4. Police Injury Pensions: Introduction.

4.1. The police pension scheme has a system of enhanced pension payments for police officers, now under the Police (Injury Benefit) Regulations 2006 ("**PIBR**"), who have been injured as a result of their services as a police officer. The purpose of a police injury pension scheme was explained by the Minister, Mr Tony McNulty, in a 2008 Consultation on the Police Injury Benefit Regulations[1] which said:

> "Police injury benefits are an integral part of the overall financial package for police officers, and provide valuable reassurance for officers who have to face dangerous situations"

4.2. That purpose of injury pensions was described by Cox J in *Laws v Metropolitan Police Authority* [2009] EWHC 3135 (Admin)[2] to be as follows:

> "… the scheme established by the regulations recognises the risks that are faced by officers who are injured in the course of their duties, and who are unable, as a result, to continue to serve in the police force"

4.3. Injured police officers face dangers and often do not have anyone to sue in negligence because their injuries have not been caused by the intentional action or the negligence of a person who is usually worth suing or are just an accident that happened due to the inherent dangers of the job. Hence, the police injury pension can be seen as a compensation system police officers are exposed to risks on behalf of the rest of society and where those risks materialise, injury pensions are part of the overall remuneration package offered to officers, being life-long payments to reflect the fact that a former police officer has suffered duty injuries which have led to the officer losing his or her position and salary.

[1] See http://data.parliament.uk/DepositedPapers/Files/DEP2008-2197/DEP2008-2197.pdf

[2] See http://www.bailii.org/ew/cases/EWHC/Admin/2009/3135.html This case went to the Court of Appeal and was reported at *Metropolitan Police Authority v Laws & Anor* [2010] EWCA Civ 1099 [2011] ICR 242.

4.4. The injury benefit scheme has been set up by the Regulations as a no fault pension scheme which arises by way of entitlement. A direct consequence of this policy decision is that entitlement to an injury pension does **not** depend on whether a former officer "deserves" a pension but simply on whether the officer fulfils the statutory entitlement criteria. Equally, it does not depend on whether the officer has been an efficient and effective officer or not. An officer who has been lazy, ineffective or incompetent has largely the same pension rights as the hero, just as the salary scheme is the same for all officers. Entitlement to an injury pension also does not depend on whether the former officer has developed a physical or psychological illness in response to police service, or (save in a few cases which are discussed below) whether the injury was developed in a way that was public facing service or arose as a result of an incident which happened within the police service.

4.5. The primary question under PIBR is not *how* the officer got injured but simply *whether* the officer's injuries were a result of the work officer's "work circumstances" or came within another specific category of injuries which delivers an entitlement under PIBR. Unfortunately, a number of decisions by both medical authorities and Chief Constables appear to have been motivated by concerns that the former officer may not "*deserve*" an injury pension and, to an extent, this broad brush approach has not been sufficiently challenged by the Courts. However, "deservedness" is not part of the statutory scheme and Chief Constables, SMPs, the PMAB and even the High Court needs to guard against introducing any element of either deservedness on the part of the former officer or to look for any element of fault on the part of the Force before an injury pension is awarded.

4.6. This is a particularly acute problem where the duty injury cannot be "seen", as in the case with a broken leg. An officer who develops a permanent mental health condition in response to stress at work is entitled to an injury pension regardless as to whether he was only exposed to the standard level of stress experienced by police officers or whether the Force acted properly or improperly when the issue of stress was first raised. Save for those limited cases where the injury arose due to the officer's own default or the injury arose in response to disciplinary proceedings, questions of

whether there was any fault on the part of the Force in exposing the officer to the stresses which led to the injury are irrelevant. Those issues may be relevant to a personal injuries case based on fault but they have no part to play in the assessment of the former officer's entitlement to an injury pension.

The qualifying conditions.

4.7. The primary provision which defines whether an officer is entitled to an injury pension is now Regulation 11 PIBR which provides:

> "(1) This regulation applies 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 (in Schedule 3 referred to as the "relevant injury").
>
> (2) A person to whom this regulation applies shall be entitled to a gratuity and, in addition, to an injury pension, in both cases calculated in accordance with Schedule 3; but payment of an injury pension shall be subject to the provisions of paragraph 5 of that Schedule and, where the person concerned ceased to serve before becoming disabled, no payment shall be made on account of the pension in respect of any period before he became disabled"

4.8. The entitlement conditions are thus:

a) The applicant has "*ceased to be a member of a police force*". Thus the officer can only become entitled to this pension after leaving the Force as an officer[3], but then the same is true of all police pensions;

b) The officer must be certified by a medical authority as being "*permanently disabled*" (or to have been classified as being "*permanently medically unfit*" under the 2015 Regulations). This issue may have already been determined if the officer has been required to retire on the grounds of disablement or permanent medical unfitness but, if the officer did not leave the Force pursuant

[3] There is nothing to prevent a police officer who suffers a duty injury from being employed by the Force as a civilian support worker because such a person has ceased to be a serving police officer.

to an ill-health retirement process, this issue needs to be established afresh by the SMP;

c) The officer's permanent disability must have been caused by "*an injury*"; and

d) That injury must have been received "*without his own default in the execution of his duty*".

4.9. There are definition sections in Regulations 6, 7 and 8 PIBR and the Glossary to the Regulations which define almost all of these terms. Almost all of these provisions have a specific, defined meaning under PIBR and these can be somewhat different to the accepted meaning of these words in other legal frameworks.

The meaning of "ceased to be a member of a police force".

4.10. Injury pensions are only available to officers who have ceased to be serving police officers. However, in contrast to the position with ill-health pensions, there is no requirement that the officer shall have been required to retire from his office as constable. Hence, an officer who suffers a duty injury is entitled to retire and apply for an injury pension[4] without waiting to be required to retire by the Chief Constable[5].

What is an "injury"?

4.11. An "injury" is defined in the Glossary in Schedule 1 PIBR as follows:

> ""injury" includes any injury or disease, whether of body or of mind"

4.12. Thus the concept of an "injury" extends far beyond the normal meaning of the word injury. A police officer who sustains an injury as a result of a road traffic accident is

[4] Although, even if awarded a pension, the officer is likely to be better off in retirement if awarded an ill-health pension since only 75% of the amount of an ill-health pension is taken into account when calculating the injury pension. In contrast however, an injury pension is untaxed income whereas an ill-health pension is taxed income.

[5] In some cases it may be in the financial interests of the officer to do so because an injury pension does not attract income tax whereas the ill-health pension is taxed income under the Income and Corporation Taxes Act 1988.

clearly "injured" as a result of his police service and hence may qualify for an injury pension. However, the definition of the term "injury" is wide enough to include an officer who develops a physical or psychiatric illness as a result of his work circumstances. One of the first cases which discussed this problem was Garvin where the officer in question developed tuberculosis as a result of repeated wettings during police service in the blitz. The Court accepted that this was an injury arising from his duties as a police officer.

Without his own default.

4.13. An injury which is caused by the officer's own default will prevent an officer being entitled to an injury pension because regulation 11(1) PIBR requires the injury to be "*received without his own default*". However the meaning of those words is set out in Regulation 6(4) which provides:

> "For the purposes of these Regulations an injury shall be treated as received without the default of the member concerned unless the injury is wholly or mainly due to his own serious and culpable negligence or misconduct"

4.14. The meaning of this provision was explored by Mr Justice Kay in *R (Merseyside Police Authority) v Bonner and Malone* (Unreported: 19 October 2000: CO/2502/2000; C0/4708/98[6]). In that case, the Judge decided that the onus of proof remained on the former officer to prove that he was entitled to award and thus to prove that the injury did not arise due to his own default. The Judge said:

> In other words, to prove that he received the injury without his own default he has to prove that the injury was not wholly or mainly due to his own serious and culpable negligence or misconduct.

4.15. However, the Judge decided that the "without his own default" condition required to an officer to show that the duty injury did not occur as a result of either the officer's own serious and culpable negligence or his serious and culpable misconduct. Thus the

[6] A summary of case is available on Lexis Nexis.

Judge found that the words "*serious and culpable*" applied to both any claimed negligence and in respect of any claimed misconduct. The Judge said at §28:

> " … the words "serious and "culpable" qualify both negligence and misconduct"

4.16. This case thus confirms that "ordinary" negligence or "ordinary" misconduct will not disentitle an officer from being awarded an injury pension. The negligence or misconduct must be both serious and culpable before it becomes sufficient to deny an officer an injury award under the Regulations. Hence, the proven negligence or misconduct must something akin to gross negligence or gross misconduct of such a level that would, at least, justify a dismissal for gross misconduct and possibly at a higher level.

4.17. Further, there must also be a causal relationship between the alleged negligence or misconduct and the injury suffered by the officer. An officer who was guilty of serious and culpable negligence or misconduct which did not cause the relevant injury cannot be denied an injury pension under this provision.

The meaning and effect for injury pensions of medical decisions made in an earlier ill-health retirement process.

4.18. Unfortunately, the law is an confused and contradictory state as to the extent to which medical decisions, and in particular diagnostic decisions, taken by a medical authority in the retirement phase of a police pension assessment process are binding on an SMP or the PMAB when considering the cause of the officer's disablement when the officer applies for an injury pension under the Police (Injury Benefit) Regulations 2006 ("**PIBR**"). For anyone who thinks this ought to be straightforward, let me caution you in advance. This part of the Guide may be difficult read (I apologise in advance) because the answers are sadly not clear, but I will try to navigate a path through the present legal minefield.

4.19. Regulation 30(2) PIBR requires the PPA to delegate decision making to the Selected Medical Practitioner ("**SMP**") concerning 4 precisely defined matters namely:

(a) whether the person concerned is disabled **("the disablement question)**;

(b) whether the disablement is likely to be permanent ("**the permanence question**"),

(c) whether the disablement is the result of an injury received in the execution of duty ("**the causation question**"), and

(d) the degree of the person's disablement ("**the degree of disablement question**").

Decision making where an officer has not been through a prior disablement assessment process

4.20. If a police officer has not been through a prior disablement assessment process, usually leading to an ill-health retirement, the SMP has to decide each of these issues sequentially. A former police officer will only be entitled to an injury pension if the SMP answers the first 3 questions affirmatively. A negative answer to any of these 3 questions will not lead to an entitlement to an injury pension.

4.21. The SMP starts with the (a) disablement question, and asks herself[7] whether, at the date of the assessment, the former officer would be able to discharge all the duties of a police officer if he were still in office as a policeman. That question is addressed by assessing the officer's disabilities at that date, not by reference to the earlier date when officer was in the Force: see *R (McGinley) v Schilling* [2005] ICR 1282. If the answer is "Yes", the SMP next addresses the permanence question[8].

4.22. This test can be difficult if the officer has a psychological injury which would be aggravated by a return to service. In such a case, the SMP has to consider the risks to

[7] As explained in the Preface, I have adopted the word "he" throughout for the officer and "she" throughout for the Chief Constable and the SMP. The provisions apply equally whether the officer, the Chief Constable or the SMP is a man or a woman.

[8] See the commentary in chapter 3 on permanence.

the officer's health of a return to service if, at the date of the assessment, the officer has recovered to be in a better state of mental health. That raises the question as to how an officer can be "permanently disabled" if he suffers from a health condition which is in remission at the date of the assessment but which may revive if the officer resumed active police service. This can be a real dilemma because the SMP may be cautious about certifying an officer as "medically unfit" if, at that date, the officer is in robust enough health to resume police service even if he would not (or may not) remain in good health so if he returned to police service.

4.23. The Court grappled with that problem in *R (Sharp) v West Yorkshire Police & Anor* [2016] EWHC 469 (Admin). The officer in that case had a psychological condition which was aggravated by police service but outside the police service (and without the pressures of working in the police), he was able to maintain reasonable mental health. The expert doctor's view (see §15) was:

> "It is inevitable that if the Appellant returns to work, sooner or later he will become unable to work and unable to perform the ordinary duties of a member of the force"

4.24. The evidence was that, outside the police, the officer was well and could have resumed police duties and performed successfully for a while. However, as the Judge noted at §61:

> "If he returns to work it is, however, only a matter of time before the recurrent depressive disorder will recur"

4.25. The Judge thus grappled with the problem about how a condition could be "permanent" if the symptoms of the condition were intermittent. The Judge's answer was in §62 to §64 of his judgment which adopted the guidance under the Equality Act that:

> "… an impairment has had a substantial adverse effect on a person's ability to carry out normal day-to-day activities but that effect ceases, a substantial effect is treated as continuing if it is likely to recur…… Conditions with effects which recur only sporadically over short periods can still qualify as impairment the purposes of the Act, in respect of the meaning of "long-term"

4.26. Thus the Judge accepted that any "*substantial*" inability to perform any of the duties of a police officer as a result of the permanent medical condition, albeit with fluctuating symptoms, could enable an officer to be classified as permanently disabled. The Judge noted that this approach still required the PMAB to form a view as to whether the inability to discharge his duties was substantial and he said:

> "That no doubt requires an assessment of the effect of the disability when not in remission and the likelihood of recurrence"

4.27. If the answer to question is "Yes" to the disablement and permanence questions, the SMP proceeds to the causation question and finally, if the answer to the causation question is "Yes", considers the degree of disablement question. The SMP then writes a single report setting out his or her conclusions on each of these questions and delivers it to both the PPA and the officer.

Decision making where an officer has been through a prior disablement assessment process.

4.28. For many former police officers, the first 2 questions (i.e. disablement/medical unfitness and permanence) will have been addressed by an SMP (or the Police Medical Appeal Board ("**the PMAB**")) on an earlier occasion, whether that led to decision by the Chief Constable to require the officer to retire or not. Injury pensions do not require the officer to have been ill-health retired and so the officer may have been certified as permanently disabled, and then taken his own decision to retire despite the Force offering him the chance to continue[9].

4.29. The general scheme of the police pensions system is that decisions by medical authorities should be final for the purposes of the police pension system, subject to an appeal or a mutually agreed reconsideration. That finality is designed to ensure consistency and certainty between decisions made at different stages or under

[9] However, in such a case the officer is only likely to qualify for a Band 1 award because the Force would argue that he could have continued to earned a police salary notwithstanding his disabilities.

different parts of the police pensions system. A lack of finality means that different decisions by different doctors have the potential to be contradictory because different doctors may legitimately reach different views about a person's medical diagnosis or their prospects of recovery. This objective is sought to be achieved by the wording between Regulations 30(2)(b) and (c) PIBR which provides as follows:

> "…except that, in a case where the said questions have been referred for decision to a duly qualified medical practitioner under regulation H1(2) of the 1987 Regulations, regulation 71 of the 2006 Regulations or regulation 81, 83, 86 or 117 of, or Schedule 1 to, the 2015 Regulations, a final decision of a medical authority on the said questions under Part H of the 1987 Regulations, Part 7 of the 2006 Regulations or, as the case may be, Part 6 or 7 of, or Schedule 1 to, the 2015 Regulations shall be binding for the purposes of these Regulations"

4.30. The words between Regulations 30(2)(b) and (c) PIBR provide that earlier "final" decisions made by an SMP under the 1987, 2006 or 2015 Regulations concerning the disablement question or the permanence question are required to be treated as "binding" for the purposes of any later assessment by an SMP (or later the PMAB) under the PIBR. The effect of these words has been considered in a number of High Court and Court of Appeal cases. The key issue is what is meant by an earlier final decision being treated as being "*binding*". The cases confirm that the earlier decision is binding in the sense that the officer is conclusively determined to be a person who is permanently disabled for the purposes of PIBR but the difficult question is whether the binding nature of the earlier decision goes further than the binary answer to the disablement question or the permanence question.

