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Judgment: approved by the Court for handing down | *Delivered:* **03/07/07**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

POST TRAUMATIC STRESS DISORORDER GROUP ACTION

Between:

CHARLES WAYNE McCLURG & OTHERS

Plaintiffs;

and

CHIEF CONSTABLE OF THE ROYAL ULSTER CONSTABULARY

LEAD CASE OF GERARD DOHERTY

Defendant.

COGHLIN J

[1] This plaintiff is 38 years old, having been born on 28th July 1968, and he joined the RUC as a full time reserve constable on 2nd February 1987 after undergoing 12 weeks initial training at Connswater. After completing his basic training the plaintiff was posted to Enniskillen where he performed uniform guard duties until being transferred to Kinawley station on 6th July 1987. On 4th June 1990 the plaintiff was transferred to Kesh and, approximately 18 months later, in November 1991 he was again transferred to Enniskillen where he carried out beat and patrol duties. On 4th January 1993 the plaintiff was transferred to L5 MSU and, subsequently, on 1st June 1999 to L4 MSU. While serving with this unit the plaintiff remained based at Enniskillen. On 10th August 2003 the plaintiff became a full time officer in the Police Service of Northern Ireland and he currently continues to serve in that capacity.

[2] The plaintiff referred to a number of specific traumatic events in the course of his evidence. These included:

(i) The murder of a part time member of the UDR, William Burleigh, who was killed in an under car booby trap explosion on 6th April 1988 as he left an auction of agricultural machinery. Mr Burleigh had been known to the plaintiff who had called at his house in the course of his duties on a fairly regular basis. The plaintiff and another officer were the first to arrive at the scene. Despite the extensive injuries to the deceased's body, the plaintiff did not recollect being very shocked, his training kicked in and he set about arranging a perimeter and starting a scene log. The deceased's daughter attended at the scene and the plaintiff was able to provide her with some degree of comfort. The plaintiff said that he later went to the pub with a number of his colleagues amongst whom the main mood was that of anger. They discussed who might have been to blame and how the murder might have been prevented. The plaintiff said that being with his colleagues and having a few drinks after this atrocity helped but they did not discuss any personal emotional reactions. The plaintiff confirmed that he had not suffered any psychiatric/psychological symptoms following the murder of Mr Burleigh.

(ii) On 26th October 1988 the plaintiff arrived in advance of the starting time for his shift at Kinawley police station with the result that his colleagues Reserve Constable McCrone and Constable Wright were able to leave early. Approximately 5 minutes after they left the station those two officers were caught in a terrorist ambush. As a result the Reserve Constable was murdered and Constable Wright suffered serious injuries. The plaintiff received a phone call notifying him of a shooting incident and he arranged for the attendance of the relevant agencies. He did not attend the scene himself and it was not until some hours later that he ascertained that one of the officers had been killed. He subsequently attended the hospital to visit Constable Wright and when he saw the extent of his injuries he said that he became very scared, very nervous and very angry. It is clear that the plaintiff was subject to significant guilt feelings subsequent to this incident and he appears to have blamed himself for allowing the two officers to leave early. In his original and amended Statements of Claim the plaintiff alleged that he had only suffered severe guilt feelings after this incident. In his statement of evidence he said that he also experienced nightmares and dreams for about 6 months after the murder which disturbed his sleep. In his oral evidence he said that he suffered flashbacks although in his original statement he had said that, since being involved in the litigation, he had learned the meaning of the term flash backs and that: "I do not think that these thoughts would be flashbacks but very sad memories". Between 2001 and 2005 the plaintiff was subject to medico/legal examinations upon five occasions by Dr Higson, Dr Deahl, Dr Turner and Professor Fahy but he did not give a history of flashbacks after this incident during any of these examinations and Dr Turner was the only

examiner to whom he gave a history of nightmares. Whilst he was somewhat vague about these symptoms in cross examination the plaintiff did explain that the "flashbacks" to Reserve Constable McCrone would have been in the nature of memories of such things as the conversation that they had shared about his new car and his organ playing shortly before he left the station. He said these memories came to him at night when he trying to sleep shortly after the incident. The plaintiff agreed that these symptoms were not severe enough to warrant his attendance with his GP and that while he might have told someone from the OHU about his anxieties and self guilt, if he had of been contacted by the unit, he did not think that he needed to speak to a nurse or doctor. Understandably, the plaintiff was very concerned about his own personal safety subsequent to this attack and this was confirmed by his wife.

