

<b>Neutral Citation No: [2026] NIKB 27</b>	<b>Ref:</b> FOW13068
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	<b>ICOS No:</b>
	<b>Delivered:</b> 03/06/2026

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**KING'S BENCH DIVISION  
(JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY LT AND PM  
FOR JUDICIAL REVIEW**

**Ian Skelt KC and Michael Wilson (instructed by Faloon & Co Solicitors) for the  
Applicants**  
**Neasa Murnaghan KC and Joseph Kennedy (instructed by the Crown Solicitor's Office)  
for the Respondent**

**FOWLER J**

*Introduction*

[1] The present applications for judicial review are brought by LT and PM, both former police officers, who challenge the determination of the implementation dates applicable to their respective injury on duty awards under the Police Service of Northern Ireland and the Police Service of Northern Ireland Reserve (Injury Benefit) Regulations 2006, SR2006/268 ('the 2006 Regulations'). The applicants are among a cohort of nine comparable cases, with further analogous challenges advanced by former officers concerning the same issue. The present applications are brought as a 'rolled-up' hearing.

[2] The central question arising in these proceedings concerns the proper identification of the operative implementation date for their injury on duty awards pursuant to the 2006 Regulations.

[3] The Northern Ireland Policing Board ("the respondent") acts as the administrator of, and a decision-maker under, the 2006 Regulations and is responsible for fixing the start date/implementation date for injury on duty awards.

### *Order 53 Statement*

[4] The applicants seek a range of reliefs, including a declaration that the respondent's decision to fix dates of 25 June 2021 and 16 May 2019 as the commencement dates for the applicants' injury on duty award pensions were unlawful. In addition, the applicants seek an order of mandamus requiring the respondent to determine that the pensions should be payable from the date of the applicants' retirement from service in the Police Service of Northern Ireland.

### *Relevant statutory provisions*

[4] The applicants argue, and it is accepted that police officers are not employees in the conventional sense but are holders of a statutory office. Their terms and conditions are governed, to a significant extent, by delegated legislation, which prescribes the framework applicable to that office. This includes provision for the compulsory retirement of officers on grounds of ill-health, as well as the entitlement to compensation in circumstances where officers sustain injuries on duty.

[5] The Explanatory Note to the 2006 Regulations identifies that:

"These Regulations make provision for payments to police officers who are permanently disabled as a result of an injury received without their own default in the execution of duty as a police officer or, where death results from such an injury, to surviving spouses or civil partners, children or other dependent relatives of the deceased member ..."

### *Definition of disablement and permanent disablement*

[6] The relevant portions of the 2006 Regulations which define disablement and permanent disablement are found in Regulation 6 and provide as follows:

"6.1(1) Subject to paragraph (2), a reference in these Regulations to a person being permanently disabled is to be taken as a reference to that person being disabled at the time when the question arises for decision and to that disablement being at that time likely to be permanent.

...

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

...

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

Schedule 1 of the 2006 Regulations, which is described as a Glossary of Expressions, provides that:

"“disablement” and cognate expressions have the meanings assigned to them by regulation 6”.

### *Police officer’s entitlement to injury on duty award*

[8] Regulation 10 provides that an officer who is permanently disabled as a consequence of an injury sustained in the execution of duty is entitled to an injury award, including the payment of an injury pension.

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

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

### *Referral of medical questions*

[9] Regulation 29 is also material in the present context. It provides for the referral of specified medical questions to a Selected Medical Practitioner (SMP) and, where appropriate, to an Independent Medical Referee (IMR). Such questions arise at the stage when the respondent is considering whether a member is permanently disabled, rather than at the point of determining whether a member is disabled per se. Regulation 29 provides as follows:

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

(2) Subject to paragraph (3), where the Board is considering whether a person is permanently disabled, it shall refer for decision to a duly qualified medical practitioner selected by it the following questions –

- (a) whether the person concerned is disabled;
- (b) whether the disablement is likely to be permanent,  
...
- (c) whether the disablement is the result of an injury received in the execution of duty, and
- (d) the degree of the person’s disablement;  
...

(3) Where the Board is considering eligibility for an award under regulation 11, paragraph (2) shall have effect as if the questions to be referred by it to a duly qualified medical practitioner were the following –

- (a) whether the person concerned is totally disabled;
- (b) whether that total disablement is likely to be permanent;
- (c) whether the disablement is the result of an injury received in the execution of duty; and
- (d) the date on which the person became totally disabled.

(4) The Board, if it is considering exercising its powers under regulation 36 (reduction of pension in case of default), shall refer for decision to a duly qualified medical practitioner selected by it the question whether the person concerned has brought about or substantially contributed to the disablement by his own default.

