[2025] UKUT 365 (AAC)
Appeal Nos.
UA-2024-001189-II, UA-2024-001191-II,
UA-2024-001192-II, UA-2024-001195-II,
UA-2024-001196-II, UA-2024-001197-II,
UA-2024-001213-II, UA-2024-001214-II,
UA-2024-001215-II, UA-2024-001216-II

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

MR DAVID WATSON

Appellant

- v -

THE SECRETARY OF STATE FOR WORK AND PENSIONS

Respondent

Before: Upper Tribunal Judge Stout
Hearing date: 1 October 2025
Mode of hearing: In person

Representation:
Appellant: Tom Royston (counsel)
Respondent: Richard Howell (counsel)

On appeal from:
Tribunal: First-Tier Tribunal (Social Entitlement Chamber)
Tribunal Case Nos: SC319/22/01168, 01162, 01164, 01165, 01166, 00675, 01169, 01170, 01171, 01172
Tribunal Venue: Nottingham (in person)
Decision Date: 16 February 2024

SUMMARY OF DECISION

INDUSTRIAL INJURIES BENEFITS (22)

The appellant is a former professional footballer who has diagnoses of probable Alzheimer's Dementia and probable Chronic Traumatic Encephalopathy, which he contends were caused by accidents arising out of and in the course of his employment so as to entitle him to Industrial Injuries Disablement Benefit under the Social Security

Contributions and Benefits Act 1992. The Secretary of State, and the First-tier Tribunal, accepted that the appellant had suffered ten specific, documented accidents during matches that took place between 1971 and 1983, but concluded that these had not caused his degenerative brain condition so that he was not entitled to IIDB. Rather, the First-tier Tribunal concluded that the effective causes of his degenerative brain condition included: (i) other undocumented incidents; (ii) routine heading of the ball; and (iii) a family history of dementia.

The Upper Tribunal upholds the appeal and gives guidance as to the approach to be taken in such cases to the concepts of "injury", "causation" and "accident". The Upper Tribunal decides that the First-tier Tribunal in this case in particular erred in law by:

(1) Considering the claim only by reference to the ten specific, documented accidents referred to in the claim forms. Applying *Miah v Secretary of State for Work and Pensions* [2024] EWCA Civ 186, [2024] 1 WLR 3012, the First-tier Tribunal's task was to decide, on the basis of the evidence before it (which may include evidence that was not before the Secretary of State), whether the claimant had, at the time of the Secretary of State's decision under appeal, suffered personal injury caused by an accident or accidents that occurred during the course of employment. The First-tier Tribunal should accordingly have considered whether the other undocumented incidents were accidents and, if so, whether, together with the documented accidents, they materially contributed to the nature or extent of his loss of faculty;
(2) Failing to give adequate reasons for its conclusions that: (i) the undocumented incidents; and (ii) routine heading of the ball were effective causes of the appellant's condition, but that the more significant head impacts that were documented at the time made no material contribution to the nature or extent of his loss of faculty; and,
(3) Perversely concluding that the appellant's family history of dementia was an effective cause of his loss of faculty in circumstances where the evidence in that respect was limited and the only members of the appellant's family who had dementia were also former professional footballers.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal involved an error of law. Under section 12(2)(a), (b)(i) and (3) of the Tribunals, Courts and Enforcement Act 2007, I set that decision aside and remit the case to be reconsidered by a fresh tribunal in accordance with the law as set out in this decision and the following directions.

DIRECTIONS

1. **This case is remitted to the First-tier Tribunal for reconsideration at an oral hearing.**

2. **The new First-tier Tribunal should not involve the tribunal judge or medical member previously involved in considering this appeal on 16 February 2024.**

3. **The new First-tier Tribunal is not bound in any way by the decision of the previous tribunal. Depending on the findings of fact it makes, the new tribunal may reach the same or a different outcome to the previous tribunal.**

REASONS FOR DECISION

Introduction

1. The appellant is a former professional footballer who has been diagnosed with probable Alzheimer's Dementia and probable Chronic Traumatic Encephalopathy ("CTE"), which he contends were caused by accidents arising out of and in the course of his employment so as to entitle him to Industrial Injuries Disablement Benefit (IIDB) under the Social Security Contributions and Benefits Act 1992 ("the SSCBA 1992"). The Secretary of State, and the First-tier Tribunal, accepted that the appellant had suffered ten specific, documented accidents during matches that took place between 1971 and 1983, but concluded that these had not caused his degenerative brain condition so that he was not entitled to IIDB.

2. The appellant's grounds of appeal set out a number of arguments. I granted permission to appeal on an unlimited basis, but in doing so indicated that the appellant's arguments should be grouped and the appeal focused on three grounds as follows:

> Ground 1 - *Perverse and/or inadequately reasoned conclusion that the 10 specific documented accidents were not an 'effective cause' of the injury*, in particular bearing in mind that they were sufficiently serious incidents to be documented, whereas the other similar accidents/incidents/activities that the Tribunal concluded did cumulatively constitute an 'effective cause' of the injury had not been serious enough to document;
>
> Ground 2 - *Failure to address / give reasons for concluding that the other 'undocumented' incidents that the Tribunal concluded were an effective cause of the injury were in law "process" rather than part of a series of "accidents" together with the 10 specific accidents identified in the claims*;
>
> Ground 3 - *Perverse and/or inadequately reasoned reliance on family history of cognitive impairment* as indicating that 'constitutional causes' were the other major effective cause of the appellant's injury, when (on the

face of it) the fact that only the appellant's brothers (who were also professional footballers) and not his parents had been affected would tend to strengthen the appellant's case that the injury was caused by football-related factors rather than 'constitutional causes'.

3. In responding to the appeal, the Secretary of State indicated he did not resist the appeal on Ground 2, and invited the Upper Tribunal to dispose of the appeal on that basis, but the appellant wished to pursue all grounds and it seemed to me that all the grounds needed to be addressed in order to avoid (if possible) the case needing to return to the Upper Tribunal for a second time. This would also enable the Upper Tribunal to consider the issues of principle that arise in this appeal, which may be relevant to other cases involving professional sportspeople.

4. As will be seen, in the course of argument at the hearing a further issue arose for determination in relation to Ground 2, which is whether the First-tier Tribunal could only take into account the specific accidents detailed in the appellant's claim forms on the basis that the claim ceased to exist and could not be amended after it was determined (taking the approach of Judge Wright in *Secretary of State for Work and Pensions v DS* [2025] UKUT 168 (AAC) in respect of the start date for a claim for state pension), or whether it was open to the First-tier Tribunal to consider other potential accidents that may have arisen in the course of the appellant's employment (taking the approach of the Court of Appeal in *Miah v Secretary of State for Work and Pensions* [2024] EWCA Civ 186, [2024] 1 WLR 3012 in respect of back-dating claims).

5. The structure of this decision is as follows:

Factual background

6. The appellant was a professional footballer who was born in 1946 and whose career spanned approximately 20 years from around 1966 to around 1988. He played for a number of prominent national teams and also for England.

7. During the course of his playing career he suffered various injuries, including to his head. The First-tier Tribunal in its decision noted that the appellant "was known within the game as a 'warrior' who was prepared to put his head where other people would not" and was "evidently a particularly competitive player".

8. In later life, he has suffered loss of mental faculty. On a CT head scan in 2015 there was "evidence of a generalised cerebral atrophy with slight temporal preponderance". A repeat CT scan in 2019 showed "progressive atrophic changes". Such scan results are consistent with Alzheimer's and also CTE.

9. As I understand the medical evidence, CTE is a diagnosis which depends on someone having suffered repetitive head injuries (RHI) and then having developed certain changes in the brain. An article in the bundle in this case (the Nowinski article[1]) expresses a conclusion with the "highest confidence" that RHI causes CTE, but recognises that the evidence on the link between RHI and CTE "will remain imperfect in perpetuity".

10. It is not currently possible to be certain prior to a person's death (and autopsy) whether a person with degenerative changes such as the appellant has is suffering from Alzheimer's Dementia or CTE. The appellant accordingly has diagnoses of "probable Alzheimer's Dementia" and "probable CTE".

11. In the appellant's case, the medical evidence in the bundle includes the following pertinent opinions about his condition:

    a. Dr B Ganesan (Consultant in Old Age Psychiatry) in his letter of 12 March 2019 reviewed the changes in the appellant's CT head scan between 2015 and 2019 and explained that:

        > "… the progressive atrophic changes to the mesial temporal lobes predominantly on the right would be more in keeping with

[1] Nowinski et al, "Applying the Bradford Hill Criteria for Causation to Repetitive Head Impacts and Chronic Traumatic Encephalopathy", 13 Frontiers in Neurology (2022), no 938163, New England Journal of Medicine 1801.

> Alzheimer's although there are no reliable radiological signs to differentiate it from [CTE] at present…."

b. Dr B Ganesan in his letter of 22 April 2020 adds:

> "[CTE] is a relatively new condition both for researchers and physicians. It is a progressive brain condition that is thought to be caused by repeated blows to the head. It usually begins gradually, and typical symptoms are often difficult to distinguish (short term memory loss, disorientation, changes in mood) from other degenerative brain conditions like Alzheimer's Disease.
>
> As far as I am aware there is currently no test to diagnose [CTE]. A suspicion of the condition is usually based on history of participation in contact sports, repeated head trauma along with the typical symptoms described above.
>
> While in the current clinical understanding it is impossible to confirm the diagnosis of [CTE], Mr Watson's history (ex-professional footballer who played as a centre back), initial presentation with short term memory problems complicated by episodes of paranoia, mood changes later on do raise the likelihood of this condition."

c. Dr Tom Dening (Professor of Dementia Research & Honorary Consultant Psychiatrist) in his letter of 10 May 2022 states:

> "Given that he has a history of repeated heading of a football as well as episodes of concussion and being knocked out during his playing career, there is no reason to doubt the contribution of CTE to his current cognitive impairment…".

12. In August 2021 the appellant's wife, acting on the appellant's behalf, made ten claims for IIDB in respect of ten accidents involving impact to his head that occurred on specific dates between 4 December 1971 and 11 April 1983. Each of the claim forms gave the details of one specific head injury incident for which the appellant and his wife had documentary evidence, mainly in the form of newspaper cuttings in which the appellant's injury was referred to as part of a report of the match in question. Passages from the appellant's wife's published memoirs were also provided in support of the claims. In many cases, the "witnesses" to the accidents were identified as the thousands of spectators who were watching the match. Each claim form included wording to the effect that the specific accident detailed in that claim form was:

> "one of a number of similar 'accidents' sustained throughout my career, the cumulative effects of which are believed to have resulted in an early life neurocognitive disease – probable Alzheimer's Disease; probable [CTE]".

13. By decision of 11 January 2022 the Secretary of State refused the appellant's claims and he appealed to the First-tier Tribunal.

The First-tier Tribunal's decision

14. At a hearing on 16 February 2024, the Tribunal upheld the Secretary of State's decision and dismissed the appeal.

15. The Tribunal proceeded on the basis that the only matter in issue was whether the ten specific, documented accidents relied on had "caused" the injury. The Tribunal concluded that they had not.