(iii) On 21st February 1990 the plaintiff was present in Kinawley station when it was subjected to a mortar attack. At the material time, the plaintiff was in the recreation room and he recalled a huge explosion causing light fittings and part of the ceiling plaster to fall. The attack demolished the perimeter blast wall around the station. The plaintiff agreed that he had been frightened by this attack but stated that he had not suffered from any other symptoms. He was not contacted by the OHU but confirmed, that if such contact had taken place, he would have made no complaint.

(iv) On 15th August 1998 the plaintiff's unit was deployed to Portadown to assist in policing the disturbances at Drumcree. That afternoon they were sent to Omagh in order to deal with the aftermath of the bombing of that town. The unit arrived at Omagh at approximately 7.20 pm and were briefed by Inspector Eakin that their task would be to search Market Street and recover the bodies or body parts of missing victims. The plaintiff's recollection of the relevant portion of the briefing was:

> "Whatever you see whenever you turn that corner is going to be unpleasant, prepare yourself for the worst and there is no other way that I can explain it."

The plaintiff continued to perform these duties with his colleagues for the following three or four days. I think that his attitude was best described in his own words:

> "I hated the thought of going back into work that day or any day to deal with Omagh for fear of what I would find but felt in my own belief that if I didn't go in I was letting the job down, I was letting my colleagues down and I was letting the people of Omagh down, if I didn't turn up to work and I felt that I owed it to everybody that it is a job, I have to do

it, get on with it, and don't be letting everybody down."

He described in vivid detail the impact of being able to connect personal affects recovered by himself and his colleagues during their search with photographs of missing individuals that subsequently appeared in the media. After taking a number of rest days the plaintiff resumed his MSU duties until 9th September 1998 when he went to his GP complaining of a "bad back". It appears that the plaintiff had injured his back during the course of a training session but, as his consultation with the GP progressed, he began to talk about his experience during his days at Omagh. Thereafter, the plaintiff remained absent from work until 29th September. During this absence the plaintiff was contacted by his sergeant upon a number of occasions to monitor his progress. Apart from three recorded visits the plaintiff said that he also consulted his GP out of hours, both at her surgery and, upon at least one occasion, at her home. The plaintiff said that, at his request, the doctor did not make any record of any psychological symptoms about which he complained and the sickness certificates were limited to back problems and "general debility". He also failed to disclose any of these symptoms during his back to work interview on 2 October. The plaintiff said that he felt as if a great weight had been lifted off him as a consequence of his lengthy talks with his GP and that he felt "a lot better for it". At that time he said that his symptoms were irritability, disturbed sleep, nightmares, little patience with his children, mood swings and an increase in his drinking.

(iv) On 7th July 2000 the plaintiff witnessed a collision between a police land rover and a civilian vehicle as a result of which the young male driver of the latter was killed. The plaintiff waited at the scene until the arrival of the ambulance and assisted in placing the body of the deceased into the vehicle. The plaintiff said that while this incident upset him he was not affected in any particular way and quite able to cope. By this date the plaintiff said that he had returned to his pre-Omagh condition which he described as "happy go lucky". The plaintiff had some difficulty in explaining to his counsel how long any significant symptoms had lasted subsequent to his duties at Omagh and he said that his wife would probably have been in a better position to judge his irritability and moods on a day to day basis. At one point he said he was sure it would have taken a couple of months or more to get back to his pre-Omagh condition. He said that the nightmares seemed to subside and become less frequent after he had returned to work. He thought that the nightmares might have stopped by about 6 months to a year by which time he would certainly have been less restless and his sleep would not have been as disturbed although he remained subject to what he termed "visions". These could be triggered by such things as a visit to a butcher's shop or wasps. The significance of wasps being that the fruit in the shop next door to the shop outside which the Omagh bomb had exploded had deteriorated and become infested by wasps. According to his evidence the vision that would usually be

reactivated was that of a portion of a human face that he had encountered on the pavement.

(v) On 21st January 2001 the plaintiff attended the scene of a fatal helicopter crash at Moneyreagh where he was required to take photographs of the scene including the deceased. The plaintiff found the scene distressing and troubling but agreed that he did not feel any more than the level of distress that would normally be expected in such circumstances.

(vi) On 18th March 2001 the plaintiff attended the scene of a fatal road traffic accident in which a 16 year old girl had been killed. Again, the plaintiff agreed that it had been a distressing scene to attend but he denied that he had continued to suffer any significant distress in the weeks and months afterwards.

