



EMPLOYMENT TRIBUNALS

at a Preliminary Hearing

Claimants: Ms N Clark and Mrs M Bell

Respondents:

1. Chief Constable of Derbyshire Constabulary and Chief Constable of West Midlands Police
2. Secretary of State for the Home Department

Heard at: Midlands (East) Region as a hybrid hearing
On: 8 – 10 November 2021
Before: Employment Judge Blackwell (sitting alone)

Representation

Claimants: Mr J Feeny of Counsel
First Respondents: Mr P Lockley of Counsel
Second Respondent: Ms E Hodgetts of Counsel

Covid-19 statement:

This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.

RESERVED JUDGMENT

The decision of the Tribunal is:

1. The Tribunal does not have jurisdiction to hear complaints of disability discrimination brought under Sections 15 and 19 of the Equality Act 2010 (2010 Act) through the gateway of Section 39 of that Act.
2. The Tribunal does not have jurisdiction to hear complaints of disability discrimination brought under Sections 15 and 19 of the 2010 Act through the gateway of Section 108 of the 2010 Act.
3. The Tribunal does have jurisdiction to hear complaints of disability discrimination brought under Sections 15 and 19 of the 2010 Act through the gateway of Section 61 of that Act.

RESERVED REASONS

1. I heard no evidence but took into account written statements from Ms Lofts, the Policy Support Manager of the Police Federation of England and Wales and Mr P Spreadbury, a Deputy Director in the Home Office. The factual elements of both statements are agreed between the parties and effectively set out the history of benefits payable to police officers who were injured or killed in the execution of their duty. All three Counsel provided helpful written skeleton arguments and supplemented those orally. There was an agreed bundle of documents referred to as MB. Mr Feeny provided a Claimants' authorities bundle (CAB) and Counsel for both Respondents provided an equivalent bundle (RAB).
2. The issues are set out at MB page 67, save that the first issue in relation to jurisdiction under section 29 of the Equality Act 2010 (2010 Act) disappears, being abandoned by both Claimants.
3. **Issue one**
Thus, the first issue is: **Does the Employment Tribunal have jurisdiction to hear the complaints of discrimination brought under sections 15 and 19 of the 2010 Act through the gateway of s. 39 of that Act?** The relevant statutory law is set out in sections 39 and 42:

"39 Employees and applicants

- (1) An employer (A) must not discriminate against a person (B)—
 - (a) in the arrangements A makes for deciding to whom to offer employment;
 - (b) as to the terms on which A offers B employment;
 - (c) by not offering B employment.
- (2) An employer (A) must not discriminate against an employee of A's (B)—
 - (a) as to B's terms of employment;
 - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
 - (c) by dismissing B;

- (d) by subjecting B to any other detriment.
- (3) An employer (A) must not victimise a person (B)—
 - (a) in the arrangements A makes for deciding to whom to offer employment;
 - (b) as to the terms on which A offers B employment;
 - (c) by not offering B employment.
- (4) An employer (A) must not victimise an employee of A's (B)—
 - (a) as to B's terms of employment;
 - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;
 - (c) by dismissing B;
 - (d) by subjecting B to any other detriment.
- (5) A duty to make reasonable adjustments applies to an employer.
- (6) Subsection (1)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay—
 - (a) unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or
 - (b) if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (1)(b) by virtue of section 13, 14 or 18.
- (7) In subsections (2)(c) and (4)(c), the reference to dismissing B includes a reference to the termination of B's employment—
 - (a) by the expiry of a period (including a period expiring by reference to an event or circumstance);
 - (b) by an act of B's (including giving notice) in

circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice.

- (8) Subsection (7)(a) does not apply if, immediately after the termination, the employment is renewed on the same terms.”

