

Ill-Health and Injury

Firefighters and Police Pensions



19 June 2019



@LGAworkforce #LGAFirepensions

Workshop or Conference

- Though both workshops and conferences are educational settings, conferences tend to be more formal in nature than workshops.
 - Workshops are short term training courses where participants come to enhance their skills through an expert who demonstrates new techniques rather than adopting a lecture type of style.
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- During this conference we will be using sli.do
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- How long was your journey here this morning?
-

Agenda

Best Practice Sharing

- Legislation and Legal Background
- Employer Role in Ill-Health Process
- IQMP Role and Decision Making
- Impact of mental health on workforce issues

Workshops

- Individual Police and Fire Workshops
 - Policy Issues
 - Procedures
 - What Next
-

Types of member

1992 / 1987 Scheme	2006 Scheme	Special Firefighter members	2015 Scheme	Compensation Scheme
Protected standard members	Protected standard members	Protected special members	2015 only members	Benefits based on service
	Protected retained members		1992 transitional members	Protections for retained firefighters
			2006 standard transitional members	
			2006 retained transitional members	
			2006 Special transitional members	

III-Health - Benefits

	1992 / 1987 Scheme		2006 Scheme	2015 Scheme
Lower Tier	<u>Capable</u> of undertaking regular employment	Disabled from duties of role	Permanently disabled from duties of role	Permanently disabled from duties of role
Higher Tier	<u>Incapable</u> of undertaking regular employment [B3, para 4]		Permanently disabled from regular employment	Permanently disabled from regular employment
Deferred Pension	Where permanently disabled for performing duties appropriate to former role		In opinion of IQMP / SMP the person is permanently disabled from <u>undertaking regular employment</u>	In opinion of IQMP / SMP the member is incapable of <u>undertaking regular employment</u> ...continue until deferred pension age

Injury Pensions- Benefits

	Compensation Scheme
Payment of pension and gratuity	<u>Permanently disabled from the role</u> if the infirmity was occasioned by a qualifying injury.
Compensation for permanent incapacity while on duty Payment of five times annual pensionable pay	Permanently incapacitated for carrying on <u>any occupation</u> solely by reason of qualifying injury

Single Source (also known as ‘One-Pot’)

- Single source ill-health means that it is the rules that are in force at the time of ill health retirement that are relevant in determining access to benefits.
 - This means that members who have been moved into the 2015 scheme (FPS 2015) from the final salary scheme would be considered for ill-health under the rules of the 2015 scheme only
-

Single Source (also known as ‘One-Pot’)

- This is as a result of over-arching policy that applies to all public sector pension schemes. The overarching legal principle is that, unlike entitlement to ordinary retirement pension benefits, there is no legal entitlement (“accrued right”) to ill health benefits - rights only crystallise at the appropriate ‘trigger point’, which will be when the criteria of scheme rules are met, normally the point of ill health retirement itself.
-

Single Source (also known as ‘One-Pot’)

- Normal Pension Age (NPA) of the 2015 scheme is age 60, this means when considering incapacity to NPA, this needs to be considered **to age 60**, regardless of whether a portion of pension was accumulated under the final salary rules and attracts an NPA of 55
 - Under the FPS 1992, in order to determine whether the higher tier is payable (unable to perform regular employment), the IQMP does not need to consider whether the incapacity for regular employment is permanent to NPA, this only needs to be determined at the date of the IQMP decision. However, under FPS 2006 and FPS 2015 the incapacity for regular employment does need to be permanent to NPA. Therefore, regardless of whether a portion of pension was accumulated under the FPS 1992 scheme rules, incapacity for regular employment would need to be assessed up until NPA (age 60).”
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Before we start...

- How would you rate your understanding of the ill-health process?
-

Weightmans

Weightmans

Ill-health & injury on duty workshop

Legislation & legal background

19 June 2019

Jane Marshall

Partner

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Agenda

- What should happen before instructing the IQMP/SMP
- The legislation and qualifying criteria for IHR
- Common issues that arise following the IQMP/SMP report, and how to avoid them
- Reconsiderations and appeals
- Injury on duty awards
- Case law & causation

The prelude to IHR

- HR policies in places for managing ill health and sickness absences
- May previously have obtained medical reports from occupational health
- Considered whether any reasonable adjustments can be made to facilitate a return to work
- Considered whether any redeployment opportunities
- IHR should be the last resort if not possible to make reasonable adjustment or to redeploy
- Is the individual eligible for an IHR award?

Where to find the IHR provisions in the legislation?

- The Firemen's Pension Order 1992 – Schedule 2, Para B3(III health awards) of Part B (Personal Awards) & Part H (Determination of Questions and Appeals)
- The Firefighters' Pension Scheme (England) Order 2006 – Schedule 1, Para 2 (Award on ill-health retirement) of Part 3 (Personal Awards) & Part 8 (Determination of Questions and Appeals)
- The Firefighters' Pension Scheme (England) Regulations 2014 – Chapter 4 (Ill-health benefits) of Part 5 (Retirement benefits) & Part 12 (Appeals and Determinations)

Where to find the IHR provisions in the legislation?

- The Police Pensions Regulations 1987 – Reg. B3 (Policeman’s ill–health award) of Part B (Personal Awards) & Part H (Appeals & Medical Questions)
- The Police Pension Regulations 2006 – Reg. 21 (Compulsory retirement of the grounds of disablement) & Reg. 29 (Police officer’s ill–health pension) of Part 4 (Pension Awards) & Part 7 (Medical Appeals & Questions)
- The Police Pensions Regulations 2015 – Part 6 (Retirement Pensions Payable on Grounds of Medical Unfitness) & Schedule 1 (Medical Decisions: Appeals and Reconsideration)

Which regulations apply?

- If a full protection member – it will be the 1992/2006 FPS & the 1987/2006 PPS
- If a tapered protection member – it will depend on whether or not they have transitioned to the new 2015 schemes
- If the member had no protection or became a new member on or after 1st April 2015, the 2015 FPS or the 2015 PPS will be the relevant scheme

NB: for those that have transitioned, the 2015 scheme provisions will apply regardless of the fact they have benefits accrued under the previous schemes

Firefighters' Pensions – 1992 Scheme

- Fire & rescue authority is responsible for determining entitlement to ill-health award
- Required to obtain written opinion of IQMP
- Opinion of IQMP binding on the authority
- IQMP opinion to cover:
 - whether person is disabled
 - whether disablement is likely to be permanent
 - whether person is capable of performing the duties of a regular firefighter
 - whether person is able to undertake regular employment (if applicable)

Firefighters' Pensions – 1992 Scheme

‘disablement’ – incapacity, occasioned by infirmity of mind or body, for the performance of duty

‘permanent’ – will continue to normal pension age (age 55 in the 1992 Scheme)

‘regular firefighter’ – a whole-time or part time firefighter (not retained or volunteer) engaged in fire fighting or other duties appropriate to the role and whose employment is not temporary

‘regular employment’ – at least 30 hours a week over a period of not less than 12 consecutive months

Firefighters' Pensions – 1992 Scheme

- If the individual is unable to perform the duties of a regular firefighter due to incapacity until at least normal pension age, but is capable of undertaking regular employment – **lower tier ill–health pension**
- If the individual is unable to perform the duties of a regular firefighter due to incapacity until at least normal pension age and is also not capable of undertaking regular employment – **higher tier ill–health pension**

NB: need to have completed 5 years' pensionable service to qualify for higher tier ill–health pension

