Legal Cases Brief Summary

Regina v Dorset Police Authority ex parte Jocelyn Vaughan (October 1994)

The circumstances of this case are that the issue of an officer's permanent disability, and whether their condition was caused by an injury on duty, were referred to a selected medical practitioner. The SMP determined that the above officer was permanently disabled from the Ordinary Duties of a Police Officer and that this disablement arose from an injury in the execution of duty and she was 20% disabled. As a consequence she was retired from the service.

However, after the certificate was issued someone in the police department decided that the medical history provided to the SMP was incomplete and asked the Doctor to re-consider his decision on injury award. He re-considered his decision and made a fresh determination that that the disablement was not likely to be permanent and, more importantly that the condition was not the result of an injury on duty.

In considering the regulations the court ruled that the "decision of the selected medical practitioner shall be final means exactly what it says; and that the law on this subject is very simple: absent fraud, the decision is final and will only be set aside if there is want of jurisdiction or a misunderstanding of law".

This case confirms that the decision of the Selected Medical Practitioner is binding upon the Police Authority unless there has been fraud by the officer. In the absence of fraud the only remedy to challenge the certificate is through a Judicial Review, if the Police Authority can establish that the SMP misunderstood the law.

Yates v Merseyside Police Authority (February 1999)
(See also Spriggs v West Midlands Police)

The background to this case is that Mr Yates was retired on medical grounds suffering from a psychological condition. He applied for an injury award because his Doctors had advised him that his disablement was the consequence of stress imposed on him by disciplinary proceedings. The allegation of those proceedings

was one of neglect of duty; it was said that as a custody Sergeant he had failed to deal properly with an allegation of assault made by a prisoner.

Disciplinary charges were pursued, and the Chief Constable found Mr. Yates to have committed neglect of duty and ordered that he be demoted. Mr Yates appealed against the finding, and the Appeal Tribunal unanimously recommended to the Secretary of State that the disciplinary finding be overturned. He was completely vindicated by the Tribunal; it found that he had done nothing wrong. This was important because it meant that there was no question of the injury having been received as a result of his own default.

Mr Yates made a B4 claim for an injury award. Merseyside Police refused to refer the matter to the FMO under Regulation H1 because it took the view that as a matter of principle stress resulting from properly conducted disciplinary proceedings could not give rise to an injury award.

A Crown Court Appeal was lodged on behalf of Mr. Yates, but adjourned by agreement with the Police Authority. The case proceeded to judicial review application.

In summary the Court decided as follows:

1. When a Claim is made for an injury award the Police Authority must refer the matter to the FMO under Regulation H1 unless the claim is “obviously spurious or vexatious”.
2. When the Police Authority fail to make a reference under Regulation H1 the remedy is a Crown Court Appeal rather than an application for judicial review
3. It was strongly argued that stress resulting from disciplinary proceedings could give rise to an injury award. Mr Yates was obliged as part of his duties as a Police Officer to subject himself to such proceedings. The question was one of medical causation

The effect of the Yates decision is clear: The Police Authority must refer to the FMO every claim unless it is “obviously spurious or vexatious”.

Stewart v Sussex Police (April 2000)

This case arose from an officer who had been retired from the service and after a pension review under Regulation K1 was subsequently invited to rejoin the Force. The basis for this was the doctor's opinion which stated that "whilst you are not fit for all the police duties you are fit for those with a low risk of confrontation". The Force invited her to rejoin the Force on the premise that they would assign to her essentially sedentary work in an office. The Force therefore argued that as she could perform sedentary duties she was no longer disabled within the definition of the police pension regulation. The officer argued that the correct test should include operational duties which she could not perform.

The court ruled the test must include operational duties and be a relatively robust test. This is important for both the efficiency of the service and for the protection of officers. The Police Authority has discretion whether to retire or retain an officer who is permanently disabled under Regulation A20. If the test were weakened to include disability from any police posts then it would have been feasible for Police Authorities to choose to retire officers who still had some capacity to work and then several years later invite them to rejoin the Force. If they refused to do so then their pension could be stopped.

The definition of ordinary duties is now included in PNB Guidance from 2002.

Regina v Kellam ex parte South Wales Police Authority and Paul Julian Milton (July 1999)

The background to the case is that Mr Milton was a serving officer whose wife was also a serving officer in the same Force. Ms Milton made complaints about an inspector in charge of the unit where she worked and suffered bullying and harassment and lodged an Industrial Tribunal against the Force. At about the same time she had a still born child at 7 month of her pregnancy and was also subject to a criminal complaint by a neighbour with whom they were in dispute over a hedge.

