Neutral Citation Number: [2017] EWHC 2835 (QB)

Case No: HQ16X01519

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/11/2017

Before :

MR JUSTICE HADDON-CAVE

Between :

WAYNE EVANS (1) **BARRY ASHCROFT (2)**	**Claimants**
- and -	
THE CHIEF CONSTABLE OF THE SOUTH WALES POLICE	**Defendant**

Mr D Lock QC (instructed by **Cartwright King**) for the **Claimants**
Mr J Beer QC (instructed by **Police Force Solicitor**) for the **Defendant**

Hearing dates: 8th June and 30th October 2017

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE HADDON-CAVE

MR JUSTICE HADDON-CAVE :

Introduction

1. This case raises a short point of statutory construction which is potentially important for former police officers who receive police injury pensions.

2. The question for determination was formulated in a Court Order dated 16th December 2016 as follows:

> "Do the provisions of paragraphs 7(1) and 7(2) of Schedule 3 to the Police (Injury Benefit) Regulations 2006 entitle a Chief Constable to deduct the full sums of Incapacity Benefit (IB) and Industrial Injuries Disablement Benefit (IIDB) from the injury pension paid to a former police officer in weeks in a year after the year in which the former police officer retired where the amounts of IB and IIDB have been increased by an Annual Uprating Order made under section 150 of the Social Security Administration Act 1992 and accordingly the levels of IB and IIDB payable to the former officer have increased."

3. The essential issue for determination is whether the level of injury pension payable to a former police officer should be reduced by (a) the amount of additional social security benefits payable in the year in which the former officer retired, or the first year the relevant benefits were paid if only paid after retirement (as the Claimants contend), or (b) the amount of the additional social security benefits actually payable to the former officer in each year (as the Defendant contends).

4. The answer depends on the meaning of paragraphs 7(1) and (2) of Schedule 3 of the Police (Injury Benefit) Pensions Regulations 2006, and in particular the true construction of the following words in paragraph 7(2):

> "*Where the provisions governing scales of additional benefits have changed after the person concerned ceased to be a member of a police force...*"

Background

The police injury pensions regime

5. Police officers injured in the execution of their duty are entitled, in addition to their ordinary pension, to a police injury pension. The payment of such pensions was previously regulated by the Police Pensions Regulations 1987 ("the 1987 Regulations") and is now regulated by the Police (Injury Benefit) Pensions Regulations 2006 ("the 2006 Regulations").

6. The interstices of the 1987 regime are helpfully set out in paragraphs 11-22 of Mr Beer QC's skeleton argument on behalf of the Defendant. It is not necessary, however, to rehearse these details in this judgment since the 1987 regime is materially similar to the 2006 regime for present purposes. Both the 1987 and 2006 police pension regimes require deductions to be made from the injury pensions paid to qualifying former police officers equivalent to certain social security benefits (see further below).

The Claimants' injury pensions

7. The First and Second Claimants served as police officers in the South Wales Police for 29 years and 26 years respectively. They were both injured in the course of their duties as police officers and both required to retire in 1999 as a result of those injuries. In addition to their police pensions, they each applied for, and were awarded, police injury pensions under the 1987 Regulations (now the 2006 Regulations).

8. The level of police injury pension paid is dependent upon the degree of injury and the impact which it has on the earnings capacity of the individual. The 'banding' Table is set out in paragraph 3 of Schedule 7 to the 2006 (and attached at Annex A to this judgment). The Table distinguishes between degrees of disability which calibrate the amount of gratuity and pension paid. The bands are as follows:

   (1) Band 1: 25% or less (slight disablement);

   (2) Band 2: more than 25% but not more than 50% (minor disablement);

   (3) Band 3: more than 50% but not more than 75% (major disablement); and

   (4) Band 4: more than 75% (very severe disablement).

9. The Police Authority determined that the First Claimant had a 40% degree of disablement and was awarded a "Band 2" police injury pension under the 1987 Regulations. The First Claimant was therefore entitled, having regard also to his length of service, to a Minimum Income Guarantee ("MIG") of 70% of his Average Pensionable Pay ("APP").

10. The Police Authority determined that the Second Claimant had an 80% degree of disablement and was awarded to a "Band 4" police injury pension under the 1987 Regulations. The Second Claimant was therefore entitled, having regard also to his length of service, to a MIG of 85% of his APP.

The Claimants' social security benefits

11. As a result of the same injuries, the First and Second Claimants also became entitled to social security benefits. They both became entitled to receive Incapacity Benefit ("IB"); and, in addition, the Second Claimant became entitled to Industrial Injuries Disablement Benefit ("IIDB"). The Second Claimant subsequently ceased to receive IB in 2013 and became entitled to Employment and Support Allowance ("ESA"). A separate issue between the parties regarding the non-deductibility of ESA has been resolved.

