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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **30/04/2026**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION

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Between:

JOHN McGOWAN and SUSAN MARIE COLLINS AS PERSONAL REPRESENTATIVES OF THE ESTATE OF DANIEL McGOWAN (DECEASED)

Plaintiffs

and

MINISTRY OF DEFENCE

Defendant

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Ms K Quinlivan KC with B Lundy (instructed by Madden & Finucane) for the Plaintiffs
Mr D Ringland KC (instructed by the Crown Solicitor's Office) for the Defendant

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ROONEY J

Introduction

[1] The deceased, Daniel McGowan, was born on 27 December 1934 and was 37 years old when he was shot and seriously wounded on Bloody Sunday, 30 January 1972. At the time of the shooting, he was a father of eight children whose ages ranged from three to sixteen years old. His wife, Teresa McGowan, was pregnant with their ninth child, who was subsequently born in June 1972.

[2] Consistent with the approach adopted by McAlinden J in previously reported judgments, I do not consider it necessary to set out in detail the events surrounding Bloody Sunday, and particularly the shooting of the deceased. It is accepted by the defendant that the deceased and, indeed, all the victims of the shootings on Bloody Sunday, were innocent victims. The defendant has admitted assault, battery and trespass to the person and has not sought to raise any matter or issue by way of attempted justification for the actions of the soldiers in question, nor has the defendant sought to avail of any limitation defence which might otherwise have been available.

[3] Prior to 30 January 1972, the deceased was a man of impeccable good character and work ethic. He had been employed in DuPont as a maintenance service man and had worked full time in this capacity for 13 years at the time of the shooting. Previously, he lived in England for a period of time and was employed at Rolls Royce, Derby, for three years before returning to Derry to raise a family.

[4] The deceased had never been involved in any form of criminal or paramilitary activity and did not have any political affiliations. In his statement to the Saville Inquiry ("the Inquiry"), the deceased stated that "whilst I agree with the aims of the civil rights movement, I do not condone paramilitary activity. I do not believe in violence and my being shot has not changed that."

[5] The deceased made several statements to the Inquiry. Due to his deteriorating health, he was unable to give oral evidence at the Inquiry. The significant gunshot injury to his right leg and the severe psychological sequelae from the shooting will be considered in more detail below. Unfortunately, he was diagnosed with mouth cancer in 1986 and had to undergo extensive facial and neck surgery. Further health issues arose in 2002 when he was diagnosed with a lymphoma.

[6] In his first written statement to the Inquiry, the deceased stated that he was aware of the shooting of Hugh Gilmore, who subsequently died, and Patrick Campbell, who was injured. The Inquiry concluded that the deceased was shot a matter of seconds after Patrick Campbell was injured. The Inquiry further concluded on the evidence that the deceased was probably shot halfway between the south side of Block 2 and the alleyway at Joseph Place, close to the Fahan Street steps.

[7] The Inquiry concluded that the deceased was shot by a soldier who was firing from the entrance of Glenfada Park North, across Rossville Street to civilians at the south side of Block 2 of the Rossville flats. The Inquiry's conclusion was that it was highly probable that Soldier F was responsible for the shooting of the deceased. The Inquiry also concluded that it was highly probable that Soldier F was responsible for the shooting of others in the area, to include Paddy Doherty who was wounded and Bernard McGuigan who had been shot and killed.

[8] On his own account, the deceased lay for a period of approximately one hour in intense pain before being moved by car to his own home and thereafter by ambulance to the Altnagelvin Hospital.

[9] The nature and extent of the injuries sustained by the deceased will be considered in more detail below. It is claimed on behalf of the deceased's estate that, due to the significant nature and sequelae of both the physical and psychological injuries, he was incapable of returning to any form of employment, certainly up until his diagnosis of cancer and resultant treatment in 1986.

[10] The deceased died on 28 January 2004 prior to the publication of the Saville Report which exonerated the victims of the Bloody Sunday shootings.

Evidence of John McGowan and Siobhan Collins

[11] John McGowan is a son of the deceased and was five and half years old when his father was shot on Bloody Sunday. He has a distinct memory of his father in significant pain in the family home before he was carried to the ambulance.

