**Mental health issues and the police in NI**

**Below you will find the detail of this saga. It is quite extraordinary. A legal issue [or set of issues] that could have been decided by a “test case” was instead the scene of a protracted, intricate and hugely costly “group action” for all involved. The outcome was a partial victory for the police officers. It opened the door on action in individual cases within established parameters. The press, almost universally painted it as a defeat for police and a victory for the Chief Constable. Over five thousand officers melted away. Just a few hardy souls persisted. What became of the others, what condition they are in and what treatment, if any, they are getting is unknown. I asked the Police Federation for their comments but they did not reply. An organisation that has as much cash in the bank as the Police Federation might have been expected to fund deserving cases , on the basis that the costs would be recouped. The scandal can be firmly laid at the door of the Police Federation, for its failure to properly assess, control, manage, fund and protect the interests of its members. The only winners were [comme d’habitude] the lawyers.**

*Here it is , Dear Reader…..*

In the early part of this century, police officers in Northern Ireland started a ‘group action’ against their employer about the issue of diagnosis and treatment of mental issues such as post traumatic stress disorder.

Leaving aside the wisdom of such an action, when a test case or two could have potentially produced the same result ; it was funded by the Police Federation, [ the “PF” ], a statutory body, which in the presence of a ban on police officers joining a trade unions, serves as their representative body.

A note about the PF.

Membership of the PF is free to all officers. In order to obtain additional benefits, such as legal assistance, officers are required to pay a subscription. Four officers are elected to be the full time representatives and they receive a two rank enhancement in pay. A constable elected as a full time official will receive an inspector’s salary, including pension. At the end of 2016, the PF had assets in excess of eight million pounds.

Five thousand five hundred officers joined the action.

In his judgment , delivered in 2007 Coghlin J said the following:

##### *[3] The plaintiffs consist of 5,500 former and serving members of the Royal Ulster Constabulary ("RUC") and Police Service of Northern Ireland ("PSNI"). Each of these plaintiffs claims to have sustained a psychological/psychiatric disorder as a consequence of exposure to trauma experienced during the course of the terrorist campaign in Northern Ireland. While the litigation has tended to focus upon the disorder known as post traumatic stress disorder ("PTSD") the claims also encompass other conditions such as depression, anxiety and adjustment reactions or disorders.*

*[4] The claims range over a period of some 30 years from 1970 to 2000. While both sides identified a number of discrete generic issues in their opening written submissions, ultimately, both the plaintiffs and the defendants tended to focus upon:*

*(i) the date upon which the defendant ought reasonably to have foreseen that exposure to trauma was likely to cause police officers, who did not have any pre-existing vulnerability or predisposition, to suffer from recognisable mental disorders, and*

*(ii) the nature and extent of the precautions that it was 26/03/2018reasonable for the defendant to take once such foreseeability had been established.*

Coghlin’s judgment was complex and both parties appealed certain issues to the Court of Appeal.

Hanna Q.C. for the Chief Constable, set out the core of his appeal thus:

*"24. All of the approximately 5,500 appellants allege that they have suffered psychiatric ill health caused by their exposure to one or more severe traumatic incidents during the course of their service with the RUC. Their complaint against the defendant is not that he was legally responsible (through negligence or some other tort) for any of those severe traumatic incidents, or for causing the appellants to suffer any resultant psychiatric ill health, but rather that, in breach of the duty of care which he owed them as their notional employer, he failed to take some action which would have prevented the development of, or would have alleviated, the psychiatric ill health which they suffered as a result of their exposure to those incidents.*

*25. No liability could arise unless, from the perspective of the respondent, psychiatric ill health was reasonably foreseeable as a consequence of the exposure of police officers to severe traumatic events. The respondent argued that this did not become foreseeable until, shortly after the OHU had commenced operation in 1986, police officers began presenting to its medical and nursing staff with symptoms which were identifiable as being trauma-related. The appellants had sought to persuade the court that such foreseeability on the part of the respondent should have been established sometime between 1977 and 1982. The learned trial judge concluded that the appellants had not persuaded him that foreseeability had been established at any date earlier than that for which the respondent contended.*

