

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE PENSIONS OMBUDSMAN

Applicant : Mr M Hitchcock
Scheme : Firefighters Pension Scheme (the **FPS**)
Respondents : London Fire & Emergency Planning Authority (the **LFEP**A)
The Department for Communities and Local Government (**CLG**)

Subject

Mr Hitchcock objects to the refusal by the LFEP A and the Board of Medical Referees appointed by the Secretary of State for Communities and Local Government to accept that Mr Hitchcock's injuries qualify him for an injury award under the rules of the Scheme.

The Ombudsman's determination and short reasons

The complaint should be not upheld. The correct procedures have been followed and the conclusions are neither irrational nor perverse.

DETAILED DETERMINATION

Material Facts

1. The FPS is a statutory scheme administered locally by Mr Hitchcock's employer, the LFEPA. The arrangements for determining awards are set out in full in the Appendix and summarised below.
2. Under rule H1(2), the LFEPA is required to seek the written opinion of an independently qualified medical practitioner (**IQMP**). The opinion of the IQMP is binding on the authority.
3. Any person dissatisfied with the opinion of the IQMP, may appeal under Rule H2 and Schedule 9, to the Board of Medical Referees, an independent medical tribunal, appointed by, or under arrangements made by, the Secretary of State.
4. Injury awards are provided for under rule B4, (now incorporated into Part 2, rule 1(1) of the Firefighters Compensation Scheme 2006 (the **2006 Scheme**). Injury awards are payable if the applicant is permanently disabled and the infirmity was occasioned by a qualifying injury. Under Part 6, rule 1 of the 2006 Scheme, the LFEPA is required to seek from the IQMP, his opinion about whether:
 - Any disablement has been caused by a qualifying injury;
 - The degree to which a person is disabled; or
 - Any other issue wholly or partly of a medical condition.
5. Mr Hitchcock joined the fire service, on 4 June 1990 at the age of 22. On 22 April 1993, he sustained an injury to his shoulder. He took three days' sickness absence, returning to work on full operational duties.
6. On 21 January 1996, Mr Hitchcock sustained a further injury, this time to his lower back. He took 72 days' sickness absence, followed by 37 days of light duties. Mr Hitchcock received some treatment, in the form of physiotherapy, through the LFEPA's occupational health service provider. He then returned to full operational duties.
7. On 16 June 1998, he was referred to the LFEPA's occupational health service provider, for physiotherapy in respect of recurring back pain.

8. On 18 August 2003, Mr Hitchcock had been involved in removing a casualty from the River Thames and an incident report recorded that he sustained a muscle spasm to his lower back. He did not complete his duty shift, commenced a period of sickness absence and on 20 August 2003 was again referred for physiotherapy, this time in respect of a back and neck injury. Mr Hitchcock returned to work on 10 December 2003, but on light duties which continued for 843 days. During his sickness absence and period of light duties, Mr Hitchcock was referred to the occupational health service provider.
9. In 2004 Mr Hitchcock's solicitors requested the opinion of a consultant orthopaedic surgeon, Mr Scott. Mr Scott examined Mr Hitchcock on 23 February 2004, providing a report dated 17 March 2004. His opinion was that the injury was of a soft tissue nature, from which Mr Hitchcock would probably recover, although an MRI scan would enable a more precise prognosis.
10. An MRI scan was arranged and a report was prepared on 25 August 2004. Mr Hitchcock was examined again by Mr Scott on 23 May 2005. Relevant to his application for injury benefits the report said:

“Mr Martin Hitchcock sustained injuries to his neck, thoracic and lumbar spine as a result of an accident which occurred on 18 August 2003...

..The MRI scan reports suggest degenerative changes in L5/S1 level and also T11/12 level. These changes I believe would have pre-dated the material accident but there is no reason to suppose they would have caused symptoms had the accident in question not occurred. The natural history of these degenerative changes will of course be unaffected by the accident in question.”

11. Mr Hitchcock's case was referred to a consultant orthopaedic surgeon, Mr Bucknill, who provided his opinion on 24 October 2005:

“...His present problems relate to an injury in 2003 when he was lifting a casualty from the river....

...Whilst he has not suffered any serious structural or neurological damage to his cervical or lumbar spine, he clearly has recurrent postural strain superimposed on age related degenerative changes. These symptoms have been precipitated by the injury at work when he was lifting a casualty and have not progressed with treatment, and time.”

