

<b>Neutral Citation No: [2022] NIQB 52</b>	<b>Ref: SHA11880</b>
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	<b>ICOS No: 13/113672</b>
	<b>Delivered: 29/06/2022</b>

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**QUEEN’S BENCH DIVISION**

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**COLIN KEYS**

**Plaintiff**

**and**

**CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND**

**Defendant**

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**Mr Brian Fee QC and Mr Stephen Toal BL (instructed by KRW Law, Belfast) for the  
Plaintiff**

**Mr Nicholas Hanna QC, Mr Mark Robinson QC and Mr Donal Lunny QC  
(instructed by the Crown Solicitor, Belfast) for the Defendant**

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**SHAW J**

**“Before you study the history, study the historian.”**

**EH Carr, *What Is History?* (1961)**

***Introduction***

[1] After many weeks listening to a group action against the Chief Constable by police officers claiming post-traumatic stress, Coghlin J observed in June 2007:

“The current mood of vibrant optimism [within N Ireland] bears little or no comparison with the dark despairing days of the terrorist campaign. That such a mood now prevails is due in no small part to the quiet, dignified, and dogged courage of ordinary men and women who were prepared to place themselves and often their families between anarchy and the Rule of Law.

Heroism does not only happen in headlines. In so doing they found themselves experiencing a catalogue of horrors that in some cases caused emotional damage as real as that produced by bomb or bullet. For some, troubled by persistent flashbacks and intrusive thoughts, putting the past behind them may not be a realistic option without having to undergo prolonged and distressing treatment."

Para 156 of the summary judgment in the Post-Traumatic Stress Disorder Group Action by *McClurg and others* [2007] NIQB 53.

[2] The plaintiff, Mr Colin Keys, was a police officer associated with that group action. He brought proceedings claiming negligence in his treatment by the defendant's Occupational Health Unit from October 1999 to April 2002, when he retired on medical grounds. However, in that suit he has consented to judgment in favour of the defendant, with no order as to costs.

[3] This is a separate claim that started with a writ issued on 6 November 2013 and proceeded sedately with the plaintiff enjoying the service of solicitors in some periods (as before me) while representing himself at other stages. The thrust of this case is that he was exposed by the defendant to a traumatic incident in November 1983 leading to chronic suffering and his medical retirement on 23 April 2002. He contends that he still suffers four decades later.

[4] Negligence was conceded in carefully framed terms. Para 1 of the defence dated 13 May 2021 puts it this way:

"...the defendant admits, subject to paragraph four below, that police officers of the Royal Ulster Constabulary were negligent in and about the conduct of a police operation in relation to an armed robbery at Pomeroy Post Office on about 28 November 1983 and that, in consequence, the plaintiff suffered psychiatric injury."

While para 2 of the Defence says that "the nature and extent of that psychiatric injury is not admitted", the expert tendered by the defendant (Professor Fahy) accepted a diagnosis of Post Traumatic Stress Disorder ("PTSD") for the plaintiff. I will proceed on the basis that the undisputed psychiatric injury sustained by the plaintiff is PTSD. The case turns on the extent of the plaintiff's condition by reason of the trigger event in November 1983 and the extent of the defendant's responsibility for the losses it occasioned. The defendant denies the plaintiff sustained any financial loss.

[5] Although the plaintiff's pleaded case suggested his authorities failed him in the conduct of under-cover police activities and the use of informants within paramilitary groups, the defendant denied those allegations (that is the essence of para 4 of the Defence), and the plaintiff did not pursue them before me. Indeed, at trial care was taken not to enter that arena save to allow the plaintiff to make clear that such concerns remain a feature of his worldview, since it still affects his mental health.

[6] Consequently, this is now a quantum case where I must determine the plaintiff's complaint that the traumatic incident in November 1983 has marred his life. With the plaintiff having abandoned any claim for aggravated and/or exemplary damages, the parties invited me to address some limited issues of general damages. I do so in this judgment and will return, if required, to hear evidence and rule upon any outstanding issues and special damages.

### *Background*

[7] The plaintiff was born on 1 August 1962. He left school in Belfast aged 18. While seeking to revisit 'A' level examinations at a local college, he joined the Royal Ulster Constabulary ("RUC") as a reserve constable. Aged 19 he was appointed a full-time constable on 7 March 1982. After 4 months training, he was stationed in Pomeroy, County Tyrone.

[8] While on duty on 28 November 1983 he was involved in a gun battle with two armed men. He was 21 years of age. The psychiatric experts for the parties (Dr Best for the plaintiff and Professor Fahy for the defendant), supplied me with a Joint Statement of Experts dated 3 December 2021 ("Joint Statement"). It contains a useful summary of what has become known as 'the Pomeroy incident.' I will adopt that title and their precis, which says:

- "(a) On 28 November 1983, Sergeant Collins arranged for four police officers, including the plaintiff, to occupy two police cars to patrol in the area of the Post Office. Sergeant Collins told the police officers not to wait outside the Post Office.
- (b) The police officers were issued with semi-automatic weapons but not with bullet proof vests or automatic weapons.
- (c) Two police vehicles patrolled in Pomeroy in the course of the morning of 28 November 1983. The plaintiff was in one of the vehicles with Sergeant Collins.

- (d) Shortly after 11.15am, the plaintiff was on patrol with Sergeant Collins when he saw a masked man in the vicinity of the Post Office. He then saw a second masked man.
- (e) These two men had guns and began firing at the police vehicle. Sergeant Collins fired at the masked man. The plaintiff returned one short burst of fire but his weapon was defective and then malfunctioned.
- (f) In the course of this exchange of fire a civilian passer-by was killed. The two gunmen escaped and were not apprehended. The plaintiff was traumatised by the incident."

[9] The Joint Statement includes a high-level summary of the events after the Pomeroy incident. Although, I must explore the detail more deeply to decide the case, it gives me a useful starting point and so I adopt it, with gratitude. The experts say:

"Following the Pomeroy incident Mr Keys was placed on leave for several weeks. He was then transferred to another police station at Glengormley.

Over the remainder of his police career Mr Keys worked in general police duties, as a Close Protection Officer and, from 1989 onwards, as a CID Officer.

In October 1999 Mr Keys commenced six months of sick leave. He returned to work in May 2000 but went on sick leave again at the beginning of 2001. He did not return to work.

He was medically retired in April 2002. He has not worked since then."

[10] Helpfully, the defendant identified four eras that must be considered by me. They describe them thus:

- (a) 28 November 1983 (date of Pomeroy Incident) until approximately the mid or late 1980s (there being some debate about the actual duration of this period).
- (b) From the end of Period A until late 1998.
- (c) From late 1998 until 23 April 2002 (date of medical retirement); and

(d) Period D, from April 2002 to date (post medical retirement).

