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Judgment: approved by the Court for handing down | *Delivered:* **03/07/2007**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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POST TRAUMATIC STRESS DISORDER GROUP ACTION

BETWEEN:

CHARLES WAYNE McCLURG AND OTHERS

Plaintiffs;

-and-

THE CHIEF CONSTABLE OF THE ROYAL ULSTER CONSTABULARY

Defendant.

LEAD CASE OF LINDSAY BOAL

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COGHLIN J

[1] This plaintiff was born on 11 January 1958 and served as a Constable in the Royal Ulster Constabulary from 16 January 1977 to 22 February 2005 when he was medically retired after being certified medically unfit for further service by reason of PTSD/cumulative stress, post-hemicolectomy and mechanical back pain. His disablement was expressed to be 63% with a recommendation that this should be reviewed after a period of three years.

[2] After leaving school at the age of seventeen this plaintiff worked for a while as a trainee butcher and decided to join the RUC at the age of nineteen. In the course of making his application both the plaintiff and his GP confirmed that neither he nor any member of his family had a history of mental disorder and, after successfully passing the medical examination, he joined the police on 16 January 1977.

[3] After completing his initial training at Enniskillen, the plaintiff was posted to Pomeroy Police Station on 23 April 1977 where he remained until his transfer to North Queen Street on 14 November 1978. During his service at North Queen Street the plaintiff was assigned to the Neighbourhood Policing Unit from 9 March 1981 to 1 March 1982. After one unsuccessful application the plaintiff's application for a transfer to Traffic Branch was successful resulting in his transfer to that branch based in Castlereagh Police Station on 10 May 1982. The plaintiff obtained a further transfer within Traffic Branch from Castlereagh to Antrim on 3 January 1984. On 13 October 1986 the plaintiff was transferred to Andersonstown Police Station where he remained until his eventual medical discharge. During his service at Andersonstown Police Station the plaintiff again spent some time working in the neighbourhood unit.

[4] The defendant accepts that during the course of his 28 years of service the plaintiff was involved in a significant number of potentially traumatic events although in some of these it seems that he was involved in the aftermath rather than the event and, in others, he was unaware of the fact that the event was taking place. Among the most significant of these events would appear to be:

(*i*) The murder of three police officers near Carnan on 2 June 1977. The plaintiff and his colleagues were the first police officers to respond to this incident and when they arrived at the scene Constable Davidson's body had been removed but the bodies of the other two officers were still present. The body of Reserve Constable Martin was partially in the vehicle while that of Constable Lynch was slumped over the dashboard. Both had been subjected to multiple gunshot wounds and the vehicle was riddled with bullet holes.

(*ii*) On the morning of 7 February 1978 the plaintiff was once more one of the first police officers at the scene of the murder of John "Jock" Eaglesham a UDR Staff Sergeant who worked as a postman in the area. During the course of combined RUC/UDR duties the plaintiff had developed a strong friendship with Mr Eaglesham whom he trusted and regarded as something of a father figure.

(*iii*) In 1978 the plaintiff had a narrow escape when a two car police patrol drove into a provisional IRA checkpoint near the village of Cappagh. In the course of trying to elude their attackers one police car collided with the other but, ultimately, both managed to escape.

(*iv*) During his service in North Queen Street the plaintiff was the driver of a land rover that came under severe and sustained attack by rioters outside the police station and, upon another occasion, his land rover was subjected to a shooting attack as it left the station. Upon the latter occasion one of the

constables in the rear of the land rover was shot and the plaintiff reassured and comforted him until he was taken to hospital.

(*v*) On 21 August 1987 the plaintiff and a fellow officer took part in a joint police/army foot patrol in the Andersonstown Estate. As they turned into Ramoan Gardens there was a huge explosion and the soldier on the left hand side of the road was blown out into the road. The device had been equipped with shrapnel and a metal ball bearing lodged in the left side of the commanding officer's face.

(*vi*) The plaintiff was involved in a similar incident during a joint RUC military patrol on 18 December 1988 when he witnessed a guardsman being blown off his feet.

(*vii*) On 9 October 1992 when the plaintiff and a fellow officer were trying to remove the driver from a stolen car on the Upper Springfield Road the driver suddenly reversed across the road pulling them backwards and dragging them below the driver's door. The plaintiff was knocked unconscious upon this occasion and detained overnight in the City Hospital.

(*viii*) During the 1990s the plaintiff investigated a number of serious road traffic accidents and, in particular, he attended a fatal road traffic accident on the Monagh by-pass in 1995 in which the participants had suffered particularly horrific injuries.

(*ix*) On 20 April 1997 the plaintiff was directed to attend a domestic violence incident in which a man had subjected his six months pregnant wife to a beating. This man threatened the plaintiff and his fellow officers with a large ratchet screwdriver and refused to put this down when ordered to do so, threatening to "do" or blind the policemen. The situation deteriorated and the plaintiff considered the threat so serious at one point that he discharged a shot from his personal firearm. As a consequence of this incident the plaintiff was the subject of an investigation by the Independent Commission for Police Complaints and he was involved in civil litigation from the family concerned from 2001 to 2004.

(*x*) On 10 July 1997 the plaintiff attended a scene at which a youth had committed suicide by hanging and was present when the body was cut down and the sheet removed from his neck.

(*xi*) In addition to these specific incidents, during the course of his duties, the plaintiff was the subject of numerous less serious attacks involving gunfire, petrol bombs, blast bombs and acid bombs.

[5] The plaintiff's case is that, while they may have varied in intensity, he has continued to suffer significant persistent psychological symptoms from the date of the shooting at Carnan on 2 June 1977. These included nightmares, sleep difficulties, constant thoughts of traumatic events, extreme

tiredness, difficulty in concentrating and focusing, irritability, anxiety, a fear of parked cars, recurring intrusive images of traumatic events, a withdrawal from social life, flashbacks, hyper-vigilance, mood swings and abuse of alcohol.

