



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 TWO

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



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Volume Two

PART FOUR

Chapter 21	Issue 17: The complaint made by Garda Nicholas Keogh in relation to the investigation of his protected disclosure carried out by Assistant Commissioner Dónall Ó Cualáin	
	The Facts	469
	Complaint made by Garda Nicholas Keogh	486
	Allegation that the investigation was delayed	486
	Allegations that he had to work with Garda A in Athlone Garda Station after he made his protected disclosure and that the criminal investigation interviews took place in Athlone Garda Station.	487
	Allegation that the Ó Cualáin investigation should have dealt with all matters and that there should not have been 'mini-investigations'	492
	Allegation that there was a failure to arrest suspects and/or preserve evidence by the investigation team	493
	Allegation that Superintendent Pat Murray targeted Garda Nicholas Keogh with the direction and/or acquiescence of Assistant Commissioner Dónall Ó Cualáin	495
	Responding Statements and Evidence on the Issue	498
	Former Acting Commissioner Dónall Ó Cualáin	498
	Detective Superintendent Declan Mulcahy.	507
	Detective Inspector Michael Coppinger	514
	Chief Superintendent Mark Curran	516
	Chief Superintendent Lorraine Wheatley	518
	Superintendent Noreen McBrien.	519
	Superintendent Pat Murray.	524
	Inspector Aidan Minnock.	525
	Sergeant Andrew Haran	526
	Detective Superintendent Frank Walsh.	526
	Detective Sergeant Eamon Curley.	530
	Judge Patrick McMahon.	531
	Garda Fergal Greene	533
	Legal Submissions	534
	Garda Nicholas Keogh.	534
	An Garda Síochána.	537
	Delay Commencing	537
	Delay Seizing Evidence.	537

Failure to Suspend/Proximity in the Workplace	538
Rostered with Garda A	538
Statements in Athlone	539
Failure to Revisit a Crucial Witness.	539
Favourable Treatment.	539
Interference from a Side Investigation	540
General Delay	540
Downplaying Findings.	540
General Cover-up.	540
Sergeant Andrew Haran	541
Discussion.	541
Allegations of delay	543
Seizure of evidence	544
Garda A's mobile phone	544
Suspension of Garda A	544
Taking of statements in Athlone	545
Interview of a crucial witness	546
Favourable treatment.	547
Rostering with Garda A.	548
Delay and Ms B.	548
Garda Nicholas Keogh's statement.	548
Conclusion	549

Chapter 22 Issue 19: The complaint made by Garda Nicholas Keogh in relation to the disciplinary investigation carried out by Assistant Commissioner Jack Nolan and completed by Assistant Commissioner Anne Marie McMahon

The Facts.	551
Procedure for the investigation of 'serious breaches of discipline'	551
The reports of Assistant Commissioner Dónall Ó Cualáin and the investigation carried out by Assistant Commissioner Jack Nolan	552
The Appointment of Assistant Commissioner Anne Marie McMahon	558
The investigation carried out by Assistant Commissioner Anne Marie McMahon.	560
The report of Assistant Commissioner Anne Marie McMahon	562
Consideration of the McMahon report by Assistant Commissioner David Sheahan	565
Complaint made by Garda Nicholas Keogh.	565
Failure to keep him informed	566
Failure to arrest Garda A or any others on foot of Ms B's statement.	568
Deliberate 'dragging out' of the investigation.	569

Responding Statements and Evidence on the Issue	569
Retired Assistant Commissioner Jack Nolan	569
Assistant Commissioner Anne Marie McMahon	572
Detective Inspector Michael Coppinger	578
Superintendent Michael Leacy	578
Detective Inspector Seamus Maher	581
Chief Superintendent Margaret Nugent	583
Assistant Commissioner David Sheahan	585
Assistant Commissioner Orla McPartlin	591
Deputy Commissioner John Twomey	592
Former Acting Commissioner Dónall Ó Cualáin	593
Legal Submissions	593
Garda Nicholas Keogh	593
An Garda Síochána	594
Failure to arrest	594
Alleged deliberate delay	595
Alleged failure to update	596
Discussion	596
That Garda Keogh was not informed of Assistant Commissioner McMahon's appointment	596
That Garda Keogh was not kept up to date with the investigation	598
The alleged failure by Assistant Commissioner Anne Marie McMahon to make an arrest	598
Assistant Commissioner Anne Marie McMahon did not complete her investigation until 7th June 2018, a period of more than 15 months	599
Conclusion	600

Chapter 23 Issue 18: The complaint made by Garda Nicholas Keogh in relation to the investigation of his statement of complaint of bullying and harassment carried out by Assistant Commissioner Michael Finn

The Facts	603
Pre-history of the bullying and harassment complaint:	
3rd June 2016 – 27th March 2017	603
Complaint of bullying and harassment: 27th March 2017 – 15th November 2017	608
The investigation: 15th November 2017 – 20th December 2018	615
The Report of Assistant Commissioner Michael Finn: 20th December 2018	628
Appointment of Assistant Commissioner Finbarr O'Brien: 10th January 2019	633
Appeal by Garda Keogh: 19th March 2019	634
Appointment of Deputy Commissioner John Twomey: 2nd April 2019	635

Audit of the investigation by Mr de Bruir: 4th June 2019	636
Conclusion of Garda Keogh's Appeal: 11th July 2019	637
Complaint made by Garda Nicholas Keogh.	638
Responding Statements and Evidence on the Issue.	642
Chief Superintendent Anthony McLoughlin	642
Chief Superintendent John Scanlon	646
Assistant Commissioner Fintan Fanning.	647
Mr John Barrett.	651
Mr Alan Mulligan.	656
Ms Kathleen Hassett.	659
Mr Joseph Nugent	659
Superintendent Pat Murray.	660
Assistant Commissioner Michael Finn	662
Assistant Commissioner Finbarr O'Brien.	674
Deputy Commissioner John Twomey.	675
Bullying and Harassment Policy of An Garda Síochána	676
Legal Submissions	679
Garda Nicholas Keogh.	679
An Garda Síochána.	681
Alleged delay by A/C Finn.	682
The Reasonableness of A/C Finn's findings.	683
Superintendent Noreen McBrien.	683
Sergeant Cormac Moylan	683
Assistant Commissioner Fintan Fanning.	684
Inspector Nicholas Farrell	684
Sergeant Michelle Baker.	685
Garda Aidan Lyons.	685
Sergeant Yvonne Martin	685
Discussion.	685
Delay	685
Explanation	688
Suppression.	688
Meeting on 1st December 2017	689
Was Assistant Commissioner Michael Finn's correspondence unreasonable?	689
The Finn Report.	690
Conflict of Interest.	690
Bias.	690
Time taken to complete the report.	691
Fair Procedures.	691
Supt Murray's late disclosure of notes	691
Conclusion	692

Chapter 24 Issue 20: The complaint made by Garda Nicholas Keogh in relation to the promotion of Superintendent Pat Murray to the rank of chief superintendent

The Facts	693
The role of the Policing Authority	711
Substantive Complaint made by Garda Nicholas Keogh	713
Response of Superintendent Pat Murray	719
Further Responding Statements and Evidence on the Issue	729
Inspector Aidan Minnock	729
Former Acting Commissioner Dónall Ó Cualáin	729
Mr Joseph Nugent	732
Mr John Barrett	735
Mr Alan Mulligan	736
Garda Fergal Greene	737
Assistant Commissioner Michael Finn	737
Ms Josephine Feehily	743
Ms Helen Hall	744
Legal Submissions	745
Garda Nicholas Keogh	745
Garda Nicholas Keogh submitted an addendum to his submission	747
An Garda Síochána	748
An Garda Síochána made a supplemental submissions	750
Garda Fergal Greene	751
The Policing Authority	751
Discussion	753
Canvassing	753
The clearance form	754
Conclusion	757

PART FIVE

Chapter 25 Conclusions	759
General	759
Context	760
Garda Nicholas Keogh	761
The Issues	762
Chief Superintendent Mark Curran	763

	Superintendent Pat Murray	763
	Former Acting Commissioner Dónall Ó Cualáin	764
	Assistant Commissioner Michael Finn	765
	Assistant Commissioner Anne Marie McMahon	765
	Closing	766
Chapter 26	Recommendations	767
	The publication of protected disclosures.	767
	The discloser and confidentiality	767
	Section 62 of the Garda Síochána Act, 2005	768
	Delay	769
	Work related stress and alcohol: a clear policy and a standard mode of implementation are required.	770
Appendices	Appendix 1: Opening Statement of the Tribunal: Term of Reference [p] dated 11th April 2019	771
	Appendix 2: Agreed Schedule of Issues for the Garda Nicholas Keogh Module	779
	Appendix 3: Tribunal Personnel.	781
	Appendix 4: List of Represented Parties before the Tribunal.	782
	Appendix 5: Tribunal Timeline	784

PART FOUR

CHAPTER 21

ISSUE 17: THE COMPLAINT MADE BY GARDA NICHOLAS KEOGH IN RELATION TO THE INVESTIGATION OF HIS PROTECTED DISCLOSURE CARRIED OUT BY ASSISTANT COMMISSIONER DÓNALL Ó CUALÁIN

The Facts

An investigation into Garda Nicholas Keogh's protected disclosure was commenced under the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations, 2007 on 9th May 2014.

Assistant Commissioner Dónall Ó Cualáin, Western Region, was appointed by the former Garda Commissioner Nóirín O'Sullivan and instructed to:

[C]arry out a thorough investigation into all the issues raised by the Confidential Recipient and let me have a comprehensive report on the matter.

*Your report should reach this office no later than 9 June 2014. Where delays are encountered, an interim report should be submitted setting out progress to date and reasons for delays encountered.*²¹²⁷

The assistant commissioner was requested to provide regular updates on the investigation to the Garda Commissioner to enable the Garda Síochána Ombudsman Commission (GSOC) and the Garda Inspectorate to be kept informed.²¹²⁸

A/C Ó Cualáin established an investigation team whose members included Detective Superintendent Declan Mulcahy and Detective Inspector Michael Coppinger.²¹²⁹

On 15th May 2014, A/C Ó Cualáin confirmed to the Garda Commissioner that he had informed Garda Keogh of his appointment to investigate the issues raised by him and provided him with his contact details.²¹³⁰

Garda Keogh's first meeting with the investigation team was on 7th June 2014. A/C Ó Cualáin and D/Supt Mulcahy met with Garda Keogh at Portumna Garda Station and it was recorded as follows:

As the meeting progressed the Reporter expanded on his affidavit to include other issues surrounding the interaction between serving members of An Garda Síochána who were stationed in Athlone or had been stationed there and persons involved in the sale and supply of drugs in Athlone.

*In particular he raised serious questions surrounding the bona fides of his former work partner in the Athlone Drug Unit, Garda A, and his relationship with criminal elements in and around Athlone.*²¹³¹

²¹²⁷ Tribunal Documents, Letter from Commissioner Nóirín O'Sullivan to A/C Dónall Ó Cualáin, dated 9th May 2014, p. 10790

²¹²⁸ Tribunal Documents, Letter from the Office of the Commissioner to A/C Dónall Ó Cualáin, dated 14th May 2014, p. 10792

²¹²⁹ Tribunal Documents, Email from the Office of the Commissioner to Judge Patrick McMahon, dated 2nd July 2014, p. 10801

²¹³⁰ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Office of the Commissioner, dated 15th May 2014, p. 10793

²¹³¹ Tribunal Documents, Report to the Director of Public Prosecutions, dated 24th November 2015, p. 11080 at p. 11082

D/Supt Mulcahy and D/Insp Coppinger later met with Garda Keogh for the purposes of taking his statement to the investigation on 11th June 2014, 13th June 2014 and 18th June 2014.²¹³²

D/Supt Mulcahy also met with Garda A on 13th June 2014 at Athlone Garda Station when the latter handed over an official state mobile phone in his possession.²¹³³

A/C Ó Cualáin reported to the Garda Commissioner on 16th June 2014 with an update in relation to the investigation and confirmed that Garda Keogh had been informed of the services available from the employee assistance service.²¹³⁴

On 17th June 2014, Superintendent Noreen McBrien made the following note of a meeting with Garda Keogh:

*He said he is concerned (not in a major way) about Garda A coming under pressure and carrying a gun. I asked if he was in fear of him attacking him. He said no. I wrote to D/Sgt Curley outlining what happened, asking him to monitor Garda A's wellbeing and his suitability to carry a firearm.*²¹³⁵

D/Supt Mulcahy was in Athlone Garda Station on 26th June 2014 when he searched a store that Garda Keogh alleged was a location where Garda A and others kept property, including in particular DVDs stolen when carrying out searches. Garda Keogh also alleged that this store had been cleared out by Chief Superintendent Mark Curran. The investigating officers interviewed gardai who had carried out searches and persons whose premises had been searched. They found nothing to support the claim of any property having been stolen, which meant that there was no basis for thinking anything relevant had been stored and removed. D/Supt Mulcahy phoned C/Supt Curran, who totally rejected the suggestion by Garda Keogh that he had cleared out the store.²¹³⁶

The call from the investigator put an immediate end to the divisional officer's plan to meet Garda Keogh, which Supt McBrien had mentioned to him shortly after Garda Keogh made the disclosure.²¹³⁷ C/Supt Curran said in his evidence that he proceeded 'with caution' in respect of Garda Keogh from that date:

*I think in around – I don't know if I was away for a certain period of time around that in June, but then we had a very serious incident in Athlone and I was over in Athlone a good bit. Took a lot of my attention, it was a complex investigation. So I think by the time it got to the end of June, I got a call off Detective Superintendent Mulcahy and he had said to me that there was some assertion that I'd moved a DVD and/or, I'm not sure if he said drugs at the time from a storeroom. I totally rejected that, it was not true. But that put me on – it had me my concerned. Mulcahy was part of the ó Cualáin team and investigating matters relating to the confidential recipient report. So at that stage I'm not sure am I under investigation and is this the only matter or are there other matters. So I proceeded with caution in respect of Garda Keogh from that point on. Also, there's correspondence then channelling through and from and I didn't want to make it more difficult, considering he had made a complaint about me and I was asking questions of him.*²¹³⁸

²¹³² Tribunal Documents, Statement of D/Supt Declan Mulcahy, p. 3900

²¹³³ Tribunal Documents, Statement of D/Supt Declan Mulcahy, p. 3900 at pp. 3900-3901

²¹³⁴ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Office of the Commissioner, dated 16th June 2014, pp. 10797-10798

²¹³⁵ Tribunal Documents, Handwritten note of Supt Noreen McBrien, p. 1096; Letter from Supt Noreen McBrien to D/Sgt Eamon Curley, dated 17th June 2014, p. 554

²¹³⁶ Tribunal Documents, Statement of D/Supt Declan Mulcahy, p. 3900 at p. 3901

²¹³⁷ Tribunal Transcripts, Day 117, pp. 19-20, Evidence of C/Supt Mark Curran

²¹³⁸ Tribunal Transcripts, Day 117, pp. 19-20, Evidence of C/Supt Mark Curran

During the course of the investigation, Garda Keogh raised issues and complaints with the investigation team. He communicated with Deputies Clare Daly and Mick Wallace in relation to the conduct of the investigation, which resulted in a number of references to it in Dáil Éireann. He also wrote in this regard to the Minister for Justice and Equality and the Director of Public Prosecutions during 2015.²¹³⁹

In mid-July 2014, Garda Keogh first began to record dissatisfaction with the Ó Cualáin investigation. On 16th July 2014 he noted in his diary²¹⁴⁰ that the assistant commissioner had called to say that they were not dealing with complaints against him arising at local level. Their point was that they were investigating complaints made by Garda Keogh and that taking on accusations made against him would be inappropriate.

Garda Keogh complained to D/Supt Mulcahy in another phone call that Garda A had not been suspended and asked how they could interview his unit in those circumstances.²¹⁴¹

He also vented his unhappiness to Judge Patrick McMahon, who undertook to contact the Garda Commissioner.²¹⁴² The diary entry for 22nd July 2014 is bleak and distrustful and states that *'am fully aware at this stage that investigation team is double crossing me'*.²¹⁴³ During his evidence to the tribunal, Garda Keogh was unable to explain how he came to make this judgement:

*I just can't remember what particular thing that is in relation to. I accept it's there, it's in my diary, I just can't remember exactly what particular thing that is.*²¹⁴⁴

He said that his *'liaison person with the investigation team was Detective Superintendent Mulcahy and it took time for trust to build there, so it wasn't an overnight thing'*.²¹⁴⁵

In a letter dated 6th August 2014, Garda Keogh wrote to D/Supt Mulcahy. He raised concerns regarding the continued presence of Garda A at Athlone Garda Station while the investigation team were carrying out interviews and enquiries. He stated:

*When I met A.C O Cualain and yourself the first time in Portumna I outlined the fact that without a suspension being issued that people would be reluctant to come forward and that goes for members of the public such as _____ and Gardaí. I am concerned in particular that Gardaí who intended to volunteer information have become reluctant to talk to your investigation team. The manner that this investigation is being conducted is actually obstructing this investigation. I do have faith in An Garda Síochána and hope I did the right thing in volunteering such confidential information to yourselves. Unlike many other Garda Regions in the Country the Western Region has an excellent reputation. I feel obliged to again inform you of my concerns.*²¹⁴⁶

In a report dated 10th August 2014, A/C Ó Cualáin referred to a further allegation which had been made by the confidential reporter in relation to the alleged planting of heroin by gardaí in Athlone. He said that he had sought legal advice in relation to this disclosure²¹⁴⁷ and he referred the matter to the Director of Public Prosecutions on 13th August 2014.²¹⁴⁸

²¹³⁹ Tribunal Documents, Letter from Garda Nicholas Keogh to the Director of Public Prosecutions, dated 26th July 2015, pp. 144-147

²¹⁴⁰ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 16th July 2014, p. 13265

²¹⁴¹ Tribunal Documents, Note of D/Supt Mulcahy dated 19th April 2015, p. 3926

²¹⁴² Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 17th July 2014, p. 13265

²¹⁴³ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 22nd July 2014, p. 13266

²¹⁴⁴ Tribunal Transcripts, Day 115, p. 13, Evidence of Garda Nicholas Keogh

²¹⁴⁵ Tribunal Transcripts, Day 115, p. 14, Evidence of Garda Nicholas Keogh

²¹⁴⁶ Tribunal Documents, Letter from Garda Nicholas Keogh to D/Supt Declan Mulcahy, dated 6th August 2014, p. 324

²¹⁴⁷ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Office of the Commissioner, dated 10th August 2014, p. 10806

²¹⁴⁸ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Director of Public Prosecutions, dated 13th June 2014, pp. 10808-10809

On 13th August 2014, A/C Ó Cualáin and D/Supt Mulcahy met with Garda Keogh at Portumna Garda Station:

*At this meeting the Reporter aired his views regarding the investigation, in particular his observations surrounding the behaviour of Garda A when members of the investigation team were in Athlone Garda Station. The Reporter queried why Garda A was not suspended from duty pending the outcome of the investigation. At the conclusion of this meeting the Reporter stated that he was satisfied that there were no leaks coming from the investigation and that he was happy for the investigation to continue.*²¹⁴⁹

It was at this meeting that Garda Keogh was informed that ‘Athlone Station would no longer be used as a base for enquiries into the matters raised by him’.²¹⁵⁰ Some statements had been taken at Athlone Garda Station prior to this complaint made by Garda Keogh and a number of interviews continued at Athlone Garda Station after this date.²¹⁵¹

On 29th August 2014, A/C Ó Cualáin sought the views of the Assistant Commissioner, Human Resource Management (HRM), in relation to the continued operational duty of Garda A. He stated:

*The Confidential Reporter has expressed concern that Garda A is still at work and has access to and from the Garda Station and may be in a position to interfere with witnesses and disrupt the investigation.*²¹⁵²

A/C Ó Cualáin stated that ‘[t]he issue of suspending Garda A is something which now requires considering’.²¹⁵³ This letter outlined Garda Keogh’s concerns and the general nature of his allegations and sought advice on the appropriate course of action to be adopted. A/C Ó Cualáin gave evidence that:

*I wasn’t doing this because Garda Keogh had an issue with it, I was doing it because it was the right thing to do in the context of a serious investigation, with serious allegations, that this thing would be considered on its merits by the people who are charged to do that within the organisation.*²¹⁵⁴

Garda Keogh noted in his diary that A/C Ó Cualáin told him there was a high bar for suspending a member.²¹⁵⁵ In this regard, it is stated at paragraph 3 of the Policy Document on the Suspension from Duty of Members of An Garda Síochána that the ‘Circumstances when a member is suspended’ are as follows:

A member of An Garda Síochána will normally be suspended in the following circumstances –

1. *Where the Commissioner has signified his/her intention to dismiss the member by way of:*
 - (a) *Notice of intention to dismiss the member under Regulation 39 Garda Síochána (Discipline) Regulations 2007 as amended,*

²¹⁴⁹ Tribunal Documents, Report to the Director of Public Prosecutions, dated 24th November 2015, p. 11080 at 11083

²¹⁵⁰ Tribunal Documents, Statement of Former Acting Commissioner Dónall Ó Cualáin, p. 3957 at p. 3961

²¹⁵¹ Tribunal Documents, Letter from the Chief State Solicitor’s Office to the Disclosures Tribunal, dated 4th November 2019, pp. 15524-15525 enclosing a list of statements taken in relation to the investigation, pp. 15526-15533

²¹⁵² Tribunal Documents, Letter from A/C Dónall Ó Cualáin to Assistant Commissioner HRM, dated 29th August 2014, p. 10816

²¹⁵³ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to Assistant Commissioner HRM, dated 29th August 2014, p. 10816 at p. 10817

²¹⁵⁴ Tribunal Transcripts, Day 138, p. 55, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²¹⁵⁵ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 13th August 2014, p. 13269

- (b) *A recommendation of a Board of Inquiry that the member be dismissed or required to resign or retire as an alternative to dismissal,*
 - (c) *Notice of Intention to discharge a Probationer Garda under Regulation 16 Garda Síochána (Admission and Appointments) Regulations, 1988 as amended,*
 - (d) *Notice of Intention to dismiss the member under Section 14 Garda Síochána Act 2005.*
2. *Where the Commissioner has signified his/her intention to dispense with the services of a Reserve member by way of notice of intention to dispense with the services of a Reserve member under Regulation 10 of the Garda Síochána (Reserve Members) Regulations 2006.*
 3. *Prior to arrest, where practicable, or as soon as possible following arrest.*
 4. *A member should be suspended prior to appearing in court in respect of criminal charges that may result in a custodial sentence being imposed.*
 5. *Where there is evidence to show that a member has committed acts of such seriousness as would likely result in his/her dismissal from An Garda Síochána if they are proved true but not until such time as the investigation rules out the possibility of the member being subject of a false or malicious allegation.*²¹⁵⁶

On 7th September 2014, Garda Keogh wrote to D/Supt Mulcahy stating that he had not heard anything from him or from A/C Ó Cualáin since their last meeting. He stated:

*I am wondering if there has been any progress with the investigation. I ask if at all possible that the particular state mobile phone records in particular for the period 2008–2010 can be obtained as soon as possible as I believe much progress will be made and valuable information obtained and it should gel together all the circumstantial evidence.*²¹⁵⁷

The Assistant Commissioner, HRM, replied to A/C Ó Cualáin on 16th September 2014, requesting the statement of Garda Keogh containing the allegations and any other corroborative evidence obtained in relation to the matter. It was confirmed that consideration should be given to the status of the member. A/C Ó Cualáin was asked to liaise with the divisional officer and local management and address the ‘*primary considerations for suspension*’ and ‘*secondary considerations for suspension*’. These considerations were set out in the letter as follows:

Primary considerations for suspension:

1. *Strength of evidence.*
2. *Seriousness of allegation.*
3. *Risk to members of the public.*
4. *Risk to colleagues.*
5. *Potential to pervert the course of justice/suborn colleagues.*
6. *Options of alternatives.*

²¹⁵⁶ Tribunal Documents, Policy Document on the Suspension from Duty of Members of An Garda Síochána under the Garda Síochána (Discipline) Regulations, 2007 as amended, p. 7828 at pp. 7830-7831

²¹⁵⁷ Tribunal Documents, Letter from Garda Nicholas Keogh to D/Supt Declan Mulcahy, dated 7th September 2014, p. 325

Secondary considerations for suspension:

1. *Likely outcome.*
2. *Estimate time to conclude investigation.*
3. *Relevant complaint history.*
4. *Current performance.*
5. *Impact on police/public relations.*
6. *Impact on service morale.*
7. *Risk to officer/welfare considerations.*²¹⁵⁸

Garda Keogh was not willing for his statement to go to HRM although the investigators encouraged him to agree, saying it would be helpful to the process of considering suspension.²¹⁵⁹

On 22nd September 2014, Detective Sergeant Eamon Curley reported to Supt McBrien in respect of Garda A's access to a firearm and stated that he was satisfied with Garda A's fitness to carry a firearm.²¹⁶⁰

A/C Ó Cualáin, D/Supt Mulcahy, C/Supt Curran and Supt McBrien met in Dublin the following day, on 23rd September 2014, in relation to the suspension of Garda A. It was agreed that there were no local or other issues to justify the suspension of Garda A at that time.²¹⁶¹

The significance of Garda Keogh's position on his statement was debated in evidence and in legal submissions. Since HRM actually requested his statement, the inference is that it was of some significance. If local management and the Ó Cualáin investigation team were agreed that suspension was called for, the matter would have gone to Garda Headquarters for processing by HRM; but that did not happen. In the end, A/C Ó Cualáin said that Garda Keogh's refusal to consent to his statement being furnished to HRM did not matter; it had no significance on the decision in relation to suspension.²¹⁶² D/Supt Mulcahy felt it would have been helpful but that is as far as he went.²¹⁶³ The officers rejected the proposition that the failure to provide the statement was fatal to the suspension and the consequent criticism by Garda Keogh's counsel that they were at fault in failing to alert him to that significance.²¹⁶⁴ The evidence is that Garda Keogh's refusal was not fatal, it did not make the difference between suspension or not, it was either of no materiality or of merely slight capacity to influence the decision and it did not in fact have any decisive impact.

The question of suspending Garda A was not primarily for the investigators but for local management in consultation with HRM. The complication that arose with the regime that existed at the time was that the team members who were familiar with the facts and allegations were committed to keeping their work confidential. In the result, however, the issue in this case at the particular time was addressed at the meeting in late September.

²¹⁵⁸ Tribunal Documents, Letter from Assistant Commissioner HRM to A/C Dónall Ó Cualáin, dated 16th September 2014, p. 10815

²¹⁵⁹ Tribunal Transcripts, Day 136, pp. 144-146, Evidence of D/Supt Declan Mulcahy

²¹⁶⁰ Tribunal Documents, Statement of D/Sgt Eamon Curley, p. 487 at p. 492; Letter from D/Sgt Eamon Curley to Supt Noreen McBrien, dated 22nd September 2014, p. 553

²¹⁶¹ Tribunal Documents, Statement of D/Supt Declan Mulcahy, p. 3900 at p. 3901

²¹⁶² Tribunal Transcripts, Day 138, pp. 80-81, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²¹⁶³ Tribunal Transcripts, Day 136, pp. 144-146, Evidence of D/Supt Declan Mulcahy

²¹⁶⁴ Tribunal Transcripts, Day 138, pp. 80-81, Evidence of Former Acting Commissioner Dónall Ó Cualáin; Day 137, pp. 80-84, Evidence of D/Supt Declan Mulcahy

Speaking generally about the issue, former Acting Commissioner Ó Cualáin gave evidence to the tribunal that:

*Suspension has to be made when it's justified, when it can be supported and backed up with information provided by both the investigating team in this matter and also local management. And when that bar is reached, that is when it is justified to suspend somebody. It cannot be done on the basis of whether or not it's going to suit the investigative process. That's one of the considerations given.*²¹⁶⁵

Garda Keogh subsequently wrote to D/Supt Mulcahy on 17th October 2014 informing him of what he said were attempts by C/Supt Curran and Inspector Nicholas Farrell to 'manufacture complaints' against him.²¹⁶⁶ This is a reference to the enquiries carried out at district and divisional level into Issues 3 and 4.

Garda Keogh stated that:

*Secondly, as you are aware I have spoken to G.S.O.C 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.*²¹⁶⁷

In a letter dated 9th November 2014, Garda Keogh informed Deputy Daly that:

*... after 7 months they have taken over 70 statements but have not taken statements yet from [suspect 1] (wrongfully convicted) or ____ and that's why they are not suspending anyone yet. They – the investigation team are buying time to find a way out.*²¹⁶⁸

On 24th November 2014, A/C Ó Cualáin confirmed to Assistant Commissioner Fintan Fanning, Eastern Region, that the creation of the intelligence entry on 18th May 2014 by Garda Keogh was not a matter that the investigation team could directly investigate.²¹⁶⁹

On 26th November 2014, A/C Ó Cualáin reported to the Commissioner that multiple requests had been forwarded to Crime and Security concerning telephone data and that a number of applications concerning Covert Human Intelligence Source (CHIS) matters had been made. He stated that:

*This is a very complex investigation and it appears that as each potential witness/line of enquiry is pursued the potential exists for further investigation and lines of inquiry to be followed up upon.*²¹⁷⁰

On 27th November 2014, Deputy 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.²¹⁷¹

²¹⁶⁵ Tribunal Transcripts, Day 139, p. 13, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²¹⁶⁶ Tribunal Documents, Letter from Garda Nicholas Keogh to D/Supt Declan Mulcahy, dated 17th October 2014, p. 326

²¹⁶⁷ Tribunal Documents, Letter from Garda Nicholas Keogh to D/Supt Declan Mulcahy, dated 17th October 2014, p. 326

²¹⁶⁸ Tribunal Documents, Letter from Garda Nicholas Keogh to Deputy Clare Daly, dated 9th November 2014, p. 12800

²¹⁶⁹ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to A/C Fintan Fanning, dated 24th November 2014, p. 10824

²¹⁷⁰ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Office of the Commissioner, dated 26th November 2014, p. 10825

²¹⁷¹ Tribunal Documents, Chronology of interactions with Garda Nicholas Keogh provided by Deputies Mick Wallace and Clare Daly, p. 13052 at p. 13054

D/Supt Mulcahy and D/Insp Coppinger met with Garda Keogh at Ballinasloe Garda Station on 11th December 2014 and Garda Keogh ‘discussed his concerns with the investigating members concerning aspects of the investigation’.²¹⁷²

Garda Keogh wrote to Deputy Daly on 14th December 2014. He referred to his meeting with D/Supt Mulcahy on 11th December 2014 and stated that:

*... they wanted to 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 O Coulain on 7.6.14 and they had no interest in dealing with same.*²¹⁷³

In the interim, on 12th December 2014, the informant referenced by Garda Keogh at the commencement of the investigation confirmed that he would not be making a statement to the investigation.²¹⁷⁴

In a letter dated 17th December 2014 to D/Supt Mulcahy, Garda Keogh complained about the failure to take statements from certain witnesses:

*When I wrote in my last letter that you are thoroughly investigating this I didn't realise that your team haven't taken statements from ____ or [Suspect 1] whom are the most important witnesses. We are 8 months into this and I haven't seen anything positive yet. In the event ____ declines to make a statement I ask that yourself and D. Insp Coppinger make statements confirming your conversation(s) with ____.*²¹⁷⁵

He referred to the state mobile phone used by Garda A which he considered was ‘valuable primary evidence’:

*The official state mobile involved in the conspiracy to supply heroin is vital these phone records should be valuable primary evidence. I am worried that you have doubts as to Ms B being a heroin dealer. I wish to state that what went on was criminal and deceitful and the kind of stuff that Garda A would not have spoken about to his many friends in Garda management. State mobile phone + ____ = case.*²¹⁷⁶

A further progress report was provided to the Garda Commissioner by A/C Ó Cualáin, dated 23rd December 2014, which stated that:

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.*
- *Intelligence he had placed on the Pulse system.*
- *Two alleged complaints by Ms Olivia O'Neill and Mr Liam McHugh.*

²¹⁷² Tribunal Documents, Report to the Director of Public Prosecutions, dated 24th November 2015, p. 11080 at p. 11084; Interview Notes taken by D/Insp Michael Coppinger, dated 11th December 2014, pp. 10829-10830

²¹⁷³ Tribunal Documents, Letter from Garda Keogh to Deputy Clare Daly, dated 14th December 2014, p. 12863

²¹⁷⁴ Tribunal Documents, Statement of D/Supt Declan Mulcahy, p. 3900 at p. 3903

²¹⁷⁵ Tribunal Documents, Letter from Garda Nicholas Keogh to D/Supt Declan Mulcahy, dated 17th December 2014, p. 328

²¹⁷⁶ Tribunal Documents, Letter from Garda Nicholas Keogh to D/Supt Declan Mulcahy, dated 17th December 2014, p. 328

*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.*²¹⁷⁷

On 15th January 2015, Deputy Wallace stated in Dáil Éireann that there was a lack of progress in dealing with whistleblowers' complaints.²¹⁷⁸

On 30th January 2015, A/C Ó Cualáin informed the Commissioner's Office that a final draft of the report had been commenced. It was acknowledged that the investigation was taking a considerable period of time and reference was made to the time and resources required to complete the investigation to the highest professional standard.²¹⁷⁹

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, 2014.²¹⁸⁰

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'*.²¹⁸¹

On 19th February 2015, Deputy Daly asked Minister Frances Fitzgerald whether she was satisfied that the environment in An Garda Síochána was appropriate for whistleblowers. The Minister stated that *'as to the question relating to my discussion with the Garda Commissioner, the Deputy may be aware that I have regular discussions with the Commissioner across a wide range of issues that relate to our respective roles'*.²¹⁸²

On 18th March 2015, A/C Ó Cualáin reported to the Commissioner in respect of the intelligence entry made by Garda Keogh on the PULSE system on 18th May 2014. As noted above, Garda Keogh had complained to the investigation team about the enquiries carried out at district and divisional level in respect of this entry. A/C Ó Cualáin confirmed that while the investigation was being conducted into certain matters contained in the PULSE intelligence entry, the investigation was not focusing on the inputting of the data onto the system.²¹⁸³

Deputy Wallace raised the matter of *'malpractice'* in Athlone during Leader's Questions in Dáil Éireann on 31st March 2015. He alleged that there was harassment, bullying and intimidation of whistleblowers.²¹⁸⁴

On 1st April 2015, A/C Ó Cualáin provided two reports to the Commissioner. The first concerned the welfare of Garda Keogh and the comments in Dáil Éireann by Deputy Wallace. It stated that:

²¹⁷⁷ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Office of the Commissioner, dated 23rd December 2014, p. 10834

²¹⁷⁸ Tribunal Documents, Chronology of interactions with Garda Keogh provided by Deputies Mick Wallace and Clare Daly, p. 13052 at p. 13054

²¹⁷⁹ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Office of the Commissioner, dated 30th January 2015, pp. 10839-10840

²¹⁸⁰ Tribunal Documents, Chronology of interactions with Garda Nicholas Keogh provided by Deputies Mick Wallace and Clare Daly, p. 13052 at p. 13054

²¹⁸¹ Tribunal Documents, Letter from Garda Nicholas Keogh to Deputies Mick Wallace and Clare Daly, dated 16th February 2015, p. 12868

²¹⁸² Tribunal Documents, Chronology of interactions with Garda Nicholas Keogh provided by Deputies Mick Wallace and Clare Daly, p. 13052 at p. 13054

²¹⁸³ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Office of the Commissioner, dated 18th March 2015 p. 10847

²¹⁸⁴ Tribunal Documents, Extract from Dáil Éireann Debates, dated 31st March 2015, p. 15296 at pp. 15321-15322

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 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.²¹⁸⁵

The second report to the Garda Commissioner on 1st April 2015 was a progress report on the investigation and stated as follows:

To date some one hundred and ninety one (191) jobs/lines of enquiry have been created along with eighty two (82) persons having been interviewed with some of these interviewees having provided more than one statement. A number of exhibits have also been seized in support of the investigation.

The Garda Síochána Analyst Services (G.S.A.S.) are assisting in collating over forty seven thousand (47,000) phone records pertinent to the investigation.

Members from the investigation team are expected to meet with two key witnesses central to this investigation before the end of the current week to determine if they will cooperate with this investigation. Following these meetings the investigation team proposes to have all enquiries completed with a view to then interviewing the member of An Garda Síochána (Garda A) against whom the majority of allegations are made.

The drafting of the final report has commenced and any significant developments will be reported.²¹⁸⁶

On 2nd April 2015, Deputy Wallace stated in Dáil Éireann that complainants were being harassed.²¹⁸⁷

²¹⁸⁵ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Office of the Commissioner, dated 1st April 2015, pp. 10851-10852

²¹⁸⁶ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Office of the Commissioner, dated 1st April 2015, pp. 10853-10854

²¹⁸⁷ Tribunal Documents, Chronology of interactions with Garda Nicholas Keogh provided by Deputies Mick Wallace and Clare Daly, p. 13053

In April 2015, the investigation team made a number of unsuccessful attempts to meet with and interview Ms B between 9th April 2015 and 21st April 2015.²¹⁸⁸

On 5th May 2015, Garda Barry Walshe, telephone liaison officer at An Garda Síochána, provided an analysis of the *'call related data from the billing information'* related to the state mobile phone used by Garda A. He confirmed in his report that he had examined 15,213 call records dated from 1st January 2010 to 8th September 2010. He reported a total of 1,672 contacts between that phone and that of Ms B's family member over a period of ten weeks in 2010, between 27th May 2010 and 5th August 2010.²¹⁸⁹

These billing records had been provided to the Ó Cualáin investigation team by a previous divisional officer who, having received information concerning Garda A and Ms B a number of years previously in 2010, had *'sought the phone traffic through the billing records for the state mobile phone attached to the Drug Unit phone'*.²¹⁹⁰ Following the divisional officer's interview by the Ó Cualáin investigation team between February and April 2015, a record of this phone traffic was subsequently recovered from his email archive and handed over to the investigation.²¹⁹¹

On 5th May 2015, D/Supt Mulcahy reported the findings to A/C Ó Cualáin. He confirmed that Garda Walshe had *'... analysed the billing as provided to this investigation'* by the divisional officer. D/Supt Mulcahy recommended that the suspension of Garda A should be revisited in the light of *'this new evidence which has been unearthed'*.²¹⁹²

By report to the Garda Commissioner dated 8th May 2015, A/C Ó Cualáin stated that:

To date the investigation team has generated 200 lines of enquiry and interviewed 92 persons who have provided statements to the investigation. On the 24th April, 2015 Garda A was provided with a summary of the allegations made against him to afford him an opportunity to respond. On the 5th May, 2015 the investigation team was provided with analysis of phone records by a Telephone Liaison Officer. Based on this analysis and allegations by the Confidential Reporter there now exists a reasonable suspicion that Garda A may have committed a criminal act.

*I am now seeking your direction as to whether I proceed with this investigation to a conclusion and the necessity for formal appointments for both the criminal and disciplinary aspects. Advice was previously sought from Assistant Commissioner, Human Resource Management, regarding the suspension from duty of Garda A and given the recent developments this matter will now be revisited.*²¹⁹³

Detective Superintendent Frank Walsh, private secretary to the Commissioner, replied on 13th May 2015 that:

*The Commissioner directs that you continue with your investigation into the criminal element of this matter and that you make the necessary arrangements for an appointment under the Disciplinary Regulations through the member's Divisional Officer.*²¹⁹⁴

²¹⁸⁸ Tribunal Documents, Statement of D/Insp Michael Coppinger, p. 3870 at pp. 3874-3876

²¹⁸⁹ Tribunal Documents, Report of Garda Barry Walshe to Incident Room, Galway, dated 5th May 2015, pp. 10916-10917

²¹⁹⁰ Tribunal Documents, Report of Dep/C Dónall Ó Cualáin to the Director of Public Prosecutions, p. 11080 at p. 11111

²¹⁹¹ Tribunal Documents, Report of Dep/C Dónall Ó Cualáin to the Director of Public Prosecutions, p. 11080 at p. 11111

²¹⁹² Tribunal Documents, Letter from D/Supt Declan Mulcahy to A/C Dónall Ó Cualáin, dated 5th May 2015, p. 10909 at pp. 10911-10912

²¹⁹³ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Garda Commissioner, dated 8th May 2015, p. 10881

²¹⁹⁴ Tribunal Documents, Letter from the Office of the Commissioner to A/C Dónall Ó Cualáin, dated 13th May 2015, p. 10882

The question of suspending Garda A arose again at this juncture.

On 21st May 2015, A/C Ó Cualáin wrote to the Executive Director, Human Resources and People Development (HRPD), in relation to the continued operational duty of Garda A. The letter set out details of the allegations against Garda A and reviewed each of the primary and secondary considerations in the policy as previously outlined by HRM. A/C Ó Cualáin stated that the evidence pointed to an inordinate level of contact between an official state phone allocated to the Drugs Unit in Athlone, and predominately used by Garda A, and a phone registered to a family member of Ms B, giving credence to the suggestion by the confidential reporter that Garda A was in a relationship with Ms B. He stated that it also gave credence to the allegation that Ms B was advised by Garda A to discard a mobile phone and that he informed her of an impending garda search. He concluded that *'the issue of suspending Garda A is something which now requires consideration'*.²¹⁹⁵

The response to this letter on 26th May 2015 from HRPD was a request for the assistant commissioner's recommendation.²¹⁹⁶

At this time, on 26th May 2015, Deputy Mick 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.²¹⁹⁷

A/C Ó Cualáin wrote again to the Commissioner on 5th June 2015, recommending that a disciplinary investigation should also be carried out in respect of three additional serving members of An Garda Síochána. In the letter he set out nine possible breaches of discipline against Garda A and the possible breaches of discipline by three other members.²¹⁹⁸

By report to the Garda Commissioner dated 19th June 2015, A/C Ó Cualáin advised that Garda A had met with the investigation team on 16th June 2015 and provided a prepared statement. It was confirmed that he would be interviewed on 23rd June 2015, after which the expected date for the completion of the investigation could be confirmed.²¹⁹⁹

In respect of the request for a recommendation from HRPD, A/C Ó Cualáin felt that this was not appropriate. He had provided his detailed report addressing all the relevant criteria and he gave evidence to the tribunal that:

*It wasn't for me to make a recommendation. But I had given as much as I could. It now was between themselves and local management.*²²⁰⁰

On 26th June 2015, Assistant Commissioner Kieran Kenny notified Assistant Commissioner Jack Nolan, South Eastern Region that he was appointed to conduct the disciplinary investigation under Regulation 23 of An Garda Síochána (Discipline Regulations), 2007 in respect of the four named gardaí.²²⁰¹

A/C Ó Cualáin wrote to the Executive Director, HRPD, on 29th June 2015, stating that:

²¹⁹⁵ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Executive Director HRPD, dated 21st May 2015, pp. 10890-10892

²¹⁹⁶ Tribunal Documents, Letter from Executive Director HRPD to A/C Dónall Ó Cualáin, dated 26th May 2015, p. 3996

²¹⁹⁷ Tribunal Documents, Deputy Mick Wallace's Parliamentary Question on 26th May 2015, pp. 10895-10900

²¹⁹⁸ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Office of the Commissioner, dated 5th June 2015, pp. 10907-10908

²¹⁹⁹ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Office of the Commissioner, dated 19th June 2015, p. 10925

²²⁰⁰ Tribunal Transcripts, Day 138, p. 83, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²²⁰¹ Tribunal Documents, Letter from A/C Kieran Kenny to A/C Jack Nolan, dated 26th June 2015, pp. 16439-16441

*The Commissioner has directed that an appointment is made in respect of An Garda Síochána Discipline Regulations and has nominated Assistant Commissioner, Northern Region to make the appointment. Local management on being updated of this appointment by HRPD will be asked to consider the members deployment status.*²²⁰²

Nothing further happened about the suspension of Garda A until October 2015.

On 1st July 2015, Garda Keogh wrote to D/Supt Mulcahy regarding the state mobile phone, saying that it *'had its contents wiped'*. He stated that given that the mobile phone was the property of An Garda Síochána, the *'unauthorised erasing of information from the said mobile phone/simcard is a form of Criminal Damage/Theft which permanently deprives the owner of such information'*. He continued:

I don't need to point out that wiping the state mobile phone/simcard clean could only have been done in an effort to obstruct Gardaí appointed in the course of their duties to carry out this investigation. A person with nothing to hide would have no need to do such a thing.

He expressed frustration at the fact that the investigation team could only obtain phone records for a two-year period:

*In relation to being unable to obtain the mobile phone records beyond a 2 year period, I am obviously frustrated and disappointed as it means that my allegations can neither be proven or disproven beyond doubt. I do acknowledge that you have worked hard on this investigation and I wish to thank you for that.*²²⁰³

At the end of July 2015, Garda Keogh made a scathing attack on the investigation in correspondence to the Director of Public Prosecutions and the Minister for Justice and Equality. He wrote to the Director on 26th July 2015 and copied it to the Minister detailing what he described as *'serious and deliberate flaws'* with regard to the criminal investigation as follows:

- 1. The fact that it took Assistant Commissioner one month to meet with myself being his informant. There is an unofficial store room in Athlone Garda Station which I believe contained strong tangible evidence which was deliberately emptied in and around the second week in May 2014 and evidence vital to the case disappeared.*
- 2. In or around the 10th of June 2014 the suspect Garda had his state mobile phone seized. This mobile phone had been wiped of its information which could have been potentially vital and unlike any other criminal investigation where evidence is seized the suspect Garda was given a replacement state mobile phone. It is worth noting that most Sergeants in An Garda Síochána do not have state mobile phones.*
- 3. On 18th of June 2014 I finished and signed my statement regarding very serious matters in Athlone. Nobody was suspended at any point during the investigation.*
- 4. During the investigation in July/August 2014 statements were taken from members of An Garda Síochána while [they] were in Athlone Garda Station and more critically when the suspect Garda was on duty. On these occasions I am aware that the suspect Garda did not leave the Garda Station while the investigation team were present. He was able to see every person that was called in to make statements and in a position to (eye ball) members of An Garda Síochána. I believe this was deliberately facilitated in an effort to suppress honest statements being made by way of informal intimidation.*

²²⁰² Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Executive Director HRPD, dated 29th June 2015, p. 10926

²²⁰³ Tribunal Documents, Letter from Garda Nicholas Keogh to D/Supt Declan Mulcahy, dated 1st July 2015, p. 335

5. *A crucial witness had come forward with vital information. The investigation team met this man namely _____ in or around 3rd of July 2014 but did not go back to speak with him for about six months as he did not trust the investigation team and was in fear of the suspect Garda who is still armed and on duty.*
6. *One of the allegations involves the suspect Garda getting an unregistered informant to plant drugs in a car. On the 7th of December 2014 the said unregistered Garda informant was arrested by his handler the suspect Garda for possession of approximately €4,000 worth of heroin. This now put the Garda under investigation in a position of influence over another suspect/witness in the case.*
7. *Around the 24th of April 2015 the allegations were put to the Garda under investigation where he was given over a month to seek legal advice. Cautioned statements were taken from him between the 16th of June 2015 to the 24th of June 2015. This is unusual as in any other criminal investigation the suspect would be arrested and interviewed without delay.*
8. *It is my understanding that the investigation team could not retrieve text messages over two years from the seized state mobile phone. Text messages for the period around 2010 are vital and I do not know if every effort was made to retrieve them.*
9. *In June 2015 the suspect Garda stopped _____ a witness in the case without having committed an offence and checked her tax and insurance and asked for her driver's licence. I believe this was an attempt to intimidate the witness.²²⁰⁴*

He further noted that he had to 'work in the same station and half the time on the same shift' as Garda A, the subject of his complaint. He stated that he had not yet been allowed to view the investigation file into his allegations and that every effort was 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.²²⁰⁵

He concluded by requesting that this information be taken into consideration when reading the file submitted by A/C Ó Cualáin.²²⁰⁶

On 11th August 2015, A/C Ó Cualáin submitted a progress report to the Garda Commissioner confirming that Garda A had been interviewed on 24th June 2015. It was also confirmed that:

On Thursday the 30th July, 2015 the Confidential Reporter indicated his displeasure in respect of certain aspects of this investigation. He has also indicated that he forwarded a letter in this regard to both the Director of Public Prosecutions and the Department of Justice. I convened a meeting with the Investigating Team at Oranmore Garda Station on Wednesday the 5th August, 2015. It is my intention to be in a position to forward the completed investigation file to the Director of Public Prosecutions within one (1) month.²²⁰⁷

²²⁰⁴ Tribunal Documents, Letter from Garda Nicholas Keogh to the Director of Public Prosecutions, dated 26th July 2015, pp. 144-147

²²⁰⁵ Tribunal Documents, Letter from Garda Nicholas Keogh to the Director of Public Prosecutions, dated 26th July 2015, pp. 144-147

²²⁰⁶ Tribunal Documents, Letter from Garda Nicholas Keogh to the Director of Public Prosecutions, dated 26th July 2015, pp. 144-147

²²⁰⁷ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Office of the Commissioner, dated 11th August 2015, p. 10937

D/Supt Mulcahy reported on his contacts with Garda Keogh over the course of the investigation on 3rd September 2015. He confirmed that he was the 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.*²²⁰⁸

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 Superintendent Pat Murray. He was of 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 with putting the same in place with Garda Michael Quinn on the same date. He stated that:

*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.*²²⁰⁹

The foregoing report was forwarded to the Commissioner on 3rd September 2015 by A/C Ó Cualáin.²²¹⁰

Garda A's deployment status was revisited by local management²²¹¹ and Internal Affairs²²¹² in October 2015.

In a letter to Chief Superintendent Lorraine Wheatley on 5th October 2015, headed '*Apparent Discipline Investigation being conducted under Regulation 23, Discipline Regulations – Member concerned – Garda A, Athlone*', Supt Murray referred to a recent meeting when Garda A informed him that he had been served with documents eight weeks previously '*which outlined seven allegations of serious breaches of Discipline against him*'. He stated: '*in light of this development, I would be obliged if enquiries could be made to ascertain if Garda A presents a risk by being left in his present work area...*'²²¹³

C/Supt Wheatley wrote to Internal Affairs on 7th October 2015, inquiring whether there was any information to hand about this disciplinary investigation and whether '*the breaches alleged would have any impact on service provision in the Athlone District in light of Garda A's current deployment*'.²²¹⁴

On 8th October 2015, Supt Murray provided a report to C/Supt Wheatley which referred to his previous letter and to information confidentially reported to him by a garda on 2nd October 2015

²²⁰⁸ Tribunal Documents, Letter from D/Supt Declan Mulcahy to A/C Dónall Ó Cualáin, dated 3rd September 2015, p. 10946

²²⁰⁹ Tribunal Documents, Letter from D/Supt Declan Mulcahy to A/C Dónall Ó Cualáin, dated 3rd September 2015, p. 10946 at p. 10947

²²¹⁰ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Office of the Commissioner, dated 3rd September 2015, p. 10945

²²¹¹ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Chief Superintendent Internal Affairs, dated 14th October 2015, pp. 11049-11054

²²¹² Tribunal Documents, Letter from Chief Superintendent Internal Affairs to Dep/C John Twomey, dated 14th October 2015, pp. 11047-11048

²²¹³ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 5th October 2015, p. 4001

²²¹⁴ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Chief Superintendent Internal Affairs, dated 7th October 2015, p. 4000

concerning Garda A and Ms B, which the garda thought would be of interest to the Ó Cualáin investigation. Supt Murray enclosed the report provided by the garda, dated 5th October 2015, saying it contained information which *'might be meaningful'* to the Ó Cualáin investigation. He confirmed that he had sent that information to D/Supt Mulcahy.²²¹⁵ C/Supt Wheatley forwarded this additional report to Internal Affairs on the same date and requested that it would be considered in conjunction with her earlier letter.²²¹⁶

The foregoing reports were forwarded to A/C Fanning, who stated in an email dated 8th October 2015 that Garda A's deployment should be given urgent consideration and that he could arrange a meeting.²²¹⁷

On 10th October 2015, Supt Murray had an early morning meeting with Garda A at which he informed him that it was in the interests of An Garda Síochána and himself for Garda A to return to uniform duties indoors for the moment.²²¹⁸

On 12th October 2015, Supt Murray wrote to C/Supt Wheatley recommending that Garda A be suspended.²²¹⁹ On 14th October 2015, C/Supt Wheatley wrote to Internal Affairs recommending Garda A's suspension.²²²⁰ In her statement to the tribunal, C/Supt Wheatley said that:

*In October 2015 following a local operation including searches, a file was sent to me for my consideration. Having reviewed the file, I made a recommendation that the member concerned, Garda A, be suspended. Just to clarify, prior to October 2015, former Assistant Commissioner Ó Cualáin had not contacted me in relation to Garda A. In terms of the allegations made by Garda Keogh, I was aware in a general sense that they related to the Drugs Unit that Garda A was on, however, that was the extent of my knowledge of the matter.*²²²¹

On 14th October 2015, Garda A was suspended from duty by Deputy Commissioner John Twomey under Regulation 7 of An Garda Síochána (Discipline) Regulations, 2007.²²²²

A/C Ó Cualáin was appointed to the role of Deputy Commissioner of An Garda Síochána on 20th October 2015.

On 24th November 2015, Deputy Commissioner Ó Cualáin finalised his report entitled *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*, and it was forwarded to the Director of Public Prosecutions.²²²³

Dep/C Ó Cualáin also provided a report to the Garda Commissioner on the same date outlining internal matters which needed to be addressed in light of the findings of the investigation.²²²⁴ He stated, *inter alia*, 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.

²²¹⁵ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 8th October 2015, p. 4005

²²¹⁶ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Chief Superintendent Internal Affairs, dated 8th October 2015, p. 4004

²²¹⁷ Tribunal Documents, Email from A/C Fintan Fanning to Dep/C John Twomey, A/C Jack Nolan, A/C Dónall Ó Cualáin, dated 8th October 2015, p. 3999 and p. 4002

²²¹⁸ Tribunal Documents, Note of Supt Pat Murray, dated 10th October 2015, p. 2333

²²¹⁹ Tribunal Documents, Letter from Supt Pat Murray to C/Supt Lorraine Wheatley, dated 12th October 2015, pp. 2336-2337

²²²⁰ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Chief Superintendent Internal Affairs, dated 14th October 2015, pp. 11049-11054

²²²¹ Tribunal Documents, Statement of C/Supt Lorraine Wheatley, p. 6076 at pp. 6100-6101

²²²² Tribunal Documents, Form IA.71, dated 14th October 2015, p. 11055

²²²³ Tribunal Documents, Report to the Director of Public Prosecutions, pp. 11080-11144

²²²⁴ 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.*²²²⁵

Dep/C Ó Cualáin also referred to a number of incidents addressed in his report which, he stated, required further examination.²²²⁶

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

The file concerns an investigation in relation to matters relating to policing practices and activities in Athlone Garda Station made under the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007.

*On the basis of the investigation, the Gardaí have not recommended any criminal charges for consideration. In the circumstances, the question of a prosecution does not arise on the evidence.*²²²⁷

The foregoing was forwarded to the Commissioner by Dep/C Ó Cualáin on 14th March 2016, stating that *'[t]here is to be no prosecution in respect of this investigation'*.²²²⁸ D/Supt Mulcahy informed Garda Keogh of the directions of the Director of Public Prosecutions on 8th April 2016.²²²⁹

On 16th May 2016, Garda Keogh wrote to the Minister for Justice and Equality referring to the suspension of Garda A and complaining 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.*²²³⁰

In relation to the report of Dep/C Ó Cualáin, Garda Keogh acknowledged that D/Supt Mulcahy had offered to go through the findings with him but that he *'declined as I believe the Garda investigation was flawed from the very start'*.²²³¹

On 30th May 2016, Dep/C Ó Cualáin informed the Office of the Director of Public Prosecutions that further electronic devices had been seized and analysed and that *'this examination yielded no new evidence which could assist the investigation any further'*. However, he forwarded the relevant statements and reports for completeness.²²³² The Office of the Director of Public Prosecutions replied by letter dated 5th August 2016 stating that the position of the Director remained as set out in her letter of 3rd March 2016.²²³³

²²²⁵ Tribunal Documents, Letter from Dep/C Dónall Ó Cualáin to the Commissioner, dated 24th November 2015, p. 11979

²²²⁶ Tribunal Documents, Letter from Dep/C Dónall Ó Cualáin to the Commissioner, dated 24th November 2015, pp. 11979-11981

²²²⁷ Tribunal Documents, Letter from the Director of Public Prosecutions to Dep/C Dónall Ó Cualáin, dated 3rd March 2016, p. 4009

²²²⁸ Tribunal Documents, Letter from Dep/C Dónall Ó Cualáin to the Commissioner, dated 3rd September 2015, p. 11168

²²²⁹ Tribunal Documents, Letter from D/Supt Declan Mulcahy to Insp Shane Cummins, dated 28th February 2017, p. 11258

²²³⁰ Tribunal Documents, Letter from Garda Nicholas Keogh to Minister for Justice and Equality, dated 16th May 2016, p. 298 at p. 299

²²³¹ Tribunal Documents, Letter from Garda Nicholas Keogh to Minister for Justice and Equality, dated 16th May 2016, p. 298 at p. 301

²²³² Tribunal Documents, Letter from Dep/C Dónall Ó Cualáin to Director of Public Prosecutions, dated 30th May 2016, pp. 4010-4011

²²³³ Tribunal Documents, Letter from the Director of Public Prosecutions to Dep/C Dónall Ó Cualáin, dated 5th August 2016, p. 4012

During the course of the disciplinary investigation begun by A/C Nolan and continued by Assistant Commissioner Anne Marie McMahon, Ms B, who had previously refused to engage with the Ó Cualáin investigation, made a statement on 15th November 2017 outlining her interactions with Garda A.²²³⁴ In an undated letter (probably mid-February 2018) sent by Inspector Niall Crowley, on behalf of A/C McMahon, to Dep/C Twomey, it was reported that A/C McMahon forwarded this statement for the attention of the criminal investigation team for their considerations:

*This new evidence has resulted in one (1) of the eight (8) allegations as set out against Garda A being placed into abeyance pending the review of the new evidence being considered by the criminal investigation and its potential outcomes.*²²³⁵

On a date after 15th February 2018, D/Insp Coppinger became aware as follows:

*Ms B of _____ had made a statement to Gardai from Waterford who were conducting a discipline investigation under the directions of Assistant Commissioner Ann Marie McMahon. The Assistant Commissioner forwarded a copy of this statement through official Garda channels, and on sight of same it was clear that Ms B was confirming involvement of Gardai in malpractice in Athlone Garda District.*²²³⁶

By letter dated 9th April 2018, Insp Crowley wrote on behalf of A/C McMahon to Assistant Commissioner Orla McPartlin, Western Region, referring to a letter of 8th February 2018 and enquiring as to the current position in relation to this correspondence.²²³⁷ On 2nd July 2018, A/C McPartlin informed A/C McMahon that contact had been made with Ms B's solicitor and that she would not be cooperating with the criminal investigation.²²³⁸ Ms B, through her solicitor, wrote to the disciplinary investigation team on 2nd August 2018 and stated that she no longer stood over her witness statement of 15th November 2017. She stated that she did not wish to engage with An Garda Síochána in this matter.²²³⁹

Complaint made by Garda Nicholas Keogh

Allegation that the investigation was delayed

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

*The investigation of my substantive complaints was marked by delay and patent omission in carrying out basic police enquiries, by a failure to preserve telephone, electronic and other communications, by a failure to arrest and question the relevant suspects, by an effective interference with witnesses, by attempts to transfer me from sight of the 'investigation' and finally by the victimisation, harassment and marginalisation of this whistleblower witness and the chilling effect on others of the threats of same.*²²⁴⁰

He also stated that '*no progress in this criminal investigation appears to have happened since 2014*'.²²⁴¹

²²³⁴ Tribunal Documents, Statement of Ms B, pp. 6054-6056

²²³⁵ Tribunal Documents, Letter from Insp Niall Crowley to Dep/C John Twomey, undated, pp. 16474 at p. 16475

²²³⁶ Tribunal Documents, Statement of D/Insp Michael Coppinger, p. 3893

²²³⁷ Tribunal Documents, Letter from Insp Niall Crowley to Assistant Commissioner Western Region, dated 9th April 2018, p. 16465

²²³⁸ Tribunal Documents, Letter from A/C Orla McPartlin to A/C Anne Marie McMahon, dated 2nd July 2018, p. 16467

²²³⁹ Tribunal Documents, McMahon Report, p. 11865 at p. 11878

²²⁴⁰ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116

²²⁴¹ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 117

Specifically, he complained that:

*I also say the delay of the conclusion of Assistant Commissioner Ó Cualáin's investigation of my complaint over the period of five years also targets and discredits me.*²²⁴²

Allegations that he had to work with Garda A in Athlone Garda Station after he made his protected disclosure and that the criminal investigation interviews took place in Athlone Garda Station

One of Garda Keogh's main complaints concerning the investigation was that Garda A, the subject of his protected disclosures, continued to work in Athlone Garda Station whilst the interviewing of witnesses by the investigation team was ongoing. He stated that:

*Garda A was allowed to work at the same time as witnesses to his criminal actions were being called into Athlone Station to give statements in these matters.*²²⁴³

It was Garda Keogh's contention that he himself was 'obliged to work on the same shift as the armed Garda A (whom I had accused in my substantive complaint of assisting in the sale of drugs while he double jobbed in the garda drugs unit)'.²²⁴⁴ He viewed the 'imposed' sharing of shifts with Garda A as part of an 'orchestrated attempt' to induce fear in him such that he would opt for a transfer to another station:

On the 5/5/2015, Garda A attends at the garda station in the early morning at around 6am. He is not rostered for duty at this time. He takes out his gun from the safe behind me in the public office so that I can see him, from where I am seated, in the tinted glass in front of me. I remember saying to myself when I saw his reflection taking out his gun behind me that if he shoots me everyone will know I was telling the truth.

*The imposed sharing on me of shifts with Garda A who was armed occurred against a background where there had been a number of firearm shootings in garda stations which had created concern among members about safety. All through 2015, Garda A (the subject of my serious complaints) was left on the same shift with me. I believe that this was an orchestrated attempt to induce fear in me and or to leave me in a position where I would opt for a transfer so that my allegation could be more unobtrusively suppressed and ignored.*²²⁴⁵

In his interview with tribunal investigators, Garda Keogh said that he did not raise such concerns with his line supervisor or management, but said that he did so with D/Supt Mulcahy.²²⁴⁶ He also said that 'I was not on the same shift as Garda A all of the time, but most of the time I was on the same shift as him'.²²⁴⁷

Garda Keogh stated that when he met the confidential recipient on 17th July 2014 he expressed a number of concerns to Judge McMahon, including the fact that witnesses were being interviewed at the station:

I explained furthermore – from my close observations of the nature and detail of the internal investigation (the fact that garda witnesses were being interviewed in the station while Garda

²²⁴² Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 108

²²⁴³ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116

²²⁴⁴ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 117

²²⁴⁵ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 129

²²⁴⁶ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 50

²²⁴⁷ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 50

*A was on duty in the same station), the absence of arrests, questioning, searches for internal communications – that the ‘investigation’ would not stand up to scrutiny by international police standards.*²²⁴⁸

He said that he wished to add A/C Ó Cualáin to the list of individuals against whom he was alleging targeting or discrediting following the making of his protected disclosure:

*Regarding Assistant Commissioner Dónall Ó Cualáin I wish to state the following. Assistant Commissioner Dónall Ó Cualáin was appointed to investigate my first complaint (Protected Disclosure) which I made to Judge McMahon in 08/05/2014. The conduct of Assistant Commissioner Ó Cualáin’s investigation in itself discredited me. In particular, the interview of Garda witnesses while the suspect guard (Garda A) was on duty in the same station (NK/1, page 1 of 135, last paragraph refers) was incorrect. I believe that is discrediting to me and targeting me as I have made a complaint of a serious nature and of criminal misconduct against a colleague Garda, Garda A, and he was not suspended, not arrested and Garda colleagues were interviewed about my complaint whilst the guard against whom I have made the allegation (Garda A) was on duty in the same station at the same time. It is my belief that this was done to control what guards might say and to make everybody else (Gardai) think that I had just made all this up (i.e. the contents of my Protected Disclosure). I also knew that the guards being interviewed were being interviewed in relation to my allegations as did Garda A. I say this created a hostile working environment for me in Athlone Garda Station and targeted me in my view.*²²⁴⁹

In his evidence to the tribunal, Garda Keogh said that the interviews should not have been conducted in Athlone Garda Station:

*It did discredit me. Like, the way they went and took the statements, I mean where Garda A is in duty, on duty in the station. This was over a number of days. And doesn’t leave the station, is just walking around the station, you know, for a guard – like, it shouldn’t have been done like that. If they wanted to get the real truth, they should have met individual guards off site, at a hotel or at home or some other Garda station or somewhere else. Just not there.*²²⁵⁰

He described the layout of Athlone Garda Station to the tribunal:

*... The main building is the main Garda station. So there’s three buildings in Athlone. Out the back there’s community policing, let’s say, on a separate building is the detective unit and the drugs unit and in the main station it’s the main bulk of the actual Garda station. But they’re all within the same curtilage. So, to say that we were working in completely different buildings is not the case. Anyone that was working in any part of the station would have been in the main station at certain periods.*²²⁵¹

Garda Keogh referred to one particular incident:

... There was one stage, like, for example, I happened to be in public office. There was Detective Inspector Mulcahy, Detective Inspector Coppinger and Garda A, the four of us. Garda A happened to be photocopying or something while they were talking to me. And Detective Inspector Mulcahy said, come on, we’ll go down to a back room, have a private chat. So myself

²²⁴⁸ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 123

²²⁴⁹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 106-107

²²⁵⁰ Tribunal Transcripts, Day 104, p. 43, Evidence of Garda Nicholas Keogh

²²⁵¹ Tribunal Transcripts, Day 109, p. 80, Evidence of Garda Nicholas Keogh

*and Detective Inspector Mulcahy were talking and I was actually saying, this is a joke, like, that you're conducting the investigation when Garda A is on duty. And actually when I opened the door in the private room, down the back of the station, Garda A walked by. He had been up in the public office when we were up there and then when Detective Inspector Mulcahy, when we went down to a back room in the back part of the station, he then – as I said, I opened the door, Garda A walks by and I just look back at Detective Inspector Mulcahy, I didn't say anything, because I didn't have to, I had already previously said this is a joke, what's happened.*²²⁵²

Garda Keogh told counsel for the tribunal the following:

The thing about the interview, the guards, interviewing the guards in the Garda station while the suspect guard is on duty is insane. You wouldn't see it in Police Academy. It was just insane. Like, they have the phone contact details and addresses of every guard. There was nothing to stop them meeting guards at their own homes or inviting them to meet somewhere else, some other location. To get them to start making statements in Athlone Garda Station in itself was absolutely insane. Then, to do it while Garda A was present in the station, because obviously I am aware that he was then going approaching everyone that was being interviewed and asking them, well, what were you asked and what was said and this sort of stuff.

*It was designed so that guards were not going to come forward with information.*²²⁵³

Garda Keogh referred to his allegation that the investigators were deliberately frustrating their own investigation and said that:

*I have to be serious about it, because, Judge, why else would they do that? They couldn't be that negligent. They couldn't be that negligent, to do that in the same station while the same – while the suspect garda is on duty. In the same station and while he's on duty, I just, I cannot say, I couldn't say that that's just out of negligence, it's too big a thing under the circumstances to be negligent.*²²⁵⁴

Counsel for the tribunal referred Garda Keogh to the fact that records showed seven statements had been taken in the station at the time when he raised the issue with the investigation team and he stated that 'my answer to that is, it's seven too many'.²²⁵⁵

In relation to the failure to suspend Garda A, Garda Keogh told counsel for the tribunal:

*... In relation to the suspension, you see, there's a huge issue in that when statements were taken, Garda A was present, you know, in the station while the investigation team were taking the statements, you know. He was able to see every guard that was making statements, it was insane. I had given enough evidence back in 2014, where there was enough evidence to make a suspension and a start. As I said, I didn't realise it hinged on my statement going to HR. I didn't know that.*²²⁵⁶

He also told counsel for the tribunal that:

... When I got the word that Garda A had been suspended, I thought, right, they'll back off from me now and things will get better and, you know, they'll just leave me alone now. But, of course, that's not what happens. I then get station bound into the public office. I got station bound into

²²⁵² Tribunal Transcripts, Day 103, p. 141, Evidence of Garda Nicholas Keogh

²²⁵³ Tribunal Transcripts, Day 103, pp. 132-134, Evidence of Garda Nicholas Keogh

²²⁵⁴ Tribunal Transcripts, Day 103, p. 136, Evidence of Garda Nicholas Keogh

²²⁵⁵ Tribunal Transcripts, Day 115, p. 85, Evidence of Garda Nicholas Keogh

²²⁵⁶ Tribunal Transcripts, Day 102, p. 31, Evidence of Garda Nicholas Keogh

*the public office. As I said, then there is Garda A's friend, let's say, is moved on to my unit. So it's a double whammy.*²²⁵⁷

Garda Keogh was cross-examined by counsel on behalf of An Garda Síochána in respect of his meeting with A/C Ó Cualáin and D/Supt Mulcahy at Portumna Garda Station on 13th August 2014:

Q. *I think that they went through your letter with you and they discussed with you the matters that you raised which are of concern?*

A. Yes.

Q. *I think you mentioned the question of the suspension of Garda A?*

A. Yes.

Q. *You also mentioned the fact that you were uncomfortable with enquiries being conducted by the investigation team in Athlone Garda Station?*

A. Yes. *That was a major, major thing, while Garda A was on duty.*

Q. *Yes. Now just in terms of the discussion, I think the position is that Assistant Commissioner Ó Cualáin addressed the different points that you raised and in relation to the enquiries being conducted in Athlone Garda Station, he indicated to you that Athlone Garda Station would no longer be used as a base for enquiries into the matters raised by you.*

A. *Judge, the damage was done, because they had taken all the witness statements from the guards in Athlone and once a guard has made a statement under the declaration where they state in it anything which they know to be false or do not believe to be true, they are liable to prosecution. Judge, a guard cannot change their statement once they made their actual statement. So the damage was done there.*²²⁵⁸

Garda Keogh was asked by his counsel if he was ever told that, unless he consented to his statement being made available to HRM, Garda A could not be suspended:

*No. No, definitely not. As I've said, I wrote a number of letters to Detective Superintendent Mulcahy. I do accept he did say to me or he asked me at some point would I consent to sending a copy to HR and I said no. I've outlined the reason: I didn't know who was there, who they were connected to, could it be leaked? That was a fear I always had with my main – the main original statement be leaked and go into the wrong hands within An Garda Síochána.*²²⁵⁹

Garda Keogh's diary entries concerning the conduct of the investigation and the presence of Garda A in the station are as follows:

- 17th July 2014: 15.29 *call with Judge told him that I informed DSupt that I wasn't happy with investig that how can Gardaí cooperate fully when they still working with him no susp.*²²⁶⁰
- 6th August 2014: *12 MD investigation team in Athlone at 1 point I was in Public Office members of team in there + Garda A Wrote letter to DSupt saying this is not acceptable DSupt if it was me id rather have GSOC investigation*

²²⁵⁷ Tribunal Transcripts, Day 102, pp. 31-32, Evidence of Garda Nicholas Keogh

²²⁵⁸ Tribunal Transcripts, Day 109, pp. 74-75, Evidence of Garda Nicholas Keogh

²²⁵⁹ Tribunal Transcripts, Day 114, p. 44, Evidence of Garda Nicholas Keogh

²²⁶⁰ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 17th July 2014, p. 13265

_____ made statement said he couldn't remember who was on search or what was said Garda A hanging around stn all day.²²⁶¹

- 8th August 2014: Garda Keogh noted that Garda A hung around the station and that he 'walked by A on corridor'.²²⁶²
- 10th August 2014: Garda Keogh wrote that the investigation team were in the station and Garda A was 'hanging around'.²²⁶³
- 13th August 2014: 4pm meet AC + DSupt re letter I said its an absolute disgrace re manner of investigation AC says High bar to get suspended. They to inform DPP re _____ + _____ DSupt takes selective notes + reads back over I say to high bar [illegible]
_____ not asked re A + Ms B relationship It didnt take down stuff.²²⁶⁴
- 28th August 2014: Sgt _____ interviews sgt _____ Garda A hung around stn humming + talking _____ showing confidence was with _____.²²⁶⁵
- 27th October 2014: L.61 9pm-7am going into work Garda A parked out front of stn _____ at back horrible feeling.²²⁶⁶
- 14th December 2014: close to breaking point – stress unbearable waiting for Garda A to be in at 7am. Dont want to face _____.²²⁶⁷
- 22nd March 2015: Garda Keogh records that Garda A came into the station at 9am and 'hung around all day' and that he went sick with stress at '305pm'.²²⁶⁸
- 4th May 2015: 6am Garda A arrived in + took gun From safe I was watching him in reflection of glass.²²⁶⁹

His employee assistance officer, Garda Quinn, also recorded notes of conversations with Garda Keogh where he discussed or mentioned the investigation.

- 4th June 2015: I rang. The member said that he was out sick because the person he had made the allegations against was being interviewed in the station that they both work in.²²⁷⁰
- 26th June 2015: I rang. The member is finding it difficult to keep waiting for the result of the investigation into his allegations.²²⁷¹
- 4th January 2016: I rang. We spoke for a long time about his drinking. He spoke of how difficult it was not to have been believed initially when he made his allegations and how awkward/difficult and unprofessional it was to be asked to continue to work alongside the person that he had made the allegations against.²²⁷²

²²⁶¹ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 6th August 2014, p. 13268

²²⁶² Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 8th August 2014, p. 13268

²²⁶³ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 10th August 2014, p. 13268

²²⁶⁴ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 13th August 2014, p. 13269

²²⁶⁵ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 28th August 2014, p. 13271

²²⁶⁶ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 27th October 2014, p. 13280

²²⁶⁷ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 14th December 2014, p. 13286

²²⁶⁸ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 22nd March 2015, p. 13303

²²⁶⁹ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 4th May 2015, p. 13310

²²⁷⁰ Tribunal Documents, Notes of Garda Michael Quinn, p. 10617

²²⁷¹ Tribunal Documents, Notes of Garda Michael Quinn, p. 10617

²²⁷² Tribunal Documents, Notes of Garda Michael Quinn, p. 10620

Allegation that the Ó Cualáin investigation should have dealt with all matters and that there should not have been ‘mini-investigations’

When queried by management in respect of the intelligence entry on PULSE on 18th May 2014 (Issue 1), Garda Keogh said in his statement to the tribunal that:

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 McMahon had specifically requested that I did not discuss any matters relating to the internal police investigation with any other members.²²⁷³

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.²²⁷⁴

Garda Keogh complained about a series of ‘oppressive mini-investigations’²²⁷⁵ conducted by local management into the Olivia O’Neill and Liam McHugh incidents, dealt with at Issues 3 and 4, which he said should have formed part of the Ó Cualáin investigation.²²⁷⁶ 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.’²²⁷⁷ He stated that he told both Judge McMahon and A/C Ó Cualáin about what he perceived to be ‘an attempt to interfere with the internal ‘investigation’ on 16th July 2014.²²⁷⁸

He was later told by A/C Ó Cualáin that the investigation team would not be dealing with these matters:

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. At this stage I had advised Donal O Cualain and Judge McMahon on the 16/7/2014 of what I perceived to be an attempt to interfere with the internal ‘investigation’. 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.²²⁷⁹

Garda Keogh outlined a conversation he had with Judge McMahon on 17th July 2014 during which he expressed concerns regarding queries from management concerning the Liam McHugh and Olivia O’Neill issues and the intelligence entry:

²²⁷³ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 122

²²⁷⁴ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at pp. 122-123

²²⁷⁵ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 125

²²⁷⁶ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 34

²²⁷⁷ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 124

²²⁷⁸ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 124

²²⁷⁹ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at pp. 124-125

On the 17/7/2014, I had a conversation with Judge Mc Mahon to explain my concerns about inter alios Liam Mc Hugh. (Judge McMMahon explained [see above] that the matter could not be dealt with in this way: The Morris Tribunal had held in this regard that there could not be a series of oppressive mini-investigations. Matters should all be dealt with at the same time and not oppressively by way of a multiplicity of discrete disciplinary proceedings. Judge Mc Mahon said he would contact the Commissioner on the issue).²²⁸⁰

He set out his specific complaint against A/C Ó Cualáin, dealing with his contention that the Olivia O'Neill and Liam McHugh incidents should have formed part of the criminal investigation:

Assistant Commissioner Dónall Ó Cualáin was appointed to investigate my complaint (dated 08/05/2014 made to Judge McMMahon). 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.²²⁸¹

Counsel for the tribunal asked Garda Keogh about the appropriateness or otherwise of the investigation team taking on these matters:

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.²²⁸²

Allegation that there was a failure to arrest suspects and/or preserve evidence by the investigation team

In his statement to the tribunal, Garda Keogh said that there was a failure on the part of the investigation team to question or arrest certain essential suspects and witnesses:

Neither Garda A nor Ms B nor _____ has been arrested or questioned. Neither [the previous divisional officer] nor Superintendent Murray nor Chief Superintendent Curran were arrested or questioned. Nobody has been arrested in relation to the alteration of police statements tendered to Court.²²⁸³

He stated that despite phone records being preserved, which he said evidenced contact between Garda A and Ms B, no 'arrest, questioning or prosecution' had taken place:

I later witnessed Garda A receive a telephone call on his mobile from someone called [nickname] (which I later presumed to be Ms B) in 2010. The telecommunications records will verify these contacts. Such communications were the subject of an ostensible internal investigation into my substantive complaints. While the phone records between Garda A and Ms B appear to have been preserved, no arrest, questioning or prosecution has however resulted to date. There has been a frustrated GSOC investigation and a Garda 'investigation' into this matter. The results of the latter 'investigation' have not yet been published thereby gravely fettering my capacity to make

²²⁸⁰ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 125

²²⁸¹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 35

²²⁸² Tribunal Transcripts, Day 100, p. 60, Evidence of Garda Nicholas Keogh

²²⁸³ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116

my case here; and or prove the 'shoring up' of the initial cover-up (of my substantive complaints) through harassing me after my making 'protected' disclosures.

The mobile phone bearing [nickname] (remembered by _____ in 2014) would have been supplied to Garda A by [a previous divisional officer] who at the time was a Superintendent in Athlone. He is now in the Phoenix Park. It has been widely circulated that some of these phone records have been retrieved by An Garda Síochána and that such records demonstrate extensive contacts between Garda A and Ms B.²²⁸⁴

During cross-examination by counsel on behalf of An Garda Síochána, Garda Keogh set out the rationale for his complaint in relation to this issue:

Judge, out of this, let's say the information I had given, let's say, Detective Superintendent Mulcahy and Assistant Commissioner Ó Cualáin, Judge, other matters come out of that investigation. For example, there's the issue of these missing drugs, where there's clear criminality there, there's a clear power of arrest. Judge, they seem to be kept completely away from this. They're investigated entirely separately. The same is the issue with the phone, is it the second phone was seized by Superintendent Murray, where Garda A is trying to ascertain information about witnesses or something. Judge, that is investigated again separately. Equally, I don't know now what GSOC – have they given either of those files to GSOC or what? I don't know what they have given to GSOC. But those two investigations should have been included in all this, because it's all related, Judge. What they did was, they divided it all up. They divided what was in my affidavit up. This is what appears to me, Judge, they divided my affidavit up with a collusion investigation. Then there is the missing phone or the seized phone is a separate investigation. Then there's the missing drugs, where there was clear mens rea in relation to altering – Judge, this is where drugs went missing in 2012, they did not go into the property store, they disappeared for a number of years. I understand someone in the investigation team spotted this anomaly. But on the Pulse computer system, the actual incident of the missing drugs was closed off with a different incident number, which shows that there was clear criminality, Judge, and premeditated criminality.²²⁸⁵

During his evidence, Garda Keogh clarified his position in relation to the phone and the DVDs:

Q. **Chairman:** Should we be absolving or at least reducing the criticism of Ó Cualáin to take account of that?

A. Yeah, in relation to the phone –

Q. **Chairman:** The wiping of the phone?

A. – and the DVDs, I accept there was that, yeah, that that – I can't blame them for that.²²⁸⁶

With regard to an inference that C/Supt Curran had interfered with the storeroom, Garda Keogh was cross-examined by counsel for An Garda Síochána:

If I alleged that Mark Curran cleared it out, I take that – withdraw that, if I alleged that Chief Superintendent Curran cleared it out. That would be totally wrong, just to clarify that. I don't believe Chief Superintendent Curran – no, I believe it was cleared ought all right but...

²²⁸⁴ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 118

²²⁸⁵ Tribunal Transcripts, Day 109, pp. 88-89, Evidence of Garda Nicholas Keogh

²²⁸⁶ Tribunal Transcripts, Day 103, p. 124, Evidence of Garda Nicholas Keogh

Q. So you're not making any point against Chief Superintendent Curran on that issue?

A. Not for clearing out, no, no, no, definitely not, no.²²⁸⁷

In his statement to the tribunal, Garda Keogh said that:

I believe the garda management pressure placed on me to take a transfer was to remove me from witnessing the haphazard, partial and hilly nature of the investigation and the failure to arrest or question principal suspects and or their high ranking garda minders.²²⁸⁸

He also stated that he was offered a transfer to another station by Supt Murray during their meeting of 26th March 2015. He said that this constituted an attempt to prevent him from observing the ongoing investigation:

He asked me if I would take a transfer. I replied no that I didn't want a transfer. I had not asked for a transfer. I believed the transfer he was proposing was an attempt to prevent me from observing close-up the patently inadequate criminal investigation into garda collusion with criminals (condoned by management), the non-interviewing of witnesses etc in the investigation [into] my substantive complaints, the cleaning out of the storeroom containing drugs following my protected disclosures, the absence of forensic engineers in preserving electronic records etc.²²⁸⁹

Garda Quinn recorded the following note of a conversation with Garda Keogh:

30th July 2015: The member admitted he had been drinking. He said that he had sent letters to the D.P.P. and the Minister for Justice and that they had arrived. He mentioned that he was due to visit the C.M.O. He spoke of his satisfaction with D/Superintendent Mulcaby and admits his frustration with the inaction against those he has named.²²⁹⁰

Allegation that Superintendent Pat Murray targeted Garda Nicholas Keogh with the direction and/or acquiescence of Assistant Commissioner Dónall Ó Cualáin

In his interview with tribunal investigators, Garda Keogh stated his belief that A/C Ó Cualáin imparted confidential information regarding the investigation to Supt Murray, and that Supt Murray targeted him with the direction or acquiescence of the assistant commissioner:

Superintendent Pat Murray before commencing as Superintendent attached to Athlone Garda Station, Eastern Region, was a Superintendent attached to the Western Region under Assistant Commissioner Dónall Ó Cualáin. Superintendent Murray was not part of Assistant Commissioner Dónall Ó Cualáin's investigation team into my complaint (08/05/2014). I know that later, Superintendent Pat Murray wrote a report recommending that Garda A be suspended. I query where Superintendent Pat Murray obtained the information contained in his report recommending Garda A's suspension as I understand it related to the information contained in my complaint/Protected Disclosures about Garda A that Assistant Commissioner Dónall Ó Cualáin was investigating. I am of the opinion that Assistant Commissioner Dónall Ó Cualáin divulged this information to Superintendent Pat Murray, which he should not have. I believe that Superintendent Pat Murray was sent to Athlone Garda Station to get me out. I also believe that Superintendent Pat Murray targeted me with the direction and/or acquiescence of Assistant Commissioner Dónall Ó Cualáin in this respect.²²⁹¹

²²⁸⁷ Tribunal Transcripts, Day 105, p. 117, Evidence of Garda Nicholas Keogh

²²⁸⁸ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 118

²²⁸⁹ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at pp. 126-127

²²⁹⁰ Tribunal Documents, Notes of Garda Michael Quinn, p. 10617

²²⁹¹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 35-36

Garda Keogh claimed that Supt Murray targeted him as a result of A/C Ó Cualáin's direction:

*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. I do not know if any senior member 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.*²²⁹²

In his evidence to the tribunal, Garda Keogh set out the basis for this belief:

*... I believe that because I was finding stuff, I was still working, there was certain things I was finding in relation – and I was hearing everything that was going on in relation to the main investigation in the station, I knew who they were, I knew pretty much what was going on. Also, because I would have done a lot of beat duty, I was hearing stuff around the town and everything. I always believed Ó Cualáin wanted me out of Athlone so they could – he'd have a bit more freedom to do what he wanted to do with the investigation. Superintendent Murray came to Athlone then and I always believed he wanted just me out of Athlone and away from there, so that they could – from day one, I think, from recollection actually, yeah, 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 to 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.*²²⁹³

This matter was explored by the Chairman during Garda Keogh's evidence:

Q. **Chairman:** Okay. Now, back to Mr. McGuinness's question: What evidence have you that Assistant Commissioner Ó Cualáin assigned Superintendent Murray to get rid of you?

A. *I have no evidence ...*²²⁹⁴

*It is my belief.*²²⁹⁵

Garda Keogh was asked by counsel for the tribunal whether Supt Murray interfered with the investigation:

Q. *I am sure you have seen, Garda Keogh, in Superintendent Murray's statement that he says that when he came in March '15, you know, a lot of the witnesses had been interviewed, he didn't know what had happened and he wasn't privy to the investigation. But can I be clear, are you suggesting in some way that Superintendent Murray then interfered in the investigation as a result of being sent there by Assistant Commissioner Ó Cualáin?*

²²⁹² Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 46-47

²²⁹³ Tribunal Transcripts, Day 100, pp. 118-119, Evidence of Garda Nicholas Keogh

²²⁹⁴ Tribunal Transcripts, Day 104, p. 11, Evidence of Garda Nicholas Keogh

²²⁹⁵ Tribunal Transcripts, Day 104, p. 12, Evidence of Garda Nicholas Keogh

A. *No. I never, I never said or implied anything like that.*²²⁹⁶

Garda Keogh was cross-examined by counsel on behalf of An Garda Síochána and asked the following:

Q. *Garda Keogh, just to summarise at the outset, I think you have accepted in your evidence to date that the investigation conducted by Detective Superintendent Mulcahy and Detective Inspector Coppinger was a good investigation and that you believed they were tenacious investigators?*

A. *Two of them and their team.*

Q. *And their team, yes.*

A. *Yeah.*

Q. *And, as you are aware, Assistant Commissioner Ó Cualáin was the head of that team?*

A. *Yes.*²²⁹⁷

He was further questioned about this complaint by counsel on behalf of An Garda Síochána:

Q. *So, it seems, does it not, that the case that you're seeking to make, the residual case that you're seeking to make in this case, as I understood your evidence last week when you spoke to Mr. McGuinness, was that you were suspicious that Assistant Commissioner Ó Cualáin had somehow sabotaged his own investigation or attempted to do. Is that the core of your complaint against Assistant Commissioner Ó Cualáin?*

A. *Judge, essentially, essentially. I know it's a very unusual and strange, outrageous allegation. But that's my position, Judge.*

Q. *Again, is your criticisms of his delay in certain matters or the time in which it took to do certain things, but have you any evidence that he knowingly set out to sabotage the investigation of which you were so praiseworthy in the course of your testimony?*

A. *Judge, haven't I given evidence last week about – the investigation team are in Athlone Garda Station, conducting the investigation into Garda A, Garda A is on duty, he's hanging around the station, he doesn't leave the station, and they're then calling other guards in to make statements about Garda A. I at times was able to see, Judge, because I smoke myself, Garda A was smoking in the back area, he was actually walking up and down and around the back part of the station and he was actually able to see members, whoever they were bringing in and out of the investigation team. An example of this is when Garda Lyons was interviewed by the investigation team, he then – like, he's Garda A's partner there and – ah look, Judge, that part of the investigation, it was just insane.*²²⁹⁸

Counsel on behalf of An Garda Síochána also asked Garda Keogh the following in respect of his welfare:

Q. *Certainly. Garda Keogh, would you agree that Detective Superintendent Mulcahy sought to enlist the welfare supports of An Garda Síochána to help you?*

A. *Yes.*

²²⁹⁶ Tribunal Transcripts, Day 104, pp. 12-13, Evidence of Garda Nicholas Keogh

²²⁹⁷ Tribunal Transcripts, Day 109, p. 72, Evidence of Garda Nicholas Keogh

²²⁹⁸ Tribunal Transcripts, Day 108, pp. 59-60, Evidence of Garda Nicholas Keogh

- Q. *Would you agree that he spoke to other senior officers, Superintendent McBrien and superintendent –*
- A. *Murray.*
- Q. *– yes, with a view to ensuring that they were aware that you were a person that needed help from a welfare point of view?*
- A. *I don't dispute that.*
- Q. *And finally in that regard, that throughout the course of that particular period of time, when you were speaking to him you were frequently intoxicated or the worse for wear, if I can put it that way?*
- A. *I was under a lot of pressure. Like, I was under a lot of pressure at that time. I mean ...*
- Q. *Thank you.*
- A. *At that period, going into work, again through all this, like I'm – this is in the middle of, while the investigation is going on, I am still working alongside Garda A. It's just a very difficult – I turned to drink, and that's my story. I can't, I can't change it I'm afraid.²²⁹⁹*

He was asked whether he had a good rapport with Garda Quinn and he gave evidence that:

Judge, he was brilliant, he has been brilliant throughout the last couple of years.²³⁰⁰

Responding Statements and Evidence on the Issue

Former Acting Commissioner Dónall Ó Cualáin

Former Acting Commissioner Dónall Ó Cualáin confirmed in his statement to the tribunal that he held the position of acting commissioner from 11th September 2017 until his retirement on 14th September 2018.²³⁰¹

He gave evidence of his view of members who came forward and made protected disclosures:

I would never second guess anyone's reasons for taking action. As I said earlier, it takes a whole lot of courage for an individual member of any organisation to stand up and call out what they see as maybe low standards or corruption or malpractice or whatever it might be.²³⁰²

He outlined the actions he took when he was appointed by the Garda Commissioner to conduct an investigation into the protected disclosure made by Garda Keogh:

So I was aware, having read the affidavit, that there were some very serious allegations being made, I knew that I had to immediately set about getting a serious team put together to look at these matters, because they were not insignificant in the level of seriousness that they indicated. And that's what I set about doing immediately.

Having read carefully the affidavit that Garda Keogh had provided, through the judge, then having studied again and refreshed my memory in relation to the regulations and charter and legislation surrounding all of this, and then setting about getting a team together to look into all of these matters. I viewed it so seriously that I called in the most experienced detectives I

²²⁹⁹ Tribunal Transcripts, Day 105, pp. 148-149, Evidence of Garda Nicholas Keogh

²³⁰⁰ Tribunal Transcripts, Day 105, p. 127, Evidence of Garda Nicholas Keogh

²³⁰¹ Tribunal Documents, Statement of Former Acting Commissioner Dónall Ó Cualáin, p. 3957

²³⁰² Tribunal Transcripts, Day 138, p. 18, Evidence of Former Acting Commissioner Dónall Ó Cualáin

*had available to me in the Western Region in order to initiate those enquiries for me. You have already heard from former detective superintendent Declan Mulcahy, who I appointed as my senior investigating officer. He was at that stage the senior detective in my region, responsible for all investigation of serious crime in the Western Region, not just in Galway but right across the region. I then set about getting assistance for him and I knew that I had at my disposal in my own, in the – I suppose in the station in which I resided, Detective Inspector Michael Coppinger, who I had worked with previously at different ranks. I knew that he was someone that would be, you know, of the right calibre to put into that team. I then asked both of them to attend a meeting with me on the following Thursday.*²³⁰³

He was asked by counsel for the tribunal about responsibility for Garda Keogh's welfare:

*... As I said before, this was always one very item, right at the very top of our agenda was Garda Keogh's welfare. And at the very early stages, when obviously his confidentiality had to be fully respected, I felt that was our responsibility and ours alone, until such time as then it became public knowledge. That welfare onus then shifted to some extent onto the local management, who were best placed to deal with the day to day issues. But it didn't alleviate my team of what I considered our responsibility to ensure that he was regularly contacted and I think there's been a lot of records produced for the Tribunal that shows lots of contact between the detective superintendent and Garda Keogh, in both directions, where welfare issues were discussed.*²³⁰⁴

He referred to the criminal and disciplinary elements of the investigation:

*Like, your prior knowledge of a case and you're doing a criminal investigation and there are disciplinary aspects arising at the end of that criminal investigation, the discipline would have to be given to another person who has nothing to do with the criminal investigation that just concluded. And that's so that he would remain objective in the context of both investigations. So that's an important point to raise at this juncture. And that's why you would seek to have appointments made at certain junctures so that you can continue. I did that at a certain point when I felt that that threshold was reached. I did look for formal appointments to be made. But the work that was done up until then wasn't lost in the context of a criminal investigation and even from a disciplinary point of view, in that all of the statements that were taken during that phase would have been taken on the basis that the witnesses making them would have been told that this particular statement can be used in either a criminal or disciplinary.*²³⁰⁵

He described arranging his first contact with Garda Keogh:

*Well, I was conscious again of Garda Keogh's situation. He was a confidential reporter. So I would have said to him at an early stage, I need to meet with you, I'm happy to meet wherever you nominate, where you feel safe, where you can make your statement. Within reason, of course, I knew of the urgency of the matter, that it needed to be attended to, but I wanted to give him the opportunity as well in relation to when it would happen. I have looked at my diary for those, from the day I was appointed until the day I met with Garda Keogh, it was a busy diary, but the only days where I wasn't available actually I think were two days where I was on annual leave, between my first contact with Garda Keogh and the day that I met him. And actually, the day I did meet him was on a Saturday, at the weekend. I was totally flexible in relation to where and when and the when was within reason, I couldn't let that go too long because I was anxious to get a detailed statement of complaint from him.*²³⁰⁶

²³⁰³ Tribunal Transcripts, Day 138, pp. 21-22, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²³⁰⁴ Tribunal Transcripts, Day 138, pp. 116-117, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²³⁰⁵ Tribunal Transcripts, Day 138, pp. 25-26, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²³⁰⁶ Tribunal Transcripts, Day 138, p. 38, Evidence of Former Acting Commissioner Dónall Ó Cualáin

He was asked by counsel on behalf of the tribunal about his first meeting with Garda Keogh at Portumna Garda Station on 7th June 2014 and his impression of Garda Keogh at that time:

That he was – that he was anxious, yeah. He appeared, you know, nervous. And I would expect that. He was, you know, aware of the fact that he was making very serious allegations against colleagues and, you know, he was fearful of, you know, what might happen him because of that. I was there to reassure him in that regard. I told him, given that it was under the confidential reporting mechanism, you know, that I saw it as my responsibility to ensure that his welfare needs were met. From the earliest stage of this process, that is something that I would have discussed with Garda Keogh directly or when I didn't attend the meetings, that I would have ensured that my single point of contact with Garda Keogh, who was Detective Superintendent Declan Mulcahy, would keep that on the agenda at all times.²³⁰⁷

In respect of the concerns expressed to his investigation team by Garda Keogh that he was working on the same shifts as Garda A, he told the tribunal investigators that:

Any concerns Garda Keogh raised with me or with Detective Superintendent Mulcahy and brought to my attention were addressed. For example, I refer to Exhibit A.10 where Garda Keogh raised concerns around the suspension of Garda A. All of his concerns were dealt with and he was kept informed of the outcomes following his concerns being raised.²³⁰⁸

He stated that he did not recall Supt McBrien raising Garda Keogh's concern about Garda A carrying an official weapon but said that *'I was aware that Garda Keogh had a concern'*.²³⁰⁹ He also confirmed that he did not give any consideration to offering extended leave or temporary transfers to Garda Keogh or Garda A, stating, *'No, I never considered this. I was legally bound to protect Garda Keogh's identity'*.²³¹⁰

Counsel on behalf of the tribunal asked the witness about the suspension of Garda A and whether he explained it to Garda Keogh:

I mean, I needed to explain to him that due process applied to this. It wasn't in my power to just willy nilly suspend people. The discipline had to be considered at length. In any event, no matter information I had in my possession, all I could do was have it sent to our HR department, where they could share with local management and then have a decision made locally, because that is where that decision has to reside. It wasn't in my power in that particular circumstance to suspend anybody.²³¹¹

He was cross-examined by counsel on behalf of Garda Keogh on the timing of any possible suspension and his role in relation to it:

... I don't have all the relevant information, Chairman. I have information in relation to the seriousness of the charges and I hopefully, over the course of my investigation, would gather evidence. The strength of the evidence, that part. I know that. I don't have the other pieces, which reside with local management. And my objective was to ensure that those pieces of information were brought together, so that an informed decision could be made.

Q. Would it not be better to suspend early so that you remove all possibility of the person under investigation influencing others or that sort of thing?

²³⁰⁷ Tribunal Transcripts, Day 138, p. 39, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²³⁰⁸ Tribunal Documents, Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 7306 at p. 7319

²³⁰⁹ Tribunal Documents, Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 7306 at p. 7320

²³¹⁰ Tribunal Documents, Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 7306 at p. 7320

²³¹¹ Tribunal Transcripts, Day 138, p. 54, Evidence of Former Acting Commissioner Dónall Ó Cualáin

- A. *Suspension has to be made when it's justified, when it can be supported and backed up with information provided by both the investigating team in this matter and also local management. And when that bar is reached, that is when it is justified to suspend somebody. It cannot be done on the basis of whether or not it's going to suit the investigative process. That's one of the considerations given.*²³¹²

In his statement to the tribunal, he referred to 6th October 2014, and the refusal of Garda Keogh to allow his statement of complaint to be made available to HRM. It was on this basis that A/C Ó Cualáin concluded that the *'question of Garda A's deployment status could not be progressed at that time'*.²³¹³

Counsel for the tribunal asked whether it was explained to Garda Keogh that his refusal might possibly impact on the decision to suspend Garda A:

*... I didn't inform him. I can't say exactly what wording the detective superintendent would have used when he went to convey the message that HR had sought this statement. But in any event, I am of the firm belief that it had no impact whatsoever, that there was ample information available through my own team and what we provided. And it was my own view, even at that early stage, that there wasn't ample grounds for suspension in August/September of 2014. That changed in May of '15, when I submitted a renewed application, where I could ask them to consider on the basis that now we had considered all the points relevant. It was a matter then for HR and local management.*²³¹⁴

He said that the question of Garda A's suspension was revisited in May 2015:

*On 8th May 2015 I wrote to the Commissioner with an update on progress with my investigation and pointed out that based on recent analysis of phone records that there now existed a reasonable suspicion that Garda A committed a criminal act (A.18). Given this development my fact-finding investigation was now at an end and I sought formal appointments for both the criminal and disciplinary matters identified and pointed out that given the recent developments the question of Garda A's suspension would be revisited.*²³¹⁵

In relation to the PULSE entry on 18th May 2014 (Issue 1), he stated that he was not sure when he became aware of it and that he did not take any action in respect of it. He said that *'[h]owever, it did contain information similar to that offered to my investigation team in June 2014 by Garda Keogh'*.²³¹⁶

He was asked by counsel for the tribunal about this PULSE entry and what, if any, concerns he had about it:

... Again, it probably was the detective superintendent who brought it to my attention around that time, if he had noted it. I suppose the content of that Pulse entry was already before – and was included in Garda Keogh's statement, as far as I'm aware, or some aspects of it. Where the division came here was, the information that was in the Pulse incident and the responsibilities of the local chief superintendent in relation to the management of Covert Human Intelligence Sources. So, while I – the information was from the point of view of – our investigation, we would pursue whatever information the confidential reporter wanted to make available to us in

²³¹² Tribunal Transcripts, Day 139, pp. 12-13, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²³¹³ Tribunal Documents, Statement of Former Acting Commissioner Dónall Ó Cualáin, p. 3957 at p. 3961

²³¹⁴ Tribunal Transcripts, Day 138, p. 92, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²³¹⁵ Tribunal Documents, Statement of Former Acting Commissioner Dónall Ó Cualáin, p. 3957 at pp. 3961-3962

²³¹⁶ Tribunal Documents, Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 7306 at p. 7323

*the context of those issues, but if something else arose externally, then that was not a matter for me in the context of how that appeared on Pulse, why it appeared on Pulse. That was a matter for local management.*²³¹⁷

He told the tribunal investigators that he was not aware of any instruction or communication with Judge McMahon and/or senior management that Garda Keogh was not to speak to any member of An Garda Síochána about the investigation, other than the members working as part of his investigation team.²³¹⁸

In respect of the Oliva O'Neill/Liam McHugh issues (Issues 3 and 4), he 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.*²³¹⁹

He explained the rationale for this decision to counsel for the tribunal:

*... I had a meeting then with the detective superintendent. We studied what was being asked of us and even more Detective Superintendent Mulcahy showed me what he had got from the superintendent in Athlone, I was firmly of the view that this was nothing to do with my investigation and, in fact, that I couldn't get involved in it. That was the independently held view of Detective Superintendent Mulcahy when he arrived, on the basis that everything I was dealing with were complaints that were made by the confidential reporter and what was being suggested or what was being included in the correspondence to me from Superintendent McBrien indicated that these in nature were complaints against the confidential reporter. And I felt on that basis that there's no way I could get involved in making those part of my investigation. And I made sure that this was communicated back to the local management, so that if it was felt that these matters needed to be – one thing that the confidential reporter said to me, when I rang him to tell him that I wasn't taking it on, he seemed very satisfied with that at the time... So Detective Superintendent Mulcahy did communicate with Superintendent McBrien in Athlone and passed on my advice in relation to the appointment of some independent officer to look at these matters.*²³²⁰

During cross-examination on this issue by counsel on behalf of Garda Keogh, the witness said:

Well there were certain matters that I had to attend to, having been appointed by the Commissioner. That didn't relieve local management of their duty to manage their districts or divisions, as it were. And I couldn't interfere with that. Local management have to manage, that is what they are paid to do. And in that context I was given a specific task, which I took on, and I interpreted that in a way to ensure that because of the unique circumstances of the way in which the confidential reporter had made, it came in under the confidential reporter, therefore I was

²³¹⁷ Tribunal Transcripts, Day 138, p. 106, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²³¹⁸ Tribunal Documents, Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 7306 at p. 7325

²³¹⁹ Tribunal Documents, Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 7306 at p. 7326

²³²⁰ Tribunal Transcripts, Day 138, pp. 98-99, Evidence of Former Acting Commissioner Dónall Ó Cualáin

*duty bound to protect him, his welfare, in the context of my investigation. However, I could not issue any edicts to local management around how they did their work in the context of managing the divisional district.*²³²¹

In his statement to the tribunal, he said that he spoke with Garda Keogh on 16th July 2014 and that *'I 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.'*²³²² The former Acting Commissioner said that Garda Keogh *'stated that he was happy with this position, which is contrary to the views expressed by the CR in his statement to the Disclosures Tribunal where he asserts that he believes I should have been investigating them.'*²³²³

He told tribunal investigators that he was not aware of any communication between Judge McMahon and the Garda Commissioner as regards *'mini-investigations'* and that there should only be *'one investigation'*.²³²⁴

In relation to 8th May 2015 and the revisiting of Garda A's suspension, he said that he was *'not aware of anything specific that delayed'* the analysis of phone records relating to the official state mobile phone associated with Garda A given that the phone was voluntarily handed over to D/Supt Mulcahy by Garda A on 13th June 2014.²³²⁵

Turning to Garda Keogh's complaint that interviews were conducted in Athlone Garda Station, counsel for the tribunal asked him about the location chosen for the investigation:

Oranmore was set up as – yes, it had a few advantages, in that it was on the periphery of Galway city, it was a new, modern complex, it had some vacant rooms that could be used, it would maintain a certain element of confidentiality for the team. They were travelling from various locations around the region and it meant that they could easily get into that office without having to go through Galway city, etcetera. And that is where the detective superintendent's office was, in Oranmore, as well, at the time. Because we had issues with accommodation in Galway at that juncture. So the detective superintendent's office was there, therefore he was close to the investigation at all times when he wasn't on other duties.

*So all of the jobs that were given out, and we had a garda in charge of the incident room, they would have been given out at conferences and on a regular basis by the team and they would have gone off and done their duties and done their jobs based on what they were asked to do, if it was taking statement off Garda X or Y or some witness or some civilian, that would all have been given out and they would told they wanted it back by a certain time. That's is the way in general that our incident room works.*²³²⁶

He was asked by counsel for the tribunal about Garda Keogh's expression of concern that interviews were being conducted in Athlone Garda Station in his letter to D/Supt Mulcahy of 6th August 2014 and at the meeting at Portumna Garda Station on 13th August 2014, and what action he took:

Once I became aware that there was a concern by Garda Keogh – this goes back to the welfare. There were some elements I had control of, there were some I didn't have any control of. But where I could, in order to give some element of comfort to Garda Keogh, I said, look it, rather

²³²¹ Tribunal Transcripts, Day 139, pp. 18-19, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²³²² Tribunal Documents, Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 7306 at p. 7327

²³²³ Tribunal Documents, Statement of Former Acting Commissioner Dónall Ó Cualáin, p. 3957 at p. 3959

²³²⁴ Tribunal Documents, Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 7306 at p. 7330

²³²⁵ Tribunal Documents, Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 7306 at p. 7333

²³²⁶ Tribunal Transcripts, Day 138, pp. 58-59, Evidence of Former Acting Commissioner Dónall Ó Cualáin

than ringing up a garda who works in Athlone and saying we're going to meet you, when are you working again, that was where the people, maybe two guards would go together, they made those arrangements themselves, there was no direction from on high, but there was a direction then from that date. I made it clear to the detective superintendent that in as much as they could that they should interview people away from Athlone, so that this scenario wasn't going to repeat itself for the one described by Garda Keogh.

If I can just say, in relation to any member, including Sergeant Haran, who did make a statement, as far as I'm aware, to my investigation team, it was a matter – at any stage they could have said, I don't think we should be doing this in Athlone. They could have raised concerns, like Garda Keogh rightly did when he felt there was an issue.²³²⁷

Counsel for the tribunal asked him about the letter sent by Garda Keogh to the Director of Public Prosecutions of 26th July 2015 with a list of complaints about the conduct of his investigation. He said that

All letters, every correspondence that Detective Superintendent Mulcahy received from any source in relation to the investigation was brought to my attention and any telephone conversations, any text messaging that happened, was brought to my attention. This doesn't look familiar to me at all in the context of what was shown to me at that time.²³²⁸

Counsel for the tribunal asked the former acting commissioner about the seizure of the state mobile phone and the examination of phone data:

Q. Now, you will be aware of the fact that that is one of the complaints of Garda Keogh; that this wasn't identified at an earlier stage, isn't that right?

A. That's correct, yes. Again, it was seen as an absolute priority at the outset of our investigation that phones, you know, yield some very useful evidence and can, so that was seen as a priority. It was dealt with in that manner. And while the phone that was seized from Garda A didn't yield anything of an evidential nature in the context of what we were investigating, for the same phone and as part of your enquiries into the broader set of issues that Garda Keogh had made a statement about, we discovered that these records existed for the actual period of time, that records for that same phone had already been sought and on that basis we had them analysed in the context of what they contained. And it was clear that there was, as you said, an inordinate amount of contact between that official phone and the phone belonging to [a relative] of Ms. B, yes.²³²⁹

Counsel for the tribunal also asked him about Garda Keogh's complaint that the investigation team failed to make arrests:

I don't see it as a failure, Chairman. This was – the investigation was carried out by a highly competent and efficient and experienced team of detectives. They did their business, they got to a conclusion on the basis of what was uncovered over the investigation. To make an arrest one needs reasonable suspicion. I can't direct anyone else to arrest another person, that person themselves needs to come to that conclusion in their own minds, that they have reasonable suspicion. That was a matter for the team I had appointed. And I think I heard Detective Superintendent Mulcahy's testimony yesterday, where he hadn't reached that in his own mind.

²³²⁷ Tribunal Transcripts, Day 138, pp. 59-60, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²³²⁸ Tribunal Transcripts, Day 138, pp. 156-157, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²³²⁹ Tribunal Transcripts, Day 138, pp. 73-74, Evidence of Former Acting Commissioner Dónall Ó Cualáin

*And on that basis, I can't second guess. But it wasn't a failure to arrest. It was the way that the investigation was managed.*²³³⁰

Counsel for Garda Keogh suggested to him that Garda A was afforded favourable treatment in the manner in which he was interviewed:

*I don't accept that, Chairman. There was no suggestion at any stage that anyone got favourable treatment in the context of any aspect of our investigation. My overall approach from the word go was to ensure that people were treated fairly across the board, everyone involved, let it be witnesses, the confidential reporter himself had rights and also the people that were being investigated had rights. So they had to be considered. So it was an approach that was based on fairness*²³³¹

In relation to the allegation made by Garda Keogh that he put Supt Murray in place to undermine him, he told tribunal investigators:

*In relation to divulging information, I never made contact with Pat Murray in relation to the suspension of Garda A. Pat Murray was allocated to Athlone to take charge of Athlone District having made a request for a transfer. It was a matter for the Commissioner to decide on the allocation of Officers. I never directed or discredited any person or directed anybody else to discredit another person. I never directed Pat Murray to target Garda Nicholas Keogh.*²³³²

He further stated that *'I did not put Superintendent Pat Murray up to getting Garda Keogh out of Athlone Garda Station' and that 'I completed my investigation in 18 months from the time of my appointment'*.²³³³

Counsel for the tribunal asked him about this allegation and the process whereby Supt Murray was appointed to Athlone:

I reject that completely, Chairman. Superintendent Murray I had known, the first I met him was when he came to, it was probably Gort. Gort and Loughrea districts from amalgamated at some stage during his tenure in Galway I would say. That was my first time meeting Pat Murray. And he was a very efficient and professional officer in my view, while I had him on my team. I then moved on and I finished up in Dublin. I was aware, because of my duties in Dublin in supporting the Commissioner, and these were matters for the Commissioner to consider, the transfer of officers is something the Commissioner does. While at times there would be input sought in relation to – she may, or he, whoever was in the office at the time, I used to consult with my senior team and say, here are the allocations that we need to make, you know, we were looking for horses for courses, as it were, to get the best fit for all of our district. In the normal course, if you are promoted off a promotion list, you are the most junior at that stage in your rank of super, therefore you get the last cut of the pie, as it were. So people already in office in districts who have applied to a transfer to some other district will get preference over people on a list. And that is what happened Pat Murray when he got promoted; a vacancy came up in Gort district because somebody else had transferred back, I think it was to Cork at that time. I needed to fill that district, and the Commissioner of the day allocated Pat Murray to that district. As I say, I never knew the man before that. And then in the normal course, if people are in a district that doesn't suit them, their domestic arrangements, they may and do apply for a transfer themselves, to get closer to home or to get to a district that is commutable for them.

