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Case No: CO/2661/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/02/2020

PETER MARQUAND
(SITTING AS A DEPUTY HIGH COURT JUDGE)

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Between:	
The Queen	**Claimant**
(On the Application of the Commissioner of Police of the Metropolis)	
- and –	
Police Medical Appeal Board	**Defendant**
- and-	
Neil Brown	**Interested Party**

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- -

Jonathan Holl-Allen QC (instructed by **Directorate of Legal Services**) for the **Claimant**
David Lock QC (instructed by **Penningtons Manches Cooper LLP**) for the **Interested Party**

Hearing date: 7 November 2019

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Approved Judgment

Peter Marquand:

1. The Claimant is the former employer[1] of the Interested Party, Mr Neil Brown, who was a police officer in the Metropolitan Police Service (MPS). The Claimant is also the Police Pension Authority for serving and retired members of the MPS. Mr Brown left the MPS in circumstances which I will detail below. He applied for an injury pension under regulation 11 of the Police (Injury Benefit) Regulations 2016 ('the PIBR').

2. The mechanism to determine whether or not Mr Brown was entitled to an injury pension culminated in a decision of the Defendant, the Police Medical Appeal Board ('the PMAB'). The PMAB concluded that Mr Brown's psychiatric injury and permanent disablement was received in the execution of his duty as a police officer, that being the relevant test under the PIBR.

3. The Defendant is a statutory decision maker and there is no appeal from its decisions. The Claimant challenges the decision of the Defendant by way of judicial review. The Defendant's policy is not to contest a judicial review and it has played no part in these proceedings. The Claimant says that Mr Brown's psychiatric injury was not received in the execution of his duty as a police officer.

4. Nigel Poole QC, sitting as a Deputy High Court Judge, gave the Claimant permission to apply for judicial review, by order dated 7 August 2019.

The Legal Framework

5. The Police Pension Regulations 1987 established a pension scheme for police officers. Those who are required to retire on grounds of permanent disablement are entitled to an ill-health pension. However, where the disablement has been caused by the execution of their duties as police officers they are also entitled to additional pension, known as an injury pension. The rules governing the injury pension were originally part of the Police Pension Regulations 1987, but are now contained in the PIBR. Regulation 11 PIBR provides:

> "(1) This regulation applies to a person who ceases or has ceased to be a member of a police force and is permanently disabled as a result of an injury received without his own default in the execution of his duty (in Schedule 3 referred to as the "relevant injury").
>
> (2) A person to whom this regulation applies shall be entitled to a gratuity and, in addition, to an injury pension…"

6. Under the PIBR 'injury' is defined in Schedule 1 as including: 'any injury or disease, whether of body or of mind.' Regulation 6 contains the definition of an injury received in the execution of duty as follows:

> "(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

[1] See paragraph 84

> constable and, where the person concerned is an auxiliary policeman, during a period of active service as such.
>
> (2) For the purposes of these Regulations an injury shall be treated as received by a person in the execution of his duty as a constable if—
>
> (a) the member concerned received the injury while on duty or while on a journey necessary to enable him to report for duty or return home after duty, or
>
> (b) he would not have received the injury had he not been known to be a constable, or
>
> . . .]."

7. Regulation 8 PIBR states '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.' It follows that there may be more than one causal injury of the disablement, but in order to qualify under PIBR, the injury received in the execution of duty must be a substantial cause of the disablement.

8. Where a person has been determined as permanently disabled under the Police Pensions Regulations 1987, that determination remains binding under the PIBR. In determining an award under regulation 6 PIBR, the Police Pension Authority (in this case the Claimant) refers the individual to a duly qualified medical practitioner to determine whether the disablement is a result of an injury received in the execution of duty and the degree of the person's disablement (regulation 30(2) PIBR). The duly qualified medical practitioner is referred to as the selected medical practitioner ('the SMP').

9. In the event that the individual is dissatisfied with the decision of the SMP he or she may appeal to a 'board of medical referees' (regulation 31(1) PIBR), which is the Defendant in this case, the Police Medical Appeal Board. Regulation 31(3) PIBR provides:

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

The reference to regulation 32 is not relevant in this case.

10. Although the PMAB is precluded from reconsideration of whether or not the individual is permanently disabled, it is not precluded from a reconsideration of the diagnosis or the question of causation, namely whether the disablement was a result of an injury received in the execution of duty (*R (Boskovic) v Chief Constable of*

Staffordshire Police [2019] EWCA Civ 676 at paragraphs 64 and 65). The question of the diagnosis/disablement is a matter of fact and the question of causation is a matter of fact and law.

11. The leading authority is *R (on the application of Stunt) v Metropolitan Police Service*[2] [2001] EWCA Civ 265. I have set the background out in some detail as well as extracts from this authority for reasons that will become apparent. The case was decided under the Police Pension Regulations 1987, but the relevant parts of those regulations are identical to the subsequent PIBR. Mr Stunt was a police officer who was on duty outside the Palace of Westminster when there was an altercation between him and the headmaster of a school, who was in charge of a group of students visiting the Palace. Mr Stunt arrested the headmaster for a public order offence, but this was later set aside. The headmaster complained about Mr Stunt's conduct. The complaint was investigated and a decision was made that no criminal proceedings would be taken against Mr Stunt, but a charge would be brought against him under the Police Discipline Code for arresting the headmaster without good and sufficient cause.

12. Mr Stunt went on sick leave complaining of mental stress to which he had been subjected by reason of the investigation. He never returned to his employment with the police service and the papers relating to the proposed disciplinary hearing were never served on him. The first medical examination undertaken certified that Mr Stunt was permanently disabled by depression, but that his condition was not the result of any injury received in the execution of duty as a member of the police force. Mr Stunt appealed and the second examination by Dr Mallett, consultant psychiatrist, included (at paragraph 15 of *Stunt*):

> "The events leading up to retirement consisted of what he described as malicious allegation against him while he was working in the House of Parliament. He was made subject of an internal investigation by the police, felt betrayed by his colleagues and treated like a criminal. He felt a mixture of anger, frustration and hopelessness at fighting against a seemingly implacable system.
>
> 'Opinion: Mr Stunt suffered a severe depressive illness following proceedings brought against him [in 1993] and to some extent he is suffering from the after effects of this . . . The disablement is not strictly speaking the result of an injury received in the execution of Mr Stunt's duty but does arrive [sic] as a result of his reaction to the internal proceedings brought against him.' . . ."

13. Paragraph 16 of *Stunt* is as follows:

> "In a supplemental report dated 8 January 1999, Dr Mallett said this:
>
> > "Mr Stunt's problems arise from both the fact that he feels it was a 'terrible wrong' that the investigation took place at all,

[2] Also referenced as *R (Stunt) v Mallet* [2001] ICR 989

> mainly because he felt he conducted himself appropriately and this should have been clear to anyone taking an unbiased view of the situation and in addition, he feels he has a genuine grievance about the way in which the investigation was conducted once it started. He formed a strong impression that conclusions were drawn before the investigation even started, that the investigating officers had made up their mind and that this view is backed-up by the fact that he was strongly encouraged by the Investigation Team to plead guilty to the allegations and that they even spoke to his daughter at one point to encourage her to try and persuade him to change his mind."