(5) The decision of the selected medical practitioner on the question or questions referred to him under this regulation shall be expressed in the form of a report and a

certificate and shall, subject to regulations 30 and 31, be final.

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

### *Appeals and reassessment of disablement*

[10] Regulation 30 confers a right of appeal against determinations of the SMP, such right being vested solely in the officer concerned. Also, a determination of the IMR is capable of appeal and determination on such appeal is final (subject to Regulation 31).

[11] In addition, Regulation 33 provides a distinct avenue of appeal, setting out a number of grounds upon which an officer may appeal, including entitlement to an award as of right, entitlement to a higher award, challenges to findings that the refusal of medical treatment was unreasonable, and issues of forfeiture. Such appeals lie to the Secretary of State, who is obliged to appoint an appeal tribunal.

[12] Pursuant to Regulation 31(1), a tribunal hearing an appeal under Regulation 33 may refer the decision of the SMP back for reconsideration, the resulting opinion being final. As with Regulation 30, the right of appeal under Regulation 33 is confined to the officer; the respondent enjoys no independent right of appeal. However, where an appeal is pursued, the tribunal may of its own motion direct reconsideration by the SMP.

[13] Further provision is made by Regulation 31(2) and (3), whereby the officer and the respondent may jointly agree to refer the SMP’s decision for reconsideration.

[14] Finally, Regulation 35 imposes a continuing obligation upon the respondent to reassess the degree of disablement at suitable intervals. In practice, the timing of such reassessments is ordinarily informed by recommendations made by the SMP or IMR, although the obligation remains to undertake review at intervals which are appropriate in all the circumstances.

### *Date of payment/implementation and duration of awards*

[15] Regulation 40(1) makes provision for the payment/implementation period and duration in respect of which an injury on duty award is payable, once entitlement has been established. It provides as follows:

“40. – (1) Subject to the provisions of these Regulations, in particular of regulation 10(2) (limitation on payment of an injury pension to a person who ceased to serve before becoming disabled) and Part 5 (revision and withdrawal

or forfeiture of awards), the pension of a police officer under these Regulations shall be payable in respect of each year as from the date of his retirement.”

### *Relevant factual background to applications*

[16] The relevant factual background is not in dispute. A detailed chronology in respect of each applicant is set out in the affidavit evidence of Sarah Reid and is summarised below.

[17] LT served as a police officer from 4 November 1979 until 2 September 2006, his service commencing in the Royal Ulster Constabulary and concluding in the Police Service of Northern Ireland. In 2021, approximately 15 years after his retirement, he made a retrospective application for an injury on duty award, founded upon psychological injury in the form of post-traumatic stress disorder (“PTSD”).

[18] He was subsequently assessed as suffering from a permanent disablement attributable to injury on duty PTSD. The SMP, Dr Hamilton, in an assessment dated 20 May 2022, concluded that the applicant was:

- (a) disabled as a result of PTSD;
- (b) that such disablement was permanent;
- (c) the appropriate implementation date was 25 June 2021 (this date corresponded with a second psychiatric assessment at which the applicant was diagnosed as permanently disabled); and
- (d) he was awarded Band 3 classification, denoting “Major Disability.”

[19] In reaching that conclusion, the SMP did not find that the disablement arose only after the applicant’s retirement, nor suggest that the date of disablement was incapable of ascertainment. On the contrary, it was noted that the applicant had experienced mental health difficulties prior to his retirement. However, the SMP expressly concluded that it was not possible to determine whether the applicant had been permanently disabled at any earlier stage, on the basis that he had not, by that time, undergone all appropriate treatment. The identification of 25 June 2021 as the date of permanence was therefore grounded in the point at which a diagnosis of permanent disablement could properly be made.

[20] PM served as a police officer from 7 December 1980 until 6 December 2006, his service commencing in the Royal Ulster Constabulary and concluding in the Police Service of Northern Ireland. During the course of his service, the applicant

was exposed to events which ultimately gave rise to psychological injury in the form of PTSD.

[21] In 2019, approximately 14 years after his retirement, the applicant made a retrospective application for an injury on duty award. This application was advanced on the basis of a range of conditions, including PTSD, orthopaedic complaints, and hearing-related difficulties.

[22] The assessment of the SMP, Dr Adejoro, dated 9 December 2019, concluded that the applicant was:

- (a) disabled as a result of an injury on duty, namely PTSD;
- (b) this injury arising from an incident on 25 March 1990;
- (c) that that the disablement was permanent (the date of permanence was 16 May 2019, being the point at which the applicant's condition had been confirmed following appropriate assessment and treatment.), and
- (d) the appropriate banding was assessed at Band 2 as "Minor Disability."

