

Second Interim Report of the Tribunal of Inquiry into protected disclosures made under the Protected Disclosures Act 2014 and certain other matters

Established by the Minister for Justice and Equality under the Tribunals of Inquiry (Evidence) Acts 1921 to 2004, on 17th February 2017 by instrument

Chairman: The Honourable Mr Justice Peter Charleton

Report on matters relating to Garda Keith Harrison pursuant to terms of reference (n) and (o)

Solicitor to the tribunal: Elizabeth Mullan

Registrar to the tribunal: Peter Kavanagh



**Tribunal of Inquiry into protected disclosures made under the
Protected Disclosures Act 2014 and certain other matters**

Established by the Minister for Justice and Equality under the Tribunals of Inquiry (Evidence) Act 1921,
on 17th February 2017 by instrument

The Hon Mr Justice Peter Charleton

Aberdeen Suite
Dublin Castle
Dublin D02 Y337
Ireland

+353-1-8982000
info@disclosuretribunal.ie

**Re: Tribunal of inquiry into protected disclosures made under the Protected
Disclosures Act 2014 and certain other matters**

A Shuime uasal,

Please find enclosed herewith, for laying in the library of the Houses of the Oireachtas, two hard copies of the second interim report of the tribunal of enquiry into protected disclosures made under the Protected Disclosures Act 2014 and certain other matters, which reports on matters relating to Garda Keith Harrison pursuant to terms of reference (n) and (o) of the tribunal's terms of reference. The report is also provided in digital format to facilitate circulation of the report.

The tribunal has enquired whether there are any criminal proceeding current or pending arising out of any matter discussed in this report. It is understood that there are not; see the letter from the tribunal to Detective Superintendent Brian Woods of 27 November 2017 and his reply.

Once you have confirmed to the tribunal that the report has been laid in the library, it will be available shortly thereafter in digital format from the tribunal's website and printed copies of the report will be available within a few weeks.

Is mise le meas,

Peter Charleton

30 November 2017

Mr Peter Finnegan
Clerk of the Dáil
Dáil Éireann
Leinster House
Kildare Street
Dublin 2

Solicitor to the Tribunal: Elizabeth Mullan

Registrar: Peter Kavanagh

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Mr Justice Peter Charleton, chairman

Report relating to Garda Keith Harrison

Second interim report

Introduction

This tribunal was established under the Tribunals of Inquiry (Evidence) Act 1921 on 17 February 2017 by instrument made under the hand of the Minister for Justice and Equality. While most of the terms of reference concern Sergeant Maurice McCabe, paragraph (p) asks the tribunal to enquire into the general treatment of particular gardaí who made a protected disclosure prior to 16 February 2017, a matter that the tribunal in its current form is not enquiring into, paragraph (o) requires the investigation of any pattern of the creation, distribution and wrongful use by TUSLA of files containing allegations of criminal misconduct against gardaí who made allegations of wrongdoing, and paragraph (n) requires the tribunal to investigate contacts between the gardaí and TUSLA in relation to Garda Keith Harrison. TUSLA is also known as the Child and Family Agency.¹ This is the social work body with statutory responsibility for the protection of children and the support of families. Following an oral hearing lasting 19 days, this is the report of the tribunal on this latter term of reference.

The precise form of the terms of reference is thus:

(n) To investigate contacts between members of An Garda Síochána and TUSLA in relation to Garda Keith Harrison.

(o) To investigate any pattern of the creation, distribution and use by TUSLA of files containing allegations of criminal misconduct against members of An Garda Síochána who had made allegations of wrongdoing within An Garda Síochána and of the use knowingly by senior members of the Garda Síochána of these files to discredit members who had made such allegations.

A pattern only emerges when primary facts have been found. Was it, for instance, to be found that TUSLA had undermined the family life of a particular garda through the abuse of power, that would be a fact. Where such an abuse was repeated in another case, then a pattern might emerge. Even if there were only two such cases, the methodology of the abuse of power might establish a pattern. Before, however, one can think of uncovering a pattern, one must first of all find primary facts.

¹ The Child and Family Agency Act 2013 defines the parameters of the agency's responsibility as does s3 of the Child Care Act 1991

Tribunals and allegations

While the purpose of the tribunal of inquiry is, as the name implies, to make an enquiry, a tribunal is limited as to its jurisdiction only to investigate the matters which properly impact on the issues set out in the terms of reference. It is said that every tribunal begins with a blank sheet of paper and while this is, to some extent, true, it is nonetheless possible to isolate the ordinary interaction that defines litigation whereby one person or group claims that another person or group has acted illegally or discredibly. In the context of litigation, the claim made by the plaintiff or applicant for relief will be set out in a document the form of which is determined by the rules of the relevant court which has jurisdiction. All of these require a statement of fact as to what is claimed to be wrong. To that, the defendant or respondent will reply and either deny the allegations in whole or in part or will, in addition to that, set out a statement of fact as to why the claim should not succeed or may, in some cases, make a counterclaim. This exchange of documentation defines the issues. When it comes to a hearing, evidence documents will constitute the building blocks of what is said to be the wrong that has been committed and, in responding, the person or body to whom the wrong is attributed will seek to undermine these facts or will put forward a countervailing account or make an argument as to the infirmity of the allegations.

It is necessary for the purpose of demonstrating what this lengthy hearing was about to make brief reference to a letter written by Garda Keith Harrison to a Minister of our Government. In doing that, the purpose is to set out the circumstances whereby allegations of the most serious kind were made against the national police force and against the social services, and which led to the creation of this tribunal and the imperative to enquire into these matters. One of the earliest and bitterest experiences of almost every lawyer is that of meeting a client who has a tale of injustice to tell, and setting about deploying the resources of litigation for the benefit of that client, to later realise that there is another side to the story and that is such that the court eventually resolves the case that is brought negatively. It is fundamental to our system of justice that both sides should be heard because both have evidence and insights as to the issue put forward. No case is resolvable without the consideration of the contrary case. Just as a lawyer in an office may hear only one side of the case, that which the potential litigant wishes to put forward, so, in terms of political representations, only one side will be heard and accepted in good faith. Insofar as any question may arise as to why this matter was ever brought forward for an extremely lengthy and expensive public inquiry at the expense of the Irish taxpayer, it must clearly be pointed out that serious representations of corruption at the deepest level were made to political figures in circumstances where they did not have the contrary case, nor any evidence or documentation which might immediately undermine the allegations made.

Despite this being a tribunal of inquiry, the focus of what needs to be looked into is in no way limitless. While at the hearings, lengthy examinations were widely focused as to matters which could not impact on the central issues, the task of any judicial exercise is to isolate what needs to be decided and to focus on the finding of the truth. There can be some circumstances where a piece of evidence comes along which undermines even a vehemently made and apparently credible case so completely as to destroy it. Within the context of a febrile debate, which the nature of the allegations made in this case could all too easily generate, it might also be possible to claim that a judicial figure had an inclination in favour of authority or was out of touch. It is only a matter of chance, sometimes, that evidence can come along that is completely destructive of an allegation

of corruption within the administrative organs of the State tasked with keeping the peace, preventing crime, detecting crime and assisting families at risk while obeying the constitutional imperative of treating the welfare of children as paramount. That happened during these hearings. That evidence was not likely to have been volunteered by those alleging to the contrary. Nor was it ever likely that, insofar as meetings have been held between those claiming injustice and political figures, they would point out the contrary aspects undermining the allegations, in this case totally.

The duty to put an opposing case

The work of a tribunal would be made easier were represented parties to bear in mind that, firstly, it is the tribunal that is enquiring and not them and that, secondly, they have an absolute and inescapable duty to put to witnesses concerned with their reputation any contrary case that they will state in evidence when their turn comes. The work of a tribunal is not a wide-ranging and unfocused exercise. Parties will have points of view that they wish to air, conclusions which they feel that the tribunal should pursue and factual contradictions which run counter to particular witnesses' testimony or points of view. It is required that these be made clear. A public inquiry is not a place for shyness or for holding cards close to the chest. Parties' counter allegations, in particular, must be put. This is the rule in every civil and criminal case and it cannot be shied away from. In *McNamee v Revenue Commissioners*,² the judgment of Laffoy J approves the decision of the House of Lords in *Browne v Dunn*,³ which is encapsulated in the following statement of Lord Halsbury at pages 76-77:

To my mind nothing would be more absolutely unjust than not to cross-examine witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity often to defend their own character, and not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either to their credit or to the accuracy of the facts they have deposed to.

This was most recently affirmed by the Supreme Court in *McDonagh v Sunday Newspapers*.⁴ In that case, the examination of interviewing gardaí, where the plaintiff was arrested for drug importation, was focused not on why he made apparently incriminating statements but, rather, on who within the station party had ostensibly leaked the defamatory material to a Sunday newspaper. Charleton J, in the majority, affirmed the rule thus:

It only needs a few sentences putting core instructions as a matter of a few questions. Were that done, the procedures would have been fair since, then, there would have been an aspect of what was wrong with the interviews according to the plaintiff and what the Garda response was. Laffoy J also approved another passage from *Browne v Dunn*, that of Lord Herschell LC at page 71. There, he stated a rule that if you intend to impeach a witness, you are bound, whilst that testimony is live, to give that witness an opportunity of making any explanation which is open. This was characterised as not only a rule of professional practice in the conduct of the case, but as essential to fair dealing:

² [2016] IESC 33

³ (1893) 6 R 67

⁴ [2017] IESC 46

... but it seems to me that a cross-examination of a witness which errs in the direction of excess may be far more fair to him than to leave him without cross-examination, and afterwards to suggest that he is not a witness of truth, I mean upon a point which is not otherwise perfectly clear that he has had full notice beforehand that there is an intention to impeach the credibility of the story which he is telling. Of course I do not deny for a moment that there are cases in which that notice has been so distinctly and unmistakably given, and the point upon which he is impeached, and is to be impeached, is so manifest, that it is not necessary to waste time in putting questions to him upon it. All I am saying is that it will not do to impeach the credibility of a witness upon a matter on which he has not had any opportunity to give an explanation by reason of there having been no suggestion whatever in the course of the case that his story is not accepted.

Parties have this obligation. With appropriate focus, it is hoped that the future hearings will be more concise.

Reports and statements

It is a very serious matter to accuse someone of corruption. People can be led into making unfounded allegations through being carried along on a wave of emotion. Mistaken conclusions can be reached and disseminated through having only a part of the relevant facts or documents. Fairness dictates that a correction should be made when an accusation of discredit is discovered as unfounded. Central to how people interact are the communications that human beings make to each other. Reports have consequences. While the law takes the view that statements made by those who have not witnessed an event are not generally admissible in evidence, the law also considers that where a report is made to someone, the fact of the report and its terms are evidence. While the contents of a report of someone else's conduct are not admitted in evidence as to the facts in a trial in court because the law says that the person who witnessed the event must attend in person and be subject to cross examination, police work is very different. Every day the gardaí receive reports of traffic accidents, of domestic violence, of sexual violence, of assaults, of financial misconduct: and it is their duty to investigate. No police officer can say: that is only what is being said about someone else. Instead the imperative cast on them is to enquire. Often those enquiries will lead to the necessity to obtain a written statement of fact from a potential witness.

A written statement from a witness as to what they have seen and heard, for instance about what was done to them or to another person in their presence, is a solemn document that can have legal consequences that override the general application of the hearsay rule. Under the Criminal Justice Act 2006, a statement taken by a garda can be admitted in evidence at the criminal prosecution of the person whose actions it describes even though that witness declines while giving testimony to swear to those events. In this context, a statement is defined in section 15 of the Act as meaning "a statement the making of which is duly proved" and this includes "any representation of fact, whether in words or otherwise", including "a statement which has been videorecorded or audiorecorded" and any "part of a statement". Hence making a statement to police is a serious step.

As this legislation demonstrates, the practice of criminal law is no stranger to witnesses coming to the gardaí in good faith and making a witness statement as to criminal conduct. It can happen that those charged, learning of the statement from the book of evidence that is served on them prior to the trial, decide to intimidate that person out of swearing to the facts attested to in court. It can also happen that the motivation which led to the statement being made in the first place is somehow regarded by the witness as having dissolved. Both change of mind and intimidation are particularly acute problems in the prosecution of domestic violence cases.

Quotes and documents

In what follows, mistakes in grammar, punctuation and the use of capital letters, and misspellings and misspellings of proper names in documents quoted are not corrected, or left uncorrected and followed by (sic). The tribunal is not responsible for any illiteracy in quoted documents. It is the document itself which is important and is thus quoted as it was.

Within a police force, the rank of an officer may change. Where an officer was a particular rank as of the date of an incident, that is the rank used. If there has been a promotion prior to giving evidence, then the rank as of the date of testimony is used. Where there has been a retirement before coming to the tribunal, the last rank held continues to be used.

The tribunal now turns to the relevant allegations and seeks to set them out in the stark form in which they were first presented and which led to this inquiry at public expense. These allegations are the building blocks upon which the inquiry was made and their integrity or infirmity is the matter upon which this report is made. Some basic background needs, first of all, to be set out.

Background

While the focus here is on the terms of reference in the allegations made, it is necessary to give some information on the parties involved and their general career up to the time of the events which define the relevant findings of this tribunal.

Keith Harrison comes from County Galway and was born in 1980. In the same year Marisa McDermott was born in County Donegal, as was her future husband in around the same year. They married and had two children. It is not intended to name him as he is an entirely blameless figure against whom no allegations have been made. Marisa McDermott has a sister and brother. Her mother, who gave evidence before this tribunal, is a lady called Rita McDermott and she presented at all times as a concerned and family orientated woman. Marisa McDermott later became Marisa Simms, but before her marriage she had attended the National University of Ireland in Galway, where she met Keith Harrison who, it seems, had not then determined on a police career. Apparently they got engaged in April 1999 but that was broken off some months later. Leaving college, Keith Harrison joined An Garda Síochána in April 2000. On being attested in June 2001, Garda Keith Harrison was allocated first of all to a station in the Dublin area and was then transferred in 2003 to the Athlone district. Part of this background involved two life-saving incidents and nominations in that respect. He also got married in 2006, not to Marisa Simms, but to another woman. Again, as she is an entirely blameless

figure against whom no allegations have been made, it will be unnecessary to mention her again. That marriage ended in divorce in 2011.

Apparently, and for reasons which are outside the scope of this inquiry, Garda Keith Harrison was not happy in the Athlone district. As the tribunal understands it, on 15 May 2014 Garda Keith Harrison made certain allegations to the person designated in Garda Headquarters as to wrongdoing by those serving with him at that time. While these are detailed in his lengthy statement to this tribunal, they are not within the terms of reference and no comment is made as to these. By the time that this process was engaged, the fundamental events which will later be detailed in this report had already taken place.

While the nature of the relationship between Garda Keith Harrison and Marisa Simms has occupied the time of the tribunal over weeks, it has been difficult to determine when they were living together, when she was living with her husband, or, as he became, her estranged husband, or when she was temporarily living with her mother or her sister. Certain events took place at certain times and in particular places and that should be the focus of this report. It is certainly fair to report, however, that as and from the time, apparently from December 2010, that they began to make contact with each other again, the nature of the relationship was not always completely happy and had the characteristic of an on-off affair. Their evidence to the tribunal has been that as of 2017, they have now reached a calm and well-integrated acceptance of each other as domestic partners.

Applying the biblical imperative “Am I my brother’s keeper?”⁵ it is nonetheless necessary to record that Marisa Simms has a brother called Martin McDermott, who unlawfully killed a young and much liked garda officer by the name of Garda Gary McLoughlin. This manslaughter took place on 14 December 2009 in the context of a car chase, when Martin McDermott unlawfully drove a motor vehicle at enormously high speeds while escaping lawful apprehension by the gardaí and ran straight into the official garda patrol car being driven by Garda McLoughlin. Anyone with experience of criminal law will realise that a motor manslaughter charge is among the hardest convictions to obtain. Yet it was achieved in that case. While the particular circumstances should not now be repeated, out of respect for the late Garda McLoughlin and for his bereaved family, it suffices to report that manslaughter is available in the context of an assault using a motor car or of criminal negligence at the highest level in driving. No reasonable person, with knowledge of the facts, could refer to this dreadful crime of manslaughter, which also resulted in serious injury to another garda officer, as a traffic accident. Regrettably, perhaps out of ignorance, Marisa Simms in her initial statement to the tribunal characterised it in that way.⁶

An Garda Síochána was characterised in the reports of Mr Justice Frederick Morris, which resulted from the Morris Tribunal, as being a “military organisation”.⁷ This is correct. It is an organisation which polices the State, police officers are entitled to arrest people and use necessary force in that regard, to hold people in custody and to protect the peace by the use of weapons up to and including lethal firearms. It is a uniformed force and it should be a disciplined force because of the potential for deceit and for violence which can constitute the potential negative aspects of this fundamental work. It

⁵ Genesis 4:9

⁶ Tribunal documents page 40

⁷ Mr Justice Frederick Morris, ‘Report on the Arrest and Detention of Seven Persons at Burnfoot, County Donegal on the 23rd of May 1998 and the investigation relating to same’ page 254

is sufficient to record, as of this point, that within any police or military unit there will be camaraderie and mutual support. Any sensible person would reach the conclusion that the manslaughter of a member of a police unit and the serious injury to another individual would result in serious grief and in the determination to pursue mutual support. Regrettably, Garda Keith Harrison is not an individual who was able to think that through.

Having commenced the pursuit of a relationship with Marisa Simms, Garda Keith Harrison sought a transfer out of Athlone and to Donegal to be near where she lived, and ultimately determined on accepting a transfer to Buncrana, to the same station in which the homicide of Garda McLoughlin was being investigated and prepared for trial. This was shocking.

When the connection between Garda Keith Harrison and Marisa Simms was discovered, the context of the homicide perpetrated by her brother assumed importance. Garda Harrison could and should have been transferred away from the Donegal Division but, regrettably, he was not.

Garda Keith Harrison and Marisa Simms then began seeing each other on a regular basis. Her marriage broke down, no judgement being made as to the cause thereof or as to whether it was unhappy prior to these events. It would seem that as and from June 2012 Garda Harrison and Ms Simms were living together as domestic partners. Before that time there was certainly the temporary sharing of accommodation, but the exact details of this are not relevant to this report. The relationship was deeply unhappy. Garda Harrison conceded as much when questioned by Patrick Marrinan SC, counsel for the tribunal:

Question: Well, whether you call them indiscretions, infidelities or just plain cheating, were you engaged in that on at least three separate occasions during the summer of 2013?

Answer: I had contact with two other people during that summer, yes. And previous to that, in 2012, October, I was involved with another person, yes.

Question: All right. So you were cheating, let's call it what it is, you were cheating on Marisa during this period of time?

Answer: Yes.

Question: You were lying to her, you were deceiving her, isn't that right?

Answer: I didn't act appropriately, Chairman.

Question: No, but you were lying to her and deceiving her.

Answer: Yes.

Question: You were pretending that she was the only person in your life, when she wasn't?

Answer: Yes.

Question: And that takes some form of guile on your part to try and cover your tracks in relation to attempting to ensure that she doesn't find out, isn't that right?

Answer: She did find out.

Question: And she found out on more than one occasion, and on more than one occasion she confronted with your indiscretions, infidelities or your cheating, isn't that right?

Answer: That's correct, yes.

Question: And on each occasion you promised her that there was nothing in it and you persuaded her to continue on in the relationship, isn't that right?

Answer: I was sure there was nothing in it, yes. And I would have definitely sought to continue the relationship, but I didn't persuade or make anybody do anything they didn't want to do.

Question: And one of those relationships that you were having was in fact at a time when Marisa Simms was in hospital having lost your child, isn't that right?

Answer: I was in phone contact with somebody at that time, that's correct.

Question: When Marisa Simms was in hospital having your child, you were attempting to make some sort of romantic liaison with another woman, isn't that right?

Answer: We lost a child at that time, and I was in contact with somebody else.

Question: Is the answer to my question 'yes'?

Answer: I have given you the answer to the question.

Question: And continuously, according to Marisa's statement, she finds out about your indiscretions and in fact has contact with the girls that you had been in contact with, isn't that right?

Answer: Yes.

Question: You were breaking Marisa Simms' heart?

Answer: I can see that, yes, I did.

Question: This was a form of emotional abuse, was it not?

Answer: This was part of our private life, so it was. This was actions that I'm not proud of, that I wish I hadn't done, but I did them, and I am sorry for that.

Question: Was it emotional abuse?

Answer: It was never intended as emotional abuse. I didn't think --

Question: Every time you did it and every time you were caught out, it caused her emotional angst and hardship?

Answer: Naturally.

Question: And you continued to do it, isn't that right?

Answer: There were two people that I was in phone contact with.

Question: And you did it in circumstances and after you had lost a child, isn't that right?

Answer: At that time, and I'm not justifying anything, and I'm not trying to lessen anything, I was under extreme pressure from work. I had -- as you point out, we had lost a baby. And there were issues surrounding members of Marisa's family.

Question: Garda Harrison, you're not the victim here, sure you're not?

Answer: I'm not -- no, no no, I'm not trying -- I'm putting context on what you are asking me.

Question: Is Marisa Simms the victim?

Answer: Marisa should never have been treated like that by me.

Question: Is Marisa Simms the victim in those circumstances?

Answer: Marisa Simms should never have been treated like that by me.

Question: Your behaviour during that time was erratic, was it not?

Answer: At that time, I wasn't the person I was previous to that and I am not the person now that I was then.

Question: Is your behaviour on occasions utterly bizarre?

Answer: I would say my behaviour wasn't what it should have been and --

Question: And would you agree with me, looking back on it, that it was utterly bizarre?

Answer: It wasn't the way I would normally act, no.

Question: But are you deeply ashamed as a human being as to how you treated your partner?

Answer: I am ashamed that I hurt Marisa, yes.

Question: Are you seeking in any way to justify the hurt and emotional distress that you caused to your partner?

Answer: No.⁸

Through 2013 in particular, Marisa Simms reported to her relatives a number of events leading up to her sister's wedding on 4 October, which resulted in them contacting the gardaí in good faith to seek help on her behalf, and which ultimately resulted in her coming to Letterkenny garda station on Sunday, 6 October 2013 and making a statement as to the wrongs which she said had been done to her by Garda Keith Harrison. Two days later, she came back for the purpose of having her phone downloaded in corroboration as to what she had said. Since her allegations were against a serving garda, a high-level meeting involving the chief superintendent of the Donegal Division took place two days later. This resulted in a referral to the child and family agency, which operates under the capitalised version of that name and also by the name TUSLA. This used to come under the ambit of the Health Service Executive, and was such when the gardaí first reported the matter, but at any subsequent time relevant to this report it was an independent agency. TUSLA responded by later interviewing Garda Keith Harrison and Marisa Simms. At that interview, Garda Keith Harrison confirmed some of the essential parts of the statement made by Marisa Simms to the gardaí, although the statement was not directly put to him as TUSLA did not have it. A home visit by a social worker was subsequently arranged. This lasted about 15 minutes. The children were introduced to the social worker as a friend of their mother's in the context of an ordinary chat. The social worker left, satisfied that the children were being well cared for and TUSLA then closed their case.

What, it might reasonably be asked, is the cause for any public disquiet?

The allegations of Garda Keith Harrison and Marisa Simms

In a letter dated 10 February 2017 to Dr Katherine Zappone, the Minister for Children and Youth Affairs, Garda Keith Harrison and Marisa Simms made extremely serious allegations about social workers and gardaí. When they later made statements to the tribunal, these were affirmed and elaborated on. That letter complained about lack of political action and blamed it on "a systemic approach" by social workers and gardaí, referred to as "State Agencies", to "undermine the credibility, good standing and reputations" of Garda Keith Harrison and Marisa Simms. In the letter it was complained that a series of illegal and corrupt events had occurred because Garda Keith Harrison "has been publically identified as a whistleblower". In fact, he complained about alleged corruption only when the events dealt with in this report were substantially completed. It was complained by them that TUSLA had engaged in "an inexcusable abuse of their position", which had caused Garda Keith Harrison and Marisa Simms "untold distress, stress and anguish." The letter implied a pattern of events occurring to Garda Keith Harrison and his domestic partner which were on a par with the treatment of Sergeant Maurice McCabe, thus making the case that the events were neither isolated nor un-designed. Indeed, in his statement to the tribunal, Garda Keith Harrison makes the claim that the way in which he was treated evokes comparison with Sergeant Maurice McCabe.

⁸ Transcript day 27 pages 96-99

This, he said, led him to the view that “the similarities are so alike it couldn’t be coincidence and considering the geographical locations of us such treatment had to come on orders from the highest level.”⁹ It is best to isolate the allegations referencing how they are set out in the letter to the Minister and in the statements to the tribunal by Garda Keith Harrison and Marisa Simms.¹⁰

1) The statement to the gardaí by Marisa Simms

While the letter incorrectly states the date on which this statement was made, it describes it as having been “coerced” out of her by improper garda action:

On the 5th of October 2013 Marisa Sims was invited to attend Letterkenny Garda Station after much pressure was put on her. During an 8 hour interview she was coerced into making a statement with a threat that if she didn’t there maybe repercussions for her and her children.

In her statement to the tribunal, dated 7 March 2017, Marisa Simms elaborated on this as follows:

I began receiving numerous calls to my mobile phone Goretta Sheridan, an Inspector in Letterkenny Garda Station. She wanted me to come in for “a chat”. I did not want to go for a chat or to speak to anyone about my private life. When I declined to go to Letterkenny Inspector Sheridan offered to send a patrol car to my sister’s house the night before the wedding to bring me in for this chat. I couldn’t understand why she was so persistent but the last thing I wanted was a Garda car arriving the night before the wedding with all my future brother in law’s family there. I felt that I was being backed into a corner and had no choice but to meet with Goretta Sheridan so reluctantly I agreed to attend. Then later Goretta Sheridan rang yet again stating that “the chief wanted an exact time and date”. I found this to be extremely pressuring on me and unusual. I agreed to meet at Letterkenny Garda Station on the 6th of October 2013 at 3pm for this chat. I just wanted peace and to be left alone. I recall ringing Keith on the evening of my sister’s wedding to see if he was ok and he told me there had been a death threat against him. I offered to come home but he said not to and stay where I was as it was safer. I went to Letterkenny Garda Station and I was taken to the Superintendent’s office. I must point out I am not aware of procedure and protocol at Garda Stations. Sgt Bridget McGowan was also present. We began with small chit chat about our children, work etc. Then the line of questioning became very intrusive, irrelevant and personal and I felt extremely uncomfortable. After a lengthy “chat” Goretta Sheridan stated we should get some things down on paper for the chief. I questioned on at least two occasions that I recall, if this was necessary and I was told to “think of my children”. I felt this was a threat that if I didn’t do as they wanted there could be adverse repercussions for my children. I did not attend here to make a statement but I felt I was left with no choice in the matter. I was exhausted having attended my sister’s wedding and I just wanted to get out of there. I didn’t get out of Letterkenny Garda Station until almost eight and a half hours later. I had no

⁹ Tribunal documents page 39

¹⁰ The letter to Minister Zappone is from page 1578, the statement of Marisa Simms to the tribunal is from page 40 and the statement of Garda Keith Harrison to the tribunal is from page 12 of the tribunal documents

break, no food apart from a cup of tea and a biscuit that I had while they were still writing stuff down. I asked to use the bathroom where Goretta Sheridan waited outside the cubicle. I think this may have been to ensure I didn't ring Keith on my mobile. I felt completely trapped and the only way out was to give them what they wanted. I cannot recall what exactly I signed such was the level of exhaustion and stress I was experiencing. I was put under extreme pressure by Goretta Sheridan and Bridget Mc Gowan. At no time did they mention any concerns over my children's wellbeing only the suggestion that if I didn't do what was being sought of me it could have a negative impact on me and my children. I stated a number of times during that time of taking the statement I questioned if this was appropriate to which Bridget Mc Gowan replied "you should think of your children". My understanding at all times was that this was for the chief superintendent's eyes only.¹¹

In his statement to the tribunal dated 1 March 2017, Garda Keith Harrison complains about relations of Marisa Simms going to the gardaí and giving a false version of events. One of the key events which led to this statement, and which is detailed in it, is a row which occurred at around 22:00 hours on 28 September 2013. He also complains of tensions in consequence of him not being invited to the wedding of her sister, which took place on 4 October 2013. This is how he puts the matter and how he claims the statement of his domestic partner came to be made:

Also at the end of September myself and my partner were in a difficult position where she was attending her sister's wedding that I wasn't invited to as her sister didn't approve of our relationship, this caused tension between us coupled with the fact we had recently lost a baby emotions were high. We had a row at the end of September over this wedding, it was a very normal argument that many couples experience, there was no violence or threat of violence just an exchange of words that resulted in Marisa deciding to stay with her sister until after the wedding as she didn't want any more tension and she would return after the wedding. As a result of Marisa going to her sisters, a complete fabrication of events was transmitted to Sergeant David Durkin, that I had been violent to Marisa and threw her and the children out. This false version of events was forwarded to Inspector Goretta Sheridan of Letterkenny a relation of Chief Superintendent Jim Sheridan. Inspector Sheridan then bombarded Marisa with phone calls to meet though Marisa didn't want to. She even offered to sent a patrol car out to her sister's house the night before the wedding at which point Marisa agreed to meet with Inspector Sheridan the day after the wedding to get her to stop calling. Marisa attended Letterkenny Garda Station as requested, she was taken to the Superintendent's office which is quite unusual, and over the course of the next eight and a half hours was pressurised and coerced into making a statement without any breaks and was told this statement was for the Chief Superintendent only. We both have since read this statement and Marisa is shocked by it as she states there are parts of it which she never said and other parts of it where what she said was manipulated to portray me in a bad way. During this time, on the 4th of October 2013 I was informed over the phone by Sergeant Tony Cornyn that he had received information from Letterkenny Garda that there had been a phone call to the 999 line and that I was going to be shot tonight.

¹¹ Tribunal documents pages 43-44

We laughed it off and both agreed this was a hoax, when I got to our home there was a patrol car there and they informed me that they would be passing around throughout the night.¹²

What should be immediately appreciated from the above narrative is that Marisa Simms accused two garda officers of having unlawfully coerced a statement from her, having first tricked her into coming to a garda station in an unlawful manner due to a threat involving the abuse of their power to disrupt her and her family's life.

2) The social work intervention

In the letter to Minister Zappone, Garda Keith Harrison and Marisa Simms complain about Superintendent Eugene McGovern completing a notification to the Health Service Executive on the abuse of the children during this row of 28 September 2013. They claim that this referral was brought to an end in consequence of a letter from social services and that the gardaí nonetheless revived it despite “no further information or referrals” being forwarded to what became TUSLA. They complain that on 3 February 2014 they received a letter from a duty social worker inviting them to a meeting. In the letter to Minister Zappone the meeting is described as following on the withdrawal of the statement to the gardaí of 6 October 2013 which had, they claimed, been made under “duress”. The meeting and later visit is then described in the letter:

Our clients attended the meeting with TUSLA who were represented by Ms. Donna McTeague and Ms. Naomi Wallace. It was accepted that this was a type of row which most couples have from time to time. Ms. McTeague was satisfied to leave the matter as it was advising no further intervention was required and that was the end of it.

