

# LAWS MAIN POINTS

- Lord Justice LAWS reinforces the findings of Burton J in *Turner* in paragraph 18 by stating '***The premise is that the earlier decision as to the degree of disablement is taken as a given; and the duty – the only duty – is to decide whether, since then, there has been a change: “substantially altered”, in the words of the Regulation. The focus is not merely on the outturn figure, but on the substance of the degree of disablement.***'
- Lord Justice LAWS further emphasises the duty of the SMP/PMAB in a Regulation 37(1) review in the whole of Paragraph 19 particularly where he opined '***But the clear legislative purpose is to achieve a degree of certainty from one review to the next such that the pension awarded does not fall to be reduced or increased by a change of mind as to an earlier clinical finding where the finding was a driver of the pension then awarded.***'
- In relation to the acquisition of further qualifications [the claimants law degree] Lord Justice LAWS in paragraph 27 was of the opinion that the decision of Cox J was in error. Lord Justice LAWS opined '***She has approached Regulation 7(5) as if it meant that the pensioner's earning capacity is fixed, unaffected by anything save the duty injury. That would be highly artificial, and is not what the Regulation contemplates. Its terms allow for the obvious possibility that the pensioner's earning capacity may vary from time to time by force of external factors (and of course one pensioner's earning capacity will differ from another's). Objectively, the extent to which a pensioner remains disabled from work by reason of a duty injury must be capable of being affected by the acquisition of new skills.***'
- In paragraph 28 Lord Justice LAWS does however question the impact of obtaining further qualifications: '***I would venture the opinion that, unless there are then further facts now unknown to us, its impact is***

***likely to be modest. While of course her gaining the degree demonstrates a level of intellectual ability as well as determination on the claimant's part, unless it has concrete results in terms of actual job prospects (and the degree is not, of course, a professional qualification) its effect on her earning capacity seems to me to be largely speculative.***

Lord Justice LAWS in his decision has agreed with the majority of the earlier findings of Cox J in this case and has reinforced the earlier decisions in both *TURNER* and *POLLARD* and has made it abundantly clear that the only duty of an SMP whilst conducting a review under Regulation 37 (1) is to ascertain whether the degree of disablement has substantially altered since the last review. It is not an opportunity to conduct an entirely fresh assessment of the degree of disablement and its causes.