

# FAIR EMPLOYMENT TRIBUNAL

CASE REF: 00412/00FET

**APPLICANT:** Patrick Murphy

**RESPONDENT:** Ministry of Defence

## DECISION

The unanimous decision of the Tribunal is that the applicant was unlawfully discriminated against by the respondent on the grounds of his religious belief/political opinion contrary to the provisions of the Fair Employment and Treatment (Northern Ireland) Order 1998. The matter of remedy is adjourned for further consideration.

### Appearances:

**The applicant was represented by Ms N McGreenera, Queens Counsel and Ms M Larkin, Barrister-at-Law, instructed by Campbell Stafford Solicitors.**

**The respondent was represented by Mr S Ritchie, Barrister-at-Law, instructed by the Crown Solicitor.**

1. The applicant's complaints are that before and during his service in the Army he was subjected to unlawful discrimination on the grounds of both his religious belief and political opinion. In particular he alleged that:-
  - (i) When he originally applied to join the Army he was initially refused but after the intervention of his Member of Parliament he was accepted.
  - (ii) It was suggested to him by the Recruiting Sergeant who dealt with his first application to enlist that he should change his first name from Patrick to Paul and give his religion as Church of Ireland rather than Catholic.
  - (iii) Sectarian music and loyalist tunes were played at the training depot in Ballymena particularly in the sleeping quarters which made him feel uncomfortable and when he complained about this to the instructors he was laughed at and told to clear off.

- (iv) Not long after the applicant was posted to Portadown Sergeant Magill from the Stores Department informed him that he knew he was a Catholic from West Belfast and that he would tell everyone he was a fenian.
- (v) Thereafter he was subjected to sectarian harassment both verbal and written and isolated.
- (vi) He received written notes in or on his locker which said things like “dead taig” “Kill all taigs” and “all taigs are bastards”.
- (vii) Bullets were placed in his locker one of which had his name etched on it.
- (viii) The lock on his locker was smashed and his helmet removed which he subsequently saw in the possession of a Lance Corporal Brown who threw his helmet into the carpark and said “go and get it you fenian bastard”.
- (ix) The incident with the helmet was seen by other Corporals and Lance Corporals.
- (x) This incident was reported to his Platoon Sergeant Heasley and to the Platoon Commander Captain Pickett who took no action.
- (xi) In the office used by Colour Sergeant Heasley and Captain Pickett Colour Sergeant Heasley kept trophies which only related to republicans such as a tricolour, Bloody Sunday posters, a Bobby Sands’ poster and a hurley stick.
- (xii) Colour Sergeant Heasley climbed on top of a landrover to get a Sinn Fein Election Poster which was also displayed in his office.
- (xiii) The applicant felt very unsafe sleeping in the barracks in Portadown when his platoon was on quick reaction force duties because of comments being made particularly from Private Walker such as “fenian lying here” and “you can smell him”. Because of this treatment the applicant slept from time to time in a landrover.
- (xiv) His wife got abusive sectarian phone calls which on one occasion she traced through the 1471 facility to a mobile belonging to a Private Lonsdale whom the applicant believed was in the landrover in front of the one he was travelling in that night.
- (xv) Private Williamson who was a member of the Orange Order said in the applicant’s presence “all Catholics should burn”.
- (xvi) When bottles were thrown at the applicant’s house at the beginning of July 1998 the Sergeant to whom he reported the incident told him he believed he was lying and that he would have him put in jail.
- (xvii) The applicant told the Battalion Welfare Officer Major O’Neill, towards the end of September 1998, that he was being subjected to sectarian abuse as well as informing her that his wife had left him and he needed help. He maintained Major O’Neill had taken no notice of his reference to sectarian abuse.

