

Send to Police Authority
Or Nominated person in Force

Dear Sir/Madam,

RE: INJURY AWARD REVIEW (INSERT NAME)

On (insert date) I was reviewed by the Selected Medical Practitioner (SMP) acting on behalf of (Insert name) Police Authority.

The SMP determined that my injury award should be reduced from Band (insert Band) to Band 1 on the basis that I was aged 65 years or over and Home Office Guidance suggested that in the absence of a 'cogent reason' I should be reduced to Band 1.

That assessment by the SMP amounted to nothing more than an automatic reduction to Band 1 on reason of my age and neither my medical condition nor earning capacity were properly assessed to determine whether my degree of disablement had altered. This is contrary to the legal precedents set out in the cases of **ANTON and TURNER** and the Ombudsman determinations in **AYRE** and **SHARPE**.

Furthermore I believe that the SMP adopted a different process whilst conducting my review, than that taken when conducting reviews of people under 65 years of age and automatically assumed that my earning capacity was zero.

At the time of that decision I was led to believe (include reasons why an Appeal was not pursued e.g. by the tone of letter received or otherwise) that any appeal

would be pointless and would result in me having to pay over £6,500 should I lose.

As a result of that reluctantly I decided not to appeal the decision of the SMP.

However since that date there have been some important decisions at the High Court, Pensions Ombudsman and indeed the Police Medical Appeal Board itself.

The High Court judgements in the cases of **TURNER** and **LAWS** reinforce the fact that Home Office Guidance cannot override the Regulations themselves and in particular they emphasise that there has to be a '**substantial alteration**' to the degree of disablement, **as a result of the duty injury**, before a revision of an injury pension can be made.

Paragraph 27 of Lord Justice LAWS decision in the Court of Appeal case of Belinda **LAWS** opined that the SMP can take into account external factors when determining the degree of disablement, but to use a persons age as the 'sole' factor for reducing an injury pension is unjust, unfair and contrary to the Regulations and case law. Lord Justice LAWS commented on the correct approach to take:

The question under 7(5) then is, what is the impact of the duty injury on the pensioner's earning capacity as the SMP/Board find it on the facts before them.

Lord Justice LAWS went on to opine:

One pensioner's earning capacity will differ from another's

This further emphasizes the fact that assessment of the degree of disablement should be an assessment taking into account each individuals own circumstances.

The SMP in my case has not carried out a proper work capability test and has not therefore assessed my true earning capacity, he has made an automatic assumption that my earning capacity is nil on account of my age alone and has treated me differently to those aged under 65 years.

The Pensions Ombudsman determination in the case of **AYRE** further emphasises that the Home Office Guidance cannot override the Regulations and concludes that the review process used should be the same irrespective of a person's age.

Furthermore I am aware of a number of recent PMAB decisions in Northumbria South Wales and West Yorkshire which fully support the decision in **TURNER** and **AYRE** and the PMAB have consequently concluded that the pensioner making the appeal should be restored to their original banding.

On the basis of these decisions I believe that the SMP in my case has asked himself the wrong question and has gone beyond what he was supposed to do. He should have determined if my degree of disablement as **a result of my duty injury** had altered since the last review, by reference to my medical condition and earning capacity. If there had been no alteration the review should have gone no further. Only if the SMP had determined that any alteration was '**substantial**' should he have gone any further in the process.

The SMP did not in my view make a fair, proper and credible assessment of my medical condition and my earning capacity and as such I request that the Police Authority agree to review my injury award under Regulation 32 (2) Police (Injury Benefit) Regulations 2006.

I would bring your attention to paragraph 22 of the Pension Ombudsman's determination in the case of SHARP in which he opines:

The Regulations do provide that the SMP's decision is final, subject to appeal

within 28 days. However, they also provide for the police authority and the claimant to agree to refer a final decision back to the SMP for reconsideration.

There was, therefore, scope for NPA to address the fact that the review of Mr

Sharp's injury award had proceeded on an inappropriate basis. I find that it was maladministration on their part to decline to refer the matter back to the SMP and that Mr Sharp suffered injustice as a consequence inasmuch as his injury award was not reviewed on an appropriate basis. I uphold his complaint.

I therefore submit that you should agree to Reconsideration under Regulation 32(2) PIBR 2006.

This approach will ensure that my review is conducted on the correct basis and that my review is carried out fairly and in accordance with the Regulations and legal precedent. **Furthermore as the reduction in my injury award was delayed by West Yorkshire Police until (insert month) 2010 I believe that this opportunity should now be offered to me before the reduction takes effect. (include if applicable)**

A failure to respond to this letter within 28 days will be treated as a refusal to refer the matter for reconsideration and should no reply be received within the set timescale I will have no alternative other than to involve The Pensions Advisory Service with a view to exercising my rights to make a complaint to the Pensions Ombudsman.

Yours sincerely

**Cc Chief Constable
Police Force
Police HQ.**