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*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:* 27/09/2018

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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BETWEEN:

MICHAEL QUINN

Plaintiff

and

MINISTRY OF DEFENCE

Defendant

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McALINDEN J

Introduction

[1] The Plaintiff, who was born on 2nd January, 1955, who resides with his wife in Rathfarnam in Dublin, and who had a long and successful career in banking, claims damages against the Defendant in respect of injuries suffered by him when, at the age of 17, he was shot by an unidentified soldier in Glenfada Park, Londonderry, on the afternoon of Sunday 30th January, 1972.

[2] I do not consider it necessary to set out in detail the events of that afternoon leading up to the shooting of the Plaintiff because of the manner in which the Defendant has chosen to meet and deal with this litigation and indeed all the cases brought by the surviving victims and the relatives of the deceased victims of Bloody Sunday. The Defendant accepts that this Plaintiff and indeed all the victims were innocent victims and has admitted assault, battery and trespass to the person and has not sought to raise any matter or issue by way of attempted justification for the actions of the soldiers in question nor has it sought to avail of any limitation defence which might otherwise have been available to it.

[3] At the time of these events, the Plaintiff was a lower 6th year student in St Columb's in Derry. He was studying History, English, and French to A Level. He

and several school friends decided to take part in the civil rights march planned for Sunday, 30th January, 1972. The Plaintiff's father who was a fitter employed by the Lough Swilly Bus Company also took part in the march but the Plaintiff was not with his father during the march.

[4] The Plaintiff remembers the march progressing along William Street until it was blocked at a barrier erected by the Security Forces identified as Barrier 14 on the map provided to the Court. He remembers that there was some stone throwing at this stage and water cannon being used by the Security Forces at this location and this resulted in him being drenched with water infused with a pink dye which was fired from the water cannon. He remembers being asked by a Mr Wray to help carry a banner for a short time which he did and he then remembers leaving this area and proceeding down Rossville Street as CS gas cannisters and rubber bullets were being discharged by the Security Forces at this time. At this stage he remembers putting a handkerchief over his mouth because of the gas.

[5] By the time the Plaintiff had reached the rubble barricade in Rossville Street which is also shown on the map, he remembers having heard shots and knew from the sound that they had been fired by the army. He also remembers seeing a soldier come from the back of one of the blocks of flats to the east of Rossville Street and raise his rifle in his direction and then reach into a pouch and take what the Plaintiff assumed was a bullet from the pouch and place this bullet in the breach of the rifle. The Plaintiff became very frightened at that stage and ran with others into Glenfada Park North which is to the west of Rossville Street and took partial shelter behind a wooden fence appertaining to one of the dwellings in Glenfada Park North.

[6] Whilst in this location he was photographed and the Court has been provided with a copy of that photograph. The Plaintiff is seen standing partially behind a wooden fence and in the foreground, Mr Wray is seen wearing a woollen hat and to Mr Wray's right a number of individuals are seen carrying a person who had been shot. This was Mr Michael Kelly who was killed that day and the Plaintiff, a 17-year-old school boy, of unblemished record and from a good family background, saw Mr Kelly being carried through Glenfada Park North, shortly after Mr Kelly had been shot.

[7] The Plaintiff remembers hearing quite a lot of shooting at this stage from the area of Rossville Flats and remembers a large number of individuals rushing into Glenfada Park North in an effort to flee from the shooting. The situation was confused but he remembers hearing shouting that soldiers were coming into Glenfada Park North and this engendered panic in him and many others.

[8] The Plaintiff decided to get away from this scene as quickly as possible and left the area of partial shelter beside the fence and ran towards an alley which led towards Abbey Park. Others also ran in this direction. As he was running towards this alleyway in a crouched position, the Plaintiff was struck by a bullet which was

fired by a soldier who was to the right of the Plaintiff. The bullet grazed the top of the Plaintiff's right shoulder and entered his right cheek, shattering his right cheek bone. It then passed through the Plaintiff's nasal passages and exited his face, just to the left of his nose.

[9] The Plaintiff's first appreciation of the fact that he had been shot was seeing a spray of blood, tissue and bone fragments exploding from his face. He stumbled but did not fall and all he could think about was making his way to the safety of the alleyway. He remembers the man who had asked him to help hold the banner earlier was beside him at this stage and he remembers this individual pitching forward and falling heavily to the ground, having been shot dead just a short distance away to his right. This was Mr Wray.

[10] With some assistance, the Plaintiff was able to make his way to Fahan Street West where he received first aid treatment from members of the Order of Malta. The Court has been provided with photographs of the Plaintiff both standing and lying on Fahan Street West whilst being given first aid. He remembers recognising two of the women giving him first aid as Mrs Lafferty and Ms Lynch. Because of the severity of his facial injuries, they did not recognise him and when he informed them who he was, he remembers one of the ladies saying to him: "Your mother will kill you."

[11] The Plaintiff was taken by car to a first aid post in St Mary's Primary School in the Creggan and he was then taken by ambulance to Altnagelvin Hospital. He remembers the ambulance being stopped by the Army but after some discussions with the crew, it was allowed to proceed to the hospital.

[12] The Plaintiff remembers scenes of chaos in the hospital that evening. He remembers medical staff expressing concern that his vision was at risk and bandages were placed over his face including his eyes. He remembers medical staff querying whether he had been shot with a shotgun. He received the last rites from a priest. His father attended the hospital that night but his mother was too distressed to attend the hospital at that time. It was some days before his mother could bring herself to attend the hospital and then she was unable to hide her considerable distress from her son.

[13] The Plaintiff was operated on by Mr Harvey, FRCS, Consultant ENT Surgeon, on 31st January, 1972. The findings were of a large wound to the right cheek with considerable tissue deficiency. The anterior wall of the maxilla was largely missing and fragments of bone, subcutaneous tissue and foreign bodies and what appeared to be lead pellets were lodged in the antrum. The medial wall of the antrum had been penetrated by an object which had passed through the anterior part of the nasal septum and damaged the left alar area of the nose on exit. The floor of the orbit appeared to be intact.

[14] The operation involved complete debridement of the wound with an antrostomy opening made into the nose. Various foreign bodies were removed, as were numerous fragments of bone. The skin edges were brought together with considerable difficulty. The Plaintiff was able to be discharged from hospital on 10th February, 1972 but his face was still swollen at that stage. During the time he was in hospital he was interviewed by two Police Officers on 7th February, 1972 but it is clear from the notes of that interview which have been provided that he was not accused of any wrongdoing by the Police Officers. Following his discharge from hospital, the Plaintiff was subsequently reviewed at hospital and on two separate occasions in later years the Plaintiff was seen by his General Practitioner who removed further foreign bodies from his cheek which had extruded from the subcutaneous tissues over time.

