

Introduction

Chairperson, it is my function to deliver an opening statement on behalf of the Tribunal for the purposes of outlining in public an overview of the complaint of Garda Nicholas Keogh as received by the Disclosures Tribunal under Term of Reference [p], the responses to this complaint, and the issues which have emerged from the same to date.

This overview is of course subject to the evidence that emerges, and which will be tested by all the relevant parties, during the course of these public hearings.

Disclosures Tribunal and Term of Reference [p]

By way of background, and as mentioned in the Tribunal's opening statement delivered on the 11th April 2019, the Disclosures Tribunal was established by Ministerial Order on the 17th February 2017 to inquire into definite matters of urgent public importance. These matters were set out in 16 Terms of Reference listed from [a] to [p].

The first module concerning terms (a) – (o) has been completed by Mr Justice Charleton, who submitted reports dated the 30th November 2017 and 11th October 2018.

Today, we are commencing a consideration of a complaint under the final term of reference, Term of Reference [p].

Term of Reference [p] sets out that the Tribunal will

“..consider any other complaints by a member of the Garda Síochána who has made a protected disclosure prior to 16th February, 2017 alleging wrong-doing within the Garda Síochána where, following the making of the Protected Disclosure, the Garda making the said Protected Disclosure was targeted or discredited with the knowledge or acquiescence of senior members of the Garda Síochána.”

The Tribunal addressed this term in some detail in the opening statement and clarified that *‘the essence of this reference is that the tribunal is to consider complaints made by persons who, as members of An Garda Síochána, made protected disclosures before the relevant date and who allege that they were thereafter targeted or discredited with the knowledge or acquiescence of officers of Superintendent rank or higher.’*

It was also emphasised that an important limitation on any consideration by the Tribunal is that the focus of the mandate under [p] is not on the substance of any wrongdoing reported in the disclosure, no matter how serious the allegations, but rather on the conduct towards the Garda subsequent to the disclosure and whether that conduct was condoned, tolerated or known about by senior members of An Garda Síochána.

Procedures

We are now proceeding to a public hearing of the evidence relating to the complaint by Garda Keogh as it arises under Term of Reference [p].

These hearings will be conducted in accordance with the scheme of procedures which has been published by the Tribunal, a central tenet of which is the guarantee of fair procedures.

Garda Nicholas Keogh

On the 1st July 2000, Garda Keogh was attested as a member of An Garda Síochána and assigned to Clonmel Garda Station as a student garda. Following his training in Templemore, he was assigned to Bray Garda Station where he was initially attached to the Drugs Squad. He served in Bray until his transfer to the Westmeath Division in 2006.

Garda Keogh has been allocated to the Westmeath Division since the 10th October 2006 where he was initially posted to Ballynacargy Garda Station. One year later he was transferred to Athlone Garda Station on the 16th October 2007.

In October 2009, Garda Keogh successfully obtained a post in a competition for vacancies in the District Drug Unit, Athlone. From October 2009 he served with the District Drug Unit until the 22nd August 2011, from where he returned to regular policing duties.

His secondment to the Drugs Unit was not a permanent posting and was subject to the rotation policy of the Superintendent then in charge. Garda Keogh returned to regular policing as a result of this policy.

The Tribunal is concerned with events subsequent to the making of a protected disclosure on the 8th May 2014, as outlined below. Garda Keogh continued to work in Athlone Garda Station and following a period in which he had frequent sickness related absences, which were certified by his General Practitioner as being due to ‘*work related stress*’, he ultimately reported sick and unfit for duty on the 26th December 2015 and has not since resumed duty.

Protected Disclosure by Garda Nicholas Keogh

On the 8th May 2014, Garda Keogh was named in Dáil Éireann by then Deputy Luke ‘Ming’ Flanagan as a Whistleblower. Deputy Flanagan stated that Garda Keogh was meeting with the Confidential Recipient for An Garda Síochána. In his address to the Dáil, Deputy Flanagan raised serious issues that Garda Keogh reported in relation to matters of policing which were alleged to have occurred in and around Athlone.

The Confidential Recipient for An Garda Síochána at that time, Judge Patrick McMahon, states that he met with Garda Keogh on the 8th May 2014 and was provided with an Affidavit sworn by Garda Keogh. The garda raised concerns about the operation of the Drugs Unit in Athlone including, in particular, an operation code named ‘Operation Loki’ and inquiries and prosecutions that followed it. In his meeting with Judge McMahon, Garda Keogh raised concerns about the conduct of members in Athlone Garda Station.

An investigation into this protected disclosure was commenced under the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007 on the 9th May 2014. The Acting Garda Commissioner Nóirín O’Sullivan immediately appointed Assistant Commissioner Dónall Ó Cualáin to investigate the issues raised by Garda Keogh.

Assistant Commissioner Ó Cualáin and his team met with Garda Keogh during June 2014 and Garda Keogh made a statement in which he expanded on his Affidavit to include other issues concerning a member of An Garda Síochána, whom I will describe as Garda A, and his relationship with a person or persons allegedly involved in the sale and supply of drugs in Athlone. In particular, he made allegations concerning Garda A and his relationship with a person whom I will describe as Ms. B.

The Ó Cualáin Investigation Report into matters relating to Policing and Practices and Activities in Athlone Garda District made under the Garda Síochána (Confidential Reporting of Corruption and Malpractice) Regulations 2007 was finalised on the 24th November 2015.

In his Report to the Director of Public Prosecutions, Assistant Commissioner Ó Cualáin stated that some of the allegations made by Garda Keogh were plausible and had substance but that the evidence, which was circumstantial, fell short of what was required to bring a criminal prosecution. The Director of Public Prosecutions directed no prosecution on the 3rd March 2016.

I mention this by way of background only to describe what happened after Garda Keogh made his protected disclosure.

The Issues List

Chairperson, as I stated at the outset, the purpose of this statement is to outline in public the issues that have emerged in respect of Garda Nicholas Keogh under Term of Reference [p].

There are two preliminary matters to address.

The first is the issue of redactions. During this overview and in the course of the public hearings it will be evident that redactions have been made where necessary. The Tribunal may make any appropriate redaction to documents where there is material which is irrelevant to any issue and / or where it is necessary to protect the rights of privacy or confidentiality of any party or person. Documents may be redacted in any other case where the justice of the case so requires.

The second is the management structure in place in Athlone Garda Station between the 8th May 2014 and the 26th December 2015. Athlone Garda Station is within the Athlone District of the Westmeath Division of An Garda Síochána.

On the 8th May 2014, when Garda Keogh made his protected disclosure, the Divisional Officer in the Westmeath Division was Chief Superintendent Mark Curran. Superintendent Noreen McBrien was the District Officer and Superintendent in Athlone Garda Station.

The District Management team for the Athlone District included Inspector Nicholas Farrell, Inspector Aidan Minnock, the Sergeant-in-Charge Michelle Baker and Detective Sergeant Eamon Curley.

On the 9th March 2015, Chief Superintendent Lorraine Wheatley was appointed as the Divisional Officer in the Westmeath Division and Superintendent Patrick Murray was appointed as the District Officer in Athlone.

We will hear from these gardaí and a number of other members attached to Athlone Garda Station. To avoid any confusion or misunderstanding, all of the relevant members of An Garda Síochána will be referred by reference to their rank at the time of events concerning Garda Nicholas Keogh notwithstanding any subsequent promotion or retirement.

