Neutral Citation No: [2023] NIKB 49 *Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Ref:* **ROO12114** *ICOS No:* *Delivered:* **31/03/2023**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

KING'S BENCH DIVISION

_____

BETWEEN:

MICHAEL MONAGHAN

Plaintiff;

and

CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND

Defendant.

_____

Mr Brian Fee KC and Ian Skelt KC (instructed by KRW Solicitors) for the plaintiff
Mr Nicholas Hanna KC and Joseph McEvoy BL (instructed by the Crown Solicitor) for the defendant

_____

ROONEY J

Nature of the Claim

[1] The plaintiff claims damages, including aggravated and exemplary damages, arising out of a terrorist incident on 17 February 1994 when he witnessed the shooting of his maternal grandfather, Sean McParland, who died one week later as a result of the severe injuries sustained in the attack.

[2] The plaintiff alleges that an informer, referred to as "Informant 1" was involved in the shooting and the murder of Sean McParland. The plaintiff claims that before and after the said murder, the defendant continued to employ Informant 1 as a police informer.

[3] The plaintiff's claim is founded on negligence, assault, battery, trespass to the person, conspiracy to commit trespass to the person (including murder) and misfeasance in a public office.

[4] On 22 January 2007, Mrs Nuala O'Loan, Police Ombudsman for Northern Ireland (hereinafter "PONI") published a report in accordance with Section 62 of the Police (NI) Act 1998 following an investigation into matters

surrounding the death of Raymond McCord Junior. The investigation was referred to as "Operation Ballast."

[5] Initial investigation revealed serious issues of concern, not only in relation to the death of Raymond McCord Junior but also a series of other incidents, including murders, attempted murders and drug dealing. The investigation was expanded to cover the period from 1991 to 2003 and included the murder of the plaintiff's grandfather, Sean McParland.

[6] A published summary of the report from PONI provided as follows:

> "The investigation has proved the most complex ever undertaken by the Police Ombudsman. More than 100 serving and retired police officers were interviewed, 24 of them were "under caution." Members of the public were also interviewed. Police computer systems were examined, and more than 10,000 items of police documentation was recovered, including material held within intelligence systems, on personal records, in police journals, in crime files and from other sources. Corroborating material was also recovered from a number of other "non-police" agencies."

[7] Following the wider investigation, the Police Ombudsman identified that intelligence within the policing system, the majority of which was graded as "reliable and probably true" linked police informants (and in particular one individual referred to Informant 1) to the murders of ten people (including the murder of Sean McParland), ten attempted murders, ten punishment shootings, thirteen punishment attacks, drug dealing and a bomb attack in Monaghan. In Section 7 of the report (hereinafter referred to as "the Ballast Report"), Mrs Nuala O'Loan referred to the definition of collusion as given by Lord Stevens in his third report dated 17 April 2003 at para 4.7, namely:

> "Collusion is evidenced in many ways. This ranges from the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, through to the extreme of agents being involved in murder."

[8] The Ballast Report will be considered in more detail below. Suffice to state at this stage, the Police Ombudsman's investigation into the murder of Sean McParland concluded that there was evidence of collusion between the servants and/or agents of the defendant and police informers.

[9] Specifically, in relation to Informant 1, the following conclusions were reached in the Ballast Report:

(i) Informant 1 committed murders before 19 February 1994.

(ii) The Police were aware of Informant 1's involvement in previous murders.

(iii) Informant 1 admitted to Police his involvement in the murder of Sean McParland.

(iv) Informant 1 was arrested on suspicion of involvement in the murder but released without charge.

(v) Another informant named Informant 1 as a gunman who killed Sean McParland.

(vi) No action was taken by the defendant to review Informant 1's employment with the defendant.

(vii) Informant 1's status as an informer was not cancelled following the murder of Sean McParland.

(viii) Informant 1 has never been convicted of the murder of Sean McParland.

(ix) It is estimated that during the period 1991-2003, payments of £79,840 were paid to Informant 1.

[10] The defendant admits that at all material times Informant 1 was acting as a covert human intelligence source ("CHIS"). However, the defendant denies that Informant 1 was an employee of the defendant or that, in committing, or encouraging or instigating others to commit any assault, battery, or trespass to the person, Informant 1 was acting on behalf of, or at the instigation of, or as a servant or agent of the defendant.

[11] The defendant admits that the death of Sean McParland was caused by the assault, battery, or trespass to the person of the deceased by or at the behest of Informant 1. The defendant also admits that police officers, under the direction and control of the defendant, were guilty of misfeasance in public office within the second limb of Lord Steyn's definition in *Three Rivers District Council v Bank of England (No 3)* [2003] 2AC 1.

[12] The defendant admits that police officers under his direction and control were guilty of negligence as pleaded but maintains a denial that Informant 1 was an employee of the defendant.

[13] For the avoidance of any doubt, the defendant denies that the attack on Mr McParland was committed by or on behalf of the defendant or that the defendant, or any police officer under his direction and control committed, encouraged, or instigated the commission of the said attack. Any responsibility in law to the deceased or to the plaintiff arises, it is claimed, solely by reason of the misfeasance in public office and negligence which has been admitted.

Background circumstances and the plaintiff's evidence

[14] The plaintiff was born on 18 September 1984. He is now 38 years old but was only 9 years of age when his maternal grandfather, Sean McParland, was murdered by loyalist terrorists on 17 February 1994. Mr McParland was babysitting his four young grandchildren at their home at 58 Skegoneil Avenue, Belfast, while their parents had a night out at the Motor Show. It is likely that the loyalist terrorists had intended to murder Michael Monaghan Senior, the plaintiff's father, for purely sectarian reasons but, in his absence, they murdered Mr Sean McParland instead. Although a grandfather, Mr McParland was only 55 years of age when he died from his injuries on 24 February 1994, a week after the attack. At the time of the shooting, Mr McParland was on the road to recovery from throat cancer. It has been accepted that Sean McParland was an innocent victim of a callous and violent sectarian murder.

[15] The plaintiff remembers a very happy childhood in a close extended family unit until that night in February 1994. The plaintiff was the oldest child of Michael and Sinead Monaghan. Before they went out for the evening, Michael and Sinead bathed and fed their children and they left them sitting in the living room of their home with Mr McParland watching television.

[16] At approximately 9.15pm, the plaintiff recollects hearing a loud banging on the front door. His grandfather got up from his seat and moved towards the front door. At this time a knock was also heard on the side door. As the oldest of the children, the plaintiff went to the side door followed by his brothers and sister. The front door and the side door were locked. The plaintiff asked who was there and a voice answered that it was "Alan, a friend of your father." Not surprisingly, in view of his age, the plaintiff was duped into unlocking the side door. The door was pushed in violently and a masked man with a gun burst into the room. The gunman pointed the weapon at the plaintiff initially but then towards Mr McParland as he came back into the room from the front door which remained locked. The gunman advanced towards Mr McParland and pointed the gun directly at him. The plaintiff still has the vivid memory of his grandfather falling onto his knees and begging the gunman not to shoot.

[17] Michael and his three siblings ran out through the open side door to the path at the side of the house. The children were hysterical, crying and screaming. A second masked man, carrying a shotgun, ran past them and entered the house. As they were running away, the plaintiff heard a single shot, followed by, in his view, two more shots. He remembers standing on the road at Skegoneil Avenue with his brothers and his sister, not knowing what to do. After the shots, the plaintiff saw the gunmen run out of the house and cross the road, past the children, to a red car, while still wearing their masks. There was a driver already in the red car which sped off with the gunmen.

[18] A neighbour came from his home and attempted to chase the car. He then came back. The plaintiff recollects entering his home in the aftermath with the

neighbour and that this neighbour, who was a paramedic, carried out CPR on his grandfather. The plaintiff has a vivid memory of the neighbour making use of a Babygro in the course of his efforts to treat his grandfather which was complicated by the fact that his grandfather had a tracheostomy due to his cancer treatment. The plaintiff knew his grandfather was very seriously wounded and he was unable to speak. He was also aware of the devastation caused within the room by the gunshots.

[19] The plaintiff's brothers and sister had been taken into a neighbour's house. The plaintiff remembers re-joining them there and telephoning his maternal grandmother's house. He told his aunt, who answered the call, that Mr McParland had been shot. He has a graphic recollection of hearing the distress of his grandmother and aunt. Shortly thereafter, the Police and an ambulance arrived at the scene. The plaintiff told a policeman what had happened. His parents then returned from their night out. Mr McParland was taken away in the ambulance. The plaintiff was brought to see him once when he was in hospital, before his death, a week later. He remembers his parents were desperately upset and the family had to move out of their home for fear of another attack. They stayed in various houses for short periods but mainly in their maternal grandmother's house.