Increases in injury pension and benefit payments

12. The Claimants' income under their police injury pensions will have grown annually since 1999 and continues to grow. This is because police injury pensions are index-linked to the Consumer Prices Index (see regulation 29(1) of the 2006 Regulations and the Pensions (Increase) Act 1971). Injury pension income is free of income tax.

13. Similarly, the weekly payments that the Claimants have received by way of deductible social security benefits (*e.g.* IB and IIDB) have also increased since 1999, and continue to increase. This is because social security benefits are subject to an annual up-rating process (see further below). Payments of IB, however, attract income tax.

14. Since 1999, the Claimants' police injury pensions have been reduced by the full amount of the IB and IIDB payable to each of them by reason of deductions made by the Defendant (the relevant pension provider). The net effect has been to reduce the Claimants' injury pension income each week by a figure equivalent to the IB and IIDB benefits payable. It is the level of these deductions which the Claimants challenge in these proceedings. The fact that IB attracts income tax but injury pension does not is, naturally, a significant factor as far as the impact of such deductions is concerned.

Submissions

15. Mr Lock QC submitted on behalf of the Claimants that the words in paragraph 7(2) "*...the provisions governing scales of additional benefits...*" refer to the annual up-rating order made by the Secretary of State as part of the annual up-rating of social security benefits. The Claimants' case is that the reference in paragraph 7(2) to the "*scales of additional benefits*" refers to the actual amounts of additional benefits payable in any particular year and that the deductions for IB and IIDB were first fixed at the level of benefit payable at the time that they ceased to be police officers in 1999. Their case is that the subsequent change in scale rates as a result of uprating in 2000 as a result of the up-rating Order triggered paragraph 7(2). Accordingly, the Claimants argue the Defendant's regular deductions of higher amounts since 1999 were unlawful and must all be repaid.

16. Mr Lock QC submitted that the purpose of paragraph 7 was simplicity. He argued that paragraph 7 fixed the level of deduction from the MIG at the level that a defined social security benefit is paid in the year in which a former officer retires, or if the retired officer subsequently becomes entitled to a new deductible benefit, the amount of that benefit in the first year in which it is paid. Accordingly, he submitted, the level of deduction is fixed at the same original figure for as long as the former officer is paid that particular welfare benefit. In the present case, therefore, the level of deduction for IB for the First Claimant was fixed in 1999 and should have remained the same to date; and the level of deduction for both IB and IIDB for the Second Claimant was fixed in 1999 and should have remained the same until he ceased to be entitled these social security benefits (in 2013 and 2015 respectively). Accordingly, the Claimants argue the Defendant has improperly operated paragraph 7 and has over-deducted from retired police officers with disability pensions for the past nearly two decades; and these over-deducted sums should be repaid, *i.e.* for the last 18 years.

17. Mr Beer QC submitted on behalf of the Defendant that the words of paragraph 7(2) of the 2006 Regulations "*... the provisions governing scales of additional benefits...*" referred to the statutory framework governing the uprating of benefits contained in section 150 of the Social Security Administration Act 1992. He submitted that the deductions for IB and IIDB were intended to reflect the sums actually received by the Claimants by way of social security benefits and the Defendant had lawfully deducted the full amounts of the IB and IIDB which the Claimants had received weekly since 1999.

The relevant statutory provisions

The Police (Injury Benefit) Pensions Regulations 2006 ("the 2006 Regulations")

18. Schedule 3 of the 2006 Regulations provides *inter alia* as follows (emphasis added):

> *"7(1) The amount of the injury pension in respect of any week...shall be reduced on account of any such additional benefit as is mentioned in sub-paragraph (3) to which the person concerned is entitled in respect of the same week and, subject to sub-paragraph (2), the said reduction shall be of an amount equal to that of the additional benefit or, in the case of benefit mentioned in sub-paragraph (3)(a) or (b), of so much thereof as is there mentioned.*
>
> *(2) Where the provisions governing scales of additional benefits have changed after the person concerned ceased to be a member of a police force, the amount of the reduction in respect of any week on account of a particular benefit shall not exceed the amount which would have been the amount thereof in respect of that week had those provisions not changed, it being assumed, in the case of such benefit as is mentioned in sub-paragraph (3)(a)(ii), that it would have borne the same relationship to the former maximum amount thereof.*
>
> *(3) The following benefits are the additional benefits referred to in this paragraph—*
>
> *(a) any industrial injuries benefit under section 94 of the Social Security Contributions and Benefits Act 1992 in respect of the relevant injury or so much of any such pension as relates to that injury (referred to in this sub-paragraph as the relevant part of the pension), together with—*
>
> *(i) any increase in such pension by way of unemployability supplement under Part 1 of Schedule 7 to that Act or so much of any such increase as is proportionate to the relevant part of that pension so, however, that where the person concerned is entitled to an unemployability supplement which is increased under Part 1 of the said Schedule, the unemployability supplement shall be deemed not to have been so increased,*

