlement (or any apportionment applied) the only evidence he may consider upon review is that which post dates the earlier review. Note, an exception insofar as evidence pre-dating the earlier review is concerned can arise where its relevance is established by admissible post dating evidence for the first time:-

e.g. the pensioner's qualifying condition has improved thus enabling them to undertake jobs for which they were, hitherto, incapable. Such jobs (and earnings) would now be relevant for consideration by the SMP despite the fact that they may have existed at the time of the earlier assessment, whether unchanged in content or not.

- 3.6.7 Whilst the reviewing SMP is bound by the diagnosis of the earlier SMP, it is open to the reviewing SMP to conclude that the pensioner is no longer disabled or permanently disabled by that medical condition.
- 3.6.8 If a previous SMP has misdiagnosed an index condition and the retired officer did not in fact suffer from that condition (ie right leg injury referred to as left leg) it is open to the reviewing SMP to conclude that the degree of disablement has no impact on the loss of earnings. He cannot, at review, amend the previous clinical findings. (In these circumstances it is worthy of note that the individual would still receive an award based on band 1 as the Regulations provide for zero percentage of disablement to fall into the 25% or less category)

3.7. How is comparison between outside earnings made?

- 3.7.1 In assessing the degree of disablement many assessments will be subjective, as the individual may not be earning an actual income or working to their full capacity – eg part time or temporary work instead of full time. It is however necessary to assess what the pensioner could potentially earn but for the disabling condition received in the execution of police duties and then to assess what he could potentially earn with the disabling condition. The difference between the uninjured earnings assessment (taking account of all conditions affecting earnings loss apart from index condition) and the injured potential earnings with all current conditions (ie all conditions including index condition) is the degree of disablement. For example;

Uninjured earnings potential assessed as £30,000

Injured earnings potential assessed as £20,000

Loss of earnings therefore assessed as £10,000

£10,000 expressed as a percentage of £30,000 = 33% (Band 2)

- 3.7.2 In determining what the former officer would have been capable of earning but for the duty injury it is essential that the pensioner's individual circumstances are considered, such as their past and current skills knowledge and experience and how this would enable them to earn an income in the wider world of work.
- 3.7.3 The SMP will normally require information from the Force HR Department regarding the service history of the retired officer to enable an assessment to be made of his/her competencies. The SMP, following the assessment may also require follow-up information on a range of jobs suitable to the officer's disabilities. Jobs in any sector or industry appropriate to the individuals skills, knowledge or experience may be considered as the process is aimed at deciding what the individual could, in theory, earn rather than finding them an actual job. Similarly jobs in any UK location may be appropriate as actual travel is not an issue in the assessment process. The SMP may also discuss current work and suitable jobs with the retired officer and may include that work within the assessment, if felt appropriate.
- 3.7.4 If a subsequent deterioration in the officer's general health or fitness means that his uninjured earning capacity but for the injury would have been reduced in any event, then applying ordinary principles, and in particular the cases of Jobling v Associated Dairies Ltd [1982] and Heil v Rankin [2001], that should be taken into account in assessing his uninjured earning capacity for the purpose of determining the degree of disablement.

e.g. if an individual were to have developed advanced Parkinson's disease since the last review, such that he was unable to work by reason of the symptoms of that disease alone, then the uninjured earning capacity should be nil. Alternatively, if an officer were to have become generally less fit by reason of advancing age, such that he was no longer able to undertake a physically demanding job, or no longer able to work full time, then the uninjured earning capacity would be reduced accordingly.

- 3.7.5 To do otherwise would be to fail to have regard to the wording of Regulation 7(5), (shown under 3.4.1) which sets out a test of causation clearly designed to put the injured officer in the position he would have been in had it not been for the duty injury:
- 3.7.6 Income from overtime and other allowances such as bonuses should not be taken into consideration either for the purpose of establishing pre-injury or post-injury earning capacity. Similarly income in the form of commissions may often be a clearer indicator of the current economic climate than the person's earning capacity and should be ignored.

