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From the General Secretary's Office

Our Ref: Your Ref:

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To: The Secretary
 All Branch Boards

Dear Colleagues

SICKNESS ABSENCE/MEDICAL RETIREMENT ISSUES

The purpose of this circular is to highlight experiences of Central Committees and our retained solicitors in respect of matters arising in Forces concerning the long term sickness absence and potential medical retirement of members.

The Frequently Asked Questions (FAQ) format has been used in an attempt to cover all aspects of the issues. There are many useful sources of additional information referred to within the document which are accessible via the web addresses supplied.

The structure of the answers is as we currently see them, and what we feel can be reasonable to expect in the situations described. The management of expectations of our members is paramount, and to this end the advice and the answers contained portray realistic outcomes.

If there are any further areas that you wish to see covered by an updated set of FAQ, please forward them for consideration.

Yours sincerely

JOHN FRANCIS
General Secretary

SICKNESS ABSENCE/MEDICAL RETIREMENT ISSUES

FAQs

INTRODUCTORY AND BACKGROUND

The purpose of this document is to set out some of the most commonly asked questions in cases involving long term sickness absence and potential medical retirement for members of the PPS. In many respects the position regarding members of NPPS is similar but it is not identical and **you should not use this document for NPPS cases.**

It is not possible in a document like this to provide a definitive and exhaustive statement of all factors that apply in all cases. Furthermore, the appropriate way to proceed in a particular case may be affected by the wishes of the member and/or the approach of your Force. If you are uncertain about any aspect of a case you are handling you should seek further advice initially from the JBB Secretary or if appropriate the rank General Secretary

The questions and answers represent our current view of the legal position and best practice as at 1 February 2007. You should be aware that this is an area where the legal position can change.

1. Which legal provisions and guidance are potentially relevant?

The legal provisions regulating medical retirement are found in the Police Pensions Regulations 1987 ([BPR 1987]).

The following may also be relevant:

- Police (Injury Benefit) Regulations 2006 (these now contain the injury award provisions previously found in the PPR 1987)
- Police Regulations 2003 (especially Regulation 28 and determination re sick pay; Regulation 33 and determination re sick leave)
- Disability Discrimination Act 1995 (with various regulations and Guidance)
- Disability Rights Commission ([DRC]) Code of Practice
- Home Office Guidance on Disability in the Police Service October 2006 (<http://police.homeoffice.gov.uk/news-and-publications/publication/human-resources/disability-in-the-police.pdf?view=Standard&pubID=424529>)
- Police (Efficiency) Regulations 1999
- Home Office Guidance on the Use of the Police (Efficiency) Regulations to Manage Poor Attendance (Home Office Circular 22/2003)
- Police Negotiating Board Guidance on the Management of Ill Health Retirement (Home Office Circular 21/2003) ([BNB Guidance on IHR])
- Home Office Guidance on Appeals to the Police Medical Appeal Board (Home Office Circular 3/2004 which includes PNB Circular 19/2003)
- Police Negotiating Board Guidance on Extension of Sick Pay (PNB Circular 1/2005)
- Police Medical Appeal Board Guidance

[\(http://police.homeoffice.gov.uk/news-and-publications/publication/human-resources/PMAB/Guidance/\)](http://police.homeoffice.gov.uk/news-and-publications/publication/human-resources/PMAB/Guidance/)

2. What time limits may be relevant?

There are various time limits to be aware of in this area. The most important are as follows:

Crown Court appeal (generally against a refusal to refer questions to an SMP) - **within 21 days of decision**. You should seek urgent legal assistance from the rank General Secretary. **NB** time runs from the date of decision not the date of notification and the appeal is to the Crown Court not to the Force/Police Authority.

Medical Appeal against decision of SMP □ must be notified to police authority within 28 days of receipt of the SMP report. It is then necessary to serve a short statement of grounds of appeal within 28 days of the notice being received by the Police Authority. (Other time limits apply to the process thereafter. For further information see question 42 below).

Disability Discrimination claim in the Employment Tribunal □ within three months of the act of which complaint is made (or the last act if a continuing act).

Internal Dispute Resolution Procedure □ there is no formal time limit, but complainants are encouraged to raise the issue within 6 months of matter giving rise to complaint.

Judicial review □ as soon as possible and in any event within 3 months of decision (NB time runs from the date of decision not date of notification).

