



Neutral Citation Number: [2024] EWHC 3290 (Admin)

Case No: AC-2024-LON-000890

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 18 December 2024

**Before :**

**MR JUSTICE SHELDON**

**Between :**

**CHRISTOPHER MAJOR**

**Claimant**

**- and -**

**(1) CHIEF CONSTABLE OF ESSEX POLICE**

**(2) DR WILLIAM CHENG**

**Defendants**

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**Aaron Rathmell** (instructed by **Taylor Law**) for the **Claimant**  
**Elliot Gold** (instructed by **Essex Police Legal Services**) for the **First Defendant**  
The **Second Defendant** did not appear and was not represented

Hearing dates: 15 October

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**Approved Judgment**

This judgment was handed down remotely at 11.30am on 18 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SHELDON

**Mr Justice Sheldon:**

1. The Claimant, Christopher Major, is a police officer and an active member of the Chief Constable of Essex Police’s pension scheme. The Claimant challenges the decision of the Chief Constable (the First Defendant to this claim) refusing his application for ill-health retirement, and the connected statement that this decision was “not subject to regulatory appeal”. The Chief Constable’s decision to refuse the application was based on the assessment of the Selected Medical Practitioner, Dr William Cheng (the Second Defendant to this claim), that he was not permanently unfit for the ordinary duties of a police officer. Among other things, this case requires detailed consideration of the statutory scheme for decision-making, appeals and reconsiderations, set out in the Police Pensions Regulations 2015 (SI 2015/445) (“the 2015 Regulations”).
2. Permission to proceed with the judicial review challenge on grounds 1 and 2 was granted by Jonathan Moffett KC, sitting as a deputy judge of the High Court on 23 May 2024. Permission was refused on grounds 3 to 5. At the hearing before me, Mr Rathmell, on behalf of the Claimant, sought to renew consideration of grounds 3 to 5. I stated that for convenience I would hear full argument on those latter matters.

Factual Background

3. The Claimant has been a police officer since 2003. He initially served with the British Transport Police, and subsequently with Essex Police. On 7 July 2005, whilst serving with the British Transport Police, the Claimant was a first responder during the terror attacks on London. He was one of the first officers to enter the ticket office at Russell Square station and the underground tunnel at that station to assist passengers. The Claimant suffered Post Traumatic Stress Disorder (PTSD) as a consequence of his involvement in those disturbing events.
4. On 24 January 2019, the Force Medical Adviser of Essex Police wrote to Dr Cheng asking him to assess the Claimant for possible early retirement. Dr Cheng met with the Claimant for a consultation and had access to his Occupational Health Unit Medical File, as well as his GP records. On 4 June 2019, Dr Cheng completed a document entitled “Annex D: SMP’s overall assessment and decision form Police Pensions Regulations 2015”. Part 1 of that form stated that it was “Issued under regulation 81(1) of the Police Pensions Regulations 2015 where the selected medical practitioner has the questions referred to him by the police pension authority in a case where 81(2)(c) applies and questions 81(1)(a), (b), (c) and (d) are being referred”.
5. Part 1 contained five sections: D.1 – D.5. D.1 was completed by Dr Cheng as follows:

“D.1 Assessment of medical unfitness for performing the ordinary duties of a member of the police force

.....

1. I consider that this officer **is** medically unfit for performing the ordinary duties of a member of the police force.

2. If medically unfit - This officer is medically unfit in respect of the following condition(s):

### **Recurrent anxiety with depression PTSD**

3. I consider that such medical unfitness is not likely to be permanent.

4. If permanent – of the condition(s) listed at 2 above, the following is likely to be Permanent”.

(Emphasis added). Dr Cheng left question 4 unanswered as he did not consider that any of the conditions listed at 2 were likely to be permanent. It is clear that in 2019, Dr Cheng considered that the Claimant had two underlying conditions that made him medically unfit: Recurrent anxiety with depression, and PTSD.

6. Dr Cheng did not complete D.2 (entitled “Assessment of medical unfitness for engaging in any regular employment”), or D.3 (entitled “Medical unfitness for police duties due to progressive medical conditions”). D.4 was entitled “Capability for types of work”). The document stated in bold type that “This is not a question for the SMP as specified in the Police Pensions Regulations 2015 but the SMP’s assessment will help to explain the basis of the decision and give focus to the process at D.5 below”. Dr Cheng did not fill in any of the boxes under D4. D.5 was entitled “Report”. The document stated in bold type “Please attach a report of your assessment and conclusions on the issues covered in D1 to D4”.
7. Part 2 of the document contained two sections: D.6 (entitled “Capability for further police service”) and D.7 (entitled “Severe ill-health test statement – as required by HMRC”). Under D.6, the document stated in bold type that  

“This is not a question for the SMP specified in the Police Pensions Regulations 2015 but the SMP’s assessment may assist the police pension authority where they are considering whether to retain an officer. This should only be completed where an officer is either not permanently medically unfit for engaging in any regular employment or is willing to be retained as a part-time officer”.
8. Dr Cheng produced a two-page document headed “Part 2 Supplementary Report on Capability”). This stated the following:

*“Task*

I have been asked by the Essex Police to establish whether Mr Christopher Major is permanently medically unfit from carrying out the ordinary duties of a police officer in accordance with regulation 81 of the Police Pensions Regulations 2015.

*Access to relevant Occupational Health and General Medical notes and Personnel information*

In order to compile this report, I have had access to and scrutinised Mr Major’s Occupational Health Unit Medical File, his Medical General Practitioner (GP) Records rendered in

accordance with Home Office advice on referrals for decisions under Regulation 81 for permanent medical unfitness.

*Consultation with Mr Christopher Major*

A medical consultation took place at 10 Harley Street W1G 9PF Friday, 3/6/19. He was able to concentrate and answer questions freely during the clinical consultation.

*Ordinary duties not permanently affected by his infirmity*

He is able to run, walk reasonable distances and stand for reasonable periods;

He is able to exercise reasonable physical force in restraint and retention in custody;

He is able to sit, read and write; he can use the telephone and use IT;

He is able to make coherent decisions or relied upon to report situations accurately to others in a police environment;

He is able to evaluate information properly or think logically.

*Currently affected capabilities*

He is unable to retain and concentrate to explain facts and procedures to a reasonable standard.

*Attendance/Reasonable adjustments*

In his present condition, he can perform full-time non-operational policing role with appropriate workplace adjustments, and provided the above limitations are taken into consideration.

