



Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT (Hansard)

Departmental Briefing on Police Disability Pensions

27 May 2010

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Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Jonathan Bell
Mr Tom Elliott
Mr Conall McDevitt
Ms Carál Ní Chuilín
Mr Alastair Ross

Witnesses:

Ms Clare Brady)
Mr David Hughes) Department of Justice
Ms Kathie Walker)

The Chairperson (Lord Morrow):

We will now receive a briefing on police disability pensions. With us from the Department of Justice are David Hughes, head of the policing policy and strategy division, and Kathie Walker and Clare Brady, who are both from the policing policy and strategy division. You are very welcome, and we look forward to hearing what you have to say on this topical issue.

Mr David Hughes (Department of Justice):

I shall introduce myself. I joined the Civil Service in 2000. On entry, I joined the Northern Ireland Office (NIO). I worked in each of the NIO's directorates including criminal justice, policing, central services and the political directorate. I have been head of the policing policy and

strategy division since January 2009. Before making our presentation, Kathie and Clare will introduce themselves.

Ms Kathie Walker (Department of Justice):

I am a career civil servant who has worked in the Police Authority, the Department of Finance and Personnel (DFP) and the Northern Ireland Office, and I am now in the Department of Justice. I have been in post for the past two years. I am head of the policing human resources policy branch.

Ms Clare Brady (Department of Justice):

I joined the Civil Service in 2006, and, since that time, I have worked in the policing division of the NIO. For that past two and a half years or so, I have been involved in the medical appeal side of policing.

Mr Hughes:

We are grateful for the opportunity to brief the Committee on police injury-on-duty awards. We are conscious of the public concern around the issue. We have given members a paper, and I hope that we will be able to help you by providing additional information on the subject.

I underline that the police injury awards provide a valuable reassurance for officers who have to face dangerous situations and who put themselves on the line to ensure the safety of the community. The award's purpose is to compensate the individual for loss of livelihood caused by an injury received on duty as a police officer. The award is payable in the form of a lump sum gratuity and an injury pension that relate to the officer's average pensionable pay, pensionable service and the degree of disablement. Injury awards are not pension scheme benefits: they apply to all officers, regardless of whether or not they are pension scheme members.

The statutory provision for injury awards to Police Service of Northern Ireland (PSNI) officers is contained in the PSNI and PSNI Reserve (Injury Benefit) Regulations 2006. Those provisions are negotiated on a UK-wide basis through the Police Negotiating Board. In effect, that ensures that officers moving between police forces in the UK will enjoy the same terms and conditions. Although the provisions are negotiated nationally, practical arrangements are agreed locally. That process is described in our briefing paper, which contains a map of the appeals process to show what happens when an appeal arrives at the Department.

It may be helpful if I briefly outline how the scheme works in practice. Under the regulations, a serving or former police officer may apply to the Policing Board for an injury-on-duty award. The board will appoint a doctor to decide whether the officer meets the criteria for an award and, if so, what level of award should be made. That process is currently outsourced to Capita Health Solutions. The doctor involved is referred to as the selected medical practitioner or SMP — I hope that I do not slip into speaking in acronyms too quickly — and is an occupation health specialist.

An officer who is unhappy with the selected medical practitioner's decision has the right of appeal to the Department of Justice. The board invites the individual to set out the grounds of his or her appeal, which is sent, with the file, to the Department. On receipt of an appeal from the board, officials contact the Department of Health, Social Services and Public Safety (DHSSPS), outlining the details of the appeal and seeking the nomination of a doctor or doctors to hear the appeal. Using DHSSPS in such a way preserves the independence of the appeals process. The doctors nominated will be specialists in the medical condition or conditions that are to be heard in the appeal.

The officer is then offered the opportunity to submit further medical evidence in support of the appeal. If further evidence is submitted, it is shown to the selected medical practitioner in the first instance to determine whether the fresh evidence might cause him or her to change the original decision. If the SMP's decision remains unchanged, the appeal continues. Meanwhile, the doctors identified by DHSSPS are invited to act as independent medical referees in the appeal. On accepting, the doctor is provided with guidance on the appeals process and a detailed submission on the case. Appointments are arranged, the officer is medically examined and the doctor submits a final report.

If the doctor disagrees with the decision of the selected medical practitioner in the first part of the process, he or she must complete a new certificate that states the level of award to which the officer is entitled. When two or more doctors are involved, a principal medical referee will consider the reports of the other doctors when making his or her decision. The final report and certificate are received by the Department and then forwarded to the Policing Board and to the officer.