They alleged that the later complaint only came about with encouragement from a Senior South Wales Police Officer

Mr Milton said that as a consequence of his wife's complaints and his support for her he was shunned and victimised at work by other officers of the authority, including superior officers, over the following years. He listed a series of events which amounted to bullying and ultimately became depressed and was medically retired from the Force. He made application for an injury award which was considered by Dr Kellam. He concluded that Mr Milton's stress had four causes:

1. The still birth
2. His wife's treatment by the force
3. the perception of the attitude of his colleagues after his wife won her case against the chief constable
4. the investigation of his neighbours complaint against him

Although they all interacted, and all substantially contributed to the disablement, Dr Kellam concluded that the last 3 resulted from his being a police officer and therefore his disablement was the result of an injury in the execution of duty.

South Wales Police lodged a Judicial Review claiming that Dr Kellam had applied the wrong legal test and that there must be a causal link to the officer's execution of duty as a police officer.

The Court ruled in favour of Dr Kellam and Mr Milton and rejected this argument by South Wales Police Authority. It concluded on two important points.

Firstly that it is sufficient to establish that there is a causal link to the person's service as a police officer. It concluded that duty is not to be given a narrow meaning and relates not just too operational police duties but to all aspects of the officers work – to the officers "work circumstances". In any event it is sufficient to find a causal connection with service as a police officer with events experienced by the officer at work, whether inside or outside of the police station or headquarters, and including such matters as things said or done to him by colleagues at work.

Secondly it is not necessary to establish that work circumstances are the sole cause of the injury. Metal stress and psychiatric illnesses may arise out of a combination of work circumstances and external factors (most obviously domestic, domestic circumstances). What matters is that the work circumstances have a causative role.

Commissioner of Police and Stunt (February 2001)
Clinch v Dorset Police (February 2003)
Merseyside Police v Gidlow ex parte Reilly Cooper (December 2004)
Edwards v PMAB and Derbyshire Police Authority (July 2005)
R (on the application of the Metropolitan Police Commissioner) v Police Medical Appeal Board (February 2020)

Stunt was a serving police officer who was medically retired after 28 years service. His ill health arose from a discipline enquiry following a complaint by a member of the public. Mr Stunt alleged that the complaint was malicious; however, the matter never progressed to a discipline panel due to Mr Stunt's ill health.

Following his medical retirement Mr Stunt made application for an injury award claiming that his ill health had been caused by a malicious complaint and investigation. This was refused on the grounds that the causal connection must be with the person's service as a police officer, not simply with his being a police office.

The conclusion of the court was that the Kellam case took recovery to its furthest limits. The Stunt case concluded that they could not accept the view that an injury resulting from disciplinary proceedings can be regarded as received in the execution of duty. Consequently no injury award can be payable to an officer who becomes disabled through his reaction to disciplinary proceedings

R (on the application of the Metropolitan Police Commissioner) v Police Medical Appeal Board (February 2020), reinforced the Stunt case. In this case, the Metropolitan Police Service said that the Police Medical Appeal Board, had erred in concluding that a psychiatric condition suffered by a former police officer had been

sustained in the execution of his duty as a police officer thereby entitling him to seek an injury pension. The Administrative Court, allowing a challenge by the claimant Police Pension Authority for serving and retired members of the Metropolitan Police Service, held that the officer's condition had been in relation to the claimant's investigations into his conduct and the trust that he had lost in the claimant as a result, and, whilst being connected with his being a police officer, had not been injuries sustained in the execution of his duty as a police officer.

In the case of Clinch v Dorset Police Mr Clinch joined the service in 1979. He was promoted to the rank of Inspector by 1984. However, he was unsuccessful in further promotion attempts and in 1998 he was appointed as a licensing Inspector which he regarded as a dead end job. At about the same time he started to suffer psychiatric problems.

In early 2000 he applied for a Chief Inspectors post as an Operations Manager at Poole. He was told he was unsuccessful and regarded this as the last straw. In

December 2000 he was certified as disabled due to his psychiatric condition and retired from the Force.

He applied for an injury award and the Police Authority refused to refer the case under Regulation H1 on the basis that it was “bound to fail” as the injury arose from him being a Police officer and not from the execution of duty. Clinch appealed to the Crown Court under Regulation 5 which ruled in favour of the Police Authority. The matter proceeded to appeal to the Queen’s Bench Division which upheld the decision of the Crown Court that the application could not succeed.

