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(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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IN THE MATTER OF AN APPLICATION BY CP FOR JUDICIAL REVIEW OF A DECISION OF THE POLICE SERVICE OF NORTHERN IRELAND

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IN THE MATTER OF AN APPLICATION BY GP FOR JUDICIAL REVIEW OF A DECISION OF THE POLICE SERVICE OF NORTHERN IRELAND

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IN THE MATTER OF AN APPLICATION BY MW FOR JUDICIAL REVIEW OF A DECISION OF THE POLICE SERVICE OF NORTHERN IRELAND

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IN THE MATTER OF AN APPLICATION BY ST FOR JUDICIAL REVIEW OF A DECISION OF THE POLICE SERVICE OF NORTHERN IRELAND

-AND-

IN THE MATTER OF AN APPLICATION BY CC FOR JUDICIAL REVIEW OF A DECISION OF THE POLICE SERVICE OF NORTHERN IRELAND

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AND, IN EACH CASE IN THE MATTER OF THE ROYAL ULSTER CONSTABULARY PENSION REGULATIONS 1988 [1988 No 374] [as amended]

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HIGGINS J

[1] These five applications for judicial review, brought separately but considered jointly, challenge decisions of the Police Service of Northern Ireland, the successor to the Royal Ulster Constabulary, refusing the applicants claims for entitlement to compensation for injury alleged to have been received in the execution of duty. The Royal Ulster Constabulary Pensions Regulations 1988 [the 1988 Regulations] were made on 2 October 1988 and came into operation on 1 January 1989. Regulation A10 provides –

"A10.-(1) A reference in these regulations to an injury received in the execution of duty by a member means an injury received in the execution of that person's duty as a member.

(2) For the purposes of these regulations an injury shall be treated as received by a person in the execution of his duty as a member if –

(a) the member concerned received the injury while on duty or while on a journey necessary to enable him to report for duty or return home after duty, or

(b) he would not have received the injury had he not been known to be a member, or

(c) the Police Authority are of the opinion that the preceding condition may be satisfied and that the injury should be treated as one received as aforesaid.

(3) For the purposes of these regulations an injury shall be treated as received without the default of the member concerned unless the injury is wholly or mainly due to his own serious and culpable negligence or misconduct.

(4) Notwithstanding anything in these regulations relating to a period of service in the armed forces, an injury received in the execution of duty as a member of the armed forces shall not be deemed to be an injury received in the execution of duty as a member.

(5) In the case of a member who has served as a police cadet in relation to whom Part III of the Police Cadets (Pensions) (No.2) Regulations (Northern Ireland) 1973 (b) had taken effect, a qualifying injury within the meaning of those regulations shall be treated as if it had been received by him as mentioned in paragraph (1); and, where such a qualifying injury is so treated, any reference to duties in regulations C3(1) (*widow's augmented award*) shall be construed as including a reference to duties as a police cadet."

[2] A Glossary of Expressions in Schedule A to the Regulations defines certain words or expressions.

> "'injury' includes any injury or disease, whether of body or of mind; 'injury received in the execution of duty' has the meaning assigned to it by Regulation A10 and the result of an injury shall be construed in accordance with regulations A12."

[3] A10 of the 1988 Regulations mirrors A11 of the Police Pensions Regulations 1987 in England and Wales. Both are successors to earlier regulations that used similar, but not exact terminology, to define those occasions that qualified for injury on duty payments. I was referred to a number of authorities in England and Wales under both the old and new regulations. Since R(Stunt) v Mallett 2001 ICR 989, a decision of the Court of Appeal, R v Kellam Ex parte South Wales Police Authority 2000 ICR 632 is now regarded as the outer limit for recovery under these regulations. In Kellam's case Richards J analysed the earlier authorities and at page 644 set out his conclusions as follows-

> "(1) Regulation A11(2) does not purport to contain, nor should it be read as containing, an exhaustive definition of the circumstances in which an injury may be received in the execution of a person's duty as a constable. Thus in principle a case may fall within regulation A11(1) and thereby qualify for an award even if it does not fall within regulation A11(2). Leaving aside for one moment the applicant's contention in the present case, I doubt whether the point is of great practical significance, since a person who receives an injury 'in the execution of [his] duty (in the basic meaning of that expression) is likely generally to receive it 'while on duty' within the meaning of regulation A11(2)(a): the latter extends beyond the former but also encompasses the generality of cases falling within the former. (A full exposition would require reference to the additional deeming provisions of regulation A11(3) to (6), but I have not thought it necessary to deal with them in this judgment since they do not appear to me to affect the overall position.)
>
> (2) When considering a case of mental stress or psychiatric illness amounting to an injury and said to have arisen over a period of time (as opposed to, for example, post-traumatic stress syndrome said to arise

out of a single event), it will probably be impossible in practice to draw any clear distinction between regulation A11(1) and regulation A11(2)(a). It makes no difference in any event whether one looks at the matter in terms of the one rather than the other. The test to be applied is the same. That is why one finds the authorities either failing to distinguish clearly between the two provisions or applying in the context of the one a test developed in the context of the other.

