

**POLICE NEGOTIATING BOARD**

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**AGREEMENT REACHED OUT OF THE POLICE NEGOTIATING BOARD**

1. At the meeting of the Police Negotiating Board on 15 April 2010 authority to formally agree revised joint guidance for police authorities and senior force managers on the key areas of managing ill-health (to take account of the procedures in the New Police Pension Scheme 2006) was delegated to the Official Side and Staff Side Secretaries. Agreement has accordingly been reached out of committee on revised joint guidance. 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 7215 8101 or to the Official Side Secretary ☎ 020 7187 7340 or to the Staff Side Secretary ☎ 01372 352000. Enquiries to the Independent Secretariat relating to the interpretation of this circular should, where possible, be sent in writing.

9 August 2010

\* 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.

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### **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. This version updates PNB Joint Circular 03-19 to take account of the New Police Pension Scheme, introduced in 2006.

2. To retain the widest applicability of the guidance, references within the text to specific regulations have been minimised and any that are necessary have been amended to refer to the correct regulation(s). Where the Police Pension Regulations are referred to without a date it refers to both sets of regulations as a whole. In some cases it is correct to refer to both the regulation in the Police Pension Regulations 1987 *and* the Police Pension Regulations 2006. As a rule of thumb, the references to the 1987 regulations consist of a capital letter followed by a number, whereas the references to the 2006 regulations are just a number. To ensure that there is clarity, [1987] or [2006] as appropriate will appear after the regulation reference. The analogous terms “1987 scheme” and “2006 scheme” will be used where it is necessary to refer to one of the pension schemes.

3. It is worth noting at the outset that the statutory medical questions are different under the two schemes. This means that while the procedure is substantially the same, the underlying position is different. The statutory medical questions are set out and discussed further in the Guidance for SMPs, which is attached at Appendix B to this circular. The statutory medical questions are those which must be asked of the SMP where a police authority is considering the issue of ill-health retirement for an individual officer.

##### **Context**

4. 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**

5. A flow chart setting out the key steps in the medical retirement process is attached at **Appendix A**. If a case were to pass through 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**

6. 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.

7. 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 on the reference of permanent disablement questions and medical retirement decisions (see H1 & A20 [1987] and 71 & 21 [2006]) 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 on the reference of permanent disablement questions and medical retirement decisions (see H1 & A20 [1987] and 71 & 21 [2006]) 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 referral of statutory medical questions (see H1 [1987] and 71 [2006]) 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 which have been delegated to it on the reference of permanent disablement questions and medical retirement decisions (see H1 & A20 [1987] and 71 & 21 [2006]).

*Delegation of powers*

8. 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.

9. 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.

10. 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 on medical retirement (see A20 [1987] and 21 [2006]) and should not have been closely involved in the case up to that point.

*Qualifications of FMA and SMP*

11. 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.

12. 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 and the mechanics of the ill-health retirement process. Relevant guidance should be provided to SMPs, including this circular, which incorporates guidance specifically written for SMPs (see **Appendix B**). SMPs should also have access to the Home Office Guidance for Members of the Police Medical Appeal Board.

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

13. 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. Further guidance on the definition of permanent disablement is included in **Appendix 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 statutory medical questions (see H1 [1987] and 71 [2006]) to SMP*

14. 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 (see H1 [1987] and 71 [2006]) only where the FMA so advises.

15. 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 to a SMP (see H1 [1987] and 71 [2006]), 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 statutory medical questions (see H1 [1987] and 71 [2006]) to be referred to SMP*

16. It should not normally be necessary for the officer to have to raise the issue of referral to a SMP (see H1 [1987] and 71 [2006]), 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 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.

17. 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 either by the SMP (see H1 [1987] and 71 [2006]) or on appeal to a board of medical referees (see H2 [1987] and 72 [2006]). 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.

#### *Appeal to the Crown Court*

18. A refusal by a police authority to refer a case to the SMP is subject to appeal to the Crown Court (see H5 [1987] and 66 [2006]). 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*

19. 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 2006.)

#### *FMA prepares advice to SMP*

20. 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 to answer the relevant statutory questions as appropriate (see H1(2) [1987] and 71 [2006]). In all cases if his or her opinion is that the officer is permanently disabled for the ordinary duties of a member of the force, the SMP will also be asked to assess the extent of the officer's capability for other work. This assessment will be conducted in the same way regardless of which scheme the officer is a member of, although the reason for undertaking it varies between the two schemes. Further details of the differences are contained in the SMP guidance. 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 police

duties, this should also be addressed. (This applies also to references to assessments of the officer's capability in paragraphs 21, 29 and 56.)

21. 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 for the ordinary duties of a member of the force. 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 for the ordinary duties of a member of the force he or she should complete a capability assessment checklist (included in **Appendix B**). (This section will not include any confidential medical information and therefore no consent of the officer is required.)

22. Wherever possible the FMA should give a clear view on whether or not the officer is permanently disabled, whether for the ordinary duties of a member of the force or, in appropriate cases, for regular employment. 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.

23. It will normally be expected that the SMP will examine the officer concerned, but there may exceptionally be cases where the police authority indicates that there are no management objections to there being no examination. Without an examination there can be no full assessment of the officer's capability. This course will therefore be appropriate only where expedited consideration of medical retirement is being recommended and, in 2006 scheme cases, where the FMA considers the officer to be permanently disabled for regular employment as well as for the ordinary duties of a member of the force. 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.

24. 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.

25. 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*

26. 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**

27. 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 report. The report will be in two parts:

- Part 1 dealing with permanent disablement for the ordinary duties of a member of the force;

and, where the SMP considers the officer is permanently disabled for ordinary police duties,

- Part 2 dealing with permanent disablement for regular employment and capability for retention in the force.

Templates for such reports can be found in **Appendix B** – Annexes C&D.

#### *The SMP determines permanent disablement for ordinary police duties (see H1(2)(a) and (b) [1987] and 71(a) and (b) [2006])*

28. The first question for the SMP is to determine whether the officer is permanently disabled for the ordinary duties of a member of the force as defined in the regulations (see H1 [1987] and 71 [2006]). This assessment is dealt with in more detail in **Appendix 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 determines permanent disablement for regular employment (see 71(c) and (d) [2006]) and/or capability*

29. The SMP should go on to complete Part 2. In all cases the SMP will need to undertake a capability assessment. This will involve assessing – in the 1987 scheme – the officer's capability for further police service, and – in the 2006 scheme – the officer's capability for work in outside employment before going on to assess capability for further police service. However, the

level of detail in which the assessment is made and reported in Part 2 will depend on the circumstances.

- (1987 scheme) where the SMP does not consider the person to be permanently disabled for the ordinary duties of a member of the force, nothing further is required
- (2006 scheme) where the SMP does not consider the person to be permanently disabled for the ordinary duties of a member of the force he or she should complete the report answering questions (c) and (d) (permanent disablement for regular employment). A detailed explanation will not normally be necessary.
- In the situation where the SMP considers the person to be disabled (whether for ordinary police duties or regular employment), but not permanently so, he or she should give some comment if the particular circumstances mean that there is some uncertainty over a particular event (e.g. failure of an operation or new treatment being undertaken) which may result in the officer becoming permanently disabled.
- Where the SMP concludes that the person is permanently disabled for the ordinary duties of a member of the force, he or she should normally go on to supplement that in Part 2 with a detailed assessment of the officer's capability for the key activities required for police service and also, in the 2006 scheme, outside employment using the capability assessment checklist in **Appendix B**, taking account of the FMA's assessment as appropriate – see paragraphs 33 and 34 below for exceptional cases. Further details on what is required in the Part 2 report are included in **Appendix B**.

## **Deciding Cases: Action by the Police Authority**

### *Inviting Representations*

30. 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 (officer only) appeal (see H2 [1987] and 72 [2006]) as applicable before reaching a decision on medical retirement (see A20 [1987] and 21 [2006]). The police authority should normally complete this action within 7 days.

31. The police authority should send the officer's copy of both parts of the SMP's report under cover of a letter explaining his or her right of appeal against any of its conclusions on the statutory medical questions 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 38 which deals with the procedure for doing so). Where the officer has been assessed as permanently disabled for the ordinary duties of a member of the force, the police authority will ask the officer to comment on whether he or she wishes to stay in the force. The authority will also confirm that it is passing the SMP's Part 2 report to the Chief Constable for comment – see paragraphs 41 and 42. The letter will also explain that if the officer does not want to appeal against the SMP's decision he or she may send written comments on any aspect of Part 2 to the police authority so that they

can be considered by the SMP, and advise the officer that he or she will also be given an opportunity to comment on the Chief Constable's report when it is available.

32. Where an officer is assessed as permanently disabled for regular employment the officer should, as part of the process of seeking his or her views on the SMP's report on capability and the chief constable's report, be asked in any case where it might be appropriate, whether he or she would be prepared to agree to change his or her conditioned hours in order to remain in service on a part time basis. An officer cannot be forced to work part time without agreement. If an officer is not prepared to agree a change to his or her hours then the chief constable's report and consideration of the matter by the police authority must proceed on the basis that any retention would be on a full time basis.

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

#### *FMA acting as SMP*

33. 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 part 1 of the SMP's report, covering permanent disablement for the ordinary duties of a member of the force and in 2006 scheme cases also for regular employment, as quickly as practicable. Instead of providing detailed advice on capability, the FMA should set out the medical circumstances and to draw attention to any points of action for the police authority. The FMA should 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*

34. Medical retirement may need to be expedited in other cases than just those where the FMA has acted as SMP. In such a case the SMP will not set out detailed advice on capability in part 2 but instead recommend to the police authority that it give early consideration to medical retirement. Such a recommendation should not be made routinely in every case where an officer is assessed as permanently disabled [1987]/permanently disabled for regular employment [2006], since the SMP will normally be expected to support that assessment with detailed evidence. However, the SMP should make such a recommendation in any case where an officer who is permanently disabled [1987]/permanently disabled for regular employment [2006] does not want to stay on in the force and is suffering from a condition the severity of which, in the clear view of the SMP, makes detailed advice on capability (with a view to retention in the force) unnecessary. If, on receipt of the SMP's Part 2 report

recommending expedited consideration of ill-health retirement, 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 should take an immediate decision on medical retirement (see A20 [1987] and 21 [2006]). An expedited decision by the police authority will not prejudice the officer's appeal rights. If in the particular circumstances of a case, the police authority does not consider itself justified in proceeding immediately to retirement, it will ask the SMP to give detailed advice on capability in part 2, including completing the capability assessment form, as a matter of priority. 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 to a board of medical referees (see H2 [1987] and 72 [2006])*

35. The officer will have a period of 28 days following his or her personally receiving a copy of the Parts 1 and 2 of the SMP's 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 statutory medical questions (see H1 [1987] and 71 [2006]) as stated in the conclusion to his or her report. If the officer agrees with the SMP's conclusions on the statutory medical questions he or she has no right of appeal against the contents of the SMP's report. The 28-day 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 her 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.)

