



FREEDOM OF INFORMATION REQUEST

Please note the text of this request has been reproduced exactly as received.

FOI Reference number: FOI 48/2024

Date: November 2024

Request:

All details pertaining to the “Fundamental change of process” that was agreed by the resources Committee on the 30th July 2020 regarding the NIPB’s administration and application of the PSNI Injury Benefit Regulations 2006. To include but not limited to:

[a] How many initial SMP assessments have been conducted applying this new process?

Answer:

Following the Court of Appeal judgment of *McKee & Hughes v The Charity Commission for Northern Ireland [2020]* delivered on 19 February 2020, upholding the earlier High Court judgment delivered by Madam Justice McBride on 16 May 2019 concerning the discharge of functions, delegation and the body corporate. The Policing Boards Resources Committee considered the principles of the judgment and how the same applied to the work of the Board and, in particular, the work undertaken by Police Administration Directorate. The ‘fundamental change of process’ refers not only to the administrative and procedural responsibilities of Officials within Police Administration Directorate but also to the oversight, decision making responsibility, and accountability functions of Policing Board Members in respect of the applicable legislation.

Since August 2020 until May 2024, there has been 498 assessments conducted by the Selected Medical Practitioner (SMP).

[b] How many initial IMR assessments have been conducted applying this new process?

Answer:

Between August 2020 and May 2024 72 Appeal results have been received by the Board, from the Department of Justice.

[c] How many reconsiderations have been conducted applying this new process?

Answer:

Between August 2020 and May 2024 50 reconsiderations have been conducted by SMPs and 18 IMR reconsiderations have been conducted by Independent Medical Referees.

[d] All correspondence between the Board and the Police Federation of Northern Ireland informing them of this new process.

Answer:

The Board does not hold any recorded information within the scope of your question.

[e] All correspondence between the Board and Edwards & co Solicitors informing them of this new process.

Answer:

The Board does not hold any recorded information within the scope of your question.

[f] All correspondence between the Board and the Department of Justice discussing/informing them of this new change of process.

Answer:

The Board is withholding this information as the exemption at Section 36 of the Freedom of Information Act is engaged. Providing correspondence, between Board Officials and the Department of Justice would as per Section 36 be prejudice to the effective conduct of public affairs. The specific sub sections being relied on are Section 36 (2) (b) (i) and (ii), and Section 36 (2) (c) of the Freedom of Information Act 2000.

Section 36 (2) (b) states –

Information to which this section applies is exempt information if in the reasonable opinion of a qualified person disclosure of the information under this Act –

Would, or would be likely to inhibit –

- (i) The free and frank provision of advice, or
- (ii) The free and frank exchange of views for the purposes of deliberation.

Section 36 (2) (c) states –

Information to which this section applies is exempt information if in the reasonable opinion of a qualified person disclosure of the information under this Act –
'would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.'

The information, within the scope of your request, has been shown to the 'Qualified Person' who for the Board is the Chief Executive. The 'Qualified Person's' opinion is that the exemptions at Section 36 (2) (b) (i) and (ii) and Section 36 (2) (c) are engaged.

As this exemption is a qualified exemption the Board has gone on to carry out a public interest test to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

Having conducted the public interest test it is felt that the public interest in engaging the exemption to withhold the information does outweigh the arguments towards disclosure at this point in time. A copy of the public interest test is attached at ANNEX A.

[g] The communications plan/strategy agreed by the Resources Committee that governs this new process

Answer:

The Board does not hold any recorded information within the scope of your question

[h] The Process Maps which outlined the process for the consideration of initial applications considered by the SMP and IMR

Answer:

Please see ANNEX B

[i] The Process Map which detailed the process for the Committee's consideration of the Injury on Duty Reconsideration Cases under Regulation 31[2] PSNI & PSNI Reserve [injury benefit] Regulations 2006

Answer:

Please see ANNEX C.

[j] The document that provided the statutory underpinning for this fundamental change of process.

Answer:

The statutory underpinning was the ruling in relation to the McKee & Others vs the Charity Commission for Northern Ireland.

The information referred to within this response, specifically information about McKee & Others vs Charity Commission for Northern Ireland may be found on the JudiciaryNI website at the following link: <https://www.judiciaryni.uk/judicial-decisions/2020-nica-13>

As such the exemption at Section 21 (Information already reasonably accessible) is engaged. This is an absolute exemption and as such the Board is not required to conduct a public interest test.

[k] The "Informative Memorandum" communicating the change of process to be shared with members of the Resources Committee for their information.

