

College of Policing Review of Force Management of Ill Health Retirements, Injury on Duty Awards and Police Medical Appeal Boards

1. Introduction

- 1.1 The assessment of whether officers are permanently disabled from undertaking their ordinary duties and therefore being considered for Ill Health Retirement (IHR) under Regulation A20 (and subsequently entitled to Injury on Duty Awards (IoD) if a substantial contribution to their injuries was through the execution of police duties) is covered under legislation made under several regulations including the Police Pension Regulations (1987 as amended), the Police Pensions Act 1976 and the Police (Injury Benefit) Regulations 2006¹.
- 1.2 These are complex processes requiring the understanding of highly technical pension legislation, medicine and case law. The responsibility for the management of these processes ultimately lies with the Chief Officer acting in his/her role as the Police Pensions Authority.
- 1.3 In the event that an officer is not satisfied with the outcome of the assessment (made by an independent occupational health physician engaged by the force and known as the Selected Medical Practitioner (SMP)) the officer is able to appeal the decision to an independent board of medical professionals, the Police Medical Appeal Board (PMAB)².
- 1.4 This paper outlines the summary of the findings and observations obtained as part of a scoping review conducted by the College of Policing commissioned to look at forces' management of IHR, IoD and PMABs. This paper also seeks to outline the broader themes and issues pertinent to the challenges and barriers which impact on forces' abilities to manage these complex issues.
- 1.5 In addition, the commission accepted by the College of Policing proposed to make recommendations relating to the service's management of these assessments and appeals. In line with its original commissioning these recommendations will be made to the College of Policing Professional Committee but in light of the complex governance of these processes will be directed to specific key stakeholders for consideration.

2. Background to Commission

- 2.1 In November 2013, the College of Policing accepted a commission from Chief Constable Mike Cunningham (Staffordshire Police), in his capacity as the Workforce Development Business Area Lead, to conduct a scoping review of forces' management of Police Medical Appeal Boards (PMAB). During its consideration of this request the Professional Committee identified that the relative success of Forces' management of PMAB would be directly relevant to their management of the initial IHRs and IoD assessments, which form the basis of any appeal. It was therefore agreed to extend this commission to include consideration of these issues. The commissioning paper is attached at **Appendix A**.
- 2.2 In order to ensure governance of this work T/DCC Gareth Morgan (Avon & Somerset Constabulary) agreed to act as SRO. A formal steering group to support this work was also established. Terms of Reference for this Group are attached at **Appendix B**.

2.3 While primarily focused on the management of these processes in forces in England and Wales, information pertinent to the review was also sought from Police Scotland and the Police Service of Northern Ireland (PSNI)³ to seek to identify good practice.

3. Exclusions to the remit of the Review

3.1 The remit of the review was agreed with two specific exclusions:

- **Reassessment of injury awards** – It is recognised that The Police (Injury Benefit) Regulations 2006, which govern the assessment of IoDs, enable forces to review IoD awards periodically. It was felt that this work would in itself be a significant and sizable task which may require a separate commission once consideration of the review of the initial management processes had been conducted. It was also noted that, at the time of the commission, few forces were actually conducting reviews following criticism in several high court decisions. No formal guidance has been issued by the Home Office since the correspondence on 10 March 2010 advising forces to suspend review of cases pending the outcome of a case in the Court of Appeal. The judgment in this case was handed down in October 2010.
- **Regulations** – The Professional Committee were also aware that, in tandem with this review, work was ongoing by the Home Office to develop new Police (Injury benefit) Regulations 2015. It was felt that while this work should seek to support this process, if possible, this review was a separate piece of work and not within the remit of the College of Policing.

3.2 Whilst conducting the review, issues related to the above were repeatedly raised, particularly concerning the need to tighten the regulations to prevent variations in how they are interpreted. The definition of 'permanence' was a particular concern of a number of respondents⁴.

4. Methodology and Recommendations

4.1 Evidence to support the scoping review was obtained from a variety of sources. These included

- Force policy documents. Forces were encouraged to supply copies of force policy documents and include consideration of the broader IHR / IoD / PMAB management. Specific comments relating to review of this material is attached at **Appendix C**.
- Separate questionnaires were developed for the key professionals who were engaged in forces to manage IHR and IoD assessments and PMAB hearings. These were: medical professionals working as Force Medical Advisors (FMA) or Selected Medical Practitioners (SMPs), Staff Association representatives, Force legal services, and force managers acting as administrators (predominantly HR and occupational health professionals)⁵.
- A focus group session was conducted with members of the National Attendance Management Forum (NAMF) to air issues and concerns faced by forces and personnel managing these processes.
- A focus group consisting of HR and SMP providers from the North East forces⁶.

- Canvas of views and opinions of FMAs and SMPs at the Association of Local Authority Medical advisors (ALAMA) Autumn Conference.
- Formal invitations to key stakeholders to submit evidence.
- Interviews with individuals identified from questionnaires.
- Adelphi technique to enable key stakeholders and senior managers⁷.

4.2 Recommendations of the review are outlined in **Appendix D**.

5. Financial Impact

5.1 It is noted that the service is currently facing significant financial challenges and in addition to the scope of the commission it was requested that an assessment of the financial impact of these processes was made in order to give context to this work.

6. Ill Health Retirement (IHR) costs

6.1 Data on IHR is routinely submitted to the Home Office by forces as part of the annual data return (ADR). This information was requested but is unfortunately unavailable. Specific recommendations relating to this issue is outlined in **Appendix D**.

7. Injury on Duty (IoD) Award costs

7.1 All force finance departments were asked for figures relating to the number of IoDs currently in payment and the annual cost to each force. In total 20 forces (with combined officer strength of 52,391 FTE officers⁸) responded and reported a combined financial cost of £34.5⁹ million. Using this figure as a representative of the police service of England and Wales this suggests the financial cost for IoD payments to be approximately **£83.6 million** a year.

7.2 19 responding forces¹⁰ were currently paying 4474 IoDs. Using these forces as a representative of the total number of IoD payments, this suggests that there are approximately **11500** payments currently being made to injured police officers. Of the Forces who responded the mean average cost per IoD varied from £12359¹¹ to £6567 per annum. There was significant variance in the number of IoDs depending on the size of the force. Forces reports ranged from a ratio of one IoD payment for every 5.7 to 23.4¹² serving officers.

7.3 These costs relate directly to the payments made to officers and do not include the costs of assessing the IoD, engaging the Selected Medical Practitioner (SMP), administration or any other costs associated with this work.

7.4 The above costs reflect the broader total of IoD payments. The review by David Scoffield QC on behalf of the NI Policing Board cite statistics that suggest that most police forces in England and Wales have fewer than 10 IOD applications per year. By far the highest figure was for the Metropolitan Police which, has had an average of 22 IOD applications per year in recent years.

8. Police Medical Appeal Board Costs

8.1 In the *Review Period: November 2013 to July 2014* Health Management Ltd¹³ report a total of 729 PMAB appeals being made since November 2008¹⁴, of which 432 have been heard. The PMAB board incurs a standard fee¹⁵ of £6,200 (plus VAT). This figure was increased to £6,480 (plus VAT) following the successful retendering of the contract¹⁶. While costs will vary from force to force it is

generally accepted that the overall cost to forces to manage and attend appeals is approximately £10000¹⁷.

- 8.2 Using the lower end estimated average cost this would therefore represent a total cost of **£4.3 million** since November 2008. It is however noted that this cost has been distorted due to the significant backlog of cases that developed due to poor administration of the previous contract provider and looking forward the cost of £310,000 over the three quarters reported for 2013/14 is more indicative of the cost to the service for future financial years¹⁸.
- 8.3 It is noted that while 237 appeals were withdrawn, administrative costs such as medical report costs would still have been incurred by the force but it is not possible to establish an accurate figure for of cost before the appeal was withdrawn.

9. Key Themes

- 9.1 The following key themes have been identified through this work¹⁹:
- Forces approach the management of this issue differently dependent on workload and the resources made available. In the majority of forces this work is delegated to Human Resources. There is also engagement from occupational health. However, there is significant variance in the roles of these departments between forces.
 - Many forces are struggling due to the lack of expertise within their organisations. Both forces and staff associations report difficulties managing these issues due to key personal leaving the organisation or being absent for short periods due to sickness or prolonged periods of leave.
 - The structure of some force HR facilities do not support the management of the process. When managed by shared service pools rather than through specific dedicated individuals, personnel are unable to build up experience in dealing with these cases. This is acutely felt by small forces that do not have the workload to enable individual staff members to build up their experience of this work.
 - The above issues are compounded by a lack of dedicated subject matter experts across the service and training opportunities.
 - In light of the above, force personnel lack the confidence and expertise to successfully manage these processes. This is compounded by a perception that senior management in the service do not understand the complexity of the role, do not provide adequate support and that the regulations which govern these processes are not fit for purpose.
 - There is variance in the level of engagement of legal professionals and forces are not only obtaining legal advice from a number of sources, including individual force legal teams and contracted external legal advisors, but in some instances forces are without the support of any recognised legal professional. Due to the range of legal areas force solicitors cover, and in some instances the relatively low number of occasions when their services are engaged, legal services have been unable to develop expertise in these areas.

