**PNB Circular 03/19**

# POLICE NEGOTIATING BOARD

Independent Secretary
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## AGREEMENT REACHED IN THE POLICE NEGOTIATING BOARD

1. At the meeting of the Police Negotiating Board on 9 May 2002, it was agreed that joint guidance for police authorities and senior force managers should be produced on the key areas of managing ill-health retirement. This guidance was originally circulated under cover of a Home Office Circular, pending the production of further guidance covering a new system of medical appeal boards. This further guidance has now been agreed and has been incorporated into the earlier document. The full text of the guidance document is set out in the attached memorandum.

2. This agreement requires no amendment to police regulations or specific authorisation by home department circular.

3. Any inquiries should be addressed to the Independent Secretariat at the Office of Manpower Economics ☎ 020 7467 7218 or to the Official Side Secretary ☎ 020 7296 6722 or to the Staff Side Secretary ☎ 020 8399 2224. Enquiries to the Independent Secretariat relating to the interpretation of this circular should, where possible, be sent in writing.

6 January 2004

* PNB Circulars form a single numerical series. Those which in themselves provide authority to implement an agreement carry the serial number alone, while those which are purely advisory are designated as such after the serial number.

**MEMORANDUM**

The agreed joint guidance document for police authorities and senior force managers on the key areas of managing ill-health retirement, including guidance on medical appeal boards, is attached.

**POLICE NEGOTIATING BOARD JOINT GUIDANCE**

**IMPROVING THE MANAGEMENT OF ILL HEALTH**

## Introduction

It was agreed by the PNB in May 2002 that it should produce joint guidance for police authorities and senior force managers on the key areas of managing ill-health retirement.

## Context

2. The PNB Agreement noted that the police service should not lose the skills and experience of officers who are still able to make a valuable contribution and that officers should not therefore have to retire on medical grounds unless it is necessary. The PNB also noted the need for consistency and fairness in the process. The PNB agreed therefore that there should accordingly be clarity about the criteria for medical retirement and about where responsibility lies for final decisions on medical retirement.

## Management of the process

3. A flow chart setting out the key steps in the medical retirement process is attached at **Annex A**. If a case were to pass though all the stages in the chart, the entire process could last over a year. It is therefore important for the process to be managed as expeditiously as practicable by the police authority so that delays are kept to a minimum. Managers should also recognise that many cases could be concluded in much quicker time, without all stages being involved – in particular cases where permanent disablement is serious, or where the SMP assesses disablement to be only temporary. The FMA should try, wherever possible, to point out to local management and the police authority those cases that have the potential for going through quickly and those cases that are likely to need particularly careful management, if it is not to become unduly protracted.

## Need for local protocol setting out procedures and levels of delegation

4. The Police Pensions Regulations provide for decisions on the referral of cases to the SMP, and the final decision on whether to grant ill-health retirement in a case, to rest with the police authority. However, each police authority should review any existing delegation framework for the consideration of medical retirement issues and discuss with the chief constable detailed arrangements for the effective management of ill-health retirement with a view to drawing up an agreed protocol.

5. A protocol will provide both authority and force with an agreed statement of the policy framework within which to implement the changes generated by the PNB Agreement and within which local arrangements for delegation should operate. Pension management decisions for the police authority should be clearly distinguished from on-going management actions which are the responsibility of the chief constable. The protocol should set out:

- the extent and level of delegation by the authority to officers or force managers for action to be taken in its name under regulations H1 and A20 in cases which do not involve ACPO ranks;
- the extent and level of delegation by the chief constable to other officers or force managers for action to be taken in his or her name in support of police authority decisions under regulations H1 and A20 in cases which do not involve ACPO ranks;

- the procedure for officers, force managers and the FMA to adopt when reporting cases for consideration by the police authority;
- the qualifications of the FMA and the SMP and how they are to be selected and trained;
- arrangements for each case involving an H1 referral to be monitored by a nominated member of the HR department, to help the police authority ensure that it is dealt with expeditiously at all stages, and to provide a point of contact for the police officer whose case is under consideration;
- whether the police authority will conclude agreements with other police authorities for co-operating in the supply of suitable SMPs;
- how the force should report, and the police authority monitor, the force's exercise of powers under H1 or A20 which have been delegated to it.

*Delegation of powers*

6. Police Authorities should under no circumstances delegate to the force any matters relating to the consideration of the possible medical retirement of an officer of ACPO rank.

7. All references that follow to "police authority" and to "chief constable" should be read to include references to the police officers or force managers duly delegated to carry out their respective functions on their behalf. Where delegating a power under the Police Pensions Regulations a police authority or chief constable must be satisfied that the person to whom the power is delegated will be able to exercise it with the same degree of independence as if the power had not been delegated. In the case of police authority decisions, delegation may be to the chief constable, to the deputy chief constable when acting as chief constable, or to a civilian HR manager who has the strategic view and authority to take such a decision on the authority's behalf. Where possible the HR manager should hold a post at the civilian equivalent of an ACPO rank and also have a CIPD qualification, although lack of a formal qualification may be more than compensated for by a wealth of relevant experience. The person whose duty it is to make a decision on behalf of the police authority should not have been closely involved in the day-to-day management of the case up to that point.

8. A report made to the police authority on behalf of the chief constable on the suitability of a permanently disabled officer for retention in the force should be signed or authorised only by an officer of ACPO level or an equivalent civilian HR manager. The person signing or authorising such a report should not be the same as the one delegated to take the police authority's decision under A20 and should not have been closely involved in the case up to that point.

*Qualifications of FMA and SMP*

9. It is difficult to be prescriptive about the minimum qualification an FMA should have since there are many existing FMAs with considerable experience but relatively few occupational health qualifications. New FMAs should be recruited with the minimum requirement that he or she be an Associate of the Faculty of Occupational Medicine (AFOM) or EEA equivalent and be given the opportunity quickly to build up a good knowledge of the police service and the range of duties that need to be performed.

10. Ideally, the SMP should be a Member or Fellow of the Faculty of Occupational Medicine (MFOM or FFOM), or EEA equivalent. The minimum requirement should be that he or she is an Associate of the Faculty of Occupational Medicine (AFOM) or EEA equivalent. Before appointment as SMP the police authority must provide the medical practitioner concerned with an

induction programme and other training so that he or she has an understanding of what police service entails.

**Referring Cases to the Selected Medical Practitioner (SMP)**

11. The Police Pensions Regulations provide that where a police authority is considering whether an officer is permanently disabled it shall refer the issue to the SMP for decision. A note on the definition of permanent disablement is attached at **Annex B**. Requests for referral of a case to the SMP can come from one of two sources: management or the officer. An officer's request for referral may be refused only in limited circumstances – see paragraph 15.

*Management recommendation that Police Authority refer H1 question to SMP*

12. Except in the case of an accident or the sudden onset of illness, the FMA will normally have seen the officer several times and have liaised with local management over the officer's condition. Although local management can normally look to the FMA to advise the force in the first instance whether there is a need to consider permanent disablement, the FMA may be asked for his or her view if there is concern about a case. Such referral to the FMA for advice is a matter of good day-to day management and will lead to a referral by the police authority to the SMP under H1 only where the FMA so advises.

13. The FMA should recommend referral in any case where he or she considers the officer **may be** permanently disabled, not just where the FMA considers that the officer **is** permanently disabled. Where the FMA advises that the case should be referred under H1, he or she should draw attention to any special or compassionate features including the need for urgency and, wherever possible, provide advice on which medical practitioner to use as the SMP and/or any specialism required. Local management should pass on the FMA's advice as quickly as possible to the police authority.

