Neutral Citation No. [2014] NICA 18 | *Ref:* **MOR9173**

Judgment: approved by the Court for handing down | *Delivered:* **12/02/2014**

*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

Cooley's (Annette and Rosaleen) Application

IN THE MATTER OF AN APPLICATION BY ANNETTE COOLEY AND ROSALEEN COOLEY FOR JUDICIAL REVIEW

Before: Morgan LCJ, Girvan LJ and Weatherup J

MORGAN LCJ (delivering the judgment of the Court)

[1] This is an appeal against a decision of Treacy J made on 14 March 2013 whereby he dismissed the appellants' applications for judicial review of the Chief Constable's decision not to issue them with the Certificate required for making a claim under the Northern Ireland Housing Executive's Special Purchase of Evacuated Dwellings Scheme ("SPED").

Background

[2] The appellants are a mother, Rosaleen Cooley, and daughter, Annette Cooley, who lived at 106 Mountpottinger Road and 100 Mountpottinger Road, Belfast, respectively. Rosaleen Cooley had been living at her address for some 20 years. Annette Cooley had lived at her address for approximately 12 years. The Mountpottinger Road is a known community interface between Nationalist and Loyalist areas in Belfast. A summary of Annette Cooley's living conditions at 100 Mountpottinger Road which establishes the general picture was described in a letter from her MP, Alasdair McDonnell, to the Chief Constable as follows:

> "At the front of her home, all windows are covered by steel grids, and all windows both front and back are triple glazed for extra reinforcement against missile attacks. The front door has heavy drop bars installed to protect against attacks, although for many years this door simply has not been used as it is too risky to

do so. All visitors enter and exit the house via the back door, and in fact the front section of the house is barely used at all. Annette, her family and any guests remain in the kitchen at the back instead of the living room at the front. Lights cannot be put on at this side of the house at all during the night, because this is an indication that there is someone inside, and very often a precursor to a barrage of missile attacks".

[3] Assistant Chief Constable Jones produced a summary of the reported incidents affecting the home of Annette Cooley in September 2011:

19/6/01	Reported "a 2x2 window broken".
15/7/01	Reported stones bouncing off the grills on her windows.
14/8/01	Reported her front door damaged and the garden covered in stones and bricks because of interface violence last night.
18/8/01	Reported stones being thrown from Cluan Place.
31/8/02	Reported fireworks being thrown over from Cluan Place.
27/4/04	Reported stones coming across from Castlereagh Street.
21/8/05	Reported her vehicle damaged during disturbances at the interface.
1/9/07	Reported her car and house attacked by 6 youths. States her car is badly damaged and the youths are outside.
14/5/08	Reported two groups of youths throwing stones at each other outside her house. Crowds of youths on both sides of the interface.
15/2/08	Requested police as a car tyre had just been thrown into her front garden. No damage caused. Males ran off.
1/3/08	Reported youths on bikes have made off towards Castlereagh Road.
25/2/08	Reported two males wrecking cars. Police attended and noted no males and no damage.
17/4/08	Reported two males putting up loyalist flag outside her house. Two males observed leaving the area, car also damaged belonging to a neighbour.
30/4/09	Reported a male had hit a silver car outside her house with a metal bar and ran off up Mount Street.
26/6/10	Reported problems with local youths. Local sector police made aware.
24/10/10	Reported she was concerned for her property as there was a Celtic v Rangers match that day and her house is on the interface.
15/3/11	Reported when walking home she was pelted with missiles by youths at the interface. Reported for information only, no medical treatment required.
30/3/11	Reported finding a bullet in her hallway on Sunday 27/3/11. She thinks this may be linked to interface problems as she would challenge some of the trouble-makers on both sides.

5/4/11 Reported youths gathering at the side of her house.
10/7/11 Reported being awoken by stones being thrown at the front of her house and there are youths in the street. These persons have now thrown a brick at her front door leaving a small amount of damage.
19/7/11 Reported her friend's car parked outside her house has just had the driver's side window smashed.

[4] Both appellants claim to have suffered injury to their mental health as a result of the circumstances in which they have been living. Annette Cooley's GP, Dr R Clements, provided a report dated 18 October 2010.

