

Neutral Citation No: [2007] NIQB 77

Ref: **COGC5812**

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: **03/07/07**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION**

POST TRAUMATIC STRESS DISORDER GROUP ACTION

Between:

CHARLES WAYNE McCLURG & OTHERS

Plaintiffs;

and

CHIEF CONSTABLE OF THE ROYAL ULSTER CONSTABULARY

LEAD CASE OF SCOTT LUCAS

Defendant.

COGHLIN J

[1] This plaintiff was born on 9th September 1966 and he joined the RUC as a Reserve Police Constable on 6th May 1986, aged 19. On 14th December 1986 the plaintiff joined the RUC as a full time regular Constable, an office that he continued to hold until he was medically discharged on 20th June 2001.

[2] As a reserve officer the plaintiff was posted to North Queen Street Belfast where he carried out beat and patrol and guard duties. After completion of his initial training as a full time officer he was posted to Woodbourne where he remained until he was transferred to the Mobile Support Unit (MSU) in Belfast on 2nd May 1989. The plaintiff continued to serve with the MSU until he applied for a transfer to the Dog Handling Section at Musgrave Street. That application was successful on 13th December 1993. On 26th September 1994 the plaintiff was transferred to Stormont while still remaining a member of the Dog Handling team. The plaintiff was transferred from the Dog Handling team to beat and patrol duties at Strandtown on 26th June 2000 where he remained until his eventual discharge.

[3] It is accepted that, during the course of his service with the RUC this plaintiff was exposed to a number of potentially traumatic incidents. These included, inter alia:

(i) On 21st August 1987 the plaintiff attended the scene of the booby trap bomb attack on an army patrol at Ramoan Gardens in Andersonstown. Lead claimant Boal was also involved in this incident.

(ii) Towards the end of 1987, or possibly early in 1988, the plaintiff attended the scene of a suicide on the railway line at Black's Road and, in the course of searching the scene, his patrol came across two portions of a severed torso.

(iii) On 19th March 1988 the plaintiff was a member of a patrol that arrived at the scene of the murder of Corporals Howe and Woods. The plaintiff did not approach closer than 50 yards from the bodies and remained at the scene only for a short time. He was subsequently asked to view the heli-tele video for the purpose of attempting to identify any of the assailants.

(iv) In February 1998 the plaintiff and a number of his fellow MSU officers were subjected to a hail of concrete, bottles, bricks and other objects when attempting to keep rival supporters apart at a football match between Linfield and Donegal Celtic at Windsor Park. During the course of this incident the plaintiff was knocked unconscious and struck by several bricks.

(v) On 4th December 1991 the plaintiff was talking to an army technical officer at Glengall Street when a suspect device exploded causing him to be blown across the road. As a result of this incident he suffered physical injuries and tinnitus.

(vi) On 1st August 1993 the plaintiff was cornered by a violent crowd outside the Ulster Hall and compelled to draw his firearm in order to make good his escape.

(vii) On 31st July 1994, when serving with the Dog Handling team, the plaintiff went to the assistance of a sergeant and another officer who had been surrounded by a hostile crowd on the Lower Ormeau Road and was compelled to use both his dog and his police baton for protection pending the arrival of the reinforcements. The plaintiff received an official commendation in acknowledgement of his actions upon this occasion.

(viii) In December 1996 the plaintiff was one of the first officers to attend the scene of the suicide of a police officer at a house in Bangor.

(ix) On 10th November 1997 the plaintiff attended the scene of the horrific attack upon Michelle Kerr in a flat in Quay Street, Bangor where he observed the injured party with multiple stab wounds and where he eventually arrested the offender.

[4] The plaintiff's case is that subsequent to the incident in Ramoan Gardens in August 1987 he suffered from a number of symptoms including vivid recollections, nightmares, headaches, dry mouth, flashbacks, hyper vigilance, profuse sweating, extreme fear, difficulty in concentrating, irritability, panic attacks, depression, loss of energy, irritability and detachment on a more or less continual basis. He said that he simply bottled everything up and got on with the job but that it was very very difficult.

