The Pensions Ombudsman

Ombudsman's Determination

Applicant	Mr H
Scheme	South Wales Police Pension Scheme (**the Scheme**)
Respondents	Capita
	South Wales Police (**SWP**)

Outcome

1. I do not uphold Mr H's complaint and no further action is required by Capita or SWP.

Complaint summary

2. Mr H's complaint against SWP, his former employer, is that it has refused to backdate an Ill Health Retirement Pension (**IHRP**) to the date of his retirement.

3. He also asks to be compensated for his legal fees.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.

5. Mr H is represented by Haven Solicitors (**the Representative**).

6. Payment of retirement benefits under the Scheme is governed by the Police Pension Regulations 1987 (**the Regulations**).

7. Mr H was born in 1965. On 24 February 1997, he joined SWP and became a member of the Scheme until he was dismissed from SWP on 3 April 2015. Three days after leaving SWP he applied for an IHRP.

8. On 26 November 2015, Mr H attended a medical assessment to consider whether he was eligible for an IHRP.

9. On 16 December 2015, SWP wrote to Mr H to tell him that his application had been declined as in the opinion of the Scheme Medical Practitioner (**SMP**), Dr Sampson, he was not permanently disabled from carrying out the duties of a Police Officer.

10. On 10 January 2016, Mr H emailed SWP to say that he wished to appeal against the SMP's report and the decision on the permanence of his disability. However, he subsequently requested his appeal be stayed while he gathered further evidence.

11. On 23 February 2017, he had a second medical assessment with a different SMP, Dr Johnson, as Dr Sampson had died in the interim. Mr H presented reports from Dr Aziz and Dr Thomas in support of his appeal.

12. It appears there was some confusion regarding the submission of the SMP's report. Dr Johnson carried out a number of assessments on 23 February 2017 and the report he submitted to SWP, purporting to be for Mr H, was in fact for another individual.

13. The correct report was eventually submitted on 16 June 2017. The SMP concurred with the original decision and so, again, Mr H's application was declined.

14. Mr H appealed the decision and, on 29 August 2019, his case was considered by a Police Medical Appeals Board (**PMAB**). The PMAB was made up of a Consultation Occupational Health Physician, an Occupational Health Physician and a Consultant Psychiatrist, none of whom had previously been involved in his case.

15. Mr H submitted a further report from Dr Vivian, who had acted as an SMP in other cases, in support of his claim. The PMAB noted that all of the medical opinions agreed that Mr H was disabled. The dispute was largely over the issue of whether his disablement permanently prevented him from performing ordinary police duties. Dr Aziz, Dr Thomas and Dr Vivian all concluded that he was permanently disabled whereas the two SMPs considered that he was not.

16. Mr H agreed to be examined and interviewed, with the board members, SMP and Dr Thomas being present. As part of the examination report it was noted that Mr H described a very clear history of generalised anxiety disorder, consistent with features and symptoms which were present prior to his dismissal.

17. The examination report also noted that there were other treatments which had not been put in place and that Mr H's treatments had "not been optimised". It said that "Overall with robust and structured treatment there is no reason why [Mr H] should not recover from his generalised anxiety state."

18. Having considered the evidence, the PMAB said:

> "Having assessed the evidence, including the examination of the Appellant [Mr H], it is clear that the underlying and initial condition from which the Appellant suffered and, in our opinion is still a significant issue, is that of anxiety which, in our opinion, has reached general anxiety status. The depression, which undoubtedly exists, is secondary to that anxiety state."

19. The PMAB accepted that further treatment options existed but had to assess the likelihood of that treatment being effective before Mr H reached his Normal Retirement Age in 2025. It noted that he had been ill for some five years with no evidence of improvement and that even if there was resolution of his issues, on the

balance of probabilities it was unlikely he would recover his health sufficiently to have the resilience to perform the ordinary duties of a Police Officer even if all the factors identified were amenable to treatment.

