



Sixth and Final 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.

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

Term of Reference [p]

Garda Whistleblowers

The case of Retired Sergeant William Hughes





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

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

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

The Hon Mr Justice Sean Ryan

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Dublin Castle
Dublin D02 Y337
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info@disclosuretribunal.ie

20th April 2023

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

Dear Mr. Finnegan,

I enclose with this letter two (2) copies of the Tribunal's report into the complaint made by Retired Sergeant William Hughes under Term of Reference [p] of the Disclosures Tribunal. This is the Sixth Interim Report of the Tribunal. This is also the final Report of the Tribunal. A copy of this has also been sent to you by e-mail, at your request.

As required by the terms of my appointment I provided my report to the Chairperson of the Tribunal, Mr Justice Peter Charleton, and the report then became the report of the tribunal. He did not of course have any involvement in the investigation of the complaint or the compilation of the report, for which I alone have full responsibility.

I now submit this report of the tribunal with the consent and authority of the chairperson.

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

Yours sincerely,

Sean Ryan

Chairperson of division [p] of the Disclosures Tribunal

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

Solicitor to the Tribunal: Ciara Walsh

Registrar: Peter Kavanagh



**Tribunal of Inquiry into protected disclosures made under the
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The Hon Mr Justice Sean Ryan

Aberdeen Suite
Dublin Castle
Dublin D02 Y337
Ireland

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Our ref: DT-1/P

Your ref:

14th December 2022

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

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

Dear Detective Superintendent McCormack,

I refer to the tribunal hearings concerning matters relating to Retired Sergeant William Hughes pursuant to term of reference [p] of the tribunals terms of reference. A copy of the tribunal's terms of reference is enclosed.

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

I refer you to the Tribunals of Inquiry (Evidence) (Amendment), Act, 2002. Under Section 3 (1) there are circumstances in which the recipient of the report may have to seek the directions of the High Court regarding its publication because of criminal proceedings. The relevant part of the section is as follows:

- '3. (1) If, on receipt by the person to whom a tribunal is required, by the instrument by which it is appointed or any instrument amending it, to report of an interim or the final report of the tribunal, that person considers that the publication of the report might prejudice any criminal proceedings, that person may apply to the Court for directions regarding the publication of the report.*
- (2) Before the Court determines an application under subsection (1), it shall direct that notice of it be given to—*
- (a) the Attorney General,*
 - (b) the Director of Public Prosecutions, and*
 - (c) a person who is a defendant in criminal proceedings relating to an act or omission that—*
 - (i) is described or mentioned in the report concerned, or*

Solicitor to the Tribunal: Ciara Walsh

Registrar: Peter Kavanagh

(ii) is related to any matter into which the tribunal concerned inquired and which is so described or mentioned, and the Court may receive submissions, and evidence tendered, by or on behalf of any such person here,

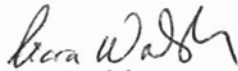
(3) On an application under subsection (1) the Court may, if it considers that the publication of the report concerned might prejudice any criminal proceedings, direct that the report or a specified part of it be not published—

(a) for a specified period, or

(b) until the Court otherwise directs..'

To assist the Tribunal in its reporting to the Clerk of Dáil Éireann could you confirm that there are no criminal proceedings in being to which section 3(1) above could apply and in particular, that there are no defendants in any criminal proceedings to which section 3 (2)(c) above could be applicable. The tribunal would be grateful if you could revert with such confirmation within 14 days of the date of this letter.

Yours sincerely,



Ciara Walsh

Solicitor to the Tribunal

83342

An Garda Síochána

Ceanncheathrú An Gharda Síochána
Páirc an Fhionnuisce
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Dáta/Date: 12th January, 2023

Your ref: DT-1/P

**Ciara Walsh,
Solicitor to the Protected Disclosures Tribunal,**

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

Dear Ms. Walsh,

With reference to your letter dated 14th December, 2022 regarding retired Sergeant William Hughes and pursuant to part (p) of the Tribunal's terms of reference, I wish to inform you of the following.

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

I can further confirm that there are no criminal proceedings in being to which Section 3(1) could apply and that there are no defendants in any criminal proceedings to which Section 3(2)(c) could be applicable.

Yours sincerely,

Handwritten signature of Sé McCormack in black ink.

Date: 12th January 2023

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

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CHAPTER 1

INTRODUCTION

The Tribunal and Term of Reference [p]

On 16th February 2017, following approval by the Government of draft resolutions to that effect, the Houses of the Oireachtas each resolved that it was expedient that a tribunal be established under the Tribunals of Inquiry (Evidence) Acts, 1921 to 2004.

The tribunal was chaired by Mr Justice Peter Charleton, Judge of the Supreme Court, and was mandated to inquire urgently into definite matters of urgent public importance set out in terms of reference from [a] to [p]. The first module concerning Sergeant Maurice McCabe and terms [a] to [o] was completed by Mr Justice Charleton, who submitted reports dated 19th May 2017, 30th November 2017 and 11th October 2018.

By further resolutions of the Houses of the Oireachtas in November 2018 and Ministerial Orders following them, Mr Justice Sean Ryan, former President of the Court of Appeal, was appointed as a member of the tribunal, and by subsequent direction of Mr Justice Charleton, became Chairperson of term of reference [p] of the tribunal, which states that the tribunal is:

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

Section 5 (1) of the Protected Disclosures Act, 2014 defines a protected disclosure as a disclosure by a worker of 'relevant information' in a particular or specified manner.

Information is 'relevant information' if two conditions are satisfied under section 5 (2):

- (a) *in the reasonable belief of the worker, it tends to show one or more relevant wrongdoings, and*
- (b) *it came to the attention of the worker in connection with the worker's employment.*

Section 5 (3) of the Protected Disclosures Act, 2014 defines 'relevant wrongdoings' as including subsection (d) 'that the health or safety of any individual has been, is being or is likely to be endangered'.

Section 5 (8) provides that 'in proceedings involving an issue as to whether a disclosure is a protected disclosure it shall be presumed, until the contrary is proved, that it is'.

The Act has retrospective application. Section 5 (1) provides that '[f]or the purposes of this Act "protected disclosure" means, subject to subsection (6) and sections 17 and 18, a disclosure of relevant information (whether before or after the date of the passing of this Act) made by a worker in the manner specified in section 6, 7, 8, 9 or 10'.

The tribunal has no inherent or independent jurisdiction; its only authority is to perform the task in the relevant term of reference. The inclusion of term of reference [p] was to enable the tribunal

to investigate other cases where whistleblowers alleged that they had been victimised – targeted or discredited – by senior officers of An Garda Síochána or with their acquiescence after they made protected disclosures and by implication because they had done so, i.e. exposed wrongdoing in the force.

Term of reference [p] reflects the concern of the Oireachtas to protect whistleblowers. Persons accused of targeting or discrediting have to be senior officers of An Garda Síochána. For a finding of targeting or discrediting by senior officers, the tribunal has to be satisfied that those who allegedly victimised the whistleblower (engaged in the acts alleged to be targeting or discrediting) did so in response to the reported wrongdoing.

The first complaint considered under term of reference [p] in a public hearing concerned Garda Nicholas Keogh of Athlone Garda Station. The report of the inquiry into the complaint was the Fourth Interim Report of the Disclosures Tribunal and was published on 8th July 2021.

In chapter 1 of the Fourth Interim Report (Volume 1), the tribunal addressed the mandate under term of reference [p] as follows:

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

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

The conditions of admissibility of a complaint under term of reference [p] were also outlined:

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

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

Another essential jurisdictional requirement under term of reference [p] is that the targeting or discrediting directed towards the whistleblower, after the disclosure, was condoned or tolerated or known about by senior members of An Garda Síochána. Mr Justice Charleton defined 'senior officers of the Garda Síochána' as being officers of the rank of superintendent and above, as well as anybody acting within those capacities and the tribunal adopts this definition.

It was emphasised by the tribunal that:

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

The tribunal published its interpretation of term of reference [p] and this is available on the tribunal website.

The tribunal is not engaged in a review of garda methods in any particular circumstances and it is not a question of whether it agrees that the conduct was appropriate or correct but rather whether the circumstances are evidence of targeting or discrediting because of a protected disclosure.

It is also important to note that the scope of the tribunal's function does not extend to any examination of the underlying allegations of wrongdoing in the protected disclosure itself and/or the validity or correctness of the findings made by each investigation discussed in this report.

Procedure

The tribunal published a Memorandum of Procedures on 8th March 2019 that it adopted in respect of term of reference [p]. This document is also available on the tribunal website.

Complaint made to the Tribunal

This is the report of the inquiry into the complaint made by retired Sergeant William Hughes of Swords Garda Station pursuant to term of reference [p] that he was targeted and discredited by senior officers of An Garda Síochána because he made a protected disclosure.

Sgt Hughes first contacted the tribunal by letter dated 9th March 2017 and enclosed a letter outlining, *inter alia*, serious allegations of a 'systems failure' in An Garda Síochána prior to and concerning the murder of Ms Baiba Saulite on 19th November 2006.¹ He said that, as a result of his disclosures as a whistleblower he was subject to mistreatment by An Garda Síochána. He provided further material to the tribunal dated 4th April 2017, 9th January 2018, 9th July 2018 and 11th February 2019.²

Tribunal investigators subsequently interviewed Sgt Hughes over the course of four days between 20th March 2019 and 27th March 2019.³ During his interview Sgt Hughes outlined what he said were four protected disclosures made between 17th December 2006 and 4th October 2010.⁴ He further outlined alleged instances of targeting or discrediting by senior officers of An Garda Síochána after the making of these protected disclosures.⁵ These instances are reflected in the Schedule of Issues referenced below and attached as Appendix 2 to this report.

¹ Tribunal Documents, pp. 62-93

² Tribunal Documents, pp. 97-372

³ Tribunal Documents, pp. 1-61

⁴ Tribunal Documents, pp. 25-33

⁵ Tribunal Documents, pp. 33-61

Discovery

Following Sgt Hughes's complaint, the tribunal requested and received extensive discovery over a number of months in 2020 and 2021, with approximately 29,000 documents being provided. The tribunal is grateful for this cooperation with its work.

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

A large number of witness statements was subsequently provided to the tribunal during 2020 and 2021.

The Interview Process

Tribunal investigators conducted interviews with relevant witnesses under section 6 of the Tribunals of Inquiry (Evidence) (Amendment) Act, 2002. Following the interview of Sgt Hughes, the tribunal investigator interviewed one further witness and issued a Memorandum of Questions to seven witnesses during 2021.

The Schedule of Issues

The tribunal conducted a case management hearing in private session on 5th November 2021. The purpose of the session was to hear submissions, if any, in respect of a schedule of questions concerning issues for this module, which had been circulated by letter dated 30th July 2021. Following the case management hearing the tribunal prepared a Schedule of Issues, which was agreed upon by all the parties.

Public Hearings

This is the second complaint to be considered under term of reference [p] in a public hearing.

In advance of public hearings, the tribunal prepared an electronic brief of material relevant to the matters into which it was obliged to inquire in respect of Sgt Hughes. This brief, or where appropriate, the relevant sections of it, was served on the relevant parties in advance of the commencement of public hearings.

The tribunal commenced public sittings in respect of Sgt Hughes's complaint under term of reference [p] on 1st February 2022. The tribunal heard sixteen days of oral evidence and a list of all witnesses called to give evidence appears in Appendix 5 to this report. All transcripts are available on the tribunal website.

The tribunal has admitted into evidence a number of written statements in circumstances where the parties agreed that it was not necessary to call such a witness *viva voce*.

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

Legal Representation

The tribunal received applications for legal representation by interested parties and these applications, in the main, were dealt with in writing. The entitlement to be represented was afforded to all parties and persons whose reputation could potentially be adversely affected in any manner by the report of the tribunal. The list of parties afforded legal representation and their representatives under this module appears in Appendix 4 to this report.

Tribunal Personnel

The tribunal expresses its gratitude to the legal teams appearing for the various parties who were accorded representation. A special word of thanks is due to all tribunal counsel, tribunal solicitor, investigators, registrar, tribunal researchers, office staff and tribunal manager. The names of the members of the tribunal team are noted in Appendix 3 to this report.

CHAPTER 2

THE FACTUAL CONTEXT

Background

Sergeant William Hughes was attested as a member of An Garda Síochána on 27th April 1982 and was assigned to Blanchardstown Garda Station. During his early career he was transferred to Coolock and Swords Garda Stations. He was promoted to the rank of Sergeant in 1993 and was stationed at the Bridewell Garda Station. He was transferred to Fitzgibbon Street Garda Station in 1997 and returned to Swords Garda Station on 29th January 2002.

During his career at Swords Garda Station he was assigned first to the regular policing unit and later to the community policing unit, where he was working in November 2006.

On Sunday night, 19th November 2006, a gunman murdered Ms Baiba Saulite, a young Latvian woman, by shooting her three times at her front door while her two small boys slept upstairs. This crime is a central feature of the background to the events with which the tribunal is concerned in this report and while the tribunal is not examining the murder or the investigation of the murder it is proper to note the heinous crime that lies in the background of the events covered in the report.

Ms Saulite had a difficult life in the years leading up to her murder. In late 2004, Ms Saulite's partner and the father of her children unlawfully abducted the two boys and refused to return them or even to reveal where he had taken them. Sgt Hughes and Garda Declan Nyhan were assigned to investigate the allegations of abduction, and they first met Ms Saulite and her solicitor Mr John Hennessy in December 2004.

In addition to the abduction of her children, Ms Saulite had occasion to seek court protection from her partner and she obtained a barring order in the District Court on 22nd December 2004 with the help of Mr Hennessy. That court was however unable to compel the partner to produce Ms Saulite's children. She complained to these officers and other gardaí about domestic abuse, but she was reluctant to make a formal complaint about it.

There was good news for Ms Saulite concerning her children. Sgt Hughes and Garda Nyhan by means of good police work ascertained that the father had caused the children to be taken out of the jurisdiction and placed in the custody of their grandmother in Syria. By this time the father was in custody on abduction charges and when he sought bail the gardaí objected. The High Court granted bail subject to the condition that the children be returned to their mother. The father complied after a time. Arrangements were made for Ms Saulite to travel to Lebanon where the boys were handed over and the reunited mother and children returned to Ireland. The father ultimately pleaded guilty to abducting the children and the investigating officers thus brought a complex investigation to a successful conclusion. At the time of her death, Ms Saulite was due to provide a victim impact statement for the sentence hearing of her former partner in December 2006.

The father was in more trouble with the law besides the abduction charges and was in jail at the time of the murder. He had been convicted of car theft charges in early 2006. At the sentence hearing for those offences he sought through counsel to make the case in mitigation that the children would be deprived of care if he was sentenced to imprisonment. Ms Saulite's solicitor, Mr Hennessy, was on hand to rebut this claim and the court imposed a custodial sentence of imprisonment of four years.

Disturbing events happened to Ms Saulite and Mr Hennessy during 2006. These included arson at his home and of Ms Saulite’s car outside her house. The gardaí also received confidential information as to threats to the solicitor’s life, one of which they took very seriously, with the result that officers gave Mr Hennessy security advice and arranged for patrols to be vigilant. The measures did not amount to round the clock armed protection until after the murder. These matters were investigated by different garda detective units, a matter about which Sgt Hughes was severely critical in the aftermath of the murder. Nobody was prosecuted for any of these crimes and obviously nothing in this report is intended to imply culpability on the part of any person.

Sgt Hughes and Garda Nyhan had been dealing with Ms Saulite for nearly two years while investigating the abduction of her two children. Some five days before she was murdered, on 14th November 2006, she met Sgt Hughes and Garda Nyhan by appointment to discuss the victim impact statement she was to provide to the court. Ms Saulite produced a draft victim impact statement but after a cursory inspection of the twelve-page handwritten document the sergeant was not satisfied that it would be suitable for use in court and he did not read it in full or to the end. In fact, Ms Saulite expressed fears for her safety at the end of the statement, but Sgt Hughes did not notice that.

When Sgt Hughes came to work on Monday morning, 20th November 2006, having learned of the murder of Ms Saulite the night before, he went to his desk and read the copy statement he had kept there. The draft contained a history of abuse that Ms Saulite said had been perpetrated against her and included near the end of the statement: *‘I am very scared for my life, because [Mr A] is blaming me for everything that has gone wrong in his life’*.⁶ Sgt Hughes immediately contacted Detective Inspector Walter O’Sullivan to tell him about the document.

Two days later, on 22nd November 2006, a press release was issued by the Garda Press Office recording that gardaí had become aware of threats to a solicitor acting for Ms Saulite and that this solicitor had been given extensive crime prevention advice. It also stated incorrectly that Ms Saulite had been given crime prevention advice regarding her property and personal safety. It recorded that at no time, prior to her tragic death, were gardaí aware of any specific threat against her life. It was also stated that the Commissioner was examining the circumstances of a document prepared by Ms Saulite for the sentencing of her partner where she had expressed concerns for her safety.⁷

An article in the Sun newspaper on 23rd November 2006 headlined *“I’ll Kill Cop”* had the sub headline *“Baiba hitman’s chilling vow to murder garda who helped win her kids back”*. The opening paragraph read:

*The killer of Baiba Saulite has vowed to execute the cop who helped reunite the mum with her children last year, the Irish Sun can reveal.*⁸

The matter was investigated by Detective Inspector John Denny. In the course of his investigation, he interviewed the journalist who had written the article who admitted that he *‘overegged’, ‘sensationalised’* and *‘tabloidised’* the article.⁹ The newspaper’s solicitor who was present indicated that solicitors for Sgt Hughes had written to him and that he had phoned his colleague to allay any fears they had over the article.

⁶ Tribunal Documents, p. 714

⁷ Tribunal Documents, p. 795

⁸ Tribunal Documents, p. 1778

⁹ Tribunal Documents, p. 1884

The inspector concluded that the article was a concocted piece of journalism with no substance to it whatsoever. Sgt Hughes complained that he was not notified about the outcome of the garda investigation although he had been reassured by his solicitor on the basis of the conversation mentioned above. The information in this article, and another on the same theme, no doubt caused considerable alarm and anxiety to Sgt Hughes.

Shortly after the murder of Ms Saulite, on 24th November 2006, her former partner made an application to the Dublin Circuit Criminal Court to be released on bail in order to take care of his children. The bail application was opposed by D/Insp O'Sullivan and Sgt Hughes. D/Insp O'Sullivan informed the court that he believed that the accused was a dangerous criminal with national and international connections. Sgt Hughes said that he was *'astounded when I heard this as it was obvious that this information was within the domain of the Gardai prior to Baiba's death, yet I was never informed'*.¹⁰ In his statement to the tribunal, D/Insp O'Sullivan said that *'I believe now and I believed then that [Mr A] is a very dangerous criminal and a felon of considerable note with national and international criminal links'*.¹¹

The essence of the complaint made by retired Sgt Hughes to the tribunal was that he perceived that An Garda Síochána had made grave errors in investigating crimes and information in relation to Ms Saulite and her solicitor Mr John Hennessy in the period before the murder. He maintained that a series of incidents should have been dealt with in a coordinated manner by a specific team so that the whole picture of threats to the two people would have been apparent. If that had happened, the threat to Ms Saulite's life would have been understood and acted upon. He claimed that he made his perceptions and conclusions known to senior officers, beginning in the days in the immediate aftermath of the murder, and that the matters he reported were grave and needed to be urgently investigated. He said that this did not happen and instead the focus turned to him and his colleague Garda Nyhan in regard to a meeting they had with the victim five days before the murder.

Sgt Hughes claimed that the failure to conduct the investigations that he felt were the necessary and proper response to the complaints that he had made about the lack of garda coordination had an adverse effect on his health in the form of work-related stress. This condition kept him out of work for long periods but An Garda Síochána refused to certify his condition as an injury on duty with the result that his long-term absences led to severe reductions in pay. These reductions would not have applied if the force had accepted that his condition was an injury on duty.

He said that he was eventually driven back to work by sheer financial necessity and he managed for a time to perform an administrative job that was created for him by his superiors. Ultimately however, he was unable to keep going.

His request that he should get injury on duty status gave rise to a seemingly endless series of psychiatric examinations, which did not bring him the confirmation he required but instead resulted in a decision that he should be retired on medical grounds.

Sgt Hughes contended that the way that senior officers treated him brought about a radical alteration of his situation from being in a good place in An Garda Síochána to the position where he was thought to be no longer suitable to do his work. That process began with the murder on 19th November 2006 and concluded some six and a half years later with his departure from the force on medical grounds in February 2013.

¹⁰ Tribunal Documents, p. 159

¹¹ Tribunal Documents, p. 664

The Investigations

On 6th December 2006, Assistant Commissioner Al McHugh, Dublin Metropolitan Region, instructed then Chief Superintendent Michael Feehan to undertake a fact-finding investigation into the level of knowledge in possession of An Garda Síochána prior to Ms Saulite's murder. C/Supt Feehan was assisted with this investigation by Detective Inspector Christopher Mangan, who met with and obtained a report from Sgt Hughes dated 17th December 2006.¹²

This investigation interviewed a number of gardaí and C/Supt Feehan filed his report with A/C McHugh on 26th March 2007 advising as follows:

*Taking account of the foregoing, it is apparent that there was knowledge in existence and available to an Garda [Síochána] in relation to threats from [Mr A] to Baiba Saulite. The members of an Garda [Síochána] readily admit this in their reports. In order to fully outline the facts in existence, and the level of actions taken as a result of this knowledge coming into possession of members of An Garda [Síochána], I recommend that a full investigation should be carried out into this matter.*¹³

On 2nd May 2007, A/C McHugh appointed C/Supt Feehan in accordance with Regulation 8 of the Garda Síochána (Discipline) Regulations, 1989 to investigate an alleged breach of discipline on the part of Sgt Hughes: that he was in possession of documentation and information as a result of meetings with Ms Saulite, and being in possession of same knew or ought to have known at the time of the existence of a real and immediate risk to the life of Ms Saulite, and failed in his duty to take measures that might have been expected to avoid that risk. A similar investigation was launched in respect of Garda Nyhan. Assistant Commissioner Michael Feehan, who had in the meantime been promoted, submitted his completed file in respect of Sgt Hughes to the appointing officer on 3rd June 2009 reporting as follows:

This investigation has not established that the member concerned was aware 'of the existence of a real and immediate risk to the life of Ms Baiba Saulite'. On the 20th October, 2006 Sergeant Hughes apprised his District Officer of his concerns for Ms. Saulite, however, there was nothing to indicate that her life was under threat. Sergeant Hughes denies having read the victim impact report, wherein she actually states that she feared for her life, and there is no evidence to hand that would indicate otherwise. Even if he had read the report in full it is unlikely that the contents could be interpreted as a real and immediate risk to the life of Ms. Baiba Saulite.'¹⁴

A/C McHugh considered the file and was satisfied that there was no breach of discipline disclosed against Sgt Hughes, and he determined to discontinue the investigation.

On behalf of Sgt Hughes, it was submitted to the tribunal that he became a 'scapegoat' and that the fact-finding investigation amounted to the targeting of him by senior members of An Garda Síochána. He claimed that the commencement of discipline proceedings, the manner in which the proceedings were conducted, and the length of time taken to reach a conclusion also amounted to targeting and discrediting.

Prior to the outcome of the discipline investigation, Sgt Hughes made a report to Mr Brian McCarthy, the Confidential Recipient for An Garda Síochána, on 16th September 2008. A/C Feehan was appointed by then Garda Commissioner Fachtina Murphy to conduct an investigation under the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations,

¹² Tribunal Documents, pp. 860-875

¹³ Tribunal Documents, p. 1981

¹⁴ Tribunal Documents, p. 924

2007. In summary, Sgt Hughes alleged that there was a failure to coordinate a number of investigations by An Garda Síochána, which ultimately led to the death of Ms Saulite. These are his allegations of a *'systems failure'* as referenced throughout this report. This investigation commenced on 7th November 2008 and was completed by report dated 10th April 2010.¹⁵ The investigation determined that *'all the various allegations in relation to this confidential report are without foundation'*.¹⁶ A/C Feehan submitted his findings to the Garda Commissioner, who, having considered the file, agreed with the recommendations and determined not to take any further action.

Sgt Hughes submitted to the tribunal that A/C Feehan should not have been appointed to investigate his confidential report because he had been involved in prior events and his appointment therefore represented a conflict of interest, as was argued in correspondence from Sgt Hughes's solicitor at the time. He alleged that this appointment, and the investigation that followed, amounted to the further targeting of Sgt Hughes by senior members of An Garda Síochána.

Following the making of his confidential report in September 2008, an article was published in the *Irish Daily Star* newspaper on 20th November 2008 entitled *'cop never looked at tragic Baiba's warning'*.¹⁷ This article was written by journalist Mr Michael O'Toole. Following a complaint by Sgt Hughes regarding the content and the reference to *'[g]arda sources'*, the Garda Commissioner directed that the complaint should be investigated and, on 22nd December 2008, A/C McHugh appointed A/C Feehan to carry out an investigation. By report dated 17th May 2010, A/C Feehan advised that:

*With the exception of the reference to the instigation of formal disciplinary proceedings against a 'Garda based in North Dublin' Mr. O'Toole's article contains nothing that appears not to have already been in the public domain. Notwithstanding the fact that Sergeant Hughes has failed to assist in my enquiries into the matters raised by Mr. Costello, I can find no basis to his contention that the article written by Michael O'Toole which appeared in the Star newspaper on the 20/11/08 was 'hugely defamatory and alleges gross negligence on the part of our client which ultimately led to the murder of Baiba Saulite'.*¹⁸

Following interviews with Sgt Hughes, Mr Hennessy and Mr O'Toole, A/C Feehan advised further on 27th January 2011 that:

*In light of the above and the refusal of Mr O'Toole to disclose his source it is not possible to progress this investigation any further. A[t] this juncture there is no evidence to identify or even confirm that the source was indeed a member of An Garda [Síochána].*¹⁹

The Garda Commissioner noted the findings made by A/C Feehan on 2nd February 2011.²⁰

In his complaint to the tribunal, Sgt Hughes submitted that, once again, A/C Feehan was appointed to conduct this investigation. He claimed that the manner in which the inquiry was initiated and conducted demonstrated that his complaints were not taken seriously by An Garda Síochána and that this gave rise to a further instance of the targeting and discrediting of him.

Sgt Hughes complained about each of these investigations saying that he was *'scapegoated'* and targeted and discredited by senior officers in An Garda Síochána because of his contentions about a *'systems failure'*. These complaints are addressed by the tribunal.

¹⁵ Tribunal Documents, pp. 2756-3868

¹⁶ Tribunal Documents, p. 2740

¹⁷ Tribunal Documents, pp. 8091-8092

¹⁸ Tribunal Documents, p. 2510

¹⁹ Tribunal Documents, p. 2628

²⁰ Tribunal Documents, pp. 2632-2634

Sgt Hughes also submitted that the entire matter of the alleged *'systems failure'* leading up to the murder of Ms Saulite, and the events thereafter, ought to have been referred to the Garda Síochána Ombudsman Commission (GSOC). He stated that the obligation to make a referral to GSOC pursuant to the Garda Síochána Act, 2005 arises where there is information to indicate that the conduct of a member of An Garda Síochána may have resulted in the death of an individual, which is the very issue that the discipline investigation was supposed to be looking at. He claimed that the failure to make a referral for investigation by an independent body once again demonstrated targeting and discrediting by senior members of An Garda Síochána.

Injury on Duty

Following the murder of Ms Saulite, Sgt Hughes continued to work in Swords Garda Station with intermittent and frequent sickness-related absences in late 2006 and early 2007, which were certified by his general practitioner and described as being due to work-related stress.

He reported sick and unfit for duty on 17th May 2007 and remained on extended sick leave until 21st December 2009, when he returned to work at the Staff Sergeant's Office in Coolock Garda Station having been certified as fit for *'light duties'* by the Chief Medical Officer (CMO) of An Garda Síochána.²¹

He ultimately reported sick and unfit for duty on 4th January 2011²² and retired from An Garda Síochána on 12th February 2013 on medical grounds.

Sgt Hughes's case is that he had suffered an injury on duty that An Garda Síochána failed to investigate. This had the serious consequence of significant cuts to his pay and to his allowances due to workplace stress being improperly treated as an ordinary illness. He submitted that the failure to conduct an investigation into whether his injury was due to an injury on duty was a breach by An Garda Síochána of obligations under Code 11.37, together with a breach of his right to a decision within a reasonable time frame and of his right to fair procedures and constitutional justice. He claimed that the failures in this process amounted to the further targeting and discrediting by senior members of An Garda Síochána.

An Garda Síochána

These contentions were rejected by An Garda Síochána and the individual officers concerned. In general submissions, they said that Sgt Hughes's overall approach was unreasonable because it failed to focus on the actual evidence available on any one issue. It was submitted that throughout the period, Sgt Hughes overlooked the possibility that actions or events he was unhappy about may have occurred without improper intentions or *mala fides* of any sort.

It was also submitted that Sgt Hughes claimed to have been victimised without identifying any supporting facts and that he made sweeping allegations against management, including a deliberate plot by management to *'shut me up and keep me quiet, to clip my wings'*.²³ He claimed that he was subjected to *'a horrendous cycle of intimidation, bullying and harassment at the hands of Garda management'*.²⁴ However, when the alleged source within management of this targeting was explored, Sgt Hughes was unable to deliver objective facts to support these persecutory beliefs.²⁵

Sgt Hughes eventually withdrew some of his allegations of targeting and discrediting against named senior officers of An Garda Síochána during the course of the public hearings and these issues are discussed in chapter 13.

²¹ Tribunal Documents, p. 4248

²² Tribunal Documents, p. 6931

²³ Tribunal Documents, p. 17

²⁴ Tribunal Documents, p. 228

²⁵ Legal Submissions on behalf of An Garda Síochána, para. 5

CHAPTER 3

THE PROTECTED DISCLOSURES MADE BY SERGEANT WILLIAM HUGHES

Background

In his complaint to the tribunal, Sergeant William Hughes maintained that he made serious allegations concerning the investigations that had happened prior to the murder of Ms Baiba Saulite. He referred in particular to an arson attempt on Mr John Hennessy's home, an arson attempt on Ms Saulite's car outside her home and intelligence indicating a threat to Mr Hennessy's life during 2006. In his interview with tribunal investigators, he stated that:

*I began making allegations about a 'systems failure', in respect of all investigations related to the murder, including the child abduction case, in which I was involved ... What I was saying was that numerous related crimes, including the child abduction case and threats to Baiba Saulite and her Solicitor John Hennessy which occurred in 2006, were not properly correlated and coordinated.*²⁶

Sgt Hughes told the investigation into his confidential report that '*[i]here was a systematic failure to coordinate the investigations which ultimately permitted a critical chain of events to transpire before the death of Baiba Saulite. The responsibility for this failure rests with senior management*'.²⁷ He also said that '*I believe that by raising the issue that a systems failure had contributed to Baiba's death, I was subjected to a horrendous cycle of intimidation, bullying and harassment at the hands of Garda management*'.²⁸

Sgt Hughes referred the tribunal to a press release that was issued shortly after the murder on 22nd November 2006 by the Garda Press Office. It stated that '*[a]t no time, prior to her tragic death, were Gardaí aware of any specific threat against the life of Ms. Baiba Saulite and no complaints were received by Gardaí from any person in this regard*'.²⁹ In his complaint, Sgt Hughes stated that '*[a]t the time of the press release I was aware there had been a systems failure in the investigations as mentioned above, yet the press release only referred to her (Baiba Saulite) submitting the Victim Impact report and failed to mention any of the other failures that I believe were evident*'.³⁰

In his statement to the tribunal, Sgt Hughes said that he submitted these allegations to senior officers by way of written and verbal reports from 2006 onwards.

Preliminary Decisions Revisited

On 12th November 2021, the tribunal made a preliminary determination as part of a process of defining the issues to be the subject of the public hearings. The decision was the culmination of a process that began with a questionnaire that the tribunal sent to relevant parties seeking their submissions. Thereafter the tribunal heard oral argument from the parties and conducted a private case management hearing.

²⁶ Tribunal Documents, p. 8

²⁷ Tribunal Documents, p. 153

²⁸ Tribunal Documents, p. 3244

²⁹ Tribunal Documents, p. 795

³⁰ Tribunal Documents, p. 12

In his interview with tribunal investigators, Sgt Hughes said that his first protected disclosure in writing was made to Detective Inspector Christopher Mangan in a report he made to a fact-finding investigation on 17th December 2006. This was disputed by D/Insp Mangan in his statement to the tribunal. He said:

I did not at any stage consider or believe that this 16-page report submitted by Sergeant William Hughes was submitted as a protected disclosure within the meaning of the Protected Disclosures Act, 2014.³¹

The tribunal ruled, following the private case management hearing, that *‘the report to Insp Mangan could not conceivably be taken as a protected disclosure. It is as it says a chronology of Sgt Hughes’s involvement in events relating to the late Ms Saulite. But it is no more than that. It does not describe any wrongdoing as defined in the 2014 Act. It does not reveal any wrongdoing, however defined.’*

Sgt Hughes also said that he spoke to local management about his concerns in the immediate aftermath of the murder, including Inspector Michael Cryan and Detective Inspector Walter O’Sullivan. The tribunal ruled that:

... the conversations described by Sgt Hughes were not protected disclosures because they did not provide information as to wrongdoing. They were at most expressions of concern without actual allegations of wrongdoing. They were observations or comments that did not call for investigation or further process and they did not take place in a context of complaints of wrongdoing. Those conversations individually or collectively cannot supply the missing essential elements of a protected disclosure. Neither do they contain anything that could alter the status of the report to Insp Mangan.

The tribunal also decided that a conversation between Sgt Hughes and his district officer, Superintendent Mark Curran, in April 2007, as described by the sergeant could be a protected disclosure but a conclusion on the question could only be reached having heard evidence on the issue. If it was a protected disclosure, then the commencement date of Sgt Hughes’s claims of targeting and discrediting would be 23rd April 2007. A rejection of protected disclosure status would mean that the starting date was 16th September 2008, when Sgt Hughes made his formal complaint to the confidential recipient for An Garda Síochána as there was no dispute that this was a protected disclosure.

The decision of the tribunal was that events prior to 23rd April 2007 were inadmissible because Sgt Hughes had not made a protected disclosure in the aftermath of the murder or in the report dated 17th December 2006, and comments he made to officers were at most expressions of concerns; and that there was nothing in the report that could amount to a protected disclosure.

One of the cases relied on during this preliminary process was *Baranya v Rosderra Irish Meats Group Limited*³², in which O’Regan J considered the meaning of a protected disclosure and made observations including recognising a distinction between a grievance and a protected disclosure.

Subsequent to the issuing of the preliminary decision by the tribunal, the Supreme Court allowed the appeal brought by the plaintiff in *Baranya*.³³ The tribunal is not concerned with the issue in the *Baranya* case but rather with observations and comments made by Mr Justice Hogan, who delivered the judgment of the Supreme Court. Although Charleton J delivered a separate judgment reflecting on the main point, he declared himself to be in full agreement with Hogan J.

³¹ Tribunal Documents, p. 848

³² [2020] IEHC 56

³³ [2021] IESC 77

The Supreme Court considered the process for determining whether a protected disclosure was within the meaning of the Protected Disclosures Act, 2014. Hogan J determined that it was a question for the fact-finder to consider first, precisely what was said and second, to inquire whether, having regard to the general context of the words actually uttered, those words expressly or by necessary implication amounted to an allegation of *'wrongdoing'* under section 5 of the Act. He said that if those two questions could be answered in the affirmative, the complaint could be regarded, at least in principle, as a protected disclosure.

The principal contending parties in this module are agreed that the Supreme Court decision and the judgments are relevant to the tribunal's approach in this inquiry, and specifically to the assessment of verbal statements made by Sgt Hughes in the aftermath of the murder and in April of the following year.

The following points are relevant for the tribunal arising from the Supreme Court's consideration.

- A protected disclosure requires no particular form.
- A brief and informal comment may suffice as a protected disclosure.
- The statement does not have to be an explicit declaration.
- It is sufficient if the implications indicate wrongdoing as defined.
- A statement is not to be rejected as a protected disclosure because it may be characterised as a grievance.

At the close of the public hearings, the parties were agreed that the tribunal should approach these questions by reference to the evidence as already given and that there was no requirement for any further evidence or process.³⁴

The tribunal has re-examined Sgt Hughes's encounters with officers in the days immediately after the murder in light of the judgment of the Supreme Court and the submissions made on it by Sgt Hughes's representatives and decided, contrary to its previous conclusion, that his conversation with Insp Cryan did amount to a protected disclosure. Accordingly, acts and decisions made thereafter, including the Garda press release on 22nd November 2006 and the decision to instigate a fact-finding investigation, are relevant to the case. The tribunal is accordingly satisfied that evidence as to conduct after 21st November 2006 is admissible on the question of targeting or discrediting.

In regard to the conversation between Sgt Hughes and Supt Curran on 23rd April 2007, the tribunal is further satisfied on the evidence that it was a protected disclosure.

Obviously, questions that remain to be considered in respect of each of the issues are whether the officers knew of the sergeant's allegations and considered them to be allegations of wrongdoing, and whether their conduct constituted targeting or discrediting and whether they acted as he claims in response to his criticisms.

In his legal submissions, Sgt Hughes suggested that a further cache of disclosures provided evidence that the gardaí generally, including the officers relevant to the specific issues in this case, were aware of the sergeant's complaints about policing in the period prior to the murder. In his written submissions, Sgt Hughes maintained that:

³⁴ Tribunal Transcripts, Day 173, pp. 128-129

18. *In addition to these three key disclosures, Sgt Hughes also made disclosures to other individuals as follows:*
- (d) *11 and 16 December 2006 – Sgt. Hughes statements to Dr. James Reilly who conveyed these to the CMO by letter dated 3 January 2008.*
 - (e) *17 December 2006 – Report to Insp. Mangan setting out a chronology of events leading to the murder.*
 - (f) *June 2007 – Report to Supt. Della Murray.*
 - (g) *January 2008 – Report to Dr. Griffin.*
19. *Given the sheer number of disclosures made and the rank of those to whom they were made, it is probable that this information was known by further, more senior members, some of whom were based in the same station and District as Sgt. Hughes, prior to the discrediting and targeting of Sgt. Hughes. In addition to the disclosures made by Sgt. Hughes, further allegations were also made by his colleague Garda Nyban at this time referring to “systems failures” matters.³⁵*

The report to D/Insp Mangan is addressed above. These other suggested protected disclosures at (d), (f) and (g) above do not qualify as protected disclosures. The letters to Dr Reilly do not actually contain relevant material. The report that Sgt Hughes made to Inspector Della Murray was in her capacity as a welfare officer of An Garda Síochána and was entirely confidential as Sgt Hughes intended, and as he expressly accepted in the course of his evidence to the tribunal:

- Q. *And you have gone to the trouble before you meet Inspector Murray, as she then was, to type all this out and to put in the chronology and then to put in all your concerns and to highlight all these matters to her?*
- A. *That's correct.*
- Q. *But it's done in strictest confidence?*
- A. *Correct.*
- Q. *On the understanding that it's to go no further?*
- A. *That's correct.³⁶*

As for (g), these were confidential medical reports that were not available to the relevant garda officers. It was never suggested to any witness in the course of the hearing or in oral submissions that such reports could have constituted protected disclosures or that they did or could have come to the attention of the officers whose conduct is in issue in regard to targeting or discrediting of Sgt Hughes.

