Judgment Approved by the court for handing down. White v PMAB

Neutral Citation Number: [2022] EWHC 385 (Admin)
Claim no: CO/2429/2021

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

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: Wednesday 23 February 2022

Before:

MR JUSTICE RITCHIE

- -

In the matter of an application for judicial review

Between :

The Queen (on the application of Mrs Nicola White)

Claimant

- and -

POLICE MEDICAL APPEAL BOARD

Defendant

- and -

THE CHIEF CONSTABLE OF HAMPSHIRE POLICE

Interested Party

Jack Feeny (instructed by Penningtons Manches Cooper Solicitors) for the Claimant

Benjamin Tankel (instructed by Irwin Mitchell LLP) for the Defendant

No appearance by the Interested Party.

Hearing date: 15 February 2022

- -

Approved Judgment

Covid-19 Protocol: This judgment was handed down by the Judge remotely by circulation to the parties' representatives and BAILII by email. The date of hand-down is deemed to be as shown above.

Mr Justice Ritchie:

The Parties

[1]
The Claimant used to be a serving police constable who has been retired due to various injuries and medical conditions.

[2]
The Defendant, the Police Medical Appeal Board, (the Board) is the organisation which deals with appeals from decisions by selected medical practitioners (SMPs) under the relevant police legislation.

[3]
The Interested Party used to be the Claimant's employer.

Permission

[4]
Permission for this judicial review was granted by Andrew Thomas QC on 9th September 2021.

The issues

[5]
This judicial review concerns the entitlement of police constables to injury benefit pensions under the Police (Injury Benefit) Regulations 2006 (the 2006 Regulations). It arises from the refusal of the SMP and the Defendant's Board to accept that the Claimant came within the relevant legislation permitting an award based upon an organic injury which the Claimant alleges and the Defendant accepts that she suffered whilst on duty as a serving police constable in 2007.

[6]
For reasons which will become apparent later in the judgment consideration of the Home Office Guidance 2006 on the qualification criteria for injury benefits was necessary but was not central to the review and there were insufficient interested parties present at the hearing for a full and properly argued thorough consideration of the lawfulness of the Guidance.

The 2006 Regulations

[7]
The 2006 Regulations provide as follows:

"6.- Injury received in the execution of duty

(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 ….

(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) ...

(3) ...

(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."

Terminology used in this judgment

[8]
Before I can analyse the law with clarity I need to define some terms.

[9]
As was the case under the Police Pensions Regulations 1987, the current Police (Injury Benefit) Regulations 2006 split up the qualifying triggers for the payment of injury benefits into 4 separate categories.

EOD

1.
The first category I shall call EOD. That stands for: injury received in the "Execution Of that constable's Duty" as a constable. This is the qualifying category contained in Reg. 6(1) of the 2006 Regulations and Reg. A11(1) of the 1987 Regulations. In this category the qualification springs from the causal connection with the activity of the constable at the time when the injury was received.

WOD

2.
The second category I shall call WOD. That stands for: an injury received by a constable "While On Duty". This is the qualifying category contained in Reg. 6(2)(a) of the 2006 Regulations in the first sentence thereof and in Reg. 11A(2)(a) of the 1987 Regulations in the first sentence thereof. In this category the qualification springs from the time when the injury was received. It is a temporal test. The constable was either on duty or not on duty. The Police Regulations 2003 contain detailed provisions delineating when a constable is on duty: see Regs. 20, 22, 24 and 25 and Annex E so the decision about whether the constable was on duty when the injury was received will or should be clear.

WOJ

3.
The third category I shall call WOJ. That stands for: injury received by a constable "Whilst On a Journey" necessary to enable him to report for duty or get home from duty. This is the qualifying category contained in Reg. 6(2)(a) of the 2006 Regulations in the second sentence thereof and in Reg. 11A(2)(a) of the 1987 Regulations in the second sentence thereof. This qualifying category springs from the fact of the journey and the reason for the journey.

NOD

4.
The fourth category I shall call NOD. That stands for: an injury received by a constable whilst "Not On Duty" but because he/she is a police constable. At the root of this qualifying category is the fact that the constable would not have received the injury had he not been "known" by others to be a

constable. This is a status-based trigger to cover the risk of injury to constables, for instance from assaults by those who are mala fides to the police, whether in a public or private setting, whilst not on duty, just because they are police officers. It is contained in Reg. 6(2)(b) of the 2006 Regulations and in Reg. 11A(2)(b) of the 1987 Regulations.

Qualification for these four qualifying factors is considered and determined by the independent SMP appointed by the relevant police force. There is a fifth category in Reg. 6(2)(c) which puts the decision about the NOD qualification on the shoulders of the police authority in certain situations.

Disqualifying factor – serious misconduct or negligence

5.
If the injury was received wholly or mainly due to the constable's own serious and culpable negligence or misconduct then the constable is disqualified from receiving injury benefits. So the cause of the injury needs to be analysed in every case, at the least the Claimant's own causal activity has to be determined and assessed, to decide whether the disqualification applies. There are two parts to this disqualification: (1) the Claimant's conduct must be negligence or misconduct and (2) it must be serious and culpable. The police authority decides this factor not the selected medical practitioner.

[10]
I will return to the appropriate interpretation of these categories later. When considering terminology it is apparent from the cases that, because of the effect of the deeming words "shall be treated as", which make qualifying categories 2-4 (WOD, WOJ and NOD) deemed to be in qualifying category 1 (EOD), the terminology used in the judgments in the cases can be confusing. In particular when the phrase "injury received in the execution of his duty" is used it may be confusing when the judgment does not distinguish between the four categories and does not or may not indicate which category is being considered or whether the category is EOD or deemed to be EOD.

Bundles

[11]
I had before me a final bundle for the judicial review containing the statement of facts and grounds and the Defendant's response thereto together with the decisions appealed, some of the evidence in support and some correspondence.

[12]
I was also provided with skeleton arguments, a chronology, an agreed list of issues and an electronic bundle of statutory provisions, the Home Office Guidance and case law.

Statements of case and chronology of facts and events

[13]
At the relevant time the Claimant, Nicola Goode (now Nicola White), was a serving police officer. She was born on the 3rd of October 1973. She left school at age 16 in 1989 and joined the Hampshire Police force in 1990 as a crime administration assistant. In 1993 she moved up to become a local intelligence officer and in 1994 she became a special constable. By 1997 she was a full Police Constable and she provided services at that level on the frontline until she retired on the 8th of January 2020.

[14]

In 2007, on the 18th of November, the Claimant was on duty at Fratton Park police station in Portsmouth in the early hours of the morning working in the parade room with other constables who were writing up incident reports. The normal banter was taking place between the constables and as part of that the Claimant threw a Sellotape roll at PC Fruin in jest. It hit him with a glancing blow to the head, causing amusement and no injury. He looked round and got out of his chair and said he was going to tip her onto her backside or words to that effect. He was not angry. The Claimant was not frightened, but she decided to run away and as she was going towards the door he caught her, held her by her shoulders, swept her legs away with a judo style move. They both fell into a heap on the floor with PC Fruin on top. During that fall the Claimant's right knee and leg were twisted and she suffered an injury to the medial compartment of her right knee.

[15]
So the injury was caused by PC Fruin not by the Claimant.

[16]
That evening the Claimant was taken to Royal Hospital Haslar in Portsmouth by her dad and seen at the A&E department where her injury was diagnosed.

[17]
Police Sergeant Murray was on duty that night and, as was evidenced in emails dated the 20th and 23rd of November 2020 provided to the medical review authorities, she took no action as a result of the tomfoolery that led to the injury.

[18]
The chronology of the knee injury was set out in the decision of Doctor Charles Vivian dated the 19th of November 2019, who was appointed as the SMP on the Claimant's application for permanent disability injury benefits due, on her case, to an injury received at work (WOD).