4.31. The real question is thus whether the final and binding nature of an earlier decision extends to decisions about the medical diagnosis of the cause of the officer's permanent disablement, which led to the finding on the disablement question or the permanence questions. Whilst this may seem an obscure question of semantic detail, in fact (as the cases listed below explain), this can be really important to whether the officer secures an injury pension and/or can affect the value of such a pension.

4.32. It is important to note that, whereas the disablement question or the permanence questions are contemporary questions decided at that date, the causation question under Regulation 30(2)(c) (namely "*whether the disablement is the result of an injury received in the execution of duty*") is usually a backwards looking test which considers the cause of the disablement suffered by the police officer during his period of service: see Regulation 7(1) PIBR.

4.33. The problem can arise in cases where the officer is suffering a physical or psychological illness, but is more often a problem in cases involving psychological illnesses. It can arise where an officer is determined to be permanently disabled because an SMP decides that the officer is suffering from, for example, depression which the SMP considers is likely to be permanent. The officer is then required to retire and an SMP then assesses him a few years later for an injury award. By that stage, relieved of the pressures of police work, his mental health may have improved and he no longer suffers from depression but may nonetheless present with another mental health condition or may be in good mental health. There is no difficulty if the SMP concludes that the officer was suffering from depression at the time of his resignation. However, in the exercise of the SMP's clinical judgment, the SMP may consider that the officer has never suffered from depression (in part because there are no current symptoms of depression). If that is the case, the SMP logically can only come to one of 3 conclusions. Either (a) the SMP decides that the officer was (at the time of his service) permanently disabled due to a different medical condition or (b) if there is no other medical condition which led to permanent disablement, the only conclusion for the SMP is that the officer was never permanently disabled or (c) the officer was disabled at the time when he was a police officer but it was a permanent disablement.

4.34. Options (b) and (c) produce a logical conundrum for the SMP, namely if the SMP's medical diagnosis is that the officer is not and was never permanently disabled, how can the SMP be bound by the earlier finding that the officer was permanently disabled? Further, how can the SMP properly address the question as to whether the

former officer's permanent disablement was caused by the execution of his duties if the medical assessment of the SMP is that the former officer is not disabled or, if he was disabled when serving, that this disablement was not likely to be permanent.

4.35. The only logical answer to this conundrum is that the SMP who is called on to answer the causation question under Regulation 30(2)(c) PIBR where there has been an earlier assessment must be required to conduct a backward looking exercise which asks whether the diagnosed permanent disablement of the former officer, as found by the previous SMP and thus based on that SMP's diagnosis, was the result of the execution of the officer's duties. Any other exercise, properly examined, has the potential to be nonsensical because it requires an SMP or the PMAB to identify a cause of a permanent disablement when the SMP is unable to diagnose any such disablement. Hence the SMP or PMAB are asked to identify a mythical disablement or identify a cause for something that, in that doctor's clinical judgment, does not exist. That would be a simple, workable and consistent interpretation of the statutory scheme but sadly it is not the way the Courts have interpreted the scheme to operate.

4.36. The first attempt to provide guidance on the legal effect of words between Regulation 30(2)(b) and (c) was given by the High Court in May 2010 in *R (Doubtfire & Williams Anor) v West Mercia Police Authority & Anor* [2010] EWHC 980 (Admin) ("***Doubtfire***"). The first instance decision in *R (Laws) v Metropolitan Police Authority ("**Laws**")*[10] was cited to the Judge but this case was heard and determined before the Court of Appeal had heard the appeal in *Laws. Doubtfire* involved 2 cases where largely the same problem arose, namely what approach should an SMP take when considering the causation question under Regulation 30(2)(c) if the SMP does not accept that the former officer had become or was presently disabled as a result of the medical condition described in the earlier SMP report[11].

[10] See below for the details of the *Laws case.*

[11] The facts in Ms Doubtfire's case were as follows. Ms Doubtfire had a history of intermittent mental illness. She had depressive episodes in 1993, 1996 and 2001, none of which were directly related to her service as a police officer. Work related events triggered a further period of mental ill health and she was diagnosed by the SMP as having a "recurrent depressive disorder", but it was not felt to permanent as treatment options remained. Those were unsuccessful and she was assessed by another SMP. The second SMP said "I am confident that the diagnosis is Social Phobia" and was permanent. She was

4.37. HHJ Pelling, sitting as a High Court Judge in *Doubtfire and Williams*, decided that the doctor at the police injury award stage (i.e. deciding only the causation under Regulation 30(2)(c) PIBR) was bound by the earlier decision on disablement but not on the reasoning or diagnosis which underpinned that decision. Thus, so the Judge decided, the SMP is entitled to start afresh with a new diagnosis as to why the officer should be considered to be permanently disabled and then decide whether that medical condition was the result of his police service. The Judge said at §42:

> "The SMP considering the causation question has to decide what if any injury as defined caused the disablement before he can answer the further question whether the injury that it is concluded caused the disablement was received in the execution of duty"

4.38. In *Doubtfire*, the decision was quashed because the medical authority considering the case at the injury award stage made its own diagnosis and differed from the earlier diagnosis, and then refused to make an award on the grounds that the true diagnosis did not cause the disablement (as found by the earlier SMP). The Judge said this was a wrong approach because the medical authority deciding the causation question was not bound by the diagnosis made by the SMP at the retirement stage. Whilst that solved the immediate problem, a logically alternative way that the Judge could have decided the case in favour of the officers would have been to say that the final and binding nature of the first decision included the earlier diagnosis, on the basis that the report was binding and the diagnosis was part of the report.

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required to retire and applied for an injury pension. The SMP said "… the difficulties at work have substantially contributed to Mrs Doubtfire's mental ill-health and it follows, therefore, that these difficulties have contributed substantially to her permanent disablement", but her injury award was refused because her relevant disablement was considered to be limited to that caused by Social Phobia, and the SMP thought she did not have that condition. The PMAB agreed saying any "Social Phobia had [not] been caused or substantially contributed to by an injury or injuries in the execution of duty". However, both the SMP and the PMAB thought she suffered from depression and that had been caused by her police service, but as this was not the condition described in the SMP report which led to her retirement, they felt that a medical decision maker under PIBR could not consider that condition. Mr Williams had a long standing diagnosis of depression, triggered by work circumstances. However the SMP reviewing his case for retirement diagnosed him as suffering from permanent Bi-Polar Affective Disorder and he was retired. The SMP and PMAB rejected his injury award application because, as the Board explained, "the Board is therefore being asked whether Bi-Polar Affective Disorder is due to an injury received in the execution of duty". He suffered from no Bi-Polar Affective Disorder and so his award was refused.

4.39. A significantly different approach was taken to the finality of decisions made by the SMP in an earlier report within the police pensions statutory framework when the Court of Appeal handed down judgment in *Laws* [12] in October 2010, a few months after *Doubtfire*. This case was primarily about the meaning of the finality of a medical report in relation to a review of a police injury pension under Regulation 37[13].

4.40. The facts of that case, in summary were that Ms Laws had been awarded a police injury pension arising out of a combination of the physical and psychological effects of an assault that she suffered in 1997. She was determined to be permanently disabled and retired on ill-health grounds in 1999. She was awarded a Band 4 pension based on an 85% degree of disablement. She was reviewed on a number of occasions, with the last review being in 2004, and her pension was maintained at Band 4. Ms Laws' pension was then reviewed by the SMP in 2008 and her pension was dropped to a Band 1. In summary, the approach taken by the SMP (who was the same SMP who reviewed her in 2004) was described as "*more robust*". The SMP conducted an entirely fresh assessment of the causes of her disablement from the outset and decided that only a limited number of her presenting medical conditions flowed from the assault, and in particular did not accept the causal connection between the original assault and her psychological conditions or other physical conditions such as Irritable Bowel Syndrome. However, the SMP did <u>not</u> address the question as to whether there had been any change in her presenting medical condition or her degree of disablement between 2004 and 2008. Her appeal to the PMAB was dismissed when the PMAB adopted a similar approach.

4.41. That decision was challenged successfully by Ms Laws by way of judicial review: see *R (Laws) v The Police Medical Appeal Board* [2009] EWHC 3135 (Admin). The Judge decided at §28 that the requirement of finality in each case under Regulation 30(5) had the following effect:

[12] None of the counsel at the *Laws* appeal cited *Doubtfire* at the Court of Appeal hearing in *Laws* and thus the Court of Appeal were not aware of this decision.
[13] Reviews under Regulation 37 are considered below.

> "It is clear from these provisions that each determination of the SMP, or on appeal by the Board, is to be treated as being final"

Thus, so the Judge held, at §29 the question on a review was whether the former officer's degree of disablement "*had substantially altered since*" the last final decision which would either be the original decision or the last review. It followed that the focus of the SMP's inquiry on a review under Regulation 37 was limited to the time period after the last final decision and that the SMP was bound by the report made at that time. Having decided that this was the statutory duty on the SMP, the PMAB's decision in this case was quashed because the SMP had asked herself the wrong questions.

4.42. The Metropolitan Police Authority ("**the MPA**"), which was an Interested Party in the case before Mrs Justice Cox (the defendant being the PMAB) sought to appeal that decision to the Court of Appeal. The MPA's appeal on this ground involved the Court deciding the meaning of the statutory provision in Regulation 30(6) that a medical report issued under Regulation 30 PIBR was "*final*". The only judgment was given by Laws LJ[14]. He explained the background to the legislative scheme by referring with approval to an observation made by Burton J in *R (Turner) v Metropolitan Police Authority* [2009] EWHC Admin 1867 who said that the issue of finality in any SMP or PMAB report was a key part of the legislative scheme for the following reason:

> "It is important from the point of view of disputes such as pension entitlement that a decision once made should be final if at all possible, and that is what is provided for by these Regulations..."

4.43. That broad approach to the meaning of finality was challenged by the MPS in *Laws.* In order to understand the legal effect of the decision, it is necessary to look carefully at the submission that was made by counsel for the MPS. This is recorded at §14 as follows:

[14] This is a case where the Claimant and the Judge confusingly had the same surname. The Claimant was Belinda Laws and the Judge was (the now sadly late) Sir John Laws.

> " .. the requirement to treat the previous assessment as "final" does not oblige the Board to accept all the clinical judgments made in or for the purpose of the previous assessment. It means only that the Board has to accept that the pensioner was entitled to whatever pension was then fixed; it is open to them, however, to arrive at their own assessment under Regulation 37(1) by a process of reasoning which may involve a frank departure from earlier clinical judgments"

4.44. That narrow approach to the meaning of the finality of an earlier SMP or PMAB report was rejected by Laws LJ because, as the Judge explained at §16, "finality" in the earlier report applied to the report, not just the final figure on the certificate. The Judge said that the requirement of finality:

> "must include the essential judgment or judgments on which the decision is based"

4.45. At §18, the Judge explained that the task allocated to the medical authority under Regulation 37(1) was to:

> " .. "consider whether the degree of the pensioner's disablement has altered". The premise is that the earlier decision as to the degree of disablement is taken as a given; and the duty – the *only* duty – is to decide whether, since then, there has been a change: "substantially altered", in the words of the Regulation. The focus is not merely on the outturn figure, but on the *substance* of the degree of disablement"

4.46. Thus, the approach taken by the SMP and the PMAB in this case of going back to the causes of the original assault on Ms Laws in 1997 and reaching their own views about the extent to which her present medical conditions were the result of the assault offended against the finality attaching to those earlier reports. The statutory purpose of finality was explained by the Judge in §19 as follows:

> "The result is to provide a high level of certainty in the assessment of police injury pensions. …. the clear legislative purpose is to achieve a degree of certainty from one review to the next such that the pension awarded does not fall to be reduced or increased by a change of mind as to an earlier clinical finding where the finding was a driver of the pension then awarded"

4.47. The potential conflict between the approaches in *Doubtfire* and *Laws* does not appear to have been initially appreciated by legal practitioners in this field (or medical decision makers). After 2010 *Doubtfire* was generally followed until the issues were considered by Lane J in *R (Evans) v Cheshire Constabulary* [2018] EWHC 952 (Admin). In that case, the Judge conducted a careful analysis of the statutory provisions and decided that a subsequent SMP should treat herself as being bound by the essential medical conclusions reached by an earlier SMP. He accepted that it was the report that was binding and not just decisions on disablement and permanence. Hence, so the Judge found, a later SMP was bound by the essential medical judgments set out in an earlier SMP report. The Judge explained his reasoning at §37ff as follows:

> "37. .. police officers who are required to retire on the grounds of permanent disablement are entitled to a degree of finality in respect of their entitlement to pensions. A police officer who has to retire as a result of what is then considered to be permanent disablement caused in the line of duty should not be at the mercy of a subsequent medical assessment, that he or she was not, in fact, permanently disabled. That applies to an injury pension, as much as it does to a disablement pension. In the absence of statutory wording to the contrary, there is no reason to treat the injury pension as a more fragile form of benefit …
>
> 38. … I consider that what is made binding is not just the bare answers to questions (a) and (b) but also the reasons (that is to say, the diagnosis) underpinning those answers. Regulation 30(6) provides in terms that the decision "shall be expressed in the form of a report and shall, subject to regulations 31 and 32 [appeals] be final". By requiring a report, the legislature has, I find, made evident the indivisibility of the answer to the question and the reasons for that answer.
>
> 39. Any doubt concerning the correctness of this exercise of statutory interpretation is, I find, laid to rest by the judgments in Laws. At paragraph 19, Laws LJ identified the need for "a high level of certainty in the assessment of police injury pensions"

4.48. Thus, so the Judge held, the SMP report made at the retirement stage is final and binding for the purposes of the subsequent police injury pension stage. That judgment made the perceptive point that the disablement and permanence questions were questions addressed on the basis of the officer's presenting condition whereas, in contrast, the causation question was a backwards looking question which was

required to look into the past to determine what had caused a past disablement (which may or may not still manifest itself in the same way). Thus, so the Judge found, there was logic in a process under which that the SMP addressing the causation question had to accept the clinical findings at the retirement stage because, in the usual case, she was not asking what had caused the officer's present disablement but what had caused the disablement from which the officer suffered at the date when he developed the disabling condition when led to him retiring from the Force.

4.49. The law was thus clear. However confusion was again created by the Court of Appeal which once again looked at this question in *R (Boskovic) v Chief Constable of Staffordshire Police*[15] [2019] EWCA Civ 676 ("***Boskovic***"). *Boskovic* was a difficult case on the facts and may well be an example of a hard case making bad law. I apologise to any non-lawyer grappling with the following paragraphs because they involve an intense examination of judgments in a case where the Judges are required to produce judgments at speed in areas where, prior to the judgments, they may have little familiarity. Judges are human and, brilliant as they may be, they can make mistakes. Regrettably this case has left the law in a state of considerable confusion. However, in order to understand the state of the law on this point, some detail of the facts of the *Boskovic* case is needed.

