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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

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POST TRAUMATIC STRESS DISORDER GROUP ACTION

Between:

CHARLES WAYNE McCLURG & OTHERS

Plaintiffs;

and

CHIEF CONSTABLE OF THE ROYAL ULSTER CONSTABULARY

Defendant.

LEAD CASE OF COLIN ROBERT GEORGE HEPBURN

COGHLIN J

[1] This plaintiff was born on 20th September 1948 and he served in the RUC from 29th April 1975 until 30th April 2001 when he retired under the "Patten" voluntary severance scheme. He joined initially as a member of the part-time reserve in which he served until April 1977 when he became a member of the full-time reserve force. In December of 1977 he became a member of the regular RUC. After a period of recruitment training he was posted to Waterside police station in Derry in April 1978 where he remained until March 1996 when he was transferred to Shantallow station. In January 1998 he was transferred to Strand Road police station and in June 1998 he was transferred to Strabane. In March 2000 he was again transferred to Strand Road where he remained until his retirement. In March 1985 he was appointed to the rank of Detective Aide and in March 1986 he became a Detective Constable.

[2] It is common case that the plaintiff was exposed to a number of events that could be characterised as traumatic. In the course of his pleadings the

plaintiff has referred to approximately fifty incidents but he identified eight specifically when he was seen by Professor Davidson, Consultant Psychiatrist, who gave evidence on his behalf. These were –

(i) On 26th November 1976 the plaintiff was delivering bread to Long's supermarket on Strand Road in the course of his civilian employment when he was ambushed by two terrorists. One placed a hand gun behind his left ear and pulled the trigger but no round was discharged. The other terrorist shot the plaintiff in the chest causing a severe injury as a consequence of which part of his right lung had to be surgically removed. He remained in intensive care for approximately three weeks and was hospitalised in total for a period of six to seven weeks. During the course of his hospitalisation at Altnagelvin it was necessary to have an armed guard on his door 24 hours per day.

(ii) On 1st April 1982 the plaintiff was required to attend the A&E department of Altnagelvin Hospital following the terrorist murder of two army sergeants. The plaintiff's duties required him to search the bodies, which had been mutilated by gun fire, and recover the soldiers' personal effects.

(iii) On 6th December 1982 the plaintiff acted as an observer in a mobile patrol sent to the mortuary at Altnagelvin Hospital where causalities were being received from the explosion at the Droppin Well bar, Ballykelly. The plaintiff was required to make identification notes and many of the bodies were severely mutilated with missing heads or limbs.

(iv) On 27th March 1984 the plaintiff went to the scene of an explosion at Gransha dual carriageway and discovered the torso of Sergeant Ross, an army sergeant with whom he had been acquainted.

(v) On 26th November 1986 the plaintiff was required to attend the mortuary at Altnagelvin Hospital and observe a post mortem on a 6 year old child that was being carried out by Professor Marshall, the State Pathologist for Northern Ireland.

(vi) On 23rd march 1987 a cousin of the plaintiff's wife, a prison lecturer, was murdered by terrorists outside Magee College and when police officers arrived to investigate the scene they were killed by a booby trap bomb. One of these officers had been a close friend of the plaintiff and he heard the explosion.

(vii) On 24th September 1990 the plaintiff went with other police to the scene of a human proxy bomb at a military checkpoint on the Buncrana Road. The bodies of the dead had been removed by the time that the plaintiff arrived but human remains were still widely scattered about the area.

(viii) On 29th June 1991 the plaintiff arranged for a well known loyalist to be at home so that he could be interviewed by the police. Whilst he was at home the loyalist was murdered by terrorists. The plaintiff was accused by the family of setting this man up and he himself developed feelings of guilt although he was satisfied that, in reality, he was not in any way to blame.

[3] In addition to the above the plaintiff was targeted by terrorists upon a number of occasions as a result of which he was compelled to move house in January 1990. He was again targeted in July/August 1991 and on this occasion he opted for a security package to be installed rather than move house once more. The plaintiff became a member of the Key Persons Protection Scheme. On the 14 of December 1980 the plaintiff suffered a fractured jaw during the course of a riot but he did not include that as one of the incidents that he particularly drew to the attention of Professor Davidson.

The plaintiff's symptoms

[4] The plaintiff's case was that he began to experience psychological symptoms subsequent to the attack upon him in the supermarket in November 1976 including nightmares, difficulty in sleeping, flashbacks, irritability, poor concentration and general lack of interest in his family and social life. He also complained of insecurity, low mood and depression. The plaintiff said that he continued to suffer panic attacks which produced physical symptoms such as palpitations, sweaty hands, difficulty breathing and he also attributed a number of other physical complaints to stress including hyper tension, sciatica, high blood pressure and chest pain.

The expert evidence

[5] After reading their respective reports and consulting, Professor Davidson and Professor Fahy produced a joint statement which recorded that both accepted that the plaintiff had given a broadly reliable account of his psychiatric history although he was not always clear on the periods of time when he experienced intrusive symptoms and that he may have amplified severity albeit not to a troublesome degree. The plaintiff told Professor Davidson that since the shooting attack in November 1976 he had only been symptom free for about 20% of the time and that for the other 80% he had been suffering significant psychological symptoms.

