

## Schedule 1

Regulations 77 and 78

### Medical decisions: appeals and reconsideration

#### **Interpretation**

1. In this Schedule—

“appeal tribunal” means a tribunal appointed under paragraph 6 of this Schedule;

“final decision” has the meaning given in paragraph 4 (reconsideration of final decision).

“Independent medical referee” (“IMR”) means one (or more) independent medical practitioners appointed by the Department.

“medical decision” means a decision contained in—

- (a) a report by the selected medical practitioner on the question of permanent medical unfitness under regulation 79 (referral of questions to a selected medical practitioner for the purpose of regulation 80);
- (b) a report by the selected medical practitioner under regulation 81 (compulsory retirement of a member who was required to continue to serve);
- (c) a report by the selected medical practitioner under regulation 84 (referral of medical questions for purpose of early payment of a full retirement pension on grounds of permanent medical unfitness);
- (d) a report by the selected medical practitioner under regulation 105 (reduction of pension in case of default) on whether a person has brought about or substantially contributed to the person’s medical unfitness by the person’s own default;
- (e) a report by the independent medical referee under paragraph 2(6) (appeal against a decision of a selected medical practitioner); or
- (f) a fresh report by a medical authority under paragraph 4 (reconsideration of final decision)

“medical authority” means a selected medical practitioner or an independent medical referee.

“PIMR” means where one or more IMRs are appointed by the Department, the Department shall designate one of them as principal independent medical referee.

“police pension authority” means the police pension authority acting in exercise of its function as employer or scheme manager.

“selected medical practitioner” (“SMP”) means a duly qualified medical practitioner selected by the police pension authority or the Chief Constable.

#### **Appeal against a decision of a selected medical practitioner**

2.—(1) Within 28 days after a member of the police service receives a copy of a report by the selected medical practitioner containing a medical decision and certificate (or such longer period as the police pension authority may allow), the member may give notice of appeal to the police pension authority against the decision in accordance with paragraph 3 (referral to the Independent Medical Referee).

(2) An appeal under this paragraph is to be held in accordance with paragraph 3 (referral to the Independent Medical Referee).

(3) Sub-paragraph (4) applies if, within a further 28 days of the police pension authority receiving the notice of appeal (or such longer period as the police pension authority may allow), the member gives the police pension authority a statement of the grounds of appeal.

*Status: This is the original version (as it was originally made).*

- (4) The police pension authority must, unless the member and the police pension authority agree to a further reference to a selected medical practitioner under paragraph 4 (reconsideration of final decision)—
- (a) notify the Department that a statement of the grounds of appeal has been received; and
  - (b) provide the Department with 2 copies of the notice of appeal and the report and certificate appealed against with the name and address of the appellant and any further information required by the Department.
- (5) The Department shall appoint —
- (a) the IMR which shall consist of one or more independent medical practitioner's;
  - (b) where more than one IMR is appointed the Department shall designate one IMR as the PIMR.
- (6) The IMR shall report on the question or questions which is or are subject to appeal, except where there is a PIMR designated then only the PIMR shall report after taking into account the assessment of all other IMR's appointed by the Department.
- (7) The decision of the IMR, if it disagrees with any part of the report of the selected medical practitioner—
- (a) must be expressed in the form of a report and a certificate; and
  - (b) subject to paragraph 4 (reconsideration of final decision), that report is final.
- (8) A copy of the report and certificate must be given to the police pension authority and the member.
- (9) The police pension authority shall determine the appeal after considering the report of the IMR and that report shall supersede any other medical report.

### **Referral to the Independent Medical Referee**

- 3.—(1) The IMR must—
- (a) appoint a time and place for hearing the appeal and for any further hearings it may consider necessary; and
  - (b) give notice of the hearing to the appellant and the scheme manager (“the parties to the appeal”).
- (2) Notice of a hearing must be given at least 2 months before the hearing (or any shorter period the parties to the appeal agree).
- (3) The parties to the appeal must, not less than 35 days (including weekends and public holidays) before the date appointed for a hearing, inform the appeal board whether they intend to be represented at the hearing.
- (4) The IMR may interview or examine the appellant at any hearing.
- (5) Any hearing (including any medical examination of the appellant) may be attended by—
- (a) the selected medical practitioner or, if that practitioner is unavailable, a duly qualified medical practitioner appointed for the purpose by the scheme manager, and
  - (b) a duly qualified medical practitioner appointed for the purpose by the appellant.
- (6) A medical practitioner who attends a hearing may only observe a medical examination.
- (7) If any hearing includes a medical examination, only medical practitioners may be present for that part of the hearing.
- (8) The IMR must supply the Department and the parties to the appeal with a written statement of its decision.

