This information on Ill health retirement will be subject to updates and changes in working practice. It applies to England and Wales, though other parts of the UK will follow similar legislation and guidance. The focus of the content here is on retirement due to psychological injury and does not cover urgent cases (such as terminal illness). All force areas have their own way of managing this process, however there is Police Negotiating Board (PNB) guidance, policy and legislation which should be followed. This guide will also give a realistic view of how the process is often managed.

What is Ill Health Retirement?

When an officer is no longer able to perform the ordinary duties of a police officer due to ill health, he may be considered for early retirement and receive an ill health pension. The officer is assessed by an independent doctor, known as an SMP (selected Medical Practitioner). This can be for infirmity which is psychological, physical or both. If the officer can only perform the relevant duty to a very limited degree or with great difficulty, s/he will be regarded as disabled. The SMP must ascertain whether this disablement is likely to be permanent and prevent the officer from continuing their duties.

Ordinary policing duties have been defined by the court of appeal (in the case of Stewart, 2000) as the following:

- Patrol/supervising public order
- Arrest and restraint
- Managing processes and resources and using IT
- Dealing with procedures, such as prosecution procedures, managing case papers and giving evidence in court
- Dealing with crime, such as scene of crime work, interviewing, searching and investigating offences
- Incident management, such as traffic and traffic accident management

Additionally, the regulations (paragraph 4.3) state that inability to undertake *any* of these duties due to infirmity in the following ways, defines the officer as disabled for ordinary duties:

- to run, walk reasonable distances, and stand for reasonable periods
- to exercise reasonable physical force in restraint and retention in custody
- to sit for reasonable periods, to write, read, use the telephone and to use (or learn to use) IT
- to understand, retain and explain facts and procedures

- to evaluate information and to record details
- to make decisions and report situations to others [1]

Is there a cap on how many officers can get ill health retirement each year?

According to the Institute of Fiscal Studies, the Home Office (2005) set a target of no more than 6.5 per 1000 officers in service for every police force as a maximum for ill health retirement. Failure to achieve this target could result in pressure on senior officers and Chief Constables to leave their job.[2]

Do I have to wait for the Force Medical Officer (FMO) or my employer to recommend Ill health retirement?

You can request a referral to the SMP and consideration for IHR without waiting for the recommendation of the FMO, the Federation or anyone else. You can contact HR (Human Resources) and OH (Occupational Health) to instigate this process.

You may be discouraged from applying for IHR if the Federation or your employer are of the opinion you have not yet exhausted all treatment options. However, there are other considerations here, such as:

- being unable to access treatment in a timely way for it to be effective[3](your force does not provide treatment, there is a long waiting list for treatment on the NHS)
- Your treating consultant is of the opinion you cannot return to policing EVEN AFTER treatment[4] – in which case, the point of 'exhausting all treatment' may become null and void

A referral can be refused if the request is vexatious or frivolous[5], for example, the officer has no medical evidence to support the possible need for ill health retirement. Therefore, it is advisable to ensure you have medical reports from your treating practitioner(s) to support IHR before taking this step.

How long will the IHR process take?

The length of time it takes to go through IHR will depend on the efficiency of those managing the process and demand on the system. '*If a case were to pass through all the stages in the chart, the entire process could last over a year. It is therefore important for the process to be managed as expeditiously as practicable by the police authority so that delays are kept to a minimum*.' (PNB guidance, managing ill health retirement, 2010)

What happens once I request/FMO recommends IHR?

The officer should have already seen the FMO. If this has not happened, it may be advisable for the officer to request an appointment with the Force doctor at the earliest opportunity.

The officers' case will be put forward for consideration by the Police Authority.

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[1] (Board, 2010)
[2] (Studies, 2012)
[3] (Board, 2010)
[4] (Board, 2010)
[5] (Board, 2010)

The officer should be notified in a timely manner of the decision. If a referral to the SMP is refused, the force must state their reasons in writing and furnish the officer with information on his/her right of appeal.

SHUK is aware of one case where an officer still had not been given a decision on referral to the SMP a year after making the request and was therefore advised to follow this up. This is unacceptable mismanagement of the process and one which can impact on the officers' employment rights, sickness absence record, mental health, use of Unsatisfactory Performance/Attendance Procedure and drop in pay. Professional legal advice may be appropriate, particularly if an officer suffers detriment as a result of any mismanagement of their case.