Merseyside Police v Gidlow involved an Officer by the name of Reilly Cooper. He was a Sergeant in Merseyside Police who supervised both Police Officers and Civilian Staff. He had occasion to challenge the performance of a female staff member who then submitted a grievance against him. She further alleged that Sgt Reilly Cooper had behaved inappropriately towards her some 2 years previous. The grievance was resolved by moving the member police staff so that she did not have to work with Sgt Reilly Cooper. However, the allegation that he had behaved inappropriately was not investigated and never became part of the grievance. This led to him becoming anxious that the grievance had been resolved although this allegation was never investigated further and therefore he had no chance to exonerate himself. As a consequence he started his own employment tribunal proceedings which were ultimately unsuccessful.

His anxiety developed to the point of permanent disability and he was medically retired from the service. He applied for an injury award which was turned down by the SMP. He appealed to a medical referee, Dr Gidlow, who upheld his appeal and awarded him an injury award.

Merseyside Police lodged Judicial Review Proceedings against the medical referee. The Court upheld that the circumstances arose from him being a police officer and not in the execution of duty and therefore could not amount to an injury under the terms of the pension regulations. They offered a remedy of a further PMAB appeal which Mr Reilly Cooper ultimately lost.

The case of Edwards v PMAB and Derbyshire Police was an application for a review of a decision by a PMAB that Constable Edwards psychological injuries were not the result of an injury in the execution of duty.

The circumstances are that Constable Edwards was a serving officer with Derbyshire Police. Between 1983 and 1995 he worked on CID Duties. In November 1994 he discovered that he was to be posted to uniform duties as the result of the application of the Force tenure policy. He was surprised that this policy was to be applied to him as there was discretion within the policy to extend which he was led to believe would apply in his case. There is some clear evidence that the management of his move to uniform duties was at best poor and this formed the basis for the later application for an injury award.

Mr Edwards returned to uniform duties in January 1995 and remained on these apart from a secondment to CID duties between September 1998 and March 1999. He continued to suffer from psychiatric problems and consulted his doctor on 14 separate occasions.

In October 2001 after a lengthy period of sickness Mr Edwards was considered permanently disabled and he was medically retired in February 2002.

He made application for an injury award on the basis that it was the poor management of the move which caused his ill health and not merely his move from a CID post. His application was rejected and the PMAB dismissed his appeal of that decision.

The court upheld the decision of the PMAB and ruled that the move was the cause of his becoming unwell and therefore it arose from his being a police officer and not in the execution of a Police Officer.

Merseyside Police Authority v PMAB and Hudson (January 2009)

The previous 4 cases weakened the position of the Kellam Judgement and made any injury awards arising from circumstances at work difficult to achieve. This balance was addressed in the above recent case.

The issue in the case was whether permanent disablement resulting from a psychiatric condition was a consequence of an injury in the execution of duty. The factual background is extremely complex, and essentially began with a criminal investigation into the officers actions following an allegation of criminal damage whilst off duty which was made by a colleague. There were 21 specific incidents which were identified as affecting his health, and these included the way in which the investigation was conducted, a decision to transfer him and place him on restricted duties, a failure to investigation his own complaints against senior officers, and the officer finding himself ostracised by colleagues and "sent to Coventry".

As far as the investigation was concerned, the officer's case was that the fact he was under investigation did not worry him because he knew he would be exonerated through an impartial and thorough investigation. The cause of his stress was treatment by management and colleagues whilst on duty after the investigation had begun.

The SMP found against Mr Hudson but the PMAB upheld his appeal. The psychiatrist on the PMAB found that "it was the drip, drip, drip of a number of non-disciplinary related events over a period of time which led to the depressive illness".

The Police Authority sought to challenge this decision by way of Judicial Review. The court rejected this challenge and upheld the decision of the PMAB.

Paragraph 19 of the Hudson decision contains a useful summary of a number of cases in this area. As well as those above it also considers, South Wales Police Authority v Morgan which concludes stress arising from a reduction in pay and subject financial difficulties could not be an injury on duty. Also Sussex Police Authority v Cooling which concluded that a psychiatric condition developed whilst an officer was on suspension could not be treated as an injury.