[12] Prior to the shooting, John McGowan stated that he had been spoiled by his father, probably due to the fact that he was the youngest son. Mr McGowan recollects going to the cinema with his father and enjoying fishing together. Also, he remembers his father playing football at a pitch close to their house and frequently attending football tournaments. Mr McGowan described his father before the incident as strict but fair. Unfortunately, everything changed after the shooting. Mr McGowan described how his father's mood deteriorated, to include argumentative and aggressive behaviour, both in relation to the children and also towards the deceased's wife. Mr McGowan stated that his father found fault in everything they did, culminating in verbal and physical aggression which often resulted in actual physical injuries.

[13] During the course of his evidence it was clear to the court that Mr McGowan was fighting back tears as he described how his previously reserved and quiet natured father became overtly irritable and significantly aggressive with his family, particularly the deceased's wife.

[14] Mr McGowan emphasised that, prior to Bloody Sunday, his father had been in continuous employment. Prior to the shooting, the deceased would have enjoyed a few sociable drinks on a Saturday but never drank alcohol to excess. After the shooting, his father would visit the local pub on a daily basis and often remained there throughout the day. Mr McGowan stated that his father plainly missed the structure that his employment had given him. The deceased became an alcoholic and continued to drink heavily up until he developed a terminal illness and died in 2004.

[15] Mrs Siobhan Collins was the eldest in the family and was aged 16 when her father was shot. Prior to the subject incident, Mrs Collins described her father as strict, but loving and affectionate to his children and his wife. She stated that the deceased took a keen interest in their education. He also would have taken them swimming and on long walks. Prior to the shooting, Mrs Collins stated that her father was "very good to all of us."

[16] Mrs Collins noted significant changes in her father after the incident. She stated that he became angry with everyone and would frequently fly off the handle for no good reason. He became verbally and physically aggressive, culminating in causing physical injuries to his wife. Mrs Collins described one incident when,

following a physical altercation initiated by the deceased, her mother required treatment at Altnagelvin hospital. Similar to her brother's demeanour in the witness box, Mrs Collins was emotional when describing the significant changes to her father following the shooting.

[17] Before the incident, Mrs Collins recollected that her father and mother would have gone to DuPont for a social drink at the weekend. After the subject incident, her father's drinking increased as the years progressed and he developed an addiction to alcohol. Mrs Collins stated that she was married in January 1973 and was delighted to be able to leave the family home, so as to avoid confrontation with her father. However, she remained a frequent visitor to the family home and witnessed on many occasions her father's verbal and physical aggression. She emphasised that, prior to the shooting, her father loved his work and, indeed, his brothers also worked in DuPont. It was clear that the deceased's inability to return to employment caused a loss of purpose and structure in his life, not only regarding the daily routine and fulfilment of working with colleagues but also his enjoyment of social contact with friends at the weekend.

Gunshot injury to right leg

[18] A medical report was obtained from Mr Hanratty, Consultant Orthopaedic Surgeon, dated 26 July 2017. Mr Hanratty's report was based on a review of the deceased's clinical notes and records, medical records, x-ray reports and Ministry of Health and Social Service records.

[19] Clinical records reveal that the deceased sustained a wound to the medial side of his right calf and a comminuted fracture of the right tibia and fibula. In theatre, the wound was debrided and a pin inserted through the lower part of the tibia. The deceased returned to theatre on 4 February 1972 for a second re-suture of the wound and further application of a long leg plaster of Paris. At this time, it was recorded that sensation and movement in his right foot was good. A further x-ray on 11 February 1972 showed the fracture was well aligned.

[20] The deceased returned to theatre on 14 March 1972 and underwent removal of the sutures and the Steinmann pin and a change of the plaster of Paris. The fracture was found to be quite mobile. Further reviews took place in April 1972, and a decision was made to continue with the long leg plaster.

[21] During a review in May 1972, Mr Fenton, FRCS noted there was still a wound on the medial side of the right calf and another wound on the lateral side of the leg. In November 1972, Mr Nixon, FRCS observed that the deceased had a slight limp, but full knee and ankle movements. X-rays showed good union posteriorly, although there was still a part of the bone that had not united. It was also noted that the tibia was prominent with the lower fragment protruding markedly.