16. The Tribunal noted that there was no dispute that the ten incidents relied on were indeed "accidents" and that Mr Watson was at the time of each accident an "employed earner" as required by the legislation. It directed itself at [10] of the Decision Notice (which stood as the Tribunal's Statement of Reasons) that:

> "Mr Watson … needed to demonstrate to the Tribunal on a balance of probability that (i) the ten accidents caused or contributed to his loss of faculty; (ii) but for these accidents, his loss of faculty would not have occurred and (iii) these accidents were an effective cause of his loss of faculty."

17. Its conclusion is summarised at [3]-[4] as follows:

> "3. Mr Watson's neurological loss of faculty and resulting disability at the time of the decisions was likely to have been caused by constitutional factors and the process of routine footballing activity such as repeatedly heading the ball and/or numerous other undocumented incidents over the years that he played football. The Tribunal could not be satisfied that the ten accidents claimed either individually or collectively were an effective cause of Mr Watson's brain injury.
>
> 4. Applying its medical expertise, the Tribunal found on the balance of probability that had the ten accidents claimed not occurred, Mr Watson would have been in the same position in terms of his loss of faculty at the time of decision."

18. The Tribunal held that the majority of the ten accidents "appeared minor at the time" as the appellant continued to play following the accidents, though it noted at [12] that "The most serious of these accidents occurred in January 1980 when a goalkeeper mis-punched the ball and contacted Mr Watson's head. He was briefly unconscious but continued to play for the remainder of the match. He was subsequently seen in hospital and treated for concussion". (Counsel at this hearing drew my attention to his wife's diary, which contains a fuller account of this incident in which she describes how at the end of the match the appellant

"was running around without a clue where he was, unaware that he had scored and after the final whistle had to be shown where the dressing-rooms were" and that on driving him home "He could not remember his way home, he could only vaguely remember the bungalow, he had forgotten all about Christmas some six weeks before, and he kept repeating the same questions over and over again".)

19. At [13], the Tribunal found:

> "In addition to these ten accidents, Mr Watson regularly suffered head injuries when playing football and when training. Mrs Watson confirmed that there were likely to have been many more undocumented injuries … The ten claimed accidents represented a fraction of the injuries Mr Watson sustained in the course of training for and playing in football matches. …"

20. The Tribunal considered the appellant's medical evidence and two academic articles on which the appellant relied (including the Nowinski article referred to above) and observed at [18]:

> "Neither study assisted in terms of determining whether impacts from accidents, such as a clash of heads or a punch to the head during a football game was more contributory to impacts from day to day process, such as regularly heading the ball during matches or training. Research in this respect remains limited. In 2016, the Industrial Injuries Advisory Council (IIAC) declined to prescribe neurodegenerative diseases in professional sportspeople given the limitations in the evidence base. Whilst it was pointed out … that the IIAC is reconsidering its position in this respect, the Tribunal was considering the position as it stood."

21. Although the diagnoses of probable Alzheimer's and probable CTE relied on precisely the same physiological symptoms and CT scan results, the Tribunal considered separately the probable causes for each condition.

22. At [20] the Tribunal concluded in relation to Alzheimer's that:

> "Mr Watson's probable Alzheimer's Disease was likely to have constitutional causes. The medical evidence reflected that Mr Watson's neurological problems are more due to Alzheimer's rather than CTE. He has a family history of dementia /cognitive impairment. The contribution of the ten claimed accidents to that condition, if any, was minimal. The loss of faculty Mr Watson sadly suffers from was likely to have occurred in any event as a result of his probable Alzheimer's Disease."

23. At [21]-[23] the Tribunal concluded in relation to CTE:

> "21. The process of Mr Watson repeatedly heading the leather ball was clearly a significant risk factor for developing CTE. This was noted by Dr Denning in his conclusion that there was no reason to doubt a

> contribution of CTE to Mr Watson's impairment. This is important because the repeated heading of the ball by Mr Watson in the course of his employment is a process rather than accident and cannot give rise to entitlement to IIDB because the conditions Mr Watson suffers from are not prescribed as noted above. Whilst medical literature may have established a link between neurodegenerative disease such as Alzheimer's Disease and CTE with playing various sports, the evaluation of those sports has been considered holistically with no differentiation between which portions are caused by accidents within sport and which are caused by the process of playing sport.
>
> 22. Mr Watson sustained head injuries, which for the most part appeared minor to the Tribunal, following each of the documented accidents. However, he also sustained a large number of other, undocumented injuries as well as his repetitive heading of the ball, both in training and in playing football matches. Given this background, the Tribunal could not be satisfied on the balance of probability that 'but for' these ten accidents, that Mr Watson's brain injury would not have occurred.
>
> 23. The Tribunal did not find that the ten accidents complained of were an effective cause of Mr Watson's probable CTE. The Tribunal noted that it would be sufficient that the incidents, whether singly or in combination, were an effective cause of Mr Watson's injury. They did not have to be the sole or main cause. This was not the case. The probable CTE was likely to have been caused by the process of Mr Watson's repeated and regular heading of the football in the course of games and in training. In addition to the ten mostly minor incidents noted, Mr Watson was regularly involved in other incidents which were not documented and from which he regularly sustained injuries. Against that background, there were likely to be constitutional causes of Mr Watson's probable Alzheimer's Disease which could not be distinguished from the CTE condition."

24. The mention in that last paragraph of "constitutional causes" as a contributing factor is a reference back to the Tribunal's finding of fact at [15] that "Mr Watson had a family history of dementia / cognitive impairment in his two older brothers, who had also played professional football".

The law

Legal framework relevant to IIDB

25. Section 94 of the SSCBA 1992 sets out the right to industrial injuries benefit as follows:-

> **94.— Right to industrial injuries benefit.**

> (1) Industrial injuries benefit shall be payable where an employed earner suffers personal injury caused by accident arising out of and in the course of his employment, being employed earner's employment.
>
> (2) Industrial injuries benefit consists of the following benefits—
> (a) disablement benefit payable in accordance with sections 103 to 105 below, paragraphs 2 and 3 of Schedule 7 below and Parts II and III of that Schedule;
> (b) reduced earnings allowance payable in accordance with Part IV;
> (c) retirement allowance payable in accordance with Part V; and
> (d) industrial death benefit, payable in accordance with Part VI.
>
> (3) For the purposes of industrial injuries benefit an accident arising in the course of an employed earner's employment shall be taken, in the absence of evidence to the contrary, also to have arisen out of that employment.
>
> (4) Regulations may make provision as to the day which, in the case of night workers and other special cases, is to be treated for the purposes of industrial injuries benefit as the day of the accident.
>
> (5) Subject to sections 117, 119 and 120 below, industrial injuries benefit shall not be payable in respect of an accident happening while the earner is outside Great Britain.
>
> (6) In the following provisions of this Part of this Act "work" in the contexts "incapable of work" and "incapacity for work" means work which the person in question can be reasonably expected to do.

26. In this appeal, we are concerned with IIDB which, by virtue of section 94(2)(a) is payable in accordance with (among other provisions), section 103. Section 103 provides (so far as relevant):

> **103.— Disablement pension.**
>
> (1) Subject to the provisions of this section, an employed earner shall be entitled to disablement pension if he suffers as the result of the relevant accident from loss of physical or mental faculty such that the assessed extent of the resulting disablement amounts to not less than 14 per cent. or, on a claim made before 1st October 1986, 20 per cent.
>
> (2) In the determination of the extent of an employed earner's disablement for the purposes of this section there may be added to the percentage of the disablement resulting from the relevant accident the assessed percentage of any present disablement of his—
> (a) which resulted from any other accident arising out of and in the course of his employment, being employed earner's employment, and

> (b) in respect of which a disablement gratuity was not paid to him after a final assessment of his disablement, (as well as any percentage which may be so added in accordance with regulations under subsection (2) of section 109 below made by virtue of subsection (4)(b) of that section [i.e. disablement from prescribed disease or injury).
>
> (3) Subject to subsection (4) below, where the assessment of disablement is a percentage between 20 and 100 which is not a multiple of 10, it shall be treated—
> (a) if it is a multiple of 5, as being the next higher percentage which is a multiple of 10, and
> (b) if it is not a multiple of 5, as being the nearest percentage which is a multiple of 10,
> and where the assessment of disablement on a claim made on or after 1st October 1986 is less than 20 per cent., but not less than 14 per cent., it shall be treated as 20 per cent.
>
> (4) Where subsection (2) above applies, subsection (3) above shall have effect in relation to the aggregate percentage and not in relation to any percentage forming part of the aggregate.
>
> (5) In this Part of this Act "assessed" , in relation to the extent of any disablement, means assessed in accordance with Schedule 6 to this Act; and for the purposes of that Schedule there shall be taken to be no relevant loss of faculty when the extent of the resulting disablement, if so assessed, would not amount to 1 per cent.
>
> (6) A person shall not be entitled to a disablement pension until after the expiry of the period of 90 days (disregarding Sundays) beginning with the day of the relevant accident.
>
> (7) Subject to subsection (8) below, where disablement pension is payable for a period, it shall be paid at the appropriate weekly rate specified in Schedule 4, Part V, paragraph 1.
>
> (8) Where the period referred to in subsection (7) above is limited by reference to a definite date, the pension shall cease on the death of the beneficiary before that date.

27. As can be seen, the extent of disablement is to be assessed in accordance with Schedule 6 and regulations made thereunder, the Social Security (General Benefit) Regulations 1982 (SI 1982/1408) ("the 1982 Regulations"). There is no need for present purposes to set out all these provisions, but it is helpful to note paragraph 1 of Schedule 6, which provides:

> **1.**
> For the purposes of section 103 above and Part II of Schedule 7 to this Act, the extent of disablement shall be assessed, by reference to the

> disabilities incurred by the claimant as a result of the relevant loss of faculty, in accordance with the following general principles—
> (a) except as provided in paragraphs (b) to (d) below, the disabilities to be taken into account shall be all disabilities so incurred (whether or not involving loss of earning power or additional expense) to which the claimant may be expected, having regard to his physical and mental condition at the date of the assessment, to be subject during the period taken into account by the assessment as compared with a person of the same age and sex whose physical and mental condition is normal;
> (b) regulations may make provision as to the extent (if any) to which any disabilities are to be taken into account where they are disabilities which, though resulting from the relevant loss of faculty, also result, or without the relevant accident might have been expected to result, from a cause other than the relevant accident;
> (c) the assessment shall be made without reference to the particular circumstances of the claimant other than age, sex, and physical and mental condition;
> (d) the disabilities resulting from such loss of faculty as may be prescribed shall be taken as amounting to 100 per cent. disablement and other disabilities shall be assessed accordingly.