²³³⁰ Tribunal Transcripts, Day 138, p. 114, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²³³¹ Tribunal Transcripts, Day 139, p. 25, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²³³² Tribunal Documents, Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 7306 at p. 7342

²³³³ Tribunal Documents, Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 7306 at pp. 7343-7344

*So that was what Pat Murray would have done in this instance, I assume. He would have looked for his transfer. A vacancy arose in Athlone because Superintendent McBrien had looked for a transfer back to the DMR, somewhere in the DMR here in Dublin, which would have suited her domestic arrangements. I think Pat lived somewhere in the midlands and he probably listed Athlone as one of the stations or one of the districts that would suit him.*²³³⁴

In his statement to the tribunal, former Acting Commissioner Ó Cualáin referred to Garda Keogh's allegation that there was delay in investigating his disclosure:

In his statement to the Disclosures Tribunal the CR asserts that the delay in the conclusion of my investigation of his complaint over a period of five years targets and discredits him... There was no delay in the completion of my investigation file. The quantity and complexity of the issues to be examined threw up numerous lines of enquiry which had to be pursued. I submitted a file to the DPP in November 2015 a period of 18 months from the date of my appointment... This file addressed all issues raised by the CR. A supplementary file was submitted in May 2016 which addressed fresh evidence that came to light on an aspect of the original file.

During his evidence on this issue he stated:

*Well, I have to reject that allegation out of hand. I put every effort and every ounce of energy I had over a very busy period of time into ensuring that everything in relation to Garda Keogh's issues that he reported to us were fully investigated. And during that time to ensure that Garda Keogh's own welfare issues were fully supported. I can identify with some of the frustrations that Garda Keogh would have felt, having been an experienced investigator himself.*²³³⁵

*... possibly being on the outside of that, and looking over the wall, as it were, and feeling frustrated that things weren't moving at a pace that he would like or maybe in a direction that he would like. But all I can do as an investigator is to follow the evidence that is there. And that is what our team did. With due respect to all the rules of law and fair procedure, that is what I was in charge of and that is how I did my business. So, while I can empathise with the confidential reporter and maybe some frustrations that he felt along the way, you know, I have to do my job within the parameters of the law that is set out. And that is what I did, and my team.*²³³⁶

He was asked by counsel for An Garda Síochána whether he had looked after Garda Keogh's welfare throughout the process:

*At all times, as I said from the beginning, his welfare was paramount in this matter. I think my team went way above and beyond, you know, what would be expected in the context of an organisation that had a formal process and procedure in place for people who needed welfare and in the context that he didn't – I accept that at the early stages, you know, he did obviously lean on, I would say, Detective Superintendent Mulcahy at certain times during that process and spoke to him a lot. And Detective Superintendent Mulcahy was available for those interactions.*²³³⁷

He was asked about the suggestion made by Garda Keogh that contrary to her public statements, former Garda Commissioner O'Sullivan did not in fact support whistleblowers:

²³³⁴ Tribunal Transcripts, Day 138, pp. 117-119, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²³³⁵ Tribunal Documents, Statement of Former Acting Commissioner Dónall Ó Cualáin, p. 3957 at p. 3965

²³³⁶ Tribunal Transcripts, Day 138, pp. 159-160, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²³³⁷ Tribunal Transcripts, Day 139, p. 53, Evidence of Former Acting Commissioner Dónall Ó Cualáin

Nothing could be further from the truth, Chairman. I worked very closely with former Commissioner O’Sullivan, from 2014 up until she retired in 2018, and I don’t think a day went by when I had interactions with her that whistleblowers wasn’t raised in some format, whether it was the updating of policy to ensure, you know, that we were learning from mistakes, or the dealing with current cases, as it were, in relation to different members, including my own case and how those members being treated. And our her public pronouncements, and during all our conferences to senior management, which were held in the Garda college twice yearly, this was always on the agenda, something that was always raised in the context of raising awareness around the organisation, as to the importance of ensuring that this legislation was properly –²³³⁸

Detective Superintendent Declan Mulcahy

In his statement to the tribunal, D/Supt Declan Mulcahy confirmed that he was appointed by A/C Ó Cualáin on 15th May 2014 to assist with the investigation and that he met with Garda Keogh to take his statement on 7th, 11th, 13th and 18th June 2014.²³³⁹

Counsel on behalf of Garda Keogh asked D/Supt Mulcahy why there was a delay in taking possession of the state mobile phone:

On the 7th June we met at six o’clock on the Saturday evening. On the Tuesday I made contact with the superintendent of Garda A and asked for the phone to be seized. I did that because I didn’t want to cause alarm bells by going over around Athlone and the word would get out very quick that I was around and things would happen. Unfortunately it wasn’t seized on that date. I went to the station, it was actually the 13th when I seized the phone and I took it from Garda Keogh himself. Or sorry, Garda A.

Q. It would have been much better, would it not, with the benefit of hindsight, if someone had seized that State phone that Garda A held within a matter of days certainly of the allegations being made?

A. But I wasn’t aware of anything of the phone –

Q. I know.

A. – until I met with Garda Keogh on the 7th.²³⁴⁰

He said in his statement that he arranged for the phone to be analysed by Garda Barry Walshe at the Telephone Liaison Unit:

... it did not contain any text messages nor did it contain any contact details for any person named “Ms B” to which the reporter had made reference to. In order to establish the full picture of contact I sought the call related data from the service providers. Some data could not be provided for the relevant period due to the fact it was outside of the time frame the service providers are required by law to retain data (2 years).²³⁴¹

D/Supt Mulcahy also stated that on 26th June 2014 he attended at Athlone Garda Station and carried out a search of the storeroom.²³⁴²

²³³⁸ Tribunal Transcripts, Day 138, pp. 150-151, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²³³⁹ Tribunal Documents, Statement of D/Supt Declan Mulcahy, p. 3900

²³⁴⁰ Tribunal Transcripts, Day 137, pp. 103-104, Evidence of D/Supt Declan Mulcahy

²³⁴¹ Tribunal Documents, Statement of D/Supt Declan Mulcahy, p. 3900 at p. 3901

²³⁴² Tribunal Documents, Statement of D/Supt Declan Mulcahy, p. 3900 at p. 3901

He was contacted by Garda Keogh on 16th July 2014 in relation to the queries raised with him by management over the intelligence entry on PULSE. D/Supt Mulcahy said that:

*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.*²³⁴³

D/Supt Mulcahy told counsel for the tribunal that he was contacted by C/Supt Curran in relation to this PULSE entry:

*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.*²³⁴⁴

He was asked by counsel for the tribunal about Garda Keogh's request that the investigation team take over the Liam McHugh and Olivia O'Neill inquiries:

*Yeah. I probably agree that maybe he was anxious that we do it. But having spoken with the team and spoken with the assistant commissioner, we didn't feel that it would be correct that we would be investigating him and investigating his complaint. So I know correspondence – there was a correspondence exchange in relation to it and I think I wrote on it to suggest that any matters of that nature should be investigated locally, that we were investigating Garda Keogh's complaint.*²³⁴⁵

In his statement to the tribunal, D/Supt Mulcahy referred to the meeting with Garda Keogh at Portumna Garda Station on 13th August 2014:

*At this meeting the Reporter aired his views surrounding the investigation, in particular his observations surrounding the behaviour of Garda A when members of the investigation team were in Athlone Garda Station. The Reporter queried why Garda A was not suspended from duty pending the outcome of the investigation. At the conclusion of this meeting the Reporter reiterated that he was satisfied that there were no leaks coming from the investigation and he was happy for the investigation to continue.*²³⁴⁶

Counsel on behalf of Garda Keogh asked D/Supt Mulcahy why the witnesses were interviewed in Athlone:

... I don't know if they had to refer to material within the station at the time when their statements were taken or not. I didn't receive any complaint from any of those to suggest that they were eyeballed or otherwise while their statements were taken. And I didn't get anything from the persons who took the statement to suggest there was any problem with it.

Q. Right. So anyway, look, what it comes to is, you as chief superintendent didn't think there was a problem interviewing these people at Athlone station whilst Garda A was still a serving member of the drug squad?

²³⁴³ Tribunal Documents, Statement of D/Supt Declan Mulcahy, P.3900 at p. 3911

²³⁴⁴ Tribunal Transcripts, Day 136, p. 137, Evidence of D/Supt Declan Mulcahy

²³⁴⁵ Tribunal Transcripts, Day 136, pp. 135-137, Evidence of D/Supt Declan Mulcahy

²³⁴⁶ Tribunal Documents, Statement of D/Supt Declan Mulcahy, p. 3900 at pp. 3904-3905

- A. *Garda A was a serving member, he wasn't suspended. I didn't see any particular problem in relation to interviewing people there if they wished to be interviewed and it was the most convenient place for them.*
- Q. *We know that when this criticism was pointed out to Assistant Commissioner Ó Cualáin, he said that they should take place elsewhere?*
- A. *Yeah, no, Garda Keogh wrote to me in relation to it and as a result of that we met with Garda Keogh and Commissioner Ó Cualáin and we moved the focus of the investigation as best we could from the station.*²³⁴⁷

In his statement to the tribunal, D/Supt Mulcahy outlined that on 23rd September 2014, he met with A/C Ó Cualáin, C/Supt Curran and Supt McBrien in Dublin in relation to the suspension of Garda A. He said that:

*A discussion took place around the question of suspension of Garda A. There was agreement that there was no local or other issues to justify the suspension of Garda A at this time. Neither the Chief Superintendent nor the Superintendent had received any complaints regarding Garda A following our investigation or visit to Athlone Garda station.*²³⁴⁸

Counsel on behalf of Garda Keogh asked him why Garda A wasn't suspended:

I couldn't suspend him.

Q. *You could have requested that he be suspended?*

A. *We sat down and we spoke in relation to the criteria that was required and to see had we reached that far and it didn't appear that we had at the time.*²³⁴⁹

D/Supt Mulcahy outlined the contacts with the informant (whose identity was provided by Garda Keogh to the investigation team) between 2nd July 2014 and 12th December 2014.²³⁵⁰ He stated that the informant made a statement to the investigation team on 12th December 2014 setting out that *I do not wish to have anything I said entered in evidence, I spoke only because I thought it was in confidence. I don't want to get involved in any trials surrounding this*.²³⁵¹

He was asked by counsel for the tribunal to outline the efforts made by the investigation team to contact the informant:

*Just for the record, in relation to this particular period, I went to great extremes to try and make contact with him, having met him first and he suggesting to us that he didn't want to get involved in stuff. I was hoping that we could push him that little further. I thought that we might get him. Unfortunately at the end it didn't happen. I included even going to his workplace, trying to get him to talk to us. We visited the house that he had been in with a partner, but unfortunately he had left that and we found a new address for him. So I went to a lot of effort to try and establish contact with him and to try and get him on board in the investigation.*²³⁵²

He further stated under cross-examination by counsel on behalf of Garda Keogh that:

²³⁴⁷ Tribunal Transcripts, Day 137, p. 114, Evidence of D/Supt Declan Mulcahy

²³⁴⁸ Tribunal Documents, Statement of D/Supt Declan Mulcahy, p. 3900 at p. 3901

²³⁴⁹ Tribunal Transcripts, Day 137, p. 108, Evidence of D/Supt Declan Mulcahy

²³⁵⁰ Tribunal Documents, Statement of D/Supt Declan Mulcahy, p. 3900 at pp. 3902-3903

²³⁵¹ Tribunal Documents, Statement of D/Supt Declan Mulcahy, p. 3900 at p. 3903

²³⁵² Tribunal Transcripts, Day 136, pp. 160-161, Evidence of D/Supt Declan Mulcahy

Well, I say, it ended up that it was nearly that period of time before we got to talk to him. But it wasn't from the want of trying. He changed his number to avoid me contacting him. We had to go to great extremes in relation to finding him and eventually, when I rang Garda Keogh, Garda Keogh seemed to have his new number. He had changed his number. Garda Keogh gave me that and I subsequently made contact with the man and between comings and goings and he ducking me and so forth, it took us quite a long time before we actually got to him and got to see what he had to say.²³⁵³

Counsel for the tribunal asked him to respond to Garda Keogh's complaint that there had been undue delay in the investigation:

There was absolutely no delay. I suppose all of us were doing our day job as well at the same time. Now if you look at the man from Galway, it took us nearly seven months to get a final answer from him. When we look at Ms. B, who is named as another important witness, it took considerable time to pin her down and try to see where we are going in relation to her. So that took up a lot of our time. Our investigation sprung from those two potential witnesses, so to speak.²³⁵⁴

In his statement to the tribunal, D/Supt Mulcahy recalled a phone call with Garda Keogh on 1st April 2015, when he updated him on the investigation. He stated that:

He mentioned "Garda A in to the station but not working", (I understood from this that Garda A although not rostered to work was hanging around the station when the reporter was working) "not saying anything just whistling and humming", I asked him if he had reported the matter to his Super, he stated he did but not the whistling and the humming. He stated he was happy with the investigation and appreciated the call.²³⁵⁵

In evidence to the tribunal he recalled a slightly earlier phone call with Garda Keogh but was uncertain of the exact date:

Basically I told him about the new superintendent, yeah. That the new superintendent – out of courtesy, there was going to be a change, that there was a new superintendent. I do recall, however, that he asked me what was he like and I think my exact words were that he was very fair but firm. I think they are the words I recall exactly as I would have said to him. Now, whether that was on that particular occasion or not, I'm not a hundred percent certain.

And that was because AC Ó Cualáin had instructed me on every meeting with him to ensure that his welfare was looked after from our point of view.²³⁵⁶

D/Supt Mulcahy stated that he met with Garda A in the company of D/Insp Coppinger on 24th April 2015. He also confirmed that Garda A gave a prepared statement to the investigation on 16th June 2015 and was interviewed on 24th June 2015²³⁵⁷

Counsel for the tribunal asked him how he approached interviewing Garda A:

... [I]n fairness to him, due process had to prevail, as it did for everybody else in the investigation. And I had to be very conscious of where the information that this investigation was based on had come from.

²³⁵³ Tribunal Transcripts, Day 137, p. 115, Evidence of D/Supt Declan Mulcahy

²³⁵⁴ Tribunal Transcripts, Day 136, p. 175, Evidence of D/Supt Declan Mulcahy

²³⁵⁵ Tribunal Documents, Statement of D/Supt Declan Mulcahy, p. 3900 at p. 3913

²³⁵⁶ Tribunal Transcripts, Day 137, pp. 11 and 16, Evidence of D/Supt Declan Mulcahy

²³⁵⁷ Tribunal Documents, Statement of D/Supt Declan Mulcahy, p. 3900 at pp. 3907-3908

Q. Yes.

A. As Garda Keogh had outlined, the information that he had put on the Pulse system back on the, was it around the 18th May, that it had come from this particular person in Galway. Now, I looked at this particular person. This person was a convicted criminal, a heroin dealer, a heroin addict, he was the partner of Ms. B.

A. Well at that time we didn't have any concrete evidence as such. We had the word from this man, who I was sceptical about.²³⁵⁸

Counsel for the tribunal asked D/Supt Mulcahy if he had considered arresting Garda A and invoking various statutory powers whilst he was detained:

*... But here was a man who was totally cooperating with our every question, made himself available to every request. And if you just maybe look at the last interview, you may note there that I said to him, you're not under arrest, you're free to leave at any stage if you wish. He chose to remain. Now, hypothetically if he got up and walked out, maybe, I don't know, maybe our approach might have been different. But he was cooperating and that's what we worked on at the time.*²³⁵⁹

Counsel on behalf of Garda Keogh asked him why the allegations were not put to Garda A at their first meeting:

*I have no doubt – the reason we did it was to give him an opportunity, because fair procedure needed to be applied in all cases here, not just in respect of our complaint received but also the person that the complaint was made against. Because the information we had got, it was very hard to base a decision to arrest, first of all, Garda A. So it was felt that due process should prevail and that he should be given an opportunity to see the allegations that were made against him.*²³⁶⁰

Later in his cross-examination, counsel on behalf of Garda Keogh put the following to D/Supt Mulcahy:

Q. Well, I am suggesting to you, I will have to do it bluntly, that you were affording him favourable treatment?

A. I wouldn't say I was affording him favourable treatment, I was trying to see that natural justice would prevail.²³⁶¹

In his statement to the tribunal, D/Supt Mulcahy confirmed that he dealt with Garda Keogh in relation to his welfare during the investigation:

*Also throughout the investigation I spoke with the reporter concerning welfare matters and I maintained contact with both Superintendent Noirin Mc Brien and Pat Murray in respect of welfare issues that arose around the reporter.*²³⁶²

He outlined how, on 21st April 2015, having spoken with Garda Keogh, he made arrangements with Garda Quinn to be appointed to liaise with Garda Keogh.²³⁶³

²³⁵⁸ Tribunal Transcripts, Day 137, pp. 21 and 23, Evidence of D/Supt Declan Mulcahy

²³⁵⁹ Tribunal Transcripts, Day 137, pp. 36-37, Evidence of D/Supt Declan Mulcahy

²³⁶⁰ Tribunal Transcripts, Day 137, pp. 94-95, Evidence of D/Supt Declan Mulcahy

²³⁶¹ Tribunal Transcripts, Day 137, pp. 98-99, Evidence of D/Supt Declan Mulcahy

²³⁶² Tribunal Documents, Statement of D/Supt Declan Mulcahy, p. 3900 at p. 3909

²³⁶³ Tribunal Documents, Statement of D/Supt Declan Mulcahy, p. 3900 at p. 3910

Counsel on behalf of Garda Keogh referred D/Supt Mulcahy to Garda Keogh's letter to him in December 2014 with the following extract:

Q. "Garda A is now in a position of influence over him. It will be interesting to see if there is a prosecution on this one."

Would you firstly accept that this was brought to your attention?

A. *The start of it is very similar to another letter I received about a man coming into the station and stating – but I cannot recall having seen that letter, that aspect of it previously.*

Q. *You have never seen this letter before?*

A. *I cannot recall it. Initially in relation to the first few lines I have an idea who he is speaking about. But in relation to the bottom aspect of it, I have no recollection whatsoever.²³⁶⁴*

Counsel for the tribunal asked D/Supt Mulcahy about his notes of a conversation with Garda Keogh in April 2016 following the directions of the Director of Public Prosecutions:

Basically, I wanted to meet him to discuss them in person with him. I didn't want to talk to him over the phone about the directions.

The note recorded:

Told me that he could not meet with me as he was going on the tear with another lad. He accepted he was an alcoholic.²³⁶⁵

D/Supt Mulcahy said in evidence:

That is the first time that he has accepted that to me.²³⁶⁶

The note continued:

I again asked him if he would contact his welfare officer. He told me he was going to the press and just wanted to tell me that he was going to bring down Nóirín O'Sullivan. I advised him that the DPP had directed no prosecution. He told me he had 15 years good service and I advised him that he could have another 15 years good service but not necessarily in Athlone. He mentioned Birr. He rang me back later and spoke about drinking and his head not being correct and that every Irish family had it.²³⁶⁷

D/Supt Mulcahy said in evidence:

And by that I understood to be that every Irish family had a drink problem. He would have been sincere in relation to his comments at that point.²³⁶⁸

D/Supt Mulcahy was referred by his own counsel to a letter he received from Garda Keogh on 17th October 2014:

Q. *Can I just draw your attention to the first few lines. It says:*

"Detective Superintendent Mulcahy, I am writing to say I appreciate that you have kept your word and have thoroughly investigated my complaint."

²³⁶⁴ Tribunal Transcripts, Day 137, pp. 69-70, Evidence of D/Supt Declan Mulcahy

²³⁶⁵ Tribunal Transcripts, Day 137, pp. 60-61, Evidence of D/Supt Declan Mulcahy

²³⁶⁶ Tribunal Transcripts, Day 137, p. 61, Evidence of D/Supt Declan Mulcahy

²³⁶⁷ Tribunal Transcripts, Day 137, p. 61, Evidence of D/Supt Declan Mulcahy

²³⁶⁸ Tribunal Transcripts, Day 137, p. 61, Evidence of D/Supt Declan Mulcahy

Is it fair to say that reflected Garda Keogh's views and expressing them to you about the quality of the work he saw you were doing as of October 2014?

- A. *And that's not the only time, Garda Keogh has said that to me on several occasions when he spoke to me.*²³⁶⁹

D/Supt Mulcahy was asked the following:

Q. *Did he complain to you in 2014 that you or Assistant Commissioner Ó Cualáin were deliberately suppressing or facilitating efforts to suppress honest statements or were engaging in informal intimidation of potential witnesses?*

- A. *No. No.*

Q. *I see. Is it your evidence to the Chairman that the first time you saw this particular phraseology was in these papers before this Tribunal?*

- A. *Yes.*²³⁷⁰

Counsel on behalf of An Garda Síochána asked him about the allegation made by Garda Keogh that A/C O'Cualáin had deliberately sought to sabotage his own investigation:

There was absolutely no interference or hindrance in any way whatsoever had from senior management in relation to this investigation. Nothing but help, I may add. That's all we got from our senior management, help.

Q. *Again, just taking the language used in this letter, can I ask you to confirm for the Chairman that there was no deliberate attempt to suppress honest statements or to exercise any form of informal intimidation?*

- A. *Absolutely none.*²³⁷¹

Counsel on behalf of An Garda Síochána asked D/Supt Mulcahy whether he had ever targeted or discredited Garda Keogh:

*Absolutely not. Absolutely not. I was more than helpful to him. I bent over for every request he had, I was available for every phone call, no matter what hour of the day it came. And I listened to him every single time it happened.*²³⁷²

He was asked by counsel on behalf of An Garda Síochána about the overall standard of the investigation:

Q. *If we move from the allegations of deliberate targeting, which is made in the correspondence, down to the allegations made today, which is that somehow the investigation was flawed.*

- A. *Yeah.*

Q. *Or mistakes were made. Do you believe that any of those mistakes, if they were so found by the Chairman, had any impact on Garda Keogh whatsoever?*

- A. *Absolutely not.*

²³⁶⁹ Tribunal Transcripts, Day 137, p. 148, Evidence of D/Supt Declan Mulcahy

²³⁷⁰ Tribunal Transcripts, Day 137, p. 151, Evidence of D/Supt Declan Mulcahy

²³⁷¹ Tribunal Transcripts, Day 137, p. 153, Evidence of D/Supt Declan Mulcahy

²³⁷² Tribunal Transcripts, Day 137, p. 159, Evidence of D/Supt Declan Mulcahy

- Q. *In terms of the interviewing of witnesses, were you satisfied from your professional experience that the witnesses in your investigation were interviewed fairly and in accordance with standard procedure?*
- A. *I am.*
- Q. *Were any of those witnesses subject to pressure or attempted interference?*
- A. *I have no knowledge that any of them were subject to anything.*
- Q. *In particular, can I ask you in terms of the superintendents, of your efforts, did you see anything in the conduct of Assistant Commissioner Ó Cualáin which represented targeting or discrediting of Garda Keogh?*
- A. *Absolutely not.*
- Q. *In your communications with Assistant Commissioner Ó Cualáin, did he share your concerns in relation to Garda Keogh's welfare?*
- A. *He does.*²³⁷³

Detective Inspector Michael Coppinger

In his statement to the tribunal, D/Insp Coppinger said that he was appointed by A/C Ó Cualáin on 15th May 2014 to assist in conducting an investigation into policing practices in the Athlone District.²³⁷⁴ He also confirmed that he made a number of statements for the purposes of the criminal investigation. These statements outlined *inter alia* the taking of various witness statements from June 2014 and the seizing of exhibits from July 2014. He also outlined the efforts made by the investigation team to meet with and interview Ms B between 9th April 2015 and 21st April 2015.²³⁷⁵ He stated that the investigation met with Garda A on 24th April 2015 and again on 16th June 2015, when Garda A produced a prepared statement to the investigation.²³⁷⁶

Counsel for the tribunal asked D/Insp Coppinger if he heard discussion suggesting the state mobile phone had been wiped. D/Insp Coppinger replied:

First of all, I do not know if the phone, as you say, was wiped. I don't have any evidence to say that it was wiped. The critical period surrounding the allegations being made were already downloaded by telecoms in relation to an inquiry that the district officer in Athlone had carried out. And we were subsequently able to recover that data, which did, which did support Garda Keogh's suggestion that there was a lot of contact between Garda A and a witness. I think some 1,600 contacts over a period.

- Q. *Are you referring to the billing records that have been obtained?*
- A. *I am, yes.*
- Q. *Was it your understanding that they had been provided by the telecom company on request at that point in time?*
- A. *They had been sought previously by the district officer in Athlone.*²³⁷⁷

²³⁷³ Tribunal Transcripts, Day 137, pp. 172-173, Evidence of D/Supt Declan Mulcahy

²³⁷⁴ Tribunal Documents, Statement of D/Insp Michael Coppinger, p. 3870 at p. 3871

²³⁷⁵ Tribunal Documents, Statement of D/Insp Michael Coppinger, p. 3870 at pp. 3874-3876

²³⁷⁶ Tribunal Documents, Statement of D/Insp Michael Coppinger, p. 3870 at pp. 3876-3877

²³⁷⁷ Tribunal Transcripts, Day 136, p. 75, Evidence of D/Insp Michael Coppinger

Counsel for An Garda Síochána asked D/Insp Coppinger why interviews still took place in Athlone after the instruction in August 2014:

There was a number of witnesses who when interviewed would have to rely on certain documentation which would be within the confines of the Garda station, to which they would have a right to refer. And it would – in some cases it would be quite impossible to take their statements without them having the opportunity to refer to those records. I myself did attend Athlone station on a few occasions. On one occasion we had reason to carry out a search of a particular room or cupboard, which had been mentioned by the confidential reporter, that could again render evidence. So for certain things like that, there was no choice, we had to go and clear those issues raised.²³⁷⁸

With regard to the allegation that Garda A was given preferential treatment by the investigation team, he gave evidence:

... Certainly in relation to witness A, we had went through the statements of complaint and the evidence we had and we set out a number of questions that we wished addressed. We had obviously to afford witness A fair procedure and natural justice, in that he would have to be afforded prior to we interviewing him, because we intended to interview him after caution. So he would have to have been afforded an opportunity to speak with his solicitor and, indeed, in relation to recent judgments would have been allowed to have a solicitor present.²³⁷⁹

Counsel for the tribunal asked him about the emergence of Ms B's statement during the disciplinary inquiry:

- Q. ... I think you became aware of a statement that had been provided in the context of a disciplinary inquiry being conducted by Assistant Commissioner McMahon?
- A. I did, yeah. I became aware of that through the normal reporting channels and it was brought to my attention, yes.
- Q. I think on foot of that, I think you acquired a copy of that statement that Ms. B had made?
- A. I did, yes.
- Q. You outline in your statement, at page 3893, the steps that you took from that point to try and get confirmation from Ms. B in the form of a statement in the course of a criminal inquiry?
- A. Yes. That's correct, yes. That statement, it was – it set out very, very serious allegations that were the subject of our investigation and it was confirming some of those very serious allegations. But it was made during the course of what was the disciplinary inquiry. So, from my perspective, it was not a statement that would hold any great weight in a criminal prosecution. So as a result I set about again approaching that witness.
- Q. I think you made a number of attempts, which you document in that statement, to contact her and make an appointment for the purpose of taking such a statement if possible?
- A. That's correct.²³⁸⁰

²³⁷⁸ Tribunal Transcripts, Day 136, p. 113, Evidence of D/Insp Michael Coppinger

²³⁷⁹ Tribunal Transcripts, Day 136, p. 81, Evidence of D/Insp Michael Coppinger

²³⁸⁰ Tribunal Transcripts, Day 136, pp. 85-86, Evidence of D/Insp Michael Coppinger

D/Insp Coppinger went on to say:

... I called to her on a number of occasions and the reception, I didn't get much reception, to say the least. The reception was quite hostile. And eventually I got contact with [a relative] at the house and I asked her to contact me. She didn't make contact. I went back on another occasion and again I had no luck. But I carried out enquiries following speaking with her [relative] that she was on a course in Athlone and from enquiries I carried out in Athlone that day, I established that she was on course. I went to that location and I seen her car parked in the car park. I was accompanied on that date by Inspector Paudie O'Shea. In order to progress the matter, we waited for a considerable period, some hours actually, until she returned to that car, so that I could make contact, because she was frustrating my meetings with her.

Q. Yes.

A. On that occasion she said she would wish to speak with her solicitor.

Q. Yes. I think you spoke with her solicitor, who told you that he had consulted with her and that she would be making a statement through his office to the effect that his client did not want anything to do with the process, and that Gardai had called to her house with guns and that she felt compelled to make a statement?

A. That's correct.

Q. He confirmed that position in correspondence to you?

A. He did.²³⁸¹

Counsel for the tribunal referred D/Insp Coppinger to an entry in Garda Keogh's personal diary for 22nd July 2014 saying that the investigation was double-crossing him. He said:

I was not aware of that, no. And I would like to put it on the record of this Tribunal that I totally and utterly refute that allegation. I am actually surprised by that.

Q. Garda Keogh, in fairness, in evidence he wasn't able to explain on what basis he had recorded that at that point in time, but it's not something that was ever said to you, is that right?

A. No. And again, I am disappointed, because we always set out to do our very best to get to the bottom of the allegations that were being made by him.²³⁸²

Chief Superintendent Mark Curran

C/Supt Curran told tribunal investigators that he did not have any contact with A/C Ó Cualáin in relation to the logistics of the investigation including *inter alia* the 'arrangements for Interviewing of witnesses from the Athlone station party'. He stated that:

I never had any contact in relation to the matters raised in this question with either then Assistant Commissioner Ó Cualáin or Detective Superintendent Declan Mulcahy. I am aware that sometime in the summer of 2014, the interviewing of witnesses was relocated from Athlone Garda station to another location. This was, I believe on foot of complaints raised by Garda Nicholas Keogh.²³⁸³

²³⁸¹ Tribunal Transcripts, Day 136, pp. 86-87, Evidence of D/Insp Michael Coppinger

²³⁸² Tribunal Transcripts, Day 136, pp. 83-84, Evidence of D/Insp Michael Coppinger

²³⁸³ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1938

In respect of the sharing of shifts with Garda A, he said that:

*To the best of my recollection, Garda Keogh's workplace concerns were never mentioned to me by Detective Superintendent Mulcahy. Just to note, Garda Keogh and Garda A worked in separate buildings, albeit adjacent.*²³⁸⁴

In his statement to the tribunal, he said that:

*Given the speculation which followed Garda Keogh's creation of PULSE Intelligence Entry 4085409 and subsequent suggestion by Garda A that it was him to whom the intelligence entry related, I was aware of the potential conflict which arose. However, given the fact that there was no situation in which the two would be required to work to assist one another or work directly with one another, any decision to move either or both parties would have been considered a move to target/discredit either or both parties. There was no incident of hostility on the part of either party reported to my office and consequently the two were allowed to remain with their respective units until Garda A was suspended from duty in September 2015 following my departure in March of that year.*²³⁸⁵

In respect of whether consideration was given to offering extended leave or temporary transfers to Garda Keogh and Garda A until the completion of the investigation, C/Supt Curran told tribunal investigators that:

*No. Officially, 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. Therefore, the matter did not arise and there was no related procedure in place for temporary transfers or extended leave. If it was the case that an application had been made to me for extended leave or temporary transfer, I would certainly have looked favourably on that.*²³⁸⁶

In relation to the intelligence entry on 18th May 2014, C/Supt Curran said that he did not consider contacting members of the criminal investigation team to clarify matters²³⁸⁷ and that he was the chief superintendent 'with responsibility under this policy in respect to CHIS matters and was tasked with ensuring strict compliance'.²³⁸⁸ He stated that he had no recollection of being told of an instruction to Garda Keogh not to speak to any member of An Garda Síochána other than the Ó Cualáin team about the criminal investigation.²³⁸⁹

He referred to a telephone call with D/Supt Walsh on 29th May 2014, and said that he was made aware that a complaint had been made to Judge McMahon in respect of the queries raised with Garda Keogh. He said 'I decided then not to pursue any further enquiries in respect to the content of the intelligence entry on PULSE'.²³⁹⁰

He told tribunal investigators that in December 2014/January 2015, he received an assurance during a telephone conversation with D/Supt Mulcahy 'about the matters of concern namely the criminal matters relating to the intelligence entry that were being pursued by Assistant Commissioner Ó Cualáin in respect of the confidential recipient complaint and that significantly my concerns regarding compliance under HQ 126/10 could end'.²³⁹¹

²³⁸⁴ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1942

²³⁸⁵ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1794

²³⁸⁶ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1943

²³⁸⁷ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1954

²³⁸⁸ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1957

²³⁸⁹ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1958

²³⁹⁰ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1935

²³⁹¹ Tribunal Documents, Statement of C/Supt Mark Curran, p. 1778 at p. 1786

In relation to Garda A carrying a firearm and whether Supt McBrien brought it to his attention, he told tribunal investigators that:

*She brought it to my attention shortly afterwards. I understand Detective Sergeant Eamon Curley did an assessment where no matters of concern arose. To me, it seemed she was exploring the issues Garda Keogh brought to her attention. There was no action required from me.*²³⁹²

In respect of any concerns that Garda Keogh raised with Supt McBrien with regard to his workplace environment, C/Supt Curran stated that:

*My memory of all those conversations was that these matters could be dealt with locally and that there were effective welfare supports in place. Nothing was ever reported to me formally.*²³⁹³

As to whether A/C Ó Cualáin or D/Supt Mulcahy ever raised the specific concern regarding Garda A in relation to the firearm, or any other workplace concern brought to their attention by Garda Keogh, he stated that:

*I cannot recall having a conversation with them in relation to this matter outside of the meeting in relation to suspension considerations of Garda A in Garda Headquarters on 23rd September 2014.*²³⁹⁴

Chief Superintendent Lorraine Wheatley

C/Supt Wheatley told tribunal investigators that she did not have any contact with A/C Ó Cualáin in relation to the logistics of the investigation including inter alia the ‘*arrangements for Interviewing of witnesses from the Athlone station party*’.²³⁹⁵ She said that the concerns raised by Garda Keogh with D/Supt Mulcahy in respect of the sharing of shifts with Garda A were never brought to her attention:

*No, I never dealt with Detective Superintendent Mulcahy at all. These issues were never brought to my attention. My recollection is that the Detective Unit is in a separate building and Garda A operated in plain clothes in a different building to Garda Keogh. I never met him.*²³⁹⁶

She also stated in relation to Garda Keogh that ‘*I never received any communication around him being afraid of Garda A*’.²³⁹⁷

C/Supt Wheatley said that she never had any contact with either A/C Ó Cualáin or D/Supt Mulcahy in respect of any workplace concerns raised.²³⁹⁸ In respect of whether extended leave or a temporary transfer was considered, she stated that:

Temporary Transfer: As Divisional Officer, it is within my authority to move members within the Division for operational or welfare reasons from time to time. Any transfer outside the Division would be a matter for HRM. I did not receive an application for transfer from Garda Keogh, from him or on his behalf. Had he applied, I would have supported the application. Where an investigation is ongoing, you cannot transfer a person, unless they applied for same, as it may be seen as pre-judging the situation or as a punishment.

²³⁹² Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1963

²³⁹³ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1963

²³⁹⁴ Tribunal Documents, Investigator Interview of C/Supt Mark Curran, p. 1922 at p. 1964

²³⁹⁵ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6095

²³⁹⁶ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6097

²³⁹⁷ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6098

²³⁹⁸ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6098

*Extended Leave: There is no provision that I am aware of, nor was there a conversation with me, relating to offering extended leave to Garda Keogh or any other member in the Division.*²³⁹⁹

C/Supt Wheatley recalled that she was contacted in respect of the suspension of Garda A in October 2015:

*In October 2015 following a local operation including searches, a file was sent to me for my consideration. Having reviewed the file, I made a recommendation that the member concerned, Garda A, be suspended. Just to clarify, prior to October 2015, former Assistant Commissioner Ó Cualáin had not contacted me in relation to Garda A. In terms of the allegations made by Garda Keogh, I was aware in a general sense that they related to the Drugs Unit that Garda A was on, however, that was the extent of my knowledge of the matter.*²⁴⁰⁰

Superintendent Noreen McBrien

In her statement to the tribunal, Supt McBrien said that she did not have any contact with A/C Ó Cualáin in relation to the logistics of the investigation including inter alia the ‘arrangements for interviewing of witnesses from the Athlone station party’. She told tribunal investigators that:

*There was no formal correspondence between myself and Assistant Commissioner Ó Cualáin’s investigation team regarding the logistics of the investigation. The only formal correspondence that exists between the investigation team and me relates to my request that the investigation team investigate the “Liam McHugh” allegation, which they declined. The investigation team did not consult with me regarding the interviewing of witnesses from the Athlone Station party, or any arrangement they had for interviewing witnesses. The investigation team only contacted me if they required something from me. I do not recall if any enquiry was made by them regarding members’ welfare, but I did get a call on 31st October 2014 from Detective Superintendent Mulcahy to advise that Garda Keogh was drinking heavily. I was not kept updated as to the progress of the investigation, nor, in my view, should I have been, unless something arose which may or could have a significant adverse effect on a member involved. It was necessary for that to be kept entirely separate and independent of the investigation, particularly in circumstances where I was supervising the members involved and had a duty towards all of the members as regards their welfare, including Garda Keogh, Garda A and other members.*²⁴⁰¹

In relation to the interviewing of witnesses at Athlone Garda Station, Supt McBrien stated that:

*Assistant Commissioner Ó Cualáin’s investigation was out of my hands and nothing to do with me. The location of where witness interviews took place was Assistant Commissioner Ó Cualáin’s call. I have a note on the 10th June 2014 that I was contacted by phone by Garda Fergal Greene to say Garda A was asking about the investigation team. I contacted Detective Sergeant Curley and asked him to speak to Garda A and to advise him not to be making such enquiries. Detective Sergeant Curley did this. On 16th July 2014, I gave a similar instruction to Garda Keogh, who was also asking questions in respect to the investigation team. Garda Keogh did not make me aware at any stage that there was a hostile environment. It was a difficult time in the Station, and I was very vigilant as regards members’ welfare. I repeatedly reminded Garda Keogh of welfare services.*²⁴⁰²

²³⁹⁹ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at p. 6099

²⁴⁰⁰ Tribunal Documents, Investigator Interview of C/Supt Lorraine Wheatley, p. 6076 at pp. 6100-6101

²⁴⁰¹ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at pp. 6222-6223

²⁴⁰² Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at pp. 6227-6228

During her evidence, she was asked about the interviewing of witnesses in Athlone Garda Station:

... I wasn't aware a lot of these took place, to be honest with you in Athlone. I know there's three buildings and none of the members ever came up and told me they were making a statement to Declan Mulcahy's team. Nor did I ask. So I don't even know where in the station some of these – now some of these were during periods I was out sick, but it was never –

... They were occasionally around the station. They could have been in the property store, they could have been anywhere. There's three buildings in Athlone that's very separate. I never questioned why they were there and nobody ever came to me and told me they were being interviewed.

Q. Chairman: Let's put it this way: It didn't come to your attention as something that was questionable or inappropriate; is that correct?

A. No, no, and it was never brought to my attention by anyone as a problem.²⁴⁰³

Counsel on behalf of Garda Keogh asked the superintendent about the atmosphere in Athlone Garda Station subsequent to Garda Keogh making his disclosure:

It was tense. Probably, I suppose, deflated ... and there was a sense of, I suppose, suspicion and just – it was just as if a balloon had burst; it just brought everyone down. That was across the board in the station. It was difficult.

... I think, from recollection, it would be people just didn't know at that stage what was happening. There was an investigation team in the station. Just that would cause, I think, a level of probably unsettlement in any working environment and I think Athlone Garda Station at that time was no different. And as well as that, because of the confidential reporter going public, it was also out in the public and it was out in the – the people in the town of Athlone knew all about it as well. So I think that had to be all difficult for the members.²⁴⁰⁴

In respect of the concerns raised by Garda Keogh about carrying a firearm, she said in her statement that:

On 17th June 2014 I met with Garda Keogh by arrangement in my office. He said he was doing well and getting on well with his colleagues. He said that he was concerned (not in major way) about Garda A coming under pressure and carrying an official weapon. I asked him if he was concerned for himself and he said he was not. I said we would await the outcome of Assistant Commissioner O' Cualain's investigation and then re-visit this situation.²⁴⁰⁵

She said that she spoke to D/Sgt Curley and asked for his views:

Detective Sergeant Curley wrote to me on 22nd September 2014 and confirmed he did not have a concern with Garda A's access to firearms at that time and confirmed that if he did, he would report same immediately. He also confirmed that he had outlined welfare supports to Garda A. No other concern or issue with Garda A's access to the firearm was ever raised.²⁴⁰⁶

Supt McBrien told tribunal investigators that she also outlined Garda Keogh's concern to A/C Ó Cualáin, D/Supt Mulcahy and C/Supt Curran at the meeting on 23rd September 2014.²⁴⁰⁷

²⁴⁰³ Tribunal Transcripts, Day 130, pp. 188-189, Evidence of Supt Noreen McBrien

²⁴⁰⁴ Tribunal Transcripts, Day 120, pp. 88-89, Evidence of Supt Noreen McBrien

²⁴⁰⁵ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 832

²⁴⁰⁶ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at pp. 6229-6230

²⁴⁰⁷ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6230

Supt McBrien referred to Garda Keogh's complaint regarding working with Garda A and stated that:

It must be acknowledged that I was not privy to Garda Keogh's complaint, whether in terms of what it was about, or who it was against. Until the reference to his concern regarding Garda A having access to a weapon, the only other awareness I had of any issue with respect to Garda A was a request by Assistant Commissioner O'Qualain's investigation Team for Garda A's mobile telephone device.²⁴⁰⁸

Counsel for the tribunal asked her about the work arrangements in Athlone Garda Station:

The rosters are 10 hour days. The tours of duties were ten hours. Garda A would be on unit C core. So, Garda A – sorry, Garda Keogh would be on unit C core, Garda A would be probably unit C DDU tour, which they would overlap by a half tour. So of every 10 hour tour they would overlap by five [hours]. They were also in different buildings in the station...²⁴⁰⁹

She told tribunal investigators that she was not notified by D/Supt Mulcahy of the concerns raised by Garda Keogh about working with Garda A:

No, he didn't. I did recognise that this could be an issue and I raised the issue with Garda Keogh during a meeting on the 17th of June 2014. When I would meet with Garda Keogh, we would have very long conversations. During the conversation, I asked him about his wellbeing and working with Garda A. It is my recollection that he said working with Garda A wasn't an issue because it was only a half-overlap. I was also aware that they worked in separate buildings. I asked him if there was a major incident and if it was the case that it was all hands on deck, how would he feel. He said he would find it awkward. He gave absolutely no indication that it was a situation he would find untenable or that he would be unable to work.²⁴¹⁰

Supt McBrien told counsel for the tribunal that Garda Keogh frequently raised the issue of the suspension of Garda A with her. She was asked by counsel how she responded to his concerns:

It wasn't my call and I didn't know – like I mean, we weren't kept up to date. Apart from knowing that Donal Ó Cualáin's investigation was ongoing, that was all we knew about it. We didn't know any more about it. I met with them on the 10th, I met with Declan Mulcahy and the DI Coppinger in relation to just an introductory meeting and they told me that they required the phone. Then I think on the 16th they came by another day to update me on what they weren't investigating, basically. But we were completely in the dark about that investigation and which way it was going. So I wouldn't be able to answer those questions for Garda Keogh.²⁴¹¹

She was cross-examined about the issue of suspension by counsel on behalf of An Garda Síochána:

- Q. Long term, the power of suspension rests with the Commissioner but he can delegate that?
- A. Yes. But with regards to this investigation, I probably worded it badly, is that neither myself nor the chief superintendent were aware of what was going on with the Ó Cualáin investigation or the content of it. So with regard to the draft suspension notice that's there, that was the only level of knowledge that was in Athlone at the time. As I say, I have read that, and that would be the level of knowledge that was available. But Deputy Commissioner

²⁴⁰⁸ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 832

²⁴⁰⁹ Tribunal Transcripts, Day 119, p. 173, Evidence of Supt Noreen McBrien

²⁴¹⁰ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6225

²⁴¹¹ Tribunal Transcripts, Day 119, pp. 174-175, Evidence of Supt Noreen McBrien

*Ó Cualáin, who was carrying out the investigation, would have known what his investigation was about.*²⁴¹²

Supt McBrien told tribunal investigators that Garda Keogh never requested a transfer and that ‘Garda Keogh could always approach me and, as he has said, we had a good relationship’.²⁴¹³ In respect of the offering of extended leave or a transfer, she stated that:

*I can only speak for myself. There is no facility for leave of absence or extended leave. As District Officer, I was very hands on in relation to welfare. Specifically, I would stay late at the station to keep an eye on things and to be available to members there. Neither member ever requested a transfer. Had they wished to, they could approach me. I was aware of the bigger picture of all members being treated equally, and there would be a concern that if either member was transferred without making application, it would have a negative inference.*²⁴¹⁴

Counsel on behalf of An Garda Síochána asked Supt McBrien how local management interacted with the investigation team:

*... the chief and I were both very strict on the fact that the investigation takes its course, it’s separate to us and that’s it. So, we didn’t – we didn’t engage with them. If they wanted anything, they contacted us.*²⁴¹⁵

She stated that she was unaware of the progress or status of the investigation but that she wrote at one stage to enquire whether the investigation team would investigate the Liam McHugh incident.²⁴¹⁶

She told tribunal investigators that:

*I had discussed the matter with Inspector Aidan Minnock and Detective Sergeant Eamon Curley, and we felt that it most likely... 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. I wrote to Superintendent Mulcahy to ask could Detective Inspector Coppinger interview Liam McHugh. Detective Sergeant Eamon Curley couldn’t take the statement because he knew Liam McHugh personally ... The Galway team said they weren’t dealing with the McHugh incident as advised in correspondence from Detective Superintendent Mulcahy dated the 15th July 2014.*²⁴¹⁷

In respect of the Olivia O’Neill incident, Supt McBrien stated that she raised the issue with Garda Keogh on 9th June 2014 and that:

*Garda Keogh told me that he had brought it to the attention of Assistant Commissioner Ó Cualáin and that he was dealing with it. I was satisfied that Garda Keogh had outlined his concerns regarding Olivia O’Neill to Assistant Commissioner Ó Cualáin and that the Assistant Commissioner was dealing with it.*²⁴¹⁸

²⁴¹² Tribunal Transcripts, Day 130, pp. 145-146, Evidence of Supt Noreen McBrien

²⁴¹³ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6225

²⁴¹⁴ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6231

²⁴¹⁵ Tribunal Transcripts, Day 120, pp. 112-113, Evidence of Supt Noreen McBrien

²⁴¹⁶ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6231

²⁴¹⁷ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at pp. 6256-6257

²⁴¹⁸ Tribunal Documents, Statement of Supt Noreen McBrien, p. 823 at p. 829

However, she stated that:

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.²⁴¹⁹

During cross-examination by counsel on behalf of Garda Keogh she recalled that she advised Garda Keogh that he wasn't being investigated in relation to the Olivia O'Neill and Liam McHugh incidents:

... I think it's the end of July. But I had sent a report to the chief on the 16th July and I had explained to Garda Keogh numerous times that just because something is being investigated doesn't mean he's being investigated. He was told that and I had said that to him, it's in my notes on that, I think at the very outset, that he wasn't having investigated. That I was investigating these issues or events or incidents and that any investigation could have any conclusion, including complete exoneration. I mentioned that to him several times. And that's just me reiterating the same thing...²⁴²⁰

Superintendent Pat Murray

Supt Murray told tribunal investigators that he had no interaction with the Ó Cualáin investigation, stating that '*I had no interaction because I knew nothing about the investigation*'.²⁴²¹ He stated that he was not officially informed of anything in relation to the Ó Cualáin investigation and this included the interviewing of witnesses at Athlone:

I wasn't informed officially of anything. When I went to Athlone members of An Garda Síochána attached to Galway Division were arriving to interview garda members there. There was no formal communication with me by anybody about what was happening. So interviewers just arrived and they had private arrangements made to interview members in Athlone and I wasn't involved at all. A lot of interviews had happened before I got there and I knew nothing about it.²⁴²²

He said that there was no communication or consultation with him concerning the logistics of the investigation including *inter alia* the arrangements for interviewing witnesses at Athlone Garda Station.²⁴²³

He said that Garda Keogh's reference to the environment in Athlone Garda Station being a '*hostile*' one was a '*subjective view*'²⁴²⁴ and that Garda Keogh '*made no formal complaints while in the workplace between March and December 2015 that I am aware of*'.²⁴²⁵

In relation to the concerns expressed by Garda Keogh about sharing shifts with Garda A, Supt Murray told tribunal investigators that:

²⁴¹⁹ Tribunal Documents, Investigator Interview of Supt Noreen McBrien, p. 6204 at p. 6255

²⁴²⁰ Tribunal Transcripts, Day 130, pp. 168-169, Evidence of Supt Noreen McBrien

²⁴²¹ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3027

²⁴²² Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3019

²⁴²³ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3021

²⁴²⁴ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3030

²⁴²⁵ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3030

I think I've only spoken to Garda Keogh on the 26th March, 3rd April, 15th July, 30th August 2015 and the 22nd October. So there were four face to face conversations and one on the phone. That is the only direct contact I had with Garda Keogh. During that first and second interaction, Garda A came up, I think it was particularly 15th July and I distinctly remember Garda Keogh mentioned _____ who he had issues with as well, as both he and Garda A were friendly. He raised issues in relation to both of them during that phone call and I remember putting the point to him that they had both been interviewed. I was trying to allay his fears from memory and from dealing with Garda A I believe he was on Unit E, albeit that he was attached to the Detective Unit. He wouldn't have been working through the night but there may have been a cross over period with Unit C but it wouldn't have been as intense as what is suggested. I have to make that point. During my first conversations with Detective Superintendent Mulcahy, he explained that Garda Keogh was ringing him while drunk and brought up the issue concerning Garda A. Detective Superintendent Mulcahy and I had a shared concern for Garda Keogh's welfare and as a result of our discussion, Detective Superintendent Mulcahy undertook to liaise directly with the Welfare Service to allow assistance be provided directly to Garda Keogh. Detective Superintendent Mulcahy couldn't go into anything to do with the investigation and I was happy enough because I wasn't involved and I wanted to remain impartial and I didn't want my mind clouded.²⁴²⁶

In respect of the issue of temporary leave and/or transfer of the members concerned, Supt Murray said that:

There was no facility for doing that that I was aware of and again without the knowledge about what was going on, I couldn't possibly make a determination other than to meet and support those involved.²⁴²⁷

Responding to the allegation by Garda Keogh that he was sent to Athlone to get him out, and that he targeted him with the direction and/or acquiescence of A/C Ó Cualáin, Supt Murray stated that:

I applied for a transfer and I outline that in my statement (PM/A para 1 page 1) and that resulted in my transfer. I spent 5 years commuting and I applied for a transfer closer to home. I was transferred to Athlone by the then Garda Commissioner. I wasn't sent there for any purpose other than to manage the delivery of a policing service to Athlone. No one ever mentioned Garda Keogh to me. No information in relation to Garda Keogh's protect[ed] disclosure investigation was divulged to me. Former acting Commissioner Ó Cualáin phoned me three times on 1st April 2015 and once on 2nd April. The next conversation I remember having with him was on 14th September 2017 when he notified me that he was transferring me to the Garda College following my impending promotion. My statement sets out in great detail how I came to deal with Garda Keogh and I have given a full explanation of how I dealt with him. In my statement at PM/A page 13, paragraphs 3 to page 16, and associated exhibits I have set out how I came to recommend the suspension of Garda A, in which former Commissioner Ó Cualáin had no involvement. Former Acting Commissioner Dónall Ó Cualáin is one of the most honourable men I have ever met and he would not have any reason in my view to target any garda. That is totally untrue and a fabricated allegation.²⁴²⁸

²⁴²⁶ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3023-3024

²⁴²⁷ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3026

²⁴²⁸ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3059-3060

Inspector Aidan Minnock

In respect of the Liam McHugh matter, Insp Minnock outlined the following in his statement to the tribunal:

Having examined the file, I felt the entire matter would be best explored as part of (then) Assistant Commissioner Ó'Culáin 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. I am aware that Superintendent McBrien forwarded the file to (then) Assistant Commissioner Ó'Culáin investigation for their appropriate attention, and requesting a statement to be taken from Liam McHugh...

*... It was my considered opinion that (then) Assistant Commissioner Ó'Culáin investigation was best placed to investigate the matter, which clearly indicates my focus was on the substantive matter. The fact that the file was sent to Galway also provided local management with some assurance, that the contents of the allegations surrounding gardaí taking money may be identified or corroborated through some other aspect of their investigation...*²⁴²⁹

Insp Minnock made a series of notes in his official garda journal in respect of his dealings with Garda Keogh. On 28th May 2014 he recorded that he spoke with Garda Keogh and that Garda Keogh told him that *'he had not experienced any negativity (feelings or comments) since his disclosure was made public'*.²⁴³⁰ He further recorded that he spoke with Sergeant Andrew Haran on 5th January 2015 and raised Garda Keogh's welfare. Sgt Haran told Insp Minnock that he had spoken with Garda Keogh on Christmas day. Insp Minnock stated the following:

... he found it difficult meeting Garda A in work, particularly when on his own. Sergeant Haran stated he had offered Garda Keogh a change of unit or station. Sergeant Haran stated that Garda Keogh had since come back to him to state, that he did not want to move and was happy with the current situation. Garda Keogh had also initially stated that he was frustrated with the investigation (conducted by (then) Assistant Commissioner Ó'Culáin) and the lack of progress, but had also come back to him on this, to say, that he had heard of recent developments and it was moving in the right direction. I made a contemporaneous note in my Garda Journal.

*I was conscious at this time that Garda Keogh was linking in with Sergeant Haran and Superintendent McBrien and I was conscious of providing support but not bombarding Garda Keogh. In this regard, I asked Sergeant Haran if I should approach Garda Keogh. Sergeant Haran reckoned it would not be the best move, as Garda Keogh did not seek any more, or other interventions from local management at that time.*²⁴³¹

Insp Minnock told counsel for the tribunal that three statements had been taken from him in Athlone Garda Station by the investigation team. He was asked about the reason for this by counsel on behalf of An Garda Síochána:

*Well I know in respect of some of the matters that I was interviewed about, I had to actually seek court files and I was able to go, obtain the court file and prepare my statement in a factual way as a result of that. And also, I know in respect of the other matters, having diaries in relation to days you were working, other records in the station, and access to Pulse, it was certainly very convenient in making my statements and that was something that I had requested.*²⁴³²

²⁴²⁹ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at pp. 687-688

²⁴³⁰ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 700

²⁴³¹ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at pp. 700-701

²⁴³² Tribunal Transcripts, Day 130, p. 82, Evidence of Insp Aidan Minnock

Counsel on behalf of An Garda Síochána asked Insp Minnock whether he had ever witnessed any targeting or discrediting of Garda Keogh:

Q. ... insofar as the general allegations have been made, and I don't propose to deal with them in turn because there have been many questions asked about them, but the overall proposition that has been put to you on behalf of Garda Keogh is that the various issues before the Tribunal represented targeting, harassment of Garda Keogh by the management in the station in Athlone or supervised from Mullingar. Can I ask you in that regard, did you ever witness anything in relation to those issues, which in your view represented harassment or targeting of Garda Keogh?

A. Absolutely not.²⁴³³

Insp Minnock was asked by counsel for the tribunal about his visit to Garda Keogh's home on 24th May 2016 and the note he made of their conversation:

Q. But on the next page then, in the paragraph that's visible at the bottom there:
"He said it's Ó Cualáin and Commissioner they're after."

A. Yes.

Q. "He said he's been speaking to Clare Daly and Mick Wallace..."
That appeared to be the first time Garda Keogh saying anything to you about Assistant Commissioner Ó Cualáin, is that correct?

A. That's correct.

Q. It appears to be in the immediate aftermath or certainly some [short] time after he's learnt of the decision in relation to the investigation?

A. Yes.

Q. Does that jog your memory as to whether you –

A. Yeah, I would safely say that I was unaware at that time.

Q. Okay. But certainly on that occasion he was drunk, according to your note?

A. Yeah. I wouldn't say – like, yeah, he was intoxicated to some extent.

Q. He had ever previously complained to you or said anything derogatory about Assistant Commissioner Ó Cualáin?

A. No.²⁴³⁴

Sergeant Andrew Haran

In respect of Garda Keogh's concerns about working with Garda A, Sgt Haran told tribunal investigators that:

*He never specifically said to me that working with Garda A was problematic. I was aware that they would work together on occasion and that it may have been difficult for them to work together given the circumstances.*²⁴³⁵

²⁴³³ Tribunal Transcripts, Day 130, p. 83, Evidence of Insp Aidan Minnock

²⁴³⁴ Tribunal Transcripts, Day 130, pp. 115-116, Evidence of Insp Aidan Minnock

²⁴³⁵ Tribunal Documents, Investigator Interview of Sgt Andrew Haran, p. 11749 at p. 11758

He referred to the conduct of interviews by the Ó Cualáin team at Athlone Garda Station and whether this created a hostile environment at Athlone for Garda Keogh:

*I have no basis to say that the way the investigation was carried out was contrived, however, from an investigative perspective, I feel that the location of the investigation was inappropriate given the fact that... both the Garda making the allegations and the Garda against whom the allegations were made were working at that station. I cannot say that the investigation was hostile from my perspective.*²⁴³⁶

As to whether a formal complaint was ever made to him in respect of these interviews, he stated that:

*We were called in sequentially and people were saying it was a bit tricky to meet on-site for the reasons set out above. No formal complaint was made to me.*²⁴³⁷

He referred to the impact of the Ó Cualáin investigation on Athlone Garda Station:

*Yes from the point of view of the location, and also the nature of the allegations being made. 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.*²⁴³⁸

Counsel for the tribunal asked Sgt Haran for his views on the appropriateness of interviewing witnesses in Athlone Garda Station:

Well, the idea that you might make an investigation on behalf of one person but accusing another, where both parties were in the station and both still working in the station, to me it seemed unprofessional. It seemed, to attempt to get the best and to get the best evidence and answers from everybody, it would have been done properly to have been taken completely away from Athlone Garda Station, to put people on both sides, and I don't just talk about the protagonists, I am talking about the people accused, it would have put everybody in a better place. Because I didn't particularly make a decision that someone was right or wrong, but in the interests of best practice, all parties were affected by the Ó Cualáin investigation taking place in Athlone Garda Station.

Q. Did witnesses who were called in to make statements express concern to you?

A. Not to me, because I was a witness. So I had my own concerns. I felt everything that I felt everybody else felt. So if I was feeling all of the angst about going from a building to a room to make a statement about a person and both parties were working in the Garda station, I felt it was very much on the back foot and I wasn't happy with it at all. And I then knew from other witnesses. It's not that they said that they made a complaint to me, but they felt – specifically some of them said to me they felt deep discomfort in making statements in that location.

Q. Do you think that might have fed into the pressure that Garda Keogh was feeling at the time?

A. Well, I mean, if he felt some of the pressures that I felt even working amongst it, it must have.²⁴³⁹

²⁴³⁶ Tribunal Documents, Investigator Interview of Sgt Andrew Haran, p. 11749 at p. 11759

²⁴³⁷ Tribunal Documents, Investigator Interview of Sgt Andrew Haran, p. 11749 at p. 11759

²⁴³⁸ Tribunal Documents, Investigator Interview of Sgt Andrew Haran, p. 11749 at p. 11760

²⁴³⁹ Tribunal Transcripts, Day 121, pp. 77-78, Evidence of Sgt Andrew Haran

He told tribunal investigators that Garda Keogh never raised a concern with him about Garda A carrying an official firearm²⁴⁴⁰ and stated that there was no firearm safe in the public office.²⁴⁴¹

Detective Superintendent Frank Walsh

D/Supt Walsh was the private secretary to the Garda Commissioner during 2012-2016 and outlined in his statement to the tribunal the commencement and progress of the Ó Cualáin investigation during that period.²⁴⁴²

Counsel for the tribunal asked him about the nature of the investigation to be carried out by A/C Ó Cualáin:

Okay. So in a disciplinary investigation, if I am appointed to conduct a discipline investigation and a criminal matter comes up during that, it's our practice and procedure, and I think it's possibly underpinned legally, that we would seek a separate appointment, one to deal with the discipline and one to deal with the criminal aspects, that both are not dealt with together. That's what's happening here. This is my interpretation, what I am being asked here is for the Commissioner to appoint somebody separately to look into the criminal side as to the disciplinary side.

Q. *But the investigation that has been happening up to this point, how is that viewed or described? What is it effectively? Is it a criminal investigation up to this point?*

A. *It depends on what's uncovered during the investigation. A set of allegations were made by the garda and Assistant Commissioner Ó Cualáin set up a team to investigate all aspects of that, to see what would come from that. There may be only discipline aspects to it, there may be discipline and criminal aspects to it. But with this, as that investigation progressed, another guard who may or may not have been involved in wrongdoing was identified. And to my knowledge here, this is asking for a separate appointment in relation to the other garda, as to who would investigate the criminal and/or disciplinary aspects of what was being alleged against that member.²⁴⁴³*

He said in his statement to the tribunal that he received correspondence from Judge McMahon in respect of the protected disclosure on or around 9th May 2014, and that the Garda Commissioner appointed A/C Ó Cualáin on that date.²⁴⁴⁴ He said that he had no record of a call with C/Supt Curran on 29th May 2014.²⁴⁴⁵

He outlined how his office received an update from A/C Ó Cualáin on 16th June 2014.²⁴⁴⁶ He also stated that:

By correspondence dated 24th July 2014 I wrote to Deputy Commissioner, Strategy and Change Management (SCM) indicating the fact that this complaint had been made and that the confidential reporter was alleging that his Chief Superintendent was continuing a complaint against him while these confidential matters were being investigated. Judge McMahon had enquired as to whether An Garda Síochána had protocols for such matters. The Commissioner was seeking the views of both the Deputy Commissioner and the Assistant Commissioner in Human Resource Management.²⁴⁴⁷

²⁴⁴⁰ Tribunal Documents, Investigator Interview of Sgt Andrew Haran, p. 11749 at p. 11761

²⁴⁴¹ Tribunal Documents, Investigator Interview of Sgt Andrew Haran, p. 11749 at p. 11761

²⁴⁴² Tribunal Documents, Statement of D/Supt Frank Walsh, p. 15877

²⁴⁴³ Tribunal Transcripts, Day 135, pp. 104-105, Evidence of D/Supt Frank Walsh

²⁴⁴⁴ Tribunal Documents, Statement of D/Supt Frank Walsh, p. 15877

²⁴⁴⁵ Tribunal Documents, Statement of D/Supt Frank Walsh, p. 15877 at p. 15882

²⁴⁴⁶ Tribunal Documents, Statement of D/Supt Frank Walsh, p. 15877 at p. 15878

²⁴⁴⁷ Tribunal Documents, Statement of D/Supt Frank Walsh, p. 15877 at p. 15878

D/Supt Walsh did not recall any response to this enquiry. He said that his office received further updates from A/C Ó Cualáin on 10th August 2014 and 26th November 2014²⁴⁴⁸ He stated that:

*On 27th November 2014, following a newspaper article on Garda Keogh facing harassment, I sent a copy of the article and a minute to A/C O Cualain (FAO D/Supt Mulcahy), wherein the Commissioner directed that Garda Keogh should be contacted immediately to establish the problems he is experiencing and that he be reassured that he will not be subject to any form of harassment and will be treated with dignity and respect in the workplace. It was noted that Garda Keogh had previously been informed of the services of the Employment Assistance Office.*²⁴⁴⁹

Counsel for the tribunal asked him about the Garda Commissioner's response to this newspaper article:

*... So obviously I had had a discussion with the Commissioner and I was to do up this reply and this is obviously the reply here that we are looking at. Yeah, the article in the Daily Mirror, from memory, it caused some consternation, as in the Press Office were asking us for comments on it. I think at that point in time we didn't realise that there was anything untoward or any allegations being made. So the Commissioner was anxious to have it addressed immediately. So possibly dictated this or perhaps I wrote it myself and the Commissioner may have made some changes. I can't honestly remember. But certainly it was done between us both and I signed it and sent it looking for the response.*²⁴⁵⁰

He also referred to the letter he wrote to Deputy Wallace:

*No, I think the letter to Deputy Wallace was to see whether he had any additional information or whether he wanted to make a statement or whether he was making a formal complaint or whether he wanted GSOC – we were really trying to establish what he wanted to do with it. I suppose we were trying to guard against him saying that he had no contact from the Guards, that we did nothing about the allegations that he made. So we were trying to tease out – when I wrote the letter to the deputy, I was trying to tease out is there anything more that he wanted done, we would investigate it fully, but were there any other avenues he wanted us to cover and he indicated that there were not. But that doesn't mean that we felt that that was drawing a line under it, the matter was still being investigated.*²⁴⁵¹

He said that his office received further updates from A/C Ó Cualáin on 30th January 2015, 18th March 2015, 1st April 2015, 8th May 2015, 5th June 2015 and 19th June 2015.²⁴⁵² In relation to an update provided on 11th August 2015, he stated that:

*On 11th August 2015 A/C O Cualain reported that the confidential reporter had indicated his displeasure in respect of certain aspects of the investigation and that he had written to the Director of Public Prosecutions and the Department of Justice and Equality.*²⁴⁵³

A/C Ó Cualáin provided a further update on 3rd September 2015 and on 14th March 2016 he notified the Commissioner's office that there would be no prosecution in respect of his investigation.²⁴⁵⁴

²⁴⁴⁸ Tribunal Documents, Statement of D/Supt Frank Walsh, p. 15877 at p. 15878

²⁴⁴⁹ Tribunal Documents, Statement of D/Supt Frank Walsh, p. 15877 at p. 15878

²⁴⁵⁰ Tribunal Transcripts, Day 135, p. 84, Evidence of D/Supt Frank Walsh

²⁴⁵¹ Tribunal Transcripts, Day 135, p. 86, Evidence of D/Supt Frank Walsh

²⁴⁵² Tribunal Documents, Statement of D/Supt Frank Walsh, p. 15877 at pp. 15879-15880

²⁴⁵³ Tribunal Documents, Statement of D/Supt Frank Walsh, p. 15877 at p. 15880

²⁴⁵⁴ Tribunal Documents, Statement of D/Supt Frank Walsh, p. 15877 at p. 15880

D/Supt Walsh was asked by counsel for the tribunal whether consideration was given to Garda Keogh's welfare throughout the process:

*But certainly from day one that the Commissioner was appointed, with any of these reports that came in, welfare was always the number one issue and Commissioner O'Sullivan always insisted that I would put something in that members were to be treated with respect and dignity in the workplace and that they were to be afforded all welfare supports. I can remember the actual wording because it was repeated so often.*²⁴⁵⁵

Detective Sergeant Eamon Curley

As noted above, D/Sgt Curley was asked by Supt McBrien to report on Garda A's access to a firearm. In his statement to the tribunal, he stated that:

... I received a report dated 17.6.2014 from the then District Officer Noreen McBrien seeking information on the member's access to firearms and my views regarding his fitness to carry an official firearm.

*I reported back to the District officer on my report dated 22.9.14 that I was satisfied with his fitness to carry a firearm and outlined his access to the official firearm store in Athlone. I undertook to continue to monitor the member and report upon any concerns I have, in addition on 22.9.2014 I outlined the welfare supports to Garda A should he be in need of same.*²⁴⁵⁶

D/Sgt Curley dealt further with this issue of the firearm in his evidence to the tribunal:

*So the initial request came from Superintendent McBrien dated the 17th June, so I believe that I didn't get it on the 17th, I got it shortly afterwards. So the 20th June was the date of the murder investigation and Garda A was an integral part of the investigation team for the murder investigation team. But I verbally advised Superintendent McBrien in relation to what firearms Garda A has access to, and I monitored it then throughout the summer and I replied on 22nd September '14 that I didn't have any concerns regarding him. As I said, having worked closely with him during the summer on tasks surrounding the investigation, I didn't have any concerns in relation to him. I advised in relation to welfare supports and I was quite satisfied that he was okay in relation to having access to firearms.*²⁴⁵⁷

Counsel for the tribunal asked him about the investigation team conducting interviews in Athlone Garda Station:

*Chairman, I suppose on a professional basis at that time in Athlone, I was previously involved in, I suppose, reporting wrongdoing and appointed to investigate Garda wrongdoing. So I would have performed similar roles as to what the Galway investigation team were performing. And I thought that the way that they were going about their business was quite normal, I didn't see anything unusual about it. Nobody complained to me or I had no issue with that. That's purely on a professional level. I suppose I wasn't au fait with the scope of their investigation or what they were doing, and I was quite happy not to be au fait with it bar any particular task be assigned to me.*²⁴⁵⁸

²⁴⁵⁵ Tribunal Transcripts, Day 135, p. 90, Evidence of D/Supt Frank Walsh

²⁴⁵⁶ Tribunal Documents, Statement of D/Sgt Eamon Curley, p. 487 at p. 492

²⁴⁵⁷ Tribunal Transcripts, Day 128, p. 161, Evidence of D/Sgt Eamon Curley

²⁴⁵⁸ Tribunal Transcripts, Day 128, pp. 155-156, Evidence of D/Sgt Eamon Curley

He continued that:

As I said, Chairman, I suppose the best way I can put it is, I thought it was quite normal in how they went about their work. They were professional, they were courteous. And having been involved in similar roles myself as an investigator, I have gone to Garda stations in similar circumstances and met with the people and how – I suppose the question I’m going to say is, how else would you do it, bar going make an appointment to meet the people.

... Chairman, I suppose part and parcel of the job of a policeman is, you know, every now and again there are investigations and complaints, and that’s the way that they are dealt with, people meet an appointment to meet with you to take a statement from you. I certainly didn’t see anything other than it being normal how they went about their work, they were professional.²⁴⁵⁹

Judge Patrick McMahon

In his statement to the tribunal, Judge Mc Mahon stated as follows:

In respect of Garda Keogh’s comment that I specifically requested that he did not discuss any matters relating to internal police investigation with any other members. However, I do not specifically remember this conversation but if Garda Keogh states I said it, I am quite happy to confirm that. That would have been my intention.²⁴⁶⁰

Counsel for the tribunal asked Judge McMahon about the concerns raised by Garda Keogh:

- Q. ... First of all, did he express a concern that Assistant Commissioner Ó Cualáin may have known other people involved in the matter?
- A. 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 that 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.²⁴⁶¹

Counsel for the tribunal referred Judge McMahon to a note made by Garda Keogh of their conversation on 17th July 2014:

- Q. ... “15:29: Call with judge, told him that I informed detective superintendent that I wasn’t happy with investigation. That how can Gardaí cooperate fully when they are still working with him.”

Was that a concern that he expressed to you at the time?

- A. Regularly. That was a concern he expressed more or less all the time.²⁴⁶²

In relation to whether Garda Keogh mentioned the local investigations, he was asked by counsel for the tribunal:

- Q. I am just wondering, you know, I mean Garda Keogh has an entry in his diary of this conversation with you, which he made shortly afterwards. Also, there seems to have been some sort of follow up on it, he says that you would contact the Commissioner. Could it be

²⁴⁵⁹ Tribunal Transcripts, Day 128, pp. 157-158, Evidence of D/Sgt Eamon Curley

²⁴⁶⁰ Tribunal Documents, Letter from Judge Patrick McMahon to the Disclosures Tribunal, dated 16th May 2019, p. 12628

²⁴⁶¹ Tribunal Transcripts, Day 135, pp. 14-15, Evidence of Judge Patrick McMahon

²⁴⁶² Tribunal Transcripts, Day 135, p. 23, Evidence of Judge Patrick McMahon

that he did mention to you or you did mention to him that it wasn't satisfactory that they were conducting two investigations?

- A. *Oh wait now, sorry. Yes, I did say that to him. I recall that now. I did. I said there's no need to have two investigations going on at the same time. Because I was actually involved in another matter at the same time and I know that the guards in that one were trying to carry out a separate investigation at the time, or at least that's what I was told.*²⁴⁶³

Judge McMahon was asked the following by counsel on behalf Garda Keogh:

Q. *And throughout this period, if I have understood you correctly, what you found with Nick Keogh, was that this was a man who had made disclosures?*

A. *Yeah.*

Q. *Was very anxious, very worried, suspicious about what the authorities might or might not do to him, is that right?*

A. *I think you have put it very accurately. He was a very distressed young man in my opinion at the time.*

Q. *Yes.*

A. *Very distressed.*

Q. *He was really worried at the thought of what might happen to him?*

A. *Absolutely. He was very concerned and he felt that he was a good policeman, but he was worried – and there is a context – at this particular time, sorry for repeating myself, but you know there was a bigger issue, I'm afraid to mention names, Chairman, but there was a sergeant, as you know, a very high profile –*

Q. *Chairman: Do you mean Sergeant McCabe.*

A. *Yes.*

Q. *Chairman: Oh yes.*

A. *And there was a huge issue around An Garda Síochána at the time.*

Q. *Yes.*

A. *Hence the reason why I went and had meetings with the Commissioner when I was in this position. But you have put it so accurately, he was very – he was anxious, he was distressed and a very bothered young policeman.*²⁴⁶⁴

Counsel on behalf of Garda Keogh asked him about the reference to '*multiple investigations*':

Q. *... The substance of it was, you were an experienced lawyer, a judge, you deal with a wide – you said to him, look, they shouldn't really be doing multiple investigations?*

A. *I felt it was very wrong at the time, when it was subject to the matters that I was dealing with, that that investigation should have gone on its own.*

²⁴⁶³ Tribunal Transcripts, Day 135, p. 26, Evidence of Judge Patrick McMahon

²⁴⁶⁴ Tribunal Transcripts, Day 135, pp. 30-31, Evidence of Judge Patrick McMahon

- Q. Yes. Thank you. Is it right to say that throughout your dealings with Nick Keogh you always found him cooperative?
- A. 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.
- Q. And he was trying to do the right thing as he saw it?
- A. As he saw it, he was, yes.²⁴⁶⁵

Counsel on behalf of An Garda Síochána asked Judge McMahon about the view taken by the investigation team of the McHugh and O'Neill issues:

- Q. ... Just in relation to the question of separate investigations, I am not sure whether you have been following the evidence in the Tribunal over the last number of months, the McHugh and O'Neill investigations, the position that the investigation team, the Ó Cualáin team, which was set up to investigate the complaints, brought by Garda Keogh to you and passed on then to the Garda Keogh, was being conducted by Assistant Commissioner Ó Cualáin and his team. When the McHugh and O'Neill matters arose, they took the view that it would be inappropriate for them to be on the one hand investigating complaints made by Garda Keogh and on the other hand investigating complaints made against Garda Keogh. I'm not sure if you heard that evidence or whether you're aware of that?
- A. I'm not actually. But I would go along with that.²⁴⁶⁶

Garda Fergal Greene

Garda Greene was a colleague of Garda Keogh during the relevant period under consideration. He was asked by counsel for the tribunal about a discussion he had with Garda Keogh shortly after he was informed of the decision that there would be no prosecution arising from his protected disclosure:

Well, he just felt that Commissioner Ó Cualáin had watered down the findings in relation to whatever, the investigation that was carried out. I suppose at that time, I suppose Garda Keogh was kind of second guessing everyone. And that's understandable, I do get that, I understand that when you're in the middle of something, I was there myself before, you kind of question everything. It kind of goes part and parcel with having difficulties, for anyone, I suppose, in an organisation or in their own life, you start to second guess anything that anybody does. So I did understand that, where he was coming from. I couldn't comment because I hadn't seen it, so I didn't.²⁴⁶⁷

Garda Greene also told the tribunal the following:

Chairman, my view is today and it will always be my view, that when Garda Keogh set out on this road and his initial complaint at the very beginning, before anyone interfered in any way, had some merit and I understood it and I made statements in relation to it and I assisted the Ó Cualáin investigation as best I could.

²⁴⁶⁵ Tribunal Transcripts, Day 135, pp. 33-34, Evidence of Judge Patrick McMahon

²⁴⁶⁶ Tribunal Transcripts, Day 135, pp. 35-36, Evidence of Judge Patrick McMahon

²⁴⁶⁷ Tribunal Transcripts, Day 147, p. 29, Evidence of Garda Fergal Greene

- Q. *Chairman: And if I understand, to some extent at least you were sympathetic to that complaint, regarding it at least as something to be investigated?*
- A. *Correct.*
- Q. *Chairman: Is that right?*
- A. *And at that time I did.*
- Q. *Chairman: Okay.*
- A. *And Garda Keogh is well aware of that.*
- Q. *Chairman: I know your view, I don't want to revisit it, but your view was that that original complaint altered as time went on?*
- A. *Yes.*
- Q. *Chairman: And as people became involved. I don't want to get into that?*
- A. *That's correct.*
- Q. *Chairman: But that is your view?*
- A. *That's correct. We lost – what happened was, the whole beginning of it, that started off this whole scenario, got lost and it took off in several different directions and people got sucked into it.*
- Q. *Chairman: But apart from your individual and specific anxiety or concern about your matter, there was in general in Athlone Garda Station a discomfort, an apprehension, we're under scrutiny, we're being accused, whatever it is. There was a more general one, in other words, that all the Gardaí – is that right?*
- A. *There was. There was times it was just a cloud hung over the place.*²⁴⁶⁸

Legal Submissions

Garda Keogh submitted as follows:²⁴⁶⁹

- that the investigation conducted by A/C Ó Cualáin was flawed and that this discredited Garda Keogh.
- that it took A/C Ó Cualáin one month to meet with him following the making of the protected disclosure and that an unofficial storeroom in Athlone Garda Station, which he believed contained strong tangible evidence, was deliberately emptied in or around the second week of May 2014 and evidence vital to the case disappeared.
- that in or around 10th June 2014, Garda A had his state mobile phone seized, which had been wiped of its information. This information could have been vital and, unlike any other criminal investigation where evidence is seized, the suspect garda was given a replacement state mobile phone.
- that, in a short period of time from 27th May 2010 to 5th August 2010, there were 1,672

²⁴⁶⁸ Tribunal Transcripts, Day 147, pp. 78-79, Evidence of Garda Fergal Greene

²⁴⁶⁹ 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

contacts between the phone of Garda A and the phone of Ms B's family member to which Ms B had access. This supported Garda Keogh's allegation that Garda A and Ms B had an irregular relationship. That evidence was only obtained after the investigation team were alerted to the fact that Sgt Haran had made a report which ultimately led to the phone then used by Garda A being seized and the billing records sought in 2010. Those records seem to have been accessed by the investigation team on a date that is unclear but certainly after 20th February 2015, when the team interviewed a previous divisional officer. This reinforced Garda Keogh's assertion that the seizure of all the phones used by Garda A should have been an investigative priority after their appointment in May 2014. The state phone Garda A used was seized on 10th June 2014, a month after their appointment, but D/Supt Mulcahy conceded in evidence that it would have been better if it had been seized earlier. Moreover, two other phones used by Garda A were not seized until 9th October 2015, when a search warrant was granted to search the home of Garda A. That was one year and five months after the appointment of the Ó Cualáin team as investigators. By then, any useful information there might have been was no longer on the phones.

- that on 18th June 2014, Garda Keogh completed and signed his statement regarding the profoundly serious matters alleged in Athlone. None of the suspects in the investigation were suspended at that time.
- that Garda A was not suspended until October 2015 and the factors taken into account were present from the outset of the investigation. Notwithstanding this fact, there was a delay of one year and five months in action being taken to suspend Garda A. It was clear from the reasons attached to the suspension that the allegations of Garda Keogh played a significant part in the decision, making it all the harder to understand why that decision had not been made back in May 2014. This delay and the actions of the investigators discredited Garda Keogh.
- that during the investigation in July/August 2014, statements were taken from members of An Garda Síochána while they were in Athlone Garda Station, where the primary suspect, Garda A, remained on duty. On these occasions, Garda Keogh stated to the tribunal that he was aware that Garda A did not leave the garda station while the investigation team was present. The consequence of allowing this to happen was to permit obvious dangers to the investigation. These included witnesses being inhibited, morale in the workplace being affected and the implication that there was nothing believable or credible in Garda Keogh's allegations. They were ignored at that stage.
- that there was a failure on the part of the investigation team, or A/C Ó Cualáin, to explain to Garda Keogh that any refusal on his part to consent to his statement being disclosed to HRM would impact upon the decision to suspend Garda A from duty. It was difficult to comprehend the decision of the investigators in relation to such a serious aspect of the investigation.
- that the impropriety of the venue was obvious to Sgt Haran. He was asked about it when he gave evidence and he described the decision to conduct the interviews in Athlone as '*appalling*' and one which gave rise to a feeling of '*deep discomfort*' amongst gardaí who were interviewed in that location.
- that it was put to D/Supt Mulcahy that a total of 38 gardaí were interviewed, with 81 meetings, and 26 of those interviews took place in Athlone. That information was

confirmed by the disclosure made by the Chief State Solicitor's Office. His response was that it was the first time he had seen the list. It was put to D/Supt Mulcahy that it was *'a terrible mistake to have made the decision to interview people, serving guards there whilst Garda A was there on duty in Athlone station'*. D/Supt Mulcahy then went through the list in the witness box and his reply was *'... I didn't receive any complaint from any of those to suggest that they were eyeballed or otherwise while their statements were taken. And I didn't get anything from the persons who took the statement to suggest there was any problem with it'*.

- that a crucial witness came forward with vital information. The investigation team met this individual in or around 3rd July 2014 but did not go back to speak to him for about six months. Garda Keogh accepted that the investigation team did speak to that witness and viewed his evidence as valuable but discovered later that he was unwilling to become involved as his life had, by then, moved on. That seriously weakened the evidence against Garda A.
- that on 24th April 2015, the nineteen allegations were given to Garda A and he was given over a month to seek legal advice and respond. This was a very unusual step for the investigators to take in the circumstances. Cautioned statements were taken from Garda A on 16th and 24th June 2015. On 16th June 2015, Garda A's solicitor attended Oranmore Garda Station and handed in a prepared statement which already bore the caution. Significantly, no interview was attempted there and then. Instead, the investigation team invited Garda A to have the 19 allegations read to him on camera, an invitation which was declined. The prepared statement was then signed by Garda A and a further meeting arranged for 24th June 2015. In summary, it took from 9th May 2014 when A/C Ó Cualáin was appointed to 16th June 2015 to obtain Garda A's response to Garda Keogh's 19 allegations against him. This was unusual, as in any other criminal investigation the suspect would be arrested and interviewed without delay.
- that while the investigation was ongoing for over a year, Garda Keogh had to work in the same station and, for half of that time, he had to work on the same shift as Garda A.
- that on 9th October 2015, the home of Ms B was raided and a large quantity (twenty or more) SIM cards and other electronic equipment including laptops were seized. Again, this was over a year after the disclosures were made. Ms B made a statement which implicated Garda A to the McMahon Inquiry on 15th November 2017 (three years and seven months after the disclosures were first made). She then withdrew the statement and refused to cooperate. That withdrawal of cooperation was on 7th August 2018. This occurred at a remove in time long after the report had already gone to the Office of the Director of Public Prosecutions and some four years and three months from the time this team were appointed. That this was an inordinate amount of time to allow to pass to the discredit of Garda Keogh.
- that the sheer length of time the investigation took, the slow pace at which it was conducted and the manner of its conduct were all matters which were discrediting to Garda Keogh's legitimate complaint and demonstrated an attitude of indifference to these serious allegations.
- that the fact that his protected disclosure did not lead to a prosecution was a discredit to Garda Keogh.

An Garda Síochána submitted as follows:²⁴⁷⁰

- that Garda Keogh appeared to be happy with the work undertaken by D/Supt Mulcahy and D/Insp Coppinger, praising them on several occasions. Garda Keogh was disappointed with the outcome of the investigation, which was subject to the Director of Public Prosecutions' directions. However, that did not undermine the quality of the investigation.
- that Garda Keogh appeared to allege both that the investigation was terminated prematurely and that it went on too long. A *bona fide* investigation was pursued, and every reasonable lead concluded. There was no evidence that the investigation was conducted so as to undermine Garda Keogh. Garda Keogh was consulted from time to time throughout the process, for example, being given an opportunity to go through the report to the Office of the Director of Public Prosecutions.
- that Garda Keogh previously expressed satisfaction with the investigation on a number of occasions. Former Acting Commissioner Ó Cualáin described how Garda Keogh would be consistently happy, then an issue would arise, they would deal with it; and then Garda Keogh would be happy again.
- that D/Insp Coppinger told the tribunal he was surprised and disappointed to hear the criticisms Garda Keogh now makes of the investigation. D/Supt Mulcahy stated that he had found them *'hurtful'*.
- that Garda Keogh did not make any criticism of the investigation in his statement to the tribunal and that, at interview, he expanded this to include A/C Ó Cualáin (and Assistant Commissioner Michael Finn). He appeared, in evidence, to confine his complaint against the investigation to the fact that statements were taken in Athlone Garda Station.

Delay Commencing

- that it was accepted by Garda Keogh that A/C Ó Cualáin phoned him on 15th May 2014, approximately one week after the disclosure. Former Acting Commissioner Ó Cualáin told the tribunal that Garda Keogh nominated that date of 7th June 2014, but Garda Keogh disputed this. Former Acting Commissioner Ó Cualáin set out the preliminary steps necessary before proceeding to interview, such as traversing the file and assembling the appropriate team.
- that D/Insp Coppinger expressed the view that he thought they moved very quickly in assembling a team and meeting with Garda Keogh. If Garda Keogh felt there were urgent matters that needed to be attended to prior to the formal statement being taken, he did not outline them to the investigation team.

Delay Seizing Evidence

- that D/Supt Mulcahy specifically averred to the possibility of causing alarm and Garda A disposing of his phone, that he seized the phone himself on 13th June 2014 *'before we even sat down to make a statement'* and that he was not aware of anything on the phone until the meeting with Garda Keogh on 7th June 2014.
- that Garda Keogh agreed that he cannot blame the Ó Cualáin investigation for a delay in seizing phones: *'I concede on that'*. He agreed with the Chairman that there was ample

²⁴⁷⁰ 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

opportunity for the phones to be wiped after his allegations became public. He agreed that Garda A could have worked out his phone was going to be seized and that the same applied in respect of clearing the storeroom.

- that D/Supt Mulcahy and D/Insp Coppinger maintained that there was data on the phone which was analysed when it was seized. Call-related data was sought from the service provider, even before Garda Keogh's statement was completed, and Garda A's billing records were procured, which disclosed extensive contact between Garda A and a phone to which Ms B had access, which eventually grounded the suspension.

Failure to Suspend/Proximity in the Workplace

- that former Acting Commissioner Ó Cualáin told the tribunal that he felt he had a responsibility to follow up the question of suspension, given his unique role in the matter, and he took appropriate expert advice. He stated that he understood the concerns expressed by Garda Keogh but equally knew there was a process that had to be gone through to suspend a member.
- that D/Supt Mulcahy told the tribunal that it was explained to Garda Keogh that it would be *'helpful'* for HRM in making a decision if they could see Garda Keogh's complaint. Garda Keogh thought about it and sent a text indicating he would not be providing the statement. Garda Keogh was pressed to release his statement but he declined to do so. Garda Keogh now feels this was a mistake but stated that he did not know the suspension hinged on his statement.
- that the only complaint against Garda A at that time were Garda Keogh's allegations. The allegations could not even be put to Garda A, in an employment context, where they were not also shared with HRM.
- that D/Supt Mulcahy described how the investigation team sat down and discussed the suspension criteria, assessing that the case did not appear to meet those criteria, and how the question was revisited in April/May 2015 and at their meeting before Christmas. It is not the case that suspension was not actively considered by all parties.

Rostered with Garda A

- that Garda Keogh acknowledged that he was only on the same shift as Garda A on eight occasions. It was established that they were on different units, which were in different buildings, and that they were on overlapping rather than the same shifts. Dr Oghenovó Oghuvbu went through his notes from the time, which documented that Garda Keogh intended requesting a transfer as he continued to work daily, as he reported it, with other staff members under investigation and was beginning to feel threatened. Dr Oghuvbu advised him to liaise with senior officers about this. He did not appear to have done so.
- that while it was suggested to the tribunal by Garda Keogh that Garda A was menacing Garda Keogh with a firearm, this was inconsistent with what he stated to Supt McBrien at the time.
- that the investigation team did not have control over the proximity of Garda Keogh and Garda A in the workplace. Garda Keogh did not make any complaint or request to move shifts and that no evidence of targeting/discrediting arises in this matter.

Statements in Athlone

- that Garda Keogh characterised the Athlone interviews as *'insane'* and appeared to rank this as his principal complaint against the investigation; and in fact appeared in evidence to confine his criticisms to this issue.
- that while Sgt Haran expressed a view that it was an *'appalling idea'* to conduct the interviews in Athlone, this view was never raised with the investigation team, or with local management at the time.
- that D/Supt Mulcahy totally refuted the allegation that Garda A was *'eyeballing'* people making statements. He stated that there was no complaint from anyone else in the station to this effect, including management, and that individual members could nominate where they wished to be interviewed.
- that once Garda Keogh complained about the interviews taking place in Athlone, the focus of the investigation was moved away from Athlone insofar as that was practicable. Interviews were conducted where necessary on days where Garda A was off duty. Garda Keogh agreed that once he made a complaint, the main focus was moved away from Athlone.

Failure to Revisit a Crucial Witness

- that D/Supt Mulcahy told the tribunal of his efforts to secure the cooperation of this individual, which he characterised as going *'far beyond the ordinary call to try and get him on board'*. D/Supt Mulcahy stated that it was not for want of trying that they did not succeed in speaking to this witness for six months. He indicated that they were in contact with him as early as June 2014. He stated that they went to *'great extremes'* from June to December to try to get him to cooperate, calling at his work and his house, and seeking out his new address.
- that in relation to Ms B, D/Insp Coppinger stated that *'to say the least, she was uncooperative'*. After getting a *'hostile'* reception on contacting her, he obtained her statement from the McMahon disciplinary investigation team, but then thought it would not suffice in a criminal prosecution. He sought Ms B out again, to try and speak to her. They called to her house, established that she was undertaking a course in Athlone, and waited for her in the car park. On her return she stated that she wished to speak to her solicitor. She stated through her solicitor that she did not want anything to do with the investigation.

Favourable Treatment

- that Garda A was always approached as a suspect, rather than a witness. D/Insp Coppinger told the tribunal that it was intended to interview him under caution and that, therefore, fair procedures would have to be observed. He believed that required Garda A to be given an opportunity to seek out his own records, given the complexity and antiquity of the allegations. Both he and D/Supt Mulcahy indicated that this would not be unusual in the kind of investigations they were involved in, particularly fraud cases. He indicated that the solicitor would often sit in a voluntary interview and that he saw nothing unusual in this, given the seriousness of the allegation. Garda A and his solicitor were compliant so

there was no need to effect an arrest. Garda Keogh agreed that the benefit of a voluntary interview is that it was still possible to conduct an arrest afterwards.

Interference from a Side Investigation

- that Garda Keogh felt himself harassed by local investigations into his PULSE check on Garda A and the Olivia O’Neill/Liam McHugh matters. Former Acting Commissioner Ó Cualáin stated that all he could do was to make sure the available supports were placed at Garda Keogh’s disposal.
- that there is no evidence that the *‘side investigations’* did anything to divert from the investigation of Garda Keogh’s complaints.

General Delay

- that the former acting commissioner explained that this was a complex investigation; that there were nine separate but related modules to be investigated and that there were several strands to the investigation. The complexity was acknowledged by all parties, including Garda Keogh.
- that former Acting Commissioner Ó Cualáin said that he had been strict in requiring that every lead was followed up and that the difficulty was that some of them led nowhere.
- that in light of the complexity, and the particular difficulties encountered, there was no unreasonable delay in the progress of investigation. Furthermore, there was no evidence of any deliberate delay, such as would prove that there was targeting/discrediting of Garda Keogh.

Downplaying Findings

- that the investigation team made two approaches to the Director of Public Prosecutions, sharing evidence that might ground a prosecution. It was not their decision as to whether a sufficiency of evidence existed, and indeed the Director of Public Prosecutions is required to have regard to a number of other policy factors in deciding whether to prosecute a case, as set out in the published guidelines for prosecutors.

General Cover-up

- that Garda Keogh persisted in alleging that the entire investigation amounted to a deliberate cover-up by A/C Ó Cualáin. There was no evidence to support this accusation. The report to the Director of Public Prosecutions suggests otherwise, as does the revelation of confidential information to D/Supt Mulcahy in October 2015, which corroborated Garda Keogh’s account, and the seeking out of independent intelligence by Supt Murray. D/Insp Coppinger went back to the Director of Public Prosecutions after a negative outcome was received, querying whether perhaps the statement from the disciplinary proceedings could be of assistance. This was not reflective of a cover-up.
- that an assessment was made by the Commissioner’s office at the outset that this was not a vexatious complaint and that it needed to be fully investigated. Garda A was ultimately suspended by the organisation following this complaint.

Sergeant Andrew Haran submitted as follows:²⁴⁷¹

- Sgt Haran stated that he had concerns about interviews taking place in Athlone Garda Station and he did not agree with that approach.

Discussion

Before discussing this issue and reaching conclusions, it is important to remember that this inquiry has not investigated Garda A or Ms B. It makes no findings against them or even about them. The tribunal has no power or authority to do so. Reference has to be made to them because Garda Keogh's allegations are a central element of the background to his complaints of being targeted and discredited because of his protected disclosure. The tribunal explained in its opening statement that its function was strictly confined to considering those complaints. Nothing in this report should be interpreted as casting any aspersions whatever on those persons.

It might have been thought that Garda Keogh would be pleased and relieved at the news of A/C Ó Cualáin's appointment but his situation was more complicated, difficult and uncertain. He did not trust An Garda Síochána to investigate his allegations of corruption properly, believing that senior officers would seek to cover up such wrongdoing. It was not open to him at the time to bring his allegations to GSOC because the 2005 legislation did not provide for complaints from a garda, a limitation that was largely removed by the Protected Disclosures Act, 2014.

In Athlone Garda Station there was no secret as to the identities of the persons involved, including the garda to whom the disclosure referred. Obviously this had repercussions on the atmosphere in the garda station and on Garda Keogh himself, but he was clear in his evidence to the tribunal that he did not experience any hostility from his colleagues, except for complaints he made against senior officers.

Another feature of the relationship between Garda Keogh and the investigators was the difference of approach to his allegations of corruption. He was utterly convinced of the guilt of the persons whom he reported and was impatient of any delay in proceeding against them. The investigators were obliged to proceed carefully in accordance with legal process and respecting human rights such as the presumption of innocence and the right to a fair trial.²⁴⁷²

Garda Keogh became satisfied over time with the integrity and professionalism of the lead detectives in the investigation, D/Supt Mulcahy and D/Insp Coppinger. He was generous in his appreciation of their work but he withheld such respect from the head, A/C Ó Cualáin, whom he accused of working to sabotage the inquiry he was leading. Garda Keogh remained of that view notwithstanding the absence of any evidence to support that grave charge. On that note it is telling that the legal submissions filed on behalf of Garda Keogh do not even mention this firmly held and repeated allegation against the officer who ultimately held the position of acting commissioner.

In the events that happened, the situation in which Garda Keogh found himself in Athlone Garda Station was awkward and tense. It is possible that the station might have been an uncomfortable place for the whistleblower even if he had not publicised his allegations because news of the case might have leaked out or been deduced by colleagues. But with the general knowledge that came from the Dáil proceedings, there was no possibility of private and discreet enquiries,

²⁴⁷¹ 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

²⁴⁷² Tribunal Transcripts, Day 136, p. 81, Evidence of D/Insp Michael Coppinger

notwithstanding that the Ó Cualáin investigation team respected the confidentiality their task required.

Garda Keogh was thus affected by local tensions in the station and by the publicity about the case. He was concerned about the progress of the investigation and its methods, and he became the subject of political controversy.

In addition to the strains engendered by these features of the situation, controversies arose between Garda Keogh and local garda management that he considered to be intrusions into the exclusive zone of the Ó Cualáin investigation.

Issues 1 to 4 of this report arose in Athlone between May and October 2014 and they are separately considered, but it is relevant to observe the extra tension that they would have introduced into an environment that was already under pressure. Garda Keogh insisted that these issues were properly the exclusive responsibility of the Ó Cualáin investigation team, but they did not agree. The investigators felt it was not right for them to be enquiring into allegations made by Garda Keogh at the same time as allegations against him. As for local management, in respect of Issues 1 and 2, they held that they had specific responsibilities to discharge. Issue 3 did not give rise to a matter that could be followed up by an external examiner. In respect of Issue 4, the Liam McHugh issue, local officers would have welcomed outside intervention, including from the Ó Cualáin team, but that did not happen. Garda Keogh focuses his complaints on the divisional officer, C/Supt Curran, on these issues.

Another series of disputes arose in Athlone between 26th March 2015, the date of Garda Keogh's first meeting with Supt Murray, and 26th December 2015, when he went on long-term sick leave citing work related stress. He complained that these events also constituted targeting or discrediting because he had made a protected disclosure, and they are analysed individually as Issues 5 to 16 and 21 to 22. They are mentioned here because they would have contributed to the tensions in the station, but particularly as experienced by Garda Keogh.

It is clear that Garda Keogh felt these stresses. In June 2015, his treating doctor reported him as struggling with work related stress and the ongoing investigation. They discussed *'requesting transfer as he continues to work daily with other staff members under investigation... he is [beginning] to feel threatened by these colleagues... I have advised to liaise with his senior officers /garda dr about this'*.²⁴⁷³ Garda Keogh did not seek a transfer from Athlone.

Under term of reference [p], it is not sufficient to establish that a complainant was targeted or discredited, it is also a requirement to show that the motivation was that the person made a protected disclosure. The essence of term of reference [p] is that the allegedly offensive conduct was a response to a protected disclosure. The connection is crucial.

This chapter examines the criticisms Garda Keogh makes about the Ó Cualáin investigation. His principal accusation, that A/C Ó Cualáin tried to sabotage the investigation, is entirely without evidence to support it. The condemnation that he expressed in July 2014, less than two months into a complex investigation, that the *'investigation team is double crossing me'*,²⁴⁷⁴ which he was unable to attribute to a particular remembered circumstance, falls into the same category.

There is some support in evidence and inferentially for his claims as to defects in the investigation process as discussed below, but that cannot logically carry the weight of inference that he seeks

²⁴⁷³ Tribunal Documents, Letter from Dr David Bartlett to the Disclosures Tribunal, dated 9th January 2019, p. 10638 at p. 10639

²⁴⁷⁴ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 22nd July 2014, p. 13266

to impose. The criticism of the investigative process on which Garda Keogh laid most emphasis concerned interviews by the investigators of Garda witnesses in Athlone Garda Station while Garda A was in the station. This was undoubtedly stressful and difficult for him, and possibly also for the witnesses, and it tended to confirm his lack of faith in the investigation. But that did not demonstrate deliberate action on the part of A/C Ó Cualáin or his team that targeted or discredited Garda Keogh because he had made a protected disclosure.

The then deputy commissioner completed his report on 24th November 2015 and submitted it to the Director of Public Prosecutions. The case was referred back to the Director of Public Prosecutions in light of other developments before the ultimate decision in April 2016. The Ó Cualáin investigation ultimately culminated in a final decision by the Director of Public Prosecutions on 8th April 2016 that there should not be any prosecution.

The questions raised by the specific complaints of Garda Keogh are as follows:

- Was it a long, drawn out and ineffective process?
- Did it demonstrate an attitude of indifference to these serious allegations?
- Was the investigation flawed?
- If so, did that discredit Garda Keogh because he had made a protected disclosure alleging serious offences of criminality by members of the force?

Allegation of delay

Former Acting Commissioner Dónall Ó Cualáin answered the general allegation of delay in his statement to the tribunal:

For the purposes of the efficient management of the investigation the CR's complaints were broken into nine distinct modules and led to numerous lines of enquiry emerging during the course of the investigation. By the time I submitted my report to the DPP in November 2015 the investigation team had managed over 230 jobs/lines of enquiry and had interviewed over 113 persons, some more than once. Even as the report was being prepared for submission fresh evidence had emerged which was pertinent to my investigation and which necessitated the submission of a supplementary report to the DPP in May 2016. In his statement to the Disclosures Tribunal the CR asserts that the delay in the conclusion of my investigation of his complaint over a period of five years targets and discredits him... There was no delay in the completion of my investigation file. The quantity and complexity of the issues to be examined threw up numerous lines of enquiry which had to be pursued. I submitted a file to the DPP in November 2015 a period of 18 months from the date of my appointment... This file addressed all issues raised by the CR. A supplementary file was submitted in May 2016 which addressed fresh evidence that came to light on an aspect of the original file.²⁴⁷⁵

The allegations of delay and indifference are contradicted by the evidence of the complexity of the undertaking, the fact that some witnesses were interviewed a number of times, that some witnesses were reluctant or unwilling to cooperate, and that the team had to carry out their ordinary duties as well as conducting this investigation. They are also inconsistent with the declarations of approval that were repeatedly made by Garda Keogh himself. There is accordingly no foundation for these suggestions of delay and indifference.

²⁴⁷⁵ Tribunal Documents, Statement of Former Acting Commissioner Dónall Ó Cualáin, p. 3957 at p. 3965

It cannot be argued that the fact that his protected disclosure did not lead to a prosecution was a discredit to Garda Keogh.

Seizure of evidence

There is no factual basis for the claim that any evidence was lost that would have been secured if the investigators moved faster generally or in pursuit of any particular item. In the public hearings, during the evidence of Garda Keogh, he acknowledged that these claims were in addition illogical, when the issue was analysed by counsel. The publicity that Garda Keogh himself had generated would have alerted even the most complacent suspect to the prudence of urgent self-protection measures. No matter how speedily the investigation was established, the horse was likely to have bolted well before the team could have made it to the stable.

There is no evidence that anything was moved out of a storeroom in the station. And neither is there evidence to support the allegation of the theft of a book which was allegedly in the room – the people whose dwelling was searched did not confirm any removal of a book of that kind and the garda evidence as to the use of the storeroom also appears not to support the claims.

Garda Keogh suggested that there had been a leak from the investigating team to alert Garda A to the search but he ultimately abandoned that speculation. He then withdrew these criticisms when presented with the logic of the public revelation of the details of his protected disclosure.

Garda A's mobile phone

The evidence does not establish that Garda A's phone had been wiped. It is the case that evidence of suspected contacts was not on the phone but it cannot be assumed that such records were removed. Again, Garda Keogh accepted the logic in this instance of the national publicity that followed his disclosure. He abandoned the proposition that there might have been a leak that alerted a suspect.

Sgt Haran had made a report on 9th September 2010²⁴⁷⁶ which gave rise to enquiries that included obtaining a printout of the billing records relating to the drug squad phone. They revealed that between 27th May 2010 and 5th August 2010, there were 1,672 contacts between this phone and one belonging to an immediate family member of Ms B to which she had access.²⁴⁷⁷

Garda Keogh's submissions say that this supported his allegation that Garda A and Ms B had an irregular relationship. This point is made as a supporting argument rather than an allegation of failure on the part of the investigators. It is evidence of an extremely high and unusual level of contact during a short period. In around 70 days an average of just under 24 calls per day suggests a relationship but not necessarily an unlawful relationship. The fact is that the investigation acquired these records and considered them for the purpose of the report to the Director of Public Prosecutions. They were also relevant to the question of suspending Garda A. Garda A gave an explanation for these contacts when interviewed by garda investigators and maintained that they arose in connection with his police duties.

Suspension of Garda A

The consideration of the suspension of Garda A in August/September 2014 and May 2015 is described above. The Ó Cualáin investigation team considered the suspension of Garda A and discussed it with HRM in accordance with garda protocols, and Garda Keogh was informed

²⁴⁷⁶ Tribunal Documents, Report to the Director of Public Prosecutions, dated 24th November 2015, p. 11080 at pp. 11109-11110

²⁴⁷⁷ Tribunal Documents, Report to the Director of Public Prosecutions, dated 24th November 2015, p. 11080 at p. 11111

that it was difficult to have a garda suspended and that the threshold of evidence was high. Other requirements had to be satisfied as to the appropriateness of the measure in light of local conditions. Garda Keogh was not willing for his statement to be supplied to HRM for use in considering suspension but that was of little if any relevance and certainly not decisive.

A/C Ó Cualáin raised the issue of suspending Garda A on two occasions before it happened. It was not a decision that he or his team could make, although they were in possession of relevant information. The first decision was made at the meeting in Dublin on 23rd September 2014 with local officers. The second time he brought it up was on 21st May 2015 when the assistant commissioner put the case before the Executive Director, HRPD and left it in his hands to decide in conjunction with local management.

Garda A was eventually suspended on 14th October 2015 when he was facing an investigation into serious disciplinary charges after other evidence came to light, as described above in the factual narrative. The investigation at that stage was close to completion so the situation was very different from when the work began.

It is therefore incorrect to say that nobody was suspended at any point during the investigation. Neither is it right that the information available in the early stages when suspension was first considered was essentially the same as when the decision was made. Suspension was considered by the Ó Cualáin team on two occasions but the consensus on the first instance was that it was not warranted at the time. In regard to the second, the assistant commissioner made a full report to HRPD. Any deficiencies in the decision-making process were not the responsibility of the investigation team or its leader.

Taking of statements in Athlone

There is no evidence to support Garda Keogh's allegation that *'I believe this was deliberately facilitated in an effort to suppress honest statements being made by way of informal intimidation'*.²⁴⁷⁸ The investigation team began interviewing garda witnesses in Athlone Garda Station and at a point in August 2014, when Garda Keogh complained to D/Supt Mulcahy, A/C Ó Cualáin decided to do things differently thereafter. However, a large number of further statements resulted from interviews at Athlone Garda Station, notwithstanding the decision and direction previously made.

Despite the undertaking to do things differently and the repetition of the practice in a significant number of interviews, the complaint did not resurface and the problem appears to have settled down.

As to the situation before that, there are arguments going each way. Sgt Haran was firmly of the view that it was not just erroneous but unprofessional to do the interviews and take the statements in Athlone Garda Station.²⁴⁷⁹ D/Supt Mulcahy, D/Insp Coppinger, and the assistant commissioner, as well as some of the Athlone personnel, including Insp Minnock, rejected the criticism, saying indeed that there were particular advantages in proceeding as they did. If documents had to be consulted, such as records or files or statements that were retained in Athlone Garda Station, it was convenient to be on the spot. If interviews were conducted elsewhere and documents kept in Athlone Garda Station needed to be referred to, obviously that would be very inconvenient.

²⁴⁷⁸ Tribunal Documents, Letter from Garda Nicholas Keogh to the Director of Public Prosecutions, dated 26th July 2015, p. 144 at p. 145

²⁴⁷⁹ Tribunal Transcripts, Day 121, pp. 77-78, Evidence of Sgt Andrew Haran

It has to be borne in mind that Garda A and the gardaí in Athlone were aware that Garda A was the subject of the protected disclosure and the investigation. There was no surprise, therefore. Although some of Garda Keogh's allegations were of long standing – going back to late 2010/early 2011 – Garda Keogh and Garda A had been working in Athlone Garda Station since 2010 without incident. And Garda Keogh had used PULSE to circulate to An Garda Síochána information that gardaí in Athlone knew was directed at Garda A. The situation was difficult and probably unique in that the protected disclosure being investigated had been so widely publicised.

The investigation team maintain that they responded to Garda Keogh's complaint about the taking of statements and that they avoided it for the most part in their interviews after he made the complaint in August 2014. There is no evidence of complaints by any garda witnesses that they were intimidated or made a different statement than they otherwise would have done if Garda A had not been present in the station.

Overall, it was reasonable of Garda Keogh to make his complaint to the investigators but not to suggest that it was evidence of a policy to subvert the process. The tribunal would not go as far as Sgt Haran in decrying the procedure as unprofessional but the point is that it was a procedure that was considered unsatisfactory by at least one member of standing in the force. It is easy to understand why it would be embarrassing, not only for Garda Keogh but also for the garda being interviewed. Having said that, the response of the investigators to his complaint was appropriate and reasonable. However, concern remains that the decision they made may not have been adhered to as well as it might have been.

There is no basis for the submission that the interviews in Athlone carried the implication that there was nothing believable or credible in Garda Keogh's allegations and the tribunal rejects it.

The tribunal also rejects the suggestion that taking witness statements in Athlone Garda Station is evidence of deliberate subversion of the investigation.

Neither did this arrangement constitute targeting or discrediting.

Interview of a crucial witness

D/Supt Mulcahy described the extensive and determined efforts of the investigation team to obtain a statement from Garda Keogh's informant. Garda Keogh had spoken to the witness at a late-night meeting in Galway shortly after he made the protected disclosure and made a note of what the witness told him. However, the witness was not willing to sign a statement containing his evidence. When the investigation team spoke to the witness he confirmed what he had said to Garda Keogh but again he was unwilling to commit himself to a written statement by signing it.

The investigation team was thus in the same position as Garda Keogh, with a real problem on their hands of having somebody who had relevant evidence to give but who was not willing to go beyond verbal information. D/Supt Mulcahy described his efforts to get back in touch with the witness, who proved to be elusive, but the officer eventually succeeded in making contact and speaking to him. However, the position remained the same with the witness determined not to sign a statement and indeed making it clear that he did not want to be involved in any investigation or in any trial that might ensue. In the result and in all the circumstances this criticism of the investigation cannot withstand analysis and reference to the garda evidence.

Favourable treatment

The question here is whether Garda A was afforded an unduly generous or lenient mode of questioning which represented targeting or discrediting of Garda Keogh and whether it happened because the latter had made a protected disclosure. Here was an experienced garda who was the subject of serious multiple allegations of corruption going back to December 2010/January 2011 in respect of some allegations, and in regard to others being of a continuing nature but going back nevertheless a number of years. The first point is that the case was undoubtedly a very unusual one.

Next, there is the fact that there were multiple allegations. Garda A was voluntarily presenting himself with his solicitor and he was entitled to full information about the allegations and time to consider them and respond. Whether the time given was longer than one would consider appropriate or normal or fair or proper is not really the point. It does not actually matter in any practical way whether he was given three weeks or six weeks or nine weeks in which to prepare his defence. Suppose during that period he had requested some further time, could that have been refused if the gardaí were acting reasonably? The detective superintendent was cross-examined on the basis that there were no other cases where he had given similar facility to an accused or a suspect but then the case itself is probably unique in its particular circumstances.

It was clearly proper to give the suspect garda details of the allegations that were being made against him; in fact, he could not fairly have been questioned without such information and a reasonable opportunity to consider it. Whether his solicitor was present or not, again, is something that is not relevant. Garda A was presenting voluntarily, which meant that he was not under arrest or other legal compulsion. He was a free person, in a position to agree to talk to the investigators or to refuse to do so. Obviously, in the latter case the detectives would have had a decision to make as to whether to arrest the suspect but for that they would need a basis of reasonable suspicion and they would also be conscious that they would not get a second opportunity to question him, absent some new development that satisfied the statutory conditions.

The fact that the officers gave a longer time than the tribunal might have considered necessary is not evidence of a defective investigation, and still less is it proof of a malign intention to favour the suspect to the detriment of the allegations made by Garda Keogh. The evidence of the detective superintendent was that the time period allowed to the suspect garda was – at least in part – to the best of his recollection determined by the availability of the solicitor. In a situation where a person is voluntarily presenting for a process of investigation and questioning, investigators will be sympathetic to the needs of a professional adviser and would want to facilitate him or her.