4.0 **ADDITIONAL ISSUES**

4.1 **Appeals**

- 4.1.1 Appeals to the PMAB can occur under Regulations 31 or 32.
- 4.1.2 Regulation 31(1) states that where a person is dissatisfied with the decision as set out in the SMP's report, an appeal may be made to the PMAB. Notice of an intention to appeal should be given to the Force within 28 days of receiving the SMP's report. A further 28 days is allowed to provide the grounds for the appeal.
- 4.1.3 On receipt of the grounds for a medical appeal, the Force will refer the matter to the PMAB who will hear the case. If the PMAB disagrees with any decision of the SMP, it will issue a written report, which will be final. Any appeal against facts may lead to an appeal to the Crown Court.
- 4.1.4 Regulation 32(2) allows for the PPA and the claimant to agree to revisit any previous final decision of a medical authority. A former officer who wishes to pursue a Regulation 32(2) referral should write to the Force for the information of the PPA of his/her former Force, or the person responsible under delegated powers, if known setting out brief details as to why this should be considered.
- 4.1.5 In deciding whether to agree to a referral under Regulation 32(2), the PPA may look to use the provision as a mechanism to correct mistakes either as to fact or as to law. Any such reconsideration can only transpire if both the individual and the PPA agree to this.

4.2 Medical Examination (on review)

4.2.1 It is best practice that the SMP should wherever possible conduct a medical examination.

4.2.2 In Turner, it was said at paragraph 21:

“... It is clearly fair both for the police force and for the community that someone who starts out on a pension on the basis of a certain medical condition should not continue to draw a pension, or any kind of benefit, which is no longer justified by reason of some improvement in his condition, or, of course, the reverse.”

4.2.3 Regulation 33 explains that if a person concerned wilfully or negligently fails to submit to a medical examination when the medical authority has been asked questions under the Regulations, the Authority is entitled to make their determination on such evidence and medical advice as they in their discretion think necessary. If this happens at the PMAB stage, the appeal shall be deemed to be withdrawn.

4.3 Case Management Powers of SMP

4.3.1 SMP's operate in a quasi-judicial capacity. If the judgment of SMP's is that they consider it necessary to obtain additional medical records, they are in a position to direct the pensioner to supply these.

4.3.2 If the SMP's, in their judgement consider it necessary to seek additional specialist opinion, they are at liberty to do this and they may direct the pensioner to attend any such consultation.

4.3.3 The pensioner may refuse to comply with any such direction. However, it would be surprising for SMP's to modify their requirements in the face of a refusal by the retired officer to comply with a direction.

4.3.4 Although the retired officer is free not to comply, this will have consequences, namely, a potential drawing of the process to an end with no right of appeal other than to the High Court in the form of an application for leave to apply for Judicial Review.

4.3.5 SMPs are counselled against attempting to make a determination in the absence of information which they, in their professional judgement, consider necessary in order to complete their determination.

4.3.6 If at any stage the SMP considers that a necessary step to the determination has not been taken by the pensioner, the SMP should inform management in writing stating that a step considered necessary to the determination has not been taken, what the step is and any further information the SMP is able to supply as to the circumstances. (ie this may show a wilful or negligent failure)

4.3.7 The SMP should then take no further steps unless or until further instructions are received from the PPA.

4.4 **Regulation 32(2) – Reconsideration of an award**

4.4.1 Regulation 32(2) allows for the Police Pensions Authority and the claimant to agree to revisit the previous final decision of a medical authority.

4.4.2 In the case of R (The City of London Police Authority and another) v The Medical Referee and (1) Galvin and another [2004] the court considered whether, on an appeal to a medical referee under the Police Pensions Regulations 1987, Regulation H2, the medical referee was required to assess the officer's medical condition as at the date of the SMP's original decision, or at the date of the appeal to him.

It was argued on behalf of the Police Authority that the medical referee should have reviewed the decision of the SMP, to determine whether the officer had been disabled at the date of that doctor's decision.

This argument was rejected and it was determined that the medical referee was required to consider whether the officer was permanently disabled at the time of the appeal to him. The reasoning was set out in paragraph 19 of the judgment.

