Neutral Citation Number: [2018] EWHC 952 (Admin)

Case No: CO/3494/2017

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN MANCHESTER

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/04/2018

Before :

THE HON. MR JUSTICE LANE

Between :

- -

The Queen (on the Application of) Mark Evans	**Claimant**
And	
Chief Constable of Cheshire Constabulary	**Defendant**
And	
Police Medical Appeal Board	**Interested Party**

- -
- -

Mr David Lock QC (instructed by **Haven Solicitors Ltd**) for the **Claimant**
Mr Graham Wells (instructed by **Legal Services, Cheshire Constabulary**) for the **Defendant**

The interested party did not appear and was not represented

Hearing date: 14 March 2018

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Judgment Approved

MR JUSTICE LANE :

A. Glossary

1987 Regulations	Police Pensions Regulations 1987
2006 Regulations	Police (Injury Benefit) Regulations 2006
Doubtfire	R (Doubtfire & Anor) v Police Medical Appeal Board [2010] EWHC 980 (Admin)
injury pension	A pension payable to former police officers who have become disabled as a result of injuries sustained in their service as a police officer, now awarded under the 2006 Regulations. This can supplement the police ill-health pension which is payable to disabled former police officers who are required to retire on the grounds of their disablement.
Laws	R (Laws) v Police Medical Appeal Board & Anor [2010] EWCA Civ 1099
PPA	The Police Pensions Authority, a statutory post under the 1987 Regulations and the 2006 Regulations generally held by the relevant Chief Constable.
SMP	The selected Medical Practitioner, namely a doctor appointed by the PPA under either the 1987 Regulations or the 2006 Regulations as a medical decision-maker.
PMAB	The Police Medical Appeal Board, which is the appellate body from an SMP under 1987 Regulations and the 2006 Regulations.
medical authority	The term used in the 1987 Regulations and the 2006 Regulations to cover either an SMP or the PMAB.

B. Introduction

1. The claimant, born in 1968, began service as a police officer with the Cheshire Police Force in October 1988. He suffered a number of injuries and was involved in several traumatic events during the period of his service.

2. In 1993, the claimant assisted a child abuse victim who had doused himself with petrol and was trying to self-immolate. The claimant successfully intervened but was informed that the individual had hanged himself a month later.

3. In July 2004, the claimant was driving a police car when the driver of another vehicle deliberately collided with the claimant, causing him a number of injuries.

4. In October 2004, the claimant was on duty in a stationary police car when a vehicle collided with it from the rear, at a speed of approximately 40 miles per hour. This collision also caused the claimant injury.

5. From October 2004, the claimant suffered psychological symptoms. He was absent from work on medical grounds, returning in September 2005, at which point he undertook non-operational clerical roles for the defendant.

6. In December 2015, the defendant required the claimant to retire as a police officer, on the ground of permanent disablement.

7. As a person who has been required to resign as a police officer by reason of permanent disability, the claimant is entitled to a disability pension, which he draws. There is, however, an additional pension, known as an injury pension, which is payable to those whose disablement is the result of injury received in the execution of duty. The claimant applied for an injury pension, but his application was rejected.

8. It is this rejection, which was taken on the defendant's behalf by the PMAB on 31 October 2016, which is challenged in these proceedings.

9. The central question is whether the PMAB gave proper effect to the decision of the SMP, Dr Hutton, of 27 June 2007, in which Dr Hutton found that the claimant was disabled from performing the ordinary duties of a member of the Police Force, by reason of (i) mechanical back pain; and (ii) post-traumatic stress disorder; and that both of these disablements were "likely to be permanent".

10. The resolution of the claimant's challenge depends upon the construction of the 1987 Regulations and the 2006 Regulations; and a consideration of the judgment of the High Court in ***Doubtfire*** and of the judgments of the Court of Appeal in ***Laws.***

11. Mr Lock QC and Mr Wells presented their respective arguments with clarity and rigour. I am grateful for both their oral and written submissions.

C. The 1987 Regulations

12. The relevant provisions of the 1987 Regulations are as follows:-

> "A12. **Disablement**
>
> (1) A reference in these Regulations to a person being permanently disabled is to be taken as a reference to that person being disabled at the time when the question arises for decision and to that disablement being at that time likely to be permanent.
>
> (1A) For the purpose of deciding if a person's disablement is likely to be permanent, that person shall be assumed to receive normal appropriate medical treatment for his disablement, and in this paragraph "appropriate medical treatment" shall not include medical treatment that it is reasonable in the opinion of the police pension authority for that person to refuse.
>
> (2) Subject to paragraph (2A), disablement means inability, occasioned by infirmity of mind or body, to perform the ordinary duties of a member of the force, except that, in relation to a child it means inability, occasioned as aforesaid, to earn a living.
>
> (2A) In the application of paragraph (2) to a specified NCA officer, the reference to "the ordinary duties of a member of the force" shall be construed as a reference to the ordinary duties of a member of the home police force in which the person last served before becoming a specified NCA officer.
>
> (3) Where it is necessary to determine the degree of a person's disablement it shall be determined by reference to the degree to which his earning capacity has been affected as a result of an injury received without his own default in the execution of his duty as a member of a police force:
>
> Provided that a person shall be deemed to be totally disabled if, as a result of such an injury, he is receiving treatment as an in-patient at a hospital.
>
> (4) Where a person has retired before becoming disabled and the date on which he becomes disabled cannot be ascertained, it shall be taken to be the date on which the claim that he is disabled is first made known to the police pension authority.
>
> (5) In this regulation, "infirmity" means a disease, injury or medical condition, and includes a mental disorder, injury or condition.

...