(ii) any increase in such pension under section 94 of that Act (reduced earnings allowance) or so much of any such increase as is proportionate to the relevant part of that pension, and

(iii) so long as the person concerned is receiving treatment as an in-patient at a hospital as a result of the relevant injury, any increase in such pension under Part 3 of Schedule 7 to that Act (hospital treatments);

(b) any reduced earnings allowance under section 94 of that Act in respect of the relevant injury or so much of any such allowance as relates to that injury;

(c) until the first day after his retirement which is not, or is deemed not to be, a day of incapacity for work within the meaning of section 30A, or, as the case may be, a day on which he is incapable of work within the meaning of sections 68 and 69, of that Act—

(i) any incapacity benefit under section 30A of that Act,

(ii) any severe disablement allowance under sections 68 and 69, including, in each case, any increase under any provision of Part 4 of that Act (dependants);

(d) any employment and support allowance under sections 1(2)(a) or 1B of the Welfare Reform Act 2007.

(4) Where a person has become entitled to a disablement gratuity under Part 2 of Schedule 7 to the Social Security Contributions and Benefits Act 1992 in respect of the relevant injury, this paragraph shall have effect as if he were entitled during the relevant period to a disablement pension of such amount as would be produced by converting the gratuity into an annuity for the said period.

In this sub-paragraph the expression "the relevant period" means the period taken into account, in accordance with section 94 of that Act, for the purpose of making the assessment by reference to which the gratuity became payable"

19. The terms of paragraphs 7(1) and 7(2) of Schedule 3 of the 2006 Regulations are materially identical to the terms of paragraphs 4(1) and 4(2) of Part V of Schedule B to the 1987 Regulations.

Section 150 of the Social Security Administration Act 1992

20. Part X of the Social Security Administration Act 1992 ("the 1992 Act") is headed "*Review and Alteration of Benefits*". Section 150(1) of the 1992 Act obliges the Secretary of State to review certain state benefits annually:

> "*...in order to determine whether they have retained their value in relation to the general level of prices obtaining in Great Britain estimated in such manner as the Secretary of State thinks fit.*"

21. Section 150(2) sets out what the Secretary of State must do if there has been a rise in the general level of prices (emphasis added):

> "*Where it appears to the Secretary of State that the general level of prices is greater at the end of the period under review than it was at the beginning of that period, he shall lay before Parliament the draft of an uprating order* –
>
> *(a) which increases each of the sums to which sub-section (3) below applies by a percentage not less than the percentage by which the general level of prices is greater at the end of the period than it was at the beginning;*
>
> *(b) if he considers it appropriate, having regard to the national economic situation and any other matters which he considers relevant, which also increases by such a percentage or percentages as he thinks fit any of the sums mentioned in subsection (1) above, but to which subsection (3) below does not apply; and*
>
> *(c) stating the amount of any sums which are mentioned in subsection (1) above but which the order does not increase.*"

22. Section 150(3) sets out certain benefits in social security legislation. The effect is that certain benefits are automatically uprated in line with the percentage price increase, whereas in the case of other benefits there is a discretion whether to give effect to that increase or not, and one of the factors the Secretary of State is required to consider in the latter case is the "*national economic situation*".

23. Section 150(9) provides that the Secretary of State shall make an order in the form of the draft if it is approved by a resolution of each House.

24. Section 189(8) of the 1992 Act provides that an order under section 150 shall not be made by the Secretary of State without the consent of the Treasury.

25. In summary, therefore, section 150 sets out the statutory framework and procedure for the annual uprating of benefits and the issuing of "*uprating order[s]*" by the Secretary of State. Section 150 requires the Secretary of State annually to review sums specified as payable by the Contribution and Benefits Act 1992 (including in relation to IB and IIDB) by reference to certain criteria such as increases in "*the general level of prices*" and "*the national economic situation*" (see sections 150(2)(a) and (b) and further above). In particular, the Secretary of State is required (by section 150(2)) to lay a draft up-rating order before Parliament if it appears to him that "*the general level of prices is greater at the end of the period under review than it was at the beginning of that period*". Uprating orders made under section 150 are drawn up in the form of statutory instruments, given an S.I. number and laid before Parliament (see *e.g.* Social Security Benefits Up-rating Order 2017).