Answer:

The document requested was a paper presented to the Board's Resources committee on 30 July 2020 titled 'Implications of McKee & Others v The Charity Commission for Northern Ireland'

The Board is unable to provide an unredacted copy of this paper, but we have attached a redacted copy of the paper for your convenience – see ANNEX D. Where redactions have been made this is because the following exemptions apply.

Section 36 Prejudice to effective conduct of public affairs.

The specific sub sections being relied on are Section 36 (2) (b) (i) and (ii), and Section 36 (2) (c) of the Freedom of Information Act 2000.

Section 36 (2) (b) states –

Information to which this section applies is exempt information if in the reasonable opinion of a qualified person disclosure of the information under this Act –

Would, or would be likely to inhibit –

- (i) The free and frank provision of advice, or
- (ii) The free and frank exchange of views for the purposes of deliberation.

Section 36 (2) (c) states –

Information to which this section applies is exempt information if in the reasonable opinion of a qualified person disclosure of the information under this Act – ‘would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.’

The information, within the scope of your request, has been shown to the ‘Qualified Person’ who for the Board is the Chief Executive. The ‘Qualified Person’s’ opinion is that the exemptions at Section 36 (2) (b) (i) and (ii) and Section 36 (2) (c) are engaged.

As this exemption is a qualified exemption the Board has gone on to carry out a public interest test to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

Having conducted the public interest test it is felt that the public interest in engaging the exemption to withhold the information does outweigh the arguments towards disclosure at this point in time. A copy of the public interest test is attached at ANNEX A.

[I] The document informing the SMP that he could no longer make “decisions” under the Injury Regs only “recommendations” and supporting legal rational for this fundamental change.

Answer

The Board does not hold any recorded information within the scope of your question.

If you have queries about this request or the decision please contact the Board quoting the reference number above. If you are unhappy with the service you have received and wish to make a complaint or request a review you should contact the Board’s Chief Executive -

Via Email: foi@nipolicingboard.org.uk

Or in writing at the following address:

Northern Ireland Policing Board
James House
Block D
2 – 4 Cromac Avenue
The Gasworks
Belfast
BT7 2JA

You should contact the Board within 40 working days of this response.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner. Generally, the Information Commissioner’s Office cannot investigate or make a decision on a case unless you have exhausted the complaints procedure provided by the Board. You should make complaints to the ICO within six weeks of receiving the outcome of an internal review.

The Information Commissioner can be contacted at the following web link –

www.ico.org.uk/foicomplaints

or in writing at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Telephone: - 0303 1231114

Email: - ni@ico.org.uk

Please be advised that Policing Board replies under Freedom of Information may be released into the public domain via our website @ www.nipolicingboard.org.uk.

Personal details in respect of your request have, where applicable, been removed to protect confidentiality.

FOI 48/2024 Section 36 Exemption “Effective Conduct of Public Affairs”

Public Interest Test

The above exemption is a qualified exemption, and a Public Interest Test must be carried out to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

Information requested by the applicant

(f) All correspondence between the Board and the Department of Justice discussing / informing them of this new change of process.

(k) The “Informative Memorandum“ communicating the change of process to be shared with members of the Resources Committee for their information.

Arguments in favour of disclosure of the requested information

1. Disclosure of the requested information would be in line with the spirit and requirements of the Freedom of Information legislation in asking public bodies to be open and transparent and would help promote accountability.
2. Work undertaken by the Board in respect of the Injury on Duty Award process generally and specifically in relation to the Charity Commission decision has generated considerable debate amongst, and communication from, interested parties and, therefore, it could be argued that there is a public interest in releasing the requested information.

Arguments in favour of engaging the exemption and withholding the requested information

1. Withholding disclosure would safeguard openness in all communications internally between Board Officials, as well as with Board members as well as between the Board and relevant third parties. This will ensure a full and frank exchange of views and robust discussion, which in turn is fundamental to the administration of justice.
2. The issues arising from *the McKee & Others v The Charity Commission for Northern Ireland* judgement are ‘live’ and are still being actively pursued by relevant third parties.
3. Release of the requested information at this time would adversely impact upon the current operation of the Board’s Police Pensions & Injury Benefits Branch. It is believed that full release of this information would generate an unsustainable increase in the volume of requests for information which would impact on the Board’s ability to focus on the review, and other business.
4. Release of the information at this time could hinder and restrict the ability of officials to have the necessary ‘free thinking space’ to fully consider the issues surrounding the *McKee & Others v The Charity Commission for Northern Ireland* judgement.
5. Release of all information into the wider public arena at this time *could* lead to interested parties amongst the general public and amongst elected representatives

to 'lobby' the Board on individual cases, which could also hinder the discussions currently on-going and lead to misrepresentation of issues.