*26. However, merely because psychiatric ill health had become a reasonably foreseeable consequence of severe traumatic exposure after late 1986, it did not follow that the respondent would thereupon, and without more, become subject to any factual duty to take specific action of some kind, pursuant to his employer's notional duty of care to provide a safe system of working. This is because, among other things, an employer can only reasonably be expected to take steps which are likely to do some good, and the court is likely to need expert evidence on this.*

*27. As the Court will hear, both the treatment of post-traumatic psychiatric ill health (including the timing of its provision), and the identification of those likely to benefit from such treatment, are matters of some complexity about which different views have been expressed, and expert knowledge and opinions have changed over the years since PTSD first entered the American Psychiatric Association diagnostic classification (then DSM-III) in 1980.*

*28. In March 2005, approximately 6 months before the trial of the action commenced, the National Institute for Clinical Excellence (as it was then known) (NICE) published the UK National Guidelines on PTSD ('the NICE Guidelines'). At paragraph 2.4.1 of the NICE Guidelines the aetiology of PTSD was summarised. Before PTSD entered the diagnostic nosology the predominant view had been that reactions to traumatic events were transient in individuals of normal disposition, and that only people with unstable personalities, pre-existing neurotic conflicts or mental illness would develop chronic symptoms. It was the recognition of a long standing psychological problems of many war veterans, especially Vietnam veterans, and of rape survivors that changed this view and convinced clinicians and researchers that even people with sound personalities could develop clinically significant psychological symptoms if they were exposed to horrific stressors.*

*29. Most individuals who have been exposed to a severe traumatic event will experience a reaction to it. It would be unusual for someone not to be disturbed or distressed in such circumstances even though that disturbance or distress may not amount to any recognised psychiatric illness. For many people the sense of distress will pass reasonably quickly. Some will experience a more significant short-term reaction such as an acute stress reaction (ASR) (ICD-10) which is, by definition, transient. Such reactions recover spontaneously without the need for treatment and there is no evidence that treatment will accelerate their recovery. Overlapping, to some extent, with acute stress reactions are Acute Stress Disorders (ASDs) (DSM-IV) which, if they continue, can develop into PTSD. Before PTSD can be diagnosed the disturbance must have continued for more than one month, and must cause clinically significant distress or impairment in social, occupational or other important areas of functioning (functional impairment). If the symptoms of PTSD resolve within three months the illness is regarded as acute, but if they persist for a period of three months or more the illness is regarded as chronic. In practice these time periods are not treated in quite such a strictly prescriptive way. It is also possible, though less common, for individuals to experience delayed onset PTSD, where the cluster of symptoms are not experienced until at least six months have elapsed following the traumatic incident. This raises the important questions of when treatment should be offered after a traumatic event, and how people who are unlikely to recover on their own can be identified. In general terms, there is no treatment capable of accelerating the recovery of acute reactions, including acute PTSD, or of alleviating their symptoms.*

*30. Accordingly, once foreseeability of psychiatric harm had been established in 1986, the question was what, if anything, the respondent's duty of care required him to do in order to prevent, or alleviate the suffering of those who had developed, or were likely to develop chronic PTSD or other chronic psychiatric ill health caused by severe traumatic exposure. This gave rise to two fundamental issues: (1) that of identifying, and affording the opportunity of treatment to, those individuals (detection); and (2) that of determining the nature of treatments to be offered and the time at which they should be offered (treatments)."*

      Girvan LJ, in a judgment dealt with grounds 1 and 4 of the respondent's appeal, namely, the duty to provide training, education and/or information including stress awareness training. In light of his conclusions, with which the other members of the court agreed, that the respondent's failure to provide training and education was not a breach of the defendant's duty of care to individual plaintiffs, it was no longer necessary to consider grounds 2 and 5 (the extent to which, if at all, and the respects in which the respondent was in breach of any duty of care in failing to provide training, education and/or information).