12. Mr Hitchcock's case was referred by the LFEPA to an IQMP, Dr Freeland. On 10 March 2006, Dr Freeland wrote to the Head of Employment Services. As is material, his letter stated:

"...The diagnosis in this case is one of Recurrent Lumbar Strain superimposed upon age related degenerative changes. This means that there is an existing underlying medical condition i.e. degenerative change. The opinion is that the incident involving lifting a casualty precipitated the onset of symptoms. From the evidence available it is not possible to state that the onset of symptoms was inevitable i.e. an acceleration. Rather, it appears to be an aggravation of the underlying degenerative changes leading to the recurrence of symptoms.

The medical evidence indicates that there is no permanent structural damage to the neck, lumbar spine or shoulder. Further recovery is expected. However, the presence of recurrent lumbar strain means that he will not return to operational fire-fighting duties.

I would support the application for ill health retirement..."

13. On 13 March 2006, Dr Freeland issued his opinion (the **first opinion**):

"1. The firefighter –

is suffering from the incapacity (recurrent lumbar strain)

2. The Firefighter-

is disabled from performing the duties of a regular firefighter.

3. The disablement-

is likely to be permanent.

4. The disablement-

has not been brought about or contributed to by the firefighter's own default.

5. Comments-Has age related changes aggravated by incident at work

6...."

14. Mr Hitchcock was seen by Mr Scott again on 20 March 2006. In his report, Mr Scott stated:

"Mr Martin Hitchcock sustained injuries to his neck, low back and shoulder s a result of a lifting accident that occurred on 18th August 2003....

...I believe that his symptoms have been precipitated by the accident in question and that these symptoms arise from age-related degenerative changes to his cervical and lumbar spines...

..The question arises as to whether he would have developed symptoms in any case, even if the accident had not occurred. Apart from the soft tissue injury to his back in 1996, I see no evidence of any previous problems with his back, or his neck, and I believe that as a result he would have remained in his previous employment until retirement had it not been for the material accident. In general terms MRI scans are poor prognostic indicators of future problems from degenerative spinal disease.”

15. On 22 March 2006, the LFEPA sent a letter to Mr Hitchcock stating the following:-
- “...the Authority has decided in accordance with Rule H1 of the Firefighters Pension Scheme that
- a) you are incapacitated for the performance of your duties as a fire-fighter on account of Recurrent Lumbar Strain
 - b) the incapacity is likely to be permanent
 - c) the incapacity has not been occasioned by a “qualifying injury” as defined in the Firefighters’ Pension Scheme.”
16. Mr Hitchcock obtained a copy of Dr Freedland’s opinion, as he was entitled to under the rules. He says that having done so he telephoned the LFEPA about it, on or around 22 March 2006, and was told that he was not entitled to an injury award because Dr Freeland had given his opinion on the wrong form and that his only remedy was to appeal to the Board under Rule H2(2).
17. On 1 April 2006, Mr Hitchcock appealed to the Board of Medical Referees under rule H2. He states that in May 2006, he received a copy of a revised opinion (the **revised opinion**), issued by Dr Freeland, that was also dated 13 March 2006. It was identical to the previous opinion apart from the addition of new line 5:
- “5. The disablement had not been occasioned in the execution of his regular duties as a regular firefighter.”
- Mr Hitchcock also says that he has seen a version of the original form on which paragraph 5 had been deleted by hand.
18. The LFEPA’s explanation for this is that when Dr Freeland sent his original opinion on 13 March 2006 he did so by using the wrong form and overlooked addressing the issue of causation under Rule H1(2)(c). When asked to give a revised opinion he did so by confirming that Mr Hitchcock’s disablement had not been occasioned in the

exercise of his regular duties as a regular fire-fighter. They say there is no evidence that the IQMP's original opinion was that Mr Hitchcock *had* suffered a qualifying injury. He had not considered the question.