So, it does not seem that the time given to Garda A is evidence of anything much. It did happen ultimately that the suspect was questioned. It is not correct to say that in the normal way a suspect would be arrested and interviewed, if the person indicated willingness to cooperate in the investigation to the extent of presenting for interview on a voluntary basis. And in this case the circumstances were not only unusual but they were also very serious for the suspect. Overall, it is hard to see how this allegedly generous time given to the suspect can be regarded as in any way causative of anything. So, even if one were to consider that he was treated generously as to time, it is not apparent how that could have given him any particular advantage.

Rostering with Garda A

It should be remembered that rostering was not the responsibility of the Ó Cualáin investigation team.

It is easy to understand how Garda Keogh would have experienced discomfort in being present in the station with Garda A. Part of this point goes back to the earlier complaint that the suspect garda was not suspended, but it also has to be borne in mind that the two gardaí had been working in the same station for more than 13 years. And of course the publicity mentioned above was generated with the consent of Garda Keogh. It might have eased the situation if Garda Keogh had been moved to a different shift but he never asked for that. Supt Murray did raise the possibility of a transfer, something that Garda Keogh's own doctor suggested, but the garda was completely opposed and indeed was of the view that the superintendent was targeting him by making this proposal.

One way or another, given that these two members were assigned to the same station, it seems obvious that the only way out of having them operating cheek by jowl at least some of the time was for one or other to be transferred, or for both to move. Unless there was a basis for an involuntary transfer, which has not been suggested, consent of the transferee was required, and in Garda Keogh's case that was not forthcoming.

Delay and Ms B

The submission that the investigation team allowed an inordinate amount of time to pass before Ms B's home was searched on 9th October 2015 sets out a series of dates and events, but it is not clear just what the criticism of the investigation is beyond a general allegation of delay:

On 9th October 2015, the home of Ms. B was raided and a large quantity (20 or more) SIM cards and other electronic equipment including laptops were seized... over a year after the disclosures were made.²⁴⁸⁰

That does not establish fault or error. It appears to be a return to the complaint that notwithstanding the allegations Garda Keogh made, nobody was suspended or arrested. The reference to arrest is obviously to Ms B but for that there had to be reasonable suspicion of commission of a crime. Evidence was also required for a search. In fact Ms B was not arrested at any point in reference to the matters under inquiry. This submission does not furnish a basis of criticism of the Ó Cualáin team.

Garda Keogh's submissions argue that the investigation allowed an inordinate amount of time to pass before 15th November 2017, the date when Ms B made a statement about Garda A to the McMahon disciplinary investigation. This is unreasonable. The evidence reveals the many attempts the Ó Cualáin investigators made to interview Ms B, and their lack of success in obtaining information from her. The fact that Ms B at a later point in time made a statement containing relevant material is not a criticism of the investigation. Neither is the fact that she withdrew the statement subsequently.

Garda Nicholas Keogh's statement

Did the investigation team or A/C Ó Cualáin fail to explain to Garda Keogh that any refusal on his part to his statement being disclosed to An Garda Síochána HRM would impact upon the decision to suspend Garda A from duty?

²⁴⁸⁰ Legal Submissions of Garda Nicholas Keogh, p. 80

This matter is dealt with in the narrative section above. The tribunal is satisfied that Garda Keogh's refusal of consent for the use of his statement was not material to the suspension decision. On the alternative factual basis, namely, assuming that the refusal was material, it cannot be said that the failure to explain the possible relevance amounting to targeting or discrediting Garda Keogh or could be related to his protected disclosure.

Conclusion

The function of the tribunal is not to evaluate the process of investigation or the outcome in the report but rather to determine the questions of targeting, discrediting and connection with Garda Keogh's protected disclosure. It is important, however, to say that the tribunal is satisfied that no case can be made out for incompetence or deficiency of integrity or dedication. That needs to be said because Garda Keogh impeached former Acting Commissioner Ó Cualáin's integrity, suggesting that he was actuated by a desire to sabotage his own investigation. The tribunal is satisfied that this charge is utterly unsubstantiated, based on no evidence and seriously unjust.

This issue does not reveal targeting or discrediting of Garda Keogh.

CHAPTER 22

ISSUE 19: THE COMPLAINT MADE BY GARDA NICHOLAS KEOGH IN RELATION TO THE DISCIPLINARY INVESTIGATION CARRIED OUT BY ASSISTANT COMMISSIONER JACK NOLAN AND COMPLETED BY ASSISTANT COMMISSIONER ANNE MARIE McMAHON

The Facts

The disciplinary investigations in respect of four members of An Garda Síochána, including Garda A, commenced on 25th June 2015 with Assistant Commissioner Jack Nolan appointed as the investigating officer. These investigations were completed by Assistant Commissioner Anne Marie McMahon, who provided her reports to the Commissioner on 7th June 2018 and 27th February 2019.²⁴⁸¹

Procedure for the investigation of ‘serious breaches of discipline’

Regulation 23 of the Garda Síochána (Discipline) Regulations, 2007 provides for an investigation in respect of what is termed a ‘*serious breach of discipline*’.²⁴⁸² A ‘*serious breach of discipline*’ is defined as one which, in the opinion of the Garda Commissioner, a member may be subject to one of the following disciplinary actions:

- (a) *dismissal*
- (b) *requirement to retire or resign as an alternative to dismissal*
- (c) *reduction in rank*
- (d) *reduction in pay not exceeding 4 weeks’ pay.*²⁴⁸³

An appointing officer, designated by the Garda Commissioner, appoints an investigating officer to investigate the alleged breach.²⁴⁸⁴

HQ Directive 159/08 outlines the policy and procedure as it relates to proceedings under the Garda Síochána (Discipline) Regulations, 2007.²⁴⁸⁵ The Directive sets out at paragraph 1.1 (6) that ‘*there should be no avoidable delay in commencing the investigation of an alleged breach of discipline once it has come to official notice*’.²⁴⁸⁶ The Directive refers to the judgment of *Mark Gibbons v The Commissioner of An Garda Síochána* delivered on 30th July 2007, which involved an investigation under the Garda Síochána (Discipline) Regulations, 1989 and adopted the following underlying principle:

It is incumbent upon him (The Appointing Officer) to appoint an Investigating Officer as soon as it was apparent to him that there may have been a breach of discipline. It was not necessary for

²⁴⁸¹ Tribunal Documents, Reporting under Garda Síochána (Confidential Reporting of Corruption & Malpractice) Regulations – Athone District (McMahon Report), dated 27th February 2019, pp. 11865-11978

²⁴⁸² Tribunal Documents, Garda Síochána (Discipline) Regulations, 2007, p. 7793 at pp. 7802-7803

²⁴⁸³ Tribunal Documents, Garda Síochána (Discipline) Regulations, 2007, pp. 7802-7803

²⁴⁸⁴ Tribunal Documents, Garda Síochána (Discipline) Regulations, 2007, p. 7793 at p. 7803

²⁴⁸⁵ Tribunal Documents, HQ Directive No. 159/08, Notes on Disciplinary Procedures Under the Garda Síochána (Discipline) Regulations 2007, dated 3rd September 2008, pp. 11802-11829

²⁴⁸⁶ Tribunal Documents, HQ Directive No. 159/08, Notes on Disciplinary Procedures Under the Garda Síochána (Discipline) Regulations 2007, dated 3rd September 2008, p. 11802 at p. 11805

*him to conduct a comprehensive investigation before doing so ... All he has to do is satisfy himself that 'there may have been a breach of discipline' by someone. If he is so satisfied he must then appoint an investigating officer to investigate.*²⁴⁸⁷

The Directive requires that the form of appointment (known as an I.A.(S.)31) is to be forwarded to the investigating officer with a copy of same sent to the Assistant Commissioner, Human Resource Management (HRM).²⁴⁸⁸ In accordance with both the Regulations²⁴⁸⁹ and the Directive,²⁴⁹⁰ the investigating officer is to inform the member concerned 'as soon as practicable' after his or her appointment of the grounds on which it appears that the member may have been in breach of discipline. Within seven days of the completion of the investigation the investigating officer is obliged to submit a report to the Commissioner containing 'his or her recommendation as to whether the facts disclosed warrant the establishment of a board of inquiry, together with copies of any written statements made during it and details of any information, document or thing which the investigating officer was made aware of during the investigation'.²⁴⁹¹

HQ Directive 159/08 does not set out a time frame for a disciplinary investigation or indicate any specific period within which it must be concluded. The tribunal notes the extensive jurisprudence of the High and Supreme Court in relation to the conduct of disciplinary investigations including the period of time taken to complete them.

The Directive provides for the following where the appointing officer retires, transfers or is otherwise unavailable:

*Where an Appointing Officer retires, is transferred or is for any other reason unavailable, the Officer (who must be of the same rank) then occupying the office, or, if necessary, an Officer of equivalent rank or above may continue in place of the original Appointing Officer.*²⁴⁹²

However, the Directive does not specify the procedure to be applied where the investigating officer retires, transfers or becomes otherwise unavailable.²⁴⁹³

The reports of Assistant Commissioner Dónall Ó Cualáin and the investigation carried out by Assistant Commissioner Jack Nolan

During the spring of 2015 the Ó Cualáin investigation continued investigating the matters raised by Garda Keogh in his protected disclosure, and in his statements to the investigation team. On 8th May 2015, Assistant Commissioner Dónall Ó Cualáin wrote to the Garda Commissioner reporting on the progress of the investigation. At that stage he was in a position to report that over 200 lines of enquiry had been generated and that 92 persons had been interviewed. Crucially, he noted that:

*On the 5th May, 2015 the investigation team was provided with analysis of phone records by a Telephone Liaison Officer. Based on this analysis and allegations by the Confidential Reporter there now exists a reasonable suspicion that Garda A may have committed a criminal act.*²⁴⁹⁴

²⁴⁸⁷ Tribunal Documents, HQ Directive No. 159/08, Notes on Disciplinary Procedures Under the Garda Síochána (Discipline) Regulations 2007, dated 3rd September 2008, p. 11802 at p. 11808

²⁴⁸⁸ Tribunal Documents, HQ Directive No. 159/08, Notes on Disciplinary Procedures Under the Garda Síochána (Discipline) Regulations 2007, dated 3rd September 2008, p. 11802 at p. 11818

²⁴⁸⁹ Tribunal Documents, Garda Síochána (Discipline) Regulations 2007, p. 7793 at p. 7803

²⁴⁹⁰ Tribunal Documents, HQ Directive No. 159/08, Notes on Disciplinary Procedures Under the Garda Síochána (Discipline) Regulations 2007, dated 3rd September 2008, p. 11802 at p. 11818

²⁴⁹¹ Tribunal Documents, Garda Síochána (Discipline) Regulations, 2007, p. 7793 at pp. 7803-7804

²⁴⁹² Tribunal Documents, HQ Directive No. 159/08, Notes on Disciplinary Procedures Under the Garda Síochána (Discipline) Regulations 2007, dated 3rd September 2008, p. 11802 at p. 11819

²⁴⁹³ Tribunal Documents, HQ Directive No. 159/08, Notes on Disciplinary Procedures Under the Garda Síochána (Discipline) Regulations 2007, dated 3rd September 2008, p. 11802 at pp. 11819-11820

²⁴⁹⁴ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Garda Commissioner, dated 8th May 2015, p. 10881

He therefore sought directions from the Garda Commissioner as to how he was to proceed, and whether formal appointments were necessary for the criminal and disciplinary investigations. He further indicated that the issue of whether Garda A should be suspended would be revisited.

On 13th May 2015, Detective Superintendent Frank Walsh, private secretary to the Garda Commissioner, replied on her behalf and directed A/C Ó Cualáin to proceed with the criminal investigation and arrange for the necessary appointment under the disciplinary Regulations with the divisional officer.²⁴⁹⁵

On 21st May 2015, A/C Ó Cualáin wrote to the Executive Director, Human Resources and People Development (HRPD) in relation to the continued operational duty of Garda A. He stated that the evidence pointed to an inordinate level of contact between an official state phone allocated to the Drugs Unit in Athlone, and predominately used by Garda A, with a phone belonging to a family member of Ms B, which in his view gave credence to the suggestion by the confidential reporter that Garda A was in a relationship with Ms B. He stated that it also gave credence to other allegations concerning Garda A and Ms B. He concluded that *'the issue of suspending Garda A is something which now requires consideration'*²⁴⁹⁶

A/C Ó Cualáin further reviewed Garda Keogh's allegations and the evidence gathered during the course of his investigation. Having done so, he wrote again to the Commissioner on 5th June 2015 recommending that a disciplinary investigation should also be carried out in respect of three other serving members of An Garda Síochána. In the letter he set out nine allegations against Garda A and the allegations against the other three members.²⁴⁹⁷

On 15th June 2015, D/Supt Walsh sent this report to Assistant Commissioner Kieran Kenny in his capacity as Assistant Commissioner, Northern Region. D/Supt Walsh informed A/C Kenny that he had been nominated by the Commissioner as appointing officer under the Garda Síochána (Discipline) Regulations, 2007. D/Supt Walsh pointed out that since one of those to be investigated held a particular rank, an assistant commissioner was the appropriate officer to undertake the investigation.²⁴⁹⁸

On 26th June 2015, A/C Kenny notified A/C Nolan, South Eastern Region, that he was appointed to conduct a discipline investigation under Regulation 23 of the Garda Síochána (Discipline) Regulations, 2007 in respect of four gardaí.²⁴⁹⁹

Form I.A.31, dated 25th June 2015, which grounded the appointment in respect of Garda A, set out nine alleged acts or conduct in relation to Garda A that were to be investigated from a disciplinary standpoint.²⁵⁰⁰ These largely mirrored the matters under examination by the Ó Cualáin investigation.

Garda Keogh was informed of A/C Nolan's appointment on 30th July 2015 by Detective Superintendent Declan Mulcahy.²⁵⁰¹ Garda Keogh confirmed that he was notified of the

²⁴⁹⁵ Tribunal Documents, Letter from the Office of the Commissioner to A/C Dónall Ó Cualáin, dated 13th May 2015, p. 10882

²⁴⁹⁶ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to Executive Director HRPD, dated 21st May 2015, pp. 10890-10892

²⁴⁹⁷ Tribunal Documents, Letter from A/C Dónall Ó Cualáin to the Office of the Commissioner, dated 5th June 2015, pp. 10907-10908

²⁴⁹⁸ Tribunal Documents, Letter from the Office of the Commissioner to A/C Kieran Kenny, dated 15th June 2015, p. 10921

²⁴⁹⁹ Tribunal Documents, Letter from A/C Kieran Kenny to A/C Jack Nolan, dated 26th June 2015, p. 16439

²⁵⁰⁰ Tribunal Documents, Form IA.31 Appointment of Investigating Officer Regulation 23 Garda Síochána (Discipline) Regulations, 2007, dated 25th June 2015, pp. 16440-16441

²⁵⁰¹ Tribunal Documents, Letter from D/Supt Declan Mulcahy to A/C Michael Finn, dated 3rd September 2015, pp. 7687-7688

appointment when giving evidence to the tribunal.²⁵⁰² He had previously recorded in his diary for 13th July 2015 that *'Jack Nolan to do internal on Garda [A]'*.²⁵⁰³

On 22nd July 2015, A/C Nolan wrote to Garda A and informed him that he had been appointed to investigate alleged breaches of discipline pursuant to Section 23 of the Garda Síochána (Discipline) Regulations, 2007 and enclosed Form I.A.32, which set out the alleged breaches.²⁵⁰⁴

Shortly after his appointment, A/C Nolan considered it appropriate to request a full copy of the criminal investigation file. Accordingly, he wrote to the appointing officer, A/C Kenny, on 28th July 2015 requesting a full copy of the criminal investigation file which had precipitated the disciplinary investigation.²⁵⁰⁵

On 5th August 2015, A/C Ó Cualáin wrote back to A/C Nolan and outlined his concerns over the release of the investigation file, and suggested that a meeting be held at Garda Headquarters to discuss the matter.²⁵⁰⁶ This meeting took place on 10th August 2015. In attendance were A/C Ó Cualáin, A/C Nolan, Chief Superintendent Dominic Hayes and Chief Superintendent Matthew Nyland of Internal Affairs. It was decided that only witness statements taken during the course of the criminal investigation would be made available to the disciplinary investigation, as the investigation file had not, at that stage, been sent to the Director of Public Prosecutions.²⁵⁰⁷

The witness statements were not in fact provided to the disciplinary team at this stage and a question subsequently arose as to whether the disciplinary investigation was *'put in abeyance'* at this time.

Meanwhile, on 4th October 2015, an issue was raised in public, both in Dáil Éireann and on the national airwaves, as to whether A/C Nolan had a conflict of interest that prevented him from enquiring impartially.²⁵⁰⁸ This media interest was reflected, in part, in an email dated 2nd October 2015 from Mr John Burke, RTÉ journalist, to Mr Andrew McLindon of the Garda Press Office in which he stated:

*Can you give me an update in relation to an issue we covered previously on the 'This Week' radio programme some weeks ago; specifically the decision by the Garda Commissioner Nóirín O'Sullivan to appoint Asst Commissioner AJ Nolan to take a leading role in the internal disciplinary process into a senior Garda, despite the expression of concern by a Garda whistleblower that they had a concern over a possible conflict of interest between the senior garda in question who was under investigation, and AC Nolan.*²⁵⁰⁹

Following this request, Mr McLindon sent an email on 5th October 2015²⁵¹⁰ to the Garda Commissioner, attaching a transcript of the RTÉ *'This Week'* radio programme, in which Mr Burke stated:

²⁵⁰² Tribunal Transcripts, Day 104, p. 14 and p. 93, Evidence of Garda Nicholas Keogh

²⁵⁰³ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 13th July 2015, p. 437

²⁵⁰⁴ Tribunal Documents, Letter from A/C Jack Nolan to the Office of the Commissioner, dated 18th January 2017, pp. 12631; Tribunal Documents, McMahon Report, p. 11865 at p. 11870

²⁵⁰⁵ Tribunal Documents, Letter from A/C Jack Nolan to the Office of the Commissioner, dated 18th January 2017, pp. 12631-12633; Tribunal Documents, McMahon Report, p. 11865 at p. 11872

²⁵⁰⁶ Tribunal Documents, McMahon Report, p. 11865 at p. 11872

²⁵⁰⁷ Tribunal Transcripts, Day 143, pp. 139-140, Evidence of A/C Jack Nolan

²⁵⁰⁸ Tribunal Documents, Transcript of RTÉ *'This Week'*, dated 4th October 2015, pp. 11025-11026

²⁵⁰⁹ Tribunal Documents, Email from Mr John Burke to Mr Andrew McLindon, dated 2nd October 2015, p. 11022

²⁵¹⁰ Tribunal Documents, Email from Mr Andrew McLindon to the Garda Commissioner, dated 5th October 2015, pp. 11024-11026

*Independent T.D. Clare Daly has also raised this issue in the Dáil, since the Dáil has resumed, we're now told that an examination is being carried out by Gardai in relation to the issues raised, those issues being that there was a potential conflict of interest between this high ranking Garda appointed to lead the disciplinary enquiry into the Senior Garda and the subject of that enquiry. So our understanding is that this has led to the disciplinary inquiry being temporarily suspended pending the outcome of that examination*²⁵¹¹

On 14th October 2015, Garda A was suspended from duty by Deputy Commissioner John Twomey under Regulation 7 of the Garda Síochána (Discipline) Regulations, 2007.²⁵¹²

On 24th November 2015, the report on the *'Investigation under the Garda Síochána (Confidential Reporting of Corruption and Malpractice) Regulations 2007 pertaining to Policing Practices and Activities in Athlone District'* was finalised.²⁵¹³ In his report to the Garda Commissioner, Deputy Commissioner Ó Cualáin stated, *inter alia*, 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.

While the investigation uncovered suspicions of criminal behaviour by Gardai 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 ...

*... I am aware that your office has appointed Assistant Commissioner Jack Nolan to carry out a disciplinary investigation based on my report of the 5th June 2015 (see attached). At a meeting in Garda HQ on 10th August 2015 and attended by Assistant Commissioner Nolan and also D/Supt Mulcahy, it was agreed that Assistant Commissioner Nolan's investigation would be put in abeyance pending the submission of my investigation file. This decision would allow for further consideration of the file, and to determine what aspects having regard to all the circumstances should be made available to Assistant Commissioner Nolan that would assist him in progressing his investigation. I believe that the appropriate advices should now be sought in this regard.*²⁵¹⁴

Dep/C Ó Cualáin highlighted a number of incidents dealt with in his report that required further examination.²⁵¹⁵ Dep/C Ó Cualáin also referred to the disciplinary investigation having been *'put in abeyance'* pending the submission of his criminal investigation file.

Following the media reports referred to above, and the suggested conflict of interest, A/C Kenny wrote to A/C Nolan on 9th December 2015 advising him that there was no issue with the discipline investigation progressing.²⁵¹⁶ He also observed that none of the members named in the alleged breaches of discipline objected to the appointment of A/C Nolan, nor indeed did the confidential reporter, Garda Keogh.²⁵¹⁷

²⁵¹¹ Tribunal Documents, Transcript of RTE 'This Week', dated 4th October 2015, p. 11025 at p. 11026

²⁵¹² Tribunal Documents, Form LA.71 Suspension of a Member of An Garda Síochána from Duty Pursuant to Regulation 7 of the Garda Síochána (Discipline) Regulations, 2007, dated 14th October 2016, p. 11055

²⁵¹³ Tribunal Documents, Report by Dep/C Dónall Ó Cualáin to the Director of Public Prosecutions, dated 24th November 2015, pp. 11080-11144

²⁵¹⁴ Tribunal Documents, Letter from Dep/C Dónall Ó Cualáin to the Garda Commissioner, dated 24th November 2015, pp. 11979-11981

²⁵¹⁵ Tribunal Documents, Letter from Dep/C Dónall Ó Cualáin to the Garda Commissioner, dated 24th November 2015, pp. 11979-11981

²⁵¹⁶ Tribunal Transcripts, Day 143, p. 144, Evidence of A/C Jack Nolan

²⁵¹⁷ Tribunal Documents, McMahon Report, pp. 11865-11874

The position of Garda A and his continued suspension was raised by Chief Superintendent Lorraine Wheatley with Internal Affairs on 26th January 2016 as follows:

The discipline investigation being conducted by Assistant Commissioner Nolan has commenced and is currently ongoing. It is anticipated that the discipline investigation will only be concluded following a determination in respect of the criminal matters under investigation.

In view of the foregoing the continued suspension of the member from duty to allow for these matters to be brought to a conclusion is recommended.²⁵¹⁸

The response from Internal Affairs indicated some confusion with regard to the status of the disciplinary investigation. In a letter from Chief Superintendent Mark Curran, Internal Affairs, to A/C Kenny dated 28th January 2016 he stated that:

The correspondence from Chief Superintendent Westmeath also states that the discipline investigation being conducted by Assistant Commissioner Nolan has commenced and is currently ongoing. Records at this office indicate that in August 2015, Assistant Commissioner Nolan intended to place the discipline investigation in abeyance pending the outcome of the criminal investigation.

By way of clarification, I am to enquire as to the present position of the discipline investigation being conducted by Assistant Commissioner Nolan in relation to this matter, in particular if it remains in abeyance at present. If the matter was placed in abeyance in August 2015, I also wish to seek confirmation as to whether Assistant Commissioner Nolan informed the members concerned of same at that time.²⁵¹⁹

However on 24th February 2016, A/C Nolan notified Internal Affairs that he had never sought to have the disciplinary investigation placed in abeyance, and that his inquiry was ongoing.²⁵²⁰ On the same day he informed Internal Affairs that he had made additional appointments to his investigation team, namely Superintendent Michael Leacy, Detective Inspector Seamus Maher, Detective Sergeant Seamus Keevans and Garda Adrian Cooke.²⁵²¹

Supt Leacy recorded that at a meeting in Kilkenny the following day, 25th February 2016, *A/C Nolan to seek advice re interview of Confidential Reporter Nicky Kehoe*.²⁵²² The disciplinary team did not meet Garda Keogh until almost a year later on 2nd February 2017.²⁵²³

As previously outlined in this report, on 3rd March 2016, the Director of Public Prosecutions directed that there was to be no prosecution arising from the criminal investigation.²⁵²⁴ Following on from this decision, A/C Nolan notified Dep/C Ó Cualáin on 8th April 2016 that since all impediments had been clarified in respect of the criminal investigation he now requested a copy of the investigation file.²⁵²⁵

²⁵¹⁸ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to Chief Superintendent Internal Affairs, dated 26th January 2016, pp. 9587-9588

²⁵¹⁹ Tribunal Documents, Letter from C/Supt Mark Curran to A/C Kieran Kenny, dated 28th January 2016, p. 9590

²⁵²⁰ Tribunal Documents, Letter from A/C Jack Nolan to Chief Superintendent Internal Affairs, dated 24th February 2016, p. 16602

²⁵²¹ Tribunal Documents, McMahon Report, p. 11865 at p. 11875

²⁵²² Tribunal Documents, Notes of Supt Michael Leacy, dated 25th February 2016, p. 15795

²⁵²³ Tribunal Documents, McMahon Report, p. 11865 at p. 11877

²⁵²⁴ Tribunal Documents, Directions of the Director of Public Prosecutions, dated 3rd March 2016, p. 11219

²⁵²⁵ Tribunal Documents, McMahon Report, p. 11865 at p. 11875; Tribunal Transcripts, Day 143, pp. 157-158, Evidence of A/C Jack Nolan

However, on 18th April 2016, Dep/C Ó Cualáin, following legal advice,²⁵²⁶ directed that only the witness statements on the criminal investigation file should be made available to the discipline investigation, and advised the disciplinary team to liaise with Internal Affairs to obtain same.²⁵²⁷ This appeared to reflect the position that had been agreed at the meeting months previously on 10th August 2015.

A/C Nolan requested these witness statements from Internal Affairs by letter dated 26th April 2016.²⁵²⁸ He was informed on 29th April 2016 by C/Supt Curran that Internal Affairs was not in possession of the statements or other material.²⁵²⁹ Accordingly, on the same date, A/C Nolan requested the witness statements directly from D/Supt Mulcahy.²⁵³⁰

On 4th May 2016, D/Supt Mulcahy notified the disciplinary investigation team that witness statements were being prepared and a query was raised as to whether the witness statement of the confidential reporter could be disclosed.²⁵³¹

By letter dated 16th May 2016, A/C Nolan informed D/Supt Mulcahy that *'it is imperative that the witness statements are made available to the investigation team to enable this discipline investigation to be progressed. The legal advice has been obtained and no further delay can be accepted.'*²⁵³² The witness statements were sent to the disciplinary investigation on 17th May 2016.²⁵³³

By letter dated 24th May 2016, A/C Nolan referred to *'eventually'* being provided with the witness statements and he raised a query with Internal Affairs regarding a report in the Sunday Business Post, dated 22nd May 2016, that referred to a Garda Síochána Ombudsman Commission (GSOC) investigation. He enquired whether this had *'any impact on the investigation I am appointed to conduct'*.²⁵³⁴ On 27th July 2016, A/C Nolan wrote to Internal Affairs and proposed that a meeting be convened with GSOC in respect of matters raised in the investigation.²⁵³⁵ This meeting with GSOC took place at Garda Headquarters on 20th September 2016.²⁵³⁶

On 8th November 2016, solicitors for Garda A wrote to A/C Nolan concern over what they described as the *'inordinate and unreasonable length of time'* of suspension and asking when he could expect to be engaged with.²⁵³⁷ A response was issued to Garda A's solicitors on 12th December 2016 by C/Supt Nyland, Internal Affairs.²⁵³⁸

²⁵²⁶ Tribunal Documents, Letter from Dep/C Dónall Ó Cualáin to Assistant Commissioner South Eastern Region, dated 18th April 2016, p. 16603-16604

²⁵²⁷ Tribunal Documents, Letter from Dep/C Dónall Ó Cualáin to Assistant Commissioner South Eastern Region, dated 18th April 2016, p. 16605; McMahon Report, p. 11865 at p. 11876

²⁵²⁸ Tribunal Documents, Letter from A/C Jack Nolan to Chief Superintendent Internal Affairs, dated 26th April 2016, p. 16606

²⁵²⁹ Tribunal Documents, Letter from C/Supt Mark Curran to Assistant Commissioner South Eastern Region, dated 29th April 2016, p. 16607

²⁵³⁰ Tribunal Documents, Email from Insp David McCarthy to D/Supt Declan Mulcahy, dated 29th April 2016, p. 16609

²⁵³¹ Tribunal Documents, Emails from D/Supt Declan Mulcahy to the Assistant Commissioner South Eastern Region, dated 29th April 2016 and 4th May 2016, pp. 16608-16609

²⁵³² Tribunal Documents, Letter from Insp David McCarthy to D/Supt Declan Mulcahy, dated 16th May 2016, p. 16616

²⁵³³ Tribunal Documents, Email from D/Supt Declan Mulcahy to Assistant Commissioner South Eastern Region, dated 17th May 2016, p. 16617

²⁵³⁴ Tribunal Documents, Letter from A/C Jack Nolan to Executive Director HRPD dated 24th May 2016, p. 16618

²⁵³⁵ Tribunal Documents, Letter from A/C Jack Nolan to Chief Superintendent Internal Affairs, dated 27th July 2016, p. 11216; McMahon Report, p. 11865 at p. 11877

²⁵³⁶ Tribunal Documents, Notes of Supt Michael Leacy, dated 20th September 2016, p. 15801

²⁵³⁷ Tribunal Documents, Letter from solicitor for Garda A to Assistant Commissioner South Eastern Region, dated 8th November 2016, p. 11246

²⁵³⁸ Tribunal Documents, Letter from C/Supt Matthew Nyland to solicitor for Garda A, dated 12th December 2016, pp. 11253-11254

The disciplinary investigation held its first conference at Dungarvan Garda Station on 9th November 2016, some 16 months after it had been established.²⁵³⁹

On 2nd February 2017, Supt Leacy and D/Insp Maher met with Garda Keogh for the first time at Portlaoise Garda Station. During this meeting, Garda Keogh provided his consent for the disciplinary investigation to use all his previous witness statements and supporting documentary evidence that he had supplied to D/Supt Mulcahy during the course of the criminal investigation.²⁵⁴⁰

On 8th April 2017, Garda Adrian Cooke, of the disciplinary investigation team, sent a report to Supt Leacy updating him on the progress of the investigation.²⁵⁴¹ He reported that since 26th October 2016 five conferences had been held at Dungarvan Garda Station, with the most recent being 9th March 2017. He further reported that a lengthy desktop review of over 100 witness statements had been conducted, and that jobs for the investigation team had been issued, where appropriate.²⁵⁴² All these witness statements appear to be those provided by the Ó Cualáin investigation.

At the time of his report, Garda Cooke confirmed that 20 gardaí and 6 civilians had been interviewed about the witness statements they made to the criminal investigation. He stated that a substantial body of work had been completed but that a large number of witnesses, both civilian and garda, had yet to be approached with regard to their original statements to the criminal investigation. He concluded by saying:

*The investigation team is mindful of the lengthy nature of this investigation to date, and is progressing the matter [as] expeditiously and diligently as possible.*²⁵⁴³

The Appointment of Assistant Commissioner Anne Marie McMahon

A/C Nolan retired from An Garda Síochána on 20th April 2017. Prior to this retirement, C/Supt Nyland, Internal Affairs, wrote to Assistant Commissioner John O'Mahoney, Northern Region, on 19th April 2017 in the following terms:

As you will be aware, on 25th June 2015, Retired Assistant Commissioner Kieran Kenny in his role as Assistant Commissioner Northern Region appointed Assistant Commissioner Nolan to investigate this matter pursuant to Regulation 23 of the Garda Síochána (Discipline) Regulations, 2007 as amended. As you now hold the role of Assistant Commissioner Northern Region you are the Appointing Officer in this matter.

In relation to Assistant Commissioner Nolan's discipline investigation, as Assistant Commissioner Nolan is due to retire shortly from An Garda Síochána, he should be replaced as Investigating Officer in this matter to allow for a hand-over period before his retirement. Every effort should be made, prior to Assistant Commissioner Nolan's retirement for any evidence gathered to date in his investigation to be provided to the new Officer.

According to records at this section it would appear that Assistant Commissioner Anne Marie Mc Mahon Southern Region has had no prior involvement in this matter: accordingly you may wish to consider her as the replacement Investigating Officer.

²⁵³⁹ Tribunal Documents, McMahon Report, p. 11865 at p. 11877

²⁵⁴⁰ Tribunal Documents, Statement of Garda Nicholas Keogh to the McMahon Investigation, p. 5974

²⁵⁴¹ Tribunal Documents, Letter from Garda Adrian Cooke to Supt Michael Leacy, dated 8th April 2017, pp. 16448-16454

²⁵⁴² Tribunal Documents, Letter from Garda Adrian Cooke to Supt Michael Leacy, dated 8th April 2017, p. 16448 at p. 16449

²⁵⁴³ Tribunal Documents, Letter from Garda Adrian Cooke to Supt Michael Leacy, dated 8th April 2017, p. 16448 at p. 16454

*The new Investigating Officer should notify the members concerned, by way of plain paper minute that they have been appointed to replace Assistant Commissioner Nolan. It is not necessary for Form I.A.31 to be completed in this instance as this is not a new appointment, rather a replacement Investigating Officer.*²⁵⁴⁴

On 3rd May 2017, A/C O'Mahoney wrote to the deputy commissioner Governance and Strategy, Dep/C Ó Cualáin, and stated that *'I refer to the above matter and forward the attached correspondence from Chief Superintendent Internal Affairs for your information and consideration please, as your office made the appointment in this matter'*.²⁵⁴⁵

However, by letter dated 5th May 2017, C/Supt Nyland wrote to Assistant Commissioner Eugene Corcoran, Governance and Accountability, stating that:

*This is at variance with the above mentioned correspondence from then Assistant Commissioner Ó Cualáin dated 29th June 2015 which clearly states that the Commissioner directed that an appointment be made in respect of the Garda Síochána (Discipline) Regulations 2007, as amended and had nominated Assistant Commissioner Northern Region to make that appointment.*²⁵⁴⁶

A/C Corcoran brought this matter to the attention of Dep/C Ó Cualáin on 5th May 2017.²⁵⁴⁷

On 16th May 2017, Dep/C Ó Cualáin wrote to Assistant Commissioner, Northern Region, confirming that the original appointment had been made by A/C Kenny in his capacity as Assistant Commissioner, Northern Region, as distinct from Acting Deputy Commissioner, Strategy and Change Management. He stated that the appointment papers (Form I.A.31) had been communicated from the latter Office out of expediency. He further stated that *'it is therefore critical that you now make an immediate substitution of investigation officer in this matter and ensure the investigation is completed as a matter of urgency'*.²⁵⁴⁸

In the interim, on 12th May 2017, Dep/C John Twomey, Policing and Security, notified A/C McMahon, that she was appointed pursuant to Regulation 23 of the Garda Síochána (Discipline) Regulations, 2007 to investigate *'the allegations as per the attached Form IA31s'*.²⁵⁴⁹ These forms were fresh appointment forms dated 26th April 2017 and set out the allegations against Garda A and the other three gardai.²⁵⁵⁰

An issue appears to have arisen at Internal Affairs as regards the nature of the appointment of A/C McMahon and whether or not this was a fresh appointment.²⁵⁵¹ It was recorded in a note in Internal Affairs on 25th May 2017 that *'it may be helpful if the AC also queried if this was a new appointment or a substitution, if it was a substitution the paperwork is incorrect and will need to be rectified'*.²⁵⁵²

On 12th June 2017, A/C McMahon wrote to Dep/C Twomey highlighting her concern as to whether or not her appointment was to continue the investigation or to start afresh. She stated that:

²⁵⁴⁴ Tribunal Documents, Letter from C/Supt Matthew Nyland to A/C John O'Mahoney, dated 19th April 2017, p. 16431

²⁵⁴⁵ Tribunal Documents, Letter from A/C John O'Mahoney to Dep/C Dónall Ó Cualáin, dated 3rd May 2017, p. 16433

²⁵⁴⁶ Tribunal Documents, Letter from C/Supt Matthew Nyland to A/C Eugene Corcoran, dated 5th May 2017, p. 16434 at p. 16435

²⁵⁴⁷ Tribunal Documents, Letter from A/C Eugene Corcoran to Dep/C Dónall Ó Cualáin, dated 5th May 2017, p. 16436

²⁵⁴⁸ Tribunal Documents, Letter from Dep/C Dónall Ó Cualáin to Assistant Commissioner Northern Region, dated 16th May 2017, p. 16437

²⁵⁴⁹ Tribunal Documents, Letter from Dep/C John Twomey to A/C Anne Marie McMahon, dated 12th May 2017, p. 16442

²⁵⁵⁰ Tribunal Documents, Form IA.31 Appointment of Investigating Officer Regulation 23 Garda Síochána (Discipline) Regulations, 2007, dated 26th April 2017, pp. 6006-6010

²⁵⁵¹ Tribunal Documents, Notes from Internal Affairs, dated 23rd May 2017-29th May 2017, pp. 16455-16457

²⁵⁵² Tribunal Documents, Note from Internal Affairs, dated 25th May 2017, p. 16457

It is noted that Assistant Commissioner Nolan was appointed as Investigating Officer by Assistant Commissioner Kenny on 26th June 2015 in accordance with Regulation 23 Garda Síochána (Discipline) Regulations 2007. The report of Garda Adrian Cooke of 8th April 2017, details that an investigation team was established and extensive investigations have been undertaken to date comprising of in excess of 120 jobs.

In consideration of the extensive work conducted to date, it may be that an Investigating Officer substitution was envisaged to continue with the work commenced by then Assistant Commissioner Nolan. A new Investigating Officer appointment will require the work conducted to date to be disregarded.

Clarification is sought on this matter and subject to your consideration, I can proceed with the existing investigation team to bring this matter to a conclusion at the earliest opportunity.

*For your consideration, please.*²⁵⁵³

The matter was considered by Dep/C Twomey and he replied to A/C McMahan on 30th August 2017 in the following terms:

*... I am to advise, for the purpose of clarification, that you are to takeover the investigation pursuant to the Garda Síochána (Discipline) Regulations, 2007, arising from the above-referenced Report, originally commenced by Assistant Commissioner Nolan, now retired, to completion.*²⁵⁵⁴

The office of A/C McMahan informed C/Supt Nyland of this position on 11th September 2017.²⁵⁵⁵ The ‘paperwork’ was never corrected.

This point as it later transpired was thought to give rise to a potentially serious procedural irregularity.

The investigation carried out by Assistant Commissioner Anne Marie McMahan

On 21st September 2017, Garda Keogh’s solicitor wrote to the Minister for Justice and Equality, the Garda Commissioner and the Policing Authority enclosing a handwritten letter from his client which included a query as to who was conducting the disciplinary investigation, and what stage it had reached.²⁵⁵⁶

Four days later, on 25th September 2017, Inspector Colm Noonan wrote on behalf of A/C McMahan to Dep/C Twomey as follows:

*Clarification is sought enquire as to whether the members concerned, including the complainant and those members complained of, have been formally notified that Assistant Commissioner McMahan has been nominated to take over to completion the investigation...*²⁵⁵⁷

Garda Keogh was not formally notified of A/C McMahan’s appointment.

On 3rd October 2017, the minutes of a case conference²⁵⁵⁸ recorded that it was agreed that Chief Superintendent Anthony McLoughlin would follow up with Internal Affairs regarding

²⁵⁵³ Tribunal Documents, Letter from A/C Anne Marie McMahan to Dep/C John Twomey, dated 12th June 2017, p. 16458

²⁵⁵⁴ Tribunal Documents, Letter from Dep/C John Twomey to A/C Anne Marie McMahan, dated 30th August 2017, p. 16461

²⁵⁵⁵ Tribunal Documents, Letter from Insp Colm Noonan to C/Supt Matthew Nyland, dated 11th September 2017, p. 16463

²⁵⁵⁶ Tribunal Documents, Letter from Garda Nicholas Keogh’s solicitor to the Minister for Justice and Equality, the Garda Commissioner and the Policing Authority, dated 21st September 2017, pp. 3558-3564

²⁵⁵⁷ Tribunal Documents, Letter from Insp Colm Noonan to Dep/C John Twomey, dated 25th September 2017, p. 16473

²⁵⁵⁸ Tribunal Documents, Minutes of Case Conference, dated 3rd October 2017, p. 3549 at p. 3550

the disciplinary investigation and Garda Keogh would be informed as to its progress. On 23rd October 2017 the minutes of another case conference²⁵⁵⁹ noted that the disciplinary investigation was still ongoing and concern was recorded as to the length of time it was taking.

On 15th November 2017, Ms B, who had previously refused to engage with the Ó Cualáin investigation, made a statement to the disciplinary investigation team outlining her interactions with Garda A.²⁵⁶⁰ This new evidence potentially incriminated Garda A in wrongdoing.

In an undated letter (possibly mid-February 2018) sent by Inspector Niall Crowley, on behalf of A/C McMahon, to Dep/C Twomey, it was reported that A/C McMahon hoped to finalise all matters by the end of March 2018 and it was noted that:

As part of this investigation Ms B was interviewed on 15th November, 2017. On that date she made a statement concerning her interaction with Garda A...

This statement has been forwarded for the attention of the criminal investigation team for their considerations.

This new evidence has resulted in one (1) of the eight (8) allegations as set out against Garda A being placed into abeyance pending the review of the new evidence being considered by the criminal investigation and its potential outcomes. This development is the only anticipated issue at present which may prevent the deadline of 31st March 2018 being met.²⁵⁶¹

On a date after 15th February 2018, Detective Inspector Michael Coppinger, who was a member of the Ó Cualáin investigation team, outlined in his statement to the tribunal how he became aware of this statement:

Ms B of _____ had made a statement to the Gardai from Waterford who were conducting a discipline investigation under the directions of Assistant Commissioner Ann Marie McMahon. The Assistant Commissioner forwarded a copy of this statement through official Garda channels, and on sight of same it was clear that Ms B was confirming involvement of Gardai in malpractice in Athlone Garda District.²⁵⁶²

Garda Keogh made a note in his diary on 6th March 2018 stating that:

Supt minnock txt me to say insp seamus maher looking for my no [number] part of A.C McMabons investigation team.²⁵⁶³

On the same day D/Insp Maher spoke with Garda Keogh and updated him on the progress of the disciplinary investigation.²⁵⁶⁴

By letter dated 9th April 2018, Insp Crowley wrote on behalf of A/C McMahon to Assistant Commissioner, Western Region, referring to a letter of 8th February 2018 and enquiring as to the current position in relation to this correspondence. He stated that:

The current status of the discipline enquiry is that it must be put in abeyance pending the outcome of the criminal investigations interactions with Garda A.²⁵⁶⁵

²⁵⁵⁹ Tribunal Documents, Minutes of Case Conference, dated 23rd October 2017, pp. 3598-3599

²⁵⁶⁰ Tribunal Documents, Statement of Ms B to the McMahon Investigation, pp. 6054-6056

²⁵⁶¹ Tribunal Documents, Letter from Insp Niall Crowley to Dep/C John Twomey, undated, pp. 16474-16475

²⁵⁶² Tribunal Documents, Statement of Detective Insp Michael Coppinger, p. 3893

²⁵⁶³ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 6th March 2018, p. 13381

²⁵⁶⁴ Tribunal Documents, Notes of D/Insp Seamus Maher, dated 6th March 2018, p. 15810

²⁵⁶⁵ Tribunal Documents, Letter from Insp Niall Crowley to Assistant Commissioner Western Region, dated 9th April 2018, p. 16465

In the meantime the disciplinary investigation with regard to the members other than Garda A was completed and a report was sent by A/C McMahon to Dep/C Twomey on 7th June 2018. The report, which concluded that there was no evidence of wrongdoing in all three cases, was considered by the deputy commissioner and he agreed that there were no grounds which would justify the establishment of a board of inquiry.²⁵⁶⁶

On 2nd July 2018, Assistant Commissioner Orla McPartlin, Western Region, informed A/C McMahon that contact had been made with Ms B's solicitor and that she would not be cooperating with the criminal investigation.²⁵⁶⁷

On 26th July 2018, A/C McMahon again sought clarification on this issue and reiterated that her investigation must be put in abeyance pending the outcome of the criminal investigation's interactions with Garda A.²⁵⁶⁸

Ms B, through her solicitor, wrote to the investigation team on 2nd August 2018 and confirmed that she no longer stood over her witness statement of 15th November 2017. She further stated that she did not wish to engage with An Garda Síochána in this matter.²⁵⁶⁹

Insp Crowley wrote on behalf of A/C McMahon to Internal Affairs on 30th October 2018 stating, inter alia, as follows:

The discipline investigation has been in a position to conduct interviews with Garda A since August of this year, however new developments which arose in the criminal investigation concerning allegations against Garda A prohibited the planned discipline interviews from being conducted until certain matters were put to Garda A by Detective Inspector Michael Coppinger.

*The discipline investigation was informed on the 10th September 2018 that this process was complete. Arrangements have now been made with Garda A and his legal team to conduct our interviews on the 14th November 2018.*²⁵⁷⁰

In essence, the disciplinary investigation had been placed in abeyance from February 2018, when the criminal investigation was advised that Ms B had made a statement, until 10th September 2018, when the disciplinary investigation was informed that the criminal investigation had exhausted their enquiries.

Garda A was interviewed by the disciplinary investigation team on 4th December 2018.²⁵⁷¹

The report of Assistant Commissioner Anne Marie McMahon

On 27th February 2019, A/C McMahon completed her discipline investigation into the matters concerning Garda A, and forwarded her file and covering report to the Office of the Deputy Commissioner, Governance and Strategy at Garda Headquarters for a final determination to be made in respect of her recommendations. The report extended to 113 pages.²⁵⁷²

²⁵⁶⁶ Tribunal Documents, Letter from Supt John Keegan to Assistant Commissioner Governance and Accountability, dated 3rd July 2018, p. 6011

²⁵⁶⁷ Tribunal Documents, Letter from A/C Orla McPartlin to Assistant Commissioner Eastern Region, dated 2nd July 2018, p. 16467

²⁵⁶⁸ Tribunal Documents, Letter from A/C Anne Marie McMahon to Assistant Commissioner Western Region, dated 26th July 2018, p. 16468

²⁵⁶⁹ Tribunal Documents, McMahon Report, p. 11865 at p. 11878

²⁵⁷⁰ Tribunal Documents, Letter from Insp Niall Crowley to Chief Superintendent Internal Affairs, dated 30th October 2018, p. 16476

²⁵⁷¹ Tribunal Documents, McMahon Report, p. 11865 at p. 11878

²⁵⁷² Tribunal Documents, McMahon Report, pp. 11865-11978

A/C McMahon set out a timeline of the investigation from its inception, and analysed in depth all the evidence that had been gathered by her investigation team. The report recorded that 28 conferences were held in course of the investigation from 26th April 2016 when A/C McMahon was appointed, and more than 110 statements were gathered. A further 27 persons were approached and asked to make statements, but declined. A/C McMahon gave evidence to the tribunal that there was a considerable amount of documentary evidence gathered and that a time-consuming desktop review of the material provided by the Ó Cualáin investigation was carried out.²⁵⁷³

In her report, the assistant commissioner concluded that there was no evidence to support eight of the allegations set out on Form I.A.31 in respect of Garda A. However in relation to one allegation, she recommended that a board of inquiry be established to examine the matter.²⁵⁷⁴

A/C McMahon said in her statement that, when submitting her report, she was of the view that *'a Peer Review be conducted to ensure the impartiality and integrity of the discipline investigation conducted by me'*.²⁵⁷⁵ She took this position because her husband, Chief Superintendent John Scanlan, had lodged a complaint against Garda Keogh in late 2018 with regard to a drunken telephone call made by Garda Keogh to Portlaoise Garda Station.

Consideration of the McMahon report by Assistant Commissioner David Sheahan

As already noted, the Garda Síochána (Discipline) Regulations, 2007 set out the procedure whereby an investigating officer submits a report to the Garda Commissioner. Regulation 24 (5) states the following:

*Within 7 days after the investigation has been completed, the investigating officer shall submit to the Commissioner a written report of the investigation containing his or her recommendation as to whether the facts disclosed warrant the establishment of a board of inquiry, together with copies of any written statements made during it and details of any information, document or thing which the investigating officer was made aware of during the investigation.*²⁵⁷⁶

Regulation 25(1) provides that:

If it appears from the report of the investigation that the member concerned may have committed a serious breach of discipline the Commissioner shall establish a board of inquiry –

- (a) to determine whether such a breach has been committed by the member concerned, and*
- (b) if so, to recommend to the Commissioner the disciplinary action to be taken in relation to the member.*²⁵⁷⁷

A/C McMahon submitted her report to Internal Affairs on 27th February 2019, where it was reviewed by Chief Superintendent Margaret Nugent. C/Supt Nugent's review dated 30th April 2019 was sent to Assistant Commissioner David Sheahan, Governance and Accountability.²⁵⁷⁸ She stated that its purpose was to:

... provide a report on the discipline investigation conducted in relation to this matter and to forward the recommendations of the Investigating Officer in order that a decision can be made

²⁵⁷³ Tribunal Transcripts, Day 140, pp. 14-15, Evidence of A/C Anne Marie McMahon

²⁵⁷⁴ Tribunal Documents, McMahon Report, p. 11865 at p. 11894

²⁵⁷⁵ Tribunal Documents, Statement of A/C Anne Marie McMahon, p. 5994 at p. 5999

²⁵⁷⁶ Tribunal Documents, Garda Síochána (Discipline) Regulations, 2007, p. 7793 at pp. 7803-7804

²⁵⁷⁷ Tribunal Documents, Garda Síochána (Discipline) Regulations, 2007, p. 7793 at p. 7804

²⁵⁷⁸ Tribunal Documents, Letter from C/Supt Margaret Nugent to A/C David Sheahan, dated 30th April 2019, pp. 14272-14281

*as to whether the facts disclosed during the course of the discipline investigation warrant the establishment of a Board of Inquiry in relation to this matter.*²⁵⁷⁹

C/Supt Nugent examined the nine allegations in respect of Garda A and highlighted the lack of corroborative evidence or insufficient evidence in each case. She further highlighted the following concern:

*Notwithstanding that there is little or no evidence found by the discipline investigation team, on examination of the investigation file at this office it has been discovered that there are a number of potential issues which may be challenged in relation to the conduct of the investigation and adherence to the Garda Síochána (Discipline) Regulations, 2007, as amended.*²⁵⁸⁰

She stated that:

This matter first came to the attention of Assistant Commissioner Human Resource Management in September 2014 by way of correspondence from then Assistant Commissioner Western Region, Dónall Ó’Cualáin who was overseeing a criminal investigation into allegations made by a Confidential Reporter sometime previously.

It was not until 5th June 2015, some nine (9) months later, that an appointment was made in accordance with the Garda Síochána (Discipline) Regulations 2007, as amended, which is at variance with the High Court judgment in the case of Mark Gibbons V the Commissioner of An Garda Síochána, delivered on 30th July 2007, which stated that any preliminary enquiry undertaken to allow an Appointing Officer to make a decision as to whether a breach of discipline may have been occasioned should take no longer than six (6) to eight (8) weeks.

*Notwithstanding the delay in making an appointment, the investigation, although complex and substantial in scope and depth, has taken nearly four and a half years to complete.*²⁵⁸¹

C/Supt Nugent also identified an issue associated with changing the composition of the investigation team, concluding that a new investigation team should have been appointed to assist the new investigating officer.²⁵⁸² She further identified a problem with the appointing officer, stating that it was Dep/C Twomey, Policing and Security, who had appointed A/C McMahon.²⁵⁸³

As noted above, this review was provided to A/C Sheahan who had the task delegated by the Garda Commissioner of deciding pursuant to the Regulations whether a board of inquiry should be established.

On 7th May 2019, A/C Sheahan determined that a board of inquiry was not warranted in this case but he accepted the suggestion made by A/C McMahon and appointed A/C McPartlin to peer review the investigation.

A/C McPartlin conducted this exercise by reviewing the entire disciplinary investigation file. In her report dated 19th June 2019, she concluded that:

All of the allegations made by the confidential reporter were investigated in a rigorous and thorough manner. All lines of inquiry were pursued to a conclusion insofar as that was possible

²⁵⁷⁹ Tribunal Documents, Letter from C/Supt Margaret Nugent to A/C David Sheahan, dated 30th April 2019, p. 14272

²⁵⁸⁰ Tribunal Documents, Letter from C/Supt Margaret Nugent to A/C David Sheahan, dated 30th April 2019, p. 14272 at p. 14277

²⁵⁸¹ Tribunal Documents, Letter from C/Supt Margaret Nugent to A/C David Sheahan, dated 30th April 2019, p. 14272 at p. 14277

²⁵⁸² Tribunal Documents, Letter from C/Supt Margaret Nugent to A/C David Sheahan, dated 30th April 2019, p. 14272 at p. 14279-14280

²⁵⁸³ Tribunal Documents, Letter from C/Supt Margaret Nugent to A/C David Sheahan, dated 30th April 2019, p. 14272 at p. 14280

by Assistant Commissioner McMahon and the investigation team. All persons nominated by the confidential reporter were interviewed as part of the investigation.

*I am satisfied, having reviewed the investigation file, that the investigation was thorough and complete.*²⁵⁸⁴

Finally, on 27th June 2019, A/C Sheahan wrote to A/C McMahon stating, *inter alia*, that:

*Based on the finding of the peer review, I have again reviewed my previous decision in this matter and I am satisfied that a Board of Inquiry is not warranted in this case.*²⁵⁸⁵

This brought the disciplinary process to an end. As a result the suspension of Garda A was lifted in relation to this investigation.

In his statement to the tribunal, A/C Sheahan set out the reasons why a board of inquiry was not warranted:

In respect of eight of the allegations (Numbered 2-8 in the Report) Assistant Commissioner McMahon submitted that there was no evidence to warrant the establishment of a Board of Inquiry. From an evidential point of view I concur with those recommendations. In respect of one allegation (Number 1 in the Report) Assistant Commissioner McMahon recommended the establishment of a Board of Inquiry.

*Having fully and carefully considered the matter, I decided on the 7th May 2019 that a Board of Inquiry should not be established ... in respect of the allegations as recommended by Assistant Commissioner McMahon under Regulation 24(5) of the Discipline Regulations despite the fact that she was of the view that the facts disclosed warranted the establishment of a Board of Inquiry in respect of one of the allegations that was under investigation.*²⁵⁸⁶

A/C Sheahan said that in reaching his decision in such cases he had regard to case law to ensure that the investigation was procedurally sound and that his decision on whether or not to establish a board of inquiry was based on two strands, 'Evidential and Procedural'.²⁵⁸⁷ These are considered below when referring to his statement and evidence.

Complaint made by Garda Nicholas Keogh

In his statement to the tribunal, Garda Keogh stated that:

*The investigation of my substantive complaints was marked by delay and patent omission in carrying out basic police enquiries, by a failure to preserve telephone, electronic and other communications, by a failure to arrest and question the relevant suspects ...*²⁵⁸⁸

He stated that 'neither [a previous divisional officer] nor Superintendent Murray nor Chief Superintendent Curran were arrested or questioned'²⁵⁸⁹ and that 'matters should all be dealt with at the same time and not oppressively by way of a multiplicity of discrete disciplinary proceedings'.²⁵⁹⁰

²⁵⁸⁴ Tribunal Documents, Letter from A/C Orla McPartlin to A/C David Sheahan, dated 19th June 2019, p. 14262

²⁵⁸⁵ Tribunal Documents, Letter from A/C David Sheahan to A/C Anne Marie McMahon, 27th June 2019, p. 14263

²⁵⁸⁶ Tribunal Documents, Statement of A/C David Sheahan, p. 14250

²⁵⁸⁷ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14251

²⁵⁸⁸ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116

²⁵⁸⁹ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116

²⁵⁹⁰ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 125

Garda Keogh referred to a report made by Sergeant Andrew Haran to a previous divisional officer in 2010 and stated that:

Sergeant Haran had made a serious report in 2010 to [a previous divisional officer] which cited complaints of criminal collusion between Garda A and Ms B; and the leaking of intelligence from the station. This report was ignored and or not adequately investigated and or otherwise 'covered up' by [a previous divisional officer]. Subsequently, Assistant Commissioner Jack Nolan was appointed by Commissioner Noirin O Sullivan to carry out a disciplinary 'investigation' into [a previous divisional officer] and Garda A in relation to my substantive complaint notwithstanding the fact that Jack Nolan had been the subject of criticism in the report of the Honourable Mr Justice Fennelly. (Jack Nolan was also simultaneously under investigation by gSOC in respect of disclosure of confidential information contrary to the Garda Síochána Act 2005 and the Protected Disclosures Act, 2014). [A previous divisional officer] has never been arrested or questioned in relation to Sergeant Haran's discarded report.²⁵⁹¹

Garda Keogh did not expressly refer to A/C McMahon in his statement to the tribunal.²⁵⁹² He stated in general terms that:

What one knows at this stage is that Garda A has now been suspended for collusion with criminals. Other than such very minimalist and unavoidable light-touch regulation, garda collusion in serious drug crime has been met here by obfuscation, censorship, diversion, a systemic failure to investigate in accordance with basic policing protocols, a refusal to search for and or preserve incriminating electronic and documentary evidence, a fragmentation of lines of enquiry and a deferential refusal to interrogate or prosecute senior gardai. This police collusion in drug crime and the perversion of the course of justice have enjoyed here the semblance only of a proper forensic police investigation. Such collusion has been disguised by an elaborate 'smoke and mirrors' charade (using the rhetoric of fair procedures) to mask a cast-iron guarantee and immunity from prosecution for gangs of senior garda managers.²⁵⁹³

The disciplinary investigation in respect of Garda A had not concluded by the time Garda Keogh provided his statement to the tribunal or met with the tribunal investigators for interview. During his evidence, Garda Keogh outlined his complaints as follows:

- (i) failure to keep him informed of the progress of the investigation
- (ii) failure to arrest Garda A or any others on foot of Ms B's statement and
- (iii) deliberate 'dragging out' of the investigation.²⁵⁹⁴

Failure to keep him informed

Garda Keogh told counsel for the tribunal that:

I have not got a letter from Assistant Commissioner McMahon and we write – when I say we write, through my solicitor, at the time, to acting Commissioner Ó Cualáin to find out who is doing this investigation. He sends a letter back to say Joe Nugent will be in touch with you. He's the CAO for An Garda Síochána. We don't get to find out then. Then, at some point, Clare Daly writes to the Minister for Justice in relation to the same thing, who is conducting this

²⁵⁹¹ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 120

²⁵⁹² Tribunal Documents, Statement of Garda Nicholas Keogh, pp. 116-140

²⁵⁹³ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 138

²⁵⁹⁴ Tribunal Transcripts, Day 104, pp. 107-108, Evidence of Garda Nicholas Keogh

*investigation. I think he can't get involved or something. Then we later write to Commissioner Drew Harris, who is doing this investigation. He acknowledges the letter, but in the end I find out it's Assistant Commissioner McMahon.*²⁵⁹⁵

He was asked the following by counsel for the tribunal:

- Q. But are you suggesting that a failure – I mean, it's not in the documents as a complaint, in terms of delay, but are you suggesting that the failure to keep you up to date was in some way designed to target you because of your disclosures?
- A. Yes. Yes. Because like, Assistant Commissioner Ó Cualáin at this time I think is the acting commissioner. He obviously knows a lot about it.²⁵⁹⁶

Garda Keogh was cross-examined by counsel on behalf of An Garda Síochána on this issue and he stated his case as follows:

Just, there's two, two points to that question, Judge. The first one is: When Assistant Commissioner Nolan was appointed to do the investigation, he sent me out a letter to say I am appointed to the investigation, that's fine. I never got any notification from Assistant Commissioner McMahon. I didn't know for a long period of time that it was Assistant Commissioner McMahon. I knew Assistant Commissioner Nolan had retired, I didn't know then what was – no one had informed me.

- Q. Chairman: Yes.
- A. Under the protected disclosures, that's one of the things, that you're supposed to be kept up to date. And I didn't even know who was conducting the investigation.²⁵⁹⁷

Garda Keogh also told counsel on behalf of An Garda Síochána:

*... [A/C McMahon] was obliged to inform me that she was conducting this, as Jack Nolan did. She was also obliged to at least let me know, by the way, I'm appointed now to do this investigation. There was none of that. I was writing to Donal Ó Cualáin to try and find out. He wouldn't tell me. He wrote back to say the CEO Joe Nugent will be in touch with you. I'm aware Clare Daly wrote a letter to I think the Taoiseach and the Minister for Justice in relation to it, but fair enough, they couldn't get involved, I understand, I accept that. But then I wrote to the new commissioner, Drew Harris. There was no letter ever came back to say Assistant Commissioner McMahon is investigating this.*²⁵⁹⁸

Counsel on behalf of An Garda Síochána asked Garda Keogh about his telephone conversation with D/Insp Maher on 6th March 2018:

- Q. Again, you told the Chairman many times that you tend to forget things. I have to suggest to you that Detective Inspector Maher took a note of this telephone conversation with you. Do you deny that that conversation happened at all or is it that you don't remember it?
- A. Judge, as I explained, I can't confirm or deny the conversation. I don't remember it. I have no note of it. The document, it's not even a note, it seems to be a transcript of – it appears to be – it's a recording of a phone call which had been transcribed down. The document, as

²⁵⁹⁵ Tribunal Transcripts, Day 104, p. 94, Evidence of Garda Nicholas Keogh

²⁵⁹⁶ Tribunal Transcripts, Day 104, pp. 103-104, Evidence of Garda Nicholas Keogh

²⁵⁹⁷ Tribunal Transcripts, Day 110, pp. 61-62, Evidence of Garda Nicholas Keogh

²⁵⁹⁸ Tribunal Transcripts, Day 110, p. 65, Evidence of Garda Nicholas Keogh

*I said, I have never seen anything like it before and I don't know if any solicitor or barrister ever dealing with Garda stuff or criminal cases has seen a document like this.*²⁵⁹⁹

Failure to arrest Garda A or any others on foot of Ms B's statement

Garda Keogh set out his case under this heading in the following exchanges with the Chairman:

- Q. *Chairman: ... What complaints have you got, if any, as to Assistant Commissioner McMahon?*
- A. *Well, having read the documents, Judge. I see Ms. B has made a statement of admission there, like I mean, I would argue that she was obliged to make an arrest at that point.*²⁶⁰⁰
- Q. *Chairman: ... Let's get to the bottom of this in the end. You say that's is targeting you, because she didn't arrest?*
- A. *No, but it's is discrediting, I would say discrediting.*²⁶⁰¹

Counsel on behalf of An Garda Síochána asked Garda Keogh the following in cross-examination:

- Q. *Garda Keogh, my question was: There's nothing in the investigation that required Assistant Commissioner McMahon to arrest anybody because she was conducting, as you have accepted, a disciplinary investigation. You are aware of the distinction, are you not, between that and a criminal investigation?*
- A. *I am aware of the distinction.*
- Q. *Yes.*
- A. *But this is a game changer, this is a different scenario here now, where you have something, it relates to the the – disciplinary investigation crops out of a criminal investigation where theirs is something very serious. This information was not available to the criminal investigation team. So this is a – it's – we're into – I don't know if we in untested waters or whatever here, but if this, as I said, was something even more serious, like a murder or that, you couldn't – one could not just say, oh, well, I am only doing a disciplinary investigation, I'm not looking at that.*²⁶⁰²

Garda Keogh also criticised the alleged tardiness of the McMahon investigation team notifying the criminal investigation of Ms B's statement:

*Judge, Mr. Murphy is doing the very same thing on the other side of the coin; he is following the instructions given to him. Judge, there is evidence in relation to the Ms. B statement. There is evidence in those documents that it wasn't acted on immediately. It appears to have been sat on for about five months. It's an incredible statement in the whole sequence of events that went on and then appears to be just passed over then to Detective Inspector Coppinger. So, I think we're talking about six months of a period here where they have this hot coal and they seem to be juggling it around.*²⁶⁰³

²⁵⁹⁹ Tribunal Transcripts, Day 111, p. 9, Evidence of Garda Nicholas Keogh

²⁶⁰⁰ Tribunal Transcripts, Day 104, p. 96, Evidence of Garda Nicholas Keogh

²⁶⁰¹ Tribunal Transcripts, Day 104, p. 98, Evidence of Garda Nicholas Keogh

²⁶⁰² Tribunal Transcripts, Day 110, p. 63, Evidence of Garda Nicholas Keogh

²⁶⁰³ Tribunal Transcripts, Day 110, p. 67, Evidence of Garda Nicholas Keogh

Deliberate ‘dragging out’ of the investigation

Garda Keogh gave evidence to the tribunal as follows:

... at that stage of the game I was just wishing it would all be over, because you have to remember, this is dragged – for each one of these assistant commissioners that we are naming out, they’ve only, let’s say, one to two years, whatever, each in what they are doing. Like I have gone – this is going on for me for years.

That would be my case there on that. Like all these investigations, with the exception of the first one, like they call seem to be dragged out. Like it goes on, this whole episode has gone on for years, for, whatever, 8th May 2014 and we’re now at the end of 2019.²⁶⁰⁴

Counsel on behalf of the tribunal drew Garda Keogh’s attention to the fact that the disciplinary investigation was wider than an investigation into the conduct of Garda A. Garda Keogh gave evidence that:

Yes. Except that, when I met Superintendent Lacey and Inspector Maher, I actually pointed out, there’s four members that’s being disciplined but two of them shouldn’t be disciplined. That they were spreading, spreading, let’s say, the wrongdoing out to make it appears maybe basically less serious. Spreading it out. I pointed out to them that two of those I believe shouldn’t have been disciplined in relation to that. They were two persons from the national drugs unit and I pointed out that I didn’t believe they should be disciplined, because I didn’t think they should have – they had done anything wrong.²⁶⁰⁵

Dealing with his general allegations, he was asked the following by counsel on behalf of An Garda Síochána:

Q. *Garda Keogh, in terms of the points I put to you in relation to dragging things out and failing to make arrests, I am suggesting to you, you have no evidence to support those allegations at all?*

A. *I dispute that. Because Ms. B’s statement was made in – it was made in, was it April 2018, roughly, I mightn’t have the dates right, Judge. But that statement then appears to have been just sat on for five months and then it is passed over to Detective Inspector Coppinger from the original investigation team. That in itself, that whole episode there, that six month period has massive question marks all over it. And there is evidence.²⁶⁰⁶*

Responding Statements and Evidence on the Issue

Retired Assistant Commissioner Jack Nolan

In his statement to the tribunal, A/C Nolan rejected the assertion by Garda Keogh that he had been the subject of criticism by Mr Justice Fennelly. He stated that he was the garda liaison officer to the Commission of Investigation and outlined that he was ‘*significantly praised*’ in the commission’s report.²⁶⁰⁷

²⁶⁰⁴ Tribunal Transcripts, Day 104, pp. 106-107, Evidence of Garda Nicholas Keogh

²⁶⁰⁵ Tribunal Transcripts, Day 104, p. 102, Evidence of Garda Nicholas Keogh

²⁶⁰⁶ Tribunal Transcripts, Day 110, p. 66, Evidence of Garda Nicholas Keogh

²⁶⁰⁷ Tribunal Documents, Statement of A/C Jack Nolan, p. 4103

A/C Nolan was asked the following by counsel for the tribunal:

- Q. *In your statement, which is to be found in the Tribunal papers at Volume 14, page 4103, you draw attention first of all to the statement made about you by Garda Keogh, which is page 5 of his statement furnished to the Tribunal originally, it's page 120 of our books. We don't need to look at it. You have set it out there accurately insofar as it relates to you. I think he sets out there a suggestion that you had been the subject of criticism in a published report of a commission of inquiry?*
- A. *That's correct, Chairman. I was the Garda liaison officer to Judge Fennelly's Commission. While I was never the subject of any adverse commentary, I was significantly praised by Judge Fennelly for the role I performed while a liaison officer to that Commission, in conjunction with my colleagues of that time, Superintendent Michael Flynn and the then Inspector Majella Armstrong. So that suggestion that I was adversely commented upon or criticised is totally inaccurate.²⁶⁰⁸*

This allegation was raised with Garda Keogh when cross-examined by counsel on behalf of An Garda Síochána:

- Q. *First of all, I think it says: "Assistant Commissioner Jack Nolan was appointed by Commissioner Nóirín O'Sullivan to carry out disciplinary investigation' into [blank] and Garda A in relation to my substantive complaint notwithstanding the fact Jack Nolan had been the subject of criticism in the report of the honourable Mr. Justice Fennelly." Just pausing there for a moment, that was factually false?*
- A. *That is an incorrect assertion, yes.*
- Q. *And the Fennelly report, I understand, you agree with me, is available publicly on the internet?*
- A. *Publicly available.*
- Q. *And in your statement I think the quotation which Mr. McGuinness referred to is coming from that report?*
- A. *That's correct, Chairman.*
- Q. *And this is a statement made in preparation for this Tribunal?*
- A. *Yes.*
- Q. *And then moving on, to add fuel to the fire, this statement says that you:*
"Jack Nolan was also under simultaneously under investigation by GSOC in respect of disclosure of confidential information contrary to the Garda Síochána Act 2005 and the Protected Disclosures Act 2014."
Is that true or false?
- A. *That's false, Judge.*
- Q. *Insofar as both of these points are made in a statement to this Tribunal, perhaps you'd indicate to the Chairman how you felt when these things were said wrongly about you?*

²⁶⁰⁸ Tribunal Transcripts, Day 143, p. 128, Evidence of A/C Jack Nolan

- A. *Judge, I feel very disappointed that such comments would be made about myself personally when they are totally inaccurate.*²⁶⁰⁹

In his statement to the tribunal, A/C Nolan rejected Garda Keogh's assertions as regards an investigation of him by GSOC as being '*untrue and without foundation*'.²⁶¹⁰

In respect of the disciplinary investigation, A/C Nolan confirmed that he was appointed to conduct the investigation by A/C Kenny and that he enlisted the assistance of Supt Leacy. He referred to the delay in the investigation as follows:

The investigation was delayed for some time due to procedural issues and it was not actually completed when I retired from An Garda Síochána on 20/04/2017. I attach a report dated 17.01.2017 sent by me to the Office of the Garda Commissioner which sets out my limited involvement in this matter. I informed Garda HRM, Garda HQs that a new investigating officer would need to be appointed to complete the investigation.

*I had no other interaction with Garda Keogh other than as set out in this statement.*²⁶¹¹

He was asked by counsel for the tribunal if his investigation was ever put in abeyance at any stage:

*No, Judge. I sought the background information, the copies of witness statements and the investigation file in order that I could familiarise myself, brief myself and also to bring an investigation team up to speed with the context and the background to the investigation. I never actually put or never sought to put the investigation into an abeyance. Indeed, at one stage I sought advice from our Internal Affairs or legal section, I am not quite sure which it was at the time but I am sure there is a record of it.*²⁶¹²

Counsel for the tribunal asked him about the publicity regarding his appointment and, in particular, a radio programme with Mr John Burke of RTÉ and Deputy Clare Daly in October 2015:

*I didn't hear the radio programme. But it was brought to my attention that the investigation had been raised on the radio programme. Then I sought advice as to whether I should continue in the role of investigator in this particular disciplinary case. And I wrote to Assistant Commissioner Kenny, who, as I have outlined, held that administrative function associated with disciplinary investigations. And he subsequently responded to me that he had no concerns about my role in the investigation or my impartiality.*²⁶¹³

Counsel for the tribunal also asked him the following:

- Q. ... I am really just asking you then about the previous answer you gave me, that you did seek legal advice?
- A. I did seek legal advice on several aspects. One, about putting the matter into an abeyance; and two, whether I should continue with my investigation.
- Q. Yes. I am not asking you to disclose the legal advice, but did you put the matter into abeyance at any stage or did you continue with the investigation?

²⁶⁰⁹ Tribunal Transcripts, Day 143, pp. 164-166, Evidence of A/C Jack Nolan

²⁶¹⁰ Tribunal Documents, Statement of A/C Jack Nolan, p. 4103

²⁶¹¹ Tribunal Documents, Statement of A/C Jack Nolan, p. 4103 at p. 4104

²⁶¹² Tribunal Transcripts, Day 143, p. 136, Evidence of A/C Jack Nolan

²⁶¹³ Tribunal Transcripts, Day 143, p. 144, Evidence of A/C Jack Nolan

- A. *I did not put the matter into – I did not put the investigation into an abeyance at any time. I continued with the investigation but did [not] have the material that enabled me to continue the investigation.*²⁶¹⁴

A/C Nolan continued:

*I believe the reply to that was the response from Assistant Commissioner Kenny to say that he no concerns about myself conducting the disciplinary investigation. There was at the next point, there was also a correspondence ongoing in relation to queries that the chief superintendent had raised about the validity of the disciplinary allegations made concerning him and I corresponded again with AC Kenny, who would have drafted the original alleged breaches.*²⁶¹⁵

He was cross-examined by counsel on behalf of Garda Keogh with regard to the issue of delay:

- Q. *Assistant commissioner, you were appointed, as we know, in July 2015 and you retired in April 2017. So, as Mr. McGuinness outlined, a window of about 22 months while you were in charge of the investigation. Would you accept that the delay compromised the investigation during that period? That there was a period of delay and that it compromised the investigation?*
- A. *Well, I think with Mr. McGuinness we have gone through the chronology of many issues that emerged that needed to be fleshed out or finalised during the course of what on the surface looks like a lengthy period of time, but there were particular reasons for each, including the fact that the investigation file/witness statements were not available for a considerable period.*
- Q. *But there was a delay though, wasn't there, assistant commissioner?*
- A. *Well, it's a lengthy period of time. As regards whether it was a delay, it wasn't a matter that things were not being considered or things were not being done, it just wasn't possible to move on due to the issues that emerged.*
- Q. *Was there any particular reason why the investigation team didn't meet with Garda Keogh until 2nd January 2017?*
- A. *Well, it would be related to the finalisation of all the issues that had emerged, which we have gone through in chronological order here, unless we need to go back through them all again.*
- Q. *Finally, would you accept that those delays in that period are to the discredit of Garda Keogh?*
- A. *I wouldn't think they were. That would not be my understanding.*²⁶¹⁶

Assistant Commissioner Anne Marie McMahon

In her statement to the tribunal, A/C McMahon stated that *'I wish to confirm that I am not specifically mentioned in the statement of Garda Nicholas Keogh which was supplied from your office'*.²⁶¹⁷

²⁶¹⁴ Tribunal Transcripts, Day 143, p. 147, Evidence of A/C Jack Nolan

²⁶¹⁵ Tribunal Transcripts, Day 143, p. 152, Evidence of A/C Jack Nolan

²⁶¹⁶ Tribunal Transcripts, Day 143, pp. 161-162, Evidence of A/C Jack Nolan

²⁶¹⁷ Tribunal Documents, Statement of A/C Anne Marie McMahon, p. 5994

She said that she completed her investigation in respect of three of the four gardaí on 7th June 2018 and forwarded her investigation file to Deputy Commissioner, Governance and Strategy, for the consideration of the deciding officer. She said in her statement that she recommended that there was no evidence available to the discipline investigation which warranted the establishment of a board of inquiry.²⁶¹⁸ On 9th July 2018, she was informed by the deputy commissioner that all matters pertaining to these gardaí *'were finalised and a Board of [I]nquiry was not warranted'*.²⁶¹⁹

In response to the statement of Garda Keogh that *'the investigation of my substantive complaints was marked by delay and patent omission in carrying out basic police enquiries, by a failure to preserve telephone, electronic and other communications, by a failure to arrest and question the relevant suspects'*,²⁶²⁰ A/C McMahon said in her statement to the tribunal that:

*I can confirm that my investigation was conducted with absolute professionalism, complete impartiality and progressed as expeditiously and as diligently as possible. Whilst there is no reference made to which investigation Garda Nicholas Keogh refers (criminal or discipline), I refute any assertion, implied or otherwise that the investigation carried out by me could be characterised in this way.*²⁶²¹

In relation to the complaint by Garda Keogh that senior officers had not been arrested or questioned, A/C McMahon said in her statement that she had interviewed a previous divisional officer for Athlone and that she had no cause to interview either Superintendent Pat Murray or C/Supt Curran as part of her discipline investigation.²⁶²²

A/C McMahon also addressed a number of complaints that were set out by Garda Keogh in his statement to the tribunal. Whilst these matters were not pursued, for the sake of completeness her responses are set out in the following paragraphs:

I note the comments pertaining to arrest of Suspect 1 and Suspect 2 arising from an operation targeting the sale and supply of controlled drugs in the Athlone District. I can say that this also formed part of my discipline investigation and my recommendations in this instance are contained within my final report submitted on the 24th of February 2019 for a determination by the Deciding Officer. I have not yet been informed of the Deciding Officers final views on the matter and do not wish to comment further as a result.

... I note the allegations that Ms B had received a tip off from Garda A about a planned search of her home. I can confirm that this allegation formed part of my discipline [investigation] and my recommendations in this instance are contained within my final report submitted on the 24th of February 2019 for a determination by the Deciding Officer. I have not yet been informed of the Deciding Officers final views on the matter and do not wish to comment as to the nature of my recommendations, however, it is incumbent on me to outline to the Tribunal by way of this statement that my investigation had assessed the date of a search referenced by Garda Nicholas Keogh, being the 18th of December 2008 is at odds with the date of the planned search as identified by my discipline investigation.

... I note there is reference made by Garda Nicholas Keogh to telecommunications records. I can confirm that I am aware of the existence of certain billing records for an official mobile phone

²⁶¹⁸ Tribunal Documents, Statement of A/C Anne Marie McMahon, p. 5994 at p. 5995; Letter from Supt John Keegan to Assistant Commissioner, Governance and Accountability, dated 3rd July 2018, p. 6011

²⁶¹⁹ Tribunal Documents, Statement of A/C Anne Marie McMahon, p. 5994 at p. 5995

²⁶²⁰ Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116

²⁶²¹ Tribunal Documents, Statement of A/C Anne Marie McMahon, p. 5994 at p. 5996

²⁶²² Tribunal Documents, Statement of A/C Anne Marie McMahon, p. 5994 at p. 5996

used by Garda A, however, due to the Data Protection Act of 1988, and previous court rulings regarding the use of such records in discipline investigations, my discipline investigation could not access those records.

... I note the reference made to the discovery of a large amount of heroin on the 21st of December 2012. I can confirm that this allegation formed part of my discipline investigation... I have not yet been informed of the Deciding Officers final views on the matter and do not wish to comment as to the nature of my recommendations, however, I must highlight the fact that my discipline investigation was never made aware at any stage that there was an assertion that the controlled drugs seized by An Garda Síochána on the 21st of December 2012 were potentially controlled drugs (commercial opium) that allegedly 'went missing from the store room in Athlone Garda Station'.

... I note the assertion by Garda Nicholas Keogh that [a previous divisional officer] was 'never questioned in relation [to] Sergeant Andrew Haran's discarded report'. I can confirm that as part of my investigation, I interviewed [a previous divisional officer] and reference was made to the report of Sergeant Andrew Haran...

... I note there is reference made by Garda Nicholas Keogh to an individual named Olivia O'Neill and the alleged reporting by her of alleged 'police collusion in Athlone' and specifically named Ms B. I can state that this information was not previously known to me and my discipline investigation team and has only come to my attention as part of the documentation received from the Chief State Solicitor on the 8th of March 2019.

... I reaffirm that my investigation was conducted with absolute professionalism, complete impartiality and progressed as expeditiously and as diligently as possible.²⁶²³

Counsel for the tribunal asked A/C McMahon whether she had notified Garda Keogh of her appointment to take over the disciplinary investigation:

Chairman, I was appointed under the discipline regulations on the 26th April. So my sole focus was carrying out that investigation. I did, however, seek clarification or confirmation, in fact, that the people being investigated and the person who had made the complaint, Garda Keogh, asked if they were notified of my appointment. But my sole focus was on carrying out the investigation. There are other processes in place in terms of communicating with somebody who makes a confidential report and I wasn't in – that person wasn't me.²⁶²⁴

Counsel for the tribunal drew her attention to the letter sent on her behalf to Deputy Commissioner, Policing and Security, on 25th September 2017:

Q. If we just look at the second paragraph there, you're actually raising or he is raising the issue on your behalf:

"Clarification is sought, enquire as to whether the members concerned, including the complainant and those members complained of, have been formally notified that Assistant Commissioner McMahon has been nominated to take over to completion the investigation."

So that seems to be a matter that you were concerned about at that time; that Garda Keogh would be notified?

²⁶²³ Tribunal Documents, Statement of A/C Anne Marie McMahon, p. 5994 at pp. 5996-5998

²⁶²⁴ Tribunal Transcripts, Day 140, p. 11, Evidence of A/C Anne Marie McMahon

- A. Yes, absolutely, especially when there was a change of investigating officers. So that was certainly foremost in my mind.²⁶²⁵

A/C McMahon gave evidence of her role in this regard:

*The reason simply is that I was carrying out a discipline investigation and as with any discipline investigation, you have your statement of complaint. I had that. My job was to work on that and to investigate that as thoroughly as possible. As I have already stated, there are procedures for dealing with a confidential reporter, which were outside of my remit. Notwithstanding that, Superintendent Lacey and Inspector Maher, as he was at the time, did, on a number of occasions, try to make contact with Garda Keogh for two reasons, one was to clarify a particular matter and the other one was to inform him that the investigation was progressing. That's the discipline investigation. By way of update.*²⁶²⁶

Referring to Garda Keogh, she said in her statement that Supt Leacy and D/Insp Maher met him by appointment on 2nd February 2017 and that on 6th March 2018, D/Insp Maher spoke with Garda Keogh via a telephone call. She stated that:

*Further attempts to engage with Garda Nicholas Keogh on my behalf have not been successful. I have never interacted with Garda Nicholas Keogh.*²⁶²⁷

A/C McMahon was cross-examined by counsel on behalf of Garda Keogh on the attempts made to contact him:

- Q. In relation to, I think you gave evidence to the Chairman that you attempted to contact or at least someone on the investigating team attempted to contact Nick Keogh on eight different occasions, are any of those occasions via letter?
- A. Yes, five of them were by telephone and I think three were through the solicitor.
- Q. Can you confirm were you the author of those letters in particular or was it your superintendent?
- A. No, it was a phone call, sorry Chairman, it was a phone call to the solicitor, it wasn't a letter.
- Q. Just to be clear, did you say there were three written correspondence?
- A. No, I said there were three attempts to contact the solicitor.
- Q. Three attempts to contact the solicitor, five attempts to contact Garda Keogh himself?
- A. Correct.
- Q. And none of them via letter?
- A. Correct.
- Q. So the answer to my question did you attempt to contact Garda Keogh by letter, the answer is no?
- A. No.²⁶²⁸

²⁶²⁵ Tribunal Transcripts, Day 140, p. 88, Evidence of A/C Anne Marie McMahon

²⁶²⁶ Tribunal Transcripts, Day 140, pp. 38-39, Evidence of A/C Anne Marie McMahon

²⁶²⁷ Tribunal Documents, Statement of A/C Anne Marie McMahon, pp. 5994 at p. 5995

²⁶²⁸ Tribunal Transcripts, Day 140, pp. 44-45, Evidence of A/C Anne Marie McMahon

A/C McMahon said that she completed her investigation in respect of Garda A on 27th February 2019 and forwarded her investigation file to Deputy Commissioner, Governance and Strategy. A/C McMahon recommended that the establishment of a board of inquiry was warranted in respect of one of the nine allegations.

She was asked by counsel for the tribunal to outline the extent of her investigation:

... From my appointment time of 26th April 2017, I was appointed to investigate 13 allegations in respect of four serving members of An Garda Síochána. There was 28 conferences held in respect of the investigation. I attended 12 of those conferences. There were 110 statements gathered and there was another 27 individuals approached, and for one reason or another they didn't want to cooperate or didn't want to make a statement. There was a considerable amount of material, a desktop review essentially of material that was provided to us from the criminal investigation, which had to be gone through, in addition to the material gleaned and gathered by the discipline investigation.

There were a number of clarifications that I sought in terms of whether or not I could use the material gathered by Assistant Commissioner Nolan. And once all that was clarified, which was September 2017, I sought to appoint four additional members to the team, because I wanted to expedite the matter and wanted to get it complete as quickly as possible. During the course of the investigation then on three occasions I sought legal advice for different matters. In addition to that, there were two separate issues that arose that I referred to the appropriate authorities for further examination.²⁶²⁹

With regard to allegation that there was unreasonable delay in the investigation, A/C McMahon gave evidence that:

From the time I was appointed it took 22 months to complete all aspects of the investigation. I have already outlined steps I took to progress the investigation as quickly as possible. And I would also like to point out that both I and the team that were assisting me were working on a part time basis, they had their various other roles as well. So, yes, it was complex and there were a lot of people to interview and a lot of statements to take and legal advice to be sought. However, I believe that I carried it out as expeditiously as I could given all of the circumstances.²⁶³⁰

She was asked the following by counsel on behalf of Garda Keogh:

- Q. And do you believe that there were gaps or can you identify to the Chairman any gaps that were in your assessment and your report? Were there any gaps or anything that you missed during the process in order to expedite matters?
- A. I don't believe so, Chairman. I believe my investigation was thorough. I believe I left no stone unturned. In terms of getting to the bottom of the allegations that were made by Garda Keogh, I think I owed him that at least, in terms of the investigation that I was carrying out.²⁶³¹

Counsel for Garda Keogh suggested the following to A/C McMahon:

- Q. Just finally in relation to the interview conducted with Garda A, you gave your evidence to the Chairman that you didn't feel it was appropriate to meet with Garda A prior to completing

²⁶²⁹ Tribunal Transcripts, Day 140, pp. 14-15, Evidence of A/C Anne Marie McMahon

²⁶³⁰ Tribunal Transcripts, Day 140, p. 34, Evidence of A/C Anne Marie McMahon

²⁶³¹ Tribunal Transcripts, Day 140, pp. 43-44, Evidence of A/C Anne Marie McMahon

the work. I just want to put it to you, that was an inappropriate determination and caused undue delay in all the surrounding circumstances of this case.

A. *I don't accept that, Chairman.*

Q. *Very good. I am going to put it to you that that had the effect of discrediting Garda Keogh, the delay in particular had the effect of discrediting Garda Keogh and in fact that that was borne out in reality because no formal discipline has ever been placed on Garda A, isn't that the case?*

A. *I don't accept that.*²⁶³²

Counsel for the tribunal asked her about the allegation that she had deliberately targeted and/or discredited Garda Keogh:

*Under no circumstances whatsoever was I trying to deliberately target or discredit Garda Keogh. On the contrary, I carried out the investigation in a thorough and professional manner. I recommended a board of inquiry in respect of one of the allegations he made because there was substance to it. I found from my investigation that there was substance to it. And as I have said already, the board of inquiry would have additional authority to explore that further. So I would say in fact it's the exact opposite to what is being asserted here.*²⁶³³

A/C McMahon was also asked about the decision of A/C Sheehan not to establish a board of inquiry as recommended by her:

Q. *Now I think that since then Assistant Commissioner Sheehan has provided a statement to the Tribunal, which was made on the 9th October. On an evidential basis he doesn't agree with your assessment and he is entitled to a different view in relation to it, but he places great reliance on the fact that the charges, as investigated, concerns frustrating a criminal investigation, in circumstances where in fact the investigation wasn't frustrated, that it was – there were pleas of guilty in the case. Do you understand; that's one of the issues that he points out?*

A. *Yes. That is the case. And I take a different view to that, to Assistant Commissioner Sheehan's view. The attempt to frustrate the investigation and the outcome of the investigation are two separate things in my view. In fairness to Garda Keogh, he made a statement outlining the fact that Garda A told him that he tipped off Ms. B in relation to a search that was forthcoming. That is where the frustration or the attempted frustration of the investigation comes in. The outcome of the case is a separate matter altogether. And it was for that reason that I recommended a board of inquiry.*²⁶³⁴

Counsel for An Garda Síochána asked his client about the gravamen of Garda Keogh's complaint to the tribunal:

Q. *Just to be clear, the allegation being made against you is that any delay in relation to your investigation were designed to target Garda Keogh because he had made disclosures. What do you have to say in relation to that allegation?*

A. *Chairman, nothing could be further from the truth in terms of my perspective on this. As I have already outlined, I carried out the investigation in the manner I did, I got additional help, it was a thorough investigation, and really I was shocked to see this in the transcript.*²⁶³⁵

²⁶³² Tribunal Transcripts, Day 140, p. 79, Evidence of A/C Anne Marie McMahon

²⁶³³ Tribunal Transcripts, Day 140, p. 41, Evidence of A/C Anne Marie McMahon

²⁶³⁴ Tribunal Transcripts, Day 140, pp. 34-35, Evidence of A/C Anne Marie McMahon

²⁶³⁵ Tribunal Transcripts, Day 140, p. 80, Evidence of A/C Anne Marie McMahon

Q. *Insofar as there is any suggestion by your conduct you targeted or discredited Garda Keogh, does that have any foundation whatsoever?*

A. *No, the contrary was the case. I was doing everything in my power to professionally and thoroughly investigate and in doing so, through the provision of the statement from Ms. B, brought that to the attention of the criminal team also.*²⁶³⁶

Detective Inspector Michael Coppinger

In his statement to the tribunal, D/Insp Coppinger outlined that, as part of his role in the Ó Cualáin investigation, he made a number of statements for the purpose of submitting files to the Director of Public Prosecutions. He annexed these statements to his statement to the tribunal. He referred to the statement provided by Ms B to the McMahon investigation and stated that *‘on sight of same it was clear that Ms B was confirming involvement of Gardai in malpractice in Athlone Garda District’*.²⁶³⁷

Superintendent Michael Leacy

In his statement to the tribunal, Supt Leacy said that on 24th February 2016 he was nominated to assist A/C Nolan to investigate allegations of breaches of discipline against Garda A and other gardai.²⁶³⁸ He stated that:

*On the 26th April 2017, Assistant Commissioner McMahon was appointed to continue the investigation following the retirement of Assistant Commissioner Nolan. During the course of this investigation I presided over a number of conferences, reviewed documents and statements obtained and was present during the formal interviews with _____, _____, _____ and Garda A. On the 2nd February 2017, accompanied by Detective Inspector Maher I met with the confidential reporter in Portlaoise by appointment.*²⁶³⁹

Supt Leacy stated that on three different dates in 2018 he telephoned the confidential reporter’s solicitors with a view to making arrangements to meet with Garda Keogh:

*On the following dates in 2018, 24th August, 2018 at 11.40am, call duration 20 seconds, 28th August, 2018 at 15.19pm, call duration 35 seconds and the 4th September, 2018 at 12.22pm, call duration 26 seconds, I contacted the confidential reporter’s solicitors office... with a view to making arrangements to meet with the confidential reporter.*²⁶⁴⁰

He was asked by counsel for the tribunal who had responsibility for notifying persons involved in a disciplinary investigation of the appointment of an investigating officer. He replied:

In relation to a discipline investigation, the members concerned would be notified by the investigating officer.

Q. *The investigating officer?*

A. *Or the appointing officer.*

Q. *So is it your evidence to the Chair that Assistant Commissioner McMahon had the responsibility to notify the four gardai and Garda Keogh?*

²⁶³⁶ Tribunal Transcripts, Day 140, p. 85, Evidence of A/C Anne Marie McMahon

²⁶³⁷ Tribunal Documents, Statement of D/Insp Michael Coppinger, p. 3893

²⁶³⁸ Tribunal Documents, Statement of Supt Michael Leacy, p. 1575 I

²⁶³⁹ Tribunal Documents, Statement of Supt Michael Leacy, p. 1575 I

²⁶⁴⁰ Tribunal Documents, Statement of Supt Michael Leacy, p. 1575 I

A. *Well, I think she referenced that in her evidence as well, that she enquired if they had been notified.*

Q. *I think we might as well open it up, if there is an issue about it. Day 140 and it's page 11. Keep going down. She said:*

"I got confirmation that the guards who were the subject of the investigation were notified. I didn't get any confirmation that Garda Keogh was notified."

But what I am asking you is: Whose job was it to do the notification and was it your team or not or you as one of the investigators or not?

A. *No. Assistant Commissioner McMahon sought the application in that regard. We were dealing with a discipline investigation. It certainly wasn't my function to notify Garda Keogh.*²⁶⁴¹

Counsel for the tribunal asked him about a meeting he attended in Dublin with A/C McMahon, A/C McPartlin, C/Supt Nyland, C/Supt Nugent, D/Insp Coppinger and D/Insp Maher:

Q. *Was there a discussion of putting the discipline investigation on hold or not because this was to happen, do you remember that?*

A. *It certainly would have been a factor to consider because if the Gardaí, the criminal investigation team were going to re interview Ms. B and Garda A in respect of this particular aspect in her statement, then we wouldn't be interviewing Garda A in respect of disciplinary matters until that was concluded.*

Q. *Okay. But was there an express discussion with regard to suspending the criminal investigation to allow this issue to proceed or what do you recall?*

A. *That's my note of the meeting and I would imagine that if a decision was made to interview Garda A in respect of this, following interview with Ms. B, then the discipline side wouldn't continue to interview Garda A until such time as that had been done.*

Q. *Chairman: Do you think that was the understanding of the people at the meeting?*

A. *Yes, yes.*²⁶⁴²

Counsel for the tribunal asked him about the efforts he made to contact Garda Keogh:

Q. *... You say in your statement, you made contact with his solicitor's office on 24th August 2018, at 11:40am.*

A. *That's right.*

Q. *You refer to another call on 28th August 2018. You say the call duration was 35 seconds on that date, in your statement. You see the response there. He said he has no note recording that the superintendent telephoned other than that now received from the Tribunal. Now you have included records, isn't that right?*

A. *That's correct.*

Q. *Okay. Is it your evidence that you did leave a message?*

²⁶⁴¹ Tribunal Transcripts, Day 143, p. 175, Evidence of Supt Michael Leacy

²⁶⁴² Tribunal Transcripts, Day 143, pp. 177-178, Evidence of Supt Michael Leacy

- A. *I may have spoken to someone, I am not sure.*
- Q. *Well, I suppose from Garda Keogh's perspective, he may wish to know whether you spoke to someone, whether you left a message, whether you identified who you were, was it the investigation, etcetera. Can you give us any detail. Do you remember?*
- A. *I'm afraid not. I kept no notes of who I spoke to.*
- Q. *As I say, you do have a record of that, from call records, at 15766, but there is no need to open those?*
- A. *Yeah.*
- Q. *You refer to another call, 4th September 2018, at 12:22, and you say that's 26 seconds. Now, [Garda Keogh's solicitor] said that you did call the office and spoke to a staff member and left a landline number but no message, is he correct in that regard?*
- A. *Obviously I spoke to someone and that's what he is saying. I think the call lasted 24 25 seconds, so I must have spoken to someone.*
- Q. *Okay. Now, you say you did not keep a note of the contacts or who you spoke to, is that right?*
- A. *That's correct.*²⁶⁴³

Supt Leacy agreed that these were the only three contacts he had with Garda Keogh's solicitors.²⁶⁴⁴

Supt Leacy was cross-examined by counsel on behalf of Garda Keogh on the use made of Ms B's statement and the overall issue of delay. He replied:

Once we had interviewed Ms. B and she made a statement in relation to it, we forwarded that on to the criminal investigation team to take whatever steps they deemed appropriate.

- Q. *And you felt that that was the extent of your role, is that right?*
- A. *That's correct.*
- Q. *Do you maintain that that is still the correct thing to have done?*
- A. *Yes.*
- Q. *... Just in relation to the issue of delay, you were on the case for almost two years as well, am I right about that?*
- A. *That's correct.*
- Q. *That's correct. Do you accept that that is a very long time for an investigation to be trundling along?*
- A. *No. In relation to this particular investigation, it just wasn't Garda Keogh, there were three other members, there had to be investigations conducted in respect of those. So I wouldn't accept that, no.*
- Q. *So is it your position that that was a reasonable length of time?*
- A. *Yes.*

²⁶⁴³ Tribunal Transcripts, Day 143, pp. 179-181, Evidence of Supt Michael Leacy

²⁶⁴⁴ Tribunal Transcripts, Day 143, p. 182, Evidence of Supt Michael Leacy

Q. ... On that basis, you don't accept that it had any affect on Garda Keogh in terms of discrediting his position, am I right about that?

A. Absolutely not.²⁶⁴⁵

Counsel on behalf of An Garda Síochána cross-examined Supt Leacy about Garda Keogh's criticisms of the investigation:

Q. What was your view at that time as to whether it would have been appropriate to arrest?

A. For the discipline side.

Q. For the disciplinary –

A. It wouldn't have been appropriate, no.

Q. That was a matter for the criminal investigation?

A. Yes.

Q. The second issue that Garda Keogh complains of has already been canvassed in some detail today, but the actual complaint is of deliberate delay. In your view did you ever deliberately delay or did your colleagues ever deliberately delay the investigation?

A. No, Chairman.

Q. With a view to discrediting Garda Keogh?

A. Absolutely not, no.

Q. And then the third complaint is the failure to keep Garda Keogh informed. You've already referred to the interview in February 2017?

A. Yes.

Q. Then there were the three attempts that you made to contact Garda Keogh's solicitor?

A. Yes.

Q. Did he contact you back?

A. No.

Q. By correspondence or otherwise?

A. No.²⁶⁴⁶

Detective Inspector Seamus Maher

In his statement to the tribunal, D/Insp Maher said that he was appointed by A/C Nolan on 24th February 2016 to assist in the investigation. He outlined that his role was to *'assist with recording statements, review materials and progress the investigation as required'*.²⁶⁴⁷

He stated that he had direct contact with Garda Keogh on two occasions, on 2nd February 2017 at Portlaoise Garda Station and on 6th March 2018 by telephone. He made contemporaneous notes of this conversation in his officer's journal.

²⁶⁴⁵ Tribunal Transcripts, Day 143, pp. 183-184, Evidence of Supt Michael Leacy

²⁶⁴⁶ Tribunal Transcripts, Day 143, pp. 184-185, Evidence of Supt Michael Leacy

²⁶⁴⁷ Tribunal Documents, Statement of D/Insp Seamus Maher, p. 15808

Counsel for the tribunal asked D/Insp Maher to refer to his notes of this phone call with Garda Keogh:

“10:15 rang number. Introduced myself. Rang from Nenagh landline”.

I was an inspector in Nenagh at the time.

“[NK:] I don’t want to be rude inspector but you can meet me through my solicitor. It’s this shit with Donie Ó Cualáin. Read some of the replies from chief superintendent and they are crazy.

SM: ... I just want to give you an update on where with our investigation.

NK: I have very good contacts, there [is] no need to tell me an update. You’re not at fault. No one was ever arrested. Pull yourself away. No one was ever lifted. I have no hassle with ye, I have no issues with ye. I have with Ó Cualáin. Anything new you can tell me over the phone. I’m not recording this.

SM: I explained I am ringing on behalf of AC Anne Marie McMahon.

NK: Not a good fit. Do you know who her husband is? Best superintendent I ever had. He was one of the best to tackle crime. He was one who supported Nóirín O’Sullivan when she was what she was. Anne Marie McMahon is a friend of Nóirín O’Sullivan.”

At this point I note I tried to intervene

NK: Something about being a bigger game.”

When I wrote something it was a little incoherent, I didn’t understand what that precursor was, so I wrote:

“Something about being in a bigger game. Ó Cualáin turned a blind eye to what’s going on in Athlone. Drugs going missing and two other mega things. It’s all going to come out. Talk to D/Inspector Declan Mulcahy. He’ll explain the serious investigation is about.

SM: I’m just part of the investigation.

NK: You see what’s happening with McCabe stuff. I heard word Ó Cualáin is trying to bring Garda A back and wasn’t arrested.
Ring Declan Mulcahy, that’s all I’m asking.

SM: I asked to meet you again.

NK: Meet you again Cig no problem.

SM: I explained with Superintendent Lacey.

NK: Don’t know what to make of him. I found nothing bad.

SM: I explained we can meet in a coffee shop, plain clothes. Update and picture of what’s going on.

NK: Someone at the door.”

I noted that the dogs are barking. He asked to ring back in five minutes. I rang at 10:30. FPP relates to fingerprinting of a particular issue. Rang at 10:38, message minder

- Q. *Okay. Now you say you made that phone call because you had been tasked by Assistant Commissioner McMahon to do that, is that right?*
- A. *That is correct.*
- Q. *Now, again, and this is also in your statement, you have two notes of attempting to make telephone contact, one on 30th July 2018 and on 31st July 2018. You just left messages on his message minder, is that right?*
- A. *That's correct.*
- Q. *Did you ever succeed in making contact with him?*
- A. *Not from that point onwards, no. And I escalated it at the next conference to Assistant Commissioner McMahon, informing her of my failure to make contact and then that's when Superintendent Lacey got involved and was asked to contact [Garda Keogh's solicitor's] office.²⁶⁴⁸*

Chief Superintendent Margaret Nugent

C/Supt Nugent said in her statement to the tribunal that, in her position as chief superintendent, Internal Affairs, she provided support and guidance on matters of discipline and complaints to A/C Sheahan. She said that at the time of her appointment, Garda A had been suspended since 14th October 2015.²⁶⁴⁹

She stated that she examined the report of A/C McMahon, which was dated on 27th February 2019:

As is my normal practice, I reviewed the investigation file to identify any potential issues and to provide guidance to Assistant Commissioner Governance and Accountability. On 30 April 2019, I provided my report to Assistant Commissioner David Sheahan, Governance and Accountability, on the discipline investigation that had been concluded by Assistant Commissioner Anne Marie Mc Mahon into Garda A.

In that report I provided my views, that the facts disclosed in that investigation did not warrant a board of inquiry, and if Assistant Commissioner Sheahan agreed with this view, that the suspension of Garda A should be lifted with immediate effect.²⁶⁵⁰

C/Supt Nugent stated that she formed this view on the basis of the following concerns:

- lack of corroborative/insufficient evidence
- Potential procedural impediments such as;
 - (i) *the delay of some nine months in making an appointment in accordance with the Garda Síochána (Discipline) Regulations 2007*
 - (ii) *The delay of almost four and half years in completing the discipline investigation*
 - (ii) *The inherent problems associated with the changing composition of and lack of continuity of both the investigation team and the appointing officer (Tab B).*

²⁶⁴⁸ Tribunal Transcripts, Day 143, pp. 192-195, Evidence of D/Insp Seamus Maher

²⁶⁴⁹ Tribunal Documents, Statement of C/Supt Margaret Nugent, p. 14265

²⁶⁵⁰ Tribunal Documents, Statement of C/Supt Margaret Nugent, p. 14265

*The decision in this case on whether to put the matter before a board of inquiry ultimately rested with Assistant Commissioner David Sheahan, Governance and Accountability. Having considered the investigation file, Assistant Commissioner Sheahan determined that a Board of Inquiry was not warranted in this case.*²⁶⁵¹

C/Supt Nugent sent a further report to A/C Sheahan on 30th April 2019 wherein she recommended that the suspension of Garda A be discontinued in relation to the allegations investigated by A/C McMahon.²⁶⁵²

In her evidence to the tribunal, C/Supt Nugent said that there was a difficulty in finding a member guilty of a less serious breach of discipline under the Regulations:

The difficulty in our regulations is, once an assessment is made at early stage as to whether or not it's a serious breach or a less serious breach, that is made at the appointment stage. If somebody discovers when they are going through an investigation at the serious level, they cannot go back from what we call Regulation 23 to Regulation 14, which is a less serious breach. But there is nothing in the regulations in respect of – nothing to prevent a Regulation 10 being given once an investigation is undertaken in respect of a serious breach of the regulations. And what Regulation 10 offers is an opportunity for local management to give a warning about the type of behaviour or the practice that would be unacceptable. That was the only option that was open, because in Regulation 10 it clearly states, notwithstanding anything in the regulations, that a supervisor can give a Regulation 10. But that wasn't what Assistant Commissioner McMahon was asked to adjudicate on or to make recommendations on. Her role was to consider whether or not the matter would be brought before a board of inquiry.

Q. I think we have heard evidence that you can't go up – sorry, you could go up but you couldn't go down?

A. You can't go down from a 23 to 14.

Q. Okay.

A. But if you read Regulation 10, it clearly states that notwithstanding anything in these regulations, that you can give a Regulation 10. But you cannot, for example, come down from a 14 to a Regulation 10. That's very clear.

Q. Okay.

A. You can't – but you can – it's silent on the matter of utilising a Regulation 10. Which gives the opportunity for a warning to be given that the type of behaviour discovered is unacceptable. It would be put on somebody's file for three years locally.²⁶⁵³

Counsel for the tribunal referred C/Supt Nugent to point (iii) in her recommendations to A/C Sheahan and asked the following:

Q. ... You point out a procedural problem with the replacement of the investigating officer?

A. Yes.

Q. I think in summary, is that whether it was to be a continuation of the investigation or a fresh investigation, is that right?

²⁶⁵¹ Tribunal Documents, Statement of C/Supt Margaret Nugent, p. 14265 at p. 14266

²⁶⁵² Tribunal Documents, Statement of C/Supt Margaret Nugent, p. 14265 at p. 14266

²⁶⁵³ Tribunal Transcripts, Day 144, pp. 42-43, Evidence of C/Supt Margaret Nugent

- A. *That's correct. We had a judgment on it, it's in the documentation, which actually came in after the investigation had commenced and it's the Broughall Doyle Waldron judgment. We had to change a lot of our practices after that particular judgment. So this report came in and there was an issue with continuity of investigation team.*²⁶⁵⁴

She was asked by counsel for An Garda Síochána about her assessment:

*Well, what captures my thinking, it's the lack of corroborative available evidence in respect of this case to assist in determining on the balance of probabilities whether or not this particular case should go before a board of inquiry, based on the fact that – I suppose it's not documented, but based on the fact that there – I mean, there was anecdotal evidence, there was a person who retracted her statement and there was also hearsay evidence. So it was based on that particular culmination of matters.*²⁶⁵⁵

Assistant Commissioner David Sheahan

As previously outlined, the Garda Commissioner delegated certain functions to A/C Sheahan pursuant to the Discipline Regulations, including a function under Regulation 25, which is a decision whether or not to establish a board of inquiry following an investigation under part 3 of the said Regulations.²⁶⁵⁶

In his statement to the tribunal, A/C Sheahan said that:

*I am of the view that as Assistant Commissioner with responsibility for Governance and Accountability, it is incumbent on me to ensure that decisions that I make are made with proper and full consideration of the principles of natural justice and fair procedures in respect of all members. In order to ensure that I make a fair and balanced decision regarding the establishment of Boards of Inquiry I have a duty to fully consider any evidential and procedural issues that may arise on a case by case basis. I also take due cognisance of relevant Case Law, best practice and precedent applicable to the Discipline Regulations to ensure that the disciplinary process and, by extension the Commissioner, is not acting ultra vires of the Discipline Regulations. I am of the view that if a decision is made in the knowledge that the procedures leading to that decision are legally and/or procedurally flawed then the principles of natural justice and fair procedures are not served.*²⁶⁵⁷

A/C Sheahan said that he read and considered the investigation file submitted by A/C McMahon on 27th February 2019 and determined that a board of inquiry was not warranted.²⁶⁵⁸ He explained that his nomination of A/C McPartlin to conduct a review of the investigation was as a result of the suggestion by A/C McMahon and that the *'purpose of the review was to ensure that the investigation was conducted with due probity'*.²⁶⁵⁹

He told counsel for the tribunal that:

... In respect of that, there was one issue that arose at the end of her report and that was really to check the probity of the investigation itself. The reason for that was because there had been an incident that occurred between her husband and Garda Nicky Keogh and what I wanted to try do in respect of – or what the assistant commissioner asked me to consider was that the matter

²⁶⁵⁴ Tribunal Transcripts, Day 144, pp. 39-40, Evidence of C/Supt Margaret Nugent

²⁶⁵⁵ Tribunal Transcripts, Day 144, p. 51, Evidence of C/Supt Margaret Nugent

²⁶⁵⁶ Tribunal Documents, Statement of A/C David Sheahan, p. 14249

²⁶⁵⁷ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14250

²⁶⁵⁸ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14250

²⁶⁵⁹ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14251

*be peer reviewed for the purpose of determining the probity of the investigation, that there was nothing in that that would lend itself to suggest that there was anything but fairness in the investigation. And on 19th June 2019 then I forwarded the file to Assistant Commissioner Orla McPartlin for the purpose of doing that due diligence in the context of probity of the investigation.*²⁶⁶⁰

In respect of his decision on whether or not to establish a board of inquiry, A/C Sheahan said in his statement that in such cases he had regard to relevant case law so as to ensure that the investigation was procedurally sound.²⁶⁶¹

He stated that he took cognisance of the evidence on the file and, in respect of the allegation at number 1 in the investigation report:

*I am of the view that the premise of this allegation is that Garda A frustrated the investigation of a Public Order offence. The evidence is that the prosecution of the Public Order offence was not frustrated and the evidence shows that _____ was convicted of three charges relating to the public order incident and sentenced. Ms B was also convicted of one charge and convicted. It is my view that the alleged frustration and the alleged meeting are inextricably linked in the allegation as set out.*²⁶⁶²

A/C Sheahan also said that:

*Assistant Commissioner McMahan states in her investigation report that it has not been established what information of evidential value may have been gleaned in the event mobile phone records of Ms B and _____ had been obtained by An Garda Síochána in this instance. If the phones were disposed of, the failure to glean evidence of the public order offence did not result in a frustration of that investigation.*²⁶⁶³

A/C Sheahan referred to the contents of the statement of Garda Keogh and the statement made by Ms B:

*I noted that Ms B, in a statement dated 17th November 2017, states that Garda A did meet to tell her to dispose of the phones. The allegations are denied by Garda A. I noted that this statement was later withdrawn by Ms B. While the investigation found that the level of contact between Garda A and Ms B in the three-month period between May and August 2010 appeared excessive, there was no evidence to indicate the subject matter of that contact.*²⁶⁶⁴

In conclusion, on the evidential merits of the case, A/C Sheahan said in his statement to the tribunal that he formed the following view:

*I am of the view that if a breach of discipline was to be preferred it would have to allege that Garda A frustrated the investigation, as this is what was originally alleged in the discipline appointment. As the prosecution was not frustrated a key pillar upon which any breach could be based falls.*²⁶⁶⁵

He also considered the overall disciplinary process from a procedural perspective:

²⁶⁶⁰ Tribunal Transcripts, Day 140, pp. 97-98, Evidence of A/C David Sheahan

²⁶⁶¹ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14251

²⁶⁶² Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14251

²⁶⁶³ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14252

²⁶⁶⁴ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14252

²⁶⁶⁵ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14252

I am of the view that my role in this matter includes ensuring that the overall disciplinary process was conducted in accordance with natural justice and fair procedures and that where recommendations arise from a process which may be ultra vires, then I must consider if it is fair, in all the circumstances, to continue with the process.