The Aftermath of the Murder

Sgt Hughes's interactions with senior colleagues in the aftermath of the murder are relevant in relation to how he was affected by it and in identifying protected disclosures and how his complaints about policing were received. They also help in understanding the background to the issues and his attitude at the time.

³⁵ Legal Submissions on behalf of Retired Sergeant William Hughes, para 18-19

³⁶ Tribunal Transcripts, Day 159, pp. 90-91

Sgt Hughes learned about the murder on the night that it happened at 22:22 hrs, when Insp Cryan phoned him on the way to the scene. The inspector knew of his involvement in the abduction case over the previous two years and decided to let him know as soon as possible. Insp Cryan understood how upset Sgt Hughes was to receive this information. Sgt Hughes did not recall that it was Insp Cryan who called and thought it was in fact Sergeant Patrick Ambrose, but the tribunal is satisfied that Insp Cryan's recollection was correct based on the meticulous notes that he kept on this and other occasions.³⁷ Their next engagements happened on Tuesday and Wednesday, 21st and 22nd November 2006.

When Sgt Hughes arrived in the station on the morning of 20th November 2006, he went to his desk and took out and read in full the copy draft victim impact statement that he had received from Ms Saulite on 14th November 2006. He was particularly concerned about the fears for her life that she expressed in the final two pages. He spoke to D/Insp O'Sullivan about the statement. He was concerned among other things that it would create professional difficulties for him, which they both understood as meaning possible discipline action. D/Insp O'Sullivan sought to reassure Sgt Hughes by saying that the fact that he had done such a good job in the abduction case would surely stand to his credit whatever happened. Sgt Hughes alleged that as he left D/Insp O'Sullivan said that protection had been sought for Ms Saulite and Mr Hennessy prior to the murder but it had been refused by the Commissioner's Office.³⁸ D/Insp O'Sullivan rejected this assertion saying that it never happened, that there was no such request and that he did not say anything of that kind to Sgt Hughes on this or any other occasion.³⁹

On Tuesday 21st November 2006, Insp Cryan contacted Sgt Hughes at 13:15 hrs and requested a copy of the investigation file in the abduction case. He did not know about the draft victim impact statement at that stage.

Insp Cryan's notes of this conversation record that Sgt Hughes expressed anger that more had not been done to prevent the murder, and that he was very angry and annoyed that someone in the Detective Unit would now try to blame him for not doing his job properly.⁴⁰ According to Insp Cryan, Sgt Hughes said that the arson attack on Mr Hennessy's house was not investigated properly, and neither was the criminal damage to Ms Saulite's car; and that the abduction and the episodes of criminal damage should have been investigated as one by the same persons:

Sgt Hughes told me he was still very shocked & couldn't believe it had come to this (her murder). He said he kept wracking his brain to see if there was something else he could have done to prevent it. He expressed anger that more had not been done to prevent it. I expressed my belief that from what I knew he had done all he could & that I was not aware of any specific threats he had made & that [information received] had indicated that the threats were made against the Solicitor only ... He also stated that no one in DDU had assisted in the investigation of the child abduction & he felt that he & Garda Nyhan were being left out to dry. I pointed out that Garda Alan Campbell, who was then in DDU had assisted & done covering report & that DDU had investigated the [criminal damage] to Solicitors house, which was directly connected to this case. He complained that this was not investigated properly & nor was the criminal Damage to her car by Gdai, Malahide. I pointed out to him that I was well aware of what had been done & had only discussed it with Sgt Ambrose the previous Wednesday (15/11/06). He said that all 3 should have been investigated as one by

³⁷ Tribunal Documents, p. 725

³⁸ Tribunal Documents, pp. 10-11

³⁹ Tribunal Documents, p. 660

⁴⁰ Tribunal Documents, pp. 729-730

*same persons. He asked that I ring Gda Nyhan which I said I would this afternoon. I asked for a copy of his file on the abduction & he said it was locked in his office and he would come in and leave it for me with SHO Swords, today (21/11/06).*⁴¹

In his evidence to the tribunal, Insp Cryan confirmed that Sgt Hughes had complained to him in this manner. However, he said that he felt that Sgt Hughes was letting off steam, or as he put it in evidence, *[h]e was venting*.⁴²

Supt Curran was newly appointed to Swords District and took up office on 6th March 2007. For the first weeks of his new posting he was occupied by a case from his previous district so it took some time for him to be able to give full attention to Swords. As a result of a phone call from Sergeant Camillus Fitzpatrick about Sgt Hughes he drove to Swords Garda Station on 23rd April 2007 to meet him. What was said at the meeting is in dispute. Sgt Hughes said that he complained to Supt Curran about *'systems failures'* in the policing prior to the murder as well as making a number of other specific requests. He said in evidence that he remembered this clearly, saying:

*I am absolutely certain that I met Mark Curran, Superintendent Mark Curran, at Swords Garda Station and I raised the issue of systems failure with him in relation to that, and my recollection is very clear that I mentioned the impact it would have on the murder investigation and on the inquest.*⁴³

The superintendent's position was that he simply did not remember what was discussed at this meeting. He relied on the report he made to his superior, Chief Superintendent Gerard Phillips, by letter of 24th April 2007. This letter contained a succinct description of five specific items that Sgt Hughes had raised and there is no doubt that he did indeed specify those items. The letter said:

Reference to above, I met with Sergeant Hughes, Swords Station, on 23/4/07.

Sergeant Hughes raised a number of issues which he believed are outstanding and requested [t]hat he receives communication regarding same.

They are as follows:

- (1) Since the murder of Baiba Saulite he is still in fear for both himself and his family. He states that he has not been informed of any assessment of information regarding his or his family's situations.*
- (2) The second issue relates to the investigation into certain matters – some of which relate to the first point above – by C/Superintendent Feehan and Superintendent Mangan. No communication of status on outcome of investigation.*
- (3) Investigation into article in The Sun newspaper in November 2006 conducted by D/Inspector Dennedy (now Superintendent) – no communication of status on outcome of investigation.*
- (4) He believes that he may be the subject of a discipline regarding the allegations of a Garda [Redacted] which was reported approximately two years ago. He wishes for clarification on this issue in addition to an update regarding his own complaint against D/Inspector [Redacted]. He further stated that these and other issues are in the hands of his solicitor.*

⁴¹ Tribunal Documents, pp. 729-731

⁴² Tribunal Transcripts, Day 166, p. 19

⁴³ Tribunal Transcripts, Day 159, pp. 73-74

- (5) *He believes that discipline proceedings may be contemplated against him but is not aware of what they might be. He has suffered considerably from stress since the murder of Baiba Saulite. He is currently employed as Sergeant I/C, Community Police in Swords and believes that he is fully able to perform these tasks. He is under the care of a medical professional who has certified his ability to perform tasks.*

I read over this list of issues with Sergeant Hughes. He requests some communication regarding each matter raised.

Forwarded for your information and attention.⁴⁴

The superintendent testified that he had phoned Sgt Hughes when he had drafted the letter and read it over to him. He made a number of changes at Sgt Hughes's request. He said that the sergeant was in control of the contents of the letter.⁴⁵ So, relying on his letter as approved by the sergeant, which contained nothing about 'systems failure', Supt Curran believed that it was not mentioned. It is fair to say that he expressed some confusion as to whether this meeting was the first that he had ever had with Sgt Hughes but more importantly he appeared to accept in response to questions from the tribunal investigator that the sergeant may have made references to investigations:

I have been asked with respect to the above extract whether Sergeant Hughes at my meeting with him at Swords Garda station on 23 April 2007 told me of the negligent and gross mismanagement of related investigations prior to the murder of Baiba Saulite and whether in that context referenced any/all of the following incidents:

1. *Child abduction investigation*
2. *Arson attack on 27 February 2006 at the home of Mr John Hennessy*
3. *The arson of Baiba Saulite's vehicle outside her home on 18 August 2006*
4. *Threats to the life of Mr John Hennessy*

Firstly, in respect of my meeting with Sgt Hughes in April of 2007, from my memory I recall that a meeting occurred, in the first two weeks of April. I may have also met him on the 23rd April 2007, but this was not my first meeting with him. I do recall that in preparation of the report dated the 24th April, I spoke to Sgt Hughes on the phone several times on the 23rd April 2007. In respect of the above four incidents, I believe that Sgt Hughes gave me an outline of each one. Sgt Hughes told me directly that all of his concerns in respect of these matters had been reported by him to Detective Inspector Christy Mangan of DMR North Central Division. Sgt Hughes at no stage ever told me that he had made a protected disclosure. As I had earlier submitted, I first became aware of the fact that he had made any protected disclosure when he gave evidence of that in the High Court, in May 2012.⁴⁶

He was asked the following by counsel for the tribunal:

- Q. ... this account here suggests, chief superintendent, that Sergeant Hughes mentioned these four matters to you?
- A. ... all I can say is I have no recollection of anything. So what I'm saying here is, I believe it's possible he mentioned this. We were in the meeting for, as Sergeant Hughes says, 20

⁴⁴ Tribunal Documents, pp. 3871-3872

⁴⁵ Tribunal Transcripts, Day 170, pp. 22-23

⁴⁶ Tribunal Documents, pp. 7830-7831

or 30 minutes, so I expect – and my memory is, I'll go back, the only memory I have is of him sitting across the table from me in a state of fear, and I reckon that those issues were discussed by him at some stage in that meeting.⁴⁷

The tribunal is satisfied that Supt Curran was making every effort to recall as accurately as he could and that such discrepancies of recollection as appear do not stem from any intention to mislead. The situation is, therefore, that Sgt Hughes has a very clear recollection and the superintendent does not have any recollection and is relying entirely on his report.

Counsel for Sgt Hughes suggested to Supt Curran that he might not have reported these matters that were stated to him by Sgt Hughes because they were not among the things that he could do anything about. This seems to the tribunal to be a reasonable contention. Indeed, it is supported by the fact that when he once again endeavoured to recall it in response to the investigator he gave the account noted above.

In the result, the tribunal concludes that the probabilities lie in favour of the complaint having been made by Sgt Hughes and that this was a protected disclosure.

Conversations with Detective Inspector Walter O'Sullivan

The tribunal now returns to Sgt Hughes's claim that D/Insp O'Sullivan told him on 20th November 2006 that there had been a request for protection for Ms Saulite and Mr Hennessy that had been rejected by the Garda Commissioner's Office.

Although the meeting of Sgt Hughes and D/Insp O'Sullivan on the morning after the murder was not the occasion of a protected disclosure, the question of the request for protection gave rise to a direct conflict of evidence. This was not the first time the dispute arose because it was the subject of a specific finding by Cross J in his judgment in the High Court action brought by Garda Declan Nyhan against the Garda Commissioner.⁴⁸ The tribunal is reluctant to embark on this analysis because it does not relate to a protected disclosure or to an allegation of targeting or discrediting, at least in any direct manner. A decision is unnecessary for the purposes of the investigation of the instances of alleged targeting and discrediting. However, the tribunal considers it to be an important part of the factual background.

Sgt Hughes acknowledged that the statement would have amounted to a revelation of enormous importance as it would have established direct knowledge on the part of senior officers of a threat to the life of Ms Saulite that required consideration of personal protection. The sergeant's complaint was that there should have been coordination of investigations, which if it had been in place would have pointed to danger to Ms Saulite's life. But if the statement was correct it was evidence of actual knowledge. Sgt Hughes did not comment on the significance of that to D/Insp O'Sullivan at the time.

Sgt Hughes said that he telephoned Garda Nyhan after the meeting and told him what D/Insp O'Sullivan had said.⁴⁹ The tribunal notes that Garda Nyhan confirmed this in his evidence to the High Court.⁵⁰

⁴⁷ Tribunal Transcripts, Day 170, pp. 95-96

⁴⁸ Nyhan v Commissioner of An Garda Síochána Case and Minister for Justice, Equality and Law Reform, [2012] IEHC 329

⁴⁹ Tribunal Transcripts, Day 162, pp. 69-70

⁵⁰ Nyhan v Commissioner of An Garda Síochána Case and Minister for Justice, Equality and Law Reform, Transcript, Day 3, p. 24

However, Sgt Hughes did not mention the alleged protection request to Insp Cryan on Tuesday 21st or Wednesday 22nd November 2006. He did not mention it in the report that he made to the fact-finding investigation on 17th December 2006. Furthermore, he did not mention it to Supt Curran on 23rd April 2007 when he made his protected disclosure or when he made his report to the welfare officer, Insp Murray, on 15th June 2007.

Sgt Hughes did mention this allegation when D/Insp O’Sullivan phoned him in October 2007 in a follow-up call seeking a statement in the murder investigation. There is disagreement as to whether there were two phone calls or three. D/Insp O’Sullivan remembered three occasions, one on 20th September 2007, another in early October 2007, and a final call in mid-October 2007, after which he said that he gave up on the prospect of getting a statement from Sgt Hughes. It was not in dispute that there was no mention of the alleged protection request in the first phone conversation but in the second – Sgt Hughes’s recollection – or the third, as D/Insp O’Sullivan remembered, the matter was mentioned. Sgt Hughes said that he recalled D/Insp O’Sullivan mentioning the protection request and the latter saying that he did not use those words. The detective inspector said that in this conversation, when Sgt Hughes suggested that he had referred to a request for protection that had been refused by the Commissioner’s Office, he rejected it out of hand.

Sgt Hughes spoke of this matter to Supt Curran in 2008, which caused the latter to seek a report from D/Insp O’Sullivan who reported back in reply on 17th July 2008 saying:

- (a) that neither he nor his officers had any information prior to the murder that there was a threat to Ms Saulite’s life from the children’s father or his associates;
- (b) that the investigation did not reveal intelligence as to a specific threat to the victim; and
- (c) that he did not say what Sgt Hughes alleged.

D/Insp O’Sullivan said that there was no request for protection as Sgt Hughes suggested:

*This is not the case, no such information existed and Sergeant William J. Hughes is incorrect and mistaken in his assertions concerning any conversations that I held with him.*⁵¹

The tribunal cannot accept that D/Insp O’Sullivan made a reference to a protection request as Sgt Hughes alleged. The balance of probability leans against it. The importance of such a statement, its relevance if correct to the matters that were concerning Sgt Hughes and his failure to mention it to anyone in authority for so long make it impossible to accept the alleged statement as correct. In coming to this view, the tribunal notes the similar finding of the High Court but has made its own decision on the matter on the evidence before it.

Conclusion

The issue of knowledge of the complaints that Sgt Hughes made arises sharply in the case of some of the witnesses. An example is Assistant Commissioner Al McHugh, who gave evidence that he was unaware of any allegations by Sgt Hughes of a ‘systems failure’ or other policing deficiencies until he got the papers from the tribunal in 2020. Obviously, if an officer is unaware of the nature of the complaint he cannot be criticised for behaving in a hostile manner by way of targeting or discrediting because of such complaints.

⁵¹ Tribunal Documents, pp. 690-691

Relevant also to the question of knowledge is how the disclosures by Sgt Hughes were expressed and how they were received. Neither Insp Cryan nor Supt Curran understood what the sergeant was saying as being a report of wrongdoing or as being a matter that required further investigation. Insp Cryan thought that he was letting off steam and Supt Curran did not think it necessary to make any report about it even though he reported other complaints made by Sgt Hughes. These issues are further discussed where necessary in relevant chapters.

The tribunal looks to see whether the officer in question might have known about the disclosure and might have been responding to it by way of behaviour constituting targeting or discrediting.

The tribunal also investigated each incident that Sgt Hughes cites as targeting or discrediting by looking at the facts surrounding the event with a view to ascertaining whether they might constitute examples of victimisation of the kind intended by the Oireachtas in setting out term of reference [p].

CHAPTER 4

THE COMPLAINT MADE BY SERGEANT WILLIAM HUGHES IN RELATION TO THE GARDA PRESS RELEASE DATED 22ND NOVEMBER 2006

Background

The murder of Ms Baiba Saulite attracted significant media attention and the Garda Press Office released eleven statements between 20th November 2006 and 20th November 2007.⁵² Sergeant William Hughes complained about the third press release (no. 06/0654), which was issued by the Garda Press Office on 22nd November 2006 at 16:40 hrs. This press release recorded that:

In the course of the media reporting on the above murder a number of ancillary issues have been highlighted, some of which are being reported inaccurately. The purpose of this statement is [to] clarify the factual position

During the course of investigations over the last number of years, Gardai became aware of threats to a solicitor. This solicitor acted for Ms. Baiba Saulite.

Once Gardai became aware of the existence of these threats, the solicitor was immediately advised. Extensive crime prevention advice was also given to the solicitor including enhancements he could make to his properties and personal safety. His properties were subject to Security Surveys by trained Garda personnel and these surveys were supplied to him.

As is normal procedure in such cases, the properties of this subject would have received attention from Garda patrols, both uniformed and armed. At no time, prior to Ms. Saulite's murder, was full time armed personal protection supplied to this man.

Due to the links between Ms. Saulite and the solicitor in question, Ms. Saulite was also given crime prevention advice regarding her property and personal safety.

At no time, prior to her tragic death, were Gardai aware of any specific threat against the life of Ms. Baiba Saulite and no complaints were received by Gardai from any person in this regard.

As part of the murder investigation, house to house enquiries are ongoing in the ... area and the Gardai have now learned that Ms. Saulite expressed concerns to friends and neighbours regarding her safety. We have also established that in the course of preparing a document for Court use in the sentencing of her husband, Ms. Saulite expressed concerns for her safety and appeared to be somewhat in fear of him.

The Garda Commissioner is now examining when and to whom this information was known.

The investigation into the murder of Ms. Baiba Saulite is continuing.⁵³

⁵² Tribunal Documents, p. 791

⁵³ Tribunal Documents, p. 795

Complaint made by Sergeant William Hughes

Sgt Hughes made his report to Mr Brian McCarthy, the Confidential Recipient for An Garda Síochána, on 16th September 2008. This was forwarded to the Garda Commissioner at the time, Fachtna Murphy, on 14th October 2008.⁵⁴ In his letter to the Commissioner, the confidential recipient outlined Sgt Hughes's complaint, which included the following allegation:

*The press release that was issued in relation to the murder on 22 November, 2006 contained a number of falsehoods and omissions. These included the fact that senior garda management were aware of numerous threats to Ms. Saulite from her husband and had considered the question of providing protection for her but had decided against this.*⁵⁵

In his first letter to the tribunal on 9th March 2017,⁵⁶ Sgt Hughes referred the tribunal to this press release and stated that:

*From the outset, garda management adopted a specific version of events and publicly aired some of that version in a Press Release in the days following the murder. I could plainly see that the Press Release was not an accurate representation of events leading up to the murder and the content blatantly omitted any suggestion of a systems failure which was, or should have been, evident in the immediate aftermath of the murder. In fact, the Press Release had a direct reference to the child abduction investigation as having failed in some way or other. I could clearly see that a 'scapegoating' process was underway.*⁵⁷

In a further letter dated 9th July 2018,⁵⁸ Sgt Hughes complained to the tribunal that the press release targeted his work in the child abduction case and that:

*It is my view that the Press Release does not accurately reflect the level of threat which was evidently known, or should have been known, to senior Garda management prior to the murder. It is my view that the child abduction investigation was unfairly singled out in the Press release document when there were obvious failures elsewhere.*⁵⁹

In an attachment to this letter, Sgt Hughes divided the press release into seven sections and set out his comments on each individual section.⁶⁰ When interviewed by tribunal investigators, Sgt Hughes said:

*At the time of the press release I was aware there had been a systems failure in the investigations as mentioned above, yet the press release only referred to her (Baiba Saulite) submitting the Victim Impact report and failed to mention any of the other failures that I believe were evident. I believe that this was an example of me being targeted.*⁶¹

He also stated that:

*Following on from the Garda press release ... I was aware that the Garda [C]ommissioner was focusing attention on the meeting I had with Baiba Saulite the week before she was murdered.*⁶²

⁵⁴ Tribunal Documents, pp. 2654-2658

⁵⁵ Tribunal Documents, p. 2655

⁵⁶ Tribunal Documents, pp. 62-96

⁵⁷ Tribunal Documents, p. 69

⁵⁸ Tribunal Documents, pp. 103-116

⁵⁹ Tribunal Documents, p. 107

⁶⁰ Tribunal Documents, pp. 132-137

⁶¹ Tribunal Documents, p. 12

⁶² Tribunal Documents, p. 34

In his evidence to the tribunal, Sgt Hughes explained that:

*... the press release there doesn't seem to reflect the fact that she was actually making consistent serious complaints to the Gardaí in relation to her personal safety over the two year period prior to her death, and before, probably, from 2002 onwards.*⁶³

He told the tribunal about his concerns:

*Well, reading the press release there, there seemed to be ... a refocus back on the Victim Impact Statement, so I would have had concerns, okay. And I also had concerns in relation to the other elements of the press release there, in relation to her receiving crime prevention advice when we worked very closely with her and we weren't informed that there was crime prevention advice. And the matters of security surveys, et cetera, for John Hennessy that wasn't brought to our attention either. So I had concerns with the content of the press release when it issued.*⁶⁴

Responding Statements and Evidence on the Issue

Retired Chief Superintendent Kevin Donohoe

Retired Chief Superintendent Kevin Donohoe was a superintendent at the Garda Press Office at the time of these events and held the position of Garda Press Officer between 2004 and 2008.⁶⁵

C/Supt Donohoe gave evidence to the tribunal about his role as Garda Press Officer, likening it to being the spokesperson for the Commissioner of An Garda Síochána.⁶⁶ He noted that, at the time, the Press Office worked sixteen hours a day, seven days a week, endeavouring to get information on significant crimes to the press through their official channels.⁶⁷ During his time, the office released between 1,500 and 2,000 press releases every year, most of which were routine updates.⁶⁸ He confirmed that press releases on particularly serious crimes would be drafted in discussion with the Garda Commissioner.⁶⁹

In respect of Sgt Hughes's allegations to the tribunal, C/Supt Donohoe said in his statement to the tribunal that:

*At no time was I aware of any suggestion of 'systems failures' regarding this murder or related matters, nor was I involved in or had discussions with any other person regarding a conspiracy against or 'scapegoating' of former D/Sergeant Hughes. All Press Releases were issued in good faith and were, to the best of my knowledge, accurate. I refute the suggestion that any release intimated a failure of an earlier child abduction investigation and having reviewed the releases I fail to see any such intimation. No effort was made to correct Press Release 06/0654 as stated by D/Sergeant Hughes, which is correct. I was not then [n]or am I now aware of any inaccuracies in this Press Release (06/0654), nor are the inaccuracies specified in the statements of former D/Sergeant Hughes, to my reading.*⁷⁰

⁶³ Tribunal Transcripts, Day 159, p. 18

⁶⁴ Tribunal Transcripts, Day 159, pp. 19-20

⁶⁵ Tribunal Documents, p. 790

⁶⁶ Tribunal Transcripts, Day 166, p. 109

⁶⁷ Tribunal Transcripts, Day 166, p. 109

⁶⁸ Tribunal Transcripts, Day 166, p. 111

⁶⁹ Tribunal Transcripts, Day 166, pp. 111-112

⁷⁰ Tribunal Documents, p. 790

The chief superintendent was asked by counsel for the tribunal whether he recalled being briefed that a victim impact statement had been provided to An Garda Síochána and more recently, had been handed over to senior members. C/Supt Donohoe explained that he was aware that there was an issue in relation to the knowledge of members of An Garda Síochána that Ms Saulite felt that her life was in danger but he did not recall being briefed about the victim impact statement.⁷¹

As outlined at the outset, the press release began by referring to inaccurate media reporting in relation to ‘a number of ancillary issues’.⁷² C/Supt Donohoe gave evidence that he could not specifically recall the ancillary issues but thought that they generally related to reports that members of An Garda Síochána were aware that Ms Saulite was going to be killed and could have prevented her murder.⁷³ C/Supt Donohoe stated in his evidence that the main reasons for this press release were to focus the attention on what the investigation team required to solve the murder, to state the official position in relation to issues of protection and to correct the misreporting, which could have led to harm to people accused of being involved and may have undermined the public confidence in An Garda Síochána.⁷⁴

C/Supt Donohoe said that he drafted and phrased the contents of the press release but that all the information came from other members.⁷⁵ He told the tribunal that:

... you are very much reliant on the SIO in a lot of cases, the senior investigating officer, and the senior officer who is a superintendent, and/or the divisional officer who is a chief superintendent. And in certain cases, because of the position I was in, I would constantly deal with various commissioners depending on the issues we were dealing with, from the number one Commissioner, if you like, to either deputy Commissioners or, at that time, seven or eight assistant commissioners, but all from my offices in Garda Headquarters.

...

... you get oral briefings, or briefing, and then formulate in my own head what's going to be said at a briefing and go out and do it. And then there's follow up questions as well, and that's why you need to know more than you are going to say, because if questions ... come up, how you can deal with them.⁷⁶

He told the tribunal that he ‘*didn't make any of it up*’.⁷⁷

The press release stated that crime prevention advice was given to Ms Saulite’s solicitor. It also stated that Ms Saulite received such advice; and C/Supt Donohoe’s evidence was that he later learned, from a separate investigation, that this was inaccurate:

A. *... I stated here that Baiba Saulite had also received advice, which I now understand a separate investigation has said it was inaccurate, which is a matter of personal disappointment, professional pride, if you like, to me, because this is an accurate statement that I wrote in good faith with my name on it.*

⁷¹ Tribunal Transcripts, Day 166, p. 115

⁷² Tribunal Documents, p. 795

⁷³ Tribunal Transcripts, Day 166, p. 116

⁷⁴ Tribunal Transcripts, Day 166, pp. 116-117

⁷⁵ Tribunal Transcripts, Day 166, pp. 118-119

⁷⁶ Tribunal Transcripts, Day 166, pp. 118-119

⁷⁷ Tribunal Transcripts, Day 166, p. 119

Q. *You certainly neither distorted nor intended to distort anything that was said to you?*

A. *Certainly not.*⁷⁸

C/Supt Donohoe could not recall if he was aware at the time of the press release about other crimes such as the abduction of Ms Saulite's children or the arson attack on her vehicle.⁷⁹ In relation to the draft victim impact statement prepared by Ms Saulite, C/Supt Donohoe was aware at the time that there was a document prepared in which fears were expressed for her safety but he could not recall who had prepared that document or any other detail of the document.⁸⁰ Counsel for the tribunal referred C/Supt Donohoe to the sentence in the press release that mentioned a document for court use and asked whether this related to the victim impact statement. C/Supt Donohoe replied:

A. *I don't recall, other than that it was a document. And I am not even sure I recall if I knew it was from her.*

...

I'm aware that I knew there was a document where some fears were expressed. I don't recall that I knew any further detail in that regard.

Q. *Do you recall whether there was any talk that the document in fact concerned a fear for her life, as it were, as opposed to her safety?*

A. *I can't say that, no.*⁸¹

C/Supt Donohoe stated that he was briefed on the case in Swords Garda Station on 20th November 2006 but that he obtained the material in the statement while he was in the Garda Press Office at Garda Headquarters. He said it was reasonable to infer that he was told about the victim impact statement at Garda Headquarters on 22nd November 2006.⁸²

Counsel for the tribunal referred C/Supt Donohoe to an article by Mr Tom Brady, a journalist, published in the *Irish Independent* on 23rd November 2006 and in particular the following line, which addressed the victim impact statement:

*Senior gardaí said last night they had not become aware of the contents of the statement, or her expressed safety fears, until earlier yesterday.*⁸³

C/Supt Donohoe repeated that he only became aware of the document on 22nd November 2006.⁸⁴ Counsel for the tribunal referred him to another part of the article, which stated that:

Garda Commissioner Noel Conroy has now ordered an immediate review of all garda files on Ms. Saulite and [Mr A] to establish who knew of those concerns at an earlier stage. The review, being carried out by an assistant commissioner, will focus in particular on whether any garda knew about those concerns.

⁷⁸ Tribunal Transcripts, Day 166, pp. 120-121

⁷⁹ Tribunal Transcripts, Day 166, pp. 121-122

⁸⁰ Tribunal Transcripts, Day 166, p. 123

⁸¹ Tribunal Transcripts, Day 166, pp. 123-124

⁸² Tribunal Transcripts, Day 166, pp. 127-128

⁸³ Tribunal Documents, p. 8094

⁸⁴ Tribunal Transcripts, Day 166, pp. 130-131

*The outcome of the review will determine whether Mr. Conroy will decide to hold an internal inquiry into the level of security protection and advice provided to Ms. Saulite and to her solicitor John Hennessy.*⁸⁵

C/Supt Donohoe could not discount that the article reflected a briefing of Mr Brady and stated in his evidence that ‘... *it could do or it may be a little bit of journalistic licence*’.⁸⁶ He confirmed in his evidence that he had a briefing and discussion with Commissioner Noel Conroy about the press release before it was issued:

... I know from the subject matter and the seriousness of the release and the length of the press release, which is quite a lengthy press release, I would have certainly spoken to him a number of times. But in the course of the Press Officer's day I would speak to the Commissioner five, ten, 20 times, depending on what was happening on a given day.

...

*I'd be slow to confirm he was anxious to see the final draft, but the way I operated and the way he operated I have no doubt in my mind that he would have perused the final draft before it was released.*⁸⁷

Referring to the last line of the press release, which stated that ‘[t]he Garda Commissioner is now examining when and to whom this information was known’, counsel for the tribunal asked the chief superintendent if he could recall whether the Commissioner indicated how he was going to examine that issue. He replied that:

*I don't, no, no. I mean to follow the norm, he would have been appointing a senior officer at, you know, whatever rank, probably chief superintendent or assistant commissioner would be the norm, most likely chief superintendent. And I think that and the preceding paragraph in the press statement was an indication, and it is something that I would certainly have done previously, that while there was a lot of misreporting, there's an agreement, if you like, there that maybe the Gardaí weren't entirely right, maybe there is something to look at and admitting that, if you like, at an early stage, and the Commissioner was examining that, they were not just ignoring it, that it needed to be examined to see what the factual position was in respect of the document.*⁸⁸

In response to questions from counsel for Sgt Hughes, C/Supt Donohoe confirmed that he consulted with the district officer and the divisional officer for Swords, amongst others, in relation to the information for the press release.⁸⁹ He also confirmed that he did not see the victim impact statement before the press release and was not aware that it had been procured by Inspector Michael Cryan two to three hours before the release was issued. He said that he was ‘*absolutely certain*’ that he did not see the victim impact statement.⁹⁰

In his evidence, C/Supt Donohoe said that he could not recall speaking to Assistant Commissioner Al McHugh about the case and that his own knowledge on the subject only went as far as the information contained in the press release:

⁸⁵ Tribunal Transcripts, Day 166, p. 131; Tribunal Documents, p. 8094

⁸⁶ Tribunal Transcripts, Day 166, p. 131

⁸⁷ Tribunal Transcripts, Day 166, p. 132

⁸⁸ Tribunal Transcripts, Day 166, pp. 132-133

⁸⁹ Tribunal Transcripts, Day 166, p. 145

⁹⁰ Tribunal Transcripts, Day 166, pp. 146-147

I pretty much was aware of what's in that statement, that there was a document that may or may not be of relevance. I had no notion who had it or who got it or how many people at the time of the press release.⁹¹

C/Supt Donohoe did not accept the suggestion put forward by counsel for Sgt Hughes that the press release did not make any distinction between the level of crime prevention advice given to Mr John Hennessy and Ms Saulite:

... I don't really accept that. Because ... there's a whole paragraph and a half covering what was given to John Hennessy and it talks about trained personnel and it talks about a security survey, and that was provided to him. It then says she was also given advice. My reading of it, and my writing of it, was that these were separate levels of crime prevention advice. That the second given to Ms. Saulite was most likely of a local level, if you like, maybe a local crime prevention officer, a local member, I don't know, I am only surmising at this stage, but certainly the advice given to Mr. Hennessy was of the highest levels, if that's what you like. And I would – it would be my reading, because maybe that's the way I wrote it and I assume people would read it that way, that there was a distinction between both.⁹²

Counsel for Sgt Hughes asked C/Supt Donohoe about the meaning of the press release:

Q. *Would you accept that in reading the press statement, certainly on its face, and I think there's a degree of understanding as to why it might have come about this way certainly given that you didn't have the information, but, on its face, the press release appears to suggest that it is only in the course of the murder investigation and in the course of this document having been discovered that Ms. Saulite had first made these expressions of fear known; that this wasn't an old issue but effectively this was something that had just come about, would you accept that that is how it reads?*

A. *Yeah.⁹³*

Counsel for An Garda Síochána asked C/Supt Donohoe about his knowledge of Sgt Hughes at the time:

A. *... I didn't know his name in respect of this. In fact I said I didn't know him. When I met him today, I knew that I had seen him – you know, we'd crossed paths, I have no doubt, a number of times throughout our career, but at the time of this I had absolutely no knowledge of his involvement.*

Q. *So you didn't know his name and you didn't know his role at the time the press release was issued, is that so?*

A. *Absolutely, yeah ...⁹⁴*

He was also asked to comment on the complaint made by Sgt Hughes that the press release was an example of him being targeted. He said that:

⁹¹ Tribunal Transcripts, Day 166, p. 148

⁹² Tribunal Transcripts, Day 166, pp. 150-151

⁹³ Tribunal Transcripts, Day 166, pp. 153-154

⁹⁴ Tribunal Transcripts, Day 166, p. 169

- A. *Certainly not by me, because I didn't even know of his involvement and I think I said in the statement or in a report, I compiled and drafted this press release as all others, in good faith and issued them on the basis that I believed at the time they were accurate. There was no targeting of anyone or there was no and I hope I have explained the rationale for each of the points in the press release today, beyond that there was no other agenda or sub agenda and I certainly had no discussion or consultation with anyone around the type of wording that you are using as to what was going on here.*
- Q. *And then just finally, I think you have dealt with it already but just for completeness, were you aware of the allegations that were being made in respect of systems failure by Sergeant Hughes?*
- A. *No, absolutely not. No.*⁹⁵

In re-examination, counsel for the tribunal referred C/Supt Donohoe to contemporaneous notes taken by Insp Cryan on 20th November 2006 and his reference to attending a conference at 12:45 hrs in the *'chief's office'*.⁹⁶ These notes recorded that the officers present included A/C McHugh, Detective Chief Superintendent Noel White, Chief Superintendent Gerard Phillips, Detective Superintendent John Fitzpatrick, Detective Superintendent Michael Byrne, Inspector Donal Waters, Insp Cryan, Detective Superintendent Patrick Maher and Superintendent Kevin Donohoe.⁹⁷ D/Insp O'Sullivan was not present at that meeting.

C/Supt Donohoe told the tribunal that these were the officers that he would have consulted.⁹⁸

Former Assistant Commissioner Al McHugh

A/C McHugh was the assistant commissioner with responsibility for the Dublin Region between 2004 and 2009.⁹⁹ Counsel for the tribunal referred A/C McHugh to the press release and he said that he had no input into the document:

- A. *... I'd never any dealings with the Press Office, but I understand that the press officer and the Commissioner are in regular contact in regards to different issues.*
- Q. *Yes. And obviously there is nothing unusual about that. But, did you become aware of the Commissioner's desire to examine when and to whom this information was known?*
- A. *I mean, I don't know when I would have read that press release, but certainly I had no contact with Kevin Donohoe, Superintendent Kevin Donohoe, I never dealt with Kevin Donohoe as an Assistant Commissioner in terms of any crime investigation, and I had absolutely no input into anything that's contained in that press release.*¹⁰⁰

Counsel for Sgt Hughes asked A/C McHugh whether he had provided Supt Donohoe with information that may have been used in the press release. He told the tribunal that:

⁹⁵ Tribunal Transcripts, Day 166, pp. 174-175

⁹⁶ Tribunal Transcripts, Day 166, p. 176

⁹⁷ Tribunal Transcripts, Day 166, p. 176; Tribunal Documents, p. 727

⁹⁸ Tribunal Transcripts, Day 166, p. 177

⁹⁹ Tribunal Transcripts, Day 167, pp. 5-6

¹⁰⁰ Tribunal Transcripts, Day 167, pp. 19-20

- A. *I have said, and I want to reiterate, I had absolutely no interaction, no speaking to Kevin Donohoe.*
- Q. *Or anyone in the Press Office?*
- A. *No. I never dealt with the Press Office. The Press Office was always dealt with by the local management.¹⁰¹*

Former Assistant Commissioner Gerard Phillips

On 21st October 2006, Chief Superintendent Gerard Phillips took up the post of divisional officer for the Dublin Metropolitan North Division.¹⁰² Counsel for the tribunal asked him about his knowledge of the press release:

- Q. *And then we know from other evidence that we've heard that there was a press release issued a little over two hours later on in the afternoon; did you know anything about that? This is from the Garda Office, I should say, from the Garda Press Office.*
- A. *I have no recollection. All I know is that the Press Officer usually either rang the incident room when they wanted information or they would ring me, so I don't know. I don't remember talking to the Press Officer.*
- Q. *Would you ever have talked to the Press Office about these?*
- A. *Yes.*
- ...
- But usually it was somebody from the Office, and really the only times that we would have a chat with the Press Officer would be at a major incident such as a murder, because the first conference, the Press Officer would always be at it, and we would probably have a press conference afterwards, and usually, after that, the Press Officer wasn't at our meetings.*
- Q. *Had you had any contact with the Press Officer even the days before, because I think there was a press conference the next day?*
- A. *He was at the first conference on the 20th.*
- ...
- And there was a meeting in my office later on, around, I don't know, half twelve, one o'clock, and that was to draft a protection order for John Hennessy, the solicitor. And if I can recollect, he had a press conference arranged for, in front of Santry sometime around one or half one.*
- ...
- After that, he wouldn't have been at any of ... the conferences.*
- Q. *But in the course of that ... did you give any information to ... Superintendent Donohoe, who was the Press Officer at the time?*
- A. *Yes.*

¹⁰¹ Tribunal Transcripts, Day 167, p. 72

¹⁰² Tribunal Transcripts, Day 169, pp. 34-35

- Q. *Did you give any information to him? Was there any exchange of information about what might go into –*
- A. *He would have got his information from the senior members there. Detective Superintendent Byrne and Inspector Waters, they were familiar with this case. I probably only knew about the same as him when this murder occurred.*
- Q. *... the press release that was issued refers, albeit obliquely, but it is clear that it refers to a court document rather than a victim impact statement ... It is clear that somebody had told ... Superintendent Donohoe about it?*
- A. *Yes somebody did, yes.*
- ...
- Q. *Do you know who that was or how he came to know about it so quickly after?*
- A. *No, I don't know. All I can tell you is, as far as I can remember, it was not me.*¹⁰³

Legal Submissions

Retired Sergeant William Hughes submitted as follows:¹⁰⁴

- that the press release was the initial manifestation of An Garda Síochána scapegoating, and ultimately targeting Sgt Hughes, as a consequence of concerns/disclosures he made regarding garda failings in relation to the murder of Ms Saulite.
- that the press release referred to the draft victim impact statement (the '*document for Court use*') and the statement in it about Ms Saulite being scared for her life.
- that the draft victim impact statement had only two hours earlier been received and read by senior management (C/Supt Phillips and A/C McHugh) and somebody who had read it must have been in touch with the Garda Press Office almost straight away.
- that the press release contained an incorrect assertion that Ms Saulite had been given crime prevention advice – somebody told Supt Donohoe this, yet Ms Saulite was never given formal crime prevention or personal security advice.
- that it also implied that both Mr Hennessy and Ms Saulite had received crime prevention advice of a similar character.
- that there was a narrow focus on Sgt Hughes when assessing information known to An Garda Síochána prior to the murder of Ms Saulite – there was no mention of other information known to detectives and other gardaí.
- that the existence of other information was readily apparent – for example, in his oral evidence to the tribunal, Sgt Hughes referred to the following members as examples of gardaí who would have had relevant information for the fact-finding investigation that was commenced soon after Ms Saulite's murder: retired Superintendent Noel McLoughlin, retired Inspector Bob Melvin, Sergeant Patrick Ambrose and three of

¹⁰³ Tribunal Transcripts, Day 169, pp. 104-106

¹⁰⁴ The tribunal has considered all of retired Sergeant William Hughes's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 173, pp. 6-64

his staff who had dealings with Ms Saulite in relation to the arson attack on her car in August 2006, gardaí who had dealings with her and entered them on PULSE and the gardaí in Blanchardstown who had information in relation to matters concerning Ms Saulite and Mr Hennessy, none of whom were interviewed in the fact-finding process. These were only examples that were given by Sgt Hughes and he was not challenged in any way in respect of this evidence.

