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Judgment: approved by the Court for handing down | *Delivered:* **23/11/05**

(subject to editorial corrections)

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

IN THE MATTER OF AN APPLICATION BY TREVOR IAIN STARITT FOR JUDICIAL REVIEW

AND

IN THE MATTER OF AN APPLICATION BY CHARLOTTE CARTWRIGHT FOR JUDICIAL REVIEW

AND

IN THE MATTER OF THE ROYAL ULSTER CONSTABULARY REGULATIONS 1988 (1988 No 374) as amended.

CAMPBELL LJ

[1] Chief Inspector Cartwright and Inspector Staritt are police officers whose applications to the Royal Ulster Constabulary (now the Police Service for Northern Ireland) to have absences from duty on sick leave treated as directly attributable to injuries received by them "in the execution of their duty" have been refused.

[2] They have applied unsuccessfully to the High Court to have these decisions of the Police Service reviewed and they have now appealed to this Court from the decision of the High Court.

[3] Chief Inspector Cartwright was absent from duty on sick leave on three separate occasions and Inspector Staritt was absent on one occasion.

[4] Under regulation 42 of the Royal Ulster Constabulary Regulations 1996 a member who has been on sick leave for 183 days during the period of twelve months ceases to be entitled to full pay and becomes entitled to half pay. If the officer has been on sick leave for the whole period of 12 months he ceases for the time being to be entitled to any pay while on sick leave.

[5] The regulations provide for the chief constable to determine that a particular case is exceptional and a member who is entitled to half pay while on sick leave is to receive full pay and that a member who is not entitled to any pay while on sick leave is to receive either full pay or half pay. In the regulations it is stated that an exceptional case is one in which the member's being on sick leave is directly attributable to "an injury received in the execution of his duty," as defined in the Pension Regulations.

[6] The Royal Ulster Constabulary Pensions Regulations 1988, as amended [SR 1988 NO 374], (which came into operation on 1 January 1989) provide at regulation 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-
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> > (a) the member concerned received the injury while on duty or while on a journey necessary to enable him to report for duty or to 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.

In schedule A to the regulations "injury" is defined as including "any injury or disease, whether of body or mind; "injury received in the execution of duty" has the meaning assigned to it by regulation A10; and "the result of an injury" is to be construed in accordance with regulation A 12.

Chief Inspector Cartwright's first injury on duty report lodged in May 2000

[7] On 2 May 2000 Chief Inspector Cartwright reported sick with "Management Induced Stress." Her divisional commander received a written statement from her dated 13 May 2000 in which she said that she could not continue to perform her duties as a Chief Inspector in her present working

environment. She explained that over the past few months she had been subjected to extreme stress, anxiety and humiliation and embarrassment because it was brought to her attention that junior subordinates and civil staff within Urban Traffic were aware that complaints were made against her during ongoing proceedings at the Industrial Tribunal. This was sent to the Personnel Branch with an "injury on duty" report dated 5 June 2000 completed on her behalf by Superintendent Lecky. At an interview on 11 September 2001 she was informed by the officer appointed to investigate her application that he would not be recommending that her illness be treated as an injury on duty. She was then informed by letter dated 27 November 2001 that her application concerning her absence from 20 May 2000 and 31 October 2000 had been refused. The reason given for this decision was that the injury was not deemed to flow directly from the execution of her duty as a police officer. Her appeal against this decision was unsuccessful.

Chief Inspector Cartwright and Inspector Starritt's injury on duty reports lodged on 6 September 2001.

[8] The incident giving rise to these "injury on duty" reports occurred on 22 August 2001 and both officers made applications on 6 September 2001.

(a) Chief Inspector Cartwright's application

On 3 September 2001 Chief Inspector Cartwright recorded in the Station Accident Book that she had suffered work related stress due to spurious allegations made by another member. In a statement accompanying her injury on duty report of 6 September 2001 she stated that on 22 August 2001 on being asked to see Acting Chief Superintendent Robinson in his office he told her that Sergeant H had submitted an "injury on duty" report. The Chief Superintendent read to her from this report in which Sergeant H stated that a conversation that she and an Inspector had with him caused him to suffer stress and chest pains which resulted in him collapsing. The report continued that when she and the Inspector visited the sergeant in hospital, on the following day, they compounded his stress. On hearing this Chief Inspector Cartwright brought Inspector Starritt to the superintendent's office and the superintendent then read the content of the report to him. She said that she noticed that on hearing what was in the report the inspector appeared shaken and became white in the face. She went on to say in her report that she feels that she is starting to exhibit the same symptoms as those which she had a year earlier which had been diagnosed by her doctor as work related stress and that she was currently receiving medical treatment.