14. The leading judgment was given by Lord Justice Simon Brown (as he then was). The judgment analyses a number of previous first instance authorities and in particular refers to the decision of Richards J (as he then was) in *R v Kellam, ex parte South Wales Police Authority and Milton* [2000] ICR 632 where an analysis of earlier authorities was undertaken. In *Kellam*, the police officer making the claim, Mr Milton, had suffered a psychiatric injury. His wife, who was also a police officer, had made a number of complaints relating to her employment. Mr Milton said that as a result of her complaints, he was subjected to victimisation at his work. In addition, a neighbour made allegations of criminal offences against him and his wife, which he said had been encouraged by his employer. His employer's investigations did not result in any action being taken against him. The then equivalent of the SMP, Dr Kellam, attributed the officer's depressive illness to four causes. First, a stillbirth; secondly, his wife's treatment by the police force; thirdly, his perception of the attitude of his colleagues after his wife won her case against the chief constable; and fourthly, the investigation of his neighbours' complaint against him. Mr Milton's appeal was allowed by the doctor concluding that the four factors 'all interacted with each other and all substantially contributed to the disablement. The last three in my opinion resulted from his being a police officer.' (paragraph 34 of *Stunt*).

15. Lord Justice Simon Brown approved the series of cases concluding with *Kellam*. Richards J's conclusions are quoted at paragraph 17 of *Stunt* as follows[3]:

> "(1) Regulation [6(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 [6(1)] and thereby qualify for an award even if it does not fall within regulation [6(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 [6(2)(a)]: the latter extends beyond the former but also encompasses the generality of cases falling within the

[3] In square brackets I have replaced the references to the Police Pension Regulations 1987 with the equivalent provision in PIBR

former. (A full exposition would require reference to the additional deeming provisions of regulation [6(3) to (6)], but I have not thought it necessary to deal with them in this judgment since they do not appear to me to affect the overall position.)

(2) When considering a case of mental stress or psychiatric illness amounting to an injury and said to have arisen over a period of time (as opposed to, 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 [6(1)] and regulation [6(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.

(3) The test remains that set out in *Garvin v London (City) Police Authority* [1944] KB 358 and summarised in *Huddersfield Police Authority v Watson* [1947] KB 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 [6(2)(a)] as under regulation [6(1)]. When considering such a psychiatric condition, which cannot be attributed to a single identifiable event or moment of time, it is plainly necessary to find a causal connection with service as a police officer in order to establish that the injury has been received 'while on duty' rather than while off duty, just as it is necessary to find such a causal connection in order to establish that the injury has been received 'in the execution of duty'.

(4) The test of causation is not to be applied in a legalistic way. The concept is relatively straightforward, as Latham J observed in *Bradley v London Fire and Civil Defence Authority* [1995] IRLR 46 —this was an analogous case of a fireman — and falls to be applied by medical rather than legal experts. In particular, in my view, the reference to a 'direct' causal link does not mean that fine distinctions may be drawn between 'direct' and 'indirect' causes of the injury. The reference derives from the statement in *Garvin'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 [6(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 [6(1)] and regulation [6(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 *R v Fagin, Ex p 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.

(6) It is sufficient for there to be a causal connection with service as a police officer. It is not necessary to establish that work circumstances are the sole cause of the injury. Mental stress and psychiatric illnesses may arise out of a combination of work circumstances and external factors (most obviously, domestic circumstances). What matters is that the work circumstances have a causative role. The work circumstances and domestic circumstances may be so closely linked as to make it inappropriate to compartmentalise them, as in *R v Court, Ex p 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 (ie, in the absence of an intimate connection between the private matters and the public duty), I do not read the authorities as laying down any rule that the existence of a causal connection with the private matters is fatal to a claim. Provided that there is also a causal connection with the public duty, the test is satisfied.

(7) It may be that what I have said about the sufficiency of a causal connection with service as a police officer should be

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

16. Commenting further on *Kellam*, Lord Justice Simon Brown at paragraph 37 stated 'I would at least suggest that *Kellam* takes to their limits the principles which [Richards J] had deduced from the earlier cases. It was, as it seems to me, critical to his final conclusion that most if not all of the various stresses had borne more heavily upon Police Constable Milton because of his actually being at work and mixing with other police officers at the time.'

17. In *Stunt*, the Metropolitan Police Service made 2 arguments. First that the cases should be governed by the strict language of the Police Pensions Regulations 1987 (the wider argument) and secondly, that the application of the complaints procedure did not meet the test in the Regulations (the narrower argument). The Court of Appeal rejected the wider argument. Lord Justice Simon Brown stating at paragraph 33 'I have not the least doubt that officers whose depressive illness develops from the accumulated stresses of their work qualify for an award' and at paragraph 34 '…provided only and always that the officer's ultimately disabling mental state had indeed been materially brought about by stresses suffered actually through being at work.'

18. Lord Phillips of Worth Matravers MR stated at paragraph 56:

> "…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…"

19. On the narrow argument Lord Justice Simon Brown concluded at paragraph 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 [6 PIBR] that the natural meaning of the words just cannot bear."

20. A further argument was put forward on behalf of Mr Stunt. It was submitted that his illness should be regarded as having occurred before he went on sick leave. Lord Justice Simon Brown rejected this argument and added a further consideration as follows:

> "…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."

21. That an officer cannot be regarded as being 'on duty' whilst suspended was also the conclusion of Collins J in *R (on the application of Sussex Police Authority) v Dr Nicholas Cooling* [2004] EWHC 1920 (Admin). Mr Lock, on behalf of Mr Brown, placed particular reliance on *Merseyside Police Authority v Police Medical Appeal Board (McGinty and Hudson, Interested Parties)* [2009] EWHC 88 (Admin) a decision of Cranston J which states at paragraph 27:

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

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

22. The reference to *Gidlow* in the quote above is to *Merseyside Police Authority v Dr Gidlow (Reilly-Cooper Interested Party)* [2004] EWHC 2807 (Admin) a decision of Stanley Burnton J (as he then was). Mr Reilly-Cooper was a police officer and manager of a civilian officer and she raised a grievance against him and he raised a grievance himself and commenced Employment Tribunal proceedings. He suffered a psychiatric illness as a result of the perceived failure of the police authority to reject the allegations made against him. Stanley Burnton J stated that he could not distinguish the case from the circumstances in *Stunt* and quashed the decision that the injury had been sustained in the exercise of duty. At paragraph 39 the judge stated:

> "The essential point derived from *Stunt* appears to me to be that an officer's psychological reaction to a complaint against him is not an injury received in the execution of his duty...The second point is this: that a psychological reaction to circumstances on duty is not necessarily suffered in the execution of (and perhaps not while on) duty."

23. At paragraph 46 the judge stated:

> "… I accept Mr Westgate's submission that the mere fact that an officer is involved in a grievance procedure, or a disciplinary procedure, does not of itself mean that his psychological injury is not suffered in the execution of his duty. The essential point in *Stunt* was that the officer's stress resulted from the allegation made and the existence of the disciplinary proceedings that did not vindicate him…"

24. I was referred to a number of other authorities, but it is not necessary for me to refer to them. They were the cases that were approved in *Stunt* or examples of the application of the principle in *Stunt*. As this is a judicial review, my role is to assess the decision of the PMAB for errors of public law. It is not my role to substitute my decision for that of the PMAB.

The Facts

25. Mr Brown has been involved in a number of legal proceedings, both in the civil courts and criminal courts, as well as disciplinary proceedings brought against him by the Claimant. All of them arise out of an incident on 1 June 2007. Mr Brown was part of the territorial support group ('TSG') and on 1 June 2007 in the early evening he was in a van together with 5 other police officers. As a result of an incident, those officers stopped and spoke to 3 young men, Omar Mohidin, Ahmed Hegazy and Basil Khan. During the subsequent events, that lasted only a few minutes, Basil Khan and Ahmed

Hegazy were arrested. In particular, Mr Brown arrested Ahmed Hegazy. Ahmed Hegazy and Basil Khan were taken to Paddington Green police station in the van accompanied by the police officers.

26. One of the police officers, PC Onwugbonu, had concerns about the circumstances of the events of 1 June, not just in relation to stopping and searching the 3 men and the 2 arrests, but also what happened on arrival at the police station. On 2 June 2007 the Independent Police Complaints Commission ('the IPCC') commenced an investigation. This was under the supervision of IPCC investigator Steve Day, but carried out by Directorate of Professional Standards of the Metropolitan Police ('the DPS'), in particular Inspector Mike Belej with DS Alan Fraser[4] and DS Vicki McQueen assisting ('the DPS Officers').