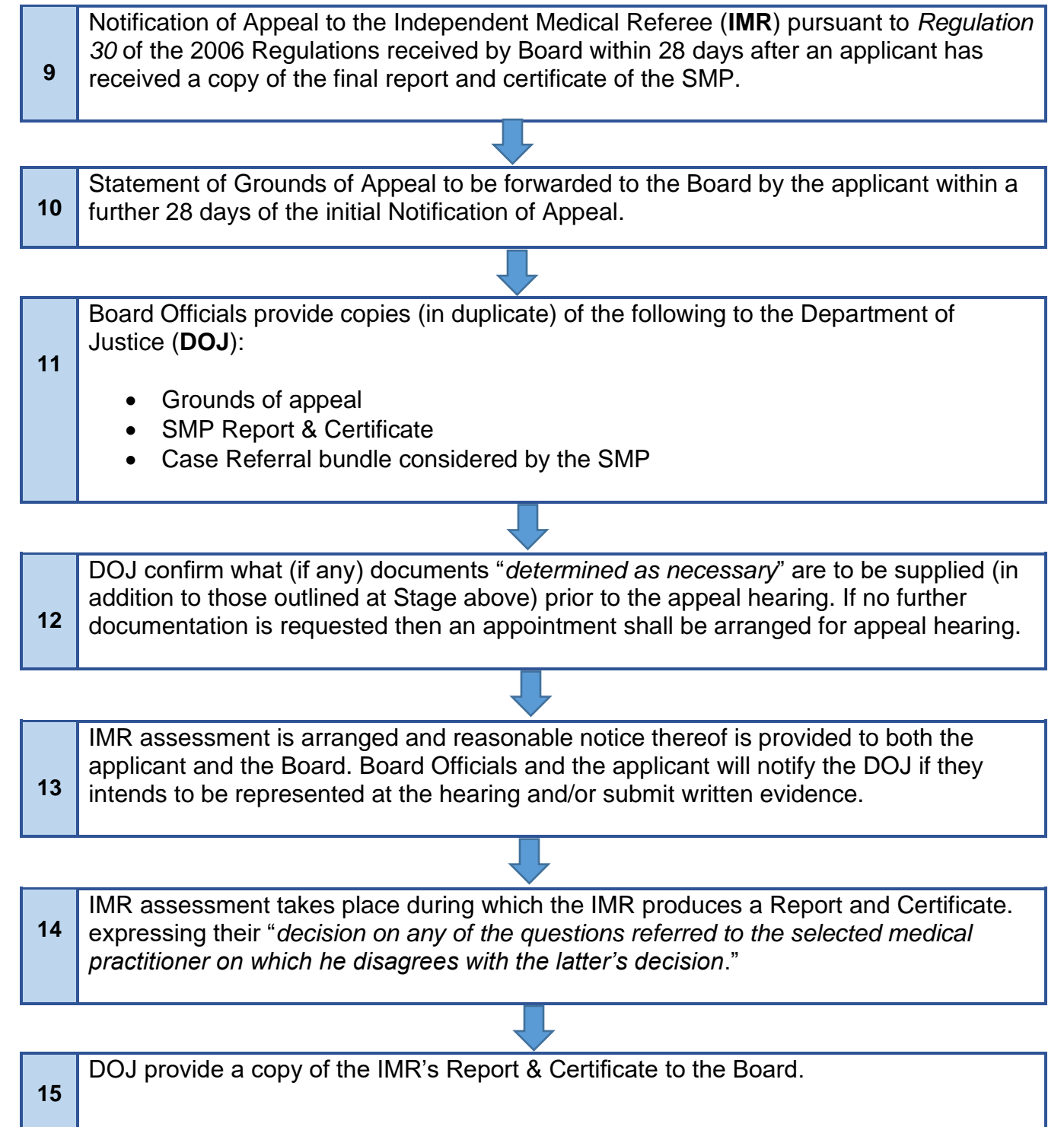
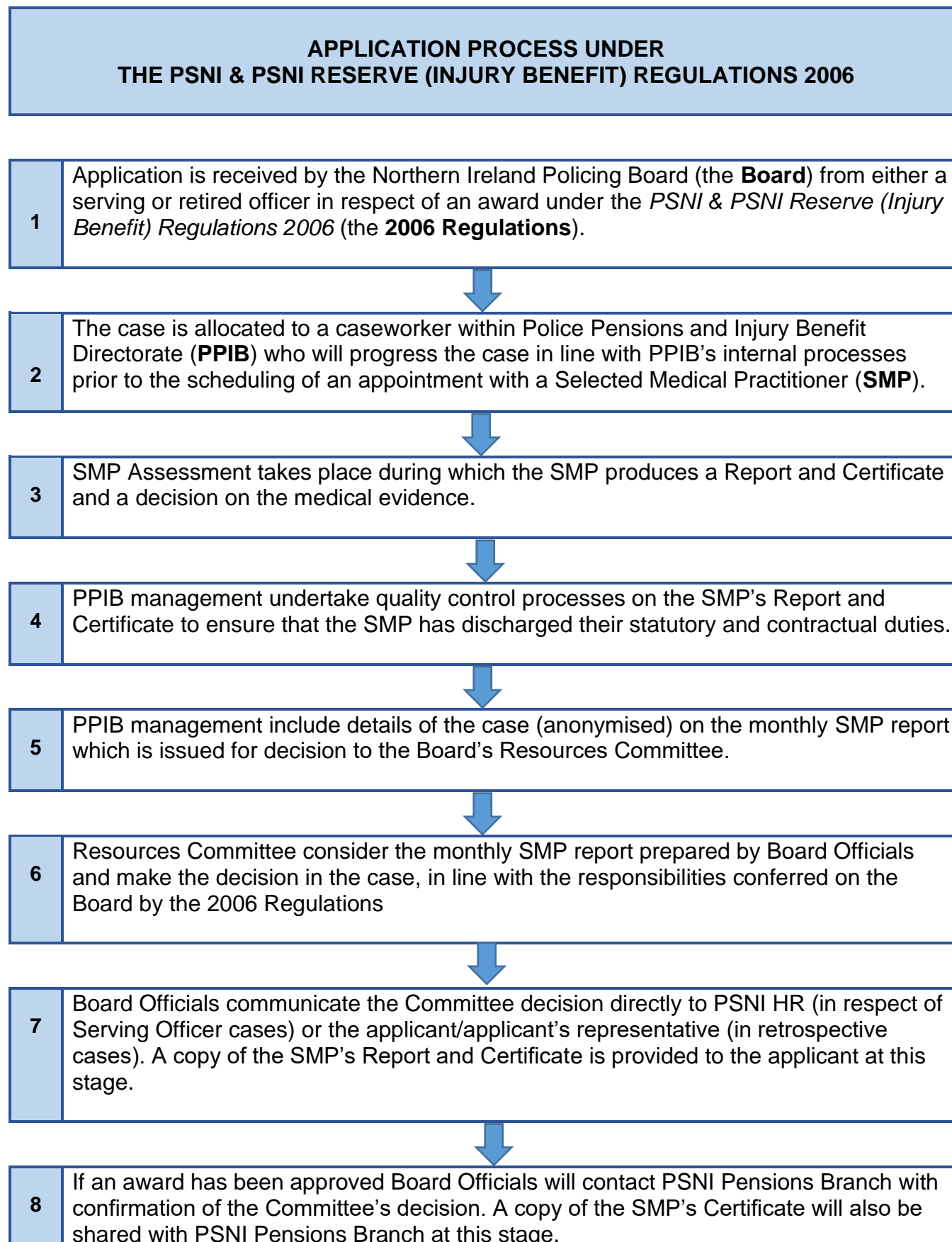
6. The release of this information is of interest to the requestors and may be of interest to other individuals who have a direct involvement with the Injury on Duty process. However, this is not the same as being of interest to the public at large which is what releasing this information under the FOIA is intended to be.