The conclusion of the court following a review of all the previous case law was set out in paragraph 27 and reads as follows:

“There is no authority for the proposition that an injury resulting from the application of a management process cannot be received in the execution of duty. Stress related illness caused by the failure to properly supervise or support may qualify. Psychiatric injury from stresses at work, bullying or harassment can be treated as an injury in the execution of duty. So to depression brought about by the appraisal process… generally speaking however the authorities indicate that psychiatric injury from exposure to the disciplinary or grievance proceedings, or failed promotion attempts, will not (be treated as an injury in the execution of duty).

The court found that a number of events had impacted on the officer which amounted to injuries on duty. These included:

- restrictions placed on his work, which went to the heart of how the officer was to execute his duties;
- Failure to pursue the grievance lodged by the officer properly was p[art of a pattern of conduct by superior officers which directly affected the way they dealt with the officer;
- Injury caused by having to work without the support an officer is entitled to expect, particularly if there has been deliberate victimisation of an officer by superiors;
- Refusing to allow him to attend a commendation parade with his colleagues even though the officer was medically unfit for normal duty at that time.

The circumstances of the Hudson case should help in persuading Police Authorities that applications for injury awards based on stress resulting from “work circumstances” is a medical question and should be referred to the SMP. The exceptions to the broad interpretation of work circumstances such as disciplinary proceedings and concerns about career prospects should be interpreted “narrowly”.

Jennings v Humberside Police (December 2002)

Callaghan V London Fire and Emergency Planning Authority (December 2008)

Both of the above cases refer to injury on duty and the issue of aggravation and acceleration. Although one is a Fire Officer's case the causation test is substantially the same and therefore applies to the Police Injury Benefits Regulations

The earlier case of Jennings relates to an officer who was involved in a road traffic collision. As a consequence of the accident it was agreed that Constable Jennings suffered minor transient neck and back injuries.

However, at the time of the accident he had developed degenerative changes in his spine, although these changes had not yet produced symptoms. The accident brought the degenerative change into play and the officer consequently suffered from persistent and permanent symptoms.

Mr Jennings was subsequently retired and applied for an injury award. This was refused on the grounds that the accident brought forward the disability rather than being responsible for the underlying cause.

The officer challenged the decision in the Crown Court which upheld the position of the Force.

The officer appealed to the Administrative Court. The Court found that the natural meaning of "permanent disability as a result of an injury on duty" was that the injury had caused the permanent disablement. In Jennings case the medical evidence was such that the symptoms of the same severity would have occurred within 18 months to two years as a result of the degenerative change. Therefore the accident had merely accelerated the condition and had not aggravated it or made it worse. The administrative court therefore upheld the earlier decision of the Crown Court and the injury award was refused.

In the Callaghan Case the circumstances on the face of it can seem very similar, indeed the Fire Authority sought to rely on Jennings to refuse the injury application.

The Callaghan case involved a fire fighter who had degenerative change which was sufficiently severe for symptoms to have arisen around the relevant time of the accident. He suffered a significant accident when he slipped on a muddy bank whilst carrying a portable generator and as consequence was detained in hospital overnight and reported sick the following day, “with severe bruising to his back and hip”.

Mr Callaghan was retired form the service and applied for an injury award which was initially refused. He appealed to a Medical Appeal Board. The Board considered that “the nature of the fall onto his right hip in full kit would have been sufficient trauma to cause symptomatic traumatic arthritis in a previously symptom free vulnerable, degenerative joint”. As a consequence they awarded him an injury on duty award.

The Fire Authority lodged a Judicial Review of this decision and sought to rely on the Jennings case to support their position.

The Court considered Jennings and agreed with its conclusion. However, it rejected the appeal of the Fire Authority on the basis that the Board considered the correct test had been applied and Mr Callaghan received his injury award. The key passage in the Callaghan Judgement is as follows:

“Each case must depend upon its own facts and be left to the assessment of the medical jury. If the injury is trivial it will be open to a Board to conclude – as the judge did in Jennings – that the necessary causal link between injury and the infirmity has not been made out. Likewise, if, for example, the affected joint had begun to show signs of arthritis before the qualifying injury occurred. On the other hand, it does not follow that, because the injury has merely accelerated the onset of symptoms a causal link cannot be made out. It is common ground that it will be made out in a case where the condition has been aggravated by the injury, but there is not in my judgement, any bright light between cases of acceleration and cases of aggravation”.

Basically the Callaghan and Jennings cases mean that each case should be treated on its own merits and on the facts of each case. It means that the SMP or PMAB can decide that an injury caused disablement even where acceleration is a factor.