- In comparison the approach of Staff Associations is significantly better. The Police Federation of England and Wales have designated representatives to manage these issues and also have the support of regional and national training provisions, peer support from their regions and, most critically have access to subject matter expertise through dedicated legal professionals.
- There are inconsistencies between forces in the approaches used to calculate the assessment of earnings.
- Forces report difficulties obtaining SMPs and this problem is being compounded by a broader lack of occupational health professionals working in the service and the negative perception of doctors with regards to the role of SMP.
- Forces have no way of benchmarking the quality and outcomes of SMP decisions against any available comparators because of a lack of systematic audit, both at individual force level, regionally or nationally.
- Due to the above, forces' personnel are keen to see the development of a central resource to provide guidance and advice.

10. Lack of consistency between forces

- 10.1 There are significant differences in how forces approach the management of these processes. This variation stems from a number of issues concerning the force structure and locally implemented force policy (see Appendix C), the experience and role of personnel and the workload and resources available. While the regulations explicitly outline the role of the Police Pension Authority there is evidence that in some forces this function is delegated to the point that the Chief Officer (Police Pension Authority) has very little practical engagement.
- 10.2 While this work is primarily delegated to Human Resources there is also significant engagement from occupational health. However there is significant variance in the roles of these departments between forces. While some force occupational health departments will provide medical information and administrative support, others are effectively carrying out the entire process including the percentage calculation of the award. The review has also identified instances of forces using officers on restricted duties in clerical roles who are neither occupational health nor HR professionals²⁰.

11. Assessment of earnings

- 11.1 There is variance in the method used to calculate the earning capacity associated with the degree of disablement²¹. With the aim of improving consistency, fairness, greater transparency and the likelihood of reducing the number of claims going to appeal, the agreement of a standardised formal approach is desirable. Specific recommendations relating to this issue is outlined in **Appendix D**.

12. Force Records and Data

- 12.1 Feedback suggests that forces have good data management of the number of IHR, IoD, PMAB and the costs associated²². It is noted that while incidents of poor file management of historic IoD files further hamper forces' abilities to review IoD cases, forces report that they have detailed occupational health files for serving officers. For the last two years 34 forces routinely collect accident data through

the Association of Police Health and Safety Advisors (APHSA) against benchmarked categories and criteria.

- 12.2 The ability of forces to successfully manage future IoD and IHR applications will be dependent on the detail and accuracy of occupational health records and accurate information as to the accidents/incidents which caused, or were alleged to have caused, the injury.

13. Submission bundle for PMAB hearings

- 13.1 The quality of the papers submitted to the PMAB is critical to ensuring that the board is able to make an informed decision as to the relative merits of the appeal. The PMAB Chair has expressed concerns that despite the existence of guidance developed by the National Attendance Management Forum and endorsed by the Police CIPD Forum²³ there was concerns over the quality of some submission bundles submitted by forces. Frequent issues involved submission bundles simply containing large volumes of documentation which did not articulate how this 'medical evidence' supported the original decision. This not only damages the effectiveness of the forces submission but also represents an unnecessary addition to the workload of the boards and a waste of time and effort on the part of the force. It was generally considered by the Board Chair that the submission bundles submitted by the appellant (where they were supported by their staff associations) were of a high quality, indexed and where evidence was submitted it was used to evidence the specific arguments the appellant was seeking to make.
- 13.2 It was also noted that there was a significant amount of duplication in submissions. This was frequently a result of documentation being relevant to both the appellant and the forces' submission. The point was raised that it would be beneficial to all parties if this duplication could be reduced. It is acknowledged that this would require close and agreed alignment of both force and the appellant's submission bureaucracy.

14. Experience of staff succession planning/ loss of resources and corporate knowledge

- 14.1 Critical to the management of IHR, IoD and any subsequent appeal to PMAB is the experience of the individual force personnel administrating these processes. Forces have had to make significant financial cuts to both their HR and occupational health services and this has invariably resulted in significant corporate knowledge leaving the service. Concerns from staff association representatives identified the inexperience of those given the roles as a significant barrier to the forces' efficient and effective management of the complex processes involved. In addition to this, in an effort to manage workload with limited resources, changes in operational models and moving to pooled shared services have resulted in a lack of opportunity for individuals to develop the necessary specialist understanding of these processes.
- 14.2 This issue is more acutely felt by smaller forces who only receive a limited number of applications and appeals and are therefore unable to build up experience and understanding in this complex area.
- 14.3 A similar concern has been identified in the legal service support available to forces with regards to IoD, IHR and PMAB. As the breadth of legal issues for which they are engaged, and their volume of work leaves little capacity to develop expertise.

- 14.4 With the abolition of Police Authorities, responsibility transferred to the Police Pension Authority (Chief Officer). While forces routinely delegated responsibility for these processes long before this hand-over occurred, it was recognised by a few respondents that the loss of experienced individuals, who had previously worked for Police Authorities and did not transfer into the Office of the Commissioner or into the Force, had a negative impact and this subsequently represented a further loss of corporate knowledge.

15. Training

- 15.1 A continuous theme of responses received by the review is the absence of training for these processes. These concerns were expressed by medical professionals working as SMPs and FMAs, legal services, police personnel charged with managing these processes and staff association representatives (concerns over the lack of training for force personnel as well as themselves). It is recognised that these processes are complex and expensive to the force and potentially led to a disservice of officers who have been injured in the line of duty. This lack of training also impacts on the ability of the force to manage these processes as the core knowledge is invested in only a small number of individuals. Where forces do not possess the knowledge, there is no immediate resource available to assist in managing these processes properly or monitor compliance in IHR and IoD decisions. The impact of the pending changes to pension provision in the round has led to some considerable delays in training of both staff association representatives, SMPs and force personnel.

Staff Associations

- 15.2 Claim handler training is given to Police Federation representatives and includes consideration of IHR and IoD applications. The Federation Representatives reported knowledgeable and well maintained support networks within their regional structure supported by ad hoc events facilitated centrally and by regions. Staff Association representatives have retained legal services that have specialist knowledge of these issues and relevant case law. Despite this resource, representatives have reported that it is their personal experience of managing live claims which has been the most valuable to develop their understanding of these issues.

Selected Medical Practitioners (SMP)

- 15.3 There is at present no recognised training or qualification for Force Medical Advisors (FMA) attempting to manage these complex issues, or for SMPs, who must make statutory, quasi-judicial decisions.
- 15.4 The PNB guidance states that in order to perform the role of a SMP a doctor must be competently trained to effectively assess a police officer's medical condition and disability. However the role of the SMP also requires them to understanding the complex regulations and case law and make arbitrations on evidence. These requirements lie outside the normal skill set of a professional clinician and are more associated with the role of a legal professional.
- 15.5 To date there are limited training opportunities available and no centrally accredited SMP qualification. Individual SMPs are therefore reliant on their experience of the work, personal endeavour and any ad hoc training they have been given by their employers.

- 15.6 The review has found little evidence of training being given either by the occupational health companies providing SMPs or by forces once appointed. PNB Circular 10/14 states:
- 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. SMPs should also have access to the Home Office Guidance for Members of the Police Medical Appeal Board.
- And;
- Need for local protocol setting out procedures and levels of delegation... The protocol should set out the qualifications of the FMA and the SMP and how they are to be selected and trained
- 15.7 It is apparent from the review that there is little evidence that forces have adequately addressed these issues in their force policies or, from feedback from SMPs, in practice.
- 15.8 A significant number of SMPs are also members of ALAMA and as such engagement through this association does offer a resource to individual SMPs. However not all SMPs are members of this association and it is not reasonable to expect this association to meet the service's training requirements.
- 15.9 The review has found little to no evidence of the private companies who are contracted by forces to provide both occupational health provisions and SMPs providing formal training for SMPs. Furthermore it is questionable whether consideration of training was included in tendering when obtaining SMPs through occupational health companies.

Force Medical Advisors (FMAs)

- 15.10 There is no specific training available to the FMAs and it is recognised that the quality of the SMP decision will be very much dependant on the information provided by the FMA and force occupational health. This is not only due to the medical content but also the clarity and concise nature in which this information has been presented.
- 15.11 There are currently two informal groups working within the police service to support FMAs (and SMPs): the Northern and Southern FMA Groups, who routinely discuss this work alongside broader medical issues. These are, however, small groups which are dependent on individual doctors' endeavours to engage and do not and cannot meet the training needs of these individuals.

HR Managers and Administrators

- 15.12 There is at present no recognised national training resource available to police staff managing these processes. There is also limited availability for training within forces and staff are frequently heavily reliant on support from subject matter experts in other forces and contacted through bodies such as the National Attendance Management Forum (NAMF) [Further comments relating to the NAMF are outlined below].
- 15.13 The review has found isolated examples of efforts to train staff such as engaging barristers to explain these processes and engaging experienced colleagues to

share knowledge. These are examples of individuals working to inform and support colleagues rather than systematic efforts by the force to train their staff.

Legal Services

15.14 While legal services are competently trained for their role with regards to these processes, they are also engaged in a significant variety of legal areas on behalf of their force. As such, when compared to the legal specialists engaged by appellants, they lack the experience and familiarity of this policy area and would benefit from some form of training support.

On the Job training

15.15 It is recognised that the vast majority of experience developed in this area has been achieved through on-the-job training. Staff Association representatives also recognised that the majority of knowledge comes from first-hand experience of these processes.

15.16 At the time of writing, very few forces are currently engaged in performing reviews of previous IoD decisions, many having not done so since the Home Office correspondence in 10 March 2010 following critical case law. The issues relating to the appropriateness of conducting reviews notwithstanding, the decision not to review has resulted in a significant degradation of the skill level of those staff members who had previous experience of this work. Many of whom, as a result of ongoing financial cuts to relevant departments, are no longer working for the police service.