Firefighters' Pensions – 2006 Scheme & 2015 Scheme

- Criteria for qualifying for ill-health pension largely the same as for the 1992 Scheme i.e. permanent disablement
- Covers any person who takes up employment with an FRA as a firefighter i.e. now includes retained firefighters
- In terms of permanency and the incapacity to perform the duties of the role, this generally has to continue to a normal retirement age of 60
- The 'role' means the role in which the firefighter was last employed, as set out the in “Fire & Rescue Services Rolemaps” issued by the JNC in August 2005

Police Pensions – 1987 Scheme

- Police pension authority is responsible for determining entitlement to an ill-health award
- Required to obtain opinion of SMP
- The decision of the SMP on the questions referred is final (subject to reconsideration or appeal)
- SMP to provide report on:
 - whether the person is disabled
 - whether the disablement is likely to be permanent
- Questions can be referred to a board of duly qualified medical practitioners instead of a single SMP

Police Pensions – 1987 Scheme

‘disablement’ – inability, occasioned by infirmity of mind or body to perform the ordinary duties of a member of the force

There is no definition in the regulations for ‘permanent’ i.e. by reference to normal retirement age, but when deciding permanency the person shall be assumed to receive appropriate medical treatment, which shall not include treatment that it is reasonable, in the opinion of the police pension authority, for the individual to refuse

Applies to a ‘regular policeman’ so generally a member of a home police force, inspectors and chief inspectors, but not auxiliary policemen

Police Pensions – 1987 Scheme

- There is no lower and higher tier III–health award, although the award does increase with length of pensionable service in line with the following bands:
 - Less than 5 years’
 - Between 5 and 10 year
 - Over 10 years’

Police Pensions – 2006 Scheme

- Introduces a two-tier benefit:
 - **standard ill-health pension** – if permanently disabled for performance of duties of a member of the police force, but not permanently disabled for engaging in any ‘regular employment’
 - **enhanced top-up ill-health pension** – if both permanently disabled for performance of duties of a member of the police force and permanently disabled for engaging in any ‘regular employment’

Police Pensions – 2006 Scheme

- Definition of ‘disablement’ largely the same as 1987 Scheme i.e. inability occasioned by infirmity of mind or body from performing the ordinary duties of a police officer
- ‘regular employment’ – employment of an annual average of at least 30 hours per week

Police Pensions – 2015 Scheme

- Introduces a definition of ‘medical unfitness’, although no real change from the previous definitions:

inability occasioned by infirmity of mind or body:

- to perform the ordinary duties of a member of the police force; or
- to engage in regular employment

Police Pensions – 2015 Scheme

- Introduces additional requirement in relation to ‘permanency’
- The SMP has to decide whether the individual is ‘permanently’ medically unfit in relation to ordinary duties of a police officer and in relation to regular employment
- ‘Permanently’ means that the inability, occasioned by infirmity of mind or body, is likely to continue until the member reaches normal pension age or is likely to die (if sooner)

Common issues – IQMP/SMP reports

- Reports being prepared on the wrong form/stating the wrong scheme
- The individual's name being spelt incorrectly
- The use of 'he' instead of 'she' and vice versa
- The wrong date in respect of when the medical examination was carried out
- Inaccurate basic facts contained in the report
- Delays in obtaining the report

NB: these sort of issues shouldn't on their own invalidate the conclusions reached in the report, however that can cause distress to the applicant

Common issues – IQMP/SMP reports

- Referring to the wrong legislative test in the report
- Increasingly number of complaints about how the medical examination was handled by the IQMP/SMP, to the point of questioning their competence or arguing bias
- Missing medical evidence or medical evidence that was not taken into consideration
- No reference in the report to the medical reports relied upon and why, and importantly why some medical evidence may have been preferred over other evidence

How to avoid/deal with issues that arise

- Think about each individual case and whether specific/tailored instructions to the IQMP/SMP may help
- If a standard instruction form is used ensure it is the correct one
- Check the IQMP/SMP report on receipt for any basic inaccuracies, spelling mistakes etc. if the report can be quickly corrected it is less likely to cause distress to the applicant
- Read the report in full and consider whether all the issues have been covered, whether the right test has been applied and whether there are any obvious areas of ambiguity or lack of clarity

How to avoid/deal with issues that arise

- If there are more fundamental issues with the report or areas of ambiguity then go back to the IQMP/SMP with clarification questions
- If there is obvious medical information missing or certain medical reports seem to have been overlooked, then obtain clarity from the IQMP/SMP about what medical evidence has been relied upon and why some medical reports may have been preferred over others
- Keep the applicant informed if the further clarification is being sought
- Don't simply accept the IQMP/SMP decision without questioning it, if required

Reconsiderations

- Each set of regulations contains a reconsideration process in relation to the medical opinion
- Under the Firefighters' Scheme where new evidence of a medical nature is provided, the FRA and the applicant can agree that the IQMP should be given the opportunity to review the opinion
- Under the Police Pension Scheme the police authority and the applicant can agree to refer any final decision of a medical authority for reconsideration
- Reconsiderations are useful, particularly if it avoids incurring the time and costs involved in an appeal

Appeals – FPS

Appeal process under the FPS:

- Applicant can appeal decision on medical grounds
- Within 28 days from receipt of the decision and medical report (or such longer period as the authority may agree, not exceeding 6 months)
- Must state the grounds of the appeal
- Authority must notify the Secretary of State of the appeal and supply copies of the appeal and the medical evidence
- The Secretary of State refers the appeal to a board of medical referees

Appeals – FPS

- Board of medical referees must contain at least 3 medical practitioners, one must be a specialist in a medical condition relevant to the appeal
- At least two months notice must be given of any interview/medical examination by the board
- Written evidence must be submitted to the board not less than 28 days before the appointed interview date
- The board will provide a written report
- The board's decision can be reconsidered if the parties agree the board has made an error of fact that materially affects its decision

Appeals – PPS

Appeal process under the PPS:

- If applicant is dissatisfied with the decision of the SMP can appeal the decision
- Within 28 days of receipt of a copy of the SMP report (or such longer as the authority may allow) must give notice of intention to appeal
- Further 28 days to provide a statement of the grounds for appeal
- Authority must notify the Secretary of State
- Authority must refer appeal to a board of medical referees appointed by the Secretary of State

Appeals – PPS

- Board of medical referees must contain at least 3 medical practitioners, one must be a specialist in a medical condition relevant to the appeal
- At least 2 months notice must be given by the board of the time and the place for the hearing, unless such shorter period is agreed
- Written evidence must be submitted to the board not less than 35 days before the appointed hearing date
- The SMP will usually attend the hearing
- The board will provide a report of its decision, if it disagrees with any part of the SMP's decision
- The board's decision can be reconsidered if the parties agree

Injury on duty awards – the legislation

- **The Firefighters' Pension Scheme (England) Order 2006**
- **The Police (Injury Benefit) Regulations 2006**

Firefighters' injury on duty

Provides for:

- an injury pension and an injury gratuity (one off lump sum payment) if permanently disabled as a result of a qualifying injury
- Compensation for permanent incapacity if permanently incapacitated from carrying out any occupation as a result of a qualifying injury

Firefighters' injury on duty

For an injury award the firefighter has to:

- have retired from the FRA
- be permanently disabled – incapacity, occasioned by infirmity of mind or body, for the performance of duty until normal pension age
- occasioned as a result of a qualifying injury – an injury received without default in the exercise of duties as a regular or retained firefighter
- will be without default unless the injury is wholly or mainly due to the firefighter's own serious and culpable negligence or misconduct

Police injury on duty

Provides for:

- an injury pension and an injury gratuity (one off lump sum payment) if permanently disabled as a result of an injury on duty
- a disablement gratuity if injured on duty and within 12 months of receiving the injury becomes totally and permanently disabled as a result of the injury

Police injury on duty

For an injury award the officer has to:

- cease to be a member of a police force;
- permanently disabled – inability, occasioned by infirmity of mind or body, to perform the ordinary duties of a member of the force/medically unfit within the meaning of the 2015 Scheme
- as a result of an injury
- received without default; and
- in the execution of duty as a constable – includes travel to and from reporting for duty, and an injury received because the officer is known to be a constable

Case law & causation issues

- Long established case law – there has to be a substantial causal connection between the injury and the person’s service as a firefighter/police officer
- Not necessary to establish that the work circumstances are the only cause of the injury
- Accepted that mental stresses and psychiatric illnesses can arise out of a combination of work circumstances and external factors (such as domestic circumstances)
- What matters is that the work circumstances have a causative role

Case law & causation issues

R v Metropolitan Police Service, ex parte Stunt [2001]

- the court found that “in the execution of duty” can not be stretched wide enough to encompass stress related illness through exposure to disciplinary proceedings
- the mere subjection to disciplinary proceedings did not constitute the execution of duty
- rather any resulting injury was simply from Mr Stunt’s status as a constable

Case law & causation issues

R v Kellam, ex parte South Wales Police Authority (2000) ICR 632

- in this case the court had analysed a number of first instance decisions on the pension entitlement of police officers retired on grounds of stress-related depressive illness
- in the Kellam case Mr Milton suffered from a depressive illness caused by a number of issues:
 - a still birth
 - his wife's treatment by the police force
 - Mr Milton's perception of his colleagues after his wife had won her case against the Chief Constable; and
 - the investigation by the force of Mr Milton's neighbour's complaint against him
- the court concluded that most probably three out of the four causes were related to Mr Milton's service as a police officer

Case law & causation issues

- The stress caused by those matters resulted from circumstances which Mr Milton encountered as a serving police officer, so were seen to be related to Mr Milton's duty as a police officer
- As Mr Milton had remained at work, mixing with other police officers at the time, it was perhaps seen by the court as an injury caused in the execution of duty, whereas in the Stunt case the officer had gone on sick leave reasonably soon after the investigation into his conduct commenced

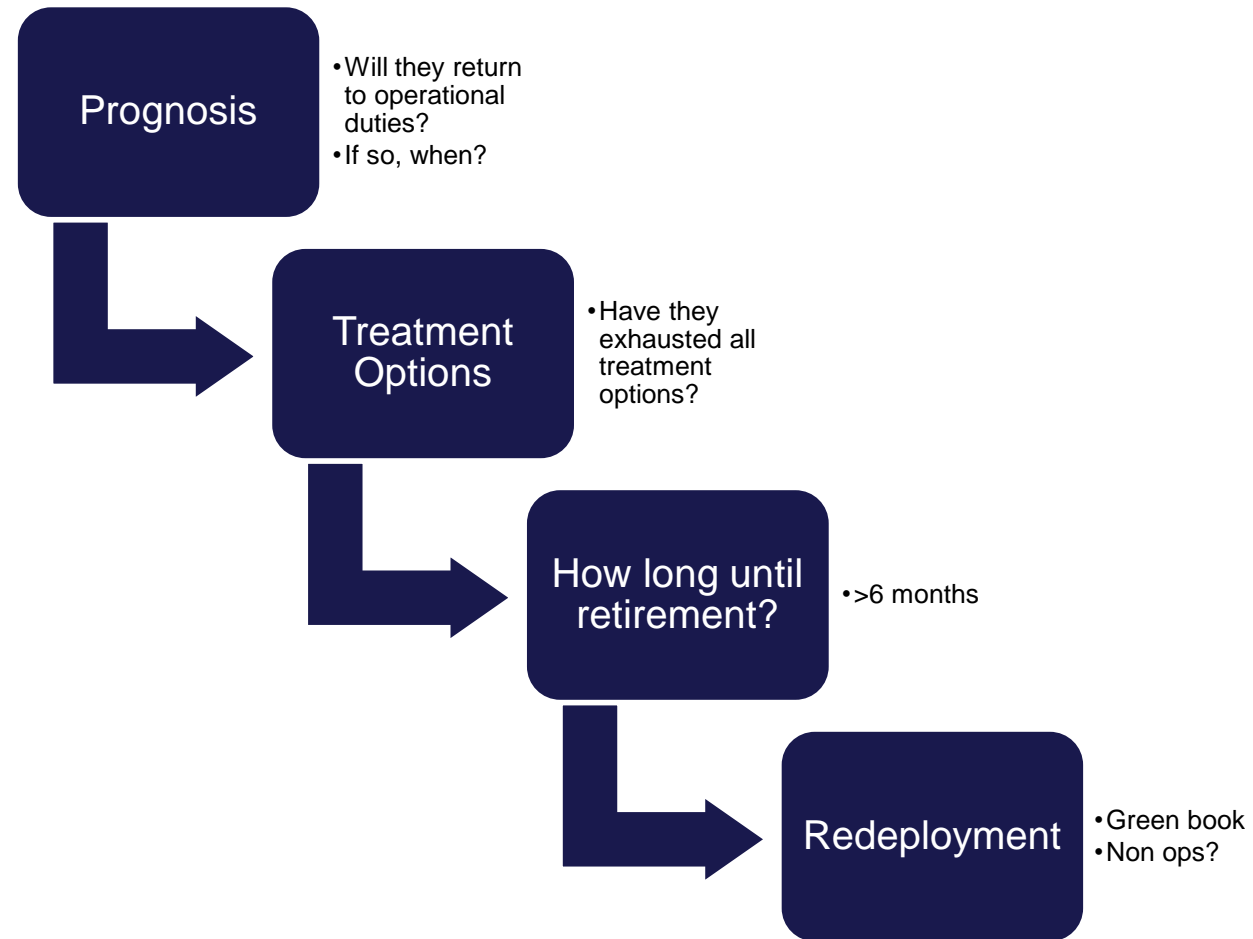


QUESTIONS?

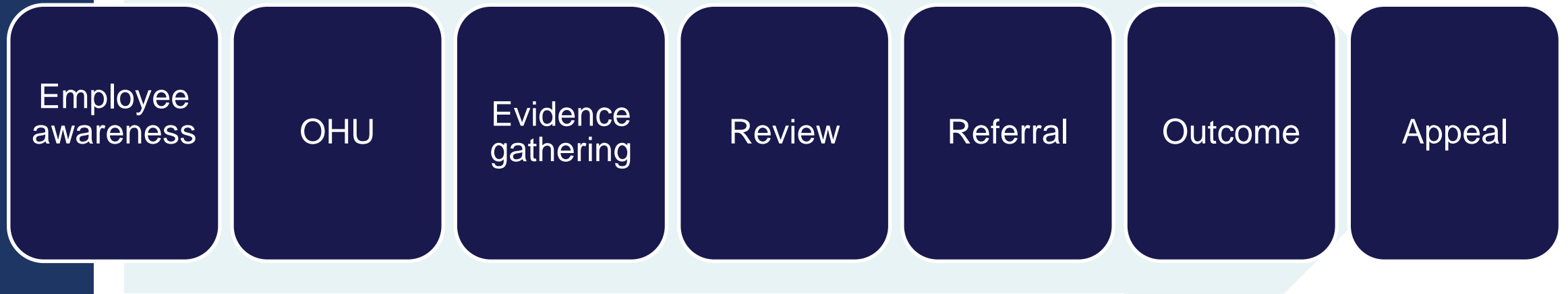
III Health Retirement Process

Claire Johnson, Pensions Officer

Considerations



WYFRS' Approach



Meet with Employee

Pensions Officer meets with employee and trade union rep (where applicable) and discuss the following:

- IOD?
- Regulations
- Process
- Timescales
- Appeals

* Provide outcome letter from meeting documenting discussion.