“42 Identity of employer

- (1) For the purposes of this Part, holding the office of constable is to be treated as employment—
 - (a) by the chief officer, in respect of any act done by the chief officer in relation to a constable or appointment to the office of constable;
 - (b) by the responsible authority, in respect of any act done by the authority in relation to a constable or appointment to the office of constable.
- (2) For the purposes of this Part, holding an appointment as a police cadet is to be treated as employment—
 - (a) by the chief officer, in respect of any act done by the chief officer in relation to a police cadet or appointment as one;
 - (b) by the responsible authority, in respect of any act done by the authority in relation to a police cadet or appointment as one.
- (3) Subsection (1) does not apply to service with the Civil Nuclear Constabulary (as to which, see section 55(2) of the Energy Act 2004).
- (4) Subsection (1) does not apply to a constable at NCA or SPA.
- (5) A constable at NCA or SPA] is to be treated as employed by it, in respect of any act done by it in relation to the constable.

...”

4. Background findings of fact

- 4.1 Ms Clark was required to retire on 15 November 2019 pursuant to Regulation A20 of the Police Pensions Regulations 1987 (PPR 1987).
- 4.2 Mrs Bell was also required to retire pursuant to the same provision on 9 November 2018.
- 4.3 Both were awarded ill-health pensions pursuant to Regulation B3.
- 4.4 Further, both were awarded an injury pension pursuant to Regulation 11 of the Police (Injury Benefit) Regulations 2006 (PIBR 2006).
- 4.5 Both applied for a disablement gratuity pursuant to Regulation 12 of the PBR 2006 and, in both cases, such gratuity was refused. It is in relation to that refusal that both Claimants wish to bring claims of disability discrimination under sections 15 and 19 of EA 2010.
5. Mr Feeny did not pursue the gateway through section 39. The retirement of both Claimants brought about the end of their employment before either of them brought claims in this tribunal: Ms Clark on 4 November 2020 and Mrs Bell on 21 January 2021. Given that they were not employees at the time of bringing their respective claims, it follows that claims cannot be brought pursuant to section 39.

Issue 2

6. **Does the Employment Tribunal have jurisdiction to hear complaints of discrimination brought under sections 15 and 19 of the EA 2010 though the gateway of section 108 of the 2010 Act?** The relevant statutory law is set out in section 108 of the 2010 Act:

“108 Relationships that have ended

- (1) A person (A) must not discriminate against another (B) if—
- (a) the discrimination arises out of and is closely connected to a relationship which used to exist between them, and
 - (b) conduct of a description constituting the discrimination would, if it occurred during the relationship, contravene this Act.
- (2) A person (A) must not harass another (B) if—
- (a) the harassment arises out of and is closely connected to a relationship which used to exist between them, and

- (b) conduct of a description constituting the harassment would, if it occurred during the relationship, contravene this Act.
- (3) It does not matter whether the relationship ends before or after the commencement of this section.
- (4) A duty to make reasonable adjustments applies to A [F1if B is] placed at a substantial disadvantage as mentioned in section 20.
- (5) For the purposes of subsection (4), sections 20, 21 and 22 and the applicable Schedules are to be construed as if the relationship had not ended.
- (6) For the purposes of Part 9 (enforcement), a contravention of this section relates to the Part of this Act that would have been contravened if the relationship had not ended.
- (7) But conduct is not a contravention of this section in so far as it also amounts to victimisation of B by A.”
7. As Ms Hodgetts has helpfully pointed out, section 108 sought to codify the decision of the House of Lords in the case of ***Rhys-Harper v Relaxion Group plc [2003] ICR 867***. I was also referred to the case of ***Ford Motor Company Ltd v Elliott & others [2016] ICR 711*** and in particular at paragraph 26:
- “26. ... the question to be considered under section 108(1)(a) is not, as the EJ directed himself, whether there was a close connection between the Claimants’ relationship with the Respondent as former employees and that as current pensioners in which capacity they bring their claims. The question is whether the discrimination alleged, in this case the difference between the lump sum payments made to active employee members of the FPSSS, and the additional pension increase made in 2011 to pensioner members, arose out of and was closely connected to the employment relationship which used to exist between them and the Respondent. ...”
8. As to section 108(1)(b), again from ***Elliott*** paragraph 29:
- “29. ...The EJ was not required to decide whether the Claimants’ claims were established. However, the EJ erred in failing to consider and decide whether the allegations in the ET1s, if established, would show that the circumstances in which the payments to the Claimants and to their comparators were not materially different so as to found a claim of discrimination contrary to the **EqA**. Such a decision is necessary to determining whether the claims fall within section 108(1)(b). ...”
9. As to the question under subsection 1(a), both Counsel for the Respondents