[20] The plaintiff remembers hearing that the gunmen had intended to kill his father and he was terrified that there would be a further attack. His parents were anxious to get the family out of Belfast and he recalls spending the summer at Minerstown, Co Down, in a caravan that had been purchased for the family.

[21] After the summer, in an attempt to avoid any area where there might be a further attack, the family relocated to Lambeg. Following this move, the plaintiff believes that his life was never the same again. He had been very happy at St Therese's Primary School in North Belfast and had many friends in the area of Skegoneil Avenue. He did not like his new school in Lambeg. He remembers crying a lot, sometimes visibly in school, and being very worried that the gunmen would come back. He was aware that the shooting had a devastating impact on his parents. In contrast to his character and disposition prior to the murder, he got into frequent fights, he was very unhappy and felt angry at the way life had been turned upside down for himself and the family. The plaintiff tried to keep his worries to himself. He felt unwilling and unable to talk about his feelings and deep concerns. He was afraid to be on his own, particularly after dark, and was always anxious when his parents were out of sight. He was afraid to go to the toilet or to bed on his own and he knew his siblings had the same issues.

[22] The plaintiff also suffered a terrible feeling of guilt for opening the side door and allowing the gunmen to enter the house. He hated himself and felt responsible for the pain and devastation suffered by his parents and siblings following the loss of his grandfather. Mr McParland had been a hugely important figure in his life.

[23] The plaintiff has only vague recollections of attending with his family at the Child Psychiatric unit, Royal Victoria Hospital, Belfast, in the months after the

attack. However, he is clear that he was reluctant to engage in therapy and did not want to talk about his experience.

[24] The plaintiff had been in primary 5 at the time of the attack and therefore the move to St Colman's Primary School, Lambeg, was at the start of primary 6 year. His education had plainly been disrupted. Prior to the shooting, his expectation was to progress to St Malachy's College grammar school. Unfortunately, his performance in the transfer test did not match his expectations and he went to De La Salle Secondary School. His feelings of unhappiness, anger, and resentment of having been prematurely uprooted preoccupied his initial years at De La Salle. The plaintiff was interested in sport, particularly boxing and football, but he found it difficult to accept discipline and became continuously embroiled in arguments and fights. He felt unable to relax and enjoy himself in the same way as his peers. He then remembers that as he advanced through his teenage years, he drank a lot of alcohol as a means of making it easier to mix with others and fit in. The plaintiff admits that his fears, anxieties, and guilt lessened as he matured but he continued to feel isolated, out of place and angry with life. He developed and maintained a firm intention to get away from Northern Ireland when he became an adult. He wanted a new life away from the constant reminders of the murder. Due to the determination of his parents, and to the credit of the plaintiff, he did not become involved with any paramilitary organisation or engage in any sectarian violence or vengeful conduct.

[25] The plaintiff left school at 16 years, having achieved 7 GCSE passes. Within a short time, he started an apprenticeship as an electrician. When he qualified, aged approximately 21, he worked as an electrician in Northern Ireland for electrical contracting firms but remained steadfastly determined to get away from Northern Ireland and the many reminders of the murder. His then girlfriend was studying to become a pharmacist and they agreed that, as soon as she finished her pharmacy degree, that they would emigrate to Australia.

[26] In October 2010, the plaintiff and his girlfriend left Northern Ireland to begin a new life in Australia. Within a short period, he felt much better away from Northern Ireland, and experienced a reduction in his intrusive recollections, hypervigilance, anxiety, and anger. He worked hard as an electrician in Australia, travelling widely to build up experience and contacts as he tried to better himself. Unfortunately, his girlfriend found it very hard to settle and was homesick. After a year or so, his girlfriend made it clear that she could not stay in Australia and was going home. Despite having spent many years with his girlfriend whom he loved, the plaintiff could not face the thought of returning to Northern Ireland. As a consequence, he decided to stay in Australia and their relationship came to an end.

[27] In Australia, the plaintiff continued to work as an electrician and successfully progressed to become a foreman and then a project manager. Eventually, he met and established a relationship with his present partner, Rachel. He then set up his own business as an electrical subcontractor which was most successful. He also successfully applied for permanent residency in Australia after two years and

thereafter obtained full Australian citizenship after four years. The plaintiff and Rachel had two children, Eve and Max, both of whom were born in Australia.

[28] It was the plaintiff's intention and hope that his family would make their future in Australia. However, after the birth of Max, Rachel began to miss Northern Ireland and especially her parents and extended family. For the sake of the family, the plaintiff reluctantly agreed to return to Northern Ireland on a trial basis. They returned in 2016. The plaintiff became depressed, but it was plain to him that Rachel was much happier living in close proximity to her family. The plaintiff managed to find work as an electrician for an electrical contracting company in N. Ireland, although he retained his contacts in Australia. His hope was to return to Australia, and this was a frequent topic of discussion between Rachel and himself. However, as time progressed, his wife and children became settled into life in Northern Ireland. Rachel now works for her father and assists in administrative work for the plaintiff. The plaintiff is now coming to the realisation that he and his family will be in Northern Ireland for many years to come and likely on a permanent basis. The plaintiff maintains contact with his friends and working associates in Australia. On two occasions, he has returned alone to Australia for some months to undertake work on construction contracts.

[29] Although determined to make the best of things by working hard and looking after his family, the plaintiff alleges that his post-traumatic symptoms are much worse since he returned to Northern Ireland. He hates living in an environment where he experiences daily reminders of the sectarianism and hatred which he associated with the murder of his grandfather and to the ruination of his parents and family life. As previously, he is obsessively security conscious since his return to Northern Ireland, installing and devising strong security and surveillance measures, including keeping weapons hidden in most rooms at his home and workplace. He finds it hard to get to sleep and now wears a gum shield to prevent him grinding his teeth. He dislikes being anywhere near the former family home, the scene of the murder. He is particularly wary of people in Northern Ireland and tries to keep his distance. He has less zest for life generally and his appetite is not as good as it was when he was in Australia. He suffers more frequently from intrusive recollections and nightmares. He gets limited enjoyment from life and Rachel would often say to him "you're never happy."

[30] The plaintiff and Rachel purchased and renovated a house in Dundrod where he now lives with their family. They chose this location because he wanted to be in a safe and mixed area, but he still cannot escape the activities of paramilitaries or their supporters and reminders of the murder, notwithstanding the benefits of the peace process. One example is that shortly after the family moved into the house, the plaintiff built a wall around the property. When the plaster was still wet, someone inscribed the letters "UVF" and another sectarian message into the plaster.

[31] The plaintiff also sees the continuing and devastating impact of the murder on his parents who have become dependent on alcohol as they try to cope with their mental health issues. His parents deeply love the plaintiff's children. However, he

is concerned about his children's exposure to people whose lives remain blighted by the murder. The plaintiff does not want his children to sample the suffering and anxiety that he, his parents and siblings have and continue to endure. To guard against activation of his symptoms of anxiety, the plaintiff keeps himself as busy as possible with his work and his interest in sport. He has set up his own electrical business and manages to control and develop. The plaintiff has always loved sport, especially football, and keeps himself fit. He coaches an underage football team in Dundrod and earnestly supports cross community relations. However, he remains keen to return to Australia as he knows it would be better for his mental health and quality of life to be there, but he realises the need to give priority to Rachel and his children.

[32] Michael is angry that the police did not act on information and admissions given to them after the murder. On the basis of the Ballast Report, the plaintiff knows that Informant 1 admitted his involvement in the murder within days.

[33] In January 2018, Gary Haggarty, a member of the UVF pleaded guilty to the murder of Sean McParland. The plaintiff remains very angry that Gary Haggarty, who fired the bullet which killed his grandfather, served only a short period of imprisonment and was given a new identity and life. The prolonged investigation and prosecution of Haggarty, over a period of seven or eight years, meant that more questions and details emerged about the murder and the whole process caused further distress to the plaintiff compounded by the severe adverse impact it had on his parents.

The Ballast Report

[34] On 22 January 2007 Mrs Nuala O'Loan, Police Ombudsman for Northern Ireland (hereinafter "PONI") published a report in accordance with Section 62 of the Police (NI) Act 1998 following an investigation into matters surrounding the death of Raymond McCord Junior. The investigation was entitled "Operation Ballast" and as stated previously, was expanded to cover the period from 1991 to 2003 and included the murder of the plaintiff's grandfather, Sean McParland.

