APPENDIX 5 **CASE REFERENCES** (Name and year order)

BRIEF SUMMARY OF HIGH COURT/CROWN COURT ETC PENSION APPEAL CASES

Note – It is necessary to read the full judgments in all cases.

(www.bailii.org covers most cases)

GARVIN v Authority for the City of London (1944)
The Court held that the applicant's tuberculosis was the direct result of and therefore suffered in the execution of duty. Applied and approved in R v Kellam.

WATSON v Police Authority for Huddersfield (1947)
Lord Goddard said, "It seems to me that the ratio in Garvin's case is this, that if it is proved that the bodily condition from which the man is suffering, whether it be rheumatism, whether it be tuberculosis and, I would add, whether a duodenal ulcer, is directly and causally connected with his service as a police officer, then he has received an injury in the execution of his duty." This case confirms the need for a causal connection between the injury and the police duty.

GODDEN - Kent Police Authority (1971)
Pension case under the Police Pension Regulations 1971.
Confirms that irrespective of the findings of the SMP it is for the Police Authority to determine whether or not the officer shall be retired. The overriding discretion rests with the Police Authority.

MATTHES - Dorset Police – Divisional Court 1987
Discharge of Probationer on grounds of epilepsy – Chief Constables has a right to dispense with service.

CUSHION - Greater Manchester Police – Divisional Court 1991
If a medical referee has made a decision based on an error of law, he can correct it because the original decision is vitiated by the error.

CHARLTON - Northumbria Police – Divisional Court –1994.
Approves the 2-tier retirement process mentioned in Godden.

VAUGHAN – Dorset Police. The decision of an SMP is final and the Force cannot overrule.

Dr CALDBECK-MEENAN - Cleveland Police Authority – Divisional Court – 1994
Depression found to have causal effect arising out of police duties

COURT & Dr BRONKS ex parte Derbyshire Police Authority – Divisional Court – 1994. ET proceedings against employer could amount to stress.
Note reference to the requirement of a causal connection between the injury, disease and police duty.

MASIEN-JONES v North Wales Police 1995. Certificates issues by joint referees must be actioned by Police Authority.

TYLER - Kent Police – Divisional Court – 1995.
Decision to retire a police officer is a decision for the Police Authority.

FAGIN, TRAVERS ex parte MOUNTSTEPHEN – Divisional Court – 1996.
An injury on duty claim with the exacerbation of pre-disposition to psychiatric illness. Duties which trigger an underlying susceptibility could amount to an IOD.

PICKERING - Sussex Police Authority – Divisional Court – 1996
Case stated from Lewes Crown Court under Regulation H5. No requirement for single trigger event in stress claims.

HAMILTON ex parte West Yorkshire Police Authority – Divisional Court – 1996.
Arthritis of the knee, and the referee found that arthritis was caused by the playing of football for the Police whilst on duty.
Note that the officer's argument that he suffered wear and tear during his time as a police officer, thereby entitling him to an award, would not pass the Bronks or Stunt test today. It is not sufficient for the officer to have suffered an injury because he was an officer at the relevant time. There must be a causal connection with the claimant's service or police duty as in Watson.

MILLING ex parte West Yorkshire Police Authority – Divisional Court – Nov 1996
Claim by the appellant that he was incapable by reason of disablement of earning any money in any employment. If he was capable of earning some money from some employment then he could not qualify as totally disabled.

R v North West Suffolk (Mildenhall) Magistrates Court, Court of Appeal (Civil Division) 1997. Defines frivolous as futile, misconceived, hopeless or academic.

RODGER - Cleveland Police Authority – Divisional Court – 1998.
Once the notice powers of A20 retirement are exercised then they are irrevocable and cannot, for example, be deferred because a disciplinary matter has come to light.

YATES - Merseyside Police Authority – Divisional Court – 1999.
Despite the unsatisfactory result the Regulations should be interpreted literally. Stress caused by protracted discipline enquiries may be a causative effect for an IOD application. Once a Police Pension Authority is 'considering' one of the questions then referral to an SMP is mandatory. The case also covers the avenues for any subsequent appeals. (Crown Court if disputed facts, High Court if disputed law and PMAB if disputed medical evidence).