20. The PMAB's Determination stated:

> "The Board unanimously upholds this appeal and considers that the Appellant [Mr H] is permanently disabled from performing the ordinary duties of a Police Officer due to generalised anxiety disorder and depression."

21. Mr H asked for his IHRP to be backdated to the date he retired from SWP but, in October 2019, his request was refused.

22. On 23 December 2019, Mr H submitted an appeal under Stage 1 of the Scheme's Internal Dispute Resolution Process (**IDRP**) to Capita, the scheme administrator. He said his dispute was the failure to apply the date of disablement correctly to his date of retirement.

23. On 17 May 2020, as nothing had been received from Capita, Mr H asked for his appeal to be reconsidered under Stage 2 of the IDRP.

24. On 29 May 2020, Capita issued its response to the Stage 1 IDRP complaint. It said that the PMAB had not disagreed or overturned the decisions reached by the SMPs in 2015 and 2017 which found that Mr H was not permanently disabled. Consequently it could not be argued that the PMAB had found that Mr H met the permanent disablement criteria in 2015 which meant his pension could not be backdated. Regulation H3 allows reconsideration of the decision that was made and subject to any reconsideration that may be deemed necessary, the issue of a fresh report. How a decision is reconsidered and any further reconsideration required is at the discretion of the PMAB.

25. On 31 May 2020, Mr H repeated his request for a review under Stage 2 of the Scheme's IDRP. He said that:-

    - The PMAB's determination on 29 August 2019 should override the decisions that the SMPs made on 8 December 2015 and 16 June 2015.

    - Case law in R v Phillip Sean Tully (**Tully**), Chief Constable of South Yorkshire Police v Kelly (**Lloyd Kelly**) and the Pensions Ombudsman's (**the PO**) Determination in Miss S v National Crime Agency (PO-11926) dictated that payment of his pension should be backdated to May 2015, the date of his retirement.

26. On 26 June 2020, SWP responded to Mr H's Stage 2 IDRP appeal. It said that it understood that following the PMAB's determination on 29 August 2019, his pension had been put into effect from that date. It concluded that the PMAB's determination had been actioned expeditiously and that backdating it to Mr H's date of retirement was not appropriate.

27. On 22 May 2022, Mr H wrote to the Chief Constable of SWP to contend that his application for IHRP should be treated as injuries on duty in accordance with Regulation 30(2)(a-d) of the Police (Injury Benefit) Regulations 2006 (**the Police Injury Benefit Regulations**).

Adjudicator's Opinion

28. Mr H's complaint was considered by one of our Adjudicators who concluded that no further action was required by Capita or SWP. The Adjudicator's findings are set out in paragraphs 29 to 50 below.

29. Some of the allegations Mr H made against SWP, including harassment, are outside of the PO's jurisdiction. So, the Adjudicator only considered Mr H's complaints in relation to the payment of the IHRP benefits, and SWP's decision making process.

30. There are two main factors affecting whether a member of the Scheme may be awarded IHR benefits. First, he must meet the relevant ill health criteria. Second, there must be no restrictions on the payment of benefits.

31. SWP accepted that Mr H passed both tests. This was eventually established by the PMAB's decision in August 2019. Since this had been accepted, the Adjudicator did not comment on it further. The remaining question was whether payment should be backdated.

32. The PMAB failed to address specifically the earlier SMP decisions, either to uphold or overturn them. The Adjudicator's view was that the PMAB did not overturn the earlier SMP decisions, which he considered remained valid in relation to the condition of Mr H's health at that time. This meant that Mr H's pension had been brought into payment from the correct effective date and that Mr H was not entitled to any further backdating.

33. The PMAB noted that all the medical opinions agreed that Mr H was disabled, the issue it had to consider was whether that disablement was permanent. While it accepted that there had been other possible treatments available it noted that Mr H had been ill for some five years with no evidence of improvement and that even if there was an improvement, on the balance of probabilities it was unlikely he would recover his health sufficiently before his normal retirement age to perform the ordinary duties of a Police Officer, even if all the factors identified were amenable to treatment.