*Opinion*

Having carefully reviewed all the available information, clinically assessed him, I conclude that he is medically unfit from performing the ordinary duties of a police officer but not permanently. The detailed rationale is provided in the Capability Report for the FMO.

*Action*

I have completed the Part 1 report covering Regulation 81 of the Police Pensions Regulations 2015. This Part 2 report covers the requirement of the Home Office Circular 21/2003.”

9. Dr Cheng also produced an eight-page document headed “Capability Report For Force Medical Officer”. This set out in summary form the Claimant’s work and medical history, a more detailed chronology, and a description of the Claimant’s Day-to-Day activities. The document contained a “Clinical” section which contained the same description of the “Ordinary duties not permanently affected by his infirmity” and the “Currently affected capabilities” as set out in the two-page Supplementary Report described above. Under the heading “Opinion”, Dr Cheng referred to the Claimant’s use of alcohol:

“Harmful use of alcohol is likely to be either contributing to his symptoms of depression (since alcohol is a depressant) or/and interfering with the effectiveness of antidepressant medication. He declared that he is now drinking within the government health guideline”.

It is clear that in 2019, Dr Cheng did not diagnose the Claimant as suffering from any condition relating to alcohol. It was not an underlying condition that made the Claimant medically unfit.

10. The Claimant was written to by Kevin Kirby, the Chief Constable’s Head of Pension Governance & Compliance, on 4 June 2019. Mr Kirby explained that the advice of the Selected Medical Practitioner (Dr Cheng) was that he was not permanently medically unfit. Mr Kirby informed the Claimant that he could appeal this decision to the Police Medical Appeals Board within 28 days. The letter enclosed what was described as the “SMP report” and “Form A”. Mr Kirby explained that “The SMP FMO advice report has been forwarded and retained by occupational health to assist your ongoing OH reviews. I have copied this notification with the shortened capability report (which excludes medical detail) to the appropriate HR Advisor to ensure that appropriate reasonable adjustments can be implemented for you.” The Claimant did not appeal from this decision.
11. On 2 February 2023, the Claimant tried to take his own life by driving his car into a tree whilst intoxicated. This led to the Chief Constable initiating disciplinary proceedings against the Claimant for being inebriated whilst driving. In order to assist the Claimant in those proceedings, the Police Federation (of which the Claimant was a member) obtained a report from a Consultant Psychiatrist, Professor Benjamin Green. In his report, dated 14 October 2023, Professor Green stated that he had reviewed a number of documents, including the Claimant’s GP records and Occupational Health records. Having set out the Claimant’s history, including his medical history, Professor Green described the mental health examination that he carried out, and then set out his Opinion as follows:

“Differential Diagnosis

13.1. Mr Major’s interview, occupational health records, and General Practitioner records indicate that he has two major mental health diagnoses namely posttraumatic stress disorder (ICD-11 6B40) and recurrent depressive disorder (ICD-11 6A71). He scores very highly on a Beck Depression Inventory

indicating severe symptomatology. **These comorbid disorders of PTSD and depression are associated with a third condition, alcohol dependence (ICD-11 6C40.2). The three conditions are often comorbid and are indicative of a severe disability.**

...

#### Prognosis

13.10. The prognosis for Mr Major's mental health conditions is not good. The severity of his symptomology and the duration to date with lack of response to first-line treatments in primary and secondary care does not auger well. I believe that his condition is permanent and that further interventions can only ameliorate his condition which is likely to continue. The aim of further treatment is to try and improve the quality of his life and to reduce his risk of completed suicide.

13.11. Resolution of Mr Major's police role with, hopefully, mental health retirement would be beneficial. It would be extremely important to avoid further stresses in an occupational setting to avoid the risks of completed suicide, which are high given the severity of his condition, the duration of his symptomatology, his disability and the continuation of symptoms despite treatment. He has already acted on suicidal impulses, made plans and carried them out therefore his statistical risk is ongoing and high. Everything necessary in terms of additional treatment to mitigate this risk will be required."

(Emphasis added). It is clear, therefore, that Professor Green diagnosed the Claimant as suffering from a further underlying medical condition: alcohol dependence.

12. On 16 October 2023, the Essex Police Federation Chair wrote to Mr Kirby to request ill-health retirement for the Claimant. Mr Kirby responded to say that he was aware that the Claimant had been assessed in 2019 as not permanently medically unfit. As a result, he stated that "this would be a regulatory re-consideration". In the same email, Mr Kirby asked Occupational Health to consider whether based on the current medical status of the Claimant he was likely to be permanently medically unfit. The Federation Chair replied to Mr Kirby, saying "Thank you, I shall wait to hear from OH as I assume they will either sign the referral or request Pc Major to attend the FMO". A referral to the Selected Medical Practitioner under "the re-consideration provisions of the Police Pension Regulations" was signed by the Chief Constable's Chief Finance Officer on 31 October 2023.
13. Dr Cheng was written to by Mr Kirby on 8 November 2023, asking him to "re-consider your original decision in light of the additional medical submission in respect of" the Claimant. Dr Cheng was asked as follows:

"Firstly, you should address the following questions: -

Assessment of medical unfitness for performing the ordinary duties of a member of the police force

Assessment of medical unfitness for engaging in any regular employment . . .

Medical unfitness for police duties due to progressive medical conditions

Capability for types of work

**[This is not a question for the SMP as specified in the Police Pensions Regulations 2015 but the SMP’s assessment will help to explain the basis of the decision and give focus to the process at D.5 below].**

Capability for further police service

**[This is not a question for the SMP specified in the Police Pensions Regulations 2015 but the SMP’s assessment may assist the police pension authority where they are considering whether to retain an officer. This should only be completed where an officer is either not permanently medically unfit for engaging in any regular employment or is willing to be retained as a part time officer]**

Please use Annex D SMP’s overall assessment and decision form Police Pensions Regulations 2015 to record your assessment”.

(Emphasis in the original).

14. On 14 December 2023, Mr Kirby emailed the Claimant stating that he was enclosing a “copy of the SMP Report and outcome”. The enclosures were a letter from Mr Kirby of the same date, which stated the following:

“THE POLICE PENSION REGULATIONS – RE-CONSIDERATION OF PERMANENT MEDICAL UNFITNESS ASSESSMENT

With reference to the above, I enclose the Selected Medical Practitioner Report. This indicates you are currently disabled from performing some of the ordinary duties of a police officer but not permanently. Permanently means up to the normal retirement age of the 2015 Police Pension Scheme which is age 60.