LYONS v Secretary of State for Home Office – Snaresbrook C/Court – 1999.
Accepts that there is a two-tier test under Regulation H. Tier 1 the Police Authority decides whether the injury was received in the execution of duty, Tier 2 the SMP decides whether the disablement is the result of the injury claimed. Judge Reynolds rejected the reasoning in Yates as being obiter and accepted the Police Authority's argument that there was a two-stage test. Lyons therefore advocates a two-stage test. Therefore there is a right not to refer cases to SMP if injury not received in execution of duties.

KELLAM ex parte South Wales Police Authority – Divisional Court - 1999.
Stress suffered whilst on police duties could give rise to an IOD. However, there must be a causal connection with the service as a police officer rather than simply being a police officer. In this case the evidence was independent and strong, and there were references to poor treatment received by the officer.

SPRIGGS v West Midlands Police – B'ham Crown Court – 1999
The claimant had requested medical retirement and the Force had refused to consider the questions of permanent disablement. Determined that if cases were obviously frivolous or vexatious can decline to refer the questions. However, in this case it was felt that the questions should be referred, as it was not obviously frivolous or vexatious.
Reference made to Home Office Circular 34/1996 indicating that police authorities should not undertake a preliminary consideration before referral to an SMP.

CHAPMAN v Lancashire Police Authority – Preston Crown Court – 2000
Case deals with a refusal to refer permanent disablement questions to SMP. Supports the two tier test.

STEWART - Sussex Police Authority - Court of Appeal – 2000
Ordinary duties includes operational duties.

HUBIE v Humberside Police – Humberside Crown Court – 2000
Psychiatric injury resulting from fear of being posted back on beat not received in execution of duty. It was the result of the status of a constable and not service as a constable.

CAINE and CAVENDISH – Administrative Court – 2001.
Covers remit of medical referee. 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. (At time of examination by referee)

STUNT - Commissioner of Police – Court of Appeal – 2001
An officer subjected to a normal discipline investigation cannot claim an IOD.
Demonstrates that in determining whether an injury was suffered by an officer in the execution of duty, it is not simply sufficient for the claimant to be a police officer, but there must be a causal connection with his service.

PHILLIPS v Strathclyde Joint Police Board, Court of Session – 2001.
There must be a substantial causal connection with duties in IOD cases. It is not however necessary that the work circumstances are the sole cause of the injury.
The test of causation is not to be applied in a legalistic way, but falls to be applied by medical rather than legal experts.

Dr BIRD v Metropolitan Police Authority – Administrative court – 2001.
The officer was examined by the SMP in December 1996 and her appeal to a referee was heard in December 2000. The Court confirmed the findings in Caine and Cavendish namely, the referee may view matters in the round as at the date of his examination.

WILLIAMS and Merseyside Police Authority – Liverpool Crown Court –
2002 Injury at PAA sporting event deemed to be an IOD.
He was being paid for the attendance and receiving expenses

SUTHERLAND and HATTON – Court of Appeal – 2002.
Although a civil case not involving police officers this is an important decision. The basic principles for Employer' Liability should apply to stress at work claims and therefore an employer to be liable, foreseeability and causation must be established. The court went on to set out the following guidelines.

1. An employer is usually entitled to assume that an employee can withstand the normal pressures of a job, unless he knows of some particular vulnerability.
2. No occupation is intrinsically stressful.
3. An employer is generally entitled to rely upon information given by the employee regarding their ability to undertake the work.
4. An employer who offers a confidential advice service is unlikely to be found to be in breach of their duty of care to an employee.

As a set of principles, the implication is that an employee is, in part, responsible for monitoring their own stress levels and alerting their employer to any potential stress or sickness. All work entails reasonable stress for which employers could not be held liable.

METCALF v Dr MARCUS - West Yorkshire Police (interested party) – 2002.
Unreasonable refusal to take medical treatment leading to permanent disability.
Question of unreasonable refusal is for the referee to decide.
It was appropriate to take into account future treatment that may remove the disability and or permanence thereof.
The SMP can use written notes/submissions when addressing the referee. It is not a breach of natural justice for the notes not to have been provided to the claimant prior to the medical referee hearing.