[23] In reaching this conclusion, the SMP did not find that the disablement arose only after the applicant's retirement, nor suggest that the date of disablement was incapable of identification. It was noted that the opinion was expressly informed by the applicant's treatment history, which extended over a number of years, including the period prior to his retirement, albeit without significant improvement in his symptoms. The identification of the date of permanence was grounded in the point at which the applicant had undergone all appropriate treatment and when his condition could properly be regarded as fixed.

### *The applicants case*

[24] It is submitted on behalf of the applicants that, on a proper construction of the Regulations, an officer who retires having sustained an injury on duty resulting in permanent disablement is entitled to an injury pension which, save in limited circumstances, is payable from the date of retirement. The exception to this general position arises where it is established that the disablement occurred at a date subsequent to retirement, in which case the entitlement arises from that later date. Where an officer has retired prior to becoming disabled, and the date of disablement cannot be identified, the Regulations permit the date of application to be adopted.

[25] It is further contended that the statutory scheme identifies specific medical questions for determination by the SMP, namely whether the officer is disabled, whether that disablement is permanent, whether it is attributable to injury on duty,

and the extent of such disablement. The answers to those questions are, by design, final.

[26] In the present cases, it is submitted that the SMPs have answered the relevant questions in a manner which mandates implementation of the injury pensions from the respective dates of retirement. In particular, the applicants contend that the respondent has erred in conflating the date upon which permanence of disablement is established with the date upon which disablement itself arose. It is emphasised that the Regulations draw a clear distinction between these concepts.

[27] By way of illustration, Mr Skelt postulates that an officer may retire whilst suffering from the effects of an injury on duty and thereafter undergo a period of medical treatment in the hope of recovery. During that period, the officer may properly be regarded as disabled, notwithstanding that the disablement is not yet considered permanent. The statutory scheme accommodates this position by providing, as a default, that the award is payable from the date of retirement unless it is demonstrated that the disablement arose at a later point.

[28] On that basis, the applicants submit that the outcome in each case follows from a straightforward application of the Regulations. The SMPs have determined that each applicant is disabled as a result of an injury on duty and that such disablement is permanent. In the absence of any determination that the disablement arose after retirement, or that its onset cannot be ascertained, the respondent is required to implement payment from the date of retirement.

[29] It is acknowledged that the respondent retains both the power and the duty to review the degree of disablement at appropriate intervals. However, it is contended that this does not affect the operation of what is described as a “bright line” statutory scheme governing the commencement of entitlement.

[30] Finally, Mr Skelt emphasises that neither the Court nor the respondent is entitled to substitute its own assessment of medical questions for that of the SMP. In that context, the applicants maintain that these are not cases of undue advantage: in each instance there is evidence of pre-retirement symptoms of mental health problems, history of engagement with treatment, and a progression to a stage at which the disablement has properly been regarded and certified as permanent.  
respondents’ argument

[31] On behalf of the respondent, it is submitted that Regulation 10 makes clear that “permanent disablement” is central to the resolution of this application and that permanence is a condition precedent to any entitlement to an award. It is argued that entitlement can only arise once it has been established that the disability satisfies the criteria set out in Regulation 10(1), which governs entitlement. This is to be distinguished from Regulation 10(2), which is concerned with the period during

which an award, once established, is payable. The respondent emphasises that these provisions must be read together as a coherent whole.

[32] It is contended on behalf of the respondent that, on a proper and purposive construction of the relevant provisions, a former police officer must satisfy the condition of permanent disablement before any entitlement to an injury on duty award can arise. As Scofield J in a review of the injury on duty scheme in 2014 at para 4.26 recognised, 'it is permanent disablement which is the gateway to these benefits.' In this context, the respondent rejects the applicants' contention that, once an award is made, the period of payment must automatically run from the date of retirement. In the present cases, neither applicant retired on the grounds of ill-health, nor was either found to be permanently disabled as at the date of retirement.

[33] Rather, it is submitted that entitlement to an injury on duty award arises only from the point at which the individual is established to be permanently disabled as a consequence of an injury sustained in the execution of duty, within the meaning of Regulation 10(2). Where the date of disablement cannot be ascertained, the Regulations permit the date of application to the Board to be adopted, pursuant to Regulation 6(7). On that basis, it is contended that entitlement does not accrue from the date of retirement but from the later point at which the statutory criteria for permanent disablement are satisfied.