Notwithstanding the evidential considerations, I am of the view that it would be wholly inappropriate and unfair and wrong to continue a process which I am satisfied is no longer procedurally sound.²⁶⁶⁶

He then identified the procedural issues that had ‘an adverse impact on the process’ as follows:

The following three issues were of particular concern and I attached considerable weight to them in formulating my decision in this matter.

- 1. Delay in the commencement of the discipline investigation,*
- 2. Prior involvement, and*
- 3. The use in the discipline investigation of statements made in respect of the criminal investigation.*

In addition to the above, I considered the following aspects which do not carry the same weight as the above items, but which had a bearing on my decision in this matter;

- 4. The role of the Appointing Officer, and*
- 5. Recent case law and impact on replacing investigating officers.²⁶⁶⁷*

In relation to the ‘Delay in the commencement of the discipline investigation’, A/C Sheahan noted that the statement of Garda Keogh, upon which the allegations are grounded and submitted as part of the discipline file, was made between 11th and 18th June 2014 as part of a criminal investigation.²⁶⁶⁸ He expressed the view that there was delay in making the disciplinary appointment under the Garda Síochána (Discipline) Regulations, 2007:

Where there are sufficient grounds to commence a criminal investigation in respect of a member of An Garda Síochána, there should also be sufficient grounds to commence a discipline investigation. However, in this case the first appointment in respect of disciplinary matters, was on the 25th June 2015 almost 12 months after Garda Keogh made his statement for the criminal investigation. It is my view that this constitutes an unreasonable delay in the commencement of the investigation in respect of Garda A.²⁶⁶⁹

Counsel for the tribunal asked A/C Sheahan to outline the reasons for his decision in respect of the issue of delay:

... My view of it was that in respect of the fact finding, for want of a better word, that that’s covered very much by case law, it’s the case law I refer to on page 2, is Mark Gibbons, which talks about, that when a person is appointed to do a fact finding that it’s incumbent on them to do it expeditiously. And the guideline was given for eight weeks to have that done. From my perspective in respect of this, I was of the view, rightly or wrongly, that from a procedural

²⁶⁶⁶ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at pp. 14252-14253

²⁶⁶⁷ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14253

²⁶⁶⁸ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14253

²⁶⁶⁹ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14254

*perspective the length of time it took to make the appointment in respect of this matter was going to cause me difficulties in any board of inquiry thereafter.*²⁶⁷⁰

In his statement to the tribunal, in relation to the issue of 'Prior Involvement', A/C Sheahan stated:

Contrary to advices from Internal Affairs at the time, Assistant Commissioner McMahon was appointed by way of Form LA 31. In my view this had the unintended effect of starting the investigations afresh.

*As this was effectively a formal appointment in accordance with Regulation 23 of the Discipline Regulations as stated on the appointment form and not merely the issue of replacing the original investigating officer. Thus this raises the issue of prior involvement in respect of the members assisting with the investigation.*²⁶⁷¹

He said that the advice of Internal Affairs was not heeded in this regard:

I am aware that advice issued from Internal Affairs to the Assistant Commissioner Northern Region stating that it was not necessary to complete a new LA 31 and that on this basis the assisting members could continue in the investigation.

*However, these advices were not heeded and the appointment was made on a form LA31 at the office of Deputy Commissioner Policing and Security. Form LA 31 is an appointment form and references Regulation 23 which requires the Commissioner to ensure that members assisting in the investigation have had no prior involvement in the matter.*²⁶⁷²

A/C Sheahan gave evidence on this issue to the tribunal:

... My experience of dealing with discipline of those natures, is that the [LA.31] that we are familiar with is actually an appointment, that's dealt with under regulation 23. That's a specific form to regulation 23 and when that's issued, that form then becomes the basis of your really going forward. In this particular case, Deputy Twomey at the time issued an LA31, which had that very unintended effect of starting the investigation afresh. In my experience in dealing with discipline, that normally what happens in those cases, in the event of somebody either dying, retiring or for some other reason can't do it, it is done by a plain paper report to say that you are hereby continuing to do that investigation. And the LA31 that was given in this particular case to Assistant Commissioner Nolan, that that would be forwarded to you to continue on with your investigation.

Chairman: It's a question of the wrong piece of paper.

A. That's about the height of it, yeah.

Q. **Chairman:** You say he should have sent the appointment with Assistant Commissioner Nolan but say, please continue this investigation, for which Assistant Commissioner Nolan was appointed?

A. Yes.

Q. **Chairman:** And you're now to continue with it?

²⁶⁷⁰ Tribunal Transcripts, Day 140, p. 108, Evidence of A/C David Sheahan

²⁶⁷¹ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14254

²⁶⁷² Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14254

- A. *And you're to continue with this investigation.*
- Q. *Chairman: So instead of which there were, as you see it, two appointments and the effect of the appointment under regulation 23 in form IA31 –*
- A. *Yes.*
- Q. *Chairman: was to in effect start it again?*
- A. *That's correct. And I think, to be honest with you, as we are here this morning, that was queried for a number of months thereafter, until the deputy clarified it on the 30th August, I think it was.*
- Q. *And the assistant commissioner was directed to proceed.*
- A. *Correct.*
- Q. *On the basis that she was continuing the basis of Assistant Commissioner Nolan?*
- A. *Yes.*²⁶⁷³

In his statement to the tribunal, he referred to Regulation 23(4) to the effect that the investigating officer or any other member shall not have *'been involved in any capacity in relation to an earlier aspect of the case'*, and also to the case of *Richard Galvin and Gerard Newman v An Garda Síochána 2012 No. 215JR*, which he said was relevant to the *'mandatory'* nature of the Regulations. He concluded that *'in this regard I am satisfied the Regulations were not complied with'*.²⁶⁷⁴ He was asked by counsel for the tribunal to elaborate on this view:

*In the Broughall Waldron & Doyle case, which was taken – a JR that was adjudicated upon on 7/5/2018, that had the impact or the import that if you are starting a new investigation that you can't swap out one person for another person, you literally have to go back to the start and you have to – what it says is that where the investigating officer needs to be replaced and in the absence of any express provision in the regulation for the appointment of a replacement, prudence dictates that a new investigating team be established and a new investigating officer to ensure continuity in terms. And we sought advice in respect of that, because that in itself had serious implications for us, particular around board of inquiries and we sought advices in respect of that and we were told that if it goes down the chain that we need to swap out teams. When there is a change of personnel, that you can't continue to use the team that was in place, you must replace the whole lot of them.*²⁶⁷⁵

In relation to the third procedural issue, *'the use in the discipline investigation of statements made in respect of the criminal investigation'*, A/C Sheahan referred to Regulation 24(5) of the Garda Síochána (Discipline) Regulations, 2007 which required *inter alia* that, after the investigation has been completed, the investigating officer must submit a written report of the investigation together with *'copies of any written statements made during it'* to the Garda Commissioner.²⁶⁷⁶

He said he had examined the report and noted that 49 statements were taken prior to the appointment of A/C Nolan. He said in his statement that *'it is noted that some of the statements taken for the criminal investigation noted that they may be used for subsequent discipline proceedings.'*

²⁶⁷³ Tribunal Transcripts, Day 140, pp. 110-112, Evidence of A/C David Sheahan

²⁶⁷⁴ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at pp. 14254-14255

²⁶⁷⁵ Tribunal Transcripts, Day 140, p. 117, Evidence of A/C David Sheahan

²⁶⁷⁶ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14255

However, the statements were not taken by the discipline investigating officers or any member of that investigating team.²⁶⁷⁷ Referring to case law, A/C Sheahan concluded that the statements did *'not comply with the precedent set [in] the Paul Fanning High Court case and the requirement of Regulation 24(2) was not satisfied'*.²⁶⁷⁸

In relation to the fourth procedural issue, *'the role of the Appointing Officer'*, A/C Sheahan referred to section 1.8(3) of HQ Directive 159/08:²⁶⁷⁹

On the 11th April 2017 as Assistant Commissioner Nolan was due to retire Chief Superintendent Internal Affairs wrote to Assistant Commissioner Northern Region requesting that an officer be nominated to replace Assistant Commissioner Nolan. Deputy Commissioner John Twomey, Policing and Security, appointed Assistant Commissioner Anne Marie McMahon on the 26th April 2017.

*It is my view the Assistant Commissioner McMahon should have been appointed by whoever held the office of Assistant Commissioner Northern Region at that time.*²⁶⁸⁰

However, while stating that this was irregular, he said that he was satisfied that it had no substantive effect on the investigation.

In relation to the fifth and final procedural issue identified in his statement, *'Recent case law and impact on replacing investigating officers'*, A/C Sheahan referred to case law which he said had an implication for circumstances where an investigating officer needs to be replaced:

*In the absence of any express provision in the regulations for the appointment of a replacement, prudence dictates that a new investigation team be established with a new investigating officer to ensure that continuity in teams of personnel with specific reporting obligations or decision making obligations under the Regulations.*²⁶⁸¹

He also said that *'taking up where another left off is problematic given the obligation to report. The replacement cannot take up where the other person left off as the latter cannot be asked to stand over any conclusions or decisions reached by the earlier incumbent'*.²⁶⁸² He noted that, in A/C McMahon's investigation, some investigators on her team were originally nominated by A/C Nolan.²⁶⁸³

A/C Sheahan concluded, as a result of the issues identified, that it was unsafe to establish a board of inquiry:

*Having regard to ... all of the foregoing I was of the view that it was unsafe to proceed to a Board of Inquiry and to do so in the knowledge that the procedures were flawed would be contrary to natural justice and fair procedure. I was of the view that Assistant Commissioner Mc Mahon and her investigation team undertook their duties in this regard in good faith, and with the utmost of integrity.*²⁶⁸⁴

He was cross-examined by counsel on behalf of Garda Keogh and it was put to A/C Sheahan that Garda Keogh, having made his disclosure in 2014, was justified in his criticism of the delay in the disciplinary process:

²⁶⁷⁷ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14255

²⁶⁷⁸ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14256

²⁶⁷⁹ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14256

²⁶⁸⁰ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at pp. 14256-14257

²⁶⁸¹ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14257

²⁶⁸² Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14257

²⁶⁸³ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14257

²⁶⁸⁴ Tribunal Documents, Statement of A/C David Sheahan, p. 14249 at p. 14258

*I hear what Garda Keogh is saying and I can't argue with him in one sense, but I have to say that the level – or sorry, the amount of issues that had to be dealt with, their complexity and how they were intertwined had a major factor in respect of it. I can't but be complimentary of the standard of the file that was actually submitted in the end, to try and tease out and get to the truth of all the issues that were raised.*²⁶⁸⁵

Counsel on behalf of Garda Keogh also put the following to A/C Sheahan:

- Q. I just have to suggest to you that the overall delay in conducting the disciplinary process has had the effect of discrediting Garda Keogh?
- A. Oh, I have to say, I couldn't agree with that, on the basis that even from an evidential point of view to have it – to get it to the point of being able to present it before a board of inquiry was going to cause me serious difficulties, even from an evidential point of view. So I don't see how – no, I couldn't accept that, sorry.²⁶⁸⁶

A/C Sheahan was asked by counsel on behalf of An Garda Síochána why he had tasked A/C McPartlin to conduct a peer review:

*From my initial review of it at that point in time, I was quite satisfied as to the probity of the investigation and what was done. Assistant Commissioner McMahon had raised one particular issue that I felt in the interest of – in the interest of her and her team and what they did versus the other matter that had risen its head, that it would be important to have it out, to have it reviewed. Once the investigation file – I forward it out to Assistant Commissioner McPartlin to review it in the context of the probity of the investigation and once I received it back, once I received it back in from – the results back from Assistant Commissioner McPartlin, I reviewed it again. There was nothing in Assistant Commissioner McPartlin's report back to me that warranted a further change in my decision in respect of the matter.*²⁶⁸⁷

Counsel on behalf of An Garda Síochána asked the assistant commissioner the following:

- Q. And finally, assistant commissioner, in your consideration, it's ultimately a matter for the Chair, but in your consideration of the papers that you saw, did you see any evidence of targeting or discrediting of Garda Keogh?
- A. I can only speak for the actions that I took in respect of this, and I have to say that from the time that I got the file until I dealt with it, that I was professional in everything I did and that any decision I made in respect of this matter, I clearly laid it out in the statement, and certainly the last thing that was on my mind was targeting Garda Keogh or anyone in respect of the matter. This was about trying to get a process across the line one way or the other in respect of that.²⁶⁸⁸

Assistant Commissioner Orla McPartlin

In her statement to the tribunal, A/C McPartlin said that on 23rd May 2019 she received a notification from A/C Sheahan of her nomination to conduct a peer review of the investigation of A/C McMahon.²⁶⁸⁹ She stated that she received four volumes of material and read the file in relation to the nine allegations against Garda A:

²⁶⁸⁵ Tribunal Transcripts, Day 140, p. 124, Evidence of A/C David Sheahan

²⁶⁸⁶ Tribunal Transcripts, Day 140, pp. 125-126, Evidence of A/C David Sheahan

²⁶⁸⁷ Tribunal Transcripts, Day 140, pp. 131-132, Evidence of A/C David Sheahan

²⁶⁸⁸ Tribunal Transcripts, Day 140, p. 132, Evidence of A/C David Sheahan

²⁶⁸⁹ Tribunal Documents, Statement of A/C Orla McPartlin, p. 14183

*Having completed my review of the investigation file I concluded that all of the allegations made by the confidential reporter were investigated in a rigorous and thorough manner. All lines of inquiry were pursued to a conclusion insofar as that was possible by Assistant Commissioner McMahon. All persons nominated by the confidential reporter were interviewed as part of the investigation carried out by Assistant Commissioner McMahon. I was satisfied having reviewed the investigation file that the investigation was thorough and complete.*²⁶⁹⁰

A/C McPartlin stated that she completed her report and it was delivered to A/C Sheahan on 19th June 2019.²⁶⁹¹

She gave evidence to the tribunal about the nature of the review she was tasked to conduct:

*To me it meant I would do a paper review or a desktop review of the investigation file that I received from Assistant Commissioner Sheehan. I had been involved in reviews of other paper files, not relating to criminal investigation files. So my methodology was to go through the whole investigation file, look at all of the allegations, look at the investigations that were carried out, the witnesses that were spoken to, witnesses that were nominated by the complainant and to come to a conclusion in relation to my review or peer review of the investigation.*²⁶⁹²

Deputy Commissioner John Twomey

Counsel for the tribunal asked Dep/C Twomey about A/C Sheahan's opinion that the procedure adopted in appointing A/C McMahon to continue the investigation was flawed:

- Q. Now we had some evidence from Assistant Commissioner Sheehan, who thought that there may be a fault in relation to this. It was one of the matters that he relied on in relation to not establishing a board of inquiry. What's your view in relation to his view, as it were, that this was a flawed procedure?
- A. Well, I think there was clarification in the minute that you have just outlined there, that it was to be taken over. So I think any confusion was clarified at a later stage. So I think when it came to the decision that Assistant Commissioner Sheehan had to make, I think it was – from my perspective, from August of 2017 it was clear to all involved that it was a continuation of the original investigation.²⁶⁹³

The Chairman referred to the letter of 25th September 2017, sent by Insp Noonan on behalf of A/C McMahon to Dep/C Twomey, and asked the deputy commissioner about the issue of notifying Garda Keogh:

- Q. **Chairman:** But the assistant commissioner obviously envisaged that Garda Keogh would also be notified. It doesn't appear he was notified, is that right?
- A. It doesn't, it doesn't. However, in a discipline investigation, it's slightly different to a bullying and harassment investigation or some other forum like that. The genesis of the discipline investigation is the findings of the Ó Cualáin report. So that would have been the information and the evidence that he brought to the table and he would have – based on his findings, he would make a recommendation that on the information that I have gathered during the course of the investigation, there should be a discipline investigation. And that

²⁶⁹⁰ Tribunal Documents, Statement of A/C Orla McPartlin, p. 14183 at p. 14184

²⁶⁹¹ Tribunal Documents, Statement of A/C Orla McPartlin, p. 14183 at p. 14184

²⁶⁹² Tribunal Transcripts, Day 140, p. 141, Evidence of A/C Orla McPartlin

²⁶⁹³ Tribunal Transcripts, Day 143, p. 90, Evidence of Dep/C John Twomey

would be the commencement of the proceedings. So there wouldn't be a single complainant as such.

Q. Chairman: Yes. Was there a decision taken, as far as you know, not to write to Garda Keogh, or did it just happen that way?

A. I would suggest it probably just happened that way, Judge.²⁶⁹⁴

Former Acting Commissioner Dónall Ó Cualáin

The former Acting Commissioner was asked about the allegation of delay made by Garda Keogh. He gave evidence that:

My own investigation, I have already spoken at length about that. There was no delay in that. It was given absolute priority. I think once a criminal type investigation is ongoing, there are issues about moving on with a discipline file. That's the reality. However, appointments had been made early on in that matter. It took a while to conclude the discipline, but they had to await the outcome of my investigation before they could – rather than having to go around the houses again, look for statements that I had taken as part – or that my investigation team had taken, and we were careful at the outset to ensure that all of those statements were taken for both purposes, so that we would be able to hand them over at a certain time.²⁶⁹⁵

Legal Submissions

Garda Nicholas Keogh submitted as follows:²⁶⁹⁶

- that he was discredited by the investigation of A/C Mc Mahon as:
 - he was not informed of A/C McMahon's appointment
 - the assistant commissioner failed to keep him up to date with the investigation
 - upon the statement of Ms B being made to her investigators, the assistant commissioner was obliged to make an arrest and this failure to act was discrediting
 - there was a lengthy period of delay in completing the investigation.
- that there was delay as follows:
 - on 25th June 2015, A/C Nolan was appointed as the investigating officer
 - on 5th August 2015, A/C Ó Cualáin corresponded with A/C Nolan and expressed concerns over the request for his investigating file
 - it was not until 14th August 2015 that A/C Nolan sought to contact the confidential recipient
 - it was not until 24th February 2016 that Supt Leacy, D/Insp Maher, D/Sgt Keevans and Garda Cooke were appointed to the investigating team
 - the Ó Cualáin statements were not made available to the investigation until 17th May 2016

²⁶⁹⁴ Tribunal Transcripts, Day 143, pp. 124-125, Evidence of Dep/C John Twomey

²⁶⁹⁵ Tribunal Transcripts, Day 149, pp. 90-91, Evidence of Former Acting Commissioner Dónall Ó Cualáin

²⁶⁹⁶ 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

- it was not until 9th November 2016 that the first conference for investigation strategy took place
- on 2nd February 2017, Supt Leacy and D/Insp Maher sought consent from Garda Keogh to use his statement given to D/Supt Mulcahy for the purposes of the investigation
- A/C McMahan was appointed to conduct the discipline investigation on 26th April 2017 and on 4th May 2017 there was a conference between the investigators, but it was not until 14th September 2017 that the required personnel were provided to progress matters.
- that in or around 15th November 2017, Ms B provided a statement to An Garda Síochána and notwithstanding the substantial evidence that Ms B provided, no arrest was made and the matter was left in abeyance until August 2018, when Ms B eventually withdrew her statement.
- that, notwithstanding A/C McMahan's appointment in April 2017, Garda A was not interviewed until 4th December 2018. This delay, it was submitted, compounded the prejudice to the case, to the discredit of Garda Keogh. Furthermore, A/C McMahan failed to interview [a previous divisional officer] until 29th January 2018.
- that A/C McMahan failed to complete her investigation until 7th June 2018, having taken more than 15 months to complete her work. This had the effect of discrediting Garda Keogh.
- that, at the time of the appointment of A/C McMahan, almost two years had passed and only the original statements of A/C Ó Cualáin's investigation had been made available. There had been no independent work done by the investigating team and, in the interim, the trail of evidence continued to freeze over.
- that the lengthy period of delay in completing A/C McMahan's investigation resulted in an inability for any aspect of Garda Keogh's allegations to be upheld, despite the assistant commissioner's own recommendation that a board of inquiry be established. This was discrediting to Garda Keogh.

An Garda Síochána submitted as follows:²⁶⁹⁷

Failure to arrest

- that in February 2018, A/C McMahan referred the statement of Ms B to D/Insp Coppinger, who was one of the members of the Ó Cualáin criminal investigation, so that that the investigation team could decide what steps needed to be taken concerning the criminal investigation.
- that in August 2018, Ms B's solicitor indicated that she no longer stood over her witness statement and did not wish to engage with An Garda Síochána in relation to the matter any further. As Ms B was unwilling to stand over her statement, the Director of Public Prosecutions considered that the earlier direction not to prosecute Garda A should stand.
- that A/C McMahan conducted what was merely the first step in a disciplinary process.

²⁶⁹⁷ 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

She had no power or business in arresting Garda A. She acted appropriately in seeking the statement from Ms B, then pausing her investigation into this issue and referring it on to the criminal investigation team. The allegation that she ought to have arrested Garda A was without foundation.

- that the investigation by A/C McMahon and her team was the first step in a disciplinary process into Garda A and three other gardaí. It was not a criminal investigation. The claim by Garda Keogh that A/C McMahon ought to have stepped out of her assigned disciplinary investigative role and arrested Garda A was without merit.

Alleged deliberate delay

- that A/C Nolan's investigation was delayed for several months because of uncertainty over the extent of his entitlement to gain access to the material generated in the Ó Cualáin investigation. Eventually, when this issue was resolved, A/C Nolan was provided with a copy of the statements generated during the Ó Cualáin investigation on 17th May 2016.
- that A/C McMahon's investigation was a lengthy one. It involved consideration of the statements made during the Ó Cualáin investigation, the holding of 28 conferences and the taking of 110 statements, as well as approaching a further 27 individuals who ultimately declined to make statements or else had no relevant evidence to offer. Issues arose during the investigation which required A/C McMahon to seek legal advice. The part of the investigation which involved Ms B was paused between February 2018 and November 2018 pending the outcome of further investigations by D/Insp Coppinger, who made further enquiries with Ms B and her solicitor, interviewed Garda A, and then sought the Director of Public Prosecution's directions.
- that A/C Sheahan, in exercising a delegated function of the Commissioner, was then tasked to decide whether a board of inquiry should be established. Having considered the McMahon report, his view was that a board of inquiry should not be held. His view was that there was no actual evidence that proved that Garda A had frustrated the criminal investigation. In addition, he considered that A/C McMahon's investigation was a new investigation and, as such, a new investigation team was required. He was also of the view that A/C McMahon's decision to use the same investigating team that A/C Nolan had used was a procedural error, and that in consequence there was a significant risk that the statements obtained by that team could not be deployed validly in the McMahon investigation. He was also concerned that recent case law relating to prejudice arising by reason of delay was relevant. He considered that the delay between the time of the alleged frustration by Garda A and the establishment of a board of inquiry (in the event of a legal challenge) was likely to be considered a breach of fair procedures. Overall his view was that a board of inquiry was not warranted.
- that Garda Keogh's allegation that there was undue delay did not engage with the complexity of the disciplinary investigation or the fact that during the currency of the investigation A/C McMahon and her team had to attend regularly to other duties and other investigations. The evidence indicates that the senior gardaí involved in managing the disciplinary investigation worked diligently in their assigned roles and took no steps that could possibly be considered as either having targeted or discredited Garda Keogh.

Alleged Failure to update

- that Garda Keogh complained that he had not been told who was conducting the disciplinary investigation after A/C Nolan had retired and that he was not kept informed of the progress of the investigation. Garda Keogh, in his statement to the tribunal, also falsely alleged that A/C Nolan was the subject of criticism in the report of the Commission of Inquiry conducted by Mr Justice Fennelly. The opposite was the case: A/C Nolan was praised by Fennelly J in his role as a liaison officer to that commission. Garda Keogh also made a false accusation to the tribunal in respect of A/C Nolan.
- that on 25th September 2017, A/C McMahan did write to Garda Headquarters to enquire if the complaining and accused members had been notified that she had been nominated to take over the completion of the investigation.
- that while there was an obligation to notify the members being investigated of the appointment of the investigator, there was no obligation on the investigating officer under the Regulations to notify the complainant.
- that D/Insp Maher had contacted Garda Keogh on 6th March 2018 and had told him of the appointment of A/C McMahan to the disciplinary investigation. The purpose of this phone call was to update him as to the progress of the investigation.
- that the allegation that Garda Keogh was not kept informed by the gardaí of the progress of the disciplinary investigation is inconsistent with his own failure to engage with or respond to A/C McMahan's team when they sought to update him and his solicitor about the progress of their investigation.

Discussion

Garda Keogh submitted that he was discredited by the investigation of A/C McMahan because:

- a. He was not informed of A/C McMahan's appointment
- b. A/C McMahan failed to keep him up to date with the investigation
- c. When Ms B made her statement to A/C McMahan's investigators on 15th November 2017, A/C McMahan was obliged to make an arrest but did not do so
- d. A/C McMahan took until 7th June 2018 to complete her investigation, a period of more than 15 months.

That Garda Nicholas Keogh was not informed of Assistant Commissioner McMahan's appointment

This point is correct in that Garda Keogh was not notified of A/C McMahan's appointment when it happened, although he was told subsequently. There was an obligation on An Garda Síochána to inform him of such developments.

On 20th April 2017, A/C Nolan retired and A/C McMahan was appointed on 26th April 2017. On 25th September 2017, A/C McMahan wrote to Garda Headquarters to enquire if the complaining and accused members had been notified that she had been nominated to take over the completion of the investigation. She subsequently got confirmation that the gardaí who were

the subject of the investigation had been notified but not that Garda Keogh had been notified. As noted above, Dep/C Twomey was unable to explain this omission.²⁶⁹⁸

An Garda Síochána submit that while there was an obligation under the Regulations to notify the members being investigated of the appointment of the investigator, there was no obligation on the investigating officer to notify the complainant. That is correct as to the requirements of the discipline Regulations, but it does not take account of another source of obligation.

Garda Keogh made his disclosure under the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations, 2007, which came into operation on 30th April 2007. That scheme was replaced following the enactment of the Protected Disclosures Act, 2014 by another policy, dated February 2017,²⁶⁹⁹ established in accordance with section 21(1) of the Act and entitled '*An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures*'. Each of these regimes provided for the reporter to be apprised of action taken on the basis of the information supplied.

In the earlier Regulations, under the heading '*Feedback Information*' it was 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.*²⁷⁰⁰

The later policy has relevant obligations at paras 1.2 and 7.11 as follows:

*1.2 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.*²⁷⁰¹

*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.*²⁷⁰²

It should be noted that this responsibility devolves on An Garda Síochána as a whole and the Garda Commissioner, and not on the individual members of the investigation team.

The evidence establishes that D/Insp Maher, one of the investigating officers, informed Garda Keogh about A/C McMahon's investigation on 6th March 2018 in a phone call. Although D/Insp Maher thought that Garda Keogh might have been inebriated when they spoke, the latter was then aware of the assistant commissioner and her role because he said that she was '*not a good fit*' and asserted that she was a friend of former Commissioner O'Sullivan. The superintendent made a detailed note of the conversation.²⁷⁰³ He referred to the phone records confirming his calls.²⁷⁰⁴ Garda Keogh did not remember the conversation but did not deny that it happened.²⁷⁰⁵

²⁶⁹⁸ Tribunal Transcripts, Day 143, pp. 123-125, Evidence of Dep/C John Twomey

²⁶⁹⁹ Tribunal Documents, An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures, dated February 2017, pp. 2003-2036

²⁷⁰⁰ Tribunal Documents, Confidential Reporting Charter for Garda Síochána, p. 7844 at p. 7856

²⁷⁰¹ Tribunal Documents, An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures, dated February 2017, p. 2003 at p. 2006

²⁷⁰² Tribunal Documents, An Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures, dated February 2017, p. 2003 at p. 2021

²⁷⁰³ Tribunal Documents, Note of D/Insp Seamus Maher, dated 6th March 2018, pp. 15810-15811; Statement of D/Insp Seamus Maher, pp. 15808-15809

²⁷⁰⁴ Tribunal Documents, Phone records of D/Insp Seamus Maher, p. 15812

²⁷⁰⁵ Tribunal Transcripts, Day 104, p. 95, Evidence of Garda Nicholas Keogh

It is clear from D/Insp Maher's evidence that he did inform Garda Keogh of A/C McMahon's appointment, albeit on 6th March 2018, which was somewhat under eleven months after it was made. However, that counts as mitigation, not defence. The failure to reply to Garda Keogh's letter in September 2017 and provide this information, even if it had previously been disclosed, was a breach of the stated obligation.

Although this is a case of failure of compliance with the duty to inform the reporter, it is impossible to characterise it as a deliberate policy by A/C McMahon or senior officers to keep Garda Keogh in the dark. The assistant commissioner sought confirmation that Garda Keogh had been told of her appointment. Her officers made contact with the garda and left messages for him and his solicitor. His comments to D/Insp Maher make clear that he knew about A/C McMahon's role on 6th March 2018. However, the essential point is that there is no basis for deciding that such failure as occurred constituted targeting or discrediting of the reporter because of his protected disclosure.

That Garda Nicholas Keogh was not kept up to date with the investigation

The evidence is that officers in the investigation tried with varying success to maintain contact with Garda Keogh and his solicitor. Other than the call described above that D/Insp Maher made on 6th March 2018, he and his colleague Supt Leacy attempted to contact Garda Keogh and his solicitor on five other occasions without success and without receiving any return call. They confirmed the occasions by reference to phone records of numbers called, dates and duration. Details are as follows:

- 06-03-18 D/Insp Maher/Garda Keogh phone conversation
- 30-07-18 D/Insp Maher/Garda Keogh—message left
- 31-07-18 D/Insp Maher/Garda Keogh—message left
- 24-08-18 ML/[solicitor's] office
- 28-08-18 ML/[solicitor's] office
- 04-09-18 ML/[solicitor's] office.²⁷⁰⁶

The investigating officers endeavoured to contact Garda Keogh and his solicitor both to keep him informed and to get information, but they ignored the contacts. Garda Keogh had the means of being informed but chose otherwise.

The alleged failure by Assistant Commissioner Anne Marie McMahon to make an arrest

The investigating officer's function was to investigate the allegations of possible serious breaches of discipline and to submit to the Commissioner a written report of the investigation containing her recommendation as to whether the facts disclosed warranted the establishment of a board of inquiry. She was not investigating a crime; her task was specifically different from that of A/C Ó Cualáin and his team, whose focus was criminal investigation. A/C McMahon transmitted Ms B's statement to D/Insp Coppinger, admittedly after a delay of some months.

Arresting Garda A would have been inappropriate and outside the remit that she had in respect of the disciplinary investigation. The whole point of the arrangement to separate the criminal from the disciplinary inquiries would have been negated if A/C McMahon did not respect the distinction, which is what Garda Keogh's legal submission proposes. The contention that the head of the disciplinary investigation should have ordered the arrest of Garda A is misconceived.

²⁷⁰⁶ Tribunal Documents, Statement of D/Insp Seamus Maher, p. 15808 at p. 15809; Statement of Supt Michael Leacy, p. 15751; Phone records of Supt Michael Leacy, pp. 15752-15793

Assistant Commissioner Anne Marie McMahon did not complete her investigation until 7th June 2018, a period of more than 15 months

It is undeniable that the disciplinary process suffered substantial delays and Garda Keogh's complaints about them are understandable.

From the beginning the investigation encountered legal and practical complications, including concerns and even scruples about the integrity of the criminal investigation, an objection on behalf of one of the subjects that the inquiry was not entitled to proceed against him, and a suggestion of conflict of interest on the part of A/C Nolan. All issues had to be considered and resolved. Some required legal advice to be obtained. Each new obstacle caused delay. The investigation was complex and difficult and it was undertaken by officers who had to deal with their own caseloads in addition. A/C McMahon set out in her report a chronology of the investigation which explains why it took so long to complete.

All this came in addition to A/C Nolan's retirement. The statement made by Ms B to the disciplinary investigators led to an interruption while the criminal enquiries took over. A/C McMahon was concerned to have her report peer reviewed because of an incident involving her husband, also a senior garda officer, and Garda Keogh. And finally, A/C Sheahan exercised his delegated power to decide whether or not to accept the recommendation to proceed with one charge.

A/C McMahon explained the time her investigation took:

*That's just one part of it. What I say in relation to the delay is, from the time I was appointed to the completion of the report, of the entire investigation, was 22 months. During that time there were 13 allegations to be investigated concerning four serving members of An Garda Síochána. I did everything that I could to expedite the investigation. I attended 12 conferences. There was an extensive examination of documentation that was gathered by the criminal investigation team, in addition to the material that was gathered as part of the discipline team. There was legal advice sought during my investigation on three occasions. And I would also like to point out again that the team, including myself, we were working on this investigation on a part-time basis. We all had our other portfolios of work to continue and bring along at the same time. I'm not saying that that's an excuse but it's the reality of the situation.*²⁷⁰⁷

Supt Leacy said that he did not consider the time the investigation took to be unreasonable stating that *'it just wasn't [Garda A], there were three other members, there had to be investigations conducted in respect of those'*.²⁷⁰⁸

D/Insp Maher said that:

*... it was a very difficult investigation. It was voluminous. There was a number of statements. There was four volumes of statements from the criminal team. There was 28 different conferences. We had to add to the investigation team at a later point when Assistant Commissioner Anne Marie McMahon came on board. I suppose a lot of the witnesses were throughout the country, that's why we brought Gardai from around the country to assist our investigation, due to geography, volume and capacity.*²⁷⁰⁹

²⁷⁰⁷ Tribunal Transcripts, Day 140, p. 43, Evidence of A/C Anne Marie McMahon

²⁷⁰⁸ Tribunal Transcripts, Day 143, p. 184, Evidence of Supt Michael Leacy

²⁷⁰⁹ Tribunal Transcripts, Day 143, pp. 196-197, Evidence of D/Insp Seamus Maher

Conclusion

The time that this investigation took to reach final decisions was very long and provided grounds for Garda Keogh's distrust of the process. On any view the period from the making of his allegations to the final decision was not only unsatisfactory but also unacceptable. Even if one takes the time from the establishment of the separate disciplinary investigation until A/C Sheahan decided that a board of inquiry should not be established, the time taken cannot be considered reasonable. There is something seriously wrong with a process that moves at such glacial speed. Garda Keogh's complaints about the pace of this investigation are justified but it is a different question whether he was targeted or discredited in the process.

The disciplinary systems of An Garda Síochána are not under review in this inquiry but it is clear that the processes are elaborate and detailed, influenced and sometimes dictated by decisions of the High Court and appellate jurisdictions in judicial review applications. Delay is inevitable in a garda disciplinary investigation and more so where there are multiple respondents and allegations. An assessment of delay must take these features into account.

Legal questions arose that took time to resolve, as mentioned above. With some exceptions the periods of delay are explained in the statements and evidence in a manner that exonerates the investigators A/C Nolan and A/C McMahon of the charge of targeting or discrediting Garda Keogh. There cannot be a case against members of the investigation teams. There is no basis for suggesting that A/C Nolan or A/C McMahon had animosity towards Garda Keogh, or had any interest in regard to his protected disclosure.

There is nothing to suggest that the long time the inquiry took undermined the validity of the process or the outcome of what was a difficult and complex disciplinary investigation. However, the fact that the disciplinary investigation took an inordinate time notwithstanding the absence of blame on the part of the individual officers was an eventuality that would have fed Garda Keogh's suspicions.

The tribunal considers Garda Keogh's concerns to be all the more understandable when it takes into account the fact that he was not formally notified of the important information as to the identity of the new investigator when A/C Nolan retired.

Because of the manner in which the periods of delay are accounted for, it seems to follow that any resulting impact on Garda Keogh happened inadvertently. If it was in no sense deliberate, there was not any discrediting of him.

And if it is suggested that it may have been possible to discredit Garda Keogh unintentionally, there is an immediate and decisive consideration. Term of reference [p] applies to discrediting for a reason, namely, because the person made a protected disclosure. Since a motivation related to the disclosure is a prerequisite, it follows that inadvertent or accidental or even negligent conduct claimed to be discrediting in effect is excluded.

Garda Keogh's legal submissions do not even suggest a connection between the faults cited in the investigation and Garda Keogh's protected disclosure. There is no basis for any such conclusion. The furthest that Garda Keogh's submissions go is to identify genuine and justified criticisms and to append the comment by way of conclusion that it discredited Garda Keogh, which is not legitimate argument.

The tribunal could not conclude that A/C Nolan or A/C McMahon delayed their enquiries, or failed to inform Garda Keogh, or did not arrest Garda A in order to victimise Garda Keogh because he made a protected disclosure.

It does not appear that Garda Keogh makes any particular case against A/C Nolan in respect of discrediting, although he did in pre-hearing processes cast aspersions on that officer's integrity by falsely claiming that he had been criticised by the Fennelly Commission and that he was under investigation by GSOC.

The overall delay in completing the investigation and the particular instances of delay were not deliberately contrived to damage Garda Keogh. Those matters were not discrediting to Garda Keogh. In the absence of any evidence or even suggestion of relevant motivation, the case of discrediting in this issue cannot be upheld.

CHAPTER 23

ISSUE 18:

THE COMPLAINT MADE BY GARDA NICHOLAS KEOGH IN RELATION TO THE INVESTIGATION OF HIS STATEMENT OF COMPLAINT OF BULLYING AND HARASSMENT CARRIED OUT BY ASSISTANT COMMISSIONER MICHAEL FINN

The Facts

Garda Keogh's complaints in this issue fall into separate sections. The first complaint relates to the delay between 27th March 2017 when he gave his statement to Chief Superintendent John Scanlan and 15th November 2017 when Assistant Commissioner Michael Finn was appointed as the investigator. The second area of complaint concerns the conduct of the investigation by the assistant commissioner. Some of the key dates in this issue are as follows.

- 27th March 2017: Garda Keogh's statement pursuant to the bullying and harassment policy was provided to C/Supt Scanlan.
- 15th November 2017: Assistant Commissioner Fintan Fanning appointed A/C Finn to conduct Garda Keogh's bullying and harassment investigation.
- 1st December 2017: A/C Finn met Garda Keogh and his solicitor for their only meeting in person.
- 18th January 2018: A/C Finn visited Superintendent Pat Murray at his home and had a meeting lasting more than four hours.
- 21st January 2018: A/C Finn and Supt Murray spoke again by phone.
- 20th December 2018: Report of A/C Finn was finalised.
- 10th January 2019: A/C Finbarr O'Brien was appointed to examine the report.
- 7th February 2019: A/C O'Brien reported his conclusion.
- 19th March 2019: Garda Keogh filed his grounds of appeal.
- 8th May 2019: Mr Rory de Bruir Barrister-at-Law was appointed to audit the investigation.
- 4th June 2019: Mr de Bruir submitted his report to Deputy Commissioner John Twomey.
- 11th July 2019: Dep/C Twomey notified his determination.

Pre-history of the bullying and harassment complaint: 3rd June 2016 – 27th March 2017

Chief Superintendent Anthony McLoughlin, one of the protected disclosures managers of An Garda Síochána, recalled in his statement that on 3rd June 2016 Garda Keogh gave him a photocopy of a list he had handwritten headed '*Harassment Index*'.²⁷¹⁰ Garda Keogh was

²⁷¹⁰ Tribunal Documents, Harassment Index of Garda Nicholas Keogh, pp. 15956-15957

accompanied by Garda Michael Quinn, his employee assistance officer, and told C/Supt McLoughlin that he did not wish him to do anything about it as matters were being dealt with by the Garda Síochána Ombudsman Commission (GSOC).²⁷¹¹ However, on 14th June 2016, Garda Keogh wrote to the Minister for Justice and Equality informing her of the harassment he said he faced and stated that C/Supt McLoughlin ‘*undertook to investigate the harassment*’.²⁷¹²

On 22nd July 2016, C/Supt McLoughlin was requested by the Office of the Garda Commissioner to prepare a report to comply with a request under section 41(2) of the Garda Síochána Act, 2005, which had been made by the Minister for Justice and Equality.²⁷¹³ This request included Garda Keogh’s letter and a minute from Mr Martin Power, principal officer of the department, which referred *inter alia* to the references in Dáil Éireann and the media to the effect that Garda Keogh had suffered bullying and harassment because he was a whistleblower.²⁷¹⁴

C/Supt McLoughlin corresponded with Ms Kathleen Hassett at Human Resource Management (HRM) and on 15th August 2016, she informed C/Supt McLoughlin:

*Please be advised that there is no record in this Section of any complaint having been made by Garda Keogh under the Harassment, Sexual Harassment & Bullying Policy.*²⁷¹⁵

Garda Keogh wrote to C/Supt McLoughlin on 16th August 2016 and stated, *inter alia*, that:

*However the issue of most concern to me at the moment is that of the Harassment, I endured from elements within Garda Management. I would be interested to know if any progress has been made on that front. It is of particular concern at the moment as I am aware that at least one of the two persons I named in relation to this harassment namely Superintendent Pat Murray is No. 14 on a promotion list to the rank of Chief Superintendent. I presume he has been recommended for promotion by the Garda Commissioner Noirin O Sullivan, whom is aware of these Harassment allegations. Has the Garda Commissioner notified the Minister for Justice and the Policing Authority of this as it is relevant information for them to be aware of.*²⁷¹⁶

C/Supt McLoughlin furnished his interim report to the Commissioner on 19th August 2016.²⁷¹⁷ On the same date, C/Supt McLoughlin wrote to Garda Keogh and stated:

*In the interest of clarity I wish to ask if a formal complaint was made by you under the Harassment, Sexual Harassment and Bullying Policy in addition to the other complaints made by you.*²⁷¹⁸

Garda Keogh replied on 1st September 2016 stating that he had posted documents to C/Supt McLoughlin in relation to the harassment on 29th August 2016 and he continued:

I am writing in relation to the question of a formal complaint being made by me regarding the harassment and the answer is no. I first reported this Harassment when it started to Deputy Commissioner Donal O Cualain on 7.June.2014. Deputy Commissioner O Cualain informed me that he “was only dealing with what was in my affidavit.”

²⁷¹¹ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3231

²⁷¹² Tribunal Documents, Letter from Garda Nicholas Keogh to Frances Fitzgerald, Minister for Justice and Equality, dated 14th June 2016 p. 3302 at p. 3303

²⁷¹³ Tribunal Documents, Letter from the Office of the Garda Commissioner to C/Supt Anthony McLoughlin, dated 19th July 2016, p. 3283

²⁷¹⁴ Tribunal Documents, Letter from Mr Martin Power to the Garda Commissioner, dated July 2016, pp. 3286-3287

²⁷¹⁵ Tribunal Documents, Letter from Ms Kathleen Hassett to C/Supt Anthony McLoughlin, dated 15th August 2016, p. 3315

²⁷¹⁶ Tribunal Documents, Letter from Garda Nicholas Keogh to C/Supt Anthony McLoughlin, dated 26th August 2016, p. 3316

²⁷¹⁷ Tribunal Documents, Letter from C/Supt Anthony McLoughlin to the Office of the Garda Commissioner, dated 19th August 2016, p. 3318

²⁷¹⁸ Tribunal Documents, Letter from C/Supt Anthony McLoughlin to Garda Nicholas Keogh, dated 19th August 2016, p. 3319

*The issue of Harassment has been raised over 20 times in the Dail and I have written to the Minister for Justice Ms Francis Fitzgerald [sic] regarding same on a number of occasions and she is aware of it.*²⁷¹⁹

C/Supt McLoughlin telephoned Garda Keogh on 7th September 2016 and informed him that if he wished to pursue his bullying and harassment complaint it would be necessary for him to make a formal complaint in accordance with the policy for the matters to be investigated.²⁷²⁰ Following this, C/Supt McLoughlin furnished a further report to the Garda Commissioner on 8th September 2016.²⁷²¹

As previously detailed in this report, C/Supt McLoughlin assisted with the restoration of Garda Keogh to full pay.²⁷²² He spoke to Garda Keogh on 7th October 2016 in relation to this issue and was informed by Garda Keogh that he was unhappy that his bullying and harassment complaint was to be investigated by An Garda Síochána.²⁷²³ Similarly, in a letter dated 7th October 2016 to the Minister for Justice and Equality and the Commissioner, Garda Keogh referred to *'ongoing and systemic harassment and bullying – prosecuted by the most senior ranks of garda management'* and was of the view that an investigation into his circumstances ought to be conducted externally *'so that the Commissioner does not become a judge in her own case of breaches committed by her, and or her immediate subordinates'*.²⁷²⁴

The Garda Commissioner provided the report under section 41(2) of the Garda Síochána Act, 2005 to the Department of Justice and Equality by letter dated 11th October 2016,²⁷²⁵ which stated *inter alia* that:

*The Protected Disclosures Manager (PDM) contacted the 'Reporter' on Friday 7th October by telephone and was informed that his pay has been restored with effect from 12th of October '16. Pay has been backdated to December 2015. Discussion also took place in relation to Harassment and Bullying and the 'Reporter' has indicated that he will not make a formal complaint, unless the complaint was investigated externally to An Garda Síochána.*²⁷²⁶

C/Supt McLoughlin wrote to Garda Keogh on 12th October 2016 enquiring:

*In the interest of clarity and completeness, I wish to ask if it is your intention to make a formal complaint under the Harassment, Sexual Harassment and Bullying Policy in addition to other complaints made by you. I appreciate that you indicated to me on the phone that it is not your intention to do so.*²⁷²⁷

In a reply dated 20th October 2016, Garda Keogh stated that:

I accept I made an indication to you regarding Harassment and Bullying. However the fact that I have reported this and supplied relevant documents to support my allegations. I understand

²⁷¹⁹ Tribunal Documents, Letter from Garda Nicholas Keogh to C/Supt Anthony McLoughlin, dated 1st September 2016, p. 3321

²⁷²⁰ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3235

²⁷²¹ Tribunal Documents, Letter from C/Supt Anthony McLoughlin to the Office of the Commissioner, dated 8th September 2016, pp. 3415-3417

²⁷²² Tribunal Documents, Emails between C/Supt Anthony McLoughlin and Ms Claire Egan, dated 26th September 2016 and 6th October 2016, p. 3442

²⁷²³ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at pp. 3237-3238

²⁷²⁴ Tribunal Documents, Letter from Garda Nicholas Keogh's solicitors to Frances Fitzgerald, Minister for Justice and Equality and Commissioner Nóirín O'Sullivan, dated 7th October 2016, pp. 9777-9778

²⁷²⁵ Tribunal Documents, Letter from the Office of the Commissioner to the Secretary General, Department of Justice and Equality, dated 11th October 2016, pp. 9786-9790

²⁷²⁶ Tribunal Documents, Letter from the Office of the Commissioner to the Secretary General, Department of Justice and Equality, dated 11th October 2016, p. 9786 at p. 9790

²⁷²⁷ Tribunal Documents, Letter from C/Supt Anthony McLoughlin to Garda Nicholas Keogh, dated 12th October 2016, p. 3467

*there are obligations for both myself and An Garda Síochána to have this investigated under the terms of Harassment and Bullying Policy of An Garda Síochána and I wish to make a formal complaint in relation to same.*²⁷²⁸

On 26th October 2016, C/Supt McLoughlin wrote to Mr John Barrett, Executive Director, Human Resources and People Development (HRPD), confirming that Garda Keogh did in fact wish to make a complaint and recommending that Garda Keogh's complaints be fully investigated.²⁷²⁹ This was the first explicit expression of Garda Keogh's desire to make a complaint and have it considered under the policy. He had not previously invoked any of the other informal mechanisms outlined in the policy.

On 19th September 2016, Garda Keogh applied to the Personal Injuries Assessment Board in respect of a claim for damages against An Garda Síochána, the Minister for Justice and Equality and Supt Murray²⁷³⁰ for alleged personal injuries caused by bullying and harassment. The claim arose out of the same issues as are contained in his complaint later made under the bullying and harassment policy²⁷³¹ and mirror the issues dealt with by this tribunal. On 28th October 2016, the Garda Commissioner was informed that the Personal Injuries Assessment Board had granted Garda Keogh, authorisation to issue civil proceedings. Supt Murray was similarly notified of the PIAB authorisation.

Mr Barrett wrote directly to Garda Keogh on 11th November 2016 and stated, *inter alia*:

Please also be advised that under the Policy where a complainant opts to take the formal route in having their complaint resolved they should report the matter to their Divisional Officer. The complaint may be made directly to the Divisional Officer verbally or in writing. All complaints whether made verbally or in writing should contain the following:

- *Details of the person or people against whom the complaint is made;*
- *Full details of the alleged act or acts constituting the behaviour complained of, including dates, times and places;*
- *A list of witnesses, if any;*
- *Details of whether the complainant let their objections be known and whether an informal resolution was invoked in the past;*
- *An indication of what would satisfactorily resolve the complaint, if the complainant wished to offer such indication.*

The person appointed to investigate a complaint under the Policy must be higher than the complainant and the person complained of and not lower than Inspector rank. While you have provided certain documentation to Chief Superintendent McLoughlin regarding your complaint it is unclear from same against whom the allegations are being made, the exact details/nature of your complaint and the highest rank being complained of.

*To ensure that the resolution of your complaint may be commenced the details referred to above should be provided by you to your Divisional Officer at your earliest convenience.*²⁷³²

²⁷²⁸ Tribunal Documents, Letter from Garda Nicholas Keogh to C/Supt Anthony McLoughlin, dated 20th October 2016, p. 3468

²⁷²⁹ Tribunal Documents, Letter from C/Supt Anthony McLoughlin to Executive Director HRPD, dated 26th October 2016, p. 3469

²⁷³⁰ Tribunal Documents, Form A, Application for Assessment of Damages, dated 19th September 2016, pp. 9751-9755

²⁷³¹ Tribunal Documents, Letter from Personal Injuries Assessment Board to the Garda Commissioner, dated 28th October 2016, pp. 3497-3499

²⁷³² Tribunal Documents, Letter from Mr John Barrett to Garda Nicholas Keogh, dated 11th October 2016, pp. 3472-3473

When phoned by C/Supt McLoughlin on 25th November 2016, Garda Keogh confirmed that he understood the process of making a complaint and stated that he was seeking legal advice and had an issue with making his complaint to his divisional officer, Chief Superintendent Kevin Gralton, because of a conflict of interest, and that he would revert to him in due course.²⁷³³ Mr Alan Mulligan at HRM contacted the solicitor acting on behalf of Garda Keogh, and offered to travel with C/Supt McLoughlin to discuss his bullying and harassment complaint in person with Garda Keogh. This offer was declined. It was subsequently agreed that Garda Keogh's complaint would be sent directly to C/Supt McLoughlin or Mr Mulligan.²⁷³⁴

On 2nd December 2016, the Office of the Garda Commissioner informed the Department of Justice and Equality that Garda Keogh was in the process of preparing his complaint, which would be submitted to C/Supt McLoughlin or Mr Mulligan, and that he was happy with the progress to date.²⁷³⁵

In a letter to both the Minister for Justice and Equality and the Garda Commissioner, dated 15th December 2016, Garda Keogh's solicitor stated:

*that Garda Keogh hereby again invokes his rights under such Harassment and Bullying Policy. Garda Keogh advises that he wishes to make a statement of complaint under said Policy as soon as practicable to a non-conflicted Officer. Please advise when and when he can further make such statement of complaint as soon as practicable.*²⁷³⁶

On 16th December 2016, the Office of the Garda Commissioner requested Mr Barrett make arrangements to take a statement of complaint from Garda Keogh *'as a matter of priority'*.²⁷³⁷ Mr Barrett, by letter dated 20th December 2016, informed A/C Fanning that he nominated Chief Superintendent Gerry Roche to investigate the complaint and that, if A/C Fanning was in agreement with this, to finalise that appointment.²⁷³⁸ On 23rd December 2016, the Garda Commissioner informed Mr Martin Power at the Department of Justice and Equality that *'Chief Superintendent Roche, Naas Garda Station has been nominated to investigate Garda Keogh's complaint under the Harassment, Sexual Harassment and Bullying Policy'*.²⁷³⁹ However, notwithstanding this nomination, on 23rd December 2016, A/C Fanning nominated C/Supt Scanlan to determine two matters: whether the complaint fell within the bullying and harassment policy, and the correct rank or grade to be appointed as investigator of Garda Keogh's complaint.²⁷⁴⁰

During January 2017, the Office of the Garda Commissioner expressed *'concern at the rate of progress in this matter'* in a letter to Mr Barrett²⁷⁴¹ and queried whether a statement had been taken from Garda Keogh. On 27th January 2017, C/Supt McLoughlin also sought an update from Mr

²⁷³³ Tribunal Documents, Diary entry of C/Supt Anthony McLoughlin, dated 25th November 2016, p. 3474; Letter from C/Supt Anthony McLoughlin to A/C Michael Finn, dated 20th April 2017, p. 12098 at p. 12099

²⁷³⁴ Tribunal Documents, Letter from Mr Alan Mulligan to the Office of the Commissioner, dated 25th November 2016, pp. 3483-3484

²⁷³⁵ Tribunal Documents, Letter from A/C Michael O'Sullivan to Secretary General, Department of Justice and Equality, dated 2nd December 2016, pp. 9889-9890

²⁷³⁶ Tribunal Documents, Letter from Garda Nicholas Keogh's solicitors to Frances Fitzgerald, Minister for Justice and Equality, Commissioner Nóirín O'Sullivan and Mr John Barrett, dated 15th December 2016, p. 3505

²⁷³⁷ Tribunal Documents, Letter from the Office of the Commissioner to Executive Director HRPD, dated 16th December 2016, p. 3506

²⁷³⁸ Tribunal Documents, Letter from Mr John Barrett to Assistant Commissioner Eastern Region, dated 20th December 2016, p. 3507

²⁷³⁹ Tribunal Documents, Letter from Office of the Garda Commissioner to Mr Martin Power, dated 23rd December 2016, p. 9919

²⁷⁴⁰ Tribunal Documents, Letter from A/C Fintan Fanning to C/Supt John Scanlan, dated 23rd December 2016, p. 3508

²⁷⁴¹ Tribunal Documents, Letter from the Office of the Garda Commissioner to Executive Director HRPD, dated 11th January 2017, p. 9932; Letter from the Office of the Garda Commissioner to Executive Director HRPD, dated 26th January 2017, p. 9936

Barrett enquiring if C/Supt Scanlan had determined if Garda Keogh's complaint fell under the bullying and harassment policy and if the correct rank of investigator had been determined.²⁷⁴²

Sergeant Fiona Broderick from Mr Barrett's office replied on 31st January 2017,²⁷⁴³ attaching correspondence from A/C Fanning indicating that Garda Keogh had expressed the view to C/Supt Scanlan that C/Supt Roche was the appointed officer in his case and that C/Supt Scanlan should not handle the case as he was already acquainted with Garda Keogh. A/C Fanning did not believe that C/Supt Scanlan was '*in anyway compromised*' and so could deal with Garda Keogh's claim. He sought the views of Mr Barrett on this matter.²⁷⁴⁴

In early February 2017, Mr Barrett informed A/C Fanning that he had received material from C/Supt McLoughlin and that '*on reading that material it was noted that the actual details of who was being complained of or relevant dates of alleged incidents etc. were not provided by Garda Keogh*'.²⁷⁴⁵ He went on to say that:

To progress this matter Garda Keogh should be informed that he should provide his statement of complaint, to include the identity of the person being complained of, relevant dates and details of the alleged incidents, to Chief Superintendent Scanlan as soon as possible.

*Until a statement of complaint is provided by Garda Keogh, clearly identifying the person and alleged incidents being complained of, it is not possible to make any decision on the appropriate policy or rank of investigator to resolve his complaint.*²⁷⁴⁶

Mr Barrett informed A/C Fanning that he agreed with him as to the suitability of C/Supt Scanlan for the role and that Garda Keogh had not provided any reason as to why the chief superintendent was in any way compromised.

Complaint of bullying and harassment: 27th March 2017 – 15th November 2017

C/Supt Scanlan met Garda Keogh on 2nd March 2017 and commenced taking his statement.²⁷⁴⁷ Garda Keogh sought more time before completing his statement as he was finalising his submission to this tribunal.²⁷⁴⁸ They met again on 27th March 2017 when Garda Keogh handed over a prepared statement. C/Supt Scanlan forwarded this statement to A/C Fanning on 31st March 2017 with a note that '*a more detailed report will follow into the context of this statement*'.²⁷⁴⁹

Approximately a fortnight prior to this Garda Keogh had provided a statement²⁷⁵⁰ to the tribunal sent under cover of letter dated 13th March 2017.²⁷⁵¹ The two statements contain almost identical paragraphs as follows:

Following my making 'protected' disclosures, I encountered a managerial culture of harassment, exclusion, victimization, 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

²⁷⁴² Tribunal Documents, Letter from C/Supt Anthony McLoughlin to Executive Director HRPD, dated 27th January 2017, p. 3514

²⁷⁴³ Tribunal Documents, Email from Sgt Fiona Broderick to C/Supt Anthony McLoughlin, dated 31st January 2017, p. 3515

²⁷⁴⁴ Tribunal Documents, Letter from A/C Fintan Fanning to Executive Director HRPD, dated 31st January 2017, pp. 3517-3518

²⁷⁴⁵ Tribunal Documents, Letter from Mr John Barrett to Assistant Commissioner Eastern Region, dated 8th February 2017, p. 6810

²⁷⁴⁶ Tribunal Documents, Letter from Mr John Barrett to Assistant Commissioner Eastern Region, dated 8th February 2017, p. 6810 at p. 6811

²⁷⁴⁷ Tribunal Documents, Letter from C/Supt John Scanlan to Assistant Commissioner Eastern Region, dated 16th March 2017, p. 6813

²⁷⁴⁸ Tribunal Documents, Letter from C/Supt John Scanlan to Assistant Commissioner Eastern Region, dated 20th March 2017, p. 6816

²⁷⁴⁹ Tribunal Documents, Letter from C/Supt John Scanlan to Assistant Commissioner Eastern Region, dated 31st March 2017, p. 6821

²⁷⁵⁰ Tribunal Documents, Statement of Garda Nicholas Keogh, pp. 116-140

²⁷⁵¹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 93

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 hypercriticize 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 has 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 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.²⁷⁵²

The bullying and harassment statement set out eighteen matters described by Garda Keogh. These issues were identified as follows:

1. The investigation into why he had checked Garda A on PULSE
2. The investigation into the PULSE intelligence entry
3. The investigation into the Olivia O'Neill issue
4. The investigation into the Liam McHugh issue
5. The disciplinary investigation in relation to his motor tax and the non-payment of travel expenses
6. The alleged micro or oppressive supervision
7. The alleged intervention by former Commissioner Nóirín O'Sullivan in a telephone call to Supt Murray
8. The alleged imposed sharing of shifts with Garda A and Garda A's access to a firearm
9. The alleged criticism by Supt Murray of Garda Keogh's investigation into the thefts at Custume Place
10. The complaint in relation to the denial of his request for a cancellation of annual leave
11. The alleged criticism by Supt Murray of Garda Keogh's investigation into the theft of a trailer and the criminal damage incidents
12. The alleged criticism by Supt Murray of Garda Keogh's investigation into the robbery from a person incident
13. Garda Keogh's confinement to indoor duty
14. The complaint in relation to the disciplinary investigation for being absent without leave in July 2015
15. The complaint in relation to the misrecording of sick leave and reduction in salary
16. The alleged denial of overtime
17. The alleged denial of commendations
18. The complaint in relation to the service of the Disclosures Tribunal Order.²⁷⁵³

²⁷⁵² Tribunal Documents, Statement of Garda Nicholas Keogh, p. 116 at p. 121; Bullying and Harassment Statement of Garda Nicholas Keogh, dated 27th March 2017, p. 303

²⁷⁵³ Tribunal Documents, Bullying and Harassment Statement of Garda Nicholas Keogh, dated 27th March 2017, pp. 303-319

The complaints embraced matters arising from May 2014 to the date of the making of the statement in March 2017. They are reflected in the schedule of issues before the tribunal and the reader is referred to each issue for an account of the events concerned, including the recording by Garda Keogh of matters relating thereto in his diary or in official correspondence to him and from him. Garda Keogh prepared an addendum to the bullying and harassment complaint on 30th November 2017.²⁷⁵⁴

In a letter of 5th April 2017, A/C Fanning informed Mr Barrett that he was examining the first part of the statement that had been provided and that *'it appears to be much wider than a bullying and harassment matter'*.²⁷⁵⁵ The unsigned statement of 2nd March 2017,²⁷⁵⁶ together with appendices, was provided by C/Supt Scanlan to the assistant commissioner on 12th April 2017.²⁷⁵⁷

On 20th April 2017, C/Supt McLoughlin sought an update from Mr Barrett on the *'present situation'* regarding the bullying and harassment complaint.²⁷⁵⁸ On 28th April 2017, Mr Barrett informed C/Supt McLoughlin that Garda Keogh had met C/Supt Scanlan and provided a prepared statement and appendices and that the matter was being considered by A/C Fanning.²⁷⁵⁹

In May 2017, A/C Fanning sought confirmation from Garda Keogh that he was satisfied that he had provided all relevant material²⁷⁶⁰ and Inspector James McCarthy (on the assistant commissioner's behalf) met Garda Keogh on 22nd May 2017.²⁷⁶¹ Insp McCarthy wrote to Garda Keogh the following day:

I wish to acknowledge that following our meeting yesterday afternoon at your home, you raised the following matters with me, namely that you were in receipt of correspondence from Chief Superintendent Mc Loughlin, H.R.M., to the Commissioner, obtained through a Freedom of Information request, and which contained information regarding your complaints.

You also stated that you first raised these issues, as outlined in your statement to Chief Superintendent Scanlan, directly with Chief Superintendent Mc Loughlin, HRM in June 2016.

The second issue that you raised was the fact that Sgt Patrick Guinan, Mullingar Divisional Office, checked your car registration number on 5th May 2017, giving the reason enquiries in Westmeath Divisional Office and that you did not know why and also the fact that Sgt Guinan was acquainted with Garda A, Athlone, via Facebook.

I wish to acknowledge that you did not wish to make a written account of these matters but stated that you merely wished that Assistant Commissioner Fanning should be made aware of them.

*I wish to acknowledge that on this date, I have made Assistant Commissioner F Fanning aware of these issues.*²⁷⁶²

²⁷⁵⁴ Tribunal Documents, Addendum to Garda Nicholas Keogh's Bullying and Harassment Statement, dated 30th November 2017, pp. 322-323

²⁷⁵⁵ Tribunal Documents, Letter from A/C Fintan Fanning to Executive Director HRPD, dated 5th April 2017, p. 6823

²⁷⁵⁶ Tribunal Documents, Unsigned statement of Garda Nicholas Keogh, dated 2nd March 2017, pp. 6824-6829

²⁷⁵⁷ Tribunal Documents, Letter from C/Supt John Scanlan to Assistant Commissioner Eastern Region, dated 12th April 2017, p. 10013

²⁷⁵⁸ Tribunal Documents, Letter from C/Supt Anthony McLoughlin to Executive Director HRPD, dated 20th April 2017, p. 3524

²⁷⁵⁹ Tribunal Documents, Letter from Mr John Barrett to Chief Superintendent HRPD, dated 28th April 2017, p. 3525

²⁷⁶⁰ Tribunal Documents, Letter from A/C Fintan Fanning to Garda Nicholas Keogh, dated 16th May 2017, p. 4826

²⁷⁶¹ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 22nd May 2017, p. 13365

²⁷⁶² Tribunal Documents, Letter from Insp James McCarthy to Garda Nicholas Keogh, dated 23rd May 2017, p. 10048

On 22nd May 2017, A/C Fanning met Mr Mulligan and had a lengthy discussion in relation to the matter. On 24th May 2017, A/C Fanning wrote to Mr Barrett, stating that:

*... the issues set out in the statement witnessed by Chief Superintendent Scanlan and the additional list set out in the unsigned statement also handed to Chief Superintendent Scanlan by Garda Keogh are most serious... I am of the firm view that the Bullying Policy is not wide enough to include any comprehensive investigation you decide.*²⁷⁶³

This letter does not record that Garda Keogh's statement was being forwarded or attached for the attention of Mr Barrett.

On 30th May 2017, A/C Fanning updated Garda Keogh as follows:

I have noted that Inspector Mc Carthy visited you on 22nd May 2017, where you raised two further issues. I have included those issues, along with your statements and forwarded them to Executive Director, Human Resources & People Development on 24th May 2017.

*The purpose is that I am of the view that these matters merit consideration, outside the Bullying & Harassment Policy.*²⁷⁶⁴

On 16th June 2017, A/C Fanning sought an update from Mr Barrett stating that *'it is three weeks since my last correspondence, for which I have received no acknowledgement... any delay should be kept to a minimum.'*²⁷⁶⁵ Mr Barrett informed A/C Fanning that *'Chief Superintendent McLoughlin is on annual leave for three weeks and on his return I will arrange a meeting to discuss issues arising in this matter.'*²⁷⁶⁶ Insp McCarthy met with Garda Keogh on 19th June 2017.²⁷⁶⁷

The Minister for Justice and Equality sought an update in relation to Garda Keogh on 20th July 2017.²⁷⁶⁸ Both the Garda Commissioner²⁷⁶⁹ and A/C Fanning²⁷⁷⁰ sought updates during August, with Insp McCarthy calling to Garda Keogh on 16th August 2017.²⁷⁷¹

On 17th August 2017, Garda Keogh's solicitor wrote to the Minister for Justice and Equality, the Garda Commissioner, Ms Josephine Feehily of the Policing Authority and Caoimhghín Ó Caoláin TD, stating that:

*We now understand that Garda Keogh's express complaints of harassment, bullying, detrimental treatment and his formal invocation of the Garda bullying and grievance procedures have been suspended. Garda Keogh has been advised in fact that the whereabouts (in An Garda Síochána) of his formal complaints are unknown. His complaints have effectively been clandestinely secreted and covered up.*²⁷⁷²

On 1st September 2017, A/C Fanning wrote to Mr Barrett recommending *'a full investigation into these matters and also that any delay should be kept to a minimum.'*²⁷⁷³

²⁷⁶³ Tribunal Documents, Letter from A/C Fintan Fanning to Executive Director HRPD, dated 24th May 2017, p. 6723 at p. 6724

²⁷⁶⁴ Tribunal Documents, Letter from A/C Fintan Fanning to Garda Nicholas Keogh, dated 30th May 2017, p. 6726

²⁷⁶⁵ Tribunal Documents, Letter from A/C Fintan Fanning to Executive Director HRPD, dated 16th June 2017, p. 6879

²⁷⁶⁶ Tribunal Documents, Letter from Mr John Barrett to Assistant Commissioner Eastern Region, dated 17th June 2017, p. 10057

²⁷⁶⁷ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 19th June 2017, p. 13366

²⁷⁶⁸ Tribunal Documents, Letter from Mr Martin Power to the Garda Commissioner, dated 20th July 2017, pp. 3533-3535

²⁷⁶⁹ Tribunal Documents, Letter from the Office of the Commissioner to Deputy Commissioner Policing and Security and Chief Administrative Officer, dated 16th August 2017, p. 3532

²⁷⁷⁰ Tribunal Documents, Letter from Insp James McCarthy to Executive Director HRPD, dated 17th August 2017, p. 6882

²⁷⁷¹ Tribunal Documents, Letter from Insp James McCarthy to Garda Nicholas Keogh, dated 17th August 2017, p. 6883

²⁷⁷² Tribunal Documents, Letter from Garda Keogh's solicitors to the Minister for Justice and Equality, Commissioner Nóirín O'Sullivan, Ms Josephine Feehily and Caoimhghín Ó Caoláin TD, dated 17th August 2017, p. 10093 at p. 10094

²⁷⁷³ Tribunal Documents, Letter from A/C Fintan Fanning to Executive Director HRPD, dated 1st September 2017, p. 6884

However, on 8th September 2017, the solicitor for Garda Keogh again wrote to the Minister for Justice and Equality and stated that:

*Garda Keogh has been advised in fact that the whereabouts (in An Garda Síochána) of his formal complaints are unknown. His complaints have been covered up.*²⁷⁷⁴

Garda Keogh sought to link this issue with the then application for promotion of Supt Murray. In a letter to his solicitor dated 17th September 2017, he stated, *inter alia*, that:

- 2) *On 27 March 2017 I made a formal internal complaint of Bullying and Harassment in accordance with the Garda Policy Document “Working together to create a positive working environment”. This investigation was supposed to commence within 1 week of making the complaint. I want to know who is investigating this and where does it stand.*
- 3) *The subject of the Bullying and Harassment complaint, a Superintendent is currently on the Police Authority promotion list. This is ironic as when the harassment from Garda management started back in 2014 I reported it to Assistant Commissioner Donal O Cualain who in 2017 is a Deputy Commissioner and the point of contact with the police Authority I want to know did Donal O Cualain inform the police Authority of this live complaint and if not why?*
- 4) *Have the Policing Authority considered such a scenario where by (I cannot say for sure this has happened) a complaint is made against a senior officer who is going for promotion and happens to be favoured by Garda management. That Garda management delay commencing the investigation including serving notice disciplinary or otherwise on the senior officer candidate where by should the police Authority ask the candidate to disclose such disciplinary information he/she could answer “none” in good faith. In the mean time the actual complaint is withheld/lost by Garda management to facilitate their choice of candidate being promoted is this possible!*²⁷⁷⁵

This letter was enclosed in a letter from Garda Keogh’s solicitor to the Minister for Justice and Equality on 21st September 2017.²⁷⁷⁶ On 25th September 2017, Garda Keogh’s solicitor wrote to Mr Barrett stating that:

We enclose herewith copy of an unanswered formal Bullying and Harassment complaint made by Garda Nick Keogh. This complaint, dated 27th March 2017, was lodged with An Garda Síochána in Portlaoise for transmission to you.

We also enclose herewith copy of our unanswered letter dated 12th July 2017 addressed to your office (with enclosures) which also remains unanswered.

*We should be grateful if you might advise what has happened to the complaint and the said letter; and kindly advise of any reasons for the delay in response.*²⁷⁷⁷

Insp McCarthy again met Garda Keogh on 25th September 2017, with the latter complaining that he had not received an update regarding his allegations. Insp McCarthy told Garda Keogh that A/C Fanning had written to Mr Barrett seeking such an update on the matter.²⁷⁷⁸

²⁷⁷⁴ Tribunal Documents, Letter from Garda Keogh’s solicitors to Charlie Flanagan, Minister for Justice and Equality, Commissioner Nóirín O’Sullivan, Ms Josephine Feehily and Caoimhghín Ó Caoláin TD, dated 8th September 2017, p. 12705 at p. 12706

²⁷⁷⁵ Tribunal Documents, Letter from Garda Nicholas Keogh to Garda Nicholas Keogh’s solicitors, dated 17th September 2017, p. 12718

²⁷⁷⁶ Tribunal Documents, Letter from Garda Nicholas Keogh’s solicitors to Charlie Flanagan, Minister for Justice and Equality, Acting Commissioner Dónall Ó Cualáin and Ms Josephine Feehily, dated 21st September 2017, pp. 12716-12717

²⁷⁷⁷ Tribunal Documents, Letter from Garda Nicholas Keogh’s solicitors to Mr John Barrett, dated 25th September 2017, p. 367

²⁷⁷⁸ Tribunal Documents, Letter from Insp James McCarthy to Garda Nicholas Keogh, dated 26th September 2017, p. 15861

On the same date, the Garda Commissioner wrote to Mr Joseph Nugent, the Chief Administrative Officer, enquiring as to the *'present position'* of the complaint.²⁷⁷⁹ This was forwarded to C/Supt McLoughlin,²⁷⁸⁰ who emailed Mr Barrett on the same date as follows:

I understand that statement not sure if it was signed was made by garda Keogh in May under B&H policy. But I have not seen it.

*I have written on a number of occasions for work related stress complaint to be investigated. It may form part of b & h complaint. But I have no update.*²⁷⁸¹

It was shortly afterwards, on 28th September 2017, that Mr Barrett wrote to C/Supt McLoughlin stating that:

*The factual position as of today is that to progress a Bullying and Harassment Investigation, the person seeking to invoke the policy must nominate the source of the Bullying and Harassment complaint. Despite repeated request to do so, Nicholas Keogh has not done so as of today's date.*²⁷⁸²

On 3rd October 2017, a case conference was organised by Mr Barrett at his office where the bullying and harassment complaint was discussed. The minutes of the meeting²⁷⁸³ record that A/C Fanning was *'concerned about making an appointment under the Bullying & Harassment policy. He says that the investigation should be made under the Byrne/McGinn model where it encompasses a wider investigation'*.²⁷⁸⁴ Both A/C Fanning and Mr Mulligan are recorded as noting that the matter was *'going on for a long time'* and needed to be progressed.²⁷⁸⁵ Mr Barrett is recorded as being responsible for making an appointment *'at Assistant Commissioner level to do the investigation'*.²⁷⁸⁶

The following day, Insp McCarthy emailed the Garda Keogh's statement dated 27th March 2017 to Mr Barrett.²⁷⁸⁷ He also updated Garda Keogh on the meeting.²⁷⁸⁸ On 5th October 2017, A/C Fanning provided an update to Mr Barrett as follows:

*I also wish to acknowledge that Inspector James McCarthy spoke with Garda Nicholas Keogh on the afternoon of the 3rd October 2017 and also corresponded in writing and apprised him of the outcome of the meeting and the actions arising namely that all future correspondence with Garda Keogh will be from the Executive Director Human Resources and People Development and that an Assistant Commissioner would be appointed to investigate these matters.*²⁷⁸⁹

Mr Barrett wrote to Garda Keogh's solicitor on 13th October 2017 stating that:

*With respect to the Bullying and Harassment complaint, I am to advise that there has been extensive correspondence from Garda HRM section seeking clarification from Garda Keogh as to who specifically he was naming as the subject of his complaint. We are now aware from both the correspondence and the telephone conversation who that individual is. We will proceed accordingly.*²⁷⁹⁰

²⁷⁷⁹ Tribunal Documents, Letter from the Office of the Commissioner to Mr Joseph Nugent, dated 25th September 2017, p. 3545

²⁷⁸⁰ Tribunal Documents, Letter from Mr Joseph Nugent to Chief Superintendent HRM, dated 25th September 2017, p. 3544

²⁷⁸¹ Tribunal Documents, Email from C/Supt Anthony McLoughlin to Mr John Barrett, dated 25th September 2017, p. 3546

²⁷⁸² Tribunal Documents, Letter from Mr John Barrett to C/Supt Anthony McLoughlin, dated 28th September 2017, p. 3547

²⁷⁸³ Tribunal Documents, Minutes of Meeting dated 3rd October 2017, pp. 3549-3552

²⁷⁸⁴ Tribunal Documents, Minutes of Meeting dated 3rd October 2017, p. 3549

²⁷⁸⁵ Tribunal Documents, Minutes of Meeting dated 3rd October 2017, p. 3549 at p. 3550

²⁷⁸⁶ Tribunal Documents, Minutes of Meeting dated 3rd October 2017, p. 3549 at p. 3550

²⁷⁸⁷ Tribunal Documents, Email from Insp James McCarthy to Mr John Barrett and Mr Alan Mulligan, dated 4th October 2017, p. 6893

²⁷⁸⁸ Tribunal Documents, Letter from Insp James McCarthy to Garda Nicholas Keogh, dated 4th October 2017, p. 6895

²⁷⁸⁹ Tribunal Documents, Letter from A/C Fintan Fanning to Executive Director HRPD, dated 5th October 2017, p. 10108

²⁷⁹⁰ Tribunal Documents, Letter from Mr John Barrett to Garda Nicholas Keogh's solicitors, dated 13th October 2017, p. 13764 at p. 13765

On 19th October 2017, the Garda Commissioner sought an update on the complaint from Mr Nugent, stating that:

The Acting Commissioner has enquired as to the present position in the investigation of Garda Keogh's allegation of bullying and harassment. Who are the people complained of and on what date were they provided with the notification of the allegations? Who has been appointed to carry out this investigation? When were they appointed? What enquiries have been carried out to date? When is it anticipated that this investigation will be finalised?

*The Acting Commissioner also requires a chronological account of who was in possession of the complaint from the date the statement was made to the present time.*²⁷⁹¹

Mr Nugent forwarded this request to Mr Barrett. The CAO was informed that a case conference had been held and a copy of the subsequent letter to Garda Keogh dated 13th October 2017 was enclosed.²⁷⁹²

By letter dated 19th October 2017, Mr Barrett stated that he was appointing Assistant Commissioner Orla McPartlin to 'conduct a fact finding investigation on matters raised with respect' to Garda Keogh.²⁷⁹³ However, this appointment did not proceed and A/C McPartlin later stated that she never received this communication.

C/Supt McLoughlin provided a further reply to Mr Nugent on 23rd October 2017,²⁷⁹⁴ enclosing a copy of a 'chronology of correspondence and events... as they relate to Garda Keogh from HRM and the Protected Disclosures Office'.

A case conference was held on 23rd October 2017, 'to gather a holistic picture of general status of issues' that had been raised by Garda Keogh.²⁷⁹⁵ It was recorded that there was a 'discussion re the B&H matters and absence of investigation into same', with Ms Hassett 'noting that no details/specifics until got the statement dated 27th March 2017, and to her knowledge no investigation carried out into same to date'.²⁷⁹⁶ It was also recorded that there was a discussion concerning the following:

- the "March" statement' and whether there was a reference to any particular individual
- that there was a correspondence in August 2017 and that they 'now have a name and can marry altogether with B&H claim now'
- that A/C Fanning noted that 'the content of the statements are far wider than B&H'
- that A/C Fanning noted 'that he has ensured Garda Keogh has been communicated with fully throughout the process'
- that A/C Fanning felt that the 'Byrne/McGinn model the only way forward'
- that High Court proceedings had been issued by Garda Keogh
- that Garda Keogh should be engaged with on the 'specific B&H issues'.²⁷⁹⁷

²⁷⁹¹ Tribunal Documents, Letter from the Office of the Garda Commissioner to Mr Joseph Nugent, dated 19th October 2017, p. 10132 at p. 10133

²⁷⁹² Tribunal Documents, Letter from C/Supt Anthony McLoughlin to Mr Joseph Nugent, dated 19th October 2017, p. 10135

²⁷⁹³ Tribunal Documents, Letter from Mr John Barrett to A/C Orla McPartlin, dated 19th October 2017, p. 10416

²⁷⁹⁴ Tribunal Documents, Letter and chronology from C/Supt Anthony McLoughlin to Mr Joseph Nugent, dated 23rd October 2017, pp. 10166-10173

²⁷⁹⁵ Tribunal Documents, Minutes of Meeting dated 23rd October 2017, p. 10149 at p. 10150

²⁷⁹⁶ Tribunal Documents, Minutes of Meeting dated 23rd October 2017, p. 10149 at p. 10150

²⁷⁹⁷ Tribunal Documents, Minutes of Meeting dated 23rd October 2017, p. 10149 at pp. 10150-10152

A/C Fanning contacted Mr Nugent the following day, 24th October 2017, stating that *‘I don’t know what a “fact finding” is, its not provided for in the process. I certainly would not recommend it’* and that Garda Keogh had made two statements *‘so there is more than enough grounds in my opinion and that is my decision. I just don’t want to get it lost in the process, the seriousness of the allegations. When you consider all the other matters, excluding the Protected Disclosure and Confidential Recipient processes, there is a lot of serious concern’*.²⁷⁹⁸

During early November 2017, correspondence took place between A/C Fanning and Mr Nugent as regards the case conference, with the assistant commissioner calling into question the accuracy of the minutes²⁷⁹⁹ and raising a question as regards the appointment of A/C McPartlin by Mr Barrett.²⁸⁰⁰ He also raised the issue of the delay in the appointment of an investigator.²⁸⁰¹ On 8th November 2017, Mr Barrett wrote to the assistant commissioner stating that:

*[f]ollowing receipt of the comprehensive complaint from Garda Keogh in March / April 2017, the essential clarity necessary, wherein we requested Garda Keogh to confirm against whom he was specifically making the B&H allegation, did not emerge until July 2017. This is an essential point which you seemingly have overlooked in your mail and which is fundamental in any consideration of matters of delay, which you raise.*²⁸⁰²

The investigation: 15th November 2017 – 20th December 2018

On 9th November 2017, A/C Fanning wrote to Garda Keogh, acknowledging receipt of his complaint in March 2017 and stating that *‘I have notified the persons complained of that you lodged a complaint about their behaviour.’* He set out the options of mediation or investigation available to Garda Keogh.²⁸⁰³ On the same date, he wrote similar letters to Inspector Nicholas Farrell²⁸⁰⁴ and Supt Murray.²⁸⁰⁵ On 9th November 2017, Garda Keogh replied, declining mediation, and stating that he wished to have the matter fully investigated.²⁸⁰⁶

On 10th November 2017, A/C Fanning requested that Mr Barrett should nominate an assistant commissioner for appointment in accordance with the policy.²⁸⁰⁷ On 11th November 2017, A/C Fanning emailed Chief Superintendent Lorraine Wheatley and Chief Superintendent Mark Curran, stating that:

*I received correspondence from Garda Keogh dated 9th November 2017, as per 8.4 of the Policy & Procedures Harassment, Sexual Harassment & Bullying, in which Garda Keogh stated that he did not accept mediation and that he required the matter to be fully investigated. I have now corresponded with Executive Director, H.R. & P.D. on 10th November 2017 in accordance with Section 8.4 Policy & Procedures Harassment, Sexual Harassment & Bullying, informing him of the current position, and I await his response and nomination of an Officer.*²⁸⁰⁸

²⁷⁹⁸ Tribunal Documents, Email from A/C Fintan Fanning to Mr Joseph Nugent, dated 24th October 2017, p. 10188

²⁷⁹⁹ Tribunal Documents, Email from A/C Fintan Fanning to Mr Joseph Nugent, dated 1st November 2017, p. 6905 at p. 6906

²⁸⁰⁰ Tribunal Documents, Email from A/C Fintan Fanning to Mr Joseph Nugent, dated 6th November 2017, p. 10214 at p. 10215

²⁸⁰¹ Tribunal Documents, Email from A/C Fintan Fanning to Mr Joseph Nugent, dated 6th November 2017 p. 10214 at p. 10215

²⁸⁰² Tribunal Documents, Email from Mr John Barrett to A/C Fintan Fanning, dated 8th November 2017 p. 10223 at p. 10224

²⁸⁰³ Tribunal Documents, Letter from A/C Fintan Fanning to Garda Nicholas Keogh, dated 9th November 2017, p. 10228

²⁸⁰⁴ Tribunal Documents, Letter from A/C Fintan Fanning to Insp Nicholas Farrell, dated 9th November 2017, p. 10229

²⁸⁰⁵ Tribunal Documents, Letter from A/C Fintan Fanning to Supt Pat Murray, dated 9th November 2017, p. 10230

²⁸⁰⁶ Tribunal Documents, Letter from Garda Nicholas Keogh to A/C Fintan Fanning, dated 9th November 2017, p. 10231

²⁸⁰⁷ Tribunal Documents, Email from A/C Fintan Fanning to Executive Director HRPD, dated 10th November 2017, p. 10238

²⁸⁰⁸ Tribunal Documents, Email from A/C Fintan Fanning to C/Supt Lorraine Wheatley, dated 11th November 2017, p. 4168; Email from A/C Fintan Fanning to C/Supt Mark Curran, dated 11th November 2017, p. 4881

On 13th and 15th November 2017, A/C Fanning repeated his request for the nomination of an investigative officer.²⁸⁰⁹ On 15th November 2017, Mr Barrett informed A/C Finn that he was nominated to conduct Garda Keogh's bullying and harassment investigation.²⁸¹⁰ A/C Fanning appointed A/C Finn on the same date.²⁸¹¹ C/Supt Curran,²⁸¹² Insp Farrell,²⁸¹³ Supt Murray,²⁸¹⁴ Superintendent Noreen McBrien²⁸¹⁵ and C/Supt Wheatley²⁸¹⁶ were duly informed of the appointment.

On 16th November 2017, C/Supt Wheatley wrote to A/C Finn in respect of the option to mediate and stated as follows:

I am to inquire as to why this key aspect of the Policy was not adhered to in this instance? I would also inquire as to the reason why I was not notified of this Complaint until some 8 months later?

*... Indeed the documentation supplied in this regard appears to be incomplete and does not appear to present a full and accurate depiction of the events complained of.*²⁸¹⁷

On the same day, A/C Finn wrote to Garda Keogh informing him of the appointment and inviting him to a meeting to progress the investigation.²⁸¹⁸ This was followed by a hand-delivered letter of 24th November 2017.²⁸¹⁹

A/C Finn stated that on 28th November 2017, Garda Keogh made contact with his office, speaking with Inspector Annette Browne, and stating that *'he did not want to meet with me until I had read a statement that he made to Chief Superintendent Scanlan in March 2017'*.²⁸²⁰ A/C Finn emailed Mr Barrett and requested a copy of Garda Keogh's statement of complaint and appendices.²⁸²¹ A/C Finn received the statement of complaint but did not receive a copy of the appendices referred to within it.²⁸²²

On 29th November 2017, Garda Keogh's solicitor wrote to the Minister for Justice and Equality stating that:

*We have enquired apropos of the irregular police processing of the harassment complaint, the curious loss of such complaint in Garda HQ, curious police meetings convened with an agenda to treat the harassment complaint of Garda Keogh in a non-standard and singular way. We have asked the Minister for explanations. We have received none.*²⁸²³

²⁸⁰⁹ Tribunal Documents, Letter from A/C Fintan Fanning to Executive Director HRPD, dated 13th November 2017, p. 10247; Email from A/C Fintan Fanning to Executive Director HRPD, dated 15th November 2017, p. 10253

²⁸¹⁰ Tribunal Documents, Letter from Mr John Barrett to A/C Michael Finn, dated 15th November 2017, p. 4131

²⁸¹¹ Tribunal Documents, Letter from A/C Fintan Fanning to A/C Michael Finn, dated 15th November 2017, pp. 4127-4128

²⁸¹² Tribunal Documents, Letter from A/C Fintan Fanning to C/Supt Mark Curran, dated 15th November 2017, p. 10249

²⁸¹³ Tribunal Documents, Letter from A/C Fintan Fanning to Insp Nicholas Farrell, dated 15th November 2017, p. 10250

²⁸¹⁴ Tribunal Documents, Letter from A/C Fintan Fanning to Supt Pat Murray, dated 15th November 2017, p. 10251

²⁸¹⁵ Tribunal Documents, Letter from A/C Fintan Fanning to Supt Noreen McBrien, dated 15th November 2017, p. 10252

²⁸¹⁶ Tribunal Documents, Letter from A/C Fintan Fanning to C/Supt Lorraine Wheatley, dated 15th November 2017, p. 4169

²⁸¹⁷ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to A/C Michael Finn, dated 16th November 2017 p. 4166 at p. 4167

²⁸¹⁸ Tribunal Documents, Letter from A/C Michael Finn to Garda Nicholas Keogh, dated 16th November 2017, p. 4140 (Date of letter corrected from 16th September 2017 to 16th November 2017)

²⁸¹⁹ Tribunal Documents, Email from Sgt Damien Bartley to A/C Michael Finn, dated 24th November 2017, pp. 4133-4140

²⁸²⁰ Tribunal Documents, Statement of A/C Michael Finn, dated 7th March 2019, p. 4105 at p. 4106

²⁸²¹ Tribunal Documents, Emails from A/C Michael Finn to Mr John Barrett, dated 28th November 2017, p. 4142

²⁸²² Tribunal documents, Statement of A/C Michael Finn, dated 7th March 2019, p. 4105 at p. 4106

²⁸²³ Tribunal Documents, Letter from Garda Nicholas Keogh's solicitors to Charlie Flanagan, Minister for Justice and Equality, dated 29th November 2017, p. 12944

A/C Finn met with Garda Keogh and his solicitor on 1st December 2017. It is recorded that A/C Finn sought to clarify against whom the complaint was being made and that Garda Keogh provided him with additional material at the meeting.²⁸²⁴ This was to be the only in-person meeting or interview between A/C Finn and Garda Keogh during the course of the investigation. Garda Keogh provided A/C Finn with an addendum to his complaint of bullying and harassment.

It is stated in the addendum that:

On the 2nd June 2016, I met Chief Superintendent Tony McLoughlin to whom I then reported my bullying and harassment. On the 17th October 2016, Chief Superintendent McLoughlin asked me if I wished to make a formal complaint. On 20th October 2016, I wrote to Chief Superintendent McLoughlin confirming that I wished to make a formal complaint. Nobody contacted me to take a statement. My Solicitor wrote two letters also requesting such.

On 2nd March 2017, I met Chief Superintendent John Scanlon in Portlaoise for the purpose of making a statement. It became evident that I should make a written statement. I gave such written statement to C S Scanlon on the 27th March 2017. I heard nothing further about the processing of my complaint at such time. I didn't realise that the complaint had gone missing until I found out that Superintendent Patrick Murray (who had come to Athlone from Donal O Cualain's western region) was on a promotion list... I wish to know did C S John Scanlon send a copy of my statement to any person other than through the correct channels ie by post, email, fax or personal delivery? How did the complaint get lost? When was the complaint rediscovered? Why were two meetings then convened by Mr Joseph Nugent CAO with an agenda to deal with the re-discovered complaint by way of a 'scoping exercise' only or a partial investigation only (rather than in accordance with the official grievance procedure)? Why did Commissioner O Cualain effectively approve such meetings?²⁸²⁵

Garda Keogh raised further issues, including the checking of his car on PULSE by Sergeant Patrick Guinan on 5th May 2017, the incident of a car being driven on the road where he lived on 21st December 2015, the recording of his sick leave and the fact that he was unaware of 'who is carrying out any investigation into my substantive complaints' of 'garda collusion in the drugs trade in the Midlands'.²⁸²⁶

On 4th December 2017, A/C Finn wrote to A/C Fanning outlining what he considered to be grievances complained of by Garda Keogh stating that '*[a]t this point in time it would appear that the matters included in his addendum are outside the scope of my appointment and should be dealt with under the 'Grievance Procedure'*'.²⁸²⁷ A/C Finn provided a copy of the Garda Síochána Grievance Procedure to Garda Keogh on the same date.²⁸²⁸

In a letter dated 5th December 2017, Garda Keogh's solicitor complained about a number of issues following on from the meeting of 1st December 2017 which he described as the physical, procedural and conceptual '*fragmentation*' of Garda Keogh's complaint.²⁸²⁹ A/C Finn addressed

²⁸²⁴ Tribunal Documents, Minutes of Meeting dated 1st December 2017, pp. 4219-4224

²⁸²⁵ Tribunal Documents, Addendum to Garda Nicholas Keogh's Bullying and Harassment statement, dated 30th November 2017, p. 322

²⁸²⁶ Tribunal Documents, Addendum to Garda Nicholas Keogh's Bullying and Harassment statement, dated 30th November 2017, pp. 322-323

²⁸²⁷ Tribunal Documents, Letter from A/C Michael Finn to Assistant Commissioner Eastern Region, dated 4th December 2017, p. 4251

²⁸²⁸ Tribunal Documents, Letter from A/C Michael Finn to Garda Nicholas Keogh, dated 4th December 2017, pp. 4245-4250

²⁸²⁹ Tribunal Documents, Letter from Garda Nicholas Keogh's solicitors to A/C Michael Finn, dated 5th December 2017, p. 4227

these points in a reply dated 5th December 2017 and requested to meet Garda Keogh to clarify the issues included in his statement of complaint provided to him on 1st December 2017.²⁸³⁰

In an email dated 7th December 2017, A/C Fanning advised A/C Finn that:

My sense is you investigate all the issues Garda Keogh raises. I'm not sure you can arbitrarily determine something is not bullying etc. and then progress to determine it's a Grievance Procedure.

*... If any of the parties are dissatisfied, then they can ask me to review the file.*²⁸³¹

A/C Finn replied by email on the same date stating that:

I have no problem with the B&H stuff but the problem is that the new stuff he brought to the table is not B&H.

*I can take this to JB in HRM if you think that I am on the wrong road but I sense that I am correct as I am only doing B&H and this is additional stuff outside the scope of that.*²⁸³²

By letter dated 13th December 2017, Garda Keogh's solicitor addressed the points made in A/C Finn's letter of 5th December 2017 and expressly referenced Supt Murray. He also requested that *'meetings might be electronically recorded'*.²⁸³³

On 15th December 2017, A/C Finn wrote to Garda Keogh's solicitor seeking confirmation that all Garda Keogh's material had been provided. A/C Finn referred to the three officers identified by Garda Keogh on 1st December 2017 and stated *'I would appreciate if your client would meet with me or indicate in writing if persons other than the members outlined above are the subject of his complaint of bullying and harassment'*.²⁸³⁴

On 15th December 2017, A/C Finn wrote to C/Supt Curran,²⁸³⁵ Supt Murray²⁸³⁶ and C/Supt Wheatley²⁸³⁷ informing them that he had been appointed to investigate a complaint of bullying and harassment against them. He stated that he wished to meet with each officer *'to put to you the complaint made by Garda Keogh'*. On the same day, he informed A/C Fanning that it would not be possible to conclude the investigation within the timeframes set out by the policy *'given the volume of material involved'*.²⁸³⁸

C/Supt Wheatley notified A/C Finn on 19th December 2017 that she had issues regarding the *'validity of this process'*,²⁸³⁹ while Supt Murray sought legal clarity as to whether the investigation was *ultra vires* in light of the civil proceedings.²⁸⁴⁰ By reply email to Supt Murray dated 21st

²⁸³⁰ Tribunal Documents, Letter from A/C Michael Finn to Garda Nicholas Keogh's solicitors, dated 5th December 2017, pp. 4265-4267

²⁸³¹ Tribunal Documents, Email from A/C Fintan Fanning to A/C Michael Finn, dated 7th December 2017, p. 6942

²⁸³² Tribunal Documents, Email from A/C Michael Finn to A/C Fintan Fanning, dated 7th December 2017, p. 4275

²⁸³³ Tribunal Documents, Letter from Garda Nicholas Keogh's solicitors to A/C Michael Finn, dated 13th December 2017, pp. 4282-4284

²⁸³⁴ Tribunal Documents, Letter from A/C Michael Finn to Garda Nicholas Keogh's solicitors, dated 15th December 2017, pp. 4287-4288

²⁸³⁵ Tribunal Documents, Letter from A/C Michael Finn to C/Supt Mark Curran, dated 15th December 2017, pp. 4291-4292

²⁸³⁶ Tribunal Documents, Letter from A/C Michael Finn to Supt Pat Murray, dated 15th December 2017, pp. 4297-4298

²⁸³⁷ Tribunal Documents, Letter from A/C Michael Finn to C/Supt Lorraine Wheatley, dated 15th December 2017, pp. 4300-4301

²⁸³⁸ Tribunal Documents, Letter from A/C Michael Finn to Assistant Commissioner Eastern Region, dated 15th December 2017, p. 4304

²⁸³⁹ Tribunal Documents, Email from C/Supt Lorraine Wheatley to A/C Michael Finn, dated 19th December 2017, p. 4308

²⁸⁴⁰ Tribunal Documents, Email from Supt Pat Murray to A/C Michael Finn, dated 20th December 2017, pp. 4311-4312

December 2017, A/C Finn said that he was *'unsighted of the legal issue'* and requested that the superintendent might bring material to his attention that he considered indicated that the process was *ultra vires*. A/C Finn also stated that he wished to conclude the matter *'as speedily as possible in the best interests of all the parties involved'*.²⁸⁴¹

Garda Keogh's solicitor wrote on his behalf to A/C Finn on 21st December 2017 stating that it was *'clear against whom the bullying and harassment complaint had been made'* and referencing Supt Murray, C/Supt Curran and C/Supt Wheatley as having *'already been named in the complaint'*. He reiterated that any further meetings should be electronically recorded.²⁸⁴² A/C Finn sought legal advice on this issue.²⁸⁴³

On 2nd January 2018, A/C Finn contacted Mr Nugent and recommended that legal advice should be sought in respect of Supt Murray's view of the investigation. Specifically, A/C Finn sought advice *'to clarify if there is any reason why cooperating with my investigation would hinder or impede the Civil Action that is currently before the High Court.'*²⁸⁴⁴

On 3rd January 2018, the investigation team prepared an extensive spreadsheet/'jobs' list, which was forwarded to A/C Finn.²⁸⁴⁵ The same day, A/C Finn wrote to C/Supt McLoughlin, C/Supt Scanlan, Dr Oghenovo Oghuvbu, Garda A, Garda Quinn, Sergeant Michelle Baker, Inspector Dermot Drea, Insp Farrell, Sgt Guinan, Sergeant Andrew Haran, Sergeant Yvonne Martin, Sergeant Dermot Monaghan, Sergeant Cormac Moylan, Supt McBrien and Inspector Aidan Minnock asking to meet with them in relation to Garda Keogh's complaint, although no allegation had been made against them.²⁸⁴⁶

On 5th January 2018, solicitors for Insp Farrell queried whether a complaint had been made against him²⁸⁴⁷ and A/C Finn confirmed on 8th January 2018 that it had not.²⁸⁴⁸

In a letter dated 9th January 2018, C/Supt Wheatley responded to allegations made against her by Garda Keogh and took issue with the correspondence received from A/C Fanning dated 9th November 2017, stating that she felt *'personally hurt with the manner in which Assistant Commissioner Fanning has targeted me with spurious allegations'* and that the manner of the process adopted was *'hard to credit'*.²⁸⁴⁹

In a letter dated 10th January 2018, Garda Keogh's solicitors confirmed to A/C Finn that all material documentation was provided on 5th December 2017 and that Garda Keogh was happy to meet with him again:

*In relation to the persons responsible for the bullying, harassment, victimisation and detriment, it is clear from the documentary evidence that Superintendent Murray is responsible. Chief Superintendent Lorraine Wheatley and Chief Superintendent Mark Curran were also involved. Please note that Garda Keogh can attest to the bullying, harassment and victimisation. He does not have a clear line of sight into the internal workings of An Garda Síochána and or the internal chain of command. These will be matters for your own enquiries.*²⁸⁵⁰

²⁸⁴¹ Tribunal Documents, Email from A/C Michael Finn to Supt Pat Murray, dated 21st December 2017, p. 4314

²⁸⁴² Tribunal Documents, Letter from Garda Keogh's solicitors to A/C Michael Finn, dated 21st December 2017, pp. 4324-4325

²⁸⁴³ Tribunal Documents, Email from A/C Michael Finn to Ms Kathleen Hassett, dated 21st December 2017, p. 4329

²⁸⁴⁴ Tribunal Documents, Email from A/C Finn to Mr Joseph Nugent, dated 2nd January 2018, p. 4332

²⁸⁴⁵ Tribunal Documents, Email from Insp Annette Browne to A/C Michael Finn, dated 3rd January 2018, pp. 10355-10365

²⁸⁴⁶ Tribunal Documents, Letters from A/C Michael Finn to various parties, dated 3rd January 2018, pp. 4362-4376

²⁸⁴⁷ Tribunal Documents, Letter from Insp Nicholas Farrell's solicitors to A/C Michael Finn, dated 5th January 2018, pp. 4464-4466

²⁸⁴⁸ Tribunal Documents, Letter from A/C Michael Finn to Insp Nicholas Farrell's solicitors, dated 8th January 2018, pp. 4467-4468

²⁸⁴⁹ Tribunal Documents, Letter from C/Supt Lorraine Wheatley to A/C Michael Finn, dated 9th January 2018, p. 4498 at p. 4503

²⁸⁵⁰ Tribunal Documents, Letter from Garda Keogh's solicitors to A/C Michael Finn, dated 10th January 2018, pp. 4490-4491

On 10th January 2018, A/C Finn wrote to Supt Murray,²⁸⁵¹ C/Supt Curran,²⁸⁵² and C/Supt Wheatley²⁸⁵³ informing the officers of legal advice to the effect that the civil proceedings were not a bar to proceeding with the bullying and harassment investigation.²⁸⁵⁴

On 22nd December 2017 and 11th and 13th January 2018, A/C Finn and Supt Murray spoke by phone. They later had a lengthy meeting at the latter's home on 18th January 2018. The superintendent kept notes of these occasions but A/C Finn did not. In respect of the meeting, A/C Finn's position was that he was merely arranging to deliver the papers in the bullying and harassment investigation and was travelling to Athlone to do so. Supt Murray's notes and some extracts from the evidence given by A/C Finn in response to questions about the notes are as follows.

Supt Murray and A/C Finn spoke by phone on 22nd December 2017 and Supt Murray made a note of the conversation in his diary as follows:

*Phoned him at 15.56 for 23 minutes and 39 seconds. Discussed the various linked issues with him. He said he was aware of civil case, my promotion issues and that another AC had refused the appointment. Became concerned at all that. Also said he was unaware we had all received Garda Keogh's material. Explained legal issues to and PA views as outlined by H. Hall to me today and he said he would contact J Nugent and K Mulkearns re legal issues. He said he could look at my 338-page document and might bring clarity to PA about the issues through the organisation and J. Nugent. I offered to meet him as early as possible. He said he was off with a bad back and would be back in the New Year. I offered to drive to Cork if necessary. Sent him email then as he requested setting out the legal issues.*²⁸⁵⁵

A/C Finn told counsel for the tribunal that he did not remember this call²⁸⁵⁶ and he was asked the following by the Chairman:

Q. **Chairman:** Now, that takes us up to the 22nd December and it is a long phone call, 23 minutes, 39 seconds, you'd accept that?

A. Absolutely, Chair, yeah.

Q. **Chairman:** Is it surprising that you don't remember the call?

A. Now, Chair, I have to confess, I was in bed with my back at that stage, you know. I think I might have taken a bit too much medication, because when I went initially to the doctor, we'll say, he put me on medication for the back ...

*I'm a bit embarrassed because actually she [his wife] says I was out for a few days because of my medication.*²⁸⁵⁷

Supt Murray and A/C Finn spoke by phone on 11th January 2018 and Supt Murray made a note of the conversation in his diary as follows:

²⁸⁵¹ Tribunal Documents, Letter from A/C Michael Finn to Supt Pat Murray, dated 10th January 2017, p. 4479

²⁸⁵² Tribunal Documents, Letter from A/C Michael Finn to C/Supt Mark Curran, dated 10th January 2017, p. 4487

²⁸⁵³ Tribunal Documents, Letter from A/C Michael Finn to C/Supt Lorraine Wheatley, dated 10th January 2017, p. 4483

²⁸⁵⁴ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4112

²⁸⁵⁵ Tribunal Documents, Diary entry of Supt Pat Murray dated 22nd December 2017, p. 12309

²⁸⁵⁶ Tribunal Transcripts, Day 142, p. 124, Evidence of A/C Michael Finn

²⁸⁵⁷ Tribunal Transcripts, Day 142, pp. 126-127, Evidence of A/C Michael Finn

11/01/18, 14.33 for 3 minutes

*Call from M. Finn. He said he sent me an email. I said he hadn't but he said he thought he did but might not have. Said it was a courtesy call to tell me K. Ruane said I ... He said he would send me the advice in an email and I could talk to Ken myself. He said he knew my promotion situation and wanted to do it quickly. I asked if the Policing Authority were waiting for the result and he said they were, and it was holding my promotion. I asked Inspector Farrell, who was present, to make a note of the fact that pressure coming on from PA to complete the investigation.*²⁸⁵⁸

A/C Finn was asked about this call by counsel for the tribunal:

Q. "He said he knew my promotion situation and wanted to do it quickly."

Does that ring a bell to you?

A. *Yeah, I think that was in the context of I think he wanted for me to do my investigation quickly...*²⁸⁵⁹

Supt Murray and A/C Finn spoke by phone on 13th January 2018 and Supt Murray made a note of the conversation in his diary as follows:

Saturday, 13/01/18

*I text M. Finn re his request for meeting. He replied at 12.57 asking if I was free to talk. I rang him 12.58 for 5.55 minutes. He said he spoke to CS F Healy who examined the entire situation re mirrored civil claim between January and August '17. He said he now knows of the meticulous files and records and notes I have. He said he knew now of the corrections I made in Athlone and was now being punished for doing so, He spoke of CS T. Myers' reception from people accused he spoke to and his view of the ethical calibre of the people accused. I explained the situation in Athlone, how CS Wheatley and I work closely to make corrections with fairness to everyone in a very careful way being aware of the sensitivities involved. I told him of the calibre of the other people accused and their frustration and annoyance at this contrived situation. He said he understood. He confirmed that CS Curran, Wheatley and I were the ones Garda Keogh says he is accusing primarily. AC Finn offered a view that Garda Keogh and his solicitor were only looking for money in a civil claim.*²⁸⁶⁰

A/C Finn gave the following evidence to the tribunal:

Oh, I accept there was a phone call, Chair. We were arranging the meeting for the following week I'd say.

Q. ... But do you reject in its entirety the note of the phone call or are you only rejecting some of it?

A. *Well, there's some parts that I would hopefully reject straightaway.*

Where I have greatest exception with, Chair, is the line where it says:

"AC [Finn] offered a view that Garda Keogh and his solicitor were looking for money in a civil claim."

²⁸⁵⁸ Tribunal Documents, Diary entry of Supt Pat Murray dated 11th January 2018, p. 12311

²⁸⁵⁹ Tribunal Transcripts, Day 142, p. 137, Evidence of A/C Michael Finn

²⁸⁶⁰ Tribunal Documents, Diary entry of Supt Pat Murray dated 13th January 2018, p. 16222

I reject – I never said that, Chair. I might have said I knew that they were looking for money. And that's what I was saying, I was putting this in the context of, if I was down in Kerry on a Saturday morning, he was ringing me, you know. He could have been picked up a bit of the conversation, I could have picked up a bit of the conversation. Sorry, Chair.

Q. ... "He said he spoke to CS F Healy who examined the entire situation re mirrored civil claim between January and August 2017."

Is that correct or incorrect? It is attributed to you.

A. *That is incorrect. I don't think I said that.*

Q. *Well, he is recording you as telling him in this conversation that you had spoken to CS Healy?*

A. *I wouldn't dispute, Chair, if I did say that to him, I wouldn't have a dispute. I wouldn't dispute that.*

Q. *Chairman: I understand that. And he wouldn't know it unless you had said it, presumably.*

A. *Correct.*

Q. "He said he knows of the meticulous files and records and notes that I have."

Is this you? Did you say this? Or could he possibly be talking about CS Healy but –

A. *I could have said it –*

I can't recall saying those words to him. I wouldn't dispute it, Chair, in the context ...

I am saying that I wouldn't dispute it in the context that Chief Superintendent Healy told me that Pat Murray had a large volume of material which he had given Chief Superintendent Healy –

– for his civil case. That is my answer.

Q. ... "He said he knew now of the corrections I made in Athlone and was now being punished for doing so."

Did you say that to him?

A. *I have no recollection, Chair. I don't think I would have said that.*

Q. ... "He spoke of CST Myers' reception from people accused he spoke to and his view –"
Which again looks like you

"– his view of the ethical calibre of the people accused."

Did you say both of those things to him in that telephone call?

A. *No, Chair. But I would take that piece as being referring to Chief Superintendent Myers' view of the ethical calibre of the people he spoke to. But I know that Chief Superintendent Myers had been in Athlone we'll say earlier on that week and he met – you know, he served the papers on the people that were the witnesses and in fairness to him, I think he said to me,*

you know, that they got a good reception when they went there. Nobody wasn't prepared not to engage with them, they didn't get any hostility or negativity when they approached people. That would have been my perception of what he said.

Q. ... at the start of that answer you said you didn't say this to chief superintendent?

A. I don't recall it saying it to him, yeah.²⁸⁶¹

Supt Murray and A/C Finn met at Supt Murray's home on 18th January 2018 and Supt Murray made a note of the conversation in his diary as follows:

Meeting AC Finn 18/01/18. Went through below with him.

Garda Keogh file. Notes and original exhibits and files re trailer and [blank] and Ms B allegations in Tullamore and complaint to Tribunal and Olivia and sickness et cetera.

Civil file, Volume 1 and 2. Supreme Court case law. Civil allegations. F. Healy report. Disclosures complaint by sol. AC Fanning praising me constantly. AC Fanning interactions. Garda Keogh, Garda A, Greene, Section 49 and Intel, journalist, politicians creating chaos.

Bullying file.

My letter to Commissioner. Extra exhibits in file I got from Fanning telling what I got. Did Fanning give him stuff from my file? Media since September and my promotion.

Promotion file. Media and Barrett letter. Fanning and HQ meeting. Letters to PA. Passed over twice. No communication, no explanation. Can show emails.

Garda A file. [Blank] info and my suspension of him. Fanning visit trying to create chaos.

[Blank] file. Leaking to media and Wallace. How if Fanning's motivation.

Greene file. Info for him to see.

M. Finn.

My letter to top three and acknowledge.

Civil action and 338-page document. Mirrored image and State Claims.

Made March, notified 13/11. Delay and explanation.

No mediation 8.4.

Conflict of interest and his part in that and O. McPartland.

Scoping exercise and Chapter 5.2.

Other processes. Tribunal, civil, media, politicians, PA, GSOC, bullying two and a half years later.

Finn involvement in civil and Tribunal re-breath tests and attack on me. Is he part of campaign?

All disclosure re-meeting in HQ and media.

Does he not smell a rat? Hurried and contrived re two and a half years ago.