34. Consequently, the PMAB had found that Mr H met the definition of permanent disability under Regulation A12(1), which states that reference 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".

35. The question to consider was how to interpret Regulation A12(1). Mr H had cited the cases of Tully, the PO's Determination in the case of Miss S (PO-11926) and Lloyd

Kelly in support of his complaint. The Adjudicator did not consider any of these assisted Mr H on the backdating point as they could be distinguished on their facts.

36. Tully was also referenced in the case of Miss S, but in that case the PO found that the PMAB overturned the previous decisions. The Adjudicator's reading of the PMAB decision was that this had not occurred in Mr H's case.

37. In the Lloyd Kelly case, Mr Kelly was awarded an injury pension, backdated to the date of his application. He had argued successfully that it should be backdated to the date he was required to leave employment. But the Adjudicator's view was that the case turned on the interpretation of the Police Injury Benefit Regulations 2006 and had implications only for benefits paid out under those regulations.

38. The Adjudicator noted that, while Mr H had submitted a claim for an injury pension, his application was still being assessed. Furthermore, Mr H had not raised that as part of this complaint, consequently it was not something that could be considered. He said that if, at a later date, Mr H was dissatisfied with the way his injury pension claim was dealt with he was free to bring a new complaint regarding that matter.

39. Mr H's IHRP application was made on 6 April 2015. Both SMPs decided that his disablement arising at that time was not likely to be permanent. The Adjudicator could see nothing in the PMAB's decision to suggest that it disagreed with either SMP's decision.

40. Nor could the Adjudicator find a statement that the PMAB considered that, at 6 April 2015, Mr H's disablement was likely to be permanent. If it were substituting its decision for that of the two SMPs, the Adjudicator expected that to have been expressly stated. So, the Adjudicator's view was that while the PMAB was reconsidering the earlier decisions it had not decided to overturn them in this case.

41. Further, the PMAB's determination was expressed in the present tense. The decision did refer to Mr H's history of anxiety and depression, but at no point stated that he was permanently disabled prior to the PMAB decision.

42. The statement: "The Appellant has already been ill for some five years, with no evidence of improvement" was not, in the Adjudicator's view, sufficient grounds to infer that the PMAB found that Mr H was permanently disabled in 2015. The PMAB also stated that Mr H's underlying condition (the anxiety) "has reached general anxiety status." This, in the Adjudicator's opinion, lent further support to the view that the PMAB did not find that Mr H's earlier condition was identical to that decided at the PMAB.

43. In summary, the Adjudicator did not find any statement in the decision that supported the view that the PMAB had overruled the previous decisions.

44. Further, the Adjudicator pointed out that the High Court had previously ruled in City of London Police v Medical Referee, interested party Galvin (2004) (**Galvin**), that the issue of an officer's disablement was decided at the date of an appeal from an earlier

decision regarding such disablement, and based on that officer's health at the time of the appeal, not at the time of the original decision.

45. In paragraph 19 of Galvin (see Appendix 2), Keith J concluded that the medical referee under Regulation H2 should assess the applicant's health as at the time of the appeal. It was in effect a "fresh" decision, rather than an analysis of earlier decisions despite the use of the term "appeal".

46. In the Adjudicator's view, Galvin applied in Mr H's case as it is, like Galvin, an appeal under Regulation H2. The PMAB decision indicated that it looked at the evidence in relation to Mr H's health, and in relation to the permanence of his condition, as at the time of his appeal. The PMAB would no doubt argue that this was the correct approach under Galvin. The PMAB decision also suggested that the PMAB believed that Mr H's health had deteriorated; it referred to Mr H's anxiety "having reached" a particular status.

47. In the Adjudicator's opinion, the fact that: (i) Galvin requires an assessment of health/permanence at the date of appeal; (ii) arguable indications in the decision that the PMAB thought that Mr H's health had worsened since the SMP decisions; and (iii) in particular, the absence of any finding (either explicit or implicit) by the PMAB that the earlier SMP decisions were incorrect or otherwise flawed, supported the conclusion set out in the Stage 1 IDRP response.