Injuries suffered by the Plaintiff

[15] The unchallenged medical evidence in the case consisted of medical reports from Mr Derek Gordon, FRCS, Consultant Plastic Surgeon, dated 5th November, 2015, Mr Sri Kamalarajah, Consultant Oculoplastic Surgeon, dated 6th August, 2018, Mr Ramzan Ullah, FRCS, Consultant ENT Surgeon, dated 29th August, 2018 and 10th September, 2018, Mr Padraig O Ceallaigh, Consultant Oral and Maxillofacial Surgeon, dated 19th June, 2018 and Dr Tanya Kane, Consultant Psychiatrist, dated 3rd February, 2015. In addition to these reports, the Court heard evidence from Mr Gordon which mainly concentrated on the availability, advisability and likely results to be achieved from fat grafting surgery even at this late stage.

[16] Following the Plaintiff's surgery, he was fit for discharge from hospital after 10 days and he was able to return to school after approximately 3 weeks. He was subject to outpatient review at the ENT Department in Altnagelvin but did not require any specific further surgical or medical intervention other than the removal of foreign bodies by his General Practitioner.

[17] The long-term sequelae of the physical injuries suffered by the Plaintiff can be described as follows:

(a) Significant but well healed scarring of the right cheek and to a lesser extent the left side of the nose.

(b) A large grossly depressed contour defect in the right side of his face due to considerable loss of bone and soft tissue in this area.

(c) Significant loss of bone in the right maxilla.

(d) Damage to the nasal septum with marked deviation to the right side.

(e) Damage to the nasal valve on the right side due to lack of support of same in the internal nasal structures or narrowing of the valve due to scarring consequent to his injury.

(f) Significant right sided nasal obstruction due to (d) and (e).

(g) Recurrent bouts of sinusitis.

(h) Drooping of the right lower eyelid and weakness of the muscle responsible for tight closure of the eye. Initially there was a complaint of excessive watering of the right eye and some double vision.

(i) Significant and uncontrolled twitching of the right lower eye lid. This problem gets worse as the day wears on.

(j) Weakness of the right upper lip to the extent that he has a lop-sided smile. The right side of the mouth cannot be elevated. This problem gets worse as the day progresses.

(k) Loss of sensation in the distribution of the maxillary branch of the trigeminal nerve on the right side i.e. over the right cheek.

(l) Naso-labial fold absent on the right side.

[18] The Plaintiff has suffered these significant sequelae since 1972, a period of over 46 years. It is clear that the Plaintiff has had great difficulty coming to terms with the degree of facial disfigurement he has suffered. This is clearly evidenced by the alacrity with which the Plaintiff has embraced the possibility of reconstructive surgery being performed even at this late stage. The nature and extent of this surgery was the subject of Mr Gordon's oral evidence, given on 25th September, 2018.

[19] Mr Gordon, FRCS, gave evidence to the effect that recent developments in surgical techniques meant that the Plaintiff could well benefit from the performance of fat grafting. He was at pains to point out that if successful, such a procedure would result in an improvement in the contour defect aspect of the loss of cosmesis suffered by the Plaintiff, but would not address any other aspect of the injuries suffered by the Plaintiff. In summary, the surgery would involve a procedure under general anaesthetic during which the defect in the cheek would be explored, adhesions in this area would be taken down to create a pocket for the graft, adipose tissue would be harvested by means of a trochar from the lower abdomen, the fat cells would be isolated from the donor extraction, these cells would then be inserted into the pocket in the cheek and although there would inevitably be some reabsorption of the graft following implantation (up to 50%), with a repeat procedure carried out six months later, the Plaintiff should expect to see a significant improvement in the contour defect which is currently very obvious.

[20] Mr Gordon, FRCS, was of the opinion that the risks associated with this procedure were not significant and that clear benefit could reasonably be expected to result from its performance. He was of the opinion that such an operation would not be carried out in an NHS setting within a reasonable timescale and that if the Plaintiff wished to have the procedure carried out he would have to fund it privately. The overall cost was estimated by Mr Gordon to lie in the region of £4,500 to £5,000, if performed in Belfast.

[21] The Defendant did not dispute the contents of any of the Plaintiff's medical evidence nor did the Defendant take any issue with the oral evidence given by Mr Gordon, FRCS. The only issue raised by the Defendant in respect of the nature and extent of the injuries suffered by the Plaintiff was in respect of the claim for a psychiatric injury and it is to that issue that I now turn.

[22] The evidence in respect of the development of a recognised psychiatric injury is contained in the medical report provided by Dr Tanya Kane and the oral testimony of the Plaintiff. The Plaintiff gave evidence on 25th September, 2018 without exaggeration or embellishment. It was clear, however, that the events of the 30th January, 1972, still caused the Plaintiff considerable distress and it was necessary for the Court to rise for a short while to enable the Plaintiff to regain his composure. The Plaintiff stated that following the incident and upon his return to school, he was dismayed when the principal of the school seemed more interested in ascertaining whether the Plaintiff had been throwing stones on the day in question rather than enquiring after his health. He gave evidence that he was able to continue with his studies but did not achieve the grades he had hoped to achieve. He obtained a grade A in History and grades D in English and French. He had expected a grade B in English. He gave evidence that he attended Coleraine University, commencing a Sociology and Social Studies Degree Course in the autumn of 1973.

[23] The Plaintiff's evidence was to the effect that he never settled in Coleraine, he became depressed, he was prescribed antidepressants by his General Practitioner and he took these for a short while. He left Coleraine University half way through his first year and then found employment for a number of months in a Social Security Office in Derry. Following discussions with a teacher at St Columb's, he applied for and obtained a place in the National University of Ireland in Maynooth. He commenced a three-year degree in Sociology and History in October, 1974. During this time, he met his future wife who was also studying at Maynooth. They were married in July, 1979. The Plaintiff graduated in 1977 and following some short-term courses and part-time work, he commenced a self-funded one-year MBA course in Trinity in September, 1978. This led onto his employment in the Banks Staff Relations Committee and a career in banking with the Ulster Bank and AIB, finishing his full-time career as Head of Rewards and Pensions in the AIB. After his retirement, he worked until recently as a Consultant in the banking sector.