A20. **Compulsory retirement on grounds of disablement**

Every regular policeman may be required to retire on the date on which the police pension authority, having considered all the relevant circumstances, advice, guidance and information available to them, determine that he ought to retire on the ground that he is permanently disabled for the performance of his duty:

Provided that a retirement under this Regulation shall be void if, after the said date, on an appeal against the medical opinion on which the police authority acted in determining that he ought to retire, the board of medical referees decides that the appellant is not permanently disabled.

...

HI **Reference to medical questions**

(1) Subject as hereinafter provided, the question whether a person is entitled to any and, if so, what awards under these Regulations shall be determined in the first instance by the police pension authority.

(2) Where the police pension authority are considering whether a person is permanently disabled, they shall refer for decision to a duly qualified medical practitioner selected by them the following questions -

(a) whether the person concerned is disabled;

(b) whether the disablement is likely to be permanent;

(3) A police pension authority, if they are considering the exercise of their powers under Regulation K3 (*reduction of pension in case of default*), shall refer for decision to a duly qualified medical practitioner selected by them the question whether the person concerned has brought about or substantially contributed to the disablement by his own default.

(4) The police pension authority may decide to refer to a question in paragraph (2) or, as the case may be, (3) to a board of duly qualified medical practitioners instead of to a single duly qualified medical practitioner, and in such a case references in this regulation, regulations H2 and H3(a), (2) and (4), and paragraphs 5(a) and 6 of Schedule H to a medical practitioner shall be construed as if they were references to such a board.

(5) The decision of the selected medical practitioner on the questions referred to him under this regulation shall be expressed in the form of a report and shall, subject to regulations H2 and H3, be final.

(6) A copy of any such report shall be supplied to the person who is the subject of that report.

H2 **Appeal to board of medical referees**

(1) Where a person is dissatisfied with the decision of the selected medical practitioner as set out in a report under regulation H1(5), he may, within 28 days after he has received a copy of that report or such longer period as the police pension authority may allow, and subject to and in accordance with the provisions of Schedule H, give notice to the police pension authority that he appeals against that decision.

(2) In any case where within a further 28 days of that notice being received (or such longer period as the police pension authority may allow) that person has supplied to the police pension authority a statement of the grounds of his appeal, the police pension authority shall notify the Secretary of State accordingly, and the police pension authority shall refer the appeal to a board of medical referees, appointed in accordance with arrangements approved by the Secretary of State, to decide.

(3) The decision of the board of medical referees shall, if it disagrees with any part of the report of the selected medical practitioner, be expressed in the form of a report of its decision on any of the questions referred to the selected medical practitioner on which it disagrees with the latter's decision, and the decision of the board of medical referees shall, subject to the provisions of Regulation H3, be final.

H3 **Further reference to medical authority**

(1) A court hearing an appeal under Regulation H5 or a tribunal hearing an appeal under Regulation H6 may, if they consider that the evidence before the medical authority who has given the final decision was inaccurate or inadequate, refer the decision of that authority to him, or, as the case may be, it, for reconsideration in the light of such facts as the court or the tribunal may direct, and the medical authority shall accordingly reconsider his, or, as the case may be, its, decision and, if necessary, issue a fresh report which, subject to any further reconsideration under this paragraph, shall be final.

(2) The police pension authority and the claimant may, by agreement, refer any final decision of a medical authority who has given such a decision to him, or as the case may be it, for reconsideration, and he, or as the case may be it, shall accordingly reconsider his, or as the case may be its, decision and, if necessary, issue a fresh report, which, subject to any further reconsideration under this paragraph or paragraph (1), or an appeal where a right of appeal exists under regulation H2, shall be final.

(3) If a court of tribunal decide, or a claimant and the police pension authority agree, to refer a decision to the medical authority for reconsideration under this Regulation and that medical authority is unable or unwilling to act, the decision may be referred to a duly qualified medical practitioner or board of medical practitioners selected by the court or tribunal or, as the case may be, agreed upon by the claimant and the police pension authority, and his or, as the case may be, its decision shall have effect as if it were that of the medical authority who has given the decision which is to be reconsidered.

(4) In this Regulation a medical authority who has given a final decision means the selected medical practitioner, if the time for appeal from his decision has expired without an appeal to a board of medical referees being made, or if, following a notice of appeal to the police authority, the police authority have not yet notified the Secretary of State of the appeal, and the board of medical referees, if there has been such an appeal.

… "

D. The 2006 Regulations

13. The relevant provisions of the 2006 Regulations are as follows:-

"**Meaning of certain expressions and references – general provisions**

2. In these Regulations, unless the context otherwise requires –

(a) the expressions contained in the glossary set out in Schedule 1 shall be construed as provided in that Schedule;

(b) any reference to a member of a police force, however expressed, includes a reference to a person who has been such a member;

(c) any reference to an award, however expressed, is a reference to an award under these Regulations.

...

Injury received in the execution of duty

6. (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.

(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.

(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.

(4) 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.

(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 Cadet (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 considered 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.

Disablement

7.(1) Subject to paragraph (2), a reference in these Regulations to a person being permanently disabled is to be taken as a reference to that person being disabled at the time when the question arises for decision and to that disablement being at that time likely to be permanent.

(2) In the case of a person who is totally disabled, paragraph (1) shall have effect, for the purposes of regulations 12 and 21 of these Regulations, as if the reference to "that disablement being at that time likely to be permanent" were a reference to the total disablement of that person being likely to be permanent.

(3) For the purposes of deciding if a person's disablement is likely to be permanent, that person shall be assumed to receive normal appropriate medical treatment for his disablement, and in this paragraph "appropriate medical treatment" shall not include medical treatment that it is reasonable in the opinion of the police pension authority for that person to refuse.

(4) Subject to paragraph (5), disablement means inability, occasioned by infirmity of mind or body, to perform the ordinary duties of a member of the force except that, in relation to the child or to the surviving spouse or surviving civil partner of a woman member of a police force, it means inability, occasioned as aforesaid, to earn a living.