[35] In the executive summary of the Ballast Report at paras 3-6 the following is stated:

> "3. In the course of the investigation the Police Ombudsman sought the cooperation of a number of retired RUC/PSNI senior officers. Officers who were being treated as witnesses were asked to provide an explanation of Special Branch and CID internal practices during this period. Investigators offered to meet retired officers at venues with which they would be comfortable and at times which would suit them. They were advised of the areas of questioning and provided with significant

> disclosure of information, at their request. The majority of them failed even to reply. This was despite the fact that witness details would be anonomised in any public statement. Amongst those who refused were two retired Assistant Chief Constable's, seven Detective Chief Superintendent's and two Detective Superintendent's.
>
> 4. Some retired officers did assist the investigation and were helpful. Officers varied a great deal in the manner in which they responded to questions. Some, including some retired officers dealt with challenging questions in a professional manner.
>
> 5. Others, including some serving officers, gave evasive, contradictory, and on occasion farcical answers to questions. On occasion those answers indicated either a significant failure to understand the law, or contempt for the law. On other occasions the investigation demonstrated conclusively that what an officer had told the Police Ombudsman's investigators was probably untrue.
>
> 6. The Police Ombudsman's initial concerns about PSNI informant management processes caused her to alert the Chief Constable to those concerns in March 2003. She subsequently made him aware on 8 September 2003 of her very detailed concerns about these matters. She also alerted the Surveillance Commissioner on 15 September 2003. He carried out an inspection of the Special Branch handling of Informant 1. That inspection found serious failings by Special Branch to comply with the requirements of the law in relation to the handling of informants."

[36] Section Three of the Ballast Report provides an analysis of intelligence linking Informant 1 and other informants to the murders of Mr Peter McTasney (1991); Ms Sharon McKenna (1993); Mr Sean McParland (1994); Mr Gary Convie and Eamon Fox (1994); Mr Gerald Brady (1994); Mr Thomas Sheppard (1996); Mr John Harbinson (1997); and Mr Thomas English (2000). Section three also deals with intelligence linking Informant 1 and others to various attempted murders. This Section highlights many significant and disturbing concerns in relation to the management, handling and protection of police informers, particularly Informant 1.

[37] On 22 January 2007, Sir Hugh Orde, the Chief Constable of the PSNI, issued a statement in response to the publication of the Ballast Report. The statement provided as follows:

> "Having received the report yesterday, I have had an opportunity to make an initial assessment of its contents. The report makes shocking, disturbing and uncomfortable reading. It does not reflect well on the individuals involved, particularly those responsible for their management and oversight. While I appreciate that it cannot redress some of the tragic consequences visited upon the families of those touched by the incidents investigated in this report, I offer a whole-hearted apology for anything done or left undone. We have noted and had the opportunity to consider the Ombudsman's recommendations. All of those which relate to the Police Service are accepted in full … I know that the police community will share my disappointment at some of the details revealed in this report. The actions and omissions of a few officers does a great disservice to the bravery and dedication of the vast majority of police officers who joined the RUC and the Police Service of Northern Ireland to serve and protect the community, some of whom paid the ultimate price for their courage. I welcome the publication of the report and I join those who have thanked the Ombudsman and her team for their work. I and my senior colleagues were determined that this investigation, which engaged our organisation over a 4 year period, will be comprehensive and transparent. It is a matter of concern to me that the Ombudsman suggests that co-operation was not as adequate as we would have wished. While steps have already been taken to reinforce the importance of co-operation with Ombudsman investigations, if further action is required, we will address it. I do however want to thank those in this organisation who have put much time and effort into working with the Ombudsman's investigation to establish the truth of these matters. It is very disappointing that a number of retired senior officers felt unable to engage with the inquiry in a way which would have painted a full picture and enabled a greater understanding of the dangers and challenging world in which they were operating."

[38] I agree with the Chief Constable that the conclusions reached in the Ballast Report are shocking and disturbing. In reaching my decision in this case, it has been necessary to consider and evaluate sections within the report which, in my judgment, are relevant to the claim for misfeasance in public office. In essence, the analysis must focus on the knowledge of police officers, or their reckless indifference, to the fact that Informant 1 was involved in murders, attempted murders and other serious crimes before the murder of Mr McParland and the steps

taken by the said police officers to prevent Informant 1's continued involvement in such serious crimes. One of the central allegations made on behalf of the plaintiff is that police officers not only turned a blind eye to Informant 1's admissions of murder and serious criminality, but that the said police officers actually protected Informant 1 from any effective investigation and from prosecution.

The murder of Mr Peter McTasney

[39] Mr Peter McTasney was murdered on 24 February 1991 by the UVF. He was 26 years old. The murder weapon was found. At para 10.6 of the Ballast Report, it is stated that there is evidence that police were told that Informant 1 had taken part in the murder of Mr McTasney. The murder file makes no mention of Informant 1. However, the PONI's investigators uncovered other police documentation which indicated that Informant 1 was suspected of being involved in the murder and that he was arrested and subjected to nineteen interviews.

[40] The main interview team consisted of Informant 1's own "handlers", namely, Detective Sergeant D of Special Branch and Detective Constable A of CID. This partnership conducted four of Informant 1's first five interviews. One of the said officers also sat in on the interviews conducted by other officers, who were Special Branch Officers. It is significant that Detective Sergeant D stated that he and Detective Constable A "babysat" Informant 1 through these interviews. Detective Sergeant D also stated that Detective Constable A completed the official interview notes but that these did not reflect the actual content of the interview. Detective Sergeant D authorised Informant 1's release without charge on 24 September 1991.

[41] A combined file for the murder of Mr McTasney and the attempted murder of Intended Victim One was prepared for the Director of Public Prosecutions ('DPP'). It is noted that CID asked Special Branch to check their records to ensure compliance with their obligation to inform the DPP of any involvement of police informants in the matters. The then Deputy Assistant Chief Constable for Special Branch responded that no such disclosure was required, despite the clear obligation to do so. The Director of Public Prosecutions confirmed that, on review of the files forwarded, there was no documentation provided by the defendant relating to sensitive matters and that, significantly, a CHIS was involved.

[42] The disturbing conclusion reached by PONI is that, not only were servants and agents of the defendant aware of Informant 1's admission to involvement in the murder of Mr McTasney, but also no documentation has been produced to indicate that Informant 1 was properly investigated for the murder. As stated at para 11.15 of the Ballast Report:

> "The police interview process was seriously flawed and contrary to any model of ethical policing. It could also have the effect of undermining any subsequent criminal prosecution."

[43] There is no documentation relating to any control or management of Informant 1, particularly since police officers were aware of his involvement in serious crimes, including murder.

The murder of Ms Sharon McKenna

[44] On Sunday, 17 January 1993 at 17.30, a Catholic woman, Ms Sharon McKenna, was shot dead at the home of her Protestant friend as she cooked her dinner. The murder was purely sectarian. Ms McKenna is remembered as the "Good Samaritan." The UVF claimed responsibility. A number of UVF suspects were arrested, including Informant 1.

[45] At the time when Ms McKenna was murdered, Special Branch and CID jointly handled Informant 1. Detective Sergeant E and Detective Constable C were Informant 1's Special Branch handlers. Detective Constable A was Informant 1's CID handler. Detective Sergeant M was no longer a handler for Informant 1, although he continued to receive information about Informant 1 through Detective Constable A.

[46] In 2002, Detective Sergeant M supplied the PONI's investigators with material in relation to several incidents. The material included an account written by Detective Sergeant M in which he alleges that Informant 1 admitted that he was a gunman in the murder of Sharon McKenna and that, at the request of Special Branch, the police covered up Informant 1's role in the murder. The written account provided that Informant 1 was the second gunman involved in the murder, although he did not pull the trigger. Another Special Branch informant, who was not named, was the murderer.

[47] There were three meetings between Informant 1 and his handlers after this murder. Details of the meetings are provided at paras 13.10-13.20 of the Ballast Report. A summary of these paras is as follows:

(i) At the time of the first meeting on 18 January 1993, the police had identified Informant 1 as a suspect in the murder.

(ii) Detective Sergeant M's police journal entry for 18 January 1993 confirms that he and Detective Constable A had a meeting with Informant 1 who admitted his involvement in the murder.

(iii) Detective Sergeant M wrote that Detective Constable A told him that, at a meeting on 19 January 1993, when Informant 1 became agitated and started to open up in respect of the murder of Ms McKenna, he was stopped before he said anything more, and his Special Branch handlers allegedly gave Informant 1 hundreds of pounds of spending money for a foreign holiday.

(iv) When Informant 1 again tried to talk about the murder of Ms McKenna, he was interrupted by his Special Branch handlers who did not allow him to talk. Informant 1 eventually broke down and admitted that he shot

Sharon McKenna. Para 13.16 provides a graphic account of calculated and deliberate attempts by Special Branch to obstruct bringing Informant 1 to justice.

(v) Detective Sergeant M wrote that he and Detective Constable A met with a CID Detective Superintendent who allegedly told them that Informant 1 was the gunman who killed Sharon McKenna and Informant 1 would be arrested "*to keep everyone right, but the Branch feared he will he admit it because he is so low at the moment.*" It is also alleged that the CID Detective Superintendent stated that Special Branch could not afford to lose Informant 1 as he was probably the most important intelligence asset within this group of the UVF.