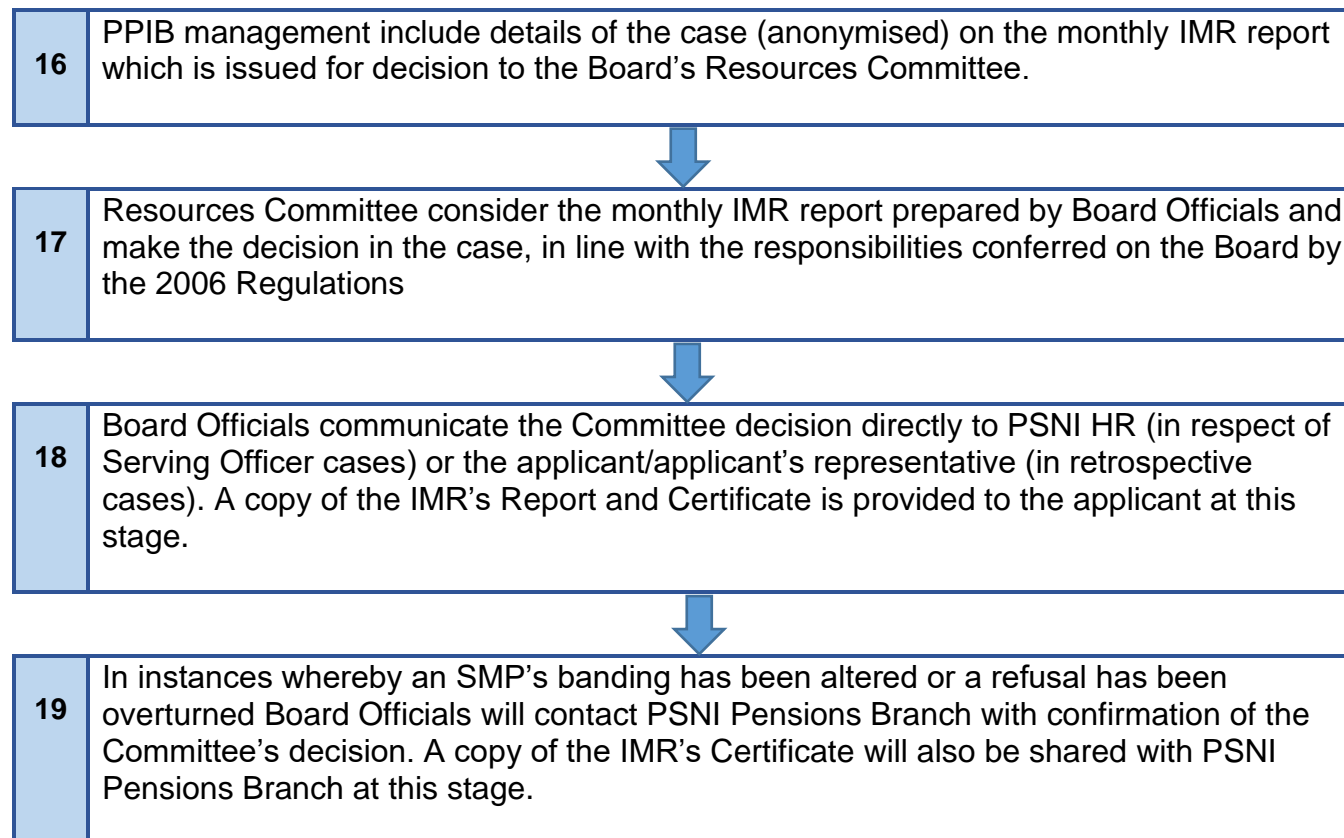
Result

Considering all of the deliberations above, it is felt that the public interest in engaging the exemption to withhold the information outweighs the arguments towards disclosure.

As a result, the requested information should not be provided.