- (xviii) Major O'Neill did not believe him in relation to his wife leaving him and sent Colour Sergeant Ellis to spy on him at home to see if his wife was really absent.
- (xix) He told Major Marks his commanding officer of the sectarian harassment he was experiencing in the Unit.
- (xx) In an interview on 9 October 1998 in the presence of the Welfare Officer Major Marks told him he believed he was lying about his wife's absence and that he should get a grip.
- (xxi) On 12 October 1998 the applicant attended with the Medical Officer, Dr Richards and told him about the sectarian harassment which he felt Dr Richards did not take seriously.
- (xxii) On 20 October 1998 the applicant saw Dr Richards again, spoke to him again about the sectarian harassment and again felt that Dr Richards was not taking his complaints seriously.
- (xxiii) As a result of his complaints about his difficulties at home and the sectarian harassment being ignored by Major O'Neill, Major Marks and Dr Richards the applicant attempted to commit suicide on 21 October 1998 by running a hose from the car exhaust through the front window of his car and blocking the gap at the top of the window with cloth.
- (xxiv) Despite telling a military policeman Corporal Osmond who came to visit him on 29 October 1998 about the sectarian harassment he was getting, no further steps were taken in this regard.
- (xxv) On being posted to Ballykinlar the applicant alleged that the sectarian harassment, both verbal and written, continued.
- (xxvi) He had to work in the Platoon with a Lance Corporal Thompson who was subsequently convicted after he left the Army of storing weapons for which he received a nine year term of imprisonment.
- (xxvii) Lance Corporal Thompson openly displayed Combat 18 documentation in his locker and from time to time wore a UVF tee-shirt and abused him in a sectarian manner.
- (xxviii) Private Redmond who had a Combat 18 tattoo on his ankle also made abusive remarks to him about "taigs" and "kill them".
- (xxix) In September 1999 queries were raised about an expenses claim he had made in relation to a holiday in England earlier in the summer and that his platoon Sergeant Smith said that he would get done for fraud.
- (xxx) He never achieved pay grade Band 1 to which he should have been entitled after 18 months service and the completion of 'on the job training'.

- (xxxix) Other part-time members of the platoon who subsequently became full-time/part-time soldiers had achieved the higher pay band.
- (xxxix) He had completed the regular radio users two weekends training which would have entitled him to the higher pay band and that he had not got the higher pay band because the paperwork connected with this element of training had been lost while he was in Portadown.
- (xxxix) He had notes and communications put in his locker and had his rifle strap cut to pieces and tacks and glass put in his boots and that in the summer of 2000 his car tyre had been punctured and his car had been scored.
- (xxxix) Two soldiers Redmond and McKnight had sung "I go to pieces" at the time of the Rosemary Nelson murder.
- (xxxix) In June 2000, while he was on holiday, he was phoned by Sergeant Frazer and Colour Sergeant Smith and told to return from his holiday to "wash dishes" according to the applicant or "to help clear up after an important parade" according to Colour Sergeant Smith.
- (xxxix) Distressing phone calls between himself, his wife and Sergeant Frazer and Colour Sergeant Smith ensued and he was told he need not report for duty until the following Monday at which time Colour Sergeant Smith intended to speak to him in relation to the applicant informing him as his platoon sergeant that he was going to Ayr when in fact he was in Enniskillen.
- (xxxix) When he reported for duty as instructed by Colour Sergeant Smith on Monday 19 June 2000 there was no one there and no transport to take him to Ballymena and that when he phoned Sergeant Frazer to enquire as to how he was to get to Ballymena he was told "walk it you f---ing fenian".
- (xxxix) As a result of this treatment the applicant went and saw his General Practitioner that day and was declared incapable of work for a further period of six weeks.
- (xxxix) On the same day Colour Sergeant Smith and Corporal Downey from Welfare attended at the applicant's home and Colour Sergeant Smith interviewed the applicant while he was in bed having taken the medication prescribed by his GP.
- (xl) On 19 June Colour Sergeant Smith visited the applicant with Warrant Officer Downey in relation to various matters including pre-release medical appointments and a return of his uniform and kit.
- (xli) On 3 July 2000 Colour Sergeant Smith attended at the applicant's home and collected his military clothing and kit which the applicant maintained was not normal practice.
- (xlii) The applicant had further visits to his home from other military personnel prior to his discharge which he considered constituted a continuing harassment.

- (xliii) At his pre-release medical with Lieutenant Colonel Titley on 29 June 2000 Colonel Titley asked him a lot of unnecessary questions about his own and his wife's religion.

The tribunal found the following facts.