[34] In support of that construction, the respondent also placed reliance upon illustrative examples. First, is where an officer who sustains, for example, a serious fracture rendering them temporarily unable to walk may properly be regarded as suffering from a disablement; however, where such an injury resolves following treatment and convalescence, the disablement would not be permanent and no entitlement to an injury award would arise. By contrast, where recovery proves incomplete and the condition stabilises in a state of ongoing incapacity, entitlement would only arise at the point at which the disablement can properly be regarded as permanent.

[35] Secondly a similar example and analysis is advanced in respect of hearing loss. An officer who sustains permanent, but non-disabling hearing damage would not, at that stage, satisfy the statutory criteria for an award. However, if, over time, that underlying injury combines with other factors—such as age-related deterioration—so as to result in a disablement, entitlement would arise only at the point when the injury has become both permanent and disabling.

[36] These examples are relied upon by the respondent to demonstrate the practical significance of the distinction between disablement and permanence. It is contended that the statutory scheme assigns particular importance to the concept of permanency, which must be satisfied before any entitlement to an injury award under the Regulations can arise.

## *Discussion*

[37] The provisions of the 2006 Regulations, together with the materially similar Regulations contained in the Police (Injury Benefit) Regulations 2006 ("the PIBR") in England and Wales, have previously been the subject of judicial consideration. In that regard, the decision of the Court of Appeal in *R (on the application of the Chief Constable of South Yorkshire) v The Crown Court at Sheffield and Kelly* [2022] ICR 623 is informative.

[38] Mr Kelly served with South Yorkshire Police and during the course of his duties he sustained injury giving rise to post-traumatic stress disorder. He was required to retire on 5 June 2005 on the grounds of permanent disablement arising from PTSD. Notwithstanding that position, it was not until 19 May 2016 that he made an application for an injury award pursuant to regulation 11 of the PIBR. He was assessed by a SMP as suffering from disablement likely to be permanent and this was why he was compulsorily retired on ill-health grounds, becoming entitled to a pension under the Police Pensions Regulations 1987. However, at the time of his retirement no consideration was given to his potential entitlement to an injury on duty award, and the question of whether his disablement was attributable to injury on duty was not referred for determination. Following assessment, the Chief Constable, by decision dated 25 July 2017, awarded the appropriate gratuity and pension, but directed that the pension be payable only from the date of the application in May 2016, declining to backdate the award to the date of retirement.

[39] As regards retrospective entitlement, the Court of Appeal identified the starting point as Regulation 11 of the PIBR, which confers, a statutory entitlement upon satisfaction of specified conditions, that the applicant has ceased to be a member of the police force and is permanently disabled as a result of an injury received in the execution of duty. I accept that Regulation 11 of the PIBR is materially equivalent to Regulation 10 of the 2006 Regulations, with the consequence that "permanent disablement" is a condition precedent to entitlement.

[40] I am persuaded that entitlement to an award can arise only once it has been established that the disability meets the criteria set out in Regulation 10(1), which governs entitlement, as distinct from Regulation 10(2), which addresses the period during which an award is payable. Clearly these provisions must be read together as part of a coherent statutory scheme with "permanent disablement" the core component of entitlement.

[41] I am of the view that para [44] of Kelly is authority for the proposition that that where disablement arises after retirement, under regulation 11(2) of the PIBR (regulation 10(2) of the 2006 Regulations) entitlement does not extend to any period prior to the establishment of permanent disablement. Para [44] states that:

“The basic provision is again regulation 11 of the PIBR, which provides for an entitlement to an injury award for an officer who has ceased to be a member of a police force (e.g. from the date of retirement), save that, by virtue of regulation 11(2), it will not be payable in respect of a period before disablement (noticeably, not a period before determination of disablement).”

This is based upon the premise that to trigger an injury on duty award disablement must be permanent. Disablement alone will not suffice.

[42] In that regard, I am satisfied that the appropriate implementation date is the date upon which the medical evidence establishes that the relevant disablement had become permanent. I accept the respondent’s argument that in circumstances where conditions such as PTSD may be amenable to treatment, permanence cannot properly be determined until appropriate therapeutic interventions have been undertaken. Accordingly, the implementation dates adopted in the present cases in my view correctly reflect the point at which the applicants’ respective disabilities were properly to be regarded as permanent.

[43] I have been referred to and considered the decision in *DB’s Application* [2013] NIQB 13, in which Treacy J considered a challenge to the fixing of an implementation date by reference to the date of a retrospective application, rather than the date of retirement. The case concerned a claim for an injury on duty award arising from hearing loss. The court accepted the respondent’s submission that the primary question is whether the applicant is permanently disabled and, if so, the date upon which such permanent disablement commenced. It was emphasised that it is only where there has been an attempt to ascertain the date of disablement that Regulation 10(2) can properly be applied.

