

## Equality Impact Assessment

The purpose of this EIA is to ensure you consider any equality issues as part of your decision making when developing / reviewing your policy / procedure.

Please complete the sections below and send to the Equality and Diversity unit to be quality assured. New / revised policies cannot be published on the policy database until the EIA has passed the quality assurance process.

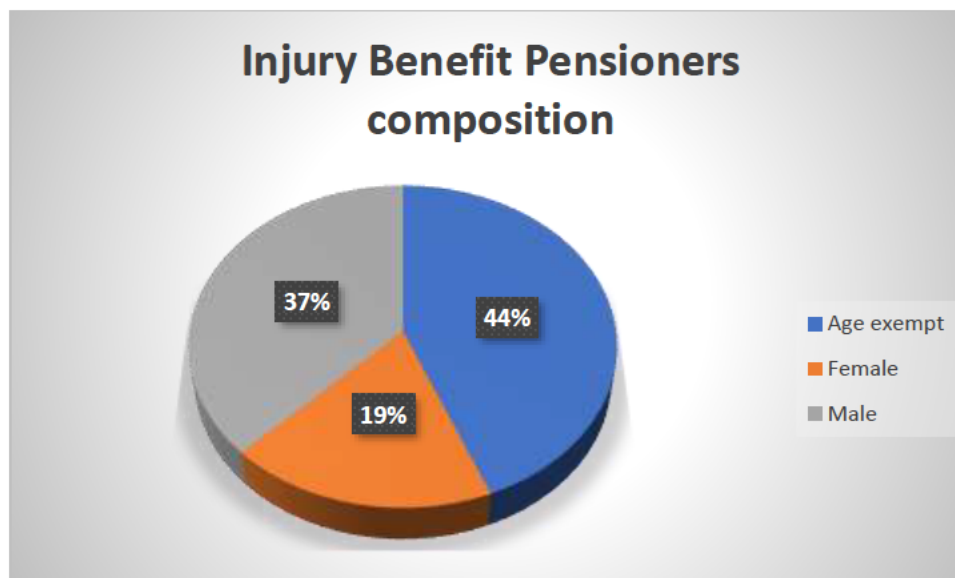
Title of process:	<b>Degree of Disablement Re-assessment</b>
Department:	<b>Pensions Governance &amp; Compliance</b>
Date:	<b>5<sup>th</sup> October 2020</b>

### Introduction

The PPA are required to take steps to ensure that the legal obligation is discharged appropriately having regard to the following principles.

1. The process to be adopted must discharge the PPA's legal obligations, including meeting his legal commitments to honour injury benefit payments at a level to which each pensioner is entitled.
  2. It is not about savings or cost cutting – there will be no savings target
  3. The process shall be fair and transparent, having proper regard to the welfare of those affected
- **Identify the aims and purpose of this process** — In accordance with Regulation 37 of the Police (Injury Benefit) Regulations 2006, to re-assess injury benefit pensioner degree of disablement at such intervals as may be suitable, for the purposes of determining whether the degree of the pensioner's disablement has substantially altered.
  - **Identify the individuals and organisations who are likely to have an interest in, or be affected** - Injury benefit pensioners, the Police Federation, the National Association of Retired Police Officers (NARPO).
  - **Data-** Summarise the findings of any monitoring data and information which you consider may impact on the protected groups.

## Essex Injury Benefit Pensioners



There are approximately 253 Injury award pensioners. 111 pensioners are exempt due to the age limitation. There are a remaining 95 males and 47 females of varying ages

### Age characteristic

Members of the pension scheme that are subject to this process are retired police officers under the age of 72. The protocol has been subject to extensive consultation with the Essex Police Pension Board. In this regard the employee representatives proposed that the exemption should be extended to age 65 on the basis that generally age 65 was still seen as the age that members would not be seeking employment. This exemption has been adopted and has the impact of removing 111 pensioners from the review.

Any injury benefit pensioner who is within six months of their 65<sup>th</sup> birthday will not be subject to review unless they request one. The objective justification for the exclusion above age 65 is detailed below.