2. The applicant enlisted in the Royal Irish Regiment as a Private on 1 November 1996 and left the Army on 10 September 2000 on the completion of his three year contract with an exemplary discharge. There was a period during his training period between January 1997 and September 1997 when he was out of the Army on a compassionate discharge due to his wife's illness but he re-enlisted as a full-time soldier in September 1997 and completed his initial training at Ballymena and was then posted to F Company in Portadown in January 1998. He was subsequently posted to B Company in Ballykinlar in March 1999 and he remained in that Company until his discharge in September 2000. The applicant was a Catholic who came originally from the Riverdale area of West Belfast.
3. The composition of the respondent's workforce was overwhelmingly Protestant including the platoons to which the applicant was assigned.
4. When the applicant first applied to become a full-time member of the Royal Irish Regiment in 1994 he was not appointed due to a misunderstanding. After the intervention of his Member of Parliament the misunderstanding was cleared up and he re-applied. After some delay due to a query about his medical history he was enlisted on 1 November 1996 for three years and went to the Ballymena depot for training.
5. At the time of his initial application the applicant with the knowledge and acquiescence of the Recruiting Sergeant changed his name from 'Patrick' to 'Paul' and his religion was noted as Church of Ireland.
6. While in Ballymena sectarian and loyalist tunes were played in the sleeping quarters which caused the applicant to feel uncomfortable. He did not however report this to any of his superiors.
7. On completion of his training, although he had expressed a preference to be sent to B Company in Ballykinlar he was posted to F Company in Portadown in January 1998. While there he was subjected to harassment and intimidation by his colleagues. This intimidation took the form of comments of a sectarian nature and being made to feel isolated. He was identified by Sergeant Magill from Stores as a Catholic from Andersonstown and was told by Sergeant Magill that his name was really Declan and that he would tell everyone that the applicant was a fenian. Once this was known he started getting comments of a sectarian nature directed to him such as "fenian lying here", "you can smell him" and "all Catholics should burn". He was also referred to as a "sleeper" and "a taig". In addition his locker lock was smashed and his helmet removed. He reported this to Colour Sergeant Heasley who appeared unconcerned and the following day he saw Lance Corporal Brown swinging his helmet which was then thrown into the park with the remark "go and get it you fenian bastard". This was seen by a number of other soldiers including Lance Corporals and Corporals. He complained to Captain Pickett about this incident with his helmet but no action was taken. The applicant felt uncomfortable reporting such matters to Colour Sergeant

Heasley and Captain Pickett particularly as the room which they shared as an office was decorated with tricolours, Bloody Sunday posters, a Bobby Sands' poster, a hurley stick and a Sinn Fein election poster all of which Colour Sergeant Heasley kept as trophies. These were in addition to maps and training materials which were on the walls.

8. As a result of the harassment he was experiencing the applicant on some occasions when he was on duty in the quick reaction force slept in a landrover because of the type of comments which were being directed at him in particular by Private Walker.
9. Bottles were thrown at the applicant's house in the run-up to the 12<sup>th</sup> July period. The applicant found this period very stressful and particularly the incident with the bottles in view of the attitude adopted by the Sergeant to whom he reported this incident who said that if he found out the applicant was lying he would put him in jail.
10. In Lurgan police station around August 1998 when the whole platoon were working excessive hours and were away from their bases and homes for protracted periods, the applicant spoke to a fellow Catholic, Corporal Carroll about bringing a claim with respect of bias because they were Catholics and asked if Corporal Carroll would support him in this. Corporal Carroll reported this to Colour Sergeant Heasley. Colour Sergeant Heasley had a long talk with the applicant in relation to his hours and his family difficulties, but he did not address the applicant's concerns about the sectarian treatment he was receiving.
11. On 24 September 1998 the applicant, at his request, saw the Battalion Welfare Officer Major O'Neill and told her his wife had left him and that he was looking after his two young children with some help. He asked for her assistance to get more notice of his duties or a more regular job. Major O'Neill noted at that time that she had been informed that the applicant was a good dependable soldier whom they needed to keep. On 30 September 1998 the applicant informed his Company Commander, Major Marks, that his wife had left and he had his two children living with him. The applicant made several telephone calls to the Welfare Assistants in Portadown between his interview with the Welfare Officer and 5 October 1998 enquiring as to what arrangements were being made to assist him. He did not tell Major O'Neill or any of the welfare assistants about any sectarian abuse.
12. Some time between 24 September 1998 and 5 October 1998 Major O'Neill became suspicious of the information the applicant had given her about his wife's absence and sent a Welfare Assistant, Colour Sergeant Ellis to visit the applicant at home.
13. Colour Sergeant Ellis called, unannounced, at the applicant's home on the evening of 5 October 1998. She observed the applicant's wife's car in the drive and the applicant told her he had taken the car from his wife and claimed he did not know where his wife was. She noted in her report that the applicant said he had changed the locks on the doors but had subsequently given his wife keys to allow her to see the children. The following day Colour Sergeant Ellis telephoned the applicant's nearest neighbour whom she knew and elicited the information that Mrs Murphy had been at the home playing with the children just prior to her visit. This neighbour and Mrs Murphy were related in some way and there was ill feeling between the two families.
14. On 6 October 1998 the Battalion Welfare Officer told the applicant she did not entirely believe him and she indicated she wished to speak to his wife. The applicant's wife

subsequently telephoned the Welfare Officer and indicated that the applicant wanted to get out of the Army and the Welfare Officer initiated enquiries to see if the applicant could get premature voluntary release.