Home Office Circular 43/2002 – The Police Pension Scheme – August 2002
The Police Authority should make the final decision on medical retirement based on all the circumstances. Such retirement should be used only where officers are unable to carry out sufficient duties to make their retention operationally practicable for the Force and there are no other reasons for retention including outstanding disciplinary proceedings.
There should be a presumption in favour of retention.

Likely to be permanent, as in A12 (1) means if in light of all the circumstances…it is more likely than not for officers early within service that they will not be able to carry out the ordinary duties of a member of the Force again before his or her compulsory retirement age, on the assumption that normal medical treatment for the officer's condition is applied in the meantime. Otherwise permanence should arguably mean for the rest of one's life. See also WALTHER (2010.)

JONES v North Wales Police – 2002 Officer off sick with stress and on return stated that stressors had diminished. He later went sick again and was medically retired. Deemed work not unduly stressful

JENNINGS v Humberside Police – Administrative Court - 2003.
Injury on duty claim where appellant had pre-existing degenerative changes to his spine but no symptoms at the time of the accident. Case covers acceleration of a previous condition. Also Caine v Cavendish and MPA v Bird affirmed. (See also London Fire & Emergency Planning Authority v Board of Medical Referees 2008)

GRUBB v Dr JONES and Lothian & Borders Police Board –
Scottish Court of Sessions - 2003
Authority for the proposition that the PMAB can consider and re-hear all the matters before the SMP. Therefore do not need to limit themselves to injury questions if an argument exists that the ex officer may not be permanently disabled. This may lead to no injury award.

CLINCH and Dorset Police Authority – High Court of Justice – 2003.
Disappointment and depression caused by a lack of promotion not an IOD. The injury was derived simply from being a police officer and wanting promotion that he failed to attain.

Dr BECK & Paul HAMLIN – Sussex Police Authority – High Ct of Justice – 2003
An officer's infirmity of mind or body may render him unable to work for a particular force, but he will not be disabled within the meaning of the Regulations if he is able to perform the ordinary duties of a police officer in another police force. See also Corkindale case (2006), which has opposite view.

CRAWFORD (interested party WARD) v Lothian & Borders Police
(2003 – Outer Court of Session – Scotland)
Case involved depression following poor annual appraisal and perceived marginalisation. On the facts it was determined to be execution of duty rather than through simply being a police officer.

Dr MORGAN and Lewis DAVIDSON v South Wales Police – Admin Court – 2003
Held that the referee is not allowed to include other disabling issues and should make the degree of disablement assessment based only on the effects of the relevant injury. The case demonstrated that where more than one injury has led to a disablement only those injuries that occurred in the execution of duty should be considered when determining the degree of disability. Hence there must be a need to apportion the degree of disability to take account only of the causes relating to the injury received in the execution of duty. See also assessments of potential earnings against 'but for' earnings levels. (See section 3.7 in procedural guidance)

PRATLEY- Surrey County Council 2003. A stress case – employer not liable for nervous breakdown that was not foreseeable.

Dr ANTON and Philip CROCKER v South Wales Police Authority
(Administrative Court - 2003) Covers issues of apportionment. The task in assessing earning capacity is to assess what the interested party is capable of doing and thus capable of earning. It is not a labour market assessment, or an assessment of whether somebody would actually pay him to do what he is capable of doing, whether or not in competition with other workers. Firstly the degree of disablement needs to be assessed by assessing the loss of earning capacity and second there is a need to assess the degree to which that loss is the result of the qualifying injury. (ie assess injured earnings potential and then compare to the uninjured earnings)

Dr CRAWFORD & Louise WARD v Lothian & Borders Police Board
(2003 – Court of Session)
In particular circumstances of this case held that disappointing appraisal was related to the execution of duties.

GALVIN - City of London Police v Medical Referee (2004)
The decision in this case was that the medical referee is entitled to look at 'permanence' at the time of the appeal, and not at the date of decision by the SMP.

FRENCH – Sussex Police – 2004. Illness whilst suspended from duty is not an IOD. See also STUNT.

HANLON – Non-Police. Case struck out because appellant refused to disclose medical information. (EAT/0120/04/ILB)

R (on the application of Cleveland Police Authority) v Medical Referee
(Administrative Court – 2004)
Case involved criticism of officer by Judge for failing to attend Crown Court as a witness causing depression. Held not to be sustained in execution of duty.

