

**GUIDANCE ON MEDICAL APPEALS
UNDER THE POLICE PENSIONS REGULATIONS 1987 AND THE POLICE
(INJURY BENEFIT) REGULATIONS 2006**

SECTION 5

**DEGREE OF DISABLEMENT AS A RESULT OF INJURY IN THE
EXECUTION OF DUTY**

Where the selected medical practitioner (SMP) has decided that a person is permanently disabled as the result of an injury received in the execution of duty, he or she must then go on to assess the *degree of the person's disablement* in order that the police authority can calculate the appropriate level of injury award.

2. Degree of disablement must also be assessed by the SMP where the police authority is reviewing an injury pension.

3. The Regulations set out the procedures as follows:

30.-(2) Where the police authority 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;

and, if they are considering whether to revise an injury pension, shall so refer question (d) above.

How an injury award is calculated

4. An injury award consists of a lump-sum *gratuity* and also a *pension* where, as is normally the case, the person's other relevant income needs to be topped up to the level of his or her *minimum income guarantee*.

5. Both the gratuity and the minimum income guarantee are calculated by reference to the person's degree of disablement and average pensionable pay (broadly speaking his or her final pensionable salary). The minimum income guarantee also takes account of length of service in all but the most serious cases of disablement. The amounts are expressed in the form of percentages of average pensionable pay in the table following paragraph 6, which is set out in the Regulations.

Degree of disablement

6. For the purposes of police injury awards "degree of disablement" means the extent to which the SMP assesses a person's earning capacity has been affected by the relevant injury. The link with earnings is necessary because injury pensions are based on a system of "minimum income guarantee" designed to bring total income in retirement up to a certain level. The Regulations define **degree of disablement** as follows:

7. - (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:

Note that degree of disablement is always related to loss of earning capacity.

Table

Degree of Disablement	Gratuity as % of app	Minimum income guarantee as % of average pensionable pay			
		Less than 5 years' service	5 or more but less than 15 years' service	15 or more but less than 25 yrs' service	25 or more years' service
25% or less (slight disablement)	12.5%	15%	30%	45%	60%
More than 25% but not more than 50% (minor disablement)	25%	40%	50%	60%	70%
More than 50% but not more than 75% (major disablement)	37.5%	65%	70%	75%	80%
More than 75% (very severe disablement)	50%	85%	85%	85%	85%

Note that, for example, a person with a degree of disablement of 35% at 10 years' service would have a "minimum income guarantee" of 50% of his or her average pensionable pay. The police authority would then deduct 3/4 of any other police pension (e.g. an ordinary or ill-health pension) and any relevant benefit entitlements and pay the balance as a non-taxable injury pension.

7. In almost all cases it will be a matter for the SMP to judge the degree of disablement in terms of bands. However where specific conditions are met the Regulations lay down that the degree of disablement should be 100%:

7. - (5) Provided that a person shall be deemed to be totally disabled if, as a result of such an injury, he is receiving treatment as an in-patient at a hospital.

Note – If an appellant is receiving in-patient treatment as a result of an injury on duty but is due to be discharged, the Board should defer the hearing until hospital treatment is over so that the appeal can be considered in the normal way.

How does the SMP calculate the degree of disablement?

8. An SMP may have difficulty in putting an exact figure on the extent to which earning capacity has been affected by the relevant injury. The task is made easier by the fact that the degree of disablement column is divided into 4 bands - slight, minor, major and severe. Percentage differences within these bands do not affect the award.

9. The Regulations do not set out a specified procedure for assessing the degree of a person's disablement. The Administrative Court has, however, commented that the task in assessing earning capacity is to assess what the person is capable of doing and thus capable of

earning. It is not a labour market assessment of whether somebody would actually pay that person to do what he or she is capable of doing, whether or not in competition with other workers. What follows here is the procedure suggested by the Home Office. This has no binding authority but it is the procedure which has been followed in most forces and by boards over recent years.

10. In order to assess the degree of disablement the SMP will need to consider by reference to the person's background, skills and qualifications what kind of employment he or she could undertake, allowing for the particular effects of the qualifying injury. The SMP should seek information from the police authority to help with this assessment. A relevant consideration is whether the person could manage that job full-time or would have to work part-time.