15. On 9 October 1998 Major Marks and the Colour Sergeant Major spoke with the Battalion Welfare Officer in relation to the applicant. On the same day, in the presence of the Welfare Officer, Major Marks informed the applicant that he would not get premature voluntary release until his three years' engagement was completed and that he would not get his requested posting from F Company to a Headquarters Unit until he had more service. Major Marks also told him that he should stop telling lies about his personal life and get a grip. The applicant did not tell Major Marks about the harassment he was experiencing at this meeting. The Battalion Welfare Officer also kept the Medical Officer, Dr Richards informed about the applicant.
16. On 12 October 1998 the applicant attended with Dr Richards for a review in relation to a back injury. At that consultation the doctor noted:

“States does not want a sick ? but gets occ twinge in back after CFT.  
A long chat about hours and not sleeping. Try Temazepan 20 x 5. Given Bruofen 400 x 30 for back to use 8 ...  
Wife and he separated. Wants reg hours. Welfare on the case. Will advise should be changed”.

On 20 October 1998 the applicant attended again with Dr Richards who noted -

“C/o snide remarks from members of the company.  
abusive phone calls to the house calling them “fenian so and sos”  
says someone has found out he is a Catholic.  
Insists that wife is not at home.  
Wants family and life back Out of the army.  
Veiled suicide/overt suicide threat.  
no suicidal ideation. Wants referral to psychiatrist – will refer ? temporarily unsuitable.  
Insists the whole regiment is conspiring against him and no one believes him about wife leaving.  
For F med 8 to be raised.  
R/v one week. GP given note.”

17. The applicant was in a distressed state when he saw Dr Richards on this occasion and told him that he could not cope anymore and that he felt suicidal and felt his back was against the wall and Dr Richards agreed to refer him to a psychiatrist. Dr Richards did not consider the suicide threat to be real.
18. On 19 October 1998 the applicant attended his General Practitioner complaining of sectarian abuse, threats of physical violence/letters “fenian bastard – we will get you” constant niggles/stealing equipment and his General Practitioner issued a sickness certificate giving the reason for incapacity as “stress at work” for four weeks.
19. On 21 October 1998 the applicant attempted to commit suicide by running a hose from the car exhaust through the front window of his car and blocking the gap at the top of the window with cloth. He took 3 x 20 mg Temazepan. He was found by his wife who

had been either going to work or taking the children shopping but who returned having forgotten her purse. An ambulance was sent for and the applicant was taken to Downe Hospital where he was found to be peripherally cyanosed. He was psychiatrically assessed and it was considered that he had had an impulsive suicide attack secondary to stress at work and problems with domestic life. He was discharged from hospital on 23 October 1998. At that time he informed the psychiatrist about his feelings of abuse in work because he was a Catholic and the fact that he felt his supervisors did not believe him. The applicant's GP noted in the course of the telephone call with the army medical officer on 22 October 1998 that the medical officer was aware of the applicant's allegations of bullying/sectarianism.

20. The applicant remained in hospital until 23 October 1998. He was not visited by his commanding officer, Major Marks, who was noted by Sergeant Edmondson in the battalion welfare book as saying he had no intention of visiting the applicant.
21. The applicant was visited at home on 29 October 1998 by two military policemen. A statement was taken from him by Corporal Osmond. This noted the attempt on the applicant's life was due to problems at home and within his company at work. It also noted that he had been experiencing sectarian verbal abuse at work which he put down to someone in the company finding out he had changed his name from Patrick to Paul and connecting this name change to his religion and that it had got worse after Drumcree. It also noted that he was getting paper notes through his locker door saying, "Fenian bastard" and "Get out of F Company or we'll kill you". It also noted that he was receiving sectarian phone calls at home and that he had told the battalion welfare officer that his wife had left. It also noted that he indicated that he did not wish to make a formal complaint as it would only make things worse for him. An Initial Case Report dated 30 October 1998 was prepared by the Military Police which indicated that the applicant would not make any official complaint or co-operate with any form of investigation.
22. In a note dated 3 November 1998, Captain Cowan who was the Adjutant noted that a request for Equal Opportunities Inquiry Team action was passed to Brigade on 2 November 1998 and rejected on 3 November 1998. Captain Cowan noted at that time that Major Moss had discussed the case with the Equal Opportunities Inquiry Team and that he had been informed that it should be left until the applicant made a formal complaint. Captain Cowan subsequently noted that the Equal Opportunities Inquiry Team were not interested because the applicant had not made a formal complaint. The Tribunal did not hear evidence from either Major Moss or any member of the Inquiry Team.
23. The applicant was seen by Doctor Richards again on 19 November 1998 when Doctor Richards admitted to the applicant that he appeared to have misjudged his condition when he saw him just before the attempted suicide. The notes of this consultation have not been discovered and can, apparently, not be found and it was suggested by Dr Richards that they had either fallen out of the medical folder or had been eaten.
24. The applicant's GP continued to give him sickness certificates on the basis of stress. The applicant was reviewed by the respondent's newly appointed medical officer, Doctor Finn, on 15 January 1999 when the following notes were made.