The Court of Appeal said:

*The remainder of the judgment therefore deals with the single outstanding issue – that of the alleged duty to treat (ground 7). Before turning to that issue, however, it is necessary to say something about a subject which occupied not a little time on the hearing of the appeal viz the approach that this court should take to findings of fact made by the trial judge.*

***[45]****It is apparent that initially OHU was not seen as a facility for the treatment of psychological or psychiatric illnesses, at least in the case of more significant conditions. This is unsurprising. This type of facility (which is replicated in a number of public service and private employment contexts) is naturally geared primarily to the detection of illnesses among employees, whether as a result of epidemiological survey or individual referral. Before the establishment of OHU, the Society for Occupational Medicine had recommended that it should not be responsible for treatment. Treatment was a matter for an individual officer's general medical practitioner and the National Health Service. Dr Courtney, who came from a background of occupational health, having worked since 1975 with Standard Telephones and Cables, explained that the role of occupational medicine was seen normally as a preventative rather than a therapeutic service. It was unrealistic to try to emulate the National Health Service which had the primary responsibility for treatment.*

***[46]****Such evidence as was given on this topic on behalf of the plaintiffs was remarkably slight. Dr Stewart Turner, a consultant psychiatrist called on their behalf, stated in a medical report prepared for the litigation that by 1980 or shortly thereafter the RUC should have been offering in-house treatment for emotional and drinking problems, or else ensuring that appropriate services were in place elsewhere for the treatment of RUC members. This certainly does not partake of an unequivocal assertion of a duty to treat as opposed to a duty to refer fro treatment. And Dr Turner's evidence must be set against the testimony of Dr Slovak, a consultant occupational physician called on behalf of the respondent. He said that, apart from the RUC, he did not know of any emergency service employer in the UK that provided treatment for the consequences of exposure to traumatic events.*

*Coghlin J described as "perhaps the best [recent] statement of general principle" the well-known passage from the judgment of Swanwick J in Stokes v Guest, King and Nettlefold (Bolts and Nuts) Limited [1968] 1 WLR 1776 at 1783 and we agree that this provides a useful starting point for the identification of the approach to be followed. This is how Swanwick J put it: -*

*"… the overall test is still the conduct of the reasonable and prudent employer, taking positive thought for the safety of his workers in the light of what he knows or ought to know; where there is a recognised and general practice which has been followed for a substantial period in similar circumstances without mishap, he is entitled to follow it, unless in the light of common sense or newer knowledge it is clearly bad; but, where there is developing knowledge, he must keep reasonably abreast of it and not be too slow to apply it; and where he has in fact greater than average knowledge of the risks, he may be thereby obliged to take more than the average or standard precautions. He must weigh up the risk in terms of the likelihood of injury occurring and the potential consequences if it does; and he must balance against this the probability of effectiveness of the precautions that can be taken to meet it and the expense and inconvenience they involve. If he is found to have fallen below the standard to be properly expected of a reasonable and prudent employer in these respects, he is negligent".*

***[56]****In these circumstances, we find it impossible to say that the respondent is entitled to assert a complete and comprehensive immunity from liability to provide treatment. True it is that the only instance where the duty of an employer to treat employees for stress-related work conditions has been accepted is in the Multiple claimants v MoD case. It is also unquestionably correct that the armed services occupy a unique position in relation to the provision of health care that distinguishes them from most members of the public. But these circumstances cannot be regarded as determinative of the issue and we have, in any event, reached the conclusion that we have arrived at without reference to any possible analogy with members of the armed forces.*

***[57]****What makes the position of RUC members unique, at least in recent UK history, is that they have been a force exposed on a regular basis to a level of trauma not experienced elsewhere. At the time that treatment (as well as diagnosis) of psychiatric and psychological problems within the RUC was being undertaken, the respondent was being told by his OHU team of the inadequacies of referrals to outside agencies. A stark dilemma was presented to him. Should those who were at risk of developing these conditions (or, even worse, had already suffered from them) be further exposed to circumstances that would either precipitate or exacerbate those problems without the prospect of adequate treatment or should he ensure that treatment was available from the resources of the force itself? We consider that a blanket exemption from a duty to treat cannot in those circumstances be justified.*