Moving on to the issues for examination by way of public hearing, these have been identified to include the following:

Issue 1: *The investigation of the PULSE entry by Garda Nicholas Keogh on the 18/05/2014 (PID 4085409).*

On the 18th May 2014, Garda Keogh created an intelligence entry on the Garda PULSE system which was recorded as PID no. 4085409. This intelligence entry stated as follows:

“observed Ms. B [in her car]at theon seeing member she smiled and stuck out her tongue. Ms. B is seriously involved in the heroin trade in Athlone with a turnover of approximately 2500euro per week she has no previous convictions for drugs due to the fact she has been aided and abetted for years by a senior member of the drugs unit who himself is a close associate of a high ranking Garda Officer. fact.”

As soon as this entry came to the attention of his superiors, Garda Keogh says that Inspector Nicholas Farrell asked where he was getting the information in respect of the ‘*turnover*’. He says that he was also asked to change the entry.

Chief Superintendent Mark Curran queried whether the PULSE entry met the criteria outlined in C.H.I.S. (Covert Human Intelligence Source). C.H.I.S. is the procedure of An Garda Síochána dealing with the registration and use of informants to assist with the investigation of crime. Garda Keogh was asked to provide a report in this regard.

Garda Keogh took the position that this ‘*was not a CHIS matter*’ and that it was a matter for the Ó Cualáin investigation.

In his statement to the Tribunal, Chief Superintendent Mark Curran states that he was concerned about the accuracy of the data and whether Garda Keogh was operating outside the official guidelines in relation to the management of CHIS and the related H.Q. Directives. He further says that *'he was concerned about the serious allegations of criminality and potential corruption both explicitly stated and inferred in this intelligence report, I was also concerned that any investigation being carried out could be compromised.'*

In his statement to the Tribunal, Garda Nicholas Keogh stated that *'I believed that this interference by Inspector Farrell and by Chief Superintendent Curran was inappropriate interferences from senior garda management in the 'independent' police internal investigation headed by Assistant Commissioner O'Cualáin.*

It will be evident from the material referenced during these public hearings that this intelligence entry led to a series of extensive reports over a number of years.

The Tribunal will consider whether the questioning of Garda Keogh on this issue was legitimate or whether it constituted targeting or discrediting of Garda Keogh.

Issue 2: *The investigation of the PULSE check by Garda Nicholas Keogh on the 18/05/2014.*

On the same day that Garda Keogh made the PULSE entry, the subject of Issue 1, Garda Keogh carried out a search on the Garda PULSE system in respect of Garda A.

Garda A made a complaint in respect of this PULSE check on the 24th September 2014 stating that this constituted a use of PULSE for ‘*personal reasons*’ and ‘*these checks were in no way Garda related matters*’. Garda A alleged that this check was ‘*sinister*’ and asked for the matter to be fully investigated.

Superintendent Noreen McBrien requested Sergeant Andrew Haran to seek a report from Garda Keogh ‘*as to the reasons this enquiry was made in relation to personal data*’. In her statement to the Tribunal she says that ‘*[t]he query to Garda Keogh was made in my governance capacity in my role as District Officer. I was operating within my role and responsibility as District Officer when carrying out this enquiry. As District Officer I have a duty of care to all my staff.*’

Garda Keogh subsequently stated to this Tribunal that:

“It was evident to senior management that an independent police investigation was in train in respect of my complaint relating to Garda A. I had checked Garda A on the PULSE on the 18th May 2014 (following specific intelligence received from a source on the 10th May 2014) which was the subject of my forthcoming statement to the internal investigator. I was entitled to check the PULSE without such attempted interference by this said letter (which demanded

a report that conflicted with my obligations to the internal investigation) and also in the light of what I had been advised by the said source.”

He further stated that:

“As far as I can remember, I did not reply to Superintendent McBrien, because I had been advised not to speak to anybody about the investigation except the investigation team. I spoke with Detective Superintendent Mulcahy about this where I outlined the obvious reason why I checked Garda A on PULSE before I met him (Detective Superintendent Mulcahy) to be sure that there was nothing else I needed to be aware of. Incidentally, I had never been asked to explain previously why I checked anybody on PULSE. “

The Tribunal will consider whether senior garda members were entitled or obliged to question him about this PULSE check and, if so, whether he was entitled not to answer these questions and / or whether the questioning constituted targeting or discrediting.

Issue 3: *The investigation into Olivia O’Neill’s visit to Athlone Garda Station on the 28/5/14.*

On the 28th May 2014, Ms. Olivia O’Neill called to Athlone Garda Station. It is not disputed that she wanted to make a statement about an alleged assault on her daughter by Ms. B. It is further not disputed that Garda Keogh was on duty in the public office that night and that he told her that he could not take her statement. A dispute of fact however arises as to the content of the exchange he then had with Ms. O’Neill.

Garda Keogh in his statement to this Tribunal has set out that:

“Olivia O’Neill then proceeded to allege –spontaneously and of her own motion and volition- that there was police collusion in Athlone in the drugs trade and that Ms. B was ‘doing favours for guards’. Her allegations were general in nature. Given my involvement as a witness in the internal investigation to corruption, I realised that I would be conflicted in taking any statement from her. I therefore replied that in those circumstances she should make her statement to another guard and that she should ‘name names and name guards’. I went immediately to Sgt. Haran to ask him to designate another guard to take her statement’.

Sergeant Haran designated Garda Stephanie Treacy to take this statement.

Garda Treacy reported her dealings with Olivia O’Neill and reported that the witness told her that Garda Keogh had advised her of the information to include in her statement, including allegations concerning gardaí and Ms. B. Both Garda Keogh and Ms. Olivia O’Neill deny this.

Garda Keogh continues in his statement to the Tribunal that:

“No statement was taken from Olivia O’Neill either in relation to her assault or her claims of corruption. Instead, I received a formal request on the 11th June 2014 for a ‘written report setting out the nature and content of my conversation’ with Olivia O’Neill. I was questioned a number of times about the ‘content’ of my conversations with Olivia O’Neill on the 9th June, 8th July 2014 (while the other matters were ignored)....it was sought to turn the desk encounter in a public office into a coaching of Olivia O’Neill by me. There was no reason to request the ‘content’ of the conversation other than the fact that Olivia O’Neill wished to make a complaint about garda corruption.”

We will hear from Inspector Nicholas Farrell, Superintendent Noreen McBrien, Chief Superintendent Mark Curran, Sergeant Haran and Garda Stephanie Treacy in respect of the enquiries subsequently carried out in respect of this incident.

Inspector Farrell stated in his report to Chief Superintendent Mark Curran on the 29th May 2014 stating that *‘the advice allegedly given by Garda Nicholas Keogh is not appropriate in the circumstances and projects the image of An Garda Síochána in an unfavourable light. It also places Ms. B in a vulnerable position from persons currently under investigation in the Athlone area’*.

Garda Keogh continues in his statement to the Tribunal that:

“I understand that Chief Superintendent Curran sent out guards again to take a statement from Olivia O’Neill about me only. I was advised by Olivia O’Neill that the guards would not take her statement of assault unless she made a complaint about me.”

Ms. O'Neill's daughter had in fact made a statement of complaint on the night in question.

Chief Superintendent Mark Curran has stated to the Tribunal that '*I absolutely reject the assertion that these enquiries were an attempt to target or discredit Garda Keogh*'.

The Tribunal will consider whether the investigation of the matter constituted targeting or discrediting of Garda Keogh.

Issue 4: *The investigation into Liam McHugh's complaint to Garda Aidan Lyons on the 31/05/2014 (PID 105191).*

A report made by Garda Aidan Lyons of Athlone Garda Station dated the 2nd June 2014 states that:

“With reference to the above, I wish to report that on the 31/05/2014 at approximately 9pm I was approached by Liam McHugh on Bastion Street Athlone. Mr. McHugh brought up the general topic of ‘whistleblowers’ and we had a general conversation for a few minutes during which he informed me as follows: ‘the bald guard came over to me the other day and asked if I could remember the time I was searched by the three guards and €800 was stolen from me and spent drinking in the castle (pub), the bookies and the casino. He said if I wanted to make a complaint about it then he would back me up.’