[6] The defendant accepts that the plaintiff may have suffered some short-lived stress reactions to a number of traumatic events to which he was exposed and that he does currently suffer from significant symptoms of mental disorder but he maintains that these are of much more recent origin than the plaintiff would claim. The defendant's case is simply that the plaintiff is not a credible witness and that his lack of credibility effectively undermines his entire claim. In such circumstances, it is necessary to give careful consideration to the submissions relating to credibility. However, in doing so, I bear in mind the acceptance on the part of the defendant that the plaintiff was exposed to traumatic events of a nature and type with a potential to produce symptoms of mental disorder and that at least some of those events have contributed to his current psychiatric condition although other factors are also relevant. I also remind myself of the CAPS, BDI and BAI scores recorded by Dr Higson in 2001 and 2005 and the plaintiff's persistence in attending sessions of therapy with Ann McKenny. Within that context it is necessary to consider the following:

(*i*) When the plaintiff and his wife attended for the purpose of medical interview on 28 August 2005 he told Professor Fahy that he first reported his psychiatric symptoms to his GP in the late 1970s when he informed him about his sleep problems and difficulties in facing work. He said that the GP had issued occasional sickness certificates for up to three weeks which had not been recorded on his work file. He said that during the 1980s he had continued to visit his GP who had prescribed Diazepam and Inderal and that he typically received such prescriptions when he complained about his difficulties in continuing to face his work. During the course of giving evidence the plaintiff confirmed that he had gone to see his GP "in the early days" and had spoken to him about his problems as a result of which he received medication for the difficulties that he was encountering at work. The plaintiff stated that he would attend his GP for a reason unconnected with his psychological symptoms, such as a respiratory tract infection or sprained ankle, and, after obtaining a certificate based on such a condition he would then subsequently attend the doctor and give an account of his psychological symptoms. In the very early days these would have included difficulties in sleeping and nightmares. It is important to bear in mind that the plaintiff agreed that his GP was aware of his occupation at all material times. The records of the plaintiff's GP contained only three entries with potential relevance to psychological symptoms. On 3 June 1982 the notes recorded "Lassitude. Anxious ++ FBP. Review". Two further entries date from September 1987 and recorded the plaintiff's attendance and treatment for an anxiety state following his involvement in the explosion at Ramoan Gardens on 21 August. When asked why his GP would not have recorded the nature

of the psychological symptoms about which he complained during these years and, perhaps more importantly, why he did not at any time record the nature and extent of the medication the plaintiff alleged that he prescribed for the symptoms the plaintiff suggested that the absence of any such record must have been for his own protection i.e. the risk that he might be dismissed from the force. However, having expressed himself to be completely satisfied with the confidentiality of his GP, he was unable to explain how such information might have reached his employers. He was also unable to explain how such omissions would have afforded protection if his mental condition had substantially deteriorated and there had been no record of any previous symptoms or medication. Subsequently, the plaintiff suggested that the reason for the omission of any psychological symptoms from the record might have been that the practice was "too busy" to record such information when he was attending in relation one of his many road traffic accident injuries. I do not accept the plaintiff's assertion that he recounted the nature and extent of his psychological symptoms to his GP over the years or that he was prescribed any relevant medication other than as indicated by the GP notes and records. The plaintiff tried to explain the relevance of "lassitude" in the entry of 3 June 1982 as being a consequence of his nightmares and inability to sleep. I do not accept this explanation. I have no doubt that such a cause would have been recorded if it had been proffered to the GP and the reference to a full blood picture is much more consistent with the GP believing that some physical cause was the explanation. It is extremely difficult to understand why his GP would suddenly decide to record anxiety symptoms and appropriate medication after the Ramoan Gardens incident in August 1987 but omit to do so for the previous ten years. Between September 1987 and his attendance in September 2003 complaining of PTSD off and on since the bomb blast there was no relevant entry in the GP records despite more than 40 attendances.

(*ii*) The plaintiff said that the effect of the Carnan incident had been "very unsettling and mind blowing" and told Dr Turner that it was the incident that he thought had changed him the most, He maintained that after this incident in June 1977 he started to recall the scene as frozen images and suffered from nightmares which disturbed his sleep. He also described how he withdrew into himself, found it difficult to talk to his colleagues, overslept to the extent that he was late for early shifts, had difficulty concentrating and focusing to the extent that he had to write notes, was unable to interact with others as he had been before and became very anxious and irritable. As a result he said, in his statement of evidence, that he was not functioning well during the day or performing his duties as well as he should have been and that he was often "in a mess". On the other hand, the plaintiff accepted that his divisional training results for the period 1977 to 1978 confirmed that he had obtained good marks and the one poor score that he achieved was attributed by his authorities to the fact that he had been on duty until 3.00 am the night before the exam. The plaintiff attempted to suggest that his disturbed sleep and

other psychological factors might also have contributed to this poor result but conceded that he had gained a mark in the region of 86% when he re-sat the same subject. The plaintiff's descriptions of psychological symptoms that interfered with his ability to satisfactorily perform his duties and to interact with his colleagues was not borne out by the training reports and appraisals contained in his personnel file during the relevant time. In particular on 3 January 1979 shortly after his transfer to North Queen Street, the plaintiff's supervisor, Sergeant Rodgers wrote:

> "Constable Boal since his arrival at North Queen Street has progressed satisfactorily to date. He is respectful and has worked well with little supervision. In the short period that he has been here he has not shirked any police work on the practical side. He is liked and respected by other members of the section. I have no doubt he will make a competent policeman."

Even if it assumed that such appraisals generally tend to be fairly positive, it is difficult, if not impossible, to reconcile this view with the plaintiff's claim to have been isolated, withdrawn and experiencing difficulty in talking to colleagues. Despite the plaintiff's evidence about his history of abusing alcohol since the incident in June 1977, his drinking on duty and the dropping of the bottle in front of Sergeant Bailie, Sergeant Megaughin described him in the following terms in June 1980:

> "Like other members he enjoys a certain amount of alcohol but it is more the exception than the rule that he would allow this to be carried to excess and I have never had to speak to him about drinking on duty."