You are at the top table unethical and coward. Are you part of campaign against me? Did you speak to J. Nugent?²⁸⁶²

²⁸⁶¹ Tribunal Transcripts, Day 142, pp. 291-297, Evidence of A/C Michael Finn

²⁸⁶² Tribunal Documents, Diary entry of Supt Pat Murray, pp. 12313-12314

A/C Finn was asked the following by counsel for the tribunal:

- Q. ... this seems like an extremely broad ranging conversation with Superintendent Murray, one might say going beyond the boundaries of a bullying and harassment complaint. Do you remember this, the content here? Does it ring any bells for you?
- A. I don't specifically, Chair. We were there for a long time, I suppose, you know, it was a cordial enough, we'll say he made me tea, we sat down talking about his family, etcetera, you know. I didn't really know the guy before then. So I suppose he was kind of introducing himself to me and telling me. But the purpose of my meeting, like, wasn't to get a response from him there and then, I was only giving him the papers. So that was our first time meeting. I'm sure he probably articulated his views or whatever. I wasn't making any notes, so it wasn't pertinent, it wasn't going to be his response to the allegation. I'm sure he might have protested his innocence or whatever, but I didn't make any notes of it. It wasn't a pertinent, as I said, part of the investigation as such, other than I physically giving him the documentation and saying, here you are, I've served you now today, you go off, get your advice, come back to me with your response. Yeah.
- Q. ... do you accept or reject this record of the meeting on that date as being accurate or inaccurate, or can you say?
- A. It's not my record anyway of the meeting, we'll say, for one. I mean, I did meet him. It could have lasted four and a half hours, I didn't time it, we'll say?
- Q. ... Can I ask you about the best practice of a meeting such as that without recording any notes or records of the conversation? Do you have a view on that?
- A. Well, as I say, Chair, I wasn't looking for his response there and then, you know. I mean it wasn't going to be – he was going to have another occasion to give me his formal response to the allegations, yeah.²⁸⁶³

Supt Murray spoke with Mr Nugent on 20th January 2018 and made a further note in his diary *inter alia* that:

*I told him of my four and half hour meeting with M. Finn on Thursday, 18/01/18, and M.Finn's view is that all is ok.*²⁸⁶⁴

A/C Finn was asked the following by counsel for the tribunal:

- Q. ... was it a four and a half hour meeting with Superintendent Murray that day?
- A. It could have been. It was at his home actually.
- Q. ... you don't have a record of the meeting of the four and a half hours, is that right?
- A. No, Chair, no.
- Q. And he records it as saying: "M Finn's view is that all is okay."
Do you know what he might have meant by that?
- A. No, Chair, no.²⁸⁶⁵

²⁸⁶³ Tribunal Transcripts, Day 142, pp. 150-152, Evidence of A/C Michael Finn

²⁸⁶⁴ Tribunal Documents, Diary entry of Supt Pat Murray, p. 12418

²⁸⁶⁵ Tribunal Transcripts, Day 142, pp. 147-148, Evidence of A/C Michael Finn

In a letter dated 17th January 2018, A/C Finn informed Garda Keogh's solicitor that legal advice had been sought on electronic recording of meetings.²⁸⁶⁶ On the same date, A/C Finn wrote to C/Supt Curran providing him with an opportunity to respond to the issues raised by Garda Keogh and confirming that the investigation would not be completed within the policy timeframe.²⁸⁶⁷ A/C Finn provided a similar letter to Supt Murray.²⁸⁶⁸

C/Supt Wheatley emailed A/C Finn on 19th January 2018, attaching a letter dated 9th January 2018, which outlined her complaints concerning the investigation.²⁸⁶⁹ A/C Finn met with her on 23rd January 2018 *'to discuss the material that I had provided to her and to hear her concerns in relation to my investigation.'*²⁸⁷⁰

On 23rd January 2018, solicitors for Insp Farrell wrote again to A/C Finn requesting confirmation that no complaint had been made against their client.²⁸⁷¹ A/C Finn confirmed by way of two letters on 25th January 2018 that Insp Farrell *'does not come within the scope of [Garda Keogh's] allegation'*²⁸⁷² and that he was *'not one of the persons named by the complainant'*.²⁸⁷³ A similar letter was received from solicitors on behalf of Sgt Martin on 24th January 2018 and A/C Finn responded on 25th January 2018²⁸⁷⁴ that Sgt Martin was *'not one of the persons named by the complainant'*.²⁸⁷⁵

On 29th January 2018, A/C Finn wrote to Garda Keogh's solicitor seeking confirmation of a meeting with Garda Keogh and stating that there was no provision in the policy for the formal electronic recording of meetings. He proposed that he would *'record the minutes and that we agree the minutes and circulate them as an agreed document afterwards.'*²⁸⁷⁶

In a letter to Garda Keogh dated 12th February 2018, A/C Finn requested confirmation of a date when he could meet with Garda Keogh.²⁸⁷⁷ This request was repeated on 26th February 2018.²⁸⁷⁸ In response, on 6th March 2018, the solicitor for Garda Keogh wrote to A/C Finn complaining of *'inordinate, unexplained delay'* in dealing with Garda Keogh's complaint and stating that:

You will note that, at the last meeting, it was necessary for us to deal with very elementary questions about Garda Keogh's written complaint. You asked repeatedly for example who the complaints were against in circumstances where the written complaint made this abundantly plain. It was also clear that the written complaint had been torn into various bits and pieces, that bits of it had been discarded and that the remainder was literally all over the place on your desk.

You then raised a series of tangential questions in correspondence which implied that you had neither read the written complaint nor any interest in investigating the case. You refused to have the meetings electronically recorded and you proposed instead to take written minutes only. Such a written record which would only serve to better hide the obfuscation, delay and disguise the absurdity of the performance.

²⁸⁶⁶ Tribunal Documents, Letter from A/C Michael Finn to Garda Nicholas Keogh's solicitors, dated 17th January 2018, p. 4546

²⁸⁶⁷ Tribunal Documents, Letter from A/C Michael Finn to C/Supt Mark Curran, dated 17th January 2018, pp. 4549-4550

²⁸⁶⁸ Tribunal Documents, Letter from A/C Michael Finn to Supt Pat Murray, dated 17th January 2018, pp. 4659-4660

²⁸⁶⁹ Tribunal Documents, Email from C/Supt Lorraine Wheatley to A/C Michael Finn, dated 19th January 2018, pp. 4495-4503

²⁸⁷⁰ Tribunal documents, Statement of A/C Michael Finn, p. 4105 at p. 4113

²⁸⁷¹ Tribunal Documents, Letter from Insp Nicholas Farrell's solicitors to A/C Michael Finn, dated 23rd January 2018, p. 4469

²⁸⁷² Tribunal Documents, Letter from A/C Michael Finn to Insp Nicholas Farrell's solicitors, dated 25th January 2018, p. 4470

²⁸⁷³ Tribunal Documents, Letter from A/C Michael Finn to Insp Nicholas Farrell's solicitors, dated 25th January 2018, p. 4472

²⁸⁷⁴ Tribunal Documents, Letter from Sgt Yvonne Martin's solicitors to A/C Michael Finn, dated 24th January 2018, p. 4676

²⁸⁷⁵ Tribunal Documents, Letter from A/C Michael Finn to Sgt Yvonne Martin's solicitors, dated 25th January 2018, p. 4677

²⁸⁷⁶ Tribunal Documents, Letter from A/C Michael Finn to Garda Nicholas Keogh's solicitors, dated 29th January 2018, p. 4689

²⁸⁷⁷ Tribunal Documents, Letter from A/C Michael Finn to Garda Nicholas Keogh's solicitors, dated 12th February 2018, p. 4695

²⁸⁷⁸ Tribunal Documents, Letter from A/C Michael Finn to Garda Nicholas Keogh's solicitors, dated 26th February 2018, p. 4740

*It is in those circumstances that we should be grateful if you might now specify precisely what you propose to talk about on the next occasion, confirm that you have actually read the written complaint of Garda Keogh; and further confirm that the meetings will be electronically recorded.*²⁸⁷⁹

A/C Finn corresponded with C/Supt Curran²⁸⁸⁰ and Supt Murray²⁸⁸¹ on 23rd March 2018 seeking a response to the allegations.

Shortly after this, A/C Fanning wrote to A/C Finn on 26th March 2018 advising that *'the matter is now approaching five (5) months and should be expedited to a conclusion'*, and that the right of individuals to seek legal advice should not allow for the process to be delayed.²⁸⁸²

On 28th March 2018, solicitors for Garda Keogh reiterated their request for electronic recording of further meetings.²⁸⁸³

On 30th March 2018, A/C Finn contacted Mr Barrett in relation to the issue of delay in commencing the investigation as raised by Garda Keogh. He requested Mr Barrett to provide *'a few lines to outline what the issues were and why it took some time to move from the statement in March to the appointment in November'*.²⁸⁸⁴ He also contacted A/C Fanning requesting *'something in relation to the route that it took from Scanlan until I was appointed last November'*.²⁸⁸⁵ A/C Fanning replied on 31st March 2018 setting out his involvement and a chronology of the bullying and harassment complaint.²⁸⁸⁶ On 3rd April 2018, Insp McCarthy, on behalf of A/C Fanning, emailed A/C Finn with the attachments of correspondence setting out the route taken by the complaint.²⁸⁸⁷

On 5th April 2018, the solicitor for Garda Keogh wrote to Insp McCarthy and A/C Finn complaining that A/C Finn had *'failed to advise what further questions he now wishes to address to Garda Keogh and he has also failed to confirm that any further meeting with Assistant Commissioner Finn will be electronically recorded'*.²⁸⁸⁸

A/C Finn replied on the same date stating inter alia that:

Referring back to our original meeting, I met your client on the basis that he wished to make a complaint of Bullying and Harassment and I came to the table with 'clean hands' having no prior involvement. At your client's wish, so that I would have some understanding of his issues in advance, I sought and read a copy of his statement to Chief Superintendent Scanlon dated the 27th March 2017. I also sought copies of appendices that your client requested that I read. This is the reason why I was in possession of a partial file and hence the reason I was asking pertinent questions. At that meeting I procured from your client, for the first time, a full copy of his complaint and supporting appendices.

²⁸⁷⁹ Tribunal Documents, Letter from Garda Nicholas Keogh's solicitors to A/C Michael Finn, dated 6th March 2018, p. 4749

²⁸⁸⁰ Tribunal Documents, Email from A/C Michael Finn to C/Supt Mark Curran, dated 23rd March 2018, p. 5946

²⁸⁸¹ Tribunal Documents, Email from A/C Michael Finn to Supt Pat Murray, dated 23rd March 2018, pp. 4360-4361

²⁸⁸² Tribunal Documents, Letter from A/C Fintan Fanning to A/C Michael Finn, dated 26th March 2018, p. 10460

²⁸⁸³ Tribunal Documents, Letter from Garda Nicholas Keogh's solicitors to Insp James McCarthy and A/C Michael Finn, dated 28th March 2018, pp. 13796-13797

²⁸⁸⁴ Tribunal Documents, Email from A/C Michael Finn to Mr John Barrett, dated 30th March 2018, p. 10475

²⁸⁸⁵ Tribunal Documents, Email from A/C Michael Finn to A/C Fintan Fanning, dated 30th March 2018, p. 10476

²⁸⁸⁶ Tribunal Documents, Email from A/C Fintan Fanning to A/C Michael Finn, dated 31st March 2018, p. 10476

²⁸⁸⁷ Tribunal Documents, Email from Insp James McCarthy to A/C Fintan Fanning, dated 3rd April 2018, pp. 4774-4898

²⁸⁸⁸ Tribunal Documents, Letter from Garda Nicholas Keogh's solicitors to Insp James McCarthy and A/C Michael Finn, dated 5th April 2018, p. 10482

He further stated that he had no difficulty if Garda Keogh's solicitor wished to electronically record the meetings.²⁸⁸⁹

By 29th May 2018, A/C Finn had received responses from all witnesses relevant to the bullying and harassment complaint. The witnesses provided both factual responses and supporting documentation in relation to each of the events complained of.

On 13th June 2018, A/C Finn provided the witness statements and reports acquired during the course of the investigation to Garda Keogh's solicitor, affording Garda Keogh an opportunity to review and respond.²⁸⁹⁰ On 4th July 2018, A/C Finn was informed by Garda Keogh's solicitor that the documentation was under review by senior counsel.²⁸⁹¹ A/C Finn sought an update on this from Garda Keogh's solicitors on 10th August 2018.²⁸⁹²

By email dated 6th September 2018, Garda Keogh's solicitor raised a number of issues for clarification with A/C Finn.²⁸⁹³ These queries were forwarded to C/Supt Wheatley²⁸⁹⁴ and Supt Murray.²⁸⁹⁵ A/C Finn provided a response to Garda Keogh's solicitor on 10th November 2018.²⁸⁹⁶

On 28th September 2018, Mr Barrett wrote to A/C Fanning stating that '*given that a considerable period of time has elapsed since the relevant parties informed Assistant Commissioner Finn of their intention to seek legal advice it is reasonable that the investigation should now be finalised*'.²⁸⁹⁷

A/C Fanning had requested updates from A/C Finn on repeated occasions during 2018: 15th February 2018, 2nd May 2018, 7th June 2018, 5th July 2018, 17th August 2018, 5th September 2018, 19th October 2018, and 13th November 2018.²⁸⁹⁸ On 21st November 2018, A/C Fanning wrote again to A/C Finn seeking an update and stating that:

*This investigation has been ongoing in excess of 12 months and I would appreciate if the matter could be brought to a conclusion forthwith.*²⁸⁹⁹

A/C Finn responded the following day stating that '*I am currently drafting my report and will have the matter concluded early [next] week... provided that no further queries are raised by Solicitor for Garda Keogh*'.²⁹⁰⁰

On 12th December 2018, Garda Keogh's solicitor wrote to the Garda Commissioner stating, *inter alia*, that:

We secondly call upon you to advise when the investigation commenced by Garda Michael Finn might be concluded. This latter investigation relates to complaints of harassment and the causation of detriment to Garda Keogh in consequence of his making protected disclosures. Please note that this latter investigation has been subject to delays in processing Garda Keogh's complaint within Garda Headquarters and in particular a failure to have it transmitted to the Head of Personnel Mr John Barrett for in excess of six months. Such delay had the effect,

²⁸⁸⁹ Tribunal Documents, Letter from A/C Michael Finn to Garda Nicholas Keogh's solicitors, dated 5th April 2018, p. 4752

²⁸⁹⁰ Tribunal Documents, Letter from A/C Michael Finn to Garda Keogh's solicitors, dated 13th June 2018, pp. 4903-4963

²⁸⁹¹ Tribunal Documents, Letter from Garda Keogh's solicitors to A/C Michael Finn, dated 4th July 2018, p. 4763

²⁸⁹² Tribunal Documents, Letter from A/C Michael Finn to Garda Keogh's solicitors, dated 10th August 2018, p. 13808

²⁸⁹³ Tribunal Documents, Email from Garda Keogh's solicitors to A/C Michael Finn, dated 6th September 2018, pp. 4996-5001

²⁸⁹⁴ Tribunal Documents, Email from A/C Michael/C Finn to C/Supt Lorraine Wheatley, dated 6th September 2018, pp. 5012-5013

²⁸⁹⁵ Tribunal Documents, Email from A/C Michael Finn to Supt Pat Murray, dated 6th September 2018, p. 5014

²⁸⁹⁶ Tribunal Documents, Letter from A/C Michael Finn to Garda Keogh's solicitors, dated 10th November 2018, pp. 13817-13820

²⁸⁹⁷ Tribunal Documents, Letter from Mr John Barrett to A/C Fintan Fanning, dated 28th September 2018, p. 4711

²⁸⁹⁸ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at pp. 4114-4119

²⁸⁹⁹ Tribunal Documents, Letter from A/C Fintan Fanning to A/C Michael Finn, dated 24th November 2018, p. 10605

²⁹⁰⁰ Tribunal Documents, Email from A/C Michael Finn to A/C Fintan Fanning, dated 22nd November 2018, p. 4724

*firstly, of more detrimentally affecting the career and prospects of Garda Keogh within An Garda Síochána and secondly had a correspondingly beneficial effect upon the promotion of Superintendent Pat Murray.*²⁹⁰¹

The Report of Assistant Commissioner Michael Finn: 20th December 2018

The report on the ‘Complaint of Bullying & Harassment made by Garda Nicholas Keogh, 28045C, Athlone Garda Station’ was finalised on 20th December 2018 and submitted for the attention of the Assistant Commissioner, Eastern Region.²⁹⁰² The report and the relevant appendices comprised 336 pages of material.

The report records that Garda Keogh made this complaint in respect of C/Supt Curran, C/Supt Wheatley and Supt Murray²⁹⁰³ and that:

From the outset of the investigation all of the parties involved expressed concern and dissatisfaction with the timeframes in which the complaint was being investigated. They also expressed dissatisfaction that the Bullying and Harassment process was being used to compromise the civil proceedings which were running in parallel with the Bullying and Harassment complaint.

*While all of the parties agreed to cooperate with the investigation they were dissatisfied that the investigation had taken such a long period of time to formally commence given the length of time between the date that Chief Superintendent Scanlan was tasked to take Garda Keogh’s statement in March 2017 and the 15th November 2017 when Assistant Commissioner Finn was appointed to investigate the matter. Garda Keogh also made reference to the fact that he first raised this issue in 2016.*²⁹⁰⁴

It records that A/C Finn obtained legal advice in respect of the civil proceedings that the investigation could proceed and it also records that other parties were allowed time to obtain legal advice given that these proceedings were in being.²⁹⁰⁵

The report outlines the definition of ‘Harassment’ and ‘Workplace Bullying’ in the policy document. It is set out that cognisance was taken of the case of *Ruffley v The Board of Management of Saint Anne’s School* and the definition of ‘corporate bullying’.²⁹⁰⁶ Referring to this case, it was stated that ‘three key factors’ must be taken into consideration:

- (i) *Repeated behaviour;*
- (ii) *Inappropriate behaviour; and*
- (iii) *Behaviour reasonably capable of undermining the dignity at work.*²⁹⁰⁷

The report states that the ‘single definition and single test’ was:

were the parties involved, collectively or individually guilty of repeated inappropriate behaviour against Garda Keogh which could reasonably be regarded as undermining the individual’s right to dignity at work?

²⁹⁰¹ Tribunal Documents, Letter from Garda Nicholas Keogh’s solicitors to Commissioner Drew Harris, dated 12th December 2018, p. 13905

²⁹⁰² Tribunal Documents, Finn Report sent by A/C Michael Finn to A/C Fintan Fanning, dated 20th December 2018, pp. 5521-5560

²⁹⁰³ Tribunal Documents, Finn Report, p. 5521 at p. 5522

²⁹⁰⁴ Tribunal Documents, Finn Report, p. 5521 at p. 5523

²⁹⁰⁵ Tribunal Documents, Finn Report, p. 5521 at p. 5523

²⁹⁰⁶ *Ruffley v The Board of Management of Saint Anne’s School* [2017] IESC 33

²⁹⁰⁷ Tribunal Documents, Finn Report, p. 5521 at p. 5525

*It is also acknowledged, as a principle cited in this case, that a person employed by another may be required to accept instructions, discipline and control during the working day.*²⁹⁰⁸

The report had regard to the statement of Mr Justice Peter Charleton in the second interim report of this tribunal that *‘imposing and maintaining proper discipline is not the same as bullying and harassment ... In any properly functioning police force, there has to be a command structure which is unequivocally responded to’*.²⁹⁰⁹ Referring to Garda Keogh’s statement of complaint, it was stated that:

*In the context of the above Assistant Commissioner Finn took the view that he should consider Garda Keogh’s complaint in the context of both the single definition of bullying, as set out above, and the definition of corporate bullying, as cited by the Supreme Court in the Ruffley case [2017] IESC 33, during the course of his investigation.*²⁹¹⁰

In respect of the **first complaint**, the investigation of the PULSE check on Garda A, A/C Finn found that *‘while Garda Keogh may have perceived that he had good reason for checking Garda A on the Garda PULSE system, it was reasonable for management to query Garda Keogh on his rationale for checking Garda A on the PULSE system and to establish the sources of the intelligence that he was creating on the PULSE system’*.²⁹¹¹

In respect of the **second complaint**, the PULSE intelligence entry on 18th May 2014, A/C Finn found that:

while the PULSE intelligence entry made by Garda Keogh on the 18th May 2014 may have reflected Garda Keogh’s perception of what was going on in Athlone, in relation to Ms B and her dealings with certain members of An Garda Síochána, there is an onus on his supervisors to ensure that any intelligence recorded is both reliable and accurate.

*Given the nature of the intelligence both Chief Superintendent Curran and Superintendent Mc Brien had a duty to establish the veracity of the intelligence report that Garda Keogh had entered on PULSE.*²⁹¹²

In respect of the **third complaint**, the Olivia O’Neill investigation, A/C Finn stated that, following her conversation with Ms O’Neill, Garda Stephanie Treacy made a report which suggested that Garda Keogh had informed Ms O’Neill that Ms B was in collusion with local gardaí, which local management then investigated. A/C Finn found *‘no evidence’* that any of the members complained of had instigated the query, and that their actions were in keeping with their roles and responsibilities.²⁹¹³

In respect of the **fourth complaint**, the Liam McHugh investigation, A/C Finn found that Garda Aidan Lyons received the intelligence in good faith, and that *‘the allegations reported by Garda Lyons were very serious matters. Senior management would have been in dereliction of their duty had they not initiated the respective enquiries they made into the matter’*.²⁹¹⁴

In respect of the **fifth complaint**, the motor tax issue, A/C Finn stated that Supt Murray did not implement different standards across the district, but issued *‘an instruction to all staff directing*

²⁹⁰⁸ Tribunal Documents, Finn Report, p. 5521 at p. 5525

²⁹⁰⁹ Second Interim Report of the Tribunal of Inquiry into protected disclosures made under the Protected Disclosures Act, 2014 and certain other matters

²⁹¹⁰ Tribunal Documents, Finn Report, p. 5521 at p. 5526

²⁹¹¹ Tribunal Documents, Finn Report, p. 5521 at p. 5527

²⁹¹² Tribunal Documents, Finn Report, p. 5521 at p. 5529

²⁹¹³ Tribunal Documents, Finn Report, p. 5521 at pp. 5530-5532

²⁹¹⁴ Tribunal Documents, Finn Report, p. 5521 at pp. 5532-5533

that their vehicles must be fully taxed and insured before they would be paid for using their vehicles’ to ensure there would be no delay in the processing of claims.²⁹¹⁵ A/C Finn stated that Supt Murray addressed the issue with a Regulation 10 caution, and that his actions were ‘in keeping with his roles and responsibilities as District Officer’.²⁹¹⁶

In respect of the **sixth complaint**, alleged oppressive supervision, A/C Finn referred to the appointment of Sgt Martin as *‘responding to the concerns raised by Garda Keogh at their meeting on the 26th March 2015’* and the referral of Garda Keogh to the Chief Medical Officer as *‘the most proactive course of action available’*.²⁹¹⁷ He found that the actions of Supt Murray *‘were to ensure that the proper supports, and programmes, were put in place to assist Garda Keogh to alleviate any work related stress he may be experiencing and to assist him in the performance of his duty’*.²⁹¹⁸

In relation to the **seventh complaint**, the phone call by former Commissioner O’Sullivan, A/C Finn found no evidence or information to support this claim.²⁹¹⁹

In relation to the **eighth complaint**, working with Garda A and his access to firearms, A/C Finn found that *‘there is no logical explanation, or evidence, to support Garda Keogh’s perception that he was in fear of Garda A’* and *‘the suggestion from Garda Keogh that Garda A was left on the same rostered unit to “induce fear” into him is not supported by any other evidence or information’*.²⁹²⁰

In respect of the **ninth complaint**, the critique of the Custume Place investigation, A/C Finn found that there was no evidence that Supt Murray *‘was specifically targeting Garda Keogh. Superintendent Murray set high standards for all his staff in the District and expected all investigations to be carried out to a high standard’*.²⁹²¹

In respect of the **tenth complaint**, the refusal of the cancellation of annual leave, A/C Finn found that:

Superintendent Murray was not satisfied that Garda Keogh’s request to cancel a day’s leave was on the basis he had to attend a GSOC appointment.

Superintendent Murray was of the view that the request lacked any form of clarity and was not prepared to accept that Garda Keogh’s absence from work was justified in the absence of supporting evidence. No further explanation was provided by Garda Keogh ...²⁹²²

A/C Finn found that the actions of Supt Murray were in keeping with *‘his role and responsibilities as District Officer’* and there was *‘no evidence to suggest’* that the behaviour of Supt Murray amounted to bullying or harassment of Garda Keogh.²⁹²³

In respect of the **eleventh complaint**, the critique of the criminal damage and theft of a trailer investigations, A/C Finn found that:

Superintendent Murray was conscious of the need to exhaust all lines of enquiries in relation to the two incidents that he reviewed – to demonstrate to the victims that An Garda Síochána

²⁹¹⁵ Tribunal Documents, Finn Report, p. 5521 at p. 5534

²⁹¹⁶ Tribunal Documents, Finn Report, p. 5521 at p. 5535

²⁹¹⁷ Tribunal Documents, Finn Report, p. 5521 at p. 5536

²⁹¹⁸ Tribunal Documents, Finn Report, p. 5521 at p. 5536

²⁹¹⁹ Tribunal Documents, Finn Report, p. 5521 at pp. 5537-5538

²⁹²⁰ Tribunal Documents, Finn Report, p. 5521 at pp. 5538-5539

²⁹²¹ Tribunal Documents, Finn Report, p. 5521 at p. 5540

²⁹²² Tribunal Documents, Finn Report, p. 5521 at p. 5542

²⁹²³ Tribunal Documents, Finn Report, p. 5521 at p. 5542

*was making every possible effort to detect their incidents. The high standards that he set were not unique to Garda Keogh – Superintendent Murray expected a high standard for all investigations from all investigating members.*²⁹²⁴

He stated that the additional enquiries carried out were acknowledged by Insp Minnock and Supt Murray as ‘good work’, and that this instance was ‘another example when Superintendent Murray was setting out, imposing and maintaining’ high standards in keeping with his role.²⁹²⁵

In respect of the **twelfth complaint**, the critique of the robbery from a person investigation, A/C Finn found that ‘Superintendent Murray was setting out, imposing and maintaining professional investigative standards in the District’ and there was no evidence of bullying or harassment.²⁹²⁶

In respect of the **thirteenth complaint**, Garda Keogh’s confinement to indoor duty, A/C Finn did not find any evidence to substantiate the claims of Garda Keogh.²⁹²⁷

In respect of the **fourteenth complaint**, the disciplinary investigation of the absence without leave by Garda Keogh in July 2015, A/C Finn found no evidence of bullying or harassment. He recorded that:

Garda Keogh subsequently pleaded guilty to the breach of discipline of failing to report for duty when interviewed by Superintendent [Alan] Murray.

*Garda Keogh could have taken the matter further if he was of the view that the Discipline Regulations were not complied with. No such further action was taken at the time and the fine was imposed.*²⁹²⁸

He determined that Garda Keogh’s requests for access to call logs were not ‘rational, proportionate or legal’.²⁹²⁹

In respect of the **fifteenth complaint**, the recording of Garda Keogh’s sick leave, A/C Finn found that it was Garda Olivia Kelly who recorded Garda Keogh’s sickness absence on the Sickness Absence Management System (SAMS), and ‘when the recording of Garda Keogh’s sick [leave] was highlighted to her by the Garda Sick Section, based in Navan, the matter was immediately rectified’.²⁹³⁰ He further found that ‘there are guidelines on the recording of sickness absence on the Garda SAMS IT system when the illness is classified as work related stress. Garda Sick Section have indicated that all work related stress is recorded as Ordinary Illness until otherwise directed by the CMO’ and that the officers complained of by Garda Keogh ‘did not have influence on how the absence was recorded’.²⁹³¹

In relation to Garda Keogh’s allegation of the denial of overtime, the **sixteenth complaint**, A/C Finn found that ‘the allocation of overtime was not directed or influenced by any of the officers who are the subject of this complaint’ and that there was ‘no evidence to adduce that there was a deliberate or inadvertent denial of overtime to Garda Keogh’.²⁹³²

In respect of the alleged denial of commendations, the **seventeenth complaint**, A/C Finn found that neither Supt McBrien nor Supt Murray had an active role in the submission of E.P.W.1

²⁹²⁴ Tribunal Documents, Finn Report, p. 5521 at p. 5543

²⁹²⁵ Tribunal Documents, Finn Report, p. 5521 at p. 5543

²⁹²⁶ Tribunal Documents, Finn Report, p. 5521 at pp. 5544-5545

²⁹²⁷ Tribunal Documents, Finn Report, p. 5521 at p. 5545

²⁹²⁸ Tribunal Documents, Finn Report, p. 5521 at p. 5547

²⁹²⁹ Tribunal Documents, Finn Report, p. 5521 at p. 5547

²⁹³⁰ Tribunal Documents, Finn Report, p. 5521 at p. 5548

²⁹³¹ Tribunal Documents, Finn Report, p. 5521 at p. 5548

²⁹³² Tribunal Documents, Finn Report, p. 5521 at p. 5549

forms and that no E.P.W.1s were completed by Garda Keogh's immediate line supervisor. He also noted that Garda Keogh was praised by Insp Minnock following the investigation of the burglary in August 2015 and that he received the Water Safety Ireland award for the Shannon River incident in November 2016. A/C Finn determined that there was no evidence of bullying or harassment of Garda Keogh in these instances.²⁹³³

In respect of the **eighteenth and final complaint**, concerning the service of the Disclosures Tribunal Order, A/C Finn found that the Order was '*circulated to all members with Athlone Garda District and was subject to widely published material on social media and on an official notice in the National Media*'.²⁹³⁴ There was no evidence to support the allegation that the order was '*curiously withheld*' from Garda Keogh.

A/C Finn concluded that:

In examining each of the complaints and issues raised by Garda Nicholas Keogh in his statement of complaint I have found no evidence to support the complaint that bullying and/or any harassment has occurred against Garda Keogh.

*I have found no evidence of bullying and/or harassment emanating from any individual member of An Garda Síochána or corporately from the collective actions of any Garda personnel examined as part of this investigation.*²⁹³⁵

A/C Finn referred to the allegations made against C/Supt Curran,²⁹³⁶ C/Supt Wheatley²⁹³⁷ and Supt Murray,²⁹³⁸ finding that there was '*no evidence*' that these members bullied and/or harassed Garda Keogh. In respect of 'corporate bullying', he determined that '*I have found no evidence to support the allegation that any bullying or harassment has occurred against Garda Keogh*'.²⁹³⁹

A/C Finn set out his findings on the statement of complaint as follows:

My findings are that each Officer fulfilled their obligations and conducted their duties to ensure an accountable and professional policing service was being delivered to the public. Their actions are examples of a proactive management that ensured appropriate governance and supervision was maintained to achieve their policing objectives and this could not be construed as either Bullying or Harassment.

Furthermore, I found that their interaction with Garda Keogh was found to be both legitimate and proportionate considering some of the serious issues that had been raised and actively managed by them. At all times they were cognisant of the personal stress and issues that Garda Keogh was encountering and each Officer ensured appropriate supports were in place for him on an ongoing basis.

*From examining each of the issues raised I am of the opinion that Superintendent Murray, Chief Superintendent Curran and Chief Superintendent Wheatley acted legitimately within their respective roles and responsibilities to manage the issues and policing demands of their areas of responsibility, and in particular their interaction with Garda Keogh.*²⁹⁴⁰

²⁹³³ Tribunal Documents, Finn Report, p. 5521 at p. 5550

²⁹³⁴ Tribunal Documents, Finn Report, p. 5521 at p. 5551

²⁹³⁵ Tribunal Documents, Finn Report, p. 5521 at p. 5552

²⁹³⁶ Tribunal Documents, Finn Report, p. 5521 at pp. 5552-5553

²⁹³⁷ Tribunal Documents, Finn Report, p. 5521 at pp. 5553-5554

²⁹³⁸ Tribunal Documents, Finn Report, p. 5521 at pp. 5554-5558

²⁹³⁹ Tribunal Documents, Finn Report, p. 5521 at p. 5559

²⁹⁴⁰ Tribunal Documents, Finn Report, p. 5521 at pp. 5559-5560

Appointment of Assistant Commissioner Finbarr O'Brien: 10th January 2019

On 8th January 2019, Mr Mulligan wrote to the office of the Eastern Region stating that he was nominating A/C O'Brien, Northern Region, to undertake the role of appointing officer in respect of the report:

It is the role of the appointing Officer to inform the parties of the findings of the investigation, having satisfied themselves that all appropriate steps have been taken and that a thorough and impartial investigation has been carried out. As Assistant Commissioner Finn was the investigator in this manner it is not appropriate that he would undertake the role of the appointing Officer.

To finalise this investigation I nominate Assistant Commissioner O'Brien, Northern Region, to undertake the role of appointing Officer in this instance.²⁹⁴¹

On 22nd January 2019, A/C O'Brien wrote to A/C Finn, seeking clarification in relation to the Liam McHugh complaint, the robbery from a person crime file, the investigation of the absence without leave and the alleged denial of commendations.²⁹⁴² On 4th February 2019, a report was forwarded to A/C O'Brien by the Finn investigation team in relation to these queries.²⁹⁴³

On 7th February 2019 A/C O'Brien wrote to C/Supt Curran,²⁹⁴⁴ Supt Murray,²⁹⁴⁵ C/Supt Wheatley,²⁹⁴⁶ the Executive Director, HRPD,²⁹⁴⁷ and Insp Farrell²⁹⁴⁸ stating *inter alia* that 'I have satisfied myself that all appropriate steps have been taken and that a thorough and impartial investigation has been carried out'.²⁹⁴⁹ In a letter to Garda Keogh on 7th February 2019, he said that:

In examining each of the complaints and issues raised by you in your statement of complaint I have found no evidence to support the complaint that bullying and/or harassment has occurred against you.

I have found no evidence of bullying and/or harassment emanating from any individual member of An Garda Síochána or corporately from the collective actions of any Garda personnel examined as part of this investigation ...

... My findings are that each Officer fulfilled their obligations and conducted their duties to ensure an accountable and professional policing service was being delivered to the public. Their actions ensured appropriate governance and supervision was maintained to achieve their policing objectives and this could not be construed as either Bullying or Harassment.

Furthermore, I found that their interaction with you was both legitimate and proportionate considering some of the serious issues that had been raised and actively managed by them. I have deemed that at all times they were cognisant of the personal stress and issues that Garda Keogh was encountering and each Officer ensured appropriate supports were in place for him on an ongoing basis.

²⁹⁴¹ Tribunal Documents, Letter from Mr Alan Mulligan to Assistant Commissioner Eastern Region, dated 8th January 2019, p. 11982

²⁹⁴² Tribunal Documents, Letter from A/C Finbarr O'Brien to A/C Michael Finn, dated 22nd January 2019, p. 7364

²⁹⁴³ Tribunal Documents, Email from A/C Michael Finn to A/C Finbarr O'Brien, dated 4th February 2019, pp. 5635-5638

²⁹⁴⁴ Tribunal Documents, Letter from A/C Finbarr O'Brien to C/Supt Mark Curran, dated 7th February 2019, pp. 7374-7384

²⁹⁴⁵ Tribunal Documents, Letter from A/C Finbarr O'Brien to Supt Pat Murray, dated 7th February 2019, pp. 7385-7407

²⁹⁴⁶ Tribunal Documents, Letter from A/C Finbarr O'Brien to C/Supt Lorraine Wheatley, dated 7th February 2019, pp. 7408-7412

²⁹⁴⁷ Tribunal Documents, Letter from A/C Finbarr O'Brien to Executive Director HRPD, dated 7th February 2019, pp. 7413-7415

²⁹⁴⁸ Tribunal Documents, Letter from A/C Finbarr O'Brien to Insp Nicholas Farrell, dated 7th February 2019, p. 7443

²⁹⁴⁹ Tribunal Documents, Letter from A/C Finbarr O'Brien to C/Supt Mark Curran, dated 7th February 2019, p. 7374

From examining each of the issues raised I am of the opinion that Superintendent Murray, Chief Superintendent Curran and Chief Superintendent Wheatley acted legitimately within their respective roles and responsibilities to manage the issues and policing demands of their areas of responsibility, and in particular their interaction with you.²⁹⁵⁰

On 11th February 2019, Garda Keogh confirmed to A/C O'Brien that he wished to appeal the findings.²⁹⁵¹ Mr Mulligan thereafter wrote to Garda Keogh on 26th February 2019 stating that:

Please be advised that your appeal must be submitted to the Executive Director HRPD within 42 days commencing on the 7th of February 2019, the date you were informed by Assistant Commissioner O'Brien, Northern Region of his findings. As per 8.12 of the Harassment, Sexual Harassment & Bullying Policy you must clearly and comprehensively outline the grounds on which your appeal is being sought.²⁹⁵²

Appeal by Garda Keogh: 19th March 2019

Garda Keogh filed his grounds of appeal by letter dated 19th March 2019, stating that:

This complaint was made in 2017 to Chief John Scanlon. It was subsequently apparently mislaid for some 7/8 months in the police administrative system. It appears not to have reached the HR Manager Mr John Barrett until November 2017. When it was re-discovered, there followed a desultory investigation by AC Finn which has now resulted in this intellectually outré whitewash. This Appeal sets out, by way of example, some of the more patent errors in the Report.

Superintendent Pat Murray has been promoted in the interim while this complaint was either lost or in transit in the office and now again lost in the labyrinthine digressions and mists of this Report.

Findings were apparently made by AC Finn on the 31st December 2018. Such findings were then to be examined by AC Fanning who was the 'natural judge' in the circumstances. AC Fanning was however curiously suspended on the 2nd January 2019. (His suspension was subsequently apparently acknowledged to be unlawful). The effect of his temporary suspension however was that the findings of AC Finn were then assigned to another judge namely AC O'Brien who produced this inchoate decision in accelerated and record time (compared to its slow progress up to that point) – before AC Fanning was reinstated or could come back.²⁹⁵³

He was highly critical of the report, describing it as 'irrational', 'opaque' and 'wanting in neutrality'. He further contended that the report was unclear, stating that:

It is impossible to distinguish – in such Report – facts from matters that are reported as facts. It is further impossible – in the Report – to distinguish AC Finn's 'findings' from AC O'Brien's 'determinations' or to know whether representations contained in the Report are being attributed to any particular witness and or are factual findings and or determinations. It proceeds by a partial suppression of the totality of specific factual matrices in the complaint: by elision. It ignores and or avoids the specificity of the complaints where they do not advance any defence for the Superintendent or where they appear to involve the investigation into police drug

²⁹⁵⁰ Tribunal Documents, Letter from A/C Finbarr O'Brien to Garda Nicholas Keogh, dated 7th February 2019, p. 7416 at pp. 7441-7442

²⁹⁵¹ Tribunal Documents, Letter from Garda Nicholas Keogh to A/C Finbarr O'Brien, dated 11th February 2019, p. 11986

²⁹⁵² Tribunal Documents, Letter from Mr Alan Mulligan to Garda Nicholas Keogh, dated 26th February 2019, p. 7444

²⁹⁵³ Tribunal Documents, Appeal against the Determination by A/C Finbarr O'Brien on the complaint by Garda Nicholas Keogh, dated 19th March 2019, p. 7446 at p. 7447

*pedalling. The Report is full of logical fallacies, platitudinous, evasive and partial. It is marked by a reliance on anecdotal evidence. It evinces a want of any forensic empirical investigation.*²⁹⁵⁴

The appeal then dealt with the specific incidents of alleged bullying and harassment and the findings by A/C O'Brien.

Appointment of Deputy Commissioner John Twomey: 2nd April 2019

On 2nd April 2019, Mr Mulligan wrote to Dep/C John Twomey and stated that:

Garda Keogh has now appealed the findings of the investigation via his legal representative, [Garda Keogh's solicitor].

*As the appointing Officer was at Assistant Commissioner rank the appropriate rank to process the appeal under paragraph 8.12 of the Policy is a Deputy Commissioner. The Policy provides for an independent expert to be engaged to audit the investigation file.*²⁹⁵⁵

Dep/C Twomey informed Garda Keogh²⁹⁵⁶ and C/Supt Curran, C/Supt Wheatley, Supt Murray, Supt McBrien and Insp Farrell²⁹⁵⁷ that he had been appointed to deal with Garda Keogh's appeal and sought an extension to the specified timeframes.

On 15th April 2019, Dep/C Twomey wrote to Mr Mulligan requesting the nomination of an expert specialising in the area of human resources and employment relations to carry out an independent audit of the investigation file. He asked that a copy of the report be returned to him for consideration in his final determination.²⁹⁵⁸

Mr Mulligan informed the deputy commissioner on 25th April 2019 that he should appoint an independent expert.²⁹⁵⁹ On 8th May 2019, Dep/C Twomey requested Mr Rory de Bruir Barrister-at-Law to conduct an audit as follows:

Having considered the matter, I have decided to engage an independent expert to carry out an audit of the investigation against the grounds of the appeal submitted and would appreciate if you would undertake this task.

*I have enclosed a copy of the Policy document, the investigation file and the grounds of appeal for your information.*²⁹⁶⁰

On 24th May 2019, Supt Murray wrote to Dep/C Twomey expressing concern over the length of time the investigation had taken and seeking a resolution.²⁹⁶¹

²⁹⁵⁴ Tribunal Documents, Appeal against the Determination by A/C Finbarr O'Brien on the complaint by Garda Nicholas Keogh, dated 19th March 2019, p. 7446 at p. 7447

²⁹⁵⁵ Tribunal Documents, Letter from Mr Alan Mulligan to Dep/C Policing and Security, dated 2nd April 2019, p. 13121 at p. 13122

²⁹⁵⁶ Tribunal Documents, Letter from Dep/C John Twomey to Garda Nicholas Keogh, dated April 2019, pp. 7466-7467

²⁹⁵⁷ Tribunal Documents, Letter from Dep/C John Twomey to C/Supt Mark Curran, C/Supt Lorraine Wheatley, Supt Pat Murray, Supt Noreen McBrien and Insp Nicholas Farrell, dated April 2019, pp. 7464-7465

²⁹⁵⁸ Tribunal Documents, Letter from Dep/C John Twomey to Mr Alan Mulligan, dated 15th April 2019, p. 16315

²⁹⁵⁹ Tribunal Documents, Letter from Mr Alan Mulligan to Deputy Commissioner Policing and Security, dated 25th April 2019, pp. 16320-16321

²⁹⁶⁰ Tribunal Documents, Letter from Dep/C John Twomey to Mr Rory de Bruir Barrister-at-Law, dated 8th May 2019, p. 13129 at p. 13130

²⁹⁶¹ Tribunal Documents, Letter from Supt Pat Murray to Dep/C John Twomey, dated 24th May 2019, p. 16357

Audit of the investigation by Mr de Bruir: 4th June 2019

The ‘Audit of Investigation’ was completed by Mr de Bruir Barrister-at-Law on 4th June 2019²⁹⁶² and submitted to the deputy commissioner for his consideration.²⁹⁶³

In his audit, Mr de Bruir addressed each of the eighteen complaints made by Garda Keogh, setting out the initial complaint, the findings of A/C Finn, and the grounds of appeal. Mr de Bruir stated that:

- 25.1 *I have sought to address the relevant points of appeal that can be discerned in the Appeal Submission and where not specifically addressed point by point, I believe are encompassed within the reasons for the findings and conclusions of A/C Finn. The findings and conclusions are logical, rational and are based on the reports and responses provided by the Gardai, Sergeants, Inspectors, Superintendents who worked with and/or supervised and/or interacted with Garda Keogh during the period May 2014 to December 2015 answer any of the points of the appeal not specifically addressed. Seventeen complaints relate to this period.*
- 25.2 *Chapter 3 of the Booklet Working together to create a Positive Working Environment, specifies that harassment has to be based on the relevant characteristic of the person outlining the Policy and Procedures. It specifies the relevant characteristic and provides that in cases where the inappropriate behaviour is not linked to one of the nine discriminatory grounds then it is not covered by the above definition. Garda Keogh does not come within the nine characteristics.*
- 25.3 *The definition of penalisation in Section 3 of the Protected Disclosures Act 2014 includes (f) harassment in relation to a person who makes a protected disclosure. Garda Keogh’s complaints can be said to have been addressed and investigated as if the specified characteristics included – persons who make protected disclosures. A/C Finn did investigate the complaints of harassment and did not find any instance of inappropriate behaviour on the part of the named Officers.*
- 25.4 *Chapter 5 of the Booklet Working together to create a Positive Working Environment, outlines Forms of Bullying, the list is not exhaustive. There is the allegation of oppressive supervision and the allegation of irrational scrutiny and minute criticism of investigation work.*
- 25.5 *These were not borne out in the reports and responses provided by the Gardai, Sergeants, Inspectors, Superintendents who worked with and/or supervised and/or interacted with Garda Keogh during this period May 2014 to December 2015. Reports specifically stated that Garda Keogh was not bullied or harassed.*
- 25.[6] *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.²⁹⁶⁴*

²⁹⁶² Tribunal Documents, Audit of Mr Rory de Bruir Barrister-at-Law, dated 4th June 2019, pp. 13138-13223

²⁹⁶³ Tribunal Documents, Letter from Mr Rory de Bruir Barrister-at-Law to Deputy Commissioner Policing and Security, dated 5th June 2019, pp. 13224-13225

²⁹⁶⁴ Tribunal Documents, Audit of Mr Rory de Bruir Barrister-at-Law, dated 4th June 2019, p. 13138 at pp. 13222-13223

In his letter to the deputy commissioner, Mr de Bruir stated, *inter alia*, that:

*I have paid cognizance to the Grounds of Appeal as submitted for and on behalf of Garda Keogh by [his solicitor]. This document does not present a clear statement in Plain English of the ground or grounds of appeal in relation to each complaint. It is presented as a commentary and poses general questions, which do not specify the precise ground of appeal that can be addressed. Thus it was difficult to discern precise points to be addressed.*²⁹⁶⁵

Conclusion of Garda Keogh's Appeal: 11th July 2019

On 11th July 2019, Dep/C Twomey informed the Executive Director, HRPD that:

*Having considered all documentation made available to me by your office, together with the comprehensive report from the Independent Expert, the investigation was carried out in a thorough, fair and impartial manner, and on that basis I do not uphold the complaints of bullying made by Garda Keogh against the named personnel.*²⁹⁶⁶

He informed Garda Keogh of his determination on the same day, stating that:

In conducting the appeal and concluding matters in respect of your eighteen (18) complaints, I have examined the completed investigation file of Assistant Commissioner Finn; the conclusions arrived at by Assistant Commissioner O'Brien; together with the appeal submitted by [Garda Keogh's solicitor], on your behalf, and had the benefit of studying the report provided to me by Mr. Rory de Bruir. I also considered whether the investigation complied with procedures set out in 'the Policy'.

I am satisfied that the investigation completed by Assistant Commissioner Finn was comprehensive and addressed, in detail and in accordance with 'the Policy', all complaints raised by you and your solicitor on your behalf.

I am satisfied that the decisions reached by Assistant Commissioner O'Brien were correct and are logical, rational and based on the reports and responses provided by Garda personnel who worked with and/or interacted with you during the timeframe to which seventeen of the complaints relate.

I concur with the findings of Assistant Commissioner Finn and subsequent decisions by Assistant Commissioner O'Brien that each Officer fulfilled their obligations and conducted their duties to ensure an accountable and professional policing service was being delivered within their area of responsibility. The actions taken equate to proactive management ensuring appropriate governance and supervision to achieve policing objectives, which I do not believe can be construed as either bullying or harassment.

*Having considered, in-depth, all documentation available to me in this matter, I am of the firm belief that a comprehensive investigation was carried out and the findings resulted from a thorough, fair and impartial investigation and, accordingly I can find no corroborative evidence in support of the complaints and I am unable to uphold any complaint of bullying made by you against the named personnel.*²⁹⁶⁷

²⁹⁶⁵ Tribunal Documents, Letter from Mr Rory de Bruir Barrister-at-Law to Deputy Commissioner Policing and Security, dated 5th June 2019, p. 13224

²⁹⁶⁶ Tribunal Documents, Letter from Dep/C John Twomey to Executive Director HRPD, dated 11th July 2019, p. 13233

²⁹⁶⁷ Tribunal Documents, Letter from Dep/C John Twomey to Garda Nicholas Keogh, dated 11th July 2019, pp. 13236-13237

He also wrote to C/Supt Curran, C/Supt Wheatley, Supt Murray, Supt McBrien and Insp Farrell informing them of the foregoing decision.²⁹⁶⁸ Garda Keogh's bullying and harassment file was then closed.²⁹⁶⁹

Complaint made by Garda Nicholas Keogh

Garda Keogh summarised his complaint of alleged targeting or discrediting by A/C Finn in his interview with tribunal investigators as follows:

Regarding Assistant Commissioner Mick Finn I wish to state the following. I reported my bullying and harassment complaint to Chief Superintendent Anthony McLoughlin on 02/06/2016. I did not make my written statement to Chief Superintendent John Scanlon until 27/03/2017, when I physically handed it to him. This statement went missing for approximately seven months. My solicitor resubmitted my bullying and harassment complaint to Garda Human Resources... on 25/09/2017. On 01/12/2017, I met Assistant Commissioner Finn who had been appointed to investigate this matter, where I submitted an addendum to my statement of bullying and harassment complaint to him, in writing, and where I verbally informed him also of the persons involved in my harassment. Assistant Commissioner Finn then subsequently sent a number of letters to my solicitor stating that he was unsure as to who I was making a complaint about, when in my view, it was crystal clear against whom I was making my complaint when I had informed him both in writing and verbally when I met him. Assistant Commissioner Finn has discredited me in saying that he does not know against whom I was making the complaint, when to me, it was crystal clear whom I was complaining about and I believe this delayed the investigation of my complaint. It is my belief that the motive behind the delay by Assistant Commissioner Finn was to allow the process for the promotion of Superintendent Pat Murray to be progressed and for him to be appointed as Chief Superintendent to go by without issue. My solicitor has correspondence relating to Assistant Commissioner Finn's correspondence with him in relation to his queries raised, which I say delayed the investigation of my complaint... The combination of the general conduct of Assistant Commissioner Finn's unwieldy investigation of my complaint together with his obfuscation and unnecessary delay damaged the timely determination of my complaint and I believe facilitated the promotion of Superintendent Pat Murray to my discredit.²⁹⁷⁰

Garda Keogh said that his statement to the tribunal and his statement of bullying and harassment dated 27th March 2017²⁹⁷¹ were versions 'of the same document' with each one having a 'slightly different focus'.²⁹⁷²

In a letter to the tribunal on 8th August 2018, Garda Keogh said that his complaint in respect of the bullying and harassment investigation was the following:

The first is the disappearance/ mislaying, in Garda HQ, of Garda Keogh's internal complaint of bullying for 6 months, the fast tracking of the promotion of Superintendent Murray, the subsequent requests by Commissioner Finn for a pinpointing of agents of detriment (such as Superintendent Murray, Lorraine Wheatley, Mark Curran) where documents were withheld from Garda Keogh and where the copy complaint had been left physically in tatters and its sense

²⁹⁶⁸ Tribunal Documents, Letter from Dep/C John Twomey to C/Supt Mark Curran, C/Supt Lorraine Wheatley, Supt Pat Murray, Supt Noreen McBrien and Insp Nicholas Farrell, dated 11th July 2019, pp. 13234-13235

²⁹⁶⁹ Tribunal Documents, Statement of Dep/C John Twomey, p. 14671

²⁹⁷⁰ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 105-106

²⁹⁷¹ Tribunal Documents, Bullying and Harassment Statement of Garda Nicholas Keogh, pp. 303-321

²⁹⁷² Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 93

*fragmented/scrambled, the delay in the processing and determination of the complaint by Garda Keogh of bullying (by reference to the fast tracking of the promotion of Superintendent Murray), the persistent prolonged withholding of information from Garda Keogh etc.*²⁹⁷³

On 10th April 2019, Garda Keogh's solicitor reiterated that:

*It is part of our client's complaint that the overall handling of this internal complaint was conducted in a manner which was unfair and breached our client's entitlement to fair procedures and natural justice. The unfairness of the investigation is compounded by the delay on the part of An Garda Síochána in carrying out its investigation and bringing it to a conclusion. As set out above, the internal complaint was originally made in 27th March 2017 to Chief Superintendent Scanlon. The complaint subsequently went missing. To date, neither this office nor our client has been provided with an explanation for this. It did not reach Mr. John Barrett until it was sent again by registered post directly addressed to Mr Barret, from this office on the 25th September 2017. Further, the complaint was again personally delivered to Assistant Commissioner Finn on the 1st December 2017. This was in circumstances where Assistant Commissioner Finn on that date had only part of the hard copy Complaint.*²⁹⁷⁴

His solicitor also raised complaints in respect of A/C O'Brien as follows:

*For reasons of which we are unaware, Assistant Commissioner Fanning did not carry out the final review of the complaint and reach the decisions thereon. This review was carried out by Assistant Commissioner O'Brien. Assistant Commissioner O'Brien completed his review within a very short window of time and rejected all our client's complaints. Importantly, in the context of fair procedures, Assistant Commissioner O'Brien never met with our client or heard any evidence from him in advance of reaching his decision. The decision was communicated to our client by letter dated the 7th February 2019. Our client has appealed against this decision. Our client is wholly dissatisfied with the decisions reached by Assistant Commissioner O'Brien. We have now taken our client's specific instructions on this issue. Our client is of the view that the decision of Assistant Commissioner O'Brien and the timing of the delivery of his findings amount to a further example that he was 'targeted or discredited with the knowledge of or acquiescence of senior members of An Garda Síochána'.*²⁹⁷⁵

By further letter to the tribunal dated 24th April 2019, Garda Keogh's solicitor enclosed an additional statement addressing the bullying and harassment appeal process and the outcome of the same:

*As you will see this statement sets out Garda Keogh's position regarding the report of Assistant Commissioner O'Brien, its findings and the timing of its delivery. It is Garda Keogh's firm position that this amounts to further evidence of targeting and discrediting him.*²⁹⁷⁶

The enclosed statement of Garda Keogh made the following complaint:

With reference to item number 18 on the list of items for consideration by the Tribunal entitled complaints by Garda Nicholas Keogh in relation to the bullying and harassment investigation carried out by Assistant Commissioner Michael Finn, I believe the outcome of this investigation

²⁹⁷³ Tribunal Documents, Letter from Garda Nicholas Keogh's solicitors to the Disclosures Tribunal, dated 8th August 2018, p. 14585 at p. 14586

²⁹⁷⁴ Tribunal Documents, Letter from Garda Nicholas Keogh's solicitors to the Disclosures Tribunal, dated 10th April 2019, p. 12624 at p. 12625

²⁹⁷⁵ Tribunal Documents, Letter from Garda Nicholas Keogh's solicitors to the Disclosures Tribunal, dated 10th April 2019, p. 12624 at p. 12625

²⁹⁷⁶ Tribunal Documents, Email from Garda Nicholas Keogh's solicitors to the Disclosures Tribunal, dated 24th April 2019, p. 5966

as comprised by Assistant Commissioner Finbarr O'Brien constitutes a failure to uphold my rights and entitlements as a Garda Officer in that; there is no acknowledgement whatsoever of the correctness of my complaints of having been longly harassed by Garda Officers which has arisen since I made my protected disclosures in May/June 2014. I have been confirmed in my opinion that the O'Brien Report and the investigation conducted by Assistant Commissioner Finn amounted to a conscious and deliberate failure to protect me from harassment and bullying within the force by reason of the conclusions reached by Assistant Commissioner Finn as furnished to me and set out at item no. 5 of the letter dated the 10th of November 2018. I give this by way of example.²⁹⁷⁷

In his evidence to the tribunal, Garda Keogh referred to the written complaint that he submitted at his meeting with A/C Finn:

And it clearly outlined who I was making complaints about. Assistant Commissioner Finn kept asking me over and over again, but who are you making your complaint about, is it a corporate allegation or is it some other allegation. And I just said, look, I said, I'm making a complaint about – I named three people out, and I said, that's it, like I'm naming them out, it's in writing. He kept going on after that, but like, who are you making your complaint after? This is the way it was, as if I didn't know who I was making my complaint about. It was in writing and I verbally just told him and told him a number of times during the meeting. He kept asking me this question over and over again: But who are you making your complaint about?²⁹⁷⁸

Counsel for the tribunal referred Garda Keogh to the notes of A/C Finn relating to Garda Keogh's decision to make a complaint about C/Supt Wheatley:

It is true, Lorraine Wheatley, I know I am humming and hawing in that, in relation to in relation to Chief Superintendent Wheatley, but, of course, just on review of evidence kind of, to work out in my head, just for continuity of stuff, she is – I've to make a complaint against both her and Mark Curran.²⁹⁷⁹

In relation to Chief Superintendent Wheatley, the thing where she – for the purpose of the appeal, where she appears to completely side in relation to the phone call with Superintendent Murray. Then there's where I don't get – I'm looking for the statement that I made to Superintendent Alan Murray and I don't get that.²⁹⁸⁰

In his evidence to the tribunal, Garda Keogh clarified his complaint in relation to the conclusions reached by the investigation conducted by A/C Finn:

Like, his conclusions, my complaints are against just a small group, just three senior officers. I have plenty of evidence in, in parts, like, as I said, not in – perhaps not in everything, but I had enough to hold them up, to get them to the points that they were actually – I could put on paper and sign my name to them that they were a complaint. He seems to have just, I think at this stage, just a circle, the wagons exercise, protect the senior officers. Because as well, he seems to divide it up then and there's – from recollection, there's notices on other members, virtually anyone I named in the complaint gets served a notice that I'm making an allegation against them, which I wasn't making an allegation against others.²⁹⁸¹

²⁹⁷⁷ Tribunal Documents, Statement of Garda Nicholas Keogh, dated 23rd April 2019, p. 5969

²⁹⁷⁸ Tribunal Transcripts, Day 104, p. 65, Evidence of Garda Nicholas Keogh

²⁹⁷⁹ Tribunal Transcripts, Day 104, pp. 71-72, Evidence of Garda Nicholas Keogh

²⁹⁸⁰ Tribunal Transcripts, Day 104, pp. 71-73, Evidence of Garda Nicholas Keogh

²⁹⁸¹ Tribunal Transcripts, Day 104, p. 81, Evidence of Garda Nicholas Keogh

Counsel on behalf of An Garda Síochána asked Garda Keogh about the conclusions in the report of A/C Finn:

Q. ... So, those were his conclusions. Do I understand your complaint to be that you disagree with the result?

A. I disagree with the whole, the whole thing. Just even what we touched on earlier, where I said about there could be a sergeant in there, never even looked at that. That was never examined. There's a whole lot of stuff. In relation to the Liam McHugh incident, which was dealt with in relation to Mark Curran's involvement there, like, in relation to Aidan Lyons' statement, sergeant Aidan Lyons' statement that he has made to the Tribunal, I think he has said that he had no further – he wrote this report in relation to the meeting with Liam McHugh, I am pretty certain it says that no one came back to him, no one came back to him in relation to this, to the map, that he didn't know what happened. As a result of the Assistant Commissioner Finn investigation, it's then obviously appealed and goes on and into the de Bruir – but the findings actually appear to go further than – basically, it's my hand that appears to go into Mr. McHugh's pocket, where there's no additional evidence of any sort. So this whole thing, Judge, I reject this whole investigation.²⁹⁸²

Counsel on behalf of An Garda Síochána put it to Garda Keogh that the report of A/C Finn was structured, factual and based on evidence. Garda Keogh replied:

*I dispute that. The other aspect of this is, Judge, Assistant Commissioner Finn is the person investigating my bullying and harassment complaint and Superintendent Murray is one of the three persons I complain about. Assistant Commissioner Finn, ironically, is the person that then signs off the clearance form to the Policing Authority for the promotion, to say that there is no allegation or anything against Superintendent Murray. Judge, he's the person who is investigating the same.*²⁹⁸³

It was further put to Garda Keogh that his complaint about A/C Finn was based on the fact that he disagreed with the result. He gave evidence that:

*Well, the whole – I mean as I said, I just gave the example earlier on in relation to the one particular thing, the Liam McHugh matter, where no further evidence seems to come to light, but yet, as a result of this investigation, there seems to be – it seems to sway in an angle very much against me in the absence of any new evidence. This whole – the whole investigation, where – and any of the evidence I supplied, where there was good documentary evidence, just seemed to have been either downplayed or ignored.*²⁹⁸⁴

When referred to the finding of Mr de Bruir that A/C Finn conducted a fair and impartial investigation, Garda Keogh stated that:

*Judge, even on this, this part here, I mean Mr. de Bruir is obviously under the impression that I know that it's Garda Lyons involved in that. Like, I didn't know Garda Lyons was involved in that. But Mr. de Bruir is under – seems to be under the impression that I knew that and I didn't make a complaint about it. I always from day one, Judge, said that I didn't have – not alone did I have anything to do with it, that I knew nothing about it, but I went as far as to say the whole thing was false. That was right back in May 2014, when it first started to pop its head up.*²⁹⁸⁵

²⁹⁸² Tribunal Transcripts, Day 109, pp. 138-139, Evidence of Garda Nicholas Keogh

²⁹⁸³ Tribunal Transcripts, Day 109, pp. 154-155, Evidence of Garda Nicholas Keogh

²⁹⁸⁴ Tribunal Transcripts, Day 109, p. 157, Evidence of Garda Nicholas Keogh

²⁹⁸⁵ Tribunal Transcripts, Day 109, p. 175, Evidence of Garda Nicholas Keogh

Garda Keogh was asked the following by the Chairman:

- Q. *Chairman: You think he rubber stamps Assistant Commissioner Finn's report. That's your point?*
- A. *Essentially. But equally, Judge, on the face of it, if you didn't know anything about what went on, Assistant Commissioner Finn's report might look fine, you know, and that. But the likes of this stuff here, the Garda Lyons things and I didn't make a complaint against him and all that, like Mr. de Bruir, of course, is not to know, because in all the reports, in the Finn investigation on this part, they have Garda Lyons received this information in good faith, in virtually every one of them, and there's not one mention in any of the reports anywhere that Garda Lyons was Garda A's partner or that from day one I always disputed that whole allegation. It's just not there. That's not Mr. de Bruir's fault, like he's only basing his – making his findings on the Finn investigation.²⁹⁸⁶*

Garda Keogh was questioned by counsel on behalf of Garda Lyons:

- Q. *... clearly at the time when your appeal was made you were aware of Garda Lyons's identity.*
- A. *Hm hmm.*
- Q. *And there was no ground of appeal to say, well, that Garda Lyons was put up to this and that it was made up.*
- A. *I accept what you are saying is correct.²⁹⁸⁷*

Responding Statements and Evidence on the Issue

Chief Superintendent Anthony McLoughlin

In his statement to the tribunal, C/Supt McLoughlin said that he met Garda Keogh on 3rd June 2016, when Garda Keogh provided him with his *'Harassment Index'* and alleged that he had been *'singled out because of his actions'*. He stated that he asked Garda Keogh what he wanted him to do in respect of the issues raised and Garda Keogh confirmed that *'he wished me to do nothing as his matters were being dealt with by GSOC'*.²⁹⁸⁸

C/Supt McLoughlin said that he received a request to prepare a report under s. 41 (2) of the Garda Síochána Act, 2005 on 22nd July 2016. He stated that this took him *'some time to prepare'* and that he wrote to a number of parties seeking information.²⁹⁸⁹ In this regard, Ms Hassett at HRM informed him on 16th August 2016 that there was no record of a complaint by Garda Keogh under the harassment, sexual harassment and bullying policy.²⁹⁹⁰ He said that he received a letter from Garda Keogh on 18th August 2016 and that *'he highlighted that the issue of most concern to him, at that time, was that harassment he alleged he endured from elements within Garda management'*.²⁹⁹¹

²⁹⁸⁶ Tribunal Transcripts, Day 109, p. 176, Evidence of Garda Nicholas Keogh

²⁹⁸⁷ Tribunal Transcripts, Day 105, pp. 38-39, Evidence of Garda Nicholas Keogh

²⁹⁸⁸ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at pp. 3230-3231

²⁹⁸⁹ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3233

²⁹⁹⁰ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3234

²⁹⁹¹ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3234

C/Supt McLoughlin said that he wrote to Garda Keogh on 19th August 2016, asking if he had lodged a bullying and harassment complaint. He received a reply from Garda Keogh on 5th September 2016:

This letter informed me that Garda Keogh had not reported his alleged harassment within An Garda Síochána, in keeping with standardised policy and practice. Instead, Garda Keogh had drawn the attention of named others to his alleged harassment. This letter also referred to a number of documents which Garda Keogh said he sent me on the, 28 August 2016, in relation to the harassment he claimed. When these documents referred to by, Garda Keogh, arrived at my office, I noted that they were a compendium of diverse letters, statements, notes and PULSE printouts. I preserved this compendium, for record.²⁹⁹²

He continued that:

I was aware that the Employee Assistance Officer, Garda Michael Quinn was in regular and frequent contact with Garda Keogh, nevertheless, I was anxious to offer Garda Keogh my personal support and I also had the purpose to inform him that GSOC had contacted me and verified the fact that it was appropriate for An Garda Síochána, not GSOC, to investigate allegations raised by Garda Keogh in respect of bullying and harassment. Accordingly, I made a telephone call to Garda Keogh on the 07th September 2016 at 1.15pm. In summary, I informed him that bullying and harassment was a matter for An Garda Síochána. I informed Garda Keogh that if he wished to pursue his bullying and harassment allegations, then, it was necessary for him to make a formal complaint in keeping with the provisions set out in An Garda Síochána's Harassment, Sexual Harassment and Bullying policy for An Garda Síochána.²⁹⁹³

He said that he had previously contacted GSOC:

... What I felt was that Garda Keogh had made a complaint or a disclosure to GSOC and I understood that it included all and every aspect of the issues that he was dealing with at that time. I was then subsequently made aware that there was an issue from his perspective, as he saw it, that the GSOC investigation was not proceeding because of a file not being released to them. Therefore, I started to take up the baton, if you like, in relation to that aspect as well with GSOC.²⁹⁹⁴

On 8th September 2016, C/Supt McLoughlin wrote to the private secretary to the Garda Commissioner in relation to his section 41 report, also updating her that '*Garda Keogh had not made an internal report about his allegations of bullying and harassment, but in its place had raised such matters with others*'.²⁹⁹⁵

In or around September 2016, on a date he cannot recall, C/Supt McLoughlin said that he attended a meeting with Mr Mulligan and Mr Barrett to discuss the welfare of Garda Keogh and his pay. He said in his statement to the tribunal that Garda Keogh's allegations of bullying and harassment were discussed at this meeting, along with Garda Keogh's claim that it resulted '*from his exposure as an identified whistleblower*'.²⁹⁹⁶ It was at this meeting that it was agreed to reinstate Garda Keogh to full pay because of '*the unique circumstances that he faced*'.²⁹⁹⁷

²⁹⁹² Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3234

²⁹⁹³ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at pp. 3234-3235

²⁹⁹⁴ Tribunal Transcripts, Day 141, pp. 54-55, Evidence of C/Supt Anthony McLoughlin

²⁹⁹⁵ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3235

²⁹⁹⁶ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at pp. 3236-3237

²⁹⁹⁷ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3237

C/Supt McLoughlin said that he spoke with Garda Keogh by phone on 7th October 2016, and that Garda Keogh was unhappy that his bullying and harassment complaint was to be investigated within An Garda Síochána as he alleged that *'the Commissioner was a party to his harassment'*.²⁹⁹⁸ C/Supt McLoughlin later wrote to Garda Keogh on 12th October 2016, and asked Garda Keogh if he wished to formally proceed with his complaint of bullying and harassment. Garda Keogh confirmed that he did wish to do so and C/Supt McLoughlin informed Ms Hassett of this decision on 26th October 2016.²⁹⁹⁹ He told the tribunal that he had received documentation from Garda Keogh which he passed on to Ms Hassett:

*Yeah, because I was in receipt, as mentioned by Garda Keogh in one of his letters, an envelope of documents, which I think we alluded to earlier in the course of this morning. And I had that, I kept that under lock and key. Then, I think it was around the end of October or into November when I passed that list of documentation on to Ms. Kathleen Hassett for the purpose of adding it to the file, the bullying and harassment file.*³⁰⁰⁰

C/Supt McLoughlin said that on 13th January 2017, he spoke with Garda Keogh by phone and updated him on the progress of his bullying and harassment complaint.³⁰⁰¹

C/Supt McLoughlin also outlined correspondence between his office and Mr Barrett during 2017 and, in particular, the role played by his office in seeking updates in respect of the bullying and harassment investigation.³⁰⁰²

On 28th September 2017, he received an update from Mr Barrett:

*It served to inform me that the accurate position at that time, was such that, to progress a Bullying and Harassment investigation, the person seeking to invoke the policy must nominate the source of the Bullying and Harassment complaint. Executive Director Barret stated that despite repeated request to do so, Garda Nicholas Keogh, had not yet nominated the specific person or persons he was complaining of, in terms of Bullying and Harassment. I gathered that a case conference to deal with these matters was scheduled for 12:00pm on the 03rd October, 2017 and that I would have to report further on that occasion.*³⁰⁰³

In his statement to the tribunal, C/Supt McLoughlin said that he attended the case conference on 3rd October 2017 in respect of Garda Keogh.³⁰⁰⁴ C/Supt McLoughlin stated that he also attended the later case conference in respect of Garda Keogh on 23rd October 2017.

He was later notified that A/C Finn had been appointed to deal with the bullying and harassment complaint of Garda Keogh.³⁰⁰⁵ He met him with Garda Keogh and his solicitor on 15th December 2017. He said that:

*... I was satisfied to an extent that all elements of Garda Keogh's complaints were now at least under investigation and were being pursued in whatever forum they were in.*³⁰⁰⁶

He was cross-examined by counsel for An Garda Síochána about his notes of this meeting:

²⁹⁹⁸ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at pp. 3237-3238

²⁹⁹⁹ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3238

³⁰⁰⁰ Tribunal Transcripts, Day 141, pp. 69-70, Evidence of C/Supt Anthony McLoughlin

³⁰⁰¹ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3241

³⁰⁰² Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at pp. 3242-3248

³⁰⁰³ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3244

³⁰⁰⁴ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at p. 3245

³⁰⁰⁵ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at pp. 3246-3247

³⁰⁰⁶ Tribunal Transcripts, Day 141, p. 139, Evidence of C/Supt Anthony McLoughlin

Q. This is the last meeting that we referred to with Garda Keogh. At page 3636, the fourth answer down, you have already referred to this entry with Mr. McGuinness:

“No issue with Mark Curran. It was chief’s offices.”

That’s Chief Superintendent Curran, he had no issue with him at that point in time, is that correct?

A. That’s what that suggests, yeah.

Q. And that was dated 15th December 2017?

A. Yes.

Q. Then if we just scroll over, this is an entry that wasn’t referred to earlier, and again, we’re at the fifth asterisk down. That’s the entry, the last entry, at the bottom of the screen:

“Mulcahy, Coppinger...”

A. “Top investigators”.

Q. Top investigators. So what was that entry being made in connection with?

A. It was a discussion that was held and Garda Keogh was alluding to the fact that he felt those two members were very competent investigators and he seemed to be happy with what they had done.³⁰⁰⁷

In his statement to the tribunal, C/Supt McLoughlin stated that he had no knowledge that Garda Keogh was targeted or discredited within An Garda Síochána:

Thereafter – as best I could – I continued in my efforts to track correspondence and keep abreast of matters pertaining to Garda Nicholas Keogh’s health, wellbeing and safety. 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.

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.³⁰⁰⁸

He gave evidence to the tribunal that:

I can only base it on my interactions with the case and all elements of it. I don’t believe, my own view is I don’t believe people went out to target Garda Keogh. I don’t believe so. I think – and Garda Keogh may have a different view obviously.

From a HR perspective and my own perspective, all I can say is we did everything we could to

³⁰⁰⁷ Tribunal Transcripts, Day 141, pp. 169-170, Evidence of C/Supt Anthony McLoughlin

³⁰⁰⁸ Tribunal Documents, Statement of C/Supt Anthony McLoughlin, p. 3228 at pp. 3248-3249

*try and support Garda Keogh, we did everything we could to try and move forward any of the aspects of the cases that he was, I suppose, anxious about. And so we did everything we could in our power to try and support him. As the section representing the Garda organisation, that's what we tried to do and that's what we did.*³⁰⁰⁹

Chief Superintendent John Scanlan

On 23rd December 2016, C/Supt Scanlan received correspondence from A/C Fanning requiring him to invite Garda Keogh to make a statement of complaint under the '*Working Together to Create a Positive Working Environment*' policy to enable A/C Fanning to determine if Garda Keogh's complaint came within the policy for resolution and if applicable, the appropriate rank or grade to be appointed to investigate.³⁰¹⁰

In his evidence to the tribunal, he said that he understood that he was not appointed to conduct the investigation:

*... I was essentially tasked with just taking a statement and I was to have no involvement in the subsequent investigation. It was to enable Assistant Commissioner Fanning to do two things. One, decide if the policy was engaged; and two, at what grade or rank it would be appropriate to investigate it.*³⁰¹¹

He spoke with Garda Keogh on 19th January 2017 to arrange a meeting. Garda Keogh was of the belief that C/Supt Roche was the appointed officer and suggested that C/Supt Scanlan was a conflicted officer in his case. C/Supt Scanlan had served as Garda Keogh's Superintendent when the former was stationed at Granard Garda Station.

When asked by counsel for the tribunal about this conversation with Garda Keogh, C/Supt Scanlan stated:

*And so, what jumps at me from that conversation was, in the first instance he thought Chief Superintendent Roche was to investigate it; in the second instance, that I should have had documentation that he had supplied to HRM; and in the third instance, that he warned me, Judge, that this was going to get dirty, that I had treated him well in the past and that I shouldn't be involved in this. I think he may have given that evidence earlier to this Tribunal. Those are the three points that jumped out at me, yes.*³⁰¹²

C/Supt Scanlan stated that he considered this information and informed the organisation. Garda Keogh also told him that he had already provided documentation in relation to his complaint to C/Supt McLoughlin.³⁰¹³

On 13th February 2017, he received a report from A/C Fanning attaching a report from Mr Barrett, which required him '*to inform Garda Keogh to provide a statement to include the identity of the person being complained of and the relevant days and dates of the alleged incidents*'. He then arranged a meeting with Garda Keogh and his solicitor.³⁰¹⁴ He said that there were delays in arranging the next meeting.

³⁰⁰⁹ Tribunal Transcripts, Day 141, p. 140, Evidence of C/Supt Anthony McLoughlin

³⁰¹⁰ Tribunal Documents, Statement of C/Supt John Scanlan, p. 3852

³⁰¹¹ Tribunal Transcripts, Day 145, pp. 54-55, Evidence of C/Supt John Scanlan

³⁰¹² Tribunal Transcripts, Day 145, p. 57, Evidence of C/Supt John Scanlan

³⁰¹³ Tribunal Documents, Statement of C/Supt John Scanlan, p. 3852

³⁰¹⁴ Tribunal Documents, Statement of C/Supt John Scanlan, p. 3852

He said that he met Garda Keogh and his solicitor on 2nd March 2017 at Portlaoise Garda Station, where Garda Keogh commenced making his statement. C/Supt Scanlan outlined his contact with Garda Keogh during the month of March 2017 and said that on 27th March 2017, Garda Keogh presented and signed a prepared statement, along with appendices:

*This volume of appendices corresponded with the documentation presented by Chief Superintendent Mcloughlin except I noted the second page of the statement of _____ was not included in the documents given by Garda Keogh listed at exhibit 7, the statement of the 2nd March. Garda Keogh agreed that this should be added to the list of exhibits. He presented this with his prepared statement. Garda Keogh was invited to sign the incomplete statement of the 2nd March, he declined to do so. I advised him that I was submitting the incomplete statement as a record of the meeting with attached appendices.*³⁰¹⁵

He described what he did:

On the 31st March I forwarded a copy of this statement to assistant commissioner Eastern Region and I compiled a report and compiled all documentation which I forwarded on the 12th April 2017. The reason for the delay there between that, it had to be typed and I wanted to proofread the documentation against what I was submitting.

*During the course of my meeting with Garda Nicholas Keogh, I advised him of the nature and purpose of my interviews with him and that I would not be investigating the matter. On the 2nd February '18 then I made a subsequent statement to Assistant Commissioner Finn about the taking of this statement.*³⁰¹⁶

He was asked the following by counsel for the tribunal about forwarding Garda Keogh's statement:

- Q. So is it possible that you sent first the undated statement of the 2nd March to Assistant Commissioner Fanning on the 31st March?
- A. Yes, that's possible, yes. But what I am certain of is that between that and the 12th April I sent everything.³⁰¹⁷

Assistant Commissioner Fintan Fanning

In his statement to the tribunal, A/C Fanning said that he received correspondence in relation to Garda Keogh's bullying and harassment complaint from Mr Barrett on 21st December 2016 and that he contacted C/Supt Scanlan on 23rd December 2016 and advised him to speak with Garda Keogh.³⁰¹⁸

He outlined his reason for taking this approach in his evidence to the tribunal:

And (b), if that is the case, then who is the appropriate investigator? Because in the correspondence I had, it didn't say that it was a member of the Garda Síochána or the Garda reserve that was being complained of. If it was, it was the Garda policy. If it was a civilian in the guards it was a different policy and I didn't have the power to make the appointment under that policy. So, under the Garda policy a complaint must be made in writing. And the purpose of my appointing Chief Superintendent Scanlan was to go out and talk to the guard who had on issue, establish what – give him whatever help he had. Particularly tell him about the equality

³⁰¹⁵ Tribunal Documents, Statement of C/Supt John Scanlan, p. 3852 at pp. 3852-3853

³⁰¹⁶ Tribunal Transcripts, Day 145, pp. 61-62, Evidence of C/Supt John Scanlan

³⁰¹⁷ Tribunal Transcripts, Day 145, p. 72, Evidence of C/Supt John Scanlan

³⁰¹⁸ Tribunal Documents, Statement of A/C Fintan Fanning, p. 6447 at p. 6450

*officer and the equality advisers, because if he wanted independent advice. It was free to him but it wasn't for me to talk to his staff association. The piece I had, make sure I had the information from him to determine whether or not it was a complaint that met the requirements of the Garda policy or not, and then if it did, what was the appropriate rank if we were going to consider that.*³⁰¹⁹

He said that he continued to correspond with the chief superintendent throughout January, February and March 2017.³⁰²⁰ In his statement to the tribunal, A/C Fanning stated that:

*On the 31st March 2017, I received correspondence from the Chief Superintendent Portlaoise containing a copy of a seventeen page statement dated 27th March 2017, signed by Garda Nicholas Keogh, Chief Superintendent Scanlan and Detective Inspector Dunne Portlaoise. Chief Superintendent Portlaoise informed me that a more detailed report would follow into the context of this statement.*³⁰²¹

In his evidence to the tribunal, he said that:

... I just see on that, the one dated the 31st March from John Scanlan to me, he said a more detailed report will follow in the context of this statement. So I think there was two statements, from memory, there was two statements Garda Keogh made.

*One was short, a five or six page one, and then, with the benefit of legal advice, he made a longer one. I am not sure what the exact sequence was. But I think the two of them came in around April.*³⁰²²

A/C Fanning said that he wrote to Mr Barrett on 5th April 2017 to inform him by way of interim report that he had received the first part of C/Supt Scanlan's report, and that *'from an early perusal of the file, it appeared to be much wider than a bullying and harassment matter'*. He stated that he would contact Mr Barrett on receipt of the next phase of the report. He said that he received a further report including the unsigned statement of Garda Keogh dated 2nd March 2017, with appendices, on 12th April 2017. He stated that he forwarded this documentation to Mr Barrett on 21st April 2017, stating he would consider the matter and report more fully in due course.³⁰²³

He gave evidence to the tribunal as follows:

Under the policy I had now got the information that identified there was a number of gardai who the garda was complaining about. I established that the policy which covers five ranks applied to the five, to the five people that were involved. And then, I was giving thought about it and I was mindful that the bullying policy was there, but the bullying policy is an agreement between the Garda associations and the Garda Commissioner. My predecessor, in a difficult case beforehand, had this model, the Byrne/McGinn model, and it was a slightly wider approach than the policy. I suppose the question I had in my head was, with the policy owner, I needed to bring this information to the policy owner's attention so the policy owner could make a decision about whether it should be Byrne/McGinn, whether it should be the default position, which was the bullying policy. There was also two other issues involved in it, one was that it would need to be an assistant commissioner because of the ranks that were complained of. I couldn't pick an assistant commissioner, it had to be the policy owner, because I couldn't pick a peer, so it had to be a policy owner that would determine one of those.

³⁰¹⁹ Tribunal Transcripts, Day 148, pp. 165-166, Evidence of A/C Fintan Fanning

³⁰²⁰ Tribunal Documents, Statement of A/C Fintan Fanning, p. 6447 at p. 6450

³⁰²¹ Tribunal Documents, Statement of A/C Fintan Fanning, p. 6447 at p. 6451

³⁰²² Tribunal Transcripts, Day 148, p. 171, Evidence of A/C Fintan Fanning

³⁰²³ Tribunal Documents, Statement of A/C Fintan Fanning, p. 6447 at p. 6451

*There's also an obligation under the bullying policy to make sure there is no conflict of interest in the decision making. So I would have been aware at that stage that I had had the letter from Garda Keogh and stuff like that. So I just thought, I want to make sure that the policy owner was completely happy and that's why I was looking for a meeting with the policy holder, the policy owner.*³⁰²⁴

A/C Fanning gave evidence to the tribunal that Mr Barrett was the policy owner who could decide whether to use the Byrne/McGinn model instead of the bullying and harassment policy:

Q. **Chairman:** Can I ask you, assistant commissioner, who would decide, if it was decided to have the Byrne/McGinn model, who would decide that?

A. The policy owner, would be the executive director of HRPD, after getting advice from people.

Q. **Chairman:** Who is?

A. Mr. John Barrett.

Q. **Chairman:** Okay. So Mr. Barrett was the policy owner?

A. Yeah, he owns the process, exactly.³⁰²⁵

On 16th May 2017, A/C Fanning said that he wrote to Garda Keogh, informing him that he had been on annual leave and was anxious to proceed with the matter.³⁰²⁶ A/C Fanning stated that he 'recommended a full investigation into these matters' when he wrote to Mr Barrett on 24th May 2017. He wrote to Garda Keogh on 31st May 2017 'to inform him that I was awaiting the decision of the Executive Director Human Resource and People Development'. He stated that he wrote to Mr Barrett on 16th June 2017 outlining that 'any delay should be kept to a minimum'. A/C Fanning outlined that Insp McCarthy of his office met with Garda Keogh at his home on 31st May 2017, 19th June 2017, 27th June 2017 and 16th August 2017.³⁰²⁷

Counsel on behalf of the tribunal asked A/C Fanning about the delay in having a meeting:

Q. ... is the reason a case conference may not have been held was because you had only sent over one part of the statement rather than the substantive 17 part?

A. I'm not aware. Nobody ever said to me there was a problem with not getting statements. There was no issue. I mean I wouldn't expect, don't take me up wrong, I wouldn't be expect to be consulted by the Commissioner about everything on it. I was doing my piece. It was going to the policy owner. What I understand about that part is, that was the Commissioner communicating with the policy holder, the policy owner, you know.³⁰²⁸

A/C Fanning stated that he wrote to Mr Barrett on 1st September 2017 referring to his previous correspondence and 'requesting a response to these matters'.³⁰²⁹ He stated that he wrote again on 22nd September 2017, referring to his previous correspondence and 'requesting confirmation regarding a meeting to discuss the Garda Keogh file'.³⁰³⁰

³⁰²⁴ Tribunal Transcripts, Day 148, pp. 176-178, Evidence of A/C Fintan Fanning

³⁰²⁵ Tribunal Transcripts, Day 148, p. 188, Evidence of A/C Fintan Fanning

³⁰²⁶ Tribunal Documents, Statement of A/C Fintan Fanning, p. 6447 at pp. 6451-6452

³⁰²⁷ Tribunal Documents, Statement of A/C Fintan Fanning, p. 6447 at p. 6452

³⁰²⁸ Tribunal Transcripts, Day 148, p. 194, Evidence of A/C Fintan Fanning

³⁰²⁹ Tribunal Documents, Statement of A/C Fintan Fanning, p. 6447 at pp. 6452-6453

³⁰³⁰ Tribunal Documents, Statement of A/C Fintan Fanning, p. 6447 at p. 6453

In his statement to the tribunal, A/C Fanning referred to the case conference on 3rd October 2017, stating that:

*On the 26th September 2017, my office wrote by email to the Executive Director Human Resources and People Development seeking a meeting with both offices to discuss this file. Later on the 26th September 2017, I received a meeting request to attend a meeting on the 3rd October 2017 at 12 midday at the office of the Executive Director Human Resource and People Development, which I attended... On the 3rd October 2017, then Sergeant Fiona Broderick of the Executive Director Human Resources and People Development office forwarded an action sheet resulting from the earlier meeting. Action One stated that Mr John Barrett would appoint an Assistant Commissioner to conduct an Investigation and Action Seven stated that sick leave recorded on Garda Keogh would be followed up by Mr. Mulligan and Ms Monica Carr and that a manual check of sick certificates would be conducted. On the 3rd October 2017, Inspector McCarthy spoke with Garda Keogh by phone.*³⁰³¹

He further stated that:

*On the 4th October 2017, Inspector McCarthy of my office wrote to Garda Keogh referencing a phone discussion on the 3rd October 2017 concerning ongoing matters. Garda Keogh was also informed that a meeting took place in Garda Headquarters attended by me, Mr John Barrett and Mr Alan Mulligan and Chief Superintendent McLoughlin HRM. The member was also informed that the Executive Director would be appointing an Assistant Commissioner to investigate matters and that his office would correspond directly with Garda Keogh in all future correspondence.*³⁰³²

A/C Fanning stated that Insp McCarthy met with Garda Keogh at his home on 10th October 2017. He also said that he wrote to Mr Barrett referring to previous correspondence and requesting that action number seven on the action sheet should be expedited.³⁰³³

A/C Fanning recalled that he attended a meeting on 23rd October 2017 in Garda Headquarters, which he said ‘was to prepare a status update in respect of the issues associated with the Nicholas Keogh matter’.³⁰³⁴ He outlined the sequence of his correspondence with Mr Nugent in the aftermath of this meeting including an email of 1st November 2017, ‘in which I outlined my further concerns in relation to not having received an acknowledgement or response to issues raised in respect of Garda Keogh, together with matters affecting my dignity at work’.³⁰³⁵

A/C Fanning referred to an email to Mr Nugent on 6th November 2017, stating that:

I expressed my concerns regarding the delay in nominating of an Assistant Commissioner in order for me to progress the complaints of Garda Keogh. I also expressed other concerns regarding the confidentiality of the Bullying and Harassment and Protected Disclosure Process and that so many were at the meeting with little or no relevance to the investigation. The Bullying and Harassment Policy provides for a practice where an Assistant Commissioner will appoint a suitable member not below the rank of Assistant Commissioner to investigate a complaint involving a Chief Superintendent. On the 24th May 2017, I forwarded a file to the Executive Director Human Resource and People Development and on the 3rd October 2017, we met and agreed that an Assistant Commissioner would be approved for me to appoint to commence the

³⁰³¹ Tribunal Documents, Statement of A/C Fintan Fanning, p. 6447 at p. 6453

³⁰³² Tribunal Documents, Statement of A/C Fintan Fanning, p. 6447 at pp. 6453-6454

³⁰³³ Tribunal Documents, Statement of A/C Fintan Fanning, p. 6447 at p. 6454

³⁰³⁴ Tribunal Documents, Statement of A/C Fintan Fanning, p. 6447 at p. 6454

³⁰³⁵ Tribunal Documents, Statement of A/C Fintan Fanning, p. 6447 at p. 6454

*investigation and to work in accordance with the “Byrne McGinn Model”. I referred to email communication of the 2nd November 2017, advising that Assistant Commissioner McPartlin had “been tasked with a piece of work”. I queried the policy under which that appointment was made and was awaiting the identity of the Assistant Commissioner as agreed on the 3rd October, so that there was no further delay to the investigation of Garda Keogh’s complaint. Procedurally, there were a number of matters that I needed to progress and the delay in appointing an Assistant Commissioner to work with me on this was further exaggerating the delay which was ultimately impacting on a member of An Garda Síochána who is additionally a protected discloser, the members subject to the complaint, on me and on the integrity of the Garda processes and the reputation of An Garda Síochána.*³⁰³⁶

He said that Mr Nugent replied on the same date and that he corresponded further by email that afternoon saying that he wished to get the investigation ‘*up and running*’. He referred to his correspondence with Garda Keogh and the parties complained of on 9th November 2017 and his request for the nomination of an assistant commissioner:

*On the 15th November 2017 at 11.17am, I wrote to the Executive Director Human Resources and People Development regarding this matter and to inform him that at this stage of the process, the policy envisages that the investigation should be conducted thoroughly and the investigator report his findings within 28 days of the complaint being received from Garda Keogh dated 9th November 2017. I requested him to nominate an Assistant Commissioner for me to appoint in accordance with the policy. Later on the morning of the 15th November 2017, I met with Mr. John Barrett, Executive Director, Human Resources and People Development to discuss the matter and during the conversation he nominated Assistant Commissioner Finn, Roads Policing and Major Emergency Management...*³⁰³⁷

A/C Fanning said that on 7th December 2017, he received an email from A/C Finn with an attachment, which he did not open as ‘*if there is a review I’ll have to come to it with clean hands*’. He stated that:

*I also mentioned the fact that he, Assistant Commissioner Finn conduct his investigation on the basis of the contents of Garda Keogh’s issues, then decide whether the conduct amounts to bullying, harassment or victimisations etc, or if it fails to meet the criteria. Finally if any of the parties were dissatisfied, then they could ask me to review the file. It is for that reason I did not want any prior involvement.*³⁰³⁸

Mr John Barrett

In his interview with tribunal investigators, Mr Barrett outlined the ‘*roles, responsibilities and reporting lines*’ for a complaint made under the ‘*Working Together to Create a Positive Working Environment*’ policy document as follows:

This is a policy dating from about 2007, to the best of my knowledge. There is a Bullying and Harassment administrative section headed up by Kathleen Hassett, and she effectively manages on a day-to-day basis all the claims of Bullying and Harassment as they arise and ensures that the policy is strictly adhered to. She sits on the civilian side of the organisation but does this for both civilians and guards and she reports to Alan Mulligan. Under the Bullying and Harassment policy, Chief Superintendent Tony McLoughlin is also the Equality Officer for An

³⁰³⁶ Tribunal Documents, Statement of A/C Fintan Fanning, p. 6447 at pp. 6454-6455

³⁰³⁷ Tribunal Documents, Statement of A/C Fintan Fanning, p. 6447 at p. 6456

³⁰³⁸ Tribunal Documents, Statement of A/C Fintan Fanning, p. 6447 p. 6457

*Garda Síochána and acts in concert with Kathleen Hassett in that capacity. The activities of the Bullying and Harassment office continue on a daily basis without the need for my intervention, save in exceptional circumstances when a decision to undertake a specific intervention is required.*³⁰³⁹

Mr Barrett stated that he met Garda Nicholas Keogh once in his capacity as the Executive Director, HRPD on 15th December 2017 and once subsequently on 30th October 2018 in a personal capacity.³⁰⁴⁰ He stated that the meeting on 15th December 2017 occurred at the Killeslin Hotel in Portlaoise, with C/Supt McLoughlin, and the purpose of the meeting was to *'take time to introduce myself, listen to Garda Keogh and enquire as how we could have Garda Keogh return to work. We were seeking to build a pathway for Garda Keogh to return to work.'*³⁰⁴¹

In respect of knowledge or involvement with Issue 18, he told tribunal investigators that:

*I have no knowledge of the work conducted by Assistant Commissioner Finn, and I think it was concluded after I had been suspended, but I was aware from correspondence prior to the commencement of the investigation by Assistant Commissioner Michael Finn that, for a time, Garda Keogh was concerned about it being done internally, that it was an internal investigation.*³⁰⁴²

When asked about his knowledge of or involvement in the receipt, investigation or management of the investigation of Garda Keogh's bullying and harassment complaint, he said that:

*I and my office did have involvement in the management of Garda Keogh's Bullying and Harassment complaint, which was originally commenced in November 2016. At this remove, my recollection of detail is not clear, and I am conducting a review of the materials disclosed to the Tribunal in order to refresh my memory prior to giving oral evidence to the Tribunal.*³⁰⁴³

In his evidence to the tribunal, he said that he did not receive Garda Keogh's complaint until 4th October 2017.³⁰⁴⁴ He did not agree that he received the complaint earlier in May 2017:

*But the suggestion that it is, you know, per file of Assistant Commissioner Fanning 24 May, I think Mr. Mulligan and I are at one, neither of us had seen it to this date from Assistant Commissioner Fanning.*³⁰⁴⁵

During cross-examination by counsel on behalf of Garda Keogh, Mr Barrett stated:

*I can address that very clearly and if there is any doubt I think discussion with the investigators for this Tribunal. When they put that to me, that there was this correspondence from AC Fanning, I said I never saw it. As in, I never saw the attachments or the appendices that were sent. I was troubled, because my initial reaction was, have I missed it? I think the recall evidence of Assistant Commissioner Fanning and the evidence of Mr. Mulligan corroborates at least what I said in absolute honesty to the investigators. I didn't see it because it wasn't sent. It wasn't in the appendixes that I had received. And I wasn't there, which was the difficulty, I knew, on those dates, Alan was standing in my shoes. So I had that anxiety. But Mr. Fanning himself I think makes the point that it was the 4th October when the matter was resolved.*³⁰⁴⁶

³⁰³⁹ Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at p. 15963

³⁰⁴⁰ Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at pp. 15966-15967

³⁰⁴¹ Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at pp. 15966-15967

³⁰⁴² Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at p. 15973

³⁰⁴³ Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at p. 15975

³⁰⁴⁴ Tribunal Transcripts, Day 150, p. 171, Evidence of Mr John Barrett

³⁰⁴⁵ Tribunal Transcripts, Day 150, p. 89, Evidence of Mr John Barrett

³⁰⁴⁶ Tribunal Transcripts, Day 150, pp. 140-141, Evidence of Mr John Barrett

He also gave evidence that:

One of the things that I think Assistant Commissioner Fanning deserves credit for and to some respects it created a problem was, Assistant Commissioner Fanning and Inspector McCarthy stayed in close touch with Garda Keogh. Now, I think they were giving him an understanding that we were in possession of a document, which we were not in that period of April, May, June etcetera. That may have created the commentary that came later in [Garda Keogh's solicitor's] letters. But to be fair, there's an obligation on a – there is a right of a protected discloser to be kept informed. I think that is something that would normally fall to the protected disclosure manager to do.³⁰⁴⁷

He continued:

... The outstanding matter upon which the decision is going to be made is the assignment given to Chief Superintendent Scanlan in January or December of 2016, a copy of which we still do not have. And I would contend that this letter from James McCarthy tends to suggest that HR and PD are equipped with all the necessary inputs upon which to make the decision and the delay is attending therefore on us. Now, let's be clear about this, I commend the regional office for keeping the protected discloser updated on progress. Essentially that is the action that would normally fall to the PD manager. And in my evidence earlier before you began this cross-examination I think I called that out. At the meeting on the 3rd October in my office I explicitly instructed that the contact established by the said James McCarthy inspector should continue. I saw it to be positive and of assistance to anybody who felt they were being obscured by or cut out from or deprived of information. So, insofar as the communication exists, goodness.

Q. Chairman: Communication is good but it is based on a mistake?

A. Correct.³⁰⁴⁸

He outlined his own professional position in 2017 as follows:

That summer had two very significant issues for me that were going on and that I think would have been well in the public domain. The first half of my year was very taken up personally with the financial irregularities at the Garda college.

Q. Yes.

A. *This led to a Public Accounts Committee hearing that occurred in May. Immediately after that I was away for two weeks, during which that time Assistant Commissioner met with Alan Mulligan, who was my delegate, in my absence. I was doing some exams at the time. I returned in June for a further hearing at the Public Accounts Committee and it's in that interregnum that this correspondence that you've just opened arrived in my office.³⁰⁴⁹*

In relation to Garda Keogh's allegation of alleged delay or the alleged mislaying of his complaint, Mr Barrett told tribunal investigators that:

I am not aware of any complaint of Garda Keogh having been mislaid. I can see from the materials made available to the Tribunal that Garda Keogh's solicitor wrote to me on 25th September 2017 and I progressed matters thereafter. So my understanding is that from September 2017, there was a case conference held in my office on Tuesday, 3rd October 2017 on

³⁰⁴⁷ Tribunal Transcripts, Day 150, p. 88, Evidence of Mr John Barrett

³⁰⁴⁸ Tribunal Transcripts, Day 150, pp. 177-178, Evidence of Mr John Barrett

³⁰⁴⁹ Tribunal Transcripts, Day 150, pp. 67-68, Evidence of Mr John Barrett

*foot of this letter (from [Garda Keogh's solicitor] dated 25th September 2017) and the minutes are contained in Chief Superintendent Tony McLoughlin's statement. The case conference was set up in response to that letter. We had a case conference on the 3rd October 2017 with the following persons in attendance: Assistant Commissioner Fintan Fanning, Alan Mulligan, Chief Superintendent Tony McLoughlin, Fiona Broderick, Inspector James McCarthy, Ken Ruane, and Sergeant Michael Donlan. The minutes of this case conference, taken by Fiona Broderick, is at Volume 12, page 3549 of the tribunal papers. After the case conference. Assistant Commissioner Michael Finn was appointed to conduct an investigation into Garda Keogh's Bullying and Harassment claim. The suggestion by Garda Keogh that there was a delay to enable Pat Murray's promotion to Chief Superintendent is not correct, as far as I am concerned.*³⁰⁵⁰

He was referred to Garda Keogh's addendum to the bullying and harassment complaint which included a complaint by Garda Keogh that the 'processing and investigation of my complaint was delayed purposely' while the promotion of Supt Murray was proceeded with. Mr Barrett told the investigators that *I had no knowledge whatsoever of any plan or programme to enable or improve the opportunity of Pat Murray. I think Garda Keogh is incorrect in the assertion he makes.*³⁰⁵¹ In his evidence to the tribunal, he said that:

*I think I addressed this question, Mr. McGuinness, when the Tribunal investigators asked me was, I think, the complaint lost. And at no point was the complaint lost or was there – I think more particularly of interest, to the Tribunal Chairman, there was no reason for it to be lost. It simply wasn't transmitted to me as I had expected it would be in a timely fashion. But there was no clandestine plan to facilitate the progression of Pat Murray from superintendent to chief superintendent that I was aware of. I certainly had no hand, act or part, as I described it in my statement, in that.*³⁰⁵²

He continued that:

I am not defending this delay and as you've said, and you're correct, I am seeking to explain it, right. And do I think it's good enough in the circumstances? Absolutely not good enough.

*I think that, you know, and taking the Chairman's point, I can explain the various segments of this, I am not seeking to approve or justify it.*³⁰⁵³

He referred to the email of Sgt Broderick dated 9th February 2018 and stated that:

*It was part of Sergeant Broderick's duties as Office Manager to keep me informed of matters that required attention from time to time.*³⁰⁵⁴

Referring to his letter of 21st March 2017,³⁰⁵⁵ that it would not be 'prudent' to have a case conference in respect of Garda Keogh, he stated that *'my understanding was we were waiting on holding the case conference until Chief Superintendent Scanlan reverted to us following his engagement with Garda Keogh.'*³⁰⁵⁶

³⁰⁵⁰ Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at pp. 15976-15977

³⁰⁵¹ Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at pp. 15977-15978

³⁰⁵² Tribunal Transcripts, Day 150, pp. 80-81, Evidence of Mr John Barrett

³⁰⁵³ Tribunal Transcripts, Day 150, p. 144 and p. 149, Evidence of Mr John Barrett

³⁰⁵⁴ Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at p. 15978

³⁰⁵⁵ Tribunal Documents, Letter from Mr John Barrett, Executive Director HRPD to C/Supt HRM, dated 21st March 2017, p. 3523

³⁰⁵⁶ Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at p. 15990

Mr Barrett stated that the case conference on 3rd October 2017 was a response to a letter received from Garda Keogh's solicitor in late September 2017 and it was intended '*to plan a way forward to deal with Garda Keogh's issues*'.³⁰⁵⁷

Mr Barrett referred to his letter to Garda Keogh dated 13th October 2017, stating that his office had assumed '*coordinative responsibility for the matters at issue and we will seek to progress the issue transparently and with all Élan*'.³⁰⁵⁸ In respect of where this '*coordinative responsibility*' rested prior to this date, he told the investigators that:

*They didn't rest anywhere in a single source. There were lots of different sources dealing with different aspects of it. The criminal investigation was effectively up and running for quite a while and was nothing to do with us, but what I'm trying to communicate in that letter is that the response of EAS, the HRM organisation and the Protected Disclosure aspects are going to have some locus. Essentially, the frustration was that it was fragmented and it needed a locus and I was willing to do that. It was only for a very brief period that I assumed coordinative responsibility, up until the 23rd October 2017 when a case conference was called by the CAO, Joe Nugent, and from that point, I understand that he assumed coordinative responsibility for all of Garda Keogh's complaints.*³⁰⁵⁹

Mr Barrett was asked about his letter to Garda Keogh's solicitor on 13th October 2017 during his evidence to the tribunal:

*I, in my letter back to [Garda Keogh's solicitor], I think on or about the 13th October, made it clear I was going to deliberate on it and I told I think that I would take a month or take to the end of the month of October to determine whether or not it was a Byrne-McGinn or bullying and harassment type investigation. At the end of the day I made a determination that it was more suitable that it be a bullying and harassment type investigation and I did so because the policy provided a framework under which if there were, for example, elements of criminality, they could then be assessed and independently investigated. One did not preclude the other.*³⁰⁶⁰

In respect of the case conference dated 23rd October 2017, and whether any decision had been made regarding how to proceed with investigating Garda Keogh's bullying and harassment complaint, he stated that:

*I note from the minutes that there was considerable debate around the Bullying and Harassment issue but no final decision about appointing an investigating officer. I do know that following that meeting, I became involved in the appointment of an Assistant Commissioner to conduct the investigation. Originally, Assistant Commissioner Orla McPartlin was considered and she didn't want to take on the appointment. The second consideration was Michael Finn and he ultimately was appointed to investigate the Bullying and Harassment complaint, and he commenced his investigation in December 2017.*³⁰⁶¹

In respect of the proposed appointment of A/C McPartlin to undertake a fact-finding investigation, he stated that '*she declined the appointment, and thereafter, Assistant Commissioner Finn was appointed to deal with Bullying and Harassment and matters arising would be dealt with after that*'.³⁰⁶²

³⁰⁵⁷ Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at p. 15991

³⁰⁵⁸ Tribunal Documents, Letter from Mr John Barrett, Executive Director HRPD to Garda Keogh's solicitors, dated 13th October 2017, pp. 3590-3592

³⁰⁵⁹ Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at p. 15992

³⁰⁶⁰ Tribunal Transcripts, Day 150, p. 71, Evidence of Mr John Barrett

³⁰⁶¹ Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at p. 15993

³⁰⁶² Tribunal Documents, Investigator Interview of Mr John Barrett, p. 15958 at p. 15994

Mr Alan Mulligan

In his statement to the tribunal, Mr Mulligan said that he was appointed as a protected disclosures manager for An Garda Síochána with C/Supt McLoughlin in May 2016.³⁰⁶³

On 1st November 2016, he received correspondence from C/Supt McLoughlin notifying him that Garda Keogh had made a formal bullying and harassment complaint and that *'this was the first notification of a first complaint of Bullying and Harassment that I have received in respect of Garda Nicholas Keogh'*.³⁰⁶⁴ He told the tribunal that:

*Ms. Hassett followed up on it then, obviously to get documentation which she got from Chief Superintendent McLoughlin's office. She read that then and it didn't satisfy the requirements of our bullying and harassment policy, she asked me to have a look at the documentation that Garda Keogh had supplied. And there was a lot of other stuff in it besides maybe bullying and harassment. So Kathleen drafted a letter, which went through me for executive director John Barrett, to write to Garda Keogh to layout how to make a formal bullying and harassment complaint.*³⁰⁶⁵

He said in his statement that he received further information from C/Supt McLoughlin on 9th November 2016:

*I am aware that Mr. John Barrett, Executive Director, HR&PD wrote directly to Garda Keogh on the 11th of November 2016 advising him of the correct method to make a formal complaint under An Garda Síochána policy for dealing with Harassment, Sexual Harassment and Bullying in the workplace namely "Working Together to Create a Positive Working Environment". This correspondence requested that Garda Keogh submit his formal complaint in accordance with policy to his local Divisional Officer with details of persons whom the complaint has been made against, list of possible witnesses, details of alleged acts which constituted the behaviour complained of including day, date, time and place, if an informal resolution was invoked in the past and indication of what would satisfactory resolve the conflict in question as required under paragraph 8.4 of the said policy.*³⁰⁶⁶

Mr Mulligan also said that he spoke with C/Supt McLoughlin on 25th November 2016, and that the latter confirmed that Garda Keogh had expressed concern *'in respect of a possible conflict of interest'* and did not want to make his complaint to his divisional officer *'as this person was related to the person who will be subject of the said complaint'*.³⁰⁶⁷ Mr Mulligan said that he spoke with Garda Keogh's solicitor on 25th November 2016 and offered to meet with him alongside C/Supt McLoughlin, but that the offer was declined:

*Garda Keogh was currently working on his bullying and harassment complaint and it was suggested that he could submit it directly to myself or Chief Superintendent McLoughlin when completed. I informed [Garda Keogh's solicitor] that on receipt of Garda Keogh's complaint an investigating officer would be appointed. I also offered the services of Ms. Kathleen Hassett (Bullying and Harassment Section) to assist in the process if required at any time.*³⁰⁶⁸

³⁰⁶³ Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829

³⁰⁶⁴ Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829 at p. 3832

³⁰⁶⁵ Tribunal Transcripts, Day 144, pp. 71-72, Evidence of Mr Alan Mulligan

³⁰⁶⁶ Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829 at pp. 3832-3833

³⁰⁶⁷ Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829 at p. 3833

³⁰⁶⁸ Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829 at pp. 3833-3834

Mr Mulligan then sent an updated report to the Office of the Commissioner, which included a schedule of contacts with Garda Keogh as provided by C/Supt McLoughlin.³⁰⁶⁹

Mr Mulligan stated that he received correspondence from the Office of the Commissioner on 16th December 2016, which stated that *'arrangements should be made to take a statement from Garda Keogh as a matter of priority'*.³⁰⁷⁰ Mr Mulligan also said in his statement that he signed correspondence on behalf of Mr Barrett on 22nd December 2016, and agreed with A/C Fanning's proposal that a statement would be obtained to determine if Garda Keogh's complaint fell within the bullying and harassment policy and, if so, to determine the correct rank to be appointed to investigate.³⁰⁷¹

Mr Mulligan stated that he was invited to a meeting on 22nd May 2017 by A/C Fanning and met with him on that date *'in relation to Garda Keogh's complaint'*. The following day, he received correspondence in relation to Garda Keogh's complaint from the assistant commissioner:

*The Assistant Commissioner was concerned in relation to Garda Keogh's statement wherein Garda Keogh states "following my making protected disclosure I encountered harassment, exclusion, victimisation penalisation". While the issues raised under the Protected Disclosure were not known to me or as stated by the Assistant Commissioner as detailed in his report he was of the view that the matters raised by Garda Keogh did not fall under the remit of the policy document governing Harassment, Sexual Harassment and Bulling. The Assistant Commissioner also raised issues as outlined by Garda Keogh and recommended that a full investigation regarding the issues raised by Garda Keogh should commence.*³⁰⁷²

Counsel for the tribunal asked him the following:

Q. You met the assistant commissioner on the 22nd May?

A. Correct.

Q. He refers in his letter of the 24th May to a summary of facts explained to you on the 24th May?

A. Correct, yeah.

Q. In your meeting on the 22nd May?

A. Basically what is in the letter he roughly discussed with me, mentioned to me.

Q. Yes. Did he give you a copy of the bullying and harassment complaint made by Garda Keogh?

A. No.

Q. The signed statement, on the 27th?

A. No. Not that I can recollect, no. Certainly not the bullying and harassment one, no.

Q. The letter of the 24th had recommended a full investigation regarding the issues. I think you e mailed Chief Superintendent McLoughlin looking for a meeting with him in relation to Garda Keogh's complaint, on the 22nd June?

³⁰⁶⁹ Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829 at p. 3834

³⁰⁷⁰ Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829 at p. 3835

³⁰⁷¹ Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829 at pp. 3835-3836

³⁰⁷² Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829 at pp. 3840-3841

- A. Yeah. I think from memory there, the executive director Barrett I think was out for a short period of time and rather than delay it, I think I was trying to move it on. It was coming into the summer period and Chief Superintendent McLoughlin I think was on leave at that stage and I just think I sent a communication that when he got back from leave he would contact me about it.³⁰⁷³

He was asked by counsel for the tribunal when he received Garda Keogh's complaint:

*The first we got it was on the 4th October. When I say we, myself and Kathleen, that we seen the bullying and harassment one. There's an e mail from that from Assistant Commissioner Fanning and I know that he does refer that he delivered a copy to the executive director of HRPD on that, it's in my attachments. I can't confirm that one way or another but I can confirm that we didn't get it until the 4th October. And as I say, these attachments here, which I will send a copy, do not contain the bullying and harassment.*³⁰⁷⁴

On 22nd June 2017, Mr Mulligan stated that he requested a meeting with C/Supt McLoughlin when he returned from annual leave. On 28th June 2017 he wrote on behalf of Mr Barrett to A/C Fanning stating that a meeting would be arranged when 'all stakeholders were available'.³⁰⁷⁵

Mr Mulligan said that a chronology of the bullying and harassment complaint was prepared at HRM, which was emailed to Assistant Commissioner, Eastern Region and C/Supt McLoughlin on 27th September 2017.³⁰⁷⁶ He stated that 'it was intended to convene a case conference in respect of this matter however due to absences of various personnel and other meeting conflicts outside my control this did not take place until the 3rd of October 2017'.³⁰⁷⁷ He told the tribunal what he believed to be the reason for delay:

*... It was proving very, very difficult to have that case conference that Assistant Commissioner Fanning wanted, because different people were on leave and I think one person might have been on sick leave. It was during the summer period. And yes, I was very anxious that we have a case conference as quick as we could.*³⁰⁷⁸

Referring to the case conference on 3rd October 2017, Mr Mulligan said in his statement to the tribunal that:

*In attendance at this case conference was the Executive Director, HRPD, Mr. John Barrett, Assistant Commissioner Eastern Region, Fintan Fanning, Assistant Commissioner Governance & Accountability, Mr. Ken Ruane, and Chief Superintendent McLoughlin HRM amongst others. It was agreed during this case conference that the issues raised by Garda Keogh were not catered for under the Bullying and Harassment policy. It was decided as a collective that an Assistant Commissioner should be appointed to investigate all matters in respect of Garda Keogh's complaint. Mr. Barrett undertook to appoint Assistant Commissioner McPartlin to conduct an initial fact finding investigation into Garda Keogh's allegations.*³⁰⁷⁹

Mr Mulligan said that he was notified of the appointment of A/C Finn as the investigating officer in respect of the bullying and harassment complaint³⁰⁸⁰ and that 'the Commissioner's Office was

³⁰⁷³ Tribunal Transcripts, Day 144, pp. 89-90, Evidence of Mr Alan Mulligan

³⁰⁷⁴ Tribunal Transcripts, Day 144, p. 84, Evidence of Mr Alan Mulligan

³⁰⁷⁵ Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829 at p. 3841

³⁰⁷⁶ Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829 at p. 3842

³⁰⁷⁷ Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829 at p. 3842

³⁰⁷⁸ Tribunal Transcripts, Day 144, p. 91, Evidence of Mr Alan Mulligan

³⁰⁷⁹ Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829 at pp. 3842-3843

³⁰⁸⁰ Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829 at p. 3845

updated on all aspects of Garda Keogh's complaint and the situation at that juncture in correspondence sent by the Executive Director HRPD on the 30th of November 2017.³⁰⁸¹ He referred to the issue of the electronic recording of meetings between A/C Finn and Garda Keogh and stated:

*On the 29th of January 2018, I sent correspondence to the Executive Director HRPD in respect of the query first raised by Assistant Commissioner Finn concerning the electronic recording of meetings with Garda Keogh and his legal advisor... In this correspondence I outlined that I was not in favour of the meetings being recorded, that a note taker should attend these meetings and that all minutes agreed by all parties following the conclusion of these meetings. The second point which I outlined in this correspondence concerned the recording of meeting in line with the review of the bullying and harassment policy.*³⁰⁸²

Mr Mulligan said that Mr Barrett agreed with his recommendations above.³⁰⁸³ Mr Mulligan said in his statement that:

During all of my dealing with Garda Keogh I have satisfied myself that all appropriate steps and actions taken were thorough and fair and I have used the Code of Ethics as a criteria to measure my actions during all of my dealings.

