

FIREFIGHTERS' PENSION COMMITTEE

GUIDANCE FOR INDEPENDENT QUALIFIED MEDICAL PRACTITIONER (IQMP)

Note by DCLG

Following a recent decision by the Board of Medical Referees, DCLG have been advised by Counsel that the Guidance for Independent Qualified Medical Practitioners (IQMP) should be altered to reflect the decision of Mr Justice Ouseley in the case of *Anton & Crocker* [<http://www.bailii.org/ew/cases/EWHC/Admin/2003/3115.html>]

2. The opportunity has also been taken to bring in relevant material from Annex A of Fire and Rescue Service Circular 9-2005.

3. The following amendments to the Guidance are proposed:

Amend paragraph 3.34 to read:

3.34 Because injury and disease often result from a combination of causes, apportionment should be used to avoid liability for non-occupational factors, e.g. a non-duty injury, and injury received through default, or some other cause. This has been recognised by the Administrative Court (see R(oao South Wales Police Authority) v Anton & Crocker [2003] EWHC 3115 (Admin)).

And add:

3.35 Before apportionment can arise each factor must separately have caused some degree of loss of earnings capacity on its own (see paragraph 3.37 below). In considering apportionment the IQMP will therefore need to consider the issue of causation. This is a separate exercise from testing for entitlement to 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 IQMP will have to consider apportionment on the basis of the evidence and applying his or her medical judgment.

3.36 The simplest case of apportionment is where there are two separate causes of loss of earnings capacity, each making a contribution to the loss. Where, for example, a person is disabled 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.

3.37 Apportionment may also be appropriate where there is no other medical condition 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.

3.38 *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?*

3.39 *How should cases be apportioned in practice. This is primarily a matter for medical expertise and the following model has been offered by ALAMA as a guide to good practice.*

1. Consider the aetiology of the disablement: review the aetiological processes and factors that may have contributed to the disablement by reference, as necessary, to reputable texts and relevant peer-reviewed journal articles.

2. Consider history, medical evidence and other relevant evidence: review OH records, hospital records, GP records, accident records, sickness absence records and any other relevant evidence and undertake further medical assessment of patient if necessary.

3. Identify qualifying occupational factor(s): ensure all relevant qualifying occupational aetiological factors are included (see “Points to note” (i) below).

4. Determine relative contribution(s) of qualifying factor(s): ascribe qualifying occupational factor(s) a % contribution to the disablement and total as necessary to establish combined contribution of qualifying occupational factors to disablement.

*The % figure resulting from 4 above represents the **apportionment**. This figure should be applied to the % reduced earnings capacity to establish the degree of disablement.*

Re-number paragraphs 3.35 – 3.40.

3. The guidance will be amended and re-issued following this meeting.
4. The Committee is invited to note.