**APPLICATION PROCESS UNDER
THE PSNI & PSNI RESERVE (INJURY BENEFIT) REGULATIONS 2006**





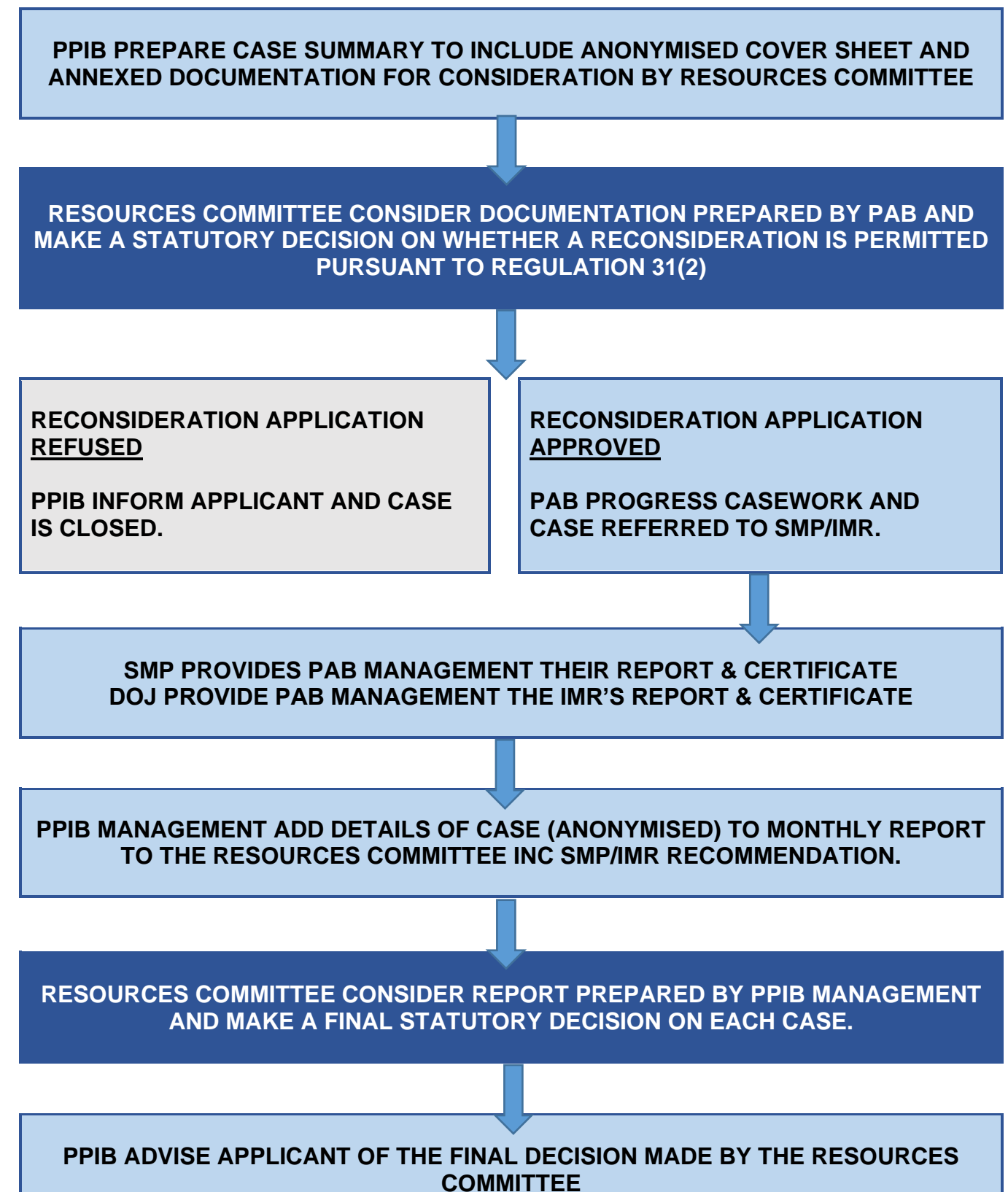
NOTES

- 1.1 Board Officials have prepared the attached flowchart being the process overview for initial applications only to the SMPs and IMRs.
- 1.2 The process relates to initial applications under the 2006 Regulations only and does not include applications made under the various police pension schemes.
- 1.3 This process does not relate to specific applications made by virtue of either *Regulation 31(2)* or *Regulation 35* of the 2006 Regulations.

ANNEX B

**RECONSIDERATION PROCESS
INJURY ON DUTY ONLY
REGULATION 31(2) PSNI & PSNI RESERVE (INJURY BENEFIT) REGULATIONS 2006**

- 1.1 Board Officials have prepared the attached flowchart being the proposed process for reconsiderations to both the Selected Medical Practitioner (**SMP**) and the Independent Medical Referee (**IMR**).
- 1.2 This process relates to reconsiderations of Injury on Duty (**IOD**) awards only which have been made under *Regulation 31(2)* of the *PSNI & PSNI Reserve (Injury Benefit) Regulations 2006*. This regulation states that, in relation to IOD awards only,
- “The Board and the claimant may, by agreement, refer any final decision of a medical authority who has given such a decision to him for reconsideration, and he shall accordingly reconsider his decision and, if necessary, issue a fresh report and certificate, which, subject to any further reconsideration under this paragraph or paragraph 31(1) or an appeal, where the claimant requests that an appeal of which he has given notice (before referral of the decision under this paragraph) be notified to the Secretary of State, under regulation 30, shall be final.”*
- 1.3 The attached process relates to reconsiderations to the SMP and IMR by both serving and retired officers.
- 1.4 Members should note that all correspondence and communication relating to any Serving Officer shall only be exchanged between Board Officials and PSNI HR.
- 1.5 Members should note that all correspondence and communication relating to any Retired Officer shall only be exchanged between Board Officials and one of the following:
- Applicant; or
 - The Applicant’s Appointed Representative (e.g. solicitor, MLA, relative, friend, staff association group).
- 1.6 Members should note that any/all communications relating to the arrangement of the IMR reconsideration will be facilitated by the Department of Justice. The only further communication the Board will have with the Applicant is confirmation of the Resources Committee’s final decision.