15.17 While it is desirable that there are as few IHRs, IoDs and PMABs as possible²⁴ it should also be recognised that, from the perspective of robust management, it is desirable that a core group of individuals manage these processes, gain expertise and develop consistency. As small forces may only have isolated cases, even if a nominated individual handles all cases the workload this may not enable the development of an adequate knowledge base.

National Policing Improvement Agency (NPIA) Development Events

15.18 Prior to its closure the NPIA ran bi-annual events to attempt to assist forces in this issue but, apart from a single event in January 2014, this work had been discontinued. No formal commission has been received by the College of Policing to provide this support.

15.19 It is noted that the events held by the NPIA, while appreciated, remained insufficient for the overall training needs of the service. Identifying and securing the service of subject matter experts who could speak with authority was problematic. The PMAB Chairs who would have been the ideal speaker for these events were approached on a number of occasions but were unwilling to engage citing the need to maintain the independence of the chair.

15.20 One aspect of the training particularly valued by SMPs was the use of case studies. However the NPIA was reliant on forces and SMPs to develop such cases on its behalf and as such a reliable source of useful training material was an ongoing problem. The cases frequently provided by forces were those where the force were either successful at PMAB or did not even go to appeal or were hypothetical and hence were of only limited value.

15.21 The model of bi-annual events was also insufficient as it was unable to keep pace with ongoing developments in case law. On more than one occasion the event

itself was overshadowed by a pending high court appeal decision which had a significant bearing on the value of the training. Ongoing developments in case law and the turnover of staff and doctors willing to act as SMPs and the divergence of working practices which exist in individual forces renders it difficult to provide appropriate and targeted training.

- 15.22 There is a significant variance in the level of expertise between those who attended and a significant concern was, although all events were free to attend, a small number of forces didn't send any representation to these events and subsequently continued to manage these processes in isolation. A number of professionals, particularly those working in occupational health, struggled to obtain the authorisation for their abstraction to attend the training events.

Health Management Ltd Training Events

- 15.23 In the recent re-tendering of the PMAB contract to Health Management Ltd, the Home Office included the requirement to provide training (one day a year). At the time of writing it is unclear as to the format of this training or when it will become available or the associated cost.
- 15.24 It is understood that Health Management is currently in dialogue with the Home Office concerning the provision of this training but it is likely that, whatever training provision Health Management Ltd does offer, will be focused specifically on their role and function relating to the PMAB and is unlikely to address the broader training needs of forces to assist their staff to successfully manage the initial IHR and IoD decisions.

IMASS Occupational Health Solutions

- 15.25 It is understood that IMASS is currently exploring the development of a bespoke training package with regards to this work. At present the details and timescale for completion is unknown.

16. Centre of Excellence / Communication

- 16.1 The collective difficulty of the police service to manage the ill-health and the original injury award and subsequently defend their position at PMAB hearings is poignantly demonstrated by comparing forces' approach to staff associations' management of these issues.
- 16.2 The Police Federation has employed professional solicitors specialising in these areas such as Slater & Gordon for hearings of the PMAB relating to their members. As such they have been able to develop a great deal of experience and expertise in this area and build up a significant library of case material. They therefore have a significant technical advantage over individual police forces, particularly smaller forces that, due to their limited exposure of this process, may not have had the opportunity to develop the necessary expertise or be able to justify deploying sufficient resources to manage this process.
- 16.3 These legal professionals are able to absorb and respond to new guidance and changes in case law considerably quicker than the Police Service. In the light of new and relevant information, they are able to quickly and efficiently inform all Federation Branches while individual forces may be left unaware of legal developments which will have significant impact on cases they are administering.
- 16.4 Individual Federation branches have also established good support structures both within their region and with the national centre. At present there is no

mechanism between forces which ensures that this vital information is disseminated consistently and the desire to develop such a resource was shared by all those who engaged as part of the scoping review.

- 16.5 Individual forces have varying approaches to PMAB, specifically whether the SMP routinely attends the PMAB. Unfortunately incidents of PMABs being conducted with no representation from the then Police Authority have also been documented.
- 16.6 There is no centrally available resource of relevant and indexed case law to assist forces manage these processes. It is noted that the NPIA did attempt to establish such a depository via its online POLKA community but this was ultimately unsuccessful as it was unable to provide the necessary interpretation and explanation of the relevance of the case law. This was mainly due to the lack of supporting subject matter expertise. In addition, the majority of doctors acting as SMPs, did not possess pnn accounts so were unable to access the system.
- 16.7 Specific recommendations relating to this issue is outlined in **Appendix D**.

17. The National Attendance Management Forum

- 17.1 The National Attendance Management Forum (NAMF), which is linked to the CIPD Police Forum meets at West Midlands Police. It is at present the most comprehensive support network available to force professionals seeking to manage IHR and IoD Assessments. The group meets quarterly, consists of a broad range of occupational health and HR professionals and between meetings correspondence is maintained to enable delegates to raise issues and share experiences.
- 17.2 The responses received from force professionals have articulated the need for a more sophisticated and comprehensive centre of excellence than the NAMF could feasibly provide due to the following limitations:
 - As the title of the forum describes it is not limited to IHR, IoD and PMAB and deals with a host of occupational health and HR attendance issues.
 - While experiences are shared, the advice is invariably the views and experience from fellow practitioners and, though given in good faith, these often lack the authority and consistency of a recognised subject matter expert.
 - The Forum does not receive engagement from all forces.
 - Administration and secretariat functions are provided on a voluntary basis and as such a depository of good practice and advice given is not maintained. This limited resource could not meet the needs of the service as a formal centre of excellence.
 - Attendance varies and opinion is an accumulation of views expressed, rather than a definitive position.
 - The Forum do not have a centrally maintained (and indexed) depository of relevant case law and guidance. It is acknowledged that a force solicitor is generally present at meetings.

18. Legal Services and the Association of Police Lawyers

- 18.1 The SMP/PMAB is a tribunal of fact and law and is tasked with determining the officer's entitlement, which may be a complex medical judgment. To correctly determine eligibility, they must also grapple with complex legal tests and frequently resolve conflicts of facts/evidence. In both latter respects, as stated above, these are not issues immediately compatible with the training and experiences of medical authorities. There are good reasons to conclude that forces should be routinely engaging with legal services through IHR, IoD assessments and when preparing for PMAB.
- 18.2 At present this is far from the case in a number of forces which frequently either do not engage with force legal services or only do so at a late stage when it is too late to intervene proactively. There is also concern over the experience of force solicitors in relation to this subject area and a number of respondents have quoted having either poor legal advice or no confidence in their legal services to assist with these processes.
- 18.3 The use of doctors to perform the role asked of them as SMP has been criticised by both the courts and by lawyers acting on behalf of SMPs²⁵ due to the skill set required by SMPs to make legal as well as medical decisions. There are cogent reasons for concluding that formal involvement from legal advisors should be routinely sought.
- 18.4 Force legal services do have an association to support their members which has an employment law subcommittee where IHR, IoD and PMAB related issues would rest. The association maintains a POLKA community to aid communication between its members. However, for reasons similar to that of the NAMF, this association would not be able to meet the overarching subject matter expert needs of the service.

19. The Selected Medical Practitioner (SMP)

- 19.1 In reaching the decision on whether to retire an officer (and the level of benefits they are to receive), the police pension authority must refer certain questions to a medical practitioner selected by them, commonly referred to as the SMP. The SMP plays a significant role in helping to determine if an officer is to be retired on ill-health grounds by the police pension authority and, if so, what level of benefit they are to receive²⁶. For the purposes of the PMAB it is important that it is recognised that this role is, by implication, not solely restricted to medical opinion²⁷.

FMA advice to the SMP

- 19.2 It is noted that to assist the SMP, the FMA is requested to provide advice and this information is delivered in two parts: a medical background and opinion²⁸. Both FMAs and SMPS engaged in this review have questioned the rationale and value of the FMA providing an opinion. It is ultimately for the SMP to answer the statutory questions. The Home Office Guidance (although not the legislation) requires their role to be independent when dealing with disablement and its permanence. By asking the FMA for a medical opinion the following negative impacts may occur:
- This may put additional pressure on the SMP in instances where they do not agree with the medical opinion of the FMA.
 - This may foster an expectation in the officer in question, who will understandably expect the SMP to concur with the FMA's diagnosis.

- Heightening the risk that an appeal against the decision due to this divergence in opinion.

Resource limitations

- 19.3 Many forces are experiencing increasing difficulty in identifying suitable doctors to perform this role. The role of the SMP is a specialist one and at the time of writing the available resource is limited. Historically, when the relevant regulations were written, many SMPs worked as Force Medical Advisors (FMA) in other forces. However ongoing changes to occupational health delivery has resulted in the vast majority of forces now obtaining clinicians from private companies with no prior background of the police service.
- 19.4 SMPs and FMAs also need to have an understanding of the complex regulatory and legal processes associated with ill-health retirement. Therefore, when SMPs are sick, take leave or resign there is no obvious resource available to forces to replace them. This limitation not only results in significant and costly delays in the process for the force but also results in forces facing increasing fees as the pool of expertise available to provide the function shrinks.
- 19.5 One of the problems relating to the difficulties in obtaining suitable doctors as SMPs is cost. Whilst SMPs can represent a significant cost resource to Forces, SMP work is relatively poorly paid compared to other roles clinicians can obtain both in the field of occupational medicine and in the private sector. In addition to this, the General Medical Council (GMC), in their 2014 edition of our annual 'state of medical education and practice' report, recognises the decline in the number of doctors choosing to go into occupational medicine and reports that occupational health has more doctors aged over 50 than any other speciality. This, therefore, represents a broader issue than just the management of IHR and IoD assessments.