BOSTOCK v Medical Referee (Dr ENTWHISTLE) (Administrative Court - 2004)
The decision confirmed that the medical referee must consider the question of appropriate medical treatment when considering the issue of permanent disablement.

McGINLEY v Referee (QBD 2004)
The decision in this case determined that for the purposes of percentage reassessment appeals the date for determination is the date of the appeal and not the prior date of reassessment by the SMP.

Dr COOLING v Sussex Police Authority (QBD 2004)
The decision in this case confirmed that the time spent by an officer attempting to return to work following suspension from duty had not been spent on duty. It was felt that his chronic depressive illness was not caused through the execution of duty.

R (On the application of Sussex Police Authority) v SMP
(Administrative Court July 2004.)
A case similar to Stunt, which upheld the Stunt decision. Claimant had argued that period of suspension for discipline matters effected his disablement. That was rejected.

BARWISE v Chief Constable of West Midlands Police. Administrative Court - 2004
Officer on long term sickness and failed to attend for assessments by FMA. Officer went to Spain. Ultimately the Force treated the officer as having resigned through conduct. (Failure to co-operate with forces requirements) The court held that Police Regs 2003 Reg 14 did not allow the Force to make that inference and there was no resignation.

McGOWAN – Scottish Water case - EAT (0007/04) – 2004 Use of covert surveillance deemed proportionate.

MacDONALD v Lothian & Borders Police Board (2004 – Court of Session)
Applying the test something external has to impact on the claimant while he is carrying out his duties. Referred to an officer who becomes depressed because he feels that his abilities entitle him to different work should not give entitlement to an injury award for an execution of duties. Referred to disappointment over an annual appraisal not being related to execution of duties in a similar way to promotion and disciplinary issues.

Dr GIDLOW and REILLY-COOPER v Merseyside Police Authority
(2004 – Administrative Court)
An injury award case, which provides a restatement of the decision in 'Stunt' and it leaves 'Kellam' as a case essentially just decided on its' own facts. This case related to a grievance procedure regarding allegations of inappropriate behaviour. The rule from this case is – reaction to the result of a procedure is not reaction to something in the execution of duty. Reaction to the manner in which a procedure is conducted may be a reaction to something in the execution of duty.

EDWARDS v PMAB and Derbyshire Police Authority
(2005 – Administrative Court)
An injury award case, which deals with the transfer back to uniform duties from CID relating to tenure policy. Determined that it was a management process to which every police officer is subject to by virtue of being a police officer.

Dr BROOME v CLEMENTSON & DOYLE v Northumbria Police Authority
(2005 – Administrative Court)
The case identifies medical facts that are prevented by law from an officer asserting render him from being permanently disabled. ie having a condition that is largely asymptomatic until such time as attempting to return to ordinary police duties; having a phobia about returning to police work; having a deep and conscious aversion towards a police force and a disenchantment with the police service in general; mental health symptoms would return if required to return to police duties; vulnerability to the development of anxiety/panic disorders; having an entrenched aversion towards returning to any police duties, which is likely to produce medical symptoms characterised by mental ill health. If symptoms will improve/resolve such that the worst you can say is that the pensioner remains vulnerable to a recurrence of symptoms, any disablement cannot be said to be "permanent". Permanently vulnerable is not the same as permanently disabled. To be permanent the medical condition must be likely to render the individual symptomatic every day for the rest of their life.

STARITT and CARTWRIGHT – Northern Ireland Judicial Review application 2005
Being subjected to extreme stress, anxiety and humiliation because it was brought to the officer's attention that junior subordinates and civil staff within the Urban Traffic were aware that complaints were made against her during on-going proceedings at an ET is not an injury on duty.

McCULLOUGH & Police Service if NI (March 2006 – High Ct of Justice in NI – QBD)
If the applicant's adverse reaction was to the legitimate exercise of the management function then she has not suffered "an injury". If on the other hand if management had pursued an unreasonable campaign of harassment or maintained an unreasonable level of criticism and this had affected the applicant's health then she could legitimately claim an injury on duty. For the exercise of procedures of management including discipline in a police force to be deemed to cause injury or disease of the mind it would have to be established that some injurious element was involved in that procedure beyond the normal stress that might be caused in the course of the imposition of any management requirement. The issue for was to consider whether there was an assessment of what is "a reasonable management action".