[24] The medical report prepared by Dr Tanya Kane, dated 3rd February, 2015, confirmed that there were no GP entries relating to any difficulties or issues with the Plaintiff's mental health or wellbeing. When assessed by Dr Kane, the Plaintiff stated that he had been traumatised by the events of Bloody Sunday and that the aftermath had never gone away. He stated that he could become very emotional when thinking about the events of that day and he tended to avoid talking about the subject as he can become distressed. He still finds his facial injuries very difficult to deal with and every time he looks in a mirror there is a reminder of what happened on Bloody Sunday and this had a negative impact on his self-esteem and confidence. He described to Dr Kane and indeed gave clear and compelling evidence that he felt that the events of Bloody Sunday had a negative impact upon his career in banking in that he had been advised on two separate occasions that it was something he should not mention within his working circles. He described to Dr Kane and gave evidence how he felt he had been left with something he was unable to talk about and was stigmatised for. The Plaintiff described how he found the Widgery Tribunal and the Saville Inquiry and the subsequent press coverage difficult to deal with and he felt that this had a significant impact upon himself and his family.

[25] When assessed by Dr Kane, the Plaintiff gave a history of having developed a period of depression which lasted for a couple of months. He was prescribed antidepressants by his General Practitioner but only took these for one week. Dr Kane's account of the mental state examination carried out by her contains a finding that the Plaintiff became emotional when talking about Bloody Sunday and its aftermath. There was no evidence of any depressive or anxiety symptoms, no feelings of life not worth living or thoughts of self-harm and no evidence of psychotic features. He had a good insight into the impact of Bloody Sunday on his psychological wellbeing.

[26] In relation to the Plaintiff's personal injuries, the Defendant's challenge to the claim made by the Plaintiff was that there was no evidence that he had developed a compensatable psychiatric/psychological injury following the events of 30th January, 1972. In essence, it is argued by the Defendant that Dr Kane makes no diagnosis of a recognised psychiatric injury and the GP notes and records do not contain any entries which would support such a diagnosis and in the absence of such evidence, the Plaintiff's account of becoming depressed while at university in Coleraine and being prescribed antidepressants which were only taken for a week is clearly an insufficient evidential basis upon which to find that the Plaintiff did suffer a compensatable psychiatric injury which was caused by the events of 30th January, 1972.

[27] In addition to hearing from the Plaintiff, the Court heard evidence from the Plaintiff's wife Marie Quinn. She described her husband's reluctance to talk about his experiences with anyone other than family or close friends. She described his feelings of anger at how he had been treated; how he felt he was stigmatised as being a troublemaker as a result of being injured during Bloody Sunday. She described his

dismay at being advised not to mention this fact in banking circles as it could adversely impact upon his career and how in one particular instance a job opportunity which had been mentioned to him did not materialise after he had revealed to a senior bank official how he had been injured. She described how the Plaintiff could be really logical in his discussion of the subject then he could suddenly be overcome with a real sadness. She described how he was very protective of his children and feared for their wellbeing, knowing how quickly things can go badly wrong when young people are out and about.

[28] Mrs Quinn described how her husband was very reluctant to talk about his experiences prior to the outcome of the Saville Inquiry and did not want to become actively involved in the campaign for a fresh inquiry. However, following the complete exoneration of the Plaintiff and the other victims by Saville, Mrs Quinn described her husband as at last feeling free to talk about his experiences. He had finally been declared innocent.

General Damages

[29] The first task of the Court is to fairly and justly assess the level of compensation to be awarded to the Plaintiff for the injuries suffered by him on 30th January, 1972. The assessment by the Court is based on the present-day value of the injuries, taking into account the fact that the Plaintiff has experienced the permanent effects of those injuries for a period of over 46 years and will, subject to any amelioration of the contour defect brought about by successful fat grafting procedures, continue to experience these effects for the rest of his life.

[30] In assessing general damages in this case, the Green Book is of some limited assistance. The fourth edition was published on 4th March, 2013, over five years ago and a Committee chaired by Stephens LJ is presently looking afresh at the assessment of general damages in Northern Ireland and the outcome of that review with the publication of a fifth edition is awaited.

[31] The facial injuries suffered by the Plaintiff involve a severe loss of cosmesis in the form of scarring and a contour defect. They involve significant bony and soft tissue destruction. They involve nerve damage manifested by loss of sensation and impairment of muscle function. This gives rise to drooping of the right lower eye lid, uncontrolled twitching of the lower eye lid and an inability to voluntarily raise the right side of the mouth, a lop-sided smile and the loss of the naso-labial fold on the right side of the face. The Plaintiff also suffered a significant nasal injury with permanent damage to the nasal valve and septum, leading to right-sided nasal obstruction and recurrent sinusitis. Fat grafting, if it takes place, may and probably will improve the contour defect aspect of the loss of cosmesis. But no other treatment will improve the Plaintiff's appearance or symptomology. Fat grafting will involve two procedures necessitating the administration of a general anaesthetic on each occasion.

[32] Bearing in mind the guidance contained in Section 8 of the Green Book, sub-section A (b) "multiple fractures of facial bones involving some facial deformity of a permanent nature £28,500 to £50,000; sub-section A (c) serious nasal "fractures requiring a number of operations and resulting in permanent damage to airways and/or facial deformity £20,000 to £35,000"; subsection A (d) serious cheek "fractures requiring surgery but with lasting consequences such as paraesthesia in the cheeks or the lips and some element of disfigurement £17,500 to £35,000; and Section B (b) (ii) "severe facial scarring leaving moderate to severe permanent disfigurement £30,000 to £75,000"; and bearing in mind the need to ensure that when assessing the appropriate level of compensation, the Court must be careful not to doubly compensate the Plaintiff by simply aggregating figures extracted from the Green Book for various types of injuries where the descriptions of various injuries contain an element of overlap; and the Court must pay careful regard to ensuring that the overall award is not out of kilter with the suggested bands of compensation for other injuries which would be regarded as more serious; the Court in this instance finds that the appropriate award for the physical injuries suffered by the Plaintiff in this case, is £125,000.

[33] In reaching this figure, the Court concludes that it is likely on the balance of probability that the Plaintiff will undergo fat grafting and that this will bring about an improvement in the contour defect in the Plaintiff's cheek. However, the Plaintiff has had to live with that contour defect for 46 years and the surgery to improve this defect involves two operative procedures, with the administration of two general anaesthetics and as such the additional compensation payable for the pain suffering and loss of amenity inevitably resulting from these procedures substantially balances any reduction in compensation for the anticipated cosmetic improvement in later life.