3. What areas should a representative dealing with these cases be familiar with?

One of the difficulties of dealing with these cases is that they can involve issues that cut across various areas. Representatives should be familiar with the following:

- Ill health retirement and related provisions of Police Pensions Regulations 1987 and guidance
- Police Injury Benefit Regulations 2006
- Police Efficiency Regulations and guidance
- Disability Discrimination Act (the DDA)
- Sick pay provisions and guidance

It may assist if at least one member of the JBB attends a Claim Handlers Course.

4. Are there any general principles to be aware of?

Each case will depend on its own particular facts. However, the provisions and spirit of the DDA, the main thrust of the PNB Guidance on IHR and our experience in practice all suggest that medical retirement will often be difficult to achieve even where this is what the member wishes.

We firmly recommend positive engagement with the Force wherever possible, focussing on any reasonable adjustments that could be made to facilitate a return to work and continued service. Not only does this keep members in service, but if this approach is attempted and

does not succeed, then in those cases where the member wants medical retirement, it may be more readily achieved.

SICK PAY

5. Is there a right of appeal against a refusal to extend paid sick leave?

There is no right of appeal in the Police Regulations. PNB guidance recommends that Forces have a written policy on the exercise of discretion and a procedure by which decisions should be reached. This should include both an opportunity for the member to make representations and a periodic review of decisions.

6. Is there a legal challenge to such a refusal?

There is unlikely to be a legal challenge. There is no breach of the Police Regulations and a judicial review is very unlikely unless the Chief Constable clearly breaches his/her own written policy on such matters. The current case law suggests that the DDA does not require maintenance of full sick pay while a worker is absent on disability related sick leave. The position may be different if the member would be able to work if the Force made reasonable adjustments but the Force has not made them or if there are other exceptional circumstances.

7. Is there anything that can be done where extended sick pay is refused?

On a collective basis the JBB should press the Force to comply with the PNB Guidance in terms of processes and approach. Please inform the JCC General Secretary if this is not done.

In an individual case you should make or encourage the member to make representations relying on the Guidance where possible.

In any case where an officer is not maintained on full pay when being considered for medical retirement and there is any delay in the process compared with the timescales envisaged in the PNB Guidance on IHR consider a complaint under the IDRP.

8. What is the position if a member wants to return from sick leave and the Force will not let him/her do so?

The determination for regulation 33 Police Regulations 2003 provides that a member is only on sick leave if s/he is absent from duty on account of injury or illness. If therefore the member presents him or herself for duty (assuming he/she is capable of performing a reasonable proportion of the duties) it is our view that s/he is not "absent from duty" even if the Force refuse to allow him or her to stay at work

In the event of a dispute with the Force on this point you should consider seeking further advice from your rank General Secretary.

SUPPORTIVE ACTION/REASONABLE ADJUSTMENTS

9. What should a Force do where a member is on extended sick leave?

If the member is a disabled person within the meaning of the DDA, then the Force will be under a duty to consider reasonable adjustments. You should generally focus on any adjustments that would enable the member to return to duty, even if on restricted or recuperative duties.

Even if the member is not a disabled person, the Force should take supportive action in accordance with the guidance on the use of the Efficiency Regulations. The supportive action that is appropriate may vary from case to case but could include:

- welfare assistance;
- funding medical treatment;
- maintaining contact;
- reasonable adjustments (see below).

Where the member may be permanently disabled within the meaning of the PPR, the case should be referred to a selected medical practitioner (SMP) to consider.

10. What are reasonable adjustments?

Section 18B DDA includes the following as examples of reasonable adjustments:

- (a) making adjustments to premises;
- (b) allocating some of the disabled person's duties to another person;
- (c) transferring to fill an existing vacancy;
- (d) altering hours of working or training;
- (e) assigning to a different place of work or training;
- (f) allowing absence during working or training hours for rehabilitation, assessment or treatment;
- (g) giving, or arranging for, training or mentoring (whether for the disabled person or any other person);
- (h) acquiring or modifying equipment;
- (i) modifying instructions or reference manuals;
- (j) modifying procedures for testing or assessment;
- (k) providing a reader or interpreter;
- (l) providing supervision or other support.

These are however only examples and, depending on the facts of the member's case, other adjustments may be reasonable. Adjustments need not be dramatic or expensive, it can be anything that assists the member.

It may be necessary to make more than one adjustment.

11. Who is covered by the DDA?

The DDA applies to anyone who is a disabled person within the meaning of section 1. This will include (with limited exceptions):

- (i) a person who has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities;
- (ii) a person who has a progressive condition (such as cancer, multiple sclerosis or muscular dystrophy or HIV infection); and
- (iii) a person who has had a disability in the past.