*The Questions posed by the parties*

[11] The defendant's closing submission outlined thirteen questions. The plaintiff helpfully reduced the territory to four questions. They are:

- (i) The extent to which the Post Traumatic Stress Disorder ("PTSD") suffered by the Plaintiff following the "Pomeroy" incident on 28 November 1983, has contributed to his chronic mental health problems.
- (ii) The extent to which the mental health injury arising from the "Pomeroy" incident caused or contributed to his medical retirement from the PSNI on 23 April 2002.
- (iii) Whether the Plaintiff would, on the balance of probabilities, have retired under the Patten package offer in or about 2010 or would have continued on to age 60 years.
- (iv) Whether the Plaintiff would, on the balance of probabilities, have obtained promotion to the rank of Sergeant, if not for his medical retirement.

[12] Since I consider the plaintiff's list of issues captures the critical topics presently before me, I will address them while delving as necessary into the more detailed issues identified by the defendant.

*The Law: Causation: The 'material consideration' and 'but for' tests*

[13] Before looking at the evidence, I will explain my approach to the law of causation.

[14] The familiar 'but for' test serves to exclude immaterial causes when looking at legal causation of an event. Accordingly, Clerk & Lindsell describe it as an 'exclusionary test': see § 2-09 of the 23<sup>rd</sup> Edition. The defendant contends that I can decide causation issues on the evidence here by the application of that exclusionary test.

[15] However, the defendant's closing submissions properly highlighted an alternative open to the court: the 'material contribution' test.<sup>1</sup> Under this line of authority, causation is established on the plaintiff's demonstration of a breach of duty by the defendant that makes 'a material contribution' to the resultant harm sustained by the plaintiff: (where harm means more than something de minimis): see

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<sup>1</sup> Closing submission §26

*Bailey v the MOD* [2009] 1 WLR 1052 applying Lord Rodger in *Fairchild v Glenhaven* [2003] 1 AC 32 at [129].

[16] Having considered the helpful submissions of the parties and reviewing the evidence, I am satisfied that I can (and should) apply the material considerations test. I think the nature of PTSD and the plaintiff's long history after the Pomeroy incident are terrain where the material consideration test will allow me to do justice to the parties. I will adopt the approach advocated in *Hatton v Sutherland* [2002] 2 All ER 1<sup>2</sup> that where I meet multiple extrinsic causes, a "sensible attempt" should be made to apportion the harm between what is and is not attributable to the defendant's wrong. The defendant will only be liable to the extent that I find is attributable to his wrong, and no more.

### *The medical evidence*

[17] Assessment of PTSD depends on self-reports that are impossible to verify. The clinicians recognise that unverifiable reports are subject to simulation. I was told they consider it helpful when someone close to the patient attends an examination to help explain the patient's experience and symptoms. As a self-described "recluse", the plaintiff attended each of his many examinations without a companion to support or correct him. Unsurprisingly, therefore, astute clinicians will take care to investigate other sources of information to allow them to assess the narrative provided by a claimant.

[18] In this case the materials available for review by the clinicians included the plaintiff's Occupational Health records and his GP notes. Unfortunately, not all the reports before me demonstrate a healthy curiosity beyond the narrative given by the plaintiff. Indeed, some reports were little more than a recitation of what the plaintiff recounted, and other clinicians had thought. But Dr Best (for the plaintiff) and Professor Fahy (for the defendant), the consultant psychiatrists acting as the respective champions on each side, took care to consider the extraneous materials. In addition, I have been provided with the plaintiff's personnel file, as kept by the police. Mr Hanna QC deployed it to explore how the plaintiff coped with a range of police duties over the years before he retired in 2002.

[19] I had the benefit of oral testimony from the plaintiff in court (not remotely). He was cross-examined by Mr Hanna QC. Among the reporting clinicians, I heard from Dr Best and Dr Patterson (clinical psychologist) for the plaintiff and Professor Fahy (for the defendant). The experts appeared remotely by Sightlink.

[20] In addition, I received reports from five clinicians engaged by the plaintiff who were not called. It was noted by one of them, Dr Daly, that by 29 November 2012 the plaintiff had never attended an NHS psychiatrist: report p2. On the

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<sup>2</sup> See para 36-41

evidence before me, that remains the case. It is a striking feature of the case that the clinicians opining are orientated towards the claim rather than treating the plaintiff.

[21] While most of the seven clinicians reporting for the plaintiff were instructed by his solicitors in the usual way, the plaintiff engaged others directly<sup>3</sup>. It seems Dr Patterson was engaged directly by the plaintiff, and he ceased treating him when BUPA funding was 'exhausted.' Although Dr Best was initially instructed by solicitors, his second report (dated 20 January 2015) is the result of a direct approach by the plaintiff.

[22] The explanation advanced for the direct approach by the plaintiff to some clinicians was that he was acting as a personal litigant. When that occurs, it is unobjectionable. But it hardly explains that in November 2013 reports were supplied by Dr Best to the solicitors who instructed him and by Dr Patterson directly to the plaintiff who hired him.

[23] Although I was told he is alive and well, Mr Hanna QC did not call Dr Black who certified the medical retirement of the plaintiff in early 2002. The court was left to make what it could of the significance of his assessment and how it sits with the views held by Professor Fahy, on whom the defendant relies.

#### *The medical issues agreed and not agreed*

[24] The battle lines emerge from the Joint Statement by Prof Fahy and Dr Best. They agree that:

- (i) The Pomeroy incident was psychologically traumatic, being the type of incident that could lead to the development of post-traumatic symptoms.
- (ii) After the Pomeroy incident the plaintiff experienced "a period of post-traumatic symptoms, probably amounting to a diagnosis of PTSD." They say the validity of this diagnosis "relies on the reliability of Mr Keys' retrospective account of his symptoms." (The degree of confidence in the plaintiff as a narrator and historian is an issue to which I return).
- (iii) As for the duration of the post-traumatic symptoms, the plaintiff has given various accounts. Dr Best accepts the plaintiff's claim of 5-years whereas Professor Fahy thinks it likely the plaintiff recovered from any clinically significant symptoms after approximately 2 years.
- (iv) The plaintiff symptoms were "sub-diagnostic" until his mental state deteriorated from 1999 onwards.

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<sup>3</sup> It is unclear who engaged Dr Morris in 2003 but the plaintiff directly procured the report of Dr Helen Harbinson in 2010 and the two reports from Dr Patterson in 2013.

