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Ref: **COGC5816**

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: **03/07/07**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION**

POST TRAUMATIC STRESS DISORDER GROUP ACTION

Between:

CHARLES WAYNE McCLURG & OTHERS

Plaintiffs;

and

CHIEF CONSTABLE OF THE ROYAL ULSTER CONSTABULARY

LEAD CASE OF COLIN ALASTAIR WOODS

Defendant.

COGHLIN J

[1] This plaintiff, who was born on 20th January 1957, joined the RUC on 16th February 1975 and is currently employed as a sergeant in the Police Service of Northern Ireland (PSNI). His service in the police may be usefully divided into four periods comprising:

(i) Stationed as a constable at Moy in County Tyrone from 14th June 1975 to July 1979.

(ii) From July 1979 until July 1982 he served as a Scenes Of Crime Officer (SOCO) based in Armagh.

(iii) On 6th July 1982 he was promoted to the rank of sergeant and transferred to Loughgall where he remained until July 1990.

(iv) On 23rd July 1990 he was transferred to Kesh in County Fermanagh and since that date he has continued to serve as a sergeant in various stations in County Fermanagh up to the present date.

[2] During the course of his service the plaintiff has been exposed to a number of potentially traumatic incidents including the following:

(i) On 2nd December 1977 the plaintiff was the driver of a mobile patrol which came under gun attack from terrorists on the Moy/Benburb Road at Cloverhill Bridge. This became known as the "pigs head" incident since, as the vehicle crossed over Cloverhill Bridge, the plaintiff noticed a pig's head sitting on a wall on the right hand side of the road. When the attack commenced the plaintiff extinguished the vehicle lights, accelerated and proceeded along the road to escape followed by continuing gun fire. At a safe distance the plaintiff stopped the vehicle and he and his colleagues dismounted and moved into cover in order to return fire. This was the first occasion upon which the plaintiff had personally experienced a direct terrorist attack.

(ii) On 17th April 1979 the plaintiff was sent with other officers to the scene of a terrorist attack on the Millvale Road, Bessbrook in which four police officers had been killed as a result of the explosion of a van bomb. The plaintiff and other officers were provided with gloves and instructed to search the adjoining area for the purpose of recovering body parts. The van in which the bomb had been planted had been used commercially to deliver bacon and cheese and the scene was one of general carnage with human and animal remains intermixed.

(iii) On 31st July 1979, after being posted to Armagh as a SOCO, the plaintiff went with a senior colleague to the scene of the murder of Constable George Walsh outside Armagh Courthouse. The plaintiff had to carry out an examination of the scene including Mr Walsh's body and he found this extremely distressing since Mr Walsh had been well known to him as a colleague. Some two days later the vehicle thought to have been used in the murder of Mr Walsh was discovered and the plaintiff was sent to the scene together with Army Technical Officers (ATOs). After the vehicle was cleared the soldiers left the scene but a short distance down the road a culvert bomb was detonated killing two members of the bomb disposal team.

(iv) On 16th December 1979 the plaintiff attended the scene of the murder of four soldiers outside Dungannon in a landmine attack where he was again required to recover body parts.

(v) On 21st January 1981 the plaintiff attended the scene of the murder of Sir Norman Stronge and his son and, in the afternoon, he attended the post

mortems at Craigavon Area Hospital. In the evening he was tasked to examine the hijacked car that had been used in the attack which had been brought to Gough Barracks after being cleared by the ATO. During the course of his examination he discovered a fully primed explosive device which he had to attempt to defuse before handing the vehicle over to the ATO at the gates to the Barracks.

(vi) On 8th May 1987, subsequent to his transfer upon promotion to the rank of sergeant, the plaintiff was present in Loughgall RUC station when it came under terrorist attack as a result of which the station was destroyed and eight terrorists were killed. At the time of the attack the plaintiff was in an armoured police vehicle a short distance from the scene.

(vii) On 22nd January 1990 a personal friend of the plaintiff, Inspector Derek Monteith, was murdered at his home in front of his wife and family and the plaintiff attended his home in the aftermath of the murder when his body was still present. A short time later on 28th March 1990 another colleague, George Starrett, was shot dead. The plaintiff heard the gunfire.