I asked Liam McHugh if he was alleging that this had actually happened and his answer was ‘no, not at all, I’m not going bringing trouble on myself’. I asked him if he was referring to Garda Nicholas Keogh and he confirmed that he was, he went on to say ‘he told me he was there himself when it happened and he would back me up if I wanted to make a complaint.’”

Garda Keogh states that on the 9th June 2014, he was called into the office of Superintendent Noreen McBrien and told that she was ‘*investigating another complaint*’ against him. He states that he ‘*had no idea what this was about*’.

Garda Keogh continues in his statement to this Tribunal that *‘[o]n the 8/7/2014 I was called into the Superintendent’s office. Noreen McBrien informed me that she was sending persons out again to try and take a statement from Liam McHugh (and also Olivia O’Neill). She said that she ‘had to’ do it.’*

Garda Keogh says that he *‘perceived’* this to be an interference with the *‘internal investigation’* and that he advised Assistant Commissioner Ó Cualáin of this on the 16th of July 2014.

Superintendent Noreen McBrien reported the matter to her Divisional Officer, Chief Superintendent Mark Curran on the 16th July 2014. In a report dated the 21st July 2014 Chief Superintendent Mark Curran referred to a *‘review by an independent Chief Superintendent’* and queried whether it had been established with Garda Keogh if he had a conversation with Liam McHugh in relation to the matters outlined in the report of Garda Aidan Lyons.

Garda Keogh states that it was not until the 5th August 2014 that he was told of the details of the Liam McHugh allegation. He says that he was shown the report by Superintendent McBrien but was not shown the name of the author of the report at the time. He says that he later discovered that it was a report by Garda Aidan Lyons, who was a garda partner of Garda A at that time.

Garda Keogh states that:

“there was again no rigorous follow-up or conclusion to this charge. It appeared to be just another false allegation left in the ether and used to blacken and cause apprehension in me. It was inscrutable, was dropped out of nowhere and went nowhere.”

However, Superintendent McBrien states in her statement to the Tribunal that:

“As District Officer I had to address such issues and informed him that he should not misunderstand this. He said he understood this and it is recorded in my notes of that meeting.”

The Tribunal will consider the manner in which the senior officers investigated the matter and whether the investigation constituted targeting or discrediting of Garda Keogh.

Issue 5: *The micro supervision of Garda Nicholas Keogh by 1. Sgt. Yvonne Martin 2. Sgt. Cormac Moylan 3. Sgt. Aidan Haran.*

As stated at the outset, Superintendent Patrick Murray took up the position of District Officer in Athlone on the 9th March 2015. Garda Keogh alleges that Superintendent Murray put in place a regime of excessive supervision by arranging for three Sergeants to oversee his work.

Garda Keogh in his statement to the Tribunal states that:

“I was allocated Sergeant Martin as a liaison person to discuss ‘work related issues’ ... Sergeant Moylan and Sergeant Haran were also dispatched to supervise me ... It was implied / alleged that my work output, investigations and reporting of incidents were deficient. These implications were made without rational grounds or hearings. Up until the encounter with criminality and protected disclosures in Athlone, I had never been hypercriticised since I had joined the guards in 1999. I was apparently now being placed under the microscopic supervision of Sergeant Martin, Sergeant Haran and Sergeant Moylan. Everything I did was being scrutinised in great detail for possible mistakes.”

He also states that:

“I had a third sergeant allocated to monitor me, unlike anybody else...This is basically three sergeants monitoring me and being asked to go through everything I am doing to find something I am not doing right or to identify some misdemeanour on my part. It is my belief that Superintendent Pat Murray was targeting me in this respect.”

Superintendent Murray rejects this allegation, saying *inter alia*:

“On the 13th March 2015 at the request of Inspector Nicholas Farrell, I met Sergeant Andrew Haran he brought up Garda Keogh and told me of the support he was trying to give Garda Keogh which was something he had taken on himself in an informal way. I spoke with Sergeant Haran again on 20th March 2015 and he said he felt the support role he was providing to Garda Keogh should pass to someone else and now was a good time for that to happen. I chose Sergeant Yvonne Martin for the role simply because she had just arrived on transfer to Athlone and could be determined as neutral. I asked her to take on the role that day and she agreed.”

Superintendent Murray met with Garda Keogh on the 26th March 2015 and discussed the issues with him which led to the decision of which Garda Keogh complains.

We will hear from Sergeants Martin, Haran and Moylan on this issue. Sergeant Haran agrees that he was Garda Keogh’s supervising Sergeant when Sergeant Moylan was absent and says that this was not unusual. He further states that *‘in general terms I was glad to assist Garda Keogh in doing files and reports. He readily admitted it was a weakness on his part.’*

Sergeant Moylan states that *‘I would regularly question any member of the unit in respect of their work. The reality is that I was Garda Keogh’s Unit Sergeant and I treated him no differently than any other member under my supervision.’*

The Tribunal will consider whether Garda Keogh was placed under micro-supervision in Athlone under the direction of Superintendent Patrick Murray and whether the conduct of the Sergeants, as ordered by Superintendent Murray, individually or collectively constituted targeting or discrediting of Garda Keogh.

Issue 6: The disciplinary investigation in relation to the motor tax on Garda Nicholas Keogh's vehicle during 2015.

Superintendent Patrick Murray told Garda Keogh in March 2015 that his long outstanding claims for travelling expenses could not be paid until he properly taxed his motor vehicle, paying the higher private rate of tax and not the lower commercial rate as he had been doing.

Garda Keogh maintains that Superintendent Murray treated him differently and more severely than he did other gardaí in the District who had incorrectly taxed their vehicles.

Garda Keogh deals with this car tax issue in some detail in his statement to the Tribunal stating that *'I thought this very odd. I pointed out inter alia that the nct authorities would not process my van as private (it had to be tested commercially by the Department of the Environment), it had no back seats, was used for police duty and to carry dogs'*. He also refers to PULSE records showing a number of checks on his car during 2014 by Garda Gerry White and Superintendent Noreen McBrien. The Tribunal will hear from Garda White and Superintendent McBrien in this regard.

Superintendent Murray says in his statement to the Tribunal that:

"I then spoke to him about his car tax and he got slightly annoyed and indicated he felt people were getting at him. I showed him the results of inquiries I had Inspector Minnock make at a tax office in Tullamore in relation to his jeep which showed it was taxed in the wrong category, commercial instead of private

resulting in a loss of revenue to the State. I spoke about the effect of that on his claims for travelling expenses. I offered a solution to dealing with the matter which was that he would correct his tax and pay the arrears to cover the period of his travelling claims and when he showed me proof of same I would approve his travel claims and finalise the matter by way of Regulation 10 caution. I explained that would conclude the matter and it could never be mentioned to him again. He agreed to that course of action. He then indicated that other Members in the District also had similar issues with their private cars, so I told him I would have everyone's vehicle checked. I subsequently had those checks carried out."