28. Regulation 11 of the 1982 Regulations contains detailed provision as to how the assessment of the degree of disablement should be carried out where there has been more than one accident or another factor that has contributed to the injury. In short summary:

    a. Where the injury is caused by more than one accident in the course of employment, the disabling effect of the accidents is aggregated and the extent of disablement assessed by reference to the accident that occurred last: see SSCBA 1992, section 103(2)(a), regulation 11(5) of the 1982 Regulations and *AR v Secretary of State for Work and Pensions* [2016] UKUT 111 (AAC) per UTJ Parker at [15]-[18]; and,

    b. Where one of the causes of the injury is something other than the relevant accident, the extent of the disablement is in principle to be assessed ignoring the contribution of the cause that is not the relevant accident (although how this is to be done differs depending on whether the other contributing cause is congenital or otherwise something contracted or received before the relevant accident, or something that has happened subsequently: see Schedule 6 to the SSCBA 1992 and regulation 11 of the 1982 Regulations).

29. Section 122 of the SSCBA 1992 makes provision as to the interpretation of various terms used in Part V. Definitions of “claimant” and “entitled” make it clear that, as with most other benefits, a person is not entitled to IIDB unless they have made a claim for it in the prescribed manner and within the prescribed time as required by section 1 of the Social Security Administration Act 1992 (SSAA 1992). Thus, by section 122(1):

> "entitled", in relation to any benefit, is to be construed in accordance with—
> (a) the provisions specifically relating to that benefit;
> (b) in the case of a benefit specified in section 20(1) above, section 21 above; and
> (c) sections 1 to 3 of the Administration Act and section 27 of the Social Security Act 1998;
>
> "claimant",
> in relation to industrial injuries benefit, means a person who has claimed industrial injuries benefit;

30. As such, the general rules applicable to other benefits claims also apply to IIDB, including section 8 of the Social Security Act 1998 (SSA 1998) which provides (at section 8(1)) that it is for the Secretary of State to decide any claim for a relevant benefit and that (by section 8(2)) where a claim for a relevant benefit is decided by the Secretary of State, the claim (a) "shall not be regarded as subsisting after that time" and the claimant (b) "shall not (without making a further claim) be entitled to the benefit on the basis of circumstances not obtaining at that time".

31. Section 122(1) of the SSCBA further provides that:

> *"relevant accident"* means the accident in respect of which industrial injuries benefit is claimed or payable;
>
> *"relevant injury"* means the injury in respect of which industrial injuries benefit is claimed or payable;
>
> *"relevant loss of faculty"* means —
> (b) in relation to industrial injuries benefit, the loss of faculty resulting from the relevant injury;

32. The SSCBA 1992 also makes some specific provision, mainly reflecting principles established in case law under predecessor legislation, as to what constitutes an "accident" for the purposes of the statute, and as to when an accident is to be regarded as "arising out of and in the course of his employment". Thus, in short summary, section 97 deals with accidents in the course of illegal employments; section 98 provides that the fact that at the time of the accident the earner was acting in contravention of any rules, regulations or instructions does not by itself mean the accident is not in the course of employment, provided that "the act is done for the purposes of and in connection with the employer's trade or business"; section 99 provides that travel as a passenger by transport (other than public transport) arranged by the employer is within the course of employment; section 100 brings within scope accidents happening while meeting "an actual or supposed" emergency in or about the employer's premises; and section 101 makes provision as to the relevance of misconduct or negligence by a third party or the claimant themselves as follows:

> **101. Accident caused by another's misconduct etc.**
> An accident happening after 19th December 1961 shall be treated for the purposes of industrial injuries benefit, where it would not apart from this section be so treated, as arising out of an employed earner's employment if—
> (a) the accident arises in the course of the employment; and
> (b) the accident either is caused—
> (i) by another person's misconduct, skylarking or negligence, or
> (ii) by steps taken in consequence of any such misconduct, skylarking or negligence, or
> (iii) by the behaviour or presence of an animal (including a bird, fish or insect),
> or is caused by or consists in the employed earner being struck by any object or by lightning; and
> (c) the employed earner did not directly or indirectly induce or contribute to the happening of the accident by his conduct outside the employment or by any act not incidental to the employment.

Industrial injuries benefits for prescribed disease or injury

33. IIDB is a benefit with a long history going back to the Workmen's Compensation Act 1897 which required employers to compensate employees "if in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman".

34. The 1897 Act applied only to employment "in or about a railway, factory, mine, quarry or engineering work, or in construction of buildings over thirty feet in height". In subsequent statutes, the employments covered were broadened, and IIDB is now in principle available to all "employed earners". "Employed earner" is defined in section 2 of the SSCBA 1992 as "a person who is gainfully employed in Great Britain either under a contract of service, or in an office (including elective office) with earnings". Self-employed earners are excluded, but earners in Crown employment, and a number of other employments not traditionally regarded as employed under contract, are included by sections 115 to 121 or by virtue of *The Social Security (Employed Earners' Employments for Industrial Injuries Purposes) Regulations 1975* (SI 1975/467). One notable exclusion is members of the armed forces (see section 116), in respect of whom separate compensation schemes are provided. Otherwise, there are no relevant exclusions by way of category of profession.

35. The SSCBA 1992 thus in principle applies to professional sportspeople, musicians, actors, stunt performers, etc, as it does to other lines of work, provided, of course, that they are "employed" rather than "self-employed". However, sections 108-110 make provision for the Secretary of State to prescribe that industrial injuries benefits will be payable for certain categories of employed earners in respect of certain diseases or injuries, so that in practice people who

suffer certain types of injuries in certain types of employment have an easier route to claiming IIDB than others. By section 108(2):

> "A disease or injury may be prescribed in relation to any employed earners if the Secretary of State is satisfied that:
> (a) it ought to be treated, having regard to its causes and incidence and any other relevant considerations, as a risk of their occupations and not as a risk common to all persons; and
> (b) it is such that, in the absence of special circumstances, the attribution of particular cases to the nature of the employment can be established or presumed with reasonable certainty".

36. The legislation is structured so that IIDB payable under section 94(1) in respect of personal injuries caused by accident arising out of and in the course of employment is the primary route to benefit in respect of 'personal injuries', since by section 108(1)(b), benefit is not payable in respect of a prescribed personal injury if it is an injury caused by an accident arising out of and in the course of employment. In contrast, for 'diseases', the primary route to benefit is under section 108 because, by section 108(6), a person "shall not be entitled to benefit in respect of a disease as being an injury by accident arising out of and in the course of any employment if at the time of the accident the disease is in relation to him a prescribed disease by virtue of the occupation in which he is engaged in that employment".

37. A number of diseases are prescribed for various occupations (subject to various conditions) under the *Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985* (SI 1985/967). The Industrial Injuries Advisory Council (IIAC) is responsible for considering and making recommendations to the Secretary of State as to whether diseases or injuries should be prescribed. The IIAC's policy is to recommend prescription where there is convincing research evidence that risks of disease from a given exposure are more than doubled relative to the risk in a comparable section of the general population. As the First-tier Tribunal in this case noted in its decision, in May 2016 the IIAC undertook a review of the evidence as to links between head trauma in professional sportspeople and neurodegenerative diseases such as motor neurone disease (MND), amyotrophic lateral sclerosis (ALS), Parkinson's disease and Alzheimer's disease, but did not recommend prescription. In its 2024/2025 Annual Report (published 19 August 2025), the IIAC has announced its intention to undertake a further review, the outcome of which is scheduled to be reported in April or May 2026.

38. At present, therefore, there are no prescribed diseases relevant to professional sportspeople who are accordingly only entitled to IIDB if they have suffered "personal injury caused by accident arising out of and in the course of [their] employment" under section 94(1) and if they otherwise fulfil the conditions of entitlement under the Act. In particular, by section 103(1) an employed earner is only entitled to IIDB "if he suffers as the result of the relevant accident from loss

of physical or mental faculty such that the assessed extent of the resulting disablement amounts to not less than 14 per cent…".

Relevant case law relating to IIDB

39. Three key elements that must be established in order to qualify for IIDB are thus: (a) there has been one or more "accidents" within the meaning of the legislation; (b) that the accidents occurred during the course of employment; and (c) that the accident(s) "caused" the injury. In the present case, the focus is on elements (a) and (c), there being no dispute that the incidents relied on as accidents occurred during the course of employment. Save to the extent set out above, the concepts of accident, injury and causation are not further defined in the legislation, but are questions of fact for the Secretary of State and, in turn, the Tribunal: see *R v Industrial Injuries Commissioner, Ex parte Starr* (10 July 1974, Thompson J), reported as an Appendix to R(I) 11/74 at 123E-F. Case law does, however, provide some guidance as to approach.

Causation

40. As to causation, the parties are agreed that the accident needs to be "an effective cause" of the injury. This is the term used in regulation 11 of the 1982 Regulations to refer to other possible causes that may need to be considered and is the phraseology adopted in the case law to refer also to the nature of the causal link required between the accident and the injury: see *Social Security Legislation 2024/25 Edn, Vol 1: Non Means Tested Benefits* at 1.346-347. Where there are multiple contributory causes, the general effect of regulation 11 is, as noted, that the extent of disablement from the accident must be separated from disablement caused by other causes. The standard of proof is the balance of probabilities and, as seems to me to be apparent from the terms of regulation 11, "an effective cause" is a cause that makes a material contribution to the injury, or to the degree of disablement resulting from it. In other words, it is a "but for" test, but a "but for" test that must be applied with care, since the question is not just whether "but for" the accident the injury would have been suffered, but also whether "but for" the accident the injury would have caused the same degree of disablement.

41. Where the injury is caused by a series of accidents, it is not necessary to be able to identify the time or place of the particular accident or accidents that produced the injury, or to be able to identify the specific influence of each individual accident on the resulting injury, provided that the accidents are, as a series, established to be an effective cause: cf *Burrell v Selvage* [1921] 1 KB 355, CA at 363-365. (In that case, a worker sustained tiny scratches to her hands in the course of about five months employment in a copper-plating department which led to blood poisoning and arthritis; the Court of Appeal held that the multiple tiny scratches constituted a series of accidents even though it was not possible to date any one such accident.)

Injury

42. While (as set out above) sections 108-110 of the SSCBA 1992 deal with benefit for "disease" as being distinct from "personal injury", it is well established that disease may itself constitute an "injury" for the purposes of section 94(1): see *Brintons v Turvey* [1905] AC 230 per the Earl of Halsbury LC at 233-234 and *CAO v Faulds* [2000] 1 WLR 1035 per Lord Hope of Craighead at 1042H-1043A. Accordingly, it is common ground on this appeal that both Alzheimer's disease and CTE are in principle injuries within the meaning of section 94(1).

Accident

43. As to "accident", the starting point is usually the definition of Lord MacNaughten in *Fenton v Thorley* [1903] AC 443 that an accident is "an unlooked-for mishap or an untoward event which is neither expected or designed". "Designed" means planned by the claimant. As is now apparent from section 101(b) of the SSCBA 1992, something planned by others may be an accident, as was tragically established in *Trim Joint District School Board v Kelly* [1914] AC 667 (where it was held that a teacher who was assaulted and killed by two pupils in a planned attack was entitled to the then equivalent benefit to IIDB).