[19]
The Claimant's medical history after 2007, in summary, was as follows.

a.
The Claimant had her first right knee Arthroscopy on the 21st of December 2007 in which a superficial costochondritic defect was stabilised.

b.
She had intensive physiotherapy in 2008.

c.
She returned to working on the frontline from sometime unknown to me in 2008.

d.
By December 2009 she needed a right knee chondroplasty and a chondral flap was stabilised. Her right knee did not improve sufficiently well after that although she did return to frontline duties in May of 2010.

e.
In July 2010 the Claimant had an accident when camping on holiday and injured her left knee.

f.
By August 2011 a consultant orthopaedic surgeon reviewed her right knee and noted her continuing chondral injury to the medial femoral condyle.

g.
In January 2012 the Claimant was suffering left knee pain after walking long distances.

h.
In April 2012 an orthopaedic registrar noted that on the 22nd of February 2012 the Claimant had suffered a running down accident at work on duty which had fractured the proximal tibial area of her left leg. The registrar noted that it did not extend into the left knee.

i.
In September 2012 Mr. Richards, a consultant, noted the Claimant was making progress with her left knee fracture but needed a few more months before she could return to work.

j.
She did return to work and worked full time thereafter. There are a few notes showing some low mood and or depression in 2015 and 2017 which were explained later as relating to her divorce.

k.
By December 2017 a consultant orthopaedic surgeon called Mr Rushbrooke diagnosed early arthritis of the medial compartment of the right knee.

l.
By June 2018 a medical note shows that she had been diagnosed with left hallux valgus deformity relating to her left knee and was on the waiting list for an osteotomy. It is not recorded what happened thereafter in relation to that.

m.
In May of 2019 the Claimant was suffering ongoing bilateral knee pain and complaining that her right knee was giving way regularly.

n.
On the 23rd of October 2019 Doctor Thornton, the force's medical advisor (FMA) noted that the Claimant's knees were MRI scanned in 2015 but no source for her symptoms was identified. He noted that in 2017 both knees were MRI scanned and minor arthritis in the right knee was diagnosed. In addition, arthritis of the right hip was diagnosed. The FMA noted that on the 29th of October 2019 a consultant orthopaedic surgeon advised the Claimant that she would need a total hip replacement on the right side in future and that she was unlikely to be able to continue with frontline policing thereafter. He also noted that in relation to her right knee her pain started in 2007 and thereafter she returned to work on the frontline. He noted she had struggled for the last few years with the knee giving way and the pain being worse in the cold and he considered that she needed a right sided total knee replacement but was too young to have it. In relation to the left knee Doctor Thornton considered that the running down accident at work that fractured her left knee had led to aches and pains but that the Claimant would be able to continue her police duties. In relation to the right hip Doctor Thornton accepted that the arthritis was worsening and noted that she was on the waiting list for a total hip replacement. He also noted some other medical matters. Doctor Thornton gave a summary that in his opinion the Claimant was permanently disabled due to her right knee and due to her right hip. He certified her permanently disabled from frontline police working and also considered that she was capable of working in other jobs but not in the police force.

[20]

As a result of that certification the Claimant made an application for the Injury Pension Benefits she alleged were due to her right knee injury at work (WOD) in 2007 and on the 12th of February 2020 Doctor Charles Vivian provided his decision on whether the injury fell within the relevant provisions. A close reading of that document is instructive. He noted he was asked whether the injury was received “in the execution of duty”. I note that he was not provided with the full text of the Police (Injury Benefit) Regulations 2006 by the IP and in particular the full text of regulations 6 and 11. He should have had access to that text in the Home Office Guidance mentioned below though.

[21]
Stopping here for a second the Guidance on Medical Appeals from the Home Office was in the appeal bundle. I shall set out the whole document here because it is relevant to this judicial review:

“ **GUIDANCE ON MEDICAL APPEALS**

UNDER THE POLICE PENSIONS REGULATIONS 1987 AND THE POLICE (INJURY BENEFIT) REGULATIONS 2006

SECTION 4

PERMANENT DISABLEMENT AS A RESULT OF INJURY IN THE EXECUTION OF DUTY

The provision for an injury award is set out in regulation 11 of the Police (Injury Benefit)

Regulations 2006. This states:

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. The question whether an officer or retired officer qualifies for an injury is referred for a medical decision in the following contexts:

• When a police authority is considering a claim from an officer who is also being considered for possible medical retirement on the grounds of permanent disablement;

• When a police authority is considering a claim from a former officer who is already in receipt of an ill-health pension or of a deferred pension which is being paid early on account of his or her permanent disablement; and

• When a police authority is considering a claim by a former officer who is not receiving an early pension – in which case the question of whether the claimant is permanently disabled must be considered as well as a preliminary step.

3. Before dealing with the detail of the medical issues to be considered by the selected medical practitioner (SMP) it is important to be clear about the meaning of the various terms related to injury received without default in the execution of duty. There are two main sources of guidance on what is meant by injury in the execution of duty for the purpose of the Regulations:

• The Regulations themselves; and

• What the courts say on the Regulations.

Without his own default

4. The issue of whether or not an injury is received without the officer's own default is a matter for the police authority to determine. The definition of default is as follows:

6(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. If the police authority considers that there is no default, and that the claim is not spurious or vexatious, it will refer the question whether the disablement is a result of an injury in the execution of duty. In order to answer this the SMP will have to be clear as to the law on what is an injury in the execution of duty and on what sort of causal connection needs to be established between the injury and the disablement.

Injury received in the execution of duty

6. The Regulations give the following definition of **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.

Note that the reference to constable is not to the rank but to the office of constable, which all ranks hold in common.

Duty

7. For the purpose of injury awards duty is defined in some detail as follows:

6(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 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.

Note that (c) above, which involves considering whether the injury should be treated as received under (b) despite it not being clear if it was, is a matter for the police authority to decide, not the SMP or the board. This will have been decided before the case reaches appeal. Note that police duty extends to playing sport for the police if this is while on duty.

The question for the SMP

8. The procedure for a police authority to refer the question of whether a person qualifies for an injury award to its SMP is set out in regulation 30 of the Police (Injury Benefit) Regulations 2006 (the Regulations):

30(2) Where the police authority 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, […]

Injury

9. The Regulations (in the definitions at Schedule 1) specify that injury includes any injury or disease, **whether of body or mind**.

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

10. The Regulations specify that **disablement** is deemed to be **the result of an injury** if the injury **has caused or substantially contributed** to the disablement.

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.

Caused

11. This has been interpreted by the courts in a number of cases, which the parties may draw to your attention, but it is suggested the following points should be noted:

• it is necessary to establish a direct causal link between the permanent disablement and service as a police officer;

• in cases where the permanent disablement through injury was the result of a single, significant incident the question will be a relatively simple one – was the injury received in the execution of duty as defined in Regulation 6(2)?

• an injury does not have to be received though a single, significant incident; where no single moment of injury can be identified it is suggested that to all intents and purposes the question for the SMP is whether the permanent disablement through injury was caused by, or received in, the execution of duty as opposed to domestic or other circumstances not related to police duty – bearing in mind the following points:

police duty should not be given a narrow meaning; it relates to all aspects of the officer's work;

the Court of Appeal has held that stress-related illness through exposure to police disciplinary proceedings does not count as an injury received in the execution of duty ;

police duty does not extend to a sporting activity for the police while not carried out on duty, unless the provisions at 6(2) (b) or (c) apply – where the injury was due to the officer being known to be a constable.

• causation has been held by a court to include the "straw that broke the camel's back". If all the previous straws were in the execution of duty, then the decision for the SMP is relatively straightforward. However, in cases where not all the straws were related to police duty the question will centre on to what extent if any incidents related to police duty, as opposed to non-related incidents, caused or substantially contributed to the permanent disablement, or simply accelerated its onset.

• an injury which accelerates the onset of permanent disablement, rather than aggravates the condition to make it permanent, has been held by a court in a non-binding judgment not to cause the

permanent disablement (although the court held that this judgement does not lay down any general principle).

In the case of Jennings the Board was not asked to determine whether the symptoms would have been the same or different following the natural progression of the underlying condition. There was no finding in the present case that the symptoms would have been identical. The causation question is essentially a medical question to be determined by the Doctors. Jennings has not affected the role of the decision-maker under the scheme to determine, in the light of the medical evidence in a particular case, whether a qualifying injury has made a substantial contribution to the infirmity.

Substantially contributed to

12. The Regulations do not interpret substantially contributed to and we are not

aware of any interpretation given by the courts. It is suggested that substantial does not have to mean predominant. Whether the injury has or has not made a substantial contribution to permanent disablement is a medical decision.

13. In many cases the issue is likely to be straightforward: whether a particular injury

caused or substantially contributed to the disablement. In some cases however the issue may be more complex. There may be an issue as to whether there was a single injury or more than one injury which contributed to the disablement. This can affect the calculation of degree or disablement where a relevant injury was not received in the execution of duty. Where this is relevant the board's findings as to whether there is one injury or more than injury should be clearly stated.