(vi) Detective Sergeant M wrote that the CID Detective Superintendent told Detective Constable A and Detective Sergeant B to "guide" Informant 1 through his detention and make sure that Informant 1 did not admit to the murder. Two other CID officers would also be involved in the interviews who would know nothing about Informant 1's status as a source. Detective Sergeant M wrote that he refused to follow these instructions. Detective Constable A agreed to interview Informant 1 as instructed.

(vii) On 20 January 1993 a third meeting took place between Informant 1, Special Branch and CID. The meeting is recorded in a journal entry from Detective Sergeant E. As highlighted by the PONI, no documentation of this meeting has been retained or provided by the defendant.

(viii) Nine days after the murder of Sharon McKenna, Informant 1 was arrested together with eight others named by Special Branch Intelligence. Informant 1 was interviewed on thirty-seven occasions. The police records state that he refused to talk about the murder. Detective Constable A (Informant 1's CID handler) and CID Detective Sergeant GG conducted nineteen of the thirty-seven interviews. Two CID detectives conducted the remaining eighteen interviews. Significantly, according to Detective Sergeant GG, "*the dogs on the street*" knew Informant 1 was a CHIS. Detective Sergeant GG stated that he knew that Informant 1 was Detective Constable A's CHIS and would say nothing of relevance in front of him. He also knew it was common practice to arrest the source who had provided information about an incident so as to provide cover for him. In effect, it was a sham interview.

(ix) Before the murder of Sharon McKenna, police paid Informant 1 a monthly retainer of £100. In the weeks after the murder the payment was increased to £160 per month. This increase was authorised by a Senior Special Branch Officer.

[48] As part of the investigation, the PONI interviewed many of the officers involved in handling Informant 1. Informant 1's CID handler, Detective Constable A, was arrested and confirmed that he and Detective Sergeant M met with Informant 1 on 18 January 1993. He also confirmed that Informant 1 admitted to being the

second gunman in the murder of Ms McKenna. Detective Constable A stated that he informed Senior Officers of Informant 1's confession.

[49] Detective Constable A stated that he submitted a written record of the said meeting with Informant 1. No documentation has been recovered. Detective Constable A refused to name the Senior Officer who was told of Informant 1's confession. He also refused to name the Senior Officer who instructed him to interview Informant 1. Significantly, Detective Constable A confirmed that Detective Sergeant M was asked to conduct the interview and refused.

[50] Detective Sergeant M was also arrested by the PONI's investigators. He confirmed that Informant 1 had admitted to being the second gunman involved in the murder of Ms McKenna and that he recorded this in his RUC journal. Both Detective Constable A and Detective Sergeant M stated that, in their opinions, the admissions made by Informant 1 amount only to intelligence.

[51] Detective Sergeant M stated that he passed all the details in relation to Informant 1's admissions to CID Detective Superintendent B. Following the arrest and interview by PONI's investigators, CID Detective Superintendent B confirmed that within days of the murder, either or both Detective Sergeant M and Detective Constable A had informed him that Informant 1 was involved in the murder. Detective Superintendent B stated that he told Special Branch Detective Chief Superintendent L, Detective Superintendent J and Special Branch Detective Sergeant E that one of their informants was believed to have been involved in the murder of Sharon McKenna. He was then given authority to arrest Informant 1.

[52] There are no records of the intelligence passing between Detective Sergeant M and/or Detective Constable A and CID Detective Superintendent B. Likewise, there are no records of CID Detective Superintendent B's discussion with the said Special Branch Officers or the authority given to arrest Informant 1.

[53] The meeting with Informant 1 on 20 January 1993 was after authority to arrest Informant 1 had been granted. It is difficult to resist the conclusion that the servants of the defendant had engaged in a deliberate and concerted attempt to brief Informant 1 prior to the interviews and persuade him that he would be protected.

[54] The PONI has confirmed that Informant 1 remains the main suspect for the murder of Sharon McKenna and that a proper investigation in relation to Informant 1's involvement has not been carried out.

[55] At para 13.49 of the Ballast Report, in relation to the findings of PONI in relation to the police investigation of the murder of Sharon McKenna, PONI confirmed the following:

> "7. Both Detective Sergeant M and Detective Constable A have confirmed during their interviews under caution that Informant 1 had admitted to being the second gunman."

[56] Following the murder of Sharon McKenna, there is no record of any review carried out by the defendant in relation to the continued employment of Informant 1. The inevitable conclusion must be that no review was carried out. Therefore, prior to the murder of Sean McParland, despite his admissions regarding involvement in two previous murders, Informant 1 remained at liberty to be involved in further murders and serious crime, protected by servants and agents of the defendant. As stated in para 13.49 of the Ballast report:

> "17. The facts outlined above have had the effect of protecting Informant 1 from possible prosecution for the murder of Sharon McKenna. This is collusion."

The murder of Sean McParland

[57] The PONI's investigation into the murder of Sean McParland provided that on 17 February 1994 two gunmen entered a house in Skegoniel Avenue and shot Mr McParland. He died in hospital from his injuries on 25 February 1994. The police attributed the murder to the UVF.

[58] The PONI's investigation revealed that, on the day before the murder, an informant had provided intelligence to the police that someone was going to be killed in the relevant area. The police had mounted a response during which Informant 1 was seen in the area. The informant stated that the operation had been called off for the time being and that Informant 1 had been involved in the aborted attempt.

[59] On the day after the shooting, an informant provided intelligence naming those allegedly involved in the shooting of Mr McParland.

[60] On 19 February 1994, two days after the shooting, Informant 1 provided intelligence to the defendant that the UVF were responsible and named the persons involved, including another informant. Significantly, Informant 1 also stated that he had a role in the murder.

[61] On 21 February 1994, four people, including Informant 1, were arrested. A direction was also provided to police officers that three other individuals were to be arrested on sight. These arrests did not occur.

[62] On 22 February 1994, an Application for Extension of Detention was made in respect of four suspects. The intelligence which formed the basis of the application cannot be found.

[63] Informant 1 and two others were released without charge. Following the murder, Informant 1 and another informant were appointed to more senior positions within the North Belfast/Newtownabbey UVF.

[64] During PONI's investigation, the police were requested to provide any intelligence. None was provided. In October 2004, police at Castlereagh Police

Station discovered material relating to Detective Sergeant M and Detective Constable A. Contained within the documentation discovered, there was an intelligence document which stated that Informant 1 had named himself as having a role in the murder and also identifying the involvement of others, including another informant.

[65] The findings of the PONI in relation to the murder of Sean McParland included the following:

(i) On 5 January 1994, prior to the murder of Sean McParland, the Police conducted a search and found a piece of paper which contained details of the plaintiff's father. The person in whose custody this document was found was arrested after the attack and pleaded guilty to a charge of possession of information of use to terrorists. He was convicted.

(ii) Informant 1 was involved in a conspiracy to commit murder in the relevant area on 16 February 1994, the day before the shooting of Mr McParland. Informant 1 did not tell his handlers about the proposed attack. It was only after another informant contacted the police and a police response was mounted that the attack was aborted.

(iii) After the shooting, Informant 1 admitted to his involvement. The Ballast Report makes no reference to whether Informant 1 was interviewed and, if so, the names of the police officers who interviewed Informant 1. It is not known whether Informant 1's handlers consulted with Informant 1 prior to any interviews. The Ballast Report does not disclose whether at any time Informant 1 was questioned about his admissions in relation to his role in the murder.

(iv) Subsequent to the murder, an informant was named as the gunman who killed Sean McParland.

[66] At para 14.17 of the Ballast Report, the PONI concluded as follows in relation to the murder of Sean McParland:

> "14.17 Police continued to employ Informant 1 and another informant without any consideration of all the information which was available to them. This is indicative of collusion."

[67] It is significant that after the publication of the Ballast Report, on 23 June 2017, Gary Haggarty pleaded guilty to murdering Sean McParland.

Misfeasance in Public Office

[68] The major thrust of the plaintiff's claim against the defendant is grounded in the tort of misfeasance in public office. The nature of the tort was considered by the House of Lords in *Three Rivers DC v Bank of England (No 3)* [2003] 2AC 1. In

summary, misfeasance in public office is a remedy in tort for harm caused by acts or omissions of public officers and those exercising public functions amounting to an abuse of their power or authority. An action for misfeasance is an intentional tort where the relevant intention is bad faith, as opposed to a genuine mistake, incompetence, inadvertence, or oversight. As will be considered below, the requirement of bad faith applies to the elements of both harm and unlawfulness.

[69] The first two ingredients of the tort are not in dispute in this case, namely that police officers, as the servants and agents of the defendant, were public officers who were at all times purporting to exercise public functions.