Analysis

(1) Plain ordinary meaning

26. I turn, first, to the plain ordinary meaning of the statutory language. In my view, the answer to this case depends primarily upon a careful reading and the plain ordinary meaning of the words of paragraphs 7(1) and 7(2) of the 2006 Regulations.

27. Paragraph 7(1) provides that "*...the amount of injury pension payable in any week shall be reduced...*" by reference to any additional (social security) benefit to which the person concerned is entitled, but "*subject to sub-paragraph (2)*". The full terms of paragraph 7(2) are detailed above. As set out above, the issue in this case boils down to the following question: whether the words in paragraph 7(2) "*...the provisions governing scales of additional benefits...*" refer (a) to the statutory provisions for the uprating of social security benefits contained in section 150 of the Social Security Administration Act 1992 (as the Defendant contends), or merely (b) to the annual up-rating order made pursuant to those provisions (as the Claimants contends).

28. The word "*provisions*" in paragraph 7(2) is a general term. If it stood alone, it may be said to be potentially ambiguous: *i.e.* it could arguably refer to statutory provisions contained either in an Act of Parliament, or the provisions of any subordinate legislation made thereunder (*c.f.* section 14A of the Interpretation Act 1978). However, the term does not stand alone: it is part of the phrase "*...the provisions governing scales of additional benefits...*" in paragraph 7(2). In my view, the adjective "*governing*" demonstrates that the "*provisions*" being referred to are the statutory provisions in section 150 which sets out the framework and procedure for the uprating of social security benefits. It is these *overarching* provisions in section 150 which can properly be said to 'govern' scales of additional benefits. The same cannot be said of uprating orders themselves. These are merely the *product* or result of the framework and procedure laid down by section 150 to be followed by the Secretary of State when uprating.

29. Even if annual uprating orders can, as a matter of language, loosely be said to 'govern' scales of additional benefits (*i.e.* in the limited sense of laying down what increases there should be in benefits in any given year taking into account price inflation and other factors), relatively-speaking it is the primary statutory provisions of section 150 which 'govern' scales of additional benefits, not the subordinate legislative products flowing therefrom. The outcome of the procedure is to be distinguished from the provisions governing the procedure itself.

30. Thus, in my view, annual uprating orders are not "*the provisions governing scales of additional benefits*" but merely the exercise of the powers derived from the primary (governing) provisions. They merely alter the "*scales of additional benefits*" on an annual basis, but are not "*the provisions governing scales of additional benefits*". I emphasise the use of the definite term.

31. Mr Lock QC's construction only properly works if you ignore the words "*...the provisions governing...*" and simply read paragraph 7(2) as referring to "*...scales of additional benefits*". However, it is a cardinal principle of statutory construction that effect must be given, if possible, to every clause and word of a statute. Mr Lock QC's reliance on the provisions of section 2 of the Interpretation Act 1978 is of no assistance. Section 2 refers to the term "*provision*" in two senses: "*an Act or provision of an Act*" and the making of "*provision*" for "*an Act or provision of an Act*" to come into force. This takes the analysis no further. An uprating order may, as a matter of language, be said to make "*provision*" for the increase in the rates of benefits in a particular year, but uprating orders cannot be said to be "*the provisions governing rates of benefits*" for the reasons set out above.

32. For these reasons, in my judgment, the plain ordinary meaning of the words of paragraph 7(2) favours the Defendant's construction.

(2) Claimants' construction would lead to over- or double-recovery

33. Second, in my view, the Claimants' construction would be inconsistent with the clear purpose of the balancing mechanism in paragraphs 7(1) and (2) of the 2006 Regulations, which is to ensure that retired police officers are properly compensated for injuries but not over- or double-compensated in respect of the same injury (referred to in paragraphs 3(a) and (b) as "*the relevant injury*"). Paragraphs 7(1) and (2) are aimed at ensuring like-for-like deductions, *i.e.* the level of deductions is to match the level of the weekly benefits received.

34. As explained above, both police injury pensions and social security benefits are subject to regular annual increases. It makes no sense to 'freeze' the deduction for benefits by reference to a notional figure payable nearly 18 years ago, whilst ignoring the annual year-on-year increases in benefits actually paid since then, as well as the annual inflation increases in injury pension also paid since then. As Stephen Lewis, the Head of Exchequer Services of South Wales Police, explains, this would lead to over-recovery by each Claimant in circumstances where there is no clear policy reason for such recovery.