> "This 48 yr old lady lives at the above address with her mother.
> She suffers from anxiety and sleeplessness as a result of recurring problems over the past 13 years on the interface where she lives.
> Miss Cooley suffers from considerable stress, anxiety and broken sleep because of verbal threats and abuse over the past 13 years and these have been a lot worse over the past 5 years.
> She has retreated to her house and is afraid to go out especially in the evenings or at night.
> Her younger family relatives are unable to stay overnight because of fear of them being exposed to this type of abuse.
> Miss Cooley has taken medication in the past but generally does not want to take medication and is reluctant to start medication at present.
> This ongoing situation is affecting her health. The pressures have been on going and persistent, and her mental health is being affected. I am concerned that her health is being very adversely affected and could deteriorate further if the situation regarding housing move is not resolved for her."

In a letter dated 27 June 2011, Dr Geraldine McCreesh, Rosaleen Cooley's GP, wrote:

> "She has had to endure years of frightening rioting and civil disturbance as her road is a well known 'flash point'. She lives with iron grills on her windows and her house has been defaced by paint. She is an elderly lady with a serious mental health problem. She lives alone. I feel that the constant fear that she has to endure is very detrimental to her health and I support her application to be rehoused."

As a result of her ill health, Rosaleen Cooley moved in with her daughter Annette in or around July 2011.

[5] Annette Cooley made an application to the Northern Ireland Housing Executive's ("NIHE") SPED scheme on 16 August 2010. By letter dated 4 October, 2010 the Chief Constable considered that the circumstances for issuing the Certificate required by the SPED scheme were not met because she was not at risk of serious injury or death as a result of being directly or specifically threatened. Annette Cooley requested a reconsideration of this decision on 14 October 2010, but the Certificate was again refused. A further request for reconsideration was made but the Certificate was again refused in January 2011.

[6] On 14 March 2011 Annette Cooley made a separate application under the NIHE's Housing Selection Scheme for housing accommodation. NIHE's District Manager contacted local police and discussed the application with Chief Inspector Davidson from Strandtown Police. The Chief Inspector confirmed that a bullet had been put through the door of the home as alleged in March 2011 and she was convinced that the situation was genuine and escalating. The official made a note "FDA(I) appropriate" which it was agreed meant that the applicant was unintentionally homeless and in priority need. That decision was communicated to her on 12 April 2011. Her entitlement to intimidation points under Rule 23 (2) of the Housing Selection Scheme was accepted on 24 June 2011. In order to qualify for intimidation points the Designated Officer in the NIHE had to be of the opinion that there was a serious and imminent risk that the applicant would be killed or seriously injured as a result of a sectarian attack.

[7] On 20 April 2011 Annette Cooley made a fresh application under the SPED scheme. Rosaleen Cooley also made her first application. The Chief Constable considered, in both individual cases, that the circumstances for issuing a Certificate under the SPED Scheme were not met. These decisions were dated 15 June 2011 and 6 June 2011, respectively. Both Annette Cooley and Rosaleen Cooley were subsequently housed together by the NIHE some distance away from the Mountpottinger area. In light of the NIHE's decision to award intimidation points, both requested the Chief Constable to reconsider his decision not to issue the required Certificates under the SPED scheme.

[8] These applications were considered on behalf of the Chief Constable by Assistant Chief Constable Jones who gathered information on the events which had occurred at both addresses, the relationship between the award of intimidation points and SPED, the views of local police and any relevant case law. He concluded that the PSNI's input into the NIHE's determination on intimidation points was simply to provide factual information, the evaluation and assessment of which lay with the NIHE. He was satisfied that the appellants had been subjected to direct threats under the O'Neill test (see below). He was of the view they had suffered

injury of a psychological nature as a result but formed the view, based on the information before him, that such injury was at the lower end of psychological injury and did not amount to serious psychological injury. In his view the available evidence did not demonstrate the existence of serious injury and, more pointedly, did not demonstrate the risk of serious injury. His decision was communicated by letter dated 24 November 2011.

The judge's decision

[9] Treacy J considered that the determination of whether someone has been 'directly or specifically threatened or intimidated and as a result is at risk of serious injury or death' under the SPED scheme was an exercise of judgment by the Chief Constable subject to Wednesbury irrationality. This was distinct from the NIHE Housing Selection Scheme, which was derived from different legislation, and under which it was for a Designated Officer within the NIHE to determine if the criteria in Rule 23(2) had been met for intimidation points to be awarded to an applicant. He considered that under the Housing Selection Scheme the role of the PSNI was merely to provide information to assist the NIHE, but the decision as to whether intimidation points should be awarded was the exercise of judgment by the NIHE's Designated Officer having regard to that, and other, information.