*Officer asks management for H1 questions to be referred to SMP*

14. It should not normally be necessary for the officer to have to raise the issue of referral under H1, since this will have been done on his or her behalf. However, there may be cases where an officer who considers that he or she is permanently disabled feels obliged to ask management that the police authority put the H1 process into effect. The officer should back this up with evidence of permanent disablement from his or her GP, or other medical practitioner he or she has been referred to. The chief constable should bring any such request to the notice of the police authority with comments from the FMA on whether the FMA is satisfied that there is a medical issue to consider. Where necessary the FMA will first see the officer.

15. The police authority should refer the case to the SMP unless there is reason to believe the officer's request is vexatious, frivolous or seeks without evidence to re-open a case which has been decided under H1 or, on appeal, under H2. In the case of a request to re-open a case the police authority should refer the issue again to the SMP only where the FMA considers there is fresh evidence which could lead to a substantive revision of the previous decision under H1 or H2.

*Appeal to the Crown Court*

16. A refusal by a police authority to refer a case to the SMP is subject to appeal to the Crown Court under Regulation H5. Where referral is refused, the police authority must give a written statement to the officer explaining the reason and pointing out his or her avenue of appeal against the decision.

**Referring Cases to the SMP: Practical Arrangements**

*FMA asked to prepare advice for the SMP*

17. Where the police authority decides to refer the case to the SMP it should normally be via the FMA. However, where the police authority is advised by the FMA that death is imminent or that the officer is totally incapacitated due to a physical condition, it should appoint the FMA as the SMP for expedited consideration – see paragraph 30 below. (An assessment by the FMA, acting as the SMP, that an officer is totally incapacitated is without prejudice to any final decision by that or another SMP on the issue of total disablement under the Police (Injury Benefit) Regulations 1987.)

*FMA prepares advice to SMP*

18. In normal cases the police authority should ask the FMA most familiar with the case to provide advice on the case to the SMP, whose name and address should be confirmed with the FMA, unless the FMA indicates that the choice of SMP needs to be held over until he or she has completed the advice. The purpose of the FMA's advice is to inform the assessment by the SMP. The SMP will be asked whether the officer is permanently disabled, and if his or her opinion is that the officer is permanently disabled, the SMP will also be asked to complete a supplement to the report dealing with the officer's capability. The assessment of capability must also address the extent to which, if at all, the SMP considers that the disablement will affect the officer's attendance. Where the SMP considers that attendance may be affected if the officer were to perform particular duties, this should also be addressed. (This applies also to references to assessments of the officer's capability in paragraphs 19, 27 and 53.)

19. To assist the SMP, the FMA's advice will consist of two sections: a medical background and opinion:

- The medical background will include all relevant medical details and history of the case. This section should take account of the assessments of the officer's GP and hospital specialist as appropriate and wherever possible should be supplemented with relevant records, reports, X-rays or scans. (The FMA should seek the written consent of the officer for this section to be referred to the SMP.)
- The opinion will be the FMA's advice to the SMP on the issue of permanent disablement in answer to the questions under regulation H1(2)(a) and (b).The authority should ensure that the FMA is aware of the officer's compulsory retirement age. Where the FMA is of the view that the officer is permanently disabled he or she should also give his or her opinion on the officer's capability. (This section will not include any confidential medical information and therefore no consent of the officer is required.)

20. Wherever possible the FMA should give a clear view on whether or not the officer is permanently disabled. However, the FMA should not feel obliged to strive for a conclusion on the balance of probabilities in finely balanced or complex cases. In difficult cases involving more than one medical condition the FMA may conclude his or her opinion by setting out the issues and advising that the police authority appoint a board of two or more SMPs.

21. It will normally be expected that the SMP will examine the officer concerned, but there may be cases where the police authority indicates that there are no management objections to there being no examination. Provided the officer concerned is also content with this, the FMA can suggest to the SMP that there is no specific need for the officer to be examined.

22. The police authority should request the FMA to complete the advice to the SMP within 28 days and to let it know as early as possible whether there are problems over this timescale. The FMA should send the advice direct to the SMP.

23. The FMA should send copies of the opinion section and any advice on capability at the same time to the police authority and the officer. The police authority should check that the opinion and any advice on capability are set out in clear terms. The FMA should also give the officer the opportunity to request a copy of the medical background section. If the officer asks for a copy, the FMA should agree to release the medical background section unless there are medical reasons for withholding it. The FMA should also send the police authority a copy of the medical background if the officer gives written consent for this to be done.

*A board of SMPs*

24. The PNB has agreed that in **exceptional** circumstances the function of the SMP should be carried out by a board of two or more doctors. It will be for the police authority to decide whether to do this, but it will look to the FMA in the first place to draw attention to whether the number or complexity of the medical issues in a case makes such a course worth considering.

## The Role of the SMP

25. The SMP will normally be required to examine the officer, but he or she may exercise discretion to consider the case on the papers if management, the officer and the FMA are all content with this. In all cases the SMP should complete a report to the police authority which is separate from the advice from the FMA and which confirms that he or she has not dealt with the case before. The police authority should ensure the SMP knows where to send his or her H1 report, plus any Part 2 report on capability.

*The SMP determines H1 questions*

26. The first question for the SMP is to determine whether the officer is permanently disabled within the meaning of regulation H1. Details of how this is to be assessed are at Annex B. The police authority should require the SMP to describe wherever possible any disease or medical condition causing disablement by reference to internationally authoritative guides available to doctors such as ICD 10 (International Classification of Diseases) and DSM IV (Diagnostic and Statistical Manual).

*SMP also considers officer's capability*

27. Where the SMP concludes that the person is permanently disabled, he or she should go on to complete a supplementary report (Part 2 of the report) to the police authority on the officer's capability. A note on what is required in the supplementary report is at **Annex C**.

## Deciding Cases: Action by the Police Authority

*Inviting Representations*

28. The report of the SMP will be addressed to the police authority. Once the police authority has received the report from the SMP, it should provide the officer and the chief constable an opportunity to comment, make representations or appeal under regulation H2 as applicable before reaching a decision under regulation A20. The police authority should normally complete this action within 7 days.

29. The police authority should send the officer's copy of the SMP's H1 report under cover of a letter explaining his or her right of appeal against any of its conclusions and the availability of a dispute resolution procedure which, if both parties are content, may settle the matter under appeal without need of an appeal hearing (see paragraph 35 which deals with the procedure for doing so). Where the SMP has provided a Part 2 report, this should be sent out together with the Part 1 report and the Chief Constable and the officer should be invited to comment on the SMP's assessment of the officer's capability – see paragraphs 43 and 45.

**Special procedures in cases of urgency or total incapacity**

*FMA acting as SMP*

30. Where the police authority is advised by the FMA that death is imminent or that the officer is totally incapacitated due to a physical condition, the police authority should expedite the case by appointing the FMA as the SMP. In such cases, the FMA acting as SMP should be asked to complete an SMP's H1 report on permanent disablement as quickly as practicable. In such cases it will be inappropriate to supplement the report with advice on capability. The FMA should instead draw attention to any points of action for the police authority, and also give an indication, where appropriate, of life expectancy in order that the police authority can if necessary arrange for medical retirement to be expedited if that is the preferred option of the officer, or his or her representatives. In some cases death in service will lead to the better provision for the officer's family. The authority is not responsible for determining and putting in place what is in the officer's best personal interests, it is the responsibility of the officer or his or her representatives to determine the preferred option.