“Reviewed today.  
No evidence  $\Psi$  illness (HX or a/e) - fit for duty.  
Problems £14,000 debt  
Sectarian abuse from F company ongoing.  
- ? threats to children (refusing this to be invd)  
Wife will leave if he is returned to a rifle company.  
Discussed options – will not consider  
    Leaving army (due to debt)  
    Returning to a Rifle Co (Because of harassment and abuse)  
Says he wants/will consider (!!)  
    PT or PT/FT within Rifle Coy. FT an option.  
    To discuss with C/o re above.”

The applicant vehemently denied having debts of £14,000. Dr Finn was aware of the applicant’s previous history because he had seen Dr Gamble’s (the Army Psychiatrist) report and had discussed this report with Dr Gamble prior to seeing the applicant although he initially denied this.

25. After numerous phone calls from the applicant and his wife enquiring where and when he was to return to work he was told in early March to report to B Company Ballykinlar. No explanation was given to the Tribunal as to why he was posted to B Company. He was happy enough initially to be there but alleged he suffered some further sectarian abuse there. He worked alongside Lance Corporal Thompson for a couple of months until Lance Corporal Thompson retired from the Army in May 1999. This man was subsequently convicted in April 2001 of storing weapons and was sentenced to nine years imprisonment. The applicant also worked alongside a Private Redmond in the same platoon who had a Combat 18 tattoo on his ankle.
26. When the applicant was posted to B Company his Platoon Commander was Colour Sergeant Smith. He was a Catholic who had joined the UDR in 1984 and had suffered considerable physical and mental abuse from fellow soldiers during his first years in the Army because he was a Catholic.
27. While in Ballykinlar the applicant suffered from a series of physical ailments. In September 1999 he had an ankle injury, in December 1999 he sustained burns to both his lower legs which entailed him on being light duties after the initial treatment. He continued on light duties until he left the Army.
28. The applicant never achieved Pay Band 1 while he was in the Army. In order to qualify for Pay Band 1 a soldier had to complete training in a variety of skills and to pass tests in relation to each of these skills. The applicant completed and passed all the required skills except for a Regular Radio Users (RRU) course. This was a course run over two weekends with a test at the end of it. The applicant for a variety of reasons, including his wife’s illness, never completed the regular radio users training while he was in F Company. At some stage in his time in B Company the applicant had agreed with Colour Sergeant Smith that he would go on the next available RRU course. However when it became apparent that he was going to be leaving at the end of his three year engagement the applicant requested that he be withdrawn from the RRU course. He therefore never achieved the progression to the Grade 1 Pay Band.

29. There were other soldiers in B Company who had been part-time soldiers who were moved on to a full-time/part-time basis. They had all completed their RRU training and tests and were therefore entitled to their Grade 1 Pay Band.
30. In June 1999 Colour Sergeant Smith assessed the applicant as A3 and potential NCO after his first three months in the platoon.
31. In September 1999 queries were raised about expenses claimed by the applicant in relation to a holiday in England. After investigation his expenses were paid in full.
32. In October 1999 the applicant applied to leave the Army giving as his reason the opportunity to join his father-in-law's business. He was not allowed to leave at this time. He was medically down-graded on 7 December 1999 as a result of an injury to his right ankle. On 14 December 1999 he gave notice that he did not wish to re-engage when his contract ran out in September 2000 giving as his reason - entering his father-in-law's business and also that he had applied to a Scottish Police Force.
33. On 13 March 2000 the applicant applied to transfer from the full-time service to the part-time service from September 2000 on completion of his engagement.
34. Also on 13 March 2000 in an annual assessment Colour Sergeant Smith gave the applicant a C4 grade which indicated that he was well up to the standard required for his rank but should not be promoted. He was still medically down-graded at that time.
35. Major Howard – the Commanding Officer in B Company, on 30 June 2000, indicated that he did not consider the applicant suitable for part-time service because of a question over his reliability and his continuing medical down-grading. In the event the applicant was not permitted to join as a part-time soldier at the end of his engagement.
36. Towards the middle of the 1990s the respondent started to take the concept of Equal Opportunities for all its personnel seriously. To this end policies, guidelines and instructions were drawn up for use in the Army. These were cascaded down through the ranks and by 1998 all ranks were required to attend compulsory lectures on Equal Opportunities at least once a year. Equal Opportunities Advisors and Equal Opportunities Counsellors were appointed and trained and an Equal Opportunities Inquiry Team was established. This team could investigate any matter it was tasked to investigate. All brigades and companies were expected to take personal possession of these policies. Lieutenant Colonel Lowden, who was the officer commanding the applicant's brigade, issued his Equal Opportunities Direction to his Company Commanders on 26 November 1998.
37. The respondent's Equal Opportunities Policy provided:

“Equal Opportunities is about promoting the individual to be an effective, highly motivated contributor to the team through good leadership, firm discipline, fair treatment, and decent behaviour, and about a recognition that there is no place for discrimination, harassment and bullying”.