[6] On 5th February 1980 the plaintiff attended his GP complaining of a lot of tension especially with the children. The relevant note included a reference to "anxiety ++" and a prescription for valium. The plaintiff was certified as absent from work for a period of two weeks from 9th to 23rd November 1981 with an anxiety state for which valium was prescribed. His GP noted that he had been shot 5 years ago, that he had difficulty sleeping and had been

"driving kids and wife mad." The GP records indicated that by the 24th he was noted to be feeling and sleeping better. In evidence the plaintiff was unsure as to why he received advice relating to stress from his GP in May 1990 but he thought that the advice was along the lines of relax more and take more time out. He thought that an attendance in November of 1990 probably related to a road traffic accident in which he had been involved while on duty when the vehicle in which he was travelling was struck from behind by another vehicle in Carrickfergus.

[7] Professor Davidson was cross examined as to the apparent absence of any attendance by the plaintiff with his GP that could be linked in time to any of the incidents during the 1980s that the plaintiff had identified as being major incidents. Professor Davidson accepted that he would have to "live with" the fact that there were no such attendances, despite being told by the plaintiff that some of these incidents had upset him a great deal. Professor Davidson was not sure that he could put forward any explanation. At one stage he ventured the view that during this period the plaintiff might have suffered from a generalised anxiety disorder which was really a condition of "pervasive worry" and not specifically a "traumatic thing" although he also believed that some of the incidents exacerbated his post traumatic stress. Even if there was some such exacerbation it never seems to have reached the level at which this plaintiff felt the need to return to his GP to whom he was clearly quite prepared to go for this type of problem. The plaintiff was asked in cross examination whether the absence of any attendance with his GP with regard to psychological symptoms from November 1981 to May 1990 meant that he was not troubled by such symptoms and he replied:

"Probably not of the same depth."

Professor Fahy explained that he and Professor Davidson discussed in detail the plaintiff's reliability and agreed that he was not consciously exaggerating. He also accepted that the plaintiff might well believe his history to be accurate but that its reliability had to be considered in the context of the chronic severe depression from which he has been suffering during recent years and which was likely to produce a gloomy picture of the past.

[8] Both Professor Davidson and Professor Fahy agreed that the appropriate diagnosis immediately subsequent to the original shooting incident in November 1976 was one of post traumatic stress disorder of clinically significant severity but subject to fluctuation. The difference between the experts lay in their respective views of the frequency and degree of severity of fluctuation. Professor Davidson agreed that there was some merit in Professor Fahy's analysis that after the shooting the plaintiff had suffered from a fluctuating mild adjustment disorder but he was more inclined to see Mr Hepburn's condition as a moderately severe disorder which never resolved and which was fuelled by the traumatic incidents to

which he had referred. The plaintiff's medical records confirmed that, after the shooting, from 1976 to 1981 the plaintiff had no inhibitions whatever about attending his GP or any other medical adviser with regards to psychological problems which appear to have been diagnosed at that time as a depression/anxiety state that was at one point marked enough for Dr Kane to suggest admission to Gransha hospital. The progress outlined in the medical reports from the plaintiff's GP and Dr Kane subsequent to the original shooting was one of gradual improvement by the end of November 1981.

[9] Both experts agreed that the plaintiff had problems over and above any related to trauma including his physical health , his wife's physical health, family stresses and alcohol consumption and that there was a flare up of a major depressive disorder of a fluctuating degree after the Shantallow transfer. In the circumstances, after reading their respective reports together with the joint statement and listening carefully to the evidence of the medical experts I reached the conclusion that Professor Fahy's analysis was likely to be more accurate.

Detection

[10] The plaintiff alleges that the psychological symptoms from which he suffered subsequent to the original shooting attack in November 1976 ought to have been detected by the defendant during the recruitment process for the full time reserve and the regular police force.

[11] On 5th April 1977 the plaintiff was examined by Dr Hagan, the Force Medical Officer, as part of his recruitment into the full time reserve. By this time the plaintiff had attended with his GP in February when he was noted to be suffering from a reaction to the shooting and having difficulty sleeping as well as being very worried. He had been reviewed at Altnagelvin Hospital on 13th February when he was noted to be nervous and anxious and arrangements were being made for him to be interviewed by a psychiatrist for assistance with his anxiety state. On 9th April 1977, some four days after Dr Hagan's examination, Dr Kane, Consultant Psychiatrist, was to express the view that the plaintiff was suffering from a moderately severe depressive illness with prominent anxiety. Despite suffering from such a condition it appears from the form completed by Dr Hagan at Garnerville that he asked the plaintiff about the gun shot wound and was told that he "feels well now". Such an answer would have been quite consistent with the plaintiff's evidence that he was determined to conceal the fact that he was suffering from any psychological symptoms from the police.