11. There would then need to be a direct comparison between the person's earnings when employed as a police officer and the potential earnings in an outside job. If the person has actually found another job at the time of the assessment, there is an expectation that the SMP would take this factor into account. NB - The officer should provide evidence of his or her current salary if this is the case. It is not necessary for the person to have found work for an assessment to be made of degree of earning capacity. Nor do earnings in a current job necessarily accurately reflect potential earnings, if the present job is not commensurate with the person's experience, skills and educational qualifications. Although the relevant injury may have prevented the person from continuing to work as a police officer, where fitness standards are exceptionally high, the person may be fully capable of taking up other employment.

12. If the person's employment prospects are such that he or she could expect to earn, in an outside occupation, as much if not more than he or she was earning as a police officer, then the degree of disablement would be virtually nothing, which would place them in the "slight disablement" category. At the other extreme, if the person is incapable of earning any money because of the relevant injury he or she will have a "degree of disablement" in the "very severe" category. As noted, Regulation 7(5) provides that if the person is receiving hospital in-patient treatment as a result of the relevant injury, then he or she should be deemed to be totally (i.e. 100%) disabled for that period.

How is the comparison between outside earnings and police earnings made?

13. In all cases the police authority will ensure that the SMP is provided with information about current outside earnings and the relevant job descriptions so that the person's earning capacity can be established in the light of the SMP's assessment of the person's capabilities after the injury. - The officer should provide evidence of his or her current salary. It is reasonable to use as a starting point the level of earnings in the UK as a whole. The fact that a person is living in a place of high unemployment or abroad should not affect the issue of earning capacity as a result of disablement. The likely attitude of employers or of the labour market towards those suffering the physical or mental disability in question is also irrelevant to the question of earning capacity.

14. Where an application is made for an injury award at the same time or immediately after medical retirement, the likely outside pensionable (or basic) earnings should be compared with the pensionable police salary earned when last serving and will not need to be adjusted for inflation. The police salary should include any competence related threshold payment given to the officer, since that is also pensionable. If the officer was not in receipt of a competence related threshold payment at the point of retirement no further account

should be taken of it in his or her case. London weighting, which is pensionable should also be taken into account if it is to be assessed against outside earnings with a pensionable London weighting allowance.

15. The reason for using pensionable earnings for assessing both pre- and post-retirement earning capacity is to arrive at the fairest and most robust measure of loss of earning capacity for the purpose of a pension which may be payable for a considerable period of time. Income from overtime, and other allowances, special priority payments or 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.

Example

If a person had earnings as a police officer of £25,000 a year and it is thought that he or she could now earn £20,000 a year, then the loss in earning capacity would be £5,000, which would be 20% and would place the person in the "slight disablement" category.

16. In the case of an after-appearing injury, or in the case of a review of degree of disablement, the medical retirement may have occurred a considerable time ago. In such cases the former police pensionable salary should be re-valued to current police pay levels to the equivalent point on the salary scale for the rank concerned. This will allow full account to be taken of the effect of inflation during the intervening period. No account should be taken of the amount of any police pension received by the person when considering a retired officer's current earnings.

Degree of disablement after compulsory retirement age

17. Once a former officer reaches what would have been his or her compulsory retirement age (CRA) under the Police Pensions Regulations it is no longer appropriate to use a police pay scale as the basis for his or her pre-injury earning capacity. As discussed in section 1, the CRAs changed on 1 October 2006. Prior to 1 October, the CRAs were 55, 57, 60 or 65 depending on the person's force and rank at the point of leaving the police service. As of 1 October, the CRAs are 60 or 65 depending only on rank at the point of leaving the police service.

18. The introduction of the new CRAs means that if the former officer would not have been old enough to be compulsorily retired under the pre-October 2006 arrangements applying to his or her former rank and force, the police authority should use the new CRA when reviewing an injury award. If the former officer would have been old enough to be compulsorily retired under the pre-October 2006 arrangements, they should be reviewed on the basis of their pre-October 2006 CRA.