[10] Accordingly it was not irrational to find that the award of intimidation points did not lead to the satisfaction of the SPED criteria. Otherwise the Chief Constable would be delegating his decision-making role wholly outside the PSNI to the NIHE. This would be inconsistent with the requirement under the SPED scheme for the Chief Constable to exercise his judgment.

[11] The learned trial judge had been led to believe that under the SPED scheme there was a separate requirement that the applicant must have been awarded intimidation points under the allocation scheme operated by the NIHE. He considered that this emphasised the room for difference between the decision on intimidation points and that on the issue of a Chief Constable's Certificate. In fact the intimidation condition had been removed from the SPED scheme in 2009. In any event, the learned judge concluded that the Assistant Chief Constable had taken account of all relevant considerations and it had not been established that his decisions were irrational.

The submissions of the parties

[12] The appellants submitted that, without diminishing the importance of the other evidence, particular significance must be placed on the finding of a bullet in the hallway of Annette Cooley's home. Such evidence could not rationally be viewed other than as a direct and specific threat of serious injury or death, targeted at the recipient in her home. There was considerable general overlap between the test for a Chief Constable's Certificate and the test for intimidation points, with the test for the

latter being more stringent due to its requirement for a "serious and imminent" risk of death or serious injury. In those circumstances, the appellants challenged whether it was rational for one public body to depart from the decision of another public body on the same issue. In the course of the oral argument Mr Sayers developed the point somewhat differently from the approach taken at first instance by submitting that the bullet through the door had the character of a threat specific to the householders independently of the threat arising from the fact that disturbances were taking place in close proximity to the houses. Where, as here, the threats amounted to threats to kill a person in their own home the decision maker was required to give his reasons for concluding that this did not give rise to a risk of serious injury or death.

[13] In relation to the Assistant Chief Constable's conclusion that although the appellants had suffered injury they were not at risk of suffering serious injury, the appellants argued that the Assistant Chief Constable was not in a position, in the absence of contrary medical evidence, to disregard the specialist evidence of the two GPs that the appellants' psychological injuries would develop into more serious psychological injury. It was accepted that there was no positive duty on the Chief Constable to obtain his own medical reports but he had a duty to consider whether the appellant should be invited to supplement the medical evidence in cases of ambiguity or uncertainty.

[14] The respondent submitted that there was not a direct relationship between the test for intimidation points and that for a Chief Constable's Certificate. Under the Housing Selection Scheme the question, to be determined by a Housing Officer, is whether a person will be granted emergency status for the purpose of being allocated public social housing. Under the SPED scheme the Chief Constable is exercising professional policing judgment to provide an objective assessment of an applicant's security situation in the context of whether the State should purchase property rights over an evacuated dwelling. The learned trial judge was correct in his assessment that, on the appellants' argument, the Chief Constable would be delegating his judgement to a person outside of the PSNI.

[15] The respondent argued that the test was not whether the intimidation or threats caused psychological injury but rather did they cause a risk of serious psychological injury. He contended that the appellants failed to produce medical evidence showing this. They had ample opportunity to submit such medical evidence if they wished and it was not the duty of the Chief Constable to seek his own medical evidence where the appellants' medical evidence was lacking.

Consideration

The bullet incident

[16] Article 29 of the Housing (Northern Ireland) Order 1988 provides for a scheme, to be approved by the Department and administered by the NIHE, to acquire by agreement houses owned by persons who, in consequence of acts of violence, threats to commit such acts or other intimidation are unable or unwilling to occupy those houses. The scheme approved by the Department is the SPED scheme which sets out the eligibility conditions as follows:

> "All the following conditions must be satisfied before an application will qualify for acceptance under SPED.
>
> (i) The house must be owner-occupied and must be the applicant's only or principal home.
>
> (ii) A certificate signed by the PSNI Chief Constable, or authorised signatory, must be submitted to the Executive, stating clearly that it is unsafe for the applicant or a member of his/her household residing with him/her to continue to reside in the house, because that person has been directly or specifically threatened or intimidated and as a result is at risk of serious injury or death."