- that it implied that Ms Saulite's fears of her partner had only just come to be known to An Garda Síochána in the course of the investigation into her murder, yet Ms Saulite had made her fears known to gardaí on several occasions before this.
- that C/Supt Donohoe's evidence was that he did not recall from whom he became aware of the draft victim impact statement. He did not recall speaking to C/Supt Phillips or A/C McHugh in relation to the document and they did not remember speaking to him. It was hard to see how anyone else could have told him about the draft victim impact statement because, apart from Sgt Hughes, these were the only people who had read it at 14:00 hrs.

The legal submissions of An Garda Síochána did not address this issue.

Conclusion

An Garda Síochána needed to answer claims in the media that they had prior information about a threat to Ms Saulite. The press release did refer to the victim impact statement that was given to Sgt Hughes and Garda Nyhan. The statement was true as far as it went in regard to the draft victim impact statement but obviously it was wrong in saying that protection advice had been given to Ms Saulite as well as Mr Hennessy. That mistake was in favour of An Garda Síochána but it did not damage or alter the situation with regard to Sgt Hughes. It is impossible to ascertain the source of this information and an understanding of the chief superintendent's position leads to the conclusion that he gathered information from a number of sources.

It may well be that in the heat of the moment collecting information from here and there he was given the mistaken impression about protection advice. It is of course true that this statement did nothing to address the state of knowledge of the gardaí prior to the murder otherwise than in the draft victim impact statement and did not acknowledge or even address the question of whether the gardaí should have deduced that there was a very substantial threat to Ms Saulite from the fact of the previous arson attacks and the realistic threat to kill Mr Hennessy.

The conclusion overall on this issue is that the press release did not represent targeting by C/Supt Donohoe, who knew nothing about Sgt Hughes's allegations. Neither can A/C McHugh be blamed, and the only other possible officers who could be said to have known of his concerns were D/Insp O'Sullivan and Insp Cryan. However, these officers were well disposed towards Sgt Hughes and actively sympathetic to him. They did not know that his complaints amounted to allegations of wrongdoing and were very conscious of how upset and troubled he was and outlined in chapter 5, Insp Cryan passed on C/Supt Phillips's message of reassurance about the victim impact statement. There is no question that they could have had any wish to target or discredit him.

The press release had nothing to do with Sgt Hughes's complaints and it was not concerned with the garda conduct of investigations. It was focused on a specific allegation and was endeavouring to disclose the situation as it had occurred.

The purpose of the press release was defensive of the position of the gardaí and not designed to victimise Sgt Hughes or Garda Nyhan.

At the time of this press release the gardaí did not know or understand or accept that there were alleged failures of policing in the period before the murder as Sgt Hughes maintained, and they could not have been expected to acknowledge failures of which they were unaware.

CHAPTER 5

THE COMPLAINT MADE BY SERGEANT WILLIAM HUGHES IN RELATION TO THE FACT-FINDING INVESTIGATION INITIATED BY FORMER ASSISTANT COMMISSIONER AL McHUGH

Background

The first issue on the Schedule of Issues for this module concerns the discipline investigation initiated by Assistant Commissioner Al McHugh under the direction of Chief Superintendent Michael Feehan. This discipline investigation followed on from a fact-finding investigation that had been conducted in the aftermath of the murder of Ms Baiba Saulite. Both investigations had their origin in the revelation by Sergeant William Hughes of a document that Ms Saulite produced at a meeting with him and his colleague Garda Declan Nyhan on 14th November 2006, five days before her murder.

As outlined in chapter 3, the fact-finding investigation was thought to be outside the purview of this tribunal before the decision of the Supreme Court in *Baranya v Rosderra Irish Meats Group Limited* caused a reconsideration of potential protected disclosures made by Sgt Hughes in conversations with officers in the days following the murder. In the result, the tribunal has considered the complaints made by Sgt Hughes about this investigation.

The days following the Murder

The story of Sgt Hughes's troubled six and a half year relationship with An Garda Síochána began at 22:15 hrs on Sunday, 19th November 2006, when he received a phone call from Inspector Michael Cryan informing him that Ms Saulite had been murdered. This was obviously deeply distressing news for anybody to hear, including gardaí, but it was especially painful for Sgt Hughes because he had been dealing with Ms Saulite over a two-year period in connection with the abduction case against the father of her children. He and his colleague Garda Nyhan had brought the case to a successful conclusion with the return of the children and the arrest and charge of the father. They had seen Ms Saulite most recently only five days before the murder, on 14th November 2006, when she came by appointment to Swords Garda Station. The father had pleaded guilty to the abduction charges on 7th November 2006 and the court had asked for a victim impact statement from Ms Saulite for the sentence hearing scheduled for 15th December 2006. At the meeting she produced a draft victim impact statement in the form of a twelve-page handwritten document. After a cursory glance it was clear to Sgt Hughes that it was unsuitable for use in court and he did not read it in full.

Sgt Hughes arrived at the station on the morning of Monday, 20th November 2006 in a distressed state. He took the draft victim impact statement out of his desk and read it, then discovering that Ms Saulite had expressed a fear for her life in the final pages of the document. That part of the draft statement read as follows:

Each visit became very upsetting for my children and myself so I decided not to go anymore. Two weeks passed and my car was petrol bombed outside my new house. We were very lucky to be alive as my children's bedrooms were straight above the blazing car. I was asked by my landlord to leave the house because of this incident. I was then forced to visit him in prison for our own safety. I move again to new house. They (sic) whole stress of this had an immense effect on my health, I lost over 20 kilos in bodyweight in two months. I became a nervous wreck. From prison he rang me on his mobile phone constantly, I took the calls thinking he needed to speak to his children but they were to torment me further. Less and less he asked to speak to them. In my new house I began to get knocks on my door at night time and no one there. I have found I'm being followed by car. [Mr A] has told me he knows my new address and where my [redacted] is going to school. If I have any relationship with any man I will be very sorry and it would be my fault that the man's life would be ruined. He constantly blames my solicitor for ruining his life and that he will pay for it.

At the moment I am very scared for my life because [Mr A] is blaming me for everything that has gone wrong in his life. All I want is some peace for my children and myself to live a normal life, safe and happy knowing that this man can not hurt us anymore. My children are becoming bright, happy, intelligent individuals and this is what I wish them to continue like.¹⁰⁵

It is not clear how Detective Inspector Walter O'Sullivan and Sgt Hughes came to meet in the Community Policing Unit Office on the morning of 20th November 2006 but there is considerable agreement as to the conversation that they had. Sgt Hughes thought that he had phoned the detective inspector after reading the draft statement and that the officer came to his room in response. D/Insp O'Sullivan stated that he sought out Sgt Hughes because he thought he had information about the abduction case that might be valuable in the murder investigation. He enquired about the sergeant and was told that he was upset. He made his way to the office where the sergeant was and they had their conversation. Sgt Hughes showed the detective inspector the copy draft statement, picking it up and putting it down and standing up and sitting down in a manner that indicated to the inspector that he was deeply troubled. D/Insp O'Sullivan told Sgt Hughes to hand in the copy statement to the incident room but he did not actually hold it in his hand and did not read it.¹⁰⁶

Sgt Hughes was drawing his attention to this document because he thought it was or might be relevant in the murder investigation. He mentioned that Ms Saulite had expressed fear for her life. Sgt Hughes was apprehensive that he might be subject to discipline proceedings.

It is not in dispute that D/Insp O'Sullivan expressed sympathy and reassurance but how he did that is a subject of deep disagreement. Sgt Hughes said that the inspector reassured him that the document was not important by saying that protection had been sought for Ms Saulite but that the Commissioner's Office had refused it.¹⁰⁷ The implication was that any failure on the part of Sgt Hughes paled into insignificance compared with this stark rejection of a specific request that was evidence that a threat posed to Ms Saulite was acknowledged within An Garda Síochána. D/Insp O'Sullivan rejected this suggestion as being wholly unfounded. He said that he did endeavour to reassure Sgt Hughes but he did so by saying that the latter's good work in regard to the abduction case would stand to his credit in any proceedings that ensued.¹⁰⁸

¹⁰⁵ Tribunal Documents, pp. 6179-6180

¹⁰⁶ Tribunal Documents, pp. 661-663; Tribunal Transcripts, Day 165, p. 104

¹⁰⁷ Tribunal Transcripts, Day 158, p. 121

¹⁰⁸ Tribunal Transcripts, Day 165, p. 106

Sgt Hughes had a number of exchanges by phone and in person with Insp Cryan on Tuesday, 21st November 2006 and Wednesday, 22nd November 2006. The sergeant was still very upset on the Tuesday and was also feeling responsible, but in addition he made complaints about the lack of coordination in the investigation of the crimes that had been committed and the intelligence received prior to the murder. The detective inspector thought that this was the sergeant *'letting off steam'* rather than making a specific report that needed to be followed up or recorded.¹⁰⁹

Insp Cryan asked Sgt Hughes to hand over the abduction file that had been compiled for the criminal investigation and the sergeant arrived at Swords Garda Station on the evening of Tuesday, 21st November 2006. Sgt Hughes did not deliver the copy victim impact statement with the file. Insp Cryan did not know about that document at the time. However, C/Supt Gerard Phillips instructed him on Wednesday, 22nd November 2006 to contact Sgt Hughes and get the copy document. There was a delay in getting Sgt Hughes to come into the station and hand over the copy of the draft victim impact statement. It was not suggested that he was refusing to do so but the view of officers was that he should have made a point of doing so earlier. By this time word of the document had reached A/C McHugh, who ultimately gave a direction that it should be obtained immediately, and Insp Cryan conveyed to Sgt Hughes the message that the assistant commissioner had ordered that if he did not come in and hand it over without delay it was to be obtained by force from his locker. Sgt Hughes responded to this diktat with some alarm and concern that he might have been considered obstructive. He duly delivered the document to Insp Cryan.

C/Supt Phillips sent the copy document by fax to A/C McHugh and, having looked at it briefly, did not consider it to be significant and sent a reassuring message to the sergeant via Insp Cryan. Insp Cryan recorded in his notes the message that C/Supt Phillips instructed him to convey to Sgt Hughes.¹¹⁰ Insp Cryan was asked about his interpretation of the chief superintendent's message by counsel for the tribunal:

Q. ... You then record:

"The chief asked to meet Sergeant Hughes and to tell him he was satisfied that there was nothing untoward in the victim impact report and that it was unfinished and needed editing."

A. That was the chief's views after reading it, yes.

Q. That was an instruction to you, as it were?

A. Yes, to ring Liam Hughes.

Q. And, on one interpretation, that seems to be directed towards the issue of the fact that it wasn't ready for court, it hadn't been finished and it needed editing and therefore it mightn't possibly be used for the sentencing hearing. Did you construe it that way or why did you record it this way?

A. I construed it that he had no need to worry about a discipline, or that he wasn't going to be blamed. That's the way –

Q. That's the way you took it?

¹⁰⁹ Tribunal Transcripts, Day 166, pp. 58-59

¹¹⁰ Tribunal Documents, p. 742

- A. *Yeah. Nothing to do with the court. That he shouldn't be blaming himself basically.*
- Q. *He shouldn't be blaming himself?*
- A. *Yeah, and that he had nothing to worry about from the chief and from garda authorities, yeah.*
- Q. *Was it expressed that way to you by the Chief Superintendent Phillips?*
- A. *My recollection is yes, yeah.*
- Q. *He had nothing to worry about on the discipline front?*
- A. *Yeah, that he had nothing to worry about, that he wasn't going to be blamed for not reading it and not acting upon it, yeah. The word 'discipline' wasn't used ...*¹¹¹

He told the tribunal that Sgt Hughes said that he felt better after the conversation and thanked him.¹¹²

The Fact-Finding Investigation

A/C McHugh appointed C/Supt Feehan to carry out a fact-finding investigation and to submit his views and recommendations.¹¹³

Chapter 10 of the Garda Code, at paragraph 10.6, envisages that preliminary inquiries may take place to enable an appointing officer to make a decision as to whether or not to initiate an inquiry under the Garda Síochána (Discipline) Regulations, 1989. It states that *'[a] brief report should normally be sufficient ... and an extensive investigation should be avoided'*.¹¹⁴

A/C McHugh's letter to C/Supt Feehan, dated 6th December 2006, said:

On the 19th November 2006, Baiba Saulite was shot dead outside her home.

Ms. Saulite had previously been interacting with members of An Garda [Síochána] involving her husband [Mr A] which resulted in recent court proceedings.

On the 14th November 2006, two members of An Garda [Síochána] from Swords Garda Station met with Mrs. Saulite. During the course of this meeting Mrs. Saulite provided written material for the preparation of a Victim Impact Statement in relation to the sentencing of [Mr A] arising from the abduction of her children. It transpires that Ms. Saulite had raised in the written material fears for her safety.

Carry out a fact finding investigation into the level of knowledge in possession of An Garda [Síochána] prior to Ms Saulite's murder. Let me have your views and recommendations in early course.

*D/Superintendent Michael Byrne, the officer in charge of this investigation will provide relevant background material.*¹¹⁵

A/C McHugh was asked by the tribunal investigator whether he had consulted with any other senior member of An Garda Síochána in relation to his decision to instruct C/Supt Feehan to

¹¹¹ Tribunal Transcripts, Day 166, pp. 38-39

¹¹² Tribunal Transcripts, Day 166, p. 40

¹¹³ Tribunal Documents, p. 805

¹¹⁴ Tribunal Documents, p. 6479

¹¹⁵ Tribunal Documents, p. 854

conduct the fact-finding investigation and he said that he had not.¹¹⁶ A/C McHugh was further asked about the parameters of the fact-finding investigation. He explained that:

While I didn't place any specific parameters on the fact finding investigation, my information at the time of writing was that retired Sergeant Hughes and Garda Nyhan may have been in possession of relevant information regarding a threat to the life of Ms Baiba Saulite.¹¹⁷

C/Supt Feehan appointed Detective Inspector Christopher Mangan from the Store Street Detective Unit to assist with the investigation.¹¹⁸ In the course of his work he sought reports from Garda Nyhan, Detective Sergeant Kieran McEneaney and Sgt Hughes. Sgt Hughes submitted his report on 17th December 2006. He stated at the outset that:

I am required to submit a report to you concerning my dealings with Ms. Baiba Saulite prior to her murder. I understand that the report is required as part of a 'fact-finding' initiative and is not required in respect of the disciplinary process.

The following is a chronology of the events from the time of the abduction of the [two] children until the death of Ms. Saulite.¹¹⁹

The report detailed Sgt Hughes's involvement with the case of Ms Saulite from 11th December 2004, when the father of her children attended at Swords Garda Station to sign the bail book. The sergeant described the circumstances giving rise to the meeting with Ms Saulite on 14th November 2006 as follows:

On the 7th November, [Mr A] pleaded guilty to the new counts and was remanded in custody until the 15th December 2006 for sentence. Apparently, he had not pleaded guilty up [to] that point as his Counsel knew that the wrong charges had been preferred.

The Court ordered a 'Victim Impact Report' in respect of Baiba Saulite.

On the 14th November 2006, Baiba Saulite arrived at Swords station by appointment. Along with Garda Nyhan, I took her to an interview room in the station. She produced a hand written twelve-page document to us. I glanced through some of the pages and immediately saw that the contents were not suitable to be included in a Victim Impact Report. I handed the documents back to her and explained precisely what material would be required. I informed her that the report can only deal with the effects the case had on her personally.

It is important to stress at this point that she did not make any formal complaint regarding any matters in the twelve-page document. She was not at Swords station to make a formal complaint, merely to help prepare the victim impact report. It is also important to stress that the document was not read in its entirety at that particular time.

She began to talk about such matters as her weight loss, the grief she suffered when the [children] were taken from her and the fact that she was under the care of her doctor. This, I informed her, was the type of material that would be required in her victim impact report for the Court. I asked her to visit her doctor and obtain a medical report to that effect.

I informed her that I would photocopy her twelve page document and informed her that the matter of preparing the victim impact report should be left until she had obtained a medical

¹¹⁶ Tribunal Documents, p. 8230

¹¹⁷ Tribunal Documents, p. 8228

¹¹⁸ Tribunal Documents, p. 847

¹¹⁹ Tribunal Documents, p. 1990

report from her doctor. It must be stated at this point that I have not before been involved in the preparation of a victim impact report for a criminal case. I had intended to seek guidance in that regard from the Law Officers.

Garda Nyhan and myself then had an informal conversation with her. I asked her about what [Mr A's] attitude was like since pleading guilty. She informed us that he was blaming 'Sergeant Hughes and John Hennessy' for his predicament. I asked her what she thought that meant. She stated that she feared for Mr. Hennessy's safety and that of myself and Garda Nyhan. She stated that [Redacted] had visited her and told her to be careful. She could not be specific in that regard. I asked her if we could talk to [Redacted]. She became anxious and told us not to approach him under any circumstances.

...

Baiba also told us that she had stopped bringing her [children] to Mountjoy Prison on visits to [Mr A]. She stated that she had also changed her mobile telephone and that [Mr A] was not aware of her new number. I asked if she considered that a good idea, the issue of not bringing the [children] to visit [Mr A]. She stated that she was making a break from him once and for all and was not going to tolerate his intimidation any further.

I detected an air of positive independence from her, a feature which I had not seen since first meeting her two years earlier. She was in good form and appeared confident and happy. I left the room to photocopy the documents. I handed her the originals and retained the copies. I reassured her that the fact [Mr A] had pleaded guilty to the abduction charges may go some way possibly to reconciling their differences in respect of the children.

In the absence of any Garda intelligence to the contrary, I had no reason to believe at that point that her fears about [Mr A] were of much significance. In fact, the things she referred to were not untypical of conversations we had on numerous occasions in the past. I dismissed her fears about myself and Garda Nyhan as being somewhat paranoid. In the past two years, Baiba Saulite constantly complained of [Mr A's] behaviour towards her. Many times she spoke of alleged threats he made to her, but she declined to make formal complaints in that regard.

From the outset, I believed that I was merely dealing with a Family Law matter which had unfortunately escalated to a case of child abduction. I was unaware of any threat to me personally relating to my involvement in this case. I was familiar with the intelligence reports already collated in respect of [Mr A]. None gave me concern for my personal safety or that of Garda Nyhan or Baiba Saulite. I informed Baiba that I would make contact with her the following week to make an appointment to meet her again. She then left the station.¹²⁰

D/Insp Mangan reported the steps he took in respect of the investigation, including the following.

- He visited the District Office at Coolock Garda Station where he spoke to Inspector Donal Waters who was not in possession of any information relative to the investigation.
- He examined files at the District Office and two reports relative to Ms Saulite were located. The first report was dated 20th January 2005 and had been forwarded to Sgt Hughes by the district officer. The second report contained a letter from Mr John Hennessy, solicitor, and this also had been forwarded to Sgt Hughes on 1st November 2005.

¹²⁰ Tribunal Documents, pp. 2001-2004

- Former District Officer Superintendent Noel McLoughlin was not interviewed as he had retired. Garda Adrian Walsh, District Office Coolock was interviewed but was unable to provide any information relative to the investigation.
- He researched section 5 of the Criminal Justice Act, 1993 and the judgment of the Court of Criminal Appeal, *DPP v Wayne O'Donoghue*.
- He examined and considered the victim impact statement submitted by Ms Saulite to Sgt Hughes.
- He researched and considered previous victim impact statements that were submitted in criminal cases in the C District.
- He interrogated the garda PULSE information system to establish what information existed relative to threats to Ms Saulite.
- He examined statements made by Ms Saulite to Garda Conor McNally.
- He spoke to Garda Alan Campbell, who was involved in the completion of the original file involving Sgt Hughes and Ms Saulite.¹²¹

In his report to C/Supt Feehan dated 22nd December 2006, D/Insp Mangan concluded as follows:

During the period of time that Baiba [Saulite] was involved with [Mr A] she suffered emotionally and physically. [Mr A] is now the main suspect for her murder.

Sergeant Liam Hughes has submitted a comprehensive report outlining his dealings with the deceased. Detective Sergeant [Kieran] McEaney has submitted a report ... outlining his dealings with the deceased. Both Sergeants were not in possession of specific threats to her and she did not make any formal complaint to either member.

The handwritten document submitted by Baiba [Saulite] to Sergeant Hughes would not constitute a Victim Impact Statement and would not have been accepted by the courts.

The handwritten document purporting to be a Victim Impact Statement could not be used by the Gardaí to investigate or instigate a prosecution against [Mr A].

As a result of an examination of the facts to hand, I am of the view that Sergeant Hughes and Garda Nyhan completed a complex investigation in a very professional manner.

There certainly was knowledge in existence and available to the Gardaí in relation to threats from [Mr A] to Baiba [Saulite]. The members of An Garda [Síochána] involved with Baiba [Saulite] readily admit this in their reports.

In the absence of a statement of complaint from Baiba [Saulite], the Gardaí would be unable to interview [Mr A] who was in prison when the intimidation was ongoing. Without a statement of complaint a prosecution could not be instigated against [Mr A] for the issuing of threats. As the matter stood, the Gardaí had no evidence to deal with the situation and impose any form of sanction on [Mr A].¹²²

The appendices to his report included the report from Sgt Hughes; a report from D/Sgt McEaney; PULSE extracts; a copy of the handwritten document provided by Ms Saulite; the statement of Ms Saulite made on 4th January 2005; and the report of Garda Nyhan.

¹²¹ Tribunal Documents, pp. 856-858

¹²² Tribunal Documents, p. 882

C/Supt Feehan raised a number of queries with D/Insp Mangan in a letter dated 10th January 2007.¹²³ The detective inspector sent a further, amended report dated 2nd February 2007.¹²⁴ The conclusion of this revised report was as follows:

*There certainly was knowledge in existence and available to the Gardai in relation to threats from [Mr A] to Baiba Saulite. The members of An Garda [Síochána] involved with Baiba Saulite readily admit this in their reports. In order to clearly outline the facts in existence, I respectfully suggest that this matter be formally investigated.*¹²⁵

The difference is that, following a request that he make a recommendation in relation to this matter, D/Insp Mangan now suggested that the matter be formally investigated.¹²⁶

C/Supt Feehan reported to A/C McHugh on 26th March 2007.¹²⁷ This was a detailed report seeking to provide a comprehensive account of Ms Saulite's engagement with the gardaí. It dealt with her background, the beginning of her complaints of domestic violence, the abduction of her children in December 2004 and their return in October 2005, and the sentencing of Mr A for car theft charges in early 2006. He outlined details of garda records of contact with Ms Saulite and described reports of violence or intimidation towards her. He further outlined Sgt Hughes's report and the reports from other gardaí. The report concluded with C/Supt Feehan's views and recommendations as follows:

The content of this report chronicles a number of years of abuse and violence which was allegedly perpetrated on Baiba Saulite by her partner [Mr A]. A number of members of An Garda [Síochána] became involved with Ms. Saulite in dealing with these various allegations. That involvement is recorded on the Pulse computer system as outlined at 3 above.

The most significant Garda involvement with Ms Saulite appears to have been in relation to the investigation of the abduction of her [two] children by her partner [Mr A]. Sergeant William Hughes, Swords, was directed by the then District Officer in Coolock, Supt. Noel McLoughlin, to carry out an investigation into these abductions. That investigation included the taking of a number of statements from Baiba Saulite, in which she alleged that she had been assaulted and intimidated by [Mr A] on several occasions and that she was in fear of him. These statements were included in a file which was completed by Sergeant Hughes and forwarded to the Director of Public Prosecutions with recommendations that [Mr A] should be prosecuted. The DPP directed that [Mr A] should be charged with two counts of abduction under Section 16 Non Fatal Offences Against the Person Act 1997. Sergeant Hughes provided a comprehensive report in relation to his involvement with Baiba Saulite. In that report the Sergeant acknowledges that he was aware that an arson attack had been perpetrated on the home of Ms. Saulite's solicitor, Mr. John Hennessy, and that [Mr A] was suspected of involvement in this crime. Sgt. Hughes also acknowledges that he was aware of an arson attack on Baiba Saulite's car, in which [Mr A] was again the suspect.

Sgt. Hughes states that he met with Baiba Saulite on the 14th of November 2006 at Swords Garda Station. He asserts that Ms Saulite produced a 12 page handwritten document, which he 'glanced through'. In that document, Ms. Saulite states that 'at the moment I am very scared for my life because [Mr A] is blaming me for everything that has gone wrong in his

¹²³ Tribunal Documents, p. 885

¹²⁴ Tribunal Documents, pp. 887-890

¹²⁵ Tribunal Documents, p. 890

¹²⁶ Tribunal Transcripts, Day 171, pp. 42-43.

¹²⁷ Tribunal Documents, pp. 1963-1981

life'. Sgt. Hughes stresses that 'the document was not read in its entirety at that particular time'. He states that he photocopied the document and then handed the original back to her. Sgt Hughes also stresses that Ms. Saulite did not make any formal complaint regarding any matters in the twelve page document. Sgt Hughes asserts that 'in the absence of any Garda intelligence to the contrary' he had no reason to believe that her fears about [Mr A] were of much significance, as these were not untypical of conversations he had with her on many occasions in the past.

The European Court of Human Rights in the case of Osman v U.K. stated that where 'the authorities knew or ought to have known at the time of the existence of a real and immediate risk to life of an identified individual or individuals' it was their duty to take all measures within the scope of their powers that might have been expected to avoid that risk'. This could be found to be pertinent in the present case.

Taking account of the forgoing, it is apparent that there was knowledge in existence and available to an Garda [Síochána] in relation to threats from [Mr A] to Baiba Saulite. The members of an Garda [Síochána] readily admit this in their reports. In order to fully outline the facts in existence, and the level of actions taken as a result of this knowledge coming into the possession of members of An Garda [Síochána], I recommend that a full investigation should be carried out into this matter.¹²⁸

C/Supt Feehan referred to the European Court of Human Rights decision in *Osman v United Kingdom*.¹²⁹ The tribunal considers that a word about the Osman case may be helpful. The case was decided by the European Court of Human Rights in a judgment delivered on 28th October 1998. The first applicant was the widow of a man who was shot and killed by a former teacher of their son. The second applicant was also injured in the fatal attack on his father. The applicants relied on article 2 of the European Convention on Human Rights, claiming that the authorities in the UK where they lived failed to appreciate and act on a series of clear warning signs that the teacher represented a serious threat to the physical safety of the boy and his family. On the facts of the case, the court was not persuaded that police at any decisive stage knew or ought to have known that the applicants' family's lives were at risk from the teacher and so the court refused relief. The case did however consider the circumstances in which a person might have an actionable claim in respect of failures by police or other relevant authorities. Article 2 of the Convention provides:

1. *Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*
2. *Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:*
 - (a) *in defence of any person from unlawful violence;*
 - (b) *in order to effect a lawful arrest or to prevent the escape of a person lawfully detained.*

The court held that an obligation arose in circumstances where the authorities know or ought to know that there is a real and immediate risk to the life of a particular person from the criminal acts of a third party and that obligation is to do all that can reasonably be expected of them in the circumstances to avoid the risk. That means that they must take measures within the scope of their powers that, judged reasonably, may be expected to avoid that risk.

¹²⁸ Tribunal Documents, pp. 1979-1981

¹²⁹ ECHR 1998-VIII 3124 (Application no. 87/1997/871/1083)

On the basis of this report, A/C McHugh made his decision to order a discipline investigation.¹³⁰ That is the subject of the next chapter.

Complaint made by Sergeant William Hughes

Sgt Hughes agreed with counsel for An Garda Síochána that D/Insp Mangan reached a number of 'reasonable and fair-minded' conclusions in his report.¹³¹ However, he said that there was '*... a lot more material that could have ... gone into the report ... in relation to the assessment of the level of threat known to the Gardai prior to her death*'.¹³²

Sgt Hughes was asked by counsel for An Garda Síochána whether he agreed that the fact-finding was a preliminary report:

Q. ... you are aware, aren't you, sergeant, this was a fact-finding; it is a preliminary report to see if there is something to look into in depth; in modern parlance, a scoping exercise, isn't that right?

... it was to gather facts to see if they warranted an inquiry; that's what he was doing, no more than that?

A. Yes.

Q. And you see it in the last sentence:

"In order to clearly outline the facts in existence, I respectfully suggest that this matter be formally investigated."

That's all he was doing. He wasn't reaching a conclusion for or against you. He wasn't condemning you. He was simply indicating it was appropriate to proceed to an investigation.

A. I accept that.¹³³

He was asked by the Chairman to outline how this was targeting:

CHAIRMAN: ... Here is a report by Inspector Mangan. How did he target you in that report?

A. Well, it appears in that report that he was just – the focus of attention is back on my dealings with Baiba Saulite on the 14th November 2006.

CHAIRMAN: Okay. The focus is on you?

A. In that report, yes.

CHAIRMAN: And that's how he targets you?

A. Well he targeted my, work, yes.

CHAIRMAN: Because the focus ... of this report is on you?

A. The focus of this report seems to be, to me, to be actually focusing in on my meeting with Baiba Saulite, and then he is talking about the Victim Impact Report and the Criminal Justice Act in relation to how the circumstances by which way the victim impact reports are formulated.¹³⁴

¹³⁰ Tribunal Transcripts, Day 167, p. 39

¹³¹ Tribunal Transcripts, Day 162, p. 95

¹³² Tribunal Transcripts, Day 162, p. 98

¹³³ Tribunal Transcripts, Day 162, pp. 98-99

¹³⁴ Tribunal Transcripts, Day 162, pp. 99-100

Sgt Hughes continued that:

What I'm saying, Mr. Chairman, is that the report from Inspector Mangan there formed the basis of his superior officers in deciding on a course. Now, if he had conducted a full fact-finding inquiry, it would have been revealed that several offences there that were reported that involved Baiba Saulite were not properly investigated, and that some of them were not entered on PULSE and not properly disseminated, and that was a level of knowledge that was known to members of the Garda Síochána prior to her murder, and they were not factored into that report. So, from my perspective, the fact that the reports were forming the basis of an assessment to senior officers', therefore, determination as to whether there was any disciplinary issues arising, I think that there should have been a much more widespread collection of information in relation to Baiba from other members.¹³⁵

When asked by the Chairman whether this was 'letting Inspector Mangan off-the-hook' Sgt Hughes replied that:

Q. *Not off the hook, no. His job was to, as we know, to collect all the information from members of An Garda Síochána who had knowledge of Baiba's Baiba Saulite prior to her murder. This wasn't done.¹³⁶*

...

CHAIRMAN *... You say Inspector Mangan should have carried out a much more comprehensive report and he would have found out a lot of other things, and because he didn't, you say that represented targeting of me? ...*

A. *That's essentially it, Mr. Chairman.¹³⁷*

In respect of the report by C/Supt Feehan, Sgt Hughes was asked the following:

Q. *... The nature of a fact finding, or what I termed scoping exercise, is that it's preliminary, it's not the full investigation?*

A. *Yes, I would say, but it wouldn't necessitate the conduct of a full investigation.*

Q. *Yes. And that was his conclusion; from his preliminary look at things it warranted looking into further, and that was reasonable, wasn't it?*

A. *A full investigation, yes, I think it warranted a full investigation from the outset.¹³⁸*

Sgt Hughes was cross-examined by counsel for An Garda Síochána in respect of the instigation of the fact-finding investigation by A/C McHugh:

Q. *I want to suggest to you that Assistant Commissioner McHugh needed to establish a level of knowledge or the level of knowledge regarding the alleged threat posed to Baiba Saulite's life that was in possession of [An Garda Síochána] prior to her murder.*

A. *Yes.*

Q. *He needed to do that?*

A. *Yes.*

¹³⁵ Tribunal Transcripts, Day 162, pp. 101-102

¹³⁶ Tribunal Transcripts, Day 162, p. 102

¹³⁷ Tribunal Transcripts, Day 162, p. 104

¹³⁸ Tribunal Transcripts, Day 162, p. 106

- Q. And it was legitimate for him to direct the carrying out of a fact finding to that end?
- A. That's accepted. Yeah, that's correct.
- Q. So, he asked Chief Superintendent Feehan to carry out the fact finding. And I'm suggesting to you fact findings are actually quite common in An Garda Síochána, fact finding investigations?
- A. Yes, I'd accept that.
- Q. And I'm suggesting to you that for the reasons already that we have gone over, identified by Inspector Mangan, there was a legitimate rationale for further inquiry after the initial fact finding?
- A. Absolutely.¹³⁹

Sgt Hughes told his own counsel that the scoping exercise was not a fair one, as follows:

- Q. ... Now, you complain of scapegoating and targeting, are those – is that scoping exercise in your view a fair one?
- A. In my view it's not, and if I can give reasons?
- Q. Yes.
- A. There were a large number of Garda personnel that were omitted from this scoping exercise who had personal dealings with Baiba Saulite prior to her death and they were apparently left off the list. There are persons, senior officers, that they were spoken to and they denied having any knowledge in relation to Baiba Saulite, when it's clear that they did have knowledge of – they were in positions of authority whereby various reports and various occurrences would be known to them in relation to Baiba Saulite, and they were in a position to assist that inquiry. The level of knowledge in relation to Baiba Saulite extended beyond our district to other divisions. And as we can see, it doesn't appear to have any input there from what I would consider crucial members who had dealings with Baiba Saulite prior to her murder.¹⁴⁰

He continued that:

... the individual Garda members referred to in the document at the first instance weren't approached in the fact find investigation and neither were they seemingly approached in the confidential recipient investigation process. And I believe that information in that document there was critical to Garda management's viewpoints in relation to systems failure within the Garda Síochána, in relation to John Hennessy and Baiba Saulite prior to the murder. And I believe, I believe that a proper investigation of the document there would have shone the spotlight considerably and substantially towards other members of An Garda Síochána, particularly of senior rank.¹⁴¹

¹³⁹ Tribunal Transcripts, Day 162, pp. 136-137

¹⁴⁰ Tribunal Transcripts, Day 164, p. 67

¹⁴¹ Tribunal Transcripts, Day 164, pp. 80-81

Responding Statements and Evidence on the Issue

Former Assistant Commissioner Al McHugh

Counsel for the tribunal asked A/C McHugh about the setting up of the fact-finding investigation and what he had intended to set in train:

- A. *Well, because of the nature of the, you know, fact finding, preliminary inquiries, scoping, whatever you want to call it, I'd expect that I'd have got an amount of knowledge that would dictate what course I would take as a result of what would have been acquired during the fact finding.*
- Q. *Yes. So, you regarded it as not necessarily the end of what might occur, but it was to give you a platform of facts from which to make a decision?*
- A. *Yeah, it was going to guide me into whatever decision making I would take at its conclusion.¹⁴²*

Counsel also asked A/C McHugh about the scope of the fact-finding investigation:

- A. *Well, the only information I had at the time was the document received by the two gardai in Swords, and if other evidence emerged that – from the fact finding – that other members were aware of threats, that would be considered as well. It wasn't a case of setting up a fact finding to – I won't use the word target, but to concentrate on both garda – or Sergeant Hughes and Garda Nyhan. Further, I'd expect that it was broader than that.*
- Q. *Yes. If we could go back to your question and answer document, at page 8228. You were asked by the investigator ... you were asked this question about the scope and nature of it. And you said:*
- "While I didn't place any specific parameters on the fact finding, my information at the time of writing was that retired Sergeant Hughes and Garda Nyhan may have been in possession of relevant information regarding a threat to the life of Ms. Baiba Saulite."*
- Factually speaking, that was accurate, is that right?*
- A. *It was, yeah. I didn't place any parameters on it. I would be dictating then how Chief Feehan would carry out his work. I didn't place any parameters on it.¹⁴³*

On the specific question of whether A/C McHugh intended the fact-finding investigation to be limited to the knowledge of those two members of An Garda Síochána, or whether it was to look at the situation in a more general way to see what evidence of a threat there was, he gave evidence that:

Oh, no, it certainly was not limited to Sergeant Hughes or Garda Nyhan. It was, in general, what information was available. I think it's fairly broad, the report that I sent asking that it be carried out.¹⁴⁴

He said that:

... in broad terms, I wanted to establish if threats were known to other members ... in that particular district apart from Sergeant Hughes and Garda Nyhan.¹⁴⁵

¹⁴² Tribunal Transcripts, Day 167, pp. 23-24

¹⁴³ Tribunal Transcripts, Day 167, pp. 26-27

¹⁴⁴ Tribunal Transcripts, Day 167, p. 27

¹⁴⁵ Tribunal Transcripts, Day 167, p. 28

A/C McHugh was asked about his understanding of the recommendation made by C/Supt Feehan and he said:

A. *My understanding of his recommendation from what was contained in his report was that he was recommending a discipline investigation.*

Q. *... why did you think he was recommending that, or did you have any doubt about that issue?*

A. *No, I had no doubt about it. Sergeant Hughes had met the deceased on the 14th November, five days before she died. She had produced a document. There was a very defining statement in the document that at the moment – which to me signifies the present tense, that day – I am very scared for my life. Unfortunately he didn't read the document. The document was placed in his locker and five days later the unfortunate mother was shot. Together with his knowledge that – in the statement contained on the 4th January 2005, it was damning evidence there which could be coupled with what she had said on her statement on the – or her draft statement on the 14th November.*

... I wasn't alleging that he was in breach of discipline.