***[58]****That is not to say that the duty arises in every case where a police officer complained of psychiatric or psychological symptoms and we do not understand the judge to have suggested that this was so. He was careful to note that this duty was activated only where it was "appropriate [and] consistent with available resources". Our conclusion on this aspect of the respondent's appeal is that we reject the claim that he is entitled to a compete immunity from liability on the question of a duty to treat. Whether that duty will in fact be triggered will depend, however, on an examination of the particular facts of each individual case.*

*Final conclusions*

***[59]****The police officers’ appeal on the question of the question of resources is dismissed for the reasons earlier given in this judgment. The Chief Constable’s appeal on the question of training, information and education is allowed to the extent that is defined in Girvan LJ's judgment. The appeal in relation to the question whether the respondent was in fact in breach of that duty is no longer relevant. The Chief Constable’s appeal in relation to the duty to treat is dismissed.*

Background of the litigation

The lead solicitor in the case was Dorcas Crawford of Edwards and Co. This firm had an agreement with the PF that it would handle a substantial portion of their claims in Northern Ireland.

The PTSD action was only one of many cases it handled.

The spend of costs in this case is significant. Bear in mind what the Court of Appeal said about evidence presented by the group action in the trial regarding the operation of the RUC Occupational health Unit:

*Such evidence as was given on this topic on behalf of the plaintiffs was remarkably slight.*

Consider then , the fees claimed from the PF by Edwards and Company at various stages in the action. Before doing so you should know that there are potentially three distinct areas of claim.

Outlay

This would cover a multitude of areas such as photocopying but it could also cover payments to experts.

Solicitor costs

These are almost always agreed in advance. A partner solicitor will be entitled to a greater hourly fee than a non-partner, then a paralegal will charge less, then , at the bottom of the list will be the humble clerk. The fact that the client is charged these sums does not mean that the person receives them. The money goes into the coffers of the solicitor’s firm and each person receives his salary or, in the case of a partner, potentially a salary plus profit share.

Counsel costs

Generally, counsel agrees a brief fee plus ‘refreshers’. This means that, on completion of the case, the barrister gets the brief fee and an extra fee for each day he spent in court. Usually these payments are claimed on the finalisation of the case.

Sometimes, in a complex case, an hourly rate may be negotiated with counsel, to be paid on a monthly or other regular basis. In those circumstances a brief fee may or may not be claimed.

Of course, all of this should be agreed in advance with the client, the PF who will ultimately foot the bill.

So let’s look at some costs.

In the quarter July to September 2005 Edwards and Co claimed that they had spent £469,757.26 on behalf of the police officers. The individual bills came to £89.05 for each and every officer.

Dorcas Crawford claimed over £50,000 for these three months.

Senior Counsel, S Irwin Q.C. claimed £131,000 for this three month period. At that time, the Serious Fraud Office, which handles the most difficult white collar crime in the United Kingdom, was not paying senior counsel much in excess of £100.00 per hour. So Mr Irwin must have worked about 1,300 hours in the period July to September 2004. Unless the PF was paying him well above the going rate.

There can’t have been much court time if any. Three months is about ninety days. It works out at £1455.00 per day, if he worked every day and didn’t take any holidays.

But he also had some help.

First there was David McMillen B.L. He was also very busy. He claimed £49,550.00 for the same period, or £550 for every day, July to the end of September.

Second, Irwin had another helper, Gary Potter B.L., he claimed £40,000. A slightly lower daily rate of £444.

So, beavering away for the PF and their 5,500 members , three counsel cost them £ 220,000 for three months.

What did they get in return?

But we are not finished. In the period January to March 2006, Edwards and Co claimed over £600,000. Irwin claimed £150,000, Potter £39,000 and McMillen £34,000. A total for ninety days of £224,000 or roughly £2,500 per day.