*Police authority action in cases requiring urgency*

31. Medical retirement may need to be expedited in other cases than just those where the FMA has acted as SMP. If, on receipt of the SMP's report, the police authority concludes, after consultation with the chief constable, that the severity of the officer's condition or compelling compassionate features in the case make it inappropriate to delay medical retirement, it may take an immediate decision under regulation A20. An expedited decision by the police authority will not prejudice the officer's appeal rights. The authority will notify the officer in writing of its decision and provide the officer, or his or her representatives, with a copy of the SMP's report.

**Appeals and internal reviews**

*Appeal by the officer under regulation H2*

32. The officer will have a period of 28 days following his or her personally receiving a copy of the SMP's H1 report (preferably with the fact and time of delivery recorded) during which he or she may give notice to the police authority of an appeal against the SMP's medical opinion on the H1 questions as stated in the conclusion to his or her report. The officer has no right of appeal under H2 against the contents of the SMP's report provided he or she agrees with the SMP's conclusions on the H1 questions. This time limit may be extended at the discretion of the police authority. The circumstances in which such a course may be appropriate include the officer having been unable to act soon enough because of his or her condition. Normally, however, it is reasonable to expect the officer, or his or representatives, to lodge an appeal within the period given that he or she is not obliged at that stage to make a formal statement of the grounds. (Except in the case of solicitors acting on behalf of an officer, the representative should be able to produce proof that he or she is acting with the officer's authorisation.)

33. Where an officer has lodged an appeal the police authority should acknowledge receipt of this and at the same time remind him or her of the requirement to provide a written statement of the basis of the appeal within 28 days following the date of lodging the appeal. The statement of the grounds of appeal need not be an explanation of the case the officer will be making in the appeal or be drawn up by a lawyer. The statement is simply to confirm which of the answers to the questions under regulation H1(2)(a) and (b) the officer is dissatisfied with and the immediate reasons why. This 28-day limit may be extended at the discretion of the police authority. Factors which may be taken into account in exercising such discretion are whether there are good reasons why a statement could not be made earlier and the authority's assessment of whether a reasonable extension of time will enable a statement to be produced.

34. If grounds of appeal are not provided within the period or extra period permitted, the police authority need not refer the appeal to the Secretary of State for the appointment of a referee.

*Possibility for internal review of decisions under dispute*

35. Regulation H3(2) allows a police authority and an appellant to agree to refer a decision back to the SMP for reconsideration. There may be cases where this process can resolve the issue without the time and effort of an appeal. Therefore, where an officer provides a statement of the grounds of appeal, the police authority should consider whether there is value in offering the appellant a reference of the matter back to the SMP for reconsideration. If the offer is made and the appellant agrees the matter should be referred to the SMP accordingly. If no offer is made or the appellant does not agree the appeal should be forwarded to the Secretary of State in accordance with H2. The SMP should issue a fresh report in the case of an internal review only where it will resolve the issue under dispute. It must be understood that there is no right of appeal under the regulations at present against a fresh report issued after an internal review. (The intention of using H3 before an SMP's decision goes to appeal is that it should be done without prejudice to that appeal.) If the report will not resolve the issue to the satisfaction of the appellant, the SMP must not issue a fresh report and instead the appeal under H2 against the original decision under H1 should be allowed to proceed.

*Action by police authority to take appeal process forward*

36. The possibility of a procedure under H3 should not be allowed to delay the appeal process unduly and the authority should either offer the officer internal resolution, without prejudice to a further right of appeal, or refer the appeal to the Secretary of State within 14 days of receiving the officer's statement of grounds, or else explain to the officer why a longer period will be needed. Except in cases referred to at paragraphs 30 and 31 above, the presumption will be that the police authority will only reach a decision under A20 once the outcome of an appeal is known. However, exceptionally, there may be other cases where the police authority decide, in the particular circumstances of the case, that the most appropriate course is to retire an officer under regulation A20 while the appeal is still pending.

*SMP's consideration of officer's capability after a successful appeal*

37. Where the medical referee overturns an SMP's decision that an officer is not permanently disabled, the police authority should arrange, in consultation with the FMA, for another SMP to be given a copy of the medical referee's H2 decision and for the new SMP to provide a report to the police authority on the officer's capability in the light of the appeal outcome.

**Preparation and action for the A20 decision**

*Comments by chief constable if the medical authority has found the officer to be permanently disabled*

38. Where the officer has been assessed by the SMP or, on appeal, by the medical referee as permanently disabled, the chief constable should within 28 days of receiving the medical authority's assessment submit a report to the police authority containing the following:

- Confirmation that he or she has seen parts 1 (H1) and 2 (capability) of the SMP's report.
- An assessment of the officer's suitability and aptitude for retention.
- An assessment of the posts available, and the scope for retaining the officer in the force in order to continue with a police career – see paragraphs 42 to 43.
- Information on whether the officer is involved in any current or pending misconduct proceedings and the seriousness of any case involved.
- A recommendation as to whether the officer should be retained

39. If the chief constable is unable to provide a report in the recommended period, he or she should advise the authority and officer of this and indicate the amount of extra time needed. The police authority should reserve the right to require an earlier date than that suggested by the chief constable. Cases should be concluded as quickly as practicable.

40. Before a permanently disabled officer may be returned to duties in a force, it will be necessary to consider the need for a risk assessment in respect of any posts he or she will be expected to hold. The key considerations are that the officer's further deployment should not:

- aggravate the officer's existing disablement;
- expose the officer to a higher risk of injury than he or she would have had if not disabled;
- expose the public or other officers to an increased risk of injury;
- expose the officer to a risk of being criticised or disciplined for not acting in a way which would normally be expected of an officer, but which would be inappropriate in view of the officer's disablement.

41. Where an officer who is permanently disabled is retained, it is important that any restrictions upon the duties the officer can be required to or is expected to perform are clear to the officer, his or her colleagues and managers. Given the general duty to obey lawful orders and the duties of a common law constable, forces must ensure that appropriate arrangements are in place to deal with communication and any other issues which arise. This will, in part, be a matter of instruction and communication. Forces may wish to consider providing a mechanism whereby any officer on restricted duties who feels that he or she is being ordered to, or may be required to, do something beyond his or her capability can raise the issue without being seen to refuse the order.

*Career in the police service*

42. In cases where the officer has only a few years still to serve before he or she can retire in the normal way, it will usually be sufficient for the chief constable to indicate what post the force has in mind for the officer and why. On the other hand an officer in the earlier stages of his or her career can reasonably expect to be given the prospect of continuing in the police service in a way which will enable him or her to develop capabilities and which will involve some variety of police work over the coming years. Medical retirement is likely to be appropriate where this is not the case.

43. The objective is to retain an officer in the force wherever practicable. In assessing whether an officer may be retained for a police career the chief constable will need to address the following

issues in his or her report. Bearing in mind the officer's rank and the fact that an officer retained for a police career may be eligible to be considered for promotion.

- whether there is a suitable post available at present or in the near future;
- whether, taking a strategic view of the likely future operational and fitness requirements of the force, there is a sufficient range of further posts likely to be available to the officer, in identified broad areas of duty, until compulsory retirement age to make it consistent with a police career, albeit on a limited scale;
- whether a satisfactory risk assessment has been drawn up for the officer in respect of any posts available at present or in the near future, and whether it is expected that similar risk assessments can be drawn up for possible future posts in the longer term;
- whether the officer and his or her line managers can be satisfactorily advised about handling situations where intervention as a constable to arrest someone or to prevent crime may be inappropriate in view of the officer's disablement;
- whether, setting aside unforeseen significant changes to the officer's condition for the worse, the officer can remain in the force without recourse to frequent reviews of his or her continued suitability for retention;
- whether there is a reasonable expectation that the officer will be capable of maintaining a satisfactory level of attendance.

