

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

SECTION 3

PERMANENT DISABLEMENT

The issue of whether an officer or retired officer is permanently disabled is referred for a medical decision in the following contexts:

- When a police authority is considering an officer for possible medical retirement on the grounds of permanent disablement;
- When a police authority is considering whether a former officer's pension which has been deferred either to age 50 or 60 should be paid early on account of his or her permanent disablement; and
- When a police authority is considering a claim by an officer or former officer for an injury award and must therefore consider first, if the issue has not yet been considered, whether the claimant is permanently disabled.

2. The procedure for a police authority to refer the question of permanent disablement to its selected medical practitioner (SMP) is set out in regulation H1 of the Police Pensions Regulations 1987 and regulation 30 of the Police (Injury Benefit) Regulations 2006 (the Regulations):

H1 (2) Where the police authority are considering whether a person is permanently disabled, they shall refer for decision to a duly qualified medical practitioner selected by them the following questions-

- (a) whether the person concerned is disabled;
- (b) whether the disablement is likely to be permanent;...

and

30 (2) Subject to paragraph (3), where the police authority are considering whether a person is permanently disabled, they shall refer for decision to a duly qualified medical practitioner selected by them the following questions-

- (a) whether the person concerned is disabled;
- (b) whether the disablement is likely to be permanent,...

3. There are three main sources of guidance on what is meant by permanent disablement for the purpose of the Regulations:

- The Regulations themselves;
- What the courts say on the Regulations; and
- The Police Negotiating Board's (PNB) Guidance of 2003.

Disablement

4. The Regulations give the following definition of **disablement**.

A12(2)/7(4) - disablement means inability, occasioned by infirmity of mind or body, to perform the ordinary duties of a member of the force...

5. The Regulations define *infirmity* as follows:

In this regulation, “infirmity” means a disease, injury or medical condition, and includes a mental disorder, injury or condition.

6. The Regulations under A12(5)/7(8) include this definition in order to make it clear that disablement, for the purpose of medical retirement, must have a recognised medical cause or be a disability as a result of injury, such as the loss of a leg. This definition ensures as far as possible that the SMP confines him or herself to a report which describes the cause of a permanent disablement by reference to internationally authoritative guides available to doctors such as ICD 10 (International Classification of Diseases) and DSM IV (Diagnostic and Statistical Manual).

7. At various time the Courts have taken a different view as to whether the reference, in Regulation 12(2) of the Police Regulations 2006, to “the police force” is a reference to the police force in which the officer was serving at the relevant time or to the police service in general. This is relevant in cases (relatively rare) where an officer might be permanently disabled from performing the duties of an officer in one force but quite capable of performing the duties in another force – e.g. because he or she has an allergy to the incapacitant spray used by one force but not to the spray used by another force. The most recent judgment was by the High Court in September 2008 in the case of *Ashton* ([2008] EWHC 1833 (Admin)), which ruled that:

“...in light of the statutory definitions and all other reasons, "the force" in reg.12(2) meant the police force for the area in which the officer was serving at the relevant time”

8. The ruling in the cases of *Ashton* will be followed unless and until it is changed by a subsequent decision of the Courts.

9. In the context of duties we also have to look to the PNB Guidance, which sets out in greater detail the view taken by the Court of Appeal in 2000 in *Stewart*. In its judgment in 2000 in the case of *Stewart* the Court of Appeal held that the reference to “ordinary duties” is a reference to all the ordinary the duties of the office of constable:

“...the hypothetical member of the force whose ordinary duties the Regulation must have in mind is the holder of the office of constable who may properly be required to discharge any of the essential functions of that office, including operational duty.”

10. In taking this view the Court was concerned that without a relatively robust test of fitness, a Police Authority would be unable to safeguard the operational effectiveness of its Force, since it would be obliged to retain too many officers who were unfit for operational duties. The Court accepted that a constable cannot perform his or her ordinary duties unless he or she can at least run, walk reasonable distances, stand for reasonable periods, and exercise reasonable physical force in exercising powers of arrest, restraint and retention in custody.

