

TEMPLATE LETTER TO CHIEF CONSTABLE

[CONSTABULARY]

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[Date]

Dear Chief Constable [*Name*],

Deductibility of Employment and Support Allowance, Incapacity Benefit and Industrial Injury Disablement Benefit

I write in relation to my injury award and the recent decision of the Court of Appeal in *Evans & Ashcroft v Chief Constable of South Wales Police*.

Findings

The Claimants were retired officers who had suffered injuries on duty. The Chief Constable had been deducting the amount of certain benefits from their award payments. The Claimants were successful in two ways:

- a. The Chief Constable was deducting Employment and Support Allowance ("ESA") when it was not a "relevant benefit" for the purposes of paragraph 7 of Schedule 3 to the Police (Injury Benefit) Regulations 2006; and
- b. The Chief Constable was deducting too much in respect of Incapacity Benefit ("IB") and Industrial Injuries Disablement Allowance ("IIDB").

The Chief Constable of South Wales Police agreed to stop deducting ESA and to repay sums wrongly deducted.

The fact that the Secretary of State subsequently made Regulations to make ESA a relevant benefit is irrelevant because those Regulations did not have retrospective effect; they only were effective going forward. The Claimants established in this action that there was an "over deduction" in relation to IB and IIDB.

The key finding of unlawfulness by the Court of Appeal is in §59 of the judgment of Henderson LJ which provided:

"It follows that the increases in the relevant benefits to which the appellants became entitled at any time from 12 April 2010 to 14 April 2011 arising from the 2010 Up-rating Order should not have led to any increase in the deductions applicable to their injury pensions during that period, and to the extent that these increased deductions were made by the Chief Constable, they were unlawful by reason of the proviso in paragraph 7(2)".

It was accordingly held that the Chief Constable had been over-deducting both Incapacity Benefit and Industrial Injuries Disablement Benefit since 2010.

Going Forward

I believe that I have been negatively affected by over-deductions of my benefits.

Include all that apply:

- *[I have been in receipt of IIDB since [date] and I believe it has been over-deducted from my payments due to the 2010 Up-Rating Order].*
- *[I was in receipt of IB from [date] to [date] and I believe it was over-*

deducted from my payments due to the 2010 Up-Rating Order].

- [I have been in receipt of ESA since [date] and I believe this was wrongly deducted from my payment before ESA became a deductible benefit.]

Please provide a breakdown of the calculation of my pension payments from 2009 to date so that I can see how the 2010 Up-Rating Order has impacted my pension payments.

As you are aware from previous communications from Cartwright King Solicitors, the force is obliged to take steps to refund monies which have been unlawfully deducted from injury-retired officers.

If you have a private pensions service provider, include the following paragraph:

It is not enough to refer me to [*name of your private pensions service provider*] to resolve this matter. The legal obligation to correct the unlawful over-deduction and to repay monies which have been over-deducted rests with the Chief Constable.

I ask that you confirm receipt of this letter within 14 days and provide a substantive response within 28 days of this letter as to how you propose to implement the judgment.

Yours sincerely,

[your name]

[your contact details]