Over to OHU

OHU arrange an appointment with AMA for the following:

- Update on medical condition
- Capability assessment
- Consent to apply for GP and consultant records (where applicable)

Evidence Gathering

Once consent has been granted OHU will then gather the necessary evidence. We'd expect the following to be included:

- OHU records
- GP records
- Consultant reports (where applicable)
- Accident reports (if IOD)
- Supplementary evidence from employee i.e. pain diary

Review

Once all of the evidence has been gathered the AMA and Senior Nurse will meet to ensure there are no gaps.

OHU will invite the employee and/or trade union to:

- Look through the evidence
- Check that the medical condition hasn't changed
- Submit additional evidence (if applicable)
- Consent for management to see IQMP outcome report

Referral

A detailed covering report is generated for the IQMP making reference to:

- Reason for referral (ill health and/or IOD)
- Scheme specific regulations
- Job description
- What evidence is included i.e. OHU notes, capability assessment, GP reports etc.

* Include correct scheme [certificate](#)

Outcome

- The IQMP ordinarily provides an opinion within 2-4 weeks. We'd expect them to complete the certificate and provide a management report* detailing their thought process and opinion.
- In some circumstances they may refrain from making a decision, this is usually down to lack of evidence.
- Although the IQMP decision is binding, it's important that it's not simply rubber stamped.



Outcome Cont...

- A panel consisting of the PO, CHRM and OH&SM meet to discuss the outcome, scrutinise the evidence and prepare questions to go back to the IQMP with (where applicable)
- Once the panel is satisfied with the IQMPs opinion the PO would meet with the employee to advise of the outcome and provide decision letter.

Outcome Cont...

- If they are ill health retired they are served notice, reminded of the review process and retired to pension.
- If they are not ill health retired they are referred back to HR for possible redeployment or capability dismissal.

Appeal Process

Routes of appeal are as follows:

- Appeals against decisions based on medical advice - Informal referral back to IQMP (new evidence permitting) – **28 days (from date of outcome letter)** – this is a statutory deadline as per the pension regulations*
- Appeals against decisions based on medical advice – H2 appeal to Board of Medical Referees – **28 days (from date of outcome letter)** – this is a statutory deadline as per the pension regulations**
- Appeals on other issues – IDRP – **6 months** (from date of my letter) – this is a statutory deadline as per the pension regulations

*If the individual chooses the informal referral back to IQMP option it's been agreed that they will have a further **28 days** to gather the 'new' evidence – This deadline can be extended at the discretion of Occupational Health and Safety Manager. Each case will be considered on a case by case basis and extension only granted in exceptional circumstances

** If the individual chooses the H2 route they have up to 28 days before the appeal is heard to submit their evidence. With consent of the individual, the Occupational Health and Safety Manager and AMA would like the opportunity to review this evidence, if the AMA deems it materially significant the Occupational Health and Services Manager has the option to refer it back to the original IQMP for them to reconsider – This is at the discretion of the Occupational Health and Services Manager, if it is decided to not refer back to the original IQMP the appellant can still submit this to the BMR as part of their evidence



Questions?

The Role of the IQMP and Decision Making

Ian Griffiths
19 June 2019

Objectives

- Understand how the IQMP/SMP role differs from that of the MA
- Facilitate optimised communication between employers and the IQMP/SMP
- Case law review, to ensure correct procedure



IQMP

- Independent Qualified Medical Practitioner
- In contrast to IRMP and SMP

Definitive guidance

- Guidance for Independent Qualified Medical Practitioners (IQMPs) providing an opinion on permanent disability, fitness for regular work, qualifying injury and degree of disablement.
- October 2012

Pre-IQMP

- Employee off sick long term, or not providing regular and efficient service
- Fire and Rescue Authority (FRA) involves occupational health (OH), and **asks specific questions**
- OH gives opinion on prognosis

Decision process

1. Consider redeployment – **FRA**
2. End contract – **FRA**
3. Criteria met for IHR +/- Injury award? – **IQMP**
4. Award IHR or not – **FRA**

Granting IHR

- This is a **decision** that can only be taken by the employer, although the authority will be bound by the **opinion** of the medical practitioner on medical issues.

What does the IQMP need from the FRA?

- Steps taken by FRA to attempt to redeploy
- Date of joining Pension Scheme

Length of Service

- In four organisations the modal age or length of service coincided with enhancements in benefits
- The granting of ill health retirement benefits may not be determined by illness. There is a need for some employers and pension schemes to improve their processes for granting benefits.

Poole CJ BMJ. 1997 Mar 29; 314(7085): 929–932

What does the IQMP need from the FRA?

- Steps taken by FRA to attempt to redeploy, e.g. making reasonable adjustments to allow suitable alternative duties
- Date of joining
- Normal retirement age
- Sickness absence record – dates and reasons
- Guidance on what the ‘other duties of the role’ are (in addition to firefighting)

What does the IQMP need from the FRA? Cont.

- Consent form?
- Appropriate form for opinion
- Statement that index incidents are accepted as qualifying (or not) in the case of an injury award

What does the IQMP need from the MA?

- Summary of case, +/- opinion on issue of permanent disablement
- Entire occupational health file
- Any letters from specialists

Getting a specialist report

“Unless you are familiar with the criteria for permanent incapacity under the rules of the pension scheme, I would prefer that you avoid comment on retirement issues, as this often raises false expectations in those who may not meet the strict criteria of the pension scheme. These matters will be assessed by the independent medical adviser to the scheme.”

What does the IQMP need from the MA? Cont.

- Summary of case, +/- opinion on issue of permanent disablement
- Entire occupational health file
- Any letters from specialists
- Investigation results
- GP records if possible and certainly in the case of a possible injury award

Getting GP records & the GDPR

- If there is no claimed qualifying injury, then selective medical records may well be sufficient.
- GPs are not necessarily in a position to work out what 'selective medical records' to provide

Questions to be addressed by the IQMP

1. Is the member disabled from performing their duty, i.e. as applicable to the job within their role (with reasonable adjustments as appropriate)? If so, is that disablement likely to be permanent?

Questions to be addressed by the IQMP

2. If the member is permanently disabled for duty, is he or she also disabled for regular employment (defined as at least 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the issue of the person's capacity for employment arises)?

Questions to be addressed by the IQMP

3. Has any permanent disablement been caused by a qualifying injury?

Questions to be addressed by the IQMP

4. If disablement has been caused by a qualifying injury, what is the degree of disablement?

Definitions

Disablement

- incapacity, occasioned by infirmity of body or mind, for the performance of duty

Definitions cont.