11. However, core policing tasks go wider than those mentioned above. The PNB Guidance lists the following as the ordinary duties of a member of the force for the purpose of assessing permanent disablement under regulation H1/30:

- Managing processes and resources and using IT;
- Patrol/supervising public order;
- Incident management, such as traffic and traffic accident management;
- Dealing with crime, such as scene of crime work, interviewing, searching and

- investigating offences;
- Arrest and restraint;
- Dealing with procedures, such as prosecution procedures, managing case papers and giving evidence in court.

12. One point to note is that these duties are applicable to all ranks even if not all duties will be carried out in exactly the same way on all occasions. All members of the force will need to be able to effect an arrest, whatever their rank. Similarly, all members of the force will need to manage an incident, whether it is a road accident or a protest march.

13. In order to make it easier for a medical practitioner to assess whether someone is disabled for these duties the PNB Guidance goes on to list the key capabilities for each of the ordinary duties. Taking each of these duties in turn, inability, due to infirmity, as defined by the Police Pensions Regulations, in respect of **any** of the following key capabilities renders an officer disabled for the ordinary duties:

- the ability to sit for reasonable periods, to write, read, use the telephone and to use (or learn to use) IT;
- the ability to run, walk reasonable distances, and stand for reasonable periods;
- the ability to make decisions and report situations to others;
- the ability to evaluate information and to record details;
- the ability to exercise reasonable physical force in restraint and retention in custody;
- the ability to understand, retain and explain facts and procedures.

14. An officer, who because of infirmity (as defined) is able to perform the relevant activity only to a very limited degree or with great difficulty, is to be regarded as disabled.

Permanent

15. The Regulations do not define the word *permanent* since the word arguably speaks for itself, meaning for the rest of one's life. The PNB Guidance states that if, in a case where the officer is still in the early stages of his or her career, such a long-term view is difficult the test should be that the officer is likely to remain disabled for the ordinary duties of a member of the force until at least the compulsory retirement age for his or her rank, which is age 60 for ranks from constable up to and including chief inspector and age 65 for ranks from superintendent and above.

Likely to be permanent

16. How sure does the medical practitioner have to be that the disablement is permanent?

17. The Regulations indicate that there is no need to be convinced that the disablement is permanent, and that there is equally no need to try to look at the case from an imaginary point in the future. The issue is to be decided more on the balance of probabilities than on the basis of "beyond reasonable doubt" and in the present, taking account of current medical knowledge.

A12(1)/7(1) - 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.

18. In order to prevent conditions which are perfectly treatable from having to be assessed as permanent because of the disabled person's wilful and unreasonable neglect, the Regulations add a proviso for the purpose of assessing whether disablement is *likely to be permanent*.

A12(1A)/7(3) - For the purposes of deciding if a person's disablement is likely to be permanent, that person shall be assumed to receive normal appropriate medical treatment for his disablement, and in this paragraph "appropriate medical treatment" shall not include medical treatment that it is reasonable in the opinion of the police authority for that person to refuse.

19. When assessing whether appropriate medical treatment can be assumed to be given in a particular case, the SMP will have to consider the following:

- the extent to which the treatment is likely to be effective in preventing permanent disablement, taking account of the officer's condition and of any other factors, such as allergies, which could lead to complications or harmful side-effects;
- the extent to which the treatment is tried and tested;
- the extent to which the treatment is available to the officer in time for it to be effective, taking account of general availability unless there are special reasons for that not being relevant.

20. The definition of appropriate medical treatment in the Regulations expressly excludes treatment to which the officer has a reasonable objection. In a case where the SMP decides that the officer is not permanently disabled because specific appropriate treatment is available to the officer, it will be for the police authority to consider whether any objection by the officer to that treatment is reasonable or not. NB. Any appeal against a decision on reasonableness of treatment is to the Crown Court.

When did the disablement start?

21. In the case of a serving officer the date of the onset of disablement has no particular significance for pension purposes, but this issue is important in the case of former officers claiming a back-dated injury award or a back-dated early payment of pension. The Regulations cover this issue as follows:

A12(3)/7(7) - Where a person has retired before becoming disabled and the date on which he becomes disabled cannot be ascertained, it shall be taken to be the date on which the claim that he is disabled is first made known to the police authority.