36. 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 statutory medical questions (see H1(2)(a) and (b) [1987] and 71(a) to (d) [2006]) 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.

37. 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 an appeal board.

*Possibility for internal review of decisions under dispute*

38. A police authority and an appellant can agree to refer a decision back to the SMP for reconsideration (see H3(2) [1987] and 73(1) [2006]). 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 [1987] or 72 [2006]. 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 further reference to a medical authority 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 (see H2 [1987] and 72 [2006]) against the original decision (see H1 [1987] and 71 [2006]) should be allowed to proceed.

*Action by police authority to take appeal process forward*

39. The possibility of a further reference to a medical authority (see H3 [1987] and 73 [2006]) should not be allowed to delay the appeal process unduly and the authority should either offer the officer internal resolution, without prejudice to their 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 33 and 34 above, the presumption will be that the police authority will only reach a decision on medical retirement (see A20 [1987] and 21 [2006]) once the outcome of an appeal is known. However, exceptionally, there may be other cases where the police authority decides, in the particular circumstances of the case, that the most appropriate course is to medically retire an officer (see A20 [1987] and 21 [2006]) while the appeal is still pending.

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

40. Where the medical appeal board overturns an SMP's decision that an officer is not permanently disabled for the ordinary duties of a member of the force, the police authority should arrange, in consultation with the FMA, for another SMP to be given a copy of the board's decision (see H2 [1987] and 72 [2006]) 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. Such a referral will not be necessary where the board has found the officer to be permanently disabled for regular employment unless the officer wishes to stay on, or is

willing to consider staying on, as a police officer on reduced hours in spite of that disablement.

**Preparation and action for a decision on medical retirement (see A20 [1987] and 21 [2006])**

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

41. Where the officer has been assessed by the SMP or, on appeal, by the appeal board as permanently disabled for the ordinary duties of a member of the force, 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 and 2 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 45 to 46.
- 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

42. Unless there is a reason for retiring an officer while a medical appeal is still pending (see paragraph 39) the chief constable will wait until any appeal has been decided before making his or her recommendation as to whether the officer should be retained. The chief constable will not comment on suitability and aptitude for retention where the officer is permanently disabled for regular employment unless the officer wishes to remain, or is willing to consider remaining, in service on reduced hours. 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.

43. 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.

44. 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*

45. 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.

46. 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.

47. 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.

48. When assessing the operational needs of the force at the second point in paragraph 46 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*

49. If assessed as permanently disabled by the SMP or the medical appeal board, whether just for the ordinary duties of a member of the force or also for regular employment, the police authority will also have given the officer an opportunity to make representations about his or her case and to say whether he or she wishes to remain in the force. In a case where he or she has not appealed to the board, the officer may comment on any aspect of Part 2 of the report by the SMP and in all cases the officer may comment on any supplementary advice given by the SMP to the chief constable, for instance on the risk which would be incurred by his or her performing certain duties. Any such comment will be sent to the SMP for consideration. The officer may also comment on the report from the chief constable. If the officer disputes or queries any medical issue he or she may adduce medical or other relevant evidence, but on the understanding that he or she cannot overturn the SMP's decision on statutory medical questions without appealing to the board. 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.

50. Where the officer disagrees with detailed comments made by the SMP 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 on medical retirement (see A20 [1987] and 21 [2006]), 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.

51. 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.

*Decisions by police authority*

52. 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.

53. Where the officer has been assessed as permanently disabled for the ordinary duties of a member of the force, the police authority should consider all the evidence before it before reaching a decision on medical retirement (see A20 [1987] and 21 [2006]). 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 46 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.

The police authority should also be mindful of their obligations under the DDA.

54. If retention is not practicable, the officer should be medically retired with the officer given confirmation of any pension benefit he or she is to receive, including whether he or she is to receive a lower-tier or upper-tier ill-health pension and a reference to the fact that the pension is or may be subject to review. 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 on medical retirement (see A20 [1987] and 21 [2006])*

55. The expectation is that a decision on medical retirement (see A20 [1987] and 21 [2006]) 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 Performance 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, paragraphs 49 to 51 apply as if references to the SMP were references to the FMA.

56. An officer who wishes to ask the police authority for a review of the decision about medical retirement (see A20 [1987] and 21 [2006]) 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 55 above.

**Appeal to a board of medical referees (see H2 [1987] and 72 [2006])**

57. 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 (see H1 [1987] and 71 [2006]), there is provision for a right of appeal (see H2 [1987] and 72 [2006]). 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 35 to 37 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*

58. 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 (see H3 [1987] and 73 [2006]). 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 38 above. (A set of appeal forms is provided with the Home Office guidance to the Police Medical Appeal Board.)

*New medical evidence*

59. 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 (see H3 [1987] and 73 [2006]).

60. If an internal review (see H3 [1987] and 73 [2006]) 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*

61. Where there is no internal review of the SMP's decision, 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 the appeal board administrator appointed by the Secretary of State (hereafter referred to as the ABA). 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.

62. It will be for the board chair appointed by the ABA 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.

The ABA 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*

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

- a copy of an appeal notification (Appeal Form B) from the police authority – see paragraph 64
- 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 medical decision (see H1 [1987] and 71 [2006]) against which the appeal is made.

64. 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.

65. 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 are given at paragraph 76 below). This simultaneous exchange should reduce the need for adjournments due to late submission of evidence and the consequential assignment of costs.

66. 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*

67. 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.

68. 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*

69. Boards are organised by the ABA 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 the ABA 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 the ABA 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.

70. The board of Medical Referees will consist of at least 3 members as follows (see Schedule H [1987] or 74 [2006])–

- 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 may want to take the views of the parties, the ABA's lawyers and, if necessary, the Home Office.

71. 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*

72. 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.

73. 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.

74. 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*

75. The terms for written evidence are outlined in schedule H [1987] and regulation 74 [2006]. 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.

76. The notification referred to in paragraph 72 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 101-102) 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*

77. 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 74 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 101-102 below.

#### *Failure to attend*

78. 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.

79. 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. 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 (see H4(b) [1987] and 75(b) [2006]). In either case the board will also decide which party should pay the costs of postponement or cancellation – see paragraphs 101-102 below.

#### *Withdrawal from appeal*

80. 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 101-102 below.

#### *Attendance of representatives at hearing*

81. As paragraph 73 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.

82. 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.

83. 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*

84. 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 76, depending on whether an original submission or a response is involved.

#### *Other representatives*

85. 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.

86. 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.

87. 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*

88. 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.)

89. 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 statutory 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.

90. 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.

91. 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.

92. 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.

93. 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 statutory medical questions (see "The decision of the board" below).

94. 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*

95. The regulations state that the medical decision of the board is final (see H2(3) [1987] and 72(3) [2006])., subject to further reference to a medical authority in limited circumstances (see H3 [1987] and 73 [2006]). 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

96. 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 98-99, or that the appellant should pay the costs of cancellation, postponement or adjournment – see paragraphs 101-102 (see schedule H [1987] and regulation 74 [2006]). The full charge for each appeal is on a fixed basis determined by the contract with the ABA. This currently stands at £6,200 per standard appeal by 3-member Board and £1,000 per additional member. The charge for reconsideration of appeals is £6,200 with a further hearing, and £1,600 without a further hearing.

97. Each party to the appeal will need to meet his or her own expenses of attending the hearing (see schedule H [1987] and regulation 74 [2006]). 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.

98. The only exception to the procedure for paying expenses set out in the paragraph 97 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.

99. 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 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 (see schedule H [1987] and regulation 74 [2006]). In each case the board will state the reasons for its decision.

100. 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*

101. If a hearing is cancelled or postponed with less than 22 calendar 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 require the appellant to meet it in whole or in part (see schedule H [1987] and regulation 74 [2006]).

<b>Notice period for cancellation, postponement or adjournment</b>	<b>Fee (percentage of the full charge for a Police Medical Appeal Board)</b>
Same day, failure to attend, or up to 2 working days' notice	£6,200 (100%)
3-5 working days' notice	£5,200 (84%)
6-10 working days' notice	£3,250 (52%)
More than ten working days notice and up to 21 calendar days notice	£1,300 (21%)
More than 21 calendar days notice	No charge

(Working days are defined in paragraph 76 above)

102. 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.

103. 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 101 applies, and not at the end of the proceedings.

**Reconsideration and review of ill-health pensions (see K1[1987] and 51[2006])**

104. In the following paragraphs references to ill-health pensions include early payment of a deferred pension upon ill-health retirement under A20 [1987] and early payment of such a pension on the ground of permanent disablement for engaging in any regular employment under 32 [2006]. In order to safeguard the public purse ill-health pensions, are subject to reconsideration [1987] or review [2006] in order that the police authority can confirm that continued payments are appropriate. The power to order a reconsideration or review of an ill-health pension lies with the police authority,

but no change can be made to an ill-health pension without the decision of an SMP on whether or not a former officer is still disabled. The timing and reasons for reconsideration or review depend on whether the former officer is a member of the 1987 scheme or 2006 scheme, and, if a member of the 2006 scheme, whether the former officer has an upper-tier or a lower-tier ill-health pension, but many of the procedures will be the same.

105. It should be noted that the following discussion assumes that the former officer who is the subject of reconsideration or review is within the age and time limits as set out in the regulations. These limits will not be discussed in detail here.

106. In the 1987 scheme the purpose of reconsideration is to consider only whether the disablement has ceased, whereas in the 2006 scheme reviews are also to determine whether a recipient has changed tier. In view of the differences between the two schemes, each will be dealt with in turn.

