



SCOTTISH PUBLIC PENSIONS AGENCY

The Chief Executives, Fife Council and Dumfries & Galloway Council
Chief Constables
Clerks to the Joint Boards

7 Tweedside Park
Tweedbank
Galashiels TD1 3TE

Telephone: 01896 893223
Fax: 01896 893230
James.preston@scotland.gsi.gov.uk

Our ref: BYO/1- POL/18/02/00
2 September 2004

Dear Sir or Madam

POLICE PENSIONS CIRCULAR No 2004/3

A: PROCEDURES FOR SUBMITTING APPEALS TO SPPA

B: DEGREE OF DISABLEMENT GUIDANCE

This circular is issued as a reminder of the procedures required in submitting an appeal made under Regulation H of the Police Pension Regulations to the SPPA for referral to the medical board provided by BUPA Wellness. The original guidance issued under SPPA Police Circular 2003/4 dated 18 August 2003 should be followed in addition to the recommendations made below.

It should be brought to the immediate attention of force personnel officers, force medical practitioners OH Managers and the administrators of the Police Pension Scheme.

A: PROCEDURES FOR SUBMITTING APPEALS TO SPPA

1. Background

SPPA Police Circular 2003/4 confirmed that as part of the PNB Agreement of 9 May 2002 there was a need for a robust appeals system and therefore the single medical referee system was to be replaced by a medical board drawn from panels of medical practitioners provided by BUPA Wellness. The circular also outlined the processes to follow and the documentation required when submitting an appeal.

SPPA POLICE PENSIONS CIRCULAR No 2004/3

Until recently there has not been a significant number of appeals submitted to SPPA. This is probably due to police authorities adapting to the new procedures both in determining ill-health questions (SPPA circular 2003/3) and gathering the information and evidence required for each appeal prior to submission to SPPA. It is acknowledged that the new processes do represent a significant change to those used previously. Circular 2003/4 was issued to allow a reasonable lead in time prior to the changes coming into force from 1 October 2003.

Of the appeal cases received to date some have arrived at SPPA complete and as per the instructions of Circular 2003/4. However, others have arrived without some of the required forms and not enclosing the medical records etc in sealed envelopes.

2. Documents required by the Appeal Board

For ease of reference the following is the relevant section of circular 2003/4 regarding what information needs to be submitted with each appeal:

60. The police authority will send to the designated contact point at the SPPA the following –

- 2 copies of the police authority's award decision letter.
- 2 copies of the appellant's notice of appeal Appeal form 1 Annex D (with attached Consent for Release of Medical Records Appeal form 2 Annex D).
- 2 copies of the medical opinion with which the appellant is dissatisfied either the Selected Medical Practitioners report or a certificate issued under H1 (2) (c) or (d).
- In appeals against H1 (2) (a) or (b) 2 copies of the appellant's written grounds of appeal.
- 2 copies of the Appeal form 3 Annex D – Appeal Notification from Police Authority to SPPA. see paragraph 62
- 2 Copies of the Appeal form 4 Annex D – Documents Form.
- The complete GP record (3 copies for the Board of Medical Referees). (It is anticipated that in making the decision under appeal that this would have already been obtained. If not the full record must be supplied as detailed).
- The complete record from the Occupational Health file (3 copies for the Board of Medical Referees).
- Accident and incident reports relevant to the appeal (3 copies for the Board of Medical Referees).
- Original x-ray/scan films where appropriate (mainly orthopaedic cases).
- Complete hospital and specialist records where appropriate e. g. in cardiac cases details of tests are required with the final report (3 copies for the Board of Medical Referees).
- Any additional medical reports available to the police authority relevant to the appeal (3 copies for the Board of Medical Referees).

These documents should be itemised on referral to SPPA. A template form Appeal form 4 for this use is at appendix D. All documents should be sent to the SPPA as soon as

SPPA POLICE PENSIONS CIRCULAR No 2004/3

possible to ensure that the information regarding the appellant's availability etc is as up to date as possible.