- (v) Since he went on sick leave at the beginning of 2001, the plaintiff has had chronic psychiatric symptoms that impaired his fitness to work, and the prognosis is poor.
- (vi) The plaintiff is preoccupied with the litigation and allegations of security force collusion in the Pomeroy incident.
- (vii) The account given by the plaintiff to them after his retirement in 2002 is compatible with a diagnosis of Chronic PTSD. His account stresses the significance of psychological trauma sustained at Pomeroy.

[25] The experts still disagree on some matters. Dr Best believes that concerns about supposed 'collusion' contributed to the reactivation of post-traumatic symptoms. Together with cumulative stress over his career, this culminated in the eventual "psychiatric breakdown" of the plaintiff. He thinks the Pomeroy incident did contribute to the chronic mental disorder that led to medical retirement in 2002 and contributed to further deterioration in mental health in the plaintiff's retirement since then. He holds the view that the delay in resolving the case has contributed to further severity and chronicity of the mental disorder.

[26] Professor Fahy thinks that the plaintiff made a good recovery from what was a "mild" reaction to the Pomeroy incident. He finds no evidence that post-traumatic symptoms related to that incident led to functional impairment or persistent, clinically significant psychological symptoms. Recognising the plaintiff's health deteriorated in the late 1990s, Professor Fahy attributes this to a combination of physical health problems, excessive alcohol, stress at work, disillusionment with his employer and a road traffic accident in 1999. He highlights that the contemporary clinical records do not point to the Pomeroy incident as a material cause for psychiatric deterioration and/or eventual medical retirement in 2002.

[27] The 'collusion' allegation has become a source of preoccupation for the plaintiff, in the opinion of Professor Fahy. But he contends there is no evidence on the records that it stressed him when the plaintiff went on sick leave or was medically retired from the police. Indeed, as discussed below, it did not feature as an element in the plaintiff's narrative until late 2009, at the earliest.

[28] Professor Fahy holds the opinion that the relative importance of the Pomeroy incident became "magnified" in the plaintiff's mind after he went on long term sick leave and medical retirement and this interpretation has probably been consolidated by the extraordinarily long-running litigation.

[29] For my purposes, with the advantage of their testimony as well as the Joint Statement, the critical differences between the expert psychiatrists seem to reside in the following:



- (i) The significance of the medical records (or lack of them) between 1983 and circa 1998. Both Dr Best and Professor Fahy agreed the employment and medical records do not refer to any troublesome psychiatric symptoms in the years after the Pomeroy Incident until 1999 when the plaintiff had his 'first lengthy period of sick leave' [Joint Statement page 4 § 2].
- (ii) The duration of the PTSD symptoms before they became sub-diagnostic: 2 or 5 years?
- (iii) Since they agree the plaintiff's mental state deteriorated from 1999 onwards, whether the Pomeroy incident played a part in the deterioration of the plaintiff after that time?
- (iv) The contribution of the Pomeroy incident (if any) to the medical retirement in April 2002, given that Dr Black certified it as causative, to some degree.

### *Assessment*

[30] While considering the entirety of the evidence, my evaluation reflects in particular my assessment of the plaintiff and the key medical witnesses: Dr Best and Professor Fahy.

### *The plaintiff's reliability as an historian*

[31] The plaintiff told me he was "obsessed" with the litigation; that had it had become a complete preoccupation; that he had read books about PTSD and DSM IV (published in 1994) from about 2007 onwards. Recognising it might be the result of that obsession and his research into PTSD, I found the plaintiff testified in an unusual manner. When giving evidence he sometimes broke what dramatists call the 'fourth wall' to speak as if he were the medically qualified narrator explaining his symptoms and evidence to me and others in the lay audience looking on. For example, he would recite a symptom that he said troubled him and then explain to me it was a classic indicator of PTSD. Perhaps it was. It was certainly an unusual way to recount to a court an unverifiable, self-reported condition.

[32] Mr Hanna QC contended the plaintiff was not a reliable historian. Having considered the entire evidence, I found three matters helpful to me on that score, namely:

- (i) The versions of the Pomeroy Incident and his police career offered by the plaintiff.
- (ii) The plaintiff's criticism of Professor Fahy; and
- (iii) The attribution of blame for killing a civilian at Pomeroy (Mrs Foster).

**(1) The versions offered by the plaintiff of the Pomeroy Incident and his police career**

[33] The defendant's closing submission included a precis of the diverse accounts given by the plaintiff of his police experiences and the Pomeroy Incident. While not comprehensive, it did reveal a shifting emphasis over time.

(i) Within a day or two of the Pomeroy incident, he provided Detective Chief Inspector McBurney with a statement. It contains a detailed factual account of the incident mentioning he had learned that an elderly lady had been killed and he was very sorry "but what could we do."

**(ii) 1 January 1984, injury on duty report form**

The plaintiff gave a brief account of the Pomeroy Incident stating that one of the masked men began to fire at him and Sergeant Collins and that they had returned fire and the gunman had fled. He said that because of the incident he had suffered a form of nervous shock and had been advised by his GP to refrain from police duties until his condition improved.

Notably, there is no mention of the death of the civilian, or of any concern that he might have caused her death or that he might be prosecuted and imprisoned in consequence. There is no mention about collusion or the involvement of any informant. Indeed, those concerns are not voiced until late 2009 or early 2010, long after he had retired.

**(iii) 5 November 1995, sergeant promotion application form**

The plaintiff refers to the fact that when stationed at Pomeroy for 18 months he had experienced anti-terrorist policing at its height attending "many" scenes of carnage and having been caught up in terrorist situations (plural).

He does not specifically pick out the Pomeroy Incident.

He then refers to his time at Glengormley and subsequently serving on VIP escort duties. There is no mention of any dangerous or terrorist-type work during this period.

Finally, he refers to his "last five years of service" (1990-95) with CID. He refers to having attended numerous murders, attempted murders, and serious crime, and says that he has always derived enjoyment from learning and understanding the needs of others.

He states that he is applying for appointment to enable him "to experience the challenge that such a post would bring."

There is no suggestion of any distress during this period.

(iv) **Between late 2000 and 3 January 2001 (precise date unknown), statement to solicitors in response to questionnaire about PTSD group litigation**

This broad statement deals in detail with many distressing and traumatic events experienced by the plaintiff during his career including some events at Pomeroy during the 18 months that he spent there.

He refers to a “horrendous” 2000lb culvert bomb attack against two named constables which “was in my mind the most shocking.”

He gives a detailed account of the Pomeroy Incident. He refers to a member of the public caught in crossfire being shot dead by a police bullet. He recollects a large amount of blood. He describes the incident as “life changing” and said that it had affected all aspects of his life right up to the present day.

There is no concern expressed that he had fired the shot that killed the elderly woman, nor that he might be prosecuted and imprisoned for causing her death.