However later that evening Marisa received a phone call from Ms. Donna McTeague to do a home visit explaining she had spoken to her supervisor Bridgeen Smith who stated as a result of a phone call from Gardaí she was now asking Ms. McTeague to do a home visit despite Ms. McTeague earlier having confirmed that now further action was needed ...

The manner of the intervention of TUSLA in our client's family life is a cause of concern and is by any measure an inexcusable abuse of their position. Their intervention caused our client untold distress, stress and anguish.

Another source of the accusation being made by Marisa Simms is a statement which she made to the Garda Síochána Ombudsman Commission dated 16 August 2016.¹³ And here is how this allegation is put:

I got a call from social services and Keith and I was interviewed. During the meeting, Donna McTeaghe, was very apologetic and did not know why it was referred. She said as far as she is concerned there was nothing in it. Two days later, Donna, phoned and said she is getting pressure from her superior and was going to make a house call to speak to the kids. They also phoned the school, our GP and the public nurse who was familiar with the kids. Nothing came from it. I

¹² Tribunal documents pages 25-26

¹³ Tribunal documents from page 2357

know that Donna's superior had weekly meetings with [Sergeant] Brigid McGowan.¹⁴

This accusation that the gardaí were manipulating social services is elaborated on by ascribing certain statements to Donna McTeague. This is Marisa Simms' statement to the tribunal describing the end of the visit which she and Garda Keith Harrison made to TUSLA offices on 7 February 2014:

She explained she dealt with families where the children were at immediate risk but was confused as to her role in this instance as the incident occurred over four months previously. Keith and I explained what happened was a normal row, that there was nothing untoward and was not a common thing to happen between us and that it occurred at a very stressful time for us both, which she accepted, she advised us in future if we were having a row to be mindful of the presence of the children. We explained this was an unusual thing in our home that we generally don't row and these were exceptional circumstances. Before we left Donna McTeague told us she didn't think we'd hear from her again that she would be reporting to her team leader no further action was necessary. We left with mixed emotions, relieved because that was the end of the matter, angry that we had to go through that and fearful that in future there maybe further attempts to harass and hurt our family. Later that evening I was astounded and upset when I received a call from Donna McTeague, she apologized and stated that her team leader had been contacted by the Guards and as a result she now had to do a house visit. This for me was the ultimate invasion of my family life and the greatest insult to me as a mother, as a teacher my work can involve liaisons with social workers and I am fully aware of the problems that can justify the visitation of social worker to a home and I knew our home in no way warranted such a visitation. This was extremely intimidating, upsetting and embarrassing. I asked Donna McTeague that she visit our home immediately as I didn't want this hanging over me. she stated she wasn't able to do that but would do so in the next few days. When she did visit, she apologised to me on her arrival saying she had no choice in the matter. she spoke to our children for about ten or fifteen minutes. I am to this day extremely upset and angry my children had to do this. Donna McTeague then left but before she did she spoke with me in our kitchen and assured me that would be the end of the matter but I remained sceptical. Everyday I fear receiving another letter from TUSLA or a phone call or a fictitious complaint. I am constantly worrying that if the children have a minor illness or bump it may lead to further intrusion by TUSLA.¹⁵

In his statement to the tribunal, Garda Keith Harrison elaborates on this allegation of garda interference:

We went home and later that day Donna Mc Teague rang Marisa and apologised and said she had to do a home visit, Marisa asked her to come that day as she couldn't bear with it hanging over us, Ms. Mc Teague couldn't do it that day but visited the following day. Ms. Mc Teague the next day came into our home apologising stating she didn't have any choice in the matter that her team leader had been in contact with the Guards and as a result had to do the visit. She spent around ten or fifteen minutes in our home and spoke with the children before

¹⁴ Tribunal documents pages 2358-2359

¹⁵ Tribunal documents pages 45-46

leaving again apologising but guaranteeing this was the end of it. Marisa and I have no issue with the conduct of Ms. McTeague but the invasion of our home, our private lives and our children's lives has left indelible scar on us as a family.¹⁶

In an affidavit to the High Court, sworn as part of proceedings to stop the disciplinary charges then in train against him in consequence of the abuse of Marisa Simms described in her statement to the gardaí of 6 October 2013, the affidavit being dated 19 May 2015, there is a further elaboration by Garda Keith Harrison.¹⁷ The Commissioner of An Garda Síochána was the respondent to that process. Here is what was said:

I say that it was some two weeks after ... Ms. Simms withdrew her statement ... that contact was made by the HSE. I say that the social worker that we met, Mr. Donna McTeague was bemused but she was obliged to carry out the said investigation. I say and believe that a superior of Ms McTeague's is friendly with Sergeant McGowan who requested to meet with us. I say and believe that Ms. McTeague was called upon with children who were allegedly in immediate danger but that the period of time which had elapsed from the date of the said alleged incident was some four and a half months and she was only requested to speak with your Deponent and Ms. Simms at that stage. Suggesting both to her and ourselves that there was no *bona fide* belief that the children were in danger. I say that Ms McTeague again mentioned the relationship between Sergeant McGowan and her superior, Bridgeen Smith.¹⁸

It is appropriate to summarise these allegations of Garda Keith Harrison and of Marisa Simms. They accuse the gardaí of having no cause to refer the issue of the wellbeing of the Simms children to the Health Service Executive, later TUSLA. They accuse the gardaí of having no faith in the statement of complaint made by Marisa Simms to Inspector Goretti Sheridan and Sergeant Brigid McGowan on 6 October 2013. In consequence of that knowledge of the supposed lack of genuineness as to the complaints by Marisa Simms against Garda Keith Harrison, both claim that there was no basis for a social work referral. They allege that Donna McTeague was manipulated into an abuse of her power: that she accepted a wrongful direction to invade a private home and interact with children knowing that this direction from her superior Bridgeen Smith was coerced by Sergeant Brigid McGowan. They accuse the gardaí of putting such pressure on social services and social services of acting under that pressure. They accuse Donna McTeague of admitting to them that she was carrying out an unlawful invasion of their home in visiting and of being aware that she was manipulated through her superior Bridgeen Smith into that visit. They accuse Bridgeen Smith of passing on information to them of this manipulation and of accepting that she was going along with an abuse of power.

These two points, detailed above, are the main focus of this report. If these allegations made in the most explicit terms by Garda Keith Harrison and by Marisa Simms were true, it would mean that vulnerable victims of domestic abuse could be coerced into making false statements in order to destroy a garda officer and that TUSLA could be coerced into abusing their power to enquire into the welfare of children through pressure in order to further that end. These are allegations of corruption and of abuse of a most shocking kind.

¹⁶ Tribunal documents page 28

¹⁷ Tribunal documents from page 791

¹⁸ Tribunal documents pages 797-798

In order to place the statement of Marisa Simms of 6 October 2013 in context, it is necessary to return to the nature of her relationship at that time with Garda Keith Harrison. It is also necessary to consider whether any witness before the tribunal from within the national police force had an animus against him or whether, as an alternative, any issues which he had with direction by superior officers were in consequence of legitimate concerns which they had. Specifically, allegations of bullying have been made and these are such as are possible to feed in to the other accusations.

Abuse of power is the central issue in the context of the statement of Marisa Simms of 6 October 2013. Here, the fundamental questions are, firstly, how did it come to be made? Secondly, was it coerced, as alleged, or was it taken fairly and in good faith? Thirdly, was it sufficiently credible and serious to require a referral to social services? Fourthly, to what extent did social services act independently of the gardaí, or properly and in accordance with their statutory duty, in consequence of that statement?

Garda Keith Harrison's move to Donegal

During the hearings there was much discussion, much of it completely unnecessary, as to the move of Garda Keith Harrison from Athlone to the Donegal Division. The basic fact is that he wanted to move as close as possible to Marisa Simms in Donegal. He pursued this and gave no thought to potential consequences. Paragraphs 8.3 and 8.4 of the Garda Code detail the circumstances under which a garda officer should not serve in any particular district. Clearly, the Garda Code is written on the basis of experience and with a view to ensuring that those engaged in police work will not be put in a position of conflict of interest, nor will any member of the general public be supported in any suspicion of lack of interest in any particular crime or in crime prevention in consequence of human relationships. At paragraph 8.3 the Code provides:

- (1) A member will not be permitted to serve at any Station which is within 32 kilometres of any place where:
 - (a) The member, or the member's spouse/partner, has relatives permanently residing;
 - (b) The member's spouse/partner, or other family members, or relatives, engages in any business requiring a licence or certificate, the grant of which, by a court or otherwise, may be opposed by An Garda Síochána.
- (2) A member will not be permitted to serve at any Station which lies within 32 kilometres of any place where the member's spouse/partner or any other family member is the proprietor of any business which is conducted from a shop.
- (3) Applications for exemptions from the terms of (1) and (2) above should be made to the Commissioner and should clearly set out the reasons why such exemption is sought.
- (4) For the purpose of this section, the term "relative" includes all relatives within (but not including) the degree of second cousin, other than serving members of An Garda Síochána or Defence Forces; or the spouses/partners of such members, or relatives residing in [the Dublin Metropolitan Region], or in the cities of Cork, Waterford, Limerick, Galway or Kilkenny.

The Code continues at paragraph 8.5 by requiring that the relevant "Details of the applicant's relatives and, those of the member's spouse or partner up to but not including

the relationship of second cousin shall be included in the columns provided.”¹⁹ In this instance, the relevant partner could be argued to be putative; but the entire purpose of Garda Keith Harrison moving to Donegal was to pursue that relationship. There is no other possible reason. Chief Superintendent James Sheridan, now retired, was at the relevant time, towards the end of 2010, filling in for Chief Superintendent Terry McGinn, who was on maternity leave as divisional officer. He recalled receiving a telephone call from Assistant Commissioner Fintan Fanning and being asked whether, as divisional officer for Sligo-Leitrim, he would accept Garda Keith Harrison to work under him. At the time there was a shortage of gardaí to do the important job of cash escorts and he accepted him with alacrity. Then, he said, the bulletin as to transfers and assignments came out and, looking through it, he noticed that Garda Keith Harrison had in fact been transferred to Buncrana.²⁰ On 3 February 2011, he had written to the relevant administrative section amending his choice for transfer from Galway, and nearby counties, to Donegal. In the letter he states that he had spoken to a particular garda stationed then in Dungloe who had agreed to swap with him. To that he adds that “Neither of us would be in breach of the code in relation to distance from our respective homes.”²¹ Superintendent Aidan Glacken of Athlone supported the reasons for transfer because he was “satisfied that same are genuine and of a personal family nature with welfare implications.”²²

Garda Keith Harrison then moved to Buncrana, commencing work there on 15 March 2011. Given that the manslaughter of someone from the very unit to which he had been assigned had occurred recently and that the trial was imminent as of July of that year, his lack of insight as to how his colleagues might be upset at his relationship with the killer’s sister is beyond surprising. Here is an extract from his examination by Patrick Marrinan SC for the tribunal:

Question: All right. And it wasn’t really appropriate, sure it wasn’t, that you would serve in Buncrana in circumstances where it was the very station Garda McLoughlin had served?

Answer: All I can say in relation to that is, that when I came up there, I was just Garda Keith Harrison, I integrated and I worked well up to the point of where it became known. I didn’t fully appreciate -- and that is my fault, I did not appreciate the hurt that was there. But I really wanted a chance to stay there and work there.

Question: Garda Harrison, it wasn’t appropriate that you would serve in Buncrana that time, sure it wasn’t?

Answer: Judge -- or Chairman, I am my own person, I didn’t have any hand, act or part in that. I wouldn’t have done anything to upset or -- any investigation.

Question: No, and I am not suggesting for one moment that you would. But there would be a perception from outside An Garda Síochána, perhaps, from the family of Garda McLoughlin, from members of the public who might hear, should something go wrong with the trial, that the boyfriend of the accused’s sister had access to the Garda station and to files, there are all sorts of files that could arise, isn’t that right?

Answer: Yes.

¹⁹ This was quoted from in a number of places in the transcript and was also reproduced in the tribunal documents at page 1353

²⁰ The evidence of Chief Superintendent Sheridan is to be found in day 19 of the transcript

²¹ Tribunal documents page 1307

²² Tribunal documents page 1308

Question: So what I suggested to you was that it wasn't appropriate that you could serve in Buncrana at that time?

Answer: I didn't have any other choice.

Question: Well, you didn't think that you had another choice at the time?

Answer: No.

Question: But leaving aside the fact that you felt under pressure for a whole variety of reasons that there is no need to go into, do you accept now that it wasn't appropriate that you would serve in Buncrana in the circumstances in which you found yourself there?

Answer: It wasn't ideal.

Question: It wasn't appropriate. Not ideal, wasn't appropriate full stop.

Answer: Chairman, I can only say that for my part, I shouldn't have been precluded or inhibited from working anywhere whereby the actions of someone else is not my responsibility.²³

People live in a community. It is realised by everyone who thinks about others that we are all interdependent: *Ar scáth a chéile a mhaireann na daoine*. The process of criminal trials is known to every garda to be complex and to be subject to twists and turns which may undermine a prosecution case. These may be such as to arise from infirmity in testimony, from the absence, loss of, or unavailability or failure to search for documents, from legal rulings and from the complexity of criminal law and procedure, which take several years to master. Within four months of this move into the very station and very unit where a criminal prosecution was being pursued in respect of the loss of one of their number in horrible circumstances, Garda Keith Harrison had failed to see what was wrong with the transfer but was instead asserting that somehow the wrong was against him. If, for instance, the criminal prosecution had gone wrong in some way, so that it had collapsed or a lesser charge had to be accepted, any friend or relative of the victim of this manslaughter would be entitled to wonder at his role and the nature of his relationship. The point made by counsel in this extract was therefore properly put, but even at this stage it appears that Garda Keith Harrison cannot understand it, or chooses not to.

Garda Keith Harrison did not appear to have regularly updated his superior officers in Buncrana as to either where he was living or who he was, at least part of the time, living with. This was discovered in consequence of an incident at Marisa Simms' home, which was in the Milford district. According to the report of Garda Peter Kearins, on 23 May 2011 at 21:00 hours, Garda Keith Harrison telephoned him to inform him that "herself" was "having a bit of trouble with her estranged husband".²⁴ Gardaí travelled to the scene and it suffices to record that the husband of Marisa Simms was upset and that one word may have borrowed another. No one wished to make an official complaint. It was in consequence of this incident that the relationship with the sister of the person about to be tried for, and ultimately found guilty of, the manslaughter of a garda serving in Buncrana was discovered. That led to, the tribunal is satisfied, what were genuine concerns. Garda Keith Harrison addressed the unit and apologised and then went off duty. He met the relevant divisional officer, Superintendent Kevin English, two days later. It fell to Chief Superintendent James Sheridan to meet with Garda Keith Harrison on 30 May 2011. The meeting took place in Letterkenny in the presence of Superintendent English. In respect of a number of occasions Garda Keith Harrison has accused those interacting with him of being angry, and this is one of these. If there was

²³ Transcript day 27 pages 75-76

²⁴ Tribunal documents page 1338

anger it was entirely justified. The evidence given, however, by everyone apart from Garda Keith Harrison was that the meeting was calm and businesslike. He was noted to have said that the relationship between Marisa Simms and her husband was now calm. He claims that Chief Superintendent Sheridan threatened to transfer him to a unit outside of Donegal. However, as Chief Superintendent Sheridan said, there would have to be an operational reason for this. Garda Keith Harrison accuses Chief Superintendent Sheridan of accusing him of deception. Evidence to the contrary was given. This would have been a justifiable accusation. In the end, having thought about it, Chief Superintendent Sheridan took a compassionate view and accepted the plea that the tribunal is satisfied was made by Garda Keith Harrison that he be kept within the Donegal Division. In the result, he was transferred to Donegal town. This is practically the same distance from his place of residence as Buncrana.²⁵

PULSE enquiries

In the spring of 2012, the garda authorities were not certain as to the current address of Garda Keith Harrison. It is part of the disciplined nature of policing that the addresses of members should be available. The submission on behalf of the garda authorities is that this is provided for in the Code. Whether so or not, in circumstances of emergency where perhaps there has to be a general call for personnel to assist and in circumstances where policing involves interacting with those who are well capable of threatening and carrying out threats, the address where a garda is living is a basic requirement.

On 9 February 2012, Sergeant Brigid McGowan was contacted by a social worker from the Health Service Executive, Úna Coll. Sometime in January, apparently, an anonymous letter had been received at the family welfare services in Letterkenny. The anonymous letter is a well-expressed and grammatically correct document, which indicates that a person of education wrote it. During the hearings, an issue was pursued on behalf of Garda Keith Harrison as to whether Sergeant Brigid McGowan should have kept a copy of that document. Since what was predicted in the document was trouble in the context of the arrangements of Garda Keith Harrison and Marisa Simms, it was not only reasonable but essential that the letter should be kept. This was, furthermore, the first indication that this relationship was not necessarily trouble-free. The text of the anonymous letter reads:

Dear Ms. McGettigan,

It has come to my attention that the wellbeing of [redacted reference to children of Marisa Simms] is questionable.

Their mother, Marisa Simms (nee McDermott) is having an extra-marital affair with a Garda Kieth Harrison [redacted]. She leaves and returns to the family home [redacted] on a regular basis, causing great upset to [redacted reference to family].

Their father[’s] [redacted] prime concern is to get his wife back, and is at breaking point.

My gut feeling is that while [redacted reference to husband] is caring for the children physically, and working full time, he needs help. Thankfully he has the help of his mother.

²⁵ An email in that regard sent by Chief Superintendent Sheridan that evening, tribunal documents page 1292

I would call you but I am aware that all calls are recorded. I have been advised not to leave myself open to Garda Harrison on any level, as I believe him to be a dangerous individual. I would fear, in his post, that he might obtain a recording of the call, and so therefore, I do not wish to put myself or my own family in danger.

[Redacted reference to child and what are claimed to be issues of health.]

I feel it my duty to inform you of this situation, and so let you decide what action might be taken, whether it be to inform the school, provide counselling etc. I feel that the children have suffered so much already and that maybe you are the people to help.

Yours sincerely,
Anonymous²⁶

This letter and the meeting with Úna Coll were correctly reported by Sergeant Brigid McGowan to Superintendent Eugene McGovern in Milford, the area where the relevant family resided. She then decided to carry out a PULSE check on the garda computer system to ascertain where Marisa Sims and her children might be living. This check was done in her presence on the garda computer system by the divisional clerk. It emerged that between 13 May 2008 and 13 February 2012, Garda Keith Harrison had carried out 17 checks on the PULSE system in relation to Marisa Simms. When, during the course of an examination on behalf of Garda Keith Harrison, the tribunal asked what the instructions were as to the reason for these checks, the tribunal was informed by counsel that Garda Keith Harrison had a suspicion that the garda authorities were watching him and Marisa Simms. This motivation emerged during the hearing when Garda Keith Harrison was questioned by Patrick Marrinan SC for the tribunal:

Question: You were checking to see who was checking on Ms. Simms?

Answer: On both of us. I would have checked myself as well.

Question: Well, she is an independent person, she had her own car, isn't that right?

Answer: Yes.

Question: Yeah. You used your car, she used hers.

Answer: Yes.

Question: She wasn't living with you during this period of time?

Answer: No, but people were aware we were seeing each other.

Question: You weren't living together, I asked you, you weren't?

Answer: No.

Question: Who is checking on you?

Answer: I've learnt recently that there is the ability to do what is called a confidential cover, or a confidential check, which is a check on PULSE that leaves no electronic trace.

Question: Well, look, Garda Harrison, sorry, before you give away some State secret in relation to this --

Answer: There's no State secret. It's in the --

Question: We're dealing with your state of mind in 2012, all right?

Answer: 2012 is the time, yeah.

Question: Okay. In April 2012, and in the years preceding that, when you were accessing PULSE and checking on Marisa Simms. Now, what I asked you was a

²⁶ Tribunal documents page 63

fairly benign question in relation to it: was this a reflection at the time of your obsessive nature?

Answer: I wasn't --

Question: In other words, it was something that you were doing that you shouldn't have been doing, which the chief seems to have taken the view of, there was no disciplinary matter, it wasn't blown out of proportion, you were checking on your girlfriend and you shouldn't have been doing that?

Answer: I wasn't checking on her for the purpose of checking on her. From when people became aware of our relationship, I was worried that people -- look at, that people were watching us.

Question: Who are the people?

Answer: Colleagues.

Question: Colleagues. Who were the colleagues?

Answer: Senior colleagues.

Question: Who were the senior colleagues?

Answer: I don't know specifically, but it was in my mind.

Question: Pardon?

Answer: No one specific.²⁷

It is common case that for several years, the decade from 2000 to 2010, Marisa Simms and Garda Keith Harrison had no contact with each other beyond leaving innocuous messages on a very occasional basis on social networking sites of the "I hope all is well with you" variety. Yet it emerged from the PULSE printout that there was a check by Garda Keith Harrison on Marisa Simms in 2008. This was at a time when no one in the gardaí knew anything of the relationship between Marisa Simms and Garda Keith Harrison for the simple reason that there was no relationship. The relationship came to light following the incident described on 23 May 2011. It is pointless to reproduce the questions and answers that followed this revelation but it suffices to record that the answers of Garda Keith Harrison were evasive and at times senseless. Furthermore, this checking had been done without filling in the reason for the check, as is required on the system. Huge amounts of sensitive data are kept by the garda force and this is necessary for proper police work. It has to be treated properly and accessing that data cannot be regarded as valid where the reason for access is absent on the system and where the true reason has nothing to do with police work. This was a worrying breach of discipline, which should have been treated in that way by the superior officers of Garda Keith Harrison. Instead, and out of a sense of kindness, Chief Superintendent Sheridan regarded it as a minor infraction. Even if it was a minor infraction, it should have had consequences which were not necessarily of a formal variety but which perhaps might have re-established discipline over an individual who showed a complete lack of respect for the privacy of citizens. Chief Superintendent Sheridan, however, is not to be criticised in this respect for taking a generous view and excusing an infraction in the interest of sustaining the career of Garda Keith Harrison.

Apart from the deceit involved in the evasive answers before the tribunal, a more serious conflict of fact emerged over this matter. On 24 February 2012 it was noticed while Garda Keith Harrison was serving in Donegal town that the insurance disc on his car related to a different vehicle. It is pointless to pursue this incident. The result of it, however, was that Garda Keith Harrison had to meet with Chief Superintendent Sheridan. Garda Keith Harrison alleges that the meeting took place in March 2012 and

²⁷ Transcript day 27 pages 170-172

that this was exclusively about the no insurance issue. He complains about Chief Superintendent Sheridan. He claims that Chief Superintendent Sheridan said that he regretted not sending Garda Keith Harrison further down the country and that he should have kept his head down. If Chief Superintendent Sheridan was not angry, it is a pity. It is highly likely from the character of Chief Superintendent Sheridan that if this meeting took place he dealt with matters in a firm but kindly fashion. He has, however, no recollection of the meeting. What he recalls instead is the serious matter of the abuse of the PULSE system by Garda Keith Harrison. What is bizarre is that Garda Keith Harrison claims that no such meeting ever took place when what is standing out is that his conduct merited a ticking off and more from his superior officers. The tribunal does not accept the evidence of Garda Keith Harrison that no meeting over the PULSE system abuse ever took place. It is yet another example of Garda Keith Harrison tailoring his evidence to what suits his purpose at the time.

As a matter of fact, on 24 April 2012, Chief Superintendent Sheridan met with Garda Keith Harrison and demanded an explanation as to his abuse of the PULSE system. As recorded in the contemporaneous report of Chief Superintendent Sheridan, Garda Keith Harrison “was not in a position to give any logical explanation for all of the checks he had carried out on Ms Simms on Pulse.” Since there was no formal complaint, Chief Superintendent Sheridan recorded that he made it “clear to him that it was totally unacceptable that he was conducting all of these checks ... for no apparent reason.” Chief Superintendent Sheridan took the trouble to explain the purpose and use of the PULSE system. A clear undertaking was received from Garda Keith Harrison that he would never again misuse the PULSE system.²⁸

The allegations about Donegal town

In his statement to the tribunal, Garda Keith Harrison complains extensively about the circumstances under which he was detected having an insurance disc on his car which related to another vehicle. Several conversations are attributed in his statement to Sergeant David Durkin and Sergeant Anthony Cornyn about this matter.²⁹ What is again missing in this account is any sense that Garda Keith Harrison can look at himself and his actions in an objective fashion or can consider his duty to the organisation which serves this country. On 8 May 2013, Garda Keith Harrison pleaded guilty at Manorhamilton District Court to driving without insurance in Donegal town on 24 February 2012 and was fined €300. This is an embarrassing incident. What is important about it is that the gardaí in Donegal town did not seek to cover up for a colleague but rather pursued this offence in the ordinary way. Garda Keith Harrison may well have had some problems in changing a vehicle, but that does not excuse putting an invalid insurance disc on a car to which it does not belong.

More seriously, in the tribunal documents, which were widely distributed and read, Garda Keith Harrison is bitterly critical of his immediate superior officer in Donegal town. He complains that Sergeant David Durkin mishandled this matter by not accepting his explanation and, further, that he was annoyed. Two obvious comments would occur to any sensible person. Firstly, Sergeant Durkin was entitled to be annoyed. Secondly, the plea of guilty eventually made by Garda Keith Harrison demonstrates beyond

²⁸ Tribunal documents pages 576 and 1293, and transcript day 19

²⁹ Tribunal documents pages 23-24

peradventure that despite whatever excuse he was minded to offer, it was he that was in the wrong.

Garda Keith Harrison claims that he was unhappy in Donegal town. He ascribes this to the oversight of Sergeant Durkin, saying that he would treat other gardaí differently to him and that as “the months went on there was always a hostile reception” where he was discriminated against by not being offered overtime. The tribunal is satisfied that this is nonsense. Sergeant David Durkin emerged in his testimony as a highly intelligent, careful and kindly individual. On one occasion when Garda Keith Harrison went out sick over an extended period of time, Sergeant Durkin rang him to invite him to a Christmas function, which was declined. The allegations against various gardaí that are raised in the lengthy statement of Garda Keith Harrison are clearly there for the purpose of showing that a serious level of malice built up against him and led to the entrapment of Marisa Simms into coming to Letterkenny garda station on 6 October 2013 and being coerced into making a statement against him. Garda Keith Harrison shows no insight into how hurtful the allegations that he has made are. As the tribunal proceeded with its hearings, his position would shift in accordance with what was perceived to be the drift in the evidence and the clear allegations which he was making would be left unmentioned if these did not apparently suit. One such instance was the refusal to put the allegations of bullying to Sergeant Durkin. The reality is that these had been made in writing and distributed to the parties to the tribunal, which included not only those directly affected but the superior officers of Sergeant Durkin. In the result, the tribunal insisted on putting these allegations to give Sergeant Durkin the opportunity to respond to them. This was done for two reasons: out of fairness to enable a public response from someone accused of discreditable conduct and to ascertain whether malice was building up like a head of steam against Garda Keith Harrison, as he was clearly alleging in his statement to the tribunal, coming up to the crucial events leading to the referral to the Health Service Executive and TUSLA. Sergeant Durkin responded with dignity and honesty to the position which he was put in. There was nothing to demonstrate that his character was capable of anything other than the fair and appropriate application of direction to a garda who was under his command. He was put in the unfortunate position of having Garda Keith Harrison under his command. He did absolutely nothing wrong and all of the allegations of Garda Keith Harrison are rejected.

Application to move to Letterkenny

In 2011 and going into 2012, it was difficult to say with certainty where Garda Keith Harrison was living. Insofar as he was at the same address which was the scene of the incident of 23 May 2011, that which led to the discovery of his relationship with Marisa Simms, this is, according to Chief Superintendent Sheridan, equidistant from Buncrana and Donegal town; there may be one kilometre in the difference. Nonetheless, Garda Keith Harrison complained of having to spend between €80 and €100 on fuel and travelling costs, implying that his post in Donegal town was a hardship. This is rejected. He regarded Donegal town as unsuitable for him and it may be that in his affidavit of 14 May 2014 he was telling the truth by stating that he missed “working in a busy station”.³⁰

In the autumn of 2011 he sought a transfer from Donegal town to the largest town in Donegal, namely Letterkenny. In his affidavit, this is what he says about it:

³⁰ Tribunal documents page 8

In August/September 2011, I met with Chief Superintendent McGinn with Garda Brian Touhey in Ballyshannon Garda Station where I sought a transfer to Letterkenny Garda Station on welfare grounds. The cost of travelling to Donegal Town is between €80 and €100 per week in fuel costs, which is a big portion of my weekly take home pay. I also miss working in a busy station and want to work in that environment as I had been used to previously. On this date I was told that a transfer to Letterkenny would not be viable because Martin McDermott had resided in the district and had family living there. I find this unfair and I am aware of several other members in relationships, whether it be married or cohabiting with their respective partners who hail from the district they work in.³¹

The purpose of this statement seems, again, to be in support of the accusation of Garda Keith Harrison that people were malicious towards him and that there was a general attitude which crescendoed into his view of the events of the autumn of 2013. This is not so.

In her evidence to the tribunal, Chief Superintendent Terry McGinn presented as a determined commander who took decisions, within the proper context, for the good of the 500 officers which she has commanded in the Donegal Division since 2005. Her attitude was admirable: that they were there to serve the people and that her job was to ensure that they did so properly. She is right: the gardaí are there to serve the people and that comes before any other consideration. Senior officers should be trusted to make the right decisions. There is not the slightest evidence that Chief Superintendent McGinn was capable of even contemplating any malicious action towards one of her subordinates. On this occasion, she certainly did not do any such thing. Contrary to what Garda Keith Harrison alleges, her approach towards him at the meeting, which in fact took place in November 2011, could not have been kinder. Kindness, however, can be misplaced and the Chief Superintendent had a wider duty to ensure that no trouble would break out in consequence of policing where it could be avoided. This meeting was her first knowledge of Garda Keith Harrison. The impression which she gleaned was that he seemed like a useful policeman. He presented to her with financial problems, understandable in the light of the divorce which he had just been through, and he told her about a common problem of negative equity on a house which he had invested in. She attempted to assist him by offering him a posting within a Gaeltacht region should he be able to bring his Irish language skills up to a level where he could pass the requisite examination. This would have led to a 7.5% increase in salary. She did this out of compassion for him but his only response has been to complain about her. Her concern about the potential transfer was his connection with the McDermott family, who lived within the district, Letterkenny garda station being both a divisional and district headquarters. She rightly concerned herself with both the perceptions that might arise and the difficulties with policing that could easily emerge in consequence of the background and associates of Martin McDermott. Notwithstanding the reasonableness of this position, on instructions from Garda Keith Harrison she was unkindly cross-examined, the high point of which was to suggest that while Martin McDermott had been sentenced to eight years' imprisonment for the manslaughter of Garda McLoughlin, and had in fact escaped and was living across the border for some time in Derry city, that he was as of that moment captured and imprisoned.