Where an impairment would be likely to have a substantial adverse effect, but for the fact that measures are being taken to treat or correct it, is to be treated as having that effect.

12. What if a member is not covered by the DDA?

While clearly a DDA claim will be only be possible if a member is a disabled person within the meaning of the Act, Forces should be encouraged to apply DDA principles in all cases, rather than seeking to argue about whether or not a member is outside the definition. This is consistent with the spirit of the DDA and the various pieces of PNB and Home Office guidance and is the approach most likely to result in improved attendance.

13. Is it a reasonable adjustment to pay a member full pay for working part time hours?

Under the Police Regulations 2003 a full time officer cannot be compelled to accept a part time appointment and remains entitled to full pay even if working limited hours for medical reasons.

However, the corollary is that the Force are not obliged to allow part time hours in return for full pay indefinitely. The Guidance from the Home Office on the DDA recommends that full pay for part time hours ("recuperative duties") should not last for any longer than 6 months. It is very unlikely that the obligation under the DDA to make reasonable adjustments extends to allowing officers to receive full pay for part time hours for indefinite periods.

Where the Force is not prepared to allow it to continue any further, and the officer is not medically capable of returning full time, an agreed move to part time status (for part time pay) is a possibility. If that is not agreed a Force may withdraw the allocation of part time duties leaving the officer to resume sick leave, with any consequent reduction in pay under Regulation 28 and/or invoke the provisions of the Police (Efficiency) Regulations 1999. This could end with a requirement to resign, although if the officer is permanently disabled under the PPR medical retirement would have to be reconsidered first.

14. Who should attend a Case Conference?

If the Force is considering holding such a meeting then it would be helpful to all if the member can attend if possible, along with their Federation representative, a senior personnel officer: the Force Medical advisor; welfare officer and a senior police officer from the BCU/Department

EFFICIENCY REGULATIONS

15. Can the Force invoke the Efficiency Regulations in relation to disability related sickness absence?

Depending on the circumstances, this might amount to a breach of the DDA but it will not inevitably do so. In most cases the main issue is likely to be whether reasonable adjustments could be made to enable the member to return to work or whether it would be a reasonable adjustment not to invoke the Regulations in the particular case. For example, if a member is on sick leave and unable to perform any duty pending treatment in three months time, it may be a breach of the DDA to invoke the Efficiency Regulations. If however the member is on very long term sick leave and no adjustments can be made to assist a return to work then this may not be a reasonable adjustment. (In such a case however medical retirement ought to be considered on a proper basis.)

16. What should be done if the attendance provisions of the Efficiency Regulations are invoked in relation to a member who may be permanently disabled?

The Police Authority should be asked to refer the issue of permanent disablement to an SMP for decision and the Force should be asked to suspend any action under the Efficiency Regulations while that is dealt with. (See HOC 22/2003 paragraphs 6 – 12).

If the Police Authority refuse to refer the questions, urgent legal advice should be sought. Any challenge is by way of an appeal to the Crown Court under Regulation H5 PPR and needs to be lodged at the Crown Court within 21 days of the decision. A Crown Court appeal should prevent the final stage efficiency hearing going ahead (see HOC 22/3003 paragraph 10).

17. If the SMP concludes that the member is not permanently disabled but the member appeals, is the Force precluded from continuing with action under the attendance provisions of the Efficiency Regulations?

The Force can proceed with the first and second stages but cannot arrange a hearing until the appeal is resolved. (See HOC 22/2003 paragraph 10).

18. What if the member is genuinely long term sick but not permanently disabled, can the Force take action under the attendance provisions of the Efficiency Regulations?

Yes. In such a case every effort should be made to consider whether any reasonable adjustments could be made to enable the member to return to at least some form of duty. If the member cannot return to duty despite reasonable adjustments and this is likely to remain the position for a considerable period into the future, then the member's position is likely to be weak.

19. What if the Force will not make adjustments that are reasonable?

A claim under the DDA may arise. You should seek legal advice and remember the three month time limit.

You should ensure that there is a written record of all discussions with the Force in relation to reasonable adjustments and that you keep copies of all correspondence, minutes, reports etc and forward these with the request for legal advice.

Don't forget that a completed RIS form will be required with such an application.