We will also hear from Chief Superintendent Lorraine Wheatley in relation to this issue who says that *'it was not within Superintendent Murray's gift to permit payment from public funds outside of financial regulations. I believe this was a very fair and balanced intervention.'*

In his statement to the Tribunal investigators, Garda Keogh stated that *'I also made the point that there were other Gardaí that had the same tax and were also driving commercial vehicles in the same way as me.'*

It is the case that on the 24th April 2015, Superintendent Murray issued a minute entitled *'Members Private Vehicles'* to *'all members of Athlone District'* stating that he had been made aware *'in a general way'* that the private vehicles of members were not in order in relation to tax, insurance, NCT and driving licences. He stated that checks would be carried out on the 1st June 2015 and that *'any claims involving the use of a members private vehicles'* would only be approved *'if the vehicle being used complies with all road traffic legislation in force'*.

In his statement to the Tribunal, Garda Keogh states that *'it was self-evident that there were- according to this letter- levels of severe dereliction which were far greater than mine and to which a blind eye was being turned. Guards with such a degree of non-compliance were given a period of grace of two months in clear breach of cut and dried statutory provisions .'*

Garda Keogh describes the letter of the 24th April 2015 as *'a retrospective attempt to justify a vindictive disciplinary procedure...'*

This allegation is rejected by Superintendent Patrick Murray in his interview with the Tribunal investigators who states that he issued five Regulation 10 notices in 2015 and that there was one other person who *'had to back tax and that was dealt with in the same way'*.

The Tribunal will examine whether this was so and will consider whether the handling of this matter constituted targeting or discrediting of Garda Keogh.

Issue 7: The disciplinary investigation in relation to the sick leave of Garda Nicholas Keogh during July 2015.

Garda Keogh reported sick and unfit for duty on the 9th July 2015. He phoned the station to say that he was going off sick leave on the 10th July 2015 but did not report for duty on the following four days. Sergeant Cormac Moylan reported the matter to Superintendent Patrick Murray on the 14th July 2015. Garda Keogh provided a retrospective sick certificate on the 16th July 2015 to cover the relevant period.

Garda Keogh says in his statement to the Tribunal that:

“There was an issue of a ‘mix up’ about my signing off sick and then not reporting for duty...I had apparently rung in ‘off sick’. I was on the contrary sick. It was at most a mistake. The medical certificate materialised retrospectively to certify my sickness during the period. In any case this medically certified absence was irrationally turned by Superintendent Pat Murray into a charge of being absent without leave.”

Superintendent Patrick Murray states in his statement to the Tribunal that:

“On Wednesday 15th July 2015 at about 12 noon I phoned Garda Keogh regarding his absence. He acknowledged his absence without leave and said he had reported fit for duty on 10th July 2015 while drunk, had forgotten he had done so and had been continuously drinking over the next few days and so didn’t report for duty..... I explained to Garda Keogh that I felt absence without leave in the manner described may be a breach of discipline and I would have to seek a formal explanation from him..... On 4th August I reported the matter to

Chief Superintendent in Westmeath recommending the matter be dealt with as a less serious breach of discipline.”

Chief Superintendent Lorraine Wheatley appointed Superintendent Alan Murray to investigate the matter on the 10th August 2015 under Regulation 14 of Garda Síochána (Discipline) Regulations 2007. Superintendent Alan Murray carried out his investigation. Garda Keogh pleaded guilty to the charge of ‘*neglect of duty*’ between the 11th and 14th July 2015 and denied the charge of ‘*discreditable conduct*’.

On the 18th September 2015, Superintendent Alan Murray found that Garda Keogh was in breach of the ‘*neglect of duty*’ charge and not in breach of the ‘*discreditable conduct*’ charge. In mitigation, he had regard to the fact that ‘*Garda Keogh stated that he suffered from work related stress, was drinking heavily and when questioned by Supt. Murray he admitted his mistake.*’ He was fined €300.

Garda Keogh sought a review of that decision by Chief Superintendent Lorraine Wheatley, who affirmed the penalty on the 9th November 2015. Garda Keogh raised issues regarding his contact with Sergeant Moylan and Superintendent Patrick Murray during the 11th - 15th July 2015 period and later raised issues as regards the fairness of the review process in November 2015. These criticisms are disputed by Superintendent Alan Murray and by Chief Superintendent Wheatley.

As a consequence of this disciplinary finding, a report was sent by Superintendent Patrick Murray to the Human Resource Directorate over-payment section.

The Tribunal will consider whether this disciplinary action was warranted or justifiable in the circumstances and whether the handling of this matter by Superintendent Patrick Murray and / or the investigation constituted targeting or discrediting of Garda Keogh.

Issue 8: Former Commissioner Nóirín O’Sullivan’s alleged intervention by telephone to Supt. Patrick Murray in April 2015.

In his statement to the Tribunal, Garda Nicholas Keogh states that:

“On the 10/4/2015, I was made aware that Nóirín O Sullivan had personally telephoned Superintendent Pat Murray about me. It appears to have happened between the 2nd and the 10th April, 2015. Thereafter, I was confidentially advised that Superintendent Pat Murray told other guards in Athlone station to ‘pull away from’, and alienate, me.”

In his statement to the Tribunal investigators he stated that:

“All I can say is that I have no direct evidence [that former Commissioner O’Sullivan contacted Superintendent Murray in April 2015] other than saying that guards in the station told me this. That is as far as I can go. I am not willing to name the guards concerned, for fear that they will be targeted.”

Commissioner Nóirín O’Sullivan has stated to the Tribunal that this phone call never took place and that the allegation *‘is completely untrue and without foundation’*.

Superintendent Patrick Murray further stated that he had never spoken to former Commissioner Nóirín O’Sullivan about Garda Keogh and that *‘[s]he did not phone me in April 2015 and I never suggested to anyone that they should pull away from or alienate Garda Keogh, nor would I have any reason to do so.’*

On the 23rd May 2019, Garda Keogh informed the Tribunal that he believed that Sergeant Andrew Haran informed him about the telecommunications between former Commissioner Nóirín O’Sullivan and Superintendent Patrick Murray but that he is *‘less certain about his recollection of his informant’*. The Tribunal will hear from Sergeant Andrew Haran in this regard who has rejected the suggestion by Garda Keogh.

The Tribunal will consider whether Garda Keogh was targeted or discredited as alleged.

Issue 9: *The criticism of criminal investigations by Garda Nicholas Keogh during 2015.*

Superintendent Patrick Murray raised queries in respect of a number of crime files where Garda Nicholas Keogh was the investigating officer. Garda Keogh maintains that the criticisms were unjustified, that his Sergeant did not comment adversely as they went before him, and that it was inconsistent and unreasonable of Superintendent Murray to single him out for alleged policing deficiencies.

In his statement to the Tribunal Garda Keogh states *inter alia* that his ‘...*police work was again irrationally scrutinised and minutely criticised by Pat Murray.*’ Garda Keogh outlines in his statement that ‘*the queries from Superintendent Pat Murray were oppressive and irrational.*’

This is disputed by Superintendent Murray who says in his statement to the Tribunal that ‘*the queries I generated in this case were not in any way directed at Garda Keogh personally but were instead to ensure the investigation was carried out to a high standard to fulfil my obligations as District Officer.*’

Garda Keogh refers to his investigation of a robbery from the person which occurred in Athlone on the 13th September 2015. While this investigation was initially recorded on PULSE as ‘Robbery from the Person’, it was subsequently re-classified as ‘Attention and Complaints’.

Garda Nicholas Keogh states in his statement to the Tribunal that:

“An interesting feature of this is that Pat Murray – who here expressly classified the incident as ‘serious’ has simultaneously and self-contradictorily declassified it on Pulse on the very same day (23/9/2012) [this should read 23/09/2015] as ‘not serious’ when he downgraded the ‘robbery’ to ‘attention and complaints’ in other words to a non- crime...Furthermore, Superintendent Pat Murray did not have jurisdiction to so reclassify this incident. In the latter action of deflating the importance of the incident, Superintendent Pat Murray was (with only the ‘inconvenience’ of self-contradiction) massaging the crime figures downwards while simultaneously increasing the importance of this same incident when he wanted to blame me).”