[22] At a further view in February 1973 by Mr Taylor FRCS, it was noted that the fracture was clinically united and that knee and ankle movements were full. It was also recorded that the deceased could stand on his toes. The deceased was still complaining of pain down the posterior aspect of his lower calf, although Mr Taylor expressed some doubts as to the level of the deceased's pain.

[23] At the next review on 6 September 1973, it was recorded that the deceased had numbness in the dorsum of his right foot and he also complained of weakness in his right foot. Power in his right leg was less when compared to the left leg.

[24] Between May 1972 and November 1972, it is recorded that the deceased did not attend the fracture clinic for three appointments. Between November 1972 and February 1973, there were two occasions when he did not attend and was sent reminders. Between the assessment in February 1973 and the assessment in December 1973, the deceased did not attend for one appointment. He failed to attend for an appointment on 17 January 1974.

[25] The next recorded review in the medical notes is August 1977, when Mr McClelland FRCS noted the deceased had pain in his ankle when he was out walking and complained of recurrent swelling in his ankle. X-rays of his right ankle did not show any degenerative changes, and the bone was recorded as being porotic.

[26] In addition to the clinical notes and records, Mr Hanratty carried out a comprehensive review of the medical records held by the Ministry of Health and Social Services. The said records were also considered in detail by Mr Yeates FRCS, in his report dated 26 November 2018 and Mr Adair FRCS, in his report dated 17 August 2020. The purpose of the examinations as recorded in the said records was to ascertain whether the deceased was capable of work. The interpretation of the history provided by the deceased to the attending doctors and results of their examinations was a matter of considerable debate which I have analysed below.

[27] I do not consider it necessary to set out in detail each and every assessment contained in the said records. Rather, I will focus on some of the more relevant entries.

[28] In his report and his evidence, Mr Hanratty concluded that the deceased suffered a life changing injury to his right lower leg following a gunshot injury on 30 January 1972. The injury was potentially limb threatening. The deceased was in hospital until 20 March 1972 and, thereafter, had multiple reviews and serial radiographs. According to Mr Hanratty, from the records, it appears that the fracture took over 12 months to unite. The deceased had pain and swelling in his right leg for a long period thereafter and was left with a permanent limp.

[29] Mr Adair FRCS, on behalf of the defendant, agrees that the deceased sustained a significant injury to his right leg which involved prolonged treatment. Fortunately, the deceased did not suffer any vascular or acute neurological

compromise. Eventually, the tibial fracture united but with a degree of shortening and malunion resulting in a mild permanent limp. Mr Adair's opinion was that the leg length inequality would not have caused any symptoms or disability.

[30] The real issue for the orthopaedic surgeons was to ascertain the nature and extent of the deceased's consequent physical injury and disability and thereafter to provide an expert opinion as to the period in which the deceased would have been incapable of work.

[31] According to Mr Adair, the deceased would have required some additional assistance and care for a period of approximately six months post injury. Thereafter, in his opinion, the deceased would have been fully mobile and capable of independent living. Having considered the records, Mr Adair's opinion was that the deceased recovered a full range of knee, ankle and foot movements. He anticipated that the deceased would have been capable of resuming useful exercise, to include walking distances of up to several miles. However, Mr Adair did accept that the deceased would never have regained his pre-injury level of activity and would not have returned to playing football or running long distances.

[32] In relation to employment, Mr Adair stated that he would have anticipated that the deceased could have returned to work as a maintenance fitter approximately 18 months from the injury. Mr Adair came to this conclusion, despite the fact that the doctor who reviewed the deceased on 12 February 1974 (two years post injury) recorded that the deceased was incapable of work.

[33] In the course of their evidence, Mr Hanratty and Mr Adair confirmed that they had not been provided with details of (nor had they made enquiries) as to the precise nature of the deceased's employment as a maintenance fitter. It was assumed that his employment involved working with machinery. However, details were lacking as to whether the nature of the deceased's employment involved standing or sitting for long periods, working at heights, heavy or repetitive lifting, climbing stairs and walking long distances, the length of each shift and information relating to rest periods. This is significant since the doctor who reviewed the deceased on 24 April 1974 recorded that the deceased was still awaiting his built-up shoe and that, on examination, there was a three quarter of an inch shortening of the right leg with slight wasting in the thigh. Significantly, it was also stated that although the deceased was incapable of his usual occupation, he was capable of work within certain limits which would not involve heavy manual work, prolonged standing, walking or climbing.