³¹ Tribunal documents page 8

This attitude simply demonstrates that Garda Keith Harrison feels entitled to second-guess every decision on the basis of no more than a belief that somehow he is being put down by his colleagues and his superior officers. That is not so.

The Junior Certificate exam papers

In June 2012 Marisa Simms and Garda Keith Harrison travelled to the midlands and thence to Galway in the context of her duties as a secondary school teacher and the correction of higher level Junior Certificate exam papers. It seems to have been in around this month that they began to share accommodation on a more permanent basis. This trip, in any event, was not a happy one and the experiment in living together led immediately to a serious scene. With a view to inducing Marisa Simms to live with him, Garda Harrison threatened to destroy some 200 examination scripts that she had left behind in his house at, it seems, a different address to the earlier one. In the evidence to the tribunal of Marisa Simms and of her mother Rita McDermott there was a great deal of fudging as to the reason why she went to this house to pick up the scripts. The tribunal is satisfied that the reason for that was that he either had told Marisa Simms that he had burned the exam scripts or that he was about to do so. This is utterly bizarre behaviour. Rita McDermott, in evidence to the tribunal, changed her account of this from that which she gave to the gardaí on 2 October 2013,³² to an account in her evidence in chief,³³ to simply agreeing with everything that counsel for Garda Keith Harrison put to her and completely changing the sense of everything she had said before.³⁴

The tribunal is satisfied that the correct account is that Marisa Simms came to her mother at her home and “was distraught about the papers”.³⁵ There had to be a reason for this distress and whether it was that Garda Keith Harrison had threatened Marisa Simms that the exam papers were going to be burned or going to go up in smoke, the purpose of the visit of Marisa Simms and her mother to the house where Garda Keith Harrison was essentially became one of rescuing the property of students from destruction. Rita McDermott recalled a “falling-out between the pair of them” and witnessed a conversation on the phone where “it was getting a bit hot and heavy”. She then took the phone and said, “you have to give her back the papers, I was on my way over, if you didn’t give them back I was going to call the gardaí.” This account came across as the truth.

The two of them travelled over to the house, Rita McDermott recently having had a health issue and having to use a crutch on emerging from the car. Garda Keith Harrison then came out of the house and threw the 200 exam scripts, which were in hessian bags, onto the ground. There was no reason for him to do this that accords with any notion of gentlemanly behaviour. On request, because of the crutch, he then picked them up and put them in the boot of the car. The two women departed.

The McDermott family concerns

Coming into 2013, the McDermott family were looking forward to the wedding of one of the daughters, which was due to take place on 4 October. In addition, one family

³² Tribunal documents from page 851 for the original handwritten version

³³ Transcript day 22 page 92

³⁴ Transcript day 22 page 135

³⁵ Transcript day 22 page 92

member appeared on 'Winning Streak' in the hope of "spinning the wheel" that summer. Some family members did not look benignly on Garda Keith Harrison. This concerned the breakup of Marisa Simms' marriage. Apparently they all went to Dublin for the game show.

By that stage, they had serious concerns about the behaviour of Garda Keith Harrison towards Marisa Simms. Here the situation of the gardaí arises starkly.

If a report is made to the police that someone is badly abusing another individual in the context of a domestic situation, there has to be a reaction. As Chief Superintendent Terry McGinn outlined in evidence, situations of domestic abuse can lead to murder or to serious assaults. If, in the ordinary way, reports are recorded and documents are gathered then this is proper police work and is not to be excoriated because someone feels a grudge. Furthermore, if the report of domestic abuse concerns a serving garda officer, issues as to discipline and the suitability of that person for police work immediately arise. It is therefore correct to follow up on reports. This is not victimisation. The proof of that is in the absence of response, which can lead to disaster. So much of the attitude before the tribunal of Garda Keith Harrison to reports as to his conduct, which came from other people, show him as thinking of himself as being victimised, no matter how serious his conduct was said to be. It also has to be recognised that a report is a report, and even if barely credible it requires investigation if the consequence of ignoring it may be endangering the safety of a vulnerable woman.

In this instance, the tribunal found itself deep inside the paradoxes of human behaviour where two people are attracted to each other but one is prepared to put up with utterly unacceptable behaviour or to return to that person after they have been abused. The tribunal has no wisdom as to why this occurs. Experience of violence within the home, as is reported in court cases, demonstrate many instances that go beyond forgiveness of wrong done and instead indicate that the attraction of people can lead to inexplicable fortitude. According to the evidence of great experience before the tribunal, which came among others from Inspector Goretti Sheridan, Sergeant Brigid McGowan, Sergeant Paul Wallace and Chief Superintendent Terry McGinn, people return to one another after serious violence, an abused spouse can make a criminal complaint in detail only to withdraw it later or to refuse to appear in court to back up a charge of assault, and an abused woman is in particular danger if she is with her abuser when he discovers that she has made a statement to police.³⁶ Asked during the course of tribunal hearings what advice a garda officer can give to somebody who is in an on-off relationship, driven away by violence or abuse but, nonetheless, returning to that person, Sergeant Paul Wallace had this to say:

You know, it's a very, very difficult one. That whole area of domestic dispute and domestic violence, there are the protections that you're well aware of in legislation, but to get a quick fix is probably get out and stay out. It's like dealing with a fire, and ring 999, you know. There's nothing -- as I would often say to young guards going into domestic violence, I always think -- I've 32 years done in the guards now, and I often think that the most dangerous call that you will ever do is a domestic violence dispute and the most dangerous room in the house is the kitchen, because you have ample ammunition, be it a frying pan, boiling

³⁶ Evidence of Sergeant McGowan, day 25, pages 34-35, evidence of Inspector Sheridan, day 23, page 86, evidence of Sergeant Wallace, day 35, pages 161-2, and evidence of Chief Superintendent McGinn, day 33, pages 48, 59 and 60, and day 34, pages 210-11

water, knives, you know. And it's something you would never think in the ordinary day-to-day. But to go back to your question, it's very difficult, and it's amazing how the people go back to that type of -- I suppose, children and everybody has the -- you know, there's different factors at work there, but it's very, very dangerous -- very, very difficult, I should say. In relation to domestic violence incidents, there was a few times that I was asked or tasked to go, and I actually would have said I was one of -- I'd be one of the worst people to go there because I wouldn't have an up-to-date knowledge on the laws because I don't be in court now too much. My role is more specialist, and it's really all about infrastructure, it's going to somebody. And if you go to someone, go a lady or a male, who is in a disruptive relationship, who are in a rented house, they don't have the means nor the financial means to really target-harden, which is basically the heavy end of the type of work I do. ... And the threats go right across society, whether it's drug-related or financially related, or whatever. ... we have a women's refuge in Letterkenny.³⁷

These are wise words. They show the depth of charity, of concern and of expertise that exists in our national police force. Furthermore, his attitude is one that was shared by all those who had the task of dealing with the regrettable domestic situation that must shortly be described.

It is possible, of course, to mistrust hearsay. The argument can be mounted that what is in a statement may be that somebody witnessed what someone is recording as having been told to them and is therefore untrustworthy. The niceties of the hearsay rule, however, go no way towards the protection of vulnerable people. The exceptions to the hearsay rule involve the recognition of particular situations as overcoming the infirmity of reported information. It has recently been recognised that the exceptions to the hearsay rule are not closed.³⁸ But the tribunal is not bound by the hearsay rule, and will act on reports which are deemed to be reliable; the hearsay rule does not touch the rule as to original evidence. Where the fact that a complaint is made is, of itself, important, then even in the strictest interpretation of the law of evidence this fact is admissible. Thereby the reaction of people to a report may be analysed in the context of the events which it set off. What the tribunal did not hear, and what would be shocking, is that where credible reports were made as to domestic abuse the gardaí did nothing. In all that follows, on the contrary, the tribunal is completely satisfied that the police response was appropriate.

During what follows, there were numerous and credible reports as to the conduct of Garda Keith Harrison. These had to be acted upon. The only report to police which is claimed now not to be entirely credible is the statement made by Marisa Simms to the gardaí in Letterkenny on 6 October 2013. The creditworthiness that might attach to that report has to be seen, however, in the light of the alarming reports of an akin nature which preceded it.

³⁷ Transcript day 35 pages 161-162

³⁸ *Ulster Bank v O'Brien* [2015] IESC 96. In criminal cases, business records are admissible under the Criminal Evidence Act 1992; bizarrely this was never extended to actual business cases. The probable reason for that is that in practice judges will not allow senseless objections on a hearsay ground to interfere with civil cases.

1 April 2013

On Sunday night, 31 March 2013, through to the following morning, 1 April, Letterkenny garda station was operating as one of the 24-hour stations in the division. Marisa Simms was living with Garda Keith Harrison in the Milford district. Among the stranger questions asked on behalf of Garda Keith Harrison of the tribunal was as to whether, if Marisa Simms was in trouble, she might not visit her neighbours. Apparently they lived in a cluster of a handful of houses out in the countryside. People normally put up a good face and do not share their troubles with others. Nor is it normal for people to call on one another as neighbours late at night or in the early hours of the morning. It is clear that something happened to make Marisa Simms flee Garda Keith Harrison that night. What is more important is what was reported. Her mother, Rita McDermott, was enjoying a break in County Mayo and was not available to drive out and pick her up. Ms Simms left the house she was sharing with Garda Keith Harrison in her pyjamas.

Garda Ian Oates was on duty that morning and at 02:20 hours received a call from William Bogle, an uncle of Marisa Simms. When asked, he declined to spell his name, querying whether Garda Oates had ever gone to school. He had. The report was somewhat garbled in consequence but, taking into account Garda Oates' evidence and the original documents, what was thought to be conveyed was that Marisa Simms had been "kicked out of the house by Keith Harrison" who was described as following her down the road and "flashing the lights at her." Garda Oates responded by making enquiries to try and ascertain the relevant names and addresses. At 03:05 hours, he noted a report that Marisa Simms was safe and with a friend called Jim Quinn in a car at an unknown location. At 03:20 hours he noted a call from Rita McDermott that Marisa Simms was safe in a relative's house elsewhere in Donegal. At 03:23 hours he spoke to Jim Quinn, a family friend, and took a note of what he said as follows "I took her home, neither of them want to make a complaint. It's a wild waste of time". At 03:30 hours, he dispatched a patrol car to the relevant address but the house was quiet and was in darkness. A question asked on behalf of Garda Keith Harrison was why no one had called into the house. It could be said that the gardaí were queried for doing something and were excoriated for not doing the opposite. The entire approach by Garda Keith Harrison was utterly illogical. Garda Oates then rang Jim Quinn and it happened that he was with Marisa Simms and passed the phone to her. She did not wish to make a complaint and did not wish to speak to the gardaí that night. She indicated a contact number and a willingness to speak over the phone later.³⁹ While Jim Quinn does genuine work in suicide prevention and has proved himself a friend to many in Donegal, he gave the impression of not completely recollecting that night. For instance, it was put to him by counsel for Marisa Simms that he called to the house twice that night. This would mean that he had travelled the 25 minutes or so from Letterkenny on two occasions, meaning that the row had lasted for well over an hour. He denied two visits. Other aspects of his recollection were shaky, but not because of any attempt to obfuscate.

Garda Tina Fowley also spoke to William Bogle when he and his daughter Kerry Bogle and another man called to the public office at Letterkenny garda station. They reported that they had been driving around Letterkenny looking for Marisa Simms "as she was in a car been pursued by her partner." No details of the vehicles were available. For some reason William Bogle thought that Garda Fowley ought to know Garda Keith Harrison

³⁹ Tribunal documents pages 1888-1892. Garda Oates gave evidence on day 20 and Garda Fowley on day 22

but she explained that he was stationed in Donegal town.⁴⁰ She took proper notes and, similar to Garda Oates and the other officers, performed her duties in an exemplary manner.

A comment here is appropriate. It is not normal for a young lady in a domestic situation with a young man to be wandering around outside her house very late at night in her pyjamas.⁴¹ Nor is it indicative of a healthy relationship that someone is either forced out of their cohabitation, or feels they have to leave, because of disharmony.

In terms of the following sequence of events, on 17 May 2013, Garda Keith Harrison had a car crash. The other driver ended up with a broken neck. The matter was referred to the Garda Síochána Ombudsman Commission and no finding of fault was made against Garda Keith Harrison. This resulted in him being on sick leave up to the following October. Thus up to the time when Marisa Simms made her statement complaining of criminal conduct against Garda Keith Harrison to gardaí on 6 October 2013, he had worked only one day. In June 2013 Marisa Simms suffered the physical and mental anguish of an ectopic pregnancy and Garda Keith Harrison was certainly also upset by this very sad event.

21 August 2013

Sometime in the early morning of Wednesday 21 August 2013, Rita McDermott again picked up Marisa Simms in her pyjamas from the house where she was living with Garda Keith Harrison. As reported to the gardaí, this was another serious incident of domestic violence. On Saturday night, 24 August 2013, Sergeant David Durkin received a telephone call at 21:42 hours from Rita McDermott. Whereas in her evidence at the tribunal Rita McDermott has represented this telephone call as being one of concern for Garda Keith Harrison in the hope of getting him some assistance for his drinking problems and for any other strains, the reality is that the matter was noted correctly by Sergeant Durkin and that this was, like the reports on 1 April 2013, a mother complaining about the abuse of her daughter by a garda officer with whom she happened to be living.⁴² In all, there were three telephone calls of some length between Sergeant Durkin and the mother of Marisa Simms. These occurred on 24 August 2013, 24 September 2013 and 1 October 2013.⁴³

The tribunal's assessment is that Sergeant Durkin is a genuine person of considerable intelligence and ability. It would be contrary to his character to edit out of a complaint about the conduct of another person any expressed view as to how the matter was to be dealt with. What matters here is the terms of the report. There is not a word in it about any kind of concern for Garda Keith Harrison and that is because Rita McDermott did not express any concern beyond the miserable time which her daughter was experiencing in cohabiting with him. Here is his first report:

Mrs. McDermott is known to Sergeant Durkin from when he was stationed in [redacted town name] previously. Rita McDermott expressed concerns for her daughter Merissa McDermott Simms who is in a long-term relationship with Keith Harrison. It is understood that Merissa has two children who reside with

⁴⁰ Tribunal documents page 2227

⁴¹ Testimony of Chief Superintendent Terry McGinn, day 33, page 35

⁴² Tribunal documents pages 667-670

⁴³ Tribunal documents pages 672-675 and 682

her and Keith Harrison as she is separated from her husband. Rita McDermott informed Sergeant Durkin that on the previous Tuesday Night/Wednesday morning the 21st of August 2013 at approximately 3am she received a call from her daughter who was in a distressed state. She indicated that Keith Harrison had thrown Merisa out of their shared accommodation in [location redacted] and she had to leave [her residence] and collect her daughter who on her arrival in [location redacted] was standing outside the house in her pyjamas. It was reported that the children were not in the house at the time as they were staying with their father overnight. Rita McDermott further indicated that this was the third serious incident in the past three months of a similar nature one of which was reported to the Gardaí in Letterkenny by a family member (not Merissa). Rita McDermott made other allegations relating to infidelity.

Sergeant Durkin informed Rita McDermott that a complaint would have to be made formally by Merissa relating to the three incidents she mentioned in order for an investigation to commence. Sergeant Durkin further explained that if there were any concerns relating to the children being exposed to these incidents they must be reported on. Advice was given to Rita McDermott relating to the option of going to the District Court with a view to making an application under the Domestic Violence Act 1996. Rita McDermott stressed that her daughter was not aware that she was phoning the Gardaí and wanted the matter to be strictly confidential. Sergeant Durkin stated that if matters were formally notified to them an investigation would commence. It was also expressed that if any concerns were suspected relating to the children's exposure to violence Gardaí were duty bound to intervene. Rita McDermott again requested that her conversation be treated with a great degree of confidentiality.⁴⁴

It was then noted where the couple was living. The tribunal is satisfied that nothing in the cross examination on behalf of Garda Keith Harrison in any way undermined the accuracy of this report or put forward any other credible scenario. In texts downloaded from Marisa Simms this row is referenced as of 21 August 2013. This describes an incident where Marisa Simms was woken up from her sleep and forced out of bed. The texts from Marisa Simms to Garda Keith Harrison refer to "u roaring and shouting" to "How u are gonna destroy her wedding, destroy me.. destroy everything or anyone who has annoyed u.. that I should go and kill someone like my brother." She also directly accuses him of saying that her family "are criminals" and that "u not getting promotion is my fault".⁴⁵

The ladies' party in Westport

In preparation for the wedding which was due to take place on Friday 4 October 2013, Marisa Simms, at this point not on good terms with Garda Keith Harrison, travelled together with members of her family to a ladies' pre-wedding gathering in a hotel in Westport, County Mayo on a stay which encompassed two nights, the Friday and Saturday 30/31 August. In her eventual statement to the gardaí of 6 October 2013, Marisa Simms complained that Garda Harrison's behaviour on the occasion was an intrusion into her life. She claimed that it was part of the ongoing harassment of her and that she was not left alone, the object being, according to her, "to stop me from going or having a nice weekend away."⁴⁶ Rita McDermott complained to Sergeant Durkin that

⁴⁴ Tribunal documents pages 667-668

⁴⁵ Tribunal documents page 1823

⁴⁶ Tribunal documents page 86, being page 17 of the statement of Marisa Simms

Garda Keith Harrison had abused his position by ringing up the relevant hotel and asking for stills and video footage of the event. This complaint took place by telephone on 1 October 2013, when Sergeant Durkin telephoned Rita McDermott, in consequence of having obtained the correct telephone number from Sergeant Anthony Cornyn. His report on the matter reads:

During the course of one of my conversations with Rita McDermott she told me that Garda Harrison had made contact with a hotel in Westport seeking CCTV footage. This was the hotel where [family name redacted] had held her hen weekend which Marissa McDermott Simms attended. Rita McDermott led me to believe that the request was made by Garda Harrison as a member of An Garda Síochána.⁴⁷

It turned out not to be correct that Garda Keith Harrison had made this request in an official capacity. His account of matters to the tribunal was that he was seeking to establish a good relationship with the family member who was getting married through seeking stills of the dancing and merriment which occurred over the course of the weekend and that his purpose was to put together a montage to be shown in the form of a projection during the speeches at the wedding. Alternatively, that it was a gift in the form of an album or “novelty box” to incorporate photographs through the years up to and including these most recent ones.⁴⁸ This was, however, done at a time when Marisa Simms was making it clear to him that she wanted him out of her life.

It is improbable that the explanation given by Garda Keith Harrison has any credibility. Rather, it is highly likely in the context of the unhappy relationship which existed between them at the time that this was another extension of his prying into her life of which the PULSE enquiries is a more obvious part.

Another complaint by Marisa Simms’ mother

The tribunal has also been furnished by the gardaí with a mobile phone video which Marisa Simms recorded on Thursday 21 August 2013 at the house which she shared with Garda Keith Harrison. While this video is short, it should be seen in context. This is not a family video of, for instance, a happy or a funny event and it is not the kind of recording that would be made in any normal circumstances. Shown on the video is a through-the-back-window shot of Garda Keith Harrison standing with his arms folded and apparently blocking the car from which it is taken. It forms part of the overall picture of deep domestic unhappiness in the context of a return by Marisa Simms to that house, probably for the purpose of picking up belongings.

There was another phone call by Rita McDermott to Sergeant Durkin on 24 September 2013. Again, there is no credible evidence that this was anything other than a mother contacting the superior of her daughter’s cohabitee out of keen concern for her. It had nothing to do with any desire to seek help for Garda Keith Harrison. In her testimony, Rita McDermott said:

Well, why I -- I called to the station in Donegal Town but I wasn’t aware that David Durkin was the sergeant there, so I asked to speak to his superior, thinking

⁴⁷ Tribunal documents from page 634

⁴⁸ Transcript day 27 page 100 and 111-112

maybe he may have a word with Keith. Obviously there was something annoying him when he was behaving like this because it's not his character, like.⁴⁹

That evidence cannot be accepted. That now-stated position is completely at odds with the clear alarm for the welfare of her daughter that animated Rita McDermott as a mother, and which she expressed at that time. The report of the telephone call as recorded by Sergeant Durkin was as follows:

At 11:30am on this date the 24th of September 2013 Rita McDermott again contacted Sergeant Durkin at Donegal Town regarding the behaviour of Garda Keith Harrison of Donegal Town Garda Station while off duty.

Rita McDermott once again emphasised the trouble her family are having with Keith Harrison. It was reported to Sergeant Durkin that Mr. Harrison has been asked to leave the house he is cohabitating with Merissa McDermott Simms by her. Mr. Harrison has not left. Rita McDermott indicated that on Mr. Harrison's return to work on Tuesday the 2nd of October 2013 it is the intention of her daughter assisted by her to remove Keith Harrison's belongings when he has left for work to get him to leave the accommodation. This process may cause some sort of incident if it proceeds and may become an issue for Gardai at Milford the address is [address redacted]. Rita McDermott further indicated that a second daughter [name redacted] is getting married on the 4th of October 2013 and the reception is taking place in [location redacted]. Rita McDermott has stated that her daughter [name redacted] has received correspondence from Keith Harrison indicating that he is going to cause some sort of disturbance at the reception as he is not invited to the wedding. This also may have implications for Gardaí at [town name redacted].

Sergeant Durkin again advised Rita McDermott that a complaint would have to be made formally by Merissa relating to incidents mentioned in order for an investigation to commence.

It was further impressed upon her that at this point if her other daughter [name redacted] had received correspondence which would amount to some threat or of an unwanted/harassing nature she could now make a complaint to Gardaí. Unfortunately Rita McDermott got cut off before the conversation was completed and the mobile number she gave does not appear to be the correct one.⁵⁰

Sergeant Durkin then made efforts to try and find the correct mobile number of Rita McDermott. He eventually succeeded in this on 1 October 2013. He then contacted her. His report of this date, however, ended alarmingly:

Prior to Sergeant Durkin's conversation with Rita McDermott on the 24th of September 2013 he was speaking to Garda Keith Harrison on matter relating to his sick absence. Garda Harrison indicated he would be returning to work at Donegal Town on Tuesday the 2nd of October 2013. He indicated that on his return he would be applying for annual leave on Friday the 4th of October 2013 as he had a wedding to attend.

⁴⁹ Transcript day 22 page 96

⁵⁰ Tribunal documents pages 672-673

The appointment of Inspector Goretti Sheridan

These reports were being forwarded up the line of garda command to Superintendent Michael Finan, district officer of Ballyshannon, and thence to Chief Superintendent Terry McGinn in divisional headquarters in Letterkenny. There was every reason to be alarmed. There would have been every reason to be highly critical had there been no garda reaction. On 5 September 2013, Chief Superintendent Terry McGinn wrote to the relevant superintendent in Letterkenny seeking details of “any incidents involving Garda Harrison attaching and referencing reports of Sergeant Durkin and Superintendent Finan, re call one from Rita McDermott.”⁵¹ What this amounted to was not, as counsel for Garda Keith Harrison asserted during the hearing, some sinister intervention for an improper purpose, but was patently an appropriate response by the divisional commander to an unfolding situation. What would be extraordinary in the context of the mounting concerns would be any failure to respond. Just because a senior officer seeks reports does not mean that a sinister plan is afoot. Rather, the responsibilities of command encompass not only the care and development of subordinates, but checking into whether there might be a developing situation that could require disciplinary intervention. Having heard Chief Superintendent Terry McGinn giving evidence over three days it is obvious that she is a woman of nurturing character, highly proud of the organisation which she serves, and determined to do the best for it and for the people which it polices. Her intelligence, diligence and application to duty are admirable.

On 11 September 2013, Inspector David Kelly requested information from Sergeant Aidan Doherty about the incident involving the Bogles. On 23 September, he forwarded a report to Chief Superintendent McGinn about that incident of 1 April 2013.⁵² Thereafter on 24 September, Chief Superintendent McGinn received a report of the second of the two Rita McDermott telephone calls to Sergeant David Durkin. She could not but have been alarmed. Her evidence to the tribunal as to how she then reacted was as follows:

I think it was on the 27th September I had received a phone call from -- early in the morning from Superintendent McGovern, and he'd be advising me that was I aware that there were a number of reports circulating in terms of Garda Keith Harrison and a potential conflict at a wedding and that there was issues, serious issues, you know, raising in terms of Garda Harrison. At that time I told him that I just wasn't fully briefed on it but there were a few reports coming across my desk and if he would allow me an opportunity to study those reports, that I would refer back to him. And I know it was later that day, having received the reports, that I actually contact Superintendent McGovern to say that I was going to appoint Inspector Goretti Sheridan to look at the different incidents. So I think what I had at that stage was, I had the two Durkin reports, which included the Bogle incident, and I had -- I'm just trying to think what other reports I had at that stage. I had a report about the difficulties that were going to happen at the wedding. So at that stage [another family member coming into Letterkenny Garda Station to complain about Garda Keith Harrison on 30 September] hadn't happened at that stage where I was going to appoint [Inspector] Goretti Sheridan...

⁵¹ Transcript day 34 page 58

⁵² Transcript day 34 from page 58

Well, firstly, the reason that I appointed Inspector Goretta Sheridan is that, first, she was new into the division, she was an inspector, I knew she was very skillful in this area in terms of her previous experience of working with victims of domestic violence, she had worked in relation to a number of areas. I also had appointed her as -- in each of the Garda divisions, we have an inspector who overlooks domestic violence incidents and how they investigate it, and she was the one in the Donegal division who was appointed to do that particular work. And I would have known from -- I had never met her prior to her coming into the division, but I know from my meetings with her that she was very competent and capable and she was very skillful in this area and I felt that she was the best person within the division to carry out these investigations.⁵³

Inspector Goretta Sheridan was a very good choice to conduct enquiries. The impression which the tribunal gleaned of her from her two days in the witness box was that everything that Superintendent McGinn said about her was true.

28 September 2013

Saturday 28 September 2013 saw yet another row between Garda Keith Harrison and Marisa Simms. According to the statement which she made to the gardaí on 6 October 2013, this was a very serious row with extremely bad behaviour by him amounting to criminal conduct; but what she described was not conduct which was out of kilter with prior incidents. It is not the task of the tribunal to enquire into the domestic circumstances of this couple beyond what is necessary for the resolution of the extremely serious allegations which they have made. What is of more significance, and key to the work of the tribunal, is the manner in which the gardaí were engaged by her family and as to whether the garda reaction was that of a diligent and fair-minded response to genuine concerns or constituted, instead, an abuse of public office. It is abundantly clear that there was no garda abuse: that every step which they took in consequence of the reports coming to them pursued their obligation to protect the community and in particular the vulnerable person of Marisa Simms.

The garda reaction to reported domestic abuse

At 14:00 hours on 30 September 2013, Garda Brendan Mahon was stationed in Letterkenny garda station at the public desk when a family member of Marisa Simms came in to report concerns about her. Garda Mahon took notes and his evidence to the tribunal was highly competent.⁵⁴ He had no advance warning that she was going to call and given the nature of the concerns which she had he humanely brought the family member into a private room beside the public office. His account was as follows:

Question: [The family member] outlined concerns... in relation to Keith Harrison, who [the person] said was in a relationship with [Marisa Simms] is that correct? ...

Answer: [The person] had spoke with [Marisa Simms], and ...she had a verbal argument with Garda Keith Harrison at her house, and during this argument ... he shouted at her and threatened her by saying that ... he was going to burn her and her child and bury her, or words to that effect. ... [The family member] was

⁵³ Transcript day 33 from page 30

⁵⁴ Tribunal documents page 1040

not present when the incident occurred but [Marisa Simms] had told [the family member] about it. ... she may not want to make a statement.⁵⁵

The actual notes taken by Garda Mahon records “burn her in the house with [the children] and bury her” and includes the name of a child.⁵⁶ When the family member left Garda Mahon telephoned her at around 16:00 hours and it was made clear that the family member did not want Marisa Simms to know that a complaint had been made to the gardaí. It seems that a conversation between the two of them had taken place and that the purpose of this was to persuade Marisa Simms to go to a garda station and to make a complaint about Garda Keith Harrison. That approach was in no way inspired by the gardaí, nor in the ordinary course of events would it need to be, since the concern of the family was heightened even beyond the incidents which had been witnessed by them or had been reported to them up to that point. It is clear that what was happening was that the McDermott family was urging an end to this apparently hideous domestic situation and understandably wanted action to be taken against Garda Keith Harrison. The nature of that action was not simply that someone should chat to him or that he should be given some kind of counselling or guidance, any such suggestion in the context of the behaviour described is untenable, but rather that he should be prosecuted. Garda Mahon drew up a formal report of the conversations, one in person and one by telephone, and he furnished this to Sergeant James Collins, his unit commander. When this matter was reported to Chief Superintendent Terry McGinn, she took it extremely seriously. Counsel for Marisa Simms had put to her that it was never “really apprehended that there was a serious threat?”, to which she replied:

I totally disagree with you. I think it is very disingenuous. An Garda Síochána already had to deal with a case in Donegal [of a murder victim] where her husband burnt her and is now serving time for it. So in my mind it was a very real threat and it needed to be investigated. So ... I took the threat ... on face value, I wanted it to be investigated and I think all my decisions were measured in that regard.⁵⁷

The relevant report went up the line through Inspector David Kelly and through to the office of Chief Superintendent Terry McGinn in divisional headquarters in Letterkenny. Because of the intervention of some rest days for Inspector Goretti Sheridan, Chief Superintendent McGinn had not spoken to her yet. A further report from Sergeant James Collins had also been prepared in consequence of him speaking to the family member and attempting to ascertain as to whether a formal statement might be made upon which the gardaí could possibly act. Much was made by counsel for Garda Keith Harrison of a view which is expressed in the report by Sergeant Collins that the wedding was more important to the McDermotts than Marisa Simms, but this was a view which he was entitled to take in the context of what he knew of the area and the unfortunate history, in particular, which had drawn garda attention to the family in the context of the criminal history of Martin McDermott. He had attempted to pursue a situation in which on one reasonable view Marisa Simms might be in peril. That is the view which Chief Superintendent McGinn took, and rightly so. On the afternoon of Wednesday 2 October 2013, Chief Superintendent McGinn encountered Sergeant Collins at around 16:00 hours in the station yard in Letterkenny. She was alarmed at what he told her.⁵⁸ What she was

⁵⁵ Transcript day 21 pages 109-112

⁵⁶ Tribunal documents page 1043

⁵⁷ Transcript day 34 page 241

⁵⁸ Transcript day 34 pages 90-91

told was that there had been “an incident and burning and burying was mentioned” and, as she said, “I was alarmed when I heard that, you know, that a member of An Garda Síochána” might act in that way. She then went and found Inspector Goretta Sheridan.