In the next quarter , April-June 2006 Irwin claimed £209,000- and his helpers -Potter £150,000 and McMillen £140,000. Total almost £500k. Irwin also claimed for a Value Cabs fare of £16.80.

Police officers suffering from PTSD might wonder what those sums were spent on.

The three sets of accounts that have been quoted are also replete with mention of experts . A selection of names: Dr Turner, Professor Alexander, Mr French, Professor Davidson, Professor McFarlane, various general practitioners, Dr Deahl, Dr Williamson, Dr Mackinnon, Dr Bell, Professor Clark.

Astonishing that eventually the trial heard such a paucity of expert evidence.

A word on S Irwin Q.C. Here is what Wikipedia has to say.

Early life and education

Irwin was born on 5 February 1953 in [Northern Ireland](https://en.wikipedia.org/wiki/Northern_Ireland).[[2]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-Who's_Who_2016-2)[[3]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-bio_-_CTJ-3) He was educated at [Methodist College Belfast](https://en.wikipedia.org/wiki/Methodist_College_Belfast), a [grammar school](https://en.wikipedia.org/wiki/Grammar_school) in [Belfast](https://en.wikipedia.org/wiki/Belfast), Northern Ireland.[[4]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-4) Having gained an open scholarship, he studied law and English at [Jesus College, Cambridge](https://en.wikipedia.org/wiki/Jesus_College,_Cambridge).[[5]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-bio_-_LIMUN-5) He graduated from the [University of Cambridge](https://en.wikipedia.org/wiki/University_of_Cambridge) with a [Bachelor of Arts](https://en.wikipedia.org/wiki/Bachelor_of_Arts)(BA) degree in 1975.[[2]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-Who's_Who_2016-2) He then undertook a year of training in order to qualify as a [barrister](https://en.wikipedia.org/wiki/Barrister).

Legal career[[edit](https://en.wikipedia.org/w/index.php?title=Stephen_Irwin_(judge)&action=edit&section=2&editintro=Template:BLP_editintro)]

In 1976, Irwin was [called to the bar](https://en.wikipedia.org/wiki/Called_to_the_bar) by [Gray's Inn](https://en.wikipedia.org/wiki/Gray%27s_Inn" \o "Gray's Inn).[[2]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-Who's_Who_2016-2)[[3]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-bio_-_CTJ-3) He then practised as a [barrister](https://en.wikipedia.org/wiki/Barrister), and specialised in "[clinical negligence](https://en.wikipedia.org/wiki/Clinical_negligence), enquiries and scientific [tort](https://en.wikipedia.org/wiki/Tort) cases".[[3]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-bio_-_CTJ-3)On 8 April 1997, he was appointed a [Queen's Counsel](https://en.wikipedia.org/wiki/Queen%27s_Counsel) (QC).[[6]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-LG_15_April_1997-6) In 1999, he was appointed an Assistant Recorder; as such, he served as a part-time [judge](https://en.wikipedia.org/wiki/Judge) in addition to practising a barrister.[[3]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-bio_-_CTJ-3)[[7]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-GOV_-_Justices_of_Appea-7) On 18 July 2000, he was appointed a [Recorder](https://en.wikipedia.org/wiki/Recorder_(judge)) of the [South Eastern Circuit](https://en.wikipedia.org/wiki/South_Eastern_Circuit).[[8]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-8) During the 2002/2003 [tax year](https://en.wikipedia.org/wiki/Tax_year), he received £314,000 in [legal aid](https://en.wikipedia.org/wiki/Legal_aid) fees; "Mr Irwin received £314,000, most of which is likely to relate to a group action over Gulf war syndrome against the Ministry of Defence which collapsed this year when legal aid was withdrawn because of a lack of scientific evidence.".[[9]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-9) In 2004, he served as Chairman of the [Bar Council](https://en.wikipedia.org/wiki/General_Council_of_the_Bar).[[2]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-Who's_Who_2016-2)