### Disability

Any injury benefit pensioner diagnosed with a terminal illness will not be subject to a review. Any injury benefit pensioner where based on the medical information the injury is permanent and there would be no purpose served in re -assessing will be excluded. The objective justification for the exclusion is detailed below. Each degree of disablement is assessed in terms of whether there has been a substantial change in the pensioner's medical condition, so each assessment is determined on a case by case basis by a qualified Occupational Physician that is medically independent to the Police Pension Authority and Scheme Manager.

## Race

No known impact. The selection criteria do not use race as a component.

## Religion & Belief

No known impact. The selection criteria do not use religion & belief as a component.

## Sex characteristic

No known impact. The selection criteria do not use sex as a component. Gender composition of the pensioners in scope is as follows

## Sexual Orientation characteristic

No known impact. The selection criteria do not use sexual this characteristic as a component.

## Gender Re-assignment characteristic

No known impact. The selection criteria do not use this characteristic as a component.

## Marriage & Civil Partnership characteristic

No known impact. The selection criteria do not use this characteristic as a component.

## Pregnancy & Maternity characteristic

No known impact. The selection criteria do not use this characteristic as a component.

## Research

- The Police (Injury Benefit) Regulations 2006
- Case Law – 1) Commissioner of Police of the Metropolis v Police Medical Appeal Board and David Walther [2013] EWHC 1203 (Admin), 2) R (P. Goodland and others) v Chief Constable of Staffs Police (2020) EWHC 2477 Admin) Mr Justice Linden
- Home Office Guidance/Circulars

## Age

The Police (Injury Benefit) Regulations 2006 provide for a level of income based on disablement. It is recognised in the construction of the regulations (37) that there will be a requirement to review the level of disablement. A degree of disablement review does not contain any age criteria. The factors that can influence the degree of disablement are as follows.

- a) **A substantial deterioration or improvement in the pensioner's overall medical condition.** This can be either the actual qualifying injury giving rise to the award itself or any other medical condition that impacts on the pensioner's overall work capability. In this respect, if there is no substantial change to the qualifying injury, but a substantial change to the pensioner's overall medical condition, which of itself has a greater impact on earnings capability, this can be taken into account by way of apportionment. The SMP can take account only of the causes relating to the qualifying injury. The SMP cannot introduce into the reassessment any new medical conditions caused by injuries sustained on duty which were not part of the original assessment for an injury award.
- b) **A substantial change to the overall earning capability of the pensioner.** Notwithstanding there is no identified change to the pensioner's actual medical condition, it is possible for the matter to be assessed with regards to recognised changes in the employment field that may substantially affect their overall earning capacity. To this end it would be possible to recognise that there are either work, education or training prospects available that were not so previously, or that work possibilities taken into account previously no longer exist. Either scenario could give rise to a determination that a substantial downgrading or upgrading of the award is possible.
- c) **Age.** The fact that an injury pensioner has now reached State Pension Age no longer means that their award will be reduced automatically to Band 1 (the lowest banding). The same criteria must be applied as outlined above in all cases. The policy is proposing to review any pensioner age 65 which would constitute more favourable treatment based on age. The objective justification for this is taking account of this is. average life expectancy is 81 so no review within 16 years before is reasonable.

## Conclusion

Greater impact on those age under 65. Pensioners aged 65 and over will not have a review unless they request one (which they are entitled to do). The objective justification for this is this is within 16 years of average life expectancy. Members who come within six months of their 65th birthday before their review is commenced will be treated as if they are 65. Those aged under 65 will be reviewed regardless of their age.

## Disability

Each individual pensioner disability is considered as part of the medical assessment when reviewing a pensioner degree of disablement. This is because the assessment involves determining whether there has been a substantial change in the pensioner medical condition. The selection criteria for review does not use disability rather elapsed period since recommended review as sole criteria.

To qualify for an Injury Award, each of the injury benefit pensioners have been found on assessment (usually around the time of their retirement) to have a disablement likely to be permanent under the Regulations, arising from an injury on duty. It does not necessarily follow that such a finding constitutes a "disability" under the Equality Act. The decision to carry out a review under Regulation 37 is not a breach of the Public Sector Equality Duty under the Equality Act. It is a measure to support equality by providing a system of ensuring each pensioner is appropriately assessed in terms of their degree of disablement at regular intervals.

The legal basis for this was quoted by as follows.