According to Garda Keith Harrison, the gardaí should not have taken any action on foot of the steadily rising tide of complaints. In particular, the view expressed by Sergeant Collins that this was being used by the McDermott family to prevent “any scene or situation” at the forthcoming wedding should have put an end to matters. That is far from a reasonable opinion. The actions of Inspector Goretta Sheridan which followed were to set aside scepticism because a child might be at risk. As she put it:

And to be honest, regardless of what Sergeant Collins thought, if there was a risk or a threat to any child, regardless of what any guard thought I would see it as a threat to the child as opposed to what any guard thought about it.⁵⁹

Inspector Sheridan and Sergeant Collins then went to speak to Rita McDermott. This is exactly what they ought to have done. She was visiting her mother and claimed, in evidence before the tribunal, to have been startled, and therefore disarmed, when the police appeared and asked to speak to her. Her evidence is not accepted. This visit was exactly what she wanted. Sergeant Collins already knew Rita McDermott from his time serving in the area and he introduced Inspector Sheridan. The account of these officers of the interview is accepted. Rita McDermott, giving evidence to the tribunal, proved to be a malleable witness who when it became clear that it was necessary for her to agree with leading questions from counsel for Garda Keith Harrison altered her account in a series of monosyllabic ‘yes’ answers to what was put to her. While clearly a very concerned mother who at all times acted in the best interests of her daughter, as she said, matters had moved on and Garda Keith Harrison had now been accepted by her and she had come to see his good qualities. Certainly, she was not seeing these at that time. The statement was freely taken in her home, she was “very personable and chatty”, tea was served, handwritten notes were taken and every page of the statement was signed by her, subject to three corrections. Inspector Sheridan was asked as to whether she “spoke freely”, to which she answered:

Absolutely, there was -- there was no barriers there. She was very willing to talk and she was, to me, a mother who had genuine concerns about her daughter’s well-being and the well-being of her grandchildren and she did perceive Garda Harrison as behaving in an inappropriate manner towards her daughter and that, I suppose, things had escalated in the last while and that these threats to her grandchildren were probably the tip of the iceberg. ... [The possibility of Marisa Simms making a statement] was discussed with her, that obviously most of what we were hearing ... was hearsay and obviously to carry out any investigation we would need to get the cooperation of Marisa to make her statement, and she undertook that she would contact Marisa. I gave her my mobile number and I said if she wants she can contact me on that number, and that was [with the intention] ... to furnish that number to Marisa and give her the opportunity to contact me if she wished to make a statement about Garda Harrison.⁶⁰

The tribunal is satisfied that the evidence of Inspector Goretta Sheridan and Sergeant James Collins on this matter is correct. It was noticeable that, apart from feeling an

⁵⁹ Transcript day 23 page 14

⁶⁰ Transcript day 23 pages 19-20

obligation to support Garda Keith Harrison, Rita McDermott made very little effort to say anything against either of these officers. Furthermore, at the end of testimony she effectively conceded that once she had made a statement it was appropriate for the gardaí to take action: she would have blamed them if they had not.⁶¹

The statement of Rita McDermott

Rita McDermott was also aware that strong drink “can do a lot -- you know, can do a lot. It can change people.” Asked how it had affected Garda Keith Harrison at that time, she described it as having changed him into a “different person”.⁶² This is the text of the statement made by Rita McDermott on that evening:

My name is Rita McDermott & I live at the above address. I have [description of family members follows]. Marissa was married to [name and address redacted] and they are now separated. She is going out with Keith Harrison for the past two years. He is from Galway. I know Keith for maybe 15 years. Marissa met Keith in university in University College Galway when she studied Arts there. She finished college there about 10 years ago when she was 22 years. I'm not sure what Keith was studying but it was not the same as Marissa. While Keith and Marissa were in college they got engaged to be married. There was no date set. I think it was just first love. They broke up again after college. I think Keith tracked her down again on Facebook. He was looking for her and I'm not sure what happened but they got together again. He wasn't in Donegal at that time, I think he was in Athlone. He transferred to Donegal then because of Marissa. Marissa had been in a relationship with [name redacted] at the time and they had just [reference to family circumstances redacted]. She started seeing Keith soon after this. I thought she was going through the baby blues. He told her that he was waiting 18 months for her to leave her husband and he gave her an ultimatum to leave or he was gone. I think she moved in with Keith before last Christmas, December 2012. She lived with Keith in a house [address redacted] and then they moved to [address redacted]. I always thought he was controlling but she never said anything. I remember one day he wouldn't let her buy clothes for the children in Benetton. He never let her buy anything for the children. She has [reference to children redacted]. They are not Keith's children. He drinks a fair bit. He could drink a bottle of brandy while you'd blink. He would be full of aul chat when he had drink in him. I didn't think he was drunk, well able to drink. He never said anything to Marissa in front of me. He would know better. Within a three month period I drove from [name of town redacted] to her house in [location redacted] to pick her up as Keith had thrown her out. This happened around May/June 2013. Anytime I picked her up she was distraught. I remember the last time she said she had been sleeping when she woke up and heard Keith shouting in her face. The children were never there when he put her out. I brought her back here to [name of town redacted]. Marissa never told me everything. She didn't want to worry me. She wouldn't want to be telling me in case I got annoyed. Marissa is very quiet. The last time she was outside the house but was actually sitting in the car when I arrived. I remember another time Marissa was marking exam papers. She travelled to Athlone with Keith and collected secondary school exam papers to correct as she is a teacher. Then Keith

⁶¹ Transcript day 22 pages 223-224

⁶² Transcript day 22 page 223

wouldn't give her the papers one day. He put her out and said he had burned them. Marissa was really worried and so I went to the house to her. We threatened to call the Guards if she didn't get her papers and then he threw them out. [Reference to family member redacted] is getting married on Friday next (4th Oct 2013) in [name of place redacted]. Keith knows he is not invited. [A family member is friendly with] Marissa's ex partner and he is invited to the wedding. This is killing Keith. Marissa has said that Keith threatened to burn her and the children but that she wasn't to hold off until after [family member's] wedding to tell the Guards. She is scared for her life. He said something about burning her and the children and something about take a good look at them children an you will only see them at weekends. She told me that there one of the day. I don't remember what day. She said it happened last Friday [reference to family illness]. That's when he threatened her. I'd be really worried about Marissa and the children. I'm not sure of the address in [location redacted] but [description redacted]. Marissa and Keith's name are on the lease but Marissa paid for the rent. She pays for everything. In July 2013 I won money in the lotto. Marissa found out at that time that Keith was seeing a girl from [place name redacted]. She called this girl on the phone and found out he had been seeing her for over a year. I think she must have got her number on his phone. So really since July she's been in the house with Keith but not as a couple. They do their own thing. After he threatened her last Friday she left the house and went to live with [family member name and address redacted]. She said she is afraid to go back home to her own house. He is constantly calling her and texting her. I want to say the times she was thrown out of the house [unreadable] in May/June this year she was outside in her pyjamas and she was cold. I think when he has drink she gets more afraid. He has threatened her as she wouldn't give him the pin number for her phone. This statement has been read over to me and I have been invited to make any changes or additions. It is correct.⁶³

This statement is a reliable narrative from a concerned mother. The gardaí were duty bound to take action on foot of it.

The complaint by Marisa Simms of 6 October 2013

Central to the allegations made by Garda Keith Harrison and Marisa Simms is that the gardaí had, at some unspecified point, made a decision to unfairly treat them. They claim that Marisa Simms never had a desire to visit Letterkenny garda station and make a statement against Garda Keith Harrison, but instead that she was induced to come there through pressure and through deception and that when she was there, Inspector Goretta Sheridan and Sergeant Brigid McGowan distorted her words, or put words into her mouth, or changed her literal words with a view to making Garda Keith Harrison seem bad, or worse than he was. All of this was done, so they assert, for the purpose of undermining their family life. This is nonsense.

Contrary to this assertion, it is clear on the evidence before the tribunal that it was family members who were concerned as to the situation of Marisa Simms, and for the very best of reasons. They considered her to be in peril, they told gardaí that Garda Keith Harrison had a serious drink problem and that in consequence he was capable of violence. These points of view are reasonable.

⁶³ Tribunal documents from page 1982

Marisa Simms made a lengthy and frank statement of complaint about Garda Keith Harrison to Inspector Goretta Sheridan and Sergeant Brigid McGowan in Letterkenny garda station superintendent's office on Sunday 6 October 2013, starting at around 15:00 hours and ending at about 23:30 hours.

Marisa Simms complains that she was bombarded by telephone calls from Inspector Goretta Sheridan inducing her to come to Letterkenny garda station in order to make a statement against Garda Keith Harrison. There is a regrettable tendency to exaggerate in her evidence. The phone traffic between these two witnesses has been analysed. This shows no such pattern. On 2 October 2013, Inspector Sheridan rang Marisa Simms on one occasion. On the next day she rang again at about 14:00 hours. She then texted her saying: "Marissa. Goretta Sheridan here in letterkenny Garda station Will you give me a call please." Marisa Simms then rang Inspector Sheridan about 20 minutes later and they spoke on the phone for in excess of seven minutes. Clearly something was being checked because there followed a missed call between them but then Marisa Simms phoned Inspector Sheridan and they spoke for another two minutes. Clearly something had transpired concerning the ladies' party because about three hours later Inspector Sheridan texted: "Marissa. when your free will u txt me the date u were in Westport and the name of the hotel for hen. This goretta Sheridan".⁶⁴ On 5 October 2013 there was a missed call from Inspector Sheridan to Marisa Simms. Marisa Simms then phoned back Inspector Sheridan and they spoke very briefly. Inspector Sheridan then phoned Marisa Simms immediately and they spoke for about seven minutes.

Unfortunately, this is one of the many examples of an exaggerated or plainly incorrect statement made by Marisa Simms only to be refuted by forensic evidence. It is clear that Marisa Simms came into contact with the gardaí in circumstances where she had a choice, that no threats were made to her or to the smooth running of the wedding, but rather that she was engaging on a human level, woman to woman, with those whom she then saw as being capable of helping her. Any allegations to the contrary are completely rejected.

In her statement to the tribunal Marisa Simms describes feeling trapped in Letterkenny garda station, of going to the toilet and having a garda officer standing immediately outside the cubicle, of being given no rest and of being dissuaded from leaving.⁶⁵ In giving evidence, the allegation as to the toilet break was altered and the nature of the complaints made seem to change in accordance with mood. Her evidence was not inherently reliable. It was a shocking experience to see two well-meaning and dutiful officers cross-examined over four days in total as to allegations which were obviously untrue. There is a plain reality to this situation which is that Marisa Simms came to Letterkenny garda station of her own free will and was well treated while there. No doubt, over the course of an interview which lasted about eight hours she was tired, or even exhausted, but that was not due to ill-treatment but rather to the recounting of the bad aspects of a relationship with Garda Keith Harrison over the previous two years. The two interviewing officers brought her to the superintendent's office for comfort, and because it was available on that occasion, and did everything to ensure that the atmosphere was conducive to comfort and to truth. The evidence of Sergeant Brigid McGowan and Inspector Goretta Sheridan is accepted in full. Apart from the obvious infirmities in the evidence of Marisa Simms, as mentioned in the introduction to this

⁶⁴ Tribunal documents page 1587

⁶⁵ Tribunal documents from page 43

report, this is one of the few cases where unshakable corroboration provides further evidence and undermines the allegations totally.

This extract from the evidence of Inspector Goretta Sheridan gives a fair description of the nature of the interview, its atmosphere, and the motivation of Marisa Simms:

... it did take -- like, I suppose eight-and-a-half hours sounds like an extremely long time. We did break for a cup of tea here and there. There is a lot of talking done at the start, I suppose, to get to things and, I suppose, put things in chronological order. But it was a case of, like I knew from Marisa that she was exhausted and this was tough going for her, she was upset at times, and she says some of the things she couldn't even -- you know, when she was talking about it out loud, she was shocked by it. And I kind of felt, I suppose, like one of your victims where to reach that cathartic stage where they start talking and everything comes out and it's their first time actually talking about their experiences, which we would encounter on a regular basis in the guards, where, if you have a victim of domestic violence or, let's say, a rape victim, that it's their first time actually talking about the whole scenario to somebody.⁶⁶

Marisa Simms complained that she was required to talk about "intimate matters" and that she felt ashamed having to go over the details of her relationship. This is incorrect. No intimate matters are mentioned in her very lengthy statement, which amounts to 24 pages of single-spaced typescript. It is certainly the case that she details the infidelities of Garda Keith Harrison but in no instance are the bounds of decorum broken. Insofar as personal matters are spoken of this is obviously part of the cathartic process whereby she was disburdening herself of deeply unpleasant experiences.⁶⁷ The entire statement is a classic example of that.

Consideration was given to the reproduction of the entire statement in this report but it is better only to refer to the relevant portions of it. The statement itself makes shocking reading. It could fairly be said by anyone in command that a policeman who is capable of this conduct could not be trusted to properly interact with the public. It is now appropriate to refer to the basic details of the statement with selected quotations.

Marisa Simms begins the statement by describing the background of her own family and how she first met Keith Harrison. She describes how, after they broke off their engagement while at college, she was contacted by him again in August 2010 and an arrangement was made to meet because of duties which brought them to the same place in the Midlands. When Garda Keith Harrison came to Donegal their relationship revived notwithstanding her subsisting marriage. She describes him as pressurising her to move in with him. The conduct portrayed is that of an obsessive person who, as she says, "constantly texted and phoned me on my mobile phone."⁶⁸ On one occasion subsequent to this they both went away to stay in a hotel. They then went to stay near his home place and while there he became drunk in a pub and claimed to her that "his family didn't know the hell I put him through. He was so angry and roaring. He was shouting so badly that he was attracting attention."⁶⁹ She describes his sister as intervening. Central to the

⁶⁶ Transcript day 23 from page 78

⁶⁷ Cathartic comes from *καθάρσις*, which in ancient Greek means cleansing or purging oneself, a word used in modern Greek as the adjective *καθαρός*, meaning pure or clean

⁶⁸ Tribunal documents page 72

⁶⁹ Tribunal documents page 74

problems which Marisa Simms describes Garda Keith Harrison as having is an alcohol problem. The behaviour described is certainly lacking in sobriety. By page six of the statement Ms Simms is describing the incident whereby the exam papers were kept by him and the threat as she puts it was that “It was more or less come and live with me or your papers will be up in smoke.”⁷⁰ Descriptions of his infidelities follow, including with a woman with whom Ms Simms met and who claimed to have been engaged to him. While this is entirely beside the point it is not the kind of thing that would be mentioned by a woman unless she were upset by it and felt that she needed to unburden herself. She also mentions that any family members or friends who did not seem to approve of him were required by him to be ostracised by her. Other infidelities are also mentioned. The background to the particularly unpleasant incident of 1 April 2013 is described in detail in the context of irrational jealousy by Garda Keith Harrison. The arrival of Jim Quinn is described, as are other incidents, which are otherwise corroborated by reports by family members to the gardaí whereby she had to leave the house. The statement also mentions the devastating event of her having to undergo emergency surgery for an ectopic pregnancy. This ultimately required a hospital stay of about five days. A row in August 2013 is described in detail, as is the intervention of her mother. Any reference to the ladies’ weekend in Westport has already been detailed. It would seem that with the build-up to the wedding and the fact that Garda Keith Harrison was not being invited, his mood worsened. While in the witness box, Garda Keith Harrison actually admitted waking up Marisa Simms and pulling a duvet cover off her in the course of one of the rows. It is now necessary to refer to a key passage from page 20 of the typed statement that references the row of 28 September 2013 when she had been for a time in a family member’s house:

I eventually spoke to him and I knew by his speech on the phone that he had been drinking. He seemed to be in good enough form and asked me to bring home curry chips which I did. I arrived home sometime after 9pm and gave him the chips. His mood totally changed and as I was getting [reference to children redacted] ready for bed he started at me. He said don’t think a curry chip will make up for me being gone all evening. He started on in front of the [children] and I felt completely drained and just wanted him to stop. I kept trying to put [particular child’s] top on and he said no he wouldn’t stop, they know what’s going on meaning the [children]. This is the first time that he even started going on in front of them. He kept making comments and ranting on about my sister saying “Who does she think she is, I will take her down a peg or two”, and also said “I am going to bury her and you”. He kept repeating this and I told him to stop but it was as if he went into a total rant. He then said “I am going to burn you” and at that point I could see [reference to particular child redacted] eyes filling up and [reference to child redacted] was getting upset, so at that stage I put their coats over their pyjamas and told them we were going to the car. I remember [child’s name redacted] was asking me if I was okay after having him threatening to burn me and it appeared to me that [reference to child redacted] didn’t know whether to go to the car or not as [reference to child redacted] was worried whether I would follow her out or not. I brought the [children] to the car and strapped them in. At that point I knew once I left I wouldn’t be back to the house but I went back in to get [particular child’s] school uniform out of the tumble dryer. When I lifted it out he wouldn’t let me back into the kitchen from the utility room again. He prevented me from going back in by physically

⁷⁰ Tribunal documents page 75

grabbing my wrist. I was really frightened of him at this stage as he was in such a rage it was if he was not in control of himself and he was crazy. I asked had he been drinking and he told me he had only two glasses of wine but I knew by him he had way more than that. He caught me by my right wrist and I remember when I was driving home it was sore as a result of him grabbing me. While he was preventing me from going into kitchen to get out of the house, he told me to take a good look at the [children] because he said I would only see them at weekend visits by the time he would be finished with me. At that point I was thinking will I get out of the house at all and I was worried that he was in such a rage that he would hurt me. he kept ranting on at me and if I made to take a step forward he would try and block me by putting his hands out in whatever direction I attempted to go in. I felt completely intimidated and frightened at this stage – I would say he kept me in the house for at least 2 to 3 minutes even though it felt much longer. I eventually got out to the car and drove to my [family member's residence and address redacted]. I was so upset and flustered at what happened that I took a wrong turn. I rang [family member] before I left [location redacted] and I was crying on the phone. She offered to come and get me but I managed to make my own way there. I remember [child's name redacted] asked me why I was crying and I told her I had something in my eye and tried to pull myself together. While on the way to [address redacted], Keith kept trying to call me but I didn't take the calls. Since then I have spoken to him on a couple of occasions.⁷¹

It is worth noting that during the taking of this statement, Garda Keith Harrison was continually ringing Marisa Simms on her mobile phone. Telephone analysis shows eight text messages and two missed mobile calls from him but there were also several other calls from the landline in his residence.

On returning home to a family member's house, there were communications between Marisa Simms and Inspector Sheridan. These do not show that Marisa Simms had just undergone any kind of coerced experience. At shortly after midnight, Marisa Simms texts Inspector Sheridan "Hi.. just here now. .Thanks for everything" and the reply is "No problem. Sorry it took soo long". On the next day, Inspector Sheridan texts Marisa Simms "Hi Marissa. Just wondering did you tell Keith u made a complaint? He mentioned to a guard bout u looking for safety order etc. Jus wondering" Marisa Simms replies "Hi.. he told me he was talking to dave kelly this morning and that he thought he was off with him on the phone and asked if i had been talking to anyone. . I asked him to stop calling or I would get a safety order.. he calling me crying all day.. seems in a bad way. ." There follow thereafter more friendly messages about him and Inspector Sheridan points out that perhaps "he prob needs help...".⁷²

While in the garda station Marisa Simms agreed that her mobile phone should be forensically downloaded. No sane person could imagine that this was anything other than for the purpose of a garda investigation. Furthermore, in signing the relevant consents, and realising that she had to return home in order to borrow another phone so that she would be covered for mobile phone communications, and leave her telephone that habitually accompanied her into the garda station, she had plenty of time to cool off in the event that she had been subject to any form of coercion. It is clear that she was not. On 8 October 2013 she handed in her mobile phone to Letterkenny garda station. It is

⁷¹ Tribunal documents pages 89-90

⁷² Tribunal documents pages 1587-1588

from this that the video of Garda Keith Harrison blocking the car with his arms folded comes but it is also from this that evidence completely undermining complaints she has made against two responsible and hard-working officers emerges.

The corroboration of that statement

The allegations against two diligent garda officers by Marisa Simms are exploded by the relevant text communications between her and Garda Keith Harrison in the aftermath of his conduct on 28 September 2013. These make shocking reading.⁷³ The downloading was done through the voluntary surrender by Marisa Simms of her mobile phone to gardaí in Letterkenny on 8 October 2013. Later, the stored messages were analysed. It is best to simply quote the texts as comment becomes superfluous to reading these. Garda Keith Harrison's answer to these texts was to make the ridiculous allegation that Marisa Simms had made these up to hurt him; that she was lying. As to why he had not replied denying what are precisely the same allegations that she had made against him in her statement to the gardaí, he said that these things are best talked over. This is utter nonsense.

For concision, the tribunal reverts to given names. The exchange of texts follows.

Marisa to Keith: Disproportionate! Really.. So which part of all u said should I have taken then? Let me see.. u said u would burn me, u would bury me and [family member name redacted], u would not be on ur own cause I was no catch anyway.. With my list of faults.. Including my goudger brother..a father who has disowned me..u would destroy me..get the kids taken from me.. And go to the newspapers... told [name of child redacted] mother has no home and can't provide for [name of child redacted]. U have crossed the line once to often of late with her constant cheating and lying but last night was the tipping point for me.. goodbye (06:57:46, 29 September)

Keith to Marisa: On way to ur mums (09:01:55, 29 September)

Two missed calls from Keith to Marisa (09:13:02 and 09:17:22, 29 September)

Keith to Marisa: X x (09:27:07, 29 September)

Three missed calls from Keith to Marisa (09:30:32, 09:30:59, 10:08:35, 29 September)

Keith to Marisa: marisa? (10:02:58, 29 September)

Missed call from Keith to Marisa (10:53:39, 29 September)

Keith to Marisa: Why are you doing this to me (11:08:59, 29 September)

Keith to Marisa: I love you and the [reference to children redacted] always know that x x x (11:14:11, 29 September)

Marisa to Keith: U r so full of shit, u make me sick.. Love! U don't know the meaning of the word.. U have threatened me for the last time... (11:39:45, 29 September)

Keith to Marisa: What? (11:44:42, 29 September)

Keith to Marisa: We over? (11:45:47, 29 September)

Keith to Marisa: You are finishing with me? (11:50:02, 29 September)

Keith to Marisa: How many times have you flipped out at me and the [reference to children redacted] in the last week or so and shouted at us? Seriously? (12:24:22, 29 September)

Two missed calls from Keith to Marisa (15:34:42, 15:35:09, 29 September)

⁷³ Tribunal documents from page 1827

Keith to Marisa: Marisa are you coming home? Please x (15:36:18, 29 September)
Missed call from Keith to Marisa (15:38:20, 29 September)
Keith to Marisa: Can you please tell me what is going on, its torture being left like this. Please marisa, are you done with us? (15:48:32, 29 September)
Keith to Marisa: I love you marisa, and I always will xoxo (18:57:23, 29 September)
Keith to Marisa: Miss you xxxx night xx (23:45:44, 29 September)
Missed call from Keith to Marisa (12:08:52, 30 September)
Keith to Marisa: Do you even care how i am, if i am ok? Am the last thing on ur mind. You are putting me through hell. Havent slept, keep thinkn u be home. How sad am i. (07:36:32, 30 September)
Keith to Marisa: Thought as much, do you realise how much this is hurting, you wouldn't care if I wasn't around. (07:41:01, 30 September)
Marisa to Keith: Rent is paid (07:54:24, 30 September)
Keith to Marisa: Can you please let me know you are ok, miss you so much, please marisa x (08:07:03, 30 September)
Marisa to Keith: Nothing to talk about.. keith u threatened to burn me. .. bury me and [name of family member redacted]. Get my kids taken from me... what type of person would do that. . I am done. . Completely (08:24:40, 30 September)
Keith to Marisa: Please marisa I am heartbroken. I love you x (08:35:39, 30 September)
Keith to Marisa: Marisa please xxxx (09:08:51, 30 September)
Keith to Marisa: I love you x (09:47:23, 30 September)
Keith to Marisa: Are you coming home today with [reference to children redacted]????? (09:48:18, 30 September)
Keith to Marisa: Marisa this is torture, please (09:48:59, 30 September)
Keith to Marisa: Mum asking for you (10:01:25, 30 September)
Keith to Marisa: Did you do a test???? I really miss you (10:56:27, 30 September)
Keith to Marisa: Marisa you could have at least let me know if you were coming home, and you could have told me whether you did a test or not. Have you any idea how I am feeling and have been since all the hassle [family member name redacted]'s wedding is causing. I would leave you like this and you know that. Told you I love you, I miss you and you just ignore me. X (17:07:56, 30 September)
Marisa to Keith: Are for real? I have no idea how YOU are feeling! Keith.. U threatened to burn me! A threat u seem to be blatantly ignoring. I am not exposing the [reference to children redacted] to that.. What kind of person would want to come between myself and the [reference to children reacted].. just crazy the things u said to me.. U think cause u tell me u love me.. I will come running.. after all, I am no catch anyway.. ur parting words to me.. U horrible person... leave me alone.. We are done. (17:17:48, 30 September)
Keith to Marisa: Marisa, please I didn't start the other night you did. I really miss you. You must know what we have is rare and special. This bloody wedding has come between us as I said it would. I do love you, and care a lot for you and the [reference to children redacted] and you know that. (18:15:30, 30 September)
Marisa to Keith: U did start it the other night keith.. I brought u curry chips and u scowled at me not to think a bag of chips would make up for me being late... (18:18:04, 30 September)
Keith to Marisa: Marisa I was joking and you flipped and said right [reference to children reacted] we are leaving I am not listening to this. And well you know it, again running away, (18:21:57, 30 September)

Marisa to Keith: U can't even apologise.. U complete ass... I will never forgive u for ur cruel comments (18:23:35, 30 September)

Keith to Marisa: Keep calling me names, you totally over reacted, I mean completely and you said plenty too (18:26:19, 30 September)

Marisa to Keith: Am done.. Couldn't get over [name of woman referencing infidelity redacted] anyway.. Then parship few weeks ago.. goodbye (18:37:30, 30 September)

Keith to Marisa: Fair enough, not arguing, but when all the gaff with the wedding has died down and [reference to family members' relationships redacted] you will wish we were still together, because we have had far more good than bad, we have a love that not many have, and you will wish at the wedding I was there beaming with pride at you. For all my faults I have a good heart and it's yours but if you don't want that well there is little I can do. I do love you, I always have and always will, I always thought you were amazing evening when you hurt me, I could only see the good in you. I am in bits, truely broken marisa. You promised me happiness if I moved up. Well thanks, hope you are happy. Am sure you are getting great advice where you are, but you will see in time that I do really love you. I will always miss you, and my heart will always be yours, sure it always was. Take care, xxx (18:46:21, 30 September)

Keith to Marisa: And I am sorry, for everything xxx enjoy the wedding, am sure it will be fulfilling (18:46:30, 30 September)

Keith to Marisa: You are, always have been and always will be my perfect fit, in every way, am in bits, so lonely, and I miss you xxx (18:56:06, 30 September)

Marisa to Keith: Enjoy the wedding am sure it will be fulfilling! Right.. U haven't a clue (19:16:53, 30 September)

Marisa to Keith: I am fine by the way (19:17:02, 30 September)

Keith to Marisa: Marisa course I am wondering how you are, asked you yesterday eve and today. But sure you have your mum rallying you on, and your dad and [reference to family member redacted] will be on side no that you have dumped me to the side, sure you have what you wanted now. Me on the other hand have no body. Thanks (19:48:02, 30 September)

...

Marisa to Keith: There is no we.. and even if I was [reference to being pregnant] I would rather do it on my own than with someone who treats me like shit... not only did u threaten me u threatened to have the [reference to children] taken from me.. I don't want u.. or anyone who would treat me like that.. u haven't a clue the two days I have put in (22:00:43, 30 September)

Ms Simms was questioned about these text messages by counsel for the tribunal, Kathleen Leader:

Question: So if we go to your phone records from the 29th of September, we see just before 7:00 in the morning, you send a text to Keith, it's recorded and it's at page 1827 of the materials and what you say in that text, it will come up in front of you now: *"Disproportionate! Really. So which part of all you said should I have taken then? Let me see. You said you would burn me, you would bury me and [family member name redacted], you would not be on your own because I was no catch anyway with all my list of faults, including my"* --

And I don't mean this to be disrespectful towards your family.

"-- including my gouger brother, a father who has disowned me. You would destroy me. Get the kids taken from me and to go to the newspapers. Told child one mother has no home and can't

provide for child one. You have crossed the line once too often of late and with her constant lying but last night was the tipping point for me. Goodbye."

Sorry:

"-- provide for child one. You have crossed the line once too often of late with your constant cheating and lying but last night was the tipping point for me. Goodbye."

So it would appear from this that the first thing you say to Garda Harrison in a text the day after you've driven from your house to [a family member's] house with the two children in the car, is that he said -- *"you said you would burn me, you would bury me and [family member name redacted], you wouldn't be on your own because I was no catch anyway and you would get the kids taken from me."*

So you see, that would be seen to be very like, almost to the word, what you told the guards a few days later on the 4th October.

Answer: Yeah, I see that. If I can just put that into context. When -- I was in my sister's house and when I relayed the message to her she convinced me that this was a threat in order to get to the Garda station. And Garda Harrison had hurt me a lot emotionally and I knew these words. I suppose, immaturity I knew that if I said this -- I knew there was never a genuine threat but I suppose I did it immaturity maybe to hurt him.

Question: Well, you didn't just say it once.

Answer: No, I know I didn't.

Question: Okay. So you sent that text to Keith at three minutes to seven in the morning on the morning of the 29th, and Keith tries to get in touch with you constantly -- well, on a fairly regular basis, until 11:14. We have a text from Keith to Marisa at 9:01. He doesn't deny that in any way of the communications. We have a missed call from Keith at 9:13, a missed call from Keith at 9:17, a text from Keith with two kisses at 9:27, a missed call from Keith at 9:30, a missed call from Keith at 9:30, a missed called from Keith at 10:08, a text from Keith to Marisa at 10:02, *"Marisa?"*, a missed called from Keith at 10:53, a text from Keith to Marisa at 11:08 *"Why are you doing this to me?"*, a text from Keith to Marisa at 11:14 *"I love you and the children, always know that xxx"* and then you reply. So the second communication from you to Keith, the first one you repeat the terms of the burning and burying, you say at 11:39: *"You are so full of S-H-I-T, you make me sick. Love! You don't know the meaning of the word, you have threatened me for the last time."* So again, the second text you sent to him that day you are accusing him of threatening you and that is for the last time?