4.50. Ms Boskovic suffered from acute anxiety/depression and was diagnosed as suffering from PTSD after a series of assaults. A certificate was prepared by the SMP, Dr Gandham, which said that she was permanently disabled due to "*acute anxiety/depression and PTSD*" and she was required to retire. She applied for an injury pension and obtained her own medical evidence which firmly linked her mental illness to her work but questioned whether she met the full clinical criteria for PTSD. Dr Gandham was appointed as the SMP and he, in effect, went back on his earlier diagnosis and decided she should not have an injury pension for 2 reasons. First, he doubted she suffered PTSD and secondly he considered her depression was "*multi-*

[15] I was leading counsel for the officer in *Boskovic*. In as much as the Court landed the law in this area in a mess, I must bear my share of responsibility in failing to explain the issues sufficiently carefully to the Court.

factorial in origin" with only some of the underlying causes being related to her work. There is no suggestion these were *de minimis* and so, as her depression was at least substantially caused by her police service, she ought to have be awarded an injury pension.

4.51. Ms Boskovic appealed that decision but, before her appeal was heard by the Medical Referee, she abandoned her appeal and left the country to live abroad. That was, so she later explained, primarily a response to her continuing mental illness. Having recovered and rebuilt her life, 15 years later she asked the PPA to reconsider her application for an injury pension under Regulation 32(2). The PPA refused and the litigation focused on the legality of that refusal.

4.52. One issue relied upon by the PPA to justify not referring the case back for a reconsideration was a claimed uncertainty about the correct diagnosis of Ms Boskovic's mental health condition. The PPA sought to rely on the debate at the injury pension stages between various doctors about whether she fulfilled all the conditions for PTSD. Objection was taken to this purported justification on the grounds that, if the *Laws* approach was taken, the diagnosis of her medical conditions was fixed at the retirement stage and the only question at the later stage was whether her diagnosed medical condition as determined by the SMP was caused by her police service (and PTSD was clearly caused by the assaults she suffered). The argument was that the *Laws* decision meant that a doctor considering the causation question under Regulation 30(2)(c) was bound by the evidential findings (including the diagnosis) reached by the SMP in his report at the retirement stage. Thus, for the purposes of answering the causation question under Regulation 30(2)(c) at the injury pension stage, Ms Boskovic had PTSD. That the medical diagnosis was a binding decision which was part of the "*essential judgment*" reached by the SMP at that stage and it was not a matter of further debate. On that basis, the Chief Constable had relied on supposed dispute between doctors when, because of the final and binding nature of the earlier report, there could be no dispute. Thus, so it was argued, the Chief Constable was mistaken in his approach and thus the decision should be quashed. Ms Boskovic's

case failed at first instance and on appeal. That argument was not accepted by Kerr J and Mrs Boskovic appealed.

4.53. In his judgment dismissing the appeal, Lord Justice Baker addressed the analysis developed by the Court of Appeal in *Laws* which led the Court to decide the meaning of finality in relation to medical reports, in the context of a Regulation 37 review. The Judge said at §62:

> "In my judgment, the words "any final decision" manifestly incorporates not only the decision itself but also evidence on which the decision is based. There is no reason in language, logic or policy to restrict the scope of the reference in the way in which review under regulation 37 is limited"

4.54. The words "*final decision*" in this paragraph do not appear in Regulation 37 and can only refer to the use of these words in the wording between Regulation 30(2)(b) and (c) PIBR. Thus the Judge appeared to be approving the approach in *Laws* which extended the binding nature of an earlier medical report beyond the answer to the statutory question and included binding decisions about the "*evidence on which the decision is based*". That logically could only mean the medical diagnosis reached in the earlier report. However, the Judge went on to say a few paragraphs later at §65 as follows:

> "I recognise, of course, that regulation 30(1) stipulates that a decision of a duly qualified medical practitioner under regulation H1(2) of the 1987 Regulations as to the questions whether the person concerned is disabled and, if so, whether the disablement is likely to be permanent shall be binding for the purposes of the 2006 Regulations. All parties agree that this precludes reconsideration of those decisions under regulation 32(2). As the judge noted (at paragraph 44 of his judgment), it was not disputed before him that Dr Gandham's certificate provided a binding affirmative answer to the two questions posed by what is now regulation 30(2)(a) and (b), namely "whether the person concerned is disabled" and "whether the disablement is likely to be permanent". But I do not accept the submission advanced behalf of the appellant that this precludes any reconsideration of the evidence on which those decisions were based when a further reference to a medical authority is made under regulation 32 to reconsider a decision as to whether the disablement is the result of an injury received in the execution of duty"

4.55. As a result of this passage, the Court reached the conclusion that *Doubtfire* was right and *Evans* was wrong. Thus, the Court expressed its conclusion at §66 as follows:

> "Where there has been an earlier final decision under regulation H1 of the 1987 Regulations about the questions whether the person is disabled and, if so, whether the disablement is likely to be permanent, that decision is binding for the purposes of the 2006 Regulations and therefore binding on the SMP who is considering under regulation 30(2) 2006 Regulations whether the disablement is a result of an injury sustained in the execution of duty and the degree of the person's disablement. But I can see no reason why the diagnosis arrived at in the earlier assessment under regulation H1(2) of the 1987 Regulations should be binding on the SMP conducting the later assessment under regulation 30(2)(c) and (d) of the 2006 Regulations"

4.56. Unfortunately, there is a reasonably clear logical flaw in the Court of Appeal's reasoning in §65 which makes the position very difficult for anyone operating this complex area. The problem is that a careful analysis of the judgment in *Boskovic* shows that Baker LJ confused 2 different processes. These are:

a) The decision making process required to answer the causation question under Regulation 30(2)(c) and how the SMP should address an earlier report which had reached a diagnosis to support a finding of permanent disablement in a particular case; and

b) The decision making process required as part of a reconsideration process under Regulation 32(2).

4.57. Regulation 32(2) concerns a "*reconsideration*" of an earlier decision by a medical authority. When undertaking a reconsideration, the medical authority is required to "reconsider" the decision in question. Thus, when undertaking that function, the medical authority cannot, of course, be bound by the earlier medical decision. If the later doctor was so bound, a proper reconsideration would not be possible: for an example of this see *McLoughlin v The Chief Constable of West Yorkshire* [2019] EW

Misc 9 (CrownC) where a reviewing SMP came to a different decision on degree of disablement.

4.58. Where the decision in question which falls to be reconsidered is the "*causation question*" under Regulation 30(2)(c), there will – by definition – be an earlier report on that question. That is the report that the later doctor is asked to reconsider and a doctor undertaking a reconsideration under Regulation 32(2) is required to make a fresh decision on the causation question. In approaching that task, the doctor cannot possibly be bound by the finality of the previous decision on causation or any evidence upon which such a decision was based. That much is clear from Regulation 30(6) which provides that any finality is "*subject to regulations 31 and 32*". Those are decisions at the same stage of decision making the process.

4.59. However, that was not the problem the court ought to have been grappling with in *Boskovic*. The key question in that case was not whether a doctor was bound by the outcome of a report when carrying out a reconsideration decision, but the extent to which a doctor was bound by the evidential findings made in an SMP report at an earlier stage of the same decision making process, namely at the retirement process when undertaking either an original decision on causation under Regulation 30(2)(c) or a reconsideration of that decision. If the diagnosis was fixed at the retirement stage (as per the *Laws/Evans* approach) then there was no diagnostic confusion for the SMP to resolve if instructed to reconsider the causation question. Baker LJ said at §62 that an SMP discharging functions at a later stage (i.e. the injury pension stage) was bound by the evidential findings made at the earlier stage.

4.60. Hence the only conclusion that can be reached is that the Judge was confused in the final sentence of §65 because he identified the wrong comparison. The Judge said "*But I do not accept the submission advanced behalf of the appellant that this precludes any reconsideration of the evidence on which those decisions were based when a further reference to a medical authority is made under regulation 32 to reconsider a decision as to whether the disablement is the result of an injury received in the execution of duty*". That sentence seeks to reject a case which was not made to

him. In effect, it rejects a case which was never made to the court and, in doing so, sets up the wrong comparison.

4.61. The proper question for the court in *Boskovic* was not whether any doctor reconsidering the causation question under Regulation 30(2)(c) was bound by evidential decisions made by the SMP in an earlier report on causation issues under Regulation 30(2)(c). Instead, the real question was whether the SMP undertaking the reconsideration was bound by the evidential conclusions reached in a report which decided that the officer was permanently disabled and why that was the case – namely a report dealing with the answer to the questions at Regulation 30(2)(a) and (b). Baker LJ then said that this meant that *Evans* was wrong and *Doubtfire* was right. But, of course, if Baker LJ was right in his analysis at §62 that the final and binding nature of the earlier report goes beyond the fact of permanent disablement and includes the evidential findings on which that conclusion was reached, the only conclusion is that *Evans* was right and *Doubtfire* was wrong.

4.62. Thus, as a result of the confusing statements made in §62 and the erroneous comparison in §66, the Court of Appeal has come to contradictory conclusions. At one point the court says that a doctor is bound by earlier diagnostic findings (see §62) and then the court says the SMP is not bound by those earlier diagnostic findings at §66 (albeit the later conclusion reached based on a faulty comparison). That contradiction makes the law in this area decided unclear.

4.63. HHJ Kramer QC sitting as a Judge of the High Court was invited to consider this point in *R (Michaelides & Anor) v Police Medical Appeal Board* [2019] EWHC 1434 (Admin) but, obiter, decided that "*Laws* and *Boskovic* are consistent". The decision is an *obiter dictum* since the Claimant won on other points but analysis above shows why this is not the case. It is perhaps unfortunate that permission to go to the Supreme Court was refused on *Boskovic.* Thus untangling this confusion will have to wait for another Court that is prepared to address the issues.

4.64. There can be times when the *Doubtfire/Boskovic* approach helps an officer and other occasions on which it assists the Force. However, it has led to an unfortunate series of cases where the SMP at the injury award stage has disagreed with the conclusions of the SMP at the retirement stage about the diagnosis identified by the earlier SMP which led to the decision that the officer was permanently disabled. The SMP is, of course, fully entitled to that under the *Doubtfire/Boskovic* approach, but it raises the problem as to what the doctor should do is she cannot reach any other medical conclusion to support a diagnosis which would justify a conclusion that the officer was permanently disabled. Thus the SMP at the injury stage is left with a binding finding that the officer is permanently disabled but a finding that there was no medical cause of that permanent disablement (because the SMP's assessment is that the former officer has no permanent disablement). In such a case, the SMP can be in great difficulties in explaining why the officer's permanent disablement has been caused by his service as a police officer and so the officer is entitled to an injury pension if the SMP cannot identify a cause of that disablement.

4.65. It seems inevitable that the confusion between the *Laws/Evans* approach and the *Doubtfire/Boskovic* approach, as well as the confusion explained above between the different paragraphs in the *Boskovic* judgment will have to be resolved by the Court on a future occasion.

4.66. There can also be problems in circumstances involving sequential injuries. Hence, an officer could become permanently disabled whilst serving, but where his disability is not caused by the execution of his duties. If that officer is retained but then suffers a duty related injury, he could later be required to retire because of his duty related injury. The question would arise as to whether that officer is entitled to an injury pension. The statutory purpose of the Regulations would be frustrated if the officer was refused a pension but his disablement, as found by the SMP, did not include any form of disablement arising from his duty injury. All this may suggest that there are future problems for the courts to grapple with in this area.

When is an injury received by an officer in the execution of his duties?

4.67. Regulation 11(1) provides that the injury must have been "*as a result of an injury received … in the execution of his duty*". The meaning of the words "*received in the execution of his duty*" is set out at Regulation 6. This definition is in 3 parts. First, Regulation 6(1) provides a general definition of the meaning of the term words "*received in the execution of his duty*". Secondly, Regulation 6(2) is a "deeming provision" which has the effect in law of extending the cases where an injury is "*received in the execution of his duty*" to other circumstances which, apart from the deeming provision, may or may not have come within the term. Thirdly, Regulations 6(3), (5) and (6) provide clarification for particular circumstances.

4.68. Working out whether an injury, particularly a psychological injury, has been received in the execution of an officer's duties as a constable can be a notoriously difficult area for former police officers and those who advise them, PPAs, SMPs (who are the initial decision makers) and the PMAB. When decisions made by the SMP or PMAB have been subject to judicial review, different Judges have made decisions which appear not to have been fully informed by the previous caselaw and/or a proper understanding of legal precedent and thus have taken subtlety different approaches. That subtlety has resulted in decisions falling one side or another side of the line in an arguably random manner, even though these decisions have had lasting consequences for both the former officers and the Force which has to fund pensions for life.

4.69. This dilemma is not assisted when the judiciary themselves appear to refuse to recognise that differing Judges have taken differing approaches to the relevant principles, albeit in attempting to apply them to differing sets of facts. In *R (Chief Constable of Avon And Somerset Constabulary) v Police Medical Appeal Board* [2019] EWHC 557 (Admin) Lambert J unhelpfully criticised a PMAB which had said there were 2 diverging lines of authority on the meaning of "execution of duties" under Regulation 6(1). The Judge said:

> "There are not two diverging lines of authority. In those cases to which my attention has been drawn the courts have sought to apply the *Stunt* principles to different sets of circumstances in which permanently disabling psychiatric injuries are suffered by

> police officers. When those principles are applied, some cases fall one way, others fall the other way. Some it may be said are more generous than others. However, it is clear from all of the authorities that for an injury to be received by an officer in the execution of duty there must be a substantial causal connection between the injury and the execution of duty and it is not sufficient that the officer is "on duty."

4.70. Whilst one hesitates long and hard before disagreeing with a High Court Judge, on this occasion any complete analysis of the cases drives one to the view that the PMAB were right and the Judge was wrong. There *are* differing lines of authority in the different cases, as Mr Justice Cranston accurately observed in *Merseyside Police Authority v Police Medical Appeal Board & Ors* [2009] EWHC 88 (Admin)[16] where he said:

> "I confess to having difficulty with the distinction drawn in some of the cases between being on duty and being in the execution of duty. In some cases it appears to me that the distinction will be the rationalisation of a particular conclusion rather than a useful tool for analysis"

4.71. Thus, what follows is an attempt to examine the wording set out in the statutory scheme and to identify which of the contradictory lines of authority set out the correct approach. In contrast to the forensic process in court, this has not been done with a particular set of facts in mind or an attempt to favour either police officers or PPAs. Thus this analysis is not constrained by any attempt to argue for or against a pension being awardable to any individual former officer. In contrast, the following paragraphs of this Guide are an attempt to identify an approach that PPAs, SMPs, the PMAB and the Courts could take to the difficult issue as to when a permanent disablement of a permanent unfitness of a former police officer should and should not lead to an award under PIBR.

The statutory provision.