(3) The test remains that set out in Garvin v London (City) Police Authority [1944] KB 358 and summarised in Huddersfield Police Authority v Watson [1947] KB 842 as being whether the person's injury 'is directly and causally connected with his service as a police officer'. It is a test formulated originally in the context of a physical disease contracted over a period of time, but aptly and repeatedly applied in the corresponding context of a psychiatric condition arising over a period of time. One can readily see why that test is applicable as much under regulation A11(2)(a) as under regulation A11(1). When considering such a psychiatric condition, which cannot be attributed to a single identifiable event or moment of time, it is plainly necessary to find a causal connection with service as a police officer in order to establish that the injury has been received 'while on duty' rather than while off duty, just as it is necessary to find such a causal connection in order to establish that the injury has been received 'in the execution of duty'.

(4) The test of causation is not to be applied in a legalistic way. The concept is relatively straightforward, as Latham J observed in Bradley v London Fire and Civil Defence Authority [1995] IRLR 46"--this was an analogous case of a fireman--"and falls to be applied by medical rather than legal experts. In particular, in my view, the reference to a 'direct' causal link does not mean that fine distinctions may be drawn between 'direct' and 'indirect' causes of the injury. The reference derives from the statement in Garvin's case that the injury was the 'direct result of, and, therefore, suffered in, the execution of duty'. That language was used, as it seems to me, as a means of emphasising the existence of a substantial causal

connection between the injury and the person's service as a police officer. The point was to distinguish such a situation, which qualified for an award, from the case where the receipt of an injury and service as a police officer were entirely coincidental rather than connected circumstances, which did not qualify for an award.

(5) The causal connection must be with the person's *service* as a police officer, not simply with his *being* a police officer (the exception in regulation A11(2)(b) is immaterial to the kind of situation under consideration in the present case). That is inherent in the reference to 'duty' in regulation A11(1) and regulation A11(2)(a). At the same time, however, 'duty' is not to be given a narrow meaning. It relates not just to operational police duties but to all aspects of the officer's work--to the officer's 'work circumstances', as it was put in R v Fagin, Ex p Mountstephen (unreported) 26 April 1996. I have referred in general terms to the person's *service* as a police officer because it seems to me to be an appropriate way of covering the point, but the precise expression used is unimportant. In any event it is sufficient in my view to find a causal connection with events experienced by the officer at work, whether inside or outside the police station or police headquarters, and including such matters as things said or done to him by colleagues at work. In so far as the applicant contended for an even greater degree of connection with a person's performance of his functions as a police officer, I reject the contention.

(6) It is sufficient for there to be a causal connection with service as a police officer. It is not necessary to establish that work circumstances are the *sole* cause of the injury. Mental stress and psychiatric illnesses may arise out of a combination of work circumstances and external factors (most obviously, domestic circumstances). What matters is that the work circumstances have a causative role. The work circumstances and domestic circumstances may be so closely linked as to make it inappropriate to compartmentalise them, as in R v Court, Ex p Derbyshire Police Authority (unreported) 11 October 1994, where the so-called 'private matters' were held

> to be intimately connected with the officer's 'public duty'. But I do not read the authorities as laying down any more general rule against compartmentalisation. On the other hand, where compartmentalisation is possible (ie, in the absence of an intimate connection between the private matters and the public duty), I do not read the authorities as laying down any rule that the existence of a causal connection with the private matters is fatal to a claim. Provided that there is also a causal connection with the public duty, the test is satisfied.
>
> (7) It may be that what I have said about the sufficiency of a causal connection with service as a police officer should be qualified by a reference to a *substantial* causal connection. The requirement of substantiality does not appear to feature in the authorities (subject to my observation about the significance of the reference to a *direct* causal connection). But that is unsurprising, since there does not seem to have been any real suggestion that the causes in issue were anything other than substantial causes. Similarly in the present case I do not think that anything turns in practice on the issue of substantiality. I therefore think it unnecessary to say any more about the point for the purposes of the case."

[4] The conclusions expressed by Richards J in Kellam's case were approved in effect by the Court of Appeal in Stunt. In Kellam the court was concerned with the case of an officer who suffered anxiety and depression which he claimed had been caused by victimisation by colleagues at work over a number of years. A judicial review of the medical referee's decision that this constituted an injury received in the execution of duty was refused. In Stunt the court was concerned with a disabling psychiatric illness resulting from subjection to disciplinary proceedings. The Court of Appeal held that the police officer subjected to such disciplinary proceedings did not suffer the illness "in the execution of duty". The construction put on the regulations by Richards J was challenged as being too benevolent and the court was invited to redefine the meaning to be attached to the words in regulation A11 (A10 in Northern Ireland). In giving the main judgment of the Court, Simon Brown LJ said that he regarded the line of cases concluding with Kellam, supra, to have been "rightly decided provided only and always that the officer's ultimately disabling mental state had indeed been materially brought about by the stresses suffered actually through being at work. In the majority of decided cases this was clearly so; the significant part played by events at work was a

consistent theme". Later he observed that, "the critical question, I repeat, is whether the officer's mere subjection to the process of itself constitutes the execution of his duty". That arose simply from the fact that he was a police officer and not from the execution of his duty. Lord Phillips of Worth Matravers MR at page 1004 summarised the situation in these words –

> "There is one common element in each case in which the injury was held to have been sustained 'in the execution of duty'. An event or events, conditions or circumstances impacted directly on the physical or mental condition of the claimant while he was carrying out his duties, which caused or substantially contributed to physical or mental disablement. If this element cannot be demonstrated it does not seem to me that a claimant will be in a position to establish that he has received an injury in the execution of his duty".