[12] The plaintiff subsequently applied to join the regular police force. As part of that recruitment process he submitted a statement dated 25th August 1977 for the purpose of the preliminary medical examination in which he

recorded the gun shot wound to his chest and also "insomnia and depression". The statements submitted by his general practitioner in connection with the same process also referred to the gun shot wound and that he had suffered from depression and anxiety but that, subsequently, the plaintiff had made a complete recovery and "there is no depression or anxiety now". In his original statement of evidence the plaintiff explained that, as part of his preparation for applying for the regular force, he had told Dr Kane's Registrar during a review appointment on 26th May 1977 that he was coping well. As a consequence of this attendance, Dr Kane's Registrar wrote to the plaintiff's GP confirming that the plaintiff was doing very well, that he had no problems and that he was cheerful with no evidence of depression. It seems clear that this was the basis upon which the GP subsequently completed the documents for the application to the full time force.

[13] When asked in cross examination how he could reconcile the claim in his original statement of evidence that the defendant had failed to ask sufficient questions about his mental condition with his firm intention to not to reveal that he was still having psychological problems the plaintiff replied "I just can't". In the circumstances I am not persuaded that the recruitment documentation established that either Dr Hagan or Dr Foster should have made any further enquiries of the plaintiff about his mental condition and, even if they had, I am satisfied that, having regard to his own evidence, the plaintiff would not have disclosed any relevant material.

[14] In the early part of 1978, when he was attending the training depot in Enniskillen, the criminal injury application made by the plaintiff subsequent to the original shooting attack was listed for hearing. By this time, despite the apparent improvement that he had reported to Dr Kane in August 1977, the plaintiff had suffered a relapse of his psychological symptoms in October and was back on medication. In evidence, the plaintiff said that he had told his solicitor that he had been seeing Dr Kane and that he had been diagnosed as suffering from a moderately severe depressive illness. He was not sure whether the solicitor had obtained a report from a Consultant Psychiatrist. In his statement of evidence the plaintiff said that, on the morning of the trial his claim was settled in respect of only physical injuries because he was advised by his legal representatives that if he pursued a case for psychological damage the Superintendent of Personnel, who was present to give evidence, would advise the court that he was unemployable because of his psychological problems. It was rather difficult to follow the plaintiff's responses to the questions he was asked about this matter in cross examination. He confirmed that he was not advised that if he did not pursue the psychological element of his claim he would be losing a large amount of compensation but on the other hand he said that he was told that, by not pursuing that element, he was abandoning compensation to which he was otherwise entitled. In any event, he confirmed that it was his decision that

nothing should be disclosed about the psychological symptoms from which he certainly appears to have been suffering at that time.

The OHU

[15] The plaintiff was never invited to attend the OHU either as a consequence of the initial reliance upon the Duty Officer's Report or the subsequent operation of Force Order 14/88 or 16/95. With regard to the Force Orders, it is to be noted that only two of the traumatic incidents specifically identified by the plaintiff to Professor Davidson as troubling occurred subsequent to the coming into operation of Force Order 14/88 in February 1988. The plaintiff's involvement in each of these incidents was relatively peripheral. The bodies of the dead had been removed from the Buncrana Road prior to his attendance on 24th September 1990, although it seems clear that there were still some gruesome remains, and he had not been present at the attack on the loyalist. The accusation made by the family was made at the hospital. In such circumstances it is arguable whether referral would have been required under Force Order 14/88. While the plaintiff does appear to have been advised by his GP about stress in May of 1990 and to have been prescribed diazepam in relation to headache and neck spasm in December of that year, he does not appear to have consulted him after his attendance at Buncrana Road. It seems to me that the rational inference must be that he was not suffering any symptoms of sufficient significance to warrant attendance at either his GP or the OHU.

[16] On 29th August 1977 prior to the plaintiff's admission to the regular force when he was serving at Strand Road as a reserve constable his recruiting officer recorded that, in conversation, he found him a very open person who was easy to get along with and highly regarded amongst the men at Strand Road. He noted that he was very popular and always appeared to be in good spirits. The plaintiff agreed that he did present such an appearance to his colleagues and that his professional appraisals were accurate in reflecting that he was an efficient and successful police officer.

[17] On 20th July 1994 the plaintiff underwent a routine health screening with the travelling Occupational Health Unit that had come to Waterside police station. This was in accordance with the Wellscreen Health Programme administered by the OHU. The programme involved inviting officers at whose station the unit had attended to undergo basic general health checks including urine, blood pressure, height/weight, cholesterol and liver. The package included a stress component. For the purpose of assessing levels of stress a questionnaire was administered and the questions and responses fed into a computer programme. At the conclusion of all the tests the officer was provided with a computer printout containing the results and he or she was also supplied with two sets of documentation one of which was

to be retained by the individual and the other to be taken to the individual's GP. The plaintiff was shown a copy of the computer print out presented to him when he attended the unit and he agreed that his blood pressure, cholesterol and Gamma-GT readings had been discussed as well as his CO result. The plaintiff also accepted that there had been a conversation about his weight, alcohol consumption and general lifestyle. He did not recollect any discussion about his stress scores which were obviously raised. The Wellscreen check seems to have taken place some three years after the most recent of the traumatic incidents categorised by the plaintiff as "major," namely, the murder of the loyalist.

