



Fourth 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, and by instrument on 7th December 2018.

Term of Reference [p]

Garda Whistleblowers

The case of Garda Nicholas Keogh

VOLUME ONE

Chair: Mr Justice Sean Ryan, former President of the Court of Appeal



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

Established under the Tribunals of Inquiry (Evidence) Act 1921, as amended.

The Hon Mr Justice Sean Ryan

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Dublin Castle
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8th July 2021.

**Re: Tribunal of Inquiry into protected disclosures made under the Protected
Disclosures Act 2014 and certain other matters - term of reference (p)**

Dear Mr. Finnegan,

I enclose with this letter two (2) copies of the Tribunal's report into the complaint made by Garda Nicholas Keogh under term of Reference [p] of the Disclosures Tribunal.

In furnishing this report, the Tribunals of Inquiry Acts 1921 to 2004 have been compiled with.

A legal requirement is to confirm to you that no prosecutions are pending in respect of the matters in the report and you will find attached copy correspondence to the tribunal solicitor Ms. Walsh from An Garda Síochána and the Director of Public Prosecutions establishing that position.

At present, the report as now furnished is with the printers for production of hard copies in A4 format in two volumes which are expected to be available in a matter of weeks.

Yours sincerely,

Sean Ryan
Chairperson of division (p) of the Disclosures Tribunal

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



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Our ref: DT-1/P
Your ref: AM/2017/01647D

31st May 2021

Detective Superintendent Sé McCormack
Tribunal Co-ordination Office
Garda Headquarters
Phoenix Park
Dublin 8

**Re: Tribunal of Inquiry into protected disclosures made under the Protected
Disclosures Act 2014 and certain other matters - term of reference (p)**

Dear Detective Superintendent McCormack,

I refer to the tribunal hearings concerning matters relating to Garda Nicholas Keogh pursuant to term of reference (p) of the tribunals terms of reference. A copy of the tribunal's terms of reference is enclosed.

The tribunal will shortly be delivering a report on term of reference (p) to the Clerk of the Dáil.

I refer you to the Tribunals of Inquiry (Evidence) (Amendment), Act, 2002. Under Section 3 (1) there are circumstances in which the recipient of the report might have to consider holding up publication because of a pending prosecution. The relevant part of the section is as follows:

'3. (1) If, on receipt by the person to whom a tribunal is required, by the instrument by which it is appointed or any instrument amending it, to report of an interim or the final report of the tribunal, that person considers that the publication of the report might prejudice any criminal proceedings, that person may apply to the Court for directions regarding the publication of the report.

(2) Before the Court determines an application under subsection (1), it shall direct that notice of it be given to—

(a) the Attorney General,

Solicitor to the Tribunal: Ciara Walsh

Registrar: Peter Kavanagh

(b) the Director of Public Prosecutions, and

.....

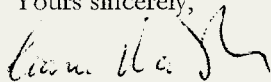
(3) On an application under subsection (1) the Court may, if it considers that the publication of the report concerned might prejudice any criminal proceedings, direct that the report or a specified part of it be not published—

(a) for a specified period, or

(b) until the Court otherwise directs..'

The tribunal, in order to deal with this situation, seeks confirmation that no prosecutions are outstanding. Please come back with such confirmation within 14 days of the date of this letter.

Yours sincerely,



Ciara Walsh

Solicitor to the Tribunal

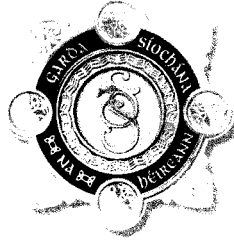
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Solicitor to the Tribunal: Ciara Walsh

Registrar: Peter Kavanagh

An Garda Síochána

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Dáta/Date: 10th June 2021

Your ref: DT-1/P

Ciara Walsh
Solicitor to the Protected Disclosures Tribunal

Re: Tribunal of Inquiry into protected disclosures made under the Protected Disclosures Act 2014 and certain other matters – term of reference (p)

Dear Ms. Walsh,

With reference to your letter dated 31st May 2021 regarding Garda Nicholas Keogh and pursuant to part (p) of the Tribunal's terms of reference, I wish to inform you of the following.

Based on enquiries made within An Garda Síochána, I can confirm that there are no outstanding prosecutions at this time in the context of Garda Nicholas Keogh's allegations under term of reference (p) and relevant to Section 3(1) of the Tribunal of Inquiry (Evidence) (Amendment) Act 2002.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Sé McCormack', written over a horizontal line.

Date: 10/6/2021

Sé McCormack
Detective Superintendent
Garda Liaison Officer
Garda Headquarters
Phoenix Park
Dublin 8

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PART ONE

CHAPTER 1

INTRODUCTION

The Tribunal

On 16th February 2017, following approval by the Government of draft resolutions to that effect, the Houses of the Oireachtas each resolved that it was expedient that a tribunal be established under the Tribunals of Inquiry (Evidence) Acts, 1921 to 2004, to be chaired by Mr Justice Peter Charleton, Judge of the Supreme Court, to inquire urgently into the definite matters of urgent public importance that were set out in Terms of Reference from [a] to [p].

The first recital to the resolutions referred to the serious public concern about allegations that senior members of An Garda Síochána sought to discredit Sergeant Maurice McCabe because of complaints he made about the performance of An Garda Síochána. It was also noted that a public inquiry was the most appropriate way to investigate these serious allegations so as to ensure public confidence in An Garda Síochána and to respond to the public disquiet caused by these allegations.

The tribunal was directed *'to adopt a modular approach to this inquiry so that the matters set out at [a] – [o] inclusive shall be inquired into in the first instance, and thereafter upon consultation with the Sole Member the Government shall, if requested by the Sole Member, take steps to appoint another Judge to continue and conclude the work of the Tribunal namely the matter at [p] above as the second module'*¹

Term of reference [p] is:

*To consider any other complaints by a member of the Garda Síochána who has made a Protected Disclosure prior to 16th February, 2017 alleging wrong-doing within the Garda Síochána where, following the making of the Protected Disclosure, the Garda making the said Protected Disclosure was targeted or discredited with the knowledge or acquiescence of senior members of the Garda Síochána.*²

In the course of her speech on 16th February 2017 moving the resolution in Dáil Éireann, the Minister for Justice and Equality, Ms Frances Fitzgerald TD, described the purpose of the tribunal:

*These terms of reference will establish a public tribunal of inquiry [to] get to the truth. That is in the interests of whistleblowers and the interests of members of An Garda Síochána, particularly those against whom allegations have been made, and it is in the public interest. What is required is that the issue of how whistleblowers in An Garda Síochána have been treated is examined independently, fairly and publicly. For the first time, we will hear in public all sides of the story. I have said to this House previously that it would be wrong to try to remedy one injustice by creating another one. Everyone has basic human rights and it would be a cruel irony if our beliefs about the appalling treatment of some led to the ill-treatment of others. Hearing the other side is a basic requirement of fair procedure.*³

¹ Dáil Éireann Debate, Establishment of a Tribunal of Inquiry: Motion, dated 16th February 2017

² Terms of Reference of the Disclosures Tribunal

³ Dáil Éireann Debate, Establishment of a Tribunal of Inquiry: Motion, dated 16th February 2017

The Minister also referred to issues concerning Sgt McCabe and said that:

There has been a lot of debate in this House and elsewhere as to whether we should look at how other gardaí who have made protected disclosures have been treated. I am providing for a new module which will allow the tribunal to look at these cases in the context of action to target or discredit gardaí who had made protected disclosures.⁴

When he had completed inquiries into the matters cited at [a] to [o] and furnished his reports, Mr Justice Charleton requested that the Government appoint another judge to complete the tribunal's work by inquiring into the matters covered by term of reference [p]. By further resolutions of the Houses of the Oireachtas in November 2018 and Ministerial Orders following them, Mr Justice Sean Ryan, former President of the Court of Appeal, was appointed as Chairperson of division [p] of the tribunal.

This is the report of the inquiry into the complaint made by Garda Nicholas Keogh of Athlone Garda Station pursuant to term of reference [p] that he was targeted and discredited by senior officers of An Garda Síochána because he made a protected disclosure. It is the first complaint to be considered under term of reference [p] in a public hearing. Other cases remain to be considered.

Mandate under Term of Reference [p]

The tribunal noted the context of paragraph [p] in relation to the other terms of reference of the tribunal, the majority of which directed an investigation into grave allegations of misconduct against senior garda management in relation to Sgt McCabe. The Oireachtas was concerned to ascertain whether there were other gardaí in a similar situation to Sgt McCabe who maintained that they were victimised because they spoke out about wrongdoing in the force and that senior officers knew about it and condoned it. So members who made protected disclosures reporting serious malpractices and were subsequently targeted or discredited with official or senior condonation were intended to be covered.

The essence of term of reference [p] is that the tribunal is to consider complaints made by persons who, as members of An Garda Síochána, made protected disclosures before the relevant date and who allege that they were thereafter targeted or discredited with the knowledge or acquiescence of officers of superintendent rank or higher.

A complaint within the meaning of term of reference [p] is a written communication made to the tribunal by an individual who maintains that he or she was victimised in the specific manner described in paragraph [p].

An essential condition of admissibility under term of reference [p] is that the garda concerned made a protected disclosure prior to the date when the tribunal was established. Any later disclosures are excluded from consideration by this body as a matter of jurisdiction.

A protected disclosure includes a report to an appropriate person or body, by a garda, of wrongdoing in the force that constitutes an offence in law or a failure to comply with a general (not merely a contractual) legal obligation and that came to the garda's attention in the course of their work.

Another essential jurisdictional requirement under term of reference [p] is that the targeting or discrediting directed towards the whistleblower, after the disclosure, was condoned or tolerated

⁴ Dáil Éireann Debate, Establishment of a Tribunal of Inquiry: Motion, dated 16th February 2017

or known about by senior members of An Garda Síochána. Mr Justice Charleton defined *‘senior officers of the Garda Síochána’* as being officers of the rank of superintendent and above, as well as anybody acting within those capacities and the tribunal adopts this definition.

It is not sufficient for the complaint to succeed for Garda Keogh to have suffered targeting or discrediting by officers of the specified seniority; there must also be a connection to his protected disclosure. The rationale for this is the protection of whistleblowers. The Oireachtas was concerned to investigate whether reporters of wrongdoing or corruption were being victimised. Having said that, the tribunal has not adopted an over-narrow or technical interpretation and the chapters on each issue address targeting, discrediting and any connection there might be with the protected disclosure.

In his opening statement when dealing with terms of reference [a] to [o], Mr Justice Charleton defined *‘discredit’* in the context of the inquiry as including the fostering of disparagement, mistrust, suspicion, disbelief or otherwise to convey or cause reputational damage in a personal and/or professional sense. The tribunal adopts this definition when dealing with term of reference [p] and adds that it cannot be viewed in the abstract but must be examined in the particular circumstances alleged. The word *‘targeted’* in the context of the inquiry means abuse or criticism directed at a person.

The tribunal considers that such ‘targeting’ and ‘discrediting’ involves intentional conduct directed towards a person; they do not happen by accident and are directed towards the person for hostile purposes. It is impossible to define these terms in the abstract in a way that is applicable in all circumstances. They have to be considered in their factual context.

Another component of the mandate in term of reference [p], is *‘to consider’*. The terms of reference as a whole directed the tribunal *‘to investigate’* specified matters in 13 terms of reference and *‘to examine and consider’* in two terms of reference. On only one occasion, in term of reference [p], is the simple verb *‘to consider’* employed.

It is apparent from the context of this tribunal and from the meaning of the word that *‘to consider’* allows for an investigation of a complaint but does not require that. *‘Consider’* in this context implies a wide discretion as to the mode of examination and indeed it is a decision for the tribunal whether to proceed with a complaint, even if it complies with the admissibility requirements of term of reference [p]. Issues of justice, practicability or expediency may make it inappropriate to proceed with a complaint. For example, many of the persons involved may be deceased in a case that depends on personal recollection and testimony. It may be impossible to conduct a thorough consideration of a complaint for a variety of reasons. On the other hand, it might be possible to consider a complaint in a compact, focused format.

The tribunal interpreted its function under term of reference [p] as giving a wide discretion as to what complaints to examine and as to the mode of consideration, while being alert at all times to the stringent constitutional and legal requirements of fair procedures.

It is a cardinal principle of inquiries that the terms of reference define the jurisdiction of the tribunal. It is not a matter of choice; the inquiry simply does not have any legal competence to investigate matters that are outside its terms of reference.

An important limitation on any consideration by the tribunal is that the focus of the mandate, and therefore the tribunal, is not on the wrongdoing reported in the disclosure, no matter how serious the allegations, but rather on the conduct towards the reporting garda subsequent to the disclosure. While these matters may not, in particular circumstances, be sealed off in discrete compartments and there may be some elements of overlap, the focus of any inquiry is clearly defined in term of reference [p].

The tribunal published, as required, its interpretation of term of reference [p]. No submissions or clarifications were at any stage sought by party in relation to the tribunal's interpretation.

Standard of Proof

The legal submissions on behalf of An Garda Síochána argued, by reference to Supreme Court authorities, that:

[T]his Tribunal should apply a suitably exacting standard of evidence when considering the degree to which it must be satisfied that the allegations have been made out. There must be proportionality between the gravity of the matters alleged and the evidence relied upon to justify the allegations.

The tribunal considers the evidence and makes its decisions in accordance with the civil standard of proof, namely, on the balance of probabilities. There is debate among lawyers and judges as to whether a person making a more serious allegation has to or should have to achieve a higher threshold of evidence. The answer seems to be that the definition of the standard is clear and not in dispute. No matter how grave the claim is against a party in civil proceedings it is the balance of probabilities that applies. But it is easier to prove a negligent scrape by a car than to make out a case of massive fraud. This point focuses on the application of the established test to different circumstances. The tribunal accepts these principles and did not find it necessary to prescribe any special standard to apply in its analysis of the evidence.

Procedure

The tribunal published a memorandum of procedures on 8th March 2019 that it adopted in respect of term of reference [p]. This document is available on the tribunal website. No issue has been taken, and no submissions have been made, in relation to the tribunal's adopted procedures.

Discovery

In accordance with section 4 of the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979, the tribunal has all the necessary powers of the High Court including the power to make orders for the preservation, production and discovery of documents. The tribunal made such orders for discovery as were required and a significant volume of voluntary disclosure was also made by a number of relevant parties, including Garda Nicholas Keogh.

The tribunal received extensive discovery over a number of months in 2018 and 2019 with approximately 100,000 documents being provided. The tribunal is grateful for this impressive level of cooperation with its work.

Following the analysis of the disclosure material, documentation was circulated to the relevant persons identified in Garda Keogh's complaint and witness statements were requested. This material was circulated on a strictly confidential basis and redacted where appropriate and/or where necessary to protect the rights of privacy or confidentiality of any party or person.

A large number of witness statements was subsequently provided to the tribunal during the period between January and October 2019.

Interview Process

Tribunal investigators conducted interviews with relevant witnesses under section 6 of the Tribunals of Inquiry (Evidence) (Amendment) Act, 2002. Under this provision, the tribunal may, when it thinks necessary and appropriate, request one or more of its investigators to carry out a preliminary investigation of any matter material to the inquiry to which the tribunal relates.

The tribunal investigators interviewed Garda Keogh in the presence of his solicitor and counsel over the course of four days between 9th August 2018 and 15th August 2018.⁵ The tribunal investigators also met with Garda Keogh's legal team on 16th and 17th October 2019 to facilitate the inspection of telephone records. The investigators went on to interview eleven further witnesses between April 2019 and February 2020.

Legal Representation

The tribunal received applications for legal representation by interested parties and these applications, in the main, were dealt with in writing. The entitlement to be represented was afforded to all parties and persons whose reputation could potentially be adversely affected in any manner by the report of the tribunal. The list of parties afforded legal representation and their representatives under this module appears in an appendix to this report.

Public Hearings

The tribunal conducted a case management hearing in private session on 30th April 2019. The purpose of the session was to hear submissions, if any, in respect of the proposed schedule of issues for the Garda Nicholas Keogh module, which had been circulated by letter dated 16th April 2019.

In advance of public hearings, the tribunal prepared an electronic brief of material relevant to the matters into which it was obliged to inquire in respect of Garda Keogh. This brief was extensive, with 59 volumes of material running to 16,715 pages. This brief, or where appropriate, the relevant sections of it, was served on the relevant parties in advance of the commencement of public hearings. This electronic brief was augmented during the course of the public hearings following additional requests for material and when further material was disclosed, it was circulated to the relevant parties.

The tribunal commenced public sittings in respect of Garda Keogh's complaint under term of reference [p] on 14th October 2019. The tribunal heard 53 days of oral evidence, calling 47 witnesses on the matters arising in the complaint. A list of these witnesses is an appendix to this report and all transcripts are available on the tribunal website.

The tribunal was not in a position to finalise the oral hearing of evidence during the period 6th March–28th June 2020 in the light of the Government regulations and guidelines in force at that time in respect of COVID-19. The public hearings recommenced and were completed on 29th, 30th June and 1st July 2020. The tribunal thanks all the legal teams, members of the public and press attending on those dates for their cooperation with the strict procedures put in place to conduct these hearings in accordance with public health guidelines.

⁵ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, pp. 1-115

At the conclusion of the public sittings, the legal representatives of the participating parties were afforded an opportunity to make both oral and written closing submissions dealing with any evidence affecting his or her client.

Applications for Costs

Section 6(1) of the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979, provides for applications for costs which may be made following this report of the findings of the tribunal.

Tribunal Personnel

The tribunal expresses its gratitude to the legal teams appearing for the various parties who were accorded representation. They conducted themselves in an exemplary manner prior to and during the oral hearings. The various representatives presented their cases with respect and courtesy towards the witnesses, their colleagues acting for other parties and towards the tribunal and its legal team.

The tribunal wishes to thank Mr Justice Charleton for his assistance in and about the takeover of this module. He is also due gratitude for assembling the outstanding tribunal legal team whose members who were in a position to do so stayed on for this phase.

Through the courtesy of Ms Justice Mary Ellen Ring of the Garda Síochána Ombudsman Commission, two investigators were seconded to the tribunal. The tribunal wishes to acknowledge their excellent work.

A special word of thanks is due to tribunal counsel, tribunal solicitors, investigators, registrar, office staff and tribunal manager. The names of the members of the tribunal team are noted in an appendix to this report.

CHAPTER 2

GARDA NICHOLAS KEOGH'S COMPLAINT

Pre-history of the Tribunal

Garda Nicholas Keogh was attested as a member of An Garda Síochána on 1st July 2000. Following his training in Templemore, he was assigned to Bray Garda Station. He commenced on regular uniform duties followed by three years in the Bray Drugs Unit. He stated that he completed training in the Garda National Drugs Unit in 2005. His final year in the Bray District was in the Detective Unit in Enniskerry.⁶ Garda Keogh remained in Bray until his transfer to the Westmeath Division in late 2006. On 10th October 2006, he was initially posted to Ballynacargy Garda Station. One year later, on 16th October 2007, he was transferred to Athlone Garda Station where he started with the uniform patrol unit on Unit C.⁷

In October 2009, Garda Keogh succeeded in a competition for positions in the District Drugs Unit, Athlone. He served in that unit for two years until 22nd August 2011. While on the Drugs Unit he was partnered with a Garda A, working on 'Unit A'. During this period he became aware of a drugs detection operation code-named 'Operation Loki', in which gardaí from the Garda National Drugs Unit carried out test purchases from suspected local drug dealers. This operation subsequently featured in his protected disclosure.⁸

Garda Keogh's secondment to the Athlone District Drugs Unit was not a permanent posting and was subject to the rotation policy of the superintendent then in charge. Garda Keogh returned to regular policing as a result of this policy.⁹

Garda Keogh had a perfect attendance record until 2011. During the ten-year period between 2000 and 2010 he was not absent from duty due to illness on a single occasion.¹⁰ His first periods of sick leave were between October 2011 and December 2011¹¹ and he was recorded as absent on sick leave from December 2011 to February 2012 due to an acute musculoskeletal injury.¹²

In 2012, Garda Keogh had periods of sick leave including a period undergoing residential rehabilitation treatment for his alcohol dependency.¹³ An inpatient progress note completed by a student nurse dated 5th June 2012 noted:

Nick informed the writer during 1:1 time that there was a situation at work where he was overheard talking to a solicitor about "all the dirt" he has on his garda colleagues in Athlone. Did not want to elaborate on same as he stated that he was here purely to focus on his alcohol dependency however stated that he was just making staff aware that he had gotten a "tip off" that there would be a welfare officer visiting _____ to probe for information as to whether Nick was going to raise issue with senior members of the gardai. Denied that he was going to do same as his solicitor advised him that he was just going to be "opening a can of worms" which lead Nick to the conclusion that it "wasnt worth the hassle".¹⁴

⁶ Tribunal Transcripts, Day 99, p. 77, Evidence of Garda Nicholas Keogh

⁷ Tribunal Transcripts, Day 99, pp. 78-80, Evidence of Garda Nicholas Keogh

⁸ Tribunal Documents, Report to the Director of Public Prosecutions, dated 24th November 2015, p. 11080 at p. 11085

⁹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 3

¹⁰ Tribunal Documents, SAMS Absence Report, pp. 10724-10725

¹¹ Tribunal Documents, SAMS Absence Report, pp. 3652-3653 and p. 10721

¹² Tribunal Documents, Report of the Garda Occupational Health Department, dated 18th April 2012, p. 3680

¹³ Tribunal Transcripts, Day 113, p. 9, Evidence of Garda Nicholas Keogh

¹⁴ Tribunal Documents, Inpatient Progress Note completed by Student Nurse, dated 5th June 2012, p. 297

Another note dated 20th June 2012, by the same carer said:

Reports that he received a phone call from the welfare officer in his place of work to inform him that she would be coming in to speak with one of the therapists on the programme tomorrow. Nick has informed _____ of same. When asked about the purpose of this visit Nick stated that she was “basically coming to find out what dirt I have on my colleagues”. Nick reports that the _____ in Athlone, who Nick works under is in line for a promotion and is eager that Nick doesn't report any of his colleagues to the _____ superiors in case it reflects badly on him and decreases his chance of getting the promotion.¹⁵

He had further significant absences on sick leave during 2013 and 2014.¹⁶

Background to the Protected Disclosure

Garda Keogh referred in his evidence to becoming aware of what he termed ‘*absolutely insane criminality*’¹⁷ in Athlone during the period 2008–2012.¹⁸ He stated that he went to a local solicitor in Athlone at the end of 2011 and that he ‘*broke confidence*’ with An Garda Síochána.¹⁹ He gave evidence to the tribunal that he was told at that the time ‘*you'll open a can of worms if you go down this road*’²⁰ and that the solicitor tried to talk him out of it.

In a letter to the tribunal dated 2nd April 2019, Mr Luke ‘Ming’ Flanagan MEP confirmed that he met with Garda Keogh in early 2014. He stated that:

He asked me to meet him in a secluded spot in the Midlands. During the meeting in his car he outlined his concerns about what he said was occurring at Athlone Garda Station.²¹

Garda Keogh recorded in his diary that he met with the then deputy on 14th January 2014²² and 7th April 2014.²³ He referred to printing an affidavit on 28th April 2014.²⁴ This was later sworn on 7th May 2014.

Deputy Flanagan contacted the Garda Síochána Ombudsman Commission (GSOC) on 30th April 2014²⁵ with the information he had received from Garda Keogh. He also referred to Garda Keogh's case in Dáil Éireann on that date without actually naming him.²⁶

By decision dated 1st May 2014, GSOC determined that it was expressly prohibited from receiving complaints from a serving member and that an investigation by the Commission under section 102 (4) of the Garda Síochána Act, 2005 would be open to challenge. It recorded that the confidential recipient process remained available to the member concerned.²⁷ Deputy Flanagan was advised accordingly.

¹⁵ Tribunal Documents, Inpatient Progress Note completed by Student Nurse, dated 20th June 2012, p. 296

¹⁶ Tribunal Documents, SAMS Absence Report, p. 10721

¹⁷ Tribunal Transcripts, Day 113, p. 7, Evidence of Garda Nicholas Keogh

¹⁸ Tribunal Transcripts, Day 113, p. 16, Evidence of Garda Nicholas Keogh

¹⁹ Tribunal Transcripts, Day 113, p. 8, Evidence of Garda Nicholas Keogh

²⁰ Tribunal Transcripts, Day 113, p. 9, Evidence of Garda Nicholas Keogh

²¹ Tribunal Documents, Letter from Mr Luke ‘Ming’ Flanagan MEP to the Disclosures Tribunal, dated 2nd April 2019, p. 12623

²² Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 14th January 2014, p. 13249

²³ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 7th April 2014, p. 13252

²⁴ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 28th April 2014, p. 13254

²⁵ Tribunal Documents, Decision of Garda Síochána Ombudsman Commission, dated 1st May 2014, p. 7641

²⁶ Tribunal Documents, Extract from Dáil Éireann Debates, dated 30th April 2014, p. 12587 at p. 12588

²⁷ Tribunal Documents, Decision of Garda Síochána Ombudsman Commission, dated 1st May 2014, pp. 7641-7642

Garda Keogh met with Deputy Flanagan on 7th May 2014. As noted above, Garda Keogh provided an affidavit to the confidential recipient that was sworn on 7th May 2014. He confirmed in his evidence to the tribunal that he was advised to proceed by way of affidavit by Deputy Flanagan.²⁸

On 8th May 2014, Garda Keogh handed over an affidavit containing a protected disclosure alleging corruption by gardaí in the Athlone District to Judge Patrick McMahon, the person designated as confidential recipient to receive the disclosure. While he was presenting his affidavit to the judge, and by arrangement with Garda Keogh, Deputy Flanagan raised the allegations in Dáil Éireann, naming Garda Keogh as the discloser.

Garda Keogh's affidavit made allegations about a Garda 'clean street operation' that was conducted in November 2009 in Athlone which resulted in subsequent follow-up activities including a search, arrests and prosecutions. It said that the purpose of a clean street operation involved undercover gardaí buying controlled drugs from suspected drug dealers, adding that this operation would also boost drug seizure figures for the district.

The affidavit included the following:

There were apparently 30 other persons charged with the sale of supply of drugs during this operation. None of these exhibits or files were stored in the normal manner instead they were hidden in a locked room in a separate building from the main Garda Station in Athlone. There was no genuine part of this investigation with the purpose of combating Athlone's Drug problem. It was simply an exercise to boost the number of Drug Detections in the District. In the case of _____ he wasn't even asked where or from whom he got the drugs from. When interviewed by the Gardai, I have great concerns in relation to this particular case as well as the operation as a whole.

1. *I suspect the original information was incorrect which led the arrest of Suspect 1 and the search of his house thus terrifying his partner.*
2. *A Garda Statement was falsely made.*
3. *There was a cover up where the original file was stolen and then the original incident removed from the pulse.*
4. *New statements were created and new original information's appeared.*
5. *The Court Order for disclosure were deliberately not complied with by the Gardai.*
6. *At least one of the accused was threatened by a Garda to plead guilty on the hearing day of the Court Case.*
7. *My greatest concern with this Drugs operation in November, 2009 is that there was a systematic and orchestrated effort by High Ranking Garda officers to induce and coerce Irish Citizens (in this case with no previous criminal convictions) to buy drugs from drug dealers, and in doing so putting them in personal danger and in turn to sell the drugs to the undercover Gardai, without making any profit thus boosting Crime Detection figures for Arrests, Charges, and Convictions. The result of this operation was that these mostly young citizens of this State now have serious Drug Convictions where at least in this case none previously existed.*

²⁸ Tribunal Transcripts, Day 99, p. 88, Evidence of Garda Nicholas Keogh

8. *A further aspect of grave concern in relation to the planning of this operation was that the list of nominated persons to be targeted had a notable omission in that a significant and well recognized drug dealer in the area who has been long associated with a _____ member of the Drugs Unit was excluded.*²⁹

In his address to the Dáil during Leader's Questions, Deputy Flanagan stated that Garda Keogh was meeting with the confidential recipient for An Garda Síochána and was raising serious issues in relation to matters of policing which were alleged to have occurred in and around Athlone.

Deputy Flanagan stated that:

At this time, Garda Nicky Keogh – that is his name and he is proud of it – from Athlone Garda Station is presenting information to the confidential recipient, Mr. Justice Patrick McMahon. Given the gaping hole that there is in legislation in this country, which means the avenue of the Ombudsman commission is cut off, he has no option but to go to the confidential recipient. He has been left with no choice but to go public because since last week when the man voted by this Government to be Taoiseach laughed at what he brought to me the word at his local Garda station is that he is a whistleblower or, to use a word being used by many people, a snitch. His allegations are serious, including a cover up of an original file which was stolen, with the original incident being removed from the PULSE system; the creation of new statements and appearance of new original information; non-compliance by the Garda with the court order for disclosure and at least one of the accused being threatened by a garda to plead guilty on the day of the court case.

His greatest concern with the drugs operation in November 2009 is that there was a systematic and orchestrated effort by high-ranking Garda officers to induce and coerce citizens, in this case citizens with no previous criminal conviction, to buy drugs from drug dealers, putting them in personal danger, and sell the drugs in turn to undercover gardaí without making any profit, thus boosting crime detection figures concerning arrests, charges and convictions. The result of this operation was that these mostly young citizens of the State, who had no previous drug convictions, now have serious drug convictions.

*Finally, a further aspect of grave concern regarding the planning of this operation was that the list of persons nominated to be targeted had a notable omission in that a significant and well recognised drug dealer in the area who has long been associated with a senior member of the drugs unit was excluded. My question is simple enough: what will the Government do to reassure the whistleblower that he will not be bullied or have a rat hung on his door? Will the Government encourage members of the public to go to Athlone Garda station this evening? When the man in question goes to work, he should be encouraged and it should be made known to him that he is a hero and not a rat, as the Government seems to suggest such people are.*³⁰

When asked by counsel for the tribunal whether he was aware that the then Deputy Flanagan was going to raise the matter in Dáil Éireann, Garda Keogh replied:

*Yes, we discussed it and the reason for that was, look, knowing the history of when the Guards are investigating themselves, we felt that it would be better if it was out in the open and it would be harder to do a cover up on it.*³¹

He was asked if he intended that the matter would get publicity and Garda Keogh said it was to put it on the record and that '*... it would be more difficult for it to be buried*'.³²

²⁹ Tribunal Documents, Affidavit of Garda Nicholas Keogh, sworn on 7th May 2014, pp. 3971-3972

³⁰ Tribunal Documents, Extract from Dáil Éireann Debates, dated 8th May 2014, p. 12596 at pp. 12598-12599

³¹ Tribunal Transcripts, Day 99, p. 88, Evidence of Garda Nicholas Keogh

³² Tribunal Transcripts, Day 99, p. 89, Evidence of Garda Nicholas Keogh

Following the election of Deputy Flanagan as a member of the European Parliament, Garda Keogh met and corresponded with Deputies Clare Daly and Mick Wallace in respect of his allegations and the investigations into the same. These interactions are outlined in the course of this report.

Judge Patrick McMahon

On 9th May 2014 Assistant Commissioner Dónall Ó Cualáin was appointed to investigate the protected disclosure.³³

On 13th May 2014, Garda Keogh made a diary entry stating '*inform[ed] judge Im not happy with A.C appointed due to friendship with chief*'.³⁴ Judge Patrick Mc Mahon, the confidential recipient, was asked by counsel for the tribunal whether Garda Keogh had expressed that concern and he replied that:

*He may have, but Garda Keogh expressed a lot of anxiety about everything at the time. And I think it would have been his choice that matters were investigated by somebody outside of An Garda Síochána. This... was my impression at the time. But I mean as regards everybody knowing each other in the Guards, of course they do, it's a small country, particularly at that level.*³⁵

He said that Garda Keogh requested the names of the members of the Ó Cualáin investigation team.³⁶

Judge McMahon gave evidence to the tribunal that Garda Keogh was a '*very distressed young man*'³⁷ and said that '*he was anxious, he was distressed and a very bothered young policeman*'.³⁸ He also stated that:

*Oh he was a very, very personable young guard. I mean, from day one that I met him he was totally cooperative. But I mean, I was only receiving information, but never had an issue with Garda Keogh. He was a total gentleman. I felt very sorry for him because he was a very anxious, distressed gentleman, that's what I felt.*³⁹

Judge McMahon said that Garda Keogh was '*... in a very serious state of anxiety. And I know he had health problems as well and he had addiction problems as well*'.⁴⁰

The Office of the Confidential Recipient was abolished when the Protected Disclosures Act, 2014 came into force on 15th July 2014 and Judge McMahon had no further dealings with Garda Keogh after this date.⁴¹

Following the making of his protected disclosure on 8th May 2014, Garda Keogh continued to work in Athlone Garda Station and he had a period of some seven months without significant sick leave, but the situation deteriorated in late 2014 and early 2015. His doctor's certificates covering his absences recorded a variety of physical illnesses but from 29th December 2014 and continually up to date, the reason was stated to be work related stress.⁴²

³³ Tribunal Documents, Letter from the Garda Commissioner to A/C Dónall Ó Cualáin, dated 9th May 2014, p. 3969

³⁴ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 13th May 2014, p. 13256

³⁵ Tribunal Transcripts, Day 135, pp. 14-15, Evidence of Judge Patrick McMahon

³⁶ Tribunal Transcripts, Day 135, pp. 19-20, Evidence of Judge Patrick McMahon

³⁷ Tribunal Transcripts, Day 135, pp. 30-31, Evidence of Judge Patrick McMahon

³⁸ Tribunal Transcripts, Day 135, p. 31, Evidence of Judge Patrick McMahon

³⁹ Tribunal Transcripts, Day 135, p. 34, Evidence of Judge Patrick McMahon

⁴⁰ Tribunal Transcripts, Day 135, p. 37, Evidence of Judge Patrick McMahon

⁴¹ Tribunal Transcripts, Day 135, p. 29, Evidence of Judge Patrick McMahon

⁴² Tribunal Documents, Letter of Dr David Bartlett to the Disclosures Tribunal, dated 11th January 2019, p. 10649

Garda Keogh has been on long-term sick leave since 26th December 2015.

The recording of his sick leave by An Garda Síochána and the investigation into his work related stress absences are both matters before this tribunal and they are dealt with in chapter 17.

Garda Nicholas Keogh's Complaint to the Tribunal

In March 2017, the legal representatives for Garda Keogh submitted a large body of documentation to the tribunal consisting of Garda Keogh's statement (undated) and thirteen appendices outlining his complaint under term of reference [p].⁴³

The complaint of Garda Keogh outlined a number of alleged instances of targeting and discrediting of Garda Keogh and stated that:

*These submissions relate ultimately and fundamentally to my serious substantive matters of complaint in that the latter gave rise, in the first place, to my 'protected' complaints under the 2005 Garda Síochána Act and under the Protected Disclosures Act 2014, which in turn produced bullying, harassment, victimisation of me.*⁴⁴

Garda Keogh outlined in some detail his complaint of harassment following the making of his protected disclosure:

Following my making 'protected' disclosures, I encountered a managerial culture of harassment, exclusion, victimisation, penalization. The undermining of my dignity did not emanate from my colleagues on the ground but from the higher echelons of garda management. I used to end up experiencing my stomach literally churning before I went to work in anticipation of maltreatment from senior garda management. It became evident that senior management would use any (and any non-existent) excuse to hypercriticise me. They set out to break me physically, mentally and financially. They were actively searching for excuses to damage, harass, isolate, demean and treat me like a Dickensian schoolboy. My professional identity had been as a member of the force. I had up to that point an exemplary record. I had received numerous commendations. I had never missed a day from work from 1999 to 2011. My work had never been severely criticised before. These acts of harassment caused me debilitating and serious injury.

*There was vexatious investigation, close monitoring and disciplining of my police work on tangential, subjective and de minimis grounds. It appeared that senior managers set out to undermine my self-confidence and professional ability. I was now, for example, presented with excerpts from a basic police manual on policing telling me how to proceed in an elementary way. There were attempts to induce persons to make complaints against me etc.*⁴⁵

Garda Keogh went on to outline what he said were instances of harassment during 2014 and 2015 in the Westmeath Division. He concluded:

*I perceived, following the making of 'protected' disclosures, the same integrated patterns of institutional abuse, victimisation and 'investigative' cover-up by senior police management that had also been applied to _____ (following his arrest of _____ for drink driving). They were also applied in Sergeant McCabe's case. These administrative actions did not emanate from the ground level or from colleagues. Such replicated patterns of control through harassment and vindictive victimisation – both express and more 'subtle' – were not, on the balance of probabilities coincidences but were employed in the same District and Divisional areas and chains of command.*⁴⁶

⁴³ Tribunal Documents, Statement of Garda Nicholas Keogh, pp. 116-258

⁴⁴ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116

⁴⁵ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 121

⁴⁶ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 138

Garda Keogh attended for an interview with the tribunal investigators over the course of a number of days between 9th August 2018 and 15th August 2018⁴⁷ and confirmed that he had detailed *'all such alleged hypercriticising'* of him by garda senior management.⁴⁸

He went on to raise additional issues in respect of his treatment by senior management, particularly in relation to the handling of his complaint of bullying and harassment under the *'Working Together To Create A Positive Working Environment'* policy document, the subsequent investigation carried out by Assistant Commissioner Michael Finn and the promotion of Superintendent Pat Murray at around this time.

Background to the Issues

On 9th May 2014, the day after Garda Keogh made his disclosure, Acting Garda Commissioner Nóirín O'Sullivan appointed Assistant Commissioner Dónall Ó Cualáin, Western Region, under the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations, 2007 to investigate Garda Keogh's allegations. He began preparations for a major investigation which included choosing senior investigating officers, arranging for a centre of operations, and contacting Garda Keogh to fix a date to meet and take a formal statement.

Garda Keogh made a lengthy statement to the investigation team over a number of days beginning on 11th June 2014. He expanded on the contents of his affidavit to cover other issues including in particular allegations that another Athlone garda and a local woman with whom he had a relationship were involved in the sale and supply of drugs in Athlone. Those persons are referred to in this report as Garda A and Ms B.

Following the disclosure, Garda Keogh continued to be rostered for normal duty in Athlone Garda Station. In the period between the making of the disclosure and his first meeting with the officers from the Ó Cualáin investigation team, a series of incidents occurred that gave rise to complaints by him with which the tribunal is concerned. Issues 1-4 arise out of occasions when he was queried by or on behalf of his officers, Superintendent Noreen McBrien or Chief Superintendent Mark Curran. Garda Keogh maintains that their actions amounted to targeting or discrediting by C/Supt Curran because he had made a protected disclosure, and that they were also improper interferences with the Ó Cualáin investigation, which he maintained had the exclusive function of inquiring into the matters that he raised or that concerned him.

A/C Ó Cualáin proceeded with the investigation of Garda Keogh's protected disclosure and the additional allegations of garda corruption that he later detailed in his statements to the investigators. Garda Keogh was troubled to be working in the same station as his colleague, Garda A, who was under investigation. Garda Keogh believed that Garda A should have been suspended but the garda authorities concluded that there were insufficient grounds for suspension when the issue was examined in September 2014. The question of suspension was revisited subsequently.

Garda Keogh made detailed criticisms of the Ó Cualáin investigation in correspondence with the Director of Public Prosecutions in mid-2015 in which he listed what he called *'serious and deliberate flaws'* in the investigation. His case to the tribunal claimed that the investigation by A/C Ó Cualáin and his team of investigators targeted and/or discredited him because he had made a protected disclosure. He also contended that A/C Ó Cualáin had worked to sabotage the investigation from the start, including by thwarting the efforts of his investigators, in whom Garda Keogh had come to place trust. Garda Keogh claimed that the assistant commissioner had

⁴⁷ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1

⁴⁸ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 16

arranged for the transfer of a new superintendent to Athlone for the purpose of removing him from the station where he was able to observe the deficiencies of the investigation.

On 9th March 2015, a new district officer, Supt Pat Murray, took up his appointment in Athlone Garda Station at a time when Garda Keogh was on sick leave certified by his general practitioner as work related stress. Garda Keogh and Supt Murray met for the first time on Garda Keogh's return to work on 26th March 2015. In the period of nine months from then until 26th December 2015, when Garda Keogh went on long-term sick leave, a series of encounters and incidents occurred that gave rise to complaints by Garda Keogh that Supt Murray targeted or discredited him because of his protected disclosure.

A/C Ó Cualáin was appointed Deputy Commissioner of An Garda Síochána on 20th October 2015. He submitted his report to the Director of Public Prosecutions on 24th November 2015.⁴⁹ In a report to the Garda Commissioner of the same date, he stated his conclusion that *'[a]s you can see from the findings of this investigation, there is substance in a number of the allegations being made by the Confidential Reporter'* but that *'the evidence while circumstantial falls short of what is required to bring a criminal prosecution due to the rules surrounding hearsay'*.⁵⁰

On 3rd March 2016, the Director of Public Prosecutions directed that there was to be no prosecution arising from the criminal investigation.⁵¹

Following a progress report by A/C Ó Cualáin in May 2015, the Garda Commissioner directed him to continue his inquiry as a criminal investigation and to arrange for the appointment of a senior officer to undertake a separate inquiry into possible breaches of discipline by four members of An Garda Síochána, including Garda A, that had come to light in the course of the investigation. Assistant Commissioner Jack Nolan was appointed for this purpose on 25th June 2015. This disciplinary investigation encountered complications and obstacles resulting in delay and it was not concluded by the time A/C Nolan retired.

A/C Nolan was replaced by Assistant Commissioner Anne Marie McMahon, who completed her investigations and reported on the allegations concerning Garda A on 27th February 2019. She recommended that a board of inquiry should be established in respect of one of the multiple allegations considered. Her report underwent a confirmation process that ultimately came to an end with the decision of Assistant Commissioner David Sheahan on 27th June 2019 that a board of inquiry was not warranted.

Garda Keogh complained to the tribunal that the McMahon investigation targeted and/or discredited him. He alleged that the investigation was delayed, that there was a failure to arrest a suspect and that he was not kept informed of developments.

On 27th March 2017, Garda Keogh made a complaint under the bullying and harassment policy of An Garda Síochána known as *'Working Together To Create A Positive Working Environment'* in which he cited many of the incidents with which the tribunal is now concerned. A/C Finn was appointed on 15th November 2017 to investigate Garda Keogh's complaints and he produced his report on 20th December 2018, in which he rejected the allegations of bullying and harassment against senior officers. Assistant Commissioner Finbarr O'Brien endorsed the inquiry as a thorough and impartial investigation and on 7th February 2019 informed all of the relevant parties that he was satisfied that there was no evidence of bullying and harassment of Garda Keogh.

⁴⁹ Tribunal Documents, Report to the Director of Public Prosecutions, dated 24th November 2015, pp. 11080-11144

⁵⁰ Tribunal Documents, Letter from Dep/C Dónall Ó Cualáin to the Commissioner, dated 24th November 2015, pp. 11979-11981

⁵¹ Tribunal Documents, Letter from Ms Claire Galligan, Office of the Director of Public Prosecutions, to Deputy Commissioner Strategy and Change Management, dated 3rd March 2016, p. 4009

Garda Keogh was dissatisfied with this outcome and appealed against the findings pursuant to the policy's provisions. Deputy Commissioner John Twomey requested that Mr Rory de Bruir, barrister, conduct an audit of the Finn investigation in his capacity as an independent expert. Mr de Bruir furnished his audit report on 5th June 2019 in which he said he was satisfied that *'[a] comprehensive investigation was carried out in relation to all complaints as made by Garda Keogh and the findings of A/C Finn leading to the decision of A/C O'Brien arose from a thorough, fair and impartial investigation'*.⁵² Dep/C Twomey, on consideration of the investigation file and the audit report, rejected the appeal on 11th July 2019.

Garda Keogh's case of targeting or discrediting in this instance includes the delay in appointing A/C Finn as the investigator, as well as allegations of deficiencies of procedure and bias on his part.

Garda Keogh maintains that the delay in the bullying and harassment investigation was not accidental or the result of inefficiency or error but was intentional. Supt Murray had applied for promotion to chief superintendent in early 2016 at a time when such decisions were made internally by An Garda Síochána and he was nominated for advancement. Garda Keogh became aware of this and sought to prevent it. His position was that Supt Murray should not be promoted while the complaint against him under the bullying and harassment policy was outstanding. As it happened, the system of promotion in An Garda Síochána was in transition and was about to be passed to the Policing Authority. Whether it was due to protests made on Garda Keogh's behalf or not, the Government stopped short of Supt Murray's name and did not promote the full list of approved and nominated appointees as new chief superintendents.

When the system changed, Supt Murray applied to the Policing Authority and was again successful in the nomination process. The efforts on behalf of Garda Keogh were now directed at the authority. Ultimately the Policing Authority proceeded with the appointment of Supt Murray in January 2018. Garda Keogh's complaint of targeting and/or discrediting in this case is not directed at the Policing Authority but rather against the most senior management of An Garda Síochána, which he accuses of improper, manipulative and misleading conduct towards the authority with the illegitimate purpose of securing Supt Murray's promotion.

Schedule of Issues

The schedule of issues, which is set out in an appendix, was agreed upon by all the parties. The issues can be placed into three categories.

First are events that took place in Athlone Garda Station in May and early June 2014 in the period between the making of the protected disclosure and when Garda Keogh first met the officers investigating his revelations. These events had repercussions in queries directed to Garda Keogh. They are Issues 1-4.

Secondly, there are issues arising during the period from 26th March 2015 when the new district officer in Athlone, Supt Murray, and Garda Keogh had their first meeting, to 26th December 2015, when Garda Keogh went on long-term sick leave, on which he remains. These are Issues 5-16 and 21-22.

The third category is a series of allegations by Garda Keogh that he was targeted or discredited by the various investigations and reports outlined above. These are Issues 17, 18, 19 and 20. Issue

⁵² Tribunal Documents, Report of Mr Rory de Bruir Barrister-at-Law, dated 4th June 2019, p. 13138 at p. 13223

17 comprises the allegations concerning the Ó Cualáin investigation. Issue 18 considers the challenges to the investigation carried out by A/C Finn and Issue 19 concerns his complaints about the McMahon investigation. Issue 20 relates to Garda Keogh's complaints in respect of the promotion of Supt Murray to the rank of chief superintendent.

Function of the Tribunal

The tribunal's function is to consider the various issues with a view to ascertaining whether Garda Keogh was targeted or discredited in the circumstances because he made a protected disclosure. Garda Keogh's complaints of being victimised are denied by the various officers whom he identifies as being responsible.

The tribunal explained in its opening statement of 11th April 2019 that its function did not extend to establishing the truth of the allegations of wrongdoing made by Garda Keogh in his protected disclosure. It is also important to remember that the persons who are accused in Garda Keogh's confidential reporting have not been convicted of any offence. They have not been formally accused or brought before a court. They enjoy the presumption of innocence and the right to a fair trial if proceeded against and the right to fair procedures. They were not parties to the inquiry into alleged victimisation of Garda Keogh. Insofar as they are mentioned in this report, it is because they are part of the background to the cases of targeting and discrediting, but not because they are the subject of any investigation by the tribunal.

The tribunal is also not exercising a supervisory role over investigations or garda conduct of policing matters to assess in any general sense whether they fell below expected standards.

Report of the Tribunal

The detailed investigation of the agreed issues is the core of the report, which begins after early chapters dealing with preliminary matters. The issues are taken in generally chronological order but not invariably so. For example, Issue 2 concerns an occurrence that actually happened earlier in the same 24-hour period than Issue 1.

The investigation of Garda Keogh's disclosures by A/C Ó Cualáin and his team loomed over the other issues and was always present for Garda Keogh. There would be logic in beginning the report with consideration of that investigation, but a chronological system has been preferred. That avoids digressions to explain events not yet discussed and has other practical advantages, as well as broadly following the enumeration of issues that was agreed by all the parties.

The scheme used in the report follows a similar pattern in dealing with each issue. First, the essential facts are set out by reference to documents and testimony. Garda Keogh's case is then stated. Next is responding testimony from relevant witnesses. Then submissions of relevant parties are stated in summary. Finally, the tribunal discusses the issue before reaching conclusions.

CHAPTER 3

REGULATORY CONTEXT

Prior to the amendments made by the Protected Disclosures Act, 2014, the legislative provisions did not permit a member of An Garda Síochána to make a complaint directly to the Garda Síochána Ombudsman Commission (GSOC).

Therefore, Garda Keogh did not have access to GSOC for his disclosure in May 2014 and was confined to the internal garda scheme set out in the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations, 2007. These Regulations emphasised confidentiality and provided for the confidential recipient to receive the disclosure and transmit it to the Commissioner, or the Minister for Justice where appropriate, and to have certain limited monitoring functions.

Garda Keogh was also aware of section 62 of the Garda Síochána Act, 2005, which enabled him to bring his information to members of the Oireachtas.

Following the commencement of the Protected Disclosures Act, 2014 on 15th July 2014, An Garda Síochána produced a code of procedures as required by the Act, which outlined the procedures for making a confidential disclosure and included the appointment of a protected disclosures manager.

The Role of the Garda Síochána Ombudsman Commission under the Garda Síochána Act, 2005

The role of GSOC was defined in section 67 of the Garda Síochána Act, 2005, which provided for the receipt of complaints about garda conduct made by or on behalf of a member of the public.⁵³

Section 67 also provided that GSOC could carry out certain '*other investigations*' as listed in section 102 of the Act.⁵⁴ Section 102 stated at that time:

- the Commissioner is mandated to refer to GSOC any matter that appears to indicate that the conduct of a member may have resulted in the death of, or serious harm to, a person⁵⁵
- GSOC may, without receiving a complaint, investigate a possible offence or breach of discipline by a member of An Garda Síochána if GSOC considers it desirable in the public interest to do so⁵⁶
- the Minister for Justice may request GSOC to investigate a possible offence or breach of discipline by a member of An Garda Síochána if the Minister considers it desirable in the public interest to do so.⁵⁷

The section was later amended to include:

- the Policing Authority may request GSOC to investigate a possible offence or breach of discipline by a member of An Garda Síochána if the Policing Authority considers it desirable in the public interest to do so⁵⁸

⁵³ Section 67 (2) (a) of the Garda Síochána Act, 2005

⁵⁴ Section 67 (2) (e) of the Garda Síochána Act, 2005

⁵⁵ Section 102 (1) of the Garda Síochána Act, 2005

⁵⁶ Section 102 (4) of the Garda Síochána Act, 2005

⁵⁷ Section 102 (5) of the Garda Síochána Act, 2005

⁵⁸ Section 102 (4A) of the Garda Síochána Act, 2005 as inserted by the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015

- the Policing Authority/Minister for Justice may refer *‘any matter’* that gives rise to a *‘cause for concern’* that a member of An Garda Síochána may have committed an offence or behaved in a manner that would justify disciplinary proceedings.⁵⁹

Section 62 of the Garda Síochána Act, 2005

Section 62 (1) provides that a person who is or was a member of An Garda Síochána, or of its civilian staff, or contracted by An Garda Síochána, shall not disclose any information obtained in the course of duty if the member knows that the disclosure of that information is likely to have a harmful effect.

Circumstances giving rise to a *‘harmful effect’* are outlined at section 62 (2) and include where the disclosure would facilitate the commission of an offence or prejudice the safekeeping of a person in legal custody. According to section 62 (3), the member is presumed, unless the contrary is proved, to know that the disclosure of such information is likely to have a harmful effect if a reasonable person would, in all the circumstances, be aware that its disclosure could have that effect.

However, under section 62 (4), a disclosure of such information *‘obtained in the course of duty’* is not prohibited if the disclosure is made to any of the following:

- the Minister for Justice
- the Attorney General
- the Director of Public Prosecutions
- the Chief State Solicitor
- the Criminal Assets Bureau
- the Comptroller and Auditor General
- Garda Síochána Ombudsman Commission (GSOC)
- the Garda Inspectorate
- the Revenue Commissioners
- a member of either of the Houses of the Oireachtas *‘where relevant to the proper discharge of the member’s functions’*
- a court.

The disclosure may also be made to a tribunal established under the Tribunals of Inquiry (Evidence) Acts, 1921-2004, a commission of investigation or a committee of the Houses of the Oireachtas.⁶⁰

Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations, 2007

The Garda Síochána Act, 2005 imposed an obligation on the Minister for Justice and Equality to make regulations establishing a charter which would enable reports of malpractice and corruption to be made by members.

⁵⁹ Section 102 (7) of the Garda Síochána Act, 2005 as inserted by the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015

⁶⁰ Section 62 (4) (c) of the Garda Síochána Act, 2005 as substituted by the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015

Regulation 5(1) of the Regulations, SI 168 of 2007, provided for the making of a confidential report by a member of An Garda Síochána or a civilian in ‘good faith for the purpose of exposing the alleged corruption or malpractice’⁶¹ as follows:

A member or civilian who has reasonable grounds for believing that a member of the Garda Síochána or civilian is engaged, has been engaged or is about to engage in corruption or malpractice may report in confidence to a confidential recipient any information that he or she has concerning the corruption or malpractice.

The confidential recipients for the purpose of the regulations were appointed by the Minister for Justice and Equality and were required to be a judge, a former judge, a barrister or solicitor, or a serving or former senior civil or public servant.⁶²

The confidential recipient was required to transmit the confidential report to the Commissioner ‘as soon as practicable’⁶³ and Regulation 8(1) outlined the obligations of the Commissioner on receipt of the report as follows:

On receipt of a confidential report, the Commissioner shall—

- (a) examine the report and, unless he or she has reason to believe that the allegation contained in it was not made in good faith or is false, frivolous or vexatious, investigate the allegation or cause it to be investigated, and*
- (b) take any other action that is necessary as a result of the investigation.*

Extensive provision was made to protect the confidentiality of the reporter’s identity as follows:

- 9. (1) A confidential recipient may disclose the identity of a confidential reporter to the Minister or Garda Commissioner only if each one of the following provisions is complied with:*
 - (a) the Minister or Commissioner, as the case may be—*
 - (i) must believe that knowledge of the identity of the confidential reporter is essential for the proper examination of the confidential report or investigation of the alleged corruption or malpractice concerned, and*
 - (ii) must inform the confidential recipient of his or her reasons for that belief;*
 - (b) the confidential recipient must be satisfied that the Minister or Commissioner, before informing the recipient under subparagraph (a)(ii), has taken all practicable steps to advance the examination or investigation of the allegation;*
 - (c) the confidential recipient must have informed the confidential reporter of the situation and considered the reporter’s views regarding disclosure of his or her identity;*
 - (d) the confidential recipient must further be satisfied that, having regard to all the circumstances, the disclosure is essential for the proper examination of the confidential report or investigation of the allegation.*
- (2) The identity of a confidential reporter may be disclosed by the Minister or Commissioner to an officer of the Minister, a member or civilian, only where the Minister or Commissioner believes that disclosure is essential for the proper examination of the confidential report or investigation of the corruption or malpractice concerned.*

⁶¹ Regulation 5 (2) of the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations, 2007

⁶² Regulation 6 (2) of the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations, 2007

⁶³ Regulation 7 (1) of the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations, 2007

- (3) *Any officer of the Minister or member or civilian to whom the identity of a confidential reporter has been disclosed under paragraph (2) may not disclose the identity to any other person without the written authorisation of the Minister or Commissioner, as the case may be.*
- (4) *The Minister or Commissioner may give such an authorisation only where he or she believes that it is essential for the proper examination of the confidential report or investigation of the alleged corruption or malpractice.*
- (5) *Unless otherwise authorised under this regulation, a confidential recipient, the Minister, an officer of the Minister, a member, or a civilian, to whom the identity of a confidential reporter has been disclosed may disclose the identity only with the written consent of the confidential reporter or under an order of a court.*

Regulation 10 provided for the notification of confidential reports to GSOC, with Regulation 11 providing for the notification of confidential reports to the Garda Inspectorate.

Regulation 14 provided for protection of the reporter from adverse repercussions.

- (1) *A member or civilian who in good faith reports an allegation of corruption or malpractice within the Garda Síochána shall not be subjected to disciplinary action for so doing.*
- (2) *Any harassment or intimidation of such person shall be dealt with in accordance with the law and the relevant disciplinary regulations or disciplinary code.*

The Confidential Reporting Charter for An Garda Síochána

Regulation 4 provided for the establishment of a charter ‘*containing the guidelines and mechanisms... to enable members or civilians to report in confidence allegations of corruption or malpractice within the Garda Síochána*’ and Regulation 12 required the charter to provide for mechanisms by which information regarding actions taken on the basis of a confidential report may be made available to a confidential recipient for communication to a confidential reporter.

The *Confidential Reporting Charter for Garda Síochána* was put in place on 4th July 2008.⁶⁴ The former Garda Commissioner, Fachtna Murphy, stated that:

This Charter is established in order to provide guidelines and mechanisms for members and civilian staff of An Garda Síochána to report in confidence allegations of corruption or malpractice within An Garda Síochána. The Charter has been developed in line with the Garda policy of encouraging ethical behaviour within An Garda Síochána and in compliance with the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007. There already exists an obligation on members of An Garda Síochána to report criminal or suspect activity on the part of any person, including a member or civilian employee of An Garda Síochána. The aim of this Charter is to create an environment in which sworn members and civilian employees are encouraged to report incidents of corruption or malpractice.⁶⁵

The charter reiterated the provisions of the 2007 Regulations. Section 6 referred to ‘*Employee Safety*’:

The Commissioner is committed to ensuring that any member or civilian employee in An Garda Síochána who raises genuine concerns or allegations of corruption or malpractice under this Charter will not be at risk of losing their employment or suffering any form of retribution as a result.

⁶⁴ Tribunal Documents, Garda HQ Directive 105/08, Section 124 of the Garda Síochána Act 2005, Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007 – Confidential Reporting Charter, p. 7843

⁶⁵ Tribunal Documents, Confidential Reporting Charter for Garda Síochána, p. 7844 at p. 7845

*Harassment or victimisation of confidential reporters who have raised genuine concerns or allegations of corruption or malpractice is contrary to the Garda Síochána (Discipline) Regulations 2007 and the Civil Service Disciplinary Code revised in accordance with the Civil Service Regulations (Amendment) Act 2006, and the Criminal Law.*⁶⁶

In respect of ‘Feedback Information’ it stated at section 15 that:

*The Commissioner, and where relevant the Minister, shall provide the Confidential Recipient, with information for the confidential reporter outlining action taken on the basis of a confidential report made by him/her. Where it is evident following investigation/examination of a complaint made pursuant to this Charter that there is no basis to the report, the substance of the report/complaint will be made known to the person complained of at the earliest opportunity.*⁶⁷

Therefore, the legislative framework that was in force when Garda Keogh made his allegations of wrongdoing within An Garda Síochána imposed an obligation on the Commissioner to provide the confidential reporter with feedback information about the progress of the investigation. When the Protected Disclosures Act, 2014 came into effect, feedback provisions were contained in the garda policy document, which also provided that the confidential reporter would be kept informed. These obligations are contained in paragraphs 1.2 and 7.11 of the policy document as outlined below.

The Protected Disclosures Act, 2014 repealed section 124 of the Garda Síochána Act, 2005 (the legislative basis for the 2007 Regulations) and revoked the 2007 Regulations outlined above.

The Protected Disclosures Act, 2014

The Protected Disclosures Act, 2014 was commenced on 15th July 2014 and provides specific protections for workers from any detriment as a result of making a protected disclosure in relation to their employment. The Act specifies that a disclosure made before the date of the passing of the Act may be a protected disclosure.⁶⁸

A disclosure is defined as a ‘*protected disclosure*’ if it is a disclosure of relevant information made by a *worker* in accordance with sections 6, 7, 8, 9 or 10 of the Act.⁶⁹ A ‘*worker*’ includes a person who is or was a member of An Garda Síochána.⁷⁰

Information is ‘*relevant information*’ if, in the reasonable belief of the worker, it tends to show one or more *relevant wrongdoings* and it came to the attention of the worker in connection with the worker’s employment.⁷¹ ‘*Relevant wrongdoings*’ are defined to include the following:

- that an offence has been, is being, or is likely to be committed
- that a person has failed to comply with any legal obligation, other than one arising under a contract of employment
- that a miscarriage of justice has occurred, is occurring or is likely to occur
- that the health or safety of any individual has been, is being, or is likely to be endangered
- that the environment has been, is being, or is likely to be damaged

⁶⁶ Tribunal Documents, Confidential Reporting Charter for Garda Síochána, p. 7844 at p. 7850

⁶⁷ Tribunal Documents, Confidential Reporting Charter for Garda Síochána, p. 7844 at p. 7856

⁶⁸ Section 5 (1) of the Protected Disclosures Act, 2014

⁶⁹ Section 5 (1) of the Protected Disclosures Act, 2014

⁷⁰ Section 3 (2) (a) of the Protected Disclosures Act, 2014

⁷¹ Section 5 (2) of the Protected Disclosures Act, 2014

- that unlawful or improper use of public money has occurred, is occurring or is likely to occur
- that an act or omission by a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement
- that information tending to show any of these matters has been, is being, or is likely to be concealed or destroyed.⁷²

The motivation for the making of a disclosure is irrelevant to whether or not it is a protected disclosure.⁷³ Furthermore, in proceedings involving an issue as to whether a disclosure is a protected disclosure it shall be presumed, until the contrary is proved, that it is.⁷⁴

The protected disclosure may be made to the following bodies/persons:

- an employer⁷⁵ (the Commissioner of An Garda Síochána where the worker is a member of An Garda Síochána⁷⁶)
- a prescribed person⁷⁷ (GSOC in the case of a member of An Garda Síochána as outlined below)
- the relevant Minister⁷⁸ (the Minister for Justice where the worker is a member of An Garda Síochána)
- legal advisers⁷⁹
- recipients other than the foregoing and where certain conditions are satisfied⁸⁰
- members of Dáil Éireann or Seanad Éireann where certain conditions are satisfied and the disclosure relates to law enforcement.⁸¹

GSOC was designated as a body to whom a garda member could make a protected disclosure in respect of alleged garda misconduct on 23rd July 2014.⁸²

The newly inserted section 102A (1) of the Garda Síochána Act, 2005 states as follows:

*Where a disclosure relating to the Garda Síochána is disclosed to the Ombudsman Commission as a prescribed person under section 7 of the Protected Disclosures Act 2014 in respect of disclosures so relating, it may, if it appears to it desirable in the public interest to do so, investigate the disclosure, even if the worker (within the meaning of that Act) making the disclosure is a member of the Garda Síochána.*⁸³

Section 12 of the 2014 Act provides protection from penalisation for having made a protected disclosure and prohibits the penalisation or threat of penalisation against a worker who has made a protected disclosure. In the event of a contravention of this prohibition the employee shall be entitled to avail of redress.

⁷² Section 5 (3) of the Protected Disclosures Act, 2014

⁷³ Section 5 (7) of the Protected Disclosures Act, 2014

⁷⁴ Section 5 (8) of the Protected Disclosures Act, 2014

⁷⁵ Section 6 of the Protected Disclosures Act, 2014

⁷⁶ Section 3 (2) (c) (i) of the Protected Disclosures Act, 2014

⁷⁷ Section 7 (1) of the Protected Disclosures Act, 2014

⁷⁸ Section 8 of the Protected Disclosures Act, 2014

⁷⁹ Section 9 of the Protected Disclosures Act, 2014

⁸⁰ Section 10 of the Protected Disclosures Act, 2014

⁸¹ Section 17 of the Protected Disclosures Act, 2014

⁸² Protected Disclosures Act, 2014 (Section 7 (2)) Order, 2014 (S.I. 339/2014)

⁸³ Section 102A (1) of the Garda Síochána Act, 2005, as inserted by the Protected Disclosures Act, 2014

Section 13 of the 2014 Act provides for an action in tort for any detriment suffered by the worker because of making a protected disclosure. The term ‘*detriment*’ is defined to include coercion, intimidation or harassment, discrimination, disadvantage or adverse treatment in relation to employment (or prospective employment), injury, damage or loss, and threat of reprisal.

Section 16 of the 2014 Act provides for the protection of the identity of the maker of a protected disclosure. It provides that a person to whom a protected disclosure is made, and any person to whom a protected disclosure is referred in the performance of that person’s duties, shall take all reasonable steps to avoid disclosing to another person any information that might identify the person making the protected disclosure. A failure to comply with this provision is actionable by the person by whom the protected disclosure was made if that person suffers any loss. The requirement to protect the identity of the discloser is subject to the qualifications set out in section 16 (2) and these are as follows:

- (a) *the person to whom the protected disclosure was made or referred shows that he or she took all reasonable steps to avoid so disclosing any such information,*
 - (b) *the person to whom the protected disclosure was made or referred reasonably believes that the person by whom the protected disclosure was made does not object to the disclosure of any such information,*
 - (c) *the person to whom the protected disclosure was made or referred reasonably believes that disclosing any such information is necessary for—*
 - (i) *the effective investigation of the relevant wrongdoing concerned,*
 - (ii) *the prevention of serious risk to the security of the State, public health, public safety or the environment, or*
 - (iii) *the prevention of crime or prosecution of a criminal offence,*
- or
- (d) *the disclosure is otherwise necessary in the public interest or is required by law.*

An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures

Under section 21 of the Protected Disclosures Act, 2014, every public body is required to establish and maintain procedures for the making of protected disclosures by workers who are or were employed by the public body and for dealing with such disclosures.

An Garda Síochána established the office of the protected disclosures manager and published this policy to members by email on 13th June 2016.⁸⁴ As outlined in more detail in this report, Chief Superintendent Anthony McLoughlin was appointed in May 2016 as one of the protected disclosures managers within An Garda Síochána and he made contact with Garda Keogh for the first time on 20th May 2016.⁸⁵

In the revised policy document dated February 2017,⁸⁶ the former Garda Commissioner Nóirín O’Sullivan, stated that:

⁸⁴ Tribunal Documents, An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures, pp. 11617-11623

⁸⁵ Tribunal Documents, Statement of C/Supt. Anthony McLoughlin, p. 3228

⁸⁶ Tribunal Documents, An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures, pp. 2003-2036

*An Garda Síochána is committed, through this policy, to providing a mechanism for reporting wrongdoing in confidence, protecting the identity of those who wish to make a protected disclosure, and investigating the alleged wrongdoing. An Garda Síochána is committed to protecting those who report wrongdoing from penalisation/detriment for having made such a disclosure.*⁸⁷

It is outlined at paragraph 1.2 of the policy that An Garda Síochána is ‘committed to ensuring that a worker who makes a protected disclosure (the discloser) is kept fully informed of the progress of any investigation arising from the disclosure and ensuring that the result of any such investigation is communicated to the worker who made the disclosure’.⁸⁸

It is also stated that an employee of An Garda Síochána against whom it is alleged *inter alia* that he/she has penalised or caused detriment to a person who has made what is being treated as a protected disclosure ‘may be the subject of an investigation under the relevant disciplinary code or regulations applicable at the time’.⁸⁹

It is stated that:

A worker must have a reasonable belief that the information disclosed shows, or tends to show, wrongdoing. The term “reasonable belief” does not mean that the belief has to be correct. Workers are entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds.

*No worker will be penalised simply for getting it wrong, so long as the worker had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.*⁹⁰

Part 6 of the policy⁹¹ outlines in some detail the procedures for making a protected disclosure, including the making of a disclosure to the protected disclosures manager under section 6 of the Protected Disclosures Act, 2014. It is stated at paragraph 6.5 that ‘Disclosers should **not** attempt to investigate the wrongdoing themselves or gather evidence to support their disclosure or seek to delay making a protected disclosure for this reason.’⁹² Similarly, at paragraph 6.11 it is stated that ‘[a] discloser should not endeavour to obtain proof of their suspicion either prior to or following the making of a protected disclosure’.⁹³

A dedicated form and secure email address is provided for the making of a protected disclosure within An Garda Síochána.

The policy outlines in some detail the ‘[d]uties of a Protected Disclosures Manager’ including the following:

7.5 *When taking a protected disclosure, the Protected Disclosures Manager should not focus on the motivation of the discloser but rather on the content of the disclosure. Any complaint made under this policy may be intermingled with a personal grievance and any complaint must be assessed appropriately to determine the exact nature of the disclosure.*

⁸⁷ Tribunal Documents, An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures, dated February 2017, p. 2003 at p. 2005

⁸⁸ Tribunal Documents, An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures, dated February 2017, p. 2003 at p. 2006

⁸⁹ Tribunal Documents, An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures, dated February 2017, p. 2003 at p. 2006

⁹⁰ Tribunal Documents, An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures, dated February 2017, p. 2003 at p. 2010

⁹¹ Tribunal Documents, An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures, dated February 2017, p. 2003 at p. 2018

⁹² Tribunal Documents, An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures, dated February 2017, p. 2003 at p. 2018

⁹³ Tribunal Documents, An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures, dated February 2017, p. 2003 at p. 2019

- 7.8 *As soon as practicable, assess the disclosure and transmit a confidential and anonymised report to a member not below the rank of Chief Superintendent or a Principal Officer who will conduct or cause to be conducted an examination/investigation*
- 7.9 *Notify the Commissioner that a protected disclosure has been made and the course of action that has been taken without disclosing the identity of the worker.*
- 7.10 *Retaining confidential written records in respect of disclosures received, and contact maintained.*
- 7.11 *Ensuring the discloser is kept informed of the progress of any enquiries/investigation undertaken under this policy as a result of their disclosure.*
- 7.12 *The Protected Disclosures Manager should be aware of any risks associated with the disclosure and document any risks identified by the worker making the disclosure.*
- 7.13 *The Protected Disclosures Manager will make regular confidential enquiries relating to other investigations pertinent to the Protected Disclosure while keeping the Commissioner and the discloser briefed accordingly.*
- 7.14 *Where it is necessary to disclose information that may or will identify the worker who made the disclosure, or where action is being taken which may result in the identification of the worker, this will be a matter to be discussed with the Protected Disclosures Manager and the worker in advance.*
- 7.15 *The Protected Disclosures Manager will liaise regularly with the person tasked with an investigation/examination.*
- 7.16 *The Protected Disclosures Manager may engage the services of any relevant professional or professional body either internal or external and liaise appropriately with such professionals or professional bodies to assist him or her in carrying out his or her duties.⁹⁴*

The policy provides for a 'Risk Assessment' at paragraph 7.17 and states that:

The Protected Disclosures Manager should be aware of any risks associated with the disclosure and document any risks identified by the worker making the protected disclosure. Appropriate steps should be taken to adequately mitigate against any such risks. The worker making the disclosure should be advised of the availability of the relevant organisational support mechanisms including employee assistance and peer support.⁹⁵

Part 9 outlines in some detail the protection of the confidentiality of the identity of the worker and outlines the provisions of the Act of 2014 (section 16 (2)) where such confidentiality may not apply.

It is stated at Part 10 of the policy that:

Following an initial assessment the Protected Disclosures Manager may refer the matter to an officer not below the rank of Chief Superintendent or a Principal Officer [who may] arrange for the examination or investigation of the allegation, if appropriate. The nature of [the] examination/investigation to be undertaken will be decided upon having due regard to the circumstances surrounding the allegation. The assistance of the Protected Disclosures Manager

⁹⁴ Tribunal Documents, An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures, dated February 2017, p. 2003 at pp. 2020-2021

⁹⁵ Tribunal Documents, An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures, dated February 2017, p. 2003 at p. 2021

*may be availed of during the course of any examination/investigation, if it is appropriate to do so.*⁹⁶

Part 10 also provides that:

- 10.5 *Other duties of a person undertaking an examination/investigation of a protected disclosure include:*
- a) *Reporting on any action taken or recommended to the Protected Disclosures Manager,*
 - b) *Notifying the relevant Divisional Officer when a Garda employee is the subject of a criminal/discipline investigation,*
 - c) *In the case of a member of An Garda Síochána, informing Chief Superintendent, Internal Affairs of the commencement of any criminal/discipline investigation,*
 - d) *In the case of a civilian employee, informing the Director of Human Resources of the commencement of any criminal/discipline investigation,*
 - e) *Ensuring that all employees, [who are] the subject of an investigation arising from a protected disclosure are fully supported from a welfare perspective, and, where required, liaising with the local Divisional Officer and Chief Superintendent, Internal Affairs, where the issue of suspension is being considered.*
- 10.6 *Any person who is the subject of an investigation arising from a protected disclosure made in accordance with this policy will be afforded all the protections and rights in accordance with natural justice and fair procedure.*
- 10.7 *Any person who is the subject of an investigation arising from a protected disclosure should be advised of the availability of the relevant organisational support mechanisms including employee assistance and peer support.*⁹⁷

The policy also provides as follows:

- the required communication between the discloser and the protected disclosures manager including ‘*[p]eriodic feedback*’.⁹⁸
- the ‘*Employee Safeguards/Protections*’ including that ‘*[a] discloser, who believes that they are being subjected to penalisation as a result of making a disclosure under this policy, should notify the Protected Disclosures Manager immediately, who will cause the matter to be appropriately investigated*’.⁹⁹
- workers ‘*will not be penalised or caused to suffer detriment for making a report of possible wrongdoing which subsequently turns out to be incorrect provided the worker had a “reasonable belief” that the information being reported showed or tended to show one or more of the relevant wrongdoings*’.¹⁰⁰

⁹⁶ Tribunal Documents, An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures, dated February 2017, p. 2003 at p. 2025

⁹⁷ Tribunal Documents, An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures, dated February 2017, p. 2003 at pp. 2025-2026

⁹⁸ Tribunal Documents, An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures, dated February 2017, p. 2003 at p. 2026

⁹⁹ Tribunal Documents, An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures, dated February 2017, p. 2003 at p. 2027

¹⁰⁰ Tribunal Documents, An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures, dated February 2017, p. 2003 at p. 2029

PART TWO

CHAPTER 4

OVERVIEW: ATHLONE ISSUES: MAY 2014 – MARCH 2015

Management Overview

The divisional officer in the Westmeath Division between 21st February 2012 and 9th March 2015 was Chief Superintendent Mark Curran.

Superintendent Noreen McBrien was the district officer in Athlone during this time and had taken up the position on 27th July 2012. She had previously worked at Bray Garda Station at the rank of inspector between 2006 and 2010 and Garda Keogh had also been stationed there during the early part of her service.

The Athlone District comprised approximately 100 garda members in May 2014¹⁰¹ and the management team included Inspector Nicholas Farrell, Inspector Aidan Minnock, the Sergeant in Charge Michelle Baker and Detective Sergeant Eamon Curley. Insp Farrell was the acting district officer during periods when Supt Noreen McBrien was absent or on leave. Sergeant Cormac Moylan was Garda Keogh's supervising sergeant on Unit C and, in his absence, Garda Keogh was supervised by Sergeant Andrew Haran.

Chief Superintendent Mark Curran

C/Supt Curran, whose Divisional Office was situated in Mullingar, described a divisional officer as being the *'most senior operational team leader'* and having the *'most pivotal leadership role'*.¹⁰² He outlined the *'Management and Leadership Responsibilities'*¹⁰³ and the *'day to day duties'* of a divisional officer.¹⁰⁴ He stated that these duties also included the management of intelligence¹⁰⁵ and ensuring compliance with Garda HQ Directive 126/10 on the *'Management and Use of Covert Human Intelligence Sources (CHIS) Garda Code of Practice'*.¹⁰⁶ He stated that the divisional officer had to *'oversee the integrity and the effectiveness of the system within their Divisions'*¹⁰⁷ and, specifically, was responsible for ensuring *'that all members of An Garda Síochána within his Division are aware of and are fully compliant with the CHIS policy'*.¹⁰⁸ Specifically, he said that *'I was the Chief Superintendent with responsibility under this policy in respect to CHIS matters and was tasked with ensuring strict compliance'*.¹⁰⁹

He stated that he had a *'vague recollection'* of meeting Garda Keogh on one occasion prior to May 2014 *'whilst walking about Athlone Garda station'*¹¹⁰ and that, since then, he had never met him personally. Garda Keogh's supervisors had never brought any work performance related issues to his attention before or after 8th May 2014.¹¹¹ He said that any interaction with Garda Keogh was

¹⁰¹ Tribunal Transcripts, Day 117, p. 9, Evidence of C/Supt Mark Curran

¹⁰² Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778

¹⁰³ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1779

¹⁰⁴ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1781

¹⁰⁵ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1781

¹⁰⁶ Tribunal Documents, Code of Practice for Garda Personnel Involved in The Management and use of Covert Human Intelligence Sources, pp. 8056-8117

¹⁰⁷ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1784

¹⁰⁸ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1784

¹⁰⁹ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1957

¹¹⁰ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1782

¹¹¹ Tribunal Transcripts, Day 117, p. 14, Evidence of C/Supt Mark Curran

in ‘official correspondence’ looking for ‘clarifications... to progress matters within the Division’¹¹² and that this was after May 2014.¹¹³

C/Supt Curran stated that ‘[o]fficially, I was never informed who the Confidential Reporter was, I didn’t know what allegations had been made, nor did I know against whom they were made.’¹¹⁴ When asked about his ‘unofficial knowledge’ by counsel for the tribunal, he replied that ‘I had no idea what the allegations were about’.¹¹⁵

He became aware of Garda Keogh’s protected disclosure through the broadcast media on 8th May 2014. He said that he ‘may have received some contact from someone in Garda Human Resources (HRM)’ but he was not sure and that he ‘never received any written official confirmation that he was a Confidential Reporter’.¹¹⁶ He said that if it had not been for the Dáil statement, he would not have known about the disclosure.¹¹⁷ He wrote immediately to the acting district officer in Athlone, Insp Farrell, saying that ‘I would like you to meet with Garda Keogh and assure him that he will be supported in the workplace’.¹¹⁸

C/Supt Curran could not recall when he first became aware of the Ó Cualáin investigation. He told tribunal investigators that he ‘never knew anything about it’ and that he was never ‘officially informed about the scope of the investigation or who the central parties were’.¹¹⁹ He said that:

*It would not have been ethical for me to meet with people who were investigating the complaint made by the Confidential Reporter. It [was] not an option for me because I would have seen the investigation as sacrosanct, sterile and remote from me.*¹²⁰

As to what he knew unofficially, he gave evidence to the tribunal that:

*I had no idea, no, none whatsoever. To be honest with you, I was[n’t] even particularly interested, because that’s something that they have to look after, you know, I’m only interested in the impact on the people on the ground.*¹²¹

Garda Keogh attended for duty on the night of 8th May 2014 and spoke to colleagues who were on duty about the making of the protected disclosure.¹²² Insp Farrell sought to meet Garda Keogh after this informal briefing but was told by Sgt Haran that Garda Keogh had declined to meet him and that it was ‘nothing personal’.¹²³ Insp Farrell met Garda Keogh the following night on 9th May 2014 and he reported to C/Supt Curran as follows:

*At 9.35 p.m. on 09/05/14 I met with Garda Nicholas Keogh in my office. I explained that I understood that this time could be a very difficult time for him and that I wanted to offer my personal support and the support of the organisation to him. Garda Keogh said “Your support means nothing to me. Say what you have to say, tick all the boxes”. I explained that there are several facilities in the organisation to support him including the Employee Assistance & Peer Support. I said that if he had any issues that I believed I could help him with in my role that I would listen and deal with them in a positive way.*¹²⁴

¹¹² Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1782

¹¹³ Tribunal Transcripts, Day 117, p. 13, Evidence of C/Supt Mark Curran

¹¹⁴ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1943

¹¹⁵ Tribunal Transcripts, Day 117, p. 24, Evidence of C/Supt Mark Curran

¹¹⁶ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1934

¹¹⁷ Tribunal Transcripts, Day 117, p. 16, Evidence of C/Supt Mark Curran

¹¹⁸ Tribunal Documents, Letter from C/Supt Mark Curran to Superintendent, Athlone, dated 8th May 2014, p. 1981

¹¹⁹ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1936

¹²⁰ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1953

¹²¹ Tribunal Transcripts, Day 117, p. 28, Evidence of C/Supt Mark Curran

¹²² Tribunal Transcripts, Day 99, p. 115, Evidence of Garda Nicholas Keogh

¹²³ Tribunal Documents, Diary entry of Insp Nicholas Farrell, dated 8th May 2014, p. 630

¹²⁴ Tribunal Documents, Letter from Insp Nicholas Farrell to C/Supt Mark Curran, p. 648

C/Supt Curran was asked about this report during his evidence to the tribunal and whether it was a cause of concern for him. He stated that *'[i]o some extent, yes, but I think if I was to really rationalise it, there was antimanagement things going for him, you know, at that time'*.¹²⁵ He also said that Garda Keogh *'... was probably slightly distrusting of Inspector Farrell at the time'*.¹²⁶ He was asked what he meant by *'anti-management'*¹²⁷ and stated that this was what he had *'gleaned from'* from Insp Farrell but that Insp Farrell had not said this.

Supt McBrien spoke with Garda Keogh on 12th May 2014 and told him that C/Supt Curran was happy to meet with him. Garda Keogh stated that he would meet C/Supt Curran if it had to do with welfare concerns.¹²⁸ C/Supt Curran did not meet with Garda Keogh following his protected disclosure. Asked why this proposal had fallen away, he told counsel for the tribunal that he was working on another complex investigation in Athlone at the time, and further that he was concerned that he might in fact be under investigation by the Ó Cualáin team in relation to an allegation made by Garda Keogh relating to alleged removal of material from a storeroom in Athlone Garda Station.¹²⁹

Superintendent Noreen McBrien

Supt McBrien was on annual leave on 8th and 9th May 2014, when Garda Keogh made his protected disclosure.¹³⁰ However, she stated that she was contacted by C/Supt Curran on 9th May 2014 and that they discussed Garda Keogh.¹³¹ It was agreed that she would contact Garda Keogh and check on his well-being.

Supt McBrien told counsel for the tribunal that she spoke to Garda Keogh by phone on the night of 11th May 2014 to offer him *'support, organisational and personal'*¹³² and that they discussed the welfare services available to him.¹³³ Supt McBrien described how the *'general thrust of the conversation was that he seemed happy at that time, that he had got a burden or a weight removed from his shoulders'* which had been on his mind for a considerable period of time.¹³⁴ Supt McBrien next spoke with Garda Keogh on 12th May 2014 and told him that C/Supt Curran was happy to meet with him. Garda Keogh told her that he would meet C/Supt Curran if it had to do with welfare concerns.¹³⁵

Supt McBrien stated that the issue of the protected disclosure had an impact on the morale of the station.¹³⁶ She also said that there was an awareness in the station that Garda Keogh's allegations concerned Garda A and that this was before Assistant Commissioner Ó Cualáin was appointed.¹³⁷ In her evidence, she recalled that *'... from speaking to Garda A, I believe he thought he was the subject [of the allegations] because at one stage he advised me he had given files and documentation to Inspector Farrell for safe keeping'*.¹³⁸ Supt McBrien also told the tribunal that she had a positive meeting with Garda Keogh on 13th May 2014 and that he was *'very upbeat'*.¹³⁹

¹²⁵ Tribunal Transcripts, Day 117, p. 18, Evidence of C/Supt Mark Curran

¹²⁶ Tribunal Transcripts, Day 117, p. 17, Evidence of C/Supt Mark Curran

¹²⁷ Tribunal Transcripts, Day 118, pp. 107-108, Evidence of C/Supt Mark Curran

¹²⁸ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 826

¹²⁹ Tribunal Transcripts, Day 117, pp. 19-20, Evidence of C/Supt Mark Curran

¹³⁰ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 825

¹³¹ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 825

¹³² Tribunal Transcripts, Day 119, p. 109, Evidence of Supt Noreen McBrien

¹³³ Tribunal Transcripts, Day 119, p. 110, Evidence of Supt Noreen McBrien

¹³⁴ Tribunal Transcripts, Day 119, p. 114, Evidence of Supt Noreen McBrien

¹³⁵ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 826

¹³⁶ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6221

¹³⁷ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6219

¹³⁸ Tribunal Transcripts, Day 119, pp. 121-122, Evidence of Supt Noreen McBrien

¹³⁹ Tribunal Transcripts, Day 119, p. 122, Evidence of Supt Noreen McBrien

In his statement to the tribunal, Insp Farrell observed that at this time *‘a sense of caution driven by fear permeated everything in Athlone’*.¹⁴⁰ He stated that Supt McBrien requested that he speak to a particular garda in the station on 15th May 2014 in respect of *‘derogatory statements’* that had been made in the station in respect of Garda Keogh. Insp Farrell recorded in his diary that he spoke to this garda saying that they were in *‘sensitive times’*.¹⁴¹

On 16th May 2014, Supt McBrien signed off on an email¹⁴² to all members of Athlone Garda Station requesting that they familiarise themselves with the *‘Working Together to create a Positive Working Environment, the Policy and Procedures of the Garda Síochána for dealing with Harassment, Sexual Harassment and Bullying in the Workplace’*. She told the tribunal that *‘I wasn’t happy that someone would pass a derogatory comment and I wanted to nip it in the bud’*.¹⁴³

Supt McBrien was on annual leave from 19th May 2014 to 4th June 2014¹⁴⁴ when the events giving rise to Issues 1-4 arose. Insp Farrell was the acting district officer on these occasions and he addressed the matters to his divisional officer, C/Supt Curran.

Inspector Nicholas Farrell

As noted above, Insp Farrell was the acting district officer on 8th and 9th May 2014, when Garda Keogh made his protected disclosure.

In his evidence to the tribunal, Insp Farrell said that he considered Garda Keogh’s position on 9th May 2014, that Garda Keogh could not speak to him because he was *‘friendly with persons who were friendly with the person involved’*, to be somewhat understandable.¹⁴⁵ Insp Farrell also recorded in his diary that Garda Keogh was *‘anxious [and] hostile’* during the meeting.¹⁴⁶ In his evidence to the tribunal he referred to Garda Keogh as *‘obviously a person under stress’*¹⁴⁷ and in his diary for 9th May 2014, he recorded that he advised Sergeant Sandra Keane to keep in contact with Garda Keogh as *‘it is a very stressful time for him’*.¹⁴⁸ He told the tribunal that he had worked with Garda Keogh since 2008 and had not seen an *‘anti-management attitude’* from him over those years.¹⁴⁹

Sergeant Andrew Haran

In his statement to the tribunal, Sgt Haran said that:

*I don’t remember the date but on a night shift Garda Keogh came to me and told me he had officially made a disclosure earlier that day. I suggested he might like to brief his unit colleagues. He agreed and I arranged for another unit to cover for a short time and then Garda Keogh briefed us all. He seemed happy to explain that we should not worry and that his aim was to expose criminality by certain people from Athlone. He said that nobody in the room was named as a culprit.*¹⁵⁰

¹⁴⁰ Tribunal Documents, Statement of Insp Nicholas Farrell, p. 616 at p. 623

¹⁴¹ Tribunal Documents, Statement of Insp Nicholas Farrell, p. 616 at p. 636

¹⁴² Tribunal Documents, Email from Supt Noreen McBrien to Members of Athlone Garda Station, p. 1238

¹⁴³ Tribunal Transcripts, Day 119, p. 130, Evidence of Supt Noreen McBrien

¹⁴⁴ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 827

¹⁴⁵ Tribunal Transcripts, Day 121, pp. 120-121, Evidence of Insp Nicholas Farrell

¹⁴⁶ Tribunal Documents, Diary entry of Insp Nicholas Farrell, dated 9th May 2014, p. 634

¹⁴⁷ Tribunal Transcripts, Day 121 p. 100, Evidence of Insp Nicholas Farrell

¹⁴⁸ Tribunal Documents, Diary entry of Insp Nicholas Farrell, dated 9th May 2014, p. 638

¹⁴⁹ Tribunal Transcripts, Day 121, pp. 102-103, Evidence of Insp Nicholas Farrell

¹⁵⁰ Tribunal Documents, Statement of Sgt Andrew Haran, p. 587 at p. 590

Sgt Haran expanded on this briefing of colleagues as follows:

I would have broadly worked the same shifts as Garda Keogh. He told me that he had made his disclosure on the evening of the day that he made it. I asked what he meant and he said he had made a formal protected disclosure. He said I didn't have to worry about it and that it was about criminality. He didn't really tease out the nuts and bolts of it; by that, he did not tell me the specific details of what he had disclosed. I remember asking him how he felt about telling his colleagues. He said "Absolutely". I said that it might just put our colleagues at ease. I suggested that we get someone else to take up his role in the public office. I suggested that we bring the other colleagues into another room. He sat down and told them that he had made a protected disclosure and that nobody present was his target. I do not recall the identity of those members present. He said he wanted them to know this was about other ranks, mainly plainclothes and some senior management. Garda Keogh did not mention any member involved. I cannot say with certainty if he met with anyone on that particular day, however, I can say that he did make reference to meeting Judge McMahon, Clare Daly TD and Mick Wallace TD at some point.¹⁵¹

Sgt Haran stated that Garda Keogh did not identify the individuals against whom he made allegations.¹⁵² When asked by tribunal investigators about the morale of the station during the ensuing Ó Cualáin investigation he replied that:

The morale of the Station has suffered and remained stagnant. I believe the investigation created a malaise in our station because there is negativity associated with the Station now. It was and is a difficult time. We see a finish line now though.¹⁵³

When asked what was being said in general terms about Garda Keogh by the Athlone station party, including garda members and management, during the course of the Ó Cualáin investigation, Sgt Haran stated that:

I think it's fair to say that people had different views. It would be naïve to suggest otherwise. I remain of the view that Garda Keogh made a disclosure that accuses people of criminality. If there was criminality, then it should be investigated and exposed. Other people would have a view that the allegations were untrue. People were not necessarily impartial. Notwithstanding the fact that people had differences of opinion, as far as I'm concerned, there was no orchestrated ostracisation of him.¹⁵⁴

Garda Nicholas Keogh

Garda Keogh suggested to the tribunal that he was subjected to 'five internal investigations'¹⁵⁵ and he referred to what he said was an 'attempt to manufacture complaints' against him.¹⁵⁶ He was of the view that C/Supt Curran was 'involved to some degree in pushing' the matters at Issues 1-4¹⁵⁷ and he believed that C/Supt Curran was putting Supt McBrien 'under pressure' in this regard.¹⁵⁸

When asked to clarify an allegation contained in a letter to the Ó Cualáin investigation on 17th October 2014 saying that a 'kabal' was coming for him, Garda Keogh stated:

¹⁵¹ Tribunal Documents, Investigator Interview of Sgt Andrew Haran, p. 11749 at pp. 11753-11754

¹⁵² Tribunal Documents, Investigator Interview of Sgt Andrew Haran, p. 11749 at p. 11755

¹⁵³ Tribunal Documents, Investigator Interview of Sgt Andrew Haran, p. 11749 at p. 11760

¹⁵⁴ Tribunal Documents, Investigator Interview of Sgt Andrew Haran, p. 11749 at p. 11760

¹⁵⁵ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 19-20

¹⁵⁶ Tribunal Transcripts, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 96

¹⁵⁷ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 98

¹⁵⁸ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 98

*I am arguing that the Garda Síochána was trying to discredit me and at that time, I believe that Chief Superintendent Mark Curran was the driving force but I suspect there were others involved also.*¹⁵⁹

Furthermore, Garda Keogh saw these ‘*internal investigations*’ as an attempt to interfere with the Ó Cualáin investigation¹⁶⁰ and he said that:

*I believed that anything to do with my allegations should have been investigated only by Assistant Commissioner Dónall Ó Cualáin and his investigation team.*¹⁶¹

Issues 1 – 4

The following chapters address the four issues arising during 2014 and whether they constituted the targeting and/or discrediting of Garda Keogh because he made a protected disclosure. While the tribunal deals with each of these issues under separate headings, it will consider whether each issue may be part of a bigger picture which in itself may disclose the targeting or discrediting of Garda Keogh during this period.

The four issues had their origins in the period between Garda Keogh’s protected disclosure on 8th May 2014 and his first meeting with A/C Ó Cualáin and his senior investigator on 7th June 2014. The occurrences were the subject of enquiries by officers of the district and the division until they came to an end for Garda Keogh in October 2014. These enquiries thus overlapped with the work of the Ó Cualáin investigation into Garda Keogh’s disclosures.

Issues 1 and 2 arose at different times on 18th May 2014 when Garda Keogh checked the PULSE system for information about Garda A and later made an entry concerning Ms B and alleged connections she had with gardaí who were not named. The latter became the subject of queries from C/Supt Curran within a matter of hours. The PULSE check, which is Issue 2, only emerged when Garda A discovered it and complained to his superiors in September 2014.

Issue 3 began with a visit on 28th May 2014 by Ms Olivia O’Neill and her daughter to Athlone Garda Station to make a criminal complaint about Ms B. Garda Stephanie Treacy reported Ms O’Neill as stating that Garda Keogh told her to include in her statement allegations that Ms B enjoyed corrupt privileges because of her relationship with gardaí.

Issue 4 arose out of a report made by Garda Aidan Lyons on 2nd June 2014 about a conversation that he had with Mr Liam McHugh on the night of 31st May 2014, in which Mr McHugh recounted what he alleged Garda Keogh had told him on a previous occasion. Garda Lyons, and most other officers who learned of the report, considered Mr McHugh’s account carried with it the implication that Garda Keogh was drumming up false complaints against gardaí.

Garda Keogh has been clear in his dealings with the tribunal that he makes no criticism of Supt McBrien, with whom he had a good relationship. In his complaint to the tribunal, and in correspondence with others including the Minister for Justice and Equality, he was critical of Insp Farrell, although he declared in the course of his evidence that he no longer stood over those aspersions. That leaves C/Supt Curran, in respect of whom Garda Keogh maintains his position. Garda Keogh claims that this officer targeted and/or discredited him, although it is fair to say that he tempers his criticism in Issues 1 to 3. However, he makes no concession for Issue 4.

¹⁵⁹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 99

¹⁶⁰ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 124

¹⁶¹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 35

A point of recurring controversy arising in Issues 1-4 is Garda Keogh's claim that local garda management had no function in investigating them because they were exclusively in the province of the Ó Cualáin investigation. It is not in dispute that the material in the protected disclosure was reserved to the investigation, which was also bound by the obligation of confidentiality. This applied even though Garda Keogh had himself cooperated in the publication of his allegations.

Garda Keogh's position was that Issues 1-4 should have been taken over by the main investigation; that only the Ó Cualáin investigation could deal with the issues he raised even if they arose outside the confidential protected disclosure process. He was consistent in this position and had support from the confidential recipient, Judge McMahon.

In respect of the PULSE entry on 18th May 2014, C/Supt Curran maintained that he had a particular responsibility with regard to the garda informant handling protocols that obliged him to make the enquiries of Garda Keogh that he did. As for the questions arising from the report of Garda Lyons about his conversation with Liam McHugh, the Athlone management members wished to have it investigated by the Ó Cualáin investigation team or some other outside officers but that did not happen.

The Ó Cualáin investigation team took the view that their brief from the Commissioner was to investigate the complaints made by Garda Keogh in his protected disclosure and subsequent statements while respecting confidentiality and that it was inappropriate for them to take on for investigation matters of complaint against the confidential reporter, Garda Keogh. In the result, that was the position which prevailed.

CHAPTER 5

ISSUE 1: THE COMPLAINT MADE BY GARDA NICHOLAS KEOGH IN RELATION TO THE INVESTIGATION OF THE PULSE ENTRY ON 18TH MAY 2014

The Facts

At 23:38 hrs on Sunday 18th May 2014 Garda Keogh created an intelligence entry on the Garda PULSE system (PID 4085409), which read as follows:

*Observed Ms. B [in her car]... on seeing member she smiled and stuck out her tongue. Ms. B is seriously involved in the heroin trade in athlone with a turnover of approximately 2500euro per week she has no previous convictions for drugs due to the fact she has been aided and abetted for years by a senior member of the drugs unit who himself is a close associate of a high ranking Garda Officer. fact.*¹⁶²

He told the tribunal that he did this because he was annoyed by Ms B's behaviour when he came across her at a filling station in the early hours during his previous night's duty tour and, on seeing Garda Keogh, she had stuck her tongue out at him.¹⁶³ He saw that as an act of defiance¹⁶⁴ and as 'threatening more or less that she was untouchable'.¹⁶⁵

The incident with Ms B is reported to have occurred at 03:09 hrs on Sunday morning during Garda Keogh's Saturday night/Sunday morning tour of duty. Before going off duty he made the PULSE check about Garda A at 05:30 hrs (Issue 2).¹⁶⁶ He came back to work on Sunday evening and at 23:38 hrs he made the entry about Ms B, having had a cooling off period.

The entry was not couched in terms of allegation or suspicion but as 'fact'. It bluntly declared Ms B to be a heroin dealer who had a senior member in the Drugs Unit in Athlone as an accessory in her drug dealing activity. It also implied that a high-ranking officer may have been connected with this criminality. Since Garda Keogh's allegations in his protected disclosure had already been made public, it soon became obvious to the station party in Athlone that Garda A was the garda against whom the allegation was made.

This entry gave rise to an issue whether the source of the PULSE entry met the criteria prescribed for handling informants outlined in the *Code of Practice for Garda Personnel Involved in The Management and use of Covert Human Intelligence Sources*, known as CHIS.¹⁶⁷

The consequence of placing the entry on PULSE was that every member of the force had access to the information and, as we will see later, it caused Garda A to lodge a complaint about the entry to his superiors. The PULSE report indicated that the 'source' was 'always reliable' and that the content was 'true without reservation'.¹⁶⁸ Garda Keogh explained in evidence that he did not type this information but that they were options on drop down menus and he selected the most accurate description for his source and content.¹⁶⁹

¹⁶² Tribunal Documents, PULSE Extract, p. 162

¹⁶³ Tribunal Transcripts, Day 100, p. 16, Evidence of Garda Nicholas Keogh

¹⁶⁴ Tribunal Transcripts, Day 100, p. 16, Evidence of Garda Nicholas Keogh

¹⁶⁵ Tribunal Transcripts, Day 100, p. 27, Evidence of Garda Nicholas Keogh

¹⁶⁶ Tribunal Transcripts, Day 100, p. 14, Evidence of Garda Nicholas Keogh

¹⁶⁷ Tribunal Documents, An Garda Síochána 'Code of Practice for Garda Personnel Involved in Management and use of Covert Human Intelligence Sources', pp. 8056-8117

¹⁶⁸ Tribunal Documents, PULSE Extract, p. 162

¹⁶⁹ Tribunal Transcripts, Day 99, pp. 120-121, Evidence of Garda Nicholas Keogh

The source of this information was a former partner of Ms B who had phoned the garda station leaving contact details for Garda Keogh shortly after the protected disclosure was made and publicised. Garda Keogh gave evidence that on Saturday, 10th May 2014, Garda David Turner of Athlone Garda Station phoned him saying that a person had phoned the station and left a number for him to ring; he rang the number and made an arrangement to meet the person in Galway that night. The person did not want to make a statement but was agreeable to Garda Keogh taking notes.¹⁷⁰ Garda Keogh continued that:

*... That person, I was happy enough, was not involved in anything and, as I said, was working and wasn't engaged in criminality when I met that person.*¹⁷¹

Garda Keogh explained his interaction with his source to his own counsel as follows:

*... I had nothing to do with that person prior to making a complaint. That person had heard stuff on the news and volunteered, I understand he made contact with the Garda station and basically I met him on 10th May 2014.*¹⁷²

Garda Keogh further explained:

*... When I asked for a statement, Judge, from my recollection he said, I have to think about this. Then I said, fine, look, I understand the position. Because this person is now everything had turned right in his life and he was working, he had a child, he was settled and everything was going well. This was stuff to do with his past. So, I then had said fair enough, I said, is it okay if I take just some notes about this. So he agreed to that. So I wrote down in longhand in the car, just a couple of notes, I think it's on maybe five pages of notes, that was it, roughly.*¹⁷³

On the next morning following the entry, Monday 19th May 2014, Inspector Nicholas Farrell, who was acting district officer, was routinely reviewing incidents and intelligence recorded on PULSE over the preceding weekend when his attention was drawn to this entry.¹⁷⁴ An email was sent on his behalf to Chief Superintendent Mark Curran, expressing his concern that *'some of the contents of this Intelligence Report is not appropriate for recording in this manner'*.¹⁷⁵

C/Supt Curran, who as divisional officer had oversight obligations in respect of CHIS, replied to Insp Farrell on 19th May 2014 and directed that he meet with Garda Keogh:

In light of the specific content of the intelligence created by Garda Keogh, you should now meet with Garda Keogh and discuss the contents of the intelligence created.

You should enquire from Garda Keogh if he has information from a specific source which gives rise to the assertion of fact in respect of the intelligence created. If Garda Keogh has obtained information from a source, he should be immediately advised of the contents of HQ Directive 126/10 in relation to the management and use of Covert Human Intelligence Sources and the revised code of practice for same.

In addition you should seek to establish on what basis Garda Keogh has entered the additional information relating to Garda colleagues and his assertion as fact that there is collusion between members of An Garda Síochána and the individual for which Garda Keogh created the above intelligence.

¹⁷⁰ Tribunal Transcripts, Day 99, p. 93, Evidence of Garda Nicholas Keogh

¹⁷¹ Tribunal Transcripts, Day 99, p. 98, Evidence of Garda Nicholas Keogh

¹⁷² Tribunal Transcripts, Day 113, p. 21, Evidence of Garda Nicholas Keogh

¹⁷³ Tribunal Transcripts, Day 113, p. 22, Evidence of Garda Nicholas Keogh

¹⁷⁴ Tribunal Documents, Letter from Insp Nicholas Farrell to C/Supt Mark Curran, dated 22nd March 2017, p. 650

¹⁷⁵ Tribunal Documents, Email sent on behalf of Insp Nicholas Farrell to C/Supt Mark Curran, dated 19th May 2014, p. 8278

*A report on your meeting with Garda Keogh should be e-mailed to this office immediately following the meeting.*¹⁷⁶

Insp Farrell met Garda Keogh as directed late on the evening of 19th May 2014. Insp Farrell's diary entry for that date recorded the details of the meeting with Garda Keogh as follows:

I asked him if he had solid information to the effect that Ms B was seriously involved in the Heroin trade. I informed him that if he had an [informant] that they should be registered with CHIS in accordance with HQ126/10. He stated that he was due to meet A/C O' Culaín and that he couldn't discuss the entry with me. He stated that was advised by the Confidential Recipient that he didn't need to talk to anyone else except A/C O' Culaín. I explained that any entry had to be supported by strong information to withstand scrutiny from credibility perspective. I then asked him about the entry relating Ms B being aided & abetted by a senior member of the Drugs Unit. He again stated that he couldn't talk to me about that as I was friendly with persons who are friendly with the person involved. He went on to say that he doesn't believe that the senior officer knew what was going on. I put it to him that would it not have been better for him to have spoken to A/C O' Culaín before creating the entry. He said 'It's done now and what can I do, everyone has seen it'.¹⁷⁷

Garda Keogh's diary entry for the meeting with Insp Farrell stated:

*Insp NF asks me to change intel. 'what part do you want me to change' I say no + will speak to AC; Ask re informant.*¹⁷⁸

In his statement to the tribunal, Insp Farrell rejected Garda Keogh's assertion that he asked him to change the intelligence entry at their meeting on 19th May 2014:

*Garda Keogh alleges that I asked him to change the intelligence entry. This is incorrect. Neither Garda Keogh nor I could have altered the intelligence entry without the assistance of the Divisional Criminal Intelligence Officer, who is one of a few members with authorisation to do so.*¹⁷⁹

The following day, 20th May 2014, Insp Farrell reported the details of his meeting to C/Supt Curran.¹⁸⁰ C/Supt Curran alerted the Assistant Commissioner, Eastern Region to the intelligence entry stating that he was 'duty bound to ensure that it is investigated fully' and he sought the views of Internal Affairs and Crime Policy and Administration in respect of the 'legal considerations' in progressing the investigation.¹⁸¹

In another letter, dated 28th May 2014, C/Supt Curran wrote to the same assistant commissioner stating that he was not in a position to determine if it was appropriate for the local investigation to proceed:

As you are aware Garda Keogh has been named publicly in the Dail and has cited the fact that he is due to meet with Assistant Commissioner O' Culaín in relation to these matters. When spoken to by Inspector Farrell, Athlone, Garda Keogh stated that he cannot discuss this matter with anyone other than Assistant Commissioner O' Culaín.

¹⁷⁶ Tribunal Documents, Letter from C/Supt Mark Curran to Superintendent Athlone, dated 19th May 2014, p. 646

¹⁷⁷ Tribunal Documents, Diary entry of Insp Nicholas Farrell, dated 19th May 2014, p. 640

¹⁷⁸ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 19th May 2014, p. 431

¹⁷⁹ Tribunal Documents, Statement of Insp Nicholas Farrell, p. 616 at p. 621

¹⁸⁰ Tribunal Documents, Letter from Insp Nicholas Farrell/Sgt Aidan Minnock (on behalf of Supt Noreen McBrien) to C/Supt Mark Curran, dated 20th May 2014, p. 1806

¹⁸¹ Tribunal Documents, Letter from C/Supt Mark Curran to Assistant Commissioner Eastern Region, dated 19th May 2014, pp. 8276-8277; Date of letter corrected from 19th May 2014 to 20th May 2014 by C/Supt Mark Curran; Tribunal Transcripts, Day 117, pp. 44-45, Evidence of C/Supt Mark Curran.

Owing to the fact that Garda Keogh has now stated that this current allegation is the subject of a referral to the Garda confidential recipient, I am not in a position to determine whether it is appropriate for local investigation to proceed. This cross referencing is an issue that can only be addressed by the Garda Commissioner and the advice of Superintendent Nyland, Crime Policy and Administration is to the effect that [the] matter should be addressed solely by the Garda Commissioner to remove any conflict of interest or intrusion on the investigation reported through the confidential recipient.

*Accordingly, subject to your approval I do not propose to take any further action unless otherwise directed.*¹⁸²

C/Supt Curran's concerns were twofold. Firstly, he was worried that a CHIS source was being handled by Garda Keogh outside of the organisation's oversight. Secondly, under the confidential reporting process there was no prescribed mechanism for him to ascertain the details of the Ó Cualáin investigation which might relieve him of his own responsibilities as divisional officer to investigate the substance of the matter reported.

Garda Keogh viewed the matter very differently. Firstly, he asserted that he did not regard the manner in which he had received the information as giving rise to any obligations under CHIS. Secondly, he believed that since the information contained in the entry related to his protected disclosure, Assistant Commissioner Dónall Ó Cualáin and his investigation team were the only people who could deal with it.

On 29th May 2014, C/Supt Curran was contacted by Detective Superintendent Frank Walsh, private secretary to the Garda Commissioner, who made him aware that a complaint had been made to the confidential recipient relating to queries the chief superintendent had raised with Garda Keogh in respect of the PULSE entry:

*This complaint related to queries I had made of Garda Keogh in respect of the intelligence entry that appeared on the PULSE system dated the 18th of May, 2014... I decided then not to pursue any further enquiries in respect to the content of the intelligence entry on PULSE. Just to clarify, Superintendent Frank Walsh did not give me any direction but my memory is I indicated to him I wouldn't be asking Garda Keogh about the intelligence entry itself however I did conduct enquiries in respect to compliance with HQ Directive 126/10.*¹⁸³

Superintendent Noreen McBrien outlined in her statement to the tribunal that C/Supt Curran drew her attention to the intelligence entry when she came back from leave on 5th June 2014 and that she spoke to Garda Keogh on 9th June 2014:

*While not prying into the issues being addressed by him with Assistant Commissioner O'Cuallan, I asked him if he was in contact with criminals as I was concerned about his personal safety. He said that he was. He said he would give their names to Assistant Commissioner O'Cuallan, he was no longer contacting criminals and would pass everything to the Assistant Commissioner.*¹⁸⁴

On 16th of July 2014, she again spoke to Garda Keogh and went through the intelligence entry and also the report that had been sent by Insp Farrell to C/Supt Curran on 20th May 2014. She stated that:

¹⁸² Tribunal Documents, Letter from C/Supt Mark Curran to Assistant Commissioner Eastern Region, dated 28th May 2014, pp. 8303-8304

¹⁸³ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1935

¹⁸⁴ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 830

I advised him of HQ 126/10... and he said that this was an exceptional circumstance and not sure if it came under CHIS. He said it was being investigated by Detective Superintendent Mulcahy and that the Intelligence was being investigated by him and that he may have a different opinion.¹⁸⁵

On the same day Garda Keogh spoke with Detective Superintendent Mulcahy and informed him that his superintendent was asking him about the PULSE entry. D/Supt Mulcahy stated that:

I rang him at 18.52 and he spoke to me regarding his Superintendent asking him about the intelligence he had put on Pulse and asking if he had an informant. I advised him that we were not investigating the pulse incident. He advised me where the intelligence had come from. I explained to him that his supervisor had an obligation to ensure that any intelligence placed on the system was correct.¹⁸⁶

On 16th July 2014, Supt McBrien reported to C/Supt Curran her conversation with Garda Keogh, and that he had told her he *‘discussed this matter with the Confidential Recipient and that Detective Superintendent Mulcahy was investigating the matter’*. Supt McBrien recommended that this, and other incidents which are Issues 3 and 4, warranted *‘further investigation’* and:

Garda Keogh is engaging with a Confidential Recipient and is subject to [the] benefits of the Protected Disclosures Act 2014. I believe that the view of Legal Affairs and Human Resource Management should be sought to ensure that a decision is not made in isolation’.¹⁸⁸

C/Supt Curran remained concerned that Garda Keogh was possibly interacting with a source outside the CHIS framework and in a letter to Supt McBrien dated 21st July 2014, he sought confirmation whether the informant had been registered with CHIS, noting that considerable time had passed to allow for the referral of this source.¹⁸⁹

On 23rd July 2014, Supt McBrien wrote to Garda Keogh requiring a report from him indicating whether the informant had been registered with CHIS in accordance with Garda HQ Directive 126/10. Garda Keogh responded promptly on 27th July with a handwritten note on the superintendent’s letter, stating that *‘this is not a chis matter. The information is in the care of Asst Commissioner Donall O Cualain’*.¹⁹⁰

On 27th July 2014, Garda A made a complaint about the intelligence entry to the detective sergeant at Athlone Garda Station. He stated that:

With reference to the above, I wish to report on the above intelligence record which was created by Garda Nicholas Keogh on the 18.05.14. I am obviously the “senior member of the drugs squad” referred to in this report as Garda Keogh has recently made a number of complaints against me which I believe are a result of a personal grievance which Garda Keogh holds against me.

I am aware that this intelligence record was widely viewed and discussed by members on a national scale and I have been the brunt of many a joke. I do not believe that the Garda intelligence system is the forum for members to make scurrilous, slanderous and unfounded allegations against other members in order to settle personal grievances.¹⁹¹

¹⁸⁵ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 835

¹⁸⁶ Tribunal Documents, Statement of D/Supt Declan Mulcahy, p. 39 | |

¹⁸⁷ Tribunal Documents, Letter from Supt Noreen McBrien to C/Supt Mark Curran, dated 16th July 2014, p. 1893

¹⁸⁸ Tribunal Documents, Letter from Supt Noreen McBrien to C/Supt Mark Curran, dated 16th July 2014, p. 1895

¹⁸⁹ Tribunal Documents, Letter from C/Supt Mark Curran to Supt Noreen McBrien, dated 21st July 2014, p. 1886

¹⁹⁰ Tribunal Documents, Letter from Supt Noreen McBrien to Garda Nicholas Keogh, dated 23rd July 2014, p. 163

¹⁹¹ Tribunal Documents, Letter from Garda A to D/ Sgt Eamon Curley, dated 21st July 2014, p. 551

Detective Sergeant Eamon Curley provided a report on Garda A's complaint to Supt McBrien on 30th July 2014.¹⁹² She informed C/Supt Curran on 5th August 2014 of both Garda Keogh's response on 27th July and of the complaint now made by Garda A.¹⁹³

The following day, in a letter to D/Supt Mulcahy, Garda Keogh referred to his source for the PULSE entry and expressed concerns in relation to how the investigation was being conducted.¹⁹⁴ Meanwhile, C/Supt Curran was still unhappy with Garda Keogh's response. He wrote again to Supt McBrien on 22nd August 2014:

I have noted Garda Keogh's suggestion that the matter is not a CHIS matter as it has been referred to Assistant Commissioner O'Cualain. I am not satisfied that this negates our responsibilities as outlined in HQ Directive 126/10 and have [to] request that the source be referred in line with Garda Policy.¹⁹⁵

The superintendent forwarded this request to Garda Keogh and passed on his reply of 26th September 2014 to C/Supt Curran. Garda Keogh's reply was as follows:

With reference to above, Chief Supt Curran, Divisional Officer, Westmeath Division is fully aware that there is an ongoing investigation into alleged criminality involving member(s) of An Garda Síochána in the said Westmeath Division. I believe it is inappropriate while the investigation is ongoing for Chief Supt Curran to seek the source related to intelligence report 4085409 which is directly linked to this investigation at this stage at least as it could jeopardise the said investigation. I believe the investigation team under Assistant Commissioner O'Cualain should be let do their job without any internal interference, at some point they will make a finding and we can deal with the intelligence report then. In relation to HQ Directive 126/10 this does not appear to cover this particular situation perhaps Chief Supt Curran could furnish to me the exact wording that refers to be outlined in HQ Directive 126/10. I wish to add that I have been advised by Judge Patrick McMahon not to speak with any member of An Garda Síochána about any part of this investigation with the exception of the investigation team under Assistant Commissioner O'Cualain and therefore, I request that any dealings between myself and Chief Supt Curran, Divisional Officer, Westmeath Division, should not be informal. I intend to be compliant once the investigation has been concluded.

Forwarded for your information please.¹⁹⁶

That was the last contact Garda Keogh had with garda management on the matter.¹⁹⁷

Although communication with Garda Keogh on this subject ceased in September 2014, the questions raised continued to be considered at higher echelons in An Garda Síochána.

As noted above, on 20th May 2014, C/Supt Curran kept the Assistant Commissioner, Eastern Region informed of the issues concerning the intelligence entry and the 'dilemma' it caused for local management. This report was brought to the attention of Internal Affairs and Crime Policy and Administration,¹⁹⁸ the Deputy Commissioner for Operations,¹⁹⁹ the Garda Commissioner,²⁰⁰

¹⁹² Tribunal Documents, Letter from D/Sgt Eamon Curley to Supt Noreen McBrien, dated 30th July 2014, p. 550

¹⁹³ Tribunal Documents, Letter from Supt Noreen McBrien to C/Supt Mark Curran, dated 5th August 2014, pp. 1157-1158

¹⁹⁴ Tribunal Documents, Letter from Garda Nicholas Keogh to D/Supt Declan Mulcahy, dated 6th August 2014, p. 324

¹⁹⁵ Tribunal Documents, Letter from C/Supt Mark Curran to Supt Noreen McBrien, dated 22nd August 2014, p. 1991

¹⁹⁶ Tribunal Documents, Letter from Garda Nicholas Keogh to Supt Noreen McBrien, dated 26th September 2014, p. 1993

¹⁹⁷ Tribunal Transcripts, Day 99, p. 134, Evidence of Garda Nicholas Keogh

¹⁹⁸ Tribunal Documents, Email from Insp Alan Murray to C/Supt Anthony McLoughlin and Supt Matthew Nyland, dated 20th May 2014, p. 8296

¹⁹⁹ Tribunal Documents, Email from Insp Alan Murray to Deputy Commissioner Operations, dated 21st May 2014, pp. 8295-8296

²⁰⁰ Tribunal Documents, Email from Deputy Commissioner, Operations to the Commissioner, dated 22nd May 2014, pp. 8294-8295

and A/C Ó Cualáin.²⁰¹ The issue also came to the attention of the Garda PULSE Surveillance Unit and Detective Chief Superintendent Peter Kirwan at Security and Intelligence.²⁰² The range of issues extended to data protection, PULSE compliance, intelligence and security.

On 16th October 2014, C/Supt Curran wrote to the Assistant Commissioner, Eastern Region, stating that he was unaware whether this aspect of the file was being dealt with by the Ó Cualáin investigation team, and that he would welcome the views of A/C Ó Cualáin as to how the terms of Garda HQ Directive 126/10 could be met.²⁰³

In a report dated 28th October 2014, D/Supt Mulcahy told A/C Ó Cualáin that:

[t]he creation of the intelligence report is not a matter I believe that the investigation team can directly investigate. I feel that this is a matter perhaps for both the Divisional Officer and District Officer to deal with in who's division Garda Keogh is currently serving. I have spoken to both the Divisional and District Officers in respect of this matter'.²⁰⁴

C/Supt Curran spoke with D/Supt Mulcahy in or around December 2014 when D/Supt Mulcahy confirmed to him *'that there was a source and he had been in contact with the source, and he gave the impression to me that he had a good handle on the source and gave me some assurance that it was no longer an issue at that time'*. C/Supt Curran deduced from the conversation that Garda Keogh was not in contact with the source, and these grounds outlined by D/Supt Mulcahy were sufficient to alleviate his concerns.²⁰⁵

In his letter dated 8th December 2014, the Assistant Commissioner, Eastern Region asked C/Supt Curran whether a member had been appointed to investigate the matter.²⁰⁶ The chief superintendent confirmed on 12th December 2014 that there had been no such appointment and that Garda Keogh had *'on a number of occasions refused to confirm'* whether or not there was a source for the intelligence.²⁰⁷

In his final report on the issue, C/Supt Curran wrote to Assistant Commissioner Fintan Fanning, Eastern Region, outlining the pressing issues which remained live in relation to the PULSE entry and seeking further directions in respect of how best to address the item of intelligence in the absence *'of any clear policy with regard to this matter and the possibility that there is the potential for civil liability if it remains unaddressed'*.²⁰⁸

Chief Superintendent Lorraine Wheatley replaced C/Supt Curran as divisional officer for the Westmeath Division on 9th March 2015, with Superintendent Pat Murray replacing Supt McBrien on the same date.

C/Supt Wheatley later reported to A/C Fanning on 19th August 2015 that she had viewed the PULSE entry file for the first time and that *'[n]o further enquiry can be progressed in respect of the source within this Division until such time as Assistant Commissioner O'Cualain concludes his enquiry'*.

²⁰¹ Tribunal Documents, Email from Deputy Commissioner, Operations to Assistant Commissioner Eastern Region and Assistant Commissioner Western Region, dated 27th May 2014, pp. 8293-8294

²⁰² Tribunal Documents, Letter from Assistant Commissioner, Crime and Security to Detective Superintendent Security and Intelligence, dated 27th May 2014, p. 8292

²⁰³ Tribunal Documents, Letter from C/Supt Mark Curran to Assistant Commissioner Eastern Region, dated 16th October 2014, p. 8360

²⁰⁴ Tribunal Documents, Letter from D/Supt Declan Mulcahy to A/C Dónall Ó Cualáin, dated 28th October 2014, p. 8366

²⁰⁵ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1961

²⁰⁶ Tribunal Documents, Letter from Assistant Commissioner Eastern Region to C/Supt Mark Curran, dated 8th December 2014, p. 8387

²⁰⁷ Tribunal Documents, Letter from C/Supt Mark Curran to Assistant Commissioner Eastern Region, dated 12th December 2014, p. 1879, pp. 1880-1881

²⁰⁸ Tribunal Documents, Letter from C/Supt Mark Curran to Assistant Commissioner Eastern Region, dated 23rd December 2014, pp. 1882-1883

She further informed A/C Fanning that she had requested that Supt Murray speak with Garda A to outline the difficulties in progressing his complaint at that point in time.²⁰⁹

C/Supt Curran, then at Internal Affairs, wrote to the Assistant Commissioner, Eastern Region on 26th April 2016 as follows:

I am to advise that this office has been notified that directions have been received from the Director of Public Prosecutions in relation to the criminal investigation conducted by Deputy Commissioner O’Cualain. The D.P.P. have stated there is to be no prosecution in respect of this investigation.

[It] was previously noted that Chief Superintendent Wheatley had previously examined this case and reported that in light of the criminal investigation being conducted by Deputy Commissioner O’Cualain it was not possible at that time to consider any breach of discipline in respect of the creation of this intelligence on PULSE.

As the criminal investigation [has] concluded I am now to seek your views and those of Chief Superintendent Westmeath in respect of how to proceed with this matter.²¹⁰

On 30th September 2016, Chief Superintendent Kevin Galton reported to the Assistant Commissioner, Eastern Region that he did not believe it possible or appropriate to ground an alleged breach of discipline against Garda Keogh for the creation of the PULSE entry. It was his belief that the entry should be redacted or deleted.²¹¹ C/Supt Galton carried out further enquiries and updated the Assistant Commissioner, Eastern Region on 3rd October 2017.

On 9th January 2018, Chief Superintendent Peter Duff wrote to the Assistant Commissioner, Eastern Region, stating that Inspector Jarlath Folan had met with Garda A who indicated he did not wish to make a formal complaint in this matter.²¹²

An Garda Síochána Code of Practice for CHIS

CHIS is a system employed by An Garda Síochána that strictly regulates the handling of informants. It was introduced following significant problems identified by Mr Justice Morris when examining the now notorious mishandling of informants in the Donegal Division. The system was designed to protect the informant and his or her handler against any improper practices. It involves not only a close monitoring of the relationship between a garda and the informant but also an ongoing examination of the quality and reliability of the information gathered. It is a carefully monitored system requiring the registration of informants with continual oversight by senior management.

A Covert Human Intelligence Source is defined as *‘a person who is in contact with criminals and agrees to regularly provide information or assistance to An Garda Síochána in respect of criminal activity and in so doing has an expectation that it will be treated confidentially.’*²¹³ CHIS controllers are defined as *‘designated officers within An Garda Síochána who are responsible for the general*

²⁰⁹ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Assistant Commissioner Eastern Region, dated 19th August 2015, pp. 6184-6186

²¹⁰ Tribunal Documents, Letter from C/Supt Mark Curran, Internal Affairs to Assistant Commissioner Eastern Region, dated 26th April 2016, p. 8456

²¹¹ Tribunal Documents, Letter from C/Supt Kevin Galton to Assistant Commissioner Eastern Region, dated 30th September 2016, pp. 8492-8494

²¹² Tribunal Documents, Letter from C/Supt Peter Duff to Assistant Commissioner Eastern Region, dated 9th January 2018, p. 8583

²¹³ Tribunal Documents, An Garda Síochána ‘Code of Practice for Garda Personnel Involved in Management and Use of Covert Human Intelligence Sources’, p. 8067

oversight of the use of a CHIS within their areas of responsibility. Controllers will be of Superintendent rank or higher.²¹⁴

Garda HQ Directive 126/10 on the 'Management and Use of Covert Human Intelligence Sources (CHIS) Garda Code of Practice' advised at the time that '[t]he revised Code of Practice has been placed on the Garda Portal and should be accessed and perused by all members of An Garda Síochána'. It further stated that '[m]anagers and supervisors will ensure that the instructions contained in the Code of Practice are strictly complied with'.²¹⁵

Complaint made by Garda Nicholas Keogh

In his evidence to the tribunal, Garda Keogh described the incident with Ms B:

... it was at a petrol station, I think it was just coincidence, I think. I don't know what we were getting, petrol – I can't remember, perhaps both cars happened to be getting petrol or whatever at the same time. But Ms. B stuck her tongue out at me ...

*I took that very much as, you know, she was making a point that she was untouchable. Of course, she was probably correct in hindsight ...*²¹⁶

Garda Keogh explained why he made the PULSE entry:

*... at the time, 8th May 2014 I had come out as a whistleblower. So I hadn't met the investigation. I don't meet them for a period of a month. That first month was difficult in the station for me, because a lot of guards didn't know what I was going on about. Therefore, at the time, for self preservation as well, I had to put this on to make sure it was that some guard thought, oh is this lad going to report that I let some lady go because she wasn't wearing a seatbelt or Mickey Mouse things like that. That was for – part of it was for survival in a way for me because things in that week start occurring, which I am sure people will be getting on to. But that was a difficult period, that first month, because I was a sitting duck in the station at that stage, but a lot, a lot, not all, but a lot of the guards didn't know, in particular junior guards, for some reason, the older guards would have had some idea, junior guards didn't know what was going on, and so it was important to have a record on Pulse so that everyone knew I wasn't going to be firing stuff about any sort of Mickey Mouse stuff that went on. It was serious stuff. It was concentrated to – you know.*²¹⁷

He added:

*Look, I'd say just reading them, the dates and that, obviously I put it on the next evening. I obviously stewed over it as well the following day and you know, obviously gave it a lot of thought. I put it on Pulse, that's it and I stand by it.*²¹⁸

In the course of an answer relating to his PULSE check on Garda A, Garda Keogh said the following about his PULSE entry:

*... So I had to check Garda A at some stage. That was the date I did it. I would accept there was probably [red] mist with Ms. B sticking her tongue out [at] me in defiance, because obviously I put her on the next day, I was stewing over it all that day, that this individual is threatening more or less that she was untouchable, you know, and I was determined to prevent – determined to – I don't know what the terminology is.*²¹⁹

²¹⁴ Tribunal Documents, An Garda Síochána 'Code of Practice for Garda Personnel Involved in Management and Use of Covert Human Intelligence Sources', p. 8067

²¹⁵ Tribunal Documents, Garda HQ Directive 126/10, p. 8129

²¹⁶ Tribunal Transcripts, Day 99, p. 106, Evidence of Garda Nicholas Keogh

²¹⁷ Tribunal Transcripts, Day 99, pp. 113-114, Evidence of Garda Nicholas Keogh

²¹⁸ Tribunal Transcripts, Day 99, p. 116, Evidence of Garda Nicholas Keogh

²¹⁹ Tribunal Transcripts, Day 100, p. 27, Evidence of Garda Nicholas Keogh

He explained that he had given the information about his source to the Ó Cualáin investigators.

Q. Yes. We know that from other evidence, other material, you handed over that material. Certainly by that time, the investigation team knew who that person was, is that right?

A. Yes. I passed over everything to the investigation team.²²⁰

In his statement to the tribunal, Garda Keogh made the following complaint in relation to Insp Farrell:

I was called up to the office of Inspector Farrell on the 19th May 2014. He asked me about the informant-specific information in relation to the turnover figures contained in the pulse report. I was asked by Inspector Farrell to change this intelligence report on the Pulse System apropos of Ms B. In reply, I asked Inspector Farrell ‘which part of it do you want me to change?’²²¹

Garda Keogh was cross-examined by counsel on behalf of Insp Farrell as follows:

Q. Well, what I am focusing on, Garda Keogh, is you gave evidence, you were asked about this by Mr. McGuinness and while you agreed with the contents of Inspector Farrell’s note, your evidence is that Inspector Farrell asked you or requested that you change the Pulse entry, isn’t that correct?

A. Yes. Just from recollection now, he didn’t kind of – it wasn’t in an aggressive manner or formally or that. It kind of was more said, you know – just from recollection, you know, is there any way you can change it. I think was he was implying, maybe, is there any way to rejig it or something. He didn’t use those words at all but he asked me to change it.²²²

He was asked whether it was possible to change the entry:

Q. Neither you nor Inspector Farrell could have the capacity to change the Pulse entry?

A. That’s correct. Because, Judge, it – in order – it would have to be done by the collator in Mullingar, I think. It’s to do with different authorisations and levels on the Pulse computer system.²²³

In his statement, Garda Keogh set out the gravamen of his complaint to the tribunal:

Such pulse input was again queried and I was formally asked to identify the informant by a letter dated 23rd July 2014. I advised that the matter was being investigated by Assistant Commissioner O Cualain. Chief Superintendent Curran communicated, through my line manager, that this internal investigation did not relieve me of the duty to also disclose the source to him. He insisted on the release of this source to him on grounds of what were described as ‘Garda policy’.

I pointed out, in my statement of reply, that the Chief Superintendent was fully aware of the ongoing internal police investigation into this corruption. I pointed out that it would be inappropriate to interfere with such internal investigation by his parallel demand for the source of the information. I also pointed out that Judge McMabon had specifically requested that I did not discuss any matters relating to the internal police investigation with any other members.²²⁴

²²⁰ Tribunal Transcripts, Day 113, pp. 22-23, Evidence of Garda Nicholas Keogh

²²¹ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 122

²²² Tribunal Transcripts, Day 105, p. 15, Evidence of Garda Nicholas Keogh

²²³ Tribunal Transcripts, Day 105, p. 16, Evidence of Garda Nicholas Keogh

²²⁴ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 122

Garda Keogh agreed that where a garda engaged or recruited an informant, such a person had to be registered on the CHIS system. However he maintained that this situation was different²²⁵ as somebody had come forward with information relating to historical events that had happened some years before and this person was not now going to be engaged as an informant; this person had provided relevant information on a once off basis relating to historical events.²²⁶

Garda Keogh accepted in his interview with tribunal investigators that he was not in fact asked to identify the informant by letter dated 23rd July 2014, but that it was requested that he indicate whether the informant had been registered with CHIS in accordance with Garda HQ Directive 126/10.²²⁷

In his evidence to the tribunal, Garda Keogh was asked about the requests made of him:

Q. We have looked at what your superiors had required of you, both through Inspector Farrell, Superintendent McBrien in the first request of you of the 23rd July and the second request of the 28th September 2014, and the way you answered them, but are you construing those two requests as bullying and harassment?

A. There was a number of there was a lot of paperwork in relation to this. The contents of that were being investigated by Donal Ó Cualáin's investigation team. The chief in Mullingar, who at the time was it wasn't just that, there was a number of other incidents that we will yet get on to. There was a whole lot of things that there were. A lot of those different things should have just been put into the main investigation by the appointed investigation team. Because it ended up it started to mount all these miniature little investigations into, whether it's Pulse or whether it's to some of the other matters we will get to. So they all started to mount up.²²⁸

Garda Keogh was further questioned by counsel for the tribunal with regard to his position:

Q. Are you, in fact, maintaining that what was required of you here, and nothing further was ever required, amounts to bullying and harassment?

A. I'd accept not bullying but harassment, if you put it in with a few other things that they're doing, cooking at the same time, you know, they're sending me down this HQ 126 and all the rest, you know, and from recollection, it doesn't contain the lines, you know. They have read that circular themselves, I mean they could have quoted the line or whatever out to me, they certainly didn't, that I was getting anyway.²²⁹

In his statement to the tribunal, Garda Keogh complained as follows:

I believed that this interference by Inspector Farrell and by Chief Superintendent Curran were inappropriate interferences from senior garda management in the 'independent' police internal investigation headed by Assistant Commissioner O Cualain. It may be noted furthermore that HQ Directive 126/10 (cited by CS Curran) does not appear to impose any such parallel obligation (as represented in Chief Superintendent Curran's letter of the 18th September, 2014). In this regard, I asked for the 'exact wording' for the interpretation that was now advanced by CS Curran. There was no response to this request.²³⁰

²²⁵ Tribunal Transcripts, Day 99, p. 97 and p. 100, Evidence of Garda Nicholas Keogh

²²⁶ Tribunal Transcripts, Day 99, p. 99, Evidence of Garda Nicholas Keogh

²²⁷ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 25

²²⁸ Tribunal Transcripts, Day 99, p. 135, Evidence of Garda Nicholas Keogh

²²⁹ Tribunal Transcripts, Day 99, pp. 139-140, Evidence of Garda Nicholas Keogh

²³⁰ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at pp. 122-123

He stated that he raised the matter of the requests from Insp Farrell and C/Supt Curran with Judge Patrick McMahon on 17th July 2014, complaining, *inter alia*, about such interventions:

*Judge McMahon said (followings findings from the Morris Tribunal) that Chief Superintendent Curran / Inspector Farrell couldn't mount such a series of mini-investigations. There should only be one investigation. He said he would raise the issue with the Commissioner.*²³¹

Garda Keogh referred to a series of 'manufactured complaints' against him and said that these were 'five internal investigations'. While he included the intelligence entry queries in this list, he stated at one point that this 'was a query made with me rather than an internal investigation'.²³²

He clarified his complaint in respect of C/Supt Curran when interviewed by tribunal investigators:

*Regarding Chief Superintendent Curran, it is my belief that he was involved and was the person behind the CHIS matter (NK/1 page 46-47 of 135 refers) referred to above previously in my statement and dealt with by Superintendent Noreen McBrien. I suspect that Chief Superintendent Curran is involved to some degree in pushing the other matters (i.e. Olivia O'Neill, Liam McHugh and the PULSE check into Garda A). What is interesting is that I have no document with Chief Superintendent Curran's signature relating to my dealings in these matters but for me that is a red flag, given that Superintendent Noreen McBrien names Chief Superintendent Curran in her letters as being the person directing her in these matters in correspondence she sends to me ... It is my belief that Chief Superintendent Curran was putting her under pressure. Chief Superintendent Mark Curran is Superintendent McBrien's direct line manager and therefore, I believe he had involvement.*²³³

Therefore, in his complaint to the tribunal Garda Keogh asserts that he was inappropriately requested by garda management to disclose the source of the information contained in his PULSE entry and that the repeated requests on the issue were not only inappropriate and an interference with the Ó Cualáin investigation, but amounted to deliberate targeting and/or discrediting of him, and were a penalisation for having made his protected disclosure. In this regard, the primary offender, as he saw it, was C/Supt Curran since the requests had emanated from him.

Garda Keogh was cross-examined on this central allegation by counsel on behalf of An Garda Síochána and the following exchange is relevant:

Q. You see, I have to suggest to you that the circumstances that you created, both in relation to this incident and the incident in issue number 2, on 18/5/2014, triggered a necessary and reasonable response from Garda management in your district?

A. Judge, they could have simplified that very easily, you know. Instead of writing I have read all the documents, Judge, in relation to the to ing and fro ing on this thing. You see, it's like a hot piece of coal that none of them want to handle. Judge, it could have been dealt with very simply, in that I understand - from what I have read, Assistant Commissioner at the time, Ó Cualáin, says he wasn't aware of this. Very simple, someone could have picked up the phone or written a letter and said there's this piece of intelligence here, Donal Ó Cualáin is the investigating member from the 9th, is it, he's appointed on the 9th May, but I don't get to meet him until the 7th June. So, all this could have been done fairly quickly and neatly in that regard.

²³¹ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 123

²³² Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 19

²³³ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 97-98

- Q. *Can I put it to you that Chief Superintendent Curran will say that your assurances that the substantive matter was being progressed through the confidential recipient process did not exempt him from his duty and his responsibility. He was obliged to enquire?*
- A. *That's fair enough, but he could have equally written to the commissioner if was not aware that Donal Ó Cualáin was the appointed officer. He could have written to the commissioner and had this given to the appointed officer. There was a number of ways they could have dealt with this, instead of the way they dealt with it.*
- Q. *Well just in the light of your last answer, where you've accepted, as I see it, that it was fair enough for Chief Superintendent Curran to enquire, do you agree with me, therefore, if that's the case, that he was not targeting you in any way by making enquiries which he was obliged to make?*
- A. *Initially, Judge, he was entitled, of course, to enquire as the manager of the CHIS system, is this source a CHIS source. But as I stated and I think I put it down in writing from the very start, this is not a CHIS matter.²³⁴*

Garda Keogh was questioned further by the Chairman:

- Q. *Chairman: From what you said earlier, it looks like you're saying it was okay for Chief Superintendent Curran to make the enquiry?*
- A. *Yeah.²³⁵*

Garda Keogh later clarified that this concession related only to the initial enquiry made by C/Supt Curran.²³⁶

Responding Statements and Evidence on the Issue

Inspector Nicholas Farrell

Insp Farrell referred to his own diary entry of the meeting on 19th May 2014 and stated that *'I told Garda Keogh that allegations of collusion by a member of An Garda Síochána with the drugs trade was a serious matter, which demanded further investigation.'*²³⁷

In his evidence to the tribunal, Insp Farrell recalled that this was a formal meeting and that he would not have asked him to change the entry:

... I don't know why Garda Keogh thinks that, because I had never it in my mind to ask him to change the intel report. I never really deviated from the instructions of Chief Superintendent Curran at all in my conversation with him, other than to make the remark about Assistant Commissioner Ó Cualáin. And I couldn't change it, he couldn't change it. I wouldn't, I wouldn't have asked him that in the circumstances that existed from the point of view of meeting him on the 8th or the 9th, and then having to meet him again in a very formal circumstance. This was a very formal meeting as far as I was concerned. I know that Garda Keogh has said in his own evidence that I didn't ask him aggressively or formally, but we sort of talked about it. There was nothing informal about this meeting as far as I was concerned. Everything that I asked, I was supposed to ask from Chief Superintendent Curran.²³⁸

²³⁴ Tribunal Transcripts, Day 106, pp. 19-21, Evidence of Garda Nicholas Keogh

²³⁵ Tribunal Transcripts, Day 106, p. 21, Evidence of Garda Nicholas Keogh

²³⁶ Tribunal Transcripts, Day 106, p. 22, Evidence of Garda Nicholas Keogh

²³⁷ Tribunal Documents, Statement of Insp Nicholas Farrell, p. 616 at p. 620

²³⁸ Tribunal Transcripts, Day 121, p. 123, Evidence of Insp Nicholas Farrell

Chief Superintendent Mark Curran

C/Supt Curran rejected Garda Keogh's assertion that enquiries made by garda management regarding the intelligence entry constituted an attempt to target or discredit him. In his statement to the tribunal, he said that he considered *'it reasonable for Garda Management to ... establish the source of the intelligence that he was creating on the PULSE system'*.²³⁹

He referred to his obligations under CHIS, which renders the divisional officer responsible to *'oversee the integrity and the effectiveness of the system within their Divisions'*²⁴⁰ and, specifically, he referred to his responsibility to *'ensure that all members of An Garda Síochána within his Division are aware of and fully compliant with the CHIS policy'*.²⁴¹ He later stated that information from a potential informant must be processed in accordance with CHIS by members with specialist training and that *'[m]anagers with responsibility in this area are advised to pursue an intrusive style of questioning when necessary'*.²⁴²

C/Supt Curran outlined his concerns in his statement to the tribunal:

*Having become aware of the intelligence entered on the Garda PULSE system, and within my responsibilities as Divisional Officer, I was concerned about the serious allegations of criminality and potential corruption explicitly stated and inferred in this intelligence report. I was also concerned that any investigation being carried out could be compromised.*²⁴³

He continued that:

*Of immediate concern were the serious allegations of criminality and potential corruption both explicitly stated and inferred in this intelligence report. I was not privy to any detail of whatever allegations Garda Keogh made to the confidential recipient nor consequently of the matters being investigated by then Assistant Garda Commissioner O'Connell. Of considerable concern to me was the possibility that a CHIS Source was being handled by Garda Keogh outside of the organisation oversight. One way or another there was no prescribed mechanism available to me legally or procedurally to ascertain the status of this matter and which would then perhaps relieve Local Management of any responsibility under the confidential recipient process.*²⁴⁴

C/Supt Curran referred to the *'significant risks to the Garda Organisation in allowing potentially untested, uncorroborated and potentially inaccurate information remain on the PULSE system and visible to all members'*.²⁴⁵

He stated that he was unclear as to Garda Keogh's motivation for making the entry *'considering the consequences it had in triggering formal responses'* and that, if he had reported the matter to the confidential recipient, it would be *'unnecessary for him to place such an entry on the PULSE system'*.²⁴⁶

He told tribunal investigators that *'I never established the reason why he entered it'*.²⁴⁷

C/Supt Curran took the position that regardless of the matter being *'investigated through the Confidential recipient process as proffered by Garda Keogh, the fact that alleged criminal activities were potentially progressing with an informant reporting on same and whilst potentially being untreated presented a predicament for Local Management'*.²⁴⁸

²³⁹ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at pp. 1783-1784

²⁴⁰ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1784

²⁴¹ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1784

²⁴² Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1786

²⁴³ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1783

²⁴⁴ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1785

²⁴⁵ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1785

²⁴⁶ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1785

²⁴⁷ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1951

²⁴⁸ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1785

He was therefore of the view that Garda Keogh's assurances that the substantive criminal matter was being processed through the confidential recipient process did not exempt him from his responsibilities.²⁴⁹ When asked by tribunal investigators whether he ever considered arranging a meeting with A/C Ó Cualáin or D/Supt Mulcahy to clarify matters relating to the PULSE entry he replied that:

*It would not have been ethical for me to meet with people who were investigating the complaint made by the Confidential Reporter. It's not an option for me because I would have seen the investigation as sacrosanct, sterile and remote from me.*²⁵⁰

When asked if he acted on the recommendation of Supt McBrien dated 16th July 2014, that the views of Legal Affairs and Human Resources should be sought, he said that '*Superintendent McBrien's proposal would not assist in bringing clarity to the operational dilemmas confronting us. In addition, such a referral would result in a slow turnaround, at which time things may have changed*'.²⁵¹

In respect of the queries that he directed, he said in his statement that '*[t]he responses Garda Keogh provided were insufficient to alleviate my concerns*'.²⁵² In addressing Garda Keogh's contention, that C/Supt Curran did not respond to his request for clarity as to the exact applicable wording from Garda HQ Directive 126/10, he said that:

*I wish to point out for the record that HQ Directive 126/10 points the reader to HQ Directive 185/05 and to the revised CHIS code of practice on the Garda Portal which outlines in considerable detail the risks and responsibilities for each role holder. In HQ 126/10 paragraph 2 it states that "The revised Code of Practice has been placed on the Garda Portal and should be accessed and perused by all members of An Garda Síochána".*²⁵³

He stated that the code of practice on the garda portal '*is a very accessible policy document*' and that '*all members are meant to read this document*'.²⁵⁴

C/Supt Curran said that he ultimately sought directions from his superiors in respect of his obligations arising from Garda Keogh's intelligence entry and he described '*numerous communications*' from his office seeking clarity and pointing out his concerns.²⁵⁵ He stated that he could not recall getting a response.²⁵⁶

He stated that, following a telephone call with D/Supt Mulcahy in or around December 2014/ January 2015, he was assured that his concerns regarding compliance under Garda HQ Directive 126/10 could end.²⁵⁷

C/Supt Curran concluded in his statement that:

I utterly reject the assertion of Garda Keogh that Garda Management in the Westmeath Division, for which I had overall responsibility, sought to target/discredit him with the acquiescence of Senior Management as the enquiries made and progressed were only necessary as a result of Garda Keogh's creation of the intelligence... which as set out above, contained serious allegations of criminality and potential corruption both explicitly stated and inferred and which

²⁴⁹ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1785

²⁵⁰ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1953

²⁵¹ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1954

²⁵² Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1786

²⁵³ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1786

²⁵⁴ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1956

²⁵⁵ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1787

²⁵⁶ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1960

²⁵⁷ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1786

*Garda Keogh ought reasonably to have known were being addressed in the appropriate forum as chosen by him through the confidential recipient.*²⁵⁸

He said that *I never targeted or discredited Garda Nicholas Keogh. These matters were organisational issues that I was attempting to deal with*.²⁵⁹

In his evidence to the tribunal, C/Supt Curran was asked about the responsibilities of the divisional officer by counsel for the tribunal:

A. *Well, the responsibility is very clearly set out in the code of practice. A chief superintendent has responsibility for the implementation of the CHIS code of practice.*

Q. *In that division?*

A. *In that division, yes. And that [involves] the management of sources, it involves the assessment of sources, the assessment of risk, etcetera. That's done in conjunction with the regional source management team.*²⁶⁰

C/Supt Curran was asked about his initial response and concerns when he first saw the PULSE entry:

*So that leaves me in a dilemma, that I have criminality alleged on the Pulse system and there is a source potentially dealing with Garda Keogh, potentially. If that's the case then there's a risk here. The biggest risk in preparing to investigate is that the source could still be interacting with Garda Keogh. That was a serious concern of mine at the time.*²⁶¹

He further described the role of management with regard to CHIS:

*In the management of CHIS, there must be intrusive management. You can go through it there, there is very clear, digestible messages within that CHIS code of practice, that nobody – unregulated source should be tasked, for example. Garda Keogh is not equipped with the skills, except from training, or he's not – more importantly, the source is not belonging to one person, if it is the source, it's belonging to the organisation, it has to be managed. So protection of Garda Keogh is central to that. Because CHIS, these people, sources can have very devious motives that compromise the integrity of an individual garda.*²⁶²

When dealing with where the ultimate responsibility for the operation of CHIS, C/Supt Curran gave evidence:

*... the only person with responsibility in the system for the management of a source in then my division was me. The potential was there and it's up to me to make sure that the Code of Practice is being implemented and there is compliance with it. So, despite the fact that there might be criminality alleged, the actual fact that there's a potential source here is a concern to me and it doesn't go away. My concern is for Garda Keogh, for the organisation, that there's protections put in place. So, it's not something that I can all I wanted was an assurance that there is no concerns. So, the fact of not pursuing the intelligence didn't remove the obligation on me in terms of CHIS.*²⁶³

²⁵⁸ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1787

²⁵⁹ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1962

²⁶⁰ Tribunal Transcripts, Day 117, p. 11, Evidence of C/Supt Mark Curran

²⁶¹ Tribunal Transcripts, Day 117, pp. 40-41, Evidence of C/Supt Mark Curran

²⁶² Tribunal Transcripts, Day 117, p. 43, Evidence of C/Supt Mark Curran

²⁶³ Tribunal Transcripts, Day 117, p. 59, Evidence of C/Supt Mark Curran

When considering the contents of the particular PULSE entry created by Garda Keogh, C/Supt Curran told the tribunal:

Remember, go back to the Pulse entry, he has now giving an evaluation of the source, in that, true, the information is true and the source is reliable. That's how you look at sources, generally. There's a mention of a monetary amount, that suggests that somebody has access to live information about someone's drug operation.

... So, I suppose to put it – just maybe to clarify, it's not for an individual guard, the CHIS Code of Practice talks about it, the source is not the ownership of an individual garda, it's a corporate issue. And the risks involving handling sources and sometimes people handling sources are not equipped to deal with it and there must be a whole series of safeguards put in to make sure there is protections for the individual member and the organisation.²⁶⁴

C/Supt Curran was asked about the role of the Ó Cualáin investigation with regard to the operation of CHIS. He replied:

AC Ó Cualáin doesn't have the responsibility for managing the CHIS, I do, as the chief in Westmeath at the time. The AC comes in, manages and investigates the set of investigation that he has to investigate, but the management of CHIS is not Assistant Commissioner Ó Cualáin, it rests with my assistant commissioner and me. So, my concern around all of this is that they are – they may believe that the informant is being handled or there is compliance with 126/10. I'm not sure. But I don't have those conversations with him. So I'm left with that dilemma. So responsibility for the CHIS is me. AC Ó Cualáin has a criminal investigation. So it's a slightly – where it's slightly lost there. It doesn't answer my problem with compliance with 126/10.²⁶⁵

C/Supt Curran said he was aware that the Ó Cualáin investigation knew about the entry and observed:

I would say, it's worthwhile saying this, and you've mentioned here that I'm not resolving my problem with compliance of 126/10 with him. But at this stage, what gives me some comfort is that Detective Superintendent Mulcahy is and was at that time a controller himself. And my comfort comes from his knowledge of the risks that come with persons that are sources. So, even though I'm not satisfying myself on 126/10, it becomes – there's some, I suppose, relaxing in my mind of the urgency around it but it doesn't resolve my 126/10 dilemma.²⁶⁶

C/Supt Curran told counsel for Garda Keogh that he remained concerned that Garda Keogh had made the entry in the first place:

The problem for me is, why did he put it in on in the first place? If he's trying to infer this is a matter for Assistant Commissioner Ó Cualáin, why is he broadcasting it within the Westmeath division?²⁶⁷

... The dilemma is the process doesn't include me. Once you go it's a confidential reported process, so it's meant to be anonymous, people are not meant to be, you know, normally, named. Therefore, these things don't arise. But by reporting it, it's in a formal setting. And that is perplexing for me, because I don't want to investigate anything that is a part of the other team and yet there's a piece of a report here, and all I'm getting from Garda Keogh, or all Inspector Farrell is getting from

²⁶⁴ Tribunal Transcripts, Day 117, pp. 69-70, Evidence of C/Supt Mark Curran

²⁶⁵ Tribunal Transcripts, Day 117, pp. 71-72, Evidence of C/Supt Mark Curran

²⁶⁶ Tribunal Transcripts, Day 117, pp. 92-93, Evidence of C/Supt Mark Curran

²⁶⁷ Tribunal Transcripts, Day 118, p. 20, Evidence of C/Supt Mark Curran

*Garda Keogh is, AC Ó Cualáin has this. So how do I know that? It doesn't relieve me of any responsibility at all.*²⁶⁸

C/Supt Curran said in his evidence that the CHIS issue arose in the case of Garda Keogh against a background in which he had made a protected disclosure:

As I said, there was a difficulty that I encountered in relation to the intelligence that was put on and formally expected, a formal response was expected from me. Number one, was the criminality and then the intelligence entry, etcetera. But what I am really talking about is, in those days, in 2014, An Garda Síochána was I suppose starting off on a journey of understanding around the whole whistleblowing thing, so the policy that was in place was very basic in form. Subsequently, you will see Chief Superintendent McLoughlin was appointed as protected disclosure manager, and there is a policy produced in 2017 that goes some way to dealing with issues, I'm not sure it deals with this one and I know it is under review, but that is what I am talking about there. That there is no real policy to bridge, to deal with dilemmas like this. It is done in a management way, but it doesn't leave people – it exposes some of the managers on the ground to some difficult situations and it could be treated differently with a more refined approach to managing stuff away from – you know, away from the operational setting, if that makes sense to you ...

... Well, the CHIS system is only dealing with a particular piece of intelligence, an informant. But in terms of dealing with people who made a protected disclosure who decide to go out and the name is publicised, I know Garda Keogh is saying he didn't decide that, but all of a sudden that creates a difficulty for everybody, because everybody knows who the person is and the whole idea is that the person who makes it is meant to be anonymous. But in some of the issues that I faced the organisation hadn't come across those previously. And all I am saying is that there was [no] policy in place at that time to deal with them. So there was some confusion. And they were complex...

*... Well, what I didn't want is the organisation going at cross purposes to the investigation, the Ó Cualáin investigation. I didn't want that happen. And I didn't so in that respect, the rights of Garda Keogh under that, to have him investigated – the investigation should be kept clear, he shouldn't be asked about anything that touches on that. That's one. In terms of welfare, the welfare that was provided to Garda Keogh by Superintendent McBrien I think Garda Keogh himself, he was very complimentary of her. And I think that was a very important part of all of that for me; that Garda Keogh was getting the best support he could get over there.*²⁶⁹

C/Supt Curran rejected a suggestion by counsel for Garda Keogh that his requests of Garda Keogh amounted to targeting:

*If you look at the first one I ask, and the second time I ask the superintendent are we in compliance or has the source been handed over, and the third one I ask are we in compliance. So I fail to see how that is targeting. I reject the idea that it's targeting or discrediting. It's a function of the chief superintendent in an operational division to manage compliance with the policy of CHIS. I have no choice.*²⁷⁰

²⁶⁸ Tribunal Transcripts, Day 118, p. 21, Evidence of C/Supt Mark Curran

²⁶⁹ Tribunal Transcripts, Day 117, pp. 200-204, Evidence of C/Supt Mark Curran

²⁷⁰ Tribunal Transcripts, Day 118, p. 30, Evidence of C/Supt Mark Curran

Garda Keogh's view that his source did not come within CHIS however was put to C/Supt Curran:

It's is not within his gift. If he has a source, he has no choice in this matter. It's is not for him to say that. You have to remember, a source interacting with one guard, who is not able to deal with it, is not equipped or trained to deal with it, and with the CHIS system, there are other safeguards there. There's management oversight, that's why there's an intrusive type of - it even said it, intrusive type of nature, nature of inquiry and has to be present. So, for him to say that I will hand over the source afterwards, that's just - it's not acceptable.²⁷¹

C/Supt Curran stated that he also had an obligation to Garda Keogh:

... I have obligations under the Code of Practice. I was controller. I understand the risks. They're of the highest order. I can't think of the most - there was tribunals going back 20 years ago all about - central to the management of informants, and that's where the CHIS Code of Practice came from. They create - they can undermine the criminal justice system, they can create enormous problems for individual guards who interact, unless they are actually employing with the skills and backed up with management assistance and oversight, which is what the Code of Practice delivers and ensures. So I am concerned Garda Keogh is being protected in this and he's not exposing himself.²⁷²

Superintendent Noreen McBrien

In her statement to the tribunal, Supt McBrien said that, in her meeting with Garda Keogh of 8th July 2014, she mentioned the PULSE entry and informed Garda Keogh that she would see 'how he got on with the Confidential Recipient'. She stated that she informed him that the intelligence entry may require a separate investigation or enquiry if 'deemed necessary' and that he understood this.²⁷³

Supt McBrien also stated that she spoke with Garda Keogh on 16th July 2014 and she asked him about 'CHIS obligations and an intelligence entry' and advised him in respect of Garda HQ Directive 126/10:

I asked Garda Keogh if his information came from a specific source which gave rise to his assertions made in the intelligence entry. He responded that this was being fully investigated by the Assistant Commissioners investigation team. I advised him of HQ 126/10 'Management of CHIS, Revised Code of Practice' and he said that this was an exceptional circumstance and not sure if it came under CHIS. He said it was being investigated by Detective Superintendent Mulcahy and that the Intelligence was being investigated by him and that he may have a different opinion. Garda Keogh said that his opinion was that it would be backed up. I asked him on what basis he had entered the additional information relating to Garda colleagues and the assertion that there was collusion between members of An Garda Síochána and an individual. His response was as above, that he was not well placed to answer, and referred to Detective Superintendent Mulcahy.²⁷⁴

Supt McBrien wrote to C/Supt Curran on 16th July 2014 and recommended that the incident, amongst others, warranted 'further investigation'.²⁷⁵

²⁷¹ Tribunal Transcripts, Day 118, pp. 38-39, Evidence of C/Supt Mark Curran

²⁷² Tribunal Transcripts, Day 118, pp. 41-42, Evidence of C/Supt Mark Curran

²⁷³ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at pp. 833-834

²⁷⁴ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 835

²⁷⁵ Tribunal Documents, Letter from Supt Noreen McBrien to C/Supt Mark Curran, dated 16th July 2014, pp. 1186-1188

She stated that she got a text from Garda Keogh at 22:46 hrs on 16th July 2014 saying ‘*Supt, Can you let me know whether there is a complaint against me please*’ and that she replied ‘*Stop worrying, I have recommended that they be investigated. You will be kept in the loop*’.²⁷⁶ She stated that:

*For the avoidance of doubt, as far as I was concerned, there was no investigation of any nature ongoing at that time against Garda Keogh.*²⁷⁷

On 23rd July 2014, following a direction from C/Supt Curran,²⁷⁸ and after speaking with Garda Keogh on the phone,²⁷⁹ Supt McBrien said in her statement that she asked Garda Keogh to furnish a report on the matter and indicate whether the informant was registered with CHIS. As previously noted, Garda Keogh’s response was that ‘*this is not a CHIS matter*’.²⁸⁰ Also, as already noted, Garda A made a complaint in respect of the PULSE entry,²⁸¹ which was forwarded to Supt McBrien.²⁸² Supt McBrien, further to a direction from C/Supt Curran,²⁸³ requested a further report from Garda Keogh on 26th September 2014.

Supt McBrien outlined her concerns as being in relation to ‘*[the] Chief Superintendent’s CHIS responsibility within Eastern Division and whether the person who made this disclosure was registered with CHIS, whether they were being dealt with by a CHIS handler and that there was compliance with CHIS policy*’.²⁸⁴

In her statement, she gave her understanding of the responsibilities referred to by C/Supt Curran:

*We had an obligation to ensure that a person who may be a CHIS is properly evaluated and the intelligence assessed before being classified as a CHIS. After such classification, there is a protocol regarding how such a person is dealt with, and this is done by suitably trained personnel with expertise in handling confidential sources. It is very serious as mismanagement of sources can have serious repercussions. Chief Inspector Curran took his responsibility very seriously.*²⁸⁵

When asked by tribunal investigators whether she, at any stage, considered arranging a meeting with the Ó Cualáin team to clarify matters relating to the PULSE entry she stated:

*No. The concern of Chief Superintendent Curran and me was only to do with compliance with the policy. I was very cognisant that Nicholas Keogh was a Confidential Reporter whose complaints were being investigated by Assistant Commissioner Ó Cualáin’s team independently.*²⁸⁶

In respect of Garda Keogh’s allegation that C/Supt Curran was putting her under pressure, she replied that:

His belief is unfounded. With regards to CHIS, CHIS is a very serious matter. Chief Superintendent Curran had a responsibility for the Divisional control of CHIS. I needed to get the responses and for them to be in line with the Chief Superintendent’s request under HQ Directive 126/10. I wasn’t under pressure from anyone to do anything. I needed the responses

²⁷⁶ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 836

²⁷⁷ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 836

²⁷⁸ Tribunal Documents, Letter from C/Supt Mark Curran to Supt Noreen McBrien, dated 21st July 2014, p. 1886

²⁷⁹ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 837

²⁸⁰ Tribunal Documents, Handwritten note of Garda Nicholas Keogh to Supt Noreen McBrien, dated 27th July 2014, p. 163

²⁸¹ Tribunal Documents, Letter from Garda A to D/Sgt Eamon Curley, dated 27th July 2014, p. 551

²⁸² Tribunal Documents, Letter from D/Sgt Eamon Curley to Supt Noreen McBrien, dated 30th July 2014, p. 550

²⁸³ Tribunal Documents, Letter from C/Supt Mark Curran to Supt Noreen McBrien dated 11th July 2014, p. 1991

²⁸⁴ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6259-6260

²⁸⁵ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6261

²⁸⁶ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6262

*back as the Chief Superintendent needed this information, given his responsibility. I don't recall me saying that I was under pressure to Nicholas Keogh.*²⁸⁷

Supt McBrien confirmed during her investigator interview that she considered the enquiries directed in respect of the PULSE entry to be 'reasonable and proportionate'.²⁸⁸ She denied that her interactions with Garda Keogh on this issue, and the matters at Issues 2, 3 and 4, could be considered instances of targeting or discrediting and said that:

*No. I never targeted Garda Keogh. I ensured he was supported and aware of supports. As I explained to Garda Keogh, I investigated issues in my role as District Officer and they were investigations of incidents/complaints rather than investigations of Garda Keogh.*²⁸⁹

Supt McBrien was asked by counsel for the tribunal if she agreed with C/Supt Curran's view concerning the obligations that Garda Keogh had under CHIS:

*Chief Supt Curran had the responsibility for the integrity of CHIS in the division. As well as having good theoretical knowledge, he had extremely good practical knowledge of where I could go wrong on that because he had been a CHIS handler in Coolock in the R District for a number of years in DMMR, so he would have a good practical knowledge of how it could go wrong. That level of knowledge for me was a privilege, to have someone who had that. So I totally took his lead on that and supported it.*²⁹⁰

She continued:

*The content of it, it could well have had something to do with assistant commissioner -- I don't know, I don't know what Assistant Commissioner O'Connell was investigating. But what was important to us was the obligations, and specifically to the chief superintendent, basically carry the can on this one, was the obligation that CHIS policy was fully complied with.*²⁹¹

Inspector Aidan Minnock

Insp Minnock was asked by counsel for the tribunal about his knowledge of the entry created by Garda Keogh on PULSE. He replied:

I was certainly aware of the entry. There would have been some discussion but I had very little engagement or interaction with that, because the file didn't cross my desk ...

... Well, I would have thought it was a CHIS matter. I think any information that comes to light where there is an informant is a CHIS matter as per policy ...

*... It means that the person is tried and trusted, proved reliable in the past, is a known source. And if it's a known source, it puts it certainly into the realms of a CHIS referral.*²⁹²

Insp Minnock was also asked about a telephone conversation he had with Garda Keogh on 12th May 2014 and his note of the same:

A. *But obviously this was something quite unusual that I felt necessitated in my role and position to talk to Garda Keogh, to just tell him that we were there to support him in his protected disclosures.*

²⁸⁷ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6264

²⁸⁸ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6265

²⁸⁹ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6266

²⁹⁰ Tribunal Transcripts, Day 120, p. 41, Evidence of Supt Noreen McBrien

²⁹¹ Tribunal Transcripts, Day 120, p. 41, Evidence of Supt Noreen McBrien

²⁹² Tribunal Transcripts, Day 122, pp. 22-23, Evidence of Insp Aidan Minnock

Q. *Yes. Perhaps could you talk us through the notes?*

A. *Yeah. So it was 12th May 2014. It was: "6:15pm: I rang Garda Nick Keogh. Offered support or any help I could give him, personally or on behalf of the organisation. Nick said he was okay at the minute but said 'I appreciate that 'he said 'I know what I'm at and I'm focused on that'. He said 'it's running it's course as planned'. I again reassured him he could contact me at any stage for a coffee or just for a chat and I would give him any help I could, either personally or organisationally. He said he was happy enough at this stage and he would bring first thing across the line and then see after that.*

*Nick appeared in great form, very happy with his course of action and how things were progressing. Appeared glad and appreciative of my call."*²⁹³

Detective Superintendent Declan Mulcahy

D/Supt Mulcahy gave evidence to the tribunal and was asked about his interaction with Garda Keogh with regard to the PULSE entry. He was asked the following by counsel for the tribunal:

Q. *... At that point in time were you aware of any issue that had arisen in relation to the creation of an intelligence entry or an intelligence check on Pulse that Garda Keogh had been involved in?*

A. *I was. Garda Keogh advised me that his chief had been on to the – or the superintendent had asked him about it and that the chief was putting pressure on her in relation to it. So I explained to him that the chief had an obligation to ensure that anything that was put on the system was true and [correct].*

Q. *Yes. Well, was that with a view to encouraging him to comply with the requirements of the chief or the superintendent?*

A. *But I don't think it was my position to advise him whether to whether or not I advised him as to what the chief was asking in relation to it. He then advised me of where the information had come from.*

Q. *Yes. He advised you, did he, of his rendezvous with a person in the Galway area?*

A. *He did, indeed, yes.*

Q. *Earlier, and his note of same, is that right?*

A. *Yes.*

Q. *And he provided that in due course, is that correct?*

A. *He did, yeah, and the intelligence that was created had come from that same person.*

Q. *Well, had you been in contact with Chief Superintendent Curran in relation to that matter, because Chief Superintendent Curran told the Tribunal that he took some solace in the fact that you had been a CHIS controller, is that right?*

A. *That's correct, yeah. Yeah.*

²⁹³ Tribunal Transcripts, Day 122, pp. 18-19, Evidence of Insp Aidan Minnock

Q. Did you have any conversation about that issue?

A. Chief Superintendent Curran rang me in relation to it, I'm not sure of the dates in relation to it but I know it wasn't on the same day that I had rang previously, in relation to the thing, and in fairness to him, he said, I'm not asking you about the investigation, I don't want to know anything about the investigation. He said, are you aware of the intelligence and are you aware where it came from? And I told him that I was aware where it came from and he said, okay. And there was no further conversation as far as I'm concerned after that.²⁹⁴

Detective Superintendent Frank Walsh

As will be recalled, C/Supt Curran gave evidence of a phone call on 29th May 2014 with D/Supt Walsh, private secretary to the Garda Commissioner. D/Supt Walsh was asked about his memory of this call by counsel for the tribunal:

*I was aware this was an issue and that that was evidence that had been given. I would speak regularly with Chief Superintendent Mark Curran. I don't recall making that phone call. It's quite possible that I did. I think the diary entry for the day, I think I included the page from the diary, which I think showed that it was a particularly long day and I was extremely busy and I didn't have notes of everything that I did on that particular day. If Chief Superintendent Curran says that I rang him on that day, I am very happy to accept that. I wouldn't contradict him in any way.*²⁹⁵

Legal Submissions

Garda Nicholas Keogh submitted as follows:²⁹⁶

- that he was targeted by senior management within the organisation as a result of making this PULSE entry; this was because he stated in the entry that a senior officer was involved and the entry brought him to the immediate attention of senior management.
- that the tribunal should consider his state of mind when he made the entry; that he was a 'sitting duck' and that he made the entry for 'self-preservation' in circumstances where a lot of his colleagues were unaware of what his protected disclosure was about.
- that both at the material time and during his evidence, it was his position that, because of the people referred to in the entry, its content was a matter for the Ó Cualáin investigation.
- that it was doubtful that the entry was, in fact, covered by CHIS because *inter alia* he confirmed that the information was 'once off' and not a regular event.
- that Garda Keogh fairly conceded in cross-examination that it was reasonable for C/Supt Curran to make his initial enquiry about CHIS but that what occurred thereafter amounted to targeting because *inter alia*:
 - (i) he maintained a consistent position that it was not a matter for CHIS but a matter for the Ó Cualáin investigation;
 - (ii) he told Insp Farrell that he was due to meet A/C Ó Cualáin and that he couldn't discuss the entry with him;

²⁹⁴ Tribunal Transcripts, Day 136, pp. 135-137, Evidence of D/Supt Declan Mulcahy

²⁹⁵ Tribunal Transcripts, Day 136, pp. 19-20, Evidence of D/Supt Frank Walsh

²⁹⁶ The tribunal has considered all of Garda Nicholas Keogh's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 14-31 and pp. 172-177

(iii) he was advised by the confidential recipient not to discuss the content of the protected disclosure with anyone outside of the Ó Cualáin investigation.