He says he believes he was severely traumatized by the life-threatening “events” (in the plural) that he experienced during his time at Pomeroy between 1982 and 1984 mentioning “in particular” the specific Pomeroy Incident.

He refers to the deterioration in his health commencing in October 1999.

(v) **14 May 2001: injury on duty report**

This is the report submitted by the plaintiff leading to his injury on duty pension award, certified by Dr Black. Given the reliance by the plaintiff on the decision to retire him on medical grounds, this is an important self-portrait.

He presents a multi-factorial picture where the Pomeroy Incident was but one of several contributing elements.

Moreover, he elects to play up a suggestion that he killed someone in that incident, which contradicted what he told me under oath.

The plaintiff refers to:

“Cumulative stress injury caused by prolonged exposure to life-threatening incidents and events compounded by increased operational demands as a result of severe downsizing and organisational change. See attached report.”

The attached report is headed “Brief medical history in respect of my current injury on duty related illness.”

He says that from the outset of his career he had been exposed to serious terrorist incidents (in the plural), which had had a large impact on his current medical condition.

He identified the Pomeroy Incident as the “most serious incident” and says “I was involved in a shootout with the Provisional IRA. Living with the experiences of almost being killed and having killed someone never goes away.”

[Underlining added by me].

Throughout my career this incident, combined with many others, have fuelled my current state of ill health.

The severe shortage of manpower within the Newtownabbey CID, during a time when a large number of murders and serious crimes are taken place, also added to my stress.”

The plaintiff told me in his sworn testimony that police informed him within weeks of the Pomeroy Incident that he was not responsible for the fatal shot. I return to this issue below.

(vi) **31 July 2001, medical report from GP (Dr McMillin)**

Dr McMillin refers briefly to the plaintiff being off sick with nervous debility for six weeks following the Pomeroy Incident.

He then refers to the fact that the plaintiff has attended him frequently “in recent years” because of severe stress with associated hypertension and duodenal ulcer. He says that he is also aware that the plaintiff has been exposed to various other stressful situations but considers after prolonged interview, the beginning of this occurred following the shooting incident in 1983.

There is no mention of any concern that he had killed an elderly woman.

(vii) **5 August 2001, statement made to DCI Templeton about his injury on duty report**

The plaintiff refers to the Pomeroy Incident and goes on to say that he had been involved in many other life-threatening incidents around that time and had been exposed to many subsequent life-threatening incidents leading up to the current date.

He mentioned having attended dozens of murder scenes and dozens of terrorist incidents as a CID detective and that his current state of mental health appeared to worsen during an investigation into the events of the McCord murder in November 1997 and his attendance at the scene of the Devlin murder in December 1997.

He then said, "If avoidable, I do not wish to recount the dozens of stressful life-threatening events that have led to my current medical condition."

(viii) **27 November 2001, report of Dr Fleming concerning RTA on 3 December 1999**

Dr Fleming says that the plaintiff told him about a previous episode of stress following the Pomeroy Incident in 1983 following which he was off work for a month.

He told Dr Fleming that there were other incidents down through the years during his work with which he felt that he coped well though over the previous two years he had experienced psychological symptoms which had brought back some of those incidents.

(ix) **13 March 2003, report of Dr Norris, consultant psychiatrist (it was apparently obtained for purpose of the group action)**

The plaintiff described the Pomeroy Incident and recalled a terrorist pointing a gun and firing at him.

There is no mention of any concern that he had shot and killed the elderly lady.

He told Dr Norris that he was off work for six weeks. On return to duty his symptoms diminished with time, and he was able to cope quite well until three years ago (i.e., early 2000).

Then paramilitary activity in his area increased resulting in several murders and that this, and an increased workload, coupled with radical and fundamental changes impacting on him placed great stress upon him and he

experienced the emergence of previous symptoms. Since leaving the police his symptoms had abated.

Dr Norris considered it unlikely that the Pomeroy Incident was the sole cause of his other medical problems and that it was probable that the cumulative effect of all the stressful circumstances contributed to his urinary symptoms and headaches and perhaps his hypertension.

(x) **21 January 2010: Medicolegal report of Dr Helen Harbinson, Consultant Psychiatrist**

In his detailed account of the Pomeroy Incident to Dr Harbinson, the plaintiff described an incident which was, for him, very frightening and he also said that he believed that he had been responsible for the death of the elderly woman and thought he might receive a 20-year prison sentence for murder.

He told Dr Harbinson that a witness had come forward to say that the woman had fallen after the sergeant had opened fire but that this did not make him feel any better.

He did not tell Dr Harbinson that he had in fact been reassured within three weeks of the incident itself that forensic examination had established that he had not fired the fatal shot.

He told her that DCI McBurney (who had been investigating the Pomeroy Incident) had said to him that Special Branch did not cooperate with the investigation and that he had threatened to arrest them. The plaintiff said he was shocked about this and believed that a police informant had been involved and wondered if one of the gunmen had in fact been a police informant.

(xi) **2010 statement made by the plaintiff**

The statement describes his posting and experience of Pomeroy and then deals with the Pomeroy Incident. He says that the post office robbery resulted in a shootout between police and terrorists and that an elderly woman was killed. He says he sustained nervous debility and was placed on sick leave for six weeks.

He could not get the incident out of his mind and felt deep remorse for the killing of the elderly woman whom he believed he had shot.

Again, he did not say that he had been reassured within three weeks of the incident that a forensic examination had established he did not fire the fatal shot.

He said that he had provided DCI McBurney with a statement. He said that Mr McBurney had informed him of his anger with Special Branch who would not cooperate with his investigation. McBurney was going to headquarters to have the Special Branch personnel arrested for withholding information. He also told the plaintiff that he suspected a police informant had been involved in the robbery.

He said he was later told that the gun fired at him had its barrel bent by intelligence officers. He did not say in this statement that the supposed involvement of an informant caused him any anxiety or distress.

He then dealt in detail with other incidents during his police career, including many murders, the first of which was that of Malachy Trainor (shot in Rathcoole in May 1989). All the other murders occurred between 1993 and 2000. He then discusses his periods of sick leave and attendances at the OHU.

Towards the end of the statement, he refers to a discussion which he had with Sergeant Collins in October 2009 during which Sergeant Collins had informed the plaintiff that he (Sergeant Collins) felt he had been duped by Special Branch about the Pomeroy Incident but did not elaborate.

He says that he later obtained statements concerning the incident and was angry and shocked at what he read. He considered that this was an avoidable incident and that no one needed to have lost their life and that senior officers had covered up their failings. He said he felt angry that he had been placed by the police in a situation of mortal danger. He also said that to make a bad situation worse it appeared to him that a police agent had been directly involved in the robbery and in his attempted murder.