44. In *CI/105/1998* Commissioner Rowland pithily summed the definition up as follows at [14]: "injury may be said to be "caused ... by accident" if it arises out of an untoward event or if it is the result of an untoward reaction to an ordinary event". However, I accept Mr Howell's submission in this case, that some care needs to be taken with situations of untoward reaction towards ordinary events. I agree that the case law prior to the House of Lords' decision in *CAO v Faulds* [2000] 1 WLR 1035 does not always identify clearly what the injury is that is distinct from the accident. Indeed, as the House of Lords noted in that case, previous House of Lords authority in *Fenton v Thorley* [1903] AC 443 and *Clover, Clayton & Co Ltd v Hughes* [1910] AC 242 had in fact held that "'injury by accident' meant nothing more than 'accidental injury' or 'accident' as the word is popularly used" (cf Lord MacNaughten at [248] in *Clover*). The facts of *Clover* were that a man was tightening a nut by a spanner at his work when he "fell down dead" from the rupture of an aneurism. The House of Lords accepted that it was open to the arbitrator to find that was an injury by accident even though the 'accident' was effectively identified in that case as being the rupturing of the aneurism itself. In *Faulds*, the House of Lords considered that this approach was too broad: see *per* Lord Clyde at 1049D-F.

45. In *Faulds,* which concerned a senior fire officer who suffered post-traumatic stress disorder as a result of attending a series of fatal accidents during the course of his employment, a majority of the House of Lords (Lord Hutton dissenting) held that the lower court had failed properly to distinguish the injury from the accident and the case was remitted for the lower court to identify whether there was a relevant accident that had caused the injury. The majority of the House of Lords held it was not permissible to collapse the distinction between the two as the lower courts had done so as to hold benefit to be payable where the

injury *was* the accident. While the majority decision aligns with Commissioner Rowland's pithy summation, with Lord Hope at 1043D holding that "the sustaining of an expected personal injury caused by an expected event or incident may itself amount to an accident" and, indeed, not doubting the correctness of the *Clover* case (see Lord Clyde at 1050D-E), their Lordships held it was not permissible for injury and cause to merge indistinguishably. "There must be a causative event or incident which can be described as 'an accident'" (Lord Hope at 1042A). *Faulds* was applied by the Court of Appeal in *SSWP v Scullion* [2010] AACR 29 to hold that a cardiac arrest following a period of sustained pressure at work was an "injury" but not itself an "accident".

46. The House of Lords in *Faulds* relied heavily on the earlier decision of the House of Lords in *Roberts v. Dorothea Slate Quarries Co., Ltd.* [1948] 2 All ER 201 (H.L.). In *Roberts v Dorothea* it was held that a slate quarry worker who had developed silicosis as a result of inhaling silica particles over many years in the course of his work was held not to have suffered injury by accident. Their Lordships emphasised the importance of distinguishing between an "accident" and "process". In *Roberts* Lord Porter at 205 to 206 held:-

> In truth, two types of case have not always been sufficiently differentiated. In the one type, there is found a single accident followed by a resultant injury, as in *Brintons, Ltd. v. Turvey* [1905] A.C. 230, or a series of specific and ascertainable accidents followed by an injury which may be the consequences of any or all of them, as in *Burrell (Charles) and Sons Ltd. v. Selvage* (1921) 14 B.W.C.C. 158 (H.L.). In either case it is immaterial the time at which the accident occurred cannot be located. In the other type, there is a continuous process going on substantially from day to day, though not necessarily from minute to minute or even from hour to hour, which gradually and over a period of time produces incapacity. In the first of these types, the resulting incapacity is held to be injury by accident. In the second it is not. In the case of silicosis it is, of course, possible to divide up the cause of the final collapse and say that each particle of silica striking upon and adhering to the lung is a separate accident, but, however analytically maintainable, the attribution of the resultant silicosis to an accidental cause is an unreal one. The distinction between accident and disease has been insisted on throughout the authorities and is, I think, well founded. Counsel for the employers formulated a proposition on which he relied by suggesting that, where a physiological condition is produced progressively by a cumulative process consisting of a series of occurrences operating over a period of time, and a microscopical character of the occurrences and the period of time involved is such that in ordinary language that process will be called a continuous process, the condition is not produced by an accident or accidents within the Acts. I do not know, however, that any explicit formula can be adopted with safety. There must, nevertheless, come a time when the indefinite number of so-called

> accidents and the length of time over which they occur take away the element of accident and substitute that of process.

47. In *CI/105/1998* Commissioner Rowland further held as follows at [20]:

> As I have already said, it is apparent from *Fenton v. Thorley & Co., Ltd* and similar cases that injury can be said to be caused by accident if it arises from an untoward reaction to an event that would not itself be characterised as an accident. It must follow from those decisions and *Roberts v. Dorothea Slate Quarries Co., Ltd* that injury can be said to be caused by accident if it arises from an untoward reaction caused by the cumulative effect of a series of events even though the events themselves cannot be characterised as accidents. Accordingly, in considering whether a claimant has suffered injury by accident or injury by process, it is necessary to consider whether there has been a series of events (whether or not they would constitute accidents) or a process. It is acknowledged in *Roberts v. Dorothea Slate Quarries Co., Ltd* that drawing the line between the concept of a series of events and the concept of a continuous process may sometimes be difficult - and some fine distinctions have been drawn in some of the cases - but the present case is nowhere near the line.

48. On the basis of my review of the case law for the purposes of this appeal, I would adopt and emphasise Commissioner Rowland's observations about the "fine distinctions" that have been drawn in some of the cases, particularly those prior to *Faulds,* and some of the cases seem irreconcilable in their outcomes. In this regard, I have in mind in particular the case of the oboist that the parties have referred to in this case. That was a decision of Commissioner Goodman (CI/72/1987) in which it was held that an oboist who had suffered laryngoceles as a result of playing the oboe was entitled to IIDB. The oboist was not himself able to identify any particular occasion or series of occasions that had brought about the condition, but an ear, nose and throat consultant gave his opinion that, although the oboist had worked for the same orchestra since 1963, and presumably playing much the same repertoire for his whole career, in the two years prior to 1982 (when the condition became manifest) "a series of incidents occurred when the elevation of increased pharyngeal pressure led to the causation of laryngoceles on both sides". The "series of incidents" was identified as being possibly the playing of more strenuous pieces such as orchestral works by Mahler and Bruckner. However, it is difficult to see how the playing of standard orchestral repertoire, which the oboist will have played many times previously, can properly be described as an 'accident' rather than 'process', or how any such 'accident' is in truth distinguishable from the 'injury' caused.

49. Other examples of claimants who made successful claims when it could be said that the injury has been sustained as a result of them 'just doing their job' include the case of *Clover* mentioned above (man tightening a nut with a spanner who died of aneurism), and see also *Mullen v SSWP* [2002] SC 251 (back pain developed over many years of lifting patients while working in a care home).

50. It is hard to see why the claims in those cases did not fail either because there was no identifiable accident that was distinct from the injury, or because the injury was caused by process. It is hard to 'square' the outcomes in those cases with the outcomes in other cases where the claims failed, such as *Williams v Guest, Keen and Nettlefolds Ltd* [1926] 1 KB 497 (miner developing silicosis through inhalation of particles of silica over many years); *Roberts v Dorothea* ibid (similar conclusion for slate quarry worker); and *R (I) 11/74* (coal face ripper developing ulnar nerve compression syndrome from use over a period of 5 months of heavy electrical boring machine that jarred the hands and arms when it vibrated).

51. Differing outcomes are of course inevitable where an issue such as this is treated as a question of fact rather than law. Nonetheless, it is desirable in the interests of legal certainty that there should, as far as possible, be consistency in the approach that is taken to deciding how to categorise the facts of a particular case. Despite the difficulties, both counsel in this case have made a valiant effort to identify particular factors that may assist in drawing the line between cases where the injury has been caused by a series of accidents (so that benefit is payable under section 94(1)) and cases where the injury has been caused by process (so that benefit is not payable unless the injury is a disease or injury that has been prescribed as "a risk of [the] occupation" and due to "the nature of the employment" under section 108(2)).

52. Mr Royston identified four factors that may be relevant to consider when seeking to answer this question: frequency, perceptibility, intentionality and foreseeability. Mr Howell advanced a fifth: the nature of the employment. I agree these are all relevant factors, though none are determinative. A little more may be said about each of them as follows:-

    a. *Nature of the employment* – An event may constitute an accident in one factual context, but not in another. In *Trim School Board v Kelly*, Lord Loreburn at 680-681 observed that "A soldier shot in battle is not killed by accident, in common parlance", whereas "An inhabitant trying to escape from the field might be shot by accident. It makes all the difference that the occupation of the two was different." Commissioner Goodman in CI/15589/1996, having cited *Trim*, observed at [15]: "A prison officer or someone in a similar occupation must expect certain dangerous incidents of that employment, which if they occur, cannot properly be described as an 'accident'. That is not because, as the tribunal in this case said, they are foreseeable. It is because they simply do not come within the meaning, in the particular factual context, of the word 'accident'." However, Commissioner Goodman nonetheless went on to hold that the prison officer in that case was entitled to benefit on the basis that he had "shown that what occurred to him on the day in question was so much out of the normal run of things and so unusual, even for a senior prison officer dealing with a violent inmate that, just on balance, the claimant has shown that he did suffer an industrial 'accident'". Commissioner Goodman was thus identifying the respects in

which, on the facts of that case, there was properly speaking an incident that amounted to an "accident" even though the incident was the result of the manifestation of a known risk of the employment.

b. *Frequency* – The cases of *Williams v Guest* (ibid) and *Roberts v Dorothea* (ibid) (among others) illustrate that the frequency of the incident that causes the injury is an indicator of whether it can properly be regarded as accident or process. In general terms, the greater the frequency with which the incident occurs in the course of employment, the more likely it is to be process rather than accident. As Lord Porter put it in *Roberts v Dorothea* at 206A, there comes a time "when the indefinite number of so-called accidents [in that case, silica particles landing in the lungs] and the length of time over which they occur take away the element of accident and substitute that of process".

c. *Perceptibility* – Lord Diplock in *R v Nat Ins Comr, ex p Hudson* at 1009F-G, discussing the need for the injury and the accident to be separately identifiable, observed: "An event which constitutes an 'accident' … must be one which can be identified as arising out of and in the course of that person's employment. It cannot be the 'personal injury' itself [of] which it is described as the cause. It must be something external which has some physiological or psychological effect upon that part of the sufferer's anatomy which sustains the actual trauma, or some bodily activity of the sufferer which would be perceptible to an observer if one were present when it occurred". Perceptibility is important because it is one way in which an accident can be distinguished from the ordinary process of 'doing the job', although the extent to which 'perceptibility' will be relevant may depend on context. Where it is relevant, it is important to remember that it is the accident that must be perceptible at the time, not the injury, which may develop later. And, of course, the accident need not be 'perceptible' to the naked eye, as is illustrated by *Brintons Ltd v Turvey* [1905] AC 230, where the 'accident' was a microscopic anthrax bacterium from infected wool landing on a vulnerable part of the claimant's body.