- that Garda Keogh provided the information about the identity of the informant to D/Supt Mulcahy on 16th July 2014, a fact accepted by C/Supt Curran when he was examined at the public hearing.
- that C/Supt Curran accepted that he did not contact Garda Keogh, either directly or indirectly, to reassure him and offer him comfort that he was executing his function as CHIS controller and when Garda Keogh requested a copy of Garda HQ Directive 126/10 he was not provided with it.
- that it wasn't until December 2014 that C/Supt Curran sought to clarify matters with D/Supt Mulcahy, a step which it was submitted was open to him from June 2014.

An Garda Síochána submitted as follows:²⁹⁷

- that the PULSE entry contained sensitive information and made serious criminal allegations against a member of An Garda Síochána, namely allegations of collusion by a member of An Garda Síochána with drug dealers. This was self-evidently a matter which required further investigation. By putting this information on PULSE, the information was published by Garda Keogh (having been inputted by him in the early hours of the morning) to every garda in the country who had access to PULSE.
- that the information was already the subject of Garda Keogh's protected disclosure and was under criminal investigation by the Ó Cualáin team. The material could have been left entirely to the Ó Cualáin team and this raised the question as to why the information was published by Garda Keogh in the first place.
- that Garda Keogh took the unsustainable position that he was entitled to take and rely upon his own interpretation of Garda HQ Directive 126/10 and not to follow the interpretation adopted by garda management which applied to every other member of An Garda Síochána.
- that Garda Keogh's allegations were entirely inconsistent with the views of Supt McBrien, against whom Garda Keogh had never made any allegations or complaints.
- that C/Supt Curran was concerned with CHIS compliance and was clear in his evidence that the enquiries he made were necessary, that he had responsibilities to do so under CHIS and that the CHIS policy was accessible by all members on the garda portal and must be strictly followed by every garda.
- that Garda Keogh's responses did not enable C/Supt Curran to assess and evaluate the information contained within the PULSE entry.
- that Supt McBrien gave evidence that C/Supt Curran would have been negligent if he had not raised the queries that he did and that CHIS was a strict policy, and that she supported C/Supt Curran's line of analysis in relation to the CHIS procedures. Garda Keogh stated that Supt McBrien, against whom he made no complaint, acted reasonably in relation to this matter.

²⁹⁷ The tribunal has considered all of An Garda Síochána's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 70-172 and pp. 177-179

- that C/Supt Curran had a dilemma: Garda Keogh was claiming that this issue was part of the Ó Cualáin investigation, yet there was criminality referred to on the PULSE system and reference to a potential source who might still be interacting with Garda Keogh.
- that C/Supt Curran sought the views of Internal Affairs, Crime Policy and Administration in respect of the legal considerations of progressing the investigation. He sought the assistance of the Assistant Commissioner, Crime and Security and the Assistant Commissioner, Organisation Development and Strategy Planning. C/Supt Curran's concerns were in relation to the accuracy of data and whether Garda Keogh was operating outside Garda HQ Directive 126/10.
- that C/Supt Curran was not privy to Garda Keogh's communications with the confidential recipient or A/C Ó Cualáin.
- that ultimately (in December 2014/January 2015), C/Supt Curran's CHIS concerns were assuaged because he communicated with D/Supt Mulcahy. Thus he was able to satisfy himself that this matter was under investigation elsewhere. D/Supt Mulcahy noted that C/Supt Curran was relieved that he (D/Supt Mulcahy) knew the source of the PULSE information.
- that when it was put to Garda Keogh that it was reasonable that C/Supt Curran had been reassured once he spoke to D/Supt Mulcahy, Garda Keogh replied, *'My answer is, that is fair'*, although he complained that it should have been done earlier.
- that when it was put to Garda Keogh that his statement to the effect that the substantive matter was being progressed through the confidential recipient process did not exempt the chief superintendent from his duty and responsibility, Garda Keogh replied *'that's fair enough'*.
- that Garda Keogh accepted that C/Supt Curran was obliged to make the initial enquiry as CHIS manager, but repeated his position that it was not a CHIS matter, even though this was not a decision which he was authorised to make.
- that Garda Keogh's conduct in relation to Issue 1 triggered a necessary and reasonable response from garda management in his district. It was entirely legitimate for management to take the proportionate steps that they did. It was accepted by Garda Keogh that C/Supt Curran had a duty to fulfil in this regard.

Superintendent Noreen McBrien submitted as follows:²⁹⁸

- that she agreed with C/Supt Curran's views in relation to the obligations that Garda Keogh had under CHIS.
- that it was reasonable for garda management to look into the PULSE entry and to take steps, and that Supt McBrien supported C/Supt Curran's line of analysis with respect to the recording and proper treatment under CHIS.
- that Garda Keogh accepted Supt McBrien's bona fides and accepted that she did not subject him to bullying or harassment in transmitting requests and making requests of him for reports on this issue. That Garda Keogh gave evidence as regards Supt McBrien that *'I never believed Superintendent McBrien was behind this, just for clarification'*.

²⁹⁸ The tribunal has considered all of Supt Noreen McBrien's legal submissions on this issue and what follows is a summary of the same.

Inspector Nicholas Farrell submitted as follows:²⁹⁹

- that he disputed the assertion by Garda Keogh that he, Insp Farrell, asked Garda Keogh to change the intelligence entry.
- that he kept a contemporaneous note of his meeting with Garda Keogh and that the contents of this note were not challenged in cross-examination by counsel for Garda Keogh.
- that it was not within the capacity of either Insp Farrell or Garda Keogh to change a PULSE entry, which can only be done by application to the Criminal Intelligence Officer, and that he was steadfast in his evidence that it never entered his mind to ask Garda Keogh to change the intelligence entry.
- that when he became aware of the intelligence entry he reported it to C/Supt Curran and followed instructions thereafter.

Sergeant Andrew Haran submitted as follows:³⁰⁰

- that the intelligence entry was not something that he would do himself as PULSE was not the appropriate channel for that information and that, if he did think it was a CHIS matter, he would have brought that to Garda Keogh's attention.
- that Garda Keogh did not come to him at any time suggesting that the questions about CHIS were inappropriate or that he was being harassed about the issue.

Discussion

On this issue Garda Keogh concentrated his complaints of targeting on C/Supt Curran, his divisional officer. He maintained that any investigation of his PULSE entry should have been done by the Ó Cualáin investigation team and not by local officers. He also denied that the CHIS system applied to his source.

C/Supt Curran had responsibility for CHIS in his area and questioned whether there had been compliance with its provisions. In his evidence to the tribunal, Garda Keogh accepted that the first of two letters sent or directed by the C/Supt was reasonable but not the second one. He also claimed evidence of targeting in other features of the officer's approach.

Garda Nicholas Keogh's source

Garda Keogh created the issue for local garda management by making a report about Ms B outside of the protected disclosure process he had invoked, which gave rise to concern about the status of his source. The PULSE entry indicated that he had an existing underworld or criminal source because the information was specific in describing a precise turnover figure, it was expressed in the present tense, it stated that it came from a source that was *'always reliable'* and that the content was *'true without reservation'*, and it described a garda accomplice and possible other higher rank involvement, concluding with the single-word sentence: *'fact'*.

The PULSE entry was made by Garda Keogh at 23:38 hrs on Sunday 18th May 2014. It was actually the second involvement with PULSE that he had on that date. The first, made at 05:30 hrs, was a query about Garda A. He made this second visit to PULSE when he was once again

²⁹⁹ The tribunal has considered all of Insp Nicholas Farrell's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

³⁰⁰ The tribunal has considered all of Sgt Andrew Haran's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69.

on duty so the two PULSE events are separated by a break in rosters and some 18 hours. Garda Keogh had time to reflect on the encounter with Ms B, which hesitation may be an indication that Garda Keogh was aware of the impact the step would have.

It was inevitable that putting this explosive entry on PULSE would produce an early response from senior officers both in the district and the division. It was also obvious that they would be concerned about the status of the source in regard to the provisions of CHIS. The report as Garda Keogh presented it indicated a person who probably had to be registered.

C/Supt Curran had divisional responsibility for the CHIS system for operating and supervising the handling of sources so as to protect them and their garda contacts and to allow for evaluation of the information.

Garda Keogh's position was clear: that he had always said this was not a CHIS matter. The legal submissions on his behalf are somewhat more guarded at first, where he submitted that it is '*doubtful*' if the entry was covered by CHIS.³⁰¹ The submissions grow in conviction where it is later submitted that Garda Keogh '*confirmed the information was "once off" and not a regular event*' and that this '*places the information outside CHIS*'.³⁰²

He maintained that CHIS did not apply because the source had left crime behind, was now a law-abiding working person and the information he supplied was once-off, historical, concerning events of some six to seven years previously. He relied on his personal knowledge and belief about the source.

However, he did not explain these circumstances to the officers in Athlone or Mullingar and they were in sharp conflict with what he had reported on PULSE. C/Supt Curran had no means of knowing that situation and Garda Keogh did not give him the information.

The submission that CHIS did not apply to the situation as it was in reality and to Garda Keogh's knowledge is therefore irrelevant to the question of targeting because the garda authorities had to deal, not with Garda Keogh's perception of his source, but with the significantly different PULSE report as made, with its obvious and grave implications.

The Ó Cualáin investigation

In addition to his specific argument on this issue about the application of CHIS to his source, Garda Keogh maintained a general proposition in response to enquiries made by his local superiors concerning Issues 1-4. He claimed that each of these issues was a matter exclusively for the major investigation being conducted by A/C Ó Cualáin. It was accordingly inappropriate for C/Supt Curran or his officers to interfere.

He cited the confidential recipient, Judge McMahon, as authority for refusing to deal with the queries. He said that the judge had referred to the Morris Tribunal in relation to allegations about gardaí in Donegal to the effect that there could not be a series of mini-inquiries in a major investigation. As the submission on his behalf points out, Garda Keogh was consistent in this position from beginning to end on this issue, from when Insp Farrell spoke to him on the day after he made the PULSE entry until he replied to C/Supt Curran's second letter about the source. This was a firm conviction bolstered by support from Judge McMahon, although that did not extend to approval of the making of the PULSE entry.

³⁰¹ Tribunal Documents, Legal Submissions on behalf of Garda Nicholas Keogh, p. 8

³⁰² Tribunal Documents, Legal Submissions on behalf of Garda Nicholas Keogh, p. 9

While acknowledging Garda Keogh's settled determination on this point, it does appear to be clear that the question as to whether his source for the PULSE entry was registered or whether it was legitimate for the divisional officer to ask about that were matters standing outside the scope of the investigation into Garda Keogh's own corruption allegations. The same goes for any debate as to the appropriateness of making the entry.

It is difficult to envisage a rule or principle that could license a garda to engage in any activity that he claimed to be connected with an investigation of corruption and to exclude answerability to his local superiors in matters properly within their area of responsibility. Garda Keogh's understanding came into conflict with the specific responsibility carried by his chief superintendent.

Moreover, whatever Garda Keogh believed, or even what Judge McMahon thought should happen, the fact is that the Ó Cualáin investigation team decided that they were not pursuing the provenance of the PULSE entry so it was left to the local officer in charge to deal with the matter, in accordance with the scheme as laid down in An Garda Síochána protocols. The investigators held that their function was to investigate allegations made by Garda Keogh but not complaints made against him. D/Supt Mulcahy of the Ó Cualáin investigation team informed him of the position.

Chief Superintendent Curran and CHIS

C/Supt Curran's evidence is that it was important that the source of the information be registered under CHIS. There are many dangers with unregistered intelligence sources. The system now in place has its origin in recommendations of the Morris Tribunal.

The central point as C/Supt Curran proposed it was that it was his function as divisional officer to supervise the operation of the CHIS system to ensure that informants were properly registered. This was not a matter for A/C Ó Cualáin's team but was exclusively for him as senior officer in the division. Accordingly, he was not only entitled but obliged to pursue the matter of the registration of the informant. Although Garda Keogh maintained that his informant did not come within CHIS, the chief superintendent reasonably made the point that the decision as to whether he was or was not within the scheme was legitimately a matter for an order by a very senior officer.

In regard to the PULSE entry, C/Supt Curran described what he called his dilemma and how he went about trying to get instruction or advice from senior garda management about how he was going to deal with the problem. He received informal advice from D/Supt Walsh as to investigating the criminality reported by Garda Keogh, but his requests for assistance from high-level officers in Garda Headquarters were unanswered.

Garda Keogh's legal submissions

As noted above, Garda Keogh submitted to the tribunal that as a result of making this PULSE entry, he was targeted by senior management within the organisation. The reason for this, he contends, is because he stated in the entry that a senior officer was involved.³⁰³ There is no evidence to support this proposition. Insp Farrell became aware of it and reported to C/Supt Curran, who proceeded as recorded in the factual narrative above.

Garda Keogh also submitted that he was a '*sitting duck*' and that he made the entry for '*self-preservation*' in circumstances where a lot of his colleagues were unaware of what his protected

³⁰³ Tribunal Documents, Legal Submissions on behalf of Garda Nicholas Keogh, p. 6

disclosure was about. It was submitted that *'it is important to take into account Garda Keogh's state of mind at the time of making the entry when the evidence is considered'*.³⁰⁴ The question of targeting to be answered in this case does not depend on Garda Keogh's state of mind. He described the circumstances as quoted above and also how he responded to the encounter with Ms B, which led to his engaging with PULSE on the two occasions on 18th May 2014.

Garda Keogh further submitted that it was reasonable for C/Supt Curran to make his initial enquiry about CHIS and request a response. It is what occurred thereafter that Garda Keogh complained amounted to targeting of him.³⁰⁵ Garda Keogh outlined the reasons for this submission as being:

1. *It is doubtful the entry was covered by the CHIS Directive.*
2. *From the outset, Garda Keogh engaged with his superior officers and responded to the questions posed to him. It was his firm view, and he maintained in his evidence, that it was not a matter for CHIS but a matter for the O'Cuailain investigation. It has been accepted in evidence by An Garda Síochána that Garda Keogh maintained such a consistent position.*
3. *Inspector Farrell confirmed in his statement that he informed Garda Keogh "that if he had an informant that they should be registered with CHIS in accordance with HQ 126/10." He confirms that Garda Keogh stated in response "that he was due to meet A/C O'Cuailain and that he couldn't discuss the entry with me. He stated that he was advised by the Confidential Recipient that he didn't need to talk to anyone else except A/C O'Cuailain."*

Garda Keogh gave evidence that he was advised by the Confidential Recipient not to discuss the content of the protected disclosure with anyone outside of the O'Cuailain investigation. He took comfort in this advice and, to his own mind and belief, he complied with it. Garda Keogh's evidence is accepted by the Confidential Recipient who also gave evidence on this issue.

Garda Keogh conceded the point in cross-examination that it was reasonable for C/Supt Curran to make his first enquiry, which is his letter of 21st July 2014 addressed to Supt McBrien, which she repeated in her letter of 23rd July to Garda Keogh. The question was whether the source was registered. He replied on 27th July saying that CHIS did not apply. On 22nd August 2014, the chief superintendent wrote again to the superintendent and she passed the letter on to Garda Keogh. He responded on 26th September 2014, setting out his reasons why he thought the query was not appropriate. So, the only things that *'occurred thereafter'* the first letter and his reply were the second letter and his substantive reply to it. The points listed in this submission were not subsequent events. The numbered points do not establish targeting.

Garda Keogh submitted that he *'provided the information about the identity of the informant to Detective Superintendent Mulcahy on the 16th July 2014. This was confirmed by Detective Superintendent Mulcahy and accepted by Chief Superintendent Curran when he was examined at the public hearing'*. That point is correct.³⁰⁶

Garda Keogh submitted that *'Chief Superintendent Curran accepted that he did not contact Garda Keogh, either directly or indirectly, to reassure him and offer him comfort that his enquiry about the Pulse entry related solely to Chief Superintendent Curran's executing his function as CHIS controller'*.³⁰⁷ That point is correct.

³⁰⁴ Tribunal Documents, Legal Submissions on behalf of Garda Nicholas Keogh, p. 7

³⁰⁵ Tribunal Documents, Legal Submissions on behalf of Garda Nicholas Keogh, p. 9

³⁰⁶ Tribunal Documents, Legal Submissions on behalf of Garda Nicholas Keogh, p. 10

³⁰⁷ Tribunal Documents, Legal Submissions on behalf of Garda Nicholas Keogh, p. 10

Garda Keogh submitted that *‘when Garda Keogh requested a copy of Directive 126/10 he wasn’t provided with it’*.³⁰⁸ That point is correct; the chief superintendent’s evidence was that CHIS was available on the garda portal and was not difficult to understand. Also, he felt that the process was going nowhere.

Garda Keogh submitted that *‘Chief Superintendent Curran accepted that Garda Keogh was not contacted after September 2014 on this issue, despite internal communication between senior officers, continuing until December 2014’*.³⁰⁹ The absence of contact in the circumstances after the exchange of correspondence is not evidence of targeting.

Garda Keogh submitted that *‘having raised the query in May 2014 it wasn’t until December 2014 that Chief Superintendent Curran sought to clarify matters with Detective Superintendent Mulcahy, a step, which it is submitted was open to him from June 2014’*.³¹⁰ D/Supt Mulcahy phoned the chief superintendent to reassure him that they were investigating the matter and were aware of the source and had spoken to him. C/Supt Curran was reassured by this information, coming from the lead investigator of the Ó Cualáin investigation team and an officer who had himself been a CHIS supervisor. The approach did not come from C/Supt Curran but from D/Supt Mulcahy. It cannot be the case that failure to be reassured at an earlier point of time represents targeting. The result of this contact had no impact on or consequence for Garda Keogh.

Conclusion

The difficulties described by C/Supt Curran were real. Garda Keogh had made his protected disclosure and was entitled to anonymity and protection arising from that. Now he had created a new issue by putting information on the system and circulating it to potentially every garda with such specific detail that it implied that he had a well-placed informant. This seems to be the very situation that the CHIS policy was designed to deal with. The chief superintendent had a specific responsibility in respect of CHIS; he was not in a position to demand information from the assistant commissioner’s investigation team; he did not know whether they were looking into the matter that Garda Keogh had publicised on PULSE. In addition, he was faced with Garda Keogh’s refusal to give information or answer questions, citing Judge McMahon’s instructions.

Garda Keogh had made a PULSE entry that had such particulars including a specific weekly amount of earnings ascribed to Ms B that it suggested that Garda Keogh was running an informant. There were rules dealing with that situation. It was the responsibility of the divisional officer, namely C/Supt Curran, to ensure that the protocols concerning informants were faithfully observed. The reasons were protection of the garda involved and of the informant, as well as evaluation of the accuracy and reliability of the information. There could be a wide variety of reasons why an informant would come forward and it was important that the rules and controls should be observed and supervised.

Here there was a situation where serious information was revealed, and it was specific, and so the question of the management of the informant was an important one. The point made by C/Supt Curran was that it was his responsibility to make sure that the established scheme was being operated in all relevant and important respects.

On the basis of the evidence it is not possible to conclude that this senior officer contrived a false query or basis for questioning the status of the source in respect of registration. If the matter were

³⁰⁸ Tribunal Documents, Legal Submissions on behalf of Garda Nicholas Keogh, p. 10

³⁰⁹ Tribunal Documents, Legal Submissions on behalf of Garda Nicholas Keogh, p. 10

³¹⁰ Tribunal Documents, Legal Submissions on behalf of Garda Nicholas Keogh, p. 11

to be doubted, the correspondence that the chief superintendent had with his own superiors in Garda Headquarters and the fact that he did not get clear information or advice corroborates his position in insisting on seeking reassurance. All that is consistent with genuine concern to see the protocols observed.

The tribunal is satisfied that C/Supt Curran was acting reasonably in seeking reassurance as to the informant.

And if those points were not sufficient, the fact that the only consequence for Garda Keogh was that he was questioned by Insp Farrell, spoke to Supt McBrien about whom he makes no complaint, and received two letters in response to which he maintained his own position does not amount to anything near sufficient to establish victimisation in the form of targeting.

For the claim to succeed, the tribunal would have to reject the evidence of the senior officer and hold that he contrived this issue for the purpose of getting at Garda Keogh because he had made a protected disclosure. There is no evidence to establish this proposition. Neither can it be related causally to the fact that he made a protected disclosure

The question that the chief superintendent directed should be put to Garda Keogh was: is your informant registered? This was not a demand for the name of the person giving the information but rather a reference to the existing regime for dealing with informants. Garda Keogh gave a somewhat dismissive reply to this July 2014 letter but his response to the chief superintendent's August letter set out his position in clear terms seeking to answer the point raised. There is nothing in this correspondence to indicate that Garda Keogh felt he was being targeted.

Garda Keogh conceded that the first letter was not targeting but it is wrong to contend that the second, which is a follow-up pursuing the informant issue represents targeting.

There is no evidence of conduct on the part of C/Supt Curran constituting targeting or discrediting of Garda Keogh.

Finally, the conflict of evidence as to whether Insp Farrell asked Garda Keogh to change the PULSE entry is not relevant to the decision on targeting or discrediting. It is clear that the inspector expressed concern about the contents, which was understandable in circumstances that included his contact with the chief superintendent. It seems likely that Garda Keogh misunderstood the point the inspector was making. As the latter pointed out in his statement and evidence, neither he nor Garda Keogh actually had the capacity to alter the entry.

In sum, the chief superintendent pursued a limited, reasonable and legitimate enquiry in accordance with his responsibility in respect of the informant scheme of An Garda Síochána. Even if there was doubt about whether CHIS applied, this enquiry was proper coming from a very senior officer.

Irrespective of all disputes as to the application of CHIS to the facts as believed by Garda Keogh, the enquiry by Insp Farrell about the contents of the PULSE entry, the conversations between Supt McBrien and Garda Keogh and the two letters C/Supt Curran caused to be written cannot be considered as targeting or discrediting and neither did they occur because Garda Keogh made a protected disclosure.

CHAPTER 6

ISSUE 2: THE COMPLAINT MADE BY GARDA NICHOLAS KEOGH IN RELATION TO THE INVESTIGATION OF THE PULSE ENTRY ON 18TH MAY 2014

The Facts

As noted in the previous chapter, the PULSE check made by Garda Keogh in respect of Garda A happened some 18 hours before he made the PULSE entry referred to in Issue 1.

Garda Keogh returned to the station before finishing work on Sunday morning³¹¹ and while there made a PULSE query about Garda A at 05:30 hrs.³¹² He came back to work that Sunday evening on his next tour of night duty and at 23:38 hrs he made the entry about Ms B that gave rise to Issue 1.

On 20th September 2014, Garda A noticed that Garda Keogh and another garda had conducted a search in relation to what he regarded as his personal details. He complained to Detective Sergeant Eamon Curley by letter on 24th September 2014.³¹³ He pointed out that both gardaí had made allegations against him and he believed the checks were for personal reasons and not related to garda business. He expressed the view that there possibly had been a breach of the Data Protection Acts and requested that the matter be fully investigated. He noted that no reason had been entered on the system for the search conducted by Garda Keogh. Of particular concern to him at the time was the possibility that information gathered in the searches may have been passed on to third parties.

D/Sgt Curley sent Garda A's complaint to Superintendent Noreen McBrien under cover of a letter headed *Possible breach of Data Protection Act as reported by Garda A*.³¹⁴ Supt McBrien forwarded the complaint to Chief Superintendent Mark Curran, observing that Garda Keogh had made a protected disclosure which she suspected concerned Garda A and that these PULSE checks may be related to that. She sought the views of C/Supt Curran in respect of the matter.³¹⁵

On 1st October 2014, Supt McBrien wrote to Sergeant Andrew Haran requesting a report from Garda Keogh as to the reasons why he had carried out an enquiry on PULSE in relation to Garda A on 18th May 2014.³¹⁶ On the same date, she made a confidential request to the Information and Communications Technologies section of An Garda Síochána seeking clarification of the PULSE checks and the reasons given by the members involved.³¹⁷ On 3rd October 2014, Sergeant Jerome Murray responded to the superintendent by email with a list of enquiries made by Garda Keogh in respect of Garda A.³¹⁸ Nothing of significance emerged; the list³¹⁹ merely confirmed what was alleged by Garda A.

On 3rd October 2014, Supt McBrien went on sick leave which extended until 18th December 2014.

³¹¹ Tribunal Transcripts, Day 99, p. 113, Evidence of Garda Nicholas Keogh; PULSE Extract, p. 13449

³¹² Tribunal Transcripts, Day 100, p. 14, Evidence of Garda Nicholas Keogh

³¹³ Tribunal Documents, Letter from Garda A to D/Sgt Eamon Curley, dated 24th September 2014, p. 8619

³¹⁴ Tribunal Documents, Letter from D/Sgt Eamon Curley to Supt Noreen McBrien, dated 24th September 2014, p. 8618

³¹⁵ Tribunal Documents, Letter from Supt Noreen McBrien to C/Supt Mark Curran, dated 24th September 2014, p. 8617

³¹⁶ Tribunal Documents, Letter from Supt Noreen McBrien to Sgt Andrew Haran, dated 1st October 2014, p. 8626

³¹⁷ Tribunal Documents, Email from Supt Noreen McBrien to Supt Denis Ferry, dated 1st October 2014, pp. 8620 – 8621

³¹⁸ Tribunal Documents, Email from Sgt Jerome Murray to Supt Noreen McBrien, dated 3rd October 2014, p. 8622

³¹⁹ Tribunal Documents, List of Enquiries, p. 13449

Sgt Haran forwarded the superintendent's request to Garda Keogh. Garda Keogh did not report as requested by his superintendent although Sgt Haran thought that Garda Keogh may have said he was dealing with the matter with Detective Superintendent Declan Mulcahy. In any event, it was not pursued any further with Garda Keogh and rested there.

On 17th October 2014, Garda Keogh wrote to D/Supt Mulcahy claiming that senior management, *'the kabal'* as he described them, were coming at him from another angle in relation to the PULSE check he had made in respect of Garda A. He mentioned a matter concerning the Ó Cualáin investigation team and then stated as follows:

*Secondly, as you are aware I have spoken to GSOC in relation to the attempt to manufacture complaints against me. I am aware that Chief Supt Curran, Mullingar G.S. and Insp Nicholas Farrell, Athlone were both involved to some degree regarding this. I understand that both men are going for promotion and if my complaint were proven it may jeopardise their chances. Since I last spoke to both yourself + GSOC the kabal has come at me from another angle in relation to a pulse check I carried out on 18 May 2014 which I have enclosed. I am not looking for you to do anything with this I just want to make you aware of same.*³²⁰

Complaint made by Garda Nicholas Keogh

Counsel for the tribunal asked Garda Keogh why he conducted a PULSE check in respect of Garda A. Garda Keogh replied:

... I did check Garda A on the 18th. That was it. I mean, I had to check it as well, because I have to go in a number I think it's two weeks time, to the investigation team. So I went to see for myself is there anything else there that might be relevant that I could – you know, a lot of the background work I had done since 2012 into this was on Pulse. So I just had never checked Garda A. I had done a lot of work on Ms. B and other persons involved. But at some point I would have to check Garda A, to see was there was something, another piece of the jigsaw there.

As I have stated, I was checking to see if there was anything and there wasn't anything of relevance on Pulse. But I had to look for myself to see, because I may have twigged something, if it was there, that other people mightn't have twigged.

*... you could find anything. You don't know until you seek and you will find. I mean, I had to look to see. As it happened, there wasn't anything of relevance there. But I mean, at least I can sit here now and say there wasn't. If I didn't look at it, I wouldn't have known, you know.*³²¹

Garda Keogh was further questioned on this point:

Q. *I just wanted to draw your attention to one part of a submission that your solicitor ... made in the course of the de Bruir inquiry... While that's coming up, this in the course of the appeal that you lodged against Assistant Commissioner Finn's findings that this was not bullying and harassment. That was still being disputed on your part and Mr. de Bruir was an expert called in to give an independent sort of audit or review of the papers. This is an extract from a submission made by [your solicitor] on your behalf and obviously pursuing it.*

If we go down there to (d), you see:

³²⁰ Tribunal Documents, Letter from Garda Nicholas Keogh to D/Supt Declan Mulcahy, dated 17th October 2014, p. 326

³²¹ Tribunal Transcripts, Day 100, pp. 16-17, Evidence of Garda Nicholas Keogh

“The finding says that Superintendent McBrien was asking Garda Keogh to explain why he was checking another Garda on Pulse. The answer is that it was because Garda Keogh was an active guard carrying out investigations.”

Is that the reason why you were checking on Pulse; that you were in fact doing some investigations into the matter that Assistant Commissioner Ó Cualáin had been tasked to do?

- A. *Since 2012 I was conducting my own, if you want to call it, investigation into this and I don't get to hand it over until, really around I think 7th June 2014, is when I get to hand everything over.*³²²

In his statement to the tribunal, Garda Keogh complained that he received queries from senior management on foot of this PULSE check of Garda A:

*It was evident to senior management that an independent police investigation was in train in respect of my complaint relating to Garda A. I had checked Garda A on the pulse on the 18th May, 2014 (following specific intelligence received from [a source] on the 10th May 2014) which was the subject of my forthcoming statement to the internal investigator. I was entitled to check the pulse without such attempted interference by this said letter (which demanded a report that conflicted with my obligations to the internal investigation) and also in light of what I had been advised by [a source].*³²³

Garda Keogh stated that the reason he did not reply to the request for a report which emanated from Supt McBrien was as follows:

*As far as I can remember, I did not reply to Superintendent McBrien, because I had been advised not to speak to anybody about the investigation except the investigation team. I spoke with Detective Superintendent Mulcahy about this where I outlined the obvious reason why I checked Garda A on PULSE before I met him (Detective Superintendent Mulcahy) to be sure that there was nothing else I needed to be aware of. Incidentally, I had never been asked to explain previously why I checked anybody on PULSE.*³²⁴

Garda Keogh pointed out that there was no follow-up by Supt McBrien on this matter. He stated that he ‘never was asked on another occasion to explain my reason for checking him on PULSE’.³²⁵

In evidence, Garda Keogh was asked the following by counsel for the tribunal:

Q. *... you said that you were entitled to check the Pulse without such attempted interference by this said letter. Now, I am just wondering, is there a slight illogicality in that issue, in that the letter came to you on the 1st October, it's dated the 1st October, but you had made the Pulse check way back in May. So the letter had nothing to do with it, it didn't impede you making the check, isn't that right, logically?*

A. *Was the check not done before –*

Q. *Exactly. Yeah. So the letter, I suggest to you, am I not right, couldn't interfere with the check that you had already made, isn't that right?*

A. *Yeah. It couldn't have interfered with what was previously done, yeah.*³²⁶

³²² Tribunal Transcripts, Day 100, pp. 35-36, Evidence of Garda Nicholas Keogh

³²³ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 122

³²⁴ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 23

³²⁵ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 24

³²⁶ Tribunal Transcripts, Day 100, pp. 13-14, Evidence of Garda Nicholas Keogh

When asked by tribunal investigators about the *‘five internal investigations’* of which he alleged he was the subject, Garda Keogh confirmed that the queries raised in respect of the PULSE check was one such investigation.³²⁷ However, he later conceded that, as with the queries regarding Issue 1, *‘this was a query made with me rather than an internal investigation, per se’*.³²⁸

Garda Keogh stated that C/Supt Curran was involved to some degree in the *‘attempt to manufacture complaints’* against him:

*I suspect that Chief Superintendent Curran is involved to some degree in pushing the other matters (i.e. Olivia O’Neill, Liam McHugh and the PULSE check into Garda A).*³²⁹

When asked by tribunal investigators to clarify the specific allegation contained in the letter of 17th October 2014 in relation to *‘the kabal’*, Garda Keogh stated:

*I am arguing that the Garda Síochána was trying to discredit me and at that time, I believe that Chief Superintendent Mark Curran was the driving force but I suspect there were others involved also. The PULSE check I am referring to here is the check conducted on PULSE on 18/05/2014 and relating to my check on Garda A.*³³⁰

However, Garda Keogh made it clear in his evidence to the tribunal that he wasn’t making any complaint against Supt McBrien:

*Again, I never accused superintendent ... she just got caught up in the middle. It was never to do with Superintendent McBrien. It was the chief’s office in Westmeath. I am reporting criminality in relation to the Westmeath division. Of all people, the chief in Westmeath should not have got involved. I accept he may have had obligations. All he has to do is send a letter, make a phone call to Assistant Commissioner Ó Cualáin and all that could be sorted out very quickly. There’s no need to be firing this out all this stuff to me. And I did address the investigation team.*³³¹

When asked about C/Supt Curran’s role in relation to the query about the PULSE check, Garda Keogh stated in evidence that:

*... At this stage it’s a criminal investigation, okay? Everybody in An Garda Síochána would know at this stage what’s going on. So he really should have passed all that just over to the investigation team. It has actually nothing at this stage to do with him. I am dealing with Detective Superintendent Mulcahy, who is conducting the investigation under Assistant Commissioner Ó Cualáin. Again, my point is, it’s criminality that I reported in the Westmeath division and here I have the chief in the Westmeath division who is looking for names of sources, who is looking for why I checked this person. Nothing to do with him. It should have been the investigation team. They did ask me and I did answer and that was it. So all this stuff, you know it’s just stuff, they kept firing down all this Mickey Mouse paperwork at me, when I was already fully complying with the investigation team.*³³²

Garda Keogh was also questioned about the impact the query by C/Supt Curran may have had on him:

Q. *But I am just trying to help establish the facts. Nobody ever pursued you about your failure to furnish a report, isn’t that right? You were never spoken to or written to by any senior*

³²⁷ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 19

³²⁸ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 19

³²⁹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 98

³³⁰ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 99

³³¹ Tribunal Transcripts, Day 100, p. 21, Evidence of Garda Nicholas Keogh

³³² Tribunal Transcripts, Day 100, pp. 23-24, Evidence of Garda Nicholas Keogh

guard about why you hadn't responded to Superintendent McBrien or why you had checked on Pulse?

- A. *I cannot recall, but I would have I do recall over different other matters I was called to the office with Superintendent McBrien and I would have - I am sure I would have said, look, this is all being investigated by the western region, guards in the western region, Ó Cualáin's investigation team and all this really should be looked at there. Because, you know, they did this in Donegal as well before, mounting all nearly little investigations, even though there is a main investigation over here dealing with all this stuff. Again, they didn't get an outside chief, outside the division or anything like that, to look at it. It was the chief in the division where I am reporting this stuff and really, you know, it kind of look, he was probably in an awkward position, but he was also compromised in a way, because the criminality is happening in his division and, fair enough, he may not have wanted to believe it at the time or anything, that's fine. But there was an investigation team set up. There was an investigation in track and all that stuff should have gone to them. There was no pounding me with all these different letters. And again, this is roughly in around the first few months, you know, and then there's other things come into play. But there's no real need for this.*
- Q. *Chairman: Okay. So, the superintendent writes a letter, 1st October, she's got a protest from Garda A and she writes and says: Why did you make the check? Was she entitled to make that enquiry?*
- A. *Yeah, I would accept she was, yeah.*
- Q. *Chairman: Okay. So is it targeting or discrediting to say, why did you make the check*
- A. *You see, my point is, it really should have gone in to the whole – the investigation, the main investigation.*
- Q. *Chairman: Who should she have written to? Whom should she have written to with her query? What should she have done?*
- A. *To the investigation team. She could have –*
- Q. *Chairman: Superintendent McBrien?*
- A. *It's not Superintendent McBrien, Judge, this is coming from the chief's office in Mullingar and Superintendent McBrien obviously had to write this letter but from the chief's office in Mullingar, they should have just wrote to Assistant Commissioner Ó Cualáin and said, look, we have a couple of these things, they're all into what you are investigating.*
- Q. *There was no follow up in the sense that nobody wrote to you and said, look, you haven't replied to Superintendent McBrien. Chief Superintendent Curran didn't say, look, I need an answer to this. There was no further step taken beyond the request of 1st October, isn't that correct?*
- A. *Yeah. I think at that stage they did then hand it over to the investigation team, like with the intelligence stuff yesterday, eventually it goes there and it's dealt with very quickly then.³³³*

³³³ Tribunal Transcripts, Day 100, pp. 30-35, Evidence of Garda Nicholas Keogh

Garda Keogh was cross-examined on this point by counsel on behalf of An Garda Síochána:

- Q. ... I have to suggest to you that the circumstances that you created, both in relation to this incident and the incident in issue number 2, on 18/5/2014, triggered a necessary and reasonable response from Garda management in your district?
- A. Judge, they could have simplified that very easily, you know. Instead of writing - I have read all the documents, Judge, in relation to the to ing and fro ing on this thing. You see, it's like a hot piece of coal that none of them want to handle. Judge, it could have been dealt with very simply, in that I understand - from what I have read, Assistant Commissioner at the time, Ó Cualáin, says he wasn't aware of this. Very simple someone could have picked up the phone or written a letter and said there's this piece of intelligence here, Donal Ó Cualáin is the investigating member from the 9th, is it, he's appointed on the 9th May, but I don't get to meet him until the 7th June. So, all this could have been done fairly quickly and neatly in that regard.³³⁴

The reasonableness or otherwise of the query by management was further explored in the following exchange between the Chairman and Garda Keogh:

- Q. **Chairman:** ... the question is: Was it reasonable in your opinion, was it reasonable - Mr. Murphy is putting to you that it was reasonable of the guards in the circumstances to write to you and say, why did you make the query? That's his question. If I understand it, that's his question. Tell us the answer to that?
- A. We know Garda A now had made a complaint.
- Q. **Chairman:** It doesn't matter whether he made a complaint or didn't make a complaint. All we is, out of the blue you get a letter saying, why did you make a check on Garda A on 18th May 2014. Now, Mr. Murphy is saying to you that was a reasonable enquiry for the senior Gardaí to make, what do you say to that?
- A. My answer to you, Judge, is the same that I told Detective Superintendent Mulcahy.
- Q. **Chairman:** Just tell me again, just tell me straight. Simple. What is the answer to that?
- A. I had to check Garda A before go to make this –
- Q. **Chairman:** That's not an answer to the question. That's not the answer to the question. Sorry, I don't want to be difficult. Let me explain. What's in my mind? I will tell you: Was it reasonable for Superintendent McBrien and, if necessary, behind her, Chief Superintendent Curran, to be writing to Garda Keogh saying, why did you make the enquiry? That's the question. No, don't answer me for a minute, because I am not asking the question yet. That's the question in my mind, did the senior officers act reasonably? That's the question in my mind. So, Mr. Murphy is suggesting to you that it was reasonable of them to say, why did you make the enquiry. Now, do you understand the question?
- A. I do understand. I am trying to think –
- Q. **Chairman:** I know it's a bit complicated, because we are a sort of level away from it. But was it reasonable of Superintendent McBrien to make the query to you?
- A. On the basis that she got the complaint from Garda A, I would say yes.³³⁵

³³⁴ Tribunal Transcripts, Day 106, pp. 19-20, Evidence of Garda Nicholas Keogh

³³⁵ Tribunal Transcripts, Day 106, pp. 33-35, Evidence of Garda Nicholas Keogh

Responding Statements and Evidence on the Issue

Superintendent Noreen McBrien

In her statement to the tribunal, Supt McBrien recalled that her attention was first drawn to the PULSE check on 24th September 2014. She stated that, having received the report from D/Sgt Curley on 24th September 2014, she requested a report from Garda Keogh as to the reasons for the enquiry and that:

*[t]he query to Garda Keogh was made in my governance capacity in my role as District Officer ... [as] District Officer, I have a duty of care to all my staff.*³³⁶

Counsel for the tribunal asked Supt McBrien about the letter she wrote to C/Supt Curran on the same day:

Q. ... There was one document that was put to Chief Superintendent Curran, and that's a letter that you wrote to him on the 24th September and it's at 8617.

"Attached find correspondence received on this date from Garda A."

Then you point out the concerns that had been raised by Garda A, that two members, namely Garda Keogh and another garda recently accessed personal details on Pulse. In the third paragraph you say:

"It is known that in or around the time of these Pulse checks, both Garda Keogh and other guards supplied information to the then Garda confidential recipient which it is suspected related to Garda A and said checks may be related to same. However, in the light of Garda A's concerns, I am seeking views in relation to same."

Did Chief Superintendent Curran ever reply to that letter or state his views in relation to the issue?

A. *I think he responded by a phone call.*

Q. *By phone call?*

A. *Yes, I think so.*

Q. *Do you recall what he said to you?*

A. *He advised me to contact the superintendent in IT, in Garda Headquarters.*

Q. *Right. And did you do that?*

A. *I did.*

Q. *Yes. Now you went out on sick leave in October, isn't that right?*

A. *Yes.*³³⁷

In her statement, Supt McBrien referred to the enquiries she made as follows:

I emailed Denis Ferry, Superintendent in IT, on the 1st of the October 2014. I also wrote to Sergeant Andy Haran for an explanation from Garda Keogh as to why he was checking Garda A on PULSE. I also notified Chief Superintendent Curran on 24th September 2014 (NMB/M refers). When I was sick on the 3rd October, I got a response from Superintendent Denis Ferry.

³³⁶ Tribunal Documents, Statement of Supt Noreen McBrien p. 823 at p. 838

³³⁷ Tribunal Transcripts, Day 120, pp. 82-83, Evidence of Supt Noreen McBrien

*I am also aware that Sergeant Haran sent my request to Garda Keogh for an explanation. I am unaware of any other enquiries carried out in this matter.*³³⁸

When questioned by tribunal investigators, she denied that her interactions with Garda Keogh on this issue and the matters at Issues 1, 3 and 4 could be considered instances of targeting or discrediting:

*No. I never targeted Garda Keogh. I ensured he was supported and aware of supports. As I explained to Garda Keogh, I investigated issues in my role as District Officer and they were investigations of incidents/complaints rather than investigations of Garda Keogh.*³³⁹

Supt McBrien was asked in evidence about her duty towards Garda A in the particular circumstances:

- Q ... As far as you're concerned, did Garda management, including yourself, have any duty towards Garda A, who was seemingly the subject of this Pulse entry?
- A. Well, Garda A is a member of staff, the same as every other member of my staff is. So, there are obligations under data protection with regard to data and which way it's being generated and accuracy and distribution and all of that. There would be responsibilities under that, but with regard to Garda A, I have a duty to his health, safety and welfare, as I do any other member. And he received that from me. I met with him as well regularly.³⁴⁰

Chief Superintendent Curran

In his interview with tribunal investigators, C/Supt Curran did not recall having any role in this matter. He said that *'I believe it was dealt with by local management'*.³⁴¹ He gave his view on the enquiries conducted in respect of the PULSE check as follows:

In the context of the ... intelligence report and the data protection issues that arose from the intelligence report, Garda Keogh was asked by Superintendent McBrien, District Officer, to explain why he was checking another Garda member (Garda A) on the PULSE system.

*I continue to consider it reasonable for Garda Management to query Garda Keogh on his rationale for checking Garda A on the PULSE system and to establish the source of the intelligence that he was creating on the PULSE system. The enquiries carried out are in keeping with the duties and responsibilities of a Divisional Officer and I reject Garda Keogh's assertion that such enquiries were an attempt to target or discredit him. The request for a report as to why Garda Keogh had checked Garda A on PULSE was initiated and dealt with locally... It is often the case that PULSE enquiries on members of the public and specific incidents are audited to establish that all Garda members making such enquiries have a lawful purpose for doing so.*³⁴²

In response to Garda Keogh's allegation that the enquiries were an attempt to target and discredit him he stated that:

This is not the case and the enquiries were carried out following Garda Keogh's own involvement in each of these matters each of which [was] precipitated by his direct involvement i.e. the check of Garda A on PULSE ... As previously outlined, I was perplexed with Garda Keogh's actions and could not see his professional reasons for the actions he was taking. These matters required my attention ... I dealt with the issues individually as they arose and in the

³³⁸ Tribunal Documents, Investigator Interview Supt Noreen McBrien, p. 6204 at pp. 6265-6266

³³⁹ Tribunal Documents, Investigator Interview Supt Noreen McBrien, p. 6204 at p. 6266

³⁴⁰ Tribunal Transcripts, Day 120, p. 109, Evidence of Supt Noreen McBrien

³⁴¹ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1962 and p. 1975

³⁴² Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at pp. 1783-1784

*absence of a policy for dealing with a member of my Divisional personnel who had been publicly named as having made a protected disclosure.*³⁴³

When giving evidence to the tribunal, C/Supt Curran was asked about Garda Keogh's assertion in evidence that he, C/Supt Curran, was behind the query in relation to the PULSE search. He replied that:

*I had nothing to do with the direction to check it out. Superintendent McBrien did that of her own accord. So I had nothing to do with any targeting or discrediting in respect of this.*³⁴⁴

He gave evidence of his knowledge of the matter in 2014:

- Q. Now, we know from the evidence that he said he carried out this Pulse check very early in the morning, at 5:30. Now, I think in fairness to you, it was months before you became aware of this, is that right?
- A. I only heard about this a long time afterwards.
- Q. Okay.
- A. So I had no role in giving any direction in it. Where I may have confused the matter, possibly, is when I made a statement to the bullying allegation, I then supported the concept that the super is entitled to ask the question.
- Q. That's right. Well, actually, what I want to ask you about - actually, I should say that in your statement, at 1784, and in your interview at 1962, you do take the position very clearly that you say this matter was dealt with locally, is that right?
- A. Yes, yes.
- Q. Okay. Now, you also continued, it would have been your interview, where you said you did not direct any actions in respect of the Pulse check on Garda A?
- A. No, I had nothing to do with that.
- Q. Okay. So what I just want to ask you about really, and I will be very brief on this issue, I want to ask you about a letter that was sent to you by Superintendent Noreen McBrien on 24th September 2014. That's at page 8617. Okay?
- A. What date is that again?
- Q. This is dated 24th September 2014.
- A. Okay.
- Q. Now, just to refresh your memory, the complaint by Garda A in respect of the Pulse check was 24th September 2014?
- A. Okay.
- Q. Okay. So just to put it in context. This is a letter that's sent to you by Superintendent Noreen McBrien. It's informing you, it says:
"A possible breach of the Data Protection Act."
Do you see that?

³⁴³ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1795

³⁴⁴ Tribunal Transcripts, Day 117, p. 128, Evidence of C/Supt Mark Curran

- A. Yes.
- Q. *She attaches the correspondence from Garda A, which is effectively the complaint in respect of the Pulse check, isn't that right?*
- A. Okay.
- Q. *She outlines, she summarises in paragraph 2 what his complaint is. Now, I just want to ask you, literally it's just to see if you can assist us with this, she says:*
- "It is known that in and around the time of these Pulse checks, both Garda Keogh and [blank] supplied information to the then Garda confidential recipient, which it is suspected relate to Garda A and said checks made in relation to same. However, in light of Garda A's concerns, I am seeking views in relation to same."*
- She is asking for your views on the 24th on the Pulse check issue?*
- A. Yes.
- Q. *Do you remember this?*
- A. *I have no recollection of this, no.*
- Q. *Okay. Can you just comment and clarify on the record for the Chairman, did you provide any views, did you ever reply to this report?*
- A. *Em, I can't I actually can't recollect. The first time I am conscious of understanding that this had happened was sometime after this. I can't recollect that piece of correspondence or being made aware of it formally.*
- Q. *Do you think you might have spoken to her on the phone about this issue?*
- A. *I don't think so. I think it was a local matter. She may have mentioned it to me, I mean I had regular conversations, but I certainly had no role. I saw it as local matter and if there were any issues at all, she may come up with a recommendation. This may be that, I can't say I recognise this correspondence.*
- Q. *This was the letter she sent to you in respect of it?*
- A. Yes.
- Q. *So when did you become - and, I should say, you don't recall the letter. When did you become aware that Garda A had made a complaint? Now let's not confuse it with the intelligence entry?*
- A. Yes.
- Q. *This is with the Pulse check. When did you become aware of it and how?*
- A. *Actually, to be honest with you, I think that the first I heard about it was when I saw the bullying complaint. That's my first memory of it.³⁴⁵*

³⁴⁵ Tribunal Transcripts, Day 117, pp. 124-127, Evidence of C/Supt Mark Curran

Sergeant Andrew Haran

In his interview with tribunal investigators, Sgt Haran stated that Supt McBrien requested Garda Keogh to provide a report setting out his reasons for conducting this PULSE check. Sgt Haran said that he could not recollect getting a reply from Garda Keogh and stated that *'I think Garda Keogh may have said he was dealing with Superintendent Mulcahy'*.³⁴⁶

Legal Submissions

Garda Nicholas Keogh submitted as follows:³⁴⁷

- that he was entitled to check the PULSE system regarding Garda A because he was dealing with criminality, and that the demands made by senior management for him to make a report on his check conflicted with his obligations to the Ó Cualáin investigation.
- that this issue coincided in time with the previous issue of the PULSE entry made by Garda Keogh and he cited this as an example of how he was targeted by C/Supt Curran.
- that C/Supt Curran maintained the position that it was reasonable for him to query Garda Keogh as to his rationale for checking Garda A on the PULSE system and to also establish the source of the intelligence that he created on the PULSE system. Garda Keogh disagreed with this position as he had given all the information to the Ó Cualáin investigation team, as advised by the confidential recipient.
- that C/Supt Curran failed to follow up on these matters with Garda Keogh after 1st October 2014, leaving Garda Keogh to deal with the uncertainty of his position alongside the other issues (i.e. Issues 1-3) which were ongoing at the time.

An Garda Síochána submitted as follows:³⁴⁸

- that having maintained this complaint, and after lengthy questioning, Garda Keogh accepted that it was reasonable for enquiries to be made of him regarding the reason for the check. It was submitted that this resolved Issue 2.
- that the enquiries about this PULSE check by Garda Keogh were raised by Supt McBrien and Garda Keogh made no complaints or allegations against Supt McBrien. His assertion that the enquiries into his PULSE check amounted to an interference with the Ó Cualáin investigation or to targeting and harassment of him were therefore illogical.
- that while C/Supt Curran had regular conversations with Supt McBrien, he did not take a role in the matter himself as he viewed it as a local matter to be dealt with in Athlone.
- that Garda Keogh's conduct in relation to Issue 2 triggered a necessary and reasonable response from garda management in Athlone who were entitled and obliged to question Garda Keogh about this PULSE check.

Superintendent McBrien submitted as follows:³⁴⁹

- that Garda Keogh was not making a complaint against Supt McBrien on this issue.

³⁴⁶ Tribunal Documents, Investigator Interview of Sgt Andrew Haran, p. 11749 at p. 11766.

³⁴⁷ The tribunal has considered all of Garda Nicholas Keogh's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 14-31 and pp. 172-177

³⁴⁸ The tribunal has considered all of An Garda Síochána's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 70-172 and pp. 177-179

³⁴⁹ The tribunal has considered all of Supt Noreen McBrien's legal submissions on this issue and what follows is a summary of the same.

- that Garda Keogh accepted that Supt McBrien was entitled to make the enquiry of him and that it was reasonable to make the enquiry.

Discussion

The submission on behalf of Garda Keogh misunderstands the situation and the evidence. First, the question was not whether he was entitled to check the PULSE system on Garda A. It was whether his superintendent was entitled to ask him why he had made the query, in circumstances where she had received a protest by the subject of the PULSE enquiry.

Secondly, it is incorrect to cite this *'as an example as to how he was targeted by Chief Superintendent Curran'*.³⁵⁰ The evidence is that Supt McBrien responded to Garda A's report on her own initiative without involvement by C/Supt Curran.

Thirdly, C/Supt Curran stated his view that it was reasonable for garda management to query Garda Keogh as to his rationale for checking Garda A on the PULSE system and also to establish the source of the intelligence that he created on the PULSE system. However, the submission on behalf of Garda Keogh stated that C/Supt Curran *'maintained the position that it was reasonable for him to query Garda Keogh'*.³⁵¹ The attribution replaces the words *'garda management'* with the words *'for him'*, thereby inadvertently implying that the officer acknowledged having a role in the query.

Fourthly, Garda Keogh did not maintain his position that the query represented targeting. He altered his position completely on this issue, as the submissions on behalf of An Garda Síochána and Supt McBrien point out. He had previously complained that the demands made by senior management for him to make a report on his check conflicted with his obligations to the Ó Cualáin investigation. The submission on his behalf stated that he stood over this position in his evidence to the tribunal and that the questioning of him by senior management in respect of this PULSE check amounts to targeting. However, that is not actually correct because Garda Keogh acknowledged that Supt McBrien was entitled to make that enquiry.

Garda Keogh asserted that he was undertaking a criminal investigation and he testified that he behaved as a garda would normally do in those circumstances, which is to make a check on PULSE to see if there is anything relevant recorded. As it happened there was not in relation to Garda A. Garda A subsequently discovered that the query had occurred and protested, and the matter ultimately came to Supt McBrien, the district officer. Supt McBrien wrote a letter to Garda Keogh asking him why he had made the query. Garda Keogh did not suggest that his superintendent did anything wrong, but he surmised – without any evidence to this effect – that she only did this at the behest of C/Supt Curran, the divisional officer.

In respect of the letter of Supt McBrien to C/Supt Curran on 24th September 2014,³⁵² C/Supt Curran gave evidence to the tribunal that he did not remember the letter. When asked if they had spoken on the phone about the PULSE check, he said that he did not think so. C/Supt Curran accepted that Supt McBrien may have mentioned it to him. He said that *'I saw it as a local matter and if there were any issues at all she may come up with a recommendation'*.³⁵³ Supt McBrien gave evidence to the tribunal that she thought C/Supt Curran responded by phone call and advised her to contact the superintendent in IT in Garda Headquarters, which she did.³⁵⁴

³⁵⁰ Tribunal Documents, Legal Submissions on behalf of Garda Nicholas Keogh, p. 13

³⁵¹ Tribunal Documents, Legal Submissions on behalf of Garda Nicholas Keogh, p. 13

³⁵² Tribunal Documents, Letter from Supt Noreen McBrien to C/Supt Mark Curran, dated 24th September 2014, p. 8617

³⁵³ Tribunal Transcripts, Day 117, pp. 126-127, Evidence of C/Supt Mark Curran

³⁵⁴ Tribunal Transcripts, Day 120, p. 82, Evidence of Supt Noreen McBrien

However, the simple point is that Garda A complained and when the report reached Supt McBrien she dealt with it by writing to Garda Keogh, who did not respond. That was the end of the matter. One way or another, the episode, culminating in this letter, did not constitute targeting.

To be fair to Garda Keogh, he accepted this point but sought to qualify his concession by associating this query with the other issues that had arisen since the protected disclosure and which he characterised as investigations to which he was subject.

It would have made no difference if the matter had come to the attention of C/Supt Curran and he had directed the letter to Garda Keogh. There is actually no evidence that C/Supt Curran directed the enquiry of Garda Keogh as made by Supt McBrien. But even if he had done so in response to the complaint by Garda A, that would not in the circumstances have amounted to targeting or discrediting.

Supt McBrien could have been faulted if she ignored Garda A's protest or did not ask Garda Keogh why he made this check.

Conclusion

Garda Keogh made his PULSE check about Garda A at 05:30 hrs on 18th May 2014, some two hours after encountering Ms B and before he went off duty. This was earlier than the PULSE entry that he made on his next working shift. The position on this issue is even clearer and simpler than with that entry. Garda Keogh accepted that it was reasonable for Supt McBrien to respond to Garda A's complaint by asking him why he made the check. It is impossible to come to any other conclusion. Garda Keogh, however, did endeavour to retreat from his concession that it was reasonable by seeking to involve C/Supt Curran and by pointing to the other matters that had arisen around this time and which were also the subject of correspondence or oral interview.

It is an important principle that a superior officer is entitled to ask why a garda made a PULSE check; in some circumstances the superior may be obliged to do so. Indeed, it is difficult to envisage when it might be legitimate for a garda to refuse to give an explanation.

This inquiry as to the PULSE check is an event that is wholly attributable to an action by Garda Keogh himself.

There is no question of targeting or discrediting in this issue.

CHAPTER 7

ISSUE 3: THE COMPLAINT MADE BY GARDA NICHOLAS KEOGH IN RELATION TO THE INVESTIGATION INTO MS OLIVIA O'NEILL'S VISIT TO ATHLONE GARDA STATION ON 28TH MAY 2014

The Facts

On 28th May 2014, Garda Keogh was on duty in the public office in Athlone Garda Station when Ms Olivia O'Neill came in with her daughter to make a complaint. A public order incident had occurred in the area where she and Ms B lived and, according to Garda Keogh, Ms O'Neill was advised by gardaí attending at the incident to go down to the station to make a complaint.

In his interview with tribunal investigators, Garda Keogh said that the public office was busy that evening and that he could not take her statement *'because there was a conflict of interest arising for me, and because the public counter being busy'*.³⁵⁵

In his diary entry for 29th May 2014, Garda Keogh recorded the incident as follows:

*PO. Olivia ON at stn to make complaint about Ms. B. She states "I know she's done favours for a guard"... I tell her put everything into statement and name people.*³⁵⁶

Later, in a report to Sergeant Andrew Haran dated 15th June 2014, Garda Keogh described the encounter in more detail as follows:

*[a]s she outlined her allegations she stated to me that "Ms. B did favours for a Guard". I advised Ms. O'Neill to put everything into her statement. I said, "name names and name Guards". At no point during the conversation did either Ms. O'Neill or I mention the name of any particular Guard. There were Members of An Garda Siobhana in the public office behind me and members of the public behind Ms. O'Neill. I asked Sgt Haran to designate a Garda to take a statement due to the fact the public counter was busy.*³⁵⁷

Sgt Haran designated Garda Stephanie Treacy to take the statement. Garda Treacy took Ms O'Neill and her daughter to an interview room to commence the taking of a statement from her daughter about the alleged threats made to her by Ms B and Ms B's daughter.

In Garda Treacy's written report, dated 29th May 2014, she stated, *inter alia*, that at the beginning of this statement Olivia O'Neill told Garda Treacy that she and her daughter were advised that Ms B was friendly with certain gardaí in Athlone Garda Station and that Ms B is phoned prior to any search of her property so she can get rid of weapons or drugs. She also alleged that Ms B is told when anyone makes a complaint or statement against her and that the gardaí cover up offences for Ms B. Ms O'Neill informed Garda Treacy that she was told to make sure that the above information went into her and her daughter's statement. Garda Treacy asked Ms O'Neill who advised her of this, and Ms O'Neill said *'Garda Nick, just now at the counter downstairs'*.³⁵⁸

Garda Treacy did not continue with the taking of the statement from Ms O'Neill's daughter but consulted Sergeant Sandra Keane, who was on duty that night. Garda Treacy recounted to Sgt Keane what Olivia O'Neill had told her. As a consequence, they both went to Inspector Nicholas

³⁵⁵ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 26

³⁵⁶ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 29th May 2014, p. 13258

³⁵⁷ Tribunal Documents, Letter from Garda Nicholas Keogh to Sgt Andrew Haran, dated 15th June 2014, p. 1174

³⁵⁸ Tribunal Documents, Letter from Garda Stephanie Treacy to sergeant in charge Athlone, dated 29th May 2014, p. 484

Farrell's office and relayed the conversation to him. He was the acting district officer on that date as Superintendent Noreen McBrien was on leave.

Insp Farrell directed that a statement be taken from Ms O'Neill relating to the assault or the threats of assault. He advised that she should be invited to make a further separate statement relating to the alleged advice given by Garda Keogh and made aware of the options available to her, namely bringing her concerns to the superintendent in Athlone or to the Garda Síochána Ombudsman Commission (GSOC).

Sgt Keane and Garda Treacy returned to the interview room and informed Ms O'Neill of the procedure to be followed if there was a complaint being made against a member of An Garda Síochána, which is to go through GSOC. Ms O'Neill was recorded by Garda Treacy as saying that she did not have a complaint to make in relation to the gardaí and '*was only going on advice she had received at the counter*'.³⁵⁹

Sgt Keane left the interview room and Garda Treacy completed taking the statement from Ms O'Neill's daughter. This statement was subsequently retracted. Ms Olivia O'Neill herself did not make a statement that evening.

Garda Treacy furnished her written report to the sergeant in charge in Athlone, which was forwarded to Insp Farrell. Insp Farrell provided a written report to Chief Superintendent Mark Curran dated 29th May 2014 as follows:

Inspector Farrell instructed that a statement relating to the complaint concerning Ms. O'Neill's daughter should be taken without reference to the advice given. Inspector Farrell then instructed that Ms. O'Neill should be invited to make a statement outlining her concerns relating to the advice given by Garda Keogh and that she should also be made aware of the options available to her in respect of bring[ing] her concerns to the Superintendent at Athlone and/or the Garda Ombudsman Commission. Ms. O'Neill made a statement of complaint in respect of her daughter but declined to make a statement or formal complaint in respect of the advice received.

The advice allegedly given by Garda Nicholas Keogh is not appropriate in the circumstances and projects the image of An Garda Síochána in an unfavourable light.

*It also places Ms. B in a vulnerable position from persons currently under investigation in the Athlone area.*³⁶⁰

On receipt of Insp Farrell's report, C/Supt Curran directed on 29th May 2014 that:

... D/Sergeant Curley meet with Ms. O'Neill and obtain a statement in relation to the information divulged to Garda Treacy on the 28th of May 2014.

*This statement should be forwarded to this office immediately upon receipt of same.*³⁶¹

On the same day, C/Supt Curran wrote to the Assistant Commissioner, Eastern Region, attaching the report of Insp Farrell, informing him that he had directed a statement be taken from Ms Olivia O'Neill. He referred to the PULSE entry, dealt with in Issue 1, and said that the matters were '*closely associated*'.³⁶²

³⁵⁹ Tribunal Documents, Letter from Garda Stephanie Treacy to sergeant in charge Athlone, dated 29th May 2014, p. 484

³⁶⁰ Tribunal Documents, Letter from Insp Nicholas Farrell to C/Supt Mark Curran, dated 29th May 2014, p. 652 at p. 653

³⁶¹ Tribunal Documents, Letter from C/Supt Mark Curran to Supt Noreen McBrien, dated 29th May 2014, p. 514

³⁶² Tribunal Documents, Letter from C/Supt Mark Curran to Assistant Commissioner Eastern Region, dated 29th May 2014, p. 8682

On 29th May 2014, Ms O’Neill returned to Athlone Garda Station with another of her daughters to make a statement of complaint about a different matter. This statement was taken by Garda Keogh.³⁶³

On 30th May 2014, Detective Sergeant Eamon Curley met Ms O’Neill and, according to his report of the same date, he informed her that he was:

[c]onducting inquiries into the information that she had divulged to Garda Stephanie Treacy as received by her from Garda Nic Keogh in Athlone Garda Station on 28/04/14. I explained to her that I wished to record a witness statement from her outlining what she was told by Garda Keogh.

*She replied that she didn’t wish to make any statement and that she now couldn’t really remember what was said in the Garda station that night at all.*³⁶⁴

Supt McBrien forwarded D/Sgt Curley’s report to C/Supt Curran by email on 30th May 2014.³⁶⁵

In relation to this approach by gardaí, Ms O’Neill, in her interview with tribunal investigators, confirmed that she subsequently went into Athlone Garda Station, asked to speak with Garda Keogh, and told him that the gardaí wanted a statement about him only. Garda Keogh made a note in his diary for 26th June 2014 that:

*5.30 Olivia O’Neill calls to stn asked to speak to me in private. Stated D. Sgt Curley and T. Higgins called to her house, then to her in another house to try to get her to make statement about me but refused to take her statement of assault. Informed her to go to GSOC.*³⁶⁶

In the interim, and prior to Ms O’Neill coming back to speak to Garda Keogh, Garda Keogh met with Supt McBrien on 9th June 2014. She raised the issue regarding reports she had received in respect of Ms Olivia O’Neill. Garda Keogh informed her that he had brought it to the attention of Assistant Commissioner Dónall Ó Cualáin when he met him on 7th June 2014 and that he was dealing with it. She was satisfied that Garda Keogh had brought the matter to the attention of A/C Ó Cualáin and that he was dealing with it. Supt McBrien reported on 9th June 2014 to C/Supt Curran outlining that Garda Keogh had told her the following:

*Olivia O’Neill called to the counter in Athlone when he was PO, she mentioned to him that she was having trouble with her neighbours and he advised her to include this in her statement. He was insistent that this is what happened.*³⁶⁷

She also reported that Garda Keogh told her he had heard that members had contacted Olivia O’Neill to see if she would make a statement against him.

On 10th June 2014, C/Supt Curran directed that Supt McBrien should request a report from Garda Keogh setting out the nature of the conversation he engaged in with Ms O’Neill, if any, and stated that:

*[a] report is required in this matter to establish the veracity of the claims of Ms. O’Neill during her conversation with Garda Treacy on the 28th of May 2014.*³⁶⁸

³⁶³ Tribunal Documents, Statement of Evidence, p. 14667

³⁶⁴ Tribunal Documents, Letter from D/Sgt Eamon Curley to Supt Noreen McBrien, dated 30th May 2014, p. 519

³⁶⁵ Tribunal Documents, Email from Garda Gerry Whyte (on behalf of Supt Noreen McBrien) to Chief Superintendent Westmeath, dated 30th May 2014, p. 8688

³⁶⁶ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 26th June 2014, p. 13262

³⁶⁷ Tribunal Documents, Letter from Supt Noreen McBrien to C/Supt Mark Curran, dated 9th June 2014, p. 1299-1300

³⁶⁸ Tribunal Documents, Letter from C/Supt Mark Curran to Supt Noreen McBrien, dated 10th June 2014, p. 1176

Supt McBrien instructed Sgt Haran that a written report was now requested from Garda Keogh.³⁶⁹ Garda Keogh provided this response on 15th June 2014 in which he recorded:

*[a]t some point during this time Ms. Olivia O'Neill arrived at the public counter to make a complaint regarding Ms. B and her daughters. As she outlined her allegations she stated to me that "Ms. B did favours for a Guard". I advised Ms. O'Neill to put everything into her statement. I said, "name names and name guards". At no point during the conversation did either Ms. O'Neill or I mention the name of any particular Guard. There were members of An Garda Síochána in the public office behind me and members of the public behind Ms. O'Neill. I asked Sgt Haran to designate a garda to take a statement due to the fact the public counter was busy.*³⁷⁰

Sgt Haran forwarded this report to Supt McBrien, together with a brief report³⁷¹ confirming that he saw Garda Keogh speaking to Ms O'Neill and that he himself had spoken to her briefly at the counter. The public office was busy with both gardaí and public callers to the station. Garda Keogh asked him to get someone to take a statement from her and he, Sgt Haran, asked Garda Treacy to take this statement. Supt McBrien forwarded these two reports to C/Supt Curran on 16th June 2014 without further comment.³⁷²

In a meeting with Supt McBrien on 8th July 2014, Garda Keogh asserted that Olivia O'Neill had been approached several times for a statement. Supt McBrien said that she was aware that she had been approached once. Garda Keogh also informed her during this conversation that Olivia O'Neill had called into the station about a week previously about a prior incident and he had advised her to go to GSOC.³⁷³

C/Supt Curran, in correspondence of 10th June, 9th July and 11th July 2014,³⁷⁴ sought the *'firm views'* and recommendations of Supt McBrien regarding, *inter alia*, the matter relating to Olivia O'Neill.

Supt McBrien reported back on 16th July 2014³⁷⁵ and noted that there was a conflict regarding Garda Treacy's and Garda Keogh's statements. She also reported that, on 9th July 2014, Garda Treacy had met with her to express her concern about the Olivia O'Neill incident.³⁷⁶ Supt McBrien reported that Garda Keogh had told her that he had informed the confidential recipient of his concerns, including the Olivia O'Neill incident, and that Detective Superintendent Declan Mulcahy was investigating them. He said that he was happy that she should know that he had reported them, and he advised her to contact D/Supt Mulcahy to verify that these incidents were being investigated by him. She stated however that she had met with D/Supt Mulcahy and Detective Inspector Michael Coppinger and that they advised her that they were not investigating these incidents.³⁷⁷

³⁶⁹ Tribunal Documents, Letter from Supt Noreen McBrien to Sgt Andrew Haran, dated 11th June 2014, p. 167

³⁷⁰ Tribunal Documents, Letter from Garda Nicholas Keogh to Sgt Andrew Haran, dated 15th June 2014, pp. 8695-8696

³⁷¹ Tribunal Documents, Letter from Sgt Andrew Haran to Supt Noreen McBrien, dated 15th June 2014, p. 8697

³⁷² Tribunal Documents, Letter from Supt Noreen McBrien to C/Supt Mark Curran, dated 16th June 2014, p. 8699

³⁷³ Tribunal Documents, Note of Supt Noreen McBrien, dated 8th July 2014, p. 833; Handwritten note of Supt Noreen McBrien, p. 1100

³⁷⁴ Tribunal Documents, Letters from C/Supt Mark Curran to Supt Noreen McBrien, dated 10th June 2014, 9th July 2014 and 11th July 2014, pp. 8693, 1986 and 1987

³⁷⁵ Tribunal Documents, Letter from Supt Noreen McBrien to C/Supt Mark Curran, dated 16th July 2014, p. 1186

³⁷⁶ Tribunal Documents, Note of Supt Noreen McBrien, dated 9th July 2014, p. 1658

³⁷⁷ Tribunal Documents, Letter from Supt Noreen McBrien to C/Supt Mark Curran, dated 16th July 2014, p. 1187

The tribunal heard evidence that A/C Ó Cualáin and D/Supt Mulcahy considered this issue and concluded that their function was to investigate the allegations made by Garda Keogh in his protected disclosure and not to investigate allegations against Garda Keogh.³⁷⁸

Supt McBrien concluded in her report of 16th July 2014 that:

*I am of the opinion that the above incidents warrant further investigation. However, I am mindful that legislation, labour law and Garda policies could impact on any decision made in this regard. Garda Keogh is engaging with a Confidential Recipient and is subject to benefits of the Protected Disclosures Act 2014. I believe that the view of Legal Affairs and Human Resource Management should be sought to ensure that a decision is not made in isolation.*³⁷⁹

On 17th July 2014, Garda Keogh texted Supt McBrien to let her know that he had been talking to Judge McMahon, and that Judge McMahon was contacting the Garda Commissioner in respect of the ‘*separate investigation*’.³⁸⁰

On 13th October 2014, Assistant Commissioner Fintan Fanning requested an update from C/Supt Curran on the Olivia O’Neill issue.³⁸¹ A reminder letter issued to C/Supt Curran on 1st December 2014.³⁸² C/Supt Curran reported on 10th December 2014³⁸³ that Olivia O’Neill had declined to make a statement and that, once audit results were available on an unrelated matter, he was going to refer all matters to the Eastern Region for consideration by a Divisional Office outside the Westmeath Division.

No further action was taken in relation to the matter. It is Garda Keogh’s complaint that this was one of a number of investigations or complaints in 2014 that were being drummed up against him and were being rolled up together to discredit and target him.

Complaint made by Garda Nicholas Keogh

In his evidence to the tribunal, Garda Keogh described Ms O’Neill’s arrival at Athlone Garda Station on the evening of 28th May 2014 and his interaction with her:

So, when she came and she started speaking about whatever assault or whatever was going on up there, I presume she may have known who I was, either way she did say something about – in relation to – there was an assault, something to do with the kids or something on those lines. She said about Ms. B doing favours for guards. And I told her, name names and name guards, put everything into your statement. That was it. So she went into the, obviously she named – said whatever she said and named Garda A. Garda Treacy, from what I read, obviously said, who told you to say that and Ms. O’Neill obviously said Garda Nick Keogh or whatever. Which is in a sense correct, I did say go in and name names, but I didn’t say name the name of the guard, which they’re trying – which Garda management are implying the whole way throughout this. That’s really the thing there, it’s sort of like a Chinese whisper in a way ... there was nothing -- that kind of emanates out of something fairly innocent. That’s why I say Garda Treacy didn’t do anything wrong, it was only just the way, who told you to say that. And it was me that said

³⁷⁸ Tribunal Documents, Letter from D/Supt Declan Mulcahy to Supt Noreen McBrien, dated 15th July 2014; Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 1191 and p. 7326

³⁷⁹ Tribunal Documents, Letter from Supt Noreen McBrien to C/Supt Mark Curran, dated 16th July 2014, p. 1186 at p. 1188

³⁸⁰ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 836

³⁸¹ Tribunal Documents, Letter from Assistant Commissioner Eastern Region to C/Supt Mark Curran, dated 13th October 2014, p. 8701

³⁸² Tribunal Documents, Letter from C/Supt Mark Curran to Assistant Commissioner Eastern Region, dated 1st December 2014, p. 8704

³⁸³ Tribunal Documents, Letter from C/Supt Mark Curran to A/C Fintan Fanning, dated 29th May 2014, p. 8705 (date later clarified to the tribunal by C/Supt Mark Curran as 10th December 2014)

*name names and put names of the guards. So when Garda Treacy said, who told you to do that, yes, in effect it was, of course it was me that said name names and name guards or name, you know ...*³⁸⁴

It is Garda Keogh's contention to the tribunal that this encounter with Ms O'Neill and her daughter was reported as, or was turned into, an allegation of coaching:

It was sought to turn the desk encounter in a public office into a coaching of Olivia O'Neill by me. There was no reason to request 'the content' of the conversation other than the fact that Olivia O'Neill wished to make a complaint about garda corruption.

I was subsequently advised when Olivia O'Neill called again to the desk, that she was told the gardai wanted a statement about me only and not about the assault or the corruption of which she was trying to complain.

I believed that this was a further attempt to try to influence the 'independent investigation' that was in train. I understand that Chief Superintendent Curran sent out guards again to take a statement from Olivia O'Neill about me only. I was advised by Olivia O'Neill that the guards would not take her statement of assault unless she made a complaint about me.

I was subjected to a number of 'call ups' and correspondence for effectively nothing. This is contained in Appendix 4.

*There was no follow-up to the allegation against me as to 'content' of 'coaching' but there was a parallel stymieing of any investigation into the corruption that Olivia O'Neill unsuccessfully sought to report.*³⁸⁵

In his statement to the tribunal, Garda Keogh said that he considered this issue to be a matter for the criminal investigation and that he 'advised Dónall O Cualain and Judge McMahon on 16/7/2014 of what I perceived to be an attempt to interfere with the internal 'investigation'.'³⁸⁶ He said that 'the garda management 'spin' of 'coaching' would be exposed as a bizarre contrivance if these matters were independently investigated'.³⁸⁷ During his interview with tribunal investigators, Garda Keogh stated:

*I believed that anything to do with my allegations should have been investigated only by Assistant Commissioner Dónall Ó Cualáin and his investigation team. The Olivia O'Neill and Liam McHugh incidents (where it is alleged that I have coaxed witnesses to make complaints), I say, should have been dealt with by Assistant Commissioner Dónall Ó Cualáin because of the allegation that I am coaching witnesses and it discredits me as a witness in relation to my substantive complaint.*³⁸⁸

Garda Keogh confirmed this position when giving evidence to the tribunal:

You see, unfortunately this, it's not as simple as even doing out a report here, I had called up to the super's office, Superintendent McBrien on a number of occasions and it was about my conversation with Ms. O'Neill and then the next subject matter we will be getting onto. The two of them were kind of I would have being asked in relation to the two of them at the one the time.

³⁸⁴ Tribunal Transcripts, Day 100, pp. 49-50, Evidence of Garda Nicholas Keogh

³⁸⁵ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 124

³⁸⁶ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 124

³⁸⁷ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at pp. 124-125

³⁸⁸ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 35

But there was correspondence obviously. I explained what happened, very simple. Again, you know, if it was the case that I had said that I had told Ms. O’Neill, oh, put in Garda A’s name into your statement, again that should have gone to Assistant Commissioner Ó Cualáin, because if he’s investigating this and the allegation is that I am rounding up all these witnesses to make complaints, I mean, it’s part of their investigation. It’s again not the chief in Mullingar that – because at the end of the day, really that’s what they’re going at, is that I tried to persuade Ms. O’Neill to name Garda A, as I’ve explained, that there is just no point, because it was obviously the elephant in the room, as I’ve said, of course.³⁸⁹

Garda Keogh continued that:

My point, my problem there is, I mean, it is really part of their investigation if the allegations are that I am rounding all these people to make complaints about Garda A, who is the subject of my main complaint, which Assistant Commissioner Ó Cualáin is investigating, like if that is the case my argument is, they should have looked at that.³⁹⁰

Garda Keogh also complained in his statement to the tribunal about alleged attempts made by gardaí to take a statement from Ms O’Neill about him only:

[s]he said they would not take a statement of complaint from her about the matter she wanted to report. They were looking for Olivia O’Neill to make a complaint about me. From memory, I think she named two Gardaí; Detective Sergeant Eamon Curley and Garda Tom Higgins. I understand now that Garda Tom Higgins was not involved and that Olivia O’Neill was inaccurate in this respect. I do not know who was involved apart from what Olivia O’Neill informed me. I believe I rang Garda Tom Higgins about this and he told me that he was not involved but he did not offer me any information as to whether this happened or who was involved.³⁹¹

In his evidence to the tribunal, he stated that:

... at some point Ms. O’Neill I think calls in to me in the station, wants to speak to me in private, this is from recollection, and she states to me, more or less, something like, they don’t want to take a statement about – basically they are only interested in getting a statement from her about me and what I said to her or allegedly said at the counter. Like, I have already replied, you see, to Superintendent McBrien in relation to this. It’s a very simple thing that this emanates from.³⁹²

He was asked the following by the Chairman about this particular complaint:

Q. Chairman: So as far as this went with Inspector Curley going out, you are happy enough, you’re not complaining about that?

A. The first part of it.

Q. Chairman: Okay. But you think that there may have been a second approach to Ms. O’Neill and if and insofar as there was a second attempt, you say that goes beyond the line?

A. Yes.³⁹³

In respect of the management response to the incident, Garda Keogh outlined in his statement to the tribunal that:

³⁸⁹ Tribunal Transcripts, Day 100, pp. 58-59, Evidence of Garda Nicholas Keogh

³⁹⁰ Tribunal Transcripts, Day 100, p. 60, Evidence of Garda Nicholas Keogh

³⁹¹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 29

³⁹² Tribunal Transcripts, Day 100, pp. 56-57, Evidence of Garda Nicholas Keogh

³⁹³ Tribunal Transcripts, Day 106, p. 49, Evidence of Garda Nicholas Keogh

No statement was taken from Olivia O'Neill either in relation to her assault or her claims of corruption. Instead, I received a formal request on the 11th June 2014 for 'a written report setting out the nature and content of my conversation' with Olivia O'Neill. I was questioned a number of times about the 'content' of my conversations with Olivia O'Neill on the 9th June, 8th July, 2014 (while the other matters were ignored).³⁹⁴

He told tribunal investigators that he believed that C/Supt Curran was involved 'to some degree in pushing the other matters (i.e. Olivia O'Neill, Liam McHugh and the PULSE check into Garda A)' and that:

I also recall that Superintendent Noreen McBrien told me she was under pressure in relation to the Olivia O'Neill and Liam McHugh matters. It is my belief that Chief Superintendent Curran was putting her under pressure. Chief Superintendent Mark Curran is Superintendent McBrien's direct line manager and therefore, I believe he had involvement.³⁹⁵

He told the tribunal during his evidence that:

... Garda Treacy in this did nothing wrong, I would have done exactly the same if I was in Garda Treacy's – if I dealt with that position she was in ... I have no issue there. But it's not until senior management then start getting involved in this that things start getting – it becomes more interesting.³⁹⁶

Garda Keogh was cross-examined by counsel on behalf of An Garda Síochána about the obligations of management to investigate the matter:

Q. So in that situation, I have to suggest to you, that a superior officer in the station, confronted with an ordinary Garda member saying, I have witnessed the following things, as are set out on page 8684, was reasonably entitled to enquire into what had taken place?

A. Oh yes.

Q. If you look, please, back at page 8683, can I suggest to you that part of what would be what Chief Superintendent Curran did on that page, where he said:

“Please ensure that a statement is obtained from Ms. O'Neill in relation to the information divulged to Garda Treacy on 28th May 2014.”

A. I see that. But, Judge, on this particular – where they veer off here on this, they become very eager to get a statement about me as opposed to whatever it is, Ms. O'Neill, this is solved or whatever, or whatever it is, what she's saying. This is where there starts to be – and this is – it appears to be Chief Superintendent Curran. And when you put all I know we are dealing with each one of these things one at a time, but like, for me it's death by a thousand cuts, when you put all these, amalgamate them all together, Judge.

Q. Garda Keogh, can we take the question of perception again. That's the perception you've outlined repeatedly to the Chairman. But looking at the reality, the two documents we have looked at, 8683 and 8684, represent basic communication between a guard and a response from a chief superintendent. There's nothing wrong with those communications, is there?

A. There's not – em, Like it's not as simple as a guard responding to a chief superintendent, even the question is inaccurate. It goes through the guard, to the sergeant, to the inspector, the super, to the chief.

³⁹⁴ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at pp. 123-124

³⁹⁵ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 98

³⁹⁶ Tribunal Transcripts, Day 100, pp. 43-44, Evidence of Garda Nicholas Keogh

Q. Would you agree, even taking this circumstance away and saying you weren’t involved in this at all, and let’s say this wasn’t in Athlone, if an ordinary Garda member reported to her superior that something which may have revealed coaching by another member to a civilian witness had taken place, would you agree with me that as a matter of policing that would need to be investigated, checked out to see whether it was correct or not?

A. Yeah, of course. How could anyone say otherwise?³⁹⁷

In his interview with tribunal investigators, Garda Keogh withdrew his complaint that Insp Farrell ‘manufactured’ complaints against him in his report of 29th May 2014:

I understand that Inspector Farrell wrote at least one report in relation to the Olivia O’Neill and Liam McHugh’s matters and that was my reason for believing that he was involved. However, in relation to my letter (NK/3, page 54 refers), that was my view in relation to Inspector Farrell at the time of writing that letter; i.e. that he was involved in manufacturing complaints against me. Since then I am more knowledgeable, as I received information under the Freedom of Information, and I would now accept that Inspector Farrell was duty bound to write reports on the basis that other persons had forwarded him such reports. As such, I am no longer making this accusation against Inspector Farrell.³⁹⁸

During his evidence to the tribunal, Garda Keogh summarised his complaint in relation to this issue and how he linked it to Issue 4:

... I believe this was to try and discredit me in this matter and in the next matter, the two things, Judge, this matter that we’re dealing with, to discredit me. They could discredit me on this issue, it would affect the main issue obviously to do with credibility in the main collusion complaint that is under investigation by D/Super Mulcahy. And, Judge, I have always maintained, they jumped the gun on this matter and the next matter, in that neither Ms. O’Neill nor Mr. McHugh had anything to do with my main complaint. They weren’t – they’d nothing to do with it.³⁹⁹

He confirmed in his evidence that, by September/October 2014, he had ‘developed a great suspicion of management’ and that:

... I came out on the 8th May, I made my disclosure on 8th May 2014. So, on the 9th May 2014, the Commissioner made a statement, dissent is not disloyalty, whistleblowers will be supported. Now, like anyone else, I would always give the benefit, say fair enough and that, you know. I was Nóirín O’Sullivan’s first, let’s say, whistleblower. All this stuff came within that timeframe, within that first month when she was in charge. You know, it all appeared to be emanating from the chief’s office in Mullingar. I would accept, fair enough, there’s certain things he has to – he has obligations, like this is Chief Superintendent Curran, would have obligations to do some things. But, you know, it starts to roll on fairly heavy. By the time we get to the Liam McHugh matter, I think as well where I say this is absolutely false, just nobody even looks at the possibility that this could have been made as a vindictive sort of complaint to discredit me in relation to what’s being investigated by Assistant Commissioner Ó Cualáin.⁴⁰⁰

³⁹⁷ Tribunal Transcripts, Day 106, pp. 44-46, Evidence of Garda Nicholas Keogh

³⁹⁸ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 97

³⁹⁹ Tribunal Transcripts, Day 113, p. 76, Evidence of Garda Nicholas Keogh

⁴⁰⁰ Tribunal Transcripts, Day 100, pp. 96-97, Evidence of Garda Nicholas Keogh

Responding Statements and Evidence on the Issue

Ms Olivia O’Neill

In her interview with tribunal investigators, Ms O’Neill stated that she knew Garda Keogh *‘like I know a lot of the Guards from me going in and out of the Garda Barracks’*.⁴⁰¹ She recalled attending Athlone Garda Station on 28th May 2014 following an incident near her home:

*[Ms O’Neill’s daughter] made her statement to Garda Stephanie. It was interrupted in the middle of taking the statement by a female Sergeant. This happened as [Ms O’Neill’s daughter] was making her statement I said to Stephanie I was told to be very careful about what I said about Ms. B. I said there was a lot of ears in the barracks that were on her side. When I said that Stephanie went and got the Sergeant. The Sergeant came into the room and she asked me what was said to me about Ms. B. I thought it was a bit odd, to see a Sergeant coming, she had more stripes, so I was a bit nervous. The Sergeant asked me questions about the statement and what was said to me. I said that I was told to be very careful where I spoke and what I said, and I became very nervous.*⁴⁰²

Ms O’Neill was asked to clarify what Garda Keogh said to her during this interaction and what, if anything, he said about Ms B and gardaí. She stated that:

*He did tell me to make sure to put everything in my statement and not to leave anything out. This was on the first occasion I went to the station when I met him at the Public Office. I want to clarify that Garda Keogh did not tell me that Ms B had ears everywhere in the barracks. I can’t recall who told me that.*⁴⁰³

She was asked about Garda Keogh’s record of their interaction and replied that:

*More than likely I said that, as in, I said “I know she done favours for a Guard”. I am referring to Ms B. Again I can’t remember who told me that. Garda Keogh did say to me to put everything into my statement and name Guards.*⁴⁰⁴

In her evidence to the tribunal, Ms O’Neill described her conversation with Garda Keogh:

*... I went to the counter and I said I wanted to make a complaint about – there was a bit of a row up in the estate we live in, that my daughter was getting – she was only 14 or 15, 15 I think, to be sure, and could we make a statement because she was threatened, you know. And he was on the desk duty, you know, he couldn’t take the statement, he said, but he would get someone for me, do you know. But other than that, that’s all we spoke about, nothing else.*⁴⁰⁵

When asked what Garda Keogh had said to her she stated that *‘... I remember he did say put everything in your statement’*.⁴⁰⁶ When asked by counsel for the tribunal whether she mentioned about Ms B doing favours for guards, she replied that *‘I could have, I don’t know’*.⁴⁰⁷ Under cross-examination by counsel on behalf of An Garda Síochána, Ms O’Neill was asked:

Q. Did you say to Garda Keogh that there were a lot of ears in the barracks that were on her side?

A. I could have, I don’t recall.⁴⁰⁸

⁴⁰¹ Tribunal Documents, Investigator Interview of Ms Olivia O’Neill, p. 438 at p. 440

⁴⁰² Tribunal Documents, Investigator Interview of Ms Olivia O’Neill, p. 438 at p. 441

⁴⁰³ Tribunal Documents, Investigator Interview of Ms Olivia O’Neill, p. 438 at p. 443

⁴⁰⁴ Tribunal Documents, Investigator Interview of Ms Olivia O’Neill, p. 438 at p. 445

⁴⁰⁵ Tribunal Transcripts, Day 119, p. 11, Evidence of Ms Olivia O’Neill

⁴⁰⁶ Tribunal Transcripts, Day 119, p. 13, Evidence of Ms Olivia O’Neill

⁴⁰⁷ Tribunal Transcripts, Day 119, p. 13, Evidence of Ms Olivia O’Neill

⁴⁰⁸ Tribunal Transcripts, Day 119, p. 50, Evidence of Ms Olivia O’Neill

She was cross-examined further as follows:

Q. *The question I am really asking is: Is it the case that you did talk about it to Garda Keogh that night, that you talked about essentially Garda involvement in the drug trade?*

A. *No. I do not remember. I don’t remember now.*

Q. *Is Garda Keogh wrong in that?*

A. *I don’t remember. I can’t remember. To the best of my knowledge, I can’t remember. You never remember everything you said.*

Q. *In fact, in fairness to you, at page 443 of your statement you accept that you do talk a lot and that you do forget a lot of what you say?*

A. *I do, yes. I do.*

A. *I forget things, but it doesn’t mean that I’m a liar.⁴⁰⁹*

In her interview with tribunal investigators, Ms O’Neill was referred to Garda Treacy’s report of the incident and she stated that:

To my knowledge I did not say to Garda Stephanie Treacy that Ms B is phoned prior to any search of her property so that she can get rid of weapons or drugs. I can’t recall, I really don’t know if I said to Garda Stephanie Treacy that Ms B is told when anybody makes a complaint or statement and that the Gardai cover up offences for her. Garda Nick Keogh did not tell me any of this about Ms B. He only told me to be truthful in our statements.⁴¹⁰

Ms O’Neill told tribunal investigators that she returned to Athlone Garda Station after 28th May 2014 and spoke to Garda Keogh about an approach by gardaí in relation to taking a statement and *‘I told him that the Gardai wanted a statement about him only’⁴¹¹*. She was referred to Garda Keogh’s diary entry of 26th June 2014⁴¹² which recorded that when Garda Tom Higgins and D/Sgt Curley called to her home, they refused to take her statement in relation to the assault and wanted a statement about Garda Keogh. She stated that *‘they did want a statement about Garda Keogh only’⁴¹³*. In her evidence to the tribunal, Ms O’Neill said that:

I asked them to take a statement of the assault, Judge, like you know, and even a later date, you know, if I went to the Garda barracks. But they said no, they wouldn’t take it. They wanted a statement about Nick Keogh and that’s all. That’s all they wanted off me, Judge, they didn’t want to know about anything else.⁴¹⁴

In her interview with tribunal investigators, Ms O’Neill described her interaction with Garda Higgins and D/Sgt Curley:

I recall two Guards approached me on the street I wasn’t at home when they came. They had called to the house and they were told where I was, I was down in my brother’s house. I was out the front when they came. I knew they were Guards when I saw them. I was having a cigarette. They were in a little black car. They pulled up on the side of the path, they wound down the window, they were two male Guards. They had files on their laps. They had asked me to get into

⁴⁰⁹ Tribunal Transcripts, Day 119, pp. 53-54, Evidence of Ms Olivia O’Neill

⁴¹⁰ Tribunal Documents, Investigator Interview of Ms Olivia O’Neill, p. 438 at p. 447

⁴¹¹ Tribunal Documents, Investigator Interview of Ms Olivia O’Neill, p. 438 at p. 450

⁴¹² Tribunal Documents, Diary entry of Garda Nicholas Keogh, p. 13262

⁴¹³ Tribunal Documents, Investigator Interview of Ms Olivia O’Neill, p. 438 at pp. 450-451

⁴¹⁴ Tribunal Transcripts, Day 119, p. 72, Evidence of Ms Olivia O’Neill

the car. I said no I would not I asked them was I under arrest. They said I was not under arrest. I said I would not get into the car. They asked me was I afraid. I said I was not afraid. They mentioned about Nick Keogh, they asked me what did Nick Keogh say to me. What we were talking about, were we meeting up all the time. They were not very nice to me. Garda Curley was doing all the talking. I know him previously from calling to my house on other matters. They asked me was I afraid to make a statement against Nick Keogh. I said I was not. I said what is this all about. They went on saying about the allegations I said and was Nick Keogh telling me to say all these things, but as I have said already he wasn't. When I say allegations, it's what I said about Ms B having ears in the barracks. They kept wanting to know was I afraid. I said I wasn't, they wanted to take a statement from me in the car. They asked me did I meet up with Garda Nick Keogh and what was Nick Keogh saying to tell me to say about a certain Guard. They asked me would Garda Nick Keogh ask me to make a certain allegation about a Guard. They didn't say what Guard that was that is to the best of my knowledge.⁴¹⁵

Ms O'Neill was asked by counsel for the tribunal about the advice to contact GSOC and she said that:

No, no, that was never told a guard never told me that in my life, go to an Ombudsman. That's lies now.⁴¹⁶

Sergeant Andrew Haran

In his statement to the tribunal, Sgt Haran described his conversation with Garda Keogh on the evening of 28th May 2014 as follows:

Garda Keogh was working as Public Officer on this day. I remember that he spoke to me during the day in an animated manner. He outlined something about Olivia O'Neill presenting unannounced at the counter and that she wanted to make a statement...

...I note from his statement that he says he asked me to designate a Garda to take a statement from her. From records I have seen, it appears that I tasked Garda Stephanie Treacy to take a statement from Olivia O'Neill. I do remember the manner and enthusiasm that Garda Keogh showed for her uninvited announcement at the desk...⁴¹⁷

Garda Stephanie Treacy

Garda Tracey was asked by counsel for the tribunal about the initial request from Sgt Haran to deal with Ms O'Neill. She said that:

... I was on the early duty day, due to finish at 5pm. The sergeant, Sergeant Haran, sometime in the late afternoon approached me, and he was the sergeant covering the late unit. He asked me he informed me that Ms. O'Neill and [Ms O'Neill's daughter] were in the station to make a statement and he asked me as favour to oblige in taking that statement, as, I don't know, I think he said it was either they couldn't do it at the desk and he didn't have any other members.

Q. Now, in terms of what Sergeant Haran told you, did he say anything to you about what Ms. O'Neill wanted to make a statement about?

A. No.

⁴¹⁵ Tribunal Documents, Investigator Interview of Ms Olivia O'Neill, p. 438 at pp. 451-452

⁴¹⁶ Tribunal Transcripts, Day 119, p. 24, Evidence of Ms Olivia O'Neill

⁴¹⁷ Tribunal Documents, Statement of Sgt Andrew Haran, p. 587 at p. 589

Q. Did you see Ms. O’Neill at any stage speaking to Garda Keogh?

A. No.⁴¹⁸

In her interview with tribunal investigators, Garda Treacy outlined the details of her conversation with Ms O’Neill as follows:

*I was just getting the background to the incident when Olivia said to me she had been told to put in her statement that Ms B was friendly with certain members of the Guards in Athlone and that she is protected by these members. Olivia said that she was told to put in her statement that Ms B was told when any search or investigation was going on so that she could get rid of any weapons or drugs and that Ms B would be told if any statement or complaint was made against her by Gardaí and that offences would be covered up by certain members of the Gardaí. Olivia did not identify these Gardaí. Olivia kept saying she was told to make sure that this information went into her statement. I asked her who told her this and she said “Garda Nick at the counter downstairs”.*⁴¹⁹

Garda Treacy said that it was her understanding ‘... that it was Garda Nick Keogh who advised her of all of this information’.⁴²⁰ In her evidence to the tribunal, Garda Treacy further outlined what had transpired:

A. Just as I proceeded to take the statement, as I said, I think I had possibly the introduction line taken when Ms. B – Ms. O’Neill interrupted and said that she had been told that Ms. B was friendly with certain Gardaí in Athlone Garda Station. She said that she had been told that Ms. B is informed of any searches that were to be carried out in her home beforehand so that she could get rid of any weapons or drugs, and she told me that she had been told that Ms. B would be informed if anybody made a statement against her and that Gardaí would cover up offences for Ms. B.

Q. Did she mention any particular garda at that point or at all?

A. No.

Q. And in relation to each of the three things that you have told the Chairman about, you have said that [Ms O’Neill] told you that she was told these things, is that right?

A. Yes, Ms. O’Neill, yes.

Q. And are you fairly clear about that?

A. Yes.

Q. Is it the case then that you certainly didn’t think, or did you think that she was telling you that she knew of these things from her own knowledge? Or did you think that she had been told this by somebody else?

A. That she had been told this by somebody else. She said she had been told.

Q. Did she relate that information in any way to the statement that [Ms O’Neill’s daughter] was going to make or started making?

⁴¹⁸ Tribunal Transcripts, Day 123, pp. 127-128, Evidence of Garda Stephanie Treacy

⁴¹⁹ Tribunal Documents, Investigator Interview of Garda Stephanie Treacy, p. 469 at p. 472

⁴²⁰ Tribunal Documents, Investigator Interview of Garda Stephanie Treacy, p. 469 at p. 473

- A. Yes. She said that she had been told that it had to go in the statement, to make sure it went into the statement that [Ms O'Neill's daughter] was going to make.
- Q. Did you ask her anything then?
- A. I did. I asked her who had told her this and she replied that Garda Nick, just now at the counter downstairs.
- Q. Well now, your question there seems to have been related at least to the issue as to who had told her to make sure that the information went into her and [Ms O'Neill's daughter's] statement and she told you Garda Nick, down below. But was she confirming to you that she had been told the other things by Garda Nick downstairs, was that your understanding?
- A. That was my understanding, yes. That's what she told me.
- Q. Okay. So to be clear then, you didn't specifically ask her whether Garda Nick had told her the first three things or all of them?
- A. From my recollection, when I said, who told you all this?
- Q. All right.
- A. And she said, Garda Nick, at the counter downstairs.⁴²¹

Garda Treacy brought this to the attention of Sgt Keane and Insp Farrell, with the latter advising that *'it was a separate matter to the statement she was making in respect of Ms B and that if she wished she could make an additional statement and he told me how to put her in touch with the Garda Ombudsman'*.⁴²² Garda Treacy stated that *'[i]f Olivia O'Neill did wish to make a statement in relation to the conduct of Gardaí, my belief is that I would not be taking that statement, that someone of a higher rank would have taken that statement'*.⁴²³

During her evidence, Garda Treacy outlined Insp Farrell's directions as follows:

He advised that the information shouldn't go into that statement and that she should - Ms. O'Neill should be - that I should continue taking the original statement as planned.

- Q. Yes.
- A. And that Ms. O'Neill should be invited to make a separate statement if she wished about any allegation she had, and she should be informed that she can make a statement, she can go to the superintendent or straight to the Ombudsman Commission.⁴²⁴

Garda Treacy then described how she returned to the interview room with Sgt Keane and spoke with Ms O'Neill:

*We told her that if she wanted to make any complaint in relation to Garda malpractice or anything like that, that there were different ways she could go about doing so. That she could go to the Ombudsman Commission, that she could meet with a superintendent and that she could make a witness statement to the Gardaí.*⁴²⁵

⁴²¹ Tribunal Transcripts, Day 123, pp. 130-132, Evidence of Garda Stephanie Treacy

⁴²² Tribunal Documents, Investigator Interview of Garda Stephanie Treacy, p. 469 at p. 474

⁴²³ Tribunal Documents, Investigator Interview of Garda Stephanie Treacy, p. 469 at pp. 476-477

⁴²⁴ Tribunal Transcripts, Day 123, pp. 134-135, Evidence of Garda Stephanie Treacy

⁴²⁵ Tribunal Transcripts, Day 123, pp. 136-137, Evidence of Garda Stephanie Treacy

Garda Treacy gave evidence that the only garda named by Ms O’Neill was ‘Garda Nick’⁴²⁶ and that:

... when Sergeant Keane and I explained to her about making a statement, making a complaint to the Ombudsman or making a statement, she said that she didn’t have any complaint to make and she was just saying what she had been told to say.

Q. Yes. I mean, did you ask her to make a statement in relation to Garda Keogh?

A. No.

Q. Did you ask her to make a statement against Garda Keogh?

A. No.

Q. Did you suggest to her that she should consider making a complaint about Garda Keogh to the superintendent or to GSOC?

A. No.⁴²⁷

Garda Treacy told tribunal investigators that she subsequently spoke with Garda Keogh:

He [Garda Keogh] said something about it going further, I wasn’t sure what that meant. That’s when I went to the Superintendent, that was my concern, I did not know what he meant by “going further” and what the implications of that was for me.⁴²⁸

Supt McBrien recorded this conversation with Garda Treacy in her notes for 9th of July 2014.⁴²⁹

Garda Treacy was cross-examined by counsel on behalf of Garda Keogh as to whether she was alleging that Garda Keogh had coached Ms O’Neill:

Q. Just on that note, Garda Treacy, I asked Sergeant Keane on Thursday had she ever made an allegation of coaching or fabrication against a colleague and she said neither before or since. And I just want to ask you the same question. I presume the answer is the same; you have never made that allegation against any other colleague, is that fair?

A. I would definitely like to point out I am not making any allegation against a colleague. I am not making any allegation against Garda Keogh. I am repeating only what Ms. O’Neill said to me. I am not saying that Garda Keogh said it to her, I am saying that she said that to me.⁴³⁰

Counsel on behalf of Garda Keogh returned to this issue later in her cross-examination and Garda Treacy responded that:

No, as I said, the word coaching never came into it. The allegations – I say that there were two allegations; one, that Ms. B told – or Ms. O’Neill told me that she was told this by a garda, and I believe that, yes, that was Garda misconduct, but I also believe that the other allegations should have been – should be investigated, if they were allegations made by Ms. O’Neill.⁴³¹

⁴²⁶ Tribunal Transcripts, Day 123, p. 138, Evidence of Garda Stephanie Treacy

⁴²⁷ Tribunal Transcripts, Day 123, p. 138, Evidence of Garda Stephanie Treacy

⁴²⁸ Tribunal Documents, Investigator Interview of Garda Stephanie Treacy, p. 469 at p. 479

⁴²⁹ Tribunal Documents, Note of Supt Noreen McBrien, dated 9th July 2014, p. 1658

⁴³⁰ Tribunal Transcripts, Day 123, p. 155, Evidence of Garda Stephanie Treacy

⁴³¹ Tribunal Transcripts, Day 123, pp. 157-158, Evidence of Garda Stephanie Treacy

Sergeant Sandra Keane

In her evidence to the tribunal, Sgt Keane described how she was first approached by Garda Treacy:

Garda Treacy came to me on that evening and said that, as I said, she had been tasked to take a statement in relation to the alleged offence with Ms. B and that during the course of being present in the room with Ms. O'Neill and her daughter, that Olivia O'Neill had said that she had been advised to say that Ms. B was friendly with gardai and that she was tipped off in advance if search was to be conducted. She was also advised too that she was protected by gardai in Athlone. And Garda Treacy said to me that when she asked her who advised her to put this in the statement or put it into a statement, she said that Garda Nick did.⁴³²

She went on to give her account of her conversation with Insp Farrell:

Inspector Farrell said that there was two elements to it. The initial element was the complaints of alleged threats to [Ms O'Neill's daughter] and the second element was what Garda Treacy had heard from Ms. O'Neill, which was that she was advised to get into the statement that Ms. B was being protected. So Inspector Farrell advised that statement could be taken, of course, from [Ms O'Neill's daughter], and Olivia if she wished to make statement, and that in relation to the other matter, Ms. O'Neill was to be advised that she could go to the Garda Ombudsman and/or a superintendent to make a complaint.⁴³³

In her statement to the tribunal, she stated that she advised Ms O'Neill that the correct procedure was to notify GSOC.⁴³⁴ In her evidence to the tribunal, she gave the following account of her conversation with Ms O'Neill:

Ms. O'Neill didn't say very much. When I explained to her the procedures that we could take, or that she could take, she said she had no complaint to make, she didn't want to say anything, she wasn't making a statement. She said she was happy for her daughter to make statement in relation to the alleged allegation of the threats by Ms. B, but she didn't want to have a conversation with me.⁴³⁵

Sgt Keane was asked about her conversation with Ms O'Neill by counsel on behalf of Garda Keogh and replied that:

Garda Stephanie Treacy had a conversation with me. We went for advice to Inspector Farrell. On going back into the room, it was quite clear to me that Ms. O'Neill did not want to engage with me and didn't have any complaint to make.⁴³⁶

Superintendent Noreen McBrien

Supt McBrien was on annual leave on 28th and 29th May 2014 and returned to work on 5th June 2014. In her interview with tribunal investigators she stated that:

I wasn't there at the time. From my understanding, the purpose of the enquiries was to establish what happened. My concern would have been to ensure that everything was being done right for everyone at the station and for Olivia O'Neill and her daughter. I was directed by Chief Superintendent Curran to find out what happened. I also emailed Sergeant Haran asking him to

⁴³² Tribunal Transcripts, Day 121, p. 14, Evidence of Sgt Sandra Keane

⁴³³ Tribunal Transcripts, Day 121, p. 17, Evidence of Sgt Sandra Keane

⁴³⁴ Tribunal Documents, Statement of Sgt Sandra Keane, p. 558 at p. 562

⁴³⁵ Tribunal Transcripts, Day 121, p. 22, Evidence of Sgt Sandra Keane

⁴³⁶ Tribunal Transcripts, Day 121, p. 40, Evidence of Sgt Sandra Keane

*facilitate Nicholas Keogh generating the report and I rang him to personally to let him know that I was writing to him.*⁴³⁷

Supt McBrien rejected Garda Keogh’s suggestion that she was ‘put under pressure’ from the chief superintendent.⁴³⁸ Supt McBrien said that she called Garda Keogh on 5th June 2014:

*On the 5th of June 2014, I rang Garda Keogh with a view to meeting him before he went on leave, as per my arrangement. He was in great form. In my note of the call, I noted that he thinks there is stuff going on behind the scenes. Without prying, I suggested that he run everything or any concerns he had by the Assistant Commissioner on Saturday. If he felt that he had other issues that we would discuss them.*⁴³⁹

She confirmed that she met Garda Keogh on 9th June 2014 and that:

*We had a long chat on 9th June. Garda Keogh confirmed that Olivia O’Neill made a complaint about Ms B, and he took the complaint. He said he didn’t mention Ms B to Olivia O’Neill. I outlined to him my role as a manager in the District and while supporting him, I had to know what was happening and that I had his safety and the safety of the public as paramount priority. He appreciated my position. I advised him to address his concerns to Assistant Commissioner Ó Cualáin. He said he heard members were asking people to make complaints against him. I outlined to him that asking someone if they wanted to make a statement was different to a person making a complaint and that he shouldn’t confuse this. All the personnel were of concern to me as manager of the District. I was only trying to establish what happened in the Olivia O’Neill incident, rather than aiming at a particular outcome and that if an issue was brought to my attention, I had to look into it. He said that he totally understood.*⁴⁴⁰

In her evidence to the tribunal, Supt McBrien described her interaction with Garda Keogh on this date:

*I tried to explain to Garda Keogh as clearly as I could, because he was saying, oh, more complaints to me. I explained to him that there were no complaints as such or no investigations into him. That issues had been brought to my attention that happened in my district and as district officer I was duty bound to investigate those incidents. Not that I was investigating him. I made it very, very clear to him that was not what was happening. I was investigating these incidents and that the outcome of these incidents – they were giving an opportunity to account for themselves and that the outcome of them would be dealt with when there was an outcome. That they can, you know, prove total clarity to the situation. That’s what I was doing, and I outlined that to him on several occasions.*⁴⁴¹

During cross-examination by counsel on behalf of Garda Keogh, Supt McBrien stated that:

*I have it mentioned in my notes, which are dated the 9th June, which at the very outset I say, I said that he has to understand if an issue is brought to my attention I have to address it and he should not misunderstand this and he said he totally understood*⁴⁴²

Supt McBrien described in evidence how she dealt with Garda Keogh and other members under her command:

⁴³⁷ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6253

⁴³⁸ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6264

⁴³⁹ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6253

⁴⁴⁰ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6254

⁴⁴¹ Tribunal Transcripts, Day 119, pp. 162-163, Evidence of Supt Noreen McBrien

⁴⁴² Tribunal Transcripts, Day 130, p. 169, Evidence of Supt Noreen McBrien

With regard to explaining things to Garda Keogh and explaining that these things were going up and down to him, I would imagine – not that I would imagine, it's fact, when other members had issues and had any concerns, and I think there's notes there with Garda Treacy as well, she had concerns, and I met with her and explained everything to her as well. It would be my technique and style to do that with people. Garda Keogh, I suppose because of the level of interaction, I wouldn't call it special treatment, he didn't get any of channels communication, the written correspondence that went down through the channels to him, but you would have to take account of the fact that he was in an unusual situation. I had never dealt with a confidential recipient before and it was an unusual situation.⁴⁴³

In her report of 16th July 2014, Supt McBrien stated that this incident warranted further investigation. She outlined her reasons to tribunal investigators:

I was cognisant of my obligations as District Officer and the need to bring the Olivia O'Neill matter to a conclusion. It had been my understanding that Assistant Commissioner Ó Cualáin's team were going to take the investigation up and Garda Keogh had a similar understanding (I refer to my correspondence to Chief Superintendent Curran, 9th June 2014 NMB/9). However, they confirmed that they weren't investigating the Olivia O'Neill issue on 15th July 2014. Consequently, it fell to me to finalise and, as per the note from Assistant Commissioner Ó Cualáin's team, the file was to be forwarded to Chief Superintendent, Westmeath. I was also conscious, given the many issues that were live at that time involving Nicholas Keogh, that a broader consideration was required. Chief Superintendent Curran wrote to me on 21st July 2014 acknowledging that all information had been received regarding the Olivia O'Neill matter and that further information was required regarding another matter, and once such information was received, a review would be conducted by an independent Chief Superintendent. This was my last involvement with the Olivia O'Neill matter.⁴⁴⁴

She stated that her 'firm views and recommendations' on the matter were outlined in her report of 16th July 2014 to C/Supt Curran.⁴⁴⁵ Supt McBrien stated that Garda Keogh's belief that C/Supt Curran was putting her 'under pressure' on this issue was unfounded.⁴⁴⁶ She also said that she considered the enquiries directed in respect of the Olivia O'Neill matter as 'reasonable and proportionate'.⁴⁴⁷

Supt McBrien was asked the following by counsel for the tribunal about Garda Keogh's belief that the Olivia O'Neill matter ought to have been referred to the criminal investigation:

... Garda Keogh was a witness in Assistant Commissioner Ó Cualáin's investigation. Garda Keogh had a narrow focus on his role in it. The broader focus is, as the Chairman said, we couldn't approach them. What they were doing, they could have been investigating me, I don't know. I didn't know what it was. The chief superintendent didn't, and nor were we entitled to. We were there to facilitate the investigation. So I think such an approach would be completely out of order.

Q. Well, you did make an approach in the sense that you were suggesting to the Ó Cualáin investigation that they would take up the running in relation to Liam McHugh?

⁴⁴³ Tribunal Transcripts, Day 119, p. 180, Evidence of Supt Noreen McBrien

⁴⁴⁴ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at pp. 6255-6256

⁴⁴⁵ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at pp. 6262-6263

⁴⁴⁶ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6264

⁴⁴⁷ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6265

- A. *It was a request in relation to a matter because at that stage I wasn’t sure whether it was of concern to them or not and they got back to me fairly quickly and told me it wasn’t, and that was the end of that. So that was written, that was a total, you know, above the table request to them.*
- Q. *I am not in any sense attempting to criticise you for it. I am saying, looking back in hindsight on this. Because on the one hand you had concerns locally that weren’t being addressed, you had concerns in relation to Liam McHugh, apparently there were concerns in relation to Olivia O’Neill. Garda Keogh was quite happy that you would go to the Ó Cualáin investigation with the Liam McHugh incident. In fact, he said it was a good idea; isn’t that right?*
- A. *When I said to him the day before, or the 8th, that it’s something I was considering.*
- Q. *And he was encouraging you to go to the Ó Cualáin investigation in relation to the intelligence issues and the CHIS issue, isn’t that right?*
- A. *But it wasn’t up to Garda Keogh to involve me in that other investigation. That was Assistant Commissioner, as he then was, Ó Cualáin’s investigation.⁴⁴⁸*

Later in her evidence, Supt McBrien observed that:

Garda Keogh was a confidential recipient and there was a lot of things going on. They were all, as I say, coming, you know, not so much to a head but they were running consecutively, as well as the Ó Cualáin investigation. And from my point of view, I was totally in the dark about the Ó Cualáin investigation. And I just felt that a broader perspective, a broader look at these things may be beneficial at the time, so as they wouldn’t be taken in isolation because I wasn’t sure or comfortable that my view was broad enough at that stage.⁴⁴⁹

In her interview with tribunal investigators, Supt McBrien stated that her interactions with Garda Keogh on this issue could not be considered instances of targeting or discrediting.⁴⁵⁰ She was cross-examined on this issue by counsel on behalf of Garda Keogh:

- Q. *Do you think these two incidents could fairly be described as getting at Nick Keogh because he had made protected disclosures?*
- A. *I don’t think I think if an incident happens in a district - like both these incidents were reported by members of An Garda Síochána and from what I can recall, I think Garda Keogh may have had some input, in the office, in the public office that day, with Garda Treacy being nominated to take the statement. Both of these were incidents that happened. I don’t - I think to tie them in as a consequence of Garda Keogh making a protected disclosure, I wouldn’t see how two separate members, and especially something that Garda Treacy said actually happened in the office that Garda Keogh had some input into, I don’t know how you could see that as targeting. And as a district officer, when something is brought to my attention or the person who is acting on behalf, you are duty bound to deal with it.*
- Q. *So you don’t see it as targeting at all?*
- A. *No, absolutely not.⁴⁵¹*

⁴⁴⁸ Tribunal Transcripts, Day 120, pp. 43-45, Evidence of Supt Noreen McBrien

⁴⁴⁹ Tribunal Transcripts, Day 120, p. 57, Evidence of Supt Noreen McBrien

⁴⁵⁰ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6266

⁴⁵¹ Tribunal Transcripts, Day 120, pp. 99-100, Evidence of Supt Noreen McBrien

Inspector Nicholas Farrell

In his statement to the tribunal, Insp Farrell confirmed that he directed that a statement be taken from Ms O'Neill in relation to the assault and that she should be invited to make a separate statement in relation to the advice allegedly given by Garda Keogh.⁴⁵² He described the information that was brought to him by Garda Treacy in his evidence to the tribunal:

... I was told, that Olivia O'Neill had certain information and she wanted to include it in her statement. That information referred to the Gardaí, we'll say malpractice of An Garda Síochána in respect of Ms. B. And she wanted that included in her statement. And I took the view that it should not be included in the statement in respect of the public order, she should be given an opportunity to make a formal complaint or a statement to the superintendent or the Garda Ombudsman, whoever she wanted to. They were two separate issues.⁴⁵³

He said that his report of 29th May 2014 was 'merely reporting the facts as they were related to me'⁴⁵⁴ and that:

What was in my mind when I was writing the report was that there is a potential that Garda Keogh could have given sensitive information to a third party. It could be interpreted at this stage that it was coaching. I didn't think of that. It was giving information to people, to a third party, that I believed was sensitive information, that shouldn't be done that way.

... the information that was allegedly given was that Ms. B was friendly with Gardaí, that they were covering up offences for her and that they were letting her know when her house was being raided. That to me would suggest that Ms. B was giving information to the Gardaí and that persons that would be seen to be giving information to the Gardaí could be under threat from other people in the drugs trade in Athlone that were currently under investigation.

Q. So does this reference have anything to do with the whistleblower allegations?

A. Absolutely no reference whatsoever.⁴⁵⁵

Insp Farrell was asked by counsel on behalf of Garda Keogh whether he considered raising the issue directly with Garda Keogh. He replied:

I didn't think it was appropriate for me to approach Garda Keogh in [these] circumstances, that the information that was given to me by Garda Treacy I believed merited being forwarded to my chief superintendent in the absence of the superintendent, for them to consider what action should be taken.⁴⁵⁶

Chief Superintendent Mark Curran

In his statement to the tribunal, C/Supt Curran referred to the report of Garda Treacy and stated that:

This report suggested that Garda Keogh advised Olivia O'Neill to include certain unprofessional behaviours attributable to Athlone Gardaí in their dealings with Ms B in her statement. Consequently [the] acting District Officer provided advice as to what course of action he viewed was appropriate in order to progress this matter.⁴⁵⁷

⁴⁵² Tribunal Documents, Statement of Insp Nicholas Farrell, p. 616 at p. 622

⁴⁵³ Tribunal Transcripts, Day 121, pp. 127-128, Evidence of Insp Nicholas Farrell

⁴⁵⁴ Tribunal Documents, Statement of Insp Nicholas Farrell, p. 616 at p. 622

⁴⁵⁵ Tribunal Transcripts, Day 121, pp. 138-139, Evidence of Insp Nicholas Farrell

⁴⁵⁶ Tribunal Transcripts, Day 121, p. 162, Evidence of Insp Nicholas Farrell

⁴⁵⁷ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1788

During his evidence to the tribunal, C/Supt Curran was asked about his interpretation of what was being reported to him:

*... of great concern here was the Garda misconduct/corruption. The issue of coaching was secondary. But in terms of the information divulged, that was the most pressing matter; that somebody here has potentially information about Garda corruption.*⁴⁵⁸

*... You see, what’s jumping out at me is criminality, yet it’s untreated in way. That an invitation should have been put to her to report the criminality to us. If in the course of that it turns out that – in the conversation with Garda Keogh, that there was some level of coaching, fine, that’s a minor matter. But that’s where the inappropriate behaviour might come in. We don’t know what happened at this point, we’re blind to what happened, you know.*⁴⁵⁹

In his statement to the tribunal, C/Supt Curran denied that he had any role in directing the enquiries in relation to this matter:

*... Inspector Farrell as Acting District Officer Athlone deemed it appropriate by way of advice that certain actions and enquiries were performed in a manner that ensured transparency and accountability in the interests of everybody concerned. I absolutely reject the assertion that these enquiries were an attempt to target or discredit Garda Keogh ... I view this type of scrutiny as being perfectly normal, necessary and proportionate in the context of the issues reported and am mindful of the fact that An Garda Síochána is a disciplined force with associated accountability for all members within the organisation.*⁴⁶⁰

He continued in his statement that:

*The queries generated as a result of Olivia O’Neill’s visit to Athlone Garda station were not instigated by any member of Garda Management in the Westmeath Division, moreover, it was a matter that was reported on from a Garda member for the information of the District Officer and the subsequent actions taken locally within the Athlone District were carried out for transparency and accountability in the interests of all parties involved including the consideration that Garda Keogh would not be exposing himself to any vulnerabilities.*⁴⁶¹

However, he later stated that he did have a role in directing matters in relation to Olivia O’Neill:

*I can confirm that line from my statement is not accurate. In the interest of clarity, this should read, “I did have a role in directing actions arising from the matter of Olivia O’Neill’s visit to Athlone Garda Station on the 28th of May 2014”. I requested that a report be obtained from Garda Keogh to provide his account of the conversation and his role in engaging with Olivia O’Neill. This had to be done in the interests of fairness to Garda Keogh and other parties involved.*⁴⁶²

During his evidence to the tribunal, C/Supt Curran was asked by counsel for the tribunal why he sought Garda Keogh’s account of his interaction with Ms O’Neill:

*If you talk about O’Neill, the focus would be on there was no statement from O’Neill, I just needed to ask Garda Keogh through Superintendent McBrien what exactly happened. I just want to get – he hadn’t been invited to give any input at all into this. To be fair to him, he needed to get that opportunity, and that’s where I came from on it.*⁴⁶³

⁴⁵⁸ Tribunal Transcripts, Day 117, p. 142, Evidence of C/Supt Mark Curran

⁴⁵⁹ Tribunal Transcripts, Day 117, p. 152, Evidence of C/Supt Mark Curran

⁴⁶⁰ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1788

⁴⁶¹ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1789

⁴⁶² Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1968

⁴⁶³ Tribunal Transcripts, Day 117, p. 166, Evidence of C/Supt Mark Curran

C/Supt Curran was also asked whether he accepted Garda Keogh’s account of his meeting with Ms O’Neill:

That’s what he says. That’s all I can go on. I have to accept that’s what he’s saying, no more than that.

Q. So, can you just confirm, are you accepting the veracity of his explanation as put forward there?

A. I am actually, yeah, because he is putting it down in writing and that’s what he is saying to me. Having given some consideration as to why I am asking the question, he says, look, I’m naming guards, I didn’t do anything wrong here.⁴⁶⁴

C/Supt Curran characterised his role in relation to this issue, and the other issues under consideration by the tribunal, as follows:

It is very important for me to put this across: At no point did I actually initiate anything to do with Olivia O’Neill. This all came in – and McHugh. And the intelligence. All of those items were reported to me and I had to respond to them. I didn’t initiate anything.

... all I’m saying is: I am responding to something I have no choice but to respond to. That’s my view on it. I’m not starting anything. I know nothing about these things. This is all reported by the people locally on the ground. They are channelling it through to me, which they should do. Any actions I do on this is a response to theirs. I didn’t initiate anything. The suggestion of Garda Keogh right through all of this is that I am trying to manipulate and manoeuvre something. It couldn’t be further from the truth. I would never do that to anybody.⁴⁶⁵

Under cross-examination by counsel on behalf of Garda Keogh, C/Supt Curran stated:

I was concerned for Garda Keogh, you know, to some extent, the media and a lot of commentary there and I’m not sure Garda Keogh, how he was feeling. I know Superintendent McBrien looked after all the welfare afterwards. But really what’s being alleged here is that there’s criminality and that’s is what I am really seeking to establish, to make sure that Olivia O’Neill was to be given the opportunity to report that to us and it’s just not to GSOC. So that was the bit that jumped out at me.⁴⁶⁶

In his interview with tribunal investigators, C/Supt Curran denied taking an over-zealous approach to this issue stating that:

I don’t think I had any other option other than to explore the facts and that’s all I was looking to do. These were only necessary enquiries. Certainly, I was not seeking to target or discredit Garda Nicholas Keogh. My role was to ensure policy-compliance.⁴⁶⁷

He maintained that the directions he gave were in keeping with his role as divisional officer.⁴⁶⁸ He rejected the allegation made by Garda Keogh that he had put Supt McBrien under pressure in relation to this or other matters:

I never put Superintendent Noreen McBrien under pressure in respect of any dealings with Garda Keogh. All my actions were open and transparent and I believe in the best interests of the Organisation.⁴⁶⁹

⁴⁶⁴ Tribunal Transcripts, Day 117, p. 171, Evidence of C/Supt Mark Curran

⁴⁶⁵ Tribunal Transcripts, Day 117, pp. 191-192, Evidence of C/Supt Mark Curran

⁴⁶⁶ Tribunal Transcripts, Day 118, p. 52, Evidence of C/Supt Mark Curran

⁴⁶⁷ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at pp. 1971-1972

⁴⁶⁸ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1974

⁴⁶⁹ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1974

C/Supt Curran stated that:

My conversations with Superintendent McBrien in respect of Garda Keogh were generally about ensuring that he was receiving welfare support. My dealings with Superintendent McBrien and Inspector Nicholas Farrell in respect of Garda Keogh and management challenges were always led by the principle of doing the right thing in the circumstances as they were presented to me and management team members.⁴⁷⁰

Detective Sergeant Eamon Curley

In evidence to the tribunal, D/Sgt Curley outlined his role in relation to Ms O'Neill:

... I received a specific task, to interview Olivia O'Neill. I suppose I wasn't the decider or the investigator on this. So I had been assigned a specific task to interview Olivia O'Neill. That was the task I was doing. I wasn't the decider on it, I wasn't the decider as to say, well other people may have more information on this. The specific task I got was to interview Olivia O'Neill.⁴⁷¹

D/Sgt Curley also described his encounter with Ms O'Neill on 30th May 2014:

... having got the report from Garda Treacy, it allowed me sufficient information to go and record a statement from Olivia O'Neill. So I tasked Garda Higgins to assist me on this. Normally when I am going to seek a statement I would seek assistance in doing that, bring someone with me. We travelled to the home of Olivia O'Neill, I think he was more familiar with the location of her home than I was at the time. She wasn't present there. Garda Higgins entered the house and spoke to I think one of the daughters, who informed us that she was at her brother's house or not too far away. We travelled down to where she was and spoke with her down there, which was near the Dean Kelly school, not too far away.

Q. Yes. And when you came upon her.

A. When we came upon her, I got out of the car and spoke to her. I informed her that I wanted to seek to take a statement from her in relation to the information she had divulged to Garda Stephanie Treacy within Athlone Garda Station on the 28th May.

Q. Did you know her previously?

A. I did, yes.

Q. And did she know you?

A. She did, yes. I suppose when I got out and spoke to her, I introduced myself and I suppose acknowledged that - and hello or whatever words we choose to interact with, and I explained my reason for being there.

Q. Which was?

A. Which was to seek to take statement from her in relation to the information that she divulged to Garda Stephanie Treacy in Athlone Garda Station on the 28th May.

Q. You appreciate her evidence is that she says that you were there to take a statement in relation to Garda Keogh?

A. No, that's not the case.

⁴⁷⁰ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1796

⁴⁷¹ Tribunal Transcripts, Day 128, p. 99, Evidence of D/Sgt Eamon Curley

- Q. Okay, just carry on then with the conversation?
- A. So I repeated my request to her, and she wasn't cooperative, in that she didn't consent to providing a statement to me. I repeated it and that's where it - she wouldn't give a statement.
- Q. How long did your interaction with her last?
- A. I would say it was quite brief, five to seven minutes, five minutes.
- Q. Did you tell her that it was important that she would cooperate with you and make a statement?
- A. My objective was to obtain a statement from her. I outlined what I sought the statement in relation to. I was courteous and patient with her and trying to encourage her to cooperate with me to make a statement. I asked her to sit into the car because it would afford some privacy to allow that to happen. But she wouldn't do that. She appeared, I suppose, not very cooperative towards us and a little bit hesitant. And I encouraged her, I repeated my request to her, that I was seeking to take statement from her in relation to the information she had divulged to Garda Stephanie Treacy in Athlone on the 28th May. But she wouldn't do that. She wouldn't provide a statement.⁴⁷²

In his statement to the tribunal, D/Sgt Curley recounted that *'I reported back to the District Officer in Athlone on 30.5.2014 that Mrs O'Neill refused to co-operate with the request for a statement ... I had no further dealings with this issue'*.⁴⁷³ He rejected the assertion that he refused to take a statement from Ms O'Neill in relation to her allegation of assault:

*I note line 401 and 402 page 28 upon which Garda Keogh refers to being advised by Olivia O'Neill that the guards would not take her statement of assault unless she made a complaint about him. I wish to state that no such interaction took place between I and Olivia O'Neill, I sought to take a statement from her regarding the information disclosed to Garda Stephanie Treacy and she declined to make such statement.*⁴⁷⁴

Garda Tom Higgins

In his statement to the tribunal, Garda Higgins confirmed that he was requested by D/Sgt Curley to drive to the home of Olivia O'Neill and stated that:

*I recall arriving at her home but she was not there and then recall seeing her a short distance down the street from where she lived and we drove to where she was standing. Apart from saying hello to her I did not make any requests of Olivia O'Neill during that meeting. The entire conversation that took place was between D/Sgt Curley and her. I do not recall the specifics of the requests made by D/ Sgt Curley during his meeting with Olivia O'Neill but I do recall that she refused to make a statement to him. I had no further contact with Olivia O'Neill in relation to this matter.*⁴⁷⁵

In evidence to the tribunal, he stated the following:

I do recall some date in 2014 as well, D/Sergeant Eamon Curley asking me to drive him up to Olivia O'Neill's house in order to obtain a statement. My recollection on it, I brought Eamon

⁴⁷² Tribunal Transcripts, Day 128, pp. 101-103, Evidence of D/Sgt Eamon Curley

⁴⁷³ Tribunal Documents, Statement of D/Sgt Eamon Curley, p. 487 at p. 488

⁴⁷⁴ Tribunal Documents, Statement of D/Sgt Eamon Curley, p. 487 at pp. 488-489

⁴⁷⁵ Tribunal Documents, Statement of Garda Thomas Higgins, p. 15828 at p. 15831

*Curley to the house, she wasn’t at home. We observed her down the street further. I had no interaction with Olivia O’Neill, only that I can recall that there was no statement obtained from Olivia O’Neill.*⁴⁷⁶

Legal Submissions

Garda Nicholas Keogh submitted as follows:⁴⁷⁷

- that the conduct of senior management towards Garda Keogh in the aftermath of Ms O’Neill’s attendance at the station, and the information she divulged while present there, amounted to targeting of him.
- that Insp Farrell’s report to C/Supt Curran implied that Garda Keogh had coached Olivia O’Neill to make a statement against the gardaí.
- that following a reasonable initial enquiry, senior management were only concerned with obtaining a statement from Ms O’Neill against Garda Keogh in relation to the allegation of coaching Ms O’Neill.
- that this issue was unfairly bundled together with Issues 1, 2 and 4, which had the effect of giving substance to complaints being made against Garda Keogh.
- that Garda Keogh made no complaint against Insp Farrell to the tribunal.
- that when the issue was reported by Insp Farrell, it was done in a way that had negative connotations for Garda Keogh with the report suggesting wrongdoing on the part of Garda Keogh.
- that if Insp Farrell wished to appraise himself fully of the facts, he could have made an inquiry of Garda Keogh before he made his report to C/Supt Curran. He did not do so and this set in train an unfair chain of inquiry by C/Supt Curran, seen by Garda Keogh as being wholly unjustified.
- that Garda Keogh accepted in cross-examination that garda management were entitled to make an inquiry of him in relation to his interaction with Ms O’Neill and it was the aftermath of the initial inquiry that he took issue with.
- that Garda Keogh believed that the gardaí attended upon Ms O’Neill twice to take a statement from her about what was said in the station on 28th May 2014.
- that it was clear from the evidence that the gardaí approached this issue with one aim in mind, namely, to extract a statement from Ms O’Neill which could be used against Garda Keogh. The direction to obtain such a statement emanated from C/Supt Curran and this was evidence of targeting.
- that correspondence requiring Garda Keogh to provide explanations on several issues was sent as if the issues were one, and this added to the stress and anxiety that Garda Keogh was suffering from.
- that to add to the stress and anxiety and to add to his discredit, when the senior officers were indeed satisfied that the issues were at an end, they failed, refused and/or neglected to inform Garda Keogh of such and this was also evidence of targeting.

⁴⁷⁶ Tribunal Transcripts, Day 128, p. 70, Evidence of Garda Tom Higgins

⁴⁷⁷ The tribunal has considered all of Garda Nicholas Keogh’s legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 14-31 and pp. 172-177

- that the true meaning of what Ms O'Neill said to Garda Treacy was misunderstood and/or misconstrued by Garda Treacy when she reported it to Insp Farrell, thus setting an unnecessary, and unfair, chain of inquiry against Garda Keogh.

An Garda Síochána submitted as follows:⁴⁷⁸

- that Garda Keogh did not suggest that Garda Treacy fabricated her report or did anything wrong.
- that Garda Treacy in her evidence was unequivocal that she had recorded the exchange correctly and that she understood Ms O'Neill to be telling her that Garda Keogh had instructed her what detail to put into her statement. Sgt Keane was of the same view.
- that Garda Keogh complained to Supt McBrien on 9th June 2014 that members had contacted Ms O'Neill to see if she would make a complaint '*against him*'. Notwithstanding Supt McBrien's reassurance and advice that a garda asking Ms O'Neill to make a statement was not the same thing as making a complaint, Garda Keogh persisted with his incorrect perception of events by claiming that this amounted to targeting him.
- that pertinent facts included that when D/Sgt Curley and Garda Higgins approached Ms O'Neill and sought to take a statement from her about the allegations of corruption on 30th May 2014, she refused to do so. There were no further attempts by anyone within An Garda Síochána to approach Ms O'Neill about this matter again.
- that Ms O'Neill was incorrect in her account of what transpired when D/Sgt Curley approached her on 30th May 2014 and that the record created by D/Sgt Curley later that day was an accurate record of what transpired.
- that the suggestion that the garda would not take a statement about the assault was clearly incorrect and improperly suggests a degree of bad faith on the part of the garda concerned. Ms O'Neill had every opportunity to make a statement about the incidents involving her daughters had she wanted to do so. She had visited the garda station on two successive occasions on 28th and 29th May 2014 when she accompanied her daughters while they made statements concerning these incidents. It would have made no sense for D/Sgt Curley to either seek a statement or refuse to take a statement concerning the 'assault' only as that was not the issue that he was tasked to achieve.
- that D/Sgt Curley's evidence concerning this encounter was to be preferred to that of Ms O'Neill, firstly because of the straightforward manner in which he gave his evidence, in contrast to the manner in which evidence was given by Ms O'Neill. Secondly, D/Sgt Curley's actions were entirely supported by the contemporary garda documentation which evidence the tasks given to him and the action taken by him.
- that the actions taken by members of An Garda Síochána consequent on Ms O'Neill's visit to Athlone Garda Station were demonstrably an appropriate and proportionate response to the information received and recorded by Garda Treacy.
- that the investigation ended when Ms O'Neill refused to cooperate with the gardaí.

⁴⁷⁸ The tribunal has considered all of An Garda Síochána's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 70-172 and pp. 177-179

Superintendent Noreen McBrien submitted as follows:⁴⁷⁹

- that when the matter was brought to her attention she made a request to Garda Keogh to provide a written report setting out the nature and content of the conversation that Garda Keogh had with Olivia O’Neill. Garda Keogh agreed that there was nothing untoward in that request.
- that Garda Keogh confirmed he accepted that Supt McBrien did not send anybody out and didn’t intend to send anybody out for a second time to Ms O’Neill.
- that in an exchange with counsel for An Garda Síochána on this issue, it was put to Garda Keogh that Supt McBrien confirmed to him in a meeting on 9th June 2014 that no one under her control was trying to get people to make statements against him, but were trying to confirm what had taken place. Garda Keogh did not remember but did not dispute that.
- that in relation to the meeting with Garda Keogh on 9th June 2014, Supt McBrien emphasised to Garda Keogh that asking a person such as Olivia O’Neill if they wanted to make a statement was a different thing to asking them to make a complaint and he should not confuse this.

Inspector Nicholas Farrell submitted as follows:⁴⁸⁰

- that no allegation was made by Garda Keogh to the tribunal investigators against Insp Farrell in relation to this issue.
- that while Garda Keogh belatedly withdrew these allegations against Insp Farrell, he had previously directed them to D/Supt Mulcahy, writing to him negatively in the context of Insp Farrell’s promotion attempts.
- that, in addition, Garda Keogh, unbeknownst to Insp Farrell, shared his *‘baseless and unwarranted concerns’* with GSOC.
- that while Insp Farrell welcomed the withdrawal of the allegations, it could not be gainsaid that unfounded allegations caused stress and strain to the party against whom they were directed.

Sergeant Andrew Haran submitted as follows:⁴⁸¹

- that he did not see Garda Treacy’s report until the disclosure herein nor did he hear any talk that Garda Keogh was trying to encourage or coach a witness.

Sergeant Sandra Keane submitted as follows:⁴⁸²

- that Garda Keogh did not appear to criticise Sgt Keane or make allegations against her in his evidence to the tribunal.
- that Sgt Keane took what Garda Treacy told her at face value and did not think that Garda Treacy had fallen into error and they both went to the office of Insp Farrell to seek guidance.

⁴⁷⁹ The tribunal has considered all of Supt Noreen McBrien’s legal submissions on this issue and what follows is a summary of the same.

⁴⁸⁰ The tribunal has considered all of Insp Nicholas Farrell’s legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

⁴⁸¹ The tribunal has considered all of Sgt Andrew Haran’s legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

⁴⁸² The tribunal has considered all of Sgt Sandra Keane’s legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

- that Sgt Keane recalled the advice from Insp Farrell to keep the two matters, namely, the complaint about a criminal offence and the references to Ms B, separate and that Ms O’Neill should be invited to make a complaint to the superintendent or to GSOC in respect of the latter.
- that insofar as there was any dispute between the evidence of Ms O’Neill and Sgt Keane as to the advice given to Ms O’Neill, it was relevant that Ms O’Neill agreed with counsel in evidence that she outlined in her statement *‘that you do talk a lot and that you do forget a lot of what you say’*.

Garda Stephanie Treacy submitted as follows:⁴⁸³

- that Garda Treacy felt uncomfortable about what Ms O’Neill told her and sought advice from senior members.
- that she informed Ms O’Neill about the possibility of contacting GSOC and that this is supported by the evidence of Sgt Keane.
- that her involvement in Issue 3 ceased with her report dated 29th May 2014.
- that, for the avoidance of any doubt, her report did not purport to be an account of what Garda Keogh did in fact say to Ms O’Neill. It was no more than a note of what Ms O’Neill told Garda Treacy that Garda Keogh had told her.
- that Garda Keogh repeatedly stated that he did not make any allegation of wrongdoing against Garda Treacy.
- that Garda Keogh accepted that the note prepared by Garda Treacy was her *‘recollection of events, nothing more, nothing less’*. Consequently, she was not accountable for the manner in which her note may have been subsequently interpreted by management.
- that there was a conflict between the evidence of Garda Treacy and Ms O’Neill in two respects. First, Ms O’Neill gave a different account as to what precisely she told Garda Treacy about Ms B. Secondly, Ms O’Neill did not accept that she was told that she could make a complaint to GSOC. The tribunal was respectfully invited to prefer the evidence of Garda Treacy because *inter alia* it was repeatedly put to Ms O’Neill in cross-examination that she simply was not sure of the details of what she actually stated to Garda Treacy.
- that there was no complaint that Garda Treacy behaved in a manner that was improper and she acted with propriety at all times.

Garda Tom Higgins submitted as follows:⁴⁸⁴

- that D/Sgt Curley’s report to the superintendent for Athlone dated 30th May 2014 setting out that he *‘explained to her that I wished to record a witness statement from her outlining what she was told by Garda Keogh’* corresponds with his evidence to the tribunal on this issue.

⁴⁸³ The tribunal has considered all of Garda Stephanie Treacy’s legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 32-37

⁴⁸⁴ The tribunal has considered all of Garda Thomas Higgins’ legal submissions on this issue and what follows is a summary of the same.

- that Ms O'Neill, in her statement, volunteered the fact that it was D/Sgt Curley who was *'doing the all the talking'* and despite this, Ms O'Neill in her evidence to the tribunal stated that it was Garda Higgins who had asked her about Garda Keogh.
- that in his statement to the tribunal, Garda Higgins stated that he did not make any requests of Olivia O'Neill during the meeting and the entire conversation that took place was between D/Sgt Curley and Ms O'Neill, a position maintained consistently by him in his evidence to the tribunal.
- that Ms O'Neill's account amounts to an assertion that Garda Higgins, as the person who *'done a lot of the talking'*, was trying to have her make a statement about misconduct on the part of Garda Keogh, was at odds with her own prior written statement to the tribunal.
- that Ms O'Neill's account of who *'done a lot of the talking'* on 30th May 2014 was inconsistent, unreliable and ought not to be preferred by the tribunal.

Discussion

C/Supt Curran's role was that he received the report of the encounter between Garda Treacy and Ms O'Neill, he directed the approach seeking a statement and requested a written statement from Garda Keogh, he reported upwards to higher garda management and ultimately, he allowed the matter to expire.

Certain factual issues arise on the statements and evidence, which will be addressed in turn:

1. Did Olivia O'Neill say what Garda Treacy noted her as saying?
2. What did Garda Keogh say to Ms O'Neill in the public office of Athlone Garda Station?
3. Did gardaí take a statement from Ms O'Neill's daughter or did they confine their attention to a complaint against Garda Keogh?
4. Did gardaí make more than one attempt to get Ms O'Neill to make a statement?

In respect of the conflict of evidence between Ms Olivia O'Neill, Garda Treacy and other officers, some comments as to reliability are appropriate. It is very clear that Ms O'Neill did not want to have anything to do with disputes between gardaí in Athlone. She did indeed have a view about the relationship between Ms B and Garda A and the influence that went with that. She said or implied that Ms B had a privileged position amounting effectively to immunity or invulnerability to the criminal process. She had a jaundiced view of the prospects that she and her daughter had of achieving a successful outcome of a complaint to the gardaí about the behaviour of Ms B.

In her evidence to the tribunal, Olivia O'Neill denied saying to Garda Treacy what she is reported as having said. However, her evidence cannot be considered reliable in regard to these events. It is only fair in the first place to understand the unenviable position in which Ms O'Neill found herself. She and her family live close to other relevant parties and there are tensions that can break out into violence. The gardaí are regular visitors to the area in the course of their work. Ms O'Neill has no desire to take sides in a dispute between gardaí in Athlone or to be seen to do so. She does have a view about the privileges that were allegedly enjoyed by a person because of their relationship with gardaí but she is also conscious of the need for caution and discretion.

It is clear that Ms O'Neill sought to say as little as possible to the tribunal. She found it hard to understand why such an inquiry could have been established. Her answers to non-leading questions were bland and uninformative, even in respect of matters that were not in dispute. For example, she said that Garda Keogh told her and her daughter to tell everything about the assault that had brought them to the station. But Garda Keogh's own freely acknowledged '*name names and name Guards*' comment could only have been said in respect of alleged Garda misconduct of some kind.

When presented with statements and evidence of other witnesses, Ms O'Neill was able to agree but she was generally uncertain of recollection about issues of detail or circumstance that would reassure the tribunal that she actually recalled the matter or, if she did, that she was willing to give a full account.

As between the evidence of Garda Treacy and Ms O'Neill, it is clear that the former is to be preferred in respect of reliability, accuracy and cogency. Ms O'Neill did not wilfully mislead the tribunal but her focus was on a different object, namely, she was endeavouring to steer a course between a number of perils that she saw as threatening her family and herself. She was in a difficult position. She claimed some diplomatic lapses of memory and misremembered other events but overall her evidence cannot withstand scrutiny or be preferred in case of conflict.

Obviously, the principal question of fact concerning Ms O'Neill is whether she said to Garda Treacy what Garda Treacy reported her as saying. There is no reason to doubt the evidence of Garda Treacy. It is significant that Garda Treacy interrupted the statement to seek advice from her sergeant and inspector. The tribunal is satisfied that Olivia O'Neill actually said what Garda Treacy recorded. Garda Treacy had no interest or reason to do otherwise than to record the statements accurately and her conduct in seeking advice from more senior gardaí is coherent and confirmatory, as indeed is what Garda Keogh said about his own encounter with Ms O'Neill.

On the second question as to what Garda Keogh said, the evidence of Garda Keogh is clear and consistent and, insofar as some statements of Ms O'Neill differ, his account must be preferred. Garda Keogh maintained from the beginning that she referred to Ms B doing favours for a guard and that he told her to '*name names and name Guards*.' This has been his position from this first conversation with Supt McBrien and his written account for C/Supt Curran in June 2014 and there is no reason to doubt it. His is the more reliable account, which is not to say that Ms O'Neill is untruthful. It is possible that she may have said things in the heat of the moment that she came to regret later as being imprudent and potentially troublesome. Two days after speaking to Garda Treacy, Ms O'Neill was diplomatically unable to remember what she had said to Garda Keogh. The evidence of Garda Keogh is preferred as to what was said in the public office on 28th May 2014.

It is clear that the gardaí took a statement from Ms O'Neill's daughter on 28th May 2014, contrary to what Garda Keogh alleged as evidence of malicious motive towards him. Garda Keogh also took and witnessed a statement from another daughter on the following day, 29th May 2014.

The evidence, including that of Ms O'Neill, is that the gardaí, in the person of D/Sgt Curley and Garda Higgins, met Ms O'Neill near her home and asked her to make a statement about what Garda Keogh said to her in the station on 28th May 2014. Ms O'Neill was confused in her recollection as to which of the officers spoke to her and the tribunal is satisfied that the gardaí

are correct in saying it was D/Sgt Curley, who had been directed to perform this task by the chief superintendent. It is correct, as Ms O'Neill and Garda Keogh maintained, that the officer asking the questions was concerned with what Garda Keogh had said and not with the assault allegation that was the occasion of the attendance at the station. The fact is that statements had been made about the assault and the issue that exercised C/Supt Curran was Garda Treacy's report as to what Ms O'Neill attributed to Garda Keogh.

There was only one garda request to Ms O'Neill for such a statement. On this point Garda Keogh was incorrect. Having said that, it is not clear why two visits for the purpose would be evidence of hostile intent amounting to targeting. Ms O'Neill's claim that these gardaí refused on the occasion to take a statement from her about the assault allegation does not have coherence with the other evidence as to statements.

Garda Keogh's submissions place reliance on a conflict of evidence arising from Ms O'Neill's denial that there was any reference to an Ombudsman, insisting that *'a guard never told me that in my life, go to an Ombudsman. That's lies now'*.⁴⁸⁵ The unspoken argument is that this conflict undermines the evidence of Garda Treacy and Sgt Keane but there is no rational basis for that. The advice from Insp Farrell was reasonable and there is no reason to think that he did not give it. Similarly, there is no reason to suppose that Garda Treacy and Sgt Keane would not have passed on the advice. But whether they referred to the Garda Ombudsman Commission or the Garda Ombudsman or GSOC, by which the body is better known, the information would have been the same. It is interesting in this connection that Garda Keogh's own evidence includes advice to Ms O'Neill about going to GSOC. This particular conflict is entirely incidental, in any event. And the force of the assertion by Ms O'Neill cannot in itself furnish reliability.

It is submitted by Garda Keogh that Insp Farrell should have approached Garda Keogh directly to ask him what he had said to Ms O'Neill; if he had done so, Garda Keogh would have been in a position to give his version of the conversation that Ms O'Neill had described to Garda Treacy. However, the situation as it presented itself to Garda Treacy, Sgt Keane and Insp Farrell was necessarily and properly a matter of serious concern, assuming that what Ms O'Neill said about what Garda Keogh had said to her was correct. Whether there was a misunderstanding or an explanation was another matter. It was not appropriate for Insp Farrell to deal with the report informally by checking with Garda Keogh. If Insp Farrell had done so, Garda Keogh could legitimately have protested that he was invited to respond on the spot to what might turn out to be a serious accusation against him. Irrespective of his rights, however, there was the public interest in having the question formally and properly dealt with.

Insp Farrell reported the matter to C/Supt Curran, which was a reasonable and appropriate response. It is not of any particular importance just what category of garda wrongdoing Ms O'Neill's reported conversation represented in Insp Farrell's mind. In other words, whether he thought it might be coaching or the revelation of improper or inappropriate information is not important. The point is that it was reasonable for Garda Treacy, Sgt Keane and Insp Farrell to realise that the statement of Ms O'Neill was a serious matter that warranted being reported to the senior officer in the garda division.

Insp Farrell's function was to report the circumstances as he knew them to the chief superintendent. It was not for him to undertake and conclude an investigation by interviewing Garda Keogh. His report might reflect adversely on Garda Keogh but that was because of what

⁴⁸⁵ Tribunal Transcripts, Day 119, p. 24, Evidence of Ms Olivia O'Neill

Ms O'Neill had told Garda Treacy, according to her report. There was accordingly an allegation, in effect, of some kind of inappropriate behaviour by Garda Keogh. It called for investigation but Insp Farrell was not obliged to undertake that there and then. He reported up to his superior and C/Supt Curran directed D/Sgt Curley to approach Ms O'Neill to get a statement about her interaction with Garda Keogh. They wanted a statement from her describing what Garda Keogh had said to her. It is correct that they did not seek a statement about the alleged assault because they were not investigating that at the time.

It is also submitted by Garda Keogh that it was unfair to bundle up this complaint with Issues 1, 2 and 4 and that, in so doing, it had the effect of causing anxiety and confusion to Garda Keogh.

Issue 3 began with the visit of Ms O'Neill to Athlone Garda Station on 28th May 2014. Some ten days before that, on 18th May 2014, Garda Keogh made the PULSE query which is Issue 2 and the PULSE entry, which is Issue 1. Issue 2 had not yet arisen as a matter of enquiry because Garda A did not question that activity by Garda Keogh until 24th September 2014. The PULSE entry was the subject of enquiry by local Athlone garda management but it has to be remembered that the decision to make the entry was exclusively that of Garda Keogh himself. Issue 4 arose soon afterwards and would undoubtedly have added an element of anxiety for Garda Keogh, although it is not obvious that it would have caused confusion. Issues 3 and 4 do have some similarity but they concern different persons and events. The fact that they happened to arise together is not something that can be attributed to any decision made by senior garda officers in Athlone.

The final submission by Garda Keogh is that Garda Treacy misunderstood or misconstrued what Ms O'Neill said to her. This is based on evidence of Ms O'Neill to the effect that Garda Keogh just told her and her daughter to put everything into their statement about the allegation of threats to her daughter:

He just told us to make sure everything was put into our statement, our statement about the allegation, on threatening my daughter, you know. The dispute was going on in the estate for a while. The Guards were well aware of that, you know. That was it.⁴⁸⁶

The problem with relying on this evidence is that it actually has nothing to do with what happened between Ms O'Neill and Garda Treacy. Secondly, it is actually in conflict with the evidence of Garda Keogh himself. Thirdly, 'name names and name Guards' can only be a response to something said about wrongdoing or misconduct by gardaí. Fourthly, there are the problems of accuracy of recollection in the case of Ms O'Neill that are described elsewhere.

It seems that any misunderstanding that occurred in this case was not that of Garda Treacy in regard to what Ms O'Neill said but it is entirely possible that Ms O'Neill misunderstood what Garda Keogh said.

Conclusion

C/Supt Curran said that the matter he focused on was the allegation of garda criminality and not the alleged coaching by Garda Keogh. However, the situation in respect of the allegations of targeting or discrediting would not change if instead C/Supt Curran's principal interest was that a garda was behaving improperly by coaching a witness to say things he wanted to be reported and not allegations of garda criminality.

⁴⁸⁶ Tribunal Transcripts, Day 119, p. 21, Evidence of Ms Olivia O'Neill

The precise nature of this senior officer’s focus is not a decisive feature in reaching a conclusion on targeting or discrediting. One way or another the matter reported in this case had to be investigated as far as it could be and the obvious first step was to seek a statement from Olivia O’Neill as to what she said happened in the public office of Athlone Garda Station in her encounter with Garda Keogh. Another step was to ask Garda Keogh what happened. Both approaches were made. The enquiry came to an end when Ms O’Neill would not make a statement and Garda Keogh gave his explanation.

Garda Keogh made factual errors in his complaint and in his evidence on this issue, which no doubt added to his suspicions but other than affecting his attitude they are not relevant evidence of targeting or discrediting. One point was his claim that the gardaí did not take a statement about the alleged assault and focused only on the conversation between Ms O’Neill and him, but that proved to be incorrect. Another was his suggestion about the number of times the gardaí approached Ms O’Neill seeking a statement.

Garda Keogh gave a written account and the matter petered out in the absence of a statement from Olivia O’Neill to confirm or deny what Garda Treacy reported her as saying.

C/Supt Curran did not initiate any action in respect of Garda Keogh but reacted reasonably and appropriately to a report that was presented to him for decision.

The events arising from the visit of Ms O’Neill to Athlone Garda Station do not amount to a case of targeting or discrediting of Garda Keogh by officers of superintendent rank or higher, nor is there any evidence of connection with the protected disclosure.

CHAPTER 8

ISSUE 4: THE COMPLAINT MADE BY GARDA NICHOLAS KEOGH IN RELATION TO THE INVESTIGATION INTO THE REPORT OF GARDA AIDAN LYONS CONCERNING MR LIAM MCHUGH ON 31ST MAY 2014

The Facts

On 2nd June 2014, Garda Aidan Lyons sent an email to Detective Sergeant Eamon Curley as follows:

Re: Liam McHugh ...

With reference to the above I wish to report that on the 31.05.14 at approximately 9pm I was approached by Liam McHugh on Bastion Street, Athlone.

Mr. McHugh brought up the general topic of 'whistleblowers' and we had a general conversation for a few minutes during which he informed me as follows;

"The bald Guard came over to me the other day and asked if I could remember the time I was searched by three Guards and €800 was stolen from me and spent drinking in the Castle (pub), the bookies and the casino, he said if I wanted to make a complaint about it then he would back me up."

I asked Liam McHugh if he was alleging that this had actually happened and his answer was, "no, not at all, I am not going bringing trouble on myself".

I asked him if he was referring to Garda Nick Keogh and he confirmed that he was. He went on to say;

"He told me he was there himself when it happened and he would back me up if I wanted to make a complaint."

Forwarded for your information please.⁴⁸⁷

This was sent to D/Sgt Curley at 20:28 hrs that evening, who forwarded it to Inspector Nicholas Farrell, the acting district officer, the next day at 08:10 hrs.⁴⁸⁸ Garda Lyons was not asked at any stage about any aspect of his report and no criminal investigation file of any type was opened.

Garda Lyons' report was emailed by Insp Farrell to Chief Superintendent Mark Curran at 13:01 hrs on 3rd June 2014.⁴⁸⁹ This email also referred to the previous reports sent in relation to the PULSE entry on 18th May 2014 and the information divulged by Olivia O'Neill to Garda Treacy on 28th May 2014.

Garda Keogh made an entry in his diary for 31st May 2014 which recorded:

Liam MH meet Guard 9p.m. alleges S23 €800 3 cops Castle.⁴⁹⁰

Garda Keogh met Assistant Commissioner Dónall Ó Cualáin, accompanied by Detective Superintendent Declan Mulcahy, on 7th June 2014 for the first time in connection with his protected disclosure. D/Supt Mulcahy's interview notes for that date refer, *inter alia*, to Mr Liam

⁴⁸⁷ Tribunal Documents, Email from Garda Aidan Lyons to D/Sgt Eamon Curley, dated 2nd June 2014, p. 1029

⁴⁸⁸ Tribunal Documents, Email from D/Sgt Eamon Curley to Insp Nicholas Farrell, dated 3rd June 2014, p. 1212

⁴⁸⁹ Tribunal Documents, Email from Insp Nicholas Farrell to C/Supt Mark Curran, dated 3rd June 2014, p. 1198

⁴⁹⁰ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 31st May 2014, p. 13258

McHugh and he recorded that *Money missing McHugh under pressure €4,500 missing*.⁴⁹¹ Garda Keogh's diary note for the same meeting noted A/C Ó Cualáin as saying that *'we are only dealing with what's in Affidavit'* and made no reference to Liam McHugh.⁴⁹²

Superintendent Noreen McBrien, on 9th June 2014, carried out a PULSE check on Liam McHugh. She also directed D/Sgt Curley to ascertain if Mr McHugh was willing to make a statement about this incident and for him to arrange to have such a statement taken if forthcoming.⁴⁹³

On the same date, she met Garda Keogh and discussed a range of issues, including Liam McHugh. She made a note⁴⁹⁴ recording Garda Keogh as saying that, apart from general chit chat, he hadn't had a conversation with Liam McHugh in about two years. She did not inform him that they were investigating a complaint against him, as no complaint had been made. She noted that she informed him that she was addressing issues that had been brought to her attention as district officer and that it was her duty to address such issues and that he should not misunderstand this. He said that he understood. She noted his comment that he felt he was being set up in relation to this incident.

In a reference to this meeting and in his own diary for 9th June 2014, Garda Keogh noted *'9.10 meet with Supt McBrien. Conversation informed Me that another complaint LMH to be approached to take statements'*.⁴⁹⁵

Supt McBrien reported her meeting with Garda Keogh to C/Supt Curran by a report on 9th June 2014 recording, *inter alia*, Garda Keogh's assertion that he had not had a conversation with Liam McHugh in about two years.⁴⁹⁶ C/Supt Curran responded to Supt McBrien on 10th June 2014 saying she should arrange for a statement to be taken from Liam McHugh. He observed that all of the matters as they relate to Garda Keogh should be dealt with collectively so as to ensure that his rights under the confidential reporting mechanism are not interfered with. He also stated that:

*[h]owever, in the light of the comments attributed to Garda Keogh by Mr. McHugh and those alleged by Ms. O'Neill in her conversation with Garda Treacy, I now require your firm views and recommendations regarding these matters.*⁴⁹⁷

Garda Keogh made a note of a call from Garda Fergal Greene at 22:35 hrs on 10th June 2014:

*He told me LMH approached him to say he is under Pressure to make a complaint against a garda re: theft of €4,500. didn't know about my comp.*⁴⁹⁸

On 23rd June 2014, Supt McBrien sent a request to D/Sgt Curley asking whether a statement had been taken from Mr McHugh and, if a statement had not yet been taken, to outline the attempts which had been made to ascertain this statement.⁴⁹⁹

⁴⁹¹ Tribunal Documents, Notes of D/Supt Declan Mulcahy, dated 7th June 2014, p. 3936 at p. 3942

⁴⁹² Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 7th June 2014, p. 13259

⁴⁹³ Tribunal Documents, Letter from Supt Noreen McBrien to D/Sgt Eamon Curley, dated 9th June 2014, p. 1325

⁴⁹⁴ Tribunal Documents, Letter from Supt Noreen McBrien to C/Supt Fergus Healy, dated 13th February 2017, p. 1253 at p. 1255; Statement of Supt Noreen McBrien, p. 823 at pp. 829-830

⁴⁹⁵ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 9th June 2014, p. 432

⁴⁹⁶ Tribunal Documents, Letter from Supt Noreen McBrien to C/Supt Mark Curran, dated 9th June 2014, p. 1299 at p. 1300

⁴⁹⁷ Tribunal Documents, Letter from C/Supt Mark Curran to Supt Noreen McBrien, dated 10th June 2014, p. 1214

⁴⁹⁸ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 10th June 2014, p. 432

⁴⁹⁹ Tribunal Documents, Letter from Supt Noreen McBrien to D/Sgt Eamon Curley, dated 23rd June 2014, p. 1205

On 8th July 2014, Inspector Aidan Minnock wrote to Supt McBrien expressing his view that the relationship between local Athlone gardaí and Liam McHugh and among the gardaí themselves made it inappropriate for gardaí from Athlone to interview Liam McHugh. He referred to Detective Inspector Michael Coppinger, the external appointed officer in the criminal investigation, stating that he or his investigation team were the most appropriate persons to interview Mr McHugh. He said that he would obtain a mobile number for Mr McHugh, which would assist the investigation team to arrange a meeting with him.⁵⁰⁰

Supt McBrien met Garda Keogh on 8th July 2014. She made a note⁵⁰¹ that he informed her that he was meeting with the confidential recipient, Judge McMahan, on the following Monday and that he was going to inform him about the investigations in relation to Liam McHugh and Olivia O'Neill. She informed him that she had requested a statement from Mr McHugh but had not got it yet and said that she was considering asking the Galway team, i.e. D/Supt Declan Mulcahy, to organise to have it taken to keep everything impartial. She recorded that Garda Keogh thought that this was a good idea. Garda Keogh went on to say that he trusted D/Sgt Curley and that he wouldn't mind him taking the statement if he didn't object. Supt McBrien informed him that D/Sgt Curley had personal knowledge of Mr McHugh and this was not really suitable. She informed him that the three incidents may require separate investigations. She also recorded that, as he was going to discuss them with the confidential recipient, it might be better to see what happened in that regard.

Garda Keogh noted the following in his own diary for 8th July 2014:

*9pm met with Supt who informed me she is sending people out again to try and get statements from OON + LMH. She under pressure. Told her I was meeting Judge Monday re; this and I know who was behind it. She didn't reply.*⁵⁰²

Later the same day, D/Sgt Curley wrote to Supt McBrien.⁵⁰³ He reported that he had requested personnel within the detective office to obtain a statement from Liam McHugh and that he had specifically tasked Garda Tom Higgins with this role. He said that Garda Higgins had met with Mr McHugh and invited him to make a statement in relation to the incident and that Mr McHugh had refused to consent to provide a witness statement at that time, but undertook to think about it and maybe make himself available to provide such a statement in the future. D/Sgt Curley expressed the view that, due to the fact that the matter under enquiry related to members within Athlone Garda Station, it might be prudent for a member other than from Athlone Garda Station to pursue Liam McHugh further for a statement. He recommended that some other member of sergeant or inspector rank be appointed to complete this task. His report had commenced by noting the receipt of attached correspondence and that prior to same being forwarded to him he had suggested that he may not be the most suitable person to pursue a statement as he was personally known to Liam McHugh.⁵⁰⁴

On 9th July 2014, Supt McBrien wrote to D/Supt Mulcahy attaching the report of Garda Lyons and referring to D/Sgt Curley's view that he would not be the most suitable person to take the statement. She suggested that, in the light of Insp Minnock and D/Sgt Curley's views, with which she agreed, it might be more appropriate and impartial if someone from outside the district approached Mr McHugh to ascertain if he was willing to make a statement. She therefore

⁵⁰⁰ Tribunal Documents, Letter from Insp Aidan Minnock to Supt Noreen McBrien, dated 8th July 2014, p. 1202

⁵⁰¹ Tribunal Documents, Note of Supt Noreen McBrien, dated, 8th July 2014, pp. 1012-1013

⁵⁰² Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 8th July 2014, p. 434

⁵⁰³ Tribunal Documents, Letter from D/Sgt Eamon Curley to Supt Noreen McBrien, dated 9th July 2014, pp. 1203-1204

⁵⁰⁴ Tribunal Documents, Letter from D/Sgt Eamon Curley to Supt Noreen McBrien, dated 9th July 2014, pp. 1203-1204

enquired whether it would be possible for D/Insp Coppinger to arrange to interview Mr McHugh in that regard and stated that Insp Minnock would assist in arranging such a meeting.⁵⁰⁵ She also informed D/Supt Mulcahy that Garda Keogh was aware that she knew about this allegation and that he had informed her that he would be meeting the confidential recipient the following Monday and would be making him aware of it.

C/Supt Curran also wrote on 9th July 2014 to Supt McBrien, following up on his earlier correspondence and noting that no reply had been received by him in respect of the queries raised and seeking a response and her *'firm views'* and recommendations concerning all of the matters as disclosed in relation to Garda Keogh.⁵⁰⁶

A/C Ó Cualáin had a meeting with D/Supt Mulcahy on 14th July 2014 and they were both of the view that, given that these were allegations being made about the confidential reporter, it would not be appropriate for the assistant commissioner to include them as part of his investigation.⁵⁰⁷ On 16th July 2014 he phoned Garda Keogh and informed him of his view on the Olivia O'Neill and Liam McHugh matters and that it would be better if someone independent of the investigation were to carry out the enquiries. Garda Keogh stated he was happy with this position.⁵⁰⁸

D/Supt Mulcahy wrote back to Supt McBrien on 15th July 2014⁵⁰⁹ stating that the issues raised by Mr McHugh regarding Garda Keogh may require further investigation. Further, that as the current investigation pertaining to Garda Keogh was investigating allegations outlined by the member himself, and the report of Garda Lyons concerned allegations made against Garda Keogh, he said that it may be prudent for an independent investigation to be conducted to progress these matters. He suggested that perhaps the file could be forwarded to the chief superintendent in the Westmeath Division to determine the most appropriate and effective manner to investigate the allegations.

Supt McBrien reported back to C/Supt Curran on 16th July 2014.⁵¹⁰ This dealt, *inter alia*, with the intelligence entry, the report relating to Olivia O'Neill, Garda Keogh's welfare and the Liam McHugh incident. Supt McBrien briefly summarised the position to date and expressed the view that it would be more appropriate and impartial for someone outside the district to approach Mr McHugh to ascertain if he was willing to make a statement. She also reported that she had met with D/Supt Mulcahy and D/Insp Coppinger and asked them if they were investigating these incidents and they advised her that they were not. She concluded by expressing her opinion that the incidents warranted further investigation. She stated that she was mindful that legislation, labour law and garda policies could impact on any decision made in this regard and noted that Garda Keogh was engaging with the confidential recipient and was subject to the benefit of the Protected Disclosures Act, 2014. She expressed her belief that the view of Legal Affairs and Human Resource Management should be sought to ensure that a decision was not made in isolation.