[34] The Court has carefully considered the issue of whether the Plaintiff is entitled to compensation for the development of a recognised psychiatric disorder following the traumatic events of 30th January, 1972 and having listened carefully to the evidence of the Plaintiff and considered the contents of Dr Tanya Kane's psychiatric report, the Court is unable to conclude on the balance of probabilities that the Plaintiff did develop a recognised psychiatric condition which would be compensatable in law. However, it is clear that the Plaintiff was injured as the result of a deliberate act, a battery, perpetrated by a servant of the Defendant and the law is quite clear that unlike damages awarded for the tort of negligence, damages for the tort of assault/battery/trespass to the person can include damages for injury to the victim's feelings even in the absence of the development of a recognised psychiatric illness.

Injury to feelings and aggravated damages

[35] The first paragraph of Chapter 42 of McGregor on Damages states the law as follows:

> "In so far as an assault and battery results in physical injury to the claimant, the damages will be calculated as in any other action for personal injury. However, beyond this, the tort of assault affords protection from the insult which may arise from interference with the person. Thus, a further important head of damage is the injury to feelings, i.e. the indignity, mental suffering, disgrace and humiliation that may be caused. Damages may thus be recovered by a claimant for an assault, with or without a technical battery, which has done him no physical injury at all. There may be a basic award of damages for the injury to feelings and if the injury is aggravated by the defendant's conduct an additional award of aggravated damages or, as with many court awards, the two can be run together."

[36] In this case, the Plaintiff alleges that he has suffered a severe, intense and enduring injury to his feelings resulting from the deliberate and unlawful infliction of physical injury to the Plaintiff on 30th January, 1972 and that this injury to his feelings was increased and was all the more severe and enduring by reason of the flagrancy, malevolence and the particularly unacceptable nature of the assaulting Defendant's behaviour both on the day in question and for many years thereafter.

[37] In relation to claims for assault, battery and trespass to the person, the English Court of Appeal in the case of *Richardson v Howie* [2005] PIQR Q3 CA at 48 has stated that a Court:

> "… should not characterise the award of damages for injury to feelings, including any indignity, mental suffering, distress, humiliation or anger and indignation that might be caused by such an attack, as aggravated damages; a court should bring that element of compensatory damages for injured feelings into account as part of the general damages awarded. It is, we consider, no longer appropriate to characterise the award of the damages for injury to feelings as aggravated damages, except possibly in a wholly exceptional case."

Carswell LCJ giving the judgment in the Court of Appeal in Northern Ireland in the case of *Clinton v Chief Constable* [1999] NICA 5 gave the following guidance in relation to the award of aggravated damages in such cases:

> "The concept of aggravated damages first appeared as a defined element in an award of damages in Lord Devlin's speech in *Rookes v*

Barnard [1964] AC 1129, where he adopted the phrase to define an element of increase in previous cases which should not be regarded as exemplary damages in the proper sense. After espousing the idea in its Consultation Paper *Aggravated, Exemplary and Restitutionary Damages* (1993) that aggravated damages contain some punitive element, the Law Commission has now accepted in its Report on this topic (Law Com No 247, 1997) that they should not do so. This corresponds with the view which we expressed in this court in a fair employment case *McConnell v Police Authority* [1997] NI 244 at 255 that aggravated damages are purely compensatory and do not contain any punitive element.

The Law Commission at paragraph 2.4 laid down two basic preconditions for an award of aggravated damages:

(1) exceptional or contumelious conduct or motive on the part of a defendant in committing the wrong, or, in certain circumstances, subsequent to the wrong; and

(2) mental distress sustained by the plaintiff as a result.

We consider that this formulation is an accurate statement of the law. It finds support in the judgment of Lord Woolf MR in *Thompson v Commissioner of Police of the Metropolis* [1998] QB 498 at 514, where he stated that aggravated damages can only be awarded where "there are aggravating features about the defendant's conduct which justify the award of aggravated damages."

By way of example of such aggravating features in a case of wrongful arrest he specified –

"… humiliating circumstances at the time of arrest or any conduct of those responsible for the arrest or the prosecution which shows that they had behaved in a high-handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution."

[38] This Court is bound by the decision of *Clinton v Chief Constable* [1999] NICA 5 and the Court will now proceed to consider and assess the Plaintiff's claim for injury to his feelings and to determine whether a compensatory award should be made for injury to feelings and if so whether the compensation awarded to the Plaintiff should include any element of aggravated damages for mental distress suffered by the Plaintiff as a result of the exceptional or contumelious conduct or motive of the Defendant in committing the wrong and/or arising out of the Defendant's conduct thereafter.

[39] In examining the events of the day in question the Court has no hesitation in finding that the wrongful actions of the servants or agents of the Defendant on the day in question gave rise to emotions of extreme fear if not terror in the mind of the Plaintiff. While on Rossville Street, he saw a soldier raise a gun, place a bullet in the breach and aim the gun in his direction. He fled in fear of being shot and took partial cover in Glenfada Park North. While in that area he heard gunfire and he saw a man who had been shot being carried by others just a short distance from him. He saw a number of individuals rushing into Glenfada Park North and heard that soldiers were coming. He decided to run for safety. As he ran towards an alleyway, he was, without any justification or lawful excuse, shot in the face and saw a man running beside him shot dead.

[40] The Court has no hesitation in finding as a fact that the behaviour of the servant or agents of the Defendant responsible for these wrongful acts was exceptional and contumelious and was imbued with a degree of malevolence and flagrancy which was truly exceptional. In the immediate aftermath of this shooting, the Plaintiff aged 17 was aware of droplets of blood and fragments of bone and soft tissue exploding from his face. He was then met with the realisation that the facial injuries were such that two women who knew him did not initially recognise him. He encountered scenes of chaos on arrival at hospital. He was made aware that his vision may be at risk and his face and eyes were covered in bandages for a period of time. He received the last rites. He then had to witness the extreme distress of his mother when she came to see him in the hospital some days after his injury. Having regard to this uncontroverted evidence, the Court determines that the Plaintiff's claim for injury to feelings for the events of the day in question and the immediate aftermath is clearly established in law and that the compensation to which the Plaintiff is entitled should include aggravated damages and the appropriate level of award is the sum of £25,000.

[41] As I have indicated above, the Plaintiff also alleges that the injury to his feelings was increased by the behaviour of the Defendant and its servants and agents in the many years after this incident right up to the conclusion of the Saville Enquiry in 2010. In essence, the Plaintiff's case is that even though he and those shot around and near him on the afternoon of 30th January, 1972, had not been involved in any wrongdoing, the Defendant, through statements made by senior military officers which were echoed by statements made by senior politicians in and outside parliament and expanded upon by documents produced by British Government information services in places as far afield as the United States, sought to widely promulgate a version of events which cast those that were killed and injured on Bloody Sunday as gunmen, nail-bombers or petrol-bombers who had engaged in a battle with the security forces. This attempt by the Defendant to justify the actions of its servants and agents caused significant additional injury to the Plaintiff's feelings.