(viii) In 1991 the plaintiff was at work when he received a telephone call from his wife who informed him that Chief Inspector Nixon had been shot and had come to her door for assistance. The plaintiff returned to his house to find bloodstains on the car, in the yard and in the house.

The plaintiff's symptoms

[3] The plaintiff's case is that since the "pig's head" incident in 1977 he has continued to suffer from fluctuating psychological symptoms including nightmares, flashbacks, nervousness, difficulty in sleeping and depression. He felt that he would have been unable to perform to the best of his ability at work after this incident for a matter of some months but he agreed that he had recovered emotionally by June of 1978 when he got married. Subsequent to the "pig's head" incident the plaintiff attended his GP on 5th December 1977 complaining of feeling nervous when out on patrol and was prescribed valium. He completed an Injury On Duty Statement on 8th December 1977 in which he set out the circumstances of the incident and recorded that, since the incident, he had become very nervous and was suffering from depression and sleeplessness. He also noted that he was taking tablets prescribed by his doctor. As a consequence of completing the Injury On Duty form the plaintiff had to attend a DHSS board at Tyrone House in Belfast. According to the plaintiff he gave a full history of the emotional symptoms that he had suffered subsequent to the incident when he appeared before the board and he was told by the board that he was young and that he would "get over it". In evidence, the plaintiff said that he was expecting some advice from the board as to how to deal with his symptoms but I found it difficult to understand why he should have entertained such an expectation given the circumstances

of his attendance at what was a routine appointment. He was emphatic when giving evidence that he was not prepared to go back to his own GP, who had actually treated him, because to return would have been a sign of weakness and he was in denial about his symptoms. In addition to his other symptoms the plaintiff said that, after this incident, he lay in bed all morning not getting up until they were ready to start work and that he felt totally withdrawn and on his own.

[4] The plaintiff did not maintain that his symptoms were continuous at the same level of intensity. Quite apart from the recovery that he said he had made after the “pig’s head” incident, he explained how his symptoms tended to fluctuate and could be “triggered” by anniversaries or other events that reminded him of previous traumas. He said that, sometimes, they would develop for no apparent reason when he would wake up experiencing nightmares, sweating and believing that he had heard explosions. He agreed that there could be periods of some months during which he would not experience any symptoms but said that when they occurred they could last for some months. Both Dr Turner and Professor Fahy agreed that the plaintiff experienced difficulties in recalling the precise chronology, duration and severity of his psychiatric symptoms and that any such symptoms were likely to have been episodic or fluctuating.

[5] It seems to me that there are three objective sources of information against which the plaintiff’s subjective history of symptoms might be considered:

(i) **The records of the plaintiff’s GP.** Despite his history of continuing symptoms over many years the only occasion upon which he reported any relevant symptoms to his GP was 5th December 1977, when he reported “feeling nervous when out on patrol”. Valium was prescribed upon that occasion. The plaintiff attended his GP and a consultant at Banbridge Hospital in the early 1980s in relation to gastric problems and was diagnosed as suffering from a pre-pyloric ulcer. Both the GP and the consultant apparently advised the plaintiff that his condition could be stress related but the plaintiff adamantly refused to admit that could be the case.

(ii) **The professional appraisals of the plaintiff’s performance in the course of his police career.** The vast majority of the appraisals of the plaintiff by supervising officers were couched in extremely positive terms. Counsel on behalf of the plaintiffs sought to establish that most supervisors would have been inclined to use fairly anodyne terms when recording such appraisals and few would have been prepared to make unambiguously adverse comments. As with most organisations there may be some substance in such a submission but, bearing that in mind, it remains the fact that the case of this plaintiff provided examples of both critical and extremely impressive appraisals. For example, in April 1982, at a time when, according to the

plaintiff's evidence, he was suffering from severe emotional problems, Chief Superintendent Harrison recorded:

"He is a thorough and dedicated officer who is held in the highest respect by the CID. He had useful general duty experience at Moy Station. I do not know why he has not succeeded at an earlier board. Perhaps he gives an impression of youthful innocence but I can say unreservedly that he is a highly competent officer with all the qualities and qualifications necessary for promotion. I have known him all his service and would with pleasure accept him as a Sergeant in my Division."