As you are [n]ot permanently medically unfit, we cannot progress ill health deferred benefits.

As this is a re-consideration of the original final SMP decision of 4<sup>th</sup> June 2019 it is not subject to regulatory appeal.”

15. There was also a document headed “PART 2 SUPPLEMENTARY REPORT ON CAPABILITY”, signed by Dr Cheng on 11 December 2023, which stated as follows:

**“Task**

I have been asked by the Essex Police to re-consider whether Mr Christopher Major is permanently medically unfit from carrying out the ordinary duties of a police officer in accordance with regulation 81 of the Police Pensions Regulations 2015.

His permanency application was considered unsuccessful on 4/6/19. He did not appeal the recommendation. This referral is a re-consideration.

**Access to relevant Occupational Health and General Medical notes and Personnel information**

In order to compile this report, I have had access to and scrutinised Mr Major’s Occupational Health Unit Medical File, his Medical General Practitioner (GP) Records rendered in accordance with Home Office advice on referrals for decisions under Regulation 81 for permanent medical unfitness.

**Consultation with Mr Christopher Major**

A medical consultation took place at 10 Harley Street W1G 9PF on Friday, 8/12/23.

He audiotaped the consultation and agreed to forward a copy contemporaneously to the Head of Pensions via email.

He was able to understand the Information Leaflet provided and complete the Pre-consultation questionnaire. He did not complete the Post-consultation questionnaire.

He was able to concentrate and answer questions freely during the clinical consultation.

**Ordinary duties not permanently affected by his infirmity**

He is able to run, walk reasonable distances and stand for reasonable periods;

He is able to exercise reasonable physical force in restraint and retention in custody;

He is able to sit, read and write; he can use the telephone and use IT;

He is able to make coherent decisions or relied upon to report situations accurately to others in a police environment;



He is able to evaluate information properly or think logically

### **Currently affected capabilities**

He is unable to retain and concentrate to explain facts and procedures to a reasonable standard.

### **Attendance/Reasonable adjustments**

In his present condition, he can perform at least 30 hours per week if not full-time non-operational policing role with appropriate workplace adjustments, and provided the above limitations are taken into consideration.

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### **Opinion**

Having carefully reviewed all the available information, clinically assessed him, I conclude that he is medically unfit from performing the ordinary duties of a police officer but not permanently. The detailed rationale is provided in the Capability Report for the FMO.

### **Action**

I have completed the Part 1 report covering Regulation 81 of the Police Pensions Regulations 2015. This Part 2 report covers the requirement of the Home Office Circular 21/2003.”

When Dr Cheng refers to having “completed the Part 1 report covering Regulation 81 of the Police Pensions Regulations 2015” he was presumably referring back to the D1 report that he completed in 2019. He did not complete a new D1 report.

16. The document entitled “Capability Report for Force Medical Officer” was signed by Dr Cheng on 11 December 2023. This stated that the referral was “a re-consideration”. In this document Dr Cheng set out the history of the Claimant, including his medical history, and his Day-to-Day activities. Dr Cheng also referred to his consultation with the Claimant on 8 December 2023. Under the heading “Clinical”, Dr Cheng repeated the “Ordinary duties not permanently affected by his infirmity” and “Currently affected capabilities” as contained in the documented headed “PART 2 SUPPLEMENTARY REPORT ON CAPABILITY”.
17. Under the heading “Rationale”, Dr Cheng wrote that “It would appear that his mental health became decompensated when he encounters challenging life events”, which included “Notification of separation from his wife (2023)”. Under the heading “Alcohol Dependence”, Dr Cheng wrote:

“Harmful use of alcohol is likely to be either contributing to his symptoms of depression (since alcohol is a depressant) or/and interfering with the effectiveness of antidepressant medication.

Increase in alcohol use was understandable and consistent with primary anxiety disorder.

He blamed the 7/7/05 event for all his problems without giving any consideration to the importance of his complex psychological issues with the propensity to revert to dysfunctional behaviours and thinking at times of stress.

Alcohol misuse is a potent maintaining factor which is amenable to treatment and has a relapsing and remitting course. CBT and Motivational Enhancement Therapy for Alcohol Dependence/Harmful use are very promising. SSRIs are helpful.

This is a treatable condition.”

18. Under the heading “Generalised Anxiety Disorder with Recurrent Depression”, Dr Cheng wrote that:

“...

Depressive disorder is typically treatable but commonly can develop into relapsing and remitting conditions.

...

Aetiological factors for anxiety symptoms:

...

Perpetuating factors include the alcohol which may have contributed to perpetuating his anxiety and made it more difficult for him to engage in psychological processes, for example, may result a better EMDR outcome (to overcome the ‘block’).

...

Treatment of anxiety is not coordinated (not received anxiety management therapy, benzodiazepines or Pregabalin) and put in place to enable him to benefit from the EMDR. He needs energetic treatment for his anxiety before he would be more amenable to psychological approaches for his ‘recurrent’ PTSD following life triggers.

Cognitive behavioural therapy focusing on the dysfunctional behaviours, address maladaptive thoughts, intensive anxiety symptoms and negative thoughts about the police through a goal-orientated systematic procedure. With engagement in a properly planned treatment program, his mental state will stabilize.

... His anxiety has been exacerbated by alcohol misuse.

He has responded favourably to previous courses of psychological therapy but for his alcohol misuse. One cannot say that he would relapse on exposure to police environment because his symptoms and compounding factors had been shown to be amenable to psychological interventions.

Focused CBT treatment for OCD (response prevention and thought stopping) should be initiated.”

19. Under the heading “Analysis of Historical / Recurrent Post traumatic Stress Disorder”, Dr Cheng described the events of 2 February 2023. He explained that the Claimant:

“was admitted after he drove his car into a tree under the influence of alcohol (6 pints of beer) with intention to kill himself:

- After his wife has informed him that she wants to separate and discussing living arrangements.
- He has a debt of around £30,000.
- He was noted to be fluent with eloquent speech and cognitive function grossly intact. He was diagnosed with:
  - Alcohol dependence syndrome
  - Major depressive disorder, recurrent severe without psychotic features
  - Adjustment disorder
  - Post traumatic disorder”.