27. Over the events of 1 June 2007, the officers, including Mr Brown, were prosecuted for misfeasance in public office. In addition, Mr Brown was charged with racially aggravated threatening behaviour towards Ahmed Hegazy. Mr Brown was suspended from duty on 4 November 2008.

28. At an early stage of the DPS Officers' investigations a plan was made to seize CCTV from Paddington Green police station and the premises in the vicinity of the incident of 1 June 2007. It is not clear what happened to any CCTV seized from such premises, but CCTV was obtained from Paddington Green police station, some 2,000 hours of it. DS Vicki McQueen made a compilation tape of the CCTV. That compilation tape contained footage which supported PC Onwugbonu's version of events but omitted footage which did not. Communication between the DPS Officers and the Crown Prosecution Service indicated that proper disclosure of CCTV had been made and the tapes had been reviewed and all relevant CCTV was on the compilation tape. In response to a defence request for full CCTV disclosure, the Crown Prosecution Service was informed by the DPS Officers that no more CCTV was available and that some elements of it were not working on the relevant day. Those assertions were incorrect. On 28 September 2009 the Crown Court judge directed all outstanding material to be served, which it was on 1 October 2009. The full disclosure identified a significant number of discrepancies between the account of events given by PC Onwugbonu.

29. During the trial, the judge directed that Mr Brown should be acquitted of the charge of racially aggravated threatening behaviour. On 3 November 2009, the jury found Mr Brown not guilty on the charge of misfeasance in public office.

30. On 6 November 2009, Mr Brown's suspension was lifted, but he was placed on restricted duties pending the conclusion of a misconduct investigation. In December 2009 the families of the prosecuted officers complained to the IPCC about the DPS investigation, the evidence of PC Onwugbonu and the late disclosure of the CCTV evidence. On 22 March 2010 the IPCC decided not to bring misconduct proceedings against Mr Brown. On 9 April 2010 Mr Brown went on sick leave with depression. In July 2010 Mr Brown and others issued Employment Tribunal proceedings against the Claimant alleging racial discrimination, harassment and victimisation. In July 2011, the IPCC concluded PC Onwugbonu's evidence should have been investigated further and the IPCC commenced an investigation into the conduct of the DPS Officers. PC

[4] DS Fraser was not involved in the investigation after November 2007.

Onwugbonu had not been guilty of any criminal offence or gross misconduct. On 6 September 2011 the IPCC issued a report ('the IPCC Report') concerning the DPS Officers and the disclosure the CCTV evidence. They found that Inspector Belej and DS McQueen each had a case to answer in respect of gross misconduct and DS Fraser a case to answer in respect of misconduct, although by that time he was no longer serving with the police.

31. At the hearing before me there was some confusion about the date at which Mr Brown returned to work for the Claimant. Subsequently, both parties have provided me with information. Mr Brown's recollection is that he returned to work around April 2011. The Claimant's records however demonstrate that the return to work was on 6 October 2011 and it is more likely that this date is correct.

32. At some point, Omar Mohidin, Basil Khan and Ahmed Hegazy issued civil proceedings ('the Civil Claim') against the Claimant (who was the defendant in the Civil Claim) seeking damages for the alleged wrongful acts of the police officers, including Mr Brown. On 25 January 2012 the Claimant issued a claim against Mr Brown under Part 20 of the Civil Procedure Rules ('the Part 20 Claim'). The Part 20 Claim sought to recover from Mr Brown any damages the Claimant had to pay in the event that she was found liable for any claims established because of Mr Brown's conduct.

33. In April 2012 Mr Brown applied for ill-health retirement and he was seen by Doctor Cheng, the SMP, who concluded he had a permanent disability in a report dated 12 October 2012. On 12 January 2013 Mr Brown retired from the Metropolitan Police Service. In March 2013 the misconduct hearings in relation to Inspector Belej and DS McQueen resulted in them both being issued with written warnings. On 5 September 2014 a DPS investigation directed by the IPCC concluded that management action was adequate to deal with the complaints against PC Onwugbonu.

34. On 2 October 2015 Mr Justice Gilbart handed down judgment in the Civil Claim (neutral citation [2015] EWHC 2740 (QB)). The judge dismissed the claim against Mr Brown and dismissed the Part 20 Claim. The judge found that Ahmed Hegazy was lawfully arrested and that any injuries suffered were as a result of him unlawfully resisting arrest. The judge concluded Mr Hegazy was not assaulted, he was not falsely imprisoned and he was not subjected to racist abuse by Mr Brown.

35. On 31 July 2016 Mr Brown applied for an injury pension under PIBR. He was assessed by Dr Nightingale, the SMP on 8 May 2018 and in her report of 9 May 2018 she concluded that Mr Brown's permanent disablement was not the result of an injury received in the execution of his duty. Mr Brown appealed that decision and the appeal was heard on 22 March 2019. The written submissions made on behalf of Mr Brown before the PMAB accepted that if *Stunt* was good law he would not be entitled to an award. However, it was submitted that the psychiatric injury did not result from disciplinary proceedings. Furthermore, in his unique circumstances the PMAB was not bound by *Stunt* and it should be distinguished. The Claimant's arguments were that exposure to the disciplinary process cannot lead to an award as a matter of law.

36. On 5 April 2019 the report of the PMAB ('the PMAB Report') was produced allowing Mr Brown's appeal. The members of the PMAB were Dr Ogunyemi, consultant occupational health physician, Dr Lambert, consultant occupational health

physician and Dr Karim Rajput, consultant psychiatrist (specialist member). In the section headed 'background to appeal' it is correctly recorded that Mr Brown's suspension was lifted, but he went off sick in April 2010 for 18 months and then returned to work until his medical retirement on 12 January 2013. In a section headed 'final questions' the PMAB records a clarification of Mr Brown's evidence including his reaction to the Part 20 Claim. It is recorded that he had wished to be treated as a whistle-blower but instead he was pressurised to drop the Employment Tribunal proceedings in return for not being brought into the Part 20 Claim.

37. The report includes an assessment by Dr Rajput. The features of this assessment that are particularly relevant are as follows:

i) Under the mental state examination section, it is recorded that:

a) '[Mr Brown] recognises that the allegations had to be investigated, however his trust with the managers and the organisation has been damaged by the apparent withholding of significant evidence which would have reduced his distress.'

b) 'The fact that [Mr Brown] requested for this issue to be evaluated and investigated, but there was resistance from his organisation, further harmed his belief and attitude to the police force, as he saw them as not being able, or willing to acknowledge their mistakes and do the right thing.'

ii) Dr Rajput's opinion on the aetiology of Mr Brown's condition includes: 'the prolonged process of the court, as well as some management of it affected his emotional stability. He reports that the biggest factor affecting him after he had discovered the CCTV footage was that the police refused to investigate what went wrong. This led to an irrevocable loss of faith and confidence in the police.'

iii) Dr Rajput's impression is recorded as: 'Overall, I regard that court process was a major stress for him and had the issues been resolved more amicably and favourably then, even by his own description, he feels that he would still be in the police, however, the prolongation of the whole process and the distress and lack of trust arising from the lack of willingness from the police to investigate how the CCTV footage was managed caused him to develop phobic anxiety disorder.'

38. The report includes a review of the relevant case law, including *Stunt* and *Merseyside Police Authority v Police Medical Appeal Board*. The PMAB record a summary of Mr Brown's arguments said to cause his permanent disability as (original emphasis included):

- "The conduct/behaviours of the Police Authority with regard to the CCTV evidence and related events contributed to his permanent disablement.