(9) If the IMR disagrees with any part of the selected medical practitioner's report, the appeal tribunal must supply a revised report and certificate.

#### **Referral of final decision for reconsideration**

4.—(1) This paragraph applies if a medical authority has given a final decision in relation to a member of the police service ("the member").

(2) For the purpose of this Schedule, a medical authority has given a final decision if—

- (a) the selected medical practitioner has given a medical decision and the time for giving notice of appeal against the decision under paragraph 2(1) has expired without an appeal to the IMR being made;
- (b) the selected medical practitioner has given a medical decision and, following the giving of notice of appeal under paragraph 2(1) the police pension authority has not yet notified the Department of the appeal; or
- (c) an appeal has been made to the IMR and the IMR has given a decision.

(3) The police pension authority and the member may, by agreement, refer the final decision to the medical authority for reconsideration.

(4) The medical authority must reconsider the final decision and, if necessary, issue a fresh report.

(5) A copy of the fresh report must be given to the scheme manager and to the member.

(6) The fresh report is final, subject to—

- (a) any further reconsideration of the final decision under this paragraph; or
- (b) any appeal under paragraph (2) against the medical decision—
  - (i) in respect of which the member gave notice before the final decision was referred under this paragraph; and
  - (ii) that the member requested be notified to the Department and referred to the IMR .

(7) If an appeal tribunal hearing an appeal under regulation 115, considers that the evidence before the medical authority which gave the final decision was inaccurate or inadequate—

- (a) the tribunal may refer the final decision to the medical authority for reconsideration in the light of such facts as the tribunal may direct; and
- (b) the medical authority must reconsider that final decision and, if necessary, issue a fresh report and certificate.

(8) A copy of the fresh report and certificate must be given to the scheme manager and to the member.

(9) Subject to any further reconsideration under this paragraph, the fresh report is final.

#### **Referral to an appointed medical practitioner**

5.—(1) If a final decision is referred to a medical authority for reconsideration under paragraph 3 and the medical authority is unable or unwilling to act, the final decision may be referred to an appointed medical practitioner.

(2) The decision of an appointed medical practitioner has effect as if it were that of the medical authority who gave the final decision.

(3) In this paragraph, "appointed medical practitioner" means a duly qualified medical practitioner or a number of duly qualified medical practitioners—

- (a) agreed by the member of the police service and the police pension authority; or
- (b) appointed by the appeal tribunal.

### **Appointment of appeal tribunal**

- 6.—(1) The appeal tribunal must consist of not less than 3 persons who—
- (a) are appointed by, and in accordance with, arrangements approved by the Department; and
  - (b) of whom one must be appointed chair.
- (2) At least one member of the appeal tribunal must be a specialist in a medical condition relevant to the appeal.
- (3) The appeal tribunal must contain a—
- (i) a barrister or solicitor of not less than 7 years standing who shall be appointed chairperson; and
  - (ii) a former member of the police service or of a police force in Great Britain, who before he ceased to serve or retired, held a rank not lower than that of superintendent.
- (4) The appeal tribunal shall apply the rules of evidence applicable in a hearing of an appeal to a county court under article 28 of the County Courts (Northern Ireland) Order 1980(1)
- (5) Subject to the preceding provisions of this regulation, the appeal tribunal shall determine its own procedure.
- (6) Where there is an equality of voting among members of the appeal board, the chair has a second or casting vote.

### **Procedure and costs on appeals to an appeal tribunal**

- 7.—(1) The notice of appeal and the statement of grounds of appeal must be in writing.
- (2) The police pension authority must send 3 copies of the following documents to the Department —
- (a) the notice of appeal;
  - (b) the statement of grounds of appeal; and
  - (c) any other documents the Department considers necessary.
- (3) There must be paid to the members of the appeal tribunal—
- (a) such fees as are determined in accordance with arrangements made by the Department, or
  - (b) where no such arrangements have been made, such fees and allowances as the Department may from time to time determine.
- (4) Any fees or allowances so payable must, subject to paragraph 10 (costs payable if hearing is cancelled, adjourned or postponed)—
- (a) be paid by the police pension authority; and
  - (b) be treated as part of the expenses of the police pension authority for the purposes of this paragraph.