[42] The Court was referred to transcripts of interviews of senior military figures, namely, General Ford and Colonel Tugwell, together with excerpts from Hansard containing speeches and statements made by Reginald Maudling, the then Home Secretary, and Lord Bainiel, a Minister of State in the Ministry of Defence, in the period immediately following the events of Bloody Sunday, and, having considered these documents, the Court concludes that the Plaintiff's claim in relation to the conduct of Defendant the during this period is made out.

[43] The Court is mindful of the fact that at no stage did the Defendant positively attempt to make an individual case against the Plaintiff that he was a gunman or a bomber. However, the version of events which was promulgated by the Defendant at that time, which was clearly intended to provide justification in law for the actions of its servants and agents, had the inevitable effect of casting a cloud of blame or guilt over the Plaintiff. This version of events was clearly perceived by the Plaintiff as having this effect and this greatly exacerbated the injury to his feelings at that time.

[44] The Plaintiff, in giving his evidence on 25th September, 2018, recounted how he co-operated with the Widgery Inquiry and gave evidence to the Inquiry when it heard evidence in Coleraine in the spring of 1972. In advance of the publication of the findings of the Widgery Inquiry, the Plaintiff stated he remembers he had no confidence in the ability of the Inquiry to get to the truth of what happened on Bloody Sunday and he regarded the report when published as "a whitewash".

[45] Turning to the findings of Lord Widgery, in paragraph 10 of his Summary of Conclusions, Lord Widgery found that,

> "… none of the deceased or wounded is proved to have been shot whilst handling a firearm or bomb. Some are wholly acquitted of complicity in such action; but there is a strong suspicion that some others had been firing weapons or handling bombs in the course of the afternoon and yet others had been closely supporting them."

[46] In paragraph 8, he stated that: "At one end of the scale, some soldiers showed a high degree of responsibility, at the other, notably in Glenfada Park, firing bordered on the reckless."

[47] In paragraph 96 of the main body of the report, Lord Widgery stated:

> "Civilian, as well as Army, evidence made it clear that there was a substantial number of civilians in the area who were armed with firearms. I would not be surprised in the relevant half hour as many rounds were fired at the troops as were fired by them."

It is worthy of note that Lord Widgery found that 108 live rounds were fired by soldiers that afternoon.

[48] In relation to the events in Glenfada Park, Lord Widgery in paragraph 85 of the main body of the report stated:

> "It seems to me more probable that the civilians in Glenfada Park were running away than that they were seeking a battle with the soldiers in such a confined space. It may well be that some of them had been attacking the soldiers from the barricade, a possibility somewhat strengthened by the forensic evidence….two experts agreed that the results of the tests on Wray were consistent with his having used a firearm. However, the balance of probability suggests that at the time when these four men were shot, the group of civilians was not acting aggressively and the shots were fired without justification."

[49] The Plaintiff's case, put succinctly, is that the version of events put forward in evidence at the Widgery Inquiry by the servants or agents of the Defendant, namely, that the soldiers had only opened fire after coming under sustained attack from gunmen and nail-bombers and had only fired aimed shots at those engaging them with such weapons was a lie made up in order to provide legal justification for their actions and that this was accepted by Lord Widgery and that this lie was not finally exposed as being untruthful until Lord Saville conducted his Inquiry which reported in 2010. Between 1972 and 2010 the Plaintiff lived under a cloud of suspicion of being engaged in serious wrongdoing on the day he was shot because although none of the deceased or wounded was proved to have been shot whilst handling a firearm or bomb and some were wholly acquitted of complicity in such action, there remained a strong suspicion that some others had been firing weapons or handling bombs in the course of the afternoon and yet others had been closely supporting them.

[50] It is the Plaintiff's case that this lie resulted in an enduring injury to the Plaintiff's feelings during this time. He was very reluctant to discuss with others how he was injured. I interpret the Plaintiff's evidence to mean that in the context of his work in the banking sector, when he was advised twice that he should not reveal the circumstances in which he was injured to others in that sector, he interpreted this advice to mean that revealing this fact to others, would, at least in some circles of the banking industry, have resulted in those individuals considering that he had been guilty of significant wrongdoing. This caused the Plaintiff significant and enduring feelings of anger, upset and distress.

[51] The case made on behalf of the Plaintiff is that this cloud of the suspicion of wrongdoing hung over him until the findings of the Saville Inquiry were made public in 2010. However, even at that Inquiry, as is demonstrated by the contents of

the transcript of the opening statement made by Mr Glasgow QC on behalf the military personnel who engaged with the Inquiry, the case made by military personnel to Lord Saville was that "What the soldiers did on Bloody Sunday was done in reaction to mob violence and sustained and physical serious attacks." He went on to state that: "those who fired live rounds will say without exception that they aimed and shot at, and only at, those who they believed to be using firearms or to be threatening lethal violence to them or to others." See page 206 of the agreed Trial Bundle.

[52] The Defendant, in answer to Plaintiff's case, points out that ex gratia payments were made to the living victims and the relatives of deceased victims by the Defendant in 1974. Also, in 1974 the UK Government made a statement that those killed in Bloody Sunday should be regarded as innocent of any allegation that they were shot whilst handling firearms or explosives. This was reiterated in a letter written by the then Prime Minister John Major to John Hume MP in December, 1992. The Defendant also sought to rely upon the statement of the then Prime Minister Tony Blair in the House of Commons on 29th January, 1998 when he announced the setting up of the Saville Inquiry. However, this statement only serves to reinforce the evidence given by the Plaintiff as to the effects of the findings of the Widgery Inquiry. In that statement the then Prime Minister stated that Lord Widgery:

> "… produced a report within 11 weeks of the day. His conclusions included these: that shots had been fired at the soldiers before they started the firing which led to the casualties; that for the most part the soldiers acted as they did because they thought their standing orders required it; and that whilst there was no proof that any of the deceased had been shot whilst handling a firearm or a bomb, there was a strong suspicion that some had been firing weapons or handling bombs in the course of the afternoon."

[53] This is precisely the case being made out by the Plaintiff. In essence, the Widgery report, cast a cloud of suspicion of wrongdoing over the Plaintiff which was due to Lord Widgery's acceptance of lies told by the soldiers involved in Bloody Sunday. That cloud of suspicion was still hanging over him when the setting up of the new Inquiry was announced in 1998 and that cloud of suspicion remained in place until Lord Saville produced his report.