It is worth setting out the criteria for an injury-on-duty award. When considering whether such an award should be made, the doctor will first consider whether the person concerned is disabled from performing the ordinary duties of a police officer. Secondly, the doctor will consider whether the disablement is likely to be permanent; thirdly, whether the disablement is the result of an injury that was received in the execution of duty; and, fourthly, the degree of the person's disablement.

The degree of disablement is not the extent of physical or mental disability, but the extent to which future earning capacity has been affected by the relevant injury. I reiterate that the process is concerned with compensation for loss of earnings. The calculation involves a comparison between the officer's basic earnings as a police officer against potential earnings outside the Police Service.

Under regulations, the board is obliged to review a retired officer's injury pension at such intervals as may be suitable. That ensures that any deterioration or improvement is taken into consideration. The review involves referral of the case to the selected medical practitioner for assessment. Again, the SMP is provided by Capita Health Solutions, and the SMP provides a certificate and a report that outlines the decision. If the officer is dissatisfied with that decision, he or she has the right of appeal to the Department. Appeals against review decisions follow the same process as those against initial decisions.

As the Committee will be aware, the Minister has instigated a review of the police injury award arrangements because he is committed to ensuring that the process is as effective and efficient as possible. A review group will be established to look at the workings of the current system and to report on how the practical arrangements could be improved. The Minister is keen that the review should consider the implementation of the entire scheme. However, as I have explained, part of the scheme is the responsibility of the Policing Board. Therefore, the Minister has invited the board to participate in the review. The Minister has also written to the Health Minister to invite him to nominate someone to join the review group, because of the role of DHSSPS.

The terms of reference for the review group are being drawn up, and the group will consider how other stakeholders can become involved. In particular, we will wish to consult the Chief Constable to ensure that he is content with the service provided to his serving and former officers.

The group is due to provide the Minister with an initial report by the end of June.

I hope that that quick overview was helpful, and we are happy to answer any questions. Of course, members will appreciate that we will not be able to discuss individual cases.

The Chairperson:

Thank you, Mr Hughes, for that overview. I would like to ask a couple of questions. It has been said in the public domain that if a person appeals a case and wins that appeal, they are not paid back to the time of the original application. Is that right?

Mr Hughes:

That is right. My understanding is that any change in the award on appeal is put into effect from the point of appeal rather than from the point of the original decision.

The Chairperson:

Does that sound unfair to you?

Mr Hughes:

My understanding is that that decision was made taking into account that an appeal could result in an award being reduced or an award being increased, and that it would not be appropriate, in the case of an award being reduced, to claim back any money. Therefore, the decision is that the new award is applied from the point of the appeal decision rather than the original decision.

The Chairperson:

Does that sound unfair to you?

Mr Hughes:

I hesitate to comment on the fairness of it, but I understand precisely why that arrangement is in place. It is a part of the process — correct me if I am wrong — that does not lie with the Department. That is the way in which the process is set up.

The Chairperson:

Does an appeal mean to you what it means to me? If someone wins an appeal, that tells me that the person was entitled to it but that a wrong judgment had been made at some stage. Is that your

definition?

Mr Hughes:

I see your point entirely. I reiterate the point that there is risk attached to applying a new award from the date of the previous decision.

The Chairperson:

Mr Hughes, do you see the point that I am making or do you agree with it? Which is it?

Mr Hughes:

I understand your point.

The Chairperson:

You understand it all right. I know that you are an intelligent man. Do you agree with it or not?

Mr Hughes:

It is not my decision as to whether that is the right or wrong way to manage an award.

The Chairperson:

I know that it is not your decision, but that is not what I asked you. If I appeal and win, is it right or wrong that I should receive an award from the date that the application was made, not from the date that the appeal was made? It is patently obvious that if I win an appeal, a wrong judgement has been made at an earlier stage. Is that right? The answer is yes or no.

Mr Hughes:

I would not put a personal view on record. I am here to reflect or describe the policy as it is set out. My understanding is that it is not a policy position that has been taken by the Department: it is an element of policy on the scheme that has been adopted by the Policing Board.

The Chairperson:

Are you prepared to tell the Committee that you will take that particular point back, look at it and give some consideration to what we are saying? I have not yet heard what one member of the Committee has to say. However, I will be presumptuous and say that I suspect that most members agree that an appeal should be what it is.

Ms Ní Chuilín:

If it were a disability living allowance (DLA) tribunal, it would be backdated.

The Chairperson:

It would be backdated.

Mr Hughes:

If it is any reassurance to the Committee, we are aware of and have raised that issue. You will be aware that it has been raised prior to the Committee meeting. It is one of the issues that the review group that the Minister is setting up has on its list of matters to consider. That is without doubt. Of course, it is precisely the sort of issue that we need to look at.