Resource Limitations (Specialists for Boards)

- 19.6 As part of this review Health Management Ltd have commented on an increase in the number of late requests for changes to dates of hearings. As a consequence of this they have expressed concern that, if this trend continues, specialists will become less willing to engage in PMAB hearings. If this concern is realised this will not only result in valuable medical expertise not being available for hearings but also heightened costs for the specialists who are willing to attend.

General Medical Council – Impact of the Regulator

- 19.7 In addition to this there is a general perception articulated by a number of clinicians who engage with this review that the police service is not a desirable employer. At the heart of this issue appears to be concerns over vulnerability to baseless complaints, or threats of complaints, by officers or former officers, to the GMC in order to obtain more favourable pension settlements. Other SMPs report perceived pressure from management to obstruct the process and influence decisions²⁹.
- 19.8 Evidence of such instances remains anecdotal. Previously work by the Health Safety and Welfare strategic group (chaired at that time by Mr Joseph Stewart - the then ACPO Safer and Healthier Policing Portfolio and reporting to the WDBA) did conduct a review of this issue, however, the GMC do not keep adequate records for this purpose and those doctors who had previously worked in this

area, who had subsequently retired or given up SMP work, could not be contacted to engage in this work³⁰.

- 19.9 It is difficult to see how the service can seek to safeguard against violation of the SMP role. The aim of the GMC is to regulate the behaviour and action of the doctor and in the post analysis of any rejected complaint made against an FMA or SMP, they will not provide any commentary on the nature of the complaint received or offer an opinion as to the motivation behind it. As such it would not be possible to ascertain whether the complaint, or threat of complaint, was vexatious in nature or a genuinely held belief that the doctor in question had acted in an untoward manner.
- 19.10 In the event of incidents of force subversion of the regulatory process, considering SMPs are on the whole employees of occupational health providers working under contract with the force, there is a clear conflict of interest for the companies in question in the event that a SMP raised concerns.
- 19.11 To work under the GMC's regulations, doctors are required to always act in the best interests of the patient, yet while it would be perverse for an SMP to confirm eligibility to Ill Health Retirement benefits or an Injury on Duty award on the basis of the patient's best interests nevertheless, this would be a justifiable position for the doctor to take in the eyes of the GMC. This however is clearly not a justifiable position for the purpose of effectively performing the role of the SMP as intended by the regulations.
- 19.12 It is noted that in separate correspondence to the Home Office representations have been made to suggest judicial exclusion for the role of the SMP³¹. Furthermore legal opinion obtained as part of this review suggests that a medical authority appointed under the Regulations may be covered by the doctrine of judicial privilege³². A specific recommendation is outlined in **Appendix D**.

20. Working with Staff Associations

- 20.1 The ability of forces to manage these processes appears to be heavily impacted by the relationship which management has with the staff associations. Most forces engaging with this review cite fostering good working relationships with their staff associations which, in some instances, has in turn created a culture where the staff association effectively serves as an informal triage service to help forces manage assessments. However this is not universally the case and in discussions instances of an 'us' vs 'them' attitude appears to be prevalent in some forces.
- 20.2 This in itself is not surprising; the relative merit of an officer's claim for IHR or IoD and the very nature of the appeal to PMAB clearly places management and the appellant as opponents. However it is important that those individuals managing these processes on behalf of forces recognise the validity of staff associations' role to represent their members and their ability to do so competently and successfully is more of a reflection of their own forces' collective failure to manage the processes well than the behaviour of the staff associations.
- 20.3 In addition to this it is recognised that the request for IHR may come following protracted absence management, grievances, disciplinary or performance issues and there is a danger of personalising the assessment. Respondents, both force and staff association, have provided examples where past behaviour of individual officers would suggest that the receipt of IHR and IoD payments was contrary to a sense of 'natural justice'. However it is important that these assessments are

regulatory processes which take no account of the behaviour / history of the individual officer outside the parameters of the injuries and medical conditions which lead to the assessment unless relevant to, eg, the credibility of the officer's/pensioner's testimony on medical or other matters.

21. Recovering Costs from Frivolous and Vexatious Claims.

- 21.1 There is a broad consensus from force personnel managing these processes that the lack of any cost risk on the part of the appellant is resulting in a number of appeals being made which have no realistic prospect of success³³.
- 21.2 Figures provided by Health Management Ltd show that 76% of appeals³⁴ did not succeed but it is not possible to make a formal assessment as to the relative merits of each appeal. Force personnel do cite a reluctance on the part of Boards to award costs against unsuccessful Appellants and greater clarity as to the board's threshold for finding an appeal frivolous and vexatious needs to be ascertained.
- 21.3 There is a widely held view that, though amendments have been made to regulations to limit such occurrences in practice, there is little confidence that PMABs will find in favour of Forces in awarding costs and the appeal therefore is seen as a 'free shot to nothing' which subsequently represents a significant cost to the public purse. While the frustration at the cost to the public purse is understandable this ultimately is dependent on the legal test for frivolous and vexatious. A specific recommendation is outlined in **Appendix D**.

22. Challenging 'Perverse' Decisions

- 22.1 It is for individual forces to decide whether to challenge decisions of the PMAB through Judicial Review. While the initial costs of proceeding to JR are relatively low the cost impact on forces of cases going against them are significant. As a result, cases were cited where forces have reported that their decision not to take cases to review was based on the local financial impact to the force at that time, despite recognising the wider impact that allowing the decision to go unchallenged would represent.
- 22.2 While this is entirely understandable from the narrow perspective of the individual force, the broader impact the case may have on force management of these processes may be significant and represent much greater, long-term financial impact to the public purse. The previous point concerning the lack of legal specialism in this policy area may also be a relevant factor.
- 22.3 The impact of case law generated by individual cases heard at the PMAB means that this is not an issue which can be successfully dealt with by individual forces. Any force, regardless of the experience and ability of its staff and the resources the force makes available to successfully manage this process, will not be able to protect itself from the impact of the negligence and/or incompetence of other forces. It is therefore crucial that the Police Service look to minimise this threat by working collectively.

23. Quality Assurance and Auditing

- 23.1 Very little evidence of the force auditing IHR or IoD decisions has been identified by the scoping review. It is noted that some forces are auditing the work of their FMA but this tends to be in a more general capacity in relation to the medical services they provide as occupational health physicians. There is no evidence of

forces or occupational health providers auditing the processes or decisions of occupational health physicians who act as SMPs.

- 23.2 It is recognised that, for the purpose of the SMP's decision the PMAB could in itself be considered to be a form of audit but this does not enable forces to audit decisions which have not gone to appeal. Instances when a force's process was inadequate or the SMP's decision to confirm eligibility was medically dubious or unduly lenient are not detected. Therefore, in the absence of the audit of IHR and IoD assessments it is unclear how forces can be confident in the services that are being provided or that the broader management processes that they have in place are fit for purpose.
- 23.3 Feedback from the review has identified instances where the IHR processes have been used as a tool to effectively manage individuals out of the service where the medical evidence does not support retirement. It is important that forces use the correct processes for specific management issues. The application of clear and robust audit process would help ensure that forces used the IHR process responsibly. Specific recommendations relating to this issue is outlined in **Appendix D**.

24. Engaging with Officers during IHR / IoD assessments

- 24.1 One aspect that all respondents to this review agree on is the complexity of the process. It is safe to assume that, when they begin these assessments, the vast majority of officers have very little understanding of what will happen, the stages involved and what will be expected of them in order to bring the assessment to completion. In addition to this, the combination of any physical/mental impairment and the financial impact of the decision to confirm or deny eligibility to health-related pensions benefits, makes this an emotive issue.
- 24.2 It is noted that officers will be supported by their staff associations throughout the assessment process but it is also important that the force clearly explains its process to the officer. Responses suggest that there is significant variance in forces' approach to informing the officer in question and explaining what will be required of them. That forces clearly explain the process is not only desirable for the wellbeing of the officer but also helps the force manage this process as quickly and cheaply as possible. For example, articulating the need for consent to medical GP records.
- 24.3 It is noted that each PMAB will cost a force approximately £10,000. As such, efforts would be well spent to ensure that an officer's expectation is managed so it remains realistic and therefore potentially avoid a costly appeal. Some force policy documents submitted as part of the review contain useful tools such as process flowcharts and Frequently Asked Questions documents. It is noted that some forces openly acknowledge that management of the officer is left to the care of their staff association.

25. Pensions Ombudsman

- 25.1 Following unsuccessful appeal to the PMAB it has been noted that a small number of appellants have subsequently lodged appeals with the Pensions Ombudsman³⁵, who has subsequently made determinations. This has resulted in confusion within forces as to the role of the Ombudsman to intervene in a statutory regulatory process in which the Ombudsman is not specifically mentioned. This confusion serves to further erode force personnel's confidence in the process and a clear explanation of the Ombudsman's role is desirable. Clarity in respect of the

jurisdiction, role and practices of the Ombudsman may alleviate any confusion and improve the process for parties.