submit that there was no close connection and that there was no causative nexus between the alleged discriminatory conduct relied upon and events in the previous relationship going beyond a “but for” connection. It seems to me that on the facts, the refusal to pay gratuities under Regulation 12 arose out of the relationship between the First Respondents exercising his duties under the PIBR 2006 and the Claimants seeking benefit thereunder. Also, the Respondents are both adopting the reasoning of the ET in the case of **Curry v The Chief Constable of Northumbria Police [2500281/2017]**, a decision of Employment Judge Buchanan beginning at page 211 of RBA.

10. Both Counsel for the Respondents also adopt the reasoning of EJ Buchanan in that;

“the conduct of the Respondent which is impugned by this claim could not have occurred during the employment relationship because the allegations arise out of the scheme into which the claimant was admitted only after the relationship ended and as a consequence of it ending.”

11. Mr Feeny argues that the Tribunal should take a liberal approach to the conduct relied upon. Denial of the disablement gratuity would on an ordinary reading meet the definition of section 39(2)(d), ie denial of access to a benefit. The fact that the benefit is only payable following retirement should be considered under the subsection 1(a) test instead. He further argues that the discriminatory refusal to pay the benefit, ie the gratuity, arises out of the previous relationship of Chief Officer as employer and Constable as employee and is closely connected to it, not least because of the execution of duty requirement.
12. I respectfully adopt the reasoning of EJ Buchanan both in relation to 1(a) and 1(b) and I therefore conclude that the section 108 gateway is not open to the Claimants.

Issue 3

13. **Does the ET have jurisdiction to hear the complaints of discrimination brought under sections 15 and 19 of the 2010 Act through the gateway of section 61?**

“61 Non-discrimination rule

- (1) An occupational pension scheme must be taken to include a non-discrimination rule.
- (2) A non-discrimination rule is a provision by virtue of which a responsible person (A)—
 - (a) must not discriminate against another person (B) in carrying out any of A's functions in relation to the scheme;
 - (b) must not, in relation to the scheme, harass B;

- (c) must not, in relation to the scheme, victimise B.
- (3) The provisions of an occupational pension scheme have effect subject to the non-discrimination rule.
- (4) The following are responsible persons—
 - (a) the trustees or managers of the scheme;
 - (b) an employer whose employees are, or may be, members of the scheme;
 - (c) a person exercising an appointing function in relation to an office the holder of which is, or may be, a member of the scheme.
- (5) A non-discrimination rule does not apply in relation to a person who is a pension credit member of a scheme.
- (6) An appointing function is any of the following—
 - (a) the function of appointing a person;
 - (b) the function of terminating a person's appointment;
 - (c) the function of recommending a person for appointment;
 - (d) the function of approving an appointment.
- (7) A breach of a non-discrimination rule is a contravention of this Part for the purposes of Part 9 (enforcement).
- (8) It is not a breach of a non-discrimination rule for the employer or the trustees or managers of a scheme to maintain or use in relation to the scheme rules, practices, actions or decisions relating to age which are of a description specified by order by a Minister of the Crown.
- (9) An order authorising the use of rules, practices, actions or decisions which are not in use before the order comes into force must not be made unless the Minister consults such persons as the Minister thinks appropriate.
- (10) A non-discrimination rule does not have effect in relation to an occupational pension scheme in so far as an equality rule has effect in relation to it (or would have effect in relation to it but for Part 2 of Schedule 7).
- (11) A duty to make reasonable adjustments applies to a responsible person.”