This is disputed by Superintendent Murray who states that he sought explanations from Garda Keogh ‘to demonstrate my commitment to high standards’. He states that:

“ I was not targeting Garda Keogh in any way. In replying Garda Keogh accused me of harassment. In my response to him on 13th October 2015, I indicated I felt his reply was not satisfactory in allowing me to provide assurance that high standards relating to their investigation of crime were met. I advised Garda Keogh of his obligation to account and I invited him to make a complaint about me if he felt I was harassing him. I again sought a response to my substantive query. Garda Keogh replied on the 29th October 2015 in a similar vague fashion and I simply let the matter rest. ”

In his statement to the Tribunal investigators Garda Keogh says that:

“All I can say is that everything I submitted was submitted through Sergeant Monaghan, and he never questioned anything or my work. And then when queries arose with Superintendent Murray, Sergeant Monaghan forwarded them to me. Sergeant Monaghan was the middle man in this. He himself, to my memory, was never critical of anything I sent up to him. It was only when my work went to Superintendent Murray that the criticism started and it would then come back down to me.”

The Tribunal will consider whether the response of Superintendent Murray in each case was reasonable and proportionate and in accordance with proper, appropriate or established practice for a District Officer. The Tribunal will consider whether the handling of these matters constituted the targeting or discrediting of Garda Keogh within the meaning with Term of Reference [p].

Issue 10: Complaints by Garda Nicholas Keogh in relation to the denial of the request for the cancellation of Annual Leave on the 31st August 2015.

Garda Nicholas Keogh wrote to the sergeant in charge at Athlone Garda Station on the 1st September 2015 stating that *‘I took annual leave on 31/8/2015, however, I was required to meet GSOC that day in Portlaoise and I request to have the annual leave cancelled for that day’*. This application was approved by Sergeant Monaghan but Superintendent Murray subsequently refused it *‘in the absence of any proper explanation’*.

Garda Keogh was informed of this decision by Sergeant Monaghan on the 10th September 2015 and told that if he still wished to have this date considered for cancellation that he should *‘forward a comprehensive report as to the reasons’*.

In his statement to the Tribunal, Garda Keogh states that:

“ Superintendent Pat Murray-who was aware of the the confidentiality of GSOC communications with members-countermanded this approval citing ‘absence of proper explanation....in circumstances where I could not provide any more specific explanation-given the confidential nature of GSOC disclosures.’ ”

In his statement to the Tribunal, Superintendent Patrick Murray states that he had met with Garda Keogh on the night of the 30th August 2015 at 9 pm and *‘he made no mention of seeking to have annual leave cancelled for the next day. Therefore I felt the application was vague in nature. I’m not aware of any further explanation being provided that allowed the matter to be revisited.’*

In his statement to the Tribunal Investigators, Garda Keogh states that:

“.....Superintendent Murray was looking for a comprehensive report of what I was going to meet GSOC about. The Protected Disclosure process is supposed to be protected and confidential. The former Garda Commissioner O’Sullivan was saying publicly she supported whistleblowers, but I feel Superintendent Murray was looking to ascertain confidential information about my meeting with GSOC....”

The Tribunal will consider whether the handling of this matter constituted targeting or discrediting of Garda Keogh.

Issue 11: Complaints by Garda Nicholas Keogh in relation to his confinement to indoor duty on the 22nd October 2015.

On the 22nd October 2015, Garda Keogh was detailed for indoor duty at Athlone Garda Station.

Garda Keogh in his statement to the Tribunal states that:

“I was reduced to indoor duties and was confined to deskbound duties in the public office carrying out therefore the most stressful job in the station in circumstances where it was known to management that I was suffering from work related stress. Thus, on the 22nd of October 2015, Superintendent Pat Murray simply ‘with immediate effect’ reduced me to indoor duties. There was no analysis or right of representation. He said that he will ‘review the matter again on the 1st November 2015’ (he never did).”

Garda Keogh in his statement to the Tribunal investigators states that:

“I suspect the real reason I was put on indoor duties at that time, was that it was just after Garda A had been suspended and who was subject of my complaint in October 2015. It was a message for everyone in the station (a circular was issued to every Sergeant in the District by Superintendent Murray, NK/1 page 115 of 135 refers) so that every other guard could see that they were making an example of me. Everyone in the station knew that I was desk bound and I believe that was a message for everyone. That is my belief... he never gave me a specific reason...My assignment to indoor duties was never reviewed.”

Superintendent Murray in his statement to the Tribunal states that:

“.....I met Garda Keogh again in my office in relation to this matter on 22nd October 2015 to serve Form IA14 on him at the request of Chief Superintendent Westmeath. I noticed that Garda Keogh had deteriorated in that he didn't seem well to me. I asked him about his health and his drinking and he wouldn't answer. I noticed his hands shaking a lot to the degree that he could barely sign his name while acknowledging receipt of Form IA14. I discussed with him his frequent sickness absence and the impact of it on his ability to follow up on work related matters. I explained I had discussed the lack of progress on some matters involving Garda Keogh with Sergeant Monaghan while going through his incident list at a PAF meeting with Sgt Monaghan on the 19th October 2015. Garda Keogh didn't seem with it to me

and I asked him if he felt fit enough to be in work. He said he did. As a result of what I saw I explained to him that I would have to assign him to indoor duty and I discussed that with him explaining the reasons why and referring him to our conversation of 30th August where we had discussed the possibility of this happening. He appeared to me to agree with the course of action I was taking...I reported how I found Garda Keogh and my decision to confine him to indoor duty to Chief Superintendent Westmeath.”

Sergeant Haran in his statement to the Tribunal says that:

“A decision was made by Superintendent Murray to confine Garda Keogh to indoor duty. I was not consulted in relation to this decision. I cannot recall how or when I became aware of this decision. I was aware that Garda Keogh was unhappy with this decision from informal conversations we had. He felt that his assignment to indoor duties was a ploy on the part of management to push

him out. He did not make a formal complaint to me at this time. I am unaware as to whether he made a formal complaint to anyone else in the station.”

The Tribunal will consider the decision to assign Garda Keogh to indoor duty in October 2015 and whether this constituted targeting or discrediting of Garda Keogh by Superintendent Murray within the meaning of Term of Reference [p].

Issue 12: Complaints by Garda Nicholas Keogh in relation to the misrecordings of his Sick Leave and the reduction of salary.

As I stated at the outset, Garda Keogh was on sick leave on a number of occasions in 2014 and 2015 until going on sick leave on the 26th December 2015 until the present. He submitted sick certificates to the District Office at Athlone Garda Station during 2014 and 2015 which were issued by his General Practitioner, Dr. David Bartlett in Athlone, and which recorded that Garda Keogh was medically unfit for work due to ‘*work related stress*’.

In his statement to the Tribunal, Garda Keogh states that he discovered that his absence through sickness was being recorded as ‘*viral flu*’ and not ‘*work related stress*’ during this period. As a consequence of ‘*viral flu*’ being classified as an ‘ordinary illness’, Garda Keogh was placed on reduced pay of €290.00 per week when he reached a threshold of 92 days absence in a twelve month period.

In his statement to the Tribunal investigators, Garda Keogh states that he discovered that he was being recorded as absent with ‘*viral flu*’ in December 2015 when meeting with the Garda Chief Medical Officer, Dr. Oghenovo Oghuvba. He says that that Dr. Oghuvba told him that ‘*he was going to talk to someone high up about this*’. Garda Keogh states that this meeting took place one week after a case conference had been held in respect of Garda Keogh with the Chief Medical Officer, Superintendent Patrick Murray and other senior officers attending.