20. Under the heading “Opinion”, Dr Cheng wrote that:

“Having carefully reviewed all available information, **he is currently unfit to perform the ordinary duties of a police officer due to:**

- **Alcohol dependence (ICD-11 6C40.2)**
- **Recurrent depressive disorder (ICD-11 6A71) with generalised anxiety disorder**
  - **PTSD (ICD-11 6B40) – likely to be residue (see above rationale)**

He is currently not under the care of an NHS Consultant Psychiatrist. He should be referred to an NHS consultant-led multidisciplinary psychiatric team to have a diagnostic review prior to formulating an evidence-based pharmco-therapeutic and

psychological treatment programme (see 14/10/23 medicolegal report from Professor Green).

On balance of probabilities, addressing these issues in a structured fashion would result in sufficient improvement to allow a return back to a substantive policing role prior to 2038.”

It is clear that in 2023, Dr Cheng diagnosed the Claimant as suffering from alcohol dependence as an underlying medical condition.

#### Statutory Framework

21. The 2015 Regulations are the most recent iteration of regulations for police pensions. The provisions relating to “Retirement pensions payable on grounds of permanent medical unfitness” are contained in Part 6 of the 2015 Regulations. The relevant provisions as referred to me by counsel for the parties under Part 6 are as follows:

#### Regulation 75: Permanent medical unfitness

“(1) In these Regulations, a reference to a member of a police force or a former member of a police force (“the member”) being permanently medically unfit is taken to be a reference to—

(a) the member being medically unfit at the time the selected medical practitioner decides the question; and

(b) that medical unfitness being at that time likely to be permanent.

(2) For the purpose of deciding whether or not the member's medical unfitness is likely to be permanent, the member is taken to receive normal appropriate medical treatment.

(3) In this regulation, “*appropriate medical treatment*” does not include medical treatment that the police pension authority acting in exercise of its functions as scheme manager decides is reasonable for the member to refuse.

(4) The member may appeal under regulation 207 (appeals to Crown Court) or 208 (appeals to Secretary of State) against a decision of the police pension authority as to whether a refusal to accept medical treatment is reasonable.”

#### Regulation 76: Decision of selected medical practitioner

“ . . .

(2) The selected medical practitioner must decide that the member is permanently medically unfit for performing the ordinary duties of a member of the police force if the selected medical practitioner is of the opinion that—

- (a) the member is unable to perform the ordinary duties of a member of the police force;
- (b) that inability is occasioned by infirmity of mind or body and is likely to continue until the day on which—
  - (i) the member reaches normal pension age under this scheme . . . “

Regulation 78:

“A report under this Part

For the purpose of these Regulations—

- (a) a reference to a report under Part 6 is a reference to—
  - (i) a report under regulation 81, 83 or 86 (“the report under this Part”); or
  - (ii) a report given under Schedule 1 on an appeal or reconsideration if that report has replaced the report under this Part; and
- (b) a reference to a report under regulation 81, 83 or 86 is a reference to—
  - (i) the report under that regulation; or
  - (ii) a report given under Schedule 1 on an appeal or reconsideration if the report under Schedule 1 has replaced the report under this Part.”

Regulation 81: Referral of medical questions for purpose of regulation 82

“(1) Before considering whether a person in service as a member of a police force (“the member”) should be compulsorily retired under regulation 82, the police pension authority must refer the following questions to a selected medical practitioner for decision—

- (a) whether the member is medically unfit for performing the ordinary duties of a member of the police force;
  - (b) whether that medical unfitness is likely to be permanent;
  - (c) whether the member is medically unfit for engaging in any regular employment; and
  - (d) whether that medical unfitness is likely to be permanent.
- (2) The selected medical practitioner must—

- (a) examine or interview the member as the selected medical practitioner thinks appropriate;
  - (b) decide the questions referred to the selected medical practitioner under paragraph (1); and
  - (c) give the police pension authority and the member a report containing a decision on those questions.
- (3) That report is final, subject to—
- (a) an appeal under Schedule 1 against the decision of the selected medical practitioner; or
  - (b) the referral under Schedule 1 of the decision of the selected medical practitioner for reconsideration.”

Regulation 82: Compulsory retirement on grounds of permanent medical unfitness

- “(1) This regulation applies if—
- (a) the police pension authority refers questions relating to the member's permanent medical unfitness to a selected medical practitioner under regulation 81(1);
  - (b) the selected medical practitioner gives the police pension authority and the member a report under that regulation; and
  - (c) the report contains the decision that the member is permanently medically unfit for performing the ordinary duties of a member of the police force.
- (2) The police pension authority, after considering all the relevant circumstances and all the advice and information available to the police pension authority (including input from the member)—
- (a) may require the member to retire on the date the police pension authority considers the member ought to retire on the ground that the member is permanently medically unfit for performing the ordinary duties of a member of the police force; or
  - (b) may require the member to continue to serve as a member of the police force.”

Schedule 1 to the 2015 Regulations

Paragraph 1:

“Interpretation

In this Schedule—

“*appeal board*” means a board appointed under paragraph 6 of this Schedule;

“*final decision*” has the meaning given in paragraph 3;

“*medical decision*” means a decision contained in—

(a) a report by the selected medical practitioner under regulation 81 (referral of medical questions to a selected medical practitioner for purpose of regulation 82);

(b) a report by the selected medical practitioner under regulation 83 (compulsory retirement of member who was required to continue to serve);

(c) a report by the selected medical practitioner under regulation 86 (referral of medical questions for purpose of early payment of a full retirement pension on grounds of permanent medical unfitness);

(d) a report by the selected medical practitioner under regulation 107 (referral of medical questions for purpose of reduction of benefits);

(e) a report by the selected medical practitioner under regulation 117 (referral of medical questions for purpose of a review);

(f) a report by the appeal board under paragraph 2(5) (appeal against decision of a selected medical practitioner); or

(g) a fresh report by a medical authority under paragraph 3 (referral of final decision for reconsideration).

“*medical authority*” means a selected medical practitioner or an appeal board;

“*police pension authority*” means the police pension authority acting in exercise of its functions as employer or scheme manager;

“*selected medical practitioner*” means—

(a) a single duly qualified medical practitioner selected by the police pension authority; or

(b) a board of duly qualified medical practitioners selected by the police pension authority.”

Paragraph 2: Appeal against decision of a selected medical practitioner

“(1) Within 28 days after a member of a police force receives a copy of a report by the selected medical practitioner containing a medical decision (or such longer period as the police pension authority may allow), the member may give notice of appeal to the police pension authority against the decision in accordance with paragraph 7 (procedure and costs on appeals to appeal board).

(2) An appeal under this paragraph is to be held in accordance with paragraph 7.