The Pension Schemes Act 1993 provides:

“1.(1) In this Act, unless the context otherwise requires—
”occupational pension scheme” means a pension scheme—

(a) that—

- (i) for the purpose of providing benefits to, or in respect of, people with service in employments of a description, or
- (ii) for that purpose and also for the purpose of providing benefits to, or in respect of, other people,

is established by, or by persons who include, a person to whom subsection (2) applies when the scheme is established or (as the case may be) to whom that subsection would have applied when the scheme was established had that subsection then been in force,

or a pension scheme that is prescribed or is of a prescribed description;

“personal pension scheme” means a pension scheme that—

- (a) is not an occupational pension scheme, and
- (b) is established by a person within section 154(1) of the Finance Act 2004;

“public service pension scheme” means an occupational pension scheme established by or under an enactment or the Royal prerogative or a Royal charter, being a scheme—

- (a) all the particulars of which are set out in or in a legislative instrument made under, an enactment, Royal warrant or charter, or
- (b) which cannot come into force, or be amended, without the scheme or amendment being approved by a Minister of the Crown or government department,

and includes any occupational pension scheme established, with the concurrence of the Treasury, by or with the approval of any Minister of the Crown and any occupational pension scheme prescribed by regulations made by the Secretary of State and the Treasury jointly as being a scheme which ought in their opinion to be treated as a public service pension scheme for the purposes of this Act.

- (2) This subsection applies—
 - (a) where people in employments of the description concerned are employed by someone, to a person who employs such people,
 - (b) to a person in an employment of that description, and
 - (c) to a person representing interests of a description framed so as to include—
 - (i) interests of persons who employ people in employments of the description mentioned in paragraph (a), or
 - (ii) interests of people in employments of that description.
- (3) For the purposes of subsection (2), if a person is in an employment of the description concerned by reason of holding an office (including an elective office) and is entitled to remuneration for holding it, the person responsible for paying the remuneration shall be taken to employ the office-holder.
- (4) In the definition in subsection (1) of “occupational pension scheme”, the reference to a description includes a description framed by reference to an employment being of any of two or more kinds.
- (5) In subsection (1) “pension scheme” (except in the phrases “occupational pension scheme”, “personal pension scheme” and “public service pension scheme”) means a scheme or other arrangements, comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people—
 - (a) on retirement,
 - (b) on having reached a particular age, or
 - (c) on termination of service in an employment.
- (6) The power of the Treasury under section 154(4) of the Finance Act 2004 (power to amend sections 154 and 155) includes power consequentially to amend—
 - (a) paragraph (a) of the definition in subsection (1) of “personal pension scheme”, and

(b) any provision in force in Northern Ireland corresponding to that paragraph.”

14. Thus, the issue is whether the PIBR 2006 is an occupational pension scheme within the meaning of section 1, subsection (5) of the 1993 Act. In short, if it is then the Tribunal will have jurisdiction to hear claims of disability discrimination. If not, the Claimants will not have redress before an Employment Tribunal.
15. Ms Hodgetts has helpfully set out at paragraph 4 of her skeleton the history of police injury awards.
16. The disablement gratuity which is the subject of this litigation was first provided for by Regulation 4 of the Police Injury Benefit Regulations 1987. Eligibility did not depend upon membership of a police pension scheme and that remains the case.
17. In 2001 to 2005, there was a review of the financing of police pensions, which included the staff side of the Police Negotiation Board (which includes the Police Federation). It seems to have been common ground that injury awards were not part of pension benefits. At broadly the same time, there was a wide-ranging review of the tax regime in respect of registered pension schemes and the Finance Act 2004 became law. As a consequence, the PIBR 2006 was also enacted. Beginning at page 243 is the explanatory memorandum to the PIBR 2006. At paragraph 4.3:

“4.3 This situation changes when the new tax regime for registered pension schemes – introduced by the Finance Act 2004 – comes into effect on 6 April this year. Any unauthorised payment will incur a tax charge. In order not to let the Police Pension Scheme incur such charges it is necessary to separate the injury benefits from the pension scheme regulations.”
18. At paragraph 7 headed “Policy background”:

“7.1 Police injury awards do not depend on membership of the Police Pension Scheme, but are in effect compensation for work-related injuries. Benefits comprise pensions and gratuities for former officers who are permanently disabled as a result of an injury received without their default in the execution of duty, and survivors’ pensions and gratuities for spouses, civil partners, children and adult dependent relatives where the officer dies as a result of such an injury.