Evidence-based approach

14. In injury cases in particular it is important that the SMP should satisfy him or herself that the evidence presented about the circumstances surrounding the injury and the disablement in question is not accepted uncritically from either party. It is for the SMP to test and weigh the evidence given in the light of the other evidence provided and in the light of his or her own medical knowledge and reasoning. In deciding whether a statement put to him or her as a matter of fact is to be accepted as such, after having duly tested and weighed it, the SMP should apply the balance of probabilities and not a higher evidential test."

(The double underlining is mine, the bold and single underlining are in the original text).

[22]
I shall return to this Guidance later in this judgment but it is safe for me to infer that the Board were aware of it when making their decision (it is mentioned in their decision) and the Defendant accepted this in submissions although the Defendant also stated that the Guidance was no longer used much by the Board because it is out of date. I also infer that the SMP had the Guidance available to him when making his decision.

[23]
It is noteworthy that the Guidance does not actually give much guidance on the three qualifying categories set out in Reg. 6(2): WOD (whilst on duty); WOJ (whilst on a journey) and NOD (not on duty). It is clear from the text that the Guidance does not separate out the categories and advise on each one by one. There is no other section of the Guidance covering Reg. 6 of the 2006 Regulations and the Defendant confirmed that they have no internal guidance on the Regulations.

[24]
Returning to the facts, the SMP directed himself that he needed to distinguish between injuries suffered in the execution of duty and injuries based on mere “status as a police officer” albeit suffered whilst the Claimant was on duty. He considered that the law required him to separate out these two types of category, the former attracting compensation and the latter failing to attract compensation. For the reasons set out below I rule that the SMP misunderstood the law and so misapplied the law when making that distinction. This review is of the Board’s decision not the decision of the SMP.

[25]
In his conclusion the SMP stated that the right knee injury was not an “injury on duty”. Those were his words. I find that as a matter of fact and law he was wrong about that conclusion. Applying the temporal test, the Claimant received her injury whilst she was on duty. The SMP also concluded that the right hip symptoms were not caused by the right knee. He rejected an injury benefits award. In the formal decision section of his report - “part one” - he expressed his decision differently. He stated that it was not “an injury received in the execution of duty”. This decision, if restricted only to the EOD category, which is not subject to any complaint in these judicial review proceedings, was of course within the ambit of the SMP’s discretion and was necessary because the EOD category is one of the four which the SMP had to consider before his final decision on whether the Claimant qualified for injury benefits. But he appears to have ignored the WOD category completely or to have misinterpreted it.

[26]
I find that it is quite clear from an objective reading of the express words of the decision of Doctor Charles Vivian that he did not distinguish between an injury suffered whilst on duty (WOD) and an injury received in the execution of the Claimant’s duty (EOD). I shall return to this below.

[27]
On the 28th of April 2020 the SMP wrote to the FMA recording that the Claimant had asked for a review of his decision. He noted that no new evidence had been put before him. He considered that his decision was part legal and part medical and he, correctly in my view, identified that the key issue was legal. He stated that if a lawyer submitted a “report” he would be able to review his decision. He also stated that on the right hip issue, the Claimant could submit a report from a consultant orthopaedic surgeon and if she did so he would review his decision on that. No summary of the law, the four categories and no further Guidance was given to him.

[28]
On or about 15th of October 2020 an appeal was made by the Claimant from the decision of the SMP on the forms attached to the Home Office Guidance on Medical Appeals 2006. A single ground of appeal was set out in a document dated the 8th of October 2020 that the SMP’s decision was wrong because the Claimant’s injury was sustained (the appellant’s word) “whilst on duty” (WOD).

[29]
The Defendant, the Police Medical Appeal Board, is the body to which the appeal was made. The Home Office Guidance sets out the procedure and the forms to be used. Such appeals to the Board of the Defendant are re-hearings, not reviews of the decisions below.

[30]
In support of that appeal written submissions were put in by the Claimant dated February 2021. They contained the assertion that the SMP failed to consider regulation 6(2), which was described as a deeming provision and, it was submitted, was mandatory because it used the words “shall”.

[31]
Evidence was relied on in support of the appeal and it consisted of a witness statement from the Claimant which I have seen, and witness statements from PC Shutler, PC Bavin, PC Berwick and PS Murray, which I have not seen.

[32]
The Interested Party (IP) made written submissions to the Board on the 16th of March 2021 asserting that the Claimant had misunderstood regulation 6(2). The IP made it clear that it did not dispute the injury or the medical condition but submitted that the issue was whether the injury was suffered “on duty”. The IP relied on a case called Stunt (which I will deal with below) and asserted that there had to be a causal link between the injury and the execution of the Claimant’s duty as a constable. For the reasons set out below in my judgment that submission was wrong in law.

The decision being reviewed

[33]
The Defendant reached a decision on the 16th of April 2021. The members of the Board were an occupational health physician, a consultant occupational health physician and a consultant orthopaedic surgeon.

[34]
In the the text of the decision the Board noted early on that no one suggested that the injury had come about as a result of the Claimant's own default. The Board considered the case law and submissions put before it and concluded that while the injury occurred whilst the Claimant was on duty (WOD) it was not an injury caused in the execution of her duty (EOD). This obviously conflates the two separate qualification categories. In relation to the case law the Board considered regulation 11, which deals with a different point which was not really of any direct relevance to the appeal in my judgment, then considered the Home Office Guidance (which I have set out above in full) and then considered the case law.

[35]
The Board concluded that the injury occurred whilst the Claimant was on duty (WOD) thereby overturning the SMP’s decision on that point, however the Board ruled that it:

“does not believe it can be described as an injury received in the execution of her duty as a police officer”.

[36]
The Board justified this decision by stating that a distinction must be drawn between “whilst on duty” and “in the execution of that officer’s duty”. That is correct in law in my judgment. However the Board then reasoned that whilst regulation 6(2) might appear to indicate that any injury on duty must be covered the Board did not consider that that was a proper reading of the Regulation because regulation 6(1) made it clear that the injury must have been suffered “in the execution of her duty as a police officer”. In support of that interpretation the Board cited the cases of Stunt and the case of Gidlow. So the Board conflated EOD with WOD and made WOD subservient to EOD.

The Legal Issue

[37]
The issue in this judicial review is whether on the correct interpretation of Regs. 6(1) and 6(2)(a) - first sentence (the WOD category), the wording of the former overrides, amends or trumps the latter

or in some way imports an activity-based filter into the temporal criterion on which Reg. 6(2)(a) is based.

Law

[38]
Police officers do a difficult and dangerous job and face a high risk of suffering injury whilst they are at work on duty and whilst executing their duties.

[39]
It has long been the case that Parliament has provided injury benefits to police officers injured at work. So as noted by Lord Reed in Lothian and Borders Police Board v MacDonald [2004] SLT 1295 at [27]:

"the Metropolitan Police Act 1829, which established the Metropolitan Police Force, made provision by s 12 for the payment of sums to constables ''as a Compensation for Wounds or severe Injuries received in the Performance of their Duty, or as an Allowance to such of them as shall be disabled by bodily Injury received, or shall be worn out by Length of Service''.

[40]
The quaint term "worn out by length of service" has been phased out since then.

[41]
In 1921 Parliament sought to continue to protect police officers from the long-term financial consequences of being injured and losing their job as a result of injuries suffered whilst on duty or whilst executing their duty. The Police Pensions Act 1921 Section 2 (1) provided that:

"subject to the provisions of this act, every member of a police force... (c) if at anytime he is incapacitated for the performance of his duty by infirmity of mind or body occasioned by an injury received in the execution of his duty without his own default, shall be entitled on a medical certificate to retire and receive a special pension for life."

[42]
By section 33:

"for the purposes of this act... (2) any injury suffered by a member of a police force...

(a) whilst on duty or whilst on a journey necessary to enable him to report for duty or to return home after duty; or

(b) whilst not on duty in the performance of some act which is within the scope of a constable's ordinary duties; or

(c) in consequence of some act performed in the execution of his duty shall be deemed to have suffered in the execution of his duty...

shall be deemed to have been suffered in the execution of his duty."