The Chairperson:

I do not want to hog the meeting because other members have put their names down to speak, and I want them to have a chance to ask their questions. However, I want to ask about the processing of appeals. According to the paper that we have in front of us, 51.6% of appeals were completed within one year. That tells me that 40.2% took two years to complete and that 8.2% took more than two years, if my maths is correct. That sounds incredible. Can you explain what 51.6% means in real terms? What are the actual numbers? Sometimes, percentages can be deceptive.

Mr Hughes:

I will deal with specific numbers. Of the 122 appeals that were closed in 2009-10, 63 were completed within 12 months or less; 34 were completed within 13 to 18 months; 15 were completed within 19 to 24 months; and 10 took over two years to complete.

I want to point out the considerable number of stages and steps that the appeals process involves, which includes a period to enable the appellant to submit additional medical evidence for consideration. We are aware that, although there is criticism of the length of time that the process takes, it is important to ensure that it is fair, that it gives the appellant proper opportunity to provide evidence and that doctors with the relevant medical expertise are used. There are quite a number of stages in the process, and we appreciate that it will take some time to complete.

Mr Bell:

Lord Morrow, I think that the whole Committee would share the sentiments that you expressed. I do not want to personalise the issue, because it is always hard to be the people who have to front up a policy. However, one of the successes of the devolution of policing and justice is that policing and justice is now accountable to us and to the people of Northern Ireland, and we are going to hold it to account. One of the biggest issues will be appeals. The injustice that was inflicted on people who have won appeals — for two years or perhaps longer — will have to be removed in the sense that justice delayed is justice denied.

We are asking our men and women to go out to serve in Northern Ireland in, unfortunately, very difficult circumstances. There are heroic figures like Peadar Heffron and many others in the police and the RUC who have lost limbs and are severely disabled. We owe the men and women who do that job for us the respect that they deserve. If, as a result of injury, they lose the earnings that they would normally have had, we will play fair by them.

Who created the policy that the appeal would not be backdated?

Mr Hughes:

I would have to check the origins of that policy and the reasoning behind it. I am sorry that I am not able to give a specific answer.

Mr Bell:

I am not getting at you personally, David, but the issue has been covered heavily in the media over the past 72 hours, and that question has been asked. On the issue of accountability, I am disappointed that you have come to the Committee meeting today without the information on who made the policy. Clearly, somebody has created that strategic policy. In every other area of the public sector, including in DLA cases, if one wins an appeal, it is backdated to the day the case was first lodged. Somebody has decided to change that policy in the way in which the Chairperson has laid out, and we want to know who that person was and what their rationale was. When can we expect an answer to that?

Mr Hughes:

We can make sure that we provide a clear answer as quickly as possible.

Mr Bell:

There are police officers who are suffering heavily. We have heard some of them break down as they speak to the media. It is not acceptable for me to go back to them and say, “We now have an accountable policing and justice service, and, by the way, we are going to have a review of the appeals policy, but we do not know who made the decision or when they made it. We will tell you as quickly as possible.”

Mr Hughes:

I will ensure that you have an answer by the beginning of next week.

Mr Elliott:

Thank you for the presentation. I am conscious of the financial issues. Is the awards scheme funded by the Treasury or by the Northern Ireland Executive?

Mr Hughes:

The scheme was devolved along with the devolution of powers.

Mr Elliott:

The briefing paper states that there will be a review:

“In light of the considerable public concern about the issue of police injury on duty awards”.

Are the police officers’ concerns taken into account in that as well? I have not heard about that public concern issue. Where is that coming from?

Mr Hughes:

The public concern has stemmed from officers’ concerns; I think that that is a fair description.

Mr Elliott:

I misunderstood; I thought that there was a different angle and that there was some wider public aspect to the issue, but I understand now that the concern stems from the concerns of the police.

Mr Ross:

I echo the comments of other members. The issue has received an awful lot of media attention, and we wish to see it resolved as soon as possible. It is an issue of fairness, and the way in which the system operates is not fair. Mention has been made of the system for DLA claims, and so on,

but this appeals system is not fair to the people affected by it.

We know that the Minister has asked for an urgent review. When do you anticipate that that review will be complete, and when we will hear about its findings?

Mr Hughes:

The Minister has asked that an initial report be sent to him by the end of June.

Mr Ross:

Will the information be made public as soon as the review is complete?

Mr Hughes:

I do not know what the Minister intends to do with the information that will be reported to him.

Mr Ross:

I urge the Department to keep the public aware of what is happening, and I am sure that other members would do likewise. The worst-case scenario would be being told that there will be a review and then hearing nothing more about it. That happens in so many other areas of government; there is supposed to be a review of this, that and the other, but we hear nothing more about it. I hope that we get information, that people are kept aware of what is happening and that the issue is resolved quickly.