4.72. Regulation 6(1) provides:

[16] See http://www.bailii.org/ew/cases/EWHC/Admin/2009/88.html

"(1) A reference in these Regulations to an injury received in the execution of duty by a member of a police force means an injury received in the execution of that person's duty as a constable and, where the person concerned is an auxiliary policeman, during a period of active service as such"

4.73. This Regulation adds little to the words in Regulation 11(1) save to provide that "*execution of duty*" means "*the execution of that person's duty as a constable*". Thus, subject to the remaining parts of this Regulation, if a police officer was seconded to work in some other capacity than as a constable, there may be an argument as to whether an injury suffered where a police officer was not discharging duties "as a constable" gave rise to the right to an injury pension. However, even then, if those were part of the duties that he had been directed to carry out by his superior officers (and was thus obliged to carry out under Police Conduct Regulations), those duties would still be part of his duties as a constable.

4.74. Regulation 6(2) provides for a series of deeming provisions which expand the circumstances in which a police officer is deemed to be acting in the execution of duty, which are explained below.

4.75. Regulations 6(3), 6(5) and 6(6) then contain some clarification provisions for particular circumstances. They provide:

"(3) In the case of a person who is not a constable but is within the definition of "member of a police force" in the glossary set out in Schedule 1 by reason of his being an officer [or employee] there mentioned, paragraphs (1) and (2) shall have effect as if the references to a constable were references to such an officer [or employee].

.....

(5) Notwithstanding anything in the 1987 Regulations relating to a period of service in the armed forces, an injury received in the execution of duty as a member of the armed forces shall not be deemed to be an injury received in the execution of duty as a member of a police force.

(6) In the case of a regular policeman who has served as a police cadet in relation to whom the Police Cadets (Pensions) Regulations had taken effect, a qualifying injury within the meaning of those Regulations shall be treated for the purposes of these Regulations as if it had been received by him as mentioned in paragraph (1); and, where such a qualifying injury is so treated, any reference to duties in regulation 14(1) (adult survivor's augmented award) shall be construed as including a reference to duties as a police cadet; and in this paragraph the reference to the Police Cadets (Pensions) Regulations is a reference to the Regulations from time to time in force made, or having effect as if made, under section 52 of the Police Act 1996"

4.76. These provisions are self-explanatory and do not need additional comment.

The proper approach to the meaning of words in Regulations.

4.77. Before looking at the cases, it may be helpful to say a little about the proper approach of a public law decision maker to the meaning of wording laid down in Regulations. The meaning of words in statutory provisions is a matter of law. The meaning does not depend on the views of the public law decision maker but is determined by the courts who are the final arbiters of that meaning.

4.78. Subject to parliamentary oversight[17], Government Ministers make Regulations and thus Ministers choose the words to be used in Regulations to express their intentions. However, once the words are set down in Regulations, their meaning becomes a matter of law, for interpretation by the courts and not the government. It is not a question of what Minister intended to mean by the words of the Regulations but a question of the meaning of the words of the Regulation themselves.

4.79. The court starts (and often ends) its quest to interpret the meaning of statutory words with the "natural and ordinary" meaning of the words used in statutes. The principles were summarised by Garnham J in *R (Shropshire And Wrekin Fire Authority & Ors) v The Secretary of State for the Home Department* [2019] EWHC 1967 (Admin) where he said:

[17] The procedures for parliamentary oversight of statutory instruments are set out in the Statutory Instruments Act 1948 and the Statutory Instruments Regulations 1947 and in parliamentary procedures.

"What is the natural and ordinary meaning of the words used depends, however, not just on the dictionary definition of each word but also the syntax of the expression used, its context and a proper understanding of any technical expressions deployed. In *AG v Prince Ernest Augustus* [1957] AC 436, Viscount Simonds said at 461:

> "For words, and particularly general words, cannot be read in isolation: their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use "context" in its widest sense, which I have already indicated as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern the statute was intended to remedy."

The essential principles were neatly summarised, if I may say so, by Nugee J in G4S Plc v G4S Trustees Ltd [2018] EWHC 1749 (Ch). The judge accepted the submissions of counsel as to the principles of statutory construction:

> "19. I was referred by both counsel to the principles applicable to statutory construction. I did not understand there to be any difference of substance between them. They were summarised … as follows: (1) the general objective of statutory construction is to ascertain the intention of the legislature; (2) the natural meaning of the words used is an important guide but literal meaning should not be applied in a vacuum; (3) statutes should be construed as a whole, so that save in exceptional circumstances similar words or the same words in an instrument should bear the same meaning; and (4) technical words are given their technical meaning (see Bennion on Statutory Interpretation 5th ed at 22.6):
>
> > "If a word or phrase has a technical meaning in relation to a particular expertise, and is used in a context dealing with that expertise, it is to be given its technical meaning unless the contrary intention appears."

4.80. The word "duty" in the phrase "execution of duty has an established meaning since there is a wealth of caselaw about what is and is not required of police officers as a result of the statutory office they hold. Hence, for example, a police officer has an obligation as a result of his office to intervene if he sees a crime being committed even if the officer is off duty. So if an officer in injured whilst intervening in a fight in a pub on a Saturday night, he is acting in the execution of his duty even though he is not rostered to be on duty. The words "*as a result of*" seem to be ordinary, non-technical

words which require the officer to establish an element of causation between the execution of his duties and the injury.

The High Court and Court of Appeal cases on the meaning of "received in the execution of duty".

4.81. There have been a number of cases concerning the test as to whether a police officer who suffers injuries is entitled to an injury pension. The history starts with *Gavin v London (City) Police Authority* [1944] KB 358 ("***Garvin***"). PC Garvin was on duty during the aerial bombardments in the Second World War in London from September, 1940, to the middle of 1941, serving twelve hours a day instead of the usual eight hours. During that time he could only take meals at irregular hours and was subjected to constant wettings. The medical evidence showed that these conditions would render him more liable to contract tuberculosis, and in fact tuberculosis supervened sometime after September, 1940. In October, 1942, he was discharged from the police force. The police authority rejected the claim for an injury pension under the Police Pensions Act, 1921, but this was overturned by the Quarter Sessions, a forerunner of the present Crown Court appeal. The Police Authority appealed to the High Court but its appeal was dismissed.

4.82. The court was constituted as a Divisional Court with 3 High Court Judges, Humphreys , Asquith and Cassels JJs. The only substantive judgment was given by Humphreys J who first dismissed a ground of appeal that tuberculosis could not be an "injury". He then dealt with the ground that tuberculosis was not an "*injury received in the execution of his duty*". The Judge said:

> "That the words "in the execution of his duty" are to receive a **benevolent interpretation** is clear when reference is made to s. 33, the interpretation section. By sub-s. 2 of that section, injury suffered by a member of a police force is deemed to have been suffered in the execution of his duty if so suffered whilst on a journey to or from duty or in consequence of some act performed in the execution of his duty. A pensionable injury, therefore, if I may use that term, may be suffered at a time when the man is not actually on duty. **There must, undoubtedly, be some degree of causal relation between the injury and the duty.** It would not be sufficient for the

claimant to say: "I was a serving policeman when I contracted tuberculosis." [*Emphasis added*]

4.83. Thus the case is authority for 2 points. First, the words "*in the execution of his duty*" are to receive a benevolent interpretation and second that there must be some degree of causal relationship between the injury and the duty. The latter point is now expressed dealt within Regulation 7 which provides that causation is established if the applicant shows that the officer's police services duty injury was a substantial cause of the disablement (even if not the only cause).

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4.84. Garvin was followed by *Huddersfield Police Authority v Watson* [1947] 1 KB 842 ("***Watson***") which was another case in the Divisional Court. PC Watson had developed a duodenal ulcer which the Recorder, who heard the case on appeal from the Police Authority, was satisfied was caused by his police service. In *Watson*, Lord Goddard CJ declined to depart from *Garvin* and turned down the appeal. He said:

> "It seems to me that the ratio in *Garvin's* case is this, that if it is proved that the bodily condition from which the man is suffering, whether it be rheumatism, whether it be tuberculosis and, I would add, whether a duodenal ulcer, is directly and causally connected with his service as a police officer, then he has received an injury in the execution of his duty"

4.85. Thus the law was clearly established that any disease which was is directly and causally connected with his service as a police officer was an "injury" within the statutory scheme. An "injury" is now defined in the Glossary at Schedule 1 PIBR as follows:

> ""injury" includes any injury or disease, whether of body or of mind"

Hence, the statutory wording now reflects the caselaw.

4.86. The history now moves to 1994 when the High Court heard the first of 5 cases which preceded the Court of Appeal hearing the case of *Stunt*, all of which were later

approved by the Court of Appeal in that case. The first case was *R v Caldbeck-Meenan and another ex parte Clerk to Cleveland Police Authority* [1994] Lexis Citation 4481, a decision of McPherson J of 22 July 1994. The officer in that case, PC Weston, suffered from a psychiatric illness which he said had been caused by this police services. The attack from the Police Authority was to challenge whether this was within the statutory scheme relating to injury pensions in the 1987 Regulations. It was claimed that "*Mr Weston's case the work did not cause his injuries but provided a backdrop for an idiosyncratic response*".

4.87. The Judge did not accept that submission. Instead the Judge referred to the *Garvin* case and said:

> "That is the test which must be applied"

4.88. Hence, the Judge in this case decided test for causation between events on duty and the development of a psychological injury was the same as for a physical injury, namely if the medical panel decide that the psychological illness is "*directly and causally connected with his service as a police officer*", then he has received an injury in the execution of his duty. In that case McPherson J also said:

> "This Court is not a Court of Appeal from the decision of the doctor. What the Court is allowed to do and has to do is to see whether there is any legal flaw in the decision and to test whether the right legal principle and the right principle as to causation have been applied"

4.89. The Judge then said, applying the *Garvin* test:

> "It is simply a question of whether the doctors can say that the work which was being done by the officer caused the depressive illness from which this man plainly suffers.
>
> … . What this Court must do is to look at the conclusion of the doctors to see if they did reach that conclusion and reach it in a logical way"

4.90. The doctor had explained his approach in that case as follows:

> "All occupations have stress factors inherent in the job demands and working situation. In most jobs individuals can take action to minimise their exposure to stress. This is less possible in the Police Force because of the necessarily rigid working structure and the unpredictability of demand combined with a degree of social isolation. For most this is compensated for by camaraderie, good man management and support from the hierarchical structure combined with a sense of job satisfaction. In the case of Mr Weston such redressing compensatory mechanisms were not sufficient to counterbalance the sense of stress to which he felt exposed and as a consequence the symptoms arose. It is, therefore, my opinion that within my understanding of what is construed as meaning injury in the Police Pensions Regulations, the disablement which occurred was the result of an injury received in the execution of his duty."

4.91. The Judge described that approach as "flawless". He said:

> "The doctor has found that the stresses and the nature of the work to which the officer was subjected were the cause of the symptoms which he suffered ….
>
> In my judgment that is an end of the matter because if the doctor properly considering the evidence which was before him and applying that to the complaints which this man made did find that the work which he did was a cause of the collapse, that completes the circle which is necessary in the case"

4.92. The next case was a Divisional Court case, *R v Court and another, ex parte Derbyshire Police Authority* [1994] Lexis Citation 1978, a decision by McCowan LJ and Gage J of 11 October 1994. Ms Court suffered sex discrimination when attempting to join CID and, after she succeeded in being transferred to CID, experienced sexual harassment at work from other officers in that department who appear to have resented a woman's presence as part of the team. She challenged the Force in tribunal proceedings which were compromised by a payment to her and she then re-joined CID. However, she reacted badly to a number of later events at work, including an adverse appraisal and developed a psychiatric condition as a reaction to events at work. The clear implication from the judgment was that the doctors accepted that her career and her health were adversely affected by long standing institutional sexism.

4.93. The key issue in that case was whether PC Court could be awarded an injury award if her psychological injury had developed in response to actions and omissions of her fellow officers as part of the discharge of their police functions or whether such awards were limited to officers who developed injuries after undertaking public facing functions. The doctor had concluded that what happened within the police station was the execution of her duties. He concluded as follows:

> "On the evidence available to me, Miss Court's psychiatric condition is largely, if not entirely, the result of events which occurred in the course of her work as a police officer"

4.94. Ms Court was awarded an injury pension and the Police Authority challenge to this part of the decision was dismissed. McCowan LJ said:

> "There are, in my view, no grounds for thinking that the term 'injury' is intended to be confined to injury or illness resulting from activities in the public arena and contact with members of the public. The phrase 'while on duty' appears to cover all events occurring during the time spent on duty, including conversations and interviews with colleagues and superior officers and the receipt and scrutiny of documents such as performance appraisals"

4.95. McCowan LJ adopted the approach taken by Latham J in a fire officer's case, where there was a similar statutory scheme, namely *Bradley v London Fire and Civil Defence Authority* [30 June 1994]. In that case, Latham J had said [page 9]:

> "It therefore seems to me that in schemes such as this, what has to be identified is the injury or disease in question, and then ask the question as to whether or not there is a causal connection between that injury or disease and the employment. That relatively straight forward concept has undoubtedly been retained in the instant scheme."

4.96. In the light of subsequent cases, the absence of caveats in that statement may be of some importance. McCowan LJ then said:

> "Obviously, psychological stress is capable of amounting to an injury. The classic case is where an officer suffers a physical injury when on duty, for example in trying to arrest a criminal. But "injury" is not restricted to physical injury. Here the stress that this lady suffered from may have resulted from the proceedings before the Industrial Tribunal and from dissatisfaction with her career advancement prospects, but what I cannot find acceptable is the suggestion that one can compartmentalise it, and say that these are private matters falling outside her public duty, because, in my judgment they, in fact, were intimately connected with her public duty. That indeed is where the stress was"

4.97. It follows that events which are "*intimately connected with her public duty*" and which precipitate a physical or psychiatric illness should lead to an award under PIBR.

4.98. The third in the quintet of cases in 1990s was *R v Fagin and Another, ex parte Mountstephen* [1996] Lexis Citation 1894, a decision of Brooke J of 26 April 1996. This was a judicial review by the former officer who challenged the refusal of the doctors to certify he had suffered a duty injury. The facts were that Sgt Mountstephen was one of authors of a report which recommended a new assessment method for trainee police officers. The assessment process he recommended was not adopted as it was felt by his superiors to be too expensive. Sgt Mountstephen disagreed, and wrote a report to say why he felt he was right about the assessment process but this report was largely ignored. He then developed a serious psychiatric illness as a response to his recommendations being rejected. The judgment records:

> "He eventually concluded that there was no way in which he could return back to his job because he felt he could not accept the dishonesty surrounding the assessment procedures, and he was therefore relieved when it was suggested that he should be medically retired"

4.99. Thus, in this case, the police officer's illness was triggered by how other police officers had responded to events that had involved him. Their reaction appears to have triggered his disillusionment with the police service overall. The judgment recorded:

> "The doctors' view was that the Applicant sincerely and genuinely believed in his principles and felt incensed that his work had gone on unacknowledged and was

misinterpreted and unused. They reported: "He still feels very strongly about what happened." When they addressed the specific question, "Is the disablement the result of an injury received in the exercise of duty?" they said:

> "We believe that the work circumstances described by [him] may have played a contributory part in his emotional difficulties, but only as far as triggering off and exposing well suppressed and, up to that point, unconscious vulnerabilities. It is unlikely that without this pre-existing predisposition, such work circumstances would have had the emotional impact on [him] which followed after 1990, but the catastrophic and extreme reactions, both in terms of an invented fantasy world and the brief dissociative state, indicate a vulnerability in his personality which we can only suspect is rooted in his own personal history."