South Wales Police Authority v Medical Referee (Dr David Anton) and another 2003

This case deals with apportionment and its affect on a pre existing condition.

The facts of the case are that Mr Crocker was retired from the service in 2002 on the grounds of a depressive illness. He applied for an injury award and the Police Authority determined that only 40% of Mr Crocker's earning capacity had been lost because of the injury at work and that the majority of the loss was the result of an underlying condition. They therefore apportioned his injury award.

Crocker appealed the decision to a Medical referee who concluded that all his earning loss was the result of the injury. South Wales Police Authority challenged this decision by way of Judicial Review.

The court held that where there was a pre-existing condition which on its own would not cause a loss of earning capacity, and then an injury exacerbated that condition to render it one of permanently disabling the loss of earning capacity should be attributed wholly to the on duty injury which, albeit because of an underlying condition, has directly caused the loss of the earning capacity.

Before apportionment can arise each factor must separately cause some degree of loss on its own.

Pollard v Police Medical Appeal Board is a decision of the High Court in a West Yorkshire case issued on 9th February 2009.

The Officer in question had been medically retired due to Lumbar Disc Degeneration and Spondylosis resulting from an injury in the execution of duty. She received an injury award and was originally assessed at 51% disabled. That assessment was confirmed by a second SMP who did not recommend that the degree of disablement be reassessed at any time.

Many years later a review was conducted by an SMP who reduced the degree of disablement to 0%. The retired Officer appealed to the PMAB but they rejected the appeal.

The PMAB found that the injury sustained by the retired Officer whilst on duty would only have resulted in the soft tissue injury from which she should have recovered in a short period of time, and that therefore there was no causal link between her injury and the permanent disablement which resulted in her retirement. Their view on this medical issue was directly contrary to the view taken by the SMP who granted her an injury award at the time of retirement. The Board said that because of this they would reduce the degree of disablement to 0%.

The application for Judicial Review brought on behalf of the retired Officer succeeded. The High Court emphasised that the decision of the SMP as to the causation of an injury was final unless it had been challenged at the time. Where the degree of disablement is reviewed under Regulation 30, neither the SMP nor a PMAB could reopen the question of causation of the original injury. They could only deal with the impairment of earning capacity now affecting the retired Officer as a consequence of the condition which had been originally determined to be the result of an injury received in the execution of duty.

Subject to seeing the official transcript of the judgment, this appears to be a helpful decision because there have been a number of instances recently where the view on causation taken by the original SMP / medical referee has been questioned on a review of the degree of disablement. Where an SMP seeks to reopen the question of causation this case can be utilised.

However, the case does not mean that the current degree of disablement can never be the subject of apportionment. The dividing line between apportionment and reopening causation can be difficult to identify.

- If there is only one medical condition affecting the member which has already been determined to be the consequence of an injury received in the execution of duty, all the current impact on earning capacity of that one medical condition should be reflected in the assessment, even

if the current SMP/PMAB would have taken a different view of causation when the original injury award was granted.

- If there are two or more medical conditions affecting the member and some are not due to an injury on duty, there can be a reduction by way of apportionment as long as those conditions not due to an injury on duty would in themselves have caused some reduction in earning capacity.

Further, retired members who consider that an SMP or PMAB has contravened the Pollard principle in a previous assessment cannot automatically reopen it. If they are still within 28 days of an SMP decision an appeal should be lodged; if they are within 3 months of a PMAB decision a judicial review application may be possible. If they are outside those time limits they can ask for the Police Authority to agree to refer the matter back for reconsideration under regulation 32(2) of the regulations. If that is not agreed an application for a fresh review under regulation 37 should be made.

R (Turner) v. PMAB and another

On 8 July 2009 in court 5 of the Royal Courts of Justice Mr Justice Burton upheld ex P.C. Turner's application for judicial review against the attempt by the Metropolitan Police Authority ("MPA") and the Police Medical Appeal Board ("PMAB") to reduce his injury pension.

The facts of this case are that Mr Turner suffered hearing loss in his left ear whilst serving as a police officer. There was a dispute about whether the injuries were caused by his service but a medical referee in 2001, hearing an appeal under the 1987 regulations, decided that the injury was caused in part by an assault he suffered whilst in the police service and in part by firearms training. He was awarded a Band 2 pension.

On 18 October 2007 the MPA, acting through the Selected Medical Practitioner ("SMP") did a new review of the jobs she felt Mr Turner could do and decided to reduce Mr Turner's injury pension from Band 2 to Band 1.