19. On 17 July 2006, CLG referred the appeal to BUPA, which then held the contract for administering and providing boards of medical referees, inviting the board to consider whether the incapacity described on form H1 by the IQMP as 'recurrent lumbar strain' had been occasioned by a qualifying injury. At Mr Hitchcock's request, the referral also included a reference to his neck and shoulder condition.
20. The LFEPA gave the Board of Medical Referees its report dated 25 October 2006. At section 5 of that report, the LFEPA set out what it considered to be the principal points:
 - that Mr Hitchcock had been involved in more energetic activities prior to joining the brigade;
 - the IQMP had set out the rationale for the medical opinion in its letter dated 10 March 2006 and that it was clear that the IQMP had considered Mr Hitchcock's condition to be a matter of acceleration;
 - that in light of the 'Jennings' case this did not meet the criteria for an injury.
21. The 'Jennings' case referred to, involved a police officer and a member of the Police Pension Scheme (the **Police Scheme**), who had sustained injuries in a road accident whilst on duty. Those injuries brought forward the onset of symptoms of degenerative changes in his spine by a period of 18 to 24 months. He became entitled to an ill health retirement and subsequently applied for an injury award. The relevant regulation in the Police Scheme stated:

“(1) This regulation shall apply to a person who ceases or has ceased to be a member of a Police force and is permanently disabled as a result of an injury received without his own default in the execution of his duty...”

His application was refused, on the grounds that he was permanently disabled as a result of a naturally occurring condition rather than as a result of an injury.
22. Mr Jennings appealed against this decision and exercised his right under the Police Scheme, to appeal to the Crown Court. The Crown Court dismissed his appeal on the basis that he had not been permanently disabled as a result of an injury received in the

execution of duty. Mr Jennings then appealed by way of case stated to the Administrative Court [Jennings v Humberside Police [2002] EWHC 3064]. The Judge dismissed the appeal, upholding the decision reached by the Crown Court. The Judge concluded that the disability could only be said to be “*the result of an injury if the injury has caused or substantially contributed to the ‘disablement’*” and that upon that test, Mr Jennings’ disability had been neither caused or substantially contributed to by the relevant injury.

23. As part of the process Mr Hitchcock was examined by Mr Vanhegan, Consultant Orthopaedic Surgeon just prior to the Board meeting on 7 November 2006. Mr Vanhegan concluded:

“The examination revealed significant restriction of movement in the neck, right shoulder and low back. There was no hard neurological abnormality to indicate nerve root irritation arising in his neck or low back. The pain experienced on examination of the right shoulder which was limiting movement appeared to be caused by provocation of pain above the shoulder which is indicative of pain being referred from the neck rather than from the shoulder joint itself from which pain is normally referred to the upper arm.”

24. The Board was asked to decide, on the balance of probabilities whether Mr Hitchcock’s condition had been occasioned by an injury or a disease contracted without his own default in the execution of his duties, or if not, whether such an injury had substantially contributed to the infirmity.
25. Mr Hitchcock presented himself to the Board complaining of further deterioration. He said he had problems with his neck and pins and needles affecting the right hand and these were becoming worse. He said that doing anything was getting harder and harder, his back was painful when dressing and he needed help, he could not get into or out of the bath, had problems washing his hair and shaving caused a pain in his neck. He also had difficulty using the stairs, ironing, driving his car and could no longer play golf, ski, cycle or go walking.
26. He argued that the LFEPA had made the wrong defence in quoting the Jennings’ case. He stated that the Court Judgement of Fiske v Norfolk County Council 1997 clearly stated that aggravation of a pre-existing condition is a qualifying injury and that the test of causation applied to him.

27. The Board had before it:

- Occupational health records;
- GP records;
- Reports from Mr Scott dated 23 February 2004, 23 May 2005 and 20 March 2006;
- Report of MRI scan dated 13 March 2006;
- Amended decision from DWP dated 14 April 2004;
- Claim for industrial injuries disablement benefit 21 June 2006.

28. The Board's discussion included the results of the latest examination by Dr Vanhegan:

“...The observed restrictions in movement are not accounted for by the MRI scan imaging changes...He has a predominantly musculo-skeletal problem that is not explained by structural changes on the MRI scan imaging because there is no evidence of any significant pathology being present.”

And Mr Scott's report dated 20 March 2006:

“...The Board disagrees with Mr Scott's opinion on the following grounds; 1. While accepting that the Appellant has degenerative spinal disease as described by Mr Scott, the changes observed on the Appellant's MRI can are not untoward for someone of his age and therefore cannot be attributed to the incident in question. 2. In the vast majority of cases such changes are not symptomatic. 3. The Board were unable to account for the Appellant's reported deterioration in his condition.”

and the aspect of permanency:

“In considering the permanency of the Appellant's problem because there is no evidence of significant pathology being present, the Board therefore concluded that the Appellant's incapacity is not likely to be permanent. The Board agreed with Mr Scott when he stated “In general terms MRI scans are poor prognostic indicators of future problems from degenerative spinal disease” and with Mr Bucknill who stated in his report dated 24 October 2005, “There is no sign of any progressive problem in his neck or lower back and there is every reason to gain significant benefit in time from gently mobilising exercises. He may well have a good relief of his present problems over a period of a further 12 months.””