The Garnerville course

[3] While it clearly would not fall within the description of traumatic incident as contemplated by the DSM or ICD classifications, there is no doubt that the plaintiff's training course at Garnerville, prior to his admission as a full time officer in the PSNI, had a considerable impact upon his emotional health. The plaintiff commenced this 6 month course on 10th August 2003 and he seems to have found it stressful from a fairly early stage for two main reasons. In the first place, he was a mature individual who was required to be absent from his family during the week over a period of 6 months and, secondly, the course had a significant academic component and the plaintiff had been out of the habit of studying for more than 20 years. The plaintiff's difficulties were compounded by the fact that he commenced an extra marital affair with another student at the course in September 2003. On 12th November the plaintiff went to the office of one of the trainers, Sergeant Karen Porter, and informed her that he had left his wife the previous evening. The Sergeant, now an Inspector, confirmed in evidence that he was red eyed and visibly distressed. The plaintiff was given home leave and subsequently, after a telephone call from his wife to Sergeant Porter, arrangements were made for him to be referred to Dr Davies at the OHU.

Medical evidence

[4] One of the difficulties faced by the medical advisers in this case was the inconsistency of the plaintiff's history to different advisers at various times and when compared to his oral evidence. Dr Turner and Professor Fahy differ as to whether any diagnosis was appropriate prior to the plaintiff's experiences at Omagh and this difference essentially turns on the history of nightmares for approximately 6 months after the attack upon Reserve Constable McCrone and Constable Wright given by the plaintiff to Dr Turner when he examined him in May 2005. As noted above, Dr Turner was the only examiner to whom the

plaintiff gave such a history. By way of contrast he told Dr Higson that his psychological problems started shortly after the Omagh bombing and he made no mention of such symptoms to Dr Deahl. The plaintiff confirmed to Dr Turner that his symptoms were not severe enough to warrant him going to his GP nor did they interfere with his work or general life. He considered that he had managed to successfully cope with a normal reaction. Such an attitude reflected his original witness statement which recorded that he had been a witness to a number of horrific events but had come through such experiences "remarkably unscathed". That statement recorded that his ability to withstand various dramas appeared to come from his own resources. Dr Turner seems to have based his diagnosis of a mild adjustment disorder largely on the simple fact that the nightmares continued for approximately 6 months and, by way of example, he referred to the fact that someone who suffered distressing nightmares for, say, two or three months might wish to seek counselling. According to Dr Turner, the condition of mild adjustment disorder is at the "interface between on the one hand normality and on the other one of the psychiatric disorders". He agreed that no treatment was required in the plaintiff's case. The only explanation that the plaintiff himself was able to offer as to why he had not mentioned nightmares and flashbacks after the attack upon McCrone and Wright to any medical adviser apart from Dr Turner was as follows:
"It wasn't severe enough to warrant telling a psychiatrist or psychologist about. I dealt with it the way I felt fit. I felt I was coping with it and it wasn't a problem."
After hearing all the evidence, I reached the conclusion that the plaintiff did not suffer anything greater than a normal reaction to what must have been a distressing event and that he was able to cope quite reasonably with any symptoms such as guilt or sad memories that disturbed his sleeping pattern subsequent to this incident.

[5] In their joint statement Dr Turner and Professor Fahy agreed that, subsequent to his experience at Omagh the plaintiff developed post traumatic symptoms including nightmares, irritability, intrusive memories, some avoidance behaviour and increased alcohol intake. However, the experts again differed as to the appropriate subsequent diagnosis.

[6] According to Dr Turner the plaintiff said that he had difficulty describing the development of his post-Omagh symptoms and would often refer to his wife as a better source of detail. Dr Turner elicited a history of marked loss of enjoyment for some three to six months, feeling sad or miserable, poor sleep and concentration and a loss of about 2 stones in weight. Dr Turner accepted that the plaintiff's GP, whom he had seen regularly from 9th September 1998, had not prescribed any medication, anti depressant or otherwise, nor had she seen fit to refer him to a clinical psychologist or psychiatrist. He also accepted the plaintiff's evidence that the counselling that he had received from his GP had been of considerable help and that he had