Q. *... I understand that. But did you regard this as, as it were, a sufficient platform to require a further inquiry into –*

A. *I did indeed. I mean, under the '89 regulations the threshold, you know, is very low in terms of what's required to initiate a discipline investigation. If a breach of discipline may be disclosed, it's very loose, I suppose, and, you know, it's a very low threshold compared to maybe the new regulations that came in shortly afterwards.¹⁴⁶*

Former Assistant Commissioner Michael Feehan

A/C Feehan explained in his evidence to the tribunal the basis for his recommendation of a full investigation in his report:

I believed that the information which I had, which I had in front of me, that there was a compelling case to institute discipline proceedings, and that's what I was referring to.¹⁴⁷

He said that he was clear about what he was recommending and that '*I would expect that Assistant Commissioner McHugh, when he read that report, would also understand what I was recommending*'.¹⁴⁸ He said that a fact-finding investigation was like a scoping or a preliminary investigation:

My understanding of it was that it was to ascertain the facts and to put these in my report then to report back to Assistant Commissioner McHugh that these are the facts that we had found in that investigation.¹⁴⁹

Detective Inspector Christopher Mangan

D/Insp Mangan was asked by counsel for the tribunal about the scope of the fact-finding investigation. He referred to the direction from A/C McHugh to C/Supt Feehan dated 6th December 2006, and said that it:

¹⁴⁶ Tribunal Transcripts, Day 167, pp. 36-37

¹⁴⁷ Tribunal Transcripts, Day 168, p. 32

¹⁴⁸ Tribunal Transcripts, Day 168, p. 33

¹⁴⁹ Tribunal Transcripts, Day 168, p. 9

*... also ... refers to a level of knowledge in possession of members of An Garda Síochána, so it's a wider – it's a wider brief than simply seeking the victim impact and what was in that.*¹⁵⁰

D/Insp Mangan referred to the first report he submitted to C/Supt Feehan dated 22nd December 2006:

*Well ... I regarded myself as having concluded endeavouring to establish the level of threat, to speculate on somebody else what they were going to do with it; it could range from an investigation into what had been alleged in the victim impact, what was in her original statements to the investigators relative to the abduction, and also the report by Sergeant Hughes and the report by Garda Nyhan, and the other reports as they were reported by the members. So, an investigation could have taken place in relation to what was there if so desired or required by Chief Feehan or Assistant Commissioner McHugh.*¹⁵¹

In relation to the recommendation in his second report, D/Insp Mangan explained that:

*Well, for somebody to be appointed to investigate the level of threats, to establish if there was a level of threats, and that would be based on the material provided, but also to investigate if there was other material available. It would be more comprehensive than my scoping exercise.*¹⁵²

He was asked if he was requested to submit a recommendation:

*I don't have any file in relation to it, I don't have any memory in relation to Chief Superintendent Feehan asking me to submit a recommendation, but I don't believe I would have submitted the second report without being asked for a recommendation. I don't have documents.*¹⁵³

He continued that '*... my belief is that I was asked to make a recommendation as to what course of action should take place. And the recommendation was to have ... it formally investigated*'.¹⁵⁴

Legal Submissions

In respect of D/Insp Mangan's report, retired Sergeant William Hughes submitted as follows:¹⁵⁵

- that it was indisputable that the fact-finding investigation evolved such that it targeted Sgt Hughes (and Garda Nyhan).
- that the fact-finding investigation was almost exclusively focused on the draft victim impact statement.
- that the fact-finding investigation did not actually look at '*the level of knowledge in possession of An Garda Síochána prior to Ms Saulite's murder*' as there were many other gardaí who knew Ms Saulite and were in contact with her apart from Sgt Hughes and Garda Nyhan (in the later confidential recipient investigation report it emerged that 74 gardaí had had an involvement with Ms Saulite), and there were garda dealings with Mr Hennessy of a serious nature that were potentially highly relevant.

¹⁵⁰ Tribunal Transcripts, Day 171, pp. 12-13

¹⁵¹ Tribunal Transcripts, Day 171, pp. 25-26

¹⁵² Tribunal Transcripts, Day 171, p. 29

¹⁵³ Tribunal Transcripts, Day 171, pp. 42-43

¹⁵⁴ Tribunal Transcripts, Day 171, p. 43

¹⁵⁵ The tribunal has considered all of retired Sergeant William Hughes's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 173, pp. 6-64 and pp. 135-151

- that the fact-finding investigation did not look at the actual life-threatening attacks and threats aimed at Mr Hennessy even though these arose only because of his professional relationship with Ms Saulite and related to Mr A.
- that the fact-finding investigation did not consider contact between detectives and a third party.
- that the fact-finding investigation found that the draft victim impact statement was not a proper victim impact statement, as would be evident to any person scanning through it.
- that the fact-finding investigation found that *'the handwritten document purporting to be a Victim Impact Statement could not be used by the Gardai to investigate or instigate a prosecution against [Mr A]'*.
- that the initial report by D/Insp Mangan was changed following a review by C/Supt Feehan to include a recommendation for further investigation.
- that whilst the initial purpose of the investigation was said to be wide, its focus narrowed to Sgt Hughes and Garda Nyhan in (i) the final report of C/Supt Feehan, and (ii) the decision by A/C McHugh to initiate disciplinary proceedings against the two members.

In respect of C/Supt Feehan's report, retired Sergeant William Hughes submitted as follows:

- that C/Supt Feehan wrote a longer, more detailed report of the fact-finding investigation although he did not interview anyone else or receive any new statements.
- that the report initially took a more expansive approach detailing various communications between Ms Saulite and gardaí from 2002, not just Sgt Hughes, but then moved on to Sgt Hughes, Garda Nyhan, the child abduction investigation and the draft victim impact statement. There was no mention of any other garda in the *'Views and Recommendations'* section at the end of the report. The information about the obvious problems with the draft victim impact statement, and the case law in respect of what should be in a victim impact statement, which was in D/Insp Mangan's reports, was disregarded, and reference was made to the European Court of Human Rights decision in *Osman v United Kingdom*.
- that the report made a recommendation for *'a full investigation'*. It did not refer to a discipline investigation. Although A/C Feehan said in evidence that that was what he thought was required, he did not state that in his written statements to the tribunal, nor did his report itself state that.
- that the report's recommendation for a full investigation was phrased in sufficiently general terms as to potentially cover other aspects of An Garda Síochána's conduct and dealings with Ms Saulite. However, ultimately it led to action only against Sgt Hughes and Garda Nyhan. They were targeted. No other gardaí were mentioned in the *'Views and Recommendations'* section, and no investigation of anyone else ever occurred on foot of the report.
- that the report did not look at the threats to Mr Hennessy even though these arose only because of his professional relationship with Ms Saulite and related to Mr A.

- that the report did not consider in any detail contact between detectives and Ms Saulite and/or contact with the third party.
- that C/Supt Feehan disregarded the findings made by D/Insp Mangan that the draft victim impact statement was not a proper victim impact statement and any other information that might have explained why Sgt Hughes would not have read it in full at the time.
- that C/Supt Feehan disregarded the previous finding by D/Insp Mangan that *'the handwritten document purporting to be a Victim Impact Statement could not be used by the Gardai to investigate or instigate a prosecution against [Mr A]'*.
- that C/Supt Feehan in the report linked the fact that Sgt Hughes did not read the draft victim impact statement in full to the systemic actions of the police in England that came under scrutiny in *Osman v United Kingdom*.
- that A/C Feehan sought in his evidence to rely on a conversation between Ms Saulite and a third party, which the deceased had described in her conversation with Sgt Hughes and Garda Nyhan. However, A/C Feehan had not mentioned this matter in his report to A/C McHugh and it could not in the circumstances have actually formed part of the consideration of the case by A/C Feehan.
- that C/Supt Feehan's recommendation was also based on a premise that he himself later discarded, i.e. that the statement in the final paragraph of the draft victim impact statement that Ms Saulite was *'scared for her life'* (a claim that she had made before) could reasonably be interpreted as indicating a real and immediate risk to her life on 14th November 2006 such that article 2 of the European Convention on Human Rights was engaged. As referred to below, C/Supt Feehan could have dismissed this premise at the time of his fact-finding report, a point put to him during his oral evidence.
- that Sgt Hughes was being targeted and there was an effort to scapegoat him for failings that may have occurred at an organisational level in respect of protecting Ms Saulite: failings he referred to almost immediately after Ms Saulite's murder when he spoke with Insp Cryan on 21st November 2006.

An Garda Síochána submitted as follows:¹⁵⁶

- that D/Insp Mangan did not adopt too narrow an approach so as to focus unduly on Sgt Hughes and Garda Nyhan. As well as getting reports from Garda Nyhan and Sgt Hughes, the inspector also spoke with Detective Superintendent Michael Byrne, he carried out an analysis of PULSE records, he got a report from D/Sgt McEaney, he interviewed or had a discussion with the staff member in the office and he also looked at records in the District Office.
- that there was ample basis to actually distinguish the role played by the sergeant and his colleague from the role played by other persons. Sgt Hughes himself told a number of different persons, and told D/Insp Mangan in the report to him, that in the conversation on 14th November 2006, Ms Saulite had relayed two matters that actually caused him concern: one was that she had stopped bringing her children to see Mr A in prison, another was that she had changed her mobile number. While that was not a

¹⁵⁶ 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 173, pp. 66-135

decisive issue, it showed that there was a basis for the sergeant's own apprehensions as to his professional position. He had queried with her the wisdom of doing these things and this was disclosed in his report to D/Insp Mangan.

- that Sgt Hughes recognised and acknowledged, in fairness to him, that the victim impact statement and the conversation he had on 14th November 2006 with the deceased did present professional difficulties for his position. That again spoke to the reasonableness of the decision to initiate at least a fact finding exercise and thereafter a fuller investigation under the Discipline Regulations.
- that D/Insp Mangan should not be accused of targeting in view of the sergeant's own evidence where he accepted that the detective inspector was not reaching a conclusion against him or condemning him but was indicating that it was appropriate to proceed to an investigation.
- that it was illogical to continue with an allegation against the detective inspector in circumstances where that acknowledgment was being made.
- that the concern that Sgt Hughes expressed for his own position to D/Insp O'Sullivan and to Insp Cryan in the aftermath of the murder, plus the contents of the victim impact statement, amounted to another important concession.
- that Sgt Hughes belatedly acknowledged in his evidence that he ought to have read the victim impact statement.
- that D/Insp Mangan's report was replete with references that were actually in ease of the sergeant. There were references to reasons why one might not focus unduly on the victim impact statement, there was a suggestion that it was not admissible, that it was written in handwriting on hotel notepaper but that it was not in the correct form for a victim impact statement.
- that not only was it a legitimate decision to initiate a fact-finding investigation but it would have been highly questionable not to have done so, and thereafter, when that had been looked into and found to warrant further investigation, it was entirely legitimate and warranted the commencement of the discipline process.
- that it was relevant that no judicial review was brought seeking to stop either the fact finding or the discipline investigation, in circumstances where it was clear that from the outset the sergeant had the benefit of legal advice, whereas he was alleging before the tribunal that there was some sort of void or invalid decision made in the first place.
- that the first part of the process was the fact-finding investigation. A/C McHugh was concerned to establish the level of knowledge regarding the alleged threat posed to Ms Saulite in the possession of An Garda Síochána prior to her murder and thus tasked C/Supt Feehan to carry out a fact-finding investigation. It was an entirely legitimate and proper inquiry and it would have been in dereliction of the duties of An Garda Síochána had there been no such inquiry in the circumstances.
- that fact-finding investigations are common within An Garda Síochána.
- that ultimately, C/Supt Feehan stated in his report: *In order to fully outline the facts in existence, and the level of actions taken as a result of this knowledge coming into the possession of members of An Garda Síochána, I recommend that a full investigation should*

be carried out into this matter. C/Supt Feehan's statement contained a detailed summary of the material collated, which gave rise to the conclusion in his May 2007 report on the fact-finding investigation that there was knowledge available to An Garda Síochána of threats to Ms Sailute, which had been accepted by the gardaí in their reports. C/Supt Feehan stated that his thinking was informed by the twelve-page victim impact statement in the possession of Sgt Hughes, where Ms Sailute referred to being scared for her life. Similar concerns were expressed in her statement of 4th January 2005 in the abduction investigation. C/Supt Feehan stated that there were compelling grounds for recommending further investigations into this matter.

Conclusion

The circumstances as they presented to A/C McHugh when he directed a fact-finding investigation were as follows: Ms Saulite came to the garda station five days before she was murdered; she presented the officers with a document in which she expressed fear for her life; the officers did not read the document and did not discover the fear that the victim expressed; they did not report the meeting or the document or the conversation that they had until after the murder; Sgt Hughes informed D/Insp O'Sullivan about the document on the morning after the crime was committed; and he handed over his copy of the document on Wednesday, 22nd December 2006, three days after the murder.

A/C McHugh responded to the disclosure of this document by ordering a fact-finding investigation. That could scarcely have come as a surprise to anybody involved, including Sgt Hughes who himself had anticipated that there would be difficulties for him in regard to the draft victim impact statement.

The revelation of the encounter between gardaí and the victim so shortly before she was murdered and the information contained in the statement that she proffered were such that an inquiry was practically mandated and, indeed, it would have been very difficult for A/C McHugh to explain or defend a decision not to pursue the matter any further. Whether he intended the fact-finding investigation to concentrate only on Sgt Hughes and Garda Nyhan or not, the instruction that he gave to C/Supt Feehan cannot in the circumstances be criticised. It was reasonable and justified. The assistant commissioner's letter did expressly refer to Sgt Hughes and Garda Nyhan and to the victim's document.

D/Insp Mangan produced his report on the basis of the instructions as he understood them. Although Sgt Hughes complained that he took too narrow a view of his brief, it is significant that neither his superior C/Supt Feehan nor A/C McHugh made any such criticism.

The first version of D/Insp Mangan's report did not contain a recommendation for an investigation and it appears that the inclusion of the suggestion for further process came about when C/Supt Feehan suggested it. However, there is nothing in that exchange between the members engaged in the reporting task that implies anything sinister. The inspector was assisting the chief superintendent and the process was under the control of the latter.

C/Supt Feehan submitted a fuller report to A/C McHugh in which he detailed all the recorded contacts between Ms Saulite and the gardaí before addressing in some detail the encounter on 14th November 2006 between Sgt Hughes and Garda Nyhan and the victim. He set the conclusions of his report in the context of the *Osman* judgment of the European Court of Human Rights.

A/C McHugh's instruction to C/Supt Feehan in his letter of 6th December 2006 was set out in general terms in respect of knowledge in the possession of gardaí and was in its terms not confined to Sgt Hughes and Garda Nyhan; and the evidence of the two retired officers confirmed that the fact-finding investigation was not intended to be limited to Sgt Hughes and his colleague with regard to their meeting with Ms Saulite on 14th November 2006.

A/C McHugh was not looking for an evaluation of the handling of evidence in the garda files relating to the deceased and her solicitor at a point in time that was just two weeks into the investigation of a heinous murder. The suggestion that A/C McHugh was directing a general review by way of look back at this time does not make sense.

Whatever the precise thinking of the officer was, the fact is that A/C McHugh directed C/Supt Feehan to carry out a fact-finding investigation and he in turn engaged D/Insp Mangan to assist. The inspector produced a report, which he supplemented in response to his superior's observations, and he also added a recommendation as suggested to him and which he would not have inserted on his own initiative.

The tribunal is satisfied that D/Insp Mangan carried out his work conscientiously and in accordance as he understood it with what A/C McHugh had instructed C/Supt Feehan to do. The report that he submitted, in either of its editions, is actually sympathetic and supportive of Sgt Hughes and there is no evidence of any animosity to be found there. Neither is there any basis for thinking that D/Insp Mangan was actuated by knowledge of any criticisms or allegations made by Sgt Hughes in respect of garda investigators of crimes, incidents or information prior to the murder.

The position is similar with C/Supt Feehan. He did his work as he understood it was required. He recommended a formal investigation, which he and A/C McHugh understood to be a suggestion for initiation of a discipline process in respect of Sgt Hughes and his colleague. If the matter that was the subject of the fact-finding investigation was to be pursued further, that meant an investigation under the Garda Síochána (Discipline) Regulations, 1989, to see whether a breach appeared to be established, in which case further proceedings would ensue. His position was that the next step was warranted for the reasons that he set out in his report. The recommendation was justified by stated grounds and it is not necessary for the tribunal to express a view on that reasoning. However, it could not be said that it was irrational or that it went outside the officer's function.

In the circumstances it cannot be considered as targeting or discrediting. And neither is there any basis for making a connection between the report and its recommendation and complaints made by Sgt Hughes about policing before the murder.

In regard to motivation, A/C McHugh made it clear that he was unaware of Sgt Hughes's criticisms of prior policing until he got the documents from the tribunal.

The fact-finding investigation in its initiation and its execution is not a case of targeting or discrediting and neither is there any evidence in respect of the garda participants that they acted in response to Sgt Hughes's criticisms of policing.

CHAPTER 6

THE COMPLAINT MADE BY SERGEANT WILLIAM HUGHES IN RELATION TO THE DISCIPLINE INVESTIGATION INITIATED BY FORMER ASSISTANT COMMISSIONER AL McHUGH

Issue 1 of the Schedule of Issues

Did Assistant Commissioner Al McHugh or Chief Superintendent Michael Feehan target or discredit Sgt Hughes because he made a protected disclosure to Superintendent Mark Curran –

- (a) *by initiating disciplinary proceedings against him in June 2007?*
- (b) *by continuing the investigation from 2008 onwards?*
- (c) *by unreasonably protracting the investigation?*

Background

As outlined in chapter 5, Chief Superintendent Michael Feehan reported his views and recommendations from the fact-finding investigation to Assistant Commissioner Al McHugh on 26th March 2007.

By Order of Appointment dated 2nd May 2007, A/C McHugh appointed C/Supt Feehan to investigate an alleged breach of discipline on the part of Sergeant William Hughes and Garda Declan Nyhan.¹⁵⁷ This appointment was made in accordance with Regulation 8(1) of the Garda Síochána (Discipline) Regulations, 1989, which states that:

Subject to Regulation 7, where it appears that there may have been a breach of discipline, the matter shall be investigated as soon as practicable by a member not below the rank of inspector (in these Regulations referred to as an investigating officer).¹⁵⁸

The Order stated that Sgt Hughes and Garda Nyhan ‘*may have been in breach of discipline*’ arising out of the following:

It appears that Sergeant William P. Hughes and Garda Declan Nyhan [were] in possession of documentation and information as a result of meetings with Ms Baiba Saulite, and being in possession of same they knew or ought to have known at the time of the existence of a real and immediate risk to the life of Ms Baiba Saulite, and failed in their duty to take measures that might have been expected to avoid that risk.¹⁵⁹

Under HQ Circular No. 40(L)/91 ‘*the member must be in no doubt as to the matters under investigation but a decision in regard to the particular breach(es) committed cannot be taken until the Investigating Officer has completed and submitted his file*’.¹⁶⁰

¹⁵⁷ Tribunal Documents, p. 2082

¹⁵⁸ Tribunal Documents, p. 6421

¹⁵⁹ Tribunal Documents, pp. 2082-2083

¹⁶⁰ Tribunal Documents, p. 6519

Regulation 10(1) requires the investigating officer to submit a written report, together with copies of any statements, *‘as soon as may be’* to the appointing officer. It is set out in Regulation 10 (2) that, on receipt of the report, the appointing officer shall *‘without avoidable delay’*:

- (a) *decide whether or not to continue the proceedings under these Regulations, and*
- (b) *if he decides to continue the proceedings, cause to be entered on a form (in these Regulations referred to as a discipline form) such particulars of the breach of discipline alleged as will leave the member concerned in no doubt as to the precise nature of it.*¹⁶¹

By letter dated 3rd May 2007, A/C McHugh informed the Assistant Commissioner, Human Resource Management (HRM) that he had appointed C/Supt Feehan *‘to fully investigate the alleged breaches of discipline arising out of a fact finding investigation into the level of knowledge in possession of An Garda [Síochána] prior to the murder of Baiba Saulite ...’*¹⁶²

The Discipline Investigation

C/Supt Feehan appointed Inspector Fergus Dwyer to assist with the investigation and on 15th June 2007 they met with Sgt Hughes at Santry Garda Station where they served him with the Discipline Notice under Regulation 9 of the Garda Síochána (Discipline) Regulations, 1989.¹⁶³

In a letter to the Assistant Commissioner, HRM dated 19th June 2007, the solicitor for Sgt Hughes claimed that this was *‘a most disturbing and scandalous action on behalf of the Commissioner’* and that *‘the motive behind the service of such a notice on our client is quite clear’*. Details of the discipline investigation were requested on behalf of Sgt Hughes including *‘... the exact documentation and information which it is alleged that our client had in his possession as a result of his meetings with Ms Baiba Saulite’*.¹⁶⁴

A/C Mc Hugh replied by letter dated 21st August 2007 stating that *‘[t]he documentation and information alleged to have been in your client’s possession include, inter alia, a copy of a twelve page hand written document ... [i]t is alleged that your client failed in his duty to take measures that would have been expected of him to avoid any risk to Ms. Saulite’*.¹⁶⁵

Sgt Hughes was on sick leave at the time of the investigation, having been certified by his doctor on 17th May 2007 as absent with work-related stress.¹⁶⁶ By letter dated 24th October 2007, Sgt Hughes’s solicitor contacted the Assistant Commissioner, HRM, stating that his client had been served with documents during a period when he had not been paid. It was stated that *‘... our client has suffered the injuries giving rise to his absence from employment in circumstances attributable to the execution of his duty’*.¹⁶⁷

By letter dated 1st November 2007, C/Supt Feehan requested Sgt Hughes to attend for an interview as part of the investigative process at Store Street Garda Station.¹⁶⁸ In a response dated 8th November 2007, Sgt Hughes’s solicitor said that his client was *‘currently unfit due to work-related stress’* and that he would not attend the meeting with C/Supt Feehan.¹⁶⁹ A request was

¹⁶¹ Tribunal Documents, p. 6422

¹⁶² Tribunal Documents, p. 2088

¹⁶³ Tribunal Documents, p. 827

¹⁶⁴ Tribunal Documents, pp. 2097-2098

¹⁶⁵ Tribunal Documents, p. 2107

¹⁶⁶ Tribunal Documents, p. 3923

¹⁶⁷ Tribunal Documents, p. 2115

¹⁶⁸ Tribunal Documents, p. 2117

¹⁶⁹ Tribunal Documents, p. 2136

made for the ‘... *questions you wish to put to my client and when my client is fit to deal with same we shall provide you with the replies*’.¹⁷⁰ This request was refused by C/Supt Feehan in a letter dated 9th November 2007, in which he also stated that ‘*I propose to make an application to the Chief Medical Officer requesting that Sergeant Hughes be medically assessed to ascertain his fitness to be interviewed*’.¹⁷¹

In the interim, Sgt Hughes had phoned C/Supt Feehan offering to attend an interview notwithstanding his solicitor’s communication.¹⁷² C/Supt Feehan refused that offer and said that he would seek the advice of the Chief Medical Officer (CMO) on the question of the sergeant’s fitness for interview. Sgt Hughes maintained that during this conversation he told C/Supt Feehan that he was being targeted.¹⁷³ However, in his evidence to the tribunal the officer denied this had been said by Sgt Hughes and asserted that if it had been, he would have made a note of it.¹⁷⁴

It is Sgt Hughes’s case that he did not hear from the chief superintendent or the investigation team for almost one year.¹⁷⁵

C/Supt Feehan first contacted the CMO on 9th November 2007 requesting that Sgt Hughes be examined to ascertain his fitness to be interviewed.¹⁷⁶ In his statement to the tribunal he said that:

*I was clear in my mind that it would be improper to interview Sergeant Hughes in the absence of medical advice which indicated that the interview could be conducted without risk to his health. Various pieces of correspondence were forwarded in the following months, seeking the guidance of the Chief Medical Officer.*¹⁷⁷

Insp Dwyer spoke with the Assistant Chief Medical Officer, Dr Richard Quigley, in respect of Sgt Hughes on 21st February 2008 and recorded in his notes of the meeting that he ‘*[e]nquired if he was fit to be interviewed in respect of a disciplinary matter*’. He noted that Dr Quigley undertook to conduct further enquiries.¹⁷⁸

A number of letters issued between the parties during 2008 with Sgt Hughes querying the delay in the investigation and with An Garda Síochána responding that the matter was with the CMO.¹⁷⁹

Sgt Hughes’s solicitor enquired in respect of the matter by letter dated 17th April 2008 stating that ‘*[g]iven the seriousness of the breaches as alleged you will appreciate that this matter continues to cause our client great stress and concern*’.¹⁸⁰ A/C McHugh sought an update from C/Supt Feehan the following day.¹⁸¹

On 29th April 2008, C/Supt Feehan wrote to Assistant Commissioner Catherine Clancy, HRM, stating that he had not received the advice of the CMO and he highlighted his obligation to carry out the discipline investigation ‘*as soon as practicable*’. He stated that:

¹⁷⁰ Tribunal Documents, p. 2136

¹⁷¹ Tribunal Documents, p. 2135

¹⁷² Tribunal Documents, p. 828

¹⁷³ Tribunal Documents, p. 19

¹⁷⁴ Tribunal Transcripts, Day 168, p. 36

¹⁷⁵ Tribunal Documents, p. 19

¹⁷⁶ Tribunal Documents, p. 842

¹⁷⁷ Tribunal Documents, p. 828

¹⁷⁸ Tribunal Documents, p. 2122

¹⁷⁹ Tribunal Documents, pp. 2123-2134

¹⁸⁰ Tribunal Documents, p. 2123

¹⁸¹ Tribunal Documents, p. 2124

*If the CMO is not forthcoming with a decision on this matter in the near future would it be prudent to proceed and interview Sergeant Hughes, if he is agreeable to such course?*¹⁸²

In a report dated 2nd May 2008, Inspector William Hanrahan stated that he had spoken with Sgt Hughes on that date and that he ‘... again reiterated his concerns over the investigation into the murder of Baiba Saulite and the fact that he has not been interviewed by Chief Superintendent Feehan or any members of his investigation team’.¹⁸³

In her letter to A/C McHugh dated 26th May 2008, Assistant Commissioner, HRM, stated that:

While I acknowledge the content of [the] report of the Investigating Officer dated 19th March 2008 in respect of Garda Declan Nyhan, it is unacceptable that a similar situation has arisen whereby Sergeant Hughes has not been interviewed by the Investigating Officer despite his appointment 12 months ago.

Please instruct the Investigating Officer to progress the disciplinary aspects of this case as a matter of urgency in light of the member’s sentiments as expressed to Inspector Hanrahan.

*To this end please let me have a report [on] the matter no later than Friday 27th June 2008.*¹⁸⁴

C/Supt Feehan informed A/C McHugh on 27th May 2008 that he had not yet received the advice from the CMO and had sent a further reminder in this regard.¹⁸⁵ The assistant commissioner informed A/C Clancy on 30th May 2008 that C/Supt Feehan had requested a report from the CMO on Sgt Hughes’s fitness to be interviewed and that ‘... [d]espite a number of reminders a reply is still awaited from the CMO. On receipt of a reply from the CMO a decision will be made on progressing this aspect of the investigation. Your assistance in this matter is requested to expedite the report from the CMO’.¹⁸⁶

The following month, on 5th June 2008, Sgt Hughes met with the CMO and by report dated 9th June 2008 the CMO advised that Sgt Hughes should be medically retired from An Garda Síochána. The CMO also recommended that, if possible, any disciplinary issues should be dealt with on as early a date as possible and speedily brought to a close.¹⁸⁷

On 12th June 2008, A/C Clancy informed A/C Mc Hugh that she had communicated with the office of the CMO and was aware that advices had issued and would be with the parties shortly.¹⁸⁸

C/Supt Feehan notified A/C Clancy on 11th July 2008 that those advices had still not been received.¹⁸⁹ This was reiterated by A/C McHugh on 16th July 2008 when he told the Assistant Commissioner, HRM, that C/Supt Feehan could not progress the investigation without a response from the CMO.¹⁹⁰ In a letter to the Assistant Commissioner, HRM, on 18th July 2008, Dr Quigley referred to the query in respect of the sergeant’s fitness for interview and reiterated his earlier advices of 9th June 2008.¹⁹¹

¹⁸² Tribunal Documents, p. 2357

¹⁸³ Tribunal Documents, p. 2139

¹⁸⁴ Tribunal Documents, p. 2141

¹⁸⁵ Tribunal Documents, p. 2134

¹⁸⁶ Tribunal Documents, p. 2144

¹⁸⁷ Tribunal Documents, p. 1239

¹⁸⁸ Tribunal Documents, p. 2159

¹⁸⁹ Tribunal Documents, pp. 2164-2165

¹⁹⁰ Tribunal Documents, p. 2169

¹⁹¹ Tribunal Documents, p. 4005

C/Supt Feehan wrote to the Assistant Commissioner, HRM, on 2nd September 2008 outlining that:

Further to my correspondence to the Chief Medical Officer dated the 9th of November 2007, copy attached and previous reminders forwarded since that date, I have still not received his advice on Sergeant Hughes fitness to be interviewed in respect of this disciplinary investigation.

I would ask that you treat this as an urgent matter as the interview of Sergeant Hughes is a necessary part of this investigation. The conclusion of this investigation has been put on hold pending that advice.¹⁹²

On 19th September 2008, C/Supt Feehan received correspondence from the Assistant Commissioner, HRM, indicating that the CMO recommended that ‘*if it is possible any disciplinary issues be dealt with as early as possible*’.¹⁹³ The Assistant Commissioner, HRM, advised that this should be taken as confirmation that Sgt Hughes was fit to be interviewed in relation to disciplinary issues.¹⁹⁴ C/Supt Feehan notified Sgt Hughes of this position on 2nd October 2008 and informed him that Insp Dwyer would arrange a date for the interview.¹⁹⁵ On 13th October 2008, Insp Dwyer was provided with a copy of this correspondence and instructed to deliver it to Sgt Hughes.¹⁹⁶

On the same day, Insp Dwyer telephoned Sgt Hughes, explaining the contents of the letter and arranging to meet with him on 14th October 2008.¹⁹⁷ Insp Dwyer and Detective Inspector Francis Sweeney met Sgt Hughes in the foyer of his solicitor’s office the next day and delivered the correspondence to him. Sgt Hughes was travelling to Germany the following day so it was agreed that Insp Dwyer would contact Sgt Hughes on 22nd October 2008. On that date, Insp Dwyer again made contact with Sgt Hughes, and the interview was arranged for 29th October 2008.¹⁹⁸

Insp Dwyer accompanied by D/Insp Sweeney met Sgt Hughes at his solicitor’s office on 29th October 2008. At the commencement of the meeting the sergeant provided an extensive pre-prepared statement to Insp Dwyer.¹⁹⁹ He was asked a number of questions by way of interview, which he answered. A/C McHugh later considered a report of the interview from Insp Dwyer and the document submitted by Sgt Hughes. He determined that Sgt Hughes should be interviewed again and asked about the specific details of a number of his allegations.²⁰⁰

On 8th December 2008, Insp Dwyer contacted Sgt Hughes by phone seeking clarification of certain matters raised in his pre-prepared statement. Sgt Hughes requested that Insp Dwyer contact his solicitor.²⁰¹ Insp Dwyer wrote to Sgt Hughes’s solicitor on 9th December 2008 seeking a further interview in relation to these matters.²⁰² There was no response from the solicitor and Insp Dwyer wrote again to the solicitor on 7th January 2009.²⁰³ There was no response and Insp Dwyer wrote a further letter on 29th January 2009, again requesting a meeting with

¹⁹² Tribunal Documents, p. 2195

¹⁹³ Tribunal Documents, p. 8221

¹⁹⁴ Tribunal Documents, p. 8221

¹⁹⁵ Tribunal Documents, p. 2200

¹⁹⁶ Tribunal Documents, p. 899

¹⁹⁷ Tribunal Documents, p. 927

¹⁹⁸ Tribunal Documents, p. 899

¹⁹⁹ Tribunal Documents, pp. 510-534

²⁰⁰ Tribunal Documents, p. 2253

²⁰¹ Tribunal Documents, p. 900

²⁰² Tribunal Documents, p. 959

²⁰³ Tribunal Documents, p. 960

Sgt Hughes.²⁰⁴ In his correspondence of 29th January 2009, Insp Dwyer stated that if he did not receive a reply within 21 days it would be assumed that Sgt Hughes did not wish to make any further comment on the disciplinary matters alleged against him. A meeting was then arranged for 10th February 2009,²⁰⁵ when a further interview was conducted with Sgt Hughes.²⁰⁶

The interview on 10th February 2009 took place at the solicitor's office and was attended by Insp Dwyer, Sgt Hughes and Sgt Hughes's solicitor. The purpose of the meeting was to clarify a number of points arising from Sgt Hughes's previously submitted statement.²⁰⁷

On 11th February 2009, Insp Dwyer forwarded a copy of his notes made at the meeting on 10th February 2009 to Sgt Hughes's solicitor seeking confirmation that the notes were an accurate representation of Sgt Hughes's responses.²⁰⁸ Although there was other correspondence between Insp Dwyer and the solicitor in relation to the remit of the discipline investigation and the bullying and harassment allegations being made by Sgt Hughes, it was not until 30th April 2009 that the solicitor responded to Insp Dwyer's correspondence of 11th February 2009 providing clarification on matters discussed at the meeting on 10th February 2009.²⁰⁹

In the interim, Sgt Hughes was reviewed by Dr John Griffin, Consultant Psychiatrist. Referring to Dr Griffin's report, Dr Quigley wrote to the Assistant Commissioner, HRM, on 2nd June 2009 stating that:

Dr. Griffin is reporting that Sgt. Hughes feels he is no further along with the disciplinary aspect of this case. He reports that this is still hanging over him and he has no idea when this is going to end or where the investigation is at present.

...

Dr. Griffin states that he really does feel that unless and until the whole issue is brought to a conclusion by the authorities Sgt. Hughes will continue to suffer significantly. Dr. Griffin wonders whether there is any way that this process could be moved forward more quickly than at present.

In these circumstances I would be much obliged to be advised and updated with regard to the disciplinary process on Sgt. Hughes. Dr. Griffin has acted as an independent mental health advisor and the advice received is that unless and until this matter is brought to a conclusion he will continue to be unfit for work.²¹⁰

Assistant Commissioner Micheal Feehan, who had been promoted, submitted his completed report in respect of Sgt Hughes to the appointing officer on 3rd June 2009, reporting as follows:

This investigation has not established that the member concerned was aware 'of the existence of a real and immediate risk to the life of Ms. Baiba Saulite'. On the 20th October, 2006 Sergeant Hughes apprised his District Officer of his concerns for Ms. Saulite, however, there was nothing to indicate that her life was under threat. Sergeant Hughes denies having read the victim impact report, wherein she actually states that she feared for her life, and there is no evidence to hand that would indicate otherwise. Even if he had read the report in full it is unlikely that the contents could be interpreted as a real and immediate risk to the life of Ms. Baiba Saulite.²¹¹

²⁰⁴ Tribunal Documents, p. 961

²⁰⁵ Tribunal Documents, p. 900

²⁰⁶ Tribunal Documents, pp. 962-963

²⁰⁷ Tribunal Documents, pp. 962-965

²⁰⁸ Tribunal Documents, pp. 966-967

²⁰⁹ Tribunal Documents, pp. 970-971

²¹⁰ Tribunal Documents, p. 4128

²¹¹ Tribunal Documents, p. 924

A/C McHugh subsequently informed Sgt Hughes by letter dated 21st July 2009 that:

*The completed file was forwarded to this office on the 3rd June 2009. Having considered the file from the Investigating Officer carefully, I am satisfied there is no breach of discipline. In accordance Regulation 10 (2)(a) Garda [Síochána] (Discipline) Regulation 1989 I have decided to discontinue the proceedings against you.*²¹²

Deputy Commissioner Martin Callinan informed the Garda Commissioner of the outcome of the discipline investigation on 5th August 2009, stating that A/C Feehan was satisfied that there were no breaches of the Regulations; and he said that *'I concur with that view, on the basis of the evidence contained on file'*.²¹³

Complaint made by Sergeant William Hughes

In his statement to the tribunal, Sgt Hughes said that the service of the discipline papers *'was the first direct action in what I believe to be garda management's attempt at targeting me for raising the issues'*.²¹⁴

In his interview with tribunal investigators, he stated that he found the service of these documents and the contents to be *'extremely shocking'*.²¹⁵ He said that he asked C/Supt Feehan who else was being served with discipline papers and the chief superintendent explained that it was only Sgt Hughes and Garda Nyhan.²¹⁶ Sgt Hughes also referred to his meeting with Superintendent Mark Curran in April 2007 and stated that *'[w]ithin six weeks I was served with disciplinary papers'*.²¹⁷ He said that:

*I felt that the matter under investigation was a targeting of me in my work on the child abduction investigation. ... I now came to understand that I was being targeted by the Garda authorities, I felt the service of the documents was a direct result of me raising the spectre of systems failure in the Baiba Saluite murder investigation. ... I believed that the service of the disciplinary papers was done to shut me up and keep me quiet, to clip my wings ...*²¹⁸

...