[34] The court notes that in relation to the said medical record for the 24 April 1974, the examining doctor had issues with the deceased's credibility, in that he stated that he did not believe that the deceased could only walk 150 yards before stopping for two minutes.

[35] Mr Hanratty, in cross-examination, stated that the deceased was capable of returning to employment two years post incident. The precise nature of such employment was not explored. Taking into consideration the evidence of both Mr Hanratty and Mr Adair, it is my view that it would not have been possible for the deceased to return to his previous occupation as a maintenance fitter until approximately two years from the date of the incident. Initially, the deceased would have been able to engage in relatively light sedentary work before gradually returning to his previous occupation. It is noted that the deceased did not return to any form of employment after the shooting. In my judgment, for two years post incident, the deceased's inability to return to employment was caused by the gunshot injury to the deceased's right lower leg and the physical sequelae. Whether the deceased's continued incapacity for work was due to the psychological impact of the shooting will be considered in further detail below.

[36] In summary, the deceased suffered a life changing injury to his right lower leg following a gunshot wound to the medial side of his right calf. He was taken to theatre and the wound was debrided. X-rays recorded a comminuted fracture of the right tibia and fibula. A Steinmann pin was inserted through the lower part of the tibia. The deceased returned to theatre on at least two further occasions, to include removal of sutures and the pin. When he was discharged from hospital in March 1972, the fracture was still mobile. The deceased was subjected to multiple reviews and serial radiographs. It appears that the fracture did not unite until over a year post incident. He had scarring to his right lower leg and walked with a limp due to leg-length discrepancy. The tibia remained prominent with the lower fragment protruding markedly. The medical evidence confirms that the deceased would never have regained his pre-injury level of activity. He would never have returned to playing football or running long distances.

[37] Having carefully considered the clinical records and the medical notes, together with the reports and evidence of the experts, I would value the deceased's physical injuries at £75,000.

Psychological injuries

[38] The psychological trauma caused by the shooting to the deceased has been considered in detail in psychiatric reports from Dr Tanya Kane, Consultant Psychiatrist, dated 26 August 2017, Professor Tom Fahy, Consultant Psychiatrist, dated 10 September 2019 and 18 October 2025 and reports from Dr John Sharkey dated 12 November 2017 and 2 December 2019. The reports will be considered in more detail below.

[39] Due to an administrative oversight, the report from Dr Sharkey, on behalf of the defendant, dated 2 December 2019, was only made available to the plaintiffs' solicitors and to the court on the morning of the hearing. No issue was taken for this oversight by Ms Quinlivan KC, on behalf of the plaintiffs. In the concluding paragraph of the said report, Dr Sharkey stated that it would be very helpful if he

could meet with Professor Fahy and prepare a joint report outlining areas of agreement and disagreement. I commended this suggested course of action and following a meeting, Mr Fahy and Dr Sharkey produced a joint statement dated 22 October 2024. The contents of this joint statement will be considered in more detail below.

[40] Professor Fahy was called to give evidence on behalf of the plaintiffs. Dr Sharkey was not called to give evidence on behalf of the defendant. The court received considerable assistance from Professor Fahy's detailed written report and his oral evidence regarding the significant post traumatic symptoms suffered by the deceased resulting from his injuries sustained on Bloody Sunday.

[41] In preparation of his written report, Professor Fahy had access to the deceased's limited GP notes and records, hospital notes and various medical records. Professor Fahy also had access to the said psychiatric reports from Dr Kane and Dr Sharkey, together with the report from Mr Hanratty in respect of the deceased's physical injuries. It is also noted that Professor Fahy was provided with the deceased's statement to the Bloody Sunday Inquiry dated 1 July 1998. Prior to giving his oral evidence, Professor Fahy had the benefit of hearing the oral evidence of the deceased's children, John McGowan and Siobhan Collins.

[42] Professor Fahy stated that the circumstances of the shooting were vividly described in the deceased's witness statement and depicted a scenario of his increasing anxiety immediately prior to the shooting. After he was shot, there was a considerable delay before the deceased reached hospital for treatment. Professor Fahy concludes that, from a clinical perspective, this must have been an extremely distressing and anxiety provoking series of events. In his opinion, such an experience would generate a substantial risk for the development of clinically significant post traumatic symptoms.