It was in those circumstances that they expressed their final belief that his work circumstances had a contributory, but not a determining, role in his subsequent disablement"

4.100. In assessing whether these facts gave rise to the right to an injury pension, the Judge agreed that the same approach had to be taken to physical and psychological injuries. He said [page 16-17]:

> "In my judgment it is appropriate to adopt the same approach to psychiatric illness as one does to personal injury …"

4.101. The Judge then analysed the causal relationship between events at work and the subsequent injury. He said:

> "[*His psychiatric illness*] represented an injury he received while on duty as a constable because nobody suggested any other triggering mechanism than the events and stresses at work. It is accepted that the injury, in this sense of the word, caused or contributed to his personal disablement, and accordingly, since the medical referees' decision did not contain a certificate showing their disagreement, on the conclusions that they had reached, with the certificate of Dr Coltart dated 14 September 1993, in my judgment the Court ought to quash it"

4.102. On that basis, Sgt Mountstephen became entitled to an injury pension because "the triggering mechanism" for a permanently disabling psychiatric illness was events and stresses at work.

4.103. The fourth case was *Sussex Police Authority v Pickering* [1996] Lexis Citation 1669 [CO/4175/95] a decision also of Brooke J of 10 May 1996. This case decided that the wording of the Police Pensions Act 1921 on causation had the same effect as the wording in the 1987 Regulations, which is now carried forward to the PIBR. Hence the test in Section 33(2) of the 1921 Act, namely an illness "*in consequence of some act performed in the execution of duty*" has the same meaning as the present causation provisions.

4.104. The final relevant case was *R v Kellam ex parte South West Police Authority* [2000] CR 632. This was a judicial review of a decision of the Medical Referee, Dr Kellam, who had awarded an injury pension to PC Milton. The facts were set out in the judgment as follows:

> "In 1991 his wife, who had also been a serving officer of the South Wales Police, was transferred to its specialist child abuse unit. She swiftly formed the view that there was malpractice within the unit. She complained about this to the inspector in charge of the unit. At around the time of making the complaint she became pregnant with the couple's second child. She was transferred to the domestic violence unit and, as she believed, harassed by the inspector about whom she had complained and by a clique of officers. She brought an industrial tribunal claim against the Chief Constable of the South Wales Police for sex discrimination. This was settled out of court. She did not return to police duty. In late 1992 the baby was stillborn when Mrs. Milton was some 7½ months pregnant. Her complaints were investigated and a number of officers were subjected to a disciplinary investigation, but no proceedings were brought against them.
>
> Mr. Milton said that in consequence of his wife's complaints and his support for his wife he was shunned and victimised at work by other officers of the authority, including superior officers, over the following years. He felt that the atmosphere at force headquarters had become so hostile to him during the investigation of his wife's complaints that he requested and was given a transfer to another police station. Other events included a senior officer maintaining observations on his home, intimations by

> senior officers that his career would not progress, and the fact that a newspaper article about his wife's industrial tribunal claim, and referring to the loss of the baby, was placed anonymously on his desk and on the notice board. In addition a neighbour with whom he had been in a long-running dispute about a hedge made ill-founded but serious allegations of criminal offences against him and his wife. These included allegations that he had threatened to kill the neighbour and that his wife had indecently exposed herself to the neighbour. He said that the neighbour had been encouraged to make the allegations by a member of the South Wales Police. The investigation into them took over 18 months to complete. None of them was made good and no action was taken against Mr. Milton. Throughout the period he was at work carrying out his duties"

4.105. PC Milton developed a permanent psychiatric illness, went off work and eventually was required to retire. The questions for the medical referee were (a) what caused PC Milton's psychiatric illness and (b) was his psychiatric illness the result of an injury received in the execution of his duty as a member of the police force. The first is a pure medical question, and the second is a mixed medical and legal question. The doctor's conclusion was as follows:

> "In summary, I conclude that Mr. Milton's disablement described as 'anxiety and depression' on the certificate of permanent disability was due to emotional stress which had four causes: (1) the stillbirth; (2) his wife's treatment by the police force; (3) his perception of the attitude of his colleagues after his wife won her case against the chief constable and (4) the investigation of his neighbour's complaint against him. These all interacted with each other and all substantially contributed to the disablement. The last three in my opinion resulted from his being a police officer. Therefore I conclude that his disablement was the result of an injury (a disease of the mind) substantially contributed to by mental injuries received in the execution of his duties. Therefore I decide this appeal by Mr. Milton should succeed."

4.106. The only ground of challenge in the judicial review was that Dr Kellam had applied the wrong legal test in determining whether Mr. Milton's disablement was the result of an injury "received in the execution of duty" within the meaning of the Regulations. That was based on a case that, for an injury to be "received in the execution of duty", a direct causal connection was needed between the injury and the police officer's duty, namely his day-to-day work or the performance of his duties as a police officer. It is not enough, so the Police Authority argued, for there to be a causal connection

simply with his being a police officer. This was a case that was purely within (what is now) Regulation 6(1). Neither side relied on the deeming provisions in Regulation 6(2).

4.107. Unusually, the medical referee was represented and argued that when the doctor said that the last three causes "*resulted from his being a police officer*", the doctor's counsel explained that he meant that the stress caused by the last three matters resulted from circumstances which Mr. Milton encountered as a serving police officer.

4.108. The Judge considered *Garvin, Watson* and the four cases referred to above, namely *Caldbeck-Meenan, Court, Mountstephen* and *Pickering.* The Judge then set out his conclusions on the effect of the Regulations in 7 numbered paragraphs as follows[18]:

> "(1) Regulation A11(2) does not purport to contain, nor should it be read as containing, an exhaustive definition of the circumstances in which an injury may be received in the execution of a person's duty as a constable. Thus in principle a case may fall within Regulation A11(1) and thereby qualify for an award even if it does not fall within Regulation A11(2). Leaving aside for one moment the applicant's contention in the present case, I doubt whether the point is of great practical significance, since a person who receives an injury 'in the execution of [his] duty' (in the basic meaning of that expression) is likely generally to receive it 'while on duty' within the meaning of Regulation A11(2)(a): the latter extends beyond the former but also encompasses the generality of cases falling within the former. (A full exposition would require reference to the additional deeming provisions of Regulation A11(3)-(6), but I have not thought it necessary to deal with them in this judgment since they do not appear to me to affect the overall position.)
>
> (2) When considering a case of mental stress or psychiatric illness amounting to an injury and said to have arisen over a period of time (as opposed to e.g. post-traumatic stress syndrome said to arise out of a single event), it will probably be impossible in practice to draw any clear distinction between Regulation A11(1) and Regulation A11(2)(a). It makes no difference in any event whether one looks at the matter in terms of the one rather than the other. The test to be applied is the same. That is why one finds the authorities either failing to distinguish clearly between the two

[18] References in the above passages to Regulation A11(1) of the 1987 Regulations are now references to Regulation 6(1) PIBR and references to Regulation A11(2) are now references to Regulation 6(2).

provisions or applying in the context of the one a test developed in the context of the other.

(3) The test remains that set out in *Garvin* and summarised in Police Authority for Huddersfield as being whether the person's injury *'is directly and causally connected with his service as a police officer'*. It is a test formulated originally in the context of a physical disease contracted over a period of time, but aptly and repeatedly applied in the corresponding context of a psychiatric condition arising over a period of time. One can readily see why that test is applicable as much under Regulation A11(2)(a) as under Regulation A11(1). When considering such a psychiatric condition, which cannot be attributed to a single identifiable event or moment of time, it is plainly necessary to find a causal connection with service as a police officer in order to establish that the injury has been received 'while on duty' rather than while off duty, just as it is necessary to find such a causal connection in order to establish that the injury has been received 'in the execution of ... duty'.

(4) The test of causation is not to be applied in a legalistic way. The concept is relatively straightforward, as Latham J observed in *Bradley* [this was an analagous case of a fireman], and falls to be applied by medical rather than legal experts. In particular, in my view the reference to a 'direct' causal link does not mean that fine distinctions may be drawn between 'direct' and 'indirect' causes of the injury. The reference derives from the statement in *Garvin* that the injury was the 'direct result of, and, therefore, suffered in, the execution of duty'. That language was used, as it seems to me, as a means of emphasising the existence of a substantial causal connection between the injury and the person's service as a police officer. The point was to distinguish such a situation, which qualified for an award, from the case where the receipt of an injury and service as a police officer were entirely coincidental rather than connected circumstances which did not qualify for an award.

(5) The causal connection must be with the person's service as a police officer, not simply with his being a police officer (the exception in Regulation A11(2)(b) is immaterial to the kind of situation under consideration in the present case). That is inherent in the reference to 'duty' in Regulation A11(1) and Regulation A11(2)(a). At the same time, however, 'duty' is not to be given a narrow meaning. It relates not just to operational police duties but to all aspects of the officer's work - to the officer's 'work circumstances', as it was put in *Fagin*. I have referred in general terms to the person's service as a police officer because it seems to me to be an appropriate way of covering the point, but the precise expression used is unimportant. In any event it is sufficient in my view to find a causal connection with events experienced by the officer at work, whether inside or outside the police station or police headquarters, and including such matters as things said or done to him by colleagues at work. In so far

as the applicant contended for an even greater degree of connection with a person's performance of his functions as a police officer, I reject the contention.

(6) It is sufficient for there to be a causal connection with service as a police officer. It is not necessary to establish that work circumstances are the sole cause of the injury. Mental stress and psychiatric illnesses may arise out of a combination of work circumstances and external factors (most obviously, domestic circumstances). What matters is that the work circumstances have a causative role. The work circumstances and domestic circumstances may be so closely linked as to make it inappropriate to compartmentalise them, as in *R v Court & Bronks*, where the so-called 'private matters' were held to be intimately connected with the officer's 'public duty'. But I do not read the authorities as laying down any more general rule against compartmentalisation. On the other hand, where compartmentalisation is possible (i.e in the absence of an intimate connection between the private matters and the public duty), I do not read the authorities as laying down any rule that the existence of a causal connection with the private matters is fatal to a claim. Provided that there is also a causal connection with the public duty, the test is satisfied.

(7) It may be that what I have said about the sufficiency of a causal connection with service as a police officer should be qualified by a reference to a substantial causal connection. The requirement of substantiality does not appear to feature in the authorities (subject to my observation about the significance of the reference to a direct causal connection). But that is unsurprising, since there does not seem to have been any real suggestion that the causes in issue were anything other than substantial causes. Similarly in the present case I do not think that anything turns in practice on the issue of substantiality. I therefore think it unnecessary to say any more about the point for the purposes of the case."

4.109. The core elements of this judicial analysis are the "*work circumstances*" test, picking up the language in *Mountstephen.* The Judge's conclusion was that "*it is sufficient in my view to find a causal connection with events experienced by the officer at work, whether inside or outside the police station or police headquarters, and including such matters as things said or done to him by colleagues at work*". Having set out those principles, the Judge upheld the Medical Referee's decision, saying that the overall conclusion was that PC Milton's psychiatric injury was the result of "*the stress caused by those matters resulted from circumstances which Mr. Milton encountered as a serving police officer*".

***The meaning and effect of Commissioner of Police of the Metropolis v Stunt* [2001] EWCA Civ 265 [2001] ICR 989.**

4.110. The cases described above were all considered by the Court of Appeal when the case of *Commissioner of Police v Stunt* [2001] EWCA Civ 265 [2001] ICR 989 came to the Court in February 2001. The primary facts, as Simon Browne LJ recorded at §9, were that on 9 July 1993 Mr Stunt was on duty outside the Palace of Westminster when an altercation occurred between him and a Mr Marcus, the headmaster of St. Bede's School, Redhill, who was visiting the House of Commons that day with a mixed party of students from St Bede's and from Tanzania. Whether Mr Stunt gratuitously insulted Mr Marcus or the other way round was hotly disputed but what is undisputed is that Mr Stunt arrested Mr Marcus for an offence under s.4 of the Public Order Act 1986; that shortly afterwards, upon the intervention of a police sergeant, Mr Marcus was "de-arrested", and that Mr Marcus then made a strong formal complaint against Mr Stunt. As the Judge below concisely put it, Mr Marcus "was supported to a greater or lesser extent by members of his party who were present, and by some of the good and the great who were not. PC Stunt's account was supported by a fellow officer". PC Stunt was investigated for criminal proceedings but that was dropped. He then faced the prospect of disciplinary proceedings. However in November 1993 Mr Stunt began a period of sick leave complaining of the mental stress to which he had been subjected by reason of the investigation. He never subsequently returned to police service and the papers relating to the proposed disciplinary hearing were never in the event served upon him. The Medical Referee found PC Stunt he was not entitled to an injury pension and that decision was overturned by Grigson J in the High Court. The Metropolitan Police Authority ("**MPA**") challenged that decision to the Court of Appeal. Hence the first difference between this case and the previous line of cases is that the Medical Referee had decided against PC Stunt, and that decision was quashed by the Judge. In all the previous decisions referred to above the Medical Referee had decided in favour of the officer and the Police Authority had unsuccessfully sought to challenge that decision.

4.111. There were 2 grounds of appeal advanced by counsel for the MPA in *Stunt,* namely (a) an attack on the approach taken in *Kellam* and the cases which preceded that case and (b) that an injury which results from the stress of being subject to disciplinary proceedings cannot be regarded as received in the execution of duty because being subject to the disciplinary proceedings process is not a process involving the execution of the officer's duties. In summary, the officer won on the first point and the MPS won on the second. Thus PC Stunt was not entitled to an injury award.

4.112. On the wider argument, the Court decided that Richards J[19] was right in *Kellam.* Simon Browne LJ said at 34:

> "It follows that I would regard the series of cases concluding with Kellam to have been rightly decided provided only and always that the officer's ultimately disabling mental state had indeed been materially brought about by stresses suffered actually through being at work. In the majority of the decided cases this clearly was so; the significant part played by events at work was a consistent theme"

4.113. That "series of cases" are the cases referred to above, namely *Garvin, Watson, Caldbeck-Meenan, Court, Mountstephen, Pickering* and *Kellam.* Thus, for the purposes of the doctrine of precedent, (and subject to the caveat set out in the above sentence) these cases have been determined by the Court of Appeal to have been correctly decided. The caveat does not seem relevant since an examination of the facts of all the cases show that the psychiatric injury had been caused by stresses "*actually through being at work*".

4.114. However, Simon Browne LJ decided the case in favour of the MPS on the second ground. That argument was characterised as

> " … simply because a police officer, by virtue of his office, is subject to a formal discipline code and procedure, with which he need not cooperate but which he cannot escape, any injury resulting from its operation is necessarily suffered in the execution of his duty"

[19] Later Richards LJ.