7.2 For the reasons set out in paragraph 4, this instrument brings together the current regulations relating to injury benefits into a separate document from the SI for the Police Pension Scheme. The instrument is not a formal consolidation since the opportunity is taken to update references to widows (now called adult survivors) and, in line with the new HMRC requirements, to apply an age limit of 23 years to child benefits where the child is not permanently disabled.

...”

19. The two Regulations with which we are most concerned are Regulations 11 and 12 and they can be found at pages 43 and 44 of the Second Respondent’s bundle of law:

“11.- Police officer’s injury award

(1) This regulation applies to a person who ceases or has ceased to be a member of a police force and is permanently disabled as a result of an injury received without his own default in the execution of his duty (in Schedule 3 referred to as the “*relevant injury*”).

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

“12.- Disablement gratuity

(1) This regulation applies to a person who –

(a) receives or received an injury without his own default in the execution of his duty,

(b) ceases or has ceased to be a member of a police force, and

(c) within 12 months of so receiving the injury, becomes or became totally and permanently disabled as a result of that injury.

...”

20. Regulation 30(2) is also, to an extent, relevant in that it deals with references to a duly qualified medical practitioner to consider –

“... ”

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

(d) the degree of the person’s disablement.

...”

21. That Regulation also makes it clear that the decision that an officer is disabled pursuant to A20 of the PPR 1987, referred to above, is not to be reopened.

Mr Feeny's submissions on behalf of the Claimants

22. Firstly, Mr Feeny submits that the Claimants need to satisfy whether the PIBR 2006:
- “a. Is a scheme or other arrangement comprised in one or more instruments or agreements ...; and
 - b. Has or is capable of having effect so as to provide benefits to or in respect of people ...:
 - i. On retirement;
 - ii. On having reached a particular age; or
 - iii. On termination of service in employment; and
 - c. Has the purpose of providing benefits to, or in respect of, people with service in employments of a description, or for that purpose and also for the purpose of providing benefits to, or in respect of, other people [eg benefits to widows]; and
 - d. When established applied to people in employment of the description in subsection (2) Subsection (3) defines employment in subsection (2) to include office-holders, so includes police officers.”
23. Mr Feeny further submits that PIBR 2006 are within the definition of scheme regulations in the Public Service Pensions Act 2013.
24. He then refers me to three cases: ***Westminster City Council v Haywood & others [1997] Pens LR 39, Court of Appeal*** which concerned a severance scheme offered by a local authority to departing employees at a certain age met the section 1 PSA definition (albeit a different definition to the one with which I am currently concerned).
25. The second case was: ***City and County of Swansea v Johnson [1999] Pens LR 187, HC***. That case concerned again whether an injury allowance due under the Local Government Superannuation Regulations 1986 as a result of contracting asbestosis during his employment with the local authority. Mr Feeny prays in aid paragraphs 14 and 15 of the Judgment of Mr Justice Hart:
- “14. As to that question, I begin with the intuitive predisposition to find that a scheme of this nature, i.e. one whereby the employer binds itself to pay compensation on a no fault basis on termination of employment as a result of injury sustained or disease contracted in the course of employment is not an occupational pension scheme. It is, however, difficult to say that such a scheme does not provide ‘benefits, in the form of pensions or otherwise, payable on termination of service’. Those words are, as Millett LJ (as he then was) pointed out in ***Westminster City Council v Haywood [1998] Ch 377 at 409*** of wide ambit. Other examples may be given of schemes or arrangements, not otherwise obviously pension schemes, which are potentially within those words: a

provision, for example, in an employment contract for agreed damages in the event of dismissal before the expiry of the contractual employment term, or for compensation for termination of the employment contract on grounds of redundancy.