(3) Sub-paragraph (4) applies if, within a further 28 days after the police pension authority receives the notice of appeal (or such longer period as the police pension authority may allow), the member gives the police pension authority a statement of the grounds of appeal.

(4) The police pension authority must, unless the member and the police pension authority agree to a further reference to a selected medical practitioner under paragraph 3—

(a) notify the Secretary of State that a statement of the grounds of appeal has been received; and

(b) refer the appeal to an appeal board for decision.

(5) The decision of the appeal board, if it disagrees with any part of the report of the selected medical practitioner—

(a) must be expressed in the form of a report; and

(b) subject to paragraph 3, that report is final.

(6) A copy of the report must be given to the scheme manager and to the member.

Paragraph 3:

“Referral of final decision for reconsideration

(1) This paragraph applies if a medical authority has given a final decision in relation to a member of a police force (“the member”).

(2) For the purpose of this Schedule, a medical authority has given a final decision if—

(a) the selected medical practitioner has given a medical decision and the time for giving notice of appeal against the



decision under paragraph 2(1) has expired without an appeal being made;

(b) the selected medical practitioner has given a medical decision and, following the giving of notice of appeal under paragraph 2(1), the police pension authority has not yet notified the Secretary of State of the appeal; or

(c) an appeal has been made to an appeal board and the appeal board has given a decision.

(3) The police pension authority and the member may, by agreement, refer the final decision to the medical authority for reconsideration.

(4) The medical authority must reconsider the final decision and, if necessary, issue a fresh report.

(5) A copy of the fresh report must be given to the scheme manager and to the member.

(6) The fresh report is final, subject to—

(a) any further reconsideration of the final decision under this paragraph; or

(b) an appeal under paragraph 2 against the medical decision.

(7) In sub-paragraph (6), “*appeal*” means an appeal in respect of which a notice of appeal was given before the medical decision was referred under this paragraph.

(8) In this paragraph, “*medical decision*” does not include a decision contained in a fresh report issued under this paragraph.

#### Paragraph 4:

“Referral of final decision by court or tribunal

(1) If a court hearing an appeal under regulation 207 (appeals to Crown Court) or a tribunal hearing an appeal under regulation 208 (appeals to Secretary of State) considers that the evidence before the medical authority which gave a final decision was inaccurate or inadequate—

(a) the court or tribunal may refer the final decision to the medical authority for reconsideration in the light of such facts as the court or tribunal may direct; and

(b) the medical authority must reconsider the final decision and, if necessary, issue a fresh report.

(2) A copy of the fresh report must be given to the scheme manager and to the member.

(3) Subject to any further reconsideration under paragraph 3, the fresh report is final.”

Paragraph 5:

“Referral to appointed medical practitioner

(1) If a final decision is referred to a medical authority for reconsideration under paragraph 3 or 4 and the medical authority is unable or unwilling to act, the final decision may be referred to an appointed medical practitioner.

(2) The decision of an appointed medical practitioner has effect as if it were that of the medical authority who gave the final decision.

(3) In this paragraph, “*appointed medical practitioner*” means a duly qualified medical practitioner or a board of duly qualified medical practitioners—

(a) agreed by the member of the police force and the police pension authority; or

(b) appointed by the court or tribunal.”

With respect to statutory appeals, regulation 207 provides that:

“(1) This regulation applies in relation to payment of benefits under this scheme to or in respect of a member of a home police force.

(2) The member or person claiming payment of a benefit in respect of the member (P) may, subject to regulation 209 (limitation on appeals against decision of scheme manager), appeal to the Crown Court against any of the following decisions—

(a) a decision by the scheme manager to refuse to accept P's claim for payment of a benefit;

(b) a decision by the scheme manager to refuse to pay P a benefit the entitlement to which arises on the fulfilment of conditions which do not include a claim for payment;

(c) a decision by the scheme manager to refuse to accept P's claim for payment of a benefit larger than the benefit granted to P;

(d) a decision by the police pension authority acting in exercise of its functions as scheme manager under regulation 75 (permanent medical unfitness) as to whether a refusal to accept medical treatment is reasonable;

(e) a decision by the scheme manager under regulation 115 (cancellation of ill-health pension: failure to receive appropriate medical treatment) as to whether a refusal to accept medical treatment is reasonable;

(f) a decision by the scheme manager under regulation 107 (reduction of pension in case of default) to reduce the amount of pension payable to the member.

(3) The Crown Court, after enquiring into the case, may make such order in the matter as appears to it to be just.”

### Grounds of Challenge

22. The Claimant challenges the decision of the Chief Constable on five grounds: (i) *Nature of the SMP’s decision*: the Chief Constable was wrong in law to treat the decision of Dr Cheng (the Selected Medical Practitioner) as a “reconsideration”; rather, it was a fresh referral to the SMP to decide the questions in regulation 81 of the 2015 Regulations, based on the Claimant’s condition and prognosis in 2023;

(ii) *Whether the Claimant may appeal the decision of the SMP*: the Chief Constable was wrong to assert that the Claimant had no right of appeal, as Dr Cheng had provided a “fresh report”;

(iii) *Misdirection as to the test for “permanent” medical unfitness*: Dr Cheng concluded that the Claimant would achieve sufficient improvement to allow “a return back to a substantive policing role” before 2038 (his 60<sup>th</sup> birthday), when the test that should have been applied was whether the Claimant was unable to perform the “ordinary duties of a member of the police force”;

(iv) *Irrationality*: the decision of Dr Cheng on the permanency question was irrational. The conclusion that the Claimant’s issues could be addressed was speculative, and did not engage with the fact that the Claimant had not been capable of performing all of the ordinary duties of a member of the police force for many years, and the only psychiatric evidence was that of Professor Green whose opinion was that the Claimant was permanently medically unfit;

(v) *Insufficient reasons*: Dr Cheng did not engage with and explain why he disagreed with Professor Green on the question as to whether the Claimant’s recognised psychiatric conditions were permanent.

### Discussion

23. At the oral hearing before me, Mr Rathmell’s submissions focussed primarily on Ground 2. He submitted that if this ground was made out it was not necessary to deal with Ground 1 as the Claimant would be able to appeal to the Police Medical Appeal

Board, and the other grounds (for which permission had not been granted) could be stayed. If the Court did not wish to stay Grounds 3-5, Mr Rathmell invited the Court to find that the challenge was at the least arguable, and in fact substantively correct. Mr Rathmell suggested that a finding by this Court of arguability would assist in any appeal before the Police Medical Appeal Board.