In his statement to the Tribunal, Garda Keogh states that *‘the police appeared to wish to deny knowledge of my work related stress while on the other hand dealing punitively with my condition in terms of reduction of pay, monitoring, disciplining etc. My recurrent sickness was seen as disciplinary and wage reduction matters rather than a welfare or safety issue.’*

The Tribunal will hear from Garda Olivia Kelly, the District clerk in Athlone Garda Station who recorded the category of Garda Keogh’s absence on the Garda Sickness Absence Management System (called SAMS) and amended the same on the 23rd May 2016.

The Tribunal will also hear from a number of witnesses in the Human Resources section of An Garda Síochána and from Superintendent Patrick Murray and Chief Superintendent Lorraine Wheatley on this issue. The Tribunal will consider why his illness category was changed from *‘viral flu’* to *‘mental heath’* on the 23rd May 2016 and subsequently changed to *‘work related stress / injury on duty’* in late 2016. The Tribunal will consider why Garda Keogh was placed back on full pay on the 13th October 2016, backdated to the 26th December 2015. The Tribunal will hear from Chief Superintendent Anthony McLoughlin, the Protected Disclosures Manager at the Human Resource and People Development (HRPD) in this regard.

The Tribunal will examine the background to this matter and consider whether the handling of this issue by senior management constituted targeting or discrediting of Garda Keogh.

Issue 13: *Complaints by Garda Nicholas Keogh in relation to the alleged denial of overtime.*

In his interview with the Tribunal investigators, Garda Nicholas Keogh states that he was the only member on his Unit not offered overtime on a number of occasions during 2014 and 2015. Garda Keogh specified the relevant dates and festivals during his interview with the Tribunal investigators.

This allegation is rejected by the local management in Athlone. Sergeant Cormac Moylan states that *‘while Garda Keogh alleges that he was denied overtime, I wish to refute the assertion in its entirety that I denied him overtime at any time. If I did have overtime to allocate, it was offered to all members on an equal basis.’*

Superintendent Patrick Murray states that *‘I was not involved in a general distribution of over-time to individual Garda members in Athlone as that was the responsibility of the Sergeant in Charge and/or the unit Sergeant. Overtime is not offered on the basis of seniority. Sickness absence has a bearing on overtime allocation as set out in Garda Finance Code 10.1(5).’*

The Tribunal will consider whether Garda Keogh was refused overtime, whether he was singled out in this regard and, if so, whether this constituted targeting or discrediting of Garda Keogh by senior officers under Term of Reference [p].

Issue 14: *Complaints by Garda Nicholas Keogh in relation to the alleged delay in the payment of his travel expenses.*

Garda Keogh met with Superintendent Patrick Murray on the 26th March 2015 and the issue of outstanding travel and subsistence claims arose. Superintendent Murray states that he was made aware of Garda Keogh's car tax issue by his predecessor, Superintendent Noreen McBrien, and that '*...[s]he felt that his claims for travelling expenses were in breach of financial code regulations and could not therefore be paid in those circumstances.*'

This is in accordance with the statement of Superintendent Noreen McBrien who outlines how she became aware of his car tax issue and the audit she subsequently carried out. She says that '*I became aware that there was an issue with the type of tax on Garda Keogh's car...I advised that Garda Keogh's outstanding claims be withheld until I investigated the matter.*'

In his statement to the Tribunal investigators Garda Keogh referred to the meeting on the 26th March 2015 and stated that he had never experienced any delay in the payment of his travel expenses before and that this delay was at least one year. He states that '*...I recall Superintendent Murray saying to me 'you won't get paid your sub until the car tax is cleared up.'*' These travel and subsistence claims were paid after Garda Keogh paid the revised car tax rate on the 27th March 2015.

The Tribunal will consider whether there was a delay in any or all of Garda Keogh's expense claims and whether any such delay constituted targeting or discrediting of Garda Keogh by Superintendent Patrick Murray or any other senior officer.

Issue 15: *Complaints by Garda Nicholas Keogh in relation to the alleged denial of commendations in respect of*

(a) an incident involving stabbing of taxi driver on 4/8/15

(b) the arrest a person for burglary on 28/10/14

(c) the rescue of a lady from drowning on 22/9/15.

Garda Nicholas Keogh refers to these incidents in his statement to the Tribunal and says that *‘it was as if any successful operation in which I was involved was to be airbrushed’*.

Superintendent Patrick Murray refers to the incident involving the alleged stabbing of a taxi driver and states that *‘...a meticulous investigation was carried out in relation to both crimes. It was coordinated by then Detective Sergeant E Curley and his team. I was not aware of Garda Keogh’s involvement in either of those crimes which were investigated together.’*

Garda Keogh states in his statement to the Tribunal investigators that *‘I was on the PULSE incident on 03/08/2015 or the 04/08/2015 as the investigating member. I was back in the Public Office on Saturday, 08/08/2015 when I noticed I had been removed from the PULSE incident altogether in relation to that incident... the record of my involvement was erased from PULSE.’* Sergeant Monaghan confirms in his statement to the Tribunal that Garda Keogh attended at the scene and took details from the taxi driver. He states that *‘Garda Keogh’s name was apparently removed from Pulse but I do not know why his name was removed or who did this.’*

The Tribunal will hear from Garda Aisling Shankey-Smith and Brian Savage who are involved in the administration of the PULSE system and who will address the alteration of PULSE records. The Tribunal will also consider the evidence of Detective Sergeant Eamon Curley in respect of why this PULSE record was changed and examine the PULSE audit records that have been made available.

In relation to the burglary in October 2014, Garda Keogh states that *‘on the 28/10/2014, I arrested a burglar in the course of the commission of a burglary. This is rare. I received commendations for less serious cases. I received no commendation in this case’*.

In relation to the rescue in September 2015, Garda Keogh says *‘Sergeant Monaghan applied for commendations for the whole unit. Nobody received any commendation.’* Sergeant Monaghan states that he *‘recommended all members present for consideration for a Seiko Just in Time Award’* and denied the *‘assertion made by Garda Keogh that he was denied a commendation for this incident and that he singlehandedly pulled the female from the water as this was a group effort.’* The Seiko award was given out almost one year later on the 8th September 2016.

Garda Keogh in his statement to Tribunal investigators outlines his belief that his recommendation for this Seiko award was *‘belatedly triggered by An Garda Síochána’* in response to the issue of his civil litigation alleging bullying and harassment by An Garda Síochána.

He says that *'It is my belief that that this was a guise to counteract the receipt of the said application as it was difficult for the Gardaí to perform a u-turn of their earlier position not to follow Sergeant Monaghan's recommendation for a commendation, hence the unusual of the sole award from Irish Water Safety.'*

However, Superintendent Patrick Murray states that *'on 11th November 2015 I nominated seven Members including Garda Keogh for a "Seiko Just in Time" award for their part in the rescue of a lady from the River Shannon on 22nd September 2015...The awards were presented to the Members on 8th November 2016 at ceremony in Dublin Castle. This was the second occasion on which I nominated Members from Athlone for recognition with the "Seiko Just in Time" awards scheme. The Members I nominated on the first occasion were also recognised, receiving Seiko watches as their rescue effort put them in greater danger. There was not an ulterior motive for nominating Garda Keogh for this award.'*

The Tribunal will consider whether Garda Keogh was denied commendations as alleged and whether he was targeted or discredited by senior officers in this regard under Term of Reference [p].