- In this context, the Police Authority was either very negligent or there was some malice towards him.

- Refusal of the MPS to investigate the CCTV issue support the latter (sic).

- After the IPCC investigation, responsible persons for the CCTV debacle were not sanctioned appropriately by the MPS. All this further contributed to the loss of confidence in the organisation.

- He was unfairly treated in the way his reintroduction to work following the trial was managed including his placement.

- He was again unfairly treated in being made to be a part 20 defendant alongside the Police Authority in connection with an allegation made by the arrested youth.

- **A combination of all these lead to loss of trust in the organisation and an irretrievable breakdown in his health.**

- The bundle also contains arguments about causation from:

  - humiliating experiences subject to as a result of this trial

  - threat of criminal proceedings and imprisonment

  - threat of extreme financial loss

  - emotional impact of discovery of extent of Onwugbonu's allegations

  The above… may have contributed to his psychiatric illness, being closely linked to the court proceedings, they would not be regarded as injuries received in the execution of duty."

39. In the section headed 'causation of permanent disablement' the PMAB refers to the reports of psychiatrists which were before them and state: 'There appears to be unanimity about his having had a loss of trust in the organisation and that this underpinned his illness and the permanency consideration.' In addition to the report of Dr Nightingale, the SMP, the medical reports before the PMAB were as follows:

    i) Dr Jeffrey Roberts, consultant psychiatrist dated 19 April 2011. This report was prepared for use in the Employment Tribunal. Dr Roberts diagnoses

PTSD and that the charges were 'pursued with untoward vigour' and 'as result of the stress of the investigation… He has suffered significant psychiatric injury… Which would not have occurred but for the events following the incident on 1 June 2007.'

ii) A letter from Dr Robert Oxlade, consultant psychiatrist, dated 4 April 2012 addressed to the medical officer in the occupational health clinic of the Claimant. Dr Oxlade records Mr Brown's opinion that he has been the victim of a conspiracy, false and malicious complaints which has resulted in him being victimised rather than the complainer. Dr Oxlade states 'I believe he is suffering from an irreparable traumatic loss of trust and that he is not going to be able to pursue his career further with the Metropolitan Police. He can unfortunately only fear, with much justification, that he will be scapegoated, or manipulated, or maltreated in some other way, should he choose to remain working with the Metropolitan Police.' Dr Oxlade agrees with Dr Roberts' opinion.

iii) A report of Dr Hayley Dare, chartered consultant clinical psychologist dated 1 July 2016. This was prepared for the Employment Tribunal. Dr Dare's report concludes that Mr Brown has suffered enormously from the psychological effects of the events following 1 June 2007. She confirmed the diagnosis of PTSD and lists specific aetiological events: 'the loss of his career, the reason for the loss of his career, the duplicity of the behaviour of the Metropolitan Police Service, the humiliating experiences he was subjected to, the threat of criminal proceedings, the threat of imprisonment, the threat of civil action against him, being subject to part 20 [proceedings] in the High Court, the threat of extreme financial losses, the discrepancy in the draft and final 'fairness at work' report, the failure of the Metropolitan Police Service to pursue charges of gross misconduct as directed by the IPCC and the entries placed on Mr Brown's 'personal records'. These factors led to the onset maintenance and severity of PTSD symptoms experienced by Mr Brown.'

iv) The report of Dr Martin Baggaley, dated 19 February 2019. This report was prepared for the purpose of the PMAB by those instructed on behalf of Mr Brown. Dr Baggaley had some doubt about the diagnosis of PTSD, but concluded in any case if that was wrong his opinion was Mr Brown had developed a chronic adjustment disorder and a major depressive disorder of moderate severity or a moderate depressive episode. He concluded that: 'as a dedicated officer, I accept the original allegations in 2007 are likely to have some impact on Mr [Brown] however, the withholding of evidence which subsequently became clear in the criminal trial in October 2009, is likely to have had a significant impact on Mr [Brown's] psychiatric state. I am therefore able to say it was the withholding of evidence and the subsequent trial of those involved that had a material impact on the overall psychiatric state leading to medical retirement. On balance therefore I anticipate Mr [Brown] would have coped from a psychiatric perspective following the incident in 2007 had the turn of events with evidence having been withheld, not followed.'

40. The PMAB Report goes on to state:

> "Thus though there is a history of prior anxiety illness, it seems to the Board that events at work [or perceptions thereof], in totality or part, have substantially contributed to the appellant's permanent disablement
>
> …
>
> If the Police Authority [or officers within it] has indeed behaved in a way that has caused the appellant's loss of trust and accompanying psychiatric illness, then the appellant may have a valid argument that he has received an injury in the execution of duty.
>
> …
>
> The key piece of independent evidence provided to support the appellant's view of events is the IPCC investigation document[5]"

41. The PMAB stated that the IPCC Report was persuasive that DI Belej and DS McQueen acted inappropriately and that it may be regarded as evidence of an injury received in the execution of duty. The PMAB stated that, although indicative, it did not necessarily support other assertions about other associated behaviour of colleagues in the Metropolitan Police Service.

42. The PMAB Report continues (original emphasis included):

> "With regards to the behaviour of his ex-colleague PC Onwugbonu, although this was the genesis of the false allegations, the response in the immediate aftermath makes it clear that this ***by itself*** is not a substantial contributor to his permanent disablement. He is very distraught at discovering the extent of the allegations but does not fall ill until much later. The enduring illness is better correlated temporally with his loss of trust in the Police Authority as a whole [the aftermath of CCTV issue][6] and his expectations with regard to subsequent placement not being met.
>
> Psychiatric injury resulting from a false allegation as made clear in the J Cranston (sic) quote above could also be construed as an injury received in the execution of duty. The argument is made stronger in this instance, given that the period for which there was a cloud over the appellant was very prolonged, and furthermore the support that the appellant would have expected from the organisation is perceived by the appellant to have been absent.
>
> The Board does not consider, **with due regard to case law**, his placement issues following the trial to be a substantial contributor to an injury received in the execution of duty. This

[5] The IPCC Report
[6] Square brackets in the original

> recognises that this aspect is inherent to service as a police officer. It appears though that his perception of this event is also a contributor to his eventual permanent disablement.
>
> The clinical assessments that are contemporaneous to the time of events support the appellant's narrative about the part 20 process. The Police Authority have not provided any information or comments in relation to this point.
>
> …
>
> In this instance the Board is persuaded to accept Mr Brown's version of events and finds as a matter of fact that these did occur. The Board notes that the appellant's version of events has not been challenged by the Police Authority, and are also in accord with the independent IPCC investigation report. The Board is also persuaded that these events that he argues have contributed to his psychiatric injury and permanent disablement have indeed done so; and that this was a substantial contribution.
>
> The Board regards these events, with the exception of the placement issue, are injuries received in the execution of duty.
>
> Finally, the Board finds that even with this exception, the combination of the remaining injuries has substantially contributed to his permanent disablement."

The Grounds

43. The Claimant was given permission for judicial review on 2 grounds ("Grounds 1 and 2") as follows:

    i) the PMAB unlawfully and/or irrationally found that an injury sustained while an officer is suspended can amount to an injury received in the execution of duty; and

    ii) the PMAB unlawfully and/or irrationally found that an injury sustained in the course of criminal proceedings can amount to an injury received in the execution of duty.

    Permission was refused on 3 other grounds, which included at Ground 4 that the PMAB unlawfully and/or irrationally took into account the Part 20 process.