[18] Understandably, Ms Donna Andrews, who saw the plaintiff at the material time, did not have a clear recollection of the Wellscreen interview but she confirmed that her practice would have been to ask whether he had any issues of concern in view of his raised stress scores. It was common case that the results of the physical tests were discussed in terms of the plaintiff's lifestyle and, in particular, the fact that he had been drinking heavily the night before the tests. The stress scores were obviously raised and I am satisfied that they would have been drawn to the plaintiff's attention. Given his reluctance to provide any information to the defendant about psychological symptoms, I think that it is probable that he said that he had no relevant concerns. When specifically asked about his unwillingness to disclose any such symptoms in this context the plaintiff said that he might have spoken more freely to a doctor but that he would not have told Ms Andrews because "she wasn't the person I wanted to talk to."

[19] I am satisfied that if the plaintiff had disclosed any relevant concerns and/or symptoms Ms Andrews would have advised further and arranged for him to attend the OHU for a more detailed assessment if so required. It is clear that the results of the other tests disclosed in the computer print out were appropriately followed up. I am also satisfied that, at the conclusion of the interview, the plaintiff was provided with the two sets of documentation, one of which would have specifically drawn his attention to the significance of the stress scores. It seems that the plaintiff did present the other set of documents to his doctor when he attended upon him shortly after being seen at the Wellscreen Unit. On 30th May 1995 the plaintiff had a follow up check with the health patrol when he was advised to visit his GP with regard to his blood pressure. He stated that he was being monitored by his GP but that he had not as yet received any medication. His weight, liver function and cholesterol were also rechecked. The necessity to lose weight was discussed and arrangements made for a review in approximately 3 months time. In August the plaintiff telephoned Miss Andrews confirming that he was still attending his GP and advising her that he did not consider it necessary to attend again at the OHU although he would renew contact should the need arise.

[20] Professor Davidson accepted that the documentation furnished to the plaintiff at the Wellscreen check was reasonable and appropriate and that it was a matter of personal responsibility if he chose not to read it. The plaintiff initially denied reading the documents with which he was supplied at all but he later conceded that he might have done so but only superficially taking "out of it what I wanted". The Professor also accepted that the documentation provided for supply to the GP was reasonable and that the plaintiff appeared to have furnished it to his GP with whom he had discussed the results. In fact, these circumstances led Professor Davidson to ask himself whether the plaintiff's own doctor had done enough although, ultimately, he accepted that it was a judgment call for the GP.

[21] It is important to remember the context in which the Wellscreen Unit carried out these health checks. It was a screening facility that was offered by the defendant to his officers for the purpose of monitoring their general health rather than a detailed medical examination performed for the purpose of diagnosis and treatment. It seems to have been a popular facility and each check was limited to approximately 45 minutes. A computer print out was provided to the officers concerned and I am satisfied that the stress scores were drawn to the plaintiff's attention but that he indicated that there were no issues that he wished to further discuss. In themselves the positive stress scores indicated a 50% probability of an indication for therapeutic intervention. As explained in the letter of 20th May 2006 from Dr Ormerod, Consultant in Occupational Medicine, the version of the documentation supplied to the plaintiff for personal use would have included a section relating to the stress check that explained in more detail the potential significance of his scores and suggested that if he had not already sought professional help now was the time to give it some consideration. The plaintiff was unable to recall reading this passage and said that it was hard to know what he would have done if he had read it in 1994.

[22] Professor Davidson agreed that personal responsibility had a role to play in this process and that it was reasonable to expect the plaintiff to have read the document with which he was provided by Ms Andrews. He also accepted that it was reasonable for that documentation to contain a suggestion that he should consult his GP and that the documentation provided for the GP was appropriate. Professor Fahy confirmed that the documentation furnished by the OHU during the Wellscreen check accorded with good standards of practice and that it was reasonable to give the advice that it contained to the patient and to his GP. In the circumstances, while I think that it would have been helpful to note the plaintiff's negative response to enquiries as to whether he had any concerns that might have been relevant to stress, I do not think that any serious criticism can be made of the operation of the Wellscreen check by the OHU in relation to this plaintiff. Ms Andrew's evidence about the content of the interview was quite consistent with the plaintiff not suffering from any significant symptoms or, in any event, a

decision not to disclose any such symptoms to a nurse, but to rely instead upon his general practitioner. The absence of any relevant GP record supports the former explanation. The OHU took all reasonable steps to draw to the attention of both the plaintiff and the GP the results and significance of the tests carried out during the Wellscreen check.

[23] On 31st July 1996, subsequent to his transfer to Shantallow, Ms Andrews received a telephone call at the OHU from Sergeant Harkness, the plaintiff's Section Sergeant. Sergeant Harkness told Ms Andrews that the plaintiff was extremely irate that he had not been contacted earlier by the OHU and that he had been on sick leave for approximately eight weeks. He said that the plaintiff was very unhappy and annoyed about his transfer and that he believed it had caused an increase in his blood pressure. The evidence was not really clear as to whether the plaintiff himself had contacted the OHU earlier. At one point he said that he had telephoned from his home and at another he said that he believed his authorities would have contacted the OHU after he had taken sickness absence.