24. I shall consider Ground 2 first. For the reasons set out below, this ground of challenge succeeds. As Ground 1 was argued in full, however, and as the matter has never been the subject of explicit judicial consideration in the past and may have wider ramifications than the present case, it seems to me that it is appropriate for me to address it, even though it is not determinative of the outcome of the case given my finding on Ground 2. I do not deal with Grounds 3 to 5 as that is not necessary. Insofar as the Police Medical Appeal Board is provided with a copy of this judgment, they should not assume that I am agreeing or disagreeing with the arguments made under Grounds 3 to 5 which may be pertinent to their appeal.

Ground 2: Whether the Claimant may appeal the decision of the SMP

25. For the purposes of Ground 2, Mr Rathmell, on behalf of the Claimant, assumes (as contended by the Chief Constable) that the referral to Dr Cheng in 2023 was a “reconsideration”.
26. Mr Rathmell submits that the documents produced by Dr Cheng following the referral in 2023 amounted to a “fresh report” within the meaning of the 2015 Regulations, thereby giving rise to a right of appeal to the Police Medical Appeal Board, noting that the Chief Constable has undertaken that if this Court decides that a “fresh report” was issued, he will facilitate an appeal.
27. Mr Rathmell submits that what has been issued is a “fresh report” because that is how it has been described by the Chief Constable. The Chief Constable has always referred to the documents produced by Dr Cheng as “the Selected Medical Practitioner *Report*” or “*SMP Report*” (emphasis added). In his own submission to the Court, Dr Cheng also described his documents as a report. Thus, Dr Cheng wrote that:

“On 11/12/23, I provided a detailed evidence-based report to the Essex Police Pension Authority indicating that [the Claimant] does not meet the criteria for permanency under the Police Pension Regulation 2015 . . . It has been highlighted in my report that . . . The report I provided . . .”

28. Furthermore, Mr Rathmell points out that the 2023 documents contain additional and materially different reasoning to Dr Cheng’s report in 2019 by referring to new evidence, including the circumstances of the Claimant’s disablements and treatment in the intervening 4 years, his suicide attempt in 2023 and Professor Green’s expert opinion. Dr Cheng also nuanced his diagnosis of the Claimant’s PTSD.
29. Mr Rathmell further contended that insofar as it is suggested that Dr Cheng did not issue a fresh report and did not need to, relying on the D1 document that he completed in 2019, that would have been an error. In 2023, Dr Cheng considered that the Claimant was suffering from a further disablement that had not been identified in 2019: “Alcohol

dependence (ICD-11 6C40.2)”; and Dr Cheng’s diagnosis of the Claimant’s PTSD was more nuanced: describing it as “residue”.

30. Mr Gold, for the Chief Constable, contended that no fresh report had been issued by Dr Cheng and it was not necessary for there to have been one. Mr Gold submitted that the Selected Medical Practitioner should issue a fresh report, or be considered as having done so, only if their decision resolves the disputed question of permanent disability to the satisfaction of the officer, or if there is a material change to their final decision. This avoids the mischief of an officer seeking to create a right of appeal with respect to a Selected Medical Practitioner’s decision on a reconsideration that involves no material departure from their original decision. The appeal has to be with respect to something new that the officer could not have previously appealed rather than something he could have appealed but did not actually appeal.
31. Mr Gold submitted that there was no material change in the Claimant’s medical condition between 2019 and 2023, and Dr Cheng’s determination was substantially the same. As a result, Dr Cheng did not issue a new Annex D report, and did not need to. Whilst it was correct that there were documents produced by Dr Cheng that were described as “reports”, they were not the statutory report answering the questions posed by regulation 81 and so did not give rise to an appeal. The capability report documents that were produced were for the purposes of the Force Medical Officer. If anything, they could be seen as providing reasons to comply with the public law obligation of sufficient reasons for a decision. With respect to alcohol dependency, Mr Gold said that this was not a new matter: it featured in the 2019 reports as undermining the treatment options for the Claimant.

### Analysis

32. The Claimant will have the right of appeal if it was “necessary” for Dr Cheng to issue a “fresh report” under paragraph 3(4) of Schedule 1 to the 2015 Regulations following the referral to him in 2023. This all depends on what is required to be included in a report and when a “fresh report” is called for following a reconsideration.
33. According to the statutory scheme, there is no statutorily prescribed form for the “report” that must be provided by the Selected Medical Practitioner. There is also no express statutory requirement for the “report” to contain reasons or a discussion of the background evidence. What a report must contain requires a close examination of the language and structure of the relevant provisions of the 2015 Regulations.
34. It is clear from the statutory scheme that the “report” must contain “a decision” on the questions posed at regulation 81(1), that is (a) whether the member is medically unfit for performing the ordinary duties of a member of the police force; (b) whether that medical unfitness is likely to be permanent; (c) whether the member is medically unfit for engaging in any regular employment; and (d) whether that medical unfitness is likely to be permanent. This is because regulation 81(2)(b) of the 2015 Regulations provides that the Selected Medical Practitioner must “decide the questions referred” under regulation 81(1) and “give the police pension authority and the member a report containing a decision on those questions”.

- 35. As a matter of construction, the report must also contain the specific medical condition or conditions that have been identified by the Selected Medical Practitioner as giving rise to the “medical unfitness”. This is clear from the structure of regulation 81(1).
- 36. At regulation 81(1)(a), one of the questions that the Selected Medical Practitioner is asked “for decision” is whether the member is medically unfit for performing the ordinary duties of a member of the police force. If the question is answered in the affirmative, the question at regulation 81(1)(b) is relevant. This asks the Selected Medical Practitioner to make a decision on whether “*that medical unfitness* is likely to be permanent” (emphasis added). This is a reference back to the specific “medical unfitness” that is the subject of question (a). Question (b) cannot properly be answered, however, without the Selected Medical Practitioner identifying what “that medical unfitness” is. In other words, to answer the questions posed at regulation 81(1)(a) and (b), where the answer to the question at regulation 81(1)(a) is in the affirmative, the report from the Selected Medical Practitioner must also include the specific medical condition, or conditions, which explains the medical unfitness.
- 37. Indeed, this is precisely the approach that is envisaged by the Home Office, in its Circular 021/2003: “The Police pension scheme: better management of ill-health”. Annex B to that circular contains a form described as “Draft of 14 March 2003”. The form contains the following text:

“Issued under regulation H1(2) of the Police Pensions Regulations 1987 where the duly qualified medical practitioner has the questions referred to him by the police authority in a case where H1(6) applies and only questions H1(2)(a) and (b) are being referred.