The plaintiff accepted that Sergeant Megaughin would have known him extremely well. In 2001, by which time the plaintiff had experienced a number of traumatic events and, according to his evidence, was suffering from significant psychological symptoms, an appraisal recorded how he presented "an excellent image of the Police Service" and how in his role as a neighbourhood policeman at Andersonstown he created "a positive image, listening attentively, giving advice and explaining issues clearly" as well as noting how his "professionalism and enthusiasm in his work is evident." I am satisfied that the poor appraisal in 1978 was linked to the plaintiff's involvement in the disorderly behaviour incident and his subsequent conviction while that of November 1982 was related to relationship problems in which he became involved prior to his marriage. The plaintiff maintained that his psychological symptoms significantly contributed to these two poor appraisals but since he also alleged that these were persistent over the years it becomes very difficult to understand why the large number of positive appraisals were not also affected at least to some degree.

(*iii*) In his written statement of evidence the plaintiff described how upon occasions when his psychological symptoms became too much for him and, to use his own words, "the jar overflowed" he would have taken a few days off work on the sick by pretending that he had the flu, a cold or some other physical condition. In the course of giving evidence he specifically referred to an absence for 20 days in February 1982 when he was certified as suffering from "post injury/influenza and debility" as being really the result of particularly bad psychological symptoms. He said that he had explained to his GP that he had problems at work, that he had not been coping very well and that his sleep had been disturbed. According to the plaintiff the GP then certified the absence as due to influenza/debility. He explained how the symptoms from which he had been suffering at that time had obviously increased to the point where he found it very difficult to maintain control of himself and was unable to go back to work or "keep a lid on things". However during the course of this absence on 18 February 1982 the plaintiff was interviewed for transfer to Traffic Branch and performed successfully enough to be selected. In evidence, the plaintiff described North Queen Street as probably more dangerous than his posting to Pomeroy and he explained how he had not wanted to be transferred to the neighbourhood unit where he would have to patrol Unity Flats with another constable who did not carry a gun. He said that he had to work a thirteen hour shift which meant that there were not many hours left outside work and this made the problems that he was having with flashbacks, nightmares, frozen images, sleeping problems, being easily startled and difficulty in concentration even worse. On the other hand, in the course of completing a self appraisal on 22 February 1982, the date upon which he returned to work after the two week absence, the plaintiff referred to patrolling Unity Flats and stated that the aspect of the job which gave him most satisfaction was being recognised and greeted by residence of his neighbourhood. On the same form, he recorded that he felt independent with little need for supervision and had an ability to communicate with people in general. He commented that the only difficulty he encountered in performing his duty in the neighbourhood was the security aspect and he accepted that there was nothing which could be done about that at the present time. He said that he felt he was proving to the people of Unity Flats that the police were indeed impartial. Again, this obvious enthusiasm for the job that he was doing at the time is difficult to reconcile with the evidence that he gave about the degree and intensity of psychological symptoms from which he was suffering.

(*iv*) On 18 June 1980, when he was still serving in North Queen Street, the plaintiff applied for a transfer to Special Branch. The vacancies that were available appear to have been in Headquarters but the plaintiff made it quite clear that his particular interest would have been in outdoor Special Branch duties stating that he had been accustomed to working outdoors and had no difficulty in talking to the public having been able to adapt quite easily to people with very different lifestyles in both Tyrone and Belfast. When it was

suggested to him in cross-examination that working in Special Branch outside Headquarters would have been dangerous his response was "quite the contrary". In my view, the plaintiff was unable to satisfactorily explain this response which was clearly quite contradictory to the general evidence and to that of lead plaintiff French in particular.

(*v*) In the course of his written statement the plaintiff maintained that he made the application to be transferred to Traffic Branch from the dangers of North Queen Street despite that fact that such a move would have resulted in a significant cut in pay, possibly as much as 50%, due to less availability of overtime. He maintained that this perception at the time of the transfer application was borne out when he transferred. In cross examination he had to accept that this claim was not confirmed by the objective evidence of his pay slips and he also conceded that these documents had been in his possession at the time of making his statement.

(vi) The plaintiff's evidence that he often brought a half bottle of alcohol with him and drank on night duty during his service in North Queen Street was not consistent with his history to Dr Turner that when he was stationed in North Queen Street his drinking was mainly restricted to his nights off. It is also difficult to reconcile his history to Dr Turner that from 1981 he returned to binge drinking but only on his nights off with his evidence that he regularly consumed alcohol while on duty with senior officers at North Queen Street between 1978 and 1982.

(vii) Throughout his evidence the plaintiff maintained that he had no faith in the confidentiality of the OHU which he considered to be an agent of his employers. The plaintiff gave two examples for the basis of this belief. The first was an interview with his inspector in traffic branch, Cyril Edgeworth, in 1986. The plaintiff had been required to attend the OHU because of continuing periods of absence and when he subsequently spoke to the Inspector the latter informed him that he was happy with the reasons he had given and that he was aware of all his physical symptoms. During cross examination the plaintiff accepted that, prior to his visit to the OHU, he had already recounted almost all of his symptoms to Inspector Edgeworth and he was unable to specify any additional information that had been conveyed to the Inspector by the OHU which ought to have remained confidential. In addition, this seems to me to have been an example of the OHU carrying out its function of monitoring persistent sickness absences which inherently involved reporting to the plaintiff's authorities. As such, it was quite distinct from confidential interviews with officers referred or self referring subsequent to traumatic events. The second example given by the plaintiff was said to have occurred in 1998 when, subsequent to a bowel operation, he attended the OHU to explain that his recovery had been set back as a result of damaging his stomach muscles when pushing a car into his garage. He said that when he subsequently spoke to Sergeant Saunders, his immediate

superior, he was surprised that the Sergeant was already aware of the set back to his recovery and the cause. Again, under cross examination, the plaintiff conceded that, prior to this attendance with the OHU, he had completed a routine absence monitoring document containing the same information for the benefit of his superiors. Ultimately the plaintiff accepted that in certain circumstances the OHU had a duty to report to his superior officers his progress in circumstances in which he had been absent from work for some time but maintained that his concern with confidentiality was a perception that was shared, in his opinion, by the majority of officers.