NORTHERN IRELAND POLICING BOARD	
RESOURCES COMMITTEE	
Meeting Date: 30 July 2020	
Paper Title:	Implications of <i>McKee & Others v The Charity Commission for Northern Ireland</i>
Agenda Ref No:	3
Lead Official:	Aislinn McGuckin, T/Director of Police Administration
Purpose of Paper:	To brief Members on the implications of the Court of Appeal judgment and outline impact on Board business and proposed next steps.
Considerations:	<p>(i) Resources: within existing staffing complement and skills. Financial implications to PSNI budget for payment of all IHR & IOD awards.</p> <p>(ii) Equality: None.</p> <p>(iii) Publication Status of paper: This paper is likely to be disclosable under Freedom of Information.</p> <p>(iv) Related Corporate Plan/Business Plan measure: <u>Corporate Plan, Objective D:</u> To deliver independent, fair and transparent processes for former and serving officers in line with Police Pension, Injury Benefit and Appeal legislation.</p>
Action Required by the Board / Committee:	<ul style="list-style-type: none"> • The Committee should consider if its Terms of Reference should now be amended to reflect the judgment and this fundamental change in process. • The Committee should consider if it is content to approve the revised process relating to initial

SMP appointments only.

- The Committee should consider if this process should also be replicated for initial IMR appointments.
- The Committee should consider and provide a final decision in relation to all cases outlined in ANNEX C. *Annex C withheld under Section 40(2) of the Freedom of Information Act 2000.*
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] at ANNEX B. *Withheld under Section 36 of the Freedom of Information Act 2000.*
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. *Withheld under Section 36 of the Freedom of Information Act 2000.*
- Finally, the Committee is asked for any input it would like to make into the Communications Strategy in respect of this change of process and in light of the issues outlined within this paper, [REDACTED]
[REDACTED] *Withheld under Section 36 of the Freedom of Information Act 2000.*

1. BACKGROUND

- 1.1 The Northern Ireland Policing Board (the **Board**) has various statutory responsibilities and obligations in light of a specific suite of police pension and injury on duty regulations (the **Regulations**).¹
- 1.2 Members will be aware, from its Terms of Reference, that the Resources Committee has responsibility for ensuring compliance with the Regulations.
- 1.3 Members should further note the Board's role as 'Scheme Manager' as outlined within the Regulations. The role of 'Scheme Manager' confers a vast range of responsibilities on the Board, most of which are currently undertaken by Board Officials within the Board's Police Administration Branch (**PAB**).
- 1.4 For ease of reference Board Officials have included at **ANNEX A** the relevant excerpt from the Committee's Terms of Reference pertaining to this work. Board Officials would draw specific attention to the footnote contained within the Terms of Reference which reads:
- "Management of the day to day workload and casework in accordance with the suite of Regulations is delegated to Police Administration Branch which provides quarterly reports and metrics for the Committee's Information."*
- 1.5 The purpose of this paper is to inform Members about the Court of Appeal judgment of *McKee & Hughes v The Charity Commission for Northern Ireland [2020] NICA 13* (<https://www.bailii.org/nie/cases/NICA/2020/13.html>). This judgment was delivered on 19 February 2020 and it upheld the earlier High Court judgment delivered by Madam Justice McBride on 16 May 2019.
- 1.6 The Court of Appeal upheld the High Court's earlier decision that the Charity Commission of Northern Ireland (**CCNI**) could not discharge of its decision making functions to a member of staff. Rather, it was held that CCNI as a "body corporate" must make all decisions required to fulfil its statutory powers, obligations and functions as outlined in legislation.

¹ *Royal Ulster Constabulary Pensions Regulations 1988, Police Pension (Northern Ireland) Regulations 2009, Police Pension Regulations (Northern Ireland) 2015 and PSNI and PSNI Reserve (Injury Benefit) Regulations 2006.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1.8 [REDACTED]

[REDACTED]. *Withheld under Section 36 of the Freedom of Information Act 2000.*

2. SUMMARY OF COURT OF APPEAL JUDGMENT

- 2.1 Briefly by way of context, CCNI was established in 2009 as the independent regulator of charities in Northern Ireland. Mirroring the Board, CCNI is also a non-departmental public body, sponsored by (in this instance) the Department for Communities.
- 2.2 Another similarity to the Board is CCNI's founding primary legislation (being the *Charities Act (Northern Ireland) 2008*) (the **Charity Act**) which sets out CCNI's extensive powers. This is much like the *Police (Northern Ireland) Act 2000* (the **Police Act**) which sets out the Board's own powers and responsibilities.
- 2.3 The subject legal case dealt with three appeals from the Charity Tribunal, all of which centred on the same issues of law being;
- 2.3.1 the statutory interpretation of the Charity Act;
- 2.3.2 the statutory interpretation of the *Interpretation Act (Northern Ireland) 1954* (the **Interpretation Act**);
- 2.3.3 whether the Charity Act & Interpretation Act read together, provided for the functions of CCNI to be lawfully discharged by CCNI staff acting alone.
- 2.4 Madam Justice McBride considered the provision for CCNI to "regulate" its own procedure and business" pursuant to Section 19 of the Interpretation Act. However, she held that the power to "regulate" did not give CCNI the express power to "delegate" its functions to staff. Further, Madam Justice McBride stated that if the provisions of the 1954 Act were interpreted in the manner submitted by CCNI then a situation would arise whereby a "blank cheque" would be made for CCNI to delegate all functions and therefore

"abdicate all decision making responsibilities." Madam Justice McBride concluded that such a broad interpretation would not align with the legislature's intent.