The GP Records

[5] Between August 1987 and the plaintiff's attendance on his GP subsequent to the Quay Street incident in December 1997 only two entries in his GP records referred to stress. On 9th January 1989 his GP recorded that he was now living in Bangor and having "difficulties with stress at work". It was noted that he was not sleeping and that his appetite was poor. The GP recorded that his wife was expecting their first child and that his problems were discussed. Some 7 years later, in April 1996, the GP issued a sickness certificate for 2 weeks in respect of stress. The GP notes and records did not contain any other relevant entries although they did confirm that the plaintiff regularly attended his doctor over the years. During the course of giving evidence the plaintiff accepted that he never had any difficulty in discussing personal matters with his GP. When asked about how he felt after attending at the scene of the murders of Corporals Howe and Woods the plaintiff said that he had taken a couple of days off work. He said that he had done so because felt that he was being overwhelmed, losing his self control and suffering from continuous intrusive thoughts and flashbacks. When questioned further said that he had not realised that he taken these days of work until just before giving evidence when he saw his sick record and it indicated this absence as a result of "flu". When he was asked how he could remember the real cause for the absence if he had initially been unable to recall the absence itself the plaintiff replied that flu was a very widely used form of cover. In such circumstances, it was clear that even if the plaintiff could not remember the absence itself or the actual cause, he was quite prepared to give evidence that he must have been using flu as a cover for psychological symptoms. If the plaintiff was prepared to tell his GP about stress at work as a result of his experiences in January 1989 and, as a result, he received medication it is difficult to understand why for virtually the entire rest of his career he "bottled up" continuing significant psychological symptoms without further attendance upon his GP.

[6] On 14th September 1988, approximately 18 months after he had been assigned to Woodbourne, the plaintiff applied for a transfer to Belfast DMSU. Prior to lodging his formal written request the plaintiff said that he had gone with his section sergeant, Sergeant Patton, to make a verbal request for transfer to his inspector, Inspector McCrory. He said that this took place during the night shift at Woodbourne and that he told the inspector that he had to get out of the station as he just “couldn’t cope any longer”. The plaintiff stated that when the inspector told him that he would have to stay longer like the rest of the officers he physically broke down and cried.

[7] There can be little doubt but that Woodbourne would have been regarded as a dangerous and daunting posting being at the forefront of the terrorist campaign. The plaintiff found himself there as a young probationer and I am sure, in company with many other officers, he must have felt fear and apprehension about the circumstances in which he was called upon to discharge his duties. Sergeant Patton agreed that the plaintiff had told him that he was frightened and he noted that he was not the only one. Sergeant Patton relayed the plaintiff’s concerns to Inspector McCrory and took the plaintiff to Inspector McCrory’s office. He agreed that the plaintiff had appeared upset when he returned from the office. Apart from traumatic incidents, it seems that the plaintiff may have encountered some difficulty with cliques that had developed among the officers at Woodbourne and he may not have endeared himself to some of those officers as a consequence of the incident in which his thumb was caught in the rear door of a land rover. It also appears that, quite apart from his own desire for a transfer, the plaintiff may have been approached by members of the Belfast MSU in an effort to secure his services for their football team. In confirming Inspector’s McCrory’s refusal of the transfer application the relevant superintendent in B Division recorded his concern about the impact on the morale of other officers who were prepared to serve for 3 years in a dangerous area, noting that it was even “more alarming” that the plaintiff had been approached by MSU personnel interested in his footballing capabilities. Ultimately, it appears that the plaintiff was able to use his personal acquaintanceship, through football, with Superintendent Catterson, who was in charge of the Belfast MSU, in order to get his transfer application approved in May 1989. It does not appear that the plaintiff made Sergeant Patton aware of his friendship with Superintendent Catterson or the interest of the Belfast MSU in securing his services for their team.

[8] In the circumstances, I am inclined to the view that the reference to stress at work during the plaintiff’s attendance with his GP in January 1989 may well have related to difficulties over his transfer application rather than his exposure to traumatic events. While his reaction to such events may have been a factor in generating that application, I do not think that it is likely to have been the only one nor do I consider that any such reaction was chronic at that time.