48. The decision in Galvin meant that the PMAB decision in Mr H's case was also in effect, a "fresh" decision as at the time of his appeal, rather than a reconsideration of the earlier decisions. If the PMAB had decided to overturn the earlier SMP decisions, the Adjudicator said he would have expected to see a specific statement in the decision to this effect.

49. Therefore, on balance, based on the above factors the Adjudicator's opinion was that Mr H's pension should be payable from the date of the PMAB's decision and not backdated to his date of retirement from the SWP.

50. With regard to compensation for the legal fees Mr H had incurred, the Adjudicator said that the PO would not ordinarily make awards of compensation for professional advice obtained in relation to a complaint as access to The Pensions Ombudsman's service is free.

51. Mr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. The Representative provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by the Representative as set out below:-

- The Representative's view is that the role of the PMAB is to act as an expert medical panel to decide the questions that the SMP is required to address under the Regulations. As such the courts will pay deference to the expertise of the PMAB. This approach was noted by Mostyn J in R (Sidwell) v Police Medical Board [2015] EWHC 122 (Admin) who said:

> "The highly specialised role and function of the board is illustrated by the fact that the specialist member acts not only as a decision maker but as an expert witness as well. This seems to blur traditional lines of demarcation from a lawyer's perspective but no-one has suggested that this is improper. Thus in this case the specialist member performed a clinical examination on the claimant on the day of the hearing, 21 June 2013. His evidence deriving from that examination was part of the material on which the board, which included him, based its decision.
>
> It is trite law that this court will pay considerable respect to the decision of an expert and informed tribunal, and will only interfere where the grounds of challenge are clearly made out: see Law Society v Salsbury [2008] EWCA Civ 1285 [2009] 1 WLR 1286 per Jackson LJ at para 30."

- In R (The Commissioner of Police of the Metropolis) v Police Medical Appeal Board [2020] EWHC 345 (Admin), Deputy Judge Marquand did not accept that the conclusions reached by the expert were part of the report to which the finality provisions applied. That conclusion appears to be contrary to the express words of the Regulations which provides that the "report" shall be final and to the decision of the Court of Appeal in Metropolitan Police Authority v Laws & Anor [2010] EWCA Civ 109923. The report is a consensus document of the Board. It would, of course, be possible for the majority of doctors to "out-vote" the specialist and to come to a different conclusion on diagnosis to the expert. Absent dissent from the other members, the finality of the report applies to the essential findings of the report and not merely the concluding sections. That conclusion also flows from the change of wording from the original form of the Regulations under which finality only applied to the certificate provided by the Medical Referee. The Regulations changed to provide that finality applies to the report and not just any conclusions set out in certificate.

- The PMAB report in Mr H's case shows:

  > "[Mr H] is appealing against the decision of the SMP, Dr Johnson, who, in a certificate dated 16 June 2017, determined that the Appellant was not permanently disabled from performing the ordinary duties of a member of the Police Force."

  The PMAB report also says:

  > "The Board unanimously upholds this appeal and considers that the Appellant is permanently disabled from performing the ordinary duties of a Police Officer due to generalised anxiety disorder and depression."

- The provisions of Regulation H2(3) of the Regulations mean the SMP reports have to have been overturned otherwise the PMAB has no right in law to come to a different determination. The PMAB overturned the decision of the late Dr Sampson and also that of Dr Johnson.

- Mr H is concerned that no mention has been made of the status of the 2017 report from Dr Johnson. Page 3 of the PMAB report says:

  "The original SMP was unable to carry out a reconsideration due to his unfortunate demise. In due course the Appellant was referred to another SMP, Dr Johnson, who stated that he would not be able to reconsider the case as he had not previously made a decision and he carried out a fresh assessment."