[24] Arrangements were made for the plaintiff to see Dr McCaughan at the OHU on 15th August, the day following an appointment he had made to see his GP. Dr McCaughan took a detailed history from the plaintiff who recounted a number of complaints about the circumstances of his transfer and difficulties that he had been encountering with his colleagues and superior officers. He also told Dr McCaughan about the shooting in 1976, the facial fracture that he had sustained during the H-Block campaign and his participation in an unit set up to monitor H-Block protests. Dr McCaughan noted that the plaintiff was not fit to return to work and that the move to Shantallow "seems unwise." He arranged for a review in December. When he saw the plaintiff again on 9th December Dr McCaughan noted that he was "not too bad" and had expressed a wish to return to work. The plaintiff said that his state of mind had improved and he was noted to be calm and positive with good insight. Dr McCaughan recorded that the plaintiff was fit for CID duties and recorded that he wished to be transferred to Limavady.

[25] The plaintiff agreed with the general accuracy of the notes recorded by Dr McCaughan and that the picture that they recorded was of a person with high blood pressure who had been troubled by the working environment at Shantallow but who had shown a good improvement over six months and was keen to get back to work. He said that he probably was suffering nightmares, sleepless nights and flashbacks at the time but accepted that there was no record that he had mentioned any of these symptoms to Dr McCaughan. If he was suffering from such symptoms it is difficult to understand why he would not have disclosed them at this stage.

[26] The OHU records indicated no further contact with the plaintiff until the home visit of 10th November 1999 followed by the treatment by Dr Pollock, Consultant Psychologist. At page 27 of his report dated 11th August

2005 Professor Fahy expressed the view that it was "a little surprising" that the plaintiff's condition was not more closely monitored during 1997, 1998 and early 1999 although he noted that the 1996 report by Dr McCaughan, at the end of the long term sickness review showed that he had improved. When cross-examined about this criticism Professor Fahy described it as "fairly tentative" and qualified and said that he could see how the OHU were reassured at the end of 1996. When Professor Davidson's attention was drawn to the view expressed by Professor Fahy he simply said that it would have been an opportunity for the OHU to have kept somewhat closer tabs on Mr Hepburn from the point of view of his emotional state. In view of the content of Dr McCaughan's note of the attendance on 9the December 1996, which the plaintiff accepted was accurate, I am not persuaded that it was negligent for the OHU not to have initiated further reviews during this period.

[27] Contrary to the closing submission upon his behalf, this plaintiff did received specialist treatment from Dr Pollock at the OHU. Dr Pollock is a Consultant Clinical and Forensic Psychologist who was engaged by the OHU upon a sessional basis and who saw the plaintiff upon a total of nine occasions between December 1999 and October 2000. Initially, Dr Pollock set out to deal with the plaintiff's symptoms using as many strategies as possible including ventilation about his annoyance and sense of grievance and, latterly, more formal cognitive therapy. The self-management part of the cognitive therapy included providing the plaintiff with assistance in stress management and coping strategies.

[28] Prior to seeing the plaintiff Dr Pollock had worked with individuals suffering from PTSD for many years and he had published a book on the treatment of trauma as well as articles in international journals. He agreed that in the course of his work with RUC officers at the OHU he had come across individuals who appeared to be suffering from PTSD on many occasions. He was closely cross-examined as to why he had not provided any specifically trauma focused treatment such as CBT or EMDR. Dr Pollock firmly maintained that he had provided the appropriate treatment required by the plaintiff in terms of his complaints and symptoms and emphasised that at no point had the plaintiff provided him with any information or symptoms that indicated his condition at that time was trauma induced. Dr Pollock was aware that the plaintiff had been exposed to traumatic events but he emphasised that such exposure by itself did not automatically lead to PTSD and that constellations of symptoms required to be properly analysed and disentangled from potential causes. In response to specific questioning the plaintiff had denied any relevant family or historical history. Dr Pollock characterised the psychological problems presented by the plaintiff as a circumstantial or reactive stress reaction producing a mixture of anxiety and depression symptoms. In his view this had been triggered by the plaintiff's reaction to the way in which he had been treated in respect of his transfer in 1996 which was uppermost in his mind. Dr Pollock's attention was drawn to

the symptoms recorded previously by Dr McCaughan including sleeplessness, increased irritability, isolation and drinking at night but he pointed out that such symptoms could equally be associated with depression, alcohol misuse and many other types of condition. Professor Davidson expressed the opinion that the reason why the plaintiff was so upset about the transfer was that:

"…for him, maybe at an unconscious level, was not consciously thought out, that he perceived this as a very, very severe threat to his safety and we could say that much of this was irrational, that the real risk was less than it was "

and that it served as a reminder of the 1976 attack. However such an unconscious rationale does not seem to have emerged during the months of sessions with Dr Pollock. Professor Davidson accepted that Dr Pollock acted in accordance with proper practice and his clinical judgement in prioritising the plaintiff's depression but that did not mean that there might not have been other issues in the plaintiff's life that had to be dealt with.

[29] In cross-examination Dr Pollock was asked for his reaction to the diagnosis made by Dr Poole in 2001 that the plaintiff was suffering from PTSD and appeared "to have done so for some considerable time." Dr Pollock did not dispute Dr Poole's opinion but said that the interesting question to be considered was why the plaintiff appeared to have been making a positive connection between his symptoms and trauma only after he had left the RUC. He went on to explain that, in his experience, a number of RUC officers had been unable to address their PTSD until after they had left the organisation because of a fear that by "becoming well" they would have found themselves returned to uniform duties in the course of which they would have been exposed to further trauma and might not have been able to cope. Dr Pollock considered that that was a very realistic and rational fear on the part of such officers. I note that this plaintiff remained in uniform at all material times.