[5] In order to qualify under the Pension Regulations 1988 an officer must receive an injury in the execution of his duty as a member of the police force (Regulations A10(1)). In the majority of cases the injury can be traced to a single identifiable event a clear example of which is when an officer is injured in the course of an arrest. However not every situation is so clear, particularly those involving an alleged psychiatric condition. The test to be applied is that set out in Garvin v London (City) Police Authority 1944 358 namely, whether the officer's injury is directly and causally connected with his service as a police officer rather than simply his being a police officer. That test was formulated in the context of a physical disease, tuberculosis, contracted over a period of time during which the officer was on duty in conditions conducive to developing that disease. That test has also been applied in cases involving an alleged psychiatric condition. However Regulation A10(2) creates several classes of case where injury is received, that are treated as received in the execution of duty. Thus the situations in which an officer may qualify as having received an injury on duty have been extended to include those specified in paragraphs (a), (b) and (c) of A10(2).

[6] I turn now to consider the five individual cases against that general background.

CP

[7] This applicant was stationed at Ballynahinch Police Station and lived at Ballywalter, both in Co. Down. On 2 December 2000 she was returning from night duty at Ballynahinch. As she was travelling through Ballygowan her car started to give trouble. She stopped her car as a precaution and contacted her family who lived nearby. Her brother came out and collected her in his

van. He was unable to take her home due to his own commitments, so he brought her to the family home. When the officer was alighting from the van she caught her foot in a joiner's belt that was in the vehicle and lost her footing and fell. She sustained serious injuries to both arms and was detained in hospital for surgery on a number of occasions. There was a period of delay and eventually an "injury on duty" Form 23/10 was submitted. Thereafter the application had a chequered history.

[8] In July 2001 the claim was rejected for pay purposes on the ground that two of three criteria required by RUC Code Section 16 paragraph 50 had not been satisfied. The two criteria were – the most direct route home must be used and the officer must not be at fault. As regards the former she was held to have deviated from that route by going to her parents home and regarding the latter she was held to have contributed through her own negligence. In October 2001 an appeal was refused on the same grounds.

[9] Thereafter, the Police Federation solicitors queried the relevance of the RUC Code Section 16 paragraph 50 and referred to the definition of an injury received in the execution of duty as provided for in A10(2) of the Pension Regulations. Eventually in April 2002 an "appeal" was launched against the decision. The Head of Employee Relations considered the appeal and on 16 May 2002 wrote to the solicitors informing them that the applicant did not comply with the requirements to have her injury regarded as an injury on duty for pay purposes. Three points had been raised and were dealt with in these terms –

> Deviation
>
> Whilst we accept that the deviation was minimal, we cannot accept that it was necessary and appropriate. In our opinion it was convenient for your client but does not preclude other options which she may have availed of which might have limited her exposure to injury.
>
> The most direct route.
>
> The fundamental issue here is whether regulations A10(2)(ii)(a) has been satisfied and if the exact wording of A10(2)ii(a) " …… journey necessary to enable him to report…" is referred to, it is our opinion that it was not necessary for your client to go to her parent's house as opposed to her own home.
>
> Due care and attention.
>
> The care with which your client exited the vehicle has not been examined.

[10] An application for leave to bring judicial review proceedings was commenced in March 2003. It was submitted by the respondents that whatever the merits of the applicant's claim that her injury was received in execution of duty, her claim for judicial review must fail on the ground of delay. Order 53 Rule 4 requires an application for judicial review to be brought promptly, and in any event within three months from the date when grounds for the application first arose, unless the court considers there is good reason for extending the period within which the application should have been brought. There was delay by both sides in the consideration of the original request by the applicant that her injury be treated as having been received in the execution of her duty. That issue was determined on 16 May 2003. Over eight months elapsed before the present application for judicial review was commenced. A cogent explanation for the delay is required – see Re Aitken's Application 1995 NI 49; in addition a good reason for extending time must be made out – see Re McCabe's Application 1994 NIJB 27. Neither a cogent explanation for the delay nor good reason for extending time have been put forward. In those circumstances there is no basis upon which the court should exercise its discretion to extend time within which to bring the judicial review proceedings.

[11] This case has been brought along with the others as test cases. I consider it would be remiss not to express an opinion on the issue at the heart of this application, without actually deciding the issue. It would be a matter for the police authorities how they deal with that opinion, given that no claim for compensation arises; rather the applicant seeks recognition of her status, as having received an injury on duty, for the purposes of the advancement of her career. It seems that absence from work due to injury is no bar to an application for promotion and constitutes mitigating circumstances where an applicant's attendance at work falls short of the required criteria.

[12] The focus of the argument was narrow. This was whether the circumstances in which this applicant was injured, constituted an injury in the execution of duty. The Royal Ulster Constabulary Regulations 1996 (No 473) are also relevant. They make provision for payment to serving officers while they are on sick leave. Regulation 42 provides that for the first 183 days during any twelve-month period an officer is entitled to full pay and thereafter half pay. If he is absent for the whole of a twelve-month period he ceases to be entitled to any pay while on sick leave. However, in an exceptional case, the Chief Constable may determine that the officer is entitled to either full pay or half pay. Regulation s 42(4) states –

> "(4) The chief constable, if he is satisfied after consultation with a registered medical practitioner appointed or approved by the Police Authority, that a particular case is exceptional, shall determine in

consultation with the said medical practitioner that for a specified period –

(*a*) a member who is not entitled to any pay while on sick leave is to receive full pay, or

(*b*) a member who is not entitled to any pay while on sick leave is to receive either full pay or half pay.