*I believe the instigation of the disciplinary proceedings against me in June 2007 represented scapegoating, bullying and harassment of me. It was an abuse of process, and represented suppression of investigations. This process hung over me for two years.*²¹⁹

In his evidence to the tribunal, Sgt Hughes said that:

*... I don't see that it required ... the invoking of the disciplinary regulations at all. The inquiries would have been made just by routine inquiry with me or Garda Nyhan in relation to our handling ... of the Victim Impact Report, and I don't see why the disciplinary regulations had to be invoked for that purpose.*²²⁰

²¹² Tribunal Documents, p. 2374

²¹³ Tribunal Documents, p. 2385

²¹⁴ Tribunal Documents, p. 70

²¹⁵ Tribunal Documents, p. 16

²¹⁶ Tribunal Documents, p. 16

²¹⁷ Tribunal Documents, p. 16

²¹⁸ Tribunal Documents, pp. 16-17

²¹⁹ Tribunal Documents, pp. 41-42

²²⁰ Tribunal Transcripts, Day 159, p. 97

He was asked about his allegation of delay by counsel for the tribunal:

- Q. *So, it would appear on both sides, in terms of your solicitor and as far as you were concerned, you wanted the disciplinary matter progressed, isn't that right?*
- A. *That's correct.*
- Q. *Because it was causing you some degree of stress. And on the other hand, Chief Superintendent Feehan and Inspector Dwyer seem to have run into a problem in relation to getting you assessed and your fitness to be interviewed determined, isn't that right?*
- A. *That's correct.*
- Q. *There doesn't appear, on the face of it, certainly at that stage, to be any mala fides on their part, would you agree with that?*
- A. *The mala fides, no, but just the amount of time that it was taking for them to progress from one step to another, a matter of five or six months to get correspondence back and forth from HRM or the CMO.*
- Q. *Yes. So, is it more that you are concerned that they were you think that they were dragging their heels to some extent in relation to it?*
- A. *I would say so, yes.*
- Q. *But I mean do you think that that was deliberate on their part when you look at the correspondence?*
- A. *I can't say it was deliberate on their behalf. Just that ... it seemed to be a protracted time between each report to the CMO and or to HRM in that regard with the correspondence. I feel that it probably could have been dealt with more expeditiously.*
- Q. *But do you say that this is a deliberate instance of targeting of you?*
- A. *Well, that's getting – I couldn't really I'm not in a position to say that it was targeting, but the effect on me was that I had to wait all those times, like an interminable amount of time, to actually receive a response in relation to – from the disciplinary team.*
- Q. *Well I am not trying to put you in a corner or anything, but obviously when you made your statement to the Tribunal investigators and your allegations of targeting and discrediting, you weren't familiar with all the papers that were available and then subsequently became available to the Tribunal as a result of its initial investigation in this matter, and whilst I understand that you regard the fact that there were disciplinary proceedings as an instance of targeting, I am just trying to establish whether the Chairman has to be concerned as to whether you consider the manner in which the disciplinary proceedings were dealt with and the procedures adopted, that you regarded that as deliberate targeting as well?*
- A. *Yes.*
- Q. *Whether you accept that they appear to have done their duty in that regard, and whilst there may have been some slight delay in relation to the matter, they seem to have pursued matters as expeditiously as they could in the circumstances.*

- A. *No, I don't agree that they were pursued expeditiously, given the inordinate amount of time in receiving responses from what is essentially an office within our own organisation, and it's when I saw the actual discovery on what questions were required to be asked of me at the end of the procedure, I can't understand why those questions just weren't preferred to me through my solicitor even, or if there was an invite for me to actually – a further invite for me to attend following the November invite, maybe that would have resolved it much sooner.*²²¹

Sgt Hughes said that he believed he was targeted from the outset in relation to the discipline proceedings and that:

*... It was the delay in actually receiving answers and me being sort of kept out of the loop in relation to these difficulties they were having, I considered just an extension of the targeting from the outset.*²²²

Sgt Hughes explained further to the tribunal that:

*If we can refer to Chief Superintendent Feehan's summing up, his report to Assistant Commissioner, where he says that I hadn't read the documents so I wouldn't be in breach of discipline. I am just summing up here. And that even if I had read it, it wouldn't constitute breach of discipline. I think that's basically what he's saying. And I feel that that conclusion could have been arrived at two years earlier, prior to the institution of the disciplinary process, without having to go that formal route. And it took two years to actually come to that determination, based on information they already had.*²²³

It was Sgt Hughes's evidence that the discipline process followed his meeting with Supt Curran in April 2007:

Q. *But do you say that the disciplinary proceedings and the use of the regulations was deliberately done to target you because you had made a disclosure in the first instance to Superintendent Curran, as you say you made a disclosure to him?*

A. *It was the next in the sequence of events following my meeting with Superintendent Curran in 2007, April 2007.*

Q. *And is it your case that this was done to target you because you were raising issues in relation to the systems failure?*

A. *Well if we look at – and I know we're not dealing with systems failure in this tribunal here, but there was only one strand of one member's – or sorry, two members' dealings with Baiba that was the focus of attention in respect of any disciplinary proceedings, and I was aware that there was huge failings in relation to several of the matters pertaining to Baiba and John Hennessy prior to her murder which weren't subject [to] that introspection.*²²⁴

Sgt Hughes maintained his position that the discipline investigation was unnecessary:

*... I'm a great respecter of the discipline code, but I think the discipline action in this case here was unwarranted in the circumstances when all particulars were taken into account in relation to all other matters.*²²⁵

²²¹ Tribunal Transcripts, Day 160, pp. 11-13

²²² Tribunal Transcripts, Day 160, p. 16

²²³ Tribunal Transcripts, Day 160, pp. 111-112

²²⁴ Tribunal Transcripts, Day 160, p. 112

²²⁵ Tribunal Transcripts, Day 160, p. 113

Responding Statements and Evidence on the Issue

Former Assistant Commissioner Al McHugh

In his statement to the tribunal, A/C Mc Hugh stated that:

On the 21st July 2009 I decided as provided for under Regulation 10(2) (a) of the Garda [Síochána] (Discipline) Regulations 1989 to DISCONTINUE the proceedings. The notice under Regulation 8 of the Discipline Regulations is clearly specific in that it stipulates that a member MAY be in breach of discipline. There was absolutely no question that I was preferring a breach of discipline against Sergeant Hughes in that notice nor was a breach of discipline ever preferred against Sergeant Hughes. When I discontinued the proceedings on receipt of the investigation file he was completely exonerated in the matter with absolutely no blemish on his character or history. There is absolutely no basis of fact for Sergeant Hughes to suggest as he has done in his statement that I instituted the proceedings: "to target, shut me up, keep me quiet, clip my wings and targeting through cover up" and I most certainly did not convey or reflect that position to Sergeant [Hughes's] Solicitor as he states.²²⁶

He told the tribunal why the discipline investigation concerned two garda members, Sgt Hughes and Garda Nyhan:

- A. *Well I had no other evidence from that fact finding that would justify me establishing a disciplinary investigation against others.*
- Q. *All right. And is that, I mean, more or less based on the fact that they had been given the draft victim impact statement, they had it, nobody else had it?*
- A. *Exactly.*
- Q. *And the concern about what had been done or not done with it seems to have been a driver in the decision to proceed a little further then, that would be accurate?*
- A. *You mean in terms of initiating the discipline?*
- Q. *Yes.*
- A. *Yeah, it was one of the influencing factors.²²⁷*

A/C McHugh outlined to the tribunal the scope of the discipline inquiry:

- Q. *If we then look at [page] 2083, and I think just to be clear about this, this isn't a breach of discipline charge under the regulations?*
- A. *Definitely not.*
- Q. *It defines, as it were, the scope of the discipline investigation to be conducted by the investigating officer. And in terms of the influence of the Osman decision, it appears to have been used as the basis for that which was to be investigated because it reflects the language of it?*
- A. *Yeah, it does, and I think it came from the Court of Human Rights, so it would be considered a very credible judgment I think.*

²²⁶ Tribunal Documents, p. 806

²²⁷ Tribunal Transcripts, Day 167, p. 38

Q. *It seems to envisage, I would suggest to you, the three different things to be looked at: what they knew, number one; number two, what they ought to have known; and whether, then, they failed in their duty to take measures that might have been expected to avoid the risk based on what they knew or either what they ought to have known.*

And did you contemplate that it would focus an investigation outside of the provision of the victim impact statement to include all matters, or was it primarily directed towards that?

A. *... the victim impact statement had to be one of those that had to be considered.*

Q. *So you weren't excluding any other meetings – or you didn't intend to?*

A. *No, I did not, no.*²²⁸

A/C Mc Hugh was cross-examined by counsel for Sgt Hughes in relation to the serious nature of the Discipline Notice:

Q. *... this allegation is ... extremely serious; ... it's linked to the reference in the Feehan report to Osman, to the Osman case, and Article 2, European Convention on Human Rights?*

A. *It's information for both members, or whoever receives a discipline notice, to give them a flavour for what the investigation is about.*

Q. *Would you accept that it's a very, very serious allegation?*

A. *I wouldn't have looked on it as very serious. It's really, what you are speaking about are the acts of commission or omission. It didn't say that they committed any offence.*²²⁹

...

Q. *But it says that "they knew or ought to have known at the time of the existence of a real and immediate risk to the life of Baiba Saulite and failed in their duty to take measures that might have been expected to avoid that risk", that's the risk of her death?*

A. *Well, the trend going through all of Sergeant Hughes's fact finding report is that any time there was any kind of a complaint from Baiba Saulite, he reported it up the ladder, or reported it to his supervisor. And in this case, the document was put in a drawer for a number of days where she had expressed that in the end – at the moment, what is it, I am very concerned for my life, or words to that effect.*

Q. *Yes. Do you accept this is a very, very serious charge?*

A. *No, I don't accept –*

Q. *Or allegation, I should say?*

A. *No, I accept that it's an outline of what had to be investigated.*²³⁰

A/C McHugh told the tribunal that at the conclusion of the discipline inquiry he did not find Sgt Hughes in breach of discipline:

Q. *And could we look at that report of the 3rd June, from page 907 onwards to [page] 924.*

And you considered the report with the appendices and the attached statements and documents?

²²⁸ Tribunal Transcripts, Day 167, pp. 45-46

²²⁹ Tribunal Transcripts, Day 167, p. 104

²³⁰ Tribunal Transcripts, Day 167, p. 105

A. *I did.*

Q. *And you made a decision to discontinue the proceedings under the disciplinary regulations?*

A. *I did indeed.*

Q. *And can you just explain your approach to it at that point in time?*

A. *Well, in terms of the report that was submitted to me, I was unable to find any breach of discipline in respect of Sergeant Hughes.²³¹*

It was put to A/C McHugh by counsel for Sgt Hughes that the discipline investigation found that the victim impact statement did not reveal a specific threat to the life of Ms Baiba Saulite and that such a conclusion could have been reached without proceeding with the investigation:

Q. *One way or the other, the threat that was referred to by – or the concern for her safety that was referred to by Baiba Saulite, that couldn't be described as a specific threat, she wasn't giving details. It wasn't the same as, for example, a hit had been order[ed] on her or anything like that. Is that correct?*

A. *Is that the last sentence you are referring to? "At the moment I am scared for my life."*

Q. *Yeah, the sentence you have referred to?*

A. *Yes, that's fair enough.*

Q. *So it's not a specific threat?*

A. *Well, I'd see it as an extremely specific concern.*

Q. *Because, I mean isn't that really what, at the end of all of this, more than two years later, is that not one of the things that Chief Superintendent Feehan found, that this wasn't a specific threat. That even if Sergeant Hughes had read it –*

A. *Yeah, that's at the conclusion of the discipline investigation, yes.*

Q. *And could that not – I mean, that's something that you could have made a call on yourself?*

A. *Sure that was the reason I established the discipline investigation, to see was there any breaches of discipline.²³²*

Counsel for Sgt Hughes cross-examined A/C McHugh about the allegation of delay in the discipline investigation:

Q. *... But did you make any suggestion to [the] chief superintendent as to what might be done to move things along?*

A. *Well, from reading all the papers that were served, it's very evident that all communications seemed to have been between Sergeant Hughes's solicitor and the investigation team, rather than with Sergeant Hughes and – whether that was the way the solicitor wanted it or Sergeant Hughes wanted it, I don't know.*

Q. *I have to put it to you it was almost painfully slow, I mean it ended up being two and a half – or maybe not – a little bit less, but over two years.*

²³¹ Tribunal Transcripts, Day 167, p. 61

²³² Tribunal Transcripts, Day 167, pp. 109-110

- A. *Oh yeah, I mean I can't say otherwise. I have said it in the questions I was asked, that I was satisfied that it was taking too long. And in the hypothetical situation, if, at the end of that period, that if the case was there that breaches would have to be preferred, I have no doubt that the High Court would be entered the following morning to challenge it because of the length of time, it wouldn't hold up. But I have to factor in the efforts being made to get medical opinion as to whether he should be interviewed or not.*²³³

Former Assistant Commissioner Michael Feehan

Counsel for the tribunal asked A/C Feehan about the scope of the discipline investigation:

- Q. *Now, insofar as any of the issues raised in his document related to other matters, did you have a view yourself as to what you could bring in or not into the investigation?*
- A. *So, the disciplinary investigation was instigated under the 1989 An Garda Síochána (Discipline) Regulations, and that's explicit about what might or should be examined or investigated. So, there's a form B33 ... which was served on Sergeant Hughes by me, and that sets out the allegation that he may have been in breach of discipline by – in relation to this particular action. So that was the scope of the investigation. And, you know, I think that was – would be pretty well known within An Garda Síochána around discipline inquiries.*

...

*That the matters which were investigated, or being inquired into, were only in relation to the matters as set out in the B33 and ... there was a Garda Headquarters directive setting out notes on the Discipline Regulations 1989 and, for example, that HQ Directive was explicit as to what would happen. So, if the member concerned was – there was an indication that he or she was not in breach of the particular breach of discipline which had been alleged in Form B33, that the investigating officer could not go off, of his own volition, and investigate maybe if there was another breach that the member concerned may have committed. So, in my mind and my understanding of it, and it's still my understanding of it, was that the scope of my investigation was constrained to the matters set out in the form that was served on Sergeant Hughes. And I would have expected, you know, that certainly, like, that his advice would be, you know, to that effect as well.*²³⁴

A/C Feehan explained the course of the discipline investigation:

- Q. *And you recommended a full investigation. But what other information in respect of Sergeant Hughes's actions did you envisage as being required?*
- A. *So, what I envisaged in the instigation of ... an inquiry under the discipline regulations was that the questions would be put to Sergeant Hughes, maybe, in relation to some of the information that he had set out in his report, and ... the response to those would inform the approach to be taken in the event that formal breaches were to be put against Sergeant Hughes through the conducting of a sworn inquiry.*
- Q. *But you had his report. What sort of things did you anticipate him being asked?*
- A. *I anticipated that the matters which he had set out in his report – So he had acknowledged that he knew of all the intelligence, he had all this information, and in his report he said that having regard – this is my language now, it's not verbatim I am sure – but that having had*

²³³ Tribunal Transcripts, Day 167, p. 120

²³⁴ Tribunal Transcripts, Day 168, pp. 41-42

regard to the information which he had, he didn't have any concern about the safety of Ms. Saulite. I certainly thought, as a professional police officer of long standing, that that wasn't really credible.

So the difference in a discipline inquiry is that the matters are put to the person, to the member concerned, and their answers can then form part of the evidence, if you like, at a sworn inquiry, if such thing were to be constituted. So it's a more formal process.²³⁵

Counsel for Sgt Hughes asked A/C Feehan whether the questions put to Sgt Hughes as part of the discipline process could have been dealt with by correspondence:

Q. Now almost immediately afterwards Sergeant Hughes's solicitor wrote to you, I think on the same day – it's at [page] 2136, but I don't think we need to look at the letter – and asked if you would put the questions in writing.

...

And you replied the following day and you said you wouldn't adopt that course. Now, the questions that were ultimately asked could have gone out in writing. Why did you refuse to take that course?

A. Because ... at the time I did not think, and now I still don't think, that was the appropriate way to progress the investigation. That's why.

Q. And why is that?

A. Because ... I wanted to have Sergeant Hughes come in and be interviewed ... and we could have a conversation, if he said something I can respond to it, and vice versa. ... I didn't think it was a proper way to continue the investigation by sending him out questions.

Q. And when we have seen the interview that ultimately occurred ... when you look back on that now ... could that interview not have been done in writing?

A. So the interview that occurred included the reading of a 25 page statement from Sergeant Hughes and his signing it. So, in fairness, it wasn't just: did you read the victim impact statement? That wasn't all that went on at that interview. So these matters ... we could have got into a train of, an exchange of letters going on for I don't know how long, but I didn't think it was the appropriate way to continue the investigation.²³⁶

In cross-examination by counsel for Sgt Hughes it was put to A/C Feehan that his conclusions could have been reached during the fact-finding investigation. He replied that:

A. ... the point that needed to be put was Sergeant Hughes, did you read the victim impact statement? He said he didn't in the fact finding report. That needed to be put to him as part of a formal discipline investigation. Now that answer can be used. So if he said yeah, I did read it, that's relevant. If he said he didn't read it, that's relevant. And he did say he didn't read the thing. And what I said in the report was, no, we can't prove he read the thing. He's adamant that he didn't read it so he didn't read it, that's the evidence. So unless Sergeant Hughes got up and admitted yes, I read the thing, or Garda Nyhan gave evidence that said yes, Sergeant Hughes read that from cover to cover, then that was the only way you could prove, because the third person that was in the room was no longer, obviously, available.

²³⁵ Tribunal Transcripts, Day 168, pp. 74-75

²³⁶ Tribunal Transcripts, Day 168, pp. 149-150

- Q. But even if he had read it, Assistant Commissioner Feehan, even if he had read it, you concluded that the contents of the victim impact draft didn't, or were unlikely to lead to a conclusion that there was a real and immediate risk to life. Now, that finding, could you have established [that at] the fact find report stage?
- A. Sorry, if I understand your question, you said that even if he had read it, it was of no relevance. If he had come in the discipline inquiry and said "yes, I read it," now there's a line of inquiry to be – questions to be put to him, as okay, you read it, well what did you make of this piece where she said she was in fear? Well, it didn't concern me, I didn't think it was of much consequence. Which is what was said about other times when she had said over the previous two years, during the child abduction investigation. The information that we had was that she said this time and time again and it was of no consequence and it didn't give him any concern – Sergeant Hughes said this himself, it did not give him any concern that there was a risk to Ms. Saulite. To me, that was not a credible position, and that is what I was recommending when I recommended that a formal investigation, a formal discipline investigation should be conducted so we could put those issues to him. And if ... there were several matters which were relevant to the discipline investigation and they could be used in a sworn inquiry down the road, if such a thing happened. So that was the position that I had.²³⁷

A/C Feehan responded to the allegation of delay stating that:

... the discipline obviously took a lot longer than I would have wished it would take. I think the main point of delay was in relation to me seeking advice from the Chief Medical Officer as to whether it was safe to interview Sergeant Hughes or not. And, as I said already, by 'safe' I mean that ... could this adversely affect his mental or physical health and well being? So I was certainly conscious of my obligations – I mean I had a duty of care to him as well – as well as trying to get the investigation completed. So that was a significant point of delay, as I have said.

The other thing that was relevant was that – and I alluded to it already – was that Sergeant Hughes continued to insist, if you like, that cognisance be taken of matters of bullying and harassment which he was alleging, which could not have come within the scope of the discipline regulations, and I think he should have known that, or should have been advised about that. But the fact that these allegations kept coming, you know, as part of the inquiry into the discipline breach that he may have been guilty of. So those matters had to be considered.

Ultimately, that came to a conclusion where Inspector Dwyer wrote and asked if Sergeant Hughes wished to make a formal complaint about those issues of bullying and harassment, the issues which were outside of the remit of the actual discipline investigation.

So that certainly ... was a cause of some time being spent on considering those and in responding. So, they're the points I would make just in relation to the disciplinary investigation.²³⁸

Retired Superintendent Fergus Dwyer

In his statement to the tribunal, Supt Dwyer said that he was involved in the discipline investigation from an early stage, and was present when C/Supt Feehan served the Discipline

²³⁷ Tribunal Transcripts, Day 168, pp. 142-144

²³⁸ Tribunal Transcripts, Day 168, pp. 45-47

Notice on Sgt Hughes under the Garda Síochána (Discipline) Regulations, 1989 on 15th June 2007. He said that the discipline investigation was *'centred around a Victim Impact Statement Ms. Baiba Saulite had handed to Sergeant Hughes shortly before she was murdered'*.²³⁹

Supt Dwyer detailed the steps he took in relation to the investigation and his interactions with Sgt Hughes. He stated that he became aware at an early stage that Sgt Hughes had reported sick with stress and that the investigation had been placed in abeyance. He said that C/Supt Feehan had sought the advice of the CMO regarding Sgt Hughes's fitness to be interviewed, but that no response had been received.²⁴⁰ Supt Dwyer confirmed in his evidence to the tribunal that he spoke with C/Supt Feehan in relation to the issue:

Q. Now, I think that, did this issue of Sergeant Hughes's fitness to be interviewed by the investigation team, was that discussed between you and Chief Superintendent Feehan?

*A. ... I am sure it was. I have no recollection of it, but that would be standard practice, Mr. Chairman, in relation to members suffering from stress who are the subject of disciplinary proceedings. I have been a sergeant in Internal Affairs, and I was aware that members on that type of sick leave, you'd always seek the guidance of the Chief Medical Officer before approaching them in case their condition was compounded in any way by your interactions with them.*²⁴¹

In relation to the interview on 29th October 2008, Supt Dwyer said in his evidence to the tribunal that the meeting lasted several hours, and involved a discussion of the matters contained in Sgt Hughes's pre-prepared statement, and the remit of the discipline investigation.²⁴² Supt Dwyer said that he did not believe that the way in which Sgt Hughes had been treated since the murder of Ms Saulite came within the jurisdiction of the discipline investigation.²⁴³

In respect of the meeting on 10th February 2009, Supt Dwyer told the tribunal that the 25-page document was discussed, as well as the way in which a bullying and harassment complaint made in respect of Sgt Hughes had been dealt with by HRM.²⁴⁴ He told the tribunal that he recalled asking Sgt Hughes how these matters were connected with the discipline investigation, but stated that *'they wouldn't give me particular details on that'*.²⁴⁵ He reiterated to the tribunal that these matters were outside the remit of the discipline investigation.²⁴⁶

When cross-examined by counsel for Sgt Hughes as to whether the whole matter could have been dealt with in writing, he told the tribunal that:

*No. I know from my time in Internal Affairs, solicitors had made similar requests beforehand and they would not be acceded to, because in the live environment, when questions are being put to somebody, the replies may take you somewhere else, and it was always practice that you'd have face to face interviews with people under investigation.*²⁴⁷

Supt Dwyer stated that he invited Sgt Hughes to make a separate complaint in relation to the matters outside the remit of the discipline investigation by letter dated 16th January 2009.²⁴⁸ In his evidence to the tribunal, Supt Dwyer outlined why this request was made:

²³⁹ Tribunal Documents, p. 898

²⁴⁰ Tribunal Documents, pp. 898-899

²⁴¹ Tribunal Transcripts, Day 171, p. 59

²⁴² Tribunal Transcripts, Day 171, pp. 62-63

²⁴³ Tribunal Transcripts, Day 171, p. 64

²⁴⁴ Tribunal Transcripts, Day 171, p. 67

²⁴⁵ Tribunal Transcripts, Day 171, p. 68

²⁴⁶ Tribunal Transcripts, Day 171, p. 94

²⁴⁷ Tribunal Transcripts, Day 171, p. 93

²⁴⁸ Tribunal Documents, p. 900; Tribunal Documents, p. 958

Again, it was during the course of the meeting with him where I was asking him the connection between the discipline and the matters that had been raised by Sergeant Hughes in respect of bullying and being, I suppose, ostracised and not being approached in relation to the murder investigation and not being invited to the conference, and all these other issues that were outside the ambit of the discipline investigation. They had said to me at the meeting I knew well what they were about, and I wanted it documented in writing and asked them exactly please identify for me the link on what you are saying these issues have with the discipline investigation.²⁴⁹

Supt Dwyer rejected the allegation made by Sgt Hughes that if the matters raised by him were outside the remit of the discipline investigation, they should have been referred to someone who could deal with them. He told the tribunal that he afforded Sgt Hughes the opportunity to make a formal complaint in relation to these matters, but he did not avail of the opportunity to do so.²⁵⁰

Dr Richard Quigley

In his statement to the tribunal, Dr Quigley said that he advised on this issue on 9th June 2008.²⁵¹ In his evidence to the tribunal, he was referred to the letter of 2nd September 2008 from C/Supt Feehan to the Assistant Commissioner, HRM, which outlined the request for advices on 9th November 2007 and the 'previous reminders' to the CMO.²⁵² Dr Quigley told counsel for the tribunal that the initial request came in six or seven weeks after he had seen Sgt Hughes for the first time and that he wanted the input of specialist advice.²⁵³

Counsel for Sgt Hughes referred Dr Quigley to his letter of 18th July 2008,²⁵⁴ which stated that he had provided his advices on 9th June 2008:

Q. But it seems, certainly, that that advice either has not made it through, or certainly that Chief Superintendent (sic) Feehan isn't of the view that he has received that advice for whatever reason?

A. Yeah.²⁵⁵

Legal Submissions

Retired Sergeant William Hughes submitted as follows:²⁵⁶

- that the allegation in the discipline investigation patently related to the draft victim impact statement and the reference to Ms Saulite being scared for her life, but that had no real basis because Sgt Hughes had not read it and the words could not reasonably be construed as evidence of a real and immediate risk to her life, even if he had read them.
- that the decision to prefer the charge was unjustified and disproportionate.
- that the recommendation of C/Supt Feehan was to institute a 'full investigation', not a discipline investigation.

²⁴⁹ Tribunal Transcripts, Day 171, pp. 70-71

²⁵⁰ Tribunal Transcripts, Day 171, pp. 99-100

²⁵¹ Tribunal Documents, p. 1339

²⁵² Tribunal Documents, p. 2195

²⁵³ Tribunal Transcripts, Day 172, p. 131

²⁵⁴ Tribunal Documents, p. 4005

²⁵⁵ Tribunal Transcripts, Day 172, p. 132

²⁵⁶ The tribunal has considered all of Sergeant William Hughes's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 173, pp. 6-64 and pp. 135-152

- that the issue could have been decided at the outset, there were no other matters to be investigated and C/Supt Feehan was wrong to deny that the victim impact statement was key.
- that the investigation was characterised by gross and unnecessary delay.

An Garda Síochána submitted as follows:²⁵⁷

- that the investigations were legitimate and necessary inquiries in the circumstances and Sgt Hughes himself anticipated that his knowledge of the victim impact statement would cause professional difficulties for him.
- that C/Supt Feehan was not surprised at the decision to invoke discipline proceedings against Sgt Hughes and A/C Phillips said that the discipline investigation was a balanced and proportionate action.
- that A/C McHugh had no knowledge of any whistleblowing complaint by Sgt Hughes.
- that Sgt Hughes appeared to concede during his evidence that any delay was not targeting of him.
- that the detailed chronology of the investigation was inconsistent with a case of targeting or discrediting, or of any deliberate delay.

Conclusion

The Investigation

A/C McHugh initiated the discipline investigation when he had considered the fact-finding report. The test he had to apply pursuant to Regulation 8 of the Garda Síochána (Discipline) Regulations, 1989 was whether ‘... *it appears there may have been a breach of discipline* ...’. The proposed investigation reflected the *Osman* judgment of the European Court of Human Rights and related to whether Sgt Hughes and Garda Nyhan knew or ought to have known of the existence of a real and immediate risk to the life of Ms Saulite and failed in their duty to take measures that might have been expected to avoid that risk.

Sgt Hughes maintained that the discipline investigation was unjustifiable because it was directed only against him and his colleague, it took an excessive time to complete and the information that was gathered in the course of the investigation did nothing to add to the information on which the original decision was based. In effect, he maintained that the whole process could have been finalised at the time when the fact-finding investigation was completed and it should have been terminated at that point.

The fact-finding report revealed that Ms Saulite had expressed fear for her life in a document she had offered to Sgt Hughes a few days before she was killed but Sgt Hughes had not reported the meeting or done anything about the document. Sgt Hughes acknowledged that the draft victim impact statement was relevant because he revealed it to Detective Inspector Walter O’Sullivan as a matter of urgency and importance on the morning after the crime was committed. It is also significant that Sgt Hughes recorded in his report to Detective Inspector Christopher Mangan additional detailed information concerning Ms Saulite’s situation and intentions that she had

²⁵⁷ 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 173, pp. 66-134

related to the two members on that occasion. Sgt Hughes was conscious from the beginning that an issue of discipline might arise and was very concerned about it.

The procedure envisaged by the Regulations was for a potential breach of discipline to be investigated, not by reference to a specific charge, but in a more general examination in the first instance. At the end of that phase a decision fell to be made as to whether to terminate the process or to proceed to the consideration of a specific charge, which would at that stage be defined with precision and would be the subject of a hearing. So the first stage was relatively general and the second, if it came to that, consisted of a specific charge or charges with which the member was accused.

In this case Sgt Hughes was not faced with a charge. Instead, there was an investigation under the relevant regulations.

The fact-finding report made by C/Supt Feehan established a basis for a full investigation by reference to the principles of law established by the European Court of Human Rights in *Osman v United Kingdom*. The essence of that decision was that the court recognised an obligation that arises when the authorities know or ought to know that there is a real and immediate risk to the life of a particular person from the criminal acts of a third party. That obligation is to do all that can reasonably be expected of them in the circumstances to avoid the risk. As such, they must take measures within the scope of their powers which, judged reasonably, may be expected to avoid that risk. The report sought to give a comprehensive account of the engagements of members of the gardaí with Ms Saulite. It ultimately focused on the victim impact statement and surrounding circumstances and the role of Sgt Hughes and his colleague.

The evidence of A/C Feehan and A/C McHugh was that the recommendation for a full investigation was intended by the writer of the report and understood by the recipient to be a reference to discipline proceedings, although that is not explicitly stated.

It would appear that a possible breach of discipline was in question because beyond the fact-finding investigation there would appear in the circumstances of this case to have been little scope for any further process other than discipline.

The Delay

The delay between the initiation by A/C McHugh of the discipline investigation and the termination of the process by the same officer was protracted to an unfortunate and unacceptable extent. The process began when the assistant commissioner appointed C/Supt Feehan on 2nd May 2007 and it ended when he wrote to Sgt Hughes on 21st July 2009 informing him that he was satisfied there was no breach of discipline; and the matter ultimately came to a formal conclusion on 5th August 2009.

The delay came about partly due to Sgt Hughes, partly due to the CMO, partly due to an insistence by the investigators of the need to interview Sgt Hughes, and partly due to the problems encountered in achieving a further interview on 10th February 2009.

The history is briefly recorded in the text and reveals that the investigators wished to interview Sgt Hughes, but that did not happen until 29th October 2008. The sergeant's solicitor had written to say that he was unable to attend for interview on the first scheduled date in November 2007 and C/Supt Feehan responded by seeking to have Sgt Hughes examined by the CMO to assess

his capacity to be interviewed. That process did not prove to be an efficient or satisfactory one, as indicated by internal garda correspondence. Sgt Hughes also complained about this delay, which is a strange feature of the case. The question was whether Sgt Hughes was in a fit medical condition to be interviewed and the chief investigator was seeking to establish the position. However, Sgt Hughes and his doctor and his solicitor must themselves have been aware of the position so criticism of the incapacity of the investigators to get the relevant medical examination conducted seems inappropriate to say the least.

At no stage did Sgt Hughes's solicitor say he was now fit to be interviewed and eventually the decision to interview him was based on a comment by the Assistant CMO; and after further delays the interview ultimately proceeded on 29th October 2008.

It is however legitimate to criticise the wider internal garda arrangements that applied in this case as being inefficient and unsatisfactory. Some of the officers involved were very dissatisfied and considered the situation to be unacceptable. One of those was A/C Feehan and it would seem that he cannot be accused of being indifferent to the delay because the documentary evidence shows that he was pressing to get the matter of the medical examination resolved.

When the interview ultimately proceeded on 29th October 2008, Sgt Hughes handed over a 25-page document that was his response to the discipline investigation and the interview as recorded is extremely brief. However, the engagement took some two hours according to Insp Dwyer. The substantive part of the interview was short but the surrounding discussions were protracted. It seems that much of the time was taken up with discussion of the fact that the statement contained material that was not within the remit of the discipline investigation.

Sgt Hughes is critical of the interview but he himself had largely diverted it by handing over a 25-page document in which he had set out complaints of events prior to the murder of Ms Saulite and in which he had largely reproduced his report to D/Insp Mangan and then made further allegations. This inevitably resulted in further consideration on the part of the investigators as to how to proceed. They were obliged to investigate the matter in the Regulation 9 Notice, and only that matter, so the inclusion of extraneous material presented them with a problem.

More delay ensued when Insp Dwyer sought information from Sgt Hughes's solicitor. Letters went unanswered and phone calls were not responded to with the result that additional time was lost that cannot be ascribed to fault on the part of the investigators.

Debate about delays and responsibility for them featured prominently in this phase of the inquiry but there was an absence of any evidence of deliberate delay in order to target or discredit Sgt Hughes by reference to any of his complaints of alleged policing failures.

In the course of his evidence as recorded above, Sgt Hughes did not impute *mala fides* to A/C Feehan or Insp Dwyer in regard to delay, but he did say that he felt they were dragging their heels to some extent. He was asked if he thought that was deliberate when he looked at the correspondence and he responded that he could not say it was deliberate on their part and that *'I'm not in a position to say that it was targeting, but the effect on me was that I had to wait all those times, like an interminable amount of time, to actually receive a response ... from the disciplinary team'*.²⁵⁸

The position on delays in the progress of the investigation is that they were explained in the evidence. Some of them, while attributable to An Garda Síochána, cannot be laid at the door

²⁵⁸ Tribunal Transcripts, Day 160, p. 12

of the investigators because of their efforts to overcome obstacles and because of the evident impatience of A/C Feehan and the efforts of Insp Dwyer.

Although the period here was protracted and indeed excessive, this is not an example of targeting and neither is there any basis for inferring a connection with Sgt Hughes's concerns about policing.

Should the Discipline Investigation have been terminated at the outset?

The discipline investigation ended in a decision that found there was no basis for proceeding further to a specific allegation of breach of discipline on the part of Sgt Hughes. A/C Feehan submitted his report to A/C McHugh and reached his conclusion, which was to absolve Sgt Hughes. A/C McHugh accepted that position and decided to discontinue the proceedings. Does that mean that the investigation should never have taken place?

The process that was followed was that a decision was made by A/C McHugh that there should be a discipline investigation. The tribunal is satisfied that he was entitled to reach that conclusion. It was also established in evidence, as accepted by the tribunal, that A/C McHugh was wholly unaware of the complaints as to policing failures that Sgt Hughes had been making. That is a separate matter of relevance to the general question of targeting but not to the specific point at issue.

A/C Feehan had been given a direction by his superior to carry out an investigation and it was his obligation to comply with that direction. He would not have been entitled to refuse to comply with the direction but it is also unreasonable and illogical to suggest that he ought to have done so without having proceeded to gather all the relevant evidence that was available including conducting an interview with the principal party who was in possession of the relevant knowledge.

A/C Feehan had just completed what he intended to be a comprehensive fact-finding report, taking account of the work of D/Insp Mangan, and recommended that there be a full investigation. He intended and A/C McHugh understood that this was to be a discipline investigation and that the persons in focus were Sgt Hughes and Garda Nyhan. So having recommended a full investigation and having now been directed to carry it out, it was practically unthinkable that he would terminate the process before it started.

While A/C Feehan ultimately came to a conclusion in favour of Sgt Hughes, and he did so on the specific ground that he set out, that does not mean that he would have been entitled to do that in the beginning. The fact that nothing useful came of the interviews with Sgt Hughes, other than some necessary formalities of evidence, was not something that was to be anticipated. If there had been a full interview in a conventional sense with Sgt Hughes, there would obviously have been questions as to why he did not read the victim impact statement, how much of it he had read and about his conversation with Ms Saulite and why he did not report the meeting, the document or the conversation. But all of those things were for the future and not to be anticipated. It is difficult to envisage a situation in which an officer undertaking a given important function would return the papers, so to speak, with obvious avenues unexplored.

The importance of the investigation that A/C Feehan was instructed to undertake should not be undervalued. The context was of a very brutal crime and the possibility that gardaí had failed to comply with their duty.

The tribunal is not concerned with whether A/C Feehan was correct in the conclusion he reached because that is not within its remit. He reached his conclusion following a process of investigation that was directed by his superior and the suggestion that he should have cut off the process at the beginning is unrealistic, unsound and not consistent with the exercise by An Garda Síochána of its obligation to investigate a question of whether its own officers had failed in their duties.

No connection with any disclosure

It is clear moreover that whatever about apparent deficiencies in the processes that were undertaken, there is no evidence that any of the officers involved were responding or reacting to complaints made by Sgt Hughes about deficiencies of investigation prior to the murder. A/C McHugh made it clear that he knew nothing about those issues until he received documentary materials from the tribunal in the year 2020 and there is nothing to counter that suggestion. The facts of the case do not offer any support for a theory of hostility towards Sgt Hughes because of any complaint he had made. Indeed they do not suggest any particular hostility. A/C McHugh was acting in the course of his responsibilities and on the basis of materials that came before him. He did initiate the fact-finding investigation but in all the circumstances he would have been subject to serious criticism if he had done nothing in the face of evidence that members of An Garda Síochána had relevant or potentially relevant information available to them a few days before a murder was carried out and had failed to act on that information.

As for A/C Feehan it is clear that he took a serious view of the circumstances of the victim impact statement and made his recommendation, but nevertheless when he came to reach his conclusions on the discipline process, he came down clearly in favour of Sgt Hughes.

In all the circumstances the tribunal is satisfied that there is no evidence from which an inference may be drawn of a desire to target or discredit Sgt Hughes because of his allegations of failures in policing.

Other points

A/C McHugh was challenged by counsel for Sgt Hughes on his resistance to the suggestion that the discipline investigation concerned a serious charge against his client:

- Q. Would you accept that it's a very, very serious allegation?*
- A. I wouldn't have looked on it as very serious. It's really, what you are speaking about are the acts of commission or omission. It didn't say that they committed any offence.*
- ...
- Q. Yes. Do you accept this is a very, very serious charge?*
- A. No, I don't accept –*
- Q. Or allegation, I should say?*
- A. No, I accept that it's an outline of what had to be investigated.²⁵⁹*

The assistant commissioner emphasised that at this stage of the process there was no actual charge against the member. This referred to the procedure in the discipline process whereby there is first an investigation without specifying a particular allegation. The reason for this approach is that the investigation may turn up a different set of circumstances or facts than first envisaged

²⁵⁹ Tribunal Transcripts, Day 167, pp. 104-105

and that the time for specifying a breach of discipline is if the investigation under Regulation 8 gives rise to a formal inquiry under Regulation 14 as to whether the member has or has not committed a breach. A/C McHugh's insistence on this distinction is understandable and cannot be dismissed as being incorrect. However, the problem with that interpretation when applied to Sgt Hughes's investigation is that there was a quite specific allegation. It may be that it is difficult in the circumstances of a possible failure to meet the obligation in the *Osman* case to couch the subject matter of the first stage of the discipline process in general terms. However that may be, the tribunal is of the view that the issue under investigation in respect of Sgt Hughes and Garda Nyhan was indeed a matter of real gravity.

Another issue that arose was whether a personal interview was required or indicated in the discipline investigation. On this point Supt Dwyer, under cross-examination by counsel for Sgt Hughes, disputed the argument made that the prior submission of the 25-page report by Sgt Hughes and interview obviated the need for a further face-to-face interview to take place. He made the point that in his experience a face-to-face interview would always take place with persons under investigation:

- Q. *And having made contact on the 13th October, there was an interview then on the 29th October with Sergeant Hughes, and he gave you the 25 page report, ...*
- Now you yourself said to [counsel for the tribunal], before lunch, that it was a short interview, the memo of interview.*
- A. *The memo of quite short. The memo was. But not the actual – the length of time I was there.*
- Q. *You said you were there for two hours?*
- A. *Yes.*
- Q. *But you said that the memo of interview was short because certain matters were dealt with in the 25 page report?*
- A. *That's correct. I remember having a kind of checklist and I don't remember exactly the details of it, but I know by reading the pre prepared statement, some of the questions that I had prepared were already covered in his response. I know there was a lot of tension in the room at the time. It was quite difficult to engage with him. They kept bringing up the matters that were outside the brief of the discipline investigation. So that was taking away from the task in hand during the course of our two hours together.*
- Q. *But the matters that you did deal with in the memo of interview ... were actually dealt with in the 25 page report as well, were they not?*
- A. *They were, but it was just confirmation that this was the document we were talking about, to have the evidence correct.*
- Q. *Because if certain matters were dealt with in the 25 page report in writing, could the whole matter not have been dealt with in writing?*
- A. *No. I know from my time in Internal Affairs, solicitors had made similar requests beforehand and they would not be acceded to, because in the live environment, when questions are being put to somebody, the replies may take you somewhere else, and it was always practice that you'd have face to face interviews with people under investigation.²⁶⁰*

²⁶⁰ Tribunal Transcripts, Day 171, pp. 91-93

The tribunal is aware that the Garda Síochána (Discipline) Regulations, 1989, did not specify in either Regulation 8 or 9 that a member must be interviewed as part of the process, nevertheless the tribunal considers that it is difficult to envisage circumstances in which an interview would not be warranted.