Garda Keogh noted in his diary for 16th July 2014 that Supt McBrien called him and asked him about his last meeting with Liam McHugh and Olivia O'Neill.⁵¹¹ This entry also recorded

⁵⁰⁵ Tribunal Documents, Letter from Supt Noreen McBrien to D/Supt Declan Mulcahy, dated 9th July 2014, p. 1201

⁵⁰⁶ Tribunal Documents, Letter from C/Supt Mark Curran to Supt Noreen McBrien, dated 9th July 2014, p. 1297

⁵⁰⁷ Tribunal Documents, Statement of Former Acting Commissioner Dónall Ó Cualáin, p. 3957 at p. 3959

⁵⁰⁸ Tribunal Documents, Statement of Former Acting Commissioner Dónall Ó Cualáin, p. 3957 at p. 3959

⁵⁰⁹ Tribunal Documents, Letter from D/Supt Declan Mulcahy to Supt Noreen McBrien, dated 15th July 2014, p. 1191

⁵¹⁰ Tribunal Documents, Letter from Supt Noreen McBrien to C/Supt Mark Curran, dated 16th July 2014, p. 1186

⁵¹¹ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 16th July 2014, p. 13265

that A/C Ó Cualáin phoned him to say that they were not dealing with these complaints. An entry on the following day noted that Garda Keogh had a call with the confidential recipient and informed him, *inter alia*, that the ‘chief in Mullingar’ was trying to mount two more investigations into two complaints and that the confidential recipient said that he would contact the Garda Commissioner. On the same page, Garda Keogh noted that:

*19/7/14 Church Street on beat Met LMH I heard they ran you out of town I asked about when I last saw him 1–2 years informed me approached re: statement. Garda A and I eat at same table.*⁵¹²

Following this, Garda Keogh sent a text to Supt McBrien stating that he was on the beat and Mr McHugh had come over to him.⁵¹³

C/Supt Curran wrote to Supt McBrien on 21st July 2014 referring to a number of matters including the Liam McHugh issue and enquiring whether it had been established with Garda Keogh whether or not he had a conversation with Liam McHugh in relation to the matters outlined in the report of Garda Lyons. He enquired whether ‘Garda Keogh [had] been asked to comment on the veracity of the information contained within the report of Garda Lyons?’ He requested that the matter be addressed immediately and a report forwarded to this office at the conclusion of Supt McBrien’s next meeting with Garda Keogh.⁵¹⁴

On 23rd July 2014, Supt McBrien spoke to Garda Keogh by telephone.⁵¹⁵ She offered to meet him but it did not suit him. Garda Keogh recorded in his diary that Supt McBrien told him that she was sending down papers, one relating to the intelligence entry and another relating to Liam McHugh.⁵¹⁶ She subsequently sent him, on that day, a request for a report outlining his contact with Liam McHugh over the previous three months and the nature of such interaction.⁵¹⁷

Garda Keogh responded to this request and furnished a handwritten explanation for the attention of the superintendent on 27th July 2014:

*I wish to report I met Liam McHugh at 21.50 19.7.14 Church St, Athlone while on the beat prior to that I had no contact or dealings with Liam McHugh over the past 3 months.*⁵¹⁸

Supt McBrien phoned Garda Keogh again on 30th July 2014 to inform him that she wanted to see him the following Tuesday, 5th of August 2014, and to ask him questions in relation to Liam McHugh.⁵¹⁹

On 5th August 2014, Supt McBrien met Garda Keogh in her office. She outlined the account of events in Garda Lyons’s report dated 2nd June 2014 without disclosing who the author of the report was. She recorded in her notes that Garda Keogh stated that he knew nothing about the allegation and that, if he had, he would have put it in his complaint to the confidential recipient. Supt McBrien further recorded that, apart from his meeting on the beat with Mr McHugh on 19th July 2014, Garda Keogh hadn’t met or spoken to him for a long time.⁵²⁰ She recorded that:

⁵¹² Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 19th July 2014, p. 13265

⁵¹³ Tribunal Documents, Text message from Garda Nicholas Keogh to Supt Noreen McBrien, dated 19th July 2014, p. 1316

⁵¹⁴ Tribunal Documents, Letter from C/Supt Mark Curran to Supt Noreen McBrien, dated 21st July 2014, p. 1886

⁵¹⁵ Tribunal Documents, Letter from Supt Noreen McBrien to C/Supt Fergus Healy, dated 13th February 2014, p. 1253 at p. 1256

⁵¹⁶ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 23rd July 2014, p. 13266

⁵¹⁷ Tribunal Documents, Letter from Supt Noreen McBrien to Garda Nicholas Keogh, dated 23rd July 2014, p. 1261

⁵¹⁸ Tribunal Documents, Handwritten letter from Garda Nicholas Keogh to Supt Noreen McBrien, dated 27th July 2014, p. 8712

⁵¹⁹ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 30th July 2014, p. 13267

⁵²⁰ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 837

I met with Garda Keogh, I read out allegations, he indicated that he knew nothing about it. He said the meeting with Liam McHugh was not arranged. I read the notes of this meeting back to him. I invited him to make any changes or alterations he considered necessary but he does not wish to do so. He also did not wish to sign the notes.⁵²¹

In Garda Keogh's diary, the entry relating to the meeting of 5th August 2014 is followed by a note that he sent a letter to Mr Simon O'Brien at GSOC.⁵²²

Supt McBrien reported on the meeting to C/Supt Curran on 5th August 2014.⁵²³ This report, which also dealt with the intelligence entry, concluded by stating:

his assertion that he had not been in contact with Liam McHugh is consistent with his conversation with me on the 9th of June 2014 which is covered in my correspondence to you on the same date.

Although C/Supt Curran and Supt McBrien envisaged that this matter might be sent for independent examination and investigation, that did not happen.

On 11th December 2014, Garda Keogh met D/Supt Mulcahy and D/Insp Coppinger at Ballinasloe Garda Station and informed them that he felt he was being harassed by senior management at Mullingar due to the following reasons:

- (a) a check he had previously done on the PULSE system;
- (b) intelligence he had placed on the PULSE system; and
- (c) two alleged complaints by Ms Olivia O'Neill and Mr Liam McHugh.

He also informed them that he had lodged a complaint with GSOC concerning alleged harassment and that he was of the understanding that GSOC would investigate same on the conclusion of the Ó Cualáin investigation.⁵²⁴

Supt McBrien met Garda Keogh on 4th February 2015 and discussed a range of issues. According to Supt McBrien's notes, Garda Keogh mentioned the McHugh and O'Neill files and said that he knew she was not behind them but that she should be careful because they were part of a GSOC investigation. He said that there were 'dark forces' at work in An Garda Síochána.⁵²⁵

In a phone call with D/Supt Mulcahy on 5th of March 2015, Garda Keogh stated that his main fear was of the two gardaí who went to McHugh and made the allegations about him, which he described as 'a pile of shite'. He presumed that they were Garda A and another garda.⁵²⁶

His allegations in relation to the Mr McHugh issue were contained in his harassment index,⁵²⁷ a copy of which he gave to Dr Oghenov Oghuvbu, Specialist Occupational Physician, Occupational Health Department of An Garda Síochána, in May 2016,⁵²⁸ and to the protected disclosures manager of An Garda Síochána, Chief Superintendent Anthony McLoughlin, in June 2016.

⁵²¹ Tribunal Documents, Letter from Supt Noreen McBrien to C/Supt Fergus Healy, dated 13th February 2014, p. 1253 at p. 1256

⁵²² Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 5th August 2014, p. 13268

⁵²³ Tribunal Documents, Letter from Supt Noreen McBrien to C/Supt Mark Curran, dated 5th August 2014, p. 1157 at p. 1158

⁵²⁴ Tribunal Documents, Letter from D/Supt Declan Mulcahy to Assistant Commissioner Western Region, dated 12th December 2014, p. 8721

⁵²⁵ Tribunal Documents, Notes of Supt Noreen McBrien, dated 4th February 2015, p. 1768 at p. 1773

⁵²⁶ Tribunal Documents, Statement of D/Supt Declan Mulcahy, p. 3900 at pp. 3912 and 3924

⁵²⁷ Tribunal Documents, Garda Nicholas Keogh's Harassment Index, p. 3260

⁵²⁸ Tribunal Documents, OHP Consultation Note of Dr Oghenov Oghuvbu, dated 19th May 2016, p. 3795

In his evidence to the tribunal, C/Supt Curran referred to the report from Garda Keogh to Supt McBrien on 27th July 2014, in which he said: *I had no contact or dealings with Liam McHugh over the past 3 months*.⁵²⁹ C/Supt Curran said:

*... he is saying it's not happening, this is her methodology in talking to him at the time. He then responds, gives a report saying he hasn't met him in three months. I was tying it down to three months. I just wanted to know that from him, because he said two years. I said, can we tie it down to three months. He gave it in writing. She is then saying, he's adamant in this report, he knows nothing about and he hasn't spoken to him for a long time. So she goes through that. He doesn't know anything about any meeting. Right. Then she sends it to up me. I leave it rest there.*⁵³⁰

As outlined above, the report came to him on 5th August 2014 with the superintendent's note: *his assertion that he has not been in contact with Liam McHugh is consistent with his conversation with me on the 9th June, which is covered in my correspondence to you on the same date*.⁵³¹ C/Supt Curran saw that as the end of the matter and he told the tribunal that:

*... I believe Garda Keogh on this. If you ask me, I don't believe there was an interaction with Liam McHugh.*⁵³²

C/Supt Curran decided to let the matter rest and not to proceed further but he did not notify Garda Keogh of his decision. C/Supt Curran gave evidence that:

*... well, I don't think he was, I let the matter rest at that time. But if he didn't do it, he didn't do it.*⁵³³

Complaint made by Garda Nicholas Keogh

It is Garda Keogh's complaint to the tribunal that the Liam McHugh allegation was completely false:

*This allegation in relation to Liam McHugh is something in which I knew nothing about and the allegation against me is completely false. It was not just that it was untrue but further, it was false.*⁵³⁴

In his evidence, Garda Keogh said the following about the time when this allegation arose:

And what was interesting is, the night before that incident I was on nights, which would have been the 30th, the 30th of June, Garda A was in an unmarked patrol car with a different guard, another guard who himself under investigation for serious matters, separate to all this. They were driving, I was dealing with a thing to do with a fella who jumped out in front of car or whatever. But anyway, they were driving up and down, driving. I remember, I clearly remember, they just kept driving up and down, it was on the main street of Athlone. Like McHugh could have been in the crowd when people had gathered around. This fella had to be pulled off the street and there was ambulances there and whatever. But I believe that's the night that that complaint was conceived. I don't even believe there was a meeting with Garda Aidan Lyons and Liam McHugh. I don't believe there was a - maybe. I just personally don't believe there was even - I believe that night, the night before was the night that whole thing was

⁵²⁹ Tribunal Documents, Letter from Garda Keogh to Supt Noreen McBrien, dated 27th July 2014, p. 3327

⁵³⁰ Tribunal Transcripts, Day 117, p. 184, Evidence of C/Supt Mark Curran

⁵³¹ Tribunal Documents, Letter from Supt Noreen McBrien to C/Supt Mark Curran, dated 5th August 2014, p. 1989 at p. 1990

⁵³² Tribunal Transcripts, Day 117, p. 185, Evidence of C/Supt Mark Curran

⁵³³ Tribunal Transcripts, Day 117, p. 185, Evidence of C/Supt Mark Curran

⁵³⁴ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 32

*contrived. Because both the guards in the patrol car were under big investigations themselves, they couldn't commit to paper. Aidan Lyons at the time was a guard that would have been a clean pair of hands and they got him to write this nonsense.*⁵³⁵

In respect of meeting Liam McHugh, Garda Keogh told the Chairman that:

*Judge, I have already been explaining to Superintendent McBrien, I had nothing to do with Liam McHugh, I haven't seen him in ages, blab blab blab. I went on the beat – just for from recollection, I went on the beat, walked out of the station and turned right, there was only one person on the street, this was just outside the station and it was McHugh. Obviously I'm after telling the superintendent, you know, I've nothing to do with McHugh, and here I am outside the station talking to McHugh. He came over to me, you see. So obviously, which was interesting, he was asking me what was going on, that there was guards up to him to try and get a statement about me.*⁵³⁶

Garda Keogh said that garda management were trying to launch a discipline issue in relation to the matter:

*There was no formal discipline papers served on me in relation to the Liam McHugh matter. However, it is my belief that was what Garda management was attempting to do but it never got off the ground.*⁵³⁷

Garda Keogh gave evidence that he believed he was being 'set up':

*... They appear to have just investigated whether I allegedly reported or got Mr. McHugh to report something and totally seemed to bypass the fact that there was a theft which involved three members of An Garda Síochána, allegedly me being one. And there's no attempt made at all, whatsoever, to identify who the other two members of An Garda Síochána were, because that's their allegation.*⁵³⁸

*That would be the obvious thing to do. They seem to just go down whether I would have got him to do that. Totally ignore – they really do initially ignore the thing with the theft. And then, when I am interviewed by Superintendent McBrien in relation to it, I don't just say this is not true. I can't remember what way I worded it but I leave Superintendent McBrien, to my recollection, in no doubt that I was being set up here.*⁵³⁹

Garda Keogh told the tribunal that the incident was 'completely vindictive' and 'false':

In fairness, in the Olivia O'Neill matter, I think I have explained, that was kind of just a Chinese whisper thing. I think they sort of – look, on that one, it was nearly springboard into the other one, the next one. The Liam McHugh thing I absolutely always have argued was completely vindictive, it was false. They tried to set me up. Garda management rolled the two of these into one, because it is – they're coming at me there for discrediting when there is this other investigation ongoing at the time. Because if they can knock me or discredit me for that – oh a very important thing, Judge, Mr. McHugh and Ms. O'Neill had nothing to do with my main disclosure, they had absolutely nothing to do with it. If, for example – they jumped the gun, I believe on this. If they had actually used those same allegations with some of the persons in my

⁵³⁵ Tribunal Transcripts, Day 100, pp. 74-75, Evidence of Garda Nicholas Keogh

⁵³⁶ Tribunal Transcripts, Day 100, p. 73, Evidence of Garda Nicholas Keogh

⁵³⁷ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 32

⁵³⁸ Tribunal Transcripts, Day 100, p. 88, Evidence of Garda Nicholas Keogh

⁵³⁹ Tribunal Transcripts, Day 100, p. 89, Evidence of Garda Nicholas Keogh

*main disclosure, then I may be in right trouble or have a much – you know, luckily, the people they went to had nothing to do with anything.*⁵⁴⁰

He continued in his evidence that:

*... in the same week with the Olivia O'Neill thing and where they're sending people out later on, twice, and then there's this Liam McHugh thing, which I know nothing about. The way it is the whole way that this Liam McHugh thing is done, the fact that they don't even take into account that Garda Lyons is Garda A's partner, the fact they don't go down the road of looking for a statement from Garda A about his interaction with McHugh, which they were obliged to do, I would argue, the fact they don't – I don't think they write anywhere, can you find out who these other two guards are. It is solely the maddest part of this complaint, Judge, is, from my reading of what I have read, it's not whether me and three guards committed a crime, it's actually whether I told McHugh to report the crime. This is – this whole thing is bizarre. The way Garda management deal with this is also very bizarre. They deal with this in a very unusual manner, Judge, and on this one.*⁵⁴¹

On the issue of whether he complained in his grounds of appeal (as part of the bullying and harassment process) that he was set up or that the report was made up by Garda Lyons, Garda Keogh was asked the following:

- Q. Nowhere in your grounds of appeal does it state that Garda Lyons was put up to this by another garda and that the entire thing was made up, isn't that right?
- A. I accept that's probably not in the appeal. I accept. I don't know how, it's an error on my behalf. But it's from my notes. When I go back, when Superintendent McBrien shows me the actual report and I actually get to see what this allegation is about, I still don't know who wrote the report, so I go back into my own diary to try find out what was going on around the night of the 30th and the early hours of the 31st, that period of time. And, of course, I have a recollection of an incident with these other two guards that night and, as I stated, I was dealing with a thing on the – I have a clear recollection of that. So, it's not in the report, but that's perhaps an omission on my behalf.
- Q. Yes. Well, it's very clear from your grounds of appeal there that you are aware of Garda Lyons's identity at that stage, isn't that right?
- A. Yes.
- Q. Yes. But nowhere in your grounds of appeal does it doubt the veracity or the authenticity of this particular complaint. Essentially, your evidence to the Chairman is the first we have heard of that; isn't that right?
- A. In relation to the that he was put up to it?
- Q. That Garda Lyons was put up to it and that it's trumped up.
- A. Well, I have always stated it's trumped up. I have always said this is pure set up. This is – none of this is – I know nothing about this. I have always said that.
- Q. Yes. No, I accept that you have always said that.
- A. Mm.

⁵⁴⁰ Tribunal Transcripts, Day 100, p. 94, Evidence of Garda Nicholas Keogh

⁵⁴¹ Tribunal Transcripts, Day 106, p. 65, Evidence of Garda Nicholas Keogh

Q. My question to you is: Your evidence to the Chairman, and he has summarised your evidence to the Chairman on Day 100, page 86 of the transcript, that Garda Lyons was put up to this by other gardaí and that was made up. This was the first we have heard of this, isn't that right?

A. I think you're correct. But that's my belief. I have no evidence to back it up.⁵⁴²

Garda Keogh told tribunal investigators that this report by Garda Lyons gave rise to one of 'five internal investigations'⁵⁴³ commenced against him by garda management:

*Again, I perceive that some form of internal investigation was commenced into this matter. I have never been served papers in this matter, but I believe he was being asked to make allegations against me. I also had to make a report on this matter also*⁵⁴⁴

In relation to Supt McBrien, he said in his statement that:

On the 9/6/2014, I was advised by Superintendent McBrien that she was investigating another complaint against me in respect of Liam McHugh. I had no idea what this was about.

On the 8/7/2014, I was called into the Superintendent's office. Noreen McBrien informed me that she was sending persons out again to try to take a statement from Liam Mc Hugh (and also Olivia O Neill). She said that she 'had to' do it. I have a contemporaneous diary note of such.

*On the 16/7/2014, I am asked by Superintendent Mc Brien about my last meeting with Liam Mc Hugh. She also looked for information about the informant.*⁵⁴⁵

Garda Keogh also received calls from Supt McBrien on the matter, which he said caused him apprehension and distress:

*On the 23/7/2014 Superintendent Mc Brien rang me, on my rest day, to say that she was sending me 'a letter' re: Liam Mc Hugh. I replied on the 27th July 2014 in circumstances where I had no specific or adequate idea of what the matter was about. On the 30/7/2014 I received a further phone call from Superintendent Mc Brien (again on my rest day) to say that she wanted to see me about Liam Mc Hugh on the 5th August next. Again, there was no specific information in her request. The effect of such calls, on my rest days, without adequate information was to cause apprehension and distress.*⁵⁴⁶

Garda Keogh outlined that he met with Supt McBrien on 5th August 2014 and that she put this allegation to him which he said was surreal:

A report had apparently been written up by someone who stated that three guards (of whom I was apparently one) were involved in a search on Liam McHugh. The three guards according to the report stole €800 from Liam McHugh and thereafter went gambling and drinking for the day with the money. This was a completely baseless, spurious and malicious report. It was dated the 31st May 2014. It was bizarrely then alleged that I sought to coach Liam Mc Hugh to make a statement of complaint about the €800 and the alleged drinking and gambling about the two other guards. The report focussed on the allegation that I had allegedly 'coached' Liam Mc Hugh to make a complaint about such matters against the other guards. The report was bizarrely not

⁵⁴² Tribunal Transcripts, Day 105, pp. 35-37, Evidence of Garda Nicholas Keogh

⁵⁴³ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 19

⁵⁴⁴ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 20

⁵⁴⁵ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 124

⁵⁴⁶ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 125

*about the alleged €800 theft or the alleged drinking and gambling with the money. The report (with the exception of the name of the author which was withheld) was cursorily shown to me by Noreen McBrien on 5/8/2014. It was prima facie a most serious allegation in that it alleged a theft of money by three members of the force.*⁵⁴⁷

He also stated that:

*I was not shown the name of the reporting guard. I was not told the name of the other two offending guards. I was left in the dark with an intimation only of a serious charge of coaching. I was not given any opportunity to challenge it or cross-examine any person, challenge any report or purported motivation. I was not given any disclosure. This malicious report was at the very least a serious matter of wasting police time which should have been investigated comprehensively and thoroughly.*⁵⁴⁸

Garda Keogh said in his interview with tribunal investigators that:

*I was not shown the name of the author of the report at the time by Superintendent McBrien but I have since established via Freedom of Information (in relation to the Assistant Commissioner Mick Finn's investigation of my bullying and harassment complaint), which contained paperwork stating that the author of the report (in relation to my alleged coaxing of Liam McHugh) was Garda... who was a Garda partner of Garda A at that time.*⁵⁴⁹

Garda Keogh confirmed that he was not alleging that Insp Farrell 'manufactured' this complaint against him and that 'I would now accept that Inspector Farrell was duty bound to write reports on the basis that other persons had forwarded him such reports. As such, I am no longer making this accusation against Inspector Farrell'.⁵⁵⁰

In respect of C/Supt Curran, Garda Keogh was of the view that the chief superintendent was pushing the matter and putting Supt McBrien under pressure:

*I suspect that Chief Superintendent Curran is involved to some degree in pushing the other matters (i.e. Olivia O'Neill, Liam McHugh and the PULSE check into Garda A). What is interesting is that I have no document with Chief Superintendent Curran's signature relating to my dealings in these matters but for me that is a red flag, given that Superintendent Noreen McBrien names Chief Superintendent Curran in her letters as being the person directing her in these matters in correspondence she sends to me. I also recall that Superintendent Noreen McBrien told me she was under pressure in relation to the Olivia O'Neill and Liam McHugh matters. It is my belief that Chief Superintendent Curran was putting her under pressure. Chief Superintendent Mark Curran is Superintendent McBrien's direct line manager and therefore, I believe he had involvement.*⁵⁵¹

Garda Keogh believed that A/C Ó Cualáin should have been investigating the matter:

*The Olivia O'Neill and Liam McHugh incidents (where it is alleged that I have coaxed witnesses to make complaints), I say, should have been dealt with by Assistant Commissioner Dónall Ó Cualáin because of the allegation that I am coaching witnesses and it discredits me as a witness in relation to my substantive complaint.*⁵⁵²

⁵⁴⁷ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 125

⁵⁴⁸ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 125

⁵⁴⁹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 32-33

⁵⁵⁰ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 97

⁵⁵¹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 98

⁵⁵² Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 35

Garda Keogh outlined his complaints to A/C Ó Cualáin and Judge McMahon on 16th and 17th July 2014 respectively in this regard.

In summary, Garda Keogh complained that there was ‘no rigorous follow-up or conclusion to this charge’ and that:

*It appeared to be just another false allegation left in the ether and used to blacken or cause apprehension in me. It was inscrutable, was dropped out of nowhere and went nowhere.*⁵⁵³

He stated that *[t]his malicious report about Liam McHugh... had all the hallmarks of similar management actions taken to discredit and demean other whistleblowers... Neither Superintendent McBrien’s superiors nor the author of this malicious [report] appear to have been arrested and questioned’.*⁵⁵⁴

Responding Statements and Evidence on the Issue

Garda Aidan Lyons

In his statement to the tribunal, Garda Lyons recounted his interaction with Mr McHugh on 31st May 2014 as follows:

I recall that on the 31st day of May 2014 Mr McHugh informed me that he had recently been approached by the “bald Guard” who had asked him if he could remember the day when he had been searched by three Gardai who had seized €800 in cash from him, which was subsequently spent in a pub, a local bookies and casino. The “bald Guard” then informed Mr McHugh that if it were the case that he wished to make a complaint in relation to this then he, (the bald Guard), would back him up.

I asked Mr McHugh if the individual he was referring to as the ‘bald Guard’ was Garda Nicholas Keogh. Mr McHugh confirmed that he was. I asked Mr McHugh if he was alleging that this search and seizure of money had actually occurred and his reply was ‘no, not at all, I’m not going bringing trouble on myself’.

*Mr Mc Hugh informed me that during this conversation with Garda Keogh, Garda Keogh informed him that he was present when the money was taken from him, and he would back him up if he wanted to make a complaint.*⁵⁵⁵

He said that it was his understanding that ‘Garda Keogh was encouraging Mr. McHugh to make a false complaint’.⁵⁵⁶

Garda Lyons gave evidence to the tribunal about this conversation:

I think the slant he was putting on it was it was a bad thing, yeah, that’s what I took from it. He informed me that he had been recently approached by the bald guard, who asked him if he could recall the day he had been searched by three guards and that €800 had been taken from him and spent in the bookmakers, casino and the pub, Castle pub. The bald garda informed him that if he wanted to make a complaint about that search that he would back him up. I asked him if this search had actually taken place, if it had actually taken place. And he said no, not at all, I’m not going bringing trouble on myself...

⁵⁵³ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 125

⁵⁵⁴ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 126

⁵⁵⁵ Tribunal Documents, Statement of Garda Aidan Lyons, p. 11714 at p. 11718

⁵⁵⁶ Tribunal Documents, Statement of Garda Aidan Lyons, p. 11714 at p. 11719

I took him to mean that – I asked him – I had asked – my question was, had this search taken place, and he said, no, not at all. I took it to mean that this search had never taken place...

I took it to mean that the search had never taken place and he wasn't going bringing trouble on himself by making a false report in relation to something happened – didn't happen ...

... Liam McHugh, he told me we had the conversation, it wasn't a long conversation, he told me what he wanted to say. He didn't hang around. He said, I'll leave it with you, or something to those words to those effect and he went on. To ask him any further questions I would have had to, you know, ask him to stay and to be quite honest with you, I would have been happier if Liam McHugh had approached any other member. This put me in a very awkward situation, in that I was partnered to work with Garda A, I had been partnered with Garda Keogh. I didn't have an issue with either member at the time. I listened to what Liam McHugh had to tell me and I reported on that conversation.⁵⁵⁷

He also gave evidence of his interpretation of what the encounter meant:

- Q. And the conclusion that you drew, and you have said it very firmly in your statement, was that what was being suggested was that Garda Keogh had coached Liam McHugh?
- A. That's what I took from it. That's what I believed. Having spoken to Liam McHugh, when I walked away that was my belief, from speaking with Liam McHugh. Now my belief is primarily based on the way he presents himself, the way – his body language, his demeanour when he spoke to me. He was very definite about what he wanted to say. He looked me straight in the eye and he told me what he wanted to tell me. I suppose it's similar to dealing with a witness to a crime or a suspect, they tell you a story, you might have no other evidence to corroborate what they are saying, but naturally, anyone would, you draw your own conclusions from what you are being told. And from speaking to Liam McHugh and from the way he presented to me when he made his when we had this conversation, I believed that he was telling me, it was the truth. That was my belief.⁵⁵⁸

In his statement to the tribunal, Garda Lyons said that he spoke to D/Sgt Curley, outlined the conversation, and told him that he would send him a report. D/Sgt Curley agreed that that this was the best course of action and this report was sent by email on 2nd June 2014.⁵⁵⁹

His evidence in response to the allegation that he had been manipulated into making the report was as follows:

... I'm aware that Garda Keogh has alleged that I was persuaded or cajoled or manipulated into making a false report. I deeply, deeply resent those comments. And I believe that Garda Keogh knows that I am not the sort of person who would allow himself to be manipulated into making a false report. I believe he said those things to further his own case. But Garda Keogh knows that I would not allow myself to be manipulated into making a false report. I have 22 years service in An Garda Síochána, not once, not once in those 22 years has any person, whether it be a member of the public, a defence solicitor, anyone, had any reason to question my credibility and honesty, and I deeply regret those comments that Garda Keogh has made.⁵⁶⁰

He was cross-examined on the allegation by counsel on behalf of Garda Keogh:

⁵⁵⁷ Tribunal Transcripts, Day 128, pp. 13-14 and pp. 16-17, Evidence of Garda Aidan Lyons

⁵⁵⁸ Tribunal Transcripts, Day 128, pp. 18-19, Evidence of Garda Aidan Lyons

⁵⁵⁹ Tribunal Documents, Supplemental Statement of Garda Aidan Lyons, p. 15708

⁵⁶⁰ Tribunal Transcripts, Day 128, p. 31, Evidence of Garda Aidan Lyons

- Q. *Just so there is absolutely no confusion whatsoever, I am putting to you that it didn't take place, you made no note of it, you waited some time before you reported it and Garda A was your partner, your friend, your mate and you made it up in order to discredit Nick Keogh.*
- A. *That is totally incorrect. I would rather have had absolutely no involvement in this whole situation. If Liam McHugh could have approached somebody else I would have been very happy. It put me in a very awkward position. Here I am today. As I have said, I am a close personal friend with Garda A. I was also very friendly with Garda Keogh. I had no problem with either member.⁵⁶¹*

Inspector Nicholas Farrell

In his statement to the tribunal, Insp Farrell said that he merely forwarded on the report of Garda Lyons to the Divisional Office, and he noted that Garda Keogh was no longer making a complaint against him that he had '*manufactured reports*'.⁵⁶² Garda Keogh accepted that this was the case during cross-examination by counsel on behalf of Insp Farrell:

- Q. *At page 97 of the documents,, this is in your own statement, you say that essentially you were no longer making the accusation that Inspector Farrell was manufacturing reports in relation to Ms. O'Neill, isn't that right? ...*
- A. *I think that's fair to say. I think that's fair to say.*
- Q. *Yes. That's in relation to Ms. O'Neill and also in relation to the Liam McHugh matter, and I understand that you make a distinction between those two items. Because previously you had written to Superintendent Mulcahy in particular terms, stating that in fact Inspector Farrell had been involved in the manufacture of those two complaints, isn't that correct?*
- A. *I think I may have written, yes, I recollect that.*
- Q. *Yes.*
- A. *Just, I mean, there's a lot of things all along the way where I have assumed things by perception and been incorrect even at that stage. I think that's correct.⁵⁶³*

Superintendent Noreen McBrien

Supt McBrien said in her statement to the tribunal that she met with Garda Keogh on a number of occasions during June, July and August 2014 where the issue of Liam McHugh was discussed.

She stated that she met Garda Keogh on 9th June 2014 and that he indicated '*that apart from general chit-chat, saying hello etc. that he hadn't had a conversation with Liam McHugh in about two years*'.⁵⁶⁴ She stated that her notes of the meeting did not reflect that she told him she was investigating another complaint against him:

This was incorrect as I was not investigating a complaint into him, as there was no complaint in existence against him, and there was no disciplinary matter. I informed him that I was addressing issues that were brought to my attention as District Officer.⁵⁶⁵

Referring to this meeting in her evidence to the tribunal she said that:

⁵⁶¹ Tribunal Transcripts, Day 128, pp. 57-58, Evidence of Garda Aidan Lyons

⁵⁶² Tribunal Documents, Statement of Insp Nicholas Farrell, p. 616 at p. 622

⁵⁶³ Tribunal Transcripts, Day 105, pp. 20-21, Evidence of Garda Nicholas Keogh

⁵⁶⁴ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 829

⁵⁶⁵ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 830

... It would be my recollection of that night that I was possibly quite firm with him with regard to specifically taking on what he may perceive to be a role in the investigation team, and he was on about kind of complaints or investigations into him. And I made it quite clear to him that there wasn't investigations into him, there wasn't complaints, but I was investigating and clarifying and trying to get clarity on issues that had happened within my district. As district officer, that was my role.⁵⁶⁶

When Supt McBrien met Garda Keogh on 8th July 2014, Garda Keogh told her that he was meeting with Judge McMahan and would be bringing the Liam McHugh and Olivia O'Neill incidents to his attention.⁵⁶⁷ In her statement to the tribunal she said that:

We discussed Liam McHugh, I said I had requested a statement and I had not got it yet. I said I was considering asking the Galway Team (Detective Superintendent Mulcahy) to organise to have it taken to keep everything impartial. He thought that this was a good idea. Garda Keogh said he trusted Detective Sergeant Eamonn Curley and that he wouldn't mind him taking the statement if he didn't object. I informed him that Detective Sergeant Curley had a personal knowledge of Liam McHugh and that this was not really suitable.⁵⁶⁸

She recalled that they also discussed that separate investigations may be required for the Olivia O'Neill, Liam McHugh and PULSE entry issues and Garda Keogh understood this.

Supt McBrien stated that she contacted Garda Keogh by telephone on 16th July 2014 in respect of the PULSE intelligence entry. She recorded that he texted her later that evening querying whether there was a complaint against him. She recorded that she assured him that there was not and that as far as she was concerned *'there was no investigation of any nature ongoing at that time against Garda Keogh'*.⁵⁶⁹

She stated that on 19th July 2014, Garda Keogh texted her to say he was *'on d beat and mchugh came over to me'*.⁵⁷⁰ On 23rd July 2014, Supt McBrien called Garda Keogh to tell him she would be writing to him regarding the Liam McHugh issue and requesting a report *'outlining his contact with Mr Liam McHugh over the past three months'*.⁵⁷¹

One week later, on 30th July 2014, Supt McBrien called Garda Keogh and arranged a further meeting with him, as she *'needed to speak to him about Liam McHugh'*.⁵⁷² They met on 5th August 2014 and she described this meeting in her statement:

On 5th August 2014 I met with Garda Keogh. I read out the report in relation to Liam McHugh. I showed him the report from Garda Lyons without showing Garda Lyons details. I did this to assure Garda Keogh that this was the extent of my enquiry. He said that he knew nothing about it. He said the meeting with Liam McHugh was not arranged. He knew nothing about it or any part of it. If he had the information he would have put it with his complaint to the Confidential Recipient and that Liam McHugh's name was not on his report to the Confidential Recipient. He said that apart from his meeting on the beat with Liam McHugh on 19th July 2014, he hadn't met or spoken to him for a long time.⁵⁷³

⁵⁶⁶ Tribunal Transcripts, Day 120, p. 116, Evidence of Supt Noreen McBrien

⁵⁶⁷ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 833

⁵⁶⁸ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 833

⁵⁶⁹ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 836

⁵⁷⁰ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 836

⁵⁷¹ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 837

⁵⁷² Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 837

⁵⁷³ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 837

Supt McBrien said that she met with Garda Keogh again on 4th February 2015:

*He mentioned McHugh and O'Neill files. He said he knew I was not behind them but I should be careful because they were part of a GSOC investigation.*⁵⁷⁴

Supt McBrien stated that she wrote to the Ó Cualáin investigation team to ask if they would deal with the Liam McHugh issue, as she had discussed the matter with Insp Minnock and D/Sgt Curley *'and we felt that it most likely it wasn't a good plan for this to be dealt with from the station because we didn't know whether it was an issue which could have importance to Assistant Commissioner Ó Cualáin's investigation and because of the small pool of people to call on to conduct these enquiries'*.⁵⁷⁵

She stated that, as Mr McHugh would not make a statement, there was nothing further to be undertaken and she reported to C/Supt Curran. She pointed out that it was her duty as district officer to act as she did.⁵⁷⁶

When asked by tribunal investigators to confirm whether other enquiries were considered into the information from Garda Lyons, such as the identification of the other gardai involved, she replied that *'I couldn't bring them any further as there was no formal complaint. In order to finalise, I felt that it would be better that somebody from outside of the District [be brought in] to review'*.⁵⁷⁷

Supt McBrien stated that Garda Keogh's belief that C/Supt Curran was putting her under pressure on this issue was unfounded.⁵⁷⁸ She said that her *'firm views and recommendations'* on the matter were outlined in her report of 16th July 2014 to C/Supt Curran.⁵⁷⁹ She told tribunal investigators that the inquiries directed in respect of the Liam McHugh matter *'were reasonable and proportionate'*.⁵⁸⁰

In her evidence to the tribunal, Supt McBrien summarised her actions in relation to Garda Keogh as follows:

To be fair to Garda Keogh, Garda Keogh was afforded the opportunity to comment on this, and he did, and I didn't disagree with what he said. So, therefore, the three parties that's mentioned, Garda Keogh, Garda Lyons and Mr. McHugh were all given the opportunity to give further information to - well, Garda Lyons has given his report there. Garda Keogh, I spoke to him about this matter, I got reports, and he said it didn't happen. So that was it ...

*I would be happy that it would be something that I should I would be duty bound to evaluate and check out more and in doing so Garda Keogh was given the opportunity to supply a report, as was Mr. McHugh and he chose not to, and I couldn't take it any further than that.*⁵⁸¹

As to why she did not identify Garda Lyons as the author of the report originally, she gave evidence that:

The reason I didn't mention Garda Lyons' name at any stage is because I was trying to keep a level of harmony and balance in the station. As I have outlined to you earlier, there was an awful lot of things going on in Athlone at the time and also this, Garda Keogh's issues, there

⁵⁷⁴ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 839

⁵⁷⁵ Tribunal Documents, Investigator Interview Supt Noreen McBrien, p. 6204 at p. 6256

⁵⁷⁶ Tribunal Documents, Investigator Interview Supt Noreen McBrien, p. 6204 at p. 6257

⁵⁷⁷ Tribunal Documents, Investigator Interview Supt Noreen McBrien, p. 6204 at p. 6257

⁵⁷⁸ Tribunal Documents, Investigator Interview Supt Noreen McBrien, p. 6204 at p. 6264

⁵⁷⁹ Tribunal Documents, Investigator Interview Supt Noreen McBrien, p. 6204 at pp. 6262-6263

⁵⁸⁰ Tribunal Documents, Investigator Interview Supt Noreen McBrien, p. 6204 at p. 6265

⁵⁸¹ Tribunal Transcripts, Day 119, pp. 140-141, Evidence of Supt Noreen McBrien

was an atmosphere in the station after that and there was an atmosphere – nobody knew what was going on with regard to it. I wanted to keep a balance and to keep it as fair as I could. So I outlined to him what was said, but I didn't think at that time the decision I made, based on what was presented to me, based on the information I had, was that it was better not to give him Garda Lyons's name. It was nothing to do with like when someone like me or anyone goes to a station and you're maybe a year or two in it there, there's links, apart from someone being a partner with someone or working beside each other, like there's so many links there that you're not aware of, you know ...

I tried to explain to Garda Keogh as clearly as I could, because he was saying, oh, more complaints to me. I explained to him that there were no complaints as such or no investigations into him. That issues had been brought to my attention that happened in my district and as district officer I was duty bound to investigate those incidents. Not that I was investigating him. I made it very, very clear to him that was not what was happening. I was investigating these incidents and that the outcome of these incidents – they were giving an opportunity to account for themselves and that the outcome of them would be dealt with when there was an outcome. That they can, you know, prove total clarity to the situation. That's what I was doing, and I outlined that to him on several occasions.⁵⁸²

Supt McBrien told tribunal investigators that her interactions with Garda Keogh on this issue could not be considered instances of targeting or discrediting and that:

I never targeted Garda Keogh. I ensured he was supported and aware of supports. As I explained to Garda Keogh, I investigated issues in my role as District Officer and they were investigations of incidents/complaints rather than investigations of Garda Keogh.⁵⁸³

She confirmed this in her evidence to the tribunal as follows:

... I think if an incident happens in a district - like both these incidents were reported by members of An Garda Síochána and from what I can recall, I think Garda Keogh may have had some input, in the office, in the public office that day, with Garda Treacy being nominated to take the statement. Both of these were incidents that happened. I don't - I think to tie them in as a consequence of Garda Keogh making a protected disclosure, I wouldn't see how two separate members, and especially something that Garda Treacy said actually happened in the office that Garda Keogh had some input into, I don't know how you could see that as targeting. And as a district officer, when something is brought to my attention or the person who is acting on behalf, you are duty bound to deal with it.

Q. So you don't see it as targeting at all?

A. No, absolutely not.

Q. Okay. When you put those all together, you still wouldn't see those as targeting?

A. No.⁵⁸⁴

⁵⁸² Tribunal Transcripts, Day 119, pp. 160-163, Evidence of Supt Noreen McBrien

⁵⁸³ Tribunal Documents, Investigator Interview Supt Noreen McBrien, p. 6204 at p. 6266

⁵⁸⁴ Tribunal Transcripts, Day 120, pp. 99-100, Evidence of Supt Noreen McBrien

Chief Superintendent Mark Curran

C/Supt Curran considered that the *‘allegations reported by Garda Lyons were serious matters’* and he directed that the matter should be followed up to allow the gardai involved to comment on the veracity of the information contained in the report.⁵⁸⁵ In his statement to the tribunal, he said that:

*The enquiries necessary to test the veracity of the intelligence were two fold in that the members concerned were requested to account for their interactions with Mr. Liam McHugh and in addition a statement was sought from Liam McHugh to outline his recollection of events. There was no further information to substantiate the information contained within the report following enquiries with Garda members and Liam McHugh declined to make a statement on the matter.*⁵⁸⁶

He stated that given the serious nature of the information in the report it was *‘incumbent’* on him to cause enquiries to be carried out and he rejected Garda Keogh’s assertion that it was to target or discredit him.⁵⁸⁷ He said that the action taken was proportionate *‘given the serious criminality alleged in the intelligence’*.⁵⁸⁸ He told the tribunal investigators that:

*The assertions were serious and appear to involve a number of Garda members in Athlone Garda Station (MC/3 refers) including Garda Keogh. I needed to get more information before I could progress to make a decision as to what policy it would fall under or what level of criminality there was, if any.*⁵⁸⁹

C/Supt Curran further outlined his view of the report in his evidence to the tribunal as follows:

... I have to respond to what has come up to me in writing. So that is set in train by asking Sergeant Curley to go off and get a statement. In relation to what Garda Keogh is saying here, he’s not saying it in writing, he’s saying it to a super. Now, I put a lot of weight on the fact that he’s saying it to the super and I will talk about that in a subsequent – when all the paper came together. But I had an obligation at the very least to go off and ensure that Liam McHugh was interviewed in relation to what all these potential issues are. The Garda Keogh discussion with Superintendent McBrien is of importance, in that I know he has a very good rapport with her and he is adamant and I think she would be telling me if she thought he wasn’t being truthful.

*So I am very conscious that in that piece of intelligence that was sent up or that report that was sent up by Garda Lyons, that everything is attributed to Garda Keogh as having all the knowledge. There’s no confirmation of that with McHugh. But I still have to ask the question of McHugh. No more than that. If I didn’t, I would be doing something wrong.*⁵⁹⁰

In his statement to the tribunal, he said the following:

*... I view this type of scrutiny as being perfectly normal, necessary and proportionate in the context of the issues reported and am mindful of the fact that An Garda Síochána is a disciplined force with associated accountability for all members within the organisation. I reject Garda Keogh’s assertion that the enquiries conducted reflect an attempt to target or discredit him.*⁵⁹¹

⁵⁸⁵ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1789

⁵⁸⁶ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1789

⁵⁸⁷ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1790

⁵⁸⁸ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1790

⁵⁸⁹ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1969

⁵⁹⁰ Tribunal Transcripts, Day 117, pp. 162-163, Evidence of C/Supt Mark Curran

⁵⁹¹ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1790

He also stated that he was duty bound to make the enquiries that he made and that anything less would have been a *'dereliction of duty'*.⁵⁹² C/Supt Curran rejected the allegation that he was pushing these issues or that he was putting Supt McBrien under pressure as alleged by Garda Keogh:

*My conversations with Superintendent McBrien in respect of Garda Keogh were generally about ensuring that he was receiving welfare support. My dealings with Superintendent McBrien and Inspector Nicholas Farrell in respect of Garda Keogh and management challenges were always led by the principle of doing the right thing in the circumstances as they were presented to me and management team members.*⁵⁹³

C/Supt Curran denied taking an overzealous approach to this issue, stating that:

*I don't think I had any other option other than to explore the facts and that's all I was looking to do. These were only necessary enquiries. Certainly, I was not seeking to target or discredit Garda Nicholas Keogh. My role was to ensure policy-compliance.*⁵⁹⁴

He gave evidence to the tribunal that he was responding to the report that came into his office:

It is very important for me to put this across: At no point did I actually initiate anything to do with Olivia O'Neill. This all came in – and McHugh. And the intelligence. All of those items were reported to me and I had to respond to them. I didn't initiate anything.

*... But look, all I'm saying is: I am responding to something I have no choice but to respond to. That's my view on it. I'm not starting anything. I know nothing about these things. This is all reported by the people locally on the ground. They are channelling it through to me, which they should do. Any actions I do on this is a response to theirs. I didn't initiate anything. The suggestion of Garda Keogh right through all of this is that I am trying to manipulate and manoeuvre something. It couldn't be further from the truth. I would never do that to anybody.*⁵⁹⁵

He said that the directions he gave were in keeping with his role as divisional officer⁵⁹⁶ and he denied, in evidence, any allegation of targeting Garda Keogh:

... I don't have the information that suggests anything other than that Garda Lyons transmits this in good faith, having heard it, probably having reflected on it for a day or two before he sent it up. Garda Lyons is someone that is held in high esteem. He's now a sergeant. I get nothing from the management team or the supervisors to suggest there's something untoward here. Which is what I would rely on if there was something that I had to deal with.

... You see, there was a statement of request, asked of McHugh, Garda Keogh is saying it didn't happen. So it didn't happen. The way I saw it: It didn't happen, there was nothing to suggest there was anything to investigate. It was finished.

Q. I suggest to you that this had the effect of targeting Garda Keogh as a whistleblower?

A. I reject that. I don't see how he can say that. I am just doing my job. It comes up to me through the system. I am sending it back down with some basic enquiries and it dies very quickly afterwards, and on the basis of Garda Keogh's word.

⁵⁹² Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1792

⁵⁹³ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1796

⁵⁹⁴ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at pp. 1971-1972

⁵⁹⁵ Tribunal Transcripts, Day 117, pp. 191-192, Evidence of C/Supt Mark Curran

⁵⁹⁶ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1974

- Q. Finally, I'm suggesting to you is that the entirety of your actions in relation to the three issues, the intelligence issue, the Olivia O'Neill issue and the Liam McHugh, just given the proximity and timing of each of these and when you consider them collectively, I suggest to you this amounts to targeting of you by Garda Keogh targeting on your part against Garda Keogh?
- A. No. I am doing my job, I am doing what's necessary and important. I would have dealt with that, with any of those situations with any other person the same way. A standard approach. I reject that there is any targeting or discrediting on my behalf or anybody else, for that matter.⁵⁹⁷

Former Acting Commissioner Dónall Ó Cualáin

In his statement to the tribunal, former Acting Commissioner Ó Cualáin said that he spoke with D/Supt Mulcahy regarding the Liam McHugh issue on 14th July 2014:

... We also discussed the CR's call regarding Olivia O'Neill and Liam McHugh. Detective Superintendent Mulcahy stated that allegations had been made against the CR. He was in receipt of a letter from Superintendent McBrien in Athlone in which she asked that matters relating to McHugh be dealt with by my investigation team ... We were both of the view that given that these were allegations being made about the CR that it would not be appropriate for me to include them as part of my investigation... On 16th July 2014 I contacted the CR by phone ... I brought him up to date with the outcome of my meeting with Detective Superintendent Mulcahy the previous Monday and with progress with the investigation.⁵⁹⁸

He said in his statement that Garda Keogh told him he was happy with this course of action.⁵⁹⁹

Inspector Aidan Minnock

In his statement to the tribunal, Insp Minnock said as follows:

I note Garda Keogh's reference to the Liam McHugh matter and his assertion that garda management were trying to instigate discipline in the matter. I cannot accept this to be the case and in my correspondence in the matter I was trying to get the matter explored as part of Garda Keogh's disclosure to the Galway investigation, which was under the stewardship of (then) Assistant Commissioner Ó Cualáin.⁶⁰⁰

He detailed his interactions in relation to the incident and stated that he discussed the report of Garda Lyons with D/Sgt Curley. D/Sgt Curley explained how he had been tasked to take a statement from Liam McHugh, but did not feel that it would be appropriate given that he knew Mr McHugh. Insp Minnock stated that he agreed with D/Sgt Curley⁶⁰¹ and that:

I asked that he return the file to me and I would write on the file to Superintendent McBrien. Having examined the file, I felt the entire matter would be best explored as part of (then) Assistant Commissioner Ó Cualáin investigation into Garda Keogh's disclosure. I felt they were best placed as they may have other information surrounding the matter and may be able to provide additional assurances to Liam McHugh, for him to make a candid statement on the matter.⁶⁰²

⁵⁹⁷ Tribunal Transcripts, Day 118, pp. 64-65, Evidence of C/Supt Mark Curran

⁵⁹⁸ Tribunal Documents, Statement of Former Acting Commissioner Dónall Ó Cualáin, p. 3957 at p. 3959

⁵⁹⁹ Tribunal Documents, Statement of Former Acting Commissioner Dónall Ó Cualáin, p. 3957 at p. 3959

⁶⁰⁰ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 687

⁶⁰¹ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 687

⁶⁰² Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 687

Insp Minnock said that he wrote to Supt McBrien on 8th July 2014, expressing this view and saying that he would obtain a mobile number for Mr McHugh, which would assist the investigation team to arrange a meeting with him.⁶⁰³ Insp Minnock did not accept that An Garda Síochána were only concerned with whether or not Garda Keogh went to Mr McHugh, but that a statement would establish if gardaí actually stole money from him and spent it. Insp Minnock stated that his focus was on the substantive matter, which is why he believed A/C Ó Cualáin was best placed to investigate the incident.⁶⁰⁴ In respect of how the matter was dealt with, Insp Minnock stated that:

*I believe Garda Keogh is correct in stating that no investigation took place in relation to the alleged theft of monies. I understand Liam McHugh verbally denied the money was ever taken and declined to make a statement in the matter. Garda Keogh denied he ever divulged such information to Liam McHugh and also stated that he had no knowledge of any such incident ever occurring.*⁶⁰⁵

In his evidence to the tribunal, Insp Minnock stated that the matter was fully addressed:

*... The reality was, it wasn't a concern to me because the matter had been fully satisfied from the point of view that Garda Keogh had denied he had any interaction with Mr. Liam McHugh and Mr. McHugh had also said that he had no knowledge of the situation of what was being alluded to. He also had said he wasn't willing to make a statement in respect of the matter. So there was nothing to start an investigation. The matter was fully addressed in every avenue and concluded. So it wasn't a matter of concern to me.*⁶⁰⁶

During cross-examination by counsel on behalf of Garda Keogh, Insp Minnock denied that the focus of garda management was on Garda Keogh and that this was evidence of targeting:

I can't accept that at all. The reality of the matter is that the superintendent, who is the manager, escalated the matter to the Galway investigation team. So I totally disagree with that.

*A[n] investigation commences with a statement. With no statement, there is no investigation.*⁶⁰⁷

Q. When you consider these three issues running side by side, these three investigations, would you accept that taken together, as Garda Keogh has said, that this is evidence of targeting of Garda Keogh?

A. Absolutely not. I fully refute that. All of those matters came to light not manufactured by Garda management but came to Garda management's attention, and all of those matters had to be bottomed out, which was done so by Garda management. I fully refute that.⁶⁰⁸

He referred in evidence to his view that the Ó Cualáin investigation should examine the matter:

I know there's been an allegation in relation to, I suppose, that we were somehow targeting Garda Keogh in respect of this matter. But I think given the fact that we were sending the matter to Galway and the fact that D/Sergeant Curley was anxious to bottom it out, I was anxious to bottom it out, as was the superintendent, forwarded the matter to Galway, which

⁶⁰³ Tribunal Documents, Letter from Insp Aidan Minnock to Supt Noreen McBrien, dated 8th July 2014, p. 1202

⁶⁰⁴ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 688

⁶⁰⁵ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 688

⁶⁰⁶ Tribunal Transcripts, Day 122, pp. 39-40, Evidence of Insp Aidan Minnock

⁶⁰⁷ Tribunal Transcripts, Day 122, pp. 51-53, Evidence of Insp Aidan Minnock

⁶⁰⁸ Tribunal Transcripts, Day 122, p. 55, Evidence of Insp Aidan Minnock

*actually gave Garda Keogh protections under the protected disclosure legislation. And if we had any way intended to target Garda Keogh, that certainly wouldn't have been our course of action.*⁶⁰⁹

Detective Sergeant Eamon Curley

In his statement to the tribunal, D/Sgt Curley said that he received a report from Garda Lyons and sought directions from his district officer:

*Upon receipt of same I reported it to the District Officer. I am personally known to Liam McHugh as he is originally from the same locality as I, consequently I reported that I may not be the most suitable person to seek to inquire into his allegations further. On 9.6.14 I was directed by the District Officer in Athlone to ascertain if Liam McHugh was willing to make a statement on the matter as reported, please see attached at Appendix 7 a copy of such direction and a reminder which I have now retrieved from email archive. Having received the directions I tasked Garda Tom Higgins with same. Garda Higgins reported to me that Liam McHugh declined to make a statement and I reported same to the District officer on 9.7.14 as per my report attached at Appendix 8. I had no further dealings with this matter.*⁶¹⁰

He gave evidence to the tribunal that he tasked Garda Higgins to take the statement:

*I am quite clear in the task I assigned Garda Higgins. It's not uncommon for me to assign detectives tasks of taking statements and never before have I had a situation where somebody misinterpreted a task being assigned to take a statement, to misinterpret it to seek a phone number or something like that. That has never happened to me before. He undertook to take the statement and reported back that he asked Liam McHugh was he willing to provide a statement and Liam McHugh said that he wouldn't at that time, that he would think about it and maybe make himself available in the future. So that's exactly what was reported back to me. I cannot explain Garda Higgins' interpretation. Perhaps it's the passage of time that he doesn't recall the interaction, I don't know.*⁶¹¹

In relation to his report to his district officer, he gave evidence that:

*Yes. But I was given a particular task to do and I replied as what he told me. Why would I put in anything different other than what he told me? Why would I not report exactly he told me? If Garda Higgins had come back to me and said, or initially said I'm not taking the statement, I would have reported that. If he said to me, here's a phone number, I am not taking a statement, I would have reported that. This is what he reported back to me. I can't put it any clearer than that, this is exactly what occurred.*⁶¹²

Garda Tom Higgins

In his statement to the tribunal, Garda Higgins said that he was requested by D/Sgt Curley to obtain a statement from Liam McHugh sometime in 2014.⁶¹³ He said that he knew of allegations of misconduct against gardaí in Athlone and, on becoming aware of the contents of Garda Lyons' report, he considered that the Liam McHugh matter was connected to those allegations.⁶¹⁴ He said that he knew both Garda Keogh and Garda A and that:

⁶⁰⁹ Tribunal Transcripts, Day 129, p. 181, Evidence of Insp Aidan Minnock

⁶¹⁰ Tribunal Documents, Statement of D/Sgt Eamon Curley, p. 487 at p. 488

⁶¹¹ Tribunal Transcripts, Day 128, pp. 116-117, Evidence of D/Sgt Eamon Curley

⁶¹² Tribunal Transcripts, Day 128, p. 176, Evidence of D/Sgt Eamon Curley

⁶¹³ Tribunal Documents, Statement of Garda Thomas Higgins, p. 15828

⁶¹⁴ Tribunal Documents, Statement of Garda Thomas Higgins, p. 15828 at p. 15829

I did not feel comfortable being involved in an investigation of allegations concerning colleagues of mine who are attached to Athlone Garda Station and I advised him that in my view it would be more appropriate for the Gardai in Galway to carry out this investigation and to interview Mr. McHugh.⁶¹⁵

Garda Higgins stated that he told D/Sgt Curley that if he came across Mr McHugh he would obtain a contact number for him so that it could be passed to whatever members outside Athlone would be appointed to interview Liam McHugh.⁶¹⁶ Garda Higgins maintained during his evidence to the tribunal that his intention was to obtain Mr McHugh's telephone number:

I didn't take any interpretation into it, because at the time when I was asked to take a statement, I stated to D/Sergeant Eamon Curley that I didn't think it appropriate, I just didn't feel comfortable in taking a statement when there was colleagues of mine involved in this

I informed him that if I came across Mr. McHugh that I would obtain his telephone number. At the time I was aware that there was members of Gardai from Galway carrying out an investigation regarding these allegations that were being made. Not this specific allegation, but regarding the protected disclosure. So I felt it would have been more appropriate for some member from outside Athlone division to carry out this obtaining of the statement.

... So I informed Detective Sergeant Eamon Curley that I didn't think it was appropriate for me, I didn't feel comfortable in obtaining the statement. However, I would endeavour to obtain Mr. McHugh's mobile number, that it could be passed on to the members in Galway in order to obtain the statement from him. Sometime later, I'm not sure was it a day or a two after, I encountered Mr. McHugh on Connaught street, and I stopped the car and I informed him that there was an incident that was being investigated and could I obtain his telephone number, that I can pass it on to other members that may wish to contact him at a future date. I can recall Mr. McHugh taking his phone out of his jacket, he couldn't remember his phone number, and he had it wrote on a piece of paper on the back of his phone. I wrote it on a piece of paper. When I returned to the Garda station, I gave his telephone number to Detective Sergeant Eamon Curley.⁶¹⁷

Garda Higgins described in his statement his meeting with Mr McHugh to the tribunal as follows:

Shortly afterwards whilst driving past Connaught Street in Athlone I spotted Liam McHugh outside an off-licence. I was on my own. I stopped my vehicle and spoke to Liam McHugh. I informed him that there were allegations being investigated in which he was involved in and I asked him for his mobile phone number so that he could be contacted again by the Gardai who would be carrying out the investigation. I recall that Liam McHugh took out his mobile phone from his jacket pocket and had to look at same to obtain his phone number as he did not know it without looking it up in his phone. The number was written on the back of his phone.

I wrote down his number on a piece of paper and when I returned to the Garda Station I gave it to D/Sgt Curley. He thanked me for getting it.

I had no other contact with Liam McHugh or involvement in relation to this incident.⁶¹⁸

⁶¹⁵ Tribunal Documents, Statement of Garda Thomas Higgins, p. 15828 at pp. 15829-15830

⁶¹⁶ Tribunal Documents, Statement of Garda Thomas Higgins, p. 15828 at p. 15830

⁶¹⁷ Tribunal Transcripts, Day 128, pp. 66-68, Evidence of Garda Thomas Higgins

⁶¹⁸ Tribunal Documents, Statement of Garda Thomas Higgins, p. 15828 at p. 15830

It was his evidence that his report to Sgt Curley concerned the telephone number only and that they did not discuss Mr McHugh refusing to make a statement:

The only recollection I have regarding this incident is: Obtaining the telephone number, handing it to Detective Sergeant Eamon Curley, and he was aware that I did not feel comfortable or didn't think it was appropriate. So there could have been no other conversation regarding the station that he refused to make a statement or he [d]eclined or that he may wish to make one at a further date. This didn't take place between me and Detective Sergeant Curley.⁶¹⁹

Mr Liam McHugh

Mr McHugh was interviewed by tribunal investigators on 3rd February 2020.⁶²⁰ He confirmed that he had received a number of letters from the tribunal during 2019⁶²¹ and that he did not make contact with the tribunal as he *'did not think it was serious'*.⁶²² He said that he knew Garda Keogh and *'was friendly with him when he was here in Athlone'*.⁶²³

He said that he knew Garda Higgins and, in relation to Garda Lyons, he stated that *'if he was in a line up now, I would not be able to pick him out'*.⁶²⁴

He was asked by tribunal investigators if he could remember a purported conversation with Garda Lyons on Bastion Street, Athlone on 31st May 2014 and he replied that he could not.⁶²⁵ He was referred to the report of Garda Lyons and said that *'I really don't remember the conversation. Maybe it did take place or maybe it didn't'*.⁶²⁶ He was referred to the extract from Garda Lyons' evidence to the tribunal⁶²⁷ and asked to comment on the veracity of the same. He again replied that he could not recall having the conversation with Garda Lyons.⁶²⁸ He was referred to extracts from the statement of Garda Higgins outlined above and he confirmed that he remembered meeting Garda Higgins and being asked for his mobile number. He told tribunal investigators that:

I gave him my number. That was more or less it. I think he said there was something going on or there was talk about it being investigated. I agree with what Garda Higgins has said above.⁶²⁹

He said that he gave Garda Higgins his mobile number, which was written on the back of the phone.⁶³⁰ He said that Garda Higgins just advised him about an incident that he may need to be spoken to about but did not have any conversation regarding it.⁶³¹ He was referred to the statement of D/Sgt Curley and stated that *'I don't recollect having a conversation about making a statement'*.⁶³² He was asked if he recalled being approached by other garda members and being asked to make a statement about Garda Keogh and he stated that *'I can't remember rightly. It may have come up in conversation'*.⁶³³

⁶¹⁹ Tribunal Transcripts, Day 128, pp. 82-83, Evidence of Garda Thomas Higgins

⁶²⁰ Tribunal Documents, Investigator Interview of Mr Liam McHugh, p. 16258

⁶²¹ Tribunal Documents, Investigator Interview of Mr Liam McHugh, p. 16258 at pp. 16259-16260

⁶²² Tribunal Documents, Investigator Interview of Mr Liam McHugh, p. 16258 at p. 16260

⁶²³ Tribunal Documents, Investigator Interview of Mr Liam McHugh, p. 16258 at p. 16261

⁶²⁴ Tribunal Documents, Investigator Interview of Mr Liam McHugh, p. 16258 at p. 16262

⁶²⁵ Tribunal Documents, Investigator Interview of Mr Liam McHugh, p. 16258 at p. 16262

⁶²⁶ Tribunal Documents, Investigator Interview of Mr Liam McHugh, p. 16258 at p. 16263

⁶²⁷ Tribunal Transcripts, Day 128, pp. 12-14, Evidence of Garda Aidan Lyons

⁶²⁸ Tribunal Documents, Investigator Interview of Mr Liam McHugh, p. 16258 at p. 16266

⁶²⁹ Tribunal Documents, Investigator Interview of Mr Liam McHugh, p. 16258 at p. 16267

⁶³⁰ Tribunal Documents, Investigator Interview of Mr Liam McHugh, p. 16258 at p. 16268

⁶³¹ Tribunal Documents, Investigator Interview of Mr Liam McHugh, p. 16258 at p. 16269

⁶³² Tribunal Documents, Investigator Interview of Mr Liam McHugh, p. 16258 at p. 16270

⁶³³ Tribunal Documents, Investigator Interview of Mr Liam McHugh, p. 16258 at p. 16270

Mr McHugh's evidence to the tribunal was equally vague as to whether Garda Keogh asked him to make a complaint and as to whether or not Garda Higgins asked him for a statement:

- Q. *Okay. Have you any memory of any conversation with Garda Keogh, where he said he would back you up if you wanted to make a complaint?*
- A. *I have not, no.*
- Q. *Did you ever discuss making a complaint with any member of the Guards?*
- A. *No. I don't think so, no.*
- Q. *Have you any memory of ever being asked to make a statement about this meeting?*
- A. *I have, yes.*
- Q. *Yes.*
- A. *Only one occasion.*
- Q. *When was that?*
- A. *I don't know. I do not know what year it was.*
- Q. *Yes*
- A. *A garda pulled up to talk to me.*
- Q. *And who was that?*
- A. *He pulled up outside the butchers, I think it was, and said he wanted to talk to me.*
- Q. *Yes. Can you recollect who that guard was?*
- A. *I think his name was Tom Higgins.*
- Q. *Did he say what he wanted to talk to you about?*
- A. *He wanted my phone number, for further reference, he says.*
- Q. *Yes. Well, did he want to talk to you, did he say he wanted you to talk to him?*
- A. *Well, he wanted my phone number and I couldn't think of it. But I had it on the phone, at the back of the phone, I gave it to him.*
- Q. *Okay. And did he ask you to make a statement about the matter?*
- A. *I am not rightly sure, I can't say yes or no. I think he said he'd be getting back to me on it or something now, he'd be talking to somebody or ...*
- Q. *Well, is it possible that he told you what he wanted to talk to you about?*
- A. *I don't think I can remember that now, I cannot remember that.⁶³⁴*

In answer to the Chairman, Mr McHugh gave evidence that Garda Higgins told him that there was *'[s]omething coming up, maybe that I was searched on one occasion or an allegation, or something, there was some talk going on and he wanted my number and he'd get back to me on it'*.⁶³⁵

⁶³⁴ Tribunal Transcripts, Day 145, pp. 22-23, Evidence of Mr Liam McHugh

⁶³⁵ Tribunal Transcripts, Day 145, pp. 34-35, Evidence of Mr Liam McHugh

When cross-examined by counsel on behalf of Garda Lyons, Mr McHugh said that he was not clear in his memory of the conversation with Garda Lyons:

Q. *I think what you told the Tribunal when you met with their representatives a few weeks ago in Athlone?*

A. Yes.

Q. *In Mr. McLynn's offices?*

A. Yeah.

Q. *What you told them is, and it's at page 6 of your statement but we don't need it, I don't think, Mr. McHugh, you said you don't really remember the conversation, maybe it did take place or maybe it didn't, is that correct?*

A. *It could have taken place and it mightn't have taken place.*

Q. *You just can't remember at this stage?*

A. No

Q. *But equally, Garda Lyons is very clear in his memory. Do you understand that?*

A. *Well, you see, I'm not clear on my memory of that. Honest to God, I'm not.*

Q. *Yes. You just can't recall one way or the other?*

A. No.⁶³⁶

Legal Submissions

Garda Nicholas Keogh submitted as follows:⁶³⁷

- that Liam McHugh never made any allegation against him but rather Garda Lyons took it upon himself to discredit Garda Keogh by fabricating an allegation of coaching.
- that senior management failed to test or critically examine the evidence of Garda Lyons in any way prior to accusing Garda Keogh of criminal activity some twenty-four days after he was confirmed to be a whistleblower.
- that the timing of this allegation should have been considered suspicious in light of the plethora of activity and accusations that were made against Garda Keogh shortly after he made a protected disclosure.
- that in the absence of a written statement made against Garda Keogh, the matter should not have been progressed, and that even the most basic elements of adherence to the presumption of innocence and fair procedures were neglected.
- that while it was clear to Garda Keogh from an early stage that Mr McHugh was not his accuser, he was never advised to whom he made the accusation. While Garda Keogh made no complaint about targeting or discrediting against Supt McBrien, the action taken here and endorsed by C/Supt Curran, not to disclose Garda Lyons' identity, was patently unfair

⁶³⁶ Tribunal Transcripts, Day 145, pp. 43-44, Evidence of Mr Liam McHugh

⁶³⁷ The tribunal has considered all of Garda Nicholas Keogh's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 14-31 and pp. 172-177

and wrong. This failure on the part of senior management gives rise to a fundamental breach of fair procedures against Garda Keogh.

- that, notwithstanding the clear potential for a conflict of interest and/or *mala fides* on the part of any accusing member, and in particular Garda Lyons, no attempt was made to secure a statement from Liam McHugh prior to addressing the allegation with Garda Keogh.
- that Garda Lyons was a member of the Drugs Unit and was also a peer of Garda A and that, because of this relationship, the allegation should have been examined and considered in that context, lest it be viewed as an attempt to undermine the credibility of a whistleblower.
- that it was established during the course of evidence that there was no proper consideration of Garda Keogh's firm position that this alleged conversation with Liam McHugh was concocted.
- that senior management failed to exercise basic due diligence and their failure to do so was to the discredit of Garda Keogh.
- that while Garda Lyons was clear that the allegation he was reporting up the line was one of alleged fabrication or coaching, it was the evidence of C/Supt Curran that he believed that it was a report, first and foremost, about criminality. This, in fact, placed Garda Keogh in a position where he has been accused of what would amount to gross misconduct mere days after he became a whistleblower.
- that it was the evidence of C/Supt Curran that a statement from Garda Lyons could be made at a later stage, but Garda Lyons took no notes in his diary. Neither did D/Sgt Curley. It is not possible to show that a proper investigation was carried out in the absence of contemporaneous notes.
- that it is Garda Keogh's case that the evidence of Garda Higgins is more credible and that he never sought a report from Liam McHugh as he didn't feel comfortable getting involved in an investigation between two local gardaí. It was his evidence that he obtained a phone number for Liam Mc Hugh only on the basis that someone outside of Athlone would be investigating.
- that C/Supt Curran's attempts to explain away this incident were feeble at best. He said he let the matter rest, but there was no rest for Garda Keogh. The matter was never resolved; it hung over Garda Keogh and hampered his ability to trust senior management and the systems in place in An Garda Síochána.
- that despite Garda Keogh confirming his position in writing regarding this allegation, he was never informed of any outcome of the investigation and was left to guess as to whether the matter was being pursued or not.
- that, running alongside Issues 1, 2 and 3, this issue placed Garda Keogh under unnecessary strain and worry and had the effect of causing him to feel alienated from the organisation.
- that, taken cumulatively, this issue had the effect of targeting and discrediting Garda Keogh.

An Garda Síochána submitted as follows:⁶³⁸

- that Garda Keogh's accusations against An Garda Síochána concerning the issue were pitched at the highest possible level. He stated that '*... Aidan Lyons at the time was a guard that would have been a clean pair of hands and they got him to write this nonsense.*' There was simply no evidence as to who '*they*' were or that any other person influenced Garda Lyons to write this report. Not satisfied with leaving the Lyons report as a fabrication he also sought to implicate C/Supt Curran in '*... trying to get this craic off the ground*'.
- that there was no evidence that garda management were involved in directing any aspect of what Garda Lyons may have done.
- that Supt McBrien tried to refer the investigation to the Ó Cualáin team because they were investigating Garda Keogh's complaints as a confidential reporter and that this suggestion was correctly rejected by the Ó Cualáin team, as to do so the Ó Cualáin team would have been put in the conflicting position of investigating the confidential reporter while at the same time investigating the same reporter's complaints.
- that the suggestion by Garda Keogh that a statement ought to have been taken from Garda Lyons was also baseless as the Lyons report contained all the information that was available at that time or indeed at any time thereafter. If matters had progressed to the point where a charge might be filed, a statement may well have been required at that point, but this was not indicated during the lifetime of this short inquiry.
- that the allegation of fabrication was an especially hurtful one to make by Garda Keogh against a serving garda. Garda Lyons described it as '*absurd*'.
- that having seen the Lyons report on 9th June 2014, though at that time unaware as to its author, it was surprising that if Garda Keogh really believed that he was being '*set up*', he chose to wait until he gave evidence before the tribunal before making such a serious and unfounded accusation. This was especially so since he had known that Garda Lyons wrote the report since the summer of 2018, when Assistant Commissioner Michael Finn, the investigator in Garda Keogh's bullying and harassment complaint, supplied it to Garda Keogh's solicitor. Rory de Bruir (who conducted an audit of the subsequent bullying and harassment report) also recorded it in his report at paragraph 8.13.
- that there was no complaint against Garda Lyons in his bullying and harassment appeal and there was no suggestion that he was instructed by any superior officer to fabricate the account he reported of the conversation with Liam McHugh. Garda Lyons' integrity or the accuracy of his report had not been challenged. Garda Keogh was questioned about why he had not claimed a fabrication at that point. Garda Keogh claimed that Mr de Bruir was under the incorrect impression that Garda Keogh knew Garda Lyons was the author of the report. This claim differed from his previous evidence that he was on notice of Garda Lyons as the reporter in making the appeal to Mr de Bruir.
- that the direction to seek to obtain a statement from Mr McHugh was also entirely appropriate and, when no statement was forthcoming, it was reasonable to request Garda Keogh to report on the matter, as he was the only person identified by Mr McHugh and he was a member of An Garda Síochána. When Garda Keogh indicated that he had not even

⁶³⁸ The tribunal has considered all of An Garda Síochána's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 70-172 and pp. 177-179

met Mr McHugh in recent times, the matter rested and was not progressed any further by garda management.

- that, to whatever extent what was asked of Mr McHugh by Garda Higgins may be relevant, the evidence of D/Sgt Curley was to be preferred over the evidence of Garda Higgins for several reasons. First, he was directed by Supt McBrien to seek a statement. One might wonder why, considering such an order, he would task Garda Higgins with simply obtaining Mr McHugh's telephone number. Second, he reported the outcome of the encounter in writing on the same day that Garda Higgins had made the approach to Mr McHugh and reported that Mr McHugh had refused to make a statement. Third, Garda Keogh's contemporaneous text in July 2014 having met with Mr McHugh refers to Mr McHugh having indicated to Garda Keogh that he had been requested to make a statement. Fourth, it is somewhat curious that the only thing of relevance that Mr McHugh admits to remembering in evidence was a request by Garda Higgins for a telephone number.
- that the actions taken by the garda members concerned were appropriate and proportionate responses to the allegations made by Mr McHugh.

Superintendent Noreen McBrien submitted as follows:⁶³⁹

- that, referring to the meeting with Garda Keogh on 9th June 2014, she did not mention Garda Lyons because she was trying to keep a level of *'harmony and balance'* in the station.
- that Supt McBrien was of the view that Mr McHugh appeared to be the one with knowledge of what he was reporting and hence the requirement for a statement from him before any action could be taken.
- that the reply from the Ó Cualáin investigation team on 15th July 2014 that it could not investigate this allegation gave her clarity as to the extent of that investigation.
- that Garda Keogh was critical of garda management, which necessarily included Supt McBrien, in the handling and processing of Garda Lyons' report.
- that Garda Keogh confirmed the accuracy of Supt McBrien's notes in his evidence and accepted his misunderstanding of the meeting which occurred on 8th July 2014 and that his note of that meeting may not have been accurate.
- Garda Keogh accepted in evidence that Supt McBrien was not repeatedly sending out members to take statements from Liam McHugh and that she followed up appropriately, including engaging with the Ó Cualáin investigation team.
- that Garda Keogh's position, as outlined in responses to questions from counsel for An Garda Síochána, was that the initial enquiries made of him in respect of his interactions with Mr McHugh were reasonable and appropriate.
- that Garda Keogh confirmed that it was not his view that Supt McBrien was targeting him by not pursuing an inquiry in respect of the alleged robbery of Liam McHugh.
- that Supt McBrien stated that she was *'duty bound'* as a district officer to deal with these matters that were brought to her attention.

⁶³⁹ The tribunal has considered all of Supt Noreen McBrien's legal submissions on this issue and what follows is a summary of the same.

- that, at the conclusion of Supt McBrien’s evidence, the Chairman encapsulated the position of Garda Keogh as regards her saying that she was ‘... *the one person he didn’t lay a finger on, so to speak ...*’.

Inspector Nicholas Farrell submitted as follows:⁶⁴⁰

- that no allegation was now made by Garda Keogh in relation to Insp Farrell in respect of Issue 4 and that Insp Farrell had very limited involvement in the issue.
- that Garda Keogh accepted in his statement to the tribunal investigators that Insp Farrell was ‘*duty bound*’ to write his reports.
- that while these complaints were withdrawn by Garda Keogh before the tribunal investigators, he had previously made them to D/Supt Mulcahy on 17th October 2014 and to GSOC.
- that the allegations were made without foundation and sought to cast adverse implications on Insp Farrell and to interfere with his promotion prospects and that, while Insp Farrell welcomed the withdrawal of the allegations, the unfounded allegations caused stress and strain to the party against whom they were directed.

Garda Aidan Lyons submitted as follows:⁶⁴¹

- that Garda Keogh made serious allegations impugning the integrity of Garda Lyons and that these allegations were wholly rejected by Garda Lyons.
- that it was particularly regrettable that Garda Keogh made these assertions in circumstances where he accepted that Garda Lyons was ‘... *a guard that would have been a clean pair of hands*’ and a ‘... *smart, smart member ... of An Garda Síochána*’.
- that Garda Keogh acknowledged that he had no evidence to suggest that the report was maliciously invented and further that he did not ‘... *see what motive Garda Lyons would have had to ...*’ do so.
- that criticisms were directed by Garda Keogh against certain parties on his *perception* of events rather than evidence; this included Garda Lyons. These assertions were not based on his dealings with Garda Lyons, whom he confirmed he considered to be a friend, but because he was Garda A’s partner.
- that the allegations made in evidence did not appear to have been raised with the investigators to the tribunal or in any submissions made to A/C Finn, Mr de Bruir, or in the appeal to Assistant Commissioner Finbarr O’Brien.
- that Garda Lyons submitted his report by email of 2nd June 2014 and had no involvement in any investigation of the complaint made to him by Mr McHugh.
- that Garda Lyons was a long-standing member of An Garda Síochána held in high esteem. Garda Lyons’ evidence was that he reported the conversation because it would be wrong of him not to and at all times he acted in good faith.

⁶⁴⁰ The tribunal has considered all of Insp Nicholas Farrell’s legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

⁶⁴¹ The tribunal has considered all of Garda Aidan Lyons’ legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

- that Garda Lyons gave evidence that he was not the sort of person who would allow himself to be manipulated into making a false report and he had the conversation with Mr McHugh.

Garda Tom Higgins submitted as follows:⁶⁴²

- that Garda Higgins refused to take the statement from Mr McHugh and instead offered to get a phone number so that the team of gardaí from Galway who were investigating the protected disclosure of Garda Keogh could contact Mr McHugh.
- that in respect of the conflict of evidence with D/Sgt Curley, no notes were taken by D/Sgt Curley of having assigned the task to Garda Higgins.
- that there followed a meeting between D/Sgt Curley and Insp Minnock on 8th July 2014, where the issue of taking a statement from Mr McHugh was discussed. Insp Minnock was of the view that the matter should be best investigated by gardaí from outside Athlone, asked for the file and wrote to Supt McBrien advising that it would be more appropriate for A/C Ó Cualáin's team to investigate and that a phone number would be obtained from Mr McHugh.
- that Garda Higgins met with Mr McHugh to get his phone number, not to ask for a statement and then gave the phone number to D/Sgt Curley.
- that D/Sgt Curley gave evidence that he checked a paragraph of his report to Supt McBrien with Garda Higgins before sending it and it was Garda Higgins' position that this did not occur.
- that the only explanation offered by D/Sgt Curley for the delay between 9th June 2014, when the task was assigned by Supt McBrien, and 9th July 2014, when D/Sgt Curley reported back to Supt McBrien, was a supposed second exchange with Garda Higgins where he claimed that Garda Higgins told D/Sgt Curley that he could not locate Mr McHugh. There was no record of this exchange, no note of it, it was not recorded in D/Sgt Curley's statement, nor was it reported to Supt McBrien, who was looking for an update. It was first mentioned in evidence to the tribunal.
- that only Garda Higgins and Mr McHugh were present when they met. Garda Higgins said that he did not ask Mr McHugh for a statement, and Mr McHugh, while in cross-examination saying it might be possible, did not recall being asked for one and confirmed that he agreed with Garda Higgins' version of events.
- that Mr McHugh, when interviewed by tribunal's investigators, was presented with Garda Higgins' and D/Sgt Curley's versions of events as recorded in the tribunal's transcript and he clearly accepted that Garda Higgins' was correct rather than D/Sgt Curley's.
- that Mr McHugh also confirmed that his view remained that he did not remember being asked for a statement by Garda Higgins.
- that Garda Higgins' account was consistent with his prior statement, was internally consistent and, if accepted as the more likely version of events, caused the difficulties or coincidences outlined above to evaporate rather than each of them requiring explanation:

⁶⁴² The tribunal has considered all of Garda Thomas Higgins' legal submissions on this issue and what follows is a summary of the same.

- (i) the lack of notes in relation to the initial tasking of Garda Higgins to take a statement supported the fact that he was not tasked to do so, as did Garda Higgins' lack of a report or notes on the issue;
- (ii) either the absence of a reference to Garda Higgins in the meeting between Insp Minnock and D/Sgt Curley would have been unremarkable, as he was not tasked to get a statement and an alternative course was being pursued, or if he was mentioned, it would have been in the context of his concerns and his suggested course of action;
- (iii) the reason that concerns identical to Garda Higgins' were shared by both men and taken to Supt McBrien could have been that an alternative to an Athlone garda taking the statement was in fact being pursued; Garda Higgins was going to get a phone number. If Garda Higgins' account was correct it logically followed that Garda Higgins then met Mr McHugh for the purpose of getting a phone number for transmission to the Galway team;
- (iv) the fact that no note of the conversation between Garda Higgins and Mr McHugh was taken was perfectly consistent with Garda Higgins only having gotten Mr McHugh's phone number and passed it on rather than Mr McHugh having (even provisionally) refused to make a statement.

Discussion

Issue 4 stands out as exceptional for Garda Keogh. He stood over this case as an example of targeting and contrasted it with Issues 1-3, in which he was prepared to make concessions of one kind or another. He was prepared, for example, to allow for possible misunderstanding by Ms Olivia O'Neill of what he had said to her in the case of Issue 3. But on this matter he was unyielding in his claim that it was a case of targeting.

His case was first that he had not had a conversation of the kind reported or indeed any substantive conversation at all with Liam McHugh for as long a time as two years. Therefore, his alleged comments could not have been made. Secondly, he maintained that the circumstances of Garda Lyons' report should have alerted the garda authorities to the possibility, if not the likelihood, of the false attribution to him of the reported statements. He submitted accordingly that the investigation that took place was entirely inadequate because it did not focus on the genesis of the report itself and instead pursued a somewhat desultory course to an unsatisfactory expiration without reaching a firm, clear conclusion and without informing him of the outcome.

'Senior Management'

It is relevant to mention a preliminary point about the term 'senior management' as used in Garda Keogh's submissions. The question for the tribunal in the circumstances of this issue is whether Garda Keogh was targeted or discredited with the knowledge or acquiescence of C/Supt Curran, and obviously that would include targeting or discrediting shown to be done by that officer. But is any distinction to be drawn between Supt McBrien's position and that of her superior? The submissions do not specify any complaint against the superintendent and Garda Keogh has been insistent throughout the inquiry that he makes no allegations against her. However, the repeated use of the term 'senior management' in criticisms in the submissions can only be read as intending to include Supt McBrien without actually saying so. It is not open to the tribunal to

consider or determine criticisms of this officer because it would be a breach of elementary canons of procedural law. But if Supt McBrien is immune from criticism, it is difficult to see how C/Supt Curran can be faulted if his involvement was essentially the same.

Detective Sergeant Eamon Curley and Garda Tom Higgins

Another preliminary issue that may be dealt with is the conflict of evidence between D/Sgt Curley and Garda Higgins about the latter's approach to Mr McHugh. It is clear that Supt McBrien instructed the sergeant to '*ascertain if Mr McHugh is willing to make a statement about this incident*'.⁶⁴³ D/Sgt Curley wrote to the superintendent on 9th July 2014 saying that Mr McHugh had told Garda Higgins he would not make a statement at that time but might do so at some later time.⁶⁴⁴

The two members disagree about the circumstances of the order by the sergeant and the garda's description of the encounter as recorded. The tribunal has submissions on each side as to reliability. But the relevant point is that D/Sgt Curley, whether he was mistaken or not, reported Mr McHugh's refusal, at that time at any rate, to Supt McBrien. That was the information on which she and C/Supt Curran acted, and they had no basis for questioning the position.

It follows that it does not matter to the question of targeting or discrediting which of the members is correct. Out of respect for the parties and their counsel, the tribunal is content that the conflict between impressive witnesses and able submissions in the absence of a decisive point is left unresolved.

Mr Liam McHugh

The person who should have been able to throw light on the conversation described in the report was Mr McHugh. Unfortunately, that was not the case. This was not entirely unexpected. Mr McHugh had proved to be elusive when experienced tribunal investigators endeavoured on many occasions to contact him with a view to obtaining a statement and to his giving evidence. When he did attend as a witness, he had memory loss or gave non-responsive or contradictory answers.

Counsel on behalf of Garda Lyons referred Mr McHugh to his statement to the investigators concerning the reported conversation, in which he said he did not remember it.⁶⁴⁵ He said he could not say that this conversation did or did not happen.⁶⁴⁶ Mr McHugh was asked whether he had referred to a bald guard, as Garda Lyons reported, and he said that '*I can never remember that. Maybe I could have said it, but I can't remember now...*'.⁶⁴⁷ As to whether Garda Higgins asked him to make a statement, he told counsel for the tribunal that '*I am not rightly sure, I can't say yes or no...*'.⁶⁴⁸

Nothing Mr McHugh said could be relied on. He endeavoured to avoid saying anything and, when he did say something, he contradicted it soon after or agreed with an entirely contrary proposition. He was determined to say nothing about this issue and to deny or qualify or quibble about anything anybody else said he said. Mr McHugh would be unlikely to describe himself as a reliable witness. His principal focus was on giving the appearance of testifying without actually committing to any factual evidence relevant to the inquiry.

⁶⁴³ Tribunal Documents, Letter from Supt Noreen McBrien to Detective Sergeant Athlone, dated 9th June 2014, p. 524

⁶⁴⁴ Tribunal Documents, Letter from D/Sgt Eamon Curley to Superintendent Athlone, dated 9th July 2014, p. 1203

⁶⁴⁵ Tribunal Transcripts, Day 145, p. 43, Evidence of Mr Liam McHugh

⁶⁴⁶ Tribunal Transcripts, Day 145, p. 46, Evidence of Mr Liam McHugh

⁶⁴⁷ Tribunal Transcripts, Day 145, pp. 19-20, Evidence of Mr Liam McHugh

⁶⁴⁸ Tribunal Transcripts, Day 145, p. 23, Evidence of Mr Liam McHugh

It is important to remember that Mr McHugh is not the subject of any allegation for consideration by the tribunal. Like Ms Olivia O'Neill, Mr McHugh may have thought he had good reason to avoid taking sides in an internal Athlone garda dispute. The tribunal without wishing to denigrate this witness is nevertheless obliged to report on the quality of his testimony.

Garda Aidan Lyons' report

On any view of the meaning of the words reportedly spoken by Mr McHugh they contained serious allegations involving Garda Keogh. There was not one precise meaning, however. Garda Lyons and almost all of the garda personnel who considered the matter thought that the report meant that Garda Keogh had sought to persuade Mr McHugh to make a false complaint about garda corruption. The report could also have meant that Garda Keogh was complicit with colleagues in stealing from Mr McHugh or that he was present as a witness when such a crime was committed.

C/Supt Curran was the exception in the matter of interpretation; he said that he took the statement as an allegation of criminality, to the point that he did not take drumming up complaints into account.

The fact is that no single precise meaning can be definitively stated, especially in the absence of any explanation from Mr McHugh.

The investigation

Garda Keogh's submissions are severely critical of the procedure adopted by Supt McBrien and C/Supt Curran. The specific complaints are addressed below. It is clear that the superintendent favoured an informal approach and wished to avoid unnecessary conflict in the station arising from the report by Garda Lyons. Members at all levels shared her unease and did not want to be involved in an investigation. They and she thought that outside officers should undertake the task, thinking that the Ó Cualáin team would be appropriate. But for reasons that will be known from other issues, they were unwilling.

It appears to have been recognised that this was a serious, difficult and sensitive matter. Some members felt that they should not be involved for those reasons. Insp Minnock had a more fundamental objection; that it was not appropriate for members of the district to be investigating a report by one of their own concerning the conduct of one of their own.

Notwithstanding these reservations the matter was not passed over to any other officers for investigation. Enquiries proceeded informally and somewhat desultorily, as appears from the reminder that was required to get action on approaching Mr McHugh. In the meantime, Supt McBrien spoke to Garda Keogh about the report at the same time as she discussed other ongoing issues with him and felt that it was better not to disclose the identity of the author of the report.

As discussed below, it is apparent that the process of enquiry was low key and necessarily preliminary. Depending on the availability of evidence it might have progressed to a more formal stage, but that point had not been reached. In fact, the only development that happened was Garda Keogh's response in oral and written form to the report's contents.

Legal Submissions

The following is stated early in the legal submissions of Garda Keogh:

It is Garda Keogh's case that Liam McHugh never made any allegation against him but rather Garda Aidan Lyons (now Sergeant) took it upon himself to discredit Garda Keogh by fabricating an allegation of coaching.⁶⁴⁹

Garda Lyons wholly rejected this allegation and said that it was something that Garda Keogh himself knew to be untrue. The principal submissions addressed this allegation with particular reference to the fact that it was first explicitly made when Garda Keogh gave his evidence to the tribunal.

Garda Keogh did make it clear from the beginning at his meeting with Supt McBrien that he believed he was being set up; that the report contained serious charges that were being used to discredit him. However, he did not expressly allege that Garda Lyons fabricated the report until he gave his evidence.

Garda Keogh's submissions stated that he '*never knew the identity of his accuser*',⁶⁵⁰ which must be understood to mean 'at all material times' because ultimately he did become aware that it was Garda Lyons. As a result of not knowing, it was submitted that he was unable to raise *mala fides* on the part of Garda Lyons as an issue. However, that point is very much in dispute, as appears from the other parties' arguments.

An Garda Síochána argued that it was surprising that Garda Keogh waited until he gave evidence to the tribunal to make the specific allegation that Garda Lyons fabricated the report of the conversation with Liam McHugh. He could have made that accusation as early as 9th June 2014 against the author of the report when he saw it, even though at that point he did not know the name of the author. He did know it was Garda Lyons from summer 2018, when A/C Finn supplied materials in connection with the bullying and harassment investigation. And when he appealed against the findings of that report, he did not make any complaint against Garda Lyons, although he did make reference to his report. The de Bruir audit report of 4th June 2019 states at para 8.13:

There is no complaint against Garda Lyons and there is no suggestion that he was instructed by any superior officer to fabricate the account he reported of the conversation with Liam McHugh. Garda Lyons's integrity or the accuracy of his report has not been challenged.⁶⁵¹

It was said that Garda Keogh sought to explain this by stating that Mr de Bruir was under the mistaken impression that Garda Keogh knew that Garda Lyons was the author of the report.

On behalf of Garda Lyons this point was made in somewhat more detail, in support of the contention that this allegation of fabrication by Garda Lyons had evolved over time on the basis of ill-founded suspicion. As appears from the summary above, the submission was that Garda Keogh was unable to explain why he had not raised this issue earlier. His reliance on not knowing the author was wrong, as he has had to accept.

It is clear that Garda Keogh knew who the author of the report was at the time when he appealed, which appeal explicitly refers to the Lyons report. There is no explanation for the failure to level the explicit charge.

⁶⁴⁹ Tribunal Documents, Legal Submissions on behalf of Garda Nicholas Keogh, p. 24

⁶⁵⁰ Tribunal Documents, Legal Submissions on behalf of Garda Nicholas Keogh, p. 25

⁶⁵¹ Tribunal Documents, Report of Mr Rory de Bruir Barrister-at-Law, dated 4th June 2019, p. 13138 at p. 13162

Garda Keogh accepted that there was no evidence to support the suggestion of fabrication. He said that Garda Lyons was a clean pair of hands and a good member of the force. He claimed that this reputation for probity was the thing that attracted others of malicious disposition to recruit Garda Lyons to their cause and to carry out their nefarious purpose.

Garda Lyons gave evidence that he ‘... *reported on the facts of the matter, which I am trained to do, to gather the facts and report on the facts...*’⁶⁵² Garda Lyons was clear on his encounter with Mr McHugh and that he did not make up the conversation with Mr McHugh. His evidence was: ‘... *he [Garda Keogh] knows that I am not the sort of person who would allow myself to be manipulated into making a false report. I wouldn't do it. I think everyone in Athlone Garda Station knows I wouldn't do it. I had that conversation with Liam McHugh.*’⁶⁵³

The allegation against Garda Lyons must be rejected. It is not in dispute that there is no evidence to support it. Garda Keogh's suspicion or belief is not evidence, as he himself candidly acknowledges. And the explicit charge that was made in evidence reflects an unexplained relatively recent alteration of Garda Keogh's belief.

Suspicions and timing

It is submitted on behalf of Garda Keogh that senior management should have suspected that Garda Lyons had made up the statement by Mr McHugh, and should have caused that matter to be investigated first. They should, in a word, have investigated the reporter before investigating the report. They should have begun by obtaining a formal statement from Garda Lyons concerning his encounter and seeking the same from Mr McHugh before approaching Garda Keogh.

The submission for Garda Keogh argues that the timing of the report by Garda Lyons should in itself have given rise to suspicion as to whether it was genuine or fabricated. It came closely on the heels of the issue concerning Olivia O'Neill and also of the PULSE issues arising from Garda Keogh's activities on 18th May 2014. However, this does not seem a logical inference. The sequence of events did not of itself give rise to an inference of suspicion. The grounds advanced in the argument do not support the conclusion. Indeed, a closer analysis reveals that there are really only two incidents that are close in time, namely those concerning Olivia O'Neill and Liam McHugh.

The PULSE check that Garda Keogh made has to be ruled out because it did not surface as an issue until September 2014 when Garda A found out about the query and made his report to Supt McBrien. As to the PULSE entry, that was entirely the responsibility of Garda Keogh and the response to it has to be examined separately. The conclusions on that cannot have any impact on the consideration of Issues 3 and 4 from the point of view of the targeting case based on timing that Garda Keogh is making.

The basic point concerns the suggested relationship between Issue 3 and Issue 4. They are different, although they have in common an implication that Garda Keogh was drumming up complaints against the gardaí. But Issue 3 arose with something done by Ms O'Neill with which no gardaí of any rank other than Garda Keogh had any connection. That is quite different from Issue 4, which originates in a report by Garda Lyons of a conversation that he had in the street in Athlone with Liam McHugh.

⁶⁵² Tribunal Transcripts, Day 128, p. 18, Evidence of Garda Aidan Lyons

⁶⁵³ Tribunal Transcripts, Day 128, p. 57, Evidence of Garda Aidan Lyons

One could surmise that a person with malicious intent towards Garda Keogh might choose such a time to add to the problems thought to be coming to him in respect of the statement made by Olivia O'Neill so in that sense the timing can be regarded as significant. But only in that sense and depending on an assumption of malicious intent and willingness to engage in serious fraud in furtherance of it. The mere fact that it would be a bad time for Garda Keogh to face a complaint is not a rational ground for suspecting the *bona fides* of a reporter and, indeed, for inferring the likelihood of serious fraud on the part of a reporting garda. Garda Keogh's suggestion requires an assumption of *mala fides* on the part of the reporter and secondly that the reporter was prepared to commit serious crime in order to damage Garda Keogh.

Other points, such as that it was twenty-four days after the disclosure or that C/Supt Curran was investigating two separate coaching allegations or that the Athlone station personnel knew about the allegations, do not add anything to the argument in the submissions.

In the circumstances, the superintendent and chief superintendent cannot be faulted for not treating Garda Lyons' report as being of such questionable veracity that it called for preliminary investigation—as to whether he was guilty of a crime in making the report—before proceeding to look for any response or evidence.

Statement

A formal statement from Garda Lyons would have added nothing to the information available in his report. As the submissions filed on behalf of An Garda Síochána point out, if the matter went further to the stage of a charge being preferred a statement may have been needed, but not until much later than the point with which the tribunal is concerned. Garda Keogh's submission may mean that such a step would reflect an intention to commit the reporter to a document that would have legal consequences if not truthful, but that point is a return to the previous argument about inferring suspicion. Besides, the consequences for a garda of making a false report would in any case be sufficiently serious that a statement would add little.

Supt McBrien directed that Liam McHugh be approached for a statement, which C/Supt Curran also ordered, and she cannot be faulted for any failure to obtain one. In fairness, this case is not made against her or her senior colleague. The argument is that she should not have asked Garda Keogh for an explanation until a statement had been obtained from Mr McHugh, or at least sought, and a decision made as to whether the case was one of coaching, i.e. a breach of discipline, or of criminality. This would have avoided the situation where Garda Keogh was faced with two allegations. But at the point on 9th June 2014 when Supt McBrien spoke to Garda Keogh there was no allegation against him in respect of Liam McHugh. There was a report of a conversation in which a statement was attributed to him. The superintendent asked what he had to say to it, and he willingly responded by denying any such encounter with Mr McHugh for two years.

There was no criminal or disciplinary investigation because that stage had not been reached and was in fact never reached. It might transpire that there was nothing to investigate. The report by Garda Lyons recorded what Liam McHugh said Garda Keogh had said to him on a previous occasion. There would inevitably be a question of the accuracy of the report in regard to what Garda Keogh actually did say. The quoted statement was part of a conversation that allegedly took place in a context and/or at a time that may have affected the meaning of the words quoted.

This made it all the more obvious and necessary to approach the parties to the reported conversation to get their versions of what was said. Asking the persons who were reported to have had the conversation in which the statement was made for their response to the report was an obvious preliminary step for the superintendent and/or chief superintendent to take before deciding whether or how to proceed.

The only further thing that Garda Keogh was asked to do was to furnish a report—not a statement—confirming his account of not having had a meeting with Liam McHugh for three months previously, a period nominated by C/Supt Curran.

It is relevant to recall that Garda Keogh made clear at all stages that he had no complaint to make against Supt McBrien, who was the principal actor in the investigation. The superintendent spoke to Garda Keogh in relatively informal circumstances, at a time when Mr McHugh's position was not known, which is an element of the criticisms levelled at senior management. If Supt McBrien is not the subject of criticism, it is difficult to see how her superior is to be treated differently.

A further and more fundamental point is that such investigative deficiencies as are alleged in this issue did not amount to targeting.

Conflict of interest

It is suggested that '*... the clear potential for a conflict of interest and/or mala fides on the part of any accusing member, and in particular, Garda Lyons ...*'⁶⁵⁴ was another reason why a statement should first have been obtained from Mr McHugh before questioning Garda Keogh.

It was put to C/Supt Curran in evidence that he might have pursued the possibility that Garda Keogh was being set up and he said that '*... I don't have the information that suggests anything other than that Garda Lyons transmits this in good faith, having heard it, probably having reflected on it for a day or two before he sent it up...*'⁶⁵⁵

Garda Keogh's own evidence does not suggest any basis for a conflict of interest or animosity in respect of Garda Lyons. This point is in essence a repetition of the criticisms of the procedure adopted by Supt McBrien and C/Supt Curran.

Due diligence

It is submitted that the absence of a statement from Garda Lyons left Garda Keogh in a position of having to answer two allegations. Garda Lyons thought what he was reporting was alleged fabrication of complaints or coaching whereas C/Supt Curran considered it as a report of criminality first and foremost. But it was not yet an accusation against Garda Keogh. Supt McBrien showed him the report, without revealing the author, and asked, in effect, 'what happened between you and Liam McHugh?' and Garda Keogh replied that nothing had happened, explaining how long it was since they had had a conversation. Supt McBrien accepted his explanation and passed it on to C/Supt Curran. He asked for a written report confirming this information covering a three-month period and his evidence was that he accepted Garda Keogh's account as correct and the matter ended there.

It appears that the missing link was not a statement from Garda Lyons but one from Mr McHugh. Only he could have clarified what he said Garda Keogh told him and only then could a

⁶⁵⁴ Tribunal Documents, Legal Submissions on behalf of Garda Nicholas Keogh, p. 25

⁶⁵⁵ Tribunal Transcripts, Day 118, p. 64, Evidence of C/Supt Mark Curran

decision be made about whether to proceed with an investigation, what was to be investigated and how it was to be carried out.

Notifying the outcome of the inquiry

The tribunal is of the view that C/Supt Curran should have notified Garda Keogh of his decision not to proceed any further with the inquiry. Failure to do so led to an understandable sense of grievance on Garda Keogh's part.

Garda Keogh was in a state of uncertainty, unaware of the outcome of the investigation, preliminary and informal though it was, not knowing whether or how it might proceed. The chief superintendent's conclusion that he did not believe there was an interaction by Garda Keogh with Liam McHugh raised the question as to how the statement had been made by Mr McHugh and the report made by Garda Lyons. This is the point that Garda Keogh made in his evidence. The tribunal considers that the authorities are not to be criticised for treating the report as *bona fide* and ostensibly reliable in the first instance and for the purpose of preliminary assessment. However, when C/Supt Curran reached his conclusion and decided to let the matter rest, it would seem to follow that he should have turned to the implications of his judgment.

This highlights the uncertainty and frustration felt by Garda Keogh and his complaint of unfinished business and that he was left under something of a cloud.

Conclusion

Garda Lyons' report of his encounter with Mr McHugh contained serious allegations against or involving Garda Keogh that called for the fullest investigation. They included encouragement of false accusations against gardaí and/or witnessing or participating in stealing from the person. While the enquiry was severely hampered by failure to obtain a statement from Mr McHugh, the case was not treated with the care that the gravity of the implications of the report required.

Officers recognised the serious nature of the reported information and wanted to get investigators from outside the division to deal with the case but that did not happen. Instead, it was dealt with locally and informally, and somewhat reluctantly.

One of Garda Keogh's complaints on this issue is that the matter was not brought to any definitive or satisfactory conclusion and that he was left not knowing the outcome and under something of a cloud of suspicion. C/Supt Curran did conclude the investigation but did not inform Garda Keogh and did not pursue any consequential issues. The tribunal understands and has considerable sympathy with Garda Keogh's frustration and distrust in the circumstances. However, the tribunal is satisfied that senior management, and specifically C/Supt Curran, did not target or discredit Garda Keogh because he made a protected disclosure. The deficiencies of the handling of this matter did not come about because of any decision to victimise Garda Keogh.

CHAPTER 9

THE CUMULATIVE VIEW OF ISSUES 1-4

During his evidence to the tribunal, Garda Keogh made the case that it would be unfair to regard these issues in isolation and that they should be viewed conjunctively, arising as they did in the early summer of 2014.

Time and Circumstance

The events giving rise to Issues 1-4 in Athlone during 2014 occurred in the period between Garda Keogh's protected disclosure on 8th May 2014 and when he met Assistant Commissioner Dónall Ó Cualáin for the first time on 7th June 2014. He was working in the same station as the principal focus of his allegations. The atmosphere in the station was tense and difficult, particularly for Garda Keogh. This context has to be borne in mind in considering these issues.

The Ó Cualáin Investigation

When speaking about Issue 1, Garda Keogh stated in his evidence that:

... The contents of that were being investigated by Donal Ó Cualáin's investigation team. The chief in Mullingar, who at the time was -- it wasn't just that, there [were] a number of other incidents that we will yet get on to. There was a whole lot of things that there were. A lot of those different things should just have been put into the main investigation by the appointed investigation team. Because it ended up it started to mount all these miniature little investigations into, whether it's Pulse or whether it's to some of the other matters we will get to. So they all started to mount up.⁶⁵⁶

Garda Keogh confirmed that he wanted the tribunal to look at the whole picture in the round.⁶⁵⁷ He maintained this position in his legal submissions to the tribunal where he stated that:

It is Garda Keogh's complaint to the Tribunal that his treatment by his Senior Officers in and about their dealings with him and the enquiries made of him, in relation to issues 1-4 set out hereunder constitute targeting of him. Taken together, the issues investigated by the Tribunal under the various headings at 1-4 demonstrate that, within a short space of time following the making of his protected disclosure on the 8th of May 2014, Garda Keogh came to the direct attention of Senior Management within the Westmeath Division. It is respectfully submitted that Garda Keogh demonstrated through his evidence that following the making of his protected disclosure, he was subjected to a hostile working environment in his engagement with Senior Officers. The Senior Officer against who he complains to the Tribunal in these issues is Chief Superintendent, Mark Curran, the Divisional Officer for Westmeath at the time. Through no fault of his own, Garda Keogh was in a unique position within the station having made his protected disclosure. He was vulnerable. This situation, it is submitted was either not properly understood or addressed and/or was ignored by senior management within the division. In relation to issues 1-4 in particular, the hostility was borne out by, inter alia, excessive and repeated questioning on issues which Garda Keogh had engaged with and addressed, a failure by management to accept reasonable explanations, in the circumstances, from Garda Keogh, a failure by management to properly communicate with Garda Keogh to reassure him as to his

⁶⁵⁶ Tribunal Transcripts, Day 99, p. 135, Evidence of Garda Nicholas Keogh

⁶⁵⁷ Tribunal Transcripts, Day 100, p. 91, Evidence of Garda Nicholas Keogh

*position and/or to explain to him the reasons for the enquiries being made of him and a failure by management to properly communicate with each other in a timely fashion to ensure that any matters of concern to them were addressed to their satisfaction.*⁶⁵⁸

This is countered by An Garda Síochána where it is submitted that Garda Keogh *‘imagined a plot against him where none existed’*.⁶⁵⁹

Garda Keogh maintained that in respect of all of these 2014 issues he was subjected to *‘mini-investigations’* or *‘five internal investigations’* when there should only have been *‘one investigation’*, that of A/C Ó Cualáin. Specifically, he complained about a series of *‘oppressive mini-investigations’*⁶⁶⁰ conducted by local management into the Olivia O’Neill and Liam McHugh incidents, which he said should have formed part of the Ó Cualáin investigation.⁶⁶¹ He characterised the queries from management regarding these two incidents as *‘a further attempt to try to influence the ‘independent investigation’ that was in train’*.⁶⁶²

Garda Keogh stated that:

*Assistant Commissioner Dónall Ó Cualáin was appointed to investigate my complaint (dated 08/05/2014 made to Judge McMabon). I believed that anything to do with my allegations should have been investigated only by Assistant Commissioner Dónall Ó Cualáin and his investigation team. The Olivia O’Neill and Liam McHugh incidents (where it is alleged that I have coaxed witnesses to make complaints), I say, should have been dealt with by Assistant Commissioner Dónall Ó Cualáin because of the allegation that I am coaching witnesses and it discredits me as a witness in relation to my substantive complaint.*⁶⁶³

Superintendent Noreen McBrien did in fact write to Detective Superintendent Declan Mulcahy on 9th July 2014 in relation to Mr Liam McHugh. She stated that it might be more appropriate and impartial if someone from outside the district approached Mr McHugh to ascertain if he was willing to make a statement. She enquired whether it would be possible for Detective Inspector Michael Coppinger to arrange to interview Mr McHugh in that regard and that Inspector Aidan Minnock would assist to arrange such a meeting.⁶⁶⁴ D/Supt Mulcahy conducted a PULSE check relating to Liam McHugh on 14th July 2014 at or around the time of his meeting with A/C Ó Cualáin which discussed this issue.⁶⁶⁵

D/Supt Mulcahy wrote back to Supt McBrien on 15th July 2014⁶⁶⁶ conveying his view that the issues raised by Mr McHugh regarding Garda Keogh may require further investigation. He stated that, as the current investigation pertaining to Garda Keogh was investigating allegations made by the member himself, and the report of Garda Aidan Lyons concerned allegations made against Garda Keogh, it may be prudent for an independent investigation to be conducted to progress these matters. He suggested that perhaps the file could be forwarded to the chief superintendent in Westmeath to determine the most appropriate and effective manner to investigate these allegations.

⁶⁵⁸ Tribunal Documents, Legal Submissions on behalf of Garda Nicholas Keogh, pp. 2-3

⁶⁵⁹ Tribunal Documents, Legal Submissions on behalf of An Garda Síochána, p. 102

⁶⁶⁰ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 125

⁶⁶¹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 34

⁶⁶² Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 124

⁶⁶³ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 35

⁶⁶⁴ Tribunal Documents, Letter from Supt Noreen McBrien to D/Supt Declan Mulcahy, dated 9th July 2014, p. 1201

⁶⁶⁵ Tribunal Documents, PULSE, pp. 16628-16650

⁶⁶⁶ Tribunal Documents, Letter from D/Supt Declan Mulcahy to Supt Noreen McBrien, dated 15th July 2014, p. 1191

A/C Ó Cualáin referred to the foregoing and stated that:

This information came to me via a telephone call from Garda Keogh on the 9th of July, 2014. At a meeting on the 14th of July 2014, Detective Superintendent Mulcahy showed me correspondence that he had received from Superintendent Noreen McBrien in which she requested that these matters form part of my investigation. I felt that it would not be appropriate for me to include these issues as part of my investigation and that it would be better if someone independent of my investigation were to carry out these enquiries. I asked Detective Superintendent Mulcahy to write back to Superintendent McBrien and recommend this course of action. These were complaints made against Garda Keogh by individuals and the focus of my investigation were complaints made by Garda Keogh.⁶⁶⁷

A/C Ó Cualáin confirmed that he spoke with Garda Keogh on 16th July 2014 and that he ‘... informed him that I felt it would not be appropriate for me to investigate complaints made against him when I was investigating complaints made by him’.⁶⁶⁸ A/C Ó Cualáin said that Garda Keogh ‘... stated that he was happy with this position, which is contrary to the views expressed by the CR [Garda Keogh] in his statement to the Disclosures Tribunal where he asserts that he believes I should have been investigating them’.⁶⁶⁹ In this regard, Garda Keogh informed the tribunal that:

On the 16/7/2014, Assistant Commissioner Donal O Cualain rings at 17.46 to say that he is not dealing with either the Olivia O Neill or Liam Mc Hugh matters – even though it appeared to me that they were, conversely, serious matters of interference here by police management in the ‘investigation’ and that the garda management ‘spin’ of ‘coaching’ would be exposed as a bizarre contrivance if these matters were independently investigated.⁶⁷⁰

The documentary evidence and witness testimony show that, notwithstanding Garda Keogh’s wishes or belief, A/C Ó Cualáin and his investigation team considered that it was incompatible with their function of investigating Garda Keogh’s allegations for them to take on issues involving criticisms or complaints about him. They made this clear to him and to local management. There was nothing malicious or hostile to Garda Keogh in that position. Indeed, the logic of that refusal seems at least justifiable if not compelling. It was not, and could not be, suggested that this understanding of their function by the Ó Cualáin investigation team was perverse or constituted targeting. The situation therefore was that the option of having these investigators deal with the four Athlone issues was not available, whatever Garda Keogh or even Judge McMahon thought.

Issues 1 – 4

If a number of issues that are considered separately do not individually amount to targeting, there has to be some targeting tendency that is a connecting thread between them that makes them together constitute targeting when considered as a whole. The mere fact that they happened in sequence is not sufficient.

In the case of the four Athlone issues, they all happened and were followed up over a period between 8th May 2014, when Garda Keogh made his protected disclosure, and 1st October 2014, when Supt McBrien wrote to him asking why he had made the PULSE query about Garda A.

⁶⁶⁷ Tribunal Documents, Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 7306 at p. 7326

⁶⁶⁸ Tribunal Documents, Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 7306 at p. 7327

⁶⁶⁹ Tribunal Documents, Statement of Former Acting Commissioner Dónall Ó Cualáin, p. 3957 at p. 3959

⁶⁷⁰ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at pp. 124-125

Issue 1 happened at 23:38 hrs on 18th May 2014. Issue 2 was the PULSE check and it was timed at 05:30 hrs also on 18th May 2014, which means that Garda Keogh made the check some 18 hours before he made the report that gave rise to the first enquiries with which we are concerned.

Issue 3 was the visit of Ms Olivia O'Neill to Athlone Garda Station on 28th May 2014 and Issue 4 began with the report made by Garda Lyons on 2nd June 2014 about his meeting with Liam McHugh on 31st May.

Contrary to Garda Keogh's submission, the dates of these occurrences do not establish a connection that is relevant to targeting or discrediting.

There were not five investigations or mini-investigations as Garda Keogh alleged. At most there was a total of four issues and they did not arise at the same time or from the same source. The PULSE query about Garda A did not arise until the subject discovered it had been made and his protest resulted in a letter of 1st October 2014 from Supt McBrien to Garda Keogh asking why he had made the query. Garda Keogh simply ignored the letter. This issue can be discounted as having any materiality to the stresses experienced by Garda Keogh during this period.

The tribunal has to look at what actually happened in these cases. The imposition on Garda Keogh was not severe; he was interviewed or spoken to by Supt McBrien on a small number of occasions and he received three letters, one of which he did not answer.

In each of the cases Supt McBrien and Chief Superintendent Mark Curran were presented with situations that were not of their making. Garda Keogh created the PULSE entry concerning Ms B, which gave rise to concern about the status of his source. It did not bring about a demand for the source to be identified, an unfortunate misreading by Garda Keogh. The chief superintendent was the person with responsibility for CHIS and he pursued a legitimate enquiry as to whether Garda Keogh's source was registered. Garda Keogh's response was inadequate and was based on his personal belief about the present life and lifestyle of the source, which was actually inconsistent with the entry that he put on the system. The PULSE entry asserted a present situation as to earnings but Garda Keogh asserted that the source's involvement ceased years earlier.

C/Supt Curran had responsibility for CHIS, the entry contained explosive allegations described as fact and as coming from a source that was always reliable; the enquiry the officer made of Garda Keogh was legitimate, limited and reasonable. Garda Keogh himself created this issue and the district and divisional officers were entitled, if not obliged, to enquire into it.

Moreover, there is simply no evidence that the limited number of oral queries and letters that Garda Keogh was asked to deal with had any connection with his protected disclosure. In fact, the local officers were keen to ensure that they kept their distance from the Ó Cualáin investigation. The chief superintendent and superintendent might well have faced criticism if they had done nothing about the PULSE entry by simply ignoring it. Garda Keogh was responsible for the enquiries that followed the report he made on PULSE.

C/Supt Curran received the report about the taking of the statement from Ms Olivia O'Neill and he responded by directing that a statement should be sought from her about her interaction with Garda Keogh. None was forthcoming and he asked that Garda Keogh confirm his account in writing, which the officer accepted. He did not have any other involvement in the matter.

In regard to Issue 4, the report of Garda Lyons's account of what Mr McHugh said could not have been ignored. It called for explanation and C/Supt Curran directed that a statement be sought from Mr McHugh, a decision that was also taken by Supt McBrien. She handled the matter informally in a mode that is the subject of severe criticism in Garda Keogh's submissions.

C/Supt Curran could, and arguably should, have tried to follow up with further enquiries when he had reached his conclusion in which he accepted Garda Keogh's explanation. But it is questionable whether there was any prospect of progress in such an endeavour. He should also have ensured that Garda Keogh was notified of the outcome of the process. The tribunal is satisfied that these criticisms do not amount to targeting or discrediting. And again, as with the other discussions there is no basis for making a connection with the protected disclosure.

C/Supt Curran and his colleagues were essentially passive receivers of information requiring responses in these cases. They were not pursuing a policy directed to Garda Keogh that was designed to victimise him because he had made a protected disclosure. It is true that there was a sequence of events that required local management's attention but that was not something that they caused to happen.

The tribunal is of the view that the cases when seen together in sequence do not supply the missing link of targeting or discrediting that they do not possess individually.

PART THREE

CHAPTER 10

OVERVIEW: ATHLONE ISSUES: MARCH – DECEMBER 2015

Superintendent Pat Murray

Superintendent Pat Murray took up duty as district officer in Athlone on 9th March 2015, replacing Superintendent Noreen McBrien at a time when Garda Keogh was on sick leave because of work related stress as certified by his general practitioner, Dr David Bartlett.

Garda Keogh returned to work on 26th March 2015 and met Supt Murray that evening. Between that date and 26th December 2015, when Garda Keogh went on long-term sick leave, the two men had three further meetings, one phone conversation and exchanged a small amount of correspondence. The first meeting resulted in two complaints of targeting and the relationship between the two men did not improve thereafter. The nine-month period when they were both working in Athlone Garda Station gave rise to a total of fourteen distinct allegations by Garda Keogh that the superintendent targeted or discredited him.

Before embarking on the examination of the issues in sequence, reference needs to be made to the context in which the disputes and events arose, beginning with the situation in early 2015 before the new superintendent arrived in Athlone.

Garda Keogh continued to be stationed there, as did Garda A, and the fact that their shifts overlapped and that the latter had not been suspended was a cause of complaint by Garda Keogh. Garda Keogh's state of health as recorded by his doctor is relevant, as are details of his absences from work on sick leave. His relationship with the Ó Cualáin investigation is important because it affected his attitude to An Garda Síochána management in general, and also to Assistant Commissioner Dónall Ó Cualáin.

Supt Murray's state of knowledge of Garda Keogh prior to their first meeting is material. A further circumstance is the fact that Garda Keogh had access to Deputy Clare Daly and Deputy Mick Wallace, who championed his cause in questions and speeches in Dáil Éireann, reflecting his concerns and criticisms with regard to the Ó Cualáin investigation and local officers, with particular reference to Supt Murray, whom they ultimately named as an officer who victimised Garda Keogh.

Garda Nicholas Keogh's Medical Records

An Garda Síochána's record of Garda Keogh's sick leave and his general practitioner's notes suggest a deterioration in his mental health dating from the beginning of 2015. However, a unit report by his sergeant and a record made by Dr Oghenovo Oghuvbu, the Specialist Occupational Physician at the Garda Occupational Health Service, were more reassuring.

On 20th February 2015, Sergeant Cormac Moylan submitted a unit report that had been requested by Dr Oghuvbu on 30th December 2013.⁶⁷¹ At this time Sgt Moylan reported that:

1. *Garda Keogh currently performs all duties [commensurate] with his rank, including beat, station and prisoner management duties.*

⁶⁷¹ Tribunal Documents, Letter from Dr Oghenovo Oghuvbu to A/C Fintan Fanning, dated 30th December 2013, p. 3705

2. *A history of his effectiveness/non-effectiveness is available in the District Office.*
3. *There are no coping skills or other measures deemed necessary at this stage.*
4. *Garda Keogh states he has a good working relationship with his peers and immediate supervisors alike.*
5. *Garda Keogh does not wish to note any other areas of concern.*⁶⁷²

In 2013, the year before he made his protected disclosure, Garda Keogh was on sick leave for a total of 22 days, including a period of nine days from 23rd May 2013. In 2014, he was sick for a total of 28 days.

Garda Keogh's absences from work in early 2015 presented as a bigger problem than previously. The sick leave records show that Garda Keogh had very good attendance from the time of his protected disclosure until late December 2014, during which he had a small number of absences on sick leave. From 8th May 2014, the date of the protected disclosure, until 19th December 2014, a period of seven months, Garda Keogh missed only 8 days from work due to illness. However, from 20th December 2014 until 26th March 2015 the pattern is very different. In this three-month period he was on sick leave for a total of 25 days.

Dr Bartlett ascribed his patient's illness to anxiety about the investigation. At a later stage, the doctor mentioned the difficulty Garda Keogh was experiencing in working with other members who were under investigation, which really meant working with Garda A. He suggested tentatively that Garda Keogh should consider and discuss with his superiors the possibility of a transfer to a different station. All this meant that Garda Keogh was indeed under pressure because of his personal circumstances in Athlone Garda Station and because of the Ó Cualáin investigation, added to which were the specific incidents and encounters that occurred between him and his superintendent.

It is no surprise in the circumstances that the relationship with Supt Murray got off to a bad start as far as Garda Keogh was concerned, and subsequently went from bad to worse.

Dr David Bartlett, General Practitioner⁶⁷³

On 13th January 2015, Garda Keogh's general practitioner recorded that he gave him a sick note for work related stress stating that he was unfit for work from 12th to 15th January 2015 inclusive.

On 17th February 2015, he recorded that he met with Garda Keogh and that he was '*counselled re ongoing issues with investigation at work*'. It is recorded that the patient '*admits to feeling quite anxious*' and '*has a general feeling of distrust with his garda colleagues who are investigating his case*'.

On 5th March 2015, Dr Bartlett noted that he met Garda Keogh's mother, that Garda Keogh had gone on a severe alcohol binge and that he counselled her about the drugs Xanax and Valium, which he had prescribed for her son. The note recorded that Garda Keogh had an AA sponsor with him. The doctor's plan was for a reducing regime of Valium down to zero.

On 12th March 2015, the doctor noted that the patient was unfit for work with work related stress and he had given him a sick note for the period 2nd to 15th March 2015.

⁶⁷² Tribunal Documents, Letter from Sgt Cormac Moylan to Superintendent Athlone, dated 20th February 2015, p. 9382

⁶⁷³ Tribunal Documents, Medical Records of Garda Nicholas Keogh disclosed by Dr David Bartlett, pp. 10638-10643

On 2nd April 2015, the doctor recorded that he had given Garda Keogh a sick note, that he had work related stress and was unfit for work from 23rd to 26th March and 31st March to 3rd April 2015.

On 1st May 2015, Dr Bartlett noted that the patient had taken further time off work, and was '*not coping with investigation at present*', as he was suffering from work related stress and was unfit for work.

On 18th May 2015, the doctor recorded that Garda Keogh had a meeting scheduled for the following day with the garda doctor, a reference to Dr Oghuvbu. He gave him a certificate covering the period 12th May to 16th May 2015 for work related stress.

On 11th June 2015, he noted that Garda Keogh had further time off work and that he was '*struggling with work related stress and ongoing investigation*'. He had met Dr Oghuvbu and it was recorded that Garda Keogh '*acknowledges he is under duress but can continue to work according to nick*', which appears to be a reference to the opinion expressed by the Specialist Occupational Physician to Garda Keogh. It is probable but not obvious that the reference to '*duress*' may be intended to be '*stress*'. The doctor's note on this occasion went on to say: '*discussed –? requesting transfer as he continues to work daily with other staff members under investigation*'; also, '*he is being [presumably intended as beginning] to feel threatened by these colleagues*'; and '*I have advised to liaise with his senior officers/garda dr about this*'.

On 16th July 2015, Dr Bartlett recorded giving another sick note because Garda Keogh was unfit for work due to work related stress; the note covered the period 9th July to 15th July 2015.

On 13th August 2015, Dr Bartlett recorded giving Garda Keogh a sick certificate for the period 10th August to 14th August 2015.

Garda Nicholas Keogh's Diary Entries (2014-2015)⁶⁷⁴

*12th December 2014: I.T. [Investigation Team] are in coohoots with Kabal to discredit me + cover up
Went to Doctor re pressure 11.12.14*

*14th December 2014: Close to breaking point – stress unbearable
Waiting for Garda A to be in at 7 am*

*23rd December 2014: Sgt Haran tells me for everyone against you many many more are with you.
Hang tough. Stopped drinking poured cans down sink.*

12th January 2015: Sick w. stress

*21st January 2015: 18.14 K Fitz GSOC called. Told him case was gone from bad mess to worse
mess with cover up + will be going back to them*

*28th January 2015: Mick Wallace asks E.K when he was first aware of Gda malpractice in Athlone.
EK avoided answering. M.W asked him again. E.K said im not sure exactly
what your referring to!*

*5th February 2015: Dail Claire Daly alleges Ó Cualáin covered up old complaint against Gardai in
West.*

⁶⁷⁴ Tribunal Documents, Diary entries of Garda Nicholas Keogh, pp. 13286-13305

- 24th February 2015: Sgt Moylan informs me he has to write report on my performance.*
- 26th February 2015: Pat Murray new supt Athlone*
- 2nd March 2015–*
4th March 2015: Sick
- 5th March 2014: Sick. 21.58 rang D. Supt to return his call. Told him was going sick with work related stress due to dangers in stn. Told him nothing has happened since the 2 complaints but have bad feeling + safety risks due to crossovers with not many around. I asked when investigation be finished he said end of March they working on phone records.*
- 6th March 2015–*
8th March 2015: Sick
- 9th March 2015: Sick R.D New supt Pat Murray starts. Went to solc advised to go back to work*
- 10th March 2015: Sick.*
- 16th March 2015: and Garda A together had to be careful 2 criminals with badges v. dangerous Garda A Humming in PO. Posted letter to Clare Daly via stn to see if + when she gets it.*
- 22nd March 2015: Garda A came in stn 9am hung around all day/went sick stress.*
- 23rd March 2015–*
25th March 2015: Sick
- 26th March 2015: 5pm met new Supt Pat Murray.*
- Conversation re sick stress told him to do with investigation legal advice couldnt discuss with him he said he would have to send me to CMO + that he was appointing Sgt Y. Martin to liaise with me. Asked me who my solicitor was. Told him thats private. He then said theres a problem with your car tax is commercial + your using it private. I told him I paid it the same way last few years + wasn't the only one in the stn.*
- 28th March 2015: Cant sleep even with sleeping tabs. Dioborria due to anxiety.*
- 29th March 2015: Couldnt sleep again. Bad anxiety. Dioborria.*
- 30th March 2015: Met Mick + Clare*
- 31st March 2015: Mick Wallace puts it to E.K that he promoted [a previous divisional officer] 2012*

Dr Oghenovo Oghuvbu, Specialist Occupational Physician (later – July 2017 – Chief Medical Officer An Garda Síochána)

The records provided by Dr Oghuvbu record on 5th March 2015:

HRPD Absence Section email of 24/2/2015

Noted with unit Report of 20/2/2015

Member reported as performing all duties required of him and not requiring any extra supports.

Member reported as not indicating any areas of concern in the course of his duties.

- Nil further warranted

- Maintain previous OHS monitoring arrangements.⁶⁷⁵

Political Interventions and the Ó Cualáin Investigation

On 27th November 2014, Deputy Clare Daly stated in Dáil Éireann that, despite the ‘*very serious allegations*’ made by Garda Keogh, no progress had been made in dealing with his complaint.⁶⁷⁶

Detective Inspector Michael Coppinger and Detective Superintendent Declan Mulcahy met with Garda Keogh at Ballinasloe Garda Station on 11th December 2014 where he ‘*discussed his concerns with the investigating members concerning aspects of the investigation*’.⁶⁷⁷

Garda Keogh wrote to Deputy Daly on 14th December 2014. He referred to his meeting with D/Supt Mulcahy and D/Insp Coppinger on 11th December 2014 and stated that:

They wanted me to make a statement re Harassment. I informed them I would make a statement to GSOC and reminded them that I first reported that to D.Supt Mulcahy + Ast. Commissioner [Ó Cualáin] on 7.6.14 and they had no interest in dealing with same.⁶⁷⁸

In a letter dated 17th December 2014 to D/Supt Mulcahy, Garda Keogh complained about the failure to take statements from ‘*the most important witnesses. We are 8 months into this and I haven’t seen anything positive yet.*’ He discussed the mobile phone of Garda A, which he said should be ‘*valuable primary evidence*’.⁶⁷⁹

A/C Ó Cualáin provided a progress report to the Garda Commissioner dated 23rd December 2014, which stated:

I wish to confirm that Detective Superintendent D. Mulcahy accompanied by Detective Inspector M. Coppinger met the confidential reporter as directed by the Commissioner. The confidential reporter stated that he had no issues with this investigation and was satisfied with progress. He further indicated that he felt he was harassed by senior Management at Mullingar for the following reasons:

- *A Pulse check he previously did on the Pulse system.*

⁶⁷⁵ Tribunal Documents, Note of Dr Oghenovo Oghuvbu, dated 5th March 2015, p. 3788

⁶⁷⁶ Tribunal Documents, Chronology provided by Deputies Mick Wallace and Clare Daly in relation to interactions with Garda Nicholas Keogh, p. 13052 at p. 13054

⁶⁷⁷ Tribunal Documents, Report by Dep/C Dónall Ó Cualáin to the Director of Public Prosecutions, dated 24th November 2015, p. 11080 at p. 11084; D/Insp Michael Coppinger’s Note of Interview with Garda Nicholas Keogh, dated 11th December 2014, p. 10829

⁶⁷⁸ Tribunal Documents, Letter from Garda Nicholas Keogh to Deputy Clare Daly, dated 14th December 2014, p. 12863

⁶⁷⁹ Tribunal Documents, Letter from Garda Nicholas Keogh to D/Supt Declan Mulcahy, dated 17th December 2014, p. 328

- *Intelligence he had placed on the Pulse system.*
- *Two alleged complaints by Ms Olivia O'Neill and Mr Liam McHugh.*

*The confidential reporter has stated that he lodged a complaint with GSOC in respect of that alleged harassment... He was assured that the current investigation will proceed to determine an outcome to his allegations and that he would be treated with dignity and respect in this determination. He was also informed that if he felt he was being harassed to report the matter immediately.*⁶⁸⁰

On 15th January 2015, Deputy Mick Wallace stated in Dáil Éireann that there was a lack of progress in dealing with whistleblowers' complaints.⁶⁸¹ On 5th February 2015, Deputy Daly raised the treatment of whistleblowers in Dáil Éireann during a debate on the Garda Síochána (Amendment) (No. 3) Bill 2014.⁶⁸²

On 16th February 2015, Garda Keogh wrote to Deputies Daly and Wallace stating that '*I intend at some point to go to GSOC with a complaint of a flawed Garda Investigation and that the failure to issue a suspension was a deliberate tactic to prevent witnesses from cooperating in particular members of An Garda Síochána.*'⁶⁸³

On 19th February 2015, Deputy Daly asked the Minister for Justice and Equality whether she was satisfied that the environment in An Garda Síochána was appropriate for whistleblowers.⁶⁸⁴

On 31st March 2015, Deputy Wallace raised the matter of '*malpractice*' in Athlone during Leader's Questions in Dáil Éireann. He referred *inter alia* to the harassment, bullying and intimidation of whistleblowers.⁶⁸⁵

On 1st April 2015, A/C Ó Cualáin provided two reports to the Garda Commissioner. The first concerned the welfare of Garda Keogh and the comments in Dáil Éireann by Deputy Wallace. It was stated that:

By way of additional information I wish to inform you that D/Superintendent Mulcahy has been in regular contact with the Confidential Reporter both in person and on the phone. During all of these meetings and conversations D/Superintendent Mulcahy has enquired about the Confidential Reporter's welfare and made him aware of all the services available to him if required. The Confidential Reporter has consistently indicated that he does not want to engage with any of [the] welfare services offered by An Garda Síochána.

The most recent communication between D/Superintendent Mulcahy and the Confidential Reporter was on today's date, the 1st April 2015. Following this communication D/Superintendent Mulcahy is of the belief that the comments made by Mr Michael Wallace TD in the Dáil on the 31st March 2015 regarding the bullying and harassment of whistleblowers may have emanated from the above mentioned Confidential Reporter. In his conversation with D/Superintendent Mulcahy the Confidential Reporter intimated that he had no choice given the

⁶⁸⁰ Tribunal Documents, Letter from Assistant Commissioner Western Region to the Commissioner, dated 23rd December 2014, p. 10834

⁶⁸¹ Tribunal Documents, Chronology provided by Deputies Mick Wallace and Clare Daly in relation to interactions with Garda Nicholas Keogh, p. 13052 at p. 13054

⁶⁸² Tribunal Documents, Chronology provided by Deputies Mick Wallace and Clare Daly in relation to interactions with Garda Nicholas Keogh, p. 13052 at p. 13054

⁶⁸³ Tribunal Documents, Letter from Garda Nicholas Keogh to Deputies Mick Wallace and Clare Daly, dated 16th February 2015, p. 12868

⁶⁸⁴ Tribunal Documents, Chronology provided by Deputies Mick Wallace and Clare Daly in relation to interactions with Garda Nicholas Keogh, p. 13052 at p. 13054

⁶⁸⁵ Tribunal Documents, Extract from Dáil Éireann Debates, dated 31st March 2015, p. 15296 at pp. 15321-15322

recent interventions by Superintendent Murray in raising issues over his car tax and also the question of having him referred to the CMO for stress related illness.

Following this conversation D/Superintendent Mulcahy contacted Superintendent Murray and outlined the issues as raised by the Confidential Reporter.

At the end of today's communication the Confidential Reporter thanked D/Supt Mulcahy for contacting him and expressed his satisfaction with the investigation to date.

With the investigation ongoing and further communications expected between D/Superintendent Mulcahy and the Confidential Reporter I have instructed D/Superintendent Mulcahy to ensure that any welfare issues highlighted will be communicated to local management for attention as appropriate.⁶⁸⁶

On 2nd April 2015, Deputy Wallace stated in Dáil Éireann that complainants were being harassed.⁶⁸⁷ On 26th May 2015, Deputy Wallace raised the issue in Dáil Éireann of two garda whistleblowers who had made complaints over a year previously and who had not had the investigation of their complaints completed.⁶⁸⁸

Garda Keogh sent a letter to the Director of Public Prosecutions on 26th July 2015⁶⁸⁹ which was copied to the Minister for Justice and Equality. He outlined nine 'serious and deliberate flaws' with regard to the criminal investigation. He further noted that he had to 'work in the same station and half the time on the same shift' as Garda A, one of the subjects of his protected disclosure. He stated that he had not yet been allowed to view the investigation file into his allegations and that every effort was being made to discredit him. However, he stated that:

I do not want to be dismissive of every part of the Garda investigation. I do believe if Detective Superintendent Mulcahy and Detective Inspector Coppinger were investigating the case, without the interference of senior management, this could have been a very different investigation.

He concluded by requesting that this information be taken into consideration when reading the file submitted by A/C Ó Cualáin.⁶⁹⁰

Garda Nicholas Keogh's Welfare

On 3rd September 2015, D/Supt Mulcahy reported on his contacts with Garda Keogh over the course of the investigation. He said that he was the investigation team's single point of contact with the confidential reporter and that:

... I have enquired into his well being and welfare on almost every occasion that I have had contact with him since this enquiry began. I also made contact with Superintendent Noreen McBrien in relation to the welfare of the Confidential Reporter prior to her transfer from the Athlone District.⁶⁹¹

⁶⁸⁶ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Commissioner, dated 1st April 2015, pp. 10851-10852

⁶⁸⁷ Tribunal Documents, Chronology provided by Deputies Mick Wallace and Clare Daly in relation to interactions with Garda Nicholas Keogh, p. 13053

⁶⁸⁸ Tribunal Documents, Deputy Mick Wallace's Parliamentary Question, dated 26th May 2015, pp. 10895-10900

⁶⁸⁹ Tribunal Documents, Letter from Garda Nicholas Keogh to the Director of Public Prosecutions, dated 26th July 2015, pp. 144-147

⁶⁹⁰ Tribunal Documents, Letter of Garda Nicholas Keogh to the Director of Public Prosecutions, dated 26th July 2015, pp. 144-147

⁶⁹¹ Tribunal Documents, Letter from D/Supt Declan Mulcahy to Assistant Commissioner Western Region, dated 3rd September 2015, p. 10946

He outlined that Garda Keogh had initially refused the offer of assistance from the employee assistance officer. He stated that, following conversations with Garda Keogh on 19th and 20th April 2015, he had concern for Garda Keogh's welfare, which he notified to Supt Murray. He expressed the opinion that Garda Keogh was under the influence of alcohol during these calls. He confirmed that Garda Keogh made contact with him on 21st April 2015 and accepted the offer of welfare assistance. D/Supt Mulcahy assisted in arranging this with Garda Michael Quinn:

I subsequently called Superintendent Pat Murray and explained to him what I had done for the confidential reporter. The confidential reporter had asked me to tell Superintendent Murray that he was not a bad person. On all subsequent contacts with the confidential reporter, I made a point of raising the matter of welfare and he stated that this was okay.⁶⁹²

Superintendent Murray's Meeting with Superintendent McBrien: 4th March 2015

In his evidence to the tribunal, Supt Murray described meeting Supt McBrien on 4th March 2015.⁶⁹³ He said that the meeting was unremarkable as far as he was concerned.⁶⁹⁴ Supt Murray recalled that Supt McBrien had a file that she was handing over to him and that their discussion 'was about the file mostly and it was a file of claims that Garda Keogh had made some time ago but that hadn't been paid'.⁶⁹⁵ Supt Murray gave evidence to the tribunal that:

She explained to me in relation to the file itself, that she didn't feel she could pay those claims. That she tried to discuss it with him but didn't feel that he was up to doing it. I think she mentioned that she had done that in February of '15. Look it, I didn't pass much comment on it, I didn't know much about Athlone. So I said, look, just leave it with me and I will deal with it when I arrive. I think she was happy with that.⁶⁹⁶

He said that she didn't portray it as a substantial matter and he saw it as a 'normal matter' to be dealt with.⁶⁹⁷ Supt McBrien told him that Garda Keogh was a whistleblower and a confidential reporter.⁶⁹⁸ When asked if they discussed Garda Keogh's welfare, Supt Murray stated in his evidence to the tribunal that:

She explained that she had been liaising with him directly herself mostly and that he had issues with the use of alcohol. Other than that, no.

Q. Did she say to you that he had previously had an alcohol addiction problem?

A. No, she didn't go that far, no.⁶⁹⁹

Supt McBrien gave an account of this meeting to tribunal investigators as follows:

On the 4th of March, I met Superintendent Pat Murray. It was a handover meeting. I was coming back as I hadn't been in Athlone in a while due to illness and there were matters to discuss regarding the budget, welfare issues, members on long-term sick leave and operational

⁶⁹² Tribunal Documents, Letter from D/Supt Declan Mulcahy to Assistant Commissioner Western Region, dated 3rd September 2015, pp. 10946-10947

⁶⁹³ Tribunal Transcripts, Day 123, p. 12, Evidence of Supt Pat Murray

⁶⁹⁴ Tribunal Transcripts, Day 123, p. 12, Evidence of Supt Pat Murray

⁶⁹⁵ Tribunal Transcripts, Day 123, p. 14, Evidence of Supt Pat Murray

⁶⁹⁶ Tribunal Transcripts, Day 123, p. 14, Evidence of Supt Pat Murray

⁶⁹⁷ Tribunal Transcripts, Day 123, p. 14, Evidence of Supt Pat Murray

⁶⁹⁸ Tribunal Transcripts, Day 123, p. 14, Evidence of Supt Pat Murray

⁶⁹⁹ Tribunal Transcripts, Day 123, p. 15, Evidence of Supt Pat Murray

matters, to include the Assistant Commissioner Ó Cualáin investigation. Garda Keogh would have been discussed under welfare matters. I would have explained that Garda Keogh and I had met several times and our meeting on 4th February 2015, and I would have explained that the reason the car tax matter hadn't progressed was due to both my illness and the fact that I was very concerned regarding his presentation on the 4th February 2015. Superintendent Pat Murray said that he would deal with it but didn't say anything about how he would deal with the matter.⁷⁰⁰

Supt Murray confirmed in his evidence that there was a discussion in respect of Garda Keogh's welfare at the time:

She mentioned that she didn't feel he was up to discussing it in February. That's my recollection of that.

Q. Well, did she explain why?

A. Around the use of alcohol at the time, she didn't feel he was up to discussing it.⁷⁰¹

Supt Murray told tribunal investigators that there was a '*palpable air of fear*'⁷⁰² in Athlone Garda Station on his arrival and he gave evidence that:

I suppose, I set about trying to meet people early on and I felt that a range of controversies that were explained to me, that had attracted national media attention, had an impact on confidence, I suppose, in particularly the supervisory roles. Superintendent McBrien listed some of those and the Roma baby situation, and there were a number of other issues that attracted national media attention to Athlone in terms of perhaps more practices and issues like that. And I'm conscious that I'm in a public forum, those issues were significant for people who were there.⁷⁰³

Supt Murray stated that he knew at that stage that Garda Keogh was a whistleblower, that A/C Ó Cualáin was conducting an investigation and that Garda Keogh had issues with alcohol.⁷⁰⁴ When asked by counsel for the tribunal if, at that stage, he knew that Garda Keogh had been out sick on a large number of occasions, he gave evidence that this '*became apparent to me when I started to conduct the analysis around resources*'⁷⁰⁵

Supt Murray told counsel for the tribunal that he was aware of the sick certificates that certified that Garda Keogh was suffering from work related stress.⁷⁰⁶ He stated his view of this at the time as follows:

Q. And you had also been advised that he had a drink problem?

A. Yes.

Q. Did you get any sense that the work related stress might be feeding into the drink problem?

A. I suppose the sense I got was it might be the opposite, that the drink problem might be feeding into the work related stress.⁷⁰⁷

⁷⁰⁰ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6245

⁷⁰¹ Tribunal Transcripts, Day 123, p. 16, Evidence of Supt Pat Murray

⁷⁰² Tribunal Documents, Investigator Interview of Supt Murray, pp. 3010-3142 at p. 3020

⁷⁰³ Tribunal Transcripts, Day 123, p. 18, Evidence of Supt Pat Murray

⁷⁰⁴ Tribunal Transcripts, Day 123, pp. 19-20, Evidence of Supt Pat Murray

⁷⁰⁵ Tribunal Transcripts, Day 123, p. 20, Evidence of Supt Pat Murray

⁷⁰⁶ Tribunal Transcripts, Day 123, p. 20, Evidence of Supt Pat Murray

⁷⁰⁷ Tribunal Transcripts, Day 123, pp. 20-21, Evidence of Supt Pat Murray

When asked to expand on the foregoing, Supt Murray gave evidence that *‘I learned that drink had been a major factor in his life for quite some time’* and that he had learned this from Sergeant Andrew Haran. He said that *‘Sergeant Haran had been supporting Garda Keogh and he explained to me that his drinking problem was a long-term drinking problem.’*⁷⁰⁸ He said that Sgt Haran did not mention work related stress to him.⁷⁰⁹

Supt Murray introduced significant changes to Athlone Garda Station to improve the quality of the policing service that An Garda Síochána was providing in the district. The new regime included provisions for greater efficiency in the reporting and recording of criminal investigations. He introduced many of these new practices in the period immediately following his taking up duty on 9th March 2015. The evidence the tribunal heard from Athlone members, including sergeants and inspectors, was that these changes were good and led to improvements generally.

Superintendent Murray’s Meeting with Garda Keogh: 26th March 2015

Garda Keogh was not well disposed towards the new superintendent. He thought that personnel changes in the district and division were *‘a bit like badger baiting, they changed the dogs, they put in fresh dogs’*⁷¹⁰ and that A/C Ó Cualáin, whom he distrusted, had put the superintendent into Athlone to get him out.

When asked by counsel for the tribunal if he had formed a picture in his mind of Garda Keogh prior to meeting him on 26th March 2015, Supt Murray said that he had not formed any view as he had never met Garda Keogh before.⁷¹¹ He said that the primary purpose of the meeting was to *‘pay the monies that were owed to him, if the issue could be solved with his tax’*.⁷¹²

Supt Murray gave the following evidence to the tribunal:

*This was the first time I met him and he felt we had met before when he was a garda in Bray and I was an inspector in Wicklow, but I didn’t have any recollection of that meeting. I suppose the investigation came up in relation to his sick days and that was the first part of the conversation. I brought his frequent absences to his attention and I was trying to find out if I could, I suppose, support or help him to attend work more frequently. And I asked about the cause of them, the absences. He was vague about that, he just said he didn’t like to be there when certain people were there. And he explained that he had gone sick the Sunday previous because a certain member who was off came into the station. And he didn’t want to say who that was.*⁷¹³

Supt Murray recorded a note of the meeting.⁷¹⁴ He was asked by counsel for the tribunal whether he had already taken a view that Garda Keogh’s absences may not have been as a result of what was certified by the medical practitioner:

*No, I did not. I had taken no view, I was only meeting him for the first time. Resources were a problem everywhere in the Garda Síochána at that time. There had been no recruitment since 2009. One had the resources one had and no replenishments occurred in that period. The optimisation of resources was something that was a priority to me.*⁷¹⁵

⁷⁰⁸ Tribunal Transcripts, Day 123, p. 21, Evidence of Supt Pat Murray

⁷⁰⁹ Tribunal Transcripts, Day 123, p. 21, Evidence of Supt Pat Murray

⁷¹⁰ Tribunal Transcripts, Day 100, p. 101, Evidence of Garda Nicholas Keogh

⁷¹¹ Tribunal Transcripts, Day 123, p. 23, Evidence of Supt Pat Murray

⁷¹² Tribunal Transcripts, Day 123, p. 51, Evidence of Supt Pat Murray

⁷¹³ Tribunal Transcripts, Day 123, p. 52, Evidence of Supt Pat Murray

⁷¹⁴ Tribunal Documents, Note of Supt Pat Murray, dated 26th March 2015, pp. 2187-2188

⁷¹⁵ Tribunal Transcripts, Day 123, p. 53, Evidence of Supt Pat Murray

Supt Murray gave evidence that he told Garda Keogh he would refer him to the Chief Medical Officer (CMO) *'to assess his stress because the in and out appearances do not, in my view, support what he is saying'*.⁷¹⁶ He told the tribunal that:

*... when you look at the absences that were there, some of them were very short-term, some of them would coincide with days before rest days, he would come off sick for the rest days and then work after or go sick again. So, it was difficult for me, without him explaining it to me, to understand when you would be stressed on these particular days but then okay to come to work on these particular days. And if there was something there that I could do.*⁷¹⁷

His note of the meeting recorded that Garda Keogh *'declined answering questions re points he was making, instead asking me to contact Detective Superintendent Mulcahy and Superintendent McBrien'* and that *'I said I wouldn't contact anyone for anecdotal info, but would ask him and it was up to him whether to answer or not'*. Supt Murray told the tribunal that he adopted this position because:

*... I was taking over a role as the superintendent in Athlone and he was a resource for me. If I were to have to engage with Garda Keogh through third parties, that wouldn't work at all for anybody.*⁷¹⁸

Supt Murray also recorded in his note that:

*I asked him if he was doing any work. He said, what do you mean? I said, you are getting wages. Are you doing garda work, enforcement, investigations, community engagement et cetera? He said he was doing very little. I said I couldn't condone that and asked him what he was doing and was he following up on incidents being reported to him.*⁷¹⁹

Supt Murray told the tribunal that:

*It would be ridiculous to suggest that someone with intermittent absences in that fashion, that may be related to drink, that it wouldn't impact on work. It would be difficult to understand how that wouldn't impact on work.*⁷²⁰

Garda Keogh's diary entry for this meeting with Supt Murray stated as follows:

... 5pm met new Supt Pat Murray.

*Conversation re sick stress told him to do with investigation legal advice couldn't discuss with him he said he would have to send me to CMO + that he was appointing Sgt Y Martin to liaise with me.*⁷²¹

In his statement to the tribunal, Garda Keogh said that on 26th March 2015 he was called into Supt Pat Murray's office and asked about his sick leave:

*I said that I was suffering from work related stress. My stress had to do with the ongoing internal investigation into garda collusion in criminal garda operations from Athlone station. He said that 'you are under no stress', and he repeated this for emphasis. He said that he was sending me to the Chief Medical Officer if I wouldn't give him any other reason than 'work related stress' for my sick leave.*⁷²²

⁷¹⁶ Tribunal Transcripts, Day 123, p. 58, Evidence of Supt Pat Murray

⁷¹⁷ Tribunal Transcripts, Day 123, p. 59, Evidence of Supt Pat Murray

⁷¹⁸ Tribunal Transcripts, Day 123, p. 61, Evidence of Supt Pat Murray

⁷¹⁹ Tribunal Documents, Note of Supt Pat Murray, dated 26th March 2015, pp. 2187-2188 at p. 2187

⁷²⁰ Tribunal Transcripts, Day 123, p. 63, Evidence of Supt Pat Murray

⁷²¹ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 26th March 2015, p. 436

⁷²² Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 126

In his evidence to the tribunal, Supt Murray denied that he said ‘*you are under no stress*’⁷²³ or that he asked Garda Keogh who his solicitor was or whether he would take a transfer.⁷²⁴ He also denied that they discussed the Ó Cualáin investigation.⁷²⁵

Supt Murray told the tribunal:

*That first meeting was to solve problems. I was trying to pay the monies owed to him, which required his tax to be dealt with. I offered a solution in a holistic way, which he accepted. I tried to ascertain what I could do in relation to allowing him attend work more frequently. It was a problem solving meeting as far as I was concerned. If there was a problem that he wished to discuss with me, I was more than happy to, I suppose, solve that problem, to do whatever I could or whatever was in my gift to ensure that his welfare and every other consideration was taken care of. There was no hostility on my part. I had never met Garda Keogh before. I had no motive to do anything other than my job and my duty. And I think my history reflects that.*⁷²⁶

He also gave evidence that:

*... As I’ve said, I never worked with anyone in Athlone before, I never worked there before. I had no motive in any shape or form to do anything that Garda Keogh alleges.*⁷²⁷

The Report to the Director of Public Prosecutions

Garda A’s deployment status was revisited by local management,⁷²⁸ and by Internal Affairs,⁷²⁹ in October 2015. On 14th October 2015, Garda A was suspended from duty by Deputy Commissioner John Twomey under Regulation 7 of the Garda Síochána (Discipline) Regulations, 2007.⁷³⁰

A/C Ó Cualáin was appointed Deputy Commissioner of An Garda Síochána on 20th October 2015.

On 24th November 2015, the *Report of the Investigation into Matters relating to Policing Practices and Activities in Athlone Garda District made under the Garda Síochána (Confidential Reporting of Corruption and Malpractice) Regulations 2007* was finalised and forwarded to the Director of Public Prosecutions.⁷³¹ The deputy commissioner also provided a report to the Garda Commissioner on the same date, outlining internal matters which he stated were required to be addressed in the light of the findings of the investigation.⁷³² He stated in this report that:

As you can see from the findings of this investigation, there is substance in a number of the allegations being made by the Confidential Reporter.

⁷²³ Tribunal Transcripts, Day 123, p. 74, Evidence of Supt Pat Murray

⁷²⁴ Tribunal Transcripts, Day 123, p. 75, Evidence of Supt Pat Murray

⁷²⁵ Tribunal Transcripts, Day 123, p. 76, Evidence of Supt Pat Murray

⁷²⁶ Tribunal Transcripts, Day 123, p. 77, Evidence of Supt Pat Murray

⁷²⁷ Tribunal Transcripts, Day 123, p. 77, Evidence of Supt Pat Murray

⁷²⁸ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Chief Superintendent Internal Affairs, dated 14th October 2015, pp. 11049-11054

⁷²⁹ Tribunal Documents, Letter from Chief Superintendent Internal Affairs to Dep/C John Twomey, dated 14th October 2015, pp. 11047-11048

⁷³⁰ Tribunal Documents, Form I.A.71, dated 14th October 2015, p. 11055

⁷³¹ Tribunal Documents, Report by Dep/C Dónall Ó Cualáin to the Director of Public Prosecutions, dated 24th November 2015, pp. 11080-11144

⁷³² Tribunal Documents, Letter from Dep/C Dónall Ó Cualáin to the Commissioner, dated 24th November 2015, pp. 11979-11981

*While the investigation uncovered suspicions of criminal behaviour by Gardaí in Athlone, in particular the allegation surrounding the destruction of evidence which was facilitated by Garda A, in the alleged tipping off of Ms. B and _____ to destroy their phones; in my opinion, the evidence while circumstantial falls short of what is required to bring a criminal prosecution due to the rules surrounding hearsay.*⁷³³

Deputy Commissioner Ó Cualáin also referred to a number of incidents dealt with in his report, which he stated required further examination.⁷³⁴

On 3rd March 2016, the Director of Public Prosecutions directed that there was to be no prosecution arising from the criminal investigation.⁷³⁵

On 16th May 2016, Garda Keogh wrote to the Minister for Justice and Equality. He referred to the suspension of Garda A and complained that:

I must point out that I had to work for 18 months mostly on the same shift as this armed Garda, whom I had formally accused of being involved in a conspiracy to supply Heroin along with a local female suspected Heroin dealer.

The Issues

The number of issues to be considered in detail has fallen because some were abandoned or not pursued. The issues concerning Supt Murray in the nine-month period when Garda Keogh was working under his command are considered in detail in chapters 13-21 of this report. Garda Keogh abandoned or did not pursue a number of complaints against Supt Murray and these are discussed in chapter 22. However, this catalogue is not the end of the contest between the two men because later chapters will consider Garda Keogh's complaint that he was targeted or discredited by the manner of the superintendent's subsequent promotion to the rank of chief superintendent.

⁷³³ Tribunal Documents, Letter from Dep/C Dónall Ó Cualáin to the Commissioner, dated 24th November 2015, p. 11979

⁷³⁴ Tribunal Documents, Letter from Dep/C Dónall Ó Cualáin to the Commissioner, dated 24th November 2015, pp. 11979-11981

⁷³⁵ Tribunal Documents, Letter from Ms Claire Galligan Office of the Director of Public Prosecutions to Deputy Commissioner Strategy and Change Management, dated 3rd March 2016, p. 4009

CHAPTER 11

ISSUE 5:

THE COMPLAINT MADE BY GARDA NICHOLAS KEOGH IN RELATION TO MICRO-SUPERVISION AT ATHLONE GARDA STATION DURING 2015

The Facts

Superintendent Pat Murray was assigned to Athlone Garda Station on 9th March 2015. He was aware that Garda Keogh had made a protected disclosure concerning policing issues in the district and he had also spoken to Superintendent Noreen McBrien about Garda Keogh at a handover meeting. Supt Murray became aware that Garda Keogh was going on intermittent sick leave and that he had difficulties with alcohol.

Supt Murray met with Sergeant Andrew Haran on 13th March 2015 when, amongst other issues, Garda Keogh was discussed. Supt Murray's diary entry of 13th March 2015 noted as follows:

Met Sergeant Haran... He brought up Garda N. Keogh and discussed the broad outline. He indicated he was contact for Garda Keogh and knew his mind re returning to work et cetera. Said he wasn't directly involved in any of it. Asked him if there was a perception he was on one side because of his role. Said there was and not totally comfortable with that. Told him to consider might be better if role passed as came near end of process. Said he thought it was a good idea and would think about it.⁷³⁶

Sgt Haran and Supt Murray disagree as to which party suggested that Sgt Haran should step back from his role with regard to Garda Keogh, as recounted below.

On 20th March 2015, Supt Murray made a note in his diary stating:

... Spoke [to] Sergeant Haran who will relinquish role with Garda Keogh for reasons of neutral stance and perceptions that may exist that he is not. Sergeant Martin agreed to take on role.⁷³⁷

Supt Murray subsequently had his first meeting with Garda Keogh on 26th March 2015. His note for that date recorded as follows:

I asked him if he was doing any work. He said, what do you mean? I said, you are getting wages. Are you doing garda work, enforcement, investigations, community engagement et cetera? He said he was doing very little. I said I couldn't condone that and asked him what he was doing and was he following up on incidents being reported to him. He mentioned an assault/harassment case he said he was neglecting. He agreed that wasn't fair to the victim. I asked if there was a sergeant available for him to link into. He didn't really answer. I said I was asking Sergeant Yvonne Martin to link in with him in relation to all workplace issues. He asked why her, as he didn't know her. I said for that very reason, as she was new here like I and she would be a support to him to allow him attend work regularly. I advised he discuss the shortfalls in the assault case/harassment case with her and she would put supports in place to ensure thoroughness in the investigation. He agreed to same and to use her.⁷³⁸

⁷³⁶ Tribunal Documents, Note of Supt Pat Murray, dated 13th March 2015, p. 2184

⁷³⁷ Tribunal Documents, Note of Supt Pat Murray, dated 20th March 2015, p. 2185

⁷³⁸ Tribunal Documents, Note of Supt Pat Murray, dated 26th March 2015, pp. 2187-2188

Garda Keogh noted a diary entry in respect of this meeting with Supt Murray which stated as follows:

5pm met new Supt Pat Murray.

Conversation re sick stress told him to do with investigation legal advice couldn't discuss with him he said he would have to send me to CMO + that he was appointing Sgt Y Martin to liaise with me ...⁷³⁹

There is a dispute on the evidence as to what exactly was said by both parties at this meeting. However, both parties accept that the issue of appointing Sergeant Yvonne Martin to link in with Garda Keogh in relation to any workplace issues was discussed.

In a subsequent letter headed 'Sick Report' and dated 2nd April 2015, Supt Murray informed Inspector Nicholas Farrell, Sgt Martin, Sergeant Cormac Moylan and Sgt Haran of the new arrangements he was putting in place:

1. *I have allocated Sergeant Martin as a liaison person for Garda Keogh to allow him to discuss any work related issues he may be having with a view to solving any issues that may arise. Both Sergeant Martin and Garda Keogh have been informed of this work place support.*
2. *Sergeant Moylan, and in his absence Sergeant Haran supervise unit C to which Garda Keogh is attached. Both those Sergeants should continue to supervise the member in the normal way in relation to any work output required of the member resulting from incidents he attends or matters he is investigating. Sergeant Moylan should sit down with Garda Keogh, go through his notebook, Pulse, the DPP and Crime File lists, and ascertain if he requires help with any ongoing cases as he mentioned a harassment case he may be in difficulty with. Any issues arising should be immediately reported.⁷⁴⁰*

On the same date, Supt Murray wrote to Chief Superintendent Lorraine Wheatley with regard to his meeting with Garda Keogh on 26th March 2015 and stated:

While Garda Keogh was reticent to discuss any issues he may have with me, I none the less felt it prudent to put an arrangement in place in Athlone to support him in the work environment as he is indicating work related stress as a source of his absences. With that in mind I have allocated a female Sergeant who is new to the District to act as a direct point of contact for the member to discuss and if possible solve any work place issues he may have in Athlone in order to allow him attend work more frequently.⁷⁴¹

On 8th June 2016, in response to a request for information regarding any investigation that had been conducted into Garda Keogh's work related stress, C/Supt Wheatley informed the Executive Director, Human Resources and People Development (HRPD) that:

A member of Sergeant rank was appointed in Athlone Garda to liaise with Garda Keogh to act as a direct point of contact for the member to discuss and if possible solve any work place issues he may have in Athlone in order to allow him to attend work more frequently.⁷⁴²

⁷³⁹ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 26th March 2015, p. 436

⁷⁴⁰ Tribunal Documents, Letter from Supt Pat Murray to Insp Nicholas Farrell, Sgt Yvonne Martin, Sgt Cormac Moylan and Sgt Andrew Haran, dated 2nd April 2015, p. 187

⁷⁴¹ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 2nd April 2015, p. 8740

⁷⁴² Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Executive Director HRPD, dated 8th June 2015, pp. 369-370

Complaint made by Garda Nicholas Keogh

In his statement to the tribunal, Garda Keogh complained that the arrangement put in place by Supt Murray amounted to micro-supervision of him by his superiors and constituted targeting and discrediting. In his evidence to the tribunal he described how he viewed garda management at that time:

... the persons at the top are the people that I hold responsible. Níorín O'Sullivan is the Commissioner, and ultimately she is the person in charge of An Garda Síochána at the time and this is all going on. There's a change, a total change, everything changes after Superintendent Murray writes that. Like it was difficult enough to work, working alongside a guard that you have accused of what you have accused them of, but when Superintendent Murray arrives, things become much, much more difficult, just even going into work and that. Now like, again, I do turn to drink, I was drinking very heavily. I go into binges. I go sick quite a lot. The investigation, of course, is ongoing in the background. I am determined at the time and also I am suspicious with what's going on in the investigation as well. So I know I have to try and stay in work as long as possible to try and prevent any - make sure any evidence that I get goes towards Detective Superintendent Mulcahy and it doesn't go missing or anything like that. So it's a difficult time.⁷⁴³

In his statement to the tribunal, Garda Keogh stated that he met with Supt Murray for the first time on 26th March 2015 after being called into his office. He outlined the conversation between them and stated that:

He then said that he was placing Sergeant Martin over me. This would be the third Sergeant now supervising me. He gave no reason.⁷⁴⁴

In relation to the letter headed 'Sick Report' and dated 2nd April 2015, where Supt Murray outlined the new arrangements he was putting in place, he complained that it was simply left in his pigeon hole and that:

I was subjected to implied criticism and to oppressive levels of supervision. Superintendent Pat Murray concluded that any issues arising should be 'immediately reported'...

I was allocated Sergeant Martin as a liaison person to discuss 'work related issues'... This response did not amount to a 'reasonable accommodation' of my medically certified work-related stress. Sergeant Moylan and Sergeant Haran were also dispatched to supervise me 'in relation to any work output required of the member resulting from incidents he attends or matters he is investigating'. It was implied alleged that my work output, investigations and reporting of incidents were deficient. These implications were made without rational grounds or hearings. Up until the encounter with criminality and 'protected' disclosures in Athlone, I had never been hypercriticised since I had joined the guards in 1999. I was apparently now being placed under the microscopic supervision of Sergeant Martin, Sergeant Haran and Sergeant Moylan. Everything I did was being scrutinised in great detail for possible mistakes.

The letter from Superintendent Pat Murray itemised a multiplicity of avenues of supervision and vistas for fault-finding in my work. The sergeants should go through my notebook, pulse records, DPP and crime file lists and ascertain if I required help with any ongoing cases 'as he mentioned a harassment case he may be in difficulty with. Any issues arising should be

⁷⁴³ Tribunal Transcripts, Day 100, p. 102, Evidence of Garda Nicholas Keogh

⁷⁴⁴ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 126

immediately reported’. Superintendent Pat Murray here appeared to seek to externalise or objectify the harassment – as if it were carried out by external or alien agents.⁷⁴⁵

Garda Keogh stated that he *‘believed that Superintendent Pat Murray was involved at that stage in harassment towards me’⁷⁴⁶*. He further stated in relation to this letter that no other colleague was being supervised by three sergeants and that he was being targeted:

I had a third Sergeant allocated to monitor me, unlike anybody else. It is under the guise of support and then it ends up with where he says that Sergeant Moylan should sit down with Garda Keogh and go through my “notebook, Pulse, the DPP and Crime File lists and ascertain if he requires help with any ongoing cases as he mentioned a harassment case he may be in difficult with.” This is basically three sergeants monitoring me and being asked to go through everything I am doing to find something I am not doing right or to identify some misdemeanour on my part. It is my belief that Superintendent Pat Murray was targeting me in this respect. It is written as if I went to him for some help but that is not what happened.⁷⁴⁷

Garda Keogh was asked by counsel for the tribunal whether the sergeants in fact micro-supervised him:

In fairness, the sergeants, they were okay. The three sergeants that were allocated to me didn’t change. There was no difference as to the way they were treating me prior to that or anything. So there was no – if you look at the instructions, read the instructions at the bottom of that report, you will see, check his notebook, check his pulse entries, check everything. He can’t obviously word it in a way where you have to find any mistake that this guy makes so we can hammer him. So he words it in a way, you know, see if he needs help or something like that. But that’s – you know, why would a person say check all his pulse entries, files, his notebooks, you know, everything like that. He is looking for microscopic management to try and find something.⁷⁴⁸

Garda Keogh told the Chairman that his complaint was about Supt Murray’s motive:

Q. **Chairman:** Yes. So whatever instruction Superintendent Murray gave, it didn’t result in any trouble to you?

A. *That is correct, but, Judge, it’s the motive.⁷⁴⁹*

Garda Keogh also isolated the issue to be considered by the tribunal in the following exchange with the Chairman:

Q. **Chairman:** I see. But the question, Garda Keogh, the question I have to decide in this case is the motivation of Superintendent Murray?

A. Yes.

Q. **Chairman:** Not what happened on the ground, it’s what was in his mind, did he make an unreasonable order that targeted you or is there another interpretation of it?