4.4.3 Another case, R (Caine) v Cavendish (2001), related to an officer's entitlement to an injury award under reg B4 of the 1987 Regulations, and also determined that the relevant date was the date of the medical referee's examination, but the issue on that appeal was whether the permanent disablement had been caused by the injury on duty. These are both issues of primary entitlement to an award, whereas the issue in this instant situation is not.

4.4.4 In both 'Galvin' and 'Caine' the correct approach to take on appeals was to make a determination as the case presents itself at that time, whereas a "reconsideration" of the original decision requires a review of what happened at the time of the determination under reconsideration.

4.4.5 Regulation 32(2) requires the consent of both the (former) officer and the Police Pension Authority for its operation, it is not prescriptive as to the situations in which it may apply. It may, for example, be used where it has become apparent, and it is agreed, that evidence before the SMP (or the PMAB) was inaccurate or incomplete, or, where guidance applied at the time has subsequently been found to be unlawful. Its purpose is to provide a simple mechanism for correcting obvious errors.

Reference should be made to 'Haworth' at para 96, which states: "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 to the former police officer by either the SMP or PMAB, has been determined in accordance with the Regulations and that the retired officer is being paid the sum to which he is entitled under the Regulations."

- 4.4.6 Best practice is for the Force and the retired officer to agree a process for reconsideration, which could be from the date that the original decision was made or from the more appropriate date of the time of the reconsideration. If no agreement can be reached it is recommended that legal advice be sought on the appropriate date.
- 4.4.7 If the only question being asked of the SMP is the degree of disablement when no conditions have changed then to reconsider from the circumstances relevant at the time of the original assessment may be acceptable to both parties.
- 4.4.8 If agreed, the SMP should reconsider the original decision that was made, on the basis of the former officer's condition as it was at that time, but applying the correct principles in order to answer the statutory question of whether the officer's degree of disablement had substantially altered since the previous review, or the original determination if there had not been a previous review (reg 37).
- 4.4.9 In effect, therefore, the SMP would then be conducting another review taking the officer's condition as at the previous date of the determination under reconsideration.
- 4.4.10 If there is no agreement then the PPA is entitled to follow the case of *Galvin v City of London Police and another v Medical Referee* (2004). Paragraphs 19-22 are relevant. It is abundantly clear that a medical authority hearing an appeal against an SMP does so in the here and now, and using the same reasoning this should also apply to reconsiderations in pursuant of Regulation 32/2.

4.5 Apportionment

- 4.5.1 The Administrative Court has taken the view a two-stage approach is required in determining degree of disablement. First, the loss of earning capacity is to be assessed. Secondly, the SMP needs to determine the degree to which that loss is the result of a qualifying injury.
- 4.5.2 The SMP therefore needs to discount the effect of a non-qualifying injury and any other cause whether classified as an injury or not - eg a non-duty injury, and any injury received through default, or some other cause. The focus of the Regulations is not exclusively on contrasting duty and non-duty injuries.
- 4.5.3 It should be noted that apportionment can only be considered at a reassessment if it had been applied at the initial assessment and any subsequent reassessments. The SMP cannot start from scratch by including apportionment, if not previously applied.
- 4.5.4 The SMP, in using a staged approach in determining degree of disablement should note that the stages are different depending on whether it is an initial assessment or a review. This is because causation can only be considered at initial assessment.

However, in both circumstances the SMP must discount the disabling effects on work capability (and the consequences for earnings capacity) of any non-qualifying cause, whether classified as an injury or not.