On 14 August 2008 the PMAB dismissed his appeal against the reduction in his pension. They rejected the SMP's case on the jobs Mr Turner could do but re-opened the issue about the cause of his original injuries, and cast doubt on whether they were related to his service.

In the High Court the Judge, Mr Justice Burton, quashed the decisions of both the SMP and the PMAB, and restored the Band 2 pension.

He held that once a medical referee (or PMAB) had determined the cause of a work related injury, that decision was final and could not be re-opened at a later review. In coming to this view the Judge supported the construction of the regulations as explained by Mr Justice Silber in the High Court on 9 February 2009 in R (on the application of Pollard) -v- PMAB and West Yorkshire Police Authority .

The following general propositions can be distilled from the judgments:-

1. An SMP is not entitled under Regulation 37 to review an award of an injury pension unless there is a proven substantial change in the pensioner's degree of disablement. This could either be because the pensioner's medical condition has changed or that there are jobs which are now open to the pensioner which were not open when the injury pension was last reviewed. The SMP cannot start with a blank piece of paper to assess what jobs he or she thinks the pensioner can do and use that new assessment as a basis for reviewing the pension.

2. The SMP and PMAB are bound by the causation findings of the original medical referee. These are "final" under regulation 30(2)(c). The SMP and the PMAB are not permitted to reinvestigate the original cause of the pensioner's injury or reach a different view to the medical referee about whether the pensioner's disablement was the result of an injury on duty. They are only entitled to review secondary issues such as apportionment if there has been a change in the pensioner's degree of disablement as a result of the original injury.

3. If there has been a change in the pensioner's medical condition triggering a review under Regulation 37, the SMP cannot review the pension unless he or she reaches the decision that the change is 'substantial'. Minor changes do not entitle a review.

4. When determining the 'degree of disablement', the SMP can consider current jobs which are suitable for the pensioner and were not available when the original decision was made or the last review was conducted. The SMP is not entitled to take into account jobs which were previously available to the pensioner (even if not considered at the last review) or which the pensioner had previously carried out since these jobs cannot be evidence of a change in the pensioner's degree of disablement.

R (ota Ashton) v Medical Appeal Board brought clarity to the position of whether the officer had to be disabled from working within the Police Service or their own Force.

Previously a 2003 case Sussex Police Authority had determined that the force meant the whole police service. In the case of Corkindale v Medical Appeal Board the court disagreed and found that the Force meant the police force in which the officer was serving.

The court decided in the Ashton case that Corkindale was correct and Beck was wrong.

This is important and relevant, particularly in cases where the officer is suffering psychiatric problems and a result of a break down in the work relationship between the Force management and themselves.

R v Tully

This was an appeal by a former serving officer in the North Wales Police against the refusal by North Wales Police Authority to admit his claim for payment of deferred pension entitlement from the 1st October 2001 to the 13th March 2005.

Tully joined the Force in 1991 and his last day of service was the 30th September 2001. His medical history showed that he started to suffer with knee problems in 1997 and had a transplant operation in 1999. At the time he left the Force he was on restricted duties and was studying to be a Barrister.

In 2005 he applied for payment of his deferred pension on account of osteoarthritis in his knee. He was referred to an SMP who concluded that he was permanently disabled. North Wales Police Authority claimed that his pension was payable from the point he applied for his pension to be activated as this was the first occasion the question of his permanent disability had arisen.

The court held that the correct interpretation of the regulations is that the pension is payable from the date that the disablement arose.

Only when a date of disablement cannot be determined would a notional date be applied, namely the date of first notification of the claim. Tully's pension was therefore backdated to the date he left the Force as his medical history showed that his disablement had arisen at the time of his resignation.

Ayre v Humberside Police

This is a pension ombudsman decision in relation to a complaint made by a retired Humberside Officer, Mr Ayre. The Ayre determination was concerned withn a review of the degree of the disablement at the age of 65. In accordance with Home Office Circular 46/2004, the PMAB reduced the assessment to Band 1 on the basis that there was no "cogent reason" as to why the Home Office Guidance should not be applied. The PMAB based this on a finding that there was no certainty that Mr Ayre would have continued to work beyond age 65 whether or not he had been injured previously.

The Pension Ombudsman ruled that the PMAB's decision was flawed because their task involved considering earning capacity and Mr Ayres indication that he would not have sought employment was not relevant to earning capacity. The ombudsman said that:

"Simply because Mr Ayre has decided against seeking further work does not mean he has no earning capacity".