Answer: Yeah.

Question: So again, it would appear from reading that that Mr. Harrison had threatened you the night before?

Answer: Yeah, but he never threatened to burn me or bury me.

Question: Did he threaten you?

Answer: He made a threat about the children that I would only see them at the weekends.

Question: Only see them at the weekends?

Answer: Yeah.

Question: Okay. And then we have a text from Keith to you at 11:44 *"What?"*, a text from Keith to Marisa at 11:45 *"We over?"*, a text from Keith to Marisa at 11:50 *"You finishing with me?"* And then a text from Keith to Marisa at 12:24 saying: *"How many times have you flipped out at me and the children in the last week or so and shouted at us? Seriously?"* A missed call from Keith at 15:34, a missed call from 15:35, a text from Keith to Marisa at 15:36, *"Marisa are you coming home, please?"*, a missed call from Keith at 15:38, a text from Keith to Marisa *"Can you please tell me*

what's going on? It's torture being left like this. Please, Marisa, are you done with us?" A text from Keith to Marisa at 18:57, *"I love you, Marisa. I always will xoxo"*. A text from Keith to Marisa at 23:45 *"Miss you xxx, night xx"*. A missed call from Keith to Marisa at 12:08... A text from Keith to Marisa at 7:36 on the 30th, *"Do you even care how I am, if I am okay? Am the last thing on your mind. You are putting me through hell. Haven't slept. Keep thinking you will be home. How sad I am."* A text from Keith to Marisa, 07:41, *"Thought as much, do you realise how much this is hurting, you wouldn't care if I wasn't around"*. And the only thing you have to say in relation to all of that, and that is on the morning of the 30th is *"The rent is paid"*. So it would appear that you were finished at that stage, he was staying in the house and you had paid the rent?
Answer: Yeah.

Question: And then we have a text from Keith to Marisa at 8:07, is *"Can you please let me know you are okay? Miss you so much. Please Marisa x."* And then we have, on 30th, at 8:24, a text from you to Keith: *"Nothing to talk about. Keith, you threatened to burn me, bury me and [family member name redacted], get my kids taken from me, what type of person would do that? I am done completely."* And then we have a series of texts from Keith to Marisa, essentially -- on the same vein as the previous texts that he has sent to you, and they go from 08:35 to 17:07 and then you text him at 17:17, questioning him: *"Are you for real? I have no idea how you are feeling, Keith. You threatened to burn me, a threat you seem to be blatantly ignoring. I am not exposing the children to that. What kind of person would want to come between myself and the children? Just crazy the things you said to me. You think because you tell me you love me I will come running after all, I am no catch anyway, your parting words to me. You horrible person, leave me alone. We are done."*

Do you see that?

Answer: Yes.

Question: So, as I said, the Tribunal is here to establish the truth of what happened and the truth of what was told to the guards on the night in question?

Answer: Yeah.

Question: But it would appear, Ms. Simms, anyway person who had no prior knowledge or no prior impression of yourself and Garda Harrison or Garda Harrison on his own, that he did threaten you, to burn you and [a family member], to bury you, to take the children from you, that you did tell that to the guards because that's what he told you, and you were happy to pursue the matter at least in the days following making the statements to the guard and you were happy to give them your phone to download all of this information so that it couldn't be denied later on if it came to it; do you understand what I am saying?

Answer: I understand what you are saying. I can totally see how it might look like that. As I said I was in my sister's house and when I had relayed the message to her that he threatened to bury her, she had convinced me that when he said you are going to get burnt that he actually meant he was going to burn me. But if you -- if she thought that was a serious threat or and indeed if I had thought that was a serious threat, why would I have went to the house on my own and why did she give me her car to go and collect stuff for her honeymoon?

Question: So, you are saying your sister convinced you that this had happened am --

Answer: Not convinced me when it had happened when I relayed the -- when I had relayed it to her, she had said to me, Marisa, that is a threat, he has threatened you.

Question: And that was on the 30th September?

Answer: Yes.

Question: And four days later, were you still convinced that is what happened when you went into the Garda station?

Answer: Sorry, say that again.

Question: On the 4th of October were you still convinced?

Answer: 4th of October, I think that was the wedding.

Question: I beg your pardon, the 6th, six days later?

Answer: No, I knew it was never a genuine threat. Exactly what he said was, if I didn't stop trying to please everyone I was going to get burnt. He did use the words bury and burn, but never in that -- he never meant he was going to incinerate me. If I had felt that was a genuine threat I never would have went back there before the wedding on my own.

Question: Okay. You see, the guards took the statement on the 4th, they didn't know what was on your -- on the 6th, I beg your pardon. They didn't get your phone until the 8th?

Answer: Yeah.

Question: They couldn't have known that what was on your phone would directly reflect what you had told them on the statement, if you are saying the statement is incorrect?

Answer: I understand.

Question: Do you understand?

Answer: I understand, yes.

Question: They couldn't have known that.

Answer: Yeah.⁷⁴

Cross examination can be, as in this instance, a powerful instrument in ascertaining the truth. Only one conclusion is possible. Nothing was coerced from Marisa Simms during her interview by Inspector Goretti Sheridan and Sergeant Brigid McGowan. She spoke freely then. They treated her with kindness. Their reputations have been unjustly attacked. In texting Garda Keith Harrison, the allegations in that statement to the gardaí are cast in a format and referenced in facts that were freely repeated in Letterkenny garda station. In evidence to the tribunal, Marisa Simms several times changed the nature of her testimony from that which appeared in her statement to the tribunal. Garda Keith Harrison is in the same position. What was presented in her statement to the gardaí as a threat to kill and burn her and other family members is now expected to be believed as a reference to social burning. In another significant respect the evidence has changed so that Marisa Simms now claims that as soon as any reference was made to her family, she took the children out to the car and that in consequence they were not there for what then happened. That is more than hard to believe.

It inexorably follows that the tribunal and any reasonable person must conclude that the allegations of Marisa Simms against Inspector Sheridan and Sergeant McGowan are false.

The wedding of the McDermott family member passed off in calm. Garda Keith Harrison was not present. There were phone calls between him and Marisa Simms during this event but the tribunal is entitled to deal only with material which is significant to the resolution of the core allegations made by them.

On two separate days, an anonymous informant rang the garda communications centre in Letterkenny. The import of what this person had to say was that a conversation had

⁷⁴ Transcript day 26 from page 74

been overheard in a particular licensed premises that indicated there was a plan to murder Garda Keith Harrison. One of the allegations made by Garda Harrison during the hearing was that this was not taken seriously enough, though curiously in his statement to the tribunal he complains of garda activity near his residence. This was designed to protect him. He regards it apparently as some form of harassment or intimidation. This is nonsense. The reality is that threats were reported. Because of the vulnerability of gardaí in the community, the threats were taken seriously and action was taken. The matter continued over several months to be discussed at high level. Garda Keith Harrison was put on indoor duties. He was less vulnerable in that position. Because of the connection of the McDermott family to crime, the cell of Martin McDermott, Marisa Simms' brother who was imprisoned for the manslaughter of a garda, was searched. A mobile phone was apparently found. In the context of the potential threat, this action was appropriate. There is nothing to suggest, however, that he was the source of the threat. That does not mean that enquiries should not have been made.

In responding to an operative threat, a measure of appreciation should be afforded to a garda response. It is easy to say: too much was done, this was harassment. It is equally facile to allege: nothing was done, the threatened person's life was lightly regarded. What the tribunal is looking for here is evidence that the garda authorities acted maliciously. There is no such evidence. To the contrary, at all times, the gardaí who have given evidence as to their interactions with Garda Keith Harrison and Marisa Simms are found to be concerned and diligent individuals who did their best and acted in good faith. They did not create this situation. The responsibility for that is clear.

Garda action: the allegations

In consequence of the death threats against Garda Keith Harrison, Sergeant Fergus McGroary asked the divisional crime prevention officer, Sergeant Paul Wallace, to visit. He attended at Garda Harrison's residence at around 18:40 hours on 7 October 2013. A visit had already been made by Sergeant McGroary to make Garda Keith Harrison aware of the threat. He had supplied Garda Harrison with a document that gave guidelines on "improving your safety against a criminal threat".⁷⁵ Chief Superintendent Terry McGinn had also telephoned Sergeant Wallace to speak of her concern. She asked that he deal with the matter urgently.

The encounter with Garda Keith Harrison was more in the nature of a confessional exchange than a professional interaction.⁷⁶ They sat and had coffee. Garda Keith Harrison spoke about his relationship with Marisa Simms. He claimed that she had taken out a safety order against him. He claimed that on that particular day they had telephone contact some 21 times. He reported Marisa Simms as saying to him that during the course of the interview in Letterkenny garda station, Chief Superintendent Terry McGinn had walked in while the statement was being written down and intoned: "No guards to treat woman like that I'll see to that." He claimed that Marisa Simms had asked him when he was going to work again and that when he replied "Friday" she had told him "you are going to be arrested." Garda Keith Harrison then claimed that the difficulties in the relationship stemmed from misunderstanding as to his use of particular words, namely "badly burnt".⁷⁷ The position he adopted towards Sergeant Wallace was that he

⁷⁵ Tribunal documents page 1065

⁷⁶ Transcript day 35 from page 116

⁷⁷ Tribunal documents page 1067

had made some reference to burning but that this was a colloquialism: that anything which he had said to Marisa Simms was to the effect that in having to choose between him and her family, if she didn't make a clear choice of him, she would be burnt. This is the choice of words which both he and Marisa Simms have decided on in giving evidence before the tribunal. This is a clear attempt to minimise the nature of their row. It is rejected. The conversation with Sergeant Wallace continued into mention of another relationship, financial difficulties, and his previous marriage breakup. During all of this Garda Keith Harrison appeared very agitated.⁷⁸ A walk-through survey of the house was carried out, with a view to "hardening the target", advice was given as to significant deficiencies in his security arrangements and as to how these might be improved. That was the business end of the interaction. The visit ended at approximately 20:00 hours. Insofar as any importance can be attached to the facts of this encounter, they demonstrate an ongoing battle of wills between Garda Keith Harrison and Marisa Simms. He claims that she told him about Chief Superintendent Terry McGinn coming into the interview room, something which never happened according to her and according to the evidence of Inspector Sheridan and Sergeant McGowan, while she claimed before the tribunal, through instructions, that she had never said any such thing. He claims that she made a reference to going to the District Court and obtaining some kind of a protection order against him, but she denies saying that.

An examination of her Internet access over her mobile phone during the days following this dreadful row of 28 September 2013 shows her taking an interest in the dismissal of gardaí for domestic violence and in the forms of court protection that may be available to an unfairly treated spouse.⁷⁹

Upon the taking of a statement such as that given by Marisa Simms, reports are made up the line to senior officers and the appropriate action is decided upon. Here there was a chief superintendent involved. Normally, if it were officers of garda rank taking a statement, the report would be to their sergeant. It was on coming into work on Monday, 7 October 2013 that Chief Superintendent Terry McGinn became aware of the statement. It is appropriate to now clarify, in the light of all of the evidence which the tribunal has heard, that she acted at all times in good faith and consistent with her duty to Marisa Simms and with a view to properly dealing with Garda Keith Harrison. Chief Superintendent McGinn has taken an interest in domestic violence throughout her distinguished career. It was apparent from the evidence that she was horrified by the contents of the statement of Marisa Simms and that this was compounded by the fact that the allegations in it were made against one of her own officers. The statement was typed up and a meeting was called for the following day. Inspector Goretta Sheridan was not working on the Monday, and hence the Tuesday was chosen. During the currency of the tribunal hearing, there has been an all-out attack on the good faith of those attending this meeting by Garda Keith Harrison. Among other allegations it is claimed that, firstly, the high level nature of the meeting shows a concerted attempt to unfairly undermine his position by decisions that were made which are inconsistent with the protection of victims and which he regards as unfairly targeting him; that, secondly, taking the statement at its highest and as apparently true it would have been impossible to make a reference to the Health Service Executive, later TUSLA, for the protection of children; that, thirdly, activating the involvement of the Garda Síochána Ombudsman Commission was a betrayal of Marisa Simms and an attempt to destroy him; that, fourthly, the death threats were improperly followed through on; that, fifthly, there was

⁷⁸ Transcript day 35 page 140

⁷⁹ Transcript day 26 from page 41

no attempt to interview him and get his side of the story in respect of the allegations made by Marisa Simms; that, sixthly, no attempt was made to protect Marisa Simms from him; that, seventhly, no criminal investigation ensued from her statement; and, lastly, that the statements disclosed the commission by him of no criminal offences whatsoever. All of these are rejected seriatim. Despite the amount of time taken by Garda Keith Harrison at the tribunal hearings in pursuing these unfounded allegations, they can be dealt with concisely.

Treatment of the Marisa Simms allegations

Firstly, it was right to treat the allegations of Marisa Simms seriously. Prior to the meeting, Inspector Goretta Sheridan had met Marisa Simms in Letterkenny garda station and she had handed over to her the mobile phone from which the already quoted text messages were extracted. These were extracted but not read until later. Then there was a meeting at 10:30 hours between Superintendent Michael Finan, Superintendent Eugene McGovern, Detective Inspector Pat O'Donnell, Inspector Sheridan and Garda Carl Campbell in order to discuss the statement and how best to progress the investigation. The meeting also concerned the death threats to Garda Keith Harrison. The meeting was presided over by Chief Superintendent McGinn. Superintendent Finan had forwarded the relevant documentation for the consideration of the meeting. Superintendent McGovern was the district officer where Garda Keith Harrison was serving. Detective Inspector O'Donnell was a crime specialist. Inspector Sheridan had taken the statement from Marisa Simms. Garda Carl Campbell was the officer in the chief superintendent's staff who dealt with referrals. There was nothing wrong, and everything right, about each of them being at the meeting. This was not a high level attempt to get at Garda Keith Harrison. Reality has to be faced here. The statement of Marisa Simms portrays him as an individual with a drinking problem and a rage problem who had resorted to violence on her, who had threatened her and a family member, who had made a violent reference to a child, who had jealousy issues, who behaved irrationally and who was obsessive in his conduct. While those at the meeting were aware that Marisa Simms had moved away from Garda Keith Harrison and was living with a family member, every experienced police officer and criminal lawyer knows that the first suspect in domestic homicide cases is the spouse or partner. Where was this going to go? The plain reality is that serious action needed to be taken, and quickly.⁸⁰

Referral to social services

Secondly, it was appropriate to refer the allegations to the Health Service Executive. The expert view on this is that of TUSLA, as it has now become. The relevant social workers had no doubt that these allegations were properly referred by the gardaí. The relevant guidelines from 2011, the *Children First* document, refers to the necessity to refer emotional abuse.⁸¹ This is relationship based. Certainly, this relationship was far from ideal. Children need "affection, approval, consistency and security" and the kind of conduct described in the statement of Marisa Simms speaks for itself. As to whether any

⁸⁰ The notes of the meeting taken by Inspector Sheridan are from page 906 of the tribunal documents, Chief Superintendent McGinn gave evidence on days 33 and 34 and her diary reference for 8 October 2013 is at page 2473, Superintendent Michael Finan gave evidence on day 35, Superintendent Eugene McGovern gave evidence on days 31 and 32, Detective Inspector Patrick O'Donnell gave evidence on day 35, Garda Carl Campbell gave evidence on days 34 and 35 and reference has already been made to the evidence of Inspector Sheridan

⁸¹ Tribunal documents from page 1178 as to definition and recognition of child abuse

child witnessed the terrible row of 28 September 2013, the evidence of Marisa Simms has shifted markedly. What is in her statement is much more likely to be true than what has now been presented in the concerted presentation of her and Garda Keith Harrison. The guidelines speak about “exposure to domestic violence” as part of serious emotional abuse. On the basis of what Marisa Simms told gardaí, an immediate triggering of a referral was inescapable.

In her evidence, Donna McTeague stated:

I suppose, to be clear, when the Gardaí are making referrals in to us they are making referrals on the basis of what they heard or what they saw or what they have been told. It's my job to make the determination from Tusla's point of view about whether this meets the criteria for assessment or otherwise. So I am going to be asking questions that allow me to make a decision whether to proceed or otherwise. So yes, the importance of the information that they provide to me is, yes, what information they have, but it also comes from the questions that I will pose to them in the course of my engagement around that referral information at the outset.⁸²... I think it's important to be clear about this. Sergeant McGowan made an appropriate referral, in my view.⁸³

Gerry Hone said the following in relation to the referral:

Question: Yes. We know of course there was a statement of complaint made in circumstances that are in dispute somewhat obviously, but would it be common or not to refer to a statement of complaint or have you any comment on the absence of reference to it here?

Answer: Not in this particular form, you wouldn't normally get reference to a statement. You might do in subsequent communications, but not on this particular form.

Question: Yes.

Answer: This form is quite limited in what you can include on it. It is purely a form that is designed for notification and then for matters to be followed up after that.

Question: So, it's the starting block, it as were?

Answer: It's the starting block, yes.

Question: Okay. But in terms of it allowing you to make any sort of judgment as to what is to occur, is it of great use in that regard?

Answer: It's not really. I think the importance of it is that it provides a mechanism to ensure that there's a way to inform the HSE about any concern that emerges about a child's welfare. And likewise, for us, we have a similar form to report to the Gardaí similar concerns, and it's that formal notification that allows activities then to begin to examine the welfare issues or the child protection issues in respect of the children.⁸⁴

It is also to be noted that the position taken at the tribunal by counsel for TUSLA was that the referral by the gardaí was proper:

⁸² Transcript day 30 pages 33-34

⁸³ Transcript day 30 page 112

⁸⁴ Transcript day 29 pages 66-67

Chairman: Is there a position being taken [by Tusla] as to whether on the basis of what was said to the social services that a referral was appropriate under the Children First Guidelines, paragraph 2?

Mr McDermott SC: Yes. Tusla regards it as being an appropriate referral. They dealt with it as such. And it is obviously then their job to visit the family and see if the children are suffering any of the effects outlined in the second paragraph. But it is a legitimate basis for referring the matter to Tusla if there's a concern children are being exposed to domestic violence, bearing in mind it is an allegation that is being referred rather than a conclusive position.⁸⁵

This was the evidence before the tribunal and there is nothing to contradict it. In itself it is inherently believable and accords with the fundamental requirement that children should be protected above other considerations. This is only right.

Referral to the Garda Síochána Ombudsman Commission

Thirdly, the referral to the Garda Síochána Ombudsman Commission was not done in bad faith. Much has been made of this by counsel for Garda Keith Harrison at the tribunal hearings. What occurred was that a reference was made under section 102 of the Garda Síochána Act 2005. This was a legislative initiative in the aftermath of reports made by Mr Justice Frederick Morris, who spent six years enquiring into garda misconduct. Basically, there are two relevant main ways that a referral can be made to this external investigative body. Section 102 of the Act reads:

(1) The Garda Commissioner shall refer to the Ombudsman Commission any matter that appears to the Garda Commissioner to indicate that the conduct of a member of the Garda Síochána may have resulted in the death of, or serious harm to, a person.

(2) The Ombudsman Commission shall ensure that the following matters are investigated:

- (a) any matter referred to the Commission under subsection (1);
- (b) any matter that appears to the Commission to indicate that the conduct of a member of the Garda Síochána may have resulted in the death of, or serious harm to, a person.

(3) The provisions of this Part relating to investigations and reports apply with the necessary modifications in relation to a matter referred to in subsection (2) of this section as if the matter were the subject of a complaint referred to in section 91.

(4) The Ombudsman Commission may, if it appears to it desirable in the public interest to do so and without receiving a complaint, investigate any matter that appears to it to indicate that a member of the Garda Síochána may have—

- (a) committed an offence, or
- (b) behaved in a manner that would justify disciplinary proceedings.

(5) The Minister may, if he or she considers it desirable in the public interest to do so, request the Ombudsman Commission to investigate any matter that

⁸⁵ Transcript day 25 pages 201-202

appears to the Minister to indicate that a member of the Garda Síochána may have done anything referred to in subsection (4), and the Commission shall investigate the matter.

Some relevant definitions are included in section 82 of the Act. These include:

“member of the public” means a person other than a member of the Garda Síochána or the Garda Commissioner;

“misbehaviour” means conduct that constitutes an offence or a breach of discipline;

“serious harm” means injury that—

- (a) creates a substantial risk of death,
- (b) causes serious disfigurement, or
- (c) causes substantial loss or impairment of mobility of the body as a whole or of the function of any particular bodily member or organ.

This was not a case where serious risk of death had occurred through injury to Marisa Simms. That, however, does not mean that the referral was in bad faith or was done for the purpose of abusing power against Garda Keith Harrison. To any objective person, the statement of Marisa Simms makes grim reading. She complains of a litany of abuse over some two years. It is possible for a reasonable person reading that statement to conclude that she must have been substantially harmed. Gardaí should think of the rights of victims; and in this instance they did. A reasonable person could conclude that the emotional toll on her mental and physical health must have been considerable. While Chief Superintendent Terry McGinn accepts that a mistake was made, there is a reality to this matter as to how serious the abuse described was. Despite the concerted attack made on Chief Superintendent McGinn and Superintendent McGovern, what emerged from their evidence was not any suggestion of bad faith but rather of concern that a police officer could have been involved in this kind of conduct and sympathetic reaction to the victim. Superintendent McGovern came across as a deeply concerned, dutiful and intelligent officer who gave the impression of applying thought and judgement to every decision which he made. His evidence was that the Garda Síochána Ombudsman Commission was a body designed to oversee the gardaí and that, in general, he thought it was his duty to make referrals as they arose. That evidence is correct, since otherwise the will of the Oireachtas would be undermined. He said:

I have made a number of section 102 referrals in relation to the involvement of Garda members on active duty on the day where they were involved in particular incidents where serious harm or the consequence of would be death were not part of the actual referral... That situation would have been encouraged by GSOC from our earliest intervention or training on the day with GSOC, matters of those particular nature were in the earlier stages of our involvement on the day with GSOC, all those incidents involving situations where patrol cars were involved in chase situations, a crash would occur, an injury would have occurred to some other party in that vehicle, we always referred those particular situations. We don't necessarily always refer them anymore... But also on the day where there's a catalogue of ongoing related domestic fines, related incidents, serious harm on the day to the actual -- psychological and emotional -- serious harm by way of psychological and emotional trauma to the actual victim in those

particular cases is also a determination... I have never been involved in another type case where a Garda member was involved in such a situation... Harm also is defined as -- it's also harm of the mind... I formed the view and there's a reason why I made the section 102 referral, that I had serious concerns on the day in relation to the actual definition of serious harm in relation to the overall wellbeing of Marisa Simms in relation to this catalogue of ongoing threats, intimidation and criminal related allegations.⁸⁶

Everything about the evidence of Superintendent McGovern shows him to be a witness of truth and this evidence is accepted. Chief Superintendent McGinn is also a witness of truth and her evidence was:

I suppose first and foremost in my mind I wanted it to be investigated by GSOC as, you know, I suppose as an independent investigation. And the fact that I was aware that the threatening phone calls had been made to Garda Harrison and he himself had nominated his domestic situation with Marisa as being the reason for these and that he wanted -- Martin McDermott's name would have come up as the person capable of carrying out these. So, you know, I was of the mindset at the time, you know, that these matters should be investigated by GSOC. And under 102 I suppose we're not obliged to go back and talk to the person who made the complaint, but it was agreed I suppose at the meeting this is the route we were taking. And by the time Chief Superintendent McLoughlin had been in touch with me and had referred back, the 102 had already been made at that stage. But I suppose I was the one in the driving seat and I was the one making the decisions in consultation with my team and I felt it was the right thing to do.⁸⁷

She also was concerned with the emotional harm to Marisa Simms and this reaction was genuine and understandable.⁸⁸ What is more important than this, however, is the instructions which senior officers were under. The referral under section 102 is made through Garda Headquarters and is transmitted to the duty officer in the Garda Síochána Ombudsman Commission. Whether the gardaí use the wrong or the right section for a referral, the Garda Síochána Ombudsman Commission are independent. While any referral must be accepted when made under section 102, this is not binding. The Garda Síochána Ombudsman Commission are then entitled to take a different view. Usually under section 102, the subject may be dead or very ill. Not surprisingly, their cooperation is not required under the Act. It is not legally required for someone whose complaint may be so referred to actually fill out a form with a relevant heading, though these are available in garda stations. The duty of senior officers is made clear through the circular from Deputy Commissioner Rice dated 26 January 2010.⁸⁹ That duty encompasses also referrals under section 85 of the Act. A person, apparently, who complains about the conduct of a garda officer may sometimes ask that the matter not be referred. It does not seem possible legally for this request to be carried out. The difference to a section 102 referral is that, under section 85, the person complaining about the conduct of a garda officer has the choice that once the matter goes on referral, they may refuse to cooperate. When that occurs, and it did occur here, the investigation on referral must cease. Hence the section 102 referral was ultimately treated as one under section 85. That provides:

⁸⁶ Transcript day 31 from page 141

⁸⁷ Transcript day 33 page 71

⁸⁸ Transcript day 34 from page 130

⁸⁹ Tribunal documents from page 2484

- (1) When the Garda Commissioner or a member of the Garda Síochána receives a complaint under section 83 (2), he or she shall immediately—
 - (a) record the complaint and the date and time of its receipt,
 - (b) provide the complainant with a written acknowledgement of its receipt, and
 - (c) forward to the Ombudsman Commission a copy of the complaint or, if the complaint was not made in writing, a copy of the record of the complaint.

- (2) If the complaint is made to a member of the Garda Síochána at a Garda Síochána station, the member in charge of the station at the time the complaint is received shall ensure that the Garda Commissioner—
 - (a) is notified of the complaint, and
 - (b) is sent a copy of the complaint or, if the complaint was not made in writing, a copy of the record of the complaint.

- (3) If the complaint is made to a member at or above the rank of chief superintendent at a place other than a Garda Síochána station, that member shall ensure that the Garda Commissioner—
 - (a) is notified of the complaint, and
 - (b) is sent a copy of the complaint or, if the complaint was not made in writing, a copy of the record of the complaint.

It follows that what was important here is that a referral to the Garda Síochána Ombudsman Commission was going to be made in any event and that the officers attending the meeting of 8 October 2013 in Letterkenny garda station were under an obligation of referral not only under the legislation but pursuant to the circulars from Garda Headquarters to which, as a disciplined force, they were bound. To remove any possible controversy from this, it is important to quote HQ Directive 050/2013, dated 20 May 2013 and, therefore, operative at the relevant time:

The advices of the Attorney General in this matter have been received and the following procedures will now apply, with immediate effect, in relation to complaints from members of the public regarding the conduct of a member of An Garda Síochána.

Section 67, Garda Síochána Act, 2005, as amended, set out that it is the function of the Garda Síochána Ombudsman Commission to receive complaints made by members of the public concerning the conduct of members of An Garda Síochána.

Section 85 of the Act states that where a Garda receives a complaint under section 83(2) he shall immediately forward it to the Garda Síochána Ombudsman Commission.

The Garda Síochána Act, 2005, as amended, differs significantly to the Garda Síochána (Complaints) Act 1986 which allowed for a complainant to opt for the matter to be dealt with by the Garda Authorities without recourse to the Garda Síochána Complaints Board. No such provision exists in the Garda Síochána Act, 2005, as amended.

All complaints made by a member of the public, concerning the conduct of a member of An Garda Síochána, will be immediately forwarded in writing to the

Garda Síochána Ombudsman Commission, with a copy submitted to the Chief Superintendent, Internal Affairs (Complaints).

In circumstances where the complainant has indicated that they wish for the matter to be dealt with by An Garda Síochána, the person should be informed that the Garda Síochána Ombudsman Commission must be notified of the complaint. The person should also be informed that the Garda Síochána Ombudsman Commission will also be informed of their desire to have the matter dealt with by An Garda Síochána. The decision whether to admit this complaint under the relevant provisions of the Garda Síochána Act, 2005, as amended, and the manner in which such complaint should be investigated rests with the Garda Síochána Ombudsman Commission.

Where it is unclear whether the Garda Síochána Ombudsman Commission should be notified about a complaint, or not, local Garda Management should consult with Chief Superintendent, Internal Affairs.

For strict compliance.⁹⁰

This guidance has the advantage of being very clear. Whether Marisa Simms had been seriously injured by Garda Keith Harrison or not, the matter would have been referred in any event. Insofar as Marisa Simms has alleged that she went to Letterkenny garda station for the purposes only of seeking help for Garda Keith Harrison and wanted no referral to any outside agency and no criminal investigation; that is rejected. The statement was clearly a formal one and contains the statutory declaration appropriate for use in a criminal trial. There was no mention by her of anything other than that she had been a victim of him. It should also be noted that this tribunal is not about the Garda Síochána Ombudsman Commission. Their ultimate conclusion was that a section 102 referral was in error. This is not, however, about statutory construction. It is about whether matters were pursued in good faith or not. That more depends on what Garda Headquarters instructed its officers.

There is no evidence here of any animus against Garda Keith Harrison. Rather, the focus was of compassion for Marisa Simms.

Consideration of the death threats

Fourthly, the death threats were taken seriously by the gardaí. Sergeant Wallace gave appropriate information to Garda Keith Harrison. He was put on duties that kept him away from the public. Partly, that was because his conduct as reported by Marisa Simms disclosed him as a liability in dealing with the public, but partly also it was for his own protection. There were garda patrols to and around his residence. The matter was investigated and the risk was assessed properly.⁹¹ It was not for him to say, as a member of a disciplined force, that he regarded the threat as insubstantial. Wiser counsels than his fortunately prevailed. The threat was regarded as substantial and acted upon as such. Garda Keith Harrison has now said that the death threats were insubstantial.⁹² That, however, is a facile opinion arrived at in early 2017 when the threats had not been carried out. At the time, the assessment by the gardaí was appropriately serious. Action had to be taken and precautions had to be put in place. Garda Keith Harrison now presents these as some kind of cruel attempt to disturb his sleep through garda patrols. This is illogical.