[43]
So as at 1921 the qualifying triggers for injury benefits were mainly centred on the activity being carried out by the constable. By S.2(1) it had to be in the execution of duty (EOD), but there was a deeming provision in S.33 expanding the scope of EOD. Those deemed injuries received WOD, WOJ

and NOD to be EOD whether or not in fact they were “suffered” in the execution of the constable’s duty. I note that the WOD category is not new. It is 100 years old.

[44]
In addition there was a disqualifying trigger because the provision of compensation for an injury or infirmity of mind had to be received in the execution of the officer’s duty without her own default.

[45]
As will be set out below, subsequent Acts and Regulations modified and maintained the compensation provisions set out above beyond EOD and so as to cover injuries received WOD and WOJ and NOD with slightly changed wording including from “suffered” to “received”. Also the disqualifying factor has been restricted by addition of the words “serious and culpable”.

[46]
The 1921 provisions were considered in Garvin v Police Authority for the City of London [1944] K.B. 358. Humphreys J had to decide whether a disease suffered by the Claimant could qualify as an injury. The Claimant suffered tuberculosis whilst on duty between 1940 and 1941 during the Blitz. He was constantly wet, cold and poorly fed. At first instance the decision was made that tuberculosis was a qualifying injury. On appeal the issue was identified as follows (p361):

“the second ground raises, I think a more difficult question. The words to be construed are “injury received in the execution of his duty without his own default”. No default by the respondent is here suggested. That the words in the execution of his duty are to receive a benevolent interpretation is clear when reference is made to section 33, the interpretation section. By subsection 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 inconsequence of some act performed in the execution of his duty. **A pensionable injury, therefore, if I may use that term, maybe 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.”** It would probably be impossible in any case of pulmonary tuberculosis to establish by evidence the day or the week or perhaps even the month during which the infection of the lungs occurred, but where it is shown that the conditions of service during the critical period were such as to cause unusual mental and bodily strain which, acting on a frame ordinarily healthy but at the time enfeebled by long hours of duty, frequent weddings and such matters, rendered it more liable than usual to such infection colour I think the injury might be described as being the direct result of, and therefore suffered in, the execution of duty.” (My bold).

[47]
It is clear from the judgment of Humphreys J that the timing of the suffering of the injury/disease was the first challenge that he had to grapple with. Had the injury been a broken arm as a result of a piece of flying bomb shrapnel whilst the police officer was acting in the execution of his duty or simply while on duty, that would not have caused any difficulty. However when the courts are faced with the emergence of a disease which could be idiopathic, the start time may not be easy or possible to identify, so Humphreys J applied a low threshold causation test to link the injury received to the police officer’s duty. He ruled that a disease could be an injury within the Act if the causal connection was established. So on the facts he found that the tuberculosis was received during the execution of the Claimant’s duties.

[48]

Some diseases could for instance be suffered and contracted whilst on holiday in between police duty. Take for instance COVID contracted and suffered on holiday by a police officer whilst in Italy for a three-week break which leads to long covid and retirement from the force. The start of that might be clear and the infection source might be clear and neither would be connected with his work or suffered whilst on duty.

[49]
Three years later a similar issue was decided by the Appeal court in Police Authority for Huddersfield v Watson [1947] K.B. 842. The police officer in that case was forced to resign due to a duodenal ulcer which he asserted was the result of his service in the police force. Lord Goddard C.J. summarised Garvin's case and stated at page 846 that:

"the court in that case laid down in terms that it was not necessary to decide whether there had been an accident or whether they had not; If it could be shown that there was an injury and they had no difficulty in holding that a disease was an injury - there was an end of the matter provided it was sustained in the execution of the man's duty."

[50]
The Police Authority in Watson had sought to argue that a duodenal ulcer was not a disease and could not therefore be an injury but this was rejected at first instance and by the Divisional Court on appeal.

[51]
It is interesting to note that very soon after that case Parliament decided to clarify the law and passed the Police Pensions Act 1948. This change was summarised by Simon Brown LJ at para 30 in Stunt (which I will consider in more detail later):

"30. Those two cases were speedily followed by the Police Pensions Act 1948 which clarified the legislation in two respects. First, by section 8, "injury" was expressly defined to include "disease", thus endorsing the court's rejection in Garvin of the police authority's argument that tuberculosis was not an injury. (The present, yet wider, definition of injury—to include "any injury or disease, whether of body or of mind"—was first introduced in the Regulations made under Police Pensions Act 1976.)

31. Secondly the 1948 Act and the Police Regulations 1948 (SI 1948/1531) which it authorised did away with the formula in section 33(2)(c) of the 1921 Act of injury being suffered "in consequence of some act performed in the execution of his duty"—a concept, submits Mr Millar for Mr Stunt, which had it survived might have lent support to the Commissioner's argument that execution involves action—and section 1(2)(iii) substituted for it the basic notion (which remains) "of injury received in the execution of . . . duty".

[52]
So, by this change, Parliament transcribed the decision in Garvin onto the statute book in relation to diseases being injuries, but importantly Parliament also revised the formula for the EOD trigger. It deleted the words "in consequence of some act performed in the execution of his duty" and substituted "of injury received in the execution of ... duty". I shall return to these words later.

[53]
In 1967 a new Police Pensions Act was passed which, in Section 1, permitted regulations to be made by the Secretary of State after consultation with stakeholders, governing pensions to be made or provided to police officers. I have no doubt that in consultation the Police Federation and the relevant

Pension Authority had to grapple with the correct extent of the injury benefits categories but that is not for me to know. Parliament decided on the words.

[54]
The Police Pensions Regulations 1987 in regulation A11 stated:

“(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 ….

(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 authority are of the opinion that the preceding condition may be satisfied and that the injury should be treated as one received as aforesaid.

(3) …

(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.” (My addition of bold text).

[55]
I have already set out above and named the four qualifying categories and they remain the same today in the 2006 Regulations. Likewise the disqualifying category remains the same.

[56]
It was on the basis of those 1987 regulations that in R. v Court Ex parte Derbyshire Police [1994] official transcripts (on Lexis) the Divisional Court, consisting of McCown LJ and Gage J, were dealing with a psychiatric condition case (stress at work caused by alleged discrimination by men against a woman constable). McCowan LJ stated at page 5:

“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.”

[57]
Mr. Justice Richards considered psychiatric conditions in R. v Kellam (Ex parte South Wales Police Authority) [2000] ICR 632. For reasons which will be explained below I consider that this is the most relevant authority in the case currently before me. The factual matrix was simple. A police officer retired due to anxiety and depression which he asserted had been caused by victimisation over a number of years by his police colleagues at work of both himself and his police officer wife. The police medical officer rejected his claim on the basis that the psychiatric conditions were not a result of an injury received in the execution of his duty as a constable. This was overturned on appeal by the medical referee who found that the officer’s ill health had been partly caused by victimisation at work and hence did constitute an injury received in the execution of his duty. On judicial review the appeal board’s award of an injury pension was upheld.

[58]

It is the chronological analysis of the relevant case law that provides enlightenment for me. Descending into slightly more detail on the facts, the police medical officer found that Kellam's anxiety and depression arose from 4 causes:

a.
The stillbirth of his child by his wife;

b.
his wife's treatment by the police force whilst at work leading up to that;

c.
his perception of the attitude of the police officers after his wife won her internal claim against the Chief Constable arising from her mistreatment; and

d.
an irrelevant dispute with his neighbour.

The police medical officer decided that each had substantially contributed to the psychiatric condition and the disablement.

[59]
In Kellam the Claimant's barrister submitted (at page 638A-B) that in EOD category cases causation of the injury in the execution of duty had to be proved. However, that was to be contrasted with WOD category cases in which there was no need to prove causation in the execution of duty, all that was necessary was to prove that the Claimant was "on duty" when the injury occurred. Richards J. did not demur.

[60]
For single incident organic injuries in Kellam the lawyers for the medical referee and the interested party (see page 639 H) agreed that there was no need for proof of a causal connection in the WOD category:

"The submissions for the medical referee and the interested party

Mr. Hillier, for Dr. Kellam, accepted that in the case of an injury received over a period of time, such as mental stress or anxiety, the relevant test is that the condition must be directly and causally connected with his service as a police officer. The causal connection is not required in the case of a simple injury sustained "while on duty" within the terms of regulation All(2)(a)."