[9] In April 1996 the plaintiff's GP issued a certificate of absence from work for a period of 2 weeks relating to stress. This period of absence seems to have been linked to the mental condition suffered by the plaintiff's wife rather than his exposure to any traumatic event. The plaintiff's wife had been admitted to the psychiatric unit at Ards Hospital in January 1996 which meant that he had to look after the four children of the family. The plaintiff attended the OHU on 25th March 1996 when he was seen by Margaret Patterson, nursing adviser. She recorded a history of his wife's psychiatric condition, that he hoped to resume work on 24th April and that his duties in the Dog Section permitted him to go home to check the situation. In such circumstances he indicated that he would "probably cope OK". The plaintiff gave Ms Patterson a history of his domestic difficulties which he described as having built up over the past 10 years. During the course of this absence from work the plaintiff had requested a visit from Welfare and Mr Jones attended at his home. The plaintiff gave Mr Jones a similarly detailed history of his domestic difficulties and the development of his wife's psychiatric condition and Mr Jones reassured him as to the security of his employment. The plaintiff told Mr Jones how, during the previous year, he and a partner had worked exceptionally well and had received a number of commendations for good police work. The plaintiff was followed up by welfare and it is interesting to note from Mr Best's record of his interview with the plaintiff on 14th March 1996 the history given by the plaintiff that he "hadn't slept more than five nights in the last five years" due to the fact that all of the children suffered from asthma and he had to be up quite regularly during the night throughout that period of time.

[10] On 21st May 1991 Mr Patterson from Welfare called on the plaintiff at a time when he was recovering from a whiplash injury sustained in the course of a high speed road traffic accident. Mr Patterson recorded a conversation with the plaintiff about his experiences in the RUC and his long term plans to leave the force as soon as he could. The plaintiff informed Mr Patterson that he had undergone "many and nasty experiences within the force" and that he intended to pursue his many interests outside the police at the earliest possible moment. He assured Mr Patterson that, whilst he was wearing the uniform, he would give the job 100% but that his heart would not be in it. The plaintiff also gave some details about the difficulties encountered by his wife in a struggle with the DHSS in respect of her inability to continue with her occupation as a nurse. The plaintiff gave evidence that the reference to "many nasty and bitter experiences" was a reference to traumatic incidents to which he had been exposed rather than difficulties with his colleagues and the job generally but he was unable to recollect whether he had told Mr Patterson about how he had been affected by such events. As promised, Mr Patterson contacted the plaintiff again on 24th June 1991 when he recorded him as sounding "reasonably cheerful" and noted that he was experiencing little difficulty and hoping to shortly resume duty. In my view it is unlikely

that the plaintiff did mention any of the traumatic events to which he had been exposed or discuss any psychological symptoms with Mr Patterson during this interview.

[11] The plaintiff accepted that after a number of incidents in respect of which he claimed to have suffered psychological symptoms or an exacerbation of such symptoms he had completed injury on duty reports but had not mentioned any such symptoms in the course of doing so. I found his explanation that no one was interested in psychological injuries and that he did not know that he could claim in respect of such injuries wholly unconvincing.

[12] On 10th May 1991 the plaintiff completed a questionnaire in the course of changing from one GP to another. Despite his evidence that he had been suffering from significant psychological symptoms for 3 or 4 years at this time and that, at one stage, he had been close to a nervous breakdown, he indicated that he had not suffered from any nervous disorder. His explanation for doing so was that the question was not very well worded and that “. . . nervous disorders can mean anything, its nothing specific.”

The Report from Dr Bownes

[13] On 5th October 1998, at the request of his solicitor, the plaintiff was examined by Dr Bownes, Consultant Forensic Psychiatrist. Subsequent to his attendance at the scene of the attempted murder at Quay Street, Bangor in November 1997 the plaintiff had been charged with theft of a sum of money and a report from Dr Bownes had been commissioned by the plaintiff's solicitors in anticipation of the impending prosecution. At page 2 of the report after obtaining details of his personal and employment history and noting that the plaintiff had attended several incidents involving violent death over the years, Dr Bownes recorded that:

“Mr Lucas denied that prior to November 1997 he had ever experienced any problems in performing his duties or in coping with his thoughts and feelings following traumatic incidents at work.”

In cross examination the plaintiff accepted that this statement was inconsistent with his claim to have been suffering significant psychological symptoms from 1987 onwards. His initial response was to point out that the interview was done at his home a week before he was due to give evidence at his trial. It was then pointed out to him that the interview was on 5th October but his trial was not due to take place until 18th December. He then said that, with hindsight, he should have told Dr Bownes how he was feeling but that he had been at a loss how to do so exactly in front of his wife who had been ill and whom he had protected from “a lot of these things” for years. He then went on to say that his

wife had been “in the house” as well as the kids. By way of further explanation he was then driven to saying that he was extremely unwell at the time and that . . . “If I had an answer now I would give you it, but I don’t.”