POTENTIAL MEDICAL RETIREMENT CASES

Overview

20. In what circumstances will a member be medically retired?

In order for a member to be medically retired:

- (i) a selected medical practitioner (SMP) or medical appeal board (MAB) must find him/her to be permanently disabled; and
- (ii) the Police Authority (or delegate) must, having considered all the circumstances, including a capability report from the SMP, a chief constable (or delegate) report and any representations from the member, decide to retire under regulation A20 PPR.

21. What are the main stages in the consideration of medical retirement?

The PNB Guidance on IHR provides for the following stages:

- (i) The issue of permanent disablement is referred to an SMP. (Paragraphs 11 -24)
- (ii) The SMP issues a report. Part 1 deals with permanent disablement. Assuming member is permanently disabled, Part 2 deals with residual capability (i.e. the member's capability to do less than the full range of ordinary duties). (Paragraphs 25 -27) There is a right of appeal against Part 1 only.
- (iii) Where member is permanently disabled) the Chief Constable prepares a report in the light of Part 2 of the SMP report. This report assesses the scope for retention of the member and contains a recommendation as to whether s/he should be retained. (Paragraphs 38 -45).
- (iv) The member should have the opportunity to comment on the Chief Constable report and the SMP report (Paragraph 46).
- (v) The Police Authority considers the SMP report, the Chief Constable report and the member's comments (and anything else that is relevant) and makes its decision whether or not to retire the officer. (Paragraphs 47-51).

(Where there is an appeal to a medical appeal board the second stage is slightly different, but where the PMAB concludes that the officer is permanently disabled stages (iii) - (v) are the same.)

22. Are there any collective steps that JBBs should take in relation to medical retirement cases?

Yes. JBBs should consider the following:

- (i) Does your Force have appropriate policies and procedures in place to follow the PNB Guidance on IHR. In particular:
 - (a) is there a local protocol that meets the requirements of paragraphs 4-5 of the PNB Guidance on IHR;

- (b) is there a member of the HR department nominated to help the police authority ensure expeditious handling of cases (paragraph 5, 5th bullet);
 - (c) is the delegation of decisions compatible with paragraphs 6-8;
 - (d) is there a clear policy showing all the relevant stages (as summarised in the answer to question 21)?
- (ii) Are the stages being followed in practice? In particular:
- (a) is the FMA preparing a proper report to the SMP and is this being sent to the member (see paragraphs 17-23 PNB Guidance on IHR);
 - (b) at what stage is a referral to the SMP being considered
 - (c) is the SMP preparing a proper report with parts I & II and is this being copied to the member (paragraphs 25-27);
 - (d) is a proper chief constable's report being prepared and is the member being given a proper opportunity to comment upon it (paragraphs 38-45);
 - (e) is the police authority reaching its decisions under regulation A20 on a proper basis (paragraphs 47-51)?
- (iii) Are related policies and procedures in place? In particular:
- (a) sick pay discretion (see question 5 above);
 - (b) restricted/recuperative duties
 - (c) risk assessment

Where appropriate policies are not in place this should in the first instance be raised with the force, in JNCC or similar context and a record kept. If this proves unsuccessful, then you should refer the matter to the JCC General Secretary.

Medical questions

23. When should the issue of permanent disablement be referred to an SMP?

The issue should be referred as soon as there is a genuine possibility that the member may be permanently disabled.

24. Can a member request a reference to the SMP?

Yes. This should be done in writing and generally supported by some reference to medical evidence.

If the Police Authority refuse to refer the questions urgent legal advice should be sought. Any challenge is by way of an appeal to the Crown Court under Regulation H5 PPR and needs to be lodged at the Crown Court within 21 days of the decision.

25. My Force only refers members to the SMP once they have decided they should be medically retired. Is this appropriate?

This is not appropriate. Part of the intention of the PNB guidance was to ensure proper separation between the medical and non-medical aspects of ill health retirement decisions.

It is for the SMP to decide whether a member is permanently disabled and, if s/he is, for the Police Authority to decide thereafter whether to medically retire.

If your Force adopts a different process, advice should be sought from the JCC General Secretary'.

26. Is there an appeal against Part 2 (the capability section) of the SMP report?

No. The appeal under Regulation H2 PPR is only in relation to the statutory questions (is the officer disabled and if so is disablement likely to be permanent). However, the PNB Guidance on IHR provides that if an officer adduces new and relevant medical evidence on the point (which could include a medical report from the member's treating doctor on the capability report) this should be referred to the SMP. If the SMP does not alter his/her view, then the Police Authority is to appoint a third medical practitioner to report on the point.