(b) Inspector Starritt's application

On 29 August 2001 Inspector Starritt recorded the incident in the Accident Book. He followed this with "an injury on duty" report on 6 September 2001 in which he described how the superintendent read the report from the

sergeant to him. He said that he was shocked, stressed and traumatised by what he heard. When he attended his doctor on 28 August 2001 she treated him for shock, trauma and stress and advised him that his symptoms had been caused by hearing these spurious comments.

[9] On 11 September 2001 an assistant chief constable directed that as the allegations by Sergeant H, who had invoked the grievance procedure, were so serious, a misconduct investigation into both applicants should be commenced. Inspector Staritt was given notice of this investigation on 25 September 2001. In accordance with its normal practice the Employee Relations Branch of the Police Service delayed making a final decision on the "injury on duty" applications while this disciplinary matter which was based on the same facts was under investigation. This was explained to the inspector in response to a letter that he sent on 3 July 2002 in which he questioned the delay in acknowledging his "injury on duty" report. In his letter he also stated that he had reported unfit for duty on 1 July 2002 as he was suffering from stress and anxiety directly related to the injury he had reported on 6 September 2001.

[10] The misconduct investigation against both officers was completed in September 2002 and dismissed. Inspector Starritt was told by letter of 6 January 2003 that his application to have the incident of 22 August 2001 treated as an injury on duty for pay purposes had not been accepted and that his subsequent application did not therefore arise. Chief Inspector Cartwright was informed on 14 January 2003, through her solicitors, that her application had been refused. The inspector appealed against the decision on 31 March 2003 to the Senior Director of Human Resources who found that there was no reason to disagree with the original decision. Chief Superintendent Cartwright also appealed the decision in respect of her application and this was also unsuccessful.

Chief Inspector Cartwright's third injury on duty report lodged on 2 December 2002.

[11] This injury on duty report was lodged on 2 December 2002, by Chief Inspector Cartwright, and was accompanied by a letter of the same date. In this letter she stated that on 4 April 2002 she was required to attend a disciplinary interview at Lisnasharragh accompanied by her solicitor. An hour after the interview commenced she collapsed and had to be taken to hospital.

[12] On the basis of a letter of 13 June 2003 from the senior director of Human Resources it appeared to Chief Inspector Cartwright that this third application has also been rejected. The content of the letter is open to this interpretation. However Mrs A E Burnett, who is Head of Employee Relations in the Police Service, has stated in an affidavit sworn by her in these proceedings that no decision has been taken on this application. The reason

that she gives is that, as it is the subject of an Industrial Tribunal application, it is considered inappropriate to reach a decision while this matter is outstanding. Counsel for the respondent confirmed that this remained the position at the date of the hearing of this appeal and we therefore treat this application as awaiting a decision.

The opposing contentions

[13] Mr Larkin QC (who appeared with Mr Scoffield for the appellants) submitted that regulation A10 (2) makes the phrase "execution of his duty" coterminous with "while on duty", provided that an officer receives an injury while on duty he does so in the execution of his duty. The opening words of regulation A 10 (2) that an injury "shall be treated as…" were, he said, classic words of extension so that the ordinary meaning of "execution of his duty" is extended to include an officer who is on duty but not necessarily executing his duty in the usual sense, when he is injured. He gave as an example an officer who is having some refreshment in a canteen when the station is attacked by a mortar. If the officer is injured during the attack he comes, Mr Larkin submitted, within this extended meaning of "execution of his duty".

[14] Mr McCloskey QC (who appeared with Mr Paul Maguire for the respondents) invited the court to have particular regard to the wording of Regulation 42 (4) of the Royal Ulster Constabulary Regulations 1996 and the definition of an exceptional case as a case, "in which the member's being on sick leave is directly attributable to an injury received in the execution of his duty, as defined in the Pension Regulations." The central theme both in this regulation and in regulation A10 (1) is "execution of duty" and regulation A10 (2) is, he suggested, subservient to these dominant provisions and not to be treated as an extension of them.