It further provides that Commanders at all levels are to ensure that Equal Opportunities complaints are taken seriously and investigated swiftly and thoroughly. This Equal Opportunities Policy provides for the training of all staff

in relation to Equal Opportunities and the appointment of Equal Opportunities advisers to advise Commanding Officers and counsellors to provide assistance to persons subjected to harassment of any sort. It also provided for the setting up of an Equal Opportunities Inquiry Team whose mission is to investigate and report all complaints referred to it concerning breaches of Equal Opportunities legislation which has the potential to be taken to a tribunal.

38. Harassment is defined in the Equal Opportunities Policy as unlawful. This policy also says that harassing behaviour cannot be excused on the grounds that no one has opposed it or complained. It specifies that any actions which create feelings of offence, unease or distress can be classified as harassment. It also specifies that harassment can be caused by jokes, inappropriate use of language, graffiti, literature, posters, gestures and physical actions.

39. The role of an Equal Opportunities Counsellor is defined as

“to act as a confidential and independent initial point of contact for complainants; to record details, arrange professional counselling or counselling with a person of the same sex or religion as the complainant; to act as a focal point for procedural advice and advise individuals on the submission of complaints. The choice of action rests not with the Equal Opportunities Counsellor but with the complainant. In appropriate cases, and with the consent of the complainant, the Equal Opportunities Counsellor may act as an intermediary between the parties in order to try and resolve a problem.”

40. Additional thought was given to the Northern Ireland situation and a special policy and guidelines was prepared and issued in 1999 in relation to sectarian harassment. The respondent's Northern Ireland Sectarian Policy and Guidelines provides:-

“

5. Sectarian harassment is not to be tolerated. It is unacceptable behaviour which must be dealt with swiftly in the appropriate manner, including, if necessary, formal disciplinary or administrative action.
6. Personnel at all levels are required to examine critically their attitudes to promote an atmosphere in which no individual or group feels under threat or intimidation because of his or her religious belief or political opinion.

#### PREVENTATIVE ACTION

7. Preventative action is to be taken as follows:-

- (a) COs are to ensure that all members of their unit are aware through education and training of the policy on sectarian harassment and the appropriate complaints procedure. In particular, unit training should draw attention to –
  - (1) The damaging effect of sectarian harassment on morale, working practices and efficiency.

- (2) The importance of prohibiting the display of flags, emblems and graffiti, the circulation of materials, or the deliberate articulation of songs which are likely to give offence or cause apprehension.

#### MAKING A COMPLAINT

8. If feasible, sectarian harassment should first be investigated and dealt with informally as a unit management matter. Only when satisfactory redress cannot be obtained should the option of formal complaint or formal disciplinary procedures normally be considered.
10. It is important that a record of complaints, statements, details of unit investigations and subsequent action and any correspondence, is kept in all cases.

#### INVESTIGATION OF COMPLAINTS

13. In the event of a complaint being received which cannot be informally dealt with to the satisfaction of the complainant, the CO is to instigate a thorough and impartial investigation with assistance from the RMP if considered necessary.”

This was further refined to clarify the type of emblems likely to make individuals feel unwelcome which could be regarded as having sectarian significance and it included the prohibition of the wearing of Rangers and Celtic football shirts on duty and the avoidance of these while off-duty. Despite this guidance the wearing of such shirts in both F Company and B Company was tolerated, not just when soldiers were coming to and from work, but also if they were playing football unofficially or exercising while off duty in the gym. The display of trophies such as were held in Colour Sergeant Heasley's room also continued after these guidelines were issued and were only removed when Colour Sergeant Heasley moved office.

41. Both representatives most helpfully provided the Tribunal with written submissions on the liability issue and on the question of whether the application had been presented within the statutory time limits. These are attached to this decision and are intended to form part of it.
42. The Tribunal heard evidence on behalf of the applicant from the applicant himself, his General Practitioner and a psychiatrist. The Tribunal heard evidence on behalf of the respondent from 38 witnesses. Throughout the hearing and even on the final day relevant discoverable documents were being produced by the respondent in a less than satisfactory manner.
43. The Tribunal having considered all the evidence and submissions was satisfied that the applicant had established on the balance of probabilities that he had been treated less favourably on the grounds of his religious belief and perceived political opinion by the respondent in the sectarian treatment to which he was exposed while based at F Company in Portadown and that this treatment was to his detriment. The Tribunal did not accept the applicant's allegations that this aggressive type of sectarian treatment had continued once he was posted to B Company in March 1999.