(5) Where it is necessary to determine the degree of a person's disablement it shall be determined by reference to the degree to which his earning capacity has been affected as a result of an injury received without his own default in the execution of his duty as a member of a police force.

Provided that a person shall be deemed to be totally disabled, if as a result of such an injury, he is receiving treatment as an in-patient at a hospital.

(6) Notwithstanding paragraph (5), "totally disabled" means incapable by reason of the disablement in question of earning any money in any employment and "total disablement" shall be construed accordingly.

(7) Where a person has retired before becoming disabled and the date on which he becomes disabled cannot be ascertained, it shall be taken to be the date on which the claim that he is disabled is first made known to the police pension authority.

(8) In this regulation, "infirmity" means a disease, injury or medical condition, and includes a mental disorder, injury or condition.

Disablement, death or treatment in hospital the result of an injury

8. For the purposes of these Regulations disablement or death or treatment at a hospital shall be deemed to be the result of an injury if the injury has caused or substantially contributed to the disablement or death or the condition for which treatment is being received.

...

PART 2

AWARDS ON INJURY OR DEATH

Police officer's injury award

11.(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 provision 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.

...

PART 4

APPEALS AND MEDICAL QUESTIONS

References of medical questions

30.(1) Subject to the provisions of this Part, the question whether a person is entitled to any, and if so what, awards under these Regulations shall be determined in the first instance by the policy pension authority.

(2) Subject to paragraph (3), where the police pension authority are considering whether a person is permanently disabled, they shall refer to a duly qualified medical practitioner selected by them the following questions

(a) whether the person concerned is disabled;

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

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 or regulation 69 of the 2006 Regulations, a final decision of a medical authority on the said questions under Part H of the 1987 Regulations or, as the case may be, Part 7 of the 2006 Regulations shall be binding for the purposes of these Regulations;

and, if they are further considering whether to grant an injury pension, shall so refer the following questions –

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

(d) the degree of the person's disablement;

and, if they are considering whether to receive an injury pension, shall so refer question (d) above.

(3) Where the police pension authority are considering eligibility for an award under regulation 12, paragraph (2) shall have effect as if the questions to be referred by them to a duly qualified medical practitioner were the following –

(a) whether the person concerned is totally disabled;

(b) whether that total disablement is likely to be permanent;

(c) whether the disablement is the result of an injury received in the execution of duty; and

(d) the date on which the person became totally disabled.

(4) A police pension authority, if they are considering exercising their powers under regulation 38 (reduction of award in case of default), shall refer for decision to a duly qualified medical practitioner selected by them the question whether the person concerned has brought about or substantially contributed to the disablement by his own default.

(5) The police pension authority may decide to refer a question in paragraph (2) or, as the case may be, (3) or (4) to a board of duly qualified medical practitioners instead of to a singly duly qualified medical practitioner, and in such a case references in this regulation, regulation 31 and 32 and paragraphs 5(1)(a) and (2) of Schedule 6 to a medical practitioner shall be construed as if they were references to such a board.

(6) The decision of the selected medical practitioner on the question or questions referred to him under this regulation shall be expressed in the form of a report and shall, subject to regulation 31 and 32, be final.

(7) A copy of any such report shall be supplied to the person who is the subject of that report.

Appeal to board of medical referees

31.(1) Where a person is dissatisfied with the decision of the selected medical practitioner as set out in a report under regulation 30(6), he may, within 28 days after he has received a copy of that report or such longer period as the police pension authority may allow, and subject to and in accordance with the provisions of Schedule 6, give notice to the police authority that he appeals against that decision.

(2) In any case where within a further 28 days of that notice being received (or such longer period as the police authority may allow) that person has supplied to the police pension authority a statement of the grounds of his appeal, the police pension authority shall notify the Secretary of State accordingly and the police pension authority shall refer the appeal to a board of medical referees, appointed in accordance with arrangements approved by the Secretary of State, to decide.

(3) The decision of the board of medical referees shall, if it disagrees with any part of the report of the selected medical practitioner, be expressed in the form of a report of its decision on any of the questions referred to the selected medical practitioner on which it disagrees with the latter's decision, and the decision of the board of medical referees shall, subject to the provisions of regulation 32, be final.

...

PART 5

REVISION AND WITHDRAWAL OR FORFEITURE OF AWARDS

Reassessment of injury pension

37.(1) Subject to the provisions of this Part, where an injury pension is payable under these Regulations, the police pension authority shall, at such intervals as may be suitable, consider whether the degree of the pensioner's disablement has altered; and if after such consideration the police pension authority find that the degree of the pensioner's disablement has substantially altered, the pension shall be revised accordingly.

(2) Where the person concerned is not also in receipt of an ordinary, ill-health or short-service pension under the 1987 Regulations or the 2006 Regulations, if on any such reconsideration it is found that his disability has ceased, his injury pension shall be terminated.

(3) Where payment of an ill-health pension is terminated in pursuance of regulation K1(4) of the 1987 Regulations or regulation 51(5) or (6) of the 2006 Regulations, there shall also be terminated any injury pension under regulation 11 above payable to the person concerned.

(4) Where early payment of a deferred pension ceases in pursuance of regulation K1(7) of the 1987 Regulations or regulation 51(8)(d) of the 2006 Regulations, then any injury pension under regulation 11 above payable to the person concerned shall also be terminated.