[54] The Court finds that conduct of the Defendant's servants and agents during the period between 1972 and 2010 in persisting with this lie in order to provide justification in law for the acts of the soldiers who opened fire on civilians on Bloody Sunday is unacceptable conduct of such flagrancy and malevolence as to justify an award of aggravated damages. Having regard to the evidence of the Plaintiff and his wife, the Court finds as a fact that the Plaintiff did suffer significant injury to his feelings during this prolonged period and that in the circumstances of this case, an

award of £38,000 aggravated damages should be made for the injury suffered during this period.

Exemplary Damages

[55] In the Court's assessment of whether in law an award of exemplary damages is appropriate in the particular circumstances of this case, the Court has obtained great assistance from the thorough and well-reasoned skeleton arguments drafted by Senior Counsel instructed by the Plaintiff and the Defendant and the Court has also been very greatly assisted in its deliberations by the comprehensive and well structured oral submissions of Mr Fee QC for the Plaintiff and Mr Ringland for the Defendant.

[56] As a result of the decision of the House of Lords in *Kuddus v Chief Constable of Leicestershire* [2002] 2 AC 122 it is clear that awards of exemplary damages are possible across the whole range of tort. Provided always that there is unacceptable behaviour on the part of the Defendant, behaviour that displays features which merit punishment by way of malice, fraud, cruelty, insolence and the like, behaviour referred to, where it is the conduct of government servants that is in issue, as oppressive, arbitrary or unconstitutional, there is no tort where a claim for exemplary damages will not be permitted. It is the character of the Defendant's behaviour rather than the cause of action sued upon which determines whether exemplary damages are appropriate.

[57] The issue of the award of exemplary damages in Northern Ireland was addressed by the Northern Ireland Court of Appeal in the case of *Clinton -v- Chief Constable of the Royal Ulster Constabulary* [1999] NI 215. In his judgment, Carswell LCJ stated that:

> "The limits within which exemplary damages can be awarded were laid down by Lord Devlin in his speech in the House of Lords in *Rookes -v- Barnard* [1964] AC 1129, and although these have been the subject of much judicial and academic discussion since then they remain fixed and have to be applied in this court.
>
> Before the decision in *Rookes -v- Barnard* exemplary damages had been fairly freely awarded, as they still are in some other common law jurisdictions. It is clear from his speech that Lord Devlin regarded punitive damages as anomalous, in that they confuse the criminal and civil functions of the law. He would have been ready to abolish them, if he had not felt constrained by long-standing precedents to allow their continued existence, albeit in a substantially more restricted form. He reclassified some apparently punitive past awards as compensatory, terming them aggravated damages. He

was left with three categories of case in which it is still possible for a court to make an award of exemplary damages:

(a) oppressive, arbitrary or unconstitutional action by servants of the government;

(b) wrongful conduct which has been calculated by the defendant to make a profit for himself which may well exceed the compensation payable to the plaintiff; and

(c) where such an award is expressly authorised by statute.

The second and third categories are not in point in the present appeals and if exemplary damages can properly be awarded in either case it must be under the first head.

Lord Diplock cast doubt in *Cassell & Co Ltd -v- Broome* [1972] AC 1027 at 1130 on the necessity for retaining the first category in modern law, pointing out that in view of the development of common law weapons to curb excesses of executive power it is a blunt instrument to use for this purpose today. He also observed that it was Lord Devlin's intention in *Rookes -v- Barnard* to remove from the categories of exemplary damages cases of outrageous or arrogant behaviour, which can adequately be dealt with by resort to the concept of aggravated damages. He recognised, however, as we must, that the first category remains part of the established law. That is not to say that modern courts should be too ready to award exemplary damages for torts which can be classified as falling into this category, for it lies within their discretion to decide in which cases they think it right to do so, and it is, as Lord Devlin said in *Rookes -v- Barnard* at page 1228, a weapon to be used with restraint. The purpose of retaining the first category of exemplary damages is to vindicate the strength of the law and to compel servants of the government (who for present purposes include the police) to be mindful of their obligation to use their power properly in the service of the public whose servants they also are (ibid at page 1226). The exemplary principle can, as Lord Devlin said (ibid at page 1223) serve a valuable purpose in restraining the arbitrary and outrageous use of executive power. The passages which we have quoted give a tolerably clear indication of the type of case in which a court might think it right to award exemplary damages. We agree with the opinion expressed in McGregor on Damages, 16th ed, para 447, that notwithstanding the statement in *Holden -v- Chief Constable of Lancashire* [1987] QB 380 at 388 that unconstitutional action alone may suffice to ground an

award of exemplary damages, that should not suffice without the presence of aggravating features. As the learned author says –

> 'a central requirement for exemplary damages has always been the presence of outrageous conduct, disclosing malice, fraud, insolence, cruelty and the like.'"

[58] In *Lumba v Secretary of State for the Home Department* [2011] UKSC 12 Lord Dyson stated at paragraph 150:

> "The relevant principles are not in doubt. Exemplary damages may be awarded in three categories of case: see per Lord Devlin in *Rookes v Barnard* [1964] AC 1129. The category which is relevant for present purposes is that there has been "an arbitrary and outrageous use of executive power" (p1223) and "oppressive, arbitrary or unconstitutional action by servants of the government" (p1226). In this category of case, the purpose of exemplary damages is to restrain the gross misuse of power: see *AB v South West Water Services Ltd* [1993] QB 507, 529F per Sir Thomas Bingham MR. It must be shown that the "conscious wrongdoing by a defendant is so outrageous, his disregard of the plaintiff's rights so contumelious, that something more [than compensatory damages] is needed to show that the law will not tolerate such behaviour" as a "remedy of last resort": see per Lord Nicholls *Kuddus v Chief Constable of Leicestershire Constabulary* [2002] 2 AC 122 at para 63."

[59] In so far as the object of exemplary damages is to deter, the calculation of the amount to be awarded must clearly be based on criteria different from those employed in the calculation of compensatory damages. Various criteria have been advanced, and some accepted, as relevant to the calculation. In particular, in *Rookes v Barnard* [1964] A.C. 1129 at 1227 to 1228, Lord Devlin, speaking for all their Lordships, stated three considerations which should always be borne in mind when awards of exemplary damages are in issue.

[60] Lord Devlin's first consideration was that a claimant cannot recover exemplary damages unless he is the victim of the punishable behaviour. It should be noted that section 14(2)(a)(i) of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 specifically precludes an award of exemplary damages in an action brought on behalf of the estate of a deceased person.