[70] The third element of the tort relates to the state of mind of the public officers. In *Three Rivers DC v Bank of England (No 3)* [2003] 2AC1 at p191, Lord Steyn stated that there were two different limbs to this element of the tort:

> "First, there is the case of targeted malice by a public officer, ie conduct specifically intended to injure a person or persons. This type of case involves bad faith in the sense of the exercise of public power for an improper or ulterior motive. The second form is where a public officer acts knowing that he has no power to do the act complained of and that the act will probably injure the plaintiff. It involves bad faith in as much as the public officer does not have an honest belief that his act is lawful."

[71] Essentially, the plaintiff must prove, firstly, the public officers or those exercising public functions:

(a) knew that they were abusing their public powers or authority; or

(b) were recklessly indifferent as to the limits upon their public powers or authority.

In addition, the plaintiff must prove that the public officers acted:

(c) with either the intention of harming the claimant ("targeted malice"); or

(d) with the knowledge of the probability of harming the claimant; or

(e) with a conscious or reckless indifference as to the probability that their acts or omissions would harm the claimant (the "untargeted malice" or "illegality" limb).

[72] It is accepted by the parties that the facts of this case fall within the second limb of Lord Steyn's definition, namely, untargeted malice. The basis of liability for untargeted malice was central to the facts considered by the House of Lords in *Three Rivers DC v Bank of England (No 3)*. The plaintiffs consisted of more than 6,000

investors who lost deposits when the fraudulently run Bank of Credit and Commercial International (BCCI) collapsed. In the action for misfeasance in public office, the plaintiffs alleged that senior officials of the Bank of England acted in bad faith in (a) granting a banking licence to BCCI in 1979 when they knew it was unlawful to do so; (b) in closing their eyes to what was happening at BCCI after the licence was granted; and (c) in failing to revoke the existing licence and to close BCCI when the known facts cried out for action in the mid 1990s.

[73] The question was whether the said allegations were sufficient to ground liability for misfeasance in public office on the part of the Bank of England. The Bank argued that for liability for untargeted malice it must be shown that the officials knew of the illegality of their acts and the probability of resulting harm. The House of Lords disagreed. Proof of actual knowledge of illegality was not necessary. Rather, the claimant had to prove that the public officer acted with a state of mind of reckless indifference to the illegality of his act and its consequences. Reckless indifference to consequences is as blameworthy as deliberately seeking such consequences.

Admitted misfeasance

[74] For the purpose of these proceedings, the defendant has admitted that police officers under his direction and control and for whose conduct he is legally responsible were guilty of misfeasance in public office within the second limb of Lord Steyn's definition. In oral and written submissions, Mr Hanna KC, on behalf of the defendant, admitted:

(1) that police officers knew that Informant 1 had been engaged in serious criminality;

(2) that they deliberately failed to take adequate steps to investigate his criminal behaviour with a view to securing evidence leading to his conviction and imprisonment;

(3) that in this respect they were misguided and were acting unlawfully (because, with the benefit of that knowledge, they had a duty to act); and

(4) that this occurred in circumstances where they were reckless as to the likely consequences for any future victim of Informant 1 or his associates.

[75] However, Mr Hanna KC argued that despite the conduct of the police officers comprising the admitted misfeasance, the plaintiff cannot prove that any psychological injuries or distress suffered was in consequence of the admitted misfeasance at any point in time before he became aware of the unlawful conduct. The defendant accepts that the plaintiff undoubtedly suffered severe psychological injuries as a result of the murder; however, the murder was committed by UVF terrorists and not by the police. It is argued that the conduct of the police, whilst reprehensible, would probably not have prevented the murder of Sean McParland. It is submitted that all or most of the psychological harm suffered by the plaintiff

was caused by the murder itself and, even in the absence of the admitted misconduct of the police, would have occurred in any event.

[76] The defendant argues that misconduct of the police giving rise to the admitted misfeasance only came to light following the publication of the Ballast Report in 2007. It, therefore, follows, according to the defendant, that he cannot be liable for any psychiatric injury suffered by the plaintiff prior to 2007 and, in any event, prior to the date on which the plaintiff became aware of the substance of the findings in the Ballast Report.

Causation

[77] The question for this court is whether, on the facts, the psychological injuries sustained by the plaintiff are capable in law of having been caused by the acts and omissions of the police officers giving rise to the admitted misfeasance in public office.

[78] Mr Hanna KC submits that the onus of proving causation lies with the plaintiff. He says that the plaintiff must produce evidence capable of satisfying the court that, on the balance of probabilities, but for the defendant's wrongdoing, the attack on the plaintiff's grandfather would not have occurred and as a consequence the plaintiff would not have sustained injury. Put shortly, can the defendant be liable for its failure to protect the plaintiff from the harm and loss caused by UVF terrorists, to include Informant 1?

[79] In *Three Rivers DC v Bank of England (No 3)* [2003] 2AC1 at p166, Auld LJ, in his consideration of causation in cases of misfeasance stated as follows:

> "Causation is essentially a question of fact and common sense: see *Galoo Ltd v Bright Grahame Murray* [1994[1 WLR 1360, 1374-1375, per Glidewell LJ. The question here, as Clarke J said [1966] 3 All ER 558, 626, is whether a jury, properly directed, could conclude that the Bank, by the alleged "sufficiently serious breaches" of its Community law obligations to the plaintiffs and/or by the alleged various repeated acts of misfeasance, caused loss to the plaintiffs. It is sufficient to establish liability if the plaintiffs prove that those acts or omissions were an effective cause; they do not have to prove that they were the only or main cause: see *Banque Bruxelles Lambert SA v Eagle Star Insurance Co Ltd* [1995] QB 375, 406, per Lord Bingham of Cornhill CJ."

[80] The case advanced by the plaintiff is that this court should have no difficulty in coming to the conclusion that, on the pleaded facts, the acts and omissions of the police officers amounting to the admitted misfeasance in public office was the effective cause of his injury. The plaintiff argues that the elements of harm and unlawfulness are present in this case. He submits that as a result of the unlawful

nature of the defendant's acts and omissions, the police officers knew that the claimant (or a group in which the plaintiff belonged) would be harmed or were consciously and recklessly indifferent about the probable harm to the plaintiff.

[81] Mr Hanna KC, on behalf of the defendant, has not sought to advance the specific argument that Informant 1 and, indeed, other informers were independent third parties and, accordingly the defendant cannot be held liable for any loss or injury caused by them. It has not been submitted in argument that there has been a *novus actus interveniens*. Rather, the defendant accepts that the police officers had a duty to take proper and adequate steps to investigate the criminal behaviour of Informant 1. They knew that Informant 1 had engaged in serious criminality, and it was their duty to secure evidence capable of leading to Informant 1's conviction. However, according to the defendant, since Informant 1 was a "leading terrorist", it would have been unlikely that he would have provided a voluntary confession after caution and that the prospect of convicting Informant 1 would have depended upon obtaining other admissible evidence. In the absence of such evidence, it is argued that Informant 1 would have remained at large and the murder of Sean McParland by the UVF would still have occurred. Mr Hanna KC states that even if evidence had been obtained and as a consequence Informant 1 had been taken out of circulation prior to February 1994, it is probable that other members of the UVF would still have carried out the attack on Sean McParland.

[82] I am not persuaded by the said submissions which are based on pure conjecture. No evidence was called in support of the argument that, even accepting misfeasance of the defendant, the murder of Sean McParland was inevitable, and the psychological injuries suffered by the plaintiff would have occurred in any event. It was agreed by the defendant that Sean McParland was not the intended victim. No evidence was offered by the defendant which would have allowed the court to draw a reasonable inference that, absent Informant 1, the UVF would have murdered Sean McParland on the night in question. The fact of the matter is, as confirmed in the Ballast Report, that despite their knowledge that Informant 1 had committed and admitted to previous murders, police officers made determined efforts to dissuade him from making formal confessions and went further to conduct sham interviews with the deliberate motive to protect him from prosecution.

[83] In *Three Rivers DC v Bank of England* dealing with the issues of causation in misfeasance cases, Auld LJ stated at p168:

> "In *Smith v Littlewoods Organisation Ltd* [1987] AC, 241, *272* Lord Goff, after referring to the general idea in Lord Sumner's dictum that a person "ought not be held responsible in law for the deliberate wrongdoing of others", said:
>
> > 'Of course, if a duty of care is imposed to guard against deliberate wrongdoing by others, it can hardly be said that the

> harmful effects of such wrongdoing are not caused by such breach of duty. We are therefore thrown back to the duty of care.'
>
> Although Lord Goff spoke in terms of a duty of care, because that happened to be the basis for the cause of action in the case, there is no logical reason to limit its application as a matter of causation to cases of negligence; see also *Dorset Yacht Co Ltd v Home Office* [1970] AC 1004, 1030A-D, per Lord Reid and *Lamb v Camden London Borough Council* [1981] QB 625, 642D, per Oliver LJ. …
>
> In my judgment, it follows that it is likely that the conduct of the Bank, as pleaded by the plaintiffs, would be capable, if proved, of having caused the plaintiffs' losses. For this purpose it is not necessary for them to prove that Bank had control over BCCI's day-to-day activities. It is sufficient that the Bank had a duty to guard against the occurrence of conduct of BCCI objectively likely to cause such losses …"

Decision

[84] Based on the above analysis, and in particular the findings reached in the Ballast Report, I conclude that the police officers, as public officers, engaged in unlawful acts knew or were recklessly indifferent as to the consequences of their illegality. The police officers acted in the knowledge that the said unlawful acts would probably injure the plaintiff or a person of a class of which the plaintiff was a member. Alternatively, the police officers, by reason of their unlawful acts and omissions, acted with a conscious or reckless indifference to the probability of harming the plaintiff. The murderous act by Informant 1 was predictable. Harm, to include psychiatric injury, was known to be a probable consequence.