- 25.2 At the time of writing the Pension Ombudsman is undergoing a period of transition with significant changes at the heart of this organisation. Representatives of the NAMF are currently working with the Ombudsman to develop a working relationship between them and forces and to seek clarification on the jurisdiction of the Ombudsman with regards to the assessment of IHR and IoDs.
- 25.3 While it is hoped that a dialogue between the NAMF and the Ombudsman will facilitate a better mutual understanding of their respective roles and in turn an improvement in force management processes, it is likely that a more central and authoritative body representing the entire police service would be better placed to develop this relationship. It is noted that there is a requirement for Chief Constables, as pension scheme managers, to formulate Pension Boards by April 2015 and work is ongoing to establish these structures. Ideally, the National [Pension] Scheme Advisory Board (the functionality is understood to be performed by the PABEW) would be best placed to liaise with the Ombudsman. Specific recommendations relating to this issue is outlined in **Appendix D**.

26. Conclusion / Recommendation

- 26.1 There is a critical need for forces to work collaboratively in order to ensure that these processes are managed appropriately as the lack of expertise, consistency and governance of the current arrangements is resulting in considerable problems. Moving forward the service needs to develop greater support and governance structures to ensure greater consistency and that staff engaged to assess IHR, IOD applications and subsequent appeals are competently trained and supported by legal, medical and regulatory subject matter experts. Recommendations relating to the issues raised as part of this review are outlined in **Appendix D**.

¹ New 2015 Police Pension Regulations were laid before parliament on the 5th March.

² If the Force decides not to refer an issue to the SMP at all the appeal is to a Crown Court.

³ It is noted that the process used in the PSNI, while following similar regulations, engage a different process for PMAB. It is also noted that at the time of writing a significant review of these processes has been conducted by Mr P Scofield QC.

⁴ It is noted that this issue has already been drawn to the attention of the Home Office. And as stated in the exclusions above consideration of this issue is beyond the remit of this review. Any regulatory changes will be managed through the Police Advisory Board (England and Wales). It is worth noting that, from evidence submitted for this review, staff associations are unlikely to support any such changes. Caution was also expressed in the impact of any regulatory change in that most aspects of the regulations which have proved controversial have now been settled in the case law any changes risk leading to more litigation until the new provisions are tested and further defined by the courts.

⁵ It should be noted that the use of the questionnaire was to seek to canvas views and identify individuals to be engaged for later parts of the review such as the focus groups and interviews. Due to the complex nature of this work an in-depth statistical analysis of force management was not possible. While the questionnaires were broadly circulated to their respective fields the overall completion rates varied. The medical questionnaire received the highest rate of response with 23 completed questionnaires. This was a good response considering the small number of doctors working as SMPs and FMAs. The response to the staff association questionnaire appears very poor with only 31 completions from 282 hits but as each Federation branch is likely to only have one individual engaged in this work the completed questionnaire are likely to represent a significant

proportion of individuals engage in this policy area on behalf of officers. The high number of non-completed questionnaires is also considered to reflect individuals who would have received the questionnaire as it was disseminated through branches and probably represented individual officers with no formal role in these processes. In addition to this the questionnaire was unfortunately leaked and appeared on the NARPO website. As such a significant number of hits would likely be curious retired officers. The most disappointing was the response to the questionnaire to HR and force administrators which while accessed 138 times was only completed by 27 individuals of which a high proportion were senior HR managers reporting high confidence in the robustness of the processes and policies which they had in place. Despite this the questionnaire did achieve the objective of identifying a number of individuals willing to engage with the review. Engagement from force legal professionals was also disappointing with only 6 completed questionnaires. It is possible this low response rate reflects the low level of engagement of legal services by forces in many forces.

⁶ One individual present at the focus group was also present at the NAMF session.

⁷ In light of the governance of police pension issues residing with the Police Advisory Board of England and Wales (PABEW), the steering group agreed that the Adelphi technique should be conducted through formal PABEW meetings. The issues raised in this paper were considered on the 27th January 2015.

⁸ Service Strength as of 14th March 2014

⁹ The financial data provided was a mixture of actual spend for the financial year 12/13 and predicted spend for the financial year 13/14.

¹⁰ One force was unable to provide this data.

¹¹ Due to a shared finance function this cost represents the combined average of two forces.

¹² A note of interest. This figure was the same forces (shared Finance function) whom had the highest average cost per IoD.

¹³ PMABs are managed by private companies on behalf of the Home Office.

¹⁴ includes ex-Capita cases and cases on hold

¹⁵ Additional costs are incurred in the event of specialist consultants are required.

¹⁶ It is understood that this still represented the cheapest option from those companies which entered into the tender process.

¹⁷ Feedback from the National Attendance Management Forum

¹⁸ However it is foreseeable that the impact of the introduction of JRFT and other Winsor Review recommendations such as changes to how force manage restricted duties will impact on the number of IHR and therefore the number of PMAB.

¹⁹ The following correspondence is a typical example of the broad themes received from force personnel: I am the Head of Corporate Health and Support Services for [Force]. Since June this year, my position has become responsible within [Force] for the management of Ill Health Retirement. This includes IoD awards and appeals. In addition, this covers Police Staff who retire through Ill Health or request Deferred Pensions through Ill Health after retirement.... .., following cuts, [Force's] dedicated Pensions Manager role was dispensed with, as a result I have taken over responsibility together with my normal role of managing the Occupational Health, Welfare and Chaplaincy for [Force]. (Acknowledging that this is the best place for it to sit within the organisation where there is no dedicated Pensions Manager) Being new to Pension issues, (other than being a Police Pensioner myself) I am keen to learn from others and have tried to link in with [name], our Police Pensions Administrator. I am told there is not a course or learning forum for those taking over the role of Pension Manager and related issues.

²⁰ Similar parallels may be drawn to the review by David Scofield QC on behalf of the NI Policing Board stating that pensions admin [in the Police Administration Branch of the Board] will only be dealt with when the process is clearly mapped, supported with appropriate IT, staff and management at all levels commensurate with the legal obligations in the Police Pension Regulations.

²¹ One Force only uses the Police Earnings Assessment Matrix (PEAM) produced by Grantwood Consulting for West Mids Police several years ago and which is updated each year by inflation. Others use PEAM but support the findings with either specific jobs suited to their competencies, skills and abilities as assessed by HR and/or police civilian jobs. It is understood that most use specific jobs and/or civilian jobs as assessed by HR.

²² This relates to numbers of IHR and IoD. This review has not sought to make any assessment of the relative efficiency of individual force HR or OH functions.

²³ Circulated to the CIPD Forum members November 2011 by the Chair of the CIPD Police Forum

²⁴ Reflecting the desire to reduce the number of officers injured and in need of these processes.

²⁵On behalf of the Doctor in the case of Rooney: *'We consider that Dr Patience was placed, as is often the case for medical referees under these regulations, in a most difficult position. Dr Patience is of course not legally qualified. The regulations required him to act in a quasi-judicial capacity and to construe complex regulations that have been the subject of repeated litigation in recent years, and to grasp legal distinctions of some nicety....However, he did not have the benefit of a legally qualified clerk or assessor. He then required to apply the appropriate tests as he understood them to convoluted factual allegations. It remains a matter of concern that legally qualified assistance is not generally provided to medical referees in attempting to reach their decisions in such circumstances.'* 2011 case of Williams, Judge Davies writes: *"Whilst I have some sympathy with the difficulty which a tribunal in its position must have experienced when asked, as a medically qualified panel without the benefit of legal assistance, to determine these issues in the context of a procedure designed principally to resolve medical issues, that does not permit me to excuse a failure to decide the questions which it was required to decide ["complicated issues of disputed fact"], or to provide reasons for the decisions which it was required to make."*

²⁶ It is a common misconception that it is the SMP who is perceived to make the decision whether to retire. The SMP role is an independent one and must remain independent to help ensure a fair and transparent process.

²⁷ Similar parallels may be drawn to the review by David Scofield QC on behalf of the NI Policing Board stating that... the present system sees SMPs and IMRs having to grapple with legal issues, factual disputes and essentially accountancy assessments, which are plainly not issues of medical judgment. On the other hand, the determination of the date when an officer became permanently disabled, which does seem to me to be an exercise of medical judgment, is left to the Board.

²⁸ A common comment, relevant to the training given to occupational health professionals in force, is the inclusion of comments in doctor's reports, particular in the case of GPs, where the doctor makes statements in the report which are effectively the officer's opinion of the condition and the cause such as citing a specific incident. When preparing submissions to SMPs it is important that such comments are identified and challenged and that forces present whatever evidence is available to enable the SMP to decide whether, on the balance of probabilities, the incidents of this is the impact of the condition. Such occurrences in medical reports is not limited to the management of IoD and IHR but is also unhelpful for managers looking to manage absence and reasonable adjustments.

²⁹ Examples reported by staff association representatives include perceived barriers to referring officers to SMPs for assessments. It is noted that not all incidents reported are to the detriment of the officer but still reflect poor management. Incidents where IHR is seen as a method of managing difficult to manage officers out of the organisation were also reported (effectively the IHR is being blocked by the SMP whose diagnosis does not support IHR).