44. The Tribunal considered that the last act of sectarian harassment occurred between January and early March 1999 when the applicant could not get definite answers as to where and when he was to report for duty. The Tribunal therefore concluded that his Originating Application presented on 21 September 2000 was out of time.
45. The Tribunal was however satisfied that it was just and equitable in all the circumstances of the case to consider the complaint although it was presented outside the time limit prescribed in Article 46(1)(a) of the Fair Employment and Treatment (Northern Ireland) Order 1998. In coming to this conclusion the Tribunal bore in mind the total failure of his superiors both in Portadown and at the Equal Opportunities Inquiry Team level to take any steps to deal with the situation, which the Tribunal was satisfied they knew about but chose to ignore, despite his attempted suicide. In this regard the Tribunal heard all the tenets of good practice enunciated to it by the applicant's superiors from Portadown but found that while they all professed to take such sectarian problems seriously, their actions belied their words and wherever the direction came from to ignore the applicant's allegations of sectarian abuse, the effect was to leave him feeling isolated and unsupported by his superiors. The Tribunal considered that because the respondent was aware from October 1998 that the applicant was making allegations of ill-treatment on the grounds of religious belief/political opinion, any prejudice suffered by the respondent was due to its own inaction in failing to investigate the applicant's complaints at that time. In any event the tribunal was not satisfied that the cogency of the evidence was affected by the delay.
46. The Tribunal accepted that in these circumstances it would have been extremely difficult for the applicant to have lodged a complaint to the Fair Employment Tribunal while he was still a serving soldier. The Tribunal therefore considered that it would be just and equitable to consider the applicant's complaints about his treatment in F Company in Portadown although they were out of time.
47. The Tribunal found some of the applicant's evidence to be far fetched and probably influenced by media reports of events which occurred while he was in the Army and the Tribunal concluded that some of the allegations he made in relation to his time in B Company came into this category. In particular the Tribunal considered that this applied to his allegations about Lance Corporal Thompson and Private Redmond and their associations with Combat 18 and Lance Corporal Thompson's association with the LVF and also the allegation of Privates Redmond and McKnight singing "I go to pieces" at the time of the murder of Rosemary Nelson.
48. The Tribunal found the explanation given by Captain Morris for the investigation of the applicant's expenses in September 1999 to be satisfactory.
49. The Tribunal considered the applicant's allegations with regard to the pay band he was on and the explanations given as to why he had not achieved the higher pay band and why others had. The Tribunal found the explanations given by Colour Sergeant Heasley and Colour Sergeant Smith in this regard to be satisfactory and convincing. The Tribunal accepted that the applicant had not completed the regular radio users required two weekends training and tests which would have entitled him to the higher pay band. The Tribunal considered that this was likely to have occurred due to the applicant's reluctance to be away from home. In any event the Tribunal noted that Colour Sergeant

Smith had arranged for the applicant to complete his regular radio users training which would have entitled him to be back-paid at the higher rate for the appropriate time.

50. The Tribunal found the applicant's allegations of having sectarian notes and bullets placed in his locker in F Company and notes in his locker in Ballykinlar and glass in his boots in Ballykinlar difficult to believe, in the absence of him being able to produce a single one of these items to the Tribunal. It was clear that the applicant was contemplating bringing a complaint about his sectarian treatment from at least August 1998 and yet he failed to keep any of these notes or bullets which could have been very valuable evidence for his case. In the circumstances the Tribunal found that the applicant had not proved this aspect of his case.
51. The Tribunal also found the version of events given by Colour Sergeant Smith and to a lesser extent by Sergeant Frazer in relation to the events before and after the parade in Ballymena in June 2000, to be more credible than the interpretation put on them by the applicant. The Tribunal was satisfied that the treatment the applicant received at this time and in the following weeks, particularly from Colour Sergeant Smith, did not have a sectarian basis but arose from the fact that Colour Sergeant Smith believed the applicant lied to him over his holiday plans. In coming to this conclusion the Tribunal took into account Colour Sergeant Smith's evidence of the sectarian treatment to which he was exposed as a Catholic when he first joined the Army and the unlikelihood of Colour Sergeant Smith tolerating such treatment of a fellow Catholic in the rather more enlightened era of the year 2000.
52. The Tribunal did not accept the applicant's version of his attendance with Lieutenant Colonel Titley. The Tribunal found Lieutenant Colonel Titley's evidence that he had not initiated any conversation about the applicant's religion or his family's religion and that this information had been disclosed voluntarily to him by the applicant more credible than the applicant's version of what happened.
53. The Tribunal also did not accept that the visits to his home by various Army personnel between the time he went on sick leave and the time he left the Army were anything other than a tidying up process prior to the applicant's discharge from the Army.
54. The Tribunal also did not believe that the applicant's car had been damaged in the manner he alleged in summer 2000. The Tribunal formed this view because the applicant was not at work from early June because he was on holiday prior to going on sick leave and never returned to the Army thereafter.
55. The Tribunal was satisfied however, that the applicant was subjected to sectarian harassment in F Company once it was discovered that he was a Catholic from West Belfast. The Tribunal found the applicant's evidence in this regard more credible than that of the persons who denied subjecting him to such abuse. The Tribunal accepted the applicant's evidence that Sergeant Magill had identified him as a Catholic from West Belfast. Sergeant Magill was not called to give evidence. The Tribunal also accepted that the applicant had his helmet taken and kicked round the carpark and that sectarian comments were directed towards him in relation to this by Lance Corporal Brown. Lance Corporal Brown did not give evidence to the Tribunal. The Tribunal also found the evidence of the applicant that he had been called a fenian and a sleeper by Private Walker to be more credible than Private Walker's denial of this. The Tribunal found Private Walker unbelievable both from his demeanour while giving evidence and in his