*I have no knowledge or belief, that Garda Nicholas Keogh was targeted or discredited with the knowledge or acquiescence of senior members of An Garda Síochána.*³⁰⁸⁴

Ms Kathleen Hassett

In her statement to the tribunal, Ms Hassett recalled that she opened a file in November 2016 to deal with Garda Keogh's bullying and harassment complaint and stated that she *'had no involvement in that investigation save to provide advice on the procedures outlined in the Policy'*.³⁰⁸⁵ She also said that she provided Dep/C Twomey with a copy of Garda Keogh's complaint, A/C Finn's investigation file and findings, and Garda Keogh's grounds of appeal.³⁰⁸⁶

Mr Joseph Nugent

In his statement to the tribunal, Mr Nugent said that he convened the case conference on 23rd October 2017, to deal with the *'multiple strands'* raised by Garda Keogh and his solicitor.³⁰⁸⁷ He stated that the *'sole purpose of the meeting was to ensure that all the elements of the various complaints made by Garda Keogh were being addressed and that those responsible for each separate element of these complaints were being addressed'*. He said that the minutes of the meeting reflected that there was a discussion around, *inter alia*, *'Bullying and Harassment complaint, which also included elements being handled by the State Claims Agency in respect of a civil litigation claim'*.³⁰⁸⁸

He told the tribunal that he rejected the Byrne/McGinn approach to the investigation of Garda Keogh's complaints:

... I think Mr. Fanning at that point in time was making the point that the specificity of the bullying and harassment element was difficult to quantify, and that certainly surfaces as part of

³⁰⁸¹ Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829 at pp. 3845-3846

³⁰⁸² Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829 at p. 3847

³⁰⁸³ Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829 at p. 3847

³⁰⁸⁴ Tribunal Documents, Statement of Mr Alan Mulligan, p. 3829 at p. 3851

³⁰⁸⁵ Tribunal Documents, Statement of Ms Kathleen Hassett, p. 15954

³⁰⁸⁶ Tribunal Documents, Statement of Ms Kathleen Hassett, p. 15954

³⁰⁸⁷ Tribunal Documents, Statement of Mr Joseph Nugent, p. 7304 at p. 7305

³⁰⁸⁸ Tribunal Documents, Statement of Mr Joseph Nugent, p. 7304 at p. 7305

*other matters that go on in parallel with that. He also references this Byrne/McGinn approach, which, as I understand it, Mr. Fanning was suggesting that we essentially start the process all over again, take all of the matters in their entirety and look at a holistic inquiry, but essentially start the matter again. An approach which I rejected.*³⁰⁸⁹

He told the Chairman that:

... what was being proposed was that essentially we start all over again. That's what was being proposed. I was saying, is it defensible that Garda Keogh, who had concerns about bullying and harassment, would expect that all of the other matters would be brought in and ultimately delay the progression of the bullying and harassment – his complaint of bullying and harassment.

Q. **Chairman:** Your understanding of Byrne/McGinn approach and starting all over again, meant what, Mr. Nugent?

A. It meant that essentially we would have one person who would investigate everything.

Q. **Chairman:** Everything being?

A. Everything being discipline, crime, bullying and harassment, all of those individual elements.³⁰⁹⁰

He said that he later nominated A/C O'Brien to conclude the investigation as A/C Finn was at the time *'temporarily carrying the Eastern Region portfolio in the temporary absence of A/C Fanning'*.³⁰⁹¹

Superintendent Pat Murray

Supt Murray described the letter of 13th December 2017 from Garda Keogh's solicitor to A/C Finn as being *'completely fixated on me'*. He told tribunal investigators that:

*Considering all that occurred this fixation with me continued in my new posting right up to March 2018. I replied to that letter... saying I felt I was being harassed in a criminal way. My name has been mentioned, and references have been made to me, on 11 occasions in Dáil Éireann by Clare Daly TD and Mick Wallace TD in relation to my dealings with Garda Keogh.*³⁰⁹²

In response to the allegation that the investigation of Garda Keogh's bullying and harassment complaint was delayed to facilitate his promotion he stated that:

*Garda Keogh was part of an orchestrated process to damage me as much as he possibly could... And delay in the investigation of the bullying was never anything I had involvement in. I cooperated fully with it from early January 2018 and I was concerned about the delay myself. Chief Superintendent Wheatley and I queried the delay in the investigation. We were anxious it be concluded as it was hanging over us.*³⁰⁹³

Supt Murray was asked about his notes of a meeting with A/C Finn in January 2018 which recorded that *'Said Keogh and solicitor looking for money'*:

³⁰⁸⁹ Tribunal Transcripts, Day 147, pp. 120-121, Evidence of Mr Joseph Nugent

³⁰⁹⁰ Tribunal Transcripts, Day 147, pp. 133-134, Evidence of Mr Joseph Nugent

³⁰⁹¹ Tribunal Documents, Statement of Mr Joseph Nugent, p. 7304 at p. 7305

³⁰⁹² Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3105

³⁰⁹³ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3111

Q. Who was it who introduced that?

A. Well, I think both of us said it. He said it and I said it. The conversation was about the civil claim. I suppose I was linking that closely with the bullying allegations, because they were inextricably linked. Who said it first, I'm not sure. But I definitely had that view, because I was being sued personally and he had spoken to Chief Superintendent Healy and he was fully aware of the information he had gathered or he had given me that impression, and he said it.

It's my view. And I was attributing it to him after we had the discussion about that and I suppose, I felt that he was agreeing with it in the empathetic way that he had, I suppose, listened to me in that call.³⁰⁹⁴

Asked about the propriety of what had transpired, he told counsel for the tribunal that:

Well, I don't know about that, because like, Assistant Commissioner Finn is a professional person, he has a very good representation in the organisation. I would like to think of myself as professional. And I'd say both of us were fully aware that all of these matters were going to be dealt with in that bullying and harassment policy. That was going to be subject to a review by someone else, outside of him, quite possibly. In addition to that, there was the civil claim which was going to be examined by the High Court. There was – I suppose, the Policing Authority were involved as an oversight body, a regulatory oversight body in this. And then this Tribunal was there, up and running, with term of reference (b), a live issue. And so, I mean, for anyone to suggest that there was a mindset between either of us that something was to be readied up, that's absolutely not the case. I welcomed any investigation that was there, if I could participate in it fully. I have no difficulty with that. And I wouldn't want anything hidden. And there was no need to do that, because I had fully addressed all of these issues in the document I had produced a year earlier.

Q. You see, the implication in this, it could be argued that it showed a mindset in Assistant Commissioner Finn, in that he had already prejudged the issue, do you understand?

A. Well, I suppose, Assistant Commissioner Finn will have to address that, but there's no –

Q. He has addressed it?

A. Yes.

Q. And he has denied that he said this. He said not only that, but he acknowledged himself that this would be unprofessional and totally inappropriate to say in circumstances where he was about to commence an investigation. And I am sure that you as a chief superintendent, that you would regard it as inappropriate if you had said that to somebody else who you were about to investigate and, as it were, cast some sort of aspersion on the complainant. Do you understand?

A. I do, but my frustration, I suppose, came out in my conversations with Assistant Commissioner Finn from the couple of conversations I had with him on, I think it was the 22nd December, where he seemed to be unaware of any of the linked issues here, which I found astonishing, and I sent him an e mail to that effect after the telephone call. On the 11th January then I think I spoke with him again and he was telling me about the advice he had got, legal advice that it could go ahead. But I didn't feel he fully comprehended what the

³⁰⁹⁴ Tribunal Transcripts, Day 146, p. 43 and p. 48, Evidence of Supt Pat Murray

*legal impediment I had was and in that conversation then on the 13th, it was all about the civil claim. It was all about how, I suppose, I felt that I was being hampered in a way from being able to put my best foot forward in his investigation, while I wanted to do that and I wanted it, you know, done properly, not quickly, but I wanted to put my best foot forward with my big document and I felt I couldn't do that.*³⁰⁹⁵

Supt Murray said that he was informed by A/C Fanning on 28th December 2018 that he had received the completed investigation file from A/C Finn, but that he *'would not be releasing the results to me at that time'*.³⁰⁹⁶ Supt Murray stated that he contacted the Association of Garda Chief Superintendents and sought its representation to have the results released to him. He stated that on 11th February 2019 he received the results of A/C Finn's investigation.³⁰⁹⁷

Assistant Commissioner Michael Finn

In his statement to the tribunal, A/C Finn addressed his state of knowledge of the complaint made by Garda Keogh:

*When I was appointed by Assistant Commissioner Eastern Region to investigate Garda Keogh's complaint I was not made aware of the nature or content of his complaint. I made contact with Garda Keogh to inform him that I was appointed and that I would meet him and take his complaint. I was unaware of the extent of his prior involvement with Chief Superintendent Scanlan... It was my understanding that at my meeting with Garda Keogh on the 1st December 2017, I would take his complaint and get some insight into his allegations. I was not aware... that he would present a detailed statement with appendices.*³⁰⁹⁸

He said that, when appointed, he was not provided with Garda Keogh's statement made to C/ Supt Scanlan in March 2017 and that *I was not aware until I contacted Garda Keogh that he had previously made a statement to Chief Superintendent Scanlan*.³⁰⁹⁹ A/C Finn said that he knew very little prior to meeting with Garda Keogh in December 2017:

*At the behest of Garda Keogh I procured a copy of the statement that he made to Chief Superintendent Scanlan. I read the statement prior to my meeting with him on the 1st December 2017. I was not aware, until I met him on the 1st December 2017 that Garda Keogh wished to have the content of his statement to Chief Superintendent Scanlan in March 2017 included in my investigation. I was not aware until I met him on the 1st December 2017 that he wanted to include additional material as part of his complaint.*³¹⁰⁰

A/C Finn described his initial meeting with Garda Keogh on 1st December 2017 and stated that:

*Garda Keogh's Solicitor, _____, made references to the fact that I did not have full knowledge of all the issues that Garda Keogh had raised with Chief Superintendent Scanlan, the Executive Director of Human Resources and People Development and all the others that he had interacted with prior to this meeting. The fact was that I had no prior knowledge of these issues, apart from reading the statement provided to Chief Superintendent Scanlon on 27th March 2017. I informed Garda Keogh that I would investigate whatever matters he wanted to include in his complaint.*³¹⁰¹

³⁰⁹⁵ Tribunal Transcripts, Day 146, pp. 49-51, Evidence of Supt Pat Murray

³⁰⁹⁶ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2080

³⁰⁹⁷ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2080

³⁰⁹⁸ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4106

³⁰⁹⁹ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4124

³¹⁰⁰ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4124

³¹⁰¹ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4107

He continued:

At the meeting with Garda Keogh on the 1st December 2017 Garda Keogh set out his complaint in a comprehensive document, with an extensive set of appendices... which he handed to me at the meeting. Garda Keogh informed me that his statement of complaint comprised of the same material that was set out in the statement that he made to Chief Superintendent Scanlan on the 27th March 2017 but with an addendum (the final two pages of his statement added on the 30.11.2017). Given the volume of material that he presented at the meeting it was not possible to read through all the material presented. The majority of the meeting on the 1st December 2017 was taken up with: (a) I trying to explain the processes that I would follow; and (b) I trying to establish the facts/substance of his complaint.³¹⁰²

A/C Finn said that he required clarification in respect of the complaint:

Following from the meeting on the 1st December 2017, and having read the entire set of documentation, I was still not satisfied that I had clarity on whom Garda Keogh wanted included in his complaint and what was inside and outside the scope of his complaint. I sought to clarify these points by communicating with Garda Keogh's solicitor... on the 5th December 2017.³¹⁰³

In his evidence to the tribunal, he stated that:

I needed to know who was he making the complaints against here. We mightn't have been on the same waive length here. I was clear because I'm familiar with the policy, I know what it's about, we'll say. So I know what I need to get from this meeting, we'll say, in terms of clarity about who it is. But maybe he wasn't on the same page as I was. But this is why I was asking those questions, Chair, because it was very important to me. Like at the outset of a bullying and harassment investigation we need to know who exactly it is you are going to be putting the allegations to. So I needed to get clarity on that.

... I think [Garda Keogh's solicitor] and Garda Keogh had the statement, there was lots of people named in it, you know, and I even refer back to I think some of the other correspondence or I saw correspondence between AC Fanning, we'll say, and HRM about this, that it wasn't clear who exactly – it wasn't clear, okay, clear to me anyway, who exactly he was referring to. Because I think I documented there was 25, I think I had in my note, Chair, 25 or 27 different people referenced in the statement. So I needed to know – I think it was 25, Chair, if you include – or 25 if you include higher echelons of Garda management plus senior Garda management. I won't list out all the others, but I have 25 in my list here, Chair. But if you take it, examining all the people who are mentioned. So you can understand from my perspective, I need to know who.³¹⁰⁴

He continued that:

Well, Chair, if you go back up to – a few lines back up there, where he starts off, he says:

“Pat Murray chief superintendent, and two chiefs in Mullingar and there a sergeant in the chief's office who maybe be pulling the strings of...”

I'm not clear that point is it just these people or the sergeant in the chief's office or who else, you know. So that's maybe why I was labouring the point;

³¹⁰² Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4107

³¹⁰³ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4124

³¹⁰⁴ Tribunal Transcripts, Day 142, pp. 63-64, Evidence of A/C Michael Finn

- Q. *If we are to be a little bit forensic about it, commissioner, he is clear about three but the one that's vague is the sergeant in the chief's office?*
- A. *At that point.*
- Q. *Okay. And he goes on there near the end of the page:*
“Pat Murray, that's is crystal clear. Mark Curran. Yes. I am not making a complaint against Noreen McBrien and Lorraine Wheatley, I have an issue...”
- A. *Even at that point, we'll say, he is saying, I'm not making a complaint against Lorraine Wheatley, which I was happy at that point, you know, but then as we roll on, as we see later, Chair, she comes back into the equation. So, as you can understand, I am not clear, you know, so I am trying to tease this out with him as we go along, who. Sorry, Chair, again for interrupting.*
Because he says there “I have an issue with John Scanlan as well”, like you know, so.
- Q. *In fairness, he says because the complaint went missing. And you know that that's a live issue?*
- A. *Correct.*³¹⁰⁵

In his statement to the tribunal, he referred to the letter of 5th December 2017,³¹⁰⁶ on behalf of Garda Keogh raising the issue of ‘*fragmentation*’ of the complaint:

*Under the heading of ‘Conceptual Fragmentation’ [Garda Keogh’s solicitor] made reference to my concept of ‘scoping’. As my minutes of the meeting with Garda Keogh on the 1st December 2017 demonstrate, the context in which I referred to ‘scoping’ was to establish, exactly, what was Garda Keogh’s complaint against each of the parties that he referenced in his statement.*³¹⁰⁷

A/C Finn rejected the allegation that his efforts to gain clarity ‘*constituted a box ticking fragmentation of the subject matter*’.³¹⁰⁸ He also stated that ‘*I reject the allegation that I deliberately fragmented or mutilated his statement of March 2017, and accompanying appendices, to cause confusion or misfortune.*’³¹⁰⁹

In respect of the complaints raised by his reference to the grievance procedure, he stated that ‘*[Garda Keogh’s solicitor] also makes references to my attempts to distinguish between Bullying and Harassment and Grievance. I consider that this is an essential thing to do at the outset of an investigation to ensure the appropriate investigation procedure is followed.*’³¹¹⁰

A/C Finn referred to his reply of 5th December 2017, and stated that:

*I specifically sought clarity in relation to the persons against whom Garda Keogh was making his complaint and I also sought clarification on what was within the scope of Garda Keogh’s Bullying and Harassment complaint. I also wanted to clarify if there were other matters which were outside the scope of his Bullying and Harassment complaint so that these matters could be addressed separately. I wanted to highlight that matters of criminality or grievance were outside the scope of the Bullying and Harassment complaint which I was appointed to investigate.*³¹¹¹

³¹⁰⁵ Tribunal Transcripts, Day 142, pp. 65-66, Evidence of A/C Michael Finn

³¹⁰⁶ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4108

³¹⁰⁷ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4125

³¹⁰⁸ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4125

³¹⁰⁹ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4125

³¹¹⁰ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4125

³¹¹¹ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4109

A/C Finn stated that it remained unclear against whom Garda Keogh was making his complaint following Garda Keogh's letter of 13th December 2017. He said in his statement that:

In the context of [Garda Keogh's solicitor's] letter of the 13th December 2017 it remained unclear as to whom Garda Keogh was making his complaint of Bullying and Harassment. While reference was made to Superintendent Murray and to 'the other two persons', [Garda Keogh's solicitor] did not name 'the other two persons'. [Garda Keogh's solicitor] makes reference in the text of the letter to Chief Superintendent Mark Curran and Chief Superintendent Wheatley but provides no detail of any complaints against them. In contrast, extensive reference is made to complaints against Superintendent Murray.³¹¹²

He continued that:

I reject any assertion... that I was seeking to avoid dealing with Garda Keogh's complaint through 'digressive diversion' or that in any of my dealings with Garda Keogh, or his solicitor, I sought to 'digress' or 'divert' any party from the investigation. I reject the assertion that the record that my 'assistant' (Inspector Browne) made was not objective or that my record of the meeting was fabricated in any manner. I reject the assertion made that I was introducing 'red herrings' or 'failing to investigate' Garda Keogh's complaint.³¹¹³

During his evidence to the tribunal, A/C Finn was asked the following:

Q. **Chairman:** [Garda Keogh's solicitor] is recorded as saying that he can't pinpoint who as doing it, he can't always pinpoint, it's a matter for investigation and that's up to you. And you are saying I'm limited to the policy.

A. **Correct.** So I am saying he has to tell me who it is he wants me to investigate.

Q. **Chairman:** So at that point there appears to be two views. One is, an investigation is going to take place which may throw up information about who is doing the bullying?

A. **Yes.**

Q. **Chairman:** And you're saying, I'm limited to the policy.

A. **Yeah.**

Q. **Chairman:** And your understanding of limited to the policy, correct me if I am wrong, your understanding of it was, I need to know who is being accused?

A. **Correct.** Now, he could have said the whole lot of them, which would have been fine, I'd have went off with that. If he said all 25 people he named, I'd have went down that road. But I just wanted to get some clarity from him because he was then including and excluding people. I just wasn't sure, Chair. Maybe I did labour it in hindsight but I wasn't doing it deliberately to frustrate him or anything like that.³¹¹⁴

He was asked about the mention of C/Supt Wheatley by counsel for An Garda Síochána:

Q. **Is it your evidence that Garda Keogh then said:**
"Throw in Lorraine Wheatley so."

A. **Correct.**

³¹¹² Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at pp. 4125-4126

³¹¹³ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4126

³¹¹⁴ Tribunal Transcripts, Day 142, pp. 69-70, Evidence of A/C Michael Finn

Q. *Were you surprised that he said it in such a casual and throwaway fashion?*

A. *I did, yes, Chair. To be fair to Ms. Wheatley.*³¹¹⁵

He was also asked about comments attributed to him in a phone call with Supt Murray on 16th January 2018:

Q. *... he attributes this to you, he says:*

“He now knows of the meticulous files and records and notes I have. He said he knew nothing of the corrections I made in Athlone and was now being punished for doing so.”

Did you say that to Superintendent Murray?

A. *No, Chair. And I think if I was to put that in context, Chair: On the week before this I got a substantial volume of material from Superintendent McBrien, where she gave me the material that she had given to Chief Superintendent Fergus Healy, we’ll say, who was doing the material for the civil action, we’ll say. I rang Chief Superintendent Healy to say, listen, have you got this material? He said, yeah, he has. So he confirmed what she gave me was correct, we’ll say. And he also said look, yeah, by the way, you know, Superintendent Pat Murray has an even bigger, larger volume of material in relation to that material. I think Superintendent Murray already told me that in terms of an e mail, that he had this 338 page volume of material. So that was the context, which I think if that was said.*

Q. *Again he attributes the next sentence to you.*

“He spoke of Chief Superintendent Myers’ reception from people accused he spoke to and his view of the ethical calibre of people accused.”

So it is a quite detailed note, would you accept that?

A. *It’s a detailed note, but I wouldn’t necessarily agree with it, Chair.*

Q. *“I explained the situation in Athlone, how Chief Superintendent Wheatley and I work closely to make corrections with fairness to everyone in a very careful way being aware of the sensitivities involved. I told him of the calibre of the other people accused and their frustration and annoyance at this contrived situation. He said he understood.”*

A. *I don’t agree with that, Chair. I mean, I wouldn’t have said that to him.*

Q. *“He confirmed that CS Curran, Wheatley and I were the ones Garda Keogh was accusing primarily.”*

Then he says:

“AC Finn offered a view that Garda Keogh and his solicitor were only looking for money in a civil claim.”

A. *I dispute that. I wouldn’t have said that, Chair. I mean, that would be very unprofessional and unethical of me to say something like that. I might have said I knew, because they had a civil action, but I wouldn’t have expressed a view. That is a very derogatory comment to make,*

³¹¹⁵ Tribunal Transcripts, Day 142, pp. 276-277, Evidence of A/C Michael Finn

*Chair. I think it would be highly inappropriate and unprofessional for me to say something like that.*³¹¹⁶

A/C Finn was re-examined on this issue by counsel for the tribunal:

Q. “He said he knew now of the corrections I made in Athlone and was now being punished for doing so.”

Did you say that to him?

A. *I have no recollection, Chair. I don't think I would have said that.*

Q. “He spoke of CST Myers’ reception from people accused he spoke to and his view –”

Which again looks like you.

“ – his view of the ethical calibre of the people accused.”

Did you say both of those things to him in that telephone call?

A. *No, Chair. But I would take that piece as being referring to Chief Superintendent Myers’ view of the ethical calibre of the people he spoke to. But I know that Chief Superintendent Myers had been in Athlone we’ll say earlier on that week and he met – you know, he served the papers on the people that were the witnesses and in fairness to him, I think he said to me, you know, that they got a good reception when they went there. Nobody wasn’t prepared not to engage with them, they didn’t get any hostility or negativity when they approached people. That would have been my perception of what he said.*

Q. *... I think at the start of that answer you said you didn’t say this to chief superintendent?*

A. *I don’t recall it saying it to him, yeah.*

Q. “I explained the situation in Athlone, how Chief Superintendent Wheatley and I work closely to make corrections with fairness to everyone in a very careful way of being aware of the sensitivities involved.”

Do you recall Superintendent Murray saying that to you?

A. *I don’t recall, Chair, but I wouldn’t have an issue with – you know, he probably did say it to me.*

Q. “I told him of the calibre of other people accused and their frustration and annoyance at this contrived situation.”

Did he say that to you?

A. *He may have, Chair.*

*I didn’t take any notes of it.*³¹¹⁷

He was asked about his meeting with Supt Murray on 18th January 2018 and he stated that:

... We were there for a long time, I suppose, you know, it was a cordial enough, we’ll say he made me tea, we sat down talking about his family, etcetera, you know. I didn’t really know the

³¹¹⁶ Tribunal Transcripts, Day 142, pp. 262-264, Evidence of A/C Michael Finn

³¹¹⁷ Tribunal Transcripts, Day 142, pp. 295-297, Evidence of A/C Michael Finn

guy before then. So I suppose he was kind of introducing himself to me and telling me. But the purpose of my meeting, like, wasn't to get a response from him there and then, I was only giving him the papers. So that was our first time meeting. I'm sure he probably articulated his views or whatever. I wasn't making any notes, so it wasn't pertinent, it wasn't going to be his response to the allegation. I'm sure he might have protested his innocence or whatever, but I didn't make any notes of it. It wasn't a pertinent, as I said, part of the investigation as such, other than I physically giving him the documentation and saying, here you are, I've served you now today, you go off, get your advice, come back to me with your response. Yeah.³¹¹⁸

He was asked about one of Supt Murray's concerns:

- Q. *And this was his concern, that if you proceeded with your investigation it would compromise the civil proceedings, is that right?*
- A. *Compromise his position anyway, Chair. I think he felt he would be compromised because – or he was concerned he might be compromised because any material he would have to give to me would be given over to Garda Keogh, we'll say, and I suppose he was concerned that would it have legal implications for him or disclosing documentation – I think he was concerned that it might have implications for the State side of it too if he was giving documentation over to me which I was going to be giving over to Garda Keogh. That's my understanding of it, Chair, now.³¹¹⁹*

In his statement to the tribunal, A/C Finn referred to the extensive correspondence throughout 2018 with Garda Keogh and the officers named in the complaint and stated that:

As a consequence of the civil proceedings that were ongoing, and running in parallel to my investigation, I allowed the parties involved sufficient time to give them an opportunity to seek legal advice on how they should deal with the Bullying and Harassment investigation, given that the other proceedings were underway. The majority of the witnesses interviewed in this case were not prepared to respond to requests for information without first seeking legal advice from their solicitors. As a consequence, it took from the 3rd January 2018 to the 30th May 2018 to get all of the requests for information back from the members who were interviewed.³¹²⁰

He addressed the length of his investigation in his evidence to the tribunal:

Certainly, Chair, it took a lot longer than I envisaged the first day. But I think if you go back through it like, there were circumstances that were outside of my control in the context that, we'll say, I had a load of people, we'll say, go off and get their legal advice. I think they were entitled to that, to be fair to them. There was a period then of three months when I was actually resting with [Garda Keogh's solicitor], where he was going off, going out to counsel, getting their legal advice. Then he comes back, we'll say, with a number of initial queries, which took some time to assemble, because again, you were talking about like the sick file, for example, like that was pretty big documentation, which is going back for a considerable period, historical records. So like trying to get them all together takes time, you know, trying to find them, track them down, see where they are. There was another investigation there about this alleged driving thing, you know. Assembling that information, Chair, took a good bit of time, I'd say. So I wouldn't say all of the delay was I don't blame myself for all the delay. But it did certainly take a lot longer than I would expected, Chair. I think it's not unreasonable to say somebody would be unhappy that it took so long, yeah.

³¹¹⁸ Tribunal Transcripts, Day 142, p. 151, Evidence of A/C Michael Finn

³¹¹⁹ Tribunal Transcripts, Day 142, pp. 195-196, Evidence of A/C Michael Finn

³¹²⁰ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4117

- Q. *Can I ask you, from the complainant's perspective was that a satisfactory period of time from his perspective? I think we have been hearing about your view on the others being given an opportunity and time to get legal advice?*
- A. *I think I was fair to everybody, Chair. I mean, I gave him three months effectively during the middle of it there to go off and get his advice and his counsel. He came back with additional queries, which I pursued, which effectively I would say I pursued on his behalf. I tried to bottom them out. Then, you know, I suppose the challenge for me then was to go off and write the report when I assembled all the material. So I think I was trying to be fair and reasonable to everybody, you know, live within the principles of natural justice and fair procedure, to all sides, Chair, you know.*³¹²¹

A/C Finn continued that:

*What we did, Chair, is that we met people, we gave them the allegations that were against them or the relevant portions that pertained to them and we said, look, there it is, you go off, prepare your response and come back to us. Now, it wasn't a case of, well, we sat down and kind of interrogated them and said there and then. You know, to be fair to people. Because, as I said earlier on, whatever was going to be said here could have implications for them at a future date, at another venue, another location. So I felt it be unreasonable and maybe unfair for me to try and say, look, you have to do it here now straightaway. You know, I allow people go off and come back to us with a written response. And having a written response was, I suppose, the best for me, Chair, because at least I could go back with it, here's the formal response from the parties that I interviewed, so there was no dispute about what was said, you know.*³¹²²

A/C Finn was asked about the process of investigation:

- Q. **Chairman:** *Did you intend this to be an entirely written process?*
- A. *Yes, Chair.*
- Q. **Chairman:** *In other words, you come to me with the material for the purpose of making sure I have it?*
- A. *Yeah.*
- Q. **Chairman:** *And then I come back with a written response?*
- A. *Correct.*
- Q. **Chairman:** *Is that the way this was done?*
- A. *Yeah, Chair, yeah. So there is no dispute then afterwards, give people an opportunity, let them get their legal advice if they have to get legal advice.*
- Q. **Chairman:** *So you don't talk to them at that stage and say, what's the story here, or X says that and Y says that and what do you say. You don't get into an interrogation?*
- A. *No, no. Give them an opportunity to go off and get their advice, yeah.*³¹²³

³¹²¹ Tribunal Transcripts, Day 142, pp. 185-186, Evidence of A/C Michael Finn

³¹²² Tribunal Transcripts, Day 142, p. 188, Evidence of A/C Michael Finn

³¹²³ Tribunal Transcripts, Day 142, pp. 188-189, Evidence of A/C Michael Finn

Q. **Chairman:** *Very good. The way you did it, would be in keeping, was in keeping with the Code of Practice?*

A. *Yeah, correct.*³¹²⁴

Counsel for Garda Keogh asked A/C Finn about the letter he wrote to C/Supt Curran on 15th December 2017:

Q. *It just says:*

“I now wish to meet with you to put to you the complaint made by Garda Keogh.”

A. *Yes.*

Q. *So that envisages you, I suppose, sitting down and discussing – the use of the words “put to you the complaint made by Garda Keogh”, discussing exactly what Garda Keogh is complaining about Chief Superintendent Curran, isn’t that correct? That’s what your letter says that you want to do?*

A. *I would agree with that, yeah.*

Q. *And did you do that?*

A. *No, no.*

Q. *You did?*

A. *I didn’t, no. I described to the Chair what I did, I met him, I gave him the documentation, I said, look, here it is, this is what I’m doing, explained to him, look, I am doing a bullying and harassment investigation, here’s Garda Keogh’s complaint, it’s set out here in this documentation, gave him the pack with all the matters that related to him and I said, look, you need to go off, but you come back to me with a response in writing, we’ll say.*

Q. *In circumstances where the policy provides for interviewing people?*

A. *Yes.*³¹²⁵

A/C Finn stated that he provided material to Garda Keogh on 13th June 2018 and received queries on 6th September 2018:

*These queries pertained to: comments made by Chief Superintendent Murray in relation [to] Garda Keogh’s addictive substance dependencies; Chief Wheatley’s review of Superintendent’s Alan Murray’s discipline investigation; a reference made by Sergeant Paddy Guinan’s Solicitor to a disclosure made by the complainant (Garda Keogh) that he was arrested for drink driving; a query in relation to Garda Gerry White’s email in relation to a check made on Garda Keogh’s car; a query in relation to Inspector Drea’s statement, and clarity sought on who investigated ‘the incident’; and a query in relation to the recording of Garda Keogh’s absence from duty due to illness.*³¹²⁶

A/C Finn said that he tasked Chief Superintendent Thomas Myers to follow up on these queries, writing to both C/Supt Wheatley and Supt Murray.³¹²⁷

³¹²⁴ Tribunal Transcripts, Day 142, pp. 190-191, Evidence of A/C Michael Finn

³¹²⁵ Tribunal Transcripts, Day 142, pp. 236-237, Evidence of A/C Michael Finn

³¹²⁶ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4118

³¹²⁷ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4118

In his evidence to the tribunal, he was asked whether a query was raised in respect of the Liam McHugh investigation being fabricated:

Q. *And he then wrote back to you on the 6th September 2018?*

A. Yes.

Q. *And that's at 4998. And I suppose, can you confirm, assistant commissioner, and obviously the material is there for us to see it, nowhere in that correspondence does it say that he is concerned that this particular complaint in relation to Mr. McHugh or I suppose the – I'm calling it a complaint, it's actually Garda Keogh's complaint, as it were, in relation to that issue, but he doesn't say that he is concerned that that had been fabricated?*

A. *That's correct, Chair.*

Q. *It doesn't say that, and also that Sergeant Lyons was requested to get involved in this issue, that he was put up to it, as it were?*

A. *That's correct, Chair. That wasn't brought to my attention.*³¹²⁸

On 10th November 2018, A/C Finn provided additional material to Garda Keogh's solicitor as requested. He sent a copy of this letter to C/Supt Myers on 13th November 2018, having emailed him on 11th November 2018 with '*a number of additional queries for the purpose of completing my investigation file*'.³¹²⁹

Counsel for Garda Keogh asked A/C Finn whether he was impartial in the light of having earlier signed the promotion form for Supt Murray:

Q. *I am conscious obviously that the next issue that I am going to touch on is for the next part of the Tribunal's hearings. But just purely in terms of impartiality, you have actually dealt with Superintendent Murray before, in terms of signing a clearance form, isn't that right?*

A. *Oh yes, sorry. Chair, I will explain that one. It's very simple to explain. I was, we'll say, attached to HQ, we were in what I call the bureau block, okay. So I was assistant commissioner for policing. You also the executive director for HRPD and you had the assistant commissioner for governance and accountability. And occasionally, we'll say, something urgent would have to be done, signed by assistant commissioner, and they would come over to me, because they knew I had been there a long time, I suppose, look, will you sign that for us. That was purely the case with that particular case with Superintendent Murray's promotion, like you know. It wasn't my side of the house, it was something I was doing for somebody else, yeah.*

Q. *I see. Having signed that document, when you were appointed by Assistant Commissioner Fanning to carry out this investigation, did you not question your ability to remain impartial at that point?*

A. *I have actually no doubt whatsoever, Chair, that I have no fathom of – or partiality towards Superintendent Murray in that regard.*³¹³⁰

³¹²⁸ Tribunal Transcripts, Day 142, pp. 287-288, Evidence of A/C Michael Finn

³¹²⁹ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4119

³¹³⁰ Tribunal Transcripts, Day 142, pp. 219-221, Evidence of A/C Michael Finn

Counsel for Garda Keogh continued:

- Q. *Can I ask you, when Garda Keogh was asked about the investigation that you carried out, at Day 104, page 81, and Ms. McGrath referred to this earlier on, he described it as an exercise in circling the wagons. And I suggest to you that that is what occurred in the context of your investigation?*
- A. *No.*
- Q. *That it was a circling of the wagons in favour of the senior officers, do you accept that?*
- A. *No, Chair. I think that was his perception of what happened there.*³¹³¹

The contents of Supt Murray's notes were put to him by counsel for Garda Keogh:

- Q. ... *"Emphasised that M Finn is honest and ethical and would make sure that everything was done right so that there was nothing to worry about. Spoke about an extra pip on my shoulder."*
- Can you assist us with what that might mean? I suggest to you that it means –*
- A. *I would like to think that he said I was honest and ethical. I take a bit of comfort in that, Chair. But I'm not sure what the rest of it means.*
- Q. *The use of the words, and again I know that this is Superintendent Murray's note, "that there was nothing to worry about" –*
- A. *Yes. That I am honest and ethical.*
- Q. *– I suggest to you that that is in relation to the investigation as a whole?*
- A. *I wouldn't agree with that, Chair, no.*
- Q. *Finally, I suggest to you on behalf of Garda Keogh that the investigation was not, was not impartial.*
- A. *No, I disagree with that, Chair.*
- Q. *... I suggest to you it wasn't carried out in accordance with fair procedures, and I suggest to you that the investigation was carried out in a manner that was discrediting to Garda Keogh.*
- A. *I disagree with that, Chair.*³¹³²

A/C Finn completed his investigation and submitted his report to the Office of the Assistant Commissioner, Eastern Region, on 21st December 2018.³¹³³ A/C Finn stated that:

*Garda Keogh raised eighteen specific points in his statement of complaint (made on the 1st December 2017). Not all of the matters related to the three members nominated by Garda Keogh in his statement of complaint – however for completeness each of the issues raised by Garda Keogh were addressed in my report.*³¹³⁴

³¹³¹ Tribunal Transcripts, Day 142, p. 259, Evidence of A/C Michael Finn

³¹³² Tribunal Transcripts, Day 142, pp. 266-267, Evidence of A/C Michael Finn

³¹³³ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4121

³¹³⁴ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4122

In his statement to the tribunal, A/C Finn addressed the timeframe of the investigation as follows:

From the outset of the investigation the parties involved expressed concern and dissatisfaction with the timeframes in which the complaint was being investigated. The members concerned were aware that Garda Keogh has made a complaint in March 2017.

While all of the parties agreed to cooperate with the investigation, they were dissatisfied that the investigation had taken such a long period of time to formally commence given the length of time between the date that Chief Superintendent Scanlan was tasked to take Garda Keogh's statement in March 2017 and the 15th November 2017 when I was appointed to investigate the matter. Garda Keogh also made reference to the fact that he first raised this issue in 2016...

I informed all of the parties that I noted their concerns in relation to the length of time and I informed all of the parties it would not be possible to complete the investigation within the time frame set out in the policy guidelines given the volume of material involved and the number of potential witnesses identified in the report. At the behest of some of the parties involved I sought legal advice with regard to what some believed to be an apparent conflict between the civil proceedings which were running in parallel with the Bullying and Harassment investigation. The legal advice I received was that the Bullying and Harassment investigation should proceed.

I concluded my investigation as soon as I had all of the material collated and considered by myself as part of the investigation process. I answered all of the queries raised by Garda Keogh and the members complained of.³¹³⁵

A/C Finn said that he wrote to Mr Nugent advising him that:

... I had concluded my investigation and the matter is now resting with the Assistant Commissioner Eastern Region. I informed the CAO that from the 3rd January 2019 I had been temporarily assigned responsibility for the Eastern Region. I informed the CAO that given my involvement in this investigation I could not progress the matter in my capacity as Assistant Commissioner Eastern Region. In that context, I recommended that the matter be referred to another Assistant Commissioner to conclude.³¹³⁶

He said that he received queries in respect of his report from A/C O'Brien and dealt with them as follows:

On the 1st February 2019 I received an update of the comprehensive report from Inspector Paul Kennedy in response to the queries raised and clarification sought on certain matters by Assistant Commissioner O'Brien ...

On the 4th February 2019 I responded to Assistant Commissioner Eastern Region's (Assistant Commissioner O'Brien's) queries of the 22nd January 2019, addressing all of the queries that he raised.³¹³⁷

A/C Finn concluded in his statement that:

I reject the assertion that anything I had done during the course of my investigation was done to target or discredit, or done for the purpose of facilitating any other person to target or discredit Garda Keogh following the making of Protected Disclosure.³¹³⁸

³¹³⁵ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4123

³¹³⁶ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at pp. 4121-4122

³¹³⁷ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4122

³¹³⁸ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4126

Assistant Commissioner Finbarr O'Brien

In his statement to the tribunal, A/C O'Brien said that:

*I was requested to review Assistant Commissioner Finn's investigation in accordance with Section 8.9 of the Policy which requires me to satisfy myself that all appropriate steps in the investigation have been undertaken, that a fair and impartial investigation has been carried out, to make a determination based on the investigation and to communicate the outcome and my decision to all parties.*³¹³⁹

He stated that he received a complete copy of A/C Finn's file, which consisted of three volumes of material. On 22nd January 2019, he requested clarification on a number of matters, along with additional documentation, which he received on 4th and 5th February 2019. He stated that he was satisfied with the investigation carried out by A/C Finn:

*Having reviewed the investigation file, including the additional material supplied, I was satisfied that all appropriate steps had been undertaken by Assistant Commissioner Michael Finn in his investigation into the allegations of Bullying by Garda Nicholas Keogh, that Assistant Commissioner Finn had conducted a thorough and impartial investigation and I agreed with Assistant Commissioner Finn's conclusion that there was no evidence to support the allegations of Bullying against any of the Gardai referred to in Garda Keogh's complaint.*³¹⁴⁰

A/C O'Brien outlined in his evidence how he conducted this review:

*Well, my view is that what I am doing is I am looking at the findings. So, as I said, first of all I have to satisfy myself, as it says there, that all appropriate steps have been taken and that a thorough and impartial investigation. And then I will look at the conclusions drawn in respect of each of the allegations and then establish and satisfy myself that the conclusions are based on the evidence provided and that they are reasonable. Then I decide whether I agree with the conclusions or otherwise. That's what I see my role as.*³¹⁴¹

Counsel for the tribunal asked A/C O'Brien about the allegation that the review was a rubber-stamping of A/C Finn's report:

Q. Okay. Now, one of the things – I am just almost finished, commissioner. One of the complaints that Garda Keogh made when he was giving evidence before Christmas, he said, for example, that he never met you, he never sat down with you. Can you respond to that?

A. That's correct.

Q. I take it that when you are carrying out a review, it's a paper review, you don't meet?

A. It's a review of the investigation file, that's correct.

Q. I think you didn't meet anybody who was involved in it.

A. No.

Q. Is that right?

A. Yes.

³¹³⁹ Tribunal Documents, Statement of A/C Finbarr O'Brien, p. 13412

³¹⁴⁰ Tribunal Documents, Statement of A/C Finbarr O'Brien, p. 13412

³¹⁴¹ Tribunal Transcripts, Day 143, pp. 12-13, Evidence of A/C Finbarr O'Brien

- Q. *He says also it was carried out very quickly, this is your review, and he used the words at one point in his evidence that you simply just rubber stamped the Finn investigation. What do you have to say to that?*
- A. *I would refute that. I discharged the obligations in accordance with the timelines as set out in the policy and I think an examination of the file and the manner in which I dealt with the file would indicate otherwise.*
- Q. *Now, he does say at one point on Day 114 that he's not necessarily pointing a finger at you in many ways because he says the Finn investigation was so flawed that anything you could have done could not have salvaged the situation. What do you have to say to that?*
- A. *I don't accept that.*³¹⁴²

Counsel on behalf of Garda Keogh asked A/C O'Brien whether he had queried the delay in the investigation:

*No, I didn't seek an explanation as to the delay. My opinion is that the delay is certainly unhelpful and probably was unfair to Garda Keogh, but also at the same time was equally unfair to Chief Superintendent Murray, Chief Superintendent Wheatley and Chief Superintendent Curran. All parties which would have had a reasonable entitlement or a reasonable expectation that this matter would be expedited. But in answer, yes, but I didn't feel it actually disadvantaged any of the parties in terms of what the allegations were or what the evidence was adduced.*³¹⁴³

Deputy Commissioner John Twomey

In his statement to the tribunal, Dep/C Twomey said that he appointed Mr de Bruir to conduct an audit of the investigation:

*The Policy provides a mechanism available to the person conducting the appeal to engage an Independent Expert to carry out an audit of an investigation. To allow me consider this matter Mr. Rory de Bruir, Barrister-at-Law, was engaged to carry out an audit of the investigation.*³¹⁴⁴

Counsel for the tribunal asked Dep/C Twomey about this appointment:

- Q. *When you ask him to do an audit, what was it that you were actually asking him to do?*
- A. *Well, it's an independent audit of the investigation, to have a look at it in the context of the issues that were raised, the investigation that was conducted and the decisions that were made as a consequence. To do an audit of that entire process, to assist me ultimately in coming to a decision and to deal with the review and the issues that were raised. Obviously Mr. de Bruir had sight of the issues that were raised in the appeal also.*
- Q. *Why did you think that it was appropriate in this case that you get someone externally to review the file?*
- A. *Well, I felt it's a very serious matter and I wanted to give it the seriousness that the issue deserved. I wanted it to be a fair and impartial consideration and I wanted it to be seen as such. I felt that the facility and the Policy enabled that assistance to provide that*

³¹⁴² Tribunal Transcripts, Day 143, pp. 44-45, Evidence of A/C Finbarr O'Brien

³¹⁴³ Tribunal Transcripts, Day 143, p. 53, Evidence of A/C Finbarr O'Brien

³¹⁴⁴ Tribunal Documents, Statement of Dep/C John Twomey, p. 14671

independent audit, that independent expert advice to me in doing my work and I felt it was appropriate to do that in this case.³¹⁴⁵

The deputy commissioner stated that he considered the audit report ‘*in conjunction with the completed investigation file of Assistant Commissioner Finn; the conclusions arrived at by Assistant Commissioner O’Brien; together with the appeal submitted by [Garda Keogh’s solicitor] on behalf of his client, Garda Keogh*’.³¹⁴⁶ He stated that:

*I was satisfied that the investigation completed by Assistant Commissioner Finn was comprehensive and addressed, in detail and, in accordance with ‘the Policy’, all complaints raised by Garda Keogh, and his solicitor, on behalf of Garda Keogh. I was satisfied that the decisions reached by Assistant Commissioner O’Brien were correct and were logical, rational and based on the reports and responses provided by Garda personnel who worked with and / or interacted with Garda Keogh. Having considered, in-depth, all documentation available to me in this matter, I was of the firm belief that a comprehensive investigation was carried out and the findings resulted from a thorough, fair and impartial investigation and, accordingly, I found no corroborative evidence in support of the complaints and I did not uphold any complaint of bullying made by Garda Keogh against the named personnel.*³¹⁴⁷

He gave evidence to the tribunal that:

*I looked at the investigation file as submitted by Assistant Commissioner Finn, along with the appendices, I looked at the report and the decisions of Assistant Commissioner O’Brien, I looked at the grounds of appeal as submitted on behalf Garda Keogh, and I looked at the report as submitted to me by Mr. de Bruir. So I considered all of those and I considered them in the context of what I had been asked to do, was to do an audit of the investigation in the context of the complaints that had been made.*³¹⁴⁸

*Well, I found that on the balance of probabilities, that I had to consider everything that was in front of me and I did need some evidence in support of it. And I needed – I needed – I suppose if I come at it from the other way, in doing the review, I found that there was no evidence that any of the actions taken could be construed as either bullying or harassment. And I was focused on the behaviours of the people that were involved and the evidence and the information that I had in front of me in the context of the investigation files and reports.*³¹⁴⁹

Bullying and Harassment Policy of An Garda Síochána

An Garda Síochána adopted a new policy in relation to bullying and harassment on 1st November 2007 entitled ‘*Working Together to Create a Positive Working Environment*’.³¹⁵⁰ The policy, which is commonly known as the bullying and harassment policy, states that:

*One of the main objectives of the policy is to achieve a safe and harmonious working environment that encourages and supports the right to dignity at work. Overall the policy has a strong emphasis on prevention to ensure the working environment is one where people are valued for their individuality and diversity. It is also designed to provide managers with the knowledge required to discharge their management function in a professional manner.*³¹⁵¹

³¹⁴⁵ Tribunal Transcripts, Day 143, p. 100, Evidence of Dep/C John Twomey

³¹⁴⁶ Tribunal Documents, Statement of Dep/C John Twomey, p. 14671

³¹⁴⁷ Tribunal Documents, Statement of Dep/C John Twomey, p. 14671

³¹⁴⁸ Tribunal Transcripts, Day 143, p. 105, Evidence of Dep/C John Twomey

³¹⁴⁹ Tribunal Transcripts, Day 143, p. 108, Evidence of Dep/C John Twomey

³¹⁵⁰ Tribunal Documents, Working Together to Create a Positive Working Environment, pp. 7868-7909

³¹⁵¹ Tribunal Documents, Working Together to Create a Positive Working Environment, p. 7868 at p. 7871

The document includes the following policy statement:

It is the policy of the Garda Síochána that every employee has the right to be treated with dignity and respect and to carry out their duties in an environment that is free from harassment, sexual harassment and bullying.

Sexual harassment, harassment and bullying will not be tolerated within the Garda Síochána and can lead to disciplinary action.

Workplace bullying, harassment and sexual harassment undermine professional working relations and adversely affect the service that the Garda Síochána provides to the public as it can lower morale and result in stress and absenteeism. It also has a negative effect on other members who may not have been directly subjected to bullying, harassment or sexual harassment but who may have observed it or have been made aware of it.

This policy is designed to protect staff from harassment, sexual harassment and bullying, whether it is carried out by a manager or a work colleague, a service provider or other business contact. Any such behaviour is totally unacceptable, and is in many instances unlawful, and will not be tolerated in the Service. Risk assessments will be carried out by Garda management taking account of current legislation. All recorded incidents of bullying, harassment and sexual harassment will be closely monitored and audited at Human Resource Management (HRM) by persons competent in this area. The purpose of the risk assessments is to identify where unacceptable behaviour has occurred and to put in place remedial action to ensure it does not occur again.

The Garda Síochána is committed to the development and maintenance of a positive working environment. An essential component of such an environment is treating colleagues with the respect and dignity they deserve.

A positive working environment places obligations on management but also places responsibilities on all members to refrain from engaging in unacceptable behaviour and where it occurs to challenge and expose it. A positive working environment is not created merely through the introduction of policies on harassment, sexual harassment and bullying. Each individual has a responsibility to ensure that such policies have real effect in the workplace.³¹⁵²

*'Harassment' is defined as 'any form of unwanted conduct in relation to any of the discriminatory grounds that could reasonably be regarded by an employee as offensive, humiliating or intimidating and includes spoken words, gestures or the production, display or circulation of written words, pictures or other material.'*³¹⁵³ *'Bullying' is defined as follows:*

Workplace bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment which could reasonably be regarded as undermining the individual's right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but as a once-off incident is not considered to be bullying.³¹⁵⁴

³¹⁵² Tribunal Documents, Working Together to Create a Positive Working Environment, p. 7868 at p. 7875

³¹⁵³ Tribunal Documents, Working Together to Create a Positive Working Environment, p. 7868 at p. 7877

³¹⁵⁴ Tribunal Documents, Working Together to Create a Positive Working Environment, p. 7868 at p. 7881

The policy states that:

Bullying can be perpetrated by a person in authority, a colleague, group of colleagues or a junior member of staff, against a person at any level in the workplace. It can also be perpetrated by a client, contractor or other business contact...

*It is each member's responsibility to bring any incident of bullying to the attention of a supervisor, who should ensure that the issue is dealt with satisfactorily, as set out within the Policy and as instructed through training.*³¹⁵⁵

The policy sets out what is not regarded as bullying:

*Bullying must be distinguished from the proper use of authority which is necessary to achieve policing objectives. All supervisors are required to manage and monitor their staff and in this context it is the duty of supervisors to be open and honest with individuals about performance, attendance and general behavioural issues. From time to time this may involve fair comments to individuals about issues affecting their work. It is important that these comments are not personalised but rather address the behaviours that need to be improved. Bullying does not arise where managers make comments or give advice and feedback in an honest and constructive manner supported by clear facts and communicated in a reasonable manner.*³¹⁵⁶

In relation to the responsibility of supervisors and officers, the policy states that:

*Supervisors and officers have a particular responsibility for implementing this policy and for taking all necessary steps to ensure that harassment, sexual harassment and bullying do not occur in their areas of responsibility. The primary responsibility for dealing promptly and effectively with such incidents rests with supervisors and officers, once they become aware of such incidents. Training will be given to those tasked with the responsibility for dealing with these incidents.*³¹⁵⁷

Chapter 8 of the policy sets out the procedures for making and dealing with complaints of unacceptable behaviour.³¹⁵⁸ It envisages, in the first instance, that objections will be made known to the person engaging in the unwelcome behaviour, and allows for an informal or a formal approach, and an appeals process.³¹⁵⁹ The formal process envisages the making of a complaint, either verbally or in writing. The policy states that:

Written complaints should contain:

- *details of the person or people against whom the complaint is being made;*
- *full details of the alleged act or acts constituting the behaviour complained of including dates, times and places;*
- *a list of witnesses (if any);*
- *details of whether the complainant let their objections be known and whether an informal resolution was invoked in the past;*
- *an indication of what would satisfactorily resolve the complaint, if the complainant wished to offer such indication.*³¹⁶⁰

³¹⁵⁵ Tribunal Documents, Working Together to Create a Positive Working Environment, p. 7868 at p. 7881

³¹⁵⁶ Tribunal Documents, Working Together to Create a Positive Working Environment, p. 7868 at p. 7881

³¹⁵⁷ Tribunal Documents, Working Together to Create a Positive Working Environment, p. 7868 at p. 7884

³¹⁵⁸ Tribunal Documents, Working Together to Create a Positive Working Environment, p. 7868 at pp. 7888-7902

³¹⁵⁹ Tribunal Documents, Working Together to Create a Positive Working Environment, p. 7868 at pp. 7889-7902

³¹⁶⁰ Tribunal Documents, Working Together to Create a Positive Working Environment, p. 7868 at p. 7892

A complaint should be acknowledged within five working days and the person complained of should be notified within the same timeframe. If mediation is not opted for, the matter will then be referred to an investigator to commence an investigation.³¹⁶¹

It is stated, in relation to an investigation, that '*[a]n investigation will establish the facts or credibility of the complaint, with due regard for the provisions of fair procedure and natural justice*' and that the '*Divisional Officer/Chief Superintendent will select a suitable investigator, who should be of higher rank than the complainant and person complained of and be not lower than Inspector rank*'.³¹⁶² It is also stated that:

*The investigation should be conducted thoroughly, objectively, with sensitivity, utmost confidentiality, and with due respect for the rights of both the complainant and the person complained of. The investigator will report their findings within 28 days of the complaint being received at the Divisional office.*³¹⁶³

Paragraph 8.5 of the policy envisages an extension to the time limits once there is clear justification and both complainant and person complained of have indicated they have no objection to the extension.³¹⁶⁴

On completion of the investigation, the investigator is required to submit a report, which shall include a conclusion with one of the following, with clear justifications for the selected option:

- (i) *on the balance of probability the complaint is upheld for the following reasons;*
- (ii) *on the balance of probability the complaint is not upheld for the following reasons; or*
- (iii) *the complainant has withdrawn their case and there is 'no case to answer'.*³¹⁶⁵

Paragraph 8.12 provides for an appeals procedure where either party is not satisfied with the outcome of the formal investigation. Such appeal must be made within forty-two days and a request for an appeal must clearly and comprehensively state the grounds on which it is being sought. On receipt of a request for an appeal, the assistant commissioner may review the case and make a final determination on the matter. Alternatively, the assistant commissioner may engage an independent expert to carry out an audit of the investigation. In making the final determination, the assistant commissioner will consider the views of the expert. It is required that the complainant and the person complained of be informed in writing of the findings of the appeal or review of the case within thirty days of the notification being received.³¹⁶⁶

Legal Submissions

Garda Nicholas Keogh submitted as follows:³¹⁶⁷

- that Garda Keogh was discredited by senior management as a result of their conduct in the investigation of his complaint.

³¹⁶¹ Tribunal Documents, Working Together to Create a Positive Working Environment, p. 7868 at pp. 7892-7893

³¹⁶² Tribunal Documents, Working Together to Create a Positive Working Environment, p. 7868 at p. 7893

³¹⁶³ Tribunal Documents, Working Together to Create a Positive Working Environment, p. 7868 at p. 7893

³¹⁶⁴ Tribunal Documents, Working Together to Create a Positive Working Environment, p. 7868 at p. 7895

³¹⁶⁵ Tribunal Documents, Working Together to Create a Positive Working Environment, p. 7868 at p. 7898

³¹⁶⁶ Tribunal Documents, Working Together to Create a Positive Working Environment, p. 7868 at p. 7901

³¹⁶⁷ 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 A/C Finn failed to remain impartial, acted outside the parameters of the bullying and harassment policy, and that he failed to ignore irrelevant considerations, amounting to discrediting.
- that he first indicated he wished to make a complaint of bullying and harassment to C/Supt McLoughlin by letter dated 20th October 2016. He experienced a significant and unexplained delay from the time of his first complaint to C/Supt Scanlan on 27th March 2017 to the appointment of A/C Finn on 15th November 2017.
- that no evidence to explain this delay was heard by the tribunal.
- that attention should be drawn to aspects of the *'Working Together to Create a Positive Working Environment'* policy document, including provisions which call for confidentiality and impartiality, and state that the complainant will be provided with a copy of the statement of the person complained of and the opportunity to comment, and that on receipt of the investigation file, the officer will satisfy themselves that *'all appropriate steps have been taken and that a thorough and impartial investigation has been carried out'*.
- that the meeting of Garda Keogh and A/C Finn on 1st December 2017 was conducted in an obstructive manner, with no second meeting to help to clarify Garda Keogh's complaints.
- that the treatment of Garda Keogh at his meeting with A/C Finn on 1st December 2017 should be contrasted with meetings with the senior officers complained of, at which no notes were taken and no proper interview was conducted, amounting to a breach of policy and fair procedure, and constituting the discrediting of Garda Keogh.
- that A/C Finn failed to abide by the bullying and harassment policy, in that he failed to interview the officers complained of, instead providing them with a copy of Garda Keogh's complaint and allowing them to come back with a response in writing.
- that in relation to C/Supt Curran, A/C Finn failed to interview him, failed to keep adequate notes of their meeting, and allowed an inordinate period of three months for the officer to reply to Garda Keogh's complaints. This approach was in breach of the policy document and illustrated the disrespectful, discrediting way in which the investigation was conducted.
- that similar to C/Supt Curran, A/C Finn should have interviewed C/Supt Wheatley, instead of merely passing on Garda Keogh's complaint.
- that A/C Finn's involvement in the investigation following his signing of a clearance form in relation to Supt Murray's promotion represented a conflict of interest.
- that A/C Finn's four and a half hour meeting with Supt Murray was improper, especially in light of Supt Murray's evidence that his 338-page civil document and his promotion were discussed. A/C Finn denied expressing the view that he would provide assurances to the Policing Authority, that he spoke of the *'ethical calibre of people accused'*, and that he offered the view that *'Garda Keogh and his solicitor were only looking for money'*, but the comments as noted by Supt Murray suggest that the investigation was pre-judged and pre-determined and biased in favour of the senior officers.

- that Supt Murray’s initial failure to disclose all his notes and materials to the tribunal was significant when considering the discrediting manner in which the investigation was carried out.
- that the issue of delay was raised by Garda Keogh to A/C Finn, but A/C Finn failed to address this issue, which he admitted ‘*was negligent on [his] behalf*’.
- that the time taken to conclude the investigation was both inordinate and unfair.
- that the investigation carried out by A/C Finn breached fair procedures, was contrary to the policy, and lacked impartiality, resulting in an investigation that was biased in favour of senior officers and discrediting of Garda Keogh.
- that the de Bruir audit and the O’Brien review were also flawed because they relied upon the A/C Finn investigation.

An Garda Síochána submitted as follows:³¹⁶⁸

- that Garda Keogh knowingly made repeated false allegations about his lost or missing complaint in order to prevent the promotion of Supt Murray.
- that in December 2016, A/C Fanning instructed C/Supt Scanlan to take a statement from Garda Keogh. In January 2017, C/Supt Scanlan contacted Garda Keogh, who expressed the view that C/Supt Scanlan might be conflicted as he had previously supervised Garda Keogh. Garda Keogh also stated that he needed the material previously sent to HRM in order to make his statement. C/Supt Scanlan reported the potential conflict to A/C Fanning and sought material from HRM.
- that on 13th February 2017, A/C Fanning directed C/Supt Scanlan to proceed with taking Garda Keogh’s statement. C/Supt Scanlan met with Garda Keogh on 2nd March 2017 and an unfinished, unsigned statement was prepared. C/Supt Scanlan contacted Garda Keogh repeatedly throughout March before meeting with Garda Keogh again on 27th March 2017. Garda Keogh’s statement was sent to A/C Fanning on 31st March 2017, with a further report on 12th April 2017.
- that Insp McCarthy provided a chronology of interactions between himself, Garda Keogh and A/C Fanning which made no suggestion of delay and that Garda Keogh was kept fully informed at all times.
- that A/C Fanning wrote to Garda Keogh on 16th May 2017, informing him that he had received his statements and asking him to submit any further information by 30th May 2017. Garda Keogh confirmed that all issues were included.
- that Garda Keogh raised additional issues with Insp McCarthy on 22nd May 2017. A/C Fanning then wrote to HRPD stating his reluctance to make an appointment as the bullying and harassment policy may not be wide enough and he feared there may be a conflict of interest. He informed Garda Keogh of same.
- that Garda Keogh informed Insp McCarthy in June 2017 that he was happy with how matters were progressing and that Garda Keogh was kept up to date throughout the summer months.

³¹⁶⁸ 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 August and September 2017, Garda Keogh and Garda Keogh’s solicitor contacted the Minister for Justice and Equality complaining about the delay and alleging the complaint had been lost to facilitate the promotion of Supt Murray.
- that Garda Keogh met with Insp McCarthy in September 2017, but Insp McCarthy did not note any concerns about a lost or missing statement.
- that in December 2017 Garda Keogh complained of this delay to A/C Finn in an addendum to his bullying and harassment statement.
- that at a case conference on 3rd October 2017, A/C Fanning was reluctant to make an appointment under the bullying and harassment policy and he felt a larger, Byrne/McGinn style investigation was appropriate.
- that another case conference was held on 23rd October 2017, following which A/C Fanning confirmed that the bullying and harassment process had been activated. He subsequently wrote to Garda Keogh and the members accused with an offer of mediation, which Garda Keogh rejected.
- that on 15th November 2017, Mr Barrett nominated A/C Finn to carry out an investigation into Garda Keogh’s bullying and harassment complaint.
- that Garda Keogh’s solicitor complained on behalf of Garda Keogh about the purpose of meetings held at Garda Headquarters.
- that details of a meeting appeared in the Irish Independent.
- that Garda Keogh failed to disclose from whom he received the information contained in the letter written on his instructions, and his assertion that he did not remember is not credible.
- that Garda Keogh was happy with A/C Fanning’s involvement with his complaint, that he was kept up to date, and that he has no evidence to support the allegation that his statement was lost.
- that this claim that Garda Keogh’s statement was lost or went missing was false, which undermines the credibility of his evidence to the tribunal.

Alleged delay by A/C Finn

- that the duration of the investigation was reasonable; there is no evidence that the investigation was delayed in order to promote Supt Murray. It was a complex investigation prolonged by legal queries and the approach taken by Garda Keogh.
- that A/C Finn was appointed on 15th November 2017 and completed his report in December 2018. It was reviewed by A/C O’Brien, who made a determination on 7th February 2019, and appealed by Garda Keogh on 19th March 2019. Mr de Bruir reviewed the findings and concluded on 4th June 2019 that the findings were made following an appropriate investigation. Dep/C Twomey then affirmed the findings.
- that A/C Finn first met Garda Keogh on 1st December 2017 and A/C Finn sought to clarify against whom Garda Keogh was making his complaint.

- that Garda Keogh's solicitor sought to have all future meetings electronically recorded, and legal advice was sought on the matter and received on 29th January 2018. A/C Finn sought to meet with Garda Keogh again in February 2018. Garda Keogh's solicitor replied on 6th March 2018 and again sought the electronic recording of meetings. He was advised that he could record them himself if he wished.
- that A/C Finn engaged with the members complained of from January to May 2018, many of whom sought legal advice which resulted in delay.
- that A/C Finn replied to correspondence from Garda Keogh's solicitor dated 12th June 2018 on 13th and 19th June but did not receive a response until 6th September 2018. This response raised concerns about the responses of Supt Murray, C/Supt Wheatley and C/Supt Curran, which necessitated further enquiries.
- that A/C Finn provided the results of his further enquiries to Garda Keogh's solicitor in November 2018 and the matter was finalised on 20th December 2018.

The Reasonableness of A/C Finn's findings

- that Garda Keogh's allegation that no reasonable person could have found that there was no bullying or harassment is unsupported by any evidence, and if the tribunal finds that there was no targeting or discrediting by the members concerned then it might reasonably be considered that A/C Finn's findings are also appropriate.
- that A/C Finn did not pre-judge the matter and that A/C Finn did not say that Garda Keogh and his solicitor were only looking for money, but may have said he was aware they were looking for money.
- that the efficacy of A/C Finn's approach to the investigation is evident and the subsequent reviews by A/C O'Brien, Mr de Bruir and Dep/C Twomey underpin the reasonableness of his findings and the diligent way in which the investigation was carried out.
- that Garda Keogh's willingness to persist in criticising the Finn investigation is evidence of a willingness to make damaging and unsubstantiated allegations against his superior officers.

Superintendent Noreen McBrien submitted as follows:³¹⁶⁹

- that despite no allegation of bullying or harassment being made against her, Supt McBrien was included in the appeals process, resulting in scrutiny and comment, potential damage to her reputation and personal distress.

Sergeant Cormac Moylan submitted as follows:³¹⁷⁰

- that while Sgt Moylan received notice a complaint had been made, he was not interviewed or notified that he was under investigation.

³¹⁶⁹ The tribunal has considered all of Superintendent Noreen McBrien's legal submissions on this issue and what follows is a summary of the same.

³¹⁷⁰ The tribunal has considered all of Sergeant Cormac Moylan's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

Assistant Commissioner Fintan Fanning submitted as follows:³¹⁷¹

- that A/C Fanning's involvement with Garda Keogh's bullying and harassment complaint began in December 2016.
- that Garda Keogh accepts that there was a large amount of work going on from the time A/C Fanning was made aware of Garda Keogh's complaint to the appointment of A/C Finn, that he was keen to advance the issue, and that contact was repeatedly made with Garda Keogh throughout this period.
- that there is no evidence to suggest that A/C Fanning's management of the complaint was in any way improper.
- that it was implied by An Garda Síochána's legal team that communication between Garda Keogh and A/C Fanning, or A/C Fanning, was responsible for the leak to the Irish Independent, but this was not put to A/C Fanning during cross-examination.
- that Insp Minnock was not in a position to dispute Garda Keogh's characterisation of an exchange with A/C Fanning, which attributed to him a statement that he was going to look after Garda Keogh and his supporters as misinformation.
- that Insp Minnock was questioned in such a way as to imply that contact between Garda Keogh and A/C Fanning was improper.
- that it is unclear how Insp Minnock could have been surprised by communications between Garda Keogh and A/C Fanning, given that A/C Fanning was dealing with Garda Keogh's bullying and harassment complaint.
- that during the cross-examination of C/Supt McLoughlin further attempts were made to imply a link between A/C Fanning and the Irish Independent article of 13th November 2017.
- that in cross-examining A/C Finn, attempts were again made by An Garda Síochána's legal team to imply that the contact between A/C Fanning and Garda Keogh was in some way improper.
- that by the time A/C Fanning gave evidence, the suggestion that there was anything untoward in his communication with Garda Keogh had been abandoned.
- that A/C Fanning received no complaints in relation to the article of 13th September 2017.

Inspector Nicholas Farrell submitted as follows:³¹⁷²

- that addressing allegations which were not maintained by Garda Keogh placed considerable strain on Insp Farrell.
- that his inclusion by Dep/C Twomey in Garda Keogh's appeal exacted a toll on Insp Farrell.

³¹⁷¹ The tribunal has considered all of Assistant Commissioner Fintan Fanning's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 37-43

³¹⁷² The tribunal has considered all of Inspector Nicholas Farrell's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

Sergeant Michelle Baker submitted as follows:³¹⁷³

- that despite receiving correspondence informing her she would be interviewed, she was not.

Garda Aidan Lyons submitted as follows:³¹⁷⁴

- that Garda Keogh made no allegation against Garda Lyons in the course of the Finn investigation.
- that Garda Keogh gave evidence to the tribunal that he was unaware of the identity of the author of the report during the Finn investigation, but later accepted he did receive a copy of the report.
- that Garda Keogh took issue with the fact that A/C Finn did not investigate the veracity of the report, but did not report the matter to A/C Finn as he did not know who the author was. When it was revealed that Garda Keogh did know who the author of the report was, he stated that it did not matter.
- that when asked about his evidence that it did not matter who wrote the report, Garda Keogh stated that the identity of the author was relevant in the context of Garda A's partner.
- that Garda Keogh stated that he was not aware that it was Garda Lyons who had made the report relating to Mr McHugh at the time of the de Bruir audit, although he was in fact aware of the author of the report at that time.
- that the evidence of Garda Keogh, which suggests a plot against him involving Garda Lyons, is strongly rejected.
- that the allegations against Garda Lyons were not raised in the appeal to Dep/C Twomey.
- that the evidence against Garda Lyons has no foundation and is based on ill-founded suspicion.

Sergeant Yvonne Martin submitted as follows:³¹⁷⁵

- that Sgt Martin was informed that she would be interviewed during the Finn investigation but she was not.

Discussion

Delay

Processing Garda Keogh's complaint to the stage of an investigation under the bullying and harassment policy proved to be slow and contentious. He provided his statement of complaint to C/Supt Scanlan on 27th March 2017³¹⁷⁶ but A/C Finn was not appointed as investigator until 15th November 2017.³¹⁷⁷

³¹⁷³ The tribunal has considered all of Sergeant Michelle Baker's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

³¹⁷⁴ 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

³¹⁷⁵ The tribunal has considered all of Sergeant Yvonne Martin's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 43-69

³¹⁷⁶ Tribunal Documents, Bullying and Harassment Statement of Garda Nicholas Keogh, pp. 303-321

³¹⁷⁷ Tribunal Documents, Letter from A/C Fintan Fanning to A/C Michael Finn, dated 15th November 2017, pp. 4127-4128

There was a division of responsibility under the policy between the Executive Director, HRPD, Mr Barrett, and A/C Fanning. It was Mr Barrett's function to initiate an investigation by deciding whether the policy was appropriate for the matters complained of and, if so, to nominate an officer to undertake the investigation. When he ultimately made his nomination, the appointment was made by A/C Fanning.

The evidence is that Mr Barrett did not consider the statement that Garda Keogh made to C/Supt Scanlan on 27th March 2017 until October 2017. Mr Barrett acknowledged that the delay from the end of March to mid-November was unacceptable and would have given rise to unease and distrust on the part of Garda Keogh. He put the delay down to communication problems. Specifically, he insisted that he had not been furnished with Garda Keogh's statement until 4th October 2017.³¹⁷⁸

C/Supt Scanlan submitted Garda Keogh's complaint documents to A/C Fanning.³¹⁷⁹ The assistant commissioner wrote to Garda Keogh on 16th May 2017 acknowledging that he had received a seventeen-page statement dated 27th March 2017 and that he got a further five-page unsigned statement dated 2nd March with a letter of 12th April from C/Supt Scanlan.³¹⁸⁰ On 22nd May 2017, Garda Keogh raised two further issues when A/C Fanning's assistant, Insp McCarthy, visited him at home.³¹⁸¹ At this point, the assistant commissioner was in possession of the relevant material.

A/C Fanning was concerned from the outset that the complaint made by Garda Keogh extended further and wider than could be accommodated in an investigation of bullying or harassment under the terms of the policy document. His view was that it constituted a series of allegations of wrongdoing, including criminality, and required a wide-ranging garda inquiry of a kind known as a Byrne/McGinn investigation, so called because of an investigation in previous years in relation to affairs in the Cavan/Monaghan Division.

A/C Fanning maintained the position to the end that Garda Keogh's complaint went beyond the scope of the bullying and harassment policy document and warranted a broader approach. Ultimately this view did not prevail, and the decision was to proceed with the bullying and harassment process that Garda Keogh had invoked. A/C Fanning sought to have a conference convened at which he could argue for his more extensive investigation but he did not receive a substantive response to his correspondence until the end of September 2017.

The case had to go to Mr Barrett because he was the person in control of the process but there is no evidence of delivery of the statement of 27th March 2017 to Mr Barrett or to his office in early 2017. There is no paper trail or direct evidence of the transmission of Garda Keogh's full complaint from A/C Fanning's office to that of the Executive Director. As noted, Mr Barrett was adamant in his evidence to the tribunal that he did not see the complaint and have an opportunity to consider it until 4th October 2017.

A/C Fanning wrote to Mr Barrett on 24th May 2017, stating that:

*The issues set out in the statement witnessed by Chief Superintendent Scanlan and the additional list set out in the unsigned statement also handed to Chief Superintendent Scanlan by Garda Keogh are most serious... I am of the firm view that the Bullying Policy is not wide enough to include any comprehensive investigation you decide.*³¹⁸²

³¹⁷⁸ Tribunal Transcripts, Day 150, p. 67, Evidence of Mr John Barrett

³¹⁷⁹ Tribunal Documents, Letter from C/Supt John Scanlan to Assistant Commissioner Eastern Region, dated 31st March 2017, p. 3868

³¹⁸⁰ Tribunal Documents, Letter from A/C Fintan Fanning to Garda Nicholas Keogh, dated 16th May 2017, p. 10042

³¹⁸¹ Tribunal Documents, Letter from Insp James McCarthy to Garda Nicholas Keogh, dated 23rd May 2017, p. 10048

³¹⁸² Tribunal Documents, Letter from A/C Fintan Fanning to Executive Director HRPD, dated 24th May 2017, p. 6723 at p. 6724

He wrote again to Mr Barrett on 16th June 2017 expressing his concerns and stating that *‘any delay should be kept to a minimum’*³¹⁸³ but he did not receive any substantive reply save a letter telling him that C/Supt McLoughlin was on annual leave.³¹⁸⁴

A/C Fanning followed up with a series of reminders that also went unanswered. The recipient of the correspondence would have been expected to respond in a way that clarified the situation, i.e. that HRPD had not received the main part of the complaint to which the assistant commissioner was referring. However, that did not happen.

Mr Barrett explained to the tribunal that he was very busy at the time with another crisis in An Garda Síochána concerning the accounts of the Garda College in Templemore, which were the subject of investigation by the Dáil Public Accounts Committee. He also had holidays during this time, which meant that he was out of the office for almost all of August. There was also the fact that the protected disclosure manager, C/Supt McLoughlin, was on holidays for some three weeks. In addition to these matters, Mr Barrett during this period had examinations to sit in a course that he was pursuing. So he was preoccupied for a significant time. In these circumstances, the assistant commissioner’s correspondence did not come to his attention until mid-September 2017. This explanation does not give reassurance as to the efficiency of the systems in place at HRPD.

A/C Fanning kept in contact with Garda Keogh during the summer of 2017, informing him of his views as to how the complaint should be investigated and also about his correspondence with HRPD. He made references in his letters indicating his belief that the complaint was with Mr Barrett.

In addition to these points was the fact that HRPD personnel, whether garda or civilian, did not have knowledge or details of the Ó Cualáin investigation into Garda Keogh’s protected disclosure and related statements. They were not entitled to any such information and properly did not seek it. This was in accordance with the strict confidentiality provisions applying to protected disclosures. It may well be that the consideration of the extent of the complaint was made more difficult and uncertain by this lack of knowledge of the criminal and disciplinary investigations.

Garda Keogh said that the complaint went missing for seven months and he submitted that the delay in processing his complaint up to the time of the appointment of A/C Finn discredited him. The question is not whether there was an accidental or even negligent delay in the appointment of the investigator but rather whether senior garda officers or authorities delayed the appointment of A/C Finn to investigate the complaint in order to target or discredit Garda Keogh because he made a protected disclosure. The delay in itself did not discredit Garda Keogh; it is a neutral disembodied circumstance. The issue is whether persons caused the delay for the purpose of targeting or discrediting Garda Keogh because he made a protected disclosure.

On the evidence in documents and testimony to the tribunal, the complaint was not lost or secreted, but it was not dealt with over a period of June, July, August and September 2017. Mr Barrett was apologetic about the delay and understanding of the impact on Garda Keogh. But it is important to note that he did not have any motive for deliberately holding up the appointment of an officer to investigate Garda Keogh’s complaint of bullying and harassment. He had been corresponding with Garda Keogh’s solicitor with a view to receiving his case. He did not know Supt Murray and there is no suggestion of any personal interest on his part. He wanted to get the investigation under way. When he considered the documents he reached his conclusion promptly

³¹⁸³ Tribunal Documents, Letter from A/C Fintan Fanning to Executive Director HRPD, dated 16th June 2017, p. 6879

³¹⁸⁴ Tribunal Documents, Letter from Mr John Barrett to A/C Fintan Fanning, dated 17th June 2017, p. 10057

and moved to instigate the investigation. There is, in the circumstances, simply no basis for accusing Mr Barrett of intentionally holding up the appointment.

The possibilities are that A/C Fanning or his office overlooked sending the full complaint to Mr Barrett's office or that they sent the relevant documents and they went missing in HRPD. But even supposing the latter to be the case, for the purpose of argument, it would not constitute discrediting by Mr Barrett. He could not be accused of discrediting Garda Keogh by delaying the inquiry when he was on the assumed facts entirely unaware of the complaint.

As for A/C Fanning, the fact that he was pressing for progress to be made is wholly inconsistent with any intention to delay. He has in addition the explicit endorsement of Garda Keogh of all of his actions in regard to the complaint. And it must also be noted how he kept in touch with Garda Keogh, ensuring that he was informed as to developments.

The evidence revealed that the decision-making process was unwieldy, with responsibility divided unsatisfactorily between A/C Fanning as Assistant Commissioner, Eastern Region, and Mr Barrett, as Executive Director, HRPD. It was the latter's function to decide to nominate an investigator and the assistant commissioner's task to set the appointment process in train. The problems of this arrangement are illustrated by the minutes of the meetings of 3rd October 2017 and 23rd October 2017.

There was indisputably a significant delay in dealing with the complaint. It is not surprising that Garda Keogh would have been suspicious, but that is not in the end justified. On any view of this issue, the garda officers cannot be held responsible for the time taken to appoint the investigator. Neither can any connection with the protected disclosure be suggested.

Explanation

Garda Keogh is correct in his submission that he was not given any explanation for the delay between 27th March 2017, when he submitted his complaint, and 15th November 2017, when A/C Finn was appointed to investigate it. The reasons for this as set out above were not fully available to the tribunal until it heard Mr Barrett's testimony on Day 150, 29th June 2020. It became clear, accordingly, that this did not represent targeting or discrediting. It follows from the above that evidence was given to the tribunal to account for the delay.

Suppression

Garda Keogh's suggestion that garda authorities suppressed his complaint for some seven months is also answered in the preceding pages. They did not purposely delay an investigation. Neither was there any question arising from the interval from the complaint to the appointment of A/C Finn of facilitating Supt Murray's promotion.

There was a long delay in processing Garda Keogh's complaint from receipt to the appointment of the investigator. There is however nothing to suggest that HRPD had any interest or agenda in holding up the investigation of the complaint for any reason; neither is there any basis for considering that the office might have been favourably disposed towards Supt Murray's promotion.

It was not suggested on behalf of Garda Keogh that HRPD or Mr Barrett or Mr Mulligan had any such ulterior motive. So, there was a substantial delay that was due to administrative error

or systems failure or deficiencies of communication. Senior garda officers were not involved in the HRPD process and cannot be held responsible for that element of the delay. A/C Finn had nothing to do with the delay. There is no relationship between the delay and the fact that Garda Keogh made a protected disclosure.

Meeting on 1st December 2017

At the meeting on 1st December 2017, A/C Finn sought the names of the persons whom Garda Keogh was accusing of bullying or harassing him. Garda Keogh and his solicitor were unhappy with that approach, considering that the complaint was sufficient to enable his case to be ascertained. However, the complaint was not in a form that made it clear who specifically was alleged to be bullying or harassing Garda Keogh—and who was not accused—and the particular manner and occasions of such abusive treatment.

The policy is precise as to what constitutes harassment and contains detailed assistance as to the nature of the conduct that may be considered bullying. Not every allegedly offensive exchange between gardaí, or involving a superior officer, is admissible under the policy. In this case, one high-ranking officer thought that the material allegations went outside the scheme and warranted a quite different, much more extensive and serious investigation than the policy prescribed.

The policy provided that written complaints should contain details of the persons alleged to have bullied or harassed; dates, times and places of the conduct; a list of witnesses, if any; details of objections made by the complainant; and *‘an indication of what would satisfactorily resolve the complaint, if the complainant wished to offer such an indication.’*³¹⁸⁵

It was reasonable for A/C Finn to seek further and better particulars of the complaint, specifically identifying the persons accused. Indeed, one might wonder how a complainant in such circumstances could object to the question: “Who do you say is or was bullying or harassing you?” And: “What did each one do to you?” The written complaint should have contained that information at a minimum and further details could have been provided at the meeting.

The policy specifies that the persons against whom complaints are made must be notified and given details and an opportunity to respond. The objection to these preliminary questions is impossible to sustain in the circumstances of the policy and the nature of the complaint as presented.

Was Assistant Commissioner Michael Finn’s correspondence unreasonable?

The correspondence reveals serious questions being raised by A/C Finn about the complaint, which met some frustration on the part of Garda Keogh’s solicitor that may have been based on a misunderstanding of the bullying and harassment policy. It appears that Garda Keogh’s solicitor thought that A/C Finn’s function was to carry out an open-ended inquiry into the personnel allegedly guilty of the conduct towards his client.

A/C Finn repeatedly sought to meet Garda Keogh again but his solicitor insisted that electronic recording be provided, rejecting proposals that he arrange that himself or that the investigator would send him minutes of meetings for agreement. It is difficult to understand why Garda Keogh’s solicitor would allow an important meeting to be prevented in circumstances where he or an assistant could take notes, where he could record the meeting himself or arrange to have that

³¹⁸⁵ Tribunal Documents, Working Together to Create a Positive Working Environment, p. 7868 at p. 7892

done, or where he could have the opportunity of agreeing minutes taken by or on behalf of A/C Finn. There was not any insurmountable problem and this complaint is unjustified.

The Finn Report

Garda Keogh maintained that this report should have accepted that garda officers had harassed him following his protected disclosures in May 2014. This complaint is in essence a claim that the report reached the wrong conclusions. It is not a function of this tribunal to decide whether the Finn report is factually correct. If the tribunal comes to different conclusions on the facts, it does not follow that the Finn report conclusions represent targeting or discrediting of Garda Keogh. And if the tribunal comes to the same conclusions on the facts, that would not relieve the Finn report of the charges of targeting or discrediting Garda Keogh if they were otherwise sustained.

Conflict of Interest

Was A/C Finn conflicted or partial because he signed a clearance form on 11th September 2017 in respect of Supt Murray's promotion? This question is addressed in chapter 22 where the evidence is summarised. It appears that A/C Finn stepped in to sign the form because a colleague of the same rank who had responsibility for clearing applications was absent. He did not examine the application or conduct any investigation and signed on the basis that any problem with the candidate would have been flagged by the less senior personnel who prepared the documentation. As far as he was concerned it was a routine administrative matter that he assumed was in order.

One might query the assistant commissioner's blind faith in the assiduity of his colleague's staff and maybe accuse him of a degree of complacency but that has nothing to do with the charge made in Garda Keogh's submission that he had a conflict of interest because he signed the form.

There is nothing to contradict A/C Finn's evidence and the tribunal is satisfied that it is correct. The mere fact of the signature does not establish the existence of a conflict of interest.

Bias

Are Supt Murray's notes of his phone calls and meeting with A/C Finn evidence that A/C Finn was biased against Garda Keogh and that the outcome of the investigation was pre-determined in favour of the officers he accused insofar as they record: that A/C Finn was willing to provide reassurance to the Policing Authority in respect of Supt Murray; that he spoke of the ethical calibre of the people accused by Garda Keogh; that he expressed the view that Garda Keogh and his solicitor were only looking for money in a civil claim?

A/C Finn was definite in his evidence that he was not in a position to provide reassurance to the Policing Authority and was not in communication with that body. He said that he would have had no basis for saying it and he did not say that he would provide reassurance to the authority.

In respect of the reference to the ethical calibre of the persons accused, this was a reference to a comment attributed to C/Supt Myers, who was leader of A/C Finn's team.

Although the statement that Garda Keogh and his solicitor were only looking for money is recorded in Supt Murray's notes, A/C Finn denied saying or thinking it³¹⁸⁶ and Supt Murray said in his evidence that this was his view, and not that of A/C Finn, and that he was '*attributing it to him*'.³¹⁸⁷

³¹⁸⁶ Tribunal Transcripts, Day 142 pp. 263-264 and p. 292, Evidence of A/C Michael Finn

³¹⁸⁷ Tribunal Transcripts, Day 146 p. 48, Evidence of Supt Pat Murray

The submissions filed on behalf of Garda Keogh say that the note speaks for itself. When he made his note, Supt Murray thought that A/C Finn had said that and that is significant in itself, irrespective of subsequent disagreement and qualifications. The point is that there was talk that gave rise to the misunderstanding and A/C Finn left himself open to that risk.

The tribunal is satisfied on the evidence that A/C Finn performed his task with honest endeavour and was not actuated by any intention to carry out his work in a manner hostile to Garda Keogh or in a way that would assist Supt Murray's promotion. He was, however, not sensitive enough to the delicacy of the situation and his own position. He spent a long time with Supt Murray when his only purpose was to deliver papers and he did not make a note of what was discussed. Such a period of conversation, irrespective of who did most of the talking, was likely to give rise to differences of recollection. One person made a note, the other did not. One was required to act impartially, the other was possessed of a powerful sense of injustice that he saw as being orchestrated by the complainant whose case was under investigation. The situation was perilous for the investigator. Problems were likely to arise and accusations to be made.

Time Taken to Complete the Report

There is not a basis for reaching a conclusion that the time taken to complete A/C Finn's investigation was inordinate and unfair.

Fair Procedures

Did A/C Finn or the investigation breach fair procedures and/or go outside the policy terms in failing to conduct interviews by robustly putting Garda Keogh's case to the officers he accused, by contrast with how he treated Garda Keogh?

Cross-examination or a robust putting of the case is not required under the policy process. As to the manner in which the assistant commissioner questioned Garda Keogh, the record of the meeting does not support the suggestion that he was robustly cross-examined. A/C Finn put questions to him in search of information about his case, not to challenge it.

A/C Finn did not breach fair procedures by allowing C/Supt Curran the time he did to respond to the complaint. There was nothing wrong with giving time, even generous time, and the allegation of impropriety by giving too much time does not make sense. Neither can the assistant commissioner be faulted for not having a second meeting with Garda Keogh. A/C Finn seems to have made several efforts to have a second meeting.

There is also no basis for alleging that the assistant commissioner took irrelevant considerations into account.

Supt Murray's late disclosure of notes

The submission that Supt Murray produced notes at a late stage, including those of the meeting with A/C Finn on 18th January 2018, has relevance to the consideration of this issue is not well founded. He produced them and Garda Keogh has made use of them in support of his case. It is irrelevant to the consideration of this issue at what point the material was produced.

Conclusion

The tribunal is satisfied that A/C Finn carried out his task of investigation with honest endeavour, integrity and competence and without intent to diminish Garda Keogh or to support Supt Murray. The tribunal finds that he made errors that were serious and unfortunate, but they were not malicious or intentional. They resulted from insufficient appreciation of the risks associated with his sensitive position under the bullying and harassment policy. It is also clear that there is an absence of a causal or indeed any connection with the protected disclosure.

CHAPTER 24

ISSUE 20:

THE COMPLAINT MADE BY GARDA NICHOLAS KEOGH IN RELATION TO THE PROMOTION OF SUPERINTENDENT PAT MURRAY TO THE RANK OF CHIEF SUPERINTENDENT

The Facts

Superintendent Pat Murray was attested as a member of An Garda Síochána in July 1982. He served in various garda stations countrywide before being promoted to the rank of sergeant in 2002.³¹⁸⁸ During the following four years he was stationed in the midlands until his promotion to inspector in 2006. He was then transferred to the Wicklow/Wexford Division, where he served for two years until his return to the midlands in 2008. In 2010, he was promoted to the rank of superintendent and transferred to Gort in County Galway.

As will be recalled from earlier chapters in this report he took up the role as district officer in Athlone on 9th March 2015. Supt Murray applied for promotion to the rank of chief superintendent on 18th January 2016.³¹⁸⁹

The following day Garda Fergal Greene, who was attached to Athlone Garda Station and friendly with Garda Keogh, called to Supt Murray's office and informed him that he had just had a long conversation with Garda Keogh. Garda Greene recounted that Garda Keogh told him that he was trying 'to dig up dirt' on the superintendent and that he was intent on having Deputies Mick Wallace and Clare Daly mention it in Dáil Éireann with a view to damaging the superintendent's character and reputation.³¹⁹⁰ However, according to Supt Murray, Garda Keogh told Garda Greene that 'he hadn't found anything yet but would keep trying'.³¹⁹¹

On 13th May 2016, Ms Valerie Little, Chairperson of the selection board, wrote to Supt Murray and informed him that he had been placed at number 14 on a panel of superintendents regarded as being suitable for recommendation to the Government for appointment to chief superintendent rank.³¹⁹²

Inspector Aidan Minnock later informed Supt Murray that he had called to see Garda Keogh at his home and found him to be intoxicated. Supt Murray's notes dated 24th May 2016 reported Insp Minnock telling him that Garda Keogh had told the inspector that he was going to 'bring down' the Garda Commissioner, Deputy Commissioner Dónall Ó Cualáin and Supt Murray.³¹⁹³

On 14th June 2016, Garda Keogh wrote to the Minister for Justice and Equality setting out a number of complaints he had against Supt Murray and stating that:

... the Garda Commissioner is rewarding Superintendent Murray by way of promotion from Superintendent to Chief Superintendent, whilst the harassment allegations are being

³¹⁸⁸ Tribunal Documents, Career Details of Supt Pat Murray, p. 12432

³¹⁸⁹ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2062

³¹⁹⁰ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2062

³¹⁹¹ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2062; Diary entry of Supt Pat Murray, dated 19th January 2016, pp. 2528-2529

³¹⁹² Tribunal Documents, Letter from Ms Valerie Little, Chairperson of the Selection Board to Supt Pat Murray, dated 13th May 2016, p. 2538

³¹⁹³ Tribunal Documents, Diary entry of Supt Pat Murray, dated 24th May 2016, p. 2536

*investigated and prior to the policing authority taking over the promotion procedure in relation to An Garda Síochána.*³¹⁹⁴

On 16th August 2016, Garda Keogh wrote to Chief Superintendent Anthony McLoughlin in his capacity as the protected disclosures manager and again raised the issue of Supt Murray's promotion in the following terms:

*I am aware that at least one of the two persons I named in relation to this harassment namely Superintendent Pat Murray is No. 14 on a promotion list to the rank of Chief Superintendent. I presume he has been recommended for promotion by the Garda Commissioner Norin O'Sullivan, whom is aware of these Harassment allegations. Has the Garda Commissioner notified the Minister for Justice and the Policing Authority of this as it is relevant information for them to be aware of.*³¹⁹⁵

C/Supt McLoughlin replied to Garda Keogh's letter on 18th August 2016. He queried whether a formal bullying and harassment complaint had been made by Garda Keogh. He stated that:

*With respect to the relevant promotions, I wish to point out that the promotions process is overseen by an independent board made up of two civilians from outside An Garda Síochána, with one acting as chair and the Commissioner has no role in the selection of same.*³¹⁹⁶

On 2nd September 2016, Garda Keogh again wrote to the Minister for Justice and Equality concerning the promotion of Supt Murray and the harassment he claimed to have endured. In this letter he pointed out that he was out sick due to work related stress and raised issues concerning his pay. He further stated with reference to Supt Murray that:

... the fact An Garda Síochána is recommending this man for promotion is incredible in itself. I have enclosed previous letters and documents that back up Harassment. The Garda Commissioner has same.

*I feel obliged to inform you that you may have been misled by the Garda Commissioner in relation to misconduct in Athlone.*³¹⁹⁷

On 5th October 2016, Deputy Daly referred in Dáil Éireann to the person selected at number 14 on the promotion list to the rank of chief superintendent who she said was targeting Garda Keogh because he was a whistleblower.³¹⁹⁸

On 2nd November 2016, Supt Murray received a letter from the Personal Injuries Assessment Board informing him that Garda Keogh had been authorised to bring civil proceedings against him. He forwarded the correspondence to the Head of Legal Affairs in An Garda Síochána.³¹⁹⁹

On 16th November 2016, Garda Keogh recorded in his diary that he met with Deputy Wallace regarding the promotion of Supt Murray.³²⁰⁰

On 23rd November 2016, Garda Keogh's solicitors wrote to the Minister for Justice and Equality, the Garda Commissioner and Mr John Barrett, Executive Director, Human Resources and People

³¹⁹⁴ Tribunal Documents, Letter from Garda Nicholas Keogh to the Minister for Justice and Equality, dated 14th June 2016, p. 11639 at p. 11641

³¹⁹⁵ Tribunal Documents, Letter from Garda Nicholas Keogh to C/Supt Anthony McLoughlin, dated 16th August 2016, p. 3316

³¹⁹⁶ Tribunal Documents, Letter from C/ Supt Anthony McLoughlin to Garda Nicholas Keogh, dated 18th August 2016, p. 3319

³¹⁹⁷ Tribunal Documents, Letter from Garda Nicholas Keogh to the Minister for Justice and Equality, dated 2nd September 2016, p. 11644

³¹⁹⁸ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2065

³¹⁹⁹ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2066

³²⁰⁰ Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 16th November 2016, p. 13358

Development (HRPD), complaining about the promotion of Supt Murray. The letter requested an investigation into Supt Murray, and asserted that the Minister and Garda Commissioner were *'making permanent promotions between now and Christmas at break-neck speed, so that they cannot be subjected to independent scrutiny from GSOC and or the policing authority'*.³²⁰¹

On 14th December 2016, Garda Keogh made a note in his diary that Minister Frances Fitzgerald said publicly there would be no more promotions until the Policing Authority took control of the process.³²⁰²

On 20th December 2016, Supt Murray was informed that he would not be promoted to chief superintendent from the present panel, as the panel was being extinguished by Government decision.³²⁰³

On 1st January 2017 the Garda Síochána Act, 2005 (Appointments to the Ranks of Assistant Garda Commissioner, Chief Superintendent and Superintendent) Regulations, 2016 came into effect. The Regulations provided for a new scheme for promotion within the sole remit of the Policing Authority, the stated aim of which is set out in Regulation 3:

3. (1). *The selection of candidates for appointment in competitions in accordance with these Regulations shall be based on merit and the readiness and suitability for appointment of the candidates.*
- (2) *A competition shall be conducted in a manner which is –*
 - (a) *fair, impartial and objective,*
 - (b) *in line with best practice,*
 - (c) *consistent throughout, and*
 - (d) *open, accountable and transparent.*³²⁰⁴

Whilst the Regulations provided for an independent role for the Policing Authority with regard to promotions, Regulation 6 provided that:

- (3) *The Authority shall consult with, and have regard to the views of, the Garda Commissioner in determining the competencies, qualifications, training, skills, expertise or experience, as the case may be, which are required for appointment to a specified rank or a particular post in a specified rank to which a competition relates.*³²⁰⁵

The procedure for promotions is set out in the Regulations. Regulation 12 is of particular relevance to the current issue and obliges a candidate to undertake any clearance process that may be required by the Policing Authority. A clearance process in relation to a candidate includes any process, including vetting, to establish the health and character of the candidate.³²⁰⁶ The new procedure was described by former Acting Commissioner Ó Cualáin in his statement to the tribunal as follows:

³²⁰¹ Tribunal Documents, Letter from Garda Keogh's solicitor to Frances Fitzgerald, Minister for Justice and Equality, the Garda Commissioner and the Executive Director HRPD, dated 23rd November 2016, p. 12434 at p. 12435

³²⁰² Tribunal Documents, Diary entry of Garda Nicholas Keogh, dated 14th December 2016, p. 13359

³²⁰³ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2067

³²⁰⁴ Tribunal Documents, Garda Síochána Act, 2005 (Appointments to the Ranks of Assistant Garda Commissioner, Chief Superintendent and Superintendent) Regulations 2016, S.I. No. 641 of 2016, p. 7521 at p. 7523

³²⁰⁵ Tribunal Documents, Garda Síochána Act, 2005 (Appointments to the Ranks of Assistant Garda Commissioner, Chief Superintendent and Superintendent) Regulations 2016, S.I. No. 641 of 2016, p. 7521 at p. 7524

³²⁰⁶ Tribunal Documents, Garda Síochána Act, 2005 (Appointments to the Ranks of Assistant Garda Commissioner, Chief Superintendent and Superintendent) Regulations 2016, S.I. No. 641 of 2016, p. 7521 at p. 7528

Since its establishment in 2015 the Policing Authority began the process of taking responsibility for running all competitions for promotion to the rank of Superintendent and above in An Garda Síochána as is required of them by law. For data protection reasons this is a confidential process and the Garda Commissioner is not informed of the outcome of competitions. It is at the clearance stage for candidates that the Policing Authority liaises with the Commissioner's office. Before candidates are considered for formal appointment by the Policing Authority Board a clearance form is sent to the Garda Commissioner for completion in respect of each candidate as vacancies arise. The Policing Authority Clearance Form includes a declaration of suitability on the candidate to be signed by the Commissioner. It also requires information on previous disciplinary actions that the candidate was subject of, any offences that the candidate has been convicted of, any outstanding criminal or disciplinary investigations and finally a confirmation by the Commissioner that the information is complete together with a commitment to notify the Policing Authority of any change or update on the information provided.³²⁰⁷

The effect of the new scheme coming into force on 1st January 2017 was that Supt Murray and seven other superintendents who had also been placed on the promotion list under the previous appointment process had to reapply for promotion and go through a vetting and interview process.

Supt Murray and the other superintendents regarded this change to their status as unfair and had consulted with their representative body prior to the introduction of the Regulations. Supt Murray personally made representations on behalf of the group to a number of prominent politicians highlighting their predicament³²⁰⁸ but he was unsuccessful in his endeavours.

During Leaders' Questions in Dáil Éireann on 24th January 2017, Deputy Wallace claimed that a superintendent who had harassed a whistleblower had been placed on the promotion list by the Garda Commissioner in 2016. Although not named by Deputy Wallace, Supt Murray believed it was a reference to him.³²⁰⁹

On 2nd February 2017, Supt Murray sent a comprehensive report to Chief Superintendent Fergus Healy, who had been tasked with gathering information in relation to Garda Keogh's civil proceedings. The report stretched to 338 pages and is understood to be a detailed account of Supt Murray's interactions with Garda Keogh in Athlone.³²¹⁰

On 13th February 2017, Sergeant Andrew Haran reported to Supt Murray, in the presence of Inspector Nicholas Farrell, that he had spoken with Garda Keogh and that the latter had claimed that *'they were bringing down the Commissioner and she would be gone before [the] end of [the] week'*.³²¹¹

On the same day, Garda Keogh's solicitor forwarded a copy of his letter of 23rd November 2016 to Ms Josephine Feehily, Chairperson of the Policing Authority, and sought confirmation that this letter had been transmitted to the Policing Authority by An Garda Síochána. Garda Keogh's solicitor concluded his email by stating:

Kindly note – for the avoidance of doubt – that we reiterate all the terms of our said letter; and that we again request confirmation of the suspension of any promotion (including any intention

³²⁰⁷ Tribunal Documents, Statement of Former Acting Commissioner Dónall Ó Cualáin, p. 3957 at p. 3966

³²⁰⁸ Tribunal Transcripts, Day 145, p. 115, Evidence of Supt Pat Murray; Tribunal Documents, Letters/emails from Supt Pat Murray to politicians, pp. 16211-16213 and pp. 16505-16508

³²⁰⁹ Tribunal Documents, Broadsheet.ie report of Dáil Éireann proceedings, dated 24th January 2017 p. 2593 at p. 2596

³²¹⁰ Legal Professional Privilege applies to this document

³²¹¹ Tribunal Documents, Diary entry of Supt Pat Murray, dated 13th February 2017, p. 2606

*to promote) Pat Murray pending an independent investigation and determination of the grave allegations and compelling case against Superintendent Murray.*³²¹²

The next day, 14th February 2017, Supt Murray was listening to the ‘Drivetime’ programme on RTÉ Radio 1, and heard Deputy Wallace ask a question in Dáil Éireann as to why the superintendent who had bullied Garda Keogh was placed on a promotion list to the rank of chief superintendent. This theme was also covered in the print media on the following day.³²¹³

On 16th February 2017, Ms Annie O’Malley of the Policing Authority wrote to Garda Keogh’s solicitor and acknowledged receipt of his correspondence of 13th February 2017. She informed him that his letter of 23rd November 2016 had not been transmitted to the authority. She said that this would not be standard practice. She added that the recruitment process referred to in the letter took place before the Policing Authority assumed responsibility for promotions. Ms O’Malley further stated that the Policing Authority did not consider submissions from third parties in relation to individual applications.³²¹⁴

It will be recalled from the previous chapter that, on 27th March 2017, Garda Keogh gave his statement in relation to his bullying and harassment complaint to Chief Superintendent John Scanlan.

On 28th March 2017, Supt Murray applied for promotion to the rank of chief superintendent under the new process.³²¹⁵ His application was acknowledged by Mr Liam Hallinan of the Policing Authority on the same day.³²¹⁶

On 30th March 2017, Supt Murray made a note in his diary that he was mentioned by Deputy Wallace at the Oireachtas Joint Committee on Justice and Equality as follows:

*At Justice Committee meeting and Commissioner’s appearance, M. Wallace TD questioned her between 1.33 and 1.53 on Oireachtas playback of four to five-hour appearance. At 1.44.18 he asked her if I was appointed to investigate NCT and breath test issues. In asking he mentioned my name four times and was rebuked by Chair, C. Ó Caoiláin TD. He said I was subject to protected disclosure. I have no knowledge of same. He also made references to [a previous divisional officer].*³²¹⁷

Supt Murray was invited to a preliminary interview with the Policing Authority on 5th May 2017³²¹⁸ and he was notified on 19th May 2017 that he had progressed to the final interview stage.³²¹⁹ As part of the appointment process, he was required by the authority to complete a clearance form. Part 4 of the form dealt with any outstanding criminal or disciplinary proceedings of which the applicant was aware. Supt Murray confirmed on this form that he was *‘not the subject of any ongoing or outstanding criminal or discipline investigations.’*³²²⁰

³²¹² Tribunal Documents, Email from Garda Keogh’s solicitors to Ms Josephine Feehily, Chairperson of the Policing Authority, dated 13th February 2017, p. 12443

³²¹³ Tribunal Documents, ‘Back-at-work garda says he was of smears by force too’, Article in the Irish Daily Mail, dated 15th February 2017, p. 2609; Diary entry of Supt Pat Murray, dated 14th February 2017, p. 2608

³²¹⁴ Tribunal Documents, Email from Ms Annie O’Malley, the Policing Authority to Garda Keogh’s solicitors, dated 16th February 2017, p. 13964

³²¹⁵ Tribunal Documents, Selection Competition for the Appointment to Chief Superintendent in An Garda Síochána, p. 2617

³²¹⁶ Tribunal Documents, Emails to/from Supt Pat Murray and Mr Liam Hallinan, the Policing Authority, dated 28th March 2017, p. 2618

³²¹⁷ Tribunal Documents, Diary entry of Supt Pat Murray, dated 30th March 2017, p. 2610

³²¹⁸ Tribunal Documents, Letter from Mr Liam Hallinan, the Policing Authority to Supt Pat Murray, undated, p. 2622

³²¹⁹ Tribunal Documents, Email from Mr Liam Hallinan, the Policing Authority to Supt Pat Murray, dated 19th May 2017, p. 2624

³²²⁰ Tribunal Documents, Policing Authority Clearance Form, dated 14th June 2017, p. 2632 at p. 2634

On 15th June 2017, Supt Murray attended for interview at the offices of the Policing Authority. Following this interview, Mr Hallinan of the Policing Authority wrote to Supt Murray on 30th June 2017 as follows:

*I refer to your candidacy for the rank of Chief Superintendent in the Garda Síochána. I am pleased to inform you that, following the completion of the selection process, you have been placed on the Panel of Candidates established by the Policing Authority based on the order of merit determined by the Selection Board.*³²²¹

Supt Murray was placed at number seven in the order of merit. This was widely reported in the media including an article in the Irish Examiner dated 7th July 2017.³²²²

Meanwhile, on 12th July 2017, Garda Keogh's solicitor wrote to Dep/C Ó Cualáin and to Caoimhghín Ó Caoláin TD, the chairperson of the Oireachtas Joint Committee on Justice and Equality, complaining about the alleged involvement of Supt Murray in the misrecording of Garda Keogh's sick leave. He requested the following:

*... we hereby call on the Justice Committee to request an explanation and sufficient reasons from the Policing Authority in respect of any proposed promotion of Superintendent Murray pending the conclusion of a thorough investigation into the substantive complaints of collusion and the complaints by Garda Keogh of bullying by Superintendent Murray and others (which latter were designed to cover up the collusion). We hereby further request the Justice Committee to call upon the Policing Authority to suspend the promotion of Superintendent Pat Murray in the extraordinary circumstances pending the finalisation of the investigations and the accordance of fair procedures and equality arms to Garda Keogh in this matter.*³²²³

This was followed by a letter dated 17th July 2017 from Garda Keogh's solicitor to the Minister for Justice and Equality. He enclosed a copy of his letter to Deputy Caoimhghín Ó Caoláin,³²²⁴ and called on the Minister for Justice and Equality to investigate Garda Keogh's claims.³²²⁵

One month later, on 17th August 2017, Garda Keogh's solicitor again wrote to the Minister for Justice and Equality, the Garda Commissioner, Ms Feehily, and Dep/C Ó Cualáin, alleging that Garda Keogh's bullying and harassment complaint had been suspended and that its whereabouts were unknown. It was stated that:

*... any investigation into this grave and systematic bullying has been officially camouflaged, secreted and placed 'on hold' while on the other hand the promotion of Superintendent Murray to Chief Superintendent has been covertly preferred, protected from the inside and furtively advanced.*³²²⁶

Garda Keogh's solicitor sought an investigation into the matters that he raised.

As part of the promotion process Ms Aileen Healy, Secretary to the Policing Authority, wrote to the Garda Commissioner on 6th September 2017 requesting the completion of clearance forms

³²²¹ Tribunal Documents, Email from Mr Liam Hallinan, the Policing Authority to Supt Pat Murray, dated 30th June 2017, p. 2639

³²²² Tribunal Documents, '15 senior gardaí on panel to be chief superintendent', Irish Examiner, dated 7th July 2017, p. 13699

³²²³ Tribunal Documents, Emailed letter from Garda Keogh's solicitors to Deputy Caoimhghín Ó Caoláin, dated 12th July 2017, p. 11674

³²²⁴ Tribunal Documents, Emailed letter from Garda Keogh's solicitors to Deputy Caoimhghín Ó Caoláin, dated 12th July 2017, p. 11674

³²²⁵ Tribunal Documents, Emailed letter from Garda Keogh's solicitors to Charles Flanagan, Minister for Justice and Equality, dated 18th July 2017, p. 11681

³²²⁶ Tribunal Documents, Emailed letter from Garda Keogh's solicitors to Charles Flanagan, Minister for Justice and Equality, Commissioner Nóirín O'Sullivan, Ms Josephine Feehily, Chairperson of the Policing Authority and Dep/C Dónall Ó Cualáin, dated 17th August 2017, p. 10093

in respect of Supt Murray and two others.³²²⁷ Assistant Commissioner Eugene Corcoran replied to Ms Healy's request on 12th September 2017 and attached the relevant clearance forms.³²²⁸ The clearance form in relation to Supt Murray was dated 11th September 2017 and had been signed by Assistant Commissioner Michael Finn.³²²⁹ The clearance form contained the following sections:

- section 1 contained a 'Declaration of Suitability', which stated that there were no grounds known to An Garda Síochána relating to health, character or otherwise why Supt Murray was not suitable to be appointed to the position of chief superintendent³²³⁰
- section 4 contained a statement that there were no outstanding criminal or disciplinary investigations in relation to Supt Murray³²³¹
- section 5 confirmed that the Policing Authority would be notified, without delay, of any change or update of the information set out in the form.³²³²

It might be noted that the clearance form did not specify any question or require any declaration in relation to any bullying or harassment claims that might exist with regard to the candidate.

Following the retirement of Garda Commissioner Nóirín O'Sullivan, Dep/C Ó Cualáin was appointed Acting Garda Commissioner on 11th September 2017. He became aware that the Policing Authority now required clearance forms to be signed by the Garda Commissioner or a deputy commissioner. In his statement to the tribunal, he said that he signed a new set of clearance forms³²³³ in the following circumstances:

*On the 19th September 2017, having considered the report submitted by Assistant Commissioner Michael Finn which showed that there was nothing unfavourable on Superintendent Pat Murray's record I signed the clearance forms for the three candidates ...*³²³⁴

The clearance form in respect of Supt Murray was forwarded to Ms Healy³²³⁵ and contained the same information as the one previously signed by A/C Finn.

Meanwhile, on 17th September 2017, Garda Keogh wrote to his solicitor and highlighted a number of his concerns. In the letter he noted that Supt Murray had been placed on the promotion list, and queried whether a bullying and harassment complaint could be delayed in order to facilitate the promotion of the officer concerned.³²³⁶ His solicitor then wrote again to the Minister for Justice and Equality, Acting Commissioner Ó Cualáin and Ms Feehily on 21st September 2017 and attached a copy of this letter from his client. He requested a response to the issues raised by Garda Keogh forthwith.³²³⁷

³²²⁷ Tribunal Documents, Letter from Ms Aileen Healy, Secretary to the Policing Authority to Commissioner Nóirín O'Sullivan, dated 6th September 2017, p. 12450

³²²⁸ Tribunal Documents, Letter from A/C Eugene Corcoran to Ms Aileen Healy, Secretary to the Policing Authority, dated 12th September 2017, p. 12456

³²²⁹ Tribunal Documents, Clearance Form for Supt Pat Murray, dated 11th September 2017, p. 12457

³²³⁰ Tribunal Documents, Clearance Form for Supt Pat Murray, dated 11th September 2017, p. 12457 at p. 12458

³²³¹ Tribunal Documents, Clearance Form for Supt Pat Murray, dated 11th September 2017, p. 12457 at p. 12459

³²³² Tribunal Documents, Clearance Form for Supt Pat Murray, dated 11th September 2017, p. 12457 at p. 12460

³²³³ Tribunal Documents, Clearance Form for Supt Pat Murray, dated 17th September 2017, p. 12462

³²³⁴ Tribunal Documents, Statement of Former Acting Commissioner Dónall Ó Cualáin, p. 3957 at p. 3967

³²³⁵ Tribunal Documents, Letter from Acting Garda Commissioner Dónall Ó Cualáin to Ms Aileen Healy, Secretary to the Policing Authority, dated 19th September 2017, p. 12461

³²³⁶ Tribunal Documents, Letter from Garda Nicholas Keogh to his solicitors, dated 17th September 2017, p. 12718

³²³⁷ Tribunal Documents, Letter from Garda Nicholas Keogh's solicitors to Charles Flanagan, Minister for Justice and Equality, Acting Garda Commissioner Dónall Ó Cualáin and Josephine Feehily, Chairperson of the Policing Authority, dated 21st September 2017, p. 12716

Former Acting Commissioner Ó Cualáin said that he recalled first hearing of Garda Keogh's bullying and harassment complaint on RTÉ Radio One on 24th September 2017. He told tribunal investigators that he was surprised to learn of the complaint on RTÉ Radio One and that it had not been picked up by the internal process.³²³⁸

The issue concerning Supt Murray's promotion received further media attention on 24th September 2017, when Garda Keogh's solicitor was interviewed by RTÉ News Now. The following, *inter alia*, was reported:

Speaking to RTE's This Week, [the] who represents Garda Keogh, said that his client had no idea what was the current status of this complaint...

[Garda Keogh] says in [a letter he has written to Garda Headquarters] that the bullying complaint relates in part to a senior officer in the force who has sought promotion, and he has questioned whether the Policing Authority would have been made aware of this complaint.