29. The decisions reached by the Board were :
- Mr Hitchcock's lumbar strain had not been occasioned by a qualifying injury;
 - The changes in the neck, shoulder and lumbar spine had not been occasioned by a qualifying injury.
30. On 29 January 2007, because of the view taken by the Board that Mr Hitchcock's incapacity was not permanent, the LFEPA referred Mr Hitchcock to Dr Krishnan a specialist in occupational medicine. Dr Krishnan declared Mr Hitchcock 'unfit for post' but advised that the issue of his qualifying injuries should be reassessed.
31. Mr Hitchcock sought to have the decision judicially reviewed in the High Court. His pre-action protocol letter was sent on 20 February 2007. The case put forward was that the decision making process had already run off-course by the time matters came before the Board. In essence Mr Hitchcock said he had been wrongly informed by the LFEPA, on receipt of the first opinion, that it had been incorrectly advised by Dr Freeland, that he was not entitled to an injury award and that his only recourse would be to appeal. As a result, Mr Hitchcock had been deprived of a 'first instance' medical opinion on his claim to be entitled to an injury award, contrary to Rule H1(2)(c) of the FPS. The LFEPA's failure to read and consider the IQMP's opinion, on certificate Form B or otherwise, on the question whether Mr Hitchcock's disablement had been occasioned by a qualifying injury had been a fundamental flaw in the decision making process. However, having been started late, his claim was deemed out of time.

Mr Hitchcock's position

32. There is sufficient evidence to support his injuries as being permanent and caused by the incident.
33. The first opinion by the IQMP, in March 2006 supported the existence of a qualifying injury, which was later replaced by the revised opinion, although also dated 13 March 2006. He was wrongly advised by the LFEPA, to appeal between the issue of the first and the revised opinion and deprived of a 'first instance' decision, as allowed by the Scheme. The LFEPA have anyway, incorrectly interpreted the revised opinion and incorrectly relied on the 'Jennings' case when doing so.

34. The opinion of the IQMP was that his condition had been aggravated by the incident at work and the 'Jennings' case supports the view that an injury that aggravates an existing condition, is a qualifying injury, providing the test of 'substantially contributes' is met, which he believes it is when based on the opinion of Dr Scott and Mr Bucknill.
35. Rule H1 states that the opinion of the IQMP is binding on the LFEPA and his case should never have been heard by the Board of Medical Referees.
36. A second opinion obtained by IQMP, Dr Krishnan, confirmed that he remained unfit but considered that the issue of qualifying injuries should be re-assessed. Whilst the LFEPA has allowed his ill health pension to stand, it has ignored the advice regarding the aspect of qualifying injuries.

CLG's position

37. Mr Hitchcock's appeal was medical in nature and properly appealed to the Board of Medical Referees to dispute the LFEPA's decision under Rule H1.
38. Mr Hitchcock has complained to the Pensions Ombudsman on an issue which is essentially medical. It is considered that the Pensions Ombudsman has no jurisdiction to consider medical matters. Mr Hitchcock does not complain on grounds of process, fact or law such that the Pensions Ombudsman could consider the matter.
39. Regardless of the above, the Board of Medical Referees had Mr Hitchcock's full occupational health and GP records available to them. The members of the Board, who under the requirement of the contract with BUPA must be consultants in occupational health or in the medical condition which is the subject of the appeal, reached their decision on the basis of their collective medical expertise. It is considered that there is no basis upon which their judgement can be challenged on medical grounds.
40. The Board of Medical Referees considers each case afresh and reaches its own view on the matters under consideration. The Board determined that Mr Hitchcock had not suffered a qualifying injury in relation to either of the conditions that he was suffering from, nor was his disablement permanent in relation to the structural change to his neck, shoulder and lumbar spine. If the disability is not permanent for the purposes

of the scheme rules, there can be no question of a qualifying injury being sustained and questions of aggravation and acceleration are irrelevant.