Issue 16: Complaints by Garda Nicholas Keogh in relation to the alleged tapping of his phone and/or that his post was opened in 2014/ 2015.

In his statement to the Tribunal, Garda Keogh expressed a concern that his post may have been intercepted by An Garda Síochána. He stated that *‘there were further problems in terms of interference with my mail. I forwarded pulse records of death threats to Garda Harrison by post to his address at [] Letterkenny in 2015. I am advised by Garda Harrison that my letter had been intercepted and opened....’*

In his statement to the Tribunal investigators, Garda Keogh expressed a concern that his telephone may have been tapped by An Garda Síochána. He stated that *‘the only evidence that I have to substantiate this belief is that in a phone call from Assistant Commissioner Ó’Cualáin to me on 15/05/2014 at 11:00 hours he advised me twice in the course of that call not to go into details over the phone. We have applied for different records through Freedom of Information in relation to the tapping of my phone. I believe the Garda Síochána has the technology to do these things but I do not have evidence to support this.’*

In his statement to the Tribunal, Assistant Commissioner Ó Cualáin says that Garda Keogh states *‘that I advised him twice not to go into detail over the phone and asserts that this is the only evidence he has to substantiate his belief that his private phone was being tapped’*. Assistant Commissioner Ó Cualáin says that *‘I may well have advised him in this way but not for the reasons outlined by the CR. The purpose of the call was to introduce myself to him, to explain what Commissioner O’Sullivan had appointed me to do and to make arrangements to meet with him at a time and place of his choosing to discuss all aspects of his concerns in detail and take a statement of complaint from him’*.

In her statement to the Tribunal, Chief Superintendent Wheatley says that

“I am not aware and have no evidence in regard to the tapping of Garda Keogh private phone, I have never interfered with the member’s personal post, I am not aware that Garda Keogh private internet is being monitored. If somebody or organisation were to carry out what Garda Keogh has alleged it would not be a requirement to consult local Garda management and I can categorically state that I was never consulted on any such issues in relation to Garda Keogh and was not made aware of any actions as alleged by Garda Keogh in this matter.”

The Tribunal will consider whether Garda Keogh was targeted or discredited by senior officers in this regard under Term of Reference [p].

It should be noted however that a letter dated the 4th October 2019 was received by the Tribunal from the solicitor acting on behalf of Garda Keogh stating that *‘he does not propose to pursue any such electronic enquiry before the Tribunal’*.

Issue 17: Complaints by Garda Nicholas Keogh in relation to the criminal investigation carried out by Assistant Commissioner Dónall Ó Cualáin.

Garda Keogh maintains that there were ‘*serious and deliberate flaws with regard to this investigation*’, numbering approximately 10, in addition to matters that are separately listed for consideration by the Tribunal. Some of the allegations are inadmissible or of questionable admissibility which may have to be ruled on in due course. The criticisms include the following briefly summarised complaints against the investigation team:

1. there was a delay in commencing the investigation during which evidence disappeared;
2. there was a delay in seizing evidence during which mobile phone evidence was erased;
3. there was a failure to suspend any person suspected, with consequences for potential witnesses;
4. statements were taken from Gardaí in inappropriate circumstances, at a time when a colleague accused by Garda Keogh was on duty and was able to be seen by witnesses;
5. there was a failure to revisit a crucial witness who had come forward with vital information;
6. a Garda under investigation was treated unduly favourably in respect of his interview with the investigation team;
7. Garda Keogh and his accused colleague were left in too close proximity as to workplace and shift times;
8. there was a failure to deal with his complaint that side-investigations were taking place by local management.

Assistant Commissioner Ó Cualáin and his investigators answer these complaints in detail. It is unnecessary at this stage to outline their responses to the individual allegations but two points may be mentioned:

- a. the Assistant Commissioner says that when Garda Keogh complained about the circumstances of interviews, he directed that they be conducted away from the station;
- b. in relation to the side investigations at no. 8 above, the Assistant Commissioner says that his inquiries concerned complaints made by Garda Keogh and not allegations made against him.

The Tribunal will consider whether any of the criticisms of the investigation are justified and, if so, whether they constitute targeting or discrediting of Garda Keogh by Assistant Commissioner Ó Cualáin.

Issue 18: Complaints by Garda Nicholas Keogh in relation to the bullying and harassment investigation carried out by Assistant Commissioner Michael Finn.

The policy and procedures of the Garda Síochána for dealing with harassment, sexual harassment and bullying in the workplace is contained within the document: *Working Together to Create a Positive Working Environment*.

Garda Keogh made a statement to Chief Superintendent John Scanlan on the 2nd and 27th March 2017 by way of formal complaint of bullying and harassment.

In his interview with the Tribunal investigators, Garda Keogh complains that his complaint ‘*went missing for seven months*’. He believes that the motive behind this delay was to facilitate the promotion of Superintendent Patrick Murray to Chief Superintendent in late 2017 / early 2018. He says that ‘*[t]he combination of the general conduct of Assistant Commissioner Finn’s unwieldy investigation of my complaint together with his obfuscation and unnecessary delay damaged the timely determination of my complaint and I believe facilitated the promotion of Superintendent Pat Murray to my discredit.*’

On the 15th November 2017, Assistant Commissioner Michael Finn was appointed to investigate the matter. In his interview with the Tribunal investigators, Garda Keogh complains about his meeting with AC Finn and says that ‘*AC Finn has discredited me in saying that he does not know against whom I was making the complaint, when to me, it was crystal clear whom I was complaining about and I believe this delayed the investigation of my complaint*’.

AC Finn's report on the '*Complaint of Bullying & Harassment made by Garda Nicholas Keogh*' was not finalised until the 20th December 2018. This report determined that '*in examining each of the complaints and issues raised by Garda Nicholas Keogh in his statement of complaint, I have found no evidence to support the allegation that any bullying or harassment has occurred against Garda Keogh*'. .

Assistant Commissioner Finbarr O'Brien carried out a review of the Finn Report in January and February 2019. He issued reports dated the 7th February 2019 affirming the conclusions of Assistant Commissioner Michael Finn.

In a recent statement to the Tribunal Garda Keogh states that:

"[w]ith reference to item number 18 on the list of items for consideration by the Tribunal entitled complaints by Garda Nicholas Keogh in relation to the bullying and harassment investigation carried out by Assistant Commissioner Michael Finn, I believe the outcome of this investigation as comprised by Assistant Commissioner Finbarr O'Brien constitutes a failure to uphold my rights and entitlements as a Garda Officer in that there is no acknowledgement whatsoever of the correctness of my complaints of having been longly harassed by Garda Officers which have arisen since I made my protected disclosures in May / June 2014."

Garda Keogh appealed this review by submissions dated the 19th March 2019 and a legal expert was engaged by Deputy Commissioner John Twomey to carry out an audit of the Finn investigation. This audit was completed on the 4th June 2019.

On the 11th July 2019 Deputy Commissioner John Twomey determined, having considered all of the documentation submitted to his office together with this expert report, that the investigation was carried out '*in a thorough, fair and impartial manner*' and he dismissed the complaints of bullying made by Garda Keogh against the named personnel.

The Tribunal will consider whether the criticisms by Garda Keogh of these decisions are justified and whether the handling of the Finn investigation, including any review or appeal of the Finn Report, constituted targeting or discrediting of Garda Keogh.

Issue 19: Whether the disciplinary investigation carried out by Assistant Commissioner Ann Marie McMahon constituted a discrediting or targeting of Garda Nicholas Keogh.