By contrast one Detective Superintendent recorded in March 1980 that the plaintiff was somewhat abrasive and inclined to do what he thought best even if that might be contrary to Force policy and the views of his supervising officers while another noted that his service and performance as SOCO had not been satisfactory. The plaintiff himself accepted that he was able to function at work to a high level without giving an indication that anything might be wrong to his commanders even when he alleged that his symptoms were significant. He agreed that his commanders were generally caring and supportive, that the appraisals would have accurately reflected his performance at work and that he had always considered himself to be good at his job.

(iii) The General Health Questionnaire and Wellscreen Report. The Wellscreen report completed when the Unit visited the Enniskillen Station in August 1995 confirmed that, at that date, both the plaintiff's stress scores were zero. I am satisfied on the basis of the document contained in this plaintiff's file and the evidence of Dr Crowther that the General Health Questionnaire was completed when the plaintiff was undergoing a sergeant's development course in 1989. I am also satisfied that the plaintiff probably completed this form after receiving a talk about stress from Dr Crowther on 3rd May 1989. Thus, the plaintiff would have been completing this form within approximately 2 weeks of the anniversary of his attendance at the Millvale Road massacre on 17th April 1979, some 9 days from the anniversary of the incident at Segaghan Dam, Armagh on 12th May 1982 and 5 days before the anniversary of the attack on Loughgall Police Station on 8th May 1987. The plaintiff agreed in cross examination that the period between 1987 and his first attendance at the OHU in 2004 was a peak period so far as his symptoms were concerned and part of his case was that his symptoms became exacerbated or particularly severe during the anniversary periods of traumatic incidents. He accepted that he had completed the General Health Questionnaire honestly and accurately but, in the circumstances, was quite unable to explain his answers which clearly indicated normal psychiatric health at that time. It became apparent that a

number of the medical experts had not appreciated the date upon which the plaintiff had completed the General Health Questionnaire and when this was clarified Dr Tracey Reid, Dr Turner and Professor Fahy each expressed a degree of surprise. In cross examination Dr Reid was taken through the series of answers given by the plaintiff to the GHQ and agreed that they were inconsistent with his history of exacerbation of symptoms during anniversaries of traumatic incidents. Dr Turner was not surprised that there were normal screening results, given his views as to the fluctuation of the plaintiff's symptoms, but he agreed that he was surprised when he learned that the General Health Questionnaire had been completed in May 1989.

[6] Overall, I reached the conclusion that the evidence indicated that this plaintiff may well have suffered some degree of symptom after a number of the traumatic incidents to which he was exposed but that such symptoms are unlikely to have amounted to more than a mild episodic adjustment order. Episodes of symptoms are likely to have been interspersed with significant periods during which a psychiatric condition was not present. Both Dr Turner and Professor Fahy agreed that the increase or resurgence of symptoms described in the OHU notes from 2004 was probably accounted for by a combination of factors including the current litigation, media references to the Loughgall incident and, in particular, to the Chief Constable's agreement to meet relatives of the deceased terrorists and the plaintiff's planning for his retirement.

The OHU

[7] The plaintiff did complete an injury on duty report for his authorities after the "pig's head" incident in the course of which he recorded that he had become very nervous and was suffering from depression and sleeplessness. He also indicated that he was taking tablets prescribed by his doctor. As a consequence of filing an injury on duty report the plaintiff was required to attend the medical board at Tyrone House. Despite the fact that the two week prescription for valium that he received from his GP relieved his symptoms to a degree the plaintiff did not return thereafter and he gave as his reason for failing to do so "bravado and not being seen to be weak." In his view it had not been weak to go to the GP in the first instance but it was weak to return. In any event, after some months he accepted that he was back to performing to the best of his ability.

[8] While it is accepted that the plaintiff was not contacted by OHU in respect of any of the traumatic events that he identified as having occurred after 1986, I am quite satisfied that, as the sergeant at Loughgall, he would have received Force Order 32/86 by which the OHU was set up and, consequently, that he would have been aware of the existence of the Unit and the assertion that it was confidential. He accepted that it was his practice to read Force Orders and inform himself of their contents. The plaintiff also accepted that he