44. In cases where there will not be a suitable post for a while, but such a post has been identified, the chief constable should consider arrangements to find a temporary post for the officer or to bring the officer back to a working environment as soon as possible in order to maintain the officer's confidence in being able to manage work.

45. When assessing the operational needs of the force at the second point in paragraph 43 above the chief constable should take into account the current number of officers on restricted duties and should also assess the expected pattern of potential medical retirement cases in the future. This will help the chief constable to judge the level of retention possible each year and the broad range of capabilities that those retained would need to have in order not to put the operational effectiveness of the force in jeopardy.

*Comments by officer*

46. If assessed as permanently disabled by the SMP or the medical referee, the police authority will also have given the officer an opportunity to make representations about his or her case. The officer may comment on Part 2 of the report by the SMP and the report from the chief constable and also say whether he or she wishes to remain in the force. If the officer disputes or queries any part of the medical authority's report on capability or the chief constable's report, he or she may adduce medical or other relevant evidence. The police authority should advise the officer where to send his or her comments and require receipt of them within 28 days. This period may be extended by the authority at its discretion.

*Decisions by police authority*

47. In deciding each case, the police authority should review the case in the light of

- The SMP's report – parts 1 and 2;
- The chief constable's report; and
- The officer's comments.

48. Where the officer disagrees with the comments made in Part 2 of the SMP's report the police authority should consider the reasons given. If the officer has adduced new evidence from a medical practitioner which is central to its decision under A20, and the SMP does not alter his or her view as a result, the police authority should, within 28 days of the new evidence being received by the authority, arrange for the officer to be examined by a third medical practitioner who is acceptable to both the SMP and the practitioner who provided the new evidence. If there is a failure to agree on a third medical practitioner the police authority should appoint its own third medical practitioner who should, where necessary, be a specialist. The third medical practitioner should report in writing to the police authority and to the other two practitioners. In exceptional cases the authority may refer the issue to a board of practitioners which includes a consultant.

49. Any comments made by the officer on the chief constable's report should be taken up with the chief constable by the authority with a request for comments within 14 days.

50. Where the officer has been assessed as permanently disabled, the police authority should consider all the evidence before it before reaching a decision under A20. The police authority will bear in mind the policy presumption in favour of retaining the officer until normal retirement age wherever that is practicable. Key factors include:

- length of service still to serve, rank etc;
- the SMP's advice on the officer's capabilities;
- the chief constable's advice – the chief constable should have taken due note of the SMP's findings, have dealt with each of the points listed at paragraph 43 above, and have provided an assessment on whether or not the officer can remain in the force; the chief constable's advice will inform but not determine the police authority's decision and the authority should consider whether the chief constable's assessment is robust;
- whether the officer wishes to remain in the force – the officer's opinion will inform but not determine the authority's decision, but where the officer does wish to remain, the presumption in favour of retention will arguably be greater still; .
- whether the officer faces outstanding or impending misconduct proceedings – in cases where the conduct in question is serious, or where the completion of disciplinary proceedings is necessary for the maintenance of public confidence, the public interest in completing the proceedings will outweigh the significance of the officer's condition, except in the most compelling compassionate cases.

51. If retention is not practicable, the officer should be medically retired. The police authority should aim to reach a decision, with the reasons stated, within 28 days of last receiving comments or advice on the case whether from the officer, chief constable or the SMP or other medical practitioner it has consulted. If there is a reason for delay, the police authority should explain this to the officer and give an indication of the extra time needed.

*Review of decision under A20*

52. The expectation is that a decision under A20 should not have to be reviewed unless there is a significant change for the worse in the officer's condition or a significant change in the operational requirements of the force, which invalidates the assumptions on which the officer was retained in the first place. In such circumstances the chief constable should bring the matter to the attention of the police authority so that it can review its decision in the light of fresh reports from the FMA (unless the review arises where an officer is facing a possible hearing under the Efficiency Regulations, in which case a report should be from an SMP) and the chief constable and fresh comments from the officer. Where the officer disagrees with the comments made by the FMA, paragraph 48 applies as if references to the SMP were references to the FMA.

53. An officer who wishes to ask the police authority for a review of the A20 decision should make such a request via the chief constable in order that the authority can be advised whether management considers that a review is necessary for one of the reasons in paragraph 52 above.

**Appeal under H2**

54. Regulation H2 provides for a right of appeal where a person is dissatisfied with any part of the decision of the selected medical practitioner (SMP) as set out in his or her report under regulation H1. An appeal will be heard by a board of medical referees (more information about this is given below). Details of how the officer (hereafter called the appellant) is required to give notice of an appeal and to state the grounds of appeal are set out in paragraphs 32 to 34 above. The purpose of the appeal board is to determine a medical appeal in a fair, orderly and authoritative way, with both parties given the opportunity at the hearing to put their case fully and to answer each other's points. Although the hearing will be conducted without too much formality or the need for legal representation, both parties will be required to have provided prior written submissions setting out the key points of their case in order to minimise the need for adjournments - given the cost and delay otherwise involved.

*Grounds of appeal*

55. On receipt of a notice of appeal the police authority should confirm receipt and provide the appellant with a form (Appeal Form A) to use for stating the grounds. On receipt of the statement of grounds of appeal the police authority should check whether there is scope for offering the appellant an internal review of the case under regulation H3. Such a review may help to avoid an unnecessary appeal, but would be without prejudice to the appellant's appeal proceeding if the issue could not be resolved – see paragraph 35 above. (A set of appeal forms will be provided with the relevant Home Office Circular.)

*New medical evidence*

56. If the appellant refers in the grounds of appeal to medical evidence unknown to the SMP, he or she should be asked to produce the relevant medical report or opinion for the SMP so that, if both parties agree, the SMP's decision may be reviewed in the light of this under regulation H3.

57. If an internal review under H3 is agreed and the SMP requires further medical details to consider the issue fully, the appellant should be asked for consent to any records which are relevant being released to the SMP and, where appropriate, being added to the OH file. (Some records, which do not relate to an appellant's service in the force, may not be suitable for the OH file, but should be seen by the SMP and, if the appeal proceeds, the appeal board.) The police authority will bear the reasonable expenses involved in obtaining those records.

*Preparation of medical documents for appeal*

58. Where there is no internal review of the SMP's decision under H3, or where such a review produces no new decision, the police authority will proceed with the dispatch of the appeal documents as soon as possible to Aon Health Solutions (hereafter referred to as Aon). To that end the appellant will be asked in Appeal Form A to provide in addition to the statement of grounds already supplied:

- the name of any specialist who has previously treated the appellant for the condition in question; this is to avoid such a person being appointed to the board for the appeal hearing;

- his or her written consent (solely for use in connection with determining the appeal) for the release of the Occupational Health file, together with any other records released to the SMP, direct to the medical practitioner appointed to chair the board of Medical Referees; and
- confirmation, where consent for the release of the OH file is given, whether he or she wishes to receive a copy of any such records.

59. It will be for the board chair appointed by Aon to arrange as necessary for the appellant's consent to release other medical records, as applicable, from:

- the appellant's General Practitioner
- any hospital or specialist which has treated the appellant, together with details of any tests and final reports.

Aon will send the appellant the necessary consent form. Any reasonable costs necessarily incurred by the board in obtaining these records will be added to the board's expenses at the end of the case.

*Despatch of non-medical documents to Appeal Board*

60. The police authority will send to Aon's designated contact point and the Home Office each

- a copy of an appeal notification (Appeal Form B) from the police authority – see paragraph 62
- a copy of the appellant's notice of appeal
- a copy of the appellant's statement of the grounds of appeal and the other details listed at paragraph 58 as set out in Appeal Form A.
- copy of the SMP's report with the decision under H1 against which the appeal is made.