…

SCHEDULE 1

GLOSSARY OF EXPRESSIONS

In these Regulations, unless the context otherwise requires, the following expressions shall be construed as follows –

"the 1987 Regulations" means the Police Pensions Regulations 1987;

"the 2006 Regulations" means the Police Pensions Regulations 2006;

"adult survivor" has the meaning assigned to it by regulation 13(1);

"aggregate pension contributions", for the purpose of calculating an award has the meaning assigned to it by regulation 4(4);

"average pensionable pay" has the meaning assigned to it by regulation 4(2);

"board of medical referees" has the meaning assigned to it by paragraph 3 of Schedule 6;

"child" means (without regard to age) legitimate or illegitimate child, step-child, step-child or adopted child and any other child who is substantially dependent on the member of a police force concerned and either is related to him or is the child of his spouse or civil partner, and "parent" shall be construed accordingly;

"disablement" and cognate expressions have the meanings assigned to them by regulation 7;

"home police force" means any police force within the meaning of the Police Act 1996(a);

"husband" includes wife;

"infirmity" has the meaning assigned to it by regulation 7;

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

"injury received in the execution of duty" has the meaning assigned to it by regulation 6 and "the result of an injury" shall be construed in accordance with regulation 8;

"member of a police force" includes –

(a) the commissioner of police for the City of London;

(b) an inspector of constabulary; and

(c) a police officer engaged on relevant service;

...

"overseas corps" means any body in which persons such as are mentioned in section 1(1) of the Police (Overseas Service) Act 1945(**b**) are serving and in relation to which regulations made under section 1(2) of that Act have been made;

"overseas policeman" means –

(d) a member of an overseas corps; or

(e) an officer to whom section 10 of the Overseas Development and Co-operation Act 1980 or the Overseas Service Act 1958 applies or applied and whose service as such an officer is or was for the time being service in respect of which section 11 of the said Act of 1980 or section 5 of the said Act of 1958 has or had effect;

"overseas service" means service as an overseas policeman;

"pensionable pay" has the meaning assigned to it by regulation 4(1);

"the Pensions (Increase) Act" means the Pensions (Increase) Act 1971 and the Pensions (Increase) Act 1974;

"public holiday" means (Christmas Day, the 26th December (if it falls on a Saturday or Sunday), the 1st January (if it so falls), Good Friday or a bank holiday;

> "regular police officer" or "regular policeman" means –
>
> (a) a member of a home police force;
>
> (b) an inspector of constabulary; and
>
> (c) a police officer engaged on relevant service and any other overseas policeman;
>
> "the Scheme actuary" means the actuary for the time being appointed by the Secretary of State to provide a consulting service on actuarial matters relevant to these Regulations;
>
> "step-child" includes a person who is the child of the civil partner of the member of a police force concerned, but is not the child of that member;
>
> "widow" includes widower;
>
> "wife" includes husband."

E. The nature of the claimant's challenge

14. As amended, the claimant's primary ground of challenge is as follows:-

> "**Ground 1:** The PMAB acted unlawfully in that it failed to treat the decision of the Selected Medical Practitioner ("SMP"), Dr Hutton, as final decisions on the questions of disablement and permanence despite those decisions being binding on them as a result of the words between Regulation 30(2)(b) and Regulation 30(2)(c) of the 2006 Regulation."

15. As we have seen, although Dr Hutton had concluded in 2007 that the claimant was disabled and that that disablement was likely to be permanent, the claimant continued to serve as a police officer, in a non-operational capacity. In 2015, the defendant reconsidered whether that state of affairs should continue. The defendant referred the claimant to be examined by Dr Pilkington. She produced a report in October 2015 in which she found that the claimant's PTSD "would not be expected to constitute a permanent incapacity". Dr Pilkington concluded, however, that the claimant was permanently disabled from being able to perform the ordinary duties of a police officer, on the basis of significant degenerative changes in his right shoulder.

16. On 22 December 2015, having considered Dr Pilkington's report, the defendant required the claimant to retire on grounds of disablement. The claimant, through Mr Lock, contends that Dr Pilkington's report was not – and

could not legally be – a report for the purposes of Regulation H1 of the 1987 Regulations. The H1 report for those purposes was, Mr Lock submitted, the report of Dr Hutton.

17. Nevertheless, the claimant does not take issue with the lawfulness of the defendant's decision in 2015 to require the claimant to retire.

18. As we have also seen, following his retirement the claimant applied for an injury pension (together with its associated gratuity). He did so under the 2006 Regulations. The defendant referred the matter to another SMP, Dr Walsh.

19. At this point, we reach the heart of the claimant's case. Mr Lock submitted that, on its proper construction, regulation 30 of the 2006 Regulations limited the questions that the defendant could lawfully require Dr Walsh to answer, in deciding whether the claimant was entitled to an injury pension.

20. The crucial provision in regulation 30 is, the claimant contends, paragraph (2). Although I have earlier set out regulation 30(2), given its centrality to the case it merits repetition:-

> "(2) Subject to paragraph (3), where the police pension authority are considering whether a person is permanently disabled, they shall refer to a duly qualified medical practitioner selected by them the following questions
>
> (a) whether the person concerned is disabled;
>
> (b) whether the disablement is likely to be permanent,
>
> **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 or regulation 69 of the 2006 Regulations[1], a final decision of a medical authority on the said questions under Part 14 of the 1987 Regulations or as the case may be Part 7 of the 2006 Regulations shall be binding for the purposes of these Regulations**;
>
> and, if they are further considering whether to grant an injury pension, shall so refer the following questions –
>
> (c) whether the disablement is the result of an injury received in the execution of duty, and
>
> (d) the degree of the person's disablement;

[1] The references to the 2006 Regulations are to the Police Pensions Regulations 2006, which apply to police officers who first become officers on or after 6 April 2006. They are not, therefore, relevant to the facts of the present case.

> and, if they are considering whether to receive an injury pension, shall so refer question (d) above."