been able to resume his employment without any deterioration in performance at the end of September. He agreed that the GP notes and records confirmed that, despite attendances for other difficulties, the plaintiff had not returned with any psychiatric/psychological complaint prior to his training course at Garnerville. In his original report of 3rd June 2005 Dr Turner expressed the view that, following the Omagh explosion, the plaintiff had developed symptoms amounting to PTSD and a major depressive disorder. He thought that the major depressive disorder was present in full for between 3 to 6 months with some residual symptoms which may have lasted 1 to 2 years. Whilst the PTSD symptoms had improved Dr Turner thought that they had persisted and were still present to a sufficient strength to warrant a diagnosis of PTSD of mild severity at the time of interview. In the joint statement with Professor Fahy Dr Turner conceded that, having heard the plaintiff's oral evidence, he would have to observe a degree of caution about his view as to the persistence of the plaintiff's symptoms. He had also took into account the fact that Dr Higson had reached a diagnosis of PTSD in December 2001, after administering the Beck Depression Inventory (BDI), the Beck Anxiety Inventory (BAI) and the Impact of Even Scale (IES), as well as Dr Deahl's diagnosis in 2002 that the plaintiff had suffered from an Acute Stress Reaction subsequent to Omagh. Both of these examinations were carried out on the instructions of the plaintiff's solicitors after commencement of the litigation. Dr Turner said that he had ceased to use the IES because he did not regard it as a particularly helpful measure in so far as individuals could both understate and overstate nor did he personally employ the CAPS assessment in a forensic setting. He also accepted that there were inconsistencies between the histories that the plaintiff had given to Dr Higson and Dr Deahl the most significance of which related to avoidance and depression. On 15th December 2001 Dr Higson found the plaintiff to be suffering from moderate/severe depression and to have at least three of the seven symptoms of avoidance specified under criteria D for PTSD. Some six months later Dr Deahl found no evidence of depressive symptoms or avoidance phenomena. Indeed, Dr Deahl specifically noted that the plaintiff deliberately watched TV programmes about the civil unrest in Northern Ireland and confirmed that exposure to reminders of traumatic events did not appear to trigger undue anxiety. It is to be noted that, despite the histories that he gave to Dr Higson and Dr Deahl in the course of this litigation, on the 23 of December 2002 the plaintiff maintained that he had no history of anxiety/depression or stress related problems when completing his medical questionnaire for the full time force.

[7] Professor Fahy was impressed by the calm and measured way in which the plaintiff described his duties at Omagh. He noted that he had not become tearful or required a break despite the fact that he gave a vivid account of the relevant events. While it was clear to Professor Fahy that it had been an intense experience for the plaintiff, he did not receive the impression that he had been overwhelmed by horror or helplessness despite the appalling results of the attack. Professor Fahy thought that this might be explained by the camaraderie

among the officers and the support that they had received from the local community. By contrast I have no doubt that recollection of his involvement in the aftermath of this atrocity caused the plaintiff significant emotional distress during the course of giving evidence, which he did in a straightforward and dignified manner. The plaintiff gave professor Fahy an account of residual symptoms after his return to work including intrusive experiences, memories, some bad dreams and a minor element of avoidance behaviour that was specific to the Omagh area. Professor Fahy said that even when he interviewed the plaintiff in 2005 he was still experiencing some distress and discomfort if he was required to visit the Omagh area but not such as to impair his function at work and any continuing symptoms were mild and infrequent. According to Professor Fahy, such a level of symptom would not have constituted a full text book diagnosis of PTSD or any other diagnosable mental disorder. In cross examination, Professor Fahy accepted that the plaintiff did not appear to be a particularly consistent historian and that his accounts appeared to have differed upon different occasions.

[8] I have no doubt that the duties that the plaintiff was required to perform in the days immediately following the explosion at Omagh made a substantial impact upon his emotions. The difficult task is to assess the degree of intensity and persistence of any relevant symptoms given the unsatisfactory nature of the evidence. While he may not have initially appreciated the full significance of his symptoms, I am satisfied that the plaintiff understandably used his "bad back" as a basis for attending his GP and thereafter took the opportunity to ventilate his feelings. The GP seems to have been extremely perceptive and sensitive and I am quite satisfied that her understanding and patience during their consultations were of very considerable assistance to the plaintiff. She appears to have observed considerable discretion in constructing her notes in such a way as to relieve the plaintiff's concern that "head problems" should not appear on a sickness certificate submitted on behalf of a reserve officer with a three year renewable contract. The plaintiff was obviously well known personally to the GP and in my view she correctly determined that by the end of September, as a consequence of their conversations/counselling, he was sufficiently improved to cope with a resumption of employment. The GP seems to have taken the view that it was not necessary to refer the plaintiff for specialised psychological/psychiatric opinion or for her to prescribe anti depressant or other appropriate medication. Later events demonstrated that she would have been prepared to make an appropriate referral, for example, to the community psychiatric nurse (CPN) had she thought it appropriate to do so. I note that in giving a history to Professor Fahy in August 2005 the plaintiff said that, at this time, his GP had recommended an appointment with Dr Cody, the local psychiatrist, but that the appointment did not arrive. He told Professor Fahy that he would have been happy to attend such an appointment. By contrast, the plaintiff appears to have told Dr Deahl in 2002 that he would have been reluctant to accept any psychiatric referral from his GP which he felt might have jeopardised the renewal of his contract. In cross examination he