4.115. Framed in that way, the answer is plainly that an injury which is caused by subjection to disciplinary proceedings is not an injury which results from the execution of the officer's duties, because the event which caused the illness is not a "work circumstance". Simon Browne LJ summed up his conclusions at §46 saying:

> "Sympathetic though I am to police officers for the particular risk of disciplinary proceedings they run by the very nature of their office, I cannot for my part accept the view that if injury results from subjection to such proceedings it is to be regarded as received in the execution of duty. Rather it seems to me that such an injury is properly to be characterised as resulting from the officer's status as a constable - "simply [from] his being a police officer" to use the language of paragraph 5 of Richards J's conclusions in *Kellam* when pointing up the crucial distinction. This view frankly admits of little elaboration. It really comes to this: however elastic the notion of execution of duty may be, in my judgment it cannot be stretched wide enough to encompass stress-related illness through exposure to disciplinary proceedings. That would lead to an interpretation of Regulation A11 that the natural meaning of the words just cannot bear"

4.116. The Master of the Rolls, Lord Phillips, also concurred and added his explanation as follows:

> "There is one common element in each case in which the injury was held to have been sustained "in the execution of duty". An event or events, conditions or circumstances impacted directly on the physical or mental condition of the claimant while he was carrying out his duties which caused or substantially contributed to physical or mental disablement. If this element cannot be demonstrated it does not seem to me that a claimant will be in a position to establish that he has received an injury in the execution of his duty. Mr Stunt was not in a position to demonstrate the existence of this essential element. For that reason, Dr Mallett was correct to conclude that Mr Stunt's disablement was not the result of an injury received in the execution of his duty. I too would allow this appeal"

The problems left by Stunt and a potential answer.

4.117. This case remains the only case on "*execution of duties*" which has gone to the Court of Appeal. However, whilst the case of *Stunt* is binding on all public law decision makers in this area, it is difficult to interpret because the grounds for holding for the

MPS on the narrow ground were expressed differently by the 3 different judges. The statutory test that the SMP or the PMAB has to apply under Regulation 30(2)(c) is:

> "whether the disablement is the result of an injury received in the execution of duty"

4.118. The difficulties left by the judgments in *Stunt* include the interpretation of causation in the application of this test. One way of looking at the case is that the judgment of Simon Browne LJ in *Stunt* appears to suggest that that police disciplinary proceedings should be looked at independently of the circumstances which gave rise to the disciplinary proceedings. However, such an approach would introduce an entirely novel concept of causation. A former police officer is entitled to an award if the permanent disablement is the "result of" the execution of his duties: see Regulation 30(2)(c). There is nothing in this this part of the statutory test which suggests that the standard caselaw on causation should be excluded from the consideration as to whether a resulting permanent psychiatric disablement has been caused by the execution of the police officer's duties.

4.119. An officer who discharges his police duties entirely properly may nonetheless face the stresses of police disciplinary proceedings, just as much as an officer who breaches his duties and, as a result, faces such proceedings. In the latter case, the PIBR provide that an officer is still entitled to an award unless "*the injury is wholly or mainly due to his own serious and culpable negligence or misconduct*": see Regulation 6(4) PIBR[20]. However, not all police disciplinary proceedings arise out of matters related to the officer's "work circumstances". Some disciplinary proceedings can arise in relation to the conduct of a police officer which is wholly unrelated to work circumstances. An officer may, for example, be subject to police disciplinary proceedings if he is found to have committed a criminal offence such as drink driving. Those disciplinary proceedings would not have arisen out of the execution of his duties and thus he could not realistically claim that a permanent psychiatric disablement that was triggered by the stress of such proceedings was "*an injury received without his own*

[20] See paragraphs 4.13 to 4.17 above.

default in the execution of his duty" (the words of Regulation 11(1) PIBR) or was an injury received "*an injury received in the execution of that person's duty as a constable*".

4.120. If complaints are made about the conduct of a police officer when he is executing his duties, the Chief Constable has a duty to investigate those complaints and, if there is a case to answer, it is entirely appropriate for the Chief Constable too bring disciplinary proceedings against the officer. As the Chief Constable has a statutory duties in this area, it cannot be argued that the commencement of disciplinary proceedings constitutes a sufficient departure from the chain of events to represent a new intervening act or '*novus actus interveniens*'[21]. Thus, in a case where the original conduct of the officer that led to the complaints was conduct in the execution of his duties, it is hard to argue there is any real break in the chain of causation[22]. Thus, applying the test in Regulation 30(2)(c), the illness would be "*the result of*" the execution of the officer's duties.

4.121. Simon Browne LJ was clearly alive to this problem because he said at §41:

> "The second point to note is that the decision is reached quite independently of the circumstances initially giving rise to the complaint - here Mr Stunt's arrest of Mr Marcus. The fact that, justified or not, that arrest was undoubtedly made in the execution of Mr Stunt's duty is, Mr Millar fully accepts, nothing to the point: the complaint could just as well have been one of corruption, say of taking a bribe to overlook an offence, or perhaps of a *failure* to do his duty"

4.122. However, with respect to the Judge, this cannot be a proper answer to the causation issue. The fact that disciplinary proceedings in other cases may be unrelated to the execution of an officer's duties in other cases is not sufficient to justify a break in the

[21] For details of the law on causation in the analogous area of tort claims, see Clerk and Lindsell on Torts (21st Edition) at §2-107ff.

[22] The facts of *R (The Commissioner of Police of the Metropolis) v Police Medical Appeal Board* [2020] EWHC 345 (Admin) are an illustration of this problem. In that case false claims were made about an officer's conduct and these led to criminal proceedings. The officer was rightly acquitted and then exonerated in a civil trial, but a decision to award a police pension was quashed (probably wrongly). The case is returning to the PMAB for a rehearing.

chain of causation in a case where the facts giving rise to the disciplinary proceedings were clearly part of the discharge of the officer's duties. Hence, in order to provide a proper basis for understanding the judgment, it is necessary to look at the other 2 judgments.

4.123. Longmore LJ gave a brief supporting judgment which at §52 referred approvingly to the Home Office Guidance which said:

> "Injury received in the execution of duty is a difficult area, but to all intents and purposes the question for you (viz the medical referee) is whether the injury was caused by or received on police duty as opposed to domestic or other circumstances not related to police duty"

The implication in this sentence appears to be that disciplinary proceedings are "*other circumstances not related to police duty*". But the obvious answer to that point is that police disciplinary proceedings are clearly "*related to*" the discharge of an officer's duties in a case where the disputed facts giving rise to the disciplinary proceedings involved the discharge of the officer's duties. The Judge justifies his conclusions at §54 where he says:

> "54. It was the fact of the investigation and, to an extent, the manner in which it was conducted that gave rise to Mr Stunt's depression. That seems to me to make unassailable Dr Mallett's conclusion that his disablement:
>
> > "is not strictly speaking the result of an injury received in the execution of Mr Stunt's duty but does arrive (sic) as a result of his reaction to the internal proceedings brought against him"

4.124. But again, this does not properly deal with the problem that the disciplinary proceedings arose out of the execution of PC Stunt's duties and thus it is hard to see how they were related to the execution of those duties.

4.125. The only analysis of the Regulations which identifies a logical basis for decision comes in the decision of the Master of the Rolls. Lord Phillips must also have been

alive to the causation problem because he referred to section 1 of the Police Pensions Act 19876 which refers to the "*narrower category of persons who cease to be a member of a police force by reason of injury received **in** the execution of their duty*". It follows that the key word in Regulation 6(1) may be "*in*" the execution of their duties as opposed to "*as a result of*" the execution of their duties. If that is the correct approach, PC Stunt was not eligible for an injury pension because he did not receive his injuries "*in*" the execution of his duties but only received the injuries "*as a result of*" the execution of his duties. That is consistent with the statutory question the SMP has to address under Regulation 30(2)(c) namely "*whether the disablement is the result of an injury received in the execution of duty".*

4.126. The Master of the Rolls carried through this thinking saying that, in all previous cases, there had been

> "An event or events, conditions or circumstances [*which*[23]] impacted directly on the physical or mental condition of the claimant while he was carrying out his duties which caused or substantially contributed to physical or mental disablement".

4.127. This suggests the importation of a "*temporal test*" – it all depends on the time at which the injury was sustained. The Judge thus appears to have been focused on the words in Regulation 11(1) namely that the disablement must be "*a result of an injury received without his own default in the execution of his duty*" and/or the test under Regulation 30(2)(c). Hence, applying this logic, an injury which is not received "*in the execution of his duty"* but is "*received*" at a later date will not attract an award, even if the injury is suffered as a direct consequence of a chain of events which started with the execution of the officer's duties.

4.128. It follows that, in order to qualify for an injury award, the injury must have been "received" as a direct result of the officer's work circumstances. As Richards J observed in *Kellam,* those work circumstances cast a wide net as they include "*events experienced by the officer at work, whether inside or outside the police station or*

[23] The word "which" appears to have been accidentally omitted.

police headquarters, and including such matters as things said or done to him by colleagues at work". However, being subject to police disciplinary procedures arising out of work circumstances is not, for these purposes, treated as an injury received "in" the execution of an officer's duties. Thus, an officer who suffers an adverse psychiatric reaction to police disciplinary procedures does not qualify for an injury pension because his permanent disablement was not received "*in the execution of his duty*" but was received as a result of events that were connected to (and were subsequent to) the execution of his duty".

The potential difficulties in the cases that followed Stunt.

4.129. There are times when a series of legal cases appear to follow a defined pattern, with the cases being decided largely one way, and then there appears to be a sea change in judicial opinion with the result that cases are largely decided in an opposite way. Cases about what is and what is not "*in the execution of duty*" appear to have followed that pattern. There have been a series of cases which up to *Stunt,* largely going in favour of the officer and others after *Stunt* largely going in favour of the PPA. Each of these cases turns on their own individual facts. However, none of these cases create any form of binding legal precedent because they are only High Court decisions. Thus they can be illustrative of the principles set out in *Stunt* and the 5 cases that were specifically approved by the Court of Appeal in that case, but they cannot be finally authoritative.

4.130. The variation in approach is shown by *Clinch v Dorset Police Authority* [2003] EWHC 161 (Admin) where the psychiatric injury which amounted to disablement arose as a result of the officer's disappointment in not gaining promotion. McCombe J held that the relevant events impacted on his condition not while carrying out his duties but when, having sought to obtain other duties, he was disappointed in not being given them. The Judge said "*The injury derived simply from 'being a police officer' and wanting promotion that he failed to obtain. On any ordinary meaning of the regulations that does not, in my view, amount to an injury received in the execution of duty.*" That approach seems to be right because of the need to focus on the injury

having been in the execution of the officer's duties or a reaction to undertaking his duties (adopting the wider definition of "work circumstances" in *Kellam*).

4.131. *South Wales Police Authority v Morgan* [2003] EWHC 2274 (Admin) was a case of a police officer's depression being caused by a number of different factors, some of which were duty related. Stanley Burnton J (as he then was) noted that initially PC LewisDavidson had gone off sick due to stress. However:

> "Mr Lewis-Davidson was a subject of both a child protection investigation and a police investigation into whether he was responsible for an injury suffered by his three-year-old foster son. Those investigations had been prompted by a diagnosis in January 1999 that the child had suffered a non-accidental injury"

4.132. The stresses caused by those investigations aggravated his mental health condition and he was diagnosed as being permanently disabled. The doctor identified initial overwork as the original precipitating cause, but then said that this was aggravated by the stresses of the investigations and financial worries when his pay was halved. The SMP's decision was quashed primarily because the doctor did not address the terms of the statutory test under Regulation 30. However, the case is significant because the Judge separated out the initial and subsequent stresses. He said at §17:

> "The investigations that caused stress to Mr Lewis-Davidson were more clearly not in the execution of his duty than that in *Stunt*. Similarly, in my judgment, depression or stress due to financial worries caused by insufficiency or lack of pay while not working as a police officer is not suffered in the execution of duty"

4.133. However the Judge rightly noted that "*overwork*" was different. He correctly said at §18:

> "Stress and depression caused by over-work as a police officer give rise to different considerations. Depression is an injury within the meaning of that expression as defined in Schedule A. It is accepted that an injury caused by over-work is received in the execution of duty"

4.134. Hence the test under Regulation 8 ought to have been whether "overwork", as the only the permissible cause of PC Lewis-Davidson's final permanent psychiatric illness, was a substantial cause of his disablement. If it was, the officer was entitled to an injury award and if not, he was not entitled to an award. The decision was quashed because the doctor had not addressed that question. The reasoning in *South Wales Police Authority v Morgan* is correct and this is an authority which could assist those making these difficult decisions.

4.135. In *R (on the application of Sussex Police Authority) v Cooling* [2004] EWHC 1920 (Admin) Collins J held that a stress-related psychiatric condition which developed while an officer was suspended from duty could not be regarded as an injury received in the execution of duty. The Judge held at §33 that:

> "when an officer is suspended from duty he cannot be regarded as being on duty"

4.136. Whilst that is correct, in the sense that a suspended officer is not scheduled for duty, it is not correct that a suspended officer is free of all "duties". Hence, a suspended officer who was injured when he intervened on seeing a suspected criminal offence would be acting in the execution of his duties. However, whilst the overall decision in *Cooling* is plainly correct because the depression was caused by the officer's exposure to disciplinary proceedings and not by work related events which preceded his suspension, caution needs to be applied to treating *Cooling* as setting any wider principle.

4.137. However, properly examined, the decision in *Merseyside Police Authority v Gidlow* [2004] EWHC 2807 (Admin) is less satisfactory. The officer, Sgt Reilly-Cooper, faced an accusation of bullying and harassment in relation to a civilian employee. He strongly denied this allegation and it was considered in a grievance procedure which was not resolved quickly. The civilian employee later made an allegation of inappropriate behaviour on the officer's part which he also denied. Sgt Reilly-Cooper then went off

on stress, primarily triggered by the stresses of the allegations made against him. The Judge analysed the cases and then said at §39:

> "The essential point derived from *Stunt* appears to me to be that an officer's psychological reaction to a complaint against him is not an injury received *in the execution of his duty*. The words must be given some meaning; as has been held in both *Kellam* and *Stunt*, they do not mean the same as "while on duty". The second point is this: that a psychological reaction to circumstances on duty is not necessarily suffered in the execution of (and perhaps not while on) duty"

4.138. That passage seems to misunderstand the fifth point in *Kellam,* as approved in *Stunt* namely that the "*duties*" of a police officer extend to all his "*work circumstances*" and that includes "*all aspects of the officer's work - to the officer's 'work circumstances'*". Thus duties specifically includes all "*events experienced by the officer at work, whether inside or outside the police station or police headquarters, and including such matters as things said or done to him by colleagues at work*". Discussions around a grievance brought by a colleague and the officer's reaction to those discussions are things said to the officer at work and thus must come within the scope of "*work circumstances*". Properly examined, the distinction is not between different types of events which happen in the police station but between events which happen in the working life of a police officer and things which happen at a later time (such as disciplinary proceedings)[24]. Whilst it may be difficult to contrast disciplinary and grievance procedures, an officer who reacts badly to things said to him by other officers is plainly entitled to an award under *Kellam (*as the facts of *Mountstephen* illustrate). It is hard to see why the right to the award should be removed simply because the things said to him by other officers are crystallised within a grievance procedure as opposed to just being things which are "*said or done to him by colleagues at work*". Thus *Gidlow* is a non-binding case which should be treated with some caution.