read Police Beat and, while he said that he had no recollection of doing so, he agreed that if he had read the issue for December 1986 he would have seen the front page article by Alan Wright strongly recommending the OHU to members. In the course of cross examination the plaintiff admitted that subsequent to the Loughgall incident he must have known of the existence of the OHU and the support of the Federation and he maintained that his reason for failing to self refer was his refusal to admit to himself that there was anything wrong because he saw it as a weakness. He said he needed some convincing evidence of the work that the OHU could do with a guarantee that contact with the unit would not have harmed his career. Ultimately he accepted that no matter what anyone had suggested to him he was not prepared to admit that he might be suffering from stress and that remained his attitude until he agreed to act as a plaintiff in this litigation. Indeed, even at that point, when he was seen by Dr Higson and Dr McKinnon by arrangement with his solicitors he was not prepared to accept their recommendation that he should seek treatment and did not do so until 2004. The plaintiff also agreed that he had read Force Order 14/88 and understood that the OHU provided a confidential counselling service for police officers involved in traumatic incidents. The evidence established that he had received a talk on stress during the course of a sergeant's development course in 1989 as well as undergoing the stress awareness course in 1994 in Enniskillen. As the plaintiff said himself in the course of cross examination about these matters he simply was not prepared to admit to suffering from stress no matter what the defendant did or might have done. He maintained a clear distinction between his public and private life but even in private he agreed that he would not have disclosed psychological symptoms to his wife.

Alcohol

[9] The plaintiff said that he began to drink more heavily after joining the police and that alcohol played a significant role in recreation and association with his colleagues. He also said that he consumed alcohol in order to numb his feelings. During the course of the litigation the defendant did not dispute that alcohol played a significant role in the off duty recreation of officers and that is hardly surprising particularly in areas in which it would have been highly dangerous for police officers to attend local bars or clubs. James Richard Johnston, a retired Scenes of Crime Officer, who worked with the plaintiff in Armagh for approximately 2 years, confirmed that after a successful operation it would not be unusual for some of the bosses to get out a bottle or arrange for the officers to go to the club at Gough Barracks. The plaintiff described how, after the "pig's head" incident, his sergeant produced a bottle of spirits. Mr Johnston said that there were mornings when the plaintiff came into work smelling of alcohol or saying that he had had too much the previous evening. While this may well have occurred, as Mr Johnston said, on a reasonable number of occasions over the 2 years that he knew the plaintiff, it is quite clear that the plaintiff's ability to perform his duties was not affected in the least by

his drinking. That was confirmed both by the plaintiff himself and by the consistently high standard of appraisals that he was given by his superior officers. While the plaintiff may have used alcohol upon occasions to ease symptoms of stress, when those were present, there is no doubt that he also participated enthusiastically in the social aspect. Dr Turner elicited from the plaintiff a history of problem drinking before the "pig's head" incident and he did not consider that drink was a risk factor for PTSD. He did not think that there was any dramatic increase in the plaintiff's drinking after that incident although he agreed that if someone was drinking to that extent in any event, they might use alcohol as a way of trying to cope with painful emotions.

The plaintiff's Commanders

[10] While the plaintiff did record sleeplessness together with feelings of nervousness and depression in his Injury On Duty report subsequent to the "pig's head" incident, it is difficult to know precisely what more he required of his superior officers at that time. He had notified them of attending his GP and taking tablets that had been prescribed and, in any event, he accepted that he was back to his full level of performance within a number of months. In his witness statement the plaintiff claimed that his sergeant would have noticed that he was withdrawn after the "pig's head" incident and, subsequent to the murders at Millvale Road, he maintained that it should have been evident to his colleagues that all was not well with him as he was extremely irritable, continually tired and seeking to be alone. However, as noted above, during the course of his evidence the plaintiff maintained that he was able to function to an extremely high level when on duty and that was reflected in the quality of his appraisal reports.