A. *Judge, the word I would use is vindictive.*

⁷⁴⁵ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 128

⁷⁴⁶ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 48

⁷⁴⁷ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 46-47

⁷⁴⁸ Tribunal Transcripts, Day 100, pp. 111-112, Evidence of Garda Nicholas Keogh

⁷⁴⁹ Tribunal Transcripts, Day 106, p. 104, Evidence of Garda Nicholas Keogh

Q. Chairman: Absolutely. Did he make this decision vindictively and not helpfully, as he asserts?

A. Yes.⁷⁵⁰

In his statement to the tribunal, Garda Keogh complained that the approach taken by Supt Murray ignored both his work related stress and the criminal investigation into his protected disclosure:

*This micromanagement occurred without objective bases, hearings or findings. It ignored my work-related stress. It occurred in a context where there was an on-going criminal 'investigation' at the station into grave garda collusion in drug dealing and perverting the course of justice in which I was a witness... It instead suggested that the most basic education/ training were now the top priorities in my case where I had an unblemished record as a policeman up to then.*⁷⁵¹

He gave evidence of his view that, while the instruction sounded supportive and sympathetic, it was an instruction to micromanage him.⁷⁵² When examined by his own counsel, Garda Keogh said that it was an attempt to keep him under the maximum pressure:

*Judge, they knew, they knew absolutely I was under stress. Even this whole thing, going through my work in micromanagement, the attempt at micromanagement was just to keep me under maximum pressure.*⁷⁵³

Garda Keogh was cross-examined by counsel on behalf of An Garda Síochána in relation to the meeting of 26th March 2015 and he insisted that he told Supt Murray he was under a lot of stress:

*Judge, I told him. Judge, I told him I was under a lot of stress and I think I said work related stress, but he replied twice to me, you're under no stress.*⁷⁵⁴

Garda Keogh gave evidence that, while Supt Murray mentioned a transfer to another station, it was his view that he had to stay in Athlone:

*... he asked me I think on the first day about a transfer, did I want a transfer to Birr. You know, it was to get me out of Athlone no matter what. It didn't matter – like, you know, okay, if it was going, I was going sick a lot, I was under serious pressure. But, you know, it was, yeah, but sure, we will give you another station and it'll be grand. My problem was I had to stay in Athlone. I was sort of caught because obviously, you know, I am a guard and I have a duty as a guard but then I am in effect double jobbing because I have to watch what's going on with this main investigation, which does become my priority really over the few years. In fact, it becomes my life for the last, whatever number of years. I mean look, the last number of years, six years I think since the complaint was made.*⁷⁵⁵

In his interview with tribunal investigators Garda Keogh stated:

*I do not know if any senior members of An Garda Síochána acquiesced or had knowledge of Superintendent Murray's targeting of me in this regard, but in general as I have stated and outlined above I believe that Superintendent Murray was acting as a result of Assistant Commissioner Ó Cualáin's direction in relation to other matters as set out above.*⁷⁵⁶

⁷⁵⁰ Tribunal Transcripts, Day 113, p. 96, Evidence of Garda Nicholas Keogh

⁷⁵¹ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at pp. 128-129

⁷⁵² Tribunal Transcripts, Day 100, p. 120, Evidence of Garda Nicholas Keogh

⁷⁵³ Tribunal Transcripts, Day 113, p. 90, Evidence of Garda Nicholas Keogh

⁷⁵⁴ Tribunal Transcripts, Day 106, p. 82, Evidence of Garda Nicholas Keogh

⁷⁵⁵ Tribunal Transcripts, Day 100, p. 119, Evidence of Garda Nicholas Keogh

⁷⁵⁶ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 47

During his evidence, Garda Keogh stated that this issue was a problem for him:

Judge, again, it's easy for – as I said last week, they just change the bounds here. They have a new set of – a new superintendent, a new chief. So I'm still the same person, having gone through the previous year with all this, writing on this Olivia O'Neill, the Liam McHugh and all this, all of these other matters. So for me it's a continuous thing, Judge. What I am trying to say is, to be in my shoes, I would view things differently from, you know, the way where a new superintendent would come in and they just – they don't take that into account, that there's been a lot of stuff already gone in, going on.⁷⁵⁷

Responding Statements and Evidence on the Issue

Superintendent Pat Murray

In his interview with tribunal investigators, Supt Murray described the supervision of Unit C when he first came to Athlone Garda Station in March 2015:

Sergeant Moylan was Garda Keogh's unit Sergeant initially. Sergeant Moylan was away frequently due to his role in the Association of Garda Sergeants and Inspectors. Sergeant Andrew Haran, of the Community Policing Unit, provided cover for Sergeant Moylan when he was away. I didn't change anything in relation to that.⁷⁵⁸

Supt Murray referred to both the 'palpable sense of fear' at the station and Sgt Haran's role in supporting Garda Keogh in the aftermath of his protected disclosure:

People were very afraid and nervous in case they were drawn into national controversy. It was like a tsunami in Athlone in relation to the number of issues occurring there that attracted national attention and there was a palpable sense of fear and I should say Sergeant Haran was very supportive of Garda Keogh and had carried out exhaustive efforts of supporting him before I got there.⁷⁵⁹

In his statement to the tribunal, Supt Murray described how he met with Sgt Haran on 13th March 2015, at the request of Insp Farrell, and he stated that Sgt Haran:

... brought up Garda Keogh and told me of the support he was trying to give Garda Keogh which was something he had taken on himself in an informal way. During the conversation he said he himself had no support in supporting Garda Keogh and didn't want any perception to exist that he was anything but neutral. I asked him to consider if in a formal way the role should pass to someone else at that time. He said he thought it was a good idea and would think about it. I spoke with Sergeant Haran again on 20th March 2015 and he said he felt the support role he was providing to Garda Keogh should pass to someone else and now was a good time for that to happen.⁷⁶⁰

In his evidence to the tribunal, Supt Murray outlined his discussion with Sgt Haran at this meeting:

I had never met Sergeant Haran before and he wanted to discuss this issue that was causing, I suppose, angst to him. I discussed that with him in detail. It was something that was troubling

⁷⁵⁷ Tribunal Transcripts, Day 106, pp. 111-112, Evidence of Garda Nicholas Keogh

⁷⁵⁸ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3015

⁷⁵⁹ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3028-3029

⁷⁶⁰ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2041

him. I helped him, assisted as best I could in our conversation. And during the course of it he brought up Garda Keogh and we had a discussion about his involvement with Garda Keogh and the support he was giving him. He had provided him with quite an amount of support from 2014 on.

Q. Yes. Did he have anything else to say in relation to it?

A. Well, I suppose in dealing with the issues that he was facing himself, which were causing him worry, and in looking at his position with Garda Keogh and from what he told me, I suppose he wanted a break, as it were, and he didn't want any perception to be created because of his entirely one handed support, one man support for Garda Keogh, that there would be anything other than neutrality on his part. I could understand that when I listed to him. I asked him was now a good time for change to happen and he said he'd think about that. He didn't want to let down Garda Keogh in any way at all. That was the tone of the conversation. It wasn't a forced conversation, it was something that happened in a very natural way, out of the blue, and it was my first time to meet him.⁷⁶¹

When he spoke to Sgt Haran again on 20th March 2015, he made a note of the conversation:

Spoke Sergeant Haran who will relinquish role with Garda Keogh for reasons of neutral stance and perceptions that may exist that he is not. Sergeant Martin agreed to take on role.⁷⁶²

In his statement to the tribunal, Supt Murray outlined why he chose Sgt Martin for this role:

I chose Sergeant Yvonne Martin for the role simply because she had just arrived on transfer to Athlone and could be determined as neutral. I asked her to take on the role that day and she agreed.⁷⁶³

In his evidence to the tribunal, Supt Murray described the role he envisaged that Sgt Martin would perform:

Q. So clearly Sergeant Yvonne Martin wasn't going to have any responsibility in relation to the work issues?

A. No.

Q. It was purely from a welfare point of view?

A. Yes, absolutely, that was my intention. Sergeant Martin had her own unit to supervise. She, I suppose, was unconnected to the station before and had arrived a short time before I did.⁷⁶⁴

In respect of his first meeting with Garda Keogh on 26th March 2015, Supt Murray said in his statement to the tribunal that:

I discussed his sickness record with him and his ad hoc appearances at work. He explained in a vague way that the investigation he was part of and the fact that he didn't like to be at work when certain people were there, was a cause of stress to him resulting in his sickness absence. I inquired about supports I could provide and offered help. We discussed his work and he mentioned problems he was having with investigations and one in particular. I suggested appointing a Sergeant to link in with him to support him and he was agreeable to that suggestion.⁷⁶⁵

⁷⁶¹ Tribunal Transcripts, Day 123, pp. 44-45, Evidence of Supt Pat Murray

⁷⁶² Tribunal Documents, Note of Supt Pat Murray, dated 20th March 2015, p. 2185

⁷⁶³ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2041

⁷⁶⁴ Tribunal Transcripts, Day 123, p. 48, Evidence of Supt Pat Murray

⁷⁶⁵ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2042

He also stated that before Garda Keogh left the meeting he told him he would ‘*appoint Sergeant Martin as a source of personal support to him*’ and that:

[w]e parted by shaking hands ... after meeting with Garda Keogh on the 26th March, I spoke with Sergeant Martin, Sergeant Moylan and Sergeant Haran the Sergeant in charge, Sergeant Baker and Inspector Farrell about the supports I discussed with Garda Keogh and all agreed with the course of action.⁷⁶⁶

Supt Murray rejected the suggestion that the directions in his letter of 2nd April 2015 constituted criticism of Garda Keogh or the micromanagement of his work:

What he says is criticism; I would say is guidance or advice ... I think it is an exaggeration for him to say he had three sergeants supervising him and to put it into context the supervisory situation that applied was in place before my arrival. Sergeant Moylan and Sergeant Haran provided support to Garda Keogh as I set out at page 5 of my statement ... After meeting Garda Keogh on 26 March 2015 and outlining to him that I would assign Sergeant Martin to support him he raised no objection. She was new to the district and impartial and neutral. Her involvement has been used by Garda Keogh negatively in that he wrote to the Minister for Justice about her in January 2017 and appears to have known about her involvement in the previous modules of this Tribunal before she did. That was very damaging to Sergeant Martin and it was false and used by Garda Keogh to damage her. She is in my view one of the most honourable people I've ever had the opportunity to work with. If, as he says, I had tried to micro supervise him, why would I not follow up with – Sergeant Moylan on the examination of his files. Sergeant Martin is altruistic in nature and I don't think Garda Keogh engaged with her even though she was there to provide support to him.⁷⁶⁷

When asked by tribunal investigators whether the allocation of Sgt Martin as his liaison officer constituted an instance of targeting or discrediting of Garda Keogh, Supt Murray replied:

Absolutely not. The allocation of Sergeant Martin in a supportive role is me putting supports in place and assisting Garda Keogh in his welfare. I did not change the supervisory system that existed for Garda Keogh before I arrived.⁷⁶⁸

In his evidence to the tribunal, Supt Murray was asked by counsel for the tribunal whether he understood that Garda Keogh may have legitimately perceived this direction as oppressive:

I do, but that is entirely erroneous on his part. The supervising situation that applied to Garda Keogh before I arrived continued after I arrived. I did nothing more than introduced Sergeant Martin as someone who he could contact in relation to his welfare, if he was of a mind to.⁷⁶⁹

Supt Murray was cross-examined by counsel on behalf of Garda Keogh as to whether the direction to check his paperwork was ‘*humiliating*’. Supt Murray replied:

No. This was a private minute to the sergeant concerned. When someone acknowledges to you that they are in difficulty, just with a case like that, normally from my experience there may be more than one. And the objective of that was to ensure that Garda Keogh didn't get into any further difficulties, that nothing would fall through the cracks. That was sort of supporting him, to ensure that nothing was going to cause trouble as he went on through time.⁷⁷⁰

⁷⁶⁶ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2043

⁷⁶⁷ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3055-3056

⁷⁶⁸ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3057

⁷⁶⁹ Tribunal Transcripts, Day 123, pp. 66-67, Evidence of Supt Pat Murray

⁷⁷⁰ Tribunal Transcripts, Day 125, pp. 103-104, Evidence of Supt Pat Murray

Supt Murray was queried by counsel on behalf of Garda Keogh as to whether he saw Garda Keogh as a ‘useless guard’:

I can understand now how he may have developed that perception, you know, because things had happened to him prior to my arriving that may have formed a mindset in him that people were against him. But I never found that and I certainly wasn't against him.⁷⁷¹

Supt Murray gave evidence of why he thought that Garda Keogh required supervision:

It would be ridiculous to suggest that someone with intermittent absences in that fashion, that may be related to drink, that it wouldn't impact on work. It would be difficult to understand how that wouldn't impact on work.⁷⁷²

Sergeant Andrew Haran

In his statement to the tribunal, Sgt Haran referred to the letter dated 2nd April 2015, and stated that it was not unusual and he ‘... would expect to be supervising the entire unit in the absence of their primary Sergeant’.⁷⁷³

In his interview with tribunal investigators, he said that he was aware that Garda Keogh was ‘bad at managing files’ and that he would assist Garda Keogh in this regard.⁷⁷⁴ He stated that Garda Keogh struggled to ‘cope with the maintaining of concise reports and basic paperwork’⁷⁷⁵ and that:

In general terms I was glad to assist Garda Keogh in doing files and reports. He readily admitted it was a weakness on his part. On occasion I would sit with him and he would literally empty out his post locker and between us we would tidy it and try to put shape on his correspondence and I advised him on how he might deal with some files in order to clear his desk.⁷⁷⁶

He described his relationship with Garda Keogh in the following terms:

He was happy to chat to me and we got on well and would chat periodically on and off duty. He often rang me when I was off and at times he would say he was in difficulty with drink. I spent a long time on occasions chatting to him and we talked about his hope that the truth would come out in the end. I was trying hard to help him stay away from drink as he was really struggling with the pressures surrounding him.

Following his disclosure, I continued in my role and on occasions I supervised Garda Keogh. He struggled at times to keep things going and would speak about his drinking being a problem and his preferences for working nights when the authorities were not working. I did not witness any bullying or overt or indeed any underhand behaviour directed towards Garda Keogh by any management in Athlone.⁷⁷⁷

Sgt Haran expanded on this in his evidence to the tribunal:

I think it's fair to say that following the disclosures people, certain people would have had views of both Garda A or Garda Keogh and as such they were held. And it may be that some people would have had a view that I might be – because I would act as a liaison, some people might

⁷⁷¹ Tribunal Transcripts, Day 125, pp. 106-107, Evidence of Supt Pat Murray

⁷⁷² Tribunal Transcripts, Day 123, p. 63, Evidence of Supt Pat Murray

⁷⁷³ Tribunal Documents, Statement of Sgt Andrew Haran, p. 587 at p. 589

⁷⁷⁴ Tribunal Documents, Investigator Interview of Sgt Andrew Haran, p. 11749 at p. 11762

⁷⁷⁵ Tribunal Documents, Investigator Interview of Sgt Andrew Haran, p. 11749 at p. 11762

⁷⁷⁶ Tribunal Documents, Statement of Sgt Andrew Haran, p. 587 at p. 590

⁷⁷⁷ Tribunal Documents, Statement of Sgt Andrew Haran, p. 587 at p. 590

perceive this as supporting his position. I would have been comfortable in the role, because I felt it was a role – well number one, I had discussed it with Superintendent McBrien, but I was happy to do it because I saw it as a role to support a person as distinct from their stance. It was more, to me, personal. Even though, like, most people had opinions in it, I took it on as a role as a supervisor to support a person in difficulty as distinct from supporting necessarily the role in which he disclosed.⁷⁷⁸

On the matter of his stepping back from his role of supporting Garda Keogh and his meeting with Supt Murray on 13th March 2015, Sgt Haran told tribunal investigators that:

My recollection is that this was suggested to me. I was open to it and I had no issue with him saying that. I felt he as my boss was telling me it would be a good idea. I think Superintendent Pat Murray felt that Sergeant Yvonne Martin would be better placed as an independent person and that it would be good to have her in that role. I saw myself as impartial and still feel the same way. I would like to clarify I did not see myself as being the only person supporting Garda Keogh.⁷⁷⁹

Sgt Haran was asked by counsel for the tribunal whether the suggestion that he step back in his role of supporting Garda Keogh was his or Supt Murray's. He replied:

... It's my recollection of it that it was his suggestion that I might be – that the role might be passed to someone else. Generally speaking, when a superintendent would take a position, I didn't refute it. Whilst I was comfortable liaising with Garda Keogh, if a superintendent was coming in with a plan to slightly alter the arrangement, I wasn't going to fight against that decision.⁷⁸⁰

Sgt Haran was referred by tribunal investigators to a letter from legal representatives of Garda Keogh dated 23rd May 2019,⁷⁸¹ which stated that Supt Murray had requested him to 'pull back from' or 'alienate' Garda Keogh. Sgt Haran told the investigators that:

I have no issue with the part which states that I was requested to 'pull back' but I reject the word 'alienate'. I would never accept a direction from my supervisor to alienate anyone. I was comfortable supporting Garda Keogh at all times and didn't feel that this was in any way inappropriate. I perceived him as someone under immense pressure and remain sympathetic towards him to this day. I didn't suggest appointing an independent person, but I accepted this decision and the reasons given for the decision... [t]he instruction to pull back and appoint Yvonne Martin was, in my view, appropriate. I thought I was being asked to pull back because I thought maybe I was perceived as being too close to Garda Keogh.⁷⁸²

Sgt Haran was also asked by counsel for the tribunal whether Supt Murray's management style differed from his predecessor. He replied:

Well, I think it's fair to say that both superintendents are very different in their manner. But changes, like, personnel changes were negligible. Practices regarding some of our meetings, what we call our PAF meetings, our daily meeting, and a thing called a crime file which was introduced, some of those things changed, but I would have said that practices changed from supervisor to supervisor. So I didn't see a change that brought – it wasn't meteoric in any way,

⁷⁷⁸ Tribunal Transcripts, Day 129, pp. 48-49, Evidence of Sgt Andrew Haran

⁷⁷⁹ Tribunal Documents, Investigator Interview of Sgt Andrew Haran, p. 11749 at pp. 11756-11757

⁷⁸⁰ Tribunal Transcripts, Day 129, p. 51, Evidence of Sgt Andrew Haran

⁷⁸¹ Tribunal Documents, Letter from Garda Nicholas Keogh's solicitor to the Disclosures Tribunal, dated 23rd May 2019, p. 5970 at p. 5971

⁷⁸² Tribunal Documents, Investigator Interview of Sgt Andrew Haran, p. 11749 at p. 11764

it was just discernible insofar as it obvious that a new superintendent was putting his stamp on the way things were done and they were in my memory all in a positive fashion, just improving what I perceived as a good ship and now only just that little bit better.

... I would have to say of Superintendent Murray, that he wasn't – he was of the type to bring change. So he brought it in promptly. So, insofar as – it didn't creep, it happened that on a certain day, which I certainly wouldn't remember, a new practice was in, and he did bring that practice in a firm way, insofar as it arrived quickly after his arrival. He obviously brought that manner with him, where he decided, I felt, to change things promptly to what he perceived as an improvement.

Q. From what you could see, was that done in an even handed way?

A. Absolutely.⁷⁸³

When cross-examined by counsel on behalf of An Garda Síochána, Sgt Haran said that he did not witness Garda Keogh being bullied by colleagues or supervisors in the station:

Q. Can I ask you, when you say in the following few lines [in your statement]:

"I did not see Nick Keogh being bullied by any persons, his unit colleagues appeared to be supportive. The supervisors in my station never bullied Nick in my presence, nor did they ever converse to me on paper, orally or by any meant in any way that might be perceived as taking actions directed at Nick in any way. Indeed, supervisors appeared to make genuine efforts to support him. I look forward to his recovery and return to work in due course and would welcome him back to work."

That is and remains your position?

A. Absolutely.⁷⁸⁴

Sergeant Yvonne Martin

Although Sgt Martin was appointed to the role of liaison officer for Garda Keogh, she did not ultimately engage with him in this capacity. In her statement to the tribunal she noted that:

Superintendent Murray appointed me as liaison officer for Garda Keogh to allow him to discuss any work related issues he might be having with a view to solving any potential issues.

Superintendent Murray discussed this role with me prior to the date of receipt of the above direction. Garda Nicholas Keogh was notified of this facility by Superintendent Murray.

Garda Keogh chose not to avail of this resource and never spoke to me in my capacity as Liaison Officer.⁷⁸⁵

She further stated that:

I understand that Garda Keogh is asserting that on foot of making a Protected Disclosure, he was subjected to harassment, exclusion, victimisation and penalisation. I was no party to any such alleged treatment. Further, I was never directed by any member of An Garda Síochána to treat Garda Keogh in any way negatively. In fact, I was appointed as Garda Keogh's liaison

⁷⁸³ Tribunal Transcripts, Day 129, pp. 65-66, Evidence of Sgt Andrew Haran

⁷⁸⁴ Tribunal Transcripts, Day 129, pp. 83-84, Evidence of Sgt Andrew Haran

⁷⁸⁵ Tribunal Documents, Statement of Sgt Yvonne Martin, p. 594 at p. 596

*officer with a view to providing Garda Keogh with support in the workplace. Garda Keogh chose not to avail of my assistance.*⁷⁸⁶

In her evidence to the tribunal, Sgt Martin described what she understood her role to be with regard to Garda Keogh:

... I spoke to Superintendent Murray at that time and he informed me that he was putting a structure in place to help support Garda Keogh, and he asked me I would be a liaison sergeant for him. This was to deal with any welfare issues he may have, with a view to solving them.

*... it was obvious at that stage that Garda Keogh was going through a stressful time and it was just an extra support in place for him. I was somebody new to the station too, I was just there a few months and I was totally independent from anything that would have went on previously. This was separate to his unit sergeant and I know Sergeant Haran was the second sergeant attached to that unit. So it was just an extra support that if he needed any – he wanted to talk to anybody or he had any issues, that he could come to me.*⁷⁸⁷

Sgt Martin continued that:

... I felt that I was probably a suitable person for the role, in that I had no dealings with anybody prior to that in Athlone and I was totally independent and impartial in relation to anything.

... The only time I spoke to Sergeant Haran was a number of weeks later when Garda Keogh hadn't approached me, that I just wanted to ensure Garda Keogh was aware that I was available to him and Sergeant Haran informed me that he was, that he was aware. So that's the only time I spoke to Sergeant Haran.

*... you know, because Garda Keogh didn't avail of me as a resource to him, that I just wanted to ensure that he was – even though I knew he had received the correspondence in relation to it, I just wan[te]d to ensure he was to know that he could come to me and Sergeant Haran informed me he was aware of that.*⁷⁸⁸

Sergeant Cormac Moylan

In his statement to the tribunal, Sgt Moylan noted that the letter of 2nd April 2015 and the direction of Supt Murray in relation to the supervision of Garda Keogh was '*... a recognition of the fact that I had taken up a position on the National Executive of the Association of Sergeants and Inspectors (AGSI) in April 2013 and as such was not always working the same shifts as my unit.*'⁷⁸⁹

He referred to the direction that he was to sit down with Garda Keogh and go through his notebook, PULSE, Director of Public Prosecutions and crime files lists:

*I duly did go through Garda Keogh's Pulse, Crime file and DPP lists. I do not recall going through his notebook. I believe I was satisfied that all relevant incidents were covered in the areas gone through. When I was going through the lists or issues in relation to Garda Keogh, I remember showing him what I was submitting before submitting same to ensure he was satisfied with the line being taken.*⁷⁹⁰

⁷⁸⁶ Tribunal Documents, Statement of Sgt Yvonne Martin, p. 594 at p. 597

⁷⁸⁷ Tribunal Transcripts, Day 129, p. 11, Evidence of Sgt Yvonne Martin

⁷⁸⁸ Tribunal Transcripts, Day 129, pp. 12-13, Evidence of Sgt Yvonne Martin

⁷⁸⁹ Tribunal Documents, Statement of Sgt Cormac Moylan, p. 604 at p. 606

⁷⁹⁰ Tribunal Documents, Statement of Sgt Cormac Moylan, p. 604 at p. 606

In his evidence to the tribunal, Sgt Moylan was asked how he viewed the direction from Supt Murray:

In actual fact, I actually thought to myself, fair play, the new superintendent is actually listening to me. Because I had previously met the previous superintendent and Inspector Minnock after a meeting in relation to – the fact that I was gone half the time off the unit and not being around, I thought maybe it was – for one, it was probably unfair on me because the workload still remained the same, you were doing all the unit work in half the time. And I had brought it to their attention. I know they undertook to have a look at it. Obviously the superintend[ent]s moved at the time. Superintendent Murray came in. And within a short space of time he had made suggestions, even within a couple of months I was given the option of moving to Kilbeggan, etcetera. So I just felt it was something, it was part of him reviewing the process of me being able to manage my workload as well because I wasn't always going to be there. So Sergeant Haran, he was the community policing sergeant, but he rested with unit C. So it was kind of putting it on a more sure footing, that when I wasn't Sergeant Haran was to be there. We were kind of operating on that basis anyway, so that if I needed leave on a Saturday night, I would ring Sergeant Haran to see was he working. So there was always one of us working. We'd bounce off each other. For the first time, I suppose, I seen it in black and white that the superintendent was putting it on a more sure footing.⁷⁹¹

Sgt Moylan also gave evidence that he did not see anything unusual in the direction:

Had I got correspondence like that before? Possibly no. Did I see it unusual? No. He had been sporadically out sick and stuff, he had his issues with alcohol etcetera, he was returning to work, there was a request for me to do it as a his sergeant. It was just to make sure there was nothing falling through the cracks. I suppose the accountability that was within Athlone, it would be fair to say from my experience, and I think it's important that having worked in a number of stations and national specialists units and Dublin areas and being in the college, when I moved to Athlone I found the accountability level and systems and processes much better than anywhere I had worked before. In fact, when they were designing processes around accountability for the Garda organisation, there was a number of Athlone personnel were involved in that, designing the processes. I suppose when Pat Murray, the super came, I suppose it went from fourth gear to fifth gear, or fifth to sixth, because it was ramped up another level. Everything, nothing was missed, if you know what I mean. So it was just ensuring that if there was a serious incident – and there wasn't anything that serious in it. Nick had more concerns and he did have concerns, but like there was a passage of time I think in relation to one investigation, but I think the matter was being withdrawn, so it didn't really impinge on it.⁷⁹²

In his statement to the tribunal, Sgt Moylan further referred to Garda Keogh's outstanding incidents and, in particular, a 'harassment case he may be in difficulty with':

I recall dealing with this as part of the review but I recall it not being overly complicated to rectify, save for an explanation about the passage of time in the investigation since the complaint was made. This was negated by the injured party who wished to withdraw the complaint, which I believe she duly did and the matter was then closed off.⁷⁹³

Sgt Moylan also referred to Garda Keogh's statement where he alleged that he was subjected to 'implied criticism and oppressive levels of supervision' and stated that:

⁷⁹¹ Tribunal Transcripts, Day 131, pp. 52-53, Evidence of Sgt Cormac Moylan

⁷⁹² Tribunal Transcripts, Day 131, pp. 61-62, Evidence of Sgt Cormac Moylan

⁷⁹³ Tribunal Documents, Statement of Sgt Cormac Moylan, p. 604 at p. 606

*I wish to state that I did not criticise or oppressively supervise Garda Keogh, and I have no knowledge of such practices.*⁷⁹⁴

In his statement to the tribunal, Sgt Moylan confirmed that he would ‘regularly question any member of the unit in respect of their work. I felt that it was my duty at all times to query work, with cause, either coming down or being submitted’.⁷⁹⁵ In conclusion he stated that:

I wish to refute any implication that I was involved in placing Garda Keogh under microscopic supervision. The reality is that I was Garda Keogh’s Unit Sergeant and I treated him no differently than any other member under my supervision.

*I have never subjected Garda Keogh to any penalisation as a result of his making a protected disclosure.*⁷⁹⁶

Sgt Moylan was asked by counsel if he ever witnessed Garda Keogh being targeted or bullied by anyone:

*I never seen it, never heard of it. As the AGSI representative of sergeants around the area, if it was going on I would have heard about it, I’m sure someone would have said it to me. I never heard anything or I was never instructed in any way to target Nick Keogh. I would actually say I treated Nick very carefully. You know, even in terms of some of the reports, sitting him down in front of and going through them, it mightn’t be something I would have done with other members, I was probably giving him extra treatment, do you know what I mean, and making sure that he was satisfied that everything was done, you know, ccing him in e mails and stuff that was going up, to make sure that he was fully au fait with what was happening and, you know, going through the correspondence with him and helping him with the investigations.*⁷⁹⁷

Sgt Moylan was asked the following by counsel on behalf of Garda Keogh:

Q. You confirm that you went through Pulse, crime file, DPP lists, is that correct?

A. Yeah. And I think I was asked to do the notebook and I actually didn’t do the notebook.

Q. Is that because you didn’t feel the need to do it because things were in order?

A. ... there was issues, but, as I said already, there was nothing insurmountable. You know, the withdrawal of the harassment issue, anything else, there was nothing, nothing that wasn’t routine stuff that I could see that wasn’t – that couldn’t be done. I suppose just some of it had maybe lagged behind, because Nick had maybe been out sick and stuff like that, a passage of time had passed in relation to certain incidents, but it was still okay.

Q. Did you view the direction by Superintendent Murray to go through his notebook as being oppressive?

A. Oh, I didn’t, no. I just didn’t go through his notebook because I suppose guards and their notebooks are – it’s kind of an area, that I just as a sergeant would be reluctant to kind of – when everything else was okay, I just didn’t see the need to go through the notebook.

⁷⁹⁴ Tribunal Documents, Statement of Sgt Cormac Moylan, p. 604 at p. 606

⁷⁹⁵ Tribunal Documents, Statement of Sgt Cormac Moylan, p. 604 at p. 607

⁷⁹⁶ Tribunal Documents, Statement of Sgt Cormac Moylan, p. 604 at p. 607

⁷⁹⁷ Tribunal Transcripts, Day 131, pp. 77-78, Evidence of Sgt Cormac Moylan

- Q. So you were satisfied at the end of sitting down with him that matters were in order, is that right?
- A. That what we had and what we were aware of was being dealt with by going through the DPP crime file list, etcetera, and through his pulse. That I had everything sorted, everything was sortable.
- Q. Just on the issue of microsupervision, I think you have been here and you have heard Garda Keogh's evidence and you know his position in relation to that, do you accept that it was Superintendent Murray's intention to place Garda Keogh under microsupervision, as is his case?
- A. No, I don't. As I have said already, I think this – when I got that direction and that correspondence, I just – my initial thing was saying, now someone has actually listened to me, because I was doing serious mileage on the road, I was up and down to Dublin and I was covering the country, I was all over the country at different meetings etcetera, meeting Garda management, and I just felt that eventually someone was actually putting something in place, you know, and me being able to manage that.⁷⁹⁸

Inspector Aidan Minnock

In relation to Sgt Martin, whom he stated was appointed '*to provide [a] point of contact and support person to Garda Keogh in a structured way*',⁷⁹⁹ Inspector Aidan Minnock said in his statement to the tribunal that Sgt Martin knew that she could bring any matter of concern in relation to Garda Keogh to his attention.⁸⁰⁰

He stated that it was '*not the position*' that there were three sergeants supervising Garda Keogh. He outlined in his statement the supervisory arrangements that were implemented across all units:

*Each unit (A, B, C, D and E) had a unit sergeant/supervisor (the majority of the time). There were (normally) ten sergeants in the District, so each unit had a second sergeant, which was assigned to other units (traffic, community policing, or sub-district stations). These sergeants were the substitute sergeant for each unit across the District. The sergeant on Unit C, Athlone was Sergeant Moylan, and the second (or substitute) sergeant on Unit C was Sergeant Haran. This situation (sergeant and substitute sergeant) was replicated across all units, and was not unique to Unit C and Garda Keogh's unit.*⁸⁰¹

He referred to the role of both Sgt Haran and Sgt Martin as follows:

*In an unofficial capacity Sergeant Haran linked in with Garda Keogh in relation to providing welfare and supports. Sergeant Haran was replaced by Sergeant Yvonne Martin in this capacity as the person providing welfare and support to Garda Keogh in 2015. Sergeant Martin was seen as a good person to provide welfare and support, as she was new to the station, had no previous dealings with Garda Keogh and was not involved in the general supervision of Unit C. This provided a distinction in the role of supervisors, allowing Sergeant Moylan to perform his role as supervising sergeant and a separation of the role for Sergeant Martin, providing welfare and support structures.*⁸⁰²

⁷⁹⁸ Tribunal Transcripts, Day 131, pp. 79-81, Evidence of Sgt Cormac Moylan

⁷⁹⁹ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 686

⁸⁰⁰ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 686

⁸⁰¹ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 695

⁸⁰² Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at pp. 695-696

Insp Minnock gave evidence about Garda Keogh’s relationship with Sgt Haran as follows:

Q. *The next paragraph there, if we scroll down, you describe Garda Keogh’s relationship with Sergeant Haran. Certainly in the second line you seem to be expressing the view that Sergeant Haran looked out for Garda Keogh and wouldn’t have condoned unfair targeting, bullying or harassment of any member of staff; is that correct?*

A. *That’s correct.*

Q. *You also state that you believe that if Sergeant Haran had witnessed or was concerned that he was being unfairly targeted or subjected to any form of bullying, harassment or targeting he would have brought it either to your attention, Inspector Farrell, the district officer, directly to the person to whom it concerned. Does that reflect your view of Sergeant Haran’s character, that he wouldn’t put up with that?*

A. *Absolutely, he wouldn’t.*

Q. *You are confirming, are you, that no complaint was ever made to you by Sergeant Haran about any maltreatment of Garda Keogh or targeting, is that right?*

A. *That’s correct. I suppose I remember an incident specifically, I suppose, that Sergeant Haran brought to my attention, I think it was December ‘15, I’d have to go back to my diary notes, where Garda Keogh had rang him on a number of occasions on Christmas day.*

Q. *Yes.*

A. *And I believe he was intoxicated. But Sergeant Haran, for the concern of Garda Keogh, answered the phone each time, because he had concerns and I suppose it really highlighted to me his approach in relation to supporting Garda Keogh. But I also felt that the relationship, myself, had maybe just gone a step too far, in that getting those phone calls on Christmas day was probably somewhat inappropriate really. But subsequently I felt that Sergeant Martin’s appointment as a liaison and a support person was certainly a good initiative and it kind of made a little bit of distance between Garda Keogh and Haran, which was a good thing in my view.⁸⁰³*

Legal Submissions

Garda Nicholas Keogh submitted as follows:⁸⁰⁴

- that the decision of Supt Murray to have three sergeants monitor his work output was something that had never happened to him at any time prior to making a protected disclosure.
- that he made no criticism of the sergeants as they didn’t micromanage him but he took issue with the actions of Supt Murray in giving them such a task.
- that Supt Murray first met Garda Keogh on 26th March 2015 to ‘*solve problems*’ and, as a consequence of what was discussed at that meeting, their relationship started with mistrust and doubt.

⁸⁰³ Tribunal Transcripts, Day 129, pp. 182-183, Evidence of Insp Aidan Minnock

⁸⁰⁴ The tribunal has considered all of Garda Nicholas Keogh’s legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 14-31 and pp. 172-177

- that Garda Keogh felt undermined and humiliated and that this decision affected Garda Keogh's trust in Supt Murray and, therefore, the credibility of his *bona fides* was brought into question.
- that there was no evidence of Supt Murray seeking any update from Sgt Martin in relation to Garda Keogh's welfare.
- that Supt Murray accepted that he could understand how Garda Keogh developed the perception that he was being undermined and discredited.
- that the appointment of Sgt Martin without any structure, follow-up or guidance had the effect of undermining Garda Keogh's confidence at a time where he was extremely vulnerable. The decision to ask Sgt Haran to withdraw from Garda Keogh further ostracised him and left Garda Keogh suspicious as to the *bona fides* of Supt Murray.
- that this issue, when considered with the totality of Issues 5-15, had the effect of targeting Garda Keogh.

An Garda Síochána submitted as follows:⁸⁰⁵

- that Garda Keogh's allegations on this issue were incorrect and were made by him without any evidential basis.
- that Supt Murray met with Garda Keogh on 26th March 2015 and discussed the issues with him, which led to the decision of which Garda Keogh complained. Supt Murray's reports and instructions following the meeting were in support of Garda Keogh.
- that there was a supervisory system in place prior to the arrival of Supt Murray and that, in lieu of Sgt Haran, Sgt Martin was asked by Supt Murray to be a welfare liaison sergeant for Garda Keogh when Supt Murray was putting supports in place for him, which was not a supervisory role.
- that Garda Keogh wrote negatively about Sgt Martin to the Minister for Justice and Equality in 2017, which Garda Keogh has accepted he should not have done given the distress it caused her, and for which he apologised.
- that Garda Keogh had been sporadically sick, he had issues with alcohol and was returning to work, and Sgt Moylan was his sergeant. The objective was to make sure nothing was missed. Sgt Moylan took the view that Supt Murray's increased level of scrutiny and accountability for all members of Athlone was positive.
- that the statements and evidence from the three sergeants showed that they endeavoured to support and to assist Garda Keogh, that they were not intrusive or overbearing in their approach and that he was not mistreated.
- Garda Keogh's own evidence was inconsistent with his complaint that he was targeted or harassed in this way. He stated in his evidence that he did not contend that the sergeants had done anything wrong. When the extracts from the sergeants' statements were put to him, Garda Keogh accepted that he was not making allegations of bullying and harassment against them. He also accepted that Supt Murray's direction had not actually affected him

⁸⁰⁵ The tribunal has considered all of An Garda Síochána's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 70-172 and pp. 177-179

adversely in practical terms. Garda Keogh stated that he accepted that the instruction was not improper on the face of it but queried Supt Murray's motive.

- that Supt Murray's actions in this regard were in response to his concern for Garda Keogh's welfare and were put in place to assist Garda Keogh. Garda Keogh accepted that this was correct insofar as it pertained to the Chief Medical Officer (CMO) and Sgt Martin.

Sergeant Andrew Haran submitted as follows:⁸⁰⁶

- that Garda Keogh acknowledged before the tribunal that the sergeants were solicitous towards his support.
- that Garda Keogh confirmed that no allegation was being made against any sergeants in respect of Issue 5.
- that Sgt Haran gave evidence that there was a change in Garda Keogh pre and post making a protected disclosure and that he was struggling with alcohol at the time, struggled to keep up with paperwork and had attendance issues.
- that Garda Keogh did not allege that Sgt Haran (or the other sergeants) micromanaged him.

Sergeant Cormac Moylan submitted as follows:⁸⁰⁷

- that Garda Keogh did not accuse Sgt Moylan of any wrongdoing and stated that he always had a good relationship with him.
- that Garda Keogh agreed that Sgt Moylan never subjected him to penalisation.
- that Garda Keogh did not make any complaint about Sgt Moylan in respect of Issue 5.
- Sgt Moylan did not think that the request to go through Garda Keogh's notebook was oppressive. Sgt Moylan stated that in his view there was no intention on the part of Supt Murray to impose micro-supervision upon Garda Keogh.

Sergeant Yvonne Martin submitted as follows:⁸⁰⁸

- that Garda Keogh gave evidence that *she didn't bother me kind of*' and explicitly stated that she was not micromanaging him.
- that Garda Keogh directed criticisms against certain parties on his *perception* of events rather than any evidence; this included Sgt Martin and it was regrettable that he did so with attendant distress to Sgt Martin.
- Garda Keogh made allegations concerning Sgt Martin in his protected disclosure and in his correspondence with the Minister for Justice and Equality. These allegations were based not on Garda Keogh's own experience with Sgt Martin but rather on his perception and were withdrawn by Garda Keogh during his evidence to the tribunal.

⁸⁰⁶ The tribunal has considered all of Sgt Andrew Haran's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

⁸⁰⁷ The tribunal has considered all of Sgt Cormac Moylan's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

⁸⁰⁸ The tribunal has considered all of Sgt Yvonne Martin's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

Discussion

Garda Keogh's evidence to the tribunal represented a substantially different position to the one he adopted in his original statement and complaints to others. He said for example that three sergeants were put in place over him to micromanage him. Everything he did was being scrutinised in great detail for possible mistakes. However, in his evidence he agreed that there was actually no micro-supervision, or any attempt to do so.

The arrangement that Supt Murray put in place did not create a regime of oppressive levels of supervision. He formalised a system whereby Sgt Haran filled in for Garda Keogh's unit head, Sgt Moylan, when he was away on AGSI duties. He assigned Sgt Martin to be available to assist Garda Keogh if he wished to avail himself of such, which did not actually happen. Indeed, the system was very little different from what was already in place.

The evidence of the members of An Garda Síochána was that the changes that Supt Murray brought were good and led to more efficiency. Sgt Moylan particularly welcomed the new arrangements insofar as they formalised the situation of Sgt Haran as his replacement when necessary; and his work with the staff association occupied some 50% of his time.

Sgt Haran had been acting as a confidant of Garda Keogh and Supt Murray decided to replace him with Sgt Martin. Sgt Haran disagreed as to who initiated the topic but agreed with the thrust and logic of Supt Murray's proposal to appoint Sgt Martin to support Garda Keogh. Supt Murray has a note of this conversation which supports his account. The difference of recollection between the superintendent and the sergeant as to whose idea it was is not important. Either way it does not disclose a hostile or malicious intention. Sgt Martin was new to the station and uninvolved with any faction.

Sgt Martin did not contact Garda Keogh and neither did he communicate with her. She did say in evidence however that she checked with Sgt Haran to make sure that Garda Keogh knew she was available in respect of welfare assistance if he wished to avail himself of that contact. Her evidence was that she was sensitive to his position and was reluctant to initiate contact in case he did not want that. In the circumstances, it seems that her approach through Sgt Haran was a reasonable one. And any potential role for her disappeared in late April 2015 when Garda Mick Quinn of the Garda Employee Assistance Service was appointed, and Garda Keogh developed a very good relationship with him. Detective Superintendent Declan Mulcahy of the Ó Cualáin investigation team was also performing a welfare function at this time.

In circumstances in which he had no involvement with Sgt Martin, it was unjust of Garda Keogh to repeat false allegations against this sergeant to the tribunal and in correspondence to the Minister for Justice and Equality. His apology at the tribunal was no doubt welcome, but came late in the day when confronted about the matter.

Supt Murray said in his evidence that Garda Keogh's circumstances were bound to have an impact on his work. He was aware that he had serious issues with alcohol, his attendance at work was erratic and he had said that he was doing very little work. He also mentioned an assault/harassment case that he was struggling with. Garda Keogh claimed that he merely told Supt Murray that it was a difficult case, which indicates that there was something of a misunderstanding.

The letter circulated by Supt Murray following the meeting of 26th March 2015 is couched in terms that are sympathetic and apparently intended to be helpful and supportive to him. Garda Keogh's complaint is that the superintendent actually intended the precise opposite to happen so that he would suffer the effects of targeting.

The instruction that Supt Murray gave to Sgt Moylan to go through all Garda Keogh's documents in order to assist him is consistent with the spirit of the letter but the inclusion of his notebook does appear on the face of it to be intrusive, even humiliating to a degree. However, the evidence of Sgts Moylan and Haran appears to mitigate the apparent harm. They both spoke of supervising Garda Keogh and Sgt Haran described helping him at night to catch up with his paperwork. On the evidence of these witnesses, Garda Keogh needed help from time to time and that included sitting down with him and going through various documents. Sgt Moylan did not go through his notebooks, but neither did he give the impression that this was something that would be embarrassing for him or Garda Keogh, or humiliating for the latter. Although it is not borne out by the evidence of Sgt Moylan and Sgt Haran, the impression remains nevertheless that this particular part of the superintendent's instruction was at least insensitive.

The evidence is that Sgt Moylan got on well with Garda Keogh, and also in his position as AGSI representative he would have been able to notice any targeting or discrediting of Garda Keogh by Supt Murray or anybody else if it was going on. However, Sgt Moylan expressly denied that any such hostility was exhibited towards Garda Keogh.

The same applies to Sgt Haran and his position as a person close to Garda Keogh and well disposed towards him. His testimony is interesting on what he saw as a change in Garda Keogh after the protected disclosure was made.

Conclusion

The tribunal is satisfied that there is no evidence of malice or hostility by Supt Murray on this issue. If the superintendent wanted to target Garda Keogh he would surely have followed up with Sgt Moylan and Sgt Haran to confirm that there was micro-supervision. He would have done something to effect his alleged intention. If it was the superintendent's intention that conditions should be made unattractive for Garda Keogh by the amount of extra and unnecessary attention that he was getting from his sergeants, he would have done something to tell them what he wanted and to follow up to make sure that what he wanted was actually happening.

There is no evidence to demonstrate hostile or vindictive motivation on the part of Supt Murray. The conclusion is irresistible in the circumstances that there is simply no evidence that Supt Murray targeted or discredited Garda Keogh by seeking to have him unreasonably or excessively supervised or by ordering micro-supervision. Neither is there any connection with the protected disclosure.

CHAPTER 12

ISSUE 6: (TO INCLUDE ISSUE 14):

THE COMPLAINT MADE BY GARDA NICHOLAS KEOGH IN RELATION TO THE DISCIPLINARY ACTION CONCERNING HIS MOTOR TAX TOGETHER WITH THE ALLEGED DELAY IN THE PAYMENT OF HIS TRAVEL EXPENSES

The Facts

On a date that cannot be precisely fixed but which was most probably on or about 16th July 2014, Superintendent Noreen McBrien recalled Detective Superintendent Declan Mulcahy commenting to her in relation to Garda Keogh's car tax when they were walking back from having coffee in Athlone. He said something to the effect that '*you should consider having a look at Nick Keogh's car tax*'.⁸⁰⁹ Supt McBrien asked was there something of concern and she recalled him as replying something like '*no but it might be worth having a look at some time*'.⁸¹⁰ Supt McBrien's understanding of the comment was that a report may follow so that she could address the matter further, but she never received any report in any formal sense from D/Supt Mulcahy. Supt McBrien noted in her journal for 16th July 2014 that she met D/Supt Mulcahy and Detective Inspector Michael Coppinger in Athlone.⁸¹¹ She does not record such a meeting on any later date.

On 23rd September 2014, having returned from annual leave, Supt McBrien attended a training seminar for senior management at Mullingar Garda Station. The subject matter of the training was conducting inspections and audits under new processes. In this context she recalled D/Supt Mulcahy's comments about Garda Keogh's car tax and considered including subsistence and travel claims and all associated issues in her forthcoming audit in line with the training.

Supt McBrien discussed this with her finance officer and requested that she prepare a sample list of members who had made travel and subsistence claims in the preceding months, and this was to include Garda Keogh. The finance officer provided Supt McBrien with a list of members and Supt McBrien requested that the vehicles of the members listed be checked; and it was during this process that she became aware that there was an issue with the type of tax on Garda Keogh's car. As a result, Supt McBrien advised that any outstanding claims be withheld until she investigated this matter.⁸¹²

On 30th September 2014, Garda Keogh made a note in his diary that:

*15:45 Gerry White Supt clerk checks my car reason – caller to supt office.*⁸¹³

On 1st October 2014, Garda Keogh also noted that:

*17:40 Supt McBrien checks my car reason – enq re Athlone!*⁸¹⁴

A PULSE check conducted on 30th September 2014, which appears to have been conducted on Supt McBrien's instruction by Garda Gerry White, her district clerk, showed the tax status

⁸⁰⁹ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 842

⁸¹⁰ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 842

⁸¹¹ Tribunal Documents, Diary entry of Supt Noreen McBrien, dated 16th July 2014, p. 6315

⁸¹² Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at pp. 842-843

⁸¹³ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 30th September 2014, p. 13276

⁸¹⁴ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 1st October 2014, p. 13276

of Garda Keogh's vehicle and the reason for such search being recorded as '*caller to office*'.⁸¹⁵ The PULSE printouts also recorded a check on Garda Keogh's vehicle on 1st October 2014 by Supt McBrien, with reason provided as '*Egn Re Athlone*'.⁸¹⁶

The PULSE check on the vehicle of Garda Keogh on 1st October 2014 indicated that it was taxed as '*own goods*'.⁸¹⁷ The matter was not raised with Garda Keogh at that point in time and he was not aware that Supt McBrien regarded it as having been incorrectly taxed.

Supt McBrien was on sick leave from 2nd October 2014 until 18th December 2014.

In the period since his first claims in May 2014, Garda Keogh stated that he had made the following journeys:

- travel to Galway on 18th June 2014 to meet D/Supt Mulcahy
- travel to Dublin on 14th July 2014 to meet Judge Patrick McMahon
- travel to Dublin on 30th July 2014 to meet Deputies Clare Daly and Mick Wallace
- travel to Portumna on 13th August 2014 to meet Assistant Commissioner Dónall Ó Cualáin
- travel to Galway on 11th December 2014 to meet D/Supt Mulcahy.⁸¹⁸

Garda Keogh believes that he submitted claims for three of these journeys. No copies of the original claims were produced to the tribunal by Garda Keogh, and they have not been discovered in any documentation produced on behalf of An Garda Síochána.

Garda Keogh wrote, by memo dated 1st January 2015, to the sergeant in charge of Athlone in relation to subsistence claims he had not been paid:

*I submitted 3 x sub claims which have not been paid one of the dates is 13.8.14 the other 2 claims which I do not have the dates to hand were with this claim can this be checked out before I re-submit claims.*⁸¹⁹

Insp Minnock, on behalf of the superintendent, caused an enquiry to be made with the finance officer. On 5th January 2015, Insp Minnock wrote to the sergeant in charge, Athlone in respect of Garda Keogh's travel expense and stated that:

Claim for duty on 11/12/2014 was returned under query on the 17/12/2014 and reply not yet received (copy attached).

*There are no outstanding claims for Garda Keogh with the Finance Officer and no record of receiving same.*⁸²⁰

Garda Keogh recorded a note in his diary for 5th January 2015 that '*summer sub claims went missing*'.⁸²¹ Garda Keogh resubmitted the claims on 11th January 2015, headed '*resubmission*'.⁸²²

⁸¹⁵ Tribunal Documents, PULSE extract, p. 173

⁸¹⁶ Tribunal Documents, PULSE extract, pp. 173-174; PULSE extract, pp. 1112-1128

⁸¹⁷ Tribunal Documents, PULSE check on Garda Nicholas Keogh, dated 1st October 2014, p. 1126

⁸¹⁸ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 7th April 2015, pp. 9205-9206

⁸¹⁹ Tribunal Documents, Letter from Garda Nicholas Keogh to sergeant in charge Athlone, dated 1st January 2015, p. 175

⁸²⁰ Tribunal Documents, Letter from Insp Aidan Minnock to sergeant in charge Athlone, dated 5th January 2015, p. 721

⁸²¹ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 5th January 2015, p. 13293

⁸²² Tribunal Documents, Claim Forms FMS2 of Garda Nicholas Keogh, dated 11th January 2015, pp. 2208-2217

These were considered by Supt McBrien on 12th January 2015, who noted that the five claim forms were not signed by Sergeant Andrew Haran and that Garda Keogh should also give the cost of public transport if available and claim the most cost-effective means of travel. They were therefore returned for his further attention on 12th January 2015.⁸²³ These were forwarded to Garda Keogh for his early attention, countersigned by Sgt Haran, and amended as requested.⁸²⁴

These forms (FMS2) are date stamped 2nd February 2015 with the stamp of the superintendent's office and Supt McBrien's signature on them.⁸²⁵ They were not, however, dispatched by her office as authorised for payment as Supt McBrien had not raised the issue of the taxation of Garda Keogh's vehicle with him. On 2nd February 2015 Garda Keogh made a note in his diary that he *'printed off checks to my car'*.⁸²⁶

Supt McBrien met Garda Keogh on 4th February 2015 and discussed a large range of issues with him. He asked her about checking his car on PULSE. She explained it was for her audit and that several others had also been checked. She formed the view, having regard to his talk about *'dark forces'* in the station and his demeanour, that it would not be prudent to raise the issue of his car tax with him.⁸²⁷ Garda Keogh noted in his diary that:

*I asked her why she checked my car 1.10.14 she said ten others checked re sub audit told her my sub went missing and Gerry White had caller to Supt Office.*⁸²⁸

Supt McBrien was feeling unwell and was driven home by Chief Superintendent Mark Curran on 9th February 2015 and she informed him of the issue with Garda Keogh's car tax at that time.⁸²⁹ She recorded in her notes that *'he advised getting a Cig to examine/investigate'*.⁸³⁰

Garda Keogh wrote to the sergeant in charge on 24th February 2015 about his claims for 2014. He said that these had not been paid and asked if someone could let him know the current status of same:

*I have submitted sub claims for 18.6.14, 14.7.14, 30.7.14 and 13.8.14. These sub + travel claims have not been paid I would be obliged if someone could let me know the current status of same.*⁸³¹

There was no response to this letter at that time.

By this point Supt McBrien was to be transferred and replaced by Superintendent Pat Murray. She met Supt Murray on 4th March 2015 and she made a note that she informed him of the situation in relation to Garda Keogh's car tax:

*Met with Supt Pat Murray. Update him on District and members etc. Gave him copies of my notes re Garda Nick Keogh. Discussed claims. Agreed to forward Insp. Minnock to hold until Monday 9th March when it would be addressed.*⁸³²

⁸²³ Tribunal Documents, Letter from Supt Noreen McBrien to sergeant in charge Athlone, dated 12th January 2015, p. 2207

⁸²⁴ Tribunal Documents, Letter from Sgt Michelle Baker to Sgt Andrew Haran, dated 12th January 2015, p. 2206

⁸²⁵ Tribunal Documents, Claim Forms FMS2 of Garda Nicholas Keogh, dated 11th January 2015, pp. 2209-2217

⁸²⁶ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 2nd February 2015, p. 13297

⁸²⁷ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 839

⁸²⁸ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 4th February 2015, p. 13297

⁸²⁹ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6248

⁸³⁰ Tribunal Documents, Note of Supt Noreen McBrien, dated 9th February 2015, p. 1731

⁸³¹ Tribunal Documents, Letter from Garda Nicholas Keogh to sergeant in charge Athlone, dated 24th February 2015, p. 181

⁸³² Tribunal Documents, Note of Supt Noreen McBrien, dated 4th March 2015, p. 1731

Supt Murray said in his statement to the tribunal that Supt McBrien explained to him that D/ Supt Mulcahy had informed her that Garda Keogh's vehicle was not correctly taxed and that his claims for travel expenses were in breach of the financial code regulations and could not be paid. He said that she also informed him that Garda Keogh had been querying the non-payment of his claims but that no one had spoken to him about it.⁸³³

Supt McBrien wrote to Insp Minnock on 4th March 2015 directing him to retain the file and that Supt Murray would discuss the matter with him.⁸³⁴

Supt Murray commenced in Athlone on 9th March 2015 and he discussed the matter with Insp Minnock on that date. He instructed Insp Minnock to make enquiries into the tax position relating to Garda Keogh's vehicle. Insp Minnock emailed the Motor Tax Office in Offaly County Council on 19th March 2015 asking if he could be provided with the taxation history of the vehicle, particularly covering the period June to December 2014. In the email he stated that:

I understand the vehicle is taxed (as per our records), however I am interested in the class of tax, private or commercial? If taxed as a commercial vehicle I will be looking for a copy of the signed declaration that the vehicle is a goods vehicle and would appreciate a scanned copy of same (or otherwise a copy in the post).⁸³⁵

The relevant official replied on 20th March 2015 and confirmed '*this is a Goods Van taxed as Own Goods but we have no Declaration attached to our form unfortunately*'.⁸³⁶ She attached scanned documents including the motor tax renewal form, which was processed on 20th October 2014 for the period commencing 1st November 2014,⁸³⁷ the receipt for same,⁸³⁸ and the printout relating to it.⁸³⁹ She also enclosed a document showing the details of the vehicle and its tax history.⁸⁴⁰

Supt Murray met Garda Keogh for the first time on 26th March 2015. He made a note in relation to car tax as follows:

I then spoke to him in relation to his travel claims left for me as his vehicle was tax goods. He got slightly annoyed. I told him I had been on to Tax Office and showed him what I got re his vehicle explaining the problem was left for me and I wanted to be sure the vehicle was not wrongly taxed. He admitted it was taxed goods and shouldn't be, but he just kept renewing it. Told him it would have to be corrected to when he last taxed it. He said he would do that and produce evidence of same to me within one week. I told him I would deal with him myself if he did that in the same way I would deal with someone I stopped if I found the same problem. He got annoyed blaming them, but wouldn't say who. He criticised CS Curran re trying to create complaints against him.⁸⁴¹

According to Supt Murray, he offered the solution to Garda Keogh of back taxing the vehicle and said that he would then approve the travel claims. He said that he told Garda Keogh he would finalise the matter by way of a Regulation 10 caution.⁸⁴² Supt Murray recorded in his note that:

⁸³³ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2042

⁸³⁴ Tribunal Documents, Letter from Supt Noreen McBrien to Insp Aidan Minnock, dated 4th March 2015, p. 1749

⁸³⁵ Tribunal Documents, Email from Insp Aidan Minnock to Motor Tax Office, Offaly County Council, dated 19th March 2015, p. 2200

⁸³⁶ Tribunal Documents, Email from Motor Tax Office, Offaly County Council to Insp Aidan Minnock, dated 20th March 2015, p. 2200

⁸³⁷ Tribunal Documents, Motor Tax Renewal Form, dated 20th October 2014, p. 2201

⁸³⁸ Tribunal Documents, Motor Tax Renewal Receipt, dated 21st October 2014, p. 2202

⁸³⁹ Tribunal Documents, Motor Tax Office printout, p. 2203

⁸⁴⁰ Tribunal Documents, Motor Tax Office printout, p. 2204

⁸⁴¹ Tribunal Documents, Note of Supt Pat Murray, dated 26th March 2015, p. 2187 at p. 2188

⁸⁴² Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at pp. 2042-2043

*He tried to say other members had issues with cars. I told him not to worry, was going to have everyone checked. He withdrew his allegations then saying he didn't want that as people would know about his tax and blame him. I said I would make a decision taking his views on board, but I would treat everyone the same and fairly. We shook hands and he left.*⁸⁴³

Garda Keogh made a note in his diary for 26th March 2015 that:

*He then said theres a problem with your car tax is commercial + your using it private I told him I paid it the same way last few years + wasn't the only one in stn.*⁸⁴⁴

On the following day, 27th March 2015, Garda Keogh obtained a new tax disc, having paid €251 in the difference. The tax disc recorded his tax classification as 'private'.⁸⁴⁵

On Monday 30th March 2015, Garda Keogh travelled to Dublin to meet Deputies Clare Daly and Mick Wallace. The following day in Dáil Éireann, during Leaders' Questions, Deputy Wallace stated, *inter alia*, that:

*We have been speaking to some new whistleblowers of late, some of whom are trying to raise issues regarding gardaí involved in the drug trade. I will tell the Taoiseach what they are facing: harassment, bullying, intimidation, cover up, denial and delay. In one internal investigation, the garda about whom complaints had been made is being kept informed while those making the allegations are being harassed – all under the watch of the new commissioner. The same internal investigation has been going on for 11 months. It appears as if they are trying to break the man and I think they might.*⁸⁴⁶

On 1st April 2015, D/Supt Mulcahy recorded in his diary that he spoke to Garda Keogh, who mentioned the 'crack with tax on car'.⁸⁴⁷ On 1st April 2015, Supt Murray made a note in his diary that:

*Calls from AC Ó Cualáin by three and D/Supt Mulcahy re Dáil utterances and Garda Keogh.*⁸⁴⁸

On 1st April 2015, Supt Murray made a more detailed note of these phone calls:

Calls from ACO Ó Cualáin, 9.58am, 1.45pm and 5.06pm re outburst in Dáil by Mick Wallace re whistleblower Athlone and [a previous divisional officer]. Explained re letter he sent to Clare Daly from D/office and my conversation with Garda Keogh re his welfare, work supports and his work and car tax and what I was doing. AC wanted to know who from Athlone was on to M. Wallace. Told him general perception was it was Garda Keogh. AC's last phone call was for me to ask Garda Keogh re his welfare considering he told D/Supt. Mulcahy he felt people closing in on him, particularly [a previous divisional officer] when car tax and CMO were mentioned to him. AC was complimentary of my handling of Garda Keogh and his welfare to date.

Calls from D/Supt. Mulcahy, 10.00am, 2.32pm. He made contact with Garda Keogh who told him he had raised issues with M. Wallace as he felt job was supporting [a previous divisional officer] when his tax CMO mentioned to him. Explained to D/Supt. Mulcahy my conversation with Garda Keogh. He explained their investigation was nearly finished and Garda Keogh was anxious it be finished asap and this was a source of his concern as well.

⁸⁴³ Tribunal Documents, Note of Supt Pat Murray, dated 26th March 2015, p. 2187 at p. 2189

⁸⁴⁴ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 26th March 2015, p. 13304

⁸⁴⁵ Tribunal Documents, Tax disc of Garda Nicholas Keogh, dated 27th March 2015, pp. 2198-2199

⁸⁴⁶ Tribunal Documents, Extract from Dáil Éireann Debates, dated 31st March 2015, p. 15296 at p. 15322

⁸⁴⁷ Tribunal Documents, Diary entry of D/Supt Declan Mulcahy, dated 31st March 2015, p. 3925

⁸⁴⁸ Tribunal Documents, Note of Supt Pat Murray, dated 1st April 2015, p. 2490

*Informed Chief Wheatley of matters above.*⁸⁴⁹

On 2nd April 2015, Supt Murray made a note of a conversation with A/C Ó Cualáin as follows:

*Call from AC ó Cualáin offering advice. As Garda Keogh is protected, no one is supposed to know his identity and against law to reveal him. He can't discuss him with anyone. If Garda Keogh refers me to them, then can only give me info if Keogh gives written permission, but because he went public I can only know about that time and two days ago outburst he wasn't named so I don't know who the whistleblower was then. Explained to AC my support structure for him.*⁸⁵⁰

On 2nd April 2015, Garda Keogh noted in his diary that:

*Mick Wallace in Dail with Minster Francis [sic] Fitzgerald G.S.O.C not functioning for Gda whistleblowers.*⁸⁵¹

On 3rd April 2015, Supt Murray met Garda Keogh in his office where Garda Keogh produced the new tax disc, the receipt for it and all associated documentation, which Supt Murray photocopied and noted.⁸⁵² According to Supt Murray, he then informed Garda Keogh that he was disciplining him pursuant to Regulation 10 of the Discipline Regulations in respect of the matter and wrote out a record of the breach of discipline there and then, which Garda Keogh signed.⁸⁵³ Garda Keogh strenuously disputes that he had prior knowledge that this would occur.⁸⁵⁴

Garda Keogh's diary for 3rd April 2015 recorded that:

*met Supt Murray re tax I showed him tax disc + receipt he then gave s.10 Discipline for same I said I wrote a report months ago re: this asking was there a problem and pointed out it should have been dealt with then.*⁸⁵⁵

Supt Murray's notes recorded that:

*Garda Keogh approached me as I left the station to show me his corrected car tax. Returned to office. He presented receipts and new tax and I copied same. Gave him Reg. 10 caution and completed same... He discussed completion of MC1 and MC2 forms and advised him re same. He thanked me leaving. Had said earlier he realised car tax issue was left for me, but felt others were getting at him. I put the other side of the argument to him.*⁸⁵⁶

Form I.A.1 dated 3rd April 2015, disciplining Garda Keogh by way of a Regulation 10, recorded that:

*you Garda Keogh conducted yourself in a manner which you knew or ought to have known would be Prejudicial to Discipline or Reasonably likely to Bring Discredit on An Garda Síochána in That you used m/vehicle _____, Being the registered owner, on Duty while the vehicle was Taxed as goods class when the tax class should have Been Private.*⁸⁵⁷

⁸⁴⁹ Tribunal Documents, Note of Supt Pat Murray, dated 1st April 2015, p. 2491

⁸⁵⁰ Tribunal Documents, Note of Supt Pat Murray, dated 2nd April 2015, p. 2491

⁸⁵¹ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 2nd April 2015, p. 13305

⁸⁵² Tribunal Documents, Note of Supt Pat Murray, dated 3rd April 2015, p. 2194

⁸⁵³ Tribunal Documents, Form I.A.1, Regulation 10, dated 3rd April 2015, p. 2197

⁸⁵⁴ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 127

⁸⁵⁵ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 3rd April 2015, p. 13305

⁸⁵⁶ Tribunal Documents, Note of Supt Pat Murray, dated 3rd April 2015, p. 2194

⁸⁵⁷ Tribunal Documents, Form I.A.1, Regulation 10, dated 3rd April 2015, p. 8766

On 6th April 2015, Supt Pat Murray signed the FMS2 forms approving Garda Keogh's resubmitted expense claims.⁸⁵⁸

Supt Murray reported to Chief Superintendent Lorraine Wheatley on 7th April 2015 stating that Garda Keogh had submitted the five claims and that they amounted to €415.99, and said, *inter alia*, that:

The claims were left for me when I arrived in Athlone as District Officer on 9th March 2015. It was brought to my attention that Garda Keogh may not have had his vehicle properly taxed. I made an enquiry with the Motor Tax Office and was provided with documentary evidence indicating that Garda Keogh had taxed his vehicle as goods class when it should have been taxed private. As a result a loss of revenue to the State of €377 resulted each year.

I met Garda Keogh on 26th March 2015. He admitted taxing his vehicle in the wrong class. I gave him an opportunity to correct his tax and pay any arrears due. He did so on 27th arch and provided proof of same to me on 3rd April 2015. I then dealt with him by way of Regulation 10 Discipline Regulations (copy attached) and approved his claims for payment. The matter is now closed.⁸⁵⁹

Supt Murray forwarded a copy of this report to A/C Ó Cualáin by email dated 8th April 2015. C/ Supt Wheatley replied on 19th April 2015.⁸⁶⁰ She noted the matter was closed and stated that the Regulation 10 notice would be kept in a loose-leaf folder in her office.⁸⁶¹

On 22nd April 2015, Supt Murray issued a letter to all gardaí in Athlone, which stated that he had been made aware in a general way that private vehicles of some members were not in order in relation to:

1. *No Valid Tax*
2. *No Valid Insurance*
3. *No Valid NCT Certs*
4. *No Valid Driving Licences.*⁸⁶²

He went on to advise all members that:

Commencing on 1st June, 2015 I will have the necessary checks carried out as follows:

- *All members will be asked to voluntarily present their vehicles and Driving Licences for inspection to their immediate supervisors who will certify all is correct.*
- *The supervisors will in the same manner be asked to present their Driving Licences and vehicles for inspections to their immediate Inspectors who will certify all is correct.*
- *I will ask both Inspectors to present to me*
- *I in turn will present to the Divisional Officer.*

In that way I will be in a position to confirm members private vehicles are in order in the District.

⁸⁵⁸ Tribunal Documents, FMS2 Forms, dated approved 6th April 2015, pp. 728-742

⁸⁵⁹ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 7th April 2015, pp. 9205-9206

⁸⁶⁰ Tribunal Documents, Email from Supt Pat Murray to A/C Dónall Ó Cualáin, dated 8th April 2015, pp. 15697-15699

⁸⁶¹ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Supt Pat Murray, dated 19th April 2015, p. 9207

⁸⁶² Tribunal Documents, Letter from Supt Pat Murray to all gardaí in Athlone District, dated 22nd April 2015, p. 184

*All members are reminded that any claims involving the use of a members private vehicle will only be approved if the vehicle being used complies with all road traffic legislation in force.*⁸⁶³

Almost two months later, on 15th June 2015, Sergeant Mary McDonald wrote to Supt Murray informing him that the documents of two gardaí were in order and stating that one other member had ‘a goods tax disc on his vehicle but all other documents are in order. I have highlighted this matter to him and asked him to rectify it’.⁸⁶⁴

On 16th June 2015, Sergeant Cormac Moylan was requested to provide a report on members’ vehicles.⁸⁶⁵ On 2nd July 2015, Sgt Moylan wrote to the sergeant in charge, Athlone stating that:

*I have inspected the driving licence, insurance disc, tax disc and NCT disc for the following members attached to Unit ‘C’ and they are all in order.*⁸⁶⁶

On 19th November 2015, Supt Murray made the following note in his diary:

*8.40am Call to D/Supt Mulcahy re car checks. He told me Gda Keogh phoned him last night drunk criticising me.*⁸⁶⁷

On 30th November 2015, Supt Murray wrote to Sgt Moylan seeking a reply in relation to the certification of members’ vehicles in Kilbeggan, and noting that one member remained outstanding.⁸⁶⁸ On 7th December 2015, Sgt Moylan replied to Supt Murray stating that the member who had not been certified was on sick leave.⁸⁶⁹

On 9th December 2015, Supt Murray attended a case conference with the Specialist Occupational Physician, Dr Oghenovo Oghuvbu, listing ‘car tax Reg’ as an item of discussion.⁸⁷⁰ On 18th December 2015, Dr Oghuvbu, recorded that Garda Keogh was ‘stressed by difficulties with his senior mgt’ including an ‘issue with his car tax’.⁸⁷¹

In undated correspondence, Supt Murray informed Sgt Moylan that, in respect of the garda he was dealing with who was on sick leave, ‘it needs to be confirmed that his car is properly taxed’. Sgt Moylan replied that he had examined the tax disc and that ‘his jeep is taxed privately until July 2016’.⁸⁷² On 5th February 2016, the member sent Sgt Moylan ‘new tax dis[c] and copy of registration certificate’. Sgt Moylan forwarded this correspondence to Supt Murray.⁸⁷³

On 22nd May 2019, Sgt Moylan confirmed the following in a report to the superintendent in Athlone:

In relation to the above, I wish to report that I took over responsibility for Kilbeggan Garda Station on the 20th July 2015. In November 2015 I received correspondence requesting I query the status of Garda _____’s privately owned vehicle, a _____. I contacted Garda _____ who was on sick leave following an injury on duty and I duly reported that he was not due to return to work until January 2016.

⁸⁶³ Tribunal Documents, Letter from Supt Pat Murray to all gardaí in Athlone District, dated 22nd April 2015, pp. 184-185

⁸⁶⁴ Tribunal Documents, Letter from Sgt Mary McDonald to Supt Pat Murray, dated 15th June 2015, p. 8785

⁸⁶⁵ Tribunal Documents, Email from Supt Pat Murray to Sgt Cormac Moylan, dated 16th June 2015, p. 8786

⁸⁶⁶ Tribunal Documents, Email from Sgt Cormac Moylan to sergeant in charge Athlone, dated 2nd July 2015, p. 8770

⁸⁶⁷ Tribunal Documents, Diary entry of Supt Pat Murray, dated 19th November 2015, p. 16210

⁸⁶⁸ Tribunal Documents, Letter from Supt Pat Murray to Sgt Cormac Moylan, dated 30th November 2015, p. 8787

⁸⁶⁹ Tribunal Documents, Handwritten note from Sgt Cormac Moylan to Supt Pat Murray, dated 7th December 2015, p. 8787

⁸⁷⁰ Tribunal Documents, Note of Supt Pat Murray, dated 9th December 2015, p. 2500

⁸⁷¹ Tribunal Documents, OHP Consultation Note of Dr Oghenovo Oghuvbu, dated 18th December 2015, p. 3791

⁸⁷² Tribunal Documents, Handwritten letter from Supt Pat Murray to Sgt Cormac Moylan, undated, p. 8788

⁸⁷³ Tribunal Documents, Handwritten letter from Sgt Cormac Moylan to Supt Pat Murray, undated, p. 8789

I again received correspondence from Supt. Murray, District Officer, Athlone approx. January 2016 to visit Garda _____ to certify that his vehicle was taxed correctly. I contacted Garda _____ and arranged to meet with him to examine his tax disc. I recall that he queried the need to tax his jeep privately as he informed me that he was involved in farming, that he had a herd number and that the vehicle was primarily used for farming. He also informed me that he primarily used the family car for going to and from work and would only occasionally use the jeep. I informed him that it was my belief that he had an obligation to tax his vehicle privately if it was being used other than in the course of his business. He accepted my explanation and told me he would tax it privately and call into the station to show me his tax disc when he had it done.

I understood this advice, which I gave to Garda _____ as negating the need for any further disciplinary action as I subsequently inspected the disc at Kilbeggan Garda Station in February 2016, took a copy of it and reported the fact to the District Officer that all was now in order.⁸⁷⁴

On 16th October 2019, the tribunal wrote to enquire whether this member ‘was disciplined by way of regulation 10 or in any other way arising out of the resolution of his car tax issue in 2015/2016’.⁸⁷⁵

By way of reply dated 17th October 2019, it was stated that all relevant material had already been provided.⁸⁷⁶ The tribunal was directed to the documentation regarding the member’s car tax, which included a report from Sgt Moylan dated 22nd May 2019 as outlined above.⁸⁷⁷ On 18th October 2019, the tribunal further enquired *for the avoidance of doubt, can you please confirm that Garda _____ did not receive a regulation 10 notice and was not disciplined in any other way arising out of this matter?*⁸⁷⁸ In a reply dated 18th October 2019 it was stated that:

[w]e have taken further instructions and our instructions are that there is no Regulation 10 Notice in respect of Garda _____ for the year 2015. We are instructed that this confirmation relates solely to the documentary records in the Athlone District.⁸⁷⁹

On 23rd October 2019, the tribunal sought a statement from this member ‘regarding the matter of his motor tax in 2015 and 2016 to deal specifically with the issues of whether he received a regulation 10 notice arising out of this matter in either 2015 or 2016 and whether he was disciplined in any other way in either 2015 or 2016 in relation to the matter’.⁸⁸⁰ The statement of the relevant member was subsequently provided to the tribunal on 25th October 2019.⁸⁸¹ There was no reference to a Regulation 10 notice being issued to the member.

It was later confirmed to the tribunal that there were ‘no records in existence in Athlone Garda Station to indicate that Superintendent Pat Murray disciplined any other Garda member by way of regulation 10 notices pursuant to regulation 5, no. 1 in the schedule to the Garda Síochána (Discipline) Regulations 2007 for using a vehicle which was taxed as goods class when the tax class should have been private’.⁸⁸²

⁸⁷⁴ Tribunal Documents, Letter from Sgt Cormac Moylan to Superintendent Athlone, dated 22nd May 2019, p. 8792

⁸⁷⁵ Tribunal Documents, Letter from the Disclosures Tribunal to the Chief State Solicitor’s Office, dated 16th October 2019, p. 15229

⁸⁷⁶ Tribunal Documents, Letter from the Chief State Solicitor’s Office to the Disclosures Tribunal, dated 17th October 2019, p. 15230

⁸⁷⁷ Tribunal Documents, Letter from Sgt Cormac Moylan to Superintendent Athlone, dated 22nd May 2019, p. 8792

⁸⁷⁸ Tribunal Documents, Letter from the Disclosures Tribunal to the Chief State Solicitor’s Office, dated 18th October 2019, p. 15231

⁸⁷⁹ Tribunal Documents, Letter from the Chief State Solicitor’s Office to the Disclosures Tribunal, dated 18th October 2019, p. 15233

⁸⁸⁰ Tribunal Documents, Letter from the Disclosures Tribunal to the Chief State Solicitor’s Office, dated 23rd October 2019, p. 15234

⁸⁸¹ Tribunal Documents, Statement of Evidence, dated 24th October 2019, p. 15236

⁸⁸² Tribunal Documents, Letter from the Chief State Solicitor’s Office to the Disclosures Tribunal, dated 14th November 2019, p. 15716

The Regulation 10 notices issued by Supt Murray in 2015 as disclosed to the tribunal consisted of the following:

- (1) On 6th April 2015, a Regulation 10 notice was issued by Supt Murray to a member for failing to investigate an alleged rape reported to the member in 2010⁸⁸³
- (2) On 30th September 2015, Supt Murray issued a Regulation 10 notice to a member for failing to submit a file in relation to the seizure of drugs⁸⁸⁴
- (3) On 14th October 2015, Supt Murray issued a Regulation 10 notice to a member for improperly extending the immigration permissions for 129 students⁸⁸⁵
- (4) On 27th October 2015, a Regulation 10 notice was issued to a member by Supt Murray for failing to submit a file after a quantity of heroin was seized.⁸⁸⁶

The tribunal was provided with material which it was stated had '*relevance to the issue*'⁸⁸⁷ and this consisted of a Regulation 10 issued to a member for driving his car when his tax had expired, issued by Insp Minnock on 9th February 2015 and signed by the member concerned on 26th February 2015.⁸⁸⁸ This arose out of an incident where, on 8th December 2014, an anonymous citizen wrote to C/Supt Curran and Supt McBrien reporting a garda car parked outside Moate Garda Station with invalid tax and insurance.⁸⁸⁹

On 23rd December 2014, C/Supt Curran wrote to Supt McBrien directing that the matter be investigated.⁸⁹⁰ On 5th January 2015, Insp Minnock wrote to C/Supt Curran, confirming the facts of the anonymous letter. He stated that he inspected the car when the member exited the garda station by following the car and signalling for the vehicle to stop. He stated that:

*Garda _____ explained that the insurance was in order but the tax was expired. Garda _____ stated he had put the tax on the long finger but knew that he would have to pay all the arrears anyway as he had not made any declaration that the car was off the road.*⁸⁹¹

Insp Minnock stated that the member had taxed his car on 12th December 2014, paying his arrears. He was also issued with an FCPS notice '*for having no tax displayed at the time of being stopped*'. In addition, Insp Minnock recommended that the member receive a formal warning under Regulation 10.⁸⁹² On 7th January 2015, C/Supt Curran wrote to Supt McBrien agreeing that the member should be disciplined with regard to his car tax:

I have considered the contents of your correspondence and the considerations made by you in recommending that Garda _____ be disciplined by way of a formal warning in accordance with Regulation 10 of the Garda Síochána (Discipline) Regulations 2007.

I agree with your recommendation that Garda _____ receive a formal caution in respect of the matters disclosed in the anonymous correspondence received. I have in particular noted that there

⁸⁸³ Tribunal Documents, Regulation 10, dated 6th April 2015, p. 8797

⁸⁸⁴ Tribunal Documents, Regulation 10, dated 30th September 2015, p. 8794

⁸⁸⁵ Tribunal Documents, Regulation 10, dated 14th October 2015, p. 8795

⁸⁸⁶ Tribunal Documents, Regulation 10, dated 27th October 2015, p. 8796

⁸⁸⁷ Tribunal Documents, Letter from the Chief State Solicitor's Office to the Disclosures Tribunal, dated 14th November 2019, p. 15716

⁸⁸⁸ Tribunal Documents, Regulation 10, dated 26th February 2015, p. 15717

⁸⁸⁹ Tribunal Documents, Anonymous letter to C/Supt Mark Curran, dated 8th December 2014, p. 15738

⁸⁹⁰ Tribunal Documents, Letter from C/Supt Mark Curran to Supt Noreen McBrien, dated 23rd December 2014, p. 15727

⁸⁹¹ Tribunal Documents, Letter from Insp Aidan Minnock to C/Supt Mark Curran, dated 5th January 2015, p. 15719

⁸⁹² Tribunal Documents, Letter from Insp Aidan Minnock to C/Supt Mark Curran, dated 5th January 2014, pp. 15719-15720

*was no loss of revenue to the state, that Garda _____ attended to the matter immediately and that Garda _____ has a good disciplinary record prior to this incident.*⁸⁹³

On 9th February 2015, Insp Minnock issued a Regulation 10 notice to the member at Moate Garda Station stating that:

*On 12th December 2014 did drive vehicle registration number _____ with no Tax displayed.*⁸⁹⁴

Insp Minnock did not bring this to Supt Murray's attention when he took up the position of superintendent in Athlone.

Complaint made by Garda Nicholas Keogh

In his statement to the tribunal, Garda Keogh recalled that Supt Murray raised the issue of his car tax during their first meeting on 26th March 2015:

*I meet him for the first time on 26th March 2015 – after being called into his office. He advised that my two seater land rover van was taxed as commercial. He said there was a problem with my motor tax. My land rover van should be taxed he claimed as private or as he put it 'non-goods'. He said that he has been down to the motor taxation office looking for 'declarations' about my motor tax. I thought this very odd. I pointed out inter alia that the nct authorities would not process my van as private (it had to be tested commercially by the Department of the Environment), it had no back seats, was used for police duty and to carry dogs.*⁸⁹⁵

Garda Keogh went on to say that:

*Coincidentally, there were delays in the payment to me of my travel expenses using my van for: 18.6.2014, the 14.7.2014, the 30.7.2014 and the 13.8.14.*⁸⁹⁶

He stated that Supt Murray asked him to back tax his vehicle and to bring him documents showing that this was done. He said that he was told *'that my outstanding subsistence allowance would not be paid until that was done.'*⁸⁹⁷ Garda Keogh stated that Supt Murray made no mention of discipline at their initial meeting, simply telling Garda Keogh to *'get it sorted'*.⁸⁹⁸

Garda Keogh stated that the tax classification of his van was a *'grey area'*, but he agreed to tax his van privately:

*It appeared that it was being assumed that my van (while nct categorised as commercial) should be taxed as private. In any case, there is doubt based on the facts whether it is commercial or private, and it was a grey area. I decided to tax my van privately when the Superintendent said that there was a 'problem' with my tax. I paid back tax of €251.00. I had never witnessed a prosecution on such a basis where a two seater van (used for carrying dogs) and which had to be processed commercially by the Department of the Environment as a non-nct vehicle for taxation purposes was deemed private for motor taxation.*⁸⁹⁹

⁸⁹³ Tribunal Documents, Letter from C/Supt Mark Curran to Supt Noreen McBrien, dated 7th January 2015, p. 15718

⁸⁹⁴ Tribunal Documents, Regulation 10, dated 9th February 2015, p. 15717

⁸⁹⁵ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 126

⁸⁹⁶ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 127

⁸⁹⁷ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 37

⁸⁹⁸ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 55

⁸⁹⁹ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 127

Garda Keogh told tribunal investigators that he paid the back tax because he *‘just wanted the thing over with’* and was not aware that he would be disciplined.⁹⁰⁰ He said that it was only when he returned to the superintendent’s office on 3rd April 2015, having paid his back tax, that Supt Murray raised the issue of discipline:

*It was only when I went back in to meet him and I showed him the receipt of the back-tax that he took a photocopy of it and then started talking to me about discipline arising. He pulled out a sheet. He asked me had I ever been disciplined before and he wrote out the discipline papers in front of me ... and I signed it on that date also. It was filled in by Superintendent Murray and signed by me on 03/04/2015. It was just myself and Superintendent Murray at this meeting. This was just the second meeting I had with Superintendent Murray.*⁹⁰¹

Garda Keogh said in his statement that by paying the additional tax *‘this was then taken by Superintendent Pat Murray as an admission of impropriety’* and that:

On the 3rd April, 2015, I was disciplined on such grounds. I pointed out to Superintendent Pat Murray that my ‘non-compliance’ had been known since September 2014 when the matter was searched on pulse by the caller and had not been brought to my attention then. I received no explanation as to why the matter had been ‘parked’ for six months and that such six months had subsequently been used to suggest that I had been in non-compliance ...

*Pat Murray, after disciplining me on this matter, said that he could organise a transfer for me to Birr. I never asked to be transferred to Birr. I refused.*⁹⁰²

Garda Keogh also said in his statement that *‘I believe that Superintendent Pat Murray targeted me in this regard with the acquiescence of Chief Superintendent Mark Curran.’*⁹⁰³ In evidence to the tribunal, Garda Keogh agreed with counsel for An Garda Síochána that this was not correct insofar as C/Supt Curran was concerned:

Q. ... Do you see at line 604, this is your statement to the Tribunal investigators and you said: “I believe that Superintendent Pat Murray targeted me in this regard with the acquiescence of Chief Superintendent Mark Curran.”

Can I just put it to you on behalf of both of those witnesses, they will say that that is incorrect and, in particular, they will say that in their statements they both indicated by the time –

A. *I agree that part can’t be correct.*⁹⁰⁴

Garda Keogh complained to tribunal investigators that he was treated differently to other gardai in Athlone. He stated that he informed Supt Murray that *‘there were other Gardai that had the same tax and were also driving commercial vehicles in the same way as me’*.⁹⁰⁵

As noted above, Supt Murray issued a circular to all gardai in Athlone Garda Station concerning the tax, insurance and NCT of their vehicles. In his statement to the tribunal, Garda Keogh said that:

⁹⁰⁰ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 44

⁹⁰¹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 44

⁹⁰² Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 127

⁹⁰³ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 42

⁹⁰⁴ Tribunal Transcripts, Day 112, p. 110, Evidence of Garda Nicholas Keogh

⁹⁰⁵ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 43

A letter dated 22nd April 2015 emanated from Superintendent Pat Murray to all guards in Athlone station which stated that guards in Athlone were driving without motor tax, without car insurance, without nct certificates and without driving licences. It was self-evident that there were – according to this letter – levels of severe dereliction which were far greater than mine; and to which a 'blind eye' was being turned. Guards with such degree of non-compliance were given a period of grace of two months in clear breach of cut and dried statutory provisions. The Superintendent was according a two month period of grace in respect of the very serious breaches of driving without motor insurance – to delinquent guards. This amounted to a non-uniform treatment of guards vis a vis other drivers and the Superintendent did not have jurisdiction to overlook the lack of motor insurance for police drivers.

The letter, which postdates my disciplining, is signed by Pat Murray. It is a retrospective attempt to justify a vindictive disciplinary procedure conducted in my case about the tax classification of a van. The letter is written in general terms so as not to appear to target my case specifically. In doing so, there is an implicit admission, in passing, of the grossly unregulated regime for criminal breaches by guards which was tantamount to a perversion of the course of justice.

His letter concludes by saying that expenses would only be paid in respect of compliant vehicles.⁹⁰⁶

Garda Keogh told tribunal investigators that other gardaí were afforded periods of grace for similar conduct:

It is clear to me that everybody else was given a chance and time to get their affairs in order ... and I was not given this opportunity in relation to the matter of motor taxation, while other members were given an opportunity to resolve the more serious issue of outstanding motor insurance.⁹⁰⁷

In his evidence to the tribunal, he described this as follows:

Well this is more, this for me is just classic targeting. Everybody else is given a two month amnesty for far more serious things than what I have been disciplined for. Like, my discipline is not that I have no tax on the car, it's just that it was in the wrong tax bracket. Like, there's people with no according to this, he's aware, is what he says, Superintendent Murray is aware that there's people with no drivers licences, no tax at all, no NCT and no insurance. They all get two months of an amnesty and I don't.⁹⁰⁸

Garda Keogh told tribunal investigators that he did not take any action or raise the issue with garda management as to why other members received a grace period whilst he did not:

No. I knew exactly what was going on at that stage; I was being targeted by Garda management. As a result, I was not going to go to Garda management about this. I knew nobody else was disciplined and everybody else in Athlone Garda station knew what this was about and that it was about me.⁹⁰⁹

In his evidence to the tribunal, Garda Keogh said that:

... I see that Superintendent Murray is in contact with Chief Superintendent Scanlan from the Laois Offaly division in relation to my car tax, not through my own chief. He veers off to the

⁹⁰⁶ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at pp. 127-128

⁹⁰⁷ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 45

⁹⁰⁸ Tribunal Transcripts, Day 100, pp. 142-143, Evidence of Garda Nicholas Keogh

⁹⁰⁹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 46

chief of the Laois Offaly division in relation to my car tax. And then of course as it transpires, I have explained the targeting, everyone else is given an amnesty with the exception of me. They could have said look, get your car tax sorted, end of story. The way everyone else – like, everyone else – I should have got that as well is what I am saying. That, you know, if they were to be fair they would have just said, look, there's problems with everybody's vehicles, including mine, and will you all just get it sorted. And that would have been – that is what I would have said would be a fair way to have dealt with it.⁹¹⁰

In respect of the travel and subsistence claims, Garda Keogh told tribunal investigators that:

I had to submit them twice. I was querying what was happening. I had to make out the claims again as they seemed to have gone missing. I remember the second time I submitted the claims I checked the travel distance based on Google maps and mapped out my journey and resubmitted them, the reason being that I was conscious that Garda management may compare my first submission and my subsequent submission of my claims. I did not keep a copy of my first submission of travel and sub claims for these dates. I do have a copy of my second submission of my claims for these dates. I submitted my claims manually on paper and submitted them through the Sergeant-in-Charge on duty that day. I do not recall to whom I submitted the first set of my travel and sub claims for these dates to. There were four separate travel and sub claim forms one for each date. I submitted four separate claims on two occasions in relation to these dates. I do not believe there were any receipts attached by me in relation to these claims...

... I never previously experienced delay in relation to payment of my sub claims. The first set I submitted disappeared, which resulted me in querying this. From my recollection, the delay in the payment of my claims for the above dates was a year at least. I do not recall the date I submitted the first set of sub claims in relation to these dates as stated above, but I recall Superintendent Murray saying to me "you won't get paid your sub until the car tax is cleared up." I know they were still outstanding in March 2015, and I believe that I was paid after I was disciplined in relation to the motor tax issue, which was dealt with by April 2015.⁹¹¹

Garda Keogh also told tribunal investigators that he was targeted by senior management in this respect:

It is more sinister that just delaying the payments. The problem is that if they saw a problem, they let it roll, to get a bigger case against me. The beginning of this was when my vehicle was checked on PULSE. Superintendent McBrien checked my car _____ on PULSE on 01/10/2014... and the reason entered for the check on PULSE was "Eqn Re Athlone". Prior to Superintendent McBrien checking my car, it was checked on 30/09/2014 at 15:45 on PULSE by Garda Thomas White (also known as Garda Gerry White, who was the District Clerk at the time) and his reason on PULSE for enquiring into my car was "caller to Supt office". Nothing happened further in this regard until Superintendent Pat Murray commenced at Athlone Garda Station in March 2015, which I say, resulted in my non-payment of my sub claims and in the motor tax issue that resulted in my being disciplined. The caller to the Superintendent's Office as reported by Garda Gerry White on PULSE is behind my targeting and that is my belief. I do not know who the caller was. Garda Gerry White is no longer the District Clerk. I believe Superintendent McBrien had no involvement in my targeting and the reason I believe that she did not is because she knew what was going on in the background. I also believe that Superintendent Pat Murray targeted me because he took this up when he came to Athlone in March 2015. I suspect that the Chief Superintendent Mark Curran was behind the phone call to Garda Gerry White.⁹¹²

⁹¹⁰ Tribunal Transcripts, Day 100, p. 145, Evidence of Garda Nicholas Keogh

⁹¹¹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 38-39

⁹¹² Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 41-42

Responding Statements and Evidence on the Issue

Superintendent Pat Murray

Supt Murray told tribunal investigators that when he met Supt McBrien on 4th March 2015, they did not discuss Garda Keogh, other than in relation to his car tax.⁹¹³ He said that he looked at the issue when he took up his new role as it had been *'dragging on'*.⁹¹⁴ In respect of Garda Keogh's travel expenses, he said that the *'decision to delay his claim happened before I arrived in Athlone and it was difficult for me to usurp that decision'*.⁹¹⁵

In his statement to the tribunal, Supt Murray said that the *'primary objective'* of the meeting on 26th March 2015 was to discuss the file in relation to Garda Keogh's expense claims that had been left with Insp Minnock:

*The primary objective of the meeting in as far as I was concerned was to discuss with Garda Keogh a file left for me by my predecessor Superintendent Noreen McBrien relating to financial claims Garda Keogh had made in 2014 for travelling expenses involving the use of his personal jeep to travel to and from Galway. My predecessor had explained to me on the 4th March 2015 that she had been informed by Detective Superintendent Mulcahy Galway that Garda Keogh's private vehicle was not correctly taxed. She felt that his claims for travelling expenses were in breach of financial code regulations and could not therefore be paid in those circumstances. She made me aware that Garda Keogh had been querying the non-payment of his claims in writing but that no one had spoken to him about the matter.*⁹¹⁶

Supt Murray stated that when he raised the issue of car tax Garda Keogh *'got slightly annoyed and indicated he felt people were getting at him'*.⁹¹⁷

Supt Murray also stated that he told Garda Keogh that this had affected his claims for travel expenses, but that he could pay the arrears to cover the period of his travelling expenses, and that Supt Murray would then pay the expenses and deal with the issue by way of a Regulation 10 caution.⁹¹⁸ He said that Garda Keogh *'agreed to that course of action'* and then told him that there were other members with similar issues. Supt Murray stated that he told Garda Keogh that he would have all vehicles checked.⁹¹⁹

Supt Murray gave evidence of this conversation to the tribunal as follows:

... he asked me what was I going to do and I explained to him that my, I suppose, number one priority was to pay the claims that were outstanding for some time, but that he needed to correct the tax to do that and if he did, and I remember saying this to him, that I would deal with him in the same way as I would deal with someone if I was a garda and I stopped him on the street, I would give them a chance to correct it and I would give them a caution then.

Q. Is that by way of regulation 10?

A. Yes.

⁹¹³ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3016

⁹¹⁴ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3069

⁹¹⁵ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3069

⁹¹⁶ Tribunal documents, Statement of Supt Pat Murray, p. 2038 at p. 2042

⁹¹⁷ Tribunal documents, Statement of Supt Pat Murray, p. 2038 at p. 2042

⁹¹⁸ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at pp. 2042-2043

⁹¹⁹ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2043

Q. Did you mention regulation 10?

A. I did, yeah.

Q. Are you sure about that?

A. I did, and I explained to him that that would close off the matter and that no one could ever come back to him again about it. You know, that came about in me answering the question, what are you going to do about it? And it was a holistic solution on it. You need to correct your tax, I am going to pay your claims and I'm going to close this down by way of regulation 10.⁹²⁰

In relation to Garda Keogh's general allegation about other members, Supt Murray gave evidence that:

*So, I wasn't sure whether he was saying this in a reactionary way or whether he had some specific information. He said that other members had issues with their cars. I told him that – I first of all asked him if he had specific information or if he wanted to tell me something he knew, so as I could act on it. But he was very vague about it. Then he said he didn't want me to do anything about it at all. And I told him I couldn't unhear what he had said. And I felt I was in a position then where if I did nothing I had a problem and if I did something, I could possibly find a problem. So I told him I would think about it and I would take his views on board but that I couldn't unhear it.*⁹²¹

In respect of the meeting on 3rd April 2015, Supt Murray told tribunal investigators that '[a]fter dealing with the car tax issue I felt he was very content'.⁹²² He described this meeting in his evidence to the tribunal:

I was leaving the station and Garda Keogh approached me and in line with, I suppose, the arrangement we had in relation to his car tax, he wanted to show me that he had corrected the car tax. So we returned to my office. And he had all the material with him, including the receipt for the arrears and the actual tax disk that he had obtained on correcting the issue. He gave me those documents when we went to the office and we photocopied them, in order that I could attach them to the claims, the file for the claims, to ensure that there was an account there in terms of when an audit would occur to show that the issue had been dealt with and finished out and the file was closed. And so I attached them to the claims file. Completed the regulation 10 and he signed for that. We went along then to discuss, I suppose, having left that all behind us, I felt that he was unburdened in a way, because we had a very frank, open and honest discussion about him and his career and what I could do for him and the value that he had got from his career at one stage. And I was making the point that if I could do anything that would allow that to return, I was more than prepared to do that within whatever was my gift or whatever support I could give.

Q. He then said that he had to continue going sick for the month?

A. He did.⁹²³

⁹²⁰ Tribunal Transcripts, Day 123, p. 68, Evidence of Supt Pat Murray

⁹²¹ Tribunal Transcripts, Day 123, p. 72, Evidence of Supt Pat Murray

⁹²² Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3027

⁹²³ Tribunal Transcripts, Day 123, pp. 98-99, Evidence of Supt Pat Murray

When interviewed by tribunal investigators, Supt Murray said that he approved Garda Keogh's expenses on 6th April 2015 and that he was the officer *'that cleared up the anomaly for him'*.⁹²⁴

Supt Murray denied allowing any members in Athlone Garda Station a *'grace period'* to fix any issues with their cars:

*No one was given any leeway to remedy any defects with their vehicles. That is a separate issue. Garda Keogh mentioned to me at my first meeting with him on 26 March 2015 that there were other people in Athlone, he did not say who, who had issues with their cars. He didn't mention any specific issues. I asked him how do you know that and who are you talking about and what are you talking about. I told him I would have to deal with that allegation and then he said he didn't want me to do anything about it. I felt if I didn't do anything with it, he would have an issue with that, and if I did he would also have an issue. I told him I couldn't unhear his allegation. I decided to have everyone's vehicle checked. I understand one other member was in a similar position to Garda Keogh and was dealt with in the same fashion.*⁹²⁵

Supt Murray considered that Garda Keogh made this allegation in a *'reactionary way'*⁹²⁶ and did not want to assist on the matter any further. He said that if Garda Keogh had specific information he would have dealt with it differently, but that he had *'no specific information from him so I felt I had to be fair to everyone in the District'*.⁹²⁷ Supt Murray gave evidence to the tribunal that:

*Well, I think the complaint has, I suppose, conflated or twisted my action into a negative against Garda Keogh in an unfair way. Garda Keogh, I suppose, made the allegation in a general way, he wouldn't back it up in any way when I asked him. I felt that I was in a position where to do nothing wasn't an option for me, having heard what he had to say. Having discussed it with my inspectors and decided on this course of action, to be fair to the hundred or so other employees against whom the general allegation was made in that way.*⁹²⁸

Supt Murray also gave evidence that:

*... The standard is what's important and I left it to the sergeant to deal with any issues that arose on their unit in relation to any issue that they might find and this was the only one brought - that came to my attention. I think Garda Keogh's may have been certified again to have been all correct in this process, the same as everyone else.*⁹²⁹

Supt Murray disagreed with Garda Keogh's stance that his case stood out in stark contrast to the other Regulation 10 notices issued. He was asked the following by tribunal counsel:

Q. ... I suppose Garda Keogh's position would be that the five regulation 10s that I have opened to you there, and we have had a brief look at and every case must depend on its own particular set of circumstances, but he would say that that stands in stark contrast to his misdemeanour as he would see it?

A. I wouldn't agree with him. I think he takes a subjective view on that, not knowing the circumstances in the other cases. But in addition to that, Garda Keogh's I suppose could be considered more serious in that his case was one where I suppose he had purposefully continued to engage in committing what was an offence over a number of years, knowing

⁹²⁴ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3069

⁹²⁵ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3077

⁹²⁶ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3078

⁹²⁷ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3079

⁹²⁸ Tribunal Transcripts, Day 124, p. 11, Evidence of Supt Pat Murray

⁹²⁹ Tribunal Transcripts, Day 124, p. 22, Evidence of Supt Pat Murray

*that it was wrong. While in the other case it was neglect of duty in terms of dealing with work issues, albeit quite serious, but the circumstances indicated to me that the regulation 10 option was the best in each of those cases.*⁹³⁰

Supt Murray told tribunal investigators that the difference between the treatment of Garda Keogh on this issue and the procedure set out in the letter dated 22nd April 2015 to all members of the district did not constitute the targeting or discrediting of Garda Keogh:

*No absolutely not. I have explained how that came about. As noted above, there was one person who had to back tax and that was dealt with in the same way.*⁹³¹

In his evidence to the tribunal, he said that:

*I didn't give anyone two months to sort anything out. I asked that this would happen and be dealt with and dealt with in the manner that's outlined in the document. And I did that after careful consideration and consultation with my two inspectors. And I felt it was a very prudent way to handle the general allegation Garda Keogh had made, considering that everyone of the 100 or so staff was entitled to the presumption of innocence.*⁹³²

Supt Murray told tribunal investigators why he elected to use a Regulation 10 procedure:

*In making an application to use one's car on duty, one must complete a declaration indicating everything is in order. If I was targeting Garda Keogh in the manner he says, I would have resorted to prosecution.*⁹³³

He further stated:

*A Regulation 10 is a very informal way of dealing with a minor breach of discipline and the fact that Garda Keogh had acknowledged that he knew he was committing an offence and continued to allow that happen was a determining factor. As I said earlier if I had been targeting him I would have adopted a different approach. I dealt with other minor issues in Athlone in 2015, issuing 5 Regulation 10 notices, only one of which was related to Garda Keogh.*⁹³⁴

He reiterated this position in his evidence to the tribunal:

*The way Garda Keogh described it is that he had bought the jeep and continued doing it. While he knew it wasn't right, he just felt that, look it, I'll continue doing it, and explained it in that fashion. With the file I had in front of me, I was very happy that that was an honest account of what had occurred and I wanted to deal with it in as minor a manner as fashion – fashion as possible so as it wouldn't, I suppose, upset him in any way. But it would move on then and pay the monies owed to him, in a very quick way.*⁹³⁵

Supt Murray was asked to elaborate on this:

Q. So my question is this: If management had in fact been minded to initiate a prosecution for signing or executing a false declaration, that was availed because the declaration appears to have been signed by Garda Keogh, if that had been their intention?

⁹³⁰ Tribunal Transcripts, Day 123, p. 107, Evidence of Supt Pat Murray

⁹³¹ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3079

⁹³² Tribunal Transcripts, Day 125, p. 122, Evidence of Supt Pat Murray

⁹³³ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3070-3071

⁹³⁴ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3077

⁹³⁵ Tribunal Transcripts, Day 126, pp. 68-69, Evidence of Supt Pat Murray

- A. *It was. And in addition to that then, there was a further declaration where Garda Keogh applied to use his car on duty and there was a declaration associated with that, that everything was correct.*⁹³⁶

Supt Murray told tribunal investigators that he confirmed verbally to the divisional officer on 1st June 2015 that all members' private vehicles were in order, but clarified that it took some time to resolve the situation with one member who was in a similar position to Garda Keogh. He stated that he allowed the sergeant to deal with that and that he believed that a Regulation 10 was issued.⁹³⁷ Supt Murray denied targeting Garda Keogh with the acquiescence of C/Supt Curran, stating that he never spoke to C/Supt Curran in relation to the issue.⁹³⁸

Superintendent Noreen McBrien

In her interview with tribunal investigators, Supt McBrien outlined the procedure for the processing of travel and subsistence claims:

*The claim form is prepared by the member, submitted to the Sergeant to be counter-signed, and then forwarded to the Finance Officer, who would go through everything and would bring any queries to my attention. If there was an issue it might be sent back for clarification and then would be approved by either myself or the Inspectors Acting. Once the claim is approved, it is entered on to the Oracle system and forwarded for payment.*⁹³⁹

She confirmed in her statement that the issue of Garda Keogh's travel and expense claims was brought to her attention by the finance officer in Athlone and that she subsequently discussed this with Garda Keogh by telephone on 16th July 2014.⁹⁴⁰ According to Supt McBrien, she asked that he contact her or, in her absence, an inspector, to seek permission in advance of any occasion he wanted to use his private car on duty and receive prior sanction for that. She stated that *'[w]hile I wanted to facilitate Garda Keogh, I could not allow a situation where he could utilise his private motor vehicle and claim without being subject to the same criteria as everyone else'*.⁹⁴¹

In her statement to the tribunal, she said that D/Supt Mulcahy made her aware of an issue with Garda Keogh's car tax:

*I recall Detective Superintendent Mulcahy commenting to me in regards to Garda Keogh's car tax. What I specifically recall is that we were walking down the street on the way back from having a coffee in Athlone; Detective Inspector Coppinger was walking ahead with another member. Detective Superintendent Mulcahy said something to the effect 'You should consider having a look at Nick Keogh's car tax'. I asked 'was there something of concern and he replied something like 'no, but it might be worth having a look at some time'. My understanding of this was that a report may follow so that I could address the matter further. I never received such report. However, being mindful of what he said, I did follow up on this matter with the Finance Officer to provide a sample list of members who had claimed for using their private cars on duty in late September 2014. This list was to include Garda Nicholas Keogh. It was my intention to inspect such claims and associated paraphernalia by way of audit for the third quarter.*⁹⁴²

⁹³⁶ Tribunal Transcripts, Day 126, pp. 70-71, Evidence of Supt Pat Murray

⁹³⁷ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3080

⁹³⁸ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3074

⁹³⁹ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at pp. 6247-6248

⁹⁴⁰ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 841

⁹⁴¹ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 841

⁹⁴² Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 842

She stated that she could not be sure of the date of this conversation.⁹⁴³ Supt McBrien recalled that D/Supt Mulcahy did not clarify the issue or provide any other information, nor did he raise an issue regarding the car tax of any other member in Athlone.⁹⁴⁴ She confirmed that she did not raise the issue immediately with Garda Keogh as she was waiting for a report or correspondence from D/Supt Mulcahy before she approached him.⁹⁴⁵

Supt McBrien said that in September 2014 she requested a sample list of members who had claimed for using their private cars, and that this list was to include Garda Keogh. She explained that it was her intention to inspect such claims for her audit⁹⁴⁶ and referred to her audit duties⁹⁴⁷ under HQ Directive 59/2014.⁹⁴⁸ She told tribunal investigators that she asked for a sample list of ten members:

*I was mindful to deal with travel and subsistence because of the challenging budget. There were many things I wanted to analyse regarding travel and budgeting. As part of this new risk-based system and it being more all-encompassing, and given what Superintendent Mulcahy had said to me about Garda Keogh's car tax, I included Garda Nicholas Keogh in the sample of 10. There were 10 on-duty members who had used their private cars, including Garda Keogh's, and I would have asked my District Clerk to check them.*⁹⁴⁹

She confirmed that this check indicated that there was an issue with Garda Keogh's car tax and that any outstanding expense claims should be withheld until she investigated this matter.⁹⁵⁰ She said that:

*The investigation was to establish if the classification on PULSE of his car tax was correct. The matter would also have to be brought to Garda Keogh's attention to see what he had to say about it.*⁹⁵¹

In respect of the PULSE check carried out by Garda White on 30th September 2014, Supt McBrien stated that she could not clarify the reason which was noted as 'Caller to Supt office'.⁹⁵²

She stated that the matter was not raised with Garda Keogh in September 2014 as she was ill and on leave. She said that she did not meet with Garda Keogh again until February 2015.⁹⁵³

In her statement to the tribunal, Supt McBrien outlined her reasons for not raising the issue of the car tax during her meeting with Garda Keogh on 4th February 2015:

*I informed him that I had checked his and several other cars as I was evaluating areas for my audit and aspects of finance were considered. I had intended addressing his car tax issue with him at this meeting. However, I thought that he became tenser during this aspect of the conversation. In light of his talk about dark forces, his demeanour, especially when discussing Liam McHugh and Olivia O'Neill and taking into account my knowledge of his previous medical history, I did not consider it prudent to mention his car tax situation at this time.*⁹⁵⁴

⁹⁴³ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6237

⁹⁴⁴ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6238

⁹⁴⁵ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6238

⁹⁴⁶ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 842

⁹⁴⁷ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6239

⁹⁴⁸ Tribunal Documents, HQ Directive 59/2014: Garda Inspections and Reviews, dated 22nd July 2014, p. 6338

⁹⁴⁹ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at pp. 6239-6240

⁹⁵⁰ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 843

⁹⁵¹ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6242

⁹⁵² Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6242

⁹⁵³ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6242

⁹⁵⁴ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 839

Supt McBrien told tribunal investigators that Garda Keogh did not seem well at that time:

*He asked why I checked his car and I told him. I made a decision that given his presentation and my assessment of him, that if I broached the car tax issue with him, it could have a very negative impact on him. I felt his welfare was more important to me than the car tax. I still believe that was the right decision because he was not in the right frame of mind. He was very agitated. I dealt with the issues he raised that I could. He raised the issue of me checking his car, as he may have seen my enquiry on PULSE. I explained it to him.*⁹⁵⁵

Supt McBrien said that the reason for not addressing the car tax issue with Garda Keogh had nothing to do with his status as a confidential reporter:

*No. Garda Keogh was like any other member. Garda Keogh was subject to the same regulations as anyone else. My responsibility to members who make Confidential Reports, is to ensure their welfare is looked after. That was what I was doing, I was taking his wellbeing into account and on that date (4th February 2015) I didn't think it was the right time to mention it, given the way he presented at that meeting. If any other member presented similarly, I would have done the same.*⁹⁵⁶

In her evidence to the tribunal on this issue, Supt McBrien said:

*... I was actually surprised because I hadn't seen him since September and he just didn't look well. He was very agitated about anything that was kind of probably slightly of concern to him. He was agitated about a thing about the property audit. He was talking about dark forces and he was saying that there was dark forces at work in Athlone and things like that...*⁹⁵⁷

She continued that:

*I changed my mind because of his presentation in front of me. I was concerned that it wasn't an appropriate time because – I was also concerned because it was very late at night as well. He was very agitated and very anxious about several things. His demeanour had changed since September. I had been informed by Detective Superintendent Mulcahy at the end of October, he rang me, I think, to say that Garda Keogh was back on the drink and Sergeant Haran had told me only that morning, in February, that Garda Keogh had been very bad over the Christmas and was back on the drink. And I just felt looking at him in front of me and listening to him and taking account of the situation, that I would be better off dealing with – not mentioning the tax issue, mention it to him the following week, it was my intention to maybe pick a daytime time to discuss this with him, because I felt it was better and if any other member had presented in front of me in the same way – I just felt his welfare was paramount to the car tax at that time.*⁹⁵⁸

In relation to whether she had considered disciplinary action, she told tribunal investigators that:

*From my perspective, if I spoke to him about this matter, it would have been in the context of speaking to him to see what he had to say and establish the facts, and given the Discipline Regulations, which are very clear, it could well have been a disciplinary matter, as it would be for any other member. However, I could not progress this and ascertain the facts on 4th February 2015 given Nicholas Keogh's presentation.*⁹⁵⁹

⁹⁵⁵ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6243

⁹⁵⁶ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6244

⁹⁵⁷ Tribunal Transcripts, Day 130, pp. 129-130, Evidence of Supt Noreen McBrien

⁹⁵⁸ Tribunal Transcripts, Day 130, pp. 130-131, Evidence of Supt Noreen McBrien

⁹⁵⁹ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at pp. 6244-6245

Supt McBrien confirmed that she informed C/Supt Curran of Garda Keogh’s car tax issues on 9th February 2015.⁹⁶⁰ In relation to C/Supt Curran, she was asked the following by counsel for the tribunal:

- Q. *On the other hand, as against Mark Curran, [Garda Keogh] has indicated at page 42 of the materials, we might just call that up, that he suspected Mark Curran was behind the phone call?*
- A. *Yes, I have read that.*
- Q. *And the phone call that he was referring to was the phone call –*
Chairman: To superintendent’s office.
- A. *Yes.*
- Q. *That caused the Pulse inquiry.*
- A. *Yes.*
- Q. *And that is completely incorrect, isn’t that right?*
- A. *Absolutely. Totally.*
- Q. *And then in relation to Pat Murray, the allegation also on page 42 is that he targeted me with the acquiescence of Mark Curran, on the car tax issue?*
- A. *That is totally incorrect.*⁹⁶¹

In respect of her meeting with Supt Murray on 4th March 2015, Supt McBrien said in her statement that she *‘provided him with information and updates on Garda Keogh and gave him copies of my notes regarding him.’*⁹⁶² She told tribunal investigators that *‘Garda Keogh would have been discussed under welfare matters’* and that she explained the car tax matter and why she had not previously dealt with it. She said that the issue of discipline was not discussed.⁹⁶³

Supt McBrien told tribunal investigators that she did not *‘delay’* the payment of Garda Keogh’s travel and subsistence claims. She stated that *‘once there is an issue with car tax, claims cannot be processed until the car tax issue is resolved’*.⁹⁶⁴ She said in her statement that:

There was no management conspiracy to refuse Garda Keogh his claims, he informed me on 16th July 2014 that he had yet to submit some claims so therefore he had not had his claims submitted by that date. Also, I had paid his claims for May 2014. I discovered that his road tax was not in order on 1st October 2014 and directed that his outstanding payments be withheld until I investigated the matter. Outstanding claims for Garda Keogh could not be paid while his car tax was out of order. I do not recollect what happened to these claims... The re-submitted claims made by Garda Keogh are dated early January 2015.

*I have absolutely no idea, nor can I recollect where the original claims submitted by Garda Keogh were kept. I have searched for them since but I never found them.*⁹⁶⁵

⁹⁶⁰ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6248

⁹⁶¹ Tribunal Transcripts, Day 130, pp. 176-177, Evidence of Supt Noreen McBrien

⁹⁶² Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 840

⁹⁶³ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at pp. 6245-6246

⁹⁶⁴ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6247

⁹⁶⁵ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 843

Supt McBrien denied targeting Garda Keogh:

*There was absolutely no targeting or anything going on in the background, as far as I was concerned. Any delay with his claims may have been due to the car tax issue. I also sent claim forms back on 12th January 2015 as they were incomplete. The claim forms, which have been presented to me now, are all dated 11th January 2015 and I processed them on 12th January 2015. These claim forms dated the 11th January 2015 have been exhibited as NMB/L (9 pages in total). I have signed and dated the exhibit. These claims could not have been paid until the car tax issue was resolved. The claims were received back in the Superintendent Office on 2nd February. I refer to my earlier answer regarding my meeting with Nicholas Keogh on 4th February and my decision, based on his presentation on that date, not to address the issue with him. On 9th February, I went on sick leave again and I didn't return to duty in Athlone. I have been provided with the claim forms completed by Garda Keogh for the following dates: 13th August 2014, 11th December 2014, 18th June 2014, 14th July 2014 and 30th July 2014. These documents (9 pages in total) have been exhibited as NMB/L and I have signed and dated the exhibit. Every member in Athlone was aware that I was ill including Garda Keogh. I wasn't part of any campaign, nor was I aware of any campaign against Garda Keogh.*⁹⁶⁶

Supt McBrien stated that the delay was not an example of her targeting or discrediting Garda Keogh and referred to the fact that she ensured that ‘...he was paid earlier in the year (Claims in May 2014) in respect of meeting Deputy Flanagan and Judge McMahon’.⁹⁶⁷

Inspector Aidan Minnock

In his statement to the tribunal, Insp Minnock stated that:

*In respect of the claims referred to by Garda Keogh, I do not know when these claims were submitted. In early January 2015, I received a minute from Garda Keogh querying a delay in paying his claims.*⁹⁶⁸

Insp Minnock said that he spoke with the finance officer, who searched for these claims, both manually and on the Oracle system, and he confirmed that he did not check with other offices:

*I did not check with the various offices that could have had the claims to see if the claims were located there. I had no reason to think the claims were held in any of the various offices that processed the claims. Having conducted enquiries into Garda Keogh's claims, the Finance Officer reported to me that the claims were not with her for processing or on the Oracle system awaiting payment.*⁹⁶⁹

He said that the finance officer prepared a minute, which Insp Minnock forwarded to Garda Keogh. Insp Minnock stated that he was ‘unaware of any issue surrounding the payment of Garda Keogh's claim’⁹⁷⁰ at this time. He received the file on the matter from Supt McBrien and later discussed the matter with Supt Murray on his arrival.⁹⁷¹ He said in his statement that:

At some stage prior to the 19th March 2015 (Chief) Superintendent Murray asked me to conduct an enquiry regarding the tax situation of Garda Keogh's vehicle (a jeep) to establish the factual position. I made an enquiry with Offaly County Council, the licensing authority for a

⁹⁶⁶ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at pp. 6251-6252

⁹⁶⁷ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6252

⁹⁶⁸ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 681

⁹⁶⁹ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 681

⁹⁷⁰ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 682

⁹⁷¹ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 682

*vehicle owned by Garda Keogh, as he resided in Tullamore. On the 19th March 2015 I sent an email to Tara McKinney, Offaly County Council.*⁹⁷²

As to why he sought the full file, Insp Minnock told the tribunal that:

*I sought the full file, the full factual situation and I didn't want an e mail back to say this is the situation or that, I wanted the file, I wanted the paper-work surrounding it. I am well able to interpret after that myself. So I just looked for the information surrounding it. The declaration I knew should be part of that and that's what I sought. And, in fact, if I can go a step further, I know Garda Keogh has made an allegation that we were seeking the declaration to go after him for fraud, but the reality of the situation was I had got the RF 100B form and if I can refer to page 747, and at the bottom of that page, which is the form I received, which is signed by Garda Keogh, which says: "I declare that the particulars given on this form, including details of insurance are correct and that I am aware that any person making a false declaration or who fails to provide correct details in relation to motor tax, insurance status or the ownership of a vehicle is committing an offence and is liable to heavy penalties." That document was returned to me from Ms. McGinley. And if I had any intention of prosecuting or dealing with Garda Keogh in respect of a declaration or making a false declaration, I had that.*⁹⁷³

In his statement to the tribunal, Insp Minnock said that he conveyed the information provided to Supt Murray and that Supt Murray *'appeared anxious to deal appropriately, swiftly and fairly with the matter'*.⁹⁷⁴ In respect of the steps taken by Supt Murray, he stated that:

*(Chief) Superintendent Murray later advised me that Garda Keogh was asked to regularise the tax classification of his vehicle. I am aware his claims were paid and he received a Regulation 10 of the Garda Síochána (Discipline) Regulations 2007 for using a vehicle which was incorrectly taxed. This was consistent with matters of this nature coming to the attention of the District Management Team and to my attention.*⁹⁷⁵

Insp Minnock continued:

*To ensure this practice ([in]correct classification of vehicle tax) was not occurring with vehicles belonging to other members, and that vehicles were correctly taxed and insured, and to ensure a consistent approach across the District, (Chief) Superintendent Murray initiated a certification process for driving licenses, tax and insurance for all members across the District.*⁹⁷⁶

In his evidence to the tribunal, he outlined why he believed that Supt Murray took this step:

*Well I felt myself that Superintendent Murray had no option. Garda Keogh had divulged information to him that indicated that there was cars or vehicles driven by members in the district that weren't appropriately taxed or insured. So, I suppose Superintendent Murray had two options, one was to do nothing with that information, or to action that information. And the only way to action it was to establish what was the factual position around the tax and insurance and this, he felt, was the most appropriate way to do it. And I agreed it was an appropriate way to deal with it.*⁹⁷⁷

⁹⁷² Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 682

⁹⁷³ Tribunal Transcripts, Day 130, pp. 51-52, Evidence of Insp Aidan Minnock

⁹⁷⁴ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 682

⁹⁷⁵ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 682

⁹⁷⁶ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at pp. 682-683

⁹⁷⁷ Tribunal Transcripts, Day 130, p. 13, Evidence of Insp Aidan Minnock

Chief Superintendent Mark Curran

In respect of the reference to Garda Keogh's allegation that he was '*behind the phone call to Garda Gerry White*',⁹⁷⁸ C/Supt Curran outlined in his statement to the tribunal that:

*I did not make the phone call referred to by Garda Keogh to retired Garda Gerry White and I was in no way associated or involved in the processing of Garda Keogh's claims for payment of expenses incurred by him.*⁹⁷⁹

He told tribunal investigators that he had no involvement in the approval of subsistence claims and that:

*I note the contents of Exhibit MC13, where Superintendent McBrien forwarded form FMS2, dated 5 June 2014, submitted by Garda Keogh in respect of claims, to the Executive Director of Finance & Services. The Executive Director subsequently returned same to me on document dated 8th July 2014. I forwarded this to Superintendent Athlone on 11th July 2014. This was the entirety of my involvement in this issue.*⁹⁸⁰

In relation to Garda Keogh's car tax, C/Supt Curran said:

*In relation to the motor taxation issue, same was mentioned to me at the end of September 2014. In the normal course of events, this matter would have been reported formally to my office in respect of actions or developments. No such report was received before I left the Westmeath Divisions.*⁹⁸¹

In respect of the allegation by Garda Keogh that C/Supt Curran acquiesced in Supt Pat Murray's targeting of him in relation to his car tax,⁹⁸² C/Supt Curran stated that:

*I reject that allegation and just to clarify I had never spoken to Pat Murray before Quarter 3 2018, in either a professional or personal capacity.*⁹⁸³

Detective Superintendent Declan Mulcahy

In his statement to the tribunal, D/Supt Mulcahy said that:

*On the 01/04/2015 I contacted the reporter by phone and updated him on the investigation. He told me he felt pinned in and I asked him how, he replied the crack with the tax on car and the Surgeon.*⁹⁸⁴

He gave evidence to the tribunal as to how he came to mention the car tax to Supt McBrien:

We met Garda Keogh in a car park and he parked near where I was.

As he was leaving, I noticed that he had a CVR cert on the window, or a cert on the window.

Because of that, it struck me that he was driving a commercial vehicle. Now, I had concerns from the point of view that he was travelling to meet me in a vehicle that I didn't know was properly taxed or insured. I was aware that he would have to get written consent to use his vehicle to

⁹⁷⁸ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 42

⁹⁷⁹ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1793

⁹⁸⁰ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at pp. 1976-1977

⁹⁸¹ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1977

⁹⁸² Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 42

⁹⁸³ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1978

⁹⁸⁴ Tribunal Documents, Statement of D/Supt Declan Mulcahy, p. 3900 at p. 3913

attend such meetings and my concern was for him. I wasn't aware whether the tax was in, out, tax was private or commercial. I did not check it.

I said it as a passing comment to the superintendent, because he told me that he trusted the superintendent and he [had] good time for her.

It was a remark, I just made it to her because she would be the one providing consent for him to use his private car on duty to meet me.

Q. ... You were obviously familiar with the regulations that if he was using a private car the issue might arise of an expense claim in relation to it on duty, is that it?

A. No, it was nothing to do with expenses.⁹⁸⁵

Garda Gerry White

In his statement to the tribunal, Garda White outlined his involvement in checking Garda Keogh's car tax as follows:

I do not recall specifically checking Nick Keogh's vehicle on any occasion. It would not be a normal practice for me [to] check Garda members vehicles, beyond the occasional check where a car may be blocking access to or from car parking spaces in the Garda station yard. However, having checked the PULSE print-outs supplied with disclosure showing my checks of Nick Keogh's car I do recall being at an informal meeting with the District Finance Officer and the District Officer Noreen McBrien while I was employed as District Clerk in Athlone. I do not however recall the actual date. During our conversation the Finance Officer showed us a large number of Travel and Subsistence Allowance claims she had from Garda members for processing and payment. I do recall Superintendent McBrien asking me to do a check on the car registration details of random Garda members whose claims were in for processing. This check would have been done to ensure that vehicles were properly taxed and insured on the date's claims were incurred. I cannot recall if Superintendent McBrien or the Finance Officer handed me the claims to be checked or if I took them from the bundle being processed. I do not recall if Nick Keogh's vehicle was one of those checked, however PULSE entries supplied would indicate that it may have been. Neither do I recall the results of my enquiries or how I transmitted them back to Superintendent McBrien.⁹⁸⁶

He said that he was at a loss to explain why he had checked Garda Keogh's vehicle a few times in a short period of time:

In an effort to confirm that this recollection of events is correct I requested Sergeant Michael McArdle of the Tribunal Co-ordination Office to source my PULSE search history for 30th September and 1st October 2016. Same shows my check on a number of motor vehicles on the afternoon of the 30th September. These checks appear to be of vehicles of Garda members who were stationed in Athlone at that time. From this I am satisfied that my recollection of events as outlined above is correct and my checking of Garda Nick Keogh's vehicle was connected with this request by Superintendent McBrien to check the validity of claims of a number of Garda members which had been submitted for payment.⁹⁸⁷

⁹⁸⁵ Tribunal Transcripts, Day 136, pp. 150-151, Evidence of D/Supt Declan Mulcahy

⁹⁸⁶ Tribunal Documents, Statement of Garda Gerry White, p. 486

⁹⁸⁷ Tribunal Documents, Statement of Garda Gerry White, p. 486

In respect of his relationship with Garda Keogh he stated that:

*I have never had any personal or professional animosity towards Nick Keogh, and I would hope that he feels the same about me.*⁹⁸⁸

Chief Superintendent Lorraine Wheatley

In her statement to the tribunal, C/Supt Wheatley stated that:

*It came to the Superintendent attention that Garda Keogh's private car was taxed at a commercial rate, rather than private as it should have been. Superintendent Murray had a number of expense claims from Garda Keogh for using his private car on duty. The claims remained unpaid for the reason of the improper road tax category. Superintendent Murray directed Garda Keogh to have the tax on his car regularised. Superintendent Murray told me of his decision and I agreed with him. Garda Keogh taxed his car at the appropriate rate and back taxed it. All his claims were then paid. Even though there was a revenue offence involved here, he was given an opportunity to address the issue and then the matter was dealt with the matter as a minor breach of discipline. A minor breach of discipline does not go on a member's personal file. It was not within Superintendent Murray's gift to permit payment from public funds outside of financial regulations. I believe this was a very fair and balanced intervention.*⁹⁸⁹

Former Acting Commissioner Dónall Ó Cualáin

In his interview with tribunal investigators, former Acting Commissioner Ó Cualáin said that he was aware from D/Supt Mulcahy that there was an issue with Garda Keogh's car tax:

*I was aware at some stage that there was an issue with the tax on his car, which I was informed about by Detective Superintendent Declan Mulcahy. This was something that I felt was an issue for local management to deal with.*⁹⁹⁰

Garda Fergal Greene

Garda Fergal Greene gave evidence of his experience of Supt Murray's style of management at this time:

... But I had my own difficulties at the time and, you know, I understood where Nick was coming - where Garda Keogh was coming from with some of this. I suppose where we were, we didn't we were never fully in agreement in relation to - and Garda Keogh is well aware of this, in relation to Chief Superintendent Murray. We were in agreement with other stuff, but we weren't in relation to that. I think Garda Keogh went sick not long - within a few months of Chief Superintendent Murray arriving in Athlone. And the unfortunate thing was that he wasn't around long enough. If he had been around a few months longer in Athlone, he would have seen that Chief Superintendent Murray had a certain style of management, whether people disagreed with it or agreed with it. He arrived and he introduced new policies, new guidelines, a whole different way of doing business. He was very firm on discipline. I seen several people being disciplined over different things. Something, I suppose, I hadn't seen to that extent in the past in my years up to that in Athlone. He had a style that if you done wrong there was no doubt you were going to be punished. He had a humane side to him, where you could talk to him if you had a difficulty or whatever and he had understandings of people in their own lives having

⁹⁸⁸ Tribunal Documents, Statement of Garda Gerry White, p. 486

⁹⁸⁹ Tribunal Documents, Statement of C/Supt Lorraine Wheatley, p. 3143 at p. 3148

⁹⁹⁰ Tribunal Documents, Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 7306 at p. 7322

difficulties and the devil knows what. But the sad thing was Garda Keogh wasn't around long enough, working with Chief Superintendent Murray, to see that the same – it was the same for everyone, regardless your rank or whatever, if you made a mistake and it was deliberate and it was wrong, you were going to be disciplined.

I think whatever difficulties they had when Chief Superintendent Murray arrived, I think Garda Keogh took the view, well, I am the only one that's getting punished or I'm the only one that's getting hammered here – to speak – to say and no one else is. But, in the months after that, there was people suspended. There was people suspended, there was people disciplined. There was lots of people being disciplined and suspended and the place was changing. Whether people wanted it or not, there was a change. And I tried to explain that to him. I suppose he didn't fully understand it, and I can understand that, because he felt that he was being targeted in his own mind. I mean, I don't the full ins and outs of the interactions between them, but he felt that. But I did on several occasions try and say, look it, you're not here at the moment, everyone is getting it, if you make a mistake that's the way it is.

The problem was, you see, we hadn't seen that, I suppose, prior to Chief Superintendent Murray arriving. You know, we're all different, we're all different people. We had Superintendent McBrien before that, a different style of management, a delightful person to work with, very compassionate, very understanding, very easy to get on with and had just a different style. And then, it just changed. I was trying to explain that as best I could.⁹⁹¹

Legal Submissions

Garda Nicholas Keogh submitted as follows:⁹⁹²

- that Supt Murray targeted him in his approach to the investigation of his motor tax.
- that Supt Murray's heavy-handed, disciplinary approach was targeting behaviour and that Supt Murray treated Garda Keogh differently from all other members by issuing him alone with a Regulation 10.
- that despite the issue being known to Supt McBrien in October 2014, the issue was not resolved by her and was allowed to fester until Supt Murray arrived in Athlone in March 2015.
- that on 19th March 2015, Supt Murray directed Insp Minnock to make enquiries at the Motor Tax Office in respect of Garda Keogh's vehicle tax. Notwithstanding this fact, the matter was not discussed with Garda Keogh until 26th March 2015.
- that Supt Murray ignored the fact that Garda Keogh had sought to clarify what the issue with the car tax was from Supt McBrien, that Supt Murray failed to consider that the delay was down to Supt McBrien's failure to deal with the issue in a timely fashion and that, as Garda Keogh acted with such haste, no disciplinary action was required to be taken.
- that Garda Keogh disputed that Supt Murray told him of his intention to issue a Regulation 10 and Garda Keogh maintained that there was 'no mention' of a Regulation 10 at their meeting on 26th March 2015.

⁹⁹¹ Tribunal Transcripts, Day 147, pp. 30-32, Evidence of Garda Fergal Greene

⁹⁹² The tribunal has considered all of Garda Nicholas Keogh's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 14-31 and pp. 172-177

- that Garda Keogh was treated differently from everyone else in the station as he was deprived of the benefit of an amnesty and no other disciplinary notice was issued to any other member.
- that the evidence concerned with this issue demonstrated that Garda Keogh was singled out and when taken with the other issues showed a pattern of targeting of him.
- that the delay in payment to him of legitimate travel expenses was a further example of how he was targeted by senior management.
- that Garda Keogh, in his note, stated that he had never experienced any delay in payment of such claims before and this was not disputed. Garda Keogh stated that *'[t]he problem is that if they saw a problem, they let it roll, to get a bigger case against me'*. That was a reasonable inference on his behalf because of the circumstances he was in.
- that Supt McBrien delayed in dealing with the matter of Garda Keogh's car tax, which she identified as an issue on 30th September 2014. This had previously been brought to her attention by D/Supt Mulcahy. Supt Murray, in turn, delayed the sanctioning of payment until he had disciplined Garda Keogh.
- that putting all of this together, both superintendents played a role in causing Garda Keogh's expenses to be delayed.

An Garda Síochána submitted as follows:⁹⁹³

- that Supt McBrien had not dealt with this issue at the time she was transferring from the district. At her handover to Supt Murray she made him aware of this outstanding issue. It was therefore a legacy issue for Supt Murray. He dealt with it in such a way that Garda Keogh could receive his expenses payment and that his conduct was dealt with at the lowest level within the disciplinary code; and in such a way that it would not follow him by being placed on his garda file.
- that Garda Keogh made no complaint against Supt McBrien yet it was Supt McBrien who raised the issue (correctly) and who did not approve the expenses claim (correctly). Garda Keogh's position on this issue was illogical and inconsistent.
- that Supt McBrien told Supt Murray that the tax on Garda Keogh's car was in breach of financial code regulations and therefore his expenses claim could not be paid, and that Supt McBrien had opted on welfare grounds not to pursue the matter with Garda Keogh in circumstances where he was drinking and not engaging with the welfare services.
- that on 26th March 2015, Supt Murray met Garda Keogh (their first meeting) and had an amicable discussion about this and other matters. Supt Murray told Garda Keogh that he had Insp Minnock make enquiries at the Motor Tax Office. Supt Murray proposed a solution whereby Garda Keogh would correct and produce evidence of the correction of his car tax. Supt Murray would then deal with the issue by way of Regulation 10 and he could then approve the travel claims. Garda Keogh agreed to this.
- that Garda Keogh was given an opportunity to address the issue of his incorrect tax and the matter was dealt with as a minor breach of discipline, which meant that the breach did

⁹⁹³ The tribunal has considered all of An Garda Síochána's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 70-172 and pp. 177-179

not go on his personnel file. While Garda Keogh later took issue with the Regulation 10, he did not raise an issue at the time of signing on 3rd April 2015. The matter was closed efficiently without any disciplinary record on Garda Keogh's file and his claim for expenses was processed and paid. It was important to note that Supt Murray issued five Regulation 10 notices in 2015 to other gardaí in the district.

- that Garda Keogh asserted that other gardaí in the district had similar issues with their private cars so Supt Murray told him he would have everyone's vehicle checked. Supt Murray stated that the allegation was made in a general way and that Garda Keogh declined to provide supporting information. Supt Murray initiated a certification process for members across the district so as to ensure compliance.
- that Garda Keogh's incorrect motor tax came to the specific attention of Supt McBrien and Supt Murray, and in particular came to their attention at a time when he had an outstanding claim for expenses payments. Garda Keogh's allegations that other gardaí had similar issues with their cars were made in a general way without reference to any specific individual. Supt Murray adopted what was a balanced and proportionate approach in both instances.
- that the complaint of Garda Keogh in respect of Issue 14 was not pursued.

Superintendent Noreen McBrien submitted as follows:⁹⁹⁴

- that at all times Supt McBrien had no issue with the payment of claims submitted by Garda Keogh provided they were correct as she was required to approve the claims for payment, and that the previous claims for travel expenses (for his visits to the confidential recipient and to meet members of Dáil Éireann) had been approved for payment by Supt McBrien on her receiving clarification from the Executive Director, Finance and Services.
- that there was no intent on the part of Supt McBrien to delay the payment of expenses to Garda Keogh.
- that Supt McBrien gave evidence that she was first told of an issue relating to Garda Keogh's car tax by D/Supt Mulcahy.
- that Supt Murray confirmed that he had not discussed with Supt McBrien the issue of discipline or her intentions, if any, in that regard.
- that on becoming aware of an issue with Garda Keogh's car tax, Supt McBrien had a duty to investigate the matter prior to sanctioning any payment of the expenses he had claimed.
- that at no stage during questioning by counsel for the tribunal did Garda Keogh dispute the narrative of Supt McBrien on this issue, whether it related to how the matter came into her knowledge, or whether it related to her acting on such knowledge or how she conducted the enquiries into same. He also acknowledged that his subsistence claims with respect to meeting the confidential recipient had been discharged.
- that the manner in which Supt McBrien dealt with the issue of the motor tax on Garda Keogh's car could not be said to amount to bullying, harassing, targeting or discrediting Garda Keogh or to be part of a wider concerted effort by An Garda Síochána to bully, harass, target or discredit him.

⁹⁹⁴ The tribunal has considered all of Supt Noreen McBrien's legal submissions on this issue and what follows is a summary of the same.

Sergeant Cormac Moylan submitted as follows:⁹⁹⁵

- that Sgt Moylan had no involvement in any disciplinary investigation of Garda Keogh in relation to car tax.
- that Sgt Moylan gave evidence in respect of the circumstances surrounding the other member who had been on sick leave when Sgt Moylan began working in Kilbeggan and whom he had not witnessed using the vehicle. He did not discipline the member but dealt with the matter by way of advice, which was within his discretion.

Discussion

The tribunal engaged in a detailed exploration of each issue so that as far as possible all potentially relevant information was assembled and analysed. The result was, in some cases, an embarrassment of riches or a superfluity of information. The tribunal endeavoured to follow up every issue raised in the documents and the evidence. This included the circumstances of the discovery of the wrong tax category, the steps taken following the initial report, the reason why the matter was not raised promptly with Garda Keogh, how it came to be left with Supt Murray as a legacy matter for him to deal with, and whether he dealt with it in a reasonable manner having regard to his treatment of other members and cases.

The essential facts are that Supt Murray pointed out to Garda Keogh that his car tax was wrong in that it was underpaid as commercial whereas it should have been paid at the higher, private rate. Garda Keogh accepted the situation and corrected it. When he returned with the documents to show compliance the superintendent imposed a form of discipline by way of a Regulation 10 caution, which is the lowest category of sanction involving no record on the member's official file. Garda Keogh complained that this conduct by Supt Murray amounted to targeting, which happened because he had made a protected disclosure.

Garda Keogh responded quickly to the direction to correct his car tax, but he complained about it to Deputy Wallace within days, at a time when according to his account no question of sanction, however mild, had arisen.

Garda Keogh's objection cannot legitimately be to the requirement to pay the proper amount of car tax – that is the legal obligation on all motorists, although some of Garda Keogh's points and comments in statements and evidence might suggest otherwise. Among the objections he makes are that the superintendent had the council motor tax file checked for any declarations as to use of the car, that garda authorities knew from the previous September that his car was taxed at the commercial rate but did nothing about it, that he told Supt Murray that other gardaí in the station were non-compliant with Road Traffic Act requirements, and that the superintendent responded by giving them an amnesty that was not offered to him. Other complaints emerged after the tribunal's research, revealing cases which might be relevant for the purposes of comparison. There was an instance of a garda who had a vehicle that he used primarily on his farm that he had taxed at the commercial rate. Sgt Moylan dealt with it by insisting that the vehicle be taxed at the private rate but he did not invoke Regulation 10 by way of sanction. That case is cited as evidence of how Supt Murray should have dealt with Garda Keogh's case.

Then there are cases in which Supt Murray employed Regulation 10 in circumstances which appear from their summary descriptions to be serious breaches of discipline or procedure. The

⁹⁹⁵ The tribunal has considered all of Sgt Cormac Moylan's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

argument is that if Regulation 10 was appropriate in matters of such gravity it cannot have been just and reasonable in Garda Keogh's case.

D/Supt Mulcahy did not mention the car tax directly to Garda Keogh when he first noticed it because he did not want to endanger the trust that existed between them. Supt McBrien knew that the car was taxed as commercial and held onto Garda Keogh's expense claims, which could not be paid until the car tax was corrected. But she did not approach Garda Keogh on the subject. And so it was left ultimately as a legacy issue for Supt Murray to deal with. Supt Murray had this issue passed onto him, together with the expense claims that were dependent on its being corrected, and when that was done he processed the claims.

In regard to the issues raised by Garda Keogh in his documents, evidence and submissions, the first point of objection is that the superintendent caused the council car tax file to be checked, *inter alia* to see if there were declarations made by Garda Keogh as to the use of the vehicle. In the tribunal's view this was entirely proper. If Garda Keogh had made declarations each year that his vehicle was used for commercial and not private purposes, that might have made the offence more serious. It was not vindictive to make the enquiry but instead it was an appropriate preliminary step to be taken before Supt Murray approached Garda Keogh.

Supt Murray could well complain that it should not have been left to him to deal with the car tax and expenses. However, on a personal level, it is easy to sympathise with Supt McBrien's motivation for not wanting to upset Garda Keogh, who already had plenty of other things to contend with. Whatever the explanation for the delay in coming to Garda Keogh, it has no bearing on the question of targeting. His complaint that the authorities knew about his car tax situation for some six months before Supt Murray raised it with him is irrelevant in the circumstances of an allegation that this officer targeted him.

Garda Keogh accepted what Supt Murray said about his car tax, that it should have been taxed as private and not commercial and the higher rate paid. He responded by claiming that other Athlone gardaí were guilty of Road Traffic Act breaches in respect of their vehicles. However, he refused to be specific when the superintendent asked for details, so the allegation remained as a general claim. There was nothing specific for Supt Murray to investigate. He had before him in relation to Garda Keogh's car tax a particular case that was not in dispute. The suggestion that others were guilty of different or similar offences was nothing to do with the case. It was not a defence. If Garda Keogh had given some specific information to Supt Murray about gardaí who were guilty of offences in regard to their vehicles and the superintendent treated those members more favourably by comparison with him, that would call for explanation. That however was a very different situation from the vague allegation that Garda Keogh made.

Garda Keogh confirmed in his evidence that he did not make any particular allegation to Supt Murray. Since there was nothing specific to investigate it was reasonable for the superintendent to deal with the assertion as something of general application. He circulated a notice that there would be an inspection of vehicles at a future date, giving members time to put any breaches or deficiencies in order. Did this represent an invidious distinction or discrimination as compared with the treatment meted out to Garda Keogh?

Supt Murray could have responded to Garda Keogh's comment by ordering a surprise general inspection of Athlone members' vehicles to check for compliance. He did not do that but instead proceeded by issuing a notice to all local gardaí. If he had instigated an immediate trawl the chances are that some cases of breach would have been discovered, perhaps of more serious offences than Garda Keogh's. This tribunal might have a preference for one course over another in that respect, as a matter of opinion. But that is not the test to be applied. The superintendent's function was to manage his district and the decision he made in this instance is within his area of responsibility. There are other choices he might have made besides the ones discussed here and some of them might appear to be preferable or more appropriate than others. What he chose to do in this case was within his discretion and does not establish a case of targeting.

In respect of the commercial car tax issue dealt with by Sgt Moylan and the other instances where Supt Murray employed Regulation 10, the question arises as to whether those cases can be used for comparison purposes to assess the propriety of the use in this case. So, a sergeant assessed a different example of the same offence and did not impose that sanction. That does not show that Supt Murray was wrong. The question in this case is not whether examples of different treatment can be found, it is whether in this case what Supt Murray did was so outside the range of reasonable penalties as to amount to targeting.

The same point applies to the more serious cases in which Supt Murray applied Regulation 10. Was he too lenient? Perhaps. Did that apply to all the cases or only to some of them? In other words, can we evaluate the circumstances and declare that because he, rightly or wrongly, used Regulation 10 in those cases it follows that his employment of it in this case represents targeting? That simply does not follow.

Conclusion

The fact of the wrong motor tax is not in dispute. It is not a trivial matter, despite Garda Keogh's protestations to the contrary. Neither is it a heinous crime, but it does involve a significant yearly sum. A garda ought to know the difference between commercial rate and private rate and should understand the limited circumstances in which the lesser payment is permissible. A motorist wrongly claiming commercial rate is liable to prosecution in the District Court for the offence. It is not appropriate to treat this matter as trivial or contrived or totally unimportant. On one view it is more serious for a garda to make an illegitimate claim for the lower rate.

Garda Keogh's claim for travel expenses using his car could not be paid if his car tax and other statutory requirements were not in order. Supt Murray had had nothing to do with the prior handling of the claims or any delay and in fact had them sanctioned for payment within a week of the first meeting with Garda Keogh. It is noteworthy that the superintendent did not require Garda Keogh to pay the balance of correct tax for previous years but only for the current tax year, and Garda Keogh did not challenge or appeal against the Regulation 10 sanction.

The question for the tribunal is whether Supt Murray's assessment that this case warranted the lowest form of sanction that was available was so unreasonable as to be evidence of targeting. It was his decision; he could have chosen, as Sgt Moylan did, to do nothing once the tax was corrected but he made a different decision. The fact that he did so cannot be considered as evidence of targeting.

And neither is there any basis for making a connection between Supt Murray's decision and the fact that Garda Keogh had made a protected disclosure.

The tribunal does not consider this to be an instance of targeting as claimed by Garda Keogh.

CHAPTER 13

ISSUE 7: THE COMPLAINT MADE BY GARDA NICHOLAS KEOGH IN RELATION TO THE DISCIPLINARY INVESTIGATION OF HIS ABSENCE WITHOUT LEAVE IN JULY 2015

The Facts

Garda Keogh phoned Athlone Garda Station on 9th July 2015 and reported that he was sick and unfit for duty.⁹⁹⁶ This was a requirement for members who were unwell and unable to perform their duties.⁹⁹⁷

He phoned Athlone Garda Station on the following day⁹⁹⁸ and told Sergeant Yvette McCormick that he was going 'off sick' leave and was therefore fit for duty.⁹⁹⁹ He did not report for duty on the following four days and was therefore absent without leave or explanation.

At the time, Garda Keogh appears to have been drinking heavily. This is evident by the fact that his diary entries record him as having phoned his welfare officer, Garda Mick Quinn, telling him that he was going drinking, and they have the word 'drink' written for each day of the 7th, 8th, 9th, 10th, 11th, 12th and a note for the 13th stating 'stop drinking'.¹⁰⁰⁰ The phrase 'AWOL' is recorded for 11th, 12th, 13th and 14th July 2015 with an entry for 10th July reading 'rang off sick while drinking. Didn't remember. Thought I was still on sick'.¹⁰⁰¹

The absence of a member had consequences for the ability of the station to provide a policing service, and this was particularly so in 2015 when there were constraints on staffing levels and the availability of overtime due to public sector cutbacks.

In accordance with HQ Directive 139/10, a member who is absent due to illness/injury is required to notify their supervisor or the member in charge of the station as early as possible of their intention to resume duty, and should report for the next rostered tour of duty.¹⁰⁰²

Sergeant Cormac Moylan was Garda Keogh's unit sergeant at the time. He was not on duty on 10th, 11th and 12th July 2015. When he resumed duty on Monday 13th July 2015 he was informed that Garda Keogh had not reported for duty. He attempted to contact Garda Keogh on his mobile phone, but was unsuccessful. He reported the matter by email to the District Office inbox at 03:15 hrs on 14th July 2015:

I am not sure if you are aware that Nick Keogh has not been in work all weekend. He went sick last Thursday and Friday and reported fit for duty on Friday night but has not attended yet. I was on leave on Saturday and it appears he did not appear into work on that night. He was not on leave on Sunday or Monday night either and did not turn up for work. I have tried calling him but he has not answered or returned my calls.

⁹⁹⁶ Tribunal Documents, Athlone Station Diary, dated 9th July 2015, p. 8880

⁹⁹⁷ Tribunal Documents, HQ Directive 139/10 Management of Sickness Absence, p. 3219 at p. 3220

⁹⁹⁸ Tribunal Documents, Athlone Station Diary, dated 10th July 2015, p. 8881

⁹⁹⁹ Tribunal Documents, An Garda Síochána Sickness Absence Report SRI Form, p. 240

¹⁰⁰⁰ Tribunal Documents, Diary entries of Garda Nicholas Keogh, dated 7th-13th July 2015, pp. 13319-13320

¹⁰⁰¹ Tribunal Documents, Diary entries of Garda Nicholas Keogh, dated 11th-14th July 2015, pp. 13319-13320

¹⁰⁰² Tribunal Documents, HQ Directive 139/10 Management of Sickness Absence, dated 1st December 2010, p. 3219 at p. 3223

*Just said I'd let you know, meant to say it to you earlier as wasn't sure if you knew. It appears from others that he has 'broken out' and is drinking in Tullamore.*¹⁰⁰³

This email was forwarded to Superintendent Pat Murray on 14th July 2015 at 09:05 hrs.¹⁰⁰⁴

Although Garda Keogh had not answered Sgt Moylan's call, he sent a message to the sergeant via Facebook at 00:29 hrs on 15th July 2015 stating:

*sorry about this week Cormac I missed ur call and haven't credit to call you back.*¹⁰⁰⁵

Supt Murray was out of the District Office on 14th July 2014 on garda duty. The next day he phoned Garda Keogh at 12:00 hrs and spoke to him for 15 minutes. Although Supt Murray's note of this conversation and subsequent reports to Chief Superintendent Lorraine Wheatley recorded this conversation as occurring on Tuesday 14th July 2015, he acknowledged that this was an error on his part, and agreed with Garda Keogh's assertion that it took place on Wednesday 15th July 2015 at 12:08 hrs.

Supt Pat Murray made a note of this call as follows:

Reported to me by Sergeant Moylan that Garda Keogh was AWOL for four days. Saturday, 11/07/15 to Tuesday, 14/07/15. Phoned member at 12 noon. Spoke to him until 12.15 p.m. Admitted being AWOL. Said reported off sick pm 10/07 in a fit of drink after drinking for a few days and said he forgot he had reported off sick so didn't go to work. Admitted a drink problem and has stopped going to AA.

Said he gets it hard to sleep before earlies. Drinks beer and wine, mostly cans of beer. Brought up his whistleblower case and says he is worried about Garda A and _____, that they will get him. Has no answer when challenged that they have done nothing since it came to light one and a half years ago and done nothing since Garda A was informed and questioned on all the allegations.

*Challenged him re why he didn't answer Sergeant trying to contact him over AWOL weekend. Said he had no credit. Agreed credit not required to answer call. Indicated he would continue going sick at will. Told him I was going to request case conference on him and am considering discipline for AWOL and would seek explanation in writing from him. See report.*¹⁰⁰⁶

Supt Murray ended their telephone conversation indicating that he would call a case conference in relation to Garda Keogh and would consider disciplinary proceedings.¹⁰⁰⁷

Garda Keogh, in his diary for 15th July 2015, recorded:

*12.08 Supt. Pat Murray rang me about AWOL. I told him had been drinking and didn't realise I rang OFF sick. He said he sending me to CMO and holding a case conference to do with me.*¹⁰⁰⁸

He noted that he then rang 'off sick' on 15th July 2015 at 10:45 hrs.¹⁰⁰⁹ On the same page, for 16th July 2015, he recorded 'got cert from Dr to cover me re: AWOL. But they will still come after me'.

¹⁰⁰³ Tribunal Documents, Email from Sgt Cormac Moylan to District Office, Athlone, dated 14th July 2015, p. 2218

¹⁰⁰⁴ Tribunal Documents, Email from District Office, Athlone to Supt Pat Murray, dated 14th July 2015, p. 2218

¹⁰⁰⁵ Tribunal Documents, Statement of Sgt Cormac Moylan, p. 604 at p. 608

¹⁰⁰⁶ Tribunal Documents, Note of Supt Pat Murray, dated 14th July 2015, p. 2220

¹⁰⁰⁷ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at pp. 2044-2045

¹⁰⁰⁸ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 15th July 2015, p. 13320

¹⁰⁰⁹ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 16th July 2015, p. 13320

On 16th July 2015, Supt Murray requested, through the sergeant in charge in Athlone, that Garda Keogh should provide an explanation for his conduct.¹⁰¹⁰

Garda Keogh sought to speak with Supt Murray three days later on 19th July 2015. Supt Murray recorded in his diary for that date that '*Gda Keogh wanted to see me at 8am. Explained it wasn't a good time. To come back to me. He took A/L 20/7.*'¹⁰¹¹ On the same day, 19th July 2015, Supt Murray wrote to C/Supt Wheatley expressing his concerns about the matter:

*Unfortunately Garda Keogh's absences from work continue on a very frequent basis. At present a pattern has developed where he reports unfit for duty on early and late tours, works on night tours and reports fit for duty to avail of Rest Days. On Friday 10th July 2015 the member reported off sick leave and fit for duty but was then absent without leave for four days between Saturday 11th July 2[0]15 and Tuesday 14th July inclusive. After availing of four Rest Days the member has appeared for work today Sunday 19th July 2015. As I am sure you well agree this type of attitude towards work commitments is unacceptable and must be addressed immediately so that the District force can have confidence, in that, the work demands placed on them apply fairly and objectively to every member.*¹⁰¹²

Supt Murray also requested that a case conference be held with the Garda Occupational Health Service and Human Resource Management (HRM) to discuss the matter, and flagged his intention to recommend disciplinary action against Garda Keogh.¹⁰¹³

Garda Keogh wrote to Sergeant Dermot Monaghan on 21st July 2015 in response to Supt Murray's request for a written explanation stating that:

*I made a mistake regarding the reporting unfit for duty, I thought I was still on sick those days.*¹⁰¹⁴

Garda Keogh enclosed a certificate from Dr Bartlett dated 16th July 2015 stating that Garda Keogh was '*was medically unfit for work from 9th July - 15th July 2015 due to work related stress*'.¹⁰¹⁵

Supt Murray followed up the matter on 4th August 2015 in a letter to C/Supt Wheatley in which he set out the circumstances surrounding Garda Keogh's absence without leave and his explanation for same.¹⁰¹⁶ This report set out a number of matters which were later to become matters of concern to Garda Keogh.

The first of these regarded the statement by Supt Murray that Sgt Moylan had attempted both personally and through other members of the unit to contact Garda Keogh by phone over the period of absence and that '*the calls went unanswered and the member did not call back*'. It was also stated by Supt Murray that Garda Keogh '*had no excuse for not returning Sergeant Moylan's calls.*' Garda Keogh's position was that he had left a message for Sgt Moylan on Facebook and that he had told Supt Murray that he had no credit with which to return the call.

Secondly, the report stated that Supt Murray had phoned Garda Keogh on Tuesday 14th July 2015. Garda Keogh's position was that they had spoken on Wednesday 15th July 2015.

¹⁰¹⁰ Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge Athlone, dated 16th July 2015, p. 2225

¹⁰¹¹ Tribunal Documents, Diary entry of Supt Pat Murray, dated 19th July 2015, p. 16209

¹⁰¹² Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 19th July 2015, p. 8800

¹⁰¹³ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 19th July 2015, p. 8801

¹⁰¹⁴ Tribunal Documents, Letter from Garda Nicholas Keogh to Sgt Dermot Monaghan, dated 21st July 2015, p. 2227

¹⁰¹⁵ Tribunal Documents, Medical certificate, dated 16th July 2015, p. 2228

¹⁰¹⁶ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 4th August 2015, p. 2221

Supt Murray stated that the explanation provided by Garda Keogh was ‘*vague and unacceptable*’. In respect of the medical certificate submitted by Garda Keogh he stated that:

*In order to create a defence to any possible breach of discipline the member submitted a retrospective medical certificate dated 16/07/15. The certificate indicates that he was most likely not examined by a doctor until 16/07/15.*¹⁰¹⁷

Supt Murray concluded his report by stating that:

*Having considered the member’s history of absence and his blatant disregard for his responsibilities to the organisation which appears to stem from over indulgence in alcohol, I respectively recommend that the member be dealt with under Regulation 14 Discipline Regulations for his absence without leave amounting to four (4) days.*¹⁰¹⁸

Regulation 14 deals with a ‘*less serious*’ breach of discipline and the disciplinary sanctions available include a reduction in garda pay. It is further open to the deciding officer to deal with the matter by way of caution under Regulation 10 of the Garda Síochána (Discipline) Regulations, 2007 as a minor breach of discipline.¹⁰¹⁹

C/Supt Wheatley considered Supt Murray’s recommendation and decided that disciplinary proceedings were warranted. In her role as appointing officer she appointed Superintendent Alan Murray as deciding officer on 10th August 2015 under Regulation 14 of the Garda Síochána (Discipline) Regulations, 2007 stating that:

*[h]aving reported fit for duty at 10pm on 10th July 2015, failed to report for duty between the 11th and the 14th of July 2015, despite several attempts to enquire into the members whereabouts which remained unanswered or replies from the member.*¹⁰²⁰

It was for the deciding officer to draft the alleged breaches of discipline.

In the meantime, and on 28th August 2015, Supt Pat Murray wrote to the overpayments section of HRM in Navan pointing out that Garda Keogh had been absent without leave from 11th to 14th July 2015 inclusive and requested that they should recoup any overpayment of wages for the relevant dates.¹⁰²¹

Supt Alan Murray prepared Form I.A.12, notifying Garda Keogh of the date for interview and setting out the alleged breaches of discipline:

1. *Neglect of duty – That is to say without good and sufficient cause, having reported fit for duty on the 10th of July 2015, did fail to attend for duty on dates between the 11th of July 2015 and the 14th of July 2015 when you were rostered to perform duty.*

The said Neglect of duty is a breach of Discipline within the meaning of Regulation 5 of the Garda Síochána (Discipline) Regulations 2007, and is described at reference number 4 in the schedule to the said Regulations.

2. *Discreditable Conduct – That is to say without good and sufficient cause, having reported “off sick” on the 10th of July 2015 submitted a retrospective medical certificate to cover the period*

¹⁰¹⁷ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 4th August 2015, p. 2221

¹⁰¹⁸ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 4th August 2015, p. 2221 at p. 2222

¹⁰¹⁹ Tribunal Documents, Regulation 10 of the Garda Síochána (Discipline) Regulations, 2007, p. 7793

¹⁰²⁰ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to C/Supt Internal Affairs, dated 10th August 2015, p. 8810; Form I.A.11, Appointment of Deciding Officer; Regulation 14 Garda Síochána (Discipline) Regulations, 2007, dated 10th August 2015, p. 8811

¹⁰²¹ Tribunal Documents, Letter from Supt Pat Murray to Overpayments Directorate, HRM, dated 28th August 2015, p. 8815

from the 11th to the 14th of July 2015 which you had earlier reported fit for and subsequently submitted a report stating that you believed that you were still off sick during that period.

The said Neglect of duty is a breach of Discipline within the meaning of Regulation 5 of the Garda Síochána (Discipline) Regulations 2007, and is described at reference number 4 in the schedule to the said Regulations.¹⁰²²

On 30th August 2015, Supt Pat Murray called to Athlone Garda Station and served the Form I.A.12 (Notice of Interview) pursuant to Regulation 15 of the Garda Síochána (Discipline) Regulations 2007 on Garda Keogh and recorded a note of the meeting stating that:

Sunday 30/08/15, 9.00 pm.

Met the member to serve IA12 for Supt. Mullingar re: discipline AWOL July. It was clear the member was annoyed at events. I explained to him that I had indicated this might happen because of his cavalier attitude towards his work obligations. At his request I explained Reg. 14 to him in full. I also enquired as to his welfare and alcohol addiction problem. He was reticent to discuss same. I am aware he engaged with welfare service Garda M. Quinn. I asked him about his work and explained I noticed poor work standards. I cited two crime files where IP wrote statement on C8. No follow up, and recent letter re: _____ family. I asked him if events were impacting on his work and said if he continued as at present I would have to consider reducing the risk he posed by taking him off outdoor duty. He asked me to continue to send him my issues in writing. He said he would do what he liked. I assured him he could not. The meeting ended on that.¹⁰²³

Garda Keogh noted in his diary that at ‘9.00 pm Supt arrives to stn. Serves Regulation 15 papers on me’.¹⁰²⁴

On 18th September 2015, Supt Alan Murray met and interviewed Garda Keogh at Athlone Garda Station.¹⁰²⁵ Garda Keogh pleaded guilty to the first charge, which concerned absence without leave, and denied the charge of ‘discreditable conduct’. Garda Keogh provided a statement to Supt Alan Murray which stated as follows:

I reported sick on 9/7/15 to Gda Paul Buckley. I am under a lot of work related stress and I am out sick a lot since March 2015. I am on tablets for anxiety & they can affect memory especially if you take drink. When I phone up Sgt McCormick to report back for duty I had been drinking a lot and I am not suppose[d] to take the tablets with alcohol. The next day I simply forgot that I had phoned Sgt McCormick and had reported fit for duty. I did get a call from Sgt Cormac Moylan I didn't deliberately not answer the phone to him. I could have been asleep, I was drinking heavily. At some [time] my credit (phone) had run out & I couldn't ring anybody. But I did send a message by face book to Sgt Moylan. I acknowledged I had missed his call but I had no phone credit at that stage. Supt. Murray phoned me & I was honest & I told him I was drunk & I did not remember phoning Sgt McCormack & reporting fit for duty. It is not fair to say I had no excuse for not phoning Sgt Moylan. Because of the drink, no phone credit on my phone I couldn't phone and I didn't think of face book until someone on my unit told me to use it and I did send a message to Sgt Moylan telling him I had no credit on my phone. At that stage I knew what I had done.

¹⁰²² Tribunal Documents, Form I.A.12, Notice of Interview Regulation 15 Garda Síochána (Discipline) Regulations, 2007, pp. 8835-8839

¹⁰²³ Tribunal Documents, Note of Supt Pat Murray, dated 30th August 2015, p. 2246

¹⁰²⁴ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 30th August 2015, p. 13326

¹⁰²⁵ Tribunal Documents, Memorandum of Interview of Garda Nicholas Keogh with Supt Alan Murray, dated 18th September 2015, p. 8840

In respect of the second breach I am denying this. As I have said I am under a lot of stress & I had attended the doctor regularly. Really I was sick for the days specified in the doctor's cert. I was not fit for duty because of stress, anxiety and the drink. I had attended Dr Bartlett regularly & he knows my medical history & the stress I am under. I was not fit for work & Dr Bartlett could see that when he examined me.

*I was so bad I had to go to the Doctors, and he issued me a cert.*¹⁰²⁶

Supt Alan Murray was satisfied that Garda Keogh was in breach of the 'neglect of duty' charge and not in breach of the 'discreditable conduct' charge. He imposed a fine of €300. Supt Alan Murray wrote to C/Supt Wheatley on 24th September 2015 reporting his findings,¹⁰²⁷ including that 'Garda Keogh stated that he suffered from work related stress, was drinking heavily and when questioned by Supt Murray he admitted his mistake'.¹⁰²⁸

On 8th October 2015, C/Supt Wheatley wrote to Supt Pat Murray informing him of Supt Alan Murray's decision. She recorded that Garda Keogh was entitled to apply for a review of the decision under Regulation 19 of the Garda Síochána (Discipline) Regulations, 2007. She also requested that Garda Keogh acknowledge the report.¹⁰²⁹ Supt Pat Murray met with Garda Keogh to serve the disciplinary form, Form I.A.14,¹⁰³⁰ on him on 22nd October 2015. Supt Pat Murray's recorded a note in relation to this meeting as follows:

22/10/15

Met Garda Keogh in my office at my request to serve IA14 for Chief re: result of discipline inquiry on him. Member acknowledged same.

*Noticed the member's hands shaking a lot to an extent he couldn't write properly. His signature reflects same. Discussed his sickness with him. He said he would continue going sick. Explained to him I felt it was a risk having him go to incidents as he wasn't around to follow up because of sick. I pointed out the incidents not dealt with properly, which I had written on and other items on Sergeant Monaghan's PAF list (19/10) not progressed. He had no reason or excuse for same. I explained as per earlier conversation I now considered he should be employed in indoors as in his present condition I felt there was risk involved to the public and/or organisation. I questioned if he was fit to work today. I informed him I had informed IC to put him on indoor duty as SO. He said okay. I asked him if suspension of Garda A would allow him to come to work more as he used Garda A's presence up to now as an excuse for going sick. He made no answer. Meeting ended.*¹⁰³¹

Supt Pat Murray returned the signed copy of the Form I.A.14 to C/Supt Wheatley by report dated 22nd October 2015.¹⁰³²

Garda Keogh was unhappy with the disciplinary decision and on 29th October 2015 lodged an application for review (Form I.A.15).¹⁰³³ The application sought a review of the finding of breach of discipline and also the sanction that had been imposed. He set out that *'the decision is not*

¹⁰²⁶ Tribunal Documents, Memorandum of Interview of Garda Nicholas Keogh with Supt Alan Murray, dated 18th September 2015, p. 8840

¹⁰²⁷ Tribunal Documents, Letter from Supt Alan Murray to C/Supt Lorraine Wheatley, dated 24th September 2015, p. 8842

¹⁰²⁸ Tribunal Documents, Letter from Supt Alan Murray to C/Supt Lorraine Wheatley, dated 24th September 2015, p. 8842 at p. 8844

¹⁰²⁹ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Supt Pat Murray, dated 8th October 2015, p. 8822

¹⁰³⁰ Tribunal Documents, Form I.A.14, Report of Appointing Officer to Member Concerned, dated 22nd October 2015, p. 2258

¹⁰³¹ Tribunal Documents, Note of Supt Pat Murray, dated 22nd October 2015, p. 2256

¹⁰³² Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 22nd October 2015, p. 2260

¹⁰³³ Tribunal Documents, Form I.A.15, Application for Review of Decision of Deciding/Designated Officer Regulation 19/15 of Garda Síochána (Discipline) Regulations, 2007, dated 29th October 2015, p. 8830

justified having regard to the information given by me. He sought Supt Pat Murray's phone log and for the date of the phone call to be considered further:

Part of the sanction relates to a phone call which I received from Supt Pat Murray which he states was on 14.7.15. I believe this phone call was made at 12.08 on 15.7.15 and is relevant to my defence. I would be obliged if a call log can be obtained regarding this and I request a copy of the statement I made to Supt Alan Murray for the purpose of legal advice.¹⁰³⁴

On 9th November 2015, C/Supt Wheatley wrote to Garda Keogh, seeking clarification:

As you had admitted the breach alleged on the date of interview, please specify the relevance of the phone call which is in question and cited by you in your grounds for appeal. What bearing had this phone call in respect of the alleged breach as outlined at No.1 on the schedule of breaches on form IA 12. In addition can you please clarify if the phone call now referred to by you was discussed or mentioned by you in your submissions regarding the breach of discipline alleged against you which you admitted at interview.¹⁰³⁵

C/Supt Wheatley also wrote to Supt Alan Murray on 9th November 2015 and requested the memo of interview and his rationale for imposing a fine of €300.¹⁰³⁶

He replied to C/Supt Wheatley on 11th November 2015 and pointed out that Garda Keogh admitted the first breach. He explained the rationale for his determination as follows:

Garda Keogh was absent without leave or explanation for four days. In deciding the fine I took in to account that he had no previous disciplinary breaches and that he had pleaded guilty to the breach.

In imposing a fine of €300 euro I took in to account that Garda Keogh had a weekly pay of €840.49 which equates to €168 per day.

I imposed a fine of €75 per day that Garda Keogh was absent. I do not believe that Garda Keogh should gain financially from his absence but I did not want to be harsh on him.

I believe the fine imposed was fair and just.¹⁰³⁷

On 2nd December 2015, Garda Keogh responded to C/Supt Wheatley explaining the relevance of the date of Supt Pat Murray's phone call and stating that he had not yet received a copy of the statement he made to Supt Alan Murray:

In the said report [Report of Superintendent Pat Murray¹⁰³⁸] it implies that I deliberately did not answer a phone call from Sergeant Cormac Moylan when I had explained this to Supt P Murray that I had contacted Sgt Moylan on Facebook explaining same to him prior to the phone call from Supt Pat Murray.

