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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION

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BETWEEN:

DAVID FINEGAN

Plaintiff

and

MARGARET McDONALD

Defendant

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Mr Ronnie Bentley KC with Mr Richard Shields (instructed by Worthingtons, Solicitors) for the Plaintiff
Mr David Ringland KC with Mr Patrick Ferrity (instructed by Murphy & O'Rawe, Solicitors) for the Defendant

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COLTON J

Introduction

[1] I am obliged to counsel for their helpful written and oral submissions in what transpired to be a difficult case.

[2] The plaintiff was born on 1 April 1956.

[3] On 27 January 2019 he was the driver of a motor vehicle at or about Millenium Way and Union Street, Lurgan when his vehicle was struck by a motor vehicle driven by the defendant. The plaintiff describes a dramatic accident. He was proceeding through a junction governed by traffic lights when a car driven by the defendant drove across his path colliding with the side of his car. He was restrained by his seatbelt. The driver's airbag detonated, and the car filled with smoke. He could smell diesel and hear the trickling of fluids. He had considerable difficulty exiting his vehicle, which he believed was going to go on fire. He was concerned he was going to die. He was ultimately able to force open the driver's door and push his way out of the vehicle.

[4] The defendant admits that she was guilty of negligence causing the road traffic accident described above.

[5] By these proceedings the plaintiff seeks damages for personal injuries loss and damage allegedly sustained by him because of the accident.

[6] In short there are three elements to the plaintiff's claim namely damages for physical injuries, damages for psychiatric injury and damages for loss of earnings.

The plaintiff's soft tissue physical injuries

[7] The plaintiff claimed he sustained soft tissue injuries to the right wrist, right knee and lower right front leg. His evidence was that his right knee and lower right leg struck the surface beneath the dashboard at the time of the collision.

[8] Two days after the accident he attended his general practitioner. The record reveals that he informed his GP that he had hurt his right leg and experienced pain in the left wrist. On examination he was noted to have a haematoma in his right shin and was referred to the A&E Department of Lagan Valley Hospital where he attended and underwent x-ray which revealed no fracture. It was recorded that there was swelling over the tibia, and it felt numb to walk on. There are no subsequent entries in the GP records relating to those injuries.

[9] This is unsurprising considering the plaintiff's description of his symptoms.

[10] The court received a medical report from Mr Cooke, Consultant Orthopaedic Surgeon, dated 13 June 2019, approximately six months post accident.

[11] In relation to his right knee and lower right front leg Mr Cooke records that the plaintiff complained of pain in this area and was limping following the accident. He had some difficulty putting his right foot to the ground. Just below the right knee anteriorly was red and swollen. He complained that his right leg does not feel as strong as it was previously. This interfered with his hobby of walking, which was limited following the accident.

[12] On examination Mr Cooke recorded that the plaintiff was tender in the right knee anteriorly on either side of the patellar tendon and had tenderness along the anterior tibial musculature in the upper third of the right shin. He had a full range of movement and there was no deformity, swelling or discolouration noted. Mr Cooke anticipated that the symptoms would resolve within a period of 12 to 15 months from the time of the accident.

[13] In relation to his wrist injury contrary to the GP record, Mr Cooke recorded the plaintiff as saying that the injury was to the right wrist rather than the left wrist.

[14] However the plaintiff told me that the wrist discomfort settled within a week or two and I do not consider this to be a material inconsistency. The wrist injury was clearly a minor one.

[15] A major theme of the defendant's approach to the plaintiff's injuries was that the account of his injuries lacked credibility. This was primarily directed at the plaintiff's claim for psychiatric injury and loss of earnings. I will discuss the plaintiff's credibility in more detail therefore in relation to those aspects of the claim.

[16] In the context of the minor soft tissue injuries I accept the plaintiff's evidence, which is supported by a contemporaneous attendance with his General Practitioner and at hospital. He did not seek to embellish or exaggerate the physical injuries, and I find him credible in this regard.

[17] I assess damages for this aspect of the claim at £7,500.

Psychiatric injuries

[18] This proved to be a most contentious issue between the parties. There was a fundamental disagreement between the Consultant Psychiatrists retained by the parties, Dr Mangan, for the plaintiff and Dr Chadda, for the defendant.

[19] The court received multiple detailed reports from each psychiatrist. The initial hearing had to be adjourned to enable further reports to be prepared. The court heard from each psychiatrist on two separate occasions.

Summary of the plaintiff's evidence

[20] The plaintiff set out in detail his impressive employment history. He obtained a Combined Humanities degree at the University of Ulster after leaving school. He subsequently served as a full-time reserve police officer for three years and later served as a part-time soldier in the Ulster Defence Regiment ("UDR") for 10 years over two periods – 1980-1988 and 1990-1991. He joined the Northern Ireland Civil Service in 1983 and worked there for 23 years until 2006. He had progressed to an Assistant Secretary, Grade 5 role. During this time he also worked at the Forensic Science Department. He spent 16 years in the Northern Ireland Office and 3 years in the Department of Health.

[21] After leaving the Civil Service he commenced employment with Price Waterhouse Coopers ("PwC"), as a Senior Manager in its Government and Public Sector Consulting Team. Consequently, he developed an expertise in supporting bids for government, public sector and private sector tenders. He left PwC in August 2014 and established his own consultancy business, David Finegan Consulting Limited, which specialised in the support of bid teams developing high value proposals in response to public, private and third sector procurement tenders. I will return to the issue of the plaintiff's consultancy business later in this judgment.

[22] He described significant psychiatric complaints arising from the accident.

[23] He initially put this down to the shock of the accident. He found he was reluctant to drive a vehicle or get into a car when someone else was driving. He described difficulty sleeping. He described waking up agitated.

[24] He was low in mood and knew he was not coping. He describes how his family, particularly his wife and daughter noticed that he seemed to be disintegrating. In June 2019 he saw an advert for the UDR Benevolent Fund. He phoned the welfare service who saw him quickly and interviewed him in relation to his symptoms.