27. What does 'disabled' mean?

'Disablement' is defined in Regulation A12 PPR as the inability, occasioned by infirmity of mind or body, to perform the ordinary duties of a member of the force.

The 'ordinary duties of a member of the force' have been found by the Court of Appeal (*Stewart v Sussex Police Authority*) to mean the ordinary duties of the office of constable and to include the ability to undertake operational duties.

Further guidance is contained at Annex B of the PNB Guidance on IHR contained within HOC 21/2003.

An officer is disabled unless they can perform all of the ordinary duties.

In the case of *Beck* the Administrative Court held that the reference to 'the force' was to be interpreted as meaning any police force, not the particular force in which the officer was serving. In the more recent case of *Corkindale v Medical Appeal Board* [2006] the Administrative Court held that *Beck* was wrongly decided and that 'the force' meant the force in which the officer was serving. Neither case is binding on any other court and further litigation is possible on this point. (As was highlighted in JBB Circular 96 /2006)

28. Is a member who is a disabled person under the DDA disabled within the meaning of the PPR or vice versa?

While many members who are disabled under one piece of legislation may be disabled under the other, it does not follow automatically that this is the case. The definitions are different and in particular the definition of disablement under the DDA focuses on normal day to day activities and ignores treatment. The assessment of disablement for Industrial Injuries Disablement Benefit is also a different standard.

29. What does 'permanent' mean?

'Permanent' is not defined in the regulations and is likely to be given its ordinary meaning of 'for the rest of one's life'.

The PNB Guidance suggests that it can be interpreted as meaning lasting until normal compulsory retirement age for the rank if a long term view is not practicable and the officer is in the early stages of his or her career. It is possible that this may be revisited in the light of the age discrimination regulations and the changes to compulsory retirement ages.

It is important to note that:

- (i) the SMP/PMAB are asked to decide whether disablement appears at the time of the assessment likely to be permanent i.e. on the balance of probabilities; and
- (ii) Regulation A12(1A) provides that in considering whether disablement is likely to be permanent, the member shall be assumed to receive normal appropriate medical treatment for the disablement. However, "appropriate medical treatment" does not include medical treatment that the police authority considers it reasonable for the member to refuse.

30. Is there an appeal against a decision by a Police Authority that a refusal of medical treatment is not reasonable?

Yes. The appeal is to a Crown Court under Regulation H5 PPR and needs to be lodged at the Crown Court within 21 days of the decision. You should seek urgent legal advice in relation to such cases.

31. Is there any appeal against the decision of a Police Medical Appeal Board?

No. Any challenge would have to be by way of judicial review. Judicial review is not an appeal and is rarely available. It will be available only where illegality, impropriety, irrationality or breach of a legitimate expectation can be shown.

In practice, most successful judicial reviews of a PMAB (or of medical referees under the old system) have involved the PMAB or referee misapplying the PPR.

Any application for judicial review needs to be brought as soon as possible and in any event within three months of the relevant decision. If you consider that grounds for judicial review may exist you should seek legal advice via the appropriate separate rank Committee General Secretary.

32. The member's doctor does not agree with the decision of the SMP or PMAB is there anything that can be done?

Doctors can and do disagree about medical issues such as diagnosis and prognosis. This is dealt with in the PPR by making the decision of one doctor, the SMP, final subject to very limited exceptions, the most important of which is the member's right of appeal to the PMAB.

If the SMP's decision is disagreed with, the member can appeal, subject to meeting the relevant time limits. If the PMAB's decision is disagreed with then unless there are grounds for judicial review no further challenge is possible.

If however there is new medical evidence then it may be possible to press for the matter to be re-opened or to be referred again to the SMP.

Chief Constable's Report

33. What is the purpose of the Chief Constable's report?

It is intended to give a Human Resources perspective following the medical perspective from the SMP. The Police Authority should then consider both aspects and the member's views before deciding whether to retire or retain.

34. What matters should be covered in the Chief Constable's report?

This report is an important element of the process and you should ensure that it complies with the PNB Guidance on IHR (paragraphs 38-45). It should for example set out an assessment of the posts available and the scope for retaining the officer in the force in order to continue with a police career.

35. Can preparation of the report be delegated?

Clearly the chief officer will not be expected to research and draft the report him or herself. The Guidance provides for delegation of the signature or authorisation of the report to an officer of ACPO level or an equivalent civilian HR manager (PNB Guidance on IHR Paragraph 8).