- 2.5 CCNI and the Department for Communities submitted that, should the court find that there was no express provision for delegation of functions to staff, then the court should find that there was implied delegation. However, Madam Justice McBride considered that a strict approach to implied delegation should be taken and found that there was **no such implied power to delegate.**
- 2.6 CCNI appealed the decision however, as indicated above, the Court of Appeal upheld Madam Justice McBride's earlier decision.
- 2.7 The Court of Appeal noted that CCNI only have authority to make decisions when it meets as a complete body. Further, Lord Justice McCloskey made the distinction that the role of CCNI staff was that of "*research, briefing and making recommendations.*" He confirmed that it is for CCNI as a body corporate to make all decisions in the discharge of its powers.
- 2.8 The importance of the function of CCNI in overseeing charities in Northern Ireland was also emphasised within the judgment owing to the correlation between public confidence in charities and in their regulation.

3.1

[REDACTED]

[REDACTED]

[REDACTED]

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4.4

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[REDACTED]
[REDACTED] *Withheld under Section 36 of the Freedom of Information Act 2000.*

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. *Withheld under section 36 of the Freedom of Information Act 2000.*

- 5.2 By way of assistance, Board Officials have prepared a draft submission in relation to **initial SMP applications only**. This is attached at **ANNEX C** for the Committee's review and approval.
- 5.3 This document contains an overview of initial SMP assessments only, which have taken place between 23 June 2020² and 24 July 2020³. The document contains a precis of key information in respect of each of the applications during this time period to include;

Anonymised case code
Date of assessment
Application type
Applicable Regulations
SMP Decision
SMP Comments

- 5.4 For the avoidance of doubt, this document does not account for either medical appeals to the IMR and/or reassessments and reconsiderations. IMR assessments have not yet recommenced following the initial Covid-19 emergency period. It is proposed that the document contained at ANNEX C would be replicated for initial IMR applications once these recommence and brought to the Committee in the same manner.

²The date on which SMP assessments recommenced following the initial Covid-19 emergency period.

³ The last date on which this paper could be submitted in advance of Resources Committee on 30 July 2020.

5.5

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Withheld under Section 36 of the Freedom of Information Act 2000.*

7. DECISION

7.1 The Committee should consider if its Terms of Reference should now be amended to reflect the judgment and this fundamental change in process.

7.2 The Committee should consider if it is content to approve the revised process relating to initial SMP appointments only.

7.3 The Committee should consider if this process should also be replicated for initial IMR appointments.

7.4 The Committee should consider and provide a final decision in relation to all cases outlined in ANNEX C. *Annex C withheld under Section 40(2) of the Freedom of Information Act 2000.*

7.5 [REDACTED]

[REDACTED]

[REDACTED] *at ANNEX B. Annex B withheld under section 36 of the Freedom of Information Act 2000.*

7.6 [REDACTED]

[REDACTED]

[REDACTED] *. Withheld under section 36 of the Freedom of Information Act 2000.*

7.7 Finally the Committee is asked for any input it would like to make into the communications plan in respect of this change of process and in light of the

issues outlined within this paper, [REDACTED]. Withheld under
Section 36 of the Freedom of Information Act 2000.

POLICE ADMINISTRATION DIRECTORATE

JULY 2020

ANNEX A

**RESOURCES COMMITTEE
TERMS OF REFERENCE (EXCERPT)**

Para 1.1	<i>The NI Policing Board (the Board) has established a Resources Committee (the Committee) to support it in its responsibilities for all issues related to Finance, Human Resources (including Pensions and Injury on Duty Awards), Land and Property, Information Technology and Equality in the PSNI, and particularly those at Section 5.1 and 5.2.</i>
Para 5.2	<i>The Committee will undertake the Board's responsibilities under Police and Police Pension Regulations and make recommendations to the Board in respect of pension forfeiture cases.</i>
Footnote to Para 5.2	<i>Management of the day to day workload and casework in accordance with the suite of Regulations is delegated to Police Administration Branch which provides quarterly reports and metrics for the Committee's information</i>