35. Mr Lock QC relies upon the unfairness resulting from the fact that retired police officers are materially worse off because non-taxable pension income is replaced by taxable benefit income. However, as he himself accepts, there is an element of 'swings and roundabouts' in the police pension scheme, *viz. e.g.* only some welfare benefits are classified as deductible. On the Claimants' construction, the deductions allowed would be significantly out of kilter with the benefits received over the past nearly two decades and, in effect, allow the Claimants a windfall.

(3) Defendant's construction consistent with purpose

36. Third, the Defendant's construction is consistent with what would appear to be the other implicit purpose or rationale of paragraph 7(2), namely to provide a measure of protection for retired police officers against wholesale changes in the legislative regime governing scales of social security benefits. At the inception of an award of a police injury pension, the recipient should be entitled to plan his or her financial future in the faith that the legislative regime governing scales of social security benefits would remain basically the same.

37. It makes good sense, therefore, for the 2006 Regulations to protect recipients of police injury pensions by providing a fail-safe mechanism, *i.e.* in the event of a fundamental change of to a benefits regime, the retired police officer has the comfort of knowing that the regime governing his or her deductions will remain as *per* the original regime in force when they were first awarded their injury pension. However, it makes no sense artificially to limit the deduction from the injury pension to the benefit received on the first day of retirement, whilst ignoring years of future increases in benefits received in the context of a 'compensation' regime, *i.e.* a regime designed to ensure that officers are compensated in respect of injuries in service over the remaining years of their natural lives.

(4) Defendant's construction consistent with guidance

38. Fourth, it is instructive (but not, of course, determinative) that the Defendant's construction is consistent with the Government's own guidance on injury pensions, as well as the manner in which these benefit deductions have always been operated under the 1987 and 2006 Regulations.

39. The Home Office's Explanatory Note on injury pensions provides:

> "*64. Injury pensions are subject to increases under the annual Pensions Increase (PI) order. DWP benefits are normally similarly up-rated with the effect that the increased reduction due to the up-rating of DWP benefits and increases to injury pensions are in balance. This means that the net injury pension payable can be increased in line with PI without further adjustment.*
>
> *As you know, we circulated earlier this year the Government's announcement that there would be no increase to police pensions from April 2010. However, the DWP Social Security Benefits Uprating Order 2010 includes changes (in the majority of cases, increases) to some benefits. This means that the net amount of some injury pensions in payment will need to be adjusted.*"

40. The *Explanatory Memorandum* to the Employment and Support Allowance (Consequential Amendment) (Police Injury Benefit) Regulations 2017 (SI 2017 No. 21) provides:

> "*7.2 It has been a long-standing principle in the Police (Injury Benefit) Regulations 2016 that a recipient of a*

police injury award may not gain by receiving other taxpayer funded benefits related to their incapacity".

Post initial hearing developments

41. Following the conclusion of the hearing on 8th June 2017, I reserved judgment. On 31st July 2017, I circulated my draft judgment (in which I found in favour of the Defendant on construction for the above reasons) to both Counsel for typographical corrections in the usual way.

42. On 2nd August 2017, Mr Lock QC served written submissions in which, as well as suggesting minor textural corrections, he sought exceptional leave to raise an additional legal argument on behalf of the Claimants. The new point which he sought to raise was that extensive amendments had, in fact, been made to section 150 of the 1992 Act since 1999, of which two amendments had a significant bearing on the case and demonstrated, he submitted, the Defendant's analysis on construction was wrong. Mr Lock QC accepted that this point should have been drawn to the Court's attention at the original hearing on 8th June 2017.

43. On 18th September 2017, Mr Beer QC served the Defendant's written response to the Claimant's further submissions. Mr Beer QC did not object to Mr Lock QC's further submissions but submitted that the point did not affect the conclusions in my draft judgment in the Defendant's favour. There was debate between Counsel was to whether Mr Lock QC's point was, in truth, a 'new' point. Mr Beer QC said that it was presaged and covered in the original submissions. However, Counsel were in agreement that the Court was not *functus* since my draft judgment had not been perfected or handed down and that it was appropriate for me to take it into account in my judgment. In these circumstances, and in accordance with overriding objective, I agreed to receive and consider the Claimants' further submissions before finalising and handing down my final judgment. I fixed a further hearing to give both Counsel an opportunity to make oral submissions about the point. This further oral argument took place before me on 30th October 2017.