[17] One of the conditions which must be satisfied before a Chief Constable's Certificate can be issued is that someone in the household must have been "directly or specifically threatened or intimidated". The test to be applied was considered by Weatherup J in Re O'Neill's Application [2008] NIQB 80. That was a case in which the applicant and her former partner were owners of a dwelling house at an interface area which was under regular attack by stones and petrol bombs. Weatherup J discussed the test at paragraph 12.

> "While of course there may be attacks that are intended to be made on particular individuals in their homes, the general nature of incidents at interface areas may be more in the nature of attacks on the homes of residents within reach, based on a sectarian view of those residents. Such attacks may be undertaken by or on behalf of an illegal organisation, although that was stated by police not to be the present case, but there may be other instances where individuals have carried out their own attacks. The attacks will be made on all properties within range on the other side of the interface. Thus the threat or intimidation involved in targeting a group of houses

> will arise because of their proximity to a particular location or the convenience of a point of attack and will be based on sectarian hostility to the occupiers of such houses. This is capable of being a direct or specific threat or intimidation of the occupier, even though it is any house within range that is being targeted."

He then quashed the decision to refuse the certificate on the ground that the police had adopted an unduly restrictive approach to the interpretation of a direct or specific threat.

[18] Assistant Chief Constable Jones accepted that the catalogue of incidents set out at paragraph 3 above plainly established that there was a direct and specific threat of the type identified in O'Neill. It is of some concern that the officers who dealt with the earlier applications appear to have approached the issue narrowly even after the delivery of the judgment in O'Neill. The point made on behalf of the appellants, however, was that the incident in March 2011 where a bullet was found in the hallway of Annette Cooley's house was different. That was a specific threat directed to the persons residing at that address threatening to kill them and was of a different character from the threats arising from the location of the property on the interface.

[19] The bullet incident was included in the list of incidents upon which Assistant Chief Constable Jones made his decision. It was also included in the submissions which were prepared for him and indeed for earlier decision makers. It appears, however, that nowhere in those submissions was there any analysis of the additional specific threat raised by the presence of the bullet or the risk to which it gave rise. It was referred to in the District Commander's report in May 2011 but the assessment remained that of low level activity around the houses. Indeed in his affidavit dealing with his reasons for concluding that the threat was direct Assistant Chief Constable Jones stated that he had reached this conclusion under the O'Neill test.

[20] The police response to the bullet incident is to be contrasted with the response of NIHE. On 11 April 2011 the police wrote to NIHE confirming that the bullet had been found in Annette Cooley's hallway on 27 March 2011. On the following day the District Manager contacted Chief Inspector Davidson and, having confirmed that the bullet was put through the door, accepted the appellant as unintentionally homeless and in priority need and set in place the award of intimidation points.

[21] By virtue of Rule 23 of the Housing Selection Scheme, intimidation points can be awarded to a housing applicant if, among other tests, the following criterion applies:

> "The Applicant cannot reasonably be expected to live, or to resume living in his / her home, because, if he or she were to do so, there would, in the opinion of the Designated Officer, be a serious and imminent risk that the Applicant, or one or more of the Applicant's household, would be killed or seriously injured as a result of terrorist, racial or sectarian attack."

The appellants point out that the "serious and imminent" risk test appears more stringent than that for a Chief Constable's Certificate. Nevertheless, the Designated Manager of the NIHE clearly processed the appellant's application for intimidation points and they were awarded to the appellant on 24 June 2011.

[22] In order to assist the decision-making process Assistant Chief Constable Jones was provided with the briefing document prepared for the Department of Social Development setting out the differences between the criteria for SPED and the award of intimidation points. It was noted that the schemes have different purposes, have different decision-makers and different qualifying conditions in that persons subject to immigration control are not entitled to homelessness assistance. It was recognised, however, that the requirements for both were very similar. Assistant Chief Constable Jones stated that the PSNI input into the NIHE's decision-making on intimidation points was simply to provide factual information, the evaluation and assessment of which lay with the NIHE.

[23] The appellant sought to challenge that assertion by reference to a particular passage in the document.

> "The rule in relation to intimidation points under the Common Selection Scheme allows for a range of evidence that may well in a large number of cases involve the police arriving at a decision and for the decision to be made by Housing Executive staff with the support of PSNI. When police are involved in such decisions they are more likely to confirm incidents took place and in their professional opinion the person may be at risk of this happening again rather than on any police intelligence."