An exceptional case is a case in which the member's being on sick leave is directly attributable to any injury received in the execution of his duty, as defined in the Pensions Regulations."

[13] For a case to be treated as an exceptional case the officer's injury must qualify within the terms of Regulation A10 of the RUC Pension Regulations, supra. Thus, in this case the issue was whether the officer received her injury in the execution of her duty while on a journey necessary to enable her to return home after a period on duty – A10(2)(a). All officers require to travel to the place where they are required to report and from the place where they are stood down. It is not disputed that this is connected to their service as police officers or part of their work circumstances. Mr Montagu who appeared on behalf of the respondent submitted that the journey to her parent's house was not a necessary journey to enable her to return home. Once she had deviated from the straight journey home, she fell outside the regulations. Mr Montagu accepted that if the applicant had carried on home with her brother in his van, then he could not resist the application for judicial review.

[14] It was submitted that the applicant should have continued on home by such means as were at her disposal rather than deviate to her parent' home. It was submitted that Regulation A10(2)(a) contemplates a situation in which an officer proceeds directly from his home to where he is to report for duty and to return directly from his duty to his home. He is not entitled to make a detour to go shopping or to stop for a meal or a drink. A substantial detour, occasioned by an accident on the road or road works, would not break the continuity of his journey home. Equally I do not think the continuity of his journey would be broken if his car breaks down and he seeks assistance in order to rectify the fault and then continues his journey to his place of duty or home. It seems to me it depends on the officer's intention. If he intends to rectify the fault and continue, he is still on his journey home. If he deviates from his journey and intends to do something different, other than return directly home or as directly home as circumstances permit, then he has broken his journey directly home and would not qualify under A10(2)(a). In this case if it is accepted that the applicant went with her brother to her parent's house with the intention of continuing on home or getting her car

serviceable and continuing in it (and there appears to be no evidence to the contrary), then she qualifies under A10, as the continuity of her journey home, has not been broken. Therefore the fact that she deviated from the most direct route home, as found in the impugned decision of 16 May 2002 would not disqualify her from establishing that the injury received was received while on a journey necessary to return home and should be treated as received in the execution of her duty under A10(2). I dismiss the application for judicial review on the grounds of delay, but the relevant authority may wish to consider the applicant's situation in the light of this judgment.

MW

[15] This applicant is a Reserve Constable and was on duty at Bessbrook RUC station on 16 October 2002. His duty commenced at 0645 and was to terminate at 2300. At 1300, during his lunch-break, he was using a microwave oven to heat some food. While operating the microwave oven his hand came in contact with an exposed electrical wire and he suffered an electric shock that caused him to be thrown onto the floor, whereby he sustained an injury to his right shoulder. Following the incident he did not return to work. For the first six months he was in receipt of full pay and thereafter for the next six months on half pay and thereafter on no pay. He asserts that if his injury had been accepted as in execution of his duty, he would have continued to receive full pay.

[16] Reserve Constable MW's application to be treated as having received an injury on duty was refused on 18 April 2002 on the ground that at the time of the injury he was not in the execution of his duty, being a lunch break in the canteen. He appealed against that decision. On 4 September 2002 he was informed that the original decision would stand. The decision maker formed the view that as he was on a break and preparing his lunch, he was not in the execution of his duty. However for the purposes of the sick pay regulations supra, an exceptional case is one in which the injury was received in the execution of his duty, as defined in the Pensions Regulations supra. Regulation A10(1) provides that an injury received in the execution of duty by an officer, means an injury received in the execution of that officer's duty as an officer. An injury received during a lunch break could not be said to be received in the execution of duty as an officer. However Regulation A10(2) extends the meaning of injury received in the execution of duty so that injury received otherwise than in the strict execution of duty are in defined circumstances to be treated as received in the execution of duty. One of these circumstances is while the officer is on duty. Duty is not to be given a narrow construction but should be contrasted with 'execution' of duty. Duty begins and ends at a certain time. Any injury received during that period is to be treated as received in the execution of duty unless the circumstances indicate clearly that the officer is not on duty. To use the words of Richards J in Kellam supra, quoting R v Fagin ex parte Mountstephen (unreported) it relates to the

officer's "work circumstances". In Kellam Simon Brown LJ accepted that the phrase "while on duty" included periods when the officer could not be said to be executing his duty and typically would cover a period of duty and included a normal break when the officer might be in the canteen. In rejecting the applicant's claim that he was not in the execution of his duty the decision maker has placed too restrictive a meaning on this phrase or overlooked the extended meaning afforded by A10(2). This officer was on duty, albeit in the canteen on a lunch break. Such breaks are taken by all ranks throughout a period of duty. Regulation A10(2)(a) provides that an injury received while on duty is treated for the purposes of the Pension Regulations (and the Sick Leave Regulations referred to above), as received in the execution of his duty, provided the period in question on duty, is so closely and causally connected with the execution of his duty as to qualify. In this instance it is. Therefore this decision must be quashed and the Chief Constable should determine the applicant's case on the basis that the injury received was received in the execution of duty as defined by the Pension Regulations.