I did mention this to Supt Alan Murray in the statement I made to him. However I have not been furnished as yet with a copy of this statement therefore I cannot quote exactly as to what is in it.¹⁰³⁹

¹⁰³⁴ Tribunal Documents, Form IA.15, Application for Review of Decision of Deciding/Designated Officer Regulation 19/15 of Garda Síochána (Discipline) Regulations, 2007, dated 29th October 2015, p. 8830

¹⁰³⁵ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Garda Nicholas Keogh, dated 9th November 2015, p. 8831

¹⁰³⁶ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Supt Alan Murray, dated 9th November 2015, p. 8832

¹⁰³⁷ Tribunal Documents, Letter from Supt Alan Murray to C/Supt Lorraine Wheatley, dated 11th November 2015, p. 8833

¹⁰³⁸ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 19th July 2015, p. 8800

¹⁰³⁹ Tribunal Documents, Letter from Garda Nicholas Keogh to C/Supt Lorraine Wheatley, dated 2nd December 2015, p. 8854

On 7th December 2015, C/Supt Wheatley affirmed the decision of Supt Alan Murray¹⁰⁴⁰ and notified Supt Pat Murray on 10th December 2015 of her decision.¹⁰⁴¹

As noted above, on 28th August 2015, Supt Pat Murray wrote to the Overpayments section at An Garda Síochána reporting that Garda Keogh was absent without leave and requesting that his wages be recouped for the relevant dates.¹⁰⁴² Ms Monica Carr, Head of HR Directorate, confirmed in her evidence to the tribunal that the wages for the four days were not recouped.¹⁰⁴³

On 23rd December 2015, Chief Superintendent Sean Ward, Internal Affairs, wrote to the Pay & Pensions section of An Garda Síochána informing them of the outcome of the appeal and the fine imposed.¹⁰⁴⁴ Form I.A.73, detailing Garda Keogh's breach of discipline and the penalty imposed was signed by Ms Carr on 15th March 2016,¹⁰⁴⁵ and a payroll amendment form was completed on 15th March 2016 authorising a temporary deduction from Garda Keogh's pay.¹⁰⁴⁶ On 21st March 2016, a query arose at Human Resources and People Development (HRPD) as to whether the deduction should be made whilst Garda Keogh was on a reduced rate of pay and it was decided that it should be postponed until he was restored to full pay.¹⁰⁴⁷

On 22nd September 2015, Garda Keogh wrote to Sgt Monaghan requesting three Haddington Road hours as he had received a phone call from Supt Murray on 14th July 2015.¹⁰⁴⁸ In October, Garda Keogh re-applied to Sgt Monaghan for three Haddington Road hours, correcting the date of the phone call to 15th July 2015.¹⁰⁴⁹ This application was refused by Supt Pat Murray on 12th October 2015.¹⁰⁵⁰

Complaint made by Garda Nicholas Keogh

In his statement to the tribunal, Garda Keogh stated that there was a *'mix up' about my signing off sick and then not reporting for duty*¹⁰⁵¹ and that:

*I had apparently rung in 'off sick'. I was on the contrary sick. It was at most a mistake. The medical certificate materialised retrospectively to certify my sickness during the period. In any case, this medically certified absence was irrationally turned by Superintendent Pat Murray into a charge of being absent without leave.*¹⁰⁵²

Garda Keogh said that he had been drunk at the time of this call and had forgotten he had reported *'off sick'*.¹⁰⁵³

In his evidence to the tribunal, Garda Keogh outlined how he missed Sgt Moylan's call:

... of course I would have answered the sergeant. As I said, I would have only seen – when I stopped drinking, I would have seen the missed call. I mean there would have been a lot of missed

¹⁰⁴⁰ Tribunal Documents, Form I.A.16, Result of Review Regulation 20(5) Garda Síochána (Discipline) Regulations, 2007, dated 7th December 2015, p. 8853

¹⁰⁴¹ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Supt Pat Murray, dated 10th December 2015, p. 8852

¹⁰⁴² Tribunal Documents, Letter from Supt Pat Murray to Overpayments Directorate, HRM, dated 28th August 2015, p. 8815

¹⁰⁴³ Tribunal Transcripts, Day 134, p. 36, Evidence of Ms Monica Carr

¹⁰⁴⁴ Tribunal Documents, Letter from C/Supt Sean Ward to Garda HRM Pay Section, dated 23rd December 2015, p. 8860

¹⁰⁴⁵ Tribunal Documents, Form I.A.73, Garda Síochána (Discipline) Regulations, 2007, dated 15th March 2016, p. 8872

¹⁰⁴⁶ Tribunal Documents, PSSC – payroll amendment form, dated 15th March 2016, p. 8870

¹⁰⁴⁷ Tribunal Documents, Email from Garda HR Directorate to PSSC Garda Pay Support, dated 21st March 2016, p. 8867

¹⁰⁴⁸ Tribunal Documents, Letter from Garda Nicholas Keogh to Sgt Dermot Monaghan, dated 22nd September 2015, pp. 8819-8820

¹⁰⁴⁹ Tribunal Documents, Letter from Garda Nicholas Keogh to Sgt Dermot Monaghan, dated October 2015, p. 2252

¹⁰⁵⁰ Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge Athlone, dated 12th October 2015, p. 2255

¹⁰⁵¹ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 135

¹⁰⁵² Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 135

¹⁰⁵³ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 72

*calls from different people, but I did see – from recollection, I think there was only one missed and that was from Sergeant Cormac Moylan. But there was a missed call, I accept that. The phone could have been on the table and I could be panned out on the couch. It's not that I deliberately wouldn't answer the sergeant. That's being honest about it.*¹⁰⁵⁴

In his statement to the tribunal Garda Keogh confused Supt Alan Murray with Supt Pat Murray and described Supt Pat Murray as *'witness, prosecutor, and enforcer in this case'*¹⁰⁵⁵ but he later clarified this in his interview with tribunal investigators as *'an error'*.¹⁰⁵⁶ Garda Keogh was cross-examined by counsel on behalf of An Garda Síochána as follows:

- Q. Can you explain to the Chairman how it took you so long to correct such a glaring error?
- A. ... Judge, there was so much going on between this and the Tribunal and even whenever I read this statement, I didn't – I was wrecked the evening we got that statement in on the 13th, I think of March. Am I correct? 2018? I mean, I remember, I didn't really read over that statement that night. I don't even know when I read over it. I would have been way – it would have been afterwards I read over the statement. I saw a lot of problems in that. I just said, look, I will deal with all them when I am meeting the Tribunal thing. Also, in that period then, I think is there the Finn investigation, and then there's also the McMahon investigation going on and all that.
- Q. But, Garda Keogh, I have to put it to you, you knew both Pat Murray and Alan Murray to see, didn't you?
- A. Yes.
- Q. You could have been under no doubt that they were two separate people. At the same time, in this situation you instructed your own advisers to put forward this complaint in relation to Pat Murray, with the added detail that this was irrational, untrue and unfair. I have to ask you, how can you have made a mistake between those two? Or are you saying that you were so careless that you were willing to throw out an allegation against Pat Murray without even reading it?
- A. Judge, I have explained that in relation to this particular statement, I think I even said it at the end of last week, I said there are problems with this statement. No, I don't think I even got – as far as I can remember, I didn't even read over it that night, because I believed there was a deadline and it had to be in. I have explained all this.
- Q. Again, Garda Keogh, you have emphasised many times and you have protested that you weren't treated fairly. Would you agree that it was unfair of you at the very least to allow this statement be issued in your name, to stay on the record until 2018, and only correct it when the investigators showed you what they believed to be a dichotomy between what you were saying and what the evidence demonstrated?
- A. I don't know if that's correct. I don't know. I know I corrected it. I think the bottom line on this is, that I did correct it, Judge. I corrected the statement when I met the Tribunal investigators.
- Q. When it was brought to your attention but not before, isn't that so?

¹⁰⁵⁴ Tribunal Transcripts, Day 101, p. 39, Evidence of Garda Nicholas Keogh

¹⁰⁵⁵ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 135

¹⁰⁵⁶ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 73

A. Sorry.

Q. When it was brought to your attention by the investigators and not before?

A. Oh listen, I just cannot remember, I can't – I just can't remember that.¹⁰⁵⁷

As noted above, Sgt Moylan notified Supt Murray of the AWOL on 14th July 2015. Supt Murray contacted Garda Keogh by telephone and an issue arose as regards the date of this call. In his statement to the tribunal, Garda Keogh stated that:

The actual date of the phone call by Superintendent Pat Murray was material in that it was clear that Superintendent Pat Murray had telephoned me on the 15/7/2015 at 12.08 pm only and had then said 'how can you ring in 'off sick' when you are not on sick'. By changing the date of his telephone call from the 15/7/2015 to the 14/7/2015, Superintendent Pat Murray was able to imply that I was deliberately not contacting Sgt Moylan on the 14/7/2015 when Superintendent Pat Murray said he was able to contact me on that same date. I had in fact contacted Sergeant Moylan on facebook (when my phone went dead) – 12 hours before Pat Murray's call on the 15/7/2015.¹⁰⁵⁸

Garda Keogh expanded on this in his evidence to the tribunal:

There was discrepancies in relation to certainly the date of the phone call with Superintendent Murray and in relation to that text message or the message that I had sent to Cormac Moylan, there was an issue to do with that date, which was wrong. It would have implied I wasn't – or wasn't, let's say, was deliberately not answering my sergeant's phone calls or anything like that. I would have good time for any of those sergeants at work but wasn't like that. The date that Superintendent Murray had on that was incorrect. He has, in his own version of events, that then he brings in I wouldn't answer the sergeants and that, which was not the case. The date that he stated on what I am to be disciplined for, was incorrect. It was actually the next date. The next date, which I had it in my note, which is the correct date that phone call was made. It also then would have covered that I did actually text the sergeant to say I am sorry about this week.¹⁰⁵⁹

Garda Keogh explained in his evidence to the tribunal why he regarded the date as being significant:

I am then prosecuted internally for something on the 14th and I made an issue about this. Because the reason it's important on the date is, if that 14th was correct, it means then I deliberately made no effort to contact any sergeant or anything like that, which wasn't the case. I didn't have phone credit and I did manage to be able to send a text to the sergeant. That's the issue.¹⁰⁶⁰

In his interview with tribunal investigators, Garda Keogh referred to the content of this telephone call with Supt Murray as follows:

Superintendent Murray stated also in point 4 that I had no excuse for not returning Sergeant Moylan's call, which is incorrect. When he asked me during the phone call I had explained to him that I had no phone credit and I accepted that I saw a missed call from Sergeant Moylan. I

¹⁰⁵⁷ Tribunal Transcripts, Day 106, pp. 130-132, Evidence of Garda Nicholas Keogh

¹⁰⁵⁸ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 136

¹⁰⁵⁹ Tribunal Transcripts, Day 101, p. 29, Evidence of Garda Nicholas Keogh

¹⁰⁶⁰ Tribunal Transcripts, Day 101, p. 35, Evidence of Garda Nicholas Keogh

*explained to Superintendent Murray that I had no phone credit to ring Sergeant Moylan back and that I had contacted Sergeant Moylan by Facebook message to explain this, which was the only way I could contact him.*¹⁰⁶¹

In respect of the report of Supt Murray to C/Supt Wheatley, Garda Keogh said in his statement that:

*Pat Murray in his statement of complaint dated 4th August 2015 stated that I had replied on the 21st July 2015 with a 'vague and unacceptable explanation.' He did not define what he meant by 'vague' or 'unacceptable.' He was also incorrect in stating that I 'had no excuse for not returning Sergeant Moylan's calls'. This was incorrect. I had always had a good professional relationship with Sergeant Moylan. I was in fact sick – and medically certified at that. Pat Murray also appeared to imply a certain unspecified invalidity in the medical certificate by stating that I was 'most likely not examined by a doctor until 16/7/15'.*¹⁰⁶²

Garda Keogh met with Supt Alan Murray on 18th September 2015 and provided a statement in reply to the charges. He stated that he was later denied a copy of this 'statement of defence' in breach of fair procedures.¹⁰⁶³ Garda Keogh also complained that he did not receive Supt Pat Murray's phone log to assist him in contesting the date of the phone call.¹⁰⁶⁴ These allegations were levelled against the appointing officer, C/Supt Wheatley, and Garda Keogh told tribunal investigators that:

*Chief Superintendent Lorraine Wheatley was involved and was the deciding officer in my discipline review/appeal (NK/1, pages 116 – 135 refers), where she declined to provide me with a copy of the statement I made and signed to Superintendent Alan Murray the deciding officer in the disciplinary matter which I requested from her and which detailed the 'work related stress' I was under. I had also outlined to her in my review/appeal application (NK/1 page 132 of 135 refers) the points I wanted her to look at in my appeal/review. In particular, I raised the point relating to my request for her to review the call log and it is my belief she did not do this. I believe she could have done this easily, having access to the call records. The fact she did not do this, in my view is targeting or discrediting me as she accepted another version of events (that of Superintendent Pat Murray) over mine, which I say discredits me.*¹⁰⁶⁵

In his evidence to the tribunal, Garda Keogh stated:

*... Judge, I recall writing to Chief Superintendent Wheatley in relation – looking for that actual statement in order to prepare my defence for the appeal. Because I do recall when Superintendent Alan Murray recorded the statement in his handwriting, I recall I was trying to read what he was writing, even though it was the other, previous – across the desk from me, but I couldn't actually, I couldn't read, I just couldn't – I couldn't read the writing. Not that my writing is great. My writing is not. I don't mean it in a bad way. His writing – he just has a different style of writing and I couldn't read it. But in hindsight, if I was to have know, again I would just ask Superintendent Alan Murray for a copy of the statement and I'm sure he would have given it to me, but I didn't even think of that at the time.*¹⁰⁶⁶

¹⁰⁶¹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 72

¹⁰⁶² Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 135

¹⁰⁶³ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 135

¹⁰⁶⁴ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 135

¹⁰⁶⁵ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 104-105

¹⁰⁶⁶ Tribunal Transcripts, Day 107, pp. 12-13, Evidence of Garda Nicholas Keogh

In his statement to the tribunal, Garda Keogh outlined:

The finding against me was that I had committed a breach of duty in that ‘without good and sufficient cause having reported fit for duty on the 10th July 2015 I did fail to attend for duty’. This implied that I should have reported for duty as fit for work against my physician’s advices or alternatively that a simple mistake in reporting fitness to work amounted to a breach of duty. The issue of ‘work related stress’ did not appear to have been taken into account.¹⁰⁶⁷

He said that ‘Pat Murray then vindictively requested an acknowledgement of this finding to him in circumstances where it was a contest between my version and that of Pat Murray’.¹⁰⁶⁸

In his evidence to the tribunal, Garda Keogh described his state of mind at this time:

I had so much going on at the time, all that’s going on with the investigation and everything else, I didn’t. But then, of course, when it becomes apparent to me what Superintendent Murray is up to there with this, you know, sticking the boot in to do with the thing with the sergeants, that I’m not – that annoys me. So chief superintendent Wheatley then affords me the entitlement of appeal, I then on, let’s say, legal grounds, request to appeal that. Firstly I looked for a copy of my statement. They wouldn’t give it to me. And the second thing was the date of the phone call and again, I was completely ignored with that.¹⁰⁶⁹

Responding Statements and Evidence on the Issue

Superintendent Pat Murray

In his statement to the tribunal, Supt Murray referred to the phone call on 15th July 2015 and stated that:

On Wednesday 15th July 2015 about 12 noon I phoned Garda Keogh regarding his absence. He acknowledged his absence without leave and said he had reported fit for duty on 10th July 2015 while drunk, had forgotten he had done so and had been continuously drinking over the next few days and so didn’t report for duty. He admitted he had a drink problem and had stopped going to AA. He went on to describe his drinking behaviour. He expressed concern that Garda A and Garda _____ might do harm to him. We discussed that and I put forward the point that neither had acted against him up until now even though Garda A appeared to have had Garda Keogh’s allegations put to him at that stage. I asked for an explanation as to why he didn’t answer Sergeant Moylan’s call to him and he said he had no credit. I indicated that credit was not needed to answer a call but he said he had left a message for Sergeant Moylan on Facebook. I indicated to him that wasn’t acceptable in as far as I was concerned. I explained to Garda Keogh that I felt being absent without leave in the manner described may be a breach of discipline and I would have to seek a formal explanation from him. He asked that I might ignore the matter as his alcohol addiction was to blame and he couldn’t overcome it and so had to continue reporting sick. I indicated to him that I would have to look for a case conference in relation to him with the Chief Medical Officer to see if help could be provided to assist him to stop drinking. I sought an explanation from Garda Keogh on 16th July 2015 and he replied dated 21st July 2015 indicating that he had made a mistake and submitting a retrospective medical certificate to cover the period of his absence without leave. On 4th August I reported the matter to Chief Superintendent in Westmeath recommending the matter be dealt with as a less serious breach of discipline.¹⁰⁷⁰

¹⁰⁶⁷ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 136

¹⁰⁶⁸ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 136

¹⁰⁶⁹ Tribunal Transcripts, Day 101, p. 45, Evidence of Garda Nicholas Keogh

¹⁰⁷⁰ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at pp. 2044-2045

In his evidence to the tribunal, Supt Murray stated:

It was a very open and frank conversation that Garda Keogh was very open with me in dealing with it. And he admitted that he was absent without leave and he went on to explain that, that he had signed off sick on the 10th July, after drinking for a few days, and he had forgotten that he had reported off sick and then didn't go to work and he continued drinking. And he admitted that he had a drink problem and that he had stopped going to AA. He went on to describe to me then his drinking habit and how he would drink.

Q. Yes. Is there anything else there that you think might be important?

A. Yes. Well, he brought up the whistleblower case and he explained that he was worried about Garda A and another member and that they might get him. And then I put the alternative to him and I explained or challenged him that they had done nothing since it came to light and nothing had happened since Garda A was informed or questioned about the allegation. So I was trying to allay his fears in that regard. I challenged him about not answering the sergeant's call during the weekend and he said he no credit. I put the point that credit wasn't required to answer a call. And he indicated at that stage that he had to continue going sick as well. I said to him then that I had to request a case conference and I would have to consider discipline and I would seek an explanation from him in writing.¹⁰⁷¹

Supt Murray continued that:

He wanted me to ignore it, if I could. And I said to him that I felt it was poor behaviour, he had let his colleagues down and there were resource issues obviously over the weekend in relation to what had happened. And there was a concern for him as well, no one knew where he was for four days. And I felt, you know, drinking, while it might be an explanation, that it wasn't or couldn't be an excuse in my view.¹⁰⁷²

[When] I phoned Garda Keogh on the 15th July, we had a meaningful conversation around this. He asked me to ignore it and I said I couldn't and I would ask for an explanation. And I talked to him about having a case conference. I wanted him to understand that something needed to be done about this, it had to be marked. And if it wasn't, I felt it would re occur again. I had hoped that Garda Keogh would take responsibility and perhaps give me some indication or succour that he was going to deal with his issues. So when I saw his response I had no hesitation in recommending discipline at that stage. The first report is merely a report to go up to the CMO. It's in relation to a case conference. I wanted to have that, the discipline aspect of it, emphasised, when that was going up there, in order that, I suppose, some account would be taken of the situation to have a case conference.¹⁰⁷³

In his interview with tribunal investigators Supt Murray clarified the date of this phone call as follows:

My diary indicates that on 14th July 2015 I attended a Divisional welfare meeting and following that I went to the CCJ in Dublin so I wasn't in Athlone on the 14th July 2015. I received an email that day reporting that Garda Keogh was absent without leave. I phoned Garda Keogh the next day, 15th July 2015, and he acknowledges that he reported fit for duty on the 10th July 2015 but he had forgotten he had done so and had continuously been drinking and so didn't come to work for four days.¹⁰⁷⁴

¹⁰⁷¹ Tribunal Transcripts, Day 124, pp. 27-28, Evidence of Supt Pat Murray

¹⁰⁷² Tribunal Transcripts, Day 124, p. 28, Evidence of Supt Pat Murray

¹⁰⁷³ Tribunal Transcripts, Day 127, pp. 75-76, Evidence of Supt Pat Murray

¹⁰⁷⁴ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3085

Referring to this error while giving evidence to the tribunal, Supt Murray stated that:

*... The date situation is a mistake on my part. Garda Keogh made a mistake for a while, albeit influenced by my mistake. So I don't have a monopoly on wisdom, I made a genuine error. I am willing to correct that at any time.*¹⁰⁷⁵

In respect of the explanation provided by Garda Keogh, Supt Murray told tribunal investigators that:

*... in his response I saw no indication that he was willing to deal with the situation and this situation I felt would most likely happen again. I had hoped to see some kind of an acknowledgement that he might try and help himself in some way. I felt he sought to explain it away and allow a retrospective medical cert support that. I felt that the behaviour had to be addressed.*¹⁰⁷⁶

In his evidence to the tribunal, he said:

*I had a problem, two things: The retrospective aspect of it and the fact that he had tried that day or did that day try and report off sick again, as if he had never reported off sick on the 10th. Those two things together.*¹⁰⁷⁷

He was cross-examined by counsel for An Garda Síochána on the matter and he replied that:

*There was obviously a resource shortfall on the night. It was a weekend, a weekend, a series of weekend nights that he was rostered to work. And he wasn't there any of those. And they could be quite busy, taxing. Particularly on members on outside duty. At that time there were big budgetary implications in relation to the financial crisis and the district was overspent and I had to manage the, I suppose, resource issue prudently and use the resources available to me as effectively and as efficiently as I could, without resorting to the use of payment of overtime.*¹⁰⁷⁸

Supt Murray told the tribunal that it was Garda Keogh's responsibility to manage his health and that his behaviour had to be 'marked':

*... I suppose the onus to manage his health is primarily Garda Keogh's. The organisation has fantastic supports available to allow that to happen. But it's his responsibility to manage his health.*¹⁰⁷⁹

He stated that:

*... alcohol is a major factor in Garda Keogh's life for quite some time. You know, it caused his absence from work on this occasion. I felt that the, I suppose, behaviour should be marked, that it was important that it be marked and that someone independent would look at it under the discipline regulations and make whatever decision they chose.*¹⁰⁸⁰

Supt Murray was asked whether he considered that stress may have been a factor with regard to Garda Keogh's health at the time. He replied that:

I didn't have any view in that regard. It's quite clear that Garda Keogh had stress because of the situation he was in, in relation to the whistleblower allegations and obviously that would

¹⁰⁷⁵ Tribunal Transcripts, Day 124, p. 54, Evidence of Supt Pat Murray

¹⁰⁷⁶ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3086

¹⁰⁷⁷ Tribunal Transcripts, Day 124, p. 31, Evidence of Supt Pat Murray

¹⁰⁷⁸ Tribunal Transcripts, Day 126, p. 79, Evidence of Supt Pat Murray

¹⁰⁷⁹ Tribunal Transcripts, Day 124, p. 35, Evidence of Supt Pat Murray

¹⁰⁸⁰ Tribunal Transcripts, Day 124, p. 40, Evidence of Supt Pat Murray

*cause stress anybody. What part alcohol had in that and how they mixed together and what the combination was, I simply don't know. On this occasion, I dealt with what I saw in front of me.*¹⁰⁸¹

Supt Murray told the tribunal the following:

*... I tried my best to ensure that he was passed to medical professionals, to work with Detective Superintendent Mulcaby to have welfare in the background and to do whatever I could locally to support him in the workplace, which was limited.*¹⁰⁸²

In his statement to the tribunal, Supt Murray recounted how he met Garda Keogh on 22nd October 2015 to serve Form I.A.14 on him:

*On 22nd September 2015, Garda Keogh sought that he be granted three hours' time off for taking the phone call I made to him on 15th July to discuss his absence without leave. He engaged in correspondence with the Sergeant in charge Athlone initially in relation to the application. Eventually it was presented by Sergeant in Charge to me for a decision. I refused the application in the circumstances that the Sergeant in Charge had pointed out to Garda Keogh in her correspondence to him... I met Garda Keogh again in my office in relation to this matter on 22nd October 2015 to serve Form IA14 on him at the request of Chief Superintendent Westmeath. I noticed that Garda Keogh had deteriorated in that he didn't seem well to me. I asked him about his health and his drinking and he wouldn't answer. I noticed his hands shaking a lot to the degree that he could barely sign his name while acknowledging receipt of Form [I.A].14. I discussed with him his frequent sickness absence and the impact of it on his ability to follow up on work related matters. I explained I had discussed the lack of progress on some matters involving Garda Keogh with Sergeant Monaghan while going through his incident list at a PAF meeting with Sgt Monaghan on the 19th October 2015. Garda Keogh didn't seem with it to me and I asked him if he felt fit enough to be in work. He said he did. As a result of what I saw I explained to him that I would have to assign him to indoor duty and I discussed that with him explaining the reasons why and referring him to our conversation of 30th August where we had discussed the possibility of this happening. He appeared to me to agree with the course of action I was taking... I reported how I found Garda Keogh and my decision to confine him to indoor duty to Chief Superintendent Westmeath.*¹⁰⁸³

Supt Murray described in evidence the atmosphere at this meeting as follows:

*I suppose I couldn't seem to make a connection to him. There was a defiance about it, but I just couldn't seem to make a connection. He seemed unwell, a little bit off. And I asked him if he was well enough to be in work, because I didn't think he just seemed right.*¹⁰⁸⁴

In his interview with tribunal investigators, Supt Murray stated his belief that 'Garda Keogh's attitude towards me, I feel, changed after his absence without leave'.¹⁰⁸⁵

Supt Murray was asked by tribunal investigators whether the institution of disciplinary proceedings in relation to this absence constituted the targeting or discrediting of Garda Keogh:

*No. I feel I was dealing with behaviours as a result of abuse of alcohol and again I was demonstrating that standards had to be the same for everyone.*¹⁰⁸⁶

¹⁰⁸¹ Tribunal Transcripts, Day 124, p. 41, Evidence of Supt Pat Murray

¹⁰⁸² Tribunal Transcripts, Day 125, pp. 130-131, Evidence of Supt Pat Murray

¹⁰⁸³ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at pp. 2046-2047

¹⁰⁸⁴ Tribunal Transcripts, Day 126, p. 93, Evidence of Supt Pat Murray

¹⁰⁸⁵ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3031

¹⁰⁸⁶ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3088

Chief Superintendent Lorraine Wheatley

In her interview with tribunal investigators, C/Supt Wheatley said that the Divisional Office received the file from Supt Pat Murray and that the report of 4th August 2015 contained the discipline recommendation.¹⁰⁸⁷ She stated that, as chief superintendent, she had the role of appointing officer and she reviewed the file.

C/Supt Wheatley stated that she considered the file *'on its merits'*.¹⁰⁸⁸ She also stated that she *'... considered that it merited an enquiry under a less serious breach of the Garda Síochána Regulations 2007, Part 2'*.¹⁰⁸⁹ She stated that Garda Keogh's absence was dealt with as a less serious breach of discipline *'... notwithstanding, the fact that the breaches could be construed as quite serious and in this regard, may have merited more severe sanctions'*.¹⁰⁹⁰ However, she stated that she was satisfied that the breaches of discipline preferred were adequate:

*I am quite satisfied that the breaches of Discipline preferred were adequate, having cognisance of all the prevailing circumstances, and that Garda Keogh was afforded every assistance throughout in terms of adequate representation which included access to the Employee Assistance Service then, and during his time in Athlone.*¹⁰⁹¹

C/Supt Wheatley stated that the relevant member is provided with all of the material gathered by the deciding officer prior to interview and that the member has an opportunity to provide an account and/or material in respect of the matter.¹⁰⁹² She told tribunal investigators that:

*When the Deciding Officer has made his decision, he notifies the Appointing Officer. He prepares a report of interview with all the relevant attachments. Then the Appointing Officer prepares a report in the prescribed format with the relevant attachments, which is forwarded through the District Office to be served on the member, which he must acknowledge. The member can appeal the Deciding Officer's decision to the Appointing Officer and has a timeframe of seven days in which to do that. In this case, Garda Keogh availed of that option. As part of the Appeal Process, the Appointing Officer can do a number of things, including interviewing the Deciding Officer, making enquiries, requesting relevant reports.*¹⁰⁹³

In respect of the review application by Garda Keogh, C/Supt Wheatley said in her statement that she sought additional clarification from Supt Alan Murray as follows:

Having regard to the submission by Garda Keogh to a breach of discipline, which he had admitted, I reviewed the investigation conducted by Superintendent Alan Murray.

As part of the process I sought additional clarification for this decision from Superintendent Murray to ensure best practise and transparency were applied, and I am fully satisfied that the rationale outlined by Superintendent Murray in arriving at his decision was sound and was motivated solely by concern for the integrity, public image and morale of the service.

*The decisions outlined in Superintendent Murray's report of the 11th of November 2017 appears to be logical well thought out and carefully considered and shows an understanding and concern for the member's welfare and financial circumstances.*¹⁰⁹⁴

¹⁰⁸⁷ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6109

¹⁰⁸⁸ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6109

¹⁰⁸⁹ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6106

¹⁰⁹⁰ Tribunal Documents, Statement of C/Supt Lorraine Wheatley, p. 3143 at p. 3144

¹⁰⁹¹ Tribunal Documents, Statement of C/Supt Lorraine Wheatley, p. 3143 at pp. 3144-3145

¹⁰⁹² Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6106

¹⁰⁹³ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6107

¹⁰⁹⁴ Tribunal Documents, Statement of C/Supt Lorraine Wheatley, p. 3043 at p. 3145

In respect of the submission by Garda Keogh in relation to phone records, she told investigators that, as it *‘was not a criminal investigation, it would not have been legal or proportionate for me to access records’*¹⁰⁹⁵ and that *‘Garda Keogh could have offered his own phone records, but he didn’t’*.¹⁰⁹⁶ Specifically, she stated that:

*In his submission, Garda Keogh refers to a telephone call which he relies on as part of his application for review, this was not a criminal investigation, (Garda Keogh did not furnish any records of this call either), and therefore this was beyond the remit of a disciplinary investigation, but importantly the date of the phone call did not alter the issue being investigated i.e. Garda Keogh being absent from duty.*¹⁰⁹⁷

She said that *‘I find it hard to understand how Garda Keogh can perceive this as an attempt to target or discredit him. As a member of the force, he understands the regulations and would understand the difference between a criminal and a discipline investigation’*.¹⁰⁹⁸

With regard to the submission made by Garda Keogh in respect of the documents he received after the interview, she stated that:

*In accordance with the regulation Garda Keogh was provided with a report of his interview which was served with him. It should be noted that the member admitted to the breach of discipline.*¹⁰⁹⁹

In relation to the statement provided by Garda Keogh to Supt Alan Murray, C/Supt Wheatley said that Garda Keogh was provided with a copy of this statement in advance of the appeal.¹¹⁰⁰ She told the tribunal that:

I didn’t reference it. I mean, I had no reason not to give this to Garda Keogh, this was something he had in the sense that it was his information, it was his account, so I had no reason not to disadvantage him by not giving it to him.

*Certainly it was my understanding he got the memo of the interview.*¹¹⁰¹

C/Supt Wheatley outlined to tribunal investigators how she made her final decision on the matter:

*I considered the Deciding Officer’s subsequent report. He had taken all the points raised by Garda Keogh into consideration. I believed the behaviour merited a sanction and I had no grounds for disagreeing with the Deciding Officer’s decision. I had a duty to Garda Keogh, the members on the unit and in the Division, and the public. This behaviour was not acceptable and the consumption of alcohol does not justify it. The penalty was at the lower end of the scale, the rationale was sound, the behaviour was not acceptable and it merited a sanction. As the Appointing Officer, my decision was final in respect of these matters.*¹¹⁰²

In relation to Garda Keogh’s position as a confidential reporter and his ongoing absences from work, she told tribunal investigators that:

I was alive to the context and surrounding issues. The reality is that in our organisation, inappropriate behaviour, whether or not it is as a result of issues with alcohol, is subject

¹⁰⁹⁵ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6107

¹⁰⁹⁶ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6112

¹⁰⁹⁷ Tribunal Documents, Statement of C/Supt Lorraine Wheatley, p. 3043 at p. 3145

¹⁰⁹⁸ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6112

¹⁰⁹⁹ Tribunal Documents, Statement of C/Supt Lorraine Wheatley, p. 3043 at p. 3145

¹¹⁰⁰ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6112

¹¹⁰¹ Tribunal Transcripts, Day 132, p. 153, Evidence of C/Supt Lorraine Wheatley

¹¹⁰² Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at pp. 6107-6108

*to Disciplinary Regulations. All members are accountable for their attendance and their performance. Supports are in place for people with difficulties. All members are treated fairly. I was satisfied the Deciding Officer had considered all the mitigating factors in the sanction he imposed. Any other member in this position would have been dealt with in the same fashion. Discipline is about learning; it is nothing personal. It marks a behaviour as unacceptable and then we move on. I am always conscious to separate the behaviour from the person.*¹¹⁰³

C/Supt Wheatley stated that Garda Keogh's submissions were afforded full consideration and fair procedures and that he 'never raised any issue with the disciplinary proceedings until November 2017'.¹¹⁰⁴ She responded to the allegation that the investigation constituted targeting or discrediting as follows:

*I reject that allegation entirely. I have various roles underpinned by legislation, policy and procedures. When behaviours are brought to my attention, if appropriate under policy, it is my duty to explore the matter. In this case, I appointed a Deciding Officer under the Discipline Regulations to enquire into the matter based on the information I considered.*¹¹⁰⁵

Superintendent Alan Murray

In his statement to the tribunal, Supt Alan Murray stated that he prepared the Form I.A.12 and formulated the breaches of discipline. He stated that he met with Garda Keogh as scheduled on 18th September 2015 and that:

Garda Keogh informed me that he was pleading guilty to breach no. 1 but was denying breach No 2 and this was recorded in the written report I obtained from Garda Keogh.

*I recorded in writing the explanation offered by Garda Keogh and this was signed by Garda Keogh. In explanation Garda Keogh stated that he had been under work related stress and had been drinking heavily. He forgot that he had contacted Sergeant McCormack to report fit for duty. Garda Keogh stated that he had admitted his mistake to Supt P. Murray and why he had made it. Garda Keogh indicated that he did not understand breach 2 and in explanation said Dr Bartlett was his Doctor and was familiar with his medical history. Garda Keogh had to go to his Doctor on that date and his Doctor issued the certificate.*¹¹⁰⁶

Supt Alan Murray found that Garda Keogh was in breach in respect of breach no. 1 and not in breach in respect of breach no. 2. He outlined the 'mitigation' in his statement to the tribunal as follows:

*In mitigation Garda Keogh stated that he suffered from work related stress and was drinking heavily. In respect of breach No 1, I fined Garda Keogh €300.*¹¹⁰⁷

In correspondence dated 9th November 2015, C/Supt Wheatley informed Supt Alan Murray that Garda Keogh had made application for a review of his decision and she requested his rationale, views and observations. He forwarded them to her in a report dated 11th November 2015. He stated that:

I had fined Garda Keogh €300 and my rationale was; Garda Keogh was absent without leave or explanation for four days. In deciding the fine I took in to account that he had no previous

¹¹⁰³ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at pp. 6110-6111

¹¹⁰⁴ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6113

¹¹⁰⁵ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6113

¹¹⁰⁶ Tribunal Documents, Statement of Supt Alan Murray, p. 1775 at p. 1776

¹¹⁰⁷ Tribunal Documents, Statement of Supt Alan Murray, p. 1775 at p. 1776

disciplinary breaches and that he had pleaded guilty to the breach. In imposing a fine of €300 euro I took into account that Garda Keogh had a weekly pay of €840.49 which equates to €168 per day. I imposed a fine of €75 per day that Garda Keogh was absent. I did not believe that Garda Keogh should gain financially from his absence but I did not want to be harsh on him.

*I believe that my fine was fair and just.*¹¹⁰⁸

Supt Alan Murray told counsel for the tribunal his reasons for the decision:

*I was dealing with a man that had gone absent from duty for four days. Resources are tight in Athlone at the best of times. Members on the unit, members on the station communicated with him, letting him know what happened, that he was absent without leave. He didn't respond to that. Mr. Chairman, it is the easiest thing in the world for a guard to report sick. He makes a phone call, causes word to get to the member in charge. That's what we have to do. And that could have been done at any time when Garda Keogh was sick. Garda Keogh, by his own statement to me, knew that he was absent, that queries were being raised, but he did nothing to sort that out. So either way there was going to be a financial penalty, I felt it was justified in this case.*¹¹⁰⁹

Supt Alan Murray was asked by counsel for the tribunal whether he made a copy of his memorandum available to Garda Keogh:

*If he had have asked me, yes. We were sitting at a table, he was opposite me. I took the memo. At no stage did he ask me for a copy of it. He signed it. If he had asked me for a copy of it, of course I would have given it to him.*¹¹¹⁰

Supt Alan Murray outlined to the Chairman the problem of members not reporting for duty as follows:

*As a district officer in Mullingar, I had to have a minimum policing presence of four members working. If only three turned up that night, I then required guards on overtime, which was going to cause me further problems when I next met the chief at our meetings. Over time was to be minded. We did not have the resources.*¹¹¹¹

He continued that:

*And if they are not working, it causes problems for me, the community, but also causes problems on the unit they are working on. Because guards are all watching each other, and if they see one guard getting off with not coming in for a few hours, they're going to expect it.*¹¹¹²

Sergeant Cormac Moylan

Sgt Moylan was Garda Keogh's operational supervisor in July 2015 and outlined in his statement to the tribunal how he became aware that he was absent without leave:

I was Garda Keogh's unit sergeant at the time of his sick report on the 9 July 2015 and subsequent call to report 'off sick' on the 10 July 2015. However, I was on annual leave on the 10 an[d] 11 July 2015 and resting on the 12 July 2015. I returned to work on Monday 13 July 2015 when I became aware that Garda Keogh had not shown up for duty the previous 2 days. I

¹¹⁰⁸ Tribunal Documents, Statement of Supt Alan Murray, p. 1775 at p. 1777

¹¹⁰⁹ Tribunal Transcripts, Day 132, pp. 37-38, Evidence of Supt Alan Murray

¹¹¹⁰ Tribunal Transcripts, Day 132, p. 23, Evidence of Supt Alan Murray

¹¹¹¹ Tribunal Transcripts, Day 132, pp. 53-54, Evidence of Supt Alan Murray

¹¹¹² Tribunal Transcripts, Day 132, p. 54, Evidence of Supt Alan Murray

*tried to call him, to no avail. I subsequently reported his absence to the District Officer, Athlone, Superintendent Murray by email.*¹¹¹³

In his evidence to the tribunal, Sgt Moylan stated that:

*I spoke to the unit, they indicated to me anyway that he hadn't turned up. I tried ringing him, I couldn't get through to him. I know that some of the members tried to ring him because they were able to come back to me – I never got a reply, I never got a text, I never got anything back. But they were able to tell me that – it was from them that I heard that he had broken out and that he was in Tullamore. He was drinking in Tullamore, he had broken out.*¹¹¹⁴

In relation to the email regarding Garda Keogh, Sgt Moylan said in his statement that it was sent to the District Office inbox at 03:15 hrs on 14th July 2015. He also stated that he received a Facebook message from Garda Keogh shortly after midnight on 15th July 2015, at 00:29 hrs.¹¹¹⁵ Sgt Moylan said that he did not respond to this message and that he was not involved in the subsequent disciplinary investigation.¹¹¹⁶

Legal Submissions

Garda Nicholas Keogh submitted as follows:¹¹¹⁷

- that Supt Murray pointed out, both in his contemporaneous note and in evidence, that credit on a phone was not necessary to answer a call but the point that he missed or overlooked was that, if one was unaware of the call or unable to answer a call, credit was necessary to return the call and this was the case with Garda Keogh.
- that Garda Keogh made contact by the means that were available to him but that was ignored by Supt Murray.
- that, at the meeting on 26th March 2015, Supt Murray showed some scepticism about Garda Keogh being under stress. He also recorded his *'doubts'* about Garda Keogh's credibility when he noted that Garda A's presence in the station at the same time as Garda Keogh *'creates scepticism re Garda Keogh's excuse of work-related stress as explained by him'*. This was an example of Supt Murray's discrediting of Garda Keogh, in the same way as he doubted Garda Keogh's credibility in respect of the later incident concerning Ms B driving past Garda Keogh's home on 28th October 2015.
- that Supt Murray filed a report with C/Supt Wheatley recommending that disciplinary action be taken against Garda Keogh, and this letter was evidence that Supt Murray was distrustful and disparaging of Garda Keogh.
- that Garda Keogh was fined to ensure he made no gain from his absence. Supt Murray consciously pursued a course of action which led to Garda Keogh having to repay all the pay he received for the period subject to the disciplinary charge, in addition to the fine. In other words, he was penalised twice in respect of the same incident.
- that on 28th August 2015, Supt Murray wrote to HRPD instructing them to recover an overpayment for 11th to 14th July 2015 from Garda Keogh when he had, at that time,

¹¹¹³ Tribunal Documents, Statement of Sgt Cormac Moylan, p. 604 at p. 607

¹¹¹⁴ Tribunal Transcripts, Day 131, p. 72, Evidence of Sgt Cormac Moylan

¹¹¹⁵ Tribunal Documents, Statement of Sgt Cormac Moylan, p. 604 at p. 608

¹¹¹⁶ Tribunal Documents, Statement of Sgt Cormac Moylan, p. 604 at p. 608

¹¹¹⁷ The tribunal has considered all of Garda Nicholas Keogh's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 14-31 and pp. 172-177

already set in train disciplinary proceedings in respect of the absence. This suggested an animus on the part of Supt Murray in respect of Garda Keogh.

- that at no point did Supt Murray ever inform HRPD that the sanction imposed upon Garda Keogh had already taken account of the fact that he had received pay for the days in question and this was, at the very least, unfair.
- that, on 22nd October 2015, Supt Murray wrote that *'any overpayment... is ancillary to the disciplinary fine imposed'* and added that *'the member is... aware that as a natural consequence of absence without leave both service and superannuation provisions are affected'*. This assertion was untrue as was demonstrated by an examination of Supt Murray's note of the meeting he had with Garda Keogh on 30th August 2015.

An Garda Síochána submitted as follows:¹¹¹⁸

- that Garda Keogh acknowledged his absence and said he had reported fit while drunk, had forgotten he had done so, and had been continuously drinking over the next few days.
- that Supt Murray's note of the conversation was that Garda Keogh stated he would continue going sick *'at will'* and that Supt Murray expressed the view it was not appropriate for a member to commit to returning to work and then not attend: *'I didn't see it as appropriate behaviour and [it] didn't align with the values of the organisation, in my view'*.
- that Garda Keogh provided a retrospective sick certificate on 16th July 2015, which indicated that he had been sick with work related stress over the four-day period. Garda Keogh subsequently applied for three hours' leave in respect of the phone call from Supt Murray but same was refused by reference to a requirement for eligible calls to last a certain duration and for the member not to have contributed to the necessity for the call.
- that Garda Keogh pleaded guilty to the charge of neglect of duty and not guilty to a second charge of discreditable conduct. In mitigation of punishment, Supt Alan Murray had regard to the fact that Garda Keogh suffered from work related stress and was drinking heavily, and that when questioned by Supt Murray, he had admitted his mistake.
- that Garda Keogh confirmed that he took no issue with Supt Alan Murray's approach to the process.
- that Garda Keogh stated that Supt Pat Murray *'vindictively requested'* an acknowledgement of the finding against Garda Keogh, gave *'untrue testimony'* regarding same and enforced a *'cap in hand'* acknowledgement. Garda Keogh clarified at interview that he was referring to the request for acknowledgment of receipt of the documents. The document does not appear to contain any content personally addressed to Garda Keogh.
- Supt Pat Murray described the resources issues facing his department at the time, highlighting that the absences included weekend nights, which could be *'quite... taxing'*. He stated that there were big budgetary issues and a lack of available overtime in Athlone at that time. This was echoed by Supt Alan Murray.
- that it is not at all clear that Garda Keogh understood or appreciated the likely effects of his actions in failing to turn up for duty and the operational pressures this would cause for his colleagues in the station party.

¹¹¹⁸ The tribunal has considered all of An Garda Síochána's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 70-172 and pp. 177-179

- that Garda Keogh claimed that Supt Pat Murray acted as ‘*witness, prosecutor and enforcer*’ and persisted with that complaint until he belatedly accepted at interview, and ultimately in evidence, that he had made a mistake between Pat and Alan Murray. Garda Keogh must have identified the roles of the two superintendents as far back as 2nd December 2015, when he submitted his appeal to C/Supt Wheatley and, therefore, this particular allegation was baseless.
- that disciplinary proceedings were warranted and that, when it was drawn to the attention of C/Supt Wheatley that a member had failed to present for work on four subsequent dates, she had little option but to commence an investigation in respect of the non-appearance of Garda Keogh.
- that non-appearance is unacceptable in any employment context, but in An Garda Síochána it takes on an added significance, and on Garda Keogh’s own account, he did not make contact with the station until the fourth day of his absence.
- that the sanction imposed was proportionate and fair.

Sergeant Cormac Moylan submitted as follows:¹¹¹⁹

- that he was working in Athlone Garda Station on Monday 13th July 2015, not having been on duty the previous weekend, and that he learned from colleagues that Garda Keogh had not shown up to work as scheduled the previous two days which caused him concern.
- that Sgt Moylan spoke to his unit about it and tried to contact Garda Keogh by telephone.
- that Sgt Moylan had no involvement in the disciplining of Garda Keogh.

Sergeant Dermot Monaghan submitted as follows:¹¹²⁰

- that Supt Murray required a report from Garda Keogh regarding his absence from work in July of 2015.
- that it was the responsibility of the unit sergeant to keep in contact with someone who was out sick for more than two days.
- that he was provided with a report and an accompanying sick certificate by Garda Keogh and he sent it to the superintendent, which completed his involvement with the issue.

Discussion

If Garda Keogh had set out to demonstrate the seriousness of the problems with alcohol that he was facing at this time and to deepen unease about his addiction and its consequences, he could scarcely have done so more effectively than he did in this case.

He had been on four days rest followed by a day on sick leave when he phoned the station on 10th July to say that he would come to work on the following day. He obviously believed when he made the phone call that he had recovered from his latest episode of illness resulting from work related stress. The fact that he forgot that he had made the phone call suggests that his drinking was out of control. The picture of a garda on an alcohol binge, unable to remember what he has done and

¹¹¹⁹ The tribunal has considered all of Sgt Cormac Moylan’s legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

¹¹²⁰ The tribunal has considered all of Sgt Dermot Monaghan’s legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

incapable apparently of even answering his phone would surely cause concern, even alarm, to his colleagues and managers as well as friends.

Garda Keogh described how he had failed to turn up for duty with what in one sense was admirable candour but in another sense indicated a dangerous lack of self-awareness. Being able to ascribe this conduct to a medical cause and to call it in aid as and when he wished were not favourable circumstances for his mental and physical health.

Anybody in a position of authority over Garda Keogh would have been deeply concerned about the situation as revealed on 15th July 2015. Insofar as Supt Murray expressed a reservation about the member's capacity to produce a medical certificate validating a claim for illness that the member had disavowed at the time, that was a proper and reasonable concern.

The garda left himself in a position where he was unable to phone the outside world. It seems that he felt he had done the best he could by trying to contact Sgt Moylan using Facebook. The superintendent's point about the mobile phone, that a person did not need credit in order to receive calls, was made in response to Garda Keogh's explanation as to why he had not answered the phone.

Unexplained absence by a garda who remains *incommunicado* is a serious concern for his colleagues and superiors. There is also the question of the burden placed on other members to fill in for him.

Supt Murray's position in regard to the issue of pay and the €300 disciplinary sanction was that these two matters were separate. Garda Keogh had not turned up for work over the period of four days and the superintendent felt that he should not get paid for time when he was not present. His understanding of the relevant regulations was that he was obliged to notify HRPD of a situation such as had arisen in this case. The sanction imposed by Supt Alan Murray was a discrete requirement arising from the neglect of duty charge to which Garda Keogh had pleaded guilty. As the matter is stated here, there was no question of double punishment, simply a recognition of the obligation to pay the sanction and of non-entitlement to be paid when on unauthorised absence.

The situation was not, however, quite so simple. Garda Keogh had produced a medical certificate covering the period of his absence. Although Supt Alan Murray had before him a charge that related to the medical certificate, that resulted in acquittal. HRPD was concerned with this issue and was not satisfied that Garda Keogh's pay should be reclaimed for the period. Supt Pat Murray had a different view, as appears from the documents and the evidence. It may be considered that his position was strict but it cannot be said that it was irrational or that there was no basis for it, or that it must necessarily be considered as being actuated by malice towards Garda Keogh. Supt Murray was entitled to take a different view from that of HRPD.

Conclusion

In the end, Garda Keogh was faced only with the disciplinary sanction. And as Supt Alan Murray explained, the terms and conditions of collection were anything but harsh. It is incorrect to say as Garda Keogh's submissions do that he was punished twice over or that he had to return the payment he received for the four days' absence.

In regard to the complaint that C/Supt Wheatley treated him unfairly and in a manner that represented targeting by refusing to send him a copy of the statement that he had made to Supt

Alan Murray in the course of the disciplinary enquiry, the documentary materials appeared to indicate that a copy of his statement was supplied to Garda Keogh, but he denied receiving it. Although he had pleaded guilty to the first charge and was acquitted of the second, he still maintained that he needed to get a copy of the statement. C/Supt Wheatley considered with some justification that the statement was not material when Garda Keogh had acknowledged this breach of discipline. However that may be viewed, the tribunal rejects the claim that this officer targeted or discredited Garda Keogh in her actions in this case.

The same conclusion applies to Supt Pat Murray, who made an error in respect of the date on which he had the phone conversation with Garda Keogh. He accepted that it was 15th July and not 14th July 2015. Garda Keogh was not satisfied to treat this as a simple error but thought it was another attempt by the superintendent to make the incident appear worse than it actually was.

The suggested errors do not amount to a case of targeting or discrediting of Garda Keogh and there is no suggestion of a connection with the protected disclosure.

CHAPTER 14

ISSUE 9: THE COMPLAINT MADE BY GARDA NICHOLAS KEOGH IN RELATION TO THE ALLEGED CRITICISM OF HIS CRIMINAL INVESTIGATION FILES DURING 2015

The Facts

This issue is concerned with the response of Superintendent Pat Murray to crime files submitted by Garda Nicholas Keogh in respect of four reported incidents in the period between 4th July 2015 and 13th September 2015.

Case 1: Thefts at Custume Place

Garda Keogh was the investigating member in relation to two thefts that took place on 4th July 2015. Athlone was very busy with an event known as triAthlone and the two thefts occurred in a premises where a dance workshop was being held. Sometime between 20:00 hrs and 21:00 hrs an intruder gained access through a door that was left open for latecomers and went upstairs where one person's purse and another's mobile phone were stolen.

The thefts were recorded separately as two crimes. In relation to the first, Sergeant Cormac Moylan was recorded as the nominated supervisor on the crime file where the following '*Remarks of Supervisor*' are recorded:

CCTV viewed but of no evidential value as camera panning quickly past premises. _____ collated at Custume Place at time of offence, possible suspect

*Statement of L/P enclosed.*¹¹²¹

This is signed and dated by Sgt Moylan. Under the heading '*(12) Additional Enquiries Conducted*' it is recorded that '*cctv viewed with L/P and info passed to members on patrol.*' It was also recorded under the heading '*(13) Investigating Member Comments*' that '*_____ in area around time of crime no other evidence.*'¹¹²²

The statement was written by the injured party, dated 4th July 2015.¹¹²³ This was made by the witness and appears to have several words crossed out in the body of the statement. Garda Keogh's handwriting at the bottom of the statement includes the sentence '*[n]obody had permission to take my property this statement has been read over to me and is correct*' and is signed by the witness and witnessed by Garda Keogh with his signature thereon.¹¹²⁴ There are four further lines on the next page of the witness statement document which are crossed out. These read as follows:

*The person we suspected of stealing these items has confessed to entering the building and eating food on the stairs, very conveniently.*¹¹²⁵

¹¹²¹ Tribunal Documents, Crime Report, dated 5th July 2015, p. 190

¹¹²² Tribunal Documents, Crime Investigation Tracking Form/Checklist, dated 5th July 2015, pp. 190-191

¹¹²³ Tribunal Documents, Statement of Injured Party, dated 4th July 2015, p. 192

¹¹²⁴ Tribunal Documents, Statement of Injured Party, dated 4th July 2015, p. 192

¹¹²⁵ Tribunal Documents, Statement of Injured Party, dated 4th July 2015, p. 192 at p. 193

In relation to the second theft, again Sgt Moylan was the supervisor and the following ‘*Remarks of Supervisor*’ are recorded:

*CCTV viewed but of no evidential value. _____ was at Custume Place at this time, possible suspect. Statement of L/P enclosed.*¹¹²⁶

This was signed and dated by Sgt Moylan. Under the heading ‘(12) *Additional Enquiries Conducted*’ it was recorded that ‘*Info passed to patrol cars + members on duty in area*’. It was also recorded under the heading ‘(13) *Investigating Member Comments*’ that ‘_____ in area around time during *TriAthlone*’.¹¹²⁷

The statement made by the injured party herself was included.¹¹²⁸ There were words crossed out in the body of the statement.

The witness said in the statement that when she realised her phone was missing, she called the number repeatedly but the person in possession eventually switched off the phone. She called the network and blocked the phone. She said in her statement that ‘*the person who we suspect took the phone cycled past the building and stopped and looked at us. We then went to the Garda station to report the crimes*’.¹¹²⁹ In Garda Keogh’s handwriting at the end of the statement it is recorded as follows:

*I did not give anyone permission to take my property. This statement has been read over to me and is correct.*¹¹³⁰

It was signed by the witness and witnessed by Garda Keogh with his signature thereon.

These two files were sent to Supt Murray in accordance with the procedure described above. Supt Murray considered them and by minute dated 30th July 2015, directed to the sergeant in charge, Supt Murray wrote the following:

The attached two crime files are returned for further attention as follows:

- *A suspect has been identified in both cases. What efforts have been made to deal with them?*
- *Why is it that both injured parties who are witnesses appear to have written out their own statements on form CS, rather than the investigating member taking down the statement?*

Each and every reported crime must be brought to investigative conclusion so the injured parties and public in general can have confidence in the police service we provide.

*For report by 10/08/15.*¹¹³¹

This was forwarded to Garda Keogh by Sgt Monaghan on 11th August 2015, enclosing a copy of the report from Supt Murray and asking Garda Keogh to address the points raised by him in the report and to return the file with the report and developments to date.¹¹³²

The letter of 18th August 2015, as quoted at the outset, subsequently issued to each sergeant and member in the Athlone District.¹¹³³

¹¹²⁶ Tribunal Documents, Crime Report, dated 5th July 2015, p. 194

¹¹²⁷ Tribunal Documents, Crime Investigation Tracking Form/Checklist, dated 5th July 2015, pp. 194-195

¹¹²⁸ Tribunal Documents, Statement of Injured Party, dated 4th July 2015, p. 196

¹¹²⁹ Tribunal Documents, Statement of Injured Party, dated 4th July 2015, p. 196

¹¹³⁰ Tribunal Documents, Statement of Injured Party, dated 4th July 2015, p. 196

¹¹³¹ Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge Athlone, dated 30th July 2015, p. 197

¹¹³² Tribunal Documents, Letter from Sgt Dermot Monaghan to Garda Nicholas Keogh, dated 11th August 2015, p. 200

¹¹³³ Tribunal Documents, Letter from Supt Pat Murray to sergeants and members Athlone District, dated 18th August 2015, pp. 2121-2122

Garda Keogh replied to this minute by his handwritten report date stamped 28th August 2015 in the following terms:

Sgt Monaghan,

This was the day of TriAthlone. _____ along with hundreds of other people were in the area. There is no evidence to link _____ to this crime.

In relation to why both statements were taken the way they were on C8s is because I was on my own in the public office during the TriAthlone It was very busy when the 2 injured parties arrived in, so I did the best I could under the circumstances

Forwarded for your information please.¹¹³⁴

This explanation was forwarded by Sgt Monaghan to Supt Murray on the same date, reporting to him as follows:

With reference to the above please find attached report from Garda Keogh. He states that he received the two reports while he was acting as Public Officer in Athlone Garda Station. This was the day of the Triathlon and the town and the station were busy. He got both injured parties to write their own statements which he read over to them on conclusion and they both signed them in his presence declaring them to be true. There is no evidence to suggest that the culprit in this case was _____ owing to the large crowds in town that day. The matter will remain under investigation.¹¹³⁵

Supt Murray referred to these crime files and another one concerning criminal damage at Mulligan's Filling Station when he met Garda Keogh on 30th August 2015 to serve a disciplinary document in relation to the July AWOL issue. Supt Murray's note of the meeting recorded that:

Met the member to serve LA12 for Supt. Mullingar re discipline AWOL July. It was clear the member was annoyed at events. I explained to him I had indicated this might happen because of his cavalier attitude towards his work obligations. At his request I explained Reg. 14 to him in full. I also enquired as to his welfare and alcohol addiction problem. He was reticent to discuss same. I am aware he engaged with welfare service, Garda M. Quinn. I asked him about his work and explained I noticed poor work standards. I cited two crime files where IP wrote statement on C8. No follow up, and recent letter re _____ family. I asked him if events were impacting on his work and said if he continued as at present I would have to consider reducing the risk he posed by taking him off outdoor duty. He asked me to continue to send him my issues in writing. He said he would do what he liked. I assured him he could not. The meeting ended on that.¹¹³⁶

Supt Murray replied to the sergeant in charge by minute dated 3rd September 2015 and stated that:

The explanation given in this case, for what I see is a laissez faire attitude towards the investigation of these two crimes, is far from satisfactory. Garda Keogh appears to need advice in relation to the purpose and scope of interviewing witnesses and in that regard should be advised in relation to the existing instructions at Chapter 3 of the Crime Investigations Manual. The manner in which these statements form part of an investigation is contrary to the training and

¹¹³⁴ Tribunal Documents, Letter from Garda Nicholas Keogh to Sgt Dermot Monaghan, dated 28th August 2015 p. 201

¹¹³⁵ Tribunal Documents, Letter from Sgt Dermot Monaghan to Supt Pat Murray, dated 28th August 2015, p. 2275

¹¹³⁶ Tribunal Documents, Note of Supt Pat Murray, dated 30th August 2015, p. 2246

ethos of member of An Garda Siochana and does not allow for this organisation to assure the victims in this case that the best possible effort was put into investigating the crimes reported.

The basis of any investigation is the injured parties statement and in these cases the injured parties nominate a suspect. That issue must be explored in a proper fashion with them. Indeed Garda Keogh has also nominated the same suspect on the Crime Tracking file. It is incumbent on us to ensure we explore the various options available to assist in gathering evidence. The case of DPP v. Reddy indicates the low threshold in relation to reasonable suspicion that exists in order to assist investigations. The tools available to Garda Keogh to assist him with his work are not used in this case. In order to bring this matter to an acceptable conclusion for the victims please address the following:

Garda Keogh should be given formal advice regarding the investigation of crime and the importance of interviewing witnesses. Chapter 3 of the Crime Investigation Manual is a source of reference.

What efforts have been made to include/exclude the suspect identified as 2 months have passed this matter needs urgent attention.

Sergeant Monaghan should ensure Garda Keogh is supervised in bringing this matter to a conclusion so that the Victims Office can advise the injured parties of the efforts An Garda Siochana put into solving their crimes.¹¹³⁷

Sergeant Michelle Baker forwarded this correspondence to Sgt Monaghan for his information and attention, and for that of Garda Keogh, also by minute dated 7th September 2015.¹¹³⁸ Garda Keogh, following receipt of this memo, recorded in his diary for 7th September 2015 that:

Supt. Murray sends down shite re: taking statements on C8s.¹¹³⁹

Sgt Monaghan returned the attached crime files with Supt Murray's report for Garda Keogh's attention and asked him to address the issues raised by the superintendent in his report.¹¹⁴⁰ Garda Keogh sent back a handwritten report, date stamped 22nd September 2015, as follows:

Sgt Monaghan,

Re: Theft Custume Place 4.7.15

With reference to above I have already written on this and explained verbally to Supt Pat Murray regarding the statements which are legally binding and valid made by the injured parties on C.8 Forms which were read over to both witnesses who signed same. When I got a chance I brought _____ into cctv room and viewed the footage with her but it did not show the suspect enter or leave the building. I also wish to point out that neither of the witnesses named a suspect in their statements. I nominated a suspect _____ who was in the area at the time along with hundreds of other people for the TriAthlone event. There is no evidence to link him to this crime.

Forwarded for your information, please.¹¹⁴¹

¹¹³⁷ Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge Athlone, dated 3rd September 2015, pp. 202-203

¹¹³⁸ Tribunal Documents, Letter from Sgt Michelle Baker to Sgt Dermot Monaghan, dated 7th September 2015, p. 204

¹¹³⁹ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 7th September 2015, p. 13328

¹¹⁴⁰ Tribunal Documents, Letter from Sgt Dermot Monaghan to Garda Nicholas Keogh, dated 7th September 2015, p. 205

¹¹⁴¹ Tribunal Documents, Handwritten report of Garda Nicholas Keogh to Sgt Dermot Monaghan, dated 22nd September 2015, p. 208

This report was received by Sgt Monaghan on 5th October 2015, who, by minute of the same date reported to Supt Murray that:

With reference to the above please find attached report from Garda Keogh. Chapter 3 of the Crime Investigation Manual has been brought to the attention of Garda Keogh. Garda Keogh nominated _____ for these Thefts but has since been unable to link him with the crimes. All CCTV was viewed and this gave no leads in the investigation. This case cannot be progressed at this time and any developments will be reported to your office as they arise.

*Forwarded for your information, please.*¹¹⁴²

This was received by Supt Murray in his office on 6th October, who replied:

*I note your views. The crime file have been sent to the victims office who will inform the IP's of the efforts made and the result. I do not expect to see a repeat of this situation from the member involved.*¹¹⁴³

Case 2: Theft of a trailer at Dublin Road

The injured party in this case parked a trailer in the driveway of his residence on 7th August 2015 but noticed it had been removed on 8th August 2015 and reported it as stolen. Garda Keogh was the investigating officer and he prepared a crime file on 11th August 2015, naming Sgt Monaghan as supervisor. The *'Remarks of Supervisor'* on the front of the file recorded *'CCTV viewed to no avail as it is poor quality. No ID for suspects.'* This was signed and dated by Sgt Monaghan.¹¹⁴⁴

Under the heading *'(12) Additional Enquiries Conducted'* it was recorded that *'Garda CCTV viewed crime occurred 4.31 to 4.34am 8.8.15 poor quality footage of car moving with stolen trailer hitched.'* It was also recorded under the heading *'(13) Investigating Member Comments'* that the investigating member was *'unable to make out registration number colour or type of car'*.¹¹⁴⁵

Garda Keogh had in fact visited the premises of a local garage in order to try and ascertain whether they might have any relevant CCTV footage. This was at approximately 04:30 hrs on 8th August 2015. He was informed that it was not possible to download the video or view the footage at that point in time. On 9th August 2015, Garda Keogh took a statement from the owner of the stolen trailer.¹¹⁴⁶ A precis of evidence, dated 20th November 2015, stated that:

*Enquiries were carried out and CCTV checked and a car can be seen on Garda CCTV footage going out the Dublin road by the college. The same car was also captured on CCTV at Kilmartins filling station Dublin road Athlone a short time before the theft.*¹¹⁴⁷

The crime report did not record that Garda Keogh had made a visit to Kilmartin's Service Station to initiate a possible line of enquiry but had been unable to view video footage from the CCTV and was awaiting the downloading of same. The file was submitted to Supt Murray for closure in accordance with the procedure referred to above. On foot of this Supt Murray wrote a minute to the sergeant in charge dated 14th August 2015 stating:

¹¹⁴² Tribunal Documents, Letter from Sgt Dermot Monaghan to Supt Pat Murray, dated 5th October 2015, p. 207

¹¹⁴³ Tribunal Documents, Handwritten note from Supt Pat Murray to sergeant in charge Athlone, dated 6th October 2015, p. 207

¹¹⁴⁴ Tribunal Documents, Crime Report, dated 11th August 2015, p. 213

¹¹⁴⁵ Tribunal Documents, Crime Investigation Tracking Form/Checklist, dated 11th August 2015, pp. 213-214

¹¹⁴⁶ Tribunal Documents, Statement of Injured Party, dated 9th August 2015, p. 8967

¹¹⁴⁷ Tribunal Documents, Precis of evidence, dated 20th November 2015, p. 8980

In relation to the stolen trailer who supplied the CCTV. No statement from that person on file. Has any effort been made to enhance the CCTV, should it be circulated in any way. Where is the CCTV, now?

*For report by 01/09/2015.*¹¹⁴⁸

Garda Keogh replied by handwritten report which stated, inter alia, that:

It is Garda cctv which is stored on computer. The incident happened at night and the quality is poor.

*Forwarded for your information please.*¹¹⁴⁹

The manager of Kilmartin's Service Station viewed the CCTV footage on Monday 10th August 2015 and saw a car, whose registration number he noted. He downloaded the footage onto a disc and left it for collection for Garda Keogh. There is no record of when Garda Keogh collected this, or whether it was left in Athlone Garda Station for him, or when he took possession of it. The manager subsequently made a statement to Garda Keogh on 9th September 2015 confirming the above, and also confirming that on Saturday 8th August 2015 Garda Keogh had contacted Kilmartin's Service Station, regarding CCTV at about 04:30 hrs.¹¹⁵⁰

The PULSE record for the incident recorded as follows:

Updated 28/08/15 as per [Garda Keogh]. added veh.

Updated by 26742B on 11/8/15. Crime File submitted. No suspects.

*i/p reports trailer stolen from driveway of house.*¹¹⁵¹

Sgt Monaghan sent a report to Supt Murray on 28th August 2015 with reference to above:

*[P]lease find attached report from Garda Keogh. He states that he wrote the statement from the injured party on the Form C8. The only CCTV footage available to cover the location of the Theft is Garda CCTV and on viewing it the quality is poor as it was night time and this CCTV is stored on the hard drive in the station. Garda Keogh has since obtained CCTV footage from Kilmartins N6 Centre and this shows two possible suspect vehicles which he has updated the incident with. Enquiries are ongoing in this case and any progress will be reported.*¹¹⁵²

Inspector Aidan Minnock was informed of this development and emailed Garda Keogh on 31st August 2015 stating 'good work in advancing this investigation'.¹¹⁵³ Supt Murray replied on 3rd September 2015 by minute to the sergeant in charge stating that:

The incident regarding the theft of the trailer requires further explanation in relation to the CCTV. It appears the Crime File was submitted prematurely indicating no evidence was available and now evidence has come to light following a request for further information.

The following issues have not been dealt with:

1. My question in relation to CCTV in correspondence dated 14/8/15 has not been answered.

¹¹⁴⁸ Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge Athlone, dated 14th August 2015, p. 215

¹¹⁴⁹ Tribunal Documents, Handwritten report of Garda Nicholas Keogh to Sgt Dermot Monaghan, dated 28th August 2015, p. 216

¹¹⁵⁰ Tribunal Documents, Witness statement, dated 9th September 2015, p. 221

¹¹⁵¹ Tribunal Documents, PULSE extract, p. 8921

¹¹⁵² Tribunal Documents, Letter from Sgt Dermot Monaghan to Supt Pat Murray, dated 28th August 2015, p. 217

¹¹⁵³ Tribunal Documents, Email from Insp Aidan Minnock to Garda Nicholas Keogh, dated 31st August 2015, p. 218

2. *The car identified was involved in a burglary in Ballinasloe on 09/08/15. What liaison has occurred with the investigating member of that incident.*
3. *How is it proposed to allow the CCTV harvested to assist the investigation.*
4. *Where is the CCTV now from an evidential exhibit point of view.*

*Sergeant Monaghan should supervise the proper investigation of this crime so that we can show to the victim that we were thorough and professional in our approach to solving the crime.*¹¹⁵⁴

A report on items 1 to 4 was requested in that minute by 20th September 2015. This was forwarded by Sgt Monaghan to Garda Keogh on 8th September 2015, asking him to address the points raised.¹¹⁵⁵

On 11th September 2015, Garda Keogh updated the PULSE record in relation to the time of the occurrence of the theft.¹¹⁵⁶ Garda Keogh subsequently reported, by handwritten report of 12th September 2015, to Sgt Monaghan in the following terms:

- 1) *Garda CCTV of poor quality saved. Kilmartins cctv downloaded. Statement regarding same attached to file.*
- 2) *Garda Keogh has spoken with Garda _____ and supplied Garda _____ with copy of Kilmartins cctv of car and suspects. Both incidents connected on pulse and warning attached to [car registration] which is registered to a false address.*
- 3) *CCTV forwarded with request to be put on G.Tube on 10.9.15.*
- 4) *Garda Keogh has original cctv, copys of same forwarded to Garda _____ Ballinasloe G.S and G.Tube.*¹¹⁵⁷

The statement of the manager of Kilmartin's Service Station taken on 9th September 2015 by Garda Keogh was included with this report. The PULSE record subsequently was updated by another garda with the footage of the two possible suspects and a bulletin issued in relation to them.¹¹⁵⁸

Sgt Monaghan reported, by minute of 19th September 2015, to the superintendent, enclosing Garda Keogh's report and noting that:

Garda Keogh has addressed points 1-4 raised in you report dated the 3/9/15.

All the CCTV is saved and the originals are in the possession of Garda Keogh. A copy of the CCTV has been forwarded to Garda _____ in Ballinasloe and Garda Keogh has been in contact with this member in relation to possible suspects for both cases, and another copy has been forwarded to the Collator in Mullingar to be uploaded on G Tube. Garda Keogh has put a warning on PULSE in relation to the suspected offending vehicle [car registration] and has made contact with Gardai in Kildare where the car is registered to.

This address is false.

*This crime is still under investigation and any further progress will be reported as it arises.*¹¹⁵⁹

¹¹⁵⁴ Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge Athlone, dated 3rd September 2019, p. 219

¹¹⁵⁵ Tribunal Documents, Letter from Sgt Dermot Monaghan to Garda Nicholas Keogh, dated 8th August 2015, p. 220

¹¹⁵⁶ Tribunal Documents, PULSE extract, p. 8921

¹¹⁵⁷ Tribunal Documents, Handwritten report of Garda Nicholas Keogh to Sgt Dermot Monaghan, dated 12th September 2015, p. 220

¹¹⁵⁸ Tribunal Documents, PULSE extract, p. 8921

¹¹⁵⁹ Tribunal Documents, Letter from Sgt Dermot Monaghan to Supt Pat Murray, dated 19th September 2015, p. 222

This was received in the superintendent's office on 22nd September 2015 and Supt Murray, on 23rd September 2015, endorsed the following on the file:

*Noted. I appreciate the additional enquiries carried out which ensure the organisation is achieving its goals in relation to the investigation of crime. Report on the efforts at identification by 1/11/15.*¹¹⁶⁰

This was forwarded to Sgt Monaghan, requesting Garda Keogh to report any developments by 1st November 2015.¹¹⁶¹ Garda Keogh subsequently showed a copy of the footage to Garda Shane Monaghan, who identified the two offenders in the CCTV footage as persons he had previously dealt with. He made a statement to that effect to Garda Keogh on 31st October 2015.¹¹⁶²

Garda Keogh made an application to perform overtime pursuant to the Haddington Road protocol, dated 2nd November 2015, for the purpose of carrying out the arrest of suspects who were due to appear in Naas District Court on 18th November 2015. This was sanctioned by Supt Murray.¹¹⁶³ At the same time, Supt Murray wrote to the sergeant in charge regarding this application, noting that Garda Keogh intended working on 18th November 2015 from 08:00 hrs to 18:00 hrs and from 21:00 hrs to 07:00 hrs and enquiring '*will the member be able for these long hours or will anything consequential arise?*'¹¹⁶⁴

Garda Keogh phoned Detective Sergeant Eamon Curley on 16th November 2015 to inform him that he would not be able to go ahead with the planned arrest as he had relapsed. He asked for other members to be assigned. D/Sgt Curley reported this to Supt Murray in writing, and also reported that Garda Keogh had phoned him on 18th November to report that he '*wouldn't be able to make it today*'.¹¹⁶⁵ The superintendent made a note of the same.¹¹⁶⁶

Case 3: Criminal damage at Mulligan's Filling Station

At 03:37 hrs on 3rd August 2015 the owner of Mulligan's Filling Station was notified of an alarm activation at the store. He noticed the window of the shop had been smashed and a brick and a large stone were on the ground. He viewed the CCTV with the gardaí, which showed two males wearing tracksuits and hoodies covering their faces, and also wearing gloves. They ran up to the shop door and each threw an object at the window causing it to smash.¹¹⁶⁷ He informed the gardaí that the CCTV would be downloaded in due course and made a statement in relation to the matter on 9th August 2015.¹¹⁶⁸

In the interim, the incident had been entered on PULSE, listing the reporting garda as Garda John J. Glennon, the investigating garda as Garda Keogh and the nominated supervisor as Sgt Monaghan. The PULSE entry recorded that:

*updated gvso letter one sent along wiht info leaflets, contacted i/p, this is an organisation, email sent to cpo for advice 2 males wearing tracksuits and hoodies threw rocks at a petrol station cracking a pane of glass. cctv viewed to be downloaded. no suspects, faces not visible.*¹¹⁶⁹

¹¹⁶⁰ Tribunal Documents, Handwritten note of Supt Pat Murray to Sgt Dermot Monaghan, dated 22nd September 2015, p. 222

¹¹⁶¹ Tribunal Documents, Letter from Sgt Michelle Baker to Sgt Dermot Monaghan, dated 23rd September 2015, p. 223

¹¹⁶² Tribunal Documents, Statement of Garda Shane Monaghan, p. 8969

¹¹⁶³ Tribunal Documents, Application to perform overtime, dated 2nd November 2015, p. 2303

¹¹⁶⁴ Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge Athlone, dated 4th November 2015, p. 2302

¹¹⁶⁵ Tribunal Documents, Letter from D/Sgt Eamon Curley to Supt Pat Murray, dated 17th November 2015, pp. 2304-2305

¹¹⁶⁶ Tribunal Documents, Note of Supt Pat Murray, dated 16th November 2015, p. 2306

¹¹⁶⁷ Tribunal Documents, Statement of Injured Party, dated 9th August 2015, pp. 8945-8946

¹¹⁶⁸ Tribunal Documents, Statement of Injured Party, dated 9th August 2015, pp. 8945-8946

¹¹⁶⁹ Tribunal Documents, PULSE extract, p. 8944

The crime report recorded the *Remarks of Supervisor* as *No Suspects to date*.¹¹⁷⁰ Under heading *(12) Additional Enquiries Conducted* it was stated *Area searched for culprits*.¹¹⁷¹ After it was submitted to Supt Murray, he wrote a minute dated 14th August 2015, *inter alia*, in relation to this as follows:

*In relation to Mulligan's it appears [family name] may be suspect. Was this put to them in any way.*¹¹⁷²

Supt Murray directed a report by 1st September 2015. Garda Keogh replied to this, amongst other matters, by handwritten report on 28th August 2015. At number 2, he stated that *in relation to the _____ being suspects. There is no evidence to suggest this and when I spoke to _____ he did not feel it could be them as they do not frequent the area*.¹¹⁷³ This was forwarded by Sgt Monaghan on the same date to Supt Murray, stating that:

*Garda Keogh indicates there is no evidence to suspect the [family name] of this damage and that on speaking with the owner _____ he is happy that it was not the [family name] as they do not frequent this area. Any developments will be reported.*¹¹⁷⁴

This file was considered by Supt Murray in conjunction with the theft of the trailer at Dublin Road, Athlone. On 3rd September 2015, Supt Murray directed that *the crime file in relation to Mulligan has been sent to the Victims Office so they can inform the injured party of our lack of progress due to the unavailability of avenues of enquiry to progress the case*.¹¹⁷⁵

Case 4: Robbery

This incident involved the robbery of a person between 02:30 hrs and 03:30 hrs on the morning of 13th September 2015. Garda Keogh was the investigating garda and Sgt Monaghan the nominated supervisor. The PULSE record in relation to this reported that:

*i party walking home through st mels to sarsfield square and under train bridge was mugged by 2 males had 20 euros stolen.patrol of area with ip who pointed out scene neg results. suspects were irish in 20s 1) wearing white airmax top & black tracksuit bottoms. 2) wearing blue mc Eenzie wind sheet top. both fled towards waste ground behind sarsfield sq. no cctv.*¹¹⁷⁶

Garda Keogh, who was on night duty, was going off duty later that morning but was also taking rest days and annual leave which had been booked. He was not due to work again until 19th September 2015. He made a handwritten report on the morning of 13th September 2015 referring to the robbery in the following terms:

With reference to above a Robbery from the person was reported at 4a.m. 13.9.15. The injured party _____ of _____, Athlone, DOB _____, mobile _____, was intoxicated and after pointing out the scene was brought home by Gardaí.

Garda Keogh is going onto rest days and has 2 days Annual leave booked and is not due to work until 19.9.15.

¹¹⁷⁰ Tribunal Documents, Crime Report, dated 11th August 2015, p. 8942

¹¹⁷¹ Tribunal Documents, Crime Investigation Tracking Form/Checklist, dated 11th August 2015, pp. 8942-8943

¹¹⁷² Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge Athlone, dated 14th August 2015, p. 215

¹¹⁷³ Tribunal Documents, Handwritten report of Garda Nicholas Keogh to Sgt Dermot Monaghan, dated 28th August 2015, p. 216

¹¹⁷⁴ Tribunal Documents, Letter from Sgt Dermot Monaghan to Supt Pat Murray, dated 28th August 2015, p. 217

¹¹⁷⁵ Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge Athlone, dated 3rd September 2015, p. 219

¹¹⁷⁶ Tribunal Documents, PULSE extract, pp. 8999-9000

This was a serious incident and the I.P may have injuries. Could this be forwarded to D.Branch for favour of immediate investigation.

*Forwarded for your information please.*¹¹⁷⁷

A statement from the injured party was taken by Garda A on 14th September 2015.¹¹⁷⁸ According to Supt Murray, Sgt Baker brought it his attention at the daily PAF meeting that the report from Garda Keogh was far from satisfactory.¹¹⁷⁹

D/Sgt Curley reported to Supt Murray on 14th September 2015 that the injured party did not wish to pursue the matter.¹¹⁸⁰ D/Sgt Curley's report to the superintendent forwarded the original statement from the injured party given to Garda A¹¹⁸¹ and said that Garda A reported that the injured party was reluctant to meet with him, stating that he didn't wish to pursue the matter. D/Sgt Curley noted, *inter alia*, that:

The witness statement as recorded is lacking in detail regarding description of offenders. However as the victim is reluctant to co-operate it is difficult to envisage how a prosecution could be successful even if a suspect could be identified.

*I recommend consideration be given to re-categorise this incident due to the attitude of the victim.*¹¹⁸²

Garda John Divilly, who had taken over as investigating officer, was tasked to speak to the injured party to ask four questions:

- 1) *Reason why he does not wish for this incident to be investigated.*
- 2) *Better description of offenders.*
- 3) *What injuries he received.*
- 4) *Had he any alcohol consumed.*¹¹⁸³

Garda Divilly reported the replies to the questions by letter of 15th September 2015, as follows:

- 1) *_____ has informed Garda Divilly that he just wants to forget about this incident. He was not seriously injured and does not want the matter investigated. He says he is not being intimidated in not pursuing this matter.*
- 2) *One suspect had bucked teeth, approx 5ft8 tall, medium build. Both had their hoods up. One was wearing a black hoodie and the other was wearing a blue hoodie. He has no description of the second suspect other than the colour of his jacket.*
- 3) *He received a bruise to his head and cuts to his knuckles which was caused when he attempted to fight off his assailants. His mother is a nurse and treated his injuries at home. He did not attend a doctor or hospital.*

¹¹⁷⁷ Tribunal Documents, Handwritten report of Garda Nicholas Keogh to sergeant in charge Athlone, dated 13th September 2015, p. 502

¹¹⁷⁸ Tribunal Documents, Statement of Injured Party, dated 14th September 2015, p. 504

¹¹⁷⁹ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2049

¹¹⁸⁰ Tribunal Documents, Letter from D/Sgt Eamon Curley to Supt Pat Murray, dated 14th September 2015, pp. 500-501

¹¹⁸¹ Tribunal Documents, Letter from D/Sgt Eamon Curley to Supt Pat Murray, dated 14th September 2015, pp. 500-501

¹¹⁸² Tribunal Documents, Letter from D/Sgt Eamon Curley to Supt Pat Murray, dated 14th September 2015, pp. 500-501

¹¹⁸³ Tribunal Documents, Letter from Garda John Divilly to sergeant in charge Athlone, dated 15th September 2015, p. 498

4) _____ *said he was drunk at the time of the incident.*

Garda Divilly informed _____ that it was his choice if he did not want the matter to be investigated but if he changed his mind to contact Gardaí. Garda Divilly informed him it would be better for the investigation to start sooner. However, _____ is adamant that he does not wish for the matter to be investigated.

*Forwarded for your information, Please.*¹¹⁸⁴

Having received Garda Divilly's report, D/Sgt Curley then reported, on 16th September 2015, to Supt Murray attaching that report and stating '*this incident cannot be investigated without the cooperation of the victim*'.¹¹⁸⁵ He then went on to say that:

*The credibility of the victim has to be questioned as it is not normal that a victim would refuse to co-operate and pursue a robbery complaint. Consequently I recommend this incident be re-categorised to attention and complaints following the outcome of the interview with the victim.*¹¹⁸⁶

This incident was re-categorised on PULSE by updating the incident summary report on 23rd September 2015 to read as follows:

*Updated on 23.9.15 – incident recategorised by _____ as per directions from District Officer Athlone. Ref. AT 135.160/IS refers. Injured party refused to co-operate with investigation and refused to make a statement of complaint. No evidence that the crime occurred as initially reported.*¹¹⁸⁷

HQ Directive 139/2003, entitled '*Crime Counting Rules*' provides, at paragraph 1.7, that:

*If a criminal offence has been recorded and a Garda investigation subsequently determines that a criminal offence did not take place the criminal offence should be marked invalid on PULSE.*¹¹⁸⁸

Chapter 33 of the Garda Síochána Code, headed '*Crimes and Offences: Reporting and Recording*' provides, *inter alia*, that:

33. 2 Recording Criminal Offences

- (1) *A criminal offence is recorded when there is a reasonable probability that a criminal offence took place and there is no credible evidence to the contrary. The test is that of a reasonable probability – whether it is more likely than not that a criminal offence took place...*
- (3) *If the criteria to record are satisfied (reasonable probability and no credible evidence to the contrary) and the victim does not want the matter taken any further, a criminal offence shall nonetheless be recorded.*
- (4) *The following rule applies to criminal offences where victim confirmation is required to complete the offence, e.g., assault and fraud. Where the alleged victim (or a person reasonably assumed to be acting on his/her behalf) declines to confirm that a criminal offence took place, or cannot be traced, a criminal offence should not be recorded unless there is evidence to suggest that there is a reasonable probability that the criminal offence took place...*

¹¹⁸⁴ Tribunal Documents, Letter from Garda John Divilly to sergeant in charge Athlone, dated 15th September 2015, pp. 498-499

¹¹⁸⁵ Tribunal Documents, Letter from D/Sgt Eamon Curley to Supt Pat Murray, dated 16th September 2015, p. 497

¹¹⁸⁶ Tribunal Documents, Letter from D/Sgt Eamon Curley to Supt Pat Murray, dated 16th September 2015, p. 497

¹¹⁸⁷ Tribunal Documents, PULSE extract, p. 496

¹¹⁸⁸ Tribunal Documents, HQ Directive 139/2003 '*Crime Counting Rules*', dated 4th September 2003, p. 7981 at p. 7982

33. 9 Compliance with Crime Counting Rules

*District Officers are responsible for ensuring compliance with the crime counting rules from Code 33.1 to 33.8 in their Districts. All information recorded on PULSE must comply with these rules. Supervisors will pay particular attention to compliance when carrying out PULSE supervisory reviews.*¹¹⁸⁹

A printout of the file history of the PID recorded that, on 16th September 2015, the following was sent to the superintendent, under the heading ‘*Comments*’:

*FOR DIRECTION – CREDIBILITY OF VICTIM IS IN QUESTION AND HAS REFUSED TO COOPERATE WITH GARDAI RECOMMEND INCIDENT TO BE RECATEGORISED TO ATTENTION AND COMPLAINTS.*¹¹⁹⁰

A reply from the superintendent was recorded, under the heading ‘*Comments*’:

*AGREE PROCEED TO RECATEGORISE THE INCIDENT TO ATTENTION AND COMPLAINTS FOLLOWING THE OUTCOME OF THE INTERVIEW WITH THE VICTIM WHOSE CREDIBILITY IS QUESTIONED RETURN FOR FILING BY 15/10/15.*¹¹⁹¹

This was followed by an entry of the same date with the heading ‘*Comments*’ sent to the sergeant in charge:

*REPORT REQUESTING PROPER REPORT FROM GARDA KEOGH AND OUTLINING WHAT IS REQUIRED. FORWARDED FOR REPLY BY 15/10/15.*¹¹⁹²

An entry for 24th September 2015 recorded, under the heading ‘*Comments*’, that:

*INCIDENT RECATEGORISED BY DBRANCH AND FILE RTD FOR FILING.*¹¹⁹³

Following the reclassification, Supt Murray wrote to Sgt Monaghan on 23rd September 2015:

I refer to the above matter and my correspondence attached regarding reporting incidents.

In this case the incident on the face of it was serious. The scant report submitted does not give any indication of what investigative steps were taken at the initial reporting stage regarding the scene, searches of it, CCTV issues, injured parties, account of events and descriptions of assailants, what was taken, what violence was used, what injuries were received, whether photographs were taken etc. These issues are the basic steps required at the commencement of any investigation. The duties of the first member at a scene are also set out clearly in the CIT manual but are not recorded in this report.

I require an explanation please as to why this matter was dealt with in the fashion chosen.

*Report by 15/10/15.*¹¹⁹⁴

Garda Keogh replied by handwritten report date stamped 2nd October 2015, as follows:

With reference to attached report This incident was reported to Gardai at 4am 13.9.15. The injured party _____ was brought to the scene where it was searched The injured party was

¹¹⁸⁹ Tribunal Documents, Chapter 33 of An Garda Síochána Code Part I Crimes and Offences: Reporting and Recording, pp. 7981-7984

¹¹⁹⁰ Tribunal Documents, PULSE extract, p. 9005

¹¹⁹¹ Tribunal Documents, PULSE extract, p. 9005 at p. 9006

¹¹⁹² Tribunal Documents, PULSE extract, p. 9005 at p. 9007

¹¹⁹³ Tribunal Documents, PULSE extract, p. 9005 at p. 9007

¹¹⁹⁴ Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge Athlone, dated 23rd September 2015, p. 505

driven around the area in an effort to identify the suspects. There is no CCTV in the area the incident occurred. The injured party was then brought home and placed in the care of his mother. When I returned to work on 19.9.15 having already written a report on the incident and put it on Pulse I rang the injured party who informed me that he made a statement to a detective to the effect that he did not want the matter pursued by Gardaí. The attached report from Supt. Murray is nothing short of a form of harassment towards myself.

*Forwarded for your information please.*¹¹⁹⁵

This was forwarded by Sgt Monaghan to Supt Murray on 5th October 2015 by report,¹¹⁹⁶ effectively repeating what Garda Keogh had said, with the exception of the last comment made by Garda Keogh. Supt Murray replied by minute dated 13th October 2015, stating that:

I note Garda Keogh's response to date, which is far from satisfactory, in order that I can be assured the organisation's objectives regarding the investigation of crime are met in this case. Garda Keogh would be well advised to take careful note of his statutory obligation to account as set out at Section 39 Garda Síochána Act, 2005 which applies to every member of An Garda Síochána equally and it's inextricable link to the Garda Síochána Discipline Regulations, 2007. If the member feels he is somehow removed from his statutory obligations then there may be a remedy open to him under the Policy Document "Working Together to Create a Positive Working Environment".

In the meantime I await a proper response as to the actions taken on the night this matter was reported. I also expect to see some written record as to what the injured party alleged, to include a description etc. of his assailants and an answer as to why my instructions of 18th of August were not complied with.

*For report by 25/10/15.*¹¹⁹⁷

The policy referred to is commonly known as the bullying and harassment policy of An Garda Síochána. This was forwarded to Garda Keogh, who replied on 29th October 2015 stating that:

With reference to overleaf, I have complied in full with S.39 Garda Síochána Act, 2005. I note with the exception of how it was reported + injuries.

Garda McMeeking and I were in the patrol car at church st at 4am when a taxi parked beside us which had come from the Direction of St. Mels the injured party got out of this taxi and reported the incident to me.

The injured party did not want medical treatment and stated he would go to the Doctor in the morning if his leg was still at him. After pointing out the scene he requested to be brought home, which we duly obliged.

I also wish to point out that this incident was recategorised by Supt Pat Murray from Robbery from person to attention and complaints on 23.9

*Forwarded for your information please.*¹¹⁹⁸

¹¹⁹⁵ Tribunal Documents, Handwritten report of Garda Nicholas Keogh to sergeant in charge Athlone, dated 2nd October 2015, p. 232

¹¹⁹⁶ Tribunal Documents, Letter from Sgt Dermot Monaghan to Supt Pat Murray, dated 5th October 2015, p. 233

¹¹⁹⁷ Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge Athlone, dated 13th October 2015, p. 234

¹¹⁹⁸ Tribunal Documents, Handwritten report of Garda Nicholas Keogh to sergeant in charge Athlone, dated 29th October 2015, p. 235

In the interim, between the request for the report and the report, Supt Murray met with Garda Keogh on 22nd October 2015 to serve papers on him in relation to the AWOL disciplinary issue and, as a result of this meeting, Garda Keogh was assigned to indoor duties with immediate effect. These are Issues 7 and 11.

Also in the interim, Deputies Mick Wallace and Clare Daly had called to visit Garda Keogh on Saturday 17th October 2015, as recorded in his diary.¹¹⁹⁹ Garda Keogh also noted in his diary entry for 20th October 2015¹²⁰⁰ that Deputy Wallace had put it to the Minister for Justice and Equality in relation to whistleblowers *‘that I was being bullied by senior officer in Athlone’*.

On 30th October 2015, Garda Keogh noted in his diary¹²⁰¹ that he had printed PULSE entries regarding reclassifications and copied and hidden same. He supplied a number of documents to Deputy Daly, in which he highlighted other incidents which he alleged were reclassified, marked as invalid or classified incorrectly on PULSE.¹²⁰²

Supt Murray noted in his records that Deputies Wallace and Daly had accused him publicly in Dáil Éireann in December 2015 of harassing and bullying Garda Keogh and wrongly classifying crimes in his district in a deliberate fashion.¹²⁰³

Complaint made by Garda Nicholas Keogh

In his interview with tribunal investigators, Garda Keogh outlined how he perceived that Supt Murray *‘had it in’* for him from the start.¹²⁰⁴ In his statement to the tribunal, Garda Keogh said that he regarded queries from Supt Murray as *‘oppressive and irrational’*¹²⁰⁵ and *‘led nowhere in the overall context of the elephant in the room of an ongoing ‘investigation’ into garda collusion with criminals in his own station’*.¹²⁰⁶

He stated that he was unaware whether there were any meetings amongst management about his crime files.¹²⁰⁷ He outlined his understanding of the crime file review process and stated that he never received criticism from his line manager, Sgt Monaghan, in respect of his files:

*There was a process. There were PALF meetings, and from my recollection, they were meetings to do with crime files. I don't even know how often they (Garda management) would have these PALF meetings. The Sergeant of each unit along with the Inspector or Superintendent would conduct them. I don't know any more about them. These meetings did not involve me as the investigating Garda. I would do my own investigation and I would have sent it up through my Sergeant. My experience was that my Sergeant never questioned anything in relation to my work; this was always done further up the chain, where queries and issues were raised. The only time my crime files would become an issue was when I would submit them and the Sergeant would write on them and send them up the line. Other than that issues would not have arisen.*¹²⁰⁸

¹¹⁹⁹ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 17th October 2015, p. 13333

¹²⁰⁰ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 20th October 2015, p. 13334

¹²⁰¹ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 30th October 2015, p. 13335

¹²⁰² Tribunal Documents, PULSE extract, pp. 13055-13070

¹²⁰³ Tribunal Documents, Note of Supt Murray, dated 15th December 2015, p. 2527; Extract from Dáil Éireann Debates, dated 15th December 2015, p. 2523

¹²⁰⁴ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 54

¹²⁰⁵ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 133

¹²⁰⁶ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 133

¹²⁰⁷ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 53

¹²⁰⁸ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 51

He reiterated his view to the tribunal investigators that the queries came solely from Supt Murray:

*All I can say is that everything I submitted was submitted through Sergeant Monaghan, and he never questioned anything or my work. And then when queries arose with Superintendent Murray, Sergeant Monaghan forwarded them to me. Sergeant Monaghan was the middle man in this. He himself, to my memory, was never critical of anything I sent up to him. It was only when my work went to Superintendent Murray that the criticism started and it would then come back down to me.*¹²⁰⁹

Garda Keogh told tribunal investigators that:

*Prior to this, I never had a difficulty in relation to my crime files. There would have been a very odd query raised previous to Superintendent Murray, but nothing on the level I experienced with Superintendent Pat Murray. That never happened to me before.*¹²¹⁰

He denied that he was ‘hypersensitive’ to feedback from the district officer stating that ‘there was nobody else in the Garda Station that was getting everything fired back at them except me’.¹²¹¹

In his evidence to the tribunal, he stated that:

*My view is still the same and it is very simple. He was sent in there to get me out of Athlone, so Assistant Commissioner Ó Cualáin could investigate in – let’s say, do the investigation whatever way he wanted to investigate. That is my feeling.*¹²¹²

Garda Keogh told the tribunal that alcohol had no impact on his ability to perform his duties:

*Just one thing I haven’t addressed all through this, Judge, because the alcohol has been fired at me and I am not taking any issue with that, but just to clarify Judge: When I would go drinking, Judge, it’s not a matter that I just stop drinking one day and then put on the uniform and go back into work. I don’t go back into work I stay off for a couple – for about three days, where I don’t consume anything, just to get myself fit enough to go back into duty. So, if you understand, I’m not drinking actually. The last few days of my illness where I am out do with that, I wouldn’t actually be drinking. I am getting myself fit, so when I go back into work, that I can give a hundred percent. To the best of my ability. And under the – you know, in that time period, in November ‘18, I am under a lot of pressure, but doing the best.*¹²¹³

It was his view that there was nothing wrong with his police work and that Supt Murray was ‘nit-picking’:

*Judge, I’ve already said, Ó Cualáin is doing the investigation into the heroin supply in the midlands while – this is 2015 and we saw again, I have gone through all this, I am under stress, but there’s nothing wrong with my police work here. At the end of the day, there is nothing wrong with my police work. Judge, if any superintendent was to go through any guard’s file in the country, forensically, you are always going to find some sort of minute problem, if you want to nit pick. And that is all this is; nit picking.*¹²¹⁴

¹²⁰⁹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 52

¹²¹⁰ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 52

¹²¹¹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 53-54

¹²¹² Tribunal Transcripts, Day 101, pp. 155-156, Evidence of Garda Nicholas Keogh

¹²¹³ Tribunal Transcripts, Day 107, pp. 60-61, Evidence of Garda Nicolas Keogh

¹²¹⁴ Tribunal Transcripts, Day, 107, p. 43, Evidence of Garda Nicholas Keogh

Case 1: Thefts at Custume Place

In his statement to the tribunal, Garda Keogh recalled the circumstances surrounding this incident:

A theft occurred at Custume Place on the 4th July 2015 during the Triathlon event. I was on duty in the public office. It was extremely busy and I was overstretched...

... I viewed the CCTV footage with the injured parties. The footage proved to be of no evidential value. There was a 'possible suspect' isolated at the outset only but there proved to be no evidence whatever to link that suspect to the crime.¹²¹⁵

In his evidence to the tribunal, Garda Keogh stated that:

It could have been either that evening or the next day, I'm not sure, but it would have been fairly lively. I know I was busy when they came in to report the thing, but it would have been – it would have been it would have been – again, I'm working off memory, it would have been very either that evening, I presume, or the next day. But I do recall one of the witnesses came in and we went through the whole thing. For clarification as well, it was me that nominated the suspect, because I don't think in the statements that they wrote themselves, I don't think they actually nominated a suspect themselves.¹²¹⁶

The crime file relating to this incident was returned to Garda Keogh by Supt Murray for further attention on 30th July 2015. Supt Murray queried, *inter alia*, why the injured parties had written up their own statements. In his statement to the tribunal, Garda Keogh stated that:

Pat Murray writes on the 30/7/2015 returning the report for further attention: 'A suspect has been identified in both cases. What efforts have been made to deal with them?' It was clearly stated that there was a possible suspect only but that statement was further qualified by the rider that there was no evidence to link the suspect to the crime. Superintendent Pat Murray also wants to know why the CS's were written up by the injured parties. It is however frequent, and arguably best, practice for witnesses to write their own statements. This practice is furthermore expressly permitted within the policing rules that Superintendent Murray himself forwarded to me. I had moreover read over the statements to the injured parties afterwards and I had included their declarations. The resulting statements were legally sound. I had also inputted the incidents onto the pulse recording system. I further submitted two crime files.¹²¹⁷

Garda Keogh was asked by counsel for the tribunal whether it was normal practice for witnesses to write out their own statements:

As I previously said, I have on numerous occasions over my career not – not, sorry, numerous, on occasions over whatever, the last 20 years, in circumstances like that, where it's just a difficulty and it's awkward, I would have, the odd time, got persons to do the statement, make their own statements in that fashion. It was never questioned before. As I said, they are perfectly legal and valid statements.¹²¹⁸

He went on to give evidence as follows:

Yes. And now it calls for clarification. When I received this document, from recollection, that chapter, whatever, 3 of the crime investigations manual is attached to the report. So obviously I

¹²¹⁵ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 129

¹²¹⁶ Tribunal Transcripts, Day 101, pp. 77-78, Evidence of Garda Nicholas Keogh

¹²¹⁷ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at pp. 129-130

¹²¹⁸ Tribunal Transcripts, Day 101, pp. 83-84, Evidence of Garda Nicholas Keogh

*read that chapter 3 and at the very bottom part of it, it has: On occasion a witness may wish to make – something like, a witness can make a statement themselves and the guard then have to read it over to them, sign it and that's it. So I was even covered under their own investigation manual in relation to that.*¹²¹⁹

Garda Keogh was cross-examined by counsel on behalf of An Garda Síochána as to whether it was best practice for a witness to write out their own statement. He replied that:

*I don't know if I would use the term best practice. It would be the normal practice. I would accept it's the normal practice that a guard would take a statement in the – a guard would, in their own writing, write down what someone is saying. Whether it's best practice, I don't think I could go that far.*¹²²⁰

Garda Keogh was asked by counsel on behalf of An Garda Síochána whether he agreed that Supt Murray was seeking to raise the standards in Athlone:

Q. So you were aware certainly by August, if you weren't already aware by July, that Superintendent Murray was seeking to get everybody in the division to raise their standards and, therefore, you would have been aware of the fact that he was encouraging you and all of your colleagues to show victims that you were thorough and professional, is that right?

A. I'm not disputing that.¹²²¹

In his statement to the tribunal, Garda Keogh outlined his response to Supt Murray's query:

I replied to the letter dated 30/7/2015 by letter which is postmarked the 28th August 2015. I explained that I was the only guard on duty in the public office, that the witnesses had written up their own statements on this 'event' day and that there was no evidence to link _____ to either crime.

*My reply was then mediated in reasonable terms by Sergeant Monaghan in his letter of the 28th August 2015. He appeared to approve the line adopted by me.*¹²²²

In a letter dated 3rd September 2015,¹²²³ Supt Murray stated that Garda Keogh had adopted a laissez-faire attitude towards the case and that he should be advised of chapter 3 of the Garda Crime Investigation Techniques Manual. Garda Keogh took issue with this letter, stating that Supt Murray had resorted to 'extraordinary generalisations' which 'ignored that there was a possible suspect nominated only at the start by me but that there was no evidence whatever to link that 'possible' suspect to the crime. Pat Murray's letter appeared to ignore that my line manager appeared to agree with the detail of my investigation'.¹²²⁴ He further stated that:

*It is my belief that Superintendent Pat Murray was seeking to target me – unsuccessfully trying to bypass any criticism of my line manager – in hyper-critical terms in circumstances where an elephant-in-the-room 'investigation' of police collusion in crime, perversion of justice was being carried out in his station in breach of basic police protocols.*¹²²⁵

¹²¹⁹ Tribunal Transcripts, Day 101, pp. 75-76, Evidence of Garda Nicholas Keogh

¹²²⁰ Tribunal Transcripts, Day 107, pp. 19-20, Evidence of Garda Nicholas Keogh

¹²²¹ Tribunal Transcripts, Day 107, p. 51, Evidence of Garda Nicholas Keogh

¹²²² Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 130

¹²²³ Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge Athlone, dated 3rd September 2015, p. 8916

¹²²⁴ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 130

¹²²⁵ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 130

Garda Keogh complained that the extracts from the investigation manual suggested that his approach was '*basically incompetent*' and that this '*basic manual*' in fact confirmed that statements could be written up by an injured party.¹²²⁶

Garda Keogh stated that he replied to Supt Murray on 22nd September 2015, taking the position that the statements were '*legally sound*' and was of the view that:

*Pat Murray can apparently find no fault with this answer. He had nothing to say on the content of my replies. However, he irrationally replied in a manner calculated to cause apprehension by saying that 'I do not expect to see a repeat of this situation where this member is involved.'*¹²²⁷

Referring to Supt Murray's letter dated 18th August 2015,¹²²⁸ relating to the '*Reporting of Incidents other than creating Pulse entries*', Garda Keogh told tribunal investigators that:

*I cannot say that this particular letter was targeted at me, other than it is a general letter setting out criteria which I believe I have met and in circumstances where I am supervised by three Sergeants when no other colleagues are.*¹²²⁹

Garda Keogh was asked the following by counsel for the tribunal:

Q. Do you see this as Superintendent Murray getting at you?

A. Oh absolutely. Like, that's a big long report on something that really is a non issue. That is my take on it. I could be - I'm in your hands there, but that's the way I took at it.¹²³⁰

Case 2: Theft of a trailer at Dublin Road

Following his submission of this crime file, Garda Keogh received queries from Supt Murray regarding the CCTV footage obtained. In his statement to the tribunal, he said that:

*In relation to the theft of the trailer, I had already explained in my crime report (11/8/2015) that the CCTV is Garda cctv. There could be no other material statement (contrary to what Superintendent Pat Murray implies) about that cctv. Superintendent Pat Murray asked 'Where is the cctv now?' in circumstances where I had told Superintendent Pat Murray that the cctv is in garda custody.*¹²³¹

Garda Keogh outlined in his statement how he had subsequently obtained footage from Kilmartin's Service Station, which had assisted in advancing the investigation.¹²³² In his evidence to the tribunal, Garda Keogh said that:

*The breakthrough was made essentially by taking a chance of going around to Kilmartin's petrol station that night and asking them, can you just check your CCTV to see did a car arrive in between such and such a time and such a such a time with a trailer. Like because the car had gone in that direction, pure chance.*¹²³³

¹²²⁶ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 131

¹²²⁷ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 131

¹²²⁸ Tribunal Documents, Letter from Supt Pat Murray to each sergeant and each member, Athlone, dated 18th August 2015, p. 2121

¹²²⁹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 56

¹²³⁰ Tribunal Transcripts, Day 101, p. 89, Evidence of Garda Nicholas Keogh

¹²³¹ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at pp. 131-132

¹²³² Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 132

¹²³³ Tribunal Transcripts, Day 101, p. 110, Evidence of Garda Nicholas Keogh

He told tribunal investigators that this had taken some time as he had to wait for someone who could work the CCTV in Kilmartin's Service Station.¹²³⁴ He gave evidence that:

*I had left the details with the operator, with the young lad to pass it on to whoever could monitor the CCTV, look at the CCTV and he actually found a car with a trailer pulling up to fill petrol in it. So we didn't actually know there was anything, it was just I had looked for CCTV, but we didn't know until – luckily it turned out there was that car. The car, after they swiped the trailer, pulled in for petrol down the road into that petrol station. I get the CCTV a week later, let's say, after I write this document.*¹²³⁵

He further said in his statement to the tribunal that:

Sgt Monaghan explained all this in his letter dated the 28th August 2015. He points out that the cctv referred to in the crime report was garda cctv and that this was stored 'on the hard drive in the station'.

*Sgt Monaghan further explained on the 28/8/2015 that the investigation was ongoing and that 'two possible suspect vehicles' had been identified from cctv footage retrieved from [K]ilmartins. He said that 'Enquiries are ongoing in this case and any progress will be reported'.*¹²³⁶

Garda Keogh pointed out that he was commended by Insp Minnock on 31st August 2015 for his work in advancing this investigation.¹²³⁷ Garda Keogh was asked by counsel on behalf of An Garda Síochána about Supt Murray's endorsement on the file dated 22nd September 2015:

Q. *This is Superintendent Murray's writing, do you see what he says, he says:*

"Noted: I appreciate the additional enquiries carried out, which ensure the organisation is actually achieving its goals in relation to the investigation, reports and the efforts on identification."

That's signed by him. So that's saying, well done, good work. Would you agree?

A. *That's fair enough.*

Q. *So, so far, if we look at this, can I suggest to you that what this indicates is what an outside person – that's going back to perspective and reality, an ordinary person, an ordinary citizen would look at communications between a superior and his team asking for further information and then you, as part of that team, responding, carrying out information and clarifying the situation?*

A. *Yes. Yeah.*¹²³⁸

In his statement to the tribunal, Garda Keogh was critical of the queries raised with him by Supt Murray on 3rd September 2015:

Superintendent Pat Murray in his letter of reply dated 3rd September 2015 now stated the crime file was submitted 'prematurely'. [my emphasis]. However, according to Garda policy, a crime file must be submitted as soon as possible. Superintendent Pat Murray tried to twist

¹²³⁴ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 63

¹²³⁵ Tribunal Transcripts, Day 101, p. 100, Evidence of Garda Nicholas Keogh

¹²³⁶ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 132

¹²³⁷ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 132

¹²³⁸ Tribunal Transcripts, Day 107, pp. 56-58, Evidence of Garda Nicholas Keogh

matters by saying ‘now evidence has come to light following a request for further information’. [my emphasis] This is completely incorrect: CCTV footage was sought from [K]ilmartin’s on the 8/8/2015 (on the day the crime was reported) and not ‘following’ his request as he implied. He then irrationally stated (without seeming to criticise any of my line managers) on the 3rd September 2015 that his ‘question in relation to CCTV in correspondence dated 14/8/15 has not been answered.’ This is just baseless and incorrect. It had been comprehensively answered based on the status of the investigation at each stage. Superintendent Pat Murray then irrationally concluded that ‘Sergeant Monaghan should supervise the proper investigation of this crime so that we can show the victim that we were thorough and professional’. Superintendent Pat Murray did not define what he means by ‘show’, ‘thorough’, ‘professional’ or ‘proper’. He did not mention work-related stress.’¹²³⁹

Garda Keogh pointed out that he responded to these further queries from Supt Murray through his line manager in a letter dated 12th September 2015 and that, according to him, Supt Murray:

... did not substantively reply to any of the ‘red herring’ issues he had raised earlier except to say ‘Noted’. He hermetically qualified this by saying that ‘he appreciates the additional enquiries carried out will ensure that the organisation is achieving its goals’ when these enquiries were not in fact ‘additional’ [my emphasis] at all but were intrinsically and integrally part of the evolving investigation itself.’¹²⁴⁰

He further stated that:

Pat Murray tried to keep the apprehension up by asking for some kind of a general report by 1.11.2015 on what he vaguely and redundantly calls ‘efforts at identification’ when at 3 of my response on the 12th September [2015] I had already pointed out that the ‘cctv [was] forwarded with request to be put on g.tube’.¹²⁴¹

Garda Keogh was cross-examined by counsel on behalf of An Garda Síochána as to the consequences that flowed from Supt Murray raising the queries:

- Q. Garda Keogh, we’re in a position where these questions have been raised, you have done the extra work, you have got extra information and this is good news, because this is leading to an advance of the investigation, isn’t it?
- A. Yes.
- Q. It is. He says or he will say in his evidence that he expressed his appreciation of the efforts made, and on the 2nd November 2015 he sanctioned ten hours overtime, Haddington Road hours, to you to attend to the arrest stage of the investigation. Were you aware of that?
- A. Yes.
- Q. I think two culprits had been identified as a result of your additional good forensic work and they were due to appear in Naas District Court on 18th November 2015?
- A. Yes.
- Q. I think you had been liaising with the detective sergeant in Athlone and arrangements to be made for a member to accompany you to try and bring the investigation to a conclusion?

¹²³⁹ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 132

¹²⁴⁰ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 133

¹²⁴¹ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 133

- A. Yes. This part, this is all correct, yes.
- Q. Then he will say that the detective sergeant in Athlone reported to him on the 16th November that you had indicated that it would be unlikely that you could take part in the arrest because would you have a relapse of drinking?
- A. Yes. I informed the detective sergeant of this in advance.
- Q. Then he will say that the detective sergeant arranged for two members to travel to Naas District Court on 18th November 2015?
- A. Yes.
- Q. One person was arrested for the crime there and he admitted during his detention that he committed the theft?
- A. Yes.¹²⁴²

Case 3: Criminal damage at Mulligan's Filling Station

In relation to the criminal damage at Mulligan's Filling Station, Garda Keogh complained in his statement to the tribunal that Supt Murray had nominated a certain family as suspects 'without any rational basis' and that:

*In fact, the [family] were not mentioned. [The [family] lived on the other side of town, were without transport and did not ordinarily frequent the locus]. There was no evidence whatever to link unspecified members of this family with this damage. Superintendent Pat Murray then jumped to enquiring whether 'this' was put to persons who were not suspects.*¹²⁴³

According to Garda Keogh this was a 'baseless suspicion'¹²⁴⁴ and that:

*In relation to the criminal damage, Superintendent Pat Murray in the letter dated the 3rd September 2015 did not explain why he mentioned the [family]. He implied that he conceded that 'there is an unavailability of avenues of enquiry' but he did not expressly explain his earlier queries or admit his errors.*¹²⁴⁵

Garda Keogh characterised Supt Murray's nomination of this family as irrational, stating that:

*... the [family] live on the other side of Athlone, the Westmeath side of Athlone, and have no transport. Mulligan's garage is on the Roscommon side of Athlone, well away from where the [family] live. I am still baffled as to how he suggested the [family] as suspects in this crime and there is absolutely no evidence to suggest it was the [family]. Separately, in my view it is oppressive in the manner that Superintendent Murray is 'pie out of the sky' nominating these suspects and criticising me for not nominating the [family] that live two miles away and have no transport.*¹²⁴⁶

Garda Keogh was asked the following questions by the tribunal:

- Q. **Chairman:** Did you go back to the owner, following the query from the superintendent?
- A. I think so.

¹²⁴² Tribunal Transcripts, Day 107, pp. 57-58, Evidence of Garda Nicholas Keogh

¹²⁴³ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 131

¹²⁴⁴ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 132

¹²⁴⁵ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at pp. 132-133

¹²⁴⁶ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 62-63

- Q. **Chairman:** And say, did you see the XYs and he said, ah no, they don't frequent this area?
- A. Yes, I did, because it was the owner that said they don't frequent the area.
- Q. **Mr McGuinness:** But did you regard that at the time you got that query as targeting or bullying or harassment?
- A. Again, the previous page, is it 215, where he starts writing down a number of these issues together and some of them were rolled up in – and again, with this, I'm not sure does this crop up somewhere else in further correspondence again. I'm not sure until we will get to it.¹²⁴⁷

Case 4: Robbery

In his statement to the tribunal, Garda Keogh asserted there was a comprehensive PULSE report on the incident together with a further report in manuscript form submitted on 13th September 2015.¹²⁴⁸ When Supt Murray later described the incident summary report as 'scant',¹²⁴⁹ Garda Keogh stated that:

There is one PULSE incident report _____, which includes all the details of the crime... On the same date there is a report left to the Sergeant in Charge outlining that I would not be around, noting that it is serious and asking that the Detective Branch deal with the matter in my absence... I submitted the letter citing the PULSE incident number to Superintendent Murray and to the best of my knowledge I did not submit the PULSE incident report itself.¹²⁵⁰

Garda Keogh was asked by counsel for the tribunal whether he also had a duty to write a report and he responded that:

You see, I didn't have to write a report. The Pulse report is on the system. So when they type in, log into Pulse, whatever, every morning, to look at what has happened and crimes and things like that, they would see the purpose of the report is, this is serious, I'm not going to be around the next few days to deal with this. For clarification, is the actual Pulse reported in this, that we can see what I inputted into Pulse, which would've been available. If they didn't look at Pulse, that's negligence on their behalf.¹²⁵¹

Garda Keogh continued in his evidence that:

Like this is the Pulse report, I report what was taken, I put the location on it, the investigating garda, supervisor, the assisting garda that's with me, the occurred date and time and all the rest.

"Injured party walking home through (a certain area) to (another certain area) and under a bridge was mugged by two males, €20 stolen. Patrol of area. Injured party pointed out scene with negative results. Suspects were Irish, in their 20s. One wearing a white Air Max top and black tracksuit bottoms. Two wearing Blue McKenzie wing sheet top. Both fled towards waste ground behind the location. No CCTV."¹²⁵²

Garda Keogh went on to describe in evidence what actions he took that night:

¹²⁴⁷ Tribunal Transcripts, Day 101, pp. 119-120, Evidence of Garda Nicholas Keogh

¹²⁴⁸ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 133

¹²⁴⁹ Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge Athlone, dated 23rd September 2015, p. 2313

¹²⁵⁰ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 65

¹²⁵¹ Tribunal Transcripts, Day 101, pp. 125-126, Evidence of Garda Nicholas Keogh

¹²⁵² Tribunal Transcripts, Day 101, pp. 126-127, Evidence of Garda Nicholas Keogh

So after we conducted our search of the area, take details, put it on Pulse, drop that young lad home, it's nearly time to finish work as well. So, I mean, I am just writing the report in addition to what's on the Pulse. I just leave it I think on the sergeant's tray and that's it like, as in, this is a serious thing, can someone just look at this, I'll be gone for the next few days. The details, it's all detailed on Pulse. All they have to do is turn on the Pulse, which they would be doing anyway.

... The report, everything has to go onto Pulse. Pulse contains the report with all the information. The so called scant report that I wrote was just a note, look, this is serious. At the very top line of this, I refer to Pulse incident such and whatever number, this is a serious incident, I won't be around, can you get someone else, someone from the detective branch to deal with this. This is serious. All the details that Superintendent Murray is on about, are all on the Pulse incident number. But again, of course, he then reclassifies – has it reclassified, sorry, to attention and complaints and he continues to write down to me for a period of time about, I think, we will be getting on to them about the serious robbery from a person, where he has already reclassified it to non crime.¹²⁵³

In his statement to the tribunal, Garda Keogh had initially stated that Supt Murray was ‘*inflating the matter to ‘serious’*” and ‘*exaggerating it into a stick to beat me with*’.¹²⁵⁴ However, he later said in his interview with tribunal investigators that this was an error and ‘*worded incorrectly*’.¹²⁵⁵ He clarified that his complaint concerned Supt Murray’s correspondence with him in respect of the file. Specifically, he stated that Supt Murray ‘*persisted with his queries and correspondence about what he continued to refer to as a serious matter despite having downgraded the incident to a non-crime*’ on 23rd September 2015.¹²⁵⁶ The incident classification on PULSE had been changed, or ‘*downgraded*’ according to Garda Keogh, from ‘*Robbery from Person*’ to ‘*Attention and Complaints*’.¹²⁵⁷

In his statement, Garda Keogh referred to his and Sgt Monaghan’s replies to Supt Murray in early October 2015.¹²⁵⁸ Garda Keogh stated that he responded to Supt Murray on 2nd October 2015 in circumstances where he was ‘*still unaware that Superintendent Pat Murray had downgraded the investigation to a non-crime and a non-investigation*’.¹²⁵⁹ He further complained that Supt Murray replied in what he described as ‘*hyperbolic terms*’.¹²⁶⁰ When Garda Keogh later became aware of the reclassification, he said that it ‘*let a very big cat out of the bag on this one*’.¹²⁶¹

Garda Keogh’s position in relation to this file was clarified to the Chairman as follows:

Q. Chairman: *If I understand, correct me if I am wrong, if I understand, your point is (a) it shouldn't have been reclassified?*

A. Yes.

Q. Chairman: *You had given the information; (b) you shouldn't be criticised for not giving sufficient information because you had put everything on Pulse?*

A. Yes.

¹²⁵³ Tribunal Transcripts, Day 101, pp. 139-141, Evidence of Garda Nicholas Keogh

¹²⁵⁴ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 133

¹²⁵⁵ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 64

¹²⁵⁶ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 64

¹²⁵⁷ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 64

¹²⁵⁸ Tribunal Documents, Handwritten report of Garda Nicholas Keogh to sergeant in charge Athlone, dated 2nd October 2015, p. 232; Letter from Sgt Dermot Monaghan to Supt Pat Murray, dated 5th October 2015, p. 233

¹²⁵⁹ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 134

¹²⁶⁰ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 134

¹²⁶¹ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 134

Q. **Chairman:** (c) it is inconsistent irrational and wrong for the superintendent to continue to challenge you about your reporting of the incident when it has already been reclassified as in effect a non crime?

A. Correct.¹²⁶²

In his statement to the tribunal, Garda Keogh stated:

*Again, as in his other allegations of so-called inadequacies and ‘grounds’ for monitoring my police investigations, these ‘concerns’ went nowhere. The incident – when the contradiction was pointed out – was simply abandoned by Superintendent Pat Murray without explanation or conclusion after he had effectively beaten me up professionally on the basis of what he had classified as simultaneously as a serious and a non-serious incident.*¹²⁶³

He gave evidence to the tribunal of his mindset at the time:

*I recall reading where there’s a question mark whether this crime occurred at all. Of course, I am the investigating officer, so am I wasting time essentially me investigating something that I should have had the cop on to know never even occurred? That’s the way I perceived it.*¹²⁶⁴

Alleged Massaging of Crime Figures in Athlone

In his interview with tribunal investigators, Garda Keogh complained that the reclassification of the robbery incident was a ‘massaging [of] the crime figures downwards while simultaneously increasing the importance of this same incident when he wanted to blame me’.¹²⁶⁵ He stated his belief that Supt Murray did not have the jurisdiction to reclassify the PULSE incident:

*This incident was reported as a robbery and just because somebody will not make a statement it does not mean that the robbery did not occur. In my view, this incident should not have been reclassified as a non-crime. It is my view that this is also technically interfering with the crime figures.*¹²⁶⁶

In his evidence to the tribunal, Garda Keogh further stated that:

*I am being targeted by Superintendent Murray in relation to this issue. Judge, I have clearly said how I found out even about the fiddling with the crime figures was because that he had set off this it’s to do with – he sets off this chain of correspondence from robbery from person and it’s me that’s writing back to him and at some point I have to go back onto Pulse and I find that the incident was reclassified. Then there’s other incidents that were reclassified. It cropped up last week, Judge. If my memory is correct, some one of us used the word, it wasn’t me, corruption and we weren’t sure. But I think it actually does follow under the term corruption. I would have gone, either way, to – I did go to Deputy Wallace and Daly and I printed off a couple of examples for Deputy Wallace and Daly and I said, look at this.*¹²⁶⁷

He was cross-examined by counsel for An Garda Síochána with regard to his allegation:

Q. **Yes. But you went one step further, did you not, Garda Keogh? Didn’t you go and speak to other people about this. And in particular, did you speak to Deputy Wallace and Deputy Daly?**

¹²⁶² Tribunal Transcripts, Day 101, p. 148, Evidence of Garda Nicholas Keogh

¹²⁶³ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at pp. 134-135

¹²⁶⁴ Tribunal Transcripts, Day 101, p. 138, Evidence of Garda Nicholas Keogh

¹²⁶⁵ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 134

¹²⁶⁶ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 67

¹²⁶⁷ Tribunal Transcripts, Day 107, p. 114, Evidence of Garda Nicholas Keogh

A. Yes.

Q. *Did you tell them that you thought that this was massaging the crime figures?*

A. *Yes. As I have said, Judge, when I went in to - and I noticed on that last day, that's the day I found out that this had been reclassified, I went through other incidents on Pulse to do with me and they were reclassified. Then obviously I saw other incidents and I did speak to Deputy Wallace and Daly and the answer is yes.*

Q. *Again I have to put to you that that is a very serious thing to have done and a wrong thing to have done, because this case demonstrates clearly on the evidence we heard this morning, that this was a reasonable decision taken by Garda command in accordance with law, which you disagreed with, and then mischaracterised as fiddling the crime figures?*

A. *Judge, it is fiddling with the crime figures.*¹²⁶⁸

Garda Keogh told the Chairman how he gathered a number of examples:

... I have said, I have explained how I printed off the number of examples, I gave them to Deputy Wallace and Daly and I said, look at this.

Q. *Where did you get the other examples?*

A. *After I found the first example with the robbery from a person and I realised that was reclassified, I then went through other figures to do with my work and I realised there was other stuff that was reclassified.*

Q. *Other stuff in your work?*

A. Yes.

Q. *Okay. So all the cases were your work?*

A. *Not all, because then I went through a couple of others. You see, the problem was, I didn't want to drag other guards involved. So most of the stuff that I gave to Deputy Wallace and Daly was just my stuff.*¹²⁶⁹

Garda Keogh was asked the following by counsel for An Garda Síochána:

Q. *Did you ever go to Superintendent Murray and say, I think you have got this wrong in four other cases, I think you are massaging the figures?*

A. *No, I didn't.*

Q. *So instead what you did was, with the annoyance and anger which you felt clearly, that you effectively sprung this so that it could be said about Superintendent Murray in the Dáil, in public, to the country, with no right of reply?*

A. *Judge, I'm entitled to do what I did. I did what I did and I stand by what I did.*

Q. *Yes. But I have to suggest to you what you did was an attempt to damage or, in your words, take down Superintendent Murray by allowing the picture of what took place be put in the public domain that was false.*

¹²⁶⁸ Tribunal Transcripts, Day 107, pp. 111-112, Evidence of Garda Nicholas Keogh

¹²⁶⁹ Tribunal Transcripts, Day 107, pp. 116-117, Evidence of Garda Nicholas Keogh

- A. *Judge, it wasn't false, it was true, and it was corruption. And I gave it to Deputy Wallace and Daly. I didn't even know, I'd say, at the time it was corruption. Because there was such a thing going on, on national statistics with fiddling with figures and all the rest, I brought this to their attention. Because I think – I can't remember – I think the Guards were saying this is – are they up to their – I think breath tests, I think, at some stage go to 6 million and then they revise it down to, is it, 2 million or something.*¹²⁷⁰

Garda Keogh described how he gathered what he alleged was evidence of corruption:

*When I printed the documents off Pulse, Judge, just for clarification, in Garda HQ they're able to monitor the Pulse computers and I would have obviously have known my pulse computer was being monitored. So, when I printed off the documents, the reclassification documents, what I did was I printed off the documents and then I obviously photocopied them and I hid one batch in the station, Judge, and the other batch, Judge, there's a baton pocket in a Garda trousers, I rolled them up and I would have sneaked – put them into the baton pocket to leave the station with them, in case someone would have perhaps tried to intercept them.*¹²⁷¹

Counsel for An Garda Síochána asked Garda Keogh the following:

- Q. *Garda Keogh, I have to suggest to you, what you did in this situation was reckless, irresponsible and revealing, because it revealed the fact that you had come to a position where if people didn't agree with you in the chain of command, particularly people above you, you felt free to criticise them without evidence?*
- A. *No, no. And, Judge, at this time Superintendent Murray is giving me a hell of a time in Athlone, during this period of time. As I have said, that's actually how I found out. Actually, he puts this into motion by writing out all this stuff to me in relation to what he has already marked as a non crime and then he's writing out to me as a crime. That's how I even found this. He essentially is the cause of me finding this. It's not that I went onto Pulse digging for something negative about Superintendent Murray. It's because he is writing down all this stuff that I have to go back on to Pulse. And that's how I find the original – the robbery from persons being reclassified to attention and complaints, and that's where I then go and look at the other stuff. So he has actually inadvertently set this in motion.*¹²⁷²

In reply to counsel for An Garda Síochána, Garda Keogh explained to the tribunal why he gave the information to Deputies Mick Wallace and Clare Daly:

I passed on that information to them because at the time there was a whole issue to do with fiddling of figures. It was not just in the Dáil, Deputy Wallace and Daly were members of the justice committee also, Judge. So they had a, what's the word, a more prevalent role in matters than just asking questions in the Dáil.

- Q. *But in this case, I have to suggest to you, Garda Keogh, that what you are doing is you are targeting Superintendent Murray by name, isn't that right?*
- A. *That's an interesting way of putting it, I'm exposing corruption.*
- Q. *And again I have to suggest to you what you are doing is you are targeting him because you are doing it in a forum where you know he can't reply, where he can't speak back and which is covered by Dáil privilege, isn't that right?*

¹²⁷⁰ Tribunal Transcripts, Day 107, pp. 117-118, Evidence of Garda Nicholas Keogh

¹²⁷¹ Tribunal Transcripts, Day 112, p. 26, Evidence of Garda Nicholas Keogh

¹²⁷² Tribunal Transcripts, Day 107, pp. 120-121, Evidence of Garda Nicholas Keogh

- A. *Superintendent Murray has the whole of Garda management behind him here. I have nobody. I am the one that has to go to Deputies Wallace and Daly.*¹²⁷³

Responding Statements and Evidence on the Issue

Superintendent Pat Murray

In his statement to the tribunal, Supt Murray described his *'management style as open, inclusive and progressive with a distinct emphasis on a team based approach.'*¹²⁷⁴ He stated that upon his arrival to Athlone Garda Station, he *'immediately set out to evaluate the policing service being provided'* and introduced a number of initiatives *'to professionally improve standards, accountability and Governance, to make improvements, and manage and lead the development and delivery of a comprehensive policing service within Athlone District.'*¹²⁷⁵ He outlined these 'initiatives' as including, *inter alia*, the following:¹²⁷⁶

- The Performance and Accountability Framework (PAF), introduced on 21st April 2015¹²⁷⁷
- A District Policing Planning and Accountability Process introduced from April 2015¹²⁷⁸
- A system to ensure accountability around the investigative process for volume crime, introduced from 19th June 2015¹²⁷⁹
- An instruction relating to the reporting of critical or serious incidents including excellent police work introduced on 18th August 2015.¹²⁸⁰

In respect of the instructions introduced on 19th June 2015, Supt Murray stated that this was to *'ensure that the thoroughness of the investigation process relating to reported volume crime was to a high standard to allow information be communicated to all victims to accurately update them on the investigative efforts undertaken by An Garda Síochána.'*¹²⁸¹ According to Supt Murray, the initiative was part of his role as district officer to give clear direction on issues such as *'thoroughness, accuracy and completeness of investigation files'*.¹²⁸²

With regard to the District Policing and Accountability Process, introduced from April 2015, Supt Murray informed the tribunal investigators that:

*At that time when I went there I was carrying out analysis of how things were operating and I felt in terms of governance some control was required and in addition I wanted a holistic view of victims and where they fitted in in the whole picture of volume crime. So I designed a new framework to try and bring all that together and I have outlined it from PM2. It was a phased process and we spent some time designing a crime form or crime tracking form for crime files and they were for crimes which were unsolved or where there may not be a suspect identified and in particular they were the important ones from the victim's perspective ... I felt that we needed to come together and I involved the management team in that and we all came up with a solution to create a control mechanism. The outcome was to ensure the victim was central in the procedure.*¹²⁸³

¹²⁷³ Tribunal Transcripts, Day 111, pp. 30-31, Evidence of Garda Nicholas Keogh

¹²⁷⁴ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2056

¹²⁷⁵ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2039

¹²⁷⁶ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at pp. 2039-2040

¹²⁷⁷ Tribunal Documents, Performance and Accountability Framework (PAF), pp. 2085-2087

¹²⁷⁸ Tribunal Documents, District Policing and Accountability Process, pp. 2089-2094

¹²⁷⁹ Tribunal Documents, Letter from Supt Pat Murray to sergeants and members Athlone, dated 19th June 2015, pp. 2099-2100

¹²⁸⁰ Tribunal Documents, Letter from Supt Pat Murray to sergeants and members Athlone, dated 18th August 2015, pp. 2121-2122

¹²⁸¹ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2047

¹²⁸² Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2047

¹²⁸³ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3033

He denied that his instruction of 18th August 2015,¹²⁸⁴ issued to all district members, was targeted at Garda Keogh:

*On 18th August 2015, I issued instructions to all District Members relating to reporting critical or serious incidents. I also indicated that the process should be used to highlight excellent police work. The instruction was issued to follow on from a similar type instruction issued from the Assistant Commissioners Office and was not in any way directed at Garda Keogh personally.*¹²⁸⁵

Supt Murray told the tribunal investigators that ‘... I tailored it to suit the District but it was not in any way directed at Garda Keogh it was for every Member and every Sergeant in the District to take note of’.¹²⁸⁶ In terms of the process adopted for the monitoring of the quality of a member’s investigation files, Supt Murray noted that this was the sergeant’s role and that he met his team daily for briefings as part of the ‘new standard and new process’. He further stated that:

*That was entirely the Sergeants role and he/she would control that. The Sergeant would feedback to the garda member if further enquiries were required. It would come up to me for sign off. I think in 2015, and it only began in mid-June, 46 crime files were returned to various members of the District. I understand everyone needed time to get used to this new system and what might have been accepted previously may now not be accepted in order to close that circle for the victim. The circular that I issued was addressed to every Sergeant and Member ... I met my team every day at 10am ... I wanted communications upwards and downwards to ensure feedback. The message flowed and came back. It took time for people to get to know that there was a new standard and a new process. I don’t apologise for raising the standard. My role, as is clearly outlined in the Garda Code (PM1) is to ensure the thoroughness, completeness and accuracy of crime files. My primary objective was to close the circle for victims.*¹²⁸⁷

Supt Murray maintained that the process was the same for all members:

*When I say 46 files were returned it was to members right across the District. It was essential that before a file was transferred to the Victims Office that what was contained in it was correct and my role involved examining the file and having an overview of whether more could be done. Crime files came to me in daily correspondence that one would receive at the end of the day and my instructions flowed from my examination of them. Inspectors shared in that role to lighten the load. If there was something that someone needed pointing towards, it was a mechanism for allowing that and it wasn’t designed to be a criticism. I would look at things from the victim’s point of view in terms of questions I might ask and I hoped to allow that mindset be adopted.*¹²⁸⁸

In respect of Garda Keogh, he said that:

As that system bedded in it became apparent that Garda Keogh was in a difficult place at the time, but from my perspective everyone had to contribute to policing performance in the District. While I didn’t keep record, Garda Keogh used to ring the station drunk and people were aware of that. He used to ring Detective Superintendent Mulcahy while drunk. I have referred in my statement to a PAF meeting with Sergeant Monaghan on 19th October 2015 where a number of Garda Keogh’s files that weren’t coming to a conclusion that needed to be addressed. It was difficult to try and balance dealing with Garda Keogh’s welfare and work performance. He had

¹²⁸⁴ Tribunal Documents, Letter from Supt Pat Murray to sergeants and members Athlone District, dated 18th August 2015, pp. 198-199

¹²⁸⁵ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2049

¹²⁸⁶ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3058

¹²⁸⁷ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3034

¹²⁸⁸ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3035

*an operational role, he was meeting members of the public and he wanted to continue in that role but there was a risk to the policing service if he continued to do so. It was difficult for everybody. I was demanding a certain standard and I wanted to apply it across the board.*¹²⁸⁹

In his statement to the tribunal, Supt Murray detailed what he saw as the impact of Garda Keogh's alcohol addiction on his performance at work:

*To be honest Garda Keogh had an alcohol addiction problem and that was affecting his attendance at work and he wasn't functioning properly and it had an effect on his work. I appreciate he was in the Protected Disclosures process and that added strain to him but in my view he was performing poorly.*¹²⁹⁰

As will be outlined in Issue 11 in more detail, Supt Murray had regard to these factors in the context of a later decision to confine Garda Keogh to indoor duty:

*I discussed his work standard with him citing two theft cases ... I indicated that if his drinking was going to continue impacting on his work, I might have to consider taking him off outdoor duty.*¹²⁹¹

In his interview with tribunal investigators, Supt Murray denied paying closer attention to or particularly scrutinising any of Garda Keogh's crime files. He stated that they passed across his desk in the normal fashion¹²⁹² and that:

*I never sought out any of Garda Keogh's work and any of the issues that he complains about in relation to me are all issues that came across my desk. Indeed every issue that he complains about was something that came across my desk in the normal course of business. I never sought him out. I would have no reason to do so having never met the man before I arrived in Athlone. Even though he mightn't perceive it as that, I was in his corner.*¹²⁹³

He said that it was his role to maintain standards and provide leadership:

*There was a process for processing crime files and guidance as to the nature of the inquiries required to assist success in investigations. Those decisions were made at crime management meetings every morning, it wasn't unusual. I suppose in an open and transparent way, I wanted Garda Keogh and the Sergeant to understand the standards and accuracy and follow up action required and I feel in doing that I was carrying out my role as a Superintendent as set out in Chapter 3 of the Garda Code. There was a palpable fear and supervisors were nervous interacting with Garda Keogh as they felt they were going to be drawn into controversy. In my leadership role I felt I had to provide leadership, irrespective of what was going on in people's lives, I had to be fair and proportionate. I felt it would be remiss of me if I didn't do what was right and in doing that I was hoping to demonstrate my insistence on high standards.*¹²⁹⁴

Supt Murray denied, in its entirety, Garda Keogh's contention that he would, in respect of certain files, bypass the Director of Public Prosecutions and issue directions to prosecute. He stated that:

*I deny them in their entirety and I see no evidence provided by Garda Keogh to what I see as a scurrilous allegation delivered in a reckless type of fashion.*¹²⁹⁵

¹²⁸⁹ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3035

¹²⁹⁰ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3039

¹²⁹¹ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at pp. 2045-2046

¹²⁹² Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3038

¹²⁹³ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3039

¹²⁹⁴ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3053-3054

¹²⁹⁵ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3037

He also denied that his interactions with Garda Keogh, as they related to his review of these crime investigation files, constituted the targeting or discrediting of Garda Keogh:

*During the period 10th March 2015 which was the day I started to the 31st December 2015, I worked 37 weeks in that period, I think I had 3 weeks leave, and during those 37 weeks my average hours was 61 hours per week, so I wasn't there to discredit Garda Keogh but to deal with a myriad of issues hence the time commitment I gave Athlone at that time.*¹²⁹⁶

Case 1: Thefts at Custume Place

Supt Murray issued his instructions in relation to the new accountability process in June 2015 and he said in his statement to the tribunal that *'[i]n that context I made a simple query in relation to two crime files submitted in a normal way by Sergeant in Charge Athlone to me. Crime files following the introduction of this initiative were part of the normal daily correspondence I dealt with.'*¹²⁹⁷ Supt Murray considered that it was clear that there was an issue with the witness statements and he queried why the witnesses had written their own statements.

Supt Murray explained his concerns in his evidence to the tribunal:

... I have seen, I suppose, suspects present statements in answer to allegations in their own hand. But I have never seen anyone just allow a witness who had evidence to just write it out and leave it at that and, I suppose, allow that to conclude matters. I couldn't – that wasn't a stand that was acceptable to me. I had come to an Athlone and I had initiated new systems and processes, I had an obligations under the Garda Code to monitor the thoroughness, accuracy of investigations and the direction of them. And I had obligations, you know, to make sure that each and every incident was brought to an investigative conclusion in as far as possible.

*I suppose my obligation was carried out by the members of An Garda Síochána who were attached to Athlone district and I had to ensure that they did their job in a correct manner, so as that the organisation could allow, trust, the trust of the public in carrying out its investigative function in dealing with issues that they had complained about in a proper fashion.*¹²⁹⁸

He further explained that:

*They weren't taken by the investigating member. They were written out. On reading them, it was clear that those witnesses had further information that they could give in relation to what had occurred. And it didn't seem to, I suppose, have been elicited from them in an investigative way. One of the objective of statements is to gather evidence.*¹²⁹⁹

Supt Murray told tribunal investigators that:

*I wasn't intending to be critical. I was asking two questions, which I saw was my role and when the crime file came back up it was clear it was going to be difficult to allow a successful conclusion. I set out in a very open way in further correspondence the genesis of advice and guidance I wished to give. I didn't see it as a criticism.*¹³⁰⁰

He said that witnesses writing their own statements was not normal practice and that:

¹²⁹⁶ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3056

¹²⁹⁷ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2047

¹²⁹⁸ Tribunal Transcripts, Day 124, pp. 63-64, Evidence of Supt Pat Murray

¹²⁹⁹ Tribunal Transcripts, Day 124, pp. 61-63, Evidence of Supt Pat Murray

¹³⁰⁰ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3041

*... I never came across that before in this type of situation. People have handed in a prepared statement in answering an allegation as opposed to a witness statement which is the starting point, the foundation stone which allows the guards to take action, make decisions and perhaps make an arrest and one would be open to huge criticism if one took action on a statement from a witness presented in this fashion. I made the point then at the very end that I expected it to be brought to a conclusion, which ties into the accountability process. The crime file came back and there had to be some reminders.*¹³⁰¹

He also stated that it was ‘*contrary to our training and the ethos of the organisation*’.¹³⁰² He said that he ‘*wanted the standard to be raised*’¹³⁰³ and clarified that he did not specifically indicate the pages of chapter 3 of the Criminal Investigation Techniques Manual to be sent to Garda Keogh, nor did he send the crime file down with the pages attached. However, he accepted that he clearly said that Garda Keogh needed to be advised to refer to chapter 3 of the manual. It was, he said, an indicator of how he wanted things done.¹³⁰⁴

In his interview with tribunal investigators, Supt Murray said that:

*I didn't feel there was anything overly critical, but I intended to allow people to see the standard I was setting. It was not a personal criticism of Garda Keogh in any way. That's the way I saw it as this file came to my desk. I took the file as an example of the new framework and how it could assist in upping the game with that type of volume crime. I don't know why Garda Keogh allowed the witnesses to make their own statements. He said it was the day of the triathlon in Athlone and he was working overtime but this was 8PM in the evening and the triathlon was much earlier in the day. When the file came back to me on 6th October I finally closed it off realising that we couldn't do any more with it and that was the end of that.*¹³⁰⁵

He referred to the review that he carried out of these files:

*During my tenure as District Officer Athlone and in my day to day functions, I initiated queries on many crime files to ensure high standards prevailed. In doing so I believe I was in keeping with my responsibilities as District Officer in ensuring Service Delivery to victims. I was not in any way targeting Garda Keogh in these instances.*¹³⁰⁶

Supt Murray gave evidence to the tribunal that the changes he introduced in Athlone had the objective of ‘*providing as good a service as possible to the public*’:

*... The process began in or around the 1st July. I was on annual leave until the 13th and when I came back both inspectors went on leave and I was dealing with most of the correspondence at that stage. But in 2015, after the process came in, I returned 44, I suppose, crime files to different members. These ones to Garda Keogh and the rest to other members, out of 184 that were submitted that year. And in '16 again that continued, 68 returned out of 536 that came in. In '17 53 returned out 502 that came in. That's a monitoring and control and an audit process that we were going through. I would give the benefit of my experience, as would the inspectors, in pointing out other avenues of inquiry, to allow fruition to develop an investigation, with the primary objective of providing as good a service as possible to the public and ensuring that criminals are brought to justice and the people would be kept safe.*¹³⁰⁷

¹³⁰¹ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3042

¹³⁰² Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3042

¹³⁰³ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3042

¹³⁰⁴ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3042

¹³⁰⁵ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3043

¹³⁰⁶ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2048

¹³⁰⁷ Tribunal Transcripts, Day 124, pp. 73-74, Evidence of Supt Pat Murray

He was cross-examined by counsel on behalf of Garda Keogh about his memo dated 3rd September 2015:

- Q. *Just before I leave this, by this stage we had seen Garda Keogh's perspective, you had criticised his attitude as laissez faire; his work was far from satisfactory; that he appeared to be in need of advice; that the issues he was dealing with needed to be explored in a thorough fashion; that Sergeant Monaghan should ensure that Garda Keogh was supervised in bringing the matters to conclusion; the members response was far from satisfactory; the member feels he is removed from his statutory obligations, the reference for that is at page 234; that there needed to be a supervision of a proper investigation. Would you accept that the use of those words that I have just covered, humiliates and undermines Garda Keogh?*
- A. *No, absolutely not. This wasn't about Garda Keogh. This was about the investigation of this particular crime. I feel that I ensured that supports were in place to allow Garda Keogh to bring it to a conclusion. Indeed, those supports remained right in place right up to the arrest phase, and Garda Keogh was due to take part in that, but unfortunately he didn't. And I had hoped as well that perhaps being involved in that, in a team based way, might reignite some spark in him to get some value out of his work, because it was a particularly good detection and it was nice to get to the bottom of it.*
- Q. *If he had so many failings, did you ever just sit him down and say, look, Garda Keogh, here's what you need to tidy up?*
- A. *Garda Keogh was a difficult man to deal with and to talk to and I found that out, I suppose, when I was dealing with him. His sergeant was actively engaging with him. His unit were supporting him. I had a standard that I was trying to, I suppose, explain, that needed to be met. And they were helping him out to deal with this in the proper fashion. And it was brought to a successful conclusion and I acknowledged the work that he did in that.*
- Q. *I am just wondering, because before this, you already told me that there didn't appear to be any problem, he was an experienced guard, and all this starts happening when you arrive on the scene?*
- A. *I was just dealing with, in relation to Garda Keogh, things that came across my desk. I didn't look for any of it. It came to me in the normal course of events, across my desk. My role, I didn't see it to just simply ignore or to rubber stamp. If I saw failings, I would point them out. I didn't intend to be over critical. My initial reaction would be, look it, let's do this properly, let's get the team in place and let's support one another with a view to providing as good a possible service the public as we could. I don't think the public would thank An Garda Síochána for not putting in an effort to bring an investigation to a conclusion where there was an obvious lead to follow. I think that would be neglect on our part, if we didn't see that through.¹³⁰⁸*

Case 2: Theft of a trailer at Dublin Road

In his statement to the tribunal, Supt Murray referred to the crime file that was submitted to him and said that he *'asked four questions to assist a successful conclusion'*, and that, when Garda Keogh replied, *'I expressed my appreciation of the efforts made'*.¹³⁰⁹

¹³⁰⁸ Tribunal Transcripts, Day 126, pp. 19-21, Evidence of Supt Pat Murray

¹³⁰⁹ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2048

In his interview with tribunal investigators, Supt Murray denied criticising Garda Keogh's police work and stated that:

*I asked a question about CCTV, what efforts been made to enhance it? I would have been willing to approve financial sanction to improve/enhance the CCTV quality, if that was possible. There was no criticism. Garda Keogh may have taken a subjective view of this, but from my point of view I was only offering assistance ... I was thinking further down the line and drawing on my experience as a prosecutor.*¹³¹⁰

He further elaborated on the actions taken to bring the matter to a close:

*On 28th August Garda Keogh obtained CCTV from [K]ilmartin's, (PM45 page 225). This brought more certainty to matters. My prompting guided people towards doing a better job. From that point, with a distinct lead to follow and evidence to support that lead, action had to be taken.*¹³¹¹

Supt Murray pointed out that he put further supports in place to assist Garda Keogh in bringing the matter to a conclusion, including sanctioning ten hours' overtime for him to attend the arrest phase of the investigation.¹³¹²

In his interview with tribunal investigators, Supt Murray also pointed out the following:

*Garda Keogh as I said before had issues around the abuse of alcohol. I asked Sergeant Monaghan and Detective Sergeant Curley to assist Garda Keogh to provide further assistance to bring the matter to a conclusion. I was insisting culprits be found, through social welfare checks, or intelligence. Eventually it became apparent they were appearing in Naas District Court on a particular day. An application came from Garda Keogh for extra hours, (PM45, Pages 231, 232, 233, 234 and 235) prior to the court appearance. It was arranged that Garda Keogh would take part in this arrest. He contacted the Detective Sergeant Curley the day before and the day of the planned arrest and said that he had a relapse of drinking and he didn't appear to take part in the task. A successful prosecution ultimately ensued, with a six month custodial sentence imposed on one of the offenders on 6th October 2016. I raised the standard and I saw that as my role as a then Superintendent.*¹³¹³

Supt Murray was asked by counsel for the tribunal whether he considered that Garda Keogh had done good police work in this case:

Q. It would appear that Garda Keogh had investigated the matter thoroughly?

A. Absolutely.

Q. And as a result of good police work, it led to the solving of this crime, isn't that right?

A. Absolutely, and I acknowledged that in the correspondence, when I said I appreciated the additional enquiries made and the efforts that were made to deal with this.

Q. Did you think that that was adequate in the circumstance, in the light of all the queries that you had initially raised mistakenly in relation to the Garda CCTV footage?

¹³¹⁰ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3045

¹³¹¹ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3046

¹³¹² Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2048

¹³¹³ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3046-3047

- A. Well, I was mistaken in relation to the Garda CCTV footage, but I would say the other queries I generated were legitimate queries, in me doing my – performing my role as a superintendent, monitoring and being responsible for the thoroughness and accuracy of all investigations in the district.¹³¹⁴

He stated that he was unaware of Insp Minnock's email of 31st August 2015, which commended Garda Keogh for his good work in advancing the investigation. However, he noted that:

*I gave that same credit to Garda Keogh on 22nd September 2015 ... I suggest that Inspector Minnock (now Superintendent) was doing an audit of Pulse and saw an update on the narrative of the Pulse incident and commented. That was something I encouraged. He may not have had sight of the crime file or the guidance I provided on it. The acknowledgement he gave is the same as the one I gave on 22nd September 2015.*¹³¹⁵

Case 3: Criminal damage at Mulligan's Filling Station

In his statement to the tribunal, Supt Murray outlined how his queries relating to Garda Keogh's investigation of this crime arose:

*On 14th August 2015, having again received crime files for review in the normal way, I initiated queries in relation to Pulse incident 12095496 a criminal damage incident querying if Garda Keogh had taken the statements on the file from the witnesses and asking if possible suspects could be a local criminal family. In replying, Garda Keogh dealt with both issues adequately and I marked the incident inactive and asked the Victims Office to fully update the victim on the unavailability of avenues of inquiry.*¹³¹⁶

In his interview with tribunal investigators, Supt Murray rejected Garda Keogh's allegation regarding his 'pie out of the sky'¹³¹⁷ nomination of a certain family as suspects, outlining his knowledge of that particular family in Athlone and stating that:

*I don't have a specific recollection about how the _____ family came to be suggested as suspect, but their names may have arisen in the 10AM PAF meeting. That may have allowed me to make a suggestion, merely suggesting and I was quite happy when Garda Keogh analysed that and took it into account in closing off the crime file. So I don't see a major issue with that and I was offering guidance to bring it to a conclusion. The _____ family were causing problems and that's merely where it came from. As Garda Keogh knows, and he is a Garda for some time, suggesting that someone hasn't transport wouldn't exclude them from committing crime.*¹³¹⁸

Supt Murray was asked by counsel for the tribunal why he nominated the family as potential suspects:

*... well I suppose just the level of activity I think that were involved with the family at that time. They also had access to a house that was close by to that filling station as well I think, and it may possibly have been them. I just wanted that avenue explored. If there was nothing in it, there was nothing in it. But I was, I suppose, guiding the direction of the investigation, to ensure there was no stone was left unturned and I felt always that the public would demand that kind of a service from us.*¹³¹⁹

¹³¹⁴ Tribunal Transcripts, Day 124, p. 96, Evidence of Supt Pat Murray

¹³¹⁵ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3052-3053

¹³¹⁶ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2048

¹³¹⁷ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 63

¹³¹⁸ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 3010 at p. 3045

¹³¹⁹ Tribunal Transcripts, Day 124, pp. 102-103, Evidence of Supt Pat Murray

He was also asked about his motivation in raising the query:

*They were directed to the sergeant in charge of Athlone as far as I was concerned. They were cases Garda Keogh was involved in but I do indicate that they may be suspect. I was giving some guidance as I saw it and I saw that as a my role in not merely rubber stamping a crime file that came up, but I felt my role was to add value in the service to the public in terms of how volume crime was investigated, so as that the victim would be at the centre of what we did in a holistic type way. And I think the structures I set up, you know, ensured that that was the case and it was a matter for me then to ensure that everyone understood the standard that I had set and that that would be applied then fairly across the board, with a view to improving the service, creating efficiency and effectiveness in the service we're delivering.*¹³²⁰

*I would just like to say, you know, I suppose my dealing with the crime files was the same for Garda Keogh as every other member in the station. If I felt a query needed to be generated, if I felt guidance or a direction needed to be given, I did that irrespective of who the member was.*¹³²¹

Case 4: Robbery

In his statement to the tribunal, Supt Murray referred to the instructions issued to all district members relating to the reporting of critical or serious incidents which he said was *'not in any way directed at Garda Keogh personally'*.¹³²²

Supt Murray was referred to his directive dated 18th August 2015 by counsel on behalf of An Garda Síochána:

So the purpose of that was to allow, I suppose, the early warning system to take over and, I suppose, the passing over of the continuation of any investigation that occurred, particularly during the night, and that the, I suppose, mechanisms and machine that we had in place would swing into action and try and make efforts to gather evidence at an early a stage as possible.

Q. Yes. In the second paragraph there is a reference to ensuring the reporting system is working swiftly and the sergeant in duty or the sergeants, in his or her absence the station orderly, will prepare a short, concise report and e mail it to district office and to yourself or Inspector Farrell, D/Sergeant Curley or D/Sergeant Baker?

A. Yes.

Q. Sergeant in charge.

“Reports are required for all Pulse category types which are deemed serious and likely to generate community/media interest.”

That was the breadth of the direction?

A. Yes.

Q. Do you see over the page, there is a similar last line to this document. This is what I was – I think this was canvassed possibly by Mr. Marrinan: “Please bring to attention of each member for immediate implementation and for strict compliance.”

A. Yes.

¹³²⁰ Tribunal Transcripts, Day 124, pp. 102-103, Evidence of Supt Pat Murray

¹³²¹ Tribunal Transcripts, Day 124, p. 109, Evidence of Supt Pat Murray

¹³²² Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2049

- Q. *Again, was this only to apply to sergeants and upwards or was this for all guards?*
- A. *It was for everyone to take note of. And I suppose what was important is, that the report might come in – I was trying to cater for every eventuality, I suppose, in trying to pin roles to people. The objective was hopefully that the report would come in and our team would swing into action then.*
- Q. *Chairman: Where I think the debate was and the analysis was, that clearly – sorry, when I say clearly, it seems that this memo was intended to say it's not enough to have just put it on Pulse.*
- A. Yes.
- Q. *Chairman: You have to make a report.*
- A. Yes.
- Q. *Chairman: And that's going to be the basis of it. So obviously somebody might previously have thought, well, I have put everything on Pulse, that's okay.*
- A. Yes.
- Q. *Chairman: You are saying that's not okay.*
- A. Yes.¹³²³

Supt Murray's attention was drawn to the actual wording of the document and he was asked the following:

- Q. *Chairman: But the first paragraph appears on the face of it, on one reading at least, the reading that Mr. Marrinan was canvassing, it appears to say that the obligation of making that report is on the sergeant?*
- A. Yes.
- Q. *Chairman: Now, you say, as I understand it, well, where is he going to get the information?*
- A. Yes.
- Q. *Chairman: Except from me as I come in and report it?*
- A. Yes.
- Q. *Chairman: So that envisages if you like, although it doesn't say it, two reports; in other words, that if I am the investigating person, I come in, I put it on Pulse and I make a report, the sergeant may simply transmit it?*
- A. Yes.
- Q. *Chairman: Or the sergeant may write out something different?*
- A. Yes.
- Q. *Chairman: But it doesn't actually say that?*
- A. No, I appreciate that.¹³²⁴

¹³²³ Tribunal Transcripts, Day 126, pp. 149-151, Evidence of Supt Pat Murray

¹³²⁴ Tribunal Transcripts, Day 126, p. 151, Evidence of Supt Pat Murray

In his statement to the tribunal, Supt Murray referred to the PAF meeting which occurred on 14th September 2015, during which this incident was discussed:

*On Monday 14th September 2015, at the Daily PAF meeting with my District Team Pulse Incident 12207121 was discussed and the Sergeant in Charge Athlone, Sergeant Baker, brought to my attention at the meeting a report from Garda Keogh which she felt was far from satisfactory in that it lacked any detail to assist inquiries Garda Keogh said he was unable to make. The group around the table which included the Detective Sergeant and Inspector Minnock felt the same.*¹³²⁵

He was asked by counsel for the tribunal who was responsible for first raising the issue at the meeting. He replied that:

*Inspector Baker, who was then the sergeant in charge, brought the matter to attention. It had happened in the early hours of Sunday morning and it seemed to be coming to attention for the first time. So we had missed an opportunity, I suppose, all throughout Sunday to make some effort to deal with it.*¹³²⁶

Supt Murray referred in evidence to the email that ought to be sent to management:

*... the e mail that we had envisaged in the document you mentioned there, allows that early alert process, so as that none of this happens and things don't get lost. Detective Sergeant Curley and Sergeant Baker have access to emails on their phone and would be able to – as do I, and would be able to sort of ensure that some element of investigative process would begin immediately. Robbery wasn't a hugely common offence in Athlone and I think for 2015 there were six robberies. Two of them we will probably be speaking about later.*¹³²⁷

He told tribunal investigators that an onus arose for action to be immediately taken and that:

*... the Detective Sergeant allocated one of his team to bottom this out, and as it turned out, that member did not, I believe, see fit to contact Garda Keogh at all which, I believe, would be unusual and speaks for itself.*¹³²⁸

In respect of the review that was later carried out, Supt Murray stated that *'the matter was reviewed again following those inquiries and doubts existed as to whether or not the incident occurred at all'*¹³²⁹

Supt Murray outlined the actions taken which led to the reclassification of the crime:

Through the Detective Sergeant on 23rd September 2015, who reported the result of inquiries, we decided that there was nothing in it and we made a decision at our management meeting that it didn't merit the classification allocated on PULSE and I used my authority to reclassify the crime. I did that in a very open way as I did with anything that we had to amend. So the rationale was on PULSE including the fact that the decision was made at the morning management meeting. It was also outlined who had amended the incident and the file number that attaches to the incident. The Organisation's then crime counting rules, divests clear authority to the District Officer to make decisions in relation to the management of crime within the District. We all felt reclassification was the best course of action and in doing that to explain to Garda Keogh that the manner in which he had dealt with the incident on that night wasn't

¹³²⁵ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2049

¹³²⁶ Tribunal Transcripts, Day 124, pp. 113-114, Evidence of Supt Pat Murray

¹³²⁷ Tribunal Transcripts, Day 124, p. 115, Evidence of Supt Pat Murray

¹³²⁸ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3048

¹³²⁹ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2049

*what was expected... So again on the face of it, it was serious as reported by Garda Keogh but this was bottomed out by someone else and that person I believe didn't see fit to contact Garda Keogh at all.*¹³³⁰

Supt Murray explained the rules governing reclassification of a crime in his evidence to the tribunal:

*Well, HQ circular 139/03 is the crime counting rules. It's much the same as that really, but number 1 on that gives me, I suppose, the delegated authority to make decisions around reclassification of crimes, taking into account that quality and the other regulations that are there about that. There are in the pages in the disclosures as well. That creates a situation where I and my team are allowed to make that decision in the best interests.*¹³³¹

He was asked by counsel for the tribunal about his concerns with regard to the report submitted by Garda Keogh:

*... he furnished a report on the first night which didn't contain that information. There was a potential witness perhaps lost. And that was the type of situation I was trying to indicate that had occurred here, that I suppose wouldn't meet the standard that I wished to apply and in turn wouldn't demonstrate that we were providing the best possible service. I too was accountable to the chief superintendent and I had to, I suppose, account for myself every fortnight to her.*¹³³²

He was also asked by counsel on behalf of An Garda Síochána about the adequacy of Garda Keogh's PULSE entry:

*... there was more information that could have been captured there. The search. Maybe scene details. What CCTV was checked or what direction of travel people had taken, particularly the injured party, to allow further efforts of CCTV. What kind of account the had victim given? Had it been recorded in Garda Keogh's notebook? Were there any descriptive features? As it turned out, the injured party seemed to have descriptive features here ...*¹³³³

In his statement to the tribunal, Supt Murray set out the action that he took:

I then sought in correspondence to ascertain why the matter was dealt with in the manner chosen when firstly on the face of it, it was a serious crime and as such required a serious response.

*Secondly I sought to ascertain why the instruction of 18th August 2015, relating to reporting of critical or serious incidents was not complied with. In seeking explanation I wished to demonstrate my commitment to high standards. I was not targeting Garda Keogh in any way.*¹³³⁴

He set out his correspondence with Garda Keogh on the matter, explaining that his queries persisted as he found that Garda Keogh's initial response did not adequately address the issues raised:

On the Pulse incident there is a file number associated with the file in Athlone that refers to the enquiries carried out... The definition of a robbery includes that there must be a stealing and it must be attended to by the use of force or putting a person in fear of being subjected to such force. So to simply put it a robbery on Pulse and just leave it at that wouldn't allow an opportunity

¹³³⁰ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3048-3049

¹³³¹ Tribunal Transcripts, Day 124, p. 125, Evidence of Supt Pat Murray

¹³³² Tribunal Transcripts, Day 124, p. 129, Evidence of Supt Pat Murray

¹³³³ Tribunal Transcripts, Day 127, pp. 11-12, Evidence of Supt Pat Murray

¹³³⁴ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at pp. 2049-2050

*for anybody to apprehend the suspect. So again I outlined the duties of the first member on the scene in my correspondence, considering the seriousness of this crime. So Garda Keogh replied as included at PM46 page 241 and he outlines some more detail. So he was off then until 7th September and he indicates he rang the injured party who told him the matter had already been dealt with.*¹³³⁵

He referred to the allegation made by Garda Keogh that the correspondence on the issue was a form of harassment and that Garda Keogh believed Supt Murray ‘was being personal towards him’.¹³³⁶ He told tribunal investigators that:

*He indicates the way I wrote to him about the robbery is some form of harassment in correspondence ... I personally didn't feel he dealt with the inquiries well and again I explain An Garda Síochána's objectives regarding the investigation of the crime on him and I advised him of his obligation to account and I invite him to make a complaint about me if he feels I am harassing him. I feel I would not have invited him to make a complaint if I was harassing him. I was very open I feel and transparent I didn't hide anything. Why would I invite someone to make a complaint about me if I could avoid that. I left that to one side and I asked him to address the queries I was making. I didn't want him to confuse things or have him believe the threat of a complaint against me would force me to desist with what I saw as a legitimate query. He and I still had an obligation to be accountable and I pointed out a mechanism that was there if he felt I was overly harsh. He replied in a very vague way. I could see no purpose in taking the matter any further. He had a view that I was being personal towards him, as outlined in his response at PM46 page 237. I didn't take it any further than that. I didn't feel there was any point in getting into a to and fro and the general feeling following the enquiries carried out was the robbery may not have occurred at all. I simply let the matter rest. As I have earlier indicated, I had decided in early April 2015 that I would not allow veiled threats regarding complaints from Garda Keogh prevent me from doing my job and performing my role. I was determined that I would do the right thing for the right reason, even though it may not be to Garda Keogh's liking.*¹³³⁷

Supt Murray expanded on this in his evidence to the tribunal:

*... I suppose, Garda Keogh may have or had a view of me, I don't know when he formed that view or why, but I had only the objectives of ensuring the organisation's investigative service was met in relation to the case. I only wanted to get the information that he possibly had. I made it clear to him that, despite the fact that he was making a complaint that I was harassing him, that didn't remove him from the obligation to account. He had a remedy open to him, if he felt that I was harassing him or if he felt I was being unfair to him. And I invited him to take that remedy and I feel that, you know, if my intentions weren't honourable, I wouldn't have sent that letter or adopted that approach.*¹³³⁸

I knew the position Garda Keogh was in, I knew it was difficult for him. But he continued to come to work and his doctor was certifying him fit for work on a certain day and he was going to incidents and calls and meeting the public. My system insisted on follow up. I was very anxious that that follow up would happen. And I understood, you know, Garda Keogh wasn't able at times, I suppose, to follow up because of the issues he had with alcohol and the impact that was

¹³³⁵ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3049-3050

¹³³⁶ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3050

¹³³⁷ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3050-3051

¹³³⁸ Tribunal Transcripts, Day 124, p. 129, Evidence of Supt Pat Murray

*having on his absences. And then he seemed detached from his roles and responsibilities in the Garda station and to the public as a member of An Garda Síochána, in relation to the every day duties that had to be carried out when he presented for work. And that was where I found myself.*¹³³⁹

He was asked by the Chairman whether it was reasonable to raise the query with Garda Keogh after the incident had been reclassified:

Q. *Chairman: He says, look, I investigate it, the next thing I come back to work and I find the victim, the injured party has suddenly mysteriously dropped his complaint, despite the fact that he looked serious to me and I said it and I wanted it there. That's number one. And he comes back and then he gets queries about it. And it transpires that at the time he gets the queries the matter has actually been reclassified as, so to speak, a non crime. So, it looks a bit frustrating from his point of view?*

A. *I see that. I see that, Chairman.*

Q. *Chairman: I mean that he's getting it in the neck, so to speak, for something that is a non crime. Can you understand?*

A. *I see his position exactly. In fairness to him, when he came back he contacted the injured party, who told him that somebody had visited. I see how he might form a view in his mind that I was in some way against him, you know, but that wasn't the case. Maybe I added to that, Chairman, in the way I handled it ...*¹³⁴⁰

Supt Murray went on to give evidence that:

Well, he had indicated to me in August that he wanted everything in writing and it was just very difficult. I found it very challenging, dealing with Garda Keogh, in terms of him being available for work, going to incidents, my responsibility to, I suppose, ensure that they are closed out and his view of me, I suppose, you know, the view that he had adopted of me being in some way against him, when I wasn't and I only tried to help him in any way I could in relation to his welfare. But I had to bottom out the stuff. I had to have a standard and it had to apply equally to everybody.