41. It is the decisions of the Board that are binding on the parties and the decisions in this case were limited to the questions of whether qualifying injuries had been occasioned. The question of permanence of Mr Hitchcock's lumbar strain was not a decision the Board was required to address.
42. Dr Krishnan was not an IQMP and his opinion was not on a matter that was before the Board, on appeal.

LFEPAs position

43. The LFEPAs reached its decision that Mr Hitchcock's incapacity has not been occasioned by a 'qualifying injury' as defined in the FPS 1992, on the basis of the opinion of the IQMP. The decision of the IQMP was confirmed, on appeal, by the Board of Medical Referees, which, in accordance with Part 1 of Schedule 9 of the FPS 1992, comprised three medical experts.
44. The Board also stated that it did not consider that Mr Hitchcock's incapacity was permanent. Given the Board's opinion, the LFEPAs decided to reconsider this point and referred the matter to its occupational health medical adviser, Dr Krishnan. Dr Krishnan advised that he considered that Mr Hitchcock remained incapacitated but suggested that the issue of a qualifying injury be re-assessed. Dr Krishnan is not an IQMP and under Rule H2 (3) of the FPS, the LFEPAs is bound by the decision duly given on appeal and there is no mechanism under the FPS for the issue of a qualifying injury to be re-assessed once determined by the Board of Medical Referees.
45. The decision of the Board of Medical Referees was that his lumbar strain has not been occasioned by a qualifying injury and the changes in his neck, shoulder and lumbar spine have not been occasioned by a qualifying injury.
46. Under the FPS 1992, a fire-fighter is not entitled to an injury award unless he has retired and is permanently disabled if the infirmity was occasioned by a qualifying injury. Under Rule H1 the LFEPAs is bound by the medical opinion.
47. The LFEPAs states that there is no provision in the FPS to allow cases to be reconsidered by the Board. The only way the Board could reconsider a case is if their

decision is challenged by way of a Judicial Review and (1) there was a Court Order quashing the original decision and directing that the case should be re-considered by the Board or (2) if the parties agreed by way of a consent order that the case should be reconsidered by the Board. However, if new evidence should emerge, that had been unavailable to the Board, and which casts doubt on their decision, it is possible under rule K1 for the LFEPA to review the eligibility to an entitlement under rule H1.

Conclusions

48. My role is not to reach my own conclusion on the medical evidence. I have to decide whether the respondents to this complaint have dealt with Mr Hitchcock in accordance with the relevant regulations and whether the outcome is irrational (that is to say, they have reached a decision that no reasonable decision maker could have reached).
49. When reaching a decision about whether an award is payable, the LFEPA must obtain and take into account, the opinion of an IQMP. To qualify for an award, an applicant must have suffered a qualifying injury that has been the cause of the permanent incapacity. The hand deletion on the pro forma version of the first opinion does not add anything to the evidence of what happened. I accept that the absence of a statement by Dr Freeland that disablement was not in the execution of Mr Hitchcock's regular duties did not mean that he thought it *was* in the execution of his duties. However, it was scarcely appropriate to substitute a revised opinion dated the same date without proper explanation.
50. In practice, though, it made no difference. There is no appeal against a decision of LFEPA other than to the Board of Medical Referees. If he had been given the revised opinion in March 2006, Mr Hitchcock could only have taken the matter to the Board of Medical Referees which is exactly what he did, though he set off down the path based on the earlier uncorrected opinion.
51. Mr Hitchcock is concerned that at the appeal stage, the LFEPA, in its report to the Board of Medical Referees, wrongly interpreted the 'Jennings' case law and this contributed to the Board wrongly dismissing his appeal.

52. Before the Board reached its decisions on the two issues before it, there was discussion of the degree to which the incident had been responsible for bringing about the onset of symptoms which included a reference to the 'Jennings' case, to the extent that it was analogous - in other words the extent to which the injury had caused or substantially contributed to the incapacity. Amongst the medical evidence before the Board was Dr Freeland's opinion that the incident was responsible for only an aggravation of the underlying condition; MRI scan results which did not attribute changes to the incident, as those changes pre-dated the incident; and medical reports from Mr Scott. Considering that there was no evidence supporting that the incident had caused or contributed significantly to the underlying condition, I cannot find that the decision reached by the Board was perverse.
53. Although Dr Krishnan stated on 29 January 2007 that the issue of qualifying injuries should be re-assessed, there is no mechanism for this once the Board has determined the issue. There is no identifiable maladministration, therefore.
54. I am unable to uphold the complaint.