61. The appeal notification (Appeal Form B) should include:

- details of the appellant's full name, date of birth and current address;
- a statement whether correspondence should be sent to the appellant or to a representative, and the contact address, and telephone number if available, for the purpose of communications about the appeal. (Except in the case of a legal representative or a representative acting under power of attorney, the appellant should provide written consent to the representative acting on his or her behalf for this purpose.) The appellant or representative must notify the police authority and the appeal board of any subsequent change of contact details;
- whether the SMP wishes to attend – or an indication of when this information can be given;
- the name and status of any person or persons wishing to attend on behalf of the police authority – or an indication of when this information can be given;
- a list of all documents attached.

62. The police authority should also send a copy of these documents to the appellant. At the same time the authority should provide the appellant with a form - Appeal Form C – to use in order to compile his or her submission to the board in response to the SMP's report, and to advise the board of whom he or she wishes to bring with him to the hearing. (The form will advise the appellant of the need to provide the board with any evidence upon which he or she intends to rely in advance of the hearing and of the time limits involved.) The police authority should also complete a form – Appeal Form D – to compile any submission to supplement the SMP's report, setting out its case to the board including any supporting evidence. Each party will be required to send their submission and any supporting documents to the board chair, copied to the other party at least 35 days before the hearing. Each party may make further written comments on the other party's submission up to 7 days before the hearing date. (Fuller details of are given at paragraph 73 below).

This simultaneous exchange should reduce the need for adjournments due to late submission of evidence and the consequential assignment of costs.

63. If at any stage of an appeal an appellant or a police authority does not understand the nature of the other's case then every effort should be made to resolve the matter in correspondence between the parties. If this cannot be done then either party can write to the appeal board chair who will where necessary indicate what, if any, actions either or both parties should take in order that the appeal can be dealt with properly. Any party sending such correspondence should copy it to the other party and that other party should have the opportunity to comment before any decision is made by the appeal board chair. Both parties should be mindful of the power of the appeal board to assign the costs of any adjournment.

*Despatch of medical documents*

64. Where the appellant has given the necessary consent, the police authority will ensure that the OH Department send the chair of the appeal board, under cover of a medical documents form, the complete record from the force's Occupational Health file.

65. An appellant's decision to withhold written consent for disclosure of the medical information held on the OH file will be notified to the appeal board chair. The appellant should understand that withholding consent for the release of relevant medical information will, at the very least, make the board feel at a disadvantage in being able to decide the appeal and may even lead the board to conclude that the appellant is concealing information detrimental to his or her case. It is possible that gaps in the medical evidence will be filled by the detailed medical examination and questions of the appellant at the appeal hearing. However, unless the board can be satisfied that it has all the information from the appellant that it needs in order to make a fully informed decision, the board will dismiss the appeal.

*Location of hearing*

66. Boards are organised by Aon on a regional basis and consider cases from all police authorities in England and Wales at a number of set locations. For the purposes of appeals against H1 decisions in respect of serving appellants the appeal should normally be heard at the location in or nearest to the force area. Where an appellant is retired and living in England and Wales, the appeal will normally be allocated by Aon to the location nearest to where the appellant lives except where both parties agree to alternative arrangements before the appeal documents are sent off, and advise Aon of this in the appeal notification. Where the appellant is living in retirement outside England and Wales, the appeal will normally be held at a location in or nearest to the force area and the retired appellant expected to return to this country to attend the hearing. Special arrangements will be made for the examination and questioning of appellants certified as medically unfit to travel.

67. Under Schedule H to the Police Pensions Regulations, the board of Medical Referees will consist of at least 3 members as follows –

- Chair: a Consultant in Occupational Medicine (with at least Membership of the Faculty of Occupational Medicine, MFOM).
- Second member: a Consultant or Senior Occupational Physician (with at least Associate Membership of the Faculty of Occupational Medicine, AFOM).
- Third member: a Consultant in the clinical speciality relevant to the appellant's medical condition on which the appeal is based

The appeal board should have access to legal advice both before and after the hearing. It will not normally be practicable to take legal advice during a hearing but procedural issues may arise on

which a board, in the early days of the new system at least, may want to take the views of the parties, Aon's lawyers and, if necessary, the Home Office.

68. Where an appeal relates to more than one medical condition, a specialist who is able to deal with each condition will be appointed to the board. Where more than one specialist is required, the Chairman has a second or casting vote if a decision cannot be reached because of equal voting among members of the board.

*Arrangements for the hearing*

69. Wherever possible the appeal board should arrange by telephone to set a date which it knows is suitable for both parties. However, in any case, both parties will be notified in writing of the date, time and place of the appeal hearing. The notification will give at least 2 months' notice of the hearing date, more if the board chair decides that the case is unusually complicated, and will include all relevant details about the venue and the arrangements for attending the hearing. An address at which the board can be contacted in advance of the hearing will also be given. The notification will also give the names of the board members in order to ensure the independence of the board. It is important that the board Chair should be notified immediately if either the appellant or the police authority is aware that any of the nominated members have been involved previously with the case or there is any other reason why the member should not decide the appeal.

70. The notification sent to each party will include a reply form for each to use to confirm that they have noted the date and whether they can attend. The reply form will also confirm that each party has read and understood the costs that may be incurred in the event of postponing, withdrawing (and thereby leading to the hearing being cancelled) or failure to attend the hearing, once the date has been set. Unless both parties to the appeal agree there are quite exceptional circumstances, the board will require the appellant to attend in order that he or she may be both interviewed and medically examined.

71. The appellant and the police authority should each confirm with the board in writing, at least 35 days before the hearing date, whether or not they will be attending the hearing. A hearing will not normally proceed unless the appeal board has received confirmation from both parties that they can attend. Where despite an attempt by the board to do so, an agreed time and place cannot be set, the board will set a date and ensure that each party receives a copy of the notification, with the fact and time of delivery recorded and with the appellant taking personal receipt.

*Submission of written evidence*

72. Schedule H outlines the terms for written evidence. For the purpose of medical appeals evidence includes submissions or representations provided by either party in support of their case, whether medical or non-medical, as well as any supporting medical or non-medical reports and records.

73. The notification referred to in paragraph 69 above will also inform each party that a statement of the case together with any supporting written evidence must be provided to the board and the other party no less than 35 days prior to the hearing date. Any response by the other party to that statement may be submitted to the board and the first party at any time up to and including 7 days before the hearing date. The notification will also point out the provisions relating to the costs of postponements, cancellations and adjournments (see paragraphs 98-99) and that parties must be aware that if their conduct leads to a postponement or cancellation being sought within 11 working days of the hearing date, or to the hearing being adjourned, they may be required to bear the costs of the postponement, cancellation or adjournment. (Working days are defined as 9am to 5pm

Mondays to Fridays excluding Bank and Public Holidays in England and Wales.) In each case the board should specify the dates concerned so that both parties have a common understanding of the deadlines involved.

*Request for postponement*

74. If, after a hearing date has been fixed, a party seeks a postponement, a request should be made in writing to the board chair and copied to the other party, giving reasons for the request. The board chair will consider the request and decide whether to grant a postponement. Where a hearing has to be postponed, the board will, where possible, arrange a new date for the hearing which is suitable to both parties or, where this is not possible, set a date giving both parties at least two months' notice, as set out in paragraph 71 above. Where a hearing is postponed after a request made with less than 11 days' notice the board will also decide which party should pay the costs of postponement – see paragraphs 98-99 below.