McKINLEY v Strathclyde Police Board – 2005
Case deals with SMP and PMAB processes and procedures.

STARRITT and CARTWRIGHT applications for JR 2005 Court of Appeal
Being subjected to extreme stress, anxiety and humiliation and embarrassment because it was brought to the officer's attention that junior subordinates and civil staff within Urban Traffic were aware that complaints were made against her during ongoing proceedings at an Employment Tribunal is not an injury on duty.

CORKINDALE v West Yorkshire Police - 2006
This appeal related to the issue of disablement relating to a severe irritant reaction from CS spray. In this case comment was made on the particular circumstances relevant to the 'Beck' appeal, and essentially formed the view that disablement within a particular Force should mean disablement under Regulation A12(2).

HART v Derbyshire Police – 2007. DDA adjustments for probationer must lead to full duties to pass probation.

TULLY – North Wales Police 2007. Date upon which a deferred pension begins defined.

CALLAGHAN - London Fire and Emergency Planning Authority and Board of Referees
(2008 QBD, Administrative Court)
A fire officer slipped over and his hip became symptomatic so there are similarities with 'Jennings'. However, in this case the findings were that the exact symptoms he suffered were caused by exacerbation.
Conclusion...

a. Serious pre-existing condition, which would have manifested itself quickly anyway plus a minor incident occurring – not likely to be considered as an IOD.
b. Less serious pre-existing condition, which would not have manifested itself quickly plus major incident occurring – possible IOD entitlement.
c. Assessments between above scenarios where the judgment becomes more open to medical opinion.

It appears therefore that whilst 'Jennings' gives an understanding of acceleration whether all acceleration would give IOD entitlement or not would be a medical decision based on facts in each case.

POLLARD v PMAB (2009) – QBD
The appeal board cannot change findings of SMP on review once IOD established.

TURNER v PMAB (Metropolitan case) – QBD 2009
Reviews require there to be a substantial alteration before making the assessment of the degree of disablement. Also, only consider apportionment if previously considered.

HUDSON v Merseyside Police and PMAB (2009)

The issue in the case was whether permanent disablement resulting from a psychiatric condition was a consequence of an injury in the execution of duty. The factual background is extremely complex. The alleged cause of his stress was treatment by management and colleagues whilst on duty after an investigation had begun.

Paragraph 19 of the Hudson decision contains a useful summary of a number of cases in this area.

The conclusion of the court following a review of all the previous case law was set out in paragraph 27 and reads as follows:

"There is no authority for the proposition that an injury resulting from the application of a management process cannot be received in the execution of duty. Stress related illness caused by the failure to properly supervise or support may qualify. Psychiatric injury from stresses at work, bullying or harassment can be treated as an injury in the execution of duty. So to depression brought about by the appraisal process… generally speaking however the authorities indicate that psychiatric injury from exposure to the disciplinary or grievance proceedings, or failed promotion attempts, will not (be treated as an injury in the execution of duty)."

AYRE v Humberside Police Authority – Ombudsman case 2009

If earning capacity is correctly assessed at zero then it follows that the degree to which the earning capacity has been affected by the injury on duty is also zero and the degree of disablement can properly be put at zero per cent. This indicates that if the uninjured earnings is zero then the injured figure must also be zero. The ombudsman stated that in making assessments there should be a common sense approach under the regulations. The case makes it clear that generic comparators have no place when the pensioner has no earning capacity. Although this case referred to an over 65 pensioner the approach can obviously be taken at any age.

Dr BROOME (Industrial and Organisational Health) v Northumbria Police Authority - 2010 Only the index condition/injury can be considered in the reassessment of the injury award. Cannot reopen the issue of causation – the medical condition has previously been established so cannot be altered even if wrong. It may be that an injury and its after effects are now much better controlled by modern medication or treatment methods, such that they no longer disable a police officer in a way that they did previously. Reviewing SMP cannot introduce new medical conditions caused by police duties into the assessment.

DOUBTFIRE v PMAB and West Mercia Police (QBD June 2010)
SMP or PMAB considering IOD entitlement not bound by diagnosis of SMP regarding permanence. The entitlement to an injury award under the 2006 Regulations arises only when the officer is required to retire by the Police Authority – see Regulation 11(1) of the 2006 Regulations.