On the bullying and harassment complaint, [Garda Keogh's solicitor] said: "Garda Keogh invoked a formal procedure about six months ago, and we don't have any idea what has happened since then".³²³⁹

On the same day, Supt Murray made a note in his diary as follows:

RTE News at 1 radio programme reported on a letter they said they saw that Garda Keogh sent to Garda HQ enquiring about his complaints. The programme mentioned a reference to a senior officer who has sought promotion and queried if the Policing Authority were made aware. I saw this as a direct reference to me and an attempt to smear me to prevent my possible promotion.³²⁴⁰

Three days later, on 27th September 2017, Supt Murray made another note in his diary that he was mentioned at a meeting of the Oireachtas Joint Committee on Justice and Equality:

Oireachtas, Justice and Equality Committee meeting with Policing Authority Chair J. Feehily. See media notice. 9.50pm C. Daly brought up in a question to Ms. Feehily that some people on the promotion list are under investigation, and said she had sent correspondence to the Authority about it. She also said a solicitor had sent correspondence this week telling the Authority about one person on the promotion list. She asked if garda management could pull the wool over the Authority's eyes in relation to the person by deliberately not allowing investigation, or not commencing it, until after an appointment was made.

I took this as a direct reference to me and to the RTE News at 1 radio programme of 24/09/17.

Ms. Feehily answered by saying that at the outset she had said she couldn't talk about individuals. She said the selection system for candidates was a blind selection system in line with international best practice with a detailed clearance process at the end which involved the Garda Commission, GSOC and the Authority's own information. She said the Authority assess each candidate selected for appointment in accordance with fair procedure and it was the same for each rank, AC, Chief and Supt. Ms. Feehily said it was all about fair procedure. The questioning then moved to something else.³²⁴¹

On the same day, Mr Damian Byrne, Clerk of the Oireachtas Joint Committee on Justice and Equality emailed Garda Keogh's solicitor with a response to his email of 12th July 2017.³²⁴² Mr

³²³⁸ Tribunal Documents, Investigator Interview of Former Acting Garda Commissioner Dónall Ó Cualáin, p. 7306 at p. 7336

³²³⁹ Tribunal Documents, RTE News Now, 24th September 2017, pp. 2648-50

³²⁴⁰ Tribunal Documents, Diary entry of Supt Pat Murray, dated 24th September 2017, p. 2653

³²⁴¹ Tribunal Documents, Diary entry of Supt Pat Murray, dated 27th September 2017, p. 2655

³²⁴² Tribunal Documents, Letter from Garda Keogh's solicitors to Deputy Caoimhghín Ó Caoláin, dated 12th July 2017, p. 11674

Byrne stated that the matters raised by Garda Keogh's solicitor were considered by members of the committee on that day and, having taken legal advice, they were not in a position to deal with the matter. Mr Byrne advised that the committee considered that it might be more appropriate for Garda Keogh to pursue his issues with this tribunal.³²⁴³

On 4th October 2017, Ms Annie O'Malley of the Policing Authority wrote to Garda Keogh's solicitor and acknowledged his email of 21st September 2017.³²⁴⁴ In response to the matters raised by him, she reiterated that it was not appropriate for the authority to discuss individual cases.³²⁴⁵

Meanwhile, on 6th October 2017, Supt Murray sent an email to the Policing Authority and enquired about the status of his promotion, as he had become aware that vacancies had become available.³²⁴⁶

Three days later, on 9th October 2017, Supt Murray again emailed the authority and noted that, on 4th October 2017, appointments to assistant commissioner and superintendent levels had been announced. He expressed his belief that his appointment was being interfered with in the following terms:

*In the open, transparent accountable and ethical manner in which I conduct myself both professionally and personally, I feel it necessary to relay my concern, in relation to my suspicion at efforts being made by third parties, to influence the clearance process, in an attempted character assassination of me with the Authority.*³²⁴⁷

Garda Keogh's solicitor wrote again to the chairperson of the Policing Authority on 11th October 2017. He referred to a previous letter from the authority in which it was pointed out that candidates are entitled to fair procedures and queried whether what he described as 'victims' were also entitled to be treated fairly.³²⁴⁸ He complained about the alleged delay in investigating Garda Keogh's bullying and harassment complaint and offered the following observation:

*It is Garda Keogh's contention that the promotion of Superintendent Murray has been fast tracked and accelerated while trammels and brakes have been applied to the processing of the complaints.*³²⁴⁹

The following day, Mr Seán Carpenter, Higher Executive Officer of the Policing Authority, in a letter to Garda Keogh's solicitor, reiterated that the authority would not discuss the details of any specific case.³²⁵⁰ On the same day Mr Hallinan replied to Supt Murray and explained that the promotions to the rank of chief superintendent had not occurred because the clearance process had not been completed prior to the meeting of the authority on 28th September 2017. He also provided Supt Murray with information on the clearance process, assuring him that the authority was fully committed to fair process.³²⁵¹

³²⁴³ Tribunal Documents, Email from Mr Damian Byrne, Oireachtas Joint Committee on Justice and Equality to Garda Nicholas Keogh's solicitors, dated 27th September 2017, p. 13752

³²⁴⁴ Tribunal Documents, Letter from Garda Nicholas Keogh's solicitors to Charlie Flanagan, Minister for Justice and Equality, Acting Garda Commissioner Dónall Ó Cualáin and Ms Josephine Feehily, Chairperson of the Policing Authority, dated 21st September 2017, p. 12716

³²⁴⁵ Tribunal Documents, Letter from Ms Annie O'Malley, the Policing Authority to Garda Nicholas Keogh's solicitors, dated 4th October 2017, p. 13756

³²⁴⁶ Tribunal Documents, Email from Supt Pat Murray to the Policing Authority, dated 6th October 2017, p. 2656

³²⁴⁷ Tribunal Documents, Email from Supt Pat Murray to Mr Liam Hallinan, the Policing Authority, dated 9th October 2017, p. 2658

³²⁴⁸ Tribunal Documents, Letter from Garda Nicholas Keogh's solicitors to Ms Josephine Feehily, Chairperson of the Policing Authority, dated 11th October 2017, p. 13761

³²⁴⁹ Tribunal Documents, Letter from Garda Nicholas Keogh's solicitors to Ms Josephine Feehily, Chairperson of the Policing Authority, dated 11th October 2017, p. 13761 at p. 13762

³²⁵⁰ Tribunal Documents, Letter from Mr Seán Carpenter, the Policing Authority to Garda Nicholas Keogh's solicitors, dated 12th October 2017, p. 13763

³²⁵¹ Tribunal Documents, Email from Mr Liam Hallinan, the Policing Authority to Supt Pat Murray, dated 12th October 2017, p. 2659

On 12th October 2017, Ms Helen Hall, Chief Executive Officer of the Policing Authority, wrote to Acting Commissioner Ó Cualáin in respect of the clearance form that had been submitted by him and sought clarification as to whether:

*any bullying or harassment complaint has been received or if there is any investigation relating to same in train or being contemplated with regard to this candidate.*³²⁵²

This letter provoked an inquiry within An Garda Síochána, and the following day A/C Corcoran wrote to Mr Alan Mulligan at HRPD urgently seeking information in relation to any bullying and harassment allegations against Supt Murray.³²⁵³

On 13th October 2017, Mr John Barrett, Executive Director, HRPD replied to Garda Keogh's solicitor and addressed the issues raised by Garda Keogh. In the letter he stated that the Policing Authority must decide how to proceed in the circumstances.³²⁵⁴ On the same day Mr Barrett also wrote in the strictest confidence to Ms Hall.³²⁵⁵ In this letter he said he thought it best to draw the correspondence (from Garda Keogh) to her specific attention and to 'restate the question raised' in it. He then quoted from Garda Keogh's letter as follows:

*Have the Policing Authority considered such a scenario where by (I cannot say for sure this has happened) a complaint is made against a senior officer who is going for promotion and happens to be favoured by Garda management. Garda management delay commencing the investigation including serving notice disciplinary or otherwise on the senior officer candidate, where by should the Police Authority ask the candidate to disclose such disciplinary information he/she could answer "none" in good faith. In the meantime the actual complaint is withheld/lost by Garda management to facilitate their choice of candidate ...*³²⁵⁶

Due to his prior involvement with Garda Keogh during the protected disclosures investigation, Acting Commissioner Ó Cualáin considered it prudent to instruct the Chief Administrative Officer, Mr Joseph Nugent, to oversee all matters pertaining to Garda Keogh, including liaising with the Policing Authority, without recourse to him.³²⁵⁷ The Acting Commissioner made a note in his diary to this effect on 17th October 2017.³²⁵⁸

Following this instruction, the Acting Commissioner told tribunal investigators that he was kept up to date 'in a general sense' with regard to issues concerning Garda Keogh.³²⁵⁹ However, he stated he was unaware of any additional enquiries made by the Policing Authority, and had no subsequent interaction with the authority in relation to Supt Murray's promotion.³²⁶⁰

On 17th October 2017, Mr Mulligan replied to A/C Corcoran's enquiry, and informed him that a complaint had been made against Supt Murray in the following terms:

I wish to advise that a serving Garda in the Westmeath Division has made a series of allegations in relation to wrongdoings, including possible bullying and harassment. The Garda names

³²⁵² Tribunal Documents, Letter from Ms Helen Hall, Chief Executive Officer of the Policing Authority to Acting Commissioner Dónall Ó Cualáin, dated 12th October 2017, p. 12471

³²⁵³ Tribunal Documents, Letter from A/C Eugene Corcoran to Mr Alan Mulligan, HRPD, dated 13th October 2017, p. 12476

³²⁵⁴ Tribunal Documents, Letter from Mr John Barrett, Executive Director HRPD to Garda Nicholas Keogh's solicitors, dated 13th October 2017, p. 10121

³²⁵⁵ Tribunal Documents, Letter from Mr John Barrett, Executive Director HRPD to Ms Helen Hall, Chief Executive Officer of the Policing Authority, dated 13th October 2017, p. 13767

³²⁵⁶ Tribunal Documents, Letter from Mr John Barrett, Executive Director HRPD to Ms Helen Hall, Chief Executive Officer of the Policing Authority, dated 13th October 2017, p. 13767

³²⁵⁷ Tribunal Documents, Statement of Former Acting Garda Commissioner Dónall Ó Cualáin, p. 3957 at p. 3967

³²⁵⁸ Tribunal Documents, Diary entry of Acting Commissioner Dónall Ó Cualáin, dated 17th October 2017, p. 4030

³²⁵⁹ Tribunal Documents, Investigator Interview of Former Acting Garda Commissioner Dónall Ó Cualáin, p. 7306 at p. 7337

³²⁶⁰ Tribunal Documents, Investigator Interview of Former Acting Garda Commissioner Dónall Ó Cualáin, p. 7306 at p. 7338

*Superintendent Murray as one of those he is complaining about. The file in relation to the alleged bullying and harassment was sent to Assistant Commission[er] Eastern Region for his attention.*³²⁶¹

Arising from this, A/C Corcoran emailed Mr Mulligan and sought further information in relation to Garda Keogh's complaint.³²⁶² Mr Mulligan responded to A/C Corcoran's request by letter dated 19th October 2017, and set out a chronology and summary of Garda Keogh's complaints.³²⁶³

On 25th October 2017, Mr Nugent wrote to Ms Hall and advised her that Garda Keogh had commenced civil proceedings and also had made allegations of bullying and harassment against Supt Murray.³²⁶⁴

On 31st October 2017, Supt Murray received a phone call from Mr Hallinan of the Policing Authority. He was advised that he had been passed over for promotion because of issues that had arisen, and that these issues would be discussed at the next meeting of the authority. Supt Murray made a note in his diary in which he said that he pressed Mr Hallinan on the nature of the issues but that Mr Hallinan refused to divulge them.³²⁶⁵

Later that day, Supt Murray sent a text message to the Acting Commissioner:

*Commissioner, I wonder if you could take a call as I am looking for some advice in relation to a very strange call I got from the Policing Authority telling me they were passing me over but refusing to say why. I am somewhat perplexed by the whole thing and I believe I have no problem dealing with any issue if only I knew what it was.*³²⁶⁶

Shortly afterwards, Supt Murray received a phone call from Mr Nugent. Supt Murray made a note of the call in his diary.³²⁶⁷ He said that during the call he was advised that the Acting Commissioner had requested Mr Nugent to contact him as he felt he might be compromised due to his prior involvement with Garda Keogh. Supt Murray noted that Mr Nugent was not in a position to advise him of the position with regard to the Policing Authority, but he hoped to be in contact with the authority later that day or the following morning, after which he would have a better understanding of the issues. Mr Nugent told Supt Murray he would get back to him in relation to the matter.³²⁶⁸

On 1st November 2017, Supt Murray sent an email to Mr Hallinan referring to their conversation of the previous day. He expressed his concerns regarding how he felt he had been unfairly passed over for promotion. Supt Murray referred to *'the irreparable damage this public outing of me has caused to me, my family, my character, my reputation and my career in An Garda Síochána'*.³²⁶⁹

The following day, Mr Hallinan replied to Supt Murray's email and pointed out that the clearance process was not complete. He said that:

For the sake of clarity, I wish to confirm that the Authority did not make a decision to decline to appoint you. Indeed, no decision was made as the clearance process is ongoing. The Authority

³²⁶¹ Tribunal Documents, Letter from Mr Alan Mulligan, HRPD to A/C Eugene Corcoran, dated 17th October 2017, p. 12483

³²⁶² Tribunal Documents, Email from A/C Eugene Corcoran to Mr Alan Mulligan, HRPD, dated 17th October 2017, p. 12479

³²⁶³ Tribunal Documents, Letter from Mr Alan Mulligan, HRPD to A/C Eugene Corcoran, dated 19th October 2017, p. 12496

³²⁶⁴ Tribunal Documents, Letter from Mr Joseph Nugent, Chief Administrative Officer to Ms Helen Hall, Chief Executive Officer of the Policing Authority, dated 25th October 2017, p. 12511

³²⁶⁵ Tribunal Documents, Diary entry of Supt Pat Murray, dated 31st October 2017, p. 2669

³²⁶⁶ Tribunal Documents, Diary entry of Supt Pat Murray, dated 31st October 2017, p. 2670

³²⁶⁷ Tribunal Documents, Diary entry of Supt Pat Murray, dated 31st October 2017, p. 2670

³²⁶⁸ Tribunal Documents, Diary entry of Supt Pat Murray, dated 31st October 2017, p. 2670

³²⁶⁹ Tribunal Documents, Email from Supt Pat Murray to Mr Liam Hallinan, the Policing Authority, dated 1st November 2017, p. 2672

*requested further clarification in relation to whether there are any additional matters that the Authority should be aware of in advance making an appointment as the Authority is obliged to satisfy itself in accordance with Regulation 12 of the regulations regarding appointments.*³²⁷⁰

Supt Murray sent a reply to Mr Hallinan, and to Ms Hall, on 3rd November 2017, in which he stated, inter alia, that he had been passed over and felt humiliated:

*In my case I believe the Authority have decided to appoint outside of the order of merit ordained by the selection process, in a way that has adversely affected me and by extension cast very significant aspersions on my character.*³²⁷¹

Ms Hall replied on behalf of the authority later that day and stated the following:

*As communicated to you already, the clearance process in relation to the consideration of your appointment by the Authority is still ongoing. When the clearance process is complete, in the event of a matter arising which may influence the Authority's decision-making regarding appointment you will be afforded an opportunity to respond and provide information regarding same before any decision is reached by the Authority regarding your appointment.*³²⁷²

Also on the same day, Garda Keogh's solicitor again wrote to the Policing Authority and claimed that Garda Keogh's due process rights had been infringed. He queried whether the authority had been informed of Garda Keogh's complaint, and if it 'formed part of the selection process (and is now a matter of mere 'clearance')?'³²⁷³

On 7th November 2017, Ms Hall wrote to Mr Nugent, referring to his letter of 25th October 2017,³²⁷⁴ and she raised a number of queries, primarily in relation to the nature of the allegations against Supt Murray:

*I am requesting the above information in furtherance of the clearance process provided for in Regulation 12 of the Garda Síochána 2005 (Appointments to the ranks of Assistant Garda Commissioner, chief superintendent and superintendent) Regulations 2016, and having regard to the consent signed by Superintendent Murray dated 15 June 2017 which has previously been forwarded to you. As you will be aware, Regulation 12 provides that the Authority shall not appoint a candidate selected for appointment to a specified rank unless the Authority is satisfied as to the outcome of any clearance process and the other matters in that Regulation.*³²⁷⁵

On 10th November 2017, Ms O'Malley responded on behalf of the Policing Authority to the solicitor's email referred to above. She stated that the authority did not have any remit to investigate allegations of wrongdoing by members of An Garda Síochána. She also informed Garda Keogh's solicitor that the clearance process takes place after the selection process and as close as possible to the time of the appointment.³²⁷⁶

³²⁷⁰ Tribunal Documents, Email from Mr Liam Hallinan, the Policing Authority to Supt Pat Murray, dated 2nd November 2017, p. 2673

³²⁷¹ Tribunal Documents, Email from Supt Pat Murray to Mr Liam Hallinan and Ms Helen Hall, the Policing Authority, dated 3rd November 2017, p. 2675

³²⁷² Tribunal Documents, Email from Ms Helen Hall, Chief Executive Officer of the Policing Authority to Supt Pat Murray, dated 3rd November 2017, p. 2676

³²⁷³ Tribunal Documents, Letter from Garda Keogh's solicitors to Ms Josephine Feehily, Chairperson of the Policing Authority, dated 3rd November 2017, p. 13769

³²⁷⁴ Tribunal Documents, Letter from Mr Joseph Nugent, Chief Administrative Officer to Ms Helen Hall, Chief Executive Officer of the Policing Authority, dated 25th October 2017, p. 12511

³²⁷⁵ Tribunal Documents, Letter from Ms Helen Hall, the Policing Authority to Mr Joseph Nugent, Chief Administrative Officer, dated 7th November 2017, p. 12518 at p. 12519

³²⁷⁶ Tribunal Documents, Letter from Ms Annie O'Malley, the Policing Authority to Garda Nicholas Keogh's solicitors, dated 10th November 2017, p. 13772

On 15th November 2017, Assistant Commissioner Fintan Fanning formally appointed A/C Finn to conduct an investigation under the bullying and harassment policy of An Garda Síochána.³²⁷⁷ The circumstances leading up to this appointment are outlined in the previous chapter.

The following day, Mr Nugent phoned Supt Murray and asked him if he had any objection to him making available to the Policing Authority the 338-page document which Supt Murray had prepared in response to the civil proceedings. Supt Murray had no objection.³²⁷⁸ Meanwhile, there was further relevant media coverage on 19th November 2017 when RTÉ News at One broadcast the following report:

An internal garda investigation has been launched into allegations that a prominent garda whistleblower, Nicky Keogh, was subject to harassment after raising concerns over serious criminality within the force, RTÉ's This Week has learned ...

Garda Keogh's solicitor told RTÉ that as well as dealing with the substantive allegation of inappropriate conduct, his client also wants to know why it took seven months for the complaint to get to the investigative stage ...

It is understood that Mr Keogh has not made a specific allegation, but his solicitor had raised the question about whether it could occur that a bullying investigation could have been delayed, key files lost or suppressed in order to conceal this information from the authority, in the case of a preferred officer.³²⁷⁹

On 21st November 2017, Ms Hall wrote to Mr Nugent in relation to the provision of documents by An Garda Síochána and highlighted that candidates signed a consent to information being disclosed to the Policing Authority during the clearance process.³²⁸⁰ Ms Hall wrote again to Mr Nugent on 24th November 2017, and reiterated her request for information in relation to the bullying and harassment complaint. In the letter she stated the following:

According to information in the public domain, a formal bullying and harassment complaint was made about the candidate in March 2017 and indeed that an Assistance [sic] Commissioner has been appointed to undertake an investigation into the complaint.³²⁸¹

On 28th November 2017,³²⁸² Supt Murray wrote a strongly worded letter to the Garda Commissioner, the Deputy Commissioner Policing and Security, the CAO, and the Deputy Commissioner Governance and Strategy, in which he stated that he believed *inter alia* that 'efforts [were] being made to tarnish my reputation and character in a way that will affect my good name and career in An Garda Síochána'. He also complained about the delay and the procedures followed in investigating Garda Keogh's bullying and harassment complaint. He stated, *inter alia*, that:

I understand from the correspondence I received that Garda Keogh made this workplace relations complaint in March 2017. The time-delay in notifying me is I believe extraordinary. In the absence of any explanation I must ask you now to outline to me the entire circumstances of the complaints making and the reasons for the delay involved.³²⁸³

³²⁷⁷ Tribunal Documents, Letter from A/C Fintan Fanning to A/C Michael Finn, dated 15th November 2017, p. 4127

³²⁷⁸ Tribunal Documents, Diary entry of Supt Pat Murray, dated 16th November 2017, p. 2835

³²⁷⁹ Tribunal Documents, RTÉ News at One Report, dated 20th November 2017, pp. 2840-2843

³²⁸⁰ Tribunal Documents, Letter from Ms Helen Hall, Chief Executive Officer of the Policing Authority to Mr Joseph Nugent, Chief Administrative Officer, dated 21st November 2017, p. 12524

³²⁸¹ Tribunal Documents, Letter from Ms Helen Hall, Chief Executive Officer of the Policing Authority to Mr Joseph Nugent, Chief Administrative Officer, dated 24th November 2017, p. 12526

³²⁸² Tribunal Documents, Letter from Supt Pat Murray to the Commissioner, Deputy Commissioner Policing and Security, Mr Joseph Nugent, Chief Administrative Officer, and Deputy Commissioner Governance and Strategy, dated 28th November 2017, p. 2849

³²⁸³ Tribunal Documents, Letter from Supt Pat Murray to the Commissioner, Deputy Commissioner Policing and Security, Mr Joseph Nugent, Chief Administrative Officer, and Deputy Commissioner Governance and Strategy, dated 28th November 2017, p. 2849 at p. 2851

As recorded in the previous chapter, A/C Finn first met Garda Keogh in relation to his bullying and harassment complaint on 1st December 2017.³²⁸⁴

On 8th December 2017, Mr Nugent emailed Ms Hall in response to her letter of 24th November 2017. He stated that *‘the material supplied in respect of the civil litigation allegations provide the most comprehensive statement in respect of the allegations made of bullying and harassment’*. Further he explained that there was some delay following Garda Keogh’s bullying and harassment complaint, but confirmed that A/C Finn had been appointed to investigate the matter.³²⁸⁵ Mr Nugent attached a chronology of the various actions taken with regard to the bullying and harassment complaint from 20th December 2016 until the appointment of A/C Finn on 15th November 2017.³²⁸⁶

On 22nd December 2017, Ms Hall replied to Mr Nugent in the following terms:

It is not clear, on the basis of the information you have provided us with, that the delay in commencing an investigation is justifiable or in accordance with the Bullying and Harassment policy forwarded by you on 8 December. We note that the Policy contains a commitment to select a suitable investigator (which has now been done) and that the investigator will report their findings within 28 days of the complaint being received at the Divisional office.

*In the interests of fairness to Superintendent Murray and the complainant we would request that this matter be dealt with expeditiously and that a further update in relation to the commencement and progress of this investigation be provided to the Authority well in advance of its next Authority meeting on 25 January 2018.*³²⁸⁷

On the same day, Supt Murray received a phone call from Ms Hall. Supt Murray made a note of this conversation in his diary.³²⁸⁸ He noted that Ms Hall told him that the authority had considered his appointment at a meeting on 18th December 2017 and decided that it didn’t have adequate information from An Garda Síochána in relation to the bullying and harassment complaint to make a decision. He noted that she explained to him that the authority had repeatedly sought the information, but had not received it. He set out his position and told Ms Hall of the civil litigation which, in his view, was inextricably linked to the bullying and harassment complaint. He also noted that he offered to make available to the authority the 338-page document prepared in reply to the civil proceedings.

Following this conversation, Ms Hall sent an email to Supt Murray which referred to their telephone conversation. She stated that the authority had been unable to make a decision in relation to his appointment as *‘it did not have full information regarding this complaint’*. She also said that she had sought an update from An Garda Síochána in advance of the next meeting of the authority.³²⁸⁹

Later the same day Supt Murray phoned A/C Finn. Supt Murray made a note of the conversation and recorded that they spoke for over 23 minutes.³²⁹⁰ According to Supt Murray’s note, he

³²⁸⁴ Tribunal Documents, Minutes of the Meeting on Bullying and Harassment Complaint of 1st December 2018, p. 4219

³²⁸⁵ Tribunal Documents, Email from Mr Joseph Nugent, Chief Administrative Officer to Ms Helen Hall, Chief Executive Officer of the Policing Authority, dated 8th December 2017, p. 12533

³²⁸⁶ Tribunal Documents, Appendix B, Chronology, p. 10331

³²⁸⁷ Tribunal Documents, Email from Ms Helen Hall, Chief Executive Officer of the Policing Authority to Mr Joseph Nugent, Chief Administrative Officer, dated 22nd December 2018, p. 12536

³²⁸⁸ Tribunal Documents, Diary entry of Supt Pat Murray, dated 22nd December 2017, pp. 2885-2886

³²⁸⁹ Tribunal Documents, Email from Ms Helen Hall, Chief Executive Officer of the Policing Authority to Supt Pat Murray, dated 22nd December 2017, p. 2888

³²⁹⁰ Tribunal Documents, Diary entry of Supt Pat Murray, dated 22nd December 2017, p. 12408

discussed *'linked issues'* with the assistant commissioner, with A/C Finn saying that he was unaware of Garda Keogh's civil litigation and of Supt Murray's promotion issues. The 338-page document was referred to by Supt Murray, and he recorded that the assistant commissioner thought that it might bring some clarity for the Policing Authority *'about the issues through the organisation and [Mr] Nugent'*. Supt Murray noted that A/C Finn undertook to contact Mr Nugent concerning legal issues that might arise.³²⁹¹

On 11th January 2018, A/C Finn phoned Supt Murray and advised him that legal advice had been sought from Mr Ken Ruane, Head of Legal Affairs, and that Supt Murray could speak to Mr Ruane himself. Supt Murray made the following note of the conversation:

*He said he knew promotion situation and wanted to do it quickly. I asked if the Policing Authority were waiting for the result and he said they were, and it was holding my promotion.*³²⁹²

The same day, Mr Nugent requested an update on the bullying and harassment investigation from A/C Finn, with a view to making it available to Ms Hall.³²⁹³

This update was furnished by A/C Finn on 15th January 2018.³²⁹⁴ A/C Finn reported to Mr Nugent that he had met with Garda Keogh and his solicitor on 1st December 2017. He said that he had been provided with a statement and supporting documentation in relation to Garda Keogh's bullying and harassment complaint. Subsequent to the meeting he had entered into correspondence with Garda Keogh's solicitor in order to ascertain who Garda Keogh was making a complaint against. A/C Finn confirmed that a complaint had been made against Supt Murray and that he had commenced his investigation. He also reported that he intended to meet with Supt Murray on 18th January 2018, and anticipated that it would take a number of weeks to complete the investigation. This report from A/C Finn was forwarded by Mr Nugent to Ms Hall.³²⁹⁵

On 18th January 2018, following discussions between Ms Hall and Mr Nugent, she sent him an email as follows:

*I refer to our conversations yesterday and earlier today in relation to this matter. As I understand it, the Garda Síochána has recently received a refinement of the bullying and harassment complaint (dated March 2017) previously received in relation to Superintendent Murray. In order to ensure that the Authority are provided with the most up-to-date information on this matter, I would request that you forward any updated allegations and/or refinement of previous allegations to us as quickly as possible so as to avoid any unnecessary delays in advancing this clearance.*³²⁹⁶

In mid-January 2018, Mr Nugent provided additional information to Ms Hall in response to her request, including the pertinent extract from Garda Keogh's bullying and harassment complaint dealing with Supt Murray.³²⁹⁷

³²⁹¹ Tribunal Documents, Diary entry of Supt Pat Murray, dated 22nd December 2017, p. 12309

³²⁹² Tribunal Documents, Diary entry of Supt Pat Murray, dated 11th January 2018, p. 12311

³²⁹³ Tribunal Documents, Email from Mr Joseph Nugent, Chief Administrative Officer to A/C Michael Finn, dated 11th January 2018, p. 12549

³²⁹⁴ Tribunal Documents, Email from A/C Michael Finn to Mr Joseph Nugent, Chief Administrative Officer, dated 15th January 2018, p. 12547

³²⁹⁵ Tribunal Documents, Email from Mr Joseph Nugent, Chief Administrative Officer to Ms Helen Hall, Chief Executive Officer of the Policing Authority, dated 15th January 2018, p. 12545

³²⁹⁶ Tribunal Documents, Email from Ms Helen Hall, Chief Executive Officer of the Policing Authority to Mr Joseph Nugent, Chief Administrative Officer, dated 18th January 2018, p. 12544

³²⁹⁷ Tribunal Documents, Email from Mr Joseph Nugent, Chief Administrative Officer to Ms Helen Hall, Chief Executive Officer of the Policing Authority, undated, p. 12538

On 18th January 2018, A/C Finn visited Supt Murray at his home in Athlone. This meeting was examined in chapter 23. It was recorded by A/C Finn that he *'met with supt. Murray and gave him the parts of the complaint that pertained to him'*.³²⁹⁸ Supt Murray made a note that this meeting lasted over four hours and that a great deal of time was occupied discussing Garda Keogh's complaint in detail and its impact on Supt Murray's promotion.³²⁹⁹ Supt Murray noted that he went through the following with A/C Finn:

- *Garda Keogh file*
- *Civil file, Volume 1 and 2*
- *Bullying file*
- *[Supt Murray's] letter Commissioner, and*
- *Promotion file.*³³⁰⁰

Supt Murray told the tribunal about this meeting:

Q. *You have a note of that, it's at page 2896 of the material. It's a short note.*

"Met Assistant Commissioner Finn 11:00am to 3:15pm and went over all documents I have. He indicated Policing Authority needed assurance and that seeing my documents and the information he was willing to provide that. He gave me Garda Keogh's complaint, had it already from Assistant Commissioner Fanning."

If we can just go to the next page, 2897. This is a fuller note:

"Met AC Finn at my home. We went through his complaints and my 338 page document and discussed all. I explained my concerns re providing it in circumstances where Garda Keogh will get it and my responsibilities in that regard to my co defendants, the organisation and myself and confidentiality. I showed him a letter to Ken Ruane in that regard. He agreed with same. I gave him a copy of a letter I had sent to top three."

So what else was discussed during the four hour meeting?

A. *... I went through the myriad of files that I had. And I suppose from when I was speaking to Ms. Hall, it became clear to me that there were a number of issues that the Policing Authority had or weren't aware of and I felt they needed to be made aware of them in relation to my promotion. She didn't seem to be aware of the legal impediment that I felt I had in cooperating fully and putting my best forward in the bullying investigation while civil proceedings were extant. She didn't seem to be aware that the delay in relation to the bullying complaint not coming to the fore until November was not down to me and she seemed to be of a view, maybe based on Mr. Barrett's letter, that I was some way involved in that. And I wanted to, I suppose, have that information communicated to the Policing Authority through the organisation. I felt that she didn't understand that the civil complaint and the bullying and harassment complaint were broadly aligned and mirrored. And, as I said to you, she seemed to think that it could be isolated and I could be just taken out and dealt with quickly. You know, she didn't seem to understand it would take longer than 28 days, which is what is set out in the policy. And then I felt that, you know, I would have liked to*

³²⁹⁸ Tribunal Documents, Diary entry of A/C Michael Finn, dated 18th January 2018, p. 5740 and p. 5695

³²⁹⁹ Tribunal Documents, Diary entry of Supt Pat Murray, dated 18th January 2018, p. 12313 and p. 2897.

³³⁰⁰ Tribunal Documents, Diary entry of Supt Pat Murray, dated 18th January 2018, p. 12313

*have provided evidence through the organisation that I actually had this 338 page document and it was actually a tangible, real thing. And my conversation, you know, after I had spoken to Ms. Hall on the 22nd December, I telephoned I sent her e mail to Mr. Nugent, who telephoned me and I also spoke to Assistant Commissioner Finn. And I wanted to get that information provided to the Policing Authority through Mr. Nugent and the organisation by way of Assistant Commissioner Finn. Not in connection with the bullying investigation but in connection with my promotion.*³³⁰¹

Supt Murray continued that:

- Q. – *in relation to the various files that you discussed. In hindsight, do you think that it may have been inappropriate to have gone into this level of detail with Assistant Commissioner Finn in an unrecorded situation?*
- A. *No, because I suppose Mr. Nugent had indicated to me that he was talking to Assistant Commissioner Finn. And my interpretation was that Assistant Commissioner Finn was providing the information and assurances and views to Mr. Nugent, so as that the Policing Authority could be properly informed in a credible way through the organisation that – you know, those things I mentioned there.*
- Q. *... a complaint could be made by Garda Keogh that, for instance, if you were to discover that Assistant Commissioner Finn had sat down and visited Garda Keogh in his home and spent four hours discussing his allegations against you and none of it was recorded, you might be quite either suspicious of that or angry about it...*
- A. *... I think it's a sinister perception that's being made but there wasn't a sinister motive on my part or, indeed, I'd say his. This wasn't about Garda Keogh's complaints, this was about my promotion and having what I felt were the impediments and assurances the Policing Authority needed delivered to them in a proper fashion. And I didn't – like Assistant Commissioner Finn's investigation I knew I would have to deal with further on down the line. I had a problem with it. It was put aside. The meeting wasn't really about that, other than he gave me Garda Keogh's complaint, which I already had from Assistant Commissioner Fanning. But apart from that, that was left aside. And this focus of this meeting was, I suppose, my promotion insofar as I was concerned.*³³⁰²

Supt Murray phoned Mr Nugent on 20th January 2018. Supt Murray made a note to this conversation. He recorded that Mr Nugent informed Supt Murray that he was in contact with the Policing Authority to ensure that they had all the material they required to make a decision in relation to his promotion. Supt Murray also noted that he told Mr Nugent the following:

... of my four and a half hour meeting with M. Finn on Thursday, 18/01/18, and M. Finn's view is that all is okay. I also told him that F. Healy had examined the issues and found nothing wrong and I wanted those views given as assurance to the Policing Authority.

*J. Nugent spoke about M. Finn doing his investigation quickly.*³³⁰³

Supt Murray recorded that *'I then sent M. Finn a text at 10.51 asking him to promise he would fill J. Nugent in re our meeting. He text back at 14.06 saying, already on it and he would ring me Sunday, 21/01/18'*³³⁰⁴

³³⁰¹ Tribunal Transcripts, Day 146, pp. 55-57, Evidence of Supt Pat Murray

³³⁰² Tribunal Transcripts, Day 146, pp. 60-61, Evidence of Supt Pat Murray

³³⁰³ Tribunal Documents, Diary entry of Supt Pat Murray, dated 20th January 2018, p. 12418

³³⁰⁴ Tribunal Documents, Diary entry of Supt Pat Murray, dated 20th January 2018, p. 12418

Counsel for Garda Keogh cross-examined Supt Murray about the conversation he had with Mr Nugent and drew his attention to the note:

Q. “M Finn’s view is that all okay.” *What does that mean?*

A. *These are, I suppose, what I thought from my perspective was being relayed from Assistant Commissioner Finn to Mr. Nugent to Policing Authority in a very official and formal way. The things that I felt in my conversation with Ms. Hall had been problems, that there were was a legal impediment, and she didn’t seem to understand that, and I gave – or I e-mailed Assistant Commissioner Finn on the evening of the 18th January, an e-mail I sent to the Head of Legal Affairs in the Garda Síochána at that time, outlining, I suppose, what I saw as impediments and asking for legal advice. I gave him a copy of that. Ms. Hall had indicated to me that she couldn’t understand about this delay and I wanted again information to be conveyed in a proper way, that the delay wasn’t of my making. And I gave Commissioner Finn the letter that was opened this morning, that I sent to the executive of the Garda Síochána on the 28th November.*

Q. *Just remind me, Mr. Finn at that time is the investigator conducting the investigation?*

A. *– to conduct a bullying and harassment investigation. I didn’t see that, him with that, and I suppose in conversations I had with him and Mr. Nugent on the 22nd December, I suggested that perhaps Commissioner Finn in meeting me could provide assurances that the Policing Authority required, which they indicated had been not forthcoming from the Garda Síochána by way of information.*

Q. *You see, I am just wondering what Nick Keogh, or the Tribunal for that part, is to make of this, the investigator, you speaking and you recording:*

“M Finn’s view is that this is all okay.”

I am just wondering what we are supposed to make of that?

A. *Well, that those points –*

Q. *Given he’s the investigator.*

A. *Those points that were okay to outline, and there was credibility around them, to, I suppose, overcome or provide the information, the assurances the Policing Authority needed in a proper way through the organisation. And, as I said earlier, both Assistant Commissioner Finn and I were well aware that the bullying issue would be subject to a review under the policy, possibly, had to be conducted properly, that these proceedings were before the High Court, would be examined and reviewed there, that the Policing Authority, the statutory body overseeing the Guards, would be, you know, getting assurances from the organisation and information relating to this. Then in relation to my promotion and then this Tribunal, term of reference (b) was a live issue as well. So I was just very anxious to do everything properly and I felt never felt – I had anything to hide.³³⁰⁵*

Supt Murray also made a note in his diary that he spoke with A/C Finn on 21st January 2018:

He assured me he spoke to J. Nugent on Friday, 19/01/18 about what he learned over his four-hour visit with me. He also assured me Joe Nugent gets it and is talking to the Policing Authority. He is to run it by Joe Nugent whether or not I should offer the Policing Authority my document and get back to me.³³⁰⁶

³³⁰⁵ Tribunal Transcripts, Day 146, pp. 111-113, Evidence of Supt Pat Murray

³³⁰⁶ Tribunal Documents, Diary entry of Supt Pat Murray, dated 21st January 2018, p. 12419

On 23rd January 2018, Ms Hall replied to Mr Nugent, and requested an update in relation to the allegations as she wanted *‘to avoid any unnecessary delays in advancing this clearance process’*.³³⁰⁷

On 26th January 2018, Mr Nugent emailed Ms Hall with a further ‘Declaration of Suitability’ in relation to Supt Murray. It read as follows:

*I declare that there are no grounds known to the Garda Síochána relating to health, character or otherwise why Superintendent Pat Murray is not suitable to be appointed to the position of Chief Superintendent at this time. I declare that the candidate is suitable to be appointed to the post of Chief Superintendent having regard to the candidate’s sick leave record and any relevant sick leave regulations and policies.*³³⁰⁸

On 26th January 2018, the Policing Authority considered Supt Murray’s application for promotion and decided to promote him to the rank of chief superintendent. The promotion was backdated to 26th October 2017.³³⁰⁹ Three days later Supt Murray received a phone call from Ms Hall, who advised him of his appointment.³³¹⁰

The issue of Supt Murray’s promotion was raised by Deputy Daly in Dáil Éireann on 6th February 2018 when she stated the following:

*The Minister can dress it up any way he likes but it has been established that there has been Garda involvement in the drugs trade in Athlone. It is a fact that no action has been taken against those responsible. It is a fact that the person who made the allegations is out sick and his senior manager has recently been promoted despite being at the centre of allegations of bullying and harassment.*³³¹¹

Deputy Daly raised this issue again during Leaders’ Questions on 8th March 2018:

*The Tánaiste talks about a change in culture but is he aware that the same Policing Authority recently promoted an individual who is the subject of an internal investigation into bullying and harassment against a whistleblower?*³³¹²

The role of the Policing Authority

The Policing Authority was not a party to the inquiry and none of its personnel gave evidence. There were some references to that body and it sought, and the tribunal granted, an opportunity of making a statement at a public sitting.³³¹³ See below at Section e, following submissions. The authority was mentioned in the documents and evidence for this issue concerning the promotion of Supt Murray to chief superintendent, but no question arises as to the acts or omissions of the authority. No party makes any case against the authority or its officers, nor indeed does anybody offer criticisms of them. The only reason why legislative provisions relating to the authority appear here is to give context to the discussion on the issue.

³³⁰⁷ Tribunal Documents, Email from Ms Helen Hall, Chief Executive Officer of the Policing Authority to Mr Joseph Nugent, Chief Administrative Officer, dated 23rd January 2018, p. 12539 at p. 12540

³³⁰⁸ Tribunal Documents, Email from Mr Joseph Nugent, Chief Administrative Officer to Ms Helen Hall, Chief Executive Officer of the Policing Authority, dated 26th January 2018, pp. 12570-12571

³³⁰⁹ Tribunal Documents, Policing Authority Letter of Appointment, dated 26th January 2018, p. 12575

³³¹⁰ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2077

³³¹¹ Tribunal Documents, Dáil Éireann Debates, dated 6th February 2018, p. 2910

³³¹² Tribunal Documents, Dáil Éireann Debates, dated 8th March 2018, p. 2925

³³¹³ Tribunal Transcripts, Day 152, pp. 7-12, Counsel for the Policing Authority

The Policing Authority was established as an independent statutory body by the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015 for the *purpose of overseeing the performance by the Garda Síochána of its functions relating to policing services*.³³¹⁴ The Garda Síochána Act, 2005 was amended to provide for an extensive range of functions for the authority, some of which were previously the responsibility of Government or the Minister for Justice and Equality.

The Policing Authority now has a broad range of functions including, *inter alia*, the nomination of candidates to the ranks of Garda Commissioner and Deputy Garda Commissioner (sections 9-10 of the Garda Síochána Act, 2005 as amended), the appointment of persons to the rank of chief superintendent in An Garda Síochána following outlined procedures (section 13 of the Garda Síochána Act, 2005 as amended), the removal of members of certain ranks (section 13A of the Garda Síochána Act, 2005 as amended) and the establishment of a code of ethics that includes the standards of conduct and practice for members together with provisions to encourage and facilitate the reporting by members of wrongdoing (section 17) of the Garda Síochána Act, 2005 as amended).

The revised section 13 of the Garda Síochána Act, 2005, which was commenced on 1st January 2017, provided for the appointment of persons to the rank of chief superintendent in the Garda Síochána by the Policing Authority in accordance with Regulations and following a selection competition. Regulation 12 of the Garda Síochána (Appointments to the Rank of Assistant Commissioner, Chief Superintendent and Superintendent) Regulations 2016 (S.I. 641 of 2016) provided for the authority to conduct a clearance process in respect of candidates and states that the authority shall not appoint any candidate unless this process is carried out:

- 12 (1) The Authority shall not appoint a candidate selected for appointment to a specified rank—*
- (a) unless the candidate—*
 - (i) undertakes any clearance process that may be required by the Authority, and*
 - (ii) agrees to perform the duties attached to the specified rank or the particular post in the specified rank concerned and to accept the conditions under which those duties are, or may be required to be, performed,*
 - (b) unless the Authority—*
 - (i) is satisfied as to the outcome of any clearance process undertaken by the candidate under subparagraph (a)(i),*
 - (ii) is satisfied at the time of the appointment that the candidate is fully competent and is available to undertake, and is fully capable of undertaking, the duties attached to that specified rank, having regard to the conditions under which those duties are, or may be required to be, performed,*
 - (iii) has made all such enquiries as it considers necessary to verify the information provided in the candidate's application including through seeking references from referees submitted by the candidate at the request of the Authority.*³³¹⁵

It is stated at Regulation 12 (2) that the 'clearance process', in relation to a candidate, includes any process, including vetting, to establish the health and character of the candidate.³³¹⁶

³³¹⁴ Preamble to Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015

³³¹⁵ Tribunal Documents, Garda Síochána Act, 2005 (Appointments to the Ranks of Assistant Garda Commissioner, Chief Superintendent and Superintendent) Regulations 2016, S.I. No. 641 of 2016, p. 7521 at p. 7528

³³¹⁶ Tribunal Documents, Garda Síochána Act, 2005 (Appointments to the Ranks of Assistant Garda Commissioner, Chief Superintendent and Superintendent) Regulations 2016, S.I. No. 641 of 2016, p. 7521 at p. 7528

Substantive Complaint made by Garda Nicholas Keogh

Garda Keogh provided an addendum to his bullying and harassment complaint to A/C Finn when they met on 1st December 2018:

I gave such written statement to C S Scanlon on the 27th March 2017. I heard nothing further about the processing of my complaint at such time. I didn't realise that the complaint had gone missing until I found out that Superintendent Patrick Murray (who had come to Athlone from Donal O Cualain's western region) was on a promotion list. Donal O Cualain was furthermore the point of contact with the Policing Authority (-and therefore critically involved in any clearance of Superintendent Murray in respect of my bullying complaint to the PA for the purposes of this promotion).³³¹⁷

Garda Keogh said in his interview with tribunal investigators that A/C Finn was belatedly appointed to investigate his bullying and harassment complaint and that:

As stated in my addendum statement, it appears to me that the processing and investigation of my complaint was delayed purposely whilst the promotion of Superintendent Pat Murray to Chief Superintendent was proceeded with. That is how it is perceived by me.³³¹⁸

Garda Keogh added A/C Finn to the list of people he alleged targeted and discredited him³³¹⁹ and stated that:

Regarding Assistant Commissioner Mick Finn I wish to state the following. I reported my bullying and harassment complaint to Chief Superintendent Anthony McLoughlin on 02/06/2016. I did not make my written statement to Chief Superintendent John Scanlon until 27/03/2017, when I physically handed it to him. This statement went missing for approximately seven months. My solicitor resubmitted my bullying and harassment complaint to Garda Human Resources... on 25/09/2017. On 01/12/2017, I met Assistant Commissioner Finn who had been appointed to investigate this matter, where I submitted an addendum to my statement of bullying and harassment complaint to him, in writing, and where I verbally informed him also of the persons involved in my harassment. Assistant Commissioner Finn then subsequently sent a number of letters to my solicitor stating that he was unsure as to who I was making a complaint about, when in my view, it was crystal clear against whom I was making my complaint when I had informed him both in writing and verbally when I met him. Assistant Commissioner Finn has discredited me in saying that he does not know against whom I was making the complaint, when to me, it was crystal clear whom I was complaining about and I believe this delayed the investigation of my complaint. It is my belief that the motive behind the delay by Assistant Commissioner Finn was to allow the process for the promotion of Superintendent Pat Murray to be progressed and for him to be appointed as Chief Superintendent to go by without issue. My solicitor has correspondence relating to Assistant Commissioner Finn's correspondence with him in relation to his queries raised, which I say delayed the investigation of my complaint... The combination of the general conduct of Assistant Commissioner Finn's unwieldy investigation of my complaint together with his obfuscation and unnecessary delay damaged the timely determination of my complaint and I believe facilitated the promotion of Superintendent Pat Murray to my discredit.³³²⁰

³³¹⁷ Tribunal Documents, Bullying and Harassment Addendum Statement of Garda Nicholas Keogh, dated 1st December 2017, p. 322

³³¹⁸ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, dated 9th-15th August 2018, p. 1 at p. 95

³³¹⁹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 102

³³²⁰ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at pp. 105-106

Garda Keogh also complained that Acting Commissioner Ó Cualáin must have been aware of his bullying and harassment complaint at the time of the promotion process:

Assistant Commissioner Ó Cualáin was also the Garda point of contact with the Policing Authority in relation to the promotions whereby Superintendent Pat Murray, who originally came from his area (Western Region) into Athlone (Eastern Region), was promoted to Chief Superintendent without any determination of my complaint, which I say Assistant Commissioner Ó Cualáin had to be aware of at the time.³³²¹

During Garda Keogh's evidence to the tribunal, counsel for An Garda Síochána referred him to a statement made by Deputy Wallace in Dáil Éireann on 15th December 2015, in which the deputy alleged that crime figures were being 'massaged' in Athlone and Supt Pat Murray was named. Counsel for An Garda Síochána suggested to Garda Keogh that, as early as 2015, he was hostile to Supt Murray and provided the information in the hope and expectation that he would be accused of corruption with the protection of Dáil privilege:

- Q. *Chairman: ... What do you say to the charge that that was convicting him without giving him a chance to defend himself?*
- A. *Well, Judge, the way the system works is, whether it's right or wrong, I was entitled to do what I did. And I was entitled under section 62 of the An Garda Síochána Act to bring that to a TD. I brought that lawfully and legally to a TD. After that, it's up to them whether they want to use it. And I understand at the time there were topical issues where the guards I think were turning around –³³²²*

Garda Keogh was also cross-examined by counsel on behalf of An Garda Síochána on his attitude towards Supt Murray in 2016:

- Q. *Garda Keogh, here we are in the middle of 2016 and Garda Greene also told Superintendent Murray that you had said you wanted to bring down the commissioner and Deputy Commissioner Ó Cualáin. Is that what you said to Garda Greene at that stage?*
- A. *I can't deny I would have said – I can't remember saying it, but I certainly can't deny that that would have been something I would have said, Judge.*
- Q. *Did you also indicate to Garda Greene that you will engage with transparency Ireland through retired Garda John Wilson?*
- A. *Yes. Well, I mean that's accurate. Look, it appears accurate.*
- Q. *Did you tell Garda Greene that you had engaged with the media in relation to the way whistleblowers were treated and that you were aware allegations were going to be made against Sergeant Yvonne Martin?*
- A. *Judge, anything to do with those allegations against Sergeant Martin had nothing to do with me. That was a separate matter. I've had the opportunity to apologise to Sergeant Martin, Judge, actually – I know I'm not allowed talk to witnesses but just at the door, I did make an apology. But this part has nothing to do with me. And Sergeant Martin was vindicated in the last part of the Tribunal. But that part, at the time I, along with most –*
- Q. *Chairman: But Mr. Murphy's question, sorry, Garda Keogh, Mr. Murphy's question is: Did you say this?*

³³²¹ Tribunal Documents, Investigator Interview of Garda Nicholas Keogh, p. 1 at p. 107

³³²² Tribunal Transcripts, Day 111, p. 37, Evidence of Garda Nicholas Keogh

A. *I could have.*³³²³

Counsel for An Garda Síochána asked Garda Keogh about a conversation he had with Insp Minnock on 24th May 2016, when the inspector visited Garda Keogh at his home and found him intoxicated:

Q. *... Inspector Minnock reported back that you had spoken to him, to Inspector Minnock, about bringing down the commissioner, then Deputy Commissioner Ó Cualáin and Superintendent Murray. Do you recall saying that to him?*

A. *I don't recall it but I see that's said there. It would be the kind of stuff I probably would have said, Judge.*

Q. *So I think it's fair to say that from that answer, that the Chairman can take it that certainly as of that date it was your intention to target Superintendent Murray and to bring him down?*

A. *Judge, the second line there, I mean, I have no problem in reading this out again, like Inspector Minnock reported he called to my house:*

"... on a welfare visit and found him drunk and drinking from a can of cider."

Drunk and I'm on about this stuff. I mean... Like, you know, do I need to even go – I mean, I'm not disputing it, it is certainly the kind of thing I would have said, Judge. I don't remember saying it but it would be definitely the kind of thing I would have said, Judge

Q. *Yes. And that's because that's what you thought at the time, isn't it, Garda Keogh?*

A. *Well, you see, where are we here? We're in 2016?*

Q. *Yes.*

A. *My awareness to what's going on internally in the Guards is growing and what I thought was mild corruption was an understatement.*³³²⁴

Garda Keogh was asked by counsel for An Garda Síochána about the letter he wrote to the Minister for Justice and Equality on 14th June 2016:

Q. *I have to suggest to you again that you are effectively seeking to communicate to the Minister in an effort to stop the promotion, isn't that right?*

A. *Em, I am pointing out – there's an issue here and I am pointing it out to the Minister. I am entitled to do that. That's – I mean, that's – I am entitled to do that. I wrote a letter to the Minister, everything is there in writing. I still stand by that.*³³²⁵

Garda Keogh was cross-examined about his assertion in the letter that his complaint of bullying and harassment was not being investigated when it had not actually been made until 27th March 2017:

Q. *Well, there was no gist of it being correct at that time. On that date in 2016, is it not the case that the harassment allegations were not being investigated?*

A. *No, no, Judge, I had reported bullying and harassment, I had reported it. I accept that the actual investigation hadn't taken place, but I had reported it.*

³³²³ Tribunal Transcripts, Day 111, pp. 48-49, Evidence of Garda Nicholas Keogh

³³²⁴ Tribunal Transcripts, Day 111, pp. 54-55, Evidence of Garda Nicholas Keogh

³³²⁵ Tribunal Transcripts, Day 111, pp. 70-71, Evidence of Garda Nicholas Keogh

Q. Weren't you at the same time complaining that there wasn't an investigation taking place. Later on, haven't we have seen in earlier issues that you were complaining about a delay in the investigation in 2017?

A. Yeah.

Q. So here we are in the middle of 2016. I just have to suggest to you that that's a very misleading statement that you incorporated in your letter?

A. No, it's not.³³²⁶

Counsel for An Garda Síochána suggested to Garda Keogh that he was targeting Supt Murray and trying to bring his career to an end:

*No, no, no. Judge, what that is, even under the old the Garda Síochána Act and I didn't know this at the time, I know it now, one wouldn't get promoted if there was an active complaint against them. But equally, under this new – the new promotion thing or whatever – Judge, Superintendent Murray, there's no issue with him being promoted, but after it's investigated. That's my point. He should have been investigated and then promoted. No issue. This craic where they know there's an allegation of bullying and harassment, they know I'm trying to invoke the bullying and harassment policy and then afterwards it takes, I think, about a year before I get to actually make the statement. But that's out of my hands, that was out of my control. That's why I was writing to Minister Fitzgerald in relation to this, because if I wasn't informing Minister Fitzgerald what was going on, I doubt Garda management were informing her what was going on.*³³²⁷

Garda Keogh was asked about the handwritten letter he sent to the Minister for Justice and Equality on 29th September 2016:

Q. How did you know it [the promotion] was about to be signed off by the cabinet?

A. I can't remember how I knew that. But I found – I obviously found that out, possibly that day.

Q. Yes.

A. I don't know, I presume that.

Q. Who could have told you about that kind of information before it went to the cabinet?

A. I don't know. I don't know.

Q. I mean, you agree with me it wasn't on the radio?

A. Oh!

Q. It wasn't. So it had to be somebody who was very close to the organisation at a very high level in An Garda Síochána or else to the Cabinet. Where did you find the information?

A. It was someone in a Government department. There's many other aspects that –

Q. Who was it then?

A. I don't know, I actually do not know. All I know is, I got this information and I wrote – this

³³²⁶ Tribunal Transcripts, Day 111, pp. 71-72, Evidence of Garda Nicholas Keogh

³³²⁷ Tribunal Transcripts, Day 111, p. 74, Evidence of Garda Nicholas Keogh

is back in 2016. I recall – actually, I recall writing the letter just on the kitchen table, I scribbled it down. It is a letter to the Minister, where I didn't even go to type it or anything like that, it was just urgent, wrote it down and posted it immediately. And that was it.

Q. *So did someone tell you, somebody with inside information tell you that the matter was now about to be signed off by the Cabinet and that was why you are writing so urgently?*

A. *That would be correct.*

Q. *So who was the person who told you?*

A. *Well, can I check my diary, Judge.*³³²⁸

Counsel for An Garda Síochána cross-examined Garda Keogh further on this issue:

Q. *Garda Keogh, you've given us evidence you have problems with memory, but I have to suggest to you, it's incredible that you don't remember who told you this information?*

A. *There's an awful lot of information that I've have heard and stuff that I can't remember.*

Q. *Why don't you think about it for a moment. You mentioned your circle of trust a few days ago, was it somebody in your circle of trust that told you about this information?*

A. *I mean it could have been.*

Q. *Chairman: Somebody had to tell you, this is going to the cabinet?*

A. *Yes, yes.*

Q. *Chairman: Superintendent Murray, his promotion is going to the cabinet.*

A. *Yes.*

Q. *Chairman: Whenever it is, at their next meeting.*

A. *Look, if I knew who it was, if I had it in my diary, I just can't –*

Q. *Chairman: Mr. Murphy is suggesting that you do know who it was.*

A. *I reject that.*

Q. *Chairman: That's the writing on the wall?*

A. *I would tell you if I knew who it was.*

Q. *Chairman: I understand.*

A. *I can't turn around and say it might have been Clare Daly, and it wasn't Clare Daly. And, it might have been Mick Wallace, and it wasn't. It was obviously somebody in my circle.*³³²⁹

Counsel on behalf of An Garda Síochána asked Garda Keogh:

Q. *Would you agree with me, though, this letter is clearly an attempt to target Superintendent Murray, to stop him from being promoted?*

A. *It's not targeting. This is where – there's an issue here. There's someone going for promotion*

³³²⁸ Tribunal Transcripts, Day 111, pp. 79-80, Evidence of Garda Nicholas Keogh

³³²⁹ Tribunal Transcripts, Day 111, p. 81 and p. 84, Evidence of Garda Nicholas Keogh

*who I believe has a – I believe I have a case and Superintendent Murray has questions to answer, that it has to be investigated, and then go on and do promotions.*³³³⁰

Counsel then referred Garda Keogh to an email sent by Supt Murray to Mr Liam Hallinan of the Policing Authority following a conversation between them on 31st October 2017:

Q. Do you see in the next paragraph, he says:

“You cannot underestimate the irreparable damage this public outing of me has caused to me, my family, my character, my reputation and my career in An Garda Síochána.”

I take it you accept that somebody who had been subject to vilification in the press, repeated attacks from members of the Oireachtas and targeted, as you sought to target him, would be reasonably concerned that their reputation and their career are being damaged by this?

*A. Judge, equally, I could have written that about myself to the Policing Authority in the way Garda management were trying to proceed with this promotion, you know, you cannot under estimate the irreparable damage, you know, that it was doing to me. Because Garda management were not upfront with the Policing Authority. The obligation really was on Garda management to be truthful and honest with the Policing Authority in what was going on and they appear not to have been, Judge.*³³³¹

Counsel for An Garda Síochána also referred Garda Keogh to a letter from Mr Barrett to his solicitor on 13th October 2017:

Q. Garda Keogh, would you agree with me, parallel with this correspondence and these meetings with Garda management, at the same time and in the same month, as we have seen yesterday, you're doing things to leak information to the press, speak to TDs, provide them information, in the hope that they will target and criticise Superintendent Murray?

*A. Judge, there's a number of other things parallel going on as well. Because there's the GSOC investigation is somewhere there, I don't know what happened with that. Again, back then, in 2017, I didn't know what was going on with that either. Then there is the disciplinary investigation. I don't even know who was appointed to investigate that. Because that's – where are we? October 2017, Jack Nolan is retired. So I'm trying to find out what's going on with that. Then there's this whole thing as well. Like I mean, I am trying to highlight a whole load of issues here. It's not just one particular matter. There's a number of stalling points that I have to highlight.*³³³²

During cross-examination of Garda Keogh by counsel on behalf of An Garda Síochána, Garda Keogh gave evidence:

But just to reinforce it, that Ó Cualáin put Murray – Deputy Commissioner Ó Cualáin put Superintendent Murray in Athlone to get me out so he could conduct the investigation or whatever he was doing. And after that then they organised the promotion, which is clearly there on 11345, where Ó Cualáin is discussing with this. And I mean –

Q. Chairman: Tell me more. What conclusion are you drawing from the materials that we're looking at?

³³³⁰ Tribunal Transcripts, Day 111, pp. 86-87, Evidence of Garda Nicholas Keogh

³³³¹ Tribunal Transcripts, Day 111, pp. 152-153, Evidence of Garda Nicholas Keogh

³³³² Tribunal Transcripts, Day 112, pp. 42-43, Evidence of Garda Nicholas Keogh

- A. *My conclusion is, what I had stated all along, my suspicion.*
- Q. *Chairman: Turns out to be right.*
- A. *Correct.*
- Q. *Chairman: Explain how it turned out to be right.*
- A. *Well, it's in these documents here and then there is more –*
- Q. *Chairman: No, these documents here, what do you read these documents as saying that confirms your suspicions, that is what I want to know?*
- A. *Yes. In relation to 345, Judge, there, Deputy Commissioner Ó Cualáin is in contact, direct contact with Superintendent Pat Murray, discussing where he is going to be stationed after he is promoted.*
- Q. *Chairman: Yes? And?*
- A. *Well, he hasn't even been promoted yet and they're discussing where he is going to be put after the promotion. Because there's an issue with filling out the clearance forms.*
- Q. *Chairman: Okay.*
- A. *Which involved Deputy Commissioner Ó Cualáin and Assistant Commissioner Finn, Judge.*
- Q. *Chairman: Whether it's right or it's not right or it's important or it's not important, you are citing these documents as evidence to support your contention of irregular conduct on the part of Assistant Commissioner Ó Cualáin?*
- A. *Yes, Judge.*³³³³

Response of Superintendent Pat Murray

In his statement to the tribunal, Supt Murray set out the references made in respect of his promotion in Dáil Éireann, in print media and in letters from Garda Keogh to a number of persons including the Minister for Justice and Equality and the Policing Authority. He said that his interactions with Garda Keogh were mentioned in Dáil Éireann by Deputies Daly and Wallace during 2015:³³³⁴

*On 15th December 2015 both Mr. Wallace and Ms. Daly accused me publicly in Dail Eireann of harassing and bullying Garda Keogh and wrongly classifying crimes in my District in a deliberate fashion.*³³³⁵

Supt Murray applied for a promotion to the rank of chief superintendent on 18th January 2016. He referred in his statement to a conversation with Garda Greene on 19th January 2016, who said that Garda Keogh was trying to 'dig up dirt' on him. Supt Murray said in his statement that he 'asked Garda Greene to inform Garda Keogh that I was not his enemy but was concerned for his welfare.'³³³⁶

³³³³ Tribunal Transcripts, Day 111, pp. 104-106, Evidence of Garda Nicholas Keogh

³³³⁴ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2062

³³³⁵ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2062

³³³⁶ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2062

In respect of 2016, Supt Murray said in his statement that *‘I now know that on the 16th May 2016 Garda Keogh wrote to the Minister for Justice and Equality complaining about me’*.³³³⁷ He referred to two articles in the Sunday Business Post on 12th and 19th June 2016 and said that *‘I now know that on 14th June Garda Keogh wrote to the Minister of Justice casting aspersions on my selection for promotion. He cc’d the Policing Authority, GSOC and Ms. C. Daly TD in that correspondence’*.³³³⁸

Counsel for the tribunal asked Supt Murray about representations he made to a number of prominent politicians in 2016, as evidenced in the notes he disclosed to the tribunal:

- Q. *During the whole process of your application for promotion back in 2016 and then going through to your ultimate promotion in 2018, do you believe that you had done anything improper in relation to any of your representations that you made to the Policing Authority or to any TDs or otherwise?*
- A. *No. I tried to be very careful in everything I did. In 2016 I was working with a group of eight people under the auspices of the representative association. That turned into five then after November of ‘16. And in 2017 I was working on my own with my solicitor with the Policing Authority, from when they passed over me in October.*
- Q. *You have disclosed notes to the Tribunal and I don’t intend to open all of them, but it shows fairly extensive correspondence or, sorry, meetings that you had with various TDs?*
- A. *Yes.*
- Q. *Can you explain the circumstances in which you approached members of Dáil Éireann in relation to your promotion?*
- A. *So, I suppose the 18 people who were promoted, and I was one of those, or listed for promotion in ‘16, were of the understanding that we were all going to be promoted clear in line with, I suppose, documents that had circulated in the organisation indicating that there were vacancies for 18 people, in line with the modernisation and renewal programme and a governance document that was introduced. When ten people were promoted, we couldn’t find out any information then right throughout the summer. We got a date of September and I do see that Garda Keogh got some information in September as well himself that there was going to be some appointments at cabinet. And I see in August where there was some interaction between the department and the Attorney General in relation to me and promotion. I didn’t know any of that. But in October, one of the eight people who hadn’t been promoted made contact with the other seven and we met as a result of that communication then with our representative association and decided on a course of action to try and find out what was happening and, number two, could we possibly get promoted before the end of the year and before the list was to extinguish. And could some transitional arrangements be made in our case, as was similar in legislation or regulations which allowed for that to happen at the ranks of garda sergeant and sergeant to inspector.*³³³⁹

Counsel on behalf of Garda Keogh asked Supt Murray about his note dated 11th June 2016,³³⁴⁰ where he recorded that he gave a gift of a bottle of whiskey to Dep/C Ó Cualáin at his home:

- Q. *What were you doing giving him a gift?*

³³³⁷ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at pp. 2062-2063

³³³⁸ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2064

³³³⁹ Tribunal Transcripts, Day 146, pp. 27-29, Evidence of Supt Pat Murray

³³⁴⁰ Tribunal Documents, Diary entry of Supt Pat Murray, dated 11th June 2016, p. 16210

- A. *I called to his home, so I brought the gift with me for him. The purpose of my call was to express my gratitude to the board through him for placing faith in me. I was absolutely delighted to [be] promoted, exuberant in fact. And I felt it was a huge achievement for me to get it.*³³⁴¹

In his statement to the tribunal, Supt Murray referred to the letter by Garda Keogh to the Minister for Justice and Equality on 2nd September 2016, which he said was ‘*casting further aspersions on my selection for promotion*’.³³⁴²

Counsel for the tribunal asked Supt Murray about a speech delivered by Deputy Daly in Dáil Éireann the following month during which she referred to the person who was selected at number 14. He was asked:

- Q. *But that number 14, were you identifiable?*
- A. *Yes, within the organisation, because the list had been, I suppose, circulated within the organisation from 1 to 18 in some type of a circular or bulletin at that time. I think the personnel bulletin was issued following the competition to the successful candidates. And that would have been normal at that time, that’s the way information was communicated. It has changed since under the Policing Authority rules. It’s now a private situation between the candidate and the Policing Authority and it’s not generally advertised.*³³⁴³

Supt Murray was asked about a letter he received from the Personal Injuries Assessment Board in November 2016:

- Q. *I think on 2nd November 2016 you received a letter from the personal injuries board indicating that Garda Keogh had been authorised to bring civil proceedings by the board, is that right?*
- A. *That’s correct, and it didn’t contain any information other than that. So I didn’t know what aspect of complaints were actually being brought before.*
- Q. *I think you forwarded the correspondence to the Head of Legal Affairs, is that right?*
- A. *I did, Chairman.*³³⁴⁴

Counsel for the tribunal asked Supt Murray about the document he prepared for C/Supt Healy in response to Garda Keogh’s civil proceedings:

- Q. *Is this the document that stretches to I think 338 pages or so, is that right?*
- A. *That’s correct. He approached me in early January, having been appointed to gather the information in relation to the civil proceedings that were initiated. I put together that file, not knowing what the actual complaints were, I was devoid of information. I think the only thing that wasn’t contained in it, eventually when I did become aware of the complaints in May of ‘17, the only thing was the phone call I was alleged to have made to – or Commissioner O’Sullivan was alleged to have made to me. That was the only thing I think that was missing.*³³⁴⁵

³³⁴¹ Tribunal Transcripts, Day 146, p. 94, Evidence of Supt Pat Murray

³³⁴² Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2065

³³⁴³ Tribunal Transcripts, Day 145, p. 113, Evidence of Supt Pat Murray

³³⁴⁴ Tribunal Transcripts, Day 145, p. 114, Evidence of Supt Pat Murray

³³⁴⁵ Tribunal Transcripts, Day 145, p. 116, Evidence of Supt Pat Murray

In respect of 2017, Supt Murray outlined the media and political coverage of his promotion application in early 2017 in his statement to the tribunal.³³⁴⁶ Counsel for the tribunal asked him the following:

- Q. You also note on 30th March 2017, Deputy Wallace questioned the Garda Commissioner during a meeting of the Dáil Justice Committee about your promotion, to enquire into aspects of the controversy relating to the application of penalty points in persons convicted of NCT road traffic offences. I think that Deputy Wallace indicated in public that you were the subject matter of a protected disclosure, is that right?
- A. Yes. And I had never been aware of it, or had never been aware since, other than when I saw it in the documents from the Tribunal.³³⁴⁷

Supt Murray outlined further media coverage of his promotion during September 2017 and told tribunal investigators that:

Negative media about my promotion began on the 24th of September 2017 when references to my promotion were made on RTE News at One radio programme at a time when my name was to appear before the PA to be appointed to take up the next vacancy at Chief Superintendent level ... Three days later my promotion was discussed at the Dáil Justice Committee when Clare Daly TD raised it with the Chair of the PA, Josephine Feehily ... Following that I engaged with the PA in emails as I was concerned that there was an attempted character assassination of me with a view to interfering with my career prospects by creating fear in others that in some way there was a risk if I was promoted. I found all this incredible and I believe there were people involved in planning what I saw as an orchestrated effort to destroy me. There were newspapers articles appearing as well with the same theme. I believe it was a very orchestrated and planned effort to undermine my position and career. I believe that Garda Keogh and his political supporters and some elements of the media had an unhealthy fixation with me which is bordering on harassment and I've set that out in documents. To give an example of that, you only have to look at Exhibit PM147 ... included in this is a letter from Clare Daly TD to the Garda Commissioner dated 9th March 2018 which shows an unhealthy fixation with me. I refer also to NK13 which is an exhibit to the statement provided by Garda Nicholas Keogh to the Disclosures Tribunal dated 15th August 2015. It's a letter 13th December 2017 from Garda Keogh's solicitor to Assistant Commissioner M. Finn. It's completely fixated on me. Considering all that occurred this fixation with me continued in my new posting right up to March 2018. I replied to that letter ... by saying I felt I was being harassed in a criminal way. My name has been mentioned, and references have been made to me, on 11 occasions in Dáil Éireann by Clare Daly TD and Mick Wallace TD in relation to my dealings with Garda Keogh.³³⁴⁸

Supt Murray was asked by counsel for the tribunal when he first became aware there may be a problem with his promotion:

... I learned on the 24th September, while listening to the RTÉ programme, that my promotion was being debated in public and there were complaints about it. It was followed on three days later then by what happened at the Justice Dáil Committee that you've referred to. I was aware, I suppose, numbers 1 to 6 had been promoted and the position for number 7 occurred on the 20th September with the retirement of a chief superintendent. And [the] Policing Authority had advertised the fact that at their meeting on the 28th September they were making appointments

³³⁴⁶ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at pp. 2065-2067

³³⁴⁷ Tribunal Transcripts, Day 145, pp. 118-119, Evidence of Supt Pat Murray

³³⁴⁸ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3104-3105

*of senior Gardaí to the rank of chief superintendent. When that didn't happen, coupled with what had happened on the 24th and 27th September, I knew there was a problem.*³³⁴⁹

Counsel for the tribunal asked Supt Murray about his reaction to this development:

... I felt that, I suppose, I was being tried in the media and by what was in the public domain, decisions were being made about me in relation to what had appeared there and I had no input into it or no voice.

Q. At this point were you aware of any bullying and harassment allegations being made against you?

A. ... no, certainly not, other than what was said in the media on the 24th September.

And what was said in the Dáil committee, that perhaps someone had pulled the wool over the Policing Authority's eyes in relation to hiding complaints made against me.

Q ... you had been named as a co defendant in civil proceedings?

A. I had.

Q. Did you think that that was something that you ought to have drawn the board's attention to or not?

A. I thought about that carefully and I got advice about it and I answered the questions that were asked in it.

I suppose at that stage I had supplied documents for that and it was being dealt with by the legal section in An Garda Síochána.

*I didn't think it was relevant to, I suppose, the candidate information that I had to provide anywhere. But I would have no difficulty in discussing it or making people aware of it because, as I said, I had, you know, put together a document which covered, as it turned out, all the allegations made against me.*³³⁵⁰

In his statement to the tribunal, Supt Murray said that he contacted the Policing Authority in October 2017:

*I am aware that a meeting of the Policing Authority took place on 28th September 2018 which had Garda Promotions on the agenda. A vacancy at Chief Superintendent level which occurred on 20 September 2018 and which applied to my position at number seven (7) in the order of merit on the Chief Superintendent's promotion list was not filled despite a positive clearance in relation to my character being supplied to the Authority by An Garda Síochána on 14th September 2017. I queried my position with the Policing Authority on 6th October 2017 who advised me the clearance process was ongoing. I advised the Polic[ing] Authority of my suspicions and efforts being made by third parties to influence the clearance process in an attempted character assassination of me with the Polic[ing] Authority.*³³⁵¹

Supt Murray was informed by Mr Liam Hallinan of the Policing Authority on 31st October 2017 that he was being passed over in the order of merit, with the candidate at position number eight being promoted.³³⁵² Supt Murray told tribunal investigators that:

³³⁴⁹ Tribunal Transcripts, Day 145, pp. 123-124, Evidence of Supt Pat Murray

³³⁵⁰ Tribunal Transcripts, Day 145, pp. 126-127, Evidence of Supt Pat Murray

³³⁵¹ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2071

³³⁵² Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2071

*I had engaged with [the] Policing Authority on the 9th of October 2017 and I advised them that people were attempting to assassinate my character in public in order to influence the promotion process against me. When the Policing Authority phoned me to tell me they were passing over me on the 31st of October 2017 they would not give me a reason for that decision.*³³⁵³

He was asked by counsel for the tribunal about a note he made of this conversation with Mr Hallinan:

Q. “Mr. Hallinan refused to inform me what those issues were and simply said he couldn’t discuss them. I continued to insist he tell me as what had just happened had an adverse impact on my character, reputation and career.”

Did you feel that at the time?

A. *I did. I felt it was very damaging to me, because a couple of days before that, on the 29th October, my promotion had again been discussed on the News at One radio programme on RTÉ that Sunday. On that programme it had been indicated that the then head of HR, Mr. Barrett, had written to the Policing Authority about me.*³³⁵⁴

On the same day, Supt Murray spoke on the phone with Mr Nugent. Counsel for the tribunal asked him to recall this conversation:

*... I wanted to tell him about the document that I had furnished already to the organisation back in February of ‘17. I felt that I was confident that I had fully dealt with every issue that had been raised in the media. I suppose in May of ‘17 I had learned, when I got the statement of claim in relation to civil proceedings, what exactly were the complaints against me and I was confident that the document I had provided had dealt with them as far as from my perspective. And I asked, you know, if that report had gone to the Policing Authority or if it could be made available to them, so as they could address any issues that they had that were in the public domain, which seemed to be something of concern to them. You know, I suppose I was anxious to make him aware that in my dealings in Athlone I had, you know, I suppose as far as I was concerned, acted within the policies of An Garda Síochána in the full sight by my line management and the Commissioner – or Chief Superintendent Wheatley was fully aware of how I managed Athlone.*³³⁵⁵

In his statement to the tribunal, Supt Murray outlined that he was informed on 15th November 2017 that A/C Finn would be investigating Garda Keogh’s bullying and harassment complaint.³³⁵⁶ He spoke with Mr Nugent the following day in relation to the provision of the document he had prepared, regarding the civil proceedings, to the Policing Authority.³³⁵⁷ Supt Murray referred in his statement to coverage on RTÉ Radio One on 19th November 2017, which he stated:

*... had a feature regarding Assistant Commission[er] Finn’s appointment to investigate Garda Keogh’s allegations against me. Referring to me the programme indicated the investigation was directed at a senior officer on the Policing Authorities promotion list. Further media commentary on the feature was highlighted on the RTE website and the Irish Independent and Daily Star newspapers of 20th November 2017.*³³⁵⁸

³³⁵³ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3103

³³⁵⁴ Tribunal Transcripts, Day 145, p. 128, Evidence of Supt Pat Murray

³³⁵⁵ Tribunal Transcripts, Day 145, pp. 131-132, Evidence of Supt Pat Murray

³³⁵⁶ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2073

³³⁵⁷ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2073

³³⁵⁸ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2074

Supt Murray further stated that he wrote to the Garda Commissioner on the 28th November 2017:

I highlighted my concerns to the Garda Organisation regarding what I felt was an orchestrated effort to prevent my promotion by the emergence of a complaint just then, which had apparently been made by Garda Keogh in March 2017, and which was being combined with a media and political campaign against me, occurring at a time when my name was before the Policing Authority for consideration for promotion to the rank of Chief Superintendent.³³⁵⁹

Supt Murray told tribunal investigators that this document spoke for itself and that:

My correspondence relates entirely to the bullying complaints and the way I felt it was orchestrated. In an exchange of emails with the PA when they passed over me for promotion on the first occasion they mentioned matters in the public domain as a reason but wouldn't go further. To introduce that when it was part of the promotion process at all was, in my view, entirely unjustified as no objective analysis had occurred and I was adamant the public allegations were without foundation. When the bullying complaint was introduced the PA focussed on that and they didn't talk about the public domain any more, just about the bullying complaint and no explanation has ever been given to me. It was unprecedented as far as I am concerned and I alerted the Garda organisation to my concerns and I got no response to that other than an acknowledgement.³³⁶⁰

Counsel for the tribunal drew Supt Murray's attention to an extract from his letter to the Garda Commissioner which stated that *'I must ask you now to outline to me the entire circumstances of the complaints making and the reasons for the delay involved'*:

- Q. You will appreciate that in hindsight you're at one in relation to this in relation to Garda Keogh's position ...
- A. Yes.
- Q. – in terms of the delay –
- A. Yes.
- Q. – in relation to the investigation?
- A. Yes.
- Q. But you seem to be coming at it from a different angle, isn't that right?
- A. I'm looking at it from the angle of it being introduced at a particular time following what I saw as a political and media campaign and that certain elements were introduced then further along. So in September I had RTÉ and the Dáil, in October I had RTÉ again and a letter from Mr. Barrett to the Policing Authority, I suppose suggesting a scenario in relation to this complaint. And then in November again more media with the introduction of the appointment of Assistant Commissioner Finn in relation to this. And I felt all those things were occurring in or about the time of Policing Authority meetings where my appointment was perhaps being considered.
- Q. You will appreciate that Garda Keogh's position in relation to this is that there was a delay

³³⁵⁹ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at pp. 2074-2075

³³⁶⁰ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at p. 3110

in the investigation to facilitate your promotion so that there could be a declaration that you had no issues to be dealt with in An Garda Síochána?

- A. *I wouldn't agree with that. And when I studied the documents from the Tribunal, you know, between the time Garda Keogh made the complaint on the 27th March and until he sent a letter to Garda Headquarters on the 21st September, I don't see any enquiries being made in all the correspondence that's there even about me to various bodies, I don't see any enquiries about this particular complaint.*

Or where it was in that period. Particularly from when he learned I was on a promotion list again in July of '17 until 21st September '17, while he wrote plenty of letters, I just don't see any enquiries about where that complaint was at that particular time.³³⁶¹

He was asked by counsel for the tribunal whether he believed he was being treated unfairly by the organisation at the time:

I suppose I felt that I was going to be scapegoated because of the position that may have been adopted by people who were making decisions about me because of what was in the media and the Dáil. And I felt that I was going to be scapegoated to allow placation of, I suppose, all of that noise that was occurring with politicians in Garda Keogh's favour.³³⁶²

In his statement to the tribunal, Supt Murray referred to December 2017:

On 22nd December 2017 at 1:36PM I received a telephone call from Ms. Helen Hall CEO of the Policing Authority who informed me that the Authority were again for the second time passing over me in the order of merit and promoting a person further down the promotion list at number nine (9). Ms. Hall confirmed for the first time, that the issue effecting my promotion were complaints being made by Garda Keogh. She indicated both her and the Policing Authority's annoyance in that she had been receiving incomplete information from An Garda Síochána despite repeated requests. She said the Policing Authority wanted to be fair to Garda Keogh. I informed Ms. Hall that I had prepared a document for An Garda Síochána in January 2017 outlining all of my interactions with or about Garda Keogh in response to the initiation of civil proceedings by him. I offered Ms. Hall the document to overcome the impasse. She indicated it might be helpful but she would have to check her legal basis for receiving it from me.³³⁶³

The tribunal heard evidence that Supt Murray had telephone conversations with A/C Finn in December 2017 and January 2018. They also met at Supt Murray's home on 18th January 2018 and had a meeting that lasted over four hours. The notes and details of these conversations and meetings are described above.

Supt Murray stated that, on 29th January 2018, he spoke with Ms Hall, who informed him that the authority had sat in special session to consider his promotion on 26th January 2016. Ms Hall had distributed Supt Murray's report to members, and *'following that, the Authority was happy to promote me and back date that promotion to 26th October 2017'*. He said in his statement that:

She discussed how the Authority would release a statement to the media to cover the promotions that had occurred since the 1st October 2017 and that they would release the names of the persons promoted, including mine, in alphabetical order for the first time rather than the order of merit as determined by the competition as had been the case previously. Ms. Hall informed me that the

³³⁶¹ Tribunal Transcripts, Day 146, pp. 12-13, Evidence of Supt Pat Murray

³³⁶² Tribunal Transcripts, Day 146, pp. 19-20, Evidence of Supt Pat Murray

³³⁶³ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2076

*Policing Authority expected a political and media backlash from their decision to promote me and that I should also expect that backlash.*³³⁶⁴

In his statement to the tribunal, Supt Murray also referred to political coverage of his promotion in February 2018:

*On 6th February 201[8] Ms. C. Daly TD, referred to my promotion in a negative way in Dail Éireann citing allegations Garda Keogh was making against me.*³³⁶⁵

He told tribunal investigators that Garda Keogh did the following:

*Garda Keogh was part of an orchestrated process to damage me as much as he possibly could and my statement and PM page 26 onwards refers. And delay in the investigation of the bullying was never anything I had involvement in. I cooperated fully with it from early January 2018 and I was concerned about the delay myself. Chief Superintendent Wheatley and I queried the delay in the investigation. We were anxious it be concluded as it was hanging over us. I felt it was an orchestrated and structured campaign against me with the PA through the media and in Dáil Éireann, with elements introduced into the mix at particular times between September and December 2017, and into January 2018. The PA reacted to that and from my perspective it was outrageous how the PA behaved in their interaction with Garda Greene. That is completely beyond any normal ethical behaviour. As an organisation that has ethics as a virtue they had a complete disregard for me who had been selected in an open and transparent promotion competition by two interview boards and a pre selection board. I then found myself with the PA passing over me in the order of merit twice without reason or foundation. I regret the PA hadn't engaged with me earlier on, as their perceived views of me as a result of public exposure could have been resolved very early. They allowed my character to be drawn through the mud for no reason whatsoever I believe.*³³⁶⁶

He continued that:

*I find these clandestine and covert activities and the interaction Garda Keogh had with a myriad of state bodies, including the PA and mentions he makes of Josephine Fe[e]hily to be most unusual. I have no knowledge of what direct interaction occurred with the PA and Garda Keogh. It is clear he had interactions about me with the Minister [for] Justice, GSOC, the Commissioner and senior members of An Garda Síochána, media and politicians and all of those interactions had a direct fixation on me in an irrational way. I believe there is no foundation for targeting me in that fashion.*³³⁶⁷

Supt Murray was asked by counsel on behalf of Garda Keogh why he did not disclose the bullying and harassment complaint to the Policing Authority:

There was no obligation to me to anything about bullying on the application form, and all one has to do is read the clearance form that I filled out, that I disclosed. I suppose it would be prudent to put it up on the screen, seeing that you are asking that question, and if you bear with me, I should be able to get the page number. I think it could be around 2624 or thereabouts. It's the copy of the declaration that I completed, and you will see from reading that, that nowhere on it does it say anything about it. It could be a few pages on.

³³⁶⁴ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2077

³³⁶⁵ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2078

³³⁶⁶ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3111-3112

³³⁶⁷ Tribunal Documents, Investigator Interview of Supt Pat Murray, p. 3010 at pp. 3118-3119

Q. *Chairman: That's all right. You say the application form did not say – I mean, there's no need for us to put it up, unless you particularly want to draw attention to it.*

A. *The application form didn't say it, nor did the vetting form.*

Chairman: I understand.

Q. *I just put it to you, so there's no need to take it up, that the application form does ask for you to update any of the matters that you deal with should they change?*

A. *Absolutely. And the update, as far as I was concerned, could only have been provided after the 15th November, when I was noted formally of the bullying complaint. At that time I discussed with my solicitor, should I now formally notify the Policing Authority of this, and because they already were now aware of it, it was in the public domain, I decided not to. I didn't think it would serve any purpose.*

Q. *Well, I am putting it to you that, as you say, it was quite clear to you back in March, the 1st March, that this was – there was an investigation underway in respect of claims of bullying and harassment being made by Nick Keogh against you?*

A. *No, that's not true.*

On the 1st March, and I think I heard Chief Superintendent Scanlan say it yesterday, he was not appointed to investigate anybody or anything at that point in time. He led me to believe he was meeting Garda Keogh the next day, to take some kind of a statement. He mentioned it to me again on the 23rd March, and we went through the note earlier on, and he said to me that he hadn't been able to meet Garda Keogh. And that's as I saw it. And I didn't know that there was any bullying complaint made against me until the 24th September, when it appeared in the public domain and then on the 27th in the Dáil.³³⁶⁸

Counsel for Garda Keogh asked Supt Murray about the section on the form advising notification to the Policing Authority of any relevant change in circumstances:

Q. *Do you accept that that obliges you to notify them of anything which alters that which you have said, any updates, after sending it in?*

A. *It depends. Like, the rest of the questions, if you care to go down through them, do not relate in any way to bullying and harassment. And I think it's prudent to go down through them. And again, as I said to you, when it came to my knowledge on the 15th November, I discussed with my solicitor whether I should now formally advise the Policing Authority and they said there's no point because they already know, it's just semantics. And they have never raised an issue with me about that, and it's their competition and their rules and their vetting and their decision to appoint.³³⁶⁹*

Supt Murray was asked by counsel for An Garda Síochána whether he had targeted or discredited Garda Keogh:

Q. *Concerning the question of whether you engaged in the targeting or discrediting of Garda Keogh, and we are looking at it under the rubric of your promotion. What is the position you take in relation to how your promotion was dealt with and Garda Keogh?*

³³⁶⁸ Tribunal Transcripts, Day 146, pp. 84-86, Evidence of Supt Pat Murray

³³⁶⁹ Tribunal Transcripts, Day 146, pp. 88-89, Evidence of Supt Pat Murray

- A. Well, I don't – I can't understand how the allegation could be made that I targeted and discredited Garda Keogh merely by trying to fulfil a mission and move my career forward by applying for promotion and being successful in those competitions and demonstrating competency and the capability and capacity to carry out the role, being, I suppose, tested in that fashion at the interview boards that I sat.³³⁷⁰

Further Responding Statements and Evidence on the Issue

Inspector Aidan Minnock

In his statement to the tribunal, Insp Minnock referred to the allegation by Garda Keogh that the investigation of his bullying and harassment was delayed to facilitate Supt Murray's promotion:

*I do not believe it was in Chief Superintendent Murray's interest to delay the investigation of this complaint, as the investigation was a source of delay in his promotion, rather than facilitating it.*³³⁷¹

Former Acting Commissioner Dónall Ó Cualáin

In his statement to the tribunal, the former Acting Commissioner said that he did not sit on the interview board that selected Supt Murray for promotion.³³⁷² He stated that he signed the clearance form in respect of Supt Murray in the following circumstances:

*On the 19th September 2017, having considered the report submitted by Assistant Commissioner Michael Finn which showed that there was nothing unfavourable on Superintendent Pat Murray's record I signed the clearance forms for the three candidates...*³³⁷³

In his evidence to the tribunal, he explained the procedure for signing clearance forms:

I became aware that clearances had been sought. In my role as deputy commissioner of Governance and Strategy, I would have been the point of contact from the very early stages of the Policing Authority's taking over the whole promotion process in early 2017.

The Commissioner then delegated the function of the clearance process to assistant commissioner of Governance and Accountability.

Who was Eugene Corcoran at the time, Commissioner Eugen Corcoran, and he was under my control and my side of the house. So, all clearance requests came in to the Commissioner's office and were sent out through my office for the attention of Assistant Commissioner Corcoran, who could then go to all of the sections and ensure that matters that were required in the clearance forms would be explored and that they would come back with the response.

In those early stages, when this policy was still being bedded in by the Policing Authority, there was some questions about the form itself. For example, it was very clear that they wanted any criminal or discipline issues recorded, but they were silent on bullying and harassment, even though having discussed it with them myself, it was clear to me very early on that bullying and harassment was something they wanted to hear about. So it was something that need to be in form, if there was anything of that nature.

After the early stages, where there was an issue with the few clearance forms because of that

³³⁷⁰ Tribunal Transcripts, Day 146, p. 158, Evidence of Supt Pat Murray

³³⁷¹ Tribunal Documents, Statement of Insp Aidan Minnock, p. 679 at p. 694

³³⁷² Tribunal Documents, Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 7306 at p. 7334

³³⁷³ Tribunal Documents, Statement of Former Acting Commissioner Dónall Ó Cualáin, p. 3957 at p. 3967

lack of clarity, it was decided that either myself or the Commissioner would sign all subsequent clearance forms, that it had to be at my level at a minimum. So there was a higher level view and we could ensure that all necessary sections were contacted in relation to whatever information might be out there.

So that's how things developed over the early part of 2017. So then, I took over on the 11th September. I found out shortly after taking over that clearance forms had gone back to the Policing Authority. Now, Assistant Commissioner Finn at that stage was in charge of traffic, policing and policy.

So I said, no, this needs to be signed by a deputy commissioner. So I said – or the Commissioner. So I want the forms to be resent through the process so that I sign them and that the Authority will be happy at the level that they needed to be signed from there. So that's what happened.

So, the week that the request came in I think was the 6th September, I was away on leave that week, that's the week when Commissioner O'Sullivan decided to retire. And that all happened in those few days. Then Assistant Commissioner Finn signed these forms. I realised that there was an error in the context that he shouldn't have gone directly back and he shouldn't have been the person signing it, and I remedied that by what I did.³³⁷⁴

In his statement to the tribunal, he said that:

I was not aware of a complaint made against Superintendent Pat Murray under the Bullying and Harassment policy. If known, this would have been noted in the clearance form being returned to the Policing Authority.³³⁷⁵

He also said that he first heard of Garda Keogh's bullying and harassment complaint on RTÉ Radio One on 24th September 2017. He stated that he was surprised to learn of the complaint on RTÉ Radio One, and that it had not been picked up by an internal process.³³⁷⁶ He said in his statement that:

I immediately sought an update on all matters relating to the CR. In October 2014 given my prior involvement in certain matters pertaining to the CR and on the basis of legal advice from the Head of Legal Services I instructed the Chief Administrative Officer, Mr Joe Nugent, to oversee all matters pertaining to the CR without recourse to me... This included the establishment of how all aspects of the CR's complaints were being dealt with and liaison with the Policing Authority on all future queries regarding clearance for Superintendent Murray.³³⁷⁷

In his evidence to the tribunal, former Acting Commissioner Ó Cualáin said that:

I had no knowledge of the bullying and harassment claim. My first knowledge of that was actually after I was appointed acting commissioner in September. It was over the public airwaves on the 24th September during a news report. That was my first time hearing about Garda Keogh's bullying and harassment complaint, which had been made, and to give context to it, in relation to it being made earlier that year and that there was still no appointment.³³⁷⁸

Counsel for the tribunal asked the former Acting Commissioner if he was aware of the email sent on behalf of Garda Keogh on 17th August 2017:

³³⁷⁴ Tribunal Transcripts, Day 149, pp. 72-75, Evidence of Former Acting Commissioner Dónall Ó Cualáin

³³⁷⁵ Tribunal Documents, Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 7306 at p. 7336

³³⁷⁶ Tribunal Documents, Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 7306 at p. 7336

³³⁷⁷ Tribunal Documents, Statement of Former Acting Commissioner Dónall Ó Cualáin, p. 3957 at p. 3967

³³⁷⁸ Tribunal Transcripts, Day 149, p. 60, Evidence of Former Acting Commissioner Dónall Ó Cualáin

No. Again, Chairman, that would immediately have rung bells in my mind, the bells that rang very loudly in September when I heard the press, I suppose, programme in relation to matters regarding Garda Keogh and his bullying and harassment complaints. That would have brought it into then a current issue as distinct from something that my view of Garda Keogh's issues were at the time when I was hands on in my own investigation in the context of the issues that he had. This brought it into a far more recent timeframe.

Q. ... Do you recall seeing this letter?

A. I don't, Chairman, I have to say. That line, if I had seen that, this thing about "clandestinely secreted and covered up" that would definitely have caused me to ask questions as to why this was being alleged.³³⁷⁹

He was asked by counsel for the tribunal whether he considered that he was obliged to disclose a bullying and harassment complaint to the Policing Authority:

... I was aware when signing these forms that there was a requirement on me, if I knew about it, to report on a bullying and harassment complaint if such was the case.

And I was well aware when I signed those forms that that was the requirement. And I ensured and asked my office staff as it came back to me, has this gone to Internal Affairs, has this gone to the HR section, has it gone around the houses in the context of ensuring that we have the most up to date position in relation to all of the candidates, not just Superintendent Murray.³³⁸⁰

Q. ... And then it's signed by you on the 19th September. So to be clear about this, had you known of a bullying and harassment allegation, you would have included that on this form?

A. Yes. And that is despite the fact that the office charged with holding the record, as it were, came back and said we have nothing on record. In effect, no appointment had been made to investigate anybody or in this case Pat Murray. But if I had known that there was the possibility of that happening, I would have referenced it in that report going back. Even though there was no appointment made, it was important that the Authority would be kept fully briefed in relation to any matters, even if there hadn't been appointments made, in my view, and that is what I did immediately having learned of it on the 24th September. I would have been in contact with the Policing Authority immediately, saying, look it, there are issues around that clearance because there is – there may be a disciplinary matter or a bullying and harassment matter that has to be dealt with by Pat Murray.³³⁸¹

Counsel for the tribunal asked him about what, if any, action he took after the RTÉ report:

... I got on to my office staff and said I want a report on this, I want a full chronology of events as to when matters were first brought to our attention. Because I felt here I was in my first two weeks as acting commissioner and I am hearing about a very serious matter over the airwaves. So, I wasn't very happy with that. I looked for reports. I brought it up at my first executive meeting of that week and would have asked the CAO, Joe Nugent, to ensure that we get a full update as quickly as possible, because I was aware that the clearance had gone to the Policing Authority and I was anxious to ensure that I was able to give them as clear and as accurate a position as I could, because at that juncture, as we now know, an appointment still hadn't

³³⁷⁹ Tribunal Transcripts, Day 149, p. 67, Evidence of Former Acting Commissioner Dónall Ó Cualáin

³³⁸⁰ Tribunal Transcripts, Day 149, p. 78, Evidence of Former Acting Commissioner Dónall Ó Cualáin

³³⁸¹ Tribunal Transcripts, Day 149, p. 80, Evidence of Former Acting Commissioner Dónall Ó Cualáin

*been made and there was some confusion as to who was actually being complained of over that number of months.*³³⁸²

Counsel for the tribunal asked the former Acting Commissioner if he advised the Policing Authority of the bullying and harassment complaint at that stage:

*... They weren't alerted in writing, Chairman, but I would have been in contact with the Authority. At that stage all I knew was what in the public domain, some of my staff were putting together the chronology of events and it was around early October before I started to get a clear picture of what actually was happening with Garda Keogh's bullying and harassment file. At that stage I felt that it would be prudent for me to take a step back in the context of any future involvement in decision making around that process. I did alert the CEO, Helen Hall of that, and I sought legal advice internally on that matter. That's the course I took, and I appointed the CAO, Mr. Joe Nugent to deal with all matters pertaining to both the clearance process in the first instance, but also the bullying and harassment complaint and ensuring that it was moved on as efficiently and as urgently as possible.*³³⁸³

He was asked by counsel on behalf of the tribunal about his evidence that the internal processes in An Garda Síochána did not pick up the bullying and harassment allegations:

*Yes. There was learning there as well, Chairman. Obviously even before appointments are made, if the organisation is aware that there is a pending or possible complaint, let it be in discipline, bullying and harassment or criminal, whatever area, it's important that the Commissioner's office is fully aware of all of those things at this juncture, because in order to ensure that we are fully informing the Policing Authority with regard to the promotion prospects of the candidates. But, more importantly, that, you know, individuals who are coming forward with these complaints, that they're, you know, in this – at this point we have a confidential reporter, a protected discloser, who had come forward much earlier. He was well known in the organisation in the context that he had made this complaint. So, there should have been, I think, an elevated sense of urgency about that particular complaint.*³³⁸⁴

He stated that, following his appointment of Mr Nugent, he was kept up to date 'in a general sense',³³⁸⁵ but was unaware of any additional enquiries made by the Policing Authority, and had no subsequent interaction with them in relation to Supt Murray's promotion.³³⁸⁶

In respect of the delay in progressing the bullying and and harassment investigation, he told the tribunal:

*... In regard to the bullying and harassment, this came into the organisation I think in November of 2016, if my memory serves me, according to what I heard here, and an appointment wasn't made for 11 months. There is an issue there in relation to delay, in my view. It should have happened much quicker.*³³⁸⁷

Mr Joseph Nugent

In his statement to the tribunal, Mr Nugent confirmed he was requested by Acting Commissioner Ó Cualáin to liaise with the Policing Authority as follows:

³³⁸² Tribunal Transcripts, Day 149, pp. 82-83, Evidence of Former Acting Commissioner Dónall Ó Cualáin

³³⁸³ Tribunal Transcripts, Day 149, p. 87, Evidence of Former Acting Commissioner Dónall Ó Cualáin

³³⁸⁴ Tribunal Transcripts, Day 149, pp. 89-90, Evidence of Former Acting Commissioner Dónall Ó Cualáin

³³⁸⁵ Tribunal Documents, Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 7306 at p. 7337

³³⁸⁶ Tribunal Documents, Investigator Interview of Former Acting Commissioner Dónall Ó Cualáin, p. 7306 at p. 7338

³³⁸⁷ Tribunal Transcripts, Day 149, p. 91, Evidence of Former Acting Commissioner Dónall Ó Cualáin

*... to oversee matters relating to the various complaints made by Garda Keogh and liaison with the Policing Authority in respect of requests for information in respect of their consideration of the promotion of Superintendent Patrick Murray to the rank of Chief Superintendent, with particular regard to queries they may raise in respect of complaints made by Garda Keogh against Superintendent Murray.*³³⁸⁸

Mr Nugent said that he brought together the various issues surrounding Garda Keogh's complaints³³⁸⁹ and that:

*Through October 2017 into late January 2018 I was in correspondence with Ms. Helen Hall of the Policing Authority in respect of the provision sought by the Authority to assist its consideration of the appointment of Superintendent Patrick Murray to the rank of Chief Superintendent. This involved the provision of a range of responses to queries from the Authority and culminated on 26 January 2018 with a declaration from An Garda Síochána that there were no grounds relating to health, character or otherwise known to An Garda Síochána that would make him unsuitable to be appointed to the post of Chief Superintendent.*³³⁹⁰

He was asked by counsel for the tribunal whether he recalled a phone call with Supt Murray on 2nd November 2017 and in particular Supt Murray's note of the call:

*I don't. But, as I said before, I am not going to dispute, you know, the notes Chief Superintendent Murray has made. Do I recall using the word "badly wronged" no, I may have used other words, I might have said unfair perhaps. So what was my position on this? In my, you know, vast experience in the public service I hadn't come across a situation where an allegation, and that's all it was at that point in time, an allegation which had not at that point be proven, would be used to defer somebody's promotion. Like in my experience I had never come across that. And I am not saying that – the Policing Authority has their own processes and I am conscious of what the Judge said yesterday. But in my opinion that's unfair.*³³⁹¹

Counsel on behalf of the tribunal asked Mr Nugent to explain his opinion in this regard:

*... I think across the organisation, the idea – people in the organisation are used to due process and we had a situation where an individual – an individual's promotion was being delayed in advance of the process being completed. No more than that. There were other ways, it seems to me, to do this. Ultimately an individual appointed, and this would have been appointed on probation, if it a matter of concern surfaced later on, it could have been dealt with that way. What was at play here was not that. So I am offering my view on it, certainly the view of others in the organisation, other senior people in the organisation, as a process it seems unfair.*³³⁹²

Mr Nugent further stated in evidence that:

*The fact that there was a lot of discussion going on in the media about whether Superintendent Murray should be appointed or not. It seemed to me worrying that an independent process, you know, that had that transparent and accountable approach was perhaps being frustrated by media commentary as opposed to, you know, it following the normal routes that it should progress.*³³⁹³

³³⁸⁸ Tribunal Documents, Statement of Mr Joseph Nugent, Chief Administrative Officer, pp. 7304-7305

³³⁸⁹ Tribunal Documents, Statement of Mr Joseph Nugent, Chief Administrative Officer, p. 7304 at p. 7305

³³⁹⁰ Tribunal Documents, Statement of Mr Joseph Nugent, Chief Administrative Officer, p. 7304 at p. 7305

³³⁹¹ Tribunal Transcripts, Day 148, p. 54, Evidence of Mr Joseph Nugent, Chief Administrative Officer

³³⁹² Tribunal Transcripts, Day 148, p. 55, Evidence of Mr Joseph Nugent, Chief Administrative Officer

³³⁹³ Tribunal Transcripts, Day 148, pp. 62-63, Evidence of Mr Joseph Nugent, Chief Administrative Officer

Counsel for the tribunal referred Mr Nugent to Supt Murray’s note of a phone conversation with him on 8th January 2018:

Q. ... He is saying that:

“We discussed me being passed over for a second time. He said he was anxious to get me over the line as he felt I have been badly treated.”

So this is quite a theme that is developing in the sense of the organisation supporting Superintendent Murray and the phrase here is “getting him over the line” do you accept that language or the sentiment that is being expressed?

A. *I certainly express the sentiment. I mean, again to reflect on this, this matter, just this particular matter had now been running since are we saying the request was the 12th October I think, so at this point we had essentially run – just on this issue, had been running for a series of months. In that regard, it was taking an excessive amount to address whether Superintendent Murray should be promoted or not. That’s unfair. I am not putting blame on anybody, but I am saying it is unfair for the length of time for this to be dealt with. You know, I take responsibility for the material we provided to the Policing Authority and that wasn’t answering the questions they have. That is unfair and it was unfair on Superintendent Murray that it would drag on that long.³³⁹⁴*

Mr Nugent was cross-examined by counsel on behalf of Garda Keogh who pointed out that no one had informed Garda Keogh of the ongoing issues in relation to the promotion of Supt Murray. Counsel asked Mr Nugent if he could understand that Garda Keogh, and the general public might find this suspicious when contrasted with the level of contact between himself and Supt Murray:

No, I don’t. I mean Superintendent Murray was – the matter that we are talking about here relates to the promotion of Superintendent Murray. In many ways it had nothing to do with anyone else in the organisation and I don’t mean that in a disrespectful way, the matter related to Superintendent Murray. I was the one who was tasked with addressing and engaging with the Policing Authority in relation to that matter. I wasn’t the person who was tasked in relation to dealing with the bullying and harassment allegations levelled by Garda Keogh. So my engagement with Superintendent Murray seems to me most appropriate. In fact, I think it would have been – I think I was equally critical of the organisation yesterday in terms of not providing sufficient information to Garda Keogh in relation to what was happening in relation to the bullying complaint.³³⁹⁵

He was asked by the Chairman if he should have phoned Garda Keogh:

No, I should not have phoned Garda Keogh. I was tasked – you have contrasted that with my engagement in relation to Superintendent Murray. I was personally tasked with providing the information to the Policing Authority in relation to [Supt] Murray’s promotion. My role in relation to Garda Keogh was about the process. There were others who were tasked with making and dealing with those issues. That was their responsibility. For me to become involved, in my opinion would have been inappropriate.³³⁹⁶

Counsel on behalf of Garda Keogh suggested the following to Mr Nugent:

³³⁹⁴ Tribunal Transcripts, Day 148, pp. 79-80, Evidence of Mr Joseph Nugent, Chief Administrative Officer

³³⁹⁵ Tribunal Transcripts, Day 148, pp. 96-97, Evidence of Mr Joseph Nugent, Chief Administrative Officer

³³⁹⁶ Tribunal Transcripts, Day 148, pp. 99-100, Evidence of Mr Joseph Nugent, Chief Administrative Officer

- Q. ... Irrespective of what happened, irrespective of how this would affect Garda Keogh, Superintendent Murray, prior to any determination, is appointed as a chief superintendent, irrespective of any outcome of the complaints made by Garda Keogh in 2016. We're here to discuss whether or not that had the effect of discrediting or targeting Garda Keogh. I am putting it to you that it must have the effect of discrediting Garda Keogh?
- A. I certainly am not in a position to give any evidence around that whatsoever. My responsibility related to the specific issues associated with the appointment of Superintendent Murray, who entered into a process that was advertised by the Policing Authority with a set of procedures that were applied. My job was to address and deal with those. No more than that.³³⁹⁷

He was asked the following by counsel for An Garda Síochána:

- Q. Mr. Nugent, if we could just deal with the Policing Authority issue first. In terms of the level of contact that you had with Superintendent Murray, and there seems to be some criticism about the level of contact from Garda Keogh's counsel. Superintendent Murray himself described himself as under pressure at the time, insofar as he considered he was under attack from a number of different angles. How did he strike you at the time?
- A. Yeah, I certainly share that. I think a lot of the contact was being initiated by Superintendent Murray and it reflected, I think, a broader concern that – I think he referenced it in other evidence, about the impact this was having on himself, on his family and how he was perceived. So I absolutely felt – and I could hear that in the nature of the tone of the conversations, that he did feel under pressure, yes.³³⁹⁸

Counsel for An Garda Síochána also asked Mr Nugent about his contacts with A/C Finn:

- Q. And your contact with AC Finn was also only for the purpose of getting information and providing that to the Policing Authority?
- A. Absolutely. The Policing Authority wanted an update as to the status of the investigation, they wanted to understand how long it was going to take to be progressed and my contact with AC Finn was purely in relation to that, no more.
- Q. Did you offer to the Policing Authority any subjective comments or opinions on the bullying and harassment complaint?
- A. No, I didn't. No.³³⁹⁹

Mr John Barrett

In his interview with tribunal investigators, Mr Barrett said that he had no involvement in the promotion process concerning Supt Murray but that he had '*advised the Policing Authority by letter dated 13th October 2017 of matters raised by Garda Keogh and his solicitor*' in his role as Executive Director, HRPD.³⁴⁰⁰

He stated that his office was involved in the management of Garda Keogh's bullying and harassment complaint, which commenced in November 2016.³⁴⁰¹ In respect of the allegation by

³³⁹⁷ Tribunal Transcripts, Day 148, p. 107, Evidence of Mr Joseph Nugent, Chief Administrative Officer

³³⁹⁸ Tribunal Transcripts, Day 148, p. 115, Evidence of Mr Joseph Nugent, Chief Administrative Officer

³³⁹⁹ Tribunal Transcripts, Day 148, pp. 116-117, Evidence of Mr Joseph Nugent, Chief Administrative Officer

³⁴⁰⁰ Tribunal Documents, Investigator Interview of Mr John Barrett, Executive Director HRPD, p. 15958 at p. 15974

³⁴⁰¹ Tribunal Documents, Investigator Interview of Mr John Barrett, Executive Director HRPD, p. 15958 at p. 15975

Garda Keogh that the processing of his complaint was delayed to facilitate the promotion of Supt Murray, Mr Barrett told tribunal investigators that:

I am not aware of any complaint of Garda Keogh having been misled. I can see from the materials made available to the Tribunal that Garda Keogh's solicitor wrote to me on 25th September 2017 and I progressed matters thereafter. So my understanding is that from September 2017, there was a case conference held in my office on Tuesday, 3rd October 2017 on foot of this letter (from [Garda Keogh's solicitor] dated 25th September 2017) and the minutes are contained in Chief Superintendent Tony McLoughlin's statement.³⁴⁰²

He further stated that:

The suggestion by Garda Keogh that there was a delay to enable Pat Murray's promotion to Chief Superintendent is not correct, as far as I am concerned. I had nothing to do with the selection of Pat Murray for Chief Superintendent. I wrote one piece of correspondence to the Policing Authority on this matter. This letter of the end of September, which came directly to me dated 25th September 2017 from [Garda Keogh's solicitor], triggered a series of responses, including the case conference held in my office on the 3rd October 2017.³⁴⁰³

He rejected Garda Keogh's allegation, stating that *'I had no knowledge whatsoever of any plan or programme to enable or improve the opportunity of Pat Murray. I think Garda Keogh is incorrect in the assertion he makes'³⁴⁰⁴* and he said that:

I had almost nothing to do with this in the sense that it was a competition, as I understand it. It was a Policing Authority competition and they conducted the interviews and all of the process. I had never met Pat Murray until his appointment to Chief Superintendent at the Garda College in Templemore. In that role, he reported to me. Any suggestion I was either seeking to assist him or obstruct him is absolutely incorrect. I had no knowledge of Pat Murray at that time. The only other involvement I had in the matter was my letter dated 13th October 2017 to the Policing Authority, written on foot of my obligation to keep the Policing Authority advised of any investigations/allegations with respect to members being considered for promotion.³⁴⁰⁵

In respect of his letter dated 13th October 2017, Mr Barrett stated that he could not recall whether he notified the Office of the Commissioner about it but stated that he had *'an obligation to ensure that all relevant information available to me was put before the Policing Authority/ Promotions Authority'³⁴⁰⁶* He asserted that *'if there was a plan to present a delay as a facilitation of Pat Murray's promotion, I had no hand, act or part in any such plan.'³⁴⁰⁷*

Mr Alan Mulligan

In his statement to the tribunal, Mr Mulligan recalled that on 17th October 2017 he received correspondence from the assistant commissioner, Governance and Accountability, in relation to clearance of candidates for promotion and that *'this correspondence sought details in relation to allegations made against Superintendent Pat Murray.'³⁴⁰⁸* He said that he forwarded this correspondence to Ms Kathleen Hassett.³⁴⁰⁹

³⁴⁰² Tribunal Documents, Investigator Interview of Mr John Barrett, Executive Director HRPD, p. 15958 at pp. 15976-15977

³⁴⁰³ Tribunal Documents, Investigator Interview of Mr John Barrett, Executive Director HRPD, p. 15958 at p. 15977

³⁴⁰⁴ Tribunal Documents, Investigator Interview of Mr John Barrett, Executive Director HRPD, p. 15958 at p. 15978

³⁴⁰⁵ Tribunal Documents, Investigator Interview of Mr John Barrett, Executive Director HRPD, p. 15958 at p. 15986

³⁴⁰⁶ Tribunal Documents, Investigator Interview of Mr John Barrett, Executive Director HRPD, p. 15958 at p. 15987

³⁴⁰⁷ Tribunal Documents, Investigator Interview of Mr John Barrett, Executive Director HRPD, p. 15958 at p. 15986

³⁴⁰⁸ Tribunal Documents, Statement of Mr Alan Mulligan, HRPD, p. 3829 at p. 3843

³⁴⁰⁹ Tribunal Documents, Statement of Mr Alan Mulligan, HRPD, p. 3829 at p. 3843

On 19th October 2019, Mr Mulligan provided a ‘*synopsis*’ of Garda Keogh’s complaint to the assistant commissioner, Governance and Accountability and Legal and Compliance, as he was aware of the allegations made against Supt Murray.³⁴¹⁰

Garda Fergal Greene

In his statement to the tribunal, Garda Greene referred to the conversation with Supt Murray on 19th January 2016³⁴¹¹ and stated as follows:

I have no contemporaneous notes and I am working off my recollection so I cannot confirm the date. I do recall telling now Chief Superintendent Murray that Garda Keogh had phoned me. Garda Keogh informed me that he was in discussions with Deputy Daly and Deputy Wallace regarding now Chief Superintendent Murray’s promotion. I don’t recall using the words “dig up dirt”. I told Chief Superintendent Murray because I was uncomfortable with the information, I didn’t know if Garda Keogh had recorded the conversation, I felt it was appropriate to report it to my Superior. Chief Superintendent Murray did ask me to inform Garda Keogh that he wasn’t his enemy and he was concerned for his welfare. I did tell Garda Keogh this the next time he called me but he told me “I don’t want to hear it”.³⁴¹²

Garda Greene referred to the note of Supt Murray on 14th August 2017³⁴¹³ and stated that:

I do recall telling him that Garda Keogh would try and fire a scud prior to his formal appointment. When Garda Keogh rang me in and around this time, although I have no contemporaneous notes, Garda Keogh told me that he would “fire a scud before Pat Murray’s appointment”. He didn’t elaborate on this and I don’t know what he meant by it. I took this to be in the same context as the comments he had made about “taking down” the Commissioner and Deputy Commissioner.³⁴¹⁴

Dealing with Supt Murray’s note regarding 4th September 2017,³⁴¹⁵ Garda Greene said that he told Supt Murray that ‘*Garda Keogh was no longer going after him. Garda Keogh rang me and told me this*’.³⁴¹⁶

Assistant Commissioner Michael Finn

In his statement to the tribunal, A/C Finn confirmed that he did not receive the statement of complaint of bullying and harassment made by Garda Keogh in March 2017 when he was appointed to the role of investigator on 15th November 2017.³⁴¹⁷ He stated that he requested the statement from the Executive Director, HRPD, following a communication from Garda Keogh.³⁴¹⁸ He said that he was ‘*not made aware of the nature or content*’ of Garda Keogh’s complaint and that he was ‘*unaware of the extent of his prior involvement with Chief Superintendent Scanlan*’.³⁴¹⁹

He said that he met with Garda Keogh on 1st December 2017 and that the majority of the meeting was taken up with trying to explain the processes that he would follow and trying to

³⁴¹⁰ Tribunal Documents, Statement of Mr Alan Mulligan, HRPD, p. 3829 at pp. 3843-3844

³⁴¹¹ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2062

³⁴¹² Tribunal Documents, Statement of Garda Fergal Greene, p. 7606

³⁴¹³ Tribunal Documents, Diary entry of Supt Pat Murray, dated 14th August 2017, p. 2643

³⁴¹⁴ Tribunal Documents, Statement of Garda Fergal Greene, p. 7606 at p. 7609

³⁴¹⁵ Tribunal Documents, Statement of Supt Pat Murray, p. 2038 at p. 2070

³⁴¹⁶ Tribunal Documents, Statement of Garda Fergal Greene, p. 7606 at p. 7609

³⁴¹⁷ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4106

³⁴¹⁸ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4106

³⁴¹⁹ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4106

establish the facts/substance of Garda Keogh's complaint.³⁴²⁰ He outlined the correspondence between his office and Garda Keogh in December 2017 in respect of clarifying the persons against whom Garda Keogh was making his complaint.