[30] In summary I am not persuaded that any negligence has been established on the part of the OHU in relation to this plaintiff. Prior to the episode of the Shantallow transfer I do not think that any trauma related symptoms from which he may have suffered are likely to have been seriously troubling, given his normal coping mechanisms, and that even if they had been the plaintiff would not have been prepared to reveal them to the defendant or the OHU. As far as his fellow officers were concerned there was no evidence to indicate that he was in any way adversely affected in carrying out his duties. The circumstances of the transfer and his consequent severe depression may have ultimately led to some exacerbation of trauma symptoms as his coping mechanisms became weakened but that had not occurred before he left the RUC or at least had not done so as to be reasonably detectable by Dr Pollock.

Treatment

[31] Both Professor Davidson and Professor Fahy agreed that the plaintiff now presents a complex and difficult case and that, over time, he has often made it difficult for health providers to do their job. Both are agreed that the optimal form of treatment at present would be provided by a multi-disciplinary team approach. After he retired from the RUC the plaintiff attended Dr Poole at PRRT in 2001 where he received five or six sessions of EMDR. Shortly after those sessions had been completed he told Dr Higson in November 2001 that he had not derived any benefit from that therapy. In 2003 he underwent nine sessions of counselling spread over approximately nine months arranged by the Police Fund. Professor Davidson described this as "motivational counselling" and noted that, "upon completion, the plaintiff had reduced his drinking and was taking part in more activities." Within a few weeks of completing this counselling the plaintiff said he was back to square one. Thereafter he was offered a further course of EMDR which he declined. Professor Davidson expressed a view that the benefit he had obtained from medication such as Prozac had been limited but worthwhile.

[32] Professor Fahy though that the plaintiff's current problem was that he was immobilised through depression, low morale and pessimism and that is why he considered that he needed the input of a multi-disciplinary community mental health team. Such teams are accustomed to dealing with individuals who are chronically depressed because of a complicated cocktail of factors. He thought that such a programme might include attendance at a day hospital or rehabilitation centre. In Professor Fahy's opinion, quite apart from treating them, it would not be possible to establish the significance of any post-traumatic symptoms until a concentrated effort had been made to deal with the plaintiff's depression. While neither expert was completely unequivocal about the benefits of earlier treatment, it seems likely that treatment might have been more effective had it been administered prior to the transfer, and subsequent to the transfer before the plaintiff's depression became significantly more intense from 1999 to 2001.

Culture

[33] As was the case with other lead plaintiffs, this plaintiff described the extent to which the RUC macho culture inhibited him from discussing the fluctuating symptoms from which he was suffering during the 1980's and early 1990's with his senior or fellow officers. Ms Donna Andrews confirmed that in the "earlier days" such a culture inhibited people from disclosing that they were suffering from emotional difficulties or problems relating to stress and, as I have already noted above, Dr Pollock gave evidence about his experience of officers who felt that they could not deal with PTSD until they had secured their exit from the organisation. At all material times, this plaintiff made clear that it was his GP to whom he chose to turn whenever he felt the need to seek advice and/or treatment for psychological symptoms

and, during the recruitment process his concerns led him to actively suppress symptoms. However the certification provided by his GP as early as November 1981 established that by that date he was not inhibited by the culture from admitting that he was suffering from an anxiety state and receiving medication. I found it somewhat difficult to accept his evidence that he was not aware of the existence of the OHU prior to July 1994 in the context of his acceptance that he kept himself reasonably familiar with Force Orders and that he was a member of the Police Federation. Indeed, he accepted in cross-examination that he probably had read articles about or references to the OHU in copies of Police Beat. Nevertheless, he maintained that he was not aware that he could self-refer to the OHU. There can be no doubt that he would have been fully aware of the existence and functions of the OHU when he attended the Wellscreen unit in July 1994 but, despite his attention being drawn to the high stress scores and being asked by Ms Andrews whether there were any relevant issues he wished to discuss, it seems clear that the plaintiff again chose to consult with his GP.

[34] The plaintiff gave evidence that a few days after he had been notified of his transfer to Shantallow in February 1996 he went to an interview with Detective Superintendent McVicker in the course of which he emphasised the concerns that he had about being transferred to an area where he had been shot, that his house was under threat and that he had been a member of the unit concerned with the prosecution of H-Block demonstrators other members of which had also been shot. While the content of this interview was disputed by the retired chief superintendent, the plaintiff emphasised in his report of 11 November 1996 to Detective Inspector Paul that, prior to his transfer, it was a well known fact that he was suffering and receiving medical attention for his stress related illness. That report was clearly designed to seek a more favourable outcome for the plaintiff in respect of his application for a transfer to Limavady. It seemed to me that the reference to a well known stress related illness in the report might well have been to the high blood pressure and hypertension from which the plaintiff had suffered since 1993 which had been reflected in the Wellscreen results and which he had regularly discussed with his GP and, more recently, with Dr McCaughan. However he went on to refer to the original shooting and alleged that it brought back vivid and traumatic memories upon each occasion that he travelled through the relevant area. In such circumstances it appeared that the plaintiff was not prevented by the culture upon that occasion from bringing home to the defendant in strong terms the fact that he had been suffering from a stress related illness with traumatic symptoms. Apart from this occasion the only other time when the plaintiff appears to have been willing to make a clear connection between traumatic events and psychological symptoms seems to have been his attendance upon Dr Poole at PRRT after he had left the RUC and shortly before the issue of the Writ of Summons in these proceedings.