d. *Intentionality* – Surprisingly, perhaps, given the colloquial use of the word "accident", the fact that the incident was one that was itself intended, whether by the claimant or a third party, does not prevent it being an accident. As already noted, it is now clear from section 101 of the SSCBA 1992 that it does not matter that the incident arose from the intentional act of a third party, provided that "the employed earner did not directly or indirectly induce or contribute to the happening of the accident by his conduct outside the employment or by any act not incidental to the employment". Further, in most cases, the activity or incident that causes injury will be the result of an intentional act by the claimant in the course of their employment, and will occur as part of their efforts to fulfil their job. Yet further, as noted, section 98 provides that an incident may be an accident even if the claimant is not following an order, rules or

regulations, provided that "the act is done for the purposes of and in connection with the employer's trade or business". However, the fact that an incident was 'intended' may in some contexts mean either that it is not an accident because both the incident and its outcome can only reasonably be described as the result of a deliberate act by the claimant, or the incident is properly described as merely part of the process of doing the job, or the nature or intent of the claimant's conduct may be such that the act falls outwith the course of employment altogether.

e. *Foreseeability* – It has long been established that the fact that an event is foreseeable does not mean it is not an accident: see the prison officer case (*CI/15589/1996*) already mentioned. However, it is also apparent that the fact that an injury was not foreseeable may make the incident that caused it an accident. This is what is meant by the authorities which have described an accident as including an "untoward reaction to an ordinary event". I do in principle accept Mr Royston's submission that it might be relevant in cases such as the present that, at the time that the claimant was doing the job, it was not understood that injury could result from it. I do not, though, consider that this factor alone could turn an incident into an accident. That would be to collapse the distinction between accident and injury that the House of Lords in *Faulds* made clear should not happen. As I noted above at [44], this is a particular danger in cases involving an "untoward reaction to an ordinary event".

53. It is convenient also to deal here with Mr Royston's submission that in general there should be a presumption against leaving a person who has suffered a work-related injury without access to benefit under the Act. Mr Howell submitted that there was no such presumption, the legislation must just be applied on its terms and some people who have suffered work-related injuries that have not been prescribed as diseases or injuries by the Secretary of State will simply not be entitled to industrial injuries benefit under the SSCBA 1992. I agree with Mr Howell on this point. It is inevitable that there will be cases where someone has suffered an injury or disease in the course of their employment that is not the result of an accident (or accidents), but is, rather, "a risk of [the] occupation" or due to "the nature of the employment" (to adopt the terms used in section 108). In such cases, benefit is not payable unless the Secretary of State has prescribed the disease or injury under section 108. As noted above, the statutory provision for the prescription of diseases and injuries enables the Secretary of State (in practice through the IIAC) to review the medical evidence and, hopefully and in principle, to achieve a consistent approach to prescription as between different diseases, injuries and professions. It is therefore conducive to fairness and legal certainty that neither the Secretary of State or the First-tier Tribunal should strain to conclude that an injury or disease that is an occupational risk or due to the nature of the employment is in fact the result of an accident or series of accidents so as to entitle an individual to benefit, unless it can properly be described as such.

54. Finally, I observe that there is only one case in the bundle of authorities before me involving a professional sportsperson, and that is *CSI/538/98*. Both parties agree that the case is decided on its facts and does not assist Mr Watson, but I mention it for completeness as it involved a professional footballer who sought IIDB on the basis of the opinion of his doctor that his early senile dementia was attributable to head trauma sustained during his career as a footballer. The claim was based on one particular head injury sustained in March 1956. At the time the claim was before the Tribunal, the legislation provided that it was for the adjudicating medical authority to determine the causation question. The adjudicating medical authority found against the claimant so the claim failed. That decision was upheld on appeal by the Commissioner (J G Mitchell QC). It was not contended in that case that "the many 'heading' incidents in the claimant's football career could be regarded as a series of industrial accidents" and the Commissioner regarded that as a proper concession on the claimant's part. However, the Commissioner added (presciently, given the subsequent developments in medical understanding) that it was "impossible, at least from a non-medical perspective, not to suspect that the claimant's football career in the era of heavy leather footballs, made even heavier in wet weather, has at least some connection with [his] disabling condition".

The approach of the Upper Tribunal on appeal

55. An appeal to the Upper Tribunal under section 11 of the Tribunal Courts and Enforcement Act 2007 can only succeed if there is a material error of law in the First-tier Tribunal's decision. A material error of law is an error of legal principle that might have affected the result. Errors of law include misunderstanding or misapplying the law, taking into account irrelevant factors or failing to take into account irrelevant factors, procedural unfairness or failing to give adequate reasons for a decision. An error of fact is not an error of law unless the First-tier Tribunal's conclusion on the facts is perverse. That is a high threshold: it means that the conclusion must be irrational or wholly unsupported by the evidence. An appeal to the Upper Tribunal is not an opportunity to re-argue the case on its merits. These principles are set out in many cases, including *R (Iran) v SSHD* [2005] EWCA Civ 982 at [9]-[11].

56. In scrutinising the judgment of a First-tier Tribunal, the Upper Tribunal is required to read the judgment fairly and as a whole, remembering that the First-tier Tribunal is not required to express every step of its reasoning or to refer to all the evidence, but only to set out sufficient reasons to enable the parties to see why they have lost or won and that no error of law has been made: cf *DPP Law Ltd v Greenberg* [2021] EWCA Civ 672 at [57]. That case also makes the point (at [58]) that where the First-tier Tribunal has correctly stated the law, the Upper Tribunal should be slow to conclude that it has misapplied it.

Consideration of the grounds of appeal

57. In view of the Secretary of State's concession, it is convenient to take Ground 2 first.

Ground 2 - Failure to address/give reasons for concluding that the other 'undocumented' incidents that the Tribunal concluded were an effective cause of the injury were in law "process" rather than part of a series of "accidents" together with the 10 specific accidents identified in the claims

58. The Secretary of State's concession in relation to this ground was a qualified concession and the Secretary of State's position is not one with which the appellant is wholly in agreement. I therefore begin by setting out what is agreed and then explaining the parties' arguments on the points that are not agreed and the conclusions I have reached regarding them.

The parties' submissions

59. The parties are in agreement that the First-tier Tribunal in its decision directed itself that the claim to IIDB could only succeed if the claimant was able to demonstrate that on the balance of probability the ten specific, documented accidents identified in his ten claim forms had been an effective cause of his loss of faculty. The parties are in agreement that the Tribunal erred in law by regarding the claim as so limited or, at least, by proceeding on the assumption that the claim was so limited without giving reasons for doing so.

60. The appellant for his part submits that the Tribunal should also have considered the other undocumented incidents, which he submits were included in the claim forms because the documented accident in each case was said to be "one of a number of similar 'accidents' sustained throughout my career". The appellant submits that the Tribunal needed to consider whether all of the documented and undocumented accidents were cumulatively an effective cause of his loss of faculty. The appellant submits that the Tribunal was bound to do so because the appellant in the claim forms expressly referred to them, and also because the appellant's wife's evidence at the hearing, which was accepted by the Tribunal, was that "there were likely to have been many more undocumented injuries" in addition to the ten documented accidents.

61. The Secretary of State's position is more qualified. The Secretary of State takes issue with ground 2 and characterises the First-tier Tribunal's decision in relation to the undocumented incidents as being a conclusion that they were in law "process" rather than accidents. The Secretary of State further submits that the Tribunal's approach to the undocumented incidents may have been correct in substance, but accepts that the Tribunal's reasons are inadequate and the First-tier Tribunal has as a result materially erred in law.

62. The Secretary of State argues that, in view of "the relevant accident" being defined in section 122(1) as "the accident in respect of which industrial injuries

benefit is claimed or payable", it was necessary for the First-tier Tribunal to identify the accident, or series of accidents, in respect of which industrial injuries benefit was claimed. The Secretary of State submits that the reference in this definition to "or payable" is because in previous versions of the legislation it was for the insurance officer to determine if a personal injury had been caused by an accident, at which point benefit became in principle payable, but the extent of the disablement was to be determined by a medical board or medical appeal tribunal: see *R v Nat. Insr. Comr, Ex p. Hudson* [1972] AC 944 at 970G-971B. The Secretary of State submits that it is not therefore sufficient that there is an accident in the course of employment that has caused injury, the claimant must actually have made a claim in respect of that accident.

63. The Secretary of State submits that the First-tier Tribunal's task was therefore to decide in respect of which accidents the claim had been made. The Secretary of State submits that this required the First-tier Tribunal to construe the claim forms. The Tribunal had to decide whether the reference to other "similar 'accidents'" in each claim form was, at the time the claim was made, properly to be construed as referring to the other nine documented accidents in respect of which a claim was being made at the same time on the nine other claim forms, or whether it was to be construed as referring to other undocumented incidents. The Secretary of State notes that, by section 12(8)(a) of the SSA 1998, the First-tier Tribunal was not obliged to consider any issue not raised by the appeal, but submits that the Tribunal was obliged, if necessary, to consider this issue of its own motion in the exercise of its inquisitorial function once the appellant's wife had given evidence at the hearing about other incidents.

64. The Secretary of State further submits, however, that if, on a proper construction of the claim forms, the accidents in respect of which the claims were made did not include other undocumented incidents, then it would not be open to the Tribunal now to consider them. The Secretary of State so submits on the basis of section 8(2) of the SSA 1998 which provides that once the claim for the relevant benefit is decided by the Secretary of State, the claim "shall not be regarded as subsisting after that time" and the claimant "shall not (without making a further claim) be entitled to the benefit on the basis of circumstances not obtaining at that time". The Secretary of State relies on Judge Wright's decision in *Secretary of State for Work and Pensions v DS* [2025] UKUT 168 (AAC) and submits that the identification of the relevant accident for the purposes of an IIDB claim is a constitutive element of such a claim in the same way as the selection of start date was a constitutive element of the claim to pension considered by Judge Wright in *DS*.

65. The appellant in reply to the Secretary of State's latter argument submits that identification of the relevant accident is not a constitutive element of a claim to IIDB. The appellant relies on the Court of Appeal's decision in *Miah v Secretary of State for Work and Pensions* [2024] EWCA Civ 186, [2024] 1 WLR 3012 that it was open to the First-tier Tribunal to consider whether a claim to benefit should be back-dated, even where the claim had not included a request for backdating (there being no opportunity in the application process at issue in that case to do

so) and the Secretary of State had not considered it at the time of determining the claim. The appellant points out that identification of "the relevant accident" cannot be a constitutive element of the claim for IIDB because section 103(2) enables the Secretary of State and, in turn, the Tribunal to add to the percentage of the disablement resulting from the relevant accident "the assessed percentage of any present disablement of his- (a) which resulted from **any other accident** arising out of and in the course of his employment, being employed earner's employment and, (b) in respect of which a disablement gratuity was not paid to him after a final assessment of his disablement…" (emphasis added).