44. Mr Holl-Allen had not settled the Detailed Statement of Grounds. In his skeleton argument prepared for the Claimant, he went further than the Grounds upon which permission had been granted and I heard the Claimant's application to amend the Grounds. I gave permission for that amendment and my reasons for doing so during the hearing. The Ground (referred to as "Ground 6") as amended is as follows:

> "In so far as the PMAB found that events or circumstances impacting on the Interested Party after the conclusion of the

> criminal process and his suspension caused or substantially contributed to his permanent disablement, those events or circumstances were not 'work circumstances' as that term was defined in *Stunt."*

45. The Claimant also sought to make a renewed application for permission for Judicial Review in relation to the Ground concerning consideration of the Part 20 Claim (referred to as "Ground 4") and further to amend that Ground as follows:

> "In so far as the PMAB found that the Part 20 proceedings instituted by the Claimant against the Interested Party caused or substantially contributed to his permanent disablement, those proceedings were not 'work circumstances' as that term was defined in *Stunt*."

However, the Claimant accepted that if Mr Brown established that the CCTV related matters were injuries sustained by him in the execution of his duty, this ground was immaterial, because he need only show one substantial qualifying cause of his permanent disablement. I will deal with this application in the course of this Judgment.

The Submissions

46. Mr Holl-Allen submitted that the PMAB fell into error in the application of the principles in *Stunt* in concluding that any of the causes in fact of Mr Brown's permanent disablement were sustained in the exercise of his duty. Some of those causes impacted on Mr Brown when he was suspended and/or subject to criminal proceedings, in particular the late disclosure of CCTV evidence. He submitted that the assertion made by Mr Lock on behalf of Mr Brown that there was a deliberate or malicious motive for the suppression of the CCTV evidence by DI Belej and/or DS McQueen or that PC Onwugbonu told lies in order to lead to Mr Brown's wrongful conviction was not a finding made by the PMAB. The Claimant's disabling injury was caused by criminal and/or disciplinary proceedings and this is not an injury sustained in the execution of duty as per *Stunt*. There is no exception to this based upon whether or not the disciplinary proceedings are 'well-founded'. None of the causative factors found by the PMAB came within *Kellam* and *Stunt*. Mr Holl-Allen stated that it was not correct that the CCTV disclosure issue was not investigated, as the PMAB allege. Mr Brown's opinion on the thoroughness of investigation or the penalties applied does not amount to an injury received in the execution of his duty and proceedings pursued against others could not amount to such an injury. The passage from *McGinty* on which the Claimant relies is obiter and, in any event, wrong. The argument of Mr Brown that regulation 6(2)(b) PIBR applies to this case and means that under section 31 Senior Courts Act 1981 the outcome would not have been different, is wrong.

47. Mr Lock's submissions were that the PMAB decided that the cause of Mr Brown's permanent disablement was focused on events that had happened after the criminal trial in particular the response of the Claimant to the late disclosure of the CCTV evidence and the unfair treatment regarding the Part 20 Claim. *Stunt* was a policy decision. The Part 20 Claim was an abuse of power and used as Mr Brown would not drop the legitimate employment claim. In any case, there was an exception for

injuries sustained in disciplinary proceedings that are not well-founded, relying upon *McGinty*. In particular Mr Brown's case is encapsulated in the observation by Cranston J in that he was an officer defending himself against baseless allegations. Alternatively, the DPS Officers maliciously prevented the disclosure and this was on the basis that they knew he was a policeman and this came within regulation 6(2)(b) PIBR. Similarly, the Part 20 Claim was brought against Mr Brown as a police officer bringing the matter again within regulation 6(2)(b) PIBR. In those circumstances even if the PMAB had not found there was a direct causal connection between the events arising in his service as a police officer and his subsequent psychiatric injury, the PMAB would have been compelled to find he was entitled to an award. Therefore, under section 31 of the Senior Courts Act 1981 there would have been no difference to the outcome of this case and the Claimant's application should be refused.

Discussion

48. One can have nothing but sympathy for Mr Brown for the circumstances in which he found himself following the events on 1 June 2007. He has been subject to criminal proceedings, the threat of disciplinary proceedings and civil proceedings and in each case where there has been a determination by a court he has been found to have acted lawfully and the allegations against him have been rejected. There is no doubt on the evidence that he has suffered a psychiatric reaction, lost his career in the Metropolitan Police and it has taken a substantial amount of time for the various legal processes to be completed. However, I have to apply the law dispassionately.

49. *Stunt* makes a number of points that are clear. First, an injury pension cannot be awarded in circumstances where the injury has arisen whilst the police officer is not on duty, for example, suspended from work. This must extend to other circumstances when a police officer is away from work, such as when he or she is on sick leave. However, the officer may still be injured in the exercise of duty when not rostered, as identified in *Stunt* and found in *McGinty* where Mr McGinty suffered a physical injury whilst on annual leave, but in the course of exercising his police dog. This was an activity he was required to do as part of his terms of service as a dog handler. The second matter to be established for an entitlement under PIBR is that the injury is caused by 'work circumstances,' as opposed to incidents or events that occur to the police officer as a police officer. In *Stunt* and *Gidlow* the psychological reaction was to the event (disciplinary proceeding/lack of vindication) against the police officer, not a reaction to the circumstances in which the police officer exercised his duty.

50. A psychiatric injury is capable of being an injury sustained in the execution of a police officer's duty just as much as a physical injury (*Stunt*). As is clear from *Kellam*, which was approved in *Stunt*, the work circumstances/environment in which the police officer exercises his or her duty can be such that a psychiatric injury is caused. In *Kellam* it was the combination of the 3 factors I have referred to at paragraph 14 above. It is also clear that there may be more than one cause for an injury, but provided any cause that is identified as having arisen in the execution of duty is a substantial cause, an entitlement to the injury pension is established (regulation 8 PIBR).

51. In *McGinty*, Mr Hudson suffered a psychiatric illness. He had had an affair with a female police officer and after that relationship ended, she accused him of criminal damage. He was subject to a disciplinary process and as a result placed on restricted

duties. The PMAB found that 21 incidents were responsible for the development of his psychiatric illness and this occurred in the exercise of his duty. The police force appealed and Cranston J analysed the 21 matters, breaking them down into categories. The judge said that his understanding was that they were being put forward as evidence of an overall pattern of treatment in connection with Mr Hudson's work (paragraph 50). There was a work restrictions category and although they were imposed as part of the disciplinary process they went 'to the heart of how Mr Hudson was to execute his duties.' Cranston J said cases like *Stunt* relate to situations where the disciplinary action taken is not itself part of the officer's duty (paragraph 51).

52. Another category identified by Cranston J related to grievance and disciplinary procedures. An example was given of a failure to investigate a grievance Mr Hudson had lodged. The judge concluded, referring back to the example of the baseless allegation, which I have quoted at paragraph 21 above, that the PMAB was entitled to conclude 'in the special circumstances of Mr Hudson's case, that the failure to pursue his grievance was part of a pattern of conduct by superior officers directly affecting the way they dealt with him.' The analysis of Cranston J follows *Stunt* in determining that work circumstances include an injury caused by having to work without support that an officer was entitled to expect, in particular where there was deliberate victimisation. The behaviour of others creates a work circumstance that leads to psychiatric injury.

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

54. Mr Lock submitted that the entirety of the PMAB Report was the decision of the PMAB and in particular the medical assessment conducted by Dr Rajput, which starts at page 9 and concludes two thirds of the way down page 10. I have quoted extracts at paragraph 37 above. He based this argument on regulation 31(3) PIBR (see paragraph 9 above). The requirement on the PMAB is to produce a report of its decision. The PMAB Report records the background to the appeal, the parties' submissions, the medical assessment, a review of the case law and finally the reasons leading to the decision. I do not accept Mr Lock's submission. The reference to the finality of its decision is to those parts of a PMAB report that contain the decision. The examination by Dr Rajput is part of the evidence upon which the decision is based. However, it is an important part of the PMAB Report and part of the evidence of the underlying basis for the decision of the PMAB in this case.