GP

[17] The applicant is a full-time Reserve Constable. On 29 April 2002 this applicant was informed by her authorities of a threat to her life by dissident Republicans. She was given advice regarding her personal security. Thereafter she became anxious and was deemed unfit to carry out her duties due to stress. On 12 June 2002 she submitted a 23/10 injury on duty report. This was rejected and she appealed the decision. The Head of Employee Relations considered the appeal and on 19 December 2002 she decided that the original decision should stand. This decision was communicated to the applicant on 23 January 2003. The decision maker concluded that the applicant received no injury that could be described as being a direct result of her being known to be a police officer under Regulation A10(2)(b).

[18] Paragraph A10(2)(b) provides that an injury shall be treated as received by a person in the execution of his duty if he would not have received the injury had he not been known to be a police officer. It was submitted by Mr Montagu on behalf of the respondent, that for paragraph A10(2)(b) to apply, the threat had to be specific about the officer concerned. The threat received was against a female officer residing in a specified area and not against the applicant herself. Because the applicant was the only serving female police officer residing in the specified area, a senior officer informed the applicant about the threat and read the full text of the threat message to her. This did not name the applicant.

[19] The following day another senior officer was made aware of a further action sheet that identified two female student officers, residing in the specified area, as possible subjects of the earlier threat. This senior officer then spoke to the applicant and informed her that two female student officers

resided in the specified area and that the threat may be related to one of them. It was submitted that any stress the applicant suffered on 29 April should have abated on 30 April when the applicant was informed that the information might relate to someone else. Any other interpretation would mean that any general threat would make all officers eligible under Article A10(2)(b). Mr Keenan submitted that the regulation did not require that a threat must be specific to the officer making the claim. In his submission the threat was specific to the applicant or to a female officer residing in the specified area. In either case the applicant qualified. Increasing to three the number of officers to whom the threat might relate was, in Mr Keenan's submission, irrelevant.

[20] Regulations A10(2)(b) provides that an injury received by a police officer, which he would not have received had he not been known to be a police officer, shall be treated as received by him in the execution of his duty. Usually this extension of the injury on duty policy is intended to cover a police officer who is off-duty and is assaulted or injured, because he is recognised to be a police officer. However that is not the only circumstance in which Regulation A10(2)(b) is relevant. It also covers situation in which officers might be threatened directly or be the subject of threats. Whether the threat is direct or by way of intelligence, seems to me to be irrelevant. A general threat would not qualify under A10(2). However, a threat that named an officer would. Should a threat that did not name an officer but which gave sufficient information to enable him to be identified or reasonably identified be treated in a different manner? I do not think so. In this case the information was sufficient to enable other officers to adjudge that this threat referred to the applicant and prompted them to warn her. Therefore any injury received as a result of such a threat and warning would be an injury the applicant would not have received had she not been known to be a member. The following day an action sheet identified two student officers residing in the same area who might be the subject of the threat. This did not affect the text of the original message; it merely identified two students to whom the threat might possibly refer. However the applicant was the only serving officer. I do not think this action sheet alters the situation so far as the applicant is concerned. The damage had been done the previous day. It is not realistic to expect the effects of the threat to have abated the following day by reason of the additional information that two student officers resided in the same area. This applicant was entitled to have her injury treated as an injury on duty as she would not have received the injury had she not been known to be a police officer. Accordingly I quash the decision.

CC and ST

[21] The applicant ST is an Inspector in the PSNI. In August 2001 he was attached to a particular unit within the PSNI (hereafter referred to as the Unit). His superior officer (or line manager) was CC, then a Chief Inspector. It

is alleged that there were management difficulties within the Unit, particularly between two Sergeants, H and S. Sergeant S put in a grievance report against the Chief Inspector. There was a complaint by a member of the public about Sergeant H and around about the same time Sergeant H took a suspected angina attack and was taken to hospital. On 22 August 2001 Superintendent R spoke to both the Chief Inspector and the Inspector. The Superintendent advised them that Sergeant H had submitted an 'injury on duty' report alleging stress at work. The Superintendent read to each of them the contents of Sergeant H's injury on duty report. Subsequently, the Chief Inspector and the Inspector each filed an 'injury on duty' report.

[22] The Inspector's report dated 6 September 2001 stated –

> "……..On hearing the content of this alleged injury as recited to me I was immediately shocked and traumatized and stressed by the unjustified comments I was hearing. I subsequently rang and visited my GP 28/9/01 where I received treatment for shock and trauma and stressed (sic) by the unjustified comments".

[23] On 29 August 2001 the Inspector completed an Accident Book report in similar terms.

[24] On 6 September 2001 Chief Inspector CC submitted an Injury on Duty Report. This stated –

> "Inspector ST and myself returned to Superintendent R's office where he related the content of the injury on duty to Inspector ST. While doing so he established that the Inspector was indeed Inspector ST. On listening to the contents of the report that the Superintendent was reading out I observed that the Inspector appeared badly shaken and his face was white with shock and disbelief. As a result of these actions, I feel that I am also starting to exhibit similar symptoms to those which I had 12 months ago and which my GP diagnosed as work related stress. I am currently receiving medical treatment."

