Police injury pension scheme and conflicting medical assessments (R (Evans) v Chief Constable of Cheshire Constabulary)

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Pensions analysis: A ground breaking decision in the High Court limits how police injury pensions are assessed. David Lock QC, barrister at Landmark Chambers, who represented the claimant, discusses the outcome of R (Evans) v Chief Constable of Cheshire.

R (on the application of Evans) v Chief Constable of Cheshire Constabulary [2018] EWHC 898, [2018] All ER (D) 04 (May)

What are the practical implications of this case?

The decision in *Evans* means that the 'report' setting out the clinical findings of a selected medical practitioner (SMP) at stage I (ie assessing whether a police officer is disabled and, if so, whether that disablement is likely to be permanent), which leads to a decision that a police officer is permanently disabled, is binding in any later application for a police injury pension. This means that a doctor conducting the stage II process (ie deciding whether a police officer's permanent disablement has been caused by a duty injury and, if so, what is his or her degree of disablement) is not permitted to re-open questions relating to the diagnosis or prognosis of the medical conditions of the former police officer.

The SMP is now strictly limited to addressing the statutory questions set out in regulation 30(2)(c), (d) of the Police (Injury Benefit) Regulations 2006, SI 2006/932, namely whether the permanent disablement as found by the SMP at stage I was the result (either wholly or in part) of the former police officer's duties and, if so, the former police officer's degree of disablement as at the date of retirement.

This limitation in the issues that an SMP is entitled to consider at stage II may well lead to doctors having to reach causation judgments in respect of medical conditions which are not necessarily discernible at the date of the stage II assessment. SMPs may also be required to conduct a causation assessment in respect of a medical condition which, if they were able to conduct a diagnosis and prognosis exercise for themselves, they would not have ascribed to the former police officer. While that may make the role of the SMP at stage II slightly uncomfortable, it is an inevitable consequence of the need to maintain continuity and certainty in the police injury pension system for police officers who are required to retire as a result of their disabilities.

This judgment may also mean that a police officer who is diagnosed with a non-duty-related injury at stage I may wish to appeal that decision to the Police Medical Appeal Board (PMAB) in order to secure a finding that the officer's injury was, in whole or in part, duty-related. Following *R (Doubtfire and Williams) v Merseyside Police Authority* [2010] EWHC 980 (Admin), [2010] All ER (D) 149 (May), it was doubtful whether such an appeal could be entertained.

However, the implication of the *Evans* decision is that an appeal can probably now be made against an SMP report, even if it reached a conclusion with which the police officer agrees (albeit for the wrong reasons). This means that the PMAB now has the obligation to hear such appeals and have the right to disagree with any aspect of an SMP report.

Hence a police officer who is diagnosed by an SMP with a non-duty-related permanent injury who feels that this medical decision is wrong (because his or her permanent disablement is duty-related) should now seek to appeal that decision to the PMAB.

What was the background?

Police officers who are injured or develop disabilities during their police service can be referred by the Chief Constable to an SMP for a disablement assessment without their consent. If the selected SMP decides that the officer has become permanently disabled, the Chief Constable has the right to require the officer to resign.

Different doctors, all acting in good faith, can reach different diagnoses depending on what tests are conducted, what questions are asked or how the patient presents on the day. These inevitable differences have led to an unfortunate series of cases where an officer is required to retire on the basis of a decision by an SMP at the retirement stage (stage I) that the officer is suffering from permanently disabling condition X, only to find that a different SMP who is required to consider the former officer's eligibility for a police injury pension (stage II) decides that the officer does not suffer from condition X. The stage II SMP could decide the officer suffers a different permanently disabling condition or, indeed, has been known to decide that the former officer is not permanently disabled at all.

This has the potential to leave former police officers in the position where they have lost their career and income on the basis of a medical decision that they are permanently disabled, only to find that they are denied an injury pension because a different doctor does not accept that the police officer was ever permanently disabled in the first place.

What did the court decide?

The question for the High Court was whether the police injury pension scheme should leave a police officer at the mercy of a subsequent medical assessment. The clear answer from the court was 'no'. Mr Justice Lane effectively overturned the previous decision in *Doubtfire* by deciding that an SMP who is conducting the stage II process was bound by the whole of the clinical and diagnostic conclusions reached by the SMP who decided the stage I process.

The justification for this approach was explained at para [37] of the judgment where the judge said:

> 'There is, in fact, a sound policy reason for that decision…police officers who are required to retire on the grounds of permanent disablement are entitled to a degree of finality in respect of their entitlement to pensions. A police officer who has to retire as a result of what is then considered to be permanent disablement caused in the line of duty should not be at the mercy of a subsequent medical assessment, that he or she was not, in fact, permanently disabled. That applies to an injury pension, as much as it does to a disablement pension. In the absence of statutory wording to the contrary, there is no reason to treat the injury pension as a more fragile form of benefit.'

Interviewed by Evelyn Reid.

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