[61] Secondly, in *Rookes v Barnard* [1964] A.C. 1129 at 1227 to 1228, Lord Devlin considered that awards of exemplary damages should be moderate. Some of the awards that juries have made in the past seemed to him:

> "to amount to a greater punishment than would be likely to be incurred if the conduct were criminal; and, moreover, a punishment imposed without the safeguard which the criminal law gives to an offender. I should not allow the respect which is traditionally paid to an assessment of damages by a jury to prevent me from seeing that the weapon is used with restraint. It may even be that the House may find it necessary to follow the precedent it set for itself in *Benham v Gambling* [1941] AC 157 and place some arbitrary limit on awards of damages that are made by way of punishment. Exhortations to be moderate may not be enough."

[62] In the context of claims for false imprisonment and malicious prosecution, wrongful arrest and assault, the Court of Appeal in England, in two cases heard together, *Thompson v Commissioner of Police of the Metropolis* and *Hsu v Commissioner of Police of the Metropolis* [1998] QB 498 CA emphasised the need for moderation in awards of exemplary damages. For the jury's award of £200,000 exemplary damages in *Hsu*, £15,000 was substituted; in *Thompson* £25,000 was preferred to the jury's £50,000, the jury's total award being upheld only because the Court of Appeal increased the compensatory award by nearly £20,000. Lord Woolf, delivering the judgment of the Court, said at page 517 C:

> "Where exemplary damages are appropriate they are unlikely to be less than £5,000. Otherwise the case is probably not one which justifies an award of exemplary damages at all. In this class of action the conduct must be particularly deserving of punishment for an award of as much as £25,000 to be justified and the figure of £50,000 should be regarded as the absolute maximum, involving directly officers of at least the rank of superintendent."

[63] In the case of *Muuse v Secretary of State for the Home Department* [2010] EWCA Civ 453 CA where there had been outrageous abuse of executive power a false imprisonment award of £27,500 was made and upheld by the Court of Appeal.

[64] However, in Northern Ireland the Court of Appeal in the recent case of *Flynn* v Chief Constable [2017] NICA 13 referring to the *Thompson* and *Muuse* cases in support of a submission that the monetary limits on awards of exemplary damages was clear, had the following to say at paragraph 27:

> "…we do not see that the English cases referred to us regarding exemplary damages form a binding code in terms of the level of achievable damages. We consider that there is a valid argument that the subject matter of these proceedings extends beyond those bounds."

[65] The third consideration discussed by Lord Devlin was the means of the parties. This is important to deterrence. Clearly, a small exemplary award would go unnoticed by a rich defendant while even a moderate award might cripple a poor defendant, so that for the size of the defendant's bank balance to influence the size of the award is fully appropriate.

[66] The parties' conduct has also been taken into account in the past and, though unmentioned by Lord Devlin, would appear to remain today a relevant consideration in assessing exemplary damages. Thus, the Court may take into account, according to the decision in *Praed v Graham* (1890) 24 Q.B.D. 53 CA (libel) the conduct of the defendant right down to the time of judgment, and also, according to the view expressed in *Greenlands v Wilmshurst* [1913] 3 K.B. 507, especially at 532 (libel), the conduct of the defendant's counsel at the trial. An apology by the defendant in the witness box would make a difference in his favour, according to Singleton LJ in *Loudon v Ryder* [1953] 2 Q.B. 202 CA at 207 (assault) while persistence in the charge might increase exemplary damages. An important factor in the trial judge's decision to award an exemplary £60,000 in *Ramzan v Brookwide Ltd* [2011] 2 All ER 38 was the defendant's conduct in deliberately expropriating the claimant's property, a most serious type of trespass, followed by no contrition, no apology and attempted cover-up by lying in evidence.

[67] Similarly, the conduct of the claimant may be material to the assessment. In two cases involving police misconduct heard by juries and then together by the Court of Appeal, *Thompson v Commissioner of Police of the Metropolis* and *Hsu v Commissioner of Police of the Metropolis*, Lord Woolf MR, delivering the judgment of the Court, said at [1998] QB 498 CA at 517D that in an appropriate case the jury should be told that any improper conduct of the claimant can reduce or even eliminate an exemplary damages award if the jury consider that the claimant's conduct caused or contributed to the behaviour complained of.

[68] While the assessment of compensation can never be affected by the amount awarded by way of exemplary damages, the converse is not true. The size of an exemplary award may indeed be influenced by the size of the compensatory one, even to the extent of being eliminated. Lord Devlin in *Rookes v Barnard* [1964] A.C. 1129 at 1228 indicated that, in a case where exemplary damages were appropriate:

> "… a jury should be directed that if, but only if, the sum which they have in mind to award as compensation (which may, of course, be a sum aggravated by the way in which the defendant has behaved to the plaintiff) is inadequate to punish him for his outrageous conduct, to mark their disapproval of such conduct and to deter him from repeating it, then it can award some larger sum."

The principle was fully endorsed by all seven of their Lordships in *Broome v Cassell & Co* [1972] A.C. 1027. It is stated very clearly by Lord Reid: at 1089B to F.

[69] Somewhat similar to the effect of a substantial compensatory award against the defendant is the effect of a criminal conviction of the defendant. Punishing twice for the same misconduct offends against basic principles of justice and the result here is likely to be not a smaller award but no award at all. The courts have taken this consideration into account.

[70] Difficulties have been encountered in awarding exemplary damages where a claim has been brought by a large number of claimants. In relation to a case involving multiple claimants, at paragraph 152 of *Lumba*, Lord Dyson set out the reasoning of the Court of Appeal at paragraph 123 reported at [2010] EWCA Civ 111:

> "Moreover, it is difficult to see on what basis exemplary damages could be assessed in lead cases such as these. The conduct of the Home Secretary complained of in the present case was common to a large number of detainees who have brought proceedings against him. The selection of lead claimants such as [Mr Lumba] and [Mr Mighty] does not depend on the merits of their individual cases, which have not been assessed other than for the purposes of the grant of permission to apply for judicial review or permission to appeal. Other claimants may have equally or even more meritorious claims to damages, and if appropriate exemplary damages, than the present claimants. There would be no principled basis, therefore, to restrict an award of exemplary damages to the present lead claimants. If an award of exemplary damages is made to the present lead claimants, a similar award would have to be made in, every case. Exemplary damages are assessed by reference to the conduct of the tortfeasor. The court would, we think, have to assess an appropriate sum as exemplary damages and divide it between all successful claimants. But we do not know how many successful claimants there will ultimately be. These considerations demonstrate that exemplary damages, in a case such as the present, may be ill suited to be a remedy in judicial review proceedings, and would be in the present cases."