The FMO prepares advice for the SMP.

Each force should have a nominated colleague to manage the process and act as a point of contact for the officer[6], providing updates, answering questions and handling information. This person will usually collate all the medical records/reports into a bundle for the FMO and SMP.

Are my pay conditions and employment rights protected during the IHR process?

Once the Police Authority are considering IHR the officer's pay should remain unchanged. If the officer is on full or half pay, it should not be dropped. It may be appropriate for the force to reinstate pay if it is an injury on duty.

Unsatisfactory attendance (UAP) or performance (UPP) procedure should not be commenced or should be suspended until the process (including appeal) has been exhausted. Action can be taken if the reason for absence or underperformance is unrelated to IHR. [7]

What can I do if my employer refuses to refer me to the SMP?

The force must give written reasons for their refusal. The officer can appeal through Crown Court within 21 days of the refusal.[8] It is advisable to seek professional legal advice.

Is the SMP an Independent doctor?

The SMP is called 'independent'. It is noteworthy that the SMP is contracted by the force/police authority and their services paid for by them. *'The police authority must provide the medical practitioner……..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.'* (PNB guidance, Managing Ill Health Retirement, 2010)

Independent reports

It has been known for an SMP to state private consultant reports are biased as they are funded by the officer. This is not unique to this scenario. The cost of Medico-legal reports for court are sometimes shared by both parties to negate this argument. However, the SMP may take no similar

[6] (Board, 2010)
[7] (Office, 2015)
[8] (Police, 2010)

issue with a report from the psychiatrist who assesses the officer on behalf of the force and is paid for by them. This is an inconsistent approach to the question of whether a medical report is biased.

it is in the interests of the force to restrict the number of officers being granted IHR (as previously mentioned about Home Office targets and the fact much of the cost of pensions comes from the Police Authority budget)

SHUK recommends getting a specialist psychiatric report from an independent source, such as one organised by SHUK or the Federation where possible. An NHS report is independent, though it may not be robust enough for the purpose.

The report should address specific questions, to include capability for police duties, permanence and the effectiveness of treatment. It is advisable to use a consultant who matches or exceeds the experience, knowledge and qualification of the force psychiatrist or psychologist. The consultant you use should have sight of your GP records and OH file as part of the assessment. This information will be available to the force consultant. They need to work off the same medical evidence in the event the two opinions need to be debated at appeal. More detailed support with this can be provided through Safe Horizon UK.

What medical evidence will the SMP use to inform his/her decision?

The officer is assessed by the SMP who has had an opportunity to review GP records, any consultant reports and OH file prior to the face to face appointment. In some exceptions, it may be agreed that the decision is made on the review of documentation only.

The SMP will likely have prepared questions based on some of the information they have found in the medical records, as well as standard questions for this type of assessment.

The SMP may decide s/he requires more information from a specialist consultant before making a decision.[9] It is advisable to have a specialist consultant report prior to seeing the SMP to avoid delays in the process.

What will the SMP assess when determining whether someone is permanently disabled from ordinary policing duties?

Have you exhausted all reasonable treatment recommended for the condition(s)? – this can be somewhat subjective. It may be reasonable for you to decline some treatment. Some treatments (though recommended for the condition) may not be appropriate for you personally. It is not possible to set guidelines on what would be considered 'exhausted' and how many sessions of each therapy would be sufficient to determine effectiveness, as each persons' case will be different. It will be for your consultant to give an opinion on the course of treatment(s) they suggest.

Trialling various medications may be included in treatment options. However, it is perhaps debateable whether the effect of medication on disability should even be taken into account, as the disability would still exist without it. *Example: 'in the case of someone with diabetes which is being controlled by medication…..[disability] should be decided by reference to what the effects of the*

[9] (Board, 2010)

condition would be if he or she were not taking that medication….' (Effects of treatment, Equality Act 2010 guidance on defining disability).