My conclusions on ground 2

66. There is no doubt that the First-tier Tribunal directed itself that the claim to IIDB could only succeed if the claimant was able to demonstrate that on the balance of probability the ten specific, documented accidents identified in his ten claim forms had been an effective cause of his loss of faculty. It says so in terms at [10] and the rest of its reasoning is wholly consistent with this self-direction.

67. The First-tier Tribunal did, however, accept that there were in addition "numerous other undocumented incidents over the years that [the appellant] played football", as it put it at [3] of its decision. In that paragraph the First-tier Tribunal also refers to "the process of routine footballing activity such as repeatedly heading the ball". At [21] the Tribunal refers again to "repeatedly heading the leather ball" as being a "process". At [22] the Tribunal refers to the appellant having sustained "a large number of other, undocumented injuries" in addition to the ten documented accidents, and also in addition to his repeated heading of the ball.

68. The Tribunal thus in its decision distinguishes between the "process" of ordinary football activity, which it regards as including repeatedly heading the ball, and the other undocumented incidents, which it does not describe as being "process". However, neither does it describe the other undocumented incidents anywhere as "accidents".

69. The thrust of the Tribunal's decision at [21] to [24] is that it is not persuaded that the ten documented accidents were an effective cause of his loss of faculty because there were so many other undocumented injuries, as well as the process of routine heading of the ball (as well as 'family history') that probably contributed to the loss of faculty.

70. In my judgment, the First-tier Tribunal erred in law in failing to consider whether the undocumented incidents were also accidents and, if so, whether they, together with the ten documented accidents, were an effective cause of his loss of faculty.

71. In this respect, I accept the submission of the appellant that it does not necessarily matter whether all the accidents were identified by the claimant in the claim form or not. While the Tribunal should, when identifying the scope of the claim, always begin by construing the claim form, I accept the appellant's

submissions that the identification of the relevant accident or accidents is not a "constitutive element" or "defining parameter" of an IIDB claim in the manner of the start date for state pension age in *DS*. Rather, it is, in my judgment, like the request for backdating in *Miah*, something that may be altered after a determination on the claim has been made by the Secretary of State. It is in my judgment, as Underhill LJ put it in *Miah* at [50], an issue that can "be determined like any other issue going to entitlement – that is, in accordance with the ordinary procedures governing the determination of claims, including procedures relating to revision and appeal".

72. I reach that conclusion for two reasons. First, because of the terms of section 122(1), which define "relevant accident" as "the accident in respect of which industrial injuries benefit is claimed **or payable**" (emphasis added). I acknowledge Mr Howell's submission about the history of this legislation, and the division in decision-making authority between the insurance officer and the medical board or medical appeal tribunal. However, the passage from *Hudson* on which he relied is merely explaining that decision-making framework. I see no reason why the reference to "payable" in section 122(1) of the current legislation has to be read so restrictively. It seems to me that it can properly be regarded as a reference to sections such as 94(1) and 108(1) which provide that industrial injuries benefit is "payable" in the various circumstances there set out. These sections do not use the words "relevant accident" or otherwise refer to benefit being "payable" only if a claim has been made. The requirement to make a claim and prescription as to the manner and time within which a claim may be made is not to be found in the SSCBA 1992 but in section 1 of the SSAA 1992 and the Social Security (Claims and Payments) Regulations 1987 (SI 1987/1968) made thereunder ("the 1987 Regulations").

73. The only reference in the provisions governing entitlement to IIDB to the need to make a claim is a rather oblique one. Although Mr Howell placed emphasis on the definitions in section 122(1) of "claimant" and "entitled" as importing the requirement for a claim to be made, in fact the word "claimant" is not used in any of the sections with which I am concerned on this appeal, and the words "entitled" and "relevant accident" are used only in section 103(1). Section 103(1) provides that:

> "Subject to the provisions of this section, an employed earner shall be entitled to disablement pension if he suffers as the result of the relevant accident from loss of physical or mental faculty such that the assessed extent of the resulting disablement amounts to not less than 14 per cent. or, on a claim made before 1st October 1986, 20 per cent".

If one reads the relevant definition of "relevant accident" from section 122(1) into that sentence, it becomes:

> "Subject to the provisions of this section, an employed earner shall be entitled to disablement pension if he suffers as the result of the **accident in respect of which industrial injuries benefit is claimed or payable**

> from loss of physical or mental faculty such that the assessed extent of the resulting disablement amounts to not less than 14 per cent. or, on a claim made before 1st October 1986, 20 per cent"

74. Read literally, that would mean that a person could be entitled to IIDB just as a result of making a claim in respect of an accident, even if it was not "payable" in accordance with section 94(1) as a result of having occurred in the course of employment. That is clearly not what was intended. The intention of the legislation may be saved if one also construes "entitled" as required by section 122(1) as meaning "in accordance with (a) the provisions specifically relating to that benefit … and (c) sections 1 to 3 of the Administration Act …". It could be said that thus it is provided that there is no 'entitlement' under section 103 unless section 94(1) is also satisfied, but it is on any view not the most elegant piece of statutory drafting. The strong impression is that whoever drafted section 103(1) had lost sight of the definitions in section 122(1).

75. The intention, however, is clearly that a person should be entitled to IIDB where they satisfy the terms of both section 94(1) and section 103(1) and they have made a claim as required by section 1 of the SSAA 1992. The drafting is, despite its deficiencies, sufficient in my judgment to achieve that purpose. What it does not do, though, is to prescribe in any way what the content of the claim for IIDB needs to be, or dictate that the claimant needs to identify correctly every element of the basis for entitlement in the original claim, including every accident that might be taken into account in deciding whether IIDB is in fact payable, and the claimant in fact entitled to it. There is nothing in the legislation, in other words, that supports the approach contended for by the Secretary of State in this case on the basis of *DS*.

76. On the other hand, the legislation does contain express provision that indicates to me that the approach contended for by the appellant is correct. Section 103(2) permits the percentage of disablement that "resulted from any other accident arising out of and in the course of … employment" to be added to the disablement from the "relevant accident". Even if (contrary to my analysis above) Mr Howell is right that "relevant accident" in section 103(1) is limited to the accident in respect of which the claim is made, section 103(2) broadens the scope of accidents that may be taken into account to include other accidents arising out of and in the course of the employed earner's employment.

77. It follows therefore that, upon a claimant making a claim for IIDB in accordance with section 1 of the SSAA 1992 and the 1987 Regulations, the Secretary of State is required to determine that claim and to decide whether, in accordance with the relevant provisions of Part 5 of, and Schedule 6 to, the SSCBA 1992, the claimant is entitled to IIDB as having suffered an accident or accidents in the course of employment as an employed earner that caused personal injury resulting a loss of faculty of not less than 14 per cent disablement. The Secretary of State is not limited to considering only the accident(s) mentioned in the claim form, but has to determine the claim on the basis of the evidence before him that is relevant to the circumstances obtaining at that time. The determination of the claim by the

Secretary of State means, by virtue of section 8(2)(b) of the SSA 1998, that the claim ceases to exist and the claimant cannot, without making a further claim, be entitled to IIDB on the basis of circumstances not obtaining at the date of claim. However, on appeal the First-tier Tribunal stands in the shoes of the Secretary of State and needs to determine afresh whether, on the basis of the evidence before it (which might include, in the normal way, evidence and arguments that were not before the Secretary of State: see *Miah* at [53]) the claimant was entitled to the benefit on the circumstances obtaining at the time of the Secretary of State's decision (section 12(8)(b) of the SSA 1998).

78. I am reassured as to the correctness of this interpretation by the fact that it produces a result which is consistent with the approach that has been taken in the authorities to the concept of "accident". As it has been established that it is not necessary in order for a claim to succeed for anyone to be able to identify the date of any specific accident or accidents or, indeed, the precise number of any such accidents, it would in my judgment be surprising if a claimant was precluded on appeal from recasting their case to fit developments in their understanding of the law or the evidence as to the accident(s) that had caused their personal injury. I also note that my conclusion is consistent with Commissioner Rowland's decision in *CI/6872/95* at [17], to which the parties did not refer me.

79. In so concluding, I wish to make clear that I am not in this case deciding that there are not any elements of a claim to IIDB which, if changed, would count as an amendment for the purposes of regulation 5 of the 1987 Regulations and thus as something which, in the same way as the start date of the state pension claim in *DS*, cannot be amended after the claim has been determined by the Secretary of State. There may be. All I am deciding is that the identification of the accident or accidents is not such an element.

80. In this case, accordingly, the First-tier Tribunal erred in law in confining its consideration of the appellant's claim for IIDB to the question of whether it was satisfied that the ten documented accidents had constituted an effective cause of his loss of faculty. The appellant had, possibly in his claim form, and certainly through the evidence of his wife at the hearing, raised a case that there were other incidents similar to those for which there was documentary evidence which had contributed to his injury. The Tribunal needed to consider whether or not it accepted that evidence and, if it did, whether those other incidents were also accidents and, if so, whether cumulatively they were an effective cause of his loss of faculty.

81. Ground 2 therefore succeeds.

Ground 1 - Perverse and/or inadequately reasoned conclusion that the 10 specific documented accidents were not an 'effective cause' of the injury

The parties' submissions

82. The appellant's arguments in relation to ground 1 cover some of the same ground as ground 2. The appellant submits that the First-tier Tribunal's reasoning was inadequate and/or perverse in concluding that his loss of faculty was caused by a combination of the other undocumented incidents, routine heading of the ball and family history, but that the documented incidents did not materially contribute to his loss of faculty. The appellant further submits that, insofar as the First-tier Tribunal held that all head-ball contact must necessarily be treated as 'process' and not accident and therefore disregarded, it erred in law. The appellant submits that "an injury can in principle occur by what would obviously still be 'accident' even if it results from ball contact with a player's head". The appellant gives the example of where the ball is kicked and inadvertently hits the head of another player a short distance away. The appellant submits that such contacts are particularly likely to cause harm compared with other head-ball contacts because the recipient will not be braced for it and the ball will be travelling faster while a short distance from the kicker, so will apply more force to the head on impact. The appellant also submits that deliberate headers could constitute accidents if they have untoward or unexpected injurious consequences. The appellant submits that the Tribunal needed to make findings of fact as to the nature and totality of accidents that the appellant suffered during his career as a professional footballer and then decide whether these accidents were cumulatively an effective cause of his loss of faculty.

83. The Secretary of State in response complains that the appellant's argument that heading a ball can itself constitute an accident is a new point that was not identified in the original grounds of appeal – indeed, that the appellant had previously positively maintained that heading the ball was "process". The Secretary of State, however, remained neutral as to whether the Upper Tribunal should deal with the argument and did not specifically object to it being dealt with. The Secretary of State submitted that the question of what constitutes an accident and what constitutes process in the context of football is a question of fact for the First-tier Tribunal. However, the Secretary of State submitted that in this case the First-tier Tribunal was plainly entitled to conclude that routine heading of the ball was "process" as heading is an ordinary incident of the game of football, deliberately undertaken on a frequent basis throughout a professional player's career. As to head-ball collisions other than deliberate heading, the Secretary of State submits that it would be for the First-tier Tribunal to determine on the facts whether any such collisions occurred and, if they did, whether they were accident or process.

