

HO Circular No.46/2004

This circular is about

**The Police Pension
Scheme-Police Medical Appeal
Boards/Role of Selected
Medical Practitioner/British
Transport Police Transfers**

From
COMMUNITY SAFETY GROUP

CRIME REDUCTION &

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This Circular is addressed to

Chief Officers of Police
(England and Wales)

Copies are being sent to

Clerks to the Police Authorities

Broad Subject

Police Service

Sub Category

Police pensions

Dear Chief Officer

A. Bilateral Agreement with the British Transport Police Force

1. HOC 39/2004 provided a draft copy of the bilateral agreement between the Police Pension Scheme and the British Transport Police Force Superannuation Fund (BTPFSF). I attach at **Annex A** the final version of the Agreement, signed on 15 July, which comes into force on 1 August 2004. The amendments to the Police Pensions Regulations needed to give effect to the Agreement are set out in the Police Pensions (Amendment) (No 2) Regulations 2004 – Statutory Instrument No 1760/2004. – refer to www.hmso.gov.uk to see the SI.

Need for Agreement

2. The Agreement enables the transfer of pensions between the British Transport Police Force (BTPF) and

Home Department forces (HD forces) under terms broadly similar to those which would apply if the British Transport Police Force Superannuation Fund (BTPFSF) were a member of the Public Sector Transfer Club. The BTPFSF is not a member of the Club.

3. Hitherto the terms for officers transferring between BTPF and HD forces have been less favourable than they would be under Club rules. The PNB agreed that with effect from 30 April 1998 there would be mutual recognition of rank and service for pay purposes in order to facilitate interchange between BTPF and HD Forces. The PNB also agreed that transfers of pension rights should be improved. We have only recently been able to secure the necessary approvals for the bilateral agreement.

4. The key issues of the agreement for pensions administrators to note are :

- The details in Annex 1 on transfer payments – outward transfers
- The details in Annex 2 on calculation of service credits – inward transfers
- The details in Annex 3 setting out the transitional arrangements.

5. Annexes 1 and 2 are largely self explanatory, with examples given. However, the following features are drawn to your attention:

Age limits

- The standard provisions of the bilateral agreement apply where the member has not reached age 55.
- A transfer of a member joining the new scheme on or after age 55 will be subject to the agreement of both schemes.

Transfers involving breaks in service

- Transfers between the BTPF and HD Forces may be made under the Agreement provided the gap between service finishing in one force and starting in the other is no more than a month.
- Where the break in service is more than a month the receiving scheme is not obliged to accept a transfer payment and calculate the service credit under the terms of the Agreement, but has the discretion to do so.
- Forces should note that where an officer with a break in service greater than a month is allowed to reckon service for pay and allowances, favourable consideration should be given to applying the Agreement to the pension transfer.

Transfer payments not CETVs

- The incoming payment from the BTPFSF is not called a transfer value but a transfer payment. Cash equivalent transfer values (CETVs) are calculated on the basis of the capital value of the pension to provide a stream of payments starting from the deferred pension age. Unlike in the Police Pension Scheme the deferred pension age is 55 in the BTPFSF. Under the Agreement the age on which the BTPFSF transfer payment is based is also 60 - in order to even up the values.
- Although this may mean that the BTPFSF transfer payments are less than the normal CETVs, regulation 8(8) of the Occupational Pensions Schemes (Transfer Values) regulations 1996 permits this type of arrangement, as the benefits to the individual in the receiving scheme would be equivalent in value to those given up in the old scheme.
- As a backstop, an officer is able to opt for a transfer under a normal CETV under non-Agreement terms if he or she wishes.

Transfer exchange rates

- Pensions administrators will note that in the example transfer from BTPFSF to the Police Pension Scheme the officer receives a better than year-for-year service credit in the Police Pension Scheme. This is not a mistake.
- The accrual rate in the BTPFSF is 45ths, the same as the average accrual rate in the Police Pension Scheme, and the reduction in BTPFSF pension by the 'Basic State Pension Offset' is balanced by the fact that BTPFSF members receive an additional retirement lump sum.
- It is reasonable to expect nearly year-for-year service credits.