In the circumstances of this case the tribunal considers that the processes of the fact-finding and discipline investigations were justified, reasonable and proper. The garda authorities were legitimately and appropriately concerned about the information given and the statement offered by the young victim of this heinous crime. It was their duty and responsibility to seek relevant information and then to decide whether and how to proceed further. This is essentially what happened.

The tribunal is satisfied that the decision to investigate and also the decision to explore whether a disciplinary issue arose in regard to the member who acquired the document were justified. Sgt Hughes acknowledged that the draft victim impact statement was relevant because he revealed it to D/Insp O’Sullivan as a matter of urgency and importance. It is also significant that he recorded in his report to D/Insp Mangan additional information relating to her situation that was given by Ms Saulite. Sgt Hughes was aware from the beginning that an issue of discipline might arise and was very concerned about it.

In summary:

- (a) The discipline investigation was justified. There was a rational factual basis in the fact-finding report, which concluded with a recommendation by A/C Feehan.
- (b) The subject of the investigation was the legal principle established by the European Court of Human Rights.
- (c) The discipline investigation focused on Sgt Hughes and Garda Nyhan because the fact-finding report pinpointed the draft victim impact statement that the victim proffered on 14th November 2006 and the conduct of the two members by reference to the *Osman* principles.
- (d) There is no basis for proposing that some other member of An Garda Síochána had a liability for not reporting a recently expressed fear by Ms Saulite.
- (e) Even if it could be shown that another garda was potentially in breach of discipline in a somewhat similar manner, there is no evidence and no basis for suggesting that A/C McHugh was aware of that, so a case of invidious discrimination does not arise. And there is actually no evidence that other gardaí failed to report relevant fears or threats relating to the deceased.
- (f) In respect of delay there was no targeting or discrediting as Sgt Hughes more or less acknowledged.
- (g) It was not open to C/Supt Feehan to terminate the investigation before embarking on the task.
- (h) There is no evidence and no basis for suggesting a connection between the actions of the relevant officers and the disclosure of alleged policing failures by Sgt Hughes.

CHAPTER 7

THE COMPLAINT MADE BY SERGEANT WILLIAM HUGHES IN RELATION TO THE INVESTIGATION AND CLASSIFICATION OF HIS SICK LEAVE BETWEEN 2006 AND 2013

Issue 2 of the Schedule of Issues

Did Assistant Commissioner HRM or Chief Superintendent Gerard Phillips or Superintendent Mark Curran target or discredit Sgt Hughes because he made a protected disclosure –

- (a) by failing to carry out an investigation into his condition of work-related stress as required by the Garda Code?*
- (b) by failing to establish whether his work-related stress was an injury on duty?*
- (c) by treating his absences, or allowing them to be treated, as due to ordinary illness so that his pay was subject to severe reduction?*

Issue 10 of the Schedule of Issues

Did the Garda Commissioner or Assistant Commissioner HRM target or discredit Sgt Hughes as he alleges by reason of the recommendation dated 11th July 2008 by An Garda Síochána that Sgt Hughes be medically discharged?

Background

In the aftermath of the murder of Ms Baiba Saulite on 19th November 2006, Sergeant William Hughes continued to work at Swords Garda Station for a period of one month and then went on sick leave on 18th December 2006. In the first of a series of absences, Sgt Hughes provided medical certificates from his general practitioner, Dr James McDonnell Reilly, dated 18th December 2006 and 1st January 2007 certifying that he was unable to attend work as he was suffering from work-related stress.²⁶¹

Sgt Hughes was absent due to work-related stress on a number of occasions between 2006 and 2013 as follows:

- 18th December 2006 until 27th January 2007
- 30th January 2007 until 2nd March 2007
- 17th May 2007 until 20th December 2009
- 22nd September 2010 until 24th September 2010
- 4th January 2011 until 12th February 2013.²⁶²

²⁶¹ Tribunal Documents, p. 4710

²⁶² Tribunal Documents, p. 4671

On returning to work in early 2010, he was stationed in the Staff Sergeant's Office in Coolock Garda Station having been certified as fit for light duties by the Assistant Chief Medical Officer of An Garda Síochána, Dr Richard Quigley, in a report dated 20th November 2009 to the Assistant Commissioner, Human Resource Management.²⁶³ However, following a period of further extended sick leave between 2011 and 2013, he ultimately retired from An Garda Síochána on 12th February 2013 on medical grounds.²⁶⁴

Where a member of An Garda Síochána is rendered unfit for duty for an extended period of time due to illness or injury, the question as to whether the illness or injury is attributable to an injury suffered on duty is relevant because section 3.41 of the Garda Finance Code provides that:

- (1) *Where the illness is attributable to injuries received by the member in the execution of duty without wilful default or negligence on his/her part, full pay may be allowed while there is a reasonable probability that the member will be able to resume duty.*
- (2) *In other cases ... where the illness is not attributable to wilful default or negligence on the part of the member concerned, full pay may be allowed for periods of illness not exceeding six months (183 days) in any period of one year. Thereafter half-pay may be allowed for a further period of six months, after which pay at pension rate, not exceeding half-pay, may be allowed for such period as may be authorised by the Commissioner.*²⁶⁵

Therefore, a determination that the injury is one suffered while on duty is significant in that it may entitle the member to full pay (subject to the condition that there is a reasonable probability that he or she will be able to resume duty). In the absence of a determination that the illness or injury is an 'injury on duty', the illness or injury will be treated as an 'ordinary illness' and the member will be reduced to half pay following a period of six months' absence and further severe reduction thereafter including, ultimately, possible removal from the payroll.

Garda absence due to illness is recorded on the Sickness Absence Management System, known as SAMS. There is no instruction or guidance as to how work-related stress is to be recorded where so certified by the member's medical practitioner. Sgt Hughes was recorded on SAMS as absent due to 'ordinary illness', with the nature of his illness described as 'stress'.²⁶⁶ As noted, a garda on ordinary illness absence is paid his or her full rate for six months; however this is less than the member would receive if working because certain allowances can accrue to the working garda.

Sick Leave 2006-2009

By letter of 26th March 2007 to Superintendent Mark Curran, Sgt Hughes enquired about his entitlement to claim his loss of allowances during his recent period of stress-related sickness absence. In this letter he sought '*directions as to what procedure should be adopted with a view to recouping any allowances due*'.²⁶⁷ Supt Curran replied on 4th May 2007 saying that there was '*no provision under code regulations to enable a member to claim loss of allowances and unsocial hours in relation to an absence from work due to work related stress*'.²⁶⁸

Sgt Hughes revisited the matter in a letter to the superintendent dated 7th May 2007, in which he said:

²⁶³ Tribunal Documents, p. 4186

²⁶⁴ Tribunal Documents, p. 5605

²⁶⁵ Tribunal Documents, p. 6745

²⁶⁶ Tribunal Documents, p. 4671

²⁶⁷ Tribunal Documents, p. 4714

²⁶⁸ Tribunal Documents, p. 4715

I respectfully wish to seek clarification with regard to the issue of 'Injury' insofar as set out in the relevant Code regulations. It is my assertion that my absence on sick-leave was as a direct consequence of traumatic occurrences in my workplace. This is also the view of two medical practitioners I am attending.

The Code regulations are silent on whether the term 'Injury' refers to physical injury or otherwise. I respectfully request that this issue be referred to the Chief Medical Officer for determination as to whether my case falls under the category of 'Injury on Duty'.²⁶⁹

Supt Curran forwarded this request to Chief Superintendent Gerard Phillips.²⁷⁰ The chief superintendent in turn referred the matter to Assistant Commissioner Catherine Clancy, Human Resource Management (HRM) on 15th May 2007.²⁷¹ He requested the observations of the Chief Medical Officer (CMO).

A/C Clancy corresponded with C/Supt Phillips on 12th June 2007 seeking relevant forms and medical certificates and 'a full report and Certificate in accordance with Code 11.37 relating to the above member's absence through injury ...' between December 2006 and March 2007.²⁷²

Code 11.37 of the Garda Síochána Code provides that:

- (1) *If a member suffers personal injury, and is rendered non-effective or otherwise, a full report of the circumstances should be submitted immediately to the member's Divisional Officer. When non-effectiveness as a result of an injury exceeds 60 days in any period of 90 days the report will be forwarded to Assistant Commissioner, Human Resource Management. A decision regarding culpability will be made locally by the Divisional Officer except in cases where:*
 - (a) *The Divisional Officer is of the opinion that the injuries were due to wilful default or negligence on the part of the member.*
 - (b) *The Divisional Officer has a doubt about the matter. In such cases the file will be forwarded to the Assistant Commissioner, Human Resource Management for directions.*
- (2) *When submitting the file to Headquarters, a record of the Divisional Officer's decision should be attached.²⁷³*

A further letter from A/C Clancy dated 19th June 2007 noted that Sgt Hughes's absences were attributed to stress and directed C/Supt Phillips to:

... now interview this member in order to establish the source of the member's stress and if it is suggested as being work related a full investigation should be carried out.²⁷⁴

In a letter of 22nd June 2007, Supt Curran wrote to Sergeant Camillus Fitzpatrick attaching the medical certificates from Sgt Hughes.²⁷⁵ The sergeant replied on 29th June 2007 and said that:

The decision regarding the nature of the Stress in my view is a matter for decision by the Chief Medical Officer.²⁷⁶

²⁶⁹ Tribunal Documents, p. 4716

²⁷⁰ Tribunal Documents, p. 3874

²⁷¹ Tribunal Documents, p. 3878

²⁷² Tribunal Documents, p. 4717

²⁷³ Tribunal Documents, p. 6703

²⁷⁴ Tribunal Documents, p. 1236

²⁷⁵ Tribunal Documents, p. 3881

²⁷⁶ Tribunal Documents, p. 1145

Supt Curran passed on this letter to C/Supt Phillips, who subsequently enquired whether Supt Curran agreed with the sergeant's view.²⁷⁷ Although there is no written reply, it is clear by inference and also by reference to the superintendent's evidence that he and C/Supt Phillips were in agreement with Sgt Fitzpatrick that it was a matter for the CMO.²⁷⁸

It is evident at this early stage that Sgt Hughes was asking for the matter to be referred to the CMO to decide whether his was an injury on duty and that local management were themselves of the view that the case of stress was a question for the CMO.

On 17th September 2007, A/C Clancy wrote to the Secretary General at the Department of Justice, Equality and Law Reform stating that Sgt Hughes was in excess of 183 days non-effective through illness during the preceding twelve-month period and requesting that he be suspended from the garda payroll immediately.²⁷⁹ This is a normal instruction where sanction has not been obtained for the continuation of pay in such circumstances. On the same date, by letter to C/Supt Phillips, A/C Clancy stated that Sgt Hughes's pay would require sanction from 1st September 2007 and that medical certificates were required to comply with the provisions of the Garda Code.²⁸⁰

A/C Clancy referred Sgt Hughes to the CMO, and issues concerning his incapacity to work and his health status moved away from local management and became the concern of Dr Quigley and the consultants to whom he referred the sergeant; and HRM to whom the doctor reported regularly. The complex history of medical examinations, consultations and diagnoses is best described by Dr Quigley, who is a Specialist Occupational Physician at the Garda Occupational Health Service, in his statement to the tribunal and in his evidence.²⁸¹

On 19th September 2007, Dr Quigley saw Sgt Hughes for the first time, following the receipt of a standard referral form but without a report from local management, a situation that he said in evidence had occurred on other occasions.²⁸² Sgt Hughes had been on sick leave since 17th May 2007. Dr Quigley noted that Sgt Hughes had perceptions of negative behaviours towards him in the workplace in the context of the murder of Ms Saulite and his role as a community policing sergeant with responsibility to liaise with her in the context of the criminal prosecution of her former partner in a family law matter. Sgt Hughes stated that he was unaware of information that had been available to other parts of An Garda Síochána that this individual was a serious criminal capable of murder or procuring murder. He also reported that he felt under stress due to alleged threats, known to An Garda Síochána, to kill him, as a garda sergeant connected with the case. Dr Quigley noted that his general practitioner Dr Reilly had referred him to a consultant psychiatrist, Dr Joseph Fernandez, but no medications had been prescribed.²⁸³

Dr Quigley reported to garda management as to his consultation stating that:

Having talked to Sgt. Hughes in detail I am unable to identify issues outside of work contributing to his stress.

...

²⁷⁷ Tribunal Documents, p. 1163

²⁷⁸ Tribunal Transcripts, Day 170, pp. 41-42

²⁷⁹ Tribunal Documents, p. 4718

²⁸⁰ Tribunal Documents, p. 4719

²⁸¹ Tribunal Documents, pp 1331-1340, Tribunal Transcripts, Day 172, pp. 5-148

²⁸² Tribunal Transcripts, Day 172, pp. 10-11; Tribunal Documents, p. 1331

²⁸³ Tribunal Documents, p. 1331

*I note Sgt. Hughes is particularly anxious that this current sickness absence be regarded as injury on duty. I have pointed out to Sgt. Hughes that this is a matter for management to decide but I will advise on the medical component relating to this when the relevant medical reports are to hand.*²⁸⁴

Dr Quigley raised the issue that Sgt Hughes had reported having no contact from management during his sickness absence at the end of 2006 and the beginning of 2007 or during the current sickness absence.²⁸⁵ A/C Clancy replied by letter dated 11th October 2007 and stated that:

*Having examined his file I am satisfied that local management have made every effort to contact him. In a report dated 31 July 2007 Superintendent Curran Coolock, states inter alia, that Sergeant Hughes “is in regular contact with both myself and Inspector Cryan”. Support is also being made available to him in terms of his current work role.*²⁸⁶

In his evidence to the tribunal, Dr Quigley recalled that he communicated both with Sgt Hughes's general practitioner, Dr Reilly, and with his consultant psychiatrist, Dr Fernandez.²⁸⁷

Dr Quigley sought an opinion from Dr John Griffin, an independent specialist psychiatrist, in November 2007.²⁸⁸ On 7th January 2008, Dr Griffin reported to Dr Quigley on his assessment of Sgt Hughes, which took place on 4th January 2008:

Sergeant Hughes described to me in great detail his involvement with the tragic case of the murdered mother and the child abduction. Indeed he gave me sight of a very detailed and long report that he had prepared. Sergeant Hughes alleges considerable bullying by the authorities and indeed is currently instructing a solicitor.

He has been effectively off duty now since late June 2007 and has not been able to return to work. He said he feels constantly stressed when he thinks of return to work. He even says if a patrol car passes him on the street, it all comes back to him as he put it. As you know, he has been served with disciplinary papers also and he feels very let down by the system overall.

*When I pressed Sergeant Hughes on continuing in the police force, even on light duties, he feels that he can't foresee any way of returning as an effective police officer. Certainly, having read his detailed file which I don't have a copy of but have had full sight of, I don't think this man is in a position now or will be in a position in the future to give full and effective service as a police officer. I don't think he now has the mental robustness or will in future have the mental robustness to continue in the Garda Force. Thus my recommendation would be that he be considered for retirement on medical grounds.*²⁸⁹

Dr Griffin later reviewed Sgt Hughes's notes and added in his subsequent report that he thought there was dual effect: *'the trauma of Ms. Saluite's death affected him greatly, and also the reported threats to his own life played a major part. Thus, I think these two factors would provide the genesis for his post-traumatic stress disorder'*.²⁹⁰

On 6th March 2008, Dr Quigley reported to A/C Clancy in light of the advice from Dr Griffin and also with reference to correspondence he had received from Dr Fernandez:

²⁸⁴ Tribunal Documents, p. 3908

²⁸⁵ Tribunal Documents, p. 3908

²⁸⁶ Tribunal Documents, p. 1342

²⁸⁷ Tribunal Transcripts, Day 172, p. 14

²⁸⁸ Tribunal Documents, p. 6846

²⁸⁹ Tribunal Documents, pp. 1343-1344

²⁹⁰ Tribunal Documents, p. 1346

*At interview on 6 March 2008 Inspector Matthew Nyland of Human Resource Management (Legal Section), specifically pressed me on the issue as to whether an injury on duty had occurred in the circumstances described. My best sense of what happened is that the events described constitute, in effect, normal policing work. I do not see evidence of injury being perpetrated upon Sergeant Hughes. Therefore though the independent psychiatric adviser Dr. John Griffin has associated Sergeant Hughes's current illness with work related events, I cannot conclude that these work related events constitute formal injury on duty.*²⁹¹

Referring to the report from Dr Fernandez, Dr Quigley said:

He noted in essence Sergeant Hughes involvement in the child abduction case in this family. Sergeant Hughes felt that he was partly responsible for the circumstances of the above [lady's] death and that he had felt threatened personally by these events and was resentful of the fact that he had been left out in the cold by his Superiors, with no communication and with no formal acknowledgement of his predicament.

*Dr Fernandez also reported that there had been antecedents going back over the previous three and a half years and Dr Fernandez reports that Sergeant Hughes felt that he was victim of bullying and harassment at work. He reported that this had been taken up with his Superintendent but nothing had happened so he sought help from his Union's Solicitor (AGSI) and yet again no satisfaction was gleaned from the latter's endeavours.*²⁹²

Dr Quigley again reviewed Sgt Hughes on 5th June 2008, and advised him that he had formed the opinion that he should be retired on the grounds of ill-health, based on the report of Dr Griffin.²⁹³ The procedure for such retirement involved a cooling-off period of 28 days to allow the member to submit an appeal if he so wished.²⁹⁴

On 9th June 2008, Dr Quigley wrote to A/C Clancy outlining this and referencing his earlier advices of 6th March 2008:

I note that this case is a particularly complex one with the following aspects:

- *Grievance/welfare issues*
- *Disciplinary issues*
- *Legal issues*
- *Industrial relations issues*

*Accordingly I consider that you must decide upon the issue of injury on duty based on the medical advice as given but also based on the outcome of all these other issues which must be reported upon to you by the relevant parts of the organisation of An Garda [Síochána]. I note that Sergeant Hughes indicates that he has been served with disciplinary papers approximately a year ago. He states that he has not been interviewed or been informed of when this disciplinary matter will be dealt with. Accordingly I recommend that if it is possible that these disciplinary issues be dealt with at as early a date as possible and as speedily, effectively and fairly brought to closure. I see this as being of benefit to Sergeant Hughes and to the organisation.*²⁹⁵

²⁹¹ Tribunal Documents, p. 8102

²⁹² Tribunal Documents, p. 8103

²⁹³ Tribunal Documents, p. 3978

²⁹⁴ Tribunal Documents, p. 3978

²⁹⁵ Tribunal Documents, p. 3978

A/C Clancy subsequently received Sgt Hughes's notice of intention to appeal from his solicitor on 4th July 2008.²⁹⁶ This was forwarded to Dr Quigley.²⁹⁷

In respect of the appeal of the recommendation that he be retired on ill-health grounds, Sgt Hughes's legal representatives forwarded a report from Dr Michael Corry, Consultant Psychiatrist, dated 15th October 2008 to the CMO. Dr Corry stated that Sgt Hughes continued to suffer from an '*unresolved post traumatic stress disorder secondary to the ongoing duress he is experiencing in the workplace*'. He continued that:

It is my opinion that it would not be in the interest of his mental health to take a medical discharge as such a move would not in any shape or form address the very issues that are at the source of his mental and emotional turmoil

...

*To conclude, in my opinion Sergeant Hughes is capable of returning to his job as an effective police officer and it would not be appropriate to consider him for retirement on medical grounds. His health issues are resolvable with the appropriate intervention and support.*²⁹⁸

Dr Quigley referred the matter back to Dr Griffin in relation to the appeal by Sgt Hughes against the retirement proposal and postponed further consideration of the retirement issue pending his report.²⁹⁹

During this period, on 29th October 2008, Inspector Fergus Dwyer and Detective Inspector Francis Sweeney met with Sgt Hughes at his solicitor's office for the purposes of conducting an interview in respect of the discipline investigation, which is the subject of chapter 6. Further, on 18th November 2008, Sgt Hughes met with Superintendent Gabriel O'Gara and Inspector Peter O'Boyle who had both been appointed by Assistant Commissioner Michael Feehan to assist with the investigation into the sergeant's confidential report as discussed in chapter 8 of this report.

In a letter to his district officer on 17th December 2008, Sgt Hughes complained that:

From a welfare point of view, I believe that Garda management has failed to properly conduct a proper investigation into the reason for my absence from work. I have not been formally interviewed to date in that regard by Garda management

...

*I believe that Garda management have failed to properly and professionally tackle issues of workplace bullying, harassment and intimidation which I have been subjected to and which were reported and I believe that this failure is a continuance of such bullying and harassment of me.*³⁰⁰

The letter also referred to what Sgt Hughes said was the decision by garda management in September 2007 to reduce his salary by half even though the CMO had not properly determined whether his illness was as a result of work-related stress. His letter concluded that:

²⁹⁶ Tribunal Documents, pp. 3986-3987

²⁹⁷ Tribunal Documents, p. 3995

²⁹⁸ Tribunal Documents, pp. 4025-4026

²⁹⁹ Tribunal Documents, p. 4030

³⁰⁰ Tribunal Documents, pp. 503-504

*The full investigation of all matters pertaining to this report, and the restoration to full pay and allowances due, would have the effect of somewhat enhancing my situation from a welfare point of view.*³⁰¹

In a report to his divisional officer dated 23rd January 2009, Supt Curran enclosed the report provided by Sgt Hughes and stated that:

A number of issues are raised by Sergeant Hughes in the attached communication. Regular contact has been made with Sergeant Hughes who continues to assert that he is suffering from work related stress. To this end he outlines a number of points where he believes that Garda Management has not responded to his satisfaction. He refers to his injury on duty which he states was never investigated along with previous allegations relating to bullying and harassment.

*He further states he intends to return to work at the earliest opportunity should some of [the] issues raised in this letter be addressed.*³⁰²

This report and the meeting with Supt Curran are addressed in detail in Issue 9 of the Schedule of Issues and chapter 9 of this report.

In the interim, Dr Griffin saw Sgt Hughes on 8th January 2009 and furnished a short report in which he changed his opinion about medical retirement. He recorded seeing the reports of Dr Corry and Dr Reilly and advised as follows:

*Following a long consultation with Sgt. Hughes, I do not think it would be right for him psychologically to retire currently on medical grounds. He still feels that there are issues that need to be investigated in relation to the tragic events outlined in my previous report. He is very distressed that he is on pension pay, which is I understand, less than half his normal pay. He says that this is due to the fact that Authorities suggest that his absence from work is not related to a work issue. In my opinion his absence from work is definitely related to work issues. Also I don't think he is in a position psychologically to return to work while the situation is not being investigated. I really do feel that the expediting of this investigation would help him greatly, and he could then make a decision in due course as to whether he should return to work. I would then be happy to review him in order to ascertain as to whether or not medical discharge would be an issue at that stage.*³⁰³

Dr Quigley responded to Dr Griffin by letter of 16th March 2009 and stated that:

*Garda Management accept that absence from work has been related to a work issue; however pay provisions that Sgt Hughes would wish to invoke (members have continuing full pay while on sick leave) are reserved for those who are injured on duty. Essentially it is not so much that the issues at hand are not related to work, but that the issues at hand are not considered, in the ordinarily understood sense of the word, to constitute an injury on duty.*³⁰⁴

Dr Quigley went on to say that he thought that Sgt Hughes would be fit for a trial of light administrative duties.³⁰⁵ Dr Quigley also wrote to Dr Reilly saying that the 'issue here is that though his absence from work is related to his work, the issues at hand are not considered by Garda management

³⁰¹ Tribunal Documents, p. 505

³⁰² Tribunal Documents, p. 7918

³⁰³ Tribunal Documents, p. 1349

³⁰⁴ Tribunal Documents, p. 6860

³⁰⁵ Tribunal Documents, p. 6860

to constitute injury on duty in the ordinarily understood meaning of those words.³⁰⁶ He expressed hope that it would be possible to get Sgt Hughes back to work.

Dr Griffin wrote again to Dr Quigley on 22nd May 2009 describing how Sgt Hughes still had the discipline matter hanging over him and was finding it very difficult financially. He was now waking at 03:00 hrs very concerned and he was very stressed when examined by Dr Griffin on 21st May 2009. The psychiatrist concluded:

*I really do feel that unless and until this whole issue is brought to a conclusion by the authorities, this man will continue to suffer significantly. I cannot see him returning to work in his current mental state as he feels he could not give efficient service unless and until these issues are dealt with finally and with alacrity. I wondered whether there is any way this process could be moved forward more quickly than at present.*³⁰⁷

As outlined in chapter 6, the discipline proceedings concluded on 3rd June 2009 with the report of A/C Feehan and Sgt Hughes was informed in July 2009 that the proceedings were being discontinued.³⁰⁸ In his report of 21st October 2009, Dr Griffin recorded that Sgt Hughes was extremely relieved that the discipline proceedings had been dropped:

*However he repeated to me a number of times during the consultation that the ongoing investigation has still not been resolved and he is very concerned about this. However he says that he has no option now but to return to work because he is in deep financial trouble.*³⁰⁹

The doctor suggested that Sgt Hughes was fit for light duties but not for all policing duties just yet.³¹⁰

Dr Quigley reviewed Sgt Hughes on 19th November 2009. He supported his reintegration into the workplace on light duties and advised that he considered Sgt Hughes capable of meeting with management to discuss work arrangements that would be conducive to a return to work.³¹¹

Sick Leave 2010-2013

Sgt Hughes returned to work on light duties on 21st December 2009 and continued working until 4th January 2011.³¹²

However, in July 2010, Dr Quigley received a letter from Dr Reilly indicating that Sgt Hughes was reporting anxiety and uneasiness in relation to his work arrangements.³¹³ Dr Quigley arranged for a review at the Garda Occupational Health Service on 19th August 2010.³¹⁴

Following this attendance, Dr Quigley wrote to Sgt Hughes's general practitioner stating that Sgt Hughes had identified that the recovery of his pay and pension in respect of his extended period of sick leave would be of assistance. However, he said that Sgt Hughes did not identify alternative work locations or a work role within An Garda Síochána that would be of particular assistance to

³⁰⁶ Tribunal Documents, p. 6859

³⁰⁷ Tribunal Documents, p. 1352

³⁰⁸ Tribunal Documents, p. 556

³⁰⁹ Tribunal Documents, p. 1354

³¹⁰ Tribunal Documents, p. 1354

³¹¹ Tribunal Documents, p. 4186

³¹² Tribunal Documents, pp. 8468-8469

³¹³ Tribunal Documents, p. 6875

³¹⁴ Tribunal Transcripts, Day 172, pp. 56-57; Tribunal Documents, p. 4331

him. Dr Quigley said that he had written to garda management asking that they might look at whether the discipline charge was a substantial component of the sick leave that ensued.³¹⁵

Dr Quigley referred Sgt Hughes to Dr Patrick Devitt, Consultant Psychiatrist, to provide an opinion on whether *'the disciplinary charges proffered against Sergeant Hughes were a major or substantive cause of his sickness absence'* and requested an expert assessment on Sgt Hughes's current mental health to assist in advising garda management on fitness for duty and workplace accommodations.³¹⁶ Dr Quigley informed the Assistant Commissioner, HRM, of the basis of his referral by letter of 20th August 2010.³¹⁷

By letter dated 8th September 2010, Dr Quigley wrote to Assistant Commissioner Fintan Fanning, HRM, referring to his previous advice on 6th March 2008 to the effect that Sgt Hughes had not received an injury on duty.³¹⁸ He requested a management and legal review of the matter and asked whether medical, legal and management information had been taken into account in decisions on how to proceed. A/C Fanning replied on 23rd September 2010 asking if Dr Quigley had changed his opinion and stating that:

We take into account medical, legal and management perspectives in coming to decisions on injury on duty and a critical element in our assessment of this case was your medical opinion and prognosis that the sickness absence was not related to incidents/injuries on duty. Accordingly, we have proceeded with this case as one that was not categorized as an injury on duty.

*Your further medical advises in this regard should be forwarded as a matter of urgency.*³¹⁹

The report of Dr Devitt, dated 16th September 2010, reflected the first of five consultations that he had with Sgt Hughes for the purpose of advising the CMO. Dr Devitt described Sgt Hughes's mental state as follows:

It was quickly obvious that Sgt. Hughes was greatly consumed by every detail of the events which had befallen him with respect to the disciplinary proceedings and the bullying and other irregularities he had perceived at his workplace.

He felt that he was the victim of injustice.

...

It was difficult to deflect Sgt. Hughes from going into minute detail.

However, he did not appear depressed or anxious.

...

*It was obvious that Sgt. Hughes had been extremely traumatised by his experiences in An Garda Síochána and he credibly described intrusive recollections and ruminations, anxiety and avoidance symptoms.*³²⁰

³¹⁵ Tribunal Documents, p. 6878

³¹⁶ Tribunal Documents, pp. 6876-6877

³¹⁷ Tribunal Documents, pp. 4342-4343

³¹⁸ Tribunal Documents, p. 4350

³¹⁹ Tribunal Documents, p. 4353

³²⁰ Tribunal Documents, p. 1368

Dr Devitt concluded that Sgt Hughes had suffered emotional trauma and experienced PTSD symptoms such as intrusive recollections, avoidance and anxiety. He said that Sgt Hughes's sick leave was directly due to the emotional trauma he suffered at his place of work. He was still consumed with every aspect of his case and was distrustful of An Garda Síochána and still exceedingly angry. He said that Sgt Hughes was mentally unfit to resume regular garda duties. However, he was mentally fit to continue his current garda duties on a full-time basis. Dr Devitt was of the view that there was a reasonable possibility that if matters could be resolved, Sgt Hughes's mental state would further improve, allowing him to resume full garda duties.³²¹

In a letter dated 28th September 2010 to A/C Fanning, Dr Quigley referred to the difficulty of the injury on duty issue:

I have indicated in the past that I consider Sergeant Hughes illness to be work related and that the circumstances did not to me at the time fulfil the criteria for injury on duty. My letter of 6th March 2008 indicates that the condition was work related but that my best sense of what had happened was that the events described constituted normal policing work. In theory the matters would be much more straight-forward in having a formal definition of injury on duty which could be tested in the courts. There would then be a benchmark in which to call judgement; in the absence of well-defined criteria it is much more difficult to decide the issue at hand.

...

However I am absolutely satisfied that Sergeant Hughes' condition is work related.

...

Dr Devitt is of the opinion that the disciplinary measures being initiated against Sergeant Hughes were the cause of emotional trauma to Sergeant Hughes and that his sick leave was directly related due to this emotional trauma. I have discussed these issues with Dr. Devitt and he is of the further opinion that it is a legal and management decision as to whether such issues constitute injury on duty.³²²

On 27th September 2010, A/C Fanning wrote to C/Supt Phillips about Sgt Hughes's most recent absence:

It is noted that the above mentioned member's absence from the 22nd September 2010 to the present is stress related.

You should now interview this member in order to establish the source of the member's stress and if it is suggested as being work related a full investigation should be carried out.

Ensure that the member is advised of the Welfare Service and any other support that is deemed necessary.³²³

On 30th September 2010, C/Supt Phillips directed Supt Curran to follow this up.³²⁴ Supt Curran met Sgt Hughes on 5th October 2010 and reported in due course on 19th October 2010 as follows:

³²¹ Tribunal Documents, p. 1369

³²² Tribunal Documents, pp. 4358-4359

³²³ Tribunal Documents, p. 4361

³²⁴ Tribunal Documents, p. 4360

With reference to the above and previous correspondence relating to this matter, I am to report that I met Sergeant Hughes at Coolock Station on the 5th October 2010. I read over the contents of the minute from Assistant Commissioner, H.R.M. dated 27/09/10. This minute related to the need for an investigation into the "source of the member's stress and if it is work related a full investigation is to be carried out". The period in question was between 22/09/10 and 26/09/10.

Sergeant Hughes stated that he wished to consult his solicitor before responding but stated that it was his own medical doctor that certified this period as being work stress related.

On the 12th October 2010 Sergeant Hughes supplied a report (attached) which stated that the sick leave is "directly connected to my previous and protracted absences since December 2006" (paragraph 4).

This particular issue is to the best of my knowledge currently with A/Commissioner, H.R.M. I also understand that Sergeant Hughes has brought a case before the High Court regarding the issue of "injury on duty" against the Garda Commissioner. This appears to be a medical-legal issue.

Sergeant Hughes welfare issues have been the matter of previous reports. I continue to liaise with Sergeant Hughes regarding his current role in the Staff Office at Coolock Garda Station. This position which he has held since returning to the workforce in December 2009 was created with the purpose of facilitating his return and integrating him with the Coolock team (this position will be assigned to a civilian staff member in the future).

In my communication with Sergeant Hughes his general unhappiness relates to his long standing issues. I do not get a sense from him that he is unhappy performing the duties currently assigned to him. I request a direction on whether the minute from A/Commissioner, H.R.M., can be supplied to him.

Forwarded for your information and attention.³²⁵

The report that Sgt Hughes provided, following consultation with his solicitor, is dated 12th October 2010:

I refer to our meeting at your office on the 5th October 2010 and am required to address the issue of my absence on sick leave from the 22nd Sept to 24th Sept 2010.

Please be informed that I reported sick with an upset stomach to Sergeant Bob Kavanagh, Swords station on the 22nd Sept. 2010. I attended with my G.P. on the 23rd Sept 2010 and he subsequently issued me with a sick certificate effective from the 22nd Sept to 24th Sept 2010 inclusive. My G.P. diagnosed that my illness was one of work related stress. I furnished that medical certificate promptly to your office. I resumed duty again on the 26th Sept. 2010 following a rest day Saturday 25th Sept.

At our meeting on the 5th October 2010, you produced and read over to me the contents of a two page document which apparently originated from HRM, Garda Headquarters. The file related to the above three day absence on sick leave. To my recollection, the file requested that I be formally interviewed regarding the said absence to establish the circumstances of the 'work related stress', to investigate those circumstances and to help me avail of the Garda Welfare facility. I requested a copy of the file from HRM but this was refused.

³²⁵ Tribunal Documents, pp. 1177-1178

I wish to respectfully advise you that the above three day absence on sick leave is directly connected to my previous and protracted absences on sick leave since December 2006. As previously advised I continue to be deeply unhappy in my place of work. The serious matters which have caused my continued illness have previously been reported to Garda management.

Please refer to my report to your office on the 29th June 2010. I understand that you forwarded a report in that regard to Garda management following our meeting on that date. I have not heard of any developments regarding that report since.

As stated, I have been absent on protracted sick leave with work related stress on two previous occasions since December 2006. I was not formally interviewed by Garda management concerning those absences. I was not asked to submit a report to Garda management concerning those absences either while on sick leave or on resumption of duty on both occasions. Local Garda management did not similarly seek to advise me on the availability or otherwise of the Garda Welfare service. In fact, I made contact with the Garda Welfare service during that time on my own initiative.

I wish to state that I am surprised, but encouraged, that the above three day absence has now been made subject of scrutiny as is the case but am greatly disappointed as to why this procedure was not adopted on the previous occasions referred to.

I have always been available to assist Garda management in any effort or initiative that may move my situation on. For the past number of years I have been endeavouring to have the matters which have affected, and continue to affect, my health addressed by Garda management. The serious issues, as far as I am concerned, have not been addressed by Garda management.

The situation with regard to my current health situation and recovery prospects has been the subject of a further recent review with the Assistant C.M.O. along with an appointed medical specialist at Garda Headquarters. I am reluctant to give specific details in this report with regard to these medical consultations least to say that the continued failure as I see it to properly and professionally address the reported issues is having an increasingly negative effect on my health and well-being.³²⁶

On 20th October 2010, A/C Fanning wrote to the CMO stating that at a recent management meeting with the CMO ‘... it was established that it was a matter for the Chief Medical Officer to adjudicate as to what is or is not an injury on duty. This should be done in the context of all available information to hand and unfortunately it must be done in the absence of any clear case law in this jurisdiction.’ On that basis, A/C Fanning directed the CMO to hold a case conference to resolve the matter and so that a ‘definitive and clear direction can be given.’³²⁷

Dr Quigley responded on behalf of the CMO on 28th October 2010:

Your second letter of the 20th October 2010 raises the issue of categorisation of Sergeant Hughes medical condition as to whether it is considered associated with injury on duty. I note that you indicate that it has been established that it is a matter for the Chief Medical Officer to adjudicate as to what is or what is not an injury on duty. This is not the position of the Chief Medical Officer as communicated recently to me.

³²⁶ Tribunal Documents, pp. 4366-4367

³²⁷ Tribunal Documents, p. 4385

*He has stated to me that the issue of injury on duty shall be determined at the meeting where Management, Legal representatives meet with the Chief Medical Officer or his representative on these issues.*³²⁸

HQ Directive No. 139/10 'Management of Sickness Absence' was issued on 1st December 2010 and set out new instructions for the reporting, recording and management of sickness absence.³²⁹ The focus of this Directive was stated to be on early intervention and staff welfare, and to apply to all members. It outlined the following:

Injury on Duty Classification

Where there is any doubt that an injury on duty occurred, Divisional Officers should refer the matter to Assistant Commissioner, H.R.M., who will seek the advices of the C.M.O. The C.M.O. will take into account all relevant information in arriving at his/her advices.

A decision regarding injury on duty will be based on:

- *A complete investigation file into the incident*
- *Management views and recommendations*
- *The assessment and opinion of the C.M.O.*

...

*Where there is a doubt as to whether the member's sickness absence is due to ordinary illness or an injury on duty the member's absence will be treated as ordinary illness pending a decision on the classification of the injury and in particular the C.M.O.'s advice. If it is determined that the absence does relate to an injury on duty, the member's pay will be retrospectively adjusted as soon as practicable.*³³⁰

It was also stated that:

*Where members report non-effective for duty as a result of an injury on duty or work related stress, a thorough investigation shall be carried out immediately and the outcome reported to Assistant Commissioner, H.R.M. for the attention of the C.M.O. The member concerned shall be advised of the Employee Assistance Service, Peer Support, and any other support deemed necessary. Local management shall address the issues causing the member's stress.*³³¹

A case conference took place on 12th November 2010 to consider Sgt Hughes's case. Dr Quigley told the tribunal that the purpose of the conference 'was for local management, Human Resources, perhaps with legal advice, and medical advice, to come to a conclusion on the injury on duty question'.³³² A/C Fanning wrote to the chief superintendent after this meeting on 17th November 2010 stating:

Please forward a copy of all investigations carried out in relation to the member's work-related stress. From perusal of our records this member reported unfit for work suffering from stress on the following dates

...