Name:.....  
 .....

Police  
 Authority:.....  
 .....

Following my/our\* consideration I/we\* certify that:

1 The above-named is/is not\* disabled from performing the ordinary duties of a member of the police force.

2 If disabled - The above-named is disabled in respect of the following condition(s):

.....  
 .....

- 38. The Chief Constable adopted a version of this form and this was completed by Dr Cheng in 2019. In the form D1 (see paragraph 5 above), there were three relevant questions, which Dr Cheng answered as follows:

“1. I consider that this officer is medically unfit for performing the ordinary duties of a member of the police force.

2. If medically unfit - This officer is medically unfit in respect of the following condition(s):

Recurrent anxiety with depression PTSD

3. I consider that such medical unfitness is not likely to be permanent”.

39. In other words, in 2019, Dr Cheng’s answers in the D1 form identified the Claimant’s “Recurrent anxiety with depression PTSD” as the Claimant’s medical unfitness for performing the ordinary duties of a member of the police force. Dr Cheng decided that “such medical unfitness” (the statutory “that medical unfitness”) was not likely to be permanent.
40. The D1 form is not the only way in which a “report” can be produced that satisfies the requirements of the 2015 Regulations, but it is sufficient to satisfy those requirements. In 2019, and again in 2023, that was the form intended by the Chief Constable to be used as the “report”.
41. It is clear from the documentation produced by Dr Cheng in 2023 that, at that later time, he considered that the Claimant was medically unfit for a further reason than he had identified in 2019: “Alcohol dependence”. (Dr Cheng also considered that the PTSD was “residue”, but this is not a different reason for the medical unfitness. It is a more nuanced diagnosis of the earlier PTSD diagnosis). As the Claimant’s “Alcohol dependence” was not mentioned in the D1 document produced in 2019, Dr Cheng could not rely on the 2019 document as satisfying regulation 81(1). It was necessary, therefore, for Dr Cheng to produce a “fresh report” which contained that additional diagnosis, so as to comply with the requirements of regulation 81(1) of the 2015 Regulations.
42. Dr Cheng did not set out that condition in a new D1 form. Dr Cheng did set out that condition in a number of other documents. Mr Rathmell sought to argue that those other documents must be treated as the “fresh report”, either because they were described as being a “report” or because they contained the additional diagnosis of Alcohol dependence. It seems to me that those documents are not properly to be regarded as being the “fresh report” for the purposes of the statutory scheme. First, that was plainly not the intention of Dr Cheng or the Chief Constable. Second, the statutory scheme provides that, on an appeal, the appeal board is obliged “if it disagrees with any part of the report” to express that disagreement in the form of a report: see paragraph 2(5)(a) of Schedule 1 to the 2015 Regulations. If one of the documents produced by Dr Cheng was to be treated as a “fresh report”, then it would mean that the Police Medical Appeals Board would be obliged to set out their disagreement with every matter in Dr Cheng’s documents. That would be straying far from the central task of the appeal board.
43. In the circumstances, therefore, I consider that Dr Cheng has not issued a fresh report, even though it was necessary for him to do so. In order to ensure that the Claimant can exercise his right of appeal, the Court will issue a declaration that (i) it is necessary for Dr Cheng to issue a fresh report pursuant to paragraph 3(4) of Schedule 1 to the 2015

Regulations which includes his additional diagnosis of Alcohol dependence, and (ii) the right of appeal to the appeal board arises following receipt of that fresh report.

Ground 1: Nature of the SMP's decision

44. As I have found that it was necessary for Dr Cheng to issue a “fresh report”, triggering appeal rights, on the assumption that there was a reconsideration of the earlier decision rather than a fresh referral, it is not strictly necessary for me to consider whether the referral to Dr Cheng in 2023 was a reconsideration or a fresh referral. Nevertheless, I shall deal with the matter as the matter was fully argued before me and may have wider application.
45. The Claimant submits that the application made on his behalf for ill-health retirement should have been treated by the Chief Constable as a new referral, and not as a “reconsideration”. If it was a new referral, then it is common ground that the Claimant would be entitled to appeal from the decision of the Selected Medical Practitioner, Dr Cheng.
46. Mr Gold, acting for the Chief Constable, submitted that the statutory scheme did not permit a new referral in the circumstances of the present case or, indeed, in any case where a Selected Medical Practitioner had already issued a report on the question of whether a police officer was permanently unfit to perform his duties. In any event, Mr Gold submits that the referral was in fact, and was treated as, a reconsideration and not a new referral.
47. I will first address the question of whether a new referral is permissible under the statutory scheme, or in the circumstances of the present case. If it is permissible, I will then address the nature of the referral that did take place. If a new referral is not permissible, then the referral can only have been a reconsideration.
48. Mr Rathmell contends that the statutory scheme does permit a fresh referral. He focuses in particular on the highlighted wording at regulation 75 of the 2015 Regulations that “a reference to a member of a police force . . . being permanently medically unfit is taken to be a reference to (a) the member being medically unfit at the time the selected medical practitioner decides the question; and (b) that medical unfitness being at that time likely to be permanent” (emphasis added). The question to be answered by the Selected Medical Practitioner is time-specific, and it is contemplated therefore that a fresh decision can be taken at a later time.
49. This interpretation of the 2015 Regulations does not mean that an officer can repeatedly insist on a fresh decision whenever he wants, irrespective of whether he has new evidence. Mr Rathmell submitted that the chief officer of the relevant police force has discretion to refuse to entertain a referral, and this discretion could not be interfered with where an officer was abusing the referral process.
50. Mr Gold, on the other hand, contended that the structure of the 2015 Regulations stressed the *finality* of the decision of the Selected Medical Practitioner, or of the Police Medical Appeals Board if the matter went on appeal. That structure would be undermined if a fresh decision could be made. Mr Gold submitted that although there was no authority that addressed this question explicitly, it was assumed, and had been



for over 75 years since the Police Pensions Act 1948 which introduced the structure of an appeal and reconsideration from the decision of the Selected Medical Practitioner.