[24] It was submitted that the information given by Chief Inspector Davidson on 12 April 2011 to the District Manager constituted an expression of opinion about the risk of serious injury. We do not accept that interpretation. The notes suggest that the Chief Inspector provided information about the bullet which was essentially factual, indicated that the appellant's situation was genuine and stated that the situation she was facing was escalating. None of those matters involved the

expression of any view on the risk of serious injury or death and the provision of this information was consistent with the view of the Assistant Chief Constable.

[25] In Re Frances Doherty's Application [2014] NIQB 6 the applicant challenged a refusal by the PSNI to grant a Chief Constable's Certificate under the SPED scheme in circumstances where the applicant had given evidence against a neighbour in an assault case. Thereafter she was subject to a campaign of intimidation and harassment. Treacy J accepted that the circumstances might engage the positive obligation under Article 8 ECHR to take reasonable steps to protect the householder from the activities of a third party.

[26] The European Court of Human Rights considered the nature of the positive obligation under Article 8 in Fadeyeva v Russia (2007) 45 EHRR 10. That was a case in which the applicant was living within the vicinity of a steel producing centre which was responsible for emissions which were harmful to health. Although the steel plant had been in public ownership it had since been privatised. Domestic law provided a right to go onto a waiting list for rehousing for those within the affected zone but over a period of years the applicant had still not been rehoused. At paragraphs 68 and 69 the court concluded that in order to raise an issue under Article 8 the interference must directly affect the applicant's home, family or private life and the adverse effects must attain a certain minimum level if they are to fall within the scope of Article 8. The positive duty did not depend upon public ownership of the offending plant.

[27] We accept that where an applicant is threatened or attacked in his or her home in circumstances which may give rise to a risk of serious injury or death the state's positive obligation under Article 8 can be engaged. This positive obligation is closely related to the similar obligation under Article 2 discussed by the ECHR in Osman v UK (2000) 29 EHRR 245. The SPED scheme is clearly part of the arrangements made by the state to satisfy its positive obligation. The issue which arises in this case is the extent to which there is an obligation to give reasons in the determination of applications for inclusion in the scheme.

[28] The requirement to give reasons in the context of the positive obligation under Article 2 of the Convention was considered by the Divisional Court in Re Kincaid's Application [2007] NIQB 26. Relying on the decision of the ECHR in Jordan v UK (2003) 37 EHRR 2 the court concluded that the test for the giving of reasons was whether or not they were required for the effective implementation of the domestic laws protecting the relevant right. We consider that is the test which we should apply in this case. The test necessarily recognises that in cases where the positive obligation under Article 8 may be engaged judicial review based on a Wednesbury approach is unlikely to be adequate.

[29] It was accepted that the bullet found in the hall of the premises of Annette Cooley was a threat to kill her or a member of her household. The papers exhibited

by the respondent which showed the reporting and investigation of attacks upon the appellants' homes did not disclose any analysis of the circumstances in which the bullet entered the premises and the risk arising from the threat. The decision communicated to the appellant made no mention of the bullet incident and there was no explanation as to how the incident was assessed within the affidavits of Assistant Chief Constable Jones. We accept the appellants' submission that in respect of this threat to kill they were entitled to be given reasons so that they could understand the assessment of the threat and the risk to which it gave rise in order to ascertain whether the case had been properly dealt with under the SPED scheme.

[30] Although there is no general duty at common law to give reasons, the circumstances of a particular administrative decision may require the giving of reasons in order to ensure fairness. This issue was considered in some detail by this court in Re McCallion's Application [2005] NICA 21. The court approved the guidance given by Lord Bingham CJ in Ministry of Defence, ex p. Murray [1998] COD 134, at pp 136-137.