Mr Elliott:

On that point, who else is on the review team? Mr Ross mentioned appeals involving DLA and other types of social security benefits. Will the team include people with expertise in dealing with such appeals, given that those people have seemingly dealt with appeals much more efficiently and quickly than the police injury appeals are being dealt with?

Mr Hughes:

As I said, the Minister wrote to the Policing Board and the Department of Health, Social Services and Public Safety, because they have a direct role in the process. However, we are also conscious that other stakeholders and interested parties will be able to inform, and be informed by, the working of the review. It is valuable to take those points on board and to consider how others may be involved.

Mr Elliott:

The Committee should recommend that the Department looks at involving other people and stakeholders who might have an input to make. The review should not simply be confined to internal input, because, clearly, that has not worked in the past.

The Chairperson:

I am certain that Mr Hughes will take that on board.

Mr McDevitt:

The scheme is regulated under the PSNI and PSNI Reserve (Injury Benefit) Regulations 2006. What existed before that? Was a previous scheme in place?

Ms C Brady:

Yes. The previous scheme was part of pension regulations. However, in 2006, the provisions were separated out to form a separate set of regulations.

Mr McDevitt:

The appeals mechanism is the contentious issue. Was that part of an earlier scheme or was it novel in 2006?

Ms C Brady:

That was part of the original scheme.

Mr McDevitt:

When was the original scheme set up?

Ms C Brady:

It was part of the Royal Ulster Constabulary Pensions Regulations 1988. I am not sure how long it pre-dated that.

Mr McDevitt:

What involvement did the Police Federation and other employee representatives have in the establishment of the scheme?

Ms Walker:

We are represented on the UK-wide Police Negotiating Board. The Police Federation, the Superintendents' Association of Northern Ireland and the Association of Chief Police Officers (ACPO) are represented on that board. All of the regulations and policies on human resources are negotiated by that board.

Mr McDevitt:

I am sure that putting together the specific details of a scheme was quite a big deal, particularly in 1988, given that, tragically, the Troubles were not exactly at a low point then. Surely that was a matter of some considerable debate at the time. Who was around the table then?

Ms Walker:

All of those parties would have been on the Police Negotiating Board. Since then, they have had an opportunity at every Police Negotiating Board meeting to bring forward any problems or any issues that they wish to discuss or change.

Mr McDevitt:

Mr Hughes, you said that the terms of reference for the review group are not ready yet. I presume that I am looking at the individual who will be writing them.

Mr Hughes:

Yes, you are. There is an initial draft.

Mr McDevitt:

Will you share with the Committee what you believe the headlines and terms of reference are likely to be?

Mr Hughes:

The terms of reference will be to consider the practical implementation and effectiveness of the regulations governing injury-on-duty awards and areas that need attention and improvement. As I said, because many elements of the scheme are not the Department's immediate responsibility, the terms of reference will have to reflect who joins the review, the role of the Policing board and the inclusion of the Health Department. The terms of reference will have to be agreed with the

board in particular.

Mr McDevitt:

Those sound like very sensible heads of terms, but you would think that it might be appropriate to include principles such as fairness or even, to take the name of your Department, natural justice. The one thing that seems to be missing in the scheme is not its administrative qualities; it is the basic principle of whether the scheme is fair or unfair. Do you anticipate that the review will specifically consider the issue of natural justice that is at the heart of the debate that brings you here today?

Mr Hughes:

I am confident that, because the terms of reference have to be signed off by the Minister, who has called for the review, he will ensure that the review will consider precisely those issues of justice and fairness as well as the technicalities.

Mr McDevitt:

The SDLP shares the widespread concerns that have been expressed about this matter, simply from the point of view of natural justice and basic employment rights. We look forward to receiving those terms of reference. It might be appropriate to come back to this issue at the earliest possible point after the report has been received.

The Chairperson:

Yes, absolutely. I will reinforce Mr Bell's point; there is nothing personal against the team in front of us. I think that we have got across the message that we want the issue to be addressed. It is a topical issue. I wish to inform Mr Hughes, Ms Walker and Ms Brady that we intend to release a statement about this issue following this meeting.

I want to say something about the length of time that the process will take. You folk are in the eye of the storm. We feel that the matter should be expedited to get it resolved as quickly as possible. I suspect that the process will take six months. I do not think that that is acceptable in this case, and we want you to take that on board. We want you to do everything that you can to ensure that the process is not long and convoluted. We ask you to give it top priority; that encapsulates what other people are saying.

Thank you for coming.