[25] On 3 September 2001 the Chief Inspector completed an Accident Book report. This stated –

> "Suffered work related stress due to spurious allegations made by another member."

[26] In late September 2001 she was informed of an internal investigation into complaints made against her. In the autumn of 2002 she was informed that no disciplinary action would be taken against her in respect of those complaints.

[27] On 6 January 2003 the Inspector was advised by letter that his application, that the incident on 22 August 2001 be treated as an injury on duty for pay purposes, was refused. No reasons were given for the refusal. On 14 January 2003 Chief Inspector CC's solicitors were informed that her application was refused.

[28] It is clear that both applicants were alleging the receipt of an injury on duty upon hearing the contents of the Injury on Duty Report of Sergeant H. It was submitted by Mr Larkin QC that the circumstances in this case were distinguishable from those that pertained in the case of Stunt. Indeed he submitted that the decision maker misunderstood the grounds upon which the applications for the incident to be treated as an injury on duty were brought. In particular the decision maker referred to both applicants being informed that they were "the subject of a Complaints and Discipline Investigation arising out of an injury on duty report by Sergeant H". Mr Larkin QC submitted that Simon Brown LJ addressed two issues in his judgement. The first was whether stress through work could amount to an injury on duty – the wider argument. It was submitted that Simon Brown LJ concluded that psychiatric injury will constitute an injury received in the execution of duty if the officer's condition has been brought about by stresses suffered through being at work and mixing with other officers at the relevant time. The second issue was whether stress through subjection to disciplinary proceedings could amount to an injury on duty – the narrower argument. On this issue Simon Brown LJ concluded that injury resulting from subjection to formal disciplinary procedures should not be regarded as received in the execution of duty, as this should be regarded as part of the job. It was submitted that Stunt supported the case made by both applicants. The case made by the applicants was that they were the subject of management induced stress that occurred when they were clearly on duty and not that they suffered a reaction to the prospect of disciplinary proceedings. At the time of their alleged injury the disciplinary process had yet to commence.

[29] It was submitted on behalf of the respondents that Stunt is not authority for the proposition that disciplinary proceedings have to be commenced at the relevant time. It was submitted that such a distinction, which the applicants appeared to be making, would be purely arbitrary. It was clear that the cause of the alleged stress was the existence of a complaint against each applicant and the communication of that fact to them. Thus there was no distinction to be drawn between the applicants' cases and the circumstances considered in Stunt, supra.

[30] In Stunt it was not disputed that the officer's injury was caused by the investigation of the complaint made against him. The incident that gave rise to the complaint by a member of the public against the officer occurred on 9 July 1993. Following the incident the member of the public made a formal complaint and on 27 July 1993 the officer was served with written notification of the complaint. On 19 August 1993 the complaint was referred to the Police Complaints Authority. On 24 August 1993 the officer was interviewed about the complaint following which it was decided that no criminal proceedings would be taken against him but that a charge would be brought under the Police Discipline Code. In November 1993 the officer complained of mental stress due to the investigation to which he had been subjected and took sick leave. He never returned to work and the papers relating to the disciplinary hearing were never served upon him. The critical question was whether an officer who suffered a disabling psychiatric injury as a reaction to an internal police investigation, received that injury in the execution of his duty as a constable within regulation A11(1) and/or, whether the injury was received while on duty within regulation A11(2)(a), (in Northern Ireland A10(1) and A10(2)(a)). The independent medical referee answered that question 'No'. On judicial review of that decision Grigson J decided that the independent medical referee was wrong. The Commissioner of Police appealed against that decision. Two principal submissions were made - 1. that the analysis and conclusions of Richards J in Kellam's case were a benevolent construction of the regulations (referred to as the wider argument); and 2. that the officer's submission to the complaints procedure did not of itself constitute the execution of his duty and that the stress he suffered was not caused by his continuing at work as a police officer but rather by his concern and resentment at the allegations made against him (the narrower argument).

[31] On the wider argument the Court of Appeal concluded that the series of cases concluding with Kellam were rightly decided on the basis that each officers' "disabling mental state had indeed been materially brought about by stresses suffered actually through being at work. In the majority of decided cases this clearly was so; the significant part played by events at work was a consistent theme" (see Simon Brown LJ at paragraph 34). Kellam was regarded as a case that took to the limits the principles that Richards J distilled from the earlier cases, in that three of the four causes of the officer's stress related to his "work circumstances" as a police officer. In relation to the narrower argument Simon Brown LJ noted the passivity of the officer's role in the investigatory or disciplinary process. At paragraph 45 he stated that he did not accept that the issue could be resolved by a minute analysis of the role played by the officer in the overall disciplinary process. He concluded that the critical question was "whether the officer's mere subjection to the process of itself constitutes the execution of his duty. At paragraph 48 he stated that he "could not accept that if injury results from subjection to such proceedings it is to be regarded as received in the execution of duty. Rather …. such an injury is properly to be characterised as resulting from the officer's status as a

constable. ….It really comes to this: however elastic the notion of execution of duty maybe, in my judgment it cannot be stretched wide enough to encompass stress-related illness through exposure to disciplinary proceedings." [my emphasis]. An alternative argument that the officer's illness had been caused while he continued to work as a police officer between receiving notice of the complaint in July 1993 and going on sick leave in November 1993 was also dismissed. Simon Brown LJ stated that it was wholly unrealistic to suppose that being at work during the course of the investigation exacerbated the stress from which the officer was suffering. In agreeing with Simon Brown LJ in the Court of Appeal Longmore LJ stated that "it was the fact of the investigation and, to an extent, the manner in which it was conducted that gave rise to Mr Stunt's depression". Lord Phillips of Worth Matravers MR, in the passage quoted earlier emphasised the need for the injury to have been received in the execution of duty through some event that impacted directly on his physical or mental condition.