### *1987 scheme*

#### *Reason for a reconsideration*

107. The purpose of a reconsideration is to determine whether a former officer who is in receipt of an ill-health pension and whom the police authority might want to provide an opportunity of re-joining the force, is still disabled.

108. Reconsideration of a former officer receiving an ill-health pension will be conducted to establish whether the person is still disabled. The question to be put to the SMP has to be precise. It is whether or not the former officer is still disabled for the ordinary duties of a member of the force. If the SMP assesses the former officer to be disabled but no longer permanently disabled the doctor cannot set the original medical decision aside but should instead recommend a further reconsideration when the former officer's disablement can be expected to have ceased.

#### *When to reconsider*

109. Where a former officer has an ill-health pension the police authority is under no obligation to reconsider his or her disablement. An ill-health pension may be removed only where a former officer is no longer disabled and has refused the offer of being taken back into the force. Normally reconsiderations of ill-health awards will be confined to former officers whom the force might want to provide an opportunity of re-joining the force and who have conditions which were flagged up by the SMP at the time of the officer's retirement as suitable for reconsideration, eg because the case was borderline. A person who is taken back under K1 will be reinstated in his or her former rank and pay scale and will be entitled to resume membership of the 1987 scheme on the same terms as applied when he or she was retired. This means that a former officer who was retired with an ill-health pension will be able to resume membership with eligibility to further ill-health benefits.

110. A reconsideration of an ill-health pension may also be requested by a former officer who considers that his or her condition has improved. However

such a person has no entitlement to being taken back into the force under the reconsideration procedure. A police authority has the discretion to decline to re-engage a former officer under K1. In such circumstances a person who still wishes to re-join the force may undergo the normal recruitment procedures instead. This would include consideration for eligibility for awards payable on the ground of permanent disablement.

#### Procedure for reconsideration

111. Such a reconsideration can only be initiated by the police authority. The former officer may request a reconsideration, and it is advisable that this should be made in writing to the Chief Executive of the police authority and should be supported by the former officer's doctor. The police authority is entitled to refuse such a request.

112. Although ill-health pensions are subject to a power to reconsider, the police authority should only conduct a reconsideration in cases where the force might want to provide an opportunity of re-joining and where reconsideration may result in the officer being assessed as no longer disabled for the ordinary duties of a member of the force. Once the police authority decides, on advice from the force personnel department and the OH unit, that the ill-health award should be reconsidered, the next stage will be a written enquiry for information, unless the details required have already been supplied. The force personnel department will send the former officer a short questionnaire to complete with details of his or her:

- state of health,
- current and recent employment,
- GP, and
- authorisation for the GP to provide further relevant information as requested by the OH unit.

113. It will be for the OH department to decide in the light of the replies whether to ask the GP for more information about the former officer's state of health. Unless it is evident from the information that the former officer's disablement has not ceased, it will be necessary for the SMP to examine the former officer in each case, since reconsideration concerns whether the former officer's disablement for the ordinary duties of a member of the force has ceased.

#### *2006 scheme*

#### Reason for a review

114. The purpose of a review is to determine whether a former officer in receipt of an ill-health pension is still disabled or still disabled at the level he or she was at the time of retirement or the most recent review since then.

115. Reviews of former officers receiving an upper-tier ill-health pension will be conducted in the first instance to establish whether they are still disabled for regular employment. However, reviews may also be carried out where a former officer is receiving a lower-tier pension, either to check whether the disablement has ceased or in certain circumstances to see whether his or her

condition has become worse and he or she is now also permanently disabled for regular employment – see paragraph 120 below.

116. The precise questions to be put to the SMP will depend on the issue being considered:

- If the former officer is receiving an upper-tier ill-health pension the SMP must be asked whether he or she is still disabled for regular employment and if not whether he or she is still disabled for the ordinary duties of a member of the force. If the SMP assesses the former officer to be disabled but no longer permanently disabled the doctor cannot set the original medical decision aside but should instead recommend a further review when the former officer's disablement can be expected to have ceased.
- If the former officer is receiving a standard ill health pension the SMP must be asked whether he or she is still disabled for the ordinary duties of a member of the force (and if so whether he or she is also permanently disabled for any regular employment). If the SMP assesses the former officer to be disabled but no longer permanently disabled the doctor cannot set the original medical decision aside but should instead recommend a further review when the former officer's disablement can be expected to have ceased

#### When to review

117. Where a former officer has an upper-tier ill-health pension the police authority may arrange for a review to be carried out at intervals of no more than five years while he or she remains below age 65. Reviews will normally be instigated by the police authority but the former officer may request one as well. There will be no further reviews of an upper-tier pension once the person has reached age 65. If such a person is assessed, when still under 55, as no longer disabled for regular employment the SMP will need to consider whether he or she continues to be disabled for the ordinary duties of a member of the force. If he or she is not thus disabled, the police authority has the discretion to invite the former officer to re-join the force.

118. Where a former officer has a lower-tier ill-health pension, this may be removed only where a former officer is no longer disabled and has refused an offer of being taken back into the force. Normally reviews of lower-tier ill-health awards will be confined to former officers whom the force would want back and who have conditions which were flagged up by the SMP at the time of the officer's retirement as suitable for review, eg because the case was borderline or because treatment for it was likely to improve over time. A person who is taken back under regulation 51 will be reinstated in his or her former rank and pay scale and will be entitled to resume membership of the 2006 scheme on the same terms as applied when he or she was retired. This means that a former officer who was retired with an ill-health pension will be able to resume membership with eligibility to further ill-health benefits.

119. A review of a lower-tier pension may also be requested by a former officer under the age of 55 who considers that his or her condition has improved. However such a person has no entitlement to being taken back

into the force under the review procedure. A police authority has the discretion to decline to re-engage a former officer under regulation 51. In such circumstances a person who still wishes to re-join the force may undergo the normal recruitment procedures instead. This would include consideration for eligibility for awards payable on the ground of permanent disablement.

120. A lower-tier ill-health pension may be increased to an upper-tier pension on review following a referral by the police authority or an application for such a referral by the former officer. However, with the exception of progressive diseases (see paragraphs 124 – 125 below), such a referral or application must be made within the first five years following the officer's ill-health retirement. Where a referral or application is made just before the five-year deadline the SMP should consider the case as promptly as possible to maintain the integrity of the time limit.

#### Procedure for review

121. In all cases the review will be initiated either by the police authority or the former officer. A request by a former officer for a review must be made in writing to the Chief Executive of the police authority and must be supported by his or her doctor. Otherwise the police authority is entitled to refuse to consider the application. Where the five-year time limit applies the request must be received by the Chief Executive within that limit.

122. Although ill-health pensions are subject to a power to review, the police authority will apply full reviews only to cases where they may result in a change of status. A paper sift of cases for review by the police authority in consultation with the OH unit will help to avoid unnecessary examinations of severely disabled pensioners and enable Force resources to be used in a focused way. It will be for the police authority to decide, on advice from the force personnel department and the OH unit, whether the review needs to proceed beyond the paper sift stage. Where it does, the next stage will be a written enquiry for information, unless the details required have already been supplied. The force personnel department will send the former officer a short questionnaire to complete with details of his or her:

- state of health,
- current and recent employment,
- GP, and
- authorisation for the GP to provide further relevant information as requested by the OH unit.

123. It will be for the OH department to decide in the light of the replies whether to ask the GP for more information about the former officer's state of health. It will **not** be necessary for the SMP to examine the former officer in each case, since reviews can often be concluded by the SMP on the basis of written evidence. The SMP should examine a former officer only where:

- the force personnel department or the former officer specifically requests an examination;
- the former officer denies access to the GP;
- disablement (whether for regular employment or the ordinary duties of a member of the force) may now have ceased; or

- the condition of a person with a lower-tier ill-health pension appears to have altered for the worse either within the first five years of retirement or because the officer's disablement was due to a progressive disease at the time of retirement.

### Progressive disease

124. Where an officer is retired with a lower-tier ill-health pension but is permanently disabled at the time of retirement due to a progressive disease, there is no time limit on when that person can apply for an upward review of his or her pension if his or her condition has deteriorated because of the progressive disease. This avoids the application of the cut off in cases where an officer is medically retired from the force with a condition which by its nature will get worse and eventually leave him or her permanently disabled for regular employment but which may not qualify him or her for an upper-tier ill-health pension within five years.

125. In order for clarity as to what is meant by a progressive disease, the regulations set out the list (Schedule 4 [2006]). This may be reviewed from time to time, but the current list is:

- AIDS
- Alzheimer's disease
- Cancer
- Creutzfeld-Jacob Disease
- Huntington's chorea
- Motor Neurone Disease
- Multiple Sclerosis
- Nieman Pick disease
- Non-variant Creutzfeld-Jacob Disease
- Parkinson's Disease
- Variant Creutzfeld-Jacob disease