[25] Ultimately, counselling was arranged through Combat Stress and Inspire Wellbeing, who provide therapy and assistance to ex-members of the armed forces.

[26] He did not seek medical advice in the early weeks following the accident although he says that he started to suffer symptoms within that period. He hoped the symptoms would go away and thought that he could manage them himself.

[27] He was examined by a Consultant Psychiatrist, Grainne Coakley, arranged by these services and he was diagnosed as suffering from Post Traumatic Stress Disorder and a recurring depressive disorder.

[28] Arising from this diagnosis he has had ongoing treatment including medication, counselling, cognitive behavioural therapy and EMDR treatment.

[29] The detail of his treatment is analysed in the extensive medical evidence from the consultant psychiatrists which was available to the court, and which is analysed in this judgment.

[30] Importantly, as will be apparent from medical reports, the accident has triggered distressing memories of previous traumas experienced by him in the course of his service with the PSNI and the UDR. This included flashbacks, in particular, in relation to an incident involving a young child who had died of a drowning accident in a bath. Further examples are discussed in the medical reports.

[31] His evidence was that he simply was unable to function in the way he had done previously.

[32] In addition to the vivid flashbacks described by him he had difficult and fearful dreams.

[33] The plaintiff admitted to other stresses in his life after the accident.

[34] A particular issue related to his brother who was seriously ill with a range of co-morbidities. As a result of a road traffic accident when he was 18 his brother was unconscious for several weeks and suffered from mental health problems including schizophrenia subsequently. In effect he became his carer. To compound matters his brother was diagnosed with a cancerous tumour in the bladder in 2017 which increased his requirement for care. The plaintiff found this difficult to accept.

[35] Ultimately his brother died in August 2021 as a result of complications arising from sepsis. The plaintiff bitterly regretted that he arrived in hospital shortly after his brother passed away. This undoubtedly impacted on his depression. He also referred to the death of a beloved family dog in June 2021 which he accepted had a very significant impact on him.

[36] The plaintiff was robustly challenged by Mr Ringland. He pointed out to the plaintiff that he was able to return to the scene of the accident and describe in detail to the police the circumstances of the accident. The plaintiff was able to give a detailed statement to the PSNI on 12 February 2019. There was no suggestion in the statement that he suffered a "near death" experience. The plaintiff's explanation for all of this was that this was him responding in police mode. In his statement he was merely addressing the issue of who was to blame for the accident and not the consequences.

[37] He was challenged strongly about his evidence in relation to his employment. It was drawn to his attention that he had told Mr Cooke that he was not off work because of the accident. The plaintiff denied that he gave this history. He admitted to doing some work namely three days in June 2019 and seven days towards the end of November/early December 2019. He found he was simply unable to carry on with work because of his distress and psychiatric symptoms.

[38] He was challenged about the delay in reporting any psychiatric symptoms to any doctors. Mr Ringland relied on the reports of Dr Chadda and suggested to him that his real problem related to his financial difficulties. In short it was suggested that the desire for financial compensation was driving the claim rather than any genuine psychiatric injury.

[39] It was argued that this was demonstrated by the contents of the plaintiff's application form for PIP payments. This was a particular focus of the cross examination of the plaintiff.

[40] The plaintiff was taken through the details of the application. It was suggested to him in no uncertain terms that he had grossly exaggerated the effect of the accident when seeking the relevant benefit. Thus, in the application form he indicated that he required assistance from another person to remind him and motivate him to cook. He claimed that he required persons to prepare food for him. He claimed that he required another person to remind him to take medication and treatment. He claimed that he required another person to help him to wash and

bathe and to remind him to do so. He claimed that he needed help from another person to tell him when to change his clothes.

[41] The plaintiff recorded difficulties with concentration in terms of reading and understanding what he had read. This increased his anxiety. The form recorded that when he was depressed he did not trust his levels of understanding and would need to seek a second opinion. He indicated that he would normally read and re-read a document two or three times to ensure that he fully understood it. He confirmed that he needed another person to help him mix with other people. He indicated that he required encouragement to manage his household budgets. He needed to be prompted to pay bills. He required assistance from his family in respect of standing orders and conducting bank business. He did record that "my inability to work means that money is a constant worry now. I find it difficult to budget. I will work on this with my mental health OT."

[42] Mr Ringland noted that the plaintiff had adopted the diagnosis of "complex PTSD" and challenged when this had been diagnosed. He also noted that the plaintiff appeared to relate asthma symptoms to the accident.

[43] In summary whilst the plaintiff did attempt to explain the contents of his application the extent of the symptoms described by him were not consistent with his evidence to the court or indeed to the doctors who examined him.

[44] The plaintiff was compelled to accept that he had exaggerated his symptoms when completing the PIP forms.

Summary of medical evidence

Dr Mangan – 20 August 2019

[45] In the aftermath of the accident, the plaintiff reported a sense of fear. He thought that the vehicle was going to go on fire. He was dazed, in a state of shock.

[46] The plaintiff reports that his sleep has been erratic since the incident. He reports distressing flashbacks of the accident and previous traumatic incidents that he dealt with during his service as a police officer and in the UDR. In the aftermath he experienced panic attacks. He finds it difficult to travel in a motor vehicle. He is hypervigilant and tense during journeys. He feels on edge.

The plaintiff's personal history

[47] Dr Mangan records the plaintiff's employment history, which is discussed elsewhere in this judgment. He noted that the plaintiff previously had significant stress associated with his position in the Parades Commission while in the Civil Service.

[48] He married at the age of 30 and has two children aged 23 and 33. He separated from his wife in 2004 but remains in contact with her. He is close to his two children who live locally.

[49] In the past he has dealt with many traumatic incidents during the course of his service as a police officer and in the UDR. He was also exposed to traumatic scenes when working in the Forensic Science Department. In the past he has had problems with stress and anxiety related to his work.