And at 639H:

"Mr. Millar, for Mr. Milton, submitted that … The basic test is that in regulation A11(1). It is extended by regulation A.11(2) to cover, inter alia, all cases where the officer is "on duty" even if he is not engaged actively in the performance of his duties (e.g., to cover an injury when in the canteen during a rest break)."

[61]
I add here that the canteen break injury is a classic example of the underlying difference between an EOD injury and a WOD injury and was adopted as such in Stunt by Simon Brown LJ.

[62]
Mr. Justice Richards was not deciding a case involving an organic injury caused by an accident at work. He was deciding on a psychiatric condition and whether it fitted into any of the four categories.

Both parties submitted that psychiatric injuries were different from simple organic injuries caused by accidents at work and submitted that an element of causation was required in some way to tie the condition to the work.

[63]
Richards J. then looked back at the authorities to see the place, if any, for causation within the two relevant qualification categories he was dealing with: EOD and WOD. He considered Reg. v Court, Ex parte Derbyshire Police [1994] (transcript on Lexis) and noted at 641H:

“It may be noted that the medical referee appeared to rely on regulation A11(1) and (2)(a) of the Regulations of 1987, stating that 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."

Richards J. then noted in relation to the Derbyshire case at 642D:

“McCowan L.J. then dealt with a submission that the line of authorities referred to should be distinguished because in the instant case the officer's problems were domestic in part and partly sprang from her own ill-health. He rejected that submission, stating:

"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."”

[64]
Next Richards J. considered how Brook J. had approached the issues in Reg. v. Fagin, Ex parte Mountstephen (unreported), 26 April 1996 and Sussex Police Authority v. Pickering (unreported), 10 May 1996. About Fagin he said (P643A):

“It was contended that the test in regulation A11 of the Regulations of simply whether the applicant suffered an injury which was received while on duty as a constable; and that what had happened to the applicant had merely exacerbated an illness from which he had been suffering all along.”

Richards J. then noted at 643 D that Brooke J.:

“…concluded that the illness suffered from by the applicant at the material time was different from what he had suffered before and was an illness in its own right. He went on:

"As such it 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."

Thus the case was decided under the "while on duty" limb of regulation A11(2)(a), but the way in which the conclusion was expressed and the references to the earlier authorities suggest that the test being applied was, or was not materially different from, whether there was a causal connection between the relevant psychiatric illness and events and stresses at work.”

[65]

It can clearly be seen from his analysis that he was putting psychiatric injuries into a separate subgroup within the WOD qualification category. Richards J. then summarised the principles which he ruled applied to psychiatric injuries which he had gleaned from the various cases at p644A:

“Conclusions

From the wording of the present Regulations of 1987 and the authorities to which I have referred I draw the following material conclusions.

(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.” (The bold is mine)

[66]
I respectfully agree with this analysis. I consider and rule that the EOD qualification category for injury payments in Reg. 6(1) covers injuries received in the execution of the constable’s duty and is activity based. No doubt usually a constable executes his duty whilst on duty but occasionally the constable will execute his duty whilst off duty. The EOD category overlaps with but is intended to be different in scope from the qualification category for injury payments under WOD. WOD covers injuries received merely because the constable was on duty at the time when the injuries were received (so for instance slipping over on food spilled in the canteen, or whilst larking about in the rest room during incident report writing or whilst playing soccer for the Police team against another team in work hours or whilst buying a lottery ticket during walking on the beat down a high street). The injuries received WOD arise simply because they arose whilst on duty and are triggered purely temporally. In contrast the payments for EOD injuries are triggered by the nature of the activities which the constable was carrying out irrespective of whether he/she was on duty so the temporal aspect is irrelevant to them.

[67]
Next Richards J. turned to the types of injury received and how the type affects the interpretation of the EOD and WOD triggers for injury payments.

“(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, for example, 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 provisions or applying in the context of the one a test developed in the context of the other.”

[68]
I respectfully agree with this analysis too. When faced with a psychiatric injury or a disease or any injury the start date of which cannot be determined temporally or fixed to any single event, but which has a gradual onset (for instance where cumulative exposure to a poor posture at a desk at home and

at work causes back degeneration to turn symptomatic or aggravates it, or where stressors in and out of work are at play), the temporal test in the WOD category does not help. If there is no clear start point, then how can one know if the psychiatric condition started during work hours? Only the activity-based test for injuries received EOD may help in qualifying the disease. Richards J. therefore adopted a causal connection test and I consider that doing so makes sense. However he did not say that the causation test applied to single accident organic injury cases, he was dealing only and specifically with psychiatric conditions.

[69]
This is what Richards J. went on to rule in relation to psychiatric conditions:

“(3) The test remains that set out in Garvin v. London (City) Police Authority [1944] K.B. 358 and summarised in Huddersfield Police Authority v, Watson [1947] K.B. 842 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."

[70]
I consider that there needs to be a warning set out here. The causal connection test was being used because of the nature of the injury: an insidious onset disease or a psychiatric condition. It was not being used as a new set of words to be copied over from EOD cases to apply to all injuries received in WOD cases and hence into Reg. 6(2)(a) of the 2006 Regulations.

[71]
Richards J. then went on to define the scope of the causation test in psychiatric condition cases thus:

“(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 v. JJ London Fire and Civil Defence Authority [1995] I.R.L.R. 46, 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's case 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 Reg. v. Fagin, Ex parte Mountstephen (unreported), 26 April 1996. 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."

[72]
On this point Richards J. was seeking to clarify the necessary causal connection test for psychiatric conditions to qualify and how that was to encompass a wide interpretation of the applicant's work in the police service, not a restricted interpretation by the word "duty".

"(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 Reg. v. Court, Ex parte Derbyshire Police Authority (unreported), 11 October 1994, 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. …"

[73]
It is notable that Reg. 6(1) is the primary qualification category for injury pension benefits and matches the heading to the regulation. I note also that the 6(2) provisions are "deeming" provisions bringing other constable applicants into the payment provisions on wider or different grounds, but I consider that when interpreting Regs. 6(1) and (2)(a) or (b) the former does not override or amend the latter. They are separate and are to be interpreted objectively in accordance with the normal and natural meaning of their words and in accordance with the clear purpose of the Regulations.

[74]
To use an analogy let us consider this: to qualify for the annual Bentley car rally round Belgium the rally rules may provide one year that as normal all Bentley motor cars may enter and in addition that Land Rovers may be deemed to be Bentleys for the purpose of the rally. But such a deeming provision does not make a Land Rover into a Bentley. It simply deems it to be a Bentley for the rally. It remains a Land Rover throughout and when a bystander asks "why is that Land Rover taking part in the Bentley Rally?" the answer is not: "because it is a Bentley", it is "because it is allowed to do so being deemed a Bentley for this rally".

[75]

Taking this one step further let us look at the WOJ qualification trigger – which focuses on journeys to and from police work. It is partially temporally based, and it is activity based – being tied to the destination of the travel. This brings me to Reg. (Merseyside Police Authority) v Keith Bonner and Stephen Malone [2000] 19th October (transcript) before Maurice Kay J. PC Bonner was returning home from work but first he went to a social club and had 1-2 pints and then he drove to drop his mate to his home before heading to his own home and during the last driving leg he crashed. He was under the alcohol limit.

[76]
There was no question of the drive home being EOD or WOD. It was either a qualifying WOJ event or it was not, depending on the facts as found by the first instance medical officer who made no error in law remediable on judicial review when making his decision. The applicant was granted injury benefits. In his ruling Maurice Kay J. stated:

“15. In my judgment all this serves to illustrate is that, as Mr Hudson submitted, the application of the words of Regulation A(11)(2)(a) to particular circumstances is a matter of fact and degree. The regulations do not seek to address specific situations by, for example, expressly requiring the officer to take the most direct route home or to leave immediately after the end of his shift. These are all questions of fact and degree in the context of a provision expressed in ordinary language”

[77]
Where the boundaries of such cases are set is a matter for the SMP in each case decided, one would hope, with the help of the Guidance issued by the Home Office. One can envision a constable driving to the pub on the way home and then on to a curry house wherein he suffers a tripping accident over a raised floor tile. Whether that would be WOJ would be a matter for the SMP but does seem rather too remote for my tastes.

[78]
In the claim for judicial review before me the Defendant placed reliance on the judgment of the Court of Appeal in R. (Stunt) v Mallett [2001] EWCA civ 265, to import into the WOD provisions of Reg. 6(2)(a) some wording requiring a causal connection between the injury and her police duty when she was injured.