[14] Dr Bownes recorded that, during the interview with the plaintiff, there was no evidence of any undue suspiciousness, irritability or mood lability and his manner was pleasant and co-operative throughout. Dr Bownes was unable to detect any evidence from the clinical picture presented of any disturbance of mood, thought process or perception that might be indicative of active mental illness. He could find no evidence from the clinical picture at interview or from the plaintiff’s account of his feelings and functioning which would indicate that the plaintiff was currently suffering from any form of psychiatric illness nor could he detect any indication of any immediate requirement for psychiatric treatment. The plaintiff told Dr Bownes that he had developed a range of anxiety symptoms, including irritability, poor memory and concentration and persistent feelings of worry, tension and pressure after his wife had been admitted to the psychiatric hospital in December 1996 and that the nature and severity of these symptoms was such that he required 3 months sick leave between January and April 1997. The plaintiff told Dr Bownes that he had experienced a recurrence of anxiety symptoms shortly before the Quay Street incident in conjunction with feelings of exhaustion due to lack of sleep and continuing worries about his wife’s health. Dr Bownes felt that the plaintiff had provided a convincing description of physical and psychological symptoms consistent with an Acute Stress Reaction as defined in ICD-10 Classification of Mental and Behavioural Disorders but that he appeared to have benefited considerably from the professional and family support that he had received over the previous 9 months both in resolving psychological sequelae of the incident and his domestic difficulties. Dr Bownes felt that the plaintiff’s mental state was currently settled and stable.

Joint medical evidence of Dr Turner and Professor Fahy

[15] Both experts agreed that, given the detail and the contemporaneous nature of Dr Bownes’ report, they had substantial concerns about the reliability of the plaintiff’s account of his symptoms prior to 1997. Both considered that the most likely explanation for the plaintiff’s psychiatric illness and the one that was supported by contemporaneous clinical records was that it developed in the context of his wife’s psychiatric illness in 1996 and thereafter constituted a substantial vulnerability for later deterioration. Such deterioration occurred as a consequence of the combined affects of the trauma experienced by the plaintiff during the course of the Quay Street incident in 1997 together with his subsequent suspension and prosecution. That series of events then led to increased vulnerability and coping problems following his resumption of employment which eventually culminated in his medical retirement. The experts took the view that his problems had been exacerbated by continuing difficulties associated with his wife’s illness and his involvement in the current

litigation. I note that Dr Poole also expressed the view in his opinion for the plaintiff's solicitors in March 1999 that if he had not been exposed to the events of November 1997 the plaintiff would not have presented with PTSD

The Occupational Health Unit

[16] This plaintiff both attended and was contacted by the OHU. He attended in respect of a number of physical injuries but made no reference to psychiatric symptoms until he was required to attend as a consequence of absence from work on 25th March 1996. Upon that occasion he saw Margaret Patterson, Nursing Adviser, and discussed with her the difficulties caused by his wife's severe post natal depression. He was contacted on 15th January 1992 after the explosion in Glengall Street. When asked how he was coping he said that his ears had been tested and he was attending physio but that he did not need to attend the OHU. On 2nd August 1993 he was contacted following the incident outside the Ulster Hall during which he had been compelled to draw his personal firearm. Upon that occasion he said that his injuries were only minor and that he had been checked by the FMO. The plaintiff said that he did not inform the OHU about his difficulties in coping because of his concerns about his employment but, in view of the report from Dr Bownes, I think that the more likely explanation is that he was simply not suffering any relevant symptoms.

[17] The plaintiff himself made the case that, despite the fact that he had chosen not to disclose any psychological symptoms when contacted by the OHU in 1991 and 1993, he would have disclosed such symptoms subsequent to the Ormeau Road incident in 1994 if he had been contacted by the OHU and if the person contacting him had asked "Psychologically, how did this incident affect you?". When asked why he would have responded to such an enquiry upon this occasion he said that the Ormeau Road was "probably the worst" because, on this occasion, he felt that he was "close to death". When questioned further, he agreed that he had already given evidence that he had feared for his life in relation to the Ulster Hall and Glengall Street incidents but he said that this was the third occasion in short succession. He then said that the OHU should have contacted him in the "right way" and not "some nurse" asking if he was OK or feeling well. In response to the suggestion that it would be necessary for him to be contacted by a nurse initially in order to decide whether he should be referred to a psychiatrist the plaintiff said, "It was quite apparent in the early 90s that there wasn't the help available." Apart from being unimpressive in itself, this series of responses by the plaintiff was quite inconsistent with what he was to tell Dr Bownes some 4 years later when he said that the incident in 1994 involved physical risk but that prior to November 1997 he had never been in a situation in which he had felt that his personal safety was closely threatened.