*... it may be against my interests. In trying to press Garda Keogh, I felt I had to do the right thing for the right reason. I knew that might be against my interests, and so that's the way it turned out.*¹³⁴¹

Alleged Massaging of Crime Figures in Athlone

In respect of Garda Keogh's allegation that he was 'massaging the crime figures downwards', Supt Murray told tribunal investigators that:

Garda Keogh's views as expressed above were put forward in Dáil Éireann on 15th December 2015 by Mick Wallace TD and Clare Daly TD and in those utterances this was portrayed as something that was going on wholesale. It is my opinion that that this is coming from Garda Keogh. Again, under the crime counting rules, I had at that time the authority as District Officer, to make those decisions and I did so in a very open way with my District Crime

¹³³⁹ Tribunal Transcripts, Day 124, pp. 138-139, Evidence of Supt Pat Murray

¹³⁴⁰ Tribunal Transcripts, Day 124, p. 140-141, Evidence of Supt Pat Murray

¹³⁴¹ Tribunal Transcripts, Day 124, p. 145, Evidence of Supt Pat Murray

*Management Team and taking everyone's views into account. The decision was included in the narrative of the Pulse incident and the rationale around that decision was also included.*¹³⁴²

He also addressed this issue in his evidence to the tribunal. Supt Murray was questioned by his own counsel as follows:

Q. *We needn't rehash again the rights or wrongs of the conclusion as to the credibility of the victim, but could I ask you, on the 15th December 2015 you were the subject of a speech by Clare Daly TD in the Dáil –*

A. *Yes.*

Q. *– based on what was told to her by Garda Keogh?*

A. *Yes.*

Q. *Is that so?*

A. *That's correct.*

Q. *I think the case is that the position is that Garda Keogh accepted in evidence that what the deputy said on this particular occasion was based upon what he had told her.*

A. *Yes.*¹³⁴³

He was also asked the following:

Q. *My question for you, chief superintendent, is: That decision to organise politicians or for politicians to say these things under Dáil privilege, as far as you're concerned was that fair or reasonable?*

A. *Oh, it was very unfair. And I was very badly damaged by that. It was a very public accusation of some type of corruption against me. I was operating to a system, to a policy, to a set of procedures, with a very dedicated team of experienced people who assisted in helping me make those decisions. We were doing the right thing for the right reason in complying with organisational policy in relation to data and managing the classifications of crimes, and it's all laid out in the organisation policy. And that role fell to me. And you know, I see what is alleged here, but we equally recategorised crimes from non crime to crime. And it was based on the information that was available in relation to the crime, the enquiries that had been carried out and what determination we made as to what category it should go into. So, there was an equal amount of crimes reclassified from non crime to crime and some laterally then into different crime classes, as was the case with the assault on the taximan or the robbery of a taximan which was originally classified as an assault. And it was a very normal process, it's part of our system that we operated in keeping with the organisational policy.*¹³⁴⁴

Detective Sergeant Eamon Curley

In his statement to the tribunal, D/Sgt Curley stated that his experience with Supt Murray was *'that he has an extensive knowledge of policy and procedure and did not deviate from same'*.¹³⁴⁵

¹³⁴² Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3052

¹³⁴³ Tribunal Transcripts, Day 126, pp. 175-176, Evidence of Supt Pat Murray

¹³⁴⁴ Tribunal Transcripts, Day 126, pp. 177-178, Evidence of Supt Pat Murray

¹³⁴⁵ Tribunal Documents, Statement of D/Sgt Eamon Curley, p. 487 at p. 489

D/Sgt Curley was asked by counsel for the tribunal to describe the changes in Athlone after the arrival of Supt Murray:

- Q. *Would you have seen the new regime that came into place in March in 2015 as perhaps being more accountable, perhaps stricter than it had previously been under Superintendent McBrien?*
- A. *More beneficial from, I suppose, a crime investigation and a governance point of view, I would have thought. In that all matters were properly pursued and followed up on, particularly in relation to, I suppose, detective branch. He [had] a deep understanding of crime investigation and the supports necessary to ensure that crimes are properly investigated and followed up. In doing, as he initiated a full time incident room coordinator to detective branch, which was a huge benefit to preparing files in detective branch.*
- Q. *No reflection on Superintendent McBrien's tenure in relation to these matters and matters do evolve, but did you find that it was perhaps placing a greater burden on members or not?*
- A. *I would have thought the opposite. I would have thought that it allowed members to enjoy the supports that were there at management level to assist in the pursuit of crime investigations which they were assigned to, that they weren't isolated, that there were numerous support measures available to them to ensure that crimes were fully followed up. From speaking to members and from my knowledge, they were quite satisfied with this matter, that it was a huge support to them in how they went about their work. In particular if they found themselves investigating something which needed assistance, that they weren't isolated, assistance would be provided to them. Or if it was a matter that required, I suppose, more expedient resources to be applied, that that would happen without the member having to go and pursue that.¹³⁴⁶*

He said that he had no knowledge of Supt Murray circumventing the restrictions outlined in section 8 of the Garda Síochána Act, 2005 regarding the submission of files to the Director of Public Prosecutions.¹³⁴⁷

Case 2: Theft of a trailer at Dublin Road

In his statement to the tribunal, D/Sgt Curley said that he had assigned Garda Brian Lynskey to assist Garda Keogh to investigate this crime having learned of the identification of a suspect. He said in his statement that:

It would be common practice to assign a member from detective branch to assist in investigations where an arrest was planned. An associated crime occurred within a neighbouring district and I had arranged also with that District to participate in the arrest. The arrest was scheduled for 1[8].11.2015 which was a date the suspect was due to appear before Nass district court. On 16.11.2015 Garda Keogh reported to me that it was unlikely he would now be able to complete this duty as he had a relapse. I informed him I would seek to get alternative members to complete same and would let him know if I needed any further assistance. He informed me where the file was stored. I sought alternative members to complete same and Sergeant Moylan retrieved the investigation file. On 18.11.2015 at 12:07pm Garda Nick Keogh phoned me to report that "he wouldn't be able to make it today". I informed him that the matter was in hand to which he replied that was a load of his mind and he asked if the member's obtained the file. This phone call

¹³⁴⁶ Tribunal Transcripts, Day 128, pp. 133-134, Evidence of D/Sgt Eamon Curley

¹³⁴⁷ Tribunal Documents, Statement of D/Sgt Eamon Curley, p. 487 at p. 489

*at 1207pm didn't make much sense as the members making the arrest were already in Nass. I reported this matter to the District Officer.*¹³⁴⁸

Case 4: Robbery

D/Sgt Curley outlined that his role entailed the regular review of crime incidents to ensure that they were correctly categorised and had been assigned the right incident type. In respect of this incident, he said in his statement to the tribunal that:

*As detective Sergeant in the Athlone District I would regularly review all crime incidents to ensure their accuracy and clarity and that they have been assigned the correct category and Incident type. I would also seek to ensure incidents were updated following any investigative development. If I was of the view a crime was not correctly categorised I would send correspondence to the District Officer outlining same with recommendations to re-categorise the incident.*¹³⁴⁹

He stated that he recommended to the district officer that this incident be re-categorised.¹³⁵⁰

D/Sgt Curley was asked by counsel for the tribunal about his concerns in relation to the robbery and why he thought it should be reclassified:

... I tasked Garda A with recording a statement from the victim. Up to that point, in 2015 there had been four robberies in Athlone. So it was an unusual crime to my mind, two of them in relation to matters which are subject to the investigation in relation to a taxi driver, this inquiry in relation to a taxi driver, robbery. But I suppose it was something I would give some consideration to. So having received the statement back from Garda A, I had concerns regarding the matters, had the matters occurred as being reported. Those concerns were in relation to – I suppose there was a number of concerns. Number one, the victim describes a very violent robbery, yet the injuries weren't consistent with the description as he provided. There was no corroborative evidence in relation to the matter. He was now in turn, in relation to the theft of the €20, reporting some change having been stolen. I had concerns in relation to the location that the crime occurred, in that it wasn't the normal route that from his address, from the town that one would take home. And there was a discrepancy around the time that the crime occurred. Initially it was reported as having occurred between 2:30 and 3:30 and yet in his statement to Garda A he said it occurred between 2:00am and 3:00am. Now this location where it occurred is approximately three minutes from the town centre. So there was no explanation surrounding the discrepancy in the time that it occurred. No corroborative evidence. There was evidence that he was intoxicated. I suppose on top of all that, he wasn't willing to make a statement of complaint. So I suppose the first factor is the inconsistencies and my concerns were heightened by the fact that he wasn't willing to make a complaint. He didn't provide a description in the statement that Garda A was assigned to take from him. So, all of those things I had some concerns in relation to, believing that the incident occurred as reported.

Q. We know that there was a description of both attackers in the Pulse entry that had been made by Garda Keogh, but did anybody think it prudent to talk to Garda Keogh?

A. Well, I assigned Garda A to do it, he reported back to me. I advised Superintendent Murray on that day when Garda A reported back to me, with my report and I went to Superintendent Murray with my report and a copy of the statement and I outlined to

¹³⁴⁸ Tribunal Documents, Statement of D/Sgt Eamon Curley, p. 487 at p. 489

¹³⁴⁹ Tribunal Documents, Statement of D/Sgt Eamon Curley, p. 487

¹³⁵⁰ Tribunal Documents, Statement of D/Sgt Eamon Curley, pp. 487-488

him the concerns I had regarding whether the incident occurred as reported, with my recommendations. And my recommendations aren't mainly based or solely based or in any way based on his refusal to make a statement or complaint, they are based on my failure to believe that the matter occurred as reported. But they are merely recommendations. And having discussed it with Superintendent Murray, Superintendent Murray decided, having discussed it with him, that we would seek somebody else to re-interview the victim, see can we further the matter.¹³⁵¹

D/Sgt Curley was asked by counsel about other evidence which might have lent credibility to the complainant's account of the incident:

I wasn't aware that the victim had got into a taxi on the night and come to the Garda station. If I was aware of that, that would have been beneficial.

... I would expect that the interaction or the details, the relevant details would have been included in the report of Garda Keogh and on the Pulse incident. The matters that I have highlighted I suppose aren't referred to on that, including the use of a copper bar, which the victim described being beaten with.¹³⁵²

He then described in evidence Garda Divilly's report and the action he took on foot of it:

... The report, the task of Garda Divilly, I suppose the best outcome we could hope for that ideally with a revisit by somebody else to a victim is perhaps they may have had a change of mind and may have reported the matter by way of a statement of complaint. But that didn't happen. That sometimes happens with a different approach. But that didn't happen. But I suppose what concerned me more arising from the report of Garda Divilly is that the description of the offenders changed from white Air Max top and black tracksuit bottoms and a McKenzie top to a black hoodie and a blue hoodie, so the description changed again, which I suppose heightened my concerns that I previously had. My report then to Superintendent Murray, again recommended the matter be recategorised, was based on – when it refers to the credibility, I didn't include all the rationale for my report. Because the way Superintendent Murray operated at that time was, any decisions relating to the reclassification of crime or decisions surrounding how matters would proceed from an investigative perspective were all done collectively at PAF meetings. So, I knew from the report that I was sending back that it would lead to this matter being discussed openly at the PAF meeting, which happened on the 23rd, where we all sat around and discussed the matter at the end of the PAF meeting and I outlined my concerns in relation to it and why I felt it didn't fall within the crime counting rules to be recorded as robbery, based on the concerns, in that I didn't believe that the matter as reported occurred as reported. And arising out of that three decisions were made at the PAF meeting.¹³⁵³

He was cross-examined by counsel on behalf of Garda Keogh with regard to the credibility of the injured party and the decision-making process:

Chairman, when I refer to credibility, I didn't go into the rationale surrounding the credibility in full because the rationale surrounding that was a matter which was going to be discussed at the PAF meeting. That's how Superintendent Murray operated, that decisions surrounding re-categorisation of pursuing of investigating matters would be discussed collectively and openly by everybody. And if it was a matter, when discussed at the PAF meeting, and I outlined

¹³⁵¹ Tribunal Transcripts, Day 128, pp. 136-138, Evidence of D/Sgt Eamon Curley

¹³⁵² Tribunal Transcripts, Day 128, p. 139, Evidence of D/Sgt Eamon Curley

¹³⁵³ Tribunal Transcripts, Day 128, pp. 141-142, Evidence of D/Sgt Eamon Curley

*my concerns, that I disagreed with and the decision was made to leave it on as a robbery, that would have happened, but it was an open discussion and that was the decision that was made surrounding it. So I didn't include the entire rationale of my issues surrounding the credibility of the victim because it was going to lead to a discussion at a PAF meeting. My recommendation was going to lead to this being discussed at a PAF meeting.*¹³⁵⁴

D/Sgt Curley also gave evidence in respect of the re-categorisation of the crime:

*Collectively when it was discussed at the PAF meeting, there was a decision made to recategorise the matter to attention and complaints. There was a decision made to seek further information from the investigating guard and a decision made to leave it on, I suppose, our excel sheet, which basically would mean that the matter - or PAF sheet, which would mean the matter would be reviewed further down the road. So ultimately as detective sergeant in Athlone, I am quite familiar with the crime as reported and if any information or intelligence had occurred which was going to change my view on that, this matter is something I would have given attention to or was aware of it. It is a matter which could be recategorised up towards again. The PAF meeting is there as control measure to review incidents of this nature and it performed very well and this is an example of how it works.*¹³⁵⁵

In his statement to the tribunal, he said that, in accordance with instructions from the District Office dated 23rd September 2015, he updated the PULSE incident and detailed the same in the narrative.¹³⁵⁶

Inspector Aidan Minnock

In his statement to the tribunal, Insp Minnock described Supt Murray's leadership as follows:

*I would describe (Chief) Superintendent Murray's leadership as hands on, decisive, consultative, team based approach; with a focus on integrity and high standards across the District. There was a focus on achieving high standards from personnel across the District and this was not targeting towards Garda Keogh, or any other particular person. (Chief) Superintendent Murray tried to ensure adherence to high standards, he always operated fairly and consistently, which includes his dealings with Garda Keogh. (Chief) Superintendent Murray was proactive in implementing change and a number of new processes and structures were implement[ed] during his tenure.*¹³⁵⁷

He set out the arrangements in place for the review and return of crime files to garda members in Athlone Garda Station:

*In relation to setting high standards and endurance adherence to these standards a number of investigation files, crime files and PAF Pulse reviews were returned to garda members through their supervisory sergeants. These files/investigations were returned for further consideration by (Chief) Superintendent Murray, Inspector Farrell and myself. This process was focused on advising sergeants of the required standards, the issues arising and the areas identified for improvement in the investigation and detection of crime, while also advising gardaí of the required standards and ensuring adherence. By identifying issues and notifying the relevant supervisory sergeant and the particular garda, it was hoped that over time the standards of files submitted would improve through shared knowledge and standard setting.*¹³⁵⁸

¹³⁵⁴ Tribunal Transcripts, Day 128, pp. 179-180, Evidence of D/Sgt Eamon Curley

¹³⁵⁵ Tribunal Transcripts, Day 128, p. 142, Evidence of D/Sgt Eamon Curley

¹³⁵⁶ Tribunal Documents, Statement of D/Sgt Eamon Curley, p. 487 at p. 488

¹³⁵⁷ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at pp. 688-689

¹³⁵⁸ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 689

He referred to the updated crime file process which Supt Murray introduced to Athlone, stating that it focused in particular on victim support and the role of the newly-established Victims Office. He stated as follows:

*The crime file process was a significant part of the governance process for volume crime incidents and ensured good governance and appropriate oversight of crimes. It ensured set investigative criteria was completed on every crime, prior to closing the investigation. The crime file process was reviewed and updated during (Chief) Superintendent Murray's tenure in Athlone and I was involved in the review process. The review focused on ensuring victim support and brought the newly established Victim's Office into the process. In the review process the entire structure of the crime file form was updated, as was the channels of correspondence. The process ensured a streamlined governance process across the various levels for crime investigations. The overall process ensured all crimes, particularly volume crime, were overseen by supervisory sergeant and the District Management Team. Following oversight from the Superintendent, or an inspector, the file was forwarded to the Victim's Office to ensure updates and feedback was provided to victims, prior to closing investigations.*¹³⁵⁹

Insp Minnock further elaborated on the crime file process in his statement to the tribunal:

*There were two governance streams following a crime incident; with the stream taken dependent on whether an offender was identified (solved crime) or not (unsolved) for the crime/incident. One stream was used if a crime was detected (solved crime), with a suspect identified and another if there was no suspected offender. If a crime was detected, an investigation file was submitted by the garda to their supervisory sergeant and on to the superintendent or inspector, with each level making recommendations on the evidence available to institute proceedings. The ultimate decision was made by the superintendent or inspector under delegate authority (as per General Direction No. 3), with indictable matters forwarded to the Office of the Director of Public Prosecutions (via the State Solicitor) for directions. The other governance stream was used if a crime/incident was unsolved, with no suspected offender(s) identified. In this stream, a crime file was submitted so the crime incident could be closed off, with the appropriate oversight. This process involved the submission of a crime file by the investigating member to their supervisory sergeant and on to the District Office, where either inspector or the superintendent would review the crime file prior to closing it. Having made a decision to close the crime/incident, the crime file would go to the Courts Office for the attention of the PAF administrator and the Victims Office. In the Courts Office the crime (incident) would be closed on Pulse (PAF 6.8) and the Victims Office would communicate with the victim to advise them of the final outcome of the crime (incident). The process was comprehensive and ensure[d] good governance of investigations, with crimes (incidents) not closed without over-sight from supervisors and the District Management Team.*¹³⁶⁰

He stated that, following the implementation of the revised crime files process, he initiated an audit of crime files. He stated that this audit reviewed crime files submitted by a number of members and verified entries made by gardaí on the various crime files. He confirmed that none of the files audited were Garda Keogh's.¹³⁶¹ He stated that:

¹³⁵⁹ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 690

¹³⁶⁰ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 691

¹³⁶¹ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 691

*The ultimate goal was to automate this governance stream and replace the crime files process to an entire Pulse process. I can state that I personally returned numerous crime files for further attention of garda members via their supervisory sergeants for a variety of reasons.*¹³⁶²

Insp Minnock also stated that Supt Murray's minute of 18th August 2015 was seeking to ensure compliance with previous instructions from the deputy commissioner's office dated 2nd August 2012. He added that, after serious incidents, the divisional and regional office always sought reports, given that *'all the pertinent information was not available from Pulse'*.¹³⁶³ He further stated in respect of the minute:

*This minute was to ensure best practice regarding the recording, advancing and investigation of incidents, particularly regarding critical or serious incidents. This minute was also consistent with similar previous instructions from other Offices. In 2012, Deputy Commissioner Operations issued an instruction regarding the reporting of critical incidents. Due to the importance of this email I retained a copy and put it into my Garda Journal in 2012. This instruction was again issued from the Westmeath Divisional Office in 2015 and I again retained a copy in the back of my Garda Journal.*¹³⁶⁴

He said in his statement that he did not witness any member being hypercritical towards Garda Keogh and that *'there was a continuous process of trying to improve standards, with the aim of providing a consistently high level of policing to the community'*.¹³⁶⁵

Case 1: Thefts at Custume Place

When asked by counsel for the tribunal if it was appropriate for witnesses to write out their own statements, Insp Minnock replied:

Well, I suppose, the CIT manual is quite clear in relation to what is good practice in relation to the taking of statements from witnesses. And I suppose the deviation where I see an issue is that it provides no opportunity to, I suppose, establish the facts surrounding the statement, to corroborate matters or to challenge various aspects of the statement, or to get clarity. If someone says I went to a football match at seven o'clock, they obviously know what football match it refers to, but the statement taken of a guard could extract details around that, what was the football match, and then that can be further corroborated by other events. So the inquiries would ensue after that. So it just allows for a much more detailed, comprehensive statement when it's taken by a garda.

Q. Did you see anything unusual or disproportionate about Superintendent Murray's response?

A. I didn't. I just felt it was an issue certainly that he couldn't let pass, in that this couldn't become normal practice and it had to be addressed.¹³⁶⁶

Case 2: Theft of trailer at Dublin Road

In his statement to the tribunal, Insp Minnock said that it appeared to him the file was submitted prematurely:

Albeit I did not receive this crime file, it appears to me that it was indeed submitted prematurely,

¹³⁶² Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 691

¹³⁶³ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 698

¹³⁶⁴ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 683

¹³⁶⁵ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 684

¹³⁶⁶ Tribunal Transcripts, Day 130, pp. 14-16, Evidence of Insp Aidan Minnock

as this crime was ultimately solved. The purpose of a crime file is to provide governance process ensuring that appropriate investigative enquiries have been made prior to closing an investigation. At the time of submitting this crime file all avenues of investigation were not exhausted. I indeed complemented Garda Keogh by way of email in relation to this investigation. At that point I was unaware that a crime file had been submitted by Garda Keogh to (Chief) Superintendent Murray for the investigation to be closed. As (Chief) Superintendent Murray had not closed the investigation I reviewed the progress of the investigation as part of my ongoing review of open investigations on Pulse. On reviewing the investigation I noticed that the suspect vehicle had been identified by Garda Keogh from CCTV footage. On page 18 Garda Keogh states that (Chief) Superintendent Murray's queries on this file were oppressive and irrational and led nowhere. It is clear to me the queries kept the investigation open and there was a successful outcome to the investigation. It appears (Chief) Superintendent Murray was also complimentary in relation to the further work conducted by Garda Keogh in stating he appreciated the additional enquiries.¹³⁶⁷

He was asked about his view by counsel for the tribunal:

Q. You've expressed a view very clearly there that the crime file was submitted prematurely, isn't that right?

A. That's right.

Q. Just explain the process as you saw it working and why this was premature when it was submitted?

A. I suppose when a crime occurs it essentially goes on the Pulse system and it's reviewed, as described by Sergeant Baker in relation to the following morning at the PAF meeting. Then it's given a period to allow the investigation to ensue and it gets a review date for the supervisors or the inspector or superintendent will review the progress of that investigation. And that could be a six week period or whatever is allowed, given the particular crime. In that interim, if the guard identifies a suspect, he will then continue the investigation, update Pulse with the progress, and eventually submit an investigation file, which will eventually be considered by the superintendent under delegated authority or go to DPP under the general direction number 3, if that's required, for a direction on the matter. If there's no suspect identified and all avenues have been exhausted and no suspect has come to light, a crime file is submitted then to the inspector or superintendent to close the matter.

So it's only when you have exhausted all inquiries and you're satisfied you cannot progress any further avenues, that you submit a crime file as the governance mechanism to close a crime. Because it's not for a guard or a sergeant to close an investigation. That is done only by inspectors and superintendent rank. And the mechanism to do that is submitting a crime file. Submit the crime file and the decision is made, and then it's closed on the Pulse system and it's closed in paper file. The crime file then goes to the victims office, who advise the victim of the outcome.

So that's the two mechanisms. So by submitting a crime file you are basically telling the district officer and the inspector, I have exhausted all inquiries, I cannot progress this matter any further and I now wish to close the investigation.¹³⁶⁸

¹³⁶⁷ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 696

¹³⁶⁸ Tribunal Transcripts, Day 130, pp. 15-17, Evidence of Insp Aidan Minnock

Insp Minnock sent an email on 31st August 2015 commending Garda Keogh for his good work in advancing the investigation of this incident.¹³⁶⁹ He said in his statement to the tribunal that:

*This investigation related to the theft of a trailer from Dublin Road, Athlone on the 8th August 2015 between 4:31am and 4:34am, and Pid 12108691 refers. When sending the email to Garda Keogh I was unaware that a crime file was submitted to close the incident. Garda Keogh refers to the crime file submitted, which I presume was received in the normal post by (Chief) Superintendent Pat Murray. Initially the CCTV examined appeared to be of insufficient clarity to identify the suspect vehicle, albeit the incident was captured on CCTV footage. As (Chief) Superintendent Murray was not satisfied to close the incident at that juncture, the crime file was returned to ensure further investigation. These further investigations undertaken by Garda Keogh resulted in the good work and the successful identification of the suspect vehicle on CCTV footage. This good work was highlighted to me as part of the ongoing oversight of incidents on Pulse. I examined the progress of the investigation into this crime on the 31st August 2015, on the Pulse database, and subsequently sent the email to Garda Keogh.*¹³⁷⁰

He gave evidence to the tribunal that:

*... I suppose what I kind of alluded to is that, I suppose I didn't know that Garda Keogh had tried to close the crime file and it was really, I suppose, the intervention of Superintendent Murray that had kept the investigation opened. I suppose I was complimenting Garda Keogh on his proactive work regarding his approach.*¹³⁷¹

He said that it was his 'memory' that the investigation was progressed by Garda Lynskey in Garda Keogh's absence and that Garda Lynskey conducted good police work in identifying the suspect, which led to the successful prosecution of the crime.¹³⁷²

Case 4: Robbery

Insp Minnock attended the daily district PAF meeting on 14th September 2015, during which this incident was discussed 'as part the usual review of all incidents occurring since the previous PAF meeting'. In his statement to the tribunal he set out what occurred at the meeting:

*The Sergeant in Charge (Sergeant Baker) was in possession of a brief report from Garda Keogh regarding the incident. The consensus at the meeting was that the report lacked information to assist the team to make informed decisions. The report did not adhere to the criteria set by (Chief) Superintendent Murray in his recent report dated 18th August 2015. Given the serious nature of the reported crime, Detective Sergeant Curley was assigned to make further enquiries in relation to the incident. At a later date the incident was again discussed and in line with the Crime Counting Rules (HQ Directive 139/2003) the incident was re-categorised to a non-crime incident. As per garda policy, at that time, the decision to re-categorise an incident to a non-crime was assigned to the District Officer, and in this instance this decision was done in consultation with the team.*¹³⁷³

He told counsel for the tribunal why this incident was later reclassified:

Later that month. I suppose there was a number of – I suppose certainly the team at the table were very concerned about the number of discrepancies that were there between I suppose

¹³⁶⁹ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 683

¹³⁷⁰ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 690

¹³⁷¹ Tribunal Transcripts, Day 130, p. 17, Evidence of Insp Aidan Minnock

¹³⁷² Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 696

¹³⁷³ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 683

– firstly, in relation to the Pulse record had noted that the clothing, a white Air Max top and a blue McKenzie top, and subsequent to that, when Garda Divilly spoke to him, it was a black hoodie and blue hoodie. The time had also changed from the Pulse incident to when Garda A spoke to him, which was a day previous to Garda Divilly. I know that there was no mention of the weapon initially and then subsequently there was a copper bar was mentioned. I suppose some inconsistencies surrounding the injuries initially on Pulse and Garda Keogh's initial report outlined that he may have injuries. Then subsequent to that, in Garda Divilly's he outlined that he was kicked and he'd a knock to his forehead and he mentioned a fight and then also kicking to the chest. And then in relation to Garda Divilly's, there was now a bruise to the head and knuckles were damaged. And then subsequent to that again, in Garda Keogh's last report there was an injury to the leg. So the injuries seemed to change consistently. There was a mention of a fight then in the middle of it.

I suppose at that meeting, it was very clear something happened but what happened we weren't sure and whether it was a fight or whether it was a robbery, we just didn't know. I suppose given other factors in relation to robberies and examining MO of incidents around the time, the normal route that the youth would have taken, and I suppose the fact he wasn't cooperating in any respect in relation to the investigation.

So all of these matters, I suppose, were considered. And it was the consensus view that we weren't sure what happened. Certainly it wasn't sufficient on the balance of probability that we had, that the robbery had occurred and we all agreed that it should be reclassified at that juncture. But we didn't, we didn't stop the investigation there. It wasn't until December of that year that the incident was actually taken off the accountability sheet that I mentioned previously.¹³⁷⁴

Insp Minnock was asked by counsel for the tribunal whose decision it was ultimately to reclassify the incident:

Q. Well, the way you are describing the decision, is it appropriate to attribute it to Superintendent Murray as a reclassification at his direction or was it a group decision?

A. Well it's a group decision, but there's only one person who has the authority to make the decision.

So it's a collective view of opinions, but ultimately someone has to make the decision and there's only one person with authority, as per policy at that time, to make that decision, and that was the appointed district officer, which was Superintendent Murray.

Q. Have you any reason to believe that it had anything to do with Garda Keogh's protected disclosure or any other reason?

A. Well, the one thing I can say is, and we had a lot of consideration surrounding the reclassification of that incident, but the one thing that certainly wasn't factored into the rationale was the investigating member and the fact that it was Garda Keogh.¹³⁷⁵

Sergeant Dermot Monaghan

In his statement to the tribunal, Sgt Monaghan said that he was a unit sergeant with responsibility for supervising Unit C. He held that position from 20th July 2015 until 28th August 2015 when he took over as sergeant in charge while Sgt Baker was on leave.

¹³⁷⁴ Tribunal Transcripts, Day 130, pp. 19-20, Evidence of Insp Aidan Minnock

¹³⁷⁵ Tribunal Transcripts, Day 130, pp. 21-22, Evidence of Insp Aidan Minnock

In his evidence to the tribunal, he described the response of his unit to the changes introduced by Supt Murray:

There was buy in. I suppose reluctance initially because it was new to members, but when they saw the benefits of it, yes, there was huge buy in. And the same system is currently running and it's running effectively and efficiently. And they knew it was safeguarding themselves from getting in bother. So, you know, once they bought into that, you know, it is a good system.¹³⁷⁶

Case 1: Thefts at Custume Place

Sgt Monaghan was asked by counsel for the tribunal about Supt Murray's memo to him dated 3rd September 2015:

Q. ... The superintendent sets out his views there. Did you see anything unusual or untoward about what he was asking you to do?

A. No. Not at the time, no. This is in relation to the instructions in chapter 3 of the CIT manual.

I printed off a copy of chapter 3 and I sat down with Garda Keogh and went through it in the office.

Because I myself had never seen witnesses submit statements before. The only statements I would have seen were people presenting themselves as possible suspected offenders with their solicitor for cases that were non arrestible, I'd say.

And you would have sat them down and read it over with the caution. But I had never seen witnesses submit statements before.

So we sat down and discussed chapter 3 and Garda Keogh took it on board and made no comment in relation to it as far as I can remember.

Q. Yes. You reported back up to the superintendent that you had done that?

A. Yes.

Q. If we look at page 207. Did Garda Keogh raise any complaint that this was sort of an oppressive supervision, that he was perfectly entitled to get them to write their own statements?

A. Not that I can recollect anyway, no.

Q. That went up to the superintendent and then he endorsed his - you sent an attached report, which is at 208 there as well?

A. Yes.

Q. Which gave further detail about what Garda Keogh had done in fact?

A. Yes.

Q. Obviously there's some information that wasn't on the original crime file, but were you concerning yourself with the rights and wrongs or the reasonableness or otherwise of the response or the requests?

¹³⁷⁶ Tribunal Documents, Day 131, pp. 108-109, Evidence of Sgt Dermot Monaghan

- A. *Not really. Initially I would have thought that the crime file should not have been submitted in the first place, because the instructions were clearly that in absence of a suspect or when all avenues are exhausted you will submit a crime file. Outside that, it would be an investigation file. So, you know, that was the only thing that kind of came to me.*¹³⁷⁷

He was asked when a crime file should be submitted and he told the tribunal that it should be submitted '*[w]hen you have exhausted all your investigation purposes*'.¹³⁷⁸ He went on to tell the Chairman about the next step in the process where there is no prosecution:

That would be sent to the victims office, where the victim would be notified of the outcomes and filed away for –

- Q. *Chairman: It's the end of the line?*

- A. *It is, unless down the line it's reactivated.*

- Q. *Chairman: Of course, something else might happen and reactivate it?*

- A. *It's there for any member then to retrieve, let's say, and carry out an investigation.*¹³⁷⁹

Sgt Monaghan was asked about the role of a sergeant in the process and he gave evidence that:

*The sergeant would put a recommendation on reading what the garda submitted on the file. And if we're satisfied ourselves – sometimes it comes down for clarity, if they see something, an anomaly that we have missed. That's the beauty of the accountability process; that it's caught at all different levels before it's eventually finalised.*¹³⁸⁰

He clarified that:

*... it has to go through the channels of communication, which is garda to sergeant, sergeant to the superintendent.*¹³⁸¹

Case 3: Criminal damage at Mulligan's Filling Station

Sgt Monaghan was asked by counsel for the tribunal about the query raised by Supt Murray whether a particular family had been considered as suspects for the crime at Mulligan's Filling Station and he said that he considered it appropriate to have them ruled out definitively one way or another if possible and that it was important to out rule them in the investigation.¹³⁸²

In his statement to the tribunal, Sgt Monaghan said that he was not told by garda management to treat Garda Keogh differently from any other member. He was also unaware of any micromanagement of Garda Keogh. He stated that '*like all members if his standard of work was lacking he was asked to address outstanding issues and resubmit his files when they were fully completed for directions through his immediate Supervisor (Sergeant) and then onwards to the District Office (Superintendent/Inspector) for their directions*'.¹³⁸³

¹³⁷⁷ Tribunal Transcripts, Day 131, pp. 87-88, Evidence of Sgt Dermot Monaghan

¹³⁷⁸ Tribunal Transcripts, Day 131, p. 89, Evidence of Sgt Dermot Monaghan

¹³⁷⁹ Tribunal Transcripts, Day 131, p. 89, Evidence of Sgt Dermot Monaghan

¹³⁸⁰ Tribunal Transcripts, Day 131, p. 90, Evidence of Sgt Dermot Monaghan

¹³⁸¹ Tribunal Transcripts, Day 131, p. 90, Evidence of Sgt Dermot Monaghan

¹³⁸² Tribunal Transcripts, Day 131, pp. 97-98, Evidence of Sgt Dermot Monaghan

¹³⁸³ Tribunal Documents, Statement of Sgt Dermot Monaghan, p. 609 at pp. 614-615

Sergeant Michelle Baker

Sgt Baker was the sergeant in charge in Athlone Garda Station between August 2013 and September 2016. She said in her statement to the tribunal that she had *'limited direct contact'* with Garda Keogh during this period.¹³⁸⁴

Case 4: Robbery

In her statement, Sgt Baker referred to the critical incident report process and confirmed that the sergeant in charge was to be copied on the email sending the report to the district office. She stated that this was standard correspondence passing through her office for *'dissemination to all other sergeants and or back to the District Office.'* She stated that a record was made in her office that the relevant sergeant or garda received or sent the correspondence.¹³⁸⁵

Inspector Baker outlined in her evidence how she was notified about serious incidents occurring within the district:

Q. *I think the chief superintendent mentioned in his evidence that you may have been aware of incidents occurring, they may have fed into e mails on your phone, would you be aware over the weekend of what was happening?*

A. *Absolutely, yes. I would work occasional Sundays, but primarily I would work Monday to Friday. But with that, I would receive e mails on my phone, I would be cc'd on a lot of correspondence. It would be something that – you know, I would have it, you're obviously keeping up to date, because while you're off for the weekend, if you are up to speed on what's happening in the station it makes Monday morning easier. Then it wouldn't be unusual that, say, if there was a missing person and I received information about that, I would ring in and check. Because I might be aware – you know, from Friday's meeting I would have known what resources were over the weekend, there may be a lapse in supervision or something, so you might just know that and you'd ring in and say, are you okay, do you need a hand? You might call in. But you would definitely be keeping up to speed with your information.*

Q. *Do you remember if you got an e mail on the Sunday in relation to the incident of the robbery?*

A. *No, I didn't.*¹³⁸⁶

She was asked about her primary concerns in relation to how Garda Keogh had reported the robbery:

*Well, primarily the process, it wasn't e mailed. That's the first part, because that would have allowed for timely intervention. And then the report wasn't exactly detailed. Usually a Garda report about something like a serious assault or a robbery, would have a lot more detail in relation to efforts made.*¹³⁸⁷

She gave evidence how the system worked and the purpose of PAF meetings:

... every morning there is a meeting in the superintendent's office and the main attendees would be the superintendent, inspectors, if they're available, myself as the sergeant in charge,

¹³⁸⁴ Tribunal Documents, Statement of Sgt Michelle Baker, p. 599 at p. 601

¹³⁸⁵ Tribunal Documents, Statement of Sgt Michelle Baker, p. 599 at p. 602

¹³⁸⁶ Tribunal Transcripts, Day 129, pp. 110-111, Evidence of Insp Michelle Baker

¹³⁸⁷ Tribunal Transcripts, Day 129, p. 130, Evidence of Insp Michelle Baker

the detective sergeant, whatever unit sergeants are working or sergeants from, you know, external sub district stations. They would all attend, including the district clerk and the PAF administrator. There was also maybe sometimes a person available from the victims support office sat in. There was also, in Chief Superintendent Murray's time, an extended invitation was open to any garda personnel who were working in the mornings to attend, to understand the process. Also, if a sergeant was absent or the detective sergeant was absent, a guard would sit in instead of those, so a detective might sit in if a detective sergeant was away. So all members kind of contributed to the meeting.

So the role of the sergeant in charge in the morning, certain items – I had to gather a lot of items to bring in to this meeting. The superintendent chaired the meeting but I was sort of like a presenter. It's not a formal presentation, it's at a conference table. So for this I would have to gather numerous items. The 003 report, which is something I printed off Pulse.

Q. Sorry, we wouldn't know what is in that type of report?

A. Okay. So a 003 report is the incidents that have occurred in the previous 24 hours that have been recorded on Pulse for Athlone district, or on a Monday morning it's incidents that were recorded for the previous 72 hours, so from 7:00am on Friday morning until 7:00am on Monday morning. So I would review all those incidents and on a Monday, that would be upwards of 120 incidents. I would have to check each one in terms of outcome, what position it was at, because when I present that to the district officer he is going to have questions as to well, where is that at now, or what's the latest on that? So my function would be to gather the most update and relevant information, anticipating more questions. So that could be that I might have to talk to people in the station, check for emails, check for other reports and try and bring it to the best possible, I suppose, up to date information available.

In addition to that, I would have to check intelligence record, prisoner details, resources on personnel, who was available to work in the next 24 hour period. If it was a Friday morning meeting, I would look at resources for the next 72 hours to check our cover for the whole weekend. And then I would also bring matters to the attention, that go on the agenda for the meeting, if there were any planned events, if there was any kind of, you know, races or anything that would maybe draw on your resources or personnel in the following 24 hours. So that would be what I would do for the morning meeting, gather all that stuff.¹³⁸⁸

She was asked to clarify the contents of the 003 report:

Q. But that 003 report, is it literally just a record of Pulse recordings?

A. Yes.¹³⁸⁹

Insp Baker was cross-examined by counsel on behalf of An Garda Síochána as to whose responsibility it was to report an incident. She replied that:

... to me this minute is very clear. As you say, in the legal parlance member in charge is treatment of persons in custody, who invariably is a guard but actually also can be a sergeant. That's just one part set aside. In the superintendent's minute it addresses to me three people, one is the sergeant or supervisor, the next person is the station orderly, also known as the public officer, and then the third person is the member in charge, which is the member in charge of the investigation. Because

¹³⁸⁸ Tribunal Transcripts, Day 129, pp. 106-108, Evidence of Insp Michelle Baker

¹³⁸⁹ Tribunal Transcripts, Day 129, p. 106, Evidence of Insp Michelle Baker

*station orderly, public officer, you know, you wouldn't say or member in charge because that's the same thing. So his reference to member in charge I would have taken without doubt to be the investigating member in charge of the investigation.*¹³⁹⁰

She was asked by counsel for the tribunal to recall what transpired at the PAF meeting on the Monday morning following the incident:

*... I would have raised this not as an individual item, it would have come about in the course of the list of the hundred and whatever incidents. At each one we have a brief discussion and I would have said, I have additional information, a small bit, in this report that the investigating member isn't available, he's on leave, and that we need to, you know, task someone with – my view on it is that it was unsatisfactory and that it wasn't e-mailed and we had lost crucial time on the Sunday to interview the injured party, find the scene, look for witnesses, you know, all that timely investigation.*¹³⁹¹

She continued that:

*Point one for me was disappointment it wasn't e-mailed because we lost time and then point two, now that we are 36 hours later, 24 hours late, we still don't have enough, we have more questions than answers.*¹³⁹²

The following questions were asked by the Chairman:

- Q. **Chairman:** The first point is, I should put enough information to enable the force, i.e. my colleagues, to be able to get as much information as possible, within reason?
- A. And the additional – I suppose at the end of the day the Guards use a lot of files and paper.¹³⁹³
- Q. **Chairman:** Put a certain amount on Pulse, and he did put a certain amount of Pulse and there's a degree of disagreement, that what you say what he put on Pulse was less than satisfactory, less than adequate, it left gaps.
- A. Yes.
- Q. **Chairman:** That's what you say. So you were critical of that part of it. The next thing he had to do was he had to make a report?
- A. Mm-hmm.
- Q. **Chairman:** Now, the memo from Superintendent Murray, 2121, we don't have to argue that. We can interpret that as to what it says or what it requires. But if I am understanding, in this case, whether he was obliged to do it or wasn't obliged to do it, Garda Keogh put in a report, and that report comes up for consideration at the PAF meeting on the Monday?
- A. Yes.
- Q. **Chairman:** And that's considered to be unsatisfactory?
- A. Yes. I described it, you still had more questions than answers.

¹³⁹⁰ Tribunal Transcripts, Day 129, p. 148, Evidence of Insp Michelle Baker

¹³⁹¹ Tribunal Transcripts, Day 129, pp. 124-125, Evidence of Insp Michelle Baker

¹³⁹² Tribunal Transcripts, Day 129, p. 125, Evidence of Insp Michelle Baker

¹³⁹³ Tribunal Transcripts, Day 129, p. 155, Evidence of Insp Michelle Baker

- Q. *Chairman: It leaves more questions. Now, this was a Sunday morning at 4:00am when this happened?*
- A. Yes.
- Q. *Chairman: You say he should have also sent in an e-mail?*
- A. Yes.
- Q. *Chairman: With the same information as was on the Pulse, is that right?*
- A. *The e-mail should be – I would say the handwritten report should have been e-mailed.*
- Q. *Chairman: Okay. Now there should have been more on the handwritten report?*
- A. Yes.¹³⁹⁴
- Q. *Chairman: Okay. So it's usual that there would be. It would be unusual for all of the recipients, there may be up to five, and so it would be highly likely that one or more of them would respond?*
- A. Absolutely.
- Q. *Chairman: Possibly to each other and decide and consult. Okay. So that's the advantage of an early e-mail?*
- A. Yeah.¹³⁹⁵
- Q. *Chairman: The need for an e-mail, that was well understood?*
- A. Well understood.
- Q. *Chairman: Okay. All right. Now let's look for a moment at the report that Garda Keogh put in, the actual written report. Whether he had to do it or not we're not concerned. Could we look at 232 for a moment. Just stop in the middle there for a second. Thanks, Peter. Obviously Garda Keogh resents the criticism, express or implied, in Superintendent Murray's letter. He is very unhappy about it, and he responds here. But as well as complaining that he thinks that's harassment, as well as that he actually gives a good deal more detail about the incident.*
- A. *I see that, yeah.*
- Q. *Chairman: If he had given that detail in the report, would you have been happy with it? In other words, checking him out, bringing him round, no CCTV, bringing him round to his mother and so on, blah blah blah, would that have gone some way to –*
- A. *Yes. And when preparing for this, I was on leave but there's even more information came in later, you know. I suppose the quality of the investigating member writing a detailed report with all the detail that they have gathered at that time.*¹³⁹⁶

Insp Baker was also asked, by counsel for the tribunal, about her participation at the PAF meeting when the incident was reclassified:

¹³⁹⁴ Tribunal Transcripts, Day 129, pp. 155-156, Evidence of Insp Michelle Baker

¹³⁹⁵ Tribunal Transcripts, Day 129, p. 158, Evidence of Insp Michelle Baker

¹³⁹⁶ Tribunal Transcripts, Day 129, pp. 158-159, Evidence of Insp Michelle Baker

Well, I would have sat there collectively and listened to the new and additional evidence, the position of the injured party and all of that, and, you know, a general consensus of the group kind of, a think, a conversation around – like I said, the PAF process, it's very strong on the control of the data, you know, checking that incidents are of the correct classification. If something could be marked, you know, what we call attention and complaints but we actually at that meeting might say there is something more serious to that and recategorise it up to a crime or laterally, you know, it can be reviewed. That's what the process is for.¹³⁹⁷

Counsel for An Garda Síochána asked her about the gravamen of Garda Keogh's complaint to the tribunal:

- Q.** *In relation to the response of Superintendent Murray, you have already looked at the response of Garda Keogh, where he indicated it was nothing short of harassment. Would you agree that the response from Superintendent Murray could not be classified as harassment of any kind?*
- A.** *No, it was very common for files and correspondence to have questions and queries and seeking further information, and also seeking explanations. Sergeants would do it all the time to guards, and inspectors, superintendents would also request the same off sergeants.¹³⁹⁸*

Chief Superintendent Lorraine Wheatley

In her interview, Chief Superintendent Lorraine Wheatley provided tribunal investigators with an overview of the management process in place in the Westmeath Division during her tenure as chief superintendent:

An annual Divisional policing plan is developed each year. Following on from this, we had Performance and Accountability (PAF) meetings mostly every fortnight. The meeting would deal with operational matters, budgets, upcoming event plans, updates on serious incidents, court cases, community policing, initiatives and targets. Welfare was discussed regularly, including transfer applications and members on long-term sick. At this forum, there were conversations around any other significant issues or changes. From time to time, I would attend at District PAF meetings. I would also carry out station visits, inspections and reviews. I used management reports to monitor key issues, eg. missing persons, firearms application, serious crime, et cetera.¹³⁹⁹

She stated that performance management issues with regard to individual garda members were dealt with primarily by local management:

Performance is dealt with at each level by their supervisors. Local management would deal with work performance management issues and I had every confidence in them to deal with those. I was there to support them. Only when performance fell below a standard where intervention is required would I be advised of it. Performance management would not be discussed at PAF meetings.¹⁴⁰⁰

C/Supt Wheatley said that Supt Murray never brought performance related work issues in respect of Garda Keogh to her attention:

¹³⁹⁷ Tribunal Transcripts, Day 129, pp. 134-135, Evidence of Insp Michelle Baker

¹³⁹⁸ Tribunal Transcripts, Day 129, pp. 148-149, Evidence of Insp Michelle Baker

¹³⁹⁹ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6102

¹⁴⁰⁰ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6103

*No, he didn't. In the context of managing performance and with his background of crime investigation and understanding of policy and procedures, he put new procedures in place to ensure investigation of crime files was at the required standard.*¹⁴⁰¹

She also stated that Garda Keogh's management of the crime files was not brought to her attention by Supt Murray:

*To the best of my recollection, these matters were not brought to my attention by Superintendent Pat Murray. These matters are dealt with locally at District Officer level. Crime files are not transmitted to the Divisional Office.*¹⁴⁰²

She described Supt Murray's management style to tribunal investigators:

*He has a huge capacity to deal with complex issues and bring matters to a conclusion. He brought a lot of change to Athlone in terms of restructuring. His District flourished under his stewardship. He moved the business forward in a positive and constructive way. He is very highly regarded in the community. I was hugely impressed by his knowledge of law, legislation and procedures. He is very committed to his job and was a huge support to me. He was confident, capable and sensitive to various situations and very supportive to his team in terms of their development and welfare.*¹⁴⁰³

Legal Submissions

Garda Nicholas Keogh submitted as follows:¹⁴⁰⁴

- that clear evidence could be found throughout this issue of the superintendent's negative attitude towards Garda Keogh and that evidence of the targeting may be found in Supt Murray's unfair and unwarranted criticism together with his refusal to accept reasonable explanations from him in relation to his work on the crime files.

Case 1: Thefts at Custume Place

- that the criticism of this file took place prior to Supt Murray's direction on the reporting on incidents other than creating PULSE entries as that direction was not published until 18th August 2015.
- that Garda Keogh sent a response dated 28th August 2015 which was clear as to the steps that were taken by Garda Keogh and the reasons why.
- that Supt Murray confirmed in his evidence that there was no absolute prohibition on a witness writing out their own statement and that it is a matter of best practice. When challenged on whether there was any regulation he could point to in the manual or elsewhere that prohibited a witness writing their own statement, he was unable to do so.
- that during the exchange of correspondence between them, Supt Murray used unnecessary forceful language when he further criticised Garda Keogh's attitude and that the use of such language was telling where Garda Keogh was, again, criticised on 3rd September 2015 and his attitude was described as '*laissez faire*' and being '*far from satisfactory*'.

¹⁴⁰¹ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6103

¹⁴⁰² Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at pp. 6103-6104

¹⁴⁰³ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6105

¹⁴⁰⁴ The tribunal has considered all of Garda Nicholas Keogh's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 14-31 and pp. 172-177

- that Sgt Moylan, as the supervising sergeant, found *'absolutely no issue'* with the steps Garda Keogh had taken.
- that Supt Murray could have dealt with this issue in an informal way through Sgt Moylan.

Case 2: Theft of a trailer at Dublin Road

- that this was the second criticism of a crime file that Supt Murray made in a short space of time.
- that Garda Keogh investigated this crime fully and properly, it was belatedly acknowledged by Supt Murray in evidence that he was mistaken about the CCTV and it was only when pressed by counsel for the tribunal that Supt Murray conceded that Garda Keogh had thoroughly investigated the crime.

Case 3: Criminal damage at Mulligan's Filling Station

- that Supt Murray's queries on this file were irrational and oppressive. Supt Murray nominated a family as being suspects for the crime and Garda Keogh colourfully described their nomination as *'pie out of the sky'* as they were not known to frequent the area where the crime occurred. He described his failure to nominate this family as an unfair criticism of him. It is Garda Keogh's case that this amounted to targeting as there are multiple queries being raised at the same time.

Case 4: Robbery

- that where there was no direction from Supt Murray that a report must be emailed, the criticism of Sgt Baker was unfair. The handwritten report was prepared and there was a detailed PULSE entry. Sgt Baker accepted in cross-examination that she did not write to Garda Keogh's supervising sergeant about him not sending an email.
- that Garda Keogh's case to the tribunal in relation to this crime file was three-fold. The crime should not have been reclassified from serious to attention and complaints. Secondly, that he should not have been criticised for giving insufficient information in his initial paperwork. Thirdly, that he should not have received the extensive correspondence from Supt Murray about this file.
- that the letter dated 23rd September 2015 from Supt Murray was *'nothing short of a form of harassment'*, and that this was the fourth crime file that Garda Keogh was criticised on in a short space of time.
- that Supt Murray's letter of 13th October 2015 was clear evidence of Supt Murray's contemptuous attitude towards Garda Keogh and clear evidence of targeting. It was discrediting as it was designed to give its recipient the clear message that any complaint that may be made by him under the policy would be rejected.
- that the issue with this crime file stemmed from Sgt Baker's dissatisfaction with Garda Keogh's initial work in relation to the incident. It did not conform to the direction issued by Supt Murray on 18th August 2015. Garda Keogh was of the contrary view and he executed his functions efficiently with the steps that he took on 13th August in making the PULSE entry and his handwritten note. It was clear he did everything expected of him. While a different interpretation was put forward by Sgt Baker in evidence that the use of the words 'member in charge' meant 'member in charge of the investigation', this was both

incorrect and entirely self-serving. It was for the sergeant to prepare the report, not Garda Keogh.

- that Supt Murray continued to write to Garda Keogh under the heading ‘Robbery from the Person’ after the crime had been downgraded.

An Garda Síochána submitted as follows:¹⁴⁰⁵

- that it was incorrect to say that Supt Murray singled Garda Keogh out or treated him any differently to other members. The evidence was that Supt Murray raised queries about other investigations. Furthermore, the queries raised by Supt Murray were reasonable and proportionate.
- that Supt Murray’s letter seeking to improve standards of investigation in Athlone was dated 19th June 2015 and predated each of the incidents which gave rise to these complaints by Garda Keogh. Supt Murray was seeking to create a system that would be more accountable, better support victims of crime and be subject to audit. Supt Murray initiated queries on many crime files to ensure that high standards prevailed. The initiative that he deployed was to prioritise and give clear direction on issues like thoroughness, accuracy and completeness of investigation files. Garda Keogh did not disagree with the proposition that Supt Murray was seeking to raise the general standard, not just Garda Keogh’s.
- that Insp Minnock and Sgt Monaghan viewed Supt Murray’s initiatives as good and as improving the standards.
- that Supt Murray stated in evidence that he returned 44 crime files to various members between July and December 2015, four of which concerned Garda Keogh. Supt Murray dealt with crime files for Garda Keogh in the same way as he did for other members.

Case 1: Thefts at Custume Place

- that Garda Keogh accepted that it was ‘normal practice’ for gardaí to take down a victim’s statement. Garda Keogh’s departure from normal practice was in itself enough to warrant Supt Murray’s queries.
- that it was in fact best practice for a garda to take down a person’s statement, and in his statement to the tribunal’s investigators, Supt Murray stated that he had not come across an injured party writing down their own statement before and that it was not normal practice.
- that in his evidence, Supt Murray stated that his concern was that the witnesses appeared to have further information that had not been elicited from them in an investigative way and he pointed out that one of the objectives of taking statements is to gather evidence.
- that in his letter of 3rd September 2015, Supt Murray was entitled to query the departure from the crime manual in the interests of best practice and the investigation itself; his approach was entirely reasonable.
- that on 22nd September 2015, Garda Keogh gave a more detailed statement than his previous one and, indeed, he accepted that he had in fact provided more detail in that additional statement.

¹⁴⁰⁵ The tribunal has considered all of An Garda Síochána’s legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 70-172 and pp. 177-179

Case 2: Theft of a trailer at Dublin Road

- that on 14th August 2015, Supt Murray asked clear and succinct questions which were entirely reasonable and constructive questions for him to ask, based on the paperwork that was available at the time. Essentially, there was a misunderstanding as to the progress of the investigation. Supt Murray was not aware that the CCTV footage at issue was garda footage and, at the time he sent his report, he was not aware that further information was due to come in. Supt Murray indicated that Garda Keogh did good work in identifying the vehicle from the CCTV footage from the filling station. Supt Murray indicated that his aim was to try and get the trailer back for the victim. He also added that he was not targeting Garda Keogh and that he *‘... was lending the benefit of my experience to the investigation. I wasn’t there just to rubber stamp these files. I had to provide some oversight and quality assurance around them. And I saw that as my role, having been appointed to that role’*.
- that, on 22nd September 2015, Supt Murray expressed his appreciation of the efforts made, and on 2nd November 2015 he sanctioned 10 hours’ overtime (Haddington Road hours) for Garda Keogh to attend to the arrest stage of the investigation.
- that Garda Keogh acknowledged that Supt Murray showed his appreciation for the work done.

Case 3: Criminal damage at Mulligan’s Filling Station

- that Supt Murray did not criticise Garda Keogh for not nominating suspects but merely included potential suspects so that an avenue of enquiry might be pursued to ensure that no investigative stone was left unturned.

Case 4: Robbery

- that Garda Keogh’s report was reviewed at a daily PAF meeting on 14th September 2015 and Sgt Baker, D/Sgt Curley and Insp Minnock all took the view that there was a problem.
- that Supt Murray raised reasonable questions about the investigation based on the absence of information in Garda Keogh’s report.
- that Garda Keogh’s subsequent document in response to Supt Murray’s queries (which came in five weeks after Supt Murray’s report of 23rd September) contained a lot more additional detail. Garda Keogh’s initial response to Supt Murray, dated 2nd October, accusing Supt Murray of harassment, was not a reasonable response from a member of An Garda Síochána to a legitimate enquiry made by his superior.
- that the management team looked at the matter and the crime counting rules and concluded that there was insufficient evidence. The complaint was withdrawn and they had doubts in relation to credibility and took the view that there was a reasonable probability that a criminal offence had not occurred. That view was taken by experienced colleagues of Garda Keogh’s, based on an assessment of the evidence that they had reviewed.
- that in relation to the HQ Directive on the reviewing of PULSE incidents, Garda Keogh accepted that there was a duty to ensure that the PULSE incidents were in compliance with the relevant rules. Garda Keogh did not dispute that this document indicated that a person in Supt Murray’s position had a role, a responsibility and an ongoing duty to ensure that the PULSE record was kept up to date in relation to the available information as

assessed by An Garda Síochána. However, he erroneously told the tribunal investigators that Supt Murray did not have the jurisdiction to reclassify it. In his statement, Supt Murray stated that the crime counting rules invested clear authority to a district officer to make decisions in relation to the management of crime within his district. He and his colleagues in the PAF all felt that reclassification was the best course of action.

- that Garda Keogh made a very serious allegation that amounted to *'fiddling'* with the crime figures. Garda Keogh informed Deputies Wallace and Daly that this represented *'massaging'* crime figures. A reasonable decision was taken by garda management, which Garda Keogh disagreed with.
- that on 15th December 2015, a speech was made in Dáil Éireann by Deputy Clare Daly based on what Garda Keogh had said. Garda Keogh accepted that he never went to Supt Murray to complain to him directly about it. Instead, he facilitated this being said about Supt Murray in Dáil Éireann, in public, in a manner which made it subject to Dáil privilege, with no right of reply.

Sergeant Dermot Monaghan submitted as follows:¹⁴⁰⁶

- that while the policing measures introduced by Supt Murray were initially an adjustment, he found them to be good procedures and appreciated that the reasoning behind them was to safeguard members and assist in keeping work on track and bring files to a conclusion.

Case 1: Thefts at Custume Place

- that when referred to the views of the superintendent as set out in his letter dated 3rd September 2015, Sgt Monaghan indicated that there was nothing unusual in it.
- that Garda Keogh did not raise an issue with him that this was oppressive supervision or assert that he was entitled to ask people to write their own statements.
- that he agreed that deficiencies in a file should be identified by a sergeant and that a sergeant may overlook something that the superintendent may identify.

Case 2: Theft of a trailer at Dublin Road

- that Supt Murray raised some queries by letter dated 14th August 2015 and further correspondence ensued from Garda Keogh, who retrieved vital CCTV footage from a garage.

Case 3: Criminal damage at Mulligan's Filling Station

- that he gave evidence that the relevant party be ruled out definitively.

Sergeant Michelle Baker submitted as follows:¹⁴⁰⁷

Case 4: Robbery

- that on 18th August 2015, Supt Murray had circulated a directive regarding the reporting of incidents of a critical or serious nature and the directive contained a requirement to report an incident immediately. It was the responsibility of the duty sergeant to ensure that an email report was sent but the member investigating the matter would complete the report.

¹⁴⁰⁶ The tribunal has considered all of Sgt Dermot Monaghan's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

¹⁴⁰⁷ The tribunal has considered all of Sgt Michelle Baker's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

- that she attended the PAF meeting on 14th September 2015 and expressed a view that the written report was unsatisfactory in that it was incomplete.
- that she accepted that there was detail in the PULSE report but stated that there were items missing and extra detail was required.
- that Sgt Baker did not speak to Garda Keogh about her views of his report.

Sergeant Cormac Moylan submitted as follows:¹⁴⁰⁸

Case 1: Theft at Custume Place

- that he did not note the fact that the injured party had written his own statement and did not stop and return the file to Garda Keogh.
- that he did not see anything wrong with the queries raised by Supt Murray in that regard and that in his view they were reasonable.

Discussion

The essential question in these cases is whether Supt Murray's criticisms of Garda Keogh's police work were inappropriate or unreasonable or unjustified to such an extent as to constitute targeting or discrediting and, if so, whether that was because Garda Keogh made a protected disclosure.

A word should be said about the question and why it is in this form. It is not a matter of deciding, for example, whether it is legally permissible for a witness to write their own statement rather than have a garda take it down in a questions and answers process; there is of course no prohibition, but that is not in dispute or relevant to the inquiry.

The superintendent was entitled to give orders and instructions and to expect gardaí to obey them. He was also entitled to criticise members for what he saw as deficiencies in their work. It happens in many large organisations other than An Garda Síochána that sometimes criticism or correction by a superior may be harsh or even unjustified. For criticism by a superior to be considered as targeting or discrediting, there has to be more, something quite inappropriate to the circumstances or completely unreasonable or unjustified, and, under term of reference [p], it must be related to the making of a protected disclosure.

Case 1: Thefts at Custume Place

Having regard to the tribunal's function described above, it is not mandated to evaluate the steps taken by Garda Keogh or his supervisors in the investigation of this case.

In the statement made by the first of the injured parties,¹⁴⁰⁹ after the signature and on a second page, a section is crossed out, but it is possible to ascertain what is said. Clearly, the witness wrote this sentence but for some reason thought better of it and decided to cross it out. It is not that there is anything necessarily sinister about this but simply that it appears to call for an explanation; but none was provided.

The statement made by the other injured party¹⁴¹⁰ said that the person whom they suspected had taken the phone cycled past the building and stopped and looked at them. The injured parties then went to the garda station to report the crimes. This called for more information also.

¹⁴⁰⁸ The tribunal has considered all of Sgt Cormac Moylan's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

¹⁴⁰⁹ Tribunal Documents, Statement of Injured Party, dated 4th July 2015, pp. 192-193

¹⁴¹⁰ Tribunal Documents, Statement of Injured Party, dated 4th July 2015, p. 196

Supt Murray said that his concern in relation to the statements that had been taken was that:

*They weren't taken by the investigating member. They were written out. On reading them, it was clear that those witnesses had further information that they could give in relation to what had occurred. And it didn't seem to, I suppose, have been elicited from them in an investigative way. One of the objective[s] of statements is to gather evidence.*¹⁴¹¹

He said he was ‘... referring to the content of the statement, particularly the second page, with the crossed out writing. It appears they had more information, when I read the statements.’¹⁴¹²

He also said:

*Well, all through the statements I see an opportunity to elicit more information. I mean, professional standards in terms of investigation is something that's very important to the organisation and it has, I suppose, spent considerable time since 2009 training every member on investigative interviewing. And again, that training effort was repeated in 2014 and '15, with a view to ensuring that professional standard[s] apply to the investigation of all crime.*¹⁴¹³

He was also concerned about the viewing of the CCTV:

*I don't know what occurred, you know, in viewing the CCTV. That wasn't apparent, it's just something that's written down. So to allow someone come in and view CCTV in that fashion, wouldn't be evidentially correct in my view and would cause serious problems.*¹⁴¹⁴

By this Supt Murray meant admissibility difficulties if the case went to court.

Supt Murray rejected the suggestion that his letter of 3rd September 2015 referring to the Crime Investigation Manual was intended to humiliate Garda Keogh:

*... Prior to drafting that response, I initially asked two simple questions. Garda Keogh responded in what I felt was a way of trying to explain what occurred rather than dealing with the issue. And I responded in this fashion in paragraph one, setting out my position clearly and in paragraph two, giving guidance, advice and direction. That wasn't anything to do with Garda Keogh, that was about trying to investigate the crime. And it would be the same if I was presented with a crime file in that fashion by any other member.*¹⁴¹⁵

Supt Murray said in his evidence that he had returned some 44 crime files to different members out of a total of 184 that were submitted in 2015 so there was no question of targeting Garda Keogh by querying his work.¹⁴¹⁶

The initial queries by Supt Murray were unobjectionable.¹⁴¹⁷ Garda Keogh offered an explanation for the witnesses writing their own statements that on the face of it was reasonable.¹⁴¹⁸ However, it was legitimate for the superintendent to be concerned about the suspect and the simple conclusion offered by the garda did not answer the issues. The superintendent was uneasy about the standard of Garda Keogh's approach to the case. He reflected that in his response, which contained an argument citing authority for his attitude to the taking of statements. His point

¹⁴¹¹ Tribunal Transcripts, Day 124, p. 61, Evidence of Supt Pat Murray

¹⁴¹² Tribunal Transcripts, Day 124, p. 62, Evidence of Supt Pat Murray

¹⁴¹³ Tribunal Transcripts, Day 126, p. 7, Evidence of Supt Pat Murray

¹⁴¹⁴ Tribunal Transcripts, Day 124, pp. 76-77, Evidence of Supt Pat Murray

¹⁴¹⁵ Tribunal Transcripts, Day 126, p. 12, Evidence of Supt Pat Murray

¹⁴¹⁶ Tribunal Transcripts, Day 124, p. 73, Evidence of Supt Pat Murray

¹⁴¹⁷ Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge Athlone, dated 30th July 2015, p. 197

¹⁴¹⁸ Tribunal Documents, Letter from Garda Nicholas Keogh to Sgt Dermot Monaghan, dated 28th August 2015, p. 201

was that having the investigating garda take the witnesses' statements was not simply a standard mode of proceeding, which Garda Keogh did not dispute, but was also an integral element of an investigation. The unanswered questions in this case showed the point of the policy.

Supt Murray could have written a different letter either as to content or tone, or expressed his reservations in some other way, but that is not the issue. His second letter¹⁴¹⁹ was a response to Garda Keogh's reply to his questions, an unlikely circumstance in which to find targeting, it might be thought. The letter was sent in the course of work activity in a context that was appropriate for the superintendent and conveying a relevant message.

There is nothing in the case to suggest any connection between Supt Murray's conduct and Garda Keogh's protected disclosure. The tribunal is satisfied that this case does not contain evidence of targeting or discrediting of Garda Keogh by Supt Murray.

Case 2: Theft of a trailer at Dublin Road

Garda Keogh's enquiry at Kilmartin's Service Station about their CCTV was good police work, pursuing the possibility that there might be relevant material on it, which turned out to be the case. It provided the solution to the crime and assisted with other garda investigations elsewhere. The position, therefore, when Garda Keogh submitted the crime file was that the possibility of further evidence existed, even if it was a remote chance that anything useful would turn up. Unfortunately, that was not stated in the report.¹⁴²⁰ The file merely recorded the failure to see anything useful on the footage that was then available, which was garda CCTV footage, and left the matter there.

On 14th August 2015, Supt Murray raised queries about the CCTV and also about another file relating to criminal damage at Mulligan's Filling Station.¹⁴²¹ Garda Keogh replied with simple, clear explanations in a note to Sgt Monaghan on 20th August 2015, but still did not mention the possibility of other CCTV.¹⁴²²

Sgt Monaghan replied to the superintendent's queries on 28th August 2015 enclosing Garda Keogh's note.¹⁴²³ He also said that the garda had obtained CCTV from Kilmartin's Service Station which showed suspect vehicles. Obviously, this meant that the investigation changed from a dead end to a live pursuit of useful leads.

Insp Minnock sent Garda Keogh an email appreciating his good work in advancing the investigation.¹⁴²⁴ But Supt Murray had old and new queries which he set out in a letter of 3rd September 2015.¹⁴²⁵ The four questions related to the original CCTV and the new video material, and also asked about liaising with the investigations of other gardaí concerning the car involved. He concluded on this topic with a paragraph containing a direction and perhaps an implicit criticism, as follows:

*Sergeant Monaghan should supervise the proper investigation of this crime so that we can show to the victim that we were thorough and professional in our approach to solving the crime.*¹⁴²⁶

¹⁴¹⁹ Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge Athlone, dated 3rd September 2015, pp. 202-203

¹⁴²⁰ Tribunal Documents, Crime Report, dated 11th August 2015, pp. 213-214

¹⁴²¹ Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge Athlone, dated 14th August 2015, p. 215

¹⁴²² Tribunal Documents, Handwritten report of Garda Nicholas Keogh to Sgt Dermot Monaghan, dated 28th August 2015, p. 216

¹⁴²³ Tribunal Documents, Letter from Sgt Dermot Monaghan to Supt Pat Murray, dated 28th August 2015, p. 217

¹⁴²⁴ Tribunal Documents, Email from Insp Aidan Minnock to Garda Nicholas Keogh, dated 31st August 2015, p. 218

¹⁴²⁵ Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge Athlone, dated 3rd September 2015, p. 219

¹⁴²⁶ Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge Athlone, dated 3rd September 2015, p. 219

On 12th September 2015 Garda Keogh sent clear replies to the superintendent's queries, which Sgt Monaghan forwarded.¹⁴²⁷ Garda Keogh included a statement about the CCTV from Kilmartin's Service Station. He provided information about contact with his garda colleague who was pursuing the enquiries into crimes associated with the suspect car. Sgt Monaghan was able to report progress in the case. The superintendent made a note as follows:

*Noted. I appreciate the additional enquiries carried out which ensure the organisation is achieving its goals in relation to the investigation of crime. Report on the efforts at identification by 1/11/15.*¹⁴²⁸

Garda Keogh's enquiry about the CCTV was the crucial move in solving this crime. It led to a successful prosecution. Supt Murray wrote an appreciative note which echoed the earlier congratulatory message from Insp Minnock. Unfortunately, Garda Keogh did not reveal the possibility of the new and crucial video evidence when he submitted the crime file. Supt Murray was therefore focusing on the unclear video material when he sent his queries.

This case exposed weaknesses in Garda Keogh's work in failing to document what he did. Garda Keogh submitted the file without reference to his visit to Kilmartin's Service Station and the possibility of relevant footage becoming available. No record exists of when Garda Keogh received the disc from Kilmartin's Service Station, viewed it, and identified the suspect car.

Garda Keogh did not update PULSE until 28th August 2015 and did not take the relevant statement until 9th September 2015. Supt Murray's view of 3rd September that the file was submitted prematurely was reasonable.

Supt Murray had devised a scheme that required more detail for analysis and supervision of garda work. A mere declaration of the outcome of an investigation was not in compliance with the regime. Garda Keogh and the superintendent were coming to this matter from different factual perspectives, which accounted for some of the queries and observations, for which the responsibility lay with Garda Keogh who was in possession of the information.

This case does not reveal targeting or discrediting.

Case 3: Criminal damage at Mulligan's Filling Station

Supt Murray sent a query to Garda Keogh as to whether he had followed up on the possibility that members of a particular family had committed this crime.¹⁴²⁹ Garda Keogh responded with information from the property owner that confirmed his own conclusion that there was nothing to connect those persons with the malicious damage.¹⁴³⁰

Considered as a discrete issue, it is difficult to see how the exchange of correspondence that occurred in respect of this case could give rise to even a complaint, not to mention an allegation of targeting or discrediting. The query was legitimate and appropriate for a senior officer to address to the investigating garda and the latter answered with relevant information in a proper manner. Even when evaluated against a background of other transactions between these parties, this correspondence is not evidence of targeting and does not add to or detract from Garda Keogh's other claims.

¹⁴²⁷ Tribunal Documents, Letter from Garda Keogh to Sgt Dermot Monaghan, p. 220; Letter from Sgt Dermot Monaghan to Supt Pat Murray, dated 19th September 2015, p. 222

¹⁴²⁸ Tribunal Documents, Handwritten note of Supt Pat Murray to Sgt Dermot Monaghan, dated 22nd September 2015, p. 222

¹⁴²⁹ Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge Athlone, dated 14th August 2015, p. 215

¹⁴³⁰ Tribunal Documents, Handwritten report of Garda Nicholas Keogh to Sgt Dermot Monaghan, dated 28th August 2015, p. 216

Case 4: Robbery

D/Sgt Curley recommended that this incident be recategorised to attention and complaints, which in effect meant that it was not a crime.¹⁴³¹ That is what happened on 23rd September 2015. The incident summary report on PULSE noted that the injured party refused to cooperate with the investigation and that he had refused to make a statement of complaint, and stated: *'[n]o evidence that the crime occurred as initially reported'*.¹⁴³²

The Garda Síochána Code provides that a criminal offence is recorded when there is a reasonable probability that a criminal offence took place and there is no credible evidence to the contrary. It is to be recorded even if the injured party does not want the matter taken any further.

Sgt Baker was the sergeant in charge of the station and at the PAF meeting on 14th September 2015, she had the brief report left by Garda Keogh. It was her view, and the others at the meeting concurred, that the report lacked information to enable the team to make decisions. It did not comply with the requirements laid down by Supt Murray on 18th August. D/Sgt Curley was assigned to make further enquiries. As a result, the matter was downgraded from being recorded as a serious crime of robbery to what was in effect not a crime at all. One might have thought that that would have put an end to concerns about this case.

However, Supt Murray then pursued the inadequacy, as he saw it, of the report left by Garda Keogh. The garda maintains that this was targeting. At the time he characterised it as harassment, and that resulted in a reply from the superintendent drawing attention to the bullying and harassment policy of An Garda Síochána.

Garda Keogh complained about the reclassification of the incident. In the circumstances as they developed in the investigation of the case, it is not reasonable to see such a decision as constituting targeting of Garda Keogh. The decision may have been correct or not. The Garda Síochána Code states that even if an injured party does not want to pursue the matter it should still be recorded as a crime.¹⁴³³ If there is reason to question credibility that is relevant and may justify non-recording. That is what happened in this case. The fact that an injured party does not want to proceed is not in itself a basis for rejecting his or her credibility. D/Sgt Curley made the recommendation to downgrade the case to attention and complaints, and the evidence is that there was general agreement to that course and the superintendent accepted the recommendation. That was a matter for him to decide and he cites the consensus among colleagues in support of his decision. Garda Keogh is entitled to disagree with that decision, but it was made on a basis that is described in the evidence and Supt Murray points out that it was done openly and properly in exercise of his jurisdiction. There is no evidence that the making of that decision amounted to targeting of Garda Keogh.

The evidence is that Garda Keogh was going off duty and would be away from work for rest days as well as annual leave days. He maintained that he put all the relevant information on PULSE and left a short note in addition. That was not in compliance with the regime put in place by the superintendent in his direction of 18th August 2015.

It may be that Garda Keogh felt that he did not have sufficient time to make a fuller report and he insists that the information he provided was sufficient to alert his authorities and colleagues to the nature of the crime and that he was careful to emphasise the seriousness of the matter. Having said

¹⁴³¹ Tribunal Documents, Letter from D/Sgt Eamon Curley to Supt Pat Murray, dated 16th September 2015, p. 497

¹⁴³² Tribunal Documents, PULSE extract, p. 496

¹⁴³³ Tribunal Documents, Chapter 33 of An Garda Síochána Code, Part I Crimes and Offences: Reporting and Recording, p 7981 at p. 7982

that, criticisms of his report for being non-compliant cannot be dismissed as illogical or not based on the superintendent's directions. That came initially from the sergeant in charge, Sgt Baker, and the other members of the PAF team agreed.

It follows that the criticism of the adequacy of Garda Keogh's report cannot be regarded as targeting directed by Supt Murray. The assessment of the report arose in circumstances of routine examination of the case Garda Keogh reported by the group whose function it was to do that, so it is difficult to see how it could amount to targeting.

What is more difficult to understand is why Supt Murray would wish to pursue the matter of alleged failure of compliance by Garda Keogh in a case which he had downgraded to attention and complaints some ten days previously. The superintendent was committed to his policy of improving standards and in his and his team's view Garda Keogh's attention to this case was deficient, a matter that stood independent of the fate of the investigation. The reclassification of the case did not absolve the investigating garda of the faults in reporting. However, this approach seems unreasonable in all the circumstances. It is understandable that Garda Keogh would feel aggrieved about this pursuit of incorrect procedure at that stage.

There is no way of knowing or proving that another garda would or would not have been treated the same way in similar circumstances. But it cannot be ignored that relations between Supt Murray and Garda Keogh were at a low ebb at this stage. Obviously, the queries pursued by Supt Murray were directed specifically at Garda Keogh but was that because he was Garda Keogh and did that constitute targeting within the meaning of term of reference [p]?

Under term of reference [p] it is not enough to establish targeting, because the targeting or discrediting has to be because the garda made a protected disclosure. In this case, if the superintendent's pursuit of Garda Keogh's perceived failures of compliance with the new regime can be considered as targeting, there is no evidence on which it could be concluded that the superintendent acted as he did because Garda Keogh had made a protected disclosure.

As to targeting *simpliciter*, that is, targeting absent any connection with the disclosure, there is a lack of evidence to show that. On the other hand, there is a competing explanation based on Supt Murray's drive for higher standards of policing, his tendency towards perfectionism and his commitment to the new reporting regime. However, while the superintendent did not act from an improper motive, his approach in this matter lacked judgment and sensitivity.

Conclusion

There are circumstances in which it is legitimate to reclassify a crime on PULSE. Developments may indicate that it should be listed as more serious than it was originally or it may happen that a crime should be downgraded. What appeared originally to be a crime may no longer be so regarded in light of developments. The superintendent in the area has the function of making changes as he or she sees it necessary. Simply finding cases that were downgraded does not prove the point.

The process that was followed in this last case was rational and followed further investigation. The steps were noted in record and report. The superintendent made the decision after discussion, and after adopting the unanimous recommendation of his colleagues. While it is possible to argue that the basis for doubt as to the credibility of the injured party was questionable, the suggestion that the position taken by the group members and implemented by Supt Murray represented targeting or discrediting of Garda Keogh is unsustainable.

CHAPTER 15

ISSUE 10:

THE COMPLAINT BY GARDA NICHOLAS KEOGH IN RELATION TO THE DENIAL OF HIS REQUEST FOR THE CANCELLATION OF ANNUAL LEAVE ON 31ST AUGUST 2015

The Facts

Superintendent Pat Murray called to Athlone Garda Station at 21:00 hrs on 30th August 2015 to serve disciplinary papers on Garda Keogh on behalf of Superintendent Alan Murray. As previously observed this meeting was not a pleasant one, with Supt Pat Murray recording the following note:

Sunday, 30/08/15, 9.00 pm.

Met the member to serve LA12 for Supt. Mullingar re discipline AWOL July. It was clear the member was annoyed at events. I explained to him I had indicated this might happen because of his cavalier attitude towards his work obligations. At his request I explained Reg. 14 to him in full. I also enquired as to his welfare and alcohol addiction problem. He was reticent to discuss same. I am aware he engaged with welfare service, Garda M. Quinn. I asked him about his work and explained I noticed poor work standards. I cited two crime files where IP wrote statement on C8. No follow up, and recent letter re _____ family. I asked him if events were impacting on his work and said if he continued as at present I would have to consider reducing the risk he posed by taking him off outdoor duty. He asked me to continue to send him my issues in writing. He said he would do what he liked. I assured him he could not. The meeting ended on that.¹⁴³⁴

The following day, 31st August 2015, Garda Keogh attended a pre-arranged meeting in Portlaoise with a senior officer from the Garda Síochána Ombudsman Commission (GSOC). This was a day on which Garda Keogh had annual leave. However, he later sought to have this annual leave cancelled as he considered his meeting with GSOC part of his duty as a garda.

Accordingly, he wrote to the sergeant in charge of Athlone Garda Station on 1st September 2015 and requested that his annual leave for 31st August 2015 be cancelled. In his application to Sergeant Dermot Monaghan, Garda Keogh wrote:

Re: Annual leave 31/8/15 Garda Nick Keogh

With reference to above I took annual leave on 31/8/15 however I was required to meet G.S.O.C on that day in Portlaoise and I request to have the annual leave cancelled for that day Monday 31/8/15.

Forwarded for your consideration please.¹⁴³⁵

Sgt Monaghan considered the application and forwarded it to Supt Murray on 2nd September 2015 with the words 'Gda Keogh application approved' written below the application.¹⁴³⁶ However the application was not approved by Supt Murray. In a note dated 4th September 2015, Supt Murray recorded that:

¹⁴³⁴ Tribunal Documents, Note of Supt Pat Murray, dated 30th August 2015, p. 2246

¹⁴³⁵ Tribunal Documents, Handwritten letter of Garda Nicholas Keogh to Sgt Dermot Monaghan, dated 1st September 2015, p. 211

¹⁴³⁶ Tribunal Documents, Handwritten note of Sgt Dermot Monaghan to Supt Pat Murray, dated 2nd September 2015, p. 211

*AL App to cancel leave, 31/08/15 for Garda Keogh who explained he was meeting GSOC in Portlaoise. Returned, refused in absence of proper explanation.*¹⁴³⁷

Supt Murray returned the application to Sgt Monaghan, stating *'Application refused in the absence of any proper explanation'*.¹⁴³⁸ Garda Keogh's diary entry for 9th September 2015 stated as follows:

*Supt Murray refuses application to cancel A/L for meeting GSOC
Wants full explanation.*¹⁴³⁹

Sgt Monaghan wrote to Garda Keogh on 10th September 2015 and stated that:

*With reference to the above Supt Murray has refused the cancellation of this days leave in the absence of Proper Explanation. If you still wish to have this day considered for cancellation can you forward a comprehensive report as to the reasons and attach same to your D9 and re submit.*¹⁴⁴⁰

Garda Keogh did not resubmit his application and the matter rested there.

Chapter 11 of the Garda Síochána Code deals with *'Leave, Rest Days and Illness'*. In relation to the granting of annual leave, paragraph 11.3(2) states that:

*Applications for annual leave submitted by members of Garda rank may be granted by Sergeants-in-Charge of Stations, Units and Sections.*¹⁴⁴¹

The above was superseded by the *'Westmanstown Roster Working Time Agreement'*, a governance document detailing the operation of the garda rostering system. It was introduced in April 2012 and continues to date. On the matter of rest days and annual leave it states that:

*8.3 The District Officer/Superintendent is the granting and recording authority for annual leave. District Officers/Superintendents or Inspectors acting for them shall be obliged to ensure that leave entitlements for all members covered by this agreement can be taken within the leave year on a fair and equitable basis.*¹⁴⁴²

Complaint made by Garda Nicholas Keogh

In his statement to the tribunal, Garda Keogh said that Supt Murray, knowing of his dealings with GSOC, unreasonably denied his request and that this amounted to targeting and discrediting of him. He stated as follows:

*I applied to cancel an annual leave day namely the 31/8/2014 [sic] for the purpose of attending a GSOC appointment on that date under the Protected Disclosures Act. My line manager, Sergeant Monaghan, approved my request. Superintendent Pat Murray – who was aware of the confidentiality of GSOC communications with members – countermanded this approval citing 'absence of proper explanation'[my emphasis] in circumstances where I could not provide any more specific explanation – given the confidential nature of gsoc disclosures.*¹⁴⁴³

¹⁴³⁷ Tribunal Documents, Note of Supt Pat Murray, dated 4th September 2015, p. 2263

¹⁴³⁸ Tribunal Documents, Handwritten note of Supt Pat Murray to Sgt Dermot Monaghan, undated, p. 211

¹⁴³⁹ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 9th September 2015, p. 13328

¹⁴⁴⁰ Tribunal Documents, Letter from Sgt Dermot Monaghan to Garda Nicholas Keogh, dated 10th September 2015, p. 210

¹⁴⁴¹ Tribunal Documents, An Garda Síochána Code, chapter 11, p. 7943 at p. 7944

¹⁴⁴² Tribunal Documents, Westmanstown Roster Working Time Agreement, p. 13476 at p. 13488

¹⁴⁴³ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 131

In his evidence to the tribunal, Garda Keogh said:

That's the way it appears, comprehensive report is what I received. I don't know, like, I am not sure, it's a long time since I read the protected disclosures bill, I am not sure if it is even lawful that a person could – that a senior officer would ask for a proper – for comprehensive report, you know, as to a meeting with GSOC, when it is very apparent it is something to do with protected disclosures.¹⁴⁴⁴

He said in his interview with tribunal investigators that he did not submit a 'comprehensive report' as to the reasons for his application, as per Sgt Monaghan's correspondence of 10th September 2015, because he felt Supt Murray was seeking to ascertain confidential information about his meeting with GSOC:

They knew I was going to meet GSOC (as per my handwritten letter, dated 01/09/2015...). But Superintendent Murray was looking for a comprehensive report of what I was going to meet GSOC about. The Protected Disclosure process is supposed to be protected and confidential. The former Garda Commissioner O'Sullivan was saying publicly she supported whistleblowers, but I feel Superintendent Murray was looking to ascertain confidential information about my meeting with GSOC. I felt that I had given an explanation and I did not feel I needed to give a further explanation than I had already set out; that I had to meet GSOC. The Superintendent would have been aware that there were no papers served on me by GSOC in relation to any other work related investigation and that I was not a witness to any investigation being conducted by GSOC, as this paperwork always is dealt with through the ranks. As I have said, I believe that Superintendent Murray was aware that this meeting with GSOC related to my Protected Disclosure and given the protections in that legislation, I felt that I had outlined as much as I could in my initial explanation in writing.¹⁴⁴⁵

When examined by his own counsel, Garda Keogh said that:

Well, Judge, it would have been common knowledge, this is in 2015, so the Ó Cualáin investigation in relation to the heroin and that side of things is on, is going on, Judge. It's common knowledge that I made a protected disclosure and I'm due to meet with GSOC. Judge, I don't believe – I don't believe he's entitled to ask me why I was meeting GSOC, legally I don't – I don't think – I could be wrong on that, but I don't think —

Q. What did you understand the use of those words were "comprehensive report"? What did you think he was asking for?

A. Oh, a comprehensive report means a report outlining every detail, as in why are you meeting GSOC?

Q. Did you think he was justified in calling for that, given you had made a protected disclosure?

A. As I said, I don't think it's even legal. And I'm not sure about that, Judge, but I don't think so.¹⁴⁴⁶

Garda Keogh told counsel for the tribunal that Supt Murray did not appear to know of Garda Keogh's meeting with GSOC in advance¹⁴⁴⁷ and he was asked the following:

¹⁴⁴⁴ Tribunal Transcripts, Day 102, p. 20, Evidence of Garda Nicholas Keogh

¹⁴⁴⁵ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 58-59

¹⁴⁴⁶ Tribunal Transcripts, Day 114, pp. 27-28, Evidence of Garda Nicholas Keogh

¹⁴⁴⁷ Tribunal Transcripts, Day 102, p. 14, Evidence of Garda Nicholas Keogh

Q. *Have you any reason to suggest that he was in fact aware that you were going to GSOC yourself or that you had been in contact with them about different aspects of the investigation?*

A. *I don't think he was aware and, as I said, I hope he wasn't.*¹⁴⁴⁸

Garda Keogh told tribunal investigators that his annual leave day cancellation was not approved at any later date.¹⁴⁴⁹ Garda Keogh stated he did not consult Sgt Monaghan directly about this issue. However, he said that he generally chatted with the sergeants about matters coming from Supt Murray and it was 'crystal clear' to him that 'they were not the ones questioning my work'.¹⁴⁵⁰

Responding Statements and Evidence on the Issue

Superintendent Pat Murray

In his evidence to the tribunal, Supt Murray stated the following:

*I met Garda Keogh on the 30th August, the night before he wanted to cancel annual leave. We had a discussion and I was serving documents on him for Superintendent Alan Murray in Mullingar. He made no mention of that, to have the leave cancelled the next day. When I got the application, it came to me retrospectively, I just couldn't marry that up, that, you know, why he didn't mention it to me. And I felt that the couple of lines wrote were vague in nature anyway. And all I wanted was to have some sort of process where I could stand over to cancel his annual leave. I suppose go a little bit further than what he has there.*¹⁴⁵¹

Supt Murray told tribunal investigators that he was unsure if Garda Keogh's explanation was genuine:

*It is very simple from where I am. I met Garda Keogh on the night of the 30th August 2015 and he said nothing to me about wishing to cancel annual leave the next day. So I was not sure if it was genuine and I looked for a better explanation. Sergeant Monaghan would not have been aware of my meeting with Garda Keogh on 30th August 2015. I never received any further explanation from Garda Keogh.*¹⁴⁵²

Supt Murray was asked the following by counsel for the tribunal:

Q. *Were you doubting that he did have the appointment at all?*

A. *... I simply didn't know. Like, this is just a retrospective application. It hadn't been mentioned to me the night before, so I simply was looking for a little bit more information. He needn't have mentioned GSOC at all. He could have put some other excuse on it and it still wouldn't matter, I'd still have looked for more information, you know.*

Q. *What sort of information were you looking for?*

A. *Well, all I wanted was to say what times he was at the meeting at, to allow me to grant him the full day or a half day or how many hours would it be. So I could have a proper account and governance measure auditable in relation to annual leave, the Westmanstown roster at 8.5 indicating that I had to record annual leave and account for it.*¹⁴⁵³

¹⁴⁴⁸ Tribunal Transcripts, Day 102, p. 17, Evidence of Garda Nicholas Keogh

¹⁴⁴⁹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 58

¹⁴⁵⁰ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 59

¹⁴⁵¹ Tribunal Transcripts, Day 124, pp. 152-153, Evidence of Supt Pat Murray

¹⁴⁵² Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3081

¹⁴⁵³ Tribunal Transcripts, Day 124, pp. 153-154, Evidence of Supt Pat Murray

Supt Murray denied having any knowledge of Garda Keogh's complaint to GSOC at the time of this application and told the tribunal investigators that:

As far as I was concerned his Protected Disclosure was being dealt with by Galway investigators under the Corruption and Malpractice 2007 Act. I had no knowledge of any complaints with GSOC. I subsequently acquired that knowledge in September 2016 when I was invited to a meeting at which GSOC attended. I wanted to reassure myself in providing governance and accountability that there was no acquiescing to vagueness.¹⁴⁵⁴

He was asked by counsel for the tribunal why he required additional information from Garda Keogh:

... So as I could account for the decision I would make in cancelling his annual leave. I felt it was up to Garda Keogh to provide me with the information to allow me to make a decision in a more meaningful fashion. I had no interest in his meeting with GSOC. I didn't know what it was about. It didn't worry me. That's a matter for himself.

Q. You made a note in your diary in relation to this, it's at page 2263 of the material. Why did you note this in your diary?

A. As I said to you, I noted all my interactions with Garda Keogh, because things were very difficult, it was very challenging dealing with him and trying to, I suppose, marry my obligations, my work obligations in terms of delivering the policing service and my obligations to him as a whistleblower.

Q. Did you consider that this might make it worse?

A. Everything I did made it worse. Other than ignore everything, you know, I couldn't see any – I didn't feel that was an option for me, ignoring things. I felt I couldn't do nothing. I felt I had to try and treat Garda Keogh as normally as I could in terms of work.¹⁴⁵⁵

He was also asked by counsel for the tribunal about his motivation for seeking information from Garda Keogh:

Q. ... Were you in any way attempting, as Garda Keogh suggests, to pry into his dealings with GSOC?

A. No. I had no information or knowledge about its investigation. It wasn't of concern to me. That was being dealt with somewhere else for him. I had to try and deal with him in the workplace in terms of him presenting for work fit, as a resource to me, and to be on the team during periods he was fit and then he had intermittent absences then with work related stress. But certificates were indicating that he was fit for work on particular days. And that's the situation, that I had.¹⁴⁵⁶

Supt Murray was examined by counsel for An Garda Síochána about his management duties with regard to such matters as annual leave and he replied that:

I suppose, the policy documents in the organisation placed clear accountability on me to account for annual leave in terms of resources and then, I suppose, I in turn was accountable then to ensure that I was managing the use of annual leave in a proper way, to ensure that an efficient

¹⁴⁵⁴ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3082

¹⁴⁵⁵ Tribunal Transcripts, Day 124, pp. 156-157, Evidence of Garda Nicholas Keogh

¹⁴⁵⁶ Tribunal Transcripts, Day 124, p. 157, Evidence of Supt Pat Murray

*and effective service always prevailed. And there are limits, I suppose, on how many people can get leave together and sometimes people unfortunately have to be refused leave. It's about the management of resources really and balancing that with people's entitlement to annual leave.*¹⁴⁵⁷

In his interview with tribunal investigators, Supt Murray denied that his refusal to grant the cancellation of annual leave, albeit approved by Sgt Monaghan, amounted to targeting and discrediting of Garda Keogh:

*No absolutely not. The Regulations in An Garda Síochána at present don't allow a member of sergeant rank approve annual leave.*¹⁴⁵⁸

Counsel for An Garda Síochána asked Supt Murray the following:

- Q. Were you targeting him in providing the response that you provided?
- A. No. I merely thought the response was vague in nature and I didn't want to acquiesce to that vagueness. And I would have hoped that, you know, some more information might be provided to allow me append that application to his annual leave form and record it in that fashion for the purposes of anyone who wanted to look at it.¹⁴⁵⁹

Sergeant Dermot Monaghan

In his statement to the tribunal, Sgt Monaghan outlined his involvement in this issue as follows:

On the 1 September 2015 Garda Keogh forwarded a hand written report to myself requesting the cancellation of one day's annual leave that he applied for on the 31 August 2015. The reason for the request to cancel his leave was that he attended at Portlaoise to meet GSOC in relation to an investigation and was unable to avail of his annual leave.

*I forwarded his report to Superintendent Murray and wrote 'Garda Keogh Application approved' on the report. On the 10 September 2015 Superintendent Murray replied stating that the application was refused in the absence of any proper explanation.*¹⁴⁶⁰

Sgt Monaghan forwarded the response from Supt Murray to Garda Keogh, stating that *'if he still wished to have the day considered for cancellation he must forward a comprehensive report with reasons and attach same to his D9 and re-submit the application'*. He said in his statement that no reply was received from Garda Keogh appealing this decision.¹⁴⁶¹

Counsel on behalf of Garda Keogh asked him to address the appropriateness of Garda Keogh's application:

- Q. Having seen the form, you were satisfied or you were minded to grant his application or even recommend the application?
- A. I could recommend the application, yes, on what he was telling me, yes.¹⁴⁶²

¹⁴⁵⁷ Tribunal Transcripts, Day 126, pp. 88-89, Evidence of Supt Pat Murray

¹⁴⁵⁸ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3083

¹⁴⁵⁹ Tribunal Transcripts, Day 126, p. 89, Evidence of Supt Pat Murray

¹⁴⁶⁰ Tribunal Documents, Statement of Sgt Dermot Monaghan, p. 609 at p. 611-612

¹⁴⁶¹ Tribunal Documents, Statement of Sgt Dermot Monaghan, p. 609 at p. 612

¹⁴⁶² Tribunal Transcripts, Day 131, p. 107, Evidence of Sgt Dermot Monaghan

Legal Submissions

The parties were requested to and did make extensive legal submissions which were circulated to each relevant party. As is normal in a public tribunal of inquiry, the parties were invited to and did make oral closing submissions in support of their written submissions and each was given a right of reply.

Garda Nicholas Keogh submitted as follows:¹⁴⁶³

- that, when this issue is considered together with the other issues, they formed a pattern of negative, unfair, oppressive behaviour on the part of Supt Murray towards Garda Keogh which amounted to targeting.
- that the cancellation of annual leave was approved by Sgt Monaghan and while Sgt Monaghan clarified that he ought to have recommended the cancellation rather than approving it, he was supportive of Garda Keogh's application.
- that Supt Murray was aware of the process that Garda Keogh was going through with GSOC and refused to sanction the leave '*in the absence of any proper explanation*'. This meeting was work related and Garda Keogh was obliged to attend. Therefore, in the normal course of events he should have had that scheduled leave cancelled as a matter of routine.
- that it was a vindictive, oppressive, unfair act by what Garda Keogh described as '*an old style*' superintendent and was an act of targeting.
- that Supt Murray had met with Garda Keogh on the night of Sunday 30th August 2015 to serve a Regulation 14 notice of interview upon Garda Keogh and at a time when other issues were live with Garda Keogh. Supt Murray used the opportunity to quiz Garda Keogh about his alcohol dependency, his welfare, two theft cases where he (Supt Murray) was being critical of Garda Keogh's work, Garda Keogh's standard of work in general, and a letter from a solicitor about an unnamed family. He rounded it off by telling Garda Keogh that he would consider taking Garda Keogh off outdoor duty. Against that background, it was submitted that it was impossible to see anything but animus by Supt Murray towards Garda Keogh, a garda member who hitherto had not had any complaints or criticisms levelled against him.
- that according to the Garda Síochána Code chapter 8.3(1) as evidenced by HQ Directive 233/00 of 15th January 2001, the sanctioning of annual leave is the responsibility of the sergeant in charge of the station/unit/section and station house officers. Thus, the relevant officer for the request made by Garda Keogh was his sergeant.
- that Supt Murray's evidence on the issue was disingenuous, namely that he was not seeking to know who the appointment was with or what it was about, rather that he merely wanted to know how much time was involved in the appointment and whether it involved a whole day or a half day.
- that Supt Murray had no business or legitimate interest in querying why Garda Keogh was meeting GSOC, yet that was precisely what Supt Murray did. It was Garda Keogh's evidence that '*... it would have been common sense, it was something to do with protected disclosures*'.

¹⁴⁶³ The tribunal has considered all of Garda Nicholas Keogh's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 14-31 and pp. 172-177

- that as a matter of common-sense deduction Supt Murray must have known or should have deduced that the meeting was about the substance of what was now the protected disclosure. If that is right, Supt Murray was targeting Garda Keogh in his actions in refusing cancellation of the day as annual leave such that the refusal would disadvantage Garda Keogh.

An Garda Síochána submitted as follows:¹⁴⁶⁴

- that Garda Keogh made a retrospective request to cancel a day of annual leave that he had taken because he had attended an appointment with GSOC.
- that it was established that decisions regarding the cancellation of leave are not covered in the Garda Síochána Code and are entirely a matter for the superintendent.
- that Supt Murray found it strange that Garda Keogh had not mentioned the appointment and he told the tribunal that *'it hadn't been mentioned to me the night before, so I simply was looking for a little bit more information'*.
- that Supt Murray stated that he would take Garda Keogh *'at his word'* but wanted to know, for example, how much of the ten-hour leave day was taken up by the meeting. He stated that he felt it was up to Garda Keogh to put forward the case and left the door open to his so doing.
- that Supt Murray was accountable for leave as a resources issue and described being subject to audit annually from the assistant commissioner and biannually from the chief superintendent. He stated that he had to try to reconcile his obligations to Garda Keogh with his own work obligations.
- that Supt Murray was not attempting to pry in any way into Garda Keogh's dealings with GSOC, stating that *'I had no interest in his meeting with GSOC. I didn't know what it was about. It didn't worry me. That's a matter for himself'*.
- that Garda Keogh accepted that Supt Murray would not have been aware of communications he had with GSOC in the circumstances in which he was involved with them; or that such communications were connected with the protected disclosure. He suggested, however, that the onus was on Supt Murray to write to GSOC to enquire if Garda Keogh was involved with them. The Chairman made the point that it was unlikely GSOC would have told him, if he had.
- that this was another example of Garda Keogh deciding that, because he was unhappy with an outcome on a particular issue, that outcome *per se* amounted to targeting. This was a feature of many of his complaints. Garda Keogh considered that he had a right to a verdict in his favour on all issues or that an adverse outcome, or an outcome with which he was personally unhappy, must mean he has been the victim of deliberate targeting.
- that Supt Murray's request for further information did not amount to abuse or criticism and was entirely reasonable in the circumstances.
- that Supt Murray requested a proper explanation as to the reasons for the cancellation and not the content of Garda Keogh's GSOC communications. The request was not refused outright.

¹⁴⁶⁴ The tribunal has considered all of An Garda Síochána's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 70-172 and pp. 177-179

- that Garda Keogh did not engage with Supt Murray or Sgt Monaghan on the issue or seek clarification that Supt Murray was not asking him to disclose confidential information.
- that Supt Murray was a manager in a disciplined force and it was not a matter for him to seek out supporting information for the retrospective cancellation of leave requests in respect of individual members. He was also endeavouring to treat Garda Keogh the same as any other member, presenting fit for service on the force.

Sergeant Dermot Monaghan submitted as follows:¹⁴⁶⁵

- that he did not have the authority to approve a request for the cancellation of annual leave and he did so in error in this case. He could recommend the cancellation.
- that he did not discuss the request with Garda Keogh, who had left it in his tray, and he forwarded it to the superintendent.
- that the request was refused by the superintendent, indicating that Garda Keogh could reapply if he wished to bring further matters to the attention of the superintendent, and he did not hear anything further from Garda Keogh.

Discussion

There is nothing in the evidence to suggest that Supt Murray had any interest in Garda Keogh's dealings with GSOC. The words he used, '*in the absence of any proper explanation*',¹⁴⁶⁶ did not carry the implication that he was seeking information on Garda Keogh's business with GSOC. It was not helpful that Sgt Monaghan translated the reason '*in the absence of proper explanation*' into a request for '*a comprehensive report as to the reasons ...*'.¹⁴⁶⁷

The superintendent is the granting and recording authority for annual leave: see above where the Westmanstown Roster Working Time Agreement, clause 8.3 is cited.¹⁴⁶⁸ This represented a change from the previous situation in which the decision maker was a sergeant. It was appropriate for Sgt Monaghan to make a recommendation in respect of the application by Garda Keogh but it was not his decision: that was for Supt Murray.

Garda Keogh's complaint to the tribunal on this issue states: '*I applied to cancel an annual leave day namely the 31/8/2014 for the purpose of attending a GSOC appointment on that date under the Protected Disclosures Act*'.¹⁴⁶⁹ Despite the impression that this gives of an application concerning an upcoming, future meeting, the fact is that Garda Keogh attended the meeting on his leave day and then applied on the following day to have the leave cancelled. That is not to suggest that there was anything wrong with a retrospective application for cancellation. However, in normal circumstances one would think it reasonable to provide an explanation as to why the request was not made in advance.

On the night before the GSOC meeting, Garda Keogh and Supt Murray met and spoke but there was no mention of the former's meeting planned for the following day or the fact that he would wish to save his leave day for another occasion. In light of the matters that the superintendent raised at the meeting it is not surprising that Garda Keogh did not volunteer information about

¹⁴⁶⁵ The tribunal has considered all of Sgt Dermot Monaghan's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

¹⁴⁶⁶ Tribunal Documents, Handwritten note of Supt Pat Murray to Sgt Dermot Monaghan, undated, p. 211

¹⁴⁶⁷ Tribunal Documents, Letter from Sgt Dermot Monaghan to Garda Nicholas Keogh, dated 10th September 2015, p. 210

¹⁴⁶⁸ Tribunal Documents, Westmanstown Roster Working Time Agreement, p. 13476 at p. 13488

¹⁴⁶⁹ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 131

his plans. However, the superintendent would not have seen it that way and he was uneasy because he had not been told.

There was no reason why Supt Murray would or should have known of Garda Keogh's engagement with GSOC. The protected disclosure was known to be the subject of the Ó Cualáin team investigation, which had indeed been conducted in Athlone Garda Station at times. When Garda Keogh made his protected disclosure, GSOC was not available to him. The superintendent could not have considered seeking information from GSOC about their engagement with Garda Keogh because that was not his business, as he would no doubt have been informed if he had had the temerity to approach GSOC.

In refusing the application, Supt Murray merely stated that the application was '*refused in the absence of any proper explanation*'.¹⁴⁷⁰ It is difficult to understand what '*explanation*' Garda Keogh was required to give. A query as to whether it was a full day or half day would have been reasonable and amenable to being answered by Garda Keogh. But this somewhat dismissive refusal does not even hint at what was required.

Supt Murray's rejection of the application became translated into a request for a comprehensive report. Given Garda Keogh's mindset at the time it is easy to understand why he interpreted the request the way he did.

Conclusion

Supt Murray was entitled to query an application and to look for further information where it was required for his decision. However, his response did not seek anything specific, merely indicating that the application did not contain any proper explanation: a brusque and summary dismissal. Garda Keogh thought that this rejection, albeit not final and open to further presentation, was an antagonistic response. That is understandable.

It does appear in this case that the superintendent's decision was hasty, overly-exacting and suggestive of irritation with Garda Keogh. It was the kind of complaint that can arise in everyday life in the working environment and elsewhere. It was a response that did not shut the door to granting the request. It was not clearly expressed as to what was missing and it came to be translated into something different.

Although Garda Keogh's sentiments about the episode are understandable it does not follow that the adverse decision made in this instance represented targeting or discrediting and it cannot be ascribed to the fact that Garda Keogh had made a protected disclosure.

¹⁴⁷⁰ Tribunal Documents, Handwritten note of Supt Pat Murray to Sgt Dermot Monaghan, undated, p. 21 |

CHAPTER 16

ISSUE 11:

THE COMPLAINT BY GARDA NICHOLAS KEOGH IN RELATION TO HIS CONFINEMENT TO INDOOR DUTY IN OCTOBER 2015

The Facts

On 8th October 2015, Chief Superintendent Lorraine Wheatley sent the formal notification of the disciplinary process conducted by Superintendent Alan Murray to Superintendent Pat Murray for service on Garda Keogh.¹⁴⁷¹ Supt Pat Murray met Garda Keogh to serve the Form I.A.14 on him on 22nd October 2015. Supt Pat Murray noted the following in his diary:

22/10/15

Met Garda Keogh in my office at my request to serve IA14 for Chief's result of discipline enquiry on him. Member acknowledged same.

Noticed the member's hands shaking a lot, to an extent he couldn't write properly. His signature reflects same. Discussed his sickness with him. He said he would continue going sick. Explained to him I felt it was a risk having him go to incidents as he wasn't around to follow up because of sick. I pointed out the incidents not dealt with properly, which I had written on and other items on Sergeant Monaghan's PAF list (19/10) not progressed. He had no reason or excuse for same. I explained as per earlier conversation I now considered he should be employed in indoors as in his present condition I felt there was risk involved to the public and/or organisation. I questioned if he was fit to work today. I informed him I had informed IC to put him on indoor duty as SO. He said okay. I asked him if suspension of Garda A would allow him to come to work more as he used Garda A's presence up to now as an excuse for going sick. He made no answer. Meeting ended.¹⁴⁷²

The Form I.A.14 is entitled 'Report of Appointing Officer to Member Concerned Regulation 19 Garda Síochána (Discipline) Regulations, 2007'.¹⁴⁷³ Supt Pat Murray returned the copy of the Form I.A.14 signed by Garda Keogh to C/Supt Wheatley by report dated 22nd October 2015. He stated the following in the covering letter:

The member's hands were shaking quite a lot while I spoke to him, to an extent that he could hardly write. As a result of that and other issues regarding work performance I informed Garda Keogh he would be employed on indoor duties at present with a review date of 1st November, 2015. The member acknowledged acceptance of my decision. I have recently been in contact with Sickness Section regarding a case conference in relation to Garda Keogh.

Forwarded, please.¹⁴⁷⁴

Garda Keogh made a note in his diary for 22nd October 2015 which recorded that:

3.30 Sergeant Monaghan said Superintendent Murray looking to speak with me gave me appeal sheet re €300 discipline. Said he was having case conference re my sick and putting me permanent PO (I never looked at him).¹⁴⁷⁵

¹⁴⁷¹ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Supt Pat Murray, dated 8th October 2015, p. 2257

¹⁴⁷² Tribunal Documents, Diary entry of Supt Pat Murray, dated 22nd October 2015, p. 2256

¹⁴⁷³ Tribunal Documents, Form I.A.14, dated 8th October 2015, pp. 2258-2259

¹⁴⁷⁴ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 22nd October 2015, p. 2260

¹⁴⁷⁵ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 22nd October 2015, p. 13334

On the same date, Supt Murray issued the following instruction to the sergeants in the Athlone District:

Re: Duties – Garda Nick Keogh, 28045C, Athlone Garda Station

With immediate effect, Garda Nick Keogh should be detailed for indoor duties with Unit C.

I have spoken with the member on this issue. I will review the matter again on 1st November, 2015. Please inform all concerned and arrange accordingly.¹⁴⁷⁶

Garda Keogh made a note in his diary dated 23rd October 2015 which recorded that:

[Garda] ____ moved back in uniform re his investigation he is to work off unit C. My unit!¹⁴⁷⁷

A Facebook message exchange took place on 25th October 2015 at 20:28 hrs between Garda Keogh and Garda Fergal Greene:

Garda Keogh: Murray said he putting me as permanent PO next week. Doesn't bother me. Other than that all quiet.

Garda Fergal Greene: Ah ____ him, that won't last forever.

Garda Keogh: Ah I know, don't know what he playing at putting ____ on my unit.¹⁴⁷⁸

Garda Keogh did not protest about the decision. On 27th October 2015, he told his welfare officer that he intended to deal with the assignment in a positive way. Garda Michael Quinn made a note of his conversation with Garda Keogh as follows:

27.10.15

I rang. The member intends dealing with the fact that he had been assigned to be permanent station orderly (P.O.) by his Superintendent in a positive way.¹⁴⁷⁹

Following the direction, Garda Keogh noted in his diary that he was on rest days on 23rd, 24th, 25th and 26th October 2015, when he also met Deputies Clare Daly and Mick Wallace. He also noted that he took annual leave on 27th and 28th October 2015.¹⁴⁸⁰

His diary recorded that he started in the public office on 29th October 2015 and further recorded a visit of Assistant Commissioner Fintan Fanning the following day, 30th October 2015.¹⁴⁸¹ It was also recorded that he printed PULSE records relating to crime reclassifications, and hid them in the station, and smuggled others out in his baton pocket.¹⁴⁸²

On 2nd November 2015, Garda Keogh applied for Haddington Road sanctioned overtime hours in order to attend at Naas Courthouse on 18th November to effect the arrest of suspects who had been identified in connection with one of the crime files he had dealt with earlier.¹⁴⁸³ This was

¹⁴⁷⁶ Tribunal Documents, Letter from Supt Pat Murray to Sergeants, Athlone District, dated 22nd October 2015, p. 2261

¹⁴⁷⁷ Tribunal Documents, Diary entry Garda Nicholas Keogh, dated 23rd October 2015, p. 13334

¹⁴⁷⁸ Tribunal Documents, Printout of Facebook message exchange between Garda Nicholas Keogh and Garda Fergal Greene, dated 25th October 2015, p. 16670

¹⁴⁷⁹ Tribunal Documents, Notes of Garda Michael Quinn, p. 10618

¹⁴⁸⁰ Tribunal Documents, Diary entries of Garda Nicholas Keogh, dated 23rd-28th October 2015, pp. 13334-13335

¹⁴⁸¹ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 29th October 2015, p. 13335

¹⁴⁸² Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 29th October 2015, p. 13335

¹⁴⁸³ Tribunal Documents, Application to perform overtime, dated 2nd November 2015, p. 2303

sanctioned by Supt Murray. He noted that Garda Keogh intended working on 18th November 2015 from 08:00 hrs to 18:00 hrs and from 21:00 hrs to 07:00 hrs and Supt Murray asked the sergeant in charge in a minute whether the member would be able for these long hours or would anything consequential arise.¹⁴⁸⁴

Garda Keogh's diary records him as being on rest days from 2nd November 2015 to 6th November 2015. On 11th November 2015, Supt Murray received a phone call from Garda Greene, who reported that Garda Keogh had been drinking heavily and was in no state to work. Supt Murray made a note of this.¹⁴⁸⁵

Supt Murray had indicated that he would review the assignment of Garda Keogh to indoor duty on 1st November 2015. He sent an instruction dated 13th November 2015 to the sergeants in the Athlone District, and copied Inspectors Nicholas Farrell and Aidan Minnock. He referred to his previous direction of 22nd October 2015 and stated that:

*I have reviewed the matter as previously indicated. The member should continue to be detailed on indoor duties with Unit C. I will review the matter again on 1st February, 2016. Please inform the member accordingly.*¹⁴⁸⁶

Garda Keogh's diary¹⁴⁸⁷ recorded him as having further rest days on 12th, 13th, 14th and 15th November 2015 and the word 'drink' is recorded for 15th and 16th November, with the word 'sick' noted on 16th November 2015. On that day, Garda Keogh reported to Detective Sergeant Eamon Curley that it was now unlikely he would be able to complete the duty of arresting the suspect at Naas on 18th November 2015 as he had relapsed. D/Sgt Curley informed Garda Keogh that he would try to get alternative members to complete the duty and Garda Keogh told him where the investigation file was stored.¹⁴⁸⁸

D/Sgt Curley reported that on 18th November 2015, at 12:07 hrs, Garda Keogh phoned him to report that 'he wouldn't be able to make it' that day.¹⁴⁸⁹ D/Sgt Curley informed Garda Keogh that the matter was in hand, to which he replied that this was a load off his mind, and he asked if the members had obtained the file. D/Sgt Curley recorded that the phone call at 12:07 hrs 'didn't make much sense as the plans to travel to Naas Court were already in place and the members assigned had been there at that time'.¹⁴⁹⁰

D/Sgt Curley had already informed Supt Murray of Garda Keogh's report on 16th November 2015. Supt Murray made the following note in his diary:

*D/Sergeant Curley informed me Garda Keogh phoned him re planned arrests with Ballinasloe on Wednesday, 18/11. Garda Keogh said he had a relapse, couldn't go and wanted other members to do his work. I told D/Sergeant to do so, to properly investigate crime for IP.*¹⁴⁹¹

The following month, a case conference took place on 9th December 2015 with the Dr Oghenov Oghuvbu, the Specialist Occupational Physician at the Garda Occupational Health Service. Garda Keogh reported off duty sick from 8th December until 20th December 2015.¹⁴⁹² Garda Keogh had

¹⁴⁸⁴ Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge, Athlone, dated 4th November 2015, p. 2302

¹⁴⁸⁵ Tribunal Documents, Diary entry of Supt Pat Murray, dated 11th November 2015, p. 2498

¹⁴⁸⁶ Tribunal Documents, Letter from Supt Pat Murray to Sergeants, Athlone District, dated 13th November 2015, p. 9135

¹⁴⁸⁷ Tribunal Documents, Diary entries of Garda Nicholas Keogh, dated 9th-22nd November 2015, pp. 13337-13338

¹⁴⁸⁸ Tribunal Documents, Letter from D/Sgt Eamon Curley to Supt Pat Murray, dated 17th November 2015, p. 2304

¹⁴⁸⁹ Tribunal Documents, Letter from D/Sgt Eamon Curley to Supt Pat Murray, dated 17th November 2015, p. 2304 at p. 2305

¹⁴⁹⁰ Tribunal Documents, Letter from D/Sgt Eamon Curley to Supt Pat Murray, dated 17th November 2015, p. 2304 at p. 2305

¹⁴⁹¹ Tribunal Documents, Diary entry of Supt Pat Murray, dated 16th November 2015, p. 2306

¹⁴⁹² Tribunal Documents, Medical certificate, dated 25th January 2016, p. 10741

attended Dr Oghuvbu on 18th December 2015, who, following consultation with Garda Keogh's GP, reported that he was unfit for work. His last day on indoor duties in the public office was on Monday 21st December 2015.

Complaint made by Garda Nicholas Keogh

In his statement to the tribunal, Garda Keogh said that, at a time when it was known he was suffering from work related stress, he was confined to indoor duty in the public office, which was the most stressful job in the station:

During this period... I was reduced to indoor duty and was confined to desk bound duties in the public office carrying out therefore the most stressful job in the station in circumstances where it was known to management that I was suffering from work related stress. Thus, on the 22nd of October 2015, Superintendent Pat Murray simply 'with immediate effect' reduced me to indoor duties. There was no analysis or right of representation. He said that he will 'review the matter; again on the 1st November 2015' (he never did).¹⁴⁹³

Garda Keogh told tribunal investigators what he considered the real reason for his redeployment:

It was up in the Superintendent's office. Sergeant Monaghan said to me on 22/10/2015 that Superintendent Murray was looking to speak with me. There was nobody else present. Superintendent Murray said he was putting me on as permanent on the Public Office and he appeared to be using my sick record as the reason. At that time they (Garda management) were officially recording me out sick with the flu, while in fact I was out on intermittent work related stress. It is my belief that they put me into the most stressful position within the Garda Station; which is the Public Office. I suspect the real reason I was put on indoor duties at that time, was that it was just after Garda A had been suspended and who was subject of my complaint in October 2015. It was a message for everyone in the station (a circular was issued to every Sergeant in the District by Superintendent Murray ...) so that every other guard could see that they were making an example of me. Everyone in the station knew that I was desk bound and I believe that was a message for everyone. That is my belief.¹⁴⁹⁴

In relation to whether his hands were shaking, Garda Keogh gave evidence to the tribunal that:

That's very interesting, because nobody else makes that – people, let's say, I'm regularly working with or whatever don't make that allegation. What's interesting is, like, why would you put the person who has the shakiest hands in the station at the public counter, that's signing all the passports and everything else for the public. Like it makes no common sense to do that.

As I said, if anyone else said – if certain other persons said that, I would probably have said, fair enough or that. But with Superintendent Murray, there's so much, let's say, stuff that I cannot agree with in his notes, that I just have difficulty with that.¹⁴⁹⁵

He told tribunal investigators that Supt Murray never informed him of the specific reason for this decision:

... He never gave me a specific reason. Superintendent Murray mentioned it was in relation to my sick record but he did not give me any specific reason for putting me on indoor duties. He said he was going to have a case conference in relation to my sick record also. My view is that [the] real reason for me being put on indoor duties, if you look at the timing; was because Garda A had

¹⁴⁹³ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 135

¹⁴⁹⁴ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 68-69

¹⁴⁹⁵ Tribunal Transcripts, Day 102, pp. 33-34, Evidence of Garda Nicholas Keogh

*been suspended. That is why I was put on indoor duties in my view. In my view it was a message for other guards in the station as well. That is my belief.*¹⁴⁹⁶

Garda Keogh also said that he remained on indoor duty until he went on long-term sick leave on 26th December 2015, and that there was no review of this redeployment to his knowledge.¹⁴⁹⁷ Garda Keogh told tribunal investigators that there was no mention of work related stress during his encounter with Supt Murray on this issue:

*No there was no mention of me suffering work related stress at this meeting, but it would have been dealt with at a previous meeting. At a previous meeting Superintendent Murray said to me 'you are under no stress'...*¹⁴⁹⁸

Garda Keogh was asked by counsel for the tribunal about Supt Murray's note of the conversation:

Q. Well, he says:

"I discussed with him his frequent sickness absence and his impact on his ability to follow up on work related matters."

Did he do that?

A. Yes, he spoke to me about sick leave, yeah.

Q. "I explained that I had discussed the lack of progress and some matters involving Garda Keogh with Sergeant Monaghan while going through his incident list at a PAF meeting with Sergeant Monaghan on 19th October 2015. Garda Keogh didn't seem with it to me and I asked him if he felt fit enough to be in work."

Do you recall that?

A. I don't recall that.

Q. "He said he did."

A. I can tell you for a fact that "he said he did", I not alone have a note of it – oh sorry, sorry. Excuse me, sorry. I am not sure just about that but I do recall in that meeting, I didn't even look at Superintendent Murray. So I don't know even – I remember just looking out the window while he was talking away, he obviously has his own notes and a version of the conversation. I wasn't very chatty to him.¹⁴⁹⁹

In his interview with tribunal investigators, Garda Keogh said that *'I don't think I said anything'*.¹⁵⁰⁰ In his diary note of the meeting, Garda Keogh recorded *'I never looked at him'*.¹⁵⁰¹ He was asked about his demeanour at this meeting when giving evidence to the tribunal:

Q. *Just in terms of what you are describing about your demeanour in the meeting, were you sort of not bothering to pay attention to what he was saying?*

A. *Oh no, it's not that I wasn't bothered. Like, I had stated fully Superintendent Murray's agenda. So, I mean, to put it mildly, he's not in my circle of trust.*¹⁵⁰²

¹⁴⁹⁶ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 70

¹⁴⁹⁷ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 70-71

¹⁴⁹⁸ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 69

¹⁴⁹⁹ Tribunal Transcripts, Day 102, pp. 34-35, Evidence of Garda Nicholas Keogh

¹⁵⁰⁰ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 69

¹⁵⁰¹ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 22nd October 2015, p. 13334

¹⁵⁰² Tribunal Transcripts, Day 102, pp. 35-36, Evidence of Garda Nicholas Keogh

Garda Keogh continued that:

Like I would have been just looking out the window.

Q. Well, he's not purporting to say that you said, yes, that's fine, but he's saying you seemed to be taking it. I mean, did you raise any issue with it, from your side?

A. From my recollection again, I don't think I spoke really at all at that meeting. I think I just sat down, looked out the window and that was it.

Q. You neither expressly agreed or disagreed?

A. Yes.

Q. Okay. So that might have conveyed to him that you were going along with it, as it were?

A. I suppose anyone could interpret it in any different way.

Q. All right. It's just in your complaint, you seem to be sort of implying that you should have been given a hearing or charges or some right of representation in relation to the matter. I mean, you're not suggesting that he should have indulged in any greater degree of formality of procedure, or are you?

A. Oh, my view is that he put me, as I said, in the public office, it is the most stressful job in the station, there's no question, you're answering the phones, you're dealing with the prisoners and dealing with all the members of the public that are coming in. It is by far the most stressful job in the station, and equally, for me, after all we have gone through yesterday, it's the place where you're most likely to get landed with complaints and things like that from members of the public. At that stage, of course, any interactions I am having with the public or investigations or anything that's reported to me is scrutinised to such a level that, you know, I know my career is pretty much finished once I am put PO, because essentially I am trapped there. You know, I'm a sitting duck in that position, because there's going to be people coming in reporting stuff to me and, you know, I am going to be under intense scrutiny of anything that's reported to me. So that's – I think, we at the end of October. There's November. So yeah, I am on the way, let's say, I think I have two months left in my career.¹⁵⁰³

Garda Keogh told counsel for the tribunal that:

... Garda A is suspended and it appears that Garda management are now going to – as I stated, I thought, great, they'll be off my back now, I'll be able to go in and they'll just leave me alone and I will be able to get back, you know, working and whatever and things might get better. But when Garda A is suspended, they don't do that. In fact, it's like as if – the way I perceived it is, we are not going to allow this so called whistleblower to be winning, is the way I think they viewed it. That they were not going to allow this guy to be seen as he is winning. Therefore, we are in charge and we're going to show we're in charge, you know, and therefore we're putting this guy in the public office. It's circulated to everybody else around the place that the whistleblower is going in to the public office. I think that's – now I may have that wrong but that's my belief.¹⁵⁰⁴

Garda Keogh was asked whether he believed that the redeployment was linked to his protected disclosure:

¹⁵⁰³ Tribunal Transcripts, Day 102, pp. 36-37, Evidence of Garda Nicholas Keogh

¹⁵⁰⁴ Tribunal Transcripts, Day 102, pp. 40-41, Evidence of Garda Nicholas Keogh

... it's all linked, like, the whole thing is all linked.

- Q. *Why do you say it's linked, just to be clear. Could you just, as it were, encapsulate why you say it's linked and it's targeting and discrediting?*
- A. *The whole chain of everything that we've gone through so far, it's all linked. I never had any of this prior to making the protected disclosure. Nothing on – pretty much anything we have gone through or discussed, I had nothing. Once a year, perhaps, a sergeant might pull me in and say, listen, there's something to do with a file, or there's something not right or whatever, roughly. I mean roughly once a year. This is just – what happens here, I just can't think of a word for it. It just avalanches after 2014, and, of course, into '15 and that, yeah.¹⁵⁰⁵*

When cross-examined by counsel on behalf of An Garda Síochána, Garda Keogh was asked the following:

- Q. *Would you agree with me, Garda Keogh, that at the meeting with the superintendent you didn't protest and say to him, don't do it, superintendent, this is the worst job in the station.*
- A. *... I think I am agreed with you just on that.*
- Q. *Okay. And in fairness, after the meeting, is it fair to say you didn't go to your GRA representative and say, this can't happen, I am being put into the worst job in the station?*
- A. *You see, Judge, I left the GRA prior to making my disclosure because I couldn't trust the GRA and just, their own history in recent times isn't great. Judge, also there was persons involved to do with the original disclosure involved with the GRA.*
- Q. *Chairman: Okay.*
- A. *So I had to pull away from the GRA.*
- Q. *Chairman: I follow. So that wasn't an option for you. I suppose Mr. Murphy is really saying, okay, you didn't protest to Superintendent Murray, did you do anything else about it? I mean whatever challenge you could do, did you go to the sergeants and say, look here, would you have a word, put in a word for me, do you know what I mean, I think that's what he's really saying?*
- A. *Judge, I didn't want to involve the sergeants in this because I believed it was crystal clear to every one of them what was going on.¹⁵⁰⁶*

Garda Keogh was cross-examined about the Facebook message he sent to Garda Greene:

- Q. *... these are Facebook messages that you discovered to the Tribunal. Can I refer to you the one in the middle, which is dated 25/10/2015, at 20:18:22. This is the one that reads, and it's from you*
"Murray said he putting me as permanent PO next week. Doesn't bother me. Other than that all quiet."
- A. *I see that.*
- Q. *I have to suggest to you that's wildly different to the evidence that you gave to the Tribunal*

¹⁵⁰⁵ Tribunal Transcripts, Day 102, pp. 45-46, Evidence of Garda Nicholas Keogh

¹⁵⁰⁶ Tribunal Transcripts, Day 107, pp. 144-145, Evidence of Garda Nicholas Keogh

last week and today. That in effect at the time you indicated that as far as you were concerned that didn't bother you and that, other than that, all was quiet?

A. Judge, all I can say is that perhaps is bravado to another guard that I know is under serious stress as well.

Q. You see, I have to suggest to you, Garda Keogh, two things: It's consistent with the way in which you responded to Superintendent Murray and which he recorded, namely acceptance?

A. No, no.¹⁵⁰⁷

He was re-examined on the Facebook exchange by counsel for the tribunal and Garda Keogh gave evidence that:

... You see, the problem with a lot of stuff in the Guards and because different things go on for years, things are constantly shifting. Like the tectonic plates nearly, they're constantly shifting. Oh, it's too complicated to go into. But I was in contact with Garda Greene in relation to that, and that was where – this is where I am being put on the indoor duties and I make a comment, yeah, it doesn't bother me at all, I'm under pressure. It was just bravado. But equally, Judge, I recall when that was put to me, and I turn the page, there's another incident when Garda Greene himself is under serious pressure on a particular matter and he makes the same comment back, that he's not bothered at all and it was on something that obviously he would have been bothered on.¹⁵⁰⁸

Responding Statements and Evidence on the Issue

Superintendent Pat Murray

In his statement to the tribunal, Supt Murray said that he informed Garda Keogh on 30th August 2015 that he may have to consider removing him from outdoor duty if his drinking continued to impact on his work:

I discussed his work standard with him citing two theft cases... I indicated that if his drinking was going to continue impacting on his work, I might have to consider taking him off outdoor duty. He said if I had any issues to send them to him in writing and that in the meantime he could do what he liked. I assured him he couldn't do that and that professionalism and standards were important in the delivery of policing. The meeting then ended.¹⁵⁰⁹

Supt Murray described the meeting with Garda Keogh on 22nd October 2015 to serve the disciplinary material:

I met Garda Keogh again in my office in relation to this matter on 22nd October 2015 to serve Form LA14 on him at the request of Chief Superintendent Westmeath. I noticed that Garda Keogh had deteriorated in that he didn't seem well to me. I asked him about his health and his drinking and he wouldn't answer. I noticed his hands shaking a lot to the degree that he could barely sign his name while acknowledging receipt of Form AI14. I discussed with him his frequent sickness absence and the impact of it on his ability to follow up on work related matters. I explained I had discussed the lack of progress on some matters involving Garda Keogh with Sergeant Monaghan while going through his incident list at a PAF meeting with Sgt Monaghan on the 19th October 2015. Garda Keogh didn't seem with it to me and I asked him if

¹⁵⁰⁷ Tribunal Transcripts, Day 107, pp. 148-149, Evidence of Garda Nicholas Keogh

¹⁵⁰⁸ Tribunal Transcripts, Day 115, pp. 63-64, Evidence of Garda Nicholas Keogh

¹⁵⁰⁹ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at pp. 2045-2046

*he felt fit enough to be in work. He said he did. As a result of what I saw I explained to him that I would have to assign him to indoor duty and I discussed that with him explaining the reasons why and referring him to our conversation of 30th August where we had discussed the possibility of this happening. He appeared to me to agree with the course of action I was taking.*¹⁵¹⁰

Supt Murray further stated that:

*He was in a mess from my perspective on the 22nd October 2015. He didn't seem well at all. He didn't answer when I asked him about his drinking and his health. He found it difficult to sign acknowledging receipt of the forms. I was concerned to a degree that I asked him was he well enough to be in work and he said he was. I discussed with him issues that had come to my attention on the 19th October from Sergeant Monaghan and I felt, from what I saw in front of me, to continue to allow him deal with the public operationally was not an option. I felt I had no alternative at that point but to confine him to indoor duties and I explained that to him and he didn't object in any way at all. I felt he wasn't in a good place as a result of abusing alcohol. I had discussed the possibility of this occurring when I met him on 30th August 2015... The point I would make is that what I found on 22nd October 2015 is something the CMO found on the 18th December 2015 because he immediately directed that Garda Keogh was not fit to attend work because of his abuse of alcohol. So I tried to balance everything and do the right thing but I didn't feel it was good for Garda Keogh to be involved in operational policing the way he was at that time.*¹⁵¹¹

In his interview with tribunal investigators, Supt Murray said that the detailing of Garda Keogh to indoor duties 'resulted from his abuse of alcohol'.¹⁵¹²

In his evidence to the tribunal, Supt Murray said that Garda Keogh's hands were visibly shaking:

... I met Garda Keogh for no other purpose other than to serve the documents on him in a confidential way from the chief superintendent. I think while engaging with him in that process, I noticed that he didn't seem well to me. I felt on having to sign an acknowledgment further, I remember having to hold the page so as he could sign and his hands were, to me, visibly shaking doing that. And he just didn't seem as if he could focus on what I was saying. And he didn't seem to be able to do that and he just seemed a bit disorientated to me and I just felt that he wasn't well. And I asked him about that.

Q. Did you think that he was drunk?

A. No, no. No, absolutely not. No. No, there was no suggestion there was alcohol involved.¹⁵¹³

Supt Murray outlined his concern about leaving Garda Keogh on operational policing:

I suppose, if I was meeting members of the public in the condition I found him in, I didn't feel it to be good. He seemed completely detached from being able to engage with me. That's what I found.

Q. Would he not be exposed to the public in the public office?

A. Absolutely. But I suppose I was hoping that that would encourage him to come to work, I

¹⁵¹⁰ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2046

¹⁵¹¹ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3065-3066

¹⁵¹² Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3068

¹⁵¹³ Tribunal Transcripts, Day 124, p. 162, Evidence of Supt Pat Murray

*suppose, in a proper way and fit for work. You know, the supports he'd have there would ensure that the risk would be minimised. The options I had to putting him indoors were quite limited. I didn't have a suite of jobs that I could assign to him indoors. That option wasn't available to me. So I was limited. I tried to do the best I could in the circumstances that I found.*¹⁵¹⁴

Supt Murray told tribunal investigators that he was consistent in his approach:

*I had to adopt the same approach in relation to the other issues in dealing with Garda A as well as two other members in the District. I applied a consistency of approach across the District.*¹⁵¹⁵

Supt Murray gave evidence in relation to the stresses of indoor duties in the public office:

*There are many stresses with being a member of An Garda Síochána, but I suppose in the hierarchy, being outside on duty and the uncertainty of what one is going to come across, is normally more stressful for most people than being indoors and having the support of someone available to you and dealing with, I suppose, what might be telephone calls and callers to the counter and referring them on to someone else or perhaps sending a car to the issue they had phoned in about or called about. And as I said, I didn't have a huge amount of options open to me and I felt that that option would be good for Garda Keogh, he would be in a secure environment, he'd have support there. It would give him time to, I suppose, deal with whatever paperwork had manifested itself in our meeting on 19/10. And, you know, I phoned the sick absence section, the Human Resources section that day to see if I could expedite the CMO conference in some shape or form. I think they have a record of that in their papers here, page 11722.*¹⁵¹⁶

Supt Murray was asked the following:

- Q. ... And Garda Keogh's position in relation to that is that this was another incident he alleges of targeting and it was effectively broadcasting to all the members by placing him in the public office, that people who were in his position of whistleblowers wouldn't be tolerated, that's effectively –
- A. I deny that utterly. That absolutely was not my intention. I have nothing but support for anyone who reports wrongdoing, and my history will show that. Indeed, I've had to arrest a sergeant and two members at garda rank, one twice, in addition to directing the arrest of two other Garda members for wrongdoing. I have a history of supporting the outing of wrongdoing and dealing with it in an effective manner.¹⁵¹⁷

He told the Chairman that:

*... in trying to support Garda Keogh, even though he was indoors, I tried to accommodate him in taking part of the arrest phase of the trailer case and made arrangements that he would be accompanied by another member to take part in the arrest and unfortunately he, I suppose, didn't attend to that because of a drinking issue that he had on that particular day. That was on the 18th November.*¹⁵¹⁸

When cross-examined about the nature of indoor duties by counsel on behalf of Garda Keogh,

¹⁵¹⁴ Tribunal Transcripts, Day 124, pp. 164-165, Evidence of Supt Pat Murray

¹⁵¹⁵ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3066

¹⁵¹⁶ Tribunal Transcripts, Day 124, p. 169, Evidence of Supt Pat Murray

¹⁵¹⁷ Tribunal Transcripts, Day 124, p. 171, Evidence of Supt Pat Murray

¹⁵¹⁸ Tribunal Transcripts, Day 124, p. 173, Evidence of Supt Pat Murray

Supt Murray replied:

There are, I suppose, quite an amount of roles An Garda Síochána would think are stressful. The public office is one of the more protected environments in my view. I was at garda rank for 20 years and performed that duty too many times that I care to remember. It's a job where I suppose members of the public may come to have forms signed or telephones may be answered primarily or your colleagues may be contacting you on the radio. You're in the station. Your colleagues are in and out and around and there's a sergeant invariably on duty. And when that occurred, there was no conscious intention to put Garda Keogh under additional stress other than to try and support him. And that was one of the – or the only option I had available to me indoors at that time, where he could be supported in some fashion, or if he felt he needed time out, that he could put his hand up and Sergeant Monaghan would readily ensure that he had relief or support there. That was my train of thought at that time.¹⁵¹⁹

Supt Murray was further cross-examined on whether it was a stressful job:

Some people view it differently. There could be stresses there, but there's support there at all times. There are stresses out on the street. There are stresses going to unknown incidents that may be reported on the phone to the person in the public office, that may allow for all kinds of confrontation or violence, you know, or danger to members of An Garda Síochána in being sent to them by the person in the public office. So there's stress everywhere, unfortunately, in the organisation at times. And I suppose people are trained to deal with that stress. And supports are in place to allow that to happen and to allow them to do their job as best they can.

Q. So this stressful job, you thought it was right to transfer a man suffering from work related stress into it?

A. I didn't say it was a stressful job entirely on its own. It depends, people can find it stressful because of things that are happening in their life outside of the organisation. They can find it stressful because of the things that happen in the particular role they have. Different people find it in different ways. This wasn't done in any way to target Garda Keogh. It was me, I suppose, dealing with a situation that presented itself to me, in what I thought was the best way possible to support Garda Keogh, but to also ensure that, you know, there was no organisational risk.

Q. I will put it to you another way: Do you think that assigning him to indoor duties would actually help relieve his stress?

A. Look, it's a protected environment in the nature of where he found himself. If there were issues in relation to paperwork, he may have time to deal with them. He wasn't going to be loaded with any new investigations that were going to add or complicate his life further and everything that you would be dealing with in the public office would be dealt with at that point in time or within your tour of duty and there'd be no carry over, as it were, that might cause further difficulties. When that happened, I contacted the human resource department so as that the case conference would be expedited, that day I think.¹⁵²⁰

In relation to his letter to C/Supt Wheatley dated 22nd October 2015, in which he noted that Garda Keogh acknowledged acceptance of the decision to place him on indoor duty, he clarified to tribunal investigators that *'when I say he acknowledged my decision he didn't voice any opposition to it'*.¹⁵²¹

¹⁵¹⁹ Tribunal Transcripts, Day 126, pp. 25-26, Evidence of Supt Pat Murray

¹⁵²⁰ Tribunal Transcripts, Day 126, pp. 27-28, Evidence of Supt Pat Murray

¹⁵²¹ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3067

Sergeant Dermot Monaghan

In his statement to the tribunal, Sgt Monaghan said that Garda Keogh did not raise any query with him about the direction in respect of indoor duty:

On the 22 October 2015 all Sergeants stationed in Athlone received correspondence from Superintendent Murray stating that with immediate effect that Garda Keogh should be detailed for indoor duties for Unit C. This was a general minute circulated within the station and Garda Keogh did not raise any query with me in relation to the direction.

Following the direction of Superintendent Murray and in my role as Garda Keogh's supervisory Sergeant, I detailed him for duty as Public Officer from that date as there were no other roles that required indoor duties. This period of indoor duties commenced on the 29 October 2015. On the 9 November 2015 Garda Keogh was on annual leave.¹⁵²²

Sgt Monaghan outlined Garda Keogh's annual leave, sick leave, rest days and attendance for duty after this date. He stated that *'it appeared that Garda Keogh tended to call in sick when he was scheduled to work on the day shift'*.¹⁵²³

Sergeant Andrew Haran

In his statement to the tribunal, Sergeant Andrew Haran said that he was not consulted in relation to the decision to place Garda Keogh on indoor duty:

A decision was made by Superintendent Murray to confine Garda Keogh to indoor duty. I was not consulted in relation to this decision. I cannot recall how or when I became aware of this decision.

I was aware that Garda Keogh was unhappy with this decision from informal conversations we had. He would often call me off duty to express his frustrations and his difficulties with drink. I offered support and encouraged him to seek help.

He struggled to be on time for early shifts and mentioned that he may have no choice but to commence long term sick leave. I discouraged him from going on sick leave. He felt that his assignment to indoor duties was a ploy on the part of management to push him out.¹⁵²⁴

Counsel on behalf of Garda Keogh cross-examined Sgt Haran in relation to the stresses of indoor duties in the public office:

- Q. *Just while we're on that, the public office. That is a job, as I understand it, that's not very popular amongst guards?*
- A. *No, I mean, it isn't. Because for a start it's unknown in its nature, in that if you take up a position in the public office, by the nature of the public you don't know what's coming in the door and it can be a question of volume only but there could also be a question of strange content coming through and challenge you on a minute by minute basis, along with a lot of other duties that go with the position. So it's a really difficult job.¹⁵²⁵*

¹⁵²² Tribunal Documents, Statement of Sgt Dermot Monaghan, p. 609 at p. 611

¹⁵²³ Tribunal Documents, Statement of Sgt Dermot Monaghan, p. 609 at p. 611

¹⁵²⁴ Tribunal Documents, Statement of Sgt Andrew Haran, p. 587 at p. 591

¹⁵²⁵ Tribunal Transcripts, Day 121, p. 80, Evidence of Sgt Andrew Haran

Sgt Haran was asked by counsel on behalf of Garda Keogh about Garda Keogh's perception of Supt Murray's decision:

If the superintendent perceived that Garda Keogh couldn't work outdoors, the reality is, that is the next role. Each shift in Athlone, the first three places that are filled is the role of public officer and patrol car, driver and observer. Then you work off any extra personnel you have for various roles, for people. So I don't really see the options were –

Q. It was apparent to you that Nick Keogh felt that the effect of that was to try and force him out of the Guards. That was how he saw it, wasn't it?

A. Well, I suppose – well, I see he says that very clearly. I don't see it as being – what the superintendent's thought process –

Q. I'm not asking [about] that?

A. Yeah.

Q. But what Nick Keogh seen at the time as?

A. Oh yeah, Nick Keogh certainly felt the strain and huge pressure on that, once that happened.

Q. This was sending him a clear and unmistakable message, as he saw it?

A. Well, he may have seen it that way, yeah.¹⁵²⁶

Sgt Haran said in his statement that Garda Keogh did not make a formal complaint to him at that time and he was unaware whether he had made such a complaint to anyone else in the station.¹⁵²⁷ However, he gave evidence that he was aware that Garda Keogh was struggling at that point:

Nothing that I took official note of, but I would have been aware of his general demeanour, health, etcetera. So I would have been aware that he was struggling at that point, but nothing that would have caused me to make a formal report or anything.

... They're more an amalgam of conversations as distinct from one particular event now. As I say, we worked daily, so when we spoke daily I would call them informal conversations and as a result there was no doubt he was frustrated at being put into, what we call the public office, on a full time basis. Because it's – well, I previously described it as quite a difficult job, and his frustration was, I suppose, building. You know, he was struggling with the pressures that he was under anyway. So I do remember regular conversations with him.¹⁵²⁸

Inspector Aidan Minnock

In his statement to the tribunal, Insp Minnock said that Supt Murray consulted with him after his decision to assign Garda Keogh to indoor duty.¹⁵²⁹ He stated that he agreed with this decision:

... Superintendent Murray outline[d] how Garda Keogh was in his office and he noticed he had a bad shake in his hand when he was signing documentation. He had also recently submitted a statement from an injured party, which was written by the injured party rather than written by Garda Keogh. I was in agreement that at that particular time the policing service provide[d] by

¹⁵²⁶ Tribunal Transcripts, Day 129, pp. 70-71, Evidence of Sgt Andrew Haran

¹⁵²⁷ Tribunal Documents, Statement of Sgt Andrew Haran, p. 587 at p. 592

¹⁵²⁸ Tribunal Transcripts, Day 129, pp. 61-62, Evidence of Sgt Andrew Haran

¹⁵²⁹ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 691

*Athlone gardaí would be best served if Garda Keogh was temporarily assigned indoor duties and the matter could be reviewed at a later date.*¹⁵³⁰

Insp Minnock was asked why Supt Murray was consulting him. He replied:

... it was important I was aware, I suppose, and – important I was aware of the decision. I suppose he was partly feeling out the decision with me, to see did I agree with the decision or what was my view on it.

Q. Did you agree with the decision or what did you say to Superintendent Murray?

A. Yeah, absolutely, I fully agreed with the decision.

Q. Why was that?

A. Because I suppose there was a – the reality was, what Superintendent Murray had reported to me in relation to Garda Keogh, certainly I would have had concerns in Garda Keogh going out in the public, where there is no supervision or control of Garda Keogh. I suppose the reputation of the organisation was at stake, in relation to how he dealt with people in public. And I felt by indoor duty, it meant that Garda Keogh had continuous support available to him within the station. There was also the situation where, I suppose, there was constant supervision in the station, which added an element, I suppose, that a supervisor would be monitoring Garda Keogh and it would be a help, I suppose, to Garda Keogh in relation to where he was I believe at that time, to assist him in, I suppose, making sure that he was in a fit condition for work each day. And if he was out and about in the patrol car, certainly it's impossible to have complete oversight of how he was.

*So in that regard I suppose I felt it was a good decision and Superintendent Murray's decision was open for review at any particular stage subsequent to that if he felt that Garda Keogh was in a fit position to perform duty outdoors.*¹⁵³¹

Insp Minnock outlined in his statement what Supt Murray discussed with him:

*The decision was reached following recent interactions between ... Superintendent Murray and Garda Keogh, and also a recent dealing Garda Keogh had with a member of the public. In this instance Garda Keogh asked the person (injured party or witness) to write their own statement. This would not be normal practice and in my view not best practice. ... Superintendent Murray outlined to me that he had noticed a significant shake in Garda Keogh's hand and this was possibly related to his recent absenteeism and could also have been why Garda Keogh asked the person to write their own statement. ... Superintendent Murray was always trying to ensure high standards and provide a quality policing service, which gave confidence to the public in policing in Athlone. This was particularly important given media publicity surrounding policing in Athlone. These factors were the only aspect mentioned by ... Superintendent Murray to me in his decision to temporarily restrict Garda Keogh to indoor duties and the rationale appeared unrelated to other matters.*¹⁵³²

Insp Minnock gave evidence that:

The other part I suppose that was discussed was, I suppose, securing good policing in Athlone. That was certainly a matter that was mentioned, that in relation to ensuring professionalism

¹⁵³⁰ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 684

¹⁵³¹ Tribunal Transcripts, Day 130, pp. 22-23, Evidence of Insp Aidan Minnock

¹⁵³² Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at pp. 691-692

of policing out in the public, which, I suppose, as managers who are in the station don't have direct oversight of, the only way to ensure that was to make sure that we had confidence in the people that we were sending out on patrol on a daily basis. That was part of the rationale also in relation to confining Garda Keogh to indoor duties.¹⁵³³

Insp Minnock was cross-examined by counsel on behalf of Garda Keogh as to whether this decision constituted targeting of Garda Keogh:

- Q. *In the summer then we had an issue regarding the AWOL, him being absent without leave, isn't that right?*
- A. *That's correct.*
- Q. *And then in the summer months, in the late summer months there were a number of criticisms in relation to his investigation files, isn't that correct?*
- A. *Yes.*
- Q. *So Garda Keogh, it would be fair to say, I suppose, was cropping up on a regular basis within the – being brought to the attention of the management, isn't that correct?*
- A. *Yeah, it appears that at that stage perhaps his condition impacted his work.*
- Q. *I see. You have heard Garda Keogh's evidence, essentially that this position in the station was the most stressful job in the station?*
- A. *Yes.*
- Q. *It is his case, and I suggest to you, that he was put there with a view to targeting him, so that he could take it no more and would have to leave. Would you accept that?*
- A. *No, I would refute that.¹⁵³⁴*

Legal Submissions

Garda Nicholas Keogh submitted as follows:¹⁵³⁵

- that Supt Murray's statement that Garda Keogh's hand was shaking so much he could not write properly and that *'his signature reflects same'*, was an example of Supt Murray's propensity to exaggerate and make diary entries which others present at the meeting/ encounter in question do not believe accurately reflect what was said.
- that Supt Murray's note of this meeting to C/Supt Wheatley, which recorded that *'the member acknowledged acceptance of my decision'* was put to Garda Keogh, and Garda Keogh gave evidence that *'I didn't object, he says I acknowledged'*. That any attempt to read Supt Murray's memo as meaning Garda Keogh 'consented' or 'agreed' and that his failure to protest loudly and object to Supt Murray's decision represented his consent was plainly wrong.
- that Garda Keogh never 'consented' to the confinement to indoor duty. He did 'accept' it as there was absolutely nothing he could do to change the decision, a decision made by his

¹⁵³³ Tribunal Transcripts, Day 130, p. 47, Evidence of Insp Aidan Minnock

¹⁵³⁴ Tribunal Transcripts, Day 130, pp. 57-58, Evidence of Insp Aidan Minnock

¹⁵³⁵ The tribunal has considered all of Garda Nicholas Keogh's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 14-31 and pp. 172-177

senior officer which he had to ‘accept’ and that the Chairman stated *‘it would be too much to read consent into the words of acceptance’*.

- that Garda Keogh’s signature on the appeal form did not show evidence of a shaky hand and Garda Keogh’s evidence in this regard remained unchallenged.
- that this was a matter Supt Murray had clearly had in mind for some time and had raised as a threat when he met Garda Keogh late on the evening of 30th August 2015.
- that Sgt Haran described the unattractive and difficult nature of indoor duty in the station when he gave evidence.
- that Sgt Haran gave evidence that Garda Keogh was not motivated by malice when making the protected disclosure and said that *‘I believed he was exposing criminality at the time’*.
- that this matter was linked to his making of a protected disclosure and was linked to all of the other matters of which he complained against Supt Murray.
- that the role of manning the public office was a job which was subject to considerable pressure and was utterly unsuitable for someone as vulnerable as Garda Keogh was at the time. In Garda Keogh’s view, this step was taken to drive him out of An Garda Síochána as a person who had made a protected disclosure, which was seen by some as bringing discredit upon An Garda Síochána.
- that Garda Keogh has not been able to return to work due to the stress (work related stress) he has been under as a result of his having made his disclosures of wrongdoing in Athlone.

An Garda Síochána submitted as follows:¹⁵³⁶

- that Supt Murray noticed that Garda Keogh had deteriorated and did not seem well and that his hands were shaking a lot, to the degree that he could barely sign his name to acknowledge receipt of the form. Supt Murray stated that Garda Keogh did not seem *‘with it’* and asked him if he felt fit enough to be in work.
- that there was a risk incumbent in attending at incidents and that Garda Keogh was often unavailable to undertake follow-up work. Supt Murray stated that he spoke to Sgt Monaghan about a few such occasions, where Garda Keogh had not been in a position to undertake the necessary follow-up. He stated that he did not think it was good for Garda Keogh to be meeting members of the public in the condition that he was in. He also raised the issue with Insp Minnock, as he wanted to make sure Garda Keogh was not assigned outdoor duties after that.
- that Supt Murray told Garda Keogh that, as a result of what he saw, he would have to assign him to indoor duty and discussed that with him, explaining the reasons and referring him to a previous conversation where they had discussed the possibility of indoor duty. Supt Murray indicated that during that conversation he had told Garda Keogh that if his drinking continued to impact on his work, he might have to consider taking him off outdoor duty.
- that Supt Murray conveyed this message to the relevant sergeants and up to the chief superintendent and the official circular went to the sergeants and chief superintendent only.

¹⁵³⁶ The tribunal has considered all of An Garda Síochána’s legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 70-172 and pp. 177-179

- that Garda Keogh did not recall whether he indicated assent to this proposal but stated that he could have, and he also agreed with the Chairman's observation that it was not really his, Garda Keogh's, prerogative to object.
- that indoor duty was never intended to last forever and that the plan was to review it on 1st November 2015. Garda Keogh stated that he was not aware of any review at the time but has since read documents confirming that it took place.
- that Garda Keogh stated that he was not sure whether the reasons were explained to him; that he was looking out the window and not really partaking in the conversation. He stated that he did not take the matter up with the Garda Representative Association because he had left the organisation shortly before because he did not trust them.
- that Garda Keogh agreed with the Chairman that the station orderly was not a punishment job, and that somebody had to do it. He stated that usually the station orderly job would be rotated but that he was assigned permanently. He repeated his view that it was by far the most difficult job in every station.
- that Garda Keogh agreed that Supt Murray had spoken to him about his absences but could not recall whether he had discussed the lack of progress and certain matters from an incident list, or being asked if he was fit enough to be in work. He could not recall whether he was actually fit enough. Garda Keogh disagreed that any risk to the public was minimised by the move, because he was still signing forms for the public. He agreed that he discussed the CMO with Supt Murray.
- that Supt Murray stated that he felt concern for Garda Keogh. He stated that the options he had to move Garda Keogh were quite limited. He stated that Garda Keogh was involved in reasonable police work but that his colleagues had been supporting him and had been talking about him. He stated that indoor duty was never intended to last forever and that the plan was to review it on 1st November 2015.
- that moving Garda Keogh was not an attempt to target him and was not 'broadcasting' to other members, and the superintendent had been trying to support him.
- that Supt Murray sat down with Garda Keogh and set out his point of view on the risk in Garda Keogh continuing on outdoor duty. This showed respect for Garda Keogh and afforded him dignity by engaging on the issue directly with him. The evidence was that Garda Keogh stated that he understood why he could not continue on outdoor duty.
- that the assignment did not constitute 'abuse or criticism', but rather an accommodation to allow Garda Keogh to continue his employment.
- that Garda Keogh said that he felt this was the end of his career, but if he did, he made no attempt to change Supt Murray's mind, for example, by reassuring him he could continue outdoors; or by trying to return to outdoor duty following the reassignment.
- that the circular was sent to the sergeants and the chief superintendent only and it was not discrediting for management to communicate about the deployment of staff in such a fashion. Indeed, there is no evidence to suggest that reputational damage was occasioned to Garda Keogh from his assignment to this function.

- that Supt Murray found himself in a very difficult position with limited possible solutions, and he used his best endeavours to balance the interests of the stakeholders involved. He set out the risks incumbent in outdoor duties and explained that his options were limited in terms of sourcing alternative work for Garda Keogh.
- that desk duty was not the *'most stressful job in the station'* as contended by Garda Keogh, or *'by far the most difficult [job]. By far. In every station in the country'*. Recent media reports indicated that 4% of the garda force were on 'light duties' (as opposed to frontline duties) at any one time, accommodating for pregnancy, illness or injury.
- that Garda Keogh told the tribunal that what happened with Supt Murray and C/Supt Wheatley was *'a bit like badger baiting, they changed the dogs, they put in fresh dogs'* and this mindset coloured his view from the outset towards actions taken by these officers in respect of him.

Sergeant Andrew Haran submitted as follows:¹⁵³⁷

- that Sgt Haran gave evidence in relation to Garda Keogh's presentation at that time including that he was aware *'of his general demeanour, health, etcetera. So I would have been aware that he was struggling at that point, but nothing that would have caused me to make a formal report or anything'*.
- that Sgt Haran recalled that Garda Keogh was frustrated at public office duty. Sgt Haran offered support. Sgt Haran stated that if the decision was taken to confine a member to indoor duty for whatever reason, there were not a lot of options available other than working in the public office in Athlone Garda Station.

Sergeant Dermot Monaghan submitted as follows:¹⁵³⁸

- that Sgt Monaghan had no discussion with Supt Murray either before or after the decision to confine Garda Keogh to indoor duty.
- that the only role available to a person who was not engaged in outdoor duties was the public office.

Discussion

Garda Keogh had returned to work at 22:30 hrs on 21st October 2015 after eleven days of sick leave. The meeting on 22nd October 2015 was for Supt Murray to serve papers in connection with the disciplinary inquiry into Garda Keogh's absence without leave in July. The superintendent's evidence was that he had to do something to take account of Garda Keogh's condition as he presented on 22nd October 2015.¹⁵³⁹ It was too much of a risk to allow him to be out on the beat dealing with the public on his own.¹⁵⁴⁰ The decision to place Garda Keogh on indoor duty represented a balance of the interests of Garda Keogh, the public and An Garda Síochána.

In his submission, Garda Keogh said that he believed that this decision by Supt Murray was related to the protected disclosure, just as everything else that had happened to him since 8th

¹⁵³⁷ The tribunal has considered all of Sergeant Andrew Haran's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

¹⁵³⁸ The tribunal has considered all of Sergeant Dermot Monaghan's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

¹⁵³⁹ Tribunal Transcripts, Day 124, p. 162 and Day 126, pp. 92-93, Evidence of Supt Pat Murray

¹⁵⁴⁰ Tribunal Transcripts, Day 124, p. 164, Evidence of Supt Pat Murray

May 2014 was linked. His contention was that Supt Murray wanted to penalise him and drive him out of An Garda Síochána because he made a protected disclosure alleging corruption by colleagues.¹⁵⁴¹ To that end, Supt Murray assigned him to the most unpleasant job available, namely, at the public office.¹⁵⁴²

There is agreement on an important feature of the conversation between the two on that occasion in their descriptions of the response of Garda Keogh to what the superintendent was saying to him. Garda Keogh said that he paid no attention and made it obvious that he was doing so by looking out of the window while Supt Murray spoke. This conduct was deliberate, as Garda Keogh said.¹⁵⁴³

If Garda Keogh is correct in saying that there was nothing wrong with him on this occasion, it is difficult to understand why he would have behaved as it is agreed that he did. It would also follow that Supt Murray engaged in the discussion for no reason. It made no sense for him to enquire after Garda Keogh's health or to talk as he did. It would also be the case that his statement and his evidence are untrue and his explanation of what he did and why he did it are complete fabrications. And he did those things because Garda Keogh made a protected disclosure alleging garda corruption in Athlone.

The superintendent had no connection with the events reported by Garda Keogh; he had no personal interest in the investigation or its outcome. Assistant Commissioner Dónall Ó Cualáin and his team were conducting their enquiries into the disclosures that had been made nearly a year before Supt Murray arrived in Athlone.

Whilst Garda Keogh cited his own belief that everything that happened to him was connected in a malevolent scheme by dark forces that were endeavouring to damage him, this does not constitute evidence sustaining such a finding.

It might be argued that putting him into the public office in the station was not ideal, but the evidence is that the superintendent did not have an alternative position where he would not present an equal or perhaps greater risk.

Placing him on indoor duty meant that there were other members and ranks present if they were needed. And the assignment was subject to review as the superintendent specified.

The superintendent had previously warned Garda Keogh of the possibility of assignment to indoor duty, and his evidence is that the decision at this point was precipitated by the garda's physical condition.

If Supt Murray wanted to penalise Garda Keogh because he had made a protected disclosure, there is no reason why he should wait until late October when he could have done so many months before. Neither would he have warned Garda Keogh of the possibility of assignment to indoor duty. And he would not have mitigated the imposition by directing that the position be reviewed.

¹⁵⁴¹ Tribunal Documents, Legal Submissions of Garda Nicholas Keogh, p. 65

¹⁵⁴² Tribunal Documents, Legal Submissions of Garda Nicholas Keogh, p. 64

¹⁵⁴³ Tribunal Transcripts, Day 102, pp. 35-36, Evidence of Garda Nicholas Keogh

Conclusion

The tribunal is satisfied that Supt Murray encountered a problem that he dealt with by choosing from the limited options available to him. The criticism is not that he made the wrong decision, or that there were better choices available, but that he was actuated by malice and contrived a false basis on which to fix Garda Keogh in a hardship post. The tribunal rejects that case.

This issue does not reveal evidence of targeting or discrediting, or any relationship with the protected disclosure.

CHAPTER 17

ISSUE 12:

THE COMPLAINT MADE BY GARDA NICHOLAS KEOGH IN RELATION TO THE MISRECORDING OF HIS SICK LEAVE AND THE REDUCTION OF HIS SALARY

The Facts

Introduction

The topics in this issue are, first, the designation in the official records of the reasons for Garda Keogh's absence, secondly, the way that his certified condition of work related stress should have been dealt with and, thirdly, some more general considerations of the way he was treated.

In the years 2012, 2013 and 2014 Garda Keogh's doctor, Dr David Bartlett, General Practitioner, issued medical certificates ascribing his absences from work to various physical conditions. However, from 29th December 2014 he cited one condition only on each occasion, that is, work related stress. Despite this change, the absences continued to be recorded in the garda sickness absence management system (known as SAMS) under the category *flu/viral*. Garda Keogh did not become aware of this designation of his absences until late December 2015 when it emerged at a meeting with Dr Oghenovo Oghuvbu, the Specialist Occupational Physician at the Garda Occupational Health Service and subsequently the Garda Chief Medical Officer.

HQ Directive 139/2010 '*Management of Sickness Absence*' requires that, where the reason for the member's absence is due to work related stress, a thorough investigation should be carried out immediately and the outcome reported to the Assistant Commissioner, Human Resource Management (HRM) for the attention of the Chief Medical Officer (CMO).¹⁵⁴⁴

A garda on sick leave is paid his or her full rate, which is less than the member would receive if working because certain allowances can accrue to the working garda. That level of pay continues until the member has been off work for a total of 92 days in any given year, after which the payment reduces to half pay for up to 91 days, subject to a maximum of 183 days' sick leave in a rolling four-year period. When these benefits have been used up, the member ceases to be entitled to sick pay but may be awarded temporary rehabilitation remuneration (TRR), which is the equivalent of the pension rate of pay that the member would be entitled to receive if he or she had retired with their accrued service. That cannot be paid for more than 1½ years.

These consequences affected Garda Keogh. By April 2015, his sick leave pay was at the TRR rate. However, the impact was mitigated by the fact that he was at work and on full pay plus allowances for most of the time. The situation changed sharply when he went on long-term sick leave on 26th December 2015 with only TRR to sustain him. He was reported to be in dire financial circumstances in early 2016. Relief was ultimately provided in the latter part of 2016 by a pragmatic solution devised by one of the newly appointed protected disclosures managers, Chief Superintendent Anthony McLoughlin and officials in Human Resources and People Development (HRPD).

Normal rules of sick pay as set out above do not apply in the case of an injury on duty that is certified by the chief superintendent of the division under paragraph 11.37 of the Garda Síochána

¹⁵⁴⁴ Tribunal Documents, HQ Directive 139/2010 '*Management of Sickness Absence*' dated 1st December 2010, p. 8202 at p. 8205

Code. In such a case, the member is paid his or her full rate plus all allowances for as long as the absence continues. The rationale is easy to understand if one pictures a member who suffers injury in an assault by a suspect he is attempting to arrest. If his chief superintendent had declared that Garda Keogh's medical condition was the result of an injury on duty, none of the reductions would have applied to him and he would have been entitled to full pay and allowances pending recovery. He claimed that the officers deprived him of that opportunity by failing to investigate.

Garda Keogh accused Superintendent Pat Murray of deliberately mis-describing his condition on SAMS and not carrying out an investigation. He also charged Chief Superintendent Lorraine Wheatley on the latter alleged default. The superintendent maintained that he had nothing to do with recording the reason for members' absence on sick leave and was not aware it was designated under the category flu/viral. In summary, Supt Murray and C/Supt Wheatley contended that they were not at fault and that it was not possible to investigate the cause of Garda Keogh's work related stress because he was not willing to discuss it.

Procedure for the recording and classification of sickness absence in An Garda Síochána

The procedure for a member reporting his/her absence from duty on medical grounds is set out in HQ Directive 139/10 as follows:

*Members will report sickness absence to their first line supervisor as soon as possible and at least 3 hours prior to the scheduled starting time. If it is not possible to make contact with the first line supervisor, the member will report to the supervisor working at the time of the report.*¹⁵⁴⁵

In practice this reporting requirement is satisfied by the member phoning their garda station and advising the garda in the public office that they are unable to attend work due to illness. It may also be done in writing. Whoever is so advised is required to complete and sign a sick absence report, known as an SR1 form.¹⁵⁴⁶

The SR1 form sets out a number of categories under which an illness should be recorded. If the person filling in the form is aware of the nature of the illness they choose the box which most closely covers the nature of the illness and tick it. The tribunal heard evidence that it is not unusual for this section of the SR1 form to be left blank as in most cases the illness is not declared.¹⁵⁴⁷

The first category is *ordinary illness*. Within this category are classifications under which an illness might fall. These are reflected in a number of boxes describing common medical conditions. These are somewhat limited, but include *flu/viral* and *mental health*.

The second category covers *occupational injury/illness arising from duty*. This category includes *malicious injury* on or off duty, *injury on duty* (covering both accident and injuries arising from road traffic incidents) and what is described in broad terms as *occupational illness arising from duty*.

The third category covers *critical illness*, though this is not defined.

How injuries are to be categorised by the member recording the details is included in an instruction on the SR1 form which states that:

*An absence must be categorised as 'Ordinary Illness' until such time as a Certificate, in accordance with Code 11.37 has been issued by the Chief Superintendent.*¹⁵⁴⁸

¹⁵⁴⁵ Tribunal Documents, HQ Directive 139/10 'Management of Sickness Absence', dated 1st December 2010, p. 8202 at p. 8203

¹⁵⁴⁶ Tribunal Documents, SR1 form, p. 9327

¹⁵⁴⁷ Tribunal Documents, Statement of Garda Olivia Kelly, p. 3640

¹⁵⁴⁸ Tribunal Documents, SR1 form, p. 9327

Code 11.37 of the Garda Síochána Code provides as follows:

If a member suffers personal injury, and is rendered non-effective or otherwise, a full report of the circumstances should be submitted immediately to the member's Divisional Officer. When non-effectiveness as a result of an injury exceeds 60 days in any period of 90 days the report will be forwarded to Assistant Commissioner, Human Resource Management. A decision regarding culpability will be made locally by the Divisional Officer except in cases where:

- (a) The Divisional Officer is of the opinion that the injuries were due to wilful default or negligence on the part of the member.*
- (b) The Divisional Officer has a doubt about the matter. In such cases the file will be forwarded to the Assistant Commissioner, Human Resource Management for directions.¹⁵⁴⁹*

The completed SR1 form is forwarded to the local district clerk who records the absence due to illness on SAMS. This system is updated when the member returns to work (when part B of the SR1 is completed) and when the member submits a medical certificate covering the period of illness.

There are three classifications for illnesses on SAMS:

- *Ordinary illness category*
- *Occupational injury /illness arising from duty category*
- *Critical illness category.¹⁵⁵⁰*

The *ordinary illness category* on SAMS has a number of subheadings in dropdown boxes including the subcategories of *flu/viral* or *mental health*.¹⁵⁵¹

There is no subheading allowing for work related stress to be recorded as the reason for the member's absence. There is also no instruction or guidance as to how work related stress is to be recorded where so certified by the member's medical practitioner. There is, however, a presumption in favour of classifying work related stress as *ordinary illness* created by HQ Directive 139/10 which states:

Where there is a doubt as to whether the member's sickness absence is due to ordinary illness or an injury on duty the member's absence will be treated as ordinary illness pending a decision on the classification of the injury and in particular the C.M.O.'s advice. If it is determined that the absence does relate to an injury on duty, the member's pay will be retrospectively adjusted as soon as practicable.¹⁵⁵²

Where there is a continuous absence of 28 days or more or where there is an aggregate of 60 days absence in a period of 90 days, a report will be forwarded, via the divisional officer, to the Assistant Commissioner, HRM.¹⁵⁵³ The report should be supported by a D5 form and relevant medical certificates. This will result in an intervention by the Garda Occupational Health Service, which may offer advice based on the reports submitted, or by a referral to the CMO.¹⁵⁵⁴

¹⁵⁴⁹ Tribunal Documents, An Garda Síochána Code, Chapter 11.37, p. 7963

¹⁵⁵⁰ Tribunal Documents, Printout of SAMS, p. 11789

¹⁵⁵¹ Tribunal Documents, Printout of SAMS, p. 11790

¹⁵⁵² Tribunal Documents, HQ Directive 139/10 'Management of Sickness Absence', dated 1st December 2010, p. 8202 at p. 8204

¹⁵⁵³ Tribunal Documents, HQ Directive 139/10 'Management of Sickness Absence', dated 1st December 2010, p. 8202 at pp. 8203-8204

¹⁵⁵⁴ Tribunal Documents, HQ Directive 139/10 'Management of Sickness Absence', dated 1st December 2010, p. 8202 at pp. 8203-8204

The Public Service Management (Sick Leave) Regulations, 2014 came into effect on 31st March 2014. They provided for a new scheme of payment with regard to the public service generally, and also applied to An Garda Síochána.¹⁵⁵⁵ HQ Directive 043/14 outlined how the scheme was to be applied.¹⁵⁵⁶ The scheme allowed for a maximum of 92 days sick leave on full pay in any given year, followed by a maximum 91 days sick leave on half pay. This was subject to a maximum of 183 days entitlement to paid sick leave in a rolling four-year period.¹⁵⁵⁷

The scheme also provided that a member who had exhausted the 183 days entitlement in a rolling four-year period may be placed on TRR subject to a maximum of 548 days.¹⁵⁵⁸ However, this is only available to members having a realistic prospect of being able to return to regular and effective duty at some point in the future.¹⁵⁵⁹ General practitioners are requested to address this prognosis in any sickness certificate provided to a member as occurred in this case.