The force will expect the officer to seek medical advice on appropriate treatment and follow this course of therapy before considering ill health retirement, as this may facilitate recovery and return to work. The SMP will consider how likely it is that the treatment will prevent permanent disability.

'*In considering whether mental health disorders in police officers such as anxiety and depression, adjustment disorder and post-traumatic stress disorders are likely to be permanent, the SMP should consider the likely effect of normal and appropriate treatment. Permanent disablement should only be found if the disablement is likely to be permanent* ***even if*** *such treatment is undertaken'* (PNB guidance, managing ill health retirement, 2010).

Therefore, if your consultant is of the opinion you cannot return to policing even after treatment – this could render the 'exhausted all treatment' point null and void. You may not need to complete treatment before applying for IHR.

Is your alcohol intake high? – It is common for officers to self-medicate using alcohol to numb the senses, to block out thoughts and feelings and to get off to sleep. The SMP could determine that alcohol is the primary issue under consideration (not the psychological injury) and this can prevent IHR as alcohol misuse is not a medical condition.[10] Is alcohol excessive and inhibiting recovery or engagement with treatment? It is recommended to reduce alcohol consumption. Your GP or consultant can advise you on medication which may alleviate the need for alcohol, such as those designed to reduce anxiety, depression, anger, aid sleep and help with psychosis. It may take a few attempts and specialist advice from a psychiatrist to get the right combination and dosage which works for you.

Do you exercise? – The SMP may ask about any physical activity. It is widely accepted that exercise can help with managing symptoms. Do your symptoms persist even with regular exercise?

It is also a way of gauging your general physical health and capability (refer to the ordinary policing duties).

Do you have difficulty with Social activity? – One way to gauge the level of disablement is to assess the officers' ability to engage in social activity, be around others and attend family gatherings or events (for example).

Is there a history of mental ill health prior to service? – The SMP will most likely have access to full medical records provided by the GP. This is to ascertain any history of mental ill health or significant trauma which pre-dates joining the Police service. Questions may be asked about any entries in the records which the SMP feels relevant, such as bereavement, depression, former military service and so on.

The SMP will seek to determine if the causation of the presenting condition(s) can be attributed to circumstances which are NOT related to the officers' police service and those which may have reduced resilience to trauma. The SMP may decide the psychological injury is in part or full, a result

[10] (Board, 2010)

of these. Equally the SMP, upon reviewing the evidence may be of the opinion the cause is entirely injury on duty.

Family history – The SMP (as with consultant Psychiatrists/Psychologists) will want to explore the officer's family background which may predispose the officer to psychological injury. For example, questions may be asked about childhood and quality of relationships during this period.

Psychological injury on duty – Assessing whether the disability is a result of an injury on duty (IOD) will become more relevant if/when the officer applies for an injury on duty award after being granted ill health retirement. IOD may be accepted in principle by the force prior to commencing the IHR process and as part of regular pay reviews. Medical reports may identify the cause of the condition or disability as an IOD.

Comprehension and concentration[11] – The SMP will assess the officer's ability to communicate clearly, recall information in a linear way, read and understand information, short and long-term memory, comprehension and concentration. For example:

- Reading - retain and understand the content – you may be asked to read a lengthy disclaimer at the start of the assessment which outlines the purpose of the meeting, the remit and role of the medical practitioner and their background. You may be asked to sign to say you have read and understood this document. Be honest if you need help with this.
- hold a conversation with others
- follow a radio or television programme

Evaluating information and recording details[12] - Abilities under assessment here include: remembering information (such as dates, timeline of events, details), remembering and following verbal instructions (such as directions given by the Doctor during assessment). This will highlight any issues with communication and interacting with colleagues or the public.

Decision making and relaying information[13] - This is to assess how well the officer can process information, make decisions and adapt to change. For example, you may be asked for information relating to your circumstances and about your plans for the future (including work you might like to do and further treatment).

Presentation – As with Psychiatrists and Psychologists, the SMP will observe the officers' presentation at assessment. For example, this may include personal grooming and hygiene, type of eye contact, body language, signs of distress, anxiety or psychosis. These may be visual cues consistent with the condition or disability which may support the medical evidence.