19. In the absence of a cogent reason for a higher or lower outside earnings level, it is suggested that the basis for the person's earning capacity, had there been no injury, should be the national mean earnings (from the Annual Survey of Hours and Earnings - ASHE). The ASHE figure taken should be the average for the population overall. Separate figures for males and females, and regional variations should not be considered. It will be for the SMP, after seeking such information from the police authority about the background to this case as he or she needs, to decide whether the ASHE figure can be used. This is because it is or needs to be increased in the light of the sort of work the person would have been expected to be capable of had he or she not been injured.

Example

If the ASHE figure is £22,000 a year and the former officer is capable of earning £13,200 a year, then the loss of earning capacity would be £8,800, which would be 40% and would place the person in the “minor disablement” category.

Degree of disablement after age 65

20. Once a former officer reaches the age of 65 he or she will have reached State Pension Age irrespective of gender. In the absence of a cogent reason otherwise, the SMP may place the former officer in the lowest band of Degree of Disablement. At such a point the former officer would normally no longer be expected to be in employment.

21. It should be noted that while the default retirement age of 65 set in the Employment Equality (Age) Regulations does not apply to police officers as office holders, it does apply to employees and that age remains one at which a former officer can be taken to be no longer economically active. However, each case needs to be considered in compliance with the Police Pensions Regulations and in the light of the individual circumstances. We consider that the Age Regulations add extra weight to the requirement in the Police Injury Benefit Regulations that each case which is reviewed should be considered on its merits and in the light of any points made on behalf of the former officer.

Note - It is important that the correct procedures are followed in such cases in accordance with regulations 37 and 30 and that the issue is referred to the SMP for decision.

Apportionment

22. 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. The SMP therefore needs to discount the effect of a non-qualifying injury and any other cause whether classified as an injury or not - e.g. a non-duty injury, and injury received through default, or some other cause. The focus of the regulations is not exclusively on contrasting duty and non-duty injuries.

23. Before apportionment can arise each factor must separately have caused some degree of loss of earning capacity on its own (see paragraph 25 below). In considering apportionment the SMP will therefore need to consider the issue of causation. This is a separate exercise from testing for entitlement for an injury award by reason of the injury causing or substantially contributing to the disablement. However, as in the case of determining whether disablement is attributable to a qualifying injury, the SMP will have to consider apportionment on the basis of the evidence and applying his or her medical judgement.

More than one medical condition causing loss of earning capacity

24. 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.

More than one injury within same condition causing loss of earning capacity

25. 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.

26. 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?

Example

If the officer was on a police salary of £30,000, a potential earnings capacity with all disabling conditions of £12,000 would result in a 60% loss of earnings capacity before apportionment. If another, unrelated condition has caused 25% of the loss, and a related but pre-existing condition has caused another 25%, the total reduction would be 50% of the original 60% which would equate to a degree of disablement of 30% (minor banding).

Procedure on appeal

27. The Board should ensure that before the hearing the submissions of both parties set out:

- what work they believe the appellant can do;
- what mental/physical capabilities the jobs they have in mind entail;
- where applicable, details of any jobs the appellant has done or is doing since retirement;
- what earnings would be expected from such possible or actual jobs; and
- the earnings of the appellant as a police officer – or, in the case of a review of loss of earning capacity or claim arising after the officer has left the police service, the appellant's police earnings updated to the time of appeal.

The Board should require to see evidence confirming any statement of earnings. In all cases current or potential pensionable or basic outside pay should be compared with the relevant pensionable police pay at the time of appeal.

28. Under the pre-hearing procedures agreed by the PNB both parties will have the opportunity to send in written comments on the evidence of the other.

29. At the hearing the Board should carefully assess for itself the loss of normal functioning. It should then weigh up on the balance of probabilities, in view of its own assessment of the appellant's capabilities:

- whether the appellant can reasonably be expected to cope with the jobs described; and
- whether the appellant's capabilities are being accurately estimated.

30. Once the Board has decided the job and earnings the appellant can hold down, it should compare that salary with the appellant's police pay, updated to the current salary level as necessary in the case of a post-retirement case, and then work out the percentage

difference.

Note – The references to employment and jobs include the possibility that a person may be in business or self employment.

Note - The references to police pay need to be adapted in cases of degree of disablement after compulsory retirement age – see paragraphs 17-21.