55. I bear in mind that the authors of the PMAB Report are registered medical practitioners and not lawyers. I also bear in mind the need not to read the report as if it were a judgment and not to subject it to unrealistic scrutiny. It is not for me to

substitute my decision for that of the PMAB, but rather to analyse their decision against public law principles.

56. Mr Holl-Allen in his skeleton argument stated that Mr Brown went off sick in April 2010 '…and is understood not to have spent any substantial time at work thereafter up to the point of his retirement in January 2013'. This is not correct as a matter of fact, as I have indicated at paragraph 31 above. The PMAB Report correctly identified the length of time that Mr Brown was back at work following the criminal trial, his period of sick leave and then his return to work before his retirement. Mr Brown was at work after the suspension was lifted for approximately 20 months cumulatively.

57. The PMAB accepted the facts as put forward by Mr Brown and noted they were not challenged by the Claimant. Mr Holl-Allen submitted that the references to the Claimant refusing to investigate the CCTV issue was not correct and pointed to the judgment of Gilbart J in the Civil Claim at pages 6 and 7. However, that information was not before the PMAB and for whatever reason was not put forward by the Claimant at the time. Mr Lock submitted that the PMAB had found as a fact that the DPS Officers had acted out of malice and that PC Onwugbonu had lied. The PMAB record the submissions made on Mr Brown's behalf were that the Claimant was either 'very negligent' or there has been 'some malice' and record Mr Brown's evidence that he considered it malicious or that it cannot be anything less than negligent. Notwithstanding the PMAB's acceptance of Mr Brown's version of events they do not make any specific finding on malice or lying. The PMAB identifies that the IPCC investigation document is a key piece of evidence and summarises its contents. That document makes no findings of malice. The PMAB was in no position to make such a finding and reading the entirety of the report it is clear that they did not reach such a conclusion.

58. What were the events that the PMAB relied upon to reach their conclusion? A number of arguments/incidents are rejected and there is no dispute about them. These are the behaviour of PC Onwugbonu, Mr Brown's treatment when re-introduced to work (referred to also as the "placement issue") and those matters identified in the last bullet point of the quote at paragraph 38 above. The PMAB Report states that the panel was persuaded '… these events that he argues have contributed to his psychiatric injury and permanent disablement have indeed done so…' The events that Mr Brown argued contributed to his permanent disablement are set out in the first 4 bullet points[7] quoted paragraph 38 and are referred to as a 'summation of the appellant's arguments.'

59. The first bullet point of Mr Brown's argument covers a number of issues. First, the late disclosure of the CCTV evidence. Secondly, whether there was negligence or malice (the refusal of the Claimant to investigate is said to support malice). Thirdly, after the IPCC investigation, inappropriately lenient sanctions applied to those responsible. The PMAB refer to the medical evidence and state there is unanimity "about his having had a loss of trust" in the Claimant and that this "underpinned his illness and the permanency consideration." This leads to a statement that the events at work have substantially contributed to Mr Brown's permanent disablement. The PMAB state that if the conduct of the Claimant or its officers has caused a "loss of trust" then Mr Brown may have an argument that he has received an injury in the

[7] Including the sub-bullet points

execution of duty. If the reference to 'loss of trust' is being used as a determinant of whether or not the injury was received in the execution of duty this would not be correct. Loss of trust was Mr Brown's reaction to the circumstances, in the same way as not feeling vindicated was the reaction of the police officer in *Gidlow*. The PMAB accept the IPCC Report factually and state it may be evidence of "breach of duty/management failures/abnormal processes" and "could" be a substantial contributor to an injury received in the execution of duty. They query whether the IPCC Report alone is enough to support allegation about other officers. The reference to 'other officers' must be a reference to Mr Brown's allegations that other officers were resistant to investigating the circumstances surrounding the late disclosure of CCTV evidence.

60. A key part of the PMAB's reasoning is set out in the first two paragraphs of the PMAB Report quoted at paragraph 42 above. The emphasis in those paragraphs is on the enduring illness being correlated in time with Mr Brown's loss of trust in the Claimant in the aftermath of the CCTV disclosure. This must be where the evidence of Dr Rajput and his conclusion quoted at paragraph 37(iii) above are taken into account. His conclusion is that the lack of trust arose from the Claimant's lack of willingness to investigate the CCTV issue. Dr Rajput concludes that this caused Mr Brown to develop the psychiatric condition causing his permanent disablement. Dr Rajput finds the psychiatric condition was the result of the Claimant's resistance to investigate what happened.

61. The PMAB refer to the 'false allegation' and the decision of Cranston J in *McGinty.* As I have already concluded the relevant question is not based on the description of the event but the principle in *Stunt.* There is no binding authority for an exception from the principle in *Stunt* where a police officer develops a permanent disablement as a result of baseless allegations, having been subjected to a disciplinary process. The observations of Cranston J in the final two sentences of the quote from *McGinty* at paragraph 21 above are obiter. The outcome will depend on the answer to the two questions I have referred to in paragraph 49 above. In any event, the PMAB had rejected the false allegations made by PC Onwugbonu as being a cause of the permanent disablement. This paragraph is particularly difficult to interpret, but in my judgment, it is merely a discussion without reaching any conclusion on the matters to which it refers.

62. If the PMAB had relied upon the failure to disclose the CCTV before or during the criminal trial that would have been unlawful, because first, it would not be relevant to the issue they had to decide, as it was during the time Mr Brown was suspended. Secondly, there could have been no impact on him from the events referred to in the IPCC Report before or during the trial until he knew about them after the trial. However, the PMAB place their emphasis on the 'aftermath' of the CCTV disclosure and conclude this correlates with the development of Mr Brown's psychiatric condition. As the PMAB had also identified correctly the period of time that Mr Brown was at work, I conclude that they correctly excluded from their consideration the time that he was off sick and therefore not on duty. In the concluding paragraphs of the PMAB Report (see paragraph 42 above) there is a reference to accepting Mr Brown's arguments, however, on analysis this is inaccurate drafting. As I have stated above, the PMAB had, correctly, rejected those arguments of Mr Brown that did not focus on the aftermath of the CCTV disclosure issue.

63. Were the events in the aftermath of the CCTV disclosure issue directed at Mr Brown as a police officer, or were they circumstances in which Mr Brown exercised his duty? The conclusion of the PMAB, having accepted Mr Brown's version of events, was that the Claimant's response in the aftermath of the CCTV disclosure was inadequate. Mr Brown reacted to this with a loss of trust and the development of his psychiatric condition. This is equivalent to the circumstances in *Stunt* and in *Gidlow* where Mr Reilly-Cooper's psychiatric injury arose from the fact that a grievance procedure did not vindicate him. This is not a work circumstance. A loss of trust in the Claimant is not a reaction to the work circumstances in which Mr Brown had to exercise his duty: he suffered a loss of trust as a reaction to the action or inaction of the Claimant over the disclosure of CCTV issue, which was connected to his being a police officer.

64. For the same reasons, the consequences of disciplinary action against the DPS Officers is not a work circumstance and Mr Brown's reaction to it is not an injury received in the execution of duty.

65. The remaining argument put forward and which the PMAB apparently relied upon is that relating to the Part 20 Claim. The PMAB Report does not contain a lot about the Part 20 Claim. There is the reference to Mr Brown's reaction to it set out in paragraph 36 and the reference to it in the fourth paragraph quoted at paragraph 42 above. The only expert who refers to the psychiatric implications for Mr Brown of the Part 20 Claim is Dr Dare, who I have quoted at paragraph 39(iii) above. It is not clear from the PMAB Report how much the authors relied upon a contribution from the Part 20 Claim, as it is not dealt with conclusively. However, on the assumption that it was relied upon it was not open for the PMAB to do so as bringing the Part 20 Claim against Mr Brown was not a work circumstance. This was an action brought against Mr Brown as a police officer engaged in a dispute with the Claimant. Mr Brown's reaction to it, whilst understandable, is not an injury caused in the execution of duty. Mr Holl-Allen's submissions for permission to rely on this Ground were based upon the change in position between the Summary Grounds of Resistance and the Detailed Grounds. It is correct the Summary Grounds did not rely upon the Part 20 Claim, but in the Detailed Grounds they were relied upon by Mr Brown. Mr Lock did not advance any case of prejudice in relation to giving permission in relation to this Ground. Given the conclusions that I have reached on the Part 20 Claim, I give permission to the Claimant to rely upon this ground, as amended, given Mr Brown's change in position.

