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Dear Colleague

POLICE PENSIONS CIRCULAR No 2006/7

THE POLICE PENSIONS SCHEME (PPS) MEDICAL APPEALS. EXTENSION OF CONTRACT WITH BUPA

This circular should be brought to the immediate attention of force personnel and HR officers and the administrators of the Police Pension Scheme.

Previous SPPA Police circulars 2003/4 and 2004/3 outlined details and procedures required to submit appeals to the medical board provided by BUPA. The contract with BUPA in relation to Scottish appeals forms part of the main contract agreed between the Department of Communities and Local Government (DCLG) and BUPA for the provision of UK wide medical appeals for the Firefighters' Pension Scheme.

The contract with BUPA expired on 28 February. Despite negotiations between DCLG and BUPA commencing from August 2005 an agreement on a revised price for firefighter appeals was not finalised until July 2006; after which further separate negotiations have continued in relation to police appeals on the price agreed with DCLG. As a result of the protracted negotiations we have been unable to refer any new cases to BUPA since 1 March 2006 and as a result a small backlog of cases has arisen which are detailed below. We apologise for the delay that this has caused in processing these cases and hope that this has not caused too many difficulties.

The key factor in the delay related to a significant rise in judicial reviews made in firefighter cases and how the resulting additional costs would be managed within the extension of the contract. To minimise the risk of judicial review BUPA have engaged lawyers to advise on issues of law and precedent that may arise and it is hoped that this will significantly reduce the risk of judicial review. The agreed revised price for firefighter appeals is £5,300 which includes £300 to meet the additional costs associated with the additional legal costs mentioned above.

On the basis that judicial reviews have not caused a similar problem with the police appeals, separate negotiations continued with BUPA once the above price had been agreed with DCLG. It has now been agreed with BUPA that police appeals will be charged at £5,000 but with the proviso that if it is confirmed with this Agency that legal advice is required in an individual case that an additional charge of £300 would be payable in that case. Where due to complexity of the case the legal costs exceed £300 then the fee will reflect the actual costs incurred.

In addition to the increase in legal costs there have been other general increases in costs since the contract was awarded. The availability of Specialists required for membership of the board has become restricted as a result of greater commitment to their NHS contract work. This has led to an inevitable increase in the fees charged to BUPA. In addition to an increase in their fees occupational health consultants and specialists appointed to the board now also seek to include other expenses e.g. travel and subsistence in their fee.

The costs associated with a late withdrawal of an appeal have also been amended; details of which are shown below.

The following charges apply for cases referred to BUPA from 1 March 2006.

Fees for cases referred to BUPA from 1 March 2006

Standard fee for appeal	£5000
Re-referral to board e.g. where both the police authority and appellant agree under Regulation H3(2)	A charge of £450 per hour will apply for any work in excess of 2 hours. No charge will be made for the first two hours.
Additional board member if required	Actual cost
Medical Tests	Actual costs
Requirement to seek legal advice.	£300 unless exceeded where actual cost will apply.
Penalty for failing to meet the target for setting a hearing i.e. 16 weeks from date all papers are held by BUPA	Deduct £250

Issue of late reports

Issued – working days from hearing	Reduction in fee	Fee payable on cases referred from 1 March 2006
1 – 15	No reduction	£5000
16	£250	£4750
17 -22	£500	£4500
23 -28	£750	£4250
29 -34	£1000	£4000
And so on for each 5 working days	+£250	To nil

Late withdrawals/cancellations

Number of working days prior to hearing	Charge for cases referred after 1 March 2006
21 to 11	Actual up to £2,250
10 to 4	£3180
3	£4240
2	£4770
1	£5000

To date there has only been one board decision challenged by judicial review in relation to a Scottish police appeal. However, it was felt appropriate to formally agree with BUPA what action should be taken on the receipt of any further challenges and how the costs of any re referral or rehearing determined by the Court should be met. The following has been agreed with BUPA:

- Where the good faith, competence in providing a fair and open hearing or medical competence of the board is not under challenge then it would be for BUPA to indicate if it wishes to take any further part in the proceedings. This Agency will be informed of BUPA's decision in each and every case. However, in any case where it is decided that no further part in the proceedings is to be taken then BUPA will, if requested by the petitioner or named respondents, provide information regarding the decision of the board under challenge. A fee for this service will only apply if the time taken by BUPA to provide a response exceeds two hours and will be based on an hourly charge of £450. Again as with referrals for reconsideration under Police Pensions regulation H3(2) there will be no charge for the first two hours.
- In cases where the judgement refers the case back to the board for reconsideration, then the cost associated with that reconsideration will be met by BUPA. Similarly in cases where a decision is set aside and the judgement instructs that the case should be considered by a new board then the fee to be charged is to be met by BUPA.

The backlog of cases currently held for referral to BUPA will now be issued and hearing dates will be arranged as soon as possible.

Backlog of cases due to be issued to BUPA

Police Authority	Number of appeals
Northern	1
Grampian	0
Tayside	1
Central Scotland	1
Fife	3
Lothian and Borders	5
Strathclyde	1
Dumfries and Galloway	0

Because of the relatively small number of appeals involved a meaningful comparison between the old single medical referee system and the use of a medical board is difficult. This is because to date the board has not heard any degree of disablement appeals and that one case can significantly change the differences in percentage terms of cases upheld or dismissed. However, when considering the effectiveness of the use of a medical board the following should be taken into account:

- On current figures held and taking into account the known outcome of Judicial Reviews, the medical board system has resulted in 51.5% of appeals heard being upheld compared to 54.3% under the old system based on a comparable number of appeals heard;
- The number of decisions subject to Judicial Review has reduced significantly from five under the old system to just one using a medical board. This indicates that the decisions provided by the board are more robust against challenge and therefore reducing any additional costs associated with such challenges;

- Excluding the delay caused by the prolonged contract extension discussions, the average time for an appeal to be completed under the old system was 16 months compared to 6 months using the board;

This contract has been extended to 30 April 2008 after which there will be no further extensions. Work on a tender exercise for a contract to run from 1 May 2008 will commence next summer.

Yours sincerely



Jim Preston