Basic activity of daily living[14]– The SMP will seek to ascertain what a normal day would be like for the officer. This could include their ability to do household chores, go shopping, sleep pattern, and eating habits to name a few. For example, someone experiencing confusion and memory loss, may need 'to do lists' written for them which act as a reminder for each task. For some, it can take hours

[11] (Board, 2010)
[12] (Board, 2010)
[13] (Board, 2010)
[14] (Board, 2010)

to get up, washed and dressed due to exhaustion or depression. It is important to be open about how symptoms affect day to day life (and this may vary from one day to the next).

Have you engaged with treatment? – The SMP will take into account:

- what treatment the officer has had
- what has been recommended
- how effective the treatment has been or is likely to be
- Any other treatment still unexplored (which is recommended for the condition)
- Attitude towards treatment and engagement with it

Have you tried medication? – There is no obligation to take medication and it may be reasonable to refuse this as a treatment option. Medication can have side effects. It can supress or manage symptoms and is not a cure for psychological injury.

Some people find medication invaluable and others find it has little impact or the side effects are unacceptable.

Medical practitioners may recommend trying medication alongside trauma-focused therapy. It may make accessing and engaging with treatment easier. For example, reducing anxiety associated with reliving traumatic incidents during CBT or EMDR.

Embitterment – '*The SMP's judgement on the permanence of incapacity…..should disregard …..prospects for regular employment arising from non-medical factors, such as dissatisfaction, domestic or societal factors; the judgement should be based upon medical criteria alon*e' (PNB guidance, managing ill health retirement, 2010)

SHUK recognises the devastating impact of moral injury and embitterment which is often entrenched and contributes to psychological injury and can compound symptoms. However, embitterment and moral injury are not recognised as medical conditions. Therefore, It is unlikely the SMP will grant IHR if the officer is seeking early retirement due to the irrevocable breakdown of relationship with the employer as the primary reason. The focus of the assessment needs to be on day to day functioning, symptoms and the medical condition(s). It's advisable to avoid raising any matter of dissatisfaction with the employer during a medical assessment, as it isn't a medical issue.

Default– An ill health pension can be reduced by up to 50% if the SMP is of the opinion the officer has significantly contributed to, or caused the disablement by their own default.[15] The following excerpt from the PNB guidance, managing ill health retirement 2010 is also noteworthy:

'Where an individual's incapacity due to a mental health disorder results from a failure to take (or continue to take) normal and appropriate prescribed medication or other therapy that, ***on balance of probabilities, would otherwise restore or maintain the health necessary*** *to perform regular employment, it is open to the SMP to conclude that the officer is not permanently disabled for any* ***regular*** *employment.'*

Can I record the SMP assessment and any other medical appointments?

[15] (Board, 2010)

Yes, you can record medical appointments. The SMP or consultant can refuse to allow the recording, however this should be a consistent response to all officers. For example, the SMP disagrees with recording medical appointments in principal. The SMP should not be selective with who is permitted to record their assessment (as has been known to happen). This could be discriminatory practice. If the SMP refuses to allow the recording, you can request the force arranges for an alternative SMP to carry out the assessment.

You will need to provide two recording devices and leave a copy of the recording with the SMP at the end of the appointment. Therefore, you will need to decide the type of recording equipment which is best suited to this. You may also want to test the sound quality of the device. Some work better with microphone attachments.

What happens after the SMP gives an opinion of permanent disability from ordinary policing duties?

The officer can appeal the SMP decision within 28 days of personally receiving the report.[16] The SMP will provide an opinion on general work-capability so the Police Authority can determine if there's a possibility to retain the officer in a non-policing role. The officer and the Chief Constable should have an opportunity to comment on the report.

If the Police Authority are unable to find an alternative role for the officer which matches their general work capability, the SMP advises that the officer is unfit for work or operational needs cannot support retaining the officer; the Police Authority may proceed to medical retirement.

What happens if the SMP says an Officer isn't permanently disabled from ordinary policing duties?

The officer has 28 days after personally receiving a copy of the Parts 1 and 2 of the SMP's report to appeal the SMP decision (not the content of the report). In the event of appeal, the officer and the police authority may agree to revert the case back to the SMP for reconsideration on the grounds given (internal review). This may prevent a costly appeal hearing. However, it may proceed to an appeal hearing without prejudice if the internal review does not resolve the issue satisfactorily.