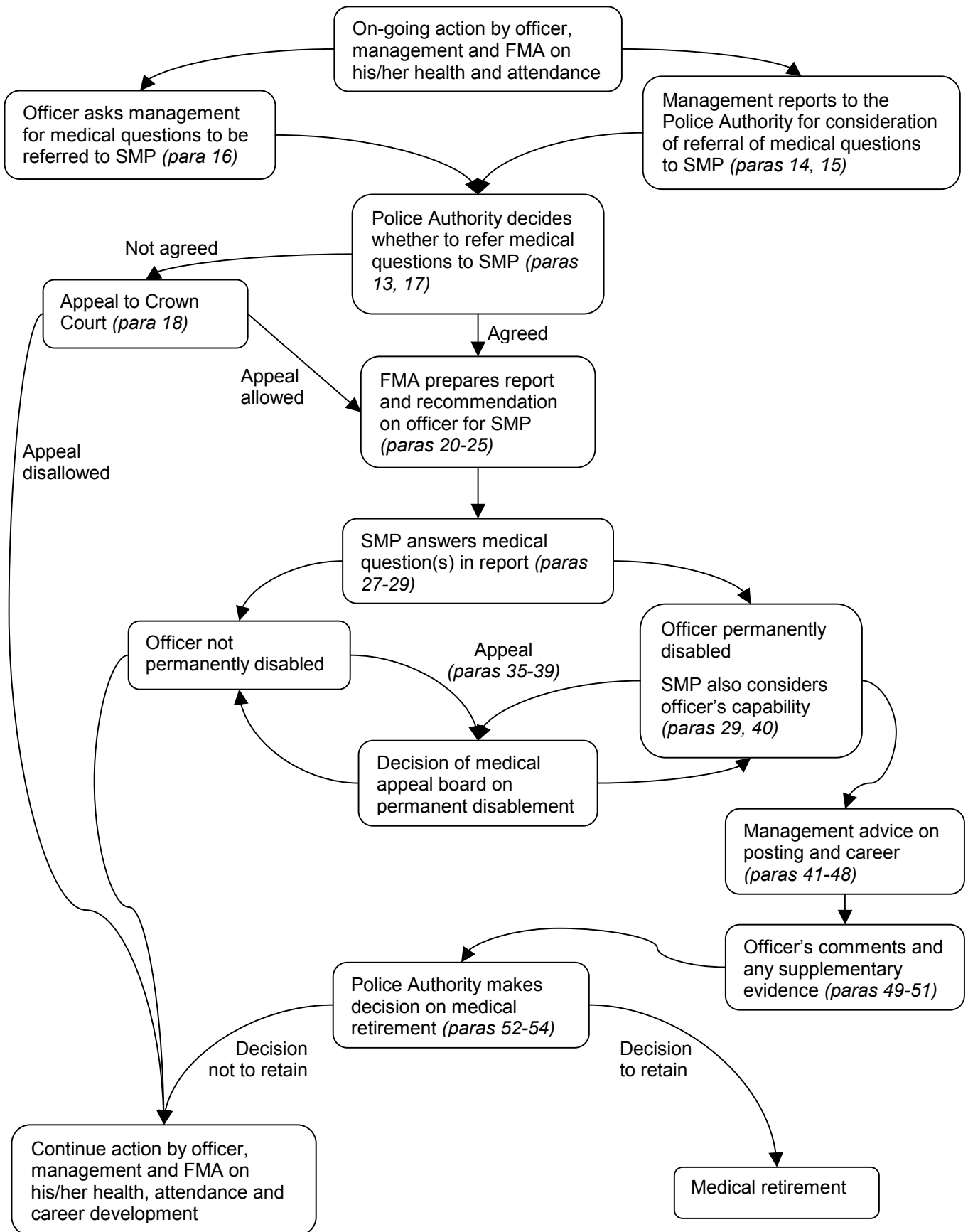
It is not essential that the SMP flag up at the time of initial assessment whether the officer has a progressive disease, but it would be good practice to do so wherever possible.

### Review in the case of a serving officer

126. A review under regulation 21 is also available where an officer who was assessed as permanently disabled for the ordinary duties of a member of the force but retained in the force. In such cases the officer's condition may have improved or deteriorated. At one end of the spectrum the officer may no longer be disabled, at the other the officer may also have become permanently disabled for regular employment. In both cases, where there has been a significant development, it would be inappropriate to let him or her to continue to serve in the force without referring statutory medical questions (a) to (c) at regulation 71(2) [2006] to the SMP in order to update the medical record and, where the officer is now permanently disabled for regular employment, to enable the police authority to review the decision to retain him or her.

Guidance: Appendix A

Flow Chart showing the management process of ill-health retirement in the most standard cases.



Note – “medical questions” relate to the questions at regulation H1(2)(a) and (b) [1987] and 71 (a) to (d) [2006]  
 “medical retirement” relates to the decision at regulation A20 [1987] and 21 [2006]  
 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



# The Police Pension Scheme 1987 The New Police Pension Scheme 2006

## Guidance for Selected Medical Practitioners

# Contents

1. Introduction
  2. The SMP's role
  3. The questions to be decided by the SMP
  4. Permanent Disablement for the Ordinary Duties of a Police Officer
  5. General Work Capability
  6. Reasonable adjustments
- Annex A      General Work Capability assessment for both PPS and NPPS members
- Annex B      General Work Capability assessment checklist
- Annex C      SMP's overall assessment and decision form (PPS members)
- Annex D      SMP's overall assessment and decision form (NPPS members)

# 1. Introduction

- 1.1 Both the Police Pension Scheme 1987 (PPS) and the New Police Pension Scheme 2006 (NPPS)<sup>1</sup> include a facility to retire police officers who are no longer able on medical grounds to carry out the ordinary duties of a member of the force<sup>2</sup>.
- 1.2 Under both schemes, it is for the police authority to determine whether an officer is to be retired on grounds of ill-health. In reaching that decision, the authority must refer certain questions to a medical practitioner selected by them, commonly referred to as the Selected Medical Practitioner (SMP).
- 1.3 The purpose of this guidance is to help SMPs to understand what their role is, what they need to determine and what questions they need to address. The ultimate objective is to enable SMPs to provide opinions that are fair, consistent and supported by clear evidence and reasoning.

## The two pension schemes

- 1.4 NPPS was introduced for new entrants to the service from 6 April 2006 and for those members of PPS who wish to transfer to the new scheme. PPS remains in existence for those officers (the majority) who do not wish to transfer, so for many years the two schemes will continue to run in parallel.
- 1.5 There are two aspects to ill-health retirement. First, there is the process to determine whether an officer should be retired on ill health grounds. Secondly, there is the level of the benefits to which an officer who is medically retired is entitled. The process to determine whether an officer should be retired on ill health grounds is exactly the same under PPS and NPPS. There is, however, a difference in the level of benefits payable under the two schemes. Under NPPS there are two levels of ill-health pension, an upper tier and a lower tier. The tier depends on whether an officer is permanently disabled for any regular employment. In NPPS an officer retired on grounds of ill-health can, on review, move from one level to the other if his or her condition worsens or improves. This is known as a “two tier” ill-health system and is common to a number of public service schemes.
- 1.6 The procedure set out in this guidance is intended to apply to cases under both PPS and NPPS. Where differences between the schemes affect the role of the SMP, this is spelled out.
- 1.7 Throughout this guidance, the individual who is being assessed is referred to as “the officer”, since these procedures will normally apply to police officers being considered for ill-health retirement. However, there may well be occasions where the issue of permanent

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<sup>1</sup> The names of the two schemes refer to the date of the main set of regulations on which they are based, namely the Police Pensions Regulations 1987 (SI 1987/257) for PPS and the Police Pensions Regulations 2006 (SI 2006/3415) for NPPS.

<sup>2</sup> In this guidance the terms “police officer”, “officer” and “member of the force” are used interchangeably.

disablement for police duties or for regular employment needs to be determined after the individual has retired from the force. In view of this the term “officer” should be taken to include “former officer”.

- 1.8 This guidance concentrates on cases involving possible ill health retirement and similar issues. An SMP may also be asked to answer other questions in these cases the SMP should refer to the appropriate guidance.

### Eligibility for ill-health awards

- 1.9 When an officer joins NPPS (whether on appointment to the police service or on opting back in to the scheme), the police authority may require him or her to submit to a medical examination by the SMP to enable the authority to determine whether the officer is eligible to receive ill-health benefits under the scheme (under Regulation 8 of the Police Pensions Regulations 2006). An officer who is determined not to be eligible may still join the scheme, but will not receive ill-health benefits if he or she becomes unable to work (and so pays a lower contribution rate under Regulation 7 of the Police Pensions Regulations 2006).
- 1.10 Before making such a determination, the police authority must obtain a report from the SMP on the likelihood and likely timing of the officer becoming permanently disabled for the performance of the ordinary duties of a member of the police force<sup>3</sup>. A copy of the report is sent to the officer in question.
- 1.11 The issues raised in such cases are different to those that arise in relation to possible ill health retirement cases. It is beyond the scope of this guidance to deal with eligibility cases in detail. Further guidance on such cases can be found in Home Office Circular HO 21/06.

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<sup>3</sup> Regulation 70 of the Police Pensions Regulations 2006.

## 2. The SMP's role

- 2.1 The regulations for each scheme, namely the Police Pensions Regulations 1987 (SI 1987/257) (as amended) for PPS and the Police Pensions Regulations 2006 (SI 2006/3415) for NPPS, set out various questions that must be referred by a police authority to “a duly qualified medical practitioner selected by them”. In practice, this medical practitioner is known as the “selected medical practitioner” or SMP. The regulations specify the questions which the police authority must refer to the SMP for decision, and the reports which the SMP must provide, at each stage. In this guidance questions that arise under the regulations are described as “statutory questions”. The questions and reports are considered in more detail in Parts 3 and 4 of the guidance.
- 2.2 In potential ill health retirement cases, the statutory questions under NPPS are more wide ranging, as there is a requirement under the regulations to decide whether the officer is permanently disabled for regular employment. However, the procedure set out in this guidance is fundamentally the same for both PPS and NPPS, which should assist in a proper determination by the police authority of whether an officer who is permanently disabled for police duties should be retired or whether s/he can be retained with reasonable adjustments and/or to perform a more restricted role.
- 2.3 The police authority must refer a case to the SMP in terms of a specific question or questions. The SMP must accordingly frame his or her report in terms of answering the question or questions which have been put.

### Reading the guidance

- 2.4 In answering the statutory questions the SMP acts in a quasi-judicial capacity, performing a vital function in a process which will entail decisions about an officer's future employment and pension rights. The SMP must understand the role and the procedures to be followed. This guidance covers the medical aspects and those which affect the SMP directly; more general information on the wider policy is set out in the rest of [PNB Joint Circular 10-4](#). The procedures followed during the assessment must be robust and the SMP must be sure about what he or she is doing. If there is any doubt about any procedural issue the SMP should contact the Force HR Department before proceeding further (and copy any correspondence to the officer).
- 2.5 The SMP will need to be aware of any relevant case law. The force's human resources department should be able to provide this.

## Reading the documents

- 2.6 In preparation for the interview, the SMP should read carefully the documents in the Force Medical Adviser (FMA) file and the advice provided to him or her. All the medical evidence provided by the FMA should be considered, including any GP records, Occupational Health notes and any specific points. The SMP should have a copy of the full occupational health file and read the detailed management brief submitted with each case
- 2.7 The SMP should complete the assessment in the light of the specific questions or questions which have been referred to him or her by the police authority.