Mr Lock QC's further point

44. Mr Lock QC's new point as explained by him can be summarised as follows. His first submission was that the Defendant's case that section 150 of the 1992 Act had not changed since the Claimants retired in June 1999 was factually incorrect: the Claimants now realised that extensive (some 25) amendments had been made to section 150 since April 2000, two of which were of particular significance:

45. The first significant amendment was introduced by section 23 of the Welfare Reform Act 2009 which added a new section 2(A) to section 150 as follows:

"In relation to the review under subsection (1) of section 150 of the Social Security Administration Act 1992 (annual up-rating of benefits) in the tax year ending with 5 April 2010, the other provisions of that section are to have effect as if—

(a) after subsection (2) there were inserted—

> *"(2A) Where it appears to the Secretary of State that the general level of prices is no greater at the end of the period under review than it was at the beginning of that period, the Secretary of State may, if the Secretary of State considers it appropriate having regard to the national economic situation and any other matters which the Secretary of State considers relevant, lay before Parliament the draft of an up-rating order—*
>
> *(a) which increases by such a percentage or percentages as the Secretary of State thinks fit any of the sums mentioned in subsection (1); and*
>
> *(b) stating the amount of any sums which are mentioned in subsection (1) but which the order does not increase; and*
>
> *(b) in subsection (5), after "(2)" there were inserted "or (2A)", and*
>
> *(c) in subsection (6)—*
>
> *(i) after "(2)" there were inserted "or (2A)", and*
> *(ii) after "requires" there were inserted "or authorises"*

46. This change to the terms of section 150 was introduced to enable the government lawfully to decide to introduce an uprating order which would otherwise have been required under the original wording of section 150 because there had been no price increase in that year. This removed the requirement that the Secretary of State find there was an increase in prices before an uprating order was made. The measure only applied to the 2010 process.

47. The second significant change to section 150 was made by section 97(5) of the Welfare Reform Act 2012 which added the following new section 150(7A) to section 150:

> *"(7A) The Secretary of State—*
>
> *(a) shall in each tax year review the amount specified under subsection (5) of section 96 of the Welfare Reform Act 2012 (benefit cap) to determine whether its relationship with estimated average earnings (within the meaning of that section) has changed, and*
>
> *(b) after that review may, if the Secretary of State considers it appropriate, include in the draft of an up-rating order provision increasing or decreasing that amount"*

Section 150(7A) was removed four years later by section 9(7) of the Welfare Reform and Work Act 2016.

48. Second, Mr Lock QC submitted that it was clear, therefore, that "*the provisions governing scales of additional benefits*" under section 150(2) had changed since 1999; and, accordingly, the amount of deduction from their disability should not exceed "*the amount which would have been the amount thereof in respect of that week had those provisions not changed*". This meant, he submitted, that the Chief Constable was required to calculate the level of welfare benefit that would have been payable to the former officer if the *"provisions"* had not changed; and if the result of the recalculation meant the level would be higher under the changed provisions than the unchanged provisions, the deduction had to be capped at the level of deduction under the unchanged provisions. This was because section 150 provided for what Mr Lock QC called a 'five-stage discretionary decision-making process' before the Secretary of State can make the Uprating Order.

49. Third, accordingly, section 150 sets up a discretionary decision-making process whereby once *"changes"* are made to section 150, the Chief Constable is required to calculate deductions to pensions on the assumed basis that the changes to the mechanism have not been made. But if changes are made and the new process is used to set the rates of benefits, by definition, the old process is not used. The Chief Constable cannot, by definition, know what discretionary decision would have been made by a combination of the Secretary of State and Parliament by operating the previous decision making machinery. He does not know, for instance, (i) what would be the outcome of the Secretary of State's review; (ii) whether the Secretary of State would consider that the "increase would be inconsiderable" under section 150(4); (iii) whether there would be rounding up or down under section 150(5); (iv) what would be terms of the Uprating Order presented to parliament, *i.e.* how much more than inflation would the Secretary of State propose as an increase; and (v) whether parliament would have voted to approve the order in this form.

50. Fourth, where there is a change to the *"provisions"* (assuming the term *"provisions"* refers to section 150) the Chief Constable cannot just keep the deductions at the same rates because he is required to determine what the level of deductions would have been if the changes to section 150 had not been made (not the benefit deduction level at the same rate as the previous year). But, of course, the Chief Constable will never know the answer to that question because it is a discretionary decision making process which, by definition, has not taken place. Different Chief Constables could reach the view that different outcomes would have been reached. Hence different Chief Constables might deduct different sums from police injury pensions

51. Fifth, police officers retire at different times. If the Defendant is correct, the exercise that the Chief Constable is mandated by the legislation to carry out would be different for each former officer. The Chief Constable would have to calculate what level of benefits would have been payable to that officer if the Secretary of State and Parliament had operated the statutory machinery in the form it existed at the date that each different officer retired. The duty on the Chief Constable to undertake his own decision-making process applies for each "change", regardless of the nature of the "change". Any change can trigger the recalculation and comparison duty for each retired officer. Accordingly, Mr Lock QC submitted that the Defendant's construction would require the Chief Constable to carry out an "impossible" exercise.