(viii) The plaintiff agreed that there had been problems in his first marriage almost from the start in 1982 and that there was something like half a dozen occasions upon which he and his first wife separated before finally going their separate ways in December 1987, apart from a short period of cohabitation in April 1988. However, he also maintained that a large factor in the break up was the psychological symptoms from which he had been suffering subsequent to the bombing in Ramoan Gardens in August 1987. His first wife was also a police officer and he agreed that the long hours of work were a factor but that his symptoms and behaviour outweighed all other factors. In cross examination he was asked about the account that he had given to Professor Fahy namely that the end of the marriage had been amicable break up possibly caused by their heavy work commitments. The plaintiff was quite unable to explain why the role of his psychological symptoms had not been recorded by Professor Fahy. He could give no reason why he would not have mentioned his symptoms but he was reluctant to say that he had referred to them but that they had not been recorded by Professor Fahy. He referred to the length of his interview with Professor Fahy, he said that he had been under "extreme pressure" when speaking to Professor Fahy, that he could not stop talking and that he was saying so much that it might have been difficult for any one to make a record. He also referred to the fact that he had to travel to London to see Professor Fahy and that on the day he arrived the building had been evacuated. On the other hand he agreed that Professor Fahy had impressed him as a "very nice man" who did his best to make him feel at ease. I note that the plaintiff does not appear to have alleged to Dr Higson that his psychological symptoms played any significant part in the break up of his first marriage.

(ix) On 9th November 1997 the plaintiff had to undergo a serious bowel operation as the result of which he was absent from work from November 1997 to April 1998. On 23rd March 1998 the plaintiff was required to attend Dr McCaughan at the OHU for an assessment of his condition after a prolonged period of absence. Dr McCaughan appears to have assessed him as fit to return to work on restrictive duties on 6th April 1988 with a view to reviewing his condition in November. When the plaintiff returned for review by Dr McCaughan in November he said that he asked for a further 3 months of restrictive duties but that Dr McCaughan told him that such an option was

not open since he did not think that his condition was going to change. According to the plaintiff, a conversation then took place in which Dr McCaughan indicated that if he remained unfit for full duties he would have to refer his case to personnel who would decide with regard to a permanent medical discharge. The plaintiff said that he talked this information over with his wife and that about 4 weeks later he took it upon himself to ring Dr McCaughan and inform him that he was reporting fit for full time duty. According to the plaintiff Dr McCaughan then agreed that he would record that a change of diet had been successful. I fail to understand why the circumstances of this event were put forward by the plaintiff in support of his concerns about the confidentiality and independence of the OHU. The plaintiff himself accepted that even on his own version of this event, Dr McCaughan appeared to be affording him some protection. In fact, the attendance notes made by Dr McCaughan on 11th November 1998 record that the plaintiff volunteered that he would definitely be fit in 2 months although he thought that his abdominal wall was weak. Dr McCaughan tried to reassure him and fixed a review in 3 months time. On 17th November 1998 Dr McCaughan wrote to the deputy head of personnel referring to his review of the plaintiff on 11th November and noting that:

> "He (the plaintiff) seems to be managing his current duties satisfactorily but I am still hesitant to say that he is fully fit for normal duty once again. He is improving with time and I would suggest a further review in 3 months to assess his progress then. In the meantime he ought to avoid confrontational situations and out door operational duties."

In such circumstances, since he had acceded to the plaintiff's request to grant a further 3 months on restricted duties, I can see no reason whatever for Dr McCaughan to have made up the story about a miraculous new diet whether or not to protect the plaintiff and I reject the plaintiff's version of this event. His attempted to explain the matter when confronted with the contemporaneous notes and correspondence from Dr McCaughan in my view, simply reinforced the impression that he was willing to say virtually anything to support his case.

(x) The plaintiff maintained that he did not tell his wife anything about the psychological symptoms from which he had been suffering until January 2004 although he had told her that he had been diagnosed as suffering from PTSD after being seen by Dr Higson for his own solicitors in December 2001. This evidence was corroborated by his wife and, while it might be possible to understand why the plaintiff would not have wished to go into the details of the traumatic incidents, the defendant makes the case that the failure to explain the nature, effects and symptoms of PTSD to his wife is simply not credible. I bear in mind that, in the course of giving her evidence, the plaintiff's wife did describe unusual elements of his behaviour almost from the time of their

marriage including, for example, an obsession with security that involved taking his gun everywhere, hyper vigilance, significant mood swings, irritability and a short temper, withdrawal into a darkened room upon occasions and nightmares in which he perspired profusely, screamed and would sit up in bed. She also said that she had become concerned about the amount of alcohol that he consumed and that she tended to think that some of his behaviour was her fault because she had done something wrong or made him cross. She said that when her husband informed her that he had been diagnosed with PTSD he gave her a brief outline of the condition and how it made the victim react but that she did not ask him what the effects were or how they applied to him. She said that she did not suggest that he should consult his GP because that was "up to my husband" who was a forty year old man and she did not think that it was "anything that I should be concerning myself with." Even after allowing for the domestic situation, I found this evidence difficult to accept particularly in the context of the conduct which she had earlier described and the fact that she had been informed that her husband was suffering from a specific mental disorder. She said that she still did not suggest that he should consult his GP despite the fact that he appeared to be deteriorating with the winding down of the Andersonstown police station. At one stage she said:

> "I didn't understand the way my husband was behaving, I didn't know what it was, why he was behaving like that. I mean I don't think that I attributed the PTSD to be husband's behaviour, I didn't know really anything about it".