*Failure to attend*

75. If either party fails to attend, the board will decide how to proceed. Where the police authority representative fails to attend without good reason but the appellant is present, it is likely that the board will proceed to hear the appeal in that representative's absence.

76. Where the appellant fails to attend the board may either offer the appellant another opportunity to attend, by adjourning the case, or deem the appeal to be withdrawn. Regulation H4(b) provides that an appeal shall be deemed to be withdrawn where the appellant wilfully or negligently fails to submit himself to such medical examination or to such interviews as the medical authority determining the appeal may consider necessary. In either case the board will also decide which party should pay the costs of postponement or cancellation – see paragraphs 98-99 below.

*Withdrawal from appeal*

77. Where a party withdraws from the appeal, the board will confirm that the other party is deemed to have won the appeal and decide, where withdrawal was with less than 11 working days' notice, which party should pay the costs of cancellation – see paragraphs 98-99 below.

*Attendance of representatives at hearing*

78. As paragraph 70 above makes clear, the presumption is that the appellant is required to attend. If the appellant or the police authority arranges to have others attend each will bear the costs involved, whatever the outcome. Although there is not the same degree of necessity, it will be helpful if the SMP also attends. It is the SMP's decision which is under appeal and his or her presence will help to ensure that that decision is properly understood by the appeal board. Neither the board nor either party may refuse the appellant or the SMP the right to attend the hearing.

79. The board should allow others to attend as well in order for each party to make their case effectively, provided that the numbers involved do not detract from a properly conducted hearing and provided the board is clear about the status of each person present. The purpose of a board of medical referees is to determine disputed medical issues without the need for formal advocacy or legal argument. In this context "representative" does <u>not</u> imply an advocate as in court proceedings. Although no formal advocacy is required, the appellant (or his or her representative) and the police authority representative will normally be invited to explain their written submissions at the hearing. In addition the appellant, the SMP and others attending as representatives may be required to answer questions which the board may put to them in order to clarify issues and help it reach a

decision. All this will be done as informally as possible, consistent with an orderly process which ensures that each party is fairly and equally treated.

80. Those attending a hearing other than the appellant or the SMP will fall into the following categories:

- Medical practitioner appointed by either party to attend in order to deal with medical issues;
- Non-medical representative of either party to present their case and to deal with questions or points the board or the other party may raise.
- Appellant's friend or relative accompanying him or her for moral support.

The board chair will make reasonable efforts to set a date which is suitable for the appellant and the SMP and which also allows each party to have one representative or companion. The board cannot undertake, however, to set a date suitable for other would-be attendees.

*Medical practitioners*

81. It will be for the police authority to decide whether the attendance of the SMP will be sufficient to ensure that the decision under appeal is effectively represented to the board or whether the FMA or another medical practitioner should appear specifically as its medical representative. If the SMP cannot attend the authority may decide to send the FMA or other medical representative in his or her stead. It is open to the appellant to appoint his or her own medical representative as well. Neither the board nor either party may impinge on the right of a medical representative for each party to attend the hearing. Each party should ensure however that the board chair and the other party is given notice of the representative's attendance and of the evidence the representative will give. The notice given should comply with the time limits set out in paragraph 73, depending on whether an original submission or a response is involved.

*Other representatives*

82. It will be for the appellant to decide whether he or she wants representation at the hearing on any non-medical issues, or whether he or she will deal with them. The police authority also needs to consider its representation. In some cases the SMP or a medical representative may also deal with any non-medical issues on behalf of the police authority, but the authority may consider it preferable for there to be a non-medical representative for that purpose. The board may wish to clarify with the parties any issues which are not within the province of a medical representative. In doing so the board will bear in mind the need for parity of treatment between the parties, with the evidence of one party not treated as inherently more authoritative than that of the other.

83. Because of the nature of the appeal, neither party should need legal representation at the hearing. The board chair will allow a party such representation only in exceptional circumstances. Legal points can be put to the board in writing in advance of the hearing. If the appellant wishes to bring a friend or relative to provide moral support, the board should establish whether he or she will also act as a spokesperson. It will be in the interests of an orderly hearing to establish beforehand who will be speaking for either party.

84. If either party wishes to bring along a non-medical representative or companion, they should apply to the board chair, stating the name and status of the person as soon as possible, but not later than 7 days before the hearing. Each party should also notify the other of anyone who will be attending as their non-medical representatives. It will be for the board to ensure that numbers are reasonable and fairly balanced and it has discretion to limit the numbers attending and to refuse individuals permission to attend. Normally each party should have no more than one non-medical

representative present. Provided a companion for the appellant is not to take part in the proceedings, he or she should normally be allowed to attend the hearing in addition to such a representative. Where the board exceptionally refuses an individual permission to attend it should give the reasons.

*Conduct of hearing*

85. On arrival, those attending the hearing will be shown to a waiting room until the board members are ready to start the appeal. There should be separate waiting rooms for each party to the appeal. When the board is ready, a member of the board will escort those attending the hearing to the appeal interview room. Under no circumstances will the board see one party without the other party attending also being present. (This requirement does not, however, confer on a non-medical representative a right to attend a medical examination.)

86. A hearing will normally be as informal as possible, consistent with it being conducted in an orderly and business-like way. It will be for the board to ensure that order is kept. At the start of the hearing, the board chair will confirm with the appellant and the police authority representative in attendance, the medical questions to be decided. The chair will also mention the medical records and factual submissions obtained and considered by the board in advance of the hearing. The Chair will also refer to any refusal to give consent for release of medical records which the board wanted to see.

87. The board will then go through the submissions sent in by the parties, asking each party to set out the case in their submission orally, and asking for clarification and further information as necessary. . The parties will not normally be allowed to submit new evidence at the hearing, but this should not deter them from answering the questions put by the board fully and truthfully. The parties will also be given the opportunity to comment on each other's submissions. However, neither should interrogate the other; any points should be raised via the board.

88. The interview will then be adjourned for the appellant to be medically examined, normally in a separate examination room. The length of the examination will depend upon the type of medical condition involved. While the examination takes place, any non-medical representatives present for either party will be asked to wait in the reception area or waiting room. The SMP has the right to attend the examination, but only as an observer. The appellant may have one medical representative also in attendance as an observer. In cases where the SMP is not present one medical representative of the police authority may attend the examination as an observer in his or her stead.

89. After the examination, the hearing will be re-convened in the interview room. The chair will tell the parties if the board members have any further questions. The chair will then sum up the key points of the medical examination and provide the SMP and the medical representatives with the opportunity to raise questions about it. Unless a further examination is necessary as a result, the chair should then sum up the key facts and history of the case, as understood by the board, and give both parties the opportunity to make further comments or raise questions with the board members.

90. The hearing will then be concluded and the board chair will inform the attendees that the board will discuss the case between themselves and reach a decision on the relevant medical questions (see "The decision of the board" below).

91. The board will not inform the parties of its decision on the day of the hearing; the board must instead produce a detailed report of proceedings and its decision on the relevant medical issues and send it to both parties and also to the Secretary of State. This should normally be sent within 10

working days of the hearing (or in 15 working days in extenuating circumstances, e.g. if more information is required for it to reach a decision or if the consultant member of the board is not available to sign). This decision will be summarised in a form attached to its report.

*The decision of the board*

92. Regulation H2(3) states that the medical decision of the board is final, subject to a review under regulation H3. The board must reach a decision on any question it is considering on appeal in clear and unambiguous terms. Where there is room for doubt, the board should reach its decision on the balance of probabilities, making it clear in which way the balance is tipped and why.

