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**GUIDANCE ON MEDICAL APPEALS
UNDER THE POLICE PENSIONS REGULATIONS 1987 AND THE POLICE
(INJURY BENEFIT) REGULATIONS 2006**

SECTION 7

PREPARATION FOR THE HEARING

Location of hearing

Boards are organised by Health Management Ltd (HML) on a regional basis and consider cases from all police authorities in England and Wales and Scotland at a number of set locations. For the purposes of appeals against regulation H1/30 decisions in respect of serving appellants the appeal should normally be heard at the location in or nearest to the force area. A list giving the agreed location for each force in respect of appeals by serving officers has been agreed between the Home Office and the Scottish Public Pensions Agency, after consultation with the police service, and HML. Where an appellant is retired and living in England and Wales or Scotland, the appeal will normally be allocated by HML 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 HML of this in the appeal notification. Where the appellant is living in retirement outside England and Wales or Scotland, 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.

2. Under Schedule H to the Police Pensions Regulations 1987 and Schedule 6 to the Police (Injury Benefit) Regulations 2006, the appeal board 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

3. 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 extreme circumstances, may want to take the views of the parties, HML's lawyers and, if necessary, the Home Office.

4. 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

5. Wherever possible the appeal board should arrange by telephone to set a date which it knows is suitable for both parties, bearing in mind that HML have a requirement to arrange a hearing within such time as to enable the Board's report to be issued within 16 weeks of receipt by HML of papers from police authority. 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.

6. 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 that 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.

7. 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

8. Schedule H/6 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.

9. The notification referred to in paragraph 4 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 that if any new evidence is submitted less than 35 days prior to the hearing date there is a risk that that party will bear the costs of the postponement, cancellation or adjournment. 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

10. 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. Where a hearing is postponed after a request made with less than 29 calendar days' notice the board will also decide which party should pay the costs of postponement – see Section 10 – Appeal Costs.

Failure to attend

11. 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.

12. 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)/33(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 Section 10 – Appeal Costs.

Withdrawal from appeal

13. Where a party withdraws from the appeal, the board will confirm that the appeal is deemed to have been decided in favour of other party and decide, where withdrawal was with 21 calendar days' notice or less, which party should pay the costs of cancellation – Section 10 – Appeal Costs.

Attendance of representatives at hearing

14. As paragraph 6 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.

15. 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 not 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.

16. 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

17. 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 9, depending on whether an original submission or a response is involved.

Other representatives

18. 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.

19. 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.

20. 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.