66. I have to consider the argument put forward by Mr Lock on Mr Brown's behalf on whether the PMAB would have had to conclude under regulation 6(2)(b) PIBR that Mr Brown would not have received the injury had he not been known to be a constable. The relevant regulation is set out at paragraph 6 above. The regulation provides that a person is deemed to receive an injury in the execution of their duty if the injury is received because the person is known to be a police officer. This covers injuries received due to targeting a person because of their particular status as a police officer. This is not the same consideration I have discussed in relation to the principles from *Stunt* (see paragraph 17(5) of *Kellum*, quoted at paragraph 15 above). I do not find that this regulation is applicable to the circumstances of Mr Brown. It cannot be said that the actions of other police officers or the Part 20 Claim were directed at Mr Brown because he was a police officer within the meaning of

regulation 6(2)(b) PIBR. Even if there had been a finding of malice, which for the reasons I have given above there was not, any actions towards him were or would have been in a personal capacity or as an employee[8] and not because of the office that he held.

Conclusion

67. I realise Mr Brown will be disappointed with this outcome. However, the PMAB did not correctly direct itself on the law. The matters relied upon were not circumstances that amounted to Mr Brown, the Interested Party, being injured in the execution of his duty as a police officer. For the reasons I have given, the decision of the PMAB must be quashed.

Terms of the order and other matters

68. I circulated the draft of this Judgment to the parties for correction of typographical errors and to see if the terms of the order could be agreed. The parties were unable to agree the terms of the order and I have received written submissions on the areas of disagreement. The parties have agreed that I should deal with these aspects 'on the papers.'

Recording the outcome of the application for judicial review

69. For the Claimant, Mr Holl-Allen submitted that it is unnecessary to determine upon which Grounds the Claimant succeeded. Mr Lock for Mr Brown submits that success was only on Grounds 4 and 6. The findings that I reached were that the PMAB, as a matter of fact, did not rely on events occurring during Mr Brown's suspension and/or criminal proceedings as causative of his permanent disablement. This is the conclusion that I have reached for the reasons given in paragraph 62. The Claimant does not succeed on Grounds 1 and 2, given the factual findings, but does succeed on Ground 4 and Ground 6.

The Remedy

70. Mr Holl Allen submitted that by virtue of the Senior Courts Act (SCA) section 31(5)(b) and subsections (5A) and (5B) I should exercise my discretion and substitute my own decision as first, the PMAB is a tribunal within the meaning of the SCA and secondly, without the error, there is only one decision which the PMAB could have reached. Mr Lock submitted that the PMAB was not a tribunal within the meaning of the SCA and when exercising this discretion, the court should be cautious. I was referred to *R (Michael) v HMP Whitemoor* [2020] EWCA Civ 29, in particular paragraph 51 quoting *Lawrence v Attorney General* [2007] 1 WLR 1474 at paragraph 65.

71. The relevant parts of section 31 SCA are as follows:

> "(5) If, on an application for judicial review, the High Court quashes the decision to which the application relates, it may in addition—

[8] See paragraph 84 concerning the use of the word "employee"

> (a) remit the matter to the court, tribunal or authority which made the decision, with a direction to reconsider the matter and reach a decision in accordance with the findings of the High Court, or
>
> (b) substitute its own decision for the decision in question.
>
> (5A) But the power conferred by subsection (5)(b) is exercisable only if—
>
> (a) the decision in question was made by a court or tribunal,
>
> (b) the decision is quashed on the ground that there has been an error of law, and
>
> (c) without the error, there would have been only one decision which the court or tribunal could have reached."

72. I was not referred to any authorities on the meaning of the word 'tribunal.' Sub-sections (5), (5A), (5B): were substituted, for sub-section (5) as originally enacted, by the Tribunals, Courts and Enforcement Act 2007 (TCEA), s 141. The TCEA enacts the tribunal system. The PMAB is not established by that legislation. References to 'tribunal' elsewhere within SCA are consistent with references to tribunals established under TCEA. I am not satisfied that the PMAB is a tribunal within the meaning of section 31 SCA.

73. Section 31(5A) (c) SCA requires that, without the error, there would have been only one decision which the court or tribunal could have reached. The authorities of *Michael* and *Lawrence* make it clear that the court should be wary of exercising this power because of the danger that the court might substitute its own view of the merits of the case for that of the decision-maker. The court should only do so if the decision maker 'would undoubtedly have arrived at the same decision.' There is a risk that the PMAB focused their enquiries about the facts around their incorrect view of the legal principles. There is a lack of clarity in some areas over the findings of fact and I am not satisfied that there is only one possible outcome. Therefore, even if I am wrong on the issue of whether or not the PMAB is a tribunal, I am not satisfied that all 3 of the criteria are met in subsection (5A) and therefore the question of the exercise of my discretion to substitute my decision for that of the PMAB does not arise. Accordingly, I order that the matter is remitted to the PMAB to reconsider the matter in accordance with this Judgment.

Costs

74. The Claimant seeks an order that the Interested Party, Mr Brown, pays her costs of the claim. A schedule of costs has been provided with a total of £16,310.50. I am invited to assess those costs summarily. Mr Holl-Allen's submissions are that the Claimant succeeded, any lack of success in relation to Grounds 1 and 2 rests on findings of fact not a legal argument, the renewed application in relation to Ground 4 arose due to the Interested Party's change in position between the Summary Grounds and Detailed Grounds of Resistance. The additional Ground 6 arose, in part, due to a change in the

way the Interested Party's case was advanced and that Ground did not materially add to the costs of the claim. The Interested Party would have contested the claim even if ground 6 had been advanced from the beginning. The Claimant succeeded in resisting the argument advanced on behalf of the Interested Party that the result would have been the same in any event because of regulation 6(2)(b) PIBR. Mr Holl-Allen further submitted that in the event that it was considered that there was merit in the Interested Party's arguments concerning Grounds 1, 2, 4 and 6 then a percentage reduction should be made to the Claimant's recoverable costs.

75. Mr Lock submitted that the Interested Party successfully defended all of the Grounds as originally pleaded and on which permission had initially been given. The Claimant only succeeded because of the applications made at trial and the Court of Appeal has set out the need for procedural rigour (*R(Talpada) v The Secretary of State for the Home Department* [2018] EWCA Civ 841) per Singh LJ at paragraphs 67 to 69. Mr Lock also referred to paragraph 23.1.5 of the Administrative Court Judicial Review Guide 2019.

76. The rules on cost are in Part 44 of the Civil Procedure Rules (CPR). CPR 44.2 deals with the Court's discretion as to costs and provides:

> "(1) The court has discretion as to—
>
> (a) whether costs are payable by one party to another;
>
> (b) the amount of those costs; and
>
> (c) when they are to be paid.
>
> (2) If the court decides to make an order about costs—
>
> (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but
>
> (b) the court may make a different order.
>
> …
>
> (4) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including—
>
> (a) the conduct of all the parties;
>
> (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and
>
> (c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.
>
> (5) The conduct of the parties includes—

> (a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction—Pre-Action Conduct or any relevant pre-action protocol;
>
> (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
>
> (c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and
>
> (d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.
>
> (6) The orders which the court may make under this rule include an order that a party must pay—
>
> (a) a proportion of another party's costs;
>
> (b) a stated amount in respect of another party's costs;
>
> (c) costs from or until a certain date only;
>
> (d) costs incurred before proceedings have begun;
>
> (e) costs relating to particular steps taken in the proceedings;
>
> (f) costs relating only to a distinct part of the proceedings; and
>
> (g) interest on costs from or until a certain date, including a date before judgment.
>
> (7) Before the court considers making an order under paragraph (6)(f), it will consider whether it is practicable to make an order under paragraph (6)(a) or (c) instead.
>
> (8) Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so."