[85] Accordingly, for the reasons given, it is my decision that the defendant's unlawful conduct was an effective cause of the plaintiff's loss and psychiatric injury.

[86] The police officers knew that Informant 1 had murdered Peter McTasney and Sharon McKenna prior to the murder of Sean McParland. The police officers knew that Informant 1, prior to the murder of Sean McParland, had also engaged in acts of serious criminality, including attempted murder. By failing to take any steps to properly investigate and prosecute Informant 1, by engaging in a deliberate determination to protect him and by continuing to deploy Informant 1 as a CHIS, the police knew or were consciously indifferent to the risk that Informant 1 was likely to commit further murders and engage in serious acts of violence, resulting in death, personal injury and psychiatric damage. Accordingly, the essential ingredients of the tort of misfeasance and causation are proved.

[87] I reject the defendant's argument that, despite the admitted misfeasance of the police officers, it was unlikely that Informant 1 would have provided a voluntary confession after caution so that the prospect of convicting Informant 1 would have inevitably depended upon obtaining other admissible evidence. The fact is, in relation to the murder of Sharon McKenna, once Informant 1's handlers became aware that Informant 1 had voluntarily admitted to his involvement in the murder, meetings were arranged by his handlers to dissuade him from making a confession and also to offer him protection during the formal interviews. Furthermore, financial inducements were made to Informant 1 to ensure that he remained silent.

[88] In my judgement, there was a duty on the police officers to exercise supervision and control over Informant 1 to guard against and prevent Informant 1 causing the very loss that their duty was intended to prevent. As stated in the Ballast Report, the police officers knew that Informant 1 had admitted to his involvement in the murders of Peter McTasney and Sharon McKenna. The police officers knew that he was capable of committing further murders or attempted murders. Despite this, the police officers engaged in "sham interviews." For example, in relation to Informant 1's involvement in the murder of Peter McTasney, the main police interview team consistent of Informant 1's own handlers. Interviews were also conducted by Special Branch Officers during which one handler would remain. The same format applied in relation to the interviews relevant to the murder of Sharon McKenna, whereby many of the interviews were conducted by Informant 1's handlers. Prior to these interviews, according to Detective Sergeant M, a CID Detective Superintendent instructed his handlers to make sure that Informant 1 did not admit to the murder.

[89] The unlawful nature of the acts of the police officers in protecting Informant 1 is demonstrated by the fact that, according to the Ballast Report, the official interview notes did not reflect the actual content of the interviews. At para 10.12 of the Ballast Report, in respect of the murder of Peter McTasney, Detective Sergeant D stated that the interview notes were completed so as to give the impression that police questioned Informant 1 about the offences and that Informant 1 made no response to the questions. Since Informant 1 had made admissions to police officers that he was involved in the murders of Peter McTasney and Sharon McKenna, one would have expected such admissions to have been put to Informant 1 during the formal police interviews and that he would be questioned at length with regard to same. Therefore, since the formal interview notes have not been provided, the court is drawn to the conclusion that the said questioning did not take place.

[90] Following the murder of Sharon McKenna, there is no record of any review carried out by the defendant, his servants or agents, in relation to the continued employment of Informant 1. The inevitable conclusion must be that no review was carried out. Therefore, prior to the murder of Sean McParland, despite his admissions regarding involvement in two previous murders, Informant 1 remained at liberty to be involved in further murders and serious crime, protected by servants and agents of the defendant. As stated in para 13.49 of the Ballast report:

> "17. The facts outlined above have had the effect of protecting Informant 1 from possible prosecution for the murder of Sharon McKenna. This is collusion."

[91] PONI's investigation into the murder of Sean McParland, revealed that, on the day before the murder, an informant had provided intelligence to the police that someone was going to be killed in the relevant area. The police had mounted a response during which Informant 1 was seen in the area. The informant stated that the operation had been called off for the time being and that Informant 1 had been involved in the aborted attempt. In relation to this aborted attempt, two matters are significant. Firstly, Informant 1 was not arrested. Secondly, on 15 January 1994, a matter of weeks before the murder, the police conducted a search of a property and found a piece of paper which contained details of the plaintiff's father. On the basis of this information, it was clear that the plaintiff's father was a potential target for the terrorists.

[92] On 19 February 1994, two days after the shooting, Informant 1 provided intelligence stating that the UVF were responsible and named the persons involved, including another informant. Significantly, Informant 1 also stated that he had a role in the murder. It beggars belief that Informant 1, who had voluntarily admitted to the police that he was involved in the murders of Peter McTasney and Sharon McKenna, assumed such a protected status that he was freely able to admit to the murder of Sean McParland. The Ballast Report does not disclose whether at any time Informant 1 was questioned about his admissions in relation to his role in the murder.

[93] At para 14.17 of the Ballast Report, the PONI concluded as follows in relation to the murder of Sean McParland:

> "14.17 Police continued to employ Informant 1 and another informant without any consideration of all the information which was available to them. This is indicative of collusion."

[94] The defendant employed Informant 1 as a CHIS. It is clear that the defendant allowed Informant 1 to assume a protected status. The defendant, and in particular the police officers exercising their public functions, knew that Informant 1 was a murderer and had engaged in attempted murders and serial criminality. Informant 1 had admitted to the murders of Peter McTasney and Sharon McKenna. Despite these admissions, the police officers continued to protect him from independent and effective investigation and prosecution. The police officers knew that it was probable that Informant 1 would murder or cause serious injury again. Alternatively, they were recklessly indifferent to the probability that Informant 1 would cause harm and injury to the plaintiff or to a person within a class in which the plaintiff belonged.

[95] In *Akenzua v Secretary of State for the Home Department* [2002] EWCA Civ 1470,

the Court of Appeal had to decide whether, in light of the decision of the House of Lords in *Three Rivers*, whether there was a requirement of proximity between the defendant and the claimant. The Court of Appeal decided that no proximity was required. Sedley LJ stated as follows:

> "The reference in Lord Steyn's speech, at p 1235, to an individual or class is not a free-standing requirement of the tort. As the words which I have italicised in it indicated, it is derived from the antecedent proposition that the intent or recklessness must relate (`be directed') to the kind of harm suffered. It is clear, too, that it is an expansive rather than a restrictive element of the tort, allowing the action to be maintained even where the identities of the eventual victims are not known at the time when the tort is committed, so long as it is clear that they will be such victims."

[96] The defendant had a duty to guard against the deliberate wrongdoing by Informant 1 and accordingly, to adopt the words of Lord Goff in *Smith v Littlewoods* [1987] AC, 241, *272* "it can hardly be said that the harmful effects of such wrongdoing were not caused by the defendant's breach of duty." Causation is essentially a question of fact and common sense. As stated by Auld LJ in *Three Rivers DC v Bank of England (No 3)* [2003] 2AC 1 at p166, in order to establish liability, the plaintiff must only prove that the unlawful acts or omissions of the defendant were an effective cause. The plaintiff does not have to prove that they were the only or main cause. In my judgment, for the reasons given, the defendant's misfeasance in public office was an effective cause of the plaintiff's injury.

Medical evidence

[97] Following a clinical assessment of the plaintiff on 1 February 2020, Dr Maria O'Kane, Consultant Psychiatrist, produced a medical report dated 19 September 2020. During her examination of the plaintiff, Dr O'Kane referred to medical records which covered the period from August 2016 to September 2019. Dr O'Kane produced a further report dated 19 June 2022 following a review of the Child Psychiatry Notes, Royal Victoria Hospital, Belfast and the medical reports from Dr Daly, Consultant Psychiatrist, dated 3 March 2022 and 25 April 2022. The clinical notes and records and the reports from Dr Daly will be considered in detail below.