52. Sixth, for these reasons, Mr Lock QC submitted that the above analysis of the implications of making *"changes"* to section 150 demonstrates that Parliament cannot have intended the word *"provisions"* to refer to the statutory mechanism under section 150. Accordingly, Mr Lock QC submitted the conclusion in the draft judgment should be changed in the Claimants' favour.

Mr Beer QC's response

53. Mr Beer QC submitted that there were are four reasons why Mr Lock QC's new point should not cause the Court to change its conclusion:

(1) First, it proceeded on a false basis, namely that *any* change in section 150 of the 1992 Act would cause the amount to be deducted by way of benefits to revert to the amount that was deducted when the Claimants retired from the police service 19 years' ago;

(2) Second, because it mischaracterises the Defendant's case – to the effect of that (a) if the Chief Constable's construction is correct, then it would be necessary to work out what the Claimants *would have* received by way of benefits had section 150 not changed and (b) this produces an unworkable result because it requires the Chief Constable to undertake an impossible exercise, *i.e.* to work out what the amount of increase would have been had the amendment not been made;

(3) Third, the Claimants' submission is inconsistent with the knowledge that Parliament had in 2006 when it enacted the Police (Injury Benefit) Regulations 2006, namely that section 150 Act required upwards revision of benefit payment and that the Pensions (Increase) Act 1971 required upwards revision of injury pensions in line with increases to benefits payments;

(4) Fourth, the new point does not overcome the existing four reasons given in the draft judgment for preferring the Chief Constable's construction. Three of those four reasons address the issue of construction by reference to the three most significant approaches to statutory interpretation available to a Court – and all produce the same result; whereas, the Claimants' new point does not come close to overcoming that result. To accept the Claimants' new point would require the Court to conclude that a construction should be adopted that (a) is contrary to the plain and ordinary meaning of the words of paragraph 7(2) of Schedule 2 of the 2006 Regulations, (b) would lead to over and double recovery where there is no good policy reason for it and, as the Court has provisionally held, it would "make no sense", and (c) is inconsistent with the purpose of paragraph 7(1) and (2) of the 2006 Regulations.

Further Analysis

54. In my judgment, there are a number of problems with Mr Lock QC's further point.

55. First, Mr Lock QC is wrong to suggest that is that *any* change to section 150 of the 1992 Act following the officers' retirement in 1999 would trigger an analysis under paragraph 7(2), irrespective of whether it had the effect of *increasing or decreasing* the benefit in question. As stated above, the words *"those provisions"* at the end of

the paragraph 7(2) clearly refer back to *"the provisions governing scales"* at the beginning of paragraph; and the only relevant *"change"* to those provisions in section 150 is one which results in an *increase* in the particular benefit received, *viz.* it is only such an increase which falls to be disregarded as a deduction from the disability pension.

56. Second, to this extent, Mr Lock QC mischaracterises the Defendant's case. Mr Beer QC did not suggest that there had been no changes at all to section 150 of the 1992 Act. Mr Beer QC submitted that there had been no *relevant* or *material* changes to section 150 which resulted in an *increase* in the benefits received. The Defendants' case is that it is only changes to section 150 which result in *increases* in benefits received which are caught by paragraph 7(2) of the 2006 Regulations and which, therefore, fall to be to be disregarded. This is plainly correct on the wording of paragraph 7(2) (see above).

57. Third, I do not accept Mr Lock QC's further submission on this point that the Defendant's argument that there have been no material changes is 'irrelevant' since Parliament cannot have known what future changes would be made to section 150 and whether future changes would be material or not. It is clear that increases in social security benefits were to be anticipated (see further below).