[15] In advancing his argument Mr Larkin encouraged the court not to follow a decision of the Court of Appeal in England and Wales in *Regina (Stunt) v Mallett* (2001) EWCA Civ 265 where the issue before the Court was whether Mr Stunt, a former police officer who was medically retired from the service, was permanently disabled as a result of an injury received without his own default in the execution of his duty. In summary the facts were that a complaint had been made against Mr Stunt and after he had been interviewed during the investigation of this complaint in August 1993 a charge was brought against him under the Police Discipline Code. In November 1993 Mr Stunt went absent from duty due to the mental stress that he had been under because of the investigation and he did not return to duty. A police doctor certified that he was permanently disabled by depression. The doctor had then to decide whether this condition was the result of an injury that Mr Stunt had received in the execution of his duty within the meaning of regulation A11 of the Police Pensions Regulations 1987 (SI1987/257). This regulation is in almost identical terms to regulation A10 of the Royal Ulster

Constabulary Regulations and the police doctor decided that the injury had not been so received. On appeal a medical referee appointed by the Secretary of State found that Mr Stunt was suffering from a severe depressive illness which was a reaction to the internal investigation and not the result of an injury received in the execution of his duty. Mr Stunt's application for judicial review of this decision was granted by Grigson J on the basis that a police officer's submission to the complaints procedure is required of him and is therefore in the execution of his duty.

[16] The Commissioner appealed and Simon Brown LJ (with whom Longmore LJ agreed) held that the word "execution" in the phrase "execution of his duty" in regulation A11 means "the fulfilment or discharge of a function of office". In his judgment he said:

> "It follows that I would regard the series of cases concluding with *Kellam*_[2000] ICR 632 to have been rightly decided provided only and always that the officer's ultimately disabling mental state had indeed been materially brought about by stresses suffered actually through being at work." (paragraph 34)
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> "The decision, in short, depends upon the correctness of the view that simply because a police officer, by virtue of his office, is subject to a formal discipline code and procedure, with which he need not co-operate but which he cannot escape, any injury resulting from its operation is necessarily suffered in the execution of his duty." (paragraph 42)
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> "Sympathetic though I am to police officers for the particular risk of disciplinary proceedings they run by the very nature of their office, I cannot for my part accept the view that if injury results from subjection to such proceedings it is to be regarded as received in the execution of duty. Rather it seems to me that such an injury is properly to be characterised as resulting from the officer's status as a constable--"simply [from] his being a police officer" to use the language of paragraph 5 of Richards J's conclusions in *Kellam* [2000] ICR 632, 645 when pointing up the crucial distinction. This view frankly admits of little elaboration. It really comes to this: however elastic the notion of execution of duty may be, in my judgment it

> cannot be stretched wide enough to encompass stress-related illness through exposure to disciplinary proceedings. That would lead to an interpretation of regulation A11 that the natural meaning of the words just cannot bear."
> (paragraph 46)

[17] Lord Phillips MR said at paragraph 56 of his judgment:

> "A number of authorities were referred to Grigson J and to us where a similar issue arose. 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. Mr Stunt was not in a position to demonstrate the existence of this essential element. For that reason Dr Mallett was correct to conclude that Mr Stunt's disablement was not the result of an injury received in the execution of his duty. I too would allow this appeal."

[18] The court rejected an argument advanced on behalf of Mr Stunt that a significant part of the stress that he suffered from the worry of the disciplinary investigation occurred whilst he was at work and that he was therefore eligible for an award.

[19] In *Kellam* a husband and wife were both serving police officers. The wife complained about malpractices which she claimed were occurring in the unit in which she was serving. She alleged that she was harassed by other officers because she had made this complaint and she brought a claim against the Chief Constable which was settled. Some time later her second child was stillborn. Her husband claimed that as a result of his support for his wife over her complaints he was shunned and avoided by officers in authority over him. Furthermore, he said that he believed that a member of the police force had encouraged a neighbour to make a complaint against him. The officer went on sick leave and did not return to the force. Dr Kellam, who was appointed as a medical referee when the officer appealed against a decision that his disablement did not result from an injury received in the execution of

his duty, concluded that the husband's disablement was as a result of an injury (disease of the mind) substantially contributed to by mental injuries received in the execution of his duties. This decision was challenged by the police authority and Richards J. dismissed the application by the authority. In the course of his judgment he stated the test that was set out in *Garvin v London (City) Police Authority* [1944] KB 842 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." Richards J. suggested that this test is not to be applied in a legalistic way and that the causal connection must be with the person's *service* as a police officer, and not simply with his *being* a police officer. At page 645 the judge said this:

> "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."

[20] This decision has to be read in the light of the observation of Simon Brown LJ in *Stunt* (referred to earlier) that he would regard the series of cases concluding with *Kellam* to have been rightly decided provided only and always that the officer's ultimately disabling mental state had indeed been materially brought about by stresses suffered actually through being at work. Later in his judgment he described *Kellam* as taking recovery under these regulations to its furthest limits.