In **Commissioner of Police of the Metropolis v Police Medical Appeal Board and David Walther [2013] EWHC 1203 (Admin)**

*“The purpose of an award is to give a minimum income guarantee depending on degree of disablement and length of service. This is an attempt to ensure that the person’s reduced earning capacity caused by the disablement resulting from the qualifying injury is compensated for by the amount of the injury pension. ... But, since it means that a sum based on the continuing effect of a qualifying injury is payable, it is necessary in the interest of ensuring that only the deserving continue to receive the injury pension at a particular level to be able to carry out checks. These may, of course, work both ways in that they may show that the effects of the injury have increased the degree of disability just as they may show the contrary.”*

**In R (P. Goodland and others) v Chief Constable of Staffs Police (2020) EWHC 2477 Admin) Mr Justice Linden;**

- *It is for the defendant (PPA) to decide whether a suitable interval has elapsed since the last assessment or re-assessment and, if it has, he is obliged to consider whether the degree of the pensioner’s disablement has altered. I agree with Mr Holt-Allen that there is therefore a continuing duty to monitor whether an award is being paid in accordance with the 2006 Regulations. (“Para 81”)*
- *The true abuse of power in the present case would be for the Defendant (PPA) failing to act in accordance with the 2006 Regulations. (“Para 88”)*

The judgement confirmed that the PPA is obliged to consider whether the degree of the pensioner’s disablement has altered when a suitable interval has passed since an award was made or was last reassessed, pursuant to Reg 37 of the 2006 Regulations.

A re-assessment of degree of disablement could result in no change or even an increase in the injury benefit pension, neither of which would amount to a detriment.

- *If there is a substantial change in the pensioners medical condition (which can only be ascertained by conducting re-assessments) and if there was a policy of no re-assessment of degree of disablement at suitable intervals this would constitute more or less favourable treatment for those pensioners who medical conditions had changed compared to those whose medical conditions had not changed. This would also amount to “ the true abuse of power in the present case would be for the Defendant (PPA) failing to act in accordance with the 2006 Regulations. (“Para 88”)*
- *To have a policy of no review would also be ultra vires as the Police Injury Benefit Regulations 2006 requires the Scheme Manager to conduct reviews at suitable periods.*

- The Regulation and policy to implement the regulation ensures there is fair and equitable treatment of all pensioners in relation to their specific degree of disablement under the appropriate regulations.
- Conducting re-assessments at suitable periods would constitute a measure to ensure all pensioners are treated consistently and fairly, regardless of their disability so that there is a fair and objective assessment of their degree of disablement at suitable periods of interval.
- To fail to review a pensioner's degree of disability in situations where the medical condition has substantially changed would have the potential to place the pensioner either.
  - At a disadvantage in terms of their degree of disability or an advantage in terms of their degree of disability compared to other pensioners because they would not be placed on the correct level of degree of disablement based on their current medical condition.
  - The adoption of this protocol avoids this occurring.

## Conclusion

Neutral impact overall. The review of Injury Benefit pensioners is not intrinsically detrimental in that it does not presuppose the outcome. Quantum will not be reassessed unless the Selected Medical Practitioner (SMP) first decides that there has been a substantial alteration in the person's disablement. If quantum is reassessed, it may increase (to no more than Band 4) or decrease (to no less than Band 1). If a person to be reviewed has difficulty in traveling to an appointment with the SMP, which for example may be due to mobility problems, they may be interviewed by the SMP by telephone etc. If the person is unable to attend an appointment with the SMP due to hospitalisation, their appointment will be postponed and rearranged. If the person to be reviewed has been diagnosed with a terminal illness, the review will not take place. Individuals will be reviewed by longest time elapsed since last re-assessment

## Consultation

Essex Police Pension Board comprising the Essex Police Joint Branch Board members, The Superintendents Association.

The decision to apply the Regulation 37 provisions of The Police (Injury Benefit) Regulations 2006 is a legal requirement. Feedback from the Essex Police Federation employee representatives has been incorporated in the protocol.

Essex NARPO

## Monitoring

Outcomes and analysis of injury benefit reviews will be reported (anonymised) at six-monthly intervals for scrutiny to the Essex Police Pension Board and included in The Annual Scheme Manager report.

## Approved

*I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that due regard has been made to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations.*

This equality impact assessment will be published on the force website.