[50] Dr Mangan's provisional diagnosis was relapse of post-traumatic stress disorder. It was his opinion that the plaintiff would benefit from trauma focused cognitive behavioural therapy and EMDR treatment.

Addendum dated 5 February 2020

[51] In an addendum dated 5 February 2020, Dr Mangan advised that the plaintiff was suffering from post-traumatic stress disorder which was precipitated by his involvement in the road traffic accident. There had been a marked deterioration in his mental health from the index incident. It was his opinion that the plaintiff met diagnostic criteria for post traumatic stress disorder for a period greater than one month during his previous service. Further, he says that his past exposure to trauma would have increased his psychological vulnerability at the time of the index incident. His view was that the current debilitating mental health problems have been caused by the index accident.

Report dated 11 March 2020

[52] Dr Mangan re-examined the plaintiff on 11 March 2020 and said there had been no significant improvement in his condition. He had attended Inspire Wellbeing counselling between August 2019 and early January 2020. He was on a waiting list with the Southern Trust for further counselling. He continued to report flashbacks to previous traumatic experiences. He gave the example of flashbacks concerning a young boy who had died of a drowning accident in a bath. In the course of his employment with the security services he was involved in guarding police personnel in hospital who had been maimed or seriously injured. He had been present at fatal road traffic accidents, sudden deaths, murder and terrorist incidents involving life changing injuries to victims. He had been involved in terrorist gun attacks on duty, riots and incidents of severe domestic violence. Two of his colleagues in his own section had taken their own lives. He described feeling desensitised by incidents over time. He described attending the scene of a road traffic accident where a lady had her kneecap torn off and a severe break of her other leg. She had severe facial injuries. Following the incident, he became completely passive and unmoved. It troubled him that the service was dehumanising him. Since the index incident he has had distressing recollections of this accident.

[53] Prior to the accident he described himself as a confident, high performing individual. He dealt with significant issues in the Civil Service and was dealing with complex business issues. In fact, he was considered an expert and mentor. Since the accident he struggles with anxiety on a daily basis. He struggles to control his emotions. He experiences palpitations and episodes of panic. He has particular issues with travel. Dr Mangan's opinion was that the plaintiff continued to suffer from post-traumatic stress disorder. He suggested the Plaintiff approach Combat Stress, a charity supporting the mental well-being of veterans. He felt that the plaintiff would benefit from further treatment.

Report dated 20 July 2020

[54] Dr Mangan re-examined the plaintiff on 20 July 2020. He had access to an Inspire Clinical Assessment form completed on 1 June 2020.

[55] Dr Mangan noted that the plaintiff informed him that his mood had markedly deteriorated since the last examination. He suffers from anxiety and periods of depression which affect his day-to-day ability to function. His sleep pattern remains disrupted. He continues to report nightmares and flashbacks to previous traumatic experiences. He averages only three to four hours of broken sleep. He suffers from panic attacks. He suffers from travel anxiety. His GP had prescribed a sleeping tablet Zopiclone and an anti-depressant Mirtazapine 15mg. He had asked his GP to increase his dosage. He was about to begin a new round of EMDR treatment in August 2020. He attended with Combat Stress in August 2020. He reports anhedonia (inability to feel pleasure). Dr Mangan reviewed the Inspire Wellbeing clinical assessment form. It confirmed he had completed one episode of 12 sessions and a further episode of 10 sessions of counselling. The plaintiff suffers from continued impairment to a significant degree. He has hypervigilant intrusive distressing thoughts, nightmares and flashbacks related both to the accident and to previous experiences from past service in military and civilian settings. Dr Mangan's view was the plaintiff continued to fulfil the criteria for post-traumatic stress disorder under DSM-5 and ICD-10 – significant problems with hyper-arousal. His disorder continues to run a chronic course. He felt it could take a further three years before he would respond to treatment. The previous exposure to trauma had significantly increased his vulnerability. It was his opinion that the plaintiff was unable to undertake any employment duties currently due to the severity of his mental health problems. He took the view that the plaintiff would be unable to return to any form of employment for the next three years. He would be vulnerable to suffering further episodes of depression in the future at times of stress.

Dr Chada's report dated 22 October 2020 (date of examination 23 September 2020)

[56] Dr Chada outlines the plaintiff's work history. He worked three days in June 2019 and last worked in December 2019. He was depressed after each of the pieces of work. Prior to that he worked on a self-employed basis for some 5-10 days per month. His business model was to take on one case which might last for one to two

months and then take the next month off. He was self-employed since December 2014 and had not worked since December 2019. He was involved with much of the care for his brother who has had significant illnesses and was diagnosed with cancer in 2017. The plaintiff had an annular tear in his back in 2013 which ultimately resulted in him leaving PWC and setting up business as a consultant. He did disclose the previous related mental health injuries to the back injury to Dr Chada.

[57] Dr Chada notes the plaintiff complained about financial difficulties and that he was in some debt. He had no income for 18 months. He had to sell cameras etc to help pay his bills. He explained later that he had gone to the aftercare service because he needed money and from that service was referred to Inspire when he had reported symptoms of PTSD. He had borrowed money from his brother and still owed that. He reports he is in desperation for money. By February of that year, he had expended all avenues for getting money. He was agitated and annoyed about this. He was fearful of losing his house. He had applied for PIP. He became animated and agitated when discussing his current financial situation. On clarification he did not describe reliving or re-enactment of dreams of the index incident, nor of previous incidents. He referred specifically to a memory of the young boy who drowned in the bath – triggered when he met a young boy of a similar demeanour in a park. He said he went to Combat Stress because he was seeking financial aid. She records that the plaintiff reported he felt overwhelmed by the claim and the impact on his financial security and the security of his home. "I have spent 18 months watching my finances worsen as well as dealing with the symptoms of PTSD."

