

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

SECTION 10

APPEAL COSTS

Under Schedule H/6 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 3-4) or that the appellant should pay the costs of cancellation, postponement or adjournment (see paragraphs 5-7). In the case of appeals where the hearings are held between 1 October 2008 and 31 January 2009, appeals will be subject to the transitional arrangements set out in Home Office Circular 23/2008. The full charge for each appeal handled by Health Management Limited (HML), under the contract which came into effect on 10 November 2008, is on a fixed basis at £6,200 per standard appeal by 3-member Board and £1,000 per additional member.

2. Under Schedule H/6 each party to the appeal will need to meet his or her own expenses of attending the hearing. If the appeal is successful, 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.

3. The only exception to the procedure for paying expenses set out in paragraph 2 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 been 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.

4. The Regulations provide for the award of costs against an appellant if the appeal is judged to be frivolous or vexatious. 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/6 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.

5. The appellant should keep a record of his or her 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

6. As explained in the guidance sheet on Preparation for the Hearing, the reply form signed by each party confirms that they have read and understood the costs that may be incurred if the hearing has to be postponed or adjourned due to their giving inadequate notice, or if they withdraw from the appeal (and thereby cause the hearing to be cancelled) with inadequate notice, or if they fail to attend the hearing. Each party will also have confirmed that they understand

that if any new evidence is submitted later than 35 calendar days prior to the hearing date and their conduct leads to a postponement or cancellation being sought within 21 calendar 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. (Calendar days are defined as including weekends and Bank/Public holidays. Working days are defined as 9am to 5pm Mondays to Fridays excluding Bank and Public Holidays in England and Wales.)

7. Where a hearing is postponed or cancelled after a request made within 21 calendar days' or less notice or a hearing is adjourned, the board will need to decide who should pay the costs of such a late postponement, cancellation or adjournment. Although it may often be the party which makes the request who will be liable for costs, it could on occasion be the other party, because it submitted new evidence within 35 calendar days prior to the hearing date. In such circumstances it would not be fair to the party which made the request to bear the costs of a postponement, cancellation or adjournment.

8. Where the appellant fails to attend, the board will again need to decide who should pay the costs. Where a party withdraws from the appeal, the board will confirm that the appeal is deemed to have been decided in favour of the other party and decide, where withdrawal was with less than 21 calendar days' notice, who should pay the costs of cancellation.

9. If a hearing is cancelled or postponed with 21 calendar days' notice or less 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 or 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 calendar days and then reach a decision. Where the board finds the appellant is responsible for the charge, the authority can under Schedule H/6 require the appellant to meet it in whole or in part.

Notice period for cancellation, postponement or adjournment	Charge for a Police Medical Appeal Board
Same day, failure to attend, or 1 working day's notice	£6,200
2 working days' notice	£6,200
3-5 working days' notice	£5,200
6-10 working days' notice	£3,250
More than 10 working days' notice and up to 21 calendar days'	£1,300
More than 21 calendar days' notice	£0

Notes: 1. All costs exclude VAT

2. Cost for years 3 of the contract onwards will be based on Employment and Earnings: Main Industry Sectors SA: Private Sector Services SA inc Bonus: Index 2000=100:GB (Short code is emp: EG2;JJGH:AEI)

3. Working days are defined as 9am to 5pm Mondays to Fridays excluding Bank and Public Holidays in England and Wales. Calendar days are defined as including weekends

and Bank/Public holidays.)

10. 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.

11. 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 9 applies, and not at the end of the proceedings.

Costs of reconsideration of appeals under H3/32

12. In a case where both parties agree to refer the decision back to the board under H3/32, either the members of the original board will meet and carry out a paper review or a new board will be convened for a full hearing, dependent on the needs of the case. The cost for a paper review will be **£1,600** per review. As a full hearing would consist of a new board the costs will be the same as the standard appeal heard by a three-member Police Medical Appeal Board and Additional Consultant Physician (if required) as set out in paragraph 1 of this section.

13. In view of the voluntary nature of this arrangement, a key factor in the decision whether to proceed with a review under H3/32 will be the costs involved for the parties and a comparison with the costs of seeking a judicial review of the board's decision instead. These considerations apply also to the board since failure to undertake a review proposed by both parties could lead to greater expense for them if the result is a re-hearing ordered by the court. The amount payable, and who pays, will ultimately depend on what is agreed by the parties and the board in each case.