⁹⁰ Tribunal documents from page 2495

⁹¹ Tribunal documents from page 1371. Garda Keith Harrison also made a statement (page 1363), he later withdrew this statement in July 2014 (page 1449)

⁹² Tribunal documents from page 26

The criminal investigation

Fifthly, the garda action in response to the statement of Marisa Simms did take her allegations seriously. The matter was referred to the Garda Síochána Ombudsman Commission. This was expected to be an independent investigation. Marisa Simms had the choice to cooperate with the referral but chose not to. In all of this there has to be some real sense of what is possible and what is impossible or barely worth attempting. Every criminal lawyer of experience will have come across cases where domestic violence cases are not proceeded with even though a prosecution is brought to the door of the court. Other cases have occurred involving violence to children or teenagers where the victims are reluctant to testify against a parent. The most striking and prevalent example is that of those who suffer sexual violence as children and who find it impossible for several years, and sometimes impossible ever, to report the perpetrator or to go to court. In a humane system, which the courts system and criminal justice system in Ireland is, people are not coerced into evidence save in the rarest circumstances. That approach prevails even though it be strongly in the interest of a victim to bring the person who has wronged them to justice. There was a reasoned expectation that Garda Keith Harrison would be investigated by the Garda Síochána Ombudsman Commission. The person who brought that expectation to an end was Marisa Simms when she refused any cooperation. She undermined the case she had made when, following an apparently tranquil Christmas 2013 with Garda Keith Harrison, she made an appointment to see Inspector Goretti Sheridan at Letterkenny garda station. She claimed a frosty reception on meeting on 11 January 2014 and a sarcastic comment on leaving.⁹³ That is rejected. There was some talking through of why she was now, three months after making it, withdrawing the statement. There was nothing apart from kindness and professionalism from Inspector Sheridan. Perhaps, as during the hearing Marisa Simms has claimed an ability to intuit feelings, the lack of wisdom of this step came across in some unspoken way from Inspector Sheridan. Such perception of feeling is an unsound foundation for evidence. But, even so, what would be wrong with that? She was facilitated in withdrawing the statement. In withdrawing it, she reiterated that everything in it was true. As pointed out by counsel for TUSLA during the hearing, it is a pity that the text of that withdrawal was not also communicated to Minister Zappone in the letter of 10 February 2017. Once that was done, Chief Superintendent McGinn, faced with that situation and the non-cooperation of Marisa Simms with the Garda Síochána Ombudsman Commission, sought to pursue a disciplinary process. There was a slight delay in appointing Superintendent Mary Murray.⁹⁴ In the High Court, proceedings were issued and in an affidavit dated 7 March 2017, Marisa Simms accused the garda parties of having “vindictively attempted to prosecute Keith for breach of discipline and to commence a criminal investigation with the statement that I had been forced to make fourteen months previously, that I had later taken back.”⁹⁵ Furthermore, Garda Keith Harrison claims that the process of discipline “was clearly a malicious investigation to cause further upset and stress to me and my family and to discredit me and exert further pressure on me to desist with my allegations.”⁹⁶ The unfortunate aspect of this is that no matter what they were to do, the gardaí were going to be accused of abuse of public office in hyperbolic terms. All of these accusations are wrong. Superintendent Murray gave evidence to the tribunal in the following terms:

⁹³ Transcript day 26 from page 94

⁹⁴ Transcript day 35 from page 183

⁹⁵ Tribunal documents page 47

⁹⁶ Tribunal documents page 32

I most certainly never set out not to carry out an investigation into either the criminal aspects or the disciplinary aspects. I suppose the first part of an investigation or commencing an investigation is to notify the party involved, and in this case it was Garda Keith Harrison. And in the course of March and April, I made contact with Sergeant Durkin in Donegal Town Garda Station, inquiring about when Garda Harrison may be working. And I was having difficulties in that, because in that period I was being informed that he was -- he was off sick or he was on rest days or he was on leave, so I was having quite a difficulty in trying to get him. Plus, I suppose that was complicated by the fact that I wanted to -- I availed of leave myself in April, 14 days in April. But I wanted to meet Garda Harrison personally because I noted from reading the file and reading the statements there's a lot of issues going on here and I felt he deserved the courtesy of meeting me in person, which is what I would normally do anyway for any investigation that I am doing. Then in May of 2014 I became aware, through media, I suppose, national and local media, that Garda Harrison had entered the Confidential Recipient process, and at that point, I knew straightaway, I believed straightaway myself, that it was inappropriate for me to approach him because he may feel that -- and I appreciate that I am assuming here and I'm thinking here, but I did rationalise it, that I took on board, or I was of the belief that if I approached him at that particular point, once he had entered the Confidential Recipient process, that it may be seen as a form of harassment or it may be seen as an effort on the part, on my part, on the part of chief superintendent in Donegal, on the part of the Garda organisation in general, to hinder him or prevent him from engaging with the process.⁹⁷

It is an extraordinary irony that in consequence of kindness shown to Garda Keith Harrison and as a result of a conscious decision to enable him to make whatever complaints he wished to make that holding off on interviewing him is now to be blamed on the organisation which treated him humanely. This allegation is rejected. Furthermore, those who have read the documents circulated by the tribunal will note the legal efforts that were made by him to ensure that no such investigation took place and that there was to be no interview with him.

Domestic violence allegation

The sixth matter goes hand in hand with what has already been noted. Contact was maintained between Inspector Goretti Sheridan and Marisa Simms, but only intermittently. It seems that as early as 11 October 2013 the relationship with Garda Keith Harrison was reviving. Superintendent McGovern noted in his diary that he had received information that it was “[p]ossible couple back together”.⁹⁸ Sometime in early November, following on the decision by Marisa Simms not to cooperate with their investigation, she and Inspector Goretti Sheridan had a brief word by telephone. In the result, an email was exchanged with Garda Carl Campbell at divisional headquarters indicating that Marisa Simms had “indicated she might withdraw statement”, though Inspector Sheridan stated that she had “advised herto take time to think about it.”⁹⁹ And here a fundamental dilemma arises: how do you protect people who do not wish to be protected? In a democracy, some adults are free to live with each other even though one adult may have served a prison term for a serious assault on the other. That is not this

⁹⁷ Transcript day 35 pages 183-184

⁹⁸ Tribunal documents page 2462

⁹⁹ Tribunal documents page 931

case but it illustrates that there is no power in the State in ordinary circumstances to require that two people should not reside together. The eloquent testimony of Sergeant Wallace and Chief Superintendent McGinn illustrates the dilemma in law enforcement when domestic violence is the issue. Very often, complaints are withdrawn. A victim is most at risk in the days following making a complaint to gardaí. Victims can be leant on or intimidated. No one knows what happened in this case save for the fact that there has been testimony from Marisa Simms and Garda Keith Harrison of telephone calls exchanged at the wedding on 4 October 2013 and subsequent to the making of the statement on 6 October. While this testimony is inherently unreliable, it appears that the couple were coming together for reasons best known to themselves. Once that happened, there was nothing that the gardaí could do.

That observation covers the seventh complaint of Garda Keith Harrison. There was to be a criminal investigation but this was delayed in the manner already described and became the subject of High Court litigation by him.

Offences disclosed by Marisa Simms' statement

The last matter urged on behalf of Garda Keith Harrison was that the statement of Marisa Simms to the gardaí disclosed the commission of no offence by him. While it may not be an offence to fly into a rage and punch the dashboard of your car in the presence of someone, as the statement describes, and while it may also not be an offence to, instead of that, violently chuck a set of keys against the windscreen, the instructions from Garda Keith Harrison during the tribunal hearing as to what happened on the occasion of one of his fits of temper, it is an offence to put someone in reasonable apprehension of being then and there subjected to an assault.

Furthermore, sending someone dozens of texts in a day may amount to harassment under section 10 of the Non-Fatal Offences against the Person Act 1997. This provides: "Any person who, without lawful authority or reasonable excuse, by any means including by use of the telephone, harasses another by persistently following, watching, pestering, besetting or communicating with him or her, shall be guilty of an offence." Certainly, the mental element adds to the first thing that needs to be sorted out in an investigation as to what actually happened. The mental element is inferred from the factual circumstances. It may be that where lovers are having a tiff or are in the course of an on-off type of relationship, some texts or phone calls may be welcome. In all of this, however, there is a limit and there is not the slightest doubt that if what Marisa Simms describes in her statement is true, this limit was exceeded.

While it may not be a criminal offence to call someone a bad mother whose children should be taken away from them and then berate their family as no-goods, this unpleasant conduct can be taken into account in the context of what is not reasonable in terms of contacting people. It could be a criminal offence, specifically an offence under s 2 or s 3 of the Act of 1997, to pull the duvet off someone who is asleep and to shout in their face. This may constitute an unwanted touching. It is clearly an offence to then take them by the arm and drag them out of the bed.

It is an assault to grab someone by the wrist so that their hand hurts when driving a car immediately afterwards. It is an offence to imprison someone in a laundry room even if it is only for a few minutes. It is similarly an offence to use intimidation to ensure that someone does not leave a house since this is a methodology of false imprisonment.

It is an offence to destroy by burning Junior Certificate examination papers and while this did not happen it is part of the background of intent should such a threat be made in respect of scripts which are the property of the Department of Education.

Under the Offences against the Person Act, 1861 it was only an offence to threaten to kill somebody in the event that this threat was put in writing. This astonishing law was reformed by the Act of 1997 and section 5 thereof provides: "A person who, without lawful excuse, makes to another a threat, by any means intending the other to believe it will be carried out, to kill or cause serious harm to that other or a third person shall be guilty of an offence". In the context of the evidence put before the gardaí, this is self-explanatory.

The actions of the Health Service Executive/TUSLA

One of the matters which has emerged most clearly from the hearing of this matter is the manner in which interactions between gardaí and the social services have needed to change. While the *Children First* guidelines constitute an extremely detailed set of instructions and, in addition, urge ever closer communication between the two agencies, some aspects of the relationship were the invariable cause of tension. This is because of the respective roles which each occupy and the respective agendas which they seek to pursue. The social services, the Health Service Executive which became TUSLA or the Child and Family Agency, are concerned with protecting children from harm and with supporting families in need. In that work, some cases may go to court with a view, for instance, to seeking an order under the Childcare Act 1991, the most serious of which enables the social services to take a child out of the family home in favour of a placement in safe custody. No doubt, families faced with such a prospect may resent the interference in their lives but this is pursued because of the paramount duty under the Constitution of the State to further the welfare of children. Orders of this kind may last for a limited period of time or there may be lesser orders for the protection of children than bringing them to a place of safety. Essentially, however, the work of the social services has nothing whatever to do with guilt or innocence, though facts may need to be proven, but with righting situations detrimental to the welfare of children so that they may be placed in situations of safety and structure to enable and foster their proper development. While the orders that may be made by a court under the 1991 Act are extremely serious, the burden of proof is the civil standard of probability and the good faith of an intervention is rarely questioned.

In contrast, gardaí need to prove criminal cases beyond all reasonable doubt and every aspect of their work in gathering evidence is subject to legal borders which are invariably questioned in the trial context. The purpose of criminal investigation is to bring a charge and uppermost in the mind of investigators may be the factors of the pursuit of legal methods and the response of the ultimate accused person. Hence, in the modern era it has been the practice of police work to investigate the matter as thoroughly as possible and only to move to arrest the prospective accused person when there is a sufficiency of material to put to him or her with a view to recording a response. This may, or may not, amount to a confession statement. Even still, the exercise of arrest and interview becomes futile if the prospective accused is armed in advance with a full knowledge of the course of the investigation. It has been for that reason that during the period in question, namely the year 2013, reports made by the gardaí to social services have tended to be in the nature of an outline so that the work done for the protection of children

does not result in any prospective accused being forewarned as to precisely that for which he or she may have to answer in a criminal court. As of that year, the form itself was short, with the relevant box giving little room for detail as to the precise nature of the allegation. In addition, the gardaí have rightly maintained the distance between policing and social services reasoning, perhaps understandably, that since social services have a duty to investigate independently of any reports made to them, the nature of a garda's report is to draw matters of concern to the attention of social workers and enable them to commence their own enquiries. In contrast to the practice in 2013, it is to be noted that, as of 2017, it has become the practice to attach a précis of allegations to the somewhat scanty form in aid of social services pursuing their role of child protection. In addition, according to the very helpful evidence of Superintendent Eugene McGovern, it is now possible for social workers to ask for access to original statements and to read these in a garda station with a view to getting clarity as to the nature of the issues.¹⁰⁰

There has thus been a tension between criminal investigation and social work that has gone back some years. It is in the light of this that the interactions called into scrutiny before this tribunal need to be seen.

On 10 October 2013, Superintendent McGovern wrote to Gerry Hone of Children and Family Social Work Services Donegal to make a report of the concern of the gardaí as to the children of Marisa Simms. The form rightly details the concern as being emotional abuse. The one line or so available on the form to provide some information of this simply notes that the children were “present during argument between mother and partner” and goes on to suggest the “HSE to contact gardaí on receipt of notification to confirm contact details”.¹⁰¹ Clearly, this does not provide sufficient information and, in terms of any comparison that might be made with the statement of Marisa Simms of 6 October 2013, is scanty indeed. A comment might here be made as to her allegations and those of Garda Keith Harrison. This shows not even the slightest inclination by gardaí at senior management as of the meeting of 8 October 2013 to exaggerate in any way the concerns which they had. Rather, this form was filled out in a similar way to all the other forms of that time. The scanty details, furthermore, led to a frustrated response from social services whose agenda at this time was to receive full details of any allegation with a view to putting their investigation forward a number of steps. Hence, a letter was written by Gerry Hone of 16 October 2013 which stated that “as there is no evidence of abuse detailed no further action will be taken from this service until we receive more information.”¹⁰² That letter states that the referral was being forwarded to Bridgeen Smith “for information purposes only.”

Gerry Hone gave evidence to the tribunal and was questioned by Diarmaid McGuinness SC for the tribunal as to the meaning of the letter and as to whether, in particular, any sinister inference might be drawn from it:

Answer: That's in usual form. I think one of the issues that I wanted to be clear about in this particular letter is that the notification, although it was ticking a box of emotional abuse, that there wasn't evidence at that particular point on that particular form to suggest emotional abuse. And what I was trying to make clear by this particular letter is that further information needed to be shared between the agencies if any action was to be taken by social work in this particular case.

¹⁰⁰ Transcript days 31 and 32, particularly day 31 from page 81

¹⁰¹ Tribunal documents page 111

¹⁰² Tribunal documents page 115

Question: Okay. This letter has been characterised in different documents as representing a decision by you that a sufficient threshold hadn't been met for intervention, is it any such thing?

Answer: No. It's no such thing. It's really to say that based on the information contained in the notification it was insufficient to suggest emotional abuse at that stage.

Question: At that stage?

Answer: And further information would need to be given or we would need to find out more information about the situation before we could reach any such determination.

Question: Okay. It's been suggested in some way that it represents a decision to close the case and that the case then gets reopened later?

Answer: No, absolutely not.

Question: All right. So is it meant to be effectively a trigger to, as it were, prompt both the Gardaí and HSE to in fact liaise about the matter?

Answer: Absolutely. And hence, copying it into Brigid McGowan and the team leader, Bridgeen Smith, because that also makes it clear to the service that we have received the notification, the status of the notification at that particular stage and the need for more information to be shared.¹⁰³

Thus, contrary to the impression that has been created by this letter in Marisa Simms and Garda Keith Harrison, the social services investigation had not stopped. Furthermore there is absolutely nothing to suggest that it was somehow revived due to garda intervention. On the contrary, this letter had, in effect, crossed in the post with a meeting that had already taken place between Sergeant Brigid McGowan and Donna McTeague and Bridgeen Smith on 21 October 2013. While this date is later than that of the letter, Sergeant McGowan in her role as liaison with social services had already set up this encounter as part of her normal and routine duties. In this she was acting both effectively and intelligently. Donna McTeague had become aware of the referral as of 9 October 2013 and as of that time further information was being actively sought by her with a view to commencing the social work investigation. In her evidence she said:

Sergeant McGowan advised me that she had forwarded a notification in respect of the Simms children. I hadn't yet at that stage received the paper notification. She advised that there had been a disagreement, an argument between Ms. Simms and her current partner, alcohol had been involved and there was physical contact between the couple and that the children had witnessed this.... She just advised that he had held her wrist -- Marisa's partner had held her wrist. I didn't go into any further detail, we were leaving the meeting at the time, it was an informal conversation, I hadn't received the paperwork, there was no further discussion.¹⁰⁴

Two honest people can meet and have a different recollection as to the information shared between them. That is the situation here. In looking at this matter objectively it has to be recalled that the case made by Garda Keith Harrison and Marisa Simms is that there was a hyping up artificially of garda concerns in order to undermine their family situation. Nothing could be further from the truth. The allegations made in her statement of 6 October 2013 were, by reason of the tension between social work investigation and criminal investigation, somewhat underplayed. This, of itself, is not evidence of malice

¹⁰³ Transcript day 29 from page 68

¹⁰⁴ Transcript day 29 from page 108

but rather that this case was being treated in the same way as every other one and that the full nature of the allegations were not passed on to social services with a view to preserving the integrity of the criminal investigation. Sergeant McGowan recalls having passed on information as to the burning and burying allegation contained in the statement of Marisa Simms but Donna McTeague has an equally clear recollection that had this happened her sense of alarm would have been heightened and her response to the problem confronting her would have been ratcheted up to a new level. Both are honest witnesses and both were operating at a time when the sharing of information had not been put on a proper procedural footing; so this divergence of views is understandable. While Garda Keith Harrison and Marisa Simms are now complaining about an intrusion into their lives by social services, the plain reality is that this understatement by the gardaí meant that it was less than it would otherwise have been. Donna McTeague said clearly in evidence that the action which she took on foot of the referral was insufficient in the light of the allegations of Marisa Simms:

I think it's important to say that the information that was made available to me at the time was made available with regard to the incident that Ms. Simms described that the children were party to. Had I have had sight of or was I aware of the additional information that I have since become aware of in Ms. Simms' statement, my assessment of the referral would have been different and undertaken in a different manner.¹⁰⁵

That difference would have involved seeing both Marisa Simms and Garda Keith Harrison separately in order to ascertain their story. Marisa Simms would have been treated as someone who was complaining of having been subjected to domestic violence and would have been interviewed separately from him with a view to allowing her the privacy and the space to expand on her concerns. Furthermore, more than one quick visit to the home of the couple to see her children would have been called for and further enquiries would have needed to have been undertaken.

At the hearing, complaints were made on behalf of Garda Keith Harrison as to the delay in carrying out the social work assessment. This is something from which the tribunal is supposed to draw an inference of malicious conduct by social services as inspired by the gardaí. In all of this, one factor ought to be remembered. Other people apart from Garda Keith Harrison have rights. The right to a good name guaranteed under our Constitution inures to the benefit of Sergeant McGowan and Donna McTeague as well as all the other persons who have been the subject of allegations by him. For the sake of clarity, apart from exonerating Sergeant McGowan and stating that she carried out her functions appropriately, Donna McTeague is a professional person who came across as taking her duties seriously with an appropriate sense of her obligation to act independently and in pursuit of the truth. She is entitled to be completely exonerated of the dreadful allegations made against her. The matter was delayed for reasons of compassion but this has been used with a view to undermining her character.

Her evidence, in this regard, is fully accepted as both truthful and, in the context in which it appeared, rationally fitting within the unfolding of events:

If it was a child protection matter, I would -- what I did and what I would have done, is, I would have made sure Ms. Simms was in a position to be able to come

¹⁰⁵ Transcript day 29 from page 123

to meet with me and would have done it in a very sensitive way. It wouldn't have been going out with the sirens blazing. I was aware at this stage that Ms. Simms was unwell and I understood that they weren't together, so that any potential risk that may have been there was eliminated by the nature of the fact that they were no longer in a relationship, as I understood it at that time. So no, I wouldn't have been going out escalating it with sirens, I would have dealt with it appropriately but it would have received a much quicker response from me than what it did¹⁰⁶.... I am not sure if the Tribunal is familiar with Donegal, but in the west central team I covered half of Letterkenny and all of the Fanad Peninsula, all the way out to Downings. So you are talking a substantive area for one small team¹⁰⁷... I was the duty social worker on that team at that time [and I was busy]. Incredibly so. I suppose you're talking, Letterkenny is a rather large town anyway as people are aware, and the area that we would -- that I would have covered at that time would be an area that would, I suppose, have experienced a lot of poverty over those years leading up to that, we had had the recession, and it was a very busy period of time in the department. I was the only duty social worker managing maybe 25, 30 referrals on an ongoing basis so I was -- it was necessary that I was prioritising all the time what needed my attention more quickly.... At the time of the strategy meeting I understood that Ms. Simms was in hospital and I didn't believe they were in a relationship at that stage, that she had left the house on that night and they weren't together, I understood that. I didn't delve into that terribly deeply but I understood she was in hospital and the children weren't with Garda Harrison.¹⁰⁸

This evidence is accepted without any qualification. On 27 January 2014, Donna McTeague spoke to Sergeant McGowan. Several calls had been missed up to that point. She was told that the statement of Marisa Simms had been withdrawn, though affirmed to be true, and that the couple were cohabiting again. There was again a request for further written information but a meeting was nonetheless planned with Ms Simms and Garda Harrison. This less elevated response was on the basis that the burning and burying allegations in the statement had not been passed on by the gardaí. This was a response as a matter of routine. There is no question of any garda having any influence. On 3 February 2014, Donna McTeague wrote to Marissa Simms requesting her presence and that of Garda Keith Harrison at a meeting in the social services offices in Letterkenny on 7 February 2014. On that morning, the meeting due to take place at or around 10:30 hours, Donna McTeague rang Sergeant McGowan. In consequence of that call, made with a view to getting details of the precise allegation, she recorded this note:

Sgt Mc Gowan advised that the original account outlined how Keith had been drinking at home and had made threatening and abusive comments to Marissa in front of [child A]. Marissa also said in her original statement that Keith had held her wrist and it was sore and threatened he would ensure she did not have the children. Marissa described Keith's behaviour as 'a total rant'. She was upset and the children saw her upset. [Child A] had come in from the car and observed some of the arguments.¹⁰⁹

¹⁰⁶ Transcript day 30 page 51

¹⁰⁷ Transcript day 30 pages 51 and 52

¹⁰⁸ Transcript day 30 pages 52 and 53

¹⁰⁹ Tribunal documents page 159

The meeting then took place. Social services would have conducted a much tougher scrutiny of events had Donna McTeague been fully informed. Instead, the meeting was more in the way of a chat, with Garda Keith Harrison admitting that he had lost his temper and pointing out the issues which the couple had confronted that put this milder version of events into context. In her case summary, Donna McTeague records that she told them that she would have to inform the children's father and that a house visit may have to happen to see the children. To this Marisa Simms replied "you're more than welcome."¹¹⁰ It is deeply unfortunate that Marisa Simms and Garda Keith Harrison have claimed that the impression was somehow given that this office encounter was the end of the matter and that there was no necessity to go to the home to see the children.¹¹¹

The home visit took place on 19 February 2014. There was no question of any child being traumatised. No reasonable person could have regarded this as an intrusion. It was no more burdensome than a routine visit by a public health nurse. Donna McTeague was introduced to the children as a family friend and she simply sat there and chatted with them and the couple with a view to trying to ascertain whether there were any issues. She reported that they discussed matters of ordinary interest to children and noted that they were "very conversational, proud of their achievements, seek close contact with their mother as appropriate and have a close relationship" with Garda Keith Harrison. She recorded "no issues of concern with regard to the presentation of the children, their relationship with their mum" or with him.¹¹² She then returned to her office and signed off on the matter that day. The relevant files were closed.

The nature of the allegations made in relation to this meeting will here be recalled. It suffices to say that Garda Keith Harrison stood over these in giving evidence to the tribunal and that Donna McTeague was subjected to an unnecessary and upsetting cross-examination with a view to establishing these. Marisa Simms did not repeat the allegations under oath but claimed instead that they arose in consequence of some kind of feeling, or telepathic communication, that she had from the social worker.

All of the allegations against this responsible individual Donna McTeague are completely rejected as false. In particular, it was alleged that Donna McTeague had apologised on the telephone for having to do a home visit. It was claimed that in the aftermath of the meeting Donna McTeague apologised to Marisa Simms, claiming that "she didn't have any choice in the matter that her team leader had been in contact with the Guards and as a result had to do the visit." It was further claimed that after the visit "before leaving" Donna McTeague was "again apologising but guaranteeing this was the end of it."¹¹³ The full details of the allegations are set out above in the section dealing with the allegations which the tribunal was confronted with.

There is no mistaking any of these matters. The fact that at the hearing they were reduced by Marisa Simms to some kind of feeling which she had in consequence of the meeting when the allegations as made were specific and the fact that Garda Keith Harrison, notwithstanding this reduction, claimed that he had been told in the immediate conversations surrounding the alleged events by Marisa Simms that social services had admitted to acting discredibly demonstrate their determination to persist in damaging and hurtful allegations notwithstanding the fact that they knew that they were untrue. It

¹¹⁰ Tribunal documents page 165

¹¹¹ Tribunal documents from page 46 for Marisa Simms and page 28 for Garda Keith Harrison

¹¹² Tribunal documents page 162

¹¹³ Tribunal documents page 28

is accepted by the tribunal that Donna McTeague acted professionally, that the gardaí had no influence over her conduct, even were they interested in directing her, which they were not, and that she conducted her duties in an exemplary fashion. Her dignity under cross examination was admirable.

Indeed, Marisa Simms conceded that Donna McTeague was not directed by the gardaí to conduct a house visit when questioned by Kathleen Leader, counsel for the tribunal:

Question: Okay. And are you sure [Donna McTeague] said she'd been contacted by the guards as a result of which she had to do the house visit? Because the impression you would get from that is, the whole thing was closed off and she was doing the house visit as a result of a contact from the guards?

Answer: No. Well, that wasn't what I meant.

Question: Well, what did you mean?

Answer: She had received the referral from the guards, so that's what I assumed, there had been some liaison there. That's what I picked up from that.

Chairman: I'm sorry to intervene, but you actually said that you were phoned that evening and the social worker said to you, I'm sorry, we have to do a visit because we have been contacted by the guards.

Answer: She didn't say directly we have been contacted by the guards, no.

Chairman: What are you trying to say then? I'm sorry, I'm going to leave it to Ms. Leader, but that is just very unclear now in my mind. What are you trying to say about this phone call?

Answer: I'm just saying that she rang and said she would have to do a house visit because of a direction she had been given by her superior.

Chairman: Nothing to do with the Gardaí?

Answer: No.¹¹⁴

It may be fair to wonder as to why Marisa Simms did not reveal this change of mind or absence of knowledge prior to calling for a tribunal to be established in relation to her issues and those of Garda Keith Harrison.

Garda Síochána Ombudsman Commission

As has already emerged, the referral to the Garda Síochána Ombudsman Commission was made, principally by Chief Superintendent Terry McGinn, on 8 October 2016. The communication on that day was Superintendent Eugene McGovern through command and control in Garda Headquarters to Darren Wright. All referrals have to be accepted. Consequently, it is not certain if there was a challenge then as to the section of the Garda Síochána Act 2005 under which the referral was made. Superintendent McGovern, following that conversation, then attached the relevant form.¹¹⁵

The referral was considered by George O'Doherty, as the relevant case worker. He considered that the appropriate kind of referral was under section 85 of the Act. Hence, to proceed, he needed the cooperation and consent of Marisa Simms. Neither were forthcoming. He rang her on 9 October 2013. She was then in hospital, or awaiting a doctor's attendance while in hospital, consequent on an infection. They had a brief conversation.¹¹⁶ She appeared surprised and is reported as being in "two minds" as to whether to proceed. She wanted "to think" about matters. She did not, however, reject

¹¹⁴ Transcript day 26 page 110

¹¹⁵ Tribunal documents from page 335

¹¹⁶ Transcript day 21 from page 201

or qualify the statement of 6 October 2013. In Garda Keith Harrison's statement about this, it is claimed that George O'Doherty said that "he was confused as to what to do with" the complaint.¹¹⁷ George O'Doherty denies this. His evidence is accepted unreservedly. There was no commentary to anyone about the correctness or good faith of the garda referral. It did not happen. He had Marisa Simms' statement of 6 October 2013 and also had that of her mother, Rita McDermott, of 2 October 2013. On 11 October, George O'Doherty and Marisa Simms spoke again. She said that she did not want the Garda Síochána Ombudsman Commission to investigate the matter and that "her mother is not entirely happy with her decision but has agreed to go along with it"; this was a matter which had to be confirmed.¹¹⁸ Her cooperation would not be forthcoming. George O'Doherty said in evidence:

I got the impression that Ms. Simms, when she was saying that she didn't want the complaint investigated that she meant she didn't want it investigated by anybody. I had to make the difference to her, that I could only speak for GSOC, and that was the reason why I explained to her that we had no role or function or influence in what action the Garda Síochána might take on the statements that they had given.... I don't believe I went into any great detail about what the Gardaí might or might not do. ... I would have had a general knowledge but it is normal practice in GSOC that we wouldn't give advice or give any sort of information to people about what other organisations can statutorily do.¹¹⁹

Marisa Simms then wrote an email to the Garda Síochána Ombudsman Commission dated 15 October 2013 stating that she did not want the matter to proceed.¹²⁰ She had this statutory entitlement as apart from complaints relating to death and serious harm, allegations against a garda that are passed on to the Garda Síochána Ombudsman Commission require the consent of the complainant for further investigation. Again, the territory of domestic violence, its aftermath, the withdrawing of complaints and the making of complaints is territory has been traversed in some detail already in this report. There is nothing to indicate that this is in any way different.

Insofar as it may be the case that Garda Keith Harrison has alleged misconduct on the part of the Garda Síochána Ombudsman Commission, or has claimed that they gossiped with him in a manner which reflected badly either on themselves or on the garda organisation, this was denied by witnesses from the Commission. On 6 November 2013, there was formal notification from the Garda Síochána Ombudsman Commission to the gardaí that the investigation by them was now closed. Under the relevant legislation, the 2005 Act, this did not stop the gardaí themselves pursuing either a criminal or a disciplinary investigation. In December 2014, Marisa Simms, for reasons known to her, again contacted the Garda Síochána Ombudsman Commission to ascertain that any investigation by them had stopped.

The discipline process

Chief Superintendent Terry McGinn took a strong view from the time of reading a statement made to gardaí by Marisa Simms that while the matter should be independently investigated, she had a responsibility to the public and to the organisation

¹¹⁷ Tribunal documents page 27

¹¹⁸ Transcript day 21 from page 203

¹¹⁹ Transcript day 22 pages 10-11

¹²⁰ Tribunal documents page 2348

which she served. The continued employment of Garda Keith Harrison was not compatible with those responsibilities.¹²¹ It was her duty to take a serious view of these matters and, in the context in which that responsibility arose, her opinion emerges as being far from unreasonable. On 10 October 2013, she wrote a lengthy submission to Garda Headquarters, copying same to Assistant Commissioner Kenny of the Northern Region.¹²² That report is a comprehensive document and, notwithstanding a lengthy cross-examination by counsel for Garda Keith Harrison, the analysis in it withstands any criticism proffered. She recommended that Garda Keith Harrison “be suspended from duty in accordance with Regulation 7 of the Garda Síochána (Discipline) Regulations, 2007, as amended.” Her primary considerations were listed as the strength of the evidence as disclosed in “a detailed statement of complaint outlining several incidents of harassment, assault and threats to kill.” She noted that permission had been given by Marisa Simms “for call and text data to be retrieved from her mobile phone.” It was also noted:

Garda Harrison has accessed data on Pulse in relation to Marissa Simms on eighteen (18) occasions between 13/05/2008 and 11/02/2012 and has checked Marissa Simms car registration twenty five (25) times between 26/08/2009 and 27/04/2013.