More information about the BTPFSF

- A fact sheet giving the key features of the BTPFSF is at **Annex B**.

Need for transitional arrangements

6. Without the provisions in Annex 3 the agreement applies to officers who transfer between the BTPF and an HD Force **on or after 1 August 2004**. The transitional arrangements in Annex 3 provide valuable backdating for the agreement in two stages as follows:

- The provisions of the agreement are backdated to cover pension transfers in respect of officers who transferred between the BTPF and an HD Force on or after 1 February 2001 but before 1 August 2004. This gives the agreement **mandatory** back-dating to 1 February 2001, the date the Strategic Rail Authority (SRA) was set up. The key relevant paragraphs in Annex 3 are 1.1. and 2.1.
- The provisions of the agreement are backdated to cover pension transfers in respect of officers who transferred between the BTPF and an HD Force on or after 30 April 1998 but before 1 February 2001. This gives the agreement **discretionary** back-dating to 30 April 1998, the effective date of the PNB Agreement. The key relevant paragraphs in Annex 3 are 1.2 and 2.2.

7. "Mandatory back-dating " means that the relevant pension scheme (the BTPFSF or the force on behalf of the Police Pension Scheme) must apply the provisions of the agreement as if it had been in force at the time that the officer transferred. In a case where a BTPFSF transfer value was received before 1 August a force must, without need for an application, first ask the BTPFSF to recalculate the transfer value as a transfer payment. The BTPFSF will advise the force of the amount of the revised payment but not make any actual payment. The force must then recalculate the service credited due to the BTPFSF transfer value and up-rate the pension where necessary, with back-dated effect. If no transfer value was made before 1 August, a force must allow that officer a full year from 1 August 2004 to apply for a BTPFSF transfer payment to be accepted under the new arrangements.

8. "Discretionary back-dating " means that the relevant pension scheme (the BTPFSF or the force on behalf of the Police Pension Scheme) is not obliged to apply the provisions of the agreement as if it had been in force at the time that the officer transferred, **but in view of the PNB agreement forces should give favourable consideration** to a request made by or on behalf of an officer to recalculate any service credited due to a transfer value already paid in respect of that officer or, if no such payment has been made before 1 August, a request by that officer for such a transfer payment to be accepted under the new arrangements. Such requests should be made by 31 October 2004.

9. Back-dating arrangements extend to multiple transfers between the BTPF and HD Forces. Paragraph 4 of Annex 3 to the Agreement covers the cases of officers who have transferred between the BTPF and an HD Force more than once since 30 April 1998. Such a case would involve both schemes co-operating to retrace the sequence of transfer values already paid and up-rate the service credited at each turn in order to produce the amount the officer would have finished up with, had the Agreement been in place at the time of each transfer value. Forces will need to note where the back-dating is mandatory and where it is discretionary but, again, favourable consideration should be given to applying the Agreement to all transfers falling within its scope.

10. You are asked to draw this agreement to the attention of officers and former officers or, if applicable, their survivors so that they can take advantage of its backdating arrangements within the time limits set down. Please note that only serving officers may apply for a transfer payment to be accepted under the Agreement. Officers, former officers or the survivors can have the service credit from a transfer value paid before 1 August recalculated and their pension up-rated if necessary. The Agreement applies not only to surviving relatives but also to other individuals entitled to receive a benefit in respect of an officer. There are limited numbers of officers involved but the Agreement also allows for the deadlines in paragraphs 6 and 7 above to be extended, where both the force and the BTPFSF agree that a person was unable to meet the time limit set for applications, to a new date as they think reasonable.

Amendments to the Police Pensions Regulations

11. Regulation 2 of the Amendment Regulations provides for the transitional arrangements discussed above.

12. Regulations 3(2) to 3(5) of the Amendment Regulations insert into regulation F6 of the Police Pensions Regulations a reference to transfer payments under the Agreement, and insert the key details of the

Agreement into Section 2 of Part IV of Schedule F of the main regulations, dealing with inward transfers under Club terms. No amendments are necessary to the provisions for outward transfers.

B. Police Medical Appeals

Minor changes to the Police Pensions Regulations

13. Regulations 3(6) and 3(7) the Amendment Regulations amend Schedule H of the Police Pensions Regulations to tidy up references which should have been changed by the Police Pensions (Amendment) Regulations 2004, which revised the medical appeal procedures.