It is worth highlighting that the issue of collusion and the involvement of a police informant does not appear to have featured as a matter of concern in any of the plaintiff's accounts prior to his discussion with Sergeant Collins in October 2009. It first arises in the report of Dr Harbinson in January 2010. To be clear, it was not a feature of the plaintiff's expressed concerns in the period leading up to his medical retirement (Period C).

(xii) **20 August 2011, report of Professor Tom Fahy**

The plaintiff referred to a weapon being jammed and to a memory of blood. An elderly woman had been killed in the exchange of fire and he said that he was concerned that he may have shot the woman, but a witness had suggested that the victim had fallen after Sergeant Collins had discharged his weapon. He said that he felt in a state of shock. He felt regret, especially about the death of the elderly woman.

He did not tell Professor Fahy that he had been reassured within three weeks of the incident itself that a forensic examination had established that he had not fired the fatal shot.

He said that in the aftermath he had learned that Special Branch may have had specific information about the timing and location of the robbery, but he also told Professor Fahy that this had not been the source of much concern or preoccupation for him at the time. He said that in subsequent years he felt anger that the safety of police officers had been compromised by lack of information.

The plaintiff told Professor Fahy that following the Pomeroy Incident he experienced 6 to 7 weeks of preoccupation and sleep disturbance and that following his transfer to Glengormley he continued to experience nervousness and periods of agitation. He said that the period of intrusive symptoms lasted for approximately two years and that after that time his symptoms became intermittent and were only present when feeling stressed. He could be free for months.

The plaintiff told Professor Fahy that his condition had deteriorated in 1999.

As explained below, I consider this to be an accurate record of what the plaintiff told Professor Fahy.

**(xiii) 29 November 2012, report of Dr Oscar Daly**

The plaintiff gave Dr Daly a detailed account of the Pomeroy Incident in which he referred to having seen blood flowing and finding out that an elderly woman had been shot dead. He told Dr Daly that he thought he had shot her and that he would end up in jail for 20 years.

He said that he now thought it more likely that Sergeant Collins had fired the fatal shot although he could not be certain and was never actually told who was believed to have fired the shot.

He referred to Special Branch having withheld information and his belief that an agent had been involved.

**(xiv) 10 November 2013, first report of Dr Stephen Best**

In giving his account to Dr Best of psychologically distressing incidents, the Pomeroy Incident was not identified by the plaintiff as the most significant incident. It was not given any elevated status but listed by the plaintiff as one of four major incidents experienced by him during his career.



He told Dr Best that he was frightened in case he was going to be held responsible for the lady's death as he feared being convicted of murder and sentenced to years in prison.

Dr Best has not recorded any concerns about collusion, or the involvement of an informant. He says that the plaintiff was preoccupied with concern that his bullet might have killed an elderly innocent woman.

The plaintiff does not appear to have informed Dr Best that he had been assured within three weeks of the incident itself that a forensic examination had established that he had not fired the fatal shot.

(xv) **3 January 2021, third report of Dr Best**

The Pomeroy Incident is discussed and again the plaintiff said that he felt responsible for the death of the woman who had died and that he feared prosecution and imprisonment.

Dr Best then noted that "in more recent times" the plaintiff was distressed by the possibility that there had been a cover-up to protect agents of the state who were involved or knew about the Pomeroy Incident.

[34] In summary, depending on the occasion, he presented the Pomeroy Incident as one factor among many in a long and challenging police career whereas for other audiences it was the essence of his health difficulties. I am satisfied his narrative shifted and evolved and was able to accommodate the late arrival (2009 or 2010) of concerns about supposed 'collusion.' The plaintiff seems to me to flex according to his audience. I do not find it surprising he does so, nor is that necessarily a mark of dishonesty. But it does put me on guard as I reflect on his reliability as an historian.

(2) **Criticisms of Professor Fahy**

[35] Professor Fahy interviewed the plaintiff on 31 May 2011 leading to his first report dated 20 August 2011. The report records the plaintiff's description of the Pomeroy Incident and other events and stressors which the plaintiff had experienced during his police career, and the plaintiff's own account of psychiatric symptoms which he said that he had experienced, and of treatment which he had received.

[36] In the following year, on 11 occasions between 19 January 2012 and 29 October 2012 the plaintiff attended Dr Michael Paterson to receive psychological therapy. Subsequently, on 13 November 2013, the plaintiff was seen by Dr Paterson for the purpose of a medicolegal report, which Dr Paterson provided on the same date (13 November 2013).

[37] When giving his evidence Dr Paterson provided to the court a bundle of documents including his handwritten notes made during the therapy sessions in

2012. The bundle also included some typed notes by the plaintiff. These notes are highly critical of Professor Fahy, and of the report which Professor Fahy had provided in August 2011.

[38] It is not clear when the plaintiff provided these notes to Dr Paterson, but in his short report headed "To whom it may concern" dated 26 February 2013 Dr Paterson commented that the plaintiff was preoccupied with ongoing legal proceedings and stated: "in particular, Mr Keys had previously had a meeting with Professor Fahy about which Mr Keys expressed anger and demonstrated upset in relation to this as he believes Professor Fahy had misrepresented what he had said to him."

[39] The content of Dr Paterson's handwritten note about the plaintiff's attendance on 27 August 2012 suggest the plaintiff's typed notes about Professor Fahy were provided to him about that time. Since he expressed these views and provided Dr Paterson with his typewritten comments, I accept the plaintiff wanted Dr Paterson to take notice of them, and to be aware of his assessment of Professor Fahy.

[40] The notes relating to Professor Fahy go far beyond mere disagreement with the opinions of the Professor. They include the following paragraph:

"On receipt of Professor Fahy's report I have studied it in great detail. It is highly erroneous and includes many false and misleading paragraphs and sentences. He alters the sequence of factual events in his report at material times in regard to this litigation and has plagiarised the work of the other expert witness. He also appears to have taken other steps to advance his cause."

[41] I find it significant that when the plaintiff gave evidence before me, he did not give voice to any such criticism of Professor Fahy. Moreover, when cross-examining Professor Fahy, no such accusations were made on his behalf.

[42] The plaintiff clearly distrusted Professor Fahy when he attended for interview in August 2011. This is clear given that, according to his notes, the plaintiff said that he had decided to record the interview "for my own protection" but that when Professor Fahy became aware of this the plaintiff informed him that he would not tape the interview. According to Professor Fahy, when challenged about this at the interview, the plaintiff denied that he had any plans to record the interview. If the plaintiff's notes are correct, he was less than frank about this when he was confronted by Professor Fahy.