The rate of payment that applies under TRR is the same as the former *pension rate of pay* and it is calculated on the basis of the pension entitlement a person would have if they retired early due to ill health, and is therefore dependant on time served. Any period on TRR is not reckonable for superannuation purposes.¹⁵⁶⁰

Sickness absence history of Garda Nicholas Keogh: 2000-2013

Garda Keogh joined An Garda Síochána on 30th June 2000. During a ten-year period between 2000 and 2010 he was not absent from duty due to illness on a single occasion.¹⁵⁶¹ His first period of sick leave was on 5th October 2011.¹⁵⁶²

On 30th December 2011, Garda Keogh went on sick leave for a continuous period of 51 days, returning on 19th February 2012.¹⁵⁶³ Due to this period of extended absence Garda Keogh was referred to the CMO for An Garda Síochána at that time, Dr Donal Collins.¹⁵⁶⁴

He was reviewed by Dr Oghenovo Oghuvbu, on 18th April 2012. In a report sent the same day to Assistant Commissioner Fintan Fanning, HRM, Dr Oghuvbu noted that Garda Keogh's absence was due to an acute musculoskeletal injury that had resolved fully. He advised that the member was fit for normal policing duties, with standard safeguards in place.¹⁵⁶⁵

Garda Keogh was again absent for a period of 44 days due to illness from 25th May 2012 to 8th July 2012.¹⁵⁶⁶ This coincided in time with a fortnight he spent in a treating hospital receiving treatment for alcohol addiction.¹⁵⁶⁷ Having exceeded the 28-day period of continuous absence,

¹⁵⁵⁵ Tribunal Documents, Public Service Management (Sick Leave) Regulations 2014, dated 31st March 2014, p. 12602

¹⁵⁵⁶ Tribunal Documents, HQ Directive 043/14 'Public Service Management (Sick Leave) Regulations, 2014 (SI No. 124 of 2014)', dated 29th May 2014, p. 8213

¹⁵⁵⁷ Tribunal Documents, HQ Directive 043/14 'Public Service Management (Sick Leave) Regulations, 2014 (SI No. 124 of 2014)', dated 29th May 2014, p. 8213

¹⁵⁵⁸ Tribunal Documents, HQ Directive 043/14 'Public Service Management (Sick Leave) Regulations, 2014 (SI No. 124 of 2014)', dated 29th May 2014, pp. 8213-8214

¹⁵⁵⁹ Tribunal Documents, HQ Directive 043/14 'Public Service Management (Sick Leave) Regulations, 2014 (SI No. 124 of 2014)', dated 29th May 2014, p. 8213 at p. 8214

¹⁵⁶⁰ Tribunal Transcripts, Day 134, pp. 69-70, Evidence of Ms Monica Carr

¹⁵⁶¹ Tribunal Documents, SAMS Absence Report, Garda Nicholas Keogh, p. 10724-10725

¹⁵⁶² Tribunal Documents, SAMS Absence Report, Garda Nicholas Keogh, p. 3652 at p. 3653

¹⁵⁶³ Tribunal Documents, SAMS Absence Report, Garda Nicholas Keogh, p. 10721

¹⁵⁶⁴ Tribunal Documents, Garda Occupational Health Services: Referral form for Absence Attributed to Illness, dated 16th February 2012, pp. 3692-3693

¹⁵⁶⁵ Tribunal Documents, Letter from Dr Oghenovo Oghuvbu to A/C Fintan Fanning, dated 18th April 2012, p. 3680

¹⁵⁶⁶ Tribunal Documents, SAMS Absence Report, Garda Nicholas Keogh, p. 10721

¹⁵⁶⁷ Tribunal Documents, Letter from C/Supt Mark Curran to Assistant Commissioner Human Resource Management, dated 30th July 2012; Letter Insp Aidan Minnock to C/Supt Mark Curran, dated 27th July 2012, pp. 3671-3672

Inspector Aidan Minnock referred Garda Keogh to the Garda Occupational Health Service on 27th July 2012.¹⁵⁶⁸ An appointment was arranged with Dr Oghuvbu for 9th October 2012.¹⁵⁶⁹

On 4th October 2012, a report was sent by Sergeant Patrick Tully to the district officer concerning Garda Keogh's return to work following the last period of absence. Sgt Tully recorded that:

His coping skills are being tested due to his alcohol problems. Even though he is currently off the drink, it is certainly taking its toll on him, but he is making a huge effort to overcome his problem.

His relationship with his peers and supervisors is excellent. He is a very affable and inoffensive individual who tries to please and cooperate with supervisors and colleagues alike.

*This member is not the most robust individual and is easily upset by the rough and tumble of life. He believes he needs a transfer from Athlone although he is not sure where he wants to go. He claims he is happy with his work colleagues and has no issue in that regard. Overall he is a bit mixed up but hopefully will make a recovery and become more self-reliant and settled.*¹⁵⁷⁰

This report was forwarded to Chief Superintendent Mark Curran on 5th October 2012 by Insp Minnock, who stated:

*As Sergeant Tully states in his report Garda Keogh is presently engaged in full uniform duties attached to a Core Unit in Athlone station. He has an excellent relationship with both his peers and supervisors. He carries out any duties assigned to him in a professional and diligent manner. Local Garda management are anxious that Garda Keogh be afforded every opportunity to avail of any services of treatments available which can assist with his continued rehabilitation.*¹⁵⁷¹

On 11th October 2012, Dr Oghuvbu sent a report to A/C Fanning, HRM, noting that the 'member's absence is attributed to a new clinical condition for which he received appropriate clinical management'. Having advised that in his view Garda Keogh was medically fit to attend work, Dr Oghuvbu recommended that he be advised of the confidential supports available to him. He also noted that no further review was warranted unless there were new circumstances.¹⁵⁷²

From 8th July 2012 until year end, Garda Keogh was absent from duty due to illness on a further five occasions, and during 2013 he was absent on a total of 23 days.¹⁵⁷³

During the period 2011 to 2013, Garda Keogh's absence was recorded as *flu/viral*, with the category identified as *illness* on SAMS.¹⁵⁷⁴

On 22nd October 2013, Inspector Nicholas Farrell wrote a letter to C/Supt Curran setting out a number of concerns he had in relation to Garda Keogh. The letter said:

Garda Keogh, 28045C, is stationed in Athlone, Co. Westmeath. He is engaged in full uniform duties attached to a Core Unit. He has an excellent relationship with both his peers and supervisors. He carries out any duties assigned to him in a professional and diligent manner.

¹⁵⁶⁸ Tribunal Documents, Garda Occupational Health Services: Referral form for Absence Attributed to Illness, dated 27th July 2012, pp. 3674-3675

¹⁵⁶⁹ Tribunal Documents, Letter from Dr Oghenov Oghuvbu to A/C Fintan Fanning, dated 18th September 2012, p. 3669

¹⁵⁷⁰ Tribunal Documents, Letter from Sgt Patrick Tully to Superintendent Athlone, dated 4th October 2012, pp. 9267- 9268

¹⁵⁷¹ Tribunal Documents, Letter from Insp Aidan Minnock to C/Supt Mark Curran, dated 5th October 2012, p. 3664

¹⁵⁷² Tribunal Documents, Letter from Dr Oghenov Oghuvbu to A/C Fintan Fanning, dated 11th October 2012, p. 3661

¹⁵⁷³ Tribunal Documents, SAMS Absence Report, Garda Nicholas Keogh, p. 10721

¹⁵⁷⁴ Tribunal Documents, SAMS Absence Report, Garda Nicholas Keogh, pp. 10721-10722

In May / June 2012 Garda Keogh attended a residential treatment course in _____ Dublin for alcohol addiction. Following this Garda Keogh returned to full duty and in the main was coping well with his addiction. He was in regular contact with the Garda Welfare Officer, and attended AA meetings.

In the recent past Garda Keogh has commenced drinking again and despite continuing to work full time concerns have been raised as regards his welfare. Management and colleagues close to Garda Keogh have tried to assist him in seeking treatment however [he] remains reluctant to avail of same. On Saturday 19th October 2013 he was treated in hospital for dehydration as a result of his drinking.

Local Garda management are anxious that Garda Keogh be afforded every opportunity to avail of any services that can assist him at this time. In this regard it is requested that [an] appointment be arranged with the Garda Occupational Health Service for a review [of] Garda Keogh's ongoing medical issues.¹⁵⁷⁵

Garda Keogh was referred to the CMO¹⁵⁷⁶ and was seen by Dr Oghuvbu on 7th November 2013. In a report dated 30th December 2013, Dr Oghuvbu advised that Garda Keogh was fit for normal duty. He noted that during the meeting he had reiterated to Garda Keogh the necessity for him to comply with relevant clinical interventions and follow-up arrangements. Further, he recommended that a unit report should be provided 6 to 8 weeks after the meeting, and every 3 months thereafter.¹⁵⁷⁷

In 2014 Garda Keogh was absent due to illness on 28 occasions, 15 of those in the lead up to 8th May 2014 when he made his protected disclosure.¹⁵⁷⁸

From 2011 until late December 2014, Garda Keogh was certified as unfit for duty by his medical practitioner Dr Bartlett for a variety of ailments, none of which included work related stress. On 29th December 2014, Dr Bartlett cited '*work related stress*' for the first time as being the reason Garda Keogh was unfit for duty.¹⁵⁷⁹ Thereafter, this was the condition stated to be the cause of every absence on sick leave. However, Garda Keogh's absences continued to be recorded on SAMS under the category of *ordinary illness* and his illness classified under the heading *flu/viral* notwithstanding what was stated on the medical certificates supplied by Dr Bartlett.¹⁵⁸⁰

Garda Olivia Kelly was assigned the role of district clerk in Athlone on 1st December 2014. When Garda Kelly recorded Garda Keogh's absence on the SAMS system, it was recorded under the *ordinary illness* and *flu/viral* category.¹⁵⁸¹ As noted earlier, the subcategories did not include a category covering work related stress.

On 20th February 2015, Sergeant Cormac Moylan sent the unit report that had been requested by the CMO on 30th December 2013.¹⁵⁸²

Sgt Moylan reported that:

¹⁵⁷⁵ Tribunal Documents, Letter from Insp Aidan Minnock to C/Supt Mark Curran, dated 22nd October 2012, p. 3701

¹⁵⁷⁶ Tribunal Documents, Garda Occupational Health Services: Referral form for Absence Attributable to Illness, pp. 3710-3711

¹⁵⁷⁷ Tribunal Documents, Letter from Dr Oghenov Oghuvbu to A/C Fintan Fanning, dated 30th December 2012, p. 3705

¹⁵⁷⁸ Tribunal Documents, SAMS Absence Report, Garda Nicholas Keogh, pp. 10721-10722

¹⁵⁷⁹ Tribunal Documents, Letter from Dr David Bartlett, General Practitioner, dated 11th January 2019, p. 10649

¹⁵⁸⁰ Tribunal Documents, SAMS Absence Report, Garda Nicholas Keogh, p. 10721

¹⁵⁸¹ Tribunal Documents, SAMS Absence Report, Garda Nicholas Keogh, pp. 10721-10722

¹⁵⁸² Tribunal Documents, Letter from Dr Oghenov Oghuvbu to A/C Fintan Fanning, dated 30th December 2013, p. 3705

1. *Garda Keogh currently performs all duties [commensurate] with his rank, including beat, station and prisoner management duties.*
2. *A history of his effectiveness/non-effectiveness is available in the District Office.*
3. *There are no coping skills or other measures deemed necessary at this stage.*
4. *Garda Keogh states he has a good working relationship with his peers and immediate supervisors alike.*
5. *Garda Keogh does not wish to note any other areas of concern.*¹⁵⁸³

Garda Keogh was absent on sick leave for a period of 12 days from 2nd March 2015 until 14th March 2015, and again from 22nd March 2015 until his return to work on 26th March 2015.¹⁵⁸⁴

As will be recalled Supt Murray had taken over from Superintendent Noreen McBrien on 9th March 2015, and he first met Garda Keogh on 26th March 2015 in his office. There are conflicting recollections between Supt Murray and Garda Keogh with regard to this meeting. Supt Murray recorded in his notes for that date, *inter alia*, that:

*I discussed work-related stress in terms of his coming to work today, if work-related stress was the issue. He said he had his certs from his doctor. I asked him if he had been to the CMO. He said no, and I said I would send him to assess his stress because the in and out appearances do not in my view support what he is saying.*¹⁵⁸⁵

On 2nd April 2015, Supt Murray referred Garda Keogh to the CMO.¹⁵⁸⁶ The form filled in by Supt Murray stated that the referral was due to frequent short-term sick absences that exceeded 12 working days in a year and that the management had concerns about the mental health of the member.¹⁵⁸⁷

Also on 2nd April 2015, under the heading '*sick report*', Supt Murray wrote to Insp Farrell and the sergeant in charge of Athlone Garda Station outlining the measures he was putting in place for the supervision of Garda Keogh, including the allocation of Sergeant Yvonne Martin as Garda Keogh's liaison person.¹⁵⁸⁸ On the same date, Supt Murray also wrote to C/Supt Wheatley as follows:

I was transferred to Athlone as District Officer on the 9th March 2015. I first met Garda Keogh on Thursday 26th March 2015. One of the issues that arose in my discussion with him was his sick absences which appeared to be occurring frequently and in a hap hazard fashion. While Garda Keogh was reticent to discuss any issues he may have with me, I none the less felt it prudent to put an arrangement in place in Athlone to support him in the work environment as he is indicating work related stress as a source of his absences. With that in mind I have allocated a female Sergeant who is new to the District to act as a direct point of contact for the member to discuss and if possible solve any work place issues he may have in Athlone in order to allow him attend work more frequently.

¹⁵⁸³ Tribunal Documents, Letter from Sgt Cormac Moylan to Superintendent, Athlone, dated 20th February 2015, p. 9382

¹⁵⁸⁴ Tribunal Documents, SAMS Absence Report, Garda Nicholas Keogh, pp. 10721-10722

¹⁵⁸⁵ Tribunal Documents, Note of Supt Pat Murray, dated 26th March 2015, p. 2187

¹⁵⁸⁶ Tribunal Documents, Garda Occupational Health Service: Referral Form for Absence Attributed to Illness, dated 2nd April 2015, pp. 6151-6152

¹⁵⁸⁷ Tribunal Documents, Garda Occupational Health Service: Referral Form for Absence Attributed to Illness, dated 2nd April 2015, pp. 6151-6152

¹⁵⁸⁸ Tribunal Documents, Letter from Supt Pat Murray to Insp Nicholas Farrell and sergeant in charge, Athlone, dated 2nd April 2014, p. 2190

As an additional measure I wish to have an appointment with the Chief Medical Officer arranged for Garda Keogh in order that professional Medical expertise can advise of other work place supports which may assist the member. The member indicated that he had not attended the CMO previously.

The member has a total of one hundred and eighty four (184) sick days in the past four years. Forty eight (48) of those occurred since January 2014 with 52% occurring on early tours of duty. The member has availed of thirty four (34) days annual leave from 1 March 2014 to 31st March 2015 with 92% of Leave taken on early tours alone.

I believe both the member and the organisation would benefit by referring him to the Occupational Health Service at this time.¹⁵⁸⁹

This report was forwarded to the Executive Director, Human Resources and People Development (Mr John Barrett) by C/Supt Wheatley on 7th April 2015, stating:

As outlined in the attached correspondence Superintendent Murray believes that Garda Keogh would benefit from this referral to the Chief Medical Officer as he has frequent sickness absences occurring in a hap hazard fashion. The referral to the Chief Medical Officer may assist in providing additional work place supports for the member who has indicated that work related stress as a source for his absences.¹⁵⁹⁰

On 14th April 2015, Ms Bridget Estridge wrote on behalf of Mr Alan Mulligan (HR Director) to C/Supt Wheatley pointing out that because Garda Keogh had exceeded the 183-day threshold as a result of reporting sick on 31st March 2015 he would no longer be eligible for full pay, but that he may be eligible for TRR. The letter instructed that Garda Keogh be so informed by being handed a copy of the notification. It further instructed: *'Please inform the member that their reckonable service will be broken as a result of going on to Temporary Rehabilitation Remuneration'*.¹⁵⁹¹

This letter was forwarded by C/Supt Wheatley to Supt Murray. Supt Murray requested that this document should be handed personally to Garda Keogh.¹⁵⁹² Sgt Moylan recorded a memo that he provided the same to Garda Keogh.¹⁵⁹³ Supt Murray replied directly to Mr Barrett on 21st April 2015 stating that:

The member reported sick and unfit for duty on 20th April 2015 and remains on sick leave. I have no indication as to when he will return and I have been unable to contact him by phone. I have asked the Superintendent in the area where he lives to give him a copy of the correspondence. At this stage I refer to my referral and report of the 2nd April 2015 and I can only ask that the member be seen by the Chief Medical Officer as soon as possible.¹⁵⁹⁴

Supt Murray further replied to C/Supt Wheatley on 21st April 2015 stating that:

As a result of my interaction with D/Superintendent Mulcahy Western Region I am aware that Garda Keogh has been behaving in an unusual and disturbing manner and is using alcohol. D/Superintendent Mulcahy has arranged that the member meet with Garda Mick Quinn Welfare Officer. I understand that this is acceptable to the member and a meeting has been arranged to take place today 21st April 2015. As you are aware I have put supports in place for the member

¹⁵⁸⁹ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 2nd April 2014, pp. 3270-3271

¹⁵⁹⁰ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Executive Director HRPD, dated 7th April 2015, p. 3272

¹⁵⁹¹ Tribunal Documents, Letter from Ms Bridget Estridge to C/Supt Lorraine Wheatley, dated 14th April 2015, p. 6166

¹⁵⁹² Tribunal Documents, Letter from Supt Pat Murray to sergeant in charge, Athlone, dated 16th April 2015, p. 9405

¹⁵⁹³ Tribunal Documents, Handwritten Memo from Sgt Cormac Moylan to Garda Nicholas Keogh, dated 24th April 2015, p. 9404

¹⁵⁹⁴ Tribunal Documents, Letter from Supt Pat Murray to Executive Director HRPD, dated 21st April 2015, p. 9408

*in Athlone and made a referral to the CMO to explore other available supports. There are no other avenues available to me to support the member.*¹⁵⁹⁵

On 21st April 2015, through the intervention of Detective Superintendent Declan Mulcahy, Garda Mick Quinn, an employee assistance officer, met with Garda Keogh. Garda Quinn offered a confidential support service to members encountering welfare issues. Garda Quinn was to have extensive dealings with Garda Keogh in the ensuing years.

On 27th April 2015, C/Supt Wheatley wrote to Mr Barrett enclosing the letter that she had received from Supt Murray dated 21st April 2015. She stated that Supt Murray had previously made a request to have Garda Keogh reviewed by the CMO and she asked that the review be expedited.¹⁵⁹⁶

Meanwhile, the issue of Garda Keogh's entitlement to be paid the reduced rate under TRR was considered by HRPD and a letter was sent by Mr Mulligan on 30th April 2015, advising C/Supt Wheatley that Garda Keogh may be paid TRR and that medical certificates were required to sanction this pay.¹⁵⁹⁷ The certificates were duly forwarded by the Divisional Office.

HQ Directive 139/10 requires that, where the reason for the member's absence is due to work related stress, an investigation should be carried out:

*Where members report non-effective for duty as a result of an injury on duty or work related stress, a thorough investigation shall be carried out immediately and the outcome reported to Assistant Commissioner, H.R.M. for the attention of the C.M.O.*¹⁵⁹⁸

Mr Mulligan responded by letter dated 7th May 2015 to C/Supt Wheatley's letter of 27th April 2015, stating:

It is noted that the above-mentioned member's absence from the 20th April 2015 to the 25th April 2015 was stress related.

You should now interview this member in order to establish the source of the member's stress and if it is suggested as being work related a full investigation should be carried out.

*This Branch requires a full report, referral form and medical certificates in accordance with Code 11.34 relating to the above named member's absence.*¹⁵⁹⁹

C/Supt Wheatley wrote to Supt Murray on 12th May 2015 stating:

With reference to the above please see attached correspondence from Executive Director Human Resources and People Development dated 7th May 2015.

*As outlined in attached, please provide a full report, referral form and medical certificates in accordance with Code 11.34, and arrange interview with member in order to establish the member's stress and if it is suggested as being work related a full investigation should be carried out.*¹⁶⁰⁰

¹⁵⁹⁵ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 21st April 2015, p. 3717

¹⁵⁹⁶ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Executive Director HRPD, dated 27th April 2015, p. 3716

¹⁵⁹⁷ Tribunal Documents, Letter from Ms Bridget Estridge (on behalf of HR Director Mr Alan Mulligan) to C/Supt Lorraine Wheatley, dated 30th April 2015, p. 9412

¹⁵⁹⁸ Tribunal Documents, HQ Directive 139/10 'Management of Sickness Absence', dated 1st December 2010, p. 8202 at p. 8205

¹⁵⁹⁹ Tribunal Documents, Letter from Mr Alan Mulligan to C/Supt Lorraine Wheatley, dated 7th May 2015, p. 6144

¹⁶⁰⁰ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Supt Pat Murray, dated 12th May 2015, p. 9428

Garda Keogh was referred for a consultation with Dr Oghuvbu on 19th May 2015 and the medical notes of the meeting record a focus on Garda Keogh's alcohol dependency.¹⁶⁰¹ Garda Keogh made a diary entry on 19th May 2015, regarding his consultation with Dr Oghuvbu:

*... he pointed out I ran out of A.L. + then went sick stress that although I would be under some stress it's not enough to keep me out of work.*¹⁶⁰²

No formal report appears to have been sent to HRM as a result of this consultation.

On 20th May 2015, Supt Murray replied to C/Supt Wheatley's letter of 12th May and referred to his report of 2nd April 2015. He stated that:

As I indicated Garda Keogh is providing information under the Garda Siochana (Confidential Reporting of Corruption or Malpractice) Regulations 2007. When I met the member on 26th March 2015 I discussed his work absences including the fact that his medical certificates were indicating that he was suffering from work related stress. The member was quick to point out that he was a confidential reporter and had certain protections in that role. He indicated that Assistant Commissioner Western Region was investigating reports and allegations he has made to the confidential recipient. Outside of disclosing that the member was reticent to discuss the work related stress he indicates he is suffering from relying instead on the protections he has in the confidential reporting legislation.

*In these circumstances I cannot further explore the situation with the member. I am aware anecdotally that a full investigation is being carried out into the member's claims of corruption and malpractice. I have no further information in relation to that investigation. I understand that the member is engaging with the welfare service via the investigation he is involved in. I did however advise him of its benefit to him.*¹⁶⁰³

C/Supt Wheatley forwarded this report to Mr Barrett on 26th May 2015, stating:

As outlined in the attached correspondence, the District Officer, Athlone advises that he cannot further explore the reasons for the member alleged stress as the member is not willing to further discuss the issue which he states arises out of his involvement and protections under the confidential reporting legislation.

The District Officer, Athlone, Superintendent Murray has advised that the member is engaging with the welfare service and has advised the member of its benefits to him.

*Garda Keogh was due for review at the Garda Occupational Health Service on the 19th of May 2015.*¹⁶⁰⁴

From 13th April 2015 until the end of September 2015, Garda Keogh was absent on 26 occasions, not including the four-day period that he was absent without leave between 10th and 14th July 2015¹⁶⁰⁵ (Issue 7).

On 19th July 2015, Supt Murray wrote a report to C/Supt Wheatley in respect of Garda Keogh's absence without leave:

¹⁶⁰¹ Tribunal Documents, OHP Consultation Note and Consent Statement, dated 19th May 2015, p. 3790

¹⁶⁰² Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 19th May 2015, p. 13312

¹⁶⁰³ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 20th May 2015, pp. 3274-3275

¹⁶⁰⁴ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Executive Director HRPD, dated 26th May 2015, p. 3276

¹⁶⁰⁵ Tribunal Documents, SAMS Absence Report, Garda Nicholas Keogh, p. 10721

*Unfortunately Garda Keogh's absences from work continue on a very frequent basis. At present a pattern has developed where he reports unfit for duty on early and late tours, works on night tours and reports fit for duty to avail of Rest Days. On Friday 10th July 2015 the member reported off sick leave and fit for duty but was then absent without leave for four days between Saturday 11th July 2015 and Tuesday 14th July inclusive. After availing of four Rest Days the member has appeared for work today Sunday 19th July 2015. As I am sure you will agree this type of attitude towards work commitments is unacceptable and must be addressed immediately so that the District force can have confidence, in that, the work demands placed on them apply fairly and objectively to every member.*¹⁶⁰⁶

Supt Murray also requested that a case conference be held with the Garda Occupational Health Service Department and HRM to discuss the matter, and flagged his intention to recommend disciplinary action against Garda Keogh.¹⁶⁰⁷

C/Supt Wheatley wrote to the Executive Director, HRPD on 24th July 2015 stating that she agreed with Supt Murray's recommendation that a case conference be held regarding Garda Keogh's frequent periods of absence.¹⁶⁰⁸ She stated that *'it is evident from the report of Superintendent Murray that Garda Keogh has significant personal difficulties which exacerbate his propensity to avail of sick leave'*.¹⁶⁰⁹

Garda Keogh wrote to the Director of Public Prosecutions and the Minister for Justice and Equality on 26th July 2015 with regard to a number of complaints he had concerning the Ó Cualáin investigation. In the letter he also referred to this issue:

*I was forced to go sick with work related stress which resulted in me being sent to the Garda Surgeon and subsequently I had my wages cut. I wish to point out I served in An Garda Síochána for almost twelve years without taking a single sick day.*¹⁶¹⁰

On 31st August 2015, Ms Monica Carr, Head of HR Directorate, wrote to C/Supt Wheatley reiterating that Garda Keogh had again exceeded the 183 days threshold due to him reporting non-effective for duty and requesting that the member be informed that his reckonable service would be broken as a result of going on to TRR.¹⁶¹¹

On 9th December 2015, a case conference was held at Garda Headquarters in regard to Garda Keogh. In attendance were Supt Murray, D/Supt Mulcahy, Dr Oghuvbu, Ms Claire Bryan (HEO), Garda Quinn, Inspector Brian Downey and Ms Fiona O'Brien from the Occupational Health Department at An Garda Síochána.

The notes of the meeting recorded that HRPD observed that Garda Keogh was going onto a TRR rate of pay on each occasion of sick leave.¹⁶¹² It was also recorded that Occupational Health stated that Garda Keogh's condition had deteriorated since his examination by Dr Oghuvbu on 19th May 2015, that the member should engage with the support services offered to him and that he should be booked into a treatment facility to help him rehabilitate. It was recorded that

¹⁶⁰⁶ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 19th July 2015, p. 8800

¹⁶⁰⁷ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 19th July 2015, p. 8800 at p. 8801

¹⁶⁰⁸ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Executive Director HRPD, dated 24th July 2015, p. 6163

¹⁶⁰⁹ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Executive Director HRPD, dated 24th July 2015, p. 6163

¹⁶¹⁰ Tribunal Documents, Letter from Garda Nicholas Keogh to the Director of Public Prosecutions and the Minister for Justice and Equality, dated 26th July 2015, p. 144 at p. 146

¹⁶¹¹ Tribunal Documents, Letter from Ms Bridget Estridge (for Ms Monica Carr) to C/Supt Lorraine Wheatley, dated 3rd August 2015, p. 9487

¹⁶¹² Tribunal Documents, Garda OHS – Management Case Conference, dated 9th December 2015, p. 6165; Email of Inspector Brian Downey, HRPD to Chief Superintendent HRPD, dated 9th December 2015, p. 9530

Supt Murray relayed *'serious concerns over the member's obvious misuse of alcohol which is adversely affecting his ability to do his job and his physical presentation'* and that:

*Management suggesting in the medium to long term support would be given for a transfer out of Athlone in view of the events that had transpired there if it is considered to be beneficial for the member's sustained wellbeing and effectiveness after he would have come through an appropriate treatment programme.*¹⁶¹³

It was agreed that an early appointment with Dr Oghuvbu should be arranged for Garda Keogh. On 18th December 2015, he met with Garda Keogh. Prior to the meeting, Garda Keogh had been on continuous sick leave since 8th December 2015. Dr Oghuvbu's notes of the meeting made reference to Garda Keogh's alcohol addiction and the desirability of him attending a treatment programme.¹⁶¹⁴ They also recorded that during the meeting, Garda Keogh raised the issue of stress arising from his working environment:

*... says stressed by difficulties with his senior mgt. (extra supervisor, issue with his car tax, issues surrounding the knowledge that he is a whistleblower, working in same station with a colleague who was the subject of his complaint) and describes himself as stressed on a daily basis by it all.*¹⁶¹⁵

Dr Oghuvbu determined that Garda Keogh was temporarily unfit for duty pending re-evaluation by his general practitioner and recorded in his notes that Garda Keogh agreed with this assessment.¹⁶¹⁶ It was also recorded that the classification of Garda Keogh's sickness absence arose during the consultation, as the notes recorded a reference to the *'classification on absence basis in report to HRPD Absence Section, OHP to highlight'*.¹⁶¹⁷ Garda Keogh made a diary entry on 18th December 2015, which recorded as follows:

*11am Dr [Oghuvbu], Garda Surgeon. He showed me my sick record which had me marked sick with flu not work related stress.*¹⁶¹⁸

Garda Keogh returned to work two days later on 20th December 2015 but reported sick on 26th December 2015. He has not returned to work since.

Dr Oghuvbu phoned Dr Bartlett on 7th January 2016. He recorded in a note of this phone call that Dr Bartlett agreed with his assessment that Garda Keogh was not fit for duty, and both considered that Garda Keogh should be referred for treatment, preferably inpatient.¹⁶¹⁹

In a report dated 8th January 2016 to the Executive Director, HRPD, Dr Oghuvbu stated:

Based on the information available to me, my opinion and recommendations in respect of the member are as follows –

Medical Fitness recommendations:

- 1. Following the consultation on 18/12/2015 and update now received from the member's doctor, the member is deemed temporarily unfit to attend regularly at work and for policing duties. Relevant treatment interventions have been initiated by his doctor and updates are expected.*

¹⁶¹³ Tribunal Documents, Garda OHS – Management Case Conference, dated 9th December 2015, p. 6165

¹⁶¹⁴ Tribunal Documents, OHS Consultation Note and Consent Statement, dated 18th December 2015, pp. 3791-3792

¹⁶¹⁵ Tribunal Documents, OHP Consultation Note and Consent Statement, dated 18th December 2015, p. 3791

¹⁶¹⁶ Tribunal Documents, OHP Consultation Note and Consent Statement, dated 18th December 2015, p. 3792

¹⁶¹⁷ Tribunal Documents, OHP Consultation Note and Consent Statement, dated 18th December 2015, p. 3792

¹⁶¹⁸ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 18th December 2015, p. 13342

¹⁶¹⁹ Tribunal Documents, Handwritten note of Dr Oghenov Oghuvbu, CMO of phone conversation with Dr Bartlett, dated 7th January 2016, p. 3793

2. *The member has been advised to avail of the confidential support services afforded members as required*
3. *Further review – Further advices shall be offered as anticipated updates become available.*
4. *In the event that the member's doctor certifies him fit to return to work prior to further advices from this Service, this Service should be notified on a priority basis so that relevant guidance on workplace accommodations/adjustments can be offered.*¹⁶²⁰

Garda Keogh continued to provide medical certificates from his general practitioner, which certified that he was medically unfit to attend work due to work related stress.¹⁶²¹ Garda Keogh continued to be recorded on SAMS as absent with *ordinary illness* and subcategory *flu/viral*.¹⁶²²

In a letter to the Minister for Justice and Equality dated 16th May 2016, Garda Keogh stated that:

*I am aware that other members of An Garda Síochána whom are/were out sick with work related stress had their illness classed as “injury on duty” and they receive full pay however this does not apply to Garda Whistleblowers whom are supposedly covered by the Protected Disclosure Act 2014.*¹⁶²³

On 16th May 2016, C/Supt Wheatley called to Garda Keogh at his home. On 17th May 2016, she made a note in her diary as follows:

“not keen to return to work, investigation stressful, not drinking much at present, payment 188 + 110”, *Sick Classification not down as work related stress. (I undertook to Review), House unkempt, owns home, linking with welfare not ready to return to work, DO REPORT UP, CLARIFY SAMS, ARRANGE CASE CONFERENCE.*¹⁶²⁴

In her report to Mr Barrett dated 17th May 2016, C/Supt Wheatley wrote as follows:

I have also on today's date visited the member at his home in _____ to enquire into his welfare and well-being. I enquired as to the probability of him returning to work in the future and was advised by Garda Keogh that his current absence is attributable to work related stress arising from his involvement in investigations being progressed outside the Westmeath Division. Garda Keogh intimated that he would not be returning to work until these matters had been concluded as these matters were exacerbating his condition.

*Garda Keogh stated that he would be attending the scheduled appointment with the Chief Medical Officer on the 19th of May and informed me that he was engaging with the employee assistance service. Upon Garda Keogh's resumption to duty I will ensure that a full investigation is conducted to establish the source of the member's alleged work related stress and if same can be attributed to his absence.*¹⁶²⁵

On 18th May 2016, an email was sent from the Office of the Commissioner to C/Supt Wheatley seeking an update on Garda Keogh's welfare.¹⁶²⁶

¹⁶²⁰ Tribunal Documents, Letter from Dr Oghenovo Oghuvbu to Executive Director HRPD, dated 8th January 2016, p. 3750

¹⁶²¹ Tribunal Documents, Medical Certificates, pp. 10742-10784

¹⁶²² Tribunal Documents, SAMS Absence Report, Garda Nicholas Keogh, p. 10721

¹⁶²³ Tribunal Documents, Letter from Garda Nicholas Keogh to the Minister for Justice and Equality, dated 16th May 2016, p. 298 at p. 300 and p. 3292 at p. 3294

¹⁶²⁴ Tribunal Documents, Diary entry of C/Supt Lorraine Wheatley, dated 17th May 2016, p. 3201

¹⁶²⁵ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Executive Director HRPD, dated 17th May 2016, p. 3203

¹⁶²⁶ Tribunal Documents, Email from D/Supt Frank Walsh to C/Supt Lorraine Wheatley, dated 18th May 2016, p. 6175

On 19th May 2016, Dr Oghuvbu had a consultation with Garda Keogh. He noted that Garda Keogh's condition had not improved, against a background of making his protected disclosure and the publicity surrounding same. It was recorded that Garda Keogh had a script '*detailing events as he sees them since 2014*'. The treatment options for Garda Keogh were discussed and it was noted that '*agreed temporarily unfit*'.¹⁶²⁷

C/Supt McLoughlin, recently appointed as one of the protected disclosures managers for An Garda Síochána, made his first contact with Garda Keogh on 20th May 2016, and the misclassification of his sick leave was mentioned by Garda Keogh.¹⁶²⁸ A few days later, in a telephone conversation between C/Supt McLoughlin and Garda Keogh on 23rd May 2016, Garda Keogh asked the chief superintendent if he could '*sort out*' his sickness record, which Garda Keogh claimed had been incorrectly documented by An Garda Síochána.¹⁶²⁹

C/Supt McLoughlin sought a report on the issue, which was provided in the late afternoon of 23rd May 2016 by Ms Claire Egan to the Executive Director, HRPD. She stated that Garda Keogh's absence was being recorded as *ordinary illness* on SAMS. She stated that:

*As is the procedure in all cases where stress is cited as the nature of illness the member's local management met with the member to discuss the source of his stress however the member advised he was unwilling to discuss this as he is aware the matters raised by him are under investigation by AC Western Region and he is under the protections of the relevant legislation in this regard. This Branch is not in receipt of nor aware of any application for this sickness absence to be treated as anything other than ordinary illness, as recorded, accordingly under the provisions of the Public Service Management Sick Leave Regulations 2014 the member's accumulated sick leave in a 4 year period was in excess of 183 days and the member was eligible to be paid at the rate of Temporary Rehabilitation Remuneration (TRR) from the commencement date of his absence (26/12/2015) and remains in receipt of TRR pay to date.*¹⁶³⁰

Ms Egan subsequently contacted Garda Olivia Kelly, the district clerk, and advised her that Garda Keogh's sickness absence should be recorded under the subcategory *mental health rather than flu/viral*.¹⁶³¹ Ms Egan emailed C/Supt McLoughlin on the late afternoon of 23rd May 2016 and confirmed that Garda Keogh's illness description had been changed to *illness type: mental health*.¹⁶³² This categorisation change did not alter the TRR or reduced rate of pay being received by Garda Keogh at that time.

On the same day, C/Supt Wheatley informed Supt Murray that there was an issue with regard to the recording of Garda Keogh's illness as *flu/viral*. Supt Murray requested that Garda Kelly send him a report, which she did on 24th May 2014. Garda Kelly reported as follows:

Garda Nicholas Keogh's Medical Certificates state that he is suffering from 'Work Related Stress' however due to the inadequacy's on SAMS there is no option to select 'Work Related Stress'. I recorded his absence on SAMS as 'Ordinary Illness' with the illness reason as 'Flu/Viral' as there is no other category to coincide with the cause of illness as outlined on his Medical Certificates. On Monday 23rd May 2016 at approx 16.10 Claire [E]gan from HRM Sick Section rang the District Office and informed me that Garda Keoghs illness was recorded on SAMS as 'Flu/

¹⁶²⁷ Tribunal Documents, OHP Consultation Note and Consent Statement, dated 19th May 2016, p. 3795

¹⁶²⁸ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228

¹⁶²⁹ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, pp. 3228-3229

¹⁶³⁰ Tribunal Documents, Email from Ms Claire Egan to Executive Director HRPD, dated 23rd May 2016, p. 3253 at p. 3254

¹⁶³¹ Tribunal Documents, Statement of Garda Olivia Kelly, p. 3640 at p. 3641

¹⁶³² Tribunal Documents, Email from Ms Claire Egan to C/Supt Anthony McLoughlin, dated 23rd May 2016, p. 3255

*Viral' and advised me that the correct category should be 'Mental Health' due to his absence being 'Work Related Stress'. I did not select Mental Health as a reason initially when recording Garda Keogh's illness due to the stigma surrounding Mental Health and it was not included in his medical cert as a cause of illness. I changed the illness reason to Mental Health at the request of Claire [E]gan of HRM Sick Section as she said Garda Keogh had been liaising with a commissioner on this issue. I recorded this change in writing also, which I have included in his file and have attached.*¹⁶³³

On 24th May 2016, C/Supt Wheatley wrote to Detective Superintendent Frank Walsh, private secretary to the Garda Commissioner, updating him with regard to Garda Keogh's sick absences and the welfare supports in place for him. She stated, *inter alia*, that:

*I am satisfied that the welfare of Garda Keogh is being attended to within the Division at every level. He has been referred to the Chief Medical Officer for review and the advices of the Chief Medical Officer indicate that the member is unfit to attend for work or for regular policing duties at present. Garda Keogh has informed me that he is not anxious to return to work until all matters he has reported under the confidential reporting mechanism are concluded in their entirety.*¹⁶³⁴

C/Supt McLoughlin subsequently sent an email to C/Supt Wheatley on 4th June 2016 at 11:07 hrs asking her to confirm that an investigation had been carried out in accordance with the regulations into Garda Keogh's work related stress and enquiring as to the outcome of it. This email was copied to A/C Fanning, Mr Barrett and Ms Carr.¹⁶³⁵

There was an email exchange between C/Supt Wheatley and Supt Murray during the course of that day. The email was first forwarded by C/Supt Wheatley to Supt Murray at 11:33 hrs on 4th June 2016.¹⁶³⁶ Supt Murray replied at 14:46 hrs stating '*Didn't he get the cmo letter*'.¹⁶³⁷ C/Supt Wheatley replied to Supt Murray stating '*I agree a bit smart, will write to him on Monday*'.¹⁶³⁸ Supt Murray further replied as follows:

*Ye it's a really funny question considering he is a whistle blower and an investigation into the entire set of allegations he is making, which gda keogh may say is causing him stress, Was carried out by D/C O'Cuailain. The reason he is prevented by the cmo from working is because of alcohol addiction. Don't know why Tony has cc'd all those people either. Might be one to sort out on the phone. All very strange. A lack of communication is the major stumbling block here. Don't get me started!!!!*¹⁶³⁹

Following this email exchange, C/Supt Wheatley responded to C/Supt McLoughlin by email at 15:09 hrs on 4th June 2016 stating:

The CMO has deemed Garda Keogh unfit for duty. He was again reviewed by... him about two weeks ago, I spoke with the CMO's Office and his reviewing doctor and he advised me that he wants to hold an early conference with me and John Barrett in respect of Garda Keogh, before he issues advices on his suitability to return to work. I would welcome an opportunity to discuss this

¹⁶³³ Tribunal Documents, Letter from Garda Olivia Kelly to Supt Pat Murray, dated 24th May 2016, p. 2387

¹⁶³⁴ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to D/Supt Frank Walsh, dated 24th May 2016, p. 6176 at p. 6179

¹⁶³⁵ Tribunal Documents, Email from C/Supt Anthony McLoughlin to C/Supt Lorraine Wheatley (copied to A/C Fintan Fanning, Mr John Barrett and Ms Monica Carr), dated 4th June 2016, p. 3213

¹⁶³⁶ Tribunal Documents, Email from C/Supt Lorraine Wheatley to Supt Pat Murray, dated 4th June 2016, p. 3212

¹⁶³⁷ Tribunal Documents, Email from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 4th June 2016, p. 3212

¹⁶³⁸ Tribunal Documents, Email from C/Supt Lorraine Wheatley to Supt Pat Murray, dated 4th June 2016, p. 3211

¹⁶³⁹ Tribunal Documents, Email from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 4th June 2016, p. 3209

*case with you in light of your email. I understand that Garda Keogh's recent certificates from his own doctor have him certified unfit due to stress however in light of all of the attendant issues in respect of this member I would like to discuss this member case with you in early course, perhaps you might be in a position to get an update from the CMO's office in respect of this member and we can discuss on tuesday.*¹⁶⁴⁰

On 8th June 2016, C/Supt Wheatley wrote to Mr Barrett and stated that:

*Efforts have been made locally to establish the source of the member's work related stress, however the member is reluctant to discuss the matter as he has indicated that it arises out of matters which he has reported through the confidential reporting mechanism and matters which he does not want to discuss with Management within the Division.*¹⁶⁴¹

She further stated as follows:

Garda Keogh has never intimated that there were any incidents which occurred in the workplace in Athlone Garda Station which were causing his alleged work related stress. Garda Keogh has never made any report which warranted investigation in accordance with the Garda Siochana grievance procedures or the Garda policy for dealing with Harassment, Sexual Harassment and Bullying in the work place. Indeed, all possible supports to facilitate a return to work by Garda Keogh have been put in place by the District management team in Athlone and his welfare has been prioritised through ongoing enquiries to ensure the member is aware and availing of the Employee Assistance Service.

*In view of the foregoing, it has not been possible to conduct a full investigation into Garda Keogh's absence through alleged work related stress, nor do I believe will any further or specific information be provided by Garda Keogh which would enable the further investigation of this claim. However, to be clear and to avoid any doubt, I am to enquire if there is any requirement to further investigate Garda Keogh's absence through alleged work related stress. In the event that the further investigation of this matter is warranted, I would recommend that permission be granted to appoint an Inspector outside the Westmeath division to conduct same.*¹⁶⁴²

Dr Oghuvbu sent a report to Mr Barrett on 10th June 2016 arising out of his consultation with Garda Keogh on 19th May 2016. In his view, Garda Keogh remained unfit for duty and he recommended a priority case conference involving senior divisional management to discuss Garda Keogh's welfare.¹⁶⁴³

A case conference was held on 12th July 2016. In attendance were Dr Oghuvbu, C/Supt Wheatley, C/Supt McLoughlin, Ms Egan, Garda Quinn and Ms O'Brien. The notes of the meeting recorded that the issues discussed included Garda Keogh's welfare generally, how his pay was being affected, and the possibility of Garda Keogh moving to another garda station on his return to work.¹⁶⁴⁴ Garda Quinn informed the conference that Garda Keogh was anxious to attend a residential treatment programme and had made enquiries in this regard. It was agreed that Garda Keogh should be financially assisted with the cost of the programme.¹⁶⁴⁵

¹⁶⁴⁰ Tribunal Documents, Email from C/Supt Lorraine Wheatley to C/Supt Anthony McLoughlin, dated 4th June 2016, p. 3205

¹⁶⁴¹ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Executive Director HRPD, dated 8th June 2016, p. 6169 and p. 3267

¹⁶⁴² Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Mr John Barrett, dated 8th June 2016, p. 6169 at p. 6171 and p. 3267

¹⁶⁴³ Tribunal Documents, Letter from Dr Oghenov Oghuvbu to Mr John Barrett, dated 10th June 2016, p. 3741

¹⁶⁴⁴ Tribunal Documents, Garda OHS – Management Case Conference, dated 12th July 2016, p. 6167

¹⁶⁴⁵ Tribunal Documents, Garda OHS – Management Case Conference, dated 12th July 2016, p. 6167

In a report dated 21st July 2016, Dr Oghuvbu confirmed that Garda Keogh was *‘currently temporarily unfit to attend at work and to undertake policing duties’*. He stated that Garda Keogh had commenced inpatient treatment *‘for a long standing and established clinical condition which has been the clinical basis for his current absence’*.¹⁶⁴⁶ He also stated that:

*‘The member, as was agreed, at the Case Conference should continue to be confidentially supported by the Garda Employee Assistance Service as well as receive the support of his senior local management in order to foster successful and sustained return to wellbeing and eventual effectiveness.’*¹⁶⁴⁷

C/Supt McLoughlin remained concerned about Garda Keogh’s entitlement to pay and he initiated a debate amongst the main stakeholders in HRM in an email to Ms Carr dated 4th June 2016 when he posed the following question:

*‘[I]s it right that they [Garda Keogh and Garda X who was in a similar position] go on reduced pay while the investigations are ongoing and while the organisation decides on a new policy... My own view is that this situation needs to be reviewed as a matter of urgency. It may well be the case that pay should not be reduced until these matters are resolved. The members concerned will argue that it is not their fault that they are out sick. The organisation carries a risk also while resolutions are found.’*¹⁶⁴⁸

This topic was debated at considerable length, with C/Supt McLoughlin,¹⁶⁴⁹ Insp Downey,¹⁶⁵⁰ Ms Carr,¹⁶⁵¹ and acting protected disclosures manager Superintendent Margaret Nugent¹⁶⁵² expressing varying views. Supt Nugent referred to a *‘human solution’* and asked whether an arrangement could be made whereby *‘pay issues are sorted out in Navan, including administrative leave, based on a communication with the Protective Disclosures Manager’*.¹⁶⁵³

Ultimately, in September 2016, C/Supt McLoughlin met with Mr Barrett and Mr Mulligan and they discussed the issue of Garda Keogh’s pay. Mr Barrett made a decision that Garda Keogh should be restored to basic pay and that it should be backdated to the date he went on long-term sick leave, which was 26th December 2015. On 12th October 2016, C/Supt McLoughlin wrote to Garda Keogh and advised him of his return to the payroll.¹⁶⁵⁴

Basic pay differs from full pay insofar as it does not include any allowances the member would otherwise be entitled to.¹⁶⁵⁵

No further steps have been taken to investigate the cause of Garda Keogh’s work related stress, and no certificate has issued under Code 11.37 reclassifying his illness as arising from work as an *injury on duty*.

¹⁶⁴⁶ Tribunal Documents, Letter from Dr Oghenovov Oghuvbu to Mr John Barrett, dated 21st July 2016, p. 3740

¹⁶⁴⁷ Tribunal Documents, Letter from Dr Oghenovov Oghuvbu to Mr John Barrett, dated 21st July 2016, p. 3740

¹⁶⁴⁸ Tribunal Documents, Email from C/Supt Anthony McLoughlin to Ms Monica Carr (copied to Dr Donal Collins, CMO, Mr John Barrett, Insp Brian Downey, Dep/C Dónall Ó Cualáin and Supt Margaret Nugent), dated 4th June 2016, pp. 9695-9696

¹⁶⁴⁹ Tribunal Documents, Email from C/Supt Anthony McLoughlin to Ms Monica Carr (copied to Dr Donal Collins, CMO, Mr John Barrett, Insp Brian Downey, Dep/C Dónall Ó Cualáin and Supt Margaret Nugent), dated 4th June 2016, pp. 9695-9696

¹⁶⁵⁰ Tribunal Documents, Email from Insp Brian Downey to Mr John Barrett, Dr Donal Collins, CMO and Ms Monica Carr (copied to Dep/C Dónall Ó Cualáin and Supt Margaret Nugent, Ms Clare Malone and C/Supt Anthony McLoughlin) pp. 9694-9695

¹⁶⁵¹ Tribunal Documents, Email from Ms Monica Carr to Mr John Barrett, Insp Brian Downey, Ms Fiona Broderick and Dr Donal Collins, CMO (copied to Dep/C Dónall Ó Cualáin, Supt Margaret Nugent, Ms Clare Malone and C/Supt Anthony McLoughlin), dated 7th June 2016, p. 9693

¹⁶⁵² Tribunal Documents, Email from Supt Margaret Nugent to Ms Monica Carr, Ms Fiona Broderick, C/Supt Anthony McLoughlin and Mr John Barrett (copied to Dep/C Dónall Ó Cualáin, Dr Donal Collins, CMO, Ms Clare Malone, Insp Brian Downey and Ms Claire Egan), dated 10th June 2016 pp. 9690-9692

¹⁶⁵³ Tribunal Documents, Email from Supt Margaret Nugent to Ms Monica Carr, Ms Fiona Broderick, C/Supt Anthony McLoughlin and Mr John Barrett (copied to Dep/C Dónall Ó Cualáin, Dr Donal Collins, CMO, Ms Clare Malone, Insp Brian Downey and Ms Claire Egan), dated 10th June 2016, p. 9690

¹⁶⁵⁴ Tribunal Documents, Letter from C/Supt Anthony McLoughlin to Garda Nicholas Keogh, dated 12th October 2016, p. 3467

¹⁶⁵⁵ Tribunal Transcripts, Day 141, pp. 91-92 and pp. 142-144, Evidence of C/Supt Anthony McLoughlin

Complaint made by Garda Nicholas Keogh

In his statement to the tribunal, Garda Keogh referred to the meeting with Supt Murray on 26th March 2015 and said that he was asked about his sick leave. According to Garda Keogh:

I said that I was suffering from work-related stress. My stress had to do with the ongoing internal investigation into garda collusion in criminal garda operations from Athlone station. He said that 'you are under no stress' and he repeated this for emphasis. He said that he was sending me to the Chief Medical Officer if I wouldn't give him any other reason than 'work-related stress' for my sick leave.¹⁶⁵⁶

In his statement, Garda Keogh said that he met Dr Oghuvbu on 19th May 2015 and that:

I did not on that date discover that I was being bizarrely officially recorded as suffering from 'viral flu' – rather than 'work related stress' in circumstances where my doctor had continually notified the police from early January 2015 of my work-related stress. I only discovered – in more in-depth discussions with the Chief Medical Officer – on the 18th December 2015 that my medical certificates from January 2015 were being mistranslated and mis-recorded so I was being officially noted as 'out with the flu' instead.¹⁶⁵⁷

Garda Keogh was asked by counsel for the tribunal whether he discussed work related stress with Dr Oghuvbu at this meeting:

I obviously did at that point. I obviously – but, as I said, he doesn't appear to know – he doesn't know anything about work related stress, because that's not established with – you see, I don't know at the time I'm being marked out with the flu and he doesn't know anything about work related stress. So that's not established at that meeting, it's not established until the meeting in the December 2015, that we both find out there's a problem.

... My diary note has that he said although I'm under some stress, it's not enough to keep me out of work. I think I would have been quite happy to have jumped ship at that stage.¹⁶⁵⁸

He told tribunal investigators that Dr Oghuvbu 'appeared to be as baffled' at their meeting on 18th December 2015.¹⁶⁵⁹ Dr Oghuvbu printed out the SAMS record in advance of each consultation and Garda Keogh said that Dr Oghuvbu showed him a sheet of paper which recorded Garda Keogh as being out of work with *viral flu*:

He asked me whether my sick certificates had 'work related stress' on them as the reason I was out sick, and I told him that they did. The CMO then went to look for a folder and took a folder from a cabinet. He then said he was going to talk to someone high up about this.¹⁶⁶⁰

Garda Keogh stated that this anomaly arose in circumstances where Supt Murray had previously held a case conference specifically relating to his sick leave which was attended by Supt Murray, Dr Oghuvbu, D/Supt Mulcahy, Garda Quinn and three civilians.¹⁶⁶¹ He stated that:

At no time did 'work related stress' appear to have been the subject matter of this case conference convened about my sickness. Records of this case conference should now be obtained. The police

¹⁶⁵⁶ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 126

¹⁶⁵⁷ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 136

¹⁶⁵⁸ Tribunal Transcripts, Day 115, p. 69, Evidence of Garda Nicholas Keogh

¹⁶⁵⁹ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 136

¹⁶⁶⁰ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 78

¹⁶⁶¹ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 136

*appeared to wish to deny knowledge of my work related stress while on the other hand dealing punitively with my condition in terms of reduction of pay, monitoring, disciplining etc. My recurrent sickness was seen as disciplinary and wage reduction matters rather than a welfare or safety issue.*¹⁶⁶²

In his evidence, Garda Keogh told counsel for the tribunal that:

*There were already case conferences in relation to me and my sickness. Somebody forgot to inform the CMO that I was going sick with work related stress. Because I meet him after these cases conference and he seems to have no idea about work related stress whatsoever and they've held case conferences to do with my sick. When I met him, he still seems to be in the dark. He doesn't know anything about work related stress. So they have held case conferences to do with my sick records and absences and they don't inform the CMO anything about work related stress.*¹⁶⁶³

He was asked whether he was found to be unfit for duty as recorded by Dr Oghuvbu his notes:

No, no, absolutely not. There's no way – I accept this is what's written here, I accept that. But there's no way I would have gone into work on the 21st December, absolutely now way. I would have quite gladly, you know, gone out on that date. But no way on that, because how that meeting happened, what emanated from that, I remember actually, I remember even referencing a Latin word for him and it was primum non nocere, going into that meeting, it means first do no harm. It's a doctor's oath that they take. I had looked it up, because, as I say, I'm going to have to tell this fella exactly what's going on.

*But anyway, when I went in, I brought up a big file with me, Judge, of all the stuff. And that's when, as a result of the file that I had, he asked me how, why are you not going out with work related stress and I said, I am. He said, is it on your certs? And I said, it is. That's when he just turned around the sheet of paper in front of me, which is in the volumes, and it has all the viral flu the whole way down. He then said, is it on your certs? I said, yes, it is. So he then went rooting through folders. Then he said, I'm going to talk to someone high up about this. And I remember passing a comment, like, no matter how high up you talk about this, you won't be getting anywhere, or you won't get anywhere. And he said something like, they'll listen to me. And I remember thinking, yeah, right! But there was no – he didn't say you're unfit for duty on that, I don't know.*¹⁶⁶⁴

He was cross-examined by counsel on behalf of An Garda Síochána and it was put to Garda Keogh that he was incorrect in his recollection. Garda Keogh replied:

*Look, I don't know. All I can say is the CMO didn't – I have no recollection of and I didn't take – no, there was no from my recollection, the CMO touches base with my doctor then, I think to sign a thing to allow him to discuss welfare, because of both doctors, they discuss it, one is the Garda doctor and one is my doctor. But I have got no notification to say I am sick, that I'm not fit for duty. I wouldn't have gone in on the 21st. At that stage, I mean I would have given anything not to have gone in, even that one day towards the end. Like that was dreadful.*¹⁶⁶⁵

In his interview with tribunal investigators, Garda Keogh said that his pay was affected adversely as he was recorded as being absent with *viral flu* as opposed to work related stress and that he was

¹⁶⁶² Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 136

¹⁶⁶³ Tribunal Transcripts, Day 102, p. 65, Evidence of Garda Nicholas Keogh

¹⁶⁶⁴ Tribunal Transcripts, Day 115, pp. 70-71, Evidence of Garda Nicholas Keogh

¹⁶⁶⁵ Tribunal Transcripts, Day 105, p. 87, Evidence of Garda Nicholas Keogh

on reduced pay for quite some time. He said that this was *‘another example of how I was targeted by senior management’* and he also complained that there was no investigation by management:

*There was also no investigation into my ‘work related stress’ as would normally be the case. I have not established who was responsible for the mis-recording of my absence from work as ‘viral flu’ rather than ‘work related stress’.*¹⁶⁶⁶

Garda Keogh said in his statement that C/Supt McLoughlin finally rectified his sick record from *flu* to work related stress in October 2016 and he was returned to the payroll.¹⁶⁶⁷ He later clarified that this situation was *‘partially rectified’* and that:

*I was financially disadvantaged as a result of being recorded as ‘sick with the flu’ because of the difference in pay as a result as opposed as to what I would have received had I been recorded as having ‘work related stress’. It has been partially rectified. I am still not recorded as being on ‘work related stress’ and I am on a basic pay rate. It is still not dealt with and has not been fully rectified from my perspective.*¹⁶⁶⁸

In respect of his letter to the Minister for Justice and Equality dated 14th June 2015, in which he stated that he was being recorded as being out sick with flu by Supt Murray notwithstanding his medical certificates recording work related stress, he told the tribunal investigators that:

*I cannot say that it was Superintendent Pat Murray recorded me as being out sick with the flu’ as opposed to ‘work related stress’. I can only state that it is my view that Superintendent Murray may have been involved, and that is as far as I can go. Again, I refer to my previous answer, where I noted that I am now aware that Superintendent Pat Murray called a Case Conference with the CMO and attended same.*¹⁶⁶⁹

Garda Keogh was cross-examined by counsel on behalf of An Garda Síochána in respect of his allegations made to the Minister for Justice and Equality in 2015 and 2016:

Q. *Would you agree with me, that’s a different statement to what you made in 2016 to the Minister, where you said it was deliberate, it was Pat Murray, it was they?*

A. *Well, when I wrote to the Minister, when we say they and refer to they as the cabal, Judge, that’s in general terms. What I have said here in my statement to the Tribunal investigators is just worded differently to what I am just after saying to you, Judge.*¹⁶⁷⁰

Garda Keogh also gave the following evidence when questioned by the Chairman:

Q. *Chairman: What I am looking at is Superintendent Murray’s role in that. That’s what I’m looking at [recording flu/viral not work related stress]?*

A. *Judge, I can’t, I can’t go any further. Garda Kelly has stated her case and I can’t, I can only guess behind the scenes, I can’t give any evidence on behind the scenes.*¹⁶⁷¹

In respect of the letter to the Minister for Justice and Equality dated 16th May 2016, in which Garda Keogh stated that *‘I am aware that other members of An Garda Síochána whom are/were out sick with work related stress had their illness classed as “injury on duty” and they receive full pay*

¹⁶⁶⁶ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 79

¹⁶⁶⁷ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 136

¹⁶⁶⁸ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 80

¹⁶⁶⁹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 80

¹⁶⁷⁰ Tribunal Transcripts, Day 109, p. 29, Evidence of Garda Nicholas Keogh

¹⁶⁷¹ Tribunal Transcripts, Day 109, p. 27, Evidence of Garda Nicholas Keogh

however this does not apply to Garda Whistleblowers whom are supposedly covered by the Protected Disclosure Act 2014', he told tribunal investigators that:

I am talking about other members in the general and I cannot give specific examples. I presume there is a Garda Síochána circular dealing with work rates of pay when out on sick leave, work related or otherwise.

I am alleging that 'work related stress' is recorded on my sick certificates as the reason I was on sick leave. The Garda Síochána have curiously not carried out an investigation (in accordance with their own HR procedures) into that issue, as stated previously (and which normally is required in work related absences). The Garda Síochána did not pay me in accordance with my medical certificates, which recorded that I was on 'work related stress.' Instead, they paid me as though I was out on a non-work related matter and were paying me approximately only €290 per week. I believe this is so because I had made a Protected Disclosures.¹⁶⁷²

Garda Keogh alleged that C/Supt Wheatley 'was involved to some degree in recording me out sick with the flu'.¹⁶⁷³ He recalled that C/Supt Wheatley and Sergeant Patrick Guinan came to his house in May 2016, and she asked him if he would go back to work. Garda Keogh stated that he told her that he would not return until all the investigations into his substantive complaint were over. He stated that:

She subsequently wrote a report saying that she had a conversation with me about work related stress on that date. Those words were never used during our conversation. Under her watch, I was recorded as absent with the 'flu' instead of 'work related stress' and she is a Chief Superintendent. It is discrediting of me because I was out of work with 'work related stress' and not the 'flu'. Furthermore, there was a letter from the Garda Síochána Executive Director of Human Resources, Navan, Co Meath to the Chief Superintendent, Westmeath on or about 07/05/2015 stating that I was on 'work related stress' and it is my belief that the Chief Superintendent at that stage was Superintendent Lorraine Wheatley. In this respect, it is my belief that Superintendent Lorraine Wheatley never ensured this matter was dealt with, no investigation was undertaken (as I understand is required when a Garda member is out on work related sick leave) and it resulted [in] me being on a lesser rate of pay as I was recorded out with the 'flu'.¹⁶⁷⁴

Garda Keogh gave evidence in respect of this meeting as follows:

I do recall at some stage around that time Chief Superintendent Wheatley called out to my house with a sergeant from the chief's office. Judge, I think she said - I would have explained I'd gone - I was out, marked - I don't know, I would have known at the time, yes, that I was marked out with the flu and that my sick certs were work related stress. Judge, I think, just from the documents, that she somewhere says that's the first time she heard about it. But it couldn't have been the first, because during the AWOL investigation, and that statement I was looking for and everything that is withheld, that whole thing can't - it couldn't be the case.¹⁶⁷⁵

Referring to C/Supt Wheatley's report, Garda Keogh told tribunal investigators that this report 'deals with the issue of me being absent with 'work related stress' while at the same time I am officially being recorded as being absent with the 'flu' by Chief Superintendent Wheatley, which I believe targets

¹⁶⁷² Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 92-93

¹⁶⁷³ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 102

¹⁶⁷⁴ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 103

¹⁶⁷⁵ Tribunal Transcripts, Day 114, p. 40, Evidence of Garda Nicholas Keogh

*and discredits me and which I believe is incorrect. My position of being out with ‘work related stress’ is supported by my medical certificates’.*¹⁶⁷⁶

Garda Keogh further stated that he believed the following members had knowledge of or acquiesced in his targeting or discrediting:

*By virtue of their positions, I believe that Chief Superintendent Mark Curran, Chief Superintendent Lorraine Wheatley and Superintendent Pat Murray may have had knowledge or acquiescence of my targeting or discrediting (by others) as set out above. In respect of the above, an example of this acquiescence I say is the incorrect recording of the true reason that I was on sick leave and the failure of senior management to rectify this and correct it, which targeted me in terms of pay reduction.*¹⁶⁷⁷

Garda Keogh was asked by counsel on his behalf whether local management carried out an investigation into the issues causing him stress:

No. Well, Judge, just going back, going back to what happened from the very first day, I think I met Superintendent Murray, where I outlined I was under stress and he made some comment about he was sceptical or something over stress.

Q. Yes. We also note from the policy that where there has been a continuous absence of 28 calendar days or more, that results in an intervention by of Occupational Health, is that right?

A. That I would take to be the CMO, that you’d go up to the chief medical officer.¹⁶⁷⁸

Garda Keogh gave evidence that, while it was never explained to him that his pay would be affected, he knew that this was the case:

*I don’t think that was explained to me, but I would have known as I said, since, let’s say, January 2013, when I knew that I was going to – I had my mind made up that I was going to break from the blue code, let’s say, and make a protected disclosure, I would have had to anticipate things like, you know, the wages were going to be hit, you’re going to end up being sick.*¹⁶⁷⁹

Responding Statements and Evidence on the Issue

Superintendent Pat Murray

In respect of the recording of Garda Keogh’s sick leave, Supt Murray said in his statement to the tribunal that he was made aware by C/Supt Wheatley that Garda Keogh was complaining about the category under which his sickness was recorded on SAMS:

On 23rd May 2016, Chief Superintendent Westmeath informed me that Garda Keogh had phoned Chief Superintendent McLoughlin HRM while drunk. She also indicated that Garda Keogh was complaining about the category under which his sickness was recorded on the Sickness Absence Management system called SAMS. As I have never had occasion to enter data on SAMS I contacted the District Clerk in Athlone, Garda Olivia Kelly whose role it is to record all absences and illnesses on SAMS for Athlone District. Garda Kelly furnished me with a report on 24th May 2016 explaining the situation.... I forwarded Garda Kelly’s report to Chief Superintendent Westmeath. I believe the allegations being made by Garda Keogh that

¹⁶⁷⁶ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 104

¹⁶⁷⁷ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 109 and p. 111

¹⁶⁷⁸ Tribunal Transcripts, Day 114, p. 32, Evidence of Garda Nicholas Keogh

¹⁶⁷⁹ Tribunal Transcripts, Day 114, pp. 38-39, Evidence of Garda Nicholas Keogh

*the recording of his absence on SAMS was carried out in the fashion chosen to target him to be without foundation.*¹⁶⁸⁰

Supt Murray told tribunal investigators that he was not involved in the recording of sick leave on SAMS and that:

*This became an issue in May 2016 and I was very anxious to bottom it out and the District Clerk was able to do that very quickly... So on the 23rd May 2016 I got a call from Chief Superintendent Wheatley and she said she had been called by Chief Superintendent McLoughlin that Garda Keogh had phoned him while drunk and was complaining about the category under which his illness was recorded. I never ha[d] any occasion to record on the SAMS system so I contacted the District Clerk and she furnished me with a report on 24th May... I forwarded her report to the Chief Superintendent Westmeath. From my inquiries into the allegation it had no foundation. Garda Keogh had been recorded in the category Ordinary Illness, subcategory of flu/viral for quite some time, including before my arrival in Athlone.*¹⁶⁸¹

Supt Murray said that the issue of the recording of his illness was never raised with him by Garda Keogh or his legal representatives.¹⁶⁸²

He further said that he had never directed that Garda Keogh's absence be recorded in a classification that resulted in an unjust financial disadvantage to Garda Keogh and that he would 'have no reason or motive to do so'.¹⁶⁸³ He gave evidence to the tribunal that:

*I never had occasion to use SAMS until this issue was pointed out to me on 23rd May 2016. I have no functional role in SAMS. It's a very confidential system, it relates to the recording of absences and I suppose it's primarily owned by the HR department.*¹⁶⁸⁴

In respect of the allegations made by Garda Keogh in the letter dated 14th June 2016 to the Minister for Justice and Equality, stating that Supt Murray was recording him as out sick with the flu as opposed to work related stress contrary to his medical certificates,¹⁶⁸⁵ he told tribunal investigators that:

*Garda Keogh is entirely wrong. The allegation has been publicly made in Dáil Éireann and the media about me. At this stage I note he is beginning to row back from it but I find it incredible considering the damage he has continuously and consistently tried to do to my character, reputation and career prospects in widely circulating this allegation publicly.*¹⁶⁸⁶

In his statement to the tribunal, Supt Pat Murray confirmed that one of the matters discussed at his first meeting with Garda Keogh on 26th March 2015 was his sickness record and *ad hoc* appearances at work. Supt Murray stated that Garda Keogh addressed his sick leave as follows:

*He explained in a vague way that the investigation he was part of and the fact that he didn't like to be at work when certain people were there, was a cause of stress to him resulting in his sickness absence. I inquired about supports I could provide and offered help.*¹⁶⁸⁷

¹⁶⁸⁰ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2054

¹⁶⁸¹ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3094-3095

¹⁶⁸² Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3095

¹⁶⁸³ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3095

¹⁶⁸⁴ Tribunal Transcripts, Day 125, p. 66, Evidence of Supt Pat Murray

¹⁶⁸⁵ Tribunal Documents, Letter from Garda Nicholas Keogh to Frances Fitzgerald, Minister for Justice and Equality, dated 14th June 2016, p. 148

¹⁶⁸⁶ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3096-3097

¹⁶⁸⁷ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2042

He also stated that:

*Following on from my first meeting with Garda Keogh on 26th March 2015 his welfare was something I was concerned with. On 2nd April 2015 I reported on my concerns to Chief Superintendent Westmeath asking that the CMO would see Garda Keogh as well as outlining that he had indicated work related stress as a source of his absence from work ... As Garda Keogh was reluctant to discuss issues in detail with me I established a direct and frequent link with Detective Superintendent Declan Mulcahy Galway in terms of Garda Keogh's welfare.*¹⁶⁸⁸

Supt Murray was asked by counsel for the tribunal whether he had formed a view that Garda Keogh was an alcoholic rather than suffering from work related stress following this meeting:

*I didn't have any view in that regard. It's quite clear that Garda Keogh had stress because of the situation he was in, in relation to the whistleblower allegations and obviously that would cause stress anybody. What part alcohol had in that and how they mixed together and what the combination was, I simply don't know. On this occasion, I dealt with what I saw in front of me.*¹⁶⁸⁹

Supt Murray was asked whether he considered what might be responsible for Garda Keogh's stress:

*The cause of the stress was quite possibly the involvement in the whistleblower allegation. That was all the medical department or HR should need to know in order to get expert help for Garda Keogh. And they didn't seem to, I suppose, comprehend or want to communicate in any way in relation to overcoming this impediment that they saw, which seemed to involve carrying out an investigation where I felt that was impossible in the circumstances that were presented to me.*¹⁶⁹⁰

Supt Murray was asked by counsel for the tribunal about the reference in his notes of this meeting to being sceptical of Garda Keogh's excuse. He gave evidence that:

*I have never said there weren't stress factors. And I have been very clear, the scepticism that I had was about the excuse he was using for the stress, in relation to the presence of Garda A in the workplace. And the enquiries or the information, I didn't make direct enquiries with the occupational health department or the CMO. But again, on 20th May 2015 I answered correspondence that came to the chief superintendent from Mr. Mulligan, from the HR department. And again, in that I sent up certificates at this time. So like, more information had now gone back up to the occupational health department.*¹⁶⁹¹

He was also asked the following by counsel for the tribunal:

- Q. Did you advise Garda Keogh on the 26th March that what you wanted to discuss with him was necessary in relation to an assessment of his work related stress and was part of an obligation that was placed on you to make an assessment in relation to his claims of work related stress?
- A. No, I didn't, I suppose, set it out in maybe clearer position. But I attempted to explore his work related stress or what the causes of it were, and he wasn't inclined to discuss it with me and he made that position clear. I do recall him saying here that that was his position now even, that he didn't want to discuss it with me, because he felt that I was in some way a

¹⁶⁸⁸ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2058

¹⁶⁸⁹ Tribunal Transcripts, Day 124, p. 41, Evidence of Supt Pat Murray

¹⁶⁹⁰ Tribunal Transcripts, Day 125, pp. 59-60, Evidence of Supt Pat Murray

¹⁶⁹¹ Tribunal Transcripts, Day 127, p. 65, Evidence of Supt Pat Murray

*cause of that stress. And I don't know how that could be, because I was meeting him for the first time and perhaps he had a preconceived notion of me. But when I got that from the chief superintendent, I felt that perhaps no one had seen my 2nd April report or that it had crossed over in the wrong way, because I had set out the context around which Garda Keogh came to be involved in the absences and the work related stress that he was indicating. And it was clear to me, anyway, in writing the document and sending it forward that because of the nature of the work related stress and its intertwined connection with the whistleblowing investigation, that it was going to be almost impossible for me to find out what was causing the stress because of that intertwined position. In that, he couldn't tell me anything about it, nor could anybody else. And I felt that getting him to the CMO and having medical expertise assess the situation in as far as stress was concerned, while allowing them to know that its overriding, I suppose, component was the whistleblower investigation he was involved in, was a prudent step on my part. I wanted to hand him over to professional medical expert care.*¹⁶⁹²

Supt Murray confirmed in evidence that he did not advise Garda Keogh of the possible impact on his pay if he refused to identify the cause of his stress:

*... I didn't I suppose go that far in making that as clear as you possibly do here. But my intentions were that when he became – when he would come under expert medical care and in dealing with Detective Superintendent Mulcahy and when the employee assistance service would come on train with him, people who he would be dealing with in a supportive way, who he might listen to and who well knew all those things, and would be well in a position, it being their specialised field, to explain all that to him, that was my train of thought on the whole thing. I just didn't see how I could delve further in the circumstances that were presented to me.*¹⁶⁹³

Supt Murray was cross-examined by counsel on behalf of Garda Keogh about his obligation to carry out an investigation. He replied that:

*Well, it depends how one would view an investigation at this stage. Because an investigation by its nature – I set out in a report on the 2nd April the context in which Garda Keogh was being sent to the CMO. And that in itself should be enough, in my view, to allow the CMO carry out some type of a medical assessment based on the context I set out. I suppose to investigate or delve deeper wasn't an option for me. I couldn't delve into that, in the circumstances in this case.*¹⁶⁹⁴

Counsel on behalf of Garda Keogh asked Supt Murray whether he accepted that Garda Keogh should be involved in such an investigation:

Q. Would you agree that an investigation as envisaged by the Code would involve at the very least putting Nick Keogh on notice that there is an investigation?

A. Absolutely. Absolutely.

Q. Secondly –

A. And he would be centrally involved in it and he would be supplying information to it.

Q. And secondly, that you would explain the purpose of the investigation?

A. Absolutely.

¹⁶⁹² Tribunal Transcripts, Day 125, pp. 54-55, Evidence of Supt Pat Murray

¹⁶⁹³ Tribunal Transcripts, Day 125, p. 57, Evidence of Supt Pat Murray

¹⁶⁹⁴ Tribunal Transcripts, Day 126, p. 45, Evidence of Supt Pat Murray

Q. Thirdly, you would put him on notice of the consequences of his failure to engage with the investigation?

A. Absolutely. And I believe that the CMO had all those obligations when he met him.¹⁶⁹⁵

Supt Murray was asked the following by the Chairman:

Q. Chairman: ... you say that your response complied with the obligation on the district officer in respect of work related injury?

A. In these circumstances, in the absence of being able to take delve further.

Q. Chairman: Okay.

A. And then in my view I was handing it over to specialist experts.¹⁶⁹⁶

Supt Murray gave evidence of the purpose of his report dated 2nd April 2015:

*To have supports put in place for Garda Keogh. I filled out a referral form with it and I ticked the boxes related to the request. And I suppose I was referring him, indicating in the report that he was indicating in his cert citing he was suffering from work related stress. I made that clear in the report and I was referring him to the CMO in order that all that could be dealt with.*¹⁶⁹⁷

Supt Murray gave evidence in respect of his discussion with Garda Keogh about his medical records during their meeting on 3rd April 2015:

*I think on the 3rd April, and I think I mentioned it yesterday in evidence, I had a discussion with him about his medical records and the confidentiality of them, in my meeting with him on 3rd April 2015. I had completed the referral form on the day before, on the 2nd, and I went through it, I suppose that's information that is common to everyone that is referred to the CMO and it's a common request that that be done and I did it on the 3rd April when I met him, having discussed with him that I completed the referral the day before, on the 2nd.*¹⁶⁹⁸

Supt Murray was asked what action he took in advising Garda Keogh that he was being placed on TRR:

*... the sickness absence regulations came into being, which I suppose halved the normal allowance for sick pay for everyone in the public sector and this was the first time it was biting for Garda Keogh, to the best of my knowledge. And this document came down to advise him of that. And I remember it, because I had been in contact with Detective Superintendent Mulcahy in relation to a phone call he got from Garda Keogh and inspector, then Detective Sergeant Curley, had made a report to me on the 21st April in relation to a phone call he got from Garda Keogh. And I phoned Garda Keogh that day and recorded it in my diary, but the call wasn't answered. So in order to deliver this to him, I sent it to Tullamore and I had an inspector there give him the document. I think the inspector reported back then at some stage that he had done that. The document went back up along the line.*¹⁶⁹⁹

Supt Murray was asked by counsel for the tribunal whether he made any enquiries with regard to the outcome of the meeting between Garda Keogh and the CMO. He gave evidence that:

¹⁶⁹⁵ Tribunal Transcripts, Day 126, pp. 47-48, Evidence of Supt Pat Murray

¹⁶⁹⁶ Tribunal Transcripts, Day 126, p. 114, Evidence of Supt Pat Murray

¹⁶⁹⁷ Tribunal Transcripts, Day 126, p. 117, Evidence of Supt Pat Murray

¹⁶⁹⁸ Tribunal Transcripts, Day 125, p. 48, Evidence of Supt Pat Murray

¹⁶⁹⁹ Tribunal Transcripts, Day 125, p. 66, Evidence of Supt Pat Murray

*Well, I wasn't sure, I suppose, what way the CMO was going to deal with that. When I sent the report up on the 2nd April, it set out the context of Garda Keogh's involvement with the confidential – as a confidential reporter. And once that was highlighted, things seemed to get very secretive and I assumed that this may be something that had occurred along those lines and perhaps that the CMO was dealing with Garda Keogh and I didn't make any further enquiries.*¹⁷⁰⁰

*... I suppose events moved on, in that in the middle of April then the employee assistance service came on board. They're directly aligned with the human resource section and the occupational health section. And I know that the CMO interacts personally with that group of people in relation to issues. And once they were involved again then, well, you know, he was, I suppose I felt, coming under the care of that specialist section, which involved the occupational health department and the human resource section, which is directly under it's chain of command, the employee assistance service.*¹⁷⁰¹

In his statement to the tribunal, Supt Murray outlined how he met with Garda Keogh again on 22nd October 2015 for the purpose of serving the outcome of his disciplinary proceedings and that:

*I noticed that Garda Keogh had deteriorated in that he didn't seem well to me. I asked him about his health and his drinking and he wouldn't answer. I noticed his hands shaking a lot to the degree that he could barely sign his name while acknowledging receipt of Form [I.A.]14. I discussed with him his frequent sickness absence and the impact of it on his ability to follow up on work related matters.*¹⁷⁰²

He told tribunal investigators that Garda Keogh '*... was in a mess from my perspective on the 22nd October 2015. He didn't seem well at all. He didn't answer when I asked him about his drinking and his health. He found it difficult to sign acknowledging receipt of the forms. I was concerned to a degree that I asked him was he well enough to be in work and he said he was*'.¹⁷⁰³

In respect of the case conference on 9th December 2015, Supt Murray said in his statement that:

*A discussion was had about Garda Keogh's sickness absence and addiction problems and his treatment. I wasn't aware until that point that the CMO was aware of Garda Keogh's addiction issues, having being informed by Garda Keogh on 26th March 2015 that he had never seen or visited the CMO. Dr Oghuvbu undertook to liaise with the Members GP to assess addiction treatment for Garda Keogh emphasising that Garda Keogh would have to engage purposefully with treatment. He also undertook to arrange an appointment to see Garda Keogh.*¹⁷⁰⁴

He said that he knew that Garda Keogh had met with Dr Oghuvbu on 18th December 2015 and he received correspondence from Dr Oghuvbu on 22nd January 2016, indicating that he deemed Garda Keogh unfit to attend work. Supt Murray stated that he arranged that Garda Keogh be informed accordingly.¹⁷⁰⁵

Supt Murray said that he provided a report on Garda Keogh's welfare supports to C/Supt Wheatley on 19th May 2016. On 4th June 2016, C/Supt Wheatley made him aware of an email she had received regarding Garda Keogh's work related stress issue from C/Supt McLoughlin. He

¹⁷⁰⁰ Tribunal Transcripts, Day 127, p. 63, Evidence of Supt Pat Murray

¹⁷⁰¹ Tribunal Transcripts, Day 127, p. 64, Evidence of Supt Pat Murray

¹⁷⁰² Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2046

¹⁷⁰³ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3065-3066

¹⁷⁰⁴ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at pp. 2059-2060

¹⁷⁰⁵ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2060

knew that she had replied directly, including in her reply the correspondence from Supt Murray dated 20th May 2015, which explained Garda Keogh's reluctance to discuss the source of his work related stress with him because of its connection to his disclosures.¹⁷⁰⁶

Supt Murray said in his statement that he attended a second case conference in respect of Garda Keogh on 12th July 2016:

*On 12th July 2016 I attended a case conference in relation to Garda Keogh organised by the CMO and attended by Dr Oghuubu, Chief Superintendent Wheatley and McLoughlin and Welfare Officer Garda Michael Quinn. Garda Quinn reported that Garda Keogh was willing to undergo treatment now but couldn't afford it and wasn't in the Garda Medical Aid Scheme. All at the meeting were in agreement that as a without prejudice gesture we should support Garda Keogh to the tune of approximately €6,000 so he could access treatment.*¹⁷⁰⁷

In his interview with tribunal investigators, Supt Murray was asked about the accuracy of the case conference notes and stated that:

*At the conference in July 2016 we put supports in place and approved the payment of a sum of money to help Garda Keogh access treatment... To the best of my recollection, it was never raised at the conference that his absence was recorded incorrectly. Classification of injuries on duty to allow full pay in cases of stress-related absence requires, I believe, a full assessment by the CMO.*¹⁷⁰⁸

Supt Murray said that he complied as best he could with his responsibilities as superintendent in relation to the absences of Garda Keogh from work, including compliance with HQ Directive 139/10. He stated that:

*Yes I have complied as best I could but it was difficult to engage with Garda Keogh because of the hostility he had towards me. Most issues went through Inspector Minnock. Sickness absence was one of the areas I monitored on a monthly basis.*¹⁷⁰⁹

Supt Murray was cross-examined by counsel on behalf of Garda Keogh as to his understanding of a member's pay entitlements where work related stress was the cause of his/her absence from duty:

*What I can say about that is, I suppose my working knowledge of the system, in that work related stress is not – doesn't – there isn't an automatic entitlement to injury on duty. Medical assessments have to be carried out. And I think the final determination is made between the chief medical officer and the executive director of HRPD.*¹⁷¹⁰

Supt Murray was asked by his own counsel for his response to the allegation that his concern for Garda Keogh was artificial. He gave evidence that:

It's not the case. Chairman, you know, Athlone and the members in it were supportive of Garda Keogh, I never heard anyone speak ill of him. People there could only go so far, he needed expert and specialised help and we tried to put him in that direction. We made every effort we do to do that. And I engaged with Detective Superintendent Mulcahy, who was dealing exclusively with him for a period throughout my time in '15 and into about April 2016. After that time then, two inspectors and the chief superintendent and I met and Inspector Minnock was allocated to liaise

¹⁷⁰⁶ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2064

¹⁷⁰⁷ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2061

¹⁷⁰⁸ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3098

¹⁷⁰⁹ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3100

¹⁷¹⁰ Tribunal Transcripts, Day 126, p. 106, Evidence of Supt Pat Murray

with him from a welfare perspective on behalf of the management in Westmeath division, after Chief Superintendent Wheatley met him on the 17th May.

Q. Yes.

A. *I think Inspector Minnock's first visit was on the 24th May, if I'm not mistaken. And that continued then right throughout the period, until I left.*

Q. *And Chief Superintendent Wheatley, from your discussions with her, was she concerned for his welfare?*

A. *She was, absolutely. She visited him. She is altruistic in nature, you know, and she has a long history I think of providing welfare support to people in the organisation.¹⁷¹¹*

Chief Superintendent Lorraine Wheatley

In her statement to the tribunal, C/Supt Wheatley stated that Garda Keogh's absences on SAMS were completed by Garda Olivia Kelly, the district clerk.¹⁷¹² She outlined the categorisation of absences on SAMS and the pay implications of the same as follows:

When a member reports sick from duty, the absence is captured on a local form which is then forwarded to the District Office, with relevant attachments, who are responsible for recording the matter on SAMS (Sickness Absence Management System). There are two categories of absence: injury on duty and ordinary illness. Where a member is injured on duty, he remains on full pay during his absence. In the case of ordinary illness, when a member reaches a threshold of a number of days absent, HRM, in consultation with the CMO, and all other requirements being in order, authorise the payment at a reduced rate and instruct Killarney accordingly. It should be noted that the Public Service Management (Sick Leave) Regulations, 2014 (HQ Directive 04312014) came into being on 29th May 2014. Any absences subsequent to that were subject to the new limits. Garda Keogh only had access to sick pay within these new limits, resulting in him being pay-affected in 2014.¹⁷¹³

She stated that it was only on the basis of advice from the CMO that a categorisation of *injury on duty* could be recorded:

1. *There are two headline categories of illness classifications on SAMS, "Ordinary illness" and "Injury on Duty", only members on the latter category remain on full pay during their absence.*
2. *Under Garda policy on Absences Management, the determination that a member has receive[d] an injury on duty due to work related stress rests finally with the Chief Medical Officer CMO.*
3. *It is only after the (CMO) confirms that a member has suffered an injury on duty... that [a] member's SAMS record [is] updated.¹⁷¹⁴*

C/Supt Wheatley said that Garda Keogh was mistaken in his belief that reporting unfit for duty with work related stress automatically put his absence into the injury on duty category.¹⁷¹⁵ She gave evidence to the tribunal:

¹⁷¹¹ Tribunal Transcripts, Day 126, pp. 136-137, Evidence of Supt Pat Murray

¹⁷¹² Tribunal Documents, Statement of C/Supt Lorraine Wheatley, p. 3143 at p. 3146

¹⁷¹³ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at pp. 6116-6117

¹⁷¹⁴ Tribunal Documents, Statement of C/Supt Lorraine Wheatley, p. 3143 at p. 3146

¹⁷¹⁵ Tribunal Documents, Statement of C/Supt Lorraine Wheatley, p. 3143 at p. 3147

There's a whole process around getting an injury on duty categorisation, classification for work related stress. It's actually quite – you have to establish the cause of the stress, the CMO does an assessment and in my experience when you refer a person, that the CMO has a view and he might send him to independent specialist, HRM have a role in it, the executive directors has a role in it and there can be – there's a whole – there's many variables in the equation.¹⁷¹⁶

She was asked by counsel for the tribunal about her role in issuing a Code 11.37. She replied:

So my understanding was that I wasn't qualified to make a determination around work related stress. It's a complex issue, it's a serious issue.

So that it was sort of – like, I know from having conversations with the CMO in relation to other people, you know, that he has to make the determination, he has to link it to the actual, I suppose, issues that arose locally and he also refers it back to HRM. Because it's complex.

Q. You thought it should go to the CMO; is that right?

A. I'm compelled to send it to the CMO.¹⁷¹⁷

C/Supt Wheatley expanded on this evidence as follows:

HRM ultimately make the determination, or I suppose the executive director in consultation with the CMO and local – you know, he ultimately says, yes – there has been a few of them, there hasn't been too many in the job – that this person is medically stressed, it's an injury. We're happy enough, we have done all this. I think there might have been a case where a couple of chiefs were issuing an 11.37s for work related stress and the organisation said, no, you can't do that, you're not qualified.

So just in relation to this, this would have come from HRM, the application to the pay section, to say, look, we are happy that this is an 11.37, so put him into that category.¹⁷¹⁸

C/Supt Wheatley was asked about the duty to investigate the cause of Garda Keogh's work related stress in the circumstances:

... in Superintendent Murray's report he indicated he was reticent to deal with it, because of the fact that Garda Keogh Garda – Keogh's position was, he had made a protected disclosure, he was dealing with the people in Galway. And to be honest with you, that's completely understandable, that he didn't want to operate outside that, I suppose, bubble. And, you know, because this was unusual, if you like, or new, we referred it up the line to say that, you know, the reason – when the person reports sick, when a person is absent, absent with work related stress, you know, the instruction is, you have to investigate to establish what is the cause of that stress. Garda Keogh clearly, and very understandably, you know, said he was stressed because all matters around to do with the protected disclosure and wasn't to go any further. I suppose that was quite understandable.¹⁷¹⁹

... What I am saying is, it was always the position that you had to establish the cause of a member's stress, you know what I mean. And I suppose even now, if there's anything unusual you refer it up to HRM. But for simple, straightforward injuries on duty, I have authority to issue an 1137. If it had been the case then and if there was a subsequent sort of clarification

¹⁷¹⁶ Tribunal Transcripts, Day 132, p. 81, Evidence of C/Supt Lorraine Wheatley

¹⁷¹⁷ Tribunal Transcripts, Day 132, pp. 114-117, Evidence of C/Supt Lorraine Wheatley

¹⁷¹⁸ Tribunal Transcripts, Day 133, p. 54, Evidence of C/Supt Lorraine Wheatley

¹⁷¹⁹ Tribunal Transcripts, Day 132, pp. 74-75, Evidence of C/Supt Lorraine Wheatley

*around it, if a person reports sick with work related stress, if a person is absent with work related stress, you know, the local management have to establish the source of that stress and then notify the CMO.*¹⁷²⁰

C/Supt Wheatley was cross-examined by counsel on behalf of Garda Keogh on this issue and gave evidence:

... When a person is absent due to work related stress, clearly it's related to the work related stress, what the policy says is you should identify the cause of that stress. And what you do in any case when anyone makes a complaint, or when anyone makes a complaint, clearly if anyone has an issue, they bring it to your attention and clearly in Garda Keogh's case, he had been out periodically, I understand, prior to when Superintendent Murray arrived with work related stress. His doctor had deemed him fit to work on numerous occasions also. When a person is absent with work related stress, we are obliged to find out why the person is stressed. And I suppose the rationale behind that is that the CMO, I suppose, needs to understand what this is about.

*To be honest with you, I reflected on this. In terms of Garda Keogh's case, he was out with work related stress and then he was back and he was fit and notwithstanding that, Superintendent Murray, because that was there, sent it up the line.*¹⁷²¹

C/Supt Wheatley told tribunal investigators that Garda Keogh was reviewed by Dr Oghuvbu on 18th December 2015 and that:

*The CMO then issued advices stating that Garda Keogh was unfit for duty. He qualified this by stating that if the member's own doctor deemed him fit for duty, we were required to bring that to his attention for his further consideration. No other matters in relation to Garda Keogh were alerted to us by the CMO at that time, including how he was recorded on the SAMS system.*¹⁷²²

She further said that the determination that Garda Keogh was unfit for duty did not put him in the category of *injury on duty* but *ordinary illness*.¹⁷²³

C/Supt Wheatley told tribunal investigators that she met Garda Keogh on 16th May 2016. She stated that this was the first time she had met Garda Keogh and that she never spoke to him subsequent to the meeting.¹⁷²⁴ She outlined in her statement why she went to see him:

*I was always mindful that supports were in place for Garda Keogh especially since he had been deemed unfit for duty by the CMO in December 2015. I regularly linked in with his assigned Welfare Officer, Garda Michael Quinn to see how he was doing... I had intended to visit Garda Keogh which I mentioned to Garda Quinn in a phone conversation in April. However, when carrying out inspections in the Athlone sub-district on the 16th of May 2016 I heard Mick Wallace TD on the radio, he was talking about his concerns about Garda Keogh. I was with my Divisional Clerk at the time, he knew Garda Keogh. I decided I would call to see him.*¹⁷²⁵

She said that Garda Keogh raised the issue of the recording of his sick leave with her on that date:

When I visited Garda Keogh on 16 May 2016 on a welfare visit, he brought it to my attention that he was aware he was being recorded on the system as 'flu/viral' and not work-related stress,

¹⁷²⁰ Tribunal Transcripts, Day 132, p. 80, Evidence of C/Supt Lorraine Wheatley

¹⁷²¹ Tribunal Transcripts, Day 133, p. 10, Evidence of C/Supt Lorraine Wheatley

¹⁷²² Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6116

¹⁷²³ Tribunal Documents, Statement of C/Supt Lorraine Wheatley, p. 3143 at p. 3146

¹⁷²⁴ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6105

¹⁷²⁵ Tribunal Documents, Statement of C/Supt Lorraine Wheatley, p. 3143 at p. 3145

*as stated on his medical certs. He mentioned that his pay had been reduced. I said I would look into what was recorded on the system. In relation to the point made by Garda Keogh that we did not discuss work-related stress, he had raised the issue with me in this context.*¹⁷²⁶

C/Supt Wheatley was asked by counsel for the tribunal to outline her recollection of this meeting:

I was dropping in to how he was. I was conscious, it just triggered, I suppose, in terms of what was being said in the Dáil about how he was feeling. And, I suppose I had been sort of testing the water with the welfare person, would a visit be welcome. I suppose up until April he had been under the care of the people in Galway. That's the way it just worked. We dropped in. Just really it was a safe and welfare check, I suppose. We had a chat. I asked him – I suppose the new pay regulations, I suppose, had a huge effect on Garda Keogh. I suppose it was unfortunate that they came into place at the time he had made the protected disclosure, because up until then members could go sick or six months every year and not be pay affected, but these regulations were really harsh because you could only go sick for three months in a year – three months in a four year period and it wasn't sort of from that day, it was retrospective. So I suppose from – and indeed, lots of members – every day he went sick, you know, coincided with our time as well, he was pay affected. So this was very difficult.

I mean, I asked him how is he fixed for a few bob, was he okay for money. He gave me the two amounts, I think he was getting, it might be social welfare, another amount. At that stage his pay had gone probably from – you get half pay for three months and then you go on what is [called] TRR, which is basically pension rate of pay. And so, he said – my recollection is he said he was okay for money. And then he brought the issue up of it being misrecorded on the system, that he should have been down as stress and not flu/viral. I said, God, I'll have a look at that.

*So, you know, he's right in a sense we didn't have a big conversation about investigation or anything like that, but he brought the issue up of him not being recorded as stress, you know, stress. And that was his issue. So the take away from that was, you know, I did a few enquiries on the system and he was going to see the CMO, actually the doctor, on the 19th. The take away I took from that, I wrote up then, and his view then was he was very sort of anxious that he would – that he was certified as being stressed and that's the reason he was out. Then, when I wrote to the CMO, I referenced the visit, or HRM, and you know, I outlined in my report that he said he wasn't going to come back to work, you know, when everything was all over he would come back. And I stated in it, because I suppose he was very much of the view that he was stressed, I said, when he returned to work, after he returned to work that I would commence an investigation into work related stress. Because clearly that was something we were never going to be able to do until the whole thing was all over.*¹⁷²⁷

She continued:

*... I think Garda Keogh had been deemed unfit from the December, and then this was April, and clearly I wouldn't be privy to what sort of interventions other than the support welfare was available. But when I met Garda Keogh, like that, very pleasant, very agreeable manner of person I found him. He talked a little bit about his drinking and I actually just found it quite upsetting, because, you know, he has his own house, car, I felt he was very disconnected really. And so, that was a concern for me.*¹⁷²⁸

¹⁷²⁶ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6117

¹⁷²⁷ Tribunal Transcripts, Day 132, pp. 102-104, Evidence of C/Supt Lorraine Wheatley

¹⁷²⁸ Tribunal Transcripts, Day 132, pp. 105-106, Evidence of C/Supt Lorraine Wheatley

In her statement to the tribunal, C/Supt Wheatley stated that this ‘*was the first I heard of this*’ as regards the recording of his sick leave.¹⁷²⁹ In her interview with tribunal investigators, C/Supt Wheatley said that during her meeting with Garda Keogh there was no discussion around the *injury on duty* classification as provided for in HQ Directive 139/10 but she stated that:

*We did discuss the ‘flu/viral’/‘work-related stress’ classification. I didn’t subsequently discuss HQ Directive 139/10 with him. I understand he was in contact with HRM and the welfare service at that time.*¹⁷³⁰

She said that she rectified the recording issue:

*Subsequent to this visit, I undertook to explore the matter. I made enquiries with Superintendent Murray, Chief Superintendent McLoughlin and also looked at the system myself. It was established that indeed the member’s absence had been recorded as ‘flu/viral’. The person keeping the records provided an explanation as to why it had been recorded in this manner. The system was limited and the only place that you could record work-related stress was ‘Mental Health’, and there was a reluctance to use that category. Following my intervention, the records were amended to reflect his certified absence as work-related stress within a week.*¹⁷³¹

She stated that pay decisions were a matter for HRM.¹⁷³² She denied that the recording of Garda Keogh’s absences as *flu/viral* as opposed to work related stress was deliberate:

*Garda Keogh has stated that the recording of his absence as “Flu/Viral” other than work related stress was deliberate and with my knowledge, which is totally untrue as the first time this was brought to my attention was when I visited him in his home in Tullamore. I subsequently explored this and ensured his absences were recorded in accordance with the certificates from his doctor. The matter was explained, and rectified within a week.*¹⁷³³

In respect of the alleged failure to carry out an investigation into Garda Keogh’s work related stress, C/Supt Wheatley said in her statement that:

*Essentially Local Management reported up the line that Garda Keogh was stating he was suffering from work related stress. Efforts had been made locally to establish the source of the members alleged work related stress, however, the member was reluctant to discuss the matter as he had indicated that it arises out of matters, which he had reported through the confidential reporting mechanism and matters which he did not want to discuss with Management within the Division. An investigation was not possible and a case conference was sought with Executive Director HRM to explore how this matter. A Case Conference was held in December 2015. As a result of Garda Keogh’s subsequent visit to the CMO, he was deemed unfit for duty. As stated already the CMO did not advise that the member was unfit for duty due to work related stress or that his absence was to be classified as an injury on duty at that time.*¹⁷³⁴

In her evidence to the tribunal, C/Supt Wheatley referred to Supt Murray’s report of his first meeting with Garda Keogh in March 2015:

... in Superintendent Murray’s report he indicated he was reticent to deal with it, because of the fact that Garda Keogh – Garda Keogh’s position was, he had made a protected disclosure, he was

¹⁷²⁹ Tribunal Documents, Statement of C/Supt Lorraine Wheatley, p. 3043 at pp. 3145-3146

¹⁷³⁰ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6124

¹⁷³¹ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at pp. 6117-6118

¹⁷³² Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6118

¹⁷³³ Tribunal Documents, Statement of C/Supt Lorraine Wheatley, p. 3143 at p. 3146

¹⁷³⁴ Tribunal Documents, Statement of C/Supt Lorraine Wheatley, p. 3143 at p. 3147

*dealing with the people in Galway. And to be honest with you, that's completely understandable, that he didn't want to operate outside that, I suppose, bubble. And, you know, because this was unusual, if you like, or new, we referred it up the line to say that, you know, the reason – when the person reports sick, when a person is absent, absent with work related stress, you know, the instruction is, you have to investigate to establish what is the cause of that stress. Garda Keogh clearly, and very understandably, you know, said he was stressed because all matters around to do with the protected disclosure and wasn't to go any further. I suppose that was quite understandable.*¹⁷³⁵

Referring to the correspondence dated 7th May 2015 sent to C/Supt Wheatley by Mr Mulligan, and her reply on 26th May 2015, she confirmed that she did not consider liaising with Assistant Commissioner Dónall Ó Cualáin or members of his investigation team to progress the matter of exploring with Garda Keogh the reasons for his alleged stress. She told tribunal investigators that:

*I did not liaise with Assistant Commissioner Ó' Cualain or his team. From a welfare point of view, Superintendent Murray spoke with Detective Superintendent Mulcahy and subsequently arranged for a welfare officer and other supports to be put in place for Garda Keogh. I am not aware of what Garda Keogh discussed with the investigation team.*¹⁷³⁶

She gave evidence to the tribunal that:

*... it was always open to people, maybe they could ask the people in Galway to do an investigation because it was so interlinked. I'm not aware that that was ever suggested. So, you know, so when I went to visit him and he was quite – he said, I'm out with stress, and that was the whole essence of the issue for him, I wrote up then and said, yes, the member is asserting his absence is to do with being stressed. When he returns from work, when this is all over, I propose to do a work related stress – pursue it.*¹⁷³⁷

C/Supt Wheatley gave evidence of the action she took after her own meeting with Garda Keogh:

*... we had written up twice, we had referred him twice. On the day, on the 20th – 16th May I had seen Garda Keogh and at that he sort of took the decision that he was out with stress, that his doctor said he was stressed and that, you know, he wasn't going to come back until it was all over. So the position I took then was that, yeah, he is saying he is stressed, he is saying it is all connected with this matter. So I took the decision then and I wrote up to HRM to say when he returns, when this is all over and when he is in a position to return to work, then I will do the investigation into work related stress. And in response to the two e mails, I know I have given this evidence yesterday, I just said, I will put this whole report together, just to pull it all together and my professional opinion, you know, at that stage it wasn't going to be realistic to sort of put another investigation on top of this investigation. So then I said, you know, to be clear, do you want us to do an investigation, do you want us to do it, do you think it is appropriate? You are the medical people, you are the HR people, do you think we should go ahead with this now? Do you think it's appropriate? I sent a reminder subsequent. My understanding is that an investigation to this date hasn't taken place.*¹⁷³⁸

C/Supt Wheatley was asked by tribunal investigators why it took a number of months to arrange a case conference in respect of Garda Keogh. She replied that:

¹⁷³⁵ Tribunal Transcripts, Day 132, pp. 74-75, Evidence of C/Supt Lorraine Wheatley

¹⁷³⁶ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6120

¹⁷³⁷ Tribunal Transcripts, Day 133, p. 62, Evidence of C/Supt Lorraine Wheatley

¹⁷³⁸ Tribunal Transcripts, Day 133, pp. 60-61, Evidence of C/Supt Lorraine Wheatley

*We set out our rationale for a case conference. In our report of 24 July 2015. In the intervening period, the member had access to all other local welfare supports. It simply took that length of time to get an appointment with the CMO.*¹⁷³⁹

In respect of the reference to the ‘transfer’ of Garda Keogh at the case conference of 9th December 2015, she stated that ‘Garda Keogh was deemed unfit for duty by the CMO in December 2015, therefore, the question of a transfer didn’t arise until he resumed duty’ and that:

*Garda Keogh never applied for a transfer, but the option was there for him. I would have supported a transfer. Given the fact that it became public knowledge that Garda Keogh had made a report, I was surprised that he didn’t consider taking himself out of the situation while the matter was being explored. It wouldn’t have been refused.*¹⁷⁴⁰

In respect of the input of local management at the case conference on 12th July 2016, C/Supt Wheatley told tribunal investigators that:

*The record has not captured the input of local management. We had sought this conference with all the stakeholders. The purpose was to get a solution to the issues affecting Garda Keogh. My clear recollection was that local management sought funding for treatment. Everyone at the meeting was endeavouring to find a solution to support Garda Keogh. This objective was achieved, and the funding was secured. I welcomed this decision. I had met Garda Keogh in May prior to this meeting, and it was evident that he needed... support to cope with his drinking.*¹⁷⁴¹

She gave the following evidence to the tribunal about this case conference:

*There was full support here for Garda Keogh. This was about – this was a man, as I saw, a young man and, you know, there seemed to be an element of chaos and, you know, I suppose drink was a factor. I am not obviously a medical person or a psychologist, but I mean, I am in the Guards 35 years, I have a good understanding of life, my view was, you know what, you’re out – I know he was under his doctor and they were linking in, I just thought, you know, we need to get this sorted. I suppose unfortunately, I do understand addiction. I believe get the money and try and let him get treatment and that. I mean, I wasn’t the only voice, that was the voice – and the executive director, Superintendent Murray, Chief Superintendent McLoughlin, and indeed everyone around the table, and the medical people there, we were – you know, we have to look after our people and our job was to support Garda Keogh, I suppose, get back on his feet again.*¹⁷⁴²

C/Supt Wheatley confirmed that she did not have any contact with the garda welfare officer in 2015 concerning Garda Keogh. Her contacts started after Garda Keogh was deemed unfit for duty and out on long-term sick leave in December 2015.¹⁷⁴³

Counsel for Garda Keogh put the following to her:

- Q. ... the steps that you did take were insufficient to protect Garda Keogh from losing his pay, which in fact occurred.
- A. I reject that entirely. The work related stress investigation, if I have had have ploughed ahead with it, wouldn’t of itself given Garda Keogh – it wouldn’t have automatically entitled to Garda Keogh to his pay. I took the view that this is unusual, this is different, you know, he’s

¹⁷³⁹ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6122

¹⁷⁴⁰ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6121

¹⁷⁴¹ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6123

¹⁷⁴² Tribunal Transcripts, Day 132, pp. 138-139, Evidence of C/Supt Lorraine Wheatley

¹⁷⁴³ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6125

*not in a position really to sort of go into any great detail. We brought it that far. I think this is an important point to make here. I don't believe that – and no one came back to us to say, well actually, do you know what, he is stressed, the doctor has said he is stressed but in order for us to make a decision here, we just need a little bit more. You know, so we were bringing it up to – and I really wouldn't – we were saying because of the complexities of this, you know, are we going to put this person through another investigation just because normal policy tells you if a person – you know, if that piece wasn't over there and a person is stressed, you go straight down the line and you do it a certain way.*¹⁷⁴⁴

Garda Olivia Kelly

In her statement to the tribunal, Garda Kelly confirmed that one of her roles as district clerk was to look after the sickness absence for all garda members in the Athlone District. She stated that when a garda reported sick she received an SR1 form from the member in charge but in the majority of cases the type of illness was not recorded on the SR1 form.¹⁷⁴⁵

Garda Kelly explained that an entry for the absence was created on SAMS and remained open until the member returned to work. She would then receive the SR1 form with part b completed (resumption section).¹⁷⁴⁶ She stated that:

*Each sickness is recorded in the same manner. No member is treated differently. Where members are on long term sick, it is requested by HRM that when a member is approaching 92 days continuous absence all Medical Certificates are scanned from the District office directly to HRM Sick Section and this is what I do in respect of Garda Keogh.*¹⁷⁴⁷

In her evidence to the tribunal, she said that the default position is that absences are recorded as *ordinary illness*:

*So it says that every absence must be categorised as ordinary illness until such a time as a certificate in accordance with Code 11.37 has been issued. There would be an investigation done into it and then the chief would decide and he or she would issue the Code 11.37. And once that was received, then it would allow you to change the SAMS recording to an injury on duty or critical illness, whichever the case may be. But all illnesses or every member reporting on duty – whether it was injury on duty or not, they have to be initially recorded as ordinary illness.*¹⁷⁴⁸

She stated that she had *'never deviated or treated Garda Keogh's sickness any differently to any other member in the Athlone District'*.¹⁷⁴⁹ In her statement, Garda Kelly said that:

*Garda Keogh had reported sick and resumed on 18 occasions since 20th December 2014 to his current absence which commenced on 26th December 2015 and none of the SR1 Forms stated that his sickness was due to 'Work Related Stress'. While the SR1's didn't state any cause of illness his medical certificates when submitted all indicated 'work related stress'.*¹⁷⁵⁰

She was asked by counsel for the tribunal about the recording of a case of work related stress. She stated that:

¹⁷⁴⁴ Tribunal Transcripts, Day 133, pp. 70-71, Evidence of C/Supt Lorraine Wheatley

¹⁷⁴⁵ Tribunal Documents, Statement of Garda Olivia Kelly, p. 3640

¹⁷⁴⁶ Tribunal Documents, Statement of Garda Olivia Kelly, p. 3640

¹⁷⁴⁷ Tribunal Documents, Statement of Garda Olivia Kelly, p. 3640

¹⁷⁴⁸ Tribunal Transcripts, Day 131, pp. 10-11, Evidence of Garda Olivia Kelly

¹⁷⁴⁹ Tribunal Documents, Statement of Garda Olivia Kelly, p. 3640

¹⁷⁵⁰ Tribunal Documents, Statement of Garda Olivia Kelly, pp. 3640-3641

I'm not sure, because this is the first case of work related stress that I've dealt with and I didn't receive the 11.37, so I had no reason to change it.

Q. So have you ever entered work related stress on a SAMS in Athlone?

A. No.¹⁷⁵¹

In relation to Garda Keogh's current absence, from 26th December 2015, Garda Kelly stated that she received the SR1 form, which did not indicate the reason for Garda Keogh reporting sick, and there was no medical certificate attached at the time. She said in her statement that:

I recorded the sickness as 'Ordinary illness'. At the time Garda Keogh reported sick and unfit for duty, there was no category on SAMS for 'Work Related Stress'. I recorded the Medical Certificates on SAMS as they were submitted and emailed each Medical Certificate to HRM Sick Section.¹⁷⁵²

In her evidence to the tribunal, Garda Kelly said that she received a call from Ms Egan on 23rd May 2016:

So I was in the office and I took a phone call from Ms. Clare Egan from HR sick section and she just told me that basically Garda Keogh's illness was wrongly categorised and that he was being pay effected and that he was liaising with the Commissioner, from what I can remember of the phone call, and she told me that the correct category was "mental health". So I changed it as a result of her telling me to change it. From her working in HR, in the sick section in particular, she is well experienced from working there and I am sure she is dealing with it every day. So I just – when I was told to change it, I changed it.¹⁷⁵³

In her statement to the tribunal, she explained why she did not initially select *mental health* when recording his absence:

I did not initially select this category due to the stigma surrounding Mental Health and 'Mental Health' was not the cause of illness outlined in his Medical Certificates. I changed the illness reason to 'Mental Health' at the request of Claire [E]gan HRM Sick Section as she indicated Garda Keogh had been liaising with the Commissioner.¹⁷⁵⁴

She was asked by counsel for the tribunal to expand on this:

Well just personally, I didn't think – it wasn't on his medical certs. It said work related stress, not mental health. So I didn't select it. There was a stigma around mental health and personally didn't associate work related stress with mental health.

Q. Okay. And you didn't use the "not provided" box or "other – please specify" for Garda Keogh?

A. It was a possibility, it is there, but like the "ordinary illness" auto populates "flu/viral" also auto populates. And because I had done it so often, it had auto populated all the previous times, I think it was 18 times in total that he had gone sick and I had created those and I just didn't alternate, it auto populates to "flu/viral" so I left it as "flu/viral".¹⁷⁵⁵

Garda Kelly confirmed in her statement that she was also contacted by Supt Murray about the matter:

¹⁷⁵¹ Tribunal Transcripts, Day 131, p. 15, Evidence of Garda Olivia Kelly

¹⁷⁵² Tribunal Documents, Statement of Garda Olivia Kelly, p. 3640 at p. 3641

¹⁷⁵³ Tribunal Transcripts, Day 131, p. 20, Evidence of Garda Olivia Kelly

¹⁷⁵⁴ Tribunal Documents, Statement of Garda Olivia Kelly, p. 3640 at p. 3641

¹⁷⁵⁵ Tribunal Transcripts, Day 131, p. 14, Evidence of Garda Olivia Kelly

*The following day the 24th May 2016 I provided Superintendent Pat Murray with a report which outlined the anomaly that had occurred. He duly reported same to Chief Superintendent's Office Westmeath.*¹⁷⁵⁶

Dr Oghenovo Oghuvbu

In his statement to the tribunal, Dr Oghuvbu said that he was the Specialist Occupational Physician at the Garda Occupational Health Department prior to his appointment to the role of CMO in July 2017. He said that he met with Garda Keogh following referrals on 18th April 2012, 9th October 2012, 7th November 2013, 19th May 2015, 18th December 2015 and 19th May 2016. He stated that:

*The nature of my interactions with Garda Nicholas Keogh were clinical consultations with a view to establishing the issues that had resulted in medical certification and/or the issues which had given rise to concerns by Garda management, clarify the clinical management that were initiated or put in place by his treating health professionals, suggest additional treatment considerations if indicated, advise on his fitness for work, offer advice on the relevant confidential organisational supports available to him in the context of issues raised, and offer advices to Garda management on extra workplace safeguards and supports that would foster his sustained attendance at work and his ability to render sustained effective service undertaking policing duties.*¹⁷⁵⁷

He was asked by counsel for the tribunal to outline the approach he adopted in cases of work related stress. He replied:

*... generally when members say work related stress, what I – the approach we have, I have, I tend to have is to kind of meet with them to explore what is it that is generating the stress in the workplace with them and if that stress is actually presenting itself as a medical illness or not, because work related stress itself is not – or stress itself is not an illness, it is just saying that I am responding abnormally to maybe a situation that I am confronted with outside of work or inside of work. So I would explore that, what it means, and to establish whether there is actually any illness present or not.*¹⁷⁵⁸

He was asked by counsel for the tribunal about the referral of Garda Keogh in May 2015:

Q. ... So, do I understand it that even though Superintendent Murray had referred to the work related stress, you weren't assessing him for that?

A. No, I was assessing him in relation to what was driving the frequent absences, trying to kind of explore if there were any – all the factors, whether it was work related or not work related, what were the factors that were contributing.¹⁷⁵⁹

Dr Oghuvbu gave evidence in respect of his assessment of Garda Keogh's condition on 19th May 2015:

My impression there was that while there were obviously – I mean I can't recall every specifics, but I felt that there was a mixture of the recurrent drinking, binge drinking, especially when he was on his days off, there was an impact of that on his attendance, that that was also impacting

¹⁷⁵⁶ Tribunal Documents, Statement of Garda Olivia Kelly, p. 3640 at p. 3641

¹⁷⁵⁷ Tribunal Documents, Statement of Dr Oghenovo Oghuvbu, p. 3643

¹⁷⁵⁸ Tribunal Transcripts, Day 134, pp. 94-95, Evidence of Dr Oghenovo Oghuvbu

¹⁷⁵⁹ Tribunal Transcripts, Day 134, p. 102, Evidence of Dr Oghenovo Oghuvbu

*on the issues that were going on at work. I didn't have any details of any other thing that was going on at work, but it was just that I felt from a medical point of view that it wasn't helping the situation and that it was reflecting in his attendance and that there was a need for him to engage with his supports that his GP was putting in place.*¹⁷⁶⁰

In respect of the responsibility for recording a period of absence, he stated that this rested with local management and HRPD sickness absence section *'taking into consideration the information provided in certificates submitted by the Garda member or employee'*.¹⁷⁶¹ In his evidence, he explained how this applied in case of work related stress:

*... there are processes within HR absence section which when they receive this they put the classification down. And I understand, I know that where there is a reporting of work related stress, their policy at that time was that they kept it as "ordinary illness" until they were able to prove that there were work related factors that were the cause of the individual's illness. So that is the procedure that I knew that they adopted. So I never worried myself too much about the classification, because I could still do my consultation without knowing what the classification was. The classification of absence as it is recorded on the SAMS doesn't affect my consultation.*¹⁷⁶²

In respect of the classification of periods of absence he said in his statement to the tribunal that:

*It is my understanding that the acceptance and classification of a period of absence as 'work-related stress' by Garda HRPD Absence Section is not exclusively based on the information provided in medical certification submitted by the member. It also involves HRPD Absence Section and local management ascertaining the work-related factors or stressors being reported by the member. I understand that it is the practice of HRPD Absence Section to record absences as 'ordinary' illnesses prior to the work-related circumstances being established.*¹⁷⁶³

In his evidence to the tribunal, Dr Oghuvbu distinguished his role from that of local management:

What was important was, if he was being certified as unfit for work, it was to explore why he was unfit for work and if there was any illness or, you know, condition that we could address. The factuals in terms of those, it was work related stress, usually it's management's role to kind of explore what the work related stress concerns were and then to kind of feedback to us. If there things that they could address, we would say they should address then. But they don't - they wouldn't be - in terms of what his GP was certifying him for, the GP - and any doctor is free to kind of make a decision as to what is certifiable. In terms of when you say it's work related, then generally what is expected is that local management would explore what those issues were in the workplace.

*The general - where there is a question that management come to ourselves and say the member is reporting work related stress and, you know, we are referring him on that basis, we would then advise them to use the HSE work positive stress, guidance on work related factors and stress factors to address the individual. So they would sit down with the individual and talk through what factors at work do you think are causing you stress. But from our own point of view, what we would be looking at is whether there is any illness that is, you know, developing or presenting as a result of the stress that the member is saying the factors, whatever the factors are, and discuss them.*¹⁷⁶⁴

¹⁷⁶⁰ Tribunal Transcripts, Day 134, p. 106, Evidence of Dr Oghenovo Oghuvbu

¹⁷⁶¹ Tribunal Documents, Statement of Dr Oghenovo Oghuvbu, p. 3643

¹⁷⁶² Tribunal Transcripts, Day 134, pp. 100-101, Evidence of Dr Oghenovo Oghuvbu

¹⁷⁶³ Tribunal Documents, Statement of Dr Oghenovo Oghuvbu, p. 3643 at p. 3644

¹⁷⁶⁴ Tribunal Transcripts, Day 134, pp. 114-115, Evidence of Dr Oghenovo Oghuvbu

He was asked by counsel for the tribunal to outline when he would carry out an assessment of work related stress. He replied:

... if they ask us specifically about that, we will then trigger our own process, which is about providing us the information about what they had gathered in relation to work related stress and examining that to see whether there was a clinical possibility that these factors could be generating any illness.

Q. You don't necessarily assess whether he has stress to the extent that it is an illness, unless you are requested to do so?

A. No, we will do an assessment as to whether there is an illness present or not, but in terms of the certification.

*The classification of the illness, we don't offer any comments because unless there is a specific question to us from management in that regard.*¹⁷⁶⁵

Dr Oghuvbu gave evidence that, as he saw it, he was never requested to assess Garda Keogh for work related stress and never asked about the classification of his absence. He was asked the following by counsel for the tribunal:

Q. So, I mean, it seems to remain the position that you were never formally asked to assess Garda Keogh on the basis of suffering from an injury arising out of work related stress, is that accurate?

A. Yeah. There was no – well, he was absent, he was being certified by his doctor as absent, he was referred on that basis. But if it's an issue about the classification of his absence, I was never asked for an opinion in relation to the classification of his absence.

Q. Yes.

A. And I have never been asked about classification of his absence.¹⁷⁶⁶

He outlined in his statement to the tribunal how the case conference on 9th December 2015 was convened at the request of local management *'on foot of concerns about the member's high level of frequent absences in an established pattern and concerns arising out of discussions with the member'*.¹⁷⁶⁷

Dr Oghuvbu also referred to Garda Keogh's account of the consultation on 18th December 2015 and stated that:

*This references a discussion at consultation for review with me on 18th December 2015 about his absences and the classification of his illness basis that was recorded in the HRPD absence record sheet which was available to me. The responsibility for recording of a period of absence rests with local management and HRPD Absence Section taking into consideration the information provided in certificates submitted by the Garda member or employee. Neither I nor the Garda Occupational Health Service would have a role in receiving or processing that information.*¹⁷⁶⁸

He also referred to a *'hand written list'* which Garda Keogh produced to him at the consultation on 18th December 2015. He stated that *'this list contained the member's attempt to chronicle various*

¹⁷⁶⁵ Tribunal Transcripts, Day 134, p. 120, Evidence of Dr Oghenov Oghuvbu

¹⁷⁶⁶ Tribunal Transcripts, Day 134, p. 144, Evidence of Dr Oghenov Oghuvbu

¹⁷⁶⁷ Tribunal Documents, Statement of Dr Oghenov Oghuvbu, p. 3643 at p. 3644

¹⁷⁶⁸ Tribunal Documents, Statement of Dr Oghenov Oghuvbu, p. 3643 at p. 3644

interactions he had with other parties which he deemed relevant to the challenges he was facing at the time.¹⁷⁶⁹ He was asked about speaking with Garda Keogh's treating doctor after this meeting:

- Q. *Giving your view. Were you holding off on your view as to whether he was unfit for work until you had spoken to his GP?*
- A. *No, no. I think I had already made that decision, if I am not mistaken. I had already said I agreed temporarily unfit to attend at work pending reevaluation with GP. So I wanted him to be seen by his GP. So I had already made that decision that he was unfit. But the reason why I was contacting his GP was, I was concerned about his clinical management. That I felt that that needed that to be intensified. So I wanted to talk to the GP so that we were on the same page in terms of getting him access to the right clinical management.*¹⁷⁷⁰

He was asked by counsel for the tribunal whether he recalled ringing Garda Quinn, Garda Keogh's employee assistance officer:

*I would have spoken with him as an employee assistance officer, supporting him, and said, look, I was concerned about that. It appeared there were issues between himself and the superintendent, it could have been a misunderstanding between them, I don't know what it was, and I said I want to ask – because of the role of the employee assistance officer is a welfare support to the individual, so if there is an issue where the individual was having difficulty with either their supervisor or their management, I would usually bring it to their attention, to say that, look, maybe we need to kind of explore this with the individual and see what can be done in relation to it. But it's not a medical advisory or anything.*¹⁷⁷¹

Counsel on behalf of An Garda Síochána asked Dr Oghuvbu about his understanding as to whose responsibility it was to make a decision with regard to an injury on duty. He told the tribunal:

In terms of injury on duty, a decision can be made on injury on duty without consulting me.

So it is not that every decision on injury on duty the CMO's office has to be consulted. It can be made and the person who is entitled to make that decision is the chief superintendent.

*Where the chief superintendent has a doubt they will then write to the executive director of HR and say I need advice or I need assistance in relation to this and then they will be required to present facts. So if the question is a clinical question where I'm not exactly sure whether there is clinical plausibility here, then it is brought to – then the executive director of HR will then write to the CMO's office and say can you provide us advice on this. But in terms of injury on duty, I mean I would only, I would – if there is no doubt about it I would just simply affirm it by saying that this has happened based on this incident that has been reported by the member. I tend to use the word 'reported', you know. So this is what it is. So I am not involving myself in the decision unless I am asked for an advice to assist the decision that is being made.*¹⁷⁷²

Inspector Brian Downey

Insp Downey was attached to HRM at Garda Headquarters during 2015. In his statement to the tribunal, he said that he attended a case conference on 9th December 2015 in relation to Garda Keogh's sickness absence. He stated that:

¹⁷⁶⁹ Tribunal Documents, Statement of Dr Oghenovo Oghuvbu, p. 3643 at p. 3644

¹⁷⁷⁰ Tribunal Transcripts, Day 134, p. 127, Evidence of Dr Oghenovo Oghuvbu

¹⁷⁷¹ Tribunal Transcripts, Day 134, pp. 128-129, Evidence of Dr Oghenovo Oghuvbu

¹⁷⁷² Tribunal Transcripts, Day 134, pp. 165-166, Evidence of Dr Oghenovo Oghuvbu

The issues presented at the case conference related to the number of sick days taken by Garda Keogh and the fact that he was on Temporary Rehabilitation Rate (TRR) of pay each time he goes sick. At the meeting a decision was made for Dr Oghuubu to liaise directly with the member's General Practitioner and to work with him to access addiction treatment. It was also decided that depending on the engagement with treatment services a further case conference could be arranged in January or February of 2016. It was also agreed that a transfer to another Division could be of assistance to the member but no decision was made on a transfer at this case conference. While I attended this case conference my role was to represent the Superintendent HRM who would be responsible for arranging transfers when and where necessary. The case conference was primarily focused on the member's sickness absence and was therefore the remit of the sickness absence section.¹⁷⁷³

He outlined the purpose of the conference in his evidence to the tribunal:

My understanding is that this conference was called and the whole thrust of the conference was actually the welfare of the individual member, Garda Nicholas Keogh, and the fact that he was now gone on TRR, which is temporary rehabilitation rate of pay or formerly pension rate of pay, which kicks in after a person has exhausted their sickness absence pay, the ordinary illness sickness absence, which is 92 days, and followed by further 13 weeks on half pay, and then the TRR kicks in under the revised sickness regulations that were introduced by the Department of Public Expenditure and Reform in 2014. So that's what TRR is.¹⁷⁷⁴

He further explained why he attended the meeting:

My role in that would be one of the sections under HRM and I was representing the chief superintendent, who was absent at the time, at this meeting, as we were responsible for transfer section. So we could facilitate the transfer subject to management requesting it, the doctor recommending it and also that the member himself agreed to it. We would never transfer somebody without the agreement of the member. But it was discussed, and I remember distinctly that Dr. Oghuubu had said at this particular juncture, at this particular point in time he wasn't ready to make that determination, that it was in the best interests of the member to transfer and he would do so at a later point because he was going to meet him shortly. And once that happened, I had no further action with regards to transferring him or arranging a transfer or initiating that process.¹⁷⁷⁵

Insp Downey gave evidence to the tribunal about the problems encountered in assessing work related stress as an *injury on duty*:

We couldn't get agreement with regards to the work related stress. It was all linked to causality. What was the cause of the work related stress? And there was definitely an understanding that pre 2014 we had 183 days to investigate the causality of work related stress. This is now reduced to 92 days, which is only 13 weeks, for the chief to make a determination, to assign an inspector to investigate it, to then go to the CMO and to have it all boxed off in 92 days, was quite a task in itself.

So it was sort of looked at, we're still going to have the problem of causality, whereas under the old system we had 183 days to make that assessment. So with our time reduced, it was just going to be more difficult. But we still couldn't get over the problem of what was the cause of the work

¹⁷⁷³ Tribunal Documents, Statement of Insp Brian Downey, p. 11745 at p. 11746

¹⁷⁷⁴ Tribunal Transcripts, Day 133, p. 109, Evidence of Insp Brian Downey

¹⁷⁷⁵ Tribunal Transcripts, Day 133, pp. 115-116, Evidence of Insp Brian Downey

*related stress. And it was highlighted at that meeting and agreed by everybody that only the office of the CMO could make that determination.*¹⁷⁷⁶

He went on to say that:

*... Garda management as such, we do not have that medical expertise and we shouldn't be involved in actually saying that somebody is suffering from work related stress because we can't determine the causality or create the link medically.*¹⁷⁷⁷

Garda Michael Quinn

In his statement to the tribunal, Garda Quinn said that he was asked on 21st April 2015 to make contact with Garda Keogh if he was willing to engage with the employee assistance service. He confirmed that he attended the case conference on 9th December 2015 and that:

*I did not take any specific notes during or after the meeting. My recollection of the proceedings were that each of the main participants (Dr. Oghuobu, Superintendent Murray, Detective Superintendent Mulcahy and I) all gave our perspective on how we found Garda Keogh when we had dealt with him. There was some discussion as to how the member's sick absence was being recorded. I took the main theme to come from the meeting to be the possible consequences for Garda Keogh's career (and his well being) if he didn't stop drinking and address his addiction issues by undergoing a suitable programme.*¹⁷⁷⁸

Garda Quinn provided the notes of his contacts with Garda Keogh¹⁷⁷⁹ to the tribunal. It was recorded on 23rd April 2015 that he received a call from Garda Keogh and that he said *'his pay had been cut and that it didn't bother him particularly'*.¹⁷⁸⁰ He recorded a note on 18th May 2016, which stated that:

*I rang seven different numbers. The member called back. We spoke of the visit of his Chief and the divisional clerk yesterday. The Chief enquired about his rate of pay, where he was originally from and if he was in contact with me. He was given a travel voucher for his visit to the CMO which is scheduled for 19.5.16.*¹⁷⁸¹

He recorded a note on 23rd May 2016, which stated inter alia that:

*The member rang and said he was still drinking... He was about to ring Chief McLoughlin and ask that his queries re his sick absence recording would be conveyed back through me. C/ Supt. McLoughlin rang at 4.35pm and said 1) That he would like to meet the member 2) that his sick had been re-classified from viral flu to mental health and 3) that the report from his second last meeting with Dr. Oghuobu would be emailed to me (advices re his medical status).*¹⁷⁸²

He recorded a note on 29th September 2016, which stated that he had received a call from C/Supt McLoughlin who told him that Garda Keogh would be restored to full pay. Garda Quinn stated that he spoke to Garda Keogh about this later that day.¹⁷⁸³ He also recorded that Ms Egan called him on 6th October 2016 to confirm that Garda Keogh had been awarded back pay which would be discharged on 13th October 2016.¹⁷⁸⁴

¹⁷⁷⁶ Tribunal Transcripts, Day 133, pp. 126-127, Evidence of Insp Brian Downey

¹⁷⁷⁷ Tribunal Transcripts, Day 133, p. 131, Evidence of Insp Brian Downey

¹⁷⁷⁸ Tribunal Documents, Statement of Garda Michael Quinn, p. 3642

¹⁷⁷⁹ Tribunal Documents, Typed notes of Garda Michael Quinn, pp. 10616-10636

¹⁷⁸⁰ Tribunal Documents, Typed notes of Garda Michael Quinn, p. 10616

¹⁷⁸¹ Tribunal Documents, Typed notes of Garda Michael Quinn, p. 10616 at p. 10621

¹⁷⁸² Tribunal Documents, Typed notes of Garda Michael Quinn, p. 10616 at p. 10622

¹⁷⁸³ Tribunal Documents, Typed notes of Garda Michael Quinn, p. 10616 at p. 10626

¹⁷⁸⁴ Tribunal Documents, Typed notes of Garda Michael Quinn, p. 10616 at p. 10626

Garda Quinn gave evidence to the tribunal of his impression of Garda Keogh:

... I suppose, just a really important point, it's a bit like the pay issue, I have never dealt with anybody with an addiction who was so honest...

Q. There was no concealment?

A. No concealment. Totally honest. Whether he is stopping or starting or continuing.

Q. Okay.

A. Very unusual.¹⁷⁸⁵

Chief Superintendent Anthony McLoughlin

C/Supt McLoughlin was appointed as one of the protected disclosures managers for An Garda Síochána in May 2016. He explained in his evidence to the tribunal how he came to be appointed in that role in Garda Keogh's case:

I was asked, well, I would argue I was almost directed by the head of legal at the time to get involved in Garda Keogh's case on behalf of the organisation, primarily from a health and welfare perspective, but also with a view to maybe pulling all the various strands together so that there was one port of call that could keep the Commissioner informed of the status of all the various elements of the investigations that were ongoing.¹⁷⁸⁶

... It wasn't so much legal advice per se, it was just a request from the head of legal, where I had been involved in other cases and where I think he knelt it would be helpful to the organisation if I would fulfil a role with Garda Keogh similar to other roles, whereby there was an office that was pulling, if you like, all of the various elements together.¹⁷⁸⁷

In his statement to the tribunal, he said that he first contacted Garda Keogh on 20th May 2016:

... I decided to make direct contact with Garda Keogh (an identified whistle-blower) whose health, wellbeing and safety, I was duly concerned about. I wanted to assure Garda Keogh that An Garda Síochána was doing all it could to support him. Arising from my conversation with Garda Keogh on the 20th May 2016 at 19.08 I discovered that he was at that time experiencing some difficulties with an alleged misclassification of his sick record.¹⁷⁸⁸

C/Supt McLoughlin said that Garda Keogh contacted him on 23rd May 2016 and the essence of the conversation was that Garda Keogh asked him to 'sort out' his record of sickness, which he said had been incorrectly documented by An Garda Síochána. He stated that he assured Garda Keogh that he would explore this and his other requests.¹⁷⁸⁹ He phoned Ms Egan and requested an update in respect of Garda Keogh's sickness management. He gave evidence to the tribunal that:

Well, my understanding from Garda Keogh was very clear: That Garda Keogh wished the system to reflect what he believed was his reason for sickness, which was work related stress. Now I obviously wasn't sure at that time how that would manifest itself on the system, I probably in my naivety would have expected that it would go onto the system and be reflected as work related stress. But I've subsequently become aware that SAMS doesn't necessarily keep work related

¹⁷⁸⁵ Tribunal Transcripts, Day 133, p. 174, Evidence of Garda Michael Quinn

¹⁷⁸⁶ Tribunal Transcripts, Day 141, p. 14, Evidence of C/Supt Anthony McLoughlin

¹⁷⁸⁷ Tribunal Transcripts, Day 141, p. 15, Evidence of C/Supt Anthony McLoughlin

¹⁷⁸⁸ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228

¹⁷⁸⁹ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, pp. 3228-3229

*stress except under the umbrella of mental health as one of the categories. And that's the way it deals with it.*¹⁷⁹⁰

He referred to Ms Egan's email dated 23rd May 2016¹⁷⁹¹ confirming that Garda Keogh's sickness had been recorded on SAMS as *ordinary illness*, and that her branch was not in receipt of nor aware of any application by Garda Keogh to treat his sickness as anything other than *ordinary illness*. She also confirmed to him that '*Garda Keogh's management met with him to discuss the source of his stress. That management were advised that Garda Keogh did not wish to discuss such matters as he claimed he was under the protections of the relevant legislation.*'¹⁷⁹² C/Supt McLoughlin said in his statement that:

*I felt that there was a need to amend Garda Keogh's illness classification. I sent a copy of Ms Egan's correspondence to the Executive Director Mr John Barrett, Deputy Commissioner Twomey and Mr Frank Walsh at the Commissioner's Office.*¹⁷⁹³

On 23rd May 2016, Ms Egan emailed C/Supt McLoughlin with a copy of the CMO's advice following a medical review on 19th January 2016¹⁷⁹⁴ and stated that Garda Keogh's SAMS record had been amended locally on SAMS to reflect *illness type: Mental Health*. C/Supt McLoughlin stated that he '*understood that work related stress illness was categorised on the system as mental health.*'¹⁷⁹⁵ He confirmed that he contacted Garda Keogh and his welfare officer, Garda Quinn, later that day.¹⁷⁹⁶

He outlined in his statement how he requested to be kept regularly updated as to contacts between Garda Keogh and Garda Quinn,¹⁷⁹⁷ and that he met with both of them on 3rd June 2016. He stated that:

*I was pleased to note that Garda Keogh reported he had stopped drinking. Garda Keogh claimed that he had become dependent on alcohol because of work related stress. He said that he was unfit for work and had been certified, as such, by the CMO and his General Practitioner. He outlined a number of issues to me. He provided me with a list that was a photo-copy of a hand-written list on Garda Form C8 and titled 'Harassment Index'... He alleged that he was singled out because of his actions. I asked Garda Keogh what it was he wanted me to do in respect of the issues he raised. He replied that he wished me to do nothing as his matters were being dealt with by GSOC. We then discussed the possibility of his return to work and that the CMO would have the final say in the matter. I made enquiries with Garda Keogh in respect of his pay and was informed that pay was not an issue for him at that time. Garda Keogh was unhappy with a classification in respect of his SAMS sick record which read 'mental health' he felt that there ought to be a procedure for recording his sickness absence as related to an 'injury on duty'. I undertook to look into this for him. I spent some considerable time communicating and emphasising my commitment to him. I said that I was available to support him and wished to do all I could to do so.*¹⁷⁹⁸

¹⁷⁹⁰ Tribunal Transcripts, Day 141, p. 27, Evidence of C/Supt Anthony McLoughlin

¹⁷⁹¹ Tribunal Documents, Email from Ms Claire Egan to Executive Director HRPD, dated 23rd May 2016, pp. 3253-3254

¹⁷⁹² Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3229

¹⁷⁹³ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3230

¹⁷⁹⁴ Tribunal Documents, Email from Ms Claire Egan to C/Supt Anthony McLoughlin, dated 23rd May 2016, p. 3255

¹⁷⁹⁵ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3230

¹⁷⁹⁶ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3230

¹⁷⁹⁷ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3230

¹⁷⁹⁸ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3231

C/Supt McLoughlin was asked about his meeting with Garda Keogh:

- Q. ... At this meeting of the 3rd June, did Garda Keogh stipulate why he wouldn't return to work at this time?
- A. Well, there was two reasons. One, he was still out of work, as certified by his GP. And secondly, I think he was anxious that going back to the same environment was not going to be conducive to him at the time.
- Q. Did he indicate why that was the case?
- A. Other than that the same structure was still in place, as he saw it. And I did offer I think then and on other occasions that if it was amenable to him we could explore other locations on his return, once he was certified fit to do so by the Chief Medical Officer.
- Q. So was the injury on duty issue not canvassed to some degree during the course of that meeting?
- A. Sorry, you're correct. He did. It was a perception – you're right, sorry, I beg your pardon. It was Garda Keogh's perception that once work related stress was categorised or diagnosed by medical or other people, that that automatically equated to an injury on duty. And it didn't.¹⁷⁹⁹

In his statement, C/Supt McLoughlin said that he requested C/Supt Wheatley to confirm whether an investigation had been carried out in accordance with the regulations into Garda Keogh's work related stress.¹⁸⁰⁰

He was asked by counsel for the tribunal to outline the reason for this request. He replied:

In my previous time in HR as a superintendent I happened to be the architect of HQ Directive 139/10, so I was very familiar with it.

One of the key things in that directive would be that if anybody goes sick with injury on duty or work related stress, it's meant to precipitate an investigation almost immediately, to find out the source of the stress or the injury on duty. And the idea behind that was to ensure that if at all possible that the organisation could take steps to either alleviate the stress or find out, I mean, the nature of it and what caused it.¹⁸⁰¹

He gave evidence of the role of local management in investigating work related stress:

And while I understand that, in fairness to Superintendent Murray, he did meet Garda Keogh and he did refer him to the Chief Medical Officer. Obviously the Chief Medical Officer was going to be an important part in the diagnosis of Garda Keogh and may well have become a significant part of the investigation or the report from the investigation into the causes and so on and so forth.

... the practice at the time in nearly all cases, from my knowledge, would be that there would have been an independent – well, not so much independent, but there would have been a report or an investigation outlining the work related stress issues and detailing them and offering maybe potential reasons or causes that gave rise to it. That report would, if you like, satisfy the regulations but it also would help, I have no doubt, the Chief Medical Officer in his various assessments that he was going to conduct as well.¹⁸⁰²

¹⁷⁹⁹ Tribunal Transcripts, Day 141, pp. 147-148, Evidence of C/Supt Anthony McLoughlin

¹⁸⁰⁰ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3231

¹⁸⁰¹ Tribunal Transcripts, Day 141, pp. 24-25, Evidence of C/Supt Anthony McLoughlin

¹⁸⁰² Tribunal Transcripts, Day 141, pp. 25-26, Evidence of C/Supt Anthony McLoughlin

He said in his statement that it was in or around this time that he rang the Divisional Office in Westmeath to rectify Garda Keogh's 'recorded sickness misclassification on SAMS'.¹⁸⁰³

C/Supt McLoughlin said that he attended the case conference on 12th July 2016 and that:

*The purpose of this conference was to discuss and explore options to support Garda Keogh financially. So as to allow Garda Keogh enter an alcoholic treatment centre, without financial impediment.*¹⁸⁰⁴

C/Supt McLoughlin outlined how he had received correspondence from C/Supt Wheatley on 25th July 2016, enquiring about the investigation of Garda Keogh's work related stress and his response to her on 9th August 2016, drawing her attention to the Garda Síochána Code instructions on the matter.¹⁸⁰⁵

He said that he met with Mr Barrett and Mr Mulligan in or around September 2016 to discuss Garda Keogh's welfare and pay. He said in his statement that:

In or around this time, I cannot be more exact as unfortunately I do not have a precise note or record of its occurrence – I recall my attendance at a meeting with Mr Alan Mulligan and Executive Director John Barrett, HRPD.

The meeting was convened, to discuss the welfare of Garda Keogh and his pay.

As the newly appointed Protected Disclosures Manager for An Garda Síochána I was specifically concerned with balancing interests in the circumstances which existed. I wanted to be fair and reasonable too. I wanted to support Garda Keogh and others in the difficult circumstances they found themselves.

*Garda Keogh was unfit for duty and reportedly could not, at that time, return to work. This had been certified by his attending doctors. Garda Keogh posited the source of his absence as being directly related to stress arising from his having made a protected disclosure. There was a need for An Garda Síochána to demonstrate that they were doing all that was within its power to support the health, wellbeing and safety of identified whistle-blowers such as, Garda Keogh.*¹⁸⁰⁶

It was noted that Garda Keogh was medically unfit for duty, recovering from alcoholism, and, now without full pay, was in need of financial support. C/Supt McLoughlin stated that:

*Having discussed these matters about pay and the Protected Disclosures Act with Executive Director John Barrett and Mr Alan Mulligan, we assessed the options and contingencies. The challenge of the decision we had to make, at that time, was not just to provide a logical, rigorous and intellectual analysis of the difficulty we were analysing in respect of Garda Keogh. We also had to consider our duty to support the health, wellbeing and safety at a time when he was vulnerable. On balance, the right thing to do in Garda Keogh's case was to recommend that he was reinstated to full pay because of the unique circumstances that he faced.*¹⁸⁰⁷

Accordingly, he confirmed that he wrote to Ms Egan on 26th September 2016 'to offer her my considered recommendation in respect of Garda Keogh's sick pay provisions'. He later clarified that 'I

¹⁸⁰³ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3232

¹⁸⁰⁴ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3232

¹⁸⁰⁵ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at pp. 3233-3234

¹⁸⁰⁶ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3236

¹⁸⁰⁷ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3237

recommended that Garda Keogh would be restored to full pay and it was mutually agreed upon by all that were present.¹⁸⁰⁸ He recorded that Mr Barrett confirmed his decision to restore Garda Keogh to full pay and backdate his payment.¹⁸⁰⁹

C/Supt McLoughlin said to the tribunal that he did not know whether the Garda Commissioner was aware of or had any role in this decision and confirmed that he did not inform her. He said that *'there may not have been a formal policy at the time to cover this situation'* and that he was unaware whether a policy had since been developed.¹⁸¹⁰

He said in his statement that he was notified on 6th October 2016, that Garda Keogh would be restored to full pay and that his pay would be backdated to 26th December 2015.¹⁸¹¹

He gave evidence to the tribunal about the restoration of full pay in Garda Keogh's case:

Q. *Moving on now to the issue of pay reinstatement, you agree with me that the regulations do not cater for the reinstatement of pay in the circumstances that arose in this particular case?*

A. *I'm aware of it now, I wouldn't necessarily have been aware of it – oh sorry, I would have been aware of it then as well, that the sick pay regulations wouldn't have covered it yes, sorry, yes.*

Q. *And, in fact, the whole issue, as you have already covered in evidence, was brought about by your intervention specifically?*

A. *Yes.*

Q. *And that this was a fix that you devised in relation to the protected disclosures of Garda Keogh?*

A. *Yes.*

Q. *And another guard, isn't that correct?*

A. *Yes. Well, there's two previous members. I'm not too sure – I don't think I was involved in those ones, but I was definitely involved in this one, yes.*

Q. *And as a result of that his pay was reinstated in October 2016?*

A. *Yes.*¹⁸¹²

In his statement to the tribunal, C/Supt McLoughlin gave the following overview:

Collectively, the materials that I have presented throughout this statement and my personal recollection of events, allows me to say with conviction that I clearly faced up to the ethical and professional imperatives at stake in the decisions and actions I was required to make while attending to Garda Nicholas Keogh's health, safety and wellbeing.

¹⁸⁰⁸ Tribunal Documents, Letter from C/Supt Anthony McLoughlin to the Disclosures Tribunal, dated 10th February 2020, p. 16419 at p. 16420

¹⁸⁰⁹ Tribunal Documents, Letter from C/Supt Anthony McLoughlin to the Disclosures Tribunal, dated 10th February 2020, p. 16419 at p. 16420

¹⁸¹⁰ Tribunal Documents, Letter from C/Supt Anthony McLoughlin to the Disclosures Tribunal, dated 10th February 2020, p. 16419 at p. 16420

¹⁸¹¹ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3237

¹⁸¹² Tribunal Transcripts, Day 141, pp. 152-153, Evidence of C/Supt Anthony McLoughlin

I was mindful of An Garda Síochána's policies and procedures as they applied to the situations, I faced. I considered the applicable laws and regulations. I balanced the interests of competing obligations and was always willing to review my choices and oppose what I did not believe was correct. My actions were consistent with An Garda Síochána's Code of Ethics and values, they were right fair and responsible. I did the right thing for the right reasons.

*Accordingly, I affirm, I have no knowledge or belief that Garda Nicholas Keogh was targeted or discredited with the knowledge or acquiescence of members of An Garda Síochána.*¹⁸¹³

Ms Monica Carr

Ms Carr is a principal officer in An Garda Síochána with responsibility for the HR Directorate. In her statement to the tribunal, she said that the responsibility for all sick leave within An Garda Síochána transferred to the HR Directorate in May 2012.¹⁸¹⁴ She also said that she *'had no direct contact with Garda Keogh, in the course of his absence on sick leave'*.¹⁸¹⁵

Ms Carr provided a list of all the correspondence at the HR Directorate in respect of Garda Keogh's sick absences between 10th February 2012 and 29th November 2017. She outlined the correspondence between Mr Mulligan and C/Supt Wheatley on 7th May 2015 and 26th May 2015. It was recorded that *'all correspondence was received and recorded at this Branch and a copy was forwarded to the office of the CMO to enquire if an appointment could be made for the member'*.¹⁸¹⁶ Ms Carr also listed the case conference request dated 24th July 2015 from C/Supt Wheatley and stated that all documentation was sent to the CMO. She further recorded that, on 22nd October 2015, an *'urgent case Conference request forwarded to CMO'*.¹⁸¹⁷

In a supplemental statement to the tribunal, Ms Carr outlined further correspondence on this issue between 7th June 2016 and 6th October 2016¹⁸¹⁸ together with material concerning a *'general discussion around the management of persons who made Protected Disclosures and avail of sick leave'*.¹⁸¹⁹

In her evidence to the tribunal, she described the operation of Code 11.37:

*A certificate code 11.37 is what is completed by the chief superintendent in the divisional officer where the member serves. So where a member has been injured in the course of executing their duty as a Garda member, they make an application through the chief superintendent for code 11.37, which means that they are paid when they are absent on sick leave, they wouldn't be pay affected in the same terms as if the ordinary sick leave regulations apply.*¹⁸²⁰

She was referred to the letter from C/Supt Wheatley dated 26th May 2016 and asked whether it was unusual. She gave evidence that:

Well, I suppose there's two elements to it. In terms of protected disclosures, this would be the first time that this – wouldn't be the first time. This was in the very early days, I suppose, of the new protected disclosures legislation and it wasn't familiar to all of us. Members not being in a

¹⁸¹³ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at pp. 3248-3249

¹⁸¹⁴ Tribunal Documents, Statement of Ms Monica Carr, p. 11720

¹⁸¹⁵ Tribunal Documents, Statement of Ms Monica Carr, p. 11720

¹⁸¹⁶ Tribunal Documents, Statement of Ms Monica Carr, p. 11722-11723

¹⁸¹⁷ Tribunal Documents, Statement of Ms Monica Carr, p. 11720 at p. 11723

¹⁸¹⁸ Tribunal Documents, Supplemental Statement of Ms Monica Carr, pp. 14866-14915

¹⁸¹⁹ Tribunal Documents, Supplemental Statement of Ms Monica Carr, p. 14866

¹⁸²⁰ Tribunal Transcripts, Day 134, pp. 14-15, Evidence of Ms Monica Carr

*position to discuss causes of stress or issues like that, that would not be unusual, where they might prefer maybe to discuss it directly with the Chief Medical Officer.*¹⁸²¹

In her evidence, she described an ongoing discussion within the organisation concerning the operation of Code 11.37 and the background to it:

*With the introduction of the public service sick leave regulations in 2014, it was felt that this is something that needs to be addressed in respect of Garda members. Because not all – slips, trips and falls shouldn't be properly categorised under code 11.37. 11.37 is where you are injured in the course of executing your duty as a Garda member. It's very specific and it's very important that it is there available to Garda members who are injured in the course of their duties. So there is a requirement that we would look at our policy around having an occupational injury scheme. So that was the purpose of that working group. So there was ongoing discussions to try and – without making it too prescriptive, but to ensure that this encapsulated all the relevant absences that we could.*¹⁸²²

*I suppose the purpose of the discussion around the work related stress, I suppose what we would say is that work related stress of itself is not an injury, it may cause an injury, so therefore that would be part of the CMO's consideration about whether or not – if I am reporting with work related stress and I develop an illness or an injury subsequent to that, it will be the Chief Medical Officer who will advise us as to whether or not there is a causality or if there is a relationship or if the injury or the illness that I suffer is directly related to work related stress.*¹⁸²³

With regard to what these enquiries would entail, Ms Carr gave evidence that:

Well, the assessment of the work related stress would include any investigation and that investigation, I suppose, refers back to where somebody reports that they are suffering with stress or work related stress, that we would ask the line manager to do an investigation into the cause of that stress ...

*... the CMO would be aware of the reasons for the member's absence and the discussions that occur then, and I suppose you're going to have to talk to the Chief Medical Officer on this piece, discussions between members and the CMO have the doctor patient confidentiality and we don't have access to that. What the CMO will do is, he will advise us on whether or not the member is fit for duty and he will also, when we ask, advise on whether or not the injury suffered by the member is causally and directly related to the injury reported.*¹⁸²⁴

Ms Carr was asked by counsel on behalf of Garda Keogh about the nature of the investigation into a member's work related stress:

*From Navan we would ask the local chief superintendent, the local managers to do that investigation and that investigation is not prescriptive, it doesn't mean that we would interrogate an individual. The idea behind it is that the local manager would know their staff or know of them or would know their line managers and they would sit with the member and find and establish the source or the cause of that. I suppose in this particular instance that had already been advised to us in advance. That letter sent out seeking to have an investigated is a standard letter that goes out in all cases. Once we see stress or work related stress, that letter issues.*¹⁸²⁵

¹⁸²¹ Tribunal Transcripts, Day 134, p. 22, Evidence of Ms Monica Carr

¹⁸²² Tribunal Transcripts, Day 134, p. 42, Evidence of Ms Monica Carr

¹⁸²³ Tribunal Transcripts, Day 134, pp. 43-45, Evidence of Ms Monica Carr

¹⁸²⁴ Tribunal Transcripts, Day 134, pp. 44-45, Evidence of Ms Monica Carr

¹⁸²⁵ Tribunal Transcripts, Day 134, p. 62, Evidence of Ms Monica Carr

She was also asked who should make the application under the Code:

Under code 11.37 there is no actual – it's not prescribed as to who should make the application. But I suppose it's my experience that the chief superintendent is required to issue a code and it's my understanding and my experience that the member would liaise with the chief superintendent in getting that code issued. I suppose in fairness, the local management were writing up to us in relation to this particular case, but as Claire has stated there, there isn't actually – when you go through everything, there isn't actually an application for that code 11.37.¹⁸²⁶

She gave the following evidence when examined by her own counsel:

Well, clearly Superintendent Murray notified us that the member was suffering with work related stress. I understand the categorisation of an illness is uploaded or is entered locally in the district or the division and the default, I suppose, on the SAMS system, which is a very basic recording system, it's not actually like part of a HRIS, it is an actual recording system for sick absences, and the default on that is that it defaults in "flu/viral", so quite a lot of the time we would find that, you know – and sometimes it belies the fact that somebody has been quite unwell, it's coming up as "flu/viral". In this instance, in fairness to the superintendent, when he notified us he wanted to support and get help from the CMO for the member, he did indicate in his correspondence that it work related stress and that would have gone over to the Chief Medical Officer, that correspondence.

Q. I see. Now, just in relation to the membership in relation to occupational injury, or sorry injury on duty, in your experience, to what extent do the members concerned actively get involved in ensuring that the classification of their injury, we will just leave it at physical injuries for now, is associated with their job?

A. In terms of code 11.37s, we would generally receive them from the divisional office, from the divisional officer, from the chief superintendent and that happens, I suppose you could say, seamlessly in a lot of the cases. But there is – where the chief superintendent might ask for advices from HRM or advices from the Chief Medical Officer, we would get correspondence on that and we would work around that. Then there are cases where a chief may decide that they're not in a position to issue a code 11.37 and there can be discussions ongoing between the member and the superintendent and the chief and stuff like that and then they make enquiries with our office and they can be kind of protracted, ongoing.

It isn't actually provided within code 11.37, but should a member wish to appeal the non issue of a code 11.37, we will accept the appeal into the directorate and it will be considered and all circumstances will be considered in that and a recommendation made. So we would have – in general, you would say that they would go ahead without too much interference, but, as I say, the chief might look for information and advice from the CMO about causality, about whether or not the injury arises can be directly related to the incident as reported, and we would facilitate that and those discussions. And then there are times when the member themselves would be in contact with our office trying to progress their position.¹⁸²⁷

Ms Carr was asked whether she had perceived any action taken in respect of Garda Keogh as targeting or discrediting:

¹⁸²⁶ Tribunal Transcripts, Day 134, p. 64, Evidence of Ms Monica Carr

¹⁸²⁷ Tribunal Transcripts, Day 134, pp. 73-75, Evidence of Ms Monica Carr

*No. Certainly from the correspondence that we would have received, it would be what I would have expected. I reviewed the file and it would be what I would expect, that the superintendent and the chief superintendent would be sending up correspondence, looking to get the support of the Chief Medical Officer for the individual. I didn't see anything different in this than on numerous other files that I would review.*¹⁸²⁸

Mr Alan Mulligan

Mr Mulligan was the HR Director at An Garda Síochána prior to becoming the Acting Executive Director, HRPD on 1st November 2018.¹⁸²⁹ He was appointed, along with C/Supt Anthony McLoughlin, as a protected disclosures manager for An Garda Síochána in May 2016.

In his statement to the tribunal he outlined the following:

*In late September 2016, I recall a meeting with Chief Superintendent Anthony McLoughlin, HRM and the Executive Director of HR&PD, Mr. John Barrett. I cannot recall the exact date of this meeting as I have not retained a note or record of the meeting. Both Chief Superintendent McLoughlin and I had recently been appointed as Protected Disclosure Managers for An Garda Síochána in May 2016. To this end I was a conduit or recipient for workers within An Garda Síochána who wished to make a Protected Disclosure....I was aware that Garda Keogh was certified medically unfit for duty and not on the payroll. From this meeting I understood that Garda Keogh required financial assistance however his absence and pay status was governed under the sick pay regulations for An Garda Síochána. I had previously written to the Department of Public Expenditure for advice and clarification in respect of this type of situation which was identical to that of Garda Keogh. Having discussed the matter and circumstances of Garda Keogh at length with Chief Superintendent McLoughlin and Mr. Barrett it was determined that in the interest of Garda Keogh's wellbeing, health and in order to provide him with support it was decided as a collective that Garda Keogh should be restored to the payroll.*¹⁸³⁰

Mr Mulligan said that this decision was made by Mr Barrett and he agreed with it. He stated that he had no discussion with the Garda Commissioner in relation to the matter or the decision taken.¹⁸³¹ He stated that:

The decision to restore a member to full pay will rest with the Executive Director, Human Resources & People Development, based on advices he/she receives from other stakeholders. In this set of circumstances a decision was made based on the best available advice. An Garda Síochána were very alert to the dangers of penalisation of the member, and this informed the decision that was made at that time.

*Since this particular issue happened, An Garda Síochána have received further legal advice which is referred to in any similar circumstances that may potentially arise in the future.*¹⁸³²

Mr Mulligan was cross-examined by counsel on behalf of Garda Keogh about the Code 11.37 process. He gave evidence that:

... My understanding is, for most 11.37s the application is made directly to your chief, and the chief obviously and the Chief Medical Officer can get involved in it. There can be cases, however,

¹⁸²⁸ Tribunal Transcripts, Day 134, p. 77, Evidence of Ms Monica Carr

¹⁸²⁹ Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829

¹⁸³⁰ Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829 at p. 3831

¹⁸³¹ Tribunal Documents, Report of Mr Alan Mulligan, dated 27th January 2020, p. 16181

¹⁸³² Tribunal Documents, Report of Mr Alan Mulligan, dated 27th January 2020, p. 16181

*were a chief for some reason states they can't make a decision on it and it can be sent to HRPD on that basis. It wouldn't happen that often, to be honest with you. And in a lot of cases, if I was dealing with it myself, because I am not down in the division, in a lot of cases I wouldn't know the person, I would usually send it back and look for some clarity or further work done.*¹⁸³³

Mr John Barrett

Mr Barrett was the Executive Director, HRPD from 3rd October 2014. As noted above, Mr Mulligan became the Acting Executive Director, HRPD, on 1st November 2018.¹⁸³⁴

In his interview with tribunal investigators, Mr Barrett outlined how the issue of Garda Keogh's pay came to his attention:

*On about the third week of September 2016, this issue was brought to my attention. I convened a meeting to determine how we should respond to Garda Nicholas Keogh's situation vis-à-vis pay. At that meeting, I decided to reinstate him on a full-pay basis with retrospection to 26th December 2015 based on a recommendation. I am recalling the happening of the meeting from memory but the details from the chronology of Anthony McLoughlin's statement to the Tribunal. I do not have an exact date of this meeting as I am making this statement without access to my contemporaneous records at present.*¹⁸³⁵

In respect of the classification of Garda Keogh's sick leave, Mr Barrett stated that this issue would come to his attention only by exception and that:

*So, these matters are dealt with according to the policy, save in exceptional circumstances that would require some judgment to be taken. These would routinely be flagged by Monica Carr, the acting Head of Administration for An Garda Síochána Human Resources, based at Athlumney House, Navan, Co. Meath. Exceptions as they arise – an example would be people coming to the end of sickness entitlement wherein they would have exhausted their full entitlement of paid sick leave. They would routinely come off payroll. They go onto Temporary Rehabilitation Remuneration (TRR). In circumstances where you had in most of the exceptional cases protected disclosers or victims of bullying and harassment or other forms of harassment, the question would arise "is the house responsible?" i.e. do we have a culpability for this, and that would give rise to a conversation by exception. Alan Mulligan would be the first point of escalation and if we needed to make a big call on this, like in the case we did with Sergeant Maurice McCabe and Garda Nicholas Keogh, it would come to me.*¹⁸³⁶

With regard to his involvement with the classification of Garda Keogh's sick leave and the meeting in September 2016, he told tribunal investigators:

This was examined and there was a lot of unsatisfactory process issues and there were questions arising, and in light of all the circumstances that we were aware of, we made a determination that he would be returned to payroll or returned to full pay, that he would be restored to full pay to a date that I believe was backdated. Just in relation to the process issues I have referred to, Garda Keogh had raised questions about classification of illness. He had felt that matters were misclassified. There was a clear conflict between what was in our records and what he was saying should have been in our records. We took the view we would give him the benefit of the doubt in all of this, and any suggestion that he was going to be economically marginalised or

¹⁸³³ Tribunal Transcripts, Day 144, pp. 110-111, Evidence of Mr Alan Mulligan

¹⁸³⁴ Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829

¹⁸³⁵ Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at pp. 15971-15972

¹⁸³⁶ Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at p. 15979

disadvantaged would be taken off the table. That was the basis for the decision. Alan Mulligan, Chief Superintendent Tony McLoughlin and I discussed this matter at a meeting. I do not know the date of the meeting as I do not have access to my electronic diary, but it was prior to the recommendation to restore Garda Keogh to full pay dated 26th September 2016. There was a discussion. From recollection, the Employee Assistance Officer, Mick Quinn, was on point and close to Garda Keogh. We were concerned for the man and reports that he lives on his own, as I understand it, had occasional engagements with alcohol, it was reported to us, and he was suffering hardship. We were concerned. One of the things that was objected to in the absence records was the use of mental health as a label. I think there was a genuine concern for the man at that meeting. We said look, in order for this to be properly dealt with, it is unfair and unreasonable to simply apply the rules in their rigidity. They were the kind of human considerations that were brought to bear.¹⁸³⁷

He said that this was done *'in very, very, very infrequent situations. So there was concern about whether we were establishing a precedent. We had done it for Sergeant McCabe. And in these circumstances the view was that we were taking a greater risk not to restore Garda Keogh to full pay. That's my recollection of that'*.¹⁸³⁸

In respect of the decision to restore Garda Keogh to full pay in September 2016, Mr Barrett told the investigators that:

Ultimately, it would have been my call to reinstate Garda Keogh to full pay, but I would have consulted with Alan Mulligan and Chief Superintendent Tony McLoughlin because they were both Protected Disclosure managers, so there was that element to this issue... It would have been my decision to make a recommendation to reinstate Garda Keogh to full pay. I would have sought the Garda Commissioner's approval, and a letter of recommendation issued to the Garda Commissioner. The recommendation is exhibited by Chief Superintendent Tony McLoughlin in his statement as TML38 and is dated 26th September 2016. I couldn't tell you now if I made notes of that meeting.¹⁸³⁹

He said that he had no recollection of an input from Garda Keogh's district or divisional officer in respect of the decision-making process to restore Garda Keogh to full pay and stated that:

I can't recall having any representative from them at the meeting. I think there would have been [a] series of requests made from the individual himself looking for restoration, and Divisional Management would have been fully aware of this, although ultimately, the decision rests with HRM. We would have been conscious that this wasn't the first time he would have asked for restoration. A call needed to be made on this.

In relation to the input of the district or division in cases, things like Chapter 11.37 of the Garda Code (Injury on duty investigation) is determined by Chief Superintendent, and in such circumstances, the Chief Superintendent wouldn't consult with HR. There may be situations where there would be a series of case conferences, particularly on medical issues, injuries on duty (11.37 of the Garda Code), there are defined owners for certain anomalies. In this case, the issue was a B&H issue that sat primarily with us, so the authority was in effect mine to decide what we do, subject to approval by the Commissioner, because it is an anomaly as we are effectively

¹⁸³⁷ Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at pp. 15980-15981

¹⁸³⁸ Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at p. 15981

¹⁸³⁹ Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at pp. 15982-15983

*stepping outside the Absence from Work Policy. I don't think this authority is set out anywhere in writing/process. We have done it so sparingly; I can count the cases on one hand.*¹⁸⁴⁰

In respect of whether the decision to restore Garda Keogh to full pay reflected a prior lack of support for him within An Garda Síochána, Mr Barrett stated that:

*I wasn't guided by righting any wrong here. That was not the consideration. The consideration was far more humane. Garda Keogh was off the payroll since the previous December. Confidential information was being made available to Chief Superintendent Tony McLoughlin through the EAS system who brought to the table the views of Garda Mick Quinn and others, indicating that Garda Keogh was in extremis. Part of the background at that time, I don't know what the figure is now, but we had significant numbers of suicides of members of An Garda Síochána annually at that time. I wasn't seeking to override any wrong. Rather, it was entirely proper intervention in the circumstances. The reports that we had at our disposal said that Garda Keogh was under stress and pressure. And so, in the circumstances, we made a recommendation and, in my view, we did the right thing.*¹⁸⁴¹

Mr Barrett was asked by counsel for the tribunal whose responsibility it was to investigate the cause of work related stress:

It's for the chief to determine whether or not there is a causal link. Historically, Chairman, and I am saying this only to be helpful to the Tribunal, injury on duty, which is matter in the Garda Code dealt with at 11.37, I think you dealt with this in the course of your inquiries.

It was always considered very simple blunt force injury on duty kind of concept. With the development of medical science around Post Traumatic Stress Disorder and PTSD generally and it being a real issue, work related stress was given some consideration. There was a working group set up to give consideration to how that would be dealt with.

I think Chief Superintendent McLoughlin was originally involved in drafting a HQ Directive, which put the onus on the chief superintendents to ensure that they carried out the enquiries at local level as to whether or not there was a link between an issue of work related stress and work.

Q. Yes. Would you accept on a general level that there would be a duty on your department to, as it were, ensure that that would be done?

A. Yes.¹⁸⁴²

He gave evidence in respect of C/Supt Wheatley's letter of 18th May 2016, and stated that it was when he '... became aware that we had a difficult problem to address.'¹⁸⁴³

Counsel on behalf of Garda Keogh asked Mr Barrett about the steps taken to investigate his work related stress:

Q. ... And can I just for the absolute clarity, there's only one direct meeting between Superintendent Murray and my client, Garda Keogh, and that is on the 26th March 2015. So that predates the request for the work related stress investigation and there was no further attempts made by anyone to contact Garda Keogh about the source of this stress.

¹⁸⁴⁰ Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at pp. 15983-15984

¹⁸⁴¹ Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at pp. 15984-15985

¹⁸⁴² Tribunal Transcripts, Day 150, p. 17, Evidence of Mr John Barrett

¹⁸⁴³ Tribunal Transcripts, Day 150, p. 30, Evidence of Mr John Barrett

- A. *I am at a significant disadvantage here in the sense that I will take your word for it. And I can say that I did rely upon the kinds of reports that are received, as I did not just from ChiefWheatley but from chiefs all over the country when matters became contentious. I would expect and I think anybody in the room would expect that in circumstances like this there would be an honest, open and adult to adult conversation as to why people are absent from work and what is the nature of the stress and what are the stressors and what are the symptoms of the stress and how does it manifest itself. All the normal, lay person, interested enquiries that should be made around topics like that. And any organisation, and I say this as somebody who has a considerable amount of experience in guiding organisations on stuff like this, any organisation would be concerned to understand sources of stress and distress for its employees. Because they impact proper functioning. So when I get a report that tells me this, I take it at face value because it should be so.¹⁸⁴⁴*

He was also asked whether an officer from a different division could have the role of investigating officer:

Of course.

Q. *So that is something that is in place and happens?*

A. *It happens all the time by local arrangement right throughout the country. I'm sure there is probably meetings going on now under that particular format.¹⁸⁴⁵*

Counsel on behalf of An Garda Síochána cross-examined Mr Barrett as follows:

Q. *Garda Keogh, who was independently legally advised, as any guard would be, would be aware of the 11.37 procedure?*

A. *Yes.*

Q. *Chief Superintendent Wheatley shows her good faith by explaining to your office exactly the difficulty that she has in completing an investigation into the cause of the work related stress. And that is associated with the very single fact that Garda Keogh has invoked his status as a protected discloser not to engage with Superintendent Murray on this issue?*

A. *I'm not impugning ChiefWheatley at all. What she wrote I read to be the position.*

Q. *I'm not suggesting you are impugning the Chief but what I want to make clear, her motives have very clear here. Her motives are, she is telling head office this is the problem, this is the reason why we haven't got an investigation and if you still think an investigation is needed –*

A. *Get somebody else, yeah.*

Q. *... then there is the opportunity to appoint another to investigate it?*

A. *Understood.*

Q. *That plays into ...*

A. *It does.*

¹⁸⁴⁴ Tribunal Transcripts, Day 150, pp. 129-130. Evidence of Mr John Barrett

¹⁸⁴⁵ Tribunal Transcripts, Day 150, p. 136, Evidence of Mr John Barrett

- Q. ... cross-examination by Ms. Mulligan, who raised the issue with you as to whether or not engaging with outside investigators was something that is done from time to time?
- A. It is, and I think we are clear on that.
- Q. So Chief Superintendent Wheatley actually engaged even with that issue as well?
- A. She did.
- Q. Yes.
- A. I think Chief McLoughlin, to his credit, had already found a different bridge to try and address the matter.
- Q. And that's the point I am making, is that the problem was created as a result of Garda Keogh forming a view that as a protected discloser he didn't have to engage with local management on the issues that he says now were causally related to the work related stress because he is a protected discloser. And the work around it was fine, the local division went as far as they could, and the local management went as far as they could and told your office they went as far as they could, and then your office and Tony McLoughlin found a work around to that; isn't that really the case?
- A. That is the case.¹⁸⁴⁶

Legal Submissions

Garda Nicholas Keogh submitted as follows:¹⁸⁴⁷

- that he was targeted by Supt Murray who caused Garda Keogh to become pay affected by the failure and/or refusal to complete a work related stress investigation. Garda Keogh was reduced to TRR pay, or pension pay, for more than 12 months.
- that C/Supt Wheatley failed in her duty to conduct a work related stress investigation and, in addition, failed to provide an accurate account to the tribunal about the aforementioned investigation to the discredit of Garda Keogh.
- that C/Supt Wheatley and Supt Murray sought to place the investigative obligations on the CMO, who gave clear contradicting evidence as to the process and procedure for establishing whether the work related stress was an injury on duty. This, it was submitted, undermined their credibility in relation to this issue and to the tribunal as a whole.
- that it was difficult to accept the *bona fides* of Supt Murray's assertion that one meeting was sufficient to absolve local management of their responsibilities under HQ Directive 139/10. Mr Barrett's evidence made it clear that he believed that there had been several attempts to engage with Garda Keogh in a work related stress investigation and admitted that, from the paperwork presented it appeared that several meetings took place when in fact only one occurred.
- that Mr Barrett agreed that if there had only been one meeting with Garda Keogh and if he had not been given notice of the purpose of that meeting, then that investigation would have been *'improper'* and *'insufficient'*.