[79]
In submissions to the Board the Interested Party relied on Stunt to do the same.

[80]
The Defendant’s Board accepted those submissions and found that a causal connection was required under the WOD qualification category. The Defendant Board relied on the Claimant’s larking about activity as the reason why it rejected the appeal. The Defendant Board imported into the WOD category the causation principles laid down for psychiatric injury or disease applications in the above cases, so a close analysis of the judgment in Stunt is needed. I ask: does Stunt alter Richards J.’s decision in Kellam?

Stunt

[81]
In 1993 a constable arrested a headmaster who was accompanying a group of students to the Houses of Parliament in Westminster. One insulted the other in some way and the question of who threw the first insult was hotly disputed. A very short while later on the same day the headmaster was de-

arrested and soon afterwards, he complained. The police started and ran a complaint/disciplinary investigation. This was referred to the Police Complaints Authority who decided not to bring criminal charges but instead to bring a charge against PC Stunt under the Police Discipline Code covering arrest without sufficient cause. A senior officer told the constable about the charge being brought. The constable promptly complained of mental stress and went on sick leave. He never returned. The disciplinary process never went forward but PC Stunt then applied for an injury pension. The force medical officer rejected the application, finding that although the constable was permanently disabled by depression, that was not an injury received in the execution of his duty (no single qualification category was identified). The medical evidence showed that the depression was caused by the investigation not the row with the headmaster.

[82]
At paras 17 and 34 Simon Brown LJ. expressly approved Richards J.'s conclusions on the law as set out above and then himself ruled that:

"Conclusion on the narrower argument

46 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 [2000] ICR 632, 645 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."

[83]
In the express context of considering an application under the EOD qualification category, where a constable has to undergo an investigation and disciplinary process which causes mental injury of some sort the Court of Appeal ruled that the disciplinary process (which did not require the constable to take part, he could remain silent) was not the constable executing his duty, it was just part of the status of being a police officer.

[84]
In the context of asking whether this was a psychiatric "injury received" within the WOD trigger Simon Brown LJ ruled thus:

"47 … Throughout this period, argues Mr Millar, a significant part of the stress Mr Stunt was suffering from the worry of the disciplinary investigation occurred whilst he was at work so as to make him eligible for an award even if his submission to the disciplinary process was not in itself in the execution of his duty.

48 This argument too I would reject. It seems to me wholly unrealistic to suppose that the fact of being at work during the course of the investigation actually exacerbated the stress from which Mr Stunt was suffering; if anything one might suppose that his duties at work helped to take his mind off his worries. Why should the mere fact of his continuing at work whilst the stress deepened qualify him

for an award? Such a claim is no stronger than had he during this period been developing a heart condition or other constitutional disability.

49 There is this consideration too: had Mr Stunt been suspended from duty during the investigation (as many officers are), clearly no such argument would have been available to him. It would be surprising and unsatisfactory if for the purposes of an injury award in circumstances like these a distinction fell to be drawn between those suspended from duty and those continuing at work. In my judgment it does not."

[85]
So under the WOD category Simon Brown LJ. used Richards J.'s causal connection test for the psychiatric injury because of the impossibility of applying the temporal test and/or perhaps for public policy reasons. Both of the two other judgments were short: two to four paragraphs long, agreeing with the lead judgment.

[86]
I do not perceive the judgment of the Court of Appeal either to overrule that of Richards J. or to distinguish it. Quite the contrary, it supports and follows it. Stunt was a psychiatric injury case and causation was found to be a necessary step in such applications where the start date for development of injury could not be pinned down to a single date or event so the WOD category really could noy apply simpliciter and had to be interpreted up towards the EOD category.

[87]
I consider that even in a psychiatric injury case causation will not be necessary for all such injuries. So in my judgment where a constable sees the horror of a fatal road traffic crash aftermath on duty and suffers PTSD which disables him or her from working as a result, the EOD or the WOD categories would apply simpliciter. The EOD category would apply if it was his duty to be there and help and cordon off the scene. The WOD category would apply if he was a simple passer by whilst on duty.

[88]
I consider that the Court of Appeal did not re-interpret the WOD category created by Reg. 6(2)(a) by adding any causation words in relation to non psychiatric injuries or in relation to simple injuries received at work whether through larking about or studious hard work.

Case law after Stunt

[89]
In Lothian v MacDonald [2004] SLT 1295, PC MacDonald was an officer who began to suffer depression. He was discharged from the force and certified by an SMP as unfit to work permanently. The SMP found that the injury was received in the EOD category. The constable had worked happily from 1975 to 1991 when he had been given a research grant into gypsy society and crime. He liked that work but he felt his bosses and his DCS did not. His mail was screened by the DCS and he was refused permission to go to conferences by the DCS and then granted permission far too late for him to actually attend. This went on for years and then his father died and he started to suffer hypertension, headaches, anxiety and stress. He recuperated in a convalescent home and after he returned he was put on the crime desk, not his old duties and he went downhill. In a year he was off work and he never returned. The SMP found that: "It is my view that the cause of his depression was the stress he faced at work" para [21]. On judicial review in the Outer House, Lord Reed analysed the genesis of the WOD qualification category between paras [50] and [53] suggesting a reason why Parliament may have introduced the WOD category was the extensive and tricky criminal case law

construing the definition of “execution of duty” in relation to assaults on police whilst in the execution of their duty charges. He noted how the statutory words for injury benefits had changed over the years always widening the categories. He reviewed various cases including ones relating to another scheme – the Firemen’s scheme – the qualifying categories of which are not the same as those for policemen, and the similar use of the words “received in”. He noted that Latham J in Bradley v London Fire [1995] IRLR 47, had defined “received in” as “arising out of or caused by” in the equivalent EOD qualification category, but not the WOD qualification category. Lord Reed analysed the reasoning of LJ Simon Brown in Kellam in relation to psychiatric injuries and the EOD and WOD categories, although those terms were not used. The relevant paragraphs are [74] of Lord Reed’s judgment and [49] of LJ Simon Brown’s judgment. Lord Reed concluded thus:

“The reasoning of Simon Brown LJ in relation to this matter appears to me to support the conclusion that an injury is not received in the execution of duty, within the meaning of the regulations, where it is caused (or contributed to) by an event or condition or circumstance (such as feeling stress) which is experienced by the officer while on duty, but which the officer would equally have experienced even if he had not been on duty. In particular, a psychiatric illness caused by stress is not necessarily an ‘‘injury received in the execution of duty’’ merely because stress which contributed to the illness was experienced while on duty.”

[90]
On the assumption that the use of terminology here means that he was considering the WOD category, not the EOD category, this would be going no further than Richards J. when ruling that there was a need for a causal connection in psychiatric injury cases between the condition and the work as a police officer. As I have said above, the pure temporal test does not work when a psychiatric condition of insidious onset is being considered. On the other hand, a causal link will always be needed for the EOD category because it is inherent in the words “injury received in the execution of the constable’s duty”.

[91]
Lord Reed summarised the issue arising from idiopathic conditions at para [79] without ever using the “injury received” analysis I have set out above and below and without making clear the categories about which he was ruling. This confusion in terminology has led in my opinion to the issues in this review. Instead Lord Reed simply used the words EOD as follows:

“For example, if an officer suffers a disabling stroke as the result of progressive heart disease from which he has suffered throughout his career, then (in the absence of some precipitating event while on duty) he cannot reasonably be said to have received the disabling injury in the execution of his duty, even though he was affected by the disease throughout his police service. The purpose of the regulations is not to protect police officers against health problems which are unrelated to the execution of their duty. Similarly, if the officer is suffering stress while on duty and also while off duty, which ultimately leads to his developing a psychiatric illness, the fact that he was suffering stress while he was on duty will not necessarily entitled him to an injury award.”

[92]
I consider that this view was probably little more than an interpretation of the words “injury received” as excluding idiopathic conditions.

[93]

The ratio of the decision was at para [99] in which Lord Reed decided that for the Claimant's psychiatric injury the causal connection between his work and the condition was insufficient on the evidence:

"[99] Considering Dr Brown's conclusions in the light of the judgments in Stunt, there is a sense in which the respondent's depression could be described as ''brought about by stresses suffered actually through being at work''. For the reasons I have explained, however, it appears to me that 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), 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."