³²⁸ Tribunal Documents, pp. 4397-4398

³²⁹ Tribunal Documents, p. 6753

³³⁰ Tribunal Documents, p. 6755

³³¹ Tribunal Documents, p. 6756

³³² Tribunal Transcripts, Day 172, p. 70

*As you are aware if any of the above absences are associated with work-related stress, a full investigation should have been carried out.*³³³

A/C Fanning later wrote to the CMO on 3rd December 2010 stating that:

*Subject to a copy of the investigation into Sergeant Hughes stress related work absence carried out by his local management, the participants of the case conference concurred with the assessment of the Assistant Chief Medical Officer on 6th March 2008 (i.e. “I cannot conclude that these work-related events constitute formal injury on duty”).*³³⁴

Dr Quigley told the tribunal that this letter reflected the conclusion of the case conference and that the participants concurred, subject to what might emerge from the investigation, that the CMO’s view was the correct one.³³⁵

Supt Curran met Sgt Hughes in his office at Coolock Garda Station on 4th January 2011 and shortly after this Sgt Hughes reported sick.³³⁶ In a letter from Dr Reilly to the CMO dated 7th January 2011, Dr Reilly stated that Sgt Hughes was still suffering from work-related stress and that he was ‘... unable to continue his work unless the underlying issue’ was resolved. He recommended that Sgt Hughes should be given sick leave with full pay and entitlements until the matter was resolved.³³⁷

Supt Curran spoke to Sgt Hughes by phone on 14th February 2011, when Sgt Hughes said that there were many outstanding issues preventing him from returning to work.³³⁸

On 17th February 2011, A/C Fanning wrote to C/Supt Phillips seeking reports from local management:

It is noted that the above mentioned member’s absence from the 4th January 2011 to the present was stress related.

You should now interview this member in order to establish the source of the member’s stress and if it is suggested as being work related a full investigation should be carried out.

Ensure that the member is advised of the Welfare Service and any other support that is deemed necessary.

In addition please forward a copy of all investigations carried out in relation to the members work related stress. From perusal of our records this member reported unfit for work suffering from stress on the following dates:

22nd September 2010 – 25th September 2010

17th May 2007 – 21st December 2009

30th January 2007 – 3rd March 2007

18th December 2006 – 28th January 2007

³³³ Tribunal Documents, p. 4406

³³⁴ Tribunal Documents, p. 4407

³³⁵ Tribunal Transcripts, Day 172, pp. 72-73

³³⁶ Tribunal Transcripts, Day 170, p. 80

³³⁷ Tribunal Documents, p. 6887

³³⁸ Tribunal Transcripts, Day 170, p. 81

As you are aware if any of the above absences are associated with work related stress a full investigation should have been carried out. (Minute from this Branch dated 17th November 2010 refers)

*Please treat as urgent and report in early course.*³³⁹

The fact was that no reports of the kind were provided. As mentioned above, the chief superintendent believed that investigation of stress was a medical matter for the CMO and not for local officers. Unfortunately, however, he did not make this position clear in a response and instead left this letter and many reminders from A/C Fanning unanswered. It is also curious that the absence of reports and the local officers' attitude did not emerge at the case conference the previous November.

In a letter to A/C Fanning on 2nd March 2011, Dr Quigley stated that:

At this time Sgt. Hughes continues to report adverse psychological symptoms which interfere with his quality of life on a daily basis and to affect his sense of well-being, to the extent that he is currently unfit for work. On my assessment I was unable to identify sources of stress or anxiety that were not related to his work circumstances. Further it appeared in consultation that the issue of concern no longer related to proximity to the death of a member of the public, nor to reported death threats to the member or his colleague, but rather to Sgt. Hughes' perceptions that he had been bullied, harassed, isolated and he asserts intimidated in work. I note your letter of 03/12/10 to the Chief Medical Officer indicating that a letter had been sent to local management and requested a copy of all investigations carried out in relation to the members work related stress. I look forward to receiving this report in early course, as this is essential to giving a definitive conclusion on the organisation's position on Sgt Hughes' assertion of injury on duty. Given that it is now over 2 ½ months since this request to local management has been made I would be obliged to receive the said report as a matter of urgency.

*Given current unfitness for work, I am arranging further review with Dr. Patrick Devitt, Consultant Psychiatrist ...*³⁴⁰

Dr Devitt's second report is dated 10th March 2011, some six months after the first report. Sgt Hughes told the doctor that he was approached on 3rd January 2011 by his superintendent to retrain for operational duties, but that during this meeting he was, in his own words:

*extremely angry ... I had a bit of a panic attack ... I couldn't talk to him ... I couldn't register what he was saying ... I was just looking out the window ...*³⁴¹

The doctor's conclusions in his previous report stood. Sgt Hughes found the workplace extremely stressful and regarded it as an unsafe working environment causing anxiety, anger and serious mistrust. In that mental state he was temporarily unfit for garda duties for three months. Dr Devitt said '*[i]t is vital that steps are taken urgently to address the matters raised by Sgt. Hughes*' and if he could be convinced that they were being approached in good faith by the authorities it was likely his mental state would improve.³⁴²

³³⁹ Tribunal Documents, p. 4433

³⁴⁰ Tribunal Documents, p. 4442

³⁴¹ Tribunal Documents, p. 1370

³⁴² Tribunal Documents, pp. 1370-1373

This report was forwarded to A/C Fanning by Dr Quigley on 22nd March 2011, who stated in the accompanying letter that it was vital that steps were taken to address the matters raised by Sgt Hughes.³⁴³ Dr Quigley told the tribunal that the format such action would take was for management to determine.³⁴⁴

On 22nd June 2011, an exasperated A/C Fanning wrote once again to the divisional officer under the heading 'RE: SICK REPORT – Sergeant William P Hughes ... Swords':

I refer to the above and to previous correspondence dated 25th May 2011, 18th April 2011, 25th March 2011, 9th March 2011, 7th January 2011, 3rd December 2010 and 17th November 2010.

Please be advised that a reply from your office is still outstanding in respect of the correspondence listed above. If there is some difficulty in addressing the issues of concern in the correspondence, please advise this office by way of interim report, advising of the current status and the difficulties encountered.

I again attach all previous correspondence in relation to this matter which remains unresolved and await your immediate reply.

In addition, I am to request that you prepare and forward a report on the meetings and interactions with Sergeant Hughes since his absence began on the 4th January 2011.

I am to request that you take this matter up personally to ensure a reply is submitted to this office forthwith.

Treat as [extremely urgent] and reply by return.³⁴⁵

On 14th July 2011, Inspector Luke Lacey reported as follows to Supt Curran:

I refer to the above matter and the attached correspondence from assistant Commissioner HRM.

On 22nd April 2011 I met with Sergeant Hughes who submitted the attached report to me outlining what he perceives to be the source of his ongoing illness. Sergeant Hughes states that his current absence on sick leave relates to the same matters that caused his previous protracted absences on sick leave since December 2006.

I cannot find any investigation that was conducted specifically into the illness of Sergeant Hughes however Sergeant Hughes states that all matters raised by him were brought to the attention of the investigation team into a Disciplinary Investigation carried out against him and also the investigation team into a Whistleblowers enquiry. I understand that these matters have been fully reported on previously.

Sergeant Hughes further states that he has previously made a formal complaint under the Garda policies regarding his alleged bullying, harassment, isolation and intimidation at work. He states that the only response he received was from Assistant Commissioner Clancy, which stated that his complaint was 'not within the ambit' of the said policies.

I have asked Sergeant to outline in detail his allegations and I have arranged a further meeting with him on Monday 18th inst.³⁴⁶

³⁴³ Tribunal Documents, p. 4460

³⁴⁴ Tribunal Transcripts, Day 172, p. 80

³⁴⁵ Tribunal Documents, p. 4480

³⁴⁶ Tribunal Documents, p. 8471

In a letter to C/Supt Phillips dated 29th July 2011, Supt Curran stated as follows:

With reference to the above and memos of Assistant Commissioner Fanning, H.R.M. dated 9th and 25th March 2011, I attach the report of Inspector Luke Lacey. Sergeant Hughes undertook to provide written details of the nature of his current complaint to Inspector Lacey by the 18th April 2011, but has not yet been received to date.

No investigation was conducted locally in respect of any specific 'injury on duty' to Sergeant Hughes. The nature of the 'injury on duty' contention related to a wide range of events and issues some of which were the subject of investigations by Assistant Commissioner Feehan.

Sergeant Hughes and I had a conversation on the 4th January 2011 in my office. A short time after this conversation took place Sergeant Hughes reported sick for duty – this conversation related to the re-training required in order for him to be prepared for operational duties. Sergeant Hughes had undergone a certain amount of training regarding administration issues. I told him that I believed that further training was required. He indicated that he had little desire to undergo further training for his greater integration into the operational role. He appeared to be anxious and mildly upset at this prospect.

I spoke to Sergeant Hughes later that day by telephone and he informed me that his sick report was a medical issue that he would discuss with his doctor.

I again spoke to Sergeant Hughes by telephone on the 14th February 2011 in respect of his sick leave. He stated that there were many issues outstanding which prevented him from returning to work. As in many previous conversations I assured him of my full support in assisting him in returning to a full operational role.

Sergeant Hughes in my own personal opinion was accommodated very significantly by placing him in the temporary administrative role in the Coolock Staff Office. He performed this role since December 2009. I had many conversations with him regarding his work and I was under the impression that he was relatively content whilst performing this duty.

His main complaint was that he was unhappy that the many issues that he reported to the Garda authorities had not been dealt with to his satisfaction. He never complained to me of any bullying incident that occurred whilst performing the 'light duties' in Coolock Garda Station.

I refer to the memo dated the 25th March 2011 where (3rd paragraph) the Chief Medical Officer advises that Sergeant Hughes "asserts that he finds the An Garda Síochána workplace extremely stressful and regards it as an unsafe working environment causing him anxiety, anger and serious mistrust".

No issue of this nature has been brought to my attention by Sergeant Hughes. However on receipt of Sergeant Hughes report I will examine it and report further.

Forwarded for your information and attention.³⁴⁷

Dr Quigley told the tribunal that he did not recall receiving this report or being told about the substance of it.³⁴⁸

³⁴⁷ Tribunal Documents, pp. 4503-4504

³⁴⁸ Tribunal Transcripts, Day 172, p. 86

In a letter to A/C Fanning dated 29th July 2011, Dr Quigley said that *'[f]rom the medical perspective I again underscore the importance of interventions of management in relation to addressing the issues as previously raised by me 22/03/11. At this stage I request an urgent report of management actions with regard to my advices of 22/03/11'*.³⁴⁹

At the time of Dr Devitt's third report on 6th October 2011, Sgt Hughes had remained off work. He complained that managers would not deal with the issues. They had cut his pay since June. His personal injury action in respect of bullying, harassment, corruption and malpractice on the part of An Garda Síochána was due before the High Court in November 2011. He described his current medical condition as being worse than ever. Dr Devitt felt that Sgt Hughes was temporarily unfit for work. He felt that if Sgt Hughes could achieve a sense of vindication as a result of his proceedings it was likely that his mental state would improve.³⁵⁰

Dr Quigley wrote to Dr Susan Keenan, now Sgt Hughes's general practitioner, on 17th October 2011 enclosing Dr Devitt's report and stating that if Sgt Hughes could achieve a sense of vindication in the High Court proceedings, his mental state was likely to improve.³⁵¹ He confirmed to the tribunal that this view to *'hold off'* was based on the independent report of Dr Devitt.³⁵²

In an exchange of emails with Dr Devitt on 13th February 2012, Dr Quigley asked for clarity as to *'the current working diagnosis in relation to this unfitness for work'*.³⁵³ Dr Devitt replied:

His symptoms currently causing him to be unfit for Garda duties are those of anger, anxiety, distrust, obsessive rumination regarding his case and every aspect of his perceived ill-treatment by An Garda [Síochána]. While he previously suffered PTSD type symptoms such as intrusive recollections, avoidance and anxiety these or the nature of the trauma did not rise to the level required for a diagnosis of PTSD.

*Sgt Hughes therefore has no formal Psychiatric diagnosis. His working diagnosis relating to unfitness for work may be described as "Work-associated Emotional Distress temporarily incompatible with effective work performance".*³⁵⁴

On 28th February 2012, Dr Keenan wrote to Dr Quigley saying that she felt that in Sgt Hughes's own best medical interest it would be advisable for him to take a medical discharge from An Garda Síochána. Dr Keenan said she felt that the huge psychological toll that the previous number of years had taken had effectively made Sgt Hughes unfit to return to work.³⁵⁵

Dr Devitt's fourth report is dated 29th March 2012, when Dr Quigley asked him *'to provide an opinion on Sgt. Hughes' current and likely future psychiatric state with respect to current occupational fitness "in light of the newly received letter from Dr Susan Keenan"*. In consultation with Sgt Hughes, the sergeant told Dr Devitt that it was his opinion that he should be medically discharged: *'I think a medical discharge would actually benefit me ... it's one way of getting a monkey off my back ...'* However, despite these views, Dr Devitt felt that the issue of retirement on medical grounds

³⁴⁹ Tribunal Documents, p. 4505

³⁵⁰ Tribunal Documents, pp. 1374-1377

³⁵¹ Tribunal Documents, p. 6894

³⁵² Tribunal Transcripts, Day 172, p. 85

³⁵³ Tribunal Documents, p. 1378

³⁵⁴ Tribunal Documents, p. 1378

³⁵⁵ Tribunal Documents, p. 6850

should not be addressed until Sgt Hughes's High Court action was settled because there was still a possibility that if he felt a sense of vindication his mental state would improve to the extent that he could resume garda duties.³⁵⁶

In a subsequent letter to A/C Fanning on 13th April 2012, Dr Quigley advised that '*Sgt. Hughes grievance against An Garda Síochána should be resolved through standard non-medical channels*'.³⁵⁷ He told the tribunal that he had in mind '*any channel through Human Resource management and local management interacting with the member*'.³⁵⁸

Dr Keenan later wrote to Dr Quigley on 5th June 2012 referring to the settlement of his action and saying that:

*Mr Hughes although relieved that the case has been settled still feels extremely upset that the issues that caused him distress in the first place have not been addressed. I can only hope that a removal from the constant reminder of these issues will help in his longer term recovery.*³⁵⁹

In this letter Dr Keenan further supported the medical discharge and '*I [reemphasise] the fact that Mr Hughes is not medically fit to return to work*'.³⁶⁰

The Assistant CMO reviewed Sgt Hughes on 26th July 2012, at which time the sergeant said that the High Court proceedings had been concluded by an out-of-court settlement but he had not had the benefit of the court's opinion on his assertions. Dr Quigley sought a further independent assessment.³⁶¹

The fifth and final report of Dr Devitt is dated 2nd August 2012, at a time when the High Court case had been settled. Nevertheless, the doctor said that throughout the interview with Sgt Hughes the pervasive impression was one of anxiety with significant obsessionality, in particular in relation to the case just settled. The doctor concluded as follows:

1. *Despite settlement of his case, Sgt. Hughes' mental condition continues to be as it was during previous assessments ...*
2. *On that basis, he would now still be regarded as unfit for work on grounds of anxiety.*
3. *There is no reasonable prospect, given his relationship with his employers, of an improvement in these symptoms of anxiety.*
4. *The symptoms of anxiety are situational in nature and occur when Sgt. Hughes thinks about, speaks about or encounters any aspect of An Garda [Síochána].*
5. *Sgt. Hughes' symptoms of anxiety and obsessionality certainly could be construed as symptoms caused by his attempts to adjust to his perceived very difficult situation.*
6. *In terms of a technical diagnosis, according to the Diagnostic and Statistical Manual (IV) ... Sgt. Hughes would currently qualify for a diagnosis of Adjustment Disorder with Anxiety Symptoms.*
7. *While this condition is usually self-limiting when the situation causing the need to adjust ceases, in some cases this can be ongoing or chronic.*

³⁵⁶ Tribunal Documents, pp. 1379-1382

³⁵⁷ Tribunal Documents, p. 4587

³⁵⁸ Tribunal Transcripts, Day 172, p. 93

³⁵⁹ Tribunal Documents, p. 6899

³⁶⁰ Tribunal Documents, p. 6899

³⁶¹ Tribunal Documents, p. 6900

8. *This would appear to be the case with Sgt. Hughes.*
9. *He would, therefore, qualify for a formal diagnosis of Adjustment Disorder with Anxiety Symptoms (Chronic).*
10. *On that basis, he is not in a position to fulfil the normal duties of his occupation as a Garda Sergeant to a satisfactory level.*
11. *It would, therefore, be to the benefit of An Garda Síochána organisation and Sgt. Hughes to retire him on medical grounds.*
12. *Sgt. Hughes is a genuine individual and medical retirement as recommended will offer him the opportunity to re-build his life.³⁶²*

Dr Quigley again spoke to Sgt Hughes on 11th September 2012 in relation to retirement on medical grounds. He also wrote to Dr Keenan outlining the position and saying that he would complete the form recommending ill-health retirement in the absence of any appeal.³⁶³ She responded by letter of 27th September 2012 confirming that she and her patient were in agreement that he should avail himself of ill-health retirement.³⁶⁴

On 15th October 2012, Dr Quigley completed the relevant form with an accompanying letter stating:

... [w]hilst the category of this illness would not normally be associated with permanent incapacity; the independent advisor indicates that there is no reasonable prospect of an improvement in his condition that could be associated with a sustained and effective resumption of his work. There are sustaining factors of his condition operating in a fixed way that are rooted in his perception of his work circumstances and his responses thereto. No medical interventions have been identified [that] would address or mitigate this.

Accordingly I advise that Sgt Hughes be retired on grounds of ill-health.³⁶⁵

The process was concluded in February 2013 when Sgt Hughes's retirement took effect.³⁶⁶

Complaint made by Sergeant William Hughes

In his statement to tribunal investigators, Sgt Hughes said that:

I was first absent from work between 19 December 2006 and March 2007. I believe that the fact that I was not visited by Garda management whilst on sick leave during this period or the fact that there was no investigation into the work related stress which was the reason for my absence represented targeting of me. I believed at the time I was being isolated, that this was an abuse of process in respect to non compliance with Garda code in respect of absence of work through illness ... I felt that the non interview of me by the Garda authorities represented suppression of the related investigations into Baiba Saulite. ... When I returned to work in April 2007 ... I was not sought out by management in respect to a return to work interview following my extended absence. Again I believe this represented targeting of me, as it isolated me, it was an abuse of process, and I believe represented a cover up in relation

³⁶² Tribunal Documents, p. 1384

³⁶³ Tribunal Documents, p. 6901

³⁶⁴ Tribunal Documents, p. 1389

³⁶⁵ Tribunal Documents, pp. 4688-4689

³⁶⁶ Tribunal Documents, p. 5605

to the serious issues I had raised, the systems failure. The person I believe who targeted me in this regard was Superintendent Mark Curran. July 2007 – December 2009 represented my second extended absence from work due to work related stress. Again my absence for this period was not properly investigated and I believe this to be targeting of me in the context of isolation, cover up, suppression of investigations and an abuse of process. The people who I believe were targeting me in this regard were local management (Superintendent Mark Curran, Chief Superintendent Gerard Phillips, Santry) Assistant Commissioner HRM, who I believe to be Catherine Clancy. Also, I believe that Dr Richard Quigley, Assistant CMO, his continued referrals of me to psychiatric assessment along with his knowledge that the matters had not been investigated by local managers represented discrediting of me.³⁶⁷

Sgt Hughes told tribunal investigators that:

On 10 October 2007 HRM informed me that my pay had been cut from 3 September 2007, I consider this to be an abuse of process, harassment of me and inflicting financial hardship on me. To explain, a decision can be made that absence can be due to work related matters (i.e. injury on duty), which means your pay is not affected, or otherwise. However, I felt that no determination could possibly have been made at that juncture, however, Garda management opted to cut my pay deliberately without that determination having been made. The persons I believe who was responsible for this was the Assistant Commissioner HRM. On 02 May 2008 my pay went from half pay to pension rate Inspector Hanrahan notified me of this. I believe once again that I was targeted and that this was an abuse of process, again to reiterate there was no workplace investigation into my absence from work which should have occurred. I believe the Assistant Commissioner HRM was responsible for this along with my line managers up to and including the office of HRM ... I believe I was targeted financially and faced further isolation.³⁶⁸

In his statement to the tribunal, Sgt Hughes said in relation to his reduced pay that:

I believe that this was yet another tactic condoned by garda management – a way of 'starving' a 'whistleblower' back to work.

This tactic actually worked in 2010 when I had no choice but to return to the workplace (on light duties) due in principal to financial constraints and even though the issues affecting me had not been addressed by the garda authorities.³⁶⁹

In his evidence, Sgt Hughes was asked by counsel for the tribunal about his understanding of the investigation into his stress and what was required. Sgt Hughes said that the local chief superintendent, or any inspector acting on his behalf, should have sat him down and asked him to explain precisely what the elements of his work-related stress were.³⁷⁰ He said that he would have outlined the '[f]ailure in management' and it could have been conveyed to HRM that these were the matters that were keeping him out.³⁷¹ He was asked the following by the Chairman:

³⁶⁷ Tribunal Documents, pp. 37-38

³⁶⁸ Tribunal Documents, pp. 38-39

³⁶⁹ Tribunal Documents, p. 74

³⁷⁰ Tribunal Transcripts, Day 160, p. 75

³⁷¹ Tribunal Transcripts, Day 160, p. 76

CHAIRMAN: ... So the problem is that nobody actually recorded your concerns about systems failure, is that right?

A. Yes. My worries and my concerns in that respect.

CHAIRMAN: It wasn't enough to say this unfortunate man is stricken with work related stress because of the Baiba Saulite affair ... [t]hat wasn't sufficient?

A. Not as far as I was concerned.³⁷²

In respect of the determination under Code 11.37, Sgt Hughes was asked the following:

CHAIRMAN: And if they say yes, this unfortunate man was investigating the abductions, successfully did that, and he was concerned in the whole matter, and that has had a terrible impact ... would that be a complete investigation as far as 11.37 is concerned?

A. With respect, Mr. Chairman, I don't think so. I think if management had approached me, I would have given them probably something similar as I furnished to Inspector Mangan but actually elaborating further as to where I saw failures in management of serious matters that affected me and, you know, my perceptions of how things had transpired in relation to the murder of Baiba Saulite.

CHAIRMAN: Okay. And your contention ... is ... that the fact that they didn't go into the circumstances in more detail with you personally by sitting you down and saying what's all this about, you say that represented a failure to investigate, as they were required to do under 11.37, and as the doctors recommended?

A. I think so.³⁷³

Following a direction from HRM that Sgt Hughes be interviewed in relation to his work-related stress, Sgt Hughes met with Supt Curran on 5th October 2010. Sgt Hughes was asked by counsel for the tribunal about this meeting and his subsequent report to the superintendent dated 12th October 2010. Sgt Hughes told the tribunal that the matters he wanted to report to Supt Curran were the 'non-medical' issues that HRM did not have full details of.³⁷⁴ Sgt Hughes was asked by the Chairman to clarify these 'non-medical' issues:

The non medical issues were that following the murder I had serious concerns that ... there had been a breakdown in communications between the various branches involving Baiba Saulite and John Hennessy and the various divisions, and there was information there in the domain of the Gardaí before she died ... that wasn't relayed to me and as a result of that I felt that I was at a fierce disadvantage to advise Baiba in relation to possibly her safety or the way forward. I felt that I was isolated in these matters. I felt that by raising these issues, that I was isolated in the workplace and then targeted through the disciplinary process, the fact finding process, the disciplinary process. And indeed, in 2008 and '09 when I went to the confidential recipient I furnished an extensive report setting out full details of the non medical issues, and I specified in that report that if ... the confidential recipient process, could not deal with ... some of the issues there in relation to the non medical issues, I specifically

³⁷² Tribunal Transcripts, Day 160, p. 76

³⁷³ Tribunal Transcripts, Day 160, pp. 77-78

³⁷⁴ Tribunal Transcripts, Day 161, pp. 17-18

*requested that the issues be sent to the relevant department for attention. And at my meeting with Superintendent Curran in 2010, to which this document refers, I was conscious that Garda management at the highest level had received full details from me in relation to the non medical issues that were affecting me under the cloak of the confidential recipient process.*³⁷⁵

In regard to the source of his stress, Sgt Hughes said that it was not just the 'systems failure' and that the reports he made to the senior management clearly pointed out the source of his stress prior to his meeting with Supt Curran.³⁷⁶

He was asked the following by the Chairman:

CHAIRMAN: ... what's wrong with ... when I described the source of your stress as the deficiencies of policing in regard to Baiba Saulite?

A. Well, not just the deficiencies in policing, but the targeting of me and isolation of me following my raising those issues with management following the murder.

And:

CHAIRMAN: ... can you understand, that your complaints about the deficiencies in policing were not a matter for Superintendent Curran in regard to injury on duty under 11.37? Do you agree with that? Do you understand that?

A. I am afraid, Mr. Chairman, all the issues affecting me and my workplace absences there are got to do with the deficiencies of policing and the response of Garda management afterwards when I raised those issues in relation to alleged deficiencies in policing.³⁷⁷

It was put to Sgt Hughes by counsel for the tribunal that there appeared to be genuine debate between the CMO and HRM as to whose responsibility it was to determine the issue of injury on duty. Sgt Hughes agreed that this appeared to be the case.³⁷⁸

In regard to the recommendation by An Garda Síochána that Sgt Hughes be medically discharged, Sgt Hughes complained in his interview with tribunal investigators that:

*On 18 September 2007 I had my first consultation with the Assistant CMO, (Dr Richard Quigley) he referred me for psychiatric evaluation whilst having no reports from Garda management setting out the reasons for my absence from duty. This I considered to be an abuse of process and harassment, this became the norm, I was continually being referred for psychiatric assessment when it was known or should have been known that Garda management were failing to deal with the serious issues involving me in the workplace. On 11 July 2008 An Garda Síochána recommended that I be medically discharged, again I believe this to be targeting because once again the workplace matters had not been investigated by local management. The persons who targeted me in respect to these matters were Assistant Commissioner HRM and the Assistant CMO, Dr Richard Quigley, along with my line managers up to and including the office of HRM.*³⁷⁹

³⁷⁵ Tribunal Transcripts, Day 161, pp. 17-18

³⁷⁶ Tribunal Transcripts, Day 161, pp. 19-20

³⁷⁷ Tribunal Transcripts, Day 161, p. 20

³⁷⁸ Tribunal Transcripts, Day 161, p. 29

³⁷⁹ Tribunal Documents, pp. 45-46

Sgt Hughes told the tribunal that he was targeted by HRM:

- A. ... And what I'm saying, the problems I was having were largely non medical which were causing my condition, and, as with the report through Dr. Griffin that I submitted [it] could be plainly seen that all my problems were really related to the workplace matters and non medical issues. And I just had a difficulty there with regard to a decision being made for medical retirement without all those issues being explored.
- Q. Yes, but are you suggesting that this is an incident of targeting of you by senior management?
- A. HRM?
- Q. Yes.
- A. Yes.
- Q. And why do you say that?
- A. Well, the subsequent reports there to HRM, I think Dr. Quigley actually advises them that they should look at the non medical issues, and he categorises the non medical issues in legal issues, industrial relations matters, must be reported on by HRM before a full decision can be made on medical retirement. He said it was a complex matter.³⁸⁰

Counsel for the tribunal asked Sgt Hughes the following:

- Q. But the decision to retire you on medical grounds is a separate decision to that, and he has expressed his [opinion] that you should be retired on medical grounds, and he has based that on the opinion of an independent psychiatrist.
- Now, do you say that that decision to retire you on medical grounds, or that advice that you should be retired [on] medical grounds was an instance of targeting?
- A. On behalf of by Dr. Quigley, is it?
- Q. Yes.
- A. Discrediting, I'd say, in respect of that he was going on psychiatric advice – well the psychiatric advice I had was already furnished a comprehensive report to Dr. Griffin outlining my difficulties and hoping those difficulties then, if those difficulties were tackled by Garda management, I am sure it would have alleviated my position from a mental health point of view.³⁸¹

When pressed as to whether he had any complaint about Dr Quigley, he explained the basis of his criticism in an answer that confirmed something of the essence of his case:

I feel that, Dr. Quigley knew that the non medical issues that were underpinning my medical condition were not being addressed by senior management.

...

... he would be cognizant of the fact that they were not being sorted out, and ... if there was an insistence that the matters be sorted out before I was referred again further for

³⁸⁰ Tribunal Transcripts, Day 160, pp. 20-21

³⁸¹ Tribunal Transcripts, Day 160, p. 22

*psychiatric assessment, I think that would have gone a long way towards resolving the issues and psychiatrists wouldn't need to have been involved at all if the non medical issues were addressed by senior management.*³⁸²

Sgt Hughes told the tribunal that he had no choice but to retire:

*Well I felt ... I had no choice, I was worn down by the entire process. Management were not looking after the matters that were affecting me in the workplace and I felt I had no option, in 2012, but to pursue this route for my own personal benefit.*³⁸³

In regard to delays in the retirement process, counsel for An Garda Síochána suggested that they were not the fault of the gardaí. Sgt Hughes responded that:

*No, I disagree. The fault lay completely at the door of the Garda management in failing to investigate the matters that were concerning me and causing my sickness absences, and they were not sending their reports to HRM for even Dr. Devitt's consideration or the ACMO's consideration. And without those reports being forwarded, I believe that a proper decision could not be made by the medical people, and HRM for that matter, in relation to my position.*³⁸⁴

During the course of Sgt Hughes's evidence a letter, dated 14th February 2022, was received from Sgt Hughes's solicitor withdrawing his allegations against A/C Clancy. It stated:

Sgt Hughes accepts that she did not herself deliberately target or attempt to discredit him by failing to carry out an investigation into the underlying reasons for his work-related stress and consequent absence from work as required by the Garda Code. A.C. Clancy tried to get reports on these issues from local management but was unsuccessful. Sgt Hughes did not know this at the time.

Sgt. Hughes' position now, given what he has read and heard at the Tribunal in recent weeks, is that the H.R. system, which A.C. Clancy was presiding over, was (in his case anyway) quite dysfunctional. A.C. Clancy was unable to get the required sickness absence/ reports and, as a consequence, failed to establish whether his work-related stress and psychiatric condition (PTSD) was due to an 'injury on duty' as she should have done. Furthermore, A.C. Clancy directed that his pay be cut in September of 2007 even though he had requested a determination of the issue whether he had suffered an 'injury on duty' by letter dated 7th May 2007 (p. 3875) and this application had not been determined, and also allowed the medical discharge process in 2008 to reach a conclusion without sight of the sickness/absence reports which may have pointed to an alternative resolution in his case.

*However, in all of the circumstances that arise, Sgt. Hughes now believes that these were administrative failings and that A.C. Clancy did not bear ill-will against him and most likely did not intend to target or to discredit him because of any protected disclosure he had made.*³⁸⁵

On 30th March 2022, during the course of legal submissions, counsel for Sgt Hughes confirmed that his client was withdrawing his allegations against A/C Fanning.³⁸⁶

³⁸² Tribunal Transcripts, Day 161, p. 86

³⁸³ Tribunal Transcripts, Day 163, p. 41

³⁸⁴ Tribunal Transcripts, Day 163, p. 48

³⁸⁵ Tribunal Documents, p. 8483

³⁸⁶ Tribunal Transcripts, Day 173, pp. 9-13

Responding Statements and Evidence on the Issues

Dr Richard Quigley

In his statement to the tribunal, Dr Quigley outlined in detail his interactions with Sgt Hughes, HRM, local management and the independent specialists reporting on Sgt Hughes. He referred to the allegation by Sgt Hughes that the medical discharge process would not stand up to scrutiny:

The member was considered to have a chronic mental health condition. An adjustment disorder with anxiety, where his perceptions regarding An Garda Síochána were acting in a fixed way as aggravating and sustaining factors in his illness. It was considered unlikely that he would be able to sustain attendance and effectiveness in a policing role either in the shorter or in the longer term. No medical interventions were identified that were considered likely to be able to improve his condition; accordingly, an ill-health retirement was advised.

In the above context, I consider that the ill-health retirement is likely to stand up to an independent medical review.³⁸⁷

With regard to the allegation that he persisted with sending Sgt Hughes to a psychiatrist in September 2007, Dr Quigley responded that Sgt Hughes had already seen a treating psychiatrist and *[i]t was considered appropriate he be reviewed by an independent specialist to clarify his mental health and fitness for policing duties, in the context of ongoing certified sickness absence*.³⁸⁸ In his evidence to the tribunal he said that:

... it's agreed that he had presented with post traumatic stress disorder, so I think it is reasonable that independent psychiatric opinion be sought where somebody is presenting with symptoms. And indeed, he had been referred to Dr. Joe Fernandez prior to the point of my first consultation.³⁸⁹

With regard to the allegation of continuous referrals to specialists, he said that:

The function of an Occupational Health assessment, in the context of ongoing sickness absence, is to carry out a medical assessment to inform the advice to Garda management on fitness for duty, on workplace accommodation that might support sustained attendance and effectiveness in a role, and not in any way to seek to discredit the Garda member.³⁹⁰

He continued that:

Independent Specialist assessments are sought to support the occupational health assessment process, clarifying the medical condition, and to be in a position to advise Garda management on fitness for duties, and on workplace accommodations that are appropriate to the member's medical status. I do not accept that the seeking of an independent specialist opinion, by an occupational health physician, is discrediting, or is seeking to discredit, the person being referred for such opinion.³⁹¹

³⁸⁷ Tribunal Documents, pp. 1338-1339

³⁸⁸ Tribunal Documents, p. 1339

³⁸⁹ Tribunal Transcripts, Day 172, p. 136

³⁹⁰ Tribunal Documents, p. 1339

³⁹¹ Tribunal Documents, p. 1340

Dr Quigley told the tribunal that he did not recall Sgt Hughes telling him that he did not want to be referred or re-referred to any specialist.³⁹² He pointed out that he was not aware of any protest by Sgt Hughes to his doctor or to any of his treating psychiatrists that he was being referred against his will.³⁹³

In cross-examination, Dr Quigley agreed with counsel for Sgt Hughes that the issue of injury on duty was a question for management to decide, with his advice on the medical side of things.³⁹⁴ He was asked about the role of independent specialist advice:

*... an independent specialist report may cover the issue of an injury on duty ... or the extent of the medical problem arising from an injury on duty.*³⁹⁵

In respect of his meeting with Sgt Hughes in September 2007, Dr Quigley agreed with counsel for Sgt Hughes that he was unable to identify issues outside of work contributing to his stress:

Q. *So this was rooted in work and work related issues, isn't that right?*

A. *Yes.*³⁹⁶

He was referred to his meeting with Inspector Matthew Nyland and the HRM legal section and his subsequent report dated 6th March 2008 where he said that he could not conclude that the work-related events constituted injury on duty.³⁹⁷ He was asked the following:

Q. *And what I wanted to ask you about, Dr. Quigley is: that appears, in ... March 2008, to be a somewhat different position to the position you were adopting approximately six months earlier, in September 2007, where you had, in your first meeting with Sergeant Hughes, indicated that the question of injury on duty was one for management to decide?*

A. *Yeah.*

Q. *You seem to have – or perhaps you haven't – changed your view as to who is to decide what injury on duty is?*

A. *I suppose in the meeting I was asked about what had been presented, and I gave my impression of what had been presented by local management.*³⁹⁸

Dr Quigley was asked by counsel for Sgt Hughes about his statement in the report that he was pressed on this issue by an inspector from HRM:

A. *My recollection is that he specifically asked me that question in the meeting, yes.*

Q. *That he specifically asked you that question. And if I were to suggest to you that you were pressed or pressurised to provide that conclusion, or provide advice, would you agree with that?*

A. *I was asked a question and I gave a considered answer, based on the information I had.*³⁹⁹

³⁹² Tribunal Transcripts, Day 172, pp. 145-147

³⁹³ Tribunal Transcripts, Day 172, p. 147

³⁹⁴ Tribunal Transcripts, Day 172, p. 106

³⁹⁵ Tribunal Transcripts, Day 172, p. 107

³⁹⁶ Tribunal Transcripts, Day 172, p. 110

³⁹⁷ Tribunal Documents, pp. 8102-8103

³⁹⁸ Tribunal Transcripts, Day 172, p. 111

³⁹⁹ Tribunal Transcripts, Day 172, p. 112

Dr Quigley was referred to his subsequent letter of 9th June 2008 which stated:

I note that on 6th March 2008 I had given earlier advices that my best sense of what had happened is that the work events described contributing to his ill health did not constitute an injury on duty. I note that this case is a particularly complex one with the following aspects:

- *Grievance/welfare issues*
- *Disciplinary issues*
- *Legal issues*
- *Industrial relations issues*

Accordingly I consider that you must decide upon the issue of injury on duty based on the medical advice as given but also based on the outcome of all these other issues, which must be reported upon to you by the relevant parts of the organisation of An Garda [Sióchána].⁴⁰⁰

He was asked the following by counsel for Sgt Hughes:

- Q. *So, in June you're making it clear once again, I suppose reverting to the position from September, that the medical component is one aspect of this, but that ultimately injury on duty is to be determined by Human Resource Management, is that right?*
- A. *Yeah. The regulation makes reference to a member's chief superintendent making that decision normally. But in cases ... of complexity, that there would be the input of Assistant Commissioner Human Resource Management ...*
- ... And I would add to that ... the expectation that the Chief Medical Officer would perform essentially non-medical decisions added to the complexity and perhaps also Sergeant Hughes's ... expectation of what I was to do didn't accord with the role of an occupational health physician. So it was complex for a number of reasons ...⁴⁰¹*

Dr Quigley was referred to his letter to HRM dated 28th October 2010, where he disputed that it was a matter for the CMO to adjudicate on the issue of injury on duty.⁴⁰² He was asked the following by counsel for Sgt Hughes:

- Q. *Would it be fair to say that by this stage you had been raising, since your first letter to Assistant Commissioner Clancy in 2007, the need for management input and the need for input outside of medical input on the question of injury on duty. You're still raising the same issues in 2010, that there was some frustration perhaps or unhappiness on your part that it was still remaining an issue some three years later, or two and a half years later?*
- A. *I suppose I was surprised, in 2010, to receive correspondence indicating that it was an issue to be determined by the Chief Medical Officer. There is a set of regulations called the Garda Code, and it is section 11.37 of that Code that covers injury on duty provisions with regard to pay and the decision is to be [made] by the chief superintendent and, essentially, if I summarise, in complex cases by the Assistant Commissioner Human Resource Management.*
- ...
- And, sorry, 11.37 doesn't mention medical or Chief Medical Officer.⁴⁰³*

⁴⁰⁰ Tribunal Documents, p. 3978

⁴⁰¹ Tribunal Transcripts, Day 172, pp. 113-114

⁴⁰² Tribunal Documents, pp. 4397-4398

⁴⁰³ Tribunal Transcripts, Day 172, pp. 122-123

Referring to the discipline process, counsel for Sgt Hughes suggested to Dr Quigley that the discipline investigation interview on 29th October 2008, over a year after the process began, took a toll on Sgt Hughes. He responded:

Yes. But on the other hand I would emphasise that, you know, it is a police force in a transparent democracy. You know, the exercise of policing powers is a considerable privilege in one sense and it is reasonable that if there is a question of accountability, that members of the force might be held accountable. Perhaps, you know, it is slightly unfortunate that the word 'discipline' comes into it, but it is one mechanism of accountability within the organisation, and probably a very important one. But my preference, where at all possible, in general, is to have disciplinary matters brought to conclusion as early as is achievable, in fairness to both management and to the member.⁴⁰⁴

Dr Quigley agreed with counsel for Sgt Hughes that he was not aware of a decision reached prior to Sgt Hughes's retirement as to whether he had or had not been injured on duty.⁴⁰⁵ Dr Quigley told the tribunal that:

I think in an ideal setting where there were reports of work related stress, that there is a management process to address the issues of work related stress, in parallel with an occupational health assessment of the employee or of the staff member, or the Garda member in the case of An Garda Síochána, that both processes would be happening in parallel.⁴⁰⁶

Chief Superintendent Mark Curran

Supt Curran was promoted to the rank of chief superintendent on 21st February 2012. In his statement to the tribunal, C/Supt Curran said that he *'took the view that the source of [Sgt Hughes's] stress was best dealt with by a referral to the C.M.O. In that belief a request was made on the 14th May 2007 ... from Inspector Donal Waters Coolock on my behalf that the matter be referred to the Chief Medical Officer ...'*⁴⁰⁷

C/Supt Curran referred to the request from HRM that Sgt Hughes be interviewed in relation to the source of his stress and he said that he referred this to Sgt Fitzpatrick.⁴⁰⁸ In his statement, C/Supt Curran said that he concurred with the view expressed by Sgt Fitzpatrick on 29th June 2007 that a decision regarding the nature of Sgt Hughes's stress was a matter for the CMO.⁴⁰⁹

C/Supt Curran also outlined his communications with his divisional officer and Sgt Hughes in relation to this issue.