Pay conditions should not be reduced until the appeal process has been exhausted. Similarly, UPP or UAP should not be commenced or restarted during this time.

If there is no intention to appeal the decision or an appeal has run its' course – a return to work plan should be discussed which includes:

- current fitness to return
- further recommended treatment to facilitate a return to work
- phased return
- restricted, limited or adjusted duties
- Impact assessments and risks

Preparing for the assessment

[16] (Board, 2010)

Provide copies of all consultant reports to the SMP on the day as it has been known for some reports to have gone missing.

Ask your point of contact to inform the SMP you wish to record the meeting well in advance. Get confirmation of the SMPs agreement before the day of the appointment. Get your recording equipment in good time and test it for sound quality.

Never assume things are happening – ask for regular updates and ensure correct procedure is being followed in a timely way. If you lack the capacity to do this make sure you have an advocate (such as family member, SHUK advocate or Federation Representative) on board to assist you with this.

What can you do if you believe your sickness absence or case for IHR has been mismanaged?

No officer should suffer a detriment to their health, finances or job security due to discrimination and/or mismanagement of their employment, sickness absence and any subsequent IHR process. In this situation you are advised to seek professional legal advice.

Factors of concern and for consideration

There are ways to 'manage-out' officers separate to the IHR process which it is wise to bear in mind and they are:

- the use of UPP/UAP,
- disciplinary procedure
- withholding resources (like pay and treatment).

SHUK does NOT advise officers to play a passive role in their recovery or IHR process. Consider that processes are timebound. The number of days sickness absence may hit a score which triggers certain procedures. There will be pressure on officers to return to work as soon as possible, or conversely, officers may find themselves left without guidance or support – unaware of the impact on their employment rights until damage has been done. To prevent difficulties as far as possible it is advisable to:

- Cooperate with your recovery, such as attend medical appointments
- Keep your employer up to date with your situation and health
- Avoid waiting for your employer to direct you and assume policy and procedure is being followed
- Make requests for information, updates and guidance in writing
- Know your rights and get support with understanding process/procedure/policy to ensure events are moving in a timely manner
- Request treatment from your employer in writing
- See your GP and ask for a referral to psychology services or crisis team (if appropriate) and get on the waiting list as soon as possible
- Seek private medical treatment which is recommended for your condition at the earliest opportunity if it isn't provided by your employer – the delay in accessing treatment via the NHS could impact on your sickness absence record, the commencement of UPP/UAP, drop in pay and the effectiveness of treatment.

- Prepare and submit a pay appeal (perhaps with help from a family member, SHUK or Federation Rep) at least a month before a drop in pay is expected. The first drop is to half pay at 6 months absence and then nil pay at 12 months. Extension of pay may be reviewed monthly.
- Get a medical diagnosis as soon as possible and provide your employer with this medical report. At this point it is arguable that your employer has 'knowledge' of your disability and you are most likely protected under the Equality Act 2010 (and thereby protected against disability discrimination). In point of fact, you are not required to have a clinically recognised diagnosis to be defined as disabled, however, it serves to clarify that this is the case. The FMO can assess you for disability and is often asked to perform this function.
- Request an appointment with the FMO if one isn't offered – you are advised to get injury on duty and disability recorded with the FMO where applicable; and in advance of any impending pay review.
- Be proactive with treatment and engaging with medical practitioners – with the aim of returning to work or applying for IHR with supporting medical evidence as soon as possible (whichever is appropriate) both courses of action will protect against drop In pay and UPP/UAP

Officers move through UPP/UAP stage 1, 2 and 3, with stage 3 potentially resulting in termination of employment. If the officer has not been able to return to work due to disability or ill health UPP/UAP can still be used.

Seek help from medical professionals when you become aware 'something isn't right' with your health. Psychological injury can result in unprofessional behaviour and lead to disciplinary, court action and dismissal. Make your employer aware of any psychological injury which may impact on behaviour – such as explosive anger. Protect yourself from risks associated with this, including excessive use of force, complaints from the public or colleagues or insubordination. Remove yourself from the situation if necessary.

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