*Costs*

93. Under Schedule H the board's fees and expenses will normally be paid by the police authority except where the board determines that the appeal was frivolous or vexatious – see paragraphs 95-96, or that the appellant should pay the costs of cancellation, postponement or adjournment – see paragraphs 97-98. The full charge for each appeal is on a fixed basis at £2,345 per standard appeal by 3-member Board and £600 per additional member.

94. Under Schedule H each party to the appeal will need to meet his or her own expenses of attending the hearing. If the appeal is successful, under paragraph 8(3) the police authority will refund to the appellant only his or her personal expenses in attending the hearing, where reasonably incurred. There will be no reimbursement of other fees or costs, such as for solicitors, medical or staff association representatives or others such as the appellant's spouse or partner, or for seeking a further medical opinion. Reasonable travel costs extend to travel within the UK.

95. The only exception to the procedure for paying expenses set out in the paragraph 94 above is where the police authority agrees in advance to pay a retired appellant's travelling and accommodation costs in excess of what they would have been, had the appeal be held at the location nearest to the appellant's home, in return for the appellant's agreement to attending a hearing at a location in or nearest to the force area. In such cases the appellant's costs may also include such reasonable excess costs of those accompanying him or her as are agreed by the police authority. Any costs agreed under this paragraph will not be recoverable by the police authority, whatever the outcome of the appeal.

96. If the board decides in favour of the police authority, and reports (whether or not at the request of the police authority) that the board's opinion is that the appeal was frivolous or vexatious, it should invite comments from the parties within 14 days as to the award of costs to the police authority. The authority can under Schedule H require the appellant to meet, either in whole or in part, the board's fees and expenses, unless the board, after taking account of any representations from either party, decides that there are exceptional reasons. In each case the board will state the reasons for its decision.

97. The appellant should keep a record of their expenses together with any receipts, since the police authority may refuse to pay for insufficiently documented costs. If there is any dispute about the documentation of a cost this will be decided by the board.

*Costs of failure to attend, or of late postponement, adjournment or cancellation*

98. If a hearing is cancelled or postponed with less than 11 working days' notice or adjourned, the police authority will be responsible for the board's charge as set out below unless the board determines:

- that the appellant was responsible; and
- that the matter was not outside the appellant's control and there were no exceptional reasons.

Where the board considers (whether or not at the request of the police authority) that the appellant may have been responsible, it will invite comments from the parties within 14 days and then reach a decision. Where the board finds the appellant is responsible for the charge, the authority can under Schedule H require the appellant to meet it in whole or in part.

| **Notice period for cancellation, postponement or adjournment** | **Fee as a percentage of the full charge for a Police Medical Appeal Board** |
|---|---|
| Same day, failure to attend, or 1 working day's notice | 100% |
| 2 working days' notice | 90% |
| 3-5 working days' notice | 80% |
| 6-10 working days' notice | 65% |
| More than 10 working days' notice | No charge |

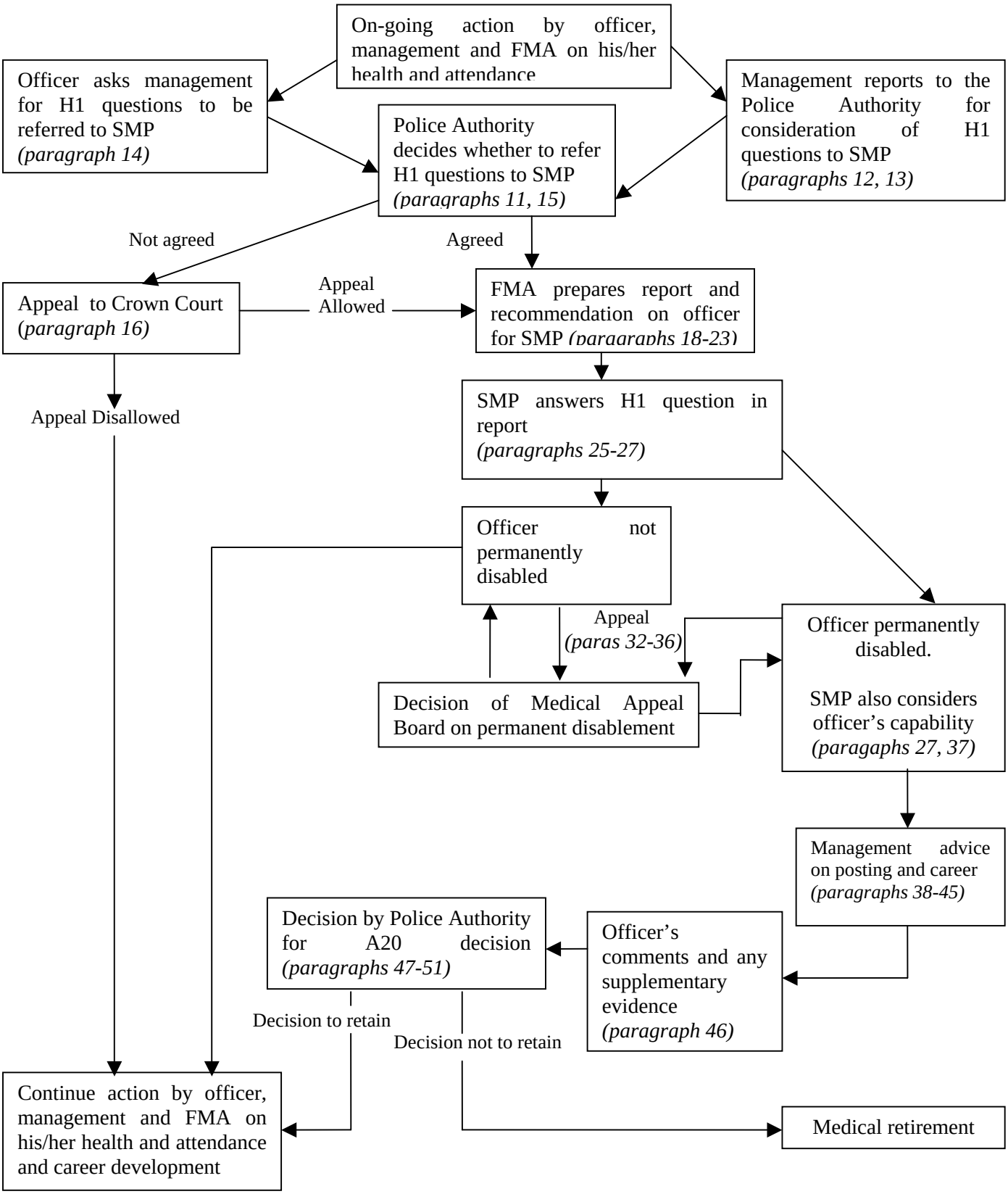
(Working days are defined in paragraph 73 above)

99. Where the police authority was responsible for the cancellation, postponement or adjournment the board will also make directions for the authority to pay the appellant's reasonable expenses incurred in attending an adjourned hearing or arranging to attend a postponed or cancelled hearing.

100. In each case where the board determines the issue of costs it will state the reasons for its decision. In the case of a postponement or adjournment the board's decision as to costs in respect of any particular instance during the appeal will be taken as near as possible to the point of the incident concerned, subject to taking account of representations in cases where paragraph 98 applies, and not at the end of the proceedings.