[94]
Other cases were relied upon by the Defendant before me in support of the submission that the WOD qualification category had an implied requirement of a causal connection between all injuries (not just psychiatric) and the constable's work duties. These were: Gidlow v Merseyside PA [2004] EWHC 2807 (Stanley Burnton J.) and R. (Edwards) v Derbyshire PA [2005] EWHC 1780 (admin) (Sir Richard Tucker) and Merseyside PA v PMAB and McGinty [2009] EWHC 88 (admin) (Cranston J.) and Chief Constable of Avon v PMAB (Ex parte Middleton) [2019] EWHC 557 (Lambert J.). On a proper analysis in my judgment none of these cases take the law any further forwards. Instead I consider that all are examples of psychiatric conditions and the application of the Richards J. principles from Kellam. I pick out here a few key paragraphs below from each case.

[95]
In Gidlow the claimant had received a grievance from a fellow officer asserting he had bullied, harassed and humiliated her as a result of him touching her a few years before inappropriately on the thigh and her rejecting him. Eventually she moved to another department and he went off sick with stress, started an Employment Tribunal claim for sex discrimination, lost and returned to reduced hours. He sought permanent medical retirement due to anxiety/stress and depression. The first SMP decided he did not qualify for injury benefits. The second SMP on appeal allowed the injury benefits because the psychiatric condition was caused by the EOD. The opinion is attached to the judgment and there is no separation of categories of qualification for injury benefits in that decision. However, Kellam and Stunt were cited and very briefly summarised. The SMP concluded:

"I believe that all these events occurred during his duty as a police officer and not just because he was a police officer at the time. Here, I believe I am supported by Reg. v Court where "whilst 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 documents such as performance appraisals (and I would add, reports from superior officers)."

Per Stanley Burnton J at [25]:

“Where the injury in question is a physical injury, suffered on a specific occasion, the question whether the injury was received in the execution of duty may be relatively straightforward. However, as the authorities show, when the injury is psychological, and suffered over a period of time, the question may be far more difficult to answer. The present is such a case.”

At [28]:

“**The general approach**

28. Where the injury is physical, the question whether an injury was received in the execution of the officer's duty will normally be simply answered by reference to regulation A11(2)(a). Where, however, the injury is psychological, and "received" over a period of time, the question is more difficult. Anxiety over a demotion, for example, may be caused by an event occurring while on duty, but is likely to be suffered while off duty as much as on duty. Regulation A13 may not be of assistance in such a case, since the question is not whether the disablement has been caused or substantially contributed to by the injury but whether the injury was suffered in the execution of duty.”

[96]
Stanley Burnton J then quashed paragraph 5 of the decision of the SMP for “equating an injury suffered ‘whilst on duty’ with one suffered ‘in the execution of duty’”.

[97]
In Edwards the officer suffered a psychiatric condition (depression) having been told he would have to return from CID work back to the beat and having been informed in a verbal way which was gross and outrageous but not causative of the condition. The ratio of Sir. Stephen Tucker’s decision is at paras 15-17 in which once again it is unclear which category he was referring to when making the ruling, but appears like all the other psychiatric injury cases to be approached on the basis that WOD cannot apply to a psychiatric injury claim so only EOD applied and it was for the Claimant to prove that he received an injury while in the execution of his duty, not due simply to his status as an officer. It was ruled that mere changes of duties were not the execution of his duties.

[98]
In Middleton the Claimant had an on and off lower back condition. He applied for ill health benefits. He was refused ill health retirement in 2012 for that condition and for acute stress but was moved off front line duties to a lot of different temporary police administration and outreach jobs. He did not appreciate this temporary job merry-go-round. He applied for permanent ill health retirement in 2016 and was retired on the basis of having: (1) a painful back, and (2) an emotional unstable personality disorder, which underlay his (3) chronic adjustment reaction to the force refusing him ill health retirement in 2012 and putting him on the job merry-go-round. The first SMP decided that this did not qualify for injury benefits because the injury received was not “the result of any incident or any injury whether in the execution of duty or otherwise” (see Lambert J. para 8). The appeal board decided that the adjustment reaction was an injury arising from the execution of his duty as a constable. At para 17 Lambert J. summarised the law on psychiatric injury claims under the 2006 Regulations but not by reference to a separation between the EOD and WOD categories because there was no need. It had long been assumed that in psychiatric injury claims the WOD qualification category does not apply because you cannot judge the emergence and intensification of the condition as either being received “on duty” or “off duty” (unless it is something like PTSD from a horrific crash). So the concentration was on the EOD qualifications category. To this end Lambert J. ruled (at para 18):

“The case law illustrates the application of the principles above to the many and various circumstances in which psychiatric injuries are sustained by those working in the police force. Predictably, the application of the principles has led to cases falling on either side of the line. I do not set out below every case to which I was referred in the Grounds and skeleton arguments, only those which seem to me to be of particular relevance.”

At para 24 Lambert J ruled that the board had misled itself on the law.

The real issue

[99]
This is a single accident organic injury case. The real issue in this case is whether or not Reg. 6(2)(a) is properly and naturally to be interpreted as requiring a causal connection between the receipt of the injury and the execution of the constable’s duty as a police officer. Or put more simply: does the WOD category have an activity based causal requirement tying the injury to duty or is it simply a temporal test?

Rulings on interpretation

The plain meaning of the words of the WOD category

[100]
The starting point for interpretation of the Regulation is that “the language is to be taken to bear its ordinary meaning in the general context of the” Regulation, Per Lord Nicholls in R. v Secretary of State for the Environment Ex P Spath [2001] 2 AC 349 at 397. In relation to organic injuries caused by accidents, in my judgment the words of the WOD category set out in Reg 6(2)(a) are clear. They require two matters to be found by the Board or the SMP: (1) that the Claimant “received an injury”, and (2) that the injury was received “while on duty”. They do not impose any causal connection requirement to the execution of the constable’s duty. Lord Nicholls went on to say (at p396) the intention of Parliament is an objective concept which courts ascertain from the words used. I consider the meaning of the words used in the WOD category was for qualification to be temporally determined.

[101]
The way in which the WOD category is different from the EOD category is made clear by the words used. The one is grounded only upon the execution of the constable’s duty and the other is far wider and is not fettered by whether the constable was or was not executing her duty, but is instead determined merely by her being on duty. This makes sense and needs no finesse or alteration to stand alone and to be clear. The practical challenges which have arisen from the WOD category can be dealt with, as I set out below, by a proper analysis of the words “injury received” and by the creation of the appropriate mechanism to deal with idiopathic and developing diseases and conditions which evade precise temporal classification.

[102]
The term “duty” is well defined in the Police Regulations 2003 Regs. 20, 22, 24 and 25 and Annex E so that use of other terms like “at work” or “on shift” would be less certain and would lead to more disputes. I reject the Defendant’s submission that it brings into the WOD regulation a causal element just because the word has been used.

“Received an injury”

[103]
Unlike earlier Acts in 2006 Parliament did not use the words “suffered an injury” or “sustained an injury” it used “received”. So what does the word “received” mean? It is used in the Regulation as a verb in the past tense not as an adjective (for instance “received wisdom”). The verb received means “to get or obtain” or to achieve. Receipt of an injury seems to me to involve something coming to the Claimant from outside or happening to the Claimant rather than emanating from the Claimant. A force or effect acting upon the Claimant.

[104]
As for the word “injury”, Schedule 1 to the 2006 Regulations provides a glossary with some assistance and states: “"injury" includes any injury or disease, whether of body or of mind”. This term is in common use in the law and can perhaps most easily be understood by looking at the Judicial College Guidelines for the assessment of damages in personal injury cases 16th Ed. The whole range of injuries is set out there in 12 categories.

[105]
As to the causes of such injuries, or the generators of the injuries received by the injured persons who make personal injury claims they are many and varied: they include diseases suffered due to exposure to noxious substances, medical injuries suffered due to clinical negligence and the full range of organic and psychiatric injuries caused by slips, trips, assaults, falls, crashes, stress and all other methods by which constables or any other human may “receive injuries”. However in personal injury and clinical negligence claims these are only relevant injuries if the person suffering them can tie them to a tort causally. In Police Pension Injury Benefit applications under Reg. 6(1) and 6(2)(a) or (b) no fault on the part of any third party is needed to trigger the qualification for benefits, merely the receipt of an injury.