accepted that the GP had not referred him to a specialist psychologist or psychiatrist at that stage.

[9] When he was asked in cross examination about his symptoms after his return to work in September 1998 the plaintiff said that, after a while, they had begun to subside, he was not so irritable, his sleeping pattern improved, his drinking was reduced and he felt that he was coping well. He agreed that his supervising inspector, who was approachable and sensitive, would not have noticed any interference with his ability to discharge his duties and he accepted that he enjoyed a normal social life during the following years. It is important in that context to record the plaintiff's evidence that he was still "bottling up" memories and visions but that they weren't troubling him to any significant degree. Such an assessment appears to be consistent with the objective evidence in that the plaintiff did not seek to return to his GP whom he clearly trusted and to whom he had been quite prepared to disclose his emotional distress, he was able to function to a high standard of performance at work and he saw no reason to self refer to the OHU despite other traumatic incidents.

[10] The plaintiff's advisers have raised the suggestion that the plaintiff may have under played his symptoms and they relied upon the evidence of the plaintiff's wife, Mrs Julie Doherty. It was Mrs Doherty who originally contacted Superintendent McFarland and was effective in securing the plaintiff's transfer from Kinawley to Kesh. In evidence, she confirmed that there were family reasons for this and it was more to suit her than to suit the plaintiff. After completing his duties at Omagh Mrs Doherty described how the plaintiff wasn't sleeping or eating and was irritable with the children and, in general, she described him as "a mess". As a nurse, she was aware that counselling and debriefing facilities were being offered to other emergency workers and she encouraged the plaintiff to visit his GP. In fact, it appears that Mrs Doherty herself saw the GP about arranging an appointment shortly before the plaintiff attended. She confirmed the beneficial effect that the sessions with the GP had upon the plaintiff and in particular the assistance that he derived from being told that it was not abnormal to feel the way that he was feeling. She was unable, perhaps understandably, to provide an accurate estimate for the length of time that the plaintiff's symptoms persisted after his experiences at Omagh. As I have noted above the plaintiff gave evidence that he coped reasonably well during the years between Omagh and the onset of his difficulties in 2003/2004. Mrs Doherty explained that her concept of "coping" and life being "grand" was different from that of the plaintiff. I have no doubt that during this period, from time to time, they would have discussed the plaintiff's experiences and memories of the distressing events that he had been through but I did not gain the impression from listening to Mrs Doherty's evidence that he had been ill during this period. She herself is a nurse, although not psychiatrically qualified, and it is clear that she was quite prepared to take decisive action upon the two occasions when she felt that the plaintiff required medical intervention, namely, after Omagh and during his

course at Garnerville. I have already noted that he functioned to a high standard at work during this period and Mrs Doherty confirmed that "at the end of the day we still functioned as a family, we had our ups and downs."

[11] When attending Mrs Sheila Colton CPN in April 2004 the plaintiff gave a history of his symptoms commencing approximately 2 to 3 months previously but stated that his wife had noticed changes in his behaviour since September 2003. Mrs Doherty felt that she had observed significant changes in the plaintiff in August 2003 just prior to the start of his course at Garnerville. However I am not persuaded that this was accurate since it was perfectly clear from her evidence that she perceived the start of Garnerville course to be of very great importance in the development of the plaintiff's symptoms. She used the phrase "going to Garnerville land" and described it as being a completely alien environment in which the plaintiff was separated from the comfort blanket of his family. She expressed the view that "the rug had been taken from underneath his feet", "his safety net had been taken away" and his whole coping mechanisms just broke down. Mrs Doherty attended a number of the plaintiff's sessions with Mrs Colton. I have read Mrs Colton's notes which appeared to focus, almost exclusively, upon the marital relationship and the extra marital affair and I note that the urgent referral letter from the GP to Mrs Colton did not refer to any continuing post trauma symptoms. The manuscript notes show that, as a matter of history, Mrs Colton recorded that the plaintiff had experienced traumatic incidents in his line of work but the notes contained no reference to any symptoms that either she or the plaintiff attributed to such experiences. In her letter to the GP of 5th May 2004 Mrs Colton referred to the plaintiff "ruminating" over past traumatic incidents but this appears to have been included in the symptoms that he believed had commenced some approximately 2 to 3 months previously. Mrs Doherty confirmed in cross examination that the reference to trauma from the years in the full-time reserve contained in her conversation with Inspector Porter had been to a conversation that she had with the plaintiff during the 3 day period when he was released from his course at Garnerville and that would have been the first occasion in a number of years that they had discussed such a topic.

