

Summary of legal advice in respect of the March 2008 agreement affecting Injury on Duty Award Pensioners

1. Staffordshire NARPO and National NARPO requested legal advice from the National Police Federation in respect of the above agreement.
2. The full legal advice provided by the Federation's retained solicitors remains the property of the Federation.
3. Below is a summary of the significant points.
 - A. The March 2008 Agreement is not legally binding. The Agreement, contains unlawful practices in respect of the reviews of Police Injury Award Pensioners.
 - B. The agreement applied to all officers who were in receipt of injury awards prior to the 1st January 2008. Those that had reached State Retirement Age on that date, were protected for life in respect of their current Injury Awards. Further it was agreed that all officers would always be entitled to a band 1 award with a minimum award of £50 per month, again this is not in the Regulations and is therefore unlawful
 - C. The Police Pension Authority has a duty to review such pensioners at suitable intervals as it considers necessary for all pensioners regardless of age. However protection is afforded in the cases of Laws and Simpson which means that reviews will only take place if there is cogent evidence to suggest that there has been a change in earnings capacity.
 - D. If a Police Pension Authority distributes questionnaires for all pensioners to complete to establish if a review is necessary, then this is valid course of action to take. If pensioners are unwilling to fill in these questionnaires, it is arguable that the Police Pension Authority has a right to review the pension in the absence of evidence to the contrary. The legal advice is that pensioners complete these questionnaires.
 - E. It is not possible to provide an Injury Pension Award which will effectively top up the pension of those who are unable to complete 30 year's pensionable service. An award is granted in accordance with the Police [Injury Benefit] Regulations to provide a minimum income guarantee for those whose earning capacity has been affected by an injury on duty. The degree of disablement is established by comparing the Police wage with a wage that can be earned. If the pensioner has reached the Police Compulsory Retirement Age. The Home Office guidance still recommends that the National Average Earnings is used, as opposed to the Police pay scales.
 - F. The Regulations provide that if there is to be a review and it is found that earnings capacity has altered, the pension shall similarly alter. There is no provision that allows for a twelve month deferment, in order to assist the pensioner in sorting out their affairs.
4. NARPO in their initial submission to the solicitors raised the issue of "Legitimate Expectation" This has obviously been considered, however because the March 2008 Agreement is not binding and unlawful, should pensioners seek to enforce this Agreement, it would be deemed unlawful and void and therefore "Legitimate Expectation." would fail.

Mark Judson [Chairman of Staffordshire NARPO.]

N.B. The summary of the legal advice will be disappointing to NARPO members who the March 2008 Agreement affects, but unfortunately the legal advice has not been favourable to us on this occasion. It will not be possible to take this issue any further.