[43] I am satisfied that Professor Fahy has given an accurate account of what the plaintiff told him when he saw him in August 2011. Given the plaintiff's plain distrust of Professor Fahy, I think it improbable that he would have played down the

various symptoms from which he claimed to have suffered over the years. Indeed, bearing in mind that the plaintiff was (and is) obsessed with his case, I consider it more likely that the plaintiff will have overstated his symptoms when giving his account to those clinicians he hired or viewed as on his side (since they were not treating him but reporting for the purpose of his claim).

### (3) *The shooting of Mrs Foster*

[44] The plaintiff testified before me under oath at the trial of the action. In his evidence-in-chief, he described the Pomeroy Incident in detail. He said that when it emerged that an elderly woman been shot dead by a police round, he was devastated at the thought that he had killed her. He dwelt on possible consequences including 20 years' imprisonment. He was traumatized. He described his apprehension in having to explain to his parents that a woman had died by his hands. However, he went on to say that the liaison inspector had phoned him after two or three weeks to inform him that forensics had established that Sergeant Collins had fired the fatal shot. He said that this was "100% correct." In cross-examination, he said that he had not been trying to mislead.

[45] I am satisfied and find that the plaintiff knew, within three weeks (at most) of the Pomeroy Incident, that he had not killed anyone. However, as noted above, for years he elected to tell clinicians that he was responsible for shooting Mrs Foster.

[46] Given the clarity of his testimony to me, it is hard to avoid the conclusion that the plaintiff misled the clinicians to add heft to his account. He portrayed himself to them as a policeman who survived a traumatic gunfight with masked men who then spent decades labouring under the burden of believing he might have killed an elderly civilian. Twenty-nine years after the Pomeroy Incident, he told Dr Daly he was "never actually told who it is believed fired the shot." (Report 29 November 2012 p5). I am satisfied that is not true.

[47] Consequently, I am persuaded there is good reason to be wary of the accounts given by the plaintiff to the various clinicians who have reported on him and to afford more weight to those who show themselves able to maintain a critical assessment of his narrative.

### *Why I prefer Professor Fahy to Dr Best*

[48] While both expert psychiatrists who testified were clear, I found Professor Fahy more helpful. I consider he maintained the appropriate degree of critical assessment of the plaintiff and his self-reported state. I concluded Dr Best demonstrated less precision and independent care in writing his reports. Consequently, I lean towards the analysis put forward by Professor Fahy.

[49] Mr Fee QC submitted that Prof Fahy was a solitary voice outnumbered by the team of clinicians supporting the plaintiff. The short response is that such matters

are not decided by majority vote. The fuller answer is that on reviewing the opinions on the other side of the aisle, it resembled an echo chamber where the plaintiff's narrative was accepted and repeated parrot-fashion without (in my view) sufficient care to consider collateral support (or lack of it).

[50] To his credit, Dr Best did have access to the extraneous materials and employed them. However, I have concluded that he demonstrated less independence and precision than I would have expected. I will use examples to illustrate.

[51] Dr Best wrote his second report dated 20 January 2015 on the foot of a direct request from the plaintiff. He explained the plaintiff had contacted him and "asked" him to "again consult records and to give an opinion on the importance of the Pomeroy Incident to him developing PTSD." I note the assumed premise of the plaintiff is that the Pomeroy Incident was causative of him developing PTSD and he seeks elaboration on its importance in that process.

[52] Dr Best's first report is dated November 2013. It not only recounted the history given him by the plaintiff but described various reports written by clinicians engaged by or on behalf of the plaintiff and critiqued Professor Fahy's report of August 2011.

[53] Dr Best described the Pomeroy Incident as 'important' (internal page 16) but it was contextualised by him within an eventful 20-year police career. It is worth setting out the passage (internal page 16) to see how his second report shifted emphasis, without any proper basis that I can discern:

"Constable Keys was exposed to years of stress as a serving police officer as were all serving police officers. There is a "drip drip" effect of chronic persistent stress that is psychologically damaging. Twenty years of exposure to personal danger and distressing material punctuated by extremely distressing experiences and in the latter part of his career, serious professional stress with a busy workload, contributed to this man's chronic mental health problem. Early in his career he was placed in a very dangerous setting Pomeroy. The behaviour of fellow officers would not have been tolerated in today's modern police force and there was constant danger of death on and off duty patrolling or in the station.

**The incident at Pomeroy is important in that he was shot at and for a period of time considered himself the cause of the death of the elderly woman. This necessitated a period of several months sick leave."**

[Emphasis added]

[54] It comes as no surprise when one reads his first report that Dr Best expresses his conclusion thus:

“I conclude that Mr Keys has a serious mental disorder that has been caused by his work as a policeman in Northern Ireland.”

[internal page 17 with underlining added by me]

[55] The second report by Dr Best is brief. He says his first report “did emphasise the Pomeroy incident as a cause of PTSD at the time and it resulted in a lengthy period of sick leave.” Dr Best proceeds to tell the reader that many of the doctors who provided reports (he lists 6 clinicians) “deemed” the Pomeroy incident to be “a major contributor” to the plaintiff developing PTSD. I consider that to be the echo chamber effect (again).

[56] What I found significant is that Dr Best, without any further examination of the plaintiff nor access to any further information, chose to unburden himself of the following revised opinion in his second report:

“I am of the opinion that the Pomeroy Post Office incident was on the balance of probabilities the most important incident and the first to cause an intense period of PTSD from which he made a partial but not full recovery.”  
(Internal page 2).

[57] While I commend an expert revising an opinion where the materials before him/her warrant it, to change without good ground hardly inspires confidence.

[58] I found troublesome Dr Best’s approach to temporal matters whether it was the initial period off work or the time he laboured under the burden of thinking he had killed a civilian. This is important since it goes to the duration and severity of the condition.

[59] The plaintiff’s initial period off work was six weeks. With access to the records as well as the plaintiff, Dr Best could and should have been more careful to avoid inaccurate terms such as “several months” and a “lengthy period.” It was no surprise that Mr Hanna QC took issue with him on his temporal descriptors and disappointing that Dr Best clung to what he had written.

[60] Under cross-examination I was surprised to hear Dr Best say that he was informed by the plaintiff that within “a few weeks” of the incident the police “reassured” him that he was not responsible for the death of the civilian. While it is unclear when this information was supplied to Dr Best, one can say without doubt that it does not make its way into any of his reports.

[61] More troubling, however, in his final report dated 29 January 2021, the reader is given the impression that the plaintiff was left to fear prosecution and imprisonment. I will allow Dr Best to describe it in his words.

“Mr Keys then reflected on the Pomeroy incident. He was only 21. There was a gun battle. He then felt responsible for the death of the woman who died during the exchange of gunfire with the terrorists, and then feared prosecution and imprisonment.”