[11] Prior to his transfer to Fermanagh the plaintiff described his life as almost unbearable, that he was suffering from severe flashbacks, nightmares, sleeplessness, tension and worry and that he was nearly driven over the edge. He said that he approached Chief Inspector Davy Pickering and informed him of the way that he felt impressing upon him that he had to get out of Armagh. According to the plaintiff Mr Pickering did not want him to leave the area and said something like "just clench your buttocks together and keep going, don't give in." He did not refer him to the OHU. Unfortunately Mr Pickering has subsequently deceased. In his witness statement the plaintiff said that he then approached his Divisional Commander, Chief Superintendent Bill Stewart and that "both he and Mr Pickering would have known of the difficulties I was experiencing at that time, but there was no mention of the support available through the OHU, and no one contacted me from the OHU at this time." However, for the reasons set out above, I am satisfied that the plaintiff was fully aware of the OHU and the services available in relation to stress at that time. In cross examination, the plaintiff denied that he had told Mr Stewart about the psychological symptoms from which he was suffering or that he had told him that the reason he wanted to go to Fermanagh was because his wife

wanted to return to nearer her home. It is difficult to know what to make of the plaintiff's evidence about his conversations with the late Mr Pickering and Chief Superintendent Stewart. The plaintiff described Mr Pickering as a considerate and caring officer with whom he had worked for some time and who knew him well. In such circumstances, it is very difficult to understand why the Chief Inspector did not suggest to the plaintiff that he should present himself at the OHU or seek some other form of medical assistance. Having heard the evidence of the retired Chief Superintendent I have no doubt at all that the plaintiff did make the case that he had been in Armagh for some time and that his wife wished to return to County Fermanagh. Mr Stewart had a clear recollection of this conversation because he had known the plaintiff for some time and held him in high esteem. Both men had a common interest in fresh water angling. He also knew the background of the plaintiff's wife and that her brother had been killed in a well known terrorist incident. If the plaintiff had been willing to discuss his symptoms with Chief Inspector Pickering, as he alleged, I have great difficulty in understanding why he was not prepared to make similar disclosures to Mr Stewart, a person whom he met for conversation on average once a week, who fished in the same fishing club and who was aware of his wife's family background. Mr Stewart had no doubt that he would have taken appropriate action if the plaintiff had reported that he was suffering from the effects of stress. Ultimately, the plaintiff conceded that he didn't have a clear recollection of exactly what went on during the conversation with Mr Stewart and that he didn't have an explanation for the assertion in his witness statement that Mr Stewart would have known of his symptoms.

[12] The plaintiff also made the case that when he was transferred to Kesh in Fermanagh he met Inspector Reeve who simply handed him a standard form without making any enquiry about his past career or the reasons behind his transfer. The plaintiff expressed the view that the form was presented in order to keep the Inspector "right". Mr Reeve gave evidence and explained that handing the plaintiff the form would have been a very small part of the interview process during which the duties of the new officer would have been explained, what was happening in the local area and welfare matters. The plaintiff accepted that he would regularly have encountered Mr Reeve during the course of his duties in Fermanagh and that the latter observed an "open door" policy in respect of the officers that he commanded.

Culture

[13] The plaintiff maintained that throughout his career he was not prepared to admit to suffering from psychological symptoms because of his concern about appearing weak and jeopardising his career. As a consequence, he refused to return to his GP even though he knew that the GP was confidential and could prescribe medication that would alleviate his symptoms and he rejected any suggestion from his GP or the consultant that his gastric problems

might have been exacerbated by stress. The same attitude prevented him from attending the OHU, despite being aware of its existence and the services that it provided for officers suffering from trauma and undergoing stress training upon at least two occasions. He accepted that he would not have attended the OHU even if it had been suggested by Inspector Reeve subsequent to the attempted murder of Inspector Nixon in 1991. He did not seek any further information from the Federation despite knowing that the OHU was recommended and supported by that body. He remained unwilling to seek treatment even after he was advised by Dr Higson and Dr McKinnon that it was available. Any assertion that the plaintiff was inhibited from seeking treatment because of his concerns about confidentiality and/or the affect upon his career cannot be reconciled with his attitude at that stage since, by then, he had become a plaintiff in the group litigation. In the circumstances, it seems to me that the only practical conclusion to be drawn is that either the plaintiff did not suffer from symptoms to the extent and of the intensity that he alleged or that his unwillingness to seek treatment was such that he would not have done so no matter what reasonable step the defendant might have taken to alleviate the affect of the macho culture.

Treatment

[14] Both Dr Turner and Professor Fahy agreed that the treatment commenced in 2005 at the OHU had been a successful intervention and that the plaintiff's psychiatric prognosis was very good.

[15] In the circumstances I am not persuaded that it has been established that the failures on the part of the defendant identified in the generic judgement have caused this plaintiff any material loss and the case must be dismissed. There will be judgement for the defendant.