At a later stage she appeared to suggest that she might not have noticed the full significance of her husband's symptoms because, initially, she worked full time and her husband worked long hours and, subsequently, she became involved with the children. In my view, that was an explanation lacking in credibility.

(xi) Between September and October 2003 the plaintiff completed a tiling course and from 14th January to 31st March 2004 he took part in a 10 week plumbing course. Both courses were funded by PRRT and took place at Castlereagh College. The courses involved both the theory and practice of the relevant trades. In the course of completing the enrolment forms for each course the plaintiff indicated that he was not suffering from any disability or medical condition which would affect his studies and that he would not require any additional support human or technical. In evidence the plaintiff told me that he couldn't tile and cut his hands because of the physically restricted movements of his back and neck. He did not record any such restrictions when completing the enrolment form for the plumbing course. Furthermore, in May 2004 the plaintiff completed an application for disability living allowance. In the course of completing this application the plaintiff described himself as suffering from PTSD and assorted disorders, damaged/worn discs in his neck,

middle and lower back, hearing loss, pain/injuries in his shoulders, arms and elbows to finger tips, hips, both knees requiring surgery, weak ankles, haemorrhoids, diverticulitis of the bowel and eczema caused by stress. He described how, as a consequence of PTSD and associated behaviour disorders, he required his wife to accompany him in areas where there were congregations of people, that he was claustrophobic and unable to use lifts or stairs, that he suffered from frequent panic and anxiety attacks, irrational behaviour, confusion and inability to concentrate. He said that he needed the attendance/support of his wife in strange and familiar environments to control his irrational behaviour, bouts of anger and panic. In response to a question seeking how far he could walk before feeling severe discomfort the plaintiff stated that would depend on the situation and very often was immediate. He said he couldn't walk comfortably or at all in the situations that he had already described. He claimed that he fell or stumbled roughly three times a week and sometimes daily. He also claimed that he had great difficulty and required assistance getting into and out of some cars, that he could not stand for any length of time due to pain in his back and neck and that he needed assistance to get in and out of the bath. He had difficulty with stairs because of his bad knees and that numbness and pain in both hands together with a lack of control and sensitivity meant that he could not properly cook or cut up his food. He stated that he could not open jars or bottles by himself. He claimed that the pains in his hands also prevented him from lifting pans and that he was unable to use utensils or peel potatoes. When the plaintiff was asked to reconcile this litany of complaints and, in particular, the alleged physical disabilities and limitations with the enrolment forms and completion of the tiling and plumbing courses his reaction was to maintain that there were aspects of the course that he couldn't do because it was "just beyond me". He said that to be honest, he went to the course more for the camaraderie of those involved and that two of the people turned out to be known to him from service in B division. However he was unable to explain why he did not inform those running the courses and, in particular, the plumbing course of his multiple restrictions at the outset. When he was asked to reconcile the nature and extent of those restrictions with his history to Anne McKenny in the report of 19th August 2004 that he had recently started playing golf again the plaintiff maintained that Anne McKenny had got that wrong and that while he had joined a golf club upon her advice he had not been playing golf in August 2004. He did concede that he had been playing golf in 2005 in an adult and child competition with his daughter at Larne golf club. I am satisfied that when he completed the application form for disability living allowance the plaintiff exaggerated his physical disabilities in particular and that he did so for the purpose of obtaining monetary benefit. In that context I note that as early as 26th July 1996 the plaintiff's GP recorded his concern that the plaintiff was putting on symptoms slightly and that in the course of a medical report submitted by Mr Boal in furtherance of a claim for insurance Mr Yeates FRCS formed the overall impression that the plaintiff's subjective level of apparent disability was much higher than justified by the facts. Despite the claimed

hearing loss, Mr Yeates noted that the plaintiff was able to hear him quite easily using a normal voice at a normal conversational distance and concluded that he would have no difficulty in answering the telephone or taking a message. His handwriting while not particularly clear was reasonably legible and the plaintiff was obviously able to read a daily newspaper. Mr Yeates was not able to discern any reason why the physical difficulties would prevent the plaintiff from walking further than 200 to 300 yards and he was not convinced that his inability to pick up an object from the floor during his assessment was entirely genuine. Mr Yeates reached the conclusion that the plaintiff was quite capable of performing all of the ability tests listed in the insurance company's instructions.

[7] **The Medical Evidence**

Overall I preferred the evidence of Professor Fahy to that of Dr Turner and Dr Higson. Dr Higson did not have the benefit of hearing the plaintiff give evidence and be subjected to cross examination but Dr Turner did although he adhered to the view that credibility was strictly a matter for the court. I preferred the approach of Professor Fahy who stated that:

> "If one is to arrive at a confident clinical diagnosis, one has to first of all weigh up the reliability of the account that the patient gives of their symptoms. It is an inevitable part of any detailed clinical assessment, more so in a medico legal setting, even more so when there are a number of concerns that are raised in the review of the documents or the clinical interview. I fully accept that it is a matter for the court to come to a final judgment on this matter, but as a clinician, I think it is a legitimate area of comment."