> "(a) 'The law does not at present recognise a general duty to give reasons' (*Doody* at 564E).
>
> (b) 'When a statute has conferred on any body the power to make decisions affecting individuals, the court will not only require the procedure prescribed by statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural standards as will ensure the attainment of fairness' (*Cunningham*, per Donaldson LJ at 318, quoting *Lloyd v McMahon* [1987] 1 AC 625 at 702-703 and *Doody* at 564F).
>
> (c) In the absence of a requirement to give reasons, the person seeking to argue that reasons should have been given must show that the procedure adopted of not giving reasons is unfair (*Doody* at 561A).
>
> (d) There is 'a perceptible trend towards an insistence on greater openness … or transparency in the making of administrative decisions' (*Doody* at 561E).
>
> (e) In deciding whether fairness requires a tribunal to give reasons, regard will be had not only to the first instance hearing but also to the availability and the nature of any appellate remedy or remedy by way of judicial review:

(i) the absence of any right of appeal may be a factor in deciding that reasons should be given (*Cunningham* at 322j)

(ii) if it is 'important that there should be an effective means of detecting the kind of error [by way of judicial review] which would entitle the court to intervene' then the reasoning may have to be disclosed (*Doody* at 565H and also *Cunningham* at 323a).

(f) The fact that a tribunal is carrying out a judicial function is a consideration in favour of a requirement to give reasons (*Cunningham* at 323a) and particularly where personal liberty is concerned (*Institute of Dental Surgery* at 263A).

(g) If the giving of a decision without reasons 'is insufficient to achieve justice' then reasons should be required (*Cunningham* at 323a) as also 'where the decision appears aberrant' (*Institute of Surgery* at 263a, cited with approval in *R v Mayor, Commonalty and Citizens of the City of London ex parte Matson* (1996) 8 Admin. L.R. 49 at 62).

(h) In favour of giving reasons are the following factors: 'the giving of reasons may among other things concentrate the decision-maker's mind on the right questions; demonstrate to the recipient that this is so; show the issues have been conscientiously addressed and how the result had been reached; or alternatively alert the recipient to a justiciable flaw in the process' (*Institute of Dental Surgery* at 256H, cited with approval in *ex p Matson* at 71).

(i) In favour of not requiring reasons are the following factors: 'it may place an undue burden on decision-makers; demand an appearance of unanimity where there is diversity; call for articulation of sometimes inexpressible value judgments; and offer an invitation to the captious to comb the reasons for previously unsuspected grounds of challenge' (*Institute of Dental Surgery* at 257A).

(j) Although fairness may favour a requirement for reasons, there may be considerations of public interest which would outweigh the advantages of requiring reasons (*Cunningham* at 323b).

(k) The giving of reasons will not be required if the procedures of the particular decision-maker would be frustrated by a requirement to give reasons even short reasons (*Cunningham* at 323b)."

[31] The decision to refuse a Chief Constable's Certificate is an administrative decision from which there is no appeal and judicial supervision is available only by judicial review. The issue concerns the safety of a person within the confines of their own home and it is important, therefore, that there should be an effective means of ensuring that any error is detected. Reasons may sometimes require consideration of intelligence material but that should bear only on the detail of the reasoning rather than the obligation to provide adequate reasons in the circumstances. We consider that Re McCallion's Application supports the argument that reasons should have been given explaining the assessment of the bullet incident and the risk to which it gave rise.

Injury to mental health

[32] In his assessment of serious injury Assistant Chief Constable Jones accepted that it could include serious psychological injury. In his second affidavit he indicated that the injury in these cases was at the lower end of psychological injury and did not amount to serious psychological injury. He considered that the available evidence did not demonstrate the existence of serious injury and more pointedly did not demonstrate the risk of serious injury.

[33] The appellants accepted that the medical evidence was in the most general terms. In respect of Annette Cooley her GP stated that her mental health was very adversely affected and could deteriorate further. Rosaleen Cooley's GP stated that she had a serious mental health problem and that the constant fear was very detrimental to her health. The decision maker was entitled to take the view that the medical evidence did not demonstrate a risk of serious injury because it did not sufficiently describe the nature of the condition in respect of each appellant and the short and long-term consequences flowing from the situation to which they were exposed. This might have been achieved by a rather more detailed analysis of the medical issues by the General Practitioners or, if necessary, by a report from a consultant.

[34] We do not accept, however, that Assistant Chief Constable Jones was in a position to conclude that the mental health consequences for either of the appellants was at the lower end of psychological injury. The medical reports suggested either a

serious mental health problem or a very adverse effect on mental health. Neither medical report supported a conclusion that the injury was at the lower end of psychological injury. The proper course was to acknowledge the inadequacy of the medical evidence so that the appellants could supplement it if they chose.

Conclusion

[35] The appeal is allowed and the decision to refuse a Chief Constable's Certificate is quashed in each case.