[18] I am satisfied that, on 10th November 1997, the plaintiff, together with other officers who had attended the scene of the Quay Street incident in Bangor, was informed by Inspector Donnelly of the facilities available at the OHU. On 28th November 1997, some 18 days after the Quay Street incident, the plaintiff self referred to the OHU and saw Margaret Patterson, nursing adviser. Between November 1997 and August 1999 the plaintiff had 19 contacts with members of OHU staff. Two of these were face to face attendances with a nursing adviser, three were telephone consultations with Dr Poole and fourteen were face to face attendances with Dr Poole. During the course of these sessions the plaintiff received EMDR treatment from Dr Poole. Dr Poole continued to see the plaintiff after he had resumed employment as a police officer in December 1998. The OHU notes made by Dr Poole indicated that apparent resolution of the plaintiff's psychological difficulties arising from the Quay Street incident was achieved on 28th January 1998. During the course of subsequent reviews the notes suggested that the plaintiff's primary concern was the attitude of the DPP and Complaints and Discipline in relation to the prosecution for theft. In particular on 29th May 1998 the note recorded that the plaintiff was "not troubled by incident but understandably upset by the manner in which his case is being handled." A further reference occurred on 22nd September 1998 when the plaintiff spoke to Dr Poole about the incident and how it triggered earlier events with his wife and he also mentioned other pressures prior to the stabbing. Dr Poole explained how these interacted. On 4th December 1998 the plaintiff told Dr Poole that he was increasingly anxious as his court appearance had been fixed for 18th December and he found that he was getting more intrusions about the incident. On 18th December 1998 the plaintiff was acquitted of the theft charge at Bangor Magistrates' Court. On 13th May 1999 the plaintiff telephoned Dr Poole and told him that all was well at present and this was confirmed on 8th June and 20 August 1999. On the latter occasion Dr Poole informed the plaintiff that he himself was leaving the OHU but that he could contact the Unit if required. Thereafter the plaintiff was seen by Joseph McCloskey, nursing adviser, upon a number of occasions during which he complained of being in a vulnerable position because his dog had failed its annual test. On 5th September 2000 the plaintiff again contacted the OHU complaining of being stressed out, transferred and not having a dog as a result of which he was suffering money problems. He also stated that there was to be an appeal in the case of the offender who had attacked the girl in Bangor and that he could not face all that stress again. It appears that Mr McCloskey spoke to Dr Poole who was of the view that a medical discharge might be the only option and a case conference was arranged with Dr Courtney upon his return from annual leave. The plaintiff was seen by Dr Courtney on 14th November 2000 when he complained of being very anxious and tearful with flashbacks to 1997. Thereafter he was seen by Dr McGarry, Consultant Psychiatrist, at the OHU on 8th January 2001, Dr Courtney on 23rd January, again by Dr McGarry on 12th February, 16th March and 14th May and, finally, on 24th August 2001. During the year 2000 the plaintiff was also seen by Dr Poole at PRRT.

[19] In the circumstances, I have no doubt whatever that the plaintiff was properly and effectively treated by OHU and PRRT subsequent to the Quay Street incident in 1996 and I note that Dr Turner and Professor Fahy concluded that:

“After reporting psychiatric problems to OHU in 1996 and again in 1997, the actions taken by OHU were reasonable and appropriate.”

The medical experts recorded that if the plaintiff's PTSD commenced in 1997 the evidence indicated that he was seen quickly by Dr Poole and offered treatment including EMDR which was an appropriate clinical response.

Welfare

[20] The Welfare Branch notes recorded that the plaintiff was provided with support in 1996 at the onset of his wife's psychotic illness and that, subsequent to the Quay Street incident in Bangor, he received 19 visits from welfare officers. Welfare Branch monitored his convalescence and the progress of the prosecution against him and provided him not only with advice regarding pay and benefits but also with a degree of emotional support. The Welfare Branch assisted the plaintiff with the practical side of his medical discharge from the force and continued to provide such assistance after he had been discharged.

[21] I did not find this plaintiff to be a credible witness and I do not consider that he suffered any recognisable mental disorder as a consequence of exposure to trauma prior to November 1997. Accordingly, I dismiss this plaintiff's claim and there will be judgement for the defendant.