Permanency

- FPS – until normal retirement age (dependent upon role)
- NFPS - until normal retirement age
- 2015 – until normal retirement age
- FPS Deferred pension - 60
- NFPS Deferred pension – until normal benefit age (65?)
- 2015 Deferred pension – until normal benefit age (SPA)

Definitions cont.

Qualifying injury

- FCS - an injury received by a person without his [her] own default, in the exercise of his/her duties as a firefighter
- an injury shall be treated as having been received by a person without his [her] default unless the injury is wholly or mainly due to his/her own serious and culpable negligence or misconduct.

Definitions cont.

Degrees of disablement

- 25% or less (slight disablement)
- More than 25% but not more than 50% (minor disablement)
- More than 50% but not more than 75% (major disablement)
- More than 75% (severe disablement)

Definitions cont.

- Lower tier: disabled for the performance of duty appropriate to role but could undertake other regular employment
- Higher tier: those who are incapable of undertaking any regular employment

Examining the patient

- The MA must examine the member in all cases, but only in certain circumstances would the IQMP be expected to do so.
- In the majority of cases the IQMP would ...be able and comfortable to make the decisions using the information provided by the FRA
- If the IQMP decides that he/she needs to see the firefighter, it will be the responsibility of the FRA to arrange a suitable appointment with the IQMP

Qualifications Necessary for IQMPs

A medical practitioner holding:

- DipOccMed
- AFOM
- MFOM
- FFOM
- or a qualification from an equivalent institution of an EEA State

Qualifications Necessary for IQMPs

- No requirement to be on the GMC register

Independence

- has not previously advised, or given his/her opinion on, or otherwise been involved in, the particular case for which the opinion has been requested, and
- is not acting, and has not at any time acted, as the representative of the employee, the authority, or any other party in relation to the same case.

Independence cont.

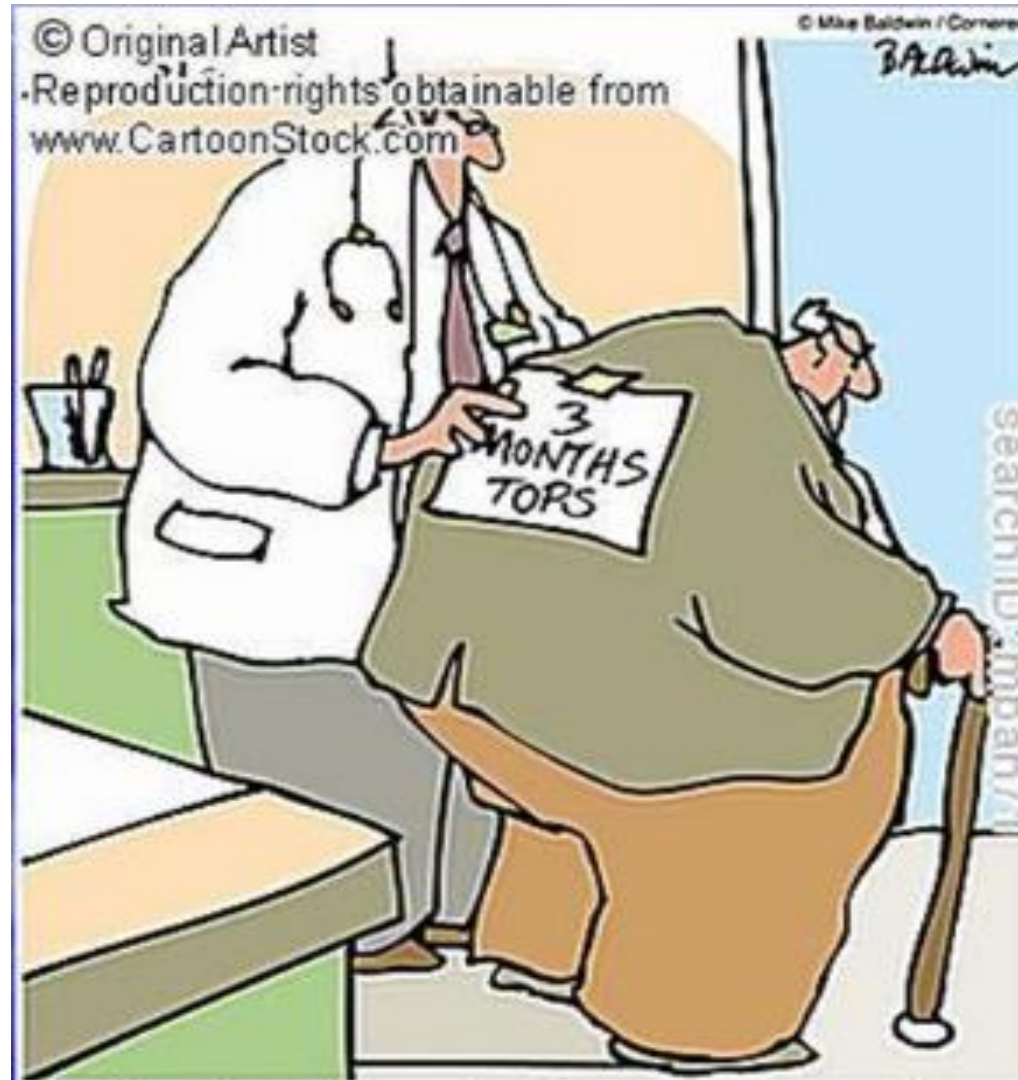
- This presumably means that a doctor is only disqualified if they have been directly involved in the current problem
- They could in theory act as the IQMP if they had only seen the firefighter e.g. for routine medical assessments, not related to the current problem

Choosing an IQMP

- FRAs should ensure that the IQMP that they use is competent.
- Advice can be sought from ALAMA
- Must have done some work as a MA
- IQMP list <https://communities.cfoa.org.uk/filemanager/25>
accessed 8/6/19

Matters for consideration by the IQMP

- “Likelihood” of permanence for the purposes of the schemes is based on the ordinary balance of probabilities
- Where the IQMP considers that an aspect of the member’s medical history needs closer examination he or she should recommend referral to a specialist.



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In the dark days, before doctor-patient confidentiality.

We are here for you

Assessment of disablement for regular employment

- It should be noted that in respect to this assessment, the requirements of the 1992 Scheme and the 2006 and 2015 Schemes are different
- 1992: incapable of “undertaking regular employment“
- 2006 & 2015: "permanently disabled from undertaking regular employment”

Qualifying injuries

- Has any permanent disablement been caused by a qualifying injury?
- The FRA should inform the IQMP whether or not the FRA has accepted that any index incident arose in the exercise of duty. This decision is for the FRA to make and should be decided before referral to the IQMP
- “injury” includes disease

Qualifying injuries

- At a later stage, FRA to provide suggestions for alternative jobs and salaries, based upon skills and educational qualifications

Apportionment

- Considered because injury and disease often result from a combination of causes
- Apportionment helps avoid liability for non-occupational factors
- Any apportioning factor must have caused some degree of loss of earnings capacity on its own

How to apportion

- Consider the causation of the disablement
- Consider history & medical evidence *e.g. OH records, hospital & GP records, accident reports, sickness absence records*
- Identify qualifying occupational factors
- Determine relative contributions of qualifying factors

Anton & Crocker 2003

- Crocker – Police Officer with ‘chemical imbalance in the brain’
- Subjected to stress at work, developed schizoaffective psychosis, and was unable to work at all
- SMP estimated loss of earnings capacity at 40%. Didn’t mention apportionment

Anton & Crocker 2003 cont.