[58] She records that the plaintiff, although shocked at the time of the accident, managed the situation well. He checked on the other driver, took photographs and arranged for the police to attend and take him home. His police training took over. Subsequently, he developed psychological symptoms.

[59] Dr Chada's opinion is that the plaintiff was not suffering from flashbacks but rather intrusive, upsetting memories. In her opinion his issues related to the index proceedings and the consequent financial difficulties he was experiencing. She diagnoses an adjustment disorder because of the index incident, but more so, as a result of the financial difficulties in which he finds himself.

Report from Dr Mangan dated 21 May 2021

[60] Dr Mangan again examined the plaintiff on 21 May 2021. At that time he had sight of the report prepared by Dr Chada dated 22 October 2020.

[61] Dr Mangan noted that the plaintiff continues to participate in therapy sessions delivered by Inspire Wellbeing on behalf of the armed forces covenant. He has been participating in mindfulness group sessions with other veterans. He had barely worked since the accident. His GP notes and records refer to attendances in

November and December 2013 re stress. There is a further reference to stress induced gastritis on 28 February 2016.

[62] The records contain an entry on 25 July 2019, confirming he had anxiety state post-traumatic stress disorder. An entry of 8 October 2019 reports depression. An entry of 17 July 2020 reports post-traumatic stress disorder. A note on the 7 January 2021 contains correspondence from Dr Richards, Consultant Cardiologist, in which it is noted that Mr Finegan had a history of significant road traffic accident and post-traumatic stress disorder following this.

[63] Importantly, he notes correspondence from Dr Grainne Coakley, Consultant Forensic Psychiatrist. The plaintiff was diagnosed with post-traumatic stress disorder and resolving depressive illness vulnerable to relapse. Ongoing symptoms since RTA in January 2019. He had been added to the psychology waiting list for trauma focused cognitive behavioural therapy.

[64] Assessments recorded by Inspire Wellbeing meet criteria for PTSD.

[65] On 28 August 2019, there is a reference to him being with his brother who was currently in hospital. Worries about his responsibility to his family and others. Struggling financially. On 26 November 2020, it is noted that the plaintiff was very upset by the defendant's medico-legal report. It has triggered flashbacks. He feels the report has diminished his experiences and dehumanised him.

[66] It was Dr Mangan's opinion that the post-traumatic stress disorder condition and depressive illness was resolving slowly. This had been helped by his engagement in intensive trauma therapy. He continued to have significant problems with hyper-arousal. He summarised the ongoing symptoms. It was his opinion that the plaintiff continued to meet the diagnostic criteria for post-traumatic stress disorder for a period of up to five years after the index incident. He felt that he would not be able to return to part-time work. He disagrees with Dr Chada re a diagnosis for PTSD. He had examined the plaintiff on four occasions. He had reviewed notes and records including treatment notes and records. His opinion was that he meets the full DSM-5 and ICD-10 diagnostic criteria for PTSD.

Report from Dr Chada dated 7 July 2021

[67] Dr Chada provided a further note dated 7 July 2021, in which she refers to a report from Dr McEneaney, Consultant Cardiologist. In relation to the records from Inspire, she noted that many of the psychological symptoms related to his previous experiences. She notes that on the self-assessment questionnaires he scored himself in the range of severe anxiety, severe depression and symptoms indicative of PTSD. The therapist noted the cumulative trauma related to past services which it was felt had been activated by more recent trauma from the road traffic accident. She focuses on the fact that he was referred to Inspire counselling after attending aftercare services for financial support. She feels this is the matter about which he is

distressed. Symptoms had worsened distant from the index accident because of ongoing financial issues and delays in the proceedings.

[68] She repeats her view that the plaintiff's symptoms were caused by stress, distress and anxiety about his financial situation. She would have expected the moderate depressive adjustment disorder she describes to have resolved relatively quickly by some six months were it not for the financial worries.

[69] In a further note from Dr Chada dated 27 June 2022, she comments on Dr McEneaney's report, Dr Mangan's report dated 21 May 2021, records from Inspire Clinic and Wellbeing and up-to-date GP notes and records. She notes that the plaintiff reports the diagnosis of PTSD to each person he sees. (I comment that this is unsurprising since this is the diagnosis he has been given.)

[70] She notes that the first reference to psychiatric injuries reported to his GP was a record of depression in October 2019. PTSD is reported on 1 July 2020. Dr Mangan refers to an earlier entry on 25 July 2019 to anxiety state PTSD.

[71] Dr Chada notes that the international classification of diseases suggests symptoms of post-traumatic stress disorder arise contemporaneously and usually within six months of an incident. She says there is no evidence that this has happened here. The earliest relevant medical entry is July 2019 which she queries - it may have been, in fact, October 2019.

Report from Dr Mangan dated 28 October 2022

[72] The plaintiff was further examined by Dr Mangan on 28 October 2022. He confirms that the plaintiff suffered a significant deterioration in August 2021 following the death of his older brother. He had been caring for his brother since 2016. He was particularly distraught that after his brother developed sepsis, he only arrived at the hospital shortly after he had passed away. He was unable to see his brother's body after his death. He had a sense of guilt. There was significant deterioration in his mood at this time. He continues to experience ongoing symptoms. He ruminates over Dr Chada's report, with a sense of anger and injustice. He is now on sertraline as he found mirtazapine over-sedating. He again reviews the notes and records. Dr Mangan notes that the plaintiff had been seen by the mental health service on 21 August 2021 but there had been significant voluntary sector input prior to this. The assessment of 8 December 2021 when seen by Joe Clifford, Senior Cognitive Behavioural Psychotherapist was consistent with PTSD. It was felt that it was better to complete work with Inspire rather than have two separate therapies.