She described the allegations made by Marisa Simms as extremely serious and noted that Ms Simms had “expressed fear and described herself as being terrified of Garda Harrison.” She is also noted as having said that he had a problem with drinking and “had difficulty controlling his anger.” Chief Superintendent McGinn’s view was that “members of the public could be at risk should Garda Harrison continue in policing duties.” She did not feel that he would be “a risk to... colleagues.” Presciently she stated that she had “no doubt that in the event that Garda Harrison discovers that Ms. Simms made a statement of complaint that he will lean on her, putting pressure on her to withdraw her statement.” Analysing the threat to the life of Garda Keith Harrison, she describes her assessment of the threat as being substantial and noted that there were two suspects, each of whom was known to be associated with the other. While no such threat had been carried out in the past she was of the opinion that “the possibility of doing so cannot be ruled out.” She regarded it as “unsafe” for Garda Keith Harrison “to continue to be deployed in Donegal Division.” She could not be confident in Garda Keith Harrison’s “continued deployment on regular policing duties given the nature of the complaints made against him.” She noted a very long sick leave absence and the matter of the driving with no insurance. His continued service would have an impact on morale since his “behaviour is not compatible with the values and principles of the organisation.” She noted concern in relation to his “mental health as there appears to be anger management issues evident.”

The response from Garda Headquarters was to place Garda Keith Harrison on indoor duties in Donegal town garda station. Chief Superintendent McGinn had recommended that he be transferred out of the division as an alternative to being suspended pending the outcome of the disciplinary investigation.

In a forthright manner, in evidence before the tribunal, Chief Superintendent McGinn defended her analysis of the situation. She took full responsibility for the recommendations which she made. She said:

¹²¹ Transcript day 33 from page 75 demonstrates her views

¹²² Tribunal documents from page 1649

I think it was at the conclusion of the meeting of the 8th [of October 2013] I was coming to the view of what I was hearing, that I didn't have any confidence in Garda Harrison's ability to carry out his functions as a member of An Garda Síochána, and I felt that at that stage I was going to look for a suspension... I was of the view myself, I possibly would have talked to Superintendent McGovern about it, but it wasn't discussed in the meeting with all of the other participants that I am going to look for suspension.¹²³

The recommendation was not accepted in Garda Headquarters.

Conclusions

Very serious allegations were made by Garda Keith Harrison and by Marisa Simms. While they presented themselves as being the victims of others, the reality that should not be forgotten is that to be wrongly accused is a deeply upsetting experience. Essentially, they accused the gardaí in Donegal of interfering in their home and family life. This was due, they claimed, to malice against him. So similar, it was asserted, was this alleged interference to what had happened to Sergeant Maurice McCabe, that they claimed that it was inspired not just at local level but by Garda Headquarters. The wrongs against Garda Keith Harrison and Marisa Simms were claimed by them to involve the cunning use of trickery to bring her in to Letterkenny garda station, pursuant to an alleged design to obtain evidence against him.

While in the station, Marisa Simms made a statement against Garda Keith Harrison. This came about, they asserted, through coercion. When that statement by her alleged various wrongs by Garda Keith Harrison against her, some amounting to criminal offences if proved, this was claimed by her to be due to pressure or to misrepresentation by the interviewing gardaí. That statement, on analysis, however, is a repeat of several of the most serious allegations made by Marisa Simms in text messages to Garda Keith Harrison during the course of their relationship. These were sent by her before she had any contact with the gardaí as to the serious complaints that she proposed to make against him. These text messages were later voluntarily downloaded from the mobile phone of Marisa Simms. The gardaí could have had nothing to do with these text messages.

It was claimed by Garda Keith Harrison and Marisa Simms that there was nothing in that statement to gardaí of Marisa Simms which required the intervention of social services. The terms of the *Children First* guidelines, however, required the gardaí to involve the Health Service Executive, later called TUSLA when fulfilling the relevant function. The relevant fundamental obligation was to protect children. At that time, generally where a domestic violence statement revealed a possible cause for criminal prosecution, the gardaí were worried about pre-arming a potential accused with a narrative of what was alleged against him. This would allow him to tailor his story if arrested or interviewed by the gardaí. In fact, TUSLA asserted during the hearings, and the tribunal accepts, that while the statement was not passed to them by the gardaí, had it been or had the full nature of the allegations made by Marisa Simms been explained to them, their response would have been considerably quicker, more vigorous and much more intrusive than it in fact was. This is borne out by the substance of Marisa Simms' statement, which is quoted in part earlier in this report. The procedures since that time have changed. Where there is

¹²³ Transcript day 33 page 75

now, in 2017, a parallel criminal and social work overlap, full statements taken by gardaí, or a detailed précis, are generally available to social services. The point wrongly asserted by Garda Keith Harrison and Marisa Simms was of a malicious referral of their life together by the gardaí to social services. Were that so, exaggeration might be expected. But here, social services testified that the allegations were not passed to them in their full seriousness. Nothing in the evidence suggests that TUSLA were drawn in to any over-reaction. There was, in fact, no over-reaction and there was nothing passed by gardaí to inspire that. An under-reaction in consequence of information passed by the gardaí is what happened. That occurred because of the then system of liaison between gardaí and social services. That resulted in a considerably milder intervention by TUSLA with the home life Garda Keith Harrison and Marisa Simms than the text of her statement warranted.

TUSLA is an independent statutory agency. It is not under the control of gardaí in Donegal and nor is it influenced by them or by Garda Headquarters. Nonetheless, Garda Keith Harrison and Marisa Simms asserted that there would have been no social work visit to their house had not the gardaí imposed pressure on particular social workers within TUSLA. For a social worker to invade someone's house on a pretext, or to have carried out an unnecessary duty with children due to pressure from an outside agency, would have been shocking. The social workers accused by them of abuse of office were entitled to feel deeply upset at being targeted with such allegations. Their integrity was incorrectly undermined by these widely-publicised allegations. Yet, during the hearings, these very serious allegations by Garda Keith Harrison and Marisa Simms simply collapsed.

Allegations need to be considered on the basis of whatever merit, if any, which they may hold. This is only possible after analysis. It is to be noted that in the aftermath of the matters which have been considered by this tribunal, Garda Keith Harrison made a report to the relevant recipient of confidential complaints of misconduct within the gardaí; in other words, he became a "whistleblower". While the accuracy or otherwise of whatever was alleged by him is outside the terms of reference, and therefore not capable of being considered by the tribunal, one thing should be noted. In Donegal town garda station, at the time he was moving into this confidential complaint process, Garda Keith Harrison met Sergeant David Durkin and told him that he was not complaining about his conduct. Nonetheless, in a statement to this tribunal, Garda Keith Harrison has done just that. These allegations were put to Sergeant Durkin by the tribunal because Garda Keith Harrison refused to put them. It was clear how upsetting those allegations were to Sergeant Durkin and his dignity and truthfulness in answering them was transparent. The allegations against Sergeant Durkin are also rejected.

This is only one example of how upsetting accusations against responsible people were found to have no foundation. This process, by the tribunal, has been one of serious and damaging allegations of professional misconduct being discovered through enquiry and through public hearings to have been completely unfounded. In this report, why there was no basis for making the allegations, the changes of mind and of emphasis, and the contradicting evidence, are set out in full. That is what an enquiry by tribunal is about. Had the accusations made been true, an extremely serious state of affairs would have been uncovered. In respect of this matter, it was not. That does not mean, however, that the process was not called for. This process of enquiry by public tribunal was started in good faith by the Oireachtas. It is only in consequence of the tribunal hearings and this report that there has been a full appraisal of the facts.

All of the allegations of Garda Keith Harrison and Marisa Simms examined by the tribunal are entirely without any validity. They have claimed to have been the victims of a malicious procession of events. That is not so. They claimed to have been the victims of others. There is another side to this. The allegations which they made must have taken a considerable emotional toll on several of the multiple persons accused by them of very serious misconduct. It is appropriate here to exonerate everyone in social services and in policing accused by them of discreditable conduct. That is the only possible conclusion to the tribunal's enquiry. It is also amply corroborated by the supporting evidence analysed in this report.

While there is indeed public disquiet arising from other matters, and the treatment of Sergeant Maurice McCabe is the urgent focus of this tribunal, it must be commented, as to the functioning of our police force and the response of social services, that this series of issues raised by Garda Keith Harrison and Marisa Simms has been enquired into in detail and a positive picture has emerged. There have been many committed public servants who gave evidence in this matter and the impression given has been one of devotion to duty and determination to do the right thing. Thus, in any public discussion of this matter, it should also be remembered that in policing and in social services in Ireland there are plenty of people who diligently turn up for their jobs and do a real day of work with humanity and with skill. Those serving in the gardaí in Donegal demonstrated seriousness and genuine concern in the context of domestic violence allegations. There was no break down in the garda command structure. Instead, allegations were treated seriously, properly reported up the line and diligently pursued.

In this section of the tribunal's work, it became apparent that there was no shortage of police officers well capable of leadership and the application of intelligence to their task.

In carrying out the often fraught and difficult duties of social work, the witnesses from TUSLA stood out as paying proper regard to independence, professional standards and pride.

Recommendations

Imposing and maintaining proper discipline is not the same as bullying or harassment. An astonishing aspect of this section of the tribunal's work has been the extent to which it has been regarded as tolerable by Garda Keith Harrison that he should be entitled to complain about his superior officers taking the view that: (a) he should not serve in Buncrana; (b) he should not be transferred to Letterkenny just because he wanted it for his own convenience; (c) he should not interact with members of the general public on patrol because of reasonable concerns as to his temperament; (d) there should be a report on him to Garda Headquarters and in particular one that should recommend his suspension; (e) he could be remonstrated with for not disclosing a relationship with the sister of a criminal who had inflicted homicide on a garda in the same unit in which he proposed to serve; (f) it was inappropriate to use the garda PULSE system to check up on an ex-girlfriend; (g) he should not drive a car with a false insurance certificate attached; and (h) when he fails to adhere to discipline, his commanding officers should be entitled to speak to him, remonstrate with him in strong terms and offer him advice. This is unacceptable. In any properly functioning police force, there has to be a command structure which is unequivocally responded to. No order given and no action taken by gardaí in relation to this matter was illegal or morally wrong; yet so very many

reasonable and ordinary commands were routinely questioned. No police force can serve the public in this way.

One instance may be illustrative. On meeting Garda Keith Harrison on it being discovered that he had kept the nature of his relationship with Marisa Simms secret, Chief Superintendent Sheridan would have been perfectly entitled to have called him “underhanded” and “deceitful” and to have told him that he had shown “little thought” or “respect” for his colleagues. He would also have been fully entitled to be very annoyed. Instead, apparently, even in such serious issues as this, senior officers are expected to feel for the sensitivities of those who infringe discipline rather than thinking about the duty that the police force owes to the country. To be clear, the duty that the police force owes to Ireland requires that those serving within it are under command and are not in a position to create difficulty when directed to do their work honestly and properly.

As Mr Justice Frederick Morris commented, it is far too difficult to dispense with the services of those who are unsuited to police work or who are just not prepared to work. That remains a concern of this tribunal. He said:

Members of the Gardaí against whom any wrong is alleged have the dubious, and often exploited, benefit of procedures that compare with those in a murder trial. Garda discipline should be about accounting for how one has served the people of Ireland and about the truth. The criminal trial model is not the only model available for the disposal of employment matters. In ordinary employment, the criminal trial model is almost never available. Instead, people are given the right to be notified of allegations and the right to respond to them before a decision is made. Then that decision is made subject to a statutory remedy as to whether a reasonable employer would have opted for dismissal in such circumstances. This all has the advantage of being swift and fair. If it were adopted within the Gardaí, matters should improve. There would be no right to claim damages for unfair dismissal as Garda service is outside the statutory framework. A simple appeal process from a decision to dismiss could replace the absence of a statutory remedy for unfair dismissal.¹²⁴

This concern should not remain 13 years later. The system requires reform along the lines suggested by Mr Justice Morris. Those gardaí accused of ill-discipline should be subject to correction by senior officers without the need to resort to the elaborate structures set up that constitute what is in effect a private trial using procedures akin to our criminal courts. A simplified structure is called for. Private industry uses a system of simply taking a statement of what is wrong, passing it to the employee and considering any response offered. As Mr Justice Morris recommended, that could be used together with an appeal system within police structures.

The discipline process as it currently exists is far too easily impeded by court applications. Citizens have a right to access the courts and gardaí are no different. They are different, however, in the elaborate nature of the disciplinary code and in the consequent invitation that it poses to resort to legal challenges in what should primarily be a disciplinary structure. Such challenges are far too easily commenced under our system. Once commenced, years of delay result. As to judicial reviews to challenge garda

¹²⁴ Mr Justice Frederick Morris, ‘Report on the Arrest and Detention of Seven Persons at Burnfoot, County Donegal on the 23rd of May 1998 and the investigation relating to same’ page 254

discipline, these should be subject to the same strictures as planning reviews. The *G* test,¹²⁵ which allows a judicial review to be taken simply on the presentation of a barely arguable case, should be replaced by a test which requires substantial grounds to be shown before any notice of motion seeking judicial review can be issued.¹²⁶

Future progress

It should be emphasised that any conclusion reached in relation to this matter has no impact on the tribunal's investigation into the issues concerning Sergeant Maurice McCabe. This is an entirely different matter. There is no fact found in this part of the enquiry that has any impact on those matters that are listed in the terms of reference as raising public disquiet as to his treatment.

Already the tribunal has sat for 38 days. In relation to term of reference (d), which is now complete apart from the submissions of the parties, or if any other relevant evidence seems pertinent, there were two days of private hearings. One was to sort out the legal representation of a person who complained of a sexual incident while a minor; the Ms D issue. Another day of private sitting concerned the protection of Ms Y; whose accusation was wrongly attributed to Ms D. There was also a private sitting for half a day during the public sittings in relation to a private matter concerning Garda Keith Harrison. That private issue was ultimately ruled irrelevant to the issues before the tribunal.

There is one section left to the tribunal's work: that concerned essentially with Sergeant Maurice McCabe. All of the other issues are interrelated. Included in that is the treatment of Sergeant Maurice McCabe before the O'Higgins Commission and the media broadcasts on the leaking of that commission's report. These can be heard at in or around the same time as the allegations made by the former garda press officer. It is best, however, to start with the O'Higgins Commission issue. The tribunal is currently dealing with a huge burden of documentation and is also conducting investigations into all these matters. The tribunal hopes to finish hearings finally by Easter 2018, provided it is not diverted.

The tribunal again feels it necessary to earnestly ask for the help and cooperation of all those who can assist in getting to the truth behind all these matters of serious public disquiet. This involves, as the tribunal called for in February 2017, those who know anything relevant to the terms of reference, or who hold any relevant documents, preparing and furnishing a witness statement or passing over relevant papers or both or otherwise contacting the tribunal. While the tribunal is seeking the assistance of those who have evidence to offer, it should not be up to the tribunal to pursue people; but, necessarily the tribunal reserves its statutory mandate to use its powers appropriately. Early answers to correspondence with witnesses would, for instance, really help.

When the tribunal is not sitting in public, it is still working on the preparation of sets of documents for distribution to represented parties and pursuing the investigation of the issues identified in the terms of reference.

The tribunal has given representation to a number of parties. This is listed at www.disclosuretribunal.ie.

¹²⁵ *G v Director of Public Prosecutions* [1994] 1 IR 374

¹²⁶ Section 50(4)(b) of the Planning and Development Act 2000 requires "substantial grounds" for leave to appeal a decision of An Bord Pleanála, for instance.

Costs

It is appropriate now to call for written submissions as to applications for costs, on this term of reference only. On receipt of same, the tribunal will decide if same need to be circulated to other parties for further submissions and whether an oral hearing is necessary as to whether the State or whether one or more of the represented parties to the tribunal should pay the costs of any or all of the other represented parties. The relevant legislation is on the tribunal's website at www.disclosuretribunal.ie.

Appendix 1

Terms of reference relevant to this report:

- (n) To investigate contacts between members of An Garda Síochána and TUSLA in relation to Garda Keith Harrison.
- (o) To investigate any pattern of the creation, distribution and use by TUSLA of files containing allegations of criminal misconduct against members of An Garda Síochána who had made allegations of wrongdoing within An Garda Síochána and of the use knowingly by senior members of the Garda Síochána of these files to discredit members who had made such allegations.

Appendix 2

Explanation of these terms of reference as given by the tribunal prior to hearings and posted on the tribunal website:

As to (n): The phrase “contacts between” is interpreted by the Tribunal as including all interaction between any member of the Gardaí and TUSLA in relation to Garda Keith Harrison howsoever first initiated and any such contacts thereafter. As to (o): No particular interpretation is required here.

Appendix 3

A chronology of events as it emerged from the papers distributed by the tribunal prior to the oral hearings:

1980: Keith Harrison, his later wife, Marisa McDermott Simms and her later husband born.

October 1998: Keith Harrison and Marisa Simms met while studying in NUI Galway.

April 1999: Keith Harrison and Marisa Simms got engaged as teenagers.

August 1999: Keith Harrison and Marisa Simms' relationship ended, no further contact until 2010.

April 2000: Keith Harrison joined gardaí.

26 June 2001: Keith Harrison attested as member of gardaí, allocated to a garda station in the Dublin area, regular policing unit.

26 June 2003: Garda Harrison transferred to Athlone district, regular policing unit.

2 July 2004: Marisa Simms and husband married, they later have two children.

2006: Garda Harrison and wife married, they divorced in November 2011.

1 January 2008: Garda Harrison commenced duty with traffic corps unit based in Moate.

December 2010: Marisa Simms responded to Garda Harrison's social networking message from August 2010, they resumed contact and at some stage began a relationship.

3 February 2011: Garda Harrison applied for a transfer from Athlone to the Donegal Division. According to Garda Harrison, following his application for transfer, Superintendent Glacken contacted him and said that he had a personal friend, Chief Superintendent Sheridan, who was able to transfer him to the cash escorts unit in Sligo.

10 March 2011: Following his transfer from Athlone, Garda Harrison commenced duty on this date in Buncrana. He was attached to the same unit where the late Garda McLoughlin had served with distinction. He died on 14 December 2009. Marisa Simms' brother, Martin McDermott was later convicted in July 2011 of the manslaughter of Garda McLoughlin in respect of events that happened on 13 December 2009. Gardai were not aware of the relationship between Marisa Simms and Garda Harrison at this time.

11 March 2011: Garda Harrison met Superintendent Kevin English who welcomed him to Buncrana.

23 May 2011: The relationship between Garda Harrison and Marisa Simms came to the attention of gardaí for the first time. Garda Harrison telephoned Garda Peter Kearins in Milford to inform him that "herself" was "having a bit of trouble with her estranged husband" and gardaí travelled to the scene but no official complaint was ultimately made.

25 May 2011: Garda Harrison met Superintendent Kevin English regarding his relationship with Ms Simms. According to Garda Harrison, members of the gardaí also serving in Buncrana were unhappy about working alongside him given that Marisa Simms' brother was Martin McDermott.

30 May 2011: As a result of the relationship between Garda Harrison and Ms Simms coming to light, Chief Superintendent Sheridan met with Garda Harrison, with Superintendent English also present, and decided to transfer him from Buncrana to Donegal town "for operational reasons and reasons of morale". Garda Harrison objected to being transferred. Garda Harrison alleges that Chief Superintendent Sheridan called him "underhanded" and "deceitful" for keeping the relationship a secret and told him that he had shown "little thought" or "respect" for his colleagues. Chief Superintendent Sheridan "categorically" denies saying any of this to Garda Harrison in his statement to the tribunal investigators on 13 July 2017. He states that Garda Harrison voluntarily outlined his relationship with Ms Simms. Chief Superintendent Sheridan stated that he

felt that it was not appropriate for Garda Harrison to continue to serve in Buncrana and that he tried to be “as facilitating to him as I could be in relation to his transfer” in transferring him to Donegal town, as it was open to Chief Superintendent Sheridan to transfer him to somewhere much further away.

1 June 2011: Chief Superintendent Sheridan wrote to Superintendent McGovern in Milford stating that he had met with Garda Harrison along with Superintendent English on 30 May 2011 and that issues involving Marisa Simms’ estranged husband had been addressed and there would not be any further issues. He asked that his office be advised if there were any further issues.

2 June 2011: After being transferred from Buncrana, Garda Harrison commenced duty in Donegal town garda station. According to Garda Harrison, he received a “hostile reception”.

21 July 2011: Martin McDermott, brother of Marisa Simms, was sentenced to eight years’ imprisonment for the manslaughter of Garda McLoughlin at Letterkenny Circuit Criminal Court.

12 August 2011: Sergeant John McFadden informed Sergeant Durkin that Garda Harrison did not have a valid tax or insurance disc displayed on his car and Sergeant McFadden spoke with Garda Harrison about this.

13 August 2011: Sergeant Durkin spoke with Garda Harrison re the tax issue, who told him he was trying to get the vehicle taxed but was told he had to get it done in Galway.

November 2011: Garda Harrison met Chief Superintendent McGinn in Ballyshannon garda station with garda welfare officer Brian Tuohy, seeking a transfer to Letterkenny garda station, but this was refused.

Early February 2012: The Health Service Executive received an anonymous letter concerning the Simms children. Úna Coll was duty social worker when the letter was received. It was addressed to Meadhbh McGettigan, social worker.

9 February 2012: Sergeant Brigid McGowan received a phone call from Ms Coll who told her that the HSE had received an anonymous letter. Sergeant McGowan met with Ms Coll who furnished her with a copy of the letter dated January 2012. On the basis of this letter, Sergeant McGowan was advised of HSE concerns in relation to the two children and informed that the HSE intended to call and speak to both parents to ensure that they were being adequately cared for, and that the gardaí would be informed of the outcome of the enquiries.

Sergeant McGowan contacted Superintendent McGovern by phone and made him aware of the anonymous letter.

10 February 2012: Superintendent McGovern received a report from Sergeant McGowan attaching the anonymous letter.

13 February 2012: Sergeant McGowan asked Garda Orla McWalters of Milford garda station to carry out a PULSE check on Marisa Simms to establish her current address. Garda McWalters observed that 21 prior PULSE checks had been carried out on Ms Simms between 13 May 2008 and 11 February 2012. Garda Harrison had checked Ms Simms on PULSE on 17 occasions (13 May 2008, 29 January, 9 and 23 February, 8, 10 and 26 March, 4 April, 30 May, 15 and 29 June, 1, 7 and 21 July, 22 October, 18 December 2011, and 11 February 2012). Sergeant McGowan brought this PULSE printout to Superintendent McGovern, who then referred this inappropriate use of PULSE to Chief Superintendent Sheridan.

15 February 2012: Address of Garda Harrison forwarded by Superintendent Coen, Ballyshannon to Superintendent McGovern.

1 March 2012: Intake records opened on Simms children following receipt of anonymous letter. Recommendation to meet with parents to discuss the referral and

complete initial assessment. Intake records signed off by Úna Coll and Nora Roarty, team leader.

7 March 2012: Úna Coll and Angela Strain from the HSE met with the Simms following referral via anonymous letter. The file was closed following this meeting as there were no child protection or welfare concerns, social work finding that there was “no evidence to support the allegations reported in the referral”. Garda Harrison was not contacted in relation to this matter.

14 March 2012: Ms Coll and Ms Roarty met with Sergeant McGowan and informed her that they had met with the Simms re the welfare of the children on 7th March, and that the matter was closed as there were no child protection concerns. Sergeant McGowan sent a report on this meeting to Superintendent McGovern stating that she had met them and that enquiries had been carried out by the HSE with the family doctor, public health nurse and the school that the eldest child was attending.

15 March 2012: Chief Superintendent Sheridan appointed Superintendent Michael Finan to investigate Garda Harrison’s use of his car without insurance under the Garda Síochána Discipline Regulations.

22 March 2012: Chief Superintendent Sheridan sent a letter to the superintendent in Letterkenny, with the title “Re: Enquiry from HSE in Relation to Anonymous Letter Received Referring to the Simms Family, Milford, and Garda Keith Harrison”. It provides a report from the superintendent at Milford and the anonymous letter of January 2012, stating that this was forwarded “for your information and attention in the event of any incident being reported by Ms Simms or Garda Harrison. The report and anonymous letter to the HSE are for your information only and not general circulation.”

3 April 2012: Superintendent McGovern wrote to Chief Superintendent Sheridan regarding the anonymous letter and forwarded a report regarding Sergeant McGowan’s meeting on 14 March 2012 with HSE social work.

24 April 2012: According to Chief Superintendent Sheridan, he met with Garda Harrison re the PULSE matter. Garda Harrison could not give any “logical explanation for all of the checks he had carried out on Ms Simms on PULSE. I made it clear to him that his behaviour was totally unacceptable. I advised him that I had issued clear instructions on accessing PULSE and that I expected him to comply with them. He gave me a firm undertaking that he would do so.” According to Garda Harrison, no such conversation took place.

June 2012: Incident involving Junior Certificate exam papers that Ms Simms was correcting and an alleged threat by Garda Harrison to put exam papers “up in smoke”.

1 April 2013: According to Ms Simms in her 6 October statement later made to gardaí, she and Garda Harrison had gone to a public house on the night of the 31 March and Ms Simms left the pub but he stayed on. She then realised that she did not have her keys, and went back towards the pub. However a car then pulled up with a group of men who had been in the pub earlier and asked if Ms Simms wanted a lift back to the pub. Ms Simms got into the car but before they drove off, Garda Harrison arrived in her car, and a row started. She then got into her car with Garda Harrison, and when they got back to the house she stated that she remembers he “banged the dashboard in front of him with his fist ... I was frightened at him at this point as he was in a complete out of control rage”. Ms Simms stated that Jim Quinn then arrived at the house and she went to bed after speaking with him. Following this, she remembers being woken up from her sleep. She then rang her mother who was in Mayo. She stated that she was outside when Mr Quinn arrived for the second time and he drove her to her mother’s house.

Garda Ian Oates states that the gardaí had sent a patrol car to Ms Simms’ mother’s house prior to this phone call, and that the house was locked up and no one was there, resulting

in him phoning Jim Quinn and then speaking to Ms Simms who “made it clear that she didn’t want to make a complaint and didn’t want to speak with Gardaí that night”.

William Bogle, uncle of Marisa Simms, reported to Garda Ian Oates at Letterkenny garda station that Ms Simms had been forcibly removed from her home by Garda Harrison. Sergeant Aidan Doherty also spoke to Kerry Bogle, her cousin, who said that Ms Simms had been “kicked ... out of the house [by Garda Harrison] and [that he] was pursuing her in a car in and around Letterkenny”, and said that she feared for her cousin’s safety. Sergeant Doherty also spoke to Rita McDermott, Ms Simms’ mother, who stated that her daughter was distressed and that Garda Harrison had issues with alcohol.

8 May 2013: Garda Harrison appeared before Judge Kevin Kilrane in Manorhamilton District Court, pleaded guilty to driving without insurance in Donegal town on 24 February 2012, and was fined €300.

17 May 2013: Garda Harrison out of work on sick leave, arising from a road traffic collision which occurred while he was off duty on that date. The other party suffered very serious injuries.

29 May 2013: Superintendent McGovern deemed road traffic collision suitable for referral to GSOC under section 102 of the Garda Síochána Act 2005, which provides that the Garda Commissioner shall refer to GSOC any matter where the conduct of a member of the gardaí “may have resulted in the death of, or serious harm to, a person”.

24 August 2013: Rita McDermott contacted Donegal town garda station and expressed concern about Garda Harrison’s behaviour towards her daughter. She said that Garda Harrison had “thrown” Ms Simms out of their home on three occasions over the previous three months. Sergeant Durkin took this call and was told that on 21 August 2013, Garda Harrison had thrown Ms Simms out of their home, and that Mrs McDermott had to travel to collect her. The children were not present in the home at the time. Sergeant Durkin states that he explained to Mrs McDermott that any concerns about the children must be reported, and also gave advice re Domestic Violence Act 1996. Mrs McDermott told Sergeant Durkin that her daughter didn’t know she was phoning the gardaí and asked that the matter be treated confidentially. Sergeant Durkin stressed to her that if there were concerns relating to the children, and them being exposed to any incidents of violence, then the gardaí are “duty bound to intervene”.

28 August 2013: Sergeant Durkin forwarded a report to Superintendent Michael Finan, district officer, Ballyshannon detailing the phone call he had with Rita McDermott.

30/31 August 2013: Marisa Simms attended a pre-wedding celebration and stayed in a Westport hotel.

24 September 2013: Rita McDermott contacted Sergeant Durkin. According to Sergeant Durkin, this again concerned “the behaviour of Garda Keith Harrison while off duty. Rita stressed the trouble her family were having with Garda Harrison.” Ms McDermott informed him that Marisa was planning on moving Garda Harrison’s belongings from their home on 2 October 2013 upon his return to work. She also informed him that her daughter was getting married on 4 October 2013 and that Garda Harrison had threatened this family member in messages to the effect that he would cause a disturbance at her wedding as he was not invited. Sergeant Durkin states that he advised Mrs McDermott that Marisa would have to make a formal statement to gardaí in order for any investigation to commence, and advised that this other family member could also make a complaint to gardaí if she was threatened by Garda Harrison.

Sergeant Durkin forwarded a report to Superintendent Finan detailing this conversation he had with Rita McDermott, “[i]ndicat[ing] the information in the report may be a cause of concern and could lead to a possible incident” at their home or at the wedding. He also spoke to Sergeant McGowan re concerns raised by Mrs McDermott.

According to Sergeant Durkin, during a telephone conversation with Garda Harrison, he indicated to Sergeant Durkin that he would be applying for annual leave for 4 October as he “had a wedding to attend.”

27 September 2013: Phone calls between Superintendent McGovern and Chief Superintendent McGinn re Garda Harrison and reported concerns. Superintendent McGovern states that Chief Superintendent McGinn told him she was appointing Inspector Sheridan to carry out a review of the reports that had so far been received in relation to Garda Harrison.

28 September 2013: An alleged incident occurred on this date which gave rise to a garda complaint by members of Ms Simms’ family and was described in her statement of 6 October 2013 to gardaí.