- Dr Anton (at appeal) stated “Mr Crocker is effectively unemployable”
- Therefore the loss of earning capacity is 100%

Anton & Crocker 2003 cont.

- Although it might be objected that the straw which broke the camel's back may enable its owner to attribute the whole of its breakdown to a small additional load, it does at least reflect the fact that up to that moment there had been no loss of capacity for work
- Before apportionment can arise each factor must separately cause some degree of loss of earning capacity on its own

Example

Firefighter aged 53 with osteoarthritis in knee:

1. Obesity
2. Injury playing football aged 15 documented in GP notes
3. Family history
4. Injury on fire ground

Example

Firefighter aged 53 with osteoarthritis in knee:

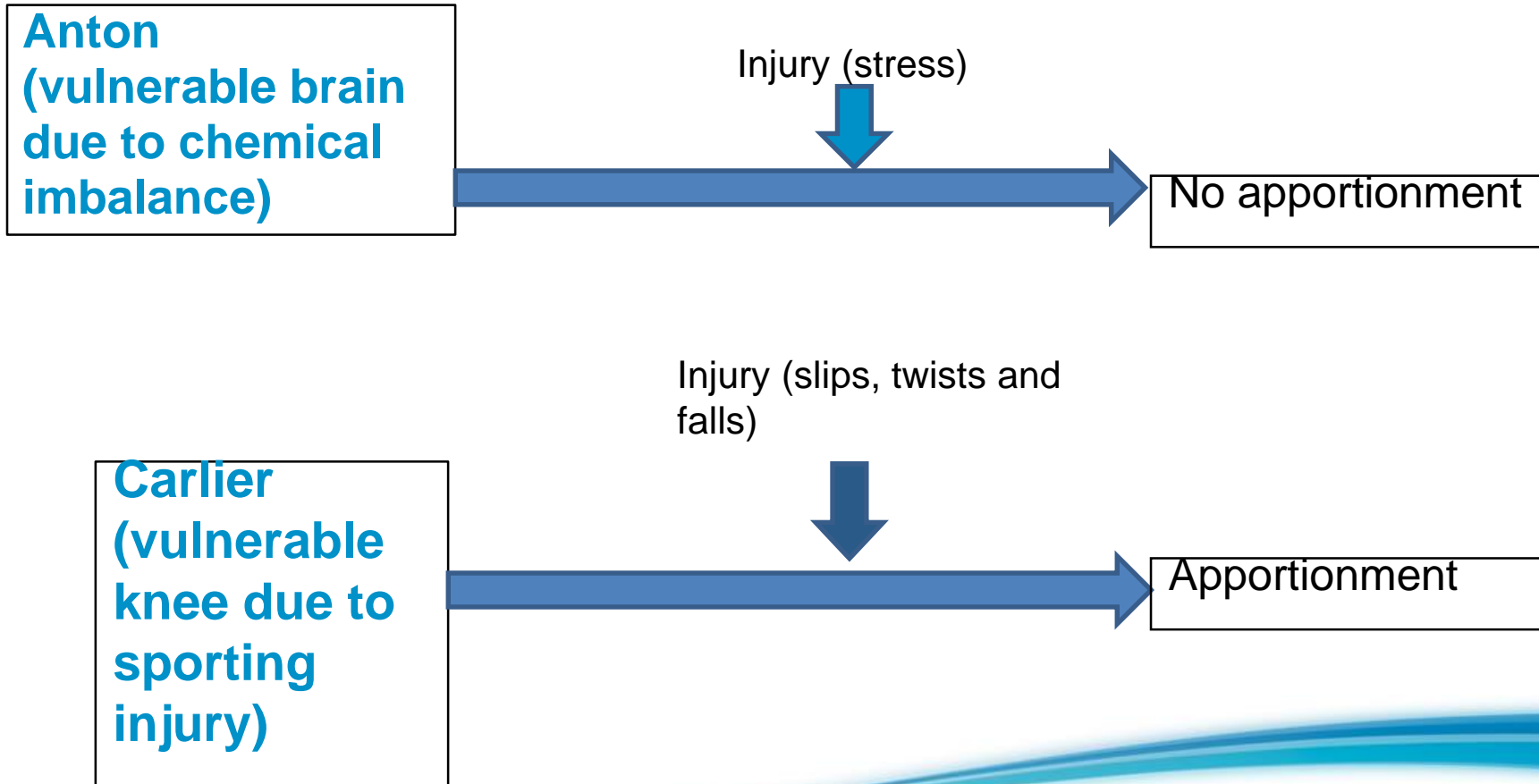
1. Obesity - 20%
2. Injury playing football aged 15 documented in GP notes - 20%
3. Family history - 20%
4. Injury on fire ground - 40%

BUT 1., 2. and 3. probably wouldn't have caused loss of earning capacity on their own, hence NO APPORTIONMENT

Carlier – Crown Court 2004

- Mr Carlier was a firefighter who had knee surgery after a sporting injury aged 15
- Aged 50 he had further knee surgery due to pain
- He had various slips, twists and falls at work that caused knee pain, and was no longer able to work
- Judge concluded that whilst the qualifying injuries caused a loss of earning capacity, so did the non-qualifying injury (the sporting injury)
- Hence reasonable to apportion

Anton & Crocker .v. Carlier



Anton & Crocker .v. Carlier cont.

- The difference is that in Carlier, the non-qualifying injury caused loss of earning capacity
- Assume this means it would have caused inability to work as a firefighter before normal retirement age

Good and bad days

- If a person cannot repeat an activity with a reasonable degree of regularity - and certainly if they can perform the activity only once - then they should be considered unable to perform that activity

What should the IQMP provide?

- Completed opinion form
- Letter of explanation for opinion to FRA
- Any additional medical evidence underlying opinion to MA

Pension reviews

- FRAs are required to carry out regular reviews of awards
- Therefore the IQMP may also be asked to determine if a retired member is still both permanently disabled for the last role they held in the fire and rescue service and/or is still incapable of regular work.

Pension reviews cont.

- The FRA can request the IQMP who provided the original opinion to provide a new opinion for the review provided the member is in the NFPS
- The FPS and FCS stipulate ‘the selected IQMP must have had no previous dealings with the case’.

QIs at Pension reviews

- Even though it may not be acceptable for an IQMP or Appeal Board to reconsider the issue of eligibility for a qualifying injury, it may be perfectly acceptable to decide that the apportionment of that qualifying injury is nil because the current disablement is not attributable in any significant way to the injury itself, but to other factors.

QIs at Pension reviews cont.

- E.g. a person who may have been awarded a pension following a whiplash event may now be shown to have sustained no significant damage, and any minor soft tissue injury has fully recovered. Any symptoms they now have can be argued to be unrelated to the injury itself, but solely related to their behaviour after the injury and their beliefs about injury.

Phillips v Strathclyde Joint Police Board [2001] ScotCS 208

- it is wrong to expect everyone to have 'normal susceptibility', and if someone is more susceptible than normal they can still be eligible for an injury award
- just because a condition arises during service does not mean it was caused by service, and the decision whether it was caused by service is a medical decision not a management decision.

Jennings .v. Chief Constable of Humberside Police 2002

- Jennings was involved in a road traffic accident in which he sustained minor neck and back injuries which caused pre-existing degenerative changes in his spine to become symptomatic
- It was felt that the accident had accelerated the onset of symptoms by **18 to 24** months
- This was not deemed 'substantial' so no injury award was given

Jennings .v. Chief Constable of Humberside Police 2002 cont.