Idiopathic medical conditions

[106]
Whilst not the subject of this judicial review the case law highlights a certain anxiety over the issue of whether an idiopathic, genetic or naturally occurring medical condition which emerges whilst a constable is working for the police could come within the WOD category triggering “injury benefits”. Examples are easy to imagine: stroke, heart attack, diabetes, Alzheimer’s disease, depression, schizophrenia, arthritis, appendicitis, septicaemia and so on.

[107]
I do not consider such matters have any relevance to the WOD category because such conditions are not injuries and are not received by the Claimant. They are idiopathic conditions which would have arisen in any event whatever job the Claimant would have been engaged in. Police Injury Benefits are for police constables. In my judgment naturally occurring diseases or medical conditions are only capable of coming within the terms “injury received” EOD or WOD or WOJ if the condition or disease was “received” and was an “injury”. Some external factor must have caused or aggravated the disease or medical condition and that factor must either have been received by the Claimant in the EOD or WOD or WOJ.

[108]
In a narrow sense this is what Lord Phillips of Maltravers was grappling with in Stunt at [56]:

“56 A number of authorities were referred to Grigson J and to us where a similar issue arose. 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.”

This phrase clearly was meant to apply to the EOD qualification category but raises the question: “was he also meaning it to refer to the WOD qualification category?”. It seems to me that he was not but it is one part of the Stunt ruling which does seem to me to describe well the term “injury received” as needing some outside event, conditions or circumstances which impact on the constable, not idiopathic or genetic disease development.

The deeming provision

[109]
The words of the 2006 Regulation creating the WOD qualifying category (and indeed also the WOJ and NOD categories) do not include any mention of “execution of duty”. On the contrary Reg. 6(2)(a) – first sentence - eschews tying the qualification for injury benefits to the execution of police duty. Instead this category is made out temporally and is then expressly deemed to be EOD by the words of Reg. 6(2) which states that:

“an injury shall be treated as received in the execution of his duty as a constable if.”

[110]
These words are mandatory. There is no discretion permitted. Therefore on any objective analysis of the Regulation it is unlawful in my judgment to ignore the deeming provision and to import back into the subsection on WOD words that undermine the deeming provision and hollow it out.

[111]
The Regulation states that receiving an injury while on duty is deemed to be receiving an injury whilst in the execution of duty, so it would be wholly wrong in my judgment to require the Claimant to prove that which Parliament has deemed - that she was actually executing her duty at the time when this is deemed in law to be the case. To impose such a requirement would be to override and ignore the deeming provision.

The Home Office Guidance

[112]
I have considerable concerns about the Guidance. I consider it to be misleading and in parts wrong. I provide the views below with the caveats set out above and below. The parties asked for the court to give guidance in this judicial review and to the extent that it is proper to give it I do so, but I restrict the paragraphs below to matters relevant to the case before me, namely qualification under Reg. 6(2)(a).

[113]
The heading to paragraph 7 is the word “duty” but the paragraph below the heading does not relate to the definition of “duty” in the Police Regulations 2003 and does not mention them. The contents of the paragraph are instead dealing with the deeming qualification categories in Reg. 6(2). The Regulations are set out but then followed by a wholly inadequate commentary upon them with inadequate practical examples.

[114]

The italicised advice on Reg. 6(2)(c) is partially helpful. It restates that the police authority will decide whether the constable comes within (b) – the NOD category.

[115]
The italicised guidance then mentions sports injuries which, interesting though they may be, can hardly be central to good guidance on the proper interpretation of the Regulations and particularly on each of the 4 very different qualification categories.

[116]
What would help SMPs and the Board would be a form on which the applicant applies which sets out which qualification category is relied upon.

[117]
In addition all SMPs would no doubt be assisted by a route map through this part of the application process showing the decisions they have to make. The following is the logical cascade of qualifying factors which the SMP should decide.

a.
Negligence or Misconduct (Reg. 6(4) disqualification);

b.
Idiopathic disease or condition ("injury received" test) without any causative link to duty;

c.
WOD application (Reg. 6(2)(a));

d.
WOJ application (Reg. 6(2)(a));

e.
NOD application (Reg. 6(2)(b));

f.
EOD application (Reg. 6(1)).

The reason why I have listed the cascade like this is that if the SMP makes the first decision on a. against the applicant, the SMP need go no further. Likewise, if factor b. is found against the applicant, the SMP need go no further. Likewise, if a. and b. are in the applicant's favour, the SMP should then decide on the 6(2) qualification factors before considering the 6(1) factor. It makes practical sense to consider the qualifying categories in Reg. 6(2) before that in Reg. 6(1) because the 6(2) qualifying categories do not entail a detailed consideration of whether the constable was acting in the execution of his duty, so should be easier to decide upon. For instance the question whether the constable was on duty or not when the incident occurred should be simple enough.

[118]
I also have considerable concerns about the Guidance in para 11 under the heading "Caused" which I consider is wrong. The authors have conflated the words in Reg. 8. (the decision on whether the received injury caused the retirement) with Reg. 6 (the decision on whether the Claimant qualifies for benefits at all). Reg. 8. states:

"**8. Disablement, death or treatment in hospital the result of an injury**

For the purposes of these Regulations disablement …. 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."

The causal link between the injury and the disablement is determined by Regulation 8. It does not control or redefine the qualifying categories in Reg. 6. which are separate and different. But the Guidance states this:

Caused

11. This has been interpreted by the courts in a number of cases, which the parties may draw to your attention, but it is suggested the following points should be noted:

• it is necessary to establish a direct causal link between the permanent disablement and service as a police officer:

• in cases where the permanent disablement through injury was the result of a single, significant incident the question will be a relatively simple one – was the injury received in the execution of duty as defined in Regulation 6(2)?

• an injury does not have to be received though a single, significant incident; where no single moment of injury can be identified it is suggested that to all intents and purposes the question for the SMP is whether the permanent disablement through injury was caused by, or received in, the execution of duty as opposed to domestic or other circumstances not related to police duty – bearing in mind the following points:

police duty should not be given a narrow meaning; it relates to all aspects of the officer's work;

the Court of Appeal has held that stress-related illness through exposure to police disciplinary proceedings does not count as an injury received in the execution of duty;

police duty does not extend to a sporting activity for the police while not carried out on duty, unless the provisions at 6(2) (b) or (c) apply – where the injury was due to the officer being known to be a constable.

[119]
Under Reg. 8 causation is needed between the injury and the permanent disablement. Under Reg. 6 causation between the received injury and the work duty is only needed in the EOD category. Causation is NOT required under the Reg. 6(2) qualifying categories – WOD, WOJ and NOD. So to that extent the guidance is wrong.

[120]
The second bullet point is wrong because it also conflates Reg. 8 with Reg. 6(2). Under Reg. 8 the causal connection between the injury and the permanent disablement is assessed. Under Reg. 6(2) each qualifying category must be assessed but each is completely unrelated to proof of the injury being received in the execution of the constable's duty. These are not proof of EOD categories. They are all standalone categories and if satisfied the Claimant qualifies under the deeming provisions. Only Reg. 6(1) required proof of EOD.

[121]
The third bullet point is an attempt to deal with diseases and psychiatric conditions under the EOD category only and should say so, but it does not. In addition, it again conflates the decision under Reg. 8 with that under Reg. 6. It should not do so because they are separate and distinct decisions. The examples given should be tied to cases but instead are scant and insufficient to assist SMPs in any meaningful way.

[122]
Paragraphs 12 and 13 are written under the heading “Substantially contributed to”. This is a Reg. 8 issue and should be dealt with under the Reg. 8 advice earlier in the Guidance, not mixed up with or written as potentially relevant to the Reg. 6 decision on qualification for benefits which does not have any relevance to those words.

[123]
I consider that this Guidance should be withdrawn forthwith and redrafted, but because this issue was not fully argued before me and because the Home Office and the IP were not at the hearing and so made no submissions, I do not go so far as to draw any conclusion on the lawfulness of the Guidance. I have restricted my views to matters related to Reg. 6(2) the subject of this case.

Conclusions

[124]
For the reasons set out above I quash the decision of the Defendant Board made on 16 April 2021 because it was based on an error of law as set out above.

[125]
If necessary, I will hand this judgment down in open court. I invite the parties to agree costs orders and consequential directions or matters. If agreement cannot be reached, then I will consider them at the handing down hearing.

END