15. I do not, however, think that it is open to me to hold that some gloss can be put on the words ‘benefits ... payable on termination of service’ so as, without more, to exclude from their ambit payments of the types mentioned above. ***Westminster City Council v Haywood*** was itself concerned with the question of a complainant’s entitlement to compensation under a severance scheme, and the court, both at first instance and on appeal regarded the determinative question to be whether the severance scheme was separate from the pension scheme. In that case the answer to that question was determinative because, as the law then stood, a complainant before the Ombudsman had to show that he had been ‘in pensionable service’ under the scheme. Had the nature of the benefits claimed under the severance scheme been regarded by the court as outside the words in section 1 of the 1993 Act, that would have been a material consideration in itself on the question whether the severance scheme should be regarded as a separate scheme. But no reliance was placed on any such point in the judgment of the Court of Appeal. It is also the case that the scheme (or subscheme) of which regulation L3 forms part does include provision for benefits payable otherwise than on termination of service (see regulation L4) and, in that respect at least, does not fulfil the definition of an ‘occupational health scheme’ in section 1 of the 1993 Act. I am not, however, persuaded that the inclusion of such an extraneous benefit necessarily takes the scheme outside the definition if it otherwise qualifies. The appellant did not seek so to argue”
26. The third case was that of ***Parlett v Guppys (Bridport) Ltd (No. 2) [2000] Pens LR 195 CA***. Mr Feeny submits that as a consequence of ***Parlett***, whilst accepting that police officers do not have to opt in or contribute to the Police Pension Scheme to be eligible for PIBR benefits, it is the fact of service that qualifies the individual for a payment under PIBR. He also cites Thorpe LJ, citing part of Millet LJ’s Judgment in the ***Westminster City Council*** case, as follows:
- “31 The only other authority to which we have been referred on the point is ***Westminster City Council v Haywood [1998] Ch 377***. Millet LJ observed at p455B that the definition of occupational pension scheme is a very wide definition. Such assistance as there is, therefore, encourages me to take the view that ‘occupational pension scheme’ should be construed liberally and not restrictively.”
27. Mr Feeny further submits that the conditions in subsection (5) of section 1 do not limit further conditions which may also have to be met for eligibility to arise. If this was so, Mr Johnson’s ill health pension would also have fallen outside the scheme.

28. He also submits that whilst the PIBR 2006 is a non-contributory scheme, that does not undermine the legal test the Tribunal must apply under section 1 PSA. He further submits that the Claimants in this case are pensioner members within the definition of the Pensions Act 1995, section 124.

The Respondents' submissions

29. Mr Lockley and Ms Hodgetts broadly adopted each other's submissions and amplified orally their own particular points, so I trust they will not be offended if I regard their submissions as joint.
30. The main thrust of their submissions was that the PIBR 2006 is a scheme for compensation for officers injured or killed (emphasis on killed) whilst on duty. It is not an occupational pension scheme in the normally understood context, ie pension being a question of deferred pay. In that context, they note that the definition in section 1 PSA no longer includes benefits contingent upon death and that the PIBR 2006 does include such benefits. They also submit that a disablement gratuity paid under Regulation 12 is not payable on retirement on having reached a particular age or on termination of service because further conditions must be satisfied, namely that the applicant becomes or has become totally and permanently disabled within 12 months of and as a result of sustaining injury of a kind specified in Regulation 12(1)(a).
31. They submit that it was open to Parliament on a number of occasions to include the wider definition contained within section 150(1) of the Finance Act 2004, which included the further definition, namely: "On the onset of serious ill health or incapacity". In particular, they point to the fact that the Disability Discrimination Act 1995 was amended in October 2004 and, once again, Parliament did not take the opportunity to include the wider definition. They assert that that was a deliberate legislative choice to use that narrower definition. They also assert that the ET in the **Curry** case to which I have referred above was wrong to conclude that the PIBR 2006 fell within the definition of section 1 PSA, firstly because the Tribunal was wrong to find that the definition was inclusive rather than exclusive, ie that the benefits to be provided under the Scheme have only to be provided to a person on retirement or on termination of service. This disregards the fact that Parliament has specifically chosen the narrower of the two available definitions and further that that point seems not to have been argued before the **Curry** Tribunal.
32. Secondly, that the Tribunal in **Curry** did not have regard to the fact that it is a creature of statute and its jurisdiction is therefore confined to that which is endowed by statute and, further, that no evidence was adduced to that Tribunal of the history of the PIBR and the fact that it was taken out of the Police Pension Scheme Regulations as a consequence of the taxation changes brought about by the Finance Act 2004.
33. The Respondents' Counsel also referred me to authorities which relate to a number of challenges brought by way of Judicial Review to the decisions of either Police Medical Appeal Boards or Police Authorities. In particular, they cite the following from the Judgment Henderson LJ in the case of **Evans and Ashcroft v The Chief Constable of the South Wales Police [2018] EWCA**