- 4.5.5 The process of apportionment requires consideration of causation, so apportionment can only be initiated by the SMP at the first assessment, when eligibility for an award is established.
- 4.5.6 Apportionment should be applied where one or more functional disablements that have a potential to impact on work capacity (and therefore earnings capacity) arise from both qualifying injury/injuries and other cause(s).
- 4.5.7 Before apportionment can arise each causal factor, taken on its own, must cause some degree of incapacity that impacts negatively on earnings capacity via relevant work function (e.g. impairs the mobility necessary to do a physical job, or impairs the ability to work full time). In considering apportionment the SMP will therefore need to consider the cause(s) for the loss of work-relevant function(s).
- 4.5.8 This is a separate exercise from assessing eligibility for an injury award by reason of the injury causing or substantially contributing to the permanent disablement. However, as in the case of determining whether disablement is attributable to a qualifying injury, the SMP will have to consider the evidence and apply his/ her medical judgement.
- 4.5.9 More than one medical condition causing loss of earning capacity –

The simplest case of apportionment is where there are two separate causes of loss of earning capacity, each making a contribution to the loss. Where, for instance, a person is disabled partly on account of a medical condition occasioned by a qualifying injury and partly by another medical condition, the degree of disablement must be assessed on the basis of an apportionment of the disablement to take account only of the condition occasioned by the relevant injury.

- 4.5.10 More than one injury within the same condition causing loss of earnings capacity –

Apportionment may also be appropriate where there is no other medical condition, as mentioned above, but where it is found that there has been more than one injury involved which causes loss of earning capacity and where not all the injuries were received in the execution of duty.

In such a case the percentage of degree of disablement should be apportioned, applying the same proportion that the injury or injuries in the execution of duty have contributed to the loss of earning capacity as a result of the disablement.

- 4.5.11 There is also the situation where loss of earning capacity is attributable to a qualifying injury exacerbating a pre-existing condition. Apportionment is appropriate here only where the underlying condition, on its own, had also caused a loss of earning capacity. The suggested test is the question: Would there have been a loss of earning capacity but for the injury?

- 4.5.12 It should be noted that apportionment can only be considered at a reassessment if it had been considered at the previous assessment or reassessment. The SMP cannot start from scratch by including apportionment, if not previously considered. (example assessments at appendix 2)

4.6 Cancellation of ill-health and injury pensions

- 4.6.1 Under Regulation K1 of the Police Pension Regulations 1987 the PPA has the discretion to review whether an officer who retired with an ill-health pension on account of permanent disablement is still disabled.
- 4.6.2 Such a review can take place only if the person concerned can still have his or her ill-health pension cancelled.
- 4.6.3 This cannot happen if the former officer concerned has reached the compulsory retirement age for the rank which he or she last held or the former officer would have been entitled to 25 years reckonable service, had he or she not been ill-health retired.
- 4.6.4 The procedure for reviewing an ill-health pension is not clearly set out in the Regulations. It is recommended that PPA's adopt a similar process to the application for permanent disablement and the SMP should be asked whether the disablement, which was assessed as permanent at the time of the officer's retirement, has ceased.
- 4.6.5 It is further recommended that any medical decision should attract the same right of appeal through to the Police Medical Appeal Board.
- 4.6.6 It will only be appropriate to recall a former officer to duty where he or she is once again able to carry out such duties.
- 4.6.7 In such circumstances any ill-health pension (and injury award) except any secured portion may be cancelled if the retired officer rejoins or refuses to rejoin the former Force.

4.7 Reduction in case of default

- 4.7.1 Where a PPA is considering whether to reduce an ill-health or injury pension on the grounds of default under K3 Police Pension Regulations 1987 or Regulation 38 Police (Injury Benefit) Regulations 2006 then Regulations H1 (3)/30(4) of those Regulations provide for the PPA to refer to the SMP the question of whether the person concerned has brought about or substantially contributed to the disablement by his or her own default.
- 4.7.2 The SMP's report containing his or her decision will be sent to the PPA who will in turn provide a copy to the applicant or award recipient.
- 4.7.3 Where there has been default, the PPA may reduce the amount of any ill-health or injury award by an amount not exceeding a half of that to which the person would otherwise be entitled.

- 4.7.4 The Police (Injury Benefit) Regulations 2006 (Regulation 6/4) require there to be "serious and culpable negligence or misconduct" for default to be relevant. The words "serious and culpable" apply to both "negligence" and "misconduct".
- 4.7.5 It should be noted that the above sections 4.7.2 to 4.7.4 could also conceivably apply to someone already in receipt of an injury award, where the full circumstances were not known at the outset.