## The interview and examination

- 2.8 It is desirable and a natural courtesy for the SMP to meet the officer and accompany him or her from the waiting room, as this will help put the officer at ease and reduce the potential for the interview to be confrontational. It is also good practice to explain the process and purpose of the interview and examination.
- 2.9 The SMP should examine the officer, except where exceptional circumstances make it unnecessary or inappropriate. Where an examination is required but the officer is temporarily incapable of attending for interview, e.g. he or she is receiving hospital treatment as an in-patient, the interview should be held over until the officer is able to attend.

### 3. The questions to be decided by the SMP

- 3.1 When a police authority is considering or reviewing the ill-health retirement of an officer, it is required by the Regulations to refer specified questions to the SMP. Regulation H1(2) of the 1987 Regulations and regulation 71 of the 2006 Regulations set out the questions which the police authority must refer to the SMP. In the case of the 2006 Regulations, exactly which question is being referred may depend on the point being considered. This is described in the paragraphs which follow.

#### *1987 Regulations (PPS)*

- 3.2 Regulation H1(2) of the 1987 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.”
- 3.3 Regulation K3 provides for the reduction of an ill-health pension, of up to 50%, on the grounds of default. In considering whether a person has brought about or substantially contributed to disablement by his/her own default (in cases where the police authority is considering whether to reduce a pension for that reason), the police authority must refer to the SMP the question whether the officer has brought about or substantially contributed to the disablement by his or her own default.

#### *2006 Regulations (NPPS)*

- 3.4 Regulation 71 of the 2006 Regulations is more complicated than Regulation H1 of the 1987 Regulations. The provisions are explained in the following paragraphs.
- 3.5 The principal issue on which the police authority must refer questions to the SMP is whether a person is permanently disabled, either for the performance of the duties of a member of the force only or, in addition, for any regular employment. The four questions which must be referred to the SMP in this context are as follows:
- Whether the person is disabled for the performance of the ordinary duties of a member of the police force;
  - Whether any such disablement is likely to be permanent;
  - Whether the person is also disabled for engaging in any regular employment (other than as a regular police officer);
  - Whether any such disablement is likely to be permanent.
- 3.6 Regulation 51(11) provides for a five year limit beyond which a person who is permanently disabled for ordinary duties of a police officer can claim an enhanced ill-health pension in account of a worsening of his or her condition. However, this does not apply to specified medical conditions.

- 3.7 Where an officer is found by the SMP to be permanently disabled for the ordinary duties of a police officer, but not permanently disabled for regular employment, the SMP should identify where the condition is a progressive medical condition as defined in Schedule 4 to the Police Pensions Regulations 2006 which, of its nature, could have been expected, as at the time of his retirement, to affect him with increasing severity.
- 3.8 An officer who is permanently disabled for the performance of the duties of a member of the police force may nevertheless continue to serve, if there are duties which he or she could undertake whilst remaining a police officer. In such circumstances the police authority may consider from time to time whether the officer's disablement has ceased, significantly worsened or significantly improved. The authority must refer the following questions to the SMP:
- Whether the person continues to be disabled for the performance of the duties of a member of the police force; and if so –
  - Whether the person is also disabled for engaging in any regular employment; and if so -
  - Whether any such disablement is likely to be permanent.
- 3.9 The police authority may consider from time to time whether the disablement of a person under 55 who has been medically retired with a standard ill health pension has ceased to be disabled for the performance of the duties of a police officer, significantly worsened or significantly improved. In these circumstances the questions to be referred to the SMP are:
- Whether the person continues to be disabled for the performance of the duties of a member of the police force; and if so –
  - Whether the person is also disabled for engaging in any regular employment; and if so -
  - Whether any such disablement is likely to be permanent.
- 3.10 The police authority may also consider from time to time whether the disablement of a person under 65 who is in receipt of an enhanced top-up ill-health pension, or a deferred pension paid early because of disablement for engaging in any regular employment has ceased or significantly improved. In these circumstances, the questions to be referred to the SMP are:
- Whether the person continues to be disabled for engaging in any regular employment; and if so –
  - Whether the person continues to be disabled for the performance of the ordinary duties of a member of the police force.
- 3.11 Lastly, in considering whether a person has brought about or substantially contributed to disablement by his/her own default (in cases where the police authority is considering whether to reduce a pension for that reason), the police authority must refer to the SMP the question whether the officer has brought about or substantially contributed to the disablement by his or her own default (under Regulation 53).

## 4. Permanent Disablement for the Ordinary Duties of a Police Officer

- 4.1 Under both the Police Pensions Regulations 1987 and the Police Pensions Regulations 2006 (the 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.
- 4.2 The assessment of whether an officer is permanently disabled for ordinary police duties is the same regardless of whether the officer is a member of PPS or NPPS.

### Disablement

- 4.3 Disablement is defined as:

“inability, occasioned by infirmity of mind or body, to perform the ordinary duties of a member of the (police) force...”.

“Infirmity of mind or body” is defined 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 (see A12(5) of the 1987 Regulations or 4(5) of the 2006 Regulations).

- 4.4 This definition ensures as far as possible that the 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).

#### *Ordinary duties*

- 4.5 In order to determine whether an officer is disabled or not in terms of the definitions of the Regulations it is necessary to consider whether they are disabled for the ordinary duties of a member of the force.
- 4.6 It has been held by the Court of Appeal that the reference to “ordinary duties” is a reference to all the ordinary the duties of the office of constable (see its judgment in 2000 in the case of *Stewart*):

“...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.”
- 4.7 The reason behind this is the concern that without a relatively robust test of fitness, a Police Authority would be unable to safeguard the operational effectiveness of its Force, since it might be obliged to retain too many officers who were unfit for operational duties. It has been 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.

- 4.8 The High Court has ruled that the reference, in Regulation 12(2) of the Police Regulations 2006, to “the police force” is a reference to the police force for the area in which the officer was serving at the relevant time. See its judgment in 2008 in the case of *Ashton* ([2008] EWCH 1833(Admin)):

“...in light of the statutory definitions and all other reasons, “the force” in reg.12(2) meant the police force for the area in which the officer was serving at the relevant time”

The case of *Ashton* applies equally to references to “member of a police force” in the Police Pensions Regulations 1987 and 2006 and also in the Police (Injury Benefit) Regulations 2006.

- 4.9 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:

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

- 4.10 Taking each of these duties in turn, inability, due to infirmity, as defined by the Regulations (see paragraph 4.3), in respect of **any** of the following key capabilities renders an officer disabled for the ordinary duties:

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

- 4.11 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.

## Permanent disablement

### 4.12 The Regulations provide:

“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 the Regulations where the questions to be put to the SMP are set out.”

- 4.13 Permanent disablement is qualified in the Regulations 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. The question for the SMP is therefore whether, on the balance of probabilities, it is more likely or less likely that officer’s disablement will cease assuming he or she receives normal appropriate medical treatment. In coming to a decision the SMP should give reasons for his or her view – setting out in concise terms why recovery is or is not likely.

#### *Appropriate medical treatment*

- 4.14 The Regulations qualify “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.
- 4.15 The definition of appropriate medical treatment in the Regulations expressly excludes treatment to which the officer has a reasonable objection.
- 4.16 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 other information, for example 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 regulations H3 or 73), to amend his or her report accordingly so that the officer is assessed as permanently disabled. There is a right of appeal (under regulations H5 and H6 or regulations 66 and 67) against a decision of the police authority as to whether a refusal to accept medical treatment is reasonable.

## Writing the report

4.17 The SMP's decision on any of the questions referred to him or her is in the form of a report, a copy of which is provided to the officer.

4.18 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 Regulations 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.

The SMP's report may also assist in determining issues which, while not specified in the regulations, are essential to the efficient management of ill-health:

- whether, in the case of an officer who is permanently disabled, he or she would be capable of carrying out a restricted range of duties in the force, if a suitable post were available.
- whether, in the case of an officer who is permanently disabled, he or she would be capable of carrying out duties in the force on a part-time basis, if a suitable post were available and they wished to work part-time. However, part-time working cannot be imposed without the officer's consent and would need to be mutually agreed between the officer and the force.

4.19 It is an important point that an assessment of an officer as being permanently disabled for the ordinary duties of a member of the force does not automatically lead to his or her retirement. Such an officer may be retained by the force, to carry out a restricted range of duties, if a suitable post is available. A capability assessment will be of help in deciding whether there is scope for retaining such an officer. This is considered in section 5.

## 5. General Work Capability

- 5.1 Where an officer is found by the SMP to be permanently disabled for the ordinary duties of a police officer, the SMP will need to consider whether she or he is nonetheless capable of other work. Although the exercise should be conducted in the same way regardless of whether the officer is a member of PPS or NPPS, although the reason for undertaking it varies between the two schemes:
- In PPS the purpose of assessing the officer's capability short of full police duties is solely to enable the police authority to be able to assess whether the officer should be medically retired or retained in a suitable post.
  - In NPPS this purpose applies equally but there is an additional need, arising from the two-tier system and the additional statutory questions, to assess whether the officer is permanently disabled for regular employment. This is because an officer who is permanently disabled for any regular employment is entitled to an enhanced ill health pension while an officer who is not permanently disabled for any regular employment is entitled to a standard ill health pension with no enhancement.

### The two levels of ill-health retirement in NPPS

- 5.2 The main difference in the ill-health arrangements between PPS and NPPS is that in NPPS there are two levels of ill-health retirement. In NPPS:
- An officer who is permanently disabled for the ordinary duties of a member of the police force may be entitled to a **standard ill-health pension**.
  - An officer who is permanently disabled for the ordinary duties of a member of the police force and in addition is permanently disabled for any regular employment may be entitled to an **enhanced top-up ill-health pension**, in addition to a standard ill-health pension.
- 5.3 For this purpose, "regular employment" means employment for an annual average of at least 30 hours per week.
- 5.4 Once a police authority decides that an officer is to be medically retired under the NPPS Regulations, the level of benefits payable is determined by the officer's capability to undertake regular employment. Where the officer is capable of regular employment, an award is made based solely on the service accrued up to that date. This is a standard ill-health pension. Where the officer is not capable of regular employment, and this is permanent, then the benefits are enhanced by the top-up ill-health pension. The top-up has the effect that the pensionable service is enhanced by up to 50% of the officer's prospective service to age 55. This provision aims to provide the financial support that would otherwise be lost through the officer's disability and consequent inability to work.