Civ 2107:

- “2. An injury award payable under the 2006 Regulations is separate from any pension or pension-related benefits to which the person in question (whom I will call the “police officer”) may be or become entitled under the police occupational pension scheme, which was governed at the material times by the Police Pensions Act 1976 and the Police Pensions Regulations 1987 (“the 1987 Pensions Regulations”). ...”
34. In the context of that citation and those authorities generally, I do not believe they are helpful. It is common ground that the 2006 Regulations are separate, and all of the authorities referred to are dealing with decisions made under the PIBR and not the question that is before me.

Conclusions

35. The issue is simply put, does PIBR 2006 fall within the definition of section 1 PSA? In reaching my conclusion, I have not put any weight on the fact that Government, the Police Authorities and the Police Federation do not consider the PIBR 2006 to be an occupational pension scheme. In my view, my task is simply one of statutory interpretation, aided by relevant authorities.
36. As to those authorities, the Respondents criticise the *Haywood, Johnson* and *Parlett* cases on the basis that they were dealing with a definition of occupational pension scheme that is different to the one which I have to construe. In particular, there were references to death and qualifying service. However, notwithstanding the change in definition, they were carrying out an analogous task namely, to consider whether the Pensions Ombudsman had jurisdiction. Further, in my view the *Johnson* case is of direct application. Mr Johnson’s application concerned an entitlement to an injury allowance which arose after early retirement. One of the grounds of appeal was “that the Pensions Ombudsman did not have jurisdiction to entertain the complaint since the scheme of allowance as contained in Part L of the 1986 Regulations did not amount to an occupational pension scheme within the meaning of section 1 of the Pension Schemes Act 1993”.
37. I have cited above paragraphs 14 and 15 of that Judgment which in my view are highly persuasive.
38. Further, the obiter dicta of Millet LJ in the *Harwood* case, cited and approved by Thorpe LJ in *Parlett*, is again highly persuasive.
39. I also adopt the reasoning of the Learned Judge in the *Curry* case at paragraph 40 and in particular:
- “...
Thus benefits under the Scheme only arise if an officer has ceased to be a member of a police force. But if an officer has so ceased then he has retired from the police force albeit because of that disability. The word “retirement” must cover a situation different to retirement on reaching a

particular age for that is specifically provided for. Furthermore the benefits to the claimant clearly arise on the termination of his employment as Regulation 11 only applies when membership of the police force has ceased and thus employment ended.

...”

- 40. I would further say that Regulations 11 and 12 must be read together because Regulation 11 makes reference to the gratuity provided for in Regulation 12.
- 41. I accept of course that the PIBR has been decoupled from the Police Pension Scheme, but it seems to me that that is purely as a consequence of avoiding a tax disadvantage and/or on administrative grounds. That does not seem to me to be of any great weight. The question remains, do the PIBR 2006 fall within the section 1 definition and I am satisfied that they do. In reaching that conclusion, I rely in particular on the **Johnson** case and the fact that Regulations 11 and 12 should be read together.
- 42. It follows therefore that the Claimants have the right to pursue claims under section 15 and section 19 of the 2010 Act by reason of section 61 of that Act.

Employment Judge Blackwell

Date: 1 December 2021

JUDGMENT SENT TO THE PARTIES ON

3 December 2021

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FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

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