21. Mr Lock contended that the highlighted words, which occur between sub-paragraph (b) and sub-paragraph (c), have the effect of making binding the decision of Dr Hutton that the claimant was permanently disabled as a result of mechanical back pain and PTSD. Thus, questions (a) and (b) had been answered by the SMP under regulation H1 of the 1987 Regulations. The SMP's decision was "a final decision" and was "binding for the purposes of [the 2006] Regulations". This meant that Dr Walsh should not have been asked to address questions (a) and (b). Insofar as his report purported to answer those questions, Mr Lock submitted that it was of no legal effect. The only questions which Dr Walsh was empowered to answer were questions (c) and (d). In other words, Dr Walsh's tasks were – and could only be – (1) to decide whether "the disablement" (which means "the disablement [which] is likely to be permanent" referred to in question (b)) was "the result of an injury received in the execution of duty"; and (2) to decide "the degree of the [claimant's] disablement".

F. Dr Walsh's report and the decision of the PMAD on appeal

22. What in fact happened, however, was that, in his report of April 2016, Dr Walsh concluded the claimant had a permanent disability as a result of "significant degenerative changes in his right shoulder joint". Otherwise, Dr Walsh found that the claimant had "ongoing psychological problems", resulting in "mixed anxiety and depression" which would "probably benefit from access to psychological therapy".

23. In the light of those findings, Dr Walsh concluded that the claimant was entitled to an injury pension, which he assessed at Band 1.

24. The claimant appealed Dr Walsh's decision to the PMAB, pursuant to regulation 31. By way of an aside, Mr Lock said that it would be far easier to examine the PMAB's report if it had been set out in numbered paragraphs. He said the present report is typical in failing to do so. I agree it would be better if, in the future, PMAB reports were to take the form of numbered paragraphs.

25. The PMAB comprised two consultant occupational health physicians, a consultant orthopaedic surgeon and a consultant psychiatrist. They undertook a physical examination of the claimant. That physical examination led to the following conclusions:-

> "• Today he has mild and intermittent symptoms in the neck and low back. They are typical of the mild degenerative spondylosis affecting his cervical and lumbar spine, which is commensurate with his age. The physical signs are minimal and the examination today was essentially normal. He remains overweight and his core muscles are significantly deconditioned. Both of these factors can and should be addressed.
>
> • He does not have and never has had degenerative arthritis of the right shoulder joint. He does have a grating arising from the medical subscapular soft tissues. This is not significant. This has not been diagnosed and has not been treated."

26. The PMAB then addressed the issue of psychiatry. The consultant psychiatrist's conclusions on this issue were:-

> "• At the present time he would not meet the criterion for a depressive disorder as per the ICD-10 classification, however, a combination of his mood and anxiety symptoms would meet the criterion for mixed anxiety and depressive disorder (ICD-10: F41.2).
>
> • Thus, I concur with the diagnostic conclusion of Dr Walsh in that at present he meets the criterion for mixed anxiety and depressive disorder.
>
> • I could find no evidence that he meets the criterion for PTSD although he still has some anxiety when he is reminded of some of the events."

27. Under the heading "Detailed Case Discussion", the PMAB said:-

> • As clearly stated in the appellant's written submission, the case of *Doubtfire and Williams* (2011) makes it clear that the conditions determined by the SMP at the A20 stage are not binding on the future injury on duty decision because the decisions are separate legal decisions and must be independently conducted.
>
> …
>
> The Board finds itself in disagreement with the SMP [Dr Walsh] in respect of the diagnosis of osteoarthritis of the right shoulder.
>
> …
>
> Detailed history taking (sic) together with clinical examination by the Board reveals there is no evidence to support a diagnosis of osteoarthritis of the shoulder joint.
>
> …

> Whilst this diagnosis of osteoarthritis of the right shoulder joint has been mentioned by a number of non-specialists, the Board considers that its diagnosis should be preferred.
>
> …
>
> As a consequence he is not permanently disabled and as a result there is no further need to address any other statutory questions required under Regulation 30(c) & (d).
>
> Turning to the issue of low back pain, again on physical examination the appellant has mild lumbar spondylosis commensurate with his age.
>
> …
>
> On the evidence today the appellant does not have a disablement related to his lower back that would permanently prevent him from undertaking the ordinary duties of a police officer. As a consequence as there is no permanent disablement, it is unnecessary to further address the questions at Regulation 30(c) & (d).
>
> …
>
> On examination the appellant does not fulfil the diagnostic criteria for a diagnosis of PTSD.
>
> …
>
> It is very clear that the appellant has responded well to focussed treatment in the past for other traumatic experiences and therefore there is every expectation that further treatment of a similar nature would assist in his current situation. Notwithstanding this, the appellant's cognitive function currently is such that he could undertake the cognitive aspects of the ordinary duties of a Police Officer, and therefore he is not permanently disabled from performing the ordinary duties of a police officer by anxiety/depression. As a consequence there is no further need to consider the questions contained at Regulation 30(c) and (d)."

28. The PMAB's determination was as follows:-

> **"Determination of the Board**
>
> The Board rejects this appeal and considers that permanent disablement is not the result of an injury in the execution of duty and as such there is no loss of earnings as a consequence of an injury in the execution of duty."

G. Case law

(a) Doubtfire

29. As we have seen, the PMAB made specific reference to ***Doubtfire*** in its challenge decision. That case involved two conjoined judicial reviews, involving the same issue.

30. The facts of the first claimant's case are sufficiently illustrative of the issue. The first claimant was the subject of an SMP decision that she was permanently disabled from serving as a police officer by reason of social phobia. She was, as a consequence, required to retire. Her application for an injury pension was rejected because a second SMP had found that she was probably not suffering from social phobia. The second SMP, however, found that the first claimant was instead suffering from depression and it was this depression that had substantially contributed to her permanent disablement. Although the depression had been directly and causally connected with service as a police officer, the PMAB declined to award an injury pension because it considered it was bound by the finding of the first SMP that it was social phobia that had rendered the first claimant permanently disabled and this had no causal connection with service as a police officer.