4.139. In 2004 the Scotland "Outer House" (equivalent of the High Court) determined *Lothian and Borders Police Board v MacDonald*: 14 October 2004 [P902/03]. In that case the officer suffered injury as a result of his frustration at not being able to

[24] See paragraphs 4.125 to 4.128 above for an explanation on this point.

continue with the kind of work he had been doing. He had been involved in research based work with travellers and had, in connection with that attended conferences and symposia and had developed an interest in this area of policing. However his talents were needed elsewhere and he found that decision difficult to accept. The judgment recorded the SMP's conclusion as follows:

> "It is my opinion that Mr MacDonald developed a depressive illness of moderate severity starting in mid-1999 and resolving by the beginning of 2002. He would appear to have been of good character pre-morbidly, with no previous history of depressive illness, although there was a family history of this. It is my view that the cause of his depression was the stress he faced at work. This had been gradually building up from the early 1990s and revolved around his perception that his abilities were not being recognised, his research was undervalued and work related to his research (such as going to conferences) was being obstructed. Consistent with his analysis is the fact that his depression resolved, without the use of antidepressant medication, spontaneously after he retired."

4.140. Lord Reed held that this did not fall within the definition of execution of duty. He said at paragraph 99:

> 'A distinction can be drawn, and ought to be drawn, between stresses encountered while the officer is at work which arise out of the execution of his duties as a constable (such as attending the scene of a crime, questioning witnesses, and arresting suspects), and stresses which are experienced while at work but do not arise out of the execution of his duties (although they may be connected with his duties). An officer who feels stress while at work because he thinks that he is in a dead-end job (as in *Clinch*), or because he thinks that he is being "marginalised" (as in *Ward* [*Crawford*]), or because he thinks that his abilities are not being recognised, or because he thinks that his work is undervalued, or because he thinks that he ought to be allowed to attend conferences instead of carrying out routine duties (as in the present case), does not suffer stress as a result of anything arising out of the execution of his duties, but as a result of his feelings about the duties to which he has been allocated or his concerns about the progress of his career.' "

4.141. There are 3 problems with that analysis. First, if that was correct, a pension should have been denied to the police officer in *Court*. However that case was specifically approved by the Court of Appeal in *Stunt* and thus, at least in England this approach

cannot be good law. Secondly, it is inconsistent with the natural meaning of the words of Regulation 6(2)(a) which provides any injury received "*injury .. while on duty*" is required to be "*treated as received by a person in the execution of his duty as a constable*". Thirdly, the events that a police officer experiences at work and which may lead to an injury do not fall into the neat categories identified by the Judge. Hence, the distinctions drawn in *MacDonald* appear to rest on a misunderstanding of the effect of *Stunt* and the case should be treated with caution.

4.142. A further case was *R (Edwards) v Police Medical Board* [2005] EWHC 1780 (Admin) where the officer discovered that he was to be returned to uniform duties as a result of the application to him of a 'tenure' policy adopted by the Derbyshire Police Authority. Under the policy officers served for 12 years in CID and were then returned to uniform duties. Although he continued to work for 5 further years, he had increasing mental health difficulties and was retired. The doctor's report said:

> "The event which precipitated Mr Edwards depressive illness was the notification in 1994 that, in accordance with the new Force tenure policy, he was to be transferred from CID duties back to uniform duties. The manner in which this was communicated to him caused him anger and distress but this was a secondary matter. If the subject matter of the communication had been different then it would have been unlikely to have caused a depressive illness.
>
> The Claimant's 'loss of tenure and transfer back to uniform duties' did not arise in the execution of the Claimant's duty. It was the application to him of a management process to which he was 'subject by virtue of being a Police Officer within the Authority"

4.143. That decision was challenged by the officer. The appeal failed but the Judge followed *McDonald* in saying that no pension was due. He said at §16:

> "In my judgment at the relevant time the Claimant, while he was on duty, was not acting in the execution of his duty. When he received the all important notification he did so as a police officer, but not in the execution of his duty. He did not sustain injury because of being at work but because of the effect of the communication. The effect

upon the Claimant would have been the same if he had received the information by post while he was off duty at home"

4.144. The case thus turned on the proposition that an officer can be "*on duty*" but simultaneously not be "*acting in the execution of his duty*". That appears to be plainly wrong in principle because it offends against the deeming provision in Regulation 6(2)[25].

4.145. A further set of facts was examined in *Merseyside Police Authority v Police Medical Appeal Board & Ors* [2009] EWHC 88 (Admin)[26]. In that case there were 2 officers who had been awarded injury pensions. The Police Authority challenged both awards. Prior to dealing with the facts Cranston J expressed his unease at the way some decisions had been reached in other cases. He said at §27:

> "For my own part I confess to having difficulty with the distinction drawn in some of the cases between being on duty and being in the execution of duty. In some cases it appears to me that the distinction will be the rationalisation of a particular conclusion rather than a useful tool for analysis. What can be said is that not everything which happens to an officer on duty resulting in an injury involves an injury caused in the execution of duty. The best examples from the case law are probably the depression caused by being in a dead end job or the receipt of disappointing information about future prospects, which may not involve a sufficient causal link. Of course when one is no longer working as a police officer and injury is caused, that cannot be in the execution of duty. There is no authority for the proposition that an injury resulting from the application of a management process cannot be received in the execution of duty. Stress related illness caused by failure properly to supervise or support may qualify. Psychiatric injury from stresses at work, bullying or harassment can be treated as an injury in the execution of duty. So too depression brought about by the appraisal process: Lothian and Borders Police Board v Ward [2004] SLT 215. Generally speaking, however, the authorities indicate that psychiatric injury from exposure to disciplinary or grievance proceedings, or failed promotion attempts, will not. However, that will not be the invariable outcome, as Stanley Burnton J acknowledged in Gidlow. One can conceive of situations where, for example,

[25] There is a difficult passage in the judgment at §9 which states "*Mr Westgate does not rely on the further definition contained in regulation A11(2) because of uncertainty as to when the injury was sustained*". It is not clear if this was accurate but, having made the findings that the Judge did about the cause of the illness, Regulation 11(2)(a) (now Regulation 6(2)(a)) was then engaged.

[26] See http://www.bailii.org/ew/cases/EWHC/Admin/2009/88.html

> psychiatric injury is caused by a baseless allegation being brought against an officer by another member of the force, or by a member of the public. It must be that police officers defending themselves in those circumstances have a strong case for saying that they are acting in the execution of duty because, in a sense, they are defending not only their own integrity but that of the force as a whole"

4.146. There is a good deal of perceptive analysis in this passage. However, the argument that an injury caused by a "*baseless allegation being brought against an officer by another member of the force, or by a member of the public*" could lead to an award whereas an allegation that was not "*baseless*" may not lead to an award does not reflect the scheme of the Regulations. It is inconsistent with the provisions in Regulation 6(4) about pensions only being removed if the conduct of the officer amounts to "*serious and culpable negligence or misconduct*".

4.147. In order to understand this case, it is necessary to say a little about the facts. In the case of PC McGinty these were as follows:

> "In March 2002 Mr McGinty was injured from a fall when he was exercising his two police dogs. He was on annual leave at the time. He had released the dogs from his vehicle off the lead and to catch up had started to jog, his normal practice as it enabled him to maintain fitness while exercising them. He suffered a broken foot and ankle. Although he returned to work in a different capacity in September that year, he failed to make a full recovery. He developed a complex regional pain syndrome, a recognised complication with this kind of injury, and he also suffered reactive depression. An occupational health physician, acting as a selected medical practitioner, certified that Mr McGinty was permanently disabled from the ordinary duties of a police officer but that his disablement was not the result of an injury received in the execution of duty. McGinty appealed that decision"

4.148. His appeal was allowed by the PMAB and the Police Authority challenged the PMAB decision. The Judge held that exercising police dogs was part of his duties and so an injury sustained whilst undertaking that task was an injury in the execution of his duties.

4.149. The second, joined case concerned an officer who, in summary, had experienced a range of management failings, as he saw it, and reacted to them by developing a psychiatric illness. He was awarded an injury pension but this was challenged by the Police Authority. Part of his case was about restrictions which were imposed on him whilst he was facing disciplinary proceedings. The Judge said:

> "Mr Hudson's case was that he suffered detriment as a continuing result of the restrictions imposed on him as to where he was to work. In my view it is not necessary to consider why those restrictions were imposed any more than it would be necessary to consider why an officer had been allocated to duties involving physical danger. Cases like Stunt relate to situations where the disciplinary action taken is not itself part of the officer's duty. Here the restrictions went to the heart of how Mr Hudson was to execute his duties"

4.150. That approach is plainly correct because this is primarily a "no fault" scheme. If the PPA want to rely on the fault of the officer, the test is whether there was "*serious and culpable negligence or misconduct*" on the part of the officer: see Regulation 6(4). Part of the reason also related to the way the Force handled a grievance procedure. On this point the Judge said at §53:

> "The next category relates to grievance and disciplinary procedures. For example, the eighth matter was the failure to investigate a grievance Mr Hudson lodged. The Police Authority invokes Gidlow. However, in that case Stanley Burnton J did not hold that an officer's reaction to a grievance procedure can never be an injury received in the execution of duty. I have given the example of the baseless allegation which triggers a grievance or disciplinary proceeding. In this case the Board regarded the allegation against Mr Hudson as false, something that should have been dealt with quickly but was not. Senior officers appeared to line up in favour of the woman police officer, not Mr Hudson. In my view the Board was entitled to conclude, in the special circumstances of Mr Hudson's case, that the failure to pursue his grievance was part of a pattern of conduct by superior officers directly affecting the way they dealt with him"

4.151. Thus this judgment confirms the observations above that *Gidlow* is a case which should be treated with some caution.

4.152. Next, reference should be made to *R (Chief Constable of Avon and Somerset) v PMAB* [2019] EWHC 557 (Admin). This was a case where Mrs Justice Lambert asserted there not multiple strands authority[27]. The Judge also said at §24(b):

> "However, it is clear from all of the authorities that for an injury to be received by an officer in the execution of duty there must be a substantial causal connection between the injury and the execution of duty and it is not sufficient that the officer is "on duty." The connection must be with his service as a police officer. The injury must arise out of duties the officer is undertaking or the conditions or circumstances in which he was undertaking those duties"

4.153. That does not appear to be a correct statement of the law because it fails to pay proper attention to the deeming provision in Regulation 6(2). However it may well be that the overall decision in that case was correct in that the PMAB had not properly addressed the statutory questions that they were required to address and thus the above observation is an *obiter dictum* which should not be followed.

The effect of the deeming provisions in Regulation 6(2).

4.154. Regulation 6(2) introduces a series of mandatory deeming provisions which expand the circumstances in which an injury received by an officer counts as an injury received in the execution of duty under the Regulations. The legal effect of a deeming provision is to require a decision maker to treat a matter as established in defined circumstances irrespective as to whether, absent the deeming provision, that matter would (in fact) otherwise be established. Thus, to take an example away from injury pensions, a person in need of social care who is placed by one local authority to live in the area of another local authority is "deemed" to continue to live in the area of the placing local authority. The true place that the individual lives because a statutory fiction is created that the individual continues to be ordinarily resident in the area of the placing local authority[28]. The effect of Regulation 6(2) PIBR requires decision makers (notably the SMP and the PMAB) to treat an injury as being received in the

[27] See paragraph 4.69 above.

[28] This statutory fiction can lead to surprising results: see for example *R (Cornwall Council) v Secretary of State for Health and Somerset County Council* [2015] UKSC 46.

execution of a police officer's duties if any of the factual circumstances set out in Regulation 6(2) are established. It follows that it is irrelevant whether, aside from Regulation 6(2), the factual circumstances would have led to a decision that the officer's injury would have been treated as being received by in the execution of his duty as a constable. If the case comes within Regulation 6(2), that is an end of the matter because the deeming provision applies and the officer's injury must be treated as being received by in the execution of his duty as a constable

4.155. Regulation 6(2) provides:

> "(2) For the purposes of these Regulations an injury shall be treated as received by a person in the execution of his duty as a constable if—
>
> (a) the member concerned received the injury while on duty or while on a journey necessary to enable him to report for duty or return home after duty, or
>
> (b) he would not have received the injury had he not been known to be a constable, or
>
> (c) the police pension authority are of the opinion that the preceding condition may be satisfied and that the injury should be treated as one received in the execution of duty, or
>
> (d) . . .."

4.156. The important word in the opening line of Regulation 6(2) is "shall". This means that the decision maker has no choice. An injury of any type (i.e. a physical or psychological injury) which is "*received*" while the officer is "*on duty*" becomes a duty injury for the purposes of the Regulations. Thus an officer who slips over in a canteen on a meal break during a shift and injures his back must be treated as suffering a duty injury. If the officer's shift is over, the officer is no longer on duty and so the statutory deeming provision does not apply.

4.157. The operation of the first deeming provision is illustrated by a recent unreported case involving a Merseyside officer who was on duty on the night that a police

colleague was tragically killed by an offender[29]. The officer was on duty searching for the same individual and suffered serious psychological trauma after being told that her colleague had died. The medical evidence clearly focused the cause of her mental illness on the particular incident, and the way that information about her colleague's death was relayed to her later during that shift. She was awarded an injury pension and this was challenged by the PPA. Permission to proceed to judicial review was refused on the ground that there was no arguable case that the deeming provision in Regulation 6(2)(a) was not engaged. The argument that, when being told of her colleague's death, she was on duty but not acting in the execution of her duties was rejected by both the High Court (Dingemans J[30]) and in an application for permission to appeal to the Court of Appeal (Lewison LJ). Thus, by implication, observations in cases such as *Middleton* that an officer can be on duty but not acting in the execution of his duties appear to be unreliable.

4.158. The presumption under Regulation 6(2)(a) also applies if the officer received the injury "*or while on a journey necessary to enable him to report for duty or return home after duty*". If the journey is straight from the police station to the officer's home, it is plain that an injury sustained on that journey will qualify for an injury award. There have, however, been some difficult cases where the officer diverted during the journey home and then suffered the injury. It appears that the deeming provision still applies as long as the officer is still "returning home" after duty.

4.159. The deeming provision in Regulation 6(2)(b) deems a police officer to be acting in the execution of his duties if "*he would not have received the injury had he not been known to be a constable*". This provision was originally introduced into the Police Pensions Act 1921 to respond to *Monk* v *Strathern* (1920) 2 SLT 364 where a Mr Monk's conviction was overturned for assaulting a police in the execution of his duties was overturned because the assault happened when the officer was returning home

[29] This is a case where the challenge by the PPA failed to gain permission. Accordingly the case is not an strictly authority which can be relied upon. However the facts are explained as an illustration as to how the statutory provisions work and an indication as to how they are considered by the Courts.
[30] Now Dingemans LJ.

after a shift. The argument was that the officer's shift had finished and hence the officer could not be acting "in the execution of his duties" when he was assaulted. Hence a wholly unmeritorious defence succeeded! But the wording in this part of Regulation 6(2) does not only cover that type of circumstance. It covers any situation where it can shown that a substantial cause of the injury (on the balance of probabilities) would not have occurred if the former officer was had not been known to be a constable. That should cover a number of different potential circumstances.