³⁰ In total 72 doctors were contacted by the NPIA and they were asked about their experiences with the GMC. 32 returns were received of which 8 doctors identified 18 complaints made against them to the GMC. However it should be noted that 7 of the 32 respondents were exclusively SMPs and had less than 2 years' experience of working with the police service in this capacity. None of the 18 complaints made were upheld by the GMC. Specific details of the basis of the complaints made and the GMC's decision is not available but indications from the respondents suggest that the complaints were on the whole dismissed as being frivolous or vexatious in nature. It is, however, acknowledged that doctors who had a complaint upheld would be unlikely to be willing to declare this fact for this exercise. One doctor did report receiving 6 complaints, all of which proved to be without basis and, even considering his lengthy service, this represents a significant statistical anomaly. Two doctors also reported internal complaints being made which were found to be without basis by the force. These complaints were not subsequently escalated to the GMC. Nationally, in 2009, there were 231,415 registered doctors in the UK and 5,773 complaints submitted to the GMC. This therefore means that each year there is approximately one complaint per 40 doctors. Seeking to make direct comparisons between the responses and the mean average of the GMC national statistics is however inadvisable for the following reasons:

- Complaints made against FMAs/SMPs occurred over a number of years and the length of service of the FMA/SMP who have had complaints made against them is a relevant factor. However for eight doctors (with a combined length of time working with the police service of 109 years) to receive 18 unfounded complaints appears inconsistent with the national trend.

- The GMC are reporting a general increase in 2009 of complaints (11%) compared with 2008. An increase in the number of complaints against FMAs/SMPs may therefore not reflect a problem restricted solely to the police service.
- The annual GMC statistics do not differentiate between the varying specialism of doctors. It is quite feasible that this difference in role will produce a variance in the proportion of complaints received. A GP will see many patients a day while an SMP may only be involved in a handful of injury awards in a given year but make meaningful decisions on injury awards and pensions.

³¹ This would require regulations to expressly state that although an SMP is employed for their medical expertise, their role is not limited to medical decisions. They are, effectively, serving as an arbitrator such as a coroner or judge and should enjoy the same protections as coroners and judges. Coroners are also employed for their medical expertise and also remain clinicians yet it is recognised that their medical regulator has no locus when the, eg, coroner is performing their statutory function.

³² Those protected by the doctrine are exempt from all civil liability at common law for anything done or said within their jurisdiction, even if there is bias, malice or corruption.

³³ NAMF and Police CIPD Forum submission plus various references during interview.

³⁴ PMAB - July 2014 Management Information

³⁵ As reported by responding forces. A current figure as to the overall number of approaches to the pensions Ombudsman is not currently available.

Appendix A

Name of meeting: Professional Committee
Date of meeting: 13/11/13
Item lead at meeting: CC Mike Cunningham

Agenda item number: []

Title of paper: **Commission to review force management of Police Medical Appeal Boards (PMABs)**

1. Issue

1.1 The Workforce Development Business Area have identified that there are emerging issues related to the Service's management of Police Medical Appeal Boards (PMABs) and, in order to ensure that forces are effectively discharging their responsibilities, have requested that the College of Policing conduct a review and assessment of forces management of this process.

1.2 As PMABs are effectively appeals against forces' management and assessment of Ill Health Retirements (IHRs) and Injury on Duty Awards (IoDs), forces' management of PMABs are inextricably linked to the initial assessment. It is therefore advisable that any review incorporates an assessment of the Service's management of these processes as well as their management of PMABs.

2. Summary

2.1 IHRs and IoDs are financial payments given to injured officers and are governed by regulations made under the Police Pensions Act 1976. Management of the IHRs and IoDs processes require a complex understanding of medical, regulatory and legal issues and the responsibility for this rests with the Chief Officer in their capacity as the Police Pension Authority (this was with the Police Authorities prior to the introduction of PCCs). Where an officer is dissatisfied with the outcome of the Police Pension Authority's decision they can appeal to the PMAB.

2.2 IHRs, IoDs and subsequent PMAB hearings have significant resource implications for forces and in 2010 the NPJA made an assessment of this cost as part of the evidence submitted for the Windsor Review. From this assessment it was identified that in October 2009, Health Management Ltd³⁵ reported that between November 2008 and October 2009 they had received 271 appeals of which 116 had been heard at PMAB³⁵. It was estimated that the cost of managing the 116 cases was approximately £1 million and this did not include costs associated with the IHRs and IoDs paid to injured officers, appeals yet to be heard, administration costs or any costs associated with cases going to judicial review. At that time, Health Management Ltd reported that of the 271 applications, 95 cases had been withdrawn. While withdrawals happen for various reasons and at varying stages of the process, each application would have undergone the injury award assessment and would therefore still represent a significant cost to forces.

-
- 2.3 Management of IHRs also have a direct impact on forces' ability to deploy and manage their workforce. At the time of writing arbitration is pending on the proposed way forward- debated within the PNB/PAB following the Winsor Review recommendations regarding management of officers on restricted duties. The number of officers currently on restricted duties is a direct result of policy decisions in 2006 to reduce the number of IHRs. It is foreseeable that the current work to reduce the number of restricted officers will increase the number of officers seeking IHR. It is also foreseeable that the introduction of fitness testing to the service will also have a bearing on the number of IHR requests.
- 2.4 Through engagement with HR and OH practitioners the NPIA identified that each force approached the management of this issue differently, dependant on their workload and the resources made available to them. Even prior to the regulatory responsibility passing to the Chief Officer it was common practice for police authorities to delegate this role to forces and this was done with little strategic governance. While this work was (and still is) primarily delegated to HR there is subsequently varying levels of engagement from occupational health professionals and force legal services with significant variance in the roles of these departments between forces. The NPIA identified that this variance was to the detriment of the Service, resulting in duplication of effort, unnecessary cost and ultimately disparity in IHR and IoD decisions, with similar claims receiving significantly different injury awards.
- 2.5 Case law resulting from PMAB decisions and judicial reviews of PMAB decisions are proving problematic for forces trying to assess IHRs and IoDs. In the submission of evidence to the Winsor Review, the NPIA identified a lack of consistency in how forces interpret case law, with some forces obtaining legal advice but some assessing IHRs and IoDs and preparing for PMABs without engaging the support of any recognised legal professional. The quasi-legal capacity of the PMAB is therefore having a profound effect on individual forces' ability to manage this process. Where an individual force fails to properly present at a PMAB, or fails to be suitably robust and challenge in the event of a perverse decision, all forces will be bound by the decision.
- 2.6 In reaching the decision on whether to retire an officer (and the level of benefits they are to receive), the Police Pension Authority must refer certain questions to a medical practitioner selected by them, commonly referred to as the SMP. The SMP plays a significant role in helping to determine if an officer is to be retired on ill-health grounds and, if so, what level of benefit they are to receive. For the purposes of the PMAB it is important that it is recognised that this role is 'quasi-legal' and therefore the SMP role is, by implication, not solely restricted to medical opinion. Many forces are experiencing increasing difficulty in identifying suitable doctors to perform this role.
- 2.7 At present there are limited training opportunities available and no centrally accredited qualification for staff and SMPs. SMPs and force personnel are therefore reliant on their experience of the work, personal endeavour and ad hoc training they have been given by their employers. Prior to its closure, the NPIA ran training events in an attempt to assist forces. It was recognised at that time

that these provisions were inadequate for the Service's overall needs as ongoing changes in case law require frequent training revisions and updates. In addition to this, in order to maintain frontline services, forces have made significant cuts to HR and occupational health provisions. This has further reduced the corporate knowledge in the service with regards to management of these complex processes.

- 2.7 In addition to the above there are also provisions within regulations for forces to review IHR decisions (IoDs are one-off payments and there is no provision to review them). The use of this provision remains controversial and its use is keenly challenged by the officers in question and NARPO. There have also been a number of significant high court decisions that have further clouded the issue. Due to this many forces, while encouraged to do so by the Home Office, are reluctant to initiate reviews fearing that the cost and work associated is a false economy compared to the financial saving generated by any reduction in IHR banding. A review of the services management of IHRs and IoDs would be a considerable piece of work in its own right and there may be benefit in seeking to review this issue separately once the review of IHR and IoD has been conducted and forces have been able to consider the review's recommendations.

3. Recommendations

- 3.1 That the College agree to conduct a scoping exercise to determine the remit for a formal review and the resources required to review of the service's management of IHRs, IoDs and PMABs.
- 3.2 The College does not include IHR reviews as part of this scoping exercise.

4. Supporting information / Consideration

- 4.1 The Home Office is currently developing new Police (Injury Benefit) Regulations 2013. The release of these regulations could potentially serve as an opportunity to realign and improve force practices and processes on this issue.
- 4.2 The Home Office is currently in the process of retendering the contract for the PMAB.

5. Resources

The breadth and complexity of this issue makes it difficult to assess the resource commitments required to conduct a broad review of all forces. The proposed scoping exercise would still be a sizable piece of work but the resource commitment would be predominantly a human and time commitment from the College staff.

Author name: Matt Johnston
Author job title: Policy Manager of Occupational Health, Safety and Welfare
Author email: matt.johnston@college.pnn.police.uk
Author tel number: 0203 113 7406
Sponsor (if not Author): CC Mike Cunningham

Appendix B

Terms of Reference

Introduction

On the 13th November 2013 the College of Policing Professional Committee accepted the commission to review how the police service manages appeals to the Police medical Appeal Board (PMAB). As PMABs are effectively appeals against forces' management and assessment of Ill Health Retirements (IHRs) and Injury on Duty Awards (IoDs), forces' management of PMABs are inextricably linked to the initial assessment the review will also look at how the service manages these processes. For the purpose of brevity the work will be referred to as the 'PMAB review'.