### Assessment of disablement for regular employment

- 5.5 Although, as explained above, the rules of the two schemes are different, the approach to the capability assessment is the same regardless of which scheme applies to the officer. The SMP is, first, to determine whether an officer's functional capacity is affected by a disability or a medical condition which renders him or her permanently disabled for regular employment. Secondly, if the officer is not permanently disabled for regular employment, the SMP should indicate which areas of regular employment the officer is, or would be, capable of in the longer term, allowing for any adjustments which could generally be expected of a reasonable employer.
- 5.6 The decision regarding an individual's fitness for regular employment will be made within the context of medical reports, information provided by the individual and the SMP's observations.
- 5.7 To assist the SMP, the request from the police authority will also include the Force Medical Adviser's (FMA) opinion on the issue of permanent disablement (for the duties of a member of the force and for regular employment) and a background report which will include all relevant medical details and history of the case. The report will 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.
- 5.8 Where it is appropriate to obtain information from a treating specialist, it is recommended that any approach be on the basis of specific questions. Answers to specific questions are more likely to be more useful than a general report in enabling the SMP to make a balanced and objective occupational health assessment.
- 5.9 The aim of the assessment is not to ascertain whether a person can carry out a particular action on a 'one-off' basis, but rather to assess the person's ability to carry out the activity with reasonable ease and reliability. If the person cannot perform an activity with any reliability at the time of the examination, the SMP will need to assess whether this inability is likely to be permanent. In performing the assessment, account will therefore need to be taken of any pain and fatigue as well as any fluctuation in the condition or disability.
- 5.10 The procedure set out here provides for a thorough assessment of capability, but it is not a full assessment of functional capacity. It is not expected that SMPs will carry out full functional capacity assessments. Where the SMP considers that an aspect of the officer's functional capacity needs closer examination he or she should refer that issue to a specialist for evaluation. The police authority would be expected to bear the costs of any such evaluation.
- 5.11 Persons with certain medical conditions may be determined incapable of any work and may be exempted from the requirement to attend for a capability assessment. These conditions include:
- Terminal illness - defined as suffering from a progressive disease that can reasonably be expected to lead to death within 6 months.

- Persistent vegetative state.
  - Established dementia.
  - A severe life threatening disease which is uncontrolled or uncontrollable by a recognised therapeutic procedure.
  - Tetraplegia, unless the individual is determined to overcome his or her disabilities.
- 5.12 After making his or her assessments of capability in the activities specified in the form, the SMP should reach a decision on fitness for regular employment. The SMP will need to take into account and specify the aids that the person could reasonably be expected to use and any adjustments that any reasonable employer could be expected to make. There is a very wide range of potential adjustments which are discussed in more detail in Part 6.
- 5.13 The SMP provides a report giving a decision on the questions referred which is then used by the police authority to decide if ill-health retirement is appropriate and, if so, what level of benefits is due.
- 5.14 Where an officer is not permanently disabled for regular employment, the SMP should give an assessment of the range of activities of which the officer is capable. This should include possible adjustments under the Disability Discrimination Act to enable the individual to continue to function in the employment market.

### Assessment of capability for further police work

- 5.15 In some cases it may be practicable for a force to retain an officer who is permanently disabled for the ordinary duties of a member of the force but not permanently disabled for regular employment. Where such an assessment has been made, the SMP should include information in his or her report on the officer's capability for further police service (see items C.3 in Annex C and D.6 in Annex D). This should include possible adjustments under the Disability Discrimination Act to enable the officer to continue to work in the force notwithstanding the disablement.
- 5.16 Possible adjustments can include alternative working patterns. This means that the SMP should give an assessment of the activities the officer can undertake and the number of hours per week he or she is able to work and any adjustments that would be necessary. However, part-time working cannot be imposed without the officer's consent and would need to be mutually agreed between the officer and the force.
- 5.17 Although the capability assessment at Annex A focuses on activities related to employment outside the police, many of those activities will also be relevant to police work. The SMP should draw on his or her assessment of capability for such activities in completing an evidence-based assessment of capability for further police work.

## Part 6 Reasonable adjustments

- 6.1 The Disability Discrimination Act (DDA) makes it unlawful, amongst other things, to discriminate against disabled people in employment. The aim of the DDA is to remove barriers and give disabled people the opportunity to compete for jobs and to exercise their skills and abilities in employment. The DDA should help disabled people to gain access to the opportunities, challenges and rewards of serving in a police force just as in any other employment. Note, however, that an individual could be permanently disabled in respect of the ordinary duties of a member of a police force without being covered by the DDA, since the definition of disability under the DDA refers to normal day-to-day activities only.
- 6.2 In cases where the SMP decides that the police officer is permanently disabled for police duties he or she will then go on to provide a capability report. In reaching a final decision on fitness for regular employment the SMP will need to make an assessment on whether the officer could be expected to be assisted in the workplace by reasonable adjustments.

### What are reasonable adjustments?

- 6.3 Reasonable adjustments are a practical way for employers to remove certain disadvantages faced by disabled people and help them to contribute fully to the workforce. The DDA says that the duty to make reasonable adjustments applies where any physical feature of the employer's premises, or any practices, policies or criteria made by or on behalf of the employer, place a disabled person at a substantial disadvantage compared to a person without disabilities.
- 6.4 The DDA lists several factors that may have a particular bearing on whether it would be reasonable for an employer to make a particular adjustment. These are:
- the effectiveness of the step in preventing the disadvantage;
  - the practicability of the step;
  - the financial and other costs of the adjustment and the extent of any disruption caused;
  - the extent of the employer's financial or other resources;
  - the availability to the employer of financial or other assistance to help make an adjustment; and
  - the nature of the activities and size of the undertaking.
- 6.5 Note that tribunals will take account of an enterprise's entire budget when considering the financial constraints in undertaking an adjustment. Financial or other help may be available from the Government 'Access to Work' programme or other agencies.
- 6.6 Reasonable adjustments might include, for example:
- altering working hours to enable, for instance, travel time to and from work to be included or otherwise reducing working hours;

- allowing the person to be absent during working hours for rehabilitation, assessment or treatment e.g. a person who is undertaking a course of treatment for cancer should be allowed to attend the hospital in work time;
  - allocating some of the disabled officers role to colleagues;
  - providing equipment/resources to enable the person to perform a task such as provision of a hearing aid loop;
  - acquiring or modifying equipment, e.g. altering the height of a computer workstation so that a person with a neck injury can work without aggravating the injury.
- 6.7 This list is not intended to be exhaustive. There may be situations where adjustments can be expected to be made which do not fall under any of the above headings.

### Reasonable adjustments for regular employment

- 6.8 Before coming to a final decision about permanent disablement for regular employment in any particular case, the SMP will need to take into account, where appropriate, what adjustments the officer could reasonably be expected to receive and whether they would be effective.
- 6.9 It is recognised that it will be difficult for the SMP to provide more than a general assessment of the sort of adjustments that an employer could reasonably be expected to provide for the officer to be able to carry out an activity of which he or she would otherwise be incapable. It is open to the SMP to refer to any adjustments provided the SMP gives as much detail as possible to verify that such adjustments are possible and may be reasonably expected.

### Adjustments for continued police service

- 6.10 Detailed guidance is given in *Disability and the Police: Serving Officers*. It will be for the FMA in the first place to brief the SMP on any adjustments that have been considered so far and with what results. As part of his or her assessment of capability for police service the SMP should give a view of the adjustments that could be made to help the officer and then for the Force to consider first the practicability and effectiveness of the adjustment(s) proposed in the light of the financial considerations and resources available. The overall decision about reasonable adjustments to allow an officer to continue to do a job with a disability is a management decision, not a medical one, even if managers are informed by medical advice.

## Annex A            General Work Capability Assessment

- A.1    Officers who are assessed as being permanently disabled for the duties of a member of a police force must also be assessed for general work capability. This assessment is to be applied in two different ways, depending on whether it is for the purposes of the old or the new police pension scheme:
- In cases being considered under the Police Pension Scheme 1987 (PPS) this assessment will assist the SMP in giving advice to management as to the officer's capability for further service as a police officer, albeit on restricted duties, instead of being medically retired.
  - In cases being considered under the New Police Pension Scheme 2006 (NPPS) this assessment will in the first instance help the SMP determine whether or not the officer is also permanently disabled for engaging in any regular employment, which is the requirement to be eligible for an enhanced ill-health pension under that scheme. Where the officer is not permanently disabled for any regular employment, or where the officer is so disabled but wishes to be considered for retention on a part-time basis, this assessment will help the SMP to go on to advise on the officer's capability for further police service.

This annex and the capability assessment checklist at **Annex B** are designed to help the SMP reach a decision and promote consistency. A capability assessment is not required if an individual is not permanently disabled.

- A.2    **Note:** the person to be assessed under this procedure is referred to here as "the officer" since in most cases he or she will still be a serving officer at the time of examination.

### General points for any assessment

- A.3    The role of the SMP is to assess medical capability and any restrictions that result from an infirmity (which is defined in the Regulations as a disease, injury or medical condition including a mental disorder, injury or condition). The SMP must make a judgement based upon an appropriate medical history and clinical examination. When judging functional capacity for work, the SMP should consider the account of functional capabilities given by the officer with reference to examples, not only from work but in a domestic or recreational context. Findings at examination should be compared for consistency with the officer's account of function and evidence from GP records, hospital records, specialist reports or other documents that the SMP considers pertinent. For example, a potential indicator of consistency in the case of an officer who continues to drive is whether the individual has reported his or her medical condition to the DVLA.
- A.4    In many cases the SMP will be able to form his or her judgement without consulting others, but the SMP should be prepared to seek specialist advice, including referring the officer for a full functional assessment, to clarify clinical issues if necessary. Where appropriate, the SMP may make reference to relevant, authoritative medical texts or papers to support his or her judgement.
- A.5    The capability checklist is broken down into four categories: "capable", "capable with adjustments", "disabled for regular employment" and "permanently disabled for regular employment", and these terms will be used to describe the officer's capability to undertake the various basic physical and mental activities required for work. As is explained in more detail later, the latter two categories only need to be completed for NPPS.