[12] Taking into account all the evidence I think that approximately 12 to 18 months after his experiences at Omagh the plaintiff probably reached a point at which he was able to cope reasonably well both at work and at home. Again, it is important to emphasise, as the GP did so effectively in this case, that the recurrence of distressing images and feelings related to exposure to traumatic events is a normal reaction and that care should be taken not to automatically pathologise the processing of such reactions by the development of coping mechanisms. In this case the non forensic evidence seems to indicate that the plaintiff probably did manage to develop reasonable coping mechanisms and that the interviews with Dr Higson and Dr Deahl should be viewed as specifically related to the litigation process. Neither of these two experts had the benefit of hearing the plaintiff examined and cross examined which clearly

had an impact upon Dr Turner Similarly to other lead cases, it appears that the effective functioning of his coping mechanism may have been reduced by the supervening depression resulting from the stresses to which he was subjected during his course at Garnerville. This may have caused some degree of resurgence of traumatic symptoms although there is very little evidence in the notes made by Mrs Colton and Dr Davies to confirm such a phenomenon. In particular, while the plaintiff's experience of trauma was discussed, those notes did not contain an reference to nightmares, flashbacks, avoidance etc It rather appears from the notes of Dr Cody, Consultant Psychiatrist, that a such a process may have taken place in January 2006, again linked to a relapse of the plaintiff's depression. Upon that occasion the plaintiff appears to have given a history of experiencing flashbacks almost on a daily basis since his duties in Omagh. Dr Cody referred the plaintiff to Dr Gillespie, a Consultant Psychiatrist at the Northern Ireland Centre for Trauma and Transformation, but no appointment had been arranged by the date of hearing.

Force Orders 14/88 and 16/95

[13] Force Order 14/88 would have been in force at the date of the terrorist murder of Reserve Constable McCrone and the injuries caused to Constable Stephen Wright on 26th October 1988. The plaintiff's name was not furnished to the OHU by his Sub Divisional Commander as a consequence of this incident despite the fact that the Order included those who had close associations or friendship with those involved. Again, the plaintiff was not referred to the OHU in accordance with Force Order 14/88 in relation to the mortar attack on Kinawley police station on 21st February 1990 which was an incident in which he was directly involved having been present in the station at the material time. In their closing submissions the plaintiff's advisers relied upon his evidence that, had he been referred at this early period, he "would have told them about his anxieties." However, it is extremely difficult to reconcile this remark with his original statement that he would not have referred himself because of his belief that the OHU was "one of the tools of management" and his concern about the possible risk to renewal of his contract. Both Dr Turner and Professor Fahy agreed that, whatever his symptoms, there was no requirement for the plaintiff to have any treatment subsequent to the attack upon Reserve Constable McCrone and Constable Wright. Indeed, the plaintiff's counsel did not suggest to him during direct examination that he would have benefited from attending the OHU at that time. The plaintiff conceded that his fellow officers sought to reassure him about the feelings of guilt that he developed. The plaintiff accepted that he had not suffered any psychological symptoms subsequent to the mortar attack and confirmed that, had he been contacted at that time, he would have reported that he was feeling fine to the OHU.