84. The appellant in reply accepted that his arguments about head-ball contact and heading were not raised in the grounds of appeal, but submitted that permission had not been limited so that (*per* Judge Jacobs at [3] in *DL-H v Devon Partnership NHS Trust* [2010] UKU 102 (AAC)) permission to raise the argument was not

strictly required, although argument could be prevented if the Upper Tribunal considered it was not in accordance with the overriding objective to entertain the argument.

My conclusions on Ground 1

85. As indicated at the hearing, I was content to allow the appellant to run the additional argument about head-ball impacts as the Secretary of State was prepared to deal with it and it seemed to me to be important to consider it both for the benefit of the Tribunal that will consider this appeal again on remission and other cases in which the issue may be relevant.

86. In my judgment there are a number of flaws in the reasoning of the First-tier Tribunal as to the causation of the appellant's loss of faculty that amount to material errors of law. I identify them below. In setting them out in the order that I do, I am conscious that I am suggesting that the Tribunal should approach the issues in this case in what might be thought to be the reverse order from that contemplated by the legislation. As will be seen, I suggest that the Tribunal consider first the nature of the claimed injury, then the effective causes of that and, lastly, whether those causes constitute 'accidents'. I do so because it seems to me that in a case such as this that may be the best way of approaching the issues. However, I am not laying down a general rule. The issues necessary to determine an IIDB claim can be decided in any order, provided the correct legal approach is taken to each issue.

87. The flaws that I have identified in the Tribunal's reasoning are as follows:-

(A) Identification of the injury

88. First, a difficulty with the decision is that the Tribunal approached the question of causation as if the appellant has two separate injuries: (a) Alzheimer's; and (b) CTE. The Tribunal then looked at the causes for those injuries separately. However, the claimant's personal injury for the purposes of the SSCBA 1992 is not one diagnosis or the other but the functional effect of the cognitive impairment. That must be borne in mind at all times, but consideration of the diagnoses themselves is also important and it seems to me that there is a lack of clarity in the Tribunal's approach to this issue, which has contributed to the inadequacy of its reasoning in this case.

89. In cases such as this where there are two possible diagnoses with relevantly different causes, the Tribunal needs first to decide whether, on the balance of probabilities, the evidence shows that the appellant is suffering from one condition or another or (if that is medically possible) both. This requires the Tribunal to consider the medical evidence, and apply its own expertise.

90. The Tribunal's reasoning in this case suggests that its understanding was that if the appellant was 'only' suffering from Alzheimer's, that was not caused by any accident in his footballing career. I do not know whether that approach is

medically correct. It may be, for example, that Alzheimer's can also be caused by head trauma. If so, the Tribunal needed to acknowledge that and address the question of causation on the basis that both Alzheimer's and CTE could be caused by head trauma.

91. If, however, Alzheimer's is by definition not caused by head trauma, as the Tribunal apparently assumed in this case, then that has certain consequences for the task of the Tribunal as I shall explain. If that is the position, then the Tribunal needs first to decide whether the appellant has established on the balance of probabilities that he is suffering from either, both or neither condition. It seems to me that there are at least four possible outcomes of that analysis in the context of an IIDB claim where the conditions of entitlement to the benefit must be established on the balance of probabilities:

(1) If the Tribunal concludes that, on the balance of probabilities, the appellant is suffering 'only' from Alzheimer's and not also CTE, then the claim would fail on that basis alone. There would be no need for the Tribunal to go on and consider the likely causes of Alzheimer's (save to the extent that it may be necessary for the Tribunal to consider the likely causes of Alzheimer's in order to assess whether the appellant is on the balance of probabilities suffering 'only' from Alzheimer's or not). This would be so also if the Tribunal considered there was a chance (less than the 50% necessary to establish this on the balance of probabilities) that the appellant does have CTE.

(2) In contrast, if the Tribunal concludes that, on the balance of probabilities, he is suffering from CTE, but not Alzheimer's, then the Tribunal would need to go on to consider whether, on the balance of probabilities, any accidents occurring during the claimant's footballing career were an effective cause of his CTE. In that scenario, the causes of Alzheimer's would not be relevant. Again, this would be so also if the Tribunal considered there was a chance (less than 50% necessary to establish this on the balance of probabilities) that the appellant does have Alzheimer's. If the Tribunal is not satisfied on the balance of probabilities that the appellant does have Alzheimer's, then it cannot conclude on that standard that the causes of Alzheimer's are a material contribution to his condition.

(3) If, however, the Tribunal concludes that the appellant is on balance of probabilities suffering from both Alzheimer's and CTE (assuming that is medically possible), then it needs to consider the possible effective causes of both conditions in the claimant. The Tribunal would then need to consider the likely relative contribution of Alzheimer's and CTE to his cognitive impairment. If CTE was only a small contributing factor, then in turn the Tribunal would when applying regulation 11 of the 1982 Regulations have to regard the contribution of different types of head impact to his overall loss of faculty to be relatively small.

(4) Finally, if the Tribunal concludes that the balance of probabilities standard is not met in relation to either the diagnosis of Alzheimer's or CTE, that is not

necessarily an end of the matter because, as noted, what matters for the purposes of IIDB is that there is an injury, not that there has been a particular diagnosis. If the Tribunal is not satisfied that either diagnosis is proven, then it would still need to proceed to consider the possible effective causes of the appellant's cognitive impairment/dementia. In that scenario, however, in which the appellant had failed to establish on the balance of probabilities that he is suffering from CTE, it is hard to see how a Tribunal could conclude on the balance of probabilities that head impacts were a contributory cause of his condition since, if they are, it ought to have concluded that on the balance of probabilities he does have CTE.

92. In the present case, the Tribunal did not take this sort of logical approach to its task. At [19], for example, it refers to how it is not possible to distinguish patients who have CTE from those who have Alzheimer's, suggesting it regarded this as a case within either (1) or (4) above, i.e. as a case where the claimant had not established on the balance of probabilities that he is suffering from CTE. However, it then goes on in its decision to treat this as a case falling within (3) above, i.e. as if the appellant has established on the balance of probabilities that he is suffering from both Alzheimer's and CTE.

93. Difficult as the fact-finding may be in a case such this, the Tribunal does need to make findings of fact on the balance of probabilities as to what the injury is as well as to its causes. The Tribunal's failure to do this in this case has in my judgment contributed to the inadequacy in its reasoning.

(B) Identification of the effective causes

94. Secondly, the Tribunal's reasoning as to the effective causes of the appellant's CTE was also flawed. In accordance with the principles set out above at [40]-[41], the Tribunal needed to decide, on the balance of probabilities, what the effective causes were of the appellant's loss of faculty. In assessing this, it needed to take into account all the relevant evidence, including: (i) the views of the appellant's treating clinicians, Dr Ganesan and Dr Dening, as to whether the causes included 'just' heading the ball or also specific head injuries suffered during his career; (ii) the IIAC review and current conclusion that the risk of CTE among footballers is not twice that in the general population; as well as (iii) other developments in the medical literature that the parties put before it as to the causes of CTE. The question of causation was a matter for the Tribunal to assess on the facts, using its own expertise as appropriate, but it needed to reach a conclusion that was not perverse and it needed adequately to explain the reasons for its conclusions.

95. The Tribunal in this case concluded that the CTE was "likely to have been caused by the process of Mr Watson's repeated and regular heading of the football in the course of games and in training" ([23]) and also by the other undocumented incidents from which he sustained injuries, but that the ten documented incidents were not on the balance of probabilities a contributory cause ([24]). That conclusion suffers from the error of not considering whether the undocumented

incidents were accidents (as already dealt with under ground 2 above), but it is also on its face inadequately reasoned as to causation.

96. The Tribunal has effectively decided for itself something that the IIAC has not accepted, and which (as I understand it) remains in significant dispute in the medical evidence, which is that routine heading of a football elevates the risk of CTE to the extent that it can be concluded on the balance of probabilities in a particular case that it is an effective cause of CTE. Without further explanation, that conclusion is unsustainable. It contradicts the conclusion of the IIAC from 2016. The Tribunal fails adequately to explain why it concludes that routine heading of the ball is an effective cause of his condition (i.e. has materially contributed to his loss of faculty or to the nature/extent of his loss of faculty), but that more significant head impacts that were recognised and documented at the time as being out of the ordinary (and some of which resulted in concussion) have not had any material impact on his loss of faculty, or the nature or extent of the loss of faculty. I am not saying that it would not be open to the Tribunal on remission to reach the same conclusion, but if it does, it needs to do a better job of explaining its reasoning.

(C) Identification of the accidents

97. Thirdly, having identified the effective causes of CTE in the appellant's case, the Tribunal needed to decide whether these constituted "accidents", applying the principles I have identified above when setting out the law. In this respect, I accept the appellant's submission that the First-tier Tribunal erred in law in this case by apparently proceeding on the assumption that all head-ball contact in the context of football is inevitably "process". While a Tribunal may, in my judgment, safely proceed on the assumption that heading the ball in football is in general "process" because it is such a routine part of the game, it does not follow that all head-ball contact is "process". It might happen that a player heads the ball in a perfectly ordinary way but suffers an untoward reaction (eg passing out) that is immediately obvious. Depending on the precise facts, that could properly be described as an "accident" applying the guidance set out above at [43]-[54]. Similarly, the example that Mr Royston for the appellant gives of a player's head coming in the way of a close-range kick, could reasonably be described as an "accident".

98. The question in any particular case of whether a player has suffered an "accident" or "accidents" needs to be determined by the Tribunal on the facts of the particular case, applying the principles I have set out above at [43]-[53]. In this respect, it must be remembered that although the claimant does not have to establish that any particular dated, documented accident has occurred, the claimant does have to establish on evidence on the balance of probabilities that an accident or accidents have occurred. It will therefore be a matter for the Tribunal to determine on the facts at the remitted hearing whether, in addition to the ten documented incidents that the Secretary of State accepts constituted "accidents", the appellant has established that he suffered any other accident or accidents in the course of his playing career that, together with the documented accidents, made a material contribution to his loss of faculty or the extent of his disablement.

(D) Extent of disablement

99. Fourthly, if and to the extent that the Tribunal concludes either that the appellant is, on the balance of probabilities, suffering from Alzheimer's as well as CTE and/or that he is otherwise suffering from degeneration that is attributable to causes other than head impacts and/or that accidents in the course of employment were only a contributing cause and not the sole effective cause of his CTE, then the Tribunal will need to apply the provisions of regulation 11 of the 1982 Regulations to decide what proportion of the appellant's disablement is attributable to CTE (as distinct from Alzheimer's) and, in turn, what proportion of his CTE is attributable to accidents in the course of employment (as distinct from other head impacts).