- A.6 In judging functional capability, the following should be considered:
- Are the functional effects of the condition stable, progressive, subject to remission/relapse or day-to-day fluctuations?
  - Has the condition affecting function been treated adequately/appropriately? If not, how may normal and appropriate treatment affect function, and over what time scale?
  - To what extent is it reasonably foreseeable that certain work activities would substantially worsen the underlying condition? A distinction should be drawn between transient worsening of symptoms and worsening of the underlying disease process.
  - Pain may limit functional capability in a work context, often by affecting concentration, the number of times an activity can be repeated, or the duration for which a sufferer can maintain a specific position or posture. The SMP should consider how ergonomic factors or “reasonable adjustments” (which may be required under Disability Discrimination legislation) could overcome limitations due to pain. The extent to which concentration may be affected by normal and appropriate medication reasonably necessary to control pain should also be considered.
  - The role of the SMP is to assess medical capability. Non-medical factors such as dissatisfaction, domestic or social circumstances should be noted since they may impact on a person’s self assessments but should not play a part in decisions on work capability.
- A.7 For NPPS, the test of permanent disablement for any regular employment is based upon whether the officer is or is not permanently incapable of working at least 30 hours a week averaged over a year. The SMP should assume the proper application by employers of Disability Discrimination legislation and associated case law, and the test of permanence is for the lifetime of the individual. The SMP’s judgement should be formed on the balance of probabilities. The SMP should not take account of labour-market or other non-medical factors that may affect the officer’s employability.
- A.8 Wherever the officer is assessed as capable of an activity with adjustment the SMP should add a note in the “further comments” column on the adjustment that he or she would expect. It is good practice for the SMP also to consider and note in the report any Health and Safety implications.
- A.9 Progressive medical conditions such as cancer raise particular issues. Where an officer is assessed as permanently disabled for police duty, the SMP must also look at general work capability unless fast-track procedures are recommended (see paragraph A11 below). It should not be assumed that disablement for police duty as a result of a condition such as cancer necessarily means disablement for general work. In a case where the officer is assessed as not disabled for general work the issue of permanent disablement does not arise - for the time being at least. In such an event the SMP will need to consider whether to recommend a review of the case depending on the likelihood of further deterioration.

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

- A.10 Where the FMA has been appointed by the police authority as the SMP because death is imminent or the officer is totally incapacitated due to a physical condition, the FMA acting as SMP should complete the report on permanent disablement for police duty (in a case being considered under PPS) or the report on permanent disablement for both police duty and regular

employment (in a case being considered under NPPS) as quickly as practicable. In such cases it would be inappropriate to go through the checklist or supplement the report with advice on capability.

### **Physical capacity**

- A.11 When making an assessment of general work capability in relation to physical capacity it should be noted that in the modern workplace, application of Disability Discrimination legislation places a duty on employers to consider ways in which people with a disability can be accommodated. Agencies like Access to Work are mandated to provide practical and financial assistance to employers and individuals in a work context.
- A.12 The following points about the effect of specific conditions on general work capability may also be of assistance, although the SMP will need to decide whether the case before him or her fits any of the general observations below or differs from them, giving reasons:
- severe impairment of function affecting both upper limbs (e.g. severe rheumatoid arthritis, neuropathic conditions, etc.) will clearly affect sustained handwriting or keyboard use. The possibility of adjustments, such as the application of disability aids like voice-activated computer software, should therefore be considered when assessing capability for administrative or clerical roles. Similarly, the SMP should consider the effects of disability aids when assessing the work capability of individuals with conditions such as acquired severe visual impairment, or acquired deafness;
  - severe cardiac or respiratory disease, with marked reduction in exercise tolerance or symptoms at rest, may well render an officer permanently incapable of engaging in any regular employment;
  - lesser degrees of heart disease and/or respiratory conditions with variable symptoms such as asthma are less likely to make an officer incapable of any regular employment;
  - chronic renal disease requiring dialysis should not automatically be assumed to be permanently disabling for any regular employment, although this may be the case depending on the severity and/or frequency of dialysis or suitability for transplant;
  - chronic, progressive neurological conditions (e.g. Parkinson's disease, multiple sclerosis) may not prevent an officer from engaging in regular employment in the earlier stages of the disease, even if they render him or her permanently disabled for the ordinary duties of a police officer;
  - similarly, problems with continence may be incompatible with police work, but are capable of being accommodated with reasonable adjustments in some regular employment;
  - in cases of mechanical back pain and neck pain, and “whiplash injury” the SMP must make a judgement based upon a careful clinical assessment, supplemented by detail of functional ability in a domestic or recreational context. Illness behaviour which impacts on capability should be noted and assessed as to whether or not it can be attributed to organic pathology.
  - in the case of conditions such as chronic fatigue syndromes, “ME”, fibromyalgia, and similar functional, somatoform diagnoses, the SMP will need to assess the likely results of compliance with and adherence to normal and appropriate treatment programmes, and the passage of sufficient time, when concluding whether these conditions render an officer

permanently disabled for any regular employment. Biopsychosocial factors which are present should be noted to ensure that the assessment is based upon medical criteria alone.

### **Mental capacity**

- A.13 Following organic brain injury or disease, significant deficit of cognitive function, memory, or dysexecutive features may well be permanent and render the sufferer incapable of engaging in regular employment. Pre-senile dementia in its various forms is likely to be progressively incapacitating and not amenable to reasonable adjustments in regular employment. However, permanence of deficits due to organic brain injury may only be established with any certainty after allowing reasonable time for recovery and adaptation, which can often take 1-2 years. The SMP will normally be guided by specialist psychological and psychometric assessment in forming a judgement on the extent of incapacity and the level to which recovery can be expected.
- A.14 Officers with psychological and psychiatric conditions may present difficult challenges for the SMP due to the inevitable subjectivity of many judgements. As with physical disorders, the SMP should seek objective indicators as evidence of function such as driving, social, sporting and recreational activity, domestic computer use, ability to travel abroad on holiday etc. These indicators may vary in the weight that can be attached to them, for instance a social indicator may in certain circumstances have greater weight than a sporting indicator. The SMP's judgement on the permanence of incapacity for regular employment should disregard any adverse influence on the prospects for regular employment arising from non-medical factors, such as dissatisfaction, domestic or societal factors; the judgement should be based upon medical criteria alone.
- A.15 The starting point for the SMP, as with any other condition, will be whether the officer has an infirmity (which is defined in the Regulations as a disease, injury or medical condition including a mental disorder, injury or condition). Current case-law states that this should be determined by reference to guidance such as the International Classification of Diseases, 10<sup>th</sup> Edition ("ICD 10") or the Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> Edition ("DSM IV"). In itself "vulnerability" to a medical condition is not a medical condition. The boundary between "vulnerability" and an actual condition may be difficult to draw and will be a matter of medical judgment for the SMP.
- A.16 In considering whether mental health disorders in police officers such as anxiety and depression, adjustment disorder and post traumatic stress disorders are likely to be permanent, the SMP should consider the likely effect of normal and appropriate treatment. Permanent disablement should only be found if the disablement is likely to be permanent **even** if such treatment is undertaken.
- A.17 Cases involving alcohol or drug abuse may appear difficult but the regulations do not make special provision for such cases and they must be considered with the same sequence of criteria as other cases. Thus the SMP should first assess carefully whether the condition related to drug or alcohol abuse is indeed an infirmity that causes incapacity for regular employment. If so, the SMP must then judge whether the infirmity is likely to be permanent even if normal and appropriate medical treatment is applied. As with other cases, the police authority may, if they are considering whether to reduce an award on the grounds of default, ask the SMP to assess whether the officer has bought about or substantially contributed to disablement by default.

- A.18 Personality disorders will usually pre-date the officer's entry to the Force but may become apparent during an officer's service and lead to conduct or performance concerns. In the context of capability for any regular employment; the SMP will need to consider the effect of the personality disorder on life-long employment prospects in a non safety-critical work environment with less disciplinary and performance constraints than the police service.
- A.19 Where an individual's incapacity due to a mental health disorder results from a failure to take (or continue to take) normal and appropriate prescribed medication or other therapy that, on balance of probabilities, would otherwise restore or maintain the health necessary to perform regular employment, it is open to the SMP to conclude that the officer is not permanently disabled for any regular employment. It will be for the police authority to decide whether or not any refusal to take such treatment is reasonable or not.
- A.20 Individuals with psychoses and more severe psychiatric disorders should be considered on a case-by-case basis taking into account the principles outlined above.

### Completing the capability assessment checklist

- A.21 The general work capability assessment checklist is at Annex B. The checklist should be used in all cases as a means of ensuring consistency in approach, and of ensuring that there is a written record that all the main areas of activity have been considered. Not all functional capabilities on the list will need the same level of investigation or write-up in the report. A detailed account will not be required of the consideration given to activities of which the officer is assessed as capable where these are self evident or not in dispute. On the other hand, an SMP may need to refer a case for further examination where an officer's ability to undertake activities, which are key to the overall decision, is difficult to assess – see paragraph A.4 above.
- A.22 Guidance on each of the individual functions considered in the form is given below.

#### **Basic activities of daily living**

- A.23 A careful and well focused history of a typical day, although not always easy to obtain, will help in this area. This should identify in the first instance exactly what area of function(s) the officer has difficulty in and address his or her ability to undertake daily functions covering basic daily care. Activities that will identify any restriction could be filling in forms, coping with buttons, zips on clothing, or cooking, opening jars, tins and bottles or washing and peeling vegetables. Useful comparisons may be drawn with the way these functions apply to the DDA. (Mobility is to be considered under travelling and walking.)

#### **Standing**

- A.24 Consideration should also be given to those officers who have to sit down and rest after a period of standing. The duration of standing is the point at which it has to stop irrespective of whatever other activity is being carried out. Any discomfort felt should be of sufficient severity so that it would be unreasonable to expect standing to continue.
- A.25 Activities of daily living which may be relevant and help in making a decision could include standing to do washing up or cooking, standing in queues in

supermarkets, waiting for public transport or standing to watch sporting activities

### **Walking**

- A.26 Walking ability may also be restricted by limited exercise tolerance as a result of respiratory or cardiovascular disease. Restrictions may also be due to breathlessness or angina, as well as any relevant musculoskeletal problems. The assessment of capability in this function must be very carefully made.
- A.27 Walking may also be affected by disturbances of balance due for example to dizziness or vertigo. The effects of any such condition should be noted and full details given in the report.
- A.28 Details of activities of daily living that may help in assessing this function include the officer's ability in relation to mobility around the home, shopping trips, exercising pets, or walking longer distances for pleasure such as rambling or sightseeing. If a particular form of activity can be performed only by inducing significant breathlessness or distress, the officer should be asked whether he or she is able to undertake a less demanding activity.
- A.29 For the purpose of assessing suitability for retention in the police force the SMP should add in the comments column a reference to whether the officer can undertake patrol duties.