[73] Dr Mangan confirms the plaintiff attended with his GP on 25 July 2019 – the entry indicates he had an anxiety state post-traumatic stress disorder - this is within the six-month period referred to in the ICD. He notes that the ICD-10 specifically states that a probable diagnosis of PTSD might still be possible if the delay between

the event and the onset was longer than six months, provided the clinical manifestations are typical and no alternative depressive episode is plausible. The DSM-5 classification specifically recognised delayed expression when a patient presented with PTSD more than six months after the exposure to trauma. Delayed expression is well-recognised in patients who have been exposed to additional life stressors, experienced another traumatic event, or of worsening of existing PTSD symptoms. He says that his review of the medical literature suggests that the prevalence of delayed expression PTSD could be as many as 25% of PTSD cases. It is higher in ex-military personnel. He notes the plaintiff was motivated to self help. He undoubtedly found the litigation process difficult and stressful. He says that the plaintiff continues to meet ICD-10, ICD-11 and DSM-5 criteria for PTSD. He estimates that he will satisfy these criteria for a period of up to five years post incident. He does not believe the plaintiff will work in paid employment again.

Addendum from Dr Chada dated 26 February 2023

[74] Dr Chada provided a further addendum dated 26 February 2023. This is a commentary on Dr Mangan's report of 28 October 2022.

[75] Dr Chada appears to accept that the plaintiff has suffered psychological symptoms as a result of this accident. She does not accept that the symptoms are sufficient to meet the diagnosis for PTSD. Rather she suggests an adjustment disorder with depressive symptoms which should have resolved at an early stage, certainly within one year, but that financial stresses and the stress of the proceedings may have perpetuated both anxiety and depressive symptoms for a longer period.

Addendum from Dr Chada dated 18 April 2023

[76] Dr Chada provided a further addendum on 18 April 2023 by which stage she had been provided with hundreds of pages of additional GP notes and records.

[77] The GP notes confirm referral to mental health in January 2020. An active problem was recorded as PTSD in July 2020. Dr Chada opines that the plaintiff is "invested" in the diagnosis of PTSD which was made in July 2019. He then repeats this to other doctors who accept and record it without any objective evidence.

[78] Dr Chada comments on the completion by the plaintiff of PIP forms for benefits in a letter of 5 January 2024. She suggests the contents are inconsistent with information given to her. For example, contrary to his application, the plaintiff advised her that he cooked for himself and that he lives alone. He did not mention requiring help for medication but did say he needed assistance for washing. At times he felt low and did not wash himself. He was allegedly the primary support carer for his brother at this time (although the plaintiff said that his ability to do so had diminished). In the forms he refers to concentration issues, something she found he had no difficulty with during her lengthy interview which took 70 minutes. He is engaged in the Somme project in Larne, writes poetry, judges poetry

competitions, has found a peer support group, walks frequently and is an advocate in the veteran service. He is noted to be functioning well. The difficulties described to her were inconsistent with the degree of disability reported in the PIP form. She repeats the diagnosis of a prolonged adjustment disorder with trauma symptoms for some six months after the accident. The financial pressures are secondary to the accident which has prolonged the adjustment disorder up to 18 months to two years if related. He suffered a deterioration after the death of his brother and his dog in August 2021, resulting in a relapse not related to the accident.

Report from Dr Chada 11 January 2024 in which she sets out the criteria for PTSD ICD-10 – ICD-11 and three core criteria for diagnosis of PTSD

Criterion 1

[79] Re-experiencing the traumatic event in the present – in which the event is not just remembered but its experience is occurring again in the here and now. Dr Chada says Mr Finegan does not meet this criterion. She says there is no objective evidence of this.

Criterion 2

[80] Deliberate avoidance of reminders likely to produce re-experience of the traumatic events. He had returned to driving quickly albeit limited. He was attending counselling in Belfast. He was driving to attend a horticultural garden in Larne. He had been back to the accident locus to give an analysis of the mechanics of the accident to the police. She argues that this criterion has not been established.

Criterion 3

[81] Persistent perceptions of heightened current threat, for example, as indicated by hypervigilance or an enhanced startle reaction to stimuli such as unexpected noises. She saw no objective evidence of this on her examination of the plaintiff. In relation to reactivation of PTSD, her main point is that there was no description of previous PTSD symptoms. He did describe incidents that have the potential to cause PTSD, but she says the plaintiff said he had coped well with all of these. In relation to delayed PTSD she accepts that this is common in veterans. She says this occurs when there are previous sub-threshold symptoms which do not meet the definition. The trigger should result in contemporaneous symptoms. The term delayed PTSD refers to the initial delay, not a delay after the secondary trigger.

[82] She is critical of self-report questionnaires as tools to diagnose psychiatric symptoms. She maintains her diagnosis of depressive adjustment disorder. The main symptoms are of depression, anxiety and stress about the financial situation in which he found himself.

[83] She says that there is no evidence that the plaintiff has been assessed by consultant psychiatrists from Combat Stress. The thrust of her argument is that PTSD appears to be an accepted diagnosis rather than one made by a consultant psychiatrist.

Report from Dr Mangan dated 31 January 2024

[84] There is a debate between the psychiatrists about ICD-11 and ICD-10 and DSM-5.

[85] Dr Mangan addresses the diagnostic requirements and says the plaintiff satisfies all of these. He points out that the plaintiff has been exposed to numerous incidents that were extremely threatening or of a horrific nature during his service in the security services. He also notes that at the time of the index incident he also believed the vehicle in which he was present was going to ignite after the airbag activated. He points to repeated references to distressing flashbacks – for example when he could smell a colleague's rotten leg. He argues that Dr Chada's report of the plaintiff describing intrusive, upsetting memories meet the reliving criteria. He refers to repeated references to hypervigilance, hyperarousal, fearful thoughts and diminished sense of self, plus nightmares, flashbacks and memories of the event, reported to him and those who have been treating him. He refers to the specific example of the flashback of the incident in which he attended the drowning of a young boy in a bath. In relation to avoidance, he points out that whilst the plaintiff did return to driving soon after the index incident, he found it difficult. He was hypervigilant and tense during journeys. He did not want to drive. He only went on essential journeys. He was very aware of other vehicles. He felt on edge. He also believes that there were avoidance behaviours in relation to his exposure to trauma whilst in the security services. He initially left the service as a police officer having felt worn down by his experiences and left the UDR as his life had come under threat.

