

Police Federation
of England and Wales



Ffederasiwn Heddlu
Lloegr a Chymru

Established by Act of Parliament

Federation House, Highbury Drive, Leatherhead, Surrey, KT22 7UY
Telephone: 01372 352000 Fax: 01372 352078

NATIONAL SECRETARY'S OFFICE

17 February 2022

BB CIRCULAR – 002-2022

To: All Branch Board Chairs & Secretaries
Cc: National Board, National Board Info and Branch Council Admin

Dear Colleague,

Back-dating of Injury on Duty awards

I am writing to confirm the legal position on claims for the back-dating of Injury on Duty awards following the Court of Appeal's judgment in the case of *R (Chief Constable of South Yorkshire Police) v Kelly and another* [2021] EWCA CIV 1699. PFEW funded Mr Kelly's successful legal claim.

In 2005, Mr Kelly was ill-health retired by his force, but he was not aware until 2016 that the circumstances of his disablement entitled him to apply for an Injury on Duty award. He then applied for an award. When the award was granted in 2017, his force only back-dated it to the date of his application in 2016.

The basic position is found in Regulation 11(1) of the Police (Injury Benefit) Regulations 2006 ('PIBR 2006'), which says that an Injury on Duty award is payable where a person:

"ceases or has ceased to be a member of a police force and is permanently disabled as a result of an injury received without his own default in the execution of his duty..."

and Regulation 43(1) PIBR 2006 which confirms that the award:

"...shall be payable in respect of each year as from the date of [the person's] retirement."

This is subject to the rules in Regulation 11(2) PIBR 2006 and Regulation 7(7) PIBR 2006 which apply to a situation where the officer becomes disabled after retirement or where the date of disablement cannot be ascertained. This was not relevant in Mr Kelly's situation because he had already been assessed as permanently disabled at the time of his retirement, but nevertheless, his force took the view that he was only entitled to payment of the Injury on Duty award from the date he applied for it in 2016.

Represent Influence Negotiate

Mr Kelly appealed to the Crown Court in line with Regulation 34 PIBR 2006. He contended that as he was already permanently disabled at the time of his retirement in 2005, he was entitled to have his Injury on Duty award back-dated to the date that he had retired, and that the force's refusal to pay him any award for the period from 2005 to 2016 was in breach of his rights under PIBR 2006. The Crown Court found in favour of Mr Kelly, ordering that his Injury on Duty award be back-dated to his retirement in 2005 and that the force should also pay interest on the back-dated payment that was owed to him.

The force unsuccessfully appealed to the High Court and then to the Court of Appeal. The force's arguments were that:

- a) Mr Kelly only had the right to back-payment of the Injury on Duty award to the date that he had applied for it;
- b) the Crown Court did not have the right to hear appeals regarding the back-dating of Injury on Duty awards because this situation did not fall under Regulation 34 PIBR 2006; and
- c) the Crown Court did not have any power to order that interest must be added to the back-payment of the award.

The Court of Appeal judgment rejected all the force's arguments and confirmed the law to be:

- **If a former police officer has been assessed to be permanently disabled from the ordinary duties of a member of the force under the Police Pensions Regulations 1987, 2006, or 2015, and subsequently successfully applies for an Injury on Duty award regarding that permanent disablement, they will be entitled to have payment of the award back-dated to the date of their permanent disablement assessment.**
- **If the permanent disablement assessment occurred before the date on which their police service ended (whether through retirement, resignation, or otherwise), their entitlement is to have the award back-dated to the date their police service ended.**
- **The Crown Court is the appropriate court to hear disputes about back-dating of an Injury on Duty award.**
- **The Crown Court has the power, if it considers it appropriate, to order that a force pay interest on a back-payment of an Injury on Duty award.**

Yours sincerely



ALEX DUNCAN
National Secretary