**GUIDANCE: ANNEX A**

*Flow chart showing the management process of ill-health retirement in the most standard cases*




*Note – H1 questions relate to the questions at Regulation H1(2)(a) and (b)*
*This flow chart includes all the key stages of a standard case but not all possible stages*
*Not every standard case will involve all these key stages*

**GUIDANCE: ANNEX B**

## NOTE ON PERMANENT DISABLEMENT

*Ordinary duties*

Under the Police Pensions Regulations an officer may be required to retire on medical grounds if he or she is permanently disabled for the ordinary duties of a member of the force. In its judgment in 2000 in the case of *Stewart* the Court of Appeal held that the reference to "ordinary duties" is a reference to all the ordinary the duties of the office of constable:

> "…the hypothetical member of the force whose ordinary duties the Regulation must have in mind is the holder of the office of constable who may properly be required to discharge any of the essential functions of that office, including operational duty."

2. In taking this view the Court was concerned that without a relatively robust test of fitness, a Police Authority would be unable to safeguard the operational effectiveness of its Force, since it would be obliged to retain too many officers who were unfit for operational duties. The Court accepted that a constable cannot perform his or her ordinary duties unless he or she can at least run, walk reasonable distances, stand for reasonable periods, and exercise reasonable physical force in exercising powers of arrest, restraint and retention in custody. Although the core policing tasks go wider than these, it is important that the criteria for ordinary duties are as clear and robust as possible.

3. Using the National Competency Framework as a basis, the following are the ordinary duties of a member of the force for the purpose of assessing permanent disablement under regulation H1:

- Managing processes and resources and using IT;
- Patrol/supervising public order;
- Incident management, such as traffic and traffic accident management;
- Dealing with crime, such as scene of crime work, interviewing, searching and investigating offences;
- Arrest and restraint;
- Dealing with procedures, such as prosecution procedures, managing case papers and giving evidence in court.

4. Taking each of these duties in turn, inability, due to infirmity, as defined by the Police Pensions Regulations (see paragraph 6 below), in respect of **any** of the following key capabilities renders an officer disabled for the ordinary duties:

- the ability to sit for reasonable periods, to write, read, use the telephone and to use (or learn to use) IT;
- the ability to run, walk reasonable distances, and stand for reasonable periods;
- the ability to make decisions and report situations to others;
- the ability to evaluate information and to record details;
- the ability to exercise reasonable physical force in restraint and retention in custody;
- the ability to understand, retain and explain facts and procedures;

5. An officer, who because of infirmity is able to perform the relevant activity only to a very limited degree or with great difficulty, is to be regarded as disabled.

*Disablement*

6. Under Regulation A12 disablement is defined as:

"inability, occasioned by infirmity of mind or body, to perform the ordinary duties of a member of the force…".

The Police Pensions Regulations under A12(5) define "infirmity of mind or body" as a disease, injury or medical condition, including a mental disorder, injury or condition, in order to make it clear that disablement, for the purpose of medical retirement, must have a recognised medical cause or be a disability as a result of injury, such as the loss of a leg.

7. This definition ensures as far as possible that the Selected Medical Practitioner (SMP) confines him or herself to a report which describes the cause of a permanent disablement by reference to internationally authoritative guides available to doctors such as ICD 10 (International Classification of Diseases) and DSM IV (Diagnostic and Statistical Manual).

*Permanent disablement*

8. Regulation A12(1) provides:

A reference in these Regulations to a person being permanently disabled is to be taken as a reference to that person being disabled at the time when the question arises for decision and to that disablement being at that time likely to be permanent. The phrase "likely to be permanent" is also used in Regulation H1(2) where the questions to be put to the SMP are set out.

9. Permanent disablement is qualified in the Police Pensions Regulations A12(1A) by reference to its being permanent despite the officer receiving appropriate medical treatment. For this purpose, "appropriate medical treatment" does not include medical treatment that it is reasonable in the opinion of the police authority for that person to refuse. Permanent is not given any further explanation in the Regulations. Arguably the word speaks for itself, meaning for the rest of one's life. If, in a case where the officer is still in the early stages of his or her career, such a long-term view is difficult the test should be that the officer is likely to remain disabled for the ordinary duties of a member of the force until at least the normal compulsory retirement age for his or her rank under regulation A18 – ie age 55 or more, depending on the rank and the force concerned.

*The questions to be decided by the SMP*

10. Regulation H1(2) of the Police Pensions Regulations provides:

"Where the police authority are considering whether a person is permanently disabled, they shall refer for decision to a duly qualified medical practitioner selected by them the following questions:

(a) whether the person concerned is disabled;

(b) whether the disablement is likely to be permanent.

11. However, unless there really is nothing wrong with an officer, then it will be helpful for the SMP's report to cover such issues as:

- whether he or she has an infirmity as defined by the Police Pensions Regulation A12(5) which impairs or prevents the performance of the ordinary duties;
- whether, in the case of each infirmity identified, the activities affected are affected to the extent that the person is **unable** to carry them out at present; and
- whether each infirmity identified is or is not likely to be permanent, assuming that appropriate medical treatment is given in the mean time.

*Appropriate medical treatment*

12. Regulation A12(1A) qualifies "likely to be permanent" to assume that the person receives normal medical treatment for his disablement.When assessing whether appropriate medical treatment can be assumed to be given in a particular case, the SMP will have to consider the following:

- the extent to which the treatment is likely to be effective in preventing permanent disablement, taking account of the officer's condition and of any other factors, such as allergies, which could lead to complications or harmful side-effects;
- the extent to which the treatment is tried and tested;
- the extent to which the treatment is available to the officer in time for it to be effective, taking account of general availability unless there are special reasons for that not being relevant.

13. The definition of appropriate medical treatment in the Police Pensions Regulation A12(1A)expressly excludes treatment to which the officer has a reasonable objection.

14. In a case where the SMP decides that the officer is not permanently disabled because specific appropriate treatment is available to the officer, it will be for the police authority to consider whether any objection by the officer to that treatment is reasonable or not. The authority should ask for whatever further medical advice or information about religious practices it thinks necessary. If the authority concludes that the objection is unreasonable the SMP's decision will stand. However, if the authority decides that the objection is reasonable the SMP will be asked, with the consent of the officer under regulation H3, to amend his or her report accordingly so that the officer is assessed as permanently disabled. There is a right of appeal under H5 and H6 against a decision of the police authority as to whether a refusal to accept medical treatment is reasonable.

**GUIDANCE: ANNEX C**

*Part 2 of SMP's Report*

The power to determine whether an officer is to be required to retire on medical grounds is vested in the police authority by Regulation A20. In *Stewart* Simon Brown LJ came to the following conclusion:

> "Regulation A20 manifestly vests in the Police Authority a discretion whether or not to enforce retirement on the grounds of disablement. […] the construction I favour would allow the Police Authority to retain any officer they wish to retain and at the same time enable them to ensure that they have as many fully fit officers as the force requires, for example in times of emergency."

2. Although the courts have given the police authority a wide enough measure of discretion under Regulation A20 to comply with the aim of retaining officers in the force wherever that is possible, it is important that an authority should exercise that discretion only after careful consideration of all relevant circumstances. A key factor is the extent to which the officer is still capable of some activities.

3. In a case where the SMP finds that an officer is more likely than not to be permanently disabled for the ordinary duties of a member of the force, he or she should be asked to examine in more detail the ordinary duties the officer is incapable of by reason of infirmity as defined by the Police Pensions Regulations A12(5) and to answer the following additional questions:

- Of the key capabilities related to those ordinary duties, which are not permanently affected by the infirmity identified?
- Which capabilities are permanently affected?
- In the case of the capabilities which are permanently affected which would the officer be capable of carrying out provided adjustments were made by management, and what adjustments would be involved?

4. Part 2 of the SMP's report must also address the extent to which, if at all, the SMP considers that the disablement will affect the officer's attendance. Where the SMP considers that attendance may be affected if the officer were to perform particular duties, this should also be addressed.