[86] Dr Mangan points out that when he initially assessed the plaintiff he did not have access to his general practitioner notes and records nor the counselling notes and records. He made a provisional diagnosis of relapse of PTSD.

[87] His opinion is that Dr Chada minimises the extent to which the plaintiff has previously been exposed to trauma. His opinion is that he has experienced multiple traumatic incidents in the past exposing him to developing a post-traumatic stress disorder. He makes a definite diagnosis of post-traumatic stress disorder and moderate depressive episode. He remained of the opinion that the index incident was critical in the development of a marked deterioration in his mental health leading to a reactivation of post-traumatic stress disorder which meets the relevant criteria.

Further report from Dr Chada dated 13 March 2024

[88] Dr Chada reports again in response in her report dated 13 March 2024. Dr Chada engages with Dr Mangan's report but repeats her view that she has no doubt that the plaintiff did suffer psychological symptoms as a result of the index incident. It is her opinion that some of these were indeed trauma related symptoms. However, it is her view that they do not meet the criteria for PTSD, delayed PTSD or reactivation of PTSD. She acknowledges that his most significant issues relate to his financial pressures and that if the road traffic accident had indeed had a significant effect on his ability to work, then a significant part of the psychological stress related to the road accident itself.

The court's assessment

[89] I admit that I found it difficult to resolve the issues relating to the plaintiff's claim for psychiatric injury. I found the plaintiff to be a very particular, obsessive individual with a tendency to rumination and introspection.

[90] It seems to me that there is no doubt that he is suffering from significant psychological difficulties. I am satisfied that those difficulties meet the criteria for post-traumatic stress disorder. On balance, I prefer the diagnosis of Dr Mangan. I do so for a number of reasons. Firstly, he has examined the plaintiff on five separate occasions and remains confident in his diagnosis. He had no problem standing by his diagnosis. The presentation by the plaintiff is common in veterans who have experienced traumatic incidents in the course of their duties. Reactivation of previously undiagnosed symptoms is a common presentation in this context. I find his reasoning persuasive. Secondly, all the contemporaneous notes and records point to other persons involved in treating the plaintiff as accepting his post-traumatic stress disorder. This, for example, is also true of the cardiologist who treated the plaintiff. I do not believe that this is a case of that condition being diagnosed and then simply accepted. It is important the diagnosis was made by a consultant psychiatrist who was treating the plaintiff. Thirdly, I note that he did make a complaint to a doctor within six months of the accident. Fourthly, I am influenced by the fact that the plaintiff has undergone significant treatment for his condition including medication, counselling, cognitive behavioural therapy and EMDR.

[91] I do accept that the plaintiff has focused on the financial difficulties that arise from his condition and his inability to engage in his business. Those difficulties can, to an extent, be attributed to his psychiatric condition. In my view, Dr Chada has unduly focused on this point and has ignored other evidence which explains his psychiatric condition. That said, I cannot ignore the fact that the plaintiff did exaggerate his symptoms in his PIP application, which can only have been motivated by a desire to obtain financial advantage. I am conscious too, that there are other factors in play relating to the plaintiff's personal circumstances, which have impacted on his condition, not least the situation with regard to his brother. In

assessing the extent of the impact of his psychiatric symptoms on his life, I also bear in mind the fact that the plaintiff has engaged in many positive activities as a result of his treatment and counselling which point to a better functioning for him. I consider that it will be to his advantage to have this claim determined and that there is room for improvement in the future.

[92] Whilst, obviously, the diagnosis is important in terms of the assessment of damages, more important, in my view, is the impact that condition has had on his everyday functioning and lifestyle, which has been significant.

[93] The main impact of his symptoms has been his ability to cope with his work. He has sought medical help which has had many positive benefits. He will be vulnerable in the future, but as I have indicated, I believe that a resolution of this case should lead to improvement. Overall, my assessment is the psychiatric damage suffered by the plaintiff attributable to the accident could be described as moderately severe whether that be under a diagnosis of post-traumatic stress disorder or psychiatric damage generally.

[94] I consider that the appropriate figure for damages for the plaintiff's psychiatric injury is £65,000.

The plaintiff alleges that he suffered from cardiac symptoms which were related to his PTSD

[95] In this regard, he relies on the opinion from Dr McEneaney, Consultant Cardiologist. Dr McEneaney has provided three reports dated 26 April 2021, 31 August 2021 (in the second report he had access to medical notes and records) and 30 May 2023.

[96] He recorded that the plaintiff reported that when he was anxious, he suffered frequent missed heartbeats and palpitations. He reported chest tightness with a variable relationship to exhaustion. Various tests were carried out on 25 January 2021 and 1 March 2021. Arising from Holter recordings carried out on 23 January 2021 it was noted that the plaintiff demonstrated arrhythmia generation, ie frequent ectopic beats. It was Dr McEneany's opinion that when he examined the plaintiff he displayed "classic symptoms of PTSD." He advised that the clinical signs of PTSD are not solely psychological and that cardiovascular manifestations are well-recognised including increased resting heart rate, increased startle reaction, and increased heart rate and blood pressure as responses to traumatic events.

[97] The high frequency of ventricular ectopic activity as noted on the plaintiff's recordings was, in his view, consistent with a high adrenergic state as found in PTSD.

[98] Importantly, Dr McEneaney's opinion is based on a contemporaneous link between the onset of cardiac symptoms and the date of the road traffic collision,

although in his evidence he argued that this was not a necessary link to establish causation.

[99] Dr Trouton, Consultant Cardiologist, advised on behalf of the defendant on this issue.