¹⁸⁴⁶ Tribunal Transcripts, Day 150, pp. 156-157, Evidence of Mr John Barrett

¹⁸⁴⁷ The tribunal has considered all of Garda Nicholas Keogh's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 14-31 and pp. 172-177

- that Supt Murray confirmed that the meeting of 26th March 2015 was in fact the very first time he met Garda Keogh and that it '*was a problem-solving meeting*' as far as he was concerned.
- that the second report of Supt Murray dated 20th May 2015 was made without any recourse to Garda Keogh and there were a number of details added, in particular, that '*I discussed his work absences including the fact that his medical certificates were indicating that he was suffering from work related stress*'.
- that there was no evidence, either in his original note or in his original diary entry, that Supt Murray had, in fact, discussed either Garda Keogh's medical certificates or his stress, other than to dismiss it, and the absence of any substantive paperwork regarding attempts at an investigation undermine the *bona fides* of Supt Murray's evidence to the tribunal.
- that there was a material inconsistency in C/Supt Wheatley's position as, if C/Supt Wheatley honestly believed that Garda Keogh would not be in a position to engage with the investigation to such an extent that she did not need to meet Garda Keogh, then why was Supt Murray charged with the task?
- that Mr Barrett confirmed that it was possible to appoint an investigator from outside the division where necessary and in fact went as far as to say that it '*happens all the time*', and he confirmed further that the making a protected disclosure was not a bar to having a work related stress investigation.
- that if Garda Keogh made it clear that the source of his stress was the Ó Cualáin investigation, C/Supt Wheatley was not absolved of her responsibility to conduct the investigation and her obligations under HQ Directive 139/10 continued.
- that Dr Oghuvbu gave exceptionally clear evidence regarding his role in the process of determining when an injury of duty certificate could be issued. It was the evidence of Dr Oghuvbu that the classification of absence was not the role of the Garda Occupational Health Service.
- that Dr Oghuvbu confirmed that management had not sought an opinion in relation to the classification of Garda Keogh's injury and that, in those circumstances, he took it upon himself to highlight this issue in his report. He outlined that there was a specific process whereby garda management sought to have a member assessed for work related stress.
- that while it was the evidence of C/Supt Wheatley that it was not within her gift to make a determination of injury on duty, Dr Oghuvbu confirmed that where management have a doubt as to classification, they would seek his advice. Thereafter, the chief superintendent would make a decision based on that advice. Dr Oghuvbu made clear that the CMO does not carry out the investigation.
- that Mr Barrett was categorically clear that the responsibility of a work related stress investigation rested with C/Supt Wheatley. He was equally clear that she may delegate the role of investigator to another member; however that delegation does not absolve her of her responsibility under HQ Directive 139/10. As Mr Barrett put it, it was the '*Chief's prerogative*' to ensure there was a local investigation so that a report could be sent on for administrative purposes and the matter could be resolved and progressed.

- that Supt Murray was asked to complete a full investigation on 7th May 2015 and he failed, refused, or neglected to undertake that investigation.
- that there was no investigation of any kind and any assertion that such an investigation took place was an attempt to retrofit an investigation into the first meeting Supt Murray had with Garda Keogh.
- that it was never put to Garda Keogh that he was required to complete a full report to HR in accordance with Code 11.37, it was never put to him that his pay would be affected if he did not cooperate and Garda Keogh was deprived of the opportunity to make his position known because Supt Murray believed that Garda Keogh was an alcoholic and nothing more.
- that C/Supt Wheatley failed to take proper steps to ensure there was an investigation.
- that there was no *bona fide* attempt to investigate Garda Keogh's stress and therefore preserve his pay.
- that depriving Garda Keogh of his income constituted targeting and fundamentally undermined his trust and confidence in garda management.
- that, while Garda Keogh was eventually restored to basic pay, he was, and continues to be, denied the opportunity to avail of full pay.

An Garda Síochána submitted as follows:¹⁸⁴⁸

- that Garda Keogh was placed on a reduced pay rate of pay once he crossed a threshold of 183 days' absence in a four-year period in accordance with the sick leave regulations, which applied across the public service from 31st March 2014.
- that Garda Keogh was not aware of this system at the time, but now understood that the CMO was not responsible for the classification.
- that Garda Keogh confirmed that he had received regular written notifications informing him that he was approaching 183 days on sick leave.
- that Garda Olivia Kelly was the officer responsible for recording the category of a member's illness on the Sickness Absence Management System (SAMS) and she explained that there was no category on SAMS for '*work related stress*'.
- that Garda Keogh accepted in evidence that Garda Kelly was responsible for the relevant inputs and he had no issue with what she did.
- that C/Supt McLoughlin explained to the tribunal that there was a misunderstanding that a diagnosis of work related stress automatically led to an '*award*' of injury on duty. Notwithstanding that this misunderstanding was explained to Garda Keogh by C/Supt McLoughlin, he still persisted with the allegation that An Garda Síochána had somehow sought to deny that his doctor had assessed him as suffering from work related stress. The evidence showed clearly that this was not the case.
- that C/Supt Wheatley, Supt Murray, Dr Oghuvbu and C/Supt McLoughlin at all times acted fairly toward Garda Keogh and had due regard for his welfare.

¹⁸⁴⁸ The tribunal has considered all of An Garda Síochána's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 70-172 and pp. 177-179

- that in October 2016, Garda Keogh's full remuneration was restored, following a recommendation from C/Supt McLoughlin, and it was backdated to 26th December 2015. C/Supt McLoughlin noted at the time that Garda Keogh was appreciative of the support in this regard. It was established that Garda Keogh would not have received the same allowances that would have been payable if he had actually served duty but this was the position which applied to other members, aside from those who had made protected disclosures.
- that Supt Murray explained that he had no role in recording sick leave and that he had never entered data on to the SAMS system.
- that while it would appear that there was an ongoing process whereby garda management were attempting to interpret the sick leave regulations in conjunction with the Protected Disclosures Act, 2014, the sole task of the tribunal was to assess whether deliberate targeting of Garda Keogh has been disclosed and, if so, whether same was connected to his protected disclosure.
- that no evidence was adduced before the tribunal of a deliberate attempt to penalise Garda Keogh through a reduction in pay and action was taken by C/Supt McLoughlin on Garda Keogh's behalf the same day he became aware of the issue. Something of an exception was made in respect of Garda Keogh and full pay restored and backdated.
- that Garda Keogh complained in interview that no investigation had been conducted, but the evidence confirmed that both Supt Murray and C/Supt Wheatley tried to investigate the matter and were not successful due to Garda Keogh's expressed preference not to discuss the matter with them.
- that C/Supt Wheatley provided human resources with all the information at her disposal, indicating that there were no incidents in the workplace that she was aware of and every effort was made to improve Garda Keogh's situation. The extensive welfare engagements were set out by Garda Quinn in evidence. Far from garda management targeting Garda Keogh, the evidence suggests that C/Supt Wheatley sought guidance from HRM on how best Garda Keogh's position might be navigated, in the light of his stress at work issues and his status as a confidential reporter.
- that if the tribunal takes the view that an investigation should have been triggered sooner, that is not evidence of targeting/discrediting and there was no evidence of any exception being made in respect of Garda Keogh (except for the exception made in his favour).
- that Garda Keogh accepted that Supt Murray *'physically'* had no role but suggested that he had to have been aware of the situation and that he/C/Supt Wheatley *'had to have spotted it'* around the time of the investigation into his absence without leave (Issue 7), because he referenced work related stress in his appeal on the disciplinary findings. It is not reasonable to expect senior garda management to connect matters beyond their functions in this way.
- that, while it would appear that both Supt Murray and C/Supt Wheatley knew Garda Keogh was experiencing stress, there is no evidence that they knew this was not appropriately processed by the District Office and/or that they knew his pay was affected. There is no evidence that either of them had a hand in deliberately bringing about this

result, such as could constitute targeting, and it is submitted that the evidence suggests the contrary.

- that discrediting did not arise in respect of this issue because the pay issue was a confidential matter and did not affect Garda Keogh's reputation.

An Garda Síochána submitted by way of supplemental legal submissions as follows:¹⁸⁴⁹

- that the legal submissions by Garda Keogh altered the original formulation of this allegation to a considerable degree and he sought to reformulate his complaint by way of submission to make an allegation that Supt Murray failed/refused to complete a work related stress investigation.
- that Garda Keogh has moved his position without reference or apology to his previous one to either C/Supt Wheatley or to Supt Murray.
- that there was no evidence that Supt Murray or C/Supt Wheatley *failed* to carry out an investigation or *refused* or *neglected* to carry out an investigation. Garda Keogh had made his position clear; that he would not discuss issues that concerned his disclosures with local management.
- that, in addition to mending his hand on the nature of the historic allegation concerning classification of his illness as 'flu/viral', Garda Keogh had, without evidence, introduced a completely new and very serious allegation that C/Supt Wheatley failed to provide an *accurate account to the tribunal to the discredit of Garda Keogh*. It was not put to C/Supt Wheatley when she was being cross-examined by counsel for Garda Keogh that she was failing to give an accurate account of what transpired or that her credibility was at issue. As is the case with his previous allegations, this additional allegation was also without merit.
- that Garda Keogh or his legal advisers did not seek, even to this day, a determination under HQ Directive 139/10 and it is reasonable to speculate from the contemporaneous correspondence on this issue that had Garda Keogh claimed that his work related stress entitled him to an award of *injury on duty* by way of certificate under 11.37, and had he collaborated in that investigation, that all necessary investigations into that issue would have been conducted.
- that Garda Keogh belatedly claimed that the failure to carry out such an investigation in order to reach this determination is a *'breach of duty'*.
- that the issue of classification of the reason for his absence from work was raised by Garda Keogh for the first time in May 2016 in a letter to the then Minister for Justice and Equality. This complaint to the Minister illustrated Garda Keogh's firmly held views in May 2016 that he should not be subject to any process involving the CMO and that doing so was a form of victimisation. It was remarkable, having eschewed Supt Murray's attempt and deprecated the reviews arranged by local management with the CMO to the Minister, and never having sought a certificate for an award of occupational injury, that Garda Keogh now sought to impugn the actions of garda management in Athlone as a 'breach of duty'.
- that C/Supt Wheatley in her letter of 8th June 2016 to Mr Barrett neatly recorded her role and that of Supt Murray. Her position on this issue was clear and unambiguous and

¹⁸⁴⁹ The tribunal has considered all of An Garda Síochána's supplemental legal submissions on Issue 12 and what follows is a summary of the same.

could not reasonably be said to be targeting or discrediting Garda Keogh. Mr Barrett did not reply to C/Supt Wheatley on the necessity or otherwise of the investigation or on her suggestion to appoint an outside investigator if that was the correct course to take. Instead, the matter was resolved at HRM outside the terms of HQ Directive 139/10 and to the benefit of Garda Keogh.

- that Garda Keogh was treated in an exceptional way by An Garda Síochána when his pay was retrospectively restored as a special case, outside the terms of HQ Directive 139/10. In October 2016, just five months after his complaint concerning his classification was first made, he was restored to full pay and accommodated outside the existing sick pay rules for a pay award based on work related stress. His pay was backdated to the time when he became pay affected in December 2015. He remains in that position.

Discussion

This complaint began with the claim by Garda Keogh that Supt Murray misrecorded his certified sick leave absences as being due to *flu/viral* and not work related stress as diagnosed by his doctor.¹⁸⁵⁰ In his complaint to the tribunal Garda Keogh alleged that Supt Murray deliberately incorrectly recorded the reason for his absence from work in order to disadvantage him financially.¹⁸⁵¹ On 14th June 2016, Garda Keogh wrote a letter to the Minister for Justice and Equality, which was copied to the Policing Authority, the Garda Síochána Ombudsman Commission (GSOC) and Deputy Clare Daly. This letter included the statement: ‘... *I was recorded as being out sick with flu by superintendent Pat Murray despite my Doctors Certification of my condition as work related stress.*’¹⁸⁵²

The issue expanded during the hearings from being a relatively narrow and specific allegation about how Garda Keogh’s sick leave was recorded into larger questions of how An Garda Síochána dealt with him from the point of view of his medical classification, to include whether Supt Murray treated Garda Keogh fairly or reasonably when the latter explained at their first meeting on 26th March 2015 that he was suffering from stress, covering his absences and how they were recorded and the consequences of their being recorded as *ordinary illness* or *flu/viral* instead of work related stress, as certified by Garda Keogh’s general practitioner. This was also relevant to how his pay was or could be affected.

Garda Keogh had an impeccable attendance record until late 2011.¹⁸⁵³ From that time he had many absences, including a substantial period as an inpatient in a treating hospital for alcoholism. He is recorded absent for 44 days from 25th May to 8th July 2012, in addition to short absences ranging from one to four days.¹⁸⁵⁴ In 2013 he had total absences of 22 days, consisting of one 9-day period, two of 4 days and 5 single days.¹⁸⁵⁵

In 2014, the figures are a total of 28 days made up of one 6-day period, two of 5 days, one of 3 days, one of 2 days and seven 1-day periods.¹⁸⁵⁶

¹⁸⁵⁰ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 136

¹⁸⁵¹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 40-41 and p. 80

¹⁸⁵² Tribunal Documents, Letter from Garda Nicholas Keogh to the Minister for Justice and Equality, dated 14th June 2016, p. 148

¹⁸⁵³ Tribunal Documents, SAMS Absence Report, Garda Nicholas Keogh, pp. 10724-10725

¹⁸⁵⁴ Tribunal Documents, SAMS Absence Record, Garda Nicholas Keogh, p. 10721

¹⁸⁵⁵ Tribunal Documents, SAMS Absence Report, Garda Nicholas Keogh, p. 10721

¹⁸⁵⁶ Tribunal Documents, SAMS Absence Report, Garda Nicholas Keogh, p. 10721

In 2015, he had 80 days' absence in total, comprising two 12-day periods, one of 11 days, two of 5 days, six of 4 days, two of 3 days and 5 single days. Garda Keogh has been on continuous sick leave since 26th December 2015.¹⁸⁵⁷

Garda Keogh's doctor certified him as being absent with ordinary illnesses until late December 2014, when he began to certify work related stress, and he has continued that designation since then.¹⁸⁵⁸

Two quite separate questions arise on this issue; the first is about the designation of the reasons for Garda Keogh's absences, the second concerns the way that the certification of work related stress should have been dealt with.

The superintendent and the chief superintendent did not have any function or responsibility for recording sick leave or the certified reasons for it. The system was unable to record it as work related stress so the non-recording is simply a feature of the design of the system and nothing more. The garda who made the entry did her best to operate the system. The relevant point for this inquiry is that the officers were not involved in the recording process.

Accordingly, as to the first question, it is clear that neither C/Supt Wheatley nor Supt Murray can be faulted because they had nothing to do with the recording of the reasons for the sick leave absences. Garda Keogh's accusations in this regard are misguided. When it became evident that the superintendent did not have a role in making the SAMS record, Garda Keogh adopted the position that Supt Murray ought to have known how his sick leave was being recorded,¹⁸⁵⁹ but that is also incorrect.

As to the second question, Garda Keogh's supplemental submissions begin with a brief '*Synopsis of Garda Keogh's Case to the Tribunal*'¹⁸⁶⁰ and they then elaborate on these points under the heading '*Evidence grounding the submission*'.¹⁸⁶¹ The synopsis is set out in full here and relevant points of the detailed argument are discussed later. The synopsis reads:

It is Garda Keogh's case he was targeted by Superintendent Murray by causing Garda Keogh to become pay affected by failing and/or refusing to complete a work-related stress investigation. It is further submitted that Chief Superintendent Wheatley failed in her duty to conduct a work-related stress investigation and, in addition, failed to provide an accurate account to the Tribunal about the aforementioned investigation to the discredit of Garda Keogh. It is Garda Keogh's case that if an investigation had taken place into his work related stress, he would have had the opportunity to remain on full pay by being categorised as having an injury at work.

Chief Superintendent Wheatley was responsible for the undertaking of the investigation and she delegated the task of undertaking the investigation of work-related stress to Superintendent Murray without following the proper procedure, thus depriving Garda Keogh of any opportunity to be notified of the investigation and to engage with same. Superintendent Murray meanwhile, failed to carry out the request of Chief Superintendent Wheatley and, instead, purported to conduct an "investigation" thus ensuring that no actual further investigation did occur. The consequence of this was that Garda Keogh was reduced to TRR pay, or pension pay, for more than 12 months.

¹⁸⁵⁷ Tribunal Documents, SAMS Absence Report, Garda Nicholas Keogh, p. 10721

¹⁸⁵⁸ Tribunal Documents, Sick Certificates from Dr John Bartlett, pp. 10726-10784

¹⁸⁵⁹ Tribunal Transcripts, Day 103, pp. 17-18 and Day 109 pp. 16-18, Evidence of Garda Keogh

¹⁸⁶⁰ Supplemental Legal Submissions on behalf of Garda Nicholas Keogh, pp. 1-2

¹⁸⁶¹ Supplemental Legal Submissions on behalf of Garda Nicholas Keogh, pp. 2-3

In addition, their evidence to the Tribunal sought to place the investigative obligations on the Chief Medical Officer, who gave clear contradicting evidence as to the process and procedure for establishing whether the work-related stress was an injury on duty. This, it is submitted, undermined their credibility in relation to this issue and to the Tribunal as a whole.¹⁸⁶²

Supt Murray did not carry out a work related stress investigation pursuant to HQ Directive 139/10 in respect of Garda Keogh. He explained in his letter to C/Supt Wheatley dated 20th May 2015 why he was unable to comply with the direction from HRPD concerning an investigation. Referring to their meeting on 26th March, he said that Garda Keogh ‘*was reticent to discuss the work related stress he indicates he is suffering from*’ and so:

In these circumstances I cannot further explore the situation with the member. I am aware anecdotally that a full investigation is being carried out into the member’s claims of corruption and malpractice. I have no further information in relation to that investigation. I understand that the member is engaging with the welfare service via the investigation he is involved in. I did however advise him of its benefits to him.¹⁸⁶³

Garda Keogh confirmed that he had not been willing to discuss the causes of his stress with the superintendent. His diary entry for the meeting of 26th March 2015 includes: ‘*conversation re sick stress told him to do with investigation legal advice couldn’t discuss with him he said he would have to send me to CMO*’.¹⁸⁶⁴

The superintendent’s explanation to his chief superintendent of why he did not carry out an investigation into Garda Keogh’s work related stress has the merit of clarity. He did not ‘*fail, refuse or neglect*’ to investigate, as submitted on behalf of Garda Keogh; he said that he was unable to do so in view of the attitude of Garda Keogh. C/Supt Wheatley passed on that information to Mr John Barrett by letter of 26th May 2015.¹⁸⁶⁵

The absence of an investigation meant that the question of injury at work resulting in a decision by the chief superintendent under Code 11.37 did not proceed to further investigation.

Garda Keogh’s submissions contend that Supt Murray deprived Garda Keogh of the opportunity to claim injury at work because he believed he was an alcoholic and nothing more, or because he did not take account of the stress and pressure Garda Keogh was under as a result of being a whistleblower. In respect of the first of these suggestions, counsel for Garda Keogh suggested to Supt Murray that he considered him to be a drunk but the witness firmly rejected that.¹⁸⁶⁶ The charge is easy to make and difficult to refute but there is no evidence to support the allegation.

The submission is also made that the superintendent failed to take account of the stress and pressure that Garda Keogh was under. That point is a very different one from the accusation of targeting by deliberate action intended to deprive Garda Keogh of a benefit to which he might be entitled. This is not an inquiry into forgetfulness or failure of duty as defined in the law of negligence. The submission also ignores the reason given by Supt Murray for not investigating.

It is submitted that Supt Murray purported to conduct some semblance of an investigation to ensure that no actual investigation occurred. This is not borne out by the superintendent’s letter to

¹⁸⁶² Supplemental Legal Submissions on behalf of Garda Nicholas Keogh, pp. 1-2

¹⁸⁶³ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 20th May 2015, p. 9436

¹⁸⁶⁴ Tribunal Documents, Diary entry of Garda Nicholas Keogh, p. 13304

¹⁸⁶⁵ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Executive Director HRPD, dated 26th May 2015, p. 6145

¹⁸⁶⁶ Tribunal Transcripts, Day 125, pp. 80-81, Evidence of Supt Pat Murray

the chief superintendent dated 20th May 2015¹⁸⁶⁷ as quoted above. Supt Murray did not pretend to have carried out an investigation. He explained clearly why he was unable, as he saw it, to do so.

Garda Keogh's submissions attack the credibility of C/Supt Wheatley and Supt Murray as witnesses at the tribunal based on allegedly misleading information supplied by them. It was submitted that *'it is difficult to accept the bona fides of the assertion that one meeting is sufficient to absolve Local Management of their responsibilities under HQ Directive 139/10'*¹⁸⁶⁸ but that is not a position adopted by C/Supt Wheatley and Supt Murray.

C/Supt Wheatley and Supt Murray did not seek to convey the impression in the paperwork presented that there had been several attempts to engage with Garda Keogh in a work related stress investigation when in fact only one occurred. Instead, each made the position clear in their reports in 2015 and in C/Supt Wheatley's June 2016 account.

The source of Garda Keogh's stress in this case did not affect obligations under HQ Directive 139/10. C/Supt Wheatley did not claim to be absolved of such because of her belief as to the source of Garda Keogh's stress. Her point in evidence was that he was not willing to discuss his stress when she spoke to him in 2016, which confirmed the position he had adopted with Supt Murray in March 2015.

It is also incorrect to propose that the report of C/Supt Wheatley dated 8th June 2016 was *'an attempt to retrofit the available material into a work related stress investigation to the discredit of Garda Keogh'*.¹⁸⁶⁹ However, there was no investigation, as the submission correctly points out. The reason is and was clear, whether it was a good or a bad reason. C/Supt Wheatley did not pretend otherwise.

C/Supt Wheatley expressly stated in her report of 8th June 2016 that it had not been possible to investigate and included an invitation to HRM to specify any further steps that might be required. She stated that:

*In view of the foregoing, it has not been possible to conduct a full investigation into Garda Keogh's absence through alleged work related stress, nor do I believe will any further or specific information be provided by Garda Keogh which would enable the further investigation of this claim. However, to be clear and to avoid doubt, I am to enquire if there is any requirement to further investigate Garda Keogh's absence through alleged work related stress.*¹⁸⁷⁰

This letter was sent to Mr John Barrett. C/Supt Wheatley confirmed in her evidence to the tribunal that she did not receive any reply and that she sent a reminder six weeks later: *'No, I sent a reminder six weeks later. I suppose I moved on. But there has never been investigated, as I am aware'*.¹⁸⁷¹

The submissions seek to make a disagreement or, more accurately, a difference of understanding as to whose role it is to conduct a HQ Directive 139/10 investigation into an issue of credibility. The CMO made his understanding of the position clear, which was that it was not his function to rule on an issue of work related stress unless he was specifically asked for his advice. His call was whether a member was fit for duty; other questions required a specific reference and he could

¹⁸⁶⁷ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 20th May 2015, p. 9436

¹⁸⁶⁸ Supplemental Legal Submissions on behalf of Garda Nicholas Keogh, p. 3

¹⁸⁶⁹ Supplemental Legal Submissions on behalf of Garda Nicholas Keogh, p. 7

¹⁸⁷⁰ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Executive Director HRPD dated 8th June 2016, pp. 6169-6171 and pp. 3267-3269

¹⁸⁷¹ Tribunal Transcripts, Day 132, p. 136, Evidence of C/Supt Lorraine Wheatley

advise on them. That did not mean that a different, even incorrect, view of his remit was not genuine or truthful yet that is what the submission seeks to portray, with nothing other than the different understanding to support it. It is also worth noting that the Directive does envisage a role for the CMO:

*Where members report non-effective for duty as a result of an injury on duty or work related stress, a thorough investigation shall be carried out immediately and the outcome reported to Assistant Commissioner, H.R.M. for the attention of the C.M.O. The member concerned shall be advised of the Employee Assistance Service, Peer Support, and any other support deemed necessary. Local Management shall address the issues causing the member's stress.*¹⁸⁷²

Ms Carr's evidence was that the garda human resources section considered that stress was not an injury per se but could give rise to an injury, subject to the certification of the CMO.¹⁸⁷³ There needed to be an inquiry about the cause of the stress and a medical certification on behalf of the organisation.

The question whether Garda Keogh could avail himself of a decision pursuant to Code 11.37 that he was suffering from an injury on duty did not proceed so he was deprived of the opportunity to be paid at full rate when out sick because of work related stress. However, it is not correct that he is still deprived of that chance because the officers did not investigate in 2015; Garda Keogh is entitled to apply for a Code 11.37 decision now and has been at all relevant times but particularly since the issue arose in 2016.

The submission that Supt Murray or C/Supt Wheatley deprived Garda Keogh of his income goes further than any view of the evidence permits; the most that can be said, as is correctly submitted earlier, is that he did not get the opportunity to make his case for injury on duty benefit. The claim that what happened was done intentionally is rejected, as considered above.

The impact on pay due to absences when it occurred happened automatically by reason of the accumulated number of days lost and the operation of law in respect of the TRR provisions. Local management did not have power to exempt Garda Keogh from those provisions.

Rejection of the allegations as to malicious intent in the behaviour of Supt Murray and of dishonesty on his part and that of C/Supt Wheatley does not mean that they are to be absolved of responsibility or blame. The fact is that Garda Keogh did not get the investigation into his condition that HQ Directive 139/10 requires when a garda reports unfit for duty because of work related stress. That question remains to be addressed.

Conclusion

Supt Murray said that he would refer Garda Keogh to the CMO and he promptly proceeded to put that in train by sending a report to the divisional officer, C/Supt Wheatley.¹⁸⁷⁴ Garda Keogh regarded that as a hostile gesture and complained about being sent to the CMO. But that cannot reasonably be considered as targeting or as evidence of targeting, even on the assumption that the superintendent was sceptical or disbelieving of Garda Keogh's illness claim. Presented with a member whose history of absences and alcohol dependency issues had been flagged as causes of concern and who was ascribing his absences to stress which he was not prepared to discuss, it was an entirely reasonable, even prudent, thing to do.

¹⁸⁷² Tribunal Documents, HQ Directive 139/10 'Management of Sickness Absence', p. 8202 at p. 8205

¹⁸⁷³ Tribunal Transcripts, Day 134, pp. 43-45, Evidence of Ms Monica Carr

¹⁸⁷⁴ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 2nd April 2014, pp. 3270-3271

The referral to the CMO is also inconsistent with an intention to deprive Garda Keogh of his chance to establish that his condition qualified as an injury on duty. The doctor did have a role to play and it did not make sense to involve him if it was intended to prevent an investigation.

However, C/Supt Wheatley and Supt Murray should have appreciated the implications for Garda Keogh's sick pay of the diagnosis of work related stress and the possibility that it might be considered as an injury at work. They did not rely on any lack of knowledge but if there was any uncertainty it was dispelled by the direction from HRPD of 7th May 2015. Mr Mulligan wrote to C/Supt Wheatley, who referred the letter to Supt Murray.

You should now interview this member in order to establish the source of the member's stress and if it is suggested as being work related, a full investigation should be carried out.

This Branch requires a full report, referral form and medical certificates in accordance with Code 11.34 [sic] relating to the above named member's absence.¹⁸⁷⁵

The obligation was clear. It was to carry out an investigation into the work related stress as certified by Garda Keogh's doctor. The two officers did not undertake an investigation, as required by Garda policy and specifically directed by the Director of HRPD. The meeting of 26th March 2015 between Supt Murray and Garda Keogh was not a Code 11.37 investigation.

Whatever their opinions of Garda Keogh or his illness, here was an important question on which his rate of sick pay depended. He had an opportunity of having his illness certified – ultimately by the chief superintendent – as being an injury at work with the consequence that he would be on full pay for however long the illness persisted.

It does not follow that Garda Keogh would have succeeded in his claim to have suffered an injury on duty because that was the matter to be investigated. It is an issue of complexity and difficulty for An Garda Síochána and no doubt for other employers in the public service and private industry. But the garda scheme envisaged the very issue that arose with such a diagnosis and Garda Keogh was entitled to the opportunity of making his case for the relief that was available.

An investigation might well have proved difficult or even impossible. Garda Keogh might have maintained his position of refusing to discuss the cause or causes of his stress. Even if he cooperated fully the case might have presented perplexing issues such as identifying some event or circumstance at work to account for the stress. It was a very different kind of inquiry from the questions that might arise if a garda suffered a physical injury while on duty. It is understandable that C/Supt Wheatley considered that the CMO would be involved in the investigation and her view, even if contradicted by the latter's evidence, does not undermine her credibility as submitted on Garda Keogh's behalf.

Although there may be complicating features to be found in the circumstances of the case and the potential complexities, the simple point is that Garda Keogh's illness as certified called for a response in the form of an investigation and C/Supt Wheatley and Supt Murray did not carry that out, despite a specific requisition from HRPD. The explanation that Garda Keogh's previously expressed attitude made it impossible is unacceptable for a number of reasons. First, the 26th March 2015 conversation did not take place in the context of a Code 11.37 investigation. Secondly, Garda Keogh was entitled to be told what the purpose of the inquiry was and of the importance for him of cooperating. A full investigation was called for and an inquiry should have been undertaken to the fullest extent possible.

¹⁸⁷⁵ Tribunal Documents, Letter from Mr Alan Mulligan to Chief Superintendent Westmeath, dated 7th May 2015, p. 6144

The result as it ultimately worked out was that the newly appointed protected disclosures manager of An Garda Síochána, C/Supt McLoughlin, took a hand in the matter, adopting a pragmatic approach. Garda Keogh was at this point – in 2016 – in dire financial straits and it was a merciful relief for him to get normal pay plus a lump sum for arrears. That does not exclude any further claim as to pay but it made a big difference.

The full impact of the reduced sick pay may not have been obvious for Garda Keogh up until the beginning of 2016 because he was at work on full pay and allowances for most of the time so the effect, although undoubtedly significant, was not critical until it affected his whole income and not just his intermittent sick pay.

The tribunal's conclusion accordingly is that Supt Murray and C/Supt Wheatley were at fault in failing to pursue the work related stress investigation and to interview Garda Keogh, or to arrange for those things to be done by some other officer. Neither can HRPD escape criticism for not following up the letter of 7th May 2015 to ensure that the investigation was undertaken, to whatever extent was possible. It would also have been necessary to ensure that Garda Keogh understood the implications of the investigation of his condition and the importance for him of cooperating fully with it. C/Supt Wheatley and Supt Murray should have carried out a full investigation, including explaining the pay implications to Garda Keogh and the importance of cooperating. They should have investigated as best they could, even if he was not cooperating, or not cooperating fully.

It is only fair to C/Supt Wheatley, and to an extent also to Supt Murray, in mitigation of this criticism to refer to her letters of 8th June 2016 and 25th July 2016, in the second of which she concluded:

While these matters have been reported on by this office in the past, a decision in respect of the further investigation of this matter has not been received at this office. Accordingly in the interest of providing clarity and to avoid any doubt, I am to enquire if an investigation into the alleged work related stress of Garda Keogh is to be carried out locally.¹⁸⁷⁶

She had not received a reply before her transfer out of the division on 9th August 2016.

It is also relevant to record that the situation as laid out by C/Supt Wheatley was in effect accepted by HR in the sense that no further direction issued. At the time of her report, there had been detailed internal email discussion as to the problems that a Code 11.37 investigation presented for members, including Garda Keogh, in regard to pay and the difficulties in carrying out such investigations when local management might be perceived to be part of the problem.

At this time the problem, as it was recognised, of Garda Keogh's situation was in the hands of C/Supt McLoughlin, the newly appointed protected disclosures manager. He ultimately devised a solution, which HRPD agreed to recommend on 26th September 2016, that Garda Keogh be restored to full basic pay, together with payment of any arrears. This effectively parked the issue of an investigation into the claims of work related stress.

The solution found by C/Supt McLoughlin meant that there was no investigation of work related stress and no conclusion as to Garda Keogh's ultimate entitlement to a certificate under Code 11.37. That remains the case.

¹⁸⁷⁶ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Chief Superintendent HRPD, dated 25th July 2016, p. 3310

The fact that Supt Murray did not carry out a work related stress investigation pursuant to HQ Directive 139/10 in respect of Garda Keogh was not targeting. He believed, as he explained, that he was unable to do so in the stated circumstances. He was mistaken in thinking that his function did not require more, as was C/Supt Wheatley as his superior and the officer with primary responsibility, in respect of her function.

The openly declared position by these officers in their correspondence, the reference to the CMO and the absence of evidence of malicious intent exclude the suggestion of targeting in this case.

If Supt Murray wished to target Garda Keogh, as he is accused of doing in this issue, he could have done what it is suggested he did, namely, to purport to conduct an investigation or to contrive an unfavourable result. He would not have done as he did, explaining why he could not conduct an investigation.

It is also manifest that there is no connection between the defaults in this case and the protected disclosure.

CHAPTER 18

ISSUE 15: THE COMPLAINT MADE BY GARDA NICHOLAS KEOGH IN RELATION TO THE ALLEGED DENIAL OF COMMENDATIONS FOR HIS POLICE WORK DURING 2015

The Facts

An Garda Síochána provides for the recognition of police work which is exceptional for reasons including courage and excellence. In relation to courage, since 1923 the Scott Medal for bravery may be awarded. The conditions relating to this are set out in HQ Directive 136/2008.¹⁸⁷⁷

Commendations for exceptional police work are awarded to members of An Garda Síochána not above the rank of inspector when, in the opinion of the divisional commendation committee, the member has made a contribution beyond what is expected in the course of their normal duty or in respect of an occasion where the member performed excellent police work (HQ Directive 26/2003¹⁸⁷⁸). The criteria for a commendation are:

*A Commendation will be awarded to recognise exceptional performance where excellence is demonstrated under one or more of the following headings: Courage, Tenacity, Zeal, Innovation, Commitment, Observation.*¹⁸⁷⁹

Examples of such performance are outlined in the Directive and include:

- extreme personal risk
- demonstration of particular zeal, ingenuity or good judgement
- continuous or sustained exceptional performance
- outstanding individual or team work
- excellence in leadership/motivation of others
- significant contribution to improving efficiency
- outstanding investigative police work
- excellence in planning or co-ordinating operations.¹⁸⁸⁰

The Directive provides that commendations can be awarded in three categories: commendation with distinction, commendation with merit and commendation.¹⁸⁸¹ It further states that:

*Any member of An Garda Síochána may initiate the commendation system ... In the event that a member of Garda/Sergeant/Inspector rank fails to initiate the process, the onus rests with the District Officer or Officer in charge of the National Units to ensure the initiation of the process.*¹⁸⁸²

¹⁸⁷⁷ Tribunal Documents, HQ Directive 136/08, Scott Medal Award, dated 11th August 2008, pp. 8031-8033

¹⁸⁷⁸ Tribunal Documents, HQ Directive 26/03, Commendations for Excellent Police Work, dated 26th February 2003, pp. 8010-8014

¹⁸⁷⁹ Tribunal Documents, HQ Directive 26/03, Commendations for Excellent Police Work, dated 26th February 2003, p. 8010

¹⁸⁸⁰ Tribunal Documents, HQ Directive 26/03, Commendations for Excellent Police Work, dated 26th February 2003, p. 8010 at pp. 8010-8011

¹⁸⁸¹ Tribunal Documents, HQ Directive 26/03, Commendations for Excellent Police Work, dated 26th February 2003, p. 8010

¹⁸⁸² Tribunal Documents, HQ Directive 26/03, Commendations for Excellent Police Work, dated 26th February 2003, p. 8010 at p. 8011

The Directive provides for the establishment of a divisional commendation committee in every division, which shall comprise the divisional officer, who will act as chairperson, and two superintendents appointed by the chairperson. The committee is required to meet once every quarter to consider all cases that may be dealt with by the committee. A list of all commendations to be awarded shall be submitted on form E.P.W.3 to the Assistant Commissioner, Human Resource Management (HRM).¹⁸⁸³

The Directive envisages that the member's immediate supervisor shall complete a form E.P.W.1 where possible. A commendation may be awarded without awaiting the outcome of criminal proceedings, unless the divisional commendation committee or the commendation appeal board considers it prudent to await such outcome.¹⁸⁸⁴

A commendation appeal board is also established in each region and consists of the regional assistant commissioner and two independent chief superintendents. This appeal board will adjudicate on cases where:

- (a) the divisional commendation committee cannot agree on which category of commendation, if any, to be awarded
- (b) a member considers that he/she or another member should have been awarded a commendation
- (c) a member considers that he/she or another member is entitled to a commendation in a different category or
- (d) any case that the divisional commendation committee deem it prudent to forward to the Board.¹⁸⁸⁵

A commendation is recorded on the member's personal history sheet at District Office level.¹⁸⁸⁶

In her interview with tribunal investigators, Superintendent Noreen McBrien described the commendation process as follows:

*There is an EPW form where members are nominated. The nomination normally comes at the conclusion of court proceedings and the sergeants would send them up through the District Office, then they would be sent to the Chief Superintendent's office. There is a quarterly meeting of the Divisional Commendation Committee and a decision is made on the EPWs that are ready to be finalised on and allocated. Nominations are usually done by sergeants. I did sit on the Committee.*¹⁸⁸⁷

Superintendent Pat Murray told tribunal investigators that:

*The EPW1 is the policy relating to exceptional performance. It begins with the Sergeant's recommendations, is submitted to the Superintendent for recommendations and a decision is made by the Divisional Awards Committee chaired by the Chief Superintendent.*¹⁸⁸⁸

¹⁸⁸³ Tribunal Documents, HQ Directive 26/03, Commendations for Excellent Police Work, dated 26th February 2003, p. 8010 at pp. 8011-8012

¹⁸⁸⁴ Tribunal Documents, HQ Directive 26/03, Commendations for Excellent Police Work, dated 26th February 2003, p. 8010 at pp. 8011-8013

¹⁸⁸⁵ Tribunal Documents, HQ Directive 26/03, Commendations for Excellent Police Work, dated 26th February 2003, p. 8010 at pp. 8011-8013

¹⁸⁸⁶ Tribunal Documents, HQ Directive 26/03, Commendations for Excellent Police Work, dated 26th February 2003, p. 8010 at p. 8014

¹⁸⁸⁷ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at pp. 6267-6268

¹⁸⁸⁸ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3089

Chief Superintendent Lorraine Wheatley told tribunal investigators that:

*The (Exceptional Police Work) EPW1 form is completed by the member and it is submitted from the District Office to the Divisional office for consideration by a Divisional Board, who adjudicate on whether the award is merited and the degree of the award. In Westmeath Division, we had ceremonies to present awards. Sometimes good work will be brought to my attention through reports and I would remind members to complete the EPW1 Form.*¹⁸⁸⁹

The arrest of a burglar

While on duty on the night of 27th-28th October 2014, Garda Keogh arrested a person during the course of a burglary.¹⁸⁹⁰ The incident is more fully described in Garda Keogh's evidence¹⁸⁹¹ and was given a PULSE identification number.¹⁸⁹² Garda Kieran Dempsey was recorded as the investigating member on PULSE.¹⁸⁹³ Garda Keogh noted in his diary for 27th October 2014 that:

*Arrest Burglar in progress
No commendation from chief.*¹⁸⁹⁴

No recommendation or application for a commendation in the form of an E.P.W.1 was made or submitted by any member, including Garda Keogh and his immediate supervisors. Supt McBrien told tribunal investigators that:

*I actually complimented Garda Keogh on his duty at one point informally. On the date Nicholas Keogh refers to, I was on leave. As stated above, nominations are made at the conclusion of proceedings and are made by the sergeant.*¹⁸⁹⁵

No other members received or were nominated for a commendation in relation to this incident.¹⁸⁹⁶

The stabbing of a taxi driver

On 4th August 2015, there was an incident in Athlone wherein an elderly taxi driver was attacked and stabbed during the course of a robbery. Garda Keogh attended the scene and assisted in securing the vehicle and he removed bloodstained clothing for examination.

At the scene Garda Keogh reported the details of the incident by phone to the garda information services centre (GISC) to have the matter entered onto PULSE. Garda Keogh provided details of all the garda members who attended at the scene and confirmed that he was the investigating garda. The PULSE record on 4th August 2015 listed these members at the scene and Garda Keogh was listed as the investigating garda. The transcript of this call was made available to the tribunal.¹⁸⁹⁷ The incident was given a PULSE identification number.¹⁸⁹⁸

Sergeant Dermot Monaghan, having been apprised of the incident, sent an email at 04:33 hrs on the morning of 4th August 2015 to Supt Murray's office. This email gave details of the incident and then continued that:

¹⁸⁸⁹ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6128

¹⁸⁹⁰ Tribunal Transcripts, Day 103, pp. 76-77, Evidence of Garda Nicholas Keogh

¹⁸⁹¹ Tribunal Transcripts, Day 103, pp. 75-77, Evidence of Garda Nicholas Keogh

¹⁸⁹² Tribunal Documents, Letter from the Chief State Solicitor's Office to the Disclosures Tribunal, dated 16th July 2019, p. 13450

¹⁸⁹³ Tribunal Documents, Letter from the Chief State Solicitor's Office to the Disclosures Tribunal, dated 16th July 2019, p. 13450

¹⁸⁹⁴ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 27th October 2014, p. 13280

¹⁸⁹⁵ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6268

¹⁸⁹⁶ Tribunal Documents, Letter from the Chief State Solicitor's Office to the Disclosures Tribunal, dated 16th July 2019, p. 13450

¹⁸⁹⁷ Tribunal Documents, Recording of telephone conversation between Garda Nicholas Keogh and GISC, dated 4th August 2015, pp. 12638-12646

¹⁸⁹⁸ Tribunal Documents, PULSE Incident Summary Report, dated 25th March 2019, pp. 533-534

The car was towed to ABS Recovery for examination. Garda CCTV was viewed and further enquiries have to be carried out in relation to local CCTV. Family members were contacted. Garda Keogh is investigating member and will attend to further enquiries when he returns from Rest Days. A search was carried out by members under the _____ and in the general area of where the incident happened and nothing was found.

*Forwarded for your information please.*¹⁸⁹⁹

Garda Keogh recorded the incident in his diary and noted his four rest days until Saturday 8th August 2015, where he recorded for that day that *'i noticed i was removed on Pulse from stabbing Taxi man I seized clothes + car FE'*.¹⁹⁰⁰

The updated PULSE entry showed that Garda Niall Cogavin replaced Garda Keogh as investigating garda and the record¹⁹⁰¹ on 4th August 2015 said:

*[A]rea canvassed for cctv, both suspects can be seen walking on castlemaine street up as far as mardyke st where they got the taxi across from nuts corner pub all on cctv including garda cctv they have hoods up covering there faces. three premises we have to do call backs. statement to be taken i/p not in position for same this morning. he received 5 stitches to thumb and 5 stitches to his face.. Updated SOC Unit Vehicle examined 4/8/15 ..Photographed and swabbed..... updated gvso letter one sent along with infor leaflets email sent to cpo for contact with i/p, rang i/p mail box full no answer Incident recategorised to Robbery & Gardai Cogavin/Divilly assigned to investigate following decision of daily PAF meeting. Injured party interviewed and is recovering at home, has received stitches to his thumb and face. Investigations ongoing, cctv being examined. Updated 4.*¹⁹⁰²

The tribunal obtained clarification from Garda Aisling Shankey-Smith¹⁹⁰³ that at 12:38:50 hrs on 4th August 2015, 'Investigating Gda' was updated on the PULSE record from Garda Keogh to Garda Cogavin and that this update was made by Detective Sergeant Eamon Curley.¹⁹⁰⁴ Mr Brian Savage, senior PULSE architect at Garda Headquarters, confirmed that, if the investigating member was changed *'on the PULSE front end'*, the name of another member who previously held that role would automatically disappear from the entry and would only be available from the audit data.¹⁹⁰⁵

A second robbery took place later on the afternoon of 4th August 2015. In a summary of matters later prepared by D/Sgt Curley for the completion of an E.P.W.1 Commendation for Excellent Police Work, he stated that:

An investigation commenced following the first robbery and expanded to include the second robbery when some elements indicated that the crimes may be the work of the one group of offenders. CCTV examination by D/Gardai Divilly and Cogavin identified two potential suspects for the robbery of the taxi driver. Consequently a search under warrant was conducted on the 5.8.2016 at a house at _____ Athlone which resulted in the recovery of clothing worn by one of the robbers and the arrest of a suspect namely _____.

¹⁸⁹⁹ Tribunal Documents, Email from Sgt Dermot Monaghan to Supt Pat Murray, dated 4th August 2015, p. 14706

¹⁹⁰⁰ Tribunal Documents, Diary entries of Garda Nicholas Keogh, dated 3rd-8th August 2015, p. 13323

¹⁹⁰¹ Tribunal Documents, PULSE Incident Summary Report, dated 25th March 2019, p. 533

¹⁹⁰² Tribunal Documents, PULSE Incident Summary Report, dated 25th March 2019, p. 533 at p. 534

¹⁹⁰³ Tribunal Documents, Letter from the Chief State Solicitor's Office to the Disclosures Tribunal, dated 27th May 2019, p. 12635 at p. 12636

¹⁹⁰⁴ Tribunal Documents, Statement of Garda Aisling Shankey-Smith, p. 6202

¹⁹⁰⁵ Tribunal Documents, Statement of Mr Brian Savage, p. 6203

Inquiries conducted during his detention led to the identification of other suspects which led Gardai to call at a home at _____ Athlone. This action resulted in the arrest of two further suspects namely _____ and _____.

The investigations continued throughout the 5.8.2016 and into the 6.8.2016 and led to the identification and arrest of two further suspects namely _____ and _____. By early morning of the 6.8.2016 all the suspects were in custody. Continued interviews throughout the day resulted in the recovery of the firearm (imitation) and baseball bat. Four offenders made extensive admission to their involvement in the robberies that occurred.¹⁹⁰⁶

The PULSE entry narrative was updated to reflect a summary of these events.¹⁹⁰⁷ The four suspects who were arrested were subsequently prosecuted on indictment and pleaded guilty in the Circuit Court. The full investigation file detailed every aspect of the matter and included all relevant statements and appendices.¹⁹⁰⁸ Garda Keogh did not make a statement or report in relation to his involvement, nor was one sought.¹⁹⁰⁹ He was not involved in any part of the investigation of the second reported crime.

As noted above, D/Sgt Curley completed an E.P.W.1 form in relation to these two investigations.¹⁹¹⁰ This was forwarded to the divisional officer by Inspector Nicholas Farrell on 29th September 2016.¹⁹¹¹ D/Sgt Curley did not include Garda Keogh as one of the eleven members recommended for commendation. He stated that:

This was an excellent detection which resulted from a timely intensive investigative process during which effective decisions were made regarding arrests and searches. This coupled with focused searches and coordinated interviewing of prisoners resulted in the compilation of sufficient evidence to lead to the convictions of all involved in both crimes.

The victims in this case have been in receipt of support and kept informed of progress of the investigation at each turn. While both victims have made good recoveries, _____ has since closed his business as a result of the attack.¹⁹¹²

There followed a summary of the involvement of each of the eleven members, the subjects of the E.P.W.1 application.¹⁹¹³ Garda Keogh's name was not included as being one involved in the investigation of this crime. The members outlined by D/Sgt Curley were as follows:

- Niall Cogavin D/Garda: Identify suspects, arrest suspects, charge & court attendance.
- John Divilly Garda: Identify suspects, arrest suspects, charge & court attendance.
- Sharon McMeeking Garda: arrest suspect
- Brian Keane: arrest suspect.
- Yvonne Martin: Execute search warrant, assist in investigation
- Dave Turner Garda: File preparation

¹⁹⁰⁶ Tribunal Documents, Form E.P.W.1 Commendation for Excellent Police Work p. 13454 at pp. 13455-13456

¹⁹⁰⁷ Tribunal Documents, PULSE Incident Summary Report, dated 25th March 2019, p. 533 at p. 534

¹⁹⁰⁸ Tribunal Documents, Reports relating to the incidents, with attachments pp. 14367-14479

¹⁹⁰⁹ Tribunal Transcripts, Day 103, p. 61, Evidence of Garda Nicholas Keogh

¹⁹¹⁰ Tribunal Documents, Form E.P.W.1 Commendation for Excellent Police Work, pp. 13454-13457

¹⁹¹¹ Tribunal Documents, Letter from Insp Nicholas Farrell to Chief Superintendent, Westmeath, dated 27th September 2016, p. 13453

¹⁹¹² Tribunal Documents, Form E.P.W.1 Commendation for Excellent Police Work, p. 13454 at p. 13456

¹⁹¹³ Tribunal Documents, Form E.P.W.1 Commendation for Excellent Police Work, p. 13454 at p. 13456

- Stephen Connolly Garda: Interview prisoner
- Eamon Curley D/Sergeant: Co-ordinate investigation.
- Padraig Shanley Garda: Interview suspects, Charge & Court attendance
- Shane O’Connell: Arrest of Suspect,
- Damien O’Rourke Garda: Interview Suspects, Charge & Court Attendance, Recovery of the weapons.¹⁹¹⁴

Supt Murray, as district officer in the district in which the incident occurred, stated in the comments section that:

*The investigative work carried out in these 2 cases was of a very high quality. The suspects were identified using sound police work as a basis for bringing the case to conclusion. The culprits are before the Circuit Court.*¹⁹¹⁵

The divisional commendation committee, chaired by Chief Superintendent Kevin Gralton, approved the application for commendation at its meeting on 24th August 2017¹⁹¹⁶ and the commendations were awarded to each of the eleven members concerned on 28th and 29th August 2017.¹⁹¹⁷

The River Shannon rescue

This incident was recorded on the PULSE system as a suicide attempt on 22nd September 2015 and the narrative stated that:

*Received phone call from Malin Head Coast guard, that a lady had telephoned them stating that she was in the river in Athlone. Gdai searched the banks of the river & found lady swimming in river at the Strand, Athlone. After several attempts, gdai removed lady from the water, ambulance was called. Lady was placed in the ambulance very agitated, Midoc was called to sedate the patient, patient transferred to Portiuncula hospital under gda escort.*¹⁹¹⁸

Garda Keogh’s name was at the top of the list of six gardaí whose role is recorded as ‘*assisting garda*’,¹⁹¹⁹ together with Sgt Monaghan, listed as the investigating garda; an inspector is outlined as the nominated supervisor. The incident was outlined to the tribunal by both Garda Keogh¹⁹²⁰ and Sgt Monaghan¹⁹²¹ Garda Keogh noted in his diary on 21st September 2015 that:

pulled lady alive out of Shannon by hair 4.00 a.m. 22.9.15

*Sgt Monaghan said he will look for commendations for the unit doubt I’ll get one.*¹⁹²²

Supt Murray completed an application form for a SEIKO Just in Time Rescue Award (Water Safety Ireland) in respect of this incident and submitted it with a letter dated 11th November

¹⁹¹⁴ Tribunal Documents, Form E.PW.1 Commendation for Excellent Police Work, p. 13454 at p. 13456

¹⁹¹⁵ Tribunal Documents, Form E.PW.1 Commendation for Excellent Police Work, p. 13454 at p. 13457

¹⁹¹⁶ Tribunal Documents, Form E.PW.1 Commendation for Excellent Police Work, p. 13454 at p. 13457

¹⁹¹⁷ Tribunal Documents, Commendations awarded, dated 28th and 29th August 2017, pp. 13459-13469

¹⁹¹⁸ Tribunal Documents, PULSE Incident Report, dated 27th November 2018, p. 9211

¹⁹¹⁹ Tribunal Documents, PULSE Incident Report, dated 27th November 2018, p. 9211

¹⁹²⁰ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 137; Tribunal Transcripts, Day 103, pp. 83-85, Evidence of Garda Nicholas Keogh

¹⁹²¹ Tribunal Documents, Statement of Sgt Dermot Monaghan, p. 609 at p. 612; Tribunal Transcripts, Day 131, pp. 102-103, Evidence of Sgt Dermot Monaghan

¹⁹²² Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 21st September 2015, p. 13330

2015.¹⁹²³ This related to the six garda members who were present on the night in question, including Garda Keogh and Sgt Monaghan. In this letter, Supt Murray described the incident in the following terms:

Same refers to an incident on the 22/09/15 at 03:00 am, following a phone call from Malin Head Coast Guard informing Gardai that a young female had rang in a distressed state stating that she was in the river Shannon in Athlone. Sergeant Dermot Monaghan, Garda Nicholas Keogh, Garda Kieran Dempsey, Garda Mary Murphy, Garda Karl Moore, Garda Johanna Connelly and Garda John Glennon, all of Athlone Garda Station rushed to the location and commenced searching thoroughly along the shoreline in an effort to locate the distressed female. Their search was severely hampered by the darkness and difficult weather conditions. They subsequently located the female about 15 feet from the bank swimming up and down. They spoke at length cajoling her and after several attempts removed her from the water.

The speed in which the members acted, their dedication and commitment in such inclement weather conditions ensured a positive outcome to what could possibly have been a tragic incident.

I highly recommend the nominees to be considered for a Seiko Just in Time Bravery Award.¹⁹²⁴

Supt Murray was notified on 2nd November 2016 by Sgt Monaghan that the members in respect of whom Supt Murray had made the recommendation in November 2015 had been invited to a presentation at Dublin Castle on Tuesday 8th November 2016 at 15:00 hrs in recognition of good work performed while rescuing a woman in the River Shannon on 22nd September 2015.¹⁹²⁵ This list of members included Garda Keogh and included an invitation to Garda Keogh and a guest for that purpose.¹⁹²⁶

On 25th October 2016, Inspector Aidan Minnock called to Garda Keogh with the invitation to the awards ceremony. This was noted by Garda Keogh on his calendar.¹⁹²⁷ Supt Murray recorded a note of the same date in his own diary:

Inspector Minnock called to Garda Keogh... Informed of nomination for SECO award. Queried credibility of that. Sergeant Monaghan supplied me with copy of invitation. I made the nominations including Garda Keogh.¹⁹²⁸

On 2nd November 2016, Supt Murray received a registered letter from the Personal Injuries Assessment Board authorising Garda Keogh to issue a plenary summons against him in the High Court.¹⁹²⁹

On 8th November 2016, Garda Keogh attended at Dublin Castle and received the Water Safety Ireland award.¹⁹³⁰ Supt Murray also recorded in his notes for 8th November 2016 that Garda Keogh attended the awards ceremony.¹⁹³¹

¹⁹²³ Tribunal Documents, Letter from Supt Pat Murray to Just in Time SEIKO Rescue Award, dated 11th November 2015, p. 2383

¹⁹²⁴ Tribunal Documents, Letter from Supt Pat Murray to Just in Time SEIKO Rescue Award, dated 11th November 2015, p. 2383

¹⁹²⁵ Tribunal Documents, Letter from Sgt Dermot Monaghan to Supt Pat Murray, dated 2nd November 2016, pp. 2384-2386

¹⁹²⁶ Tribunal Documents, Invitation from Water Safety Ireland to Garda Nicholas Keogh for the National Awards Ceremony 2016, p. 2386.

¹⁹²⁷ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 25th October 2016, p. 13357

¹⁹²⁸ Tribunal Documents, Diary entry of Supt Pat Murray, dated 25th October 2016, p. 2562

¹⁹²⁹ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2066

¹⁹³⁰ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 8th November 2016, p. 13358

¹⁹³¹ Tribunal Documents, Diary entry of Supt Pat Murray, dated 8th November 2016, p. 2564

On 13th April 2017, Garda Keogh issued a plenary summons in the High Court naming Supt Murray as a defendant. It alleged bullying and harassment, including the alleged denial of commendations.¹⁹³²

Supt Murray informed the tribunal that this was the second time he had nominated members for a SEIKO Just in Time Rescue Award,¹⁹³³ but in the previous instance, Garda John Teehan also received a commendation with merit.¹⁹³⁴

No recommendation or application for a commendation was made under the procedure laid down in HQ Directive 26/03,¹⁹³⁵ whether in relation to Garda Keogh or any other member, in respect of the rescue from the River Shannon on 22nd September 2015.¹⁹³⁶

The tribunal sought clarification in respect of the commendations received by Garda Keogh prior to the making of his protected disclosure on 8th May 2014¹⁹³⁷ and it was confirmed that Garda Keogh received the following commendations:

- Commendation for Good Police Work dated 18th March 2008 (Recovery of Stolen Property)
- Commendation for Good Police Work dated 18th November 2008 (Operation Anvil, Athlone)
- Commendation for Good Police Work dated 4th December 2008 (Theft)
- Commendation for Good Police Work dated 12th February 2010 (Possession of Drugs for Sale or Supply)
- Commendation for Good Police Work dated 15th July 2010 (Possession of Drugs for Sale or Supply)
- Commendation for Good Police Work dated 3rd August 2010 (Possession of Drugs for Sale or Supply)
- Commendation for Good Police Work dated 16th August 2010 (Possession of Drugs for Sale or Supply)
- Commendation for Good Police Work dated 22nd November 2010 (Possession of Drugs for Sale or Supply)
- Commendation for Good Police Work dated 7th January 2011
- Commendation for Excellent Police Work dated 21st March 2011 (Recovery of Stolen Property)
- Commendation for Good Police Work dated 7th June 2011 (Burglary)
- Commendation for Good Police Work dated 28th June 2011 (Possession of Drugs for Sale or Supply)

¹⁹³² Tribunal Documents, Personal Injury Summons, dated 13th April 2017, pp. 670-678

¹⁹³³ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2054; Investigator Interview of Supt Pat Murray, p. 3010 at p. 3091; SEIKO Just in Time Rescue Award Application, dated 19th August 2015, pp. 15284-15291

¹⁹³⁴ Tribunal Documents, Commendation with Merit for Excellent Police Work, dated 11th June 2015, p. 15292

¹⁹³⁵ Tribunal Documents, HQ Directive 26/03, Commendation for Excellent Police Work, dated 26th February 2003, pp. 8010-8014

¹⁹³⁶ Tribunal Transcripts, Day 131, p. 101, Evidence of Sgt Dermot Monaghan

¹⁹³⁷ Tribunal Documents, Letter from the Disclosures Tribunal to the Chief State Solicitor's Office, dated 23rd October 2019, pp. 15237-15238

- Commendation for Good Police Work dated 22nd July 2011 (Possession of Drugs for Sale or Supply)
- Commendation of Garda Nick Keogh dated 19th August 2013 (Assistance to the National Parks and Wildlife Service)
- Commendation for Excellent Police Work dated 4th December 2013 (arrest of person driving a stolen vehicle).¹⁹³⁸

It was also confirmed that Garda Keogh did not receive commendations for police work in 2009, 2012 or 2014.¹⁹³⁹

Complaint made by Garda Nicholas Keogh

In his interview with tribunal investigators, Garda Keogh stated that:

*After May 2014, I never got a commendation for anything but I did receive many commendations in the past, over the years.*¹⁹⁴⁰

The stabbing of a taxi driver

In respect of the alleged stabbing of a taxi driver, Garda Keogh outlined his involvement at the scene of the crime to tribunal investigators and stated that he was recorded on PULSE as the investigating garda member:

*This was a robbery whereby there was a stabbing of an elderly taxi man on 03/08/2015. To my recollection, I secured the vehicle at the scene which was then removed for examination. I also secured the injured party's blood stained clothing which was removed for examination. I phoned the GISC, Castlebar, to have the matter entered on PULSE. I also mentioned all of the Garda members that attended the scene and I requested that they be recorded as assisting Gardaí on PULSE. All the other Gardaí that were at the scene were recorded on PULSE. I was on the PULSE incident on 03/08/2015 or the 04/08/2015 as the investigating member.*¹⁹⁴¹

In his statement to the tribunal, he said that *'it was regarded as a success in that inter alia the crime was detected, the scene was preserved and suspects were apprehended'*.¹⁹⁴² Garda Keogh also stated that he became aware on 8th August 2015 that his name had been removed from the PULSE incident record:

*I was back in the Public Office on Saturday, 08/08/2015 when I noticed I had been removed from the PULSE incident altogether in relation to that incident.*¹⁹⁴³

He told tribunal investigators that:

What I mean by being taken off the case is the record of my involvement was erased from PULSE. It is possible that the Detective Unit took over the case, and I have no issue with that. It is just included in my statement because I was removed from the PULSE entirely though I had

¹⁹³⁸ Tribunal Documents, Letter from the Chief State Solicitor's Office to the Disclosures Tribunal, including attachments, dated 25th October 2019, pp. 15239-15267

¹⁹³⁹ Tribunal Documents, Letter from the Chief State Solicitor's Office to the Disclosures Tribunal, dated 29th October 2019, p. 15293

¹⁹⁴⁰ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 87

¹⁹⁴¹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 85

¹⁹⁴² Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 137

¹⁹⁴³ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 85

*worked on the case, and where any commendations arose I would not be included. I do not know who removed me from PULSE but I am sure this may be checked. I would have no issue if I was moved from Investigating Garda to Assisting Garda on PULSE rather than being removed altogether from the incident.*¹⁹⁴⁴

In his statement, he said that *'I was then taken off the case completely. It was as if any successful operation in which I was involved was to be airbrushed'*.¹⁹⁴⁵

Garda Keogh told counsel for the tribunal that his complaint was that he was removed from the whole incident:

On that night, the suspects in that case were actually involved in two robberies, two serious incidents. It would be the norm for it to be the updated. Because they were so serious, it could also be the norm for the detective branch to take over that investigation. So it would be expected and there's no issue whatsoever that I am removed as investigating member. I mean, that would be just normal there. The issue is, I'm actually just removed completely off the whole incident.

*As I stated earlier, what would normally happen is, I would be removed from role of investigating – changed from investigating member just to assisting member and that would be normal, what would happen normally. But in this case, I am actually removed completely from the incident, as if I was never there.*¹⁹⁴⁶

He further stated in evidence that:

*I officially didn't exist at the scene. But one thing that has caught my eye when I seen the commendations, Judge, and this is the same for the next two incidents, not alone am I not getting a commendation, none of the members of my unit are getting commendations, and that goes for the next two incidents as well. They should have got commendations in relation to this matter and the next two matters also. I suspect they didn't get the commendations, you know, because I would have had to get a commendation.*¹⁹⁴⁷

Garda Keogh was asked by counsel for the tribunal to describe what duties he carried out in the investigation of the crime:

Myself, and I can't even remember the guard that was with me, we're the first on the scene. So, we met the injured party, who I vaguely remember was covered in blood, he was stabbed in the neck.

Q. Chairman: The taxi driver.

A. Yes, yes. He was an elderly man. So the priority was a duty of care to him, to get medical assistance to him. Just from recollection at the scene, we seized his car, not seized his car, his car for technical examination. I got clothing for evidence and I think placed it into an evidence bag. I mean, for the purpose of continuity of evidence as well, should that case have been – I don't want to go into the case, because these were bad individuals who committed a very bad crime. But just, I am sure you know in relation to continuity of evidence and things like that, perhaps I should have been asked to make a statement. I wasn't asked to make a statement or anything like that.¹⁹⁴⁸

¹⁹⁴⁴ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 86

¹⁹⁴⁵ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 137

¹⁹⁴⁶ Tribunal Transcripts, Day 103, p. 54, Evidence of Garda Nicholas Keogh

¹⁹⁴⁷ Tribunal Transcripts, Day 103, pp. 61-62, Evidence of Garda Nicholas Keogh

¹⁹⁴⁸ Tribunal Transcripts, Day 103, p. 62, Evidence of Garda Nicholas Keogh

He was asked the following by the Chairman:

Q. **Chairman:** *Okay. But your real point is this, you say two things: When the detectives got a commendation, you say it would be normal for everybody who was concerned with it in any sort of realistic way, for everybody to get a commendation?*

A. Yes.

Q. **Chairman:** *Number one. And number two, related to that is the fact that your name was removed from Pulse.*

A. Yes.

Q. **Chairman:** *Which you say would also be a very unusual, if not unique situation?*

A. *That's correct.*

Q. **Chairman:** *So they're interrelated in that way, is that right?*

A. Yes.¹⁹⁴⁹

Counsel on behalf of An Garda Síochána asked Garda Keogh the following:

Q. *So on the 4th, the 5th and 6th, these were rest days, you weren't on duty at all?*

A. *That's correct.*

Q. *During those days, would you agree with me, that the report indicates that all of the significant developments in terms of detection, identification, search, arrest, interrogation, identification of suspects, decisions to prosecute, communications to the DPP, prosecution and arrival in court, were dealt with by your colleagues in the detective unit and not by you?*

A. *That's correct. They did great work and there is no issue there.*¹⁹⁵⁰

Garda Keogh was also asked the following by the Chairman:

Q. **Chairman:** *... You accept, if I understand, that you played no part in the investigation. You were the first officer on the scene and you did what was proper for an officer, a first attender at the scene, which is to -*

A. *Gather evidence.*

Q. **Chairman:** *– preserve evidence. I suppose make sure that the victim was all right and preserve evidence and do all those things?*

A. Yes.

Q. **Chairman:** *You did, with your colleagues you attended to those things and you say you did so properly and competently?*

A. Yes, Judge.

Q. **Chairman:** *But you accept that in the scale of an investigation that is only the first part of it, you were going off duty, the matter was then take every over by the detectives and they did very good work?*

¹⁹⁴⁹ Tribunal Transcripts, Day 103, p. 74, Evidence of Garda Nicholas Keogh

¹⁹⁵⁰ Tribunal Transcripts, Day 108, pp. 18-19, Evidence of Garda Nicholas Keogh

A. Yes.

Q. *Chairman: Everybody seems to agree. Sorry, your case is simple, in those cases in other circumstances where a commendation is made, it's given to everybody involved from start to finish?*

A. Yes, Judge.¹⁹⁵¹

Counsel on behalf of An Garda Síochána asked Garda Keogh:

Q. *So, what I have to suggest to you, Garda Keogh, is that the evidence in the case, now not perception but the evidence, is that Inspector Curley, then a sergeant, filled out the form, the form reflected an accurate assessment of the merging of the two investigations and the detection elements which are identified for specific praise, that Superintendent Murray didn't get in the way of that report, on the contrary, he effectively approbated the applause and commendation given to these particular members and the committee which made the decision did so on the basis of the information available to it, in accordance with standard practice of chapter 13?*

A. *I don't – I can't agree with that because Superintendent Murray stated he took a hands on approach – in relation to this investigation.*¹⁹⁵²

The arrest of a burglar

In respect of the arrest of the burglar, Garda Keogh recalled in his statement to the tribunal that it was 'rare' and that *'I had received commendations for less serious cases. I received no commendation in this case'*.¹⁹⁵³ He gave evidence to the tribunal that he didn't receive a commendation for this arrest, which occurred in 2014 under Supt McBrien's watch. Garda Keogh was asked by counsel for the tribunal whether Supt McBrien had complimented him on his duty:

I can't recollect but I wouldn't dispute it.

Q. *On the date that you refer to she was on leave. What I just want to get around to is: You've put this in as an element of targeting and bullying, that this thing, this process didn't happen and didn't apply to you and you didn't get this award. Who are you blaming, as it were, for the targeting and the bullying or the discrediting in this regard?*

A. *I would say the chief in Mullingar.*

Q. *Chief Superintendent Curran?*

A. Yes.¹⁹⁵⁴

Garda Keogh was asked the following by counsel on behalf of An Garda Síochána:

Q. *Garda Keogh, just three points arising from that. You have accepted is that Superintendent McBrien was the superintendent when this incident occurred and you make no complaint against her, isn't that correct?*

A. Yes.

¹⁹⁵¹ Tribunal Transcripts, Day 108, pp. 28-29, Evidence of Garda Nicholas Keogh

¹⁹⁵² Tribunal Transcripts, Day 108, p. 38, Evidence of Garda Nicholas Keogh

¹⁹⁵³ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 137

¹⁹⁵⁴ Tribunal Transcripts, Day 103, p. 81, Evidence of Garda Nicholas Keogh

Q. You make no complaint against any member of your own station or unit who was on duty with you on that date in 2014, is that correct?

A. How could I make a complaint against any of –

Q. That they didn't recommend you for a commendation?

A. No. But sure, I wouldn't – that's not the way, that's not the way it works. As I said, I am just after stating, it's the chief in Mullingar that would have spotted good police work there and would have just – it's a little sheet of paper. And I presume he would just say to someone in his office, give that fella – give them lads a commendation. Someone presses a button, it's sent out, we get a piece of paper and it just says commendation, good police work. And that's it.¹⁹⁵⁵

Garda Keogh's stance in relation to this matter was summed up in the following exchange with the Chairman:

Q. **Chairman:** Okay, but your case is simple, you say the chief superintendent in Mullingar should have seen this incident on Pulse and, without more, should have issued a commendation to you and your colleague. That's your case?

A. Yes.¹⁹⁵⁶

The River Shannon rescue

In respect of the rescue from the Shannon River, Garda Keogh outlined his actions in saving the woman from drowning in his evidence to the tribunal:

I had to jump into a submerged boat, to try and lean over and when – the only part of her I could grab onto was her hair, because she had gone down under, but her body weight was pulling me down. Another guard came, he grabbed me by the – around the – as I was about to go over, by the hips and he counteracted with his body weight behind. That was the way, we were able to drag her around by the head of hair, around to kind of the pier. Then, with the other – called for the other guards or I think there might have been an ambulance as well, that we were all able to then get her up out of the water then at that stage. But I, of course, had the belt, I had handcuffs and batons and boots and clothing. If that other guard hadn't grabbed me, I would have gone in with that woman and, of course, we would have ended up both going down together, because naturally instinct, if one is drowning, you grab onto anything.¹⁹⁵⁷

He told tribunal investigators that Sgt Monaghan applied for commendations for the whole unit but nobody received one. Garda Keogh later received the Water Safety Ireland award in respect of the incident and he outlined in his interview what he believed to be the reason for this award:

Sergeant Dermot Monaghan was the Sergeant present at the scene that later applied for commendations for everyone. It is my belief that no commendations were granted as I was the one who rescued the lady from the water, but nobody told me that. In my experience a rescue such as this would bring about commendations from the Gardaí. Unusually, in this situation only Irish Water Safety gave an award. This award was given on 08/11/2016 which was over a year after the incident occurred (22/09/2015). It is my belief that the recommendation belatedly triggered by An Garda Síochána for an award from the Irish Water Safety coincides with the

¹⁹⁵⁵ Tribunal Documents, Day 108, pp. 56-57, Evidence of Garda Nicholas Keogh

¹⁹⁵⁶ Tribunal Transcripts, Day 108, p. 58, Evidence of Garda Nicholas Keogh

¹⁹⁵⁷ Tribunal Transcripts, Day 103, p. 84, Evidence of Garda Nicholas Keogh

*issuance of and the Gardaí's receipt of my application to the Personal Injuries Assessment Board in respect of my civil proceedings against the Gardaí. It is my belief that that this was a guise to counteract the receipt of the said application as it was difficult for the Gardaí to perform a u-turn of their earlier position not to follow Sergeant Monaghan's recommendation for a commendation, hence the unusual [situation] of the sole award from Irish Water Safety.*¹⁹⁵⁸

Garda Keogh was asked by the tribunal about the timing of this recommendation:

Q. This is your Plenary Summons, which was issued on 13th April 2017, which is on the preceding page. But it recites the authorisation that was issued by the PIAB board?

Chairman: 28th October 2016?

A. 28th October 2016, yes.

Q. Chairman: In other words, the point you made in your statement appears to be wrong. You said, the only reason why Superintendent Murray put in the application for the Just in Time award was because the PIAB authorisation had come through for my proceedings. The dates don't support that.

A. That's fair. That's fair.

Q. Chairman: The PIAB authorisation is 28th October – hold on a second, hold on. Maybe it's wrong. It doesn't matter. But the PIAB authorisation is 28th October 2016 and the recommendation for the Just in Time award is the 11th November 2015. Are you with me?

A. I am, yes, Judge.

Q. Chairman: Now, what do you say to that?

A. I accept it, the statement I made to the Tribunal on the night of the deadline –

Q. Chairman: It doesn't matter. Mr. McGuinness is saying, that particular point appears not to be valid?

Q. Chairman: Because the dates don't match up?

A. I accept that.¹⁹⁵⁹

Garda Keogh told counsel for the tribunal that:

*It's like this, if I wasn't a whistleblower, I would have perhaps got the award, but if I wasn't a whistleblower I would have got a commendation along with the rest of my unit for that event from An Garda Síochána. There's no issue, the award, it's kind of a separate matter altogether. From An Garda Síochána there is no commendation, and that is my point. Me and the rest of my unit normally would have got a commendation from An Garda Síochána.*¹⁹⁶⁰

He also told counsel for the tribunal that a member could expect both a commendation and an award in such circumstances:

... I'm aware of previous instances where other guards would have saved persons from the River Shannon, because there's a bridge there and it's an urban area and people do things, and they would have got – they would have got a commendation. In later times, of course, it was Irish –

¹⁹⁵⁸ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 91

¹⁹⁵⁹ Tribunal Transcripts, Day 103, pp. 90-91, Evidence of Garda Nicholas Keogh

¹⁹⁶⁰ Tribunal Transcripts, Day 103, p. 94, Evidence of Garda Nicholas Keogh

*the Water Safety Council, so they would have got both a commendation from the guards and the Water Safety award, they would have got both of those. In this one, that's fine, we get an award from the Water Safety Council. The point is, we don't get any recognition from the Guards. There's no commendations for any of us on that incident again on the unit. And that, as I said, that was a real team effort there on that one.*¹⁹⁶¹

Garda Keogh was cross-examined by counsel on behalf of An Garda Síochána as follows:

Q. Do you understand, Garda, that if your complaint as you made it to the Tribunal in your statement is upheld, in the light of this evidence, you would be the first person to be targeted by being recommended for an award in the presence of the Minister, in Dublin Castle, with publicity, praise and commendation. Do you not see even through your perspective of these events how bizarre such a complaint is?

A. Judge, my argument all along –

Q. Chairman: No, hold on a second. There's a statement and Mr. Murphy says, comment.

A. Judge, I am in your hands on this.

Q. Chairman: All right. That's very fair.¹⁹⁶²

Responding Statements and Evidence on the Issue

Superintendent Pat Murray

Supt Murray told tribunal investigators that he did not know of any attempt to deny Garda Keogh a commendation for performance in the course of his duties and confirmed that he nominated Garda Keogh for an award.¹⁹⁶³

The stabbing of a taxi driver

In his statement to the tribunal, Supt Murray said that he was not aware of Garda Keogh's involvement in the investigation of the stabbing of the taxi driver:

*On 3rd August 2015, two serious crimes of robbery were committed in Athlone within a number of hours of each other. Both had a common denominator in that both victims were elderly males one a taxi driver and one a shop owner. A meticulous investigation was carried out in relation to both crimes. It was coordinated by then Detective Sergeant E. Curley and his team. I was not aware of Garda Keogh's involvement in either of those crimes which were investigated together.*¹⁹⁶⁴

He told tribunal investigators that:

I took a hands on approach with that case. I had no knowledge of Garda Keogh's involvement. I don't think he supplied a statement to the investigation file which went to the DPP. The file was done and completed through the incident room and the Chief Superintendent and I visited one of the victims the evening after it happened. I had no knowledge of Garda Keogh being involved in that one and to the best of my recollection and knowledge there is no statement on the investigation file from him so I would interpret that as him having very little or no

¹⁹⁶¹ Tribunal Transcripts, Day 103, pp. 85-86, Evidence of Garda Nicholas Keogh

¹⁹⁶² Tribunal Transcripts, Day 108, p. 52, Evidence of Garda Nicholas Keogh

¹⁹⁶³ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3090

¹⁹⁶⁴ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at pp. 2056-2057

*involvement. I believe he handed in a piece of clothing to the Exhibits Officer. Anyone who accesses PULSE leaves a footprint. There is an audit trail of anyone who went through the incident and I can't see anyone having any reason to do what Garda Keogh alleges.*¹⁹⁶⁵

Counsel for the tribunal asked Supt Murray about the removal of Garda Keogh from the PULSE record:

Q. *He suggests that this was done in a way to remove him from the incident because of the work that he had done and in some sense that this is a targeting of him. What do you say in relation to that?*

A. *I can understand in relation to what was going on in his life, that may be a perception that he held. And when he saw, I suppose, everyone else that had been at the scene with him continue as assisting gardaí on the incident and he didn't see himself there. But what I understand what happens when someone is removed as an investigating person, it was – I suppose there was an understanding that that person automatically dropped down to an assisting role without having to be removed and reentered, and that wasn't the case and no one seemed to realise that at the time.*¹⁹⁶⁶

*But no one had any motive, you know, in relation to that perception that he had. There was no motive for anyone to do it that way and it seems to have just been something that occurred in an inadvertent way.*¹⁹⁶⁷

The River Shannon rescue

Regarding Garda Keogh's involvement in the River Shannon rescue, Supt Murray said in his statement that:

*On 11th November 2015 I nominated seven Members including Garda Keogh for a "Seiko Just in Time" award for their part in the rescue of a lady from the River Shannon on 22nd September 2015... The awards were presented to the Members on 8th November 2016 at a ceremony in Dublin Castle. This was the second occasion on which I nominated Members from Athlone for recognition with the "Seiko Just in Time" awards scheme. The Members I nominated on the first occasion were also recognised, receiving Seiko watches as their rescue effort put them in greater danger. There was not an ulterior motive for nominating Garda Keogh for this award.*¹⁹⁶⁸

Supt Murray told the tribunal that he spoke with Sgt Monaghan about the matter:

*... It would be normal, something like that, for me to maybe write in hand on the incident summary at the PAF 'good work, consider EPW1' or something along those lines. But I remember speaking to Sergeant Monaghan and having a discussion how he would like to deal with it, considering that we had already used the Seiko Irish Water Safety awards as a way of commending excellent work of a similar nature a number of months previously.*¹⁹⁶⁹

On the issue of recommending a commendation as well as a Water Safety Ireland award, counsel for the tribunal asked Supt Murray the following:

Q. *So you are saying the reason that you didn't recommend a commendation was because Sergeant Monaghan hadn't initiated the process?*

¹⁹⁶⁵ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3093-3094

¹⁹⁶⁶ Tribunal Transcripts, Day 125, pp. 19-20, Evidence of Supt Pat Murray

¹⁹⁶⁷ Tribunal Transcripts, Day 125, p. 23, Evidence of Supt Pat Murray

¹⁹⁶⁸ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at pp. 2053-2054

¹⁹⁶⁹ Tribunal Transcripts, Day 125, p. 27, Evidence of Supt Pat Murray

- A. *Whatever would come up to me, I would certainly have endorsed it and forwarded it in that fashion.*
- Q. *So you would have done so had Sergeant Monaghan initiated it?*
- A. *Absolutely, yes.*
- Q. *So the fact that it wasn't done in this instance is down to Sergeant Monaghan not making the recommendation?*
- A. *Well, I suppose he did send in a Seiko form.*
- Q. *Yes.*
- A. *He sent in that form. And that was the way it went then and I suppose, as you said, I did send a report that day to the chief superintendent.¹⁹⁷⁰*

Supt Murray told tribunal investigators that he introduced the SEIKO Just in Time Rescue Award to Athlone and that it was *'a nice recognition and the fact that one can be considered for the award of a watch rather than a certificate adds meaning'*.¹⁹⁷¹

Detective Sergeant Eamon Curley

In his statement to the tribunal, D/Sgt Curley addressed the incident involving the stabbing of the taxi driver and stated that:

In serious cases where commendations are appropriate a form EPW1 is completed by the member's supervisor and submitted via the District office for the attention of the Divisional officer for his/her consideration to issue a commendation. I would have completed forms for members under my supervision over the years. I cannot recall if a form was completed regarding this crime but I would expect it was. Usually every member involved in the crime would be included on the EPW1 but the Divisional Officer would ultimately decide on whom commendations would be issue to from same in that not every member named would receive a commendation.¹⁹⁷²

D/Sgt Curley confirmed that he prepared the E.P.W.1 form¹⁹⁷³ in relation to this incident and a second robbery later that night.¹⁹⁷⁴ He said in a supplemental statement to the tribunal that he recommended commendations for eleven members:

There were 23 separate Garda members named on Pulse across both incidents and indeed there were 18 Garda witness statements included on the file to the DPP regarding the Taxi driver Robbery. I led the investigations and was familiar with each member's contribution. I included 11 members on the EPW 1. The members I included in the EPW 1 form had contributed to the investigation in my view beyond what is expected in the course of their normal duty. There were a large number of other Garda members involved across both investigations but their involvement and contribution in my view did not exceed what is expected in the course of their normal duty.¹⁹⁷⁵

¹⁹⁷⁰ Tribunal Transcripts, Day 125, p. 29, Evidence of Supt Pat Murray

¹⁹⁷¹ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3091

¹⁹⁷² Tribunal Documents, Statement of D/Sgt Eamon Curley, p. 487 at p. 490

¹⁹⁷³ Tribunal Documents, E.P.W.1 Form Commendation for Excellent Police Work, pp. 13454-13457

¹⁹⁷⁴ Tribunal Documents, E.P.W.1 Form Commendation for Excellent Police Work, pp. 13454-13457

¹⁹⁷⁵ Tribunal Documents, Supplemental Statement of D/Sgt Eamon Curley, pp. 14365-14366

D/Sgt Curley was asked about recommending commendations for some members and not for others:

- Q. ... We have nine members who received commendations. By comparing them as against the people who were on the Pulse entry, we can see that all these members were involved in the investigation side of it as opposed to being assisting members at the scene, is that right?
- A. Yes. Furthermore, there were 23 people named across both Pulse incidents and 11 people recommended for a commendation. But even with the 23 people named across both incidents, there were further people involved in investigating the incident, involved at various roles across the incident. But the people that I included on the EPWI, which I prepared, were people whom in my view had performed beyond what I would consider the normal course of their duty in the investigation of this crime to bring it to a successful conclusion. And it was their actions in line with the criteria set out in the HQ circular on the matter, which is HQ circular 26/03, it was their actions which in my view, the outstanding police work, which entitled them to commendation. And they were the people I included on it.
- Q. Indeed. If Garda Keogh had remained there on the list of people who were involved in the investigation as an assisting member and his role had been to phone in and report the matter for its entry on Pulse and then secondly, to take possession of some articles of clothing, would that have been a matter that you would then have made a recommendation in relation to those actions on his part?
- A. No, Chairman. The criteria that I used – first of all, it's not based on who was recorded on Pulse as reporting or investigating or assisting, it was the actions of the particular people, the individual people and what they did in relation to the investigation. I was familiar with the investigation. I led it from the start, from the morning that the first robbery was reported and then later that evening, shortly after 5:00pm the second robbery was reported. Both teams continued on operating together as an investigation team. And it was my knowledge of how they performed and I included, I suppose, in summary, on the EPWI on page 13456, where I summarise the actions of each individual member. They mainly relate to the investigative actions of them; identifying suspects; Garda Cogavin identifies suspects; Garda Divilly identifies suspects; Garda McMeeking arrests suspect; Brian Kane arrests suspects; Yvonne Martin, sergeant, executes search warrant, assists in investigation; Dave Turner, file preparation. And in fairness to Garda Turner, on the file preparation there was a 42 day rule, I suppose, we need to comply where somebody is in custody. And he did the file quite quickly on that and he was complemented on that by Superintendent Murray. I continue on. It's all people that were involved in the investigation of it. And that's all done in line with the criteria outlined in – it's clearly outlined on page 8010 in line with HQ circular 26/03.¹⁹⁷⁶

In his statement to the tribunal, when dealing with the changing of the PULSE record, D/Sgt Curley stated that:

Due to the serious nature of the crimes Detective Branch personnel under my supervision assisted by other members took charge of both investigations. Inquiries conducted throughout Tuesday identified some suspects and upon occurrence of the second Robbery inquiries commen[c]ed to identify if both crimes were linked and who may be responsible. Garda John Divilly and Garda Niall Cogavin were assigned to same. The investigation progressed quite quickly with

¹⁹⁷⁶ Tribunal Transcripts, Day 128, pp. 151-153, Evidence of D/Sgt Eamon Curley

all 3 suspects identified, arrested and ultimately charged in connection with the crimes. Two suspects were common to both crimes with an additional suspect for the second crime. I do not recall updating pulse but I would normally update pulse in a scenario like this. I note that the investigating member for the Taxi driver Robbery is listed as Garda Niall Cogavin. I also note that Garda Cogavin is one of the members whom preferred a charge sheet against the offender in this case and pulse may well have been updated by himself and/or myself to allow for such charge sheet to be created and for the incident to be updated as the investigation progressed and reached a point where it was detected.¹⁹⁷⁷

He was asked about the changing of the record by counsel for the tribunal:

... Chairman, this matter would have been discussed in the morning, it happened the night before, it was discussed at the morning PAF meeting, and this incident, detectives were assigned to investigate this incident. And I updated Pulse to reflect that. An unintentional consequence of doing that was that Garda Keogh didn't appear on front end of it. He had been down initially as the investigating member. It wasn't to my knowledge that by replacing the investigating member that the person wouldn't appear on the front end of it. It was always – or it was our training on Pulse that nothing could be deleted from it. I wouldn't have expected – I thought he would automatically be repopulated, I suppose, into the incident as an assisting member. But that didn't happen.

Q. Chairman: Could you explain that for the uninitiated.

A. Yes, Chairman.

Q. Chairman: First of all we have Garda Keogh recorded as the investigating member, is that correct?

A. That's correct, Chairman.

Q. Chairman: And that stands until it's changed?

A. Yes, Chairman.

Q. Chairman: So there's a PAF meeting, and now you want to record the fact that two detectives have been assigned. Am I getting it so far?

A. Yes, Chairman.

Q. Chairman: So how does it happen that Garda Keogh's name is deleted?

A. Okay.

Q. Chairman: How does that happen?

A. Okay. So after the PAF meeting, I think it was done – I think the time is actually given by Garda Shankey Smith, that it happened around 12 midday or 12:09 or something like that. So our PAF meetings were 12:30am. So following that I would have opened up the incident on my pulse screen and I would have updated it, whereby Garda Keogh was listed as the investigating member I would have put in Garda Cogavin reg number as the investigating member.

¹⁹⁷⁷ Tribunal Documents, Statement of D/Sgt Eamon Curley, p. 487 at p. 490

Q. *Chairman: Does that mean you took him out?*

A. *Sorry, Chairman. So that was the one action I do, I press save when I put in Garda Cogavin as investigating. And I updated the narrative to put in that they had been assigned. The unintentional consequence of that was that Garda Keogh doesn't appear on the front end. I didn't actually do an action that would press, we'll say, remove or delete.¹⁹⁷⁸*

D/Sgt Curley told counsel for the tribunal that this was an automatic process:

Q. *But you didn't believe at the time that his name had been deleted from the record; isn't that right?*

A. *That's correct, Chairman.*

Q. *You had no reason to check that, to see had he popped up elsewhere as assisting member?*

A. *I didn't, Chairman. The matter, I suppose, was under investigation at this stage from detective branch, we had a report from – they had already been assigned, were on route and were carrying out inquiries in relation to it, and our victim had been home from hospital, we were arranging to interview him and the incident room was up and running in relation to it. That investigation was ongoing.*

Q. *Chairman: So his name should have been there?*

A. *It should, he was an assisting member and his name should have appeared on it.*

Q. *Chairman: I mean he had gone from being the investigating officer, he gone from that, he been replaced as that, but you say his name should have been there?*

A. *He was an assisting garda on it.*

Q. *Chairman: Yes.*

A. *On the face of it, I expected that he would have been repopulated as assisting member, and that didn't happen.¹⁹⁷⁹*

He was asked the following by counsel on behalf of An Garda Síochána:

Q. *Again I ask you in relation to this question, is it your case that there was no intent on your part to target or hurt or damage Garda Keogh by what you did in connection with those recommendations?*

A. *Certainly, Chairman, I have never had an adverse interaction in any way, shape or form with Garda Keogh. And I was in Athlone for probably the entirety of the time that he was there.¹⁹⁸⁰*

Superintendent Noreen McBrien

In her statement to the tribunal, Supt McBrien said that:

There is a[n] EPW form where members are nominated. The nomination normally comes at the conclusion of court proceedings and the sergeants would send them up through the District Office, then they would be sent to the Chief Superintendent's office. There is a quarterly meeting

¹⁹⁷⁸ Tribunal Transcripts, Day 128, pp. 145-147, Evidence of D/Sgt Eamon Curley

¹⁹⁷⁹ Tribunal Transcripts, Day 128, pp. 150-151, Evidence of D/Sgt Eamon Curley

¹⁹⁸⁰ Tribunal Transcripts, Day 128, pp. 206-207, Evidence of D/Sgt Eamon Curley

*of the Divisional Commendation Committee and a decision is made on the EPWs that are ready to be finalised on and allocated. Nominations are usually done by sergeants. I did sit on the Committee.*¹⁹⁸¹

She stated that she was unaware of any attempt to deny Garda Keogh a commendation for performance in the course of his duties and said that *'I actually complimented Garda Keogh on his duty at one point informally.'*¹⁹⁸² In respect of the burglary, she told tribunal investigators that she was on leave on that date and that nominations were made by the sergeants at the conclusion of the proceedings.¹⁹⁸³

Inspector Aidan Minnock

In his statement to the tribunal, Insp Minnock stated that he did not refuse any commendation that was recommended for Garda Keogh after May 2014.¹⁹⁸⁴ He said that *'commendations are administered in a number of ways'* but they were *'most commonly'* recommended by the supervisor on a Form E.P.W.1, which goes to the next line supervisor and is forwarded to the divisional commendation committee.¹⁹⁸⁵

In his evidence to the tribunal, he was asked by counsel for the tribunal about his involvement in the commendation procedure:

... I was aware that Garda Keogh was recommended for the Seiko award, and I did speak to Garda Keogh in respect of that and advise him in relation to the subsequent ceremony that was taking place in Dublin in respect of that. But I suppose in respect of commendations, the commendations arrive normally in the normal way, a recommendation from the sergeant on a form known as an EPW1 ...

*And arrive into the superintendent's or the inspectors for their views in respect of the matter and then it goes to the divisional committee for their overall recommendation for an award or not. So I suppose our main involvement really with them as inspector and superintendent role is either to agree with them and forward the names that we feel are appropriate for commendation, maybe give an indication at what level we feel the commendation should be. But in respect of that matter, I know I didn't receive any form forwarded to me in respect of that matter. It's not to say – it could have went to another office.*¹⁹⁸⁶

Sergeant Dermot Monaghan

Sgt Monaghan recalled in his evidence the circumstances surrounding the River Shannon rescue:

... I was in the station at the time when the call came in. I detailed two patrol cars, Garda Keogh being one, to the scene. I walked down from the station, which is approximately 300 metres, I suppose, to the scene. There was a lady in the water, who had rang, called in herself, she left her property on the bank of the river further down. She was swimming up and down about 10 feet from the shoreline and Garda Keogh had a lifebuoy, trying to throw it in to her. But she was communicating with her at all times and she was in no distress or danger. But then we could see her, let's say, failing, running out of steam, so Garda Keogh, Garda Moore and Garda Glennon got into a rowboat that was moored at the side of the river. I coaxed the lady over beside

¹⁹⁸¹ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at pp. 6267-6268

¹⁹⁸² Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6268

¹⁹⁸³ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6268

¹⁹⁸⁴ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 694

¹⁹⁸⁵ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at pp. 693-694

¹⁹⁸⁶ Tribunal Transcripts, Day 130, p. 25, Evidence of Insp Aidan Minnock

*the boat and the three of them pulled her into a slip way down the river and we got her medical attention.*¹⁹⁸⁷

In his statement to the tribunal, Sgt Monaghan said that he recommended all members present for consideration for a SEIKO award. He stated that the ceremony was held in Dublin Castle on 8th November 2016 and that Garda Keogh received an award.¹⁹⁸⁸ He said that:

*I deny the assertion made by Garda Keogh that he was denied a commendation for this incident and that he singlehandedly pulled the female from the water as this was a group effort.*¹⁹⁸⁹

He was asked by counsel for the tribunal whether he recommended any commendations for the incident:

Q. *There doesn't appear to be any report or memo from you or note applying for a commendation, in terms of a Garda commendation?*

A. *No, because I didn't.*

Q. *Whether on an EPWI or not?*

A. *I didn't apply for any.*

Q. *For any member?*

A. *For any member.*

Q. *Yes.*

A. *I just applied for the Seiko Just in Time award.*

Q. *Did any member raise any issue with you about that?*

A. *No.*¹⁹⁹⁰

With regard to the robbery of the taxi driver, counsel for the tribunal asked Sgt Monaghan the following:

Q. *... would the first responders who don't or didn't take part of any of the subsequent in depth investigation of it, would you expect to get a commendation?*

A. *Only if you done something exceptional when you were first responder there. That if you saved someone's life, let's say, if the taxi driver was bleeding to death and you administered, let's say, urgent CPR or first aid to him, yes, possibly in that circumstance. But, no, in the normal course of work you are dealing with what's in front of you and you secure the scene as best you can. There's nothing exceptional in that. It is just our normal tour of duty like.*¹⁹⁹¹

Chief Superintendent Lorraine Wheatley

In her statement to the tribunal, C/Supt Wheatley stated that she was not aware of any instance during her tenure where an attempt was made to deny Garda Keogh a commendation for performance in the course of his duties.¹⁹⁹²

¹⁹⁸⁷ Tribunal Transcripts, Day 131, pp. 102-103, Evidence of Sgt Dermot Monaghan

¹⁹⁸⁸ Tribunal Documents, Statement of Sgt Dermot Monaghan, p. 609 at p. 612

¹⁹⁸⁹ Tribunal Documents, Statement of Sgt Dermot Monaghan, p. 609 at p. 612

¹⁹⁹⁰ Tribunal Transcripts, Day 131, p. 101, Evidence of Sgt Dermot Monaghan

¹⁹⁹¹ Tribunal Transcripts, Day 131, p. 104, Evidence of Sgt Dermot Monaghan

¹⁹⁹² Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6128

Garda Aisling Shankey-Smith

In her statement to the tribunal, Garda Shankey-Smith addressed the changing of the PULSE record in respect of the incident on the night of the 3rd/4th August 2015. She confirmed that the record was changed by D/Sgt Curley:

On the 20 May 2019, I received a request via email from Sergeant Michael McArdle in the Tribunal Co-ordination Office requesting the history of updates for Pulse Incident 12095940.

On Tuesday 21st May, 2019, I returned this information titled

'IncidentUpdates_History_PID_12095940' to Sergeant McArdle via email highlighting that on the 4th August 2015 at 12:38:50 'Investigating Gda' was updated from Garda Reg no 28045C (Garda Nicholas Keogh) to 28377M (Garda Niall Cogavin). I informed them that this was updated by Garda Reg No 26341K (Inspector Eamonn Curley).

On the same date I received a further email from Sergeant McArdle seeking clarification that if the investigating member was changed from Nicholas Keogh, would his record be still visible on the front end of Pulse. I forwarded this question to Brian Savage, Senior Pulse Architect.¹⁹⁹³

Mr Brian Savage

Mr Savage said in his statement to the tribunal that:

My duties include support and maintenance of the Garda PULSE system. I make this statement in response to correspondence furnished to me on 7th June, 2019 which requested a statement in relation to the removal of Garda Nicholas Keogh from PULSE incident No. 12095940.

On the 21st May 2019 I was asked by Garda Aisling Shankey-Smith to confirm that once the investigating member is replaced in a PULSE incident, the previous member's previous association with the incident as investigating member will not be visible from the front end.

I responded on the same day as follows:

"I can confirm that if the investigating member was changed 04/08/2015 then, on the PULSE front end, there will be no evidence in the IOI list of the previous investigating member having held that role. The information is only available from the audit data."

'IOI list' refers to the list of persons, locations, garda members, objects, vehicles and organisations associated with an incident which is visible on the Incident Details screen.¹⁹⁹⁴

Legal Submissions

Garda Keogh submitted as follows:¹⁹⁹⁵

- that Garda Keogh should have been awarded a commendation for the police work that was carried out in respect of each of the three incidents.

The stabbing of a taxi driver

- that Garda Keogh did not complain that his name was changed to that of Garda Cogavin as the investigating member but he took issue with his complete removal from the PULSE system in respect of him being the first responder to the incident.

¹⁹⁹³ Tribunal Documents, Statement of Garda Aisling Shankey-Smith, p. 6202

¹⁹⁹⁴ Tribunal Documents, Statement of Mr Brian Savage, p. 6203

¹⁹⁹⁵ The tribunal has considered all of Garda Nicholas Keogh's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 14-31 and pp. 172-177

- that it was normal practice within An Garda Síochána that if the investigating detectives received a commendation in respect of the incident that a rank and file garda would also receive one.
- that no member of Garda Keogh's unit received a commendation, and it was his belief that the reason for this was that if any member of the unit received a commendation, then he too ought to have received one.
- that Supt Murray accepted, when examined, why Garda Keogh could have the concern which he had at the time.

The arrest of a burglar

- that if Garda Keogh had not made a protected disclosure he would have received a commendation for his police work, and he cited Chief Superintendent Mark Curran as being the person responsible for him not receiving a commendation.
- that Garda Keogh contrasted this situation with others where he had been awarded a commendation following the divisional officer's review of PULSE.

The River Shannon rescue

- that in his initial statement to the tribunal, Garda Keogh stated that his not being nominated for a commendation for this was because it coincided with his application to the Personal Injuries Assessment Board in respect of civil proceedings he had taken against An Garda Síochána and others. He accepted in evidence and cross-examination that he was mistaken in his belief on this latter point. His case on the point was straightforward. He complained that along with the SEIKO award those involved in the rescue should have been nominated for a commendation as an acknowledgement by An Garda Síochána of the work that they carried out. This acknowledgement should have been separate and apart from the SEIKO award.
- that because he had an involvement in this incident nobody was awarded a commendation.
- that Supt Murray confirmed that while he agreed it was excellent police work, he did not contact Garda Keogh to express appreciation and that this was further evidence of the negative attitude towards Garda Keogh.
- that the failure and/or refusal of An Garda Síochána to award a commendation in this instance to Garda Keogh (and his colleagues) must be assessed against the commendation awarded to Garda Teehan on 11th June 2015. Garda Keogh gave evidence of this difference before the tribunal. That commendation was awarded to Garda Teehan for his excellent police work in response to a member of the public attempting to commit suicide by jumping from a bridge into the River Shannon. Garda Teehan was also recommended for the SEIKO award. It was submitted that the difference in treatment of the members for very similar situations was evidence of senior management discrediting Garda Keogh.

An Garda Síochána submitted as follows:¹⁹⁹⁶

The stabbing of a taxi driver

- that when CCTV was examined on 5th August 2015, two possible suspects were identified.

¹⁹⁹⁶ The tribunal has considered all of An Garda Síochána's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 70-172 and pp. 177-179

As a result of investigations that continued throughout 5th and 6th August 2015, two further suspects were arrested. By early morning of 6th August 2015 all suspects with respect to both crimes were in custody. Four suspects later admitted involvement and pleaded guilty. While all of this was going on, Garda Keogh was not on duty. He was on rest immediately after his shift finished on the morning of 4th August 2015 and did not return to work until 7th August 2015, by which time both crimes had been solved.

- that Garda Keogh created the PULSE ID and entry for the first robbery that night. On the following day, when the Detective Unit became involved, and a new member became the investigating member, Garda Keogh's name as the investigating member disappeared from the PULSE entry. Mr Savage explained that when the investigating member was changed, the name of the original investigating garda would not be visible on the visible part of PULSE that was accessible to a reader. The removal was not, as Garda Keogh presumed or perceived it to be, a sinister one, but nothing more than an IT anomaly.
- that between the two crimes, eleven members were recommended for a commendation for excellent police work by D/Sgt Curley. The commendations were supported by Supt Murray. The decision makers, known as the divisional commendation committee, ultimately decided to award the commendations. Garda Keogh's name was not before them on the form which had been filled out by D/Sgt Curley. The commendations were not issued until 29th August 2017. No one from Garda Keogh's unit was included on the recommended list.
- that Supt Murray did not recall that Garda Keogh had a role in the initial investigation and when it came to the issue of commendations, Supt Murray acted on the report of D/Sgt Curley. Garda Keogh accepted that the reporting and initial recommendation was made by D/Sgt Curley, against whom he has made no complaint. None of the members of Garda Keogh's unit, the first responders, were on that list.

The arrest of a burglar

- that Garda Keogh's sergeant, who did not cite him for a commendation, was not criticised by Garda Keogh. Similarly, he made no criticism of his then superintendent, Supt McBrien. He claimed in evidence before the tribunal that the initiative lay with C/Supt Curran.
- that this allegation was made by Garda Keogh without any evidential foundation. No request for a commendation was ever submitted through the expected channels, i.e. the lower ranks. Ignoring that point, his complaint seems to leapfrog those officers that would ordinarily make a recommendation and instead makes an allegation of targeting against C/Supt Curran.
- that when pressed in cross-examination as to the normal process for awarding a commendation, coming from supervisory ranks up to management, Garda Keogh seemed finally to relent in his complaint.

The River Shannon rescue

- that Garda Keogh was identified by Supt Murray as one of the gardaí involved in the rescue and put forward for an award.

- that Garda Keogh dismissed the SEIKO award and alleged that the SEIKO award was something of a guise by Supt Murray to cover his tracks following Garda Keogh's commencement of a personal injury claim against the superintendent and the Commissioner. This allegation was baseless. The Personal Injury Assessment Board application was launched in September 2016, almost a year after Supt Murray's recommendation for an award. Garda Keogh must have got mixed up by the fact that the awards ceremony took place on 8th November 2016, almost a full year after Supt Murray had made the initial recommendation. This illustrated that Keogh engaged in an unfounded rush to judgement against Supt Murray in relation to this issue, as with many others.

Sergeant Dermot Monaghan submitted as follows:¹⁹⁹⁷

The stabbing of a taxi driver

- that he could not say whether he told Garda Keogh that he would apply for a commendation but he did not apply for commendation for anyone arising out of that incident, and nobody had an issue with that.
- that if a unit were the first responders and another unit took over the investigation, the first responders would get a commendation only where they had done something exceptional.

The River Shannon rescue

- that Sgt Monaghan confirmed that he applied for the SEIKO award in respect of the rescue and that Insp Minnock hand-delivered Garda Keogh's invitation.

Discussion

The arrest of a burglar

The complaint of targeting or discrediting for failure to award a commendation to Garda Keogh in respect of the burglary in October 2014 is made against C/Supt Curran¹⁹⁹⁸ but there is no evidence of any involvement or function exercised by him in relation to the matter. The most that Garda Keogh can say is that the officer might have seen the case reported on PULSE, or that somebody in his office might have done so. But that is not the normal way in which commendations would be processed. The point is that there is simply no evidence to suggest that C/Supt Curran had anything to do with deciding whether or not to recommend Garda Keogh for a commendation.

The district officer, Supt McBrien, was on leave at this time.¹⁹⁹⁹ There was no evidence that anyone gave consideration to the issue of a commendation or that C/Supt Curran raised the issue in any way. In the result, the allegation against C/Supt Curran is totally speculative and unfounded and must be rejected.

The stabbing of a taxi driver

In regard to the case involving the assault on the taxi driver, the circumstances have been outlined above and in the submissions. As a result of investigations by detective gardaí, suspects were identified in this and in another case and early arrests were made. The suspects were prosecuted and pleaded guilty. This work was considered exceptional and deserving of commendation. D/Sgt

¹⁹⁹⁷ The tribunal has considered all of Sgt Dermot Monaghan's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

¹⁹⁹⁸ Tribunal Transcripts, Day 103, pp. 81-82, Evidence of Garda Nicholas Keogh

¹⁹⁹⁹ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6268

Curley recommended eleven members for commendations for excellent police work²⁰⁰⁰ and Supt Murray supported that.²⁰⁰¹

Garda Keogh was not involved in the actual investigation. He was off duty during the time when the crimes were solved. His and his colleagues' only involvement was as first responders. He made the PULSE ID and entry for the first robbery that night and was listed as investigating member. Garda Keogh did not complain that he was replaced in that designation when the Detective Unit became involved, but claimed that his name was removed entirely. The evidence was that this was not sinister, nor was it a decision of Supt Murray. It was a feature of the operation of the PULSE system technology, as Mr Savage explained in his statement to the tribunal.²⁰⁰²

It is difficult to find any basis for concluding that Garda Keogh did anything above or beyond performing his garda function in a competent manner during the relatively brief time that he was concerned with the first incident in the case. Garda Keogh appears to accept the reality of the situation in the absence of evidence of malicious or hostile intent on the part of Supt Murray, or of any direct involvement in preventing a recommendation for commendation for Garda Keogh. There is a rational basis for the commendations that were ultimately awarded.

The commendations were given in respect of the key roles undertaken by members of the investigating team in respect of two serious offences. Other gardaí in the same position as Garda Keogh were treated in the same way.

The decision to award or not to award a commendation does not have to be a perfect one, although it is difficult to see what might be wrong about the outcome in this case. The suggestion in essence is that if some gardaí involved in the investigation got commendations then in the normal way all the gardaí would get them. Such a policy might seem to be unfair to people who had done exceptional work and the policy that was apparently applied in this case has the merit of being logical and in accord with the provisions of the Code.

The River Shannon rescue

Within hours of the rescue, Supt Murray reported on it in complimentary terms to his chief superintendent²⁰⁰³ and referred explicitly to the Water Safety Ireland award. He formally nominated the members on 11th November 2015.²⁰⁰⁴ There was not a separate nomination for a garda commendation of any of the members concerned.

It is not easy to understand how the person who wrote the application for the SEIKO award could be accused of targeting any of the persons he was recommending. Some of what Supt Murray said is quoted above and does not lack enthusiasm or respect or even admiration for the actions of the officers who performed the rescue. It appears to be obvious that he was proud of their work and was keen to see it recognised. Clearly, the superintendent could also have put forward a recommendation for commendations and perhaps he would do so on another occasion. In Garda Keogh's submissions one such example is cited of a garda who was put forward for a SEIKO award and who also received a commendation.

Sgt Monaghan denied saying that it was his intention to make a recommendation but whatever about that, the fact is that Supt Murray put forward a strong case for his members to get the

²⁰⁰⁰ Tribunal Documents, Supplemental Statement of D/Sgt Eamon Curley, p. 14365 at p. 14366

²⁰⁰¹ Tribunal Documents, Form E.PW.1 Commendation for Excellent Police Work p. 13454 at p. 13457

²⁰⁰² Tribunal Documents, Statement of Mr Brian Savage, p. 6203

²⁰⁰³ Tribunal Documents, Letter from Supt Pat Murray to Chief Superintendent, Westmeath, dated 22nd September 2015, p. 9210

²⁰⁰⁴ Tribunal Documents, Letter from Supt Pat Murray to SEIKO Just in Time Rescue Award, dated 11th November 2015 p. 2383

award. If the nominees had seen the way the superintendent described the event and how they responded to the crisis, they would surely have been gratified at the esteem in which they were held by their district officer. He could of course have also put them forward for commendations, but it is impossible to condemn him for targeting or discrediting any one of them, including Garda Keogh.

Garda Keogh sought to diminish the impact of Supt Murray's compliments by suggesting that his recommendation was a cynical response to Garda Keogh's Personal Injuries Assessment Board application in respect of his personal injury case in 2016. It was of course done a whole year earlier. This allegation was wrong and potentially damaging, and should not have been made.

Conclusion

Garda Keogh's allegations of targeting and/or discrediting arising out of these incidents were misguided, unfounded in fact and unfair.

CHAPTER 19

ISSUE 2 I: THE COMPLAINT MADE BY GARDA NICHOLAS KEOGH THAT THE DISCLOSURES TRIBUNAL ORDER WAS DELIBERATELY WITHHELD FROM HIM

As set out earlier in this report, the tribunal was established on 17th February 2017. On 20th February 2017, Mr Justice Peter Charleton made an Order relating to the preservation of evidence. The Order was of general application but referred specifically to issues which arose in terms of reference [a] to [o].²⁰⁰⁵

The Order did not have an expiry date but it did give a time period of eight working days for the Garda Commissioner to make an application in respect of the Order if An Garda Síochána had any objection or problem with it. It stated that:

*IN THE EVENT of you wishing to object to the terms of the within order, by reason of the period it covers and/or the breadth of the order, or any other issue including privilege against disclosure, application may be made to the Tribunal sitting in Dublin Castle within eight working days hereof.*²⁰⁰⁶

An Garda Síochána proceeded to inform members of the force about the Order but Garda Keogh did not receive it until 21st March 2017, in circumstances revealed in the statements and evidence.

Mr Justice Charleton sat in public on 27th February 2017 when he made a request for those in possession of information relating to modules (a) to (o) to furnish statements by the 13th March 2017. Towards the end of his address the chairman said:

*Today the Tribunal is calling for all those people with knowledge of the matters in the terms of reference (a) to (o) inclusive to provide a written statement and to forward this to Elizabeth Mullan, solicitor to the tribunal at Dublin Castle... That statement should be detailed and should be received by close of business on this day fortnight, the 13th of March 2017. In that statement, every person should indicate whether they wish to assert any form of ostensible legal professional privilege against disclosure of evidence or documents or any form of ostensible... privilege. If there is any such assertion against giving a complete account of events, then that's not ruled out, but at least we know what needs to be further explored.*²⁰⁰⁷

He continued that:

Let me finally say, term of reference (p) is not now being considered unless there is some extraordinary striking similarity that someone wishes to bring in unambiguous terms to the tribunal's attention. For the moment, p stands for parked.

Garda Keogh misunderstood the situation as above described. He conflated the Order and the tribunal statement of 27th February concerning the non-parked [a] to [o] issues, believing that he was obliged to have his statement lodged with the tribunal by a deadline of two weeks from the date of the hearing. In his evidence to the tribunal he said:

²⁰⁰⁵ Tribunal Documents, Disclosures Tribunal Order; p. 11468

²⁰⁰⁶ Tribunal Documents, Disclosures Tribunal Order; p. 11468 at p. 11469

²⁰⁰⁷ Opening Statement of Mr Justice Peter Charleton, dated 27th February 2017

*... I understand that when the order came out, basically it was served on me after the date of the – after the date that it was supposed to, that I was supposed to have documents in for. There was deadline on – I think there was a deadline for statements for the Tribunal, a deadline. So what I have, I think, is the 13th March, would have been the deadline to have statements in for part (p).*²⁰⁰⁸

He was asked by counsel for the tribunal about the terms of the Order:

- Q. *... I am drawing your attention to the order to show you that it is an order of preservation of evidence in the categories set out and it doesn't deal with the provision of statements to the Tribunal.*
- A. *Right.*
- Q. *The order doesn't require anyone to provide statements, nor does it fix a date by which they should be provided.*
- A. *I don't – all I – was there another order for module (p).*²⁰⁰⁹
- Q. *No. What you may have in mind is, in fact, the Chairman sat in public on 27th February 2017, to announce the existence and the business of the Tribunal.*

As outlined in the evidence below, it was put to Garda Keogh during his evidence that the failure to serve the Order, within a week or two, did not make any difference.

The Facts

On 28th February 2017, the Assistant Commissioner, Eastern Region, directed by email to the Athlone District that all personnel in the district should be notified of the Order.²⁰¹⁰ The email to all personnel was circulated on 3rd March 2017.²⁰¹¹

By letter dated 6th March 2017, Superintendent Pat Murray wrote to Inspector Aidan Minnock in respect of the service of the Order and stated that *'it is requested that the copy of the order be hand delivered to Garda A and Garda Nicholas Keogh'*.²⁰¹² Supt Murray enclosed a letter for the attention of Garda Keogh.²⁰¹³

The Order was served on Garda Keogh on 21st March 2017.²⁰¹⁴ Subsequently, on 27th March 2017, solicitors for Garda Keogh wrote to Assistant Commissioner Fintan Fanning stating *inter alia* that:

The enclosed Order is dated the 20th February 2017 and gave eight working days or effectively 10 days to reply in relation to the preservation of documents, electronic records, the making of representations etc.

It is clear, in any event, that the relevant 10 days had expired by the time Superintendent Pat Murray even wrote his letter to Garda Keogh on the 6th March 2017. It is furthermore platitudinous to say that the 10 day time limit (set out in the Order) had therefore also expired

²⁰⁰⁸ Tribunal Transcripts, Day 104, p. 135, Evidence of Garda Nicholas Keogh

²⁰⁰⁹ Tribunal Transcripts, Day 104, pp. 135-136, Evidence of Garda Nicholas Keogh

²⁰¹⁰ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Mullingar, dated 5th April 2017, p. 11488

²⁰¹¹ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Mullingar, dated 5th April 2017, p. 11488

²⁰¹² Tribunal Documents, Letter from Supt Pat Murray to Insp Aidan Minnock, dated 6th March 2017, p. 11461

²⁰¹³ Tribunal Documents, Letter from Supt Pat Murray to Garda Nicholas Keogh, dated 6th March 2017, p. 11467

²⁰¹⁴ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 21st March 2017, p. 13363

by the time Superintendent Pat Murray served his letter (of the 6th and the Order) on Garda Keogh on the 21st March 2017.

It appears that more than 50 guards in the Division were notified of the Order within the relevant 10 days. Garda Keogh, who made protected disclosures was omitted.

*We should be grateful if you might kindly explain why there was such a delay, in Garda Keogh's case, in the writing of the letter of the 6th and then in the service of the Order so as to comprehensively defeat the terms of the Order and interfere with the operation of the Tribunal.*²⁰¹⁵

This letter gave rise to a series of enquiries and reports as regards the circumstances of the service of the Order. A/C Fanning sought a report on the matter from Chief Superintendent Kevin Gralton in the Westmeath Division on 28th March 2017.²⁰¹⁶ C/Supt Gralton requested a report from Supt Murray on 29th March 2017.²⁰¹⁷

The issues raised were addressed in reports provided by Garda Evelyn Crehan,²⁰¹⁸ the temporary district clerk in Athlone at the time, and by Insp Minnock.²⁰¹⁹

Garda Crehan outlined in her report, on 3rd March 2017, that an email was sent to all members within the Athlone District notifying them of the existence of the Order and that, on 6th March 2017, 'Superintendent Murray requested that I draft a minute to members within the Athlone District who were out on long term absences advising them of the existence of the Preservation Order'.²⁰²⁰

Insp Minnock confirmed in a brief report (undated) that he was tasked with delivering the Order to Garda Keogh:

*With reference to the above, I was appointed by Chief Superintendent Westmeath Division to liaise with Garda Nicholas Keogh on behalf of An Garda Síochána. In this capacity on the 6th March '17 I received 'Order to Preserve Evidence pursuant to Section 4 of the Tribunals of Inquiry (Evidence) (Amendment) Act 1979' for delivery personally on Garda Keogh. Having made several efforts to serve the Order on Garda Keogh I finally contacted him on Tuesday 21st March and served the Preservation Order on him. Garda Keogh stated he was already familiar with the Order.*²⁰²¹

Insp Minnock also provided a more detailed report (undated) to Supt Murray outlining the circumstances concerning the service of the Order. He referred to the letter from Supt Murray on 6th March 2017²⁰²² requesting him to serve the Order on Garda Keogh and stated *inter alia* as follows:

*On receipt of this request Inspector Minnock called to Garda Keogh's home on a number of evenings, however Garda Keogh was not at home on any occasion. Inspector Minnock continued to call to Garda Keogh's home, as it is his experience that calling to Garda Keogh's home is the most successful way to make contact. It has been Inspector Minnock's experience that Garda Keogh regularly changes phone numbers and it is difficult to liaise with him by phone.*²⁰²³

²⁰¹⁵ Tribunal Documents, Letter from Garda Nicholas Keogh's solicitors to A/C Fintan Fanning, dated 27th March 2017, pp. 11465-11466

²⁰¹⁶ Tribunal Documents, Letter from Insp James McCarthy to C/Supt Mullingar, dated 28th March 2017, p. 11476

²⁰¹⁷ Tribunal Documents, Letter from C/Supt Kevin Gralton to Supt Athlone, dated 29th March 2017, p. 11478

²⁰¹⁸ Tribunal Documents, Letter from Garda Evelyn Crehan to Supt Athlone, dated 5th April 2017, pp. 11481

²⁰¹⁹ Tribunal Documents, Letter from Insp Aidan Minnock to Supt Athlone, undated, p. 11480

²⁰²⁰ Tribunal Documents, Letter from Garda Evelyn Crehan to Supt Athlone, dated 5th April 2017, p. 11481 at p. 11482

²⁰²¹ Tribunal Documents, Letter from Insp Aidan Minnock to Supt Athlone, undated, p. 11480

²⁰²² Tribunal Documents, Letter from Supt Pat Murray to Insp Aidan Minnock, dated 6th March 2017, p. 11461

²⁰²³ Tribunal Documents, Letter from Insp Aidan Minnock to Supt Athlone, undated, p. 11483 at p. 11484

He stated that, having been unsuccessful in serving the Order between 6th and 13th March, he continued his efforts on the week commencing 20th March 2017. He called to Garda Keogh's home on 20th and 21st March 2017 and Garda Keogh was not there. Insp Minnock stated that he made telephone contact with Garda Keogh on 21st March 2017 and told him about the Order. According to Insp Minnock, 'Garda Keogh stated he had heard about the distribution of the Preservation Order and was familiar with the Order, stating I know all about it already'.²⁰²⁴ Insp Minnock concluded in his report that:

*It is also the case that the Preservation Order did not indicate a time limit for service for it to have effect or cease having effect. The Preservation Order served on Garda Keogh is therefore just as effective as if it was served within the 10 days as outlined by [Garda Keogh's solicitors]. The only relevance of the 8 working day timeframe outlined in the Preservation Order is in the event of a person wishing to object to the terms of the Order. As the Order does not relate to Garda Keogh I do not anticipate any objection on his behalf; however in the event he had such an objection the matter could be raised before the Tribunal and the issue of delay in notification could be addressed before the appropriate forum. It would be a matter for the Tribunal to decide whether to hear Garda Keogh's personal objections to the terms of the Order and if appropriate decide on those objections.*²⁰²⁵

Supt Murray enclosed the above reports for the attention of C/Supt Gralton on 5th April 2017. C/Supt Gralton wrote to A/C Fanning on 18th April 2017, stating that:

*I am satisfied that the directions received at this office to have all personnel notified of the documentation request was complied with and that the attempts made by Inspector Minnock to advise Garda Keogh of the requirement to comply with the request were reasonable and that Garda Keogh contributed to the delay in receiving the notification.*²⁰²⁶

At the request of A/C Fanning, C/Supt Gralton also wrote to Garda Keogh's solicitors on 11th June 2017. He informed Garda Keogh's solicitor that:

*Having discussed the matter with the District Officer, Athlone, and having regard to the chronology of events which led to the delay in the request for the disclosure of documents being conveyed to your client Garda Keogh, I am satisfied that everything was done to ensure that Garda Keogh was advised of its existence as soon as was practicable given his absence from the work place.*²⁰²⁷

Complaint made by Garda Nicholas Keogh

In his statement to the tribunal, Garda Keogh said that he received the Order from Insp Minnock on 21st March 2017. He referred to the fact that there was a cover note on the Order from Supt Murray dated 6th March 2017 and stated that:

It would appear that it was curiously withheld from me by Supt. Murray in an apparent effort to obstruct me from complying with the Tribunal Order in relation to evidence I may have in relation to Garda _____.

²⁰²⁴ Tribunal Documents, Letter from Insp Aidan Minnock to Supt Athlone, undated, p. 11483 at pp. 11484-11485

²⁰²⁵ Tribunal Documents, Letter from Insp Aidan Minnock to Supt Athlone, undated, p. 11483 at p. 11487

²⁰²⁶ Tribunal Documents, Letter from C/Supt Kevin Gralton to Assistant Commissioner Eastern Region, dated 18th April 2017, p. 11496

²⁰²⁷ Tribunal Documents, Letter from C/Supt Kevin Gralton to Garda Nicholas Keogh's solicitors, dated 11th June 2017, pp. 11501-11502

Also the letter was then curiously withheld from me for a further two weeks by Supt Murray in what would appear to be an effort to bypass Judge Charleton's deadline of 13-3-2017 whereby I would be denied the information and obstructed from complying with section "P"...

These documents received by me on the 21-march-2017 were well after both deadline dates for the Tribunal had expired. I believe this was improper due to the fact it relates to the Disclosures Tribunal and it is common knowledge that I made a Protected Disclosure. This had the effect of preventing me from complying with the order of the Tribunal.²⁰²⁸

In respect of the service of the Order, he told tribunal investigators that:

I also wish to state here that I note that Garda management at all times were able to contact me, whether as in this example, by post and by personal delivery, and in other examples where they have contacted me either through other Gardai, the Welfare Officer or Inspector Minnock. But when it came to the Order from the Tribunal they could not find me or contact me, according to them... I have provided the Disclosures Tribunal investigators with a copy of correspondence, dated 06/03/2017, I received from Superintendent Pat Murray enclosing an Order from the Disclosures Tribunal, dated 20/02/2017 and the Disclosures Tribunal Instrument was also enclosed. Gardai were given eight working days from 20/02/2017 to make an application to the Disclosures Tribunal if so wished. This was date stamped on correspondence of the 06/03/2017, which was at least four days after the eight working days deadline for making an application to the Disclosures Tribunal. Moreover, this document was not available to me until 20/03/2017, when Inspector Minnock contacted me about it... Further, I know that this documentation (Disclosures Tribunal Order) was circulated to all other Gardai in the District sooner that it was sent to me.²⁰²⁹

In his evidence to the tribunal, Garda Keogh stated that *'I understand that when the order came out, basically it was served on me after the date of the _____ after the date that it was supposed to, that I was supposed to have documents in for.'²⁰³⁰*

Counsel for the tribunal referred Garda Keogh to the terms of the Order and, particularly, that it did not deal with the provision of statements to the tribunal and/or fix a date by which they should be provided.²⁰³¹ The Chairman then put the following to Garda Keogh:

Q. Chairman: *Garda Keogh, as far as it goes, we have the meaning of the preservation order, we have what Judge Charleton said, it would appear from what they've said that there is no basis in this complaint. That would appear to be the case. If you are happy to let that matter stand, no doubt your counsel and solicitor will be examining that matter and we can return to that matter. But on the face of it, assuming what Mr. McGuinness says is correct, it would appear that I am drawing a line through that issue. But never say never, if somebody turns up an interpretation that has an impact on that, we will revisit it. Are you happy with that? Because I don't want to be challenging you on the meaning of the statement by the Chairperson, Judge Charleton, or anything else. But it looks as if that's a mistake. It looks as if your complaint there is a mistake. Now anybody can ask you anything they like about that. They can say it's a deliberate – or whatever it is.*

A. Yes.

²⁰²⁸ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 319

²⁰²⁹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 76-77

²⁰³⁰ Tribunal Transcripts, Day 104, p. 135, Evidence of Garda Nicholas Keogh

²⁰³¹ Tribunal Transcripts, Day 104, pp. 135-136, Evidence of Garda Nicholas Keogh

Q. *Chairman: I am not concerned with that, but for the moment I am assuming that I am drawing a line through it for the reason that Mr. McGuinness has just said, subject to revisiting it if counsel wishes to do so. Is that all right?*

A. Yes.²⁰³²

Counsel for the tribunal also referred Garda Keogh to the report provided by Insp Minnock:

Q. *I don't know if you recall seeing that. But he explains it in a way that I have explained it, in the sense that that's how he analyses the issue. I mean there is no doubt that you didn't get the order when the others got the order. But Inspector Minnock then tried to serve the order?*

A. *This is the part, you see, I dispute, the service of the order and that version of how it was served.*²⁰³³

Garda Keogh was cross-examined by counsel for An Garda Síochána and he told the tribunal that *'the main issue is the service, the service of the order is where I's going, where I dispute, Judge'*.²⁰³⁴

Garda Keogh told the Chairman his understanding that the Order meant he had until 13th March 2017 to file a statement with the tribunal.²⁰³⁵ His counsel later submitted to the Chairman that this was a *'misunderstanding'*:

Q. *Chairman: It's perhaps understandable that somebody who was uneasy about what had transpired up to then might look on this with a somewhat suspicious mind.*

A. *Mr Kelly: Yes. It's quite clear that the misunderstanding went a little wider, because there's other correspondence that it was accepted that there was a delay in, and so on. But my point is, I wonder really whether we have to go there. Because on the face of it, to me the order is clear.*

Q. *Chairman: Yes, I understand.*

A. *Mr Kelly: It was misunderstood in another way.*

Q. *Chairman: So you're happy to leave that one. I think Garda Keogh is happy to leave that one and say, look, whatever it means, it means. If we have to decide whether there was anything, so to speak, negligent, reckless or malicious, we can revisit that in due course, but we don't need to worry ourselves with it at the moment.*

A. *Mr Kelly: That's my personal view.*

Q. *Chairman: If I may say so, Mr. Kelly, I certainly endorse that view.*²⁰³⁶

During the direct examination of Supt Murray, counsel for Garda Keogh agreed that Issue 21 could be addressed *'for completeness sake'* and said that his own view of the meaning of the Order was not a view that was taken by his instructing solicitor.²⁰³⁷

²⁰³² Tribunal Transcripts, Day 104, pp. 138-139, Evidence of Garda Nicholas Keogh

²⁰³³ Tribunal Transcripts, Day 104, p. 139, Evidence of Garda Nicholas Keogh

²⁰³⁴ Tribunal Transcripts, Day 112, p. 100, Evidence of Garda Nicholas Keogh

²⁰³⁵ Tribunal Transcripts, Day 112, pp. 103-104, Evidence of Garda Nicholas Keogh

²⁰³⁶ Tribunal Transcripts, Day 112, pp. 106-107, Submission of counsel for Garda Nicholas Keogh

²⁰³⁷ Tribunal Transcripts, Day 125, pp. 75-76, Submission of counsel for Garda Nicholas Keogh

Responding Statements and Evidence on the Issue

Superintendent Pat Murray

Supt Murray told tribunal investigators that *'the allegation is attributed totally to me in a way designed to damage my character, reputation and career prospects'*.²⁰³⁸ He referred to the letter from Garda Keogh's solicitors and stated that:

*When that letter arrived I made inquiries with the then District Clerk and Inspector Minnock who dealt with the issue. I returned a report to Assistant Commissioner Fanning and I have no knowledge of whether any reply was sent to Garda Keogh. There was no intention on anyone's part to withhold anything from Garda Keogh, who it appears was fully aware of the Tribunal's order in any event.*²⁰³⁹

In response to a query by the Chairman as to whether the Order was deliberately withheld from Garda Keogh, Supt Murray replied as follows:

*No, Chairman. I first learned of this when I received a letter that had been sent by Garda Keogh's legal representatives to Assistant Commissioner Fanning. It came down the line to me, we made our enquiries and carried out the research and sent a report back explaining what had occurred. I really had no knowledge. Inspector Minnock outlined fully the delay that had occurred and how that occurred. That report went back and Assistant Commissioner Fanning asked the chief superintendent in Westmeath to reply to the query generated by Garda Keogh, which was ccd to the Tribunal. And the chief superintendent then did so on the 11th June '17, explaining what the position was.*²⁰⁴⁰

Inspector Aidan Minnock

In his statement to the tribunal, Insp Minnock said that:

*This documentation was given to me to serve on Garda Keogh and there was a delay in serving it. The Order was emailed to Garda Keogh, at the same time as personnel within the District. Compliance with service of the Order was discussed at a PAF meeting and it was mentioned that some people were absent from duty (for a variety of reasons) and it was decided to serve the Order individually on them. A decision was made at this PAF meeting to allocate specific people to serve the Orders on the persons who were absent. I undertook to serve the Order and documentation on Garda Keogh.*²⁰⁴¹

He stated that he served the Order at Garda Keogh's residence on 21st March 2017, having made other previous unsuccessful attempts to serve it²⁰⁴² and that *'[t]here was no intentional delay in serving the Order and documentation on Garda Keogh'*.²⁰⁴³

Counsel for the tribunal asked Insp Minnock the following:

Q. *Obviously it's perhaps on one view unsatisfactory that an order intended to alert members to preserve evidence isn't brought to their attention as soon as possible, I take it you agree with that?*

²⁰³⁸ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3102

²⁰³⁹ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3102

²⁰⁴⁰ Tribunal Transcripts, Day 125, pp. 76-77, Evidence of Supt Pat Murray

²⁰⁴¹ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 692

²⁰⁴² Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 692

²⁰⁴³ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 693

- A. *Oh I absolutely agree with it. But I would also say that I did bring it to Garda Keogh's attention as soon as possible.*
- Q. *Was there any intention on your part or on anyone's part to disadvantage Garda Keogh in preserving evidence?*
- A. *Absolutely not.*
- Q. *Was there any fear that he might not preserve evidence or destroy it?*
- A. *No, I don't think that was – I can't see how anyone could see why he would be destroying evidence in relation to a protected disclosure that he or someone else was going to bring. I would envisage that perhaps other people who Garda Keogh may or should have been more concerned with, them having been served with the order rather than himself.*²⁰⁴⁴

Insp Minnock was cross-examined on the issue by counsel for Garda Keogh:

- Q. *So you do accept there was a delay in serving him?*
- A. *I do. The delay was between the 6th and the 21st, but certainly not intentional. I did my best, I called a number of occasions, he wasn't there.*
- Q. *Was there anything stopping you from putting it through the letter box, for example, at an earlier stage and trying to leave a message for Garda Keogh to that effect?*
- A. *Well, I was looking for personal service, to be honest, that's kind of – and I think, if I am not mistaken, the minute that came to me was to serve it on Garda Keogh. I suppose in my experience, certainly throwing it in the letter box is not good service and I was looking to give it to Garda Keogh.*²⁰⁴⁵

Legal Submissions

The oral and written legal submissions on behalf of Garda Keogh did not address this issue.²⁰⁴⁶ However, following the conclusion of the public hearings, Garda Keogh's solicitor submitted the following by letter to the tribunal:

The issue on the late service of the Tribunal Notice was not that it was relevant only to modules (a) to (o) – and therefore irrelevant to (p). This is a misapprehension. The Notice gave 8 days in which to appeal the extent and or content of the Order to preserve real evidence. The late service consequently made any appeal to preserve phone contact evidence between Ms O Sullivan's office and the Athlone station impossible. That is the point there.

The legal submissions filed on behalf of An Garda Síochána stated that this was a '*serious allegation as it is an allegation of cover up*' and that Garda Keogh made and maintained a false allegation of obstruction and/or of withholding information about Supt Murray to the tribunal without any valid evidence to support it.²⁰⁴⁷

²⁰⁴⁴ Tribunal Transcripts, Day 130, pp. 40-41, Evidence of Insp Aidan Minnock

²⁰⁴⁵ Tribunal Transcripts, Day 130, pp. 59-60, Evidence of Insp Aidan Minnock

²⁰⁴⁶ Tribunal Transcripts, Day 152, pp. 12-30

²⁰⁴⁷ Tribunal Documents, Legal Submissions on behalf of An Garda Síochána, p. 100; Tribunal Transcripts, Day 152, pp. 154-155

Conclusion

It was accepted at the tribunal hearings that the complaint in this issue was based on a misunderstanding by Garda Keogh. The situation is actually quite clear and it was not suggested otherwise.

Any delay in serving Garda Keogh was irrelevant to the effectiveness or the implementation of the Order.

The letter from Garda Keogh's solicitor is also based on a misunderstanding, as is clear from the terms of the Order issued by the tribunal. The phone records mentioned were covered by the Order and there was no need for any application about them. The tribunal did in fact secure the mobile and landline billing records for relevant personnel. Following an inspection of the records by Garda Keogh's legal team, the complaint in regard to the communication allegedly made and which was the subject of Issue 8 was withdrawn.

The time period allowed by the tribunal for An Garda Síochána to raise issues about the Order did not represent a legal guillotine ruling out any late application.

The evidence does not reveal targeting or discrediting. The delay in serving the Order is accounted for in the statements and evidence, which the tribunal accepts, and which excludes any hostile or deliberate motivation.

CHAPTER 20

ISSUES WITHDRAWN BY GARDA NICHOLAS KEOGH

As previously noted in this report, the tribunal identified a comprehensive list of 22 issues or complaints by Garda Nicholas Keogh and prepared a schedule of issues for consideration and examination under term of reference [p].

This schedule of issues was agreed between the parties and served as a framework for the public hearings. In particular, Garda Keogh's legal representatives confirmed on 24th April 2019 that:

*We do not propose that any of the 22 matters listed be deleted. Further, as matters currently stand, our client is unaware of the issues that An Garda Síochána propose to delete as irrelevant or inadmissible. We formally request that the Tribunal furnish us with the list of those issues to allow for us to prepare to deal with same at the private hearing between the legal representatives on the 30th April next.*²⁰⁴⁸

However, a number of issues were ultimately withdrawn or not pursued by Garda Keogh. These issues remained on the schedule of issues at the commencement of the public hearings.

Issue 8: The complaint made by Garda Nicholas Keogh that former Garda Commissioner Nóirín O'Sullivan telephoned Superintendent Pat Murray in April 2015

Garda Keogh stated that he was made aware on 10th April 2015 that former Garda Commissioner Nóirín O'Sullivan had personally telephoned Superintendent Pat Murray about him. He stated that:

*It appears to have happened between the 2nd and the 10th April, 2015. Thereafter, I was confidentially advised that Superintendent Pat Murray told other guards in Athlone station to 'pull away from', and alienate, me. I cannot name this source inter alia because Superintendent Pat Murray is still the Superintendent in Athlone and Noirin O Sullivan is the Commissioner of An Garda Síochána. Discovery of the electronic records will no doubt bear this out.*²⁰⁴⁹

Garda Keogh later stated that 'all I can say is that I have no direct evidence other than saying that guards in the station told me this. That is as far as I can go. I am not willing to name the guards concerned, for fear that they will be targeted'.²⁰⁵⁰ Garda Keogh recorded in his diary for 10th April 2015 that:

5pm-3am P-O

I heard Supt P. Murray asked Sgt Haran

To pull back from Nick as it might upset others!

*Commissioner ringing Supt Murray in person!*²⁰⁵¹

²⁰⁴⁸ Tribunal Documents, Email from Garda Nicholas Keogh's solicitors to the Disclosures Tribunal, dated 24th April 2019, p. 5966 at p. 5967

²⁰⁴⁹ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 129

²⁰⁵⁰ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 49

²⁰⁵¹ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 10th April 2015, p. 13306

Asked by tribunal investigators whether he was alleging that the former Commissioner was involved with Supt Murray in allegedly telling other gardaí in Athlone Garda Station to pull away from and alienate him, Garda Keogh stated that *'I am not saying and cannot say that the former Commissioner Nóirín O'Sullivan was involved in that part of things. However, she was the Commissioner in charge at the time and I was her first whistleblower'*.²⁰⁵²

In respect of the alleged acquiescence by the former Commissioner with the targeting or discrediting conduct, Garda Keogh stated that:

*I can't see how it could have been any other way. It is my belief that former Commissioner O'Sullivan may have had knowledge and acquiesced in my targeting or discrediting. However, as stated earlier I do not wish to name the Gardaí who informed me that she had been in contact with Superintendent Pat Murray in this respect.*²⁰⁵³

However, he stated that *'I do not have any evidence to support my belief in this regard in relation to the former Garda Commissioner Nóirín O'Sullivan's knowledge or acquiescence of my targeting or discrediting'*.²⁰⁵⁴

In a letter to the tribunal dated 23rd May 2019, Garda Keogh's solicitor further clarified that:

*On my client's instructions, I can confirm that the identity of my client's informant is Sergeant Andrew Harran. My client confirms to me that Sergeant Harran was the person who advised him, in 2015, that Superintendent Pat Murray had requested Sgt Harran to 'pull back from' or 'alienate' Garda Keogh. At the time, my client reduced such information to a diary entry. It is enclosed herewith. In addition, Garda Nick Keogh believes Sergeant Harran informed him of telecommunications between the Commissioner and Superintendent Murray but Garda Keogh instructs me he is less certain about his recollection of his informant in this regard.*²⁰⁵⁵

Former Commissioner O'Sullivan rejected the allegation made by Garda Keogh in respect of her and the phone call alleged to have been made between 2nd April and 10th April 2015. In a statement to the tribunal, she stated that:

*This is untrue. I have never had a conversation by telephone or otherwise with Superintendent Murray in relation to Garda Keogh. Other than meeting Superintendent Murray on official occasions, I have never had direct contact with the Superintendent. I can state categorically that no such telephone conversation ever took place. The apparent suggestion that I in any way directed Superintendent Murray or any other member of An Garda Síochána to 'push' Garda Keogh 'away' or 'alienate' him is completely untrue and without foundation and I absolutely refute such a suggestion.*²⁰⁵⁶

In his interview with tribunal investigators, Supt Murray stated that he had never spoken to the former Commissioner about Garda Keogh and that *'I did not know her, she did not phone me and I never suggested to anyone they should pull away from or alienate Garda Keogh nor would I have any reason to do so'*.²⁰⁵⁷ He continued:

I find Garda Keogh's reluctance to divulge the source of this information sinister. Its appearance for the first time in his allegation of bullying in March 2017 leads me to conclude that it

²⁰⁵² Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 49

²⁰⁵³ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 90

²⁰⁵⁴ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 111

²⁰⁵⁵ Tribunal Documents, Letter from Garda Nicholas Keogh's solicitors to the Disclosures Tribunal, dated 23rd May 2019, p. 5970 at p. 5971

²⁰⁵⁶ Tribunal Documents, Statement of former Garda Commissioner Nóirín O'Sullivan, p. 5965

²⁰⁵⁷ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3061

*may have been supplied to him by someone who had sinister motives towards former Garda Commissioner O’Sullivan. While he indicates he received the information on 10th April 2015, I question the specificity of that date as he doesn’t appear to have a note of the allegation. Furthermore, I spoke to Garda Keogh by telephone on 15th April 2015, and the tone and nature of the conversation leads me to conclude that he had no knowledge of this alleged phone call at this time. I believe that the source of Garda Keogh’s information is of a standing sufficient to allow Garda Keogh believe it to be true without question. I find it astonishing that Garda Keogh would introduce this, an allegation which is entirely untrue in a way that casts aspersions on the characters of both Former Commissioner O’Sullivan and I ... I suggest this allegation is false because it didn’t happen and therefore I have no motive.*²⁰⁵⁸

He stated that he ‘*absolutely*’ did not telephone the former Commissioner to discuss Garda Keogh and said that ‘*I never spoke to her in relation to Garda Keogh*’.²⁰⁵⁹ He further denied that the former Commissioner, or any senior garda member, ever contacted him about Garda Keogh and directed him to target or discredit him in any way.²⁰⁶⁰

In respect of the letter of 23rd May 2019,²⁰⁶¹ Supt Murray stated that ‘*I refute in its entirety the most recent version of Garda Keogh’s allegation, as set out ... in correspondence I received*’.²⁰⁶²

In his statement to the tribunal, Sergeant Andrew Haran said that he played no part in any alleged harassment, exclusion, victimisation or penalisation of Garda Keogh. He stated that ‘*I did not receive any request or direction from any other member to treat Garda Keogh differently from other members. I have no knowledge of any such alleged mistreatment*’.²⁰⁶³ In respect of the letter of 23rd May 2019,²⁰⁶⁴ Sgt Haran stated that:

*I take issue with being characterised as an informant ... I didn’t tell Garda Keogh of any telecommunications between the Commissioner and Superintendent Pat Murray. I didn’t know of any. Had I known, that would have been hugely important to Garda Keogh, so I would definitely remember it.*²⁰⁶⁵

The tribunal carried out extensive preliminary enquiries on the issue and obtained the mobile phone billing and landline call records for the relevant period in respect of both Supt Pat Murray and the former Commissioner. A number of statements were also obtained from the Telecommunications Section at Garda Headquarters.²⁰⁶⁶

An Garda Síochána provided the mobile billing records²⁰⁶⁷ and landline call records²⁰⁶⁸ in respect of Supt Murray. An Garda Síochána also provided the mobile billing records²⁰⁶⁹ and landline call record²⁰⁷⁰ in respect of former Commissioner O’Sullivan. These were made available to the parties on application.

²⁰⁵⁸ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3062-3063

²⁰⁵⁹ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3063

²⁰⁶⁰ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3063

²⁰⁶¹ Tribunal Documents, Letter from Garda Nicholas Keogh’s solicitors to the Disclosures Tribunal, dated 23rd May 2019, p. 5970

²⁰⁶² Tribunal Documents, Additional Statement of Supt Pat Murray, p. 11698

²⁰⁶³ Tribunal Documents, Statement of Sgt Andrew Haran, p. 587 at p. 592

²⁰⁶⁴ Tribunal Documents, Letter from Garda Nicholas Keogh’s solicitors to the Disclosures Tribunal, dated 23rd May 2019, p. 5970 at p. 5971

²⁰⁶⁵ Tribunal Documents, Investigator Interview of Sgt Andrew Haran, p. 11749 at p. 11764

²⁰⁶⁶ Tribunal Documents, Witness Statements, Telecommunications Section, Garda Headquarters, pp. 6061-6075

²⁰⁶⁷ Tribunal Documents, Mobile Billing Records of Supt Pat Murray, p. 6075

²⁰⁶⁸ Tribunal Documents, Letter from the Chief State Solicitor’s Office to the Disclosures Tribunal, dated 27th May 2019, p. 12635

²⁰⁶⁹ Tribunal Documents, Letter from the Chief State Solicitor’s Office to the Disclosures Tribunal, dated 27th November 2018, p. 6063; Letter from the Chief State Solicitor’s Office to the Disclosures Tribunal, dated 24th January 2019, p. 6068

²⁰⁷⁰ Tribunal Documents, Letter from the Chief State Solicitor’s Office to the Disclosures Tribunal, dated 27th November 2018, p. 6063

The mobile phone records of former Commissioner O’ Sullivan were interrogated by Detective Superintendent Michael Flynn.²⁰⁷¹ Inspector Liam Moroney, attached to the Telecommunications Section at Garda Headquarters, examined the billing records for Supt Murray’s mobile phone.²⁰⁷² Insp Moroney confirmed that he tasked Sergeant Kieran Downey with retrieving the call records for Supt Murray’s and former Commissioner O’ Sullivan’s office phones.²⁰⁷³ The alleged call was not identified in these records.

At the commencement of the public hearings, counsel on behalf of An Garda Síochána referred to the above material and made an application to the tribunal in respect of this issue as follows:

So ultimately, a progression has developed whereby at first Garda Keogh says he doesn’t wish to disclose the informant, then he does, then that person is approached and that person says no, that never happened. And thereafter, we are stuck in a situation where in effect Garda Keogh’s perception and beliefs are the only evidential basis being put forward to support the proposition contained in issue number 8.²⁰⁷⁴

Counsel for An Garda Síochána stated that there was ‘no evidence’ for this issue.²⁰⁷⁵ The Chairman addressed counsel for Garda Keogh and raised the issue of ‘the fairness of putting an allegation to the former Commissioner’²⁰⁷⁶ and whether it was reasonable to say that ‘there should be admittedly even a low threshold of proof’.²⁰⁷⁷ Counsel for Garda Keogh stated that he would take instructions on the issue. Prior to the commencement of Issue 8, counsel for An Garda Síochána renewed his submission to the tribunal on the basis that Garda Keogh had ‘no direct evidence’ for the allegation outlined.²⁰⁷⁸

The tribunal investigators met with Garda Keogh and his legal team to facilitate an inspection of the billing records on 16th and 17th October 2019. Counsel for Garda Keogh subsequently confirmed to the tribunal on 17th October 2019 that:

Chairman, thank you very much for having given us the time. Having re-examined the relevant documents and taken instructions of Garda Keogh, we are of the view now that we don’t wish to pursue that issue, Issue 8.²⁰⁷⁹

The Chairman of the tribunal stated:

... Well, it seems to me that the proper course for the inquiry to take is to note that. Mr McGuinness will, therefore, not ask Garda Keogh any questions arising out of that. Any submissions that anybody wants to make as a consequence of that are another day’s work. But witnesses will not now be asked, subject to any application or whatever in due course, but for the present all we need do is simply pass over issue number 8 as not being proceeded with in evidence by Garda Keogh ...²⁰⁸⁰

The legal submissions filed on behalf of Garda Nicholas Keogh do not address this issue. The legal submissions filed on behalf of An Garda Síochána stated *inter alia*:

²⁰⁷¹ Tribunal Documents, Statement of D/Supt Michael Flynn, p. 6061

²⁰⁷² Tribunal Documents, Statement of Insp Liam Moroney, p. 6074

²⁰⁷³ Tribunal Documents, Statement of Insp Liam Moroney, p. 6074

²⁰⁷⁴ Tribunal Transcripts, Day 99, p. 149, Submission of counsel for An Garda Síochána

²⁰⁷⁵ Tribunal Transcripts, Day 99, p. 151, Submission of counsel for An Garda Síochána

²⁰⁷⁶ Tribunal Transcripts, Day 99, p. 152, Chairman of the Tribunal

²⁰⁷⁷ Tribunal Transcripts, Day 99, p. 152, Chairman of the Tribunal

²⁰⁷⁸ Tribunal Transcripts, Day 101, p. 65, Submission of counsel for An Garda Síochána

²⁰⁷⁹ Tribunal Transcripts, Day 102, p. 6, Submission of counsel for Garda Nicholas Keogh

²⁰⁸⁰ Tribunal Transcripts, Day 102, p. 6, Chairman of the Tribunal

- that Sgt Haran provided a statement and unequivocally denied ever having told Garda Keogh this and his position was not contested by Garda Keogh.
- that during the public hearings, Garda Keogh insinuated that because telephone records obtained by the tribunal showed texts between Commissioner O’Sullivan and Chief Superintendent John Scanlan, and C/Supt Scanlan had been in contact with Supt Murray, those communications related to him.²⁰⁸¹ This was a new allegation, once more made without any foundation or evidence.
- that while Garda Keogh’s withdrawal of allegations of phone tapping and of targeting by the former Commissioner were welcome even at a late stage, they were unaccompanied by any indication of apology, regret or acknowledgement that they had been wrongly made.²⁰⁸²

The tribunal is of the view that the allegation that the former Commissioner had phoned a superintendent to tell him to isolate a whistleblower under his command was obviously extremely damaging and intended as such. There is no room for error or misunderstanding. Garda Keogh did not provide any reliable or credible information about his source but there is little point in speculating about it. On the basis of the material available to it and as it stands, the tribunal accepts that it was not Sgt Haran and it was not suggested otherwise.

Garda Keogh had no basis for making this case against the former Commissioner. Yet he stood over it until the tribunal was under way and only retreated when challenged. Even at that point, as the submissions filed on behalf of An Garda Síochána point out, his counsel sought to reframe the allegation as an indirect message transmitted to Supt Murray and on a wholly speculative basis. This untrue allegation could well have had an adverse influence on the Commissioner vis-à-vis members of the force, outside observers, media, the public and politicians, including potentially members of the Government with whom the Commissioner had to communicate.

Issue 13: The complaint made by Garda Nicholas Keogh in relation to the alleged denial of overtime

Garda Keogh stated that there was a significant difference between his A85 forms (the garda roster forms which record overtime duty) in the years following the making of his protected disclosure and those in the years before.²⁰⁸³

In respect of his allegation that he was denied overtime, he outlined the specific instances to the tribunal, giving a series of dates and events between 21st June 2014 and 23rd September 2015.²⁰⁸⁴ However, Garda Keogh confirmed that he did not request overtime on any of the identified dates.²⁰⁸⁵

Garda Keogh has a number of diary entries on the issue of overtime²⁰⁸⁶ and in regard to a text exchange with Sergeant Sandra Keane, he recorded on 13th February 2015 that:

²⁰⁸¹ Tribunal Transcripts, Day 101, p. 25, Evidence of Garda Nicholas Keogh

²⁰⁸² Tribunal Documents, Legal Submissions on behalf of An Garda Síochána, pp. 3-4

²⁰⁸³ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 83

²⁰⁸⁴ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 81-82

²⁰⁸⁵ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 83

²⁰⁸⁶ Tribunal Documents, Diary entries of Garda Nicholas Keogh, dated 21st-22nd June 2014, 28th August 2014, 13th February 2015, 5th April 2015, 10th-11th April 2015, pp. 433-434, 13271, 13298, 13305, 13306

21.16 S Keane txt me 'tried you earlier might need more on OT for funeral Monday Detail done. OT 9-3pm are ye available if required Sandra Keane'. They only txt me when they are stuck for nos having txt everyone else so I replied 'can't do Monday'.²⁰⁸⁷

He accepted that he was *'absent intermittently with work related stress during this period'*,²⁰⁸⁸ namely between 21st June 2014 and 23rd September 2015. Garda Keogh also stated, in respect of the allocation of overtime, that, from his experience, it was done *'... by seniority (longest service) on each Unit. It is more a tradition than a policy, from my knowledge. It is generally the Sergeant that offers overtime to Garda rank'*.²⁰⁸⁹

On the allocation of overtime to garda members at Athlone Garda Station, Supt Murray stated that:

I was not involved in a general distribution of over-time to individual Garda members in Athlone as that was the responsibility of the Sergeant in Charge and/or the unit Sergeant. Overtime is not offered on the basis of seniority. Sickness absence has a bearing on overtime allocation as set out in Garda Finance Code 10.1(5).²⁰⁹⁰

He stated that he was not aware of any decision to deny Garda Keogh the opportunity to avail of overtime:

No and as I said no one in Athlone had any issue with Garda Keogh. There was no animosity displayed towards him in my experience. I note Garda Keogh was on overtime on 4th July 2015 for the Triathlon in Athlone, when two thefts were reported to him.²⁰⁹¹

Chief Superintendent Lorraine Wheatley said that she was not aware of any decision to deny Garda Nicholas Keogh the opportunity to avail of overtime during her tenure as the divisional officer.²⁰⁹² Superintendent Noreen McBrien similarly confirmed that she was not aware of any decision to deny Garda Nicholas Keogh the opportunity to avail of overtime during her tenure as the superintendent of Athlone Garda Station, and she confirmed that Garda Keogh never raised such an issue with her.²⁰⁹³ Inspector Aidan Minnock stated that he did not recall ever having a discussion with any supervisor or the district management team regarding the allocation or non-allocation of overtime to Garda Keogh.²⁰⁹⁴

Sgt Keane stated that she had no involvement in any alleged harassment, exclusion, victimisation or penalisation of Garda Keogh.²⁰⁹⁵ Sergeant Michelle Baker also stated that she played no part in any alleged harassment, exclusion, victimisation or penalisation of Garda Keogh.²⁰⁹⁶

Sergeant Cormac Moylan was Unit C's supervising sergeant and he stated that *'if I did have overtime to allocate it was offered to all members on an equal basis'*.²⁰⁹⁷ Sergeant Dermot Monaghan

²⁰⁸⁷ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 13th February 2015, p. 13298

²⁰⁸⁸ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 84

²⁰⁸⁹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 81

²⁰⁹⁰ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2056

²⁰⁹¹ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3089

²⁰⁹² Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at pp. 6127-6128

²⁰⁹³ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6267

²⁰⁹⁴ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 693

²⁰⁹⁵ Tribunal Documents, Statement of Sgt Sandra Keane, p. 558 at p. 562

²⁰⁹⁶ Tribunal Documents, Statement of Sgt Michelle Baker, p. 599 at p. 603

²⁰⁹⁷ Tribunal Documents, Statement of Sgt Cormac Moylan, p. 604 at p. 608

stated that he had no role in the allocation of overtime²⁰⁹⁸ and that he had ‘*no knowledge or awareness, directly or indirectly of any negative treatment of Garda Nick Keogh*’.²⁰⁹⁹

During its preliminary investigations of this issue, the tribunal sought the disclosure of the A85 roster forms completed in respect of Garda Keogh for the period from 5th January 2014 to 5th December 2015.²¹⁰⁰ Further, the tribunal sought details in respect of the allocation of overtime for the events referenced by Garda Keogh, including the details of the gardaí allocated overtime on those dates.²¹⁰¹ Details and material were also received in respect of the allocation of overtime for the National Ploughing Championships in 2014²¹⁰² and 2015.²¹⁰³ The foregoing material was disclosed to the parties in advance of the commencement of the tribunal hearing in respect of Garda Keogh.

Prior to the commencement of the examination of Garda Keogh in respect of Issue 13, counsel for the tribunal told the Chairman that:

*I should say that Mr. Kelly [on behalf of Garda Keogh] has told me that he's not requiring the Tribunal to pursue any further inquiry into Issue number 13, the overtime issue.*²¹⁰⁴

The legal submissions filed on behalf of Garda Nicholas Keogh do not address this issue. The legal submissions filed on behalf of An Garda Síochána stated that ‘*as the public hearings continued and as Garda Keogh was challenged on each issue, the Tribunal witnessed time after time further retreats from his allegations were similarly unaccompanied by any hint of regret or apology. Issues 13 and 14 fell away also*’.²¹⁰⁵ The legal submissions filed on behalf Sgt Baker stated that:

*The allegation in respect of alleged denial of overtime was maintained until 18 October 2019 having been asserted in the statement furnished by Garda Keogh on 27 March 2017. Inspector Baker, as the person who had responsibility for the distribution of overtime, was obliged to deal with this accusation which was withdrawn only after hearings had commenced. An allegation of inequitable distribution of overtime directly implies unprofessional and unfair behaviour by Inspector Baker. It is manifest that such allegations which impugn a person's professionalism inexorably cause stress and worry which was exacerbated by the fact that the allegation was withdrawn so late.*²¹⁰⁶

The tribunal is of the view that the puzzling features of this issue are the specificity of the claims and the fact that Garda Keogh maintained them as long as he did. They would have resonated with an observer as examples of discrimination. And more significantly, he was aware from his experience in the force of the fact that sergeants allocated overtime having told the tribunal that ‘*it is generally the Sergeant that offers overtime to Garda rank*’.²¹⁰⁷

Garda Keogh makes no complaint about his sergeants and in this issue he does not attempt to establish a connection with Supt Murray or C/Supt Wheatley.

²⁰⁹⁸ Tribunal Documents, Statement of Sgt Dermot Monaghan, p. 609 at p. 612

²⁰⁹⁹ Tribunal Documents, Statement of Sgt Dermot Monaghan, p. 609 at p. 614

²¹⁰⁰ Tribunal Documents, A85 forms relating to Garda Nicholas Keogh, dated 5th January 2014-5th December 2015, pp. 9151-9177

²¹⁰¹ Tribunal Documents, Letter from the Chief State Solicitor's Office to the Disclosures Tribunal including attachments, dated 9th October 2019, pp. 14190-14239

²¹⁰² Tribunal Documents, Letter from the Chief State Solicitor's Office to the Disclosures Tribunal, including attachments, dated 14th October 2019, pp. 14628-14646

²¹⁰³ Tribunal Documents, Letter from the Chief State Solicitor's Office to the Disclosures Tribunal, including attachments, dated 17th October 2019, pp. 14831-14865

²¹⁰⁴ Tribunal Transcripts, Day 103, p. 50, Submission by counsel for the tribunal

²¹⁰⁵ Tribunal Documents, Legal Submissions on behalf of An Garda Síochána, p. 4

²¹⁰⁶ Tribunal Documents, Legal Submissions on behalf of Sgt Michelle Baker, pp. 6-7

²¹⁰⁷ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 81

Issue 16: The complaint made by Garda Nicholas Keogh in relation to the alleged tapping of his phone and/or interference with his post

In a letter to the Director of Public Prosecutions (and copied to the Minister for Justice and Equality) dated 26th July 2015, Garda Keogh outlined the belief that *'my private phone has been tapped and my personal post has been interfered with. I also believe my pulse access has been monitored and suspect my private internet has been monitored also'*.²¹⁰⁸

In relation to whether he had evidence to support this belief, he told the tribunal investigators that:

*The only evidence that I have to substantiate this belief is that in a phone call from Assistant Commissioner Ó Cualáin to me on 15/05/2014 at 11:00 hours he advised me twice in the course of that call not to go into details over the phone. We have applied for different records through Freedom of Information in relation to the tapping of my phone. I believe the Garda Síochána has the technology to do these things but I do not have evidence to support this. I believe this would have occurred after May 2014.*²¹⁰⁹

In a diary entry dated 11th August 2014, Garda Keogh referred to a conversation with Assistant Commissioner Dónall Ó Cualáin and made a note entitled *'phone tap'*, stating that:

15.59 AC rings re letter

Meet Portumna 6pm Wednesday

*He said twice don't talk about it over phone we'll talk face to face got impression he didn't want people listening in on conversation to hear rather than being worried that I recorded him or not.*²¹¹⁰

In relation to the allegation of interference with his post, Garda Keogh told the investigators that a correspondent sent a letter to him that he did not receive and that he believed that a letter he sent to this person had been *'intercepted'*.²¹¹¹ In his diary, and in respect of the letter Garda Keogh said that he sent, he recorded that his solicitor informed him on 29th May 2015 that the *'last letter I posted to him had slit down the side'*.²¹¹²

A/C Ó Cualáin set out his recollection of the telephone call with Garda Keogh on 15th May 2014 in his statement to the tribunal:

*The CR [confidential reporter] states that I advised him twice not to go into details over the phone and asserts that this is the only evidence he has to substantiate his belief that his private phone was being tapped. I may well have advised him in this way but not for the reasons as outlined by the CR. The purpose of the call was to introduce myself to him, to explain what Commissioner O'Sullivan had appointed me to do and to make arrangements to meet with him at a time and place of his choosing to discuss all aspects of his concern in detail and take a statement of complaint from him.*²¹¹³

²¹⁰⁸ Tribunal Documents, Letter from Garda Nicholas Keogh to Director of Public Prosecutions, dated 26th July 2015, p. 144 at p. 146

²¹⁰⁹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 21

²¹¹⁰ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 11th August 2014, p. 13269

²¹¹¹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 21

²¹¹² Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 29th May 2015, p. 13313

²¹¹³ Tribunal Documents, Statement of Former Acting Commissioner Dónall Ó Cualáin, p. 3957 at pp. 3957-3958

During its preliminary investigations, the tribunal sought discovery in relation to this issue from Garda Keogh and disclosed the relevant material.²¹¹⁴ The tribunal subsequently requested additional information from An Garda Síochána in relation to Garda Keogh's allegations. This additional information was provided on 8th March 2019, confirming that no requests for telephone checks on Garda Keogh were found; neither were there traces.²¹¹⁵ Security and Intelligence returned eight search items relating to Garda Keogh which were all *'seemingly related to Garda duties'*.²¹¹⁶ The National Surveillance Unit also conducted a check of reports and records relating to all search criteria requested by the tribunal, which proved negative.²¹¹⁷

On 4th October 2019, and prior to the commencement of the public hearings, Garda Keogh's solicitor confirmed to the tribunal as follows:

*In respect of phone tapping, please note that Garda Keogh in consultation with Mr Anderson instructs that he does not propose to pursue any such electronic enquiry before the Tribunal. Garda Keogh advises that he has no additional phone records. Garda Keogh does not remember who told him his phone 'could' be tapped. This latter is of no evidential value and Garda Keogh has not made an allegation of phone tapping in his statements to Tribunal as he says it is virtually impossible to prove and would therefore be a waste of the Tribunal's time.*²¹¹⁸

On 18th October 2019, counsel for the tribunal confirmed that Garda Keogh's legal team had informed him that he was no longer requiring the tribunal to pursue Issue 16 any further.²¹¹⁹

The legal submissions filed on behalf of Garda Nicholas Keogh do not address this issue. The legal submissions filed on behalf of An Garda Síochána state that Garda Keogh did not have a single piece of evidence upon which to base this claim and that the allegation was dropped without apology.²¹²⁰

Issue 22: The complaint made by Garda Nicholas Keogh that reports prepared by An Garda Síochána pursuant to section 41 of the Garda Síochána Act, 2005 were withheld from him

This issue was not raised by Garda Keogh in his statement to the tribunal but was raised in the considerable correspondence between his solicitor and the Minister for Justice and Equality. By way of background, section 41(2) of the Garda Síochána Act, 2005 provides as follows:

Whenever required by the Minister, the Garda Commissioner shall submit to the Minister a report on any matters connected with the policing or security of the State or the performance of the Commissioner's other functions that may be specified in the requirement.

Section 41(4) provides that the Minister for Justice and Equality may publish all or part of the report provided by the Garda Commissioner.

²¹¹⁴ Tribunal Documents, Documents from Garda Nicholas Keogh regarding allegations of phone tapping and interference with post, pp. 9225-9237

²¹¹⁵ Tribunal Documents, Letter from the Chief State Solicitor's Office to the Disclosures Tribunal, dated 8th March 2019, pp. 13439-13442, enclosing schedules from the Intelligence Section/National Criminal Intelligence Unit and National Surveillance Unit, pp. 13443-13444

²¹¹⁶ Tribunal Documents, Letter from the Chief State Solicitor's Office to the Disclosures Tribunal, dated 8th March 2019, p. 13439 at pp. 13440-13441

²¹¹⁷ Tribunal Documents, Letter from the Chief State Solicitor's Office to the Disclosures Tribunal, dated 8th March 2019, p. 13439 at p. 13441

²¹¹⁸ Tribunal Documents, Letter from Garda Keogh's solicitors to the Disclosures Tribunal, dated 4th October 2019, p. 14175 at p. 14176

²¹¹⁹ Tribunal Transcripts, Day 103, p. 101, Submission by counsel for the tribunal

²¹²⁰ Tribunal Documents, Legal Submissions on behalf of An Garda Síochána, p. 3

In July 2016, the Minister for Justice and Equality wrote to the Garda Commissioner urgently requesting a report pursuant to her powers under section 41(2) of the Garda Síochána Act, 2005.²¹²¹ An interim report was provided to the Minister for Justice and Equality on 9th September 2016.²¹²² The final report was provided by the Commissioner on 11th October 2016.²¹²³

Garda Keogh wrote to both the Minister for Justice and Equality and the Garda Commissioner on a number of occasions requesting copies of these reports and querying why he had not been provided with the same. These requests were denied.

During his evidence to the tribunal, Garda Keogh stated that he was *'not even certain on this one'*.²¹²⁴ The Chairman responded that he was correct not to be certain because *'I think it has nothing to do with me'*.²¹²⁵ Counsel on behalf of Garda Keogh later informed the tribunal that the matter was no longer before the tribunal and that *'we accept that it is purely for the Minister'*.²¹²⁶

²¹²¹ Tribunal Documents, Letter from Mr Martin Power to the Commissioner, dated July 2016, pp. 11506-11507

²¹²² Tribunal Documents, Letter from C/Supt Mark Curran to Secretary General, Department of Justice and Equality, dated 9th September 2016, pp. 11519-11521

²¹²³ Tribunal Documents, Letter from C/Supt Mark Curran to Secretary General, Department of Justice and Equality, dated 11th October 2016, pp. 11525-11529

²¹²⁴ Tribunal Transcripts, Day 104, p. 142, Evidence of Garda Nicholas Keogh

²¹²⁵ Tribunal Transcripts, Day 104, pp. 142-143, Tribunal Chairman

²¹²⁶ Tribunal Transcripts, Day 110, p. 74, Submission by counsel for Garda Nicholas Keogh

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