[44] Treacy J further held that the respondent is required to determine, insofar as possible, the date of disablement, and is entitled, in doing so, to obtain and rely upon medical evidence addressing what is inherently a medical question. Where the date cannot be ascertained, recourse may be had to Regulation 6(7), with the date of application operating as a default. It follows that the statutory scheme contemplates a fact-sensitive inquiry directed to identifying the onset of disablement, rather than the automatic adoption of the date of retirement.

[45] In rejecting the applicant’s contention that entitlement must arise from the date of retirement, Treacy J observed that the applicant had not been medically retired and was not, at the point of retirement, “disabled” within the meaning of the Regulations, absent permanence and being defined as having an inability, by reason of infirmity of mind or body, to perform the ordinary duties of a police officer.

[46] I agree with Treacy J that the initial inquiry must be directed to whether the applicant is permanently disabled and, if so, to identifying the date upon which such permanent disablement commenced. Absent such an assessment, the respondent would be unable to give effect to Regulation 10(2), which expressly limits the payment of an injury pension in respect of any period prior to the onset of permanent disablement. Furthermore, Regulation 40(1), upon which reliance is placed by the applicant, is expressly made subject to the provisions of the Regulations, and in particular to Regulation 10(2).

[47] I find that the present cases of LT and PM are more closely analogous to that of DB than Kelly. Neither applicant was retired on medical grounds nor confirmed as suffering from a permanent disablement prior to or on retirement; rather, each remained fit to perform the ordinary duties of a police officer at the point of retirement, having elected to leave pursuant to the enhanced voluntary severance arrangements available in 2006. Indeed, both continued to work, with LT working for the PSNI in a civilian role from January 2007 until April 2014. Accordingly, I am satisfied that the applicants cannot properly be regarded as suffering 'disablement' at the date of their retirement for the purposes of the statutory scheme.

[48] In circumstances where the applicant continued in service until retirement, a central issue is the identification of the point at which permanent disablement arose. Accordingly, the respondent is under a duty to determine, insofar as possible, the date upon which disablement arose and is entitled, in discharging that function, to obtain and rely upon appropriate medical evidence in order to resolve what is, in essence, a medical question. Upon receipt and consideration of all relevant medical evidence, the respondent is required to determine, where possible, the date upon which disablement arose. In the event that such date cannot be ascertained, the respondent is entitled to proceed in accordance with Regulation 6(7).

[49] It is noted that the SMPs engaged in this case under Regulation 29 were asked to determine the date upon which permanent disablement commenced. In LT's case Dr Hamilton stated that the implementation date of the injury on duty should be 25 June 2021 corresponding to the second psychiatric assessment by Dr Best which found LT to be permanently disabled following completion of a course of psychological therapy, Dr Hamilton was of the opinion that permanent disablement could not have been certified before this date since all appropriate treatments had not been completed until this date. In PM's case, Dr Adejoro concluded the date of permanent disablement was 16 May 2019, the date of Dr Best's subsequent report confirming the diagnosis of PTSD and lack of improvement despite receiving recommended treatment.

[50] Having considered the applicable statutory provisions and relevant authorities I consider that the decision in Kelly is readily distinguishable while the case of DB more directly analogous. The applicants cannot be regarded as having been disabled at the point of retirement, in circumstances where they were evidently

capable of continuing to perform the ordinary duties of a police officer. Rather, their retirement arose from an election to avail of the applicable severance scheme available at that time, and not by reason of disablement within the meaning of the Regulations.

[51] In the circumstances, I find that the determination of the implementation date falls within the Board's statutory remit and that, in discharging that function, it is entitled to seek assistance from SMPs in accordance with Regulation 29.

[52] I find that both disablement and permanent disablement constitute essential preconditions to entitlement under the statutory scheme.

[53] On that basis, the applicants' construction of Regulation 10(2), when read in isolation from Regulation 10(1), is unsustainable. In particular, I consider it erroneous to infer from the absence of the term "permanent" in Regulation 10(2) that the disabling injury need not be permanent. Rather, when Regulations 10(1), 6(1), 29(2) and 29(3) are read purposively, and in light of the Explanatory Notes and the authorities, it is in my view clear that permanent disablement is a necessary prerequisite to the making of any award.

[54] In these circumstances, I find that the applicants' challenge discloses no arguable basis upon which the respondent's decision may be impugned. Accordingly, leave is refused and the application for judicial review is dismissed.