31. His Honour Judge Pelling QC, sitting as a Deputy High Court Judge, concluded that the first SMP's finding of permanent disablement had binding effect for the purposes of regulation 30. The actual diagnosis of the SMP; namely, social phobia, was not binding. Accordingly, even though the social phobia was not caused by the first claimant's duties as a police officer, her depression had been so caused.

32. The Deputy Judge's reasoning can be seen from the following paragraphs of his judgment:-

> "34. The questions that have to be answered clearly distinguish between (1) whether the officer concerned is (a) disabled and (b) likely to be permanently disabled (which I refer to hereafter as "the disablement questions") and (2) whether the disablement in question is the result of an injury received in the execution of duty (which I refer to hereafter as "the causation question"). None of them requires the SMP or Board concerned to diagnose the infirmity or injury concerned much less do the regulations make any such diagnosis final. It is only the decisions (1) whether the officer concerned is (a) disabled and (b) likely to be permanently disabled and (2) whether the disablement in question is the result of an injury received in the execution of duty that are final.

35. Each SMP asked to answer the disablement questions will have to arrive at a diagnosis (or possibly a range of diagnoses) as part of the chain of reasoning leading to the SMP's answer to the question he is asked, not least for the purpose of demonstrating that the relevant disablement has been caused by an "… *infirmity of mind or body* … " as required by Regulation 7(4) of the 2006 Regulations (or Regulation A12 of the 1987 Regulations) – a concept which is further defined by Regulation 7(8) of the 2006 Regulations. However, there is nothing within the 2006 Regulations that requires the SMP (or for that matter the Defendant) considering the causation question to consider itself bound by the diagnosis arrived at by the SMP (or the Defendant) when answering the disablement questions as opposed to the decisions made. My reasons for reaching these conclusions are set out below but in summary are that (a) such a conclusion more naturally arises from the language of the regulations (b) the alternative conclusion is likely to result in anomalous results if not absurd ones whereas (c) that is not or is much less likely to be so if the approach set out above is adopted."

…

38. It was submitted on behalf of the Interested Parties in this case that this was not a correct analysis because Paragraph 10 of the Home Office Guidance requires the report by the SMP to include within it a description of the disease or condition that has caused disablement "*wherever possible*" and the wording of Regulation 31 of the 2006 Regulations is sufficiently wide to permit an appeal against any part of the Report of the SMP including the diagnosis of the SMP. The inference was therefore that the diagnosis if any arrived at by the SMP when deciding the disablement questions was binding and could be appealed if it was not accepted. I don't agree with this analysis. Regulation H2(5) of the 1987 Regulations and Regulation 30(6) of the 2006 Regulations requires that the decision of the SMP "… *on the question or questions referred to him under this Regulation shall be expressed in the form of a report …* " and the right of appeal as defined in Regulation 31(1) is accorded to a person who is "… *dissatisfied with the decision of the [SMP] as set out in a report under Regulation 30(6)* … " not with the contents of the report other than the decision. The decisions here referred in relation to the disablement questions are (a) whether the officer concerned is disabled and (b) whether such disablement is likely to be permanent.

42. The SMP deciding the disablement question is not required to decide the cause of the disablement other than for the purpose of satisfying the authority that he has correctly applied Regulation 7(4) as explained by Regulation 7(8). 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.

43. If the analysis indentified above is adopted then the absurdity that so concerned the Defendant Board in relation to Mr William's case – that is that the permanent disability of the Claimant was caused by an injury and was caused in the execution of duty but the Defendant was precluded from answering the causation case in favour of the Claimant because it did not agree with the original diagnosis – cannot arise. That can only arise if the Defendant's construction is adopted and the SMP or Board answering the causation question is forced to do so by reference to a diagnosis arrived at in the course of answering the disablement questions that the SMP or Board considering the causation question do not agree with.

44. If the Defendant was correct then it would not be necessary to refer the causation issue to an SMP because the nature of the injury suffered by the officer concerned would have been finally decided by the SMP or Board answering the disablement questions and thus the only issue left to be decided would be whether the injury diagnosed by the SMP or Board answering the disablement questions had been received in the execution of duty which might, but will usually not, be an issue requiring medical expertise to answer. Finally , if it had been intended that the diagnosis of the SMP or Board answering the disablement questions would be final, the Regulations would have said so. The regulations very carefully avoid saying that."

(b) Laws

33. In ***Laws*** the claimant had been assaulted and injured in the course of performing her duties as a police officer. She was certified as permanently disabled and awarded an injury pension. The assessment of her degree of disablement was maintained on periodic reviews until 2008, when it was reduced by the PMAB. The claimant's judicial review of the PMAB's decision succeeded before Cox J, who held that the Board had erroneously conducted an entirely fresh assessment of the claimant's degree of disablement and its causes, rather than considering whether the degree of disablement had substantially altered since the previous review.

34. The defendant's appeal to the Court of Appeal was dismissed. Giving the only reasoned judgment, Laws LJ held as follows:-

"11. The judge acceded to the judicial review claim primarily because she accepted as correct the construction of the 2006 Regulations advanced by Mr Lock for the claimant. The board failed to adopt this construction, and in consequence (as the judge put it [2009] EWHC 3135 [35] they erroneously conducted:

> "an entirely fresh assessment of the claimant's degree of disablement and its causes, rather than directing their minds, as required by the Regulations, to whether her degree of disablement had substantially altered since the last review in 2005."