### Judiciary[[edit](https://en.wikipedia.org/w/index.php?title=Stephen_Irwin_(judge)&action=edit&section=3&editintro=Template:BLP_editintro)]

On 18 May 2006, Irwin was appointed a [judge](https://en.wikipedia.org/wiki/High_Court_judge_(England_and_Wales)) of the [High Court of Justice](https://en.wikipedia.org/wiki/High_Court_of_Justice) ([Queen's Bench Division](https://en.wikipedia.org/wiki/Queen%27s_Bench_Division)).[[10]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-10) From 2008 to 2012, he was a Presiding Judge on the Northern Circuit.[[3]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-bio_-_CTJ-3)[[7]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-GOV_-_Justices_of_Appea-7) In 2012, he was appointed a Member of the [Special Immigration Appeals Commission](https://en.wikipedia.org/wiki/Special_Immigration_Appeals_Commission) (SIAC).[[2]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-Who's_Who_2016-2) The SIAC has been described as the "most controversial" and "most secret court within English law".[[11]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-11)From January 2013 to December 2015, he served as Chairman of the SIAC.[[7]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-GOV_-_Justices_of_Appea-7) On 1 October 2016, he was appointed a [Lord Justice of Appeal](https://en.wikipedia.org/wiki/Lord_Justice_of_Appeal).[[12]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-12)

## Personal life[[edit](https://en.wikipedia.org/w/index.php?title=Stephen_Irwin_(judge)&action=edit&section=4&editintro=Template:BLP_editintro)]

In 1978, Irwin married Deborah Rose Ann Spring. Together they have three children; two daughters and one son.[[2]](https://en.wikipedia.org/wiki/Stephen_Irwin_(judge)#cite_note-Who's_Who_2016-2) From 2012 to 2015, he served as Chair of the Poetry Society.

I suppose if you can trouser these sums you can afford to wax poetic.

Aside from these characters, two of whom have had a personal relationship with Dorcas Crawford, there is another interesting character.

David McClurg

Mr McClurg was a serving police officer with the RUC from 1977 to 2002. He was a Police Federation representative from 1992 to 2002. During most , if not all of that period , Edwards and Co were representing police officers, sent to them by the PF.

In May 2003 McClurg started work with Edwards and Co as their practice manager, despite, on his own admission having no experience at all of legal practice. Here’s what Edwards website says, in a question and answer style blurb.

***How long have your worked for Edwards and Company****?*

*I commenced work at Edwards and Co in May 2003 as their first Practice Manager This was a new venture for the firm and my first experience of the legal profession from the inside.*

During McClurg’s tenure at Edwards, the PF, his former employer, has paid them millions of pounds. Aside from payments for PTSD, in the year ended 2016 Edwards received in excess of £300,000 from the PF.

So what was the final bill for PTSD? How much did the PF pay Edwards? How much was paid directly to Edwards by police officers and what costs, if any , were paid to the Chief Constable?

Here is what is known.

Up to August 2003 Edwards had received £1,000,000 for “generic work”

Bill for July –September 2005 £469,757

Bill for January –March 2006 £600,993

Bill for April –June 2006 £844,852

We do not have all the bills but even this snippet suggests that the total bill presented to the PF by Edwards and Co was in excess of £3,000,000.

What is also known is that in 2015, the PF paid out £1,000,000 in “PTSD final settlement”. Where this money went is not stated. It is referred to in the foreword to the accounts as “the settlement of the costs in the long running Post Traumatic Stress Disorder legal case, which resulted in an outflow from the Fund of £1 million.” Was it another payment to Edwards? Was it a payment to the Chief Constable? Why did it take six years after the end of the case to settle this bill?

Aftermath of the litigation

First, the decision of the Court of Appeal did not close the door on 5,500 officers’ claims.

Second, the PF declined to further fund these claims.

Third, officers were entitled to pursue individual claims and many considered doing so. They were met with warnings from the Chief Constable’s lawyers about the legal costs involved, should their claims fail. Consequently only a handful of officers have pursued claims.