14. The Home Office's Guidance to Medical Appeal Board Members is available on the Police Reform website at www.policereform.gov.uk/payconditions/boardmembersguidance. Sections 5 and 9 of the guidance have been updated following the changes to the guidance:

- on how to assess degree of disablement in an injury award, including how to apply apportionment, in the light of a recent decision in the Administrative Court, and how to assess degree of disablement in cases where the former officer is above the compulsory retirement age for his or her last-held rank (see section C below); and
- referring to another recent judgement in the Administrative Court confirming that (what is now) the medical appeal board should consider the question of permanent disablement on the evidence before them at the time of the appeal, not whether the appellant was permanently disabled at the time the selected medical practitioner (SMP) made the H1 decision under appeal.

15. Forces will also wish to know that the courts have also held that a board hearing an appeal about degree of disablement should consider it on the basis of the evidence before them at the time of appeal, and not on the basis of the circumstances at the time the SMP made the H1 decision under the appeal. Leave to appeal is being sought against this decision. The Home Office's Guidance will be updated as soon as the Court of Appeal has decided the issue. Whichever way the courts go on this it is important to keep the time-lag between the H1 decision and the appeal hearing as short as possible.

C. Degree of Disablement Guidance

16. Following consultation with both Sides of the Police Negotiating Board the Home Office have now produced guidance for forces on reviews of injury awards. A copy of this guidance is provided at **Annex C**. This guidance is intended to help ensure a fairer and more consistent approach from all police authorities reviewing injury awards when the former officer is above the compulsory retirement age for his or her last-held rank.

D. Police Injury Pension Reviews under K2

17. Under Regulation K2 of the Police Pensions Regulations police authorities have a duty to keep existing injury pensions under review at such intervals as may be suitable. In planning a programme of reviews involving a number of former officers account should be taken of the need to ensure that any appeal against an SMP's decision can be processed satisfactorily, both in terms of there being a timely appeal hearing and in terms of the force having the necessary paperwork and representatives ready for the appeal board.

18. It is requested that any force planning to undertake such a programme of reviews should give adequate notice to Capita Health Solutions (CHS) about a possible increase in the number of appeals beyond their normal flow. A large-scale programme of reviews should entail at least 3 months' notice to CHS so that they can ensure that the appeals can be heard as quickly as possible and to a manageable timetable. CHS would be happy to discuss any queries or concerns and give practical advice on the best way to proceed.

E. PNB Agreement on Chief Officers' Pay and Conditions

19. The recent PNB agreement, set out in HOC 36/2004, made wide-ranging revisions to the pay and conditions of chief officers - for instance Commanders and Assistant Chief Constables are no longer subject to fixed-term appointments. The PNB Agreement also included changes to their pension arrangements and new severance arrangements, including severance payments to chief officers leaving the force without the right to an immediate or maximum pension.

20. Work is in hand to prepare suitable amendments to the Police Pensions Regulations for consultation with the PNB and approval by the Treasury, but police authorities should note that **they already have the discretion** under regulation B1(3)(a) to approve an immediate ordinary pension to a chief officer with 30 years' service and to approve an ordinary pension payable from age 50 to a chief officer with at least 25 years' service. **The PNB Agreement does not take away or limit that discretion.**

21. In advance of any changes to the Police Pensions Regulations police authorities can use that discretionary power to give immediate effect to the provision in the Agreement under which a chief officer with at least 25 years' service may retire at any time with an immediate ordinary pension provided he or she is over 50 years of age and gives at least six months' notice - paragraph 8 of Annex B to the circular.

22. Police authorities should also note that the guidance in paragraph 5(iii) of Annex B to HOC 36/2004 needs to be amended to cater more specifically for chief officers who are under 50 but with 25 or more years' service, in order to take into account that they are eligible for an ordinary and not a deferred pension.

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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.

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. . The NAE figure used should be the one in the most recent New Earnings Survey - Streamlined Analysis. This is an annual pounds and pence figure calculated by using National Insurance contributions. It is validated and produced in October of each year and is, in our opinion, the most robust method.*

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