[98] In the course of Dr Maria O'Kane's examination and assessment of the plaintiff, he provided a detailed history of the index incident and the devastating psychological impact in the aftermath. The court acknowledges that the plaintiff's evidence as recorded above is entirely consistent with the details of the murder and its sequelae that he provided to Dr O'Kane. The court also takes into consideration, as confirmed in the evidence of Dr Maria O'Kane, Consultant Psychiatrist, and Dr Oscar Daly, Consultant Psychiatrist, the plaintiff presented as a genuine and

honest witness. There is absolutely no suggestion that the plaintiff has attempted to fabricate, exaggerate, or embellish his evidence with regard to his description of the events on the night in question and their impact on his mental health and psychological well-being.

[99] Dr O'Kane, in her report dated 16 September 2020, provided the following summary of her mental state examination of the plaintiff:

> "[The plaintiff] was distraught and agitated throughout the assessment. He presented as articulate and intelligent but highly distressed. He describes that his sleep is severely disrupted since his return to Northern Ireland again and in the last few weeks he has had no sleep. He has been grinding his teeth and requires a gum-shield. He states that his appetite and energy are poorer than normal and with the reawakening of all this he has suffered significant nightmares of people coming into his house. He is highly avoidant of anything to do with the past and hypervigilant in relation to his own and other's personal safety. He describes himself as intermittently anxious and at times low in mood and he tries to avoid thinking about the past but believes he has had to make a good life for himself and has to keep going and put all of this to one side. He denies any history of self-harming or suicidal thoughts. There is no evidence of psychosis. He undertakes some compulsive checking in relation to personal safety but does not have full blown Obsessive Compulsive Disorder. His insight into the impact of the index incident is that it ruined his life and that of his siblings and parents and extended family. He feels extremely angry and anguished by the circumstances of all this and he believes that as a result it has been very difficult for him to trust other people at times. He believes his parents have never recovered from this and he is concerned about the impact all of this has had on him and his siblings. In addition to this even many years on it is clear that he is still grieving the loss of his grandfather who was a significant figure in his life. He describes that he believes that his very disturbed mental state is a result of what he witnessed and what he lost and led to a very destructed adolescence and wayward behaviours and under-achievement at school and in other domains."

[100] Dr O'Kane's opinion was that the plaintiff is suffering from complex Post-Traumatic Stress Disorder and a prolonged Grief Reaction as a consequence of witnessing the circumstances of his grandfather being shot when he was nine years

of age. Dr O'Kane states that the plaintiff has significant survivor guilt. Dr O'Kane concluded that the plaintiff has found revisiting the murder and the said consequences to have been extremely disturbing for the plaintiff. The plaintiff continues to describe intrusive recollections and nightmares, hypervigilance, avoidance and fore-shortened effect. Significantly, Dr O'Kane stated that the plaintiff has gone to significant lengths to avoid reliving the past. As a consequence, it is Dr O'Kane's opinion that the plaintiff is not likely to benefit from specific psychological intervention, although she believes it would be helpful for the plaintiff to talk to his family members who also appear to have avoided talking about the murder and its impact due to painful recollections.

[101] In his report dated 3 March 2022, Dr Daly on behalf of the defendant, did not take any issue with Dr O'Kane's medical state examination as summarised above. In his report and in his evidence, Dr Daly accepted that the plaintiff is suffering from post-traumatic stress disorder. He disagrees with Dr O'Kane's diagnosis that the plaintiff is suffering from complex post-traumatic stress disorder. He does not comment upon whether the plaintiff is suffering from a prolonged grief reaction. In his opinion, Dr Daly believes that the plaintiff has experienced a relapse of his post-traumatic stress which is a recognised phenomenon when the patient is subjected or exposed to reminders and various other stressors. Contrary to the opinion of Dr O'Kane, Dr Daly believes that, with treatment, the plaintiff can anticipate a remission of his PTSD symptoms, although the risk of further relapse in the future remains.

[102] In his evidence, Dr Daly considered the diagnosis of PTSD and associated psychological sequelae in three stages of the plaintiff's life. The first stage was from the date of the incident in 1994 to an assessment carried out by Dr Geraldine Walford, Consultant Psychiatrist, in March 1996. Referring to the clinical notes and records, it appears that the plaintiff attended with his family for assessment and treatment at the Royal Hospital, Belfast, Child Psychiatry Department. Unfortunately, some of the clinical notes and records are handwritten and difficult to decipher. Also, it appears that notes and records in respect of the plaintiff from late 1994 are missing, or possibly do not exist. Dr Walford, Consultant Child Psychiatrist, prepared a medico-legal report dated 4 October 1995 in respect of a criminal injury claim brought on behalf of the plaintiff. The said report was located within the said clinical notes and records. It is plain that the history provided by the plaintiff, who was aged only nine/ten years old at the time of the assessment is totally consistent with the history provided by the plaintiff to this court and to Dr O'Kane and Dr Daly. The report referred to the plaintiff's profound sadness as to the loss of his grandfather. The plaintiff had become withdrawn, quite aggressive and defiant at times, which was uncharacteristic of his previous behaviour. The report also refers to the plaintiff having feelings of marked guilt which persisted for several months and suicidal thoughts. The plaintiff admitted that he cried most days. Significantly, Dr Walford reached the following conclusions:

> "Michael also admitted to having frequent intrusive thoughts about the incident, particularly in the evenings but also during school time which meant that his concentration was poor and hence his school work suffered. He also had marked symptoms of avoidance doing his best to avoid any place, object or situation that reminded him of the event. Throughout the early interviews Michael exhibited symptoms of a major depression and a very severe post-traumatic stress disorder."

[103] Dr Walford stated that when interviewed in March 1995, the minor plaintiff admitted to significant improvement and feeling much happier. It was stated in the report that the plaintiff's feelings of guilt had now gone and that he was no longer scared that the gunmen would return. The report concluded as follows:

> "Although far less scared than he used to be he still exhibited a moderate degree of anxiety and on closer questioning he admitted to episodes of derealisation, a phenomenon often associated with anxiety. The grieving process for Michael has been complicated by his severe post-traumatic stress symptomatology which has had the effect of whenever he remembers and grieves for his grandfather the traumatic incident itself is relived evoking terrifying memories. … By March 1995 Michael has made considerable progress. He was no longer depressed and was only suffering from a mild degree of post-traumatic stress disorder."

[104] On 8 March 1996, Dr Walford forwarded a letter to the plaintiff's GP which stated that:

> "[The plaintiff] has no symptoms of post-traumatic stress and although he still misses his grandfather, the initial severe depression he felt at the loss of his grandfather has now subsided and he is now a happy and well adjusted young man. … I am discharging him from the Clinic."

[105] I have not been provided with any clinical or medical notes which confirm that the plaintiff was reviewed by Dr Walford in the period from March 1995 to March 1996. Due to the absence of the relevant records (if they exist at all) Dr O'Kane questions the diagnosis made by Dr Walford that in March 1996 the plaintiff displayed no symptoms of post-traumatic stress. Dr Daly, on the other hand, states that Dr Walford (now retired) was a well-respected child psychiatrist and it unlikely that she would have reached the said diagnosis and prognosis without an objective and professional assessment of the plaintiff.

[106] It is my view that the conclusions reached by Dr Walford in her medico-legal report dated 4 March 1995 and letter to the plaintiff's GP dated 8 March 1996 must be accepted at face value. I accept that it would have been preferrable to have corroboration of Dr Walford's assessment of the plaintiff in the clinical notes and records. However, I have absolutely no reason to doubt Dr Walford's professionalism and integrity regarding her clinical assessment of the plaintiff and her diagnosis and prognosis.

[107] In his evidence, the plaintiff states that he has little recollection of attending at Child Psychiatry, Royal Hospital, Belfast. However, he did recall not wanting to attend the therapeutic sessions and saying whatever was necessary to bring the sessions to an end. In March 1996 Dr Walford did state that at that time the plaintiff did display no symptoms of post-traumatic stress disorder and that the long term prognosis for his emotional well-being would be good. Unfortunately, as confirmed by both Dr O'Kane and Dr Daly, that has not proved to be the case. Both experts have stated that the plaintiff has experienced a relapsed of his post-traumatic stress disorder, whereby even when PTSD appears to have resolve the symptoms can reawaken with reminders of the traumatic event. In fairness to Dr Walford, she did state in her report dated October 1995, that post-traumatic stress symptomatology can arise when the plaintiff relives the traumatic incident which evokes terrifying memories.

[108] On or about 22 July 1996 an award of £10,000 was made to the plaintiff pursuant to the Criminal Injuries (Compensation) (Northern Ireland) Order 1988. Under Article 5(12) of the 1988 Order, the plaintiff had shown that he had sustained an injury by virtue of being present when the act was committed and that the injury amounted to a serious and disabling mental disorder. Clearly, a diagnosis of a post-traumatic stress disorder would amount to a serious and disabling mental disorder.