denial of knowing what a Rangers football shirt looked like and in his denial of the presence of “girlic” posters in the locker rooms which had already been accepted by other witnesses for the respondent.

56. The Tribunal accepted that Catholics from Cork such as Corporal Carroll, coming from a different battalion of the RIR which had a tradition of recruiting soldiers from Eire who joined the Army for the opportunity to see the world, would not have been subjected to the same type of harassment as a Catholic from West Belfast who was being labelled as a sleeper. The Tribunal also accepted that the other Catholic, Corporal McStay, who served in Portadown, would not have been subjected to the same type of harassment as the applicant because he was a long serving well established soldier. The Tribunal was also satisfied that persons who were not Catholics from West Belfast would not have been subjected to the type of religious specific sectarian harassment to which the applicant was subjected.
57. On balance the Tribunal accepted that the applicant had probably spent the odd night sleeping in a landrover while on quick reaction force duty. This is despite Colour Sergeant Heasley’s vehement denial that this could have taken place. However, the Tribunal took into account that Colour Sergeant Heasley did not sleep in the same billet as his men and therefore could not have been aware of everything which was happening in the billets.
58. On balance the Tribunal believed Private Lonsdale more than the applicant in relation to the abusive phone call which the applicant alleged his wife had received and traced to Private Lonsdale.
59. On balance the Tribunal did not accept that it was Private Williamson who made a comment that “all Catholics should burn”. The Tribunal came to this conclusion bearing in mind that Private Williamson’s in-laws were Catholics.
60. The Tribunal was satisfied that a less than neutral environment was tolerated by the applicant’s superiors in F Company as witnessed by the one-sided displays of trophies in Colour Sergeant Heasley’s office and the toleration of the wearing of Rangers’ shirts on unofficial occasions. The Tribunal was also satisfied that the use of sectarian “banter” was tolerated in F Company. In this regard the Tribunal noted in particular Major Marks admission that while he knew the spirit of the Equal Opportunities Policy he had not had the specific training required for a person of his rank.
61. The Tribunal considered that the first time the applicant made his superiors aware of the sectarian harassment he was experiencing was when he attended with Dr Richards on 20 October 1998. Thereafter the Tribunal was satisfied that this was reported to Dr Richards’ superiors and was discussed at high level, particularly once the applicant’s attempted suicide became known.
62. However, despite knowing that the applicant was complaining of sectarian harassment, no attempt was made by the applicant’s superiors in Portadown to seek to have these matters resolved informally as is recommended in the respondent’s Equal Opportunities Guidelines. Instead there appears to have been a decision taken to close down all lines of enquiry as noted by Captain Cowan, although no explanation was given to the Tribunal as to why this course of action was adopted. In this regard the Tribunal found the respondent’s reluctance and ultimate failure to produce relevant pertinent

documentation significant, particularly in the absence of evidence from the persons who decided not to have the Equal Opportunities Inquiry Team investigate the applicant's complaints of sectarian harassment.

63. Taking all the circumstances into account the Tribunal accepted that the applicant was subjected to sectarian harassment while in F Company and in the absence of convincing denials that such harassment had taken place coupled with the absence of a satisfactory explanation for the respondent's failure to address the applicant's allegations of sectarian harassment, the Tribunal drew the inference that the respondent's failure to take such steps was on the grounds of the applicant's religious belief/political opinion.

**Chairman:**

**Date and place of hearing: 9-13 December 2002, 16 December 2002,  
20-31 January 2003,  
10-12, 14, 17-18 February 2003 and  
20 March 2003, Belfast**

**Date decision recorded in register and issued to parties:**