4.160. Finally, the deeming provision in Regulation 6(2)(c) can be significant. This provides:

> "For the purposes of these Regulations an injury shall be treated as received by a person in the execution of his duty as a constable if— … the police pension authority are of the opinion that the preceding condition may be satisfied and that the injury should be treated as one received in the execution of duty"

4.161. Decision making on police pension matters is taken by the PPA [see Regulation 30(1) PIBR]. However the PPA is required to delegate decision making to the SMP (or on appeal to the PMAB). The medical authority act as a delegated decision maker on behalf of the PPA, as confirmed in *R (Crudace) v Northumbria Police Authority* [2012] EWHC 112 (Admin). Thus a medical authority which considers that an officer "may" be eligible for an award (presumably depending on facts which may be difficult to proven either way or medical uncertainties) has a discretion to decide that the injury to the former officer should be treated as a duty injury and thus the former officer is eligible for an award. Although the discretion is expressed to be exercised by the PPA, logically it appears that the only party that can exercise this discretion is the medical authority because one a decision is made by the medical authority that an officer is, or is not, eligible for an injury pension, that decision is final: see Regulation 30(6) PIBR.

The problem of "perception" versus reality in execution of duty cases which lead to psychological injuries.

4.162. PPAs, SMPs and PMABs dealing with stress caused by work circumstances often resort to the form of wording that the former officer's illness was caused by his

"*perception*" of the way he was treated or his "*perception*" of his work circumstances. In one sense, this is a correct approach. Policing is a stressful job and every person will feel the stresses differently. Injury pensions are a "no fault" pension right and thus the important thing is not whether a person of reasonable fortitude would have developed a psychiatric condition in response to the work circumstances but whether the particular former officer did so. The fact that others who faced the same pressures did not develop a psychiatric condition in response to the same work circumstances is irrelevant. The question is how those stresses impacted on the mind of the individual officer. That impact is mediated through the officer's perception, and it matters not whether that accords with the perception of others or not. It also does not matter, as the facts of *Mountstephen* make clear, whether that reaction is reasonable or not or whether it was foreseeable that the officer would develop a psychiatric condition as a response to the work circumstances. Thus, applying this approach, it is the perception of the individual officer that matters.

4.163. However, unless the use of the word "*perception*" is properly explained in a decision, it can become an unfortunate phrase which can lead to legally incorrect results. Whilst someone's perception of events may be accurate, used in an unqualified manner the word "*perception*" can suggest that there is a difference between the "*perception*", as experienced by the police officer, and "*reality*" as experienced by all other officers. Once that step is taken, the medical authority can be reluctant to award the former officer a pension based on his idiosyncratic psychological reaction to events such an appropriate exercise of management authority or the normal stresses of the role of being a police officer. The answer to this concern is that the police injury system is a "no fault" system. It does not require the exercise of management functions to have been undertaken badly in order to produce an adverse psychological reaction on the part of a police officer which may lead to a psychiatric illness. The senior officers in *Mountstephen* may have been entirely justified in concluding that the evaluation system proposed by Sgt Mountstephen was unaffordable and Sgt Mountstephen's adverse reaction to that decision may have been both unreasonable and unpredictable. If the police injury system was based on a fault concept, that

would be a complete answer to the claim that Sgt Mountstephen had developed a permanent psychiatric illness as a result of work circumstances. Whilst the unreasonable, overbearing or insensitive exercise of management functions in the police (as elsewhere) make it more likely that officers will react adversely, a medical decision maker would err in law if it focused on the reasonableness or otherwise of the exercise of police management functions or the reasonableness or otherwise of the officer's reactions that process. The only legally relevant question is the one identified by Lord Phillips in *Stunt*, namely was there "*an event or events, conditions or circumstances [which] impacted directly on the physical or mental condition of the [serving police officer] while he was carrying out his duties which caused or substantially contributed to physical or mental disablement*". If there was not, the officer is not entitled to an injury pension. If there was, the officer may be entitled to an injury pension as long as the disablement did not arise as result of his own default[31].

4.164. This distinction was examined by Cranston J in the *Merseyside* case where PC Hudson developed a psychiatric condition in response to a large number of work related events. Cranston J rightly said that they needed to be looked at as a whole, with each being part of the overall effect. He said at §50:

> "What on my understanding Mr Hudson was doing was putting forward the 21 matters as evidence of an overall pattern of treatment in connection with his work. That, in fact, is the way they should have been regarded. Taken overall those matters, and their "drip drip" effect as the Board graphically put it, were capable of causing injury in the execution of his duty"

4.165. Part of the "work circumstances" relied upon by PC Hudson were restrictions imposed on him as part of a disciplinary process. The Police Authority understandably said his reaction to those restrictions was no a reaction to permissible work circumstances. The Judge disagreed saying:

[31] A concept which is narrowly defined: see paragraph 4.13 above.

> "The first could be regarded as in a "work restrictions" category. The submission of the Police Authority, in relation to the restrictions imposed on Mr Hudson, is that they arose because Mr Hudson was under investigation and was required to obey lawful orders. Therefore they did not arise from the execution of his duty as a constable. In my view this fails to recognise the distinction between on the one hand an obligation to obey lawful orders, which is an incident of being a police officer and on the other, the receipt of orders and the performance of work which officers are ordered to perform, which is part of the execution of their duty. Mr Hudson's case was that he suffered detriment as a continuing result of the restrictions imposed on him as to where he was to work. In my view it is not necessary to consider why those restrictions were imposed any more than it would be necessary to consider why an officer had been allocated to duties involving physical danger. Cases like *Stunt* relate to situations where the disciplinary action taken is not itself part of the officer's duty. Here the restrictions went to the heart of how Mr Hudson was to execute his duties"

4.166. Hence, whilst the fact that an officer is exposed to the stress of police disciplinary proceedings is not the execution of his duties, if restrictions are placed on the way the officer can work whilst he is subject to police disciplinary proceedings, his reaction to those restrictions can count as permissible "work circumstances", and thus if these restrictions trigger a permanent psychiatric condition, an injury pension will be payable. It might be argued that this analysis involves distinctions which are so fine that they are barely understandable.

R (The Commissioner of Police of the Metropolis) v Police Medical Appeal Board: A judgment that should be treated with considerable caution.

4.167. The final (and most recent) case on when an officer is or is not acting in the execution of his duties to consider is *R (The Commissioner of Police of the Metropolis) v Police Medical Appeal Board* [2020] EWHC 345 (Admin)[32]. Although this is a 2020

[32] I was counsel for the officer in this case. The facts of this case were somewhat extraordinary. PC Brown all was involved in an incident whilst on duty on 1 June 2007 when he was part of a team of officers that stopped and arrested three young men. It was subsequently alleged that the officers had acted improperly in conducting the arrest and subsequent detention of the young men. Their complaints were partially supported by one of the officers, who appears to have had unrelated concerns about another officer in the group, but not PC Brown. PC Brown and others were reported to the MPS PSD who investigated and recommended charging the police officers with a range of criminal offences including misconduct in public office. The officers pressed for disclosure of the CCTV footage at the scene and at the police station. The PMAB found that the disclosure officers had withheld exculpatory CCTV footage and only disclosed edited versions of remaining footage which supported the prosecution case. Full disclosure of all CCTV footage

case, it is a decision of a Deputy High Court Judge as opposed to being a decision of a full High Court Judge. I have already expressed concerns about part of the judgment but there are a large number of other areas where this decision is of questionable validity.

4.168. Having undertaken a (hopefully) comprehensive analysis of the caselaw[33] and thus exposed some of the problems in some cases, the faults in this recent approach are reasonably straightforward. The Judge appears to have misunderstood the relevant case law when he expressed his conclusions at §53:

> "The authorities demonstrate that it is not the type of activity (such as a disciplinary process per se) which is determinative of whether an injury is received in the execution of duty, but rather, for a psychiatric injury, whether the event is directed at the police officer (e.g. not being vindicated under a grievance procedure) or a reaction to the circumstances in which the police officer exercised his or her duty (e.g. the imposition of working practices). The former would not support an award, but the latter would. For example, if a culture of bullying is allowed to develop then a police officer who suffers psychiatric illness as a result of that culture will meet the test as that will affect his/her work circumstances. However, a psychiatric reaction to any failings by his/her employer to investigate any complaints brought by that officer about the bullying will not. The distinction may be a fine one"

4.169. Whilst this passage is critical to the judgment, the above analysis of the facts of the previous cases shows it is inconsistent with the cases relied on by the Deputy Judge. It

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was ordered immediately before the trial. The disclosure led to criminal proceedings being dropped against one officer and the eventual acquittal of all the officers. The IPCC then produced a damning inquiry report into the conduct of the PSD officers recommended gross misconduct disciplinary proceedings. Mr Brown perceived the MPS to be dragging their feet on these proceedings and on proceedings against the single supporting officer, whose evidence was shown to be substantially inaccurate as a result of the CCTV disclosures. The young men then sued the MPS. The MPS had decided not to bring disciplinary proceedings against PC Brown but nonetheless made him a Part 20 defendant to the action because he refused to drop tribunal proceedings seeking compensation arising out of the defaults of the CCTV officers. This action succeeded against one officer but was dismissed in its entirety against PC Brown was exonerated. However, by this stage, PC Brown had developed a serious psychological condition and was psychologically unfit to continue as a police officer. The PMAB decided that his permanent illness was not caused by the criminal proceedings but by the failure of the MPS to put right the wrongs made in this case by pursuing the other officers to disciplinary proceedings and by the decision to make him a Part 20 defendant to the civil action. The PMAB awarded him an injury pension but this was overturned in judicial review proceedings. The matter is presently waiting to return to the PMAB.

[33] Probably in more depth than is permissible in a court case.

also seems unworkable in practice and I would suggest that, as an approach, it is unlikely to be followed in further cases. It suggests that triggering events which lead to a police officer developing a psychiatric illness should be divided into two categories, namely:

a) Events which are "*directed at the police officer*" which will never result in an award because the resulting mental illness will not be an injury received by the officer in the execution of his or her duties (**Category 1**); or

b) A "*reaction to the circumstances in which the police officer exercised his or her duty*" which may lead to an award because the resulting mental illness will be an injury received by the officer in the execution of his or her duties (**Category 2**).

4.170. A central problem with this analysis, which the Judge did not address, is that this approach is inconsistent with the existing authorities. It should not be relied upon by medical decision makers in subsequent cases for at least 5 reasons:

a) First, the approach cannot be drawn from cases that were approved in *Stunt* and followed that case. Under the Judge's approach, a police officer who responded to a generally bullying atmosphere by developing a psychiatric injury would attract an award but an officer who had been the subject of directed personal bullying at him or her would not. That is not only illogical but is not how previous cases have been decided. The cases show that officers who are the victims of directed wrongdoing which leads to a psychiatric illness qualify for an award. Bullying which is directed at an individual officer has led to an award: see Cranston J in *R (Merseyside Police Authority) v Police Medical Appeal Board & Ors* [2009] EWHC 88 (Admin). Stress from actions directed towards an officer in his role which leads to a psychiatric illness also leads to an injury award: see *Sussex Police Authority v Pickering* 10 May [1996] Brooke J at [1996] Lexis Citation 1669 (cited to the Judge). Sexist actions by police officers

against a female officer: *R (Court) v Derbyshire Police Authority* [11 October 1994] Divisional Court of McCowan LJ and Gage J reported [1994] Lexis Citation 1978, also cited to the Judge. Further, an officer who develops a psychiatric injury as a result of the racist behaviour of other officers directed at him can qualify for an injury pension: see *R (Michaelides) v Police Medical Appeal Board* [2019] EWHC 1434 (Admin).

b) Secondly, this approach proposes a "fine" distinction which cannot be drawn out of the wording of the Regulations. That type of fine distinction was rejected by the Court of Appeal in *Stunt.* A similar "fine distinction" was rejected in Stunt at §39 where Simon Browne criticised the Commissioner's submissions on the wider argument saying "*a police officer who contracts asbestosis through exposure to asbestos dust during his police service obtains no award: he does not qualify under regulation A11(2)(a) because the time at which he contracted it cannot sufficiently be identified; nor under regulation A11(1) because merely breathing in and out is not action in the execution of his duty. That cannot be right*".

c) Thirdly, the circumstances in which a police officer exercises his or her duties can include his or her reaction to both a general bullying culture and specific examples as to how that culture works itself out in bullying directed to him. The stress caused by working in a Force that fails to obey the law can be both a general reaction and how this culture impacts on the individual officer and those around the officer. Thus the claimed distinction between the Judge's category 1 and category 2 is thus totally unworkable.

d) Fourthly, this approach introduces a different test for psychiatric and physical injuries, which is inconsistent with both the wording of the Regulations and existing authority. The term "*injury*" is defined in the Schedule to the Regulations to include any injury or disease, whether of body or of mind. In *R v Caldbeck-Meenan ex parte Cleveland Police Authority* [1994] Lexis Nexis

Citation 4481 MacPherson J said that the test for the development of a psychiatric illness was the same test as the test for the development of a physical illness, as established by the Court of Appeal in *Police Authority for Huddersfield v Watson* [1947] 1 KB 842. That test was picked up and repeated by Richards J in *R v Kellam ex parte South Wales Police Authority* [2000] ICR 632 at 644F ("***Kellam**"). The judgment in *Kellam* was specifically approved by the Court of Appeal in *Stunt* at §34. A police officer who is injured in an assault by a prisoner who directs his violence to the officer is just as much entitled to an award as a police officer who was not the intended subject of the violence but is injured when he seeks to restrain the prisoner. Hence, it is wrong in principle to introduce a new form of test for the development of a psychiatric injury which is inconsistent with the test for the development of a physical injury; and

e) Fifthly, this limitation is not the test established by the previous authorities relied upon by the Judge or consistent with the facts of those cases. The term "*execution*" of duties means "*the fulfilment or discharge of a function or office*": see *Stunt* at §32. Thus, any psychiatric illness which develops whilst the officer is fulfilling or discharging his duties is capable of being "*received*" by the officer in the execution of his duties. In *Kellam* Richards J decided the causes of the officer's stress resulted from circumstances "*which Mr Milton encountered as a serving police officer*". Absent discipline or grievance cases, that degree of connection was held to be sufficient to lead to an award.

4.171. The regrettable incorrectness of this approach is also shown by the facts of one the cases which were specifically approved by the Court of Appeal in *Stunt* was *R v Fagin and another ex parte Mountstephen* [1996] Lexis Citation 1894 ("*Mountstephen*"). If the Judge was correct in his analysis in this case, Sgt Mountstephen would not have received an injury award. However, he did and this was specifically approved by the Court of Appeal. It also comes within Lord Phillip's dictum. Thus, although it is perhaps unfortunate that the Court of Appeal will not have the chance to overturn this plainly misguided decision, medical decision makers need to be extremely cautious

before relying upon it. Along with a number of other legal precedents, medical decision makers can be reassured that a single High Court case creates no binding precedent.