- Dr Johnson's 2017 report says:

  "I was appointed to act as [SMP] and to consider the internal review requested by [Mr H] following the determination made by the late [Dr Sampson] dated 8 December 2015. Dr Sampson determined that [Mr H] was considered to be disabled from the ordinary duties of a member of the police force, but that the disability was not permanent. [Mr H] has subsequently appealed this decision, submitting a Form A and requesting an informal appeal, requiring the appointment of an alternative SMP to consider that informal appeal. In the circumstances, this cannot follow the usual form of such an appeal, since I am not reviewing my own opinion. I have therefore proceeded as if considering a new referral, though with the previous opinion in mind. I have then reviewed and commented upon [Mr H's] grounds for appeal as they are presented."

- In the Representative's view, Dr Johnson was appointed to conduct a reconsideration of the 2015 SMP decision in accordance with regulation H3(3). Capita has only referred to Regulation H3 in making its decision so clearly given the content of the PMAB report, the PMAB has overturned the decision of both Dr Johnson and Dr Sampson as the former was conducting a reconsideration of the determination of the latter.

- The appeal to the PMAB was made in accordance with Regulation H2, Police Pension Regulations 1987. There is no reference in the correspondence from Capita to this. That makes its response legally flawed. Dr Sampson made a determination under Regulation H1. Dr Johnson was appointed and made a determination in accordance with Regulation H3(3). His report was appealed in accordance with regulation H2.

- The PMAB noted that [Mr H] had been ill for five years with no improvement. That being the case it found him, in its report dated 18 September 2019, to be permanently disabled due to generalised anxiety disorder and depression. Dr Johnson's certificate, dated 16 June 2017, lists the disabling conditions as anxiety and depression. The late Dr Sampson's certificate, dated 8 December 2015, also lists the disabling conditions as anxiety and depression. So from a medical perspective nothing changed in terms of the conditions and the PMAB determined [Mr H] had been ill for five years with no improvement and upheld his appeal. As such in law given the circumstances of how the appeal arose the pension has to be backdated.

Ombudsman's decision

52. It is not in dispute that the PMAB decided that Mr H's disablement satisfied the permanence criterion set out in the Regulations as at the date of the appeal.

53. However, the PMAB report is silent as to whether it believed that his condition was permanent as at the time of the earlier SMP decisions. In light of the PMAB's failure to either uphold or overturn the earlier SMP decisions, specifically that Mr H's disablement was not permanent at those times, the key issue is whether the decision of the PMAB automatically overturns the earlier decisions of the SMPs.

54. In his Opinion, the Adjudicator cited the Galvin case as evidence that the PMAB takes its decisions as Medical Referee within the meaning of the Regulations based on the applicant's health as at the time of the appeal. It is in effect a "fresh" decision, rather than an analysis of earlier decisions. This is despite the "appeal" terminology in the Regulations and elsewhere.

55. Although arguable, the Adjudicator therefore concluded that the better view is that, in the absence of an explicit, or even implicit, statement to the contrary, the PMAB did not overturn the earlier SMP decisions that Mr H's ill-health did not meet the permanence criterion at the time of those SMP decisions. Therefore, Mr H was not entitled to have his ill-health pension backdated prior to the date of the PMAB appeal.

56. None of the submissions from Mr H's Representative adequately address the implications of Galvin or establish that the PMAB's decision as to permanence is automatically overriding. I will deal with the submissions in turn below.

The courts pay deference to the PMAB

57. The Representative says the role of the PMAB is to act as an expert medical panel to decide the questions that the SMP is required to address under the Regulations. As such the courts will pay deference to the expertise of the PMAB. This approach was noted by Mostyn J in R (Sidwell) v Police Medical Board [2015] EWHC 122 (Admin).

58. The Adjudicator's Opinion does not dispute, nor is it inconsistent with, this statement. I acknowledge that the PMAB is an expert medical panel and that the courts "pay deference" to the PMAB's expertise.