He said that he was requested to provide 'a *brief of what I was appointed to investigate*' to Mr Nugent on 11th January 2018 and that the same was provided on 15th January 2018.³⁴²¹ He said in his statement that:

I reject the assertion made that I was introducing 'red herrings' or 'failing to investigate' Garda Keogh's complaint. I reject the assertion that anything I had done during the course of my investigation was done to targeted [sic] or discredited [sic] or done for the purpose of facilitating any other person to target or discredit, Garda Keogh following the making of [his] Protected Disclosure.³⁴²²

A/C Finn was asked by counsel for the tribunal how it came about that he signed the clearance form for Supt Murray:

... I was filling in actually for Assistant Commissioner Corcoran on the day. I probably would have been asking him to do it because he would have been over that section. But I think I gave my evidence on a previous occasion, both of us were sharing – we were both, I suppose, based in the bureau section of HQ, you know, so our offices were next door to each other, so if he was off, you know, I would often have other correspondence, you know, on his behalf signed something. So, as you see here, I was signing for him effectively I think. So that would sense to me reading it now that there was a sense of urgency, that they couldn't wait for him to come back so they asked me to do it.³⁴²³

He was asked by counsel for the tribunal about the process before signing the clearance form:

- Q. ... what checking process or analysis of the files do you do before you sign them and to be able to write in there the confirmations?
- A. You'd be relying on your staff in the section to have done the preparatory work for you. I mean, it isn't as if the commissioner is going to go down and check all those things. You have staff in your office, they would prepare the documents, they'd have done the due diligence and they'd bring it to you and say, look, yeah, we've checked here, there's nothing in our records there for Pat Murray or who the other people were, to say there would be any impediment to them being promoted to the rank of chief superintendent.³⁴²⁴

He was also asked by counsel for the tribunal about Garda Keogh's bullying and harassment complaint:

- Q. ... he has made a statement under the policy, bullying and harassment policy, in March 2017. So he has made a complaint a number of months beforehand?
- A. Yes.
- Q. Is this just not showing up on the system or due diligence or how is it being missed?

³⁴²⁰ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4107

³⁴²¹ Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4112

³⁴²² Tribunal Documents, Statement of A/C Michael Finn, p. 4105 at p. 4126

³⁴²³ Tribunal Transcripts, Day 151, p. 26, Evidence of A/C Michael Finn

³⁴²⁴ Tribunal Transcripts, Day 151, p. 21, Evidence of A/C Michael Finn

- A. *Well, I don't think it ever got to their section, the fact that he had made a complaint. I'm saying that now, Chair, because I have knowledge, I suppose, and we all have absorbed a certain amount from reading everything, but I can tell you now that I know that it never got to that section because I think it went from Chief Scanlan over to assistant commissioner Eastern Region and there was issues about what was going to happen, how it was going to be investigated. So they didn't have it obviously.*³⁴²⁵

A/C Finn was asked about his awareness of Garda Keogh's civil claim:

- Q. *Did you know when you signed that on the 11th September 2017, did you know that there was civil litigation where he was personally named as a defendant?*
- A. *No. I wouldn't have been aware of that.*
- Q. *And did you know that there was a bullying and harassment statement made in March to Chief Superintendent Scanlan?*
- A. *No.*³⁴²⁶

Counsel for the tribunal referred to former Acting Commissioner Ó Cualáin's view that if he had known of the bullying and harassment allegation, he would have included it on the form:

- Q. *... is that your position? Are you at one on this? Or, are you of the view that it wasn't required by the form?*
- A. *I am of the view that it wasn't required of the form, we'll say, that would have been my position back then. That when I signed that form I was of the view that it wasn't required. Even though I didn't know it was there now. But that would have been my answer if you asked me back then, like you know.*³⁴²⁷
- ... Genuinely, when I signed the form I wouldn't have felt that we had to tell the Policing Authority about – I mean, I would look down through the form, it says about criminal, discipline stuff, would I have put in a bullying and harassment? Genuinely, I don't think I would have. Now it didn't happen, because I wasn't aware of it. But if you are asking me to answer the question, honestly I don't think I would have felt – it wouldn't have flagged with me that I should have told them there was a bullying and harassment complaint.*³⁴²⁸

He was cross-examined by counsel for Garda Keogh as follows:

- Q. *Do I take it then that you just took at face value the entries in each of the boxes and signed the form?*
- A. *Correct.*
- Q. *You didn't read the file to make any independent clarifications or otherwise as to what the boxes contained?*
- A. *Well, I don't think there was anything to alert me to go, say, delving further into it. If there was something in it I would have said, oh, what's that, like you know, but there was nothing there. He had no previous discipline issues.*

³⁴²⁵ Tribunal Transcripts, Day 151, pp. 23-24. Evidence of A/C Michael Finn

³⁴²⁶ Tribunal Transcripts, Day 151, p. 28. Evidence of A/C Michael Finn

³⁴²⁷ Tribunal Transcripts, Day 151, p. 31. Evidence of A/C Michael Finn

³⁴²⁸ Tribunal Transcripts, Day 151, p. 33. Evidence of A/C Michael Finn

- Q. *I see, but this is a situation where you are signing a clearance document for somebody who is going to be a senior officer within An Garda Síochána?*
- A. *Yeah.*
- Q. *What I am suggesting or what you seem to be saying to the Chairman is that you didn't carry out your own due diligence before signing that form yourself; is that right?*
- A. *No, but sure your staff would do that for you. You'd trust area staff to prepare the documentation for you.*
- Q. *Okay.*
- A. *I suppose if there was an issue, Chair, they'd be flagging it to you, they'd be saying, oh, there's an issue there, you need to look at that.*³⁴²⁹

When asked by counsel for the tribunal about a phone call with Supt Murray on 22nd December 2017, A/C Finn gave evidence that:

*... I remember the context that I had been out of work, my back had acted up and I had gone to the doctor and I overmedicated and I remember I explained to you that a number of months later my wife and daughter were saying about they had taken me to see a consultant and I was saying I had no memory of going to see a consultant. And it was just that, I was putting the context that I didn't recall Superintendent Murray's phone call but I'm saying there was stuff happening at that time, other stuff that I didn't remember, because I felt I had overmedicated, which I was embarrassed about, Chairman.*³⁴³⁰

He was asked by counsel for the tribunal about Supt Murray's note of the conversation:

*... I can only give you my opinion and show you where I was at and where I was coming from, from my perspective Superintendent Murray's promotion was of no great concern or business to me. I wasn't tasked with doing anything in relation to him, apart from giving a CAO an update at one stage. It was of no relevance as such to me. I had a task to do, I had started the process and I think my records will show what I did through each stage of that process. I understand where Superintendent Murray is coming from, because, as I say, it was obviously to the forefront of his mind, his conversations and everything. I mean, you could not, I suppose, engage with him without sensing that this was significant for him. But, as I said, it wasn't significant for me, Chair, so I wouldn't have made notes about it or wouldn't have commented on it.*³⁴³¹

Counsel for the tribunal referred to Supt Murray's note of the phone call on 13th January 2018 that *'AC Finn offered a view that Garda Keogh and his solicitor were only looking for money in a civil claim'*.³⁴³²

- Q. *It was put to you on Day 142 did you say that and you denied that you said that?*
- A. *Yes.*³⁴³³
- Q. *... when Superintendent Murray was in the witness box a couple of days later, on Day 146, this issue came up again... he maintained a position that although you had hadn't offered*

³⁴²⁹ Tribunal Transcripts, Day 151, pp. 88-89, Evidence of A/C Michael Finn

³⁴³⁰ Tribunal Transcripts, Day 151, p. 48, Evidence of A/C Michael Finn

³⁴³¹ Tribunal Transcripts, Day 151, p. 59, Evidence of A/C Michael Finn

³⁴³² Tribunal Documents, Diary entry Bullying file of Supt Pat Murray, dated 13th January 2018, p. 16222

³⁴³³ Tribunal Transcripts, Day 151, p. 66, Evidence of A/C Michael Finn

it or volunteered it as a view but that you had agreed with him. And I just want to give you an opportunity in relation to that to comment on it, is it still your position that you have no recollection of either saying it or agreeing with it?

- A. *Correct. It's still my position and I would be very adamant of that, Chair. Yeah. I never said that. I mean, as I said, that's a very derogatory comment to say about somebody and I would be one hundred percent sure I never said that, Chair.*³⁴³⁴

He was referred to the evidence given by Supt Murray where he said that:

'It's my view and I was attributing it to him after we had the discussion about that and I suppose I felt that he was agreeing with it in the empathetic way that he had listened to me in that call'.

He was asked by counsel for the tribunal whether he accepted this:

- A. *Well, I am emphatic that I never said that, one hundred percent.*

Q. *So you never said it and you never agreed with it in relation to that?*

- A. *I never said it, that's for sure anyway, and I don't think he said it to me either, you know. I don't recall, you know, he saying it to me. But, I mean, I would be one hundred percent sure I never said that. I would not say that, you know, I am quite happy I never said that.*

Q. *... In his evidence it has moved a little bit, where he is saying that he said it and you agreed with him?*

- A. *I don't recall agreeing with him. I don't recall saying it. Definitely I'm emphatic I never said it, you know. Whether he picked it up or he thought I said it, Chair, I don't know, that would be his take. But I am quite happy, a hundred percent, I never said that.*

*I mean one thing I would say I am very emphatic about.*³⁴³⁵

In regard to the meeting of 18th January 2018, A/C Finn told counsel for the tribunal that:

*I genuinely think that Superintendent Murray misinterpreted what my role was in all this. I had no role, we'll say. My role was simply to update the CAO, which I done. But I think Superintendent Murray was of the view that I was going to be this conduit back to the Policing Authority with all this information, but I had actually done my work for CAO in terms of I responded two days earlier, 12th January or whatever it was, before I ever went to see Superintendent Murray. So as far as I was concerned I had updated the CAO and I had finished my piece of the jigsaw in that context. But I think Superintendent Murray wasn't of that mindset. He seemed to think that he was going to tell me all the stuff and I was going to tell all the stuff to Joe Nugent and going to go back to the Policing Authority. Which wasn't the case at all.*³⁴³⁶

He continued that:

I am giving you – I have no difficulty articulating now it happened and what happened. I went there on that day to give him the documentation. That is what I had planned to do, that is what I told him I was going to do and that's what I had. I have no note taker with me, and nobody with me. My sole purpose to go there was to do that. Obviously when I was there, I can now know he is of the mindset that, yes, I have the AC here, I'm going to tell him this stuff in the hope that he

³⁴³⁴ Tribunal Transcripts, Day 151, p. 67, A/C Michael Finn

³⁴³⁵ Tribunal Transcripts, Day 151, pp. 68-70, Evidence of A/C Finn

³⁴³⁶ Tribunal Transcripts, Day 151, pp. 74-75, Evidence of A/C Michael Finn

is going to go back and tell the CAO. Was that my purpose? No. Did the CAO ask me to do that? No. Did I report back to the CAO? No. That was his perception. That might be his perception, it wasn't my perception.

Q. *Chairman: Did you report back to the Policing Authority?*

A. *No, Chair no. I had actually done that two days before I went there, like it wasn't on my radar at all. Yes, when I got there, had I a curiosity in terms of what he was tell me? Yes I did. Did I sit there and listen to him tell me all this stuff? Yes, I did, Chair. It was a curiosity to me, because I was learning stuff I suppose that would be useful to me in terms of going off and doing my investigation. But apart from my sitting there and absorbing this, Chair, we'll say, as a curiosity for me, yes, I am an investigator, he was telling me stuff I wanted to know, I certainly absorbed it all, Chair, but I didn't make any note of it. I didn't go there to make a note of it. I think it would have been inappropriate for me to be taking notes. Because that wasn't the purpose of my meeting there. I solely went there to serve the documentation on him. If I had gone to do a meeting I would have brought someone with me. If this was a meeting I wanted to take something from him, I would have been prepared for it, I wasn't. That is the context of my perspective, Chair, now.³⁴³⁷*

He was further asked the following by counsel for the tribunal:

Q. *Under the policy document this was raised the last day with you, the duties of impartiality, objectivity, can I ask you, you have the superintendent saying the focus of the meeting was on the promotion, and you're carrying out this investigation, can I ask you, as I say, it may be in retrospect, the appropriateness of such a meeting?*

A. *I disagree with that. It was his perspective that the focus of the meeting was about telling me this. That was not the purpose of the meeting for me, AC Mick Finn, going there, I went there with one sole purpose, to serve this documentation on him. Which I did. As I say, Chair, if I was going for some other purpose I wouldn't have gone alone, I would have brought somebody with me to take notes to do that, you know.³⁴³⁸*

Counsel for Garda Keogh asked A/C Finn about a phone call he made to Supt Murray on 26th January 2018:

Q. *... This is the call that arises when you're at the leadership meeting in Wexford, as I understand?*

A. *Yes.*

Q. *And you said that you rang him out of courtesy to see if he got promoted. And again, I suggest to you that that is highly unfair to Garda Keogh, that you as the impartial investigator of his bullying and harassment complaint are telephoning a person against whom the complaint is made as a courtesy about their promotion. Can you understand that from Garda Keogh's perspective, how that is unfair?*

A. *I wouldn't say it was unfair. I mean, I don't think – that's kind of professional courtesy. I mean, I was ringing the man to see did he get promoted, like you know. Nothing further than that, we'll say, you know.*

³⁴³⁷ Tribunal Transcripts, Day 151, pp. 77-79, Evidence of A/C Michael Finn

³⁴³⁸ Tribunal Transcripts, Day 151, p. 79, Evidence of A/C Michael Finn

Q. *But the perception is that you have created, I suggest to you, is that you were involved in Superintendent Murray's promotion business when your brief essentially was to investigate the bullying and harassment complaint?*

A. *I wasn't involved in it, that's not fair.*³⁴³⁹

Ms Josephine Feehily

In her statement to the tribunal, Ms Feehily referred to the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015 establishing the Policing Authority and confirmed that the authority had published a governance framework setting out her duties and responsibilities as chairperson.³⁴⁴⁰ Addressing the competition for the appointment to the rank of chief superintendent in 2017 she stated that:

- *The competition was properly carried out in accordance with Regulations, which include the provisions that the Authority shall not appoint a candidate selected for appointment unless the Authority is satisfied as to the outcome of any clearance process undertaken by the candidate*
- *The Authority adopted detailed procedures, including procedures in relation to clearance of candidates*
- *In addition to the relevant provisions of its published Code of Conduct, the Authority adopted and published a specific practice note in relation to canvassing*
- *The Authority at all times emphasised to itself and to the Authority's Executive Team the confidentiality of the selection and appointment process.*³⁴⁴¹

Ms Feehily stated that she sat on the selection board for the final stage of Supt Murray's promotion competition³⁴⁴² and that the board produced an order of merit which included Supt Murray.³⁴⁴³ Ms Feehily stated that, following clarification in its clearing process, Supt Murray was promoted in January 2018:

In furtherance of its statutory functions, specifically Regulation 12 of the Garda Síochána (Appointment to the Rank of Assistant Commissioner, Chief Superintendent and Superintendent) Regulations 2016 (S.I. 641 of 2016) the Authority sought information and clarification in its clearance process as set out in the statement of Chief Executive, Helen Hall. At its scheduled meeting in January 2018, it considered the clarification received and appointed Superintendent Pat Murray to the position of Chief Superintendent. The appointment was back-dated and made effective from 26 October 2017, the date upon which his appointment was first considered by the Authority i.e. the earliest date on which he could, in any circumstances, have been appointed.

*I am of the opinion that fair procedures applied at all times in the competition for the selection of officers for appointment to the Chief Superintendent rank and the process for considering, clearing and appointing Chief Superintendents are in accordance with the Regulations, the Authority's Statement of Practice and good practice in recruitment and selection.*³⁴⁴⁴

³⁴³⁹ Tribunal Transcripts, Day 151, pp. 104-105, Evidence of A/C Michael Finn

³⁴⁴⁰ Tribunal Documents, Statement of Ms Josephine Feehily, Chairperson of the Policing Authority, p. 7509

³⁴⁴¹ Tribunal Documents, Statement of Ms Josephine Feehily, Chairperson of the Policing Authority, p. 7509 at p. 7510

³⁴⁴² Tribunal Documents, Statement of Ms Josephine Feehily, Chairperson of the Policing Authority, p. 7509 at p. 7510

³⁴⁴³ Tribunal Documents, Statement of Ms Josephine Feehily, Chairperson of the Policing Authority, p. 7509 at p. 7511

³⁴⁴⁴ Tribunal Documents, Statement of Ms Josephine Feehily, Chairperson of the Policing Authority, p. 7509 at p. 7511

Ms Helen Hall

In her statement to the tribunal, Ms Hall outlined the objectives of the Policing Authority,³⁴⁴⁵ its statement of practice³⁴⁴⁶ and the clearance process in relation to promotions.³⁴⁴⁷ She said that the authority required each candidate to provide a self-declaration by way of a candidate clearance form and that clearance forms were also required from the Garda Commissioner and from the Garda Síochána Ombudsman Commission (GSOC).³⁴⁴⁸

In relation to the promotion of Supt Murray, she stated that the selection process was ‘*undertaken in accordance with the Regulations and the Policing Authority’s Statement of Practice*’ and that the clearance process ‘*commenced on 6 September 2017 as a result of vacancies arising in the Chief Superintendent rank*’.³⁴⁴⁹ She referred to the requests for additional information in respect of Supt Murray:

*The three completed forms as described in Section 5 above were received, but additional information was required from the Garda Síochána and requested on 12 October 2017. This was to seek clarification arising from the fact that the Garda Síochána clearance form did not mention ongoing matters in relation to Superintendent Murray in the context of relevant matters then in the public domain. Full clarification was finally received from the Garda Síochána on 26 January 2018.*³⁴⁵⁰

Ms Hall said in her statement that the authority regularly considered Supt Murray’s promotion at meetings between October 2017 and January 2018.³⁴⁵¹ She said that she communicated with Acting Commissioner Ó Cualáin and Mr Nugent on a number of occasions to expedite the receipt of the information and that:

*During this period I was also in contact with Superintendent Murray a number of times and informed him that the reason for the delay in the clearance process was that the Authority was seeking clarification from the Garda Síochána in relation to a complaint of bullying and harassment made against him. In particular, we had a lengthy telephone call on Friday 22 December. He expressed his frustration as to the process and I listened and reiterated what I had communicated previously, that the Authority could not make an appointment until the Clearance process was complete and they were satisfied with the outcome and that we were awaiting information from the Garda Síochána. I followed this up by email directly to Superintendent Murray.*³⁴⁵²

Ms Hall said that Supt Murray’s civil file was made available to authority members:

*Chief Superintendent Murray’s solicitors sent a copy of a 338 page document relating to his defence of High Court proceedings to the Policing Authority on 22 January 2018. This document was also made available to Authority members in the meeting room on 25–26 January 2018 and some members may have reviewed this documentation.*³⁴⁵³

³⁴⁴⁵ Tribunal Documents, Statement of Ms Helen Hall, Chief Executive Officer of the Policing Authority, p. 7514

³⁴⁴⁶ Tribunal Documents, Statement of Ms Helen Hall, Chief Executive Officer of the Policing Authority, p. 7514 at p. 7515

³⁴⁴⁷ Tribunal Documents, Statement of Ms Helen Hall, Chief Executive Officer of the Policing Authority, p. 7514 at pp. 7516–7518

³⁴⁴⁸ Tribunal Documents, Statement of Ms Helen Hall, Chief Executive Officer of the Policing Authority, p. 7514 at p. 7516

³⁴⁴⁹ Tribunal Documents, Statement of Ms Helen Hall, Chief Executive Officer of the Policing Authority, p. 7514 at p. 7518

³⁴⁵⁰ Tribunal Documents, Statement of Ms Helen Hall, Chief Executive Officer of the Policing Authority, p. 7514 at p. 7518

³⁴⁵¹ Tribunal Documents, Statement of Ms Helen Hall, Chief Executive Officer of the Policing Authority, p. 7514 at p. 7518

³⁴⁵² Tribunal Documents, Statement of Ms Helen Hall, Chief Executive Officer of the Policing Authority, p. 7514 at pp. 7518–7519

³⁴⁵³ Tribunal Documents, Statement of Ms Helen Hall, Chief Executive Officer of the Policing Authority, p. 7514 at p. 7519

Legal Submissions

Garda Nicholas Keogh submitted as follows:³⁴⁵⁴

- that Garda Keogh's problem with the promotion of Supt Murray was that it occurred prior to the completion of the investigation of his bullying and harassment complaint, and that the investigation was delayed to facilitate Supt Murray's promotion.
- that Garda Keogh gave evidence that he believed it inappropriate for Supt Murray to be considered for promotion until his bullying and harassment claim had been addressed.
- that the Regulations governing the appointment to chief superintendent prohibits the appointment of any candidate unless they have undertaken a clearance process as required by the Policing Authority. Any direct or indirect attempt to canvas disqualifies.
- that Supt Murray was in regular contact with politicians, and that Garda Keogh was criticised for that same behaviour during cross-examination.
- that Supt Murray's belated disclosure of diary entries undermined his credibility.
- that Supt Murray engaged in extensive canvassing of politicians, provided a gift to Dep/C Ó Cualáin, and permitted Garda Greene to lobby the Policing Authority on his behalf despite an awareness of the rules against canvassing.
- that Supt Murray waited until his appointment had been confirmed before challenging the lobbying behaviour to the Policing Authority.
- that Garda Keogh did not question the propriety of the Policing Authority, but the matter went to the credibility of Supt Murray.
- that Supt Murray first made an application for promotion to chief superintendent in January 2016 and was asked to complete a clearance form. He applied again for promotion in March 2017. He was specifically asked about any outstanding allegations or complaints on the clearance form, declaring *'I am not the subject of any ongoing or outstanding criminal or discipline investigations'*.
- that Supt Murray recognised that outstanding complaints should be disclosed to the Policing Authority, and that it was made clear to him that the authority should be notified of any changes to the information provided on the clearance forms.
- that Supt Murray was aware of the need to disclose relevant matters, but did not disclose the bullying and harassment matter or Garda Keogh's civil complaint. He told the tribunal he considered disclosing the complaint but on advice, decided not to.
- that the clearance forms and related declarations signed by A/C Finn and Acting Commissioner Ó Cualáin which declared that *'there are presently no outstanding discipline or complaints investigations in respect of this candidate'* were untrue as Garda Keogh's bullying and harassment complaint had been submitted prior to this.
- that the Office of the Commissioner was aware of complaints relating to Garda Keogh prior to the signing of the clearance forms on 11th September 2017.

³⁴⁵⁴ 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 from 17th October 2017, the role of Mr Nugent included dealing with Supt Murray’s clearance, but that Acting Commissioner Ó Cualáin had already signed a clearance form on 19th September 2017.
- that Mr Nugent’s approach towards disclosure of details of the complaint was begrudging and an example of *‘protecting one’s own’*, and that he expressed the view that it would be unfair to delay a promotion because of an allegation.
- that although Mr Nugent denied using the word *‘unsubstantiated’* in relation to the claim, he admitted he may have used the word *‘unproven’* in conversation with Supt Murray about the delay to his promotion.
- that Mr Nugent did not refute the notes of Supt Murray in substance and accepted that he believed it unfair for the promotion to be delayed due to unproven allegations.
- that Mr Nugent’s dealings with the Policing Authority were not the norm.
- that Mr Nugent did not believe the Policing Authority were entitled to Garda Keogh’s complaint despite a statutory entitlement to the information.
- that it was difficult for the Policing Authority to receive information about the complaint against Supt Murray from An Garda Síochána.
- that Garda Keogh’s bullying and harassment complaint was relevant to Supt Murray’s promotion and senior officers were aware of it but did not voluntarily inform the Policing Authority, as would reasonably have been expected of them.
- that Garda Keogh’s bullying and harassment complaint was intertwined with the promotion of Supt Murray.
- that critical aspects of Garda Keogh’s complaint were not openly and promptly disclosed to the Policing Authority, which led to Garda Keogh’s complaints being ignored, viewed as an irritant, not taken seriously and not acted upon by way of a proper investigation.
- that it was difficult to understand why there was such a delay in dealing with Garda Keogh’s complaints if not to facilitate the promotion of Supt Murray.
- that the lobbying which occurred to the benefit of Supt Murray was discrediting of Garda Keogh.
- that the failure to investigate Garda Keogh’s complaints represented a number of failings by An Garda Síochána, namely:
 - A failure to investigate in a timely manner
 - A failure to adhere to the bullying policy
 - A failure to disclose to and inform the Policing Authority on the conflicts of interest in the clearance forms
 - A failure to carry out transparent interviews
 - A failure to make and retain notes, the absence of any reliable recordings
 - The obvious pre-judgments

- The active lobbying for success before the Policing Authority, and that this was evidence of targeting and discrediting of Garda Keogh.
- that the promotion of Supt Murray was detrimental to Garda Keogh and undermined his bullying and harassment complaint, and that Supt Murray's promotion was advanced by means of clandestine lobbying.

Garda Nicholas Keogh submitted an addendum to his submissions as follows:³⁴⁵⁵

- that A/C Finn's conduct with regard to Supt Murray's promotion constituted discrediting behaviour.
- that on 11th September 2017, A/C Finn signed a clearance form in respect of Supt Murray, declaring that *'there are presently no outstanding discipline or complaints investigations in respect of this candidate'* even though Garda Keogh had made his statement to C/Supt Scanlan on 27th March 2017. Acting Commissioner Ó Cualáin also signed a clearance form on 19th September 2017 and it was clear from the evidence of the former Acting Commissioner that an error was made when A/C Finn signed the clearance form as it should have been signed by a deputy commissioner or the Commissioner.
- that the wording on the clearance form was clear and unambiguous and any complaint of bullying and harassment ought to have been disclosed, as stated by former Acting Commissioner Ó Cualáin in evidence.
- that A/C Finn's response that he did not remember signing the clearance form when it was put to him that he should have rectified the issues following his appointment to investigate Garda Keogh's complaint rang hollow and represented an uncandid approach to the matter.
- that A/C Finn met with Supt Murray for four hours on 18th January 2018, and did not take any notes of this meeting. A/C Finn gave evidence that the purpose of the meeting was to deliver the bullying and harassment complaint to Supt Murray but Supt Murray characterised the meeting as one to do with his promotion and the impediments he faced.
- that it was put to A/C Finn that Supt Murray believed the meeting was to do with his promotion, but A/C Finn said he was wrong. If A/C Finn had only discussed the bullying and harassment complaint with Supt Murray, he would not have been under the impression that A/C Finn was dealing with his promotion.
- that the volume of communication between Supt Murray and A/C Finn was unfair to Garda Keogh considering A/C Finn's appointment as investigator.
- that A/C Finn's intermeddling in Supt Murray's promotion was unfair and inappropriate given his position investigating Garda Keogh's bullying and harassment complaint.
- that Supt Murray did not adequately explain his late disclosure of notes to the tribunal.
- that the actions of A/C Finn in relation to both Garda Keogh's bullying and harassment complaint and Supt Murray's promotion discredited Garda Keogh.

³⁴⁵⁵ The tribunal has considered all of Garda Nicholas Keogh's supplemental legal submissions on this issue and what follows is a summary of the same.

An Garda Síochána submitted as follows:³⁴⁵⁶

- that Supt Murray initially applied for promotion in January 2016, but was not promoted following the extinguishment of the panel and the establishment of the Policing Authority at the end of the year. He applied for promotion again in March 2017 but was subsequently passed over in the order of merit. His promotion was delayed in October and December 2017 before his appointment in January 2018.
- that any complaint about the Policing Authority was not a matter for the tribunal.
- that Garda Keogh spoke with the media and several politicians throughout 2016, 2017 and 2018.
- that on 14th June 2016, Garda Keogh wrote to the Minister for Justice and Equality complaining of Supt Murray's promotion while *'harassment allegations are being investigated'* but that no such investigation was ongoing at that time.
- that Supt Murray applied again for promotion in March 2017 and Deputy Wallace raised this issue in Dáil Éireann. Garda Keogh also wrote to the Policing Authority seeking to suspend the promotion process. Supt Murray was later notified of his selection and on 17th September 2017 A/C Finn signed Supt Murray's clearance form stating that there was no reason he should not be promoted. A/C Finn was not aware of Garda Keogh's bullying and harassment complaint at this time as he was not appointed until 15th November 2017.
- that on 21st September 2017 Garda Keogh's solicitor wrote on his behalf to the Oireachtas Joint Committee on Justice and Equality, the Acting Commissioner, the Minister for Justice and Equality, and the Policing Authority regarding Supt Murray.
- that Supt Murray was identifiable when Deputy Daly referred to a superintendent in Athlone at number 14 on the promotion list and that Garda Keogh acknowledged that he had been informed that Supt Murray's name was to go before cabinet in relation to his 2016 promotion, prompting Garda Keogh to write to the Tánaiste in an attempt to prevent Supt Murray's promotion.
- that Garda Keogh was named in an RTÉ news report which referred to an investigation into whether his complaint had been concealed and referring to correspondence between Garda Keogh, the Policing Authority and HRPD.
- that on 31st October 2017, Supt Murray received a phone call from the Policing Authority informing him that he was being passed over in the order of merit, but not why. In November 2017 he was informed that A/C Finn had been appointed to investigate Garda Keogh's bullying and harassment complaint and on 22nd December 2017 he was informed that his promotion would not be progressed for the second time.
- that on 12th October 2017, the Policing Authority wrote to Acting Commissioner Ó Cualáin enquiring if a complaint had been made against Supt Murray and seeking information. Supt Murray was nominated for promotion on 26th October 2017 and on that date Mr Nugent responded to the Policing Authority explaining that civil proceedings had been issued in respect of the bullying and harassment claim. There was further correspondence between the Policing Authority and Mr Nugent.

³⁴⁵⁶ 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 Deputy Wallace asked in Dáil Éireann why the superintendent who had bullied Garda Keogh was placed on a promotion list and this was reported in the media the following day.
- that on 30th March 2017, Deputy Wallace indicated publicly that Supt Murray was the subject of a protected disclosure. Supt Murray became aware that his promotion was being debated in public and entered into correspondence with the Policing Authority out of fear that his clearance may be undermined. Garda Keogh had issued civil proceedings against him at this point.
- that on 6th October 2017, an RTÉ article referred to Garda Keogh's sick leave. Garda Keogh admitted providing the information to RTÉ but denied that this was intended to target Supt Murray.
- that Supt Murray did not have a responsibility to inform the Policing Authority of the bullying and harassment complaint as he did not become aware of it until 15th November 2017, at which point the Policing Authority were already aware of it.
- that bullying and harassment allegations were not one of the notifiable issues on the Policing Authority clearance form.
- that Supt Murray was informed on 22nd December 2017 that his promotion would not be progressed as the Policing Authority had not received enough information about the bullying and harassment complaint.
- that Supt Murray feared he was being scapegoated and privately sought legal advice.
- that Supt Murray was asked if he would release his 338-page civil document, which he agreed to even though it was prepared before he knew what allegations were being made against him.
- that on 29th January 2018, Supt Murray was informed that he would be promoted, based in particular on the report he supplied. This resulted in further negative commentary in Dáil Éireann.
- that Garda Keogh told the tribunal that at this point he went '*bananas*'.
- that Garda Keogh accepted that Supt Murray had been '*working behind the scenes*' on his welfare.
- that the tribunal has heard evidence of the significant impact Garda Keogh's campaign to block Supt Murray's promotion had on Supt Murray.
- that there was no delay in completing the Finn investigation and the lapse in time has been explained.
- that the allegation that Acting Commissioner Ó Cualáin distorted the process to favour Supt Murray is not supported by the evidence. Acting Commissioner Ó Cualáin was not aware of the bullying and harassment complaint when he signed Supt Murray's form as Mr Nugent had been appointed as the point of contact.
- that the non-disclosure by Acting Commissioner Ó Cualáin of the complaint does not

amount to targeting of Garda Keogh because he was not aware of the complaint at the time.

- that the non-disclosure of the complaint by Acting Commissioner Ó Cualáin had little significance as Garda Keogh informed the Policing Authority of the complaint and Mr Nugent provided ongoing updates despite a personal view that it should not be taken into account.
- that Mr Nugent tried to progress the Finn inquiry, not slow it down. He corresponded with the Policing Authority, explained the delay and relayed an update from A/C Finn.
- that there was no evidence that the bullying and harassment investigation was delayed to facilitate the promotion of Supt Murray.
- that Garda Keogh engaged in a co-ordinated and sustained campaign to target and discredit Supt Murray, block his promotion and end his career. He enlisted the help of politicians, journalists and others to help him, resulting in a trial by media.
- that Garda Keogh's campaign of targeting against Supt Murray was unsettling as he painted himself as a victim. His exploitation of Dáil privilege as part of his campaign was particularly egregious.

An Garda Síochána made supplemental submissions as follows:³⁴⁵⁷

- that it was suggested in Garda Keogh's submissions that A/C Finn took an '*uncandid approach*' towards the issue, which was not put to A/C Finn, was strenuously denied and was without merit or basis in evidence.
- that in September 2017 neither A/C Finn nor his staff were aware of the bullying and harassment allegation, and the clearance form was part of a new promotions process that did not explicitly seek details of bullying and harassment complaints. The details sought have subsequently been changed by the Policing Authority.
- that, although unaware of the existence of the complaint, even if he had been aware A/C Finn would not have included it on the form as he did not consider it to be a 'disciplinary investigation'. It did not occur to him to 'correct' the form following his appointment to investigate the complaint.
- that the clearance form signed by A/C Finn was not used by the Policing Authority as the Authority required clearance signed by the Commissioner of An Garda Síochána.
- that the difference in opinion of A/C Finn and former Acting Commissioner Ó Cualáin was simply that and does not show a lack of candour on the part of A/C Finn.
- that Garda Keogh was actively trying to stop Supt Murray's promotion as recorded in his diary on 5th July 2017.
- that Supt Murray was of the view that the Policing Authority should be fully informed of his response to Garda Keogh's complaint, provided them with his response to the civil complaint, and engaged with Mr Nugent and A/C Finn.

³⁴⁵⁷ The tribunal has considered all of An Garda Síochána's supplemental legal submissions on this issue and what follows is a summary of the same.

- that A/C Finn was focused on the bullying and harassment complaint and did not meddle in the promotions issue.
- that Mr Nugent sought to ensure that the Policing Authority had all available information and in this capacity he asked A/C Finn to provide an update. On 15th January 2018, A/C Finn provided an update to Mr Nugent, which appropriately did not engage with the substantive complaint. Mr Nugent forwarded this update to the Policing Authority.
- that A/C Finn did not engage with the Policing Authority beyond providing this update. His contacts with Supt Murray were little more than listening and did not interfere with his investigation.
- that there was no evidence of A/C Finn ‘intermeddling’ in this issue as suggested in the submissions of Garda Keogh.

Garda Fergal Greene submitted as follows:³⁴⁵⁸

- that the evidence as to the conversations and sequence of conversations recorded by Supt Murray involving Garda Greene were irrelevant as ruled by the tribunal.
- that the tribunal should not refer to these conversations in the report as it was irrelevant material which should be excluded from consideration.

The Policing Authority

The Policing Authority filed a written submission asking to be heard by the tribunal and the following submission was made orally by counsel on behalf of the authority:³⁴⁵⁹

The issues of substance the Authority will address relate to four matters, as follows: Firstly, the inference that gifts may be proffered and accepted by any nominee of the Authority on the chief superintendent’s selection board or by any member of the Authority staff. The information that informal representations were made indirectly to and accepted by the then Chairperson of the Authority in respect of a candidate in the competition. The evidence that the Authority behaved unfairly to a candidate by unnecessary delays in the appointment process and by exceptionally refusing an appointment because of an unresolved complaint. And finally, the integrity of the appointments process is challenged by the suggestion that the Authority abused the clearance process by urging the Garda Síochána to institute a bullying and harassment procedure so as to disadvantage an individual candidate.

A witness testified to an occasion when he gave a gift to a senior officer who had been a member of An Garda Síochána appointment board that had recommended him for appointment as a superintendent. He indicated that this was his practice. While this testimony related to a time before the Authority became responsible for appointments of senior members of An Garda Síochána, he also indicated that he had conveyed his gratitude to the Policing Authority following his subsequent appointment as chief superintendent. Insofar as this may suggest or be understood to suggest that any gifts were made to any Authority nominees of the selection board, Authority staff and/or Authority members, this is fully denied.

The receipt of any such gift would be a serious breach of the appropriate behavior of members of the selection board convened by the Authority for the conduct of this competition.

³⁴⁵⁸ The tribunal has considered all of Garda Greene’s legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 152, pp. 32-37

³⁴⁵⁹ Tribunal Transcripts, Day 152, pp. 7-12, Counsel for the Policing Authority

Since learning of this matter, the Authority made direct enquiries of each and every one of its nominees on the selection board, all staff who may have had any contact with the witness during his candidacy and all Authority members. Each confirmed that no gift was offered or accepted.

Secondly, to deal with alleged informal representations. Evidence was tendered on a number of occasions to the Tribunal that representations from third parties were accepted as part of both the appointments and clearance process. The Authority is unequivocal in rejecting any such allegations. At no point did the Authority or any of its members, staff or selection board gather information or opinions concerning any candidate outside the formal process outlined in the competition documentation. This suggestion is in particular damaging to the character and reputation of the former Chairman, Ms. Josephine Feehily. Her statement to the Tribunal of June 10th 2019 gave comprehensive information concerning this allegation and firmly rebutted the suggestion. She confirmed in that statement that she never discussed suitability or appointment nor sought any views or opinions concerning any candidate's suitability directly or indirectly. This remains the clear position of the Authority.

The third issue I want to address are alleged delays. The Authority denies any culpable delay in making appointments. The process of appointment was set out in the detailed statements provided by the Authority to the Tribunal. It can occur that an appointment is placed on hold by reason of awaiting necessary submissions from the Authority from the Garda Síochána.

A matter being on hold pending receipt of the submissions required to complete the necessary statutory clearance process are provided is not the same as a delay caused by the Authority. Regulation 12 of the Garda Síochána Act 2005 appointment to the rank of assistant Garda Commissioner, chief superintendent and superintendent regulations SI 641 of 2016 mandates that the Authority shall not appointment a candidate unless the candidate has undertaken the clearance procedure and the Authority is satisfied as to the outcome of the clearance process.

The evidence of the statutory clearance process were set out in details at pages 2 to 5 of the chief executive's statement to the Tribunal on 10th June 2019. The Authority's clearance process requires the Garda Commissioner to make a declaration with the candidate's written consent with regard to the candidate's health and character. Insofar as any case before this Tribunal is concerned, the Authority has clearly and fully set out the timeline for same in previous correspondence and this amply demonstrated the absence of any delay on the part of the Authority.

In addition, where there is a delay caused by other agencies an appointment can and has been backdated to the day the appointment was first considered by the Authority and on which date the candidate would have been appointed save for the necessary other clarifications.

It has never been the Authority's intention that an unresolved matter in relation to a candidate would of itself limit its ability to appoint. The Authority requires full and complete relevant information in respect of any candidate to allow it to fulfil its statutory responsibility.

For the avoidance of doubt, to warrant a delay before appointment, any such unresolved matter would have to be of certain and significant import. In particular, the suggestion that the Authority was refusing to appoint any candidate because of a complaint remained unresolved is a source of concern and is fully denied.

The alleged abuse of the clearance process. As regards this alleged abuse of the clearance process, a witness testified that the internal Garda Síochána investigations were being in some way driven by the Policing Authority and that the Authority's chief executive misunderstood the process. This is not only untrue, but is also wholly unfounded. At no point during this process did the Authority seek to drive or dictate the investigation. The Authority sought the necessary information to undertake a proper clearance process in accordance with the process laid out for all competition candidates and consistent with its statutory duty not to appoint a candidate until the clearance process was complete.

I conclude by saying that the Authority understands these matters are unlikely to form any part of the Tribunal's final report. That in itself makes it imperative that any impression created in the testimony be at least in some extent countered by the inclusion in that same record by the corrections now led. The Authority considered that these issues have the potential to allow for uncertainty to surround the process if left unaddressed.

Discussion

It is not in dispute that the decision to promote Supt Murray to the rank of chief superintendent was made by the Policing Authority with full knowledge of Garda Keogh's bullying and harassment complaint. The promotion cannot in itself be considered as targeting or discrediting Garda Keogh within the meaning of term of reference [p]. It was made by the proper authority, an independent statutory body, in accordance with its own procedures and following enquiries made of An Garda Síochána. An investigation of the authority's handling of Supt Murray's promotion was not within the tribunal's mandate. Furthermore, Garda Keogh's counsel made it clear at the hearings that they made no case against the authority and the written submissions on his behalf expressly confirmed that position.

This fundamental point undermines Garda Keogh's argument that he was discredited because Supt Murray's promotion went through while the investigation of his complaint of bullying and harassment had not been completed. An Garda Síochána and its officers were not in control of the process.

Supt Murray was entitled to apply for promotion without reference to Garda Keogh's feelings on the matter. Moreover, irrespective of any such consideration, he did so at a time that was well before Garda Keogh submitted his complaint to C/Supt Scanlan.

The suggestion that the promotion was detrimental to Garda Keogh because it undermined the investigation of his complaint is also not valid. The two processes were wholly discrete matters of consideration by different bodies and directed to separate and distinct purposes. Promotion did not mean that Supt Murray was cleared of Garda Keogh's allegations; nor could it give any immunity from the bullying and harassment process. Neither could refusal of the promotion application imply culpability.

Canvassing

Garda Keogh submitted that Supt Murray canvassed for his promotion, contrary to Regulation 15 of the Garda Síochána Act, 2005 (Appointments to the ranks of Assistant Garda Commissioner, Chief Superintendent and Superintendent) Regulations, 2016. He stated that Supt Murray

engaged in extensive canvassing of politicians, provided a gift to Dep/C Ó Cualáin and permitted a garda to lobby the Policing Authority on his behalf despite an awareness of the rules against canvassing. Garda Keogh alleged that Supt Murray's promotion was advanced by means of clandestine lobbying from within An Garda Síochána, from politicians, and from third party citizens, which was discrediting of Garda Keogh.

Consideration of these allegations should be set in the context of evidence. Supt Murray's contact with politicians took place in 2016 in respect of his first application for promotion, before the Policing Authority and the Regulations came into effect. Accordingly, whatever may be said about such contacts, they cannot have been contrary to the new Regulations. He applied for advancement in rank in January 2016 when such nominations were made in-house in An Garda Síochána before being approved by the Government. On 13th May 2016, he learned that he had been successful and was listed at number 14 on the order of merit, consisting of 21 applicants deemed suitable. Garda Keogh complained about the intended promotion in a letter to the Minister for Justice and Equality which was copied to GSOC, the Policing Authority and Deputy Daly.

The matter became the subject of political protest in the latter part of 2016. It was a Government decision to elevate officers on the list of 21 successful candidates, and some vacancies were filled, but the appointments stopped short of number 14 as the end of the year approached. The handover to the Policing Authority was fixed for 1st January 2017 so the appointment of the remaining eight candidates was facing a guillotine if they were not in place by 31st December 2016. In the circumstances the group sought help from their representative association and, with its blessing, made approaches to politicians whom they thought might be helpful to their cause, the object being to secure their promotions by the deadline. Supt Murray was one of the leaders of the group, if not the principal spokesman.

It is wrong to conflate the original garda application with the second that was directed to the Policing Authority. It was a political matter involving a Government decision in respect of promotions. The efforts of Supt Murray were known and approved by his colleagues and their association. Another reason why the approaches can scarcely be called clandestine or covert is that they involved a large number of public representatives. Relevant also is that the claim the officers were making had some significant merit because they had all been approved as suitable after undergoing the process that was in place at the time.

Supt Murray gave evidence that he gave a present of a bottle of whiskey to Dep/C Ó Cualáin, who had been a member of the selection board, some time after the result of the competition was announced. It might well be thought that this was unwise or inappropriate or potentially embarrassing, but it cannot be classed as a bribe or a means of influencing the decision in his favour. Whatever view is taken of giving such a gift or gifts, it does not have direct or logical relevance to the Policing Authority's consideration of the new application. Neither was it an example of targeting or discrediting of Garda Keogh.

The clearance form

The Policing Authority clearance form in section 4 is headed: *'Outstanding criminal or disciplinary investigations'* and asks the relevant applicant *inter alia*:

*Please provide details below of any ongoing/outstanding investigation (criminal or disciplinary) of which you are aware that you are the subject of.*³⁴⁶⁰

³⁴⁶⁰ Tribunal Documents, Policing Authority Clearance Form, p. 2632 at p. 2634

Supt Murray replied that *'I am not the subject of any ongoing or outstanding criminal or discipline investigations'*. The bullying and harassment policy under which the investigation was carried out contains the following at clause 8.10:

Where a complaint is upheld and the findings amount to a crime or gross misbehaviour, the Divisional Officer/Chief Superintendent may decide the matter is the subject of a criminal investigation or must be dealt with under the disciplinary regulations.

*Where a complaint is upheld and the findings do not amount to a crime or a disciplinary offence the Divisional Officer/Chief Superintendent shall decide whatever further action in relation to the complaint is warranted.*³⁴⁶¹

It is submitted on behalf of Garda Keogh that Supt Murray misled the Policing Authority by not updating his application by disclosing the bullying and harassment complaint made by Garda Keogh and that he should also have revealed the civil proceedings instituted by Garda Keogh in which he was a named defendant. It is submitted that Supt Murray recognised that any outstanding complaints ought to be disclosed to the Policing Authority. Evidence of this is seen by his diary entry for 29th October 2017, when he wrote as follows:

*He outlined the bullying claim was made in March '17 and said if the bullying claim was suppressed or delayed the senior Garda wouldn't have to declare it to the Policing Authority re promotion. (not true).*³⁴⁶²

This is not accurate, however. The above quote is from Supt Murray's note of what an RTÉ reporter said on a news programme about his promotion, to which he added the comment in parentheses. Supt Murray's position was that he did not mislead the authority because he was not required to disclose Garda Keogh's bullying and harassment complaint.

The Policing Authority clearance form includes sections headed *'Previous Disciplinary Actions'*, *'Previous Convictions'* and *'Outstanding Criminal or Disciplinary Investigations'*. In each case, relevant details are sought if they arise. It is apparent from the quotation from clause 8.10 that a complaint under the bullying and harassment policy document is not a criminal or a disciplinary investigation, but it may give rise to one of them if it is upheld. If it is not appropriate for criminal or disciplinary process although found proven, other options are available including advice or monitoring or referral to the Chief Medical Officer. It is clear therefore that there is a distinction between a complaint under this policy and a criminal or disciplinary investigation. In the circumstances, Supt Murray's failure to update his form did not constitute a breach of his obligation to the Policing Authority.

It may be that the authority intended that applicants and An Garda Síochána would be required to inform them about bullying/harassment complaints, past or pending, and Acting Commissioner Ó Cualáin's understanding of what the authority wanted accorded with that interpretation. That is not what the form actually required.

A/C Finn was of the view expressed here as to the meaning of the form and the obligation on an applicant and his different understanding from his colleague does not imply lack of candour on either part.

This analysis absolves Supt Murray of the charge levelled against him in respect of the complaint

³⁴⁶¹ Tribunal Documents, Working Together to Create a Positive Working Environment, p. 7868 at p. 7899

³⁴⁶² Tribunal Documents, Diary entry of Supt Pat Murray, dated 29th October 2017, p. 2663.

and there is also no basis for the suggestion that he was under a legal duty to disclose the civil proceedings in which he was named as defendant.

It is also submitted by Garda Keogh that senior management of An Garda Síochána misled the Policing Authority.

A/C Finn signed a clearance form on 11th September 2017 in which he declared that *'there are presently no outstanding discipline or complaints investigations in respect of this candidate'*. Acting Commissioner Ó Cualáin signed a similar form on 19th September 2017.

Former Acting Commissioner Ó Cualáin's evidence was that he was not aware of the Garda Keogh complaint when he signed the form and that, had he known about it, he would have informed the authority because his understanding was that they wanted to know about all such matters.

A/C Finn said that that he came to sign the form more or less by chance because a colleague was absent, and that he presumed that the officers who prepared the documentation had made sure that they were in order. Having said that, his opinion was that a bullying and harassment complaint did not qualify as an outstanding criminal or disciplinary investigation.

Garda Keogh's submissions attribute to Mr Nugent, the CAO of An Garda Síochána, part of whose role was to deal with the clearance of Supt Murray for promotion,³⁴⁶³ the view that the Policing Authority were not entitled to the information they sought about the bullying and harassment complaint, despite having a statutory entitlement to it. In support of this contention they cite his evidence as follows:

*I want to be clear. I don't want to talk specifically about Garda Keogh, I am talking about the generality of this. That the concept that an individual could have their promotion deferred because of an allegation, not landed at that point in time, in my view is unfair. That is not about Garda Keogh, this is a general position.*³⁴⁶⁴

*... So what was my position on this? In my, you know, vast experience in the public service I hadn't come across a situation where an allegation, and that's all it was at that point in time, an allegation which had not at that point been proven, would be used to defer somebody's promotion. Like in my experience I had never come across that. And I am not saying that — the Policing Authority has their own processes and I am conscious of what the Judge said yesterday. But in my opinion, that's unfair.*³⁴⁶⁵

The position attributed to Mr Nugent is not justified by the quotations cited in support and unfairly characterise his evidence. Moreover, this has little relevance to the issue under consideration.

The Policing Authority finally got full disclosure on 26th January 2018, according to the documentary trail and the statement evidence of Ms Hall:

The clearance process for Superintendent Murray commenced on 6 September 2017 as a result of vacancies arising in the Chief Superintendent rank. The three completed forms ... were received, but additional information was required from the Garda Síochána and requested on 12 October 2017. This was to seek clarification arising from the fact that the Garda Síochána clearance form did not mention ongoing matters in relation to Superintendent Murray in the context

³⁴⁶³ Tribunal Transcripts, Day 148, pp. 42-43 Evidence of Mr Joseph Nugent, Chief Administrative Officer

³⁴⁶⁴ Tribunal Transcripts, Day 148, p. 102, Evidence of Mr Joseph Nugent, Chief Administrative Officer

³⁴⁶⁵ Tribunal Transcripts, Day 148, p. 54, Evidence of Mr Joseph Nugent, Chief Administrative Officer

*of relevant matters then in the public domain. Full clarification was finally received from the Garda Síochána on 26 January 2018.*³⁴⁶⁶

This establishes that the Policing Authority received full information before making the promotion decision.

Other questions arising in the submissions on this issue, including whether senior officers suppressed or delayed Garda Keogh's bullying and harassment complaint in order to advance Supt Murray's promotion, are discussed in relation to the investigation conducted by A/C Finn.

Conclusion

The tribunal finds no connection between the matters considered under this issue and Garda Keogh's protected disclosure. This case does not reveal targeting or discrediting of Garda Keogh by senior officers of An Garda Síochána.

³⁴⁶⁶ Tribunal Documents, Statement of Ms Helen Hall, Chief Executive Officer of the Policing Authority, p. 7518

PART FIVE

CHAPTER 25

CONCLUSIONS

General

Garda Keogh complained to this tribunal that senior officers of An Garda Síochána targeted or discredited him following the protected disclosure that he made on 8th May 2014. The tribunal in this report details its consideration of all of the instances of targeting and discrediting that Garda Keogh set out in his complaint and is satisfied on the evidence that the complaints are not justified. The case does not reveal evidence of the conduct envisaged by the Oireachtas in its mandate to the inquiry in term of reference [p].

This is not to say that everything that happened in relation to Garda Keogh was satisfactory. Neither does it mean that Garda Keogh acted in bad faith. It is important, however, in fairness to the serving and retired garda officers whom Garda Keogh accused of serious misconduct, to state that the tribunal finds that the charges are not substantiated.

A feature that is absent from all of the cases is any connection between the behaviour of the senior officers concerned and the fact that Garda Keogh had made a protected disclosure. There were occasions when his position as a whistleblower had to be taken into account but what was not evident in the entire consideration was that the officers did anything that he claims as hostile for the reason that he had made a protected disclosure.

It is also significant that no colleague of any level of seniority who was concerned in the incidents in issue supported Garda Keogh's claim of being targeted or discredited by senior officers. Witnesses who knew Garda Keogh and who were well disposed towards him, including for example Superintendent Noreen McBrien, Inspector Aidan Minnock, Sergeant Andrew Haran, Sergeant Cormac Moylan and Garda Fergal Greene, rejected any suggestion that he was victimised. In relation to a concern expressed by Garda Keogh early in the investigation, Sgt Haran criticised the holding of interviews in Athlone Garda Station and his independence cannot be questioned. Sgt Moylan was particularly well-placed to notice any targeting or discrediting because he is an executive member of the Association of Garda Sergeants and Inspectors. If Garda Keogh was being victimised these members and others would have noticed and spoken out and they would have testified accordingly.

The tribunal makes some criticisms of the officers whom Garda Keogh accuses but it rejects his allegations that they targeted or discredited him in the cases that he pursued and that were the subject of documentary and oral evidence at the hearings.

Garda Keogh's complaints, about twenty-two specific episodes following the protected disclosure he made on 8th May 2014, are in some instances and in some respects understandable, but on full investigation they are revealed to be unfounded and essentially misconceived.

The specific reasons for these findings are set out in the chapters dealing with the individual issues but a question about the complaint overall that may strike a person reading this report is how

Garda Keogh could be wrong about all of the allegations he makes. The answer is not that he is wholly wrong, although in some instances that is the position, but rather that his allegations and his interpretations are based on an accumulation over time of apparently reasonable grievances and some understandable misjudgements, in addition to misinterpretations of events because of distorted thinking and judgement.

Context

Garda Keogh made his complaint about wrongdoing in good faith. There is no question that it was frivolous or vexatious. He could have used the confidential reporting system as it was intended but instead he went against that because he did not trust An Garda Síochána to investigate the matter properly. There was a rational basis for his suspicions about the force because of troubles that it was having at the time, and earlier events, including those that had given rise to the establishment of this tribunal and other inquiries, so it was not a fanciful or wholly unfounded opinion. The Ó Cualáin investigation as an internal process was second best for him.

It took courage for Garda Keogh to report the alleged wrongdoing, and that would have been a cause of some considerable stress even if he had availed himself of confidentiality. The fact that he consented to making his disclosures public is one of the factors that increased the pressure on him. The public generally and others, as well as colleagues in Athlone, knew that he had made serious allegations and most of the latter would have known the persons whom he had accused.

At the time when Garda Keogh made his disclosure, his allegations became the subject of internal garda investigation under the regime provided by the Garda Síochána Act, 2005 and the confidential reporting regulations. Between 2005 and 2014, a member of An Garda Síochána could not make a complaint to the Garda Síochána Ombudsman Commission because its role was confined to receiving complaints about garda conduct made by or on behalf of members of the public. The position changed when, following the Protected Disclosures Act, 2014, GSOC was designated as a body to whom a garda could make a protected complaint subject to acceptance. As a result of this legislative change, the situation that arose in this case, and that significantly influenced the events in issue, is very unlikely to recur.

A key feature of both schemes is protection of the identity of the reporter, but Garda Keogh opted to go a different route. He synchronised his protected disclosure with Deputy Luke ‘Ming’ Flanagan, who raised it in Dáil Éireann at the same time as Garda Keogh was meeting the confidential recipient, Judge Patrick McMahon. When Deputy Flanagan became an MEP in mid-2014 he introduced Garda Keogh to Deputies Clare Daly and Mick Wallace, who took up his case. Garda Keogh was able to give information to the TDs about the affairs of the force and they could raise questions about his treatment by superiors because of section 62 of the Garda Síochána Act, 2005. The essence of this wide-ranging provision is that a garda may disclose information obtained in the course of duty to a member of either of the Houses of the Oireachtas where it is relevant to the proper discharge of the functions of the TD or Senator. In effect, Garda Keogh used the available confidential reporting system as one limb of a two-pronged process, the other being the political support.

Two central elements of the context of the disclosure, therefore, are that Garda Keogh had the frustration of being excluded from access to independent outside investigation of his allegations, but he was able to avail himself of political assistance.

Garda Keogh had another source of assistance in the confidential recipient, Judge McMahon, who intervened on his behalf with the Garda Commissioner on occasion. He was able to cite the judge's views in resisting queries from his chief superintendent and to claim that everything should be examined by the Ó Cualáin investigation team.

An Garda Síochána did not have experience of dealing with a confidential reporter who had gone public. Indeed, its experience of conventional protected disclosure investigations generally appears to have been limited. The force did not have a protected disclosures manager or such a management system until Chief Superintendent Anthony McLoughlin and Mr Alan Mulligan were appointed in mid-2016.

Such an officer, if operating at the time of the protected disclosure and thereafter, could have performed an important liaison function between Garda Keogh and the Ó Cualáin investigation team as well as between him and his local management. That would have eliminated or at least reduced tensions arising from his misunderstandings of their actions and responsibilities and from their lack of knowledge of his concerns, anxieties and state of health. Furthermore, this officer could have provided briefings to Garda Keogh as to the progress of the investigations to allay suspicions as to delay or discrediting or otherwise.

The political atmosphere in 2014 in regard to garda and justice matters was febrile, with allegations of scandal and maltreatment of whistleblowers, including the shocking story of Sergeant Maurice McCabe. Many in the media and political worlds suspected An Garda Síochána of cover-ups and wrongdoing.

Garda Keogh

It is apparent in retrospect that Garda Keogh worked under conditions of significant pressure from the time of his protected disclosure, which contributed to the stress that his doctor certified in late 2014 and thereafter. The pressure intensified as time went on and events occurred that gave rise to queries and criticisms, and new circumstances arose. The issue of stress and its presentation arises in Issue 12. Some of the causes are attributable to Garda Keogh's own conduct, some arose from circumstances at the time, while others may be attributed to his own interpretations of events. In the first category are the publication of the disclosure and the PULSE query and entry that he made. In the second are the non-suspension of Garda A and the taking of witness statements in Athlone Garda Station. The third category encompasses the issues considered in this report.

Garda Keogh was predisposed to suspicion of the Ó Cualáin investigation and of its leader, whom he saw as part of the force's establishment. Somehow this led him to the extreme conclusion that the assistant commissioner was intent on sabotaging the investigation he was appointed to head. He accepted that there was no evidence to back up this jaundiced view of the officer but held on to the belief, notwithstanding that he came to trust the senior detectives who were conducting and directing the enquiries. Against that background it came naturally to Garda Keogh to consider anything that he disagreed with about the progress or methodology of the investigation to be evidence of intentional sabotage by the assistant commissioner. He spoke of *'deliberate flaws'* when he wrote to the Director of Public Prosecutions and others complaining about the investigation, which is consistent with this distorted view.

Garda Keogh worked in the same station as the garda who was the principal focus of his allegations. Although they did not work side by side, and they might not often come face to face

because Athlone Garda Station consists of three separate buildings, their shifts overlapped and they could also encounter each other outside of specific hours of duty if one or other had business that brought him into the station. Also, the two persons had friends whom they would come across in the workaday world. Garda Keogh complained about this situation and sought to have Garda A suspended early in the process but that did not work out for reasons that are discussed in the chapter on Issue 17. It is obvious, irrespective of the rights and wrongs of the question of suspension, that this was a situation that gave rise to tension for the members generally and was an understandable reason that Garda Keogh would feel stressed. And whether it was justified or not, Garda Keogh thought it was necessary for him to be in the station in order to monitor the progress of the investigation into his disclosures.

His contention that the queries in 2014, which are Issues 1 to 4, should have been dealt with by the Ó Cualáin investigation is rejected by the tribunal but it is fair to recall that Garda Keogh cited support from Judge McMahon in his position. It was not such an untenable position that he had no basis for it. It is also fair to report that in relation to Issues 3 and 4, local management had also sought the involvement of the Ó Cualáin investigation team. And it may even be thought that the rejection of the judge's view was another straw on the camel's back, as Garda Keogh saw it. It is reasonable to consider this episode as another source of pressure.

Garda Keogh saw himself as a person engaged in a struggle with the establishment of a large and malign organisation that was determined to do him down because he had pointed out corruption.

Garda Keogh's involvement in political affairs seems likely to have added its measure of mental pressure. Also, his resort to alcohol as a means of alleviating stress may well have done the opposite to the intended effect.

It did not help that Garda Keogh was unshakeably convinced that his allegations were true and that he believed that they would quickly be confirmed. Almost immediately after he made his disclosure he had contact with an informant who corroborated his suspicions and furnished additional specific information. The fact that this person would not make a written statement either to him or later to the investigating detectives did nothing to diminish Garda Keogh's faith in the information, and he even disagreed with the suggestion by counsel that the potential witness had not cooperated with the investigation.

The issues

Garda Keogh's case is that he made a serious and genuine report of criminality in the Athlone District in his protected disclosure but after doing so he suffered targeting and discrediting by senior officers. His complaint to the tribunal listed twenty-two occasions where this happened, sometimes in multiple instances, although he did not proceed with all of these issues at the public hearing.

The abandoned issues included a very serious and damaging one in which he alleged that former Commissioner Nóirín O'Sullivan telephoned Superintendent Pat Murray in April 2015 to tell him to pull away from Garda Keogh and to isolate him. Garda Keogh told the tribunal that he could not remember who had told him about the alleged phone call. Obviously, the claim was taken very seriously by the former Commissioner and also by Supt Murray. Before abandoning it, Garda Keogh's advisers sought to make an alternative case that there might have been contact

between the two officers through a third party but that was entire speculation without any basis in fact; and it appears that it only came about when the tribunal's researches discounted any record of a call between the parties at any relevant time. The former Commissioner and the superintendent were left without any explanation of how this allegation came to be made. The matter has a more general significance because it reveals that Garda Keogh's state of mind as of April 2015, and indeed earlier, left him prepared to believe such a malicious story.

A further three cases can be mentioned briefly. One is listed as Issue 14 and concerns the non-payment of travel expenses, which had in fact been delayed, but the case is considered under Issue 6, which relates to Garda Keogh's motor tax and the way Supt Murray dealt with it. Issue 21 represents a somewhat embarrassing misunderstanding by Garda Keogh or his advisers. Issue 22 was not a matter for the gardaí.

The remaining cases were explored in detail by the tribunal. Four issues arose during the early stages of the process of the Ó Cualáin investigation in 2014 when Garda Keogh claimed that he was victimised at work in Athlone because his position as whistleblower was not respected and he was subjected to unnecessary enquiries at local level about matters that could have been investigated by the principal investigators.

Chief Superintendent Mark Curran

The officer whom Garda Keogh accused of targeting and discrediting him in respect of Issues 1 to 4 is Chief Superintendent Mark Curran, who made the telling point that in dealing with all of the issues he was responding to situations that were presented to him. He did not initiate any of the matters that he was dealing with.

Garda Keogh practically acknowledged that he could not sustain a case in Issues 1 and 2 and again fairly accepted the likelihood in Issue 3 of misunderstanding by Ms Olivia O'Neill of what he had said. These concessions did, however, come late in the day and in the course of questioning. As for Issue 4, the tribunal did not find that C/Supt Curran targeted or discredited Garda Keogh, holding that the matter was presented to him for handling and he made his decision on it.

C/Supt Curran is one of the officers on whom Garda Keogh fixated, believing that he was part of *'the Kabal'* that was coming after him.

Superintendent Pat Murray

A further eight issues arose in the period between 26th March 2015, when the newly arrived Supt Murray and Garda Keogh had their first meeting, and 26th December 2015, when Garda Keogh went on long-term sick leave.

There was never a possibility of a harmonious relationship between Garda Keogh and Supt Murray. Garda Keogh formed the view, to which he has adhered unshakeably ever since, that the superintendent was hostile to him from the outset. He believed that Assistant Commissioner Ó Cualáin had installed the superintendent in Athlone in order to get Garda Keogh out of the station. The fact that there is no evidence to support this theory does not affect Garda Keogh's relentless hostility to Supt Murray.

Personalities and circumstances also militated against the prospect of good relations. Supt Murray

is ambitious and something of a disciplinarian; Detective Superintendent Declan Mulcahy described him as being tough but fair. He began working in Athlone on 9th March 2015 and set about making significant changes that included new arrangements for investigating and recording crime. He was concerned to ensure that the new practices would take root and that the members of the force under his command would adhere to them. Garda Keogh found himself being criticised for failing to implement the new regime.

Garda Keogh had had a good relationship with his previous district officer, Supt Noreen McBrien, who was more inclined to avoid confrontation. For example, she had intended to talk to Garda Keogh about his motor tax being underpaid as commercial but decided against doing so out of concern that it might be too upsetting for him because of his mental state at the time. This road tax issue was the cause of delay in the payment of the travel expenses at the time, unknown to Garda Keogh. The consequence was that it was left to Supt Murray to deal with the issue, which led to one of the complaints of targeting made by Garda Keogh.

It is not that one superintendent was wrong and one was right. In any organisation styles of management will vary and people working under different superiors will have more or less congenial experiences. Supt Murray is not to be criticised because his way was not the same as his predecessor's.

Garda Keogh was obliged to obey the lawful directions of his superintendent.

Within days of the first meeting with the superintendent, Garda Keogh complained to Deputy Wallace about the motor tax issue. The superintendent had told him to pay the correct private rate of tax on his car instead of the lesser commercial rate, which was of course a legacy issue and one that needed to be rectified before Garda Keogh's travel expenses claim could be sanctioned.

Although Supt Murray referred Garda Keogh to the Chief Medical Officer in April 2015, this did not result in a work related stress investigation, and such an investigation has never taken place. The issues of classification of Garda Keogh's absence and his consequent pay remain unresolved.

The history of the relationship between the superintendent and Garda Keogh is set out in detail in the chapters dealing with the eight issues. Garda Keogh complained to Deputies Daly and Wallace, who raised his grievances in Dáil Éireann, at first without naming the person held to be responsible but later by identifying Supt Murray by name.

Garda Keogh's campaign of opposition to Supt Murray's promotion and his reaction to the news that it had happened reflect his unremitting hostility to this officer. The superintendent was entitled to apply for promotion and that carried with it the possibility that he would succeed. In fact he was declared to be qualified on two separate occasions before he finally achieved the higher rank. Garda Keogh, together with his advisers and supporters, were able to apply political and media pressure in seeking to prevent the officer's advancement. Counsel for the superintendent described these activities as targeting.

Former Acting Commissioner Dónall Ó Cualáin

The tribunal was impressed by the integrity and dedication of the former Acting Commissioner and his leading detective officers. Garda Keogh sought to justify his belief that the officer was hostile to him by pointing to a report that he found in the disclosure material in which the then

assistant commissioner reported to the Garda Commissioner that if the serious allegations made by the reporter were found to be correct it would be a grave matter for the force. Obviously, this is no more than a fairly obvious, even trite comment.

Garda Keogh made specific criticisms of the investigation because of the delay in meeting him to begin with, because of the time it took, the failure to suspend a colleague he had accused, the way the investigators took statements and other flaws in method, and ultimately the incapacity to bring the culprits as he saw them to justice. These are addressed under Issue 17.

Garda Keogh's prejudicial view was unfortunate and was a cause of anxiety and stress for himself, as his doctor's notes for December 2014 and January 2015 demonstrate. His attitude to the investigation may well have coloured his reactions and interpretations in his dealing with his local superiors.

Assistant Commissioner Michael Finn

Garda Keogh's complaints about the bullying and harassment investigation conducted by Assistant Commissioner Michael Finn are related to Issue 20 concerning Supt Murray's promotion to the rank of chief superintendent. The tribunal finds that there were defects in the investigation, but they did not represent targeting or discrediting of Garda Keogh.

This point also arises in other issues where errors may have been made, or where there may have been a failure of explanation, or where it may be reasonable for Garda Keogh to have taken a particular interpretation, but such failures did not happen because officers targeted or discredited Garda Keogh.

The case is not made out that garda management at the highest level contrived to facilitate the promotion of Supt Murray by delaying the investigation of Garda Keogh's bullying and harassment complaint and by endeavouring to conceal its existence from the Policing Authority.

Assistant Commissioner Anne Marie McMahon

As suggested above, not all that happened concerning Garda Keogh was properly done and not all his interpretations were unjustified.

There were deficiencies and defects of one kind or another in inquiries and processes that affected Garda Keogh and it was suggested that the investigation taken over and completed by Assistant Commissioner Anne Marie McMahon had such failures, particularly delay, which in significant respect the tribunal accepted, and also that such deficiency discredited Garda Keogh, a claim that the tribunal rejected.

A general point that is relevant here is that a mistake made by an investigator or a delay in completing enquiries does not represent targeting or discrediting. The claim is made more than once in Garda Keogh's submissions that a failure or error or delay discredited him.

The tribunal did not accept that an inadvertent error or failing in any particular circumstances actually discredited Garda Keogh. It is indeed questionable whether delay, for example, that is not deliberate could actually amount to discrediting. But assuming the contrary to be the case, namely that accidental delay could cause discrediting, it follows that this result was not caused by senior officers.

While all of the investigations were carried out by members who were also performing their regular duties, the delays remain excessive.

The tribunal did not find fault in the conduct of A/C McMahon, who carried out her task efficiently, or in that of Assistant Commissioner Jack Nolan, from whom she took over when he retired. A/C Nolan encountered a series of legal and procedural obstacles which impeded his enquiries. However, these complications reflected a defective system that is in need of rectification.

Closing

Garda Keogh's beliefs and attitudes, and the circumstances that arose or that he created, made it impossible for the project that he initiated with his disclosure to succeed to his satisfaction. He brought to the Ó Cualáin investigation a set of attitudes that meant he could not accept that it was genuine as to purpose or that its findings would be legitimate. He found himself embroiled in local issues that he regarded as oppressive victimisation.

Some of Garda Keogh's suspicions or inferences were understandable from his perspective and in their factual context, but that does not explain the case. He failed to understand the obligations and functions of local superiors. He fixated on a small number of officers who he believed bore him ill-will but who had little or no knowledge or even interest in the disclosures he had made.

At the end of 2014, Garda Keogh was alleging that he was being victimised by C/Supt Curran, whom he saw as being part of a '*Kabal*' that was coming after him.

The likely explanation for what happened is that the pressure resulting from the variety of roles that Garda Keogh came to perform proved to be too much. He was a whistleblower; he had been identified publicly and in Athlone Garda Station as making serious charges against a colleague serving in the same station; he saw himself as participating in the investigation by A/C Ó Cualáin and his team and monitoring their work; he was a reporter to politicians who supported his cause and to whose own campaigns for reform of An Garda Síochána he contributed; he was also an ordinary garda on the beat. He had complex personal issues as to his health.

Garda Keogh's dominant concern was the investigation of his protected disclosure. All his eggs were in one basket, namely the Ó Cualáin investigation, but he was troubled in this respect by distrust of the assistant commissioner and also by impatience at the slow progress of the enquiries that he believed should have led swiftly to confirmation of his unshakeable certitudes. His suspicions and distrust, which were in some respects understandable, went far beyond what could be considered in any way reasonable. The tribunal's inference from all of the evidence is that suspicion, disappointment, stress and misunderstanding against the background of long-term alcohol addiction meant that Garda Keogh became irrational and even at times paranoid.

The truth is that the officers accused by Garda Keogh did not target or discredit him following his protected disclosure. There are incidents that could have been handled differently or better, the investigations could have been done better or faster, the garda managers could have done better in dealing with Garda Keogh, but the overall verdict has to be that the officers under scrutiny in this case emerge as conscientious members of An Garda Síochána concerned to do their duty.

CHAPTER 26

RECOMMENDATIONS

The publication of protected disclosures

As the tribunal previously recommended, consideration should be given to amendment of the Protected Disclosures Act, 2014 to deal with the situation where the discloser goes public with their allegations of wrongdoing. The tribunal in its Third Interim Report, when the sole member was Mr Justice Charleton, made these observations on the publication of protected disclosures:

An issue arises in respect of the use of protected disclosures. The issue, as the tribunal sees it, is for the Oireachtas to consider whether there is a lacuna in the Protected Disclosures Act, 2014.

This provides for a necessary, but elaborate, procedure in relation to the mechanism for making a protected disclosure, including the issue of the proper designated person or authority to whom it should be made. It also thereby protects the discloser by provisions relating to anonymity.

However, as happened with two of the protected disclosures with which the tribunal is concerned, these, despite having been made in the proper manner, were promptly disclosed, inter alia, to public representatives and journalists working in the media. This constituted not merely the ignition switch, but the accelerant used to inflame public opinion in relation to the matters concerned. It may be noted, of course, that these revelations necessarily led to, to say the least, deep public concern as to the nature of the alleged wrongdoing being revealed, the identity of the whistleblowers and other relevant details, at a time when it must be certain that the persons accused of the relevant wrongdoing and the proper authority had little or no opportunity to consider the impact of these disclosures and how they might be appropriately addressed.

The Oireachtas might therefore wish to consider whether any further regulation of the use of protected disclosures might be properly put in place to deal with this type of issue. In short, did the Oireachtas intend that the provisions of the 2014 Act should be used in this way or not?³⁴⁶⁷

The discloser and confidentiality

The concept behind the protection offered by the protected disclosures mechanism is the protection of the whistleblower from hostile reactions by fellow workers or superiors. An important, even essential, part of that purpose is confidentiality, whereby the identity of the whistleblower is not revealed unless and until it becomes necessary to do so.

Section 16 of the Protected Disclosures Act, 2014 offers at least a partial answer to this problem.

As noted in a previous chapter, section 16 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 by whom the protected disclosure was made. A failure to comply 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 a number of qualifications set out in section 16 (2) and these include:

³⁴⁶⁷ Third interim report of the tribunal of inquiry into protected disclosures made under the Protected Disclosures Act 2014 and certain other matters, pp. 299-300

- (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.*

This leaves the receiver of the disclosure with considerable risk as a failure to comply with the prohibition is actionable if the discloser suffers loss as a result.

The Oireachtas may think it appropriate to consider an amendment which would release other parties from the provisions of the statute where a discloser publishes or reveals his/her identity. Similar consideration should be given to the publication or revelation of the details of the disclosure or the revelation thereof outside of the statutory process.

Particular issues that arose from the evidence at the tribunal and which might be addressed in the context of confidentiality are:

- local and divisional management, having the responsibility for the day-to-day welfare of their members, should be in a position to take the measures necessary to address the welfare of the discloser or other affected members;
- officers dealing with issues arising under the *‘Working Together to Create a Positive Working Environment’* policy, the policy dealing with bullying and harassment in An Garda Síochána, should have access to the protected disclosure for the purpose of administering the scheme, including identifying matters to be investigated in a manner that does not interfere with the investigation of the disclosure itself;
- the protected disclosures manager should be formally declared to be the single point of contact between the discloser and local and divisional management in relation to all matters arising out of the protected disclosure so as to reduce delay and avoid confusion.

Section 62 of the Garda Síochána Act, 2005

The Oireachtas may wish also to consider how present or former garda members may be more effectively protected from allegations made in the Houses based on information disclosed under this section.

This section and the Standing Orders and other processes of Dáil Éireann might be reconsidered by the Oireachtas—

- (a) to assess whether they ensure an appropriate balance between the rights of a whistleblower to communicate with his or her public representatives and respect for the rights of persons subject to allegations of wrongdoing

- (b) to assess whether confidential garda information is adequately safeguarded by the qualification in subsection (4).

Section 62 of the Garda Síochána Act, 2005 is described in chapter 4 and may be summarised as follows:

A member of the Garda Síochána shall not disclose any information obtained in the course of duty if the person knows the disclosure of that information is likely to have a harmful effect.

The disclosure of such information does not have a harmful effect unless it has certain effects that are specified in paragraphs (a) to (j) and which include (a) facilitates the commission of an offence, (b) prejudices the safekeeping of a person in legal custody, and (c) impedes the prevention, detection or investigation of an offence.

A person is presumed, unless the contrary is proved, to know that 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.

Subsection (1) does not prohibit a person from disclosing such information if the disclosure is made to a member of either of the Houses of the Oireachtas where relevant to the proper discharge of the member's functions.

Section 62 enabled Garda Nicholas Keogh to report internal garda matters to deputies, who raised them as issues in Dáil Éireann under parliamentary privilege. It is not suggested that either the whistleblower or the deputies acted unlawfully or in bad faith. The problem was that the allegations could not be answered by the persons accused in the forum in which they were raised. Some officers, whom Garda Keogh reported as having victimised him, were identifiable within the force or outside it, or were actually named in the Dáil or in committee. Obviously, the deputies had no means of evaluating the legitimacy of the whistleblower's complaints, which were very strongly disputed.

Great harm can be done to a person who is subjected to criticism in Dáil Éireann on the basis of allegations that he or she maintains are wrong. The issue is not simply the fact that the section licenses the passing of internal information but the use the deputies make of what they are told. Standing Orders are intended to protect private citizens from being publicly criticised under conditions of privilege.

Another concern that arises indirectly out of this inquiry but is of important general application, and which the legislature might wish to address, is whether confidential or sensitive internal Garda material is adequately protected by the qualifying phrase '*where relevant to the proper discharge of the member's functions*'.³⁴⁶⁸

Delay

The persons concerned with a garda disciplinary process, including members who are the subject of investigation and the complainant where there is such a person, should be kept informed about its progress and notified of the reasons for delays. Problems giving rise to delay should be documented.

The Garda Disciplinary Code should be considered to see how it might be structured to reduce delay, consistent with fair procedures. Where the interests or requirements of two or more investigations come into conflict there should be proper liaison between them.

³⁴⁶⁸ Section 62 (4)(a) (x) of the Garda Síochána Act, 2005

The Garda Disciplinary Code gave rise to difficulties in this case because of the relationship between the criminal and the disciplinary processes, as the evidence of former Acting Commissioner Dónall Ó Cualáin, Assistant Commissioner Jack Nolan, Assistant Commissioner Anne Marie McMahon and Assistant Commissioner David Sheahan revealed.

There is no obvious or simple solution to the problem of delay in disciplinary investigations, or indeed other investigations. In the case of discipline, the procedures laid down in the regulations are detailed and complex and there is a substantial body of case law in superior court judgments and in judicial review applications that shows the difficulties that confront investigators. Efforts should be made to simplify and clarify the system.

Among the principal determinants of the duration of an inquiry process are the range and complexity of the issues and the number of witnesses to be interviewed. Are witnesses easily identifiable and are they cooperative? Other issues may arise to affect the time element. And it should be remembered that if there is a case to be heard, this preliminary inquiry phase will be followed by the establishment of a board of inquiry to conduct the hearing of the case. Following the board's decision there may be an appeal. The process is similar in most respects to a trial in court and its susceptibility to delay for any of a multiplicity of reasons is also analogous to such proceedings.

A point that arises clearly from this inquiry is the importance of keeping relevant parties informed of the progress of an investigation. This can operate to generate confidence in the process and to dispel unwarranted suspicion and unease.

Work related stress and alcohol: a clear policy and a standard mode of implementation are required

Decisions as to whether physical or psychological conditions, including stress, constitute injuries at work should be taken by Human Resources and People Development (HRPD) central administration, in accordance with a clear consistent policy and on the basis of medical evidence from the Chief Medical Officer (CMO) and factual evidence.

A health issue such as alcohol addiction should be identified and action taken in accordance with a specific policy that clarifies the role of the CMO. Officers should be prepared to refer a member for treatment.

Illness should be recorded as certified by the member's doctor and the form amended to include a condition not provided for as standard; the clerk should not have to adjust the description of illness on the form.

The CMO's role should be reassessed to enable that officer to conduct a full examination and to follow up—subject to issues of medical confidentiality—and to report to HRPD. It is apparent that the existing regime in respect of work related stress is unclear and in need of clarification. Disagreement between officers as to the role of the CMO showed the lack of clarity.

Assessing the causes or the impact of stress should not be a matter for a superintendent or chief superintendent in a particular district or division. Applications should be considered centrally by HRPD to ensure consistency and it should devise a procedure for applying for declarations of injury at work.

Garda management should have power to make temporary transfer or suspension arrangements that are not, and are not seen as, sanctions.

Appendix 1

OPENING STATEMENT OF THE DISCLOSURES TRIBUNAL ON THE 11TH APRIL 2019

Introduction

The Disclosures Tribunal was established by Ministerial Order on the 17th February 2017 to inquire into definite matters of urgent public importance which were set out in 16 Terms of Reference listed from [a] to [p]. The instrument appointed Mr Justice Charleton as the Sole Member and it directed that the inquiry be carried out in two modules, the first dealing with terms from [a] to [o] and the second dealing with term of reference [p].

The first module concerned Sgt Maurice McCabe, Garda Keith Harrison and Tusla. Mr Justice Charleton completed his inquiry into these matters and submitted reports on the 30th November 2017 and 11th October 2018.

The instrument of appointment and the Resolutions on which it was founded envisaged that the second module of the inquiry, dealing with issues under [p], might be carried out by a judge other than Mr Justice Charleton if he indicated a wish for that to happen when he had inquired into terms [a] to [o]. The judge notified the Government that he did wish to be replaced for term of reference [p] and new Resolutions were in due course passed by Dáil Éireann and Seanad Éireann providing for my appointment as a member of the tribunal.

Because Mr. Justice Charleton had a continuing role dealing with costs in relation to the inquiry into terms [a] to [o], the amending Resolutions provided that he remain as overall chair of the tribunal. He then appointed me as chair of the inquiry into term of reference [p]. These various resolutions and instruments are available on the tribunal's website.

Term of reference [p] is as follows:

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.

In this opening statement I want to say a word about the inquiry generally, publish

the tribunal's interpretation of term of reference [p], make some general comments and refer to upcoming hearings.

Public Inquiry function

In a judgment of the Supreme Court in July 1998¹, Chief Justice Hamilton said that

...the principal function of such Tribunals has been to restore public confidence in the democratic institutions of the State by having the most vigorous possible enquiry consistent with the rights of its citizens into the circumstances which give rise to the public disquiet.

The Court also said:

The essential purpose . . . for which a Tribunal is established under the 1921 Act is to ascertain the facts as to the matters of urgent public importance which it is to enquire into and report those findings to parliament or the relevant Minister.

The Chief Justice outlined the stages of a tribunal of inquiry as follows:

- (1) *A preliminary investigation of the evidence available;*
- (2) *The determination by the Tribunal of what it considers to be evidence relevant to the matters into which it is obliged to enquire;*
- (3) *The service of such evidence on persons likely to be affected thereby;*
- (4) *The public hearing of witnesses in regard to such evidence and the cross-examination of such witnesses by or on behalf of persons affected thereby;*
- (5) *The preparation of a report and the making of recommendations based upon facts established at such public hearing.*

In this inquiry, the steps in the full consideration of a complaint begin with the additional task of determining admissibility. Then there is the work of assembling documentary materials, using the legal process of discovery as necessary, identifying relevant witnesses and obtaining statements and defining the issues before embarking on preparations for hearings, with all the procedural measures the law dictates for the protection of rights.

These observations may help to explain why tribunals are lengthy and costly no matter how efficiently they are administered. The visible element of an investigation, when public hearings take place, represents a small fraction of the body of work that they do. The task of this tribunal in preparing for hearing of an admissible complaint

¹ Haughey v Moriarty [1999] 3 IR 1

may be likened to a legal firm preparing the cases of all the litigants in a multi-party and multi-issue case.

It will also be apparent that the tribunal is dependent on the co-operation of participants and other parties and witnesses in carrying out its work. This cooperation includes compliance with discovery of documents requests or orders, providing statements and responding to queries as well as facilitating tribunal investigators in conducting their interviews.

Term of Reference [p] and Interpretation

The tribunal gets its jurisdiction from the terms of reference and only from them. It has no inherent or independent capacity to investigate or, in the words of term of reference [p], to consider any complaint unless it comes within the reference term.

In the judgment cited above, the Supreme Court adopted a passage from the 1966 Salmon Report in England about the interpretation of the terms of reference as a correct statement of the law and practice applicable to tribunals of inquiry in this jurisdiction.

The tribunal should take an early opportunity of explaining in public its interpretation of its terms of reference and the extent to which the inquiry is likely to be pursued. As the inquiry proceeds, it may be necessary for the tribunal to explain any further interpretation it may have placed on the terms of reference in the light of the facts that have emerged.

The tribunal's interpretation of its mandate under term of reference [p] is explained in this statement and it may be summarised as follows. The essence of this reference is that the tribunal is to consider complaints made by persons who, as members of An Garda Síochána, made protected disclosures before the relevant date and who allege that they were thereafter targeted or discredited with the knowledge or acquiescence of officers of Superintendent rank or higher.

A complaint in the meaning of the paragraph [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 [p].

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

What is a protected disclosure? This is the kind of report of wrongdoing that is the subject of the Protected Disclosures Act, 2014. The reference at [p] is to a disclosure

as defined in the Act. If a report does not come within the statutory definition, it is excluded because the tribunal does not have any jurisdiction to consider it. The Act specifies the content of the disclosure and the persons and bodies to whom it is made and it is not intended to set out or summarise its provisions in this introductory statement. The legislation should be consulted for the full terms, the interpretation of which may require to be determined in a particular case. Subject to that reservation, for present purposes it is sufficient to say that 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 course of work. The 2014 Act provides safeguards for whistle-blowers whose reports of wrongdoing comply with these statutory conditions. It is noteworthy that the 2014 Act applies to a qualifying disclosure whether it was made before or after the legislation was enacted.

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 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].

Another essential jurisdictional requirement under term of reference [p] is that the targeting or discrediting directed towards the whistle-blower after the disclosure was condoned or tolerated or known about by senior members of the Garda Síochána. The tribunal notes the context of [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 Sergeant Maurice McCabe. We may take it that 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 or acquiesced in 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.

In his opening statement at the first phase dealing with terms of reference [a] to [o], Mr. Justice Charleton defined "discredit" within the meaning 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. "Targeted" meant abuse or criticism directed at a person. He also defined "senior members of the Garda Síochána" as being officers of the rank of Superintendent and above, as well as anybody acting in those capacities. The tribunal adopts those definitions for this phase.

The Gardaí to whom term of reference [p] applies, i.e. individuals whose complaints may be considered by the tribunal, are persons who, as members of An Garda Síochána, made protected disclosures before the 16 February 2017 and who allege that they were thereafter targeted or discredited with the knowledge or acquiescence of officers of Superintendent rank or higher. While a close, literal reading of term of reference [p] may suggest that complaints could only be received by the tribunal from serving Gardaí, the tribunal is satisfied that it has construed the true intention of the Oireachtas and that such a narrow interpretation would be unreasonable and impracticable and inconsistent with the intention of the legislature. Therefore, the tribunal is considering complaints from both serving and retired members of An Garda Síochána.

However, there is no reason to think that the Oireachtas intended that this module of the tribunal should embark on a historical investigation of every case of a Garda who believed he or she was victimised because of making a complaint of serious misconduct. If a major historical inquiry was envisaged, it would have been charted in more than a brief, final term of reference and in clear language. This view is supported by analysis of the debates in the Houses on the Resolutions establishing this inquiry. The warrant contained in the terms of reference does not require or justify an open-ended consideration of complaints from serving or retired Gardaí.

In a public statement in November 2017 the tribunal called for receipt of complaints, stating:

The tribunal is also carrying out a scoping exercise on term of reference (p), as to any targeting or discrediting of any Garda “who has made a protected disclosure”. The tribunal is calling for any Garda who made such a protected disclosure prior to 16 February 2017, who has not already done so, to provide a statement to it by the latest 18 December 2017.

Term of reference [p] does not specify a timeframe for complaints. However, the tribunal is in existence to address urgent matters of public importance and is obliged to complete its work expeditiously. It is therefore impractical for the tribunal to issue a general invitation for new submissions of complaints to add to those already notified but neither can it be said that the door is closed in all circumstances.

It remains to refer to a key component of the mandate set out in term [p], which is “to consider”. The terms of reference as a whole mandate 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 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 “consider” allows for an investigation of a complaint but does not require that.

“Consider” in 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 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.

Consideration of some cases will focus primarily or exclusively on admissibility questions. The tribunal interprets its function under [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.

Procedures

The tribunal has published its scheme of procedures which as stated therein are not rigid canons to be applied in all circumstances, irrespective of practicality or justice. They may have to be altered in particular situations where they might otherwise be unfair or unreasonable or unsatisfactory. To revert to Hamilton CJ speaking for the Supreme Court in the seminal case cited above, he referred to the constitutionally protected guarantee of basic fairness of procedures and endorsed the following authority:

The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with and so forth/

Questions of relevance of issues, evidence and witnesses will as far as possible be addressed in private session in advance of hearings in order to respect the rights of persons affected.

General Comments

As mentioned in the interpretation, 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.

It is understandable that some persons making complaints to the tribunal may be disappointed to find that it is not possible to investigate their grievances because they are not within the tribunal’s remit and therefore inadmissible. Gardaí whose

complaints are considered admissible may also be unhappy because some substantial or significant part of their allegations is not the subject of investigation or a public hearing. Legal advisers will no doubt apprise their clients of the legal constraints on a public inquiry such as this. If we were to trespass outside our limited zone of jurisdiction it would be open to anybody affected by the investigation to get an order from the High Court prohibiting it. But fear of litigation is not a factor; the reality is that no tribunal would intentionally engage in a process which it was not authorised to do.

I recognise that it may be difficult for parties to exercise the necessary restraint in this matter and for lawyers to resist the urgings of their clients but it is not a matter of choice. The person making the complaint may well be disappointed that the original allegation is not being examined to establish the truth one way or the other. The tribunal however does not have the legal capacity to embark on such an investigation. That is not what the Oireachtas has specified in the terms of reference. It is important I think to make this clear so that there is no misunderstanding.

There would be serious potential injustices if the consideration of a complaint trespassed into unauthorised areas. If criticisms are made of persons, the tribunal has the dilemma of how to respond in a manner that reflects fairness as well as legality. Suppose, for example, that criticism were to be levelled in respect of an inadmissible allegation against persons not involved in the tribunal's consideration. The tribunal is not permitted to embark on an inquiry into the matter. If the tribunal report offers a view on the criticism it will have done so on the basis of inadequate evidence. The factual basis of complaint may be strongly, even vehemently, held by the complainant but that does not make it admissible; moreover, engaging with the inadmissible element or even having a battle over admissibility is fraught with unsatisfactory outcomes.

Considerations of admissibility also apply to the preliminary analysis of complaints. If the case as put by the person applying to the tribunal cannot fit within the term of reference then it is not legally possible for it to be considered.

The tribunal does not apply a test of validity or credibility to a complaint in order to decide admissibility. The tribunal does not adopt an overly-technical approach at this preliminary stage and will direct further inquiries to be made, if necessary by assigning tribunal investigators to interview the complainant, in order to clarify any doubtful point on admissibility. The tribunal also takes the view that in a doubtful or debatable case it may be appropriate to seek legal submissions on the question of admissibility.

The terms of reference assign the tasks that the tribunal is required to accomplish. It is for the tribunal itself to identify the specific issues it will address in achieving this objective.

The present position

The tribunal's legal team is preparing for the first cases that will be the subject of public hearings. The tribunal is anxious to proceed as expeditiously as possible, bearing in mind the importance and urgency of the issues but it is imperative not only to respect fair procedures but also to be sure that all appropriate preparatory inquiries have been made. The measures outlined in the scheme of procedures previously published on the tribunal's website are designed to ensure that participants in the tribunal's work are afforded all necessary facilities.

Other persons who have made complaints to the tribunal have been notified of this preliminary session but there is no obligation on them to attend, although they are of course most welcome to do so.

This is not an occasion for applications for legal representation. The tribunal deals with applications for legal representation by correspondence as far as possible. If it becomes necessary to have a hearing in public on such an issue that will be arranged in due course with a specific agenda. Anybody seeking legal representation in respect of any part of the tribunal's work, who has not already done so, should write to the tribunal setting out the reasons why representation is sought and the nature of the representation requested.

We have received applications for legal representation and we are dealing with these on an individual basis and in correspondence. The granting of representation and the consequential right of audience before the tribunal does not in any way determine the level of representation that any party wishes to have. That is a matter for each party. It is further not an order for costs in respect of any party. The grant of legal representation does not mean that costs will automatically be paid and any application for an award of legal costs must be made at the conclusion of the tribunal in accordance with the relevant legislation.

Timescale and Schedule

The tribunal is planning to embark on considering the first complaint in late June 2019. Other cases will follow later in the year and as I anticipate into 2020.

The tribunal will also address issues of admissibility and notify persons who made complaints of the decisions. We will proceed with our mandate as expeditiously as possible, consistent with observance of fair procedures.

Appendix 2

SCHEDULE OF ISSUES FOR THE GARDA NICHOLAS KEOGH MODULE

1. *The investigation of the PULSE entry by Garda Nicholas Keogh on 18/05/2014 (PID 4085409);*
2. *The investigation of the PULSE check by Garda Nicholas Keogh on 18/05/2014;*
3. *The investigation into Olivia O'Neill's visit to Athlone Garda Station on 28/5/14;*
4. *The investigation into Liam McHugh's complaint to Garda Aidan Lyons on 31/05/2014 (PID 105191);*
5. *The alleged micro supervision of Garda Nicholas Keogh by 1. Sgt. Yvonne Martin 2. Sgt. Cormac Moylan 3. Sgt. Aidan Haran;*
6. *The disciplinary investigation in relation to the motor tax on Garda Nicholas Keogh's vehicle during 2015;*
7. *The disciplinary investigation in relation to the sick leave of Garda Nicholas Keogh during July 2015;*
8. *Former Commissioner Noirin O'Sullivan's alleged intervention by telephone to Supt. Patrick Murray in April 2015;*
9. *The criticism of criminal investigations by Garda Nicholas Keogh during 2015 including:

PID 12013825 & PID 12013830: Theft at Costume Place Athlone on 4/7/15;

PID 12108691: Theft at Dublin Road Athlone on 17/08/15;

PID 12095496: Criminal damage at Mulligans filling station on 17/08/15;

PID 12207121: Robbery on 13/9/15;*
10. *Complaints by Garda Nicholas Keogh in relation to the denial of the request for the cancellation of annual leave on 31/8/15;*

11. *Complaints by Garda Nicholas Keogh in relation to his confinement to indoor duty on 22/10/15;*
12. *Complaints by Garda Nicholas Keogh in relation to the misrecording of his sick leave and the reduction of salary;*
13. *Complaints by Garda Nicholas Keogh in relation to the alleged denial of overtime;*
14. *Complaints by Garda Nicholas Keogh in relation to the alleged delay in the payment of his travel expenses on 18/6/2014, 14/7/2014, 30/7/2014, 13/8/2014;*
15. *Complaints by Garda Nicholas Keogh in relation to the alleged denial of commendations in respect of (a) an incident involving the stabbing of a taxi driver on 3/8/15 (b) the arrest of a person for burglary on 28/10/14 (c) the rescue of a lady from drowning on 22/9/15;*
16. *Complaints by Garda Nicholas Keogh in relation to the alleged tapping of his phone and/or that his post was opened in 2014/2015;*
17. *Complaints by Garda Nicholas Keogh in relation to the criminal investigation carried out by Assistant Commissioner Donal O’Cuáilain;*
18. *Complaints by Garda Nicholas Keogh in relation to the bullying and harassment investigation carried out by Assistant Commissioner Michael Finn;*
19. *Whether the disciplinary investigation carried out by Assistant Commissioner Ann-Marie McMahan constituted a discrediting or targeting of Garda Nicholas Keogh;*
20. *Complaints by Garda Nicholas Keogh in relation to the promotion of Superintendent Patrick Murray to Chief Superintendent in 2017;*
21. *Complaints by Garda Nicholas Keogh that the Disclosures Tribunal Order was deliberately withheld from him;*
22. *Complaints by Garda Nicholas Keogh that other material, including the s. 41 report pursuant to the Garda Síochána Act 2005 was withheld from him.*

Solicitor to the Tribunal: John Davis

Registrar: Peter Kavanagh

Appendix 3

Tribunal personnel

Sean Ryan, Tribunal Chairman

Diarmaid McGuinness, Senior Counsel,

Patrick Marrinan, Senior Counsel,

Sinéad McGrath, Barrister-at-Law,

Ciara Walsh, Solicitor

John Davis (former solicitor at the tribunal)

Emma Toal, Barrister-at-Law, documentary counsel

Lalita Pillay, Barrister-at-Law, documentary counsel

Peter Kavanagh, Registrar

Philip Barnes, Office Manager

Joanne O'Donohue, Investigator (courtesy of the Garda Síochána Ombudsman Commission)

Carl Ryan, Investigator (courtesy of the Garda Síochána Ombudsman Commission)

Former Detective Inspector Maura Walsh (former investigator at the tribunal)

Ella Woolfson, Legal Researcher

Orla Doolin, Legal Researcher

Brenda Byrne, Administration

Susan McCormack, Administration

Stenographers to the Tribunal:

Gwen Malone Stenography Services

Niamh Kelly

Aoife Downes

Proofreader to the Tribunal:

Pat Neville

Appendix 4

List of Represented Parties before the Tribunal

For the tribunal:

Diarmaid McGuinness, Senior Counsel
Patrick Marrinan, Senior Counsel
Sinéad McGrath, Barrister-at-Law
Ciara Walsh, solicitor
John Davis (former solicitor at the tribunal)

For Garda Nicholas Keogh:

Matthias Kelly, Senior Counsel
Patrick O'Brien, Barrister-at-Law
Aisling Mulligan, Barrister-at-Law
Instructed by John Gerard Cullen Solicitors

For Superintendent Noreen McBrien:

Paul Carroll, Senior Counsel
John Ferry, Barrister-at-Law
Instructed by O'Mara Geraghty McCourt Solicitors

For Assistant Commissioner Fintan Fanning:

Paul McGarry, Senior Counsel
Stephen O'Connor, Barrister-at-Law
Instructed by Seán Costello & Company Solicitors

For Garda Fergal Greene, Garda Stephanie Treacy and Garda David Turner:

Patrick McGrath, Senior Counsel
James Kane, Barrister-at-Law
Eoin Lawlor, Barrister-at-Law
Instructed by Hughes Murphy Solicitors

For the Commissioner of An Garda Síochána, other senior members of An Garda Síochána:

Shane Murphy, Senior Counsel
Mícheál P. O'Higgins, Senior Counsel
Conor Dignam, Senior Counsel
Donal McGuinness, Barrister-at-Law
Shelley Horan, Barrister-at-Law
Kate Egan, Barrister-at-Law
Instructed by the Chief State Solicitor's Office

For Ms Olivia O'Neill:

John Connellan, Barrister-at-Law
Instructed by T & N McLynn Solicitors

For Mr Liam McHugh:

Michael Mulcahy, Senior Counsel
John Connellan, Barrister-at-Law
Instructed by T & N McLynn Solicitors

**For AGSI, Inspector Nicholas Farrell, Inspector Michelle Baker,
Sergeant Andrew Haran, Sergeant Aidan Lyons, Sergeant Sandra Keane,
Sergeant Cormac Moylan, Sergeant Dermot Monaghan and
Sergeant Yvonne Martin:**

Desmond Dockery, Senior Counsel
Peggy O'Rourke, Senior Counsel
Sinead Gleeson, Barrister-at-Law
Instructed by Reddy Charlton Solicitors

For Garda Tom Higgins:

Hugh Hartnett, Senior Counsel
Tom Power, Barrister-at-Law
Instructed by McCartan & Burke Solicitors

For Mr John Barrett:

Séamus Clarke, Senior Counsel
David Byrnes, Barrister-at-Law
Instructed by Noble Law Solicitors

For the Minister for Justice

Chief State Solicitor's Office

For the Policing Authority

Conor Power, Senior Counsel
Cathal Ó Braonáin, Barrister-at-Law
Ms Helen Hall, Chief Executive

Appendix 5

Tribunal Timeline

16th February 2017	Resolutions passed by Dáil Éireann and Seanad Éireann.
17th February 2017	The tribunal was established by the Minister for Justice and Equality under the Tribunals of Inquiry (Evidence) Act 1921 by instrument. This instrument appointed Mr Justice Peter Charleton, Judge of the Supreme Court, as sole member of the tribunal.
17th May 2017	First interim report.
4th July 2017	Tribunal commences hearing evidence.
24th November 2017	The tribunal issues public notice seeking complaints in term of reference (p).
30th November 2017	Second interim report of the tribunal on terms of reference (n) and (o).
22nd June 2018	Tribunal concludes hearing evidence.
28th and 29th June 2018	Final submissions from parties were heard by the tribunal.
11th October 2018	Third interim report of the tribunal on terms of reference (a) to (o).
13th and 29th November 2018	Resolutions passed by Dáil Éireann.
14th and 29th November 2018	Resolutions passed by Seanad Éireann.
7th December 2018	The Minister for Justice and Equality, by Instrument, appointed Mr Justice Sean Ryan to be a member of the Disclosures Tribunal.
11th December 2018	Mr Justice Peter Charleton has determined that Mr Justice Sean Ryan be Chairperson of a division of the Tribunal to continue and conclude that work of the Tribunal comprised in term of reference (p).
8th March 2019	Tribunal publishes 'Procedures of the Tribunal in relation to Term of Reference (p)' on its website.

11th April 2019	Opening statement of the tribunal delivered by the Chairman of division (p), Mr Justice Sean Ryan, Former President of the Court of Appeal.
30th April 2019	Private sitting (case management)
14th October 2019	Opening statement of counsel for the tribunal was delivered by Mr Patrick Marrinan SC, counsel to the tribunal. Day 99 of public hearings of the tribunal. Garda Nicholas Keogh gave evidence.
15th October 2019	Day 100 of tribunal hearings. Garda Nicholas Keogh gave evidence.
16th October 2019	Day 101 of tribunal hearings. Garda Nicholas Keogh gave evidence.
17th October 2019	Day 102 of tribunal hearings. Garda Nicholas Keogh gave evidence.
18th October 2019	Day 103 of tribunal hearings. Garda Nicholas Keogh gave evidence.
21st October 2019	Day 104 of tribunal hearings. Garda Nicholas Keogh gave evidence.
22nd October 2019	Day 105 of tribunal hearings. Garda Nicholas Keogh gave evidence.
23rd October 2019	Day 106 of tribunal hearings. Garda Nicholas Keogh gave evidence.
24th October 2019	Day 107 of tribunal hearings. Garda Nicholas Keogh gave evidence.
25th October 2019	Day 108 of tribunal hearings. Garda Nicholas Keogh gave evidence.
4th November 2019	Day 109 of tribunal hearings. Garda Nicholas Keogh gave evidence.
5th November 2019	Day 110 of tribunal hearings. Garda Nicholas Keogh gave evidence.
6th November 2019	Day 111 of tribunal hearings. Garda Nicholas Keogh gave evidence.
7th November 2019	Day 112 of tribunal hearings. Garda Nicholas Keogh gave evidence.
8th November 2019	Day 113 of tribunal hearings. Garda Nicholas Keogh gave evidence.
11th November 2019	Day 114 of tribunal hearings. Garda Nicholas Keogh gave evidence.

12th November 2019	Day 115 of tribunal hearings. Garda Nicholas Keogh gave evidence.
13th November 2019	Day 116 of tribunal hearings. No evidence heard.
14th November 2019	Day 117 of tribunal hearings. Chief Superintendent Mark Curran gave evidence.
15th November 2019	Day 118 of tribunal hearings. Chief Superintendent Mark Curran gave evidence.
26th November 2019	Day 119 of tribunal hearings. Ms Olivia O'Neill and Superintendent Noreen McBrien gave evidence.
27th November 2019	Day 120 of tribunal hearings. Superintendent Noreen McBrien gave evidence.
28th November 2019	Day 121 of tribunal hearings. Sergeant Sandra Keane, Sergeant Andrew Haran and Inspector Nicholas Farrell gave evidence.
29th November 2019	Day 122 of tribunal hearings. Inspector Aidan Minnock gave evidence.
2nd December 2019	Day 123 of tribunal hearings. Chief Superintendent Pat Murray and Garda Stephanie Treacy gave evidence.
3rd December 2019	Day 124 of tribunal hearings. Chief Superintendent Pat Murray gave evidence.
4th December 2019	Day 125 of tribunal hearings. Chief Superintendent Pat Murray gave evidence.
5th December 2019	Day 126 of tribunal hearings. Chief Superintendent Pat Murray gave evidence.
6th December 2019	Day 127 of tribunal hearings. Chief Superintendent Pat Murray gave evidence.
21st January 2020	Day 128 of tribunal hearings. Sergeant Aidan Lyons, Garda Tom Higgins and Inspector Eamon Curley gave evidence.
22nd January 2020	Day 129 of tribunal hearings. Detective Sergeant Yvonne Martin, Sergeant Andrew Haran, Garda Gerry White (retired), Inspector Michelle Baker and Inspector Aidan Minnock gave evidence.
23rd January 2020	Day 130 of tribunal hearings. Inspector Aidan Minnock and Superintendent Noreen McBrien gave evidence.

24th January 2020	Day 131 of tribunal hearings. Garda Olivia Kelly, Sergeant Cormac Moylan and Sergeant Dermot Monaghan gave evidence.
27th January 2020	Day 132 of tribunal hearings. Superintendent Alan Murray and Chief Superintendent Lorraine Wheatley gave evidence.
28th January 2020	Day 133 of tribunal hearings. Chief Superintendent Lorraine Wheatley, Inspector Brian Downey and Garda Michael Quinn gave evidence.
29th January 2020	Day 134 of tribunal hearings. Ms Monica Carr and Dr Oghenovo Oghuvbu gave evidence.
10th February 2020	Day 135 of tribunal hearings. Judge Patrick McMahon and Detective Superintendent Frank Walsh gave evidence.
11th February 2020	Day 136 of tribunal hearings. Detective Superintendent Frank Walsh, Detective Inspector Michael Coppinger and Detective Superintendent Declan Mulcahy gave evidence.
12th February 2020	Day 137 of tribunal hearings. Detective Superintendent Declan Mulcahy gave evidence.
13th February 2020	Day 138 of tribunal hearings. Former Acting Commissioner Dónall Ó Cualáin gave evidence.
14th February 2020	Day 139 of tribunal hearings. Former Acting Commissioner Dónall Ó Cualáin gave evidence.
17th February 2020	Day 140 of tribunal hearings. Assistant Commissioner Anne Marie McMahon, Assistant Commissioner David Sheahan and Assistant Commissioner Orla McPartlin gave evidence.
18th February 2020	Day 141 of tribunal hearings. Chief Superintendent Anthony McLoughlin gave evidence.
19th February 2020	Day 142 of tribunal hearings. Assistant Commissioner Michael Finn gave evidence.
20th February 2020	Day 143 of tribunal hearings. Assistant Commissioner Finbarr O'Brien, Deputy Commissioner John Twomey, Retired Assistant Commissioner Jack Nolan, Superintendent Michael Leacy and Superintendent Seamus Maher gave evidence.

21st February 2020	Day 144 of tribunal hearings. Chief Superintendent Margaret Nugent and Mr Alan Mulligan gave evidence.
2nd March 2020	Day 145 of tribunal hearings. Mr Liam McHugh, Chief Superintendent John Scanlan and Chief Superintendent Pat Murray gave evidence.
3rd March 2020	Day 146 of tribunal hearings. Chief Superintendent Pat Murray gave evidence.
4th March 2020	Day 147 of tribunal hearings. Garda Fergal Greene and Mr Joseph Nugent gave evidence.
5th March 2020	Day 148 of tribunal hearings. Mr Joseph Nugent and Former Assistant Commissioner Fintan Fanning gave evidence.
6th March 2020	Day 149 of tribunal hearings. Former Assistant Commissioner Fintan Fanning and Former Acting Commissioner Dónall Ó Cualáin gave evidence.
29th June 2020	Day 150 of tribunal hearings. Mr John Barrett gave evidence.
30th June 2020	Day 151 of tribunal hearings. Assistant Commissioner Michael Finn gave evidence.
1st July 2020	Day 152 of tribunal hearings. Submission from the Policing Authority. Final submissions from parties were heard by the tribunal.

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