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Chief Constables
Clerks to the Joint Boards

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Dear Sir or Madam

POLICE PENSIONS CIRCULAR No 2005/4

Police Medical Appeals

Part of the May 2002 PNB agreement saw the introduction of a number of changes to the management of ill-health which were outlined in SPPA police circulars 2003/3 and 2003/4. Further SPPA circulars have been issued in relation to the new procedures as follows:

- SPPA Circular 2003/6 – Where permanent disablement is not under question the FMA can undertake the role of SMP.
- SPPA Circular 2004/1 – Further clarity on the FMA undertaking the role of SMP. A copy of the guidance issued to the appeal board was also included.
- SPPA Circular 2004/2 – Confirmation of the aligning of time limits for all appeals made under regulation H2.
- SPPA Circular 2004/3 – Reminder of the forms required to be submitted to SPPA for all appeals.

SPPA Circular 2003/3 Part E confirmed the appointment of BUPA Wellness to provide medical boards for Scottish police appeals and explained that BUPA Wellness was also responsible for providing boards on a UK wide basis for Firefighter appeals. The provision of Scottish police appeal boards was included within the contract agreed between the Office of the Deputy Prime Minister (ODPM), who have responsibility for the Firefighters Pension Scheme in England and Wales, and BUPA Wellness.

Details of the cost, timelimits and penalties imposed where the timelimits are not met where outlined in paragraph 93 of the guidance issued under SPPA circular 2003/4.

Although the referral of medical appeals under the new procedures was initially slow a number have now been received and referred to BUPA Wellness with the first cases being heard in January. The

general feedback has been positive especially when comparing the new procedures with the system of a single medical referee. However, there have been some concerns regarding the time taken to re-arrange hearings which have been unavoidably postponed. This and other matters were discussed at the recent meeting between SPPA and BUPA Wellness. The meeting addressed a number of issues which can be summarised as follows:

Issues relating to the SMP

- The board felt that sufficient details were not always being given to the SMP when a reference was made. BUPA Wellness has been advised of the guidance (SPPA circular 2003/3 guidance para 18-20) which details the FMA advice required for referrals to the SMP. A copy is enclosed at annex A for reference. This guidance should ensure that the SMP has all the information available to make an informed and clear decision.
- Appellants have questioned the length of time the SMP actually spends on their examination which is not reflected in the SMP's report. BUPA Wellness have suggested that in all reports where an examination/interview has taken place for a question under regulation H1 that it would be very useful if both the start and finish time can be recorded. This will help remove the possibility of a prolonged dispute on this issue during the hearing. Police authorities should now request that SMPs include this in their reports.
- Under the regulations the SMP can attend the examination undertaken at the hearing but only as an observer. Although this is emphasised by the board at the hearing BUPA Wellness have asked that when appointing the SMP this potential role is outlined.
- The board have also noticed that some SMPs were referring to their manuscript notes at the hearing. SMPs should be reminded that if it is their intention to refer to these notes at the hearing then copies should be provided to the board and other parties in sufficient time before the hearing date.
- A potential conflict of interest has arisen with the employment of an FMA/SMP who is also employed by BUPA Wellness. Consideration is being given to this particular point but it raises the issue that in appointing either an FMA or SMP any direct or indirect link with the board provider needs to be considered carefully.

Other issues

- A great deal of time can be wasted at the appeal if the question actually under appeal is disputed. To ensure that this does not arise, when acknowledging receipt of hearing papers, SPPA will confirm to both the police authority and the appellant exactly what question the board will be considering. If there is any dispute by either party it must be raised at that time and not at the actual hearing.
- The question of permanence had arisen in a number of hearings. The PNB Guidance states that if, in a case where the officer is still in the early stages of his or her career, such a long-term view is difficult and the test should be that the officer is likely to remain disabled from the ordinary duties of a member of the force until at least the normal compulsory retirement age for his or her rank, which is age 55 or more, depending on the rank and the force concerned.

If, in the case of a young officer this approach is taken, rather than using the literal interpretation of the word (i.e. for the rest of the officer's life, continuing in same state, not

changing etc), then the date of retirement to be used is the normal age for rank **not** a date when the officer could actually retire if he/she served for 25 years at age 50 or even earlier if he/she were to achieve 30 years service.

- At a recent hearing the board became aware that the police authority was in agreement with the appellant i.e. that a permanent disability existed. In such a case, the SMP can be asked to consider the case again under regulation H3.

Regulation H3 (2) was amended to enable a decision under H1 to be referred back to the SMP, where there is agreement, even though an appeal has been made. This aims to allow an opportunity for a dispute to be resolved without the need of an appeal but without prejudice to the officer's right of appeal. Regulation H3 (3) goes on to confirm that if the medical authority (in this case the SMP) is unable or unwilling to act, the decision may be referred to a duly qualified medical practitioner or board of medical practitioners agreed upon by the officer and the police authority, and the resulting decision replaces the original decision that is under dispute.

Where the police authority have correctly instructed the SMP to address the question(s) referred and the FMA has provided sufficient information as per the attached annex the number of occasions where the police authority feel that further consideration is required by the SMP should be minimal. Regulation H3 allows a report to be referred back to the SMP with the proviso that both parties to the appeal are in agreement.

- A recent amendment to the contract was introduced by ODPM with regard to firefighters' appeals. The change concerned the timelimits for the issue of the board's report. Previously BUPA Wellness had 10 working days from the appeal hearing (which could be extended to 15 on agreement with ODPM) to provide the board's report. Failure to meet this target automatically imposed a penalty of £200. It was identified that once the target had been missed there was no incentive to avoid any further delay. Hence, from 1 January 2005 this timelimit has now been amended with a sliding scale of penalties as follows. -

Report issued in working days from date of hearing	Reduction in fee
1- 15	Nil
16	£200
17-22	£400
23-28	£600
29-34	£800
And so on for each 5 working day	+ £200

- It has been agreed that this will also apply to police appeals from the same date and this has already been reflected in some of the invoices submitted by BUPA Wellness to police authorities.

SPPA website

It was mentioned in an earlier SPPA circular that a new website was being developed. The website is now available at www.sppa.gov.uk and includes news on both the current scheme and the development of the new scheme. It also includes any consultations that are being undertaken for example the proposed amendments to the scheme in relation to a more equitable approach to part-time service are currently under consultation. The most recent SPPA police circulars are also included on the website and it is our intention to have previous circulars scanned and put onto the website as soon as possible.

Yours sincerely

A handwritten signature in purple ink that reads "J. Preston." The signature is written in a cursive, slightly slanted style.

Jim Preston

FMA prepares advice to SMP

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

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

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

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