One of the factors relied upon by Dr Turner in support of the reliability of the plaintiff's history was the existence of "hot spots" in his evidence when he was obviously emotionally affected by recalling one or more traumatic incidents. However, as Professor Fahy said, triggered distress is still distress and I have no doubt that most normal humane individuals, not suffering from any traumatic mental symptoms, would show visible signs of emotional distress if asked to recall the sort of events experienced by this and other plaintiffs. Chief Inspector Johnston was similarly emotionally affected during his evidence when recalling his involvement after the horrific murder of constable Beacom in 1994, a development which took him by surprise since he had not considered that he needed the assistance of the OHU at the material time. In his case the stress score in the health screening process that he underwent in February 1995 provided objective corroboration that he was not suffering from any stress related condition. In my view this was a case in which there was a risk of over pathologising the evidence on behalf of the plaintiff and I was not satisfied that

Dr Turner adopted a sufficiently robust approach. For example, Dr Turner sought to explain the absence of complaints about psychological symptoms in the GP notes and records by suggesting avoidance on the part of the plaintiff Such an explanation might have been plausible prior to the plaintiff's examination and cross examination. However it became clear from his evidence that, so far from making the case that he was not revealing his difficulties to the GP, the plaintiff maintained that not only did he recount his symptoms to his doctor but that he received medication for them and the absence of any record of either was to be laid at the door of the GP. As a response to this somewhat unusual evidence Dr Turner offered the comment that the plaintiff's GP appeared to have a "curious style" in so far as his record comprised several entries in the middle of the page where there was simply a date and there were one or two cases where there was a certificate but he had been unable to find evidence of a corresponding entry. He accepted that it was more difficult to deal with the plaintiff's evidence that he had been prescribed medication without an entry in the records but offered the explanation that, in "this was a period before there was so much litigation" GPs may well have seen people "for what they might call personal reasons and not keep a full record." He told me that, even today, he encountered GP records in which the entry simply amounted to the word "chat" which indicated that there had been a personal discussion but the GP had not wanted to make an entry. He accepted that no such entries occurred in the plaintiff's GP records and said that "It wouldn't be common in this era". I do not wish to misinterpret Dr Turner in relation to this case and I accept that he was both professional and meticulous in his concern not to trespass upon the court's responsibility for the ultimate assessment of the credibility of a witness. However, he did leave me with the impression that he had started with the clinical assessment of a plaintiff who presented with PTSD and, having formed that assessment, and accepted that the plaintiff had been exposed to traumatic events, he tended to prefer an interpretation of the evidence that would be consistent with the plaintiff's case.

[13] For example, Dr Turner confirmed his opinion that, on the basis of his symptom profile, the plaintiff had suffered PTSD from the date of the incident at Carnan in June 1977. He referred to the plaintiff's description of nightmares and sleep disturbance but said that he was more impressed by the change in his social world and the problems at work which he felt had been supported by Sergeant Hanvey's evidence. He considered that this was consistent with a diagnosis of PTSD. Dr Turner said that his understanding of Sergeant Hanvey's evidence was that there was evidence of change and evidence of impairment. To an extent that was accurate but did not take account of the fact that Sergeant Hanvey had also confirmed that his appraisal of the plaintiff six months after the incident at Carnan had not revealed any lack of enthusiasm or decline in ability and that the obvious signs which the Sergeant had noted in June 1978 occurred after the plaintiff had been involved in disorderly behaviour towards the end of 1977 and convicted in mid 1978. That incident

and the subsequent conviction were the factors specifically mentioned by the plaintiff's Chief Inspector as being the possible cause for the deterioration prior to the June 1978 appraisal. Sergeant Hanvey was unconvincing in cross examination about any conversations that he might have had with the plaintiff during this period and accepted that the obvious signs of deterioration had occurred during the interval occupied by the offence and subsequent prosecution to conviction. In addition, the entry made by the plaintiff's Inspector referred to a conversation with Sergeant Hanvey who is likely to have been the source of the information relating to the offence and subsequent conviction. Another example was Dr Turner's approach to the plaintiff's exaggeration of his physical symptoms. He initially referred to the plaintiff having been "up front" in saying that from 1977 he had used physical symptoms as a way of dealing with distress. That of course depends upon whether it is accepted that the plaintiff had been truthful about employing such a device. Dr Turner suggested that the plaintiff had developed a habit of "over stating or over-relying on" physical symptoms. In his opinion, that did not necessarily show that he had exaggerated psychological symptoms. He later went on to suggest that it was possible that the plaintiff had developed a habit or a behaviour in which he used physical symptoms as a way of trying to obtain relief from painful feelings. He thought that might have started in 1970s and he could not see any reason why it would have stopped. He accepted that he could not conceive of any way in which inclusion of the apparently exaggerated physical symptoms on the DLA application form could be seen as an escape from pain or a way of avoiding exposure of symptoms and was ultimately driven to postulating that the exaggeration of such symptoms had become a learned behaviour or habit. As a consequence of listening to the impressive range of professional expert evidence that has been called before me during the course of this litigation I have come to appreciate that the instinctive judicial reliance upon rationality may well not be the most appropriate analysis to apply in order to achieve useful comprehension of psychiatric theory and diagnosis. However, in relation to this aspect of the case in particular I preferred the approach of Professor Fahy when he said:

> "Psychiatrists are very familiar with patients presenting psychiatric symptoms in the form of physical symptoms. That isn't quite the same thing that is happening here where there seems to be in a sense a cruder form of exaggeration occurring, often in the context of an application for some form of credit, or benefit, so it is not really the same process as somatisation. In that sense I don't really accept Dr Turner's hypothesis and again I am wary about bending every item of information through the retrospectoscope to confirm with the diagnosis of PTSD".

The Occupational Health Unit

[14] The plaintiff conceded that he had been aware of the OHU and what it generally stood for from the time of its original institution and that he may well have read the implementing force order in the course of preparing to sit for his sergeant's exam in January 1987. His first attendance at the OHU was on 3rd October 1986 after a period of absence from work as a result of a back injury sustained as a result of a road traffic accident in January 1985. He was referred by his superiors who had been monitoring his absence but he accepted that he might well have been reminded by Dr Courtney upon that occasion that the OHU was confidential and that he could use the self referral facility. As a consequence of that referral steps were taken to ensure that he received appropriate treatment and his duties were rearranged to reduce the risk of aggravation of his back condition. While, initially, the plaintiff may have shared the perception of some other officers about the lack of confidentiality, I do not think that he continued to hold such a belief. I have dealt above with the two specific examples that he gave as evidence of breaches of confidence which appeared to me to be unconvincing once they were seen in context. The plaintiff's attendances, at least from 1986 onwards, would suggest that he did not entertain any persisting concerns about confidentiality. The plaintiff recalled being shown the stress awareness video by his inspector in Andersonstown and he accepted that he might well have received leaflets although he did not recollect the leaflets shown to him in cross examination.