The PMAB's decision is final

59. The Representative cites R (The Commissioner of Police of the Metropolis) v Police Medical Appeal Board [2020] EWHC 345 (Admin) and Metropolitan Police Authority v Laws & Anor [2010] EWCA Civ 109923 to support a contention that the PMAB decision is final.

60. Again, the Adjudicator's Opinion does not dispute, nor is it inconsistent with, this statement. I agree that the PMAB's decision is final, but only as to whether Mr H's disablement met the permanence criterion as at the date of the appeal (applying

Galvin). It does not mean that the PMAB's decision is automatically retrospective or that it overturns the earlier decisions of the SMPs.

The wording of Regulation H2(3)

61. The Representative says that because of the provisions of Regulation H2(3) (see Appendix 1) the SMP reports must have been overturned otherwise the PMAB has no right in law to come to a different determination.

62. The basis for the Representative's statement is not entirely clear. As noted, the PMAB did not disagree or overturn the earlier SMP determinations. Galvin is clear authority for the proposition that the PMAB's decision is taken as at the date of the appeal, based on the medical evidence available at that time. It acknowledges that this evidence can change and is therefore authority for the contention that the earlier SMP decisions can be valid and "correct" at the time of those decisions.

63. I do not find there is any evidence that the PMAB intended its determination to change the SMPs decisions in respect of whether Mr H's disablement was permanent at the time when the SMP decisions were made.

The Adjudicator's Opinion overlooks the legal status of the appeal and the timeframe.

64. The Representative makes various arguments about the status of the appeal, for example, that Dr Johnson, the second SMP, reconsidered the decision of the first SMP; and Capita did not refer to the status of the appeal in its letter to Mr H.

65. I fail to see the relevance of these statements to the central issue of whether the PMAB automatically overturned the earlier SMP decisions as to the permanence of Mr H's disablement.

66. I would also disagree with some of the statements as a matter of fact. For example, I do not believe that the evidence supports the contention that Mr H's condition did not change over the five-year period.

67. The PMAB undertook a current medical assessment at the hearing, where it decided that disablement was likely to be permanent, in view of Mr H's circumstances and approaching retirement age.

68. The PMAB's determination, as set out in the final paragraph, is expressed in the present tense. The decision does refer to Mr H's history of anxiety and depression, but at no point states that he was permanently disabled prior to the PMAB's decision.

69. The statement "The Appellant has already been ill for some five years, with no evidence of improvement" is not in my view sufficient grounds to infer that the PMAB found that Mr H was permanently disabled in 2015. The PMAB also states that Mr H's underlying condition (the anxiety) "has reached general anxiety status." This, in my view, lends further support that the PMAB did not find that Mr H's earlier condition was identical to that decided at the PMAB following examination.

Referring the question of permanence back to the PMAB

70. The Representative has suggested referring the matter back to the PMAB to address solely the issue of date of permanent disablement.

71. The key issue in this case is whether the PMAB's decision automatically overturns the earlier SMP decisions in relation to the permanence of Mr H's disablement. I acknowledge that had the PMAB explicitly addressed the conclusions reached by the SMPs in its decision, they would have had the authority to have changed the outcome of those decisions, however, they did not do so.

72. The PMAB's decision was made in consideration of the evidence in relation to Mr H's health, and in relation to the permanence of his condition, as at the time of his appeal. The PMAB would no doubt argue that this was the correct approach taking into account the High Court judgment in Galvin.

73. Consequently, I do not find that a referral back to the PMAB along the lines suggested by the Representative is appropriate or likely to achieve a different outcome.

74. I do not uphold Mr H's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
15 May 2023

Appendix 1

The Police Pension Regulations 1987

Disablement

A12.—(1) 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.

(2) Subject to paragraph (3), disablement means inability, occasioned by infirmity of mind or body, to perform the ordinary duties of a male or female member of the force, as the case may be, except that, in relation to a child or the widower of a member of a police force, it means inability, occasioned as aforesaid, to earn a living.