[32] It is clear from the reports submitted by each applicant in this case that they attributed their mental condition to hearing from Superintendent R the fact of a complaint made by the other officer against them. At the time they were spoken to by Superintendent R no formal investigation was under way. A separate grievance was submitted by Sergeant H against both applicants.

[33] On 11 September 2001 a senior member of the police service directed that a misconduct investigation into both applicants should be undertaken. Thus before any formal investigation or disciplinary procedures were commenced the applicants had made an injury on duty report. The impugned decision in each case not to treat the injury on duty reports as injuries on duty was taken by the Head of Employee Relations. She has made an affidavit in respect of each application. In her affidavit in response to the application by the applicant Inspector she averred at paragraph 5 that both applicants submitted injury on duty reports "as a consequence of the stress they suffered upon hearing of Sergeant H's injury on duty report".

[34] In the affidavit in response to the Chief Inspector's application the Head of Employee Relations averred at paragraph 6(i) that the Chief Inspector reported unfit for duty due to work related stress as a result of being informed that she and the Inspector were the subject of a Complaints and Discipline investigation arising from an injury on duty report made by Sergeant H. The source of that information was not disclosed. In her affidavit the Chief Inspector at paragraph 16, averred that "the stress of being told that Sgt H was holding me responsible for his angina attack and absence require me to take time off". At paragraph 17 she averred that she was told in September 2001 that she was being investigated in relation to disciplinary matters but these post-dated her injury on duty report. Mr Larkin QC submitted that the Head of Employee Relations had misunderstood the nature of the Chief Inspector's injury on duty report. However it is clear from

the Chief Inspector's injury on duty report dated 6 September 2001 that she started to exhibit symptoms on hearing the contents of Sergeant H's injury on duty report on 22 August 2001. In her affidavit Mrs Burnett averred that she "concluded that the August 2001 incident was not an injury on duty". It seems clear that she was considering whether the effect of hearing the contents of the Sergeant's injury on duty report was itself an injury on duty. I do not consider there is any validity in the criticism made by Mr Larkin of the basis on which she made her decision in either case.

[35] Thus the question is whether any mental disability arising from hearing the contents of the Sergeant's injury on duty report as read by Superintendent R constitutes receiving an injury on duty. On 22 August 2001 both officers were on duty and were requested to see their superior officer, Superintendent R. They were not told that they were either the subject of a formal complaint or that they were under investigation. The contents of another officer's injury on duty report, which made allegations or complaints against them, were read to them. Mr Larkin QC submitted that this was management induced stress and not a reaction to a disciplinary process. It was a very different factual situation from that which pertained in Stunt. It seems to me that it would be unrealistic to consider that this was anything other than the first step in an internal police investigation into allegations or complaints that stemmed from Sergeant H's injury on duty report. Why else would the Superintendent request to see them in his office and then read the contents to them? The Court of Appeal in Stunt, were clearly of the view that injury resulting from subjection to disciplinary proceedings could not be said to have been received in the execution of duty. At paragraph 46 of Stunt, Simon Brown LJ concluded that the notion of execution of duty was "not wide enough to encompass stress-related illness through exposure to disciplinary proceedings". I do not understand him to confine this conclusion to a disciplinary hearing or its outcome. Disciplinary proceedings are by their nature protracted matters that commence with a complaint and progress through an investigation to a determination. Once the contents of the injury on duty report of Sergeant H had been read to the applicants the disciplinary process had commenced. This was a process to which the applicants required to submit resulting from their standing as police officers. An injury received as a result of an officer being the subject of disciplinary procedures could not amount to an injury received in the execution of his duty. In R (on the application of Sussex Police Authority) v Cooling 2004 EWHC 1920 (as yet not fully reported) an officer attended with his General Practitioner with a stress related ailment, the day after he was notified that he was under investigation for an incident that had occurred less than one month previously. Collins J, after considering Stunt, refused an application for judicial review of a decision that his ailment was not received in the execution of his duty.

[36] While the Chief Inspector's injury on duty report related to 22 August 2001, it was not submitted until some days after that event. It is clear from the memo of the senior police officer directing that a misconduct investigation into both applicants should be undertaken, dated 24 October 2002 (page 157 of CC's papers), that the contents of the injury on duty report of Sergeant H were regarded as amounting to serious allegations of misconduct. The Chief Inspector was temporally removed to another post outside the Unit while the disciplinary investigation took place. It was at this point that the Chief Inspector reported unfit for duty. It is clear that this injury on duty report was made in the wider context of serious ongoing employment problems and the suggestion that there was a tactical element to some of these matters was never dispelled. Nonetheless the injury on duty reports required to be dealt with and determined within the relevant regulations, which in my opinion they were. I do not think either injury on duty report of the events related to 22 August 2001, qualified under Regulation A10.