61. The appeal notification should include:
- details of the appellant's full name, date of birth and current address; (obtained under paragraph 58)
 - a statement whether correspondence should be sent to the appellant or to a representative and the contact address, and telephone number if available, for the purpose of communications about the appeal. (Except in the case of a legal representative or a representative acting under power of attorney, the appellant should provide written consent to the representative acting on his or her behalf for this purpose.) The appellant or representative must notify the police authority and the appeal board of any subsequent change of contact details; (obtained under paragraph 58)
 - details giving the name of any specialist who has previously treated the appellant for the condition in question;(included in the notice of appeal)
 - the name of a contact person in the OH Department to whom enquiries about obtaining medical records can be made by the appeal board chair;
 - whether the SMP wishes to attend – or an indication of when this information can be given;
 - the name and status of any person or persons wishing to attend on behalf of the police authority – or an indication of when this information can be given;
 - Both the police authority and the appellant's confirming dates when they will not be available for appeal hearings for a period between 2 to 4 months from the date of the submission of papers. (This will allow the board to immediately exclude any known unsuitable dates). (A template for appeal notifications Appeal form 3 is at Annex D.)
 - SPPA will send to the appellant a copy of the list of forms and copies of the medical records provided by the police authority.

Please note The final bullet point above should read that SPPA will send to the appellant a copy of the list of forms and list of medical records provided by the police authority i.e. a copy of Appeal Form 4 from the circular. The medical records for the appeal must be supplied in a sealed envelope for dispatch to BUPA and it will therefore not be possible for SPPA to provide a copy of the records without having to open the envelopes. It is important that a copy of everything sent to thee SPPA for dispatch to BUPA should also be provided to the appellant and his/her representative (see below).

When submitting papers to SPPA it is essential that all the evidence required for the case is provided and that the papers can be readily identified. On checking against the above list you may find that some papers were not obtained during the original consideration of the case by the authority. It is important that such papers are obtained quickly. You may wish to consider reviewing any arrangements with the BMA to include a requirement to provide papers in a timely and appropriate manner.

SPPA POLICE PENSIONS CIRCULAR No 2004/3

Care should be taken to ensure that photocopied documents are complete and legible.

We have asked for medical records to be submitted in sealed envelopes with a list indicating the records inside. The list is our only means of checking that papers are complete and thus enabling referral to BUPA. Chasing missing and additional papers can be time consuming which could cause considerable delay in the allocation of a hearing date.

This will help to avoid any time taken by BUPA to prepare medical documents for consideration by their consultants which will be charged as an additional cost to the Police Service.

Action:- Each set of papers should be collated by type (e.g. GP records; occupational health records; accident and incident reports; etc), indexed and each page numbered.

3. Consent form

The consent form (Appeal form 2) makes it clear to the appellant that they may see all the papers to be put before the Medical Board if they choose to do so. At the bottom of the first page there is a declaration stating whether consent is given to access medical information and whether there is a wish to see medical information before it is sent to SPPA. It is important that this declaration has been completed. In cases when the appellant has stated that he/she does not wish to see the information it should not be assumed that there is no need to make copies available to the appellant or his representatives before the hearing.

It is the responsibility of each party to ensure that the other has any written evidence or statements upon which it intends to rely at the appeal hearing. We take the view therefore that in all cases copies of all the documentation should be made available to the appellant and his/her representatives. In a number of Firefighter appeal cases recently failure to make all documents available resulted in the appellant considering applying for Judicial Review. As the Office of the Deputy Prime Minister (ODPM), who are responsible for Firefighter appeals, were satisfied that documents had not been provided to the appellant or their representatives ODPM directed that the cases should be re-heard at the cost of the fire authority. It is not BUPA's responsibility to provide copies of documents.

Action :- All the documentation upon which the police authority intends to rely at a hearing must be copied to an appellant and his/her representatives.

Finally, care should be taken in deciding on how the appeal papers will be submitted to SPPA. The appeal papers will contain a number of confidential and personal papers and therefore a suitable means of postage and delivery should be considered.

SPPA POLICE PENSIONS CIRCULAR No 2004/3

B: DEGREE OF DISABLEMENT GUIDANCE

SPPA Police Circular 2004/2 confirmed that the Home Office was in the process of preparing guidance on the review of injury awards. Following consultation with both Sides of the PNB the Home Office have now produced guidance for forces on reviews of injury awards. A copy of this guidance is provided at Annex A. This guidance is intended to help ensure a fairer and more consistent approach is achieved when police authorities review injury awards when the former officer is above the compulsory retirement age for his or her last held rank.