[109] The second relevant stage of the plaintiff's life was, according to Dr Daly, the period from 1996 to 2016. According to Dr Daly, during this period, in his opinion, the plaintiff did not suffer from symptoms of post-traumatic stress disorder. Dr Daly points to the fact that during this period the plaintiff did not attend his GP or mental health services which would have confirmed or help support a diagnosis of post-traumatic stress disorder.

[110] Dr O'Kane disagrees and states that, during this period, the plaintiff continued to suffer from symptoms of post-traumatic stress disorder, although to a less significant and lessening degree. Dr O'Kane's evidence was the effect that the core symptoms of PTSD (common to the ICD/11 and DSM5 criteria) remained, namely, (a)intrusions or re-experiencing of the event; (b) avoidance; (c) arousal and reactivity.

[111] Based on the plaintiff's evidence, I accept that the plaintiff during this period did suffer from intrusive memories, nightmares and distress triggered by reminders of the event. I also accept that the plaintiff did display symptoms of irritability and

over-vigilance. However, the main focus was on avoidance. It is clear that the plaintiff has used avoidance as a coping technique, therefore avoiding and putting out of his mind thoughts, feelings, or memories of the murder. These core symptoms did, in my view, continue, albeit to a lessening degree, throughout the plaintiff's teenage years and prior to emigrating to Australia. However, when in Australia, although the plaintiff did suffer from some psychological issues, these were at a low level and did not amount to symptoms of post-traumatic stress disorder. However, as accepted by both Dr O'Kane and Dr Daly, post-traumatic stress symptomology was revived when police officers from the PSNI visited the plaintiff in his home in Australia to discuss the circumstances of the murder and the potential involvement of Gary Haggarty in the shooting.

[112] The third relevant stage considered by Dr Daly was the period after the plaintiff returned from Australia in 2016 to date. Both psychiatrists accept that during this stage, the plaintiff has suffered from post-traumatic stress disorder, although the extent of the symptomatology is disputed. The relevant events which have caused the plaintiff to experience a relapse of his post-traumatic stress disorder include the trial of Gary Haggarty and the Learned Trial Judge's sentencing remarks, the significance of the Ballast Report, the civil proceedings and giving evidence in court.

[113] Dr O'Kane in her report dated 16 September 2020 said that the plaintiff was suffering from complex PTSD. Dr Daly disagreed with this diagnosis. According to Dr Daly, a diagnosis of complex PTSD comprises features of standard PTSD, such as, re-enactment phenomena, avoidance/numbing and hyper-arousal together with three additional symptom clusters which include (a) severe and pervasive problems in affect regulation; (b) negative beliefs about self; and (c) difficulties in sustaining relationships and feeling close to others. Dr Daly states that there is little evidence to suggest that the plaintiff is suffering from these additional symptoms.

[114] Having considered the evidence of the experts, I do not accept that the plaintiff has developed complex PTSD. There is no evidence to convince me that the plaintiff is experiencing symptoms consistent with the additional said clusters.

[115] In conclusion, it is my view that the plaintiff suffered from severe PTSD symptomatology following the murder of his grandfather. These symptoms remained, albeit to a lessening degree during the plaintiff's teenage years. It is noted that the plaintiff did not seek any psychological help during these years. The failure or refusal to seek psychological intervention is indicative of a persistent theme, namely, the plaintiff's avoidance as a coping mechanism. Avoidance is a core symptom associated with PTSD, whereby the individual avoids thoughts, feelings, or memories of the event, including avoiding people, places, conversations, or situations associated with the event. As stated by Dr Daly in his evidence, even when the plaintiff relapsed into symptoms of post-traumatic stress disorder in 2016 to date, he has avoided seeking any psychological help or intervention. Mr Daly stated that having watched the plaintiff give evidence, it is clear that he still suffers from PTSD. For this reason, Dr Daly recommends CDT therapy or EMDR.

Dr O'Kane disagrees. She states that the plaintiff has suffered these symptoms for most of the previous 30 years and has used avoidance as a means of managing his mental state. According to Dr O'Kane:

> "Avoidance of remembering and reliving the past can then make the successful treatment of post-traumatic stress disorder more problematic and unlikely, as a core part of the evidence based psychological treatment entails and active recalling and re-working of the memories of the past."

[116] With regard to the prognosis, both experts gave different opinions. According to Dr O'Kane, the plaintiff's symptoms are highly likely to continue and will relapse when under particular strain. Dr Daly, on the other hand states that with treatment and with the conclusion of the legal proceedings, the plaintiff can anticipate a further remission of his PTSD.

[117] It is my view that, after the legal proceedings are completed, the plaintiff's symptoms of PTSD will subside. However, I agree with Dr O'Kane that a relapse remains a significant concern. The prognosis must remain guarded.

[118] Taking all the above factors into consideration, I assess damages for the plaintiff's psychiatric claim in the sum of £65,000. In my view, the injuries fall within the middle range of the moderately severe category for post-traumatic stress order as stated in the Guidelines for the Assessment of General Damages in Personal Injury Cases in Northern Ireland (2018). In arriving at the figure, in order to avoid double counting, I have taken into account the fact that the plaintiff was awarded £10,000 in July 1996 following a criminal injury claim. That award was based on the report from Dr Geraldine Walford, Consultant Psychiatrist dated March 1996 who stated that, at the time of the examination, the plaintiff did not display any symptoms of post-traumatic stress disorder and that the long-term prognosis for his emotional well-being would be good. Regrettably, despite Dr Walford's optimistic prognosis, the plaintiff continued to suffer symptoms of post-traumatic stress disorder, although to a less significant and lessening degree. In 2016, the plaintiff relapsed into symptoms of post-traumatic stress disorder which, as confirmed by both Dr O'Kane and Dr Daly, continue to be prevalent. The prognosis remains uncertain, and although an improvement is anticipated at the conclusion of the proceedings, a potential relapse of PTSD cannot be ruled out. For the avoidance of any doubt, the award of £65,000 is for PTSD symptoms suffered by the plaintiff since 1996, namely the date of the criminal injury award, and the guarded prognosis.

Aggravated damages

[119] I turn now to the question of whether, having regard to my findings above, I should consider making an award for aggravated damages.

[120] In *Clinton v Chief Constable* [1999] NICA 5, Carswell LCJ gave the following guidance in relation to the award of aggravated damages:

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

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

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

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

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

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

[121] In coming to my decision on an award of aggravated damages, I have also taken into consideration the recent decisions of McAlinden J in *Quinn v Ministry of Defence* [2018] NIQB 82; the Northern Ireland Court of Appeal in *Doherty v Ministry of Defence* [2020] NICA 9; Cheema-Grubb J in *Rees v Commissioner of the Police of the Metropolis* [2019] EWHC 2339 as approved by the Court of Appeal [2021] EWCA Civ 49.

[122] Mr Fee KC, on behalf of the plaintiff, submits that the court should have little difficulty in concluding that the plaintiff suffered mental distress as a result of exceptional or contumelious misconduct on the part of the defendant. Mr Fee KC submits, and I agree, that the plaintiff has suffered a severe and enduring injury to his feelings and extreme mental distress, not only in relation to the circumstances of the shooting but also due to the failure of the defendant to properly investigate the murder of Sean McParland and to prosecute Informant 1. The resulting indignity and mental suffering were all the more severe and enduring by reason of the defendant's flagrant abuse of his powers and recklessness as to the harm that was caused to the plaintiff.

[123] Mr Fee KC submits that the exceptional or contumelious misconduct of the defendant is exemplified by the admitted negligence and misfeasance in public office and by the conclusions reached in the Ballast Report.

[124] In my judgment, the shocking and disturbing conclusions reached in the Ballast Report clearly demonstrate that the defendant engaged in exceptional, unlawful and contumelious misconduct. As was considered in detail above the defendant knew that Informant 1 was involved in murder, attempted murder and other serious crimes before the murder of Sean McParland and did nothing to prevent Informant 1's continued involvement of such crimes. In effect, the defendant not only turned a blind eye to Informant 1's serious criminality, it went further and took active measures to protect Informant 1 from any effective investigation and from prosecution, despite the fact that Informant 1 had admitted his involvement in previous murders and criminality. In this regard, the defendant arranged and conducted "sham" interviews in which Informant 1 was instructed by the defendant not to make any admissions to involvement in murder. Even after the murder of Sean McParland, the defendant continued to pay Informant 1 large sums of money for a significant period of time. Informant 1 has never been brought to justice and the Ombudsman has concluded that, by protecting Informant 1, the defendant has engaged in collusion.

[125] On the basis of the above, I have no hesitation in finding as fact that the unlawful acts of the defendant, which have been admitted, amount to exceptional and contumelious misconduct resulting in a conscious or reckless indifference as to the likelihood of harm caused to the plaintiff. Taking into consideration the plaintiff's injuries to feelings and mental distress flowing from the said unlawful conduct, an additional award of aggravated damages is justified which I assess in the sum of £25,000.