[37] It was also submitted that neither of the injury on duty reports were adequately or fully investigated as required by Section 16 paragraphs 41 – 47 of the Police Service of Northern Ireland Code. In particular paragraph 43 requires the investigating member to obtain the fullest information concerning the occurrence and to establish beyond all reasonable doubt whether the illness or injury was directly attributable to the performance of duty. There was much correspondence entered into about these reports and other matters and complaints about delay. There was a degree of overlapping. The only other matter to which I was referred, apart from the correspondence and the Code, was a word processing "error" in the affidavit of Mrs Burnett at paragraph 6. This was clearly a reference to Paragraph 5(vi) and whether it constituted a full investigation or not. It seems the drafter or deponent was seeking assistance as to whether the investigation referred to in Paragraph 5(vi) was a full investigation or not. I do not think anything turns on this error.

[38] Paragraph 43 of Section 16 of the PSNI Code is drafted to cover the very many different ways in which a police officer may be injured or suffer illness while on duty. Some incidents may require a very detailed investigation, while others may not. The extent of the investigation, beyond the report of the incident and a consideration of it, will depend on the particular circumstances of the alleged injury on duty. In addition to the reports in both cases, each applicant submitted a detailed statement.

[39] The issue the applicants' employers had to consider was whether the reports made by the applicants constituted an injury at work under the regulations. This involved a consideration of the reports, the statements, the regulations and the relevant law. It is difficult to see what else was required or needed investigation. The injury on duty reports, together with their statements, were considered and a decision made, relying on the decision on

Stunt. In all those circumstances no case on procedural unfairness has been made out nor were the applicants under any misapprehension that the decisions were made in reliance on the case of Stunt. Not every administrative decision requires detailed reasons. The context in which the decision is made determines the extent to which reasons or detailed reasons are required. In this instance the decision maker had to determine whether the factual matrix disclosed in the injury on duty reports constituted an injury in the execution of duty. I am not prepared to hold in this instance that the decision maker was required to go further than she did. There may be cases in which further explanation or reasons may be necessary in an injury on duty decision, but this is not one of those exceptional cases.

[40] The Order 53 Statement filed on behalf of the Chief Inspector detailed three separate applications for judicial review. The second application related to the events of 22 August 2001, which I have dealt with. The third application was not pursued. The first application related to an injury on duty report dated May 2000. On 2 May the Chief Inspector reported unfit for duty owing to "Management Induced Stress". She remained off duty for some months thereafter and requested that this absence from work be treated as an Injury on Duty. Prior to this the applicant Chief Inspector was involved in proceedings before the Employment Tribunal relating to her employment. These proceedings formed the background to the alleged management induced stress that led to her absence from work from 2 May 2000. Her case in respect of this period is set out in a letter to a superior officer, Superintendent L and dated 13 May 2000. In that letter she stated that - " I have decided to inform you of the main reasons for being unable to continue with my duties". She continued –

> "Over this past number of months I have been subjected to extreme stress, anxiety, humiliation and embarrassment because it was brought to my attention that junior subordinates and civil staff within [the Unit] were aware that complaints were made against me during ongoing proceedings at the Industrial Tribunal with which you are au fait".

[41] She then referred to those complaints by Sergeant L and Constable L. Later she stated that on 10 May and 12 May 2000 she was informed of further complaints made against her by Constable L, Superintendent L, Sergeant W and Sergeant S and about a complaint made by Constable W. She stated that she did not know exactly what complaints had been made against her and continued –

> "If I am to have any hope of recovery from this position I now sadly find myself (sic) after 23 years service it is imperative that all matters in this report

> be addressed expeditiously and concluded without delay. As it is my situation has worsened since reporting unfit for duty.
>
> For the reasons stated I request that you provide me with the answers which I need to question (1) to (5) above as a matter of urgency so that in fairness to me, all matters can be fully and properly investigated and I be given the opportunity to answer all allegations against me."

[42] The respondents submitted that the case being made by the applicant Chief Inspector was that her alleged "injury on duty" related to the complaints made against her and not management induced stress and the respondent was under a duty to deal with it as such. It was submitted on behalf of the applicant Chief Inspector that this was evidently management induced stress, however the evidence did not support that view. The Chief Inspector's own letter, to which I have referred, made clear that it was the complaints made against her that were at the centre of her concerns. The injury on duty report relating to this period falls to be dealt with on the same basis as the incident of 22 August 2001 and is not an injury on duty within Regulation A10.

[43] It was submitted also that the investigation into this injury on duty report was inadequate. It is evident that the investigation took some time to complete. There were several strands to it and a number of different senior officers involved and there was the added complication of the complaints against the Chief Inspector. It appears that decisions generally on injury on duty reports are not taken until all investigation procedures are completed. It cannot be said that is an unreasonable approach to adopt. The issue that had to be determined was whether the stress injury detailed was received in the execution of duty. Like the other incident in August 2001 it required little investigation, rather a determination whether the injury reported was received in the execution of duty. I do not think the argument that this investigation was inadequate can be sustained.

[44] For the reasons I have given I refuse both applications for judicial review.