If you have any queries regarding the content of this circular please contact either

Jim Preston tel 01896 893223 or E-mail james.preston@scotland.gsi.gov.uk

Dorothy Hamilton tel 01896 893224 or E-mail Dorothy.hamilton@scotland.gsi.gov.uk

Yours faithfully



Jim Preston

HOME OFFICE GUIDANCE FOR FORCES ON REVIEWS OF INJURY AWARDS

This Guidance is being issued to help ensure a fairer, more cohesive approach to the payment of injury benefits to ill-health retired officers who have reached the compulsory retirement age with their Force. A recent survey found that practice in this area was diverse. Some forces automatically reduced degree of disablement benefits to the lowest banding when this age had been reached - others continued to pay benefits at the same rate until the death of the Officer concerned.

It is clear that a more standardised approach is needed to safeguard the rights of the Officer and ensure fair treatment across Forces. After consultation, the following Guidance has been agreed:

Forces have the duty to keep all current injury pensions under review at such intervals as they consider appropriate, including where the former officers concerned are now above the compulsory retirement age.

Review of Injury Pensions once Officers reach Compulsory Retirement Age

Once a former officer receiving an injury pension reaches what would have been his compulsory retirement age under the Police Pensions Regulations (55, 57, 60 or 65 depending on the person's force and rank at the point of leaving the police service) the force should consider a review of the award payable, since it is no longer appropriate to use the former officer's police pay scale as the basis for his or her pre-injury earning capacity.

In the absence of a cogent reason for a higher or lower outside earnings level, it is suggested that the new basis for the person's earning capacity, had there been no injury, should be the National Average Earnings (NAE)* at the time of the review. The NAE figure taken should be the average for the population overall. Separate figures for males and females, and regional fluctuations should not be considered. The loss of earning capacity for the purpose of establishing Degree of Disablement should therefore be assessed by reference to the % proportion the person's actual earning capacity bears to NAE.

This procedure should help to ensure that former officers are treated in a consistent way across forces. They will be placed on an equal financial footing with others in the employment market at a time when they could not have been assumed to be earning a police salary.

After a review at compulsory retirement age a force should determine the need and date for the next review. In some cases there may be particular circumstances which make it undesirable to conduct a further review.

SPPA POLICE PENSIONS CIRCULAR No 2004/3

Review of Injury Pensions once Officers reach Age 65

Once a former officer receiving an injury pension reaches the age of 65 they will have reached their State Pension Age irrespective of whether they are male or female. The force then has the discretion, in the absence of a cogent reason otherwise, to advise the SMP to 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 earning a salary in the employment market.

A review at age 65 will normally be the last unless there are exceptional circumstances which require there to be a further review.

Suitable Intervals for Review

It seems to us that whereas it is reasonable for most cases to be reviewed at the compulsory retirement age stage, not all such cases need to be reviewed again at age 65. A police authority would, after concluding the review at compulsory retirement age, be entitled to judge it reasonable not to review a case further where the injury award is already small. This will normally be the case with former officers who were retired injured early in their career. We do not think we can create a specific “minimum” minimum income guarantee under the Police Pensions Regulations in their present form. Each case will have to be considered on the basis of its individual circumstances.

New Cases

Applications received for injury awards from former officers over 65 should not normally be referred to the SMP for consideration.

** National Average Earnings figures available from National Office of Statistics (www.statistics.gov.uk). Look under Labour Market and NES (New Earnings Survey) Streamlined Analyses. Relevant figure is Average Gross Annual Earnings.*

Note 1 - In the case of an officer who is under retirement age but has already left the service for reasons other than ill-health retirement, it is suggested that the comparator used should still be equivalent police salary. This is because, even if the ex-officer had been dismissed, forces would still have discretion to re-employ and he or she could therefore still be deemed capable of earning that salary.

Note 2 - It is clear that NAE will not be a suitable benchmark in all cases - especially on occasion with higher ranking officers who may claim to be capable of earning substantially more than this figure. It was suggested that this Guidance should contain some kind of formulae to proportionately enhance NAE to the level of the higher ranked

SPPA POLICE PENSIONS CIRCULAR No 2004/3

salary. We would advise Forces to use their discretion as to whether they would like to adopt this approach.