(Report page 4).

### “Opinion

Mr Keys was very stressed by his work as a police officer. He was a very young man when he joined the police force. The Pomeroy incident was a major source of his long-term mental disorder. It was a frightening experience in itself being shot at, his gun failing and a woman dying at scene, and he feared he would be held responsible and even convicted and imprisoned followed [sic] that incident.”

(Report page 7).

### *Addressing the 4 questions posed to me*

[62] The first two questions proposed by the plaintiff are:

- (i) The extent to which the Post Traumatic Stress Disorder (“PTSD”) suffered by the plaintiff following the “Pomeroy” incident on 28 November 1983, has contributed to his chronic mental health problems.
- (ii) The extent to which the mental health injury arising from the “Pomeroy” incident caused or contributed to his medical retirement from the PSNI on 23 April 2002.

**[Q1] The extent to which the Post Traumatic Stress Disorder (“PTSD”) suffered by the plaintiff following the Pomeroy incident on 28 November 1983, has contributed to his chronic mental health problems**

[63] In 1984 the plaintiff’s GP attributed his initial 6 weeks off work to “nervous debility” due to the Pomeroy incident. It is not surprising that in 1983/84 the general practitioner did not suggest ‘PTSD’ as a diagnosis. The American Psychiatric Association introduced ‘PTSD’ in DSM-III published in 1980 and, as Coghlin LJ noted, it was a term that many psychiatrists in the UK did not use even in

the late 1980's: see the discussion in the PTSD Group Action Summary Judgment<sup>4</sup> at para 39.

[64] While it is now common case that the trigger event in Pomeroy on 28 November 1983 initiated the disorder of PTSD for the plaintiff, the experts differ on its duration and course. Aside from the initial 6-week absence following the Pomeroy Incident, there is no relevant attendance by the plaintiff with his GP until 1999.

[65] Absent any help from the GP records, measuring the duration of the PTSD symptoms before they became sub-diagnostic (2 or 5 years) distils to the reliability of the plaintiff as an historian reporting his symptoms. It is also informed by which expert I found more helpful. Given my reservations about the plaintiff as an historian and my preference for Professor Fahy's analysis, I am satisfied, and therefore find, the plaintiff suffered from PTSD at a diagnostic level for a period of two years. I note this was the period described by the plaintiff to Professor Fahy. This is 'Period A' in the four eras under consideration. In that period, I consider his level of suffering was 'mild', as Professor Fahy classified it.

[66] Period B (from 1984 until late 1998). While I recognise that he experienced mild occasional symptoms of stress, I accept the view of Professor Fahy and find on the evidence that in this period the plaintiff suffered at a sub-diagnostic level in terms of PTSD.

### *Periods C and D*

[67] Although I will look at the reasons for his medical retirement in April 2002, which is the watershed in the last two periods of 'C' and 'D', I am not satisfied that one can carve up these periods so neatly.

[68] When considering Period C (late 1998 until retirement on 23 April 2002) I was greatly assisted by the evidence that emerged both in chief and cross-examination. It seems to me that Dr Best and Professor Fahy both recognise a deterioration in the plaintiff's mental health from late 1998 onwards. Both acknowledged several factors were in play, including the Pomeroy incident. Dr Best considers that incident was a significant factor bearing one third of the responsibility for the medical retirement. The other factors in play included a road traffic accident, stress at work unconnected to the Pomeroy incident and the plaintiff's waning confidence in police leadership.

[69] Professor Fahy's analysis is that the plaintiff relapsed in 1998 to enter a chronic condition affected by various factors that have changed with time. He called it "a fluctuating PTSD" for which the Pomeroy incident was "partly responsible." In cross-examination he explained that the plaintiff's symptoms and presentation were

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<sup>4</sup> [2007] NIQB 53

“shaped” by the litigation. In particular, he opined the Pomeroy incident has become more dominant after the medical retirement in 2002.

[70] Agreeing with Mr Fee QC that the plaintiff is now to be regarded as vulnerable to psychological effects of trauma, Professor Fahy accepted that the plaintiff has not made a full recovery from PTSD and that stress could re-trigger in him the Pomeroy incident. Nevertheless, he thought the Pomeroy incident was not a significant cause of the medical retirement in 2002 and it was certainly not “major” at that stage.

[71] My conclusion on Period ‘C’ is that his PTSD was re-triggered on occasions by diverse other stressful factors. I am satisfied on the evidence, however, that these episodes were of short duration. As for Period D, (since his retirement in April 2002 to date), I am satisfied his PTSD fluctuates and has returned on occasions, not least because he has become “obsessed” (his term), by this protracted litigation.

### *Damages*

[72] The parties invited me not to decide special damages at this juncture. My assessment of general damages will reflect all four periods in one sum.

[73] Mr Fee QC’s closing submission urged me to measure general damages at £150,000 since it was in an “exceptional” category in terms of the Green Book. While recognising there were other factors contributing to the plaintiff’s mental health difficulties, he stressed the condition has endured for a lengthy period already and is considered chronic and permanent. Declining to propose a figure, the defendant’s closing submissions contended it fell into the terrain described by the Green Book as ‘minor’ PTSD or at the low end of ‘moderate.’

[74] It seems to me this case is not readily placed in the Green Book categories to which I have had regard. As explained above, I have decided the plaintiff had mild PTSD for 2 years. In the succeeding years I have found he experienced mild occasional symptoms of stress which were at a sub-diagnostic level in terms of PTSD. After 1998 I found his PTSD was re-triggered on occasions by diverse other stressful factors, but these episodes were of short duration. Since his retirement in April 2002, I am satisfied his PTSD fluctuates and has returned on occasions, not least because he has become “obsessed” (his term), by this protracted litigation. I accept he is now to be regarded as vulnerable to psychological effects of trauma and that stress could re-trigger in him the Pomeroy incident.

[75] Weighing up the evidence and considering the Green Book guidance and submissions by counsel while allowing for the fact that matters out with the Pomeroy Incident contributed to his condition, I consider he should receive general damages of £ 50,000 (fifty thousand pounds).



**[Q2] Medical retirement 2002 - The extent to which the mental health injury arising from the "Pomeroy" incident caused or contributed to his medical retirement from the PSNI on 23 April 2002**

[76] In 2002, the Royal Ulster Constabulary Pension Regulations 1988 ('the Regulations') were in force to provide, inter alia, for payment of a pension where an injury was received by a police officer in the execution of duty: Reg A10. 'Disablement' embraced an inability to perform the ordinary duties of a police officer occasioned by infirmity of mind or body: Reg A11.