[100] His opinion was that the diagnosis of PTSD is not a recognised risk factor for incident cardiovascular disease. The symptoms of palpitations identified when he was examined by a Dr Richardson, do not reflect underlying heart disease. He pointed out that cardiovascular testing of the plaintiff carried out in secondary care clinics on several occasions between 2009 and 2013 had normal results and did not point to underlying cardiovascular disease in his case. The plaintiff's cardio conditions are common and do require long-term surveillance and management.

[101] On this issue, I am not satisfied on the balance of probabilities that the plaintiff can relate the cardiac issues to the road traffic accident, even allowing for the diagnosis of PTSD. I say this because I do not accept that there is evidence of cardiac symptoms contemporaneous with the aftermath of the accident. The first record of a cardiac symptom is two years post-dating the accident date. During that time, the plaintiff had seen many medical practitioners, both for treatment and for medico-legal purposes. Furthermore, he was receiving detailed counselling where detailed records were maintained of his complaints. Leaving aside the medical issues that are in dispute, the plaintiff also claimed, for example, of asthmatic problems. I consider that if he was suffering from cardiac symptoms in the immediate aftermath of the accident date then these would have been referred to at some stage during the exhaustive contacts he had with those helping him.

[102] Therefore, I am not satisfied that he has suffered any cardiac injury attributable to the road traffic accident.

Financial loss

[103] The plaintiff claims that because of his inability to work due to the accident he has been unable to advance a self-employed consultancy business, David Finegan Consulting Limited, a business providing professional advice to companies and organisations tendering for high value contracts in the public, private and charity sectors.

[104] The plaintiff's evidence was that he had begun to develop his client offering as a subscription internet service. He had commenced plans in 2018. His evidence was that at the time of the road traffic accident he was actively developing this business opportunity.

The business model for the existing business

[105] The plaintiff used his expertise as a civil servant and employment with PwC to assist those companies bidding for high value contracts for major public sector tenders, merger, capital investment fund management, ICT procurement and consulting services in both the UK and Ireland.

[106] Typically this work had to be carried out under pressure with short tender response times. Consequently, the plaintiff charged a high daily fee. As a result of successful bids, he became a "trusted advisor" for a number of clients.

[107] He aimed to work between 60 to 120 days per year.

[108] As referred to earlier, the plaintiff gave evidence that his older brother became seriously ill and spent 18 weeks in hospital and rehabilitation step-down care followed by a long convalescence at home. The plaintiff spent a large part of 2016 attending to his brother's care needs, navigating the NI healthcare system and being his advocate whilst still carrying on with his business. As a result, he turned down work and his income decreased.

[109] Unfortunately further serious health issues beset his brother in 2017 in the form of a cancer diagnosis followed by treatment and a long recovery into 2018. Again, the plaintiff cared for his brother which resulted in an ongoing reduction in his work.

[110] It was during this period that the plaintiff started to consider a revised business model.

[111] His approach was to take on more client facing work by developing a "one to many" offering using internet marketing and subscriber services. His view was that subscription services were, and remain, one of the fastest growing sectors. Such an offering is not constrained to geography. It would mean that the plaintiff could take on numerous clients at one time.

[112] A particular focus was to provide initial training and reinforcement of behaviours for those involved in bidding for contracts.

[113] He had previous experience as a trainer for almost 30 years as well as taking part in many training courses himself. He wished to move from the classic face to face "classroom" based model and provide participants with online training provided for a single price or subscription.

[114] He carried out research into how the training could be delivered. He had therefore decided that his subscription service would be based on short training videos and all aspects of bidding.

[115] In summary his model was to provide a subscription learning service to develop capacity in small to medium enterprises and corporates to allow them to self-sustain in the highly competitive public and private tender market, at a price which allowed access to even the smallest company and provided value for money.

[116] Rather than provide high-cost bid services to a small number of businesses strictly limited by the plaintiff's own capacity, his intention was to market through e-learning to a large number of businesses at a nominal and affordable cost.

[117] His evidence was that he was actively pursuing his online business opportunity at the time of the road traffic accident.

[118] He had carried out some initial soundings of digital web service companies in Northern Ireland, but these were not helpful.

[119] He produced emails from a company named the Social Media Lab ("SML") based in Exeter.

[120] He secured funding for 20 hours of consulting to develop a digital marketing strategy via an initiative run by Armagh, Banbridge and Craigavon local government council to support local business development.

[121] To obtain this support he had submitted a business strategy to the council.

[122] He had ongoing contact with SML but ultimately felt they did not fully understand his business proposition.

[123] In early 2019 he sought a new e-commerce and marketing partner with the aim of using the year to develop and launch the subscription platform. Unfortunately, the accident intervened on 27 January 2019 and because of the personal injuries about which he complained he was unable to develop the concept.

[124] Notwithstanding that in late August 2019 he contacted a company "Eyekiller" and arranged a meeting to discuss his plans with their digital account manager. He described the meeting as very encouraging. He met again with Eyekiller on 6 September 2019.

[125] Eyekiller did send a proposal to the plaintiff.

[126] Meetings were proposed in January 2020. By that time, he had carried out some work for a client in early December 2019 but found it extremely difficult.

[127] The discussions with Eyekiller came to nought. Indicative figures suggested a start-up figure of £75,000.

[128] His evidence was that post the recession of 2008 the High Street banks, or as he called them "pillar banks", had been extremely averse to lending and penalised risk heavily through penalty clauses and high interest rates.

[129] He considered a growing market for Peer-to-Peer funding ("P to P") as a means for funding businesses. However, he was not able to show the lenders how he could pay back the loan with interest month to month since his capacity to earn had been directly removed from him by the injuries sustained in the road collision.

[130] His evidence was that he had "high confidence" that P to P lenders would have supplied the necessary funding, at minimum, for business start-up and that subscription receipts, where payment by subscribers is immediate, rather than the normal 30 days linked to the invoice payment cycle, would have provided working capital on which further P to P borrowing could be sought as necessary against a successful income stream. However, his inability to borrow meant that he was unable to pursue the concept.

