

The logo consists of the word "Weightmans" in white, sans-serif font, centered within a dark teal, rounded rectangular shape with a slight wave at the top.

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Ill-health & injury on duty workshop

Legislation & legal background

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A series of overlapping, wavy teal lines of varying thicknesses that flow from the left side of the slide towards the bottom right, creating a dynamic, abstract graphic element.

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?