77. The Administrative Court Judicial Review Guide 2019 states:

> "23.1.1. The Court has a discretion as to whether costs are payable by one party to another. There are provisions which guide this discretion.
>
> 23.1.2. Where the Court decides to make an order for costs, the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, subject to the abovementioned discretion of the Court.

> 23.1.3. In deciding whether to make an order contrary to the general rule, the Court must have regard to all the circumstances of the case, including the conduct of the parties and whether a party has succeeded on part of his or her case even if he/she has not been wholly successful.
>
> 23.1.4. The conduct of the parties includes (but is not limited to):
>
> > 23.1.4.1. Conduct before as well as during the proceedings, and in particular the extent to which the parties followed the pre-action Protocol (see paragraph 5.2 of this Guide)
> >
> > 23.1.4.2. Whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue.
> >
> > 23.1.4.3. The manner in which a party has pursued or defended his/her case and whether he/she has wholly or partly exaggerated his claim.
>
> 23.1.5. As a result of the provisions above, where a party has failed to comply with orders of the Court or other procedural rules (such as those outlined in this Guide) the Court may reduce the amount of costs to which a successful party would normally be entitled. Further, in such a scenario, a liable party may be required to pay more than would normally be considered to be reasonable had the breach of the provision not occurred.
>
> 23.1.6. Liability to pay costs is not necessarily an all or nothing decision and a judge may require one party to pay a percentage of the other party's costs, thus deciding that the losing party is, for example, liable to pay 80% of the other party's costs. A successful party's costs may be reduced if they lose on one or more of the issues in the case but there is no rule requiring a reduction in these circumstances."

78. The Claimant was the successful party in this litigation and therefore the general rule that the unsuccessful party should pay the Claimant's costs applies. However, she was not successful on Grounds 1 and 2, on which permission had originally been given, but on Grounds 4 and 6 for which I gave permission as set out in this Judgment. The Claimant's case as it was finally put was not clear until service of the skeleton argument before trial. However, in relation to ground 4, the renewal application became necessary because of the change in the Interested Party's case between the Summary Grounds of Resistance and Detailed Grounds of Resistance. Nevertheless, the Claimant could, and should, have acted promptly once that change of position became clear, rather than waiting to raise the issue in her skeleton argument. The Interested Party's case has also evolved, as I have indicated. It is not possible to know what might have happened if the Claimant had applied to amend at an earlier stage in the procedural timetable. However, it seems likely that the Interested Party would have contested the matter in any case. Costs will have been incurred by the Interested

Party in responding to the claim that was ultimately unsuccessful. However, some of those costs would have been incurred in any event, such as the costs of trial, the costs of the preparation of bundles and the procedural steps. From the schedule of costs, junior counsel's fees are just over 25% of the total of counsel's fees. Those fees relate to the unsuccessful aspects of the Claimant's case, although some of the fees would have been incurred in any event. Before making an order for costs for a distinct part of the proceedings I must consider whether it is practicable to make an order under paragraph CPR 44.2 (6)(a) or (c). Bearing in mind all the circumstances of the case and the matters that I set out above and using the proportion of counsels' fee as a guide, I order that the Interested Party pays 75% of the Claimant's costs.

79. I have had no submissions from Mr Lock on the Claimant's costs schedule and in those circumstances, I will order a detailed assessment of the Claimant's costs on the standard basis, subject to the Claimant being entitled to recover 75% of the total costs allowed. However, I hope the parties will be able to reach an agreement on the figure.

Permission to appeal

80. The Interested Party seeks permission to appeal and has provided six grounds of appeal[9] and a skeleton argument.

81. CPR 52.6 sets out the test for first appeals as follows (rule 52.7 is not applicable):

> "(1) Except where rule 52.7 applies, permission to appeal may be given only where—
>
> (a) the court considers that the appeal would have a real prospect of success; or
>
> (b) there is some other compelling reason for the appeal to be heard."

82. The first ground is: 'The judge erred by misinterpreting the PMAB report which, properly understood, had accepted Mr Brown's version of events including his assertion that MPS officers had acted maliciously and/or concluding that the PMAB should not have made a finding on the issue of malice whereas this was a finding that they were required to make.' I have set out in the Judgment why the PMAB report does not make such a finding, notwithstanding Mr Brown's assertions of malice. There is no realistic prospect of success on this ground and no other compelling reason for the appeal to be heard.

83. The second ground is: 'The judge misinterpreted and/or misapplied the existing authorities concerning the test in regulation 30 (2)(c) as to whether a psychiatric illness suffered by a police officer as a response to events at work was the 'result of an injury received in the execution of duty'. Mr Lock makes a number of points about why the Judgment is wrong. However, I do not accept that any of the points that he makes satisfies the tests in CPR 52.6. Briefly, as stated in the Judgment at paragraph 53 the distinction between an injury received in the execution of duty and one not so received may be a fine one. There are a number of first instance decisions based on

[9] Seven appear in the Grounds of Appeal, but 4 & 5 are identical.

differing factual scenarios, but the legal principle to be applied is the one set out in *Stunt*. There is no distinction between the application of the test for a physical or psychiatric injury.

84. The third ground is: 'The judge erred in law by basing his judgment on a proposition that Mr Brown was an employee of the MPS as well as being a police officer.' Mr Lock points out that as a matter of law police officers are officeholders but not employees of the MPS. Reference in particular is made to paragraph 1 and 66 of the Judgment. This ground does not satisfy the tests in CPR 52.6. I have not amended the use of the word "employer" or "employee" from the draft because Mr Lock has raised it as a ground of appeal. Although a police officer may not be, as a matter of law, an employee the references to him as an employee are to emphasise the distinction between Mr Brown as a person engaged in work (commonly referred to as an employee) and subject to management action by his managers, rather than action towards him because he was a police officer, as would be necessary to meet the requirements of regulation 6(2)(b) PIBR.

85. The fourth ground is: 'The judge erred in considering that the decision by the MPS to bring a Part 20 action against Mr Brown was incapable of being treated by the PMAB as a work circumstance.' It is said that there are no reasons to explain why this conclusion was reached and there is no ruling on the submission that the real reason was an abuse of power. Adequate reasons are in the Judgment at paragraph 65, in particular when read with the rest of the Judgment. The tests in CPR 52.6 are not met.

86. The fifth ground is: 'The judge erred in his rejection of the Interested Party's case that the deeming provision under regulation 6 (2)(b) applied to this case.' I have already dealt with the reference to Mr Brown as 'employee' which is advanced by Mr Lock in relation to this ground. Mr Lock's reference to the lack of evidence of 'any personal relationship between the DPS Officers and Mr Brown' is misconceived and his arguments do not meet the test in CPR 52.6.

87. The sixth ground is: 'The judge erred in granting the Claimant permission to proceed on Ground 4 and on a new ground 6.' Notwithstanding the lateness of the Claimant's amendments and the need for 'procedural rigour,' Mr Lock confirmed there was no prejudice to the Interested Party and was able to deal with the arguments advanced by the Claimant, which had been disclosed to him in any event in advance through service of the skeleton argument. The issue was a matter of discretion and again, the tests in CPR 52.6 are not met.

88. I refuse permission to appeal on all the grounds advanced.