- No demonstrable injury other than normal degeneration
- A condition should therefore only be certified as a qualifying injury if there is clear evidence of physical harm resulting directly from the injury. The presence of normal degenerative change is not evidence of physical harm.

Jennings .v. Chief Constable of Humberside Police 2002 cont.

- “The word 'aggravates' is intended to have a wholly different meaning from 'accelerates' - the word used in this case to describe the alleged effect of the injury. 'Aggravates', in my judgment, means making worse. 'Accelerates', in this context, means bringing forward.”
- ‘acceleration without aggravation’ is a medicolegal construct with no evidential base

Callaghan (London Fire and Emergency Planning Authority v The Board of Medical Referees & ANR [2008] EWCA Civ 1515

- Firefighter carrying a portable generator slipped on a muddy bank, landing on his right side
- An x-ray taken a month later revealed osteoarthritis of both hips, worse on the right, symptom free before the accident
- “it does not follow that because the injury has merely accelerated the onset of symptoms a causal link cannot be made out”

Callaghan (London Fire and Emergency Planning Authority v The Board of Medical Referees & ANR [2008] EWCA Civ 1515 cont.

- Symptoms brought forward by a period of about **one year**
- it is essential than any report, and any board, takes great care when determining whether an event should be considered insignificant, significant or substantial.

Walther .v. Police Medical Appeal Board and Metropolitan Police Authority, November 2010

- Walther continued working as a police officer despite some back pain and degeneration shown on an MRI scan until 2006, when a 15 stone officer jumped on him during safety training, causing further back pain
- The PMAB decided that this event had neither caused nor contributed to his permanent disablement

Walther .v. Police Medical Appeal Board and Metropolitan Police Authority, November 2010 cont.

- The High Court indicated that a short acceleration is unlikely to be deemed 'substantial' whereas a decade of acceleration is. "Where the dividing line comes must be a matter of fact in each case"
- The case was referred back to another PMAB

Pensions Ombudsman Decision – Kellaway, January 2010

- Kellaway was a firefighter who was medically retired due to an operational injury in 1994. Disability rated at 65% by IQMP. No apportionment
- Pension reviewed 2007. Unadjusted degree of disablement calculated at 60%. Apportionment applied – qualifying injury contribution 1%. Hence degree of disablement 0.6%. Kellaway appealed

Pensions Ombudsman Decision – Kellaway, January 2010

- “When injury award was subjected to review, application of apportionment had been given formal approval”
- Appeal dismissed

Dunford v Somerset CC [1994]

- A firefighter who is injured during training in his work location for example playing volleyball is likely to be considered to have a qualifying injury.
- A firefighter who is representing his Fire Service playing a team game away from his normal place of work is not likely to be considered to have a qualifying injury.

Commissioner of Police v Stunt [2001] EWCA Civ 265

- Mr S permanently disabled with a psychiatric injury suffered in reaction to an internal police investigation
- Not an 'injury on duty'
- The causal connection must be with the person's service as a police officer, not simply with his being a police officer
- the complaint procedure itself could not be considered to be 'execution of duty'.

Laws .v. Police Medical Appeal Board, October 2010

- Police officer retired in 1999 with a loss of earning capacity calculated at 60%. PMAB increased this to 85%
- Pension review 2008 noted further conditions but that Ms Laws had obtained a law degree and was hence capable of some work. Degree of disablement reduced to 25%
- At PMAB, causation of disablement was revisited, rather than consideration of whether the degree of disablement had substantially altered

Laws .v. Police Medical Appeal Board, October 2010 cont.

- At judicial review it was felt that PMABs should only decide whether or not there has been an alteration in the pensioner's disablement, so the appeal was successful
- In the High Court the appeal was upheld, but the judge felt it was reasonable to consider new skills and qualifications and their impact upon earning capacity
- Does this therefore mean that other things which affect earning capacity, such as illness, can affect injury awards?

Laws .v. Police Medical Appeal Board, October 2010 cont.

- It becomes difficult for the IQMP where it is very obvious that the original decision and subsequent reviews are fundamentally flawed.
- It may be appropriate to comment on this, perhaps leaving it for the employer to consider seeking judicial review.

Broome (Northumbria Police Authority v Industrial and Organisational Health [2010] EWHC 914

- where it became apparent over time that the police officer would have been unable to work for reasons which are entirely constitutional, then apportionment would be appropriate. The assessment should include whether... the injury and its aftereffects are much better controlled by modern medication or treatment methods, such that they no longer disable a former police officer from employment in the way that they did previously.

Broome (Northumbria Police Authority v Industrial and Organisational Health [2010] EWHC 914 cont.

- It may equally be that the condition has worsened. Where there are other factors that have arisen since the qualifying injury, then the Medical Adviser should consider only whether the degree to which the disability caused by the qualifying injury has altered, and whether that alteration is substantial.

Questions?



We are here for you

Lunch





Welcome Back

Mental health in the workplace

Philip Bundy, Senior Employment Law
Adviser, LGA

The issue

- National debate around mental health
- Around 15% of people at work have symptoms of a mental health condition
- 300,000 with a long-term mental health condition lose their jobs per year
- Annual cost to employers of £33-42bn

Government's approach

- Raised the profile
- Focus on employers supporting those with mental health conditions
- Focus on prevention
- Mentoring
- Changing the culture and the way we talk about mental health

‘Thriving at work’ review

- All employees will have good work
- Everyone will have the knowledge and skills to look after their own mental health and those around us
- Organisations will be equipped with tools to address and prevent mental health conditions and to support individuals
- Reduced job losses due to mental health

Mental health core standards

- Produce implement and communicate a mental health at work plan
- Develop mental health awareness
- Encourage open conversations
- Good working conditions and work life balance
- Effective people management and monitoring
- Routinely monitor employee wellbeing

Public sector employers

- ‘Thriving at work’ recommendations for large and public sector employers:
 - Improve transparency and leadership. Will employers have to report on the mental health of their workforces?
 - Demonstrate accountability: performance objectives for senior leaders

Legal framework

- Health and safety obligations: legislation supported by HSE management standards
 - Demands (workloads), control (employment involvement), support (open, supportive work environment), relationships (avoiding conflict), the role, effective management of change
- Duty of care: personal injury claims
- Contractual obligations: implied duty to act in good faith

Legal framework

- Disability discrimination
 - Reasonable adjustments
- Unfair dismissal (including constructive dismissal)
 - Build in consideration of ill-health retirement before dismissing
- Protection from Harassment Act 1997
 - Oppressive and unacceptable course of conduct

Emergency services

- [Mind Blue Light programme](#)
- 87.5% of blue light personnel had experienced stress and poor mental health
- More likely to experience mental health issues than general workforce but less likely to be off
- Fear of being treated less favourably
- 71% thought organisations did not encourage mental health discussions (45% elsewhere)

Blue Light programme

- The causes
 - Excessive workload (56%)
 - Management pressure (55%)
 - Organisational upheaval (52%)
 - Long hours (45%)
 - Exposure to traumatic incidents (42%)

Blue Light programme

- The costs
 - 250 employees: £325,000 per year
 - Does not include staff turnover costs
 - Kent Police: mental health illness absence doubled 2010 to 2017
 - CFOA 41,000 shifts per year lost to firefighters with mental health issues