As noted at the outset, a disciplinary process in respect of four members of An Garda Síochána, including Garda A, under An Garda Síochána (Discipline) Regulations 2007 began under Assistant Commissioner Nolan, and continued under Assistant Commissioner Ann Marie McMahon on his retirement. It was completed in respect of Garda A by report dated the 27th February 2019 in which Assistant Commissioner Ann Marie McMahon recommended the establishment of a Board of Inquiry.

On the 7th May 2019, Assistant Commissioner David Sheahan considered this recommendation and determined that a Board of Inquiry was not warranted. The matter was then referred for a peer review to be carried out by Assistant Commissioner Orla McPartlin. On the 19th June 2019, Assistant Commissioner Orla McPartlin issued a report stating that she was satisfied that the investigation of Assistant Commissioner Ann Marie McMahon was *‘thorough and complete’*.

In her statement to the Tribunal, Assistant Commissioner Ann Marie McMahon states that *‘Whilst I note that I am not personally named by Garda Nicholas Keogh in his witness statement, and in the absence of any clear differentiation between the criminal or discipline investigations within the statement of Garda Nicholas Keogh, I must once again reaffirm that my investigation was conducted with absolute professionalism, complete impartiality and progressed as expeditiously and as diligently as possible.’*

The Tribunal will consider whether any criticisms of Garda Keogh in relation to the disciplinary investigation are justified and whether the handling of the McMahon investigation, including any review of her report, constituted targeting or discrediting of Garda Keogh.

Issue 20: *Complaints by Garda Nicholas Keogh in relation to the promotion of Superintendent Patrick Murray to Chief Superintendent in 2017.*

On 18th January 2016 Superintendent Patrick Murray applied for promotion to the rank of Chief Superintendent. He was informed on the 25th May 2016 that he had been successful in the promotion competition but the nomination did not go ahead at that time. Over twelve months later, on 29th January 2018, the Policing Authority informed him that he would be promoted, with that promotion back-dated to 26th October 2017.

Garda Keogh states in his interview with the Tribunal investigators that *‘[t]he combination of the general conduct of Assistant Commissioner Finn’s unwieldy investigation of my complaint together with his obfuscation and unnecessary delay damaged the timely determination of my complaint and I believe facilitated the promotion of Superintendent Pat Murray to my discredit’*. He continues that *‘[a]s stated in my addendum statement, it appears to me that the processing and investigation of my complaint was delayed purposely whilst the promotion of Superintendent Pat Murray to Chief Superintendent was proceeded with. That is how it is perceived by me.’*

Garda Keogh further states that *‘Assistant Commissioner Ó’Cualáin was also the Garda point of contact with the Policing Authority in relation to the promotions whereby Superintendent Pat Murray, who originally came from his area (Western Region) into Athlone (Eastern Region), was promoted to Chief Superintendent without any determination of my complaint, which I say Assistant Commissioner Ó’Cualáin had to be aware of at the time.’*

Assistant Commissioner Ó'Cualáin states that he was not aware of the bullying and harassment complaint by Garda Keogh when he signed the clearance forms in respect of Superintendent Murray for the Policing Authority on the 19th September 2017.

Superintendent Murray complains about an orchestrated campaign to prevent his promotion and of character assassination by politicians.

The Tribunal will consider whether there is any evidence that the commencement of the investigation into Garda Keogh's bullying and harassment complaint was delayed to facilitate or progress the promotion of Superintendent Patrick Murray and / or whether the handling of this complaint constituted targeting or discrediting of Garda Keogh by senior officers within the meaning of Term of Reference [p].

Issue 21: Complaints by Garda Nicholas Keogh that the Disclosures Tribunal Order was deliberately withheld from him.

The Disclosures Tribunal Order was dated the 20th February 2017. Members of An Garda Síochána were afforded eight working days from the 20th February to make an application or submission to the Tribunal.

This Order was received by Garda Keogh on the 21st March 2017. Garda Keogh states that he was notified of this post by Inspector Minnock on the 20th March 2017. In his statement to the Tribunal, Garda Keogh states there was a cover note on the Order from Superintendent Patrick Murray dated the 6th March 2017.

Garda Keogh says that:

“It would appear that it was curiously withheld from me by Supt. Murray in an apparent effort to obstruct me from complying with the Tribunal Order in relation to evidence I may have...Also the letter was then curiously withheld from me for a further two weeks by Supt Murray in what would appear to be an effort to by-pass Judge Charleton’s deadline of 13/3/2017 whereby I would be denied the information and obstructed from complying with section ‘P’”

In his statement to the Tribunal investigators, Garda Keogh states that:

“I also wish to state here that I note that Garda management at all times were able to contact me, whether as in this example, by post and by personal delivery, and in other examples where they have contacted me either through other Gardaí, the Welfare Officer or Inspector Minnock.....Further, I know that this documentation (Disclosures Tribunal Order) was circulated to all other Gardaí in the District sooner that it was sent to me.”

Superintendent Patrick Murray disputes this allegation stating that:

“...When that letter arrived I made inquiries with the then District Clerk and Inspector Minnock who dealt with the issue. I returned a report to Assistant Commissioner Fanning and I have no knowledge of whether any reply was sent to Garda Keogh. There was no intention on anyone's part to withhold anything from Garda Keogh, who it appears was fully aware of the Tribunal's order in any event.”

Inspector Aidan Minnock was tasked with the service of the Order on Garda Keogh and states that *‘I served the Order at Garda Keogh's residence on the Tuesday the 21st March 2017, having made other previous unsuccessful attempts to serve it. Prior to service I rang Garda Keogh and we agreed to leave the Order in the post at his house. He stated he was familiar with it.’*

The Tribunal will consider whether the Tribunal Order was deliberately withheld from Garda Keogh and whether this constituted the targeting or discrediting of Garda Keogh by senior officers within the meaning of Term of Reference [p].

Issue 22: Complaints by Garda Nicholas Keogh that other material, including the s. 41 report pursuant to the Garda Síochána Act 2005 withheld from him.

Pursuant to the provisions of section 41 of the An Garda Síochána Act 2005, the Minister for Justice and Equality may request a report on a matter from the Garda Commissioner. A section 41 report was requested in respect of Garda Nicholas Keogh and provided on the 9th September 2016 (an interim report) and the 11th October 2016 (the final report).

Garda Keogh requested copies of these reports and was not provided with the same.

The Tribunal will consider whether the alleged failure and / or refusal of the Department of Justice and Equality to provide these reports comes within the jurisdiction of the Tribunal under Term of Reference [p].

Conclusion

On the 16th April 2019 we wrote to all the parties with a schedule of the above issues. The parties were requested to confirm that the schedule was a comprehensive list of topics arising for consideration in the module. They were also invited to suggest any additional matter not included in the schedule or propose the deletion of issues as irrelevant or inadmissible. Garda Keogh's team was concerned that the review of the Finn Report as carried out by Assistant Commissioner Finbarr O'Brien should be included in the Schedule of Issues. This has been incorporated at Issue No. 18.

On the 30th April 2019 the Tribunal held a case management meeting in private sitting. Again, this was designed to ensure that all the relevant issues were captured in the Tribunal's Schedule of Issues. All the parties agreed that this was so.

The parties have been served with some 50 volumes of material. We believe that all relevant documentation has been disclosed to the parties. As a matter of procedure we would ask parties who wish to produce documents during the hearings which are not included in the material to advise counsel for the Tribunal in advance and to make the document available so that it may be redacted if necessary to protect third party rights and be included in our system.

The Tribunal has provided a Schedule of Work and Witnesses to the parties. It is intended to hear the evidence on the Issues outlined above in three two-week periods as follows:

14th – 25th October;

4th – 15th November;

26th November – 6th December.

The Tribunal intends to call Garda Nicholas Keogh as the first witness at 2pm today.