LAWS v PMAB (QBD Nov 2009 and High Ct of Justice Nov 2010)
The main point that the PMAB was not entitled to reopen clinical findings that were deemed to be final, has been upheld, and R (Turner) v PMAB [2009] EWHC 1867 (Admin) has been approved.
In summary cannot re-open issue of causation and cannot therefore look behind earlier medical decisions. In relation to non-medical factors the Ct of Appeal has held it permissible to look at external factors such as new qualifications when assessing degree of disablement (ie professional qualifications not simply passing an exam or degree) Applies to substantial change since last review certificate which was final – if hours can increase due to improved functionality then that is a change??

HAWORTH v Northumbria Police (2009)
The case related to the refusal of the Authority to agree to a reconsideration (32/2) of a determination following a PMAB determination which occurred 4 years previously. The determination was that it was unreasonable in this case for the Authority not to agree to a reconsideration having not approached the exercise of discretion reasonably.

WALTHER (1) v PMAB (Metropolitan case) – (2010 QBD)
An injury award case, which expanded on meanings of permanence (lifetime) and acceleration. (see also SCARDFIELD 2013)

Permanence means for the lifetime of the applicant. This case referred to the issue of acceleration being based on the length of time that the acceleration had been brought forward.

A short acceleration of the onset of a permanent disability is unlikely to be held to be a "substantial" contribution to that disability. Acceleration to any degree is some contribution, but not likely to be regarded as substantial. The opposite applies where there has been a significant acceleration - taking the extreme case, an acceleration of a decade or more - clearly would be a significant contribution to a permanent disability. Where the dividing line comes must be a matter of fact in each case.

WILLIAMS and PMAB and Merseyside Police Authority 2011.
The Board must resolve questions of non-medical fact if they exist in the case and the statutory questions cannot be determined without them.

SIMPSON v PMAB and Northumbria Police 2012 QBD.
There is no justification for adopting a different approach to regulation 37(1) in respect of a former officer who reaches the age of 65 than in the case of a review for former officers of a younger age. Determination refers to parts of Home Office guidance (46/2004) being unlawful.

CRUDACE and Northumbria Police Authority 2012.

Variously:
- The Police Authority is responsible in law for decisions of the SMP/PMAB
- Regulation 32(2) is available to correct errors of law beyond the statutory limitation period

- Parts of HOC46/2004 are unlawful
- No basis for using generic comparators in degrees of disablement assessments.

Comparator earnings are what the ex officer can earn now, if anything with all health issues versus what that figure would be without the qualifying injury received in the execution of duty (ie comparing injured earnings potential against uninjured earnings).

Chief Constable had not delegated relevant authority to HR Manager

WALTHER (2) v PMAB (Metropolitan case) – (2013 QBD)

This case again refers to the issues of acceleration and aggravation and in the case of acceleration the critical issue is whether or not the degree of contribution from the acceleration is substantial. It should be noted that the WALTHER determinations were in lower Courts than JENNINGS and CALLAGHAN. The determination of acceleration arises once the officer has been medically retired and the question arises at the relevant time as to whether there is a substantial contribution. Reference was made to acceleration perhaps not being for the SMP to determine at the point of granting the award but may be considered at future reviews.

Whether there has been a substantial contribution will be a question of fact which is likely to turn in most cases on the seriousness of the injury and its effects. Only if there will be no loss of earning capacity resulting from the injury when the officer is medically retired will it be likely to be the case that there was no substantial contribution.. Mr Justice Collins also referred to the effect of changes in underlying medical conditions. He specifically distinguished between disablement due to injury and the effects of underlying conditions.

This judgment appears to allow the reviewing SMP to take into account other underlying medical conditions (which may be after-arising) and therefore may justify the reduction in the degree of disablement. Importantly he stated that in the interests of ensuring that only the deserving continue to receive the injury pension at a particular level that checks should be carried out. (ie reviews)

Paragraph 10 refers to the purpose of an injury award – 'an attempt to ensure that the person's reduced earning capacity caused by the disablement resulting from the qualifying injury is compensated for.' This passage reminds us of the purpose of an injury award. It does not say that the purpose is to compensate the pensioner for being unable to earn a police salary. It is in the present tense – 'is compensated for.' It is therefore the pensioner's degree of disablement NOW and the impact on their civilian self which falls to be measured.