[35] Ultimately, however, I am not persuaded that the macho culture effectively inhibited this plaintiff from revealing any trauma related symptoms. Had any such symptoms been sufficiently significant I am satisfied that he would have consulted his GP.

Alcohol

[36] The plaintiff gave a history of relatively heavy drinking. He agreed that, from time to time, his GP had advised him about his drinking but he was unsure when it had started to become "heavy" apart from the fact that it had been during his service at Waterside Station. The notes made by Ms Donna Andrews during the course of the well screen procedure in 1994 confirmed that information supplied by the plaintiff indicated an alcohol intake of some 40 units per week and that he had consumed an excessive quantity of alcohol the night before he attended the unit. Whilst, understandably, she could not recall the detail, contrary to counsel's closing submission, I am satisfied that Ms Andrews did discuss the question of the plaintiff's alcohol intake and it is also quite clear that he received advice from his GP when he subsequently attended. When the plaintiff saw Dr McCaughan on 15th August 1996 he did not volunteer any information to indicate that he was drinking excessively and the doctor simply noted "alcohol okay." In such circumstances I am not satisfied that there was any evidence to alert the defendant to any potential connection between the plaintiff's heavy drinking and any psychological symptoms suffered as a consequent of expose to trauma prior to 1994. I am satisfied that his drinking was measured and discussed with him by Ms Andrews during the course of the Wellscreen interview and, in accordance with his own preference, the relevant information was passed to his GP who subsequently gave him advice about his consumption.

The Shantallow Transfer 1996

[37] In February 1996, when the plaintiff had been serving at Waterside for approximately 19 years, he was telephoned at home by Sergeant McClure and told he was to be transferred to Shantallow. The plaintiff said that his immediate reaction was one of extreme shock because of the proximity of Shantallow to the area in Strand Road in which he had been attacked in 1976. At that time the plaintiff resided in the Waterside area and, as a result of threats, his house had been included in the Northern Ireland VIP protection scheme. He had also been a member of the unit formed to deal with the H-Block demonstrations. In such circumstances, he said that he felt that such a transfer represented an increased threat. In addition, the plaintiff found the circumstances under which he was notified of the proposed transfer humiliating in that he received the phone call at home at 11.30am and when he went to work at 4.00pm everybody was aware that he was to be transferred. The plaintiff felt that he was the last to be briefed and began to believe that the transfer represented some form of punishment. The plaintiff agreed that he had done nothing wrong, that he had been working efficiently

with good appraisals and that he had not committed any disciplinary offence. Nevertheless he stated in evidence that he believed that the transfer had been recommended by superior officers simply for the purpose of exposing him to greater risk. He was unable to identify a reason why that should have been the case.

[38] The plaintiff said that he arranged through Sergeant McClure to have an interview with Chief Superintendent McVicker the senior officer who had recommended the transfer. That interview took place a few days later at Strand Road Police Station in the Chief Superintendent's Office. The plaintiff said that he asked for the reasons for the transfer and was told by the Chief Superintendent that a senior detective was required at Shantallow and that it was his turn at the "coal face." The plaintiff maintained that he had informed the Chief Superintendent of the attack upon him at Strand Road, the subsequent threats that he had received and his involvement with the H-Block squad and that, in such circumstances, he was unhappy with the proposed transfer. The Chief Superintendent, who has subsequently retired, gave evidence and denied that the plaintiff made any such points in the course of the interview. According to Mr McVicker the plaintiff simply asked why he was being transferred and he informed him it was because there were too many inexperienced officers at Shantallow and his maturity and experience were required in that area. Mr McVicker said that the plaintiff appeared to accept that explanation without complaint. Mr McVicker agreed that Shantallow was a busier station than Waterside and would have been regarded as the most dangerous station in Derry in terms of terrorist activity. He also stated that the policy was to rotate officers and his recollection was that the plaintiff was one of the few senior CID members who had never served in Shantallow. Chief Superintendent McVicker's recommendation was accepted and the plaintiff was effectively transferred to Shantallow in March 1996. In June 1996 the plaintiff commenced a period of sickness certified by his GP as due to high blood pressure and hypertension. On 11th November 1996 the plaintiff submitted a report to his authorities that was extremely critical of Detective Superintendent McVicker's role in his transfer. By way of response the Detective Superintendent forwarded a report dated 19th November 1996 to the regional head of CID North in the course of which he referred to the plaintiff's document as "contemptible" and asserted that the plaintiff was either seriously ill or a deliberate liar. I have little doubt but that the strength of this reaction was generated by the threat contained in the plaintiff's report that he would go to the press about his treatment and that he was forwarding a copy of that document to his solicitor and, in the event of a worsening of his condition, he intended to hold "those persons behind my transfer directly responsible".