[131] The plaintiff called expert evidence from a Mr David Vincent. He described himself as a highly experienced hands-on inspirational and energetic technology leader with an entrepreneurial edge. He has 26 years of strategy delivery and leadership across technology, communications and major change programmes with a particular focus on digitally enabled businesses.

[132] He provided a detailed written report. He analysed the plaintiff's proposals and put forward potential earnings for the business.

[133] In summary his evidence was that the industry standard was that digital analytics of targeted sales tend to converge towards a median of 10% conversion, with most web sales realistically working between 5% to 10% conversion range as an acceptable range, with marketing targeted towards sustaining 10% conversions.

[134] Applying this approach, his final view was that the plaintiff suffered a loss in the range of £544,171 to £824,728 arising from his inability to pursue this business. This was based on a 75% likelihood of success.

[135] I was not persuaded of the merits of this claim. Mr Vincent himself accepted that 20% of new businesses would close their doors within just 12 months, 60% of new businesses would go under within 3 years and fewer than half of UK start-ups made it beyond 5 years.

[136] The plaintiff had no experience in this type of business. He was not in a position to demonstrate that he had funding in place to initiate the concept. The figures for the success of start-up small businesses were hardly encouraging.

[137] Importantly, pursuant to cross-examination from Mr Ringland, Mr Vincent had to accept that there was a 90% failure rate in digital businesses.

[138] I consider that the proposed internet business is highly speculative. In my view, the claim simply lacks the evidential foundation necessary for the court to award damages either on the highly speculative basis put forward by Mr Vincent or even under the principles of loss of chance. I do not consider that there was a real or substantial chance of this proposal materialising into anything concrete.

[139] I, therefore, award no damages under this heading.

Loss of earnings

[140] In addition to the lost opportunity to develop the digital business it is the plaintiff's case that as a result of these injuries he has been unable to continue his self-employed business. His evidence was that he did attempt to do some work for clients involving three days in June 2019 and seven/eight days in December 2019. Whilst he did his best, he felt that could not do the work any longer because of his psychiatric condition. His evidence was that he was not able to return to any form of occupational activity, a claim which was supported by Dr Mangan.

[141] The business he set up in September 2014 namely David Finegan Consulting Ltd was successful. He accepted that there had been a downturn in profits pre-accident because of the time spent in caring for his brother. In the three years ending 30 September 2017, his annual income was between £70,000 and £79,000. It fell to £52,000 in the year ending 30 September 2018.

[142] The plaintiff's evidence was that he had returned to a normal operating capacity shortly prior to the accident and had already embarked on developing the internet-based subscription service which he says he would have launched in 2019 but for the accident.

[143] From the income referred to above the plaintiff's profit in 2015 after tax was £51,572, £33,196 in 2016 and £29,250 in 2017. That had reduced to £22,319 in 2018 and £1,319 in the nine months to 30 June 2019.

[144] His evidence was that but for the accident he would have intended to carry on working until at least the age of 68 and was confident that but for the accident his income and earnings would have been at least in and around the level reported in the years to 30 September 2017.

[145] The court received a report from ASM Accountants prepared on behalf of the plaintiff. They did so based on the assumption that he would have worked to age 68 with an annual remuneration of £42,775 (being an average of the profits in the three-year period between 2015 and 2017). This is apart from the additional income he anticipated in relation to the digital business.

[146] Based on a discount rate of -1.5% ASM calculated past loss at £155,213 (as of 31 March 2023 at £155,213 with future loss of £35,728) (this includes costs for cognitive behavioural therapy at £2,000) with interest at £19,455 resulting in a total loss of £210,396.

[147] Harbinson Mulholland on behalf of the defendants (depending on the findings of the court) put forward a range of £29,982 to £102,305 for past and future loss of earnings before interest. The range of figures put forward by Harbinson Mulholland is based on a loss restricted to a period of 12 months, 18 months, 24 months and retirement age of 66 on 1 April 2022 respectively.

[148] Mr Ringland challenges the entire basis upon which the plaintiff is claiming a loss of earnings. He points to the obvious decline in income even before the issue of providing care for his brother. Importantly he points to the report of Mr Cooke, who in his examination of the plaintiff on 12 June 2019 noted in respect of the plaintiff "he was not off work because of the incident".

[149] The plaintiff was adamant that he did not say this to Mr Cooke. I do note that the plaintiff had carried out some work in June 2019 and this might explain Mr Cooke's record.

[150] In assessing this aspect of the plaintiff's claim I am conscious of his very significant work record. He has a long history of employment. He is clearly well qualified and experienced. I accept his evidence that apart from some work in June and December of 2019 he has not engaged in any gainful work since the date of the accident.

[151] I am also satisfied that but for the accident he would have continued in work.

[152] That said, I am not persuaded that he would have earned anything like the income put forward on his behalf. The facts of the matter are that his profits were declining. There was a consistent downturn in his earnings. I accept that his psychiatric condition meant he was unable to carry out the business in which he was engaged. I accept his evidence that the nature of his work was highly intensive and required detailed attention, strong judgment and working to tight reporting deadlines. I accept that his psychiatric condition is such that he has had to cease his consultancy work and has been unable to perform to his previous level. Based on the actual figures provided to the court I consider, doing the best I can, that his potential profits had he continued in work would have been in the £20,000 to £25,000 range.

[153] I am prepared to award him loss of earnings at £22,500 per annum to the date of State retirement at age 66, that is 1 April 2022.

[154] Accordingly, I award the plaintiff a loss of earnings on this basis for three years and two months (that is between 27 January 2019 and 1 April 2022) which approximates to £70,000.

[155] I reduce this by £2,500 which approximates to his post-accident residual earnings leaving a net figure of £67,500.

[156] I did not receive any evidence in relation to costs of treatment and, therefore, do not include this in the financial loss claim.

[157] I, therefore, award the plaintiff £72,500 general damages and £67,500 special damages for loss of earnings.