12. The correctness or otherwise of the construction adopted by the judge is the first issue in the appeal. The strict point of interpretation involved depends on the relation between regulations 30(6) and 31(3) on the one hand, and regulation 37(1) on the other. As I have shown, regulation 30(6) provides that the decision of the SMP on the question or questions referred to her shall be final (and regulations 31(3) makes like provision in relation to the board's determination of an appeal from the SMP). Accordingly, so the judge held, the SMP's decision is not to be revisited save on an appeal under regulation 31 (or, it should be added, on a judicial review, if that were ever appropriate). The board's determination on a regulation 31 appeal can only be revisited by judicial review, Regulation 37(1) then provides for periodic review at which the authority is to consider "whether the degree of the pensioner's disablement has altered". On the judge's approach this does not allow the SMP or the board to redetermine the merits of any earlier decision of either. They are only to decide whether there has been an alteration since the last decision before their current consideration of the matter – in this case the 2005 review. As the judge put it:

> "28. 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, where an injury pension has been reassessed under regulation 37 and a decision has been made by the SMP concerning the degree of the recipient's disablement at that date, that decision is final for all purposes, subject to the continuing duty, periodically, to reassess the pension under regulation 37.
>
> 29. While the [authority] clearly had a duty under regulation 37 to carry out from time to time further reviews of this claimant's injury pension, they could only revise her pension if the SMP on referral, or the board on appeal, concluded that the claimant's degree of disablement, as defined by regulation 7(5), had substantially altered since the last review."

13. The judge's decision was influenced … by the earlier judgment of Burton J in *R (Turner) v Police Medical Appeal Board* [2009] EWHC 1867 (Admin) at [21], where this was said:

> "It is important from the point of view of disputes such as pension entitlement that a decision by these Regulations … it is clearly fair both for the police force and for the community that someone who starts out on a pension on the basis of a certain medical condition should not continue to draw a pension, or any kind of benefit, which is no longer justified by reason of some improvement in his condition, or, of course, the reverse."

In view of further points in the case, to which I will come, it is convenient also to set out para 23 of the decision in *Turner's* case where Burton J said, having referred to the decision of Ouseley J in *R (South Wales Police Authority v The Medical Referee* [2003] EWHC 3115 (Admin) and regulation 7(5):

> "It is apparent, therefore, that in considering questions of disablement earning capacity is important, but … the *South Wales Police Authority* case … would not justify starting from scratch in relation to earning capacity, because in the present case what is posed under regulation 37 is the degree if any to which the pensioner's disablement has altered. By virtue of regulation 7(5) that would include a scenario in which the degree of the pensioner's disablement had altered by virtue of his earning capacity improving … Mr Lock accepts that if there is now some job available which the [pensioner] would be able to take by virtue either of some improvement in his condition or in the sudden onset of availability of such a job then that would be a relevant factor. But it would all hang on the issue of alternation or change after "such intervals as may be suitable". There is no question of relitigation and, of course, 'suitable intervals' suggests that this is not a matter which should be revisited every year, nor is it."

14. In relation to the first ground of appeal Mr Pitt Payne for the police authority puts his case two ways. His primary position is to assault the construction of the 2006 Regulations adopted by the judge root and branch. Thus he advanced a broad submission to the effect that the starting point for the board (or the SMP) was to consider the pensioner's current degree of disablement, and compare it with the previous assessment. But 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 it, however, to arrive at its own assessment under regulation 37(1) by a process of reasoning which may involve a frank departure from earlier clinical judgments.

…

16. I do not accept Mr Pitt-Payne's primary argument. It cannot sit with the language of the 2006 Regulations. The requirement of finality in regulation 30(6) does not merely apply to the percentage figure arrived at to represent the pensioner's disability. It applies to the decision of the SMP "on the question or questions referred to him under this regulation". This must include the essential judgment or judgments on which the decision is based. So much is, I think, confirmed by the text of regulation 31(3) which I repeat for convenience.

> "The decision of the board of medical referees shall, if it disagrees with any part of the report of the selected medical practitioner, be expressed in the

> form of a report of its decision on any of the questions referred to the selected medical practitioner on which it disagrees with the latter's decision, and the decision of the board of medical referees shall, subject to the provisions of regulation 32, be final."

17. It seems to me to be plain that the board's decision is to be in the form of a reasoned report; and it is that to which the finality requirement applies. The requirement's scope must be the same for regulation 30(6). Moreover Mr Pitt-Payne's approach is bizarre, or at least eccentric. It means that the SMP/board would be required to respect an earlier disability percentage finding, say of 85%, while being free to depart root and branch from the reasoning which supported it. Regulations might, I suppose, make such provision, perhaps to offer a special measure of protection for the pensioner; though of course on Mr Pitt-Payne's reasoning the SMP/board might determine that the earlier clinical position actually justified a *higher* award than had been arrived at. At all events, such a legislative state of affairs would in my judgment require very clear words. It cannot be got out of regulations 30 and 31 as they stand.

18. So much is surely confirmed by the terms of regulation 37(1), under which the police authority (via the CMP/board) are 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.

19. In my judgment, then, the judge below was right to construe the 2006 Regulations as she did. Burton J's reasoning in para 21 of *Turner's* case, which encapsulates the same approach, is also correct. The result is to provide a high level of certainty in the assessment of police injury pensions. It is not open to the SMP/board to reduce a pension on a regulation 37(1) review by virtue of a conclusion that the clinical basis of an earlier assessment was wrong. Equally, of course, they may not *increas*e a pension by reference to such a conclusion; and it is right to note that Mr Butler, appearing for the board, voiced his client's concern that so confined an approach to earlier clinical findings might in some cases work to the disadvantage of police pensioners. Strictly that is so. But 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."