Paragraph 9 refers to a reassessment in most cases requiring a medical examination to show whether there has or has not been an improvement in the disablement resulting from the qualifying injury and more particularly whether an underlying condition has overtaken it. So if the permanent disablement had been accelerated through police injury by a period and that period had now elapsed the award may be zero percent because at that point there would be no loss of earnings.

The case indicates that there is no basis for relying on generic comparators.

CORNISH v Essex Police. Ombudsman case. March 2013

This case was before the Pensions Ombudsman. It clarifies that if an Officer left the Force other than through IHR it is reasonable to assume that if he had been retained in service on full-pay in a restricted post before resigning then his potential salary in injury award assessments is the police salary because he/she could still have continued to earn that salary had he/she not left other than through IHR.

HATHAWAY v Metropolitan Police. Ombudsman case March 2013

This case concerned the issue of the recovery of costs from appellants following PMAB hearing in cases determined to be frivolous or vexatious by the Board.

It is important that Forces ensure that discretion is used appropriately and not perversely. Treat each case of the recovery of costs on its merits. Do not have a policy of always recovering costs in full.

BEALE v Metropolitan Police. Ombudsman case June 2013

Case for the applicant was that she felt the Force had unfairly reduced her injury benefit award in December 2007. She was medically retired in 1992 and granted an injury award in band 2. This was increased at review to band 3 and in 2007 was reduced to band 1 as the original injury did not relate to her current level of function. The reduction was confirmed at PMAB. However, the Ombudsman deemed that neither the SMP nor the PMAB had addressed the questions of whether there had been a substantial change in her disabling condition since 2001 AND were there new jobs now available for her to undertake, which had previously been unavailable.

Counsel's view is that the central question is whether, even if a former officer becomes totally or substantially disabled for work by another condition such as cancer, dementia or multiple sclerosis (including age and infirmity) should he/she continue to receive an injury award calculated as if that new condition did not exist.

Counsel's opinion is that both the wording of the regulations and ordinary compensation principles, is that they should not.

(see appendix 6 regarding use of injured and uninjured salaries in assessments.)

To take a more cautious approach and ignore subsequent deteriorations in health and fitness unrelated to police duties is probably not in accordance with legislation.

See cases of CRUDACE and WALTHER (2013).

SCARDFIELD v Hampshire Police Authority and PMAB. October 2013

This case was primarily concerned with the availability of treatment that had not been tried when assessing permanent disablement. The Judge did not refer to the previous case of WALTHER (2010) when he went on to explain his understanding of permanence. In WALTHER it was determined that this meant for lifetime but in this case reference was made to it meaning up to CRA. The two cases are therefore incompatible and the issue of permanence may need to be resolved in the future at the Court of Appeal.

There are many circumstances when a medical authority needs to address the degree of disablement after CRA for example when the qualifying condition has recovered.

It is advisable to cite both cases when deciding which one to follow in each individual case. However, the overlapping definitions from both cases still requires a long-lasting view of permanence albeit in SCARDFIELD it may not mean unending.

A further anomaly would be from an officer who became injured into his late 50's in the execution of duties and on balance would recover after surgery to resume full duties but that recovery may take the officer until after 60 years of age. Under SCARFIELD he would be classed as permanently disabled and probably entitled to an injury award. Under WALTHER he would not.

In such circumstances consideration should be given to the long-lasting view of permanence and the reasonableness of any decision by an SMP.

BRUNNING V West Yorkshire Police Authority April 2014

An ombudsman case following on from a PMAB determination regarding a reduction in the degree of disablement using Home Office Circular 46/2004 when retired officer exceeded age 65 years. The case was won by the applicant and he applied for costs of his representation and legal fees from the Force. The ombudsman was satisfied that there had been a maladministration and partial contribution towards his legal fees was ordered. Also the Force were required to pay for his representation at the appeal (note this was a non-legal representative and not a federation representative) and the applicant was awarded compensation for his distress and inconvenience by maladministration.

It is recommended to read case in full if requests are made for compensation to ensure there is no maladministration.