36. Is there an appeal against the Chief Constable's report?

No. The member has the right to comment upon it before the Police Authority reaches a decision, but there is no right of appeal.

The Police Authority's decision

37. Does the Police Authority have to retire an officer who is permanently disabled?

No. The Authority has the power under regulation A20 to retire but does not have to do so.

38. If an officer wants to be medically retired but is retained is there a right of appeal?

No. Any challenge would have to be by way of judicial review. Judicial review is not an appeal and is rarely available. It will be available only where illegality, impropriety, irrationality or breach of a legitimate expectation can be shown.

Any application for judicial review needs to be brought as soon as possible and in any event within three months of the relevant decision. If you consider that grounds for judicial review may exist you should seek advice.

39. If an officer wants to be retained but is medically retired is there a right of appeal?

No. Again, judicial review might be relevant, subject to the caveats above. However more importantly a decision to retire may be regarded as disability related discrimination or a failure to make a reasonable adjustment under the DDA.

Any DDA claim should be brought within three months of the decision and if you consider a claim may arise you should seek legal advice.

40. What happens if an officer who is permanently disabled resigns?

A member of PPS who leaves or who has left the police service is entitled to immediate payment of his/her pension if found by an SMP or PMAB to be permanently disabled.

Thus, a member who has been found to be permanently disabled and is not retired can choose to resign and claim immediate payment of pension. This will be based on actual service only and will not be index linked until the age of 55 (unless the member is incapable of any regular full time employment).

Delays in the process

41. Can anything be done about delays in the consideration of medical retirement?

On a collective level, JBBs should ensure that the PNB Guidance on IHR is followed (see question 22 above).

If a delay is being caused by a refusal or failure to refer questions to an SMP then a legal challenge is possible by an appeal to the Crown Court under regulation H5. Where there is a decision, the time limit is 21 days from the decision. Where there is no refusal but just a delay the time limit should not start to run.

This aside a legal challenge to delay will rarely be possible or appropriate.

A member can however complain under the IDRP (see question 45 below).

Medical appeals

42. Where can further information be found about medical appeals?

You should be aware of the time limit for notifying an appeal, which is 28 days from receipt of the SMP report and for providing a short statement of grounds of appeal, which is 28 days from the police authority receiving the notice of appeal. In each case the time limit can be extended by the police authority.

For further detail on medical appeals see:

<http://police.homeoffice.gov.uk/news-and-publications/publication/human-resources/PMAB%20Guidance/>

Injury awards

42. Should injury awards be dealt with at the same time as medical retirement?

Generally this will not be appropriate and any attempt to have the matter considered at the same time may delay proper consideration of medical retirement.

Any injury award ought however to be backdated to the date of retirement.

43. Where can further information be found about injury awards?

The legal framework is now found in the Police Injury Benefit Regulations 2006. The caselaw under the PPR 1987 is still applicable.

In addition the guidance to PMABs may be relevant:

<http://police.homeoffice.gov.uk/news-and-publications/publication/human-resources/PMAB%20Guidance/>

You should be aware that the Home Office has indicated that a consultation exercise in relation to possible changes to injury awards will be held in 2007.

Internal Dispute Resolution Procedure/Pensions Ombudsman

44. What is the IDRP?

Every occupational pension scheme must have an internal dispute resolution process (or IDRP). This must consider complaints by members in relation to their pensions. In relation to PPS this will not apply to the determination of a police authority on a question referred to an SMP under regulation H1 where a notice of appeal has been issued under H2 and a matter which is the subject of proceedings begun in any court or tribunal.

Generally the IDRP will have two stages. If having gone through these stages the member remains dissatisfied, s/he may complain to the Pensions Ombudsman who has the power to investigate and to award compensation.

JBBs should ensure that their force has an IDRP and members can use it as appropriate.

45. Can a member complain direct to the Pensions Ombudsman?

No. The IDRP must be exhausted first. While the Ombudsman can in principle agree to this being bypassed, we are not aware of this being agreed in practice.

46. What are the pros and cons of the IDR/Pensions Ombudsman?

On the positive side, the IDR is free and should be simple. It can resolve matters without the need for legal action. The only downside we are aware of is that it can be time consuming, particularly if the matter is referred to the Ombudsman, where we are aware of very long delays in some cases.

JNS
RUSSELL JONES & WALKER
31 JANUARY 2007