58. Fourth, Mr Lock QC is not correct to assert that, in the event of a relevant change to section 150 giving rise to an increase in weekly benefits paid, the Chief Constable would have to conduct a complicated 'shadow' analysis or calculation as to how the Secretary of State might exercise his or her discretion and assess (or guess) by how much the benefits in question might be increased by the Secretary of State as a result of the new provision. In my view, the way in which paragraph 7(2) is intended to operate is, in fact, relatively simple: any increase to weekly benefits as a resulting from a change to section 150 is to be disregarded. This is the effect of the words of paragraph 7(2): *"...the amount of the reduction in respect of any week on account of a particular benefit shall not exceed the amount which would have been the amount thereof in respect of that week had those provisions not changed..."*. Any increase as a result of the new provision changing *"the provisions governing scales of additional benefits"* is simply to be ignored. No difficulty should normally arise in determining the figure payable under the pre-existing legislation. The figure will normally be known or a matter of record. In any event, the Chief Constable can check with the relevant government department.

59. Fifth, thus, in my view, no difficulty arises in relation to either of the amendments to section 150 relied upon by Mr Lock QC, *i.e.* neither section 150(2A) added by section 23 of the Welfare Reform Act 2009 nor section 150(7A) added by section 97(5) of the Welfare Reform Act 2012. If and insofar as either led to increases in benefits paid or payable over and above what would have been payable under the previous legislation, the Chief Constable would have no difficulty in establishing the amount payable had those provisions not changed (and, indeed he clearly did so).

60. Sixth, Mr Lock QC's submission ignores the knowledge that Parliament must be taken to have had when it the 2006 Regulations. The Pensions (Increase) Act 1971 created a link between public sector pensions and certain state benefits and made provision for the increase of police injury pensions at the same level as any rise in benefit payments. As Elias LJ said in *The Staff Side of the Police Negotiating Board v. The Secretary of State for Work and Pensions* [2011] EWHC 3175:

> *"28. Public service pensions, including those for the civil service, police, the NHS and local government, may be increased in accordance with the rules established under the Pensions (Increase) Act 1971. That Act creates a link between public sector pensions and certain state benefits. The effect is that when benefits are increased to take account of the rise in prices that same rate is used to increase public service pensions."*

61. The 2006 Regulations came into force on 6th April 2006 and provided for the Secretary of State to lay before Parliament an uprating order which increased benefits by no less than the general level of the increase in prices under the Retail Price Index. When Parliament enacted the 2006 Regulations it knew, or is to be taken as knowing, that the injury pensions provided for under it would be increased at the same level of increase that would be applied to the benefits that any pensioner officers would receive. However, the effect of the Claimants' construction is that, on the one hand Parliament introduced a mechanism which provided for the deduction of such benefits by paragraph 7(1), but on the other hand Parliament immediately defeated that essential mechanism by dis-applying it by paragraph 7(2) if the benefits increased (as they were bound to do). This makes little sense and would be a strange way to legislate in circumstances where Parliament can be taken to have understood and anticipated that benefits would be increased when it enacted the 2006 Regulations.

62. In my judgment, it is clear that benefit increases were likely to be matched by pension increases so that they did not get out of step with each other; and Parliament enacted paragraph 7(2) to protect officers so that if the measure of increase in pension payments changed in the future to a level *lower* than that set out in section 150(2) then the deduction would only be that which fell to be made before the amendment.

63. Seventh, the Claimants' construction could have been achieved by a simple provision that said that a fixed deduction falls to be made from an officer's injury pension that is set at the level of the retirement benefits to which he was entitled in the year of his retirement.

64. Eighth, and finally, Mr Lock QC's new point fails to meet or address the three imperatives of statutory interpretation which I have referred to and analysed above which are in my view determinative in this case, namely, (a) the text is the primary indication of Parliament's intended meaning, (b) the consequences of a particular construction would lead to over-recovery, and (c) the need to achieve a purposive construction (see paragraphs 26-40 above).

Conclusion

65. For the above reasons, in my judgment, the Defendant's construction of paragraph 7(2) of the 2006 Regulations is correct. The question for determination set out in the Court Order dated on 16th December 2016 is to be answered 'yes'. Accordingly, the Claimants' challenge fails and is dismissed.

ANNEX A

TABLE
Paragraph 3 of Schedule 7 of the Police (Injury Benefit) Regulations 2006

Degree of Disablement	*Gratuity expressed as % of average pensionable pay*	*Minimum income guarantee expressed as % of average pensionable pay*			
		Less than 5 years' service	5 or more but less than 15 years' service	15 or more but less than 25 years' service	25 or more years' service
(1)	(2)	(3)	(4)	(5)	(6)
25% or less (slight disablement)	12.5%	15%	30%	45%	60%
More than 25% but not more than 50% (minor disablement)	25%	40%	50%	60%	70%
More than 50% but not more than 75% (major disablement)	37.5%	65%	70%	75%	80%
More than 75% (very severe disablement)	50%	85%	85%	85%	85%