Steering Group

The review will be conducted by the College of Policing under the instruction of a steering group that consists of representatives of the following stakeholder groups:

- ACPO (Senior Responsible Officer and chair of the steering group)
- Association of Police Crime Commissioners (APCC)
- Association of Local Authority Medical Advisors (ALAMA)
- Police Federation (England and Wales)
- Superintendent's Association (England and Wales)
- College of Policing (Secretariat)

The Steering group will also include the following subject matter experts:

- Mr Trevor Forbes – West Midlands Police
- Mr Nicholas Wirz – Force Solicitor Northumbria Police
- Mr Paul Barker – Humberside Police

The steering group will be chaired by the Senior Responsible Officer or a nominated representative.

The College of Policing shall provide secretariat support to the Working Group, drafting relevant papers for the group including minutes the meetings, where necessary.

The aim of the group is to:

- Review working practices with relation to police force's management of IHR, IoD applications and subsequent appeals to PMAB.
- Identify good practice currently existing in the service
- Make recommendations to the College of Policing professional Committee for further work.

Inclusions

All forces in England and Wales, Police Scotland, PSNI and the British transport Police.

Exclusions

It is noted that work is underway in the Home Office looking at the regulatory provisions regarding this work. While it is acknowledged that information ascertained in this review

may assist the Home Office develop this work this review will focus on the service's management as per the existing regulatory process.

It is noted that at the time of writing some forces are conducting reassessments IoDs and it is acknowledged that this is a complex and contentious issue. While it is recognised that this is important work, due to the current absence of clarity on this issue and the need to first review the initial management processes first, this issue has been excluded from this review. It is expected that the need to consider this issue may form part of the recommendation for future work.

Appendix C

Review of Sample of Force Policy Documents

Introduction

- 1.1 As part of the review internal force policies developed to assist staff to manage these processes were obtained. Documents were submitted voluntarily by SPOCs identified by their force to engage and support this work and HR and occupational health professionals engaged through the National Attendance Management Forum.
- 1.2 At the time of writing, policy documents have been submitted by eleven forces. A further four forces have contacted the review team to state that they are currently undertaking internal reviews of their force policies and as such were unwilling to release the drafts at that stage. One force reported that they did not have a formal policy for these processes.
- 1.3 The objective in reviewing and comparing these documents was as follows:
 - Inform understanding of current management processes in forces
 - Identify discrepancies between forces
 - Identify weak approaches by some forces
 - Identify good practice

Initial observations

- 2.1 From comparing the material submitted, it is clear that the policy approach is varying significantly from force to force. It is noted that individual forces will have different force structures and reporting lines which will impact on this but there remain certain aspects which ought to be covered in these policies.

Governance and Policy Control

- 3.1 There are some fundamental elements of policy development and policy governance which it is reasonable to expect should be in place for all forces. This is not only limited to this particular policy area but should be apparent from the perspective of the broader strategic policy governance of the force. A significant number of policies submitted had additional web links to their internal Intranet systems. This has meant that the review has not been able to access certain elements of the policies and as such elements of the overarching policy management may have been accessible via these links. However the following issues have been identified as issues of concern.
 - A number of Force policy documents did not include reference to who was ultimately responsible for the development and sign off of the policy.
 - Policies should make clear reference to relevant legislations. Not only relevant Police Pension Regulations but the Equality Act 2010 and consideration of freedom of information issues and legislation governing medical confidentiality. Policies should signpost these documents (all publicly available documents).

- Policies should make clear reference to the force equality impact assessment which was conducted in tandem with these policies and signpost these documents.
- Policies should have a clear sign off and a review date in order to assist forces maintain version control. It would also be beneficial to clearly state the governance structure through which the document would be reviewed and to identify key stakeholders engaged in this consultation. One policy document was particularly good at this outlining how the individual policy document aligned with management structures and also outlined auditing and dip sampling arrangements to ensure that these processes would be actively monitored.
- Forces should have clear content to signpost relevant IHR and IoD processes and this was not always the case. This is particularly relevant where the policies for IHR and IoD are imbedded in wider force HR policies which also included consideration for the management of attendance and restricted and recuperative duties. There is value in these policies not being bundled into a single overarching HR policy as this will make it a very large document which will be difficult to continually review and maintain version control.
- Policy documents should be clear as to whom the policy is aimed at and what it is for. Some policies are force vision statements and summaries and explanations of regulations and other relevant documents such as PNB circular 10/4 while others are detailed and comprehensive outlines of process and roles.

Multi Force Application

- 4.1 It was noted that a number of the policies submitted were being applied in more than one force. This reflected joint management arrangements not only specifically for ill health retirement and injury on duty but also wider force collaborations on HR and occupational health.
- 4.2 However it is also important to recognise that, for the purpose of the regulations, it is the Chief Officer of the individual force, in their capacity as the Police Pension Authority who is the established authority in these cases. It is therefore critical that forces ensure that these complex arrangements are adequately articulated within the force policies on IHR and IoD and PMAB management. Examples include:
 - Ensuring that forces adopting another force policy are suitably able to do so and that their reporting lines and governance are adequately reflected in the policy.
 - That all forces implementing the policy are engaged in the policy governance. It was noted that, while implemented in a number of forces a policy document submitted made direct reference to a specific force.

Templates and flowcharts

- 5.1 Some documents have provided agreed templates for correspondence and processes. It is considered, assuming that the accuracy and appropriateness of

such documents is maintained, the inclusion of these documents helps the force provide a standardised approach to these processes which is desirable.

- 5.2 Some policies include flowcharts to help articulate the process for staff and these documents tend to be more detailed and comprehensive. The use of such processes appear to have been beneficial to provide guidance to staff managing these processes and also help explain the process and decision making steps to officers subject to them. From a policy development perspective there may be valuable learning which forces can obtain by developing such a flowchart, as it has the potential to assist force identify weak points in their management processes. It is however important that the force does not simply lift this flowchart from other force policies but accurately reflects the working processes in their own force.
- 5.3 While some policies articulate what should happen in each circumstance they do not clearly state who is responsible for each decision at this stage. The current working arrangements in a force may not impact on some forces as the professionals engaged are clear in their own reporting lines and comfortable in their processes. This will not necessarily be the case moving forward as key individuals leave the force or HR and occupational health structures are changed as a result of strategic decisions within the force.

Review and Consultation

- 6.1 As stated above some policies did not specify specific review dates. It is noted that ongoing changes to legislation and case law may require the review process to be more flexible than simply setting a future date for the review to occur but it is important that the document does clearly state a process by which the document is reviewed, who is responsible for this review and who will be consulted.

Other issues

- 7.1 The force document will also be a source of information for the individual seeking the IOD or IHR. One force gave a good example of FAQ for these officers.
- 7.2 A number of force policies contain very little detail on what actually happens at the PMAB. It is, however, noted that separate guidance has been produced by Health Management Ltd. which forces may be using. It is also noted that supporting guidance on preparing for PMABs was also developed by the National Attendance Management Forum and endorsed by the Police CIPD Forum. Forces may be using these documents in tandem with their own force policies. However, if this is the case these documents should be referred to within the force policies and signposted.
- 7.3 A number of forces continue to refer to Police Authorities. This means that they have either not been reviewed for a number of years or have not been reviewed with sufficient diligence.

Appendix D**Recommendation – Regional Management of IHR, IoD and PMAB Processes****1. Introduction**

- 1.1 Forces currently manage injury awards and ill-health retirements in isolation. Their ability to manage this process is therefore dependant on the knowledge, expertise and resources available to them from within their own force. Forces can continue to manage this process in the manner that they are accustomed. Pension regulations set out clearly defined roles and responsibilities for police pension authorities and forces and it is ultimately their decision as to how they administer this.
- 1.2 It should be noted however that regardless of the resources and processes employed by an individual force to manage this issue forces will be vulnerable to the potential impact of mismanagement from other forces. They are also not benefiting from the support and expertise of the rest of the service. As such it is in the collective interest of all forces to manage this process effectively.

2. Regional Centres

- 2.1 A recurring comment in the review was the desire to see forces work more closely together. It was accepted that a national management model was unlikely to be accepted and would require significant resources. There was however a broad agreement that a regional approach to collective management of these processes could greatly assist individual forces.

3. Structure of the Regions

- 3.1 By looking to manage these processes collectively in regions forces could subsequently develop structures to pool knowledge and resources and benchmark their processes. Ultimately it would be for individual forces to establish which region they engage with but it is expected that this decision will be decided by the following considerations:

Pension Provider

- 3.2 It is noted that there is a requirement for Chief Constables, as pension scheme managers, to formulate Pension Boards by April 2015 and work is ongoing to establish these structures.

Staff Association Regions

- 3.3 As outlined in the review the Police Federation's collective management of these processes is already significant better than that of the Service. It is also noted that a positive and close working relationship with staff associations is desirable.

Geography

- 3.4 Clearly one of the dominant factors in aligning forces into regional centres will be the geographical location of the force. It is envisaged that the primary need to

share SMP provisions and the need to develop close working relationships suggest that forces should ideally be seeking to engage with their immediate neighbours.

Regional centres based around a large force

- 3.5 Larger forces will also subsequently have higher number of officers being injured and subsequently more requests for IoD and IHR and more appeals being submitted to the PMAB. As a result of this it is likely that they will also have significant experience in dealing with these cases. As such there may be value for each region to be aligned with a large force.
- 3.6 It would be for forces to decide which regional centre (if any) that they wish to join. In such case other factors such as similar processes or IT systems or existing shared working relationships may make forces inclined to associate with a specific force. However it should be recognised that the aim of the regional centre is to share knowledge and experiences across a broader number of forces. Were a force simply to align their processes with one force they would fail to benefit from this pooled resource (though it is noted that this is still advantageous over the current arrangement).