[43] Professor Fahy's review of the clinical and medical records is comprehensive. The records initially concentrate on the sequelae from the significant physical injury sustained to the deceased's right leg. In July 1974, the deceased complained "bitterly of his bad nerves and depression." The medical officer on behalf of the Ministry of Health and Social Services wrote that the deceased was suffering from an acute anxiety state of such severity that he could not, at that time, undertake paid work. It was also noted that the deceased was suffering from a chronic reactive depression due to his prolonged absence from work.

[44] In the said medical records dated 29 July 1974, the medical officer expressly states that "the deceased's acute anxiety state is being accentuated by the fact that he has recently been shot at on two further occasions recently."

[45] In his report dated 5 November 2017, Dr Sharkey states that "the contemporary records suggest that it was these further shootings, albeit ones that did not result in physical injury, that had the greatest psychological impact on him."

[46] Having carefully considered the evidence of Professor Fahy, coupled with the evidence of the plaintiffs, I reject the above stated conclusion reached by Dr Sharkey. Firstly, there is no evidence as to the background circumstances giving rise to the said shootings. Secondly, the plaintiffs' evidence was that they were not aware of any further shootings, least of all shootings that would have exposed the deceased to imminent danger. Thirdly, there is no reference to a description of the said shootings in any further medical notes, clinical notes and GP notes and records. On balance, I prefer the evidence of Professor Fahy, that the shooting in January 1972 caused the deceased significant psychological and post traumatic symptoms leaving him vulnerable to re-exposure from other traumatic experiences, including further shootings and a stressful living environment.

[47] In his report dated 5 November 2017, Dr Sharkey stated that there was a history of mental health difficulties in the family. He noted that the brother of the deceased was diagnosed with schizophrenia and died by suicide. However, as observed by Professor Fahy, there is no indication from any medical records that the deceased experienced symptoms of schizophrenia or other psychotic disorders before or after 1972. In his addendum report dated 2 December 2019, it is noted that Dr Sharkey agrees with Professor Fahy's observations.

[48] Both psychiatrists refer to a medical record in 1990, where the medical officer stated that deceased appeared depressed in the aftermath of an incident that resulted in the amputation of his right little finger. Dr Sharkey reported that this medical note was highly suggestive that the deceased had some pre-incident vulnerability. Professor Fahy, on the other hand, stated that he did not consider this single case note entry provides strong evidence of pre-1972 psychiatric vulnerability. I agree with Professor Fahy and his conclusion that, on the medical records provided, there is no indication that the deceased was likely to suffer psychiatric problems without exposure to significant life stresses. Furthermore, as stated by Professor Fahy, when the events of Bloody Sunday occurred, the deceased was 37 years old, an age when any serious psychiatric vulnerability would have been elicited in medical consultations or demonstrated in functional impairments in the deceased's occupational and domestic roles.

[49] The deceased's clinical records refer to two further shooting incidents (29 July 1974) and an aggravation of his problems due to the Troubles and his living environment (2 May 1978). According to Professor Fahy, in his clinical judgment, it is reasonable to conclude that the shooting incident of January 1972 would have increased his sensitivity to reminders of this incident and to the effects of further threats to his safety or the safety of his family.

[50] In his report, Professor Fahy made specific reference to psychiatric literature which provides that, over one quarter of individuals who suffer penetrating or gunshot wounds, will go on to report symptoms amounting to PTSD. He stated that it is well recognised that patients suffering from PTSD, anxiety and depression, will

often resort to alcohol misuse as a form of self-medicating and that alcohol misuse may then become a separate problem. Although there is a possibility that the deceased may have developed an alcohol problem regardless of his adverse life experiences, the accounts provided by the plaintiffs plainly support the proposition that the deceased's alcohol abuse did not emerge until after he was shot. Therefore, according to Professor Fahy, this supports the view that the deceased's alcohol dependency was precipitated by the shooting and then exacerbated by other environmental factors, to which he had been sensitised because of the shooting.