51. Mr Gold submitted that (i) it is to be assumed that the Regulations are intended to create a rational and coherent legislative scheme. The provisions which enact the finality of a medical authority's decision on permanent disability, the reconsideration of such a decision by the same medical authority, the appointment of alternative medical practitioners where it is not feasible to appoint the original practitioners, and when the medical authority should produce a fresh report as opposed to no report or a written decision, would be otiose if their effect could be avoided by an officer obtaining a fresh permanent disablement decision; (ii) the intention of the provisions was to achieve a balance of *inter alia* certainty, finality, and fairness, and they were produced following public consultations with police staff associations; (iii) otherwise, a Selected Medical Practitioner would be able to override a decision of a Police Medical Appeals Board; and (iv) if a fresh referral could be made this would open up the possibility of "forum shopping", where the officer could try to have a decision made by a different Selected Medical Practitioner if he did not like the original decision; similarly the chief officer could seek to obtain a different decision from a different Selected Medical Practitioner if he was disappointed with that of the first Selected Medical Practitioner (there will be situations where the chief officer desires that an officer is compulsorily retired against the wishes of that officer).
52. On the facts of the present case, Mr Gold submitted that it would be inappropriate for the referral to be treated as a fresh consideration rather than a re-consideration, given that the Claimant unsuccessfully sought ill-health retirement in 2018-2019. The 2019 decision of the Selected Medical Practitioner focussed on the Claimant's recurrent anxiety with depression and PTSD, both aggravated by alcohol, and his subsequent application in 2023 was on the same substantive basis, but with additional medical evidence. This application did not really present a factual challenge to the 2019 findings, but sought a reconsideration of them.

#### Analysis

53. In my judgment, the statutory scheme does not preclude an officer seeking a fresh decision as to whether or not he is permanently medically unfit. The 2015 Regulations do not prohibit a fresh application in terms, and in my judgment such a prohibition is not implicit or implied. There is no authority that states the contrary.
54. Mr Gold referred the Court to the decision of Lane J in *Evans v Chief Constable of Cheshire Constabulary* [2018] EWHC 952 (Admin). In that case, which involved an injury pension, a selected medical practitioner's report was reconsidered 8 years later by a different practitioner, and the earlier report was relied upon for the later decision-making. Mr Gold contended that it had been assumed that there could not be two referrals, but there was no analysis or discussion of that point by Lane J, and in any event it involves a different statutory scheme to the one with which we are concerned in this case.
55. Mr Gold also referred to *R (Boskovic v Chief Constable of Staffordshire Police)* [2019] ICR 1315. That case dealt with a different question to the present: whether the Chief Constable acted lawfully in refusing to exercise the power under regulation 32(2) of the Police (Injury Benefit) Regulations 2006 to refer the claimant's case back to a medical

authority for reconsideration of her entitlement to an injury award. There was no discussion by the Court of Appeal in that case as to whether there could be more than one referral.

56. I consider that it is implicit in the 2015 Regulations that there can be more than one referral to a Selected Medical Practitioner for a decision to be made under regulation 81(1), and that a fresh decision can be sought where circumstances demand it.
57. Regulation 75(1) provides that “a reference to a member of a police force . . . (“the member”) being permanently medically unfit is taken to be a reference to (a) the member being medically unfit *at the time* the selected medical practitioner decides the question; and (b) that medical unfitness being *at that time* likely to be permanent” (emphasis added). The reference to “at the time” implies that the decision of the Selected Medical Practitioner is “time” specific, and contemplates that that practitioner may reach, or may have reached, a different decision at another time. The statutory scheme does provide for a referral by way of reconsideration, and so it is possible that the “time” specific nature of regulation 75(1) refers only to the reconsideration of a decision, rather than a fresh decision. Nevertheless, there are constraints around the way in which the reconsideration process operates, and this militates against the reconsideration regime being the only mechanism for a second (or more) referral to be made.
58. First, a referral for reconsideration can only be made “by agreement” between the police pension authority and the member: see paragraph 3(3) of Schedule 1 to the 2015 Regulations.
59. Second, as discussed under Ground 2, the appeal rights following a reconsideration are limited: only where it is necessary for a fresh report to be issued, and even then only when “a notice of appeal was given before the medical decision was referred” under paragraph 3: see paragraph 3(7) of Schedule 1 to the 2015 Regulations. If there was no notice of appeal (which must be against the original decision: see paragraph 3(8)), then the statutory scheme does not allow for an appeal from a “fresh report”. On the other hand, there is a right of appeal from a referral which is treated as a fresh consideration, rather than a reconsideration.
60. Moreover, it makes no sense for the statutory reconsideration regime to be the only way in which a police officer can have the question of his permanent disablement considered again years after an initial decision has been made on that matter. For example, if an officer seeks a referral twenty five years after the initial decision and where the underlying medical condition is fundamentally different, e.g. a progressive neurological condition as compared with a severe depression or a particular physical injury that had been experienced at an earlier stage in the officer’s career, it would be absurd if this could only be done where the constraints of the reconsideration process applied.
61. These factors indicate that the proper reading of the 2015 Regulations is that a fresh referral can be made for a decision under regulation 81(1) where circumstances require it.
62. This construction does not mean that police officers can repeatedly request referrals to a selected medical practitioner for the purpose of considering whether they should be compulsorily retired. It would no doubt be open to the Chief Constable to refuse the

referral where the process was being abused. This should serve to meet the concerns raised by Mr Gold, on behalf of the Chief Constable, as to the importance of decisions being final and the need for certainty as well as the avoidance of “forum shopping”. Decisions would be final, and certainty would prevail, unless there was a good reason for a fresh decision to be made: as a result of the passage of time along with the discovery of a different underlying medical condition or the deterioration of a previous condition.

63. On the facts of the Claimant’s case, I consider that the referral to Dr Cheng in 2023 was by way of reconsideration under the statutory scheme set out at Schedule 1 to the 2015 Regulations, rather than by way of a fresh referral. This is what was understood to be the status of the referral by the Chief Constable (as articulated via Mr Kirby) and Dr Cheng himself. The Claimant (personally or through his representatives) did not assert otherwise at the time and so must be treated as having assented to the referral being by way of reconsideration.
64. Accordingly, although I consider that the statutory scheme caters for a fresh referral, that is not what took place in the instant case. As a result, the Claimant did not have an automatic right of appeal from Dr Cheng’s decision under paragraph 2(1) of Schedule 1 to the 2015 Regulations, as it was not a fresh decision following a referral. The Claimant does have a right of appeal, however, for the reasons set out under Ground 2.

### Conclusion

65. For the foregoing reasons, the Claimant’s application for judicial review succeeds on Ground 2, but fails on Ground 1.