(3) Where it is necessary to determine the degree of a person's disablement it shall be determined by reference to the degree to which his earning capacity has been affected as a result of an injury received without his own default in the execution of his duty as a member of a police force:

- Provided that a person shall be deemed to be totally disabled if, as a result of such an injury, he is receiving treatment as an in-patient at a hospital.

(4) Where a person has retired before becoming disabled and the date on which he becomes disabled cannot be ascertained, it shall be taken to be the date on which the claim that he is disabled is first made known to the police authority.

Reference of medical questions

H1.—(1) Subject as hereinafter provided, the question whether a person is entitled to any and, if so, what awards under these Regulations shall be determined in the first instance by the police authority.

(2) 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;

and, if they are further considering whether to grant an injury pension, shall so refer the following questions:—

(c) whether the disablement is the result of an injury received in the execution of duty, and

(d) the degree of the person's disablement;

and, if they are considering whether to revise an injury pension, shall so refer question (d) above.

Appeal to medical referee

H2.—(1) Where a person has been informed of the determination of the police authority on any question which involves the reference of questions under Regulation H1 to a selected medical practitioner, he shall, if, within 14 days after being so informed or such further period as the police authority may allow, he applies to the police authority for a copy of the certificate of the selected medical practitioner, be supplied with such a copy.

(2) If the person concerned is dissatisfied with the decision of the selected medical practitioner as set out in his certificate, he may, within 14 days after being supplied with the certificate or such longer period as the police authority may allow, and subject to and in accordance with the provisions of Schedule H, give notice to the police authority that he appeals against the said decision, and the police authority shall notify the Secretary of State accordingly, and the Secretary of State shall appoint an independent person or persons (hereafter in these Regulations referred to as the “medical referee”) to decide the appeal.

(3) The decision of the medical referee shall, if he disagrees with any part of the certificate of the selected medical practitioner, be expressed in the form of a certificate of his decision on any of the questions referred to the selected medical practitioner on which he disagrees with the latter’s decision, and the decision of the medical referee shall, subject to the provisions of Regulation H3, be final.

Appendix 2

Extract from the Judgment in City of London Police Authority and another v Medical Referee

“In my opinion, the medical referee is required to consider whether the officer is permanently disabled at the time of the appeal to him. I say that for the following reasons:

(i) The views of both the medical practitioner and the medical referee are referred to in the Regulations as “decisions” (see regs. H1(4) and H2(3)). Thus, at first blush the words “the time when the question arises for decision” in reg. A12(1) apply equally to the decision of the medical practitioner and that of the medical referee. So if it had been intended that the words “the time when the question arises for decision” should relate only to when the question is considered by the medical practitioner, and not the medical referee, one might have expected some qualifying words, such as “the time when the question first arises for decision”.

(ii) The proviso to reg. A20 proceeds on the footing that, when a medical referee is considering an appeal under reg. H2(2) in respect of questions (a) and (b) in reg. H1(2), he is considering whether the officer is permanently disabled at the time of the appeal: see the words “the medical referee decides that the appellant is not permanently disabled”.

(iii) Reg. K1 recognises that an officer may cease to be permanently disabled. The Regulations therefore recognise that it may be inappropriate to regard the question whether an officer is permanently disabled as set in stone. That suggests that the question is to be re-addressed by reference to the circumstances prevailing on each occasion when the Regulations require the issue to be re-addressed.

(iv) The construction of reg. A12(1) advanced by the Authority could produce surprising results. Take the case of an officer whose symptoms were such that, when he was examined by the medical practitioner, his permanent disablement could not be said to be likely. But suppose that, by the time he came to be examined by the medical referee, his symptoms were such that a prognosis could be made. It would be odd if effect could not be given to the view of the medical referee, simply because there was no basis to criticise the prognosis which the medical practitioner had made on the basis of the symptoms which were present then. The officer would be left with having to persuade the police authority to refer his case once again to a medical practitioner under reg. H1(2).”