In her garda statement, Ms Simms said that she decided to go to her sister’s house with her children to give her a wedding present in the evening, which Garda Harrison was unhappy about. On the way home at around 21:00 hours, she had several missed calls and knew by speaking to Garda Harrison that he had been drinking. She began to get her children ready for bed and he began to argue with her in front of them. Ms Simms stated that this was the first time this behaviour had occurred in front of the children. Garda Harrison, according to Ms Simms, made comments about her sister, stating “I am going to bury her and you”, and “I am going to burn you”. Child A began to get upset on hearing this, and Ms Simms decided to leave their home. Ms Simms went back inside to get child A’s school uniform and Garda Harrison prevented her from leaving by grabbing her wrist and blocking her exit. Ms Simms stated that she was “really frightened of him at this stage as he was in such a rage [and] it was [as] if he was not in control of himself”. Ms Simms was able to leave, rang her sister extremely upset and went to stay with her.

Ms Simms’ statement to the tribunal described the incident as follows: “[w]e had a row, it was tense and we both exchanged words, there was no violence just words exchanged in the heat of the moment I just couldn’t take all the tension this was creating ... so I decided I would go to my sisters with my children until after the wedding. When I got to my sister’s house I was upset, not just because of the row but because of the entire situation, I wanted my family to accept Keith and I and I wanted Keith to be able to go to work happy”. She stated that “without my knowledge or request the Guards were contacted about the row I had with Keith, I think this was seen as an opportunity to cause further hassle for Keith and I, in that it was seen as a way to break us up”.

Garda Harrison’s statement to the tribunal was as follows: “[w]e had a row ... over this wedding, it was a very normal argument that many couples experience, there was no violence or threat of violence just an exchange of words that resulted in Marisa deciding to stay with her sister until after the wedding”. He said that a “complete fabrication of events” was transmitted to Sergeant Durkin by Ms Simms’ family to the effect that Garda Harrison had been violent to Ms Simms and thrown her out of the house, with Marisa then being “bombarded” with calls by Inspector Goretta Sheridan pressuring her to make a statement. [Garda Harrison, statement to tribunal, 7 March 2017]

30 September 2013: A member of the McDermott family went to Letterkenny garda station and reported to Garda Brendan Mahon that Garda Harrison had verbally threatened Marisa on the evening of 28 September 2013. Ms Simms was not aware a complaint was being made and Garda Mahon advised that Ms Simms would need to make a statement of complaint on her own behalf in order for any investigation to take place. The family member requested that gardaí not inform her sister that she was the one to make contact with gardaí in relation to this incident. According to Garda Mahon, he spoke with this family member later that evening and she said that Ms Simms had indicated her willingness to make a complaint.

1 October 2013: Sergeant James Collins spoke with the same member of the McDermott family who had reported to gardaí on the 30 September, who informed him that Ms Simms had removed her belongings from her home with Garda Harrison, who “begged her” not to report the incident to the gardaí. The report stated that Ms Simms had indicated to this person that she wished to make a statement and would do so after the wedding. He also stated that he believed that there should be “no further planned patrols” around Garda Harrison’s home.

2 October 2013: Inspector Goretti Sheridan, in the presence of Sergeant James Collins, took a statement of evidence from Rita McDermott who outlined a series of incidents involving Garda Harrison and her daughter including the alleged incident of 28 September and burn threat. Mrs McDermott gave Inspector Sheridan Marisa Simms’ phone number as Inspector Sheridan had advised that in order to investigate the alleged incidents Ms Simms would need to make a formal complaint.

Garda Harrison returned to work for one day following sick leave.

3 October 2013: Rita McDermott informed Inspector Sheridan that she had spoken to Marisa Simms, who was willing to speak with Inspector Sheridan. Inspector Sheridan then sent Ms Simms a text message and attempted to phone her. She then spoke with her about the concerns raised by Ms Simms’ mother and sister. According to Inspector Sheridan, she explained the procedure for making a formal statement of complaint against Garda Harrison, and Ms Simms was “apprehensive and appeared to be unsure of what to do”, but agreed to make a statement. Inspector Sheridan states that she advised Ms Simms that she was not under any pressure to make a statement and that it was solely her decision as to whether she wished to pursue the matter. [Inspector Sheridan statement to tribunal, 13 April 2017]

4 October 2013: Report of a death threat against Garda Harrison made by an anonymous male caller to Letterkenny garda station. This phone call was received by Garda Gerard Curran. The anonymous caller said that Garda Harrison would be shot that night by a man [suspect 2]. Gardaí were unable to identify the caller following subsequent investigation into the matter. Garda Curran states that he informed Garda Darren Norman of Donegal town and then spoke to Sergeant Anthony Cornyn in the same station. Garda Curran also tried to contact Detective Inspector Pat O’Donnell but was unable to reach him. Information on the death threat and immediate steps subsequently taken by Garda Curran were forwarded to Superintendent English.

Sergeant Cornyn informed Garda Harrison of the death threat.

5 October 2013: An anonymous caller phoned Letterkenny garda station and said that Garda Harrison would be killed that night, as opposed to the previous night, the 4 October. This call was taken by Garda Patrick Conway. The caller stated that suspect 2, a relation of Martin McDermott, was arranging to have Garda Harrison killed as he had “been harassing his sister”. Garda Harrison states that following this, passing patrols continued over the next number of days due to security concerns.

Following a phone call that morning from Detective Inspector O’Donnell expressing concerns about calls received by Ms O’Donnell the previous night, Detective Garda David Moore went to An Chúirt Hotel. He recorded a memo of a conversation he had with Ms O’Donnell. Ms O’Donnell did not sign the notes as she did not want to be involved in the matter.

Garda Harrison made a statement to Sergeant Fergus McGroary of Milford garda station on this date in relation to the death threats.

In a report circulated to Chief Superintendent McGinn, Superintendent English, Detective Inspector O’Donnell, Inspector Sheridan and Sergeant Paul Wallace compiled on this date, Sergeant McGroary rated the risk to Garda Harrison following the receipt of death threats as “substantial”.

Inspector Sheridan talked with Ms Simms who “spoke openly and indicated her intention to make a statement”. Ms Simms agreed to come to Letterkenny garda station the following day at 15:00 hours. [Inspector Sheridan statement to tribunal, 13 April 2017]

6 October 2013: Marisa Simms made a statement of complaint to Inspector Sheridan and Sergeant McGowan at Letterkenny garda station over the course of eight hours, between 15:00 hours and 23:30 hours. The statement outlined incidents of verbal abuse, physical abuse, harassment and threats throughout her relationship with Garda Harrison, detailing the 28 September incident in which Garda Harrison allegedly threatened Ms Simms and her sister in front of child A. Ms Simms also made allegations relating to her phone bills/records and online mobile phone account, which she said had been accessed without her permission.

In Marisa Simms’ statement to the tribunal, she stated that she felt pressured to attend to make the statement and that she was told to think of her children, which she felt was a threat in that if she didn’t “do as they wanted there could be adverse repercussions for my children”. Ms Simms also alleges that she did not get a break and was not given any food, and that she does not recall exactly what she signed “such was the level of exhaustion and stress [she] was experiencing”. [Marisa Simms, statement to tribunal, 7 March 2017]

In his statement to the tribunal, Garda Harrison stated that Ms Simms was “pressurised and coerced” into making a statement, and that having both since read the statement, she is “shocked by it as she states there are parts of it which she never said and other parts of it where what she said was manipulated to portray me in a bad way”. [Garda Harrison, statement to tribunal, 7 March 2017]

According to Inspector Sheridan, Ms Simms was happy to remain for the eight hours and did not wish to return to finish making the statement. Inspector Sheridan advised Ms Simms that given her allegations about her phone, gardaí could access her phone records in order to gather further evidence in relation to her complaint. Ms Simms then signed three consent forms which allowed gardaí to access details of incoming text messages and calls for two mobile phone numbers and details of access to her online mobile phone account. [Inspector Sheridan statement to tribunal, 13 April 2017] Phone traffic between Inspector Sheridan and Marisa Simms shows that Marisa Simms sent a text message to her when she arrived home that night from the garda station saying “Hi.. just here now.. Thanks for everything”, with Inspector Sheridan replying “No problem. Sorry it took soo long”.

7 October 2013: Inspector Sheridan sent Marisa Simms a text message asking whether she had told Garda Harrison that she made a statement as he had mentioned to another garda that she would be seeking a safety order. Ms Simms replied saying that she had told Garda Harrison to stop ringing her or she would get a safety order, and that he “seem[ed] in a bad way”.

Superintendent English compiled a report on the death threats against Garda Harrison and forwarded this on to Assistant Commissioner Kieran Kenny, Chief Superintendent McGinn, Superintendent McGovern and Superintendent Finan. Assistant Commissioner Kenny sought an up-to-date report once security arrangements had been reconsidered by Superintendent English.

Garda Harrison met with Sergeant Paul Wallace, divisional crime prevention officer, in relation to the death threats. Garda Harrison also discussed his relationship with Ms Simms.

8 October 2013: Inspector Sheridan met Ms Simms in Letterkenny garda station and she handed over her mobile phone to her for examination in light of issues raised in the 6 October statement. Ms Simms signed an acknowledgment form outlining that the phone was required as part of a garda investigation.

Chief Superintendent McGinn convened a meeting with Superintendent Michael Finan, Superintendent McGovern, Detective Inspector Pat O'Donnell, Inspector Sheridan and Garda Carl Campbell to discuss Ms Simms' statement and consider how best to progress the investigation, as well as the policing actions necessary re the death threats against Garda Harrison. At this meeting, a decision was also made to refer Marisa Simms' statement to GSOC under section 102 of the 2005 Act, "due to the serious nature of the allegation and the threat of further serious harm and possible death", and was deemed appropriate for referral by Superintendent McGovern. A decision was made at this meeting to not record the matter on PULSE in order to protect Ms Simms as Garda Harrison had previously inappropriately accessed PULSE to check on Marisa Simms.

Sergeant Wallace compiled a report on this date regarding his meeting with Garda Harrison on the previous day. According to Sergeant Wallace, Garda Harrison informed him that Ms Simms had made a statement against him and that she informed him she had been to court in Letterkenny "seeking a safety order against him". Sergeant Wallace stated that Garda Harrison told him that Martin McDermott was "capable of anything" when discussing whether Garda Harrison found the death threats to be credible. The notes provide that Garda Harrison had said he used the term "badly burnt" not literally but instead to mean that Marisa Simms would get burned in an emotional sense as she was caught in the middle between him and her family.

Darren Wright, then senior investigating officer at GSOC, was on call and spoke to Superintendent McGovern re the referral under section 102. The matter was accepted as a referral pursuant to a review as he was of the view that the referral was not appropriately referred under section 102 as there was no death or serious harm involved.

9 October 2013: Formal referrals to the HSE in respect of Marisa Simms' two children arising out of the 6 October statement were completed by Sergeant McGowan. A standard notification form was filled out in respect of both children for suspected "Emotional Abuse", stating that the children were "present during argument between mother & partner. (HSE to contact gardaí on receipt of notification to confirm contact details)".

Donna McTeague, senior social work practitioner, stated that she first became aware of the Simms referral at a strategy meeting on this date concerning a separate matter when she spoke with Sergeant McGowan, who "advised that the referral pertained to two children who were present during a disagreement". Sergeant McGowan also explained that Ms Simms had made a statement of complaint and that the children witnessed the particular incident where Garda Harrison was under the influence of alcohol and "physical contact was evident in that interaction". She informed Ms McTeague that she was forwarding a garda notification to the HSE. [Donna McTeague, statement to tribunal, 29 March 2017] Ms McTeague, Sergeant McGowan, and Ms Coll as Acting Team Leader attended this meeting.

George O'Doherty (GSOC) phoned Ms Simms regarding the GSOC referral as it was not deemed an appropriate referral under section 102. According to him, Ms Simms was surprised that the statement had been received by GSOC. She was asked whether she wished to pursue a complaint with GSOC and said she "would think" about this.

10 October 2013: Due to "the gravity of the allegations made by Marisa Simms in her statement", Chief Superintendent McGinn recommended that Garda Harrison be suspended from duty and forwarded two reports to Internal Affairs recommending this. Formal referrals re the Simms children were signed off by Superintendent McGovern and sent to HSE Child and Family Services. This was recorded on PULSE by Sergeant McGowan.

11 October 2013: Ms Simms and Garda Harrison, it seems, in some sense, resumed their relationship.

George O'Doherty again spoke with Ms Simms who advised she did not wish to pursue a complaint with GSOC.

12 October 2013: Sergeant Durkin informed Garda Harrison on his return from annual leave that due to the death threats, he would "be confined to indoor duties on his return to work at Donegal Town as Station Orderly until the threat to him was fully assessed".

Garda Harrison was therefore placed on indoor duties.

15 October 2013: Marisa Simms emailed George O'Doherty at GSOC to confirm that further to their telephone conversation on 11 October, she did not want GSOC to take any action re the 6 October statement.

Detective Inspector O'Donnell compiled a report for Chief Superintendent McGinn re the death threats, finding that Mr McDermott himself could not have made the death threat phone calls.

16 October 2013: Gerry Hone, Principal Social Worker, acknowledged receipt of the garda notification but stated that as "no evidence of abuse [was] detailed [in the garda notification,] no further action will be taken from this service until we receive more information". In her statement to the tribunal, Bridgeen Smith noted that the garda referral contained minimal information and Mr Hone's role involved screening notifications without sufficient information and returning these to the superintendent at the garda station in question "requesting further information be sent prior to the social workers intervening with any family". [Bridgeen Smith, statement to tribunal, 23 March 2017]

Social worker Donna McTeague opened intake records on the Simms children. The records provide that Sergeant McGowan was to discuss the case with the duty social worker before proceeding and a strategy meeting was to be organised "with Gardaí to decide on how to proceed". The concern cited in the records was "child present during argument between mother and partner". Records were signed off by Ms McTeague and Ms Smith.

Chief Superintendent McGinn forwarded the report of Detective Inspector O'Donnell re the death threats to Assistant Commissioner Kenny.

21 October 2013: Strategy meeting held between gardaí and the HSE re the Simms children, attended by Sergeant McGowan, Bridgeen Smith and Donna McTeague. The strategy meeting record outlines that Ms Simms had recently been hospitalised following complications after an ectopic pregnancy in June 2013. It was recommended at the meeting that: 1. the social work department would liaise with gardaí to ascertain when Ms Simms was in a position to progress the matter, and 2. the social work department were not to contact Ms Simms until they received confirmation from Sergeant McGowan that the matter could be progressed when Ms Simms regained health.

24 October 2013: Garda Harrison found to be in breach of discipline re driving without insurance and fined €600.

Early November 2013: Inspector Sheridan spoke with Marisa Simms who indicated that she might wish to withdraw her statement of 6 October. Inspector Sheridan states that she advised her to think about this.

6 November 2013: Superintendent McGovern informed by GSOC that as Marisa Simms was not pursuing a complaint, GSOC was closing their file in relation to her 6 October statement.

12 November 2013: Chief Superintendent McGinn forwarded a report re Garda Harrison to Assistant Commissioner Kenny recommending the appointment of a superintendent from outside the Donegal Division to investigate "all aspects both criminal and disciplinary relating to this matter".

7 January 2014: Superintendent McGovern was appointed by Assistant Commissioner Kenny to carry out the investigation.

10 January 2014: Marisa Simms contacted Inspector Sheridan advising that she wished to withdraw her statement.

11 January 2014: Marisa Simms attended at Letterkenny garda station to meet Inspector Sheridan and withdrew her statement: “I want to say that everything I told them on 6th October 2013 and that recorded in the statement is true. These things did happen and I was honest in what I told them at the time. Today, 11th January 2014 I wish to inform you that I no longer wish to pursue a complaint against Keith Harrison. I wish to withdraw the statement I made on 6th October 2013. I am making this statement of my own accord. No one is pressurising me to do so and I am not under duress”.

According to Ms Simms, Inspector Sheridan said that she could not guarantee that social services would not get involved despite her withdrawal of the statement, which Ms Simms viewed as a threat to her family life. She also states that Inspector Sheridan had pre-prepared a statement of withdrawal and was cold towards her when she attended at the station on this date. [Marisa Simms, statement to tribunal, 7 March 2017]

According to Inspector Sheridan, she asked that Ms Simms read over her statement when she came to her office in order to be sure that she was happy in her decision to withdraw it. She states that Ms Simms did so and a statement of withdrawal was prepared, then read over and signed by Ms Simms.

Garda Harrison also states that Marisa Simms had attempted to get in touch with Inspector Sheridan to retract the statement a number of times from October 2013 to January 2014 but she was “always unavailable”.

Detective Inspector O’Donnell compiled a progress report re the death threats; no further threats had been received while phone data analysis was ongoing.

22 January 2014: Superintendent McGovern’s appointment as investigating officer was terminated.

27 January 2014: Donna McTeague phoned Sergeant McGowan for the purpose of ascertaining the “current status regarding garda investigation so as to allow [the social work department] to proceed with investigation”. Sergeant McGowan advised that Marisa Simms had withdrawn her garda statement on 11 January, as although “the content of her original statement was completely true, she did not want the matter investigated by Gardaí”. Ms McTeague was also informed that Marisa Simms and Garda Harrison had resumed their relationship. Ms McTeague advised that social work needed a report from gardaí with specific information re 28 September incident in order to progress the matter, and organise a meeting with Garda Harrison and Ms Simms; Sergeant McGowan agreed to forward same as soon as possible.

28 January 2014: Initial assessment of the Simms children commenced, reason stated: “Notification received from Gardaí indicating [child A] present during argument between her mother and her partner. Marissa made statement of complaint to gardaí and later advised she did not wish the matter to be investigated further”. The intake record was later completed following an interview with Ms Simms and Garda Harrison and a visit to meet and observe the children at home.

3 February 2014: Ms McTeague wrote to Marisa Simms requesting a meeting on 6 February as the social work department had “received information in relation to your family which we would like to discuss” and asked that Garda Harrison would also attend, “so as to explore the referral information in detail”.

7 February 2014: Ms McTeague spoke by telephone to Sergeant McGowan on this date, for the purpose of ascertaining details of the original complaint made by Ms Simms which had since been withdrawn, given that the statement of withdrawal outlined that the account was accurate but that she no longer wished for the matter to be investigated by gardaí. In this phone call, “Sergeant McGowan advised that the original account outlined how Keith had been drinking at home and had made threatening and abusive

comments to Marisa in front of [child A]. Marissa also said in her original statement that Keith had held her wrist and it was sore and threatened he would make sure she did not have the children. ... She was upset and the children saw her upset. [Child A] had come in from the car and observed some of the arguments.”

Interview conducted by Ms McTeague with Garda Harrison and Marisa Simms. Ms McTeague clarified the basis of the referral and discussed the 28 September incident. Ms Simms “verified that the incident did happen”. Following the interview, Ms McTeague stated that on the basis of this as well as the information re the referral, the 28 September incident had occurred outside the family routine at a time when there was “considerable emotional stress on the family (i.e. loss of baby, lack of acceptance by extended family members of their relationship) brought to the fore by Keith’s reliance on alcohol around the time of the incident”. Ms McTeague’s view following the initial assessment found that the children were “not at risk of ongoing significant harm and [Marisa Simms and Garda Harrison] have both taken steps to ensure disagreements/arguments will not happen again in front of the children”. According to Ms McTeague, she explained to them both that she may need to meet the children for the purpose of the assessment and both agreed and Ms Simms stated that she was “more than welcome to come” and took her phone number after explaining the next step in the process. Sometime after the interview, Ms McTeague discussed the case with Bridgeen Smith and both agreed that Ms McTeague would meet the children in order to complete the initial assessment.

Handwritten notes were taken at this meeting by Naomi Wallace, social care leader. After the meeting, she typed these up and emailed them to Ms McTeague, shredding the handwritten notes.

10 February 2014: Chief Superintendent McGinn appointed Superintendent Mary Murray, Sligo garda station under regulation 23 of the Garda Síochána (Discipline) Regulations 2007 to investigate Garda Harrison for alleged serious breaches of discipline in matters arising out of Marisa Simms statement of 6th October 2013, and unwarranted and unauthorised access to PULSE. Superintendent Murray was officially appointed to investigate: 1. that Garda Harrison had “allegedly verbally abused, assaulted, harassed and threatened to kill or harm his partner on various dates throughout their relationship”, and 2. that Garda Harrison had accessed details re Marisa Simms’ car on PULSE on 25 occasions between 26 August 2009 and 27 April 2013. Chief Superintendent McGinn stated that she appointed Superintendent Murray as she was from another district and had had no prior involvement with Garda Harrison in order to ensure independence in the investigation. [Chief Superintendent McGinn, statement to tribunal, 13 March 2017] Sergeant McGowan created incidents on PULSE reflecting referrals of 9th October 2013. These were not created previously due to “a concern that they might be inappropriately accessed”. [Sergeant McGowan statement to tribunal, 20 April 2017]

14 February 2014: Donna McTeague made a phone call to Marisa Simms to arrange a house visit.

19 February 2014: Home visit took place with the Simms children; the purpose was to meet the children, complete an initial assessment and “to observe the children with their mother and with Keith”. An account of the home visit stated that Ms McTeague chatted with both of the children who were very conversational, jovial and well-presented. They also had a close relationship with Ms Simms and Garda Harrison. There were “no issues of concern noted in the observations of the children”.

27 February 2014: Initial assessment completed, with no further action to be taken by TUSLA. Mr Simms was informed by telephone that the assessment had taken place and advised that the case was closing. Sergeant McGowan received correspondence from the HSE stating that a social work assessment had been carried out and that there were no

ongoing child protection or child welfare concerns in relation to the Simms children and the matter was closed in the HSE. Ms Simms was similarly informed.

9 May 2014: Garda Harrison gave Sergeant Durkin a copy of a typed report entitled “Re: Threat to Kill Garda Keith Harrison Received at Letterkenny Garda Station on 04/10/13 and repeated on 05/10/13”, seeking a return to normal duties, believing that the threats no longer existed and alleging “incidents of bullying and harassment from varying levels of management in the Westmeath and Donegal Division”. Sergeant Durkin states however that Garda Harrison informed him that he had no issues with bullying or harassment while stationed in Donegal town garda station. Sergeant Durkin, with permission from Garda Harrison, allowed Sergeant Cornyn to read the report. This was also forwarded to Chief Superintendent McGinn.

10 May 2014: Garda Harrison withdrew his statement of 5 October 2013 re death threats and said that he did not wish to pursue a complaint.

The report of 9 May 2014 by Garda Harrison was forwarded to Superintendent Archbold by Sergeant Durkin along with Garda Harrison’s statement of withdrawal.

13 May 2014: Chief Superintendent McGinn issued instructions to Superintendent Archbold requesting that clarification be obtained in relation to allegations made by Garda Harrison in the 9 May report. It further stated that if Garda Harrison wished to make a formal complaint, he could supply a detailed statement in accordance with the garda policy on bullying and harassment in the workplace

15 May 2014: Garda Harrison met the confidential recipient, retired Judge Patrick McMahon. Then he became what is sometimes referred to as a “whistleblower”.

19 May 2014: Garda Harrison returned to work. He states that during his shift Superintendent Andrew Archbold contacted him a number of times saying that he wanted to obtain a statement from him at Chief Superintendent McGinn’s request. He said he did not wish to give a statement but was told that he had no choice in the matter. According to Garda Harrison, in his view this was an attempt by Chief Superintendent McGinn to find out what he had set out in his allegations to Judge McMahon and to “try and cover up things”.

20 May 2014: Garda Harrison reported sick and unfit for duty.

June 2014: Garda Harrison listened to the recordings of the death threats from October 2013 in Letterkenny garda station with Detective Inspector Pat O’Donnell and did not recognise the caller’s voice.

23 July 2014: Garda Harrison made a statement re death threats to gardaí. He complained of a large volume of passing garda traffic near his home by marked and unmarked patrol cars since 20 May 2014.

1 December 2014: Superintendent Murray wrote to Garda Harrison to inform him of her appointment as investigating officer in the disciplinary investigation. She sought a meeting with him to discuss the matter.

5 December 2014: Marisa Simms sought copies of her two statements from Inspector Sheridan, who left them for collection in the public office at the garda station.

15 December 2014: Application for leave to bring judicial review proceedings made by Garda Harrison was granted by Mr Justice Noonan in the High Court. Garda Harrison sought an order for certiorari quashing the decision of the Garda Commissioner to appoint an investigating officer to investigate alleged breaches of disciplinary regulations under the 2007 regulations and criminal conduct between 1 October 1998 [beginning of Garda Harrison and Marisa Simms’ relationship, even though no allegations had been made by Ms Simms relating to any time before 2011] and 6 October 2013.

25 August 2016: Marisa Simms’ GSOC complaint declared admissible. Designated officers directed to conduct an investigation under section 98 of the Garda Síochána Act 2005.

8 November 2016: Further report from Detective Inspector O'Donnell re death threats to Chief Superintendent McGinn.

10 February 2017: Solicitors on behalf of Garda Harrison and Marisa Simms wrote to Minister Zappone complaining of the “upset and distress at their treatment by State Agencies including An Garda Síochána and TUSLA.” The letter states that Ms Simms had pressure put on her to attend at Letterkenny garda station and that she was “coerced” into making a statement “with a threat that if she didn’t there maybe repercussions for her and her children”. It states that as a result of a phone call from gardaí, Bridgeen Smith asked Donna McTeague to carry out a home visit. The letter then states that TUSLA’s actions following the referral from gardaí constituted an “inexcusable abuse of their position”.

14 February 2017: Garda Harrison released a statement through his solicitors seeking inclusion in the tribunal’s terms of reference. The matter was also discussed in Dáil Éireann.

15 February 2017: Minister Zappone met with Garda Harrison, Marisa Simms, and a legal person re the TUSLA referral.

17 February 2017: the Tribunal of Inquiry into protected disclosures made under the Protected Disclosures Act 2014 and certain other matters was established by the Minister for Justice and Equality by instrument under the Tribunals of Inquiry (Evidence) Act 1921 as amended.

April 2017: Garda Harrison returned to work at Milford garda station.

Appendix 4

List of represented parties before the tribunal on this matter:

For the tribunal:

Diarmaid McGuinness SC
Patrick Marrinan SC
Kathleen Leader BL
Elizabeth Mullan, solicitor

For the Commissioner of An Garda Síochána:

Shane Murphy SC
Mícheál P O'Higgins SC
Conor Dignam SC
Noel Whelan BL
Donal McGuinness BL
John Fitzgerald BL
Instructed by Cathy Donald, solicitor, of Chief State Solicitor's Office

For TUSLA:

Paul Anthony McDermott SC
Sarah McKechnie BL
Instructed by Arthur Cox Solicitors

For Garda Keith Harrison:

Mark Harty SC
Peter Paul Daly BL
Anthony Quinn BL
Instructed by Kilfeather & Company Solicitors

For Superintendent Kevin English and Superintendent James Coen:

Padraig Dwyer SC
Brian Gageby BL
Instructed by ME Hanahoe Solicitors

For Inspector Goretta Sheridan, Sergeant David Durkin, Sergeant Brigid McGowan, and Sergeant James Collins:

Desmond Dockery SC
Instructed by Reddy Charlton Solicitors

For Marisa Simms:

Hugh Hartnett SC
Joseph Barnes BL
Instructed by Mullaney's Solicitors

For Chief Superintendent Terry McGinn:

Conor Power SC
Cathal Ó Braonáin BL
Instructed by Daniel Spring & Company Solicitors

For Rita McDermott:

Niall O'Neill BL
Instructed by Cleary & Co Solicitors

Appendix 5

Tribunal personnel:

Peter Charleton, tribunal chairman

Diarmaid McGuinness SC, counsel

Patrick Marrinan SC, counsel

Kathleen Leader barrister, counsel

Elizabeth Mullan, solicitor

Emma Toal BL, documentary counsel

Lalita Pillay BL, documentary counsel

Peter Kavanagh, registrar

Philip Barnes, office manager

Joanne O'Donohue, investigator

Carl Ryan, investigator

Ciara Herlihy, legal researcher

Ciara Ní Ghabhann, legal researcher

Brenda Byrne, administration

Susan McCormack, administration

Appendix 6

Tribunal correspondence as to criminal proceedings



Tribunal of Inquiry into protected disclosures made under the Protected Disclosures Act 2014 and certain other matters

Established by the Minister for Justice and Equality under the Tribunals of Inquiry (Evidence) Act 1921,
on 17th February 2017 by instrument

The Hon Mr Justice Peter Charleton

Aberdeen Suite
Dublin Castle
Dublin D02 Y337
Ireland

+353-1-8982000
info@disclosuretribunal.ie

Re: Tribunal of Inquiry into protected disclosures made under the Protected Disclosures
Act 2014 and certain other matters

Our ref: DT/1

Dear Detective Superintendent Woods,

We refer to the hearings concerning Garda Keith Harrison and The Child and Family Agency (Tusla). As you are aware from our notice of 24th November 2017 a report will shortly be delivered to the Clerk of the Dáil in respect of term of reference (n).

Under the legislation, a report may not be published or may have to be redacted if it might prejudice ongoing criminal proceedings relating to any matter discussed during the hearings.

We understand that there are no such ongoing criminal proceedings arising out of any matter discussed during the hearings into this matter. Please be so kind as to confirm this by return.

Yours sincerely,

Elizabeth Mullan
Solicitor to the Tribunal

27th November 2017

Detective Superintendent Brian Woods
Garda Liaison Officer
Garda Headquarters
Phoenix Park
Dublin 7

By courier

12425

Solicitor to the Tribunal: Elizabeth Mullan

Registrar: Peter Kavanagh

An Garda Síochána

Coimisinéir Cúnta
Dlí agus Comhlíontacht
Ceanncheathrú An Garda Síochána
Páirc an Fhionnuisce
Baile Átha Cliath 8
DO8HN3X



Assistant Commissioner
Legal and Compliance
Garda Headquarters
Phoenix Park
Dublin 8
DO8HN3X

Teileafón/Tel: 01-6662597/
01-6662242

Facs/Fax:

Bí linn/Join us



Láithreán Gréasain/Web Site:
www.garda.ie

Riomh-phoist/Email:
GPDT@garda.ie

Your Ref DT/1

Dear Ms Mullan,

Re: Correspondence from the Tribunal of Inquiry into Protected Disclosures made under the Protected Disclosures Act, 2014 and certain other matters

In reply to your letter dated the 27th November 2017 in respect of your enquiry into any ongoing criminal proceedings arising out of the matters discussed during the hearings into Garda Keith Harrison and the Child and Family Agency (Tusla).

I can confirm from a search of records held within An Garda Síochána that there are no ongoing criminal proceedings against Garda Keith Harrison.

Yours sincerely,

Brian Woods
Detective Superintendent
Garda Liaison Officer
Garda Headquarters
Phoenix Park
Dublin 8

28 NOV 2017
RECEIVED

28th November 2017