[14] By the date of the explosion at Omagh on 15th August 1998 Force Order 16/95 would have been in force which provided that referral subsequent to traumatic events was compulsory. Owing to the appalling nature of this

atrocity the OHU made special arrangements in order to deal with the consequences of this incident. Dr McCaughan was present on the Saturday and Sunday and he was succeeded by nursing advisers. A short time after the explosion the large articulated lorry and trailer that constituted the OHU mobile patrol unit or screening unit was brought to Omagh and located in the car park of the police station and a tannoy system was used to publicise the OHU presence on site. There was an OHU presence in Omagh for approximately three weeks. Unfortunately, it appears that the plaintiff managed to slip through the net and I accepted his evidence that he did not know about the available OHU facilities. After their first attendance, the plaintiff's unit went back to Enniskillen each night and when they returned to Omagh their vehicles were located in the car park adjacent to the Stroule bridge approximately 100 to 200 metres from Market Street. The only occasion upon which the plaintiff and his fellow officers had to enter Omagh police station was for comfort and meal breaks. The plaintiff confirmed that, in practice, his unit simply walked through the main station gates into the canteen which was one of the first buildings and that they would have had no opportunity to view the car park which was behind the canteen and over a hill. It appears that the plaintiff's unit was the only unit concerned with the detailed searching of Market Street and, given the harrowing nature of this work, it is very difficult to understand why specific and positive steps were not taken to ensure that each of these officers was given an opportunity to be seen by the OHU. He does not seem to have received one of the questionnaires sent out by Dr Poole or the subsequent letter. In fact, the plaintiff accepted that when his unit returned to work after taking some rest days one or more of the sergeants were contacted by the OHU and was asked to pass on the names of any officers who felt that they were in need of assistance. The plaintiff expressed himself to be annoyed not that he had not been the recipient of a call from the OHU but that the sergeant had not been in personal contact. The plaintiff appears to have acquired this information by overhearing a conversation. Despite learning of this facility, the plaintiff took no steps to contact the OHU because he was not convinced of its confidentiality and still believed it to be a management tool. He agreed that he did not know of any examples of the OHU being in breach of confidentiality but maintained that was his general perception. He expressed the belief that any reference to "mental" symptoms would have placed the renewal of his three year contract in jeopardy. By this stage the plaintiff would have received stress awareness training in 1994 at Enniskillen including leaflets containing reassurances of OHU confidentiality and information relating to the provision of support, advice and counselling for those suffering from stress subsequent to traumatic incidents. He also accepted that it was quite possible that he had received talks from welfare and OHU during his 8 week training period and that he might have read articles in Police Beat relating to stress and the facilities provided by the OHU. Subsequent to the Omagh explosion one of the plaintiff's supervisors was Inspector Kennedy with whom the plaintiff would have been in regular daily contact. The plaintiff accepted that Inspector Kennedy was an approachable man and that he was the sort of man to whom

he could have spoken had he been affected by any psychological problems or difficulties at work or home. The plaintiff also agreed that he was the sort of man who might have picked up the signs of such difficulties from contact with the plaintiff on a daily basis.

[15] After the fatal road traffic accident on 7th July 2000 the plaintiff was provided with the telephone number of the OHU by either Inspector Kennedy or Inspector Elliott but he said that, while he had had been upset, he was able to cope and had no need to attend either the OHU or the GP. It was at this point in his evidence that he confirmed that by the date of this incident he was in good form, happy go lucky and had returned to the same state he had been in prior to Omagh. He agreed that the scene of the fatal helicopter crash in 2001 had been distressing but not any more than might have been normally expected. He was not contacted by the OHU but he was aware that contact had been made with some of his colleagues. Nevertheless, he confirmed that he had not felt the need to refer himself to the OHU or visit the GP. The plaintiff did receive a letter on the 4th April 2001 from the OHU subsequent to the road traffic accident that involved the death of a 16 year old girl recognising that the incident might have been distressing and pointing out that any psychological symptoms could be minimised by appropriate support and professional intervention. However, once again he maintained that this experience had not caused him any greater distress than might normally have been expected. In such circumstances, he saw no reason to refer himself to the OHU.

Culture

[16] According to Mr Doherty's evidence there was a persistent perception among reserve officers that a poor sickness record and, in particular, a record which included any reference to what might be perceived as "mental problems" would jeopardise the renewal of the three year contract. He explained that this was one of the reasons why he did not draw his symptoms to the attention of the OHU and was the primary reason as to why he resorted to his GP rather than the OHU in the post Omagh period. In particular, such a concern was the reason why he specifically asked his GP to restrict her records and not to refer to any type of emotional symptoms when submitting medical certificates upon his behalf. That the plaintiff did hold such a belief is borne out by the nature and form of the records maintained by the GP during his attendances immediately after the Omagh explosion and was clearly a concern for Mrs Doherty when she telephoned Inspector Porter on 24th November 2003. In the course of giving her evidence Inspector Porter said that the existence of such a concern did not cause her any surprise and that it would have been something of which people would have been aware.