TONY KING
Pensions Ombudsman

30 January 2009

APPENDIX

Relevant Legislation

The legislation governing the Scheme is the FPS Scheme Order 1992 (**FPS 1992**) as amended by The Firemen's Pension Scheme (Amendment) Order 1997 and The Firemen's Pension Scheme (Amendment) Order 2004. Relevant are:

Qualifying injury

A9.—(1) Except in rule J4, references in this Scheme to a qualifying injury are references to an injury received by a person without his own default in the execution of his duties as a regular fire-fighter.

....

(3) An injury shall be treated as having been received by a person without his default unless the injury is wholly or mainly due to his own serious and culpable negligence or misconduct.

Injury award

B4.—(1) This rule applies to a regular fire-fighter who has retired and is permanently disabled if the infirmity was occasioned by a qualifying injury.

(2) A person to whom this rule applies is entitled—

(a) to a gratuity, and

(b) subject to paragraphs (3) and (4), to an injury pension, both calculated in accordance with Part V of Schedule 2.

(3) Payment of an injury pension is subject to paragraph 4 of Part V of Schedule 2.

(4) Where the person retired before becoming permanently disabled, no payment in respect of an injury pension shall be made for the period before he became permanently disabled.

Determination by fire authority

H1.—(1) The question whether a person is entitled to any and if so what awards shall be determined in the first instance by the fire authority.

(2) Subject to paragraph (3), before deciding, for the purpose of determining that question or any other question arising under this Scheme—

(a) whether a person has been disabled,

(b) whether any disablement is likely to be permanent,

- (c) whether any disablement has been occasioned by a qualifying injury,
- (d) the degree to which a person is disabled,
- (e) whether a person has become capable of performing the duties of a regular fire-fighter, or
- (a) any other issue wholly or partly of a medical nature,

the fire authority shall obtain the written opinion of an independent qualified medical practitioner selected by them and the opinion of the independent qualified medical practitioner shall be binding on the fire authority.

(2A) In his written opinion, the independent qualified medical practitioner must certify that:-

- (a) he has not previously advised, or given his opinion on, or otherwise been involved in, the particular case for which the opinion has been requested; and
- (b) he is not acting, and has not at any time acted, as the representative of the member, the fire authority, or any other party in relation to the same case.

...

Appeal against opinion on a medical issue

H2.—(1) Where—

- (a) an opinion of the kind mentioned in rule H1 (2) has been obtained, and
- (b) within 14 days of his being notified of the fire authority's decision on the issue the person concerned applies to them for a copy of the opinion, the authority shall supply him with a copy, together with a statement informing the person concerned that, if he wishes to appeal against the opinion, he must give the authority written notice of his grounds of appeal, together with his name and address, within 14 days of the date on which he is so supplied.

(2) If the person concerned is dissatisfied with the opinion which has been supplied to him under paragraph (1), he may appeal against it by giving notice to the fire authority in accordance with paragraph 1 of Part 1 of Schedule 9.

(3) A fire authority shall be bound by any decision on any issue referred to in sub-paragraphs (a) to (f) of rule H1(2) duly given on an appeal under this rule.

(4) Further provisions as to appeals under this rule are contained in Part I of Schedule 9.

SCHEDULE 9
 APPEALS
 PART 1
 APPEAL TO BOARD OF MEDICAL REFEREES

1.—(1) Subject to sub-paragraph (2), written notice of appeal against an opinion of the kind mentioned in rule H1(2) stating—

(a) the grounds of the appeal, and

(b) the appellant's name and address,
 must be given to the fire authority within 14 days of the date on which he is supplied by them with a copy of the opinion.

(2) Where—

(a) notice of appeal is not given within the period specified in sub-paragraph (1), but

(b) the fire authority are of the opinion that the person's failure to give it within that period was not due to his own default, they may extend the period for giving notice to such length, not exceeding 6 months from the date mentioned in sub-paragraph (1), as they think fit.

2.—(1) On receiving a notice of appeal the fire authority shall supply the Secretary of State with 2 copies of the notice and 2 copies of the opinion.

(2) The Secretary of State shall refer an appeal to a board of medical referees (“the board”) and shall supply them with a copy of the notice and a copy of the opinion.