100. Ground 1 therefore succeeds.

Ground 3 - Perverse and/or inadequately reasoned reliance on family history of cognitive impairment

The parties' submissions

101. The appellant submits that the First-tier Tribunal's conclusion that the appellant's probable Alzheimer's disease was likely to have constitutional causes because he has a "family history" of dementia/cognitive impairment was perverse and/or inadequately reasoned. The appellant points out that on the evidence before the Tribunal the only evidence of family history was his two older brothers, both of whom were also professional footballers, and both of whom have died after suffering from dementia/cognitive impairment. The First-tier Tribunal did not have before it any evidence that any other members of the appellant's family have suffered dementia/cognitive impairment. His parents had not, his five other siblings have not. Neither his parents or his five other siblings were professional footballers. The appellant submits that, in the light of that evidence, the Tribunal could not reasonably infer that there was a family history of dementia/cognitive impairment attributable to Alzheimer's rather than to football-related injuries.

102. The Secretary of State submits that the Tribunal's conclusion was open to it on the evidence. The Tribunal was right to take into account that Alzheimer's has multiple contributory causes, one of which is family history. There was no evidence before the Tribunal that the two brothers' dementia had been caused by football. The Tribunal did not leave out of account the fact that other family members who had not been professional footballers had not suffered from dementia. It had alluded to this at [15] of the decision. The Secretary of State submits that correlation is not causation and it was open to the Tribunal to conclude that family history was a likely factor in the appellant's probable Alzheimer's diagnosis.

My conclusions on Ground 3

103. I have already dealt above at [88]-[93] with the reasons why in my judgment the Tribunal took the wrong approach to the appellant's probable Alzheimer's diagnosis in this case. I have explained there the logical approach that needs to be taken to identifying the injury and then assessing the evidence as to the effective causes of the appellant's loss of faculty on the balance of probabilities. However, I also accept the appellant's submission that the Tribunal's reasoning in relation to the contribution of family history to his loss of faculty was perverse. The Tribunal's conclusion in that respect was not founded in the evidence.

104. The evidence as to the claimant's two older brothers who also had dementia / cognitive impairment was not such that it could reasonably be weighed in the balance as strengthening the case for the appellant's primary diagnosis being Alzheimer's. The Tribunal did not, so far as I am aware, have before it any evidence to assist it either way in determining that the appellant's brothers dementia / cognitive impairment was caused by Alzheimer's (or only Alzheimer's) rather than CTE. If anything, what limited evidence the Tribunal had before it as to the appellant's family history pointed towards professional football being the common denominator between him and his brothers. However, I emphasise that the evidence was "limited". More detail would have been required about the appellant's brother's conditions and his wider family before any firm conclusions could properly be drawn. As it stands, however, I am satisfied that the Tribunal's reasoning on this issue was perverse.

Conclusion

105. I therefore conclude that the First-tier Tribunal's decision involved material errors of law. I set that decision aside and remit this case for re-determination by a fresh Tribunal panel in accordance with the law set out in this decision.

Holly Stout
Judge of the Upper Tribunal

Authorised by the Judge for issue on 23 October 2025

NCN: [2025] UKUT 425 (AAC)

Appeal No. UA-2024-001189-II, UA-2024-001191-II, UA-2024-001192-II, UA-2024-001195-II, UA-2024-001196-II, UA-2024-001197-II, UA-2024-001213-II, UA-2024-001214-II, UA-2024-001215-II, UA-2024-001216-II

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Appellant: Mr David Watson
Respondent: The Secretary of State for Work and Pensions
Tribunal: First-Tier Tribunal (Social Entitlement Chamber)
First-tier Tribunal Case Nos: SC319/22/01168, 01162, 01164, 01165, 01166, 00675, 01169, 01170, 01171, 01172
First-tier Tribunal Venue: Nottingham (in person)
First-tier Tribunal Hearing Date: 16 February 2024

DECISION ON SET ASIDE

I refuse to set aside the final decision sent to the parties on 6 November 2025.

Made under section 11 of the Tribunals, Courts and Enforcement Act 2007 (TCEA 2007) and the Tribunal Procedure (Upper Tribunal) Rules 2008 (UT Rules).

REASONS

1. By directions sent to the parties on 13 November 2025, I informed the parties that there had been an administrative oversight on this case, the circumstances of which are as follows.

2. The hearing in this matter took place on 1 October 2025. Pursuant to my directions, the parties were permitted to file short further written submissions on the question of whether the specific accident or accidents which have caused injury to an IIDB claimant are a ‘defining parameter’ of the claim or not.

3. The parties duly filed submissions, the respondent by 12 noon on 2 October 2025, and the appellant by 12 noon on 3 October 2025.

4. I then prepared a draft final decision which was sent to the parties on 17 October 2025 and, following receipt of typographical corrections from the parties, the final decision was completed by me on 28 October 2025 and sent to the parties on 6 November 2025.

5. On 12 November 2025 I received an 'alert' on the Upper Tribunal's case management system (CMS) notifying me of "Post Decision – Correspondence received". This turned out to be an email from Mr Howell, counsel for the Secretary of State, sent on 6 October 2025 at 15:17, replying to a point made by the appellant in Mr Royston's supplementary submissions of 3 October 2025 about section 103(2) of the SSCBA 1992. Mr Howell attached an additional authority, *AJ v Secretary of State for Work and Pensions* [2012] UKUT 209 (AAC).

6. Although Mr Howell's further submission of 6 October 2025 was unsolicited, it is highly regrettable that it was not placed before me immediately or before the final decision was promulgated. I would certainly have considered and dealt with the submission in my reasons if I had received it.

7. By directions sent to the parties on 13 November 2025 I informed the parties of what had happened and explained that it seemed to me that one of the conditions for set aside in rule 43(2) had been satisfied as the failure to notify me of Mr Howell's further submission constituted "some other procedural irregularity" within rule 43(2)(d). However, I explained I should not set aside a decision unless it is in the interests of justice to do so (rule 43(1)(a)). I directed the parties to make submissions as to how I should proceed and, in particular, as to whether it is in the interests of justice for me to set aside the final decision in order to consider Mr Howell's final submission or not.

8. In response, the appellant argues that it is not in the interests of justice to set my decision aside, that I could and should have refused to consider the Secretary of State's late, unsolicited submission if I had wished and that it would be disproportionate and unfair to reopen the final decision now at this stage, with the consequent delay and uncertainty that would entail for the parties.

9. The Secretary of State, however, argues that I should set aside at least paragraphs 71 to 81 of my final decision in order to deal with the argument that was raised in Mr Howell's additional email of 6 October 2025 and to enable fuller consideration of the issue dealt with in this part of the final decision. The Secretary of State submits that the important issue of statutory interpretation I dealt with in those paragraphs was, in hindsight, dealt with in a "somewhat unsatisfactory" way. The Secretary of State indicates a wish also to address me on the relevance of the decision in *CI/6872/95*, which was an authority I referred to at [78] although I had not been referred to it by the parties.

10. I have considered the parties' submissions carefully. I am satisfied that what happened in this case amounted to a procedural irregularity and that I would have allowed and considered the Secretary of State's further submission if it had reached me at the appropriate time. However, I am satisfied that it is not in the

interests of justice for me now to set aside my final decision for the following reasons.

11. First, the principle of finality in litigation is an important one and I should not lightly set aside a final decision.

12. Secondly, having now considered the submission the Secretary of State made in that 6 October 2025 email and the additional authority of *AJ v SSWP* [2012] UKUT 209 (AAC), I am satisfied that it would not have changed my decision on the point that I dealt with at [71]-[81] of my decision. I there decided that in a claim for IIDB the relevant accident is not a 'defining parameter' of the claim and that the approach in *Miah* was to be applied rather than the approach in *DS*. Accordingly, I held that it was for the Secretary of State and, in turn, the First-tier Tribunal, to determine on the basis of the evidence before them at the time, whether the claimant is entitled to IIDB as having suffered an accident or accidents in the course of employment as an employed earner that caused personal injury resulting a loss of faculty of not less than 14 per cent disablement. Neither the Secretary of State or the Tribunal is limited to considering only the accident(s) mentioned in the claim form.

13. Having reviewed *AJ v SSWP*, that does not change my view. The point of law raised by the parties before me in this case was not raised in that case. Although on appeal the appellant was arguing that the 1986/87 accident should have been investigated by the FTT at his hearing in addition to the circumstances of the accident in respect of which he had made a claim ([21]), the appellant accepted that he had not made a claim in respect of the 1986/87 accident ([23]). His case on appeal was that the FTT should have advised him to do so ([21]). It is unsurprising that Judge Wikeley concluded in the circumstances that the FTT had not erred in law in failing to offer him advice of that sort. That case is thus quite different to the present.

14. It does not follow from my decision in this case that there are no limits to the extent to which a claimant can change their claim on appeal. As I made clear at [69], it will always be necessary for the Tribunal to consider the scope of the claim, and what issues are raised on appeal, by construing the claim form. My decision was only that, as a matter of statutory interpretation, the claimant can, during the course of an appeal, change his case as to which accident or accidents caused his injury. The claim is not 'frozen' in that respect by the Secretary of State taking a decision on the claim, although it may be 'frozen' in other respects as I made clear at [79]. In the present case, where the appellant had raised a case in the claim forms or, if not in the claim forms, certainly at the hearing, that there were other accidents of a similar sort that had contributed to the claimed injury, my decision was that the Tribunal erred in law by not considering that case.

15. Thirdly, while I acknowledge that the way in which this issue emerged at the hearing was not ideal, I am satisfied that both parties had a fair and reasonable opportunity to make their arguments on the point. The fact that the parties' competing arguments were reliant on *Miah* and *DS* was not apparent until oral

argument at the hearing. Neither party referred to either authority in their skeleton argument; both should have done in order to make good their respective arguments. When it became apparent that I needed to consider those cases in order to resolve the disputed point of interpretation, I allowed the parties to make further written submissions after the hearing, with the appellant having the last word as was his entitlement under standard procedures. There was no unfairness in the Secretary of State not having a further right of reply.

16. I also acknowledge that the way the arguments unfolded was a factor in my not identifying *CI/6872/95* until after the hearing. I located that case as a result of making a check that there were no other relevant authorities that the parties should have cited to me. If I had considered it added anything material to the argument one way or the other, I would have reverted to the parties for further submissions. As it was, I did not consider it did and I remain of that view. I included it only out of a sense that it was preferable for a relevant case to be mentioned in the decision than not, and so that the parties and any reader of the decision would be aware of it lest the issue arose for determination again, whether on appeal in this case or another case. For the avoidance of doubt, my reference to that case in the decision is not in itself a procedural irregularity, and nor would it be in the interests of justice to set the final decision aside in order to enable the Secretary of State to address me on that case, whether in combination with the submissions made in the Secretary of State's email of 6 October 2025 or on its own.

17. For all these reasons, I am satisfied that it is not in the interests of justice for the final decision in this matter to be set aside and I decline to do so.

Holly Stout
Judge of the Upper Tribunal

(Approved for issue on 15 December 2025)