[77] On 22 February 2002 Dr Black completed what seems to be a pre-printed format certificate that opened the way for the plaintiff to receive an injury on duty pension award under the Regulations. He recorded that he examined the plaintiff on 4 October 2001 and formed the opinion that he was suffering from "chronic anxiety state." He recorded a "robbery" at Pomeroy on 28 November 1983 in which the plaintiff received "injuries" that he described as "nervous shock."

[78] While the parties debated before me the significance of Dr Black's certificate, he was not called to explain his assessment. It is important to bear in mind the scope and role of the Regulations that governed his task. I am satisfied he did not find the Pomeroy incident was 40% to blame for the plaintiff's incapacity. Rather, for the purpose of the benefits payable under the Regulations, he measured his "disablement" at 40% in the sense of the affect on the plaintiff's earning capacity. The disablement was certified as "permanent" by Dr Black.

[79] Thanks to skilful testing of the experts by counsel, (in particular, by Mr Fee QC), I think the debate over Dr Black's certificate is less important than it might have appeared to some. On the evidence I am satisfied the Pomeroy Incident did make a material contribution to the totality of the psychiatric harm which caused the plaintiff to be medically discharged. Both Dr Best and Professor Fahy thought it right to attribute some measure of responsibility to the Pomeroy incident; the challenge is to measure it.

[80] Agreeing with Dr Best that it is "very difficult" to apportion responsibility to the Pomeroy incident, I think his suggestion of 33% is too high. The defendant mooted a percentage in single figures in his closing submissions: see §60. Accepting the assessment by Professor Fahy that it was not a major factor in the spring of 2002 (in which I find he is supported by the contemporaneous records), I have decided the proper percentage to allow is fifteen percent (15%).

**[Q3 and Q4] Promotion to Sergeant and/or Patten retirement?**

[81] The final two questions were described by the plaintiff as follows:

- (i) [Q3] Whether the plaintiff would, on the balance of probabilities, have retired under the Patten package offer in or about 2010 or would have continued on to age 60 years.
- (ii) [Q4] Whether the plaintiff would, on the balance of probabilities, have obtained promotion to the rank of Sergeant, if not for his medical retirement.

[82] Each of these questions demands speculation. While some historians relish the counterfactual, I recognise the imponderable nature of the task and must seek to do what I can with the material before me and my assessment of the plaintiff. The task is to reflect on his actual career performance and predict how he might have progressed considering his aptitudes and life experience. Reversing the order of the questions, I have concluded (1) that he would not have obtained the rank of sergeant but for his medical retirement but (2) that he would have left the police with a Patten package.

#### *Q4 Sergeant's stripes?*

[83] The plaintiff began his career expecting, he says, to serve in the police until normal retirement age. I am asked to decide if it is likely he would have obtained promotion to the rank of sergeant.

[84] He left Methodist College Belfast aged 18 with 7 modest 'O' Levels. Commendably, he went to college to try again for 'A' levels, but it appears he decided to pursue a police career without taking the exams. The forensic accountants on each side seem to have understood that he had passed 2 'A' Levels. While he impressed his authorities with his good physique and respectful demeanour, the files paint him as a solid fellow needing a push to make progress: a "plodder" as one superior calls him.

[85] The evidence shows that instead of shrinking from career challenge, he sought to advance in two ways, seeking promotion to sergeant and pursuing a place in Special Branch. He was willing, according to his applications, to serve anywhere in Northern Ireland.

- (i) In the 1980's he applied twice for Special Branch. He was not called to the Board. He told me he now recognised he was not suited to such work.
- (ii) He passed his sergeant's examination in 1990 (not the "mid 1980's" as the forensic accountants were led to believe). By 1995 he had tried six times to gain promotion.

[86] He failed to remember correctly how many times he had tried to escape the rank of a uniformed constable. He recalled only one attempt for Special Branch and three for the sergeant's stripes. Memory can be fickle.

[87] Since he enjoyed support of colleagues to aspire to become a sergeant, he thinks nerves and his PTSD impaired his interview performance. I am not persuaded that he is right to blame his PTSD for his lack of career progression.

[88] Professor Fahy made the point that the plaintiff's determination to put himself forward into greater responsibility and/or danger (whether as a sergeant or in Special Branch) sits uncomfortably with an avoidance or 'safety first' mentality one might expect from active PTSD. Moreover, the contemporaneous papers portray him as a poor candidate rather than a nervous one. Concentrating on his later attempts (when he might be thought to appreciate more fully what was expected of him), the panel described him as "laid back" and someone who had not made much preparation for the interview. The Board peppered its notes with pithy descriptions explaining they found him unimpressive: they remark on his poor deportment; he gave them the impression of being "slow witted"; he was a poor communicator with poor interview technique. On this material, it is unsurprising that he failed to secure promotion.

[89] Having reviewed the evidence and with the advantage of watching the plaintiff in the witness box, I think that, like many other conscientious and dedicated officers, he would have remained a constable through his police career, regardless of the Pomeroy incident.

**Q3. Patten retirement? Whether the plaintiff would, on the balance of probabilities, have retired under the Patten package offer in or about 2010 or would have continued on to age 60 years.**

[90] After the Pomeroy incident, the plaintiff transferred to uniform duties in Glengormley. He was not required to serve in Pomeroy again and spent the rest of his career in greater Belfast. He spent time as a uniformed constable before serving as a protection officer for a MP (not as part of the formal CPU). He liked the post, he told me, since he did not wear a police uniform.

[91] He spent the last decade of his police career as a Detective Constable in CID based in the Glengormley/Newtownabbey Division. Again, he was not required to wear uniform, but it placed him at scenes of serious and often violent crime. He was part of the team who investigated murders that were often gruesome.

[92] Having failed to secure promotion to sergeant or an exit to Special Branch, the plaintiff was left to continue in CID. In his testimony he was candid about his frustration and disillusionment with his job. By 1999 he was feeling under stress at work. He told me he did not like the way things were going in the police. There were several elements mixed into his malaise: with the publication of the Patten Report on policing in September 1999 changes were afoot that left officers disaffected, and they left "in droves"; consequently, he faced a larger volume of work that was increasingly demanding yet without sufficient support; he believed

that loyalist paramilitary forces were afforded excessive freedom to act. He became disillusioned with leadership in the police.

[93] Although he retired on medical grounds in 2002, considering the evidence before me, I judge it likely that in or about 2010 the plaintiff would have retired with a Patten package, having become by then both disillusioned with the police service and tired of the frustrations in his changed work environment. The packages were seen as financially attractive by many and offered a fresh start. I do not accept his contention that he would have stayed. On the contrary, I find it likely that he would have welcomed the escape rather than marching into another decade in the new force.

### *Conclusion*

[94] I will hear the parties on further directions required for the next stage of the trial and any matters consequential on this ruling.