[51] Professor Fahy's conclusion was that, on the basis of the clinical records, it is probable that the deceased experienced post traumatic symptoms following his shooting and the incidents witnessed by him on Bloody Sunday. Psychological trauma, the disruption to the deceased's employment and the effects of his physical injuries provide a plausible explanation for his mood disorder, alcohol dependency and behavioural deterioration. I also take into consideration the joint statement agreed by Professor Fahy and Dr Sharkey which states as follows:

> "In Professor Fahy's opinion, it is likely that the injuries sustained on Bloody Sunday and the consequent loss of his job were pivotal events leading to the subsequent deterioration in Mr McGowan's mental health. Dr Sharkey regards this interpretation as possible, if not probable. We agree that other factor(s) have also contributed to his symptoms, including family stresses, the alleged incidents of being shot [at], the deterioration in his physical health and the secondary effects of alcoholism."

[52] The life of a hardworking and dedicated family man was shattered by the shooting on 30 January 1972. The deceased was only 37 years old when he sustained the life-threatening gunshot injury. The effect of the physical injuries reduced over time. However, the deceased's life after the shooting was devastated by the post traumatic symptoms, depression, alcohol dependency and behavioural deterioration. Due to the significant nature and sequelae of both the physical and psychological injuries, in my judgement, he was incapable of returning to any form of employment, certainly up until his diagnosis of cancer and resultant treatment in 1986.

[53] Having carefully considered all the medical evidence, I would assess damages for the psychological injuries at £75,000.

Pecuniary loss

[54] Harbinson Mulholland, Chartered Accountants, submitted a report dated 22 September 2025 on behalf of the plaintiffs which formulated a pecuniary loss claim based on two potential options. At the time of the shooting incident in January

1972, the deceased was working for DuPont but did not appear to have been a member of the company pension scheme. Option 1 assumed that the deceased would have joined the DuPont pension scheme in 1972, had it not been for the subject incident, and would have remained in the scheme until medical retirement due to a cancer diagnosis in 1986. Under this option, the deceased would have been entitled to receive an ill-health pension from 6 April 1986, and the deceased's widow would have received 50% of his pension entitlement until 21 October 2025. Option 2 assumed that the deceased would not have joined the DuPont pension scheme regardless of the subject incident.

[55] I was not persuaded that the pecuniary loss calculation should be based on Option 1. No supporting evidence has been produced that the deceased opted or intended to join the DuPont pension scheme in the 12-year period prior to 30 January 1972. Accordingly, in my judgment, it is highly speculative to assume that the deceased would have joined the DuPont pension scheme in 1972 or at some stage, thereafter, had he remained in employment.

[56] Under Option 2, Harbinson Mulholland assumed that the deceased would have been unable to work from April 1986 onwards due to his cancer diagnosis and associated treatment. The deceased died of cancer in January 2004. Accordingly, any pecuniary loss sustained after the deceased's cancer diagnosis in April 1986 was not attributable to the subject incident. I agreed with this conclusion.

[57] In the 10-month period prior to January 1972, the deceased's gross earnings from DuPont were £931. Annualising this would suggest gross annual earnings at the time of the injury at approximately £1,118. For comparison purposes, earnings of £1,118 broadly equates to Skill Level 2 earnings in NI ASHE. For the purpose of the pecuniary loss calculation, Harbinson Mulholland assumed that the deceased's earnings would have continued at this pre-incident rate (ie £1,118 gross per annum) had it not been for the injuries sustained. This amount would have increased in line with the Average Earnings Index.

[58] Applying the appropriate multipliers, Harbison Mulholland calculated the total pecuniary loss (to include interest) at £149,006.00. It is noted that this calculation assumed an average loss of services of £200 per annum during the period from 30 January 1972 to 5 April 1986. After adjusting by RPI for inflation, an average loss of services of £200 per annum would be equivalent to approximately £2,836 in 2025.

[59] The pecuniary loss as calculated by Harbison Mulholland under Option 2 assumes that the deceased would have remained in continuous employment for the total period until April 1986. Sumer Chartered Accountants ("Sumer NI"), on behalf of the defendant, considered that the deceased's loss of services has been significantly overstated. Significantly, Sumer NI proposed that a discount should be applied for the risk of periods in which the deceased would have been out of work due to general ill-health and unemployment. Reference to tables A and B in the

Ogden tables include factors which allow for interruptions in employment in the future, eg for periods of ill-health and unemployment. Pursuant to the Ogden tables, a discount for a 37-year-old (the deceased's age at the time of the incident), "not disabled", employed male, with no qualifications is 11%. At the very least, it is argued by Sumer NI that Harbinson Mulholland should have applied a 11% discount as a minimum. In my judgement, there is merit in this argument advanced by Sumer NI.