Fourth, the decisions of Coghlin J. and the Court of Appeal had no bearing on an entirely different type of case. That where the officer developed PTSD or another mental health issue as a result of a failure to act or a deliberate act on the part of the Chief Constable , in or about a specific event. The Courts accept that the duties of a police officer in NI during the Troubles resulted in almost daily exposure to danger. But many officers say that they were put in harm’s way by the activities of , for example, the Special Branch. Take the following example. The Special Branch know, from an informant, that a robbery of a bookie’s shop will take place at a likely time and place. The robbery will be carried out by armed terrorists. The Special Branch decides, in order to protect its source, not to inform uniform branch. The robbery takes place, a civilian is killed during a shootout with uniformed police. Constable X tries to revive the dying civilian. That officer subsequently develops PTSD. His claim is based on the duty of his employer, the Chief Constable, to take care of his employee.

In September 2009 Dorcas Crawford wrote to members of the “PTSD Group Action”. She stated , correctly, that despite media reports to the contrary , neither side achieved a ‘knock out’ victory. It was clear that the PF was unwilling to fund further the cases and therefore she proposed to produce a ‘toolkit’ which individual officers could use to mount their own claims.

The toolkit was duly produced and it contained all the necessary forms and guidance for taking action in either the High Court or the County Court.

Thus, irrespective of the action or inaction of the PF, each member of the group action appears to have been told, plainly by Edwards and Co , that their particular case was not lost. They had the option of continuing, albeit without any financial support from the PF. Hence the ‘toolkit’.

Only a handful of officers pursued this avenue. It is unclear why. Whilst the potential costs of a lost High Court case were off-putting, costs in the County Court were more manageable.

So what was going on within the PF? I met with two members of the PF committee in February 2018. This is what they told me.

The initial impetus for the group action came from the PF. Terry Spence was chairman, Bob Wilson was secretary Erwin Montgomery was chairman. It may be that Bogue and McNulty got the thing up and running, on a commercial basis and then the police said, ‘why isn’t the PF paying for this?’ It was then that Edwards and Co became involved.

Counsel’s opinion was not obtained till some way down the line and it was seen only by Terry Spence.

The PF committee was aware of bills coming in from Edwards and Co. There is no evidence that any controls were placed on spending.

There is a suggestion that the PF committee told their members that the case was lost [by word of mouth] and that nothing more could be done. This contrasts with the ‘toolkit’ which set out the position with admirable clarity.

**Conclusion**

Regarding the representation of officers by the lead solicitors Edwards and Co., one has to question the wisdom of pursuing a “group action” but , given that I am not privy to the advice of counsel or the twists and turns of the case, I am not in a position to give any view, except to express surprise. These actions are normally used where each Plaintiff has the same complaint. For example an inherent defect in a vacuum cleaner.

In respect of the running of the case, again, I have no knowledge base, therefore I cannot comment, save to highlight the sums expended and the Court of Appeal’s comment on the paucity of expert evidence.

What is more troublesome is the role played by the PF in instigating, funding and abandoning the litigation.

Each officer would have had two basic relationships. One with the PF and the second with his lawyer, whether Edwards or Bogue and McNulty. I have already commented on the lawyer aspects.

Regarding an officer’s relationship with the PF, first it has a statutory duty to represent officers, whether or not they make any payment to the PF. That duty relates to the officer’s relationship with the Chief Constable. Second, those officers who do make a payment , would appear to be in a contractual relationship over and above the statutory relationship with the PF. I am not in possession of any terms and conditions. It may be that, in taking the claim in the first place, in failing to control costs and the management of the action during the course of the action, and in failing to pursue or help to pursue an officer’s claims, post the Court of Appeal decision, the PF was in breach of contract with each and every officer.

Like the Grand Old Duke of York, the PF led 5,500 members up the very expensive hill of ‘group litigation’. Having won a victory it then led them down again and left them to their own devices.

It is worth pointing out that the Police Federation is sitting on assets of £8 million including £4 million cash.