[71] Lord Dyson went on to state at paragraph 167 of *Lumba* that:

> "The Court of Appeal identified at para 123 of their judgment a further point which militated against awards of exemplary damages to the appellants. Where there is more than one victim of a tortfeasor's conduct, one award of damages should be made which should be shared between the victims, rather than separate awards of exemplary damages for each individual: see *Riches v News Group Newspapers Ltd* [1986] QB 256. This is because the purpose of the award is to punish conduct rather than compensate the claimants. In *Riches,* the victims

> of the tort were a small class who were all before the court. But where (as in the present case) there is potentially a large number of claimants and they are not all before the court, it is not appropriate to make an award of exemplary damages: see *AB v South West Water Services Ltd* [1993] QB 507, 527B-D per Stuart-Smith LJ and p 531D-E per Sir Thomas Bingham MR. Unless all the claims are quantified by the court at the same time, how is the court to fix and apportion that punitive element of the damages? If the assessments are made separately at different times for different claimants, how is the court to know that the overall punishment is appropriate? The Court of Appeal were right to regard this a further reason why it was not appropriate to award exemplary damages in the present case."

[72] McGregor on Damages at 13-044 is critical of this reasoning. The relevant paragraph reads as follows:

> "This result creates an anomaly if the court determines that a defendant's conduct requires deterrence. For why should defendants be able to escape the need for a deterrent award by the "lucky" chance, for them, that they have injured many rather than one or a few? The best approach would seem to be that deterrence should focus upon the particular conduct of a particular defendant. If there are multiple claimants who have been subjected to the same conduct then the exemplary award should generally be divided amongst them. If the conduct is more serious in relation to some of them, and requires a higher deterrent award, then those claimants should get a greater portion of the award."

[73] The issue of whether it is appropriate to make an award of exemplary damages against an employer for the actions of the servants or agents of the employer has received considerable judicial attention. Despite the views expressed by Lord Scott in *Kuddus* that "the objection to exemplary damages in vicarious liability cases seems to me to be fundamental" [2002] 2 A.C. 122 at [131] and later that "vicarious punishment via an award of exemplary damages is contrary to principle and should be rejected" [2002] 2 A.C. 122 at [137], Lord Hutton in the same case at paragraph [93] pointed out that Courts in Northern Ireland have made awards of exemplary damages against the MOD and Northern Ireland Office for wrongdoing committed by servants of those two defendants. See *Lavery v MOD* [1984] NI 99 and *Petticrew v NIO* [1990] NI 179.

[74] The issue was subsequently addressed by the English Court of Appeal in *Rowlands v Chief Constable of Merseyside Police* [2007] 1 WLR 1065 CA. That case involved claims for assault, false imprisonment and malicious prosecution against the police, and exemplary damages of £7,500 for the imprisonment and prosecution were awarded against the defendant Chief Constable who had in no way

participated in the improper conduct. The view was taken that an award of exemplary damages against the head of a particular force was simply a means of expressing strong disapproval of the conduct of the police force as an institution as well as of the individual officers and, since the power to award exemplary damages rested on policy, and exemplary damages are awardable for wrongdoing by government servants of a kind that has a direct effect on civil liberties, it was desirable that awards could be made against those vicariously liable for the conduct of their subordinates as only by this means could awards of an adequate amount be made against those who bear public responsibility for the conduct of the officers concerned. It was also said that this solution removed the constraint imposed by the officers' usually limited means. Apart from the important practical feature that the employee in many, if not most, cases is not going to be worth suing, whether for compensatory or exemplary damages, imposing liability upon employers is likely to provide an incentive for them to control the ways in which their employees operate, thereby producing a certain deterrent purpose.

[75] In assessing whether an award of exemplary damages is warranted in this case, the Court has regard to the need to establish the existence of oppressive, arbitrary or unconstitutional conduct on the part of the servants or agents of the government. For the reasons set out above, the Court concludes that the conduct of the servants or agents of the government directly responsible for the deaths and injuries on 30th January, 1972 and thereafter responsible for perpetuating a lie that at least some of those killed and injured on that day had been engaged in significant wrongdoing, clearly constituted oppressive, arbitrary and unconstitutional conduct on the part of servants or agents of the government.

[76] The question which must now be answered is whether in the circumstances of this case an award of exemplary damages is rendered appropriate by the need to punish and deter. In considering this issue, the Court does take full cognizance of the fact that the UK government fully and unstintingly resourced and funded the Saville Inquiry which eventually exonerated those killed and injured on Bloody Sunday. The Court takes full account of the full, frank and unreserved apology issued by the then Prime Minister David Cameron following the publication of the Saville Inquiry Report. The Court must have regard to the reservations expressed by Lord Dyson in *Lumba* in relation to an award of exemplary damages in cases were there are multiple claimants. The Court is aware that there are 31 separate claims arising out of Bloody Sunday but that only 4 relate to living victims. The Court has already referred to the statutory bar on the award of exemplary damages under the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1934 but the Court has been made aware of the intention of the Plaintiffs in the deceased cases to argue that this bar infringes convention rights. Therefore, the number of cases in which a global sum for exemplary damages would have to be split is at this stage uncertain.

[77] However, the main question which the Court has to address is whether an award of exemplary damages is appropriate on the basis that there is a need for

punishment and deterrence. Having carefully considered all the relevant circumstances of this case, the Court has come to the conclusion that the cost to the government of fully resourcing and funding the Bloody Sunday Inquiry, the government's unqualified acceptance of the findings of the Saville Inquiry and the apology immediately offered by the Prime Minister at the time, coupled with the size of the compensatory award in this case and the likely compensatory awards in the remaining cases, all combine to satisfy the Court that the need for deterrence has not been established and the cost to the government represents adequate punishment. In the circumstances, no award of exemplary damages will be made.

[78] In summary, the compensatory payment in this case for general damages for pain, suffering and loss of amenity and injury to feelings and aggravated damages for the increased and enduring injury to feelings suffered by the Plaintiff will be in the sum of £188,000. This sum shall attract interest from date of service of the Writ (16th June, 2014) at the usual rate. During the hearing of this matter, it was agreed between the parties that account would have to be taken of the ex-gratia payment of £3,400 made in 1974 at current day value. This was agreed at £34,740.

[79] Having concluded that it is likely on the balance of probability that the Plaintiff will undergo fat grafting and that such treatment can only be provided outside the NHS, the Court awards the Plaintiff £5,000 special damages representing the costs of the said surgical procedure.

[80] The Plaintiff is entitled to his costs and the Court makes an Order for taxation of the Plaintiff's costs in default of agreement.