[60] Sumer NI also prepared calculations based on an assumption that, but for the cause of action, the deceased would have had extended periods in which he would have been unable to work due to pre-existing issues or lower levels of income during periods in which economic activity was low. I was not persuaded by these assumptions.

[61] Sumer NI also calculated that the deceased's loss of services would have been for a two-year period only, which would be equivalent to an average loss of services of £67 per annum under Option 2. No evidence was submitted to the court regarding the alleged loss of services, to include painting (internal and external) decorating, general home maintenance, cleaning widows and car maintenance. In my view, subject to further evidence, which was not received, the claim for loss of services was overstated.

[62] Prior to hearing the evidence from the forensic accountants, I invited the parties to agree a pecuniary loss figure based on Option 2, namely that the physical and psychological injuries suffered by the deceased prevented him from returning to any form of employment until his diagnosis of cancer in 1986. The parties eventually agreed a financial loss of £100,000. In my view, this agreed figure represents a sensible and reasonable assessment of the overall pecuniary loss as summarised above.

Aggravated and Exemplary Damages

[63] I turn now to the question of whether, having regard to the circumstances in which the deceased was injured on Bloody Sunday, I should consider making an award for aggravated and exemplary damages.

[64] In *Clinton v Chief Constable* [1999] NICA 5, Carswell LCJ referred to the Law Commission's 1993 consultation paper "Aggravated, Exemplary and Restitutionary Damages" which highlighted two basic preconditions for an award of aggravated damages:

> "(1) exceptional or contumelious conduct or motive on the part of the defendant in committing the wrong, or, in certain circumstances, subsequent to the wrong: and

(2) mental distress sustained by the plaintiff as a result."

[65] Referring to the said two basic preconditions, Carswell LCJ further stated as follows:

> "We consider that this formulation is an accurate statement of the law. It finds support in the judgment of Lord Woolf MR in *Thompson v Commissioner of Police of the Metropolis* [1998] QB 498 at 514, where he stated that aggravated damages can only be awarded where "there are aggravating features about the defendant's conduct which justify the award of aggravated damages." By way of example of such aggravating features in a case of wrongful arrest he specified –
>
> > 'Humiliating circumstances at the time of arrest or any conduct of those responsible for the arrest or the prosecution which shows that they had behaved in a high-handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution.'"

[66] Having carefully considered the circumstances in which the deceased sustained devastating injuries on Bloody Sunday, I have no hesitation in concluding that the said wrongful acts amounted to exceptional and contumelious conduct on the part of the 1st Battalion Parachute Regiment and that the deceased suffered considerable mental distress and emotions of extreme fear as a result. I conclude that the deceased was exposed to humiliation and degradation and that the soldiers behaved in a malicious and oppressive manner during the events in question and in the immediate aftermath. An award of aggravated damages is plainly justified.

[67] Consistent with the assessment of the appropriate level of aggravated damages by McAlinden J in other claims arising out of the shootings on Bloody Sunday, to include *Quinn v MOD* [2018] NIQB 82 and *Campbell (Deceased) v MOD* [2019] NIQB 114, the parties agreed an award at £25,000. I commend the parties for their pragmatic approach to resolution of this head of claim.

[68] A claim for exemplary damages has also been made. In *Quinn v MOD* [2018] NIQB 82, McAlinden J considered in extenso whether in law an award of exemplary damages is appropriate in relation to the events on Bloody Sunday and the need for punishment and deterrence. McAlinden J's comprehensive analysis is detailed at paras [55] to [77] of his judgment. I entirely agree with McAlinden J's analysis and that, for the reasons stated, no award of exemplary damages will be made.

[69] In summary, the compensatory payment in this case for general damages, personal injuries, including psychiatric injury and injury to feelings and aggravated damages will be in the sum of £175,000. This sum shall attract interest from the date of service of the writ at the usual rate. The special damages award for pecuniary loss will be £100,000. The total award will be £275,000 plus interest.

[70] The plaintiffs are entitled to costs, and the court makes an order for taxation of the plaintiffs' costs in default of agreement.