H. Discussion

35. As a matter of pure statutory construction, it is, in my view, manifest that regulation 30(2) falls to be read in the way for which the claimant contends. The highlighted wording between regulation 30(2)(b) and (c) makes binding a final decision of an SMP taken under and for the purposes of the 1987 Regulations, as regards questions (a) and (b), for the purpose of deciding whether a person is entitled to an injury pension under the 2006 Regulations.

36. This means that, with respect to Mr Wells, his attempt to justify the impugned decision in the present case by drawing a sharp distinction between disability pensions and injury pensions is doomed to failure. The legislature could, of course, have provided for entitlement to an injury pension to be determined solely by reference to criteria set by the 2006 Regulations. The legislature, however, chose not to do so.

37. There is, in fact, a sound policy reason for that decision. As Mr Lock submitted, 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. Leaving aside for the moment the case law, as a matter of pure statutory construction of regulation 30, 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". Although he was there speaking of reviews under regulation 37, Mr Wells was unable to advance any compelling reason why the entitlement to an injury pension should be any less certain. Equally, paragraphs 14 and 16 of the judgments have put beyond doubt that what is final, for the purposes of regulation 30(6), is not just the "bare" decision but

"the essential judgment or judgments on which the decision is based". In this regard, Laws LJ's reliance upon regulation 31(3) is equally apposite here, as it was in that case.

40. I accept that ***Laws*** is not binding on me. It is a decision on the effect of regulation 37 of the 2006 Regulations. The judgments do, however, constitute *dicta* of the most powerful kind. Not to follow paragraph 16 of the judgments, in particular, would mean that regulation 30(6) carries two different meanings, depending upon whether one is dealing with entitlement or review. We look in vain for any vestige of a rationale for such a surprising result.

41. For these reasons, I decline to follow the decision of the Deputy Judge in ***Doubtfire***. I agree with Mr Lock that, although the Deputy Judge's approach in that case produced a just result, that approach cannot withstand scrutiny and is, in any event, incompatible with the approach taken by the Court of Appeal in ***Laws***.

42. I need at this point to address the argument advanced by Mr Wells that the result of construing regulation 30 in the way I have is to put an SMP or (on appeal) a PMAB in the position of the crowd in Hans Christian Andersen's story T*he Emperor's New Clothes.* According to Mr Wells, the doctors in question would have to make findings in response to questions (c) and (d) on the causation of injury and the degree of disablement, even where those doctors are fully persuaded that no such disablement exists.

43. I understand the difficulty. The fact is, however, that that is what the legislature has decreed. It is the price to be paid for giving police officers a proper degree of certainty. It is also to be observed that the approach in ***Doubtfire***, for which Mr Wells appeared to contend, would produce the same outcome, if the second SMP were to disagree with the first, on the basis that there is no permanent disablement.

44. In fact, I do not consider that Mr Wells' "*New Clothes*" analogy is apt. In the circumstances with which we are here concerned, the task of the second SMP/PMAB remains, in my view, professionally coherent. The diagnosis of the first SMP must be accepted, with all that entails. The second SMP/PMAB then needs to determine, on what it would have to regard as a clinical hypothesis, the issue of causation and the degree of disablement. As regards the latter, Mr Lock pointed to the words "has been affected as a result of an injury received … " in regulation 7(5), which deals with the degree of disablement. The words "has been" require a backward-looking exercise, by reference to the date of retirement (regulation 43(1)). That degree of

disablement, once fixed, is then reviewed at regular intervals pursuant to regulation 37.

45. It follows that, quite apart from what I have said already, I disagree with the Deputy Judge's statement in paragraph 44 of ***Doubtfire*** that, on the basis of my construction of regulation 30, there will be nothing to ask the second SMP/PMAB to decide on questions (c) and (d), other than causation, which will not, in the Deputy Judge's view, usually be an issue requiring medical expertise to answer. On the contrary, as the facts ***Doubtfire*** themselves show, issues of causation can require medical input, particularly when dealing with psychiatric or psychological issues.

46. For these reasons, I find that ground 1 is made out. It is evident from the challenged decision that the PMAB completely failed to treat the report of Dr Hutton as binding.

47. Mr Wells criticised Dr Hutton's report for its terseness. The defendant, however, did not challenge that decision at the appropriate time. In any event, the defendant's case is not that the PMAB was free to disregard Dr Hutton's report because it was a legal nullity.

48. As we have seen, the "determination of the Board" was "that permanent disablement is not the result of an injury in the execution of duty". It is self-evident that those words do not represent a finding by the PMAB that there was "permanent disablement". The only rational way of reading the words is that – as the PMAB had specifically found – there was no causal connection between injury in the execution of duty and permanent disablement because there was simply, in its view, no permanent disablement.

49. It follows that I agree with ground 2 of the grounds of challenge. This contends that the PMAB failed to undertake the decision-making process required of it, in that it failed to address the issues under regulation 30(2)(c) and/or (d) of the 2006 Regulations. The PMAB failed to answer those questions by reference to the answers given to questions (a) and (b) by Dr Hutton.

50. Ground 3 asserts that the PMAB failed to give proper reasons for its decision. In view of my findings, it is unnecessary to address this ground, save to record that – if the primary challenge had failed – ground 3 would not have entitled the claimant to relief.

51. Mr Wells submitted that, even though there may be legal error in the defendant's decision, I should decline to quash that decision on the basis that, applying section 31 of the Senior Courts Act 1981, as amended, the

PMAB would come to the same diagnosis and would say that any disability found by Dr Hutton was not caused by an injury resulting from the execution of duty.

52. Given my findings on what is wrong with the PMAB's decision, section 31(2A) to (2C) of the 1981 Act can have no purchase. The PMAB is not able to come to the same diagnoses as it reached in its decision. Its task is to answer questions (c) and (d) on the clinical hypothesis that Dr Hutton's diagnoses were correct.

I. Decision

53. The defendant's decision is quashed.