[21] It has been long established that while this court is not technically bound by decisions of courts of corresponding jurisdiction in the rest of the United Kingdom it is customary for it to follow them to make for uniformity where the same statutory provision or rule of common law is to be applied. *(McCartan v Belfast Harbour Commissioners* [1910] 2 IR 470 at 494; *re Northern Ireland Road Transport Board and Century Insurance* [1941] NI 77 at 107; *Income Tax Commissioners v Gibbs* [1942]AC 402 at 414 and *McGuigan v Pollock* [1955] NI 74 at 106). This is not to say that the court will follow blindly a decision that it considers to be erroneous.

[22] Regulation A 10 (2) has been drafted so as to extend to a limited degree the meaning of "execution of his duty" beyond a situation in which a police constable may be injured when exercising the powers given to him by virtue of his office to include injuries sustained while on duty or on a journey to report for duty or return home after duty. "Duty" where it appears in regulations A10(1) and (2) points to a requirement of a causal connection with the officer's service and it is not sufficient that the incident in question occurred during the hours of duty or while he was at work. If this were not

so, for example, an officer who suffered psychological injury while on duty as a result of receiving distressing news from home would come within the regulation. Regulation A 10 (2) does not permit any further extension of the meaning of "execution of his duty" to include an officer who suffers stress as a result of a disciplinary investigation as this does not form part of his service. We consider therefore that *Stunt* was correctly decided and that it should be followed.

[23] Chief Inspector Cartwright and Inspector Starritt were already on sick leave when the decision was taken to commence a misconduct investigation into the incident concerning Sergeant H. The purpose of the interview with Acting Chief Superintendent Robinson was to make them aware of the report that had been received from Sergeant H which led to a complaint. Higgins J. said in his judgment in the hearing of the application for judicial review, that that once the contents of the "injury on duty" report had been read to the appellants the disciplinary process had commenced. In our view it commenced when the acting chief superintendent began to read the report to the appellants.

Procedural impropriety

[24] The appellants claim that they were entitled to a proper investigation of the circumstances giving rise to their applications. The Code of the Police Service of Northern Ireland sets out in paragraphs 41-47 of section 16 the procedure to be followed when investigating an injury on duty. Mr McCloskey did not seek to argue that the requirements of the Code had been strictly followed. Mr Larkin on the other hand accepted that if the court was persuaded that *Stunt* provided a complete answer to the applications then such an investigation would not be necessary.

[25] It may be difficult on occasions to establish whether a psychological injury has been materially contributed to by circumstances at a place of work and an investigation will be required. In her first claim Chief Inspector Cartwright related her condition to complaints made against her at the Industrial Tribunal. In the second claim the facts that were before the decision maker were sufficient to expose that *Stunt* applied and any further investigation was unnecessary.

Reasons

[26] The appellants complained that they had not been given sufficient reasons for the rejection of their applications. Higgins J. said in his judgment at paragraph 41:

> "… 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."

[27] In our view the judge dealt with this issue correctly as this is not a situation in which a duty to give reasons is to be implied so as to warrant a departure from the position recognised by Lord Mustill in R v *Secretary of State for the Home Department ex parte Doody* [1994] 1AC 531 at 564 as being:

> "that the law does not at present recognise a general duty to give reasons for an administrative decision."

Bias

[28] The decision to refuse Chief Inspector Cartwright's application of May 2000 was taken by Chief Inspector Kearney. However it was the assistant chief constable who informed her of this decision. When the chief inspector and Inspector Staritt made their injury on duty reports in September 2001 the same assistant chief constable forwarded the reports to a superintendent in the Personnel Department with a covering report. In this he said that he was doing so because of the unusual circumstances. He went on to say that as the allegations in the grievance report received from Sergeant H were so serious he had asked for a misconduct investigation to be mounted into the two officers. He recommended that at this stage the applications should not be treated as injuries on duty. Chief Inspector Cartwright suggests that the assistant chief constable was not impartial and that he was biased against her in processing her applications. It was submitted on her behalf in the court below that, on the facts a reasonable observer would be entitled (and compelled) to come to the conclusion that the chief inspector's applications had not been dealt with in an impartial manner.

[29] When the assistant chief constable made his recommendation on 11 September 2001 as to how the applications of 6 September should be treated "at this stage" he was not making a determination of the applications. There is no suggestion that he had a role as a decision maker either in respect of these applications or the chief inspector's earlier application of May 2000. In view of the gravity of the allegations made by Sergeant H he had no alternative but to

initiate a disciplinary inquiry. It is unrealistic to suggest that he did so in order to influence the outcome of the applications. The actions of the assistant chief constable do not provide any basis on which a fair minded and informed observer could conclude that there was a real possibility of bias in the way in which these applications were decided.

[30] For these reasons the appeals from the decision of Higgins J. on the applications for judicial review are dismissed.