Blue light programme

- Tackle the stigma
- Empowering staff to lead the change
- Training managers
- Making support accessible
- Building resilience
- Establishing good practice networks

Managing staff: Acas guidance

- Spot the signs: behavioural changes, increase in absences?
- Talk to them: handle sensitively and be open minded
- What if they don't want to talk?
- Think about possible solutions
- Consider reasonable adjustments

Reasonable adjustments

- Acas suggestions
 - Adjustments to work schedule, breaks etc
 - Adjustments to role and responsibilities
 - Working environment changes; more personal space etc
 - Policy changes: e.g. flexibility about time off to attend appointments
 - Mentoring support/counselling

Stress at work policies

- Effective policy will provide advice and explain measures employer is taking
 - Including stress in risk assessments
 - Explaining role and expectations of managers
 - Training available
 - Channels of communication/investigations
 - Internal and external sources of support e.g. OH
 - Reference to other procedures e.g. capability

Ill health retirements

- Important this is considered before dismissal on capability grounds
- Interaction with occupational health/IQMP crucial
- Do they have up-to-date information?
- Consider reports carefully: do not ‘act blindly’
- Keep the employee informed, but it is still your process, you can only act on what you know

Further resources

www.local.gov.uk/wellbeing-and-inclusion

www.local.gov.uk/our-support/workforce-and-hr-support/employment-relations

Audience Participation



- Firefighters: Bevan Hall
 - Police: Smith Square 3 & 4
-

- During this conference we will be using sli.do
1. Download the sli.do app onto your smart phone or enter <https://app2.sli.do/> into your browser
 2. Enter 2623 to join

The logo for sli.do, featuring the text "sli.do" in a bold, sans-serif font. The dot in ".do" is a small green square. The logo is centered within a light purple rectangular background.

sli.do



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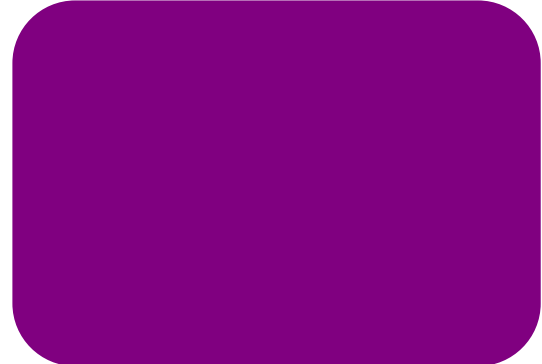
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End

III- Health Reviews

	FPS 1992 [Part K]	FPS 2006 Standard and Special Members [Part 9]	FPS 2015 [Part 5, Chapter 4]
Ill Health review	In payment for less than 10 years and under age 60. Authority has discretion to review at intervals as appropriate. [K1]	In payment for less than 10 years, and under SPA. Authority has discretion to review at intervals as appropriate. [Part 9, Para 1]	In payment for less than 10 years, and under SPA. Authority has discretion to review at intervals as appropriate [68(1)]
Cessation of higher tier	Where firefighter found to be capable of regular employment [K1A (1)]	Where firefighter found to be capable of regular employment [Part 9, Para 2 (2)]	Where firefighter found to be capable of regular employment [69 (1)]
Cessation of lower tier	Where firefighter found to be capable of performing duties of role from which retired [[K1A (2)]	Where firefighter found to be capable of performing duties of role from which retired [Part 9, Para 2 (3)]	Where firefighter found to be capable of performing duties of role from which retired [69(3)]
Cessation of deferred ill-health	Where capable of regular employment [[K1A (5)]	Where capable of regular employment [Part 9, Para 2 (5)]	Where capable of regular employment [69 (7)]

Medical Appeals

	FPS 1992 [Part H & Schedule 9]	FPS 2006 Standard and Special Members [Part 8, & Annex 2]	FPS 2015 [Part 12, Chapter 2]
Review: IQMP can review a previous decision where new medical evidence is presented [Within 28 days of new evidence]. Must provide details in writing within 14 days of decision	H1A & Schedule 9	Part 8, Para 3 & Annex 2	Regulation 153
Appeal by member: Within 28 days of decision (some discretion)	H2 & Schedule 9	Part 8, Para 4 & Annex 2	Regulation 154
Reviewing member:	Schedule 9 2B	Annex 2 (4)	Regulation 156 (8 to 11)
Error of fact: Can be referred back to board	Schedule 9 6A	Annex 2 (8A)	Regulation 159
Costs: Costs may be recovered if the opinion is that the appeal was “frivolous, vexatious or manifestly ill founded, or that the appeal is withdrawn less than 21 days of hearing date	Schedule 9 (8)	Annex 2 (10)	Regulation 161

Guidance

- [Technical Query Log](#) 'Ill-Health Retirement' and 'Compensation'
 - [Bulletins Topic List](#) 'Ill-Health Retirement' and 'Compensation Scheme'
 - [SAB Topic List](#) 'Ill-Health'
 - [IQMP Guidance](#)
 - [Ill-Health and Injury Quick Guide](#)
 - [Calculation guidance](#) 48-65
 - [Member only page](#)
-

Advantage of early involvement of rep bodies?

- Makes sure the member is ready for the referral by meeting prior to any appointment or paper based referral.
 - Member more likely to understand the process and rights of appeal.
 - Can act on behalf of member and make a submission to the IQMP. [[Guidance procedure](#) (page 13, para 2.9)]
 - Unnecessary appeals may be avoided if opportunity to gather evidence provided
-

Medical Appeal or IDRPs

- Do you have more IDRPs over the process or appeals due to medical issues?
- [Bulletin 13](#) commented on the need to ‘not act blindly’ on acceptance of an IQMP report. While the rules determine that the opinion of the independent qualified medical practitioner is binding on the Fire Authority, they firstly determine that the Fire Authority is the ultimate decision maker.
- Therefore the Authority need to ensure processes are in place to question whether the decision has been made properly and the IQMP is in receipt of all the appropriate medical evidence.

3 stage IHR Process

1. The decision whether to end an employee's contract. This can only be taken by the employer. Management need to make decisions on any non medical aspects of the case before consideration for onward referral.
 2. The medical decision on whether or not the case meets the criteria within the pension scheme for ill health retirement.
 3. The employer's decision, based on the medical opinion, on the terms under which the employee should leave
-

Review of Certificates

	1992 Scheme (Protected members only)	2006 Scheme (Protected Special and Standard Members)	2015 Scheme	Compensation Scheme
Entitlement				FCS 2006 Form A
Active	FPS 1992 Form A	FPS 2006 Form A	FPS 2015 Form A	
Deferred	FPS 1992 Form B	FPS 2006 Form B	FPS 2015 Form B	
Review following new evidence	FPS 1992 Form C	FPS 2006 Form C	FPS 2015 Form C	
Degree of disablement				FCS 2006 Form B
Periodical Review				FCS 2006 Form C
Active	FPS 1992 Form D	FPS 2006 Form D	FPS 2015 Form D	
Deferred	FPS 1992 Form E	FPS 2006 Form E	FPS 2015 Form E	

Closing remarks

Training Survey



https://www.surveymonkey.co.uk/r/FPS_training_survey

Pensionable Pay Workshop

- 18 July 2019
 - This conference will look at recent case law to pensionable pay and how it applies to the Firefighters Pension Scheme.
 - Conference will examine the process of making pensionable pay decisions and what can be improved to help best practice.
 - Booking available soon!
-

Thank you for coming

bluelight.pensions@local.gov.uk