[15] The plaintiff made the case that subsequent to his involvement in the explosion at Ramoan Gardens on 21st August 1987 he experienced persistent severe psychological symptoms. He attended his GP on 2nd September when it was recorded that he was complaining of tinnitus and that he had developed an anxiety state for which he was prescribed Inderal and Triazolam. Some 9 days later the plaintiff again attended his GP who recorded that he was feeling slightly better, sleeping better and not quite as anxious. The plaintiff was absent from work until 29th September during which time he furnished his superiors with medical certificates from his GP specifying an acute anxiety state thereby confirming that he had no qualms about disclosing such a condition. Some two weeks after his return to work, on 14th October 1987, the plaintiff completed a self appraisal in which he provided a frank assessment of working in the Andersonstown area indicating that, nevertheless, he was happy performing the duty in which he was currently engaged and felt he had the ability to work with little or no supervision. On 20th October 1987 the plaintiff's supervising inspector recorded the following assessment:

> "He recently escaped a murder attempt when a bomb was detonated as his patrol passed by. He is fully recovered and shows no ill effects, proof of his strength of character. Always respectful and well turned out, he is well liked by his fellows. He has

> good control over and rapport with the army. There are no problems with this man".

As a consequence of his involvement in the explosion at Ramoan Gardens the plaintiff made a claim under the Criminal Injuries Compensation legislation. In support of his claim the plaintiff's solicitors arranged for him to attend a psychiatrist and a report was duly submitted. However, the plaintiff accepted that he did not receive any compensation in respect of any alleged psychiatric symptoms. In his formal police statement dealing with this incident the plaintiff said that he had felt extremely shocked and had severe difficulty sleeping with constant nightmares for a period of two weeks.

[16] On 13 October 1987 the plaintiff was referred to the OHU as a consequence of his involvement in the explosion. This was in accordance with the procedure observed prior to the implementation of Force Order 14/88. An appointment was made for him to see Dr Courtney at the OHU on 4 November 1987. The plaintiff's evidence was that, prior to attending Dr Courtney, he had been drinking very heavily on a daily basis, that he was continuing to suffer from severe shock after the explosion, that he had reached a very low point in his life as a consequence of his psychological symptoms to the extent that he broke down in tears during the consultation. According to the plaintiff he "opened his soul" to Dr Courtney. He told him about the explosion while on patrol and gave a history of being involved in previous shootings and bombings. Dr Courtney noted difficulty in sleeping, nightmares upon an almost nightly basis and the fact that he was now very security conscious. The note also referred to the prescription from the GP and that the plaintiff was no longer on treatment. The note recorded that the situation was discussed a relaxation tape provided by way of treatment and a review arranged in two months time. I note that Dr Courtney does not appear to have considered that the plaintiff's condition warranted a recommendation to his GP that his medication should be renewed. At the conclusion of the appointment Dr Courtney wrote a note to the Chief Superintendent in Personnel Department indicating his desire to review the situation in two months. According to Dr Courtney the system with management referrals at that time was that after his report had been received he would normally have been sent an application for an appointment to be made from Personnel. This does not appear to have happened upon this occasion and no review took place. The plaintiff was clearly dissatisfied with his meeting with Dr Courtney and the provision of the relaxation tape but he was quite unable to explain why, given the fact that he felt that he had been treated badly; he did not again visit his GP who had previously treated him sympathetically and provided medication.

[17] In view of the conclusion that I have reached about the plaintiff's reliability and credibility I am not prepared to accept that he gave an account of any symptoms other than those recorded by Dr Courtney. I reject the

plaintiff's evidence that he broke down during the course of the interview. While Dr Turner thought that it would have been helpful, he did not criticise Dr Courtney for failing to record more detail about the duration of the plaintiff's symptoms or whether he had any symptoms relating to the earlier shootings and bombings to which he referred. Nor did Dr Turner criticise Dr Courtney for the decision to review the plaintiff in two months time. Dr Turner was not prepared to accept that the provision of the relaxation tape was an adequate intervention whether the plaintiff was actually suffering from PTSD at the material time or simply from some anxiety symptoms. This was not a view that was shared by Professor Fahy who expressed himself to be "frankly amazed" at the degree of criticism that provision of this tape to the plaintiff attracted both from the plaintiff and from Dr Turner. He accepted that it was not a definitive treatment for PTSD or any other complex psychiatric condition but, in his opinion, it constituted a sensible caring response and a reasonable preliminary action. Professor Fahy was fairly scathing in his response to Dr Turner's suggestion that the provision of a relaxation tape might induce an individual into such a state of relaxation that he or she would become flooded with intrusive memories a view which he castigated as "…. a fairly obtuse and highly theoretically driven criticism that doesn't really sit sensibly in day-to-day clinical practice, either in a psychiatric clinic or certainly Occupational Health Clinic." He agreed with Dr Turner that the failure to review the plaintiff as arranged amounted to bad practice.