4. Benefits

Consistency

- 4.1 Through a regional approach forces would be encouraged to streamline their processes and policies. This would result in the development of a standardised approach which in turn is likely to improve the quality and consistency of decisions.

Sharing and interpreting critical information

- 4.2 As identified above a significant underlying problem with the current arrangements is forces' reluctance/inability to share information such as the outcome of PMAB cases and judicial reviews. By implication, case law, new guidance and their impact on existing processes may not be sufficiently communicated across all forces, leading to a significant knowledge gap.
- 4.3 Were forces to manage these issues as part of a recognised regional centre, information could be shared more easily both within in the region and subsequently to identified contact points in the other 'regions'.
- 4.4 Ultimately, once allocated to regional centres, it would be for individual forces to develop the processes and structures by which they share information. It is envisaged this would be facilitated by regional meetings and centralised points of contact. A centralised system of legal support would further enhance communications between forces and provide for more streamlined interpretation of guidance and case law. It is also beneficial that this coincides with a central designated legal support (or at least enhanced communication between force legal services) to provide interpretation of guidance and case law to standardise force responses and avoid duplication. It is likely that forces may still wish to seek their own legal advice on these issues. However, awareness of legal advice from the regional centre will make forces aware that their interpretation is at variance with neighbouring forces and subsequently may be fallible.

- 4.5 While this business case focuses on regionalising PMAB processes, it should be recognised that this process also has the potential to assist in sharing of noteworthy practice, reduce duplication and identify cost-savings in a host of other aspects of force HR and Occupational health.

Bureaucracy and Administration

- 4.6 In dealing with IHR, IoD and PMAB through regions, there are clear benefits in regional groups seeking to standardise and share administration. Bureaucracy would be reduced. Regions could subsequently develop central expertise in dealing with injury awards and facilitate better communication between forces.

Centre of Excellence

- 4.7 A regional approach would enable a core of professionals to develop experience in managing these complex processes and develop centralised resource material on case law and past appeals.

Training

- 4.8 Aligning forces into regional centres which draw from specific pools of SMPs would greatly improve forces' ability to work to identify and obtain specialist training for SMPs and staff. This would further enable forces to keep abreast of case law developments and give bespoke advice to forces. A consistent caseload would also enable continuous 'on the job training'.

Corporate Knowledge and Force Resilience

- 4.9 The review identifies that the loss of individuals within forces has a significant impact on their ability to manage IoD, IHR and PMAB. Through a regional arrangement it is foreseeable that forces succession planning and access to replacement staff and doctors in case of emergency.

Consultation on national policy development

- 4.10 Regional groups would be able to have a stronger voice when raising concerns with central government over policy development or draw attention to key issues. Organising forces into regional centres would also potentially assist any national consultation on this issue.

5. Resources and Governance

- 5.1 Regardless of the model approached to regionalise force management of IHR, IoD awards and PMAB it is must be recognised that the forces ensure through mutual agreement that sufficient consideration of the resource needs to manage these processes. The resources committed to the management of these processes should also reflect the significant financial cost these process currently represent (paragraphs 6. – 8.3).

- 5.2 In order to develop the regional structures and to ensure broader management of IHR and IoD processes and the management of subsequent appeals it is recommended that the development dedicated portfolio is established as part of National Police Chiefs Council's structure. In light of the significant integration of force HR, occupational health, finance and legal functions associated with establishing regional management of these processes it is desirable that this portfolio is chaired by at least a Deputy Chief Constable.

6. Ill Health Retirement Data

6.1 Data on the number of IHR's is submitted by forces to the Home office as part of the Annual Data Return (ADR). However it has not been possible to obtain ADR data as part of this review. It is however recommended that such data is of significant importance to ensure appropriate strategic management of these processes and will be of significant value to forthcoming pension scheme boards. It is therefore recommended that Forces and regions work closely with the Home Office to ensure that accurate data of the number of IHRs in each force is available.

7. Assessment of Earnings Capacity

7.1 It is strongly recommended that the service agrees to employ a single methodology which all forces use in assessing the earning capacity of officers who are subject to these processes. This will ensure a consistent approach and help ensure that the process is fair and transparent.

7.2 It is recommended that the model used is agreed through formal consultation process (PABEW) and is reviewed periodically to ensure that it remains the most efficient and effective method of making this calculation.

8. Centre of Excellence / Communication

8.1 The review agrees with the broad theme of those engaged that, even if forces do align themselves into regions, a single central point of excellence is still required to provide overarching governance and point of contact. Ongoing changes in the policing landscape make it difficult to clearly identify the appropriate body for this role. However existing structures suggest this role is provided by one of the following:

- The PABEW – In line with its policy responsibility for police pensions.
- The College of Policing – In line with its role to set standards across the police service, its role accrediting specialist training and its management of national IT systems such as POLKA and the quality assurance management system.
- The National Police Chiefs Council – In line with Chief Officer's role as the Police Pension Authority.

8.2 It is noted however that currently none of the above have dedicated legal advisors or established clinical support embedded in their structure. Consideration may need to be given to procuring this resource akin to the Police Federation's engagement of Gordon and Slater Solicitors. Similarly consideration as to how the service procures clinical governance is also relevant but potentially a much broader issue that the management of the processes included in this review.

9. Auditing

9.1 It is recommended that forces seek to establish robust cross region auditing of their SMP decisions and management of IHR, IoD and PMAB processes and the findings of these audits are routinely reviewed by the force pension scheme board and circulated to PCCs.

9.2 A successful pilot of rolling cross force auditing of health and safety has recently been completed by six forces in the APHSA (Association of Police Health and Safety Advisors) Welsh and the South West Regions. It is envisaged that a similar

approach between forces within regions (or regions themselves) could be developed to audit regions and all using an agreed auditing process through which forces can benchmark their performance both between regions and internally year on year.

10. Test of Judicial Privilege

- 10.1 Legal opinion sought as part of this review suggests that the GMC has no locus over registered medical practitioners at those times when their actions and omissions are covered by the doctrine. A definitive statement that this doctrine applies to medical authorities appointed under the Regulations would deal with one of the major concerns expressed about the SMP/PMAB process. A definitive statement either by the High Court or by means of a drafting insertion into the legislation confirming that medical authorities are covered by the doctrine would deal with this serious issue.
- 10.2 It is understood that time scales for regulatory changes in advance of Purdah make it unlikely that an opportunity to reflect the above in Regulations remains. It is therefore recommended that an application of the High Court for a declaration is made on this issue funded centrally and coordinated through Home Office Legal Advisory Branch to enable suitable consideration of the issue for future regulatory change and policy governance through the PABEW.

11. Training

- 11.1 Paragraph 4.8 notwithstanding it is necessary to ensure that all staff engaged by forces (and regions) to manage these processes are suitably armed with a fundamental understanding of these processes. It is recommended that a separate commission to the College of Policing Professional Committee is developed to produce accredited foundation training.

12. Reassessments

- 12.1 As stated in the report the issue of reassessments was excluded from the remit of this review. However from feedback from those who engaged in this work it is clear that this remains a significant issue within forces. It's noted that at the time of writing, from feedback received, there appears to be little to no consistency between forces whether they are even reviewing their awards and as such an inherent discrepancy in practice exists. It is recommended that further work is commissioned to establish the national picture, not simply of whether they are or are not reassessing awards but the barriers in order to improve broader national governance of these processes.
- 11.2 The remit of such work would be agreed by the PABEW and could be conducted either through commission submitted to the College of Policing Professional Committee or through the PABEW itself.

13. Pensions Ombudsman

- 13.1 The National [Pension] Scheme Advisory Board (the functionality is understood to be performed by the PABEW) should seek to establish formal and robust relations with the ombudsman to ensure that their role, and the complexities of these processes, are fully understood by all parties. Where instances of Ombudsman's decisions impact of forces (regions) management of these processes the National [Pension] Scheme Advisory Board should seek to review the cases to capture any

learning for the service and articulate any concerns that may arise with the Ombudsman's role.

14. Cost Recovery

- 14.1 The test of frivolous and vexatious for forces to recover costs from appellants is outlined in Home Office guidance and not regulations. As such amendments to guidance could be amended to better enable forces to recover costs from appeals which did not have a meaningful chance of success. As part of the review a number of individuals have suggested some form of mechanism to share cost between the Police Pension Authority and the appellant in order to dissuade such appeals. However it also must be recognised that it is essential that officers have a fair avenue to appeal decisions and there is a risk of unintended consequences as the spectre of financial penalties for officers who may have sound grounds to appeal might subsequently be unfairly dissuaded from doing so in light of their financial situation. In light of the above, while the review recommends that the PABEW give consideration to the issue of cost recovery for appeals no assessment of the relative merits or impact of changes to the current guidance has been attempted and it is therefore not possible to provide a steer as to what, if any, changes to guidance should be made.
- 14.2` It is however recommended that, until such considerations take place, effort is made to ensure force personnel engaged to manage force preparations for appeals and potential cost recovery clearly understand the frivolous and vexatious test applied. In light of the determination being made by the PMAB board it is advisable that this is included as part of the training to be delivered by Health Management Ltd as part of its contractual obligations.