[39] I do not consider that either the plaintiff or the Chief Superintendent emerged from the episode of this transfer with particular credit. I did not believe the plaintiff's account of the content of his initial interview with the

Detective Superintendent for two main reasons. In the first place, if the plaintiff had made the case that he claimed to have made to the Chief Superintendent in February 1986 I have little doubt but that it would have been investigated at that time by Mr McVicker. Secondly, the context of the plaintiff's report of 11th November 1996 suggests that was the first occasion upon which he was making his detailed case, in particular, his wording: "I now wish to raise several points regarding this matter." In addition, I have no doubt that, had he made those points in the original interview with the Chief Superintendent the plaintiff would undoubtedly have said so in the course of compiling this report. I am satisfied that the plaintiff's main cause for concern about the transfer was not any increase in psychological symptoms resulting from trauma but his sense of humiliation, resentment and hurt about being transferred unfairly in circumstances in which many of his colleagues knew of his move before he did and thought that it represented some sort of "punishment" for professional shortcomings. It seems to me that the account given by the plaintiff to Paul McIlwaine, the welfare officer who visited him on 22nd October 1996 was entirely consistent with such a conclusion.

[40] On the other hand, I am inclined to the view that Detective Superintendent McVicker overreacted to the plaintiff's report of November 1996 as a result of which he may not have given the points of substance that it contained the consideration that they deserved. Subsequent to his examination of the plaintiff on 15th August 1996 Dr McCaughan sent a memo from the OHU to the deputy head of Personnel confirming that the plaintiff might not be able to return to work for some weeks and stating:

> "He is currently stationed in Shantallow and it might be beneficial if his posting could be reviewed."

In cross examination Mr McVicker agreed that, despite the research he had carried out subsequent to seeing the plaintiff's November report, he had not encountered this document. On the other hand, in his own report, the Detective Superintendent confirmed that the welfare department and fellow officers who had visited the plaintiff indicated that they were extremely concerned about both his mental and physical condition.

[41] The issue of the transfer was subsequently the subject of a detailed investigation by Deputy Divisional Commander Superintendent Brown who issued a report on 15th November 2000. He concluded that there was no evidence to show a pattern of transfers on rotation as suggested by Detective Superintendent McVicker and he expressed the view that the transfer could be considered as not having been properly carried out. Contrary to the plaintiff's allegation in November 1996 Superintendent Brown was unable to find any evidence of a stress related illness prior to the transfer but he did express the

view that the circumstances of the transfer would have been traumatic and that the resultant sickness absence was closely related. However, he also expressed the view that the plaintiff had contributed to his own overall stress level by not taking the advice offered with regard to the threats that he had received. Overall, I am not satisfied that this was an example of a "block" or punishment transfer. The main policy reason seems to have been one of rotation of officers through the more dangerous station. However, there does not appear to have been any clear evidence of the working of such a policy of rotation and it is difficult to see how it could have applied to the plaintiff who had been 19 years in Waterside. The plaintiff did suffer an adverse reaction to the circumstances of his transfer and I consider that the matter should have been more sensitively handled.

Training/Education

[42] It is necessary to consider whether the plaintiff would have attended the OHU at an earlier date if the failures identified in the generic judgement had not occurred. It seems clear that he actively suppressed symptoms in 1977. He may also have done so at the Wellscreen examination in 1994 and when seen by Dr McCaughan in 1996 and by Dr Pollock in 1999 although I think it is less likely. The information with which he was furnished in 1994 warned him of the significance of his raised stress scores and suggested that he should seek professional help. He sought an appointment with Dr McCaughan in 1996 at a time when he said that he was probably suffering nightmares, lack of sleep and flashbacks but declined to reveal such symptoms nor did he do so when seen by Dr Pollock. In such circumstances I am driven to the conclusion that lack of training/education is unlikely to have played any significant role in this case since, on balance, I am not persuaded that the plaintiff's symptoms were ever at a sufficient level to persuade him to attend the OHU subsequent to 1987/88.

[43] According to the plaintiff's uncontradicted evidence the circumstances in which he was introduced to the Stress Awareness tape were perfunctory at best. This seems to have taken place in December of 1995 during the course of a CID meeting at Waterside Police Station. The plaintiff's evidence was that this was a fairly mundane meeting dealing with office matters, forthcoming arrests and other general topics. He said that towards the end of the meeting, Detective Inspector Creighton held up a tape saying that it was a tape about stress and "can we take it as seen." The plaintiff denied that he had received any leaflets about stress at the time and he had never heard of a "Stress Liaison Officer." According to the plaintiff, the video was not shown and he said that he personally did not wish to ask to see the tape lest it should be thought that he was suffering from problems of stress. He denied that he could have asked to see the tape in confidential circumstances. While this evidence was certainly relevant to the generic issue of instruction and training in so far as it tended to contradict the evidence of the defendant relating to the system for distribution of the stress awareness tape, it is not so clear how it affected the position of this particular plaintiff. By December 1995 I am

satisfied that this plaintiff was aware of the problem of stress and its consequences as a result, at the very least, of his attendance at the Wellscreen unit and the documentation with which he had been provided.

[44] Accordingly this claim must be dismissed and there will be judgement for the defendant.