[18] Having reviewed the evidence, I am satisfied that, at most, the plaintiff suffered from an acute anxiety state as a consequence of the explosion in Ramoan Gardens the symptoms of which were already tending towards improvement prior to his attendance at the OHU and which were likely to have been of little real significance by the intended review date. While the plaintiff may well have thrown the relaxation tape into a bin I think that it is probably more likely that he did so as a result of frustration at being referred to the OHU when his symptoms were improving to the extent that he had already ceased the medication prescribed by the GP rather than because of any failure on the part of Dr Courtney. The plaintiff does not appear to have had any reservations about referring himself to the OHU in April 1997 after the incident when he discharged his firearm. Upon that occasion he told Donna Andrews that he did not have any adverse reaction. Nor does the plaintiff appear to have raised any relevant symptoms with Dr McCaughan during his attendances in 1998. It does appear that the plaintiff was not referred to the OHU as required by the relevant Force Orders in respect of a number traumatic incidents but, on the basis of the evidence and, in particular, the GP notes and records, I think that it is unlikely that any such referrals would have resulted in interventionist treatment, given the absence of any relevant complaint by the plaintiff to his GP after September 1987, the relatively short-lived nature of such symptoms prior to 2000/2001 and his clear reluctance to seek any treatment even when he had been diagnosed as suffering from a mental disorder.

Alcohol

[19] Dr Turner expressed the view that one of the causes for the plaintiff's recourse to alcohol was to control his psychological symptoms. In giving a history to Dr Turner the plaintiff claimed that when he was stationed in Pomeroy he would drink half a bottle or a bottle of whiskey every night stating that his reason for doing so was because of the culture rather than because of sleeping problems. Again, it is important to bear in mind the issue of the plaintiff's reliability and I have already dealt with the inconsistent accounts that he gave from time to time about his drinking habits. Sergeant Hanvey provided the straightforward explanation that, at Pomeroy, he would not have expected his officers to go out and drink and socialise in the town which would have been far too risky. He said that, instead, they would tend to drink in the station as a group and that would become a focal point once work had been completed. Sergeant Hanvey tended to attribute any increase in the plaintiff's alcohol consumption partly to the environment in which the officers had to operate in Pomeroy and partly to his association with another officer whom he considered to be an alcoholic. Sergeant Hanvey was conscious that this association appeared to have occurred as the result of both officers being present in the station for significant periods of time. Sergeant Hanvey confirmed that he had several conversations with the plaintiff, that he himself was probably aware of the existence of the welfare service and that, had he been informed by the plaintiff of a problem with alcohol, he would definitely have suggested that he should consider contacting the welfare officer. During the course of his conversations Sergeant Hanvey, as the supervising officer, did not recall forming the impression that the plaintiff was either drinking excessively or that he had a serious health problem. Given the unpleasant and dangerous circumstances in which officers had to serve in Pomeroy, it is not difficult to understand how a young officer already prone to social drinking might have increased his consumption especially when associating with another older drinker. Alcohol may also have helped to reduce any anxiety symptoms resulting from exposure to the traumatic events that occurred during this period of service. However, I am satisfied that Sergeant Hanvey was aware of the potential problem and, had the plaintiff either made significant complaints or the difficulties become obvious, I am satisfied that he would have referred the matter to the welfare officer. The plaintiff's subsequent evidence about his alcohol consumption and the reasons therefore was neither reliable nor consistent and, in particular, I reject his allegations about regularly drinking on duty. The plaintiff conceded that Sergeant Megaughin knew him and his habits extremely well and the Sergeant's report of June 1980 indicated that his superiors were aware of his social life but that the Sergeant was satisfied that there was no reason to believe that it interfered with his ability to perform his police duties. In my view, it simply is not credible that a person who was drinking as heavily and as regularly as the plaintiff claims, including doing so on duty, would be

likely to attract appraisals and reports containing phrases such as "an asset to his section", "very sound operationally and can be relied on in a difficult situation", "reliable" and "professional in his day to day work while being sensitive to the needs and feelings of others".

General

[20] While I am prepared to accept that the plaintiff may have suffered symptoms amounting to some form of acute stress reaction subsequent to a number of the traumatic events to which he was exposed, I do not accept that those symptoms were either as significant or persistent as he has claimed. It is accepted that he currently does suffer from a significant mental disorder/disorders to which his exposure to traumatic events is likely to have contributed. Unfortunately, as a result of the unreliability of his evidence and the degree of exaggeration, it is difficult, if not impossible, to ascertain with any degree of accuracy the extent of that contribution or to arrive at any meaningful assessment of the intensity and persistence of any symptoms from which he did suffer. However, I am satisfied that major factors contributing to his present condition include the decline in his physical health in recent years, his exasperation with the changes in the police and the "peace process," the loss of his long-term employment and the degree of bitterness and disillusion that he feels towards his previous employers by whom he believes that he has been very unfairly treated. He described the news that Andersonstown station was closing as "devastating" and exacerbated by his rejection for a job which was given to a security man with much less impressive service. In addition there is his commitment to this litigation which has required him to be subjected to a number of very detailed prolonged and demanding medical examinations and which I believe he has come to see, to some degree, as a vehicle for restoring the injustice that he has suffered. It is accepted by all the medical experts that the CBT treatment that the plaintiff had been afforded at PRRT has been effective and that Mr Boal has responded reasonably well. The experts also agree that, in principle the earlier that treatment is commenced the more likely it is to be successful particularly in cases that become more complex over time with multiple causal factors. However for the reasons set out above I do not consider that he has established that any failure on the part of the defendant prevented earlier intervention.

[21] He should have received a follow up appointment after seeing Dr Courtney but the evidence from his GP records indicated that he was making a gradual recovery and he did not return to the GP after seeing Dr Courtney nor did he make any inquiries with the OHU about a review. It is clear that he was aware of the OHU and its services from an early stage and in my opinion any concern that he may have harboured about confidentiality did not last long.

[22] The plaintiff was aware of the existence of the OHU and the facilities that it provided from its inception and he agreed he was likely to have read the implementing Force Order. He first attended the OHU in October 1986 and again after being referred as a result of the Ramoan Gardens incident. He was not deterred by culture or confidentiality from raising some of his symptoms with Dr Courtney. In the circumstances I do not consider that it has been established that the failures identified in the generic judgement have caused him to sustain any material loss and his claim must be dismissed. There will be judgement for the defendant.