### **Hearing the appeal**

- 8.—(1) The appeal tribunal must—
- (a) appoint a time and place for hearing the appeal and for any further hearings it may consider necessary; and
  - (b) give notice of the hearing to the appellant and the police pension authority (“the parties to the appeal”).

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(1) [S.I.1980/397\(N.I.3\)](#)

(2) Notice of a hearing must be given at least 2 months before the hearing (or any shorter period the parties to the appeal agree).

(3) The parties to the appeal must, not less than 35 days (including weekends and public holidays) before the date appointed for a hearing, inform the appeal tribunal whether they intend to be represented at the hearing.

(4) The police pension authority and the appellant (“the parties”) may be represented before the appeals tribunal by counsel, by a solicitor or by any other appropriate person, adduce evidence and cross-examine witnesses.

(5) The appeal tribunal, after enquiring into the case and arriving at a decision thereon, may make such order in the matter as appears to it just, and—

(a) the order shall state the reasons for the decision; and .

(b) each of the parties shall be entitled to a copy of any such order.

(6) An appeal shall lie on a point of law from any decision of a tribunal under this regulation to the High Court in accordance with rules of court.

#### **Written evidence or a written statement**

9.—(1) A party to an appeal who intends to submit written evidence or a written statement at a hearing must, subject to sub-paragraph (2), submit it to the appeal tribunal and the other party not less than 35 days before the date appointed for the hearing.

(2) If a party submits written evidence or a written statement under sub-paragraph (1), the other party may, not less than 7 days before the date appointed for the hearing, submit written evidence or a written statement in response.

(3) Any evidence or statement submitted under sub-paragraph (2) must be submitted to the appeal tribunal and the party who submitted the evidence or statement under sub-paragraph (1).

(4) The appeal tribunal may postpone or adjourn the date appointed for the hearing if—

(a) written evidence or a written statement is submitted in contravention of this paragraph; or

(b) it appears necessary to do so for the proper determination of the appeal.

(5) References in this paragraph to periods of days include weekends and public holidays.

#### **Costs payable if hearing is cancelled, adjourned or postponed**

10.—(1) Subject to the following provisions, the expenses of each party to the appeal must be borne by that party.

(2) This sub-paragraph applies if a hearing is cancelled, adjourned or postponed at the request of, or due to the actions or omissions of the police pension authority less than 22 days (including weekends and public holidays) before the date appointed for the hearing.

(3) If sub-paragraph (2) applies, the appeal tribunal must require the police pension authority to pay to the appellant any expenses actually and reasonably incurred by the appellant in respect of attending or arranging to attend the cancelled, adjourned or postponed hearing.

(4) This sub-paragraph applies if the appeal tribunal determines that a hearing has been cancelled, adjourned or postponed at the request of, or due to the actions or omissions of, the appellant less than 22 days (including weekends and public holidays) before the date appointed for the hearing.

(5) If sub-paragraph (4) applies, the appeal tribunal may, subject to paragraph (7), require the appellant to pay towards the cost of the cancellation, adjournment or postponement such sum not exceeding the total costs of the cancellation, adjournment or postponement as the appeal tribunal decides taking into account of representations from either party.

**Costs payable on decision**

11.—(1) Costs are payable in accordance with this paragraph on determination of the appeal.

(2) If the appeal tribunal decides in favour of the appellant, the police pension authority must refund to the appellant any expenses actually and reasonably incurred by the appellant in respect of attending any hearing of the tribunal.

(3) This sub-paragraph applies if the appeals tribunal—

- (a) decides in favour of the police pension authority; and
- (b) reports that in its opinion the appeal was frivolous or vexatious.

(4) If sub-paragraph (3) applies, the police pension authority may subject to sub-paragraph (5), require the appellant to pay towards the cost of the appeal tribunal such sum not exceeding the total fees and allowances of the members of the appeal tribunal as the police pension authority thinks fit.

(5) If the appeal tribunal, after taking account of any representations from either party, decides there are exceptional reasons why the appellant should not pay towards the cost of the appeal—

- (a) the appeal tribunal must give the parties written notice of its decision; and
- (b) the police pension authority must not require the appellant to pay towards those costs.