2A.—(1) The board shall consist of not less than three medical practitioners appointed by, or in accordance with arrangements made by, the Secretary of State.

(2) One member of the board shall be a specialist in a medical condition relevant to the appeal.

(3) One member of the board shall be appointed as chairman.

(4) Where there is an equality of voting among the members of the board, the chairman shall have a second or casting vote.

3. The board shall secure that the appellant and the fire authority (“the parties”) have been informed-

(a) that the appeal is to be determined by it, and

(b) of an address to which communications relating to the appeal may be delivered to the board.

4.—(1) Subject to sub-paragraph (4), the board—

(a) shall interview and medically examine the appellant at least once, and

(b) may interview or medically examine him or cause him to be interviewed or medically examined on such further occasions as the board thinks necessary for the purpose of deciding the appeal.

(2) The board shall—

(a) appoint, and

(b) give the appellant and the fire authority not less than 21 day's notice of, the time and place for every interview and medical examination; if the board is satisfied that the appellant is unable to travel, the place shall be the appellant's place of residence.

(3) The appellant shall attend at the time and place appointed for any interview and medical examination by the board or any member of the board or any person appointed by the board for that purpose.

(4) If—

(a) the appellant fails to comply with sub-paragraph (3), and

(b) the board is not satisfied that there was reasonable cause for the failure, the board may dispense with the interview and required by paragraph 4(1)(a) or, as the case may be, with any further interview, and may decide the appeal on such information as is then available.

(5) Any interview under this paragraph may be attended by persons appointed for the purpose by the fire authority or by the appellant or by each of them.

5.-(1) Where either party to the appeal intends to submit written evidence or a written statement at an interview held under paragraph 4, the party shall, subject to sub paragraph (2), submit it to the board and to the other party not less than 7 days before the date appointed for the interview.

(2) Where any written evidence or statement has been submitted under sub-paragraph (1) less than 9 days before the date appointed for the interview, any written evidence or statement in response may be submitted by the other party to the board and the party submitting the first-mentioned evidence or statement at any time up to, and including, that date.

(3) Where any written evidence or statement is submitted in contravention of sub paragraph (1), the board may postpone the date appointed for the interview and require the party who submitted the evidence or statement to pay such reasonable costs of the board and the other party as arise from the adjournment.

6. The board shall supply the Secretary of State with a written report of its decision on the relevant medical issues and the Secretary of State shall supply a copy of the report to the appellant and to the fire authority.

7.—(1) There shall be paid to the board-

(a) such fees as are determined in accordance with arrangements made by the Secretary of State, or

(b) where no such arrangements have been made, such fees and allowances as the Secretary of State may from time to time determine.

(2) Any fees and allowances payable to the board under sub-paragraph (1).—

(a) be paid by the fire authority, and

(b) be treated for the purposes of paragraph 8 as part of the fire authority's expenses.

8.—(1) Subject to paragraph 5(3) and sub-paragraphs (2) to (5), the expenses of each party to the appeal shall be borne by that party.

(2) Where the board—

(a) decides in favour of the fire authority, and

(b) reports that in its opinion the appeal was frivolous, vexatious or manifestly ill-founded, the fire authority may require the appellant to pay them such sum, not exceeding the amount of the fees and allowances payable to the member of the board appointed under paragraph 2A(2), as they think fit.

(2A) Where the appellant gives notice to the board of withdrawing the appeal within a period of 10 working days prior to the date appointed for an interview or medical examination by the board under paragraph 4(2), the fire authority may require the appellant to pay such sum as they think fit, not exceeding the board's total fees and allowances under paragraph 7(1).

(3) Where the board—

(a) decides in favour of the appellant, and

(b) does not otherwise direct, the fire authority shall refund to the appellant the amount specified in sub-paragraph (4).

(4) The amount is the total of—

(a) any personal expenses actually and reasonably incurred by the appellant in respect of any interview under paragraph 4, and

(b) if any such interview was attended by a qualified medical practitioner appointed by the appellant, any fees and expenses reasonably paid by the appellant in respect of such attendance.

(5) For the purposes of sub-paragraphs (2) and (3) any question arising as to whether the board's decision is in favour of the fire authority or of the appellant shall be decided by the board, or in default by the Secretary of State.

9. Any notice, information or document which an appellant is entitled to receive for the purposes of this Part shall be deemed to have been received by him if it was duly posted in a letter addressed to him at his last known place of residence.