[17] While the defendant did have the power to take into account the sickness records of reserve officers when their contacts came up for renewal, as a matter of fact, the evidence of Paul Rush and Ivor Kyle provided good

examples of reservists with substantial periods of genuine sickness absence whose contracts were renewed several times. In the circumstances, it is not easy to identify what steps could reasonably have been taken by the defendant to change such a culture, especially if any such steps were liable to be stigmatised by the officers concerned as mere management subterfuge. During the course of cross examination the plaintiff accepted that at the time of the Omagh bomb he was aware that his contract contained provisions permitting up to six months fully paid sick leave provided that the relevant incapacity, whether physical or mental, resulted from an incident on duty. Perhaps the most sensible approach was the one adopted by the defendant upon at least one occasion when providing information that was subsequently reproduced in the February 1989 issue of Police Beat, the organ of the Police Federation. In addition to this publication by the date of the explosion at Omagh the OHU would have been in existence for 12 years, Force Orders 14/88 and 16/95 had been passed, a number of articles had appeared in Police Beat and the plaintiff had undergone stress awareness training. In such circumstances it seems to me that the plaintiff had a personal responsibility to investigate and decide for himself whether there was any real substance to the cultural myths about the confidentiality of the OHU and the renewal of reserve officer's contracts.

[18] So far as the colleagues of the plaintiff were concerned, he clearly received support and reassurance about his guilty feelings subsequent to the attack upon Reserve Constable McCrone and Constable Wright and he himself confirmed that Inspector Kennedy was both sensitive and approachable. The plaintiff's advisers also accepted that no criticism could be made of Inspector Porter who quite clearly acted in an extremely sensitive and responsible manner with regard to the plaintiff's emotional difficulties in 2003. While he initially refused the plaintiff's oral request for a transfer, it is clear that Superintendent McFarland responded to the personal circumstances of the plaintiff's wife and family when these were drawn to his attention by Mrs Doherty and arranged for an appropriate transfer to take place. The plaintiff expressed the view that it was "debateable" whether Inspector Reeve would have been an approachable officer but he agreed that, upon his arrival at Kesh, the Inspector had made it clear in interview that his door would be always open if it was necessary to discuss any welfare or other problems.

The OHU

[19] The plaintiff was unable to date precisely the point at which he first became aware of the OHU but he said that his initial understanding that it was the medical department of his employer and that, as such, any matter that was referred to it would have been made available to his authorities. He eventually conceded that it was quite possible that he had received a lecture about the OHU during his recruitment training in 1987 and that seems likely in view of the evidence of Dr Courtney and Sally Meekin. He accepted that he had no objective justification for any lack of confidentiality on the part of the OHU. He

was unable to recall whether he had read any article in Police Beat relating to the problem of stress and the facilities provided by the OHU or whether he had been aware of the steps taken by Alan Wright, as Chairman of the Police Federation, to publicise the unit and encourage officers of its confidentiality. However, I am satisfied that he did undergo stress awareness training in 1994 and that, by the date of the Omagh explosion, he would have been aware of the existence of the OHU and the services that it provided with regard to officers who might have been adversely affected by exposure to traumatic incidents.

{20] In my view the plaintiff should have been picked up by the facilities provided by the OHU at Omagh. However had that occurred it is much more difficult to decide whether he would have taken advantage of the services available. He clearly had a deep seated concern about revealing any mental or emotional symptoms and he declined to have his name put forward when he learned that was possible some weeks later. While it is possible that he might have responded positively had he been contacted at the scene, I am not persuaded on the balance of probabilities that he would have been willing to declare any symptoms given the lengths that he was subsequently prepared to go to conceal such symptoms from his employer. The clear inference from the notes compiled by Dr Davies at the OHU after the plaintiff's referral in 2003 is that while he was quite happy to have a long chat about the Omagh bomb he wished to continue with NHS treatment only and did not want any support from the OHU. I have little doubt but that was how he felt in the weeks after Omagh and thereafter and I am not persuaded that the treatment that he received was in any way inappropriate or inadequate or, indeed, materially different from that which he would have received had he attended the OHU.

[21] In the circumstances I am not persuaded that this plaintiff has established that the failures identified in the generic hearing have caused him to sustain any material loss and, accordingly, this case will be dismissed and there will be judgement for the defendant.