### **Running**

- A.30 Similar considerations will apply to the officer's capability and tolerance for running (including running up stairs). Any fitness regime or exercise programme followed for leisure purposes would be a useful indication of the officer's capability in this function.
- A.31 Note: this function is included only for the purpose of assessing suitability for retention in the police force. The ability to run is not part of the assessment of capability for regular employment other than as a police officer under the 2006 NPPS.

### **Travelling**

- A.32 In assessing how, if at all, the officer's condition restricts travelling, care should be taken to ensure consistency with other areas of function. It is likely, for example, that any restriction identified in sitting or communication will similarly restrict the officer's ability to drive for a long period or use public transport. It should also be borne in mind that difficulty in travelling to and from work, especially for individuals who live some distance from their work place, is not strictly a medical problem. An officer who could fairly easily perform a mainly office based role if he or she lived a reasonable distance from the workplace, but who cannot attend work because they are unfit to commute long distances, is unlikely to be assessed as being permanently disabled on those grounds alone.

### **Driving**

- A.33 If the officer is able to drive, it should be established whether or not his or her medical condition has been reported to the DVLA and whether any adjustments have had to be made to the car. Driving is a safety-critical task requiring, among other things: the ability to sit, a degree of manual dexterity and the ability to concentrate. Evidence of confidence in driving may therefore also indicate a wider set of general work capabilities.

## **Manual Dexterity**

- A.34 This category relates to the function of wrists and hands and is a measure of the ability to grip and to hold for a period of time and perform fine manipulations. Grip strength is perhaps only relevant in heavy manual work. Aspects of daily living that might identify restrictions include coping with buttons when dressing or opening jars or cans.
- A.35 For the purpose of assessing suitability for retention in the police force the SMP should add in the comments column a reference to whether the officer can restrain someone.

## **Lifting and carrying**

- A.36 Lifting involves grip and joint mobility in the hands, wrists and upper and lower limbs together with an ability to carry a weight. References to both lifting and carrying a weight should consider the use of one *and* both hands. Due consideration should be given to acute or chronic musculoskeletal conditions. These conditions may be aggravated by lifting weights in exceptional circumstances.
- A.37 Activities of daily living that might indicate a restriction in this function include cooking (lifting saucepans, crockery), shopping (lifting goods out of shopping trolley) and dealing with laundry, carrying suitcases, briefcases, shopping and helping to clear the table.

## **Sitting**

- A.38 This involves the ability to maintain the position of the trunk without support from the arms of a chair or from another person. Sitting need not be entirely comfortable. The duration of sitting is limited by the need to move from the chair because the degree of discomfort makes it unreasonable to expect a person to continue sitting and therefore any activity being undertaken in a seated position would have to cease. Inability to remain seated in comfort is only very rarely due to disabilities other than those involving the lumbar spine, hip joints and related musculature. Reported limitations for reasons other than these require thorough exploration and strongly supported evidence.
- A.39 Activities of daily living that might help to identify problems with this function include watching television (for how long at a time and type of chair), other leisure or social activities such as listening to the radio or using a computer and how long the officer sits at meal times. Time spent travelling in cars or buses or on aeroplanes is also relevant. The ability to travel by air to and from the US or other long haul flights on holiday, for example, is likely to be inconsistent with a claim of being unable to sit for more than 10 minutes or travel by car for more than 30 minutes.

## **Handwriting**

- A.40 This relates to the function of wrists and hands and is a measure of the ability to grip and to perform fine manipulations, e.g. the officer's capability in using a pen or pencil for a specified period of time and how much written work the officer could reasonably complete before having to stop. Full movement of both the fingers and hand/wrist should be considered, together with the impact of one hand or limb causing a restriction and whether the officer is left or right handed.
- A.41 Activities of daily living that might identify restrictions include filling in forms, compiling shopping lists, writing notes or writing letters.

## **Using a keyboard**

A.42 This is related to manual dexterity but involves a potentially greater use of the wrists. It also includes potential restrictions that may also be included in other functions, e.g. the ability to sit for a reasonable time or visual impairments.

## **Vision and hearing**

A.43 Vision and hearing can affect many activities of daily living and might identify restrictions on capabilities such as filling in forms, reading reports, holding a conversation and participation in leisure and sports activities.

A.44 Vision and hearing should be assessed with the officer wearing any aids which he or she officer normally wears, i.e. spectacles, contact lenses or hearing aid.

## **Communication, comprehension and concentration**

A.45 Although a restriction in communication, comprehension or concentration may be the result of either a physical or sensory problem, the main restrictions may be associated with a mental illness where the normal daily ability to undertake these functions is affected. The range of abilities being considered in each of these functions is relatively narrow, but any areas where a restriction is identified should be clearly defined and supported by evidence. Relevant questions include:

- Can the officer hold a conversation with others including on the phone?
- Is he or she able to concentrate sufficiently to either read a newspaper or magazine or follow a radio or television programme?
- Can concentration only be sustained by prompting and does an inability to concentrate cause a higher health and safety risk?
- Is there evidence of social phobia (as described in DSM IV) of a degree which would significantly impair function in these activities?

## **Evaluating information and recording details**

A.46 This part of the form relates to the officer's capability to evaluate and record a range of simple to complex issues and how he or she is able to manage this function. Particular functions include: remembering information when simultaneously writing, remembering appropriate format for specific situation (eg writing down telephone messages or, more police-related, taking statements), remembering verbal instructions/directions so as to reliably take a message to pass on and remembering visual information (eg newspaper headlines, workplace notices or, more police-related, number plates). This will incorporate any noted problems with communication and how well an officer is able to interact with colleagues and members of the public.

## **Decision making and relaying information**

A.47 This part of the form relates to the officer's ability to assimilate information, decide on a course of action and either execute it or advise others accordingly. Particular functions could include: preparing or providing written information, managing workload and multi-tasking in general. A mental health problem may contribute to resistance to or difficulty in adapting to change.

## Annex B            General Work Capability assessment checklist

### Points to note

1. The checklist is designed to help the SMP in his or her task of making a decision and writing a report. It will help to ensure consistency in procedures in what is a quasi-judicial process and to give visible reassurance of that fact to officers and their representatives. The checklist should also serve as a useful summary of the assessments made in a case and assist the SMP in reaching his or her conclusion when considering an officer's general work capability. In particular the list should assist SMPs when looking at the new question of whether an officer is capable of regular employment (this applies to the 2006 NPPS only). A well completed list will also assist the SMP if called upon to defend his or her report and conclusion.
2. The list contains the functions that ought to be considered, in their capability groups. Where necessary further functions can be assessed and referred to in the report. **No confidential medical information should be included in this checklist.**
3. When using the list, only the first question (Capable) has to be answered for all the functions. The others should only be answered as appropriate.
4. Where the "Capable with Adjustments" category applies, the comments box needs to be completed in brief for each function in question – a fuller description should be given in the report giving the overall assessment and decision.
5. Brief details of the cause(s) of the lost function(s) which have been identified by the SMP as a potential factor in permanent disablement and (where appropriate) disablement for regular employment should be given in the final decision form. In addition other functions (or combinations of functions) which do not appear on the above list but which the SMP considers important to explain an individual's permanent disablement and/or disablement for regular employment, should also be included at this point.

General Work Capability assessment checklist

Complete boxes as appropriate

CAPABILITY GROUP	FUNCTION		CAPABLE	CAPABLE w. ADJUSTMENTS	DISABLED for REGULAR EMPLOYMENT	PERMANENTLY DISABLED for REGULAR EMPLOYMENT	FURTHER COMMENTS
Basic activities of daily living	Daily Living basics		Y/N	Y/N	Y/N	Y/N	
	Continence		Y/N	Y/N	Y/N	Y/N	
	Coping with stressors		Y/N	Y/N	Y/N	Y/N	
Access to workplace, colleagues and members of the public	Standing		Y/N	Y/N	Y/N	Y/N	
	Walking	(a) Even ground	Y/N	Y/N	Y/N	Y/N	
		(b) Uneven ground	Y/N	Y/N	Y/N	Y/N	
	Climbing stairs		Y/N	Y/N	Y/N	Y/N	
	Running		Y/N	Y/N			
	Travelling	(a) In car/taxi	Y/N	Y/N	Y/N	Y/N	
		(b) By public transport	Y/N	Y/N	Y/N	Y/N	
Driving		Y/N	Y/N	Y/N	Y/N		
Physical work	Manual Dexterity		Y/N	Y/N	Y/N	Y/N	
	Reaching , bending and twisting		Y/N	Y/N	Y/N	Y/N	
	Lifting and carrying		Y/N	Y/N	Y/N	Y/N	
	Kneeling, stooping and crouching		Y/N	Y/N	Y/N	Y/N	
Managing processes and resources and using IT	Sitting		Y/N	Y/N	Y/N	Y/N	
	Handwriting		Y/N	Y/N	Y/N	Y/N	
	Use of keyboard and telephone		Y/N	Y/N	Y/N	Y/N	
	Vision		Y/N	Y/N	Y/N	Y/N	
	Hearing		Y/N	Y/N	Y/N	Y/N	
Applying procedures	Communication	a) Oral	Y/N	Y/N	Y/N	Y/N	
		b) Written	Y/N	Y/N	Y/N	Y/N	
	Comprehension	a) Oral	Y/N	Y/N	Y/N	Y/N	
		b) Written	Y/N	Y/N	Y/N	Y/N	
Concentration		Y/N	Y/N	Y/N	Y/N		
Gathering and handling information	Evaluating information		Y/N	Y/N	Y/N	Y/N	
	Recording details*		Y/N	Y/N	Y/N	Y/N	
Decision making	Decision making		Y/N	Y/N	Y/N	Y/N	
	Relaying information**	(a) Oral	Y/N	Y/N	Y/N	Y/N	
		(b) Written	Y/N	Y/N	Y/N	Y/N	