He stated that Inspector Donal Waters was in contact with Sgt Hughes and confirmed that the sergeant was in contact with welfare officer Inspector Della Murray. He said that he reported this to his chief superintendent on 18th July 2007.⁴¹⁰

In a further report to his divisional officer on 31st July 2007, Supt Curran stated that Sgt Hughes had suffered stress following the recent service of discipline papers and that *'[h]e is in regular contact with both myself and Inspector Cryan. The stress ... which he referred to in previous sick*

⁴⁰⁴ Tribunal Transcripts, Day 172, p. 130

⁴⁰⁵ Tribunal Transcripts, Day 172, p. 127

⁴⁰⁶ Tribunal Transcripts, Day 172, p. 137

⁴⁰⁷ Tribunal Documents, p. 1050

⁴⁰⁸ Tribunal Documents, p. 1050

⁴⁰⁹ Tribunal Documents, pp. 1050-1051

⁴¹⁰ Tribunal Documents, p. 1051

certificates, relates to his concerns around the Baiba [Saulite] murder. He initially had fears about his and his family's safety but this has abated somewhat in recent times'.⁴¹¹

C/Supt Curran stated that he spoke to Sgt Hughes on 18th June 2008 in relation to the proposal that he medically retire from the force and provided a report to C/Supt Phillips on 17th July 2008.⁴¹² He also referred to the document handed to him by Sgt Hughes at their meeting on 17th December 2008. He said that:

1. *... The work related stress absences as outlined in the relevant correspondence in May, June and July 2007 clearly indicate that the determination of this was a matter for the Chief Medical Officer (C.M.O.). Subsequently Sergeant Hughes met with the C.M.O. or a psychiatrist on his behalf having been notified of this referral in July 2007.*
2. *He states that he had not been formally interviewed to date in that regard by Garda Management. I believe that his referral to a psychiatrist was a management act generated by both his and supplementary correspondence from May 2007 onwards. In my correspondence to Chief Superintendent D.M.R. North dated 7th November 2008 ... I refer to a telephone conversation that I had with Sergeant Hughes on the 8th October 2008 where he had raised the matter that nobody had formally interviewed him as to the reason he was out sick. My personal view has been that the interview would have been conducted by a medical professional on behalf of the C.M.O., the details [of] which I was not privy to for good reason, as this was a confidential medical matter.*

...

I forwarded the report. As previously addressed I had followed through with actions arising from the matter of his work related stress, a detailed investigation of which could only be carried out by a medical professional.⁴¹³

He said in his evidence that he spoke with Sgt Hughes on 18th February 2009 in relation to the decision that he was fit for light duties.⁴¹⁴ He met again with Sgt Hughes on 5th October 2010 and reported the outcome of this meeting to his divisional officer on 19th October 2010.⁴¹⁵ In the report, he referred to Sgt Hughes's previous protracted sickness absence and said that *'this appears to be a medical legal issue'.⁴¹⁶*

Counsel for the tribunal referred C/Supt Curran to the reduction in Sgt Hughes's pay in September 2007 and the medical certificates that were coming in. Supt Curran said that:

... the way I saw it is, the matter had gone up to the chief superintendent and gone to the ... CMO. And it is my understanding that around that time, sometime mid July or sometime, he had got an appointment with a consultant.⁴¹⁷

⁴¹¹ Tribunal Documents, p. 3903

⁴¹² Tribunal Transcripts, Day 170, p. 45; Tribunal Documents, pp. 688-689

⁴¹³ Tribunal Documents, pp. 1040-1043

⁴¹⁴ Tribunal Transcripts, Day 170, pp. 65-68

⁴¹⁵ Tribunal Documents, pp. 4375-4376

⁴¹⁶ Tribunal Documents, p. 4375

⁴¹⁷ Tribunal Transcripts, Day 170, p. 44

In respect of Sgt Hughes's reduction in pay in May 2008, C/Supt Curran told the tribunal that local management did not have any role in it and it was a feature of the system and automatic.⁴¹⁸

C/Supt Curran was asked whether he thought it was his responsibility or duty to investigate all or any of the matters Sgt Hughes was raising in December 2008 and he replied:

*... I don't think there is anything for me to investigate. My responsibility there is to send it up, and my biggest concern for him was to try and see if I could support him from a welfare point of view, which was the point of that meeting in the first place.*⁴¹⁹

He continued that:

*... if you look at the matters he is raising, a lot of them, they are out of my control. The discipline has nothing to do with me. The matters of the sickness and the pay, it's automatic. ... I was doing what I could and I had reported the issues that he had said to me previously.*⁴²⁰

He recalled that C/Supt Phillips and he facilitated Sgt Hughes's return to work by placing him in an administrative position with light duties. He suggested placing Sgt Hughes in Raheny Garda Station but that did not prove possible:

*... I would have introduced Raheny as an idea, because I was aware of a position that had been free down there similar to the role that he ended up with in Coolock. So I suggested that to him at that time.*⁴²¹

They also arranged for him to get extra pay by doing Sunday work:

*... we gave him the Sunday allowance, and that's in effect double pay ... he wanted to catch up with paperwork, is my memory, that's the reason why he wanted to do it.*⁴²²

C/Supt Curran referred to his meeting with Sgt Hughes on 5th October 2010. The Assistant Commissioner, HRM, had directed an investigation into Sgt Hughes's stress-related sickness absence in September 2010. Counsel for the tribunal asked C/Supt Curran about the meeting and what was discussed. He told the tribunal that:

- A. *I think the simple inquiry: what is the cause of your stress? And I probably would have referred to the Assistant Commissioner's memo. And, at which point he said he wasn't in a position to respond until he spoke to his solicitor and then he came back to me afterwards.*
- Q. *Yes. And what did he say to you when he came back to you?*
- A. *That his concerns relate to all the other issues that predate the period of sickness, and that was a four day period of sickness, then the longstanding concerns were the issues.*⁴²³

In respect of Sgt Hughes's memo of 12th October 2010, C/Supt Curran said that this was the first document he had received from Sgt Hughes giving his own account of work-related stress issues.⁴²⁴ Counsel for the tribunal asked C/Supt Curran what was his understanding of this memo:

⁴¹⁸ Tribunal Transcripts, Day 170, p. 50

⁴¹⁹ Tribunal Transcripts, Day 170, p. 61

⁴²⁰ Tribunal Transcripts, Day 170, p. 63

⁴²¹ Tribunal Transcripts, Day 170, p. 68

⁴²² Tribunal Transcripts, Day 170, p. 71

⁴²³ Tribunal Transcripts, Day 170, p. 73

⁴²⁴ Tribunal Documents, pp. 4366-4367

- A. *I saw it as a medical matter. Again, it's not something I can resolve locally.*
- Q. *Yes. But I mean the medical personnel weren't going to prescribe any inquiries or investigations?*
- A. *No. But if there was any issues, if they wanted any particular niche areas to be clarified, we could have done that.*
- Q. *Were you in any way concerned that HRM, whilst referring to the issue of work related stress, weren't being more specific as to what you were being required to either do or inquire into or report?*
- A. *Yes. It was very general. It was the same format and same use of words in respect of all I I.37s. It was nothing bespoke to the fact that it was work related stress caused by an issue or an injury that wasn't actually identifiable in the normal way.⁴²⁵*

Counsel for the tribunal asked C/Supt Curran what he considered his function and responsibility in respect of the injury on duty issue to be:

- A. *... I had several conversations commencing there on the April one, and so I think it's the cause of stress is really what is of concern here, and I took it that the source of stress, as I reported it was, at the time the threats, the concerns he had, and then it was compounded by the discipline, service of discipline papers in June I think it was.*
- Q. *But I suppose what I want to just be very clear about. Did you consider yourself to have performed what was required of you by simply reporting up that the cause of his stress was his reaction to the Baiba Saulite murder, the inquiry that was being conducted by Chief Superintendent Feehan, the disciplinary inquiry, the failure to hold other inquiries, and his fears for his safety, or did you consider that they were facts which were relevant to somebody else deciding on the issue of injury on duty?*
- A. *Yes, I think, as you know, there is no process here for to guide people like me on the ground around this, and so if you look at the Garda Code, even in the I I.37 is, if there is any doubt the matter should be referred to the Assistant Commissioner HRM.⁴²⁶*

C/Supt Curran was asked about his response to a question posed by the tribunal investigator where he said that it was not possible to conduct a full investigation into the causes of Sgt Hughes's stress:

- Q. *Would you like to explain why you have expressed that opinion?*
- A. *Well, I mean you have a murder investigation, you have a discipline investigation, and you have got an investigation – a scoping investigation as it turns out. So another investigation into all of that is ludicrous really, to be honest.⁴²⁷*

C/Supt Curran was cross-examined by counsel for Sgt Hughes on whether he maintained the position that the question of injury on duty was for medical professionals to determine:

- Q. *Was there any real doubt in your mind that this was work related stress that Sergeant Hughes was suffering from?*

⁴²⁵ Tribunal Transcripts, Day 170, p. 75

⁴²⁶ Tribunal Transcripts, Day 170, pp. 82-83

⁴²⁷ Tribunal Transcripts, Day 170, pp. 88-89

- A. *It's work related stress. No doubt in my mind it's work related stress. Whether it was an injury on duty is another ... matter and that's for the medical professionals to determine.*
- Q. *That's your position?*
- A. *It is, yes. Still, even now.*⁴²⁸

He was cross-examined by counsel for Sgt Hughes about the requests for reports issued by A/C Fanning in 2010 and the earlier part of 2011:

- Q. *There is no doubt but that the reports requested by HRM were not being produced?*
- A. *Some of them were. I think there might have been confusion, because ... there is a mention in the October '10 document that covers the fact that his injuries are longstanding. ... there might have been confusion around that between HRM and ourselves. But I'm not denying the fact that there's been a lot of delays. I'm ... not denying that. I mean, it's unfortunate.*⁴²⁹

As to whether an interview at Sgt Hughes's home should have been carried out pursuant to Code 11.39, C/Supt Curran told counsel for Sgt Hughes that:

- A. *11.39 says that, yeah. But my understanding is, you see the way it works is, if someone like me gives it out to an inspector to look after, that's a line manager. And I know Inspector Cryan had been engaging with him. I'm not sure if I ever had a conversation that I should visit him at home, but I know he had been there. And then Inspector Hanrahan had plenty of interaction with him. And I know Chief Superintendent Phillips had said something to Inspector Hanrahan as well about looking after the welfare of Sergeant Hughes. And then Inspector Lacey, when he came in April '09, I spoke to him specifically about looking after Sergeant Hughes's welfare. But I understand the visit to home, my understanding at times, that when the suggestion was to go to his house ... he didn't welcome it.*
- Q. *I mean, you are not in a position directly to give that evidence, are you?*
- A. *No, I am relying on what other people are saying to me, yeah. I know Inspector Hanrahan said the same. I think it's understandable. I mean, I understand why someone wouldn't want to be visited at home.*
- Q. *Well there was no interview in accordance with Code 11.39, is that correct?*
- A. *I wouldn't say that, no. There was a lot of engagement. I had a quick take – and I'm not saying they were all welfare – but in April '07 to the end of '08 it's in the region of 40 interactions with Sergeant Hughes. I don't think there was any visit to his house ... I mean, when I hear the engagement is happening, I'm taking that any issues then are likely to be raised. He is getting support from those inspectors and they are all reasonable people.*⁴³⁰

Counsel for Sgt Hughes asked C/Supt Curran about the protracted nature of the injury on duty issue:

- Q. *... Sergeant Hughes's position is that no timely investigation – and I don't think there is any dispute in this – or determination was made of the injury at work issue, would you agree with that?*

⁴²⁸ Tribunal Transcripts, Day 170, p. 111

⁴²⁹ Tribunal Transcripts, Day 170, p. 113

⁴³⁰ Tribunal Transcripts, Day 170, pp. 114-115

A. *I would say timely suggests that it can be done timely. Again it's a quick way, I'm not sure. Again I go to the point: my experience now is, I'm getting documents that relate to incidents several years, three to four years prior, and I'm now getting that from the CMO to give me authority to do an I 1.37 in the one or two cases that I have had in recent years.*

Q. *Well, it was unduly protracted?*

A. *It is protracted. I accept it's very protracted. You know, you'd like to think it would be done quicker but, you know, between it's appointments with medical professionals and consultations, I don't really know exactly why it takes that length of time, but it's a medical issue.*

Q. *It was unfairly protracted in Sergeant Hughes's case?*

A. *I don't know if it was unfairly protracted. I think the confusion around the Garda Code didn't help.*

...

Q. *... do you think that justifies that this took four years?*

A. *It's probably part of the reason. The medical inquiry also took time.*

...

I don't feel that I'm actually well qualified to answer these questions to be honest with you, other than [to] say we left it in the hands of the medical professionals.⁴³¹

Counsel for An Garda Síochána referred C/Supt Curran to the evidence of Sgt Hughes that he had heard no more from him after the meeting of 23rd April 2007, and he disagreed:

A. *That's incorrect. I had quite a few phone calls with him to come back to him, particularly in relation to his fears around the safety of his life, I would have made a lot of phone calls and research, the locals, Walter O'Sullivan in particular, we had very good information at the time, plus our Crime and Security, plus any of the people in the investigation, to have an authoritative response to him, which I provided to him. And also, my conversations sometimes were with Sergeant Hughes ... were very cordial, there was never any friction in them in any way, shape or form. But those other issues that were raised in that minute that I could respond to, I did. And I think the minute of Chief Phillips down to me, that that minute, the contents of that were communicated to him more or less.*

Q. *Thank you chief superintendent. And in respect of those cordial conversations, presumably you had some informal conversations with Sergeant Hughes as well, did you?*

A. *Oh, I would have ... I remember having a conversation with him for at least an hour one night. I don't know when that year was, but ... Liam Hughes is someone I knew over my career.⁴³²*

C/Supt Curran denied having any hostility towards Sgt Hughes:

Q. *Did you have any personal animus against Sergeant Hughes?*

⁴³¹ Tribunal Transcripts, Day 170, pp. 125-126

⁴³² Tribunal Transcripts, Day 170, pp. 131-132

- A. *No. Even now, I still don't know why I'm here, but even now I don't.*
- Q. *Did you genuinely want him to return to the workplace?*
- A. *Absolutely.*
- Q. *You said that you made efforts around Christmas and so on, were there any other reasons why – I mean you said you were short two inspectors, do you want to comment on resourcing issues otherwise, in terms of sergeants or any other members in the station?*
- A. *Well, I suppose, primarily my concern would have been for his personal welfare. There's obviously the long term benefit to the organisation to get someone back into ... frontline duties. So in the back of my mind that would have been the goal and I think that was what the goal of the CMO was. But I was happy to do what ever. I gave my personal undertaking I'd support him in any way I could, he could come to me at any time he wanted to. And I felt we had a good relationship actually, all throughout that time.*
- Q. *Did you ever then deliberately target Sergeant Hughes?*
- A. *Never ever, ever.*⁴³³

Former Assistant Commissioner Gerard Phillips

A/C Phillips was asked by counsel for the tribunal about the categorisation of an illness as being an injury on duty:

- Q. *... in terms of the categorisation of an illness as being an injury on duty, can you assist the Chairman as to whose responsibility that is, or was, should I say, at that time?*
- A. *An injury on duty, as far as I can recollect, it's the chief superintendent has to make a determination on it. But in this case it was stress. And I think when the Code was written, stress was not an issue, so it was, as I understand it, mostly would be referring to physical injury on duty.*
- Q. *So the determination is for the chief superintendent if it is a simply injury on duty?*
- A. *Yes.*
- Q. *A physical injury?*
- A. *Yes.*
- Q. *And that's whether it occurred during the course of the member's duty, is that right?*
- A. *Yes, that's correct.*
- Q. *And that is really quite a simple factual issue to be determined, is that right?*
- A. *Yes, that's correct.*
- Q. *And that might be determined as a result of a report that would be sent by local management concerning the circumstances in which the injury occurred, is that right?*
- A. *Yes, that's correct.*

⁴³³ Tribunal Transcripts, Day 170, pp. 134-135

- Q. *Then if we deal with a psychological injury; the Code doesn't make any provision for that, is that right?*
- A. *No, it doesn't, or it didn't.*
- ...
- Q. *So who's obliged to make a determination whether a psychological injury is occasioned when a member is on duty, or not?*
- A. *I think that's really a matter for the Chief Medical Officer.*
- Q. *And can you assist us with this because it is something the Tribunal has encountered previously, and you won't be familiar with it, but, I mean, was that well settled or was it still a matter that was open to debate at this time?*
- A. *I think there was some confusion about it ... I'm not qualified to determine if somebody is suffering from stress or what caused it; it's really a matter for the CMO to make a determination on.*
- ...
- Q. *Well, is it the situation that it's just a matter that you didn't want to make a judgment call on in relation to the causation of the stress?*
- A. *Well ... I was not qualified to make a judgment [call] on the causation of the stress.⁴³⁴*

He was asked by counsel for the tribunal about the requests from HRM for local management reports:

- Q. *And in terms of the reports that were being requested continuously by HRM in relation to the causes of Sergeant Hughes's work related stress, was it a source of frustration locally that these requests were coming in when you felt that it was a question that couldn't be answered by local management?*
- A. *Well, we felt that it was a question we couldn't answer. At that stage ... the scoping inquiry was in train, the murder was being investigated by a huge team and anything ... that would have been out of order, would have been brought to our attention.*
- Q. *That is jumping forward a little bit now to after September 2008 when Sergeant Hughes made his report to the confidential recipient. But just dealing with the earlier stages prior to that. It is very difficult to get a grasp on this in terms of actually what report was being requested by HRM of you. Did you understand what report it was that they were requesting?*
- A. *They were requesting, more or less, the investigation file, as I understood it, what investigations were done into that. Now, the murder was being investigated. And in relation to stress, what caused the stress or what caused it ... we weren't fully au fait with what investigation we needed to do.⁴³⁵*

A/C Phillips outlined to the tribunal what he understood the scale of the investigation into the source of Sgt Hughes's stress to be:

⁴³⁴ Tribunal Transcripts, Day 169, pp. 58-61

⁴³⁵ Tribunal Transcripts, Day 169, pp. 62-63

A. *Well, if you're investigating that, you have to go fully into it; what caused it? ... you have to ... go into the murder investigation, what his part in it was, how it came about and why would it affect him in such a way.*

...

Q. *You think that an investigation of that scale would have been required if you were to conduct the investigation that was envisaged by HRM, is that right?*

A. *You would – as much as.*⁴³⁶

A/C Phillips was asked by counsel for Sgt Hughes about the fact that he did not respond to the requests from HRM and provide an investigative report. He said that:

A. *If you are going into what he alleged, you have to do a proper, full investigation. And you're talking about 2011, I think. At that stage, there were a number of investigations which had looked at all aspects of it, and I don't think it would be feasible for us to do another full investigation on top of that, in relation to stress, without guidance from a CMO.*

Q. *So do you say that you didn't respond and they weren't done because you had no guidance as to how to do it ...*

A. *At that time, yes, that would be the case, I think.*⁴³⁷

Legal Submissions

Retired Sergeant William Hughes submitted as follows:⁴³⁸

- that garda management failed to investigate and determine whether his illness was an injury on duty, cutting his pay as a result.
- that HRM were guilty of inordinate and unreasonable delay in processing Sgt Hughes's application for designation of his condition as an injury on duty. This caused significant prejudice, suffering and distress.
- that the Assistant CMO gave his opinion in March 2008 that it was not a case of injury on duty, but made it clear to HRM in June 2008 that it was a complex case requiring investigation of different elements before a decision could be made, those elements being (1) grievance/welfare issues, (2) disciplinary issues, (3) legal issues and (4) industrial relations issues. However, HRM did not follow up on the doctor's suggestion.
- that the decision as to injury on duty was not one for the CMO or his assistant but rather for HRM; although the Garda Code provided for the decision to be made by the divisional officer – the chief superintendent – in normal circumstances it was not suggested that such was the position in this case.
- that local management refused to undertake the investigation of Sgt Hughes's stress.
- that no report regarding Sgt Hughes's absence was submitted as required by Code 11.37, and Sgt Hughes was not interviewed in that regard.

⁴³⁶ Tribunal Transcripts, Day 169, p. 64

⁴³⁷ Tribunal Transcripts, Day 169, p. 113

⁴³⁸ The tribunal has considered all of retired Sergeant William Hughes's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 173, pp. 6-64

- that the Assistant CMO was wrong in holding that it was not a case of injury on duty.
- that the doctor applied a different and invalid test for injury on duty whereby he drew a distinction between a physical and a psychological/psychiatric injury.
- that it would therefore appear that both the office of the CMO and garda management were reluctant to countenance the prospect of a psychiatric injury amounting to an injury on duty. This ran contrary to both a common everyday understanding of an injury on duty, and the legal interpretation of that phrase as applied by various judgments of the courts of England and Wales at that time.
- that HRM sought (a) through the Assistant CMO to medicalise a non-medical issue and (b) to reverse engineer the circumstances of the doctor's opinion so as to rely on it as a determination of the issue of injury on duty.
- that the outright refusal of local management to carry out such investigations can only be explained as being motivated by an intent to target Sgt Hughes because of his protected disclosures.

An Garda Síochána submitted as follows:⁴³⁹

- that on any view of the evidence, there was simply no basis for suggesting any deliberate targeting or discrediting of Sgt Hughes in respect to the categorisation of his injury.
- that Sgt Hughes declined to suggest that the delay in the categorisation of his injury was deliberate in any sense.
- that Supt Curran and C/Supt Phillips had no significant role in the designation of Sgt Hughes's injury.
- that there were repeated requests from HRM in 2009 and 2010 for an investigation to be undertaken locally, however, the parameters of that investigation were not set out. It was not clear what Supt Curran or C/Supt Phillips could reasonably have been expected to do to further investigate the cause of Sgt Hughes's illness, or could safely have done, where he had a documented psychological condition. The sensitivities around interviewing Sgt Hughes had already been set out in respect of the discipline issue.
- that Sgt Hughes suggested that an investigation into his stress should have included an investigation into the alleged '*systems failure*' and the multiple allegations comprised therein. That this was not a reasonable expectation where the most serious matters involved were already under investigation elsewhere. Sgt Hughes refined his position somewhat to say that his difficulty was in fact that nobody had recorded his concerns. He stated that if they had, he would have provided a report which was similar to the one he gave Detective Inspector Christopher Mangan. Respectfully, there was nothing to stop him from so doing. Counsel for the tribunal made the point on a separate issue that Sgt Hughes could have printed off his report at any stage and given it to whomever he pleased.

⁴³⁹ 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 173, pp. 66-135

- that Dr Quigley liaised with an independent psychiatrist and took advice as to whether work-related stress was an injury on duty before he made a determination in March 2008 that Sgt Hughes's condition did not amount to an injury on duty. This determination was made *bona fide* and was reasoned.
- that there was a disagreement as to whether the determination of injury on duty was a question for HRM or the CMO and unfortunately this affected Sgt Hughes's case.
- that Supt Curran and C/Supt Phillips used their best endeavours to assist Sgt Hughes: trying to arrange his transfer and facilitating weekend work. Sgt Hughes accepted that Supt Curran's efforts were genuine in this regard: that he was going to accommodate Sgt Hughes any way he could, that his door was always open, and that they met regularly in Coolock Garda Station.
- that in March 2008, Dr Quigley endorsed the advice of the independent psychiatrist and recommended that Sgt Hughes retire on grounds of ill- health. The matter was then firmly within the realm of HRM, the Assistant CMO and the independent consultants they engaged.

Conclusion

The injury on duty issue began with a request for payment of allowances by Sgt Hughes. Supt Curran responded and the sergeant replied with a request that the matter be referred to the CMO for a decision. Supt Curran passed this on to his superior, C/Supt Phillips, who in turn sent it to A/C Clancy, HRM and it was she who referred the matter to the CMO where it came to the attention of Dr Quigley.

The reason for Sgt Hughes's absence from work was psychological and it was an obvious and reasonable thing for the case to be referred to the CMO, as well as that being the express request of the member. Dr Quigley sought specialist assistance from a consultant psychiatrist, Dr Griffin. Each doctor took a history from Sgt Hughes and neither looked for extra information from local management so there is no basis for thinking that any of the doctors lacked relevant information. The Assistant CMO advised that the case was not an injury on duty based on his review of the case and with the benefit of Dr Griffin's advice and a letter from Sgt Hughes's own psychiatrist, Dr Fernandez. The reason for Sgt Hughes's condition not being deemed an injury on duty was based on the opinion of the Assistant CMO.

The sequence of expert medical opinions began with Dr Griffin in January 2008. At that early stage, Dr Griffin suggested medical retirement. The Assistant CMO agreed that medical retirement would be appropriate and he discussed it with Sgt Hughes and notified his doctor. Sgt Hughes appealed and submitted a report from Dr Corry. Following another referral Dr Griffin then considered that medical retirement was not appropriate.

Dr Quigley formed the opinion that the case was not an injury on duty and so advised HRM on 6th March 2008. He also advised Dr Reilly, Sgt Hughes's general practitioner. The case was a complex one, as the Assistant CMO reported to HRM on 9th June 2008. That was the issue that Sgt Hughes wanted to have decided and the doctor gave his opinion on the question.

Dr Quigley sought expert psychiatric advice when presented with Sgt Hughes's complaints. In doing so, he followed Dr Reilly's decision to engage a consultant psychiatrist, Dr Fernandez. Dr Reilly reported that the patient had actually asked to be referred to a psychiatrist.

The doctors, and indeed HRM, found themselves with the difficulty of how to alleviate or even understand the conditions that Sgt Hughes was reporting. They were not in a position to dictate that there should be an investigation into the complaints being made by Sgt Hughes as to *'systems failure'* in policing in the period prior to the murder of Ms Saulite. A grievance is not an injury on duty, as the Assistant CMO said in evidence.⁴⁴⁰

There was uncertainty at the highest level of An Garda Síochána as to whose decision it was to classify an illness as an injury on duty in a case like this: was it local management, HRM or the CMO? This arose because of the nature of the illness that was keeping Sgt Hughes out of work. It is not that management would not countenance a psychiatric injury as opposed to a physical one. A/C Fanning believed that the decision was for the CMO but the latter disagreed. It appears that a consensus then emerged that a case conference involving the CMO, HRM and local management was the appropriate way of deciding the issue. From this it emerged that Dr Quigley's view stood subject to a local investigation. It is not at all clear what a local investigation could have done that would have justified departing from the advice of the Assistant CMO; but it did not happen, despite repeated requests by A/C Fanning.

It is true that the Assistant CMO's view was advice and not a formal decision and that there was not actually any formal decision as to injury on duty. It is understandable that senior gardaí would be reluctant to make that evaluation in the case of a non-physical injury and that they would rely on expert medical advice. Sgt Hughes's submissions criticise Dr Quigley for pointing out the distinction between a decision as to whether a physical injury is an injury on duty as compared with a psychological condition, but the possible difficulty with regard to the latter type of injury is obvious. Dr Quigley nowhere states or implies that there cannot be a psychological injury while on duty but merely identifies the complexity of the issue.

Dr Devitt came into the picture, seeing Sgt Hughes on five occasions in the course of which the discipline investigation and Sgt Hughes's High Court litigation came to an end. At that point this psychiatrist's hopes of a non-retirement resolution evaporated. Retirement on medical grounds became the inevitable result.

Dr Quigley as Assistant CMO is not a garda officer and therefore any actions on his part do not come within the remit of the tribunal in term of reference [p]. While that is a fundamental obstacle that Sgt Hughes cannot overcome, the evidence actually discloses that there is no basis for impugning the conduct of this expert. He detailed his involvement in the case and his engagement with outside independent consultants openly and comprehensively in his statement to the tribunal and in his evidence. Dr Quigley kept Sgt Hughes's general practitioner and specialists informed about his consultations and specialist reports as they came to him. He also notified HRM of developments. There is no question of him being in any way affected in his judgement by anything Sgt Hughes might have said in a protected disclosure. The suggestion made in cross-examination that he was medicalising the problems presented to him by Sgt Hughes is misguided and unfair. The tribunal is satisfied that Dr Quigley behaved in a careful and conscientious manner in accordance with his function as Assistant CMO and that criticism of his conduct in this matter is wholly unjustified.

⁴⁴⁰ Tribunal Transcripts, Day 172, pp. 49-50

Sgt Hughes has exonerated the heads of HRM, A/C Clancy and her successor A/C Fanning, but they nonetheless have not escaped express or implied criticism in the written submissions.

C/Supt Phillips and Supt Curran did not consider themselves to be qualified to decide injury on duty in a case of stress, thinking that such a decision was not for them and was for appropriate medical experts. This view appears to have been first articulated by Sgt Fitzpatrick in a report, and C/Supt Phillips and Supt Curran agreed with that position.

They were in the dark as to what information was being sought by HRM in the form of reports, uncertainty that the tribunal shares. It does seem as if there may have been an element of self-protection on the part of HRM. Nothing specific was required and it seems that the requests were somewhat formal responses to the contents of medical reports.

These officers are accused of wilful refusal to carry out investigations specified by A/C Fanning in correspondence beginning on 27th September 2010. It is understandable that the officers would have been uncertain as to what they were required to do that they were not doing. The letter of 27th September 2010 noted that Sgt Hughes had been absent from 22nd September 2010 and that his absence was stress related. It went onto say: *'you should now interview this member in order to establish the source of the member's stress and if it is suggested as being work related a full investigation should be carried out'*.⁴⁴¹

This letter was signed by an officer on behalf of A/C Fanning but it is difficult to understand how anybody in the office of HRM could have been in doubt as to the contention by Sgt Hughes that not alone was the instant absence (of three days) work-related, but that all his previous extensive absences going back to December 2006 were similarly related. As it happened that letter was the subject of a detailed response dated 19th October 2010 from Supt Curran in which he recorded meeting Sgt Hughes at Coolock Garda Station on 5th October 2010 and discussing with him the contents of the minute from A/C Fanning. He reported that Sgt Hughes wished to consult with his solicitor before responding but said his own medical doctor had certified this period as being work stress related:

*On the 12th October 2010 Sergeant Hughes supplied a report (attached) which stated that the sick leave is "directly connected to my previous and protracted absences since December 2006".*⁴⁴²

The superintendent went on to say that the particular issue was, to the best of his knowledge, currently with the Assistant Commissioner, HRM and that his understanding was that Sgt Hughes had brought a case before the High Court regarding the issue of injury on duty against the Garda Commissioner. He described welfare issues and how he continued to liaise with Sgt Hughes regarding his current role in the staff office at Coolock Garda Station. He concluded that in his communication with Sgt Hughes his general unhappiness related to his long-standing issues. Sgt Hughes supplied a two-page report dated 12th October 2010, which concluded:

*The situation with regard to my current health situation and recovery prospects has been the subject of a further recent review with the Assistant C.M.O. along with an appointed medical specialist at Garda Headquarters. I am reluctant to give specific details in this report with regard to these medical consultations least to say that the continued failure as I see it to properly and professionally address the reported issues is having an increasingly negative effect on my health and well-being.*⁴⁴³

⁴⁴¹ Tribunal Documents, p. 4356

⁴⁴² Tribunal Documents, p. 1177

⁴⁴³ Tribunal Documents, p. 4367

Supt Curran wrote to C/Supt Phillips seeking a direction as to whether he could supply a copy of the assistant commissioner's minute.

A further letter written on behalf of A/C Fanning, dated 17th November 2010, referred to the case conference held in the office of the Assistant Commissioner, HRM, on 12th November 2010 and sought a copy of all investigations carried out in relation to the member's work-related stress and specifying periods of absence between 18th December 2006 and 25th September 2010. The letter appears not to take account of the previous correspondence from local management and the report supplied by Sgt Hughes.

Supt Curran said that it was not a matter for him to decide on work-related stress. The same would obviously apply to other psychiatric or psychological conditions. Sgt Hughes originally applied to Supt Curran, who passed on the request to C/Supt Phillips, who in turn sent it to HRM. They did not carry out an investigation of the reason or reasons for Sgt Hughes's absence from duty. The two officers are clear in their attitude that they were not qualified to assess stress in a member and this was a case of work-related stress as reported. They believed and continued to maintain that it was a medical expert's task to do so. They may be criticised for not actually setting that out explicitly in writing but their position cannot be described as wholly unreasonable.

The question here is not whether these two officers can be criticised for that failing but rather whether their inactivity in regard to the investigation of Sgt Hughes's absences can be ascribed to a reaction to his complaints about *'systems failure'*. It does not appear that there is any evidence of such a connection.

C/Supt Phillips and Supt Curran did not have any reason to be hostile to Sgt Hughes. Supt Curran had known him from years before, when they got on well. He was concerned from the first meeting on 23rd April 2007 to deal with the complaints that the sergeant was making and that the officer could do something about. He was keen to get Sgt Hughes back to work and to facilitate him in doing so and between Supt Curran and C/Supt Phillips they accommodated him even in regard to weekend work and extra pay.

Supt Curran had no connection with the investigation of any of the crimes or events prior to the murder and so had no reason to be concerned about criticisms.

In these circumstances it is very difficult to see any basis on which these officers can be accused of targeting.

During the period with which the tribunal is concerned the position of Assistant Commissioner, HRM, was held by A/C Clancy and subsequently A/C Fanning. In the course of the hearings, Sgt Hughes by his counsel abandoned his allegations that they targeted and discredited him.

A/C Phillips and C/Supt Curran acknowledge that they did not investigate Sgt Hughes's condition of work-related stress. They believed and still maintain that they were not qualified to investigate stress and were not the proper people to do so; it was a medical issue for the CMO, or in this case the Assistant CMO.

Sgt Hughes applied to Supt Curran to have his case referred to the CMO and that is just what happened.

The matter came into the care of Dr Quigley, where it remained until an issue arose between the Assistant Commissioner, HRM, and the CMO as to whose function it was to make the determination of injury on duty.

Dr Quigley reported to the Assistant Commissioner, HRM, that the case was complex, with different strands including bullying/harassment, discipline and failure to carry out investigations, which suggested that there were things for local management to investigate. However, the alleged deficiencies of policing in the period before the murder that Sgt Hughes complained about were not matters for local management to investigate.

Following a case conference on the subject of Sgt Hughes, letters seeking an investigation issued from A/C Fanning to C/Supt Phillips but they were simply standard form directions for investigation if it was suggested that the condition was caused by an injury on duty. This was meaningless in light of the case conference on that very issue. Moreover, the letters were non-specific as to the nature of the investigation that was required.

Sgt Hughes's condition was intensively investigated by medical experts. Dr Quigley gave his expert opinion that this was not an injury on duty. As the Assistant CMO is not an officer or a member of An Garda Síochána, he is outside the remit of the tribunal.

This was essentially a matter for HRM and Sgt Hughes has dropped any complaints against the assistant commissioners who were in charge.

Sick pay was governed by binding rules so it was not a question of deciding whether or not to reduce a sick member's pay. If a garda was absent for more than the prescribed period his or her pay suffered automatic reduction, first to half pay and subsequently to pension rate.

In respect of Issue 10, Sgt Hughes did not pursue the allegation against the Garda Commissioner, and he abandoned any case against A/C Clancy.

Sgt Hughes retired on medical grounds on 12th February 2013, on the advice of and with the consent of his general practitioner. The issue concerns an earlier recommendation, which Sgt Hughes successfully appealed. That arose from a report dated 4th January 2008 by Dr Griffin, consultant psychiatrist, in which he recommended that Sgt Hughes be considered for retirement on medical grounds. The Assistant CMO agreed and discussed it with the sergeant and then reported to the Assistant Commissioner, HRM. Sgt Hughes's solicitor protested and submitted reports, which were referred back to Dr Griffin. After another examination, that expert changed his mind and said that it would not be appropriate to proceed with retirement.

There is no suggestion that the Assistant Commissioner, HRM, had anything to do with the recommendation and A/C Clancy was blameless.

The tribunal's investigation of these issues does not reveal targeting or discrediting of Sgt Hughes by senior officers and there is no evidence of a connection between any complaints made by Sgt Hughes and the actions of these officers.

CHAPTER 8

THE COMPLAINT MADE BY SERGEANT WILLIAM HUGHES IN RELATION TO THE INVESTIGATION OF HIS COMPLAINT MADE TO THE CONFIDENTIAL RECIPIENT FOR AN GARDA SÍOCHÁNA ON 16TH SEPTEMBER 2008

Issue 3 of the Schedule of Issues

Did Assistant Commissioner Michael Feehan target or discredit Sgt Hughes because he made a protected disclosure by failing to carry out a proper investigation into his reports to the Confidential Recipient as to 'systems failure' in An Garda Síochána?

Background

Sergeant William Hughes made a report to the Confidential Recipient for An Garda Síochána, Mr Brian McCarthy, on 16th September 2008. This was forwarded to the Garda Commissioner at the time, Fachtna Murphy, on 14th October 2008.⁴⁴⁴ In his letter to the Commissioner, Mr McCarthy outlined Sgt Hughes's complaint as follows:

The Confidential Reporter in this case alleges that there was a failure to coordinate a number of investigations which led ultimately to the death of Ms. Saulite. The specific issues raised by the Confidential Reporter are as follows:

- Information concerning the criminal connections of Ms. Saulite's husband was in garda possession prior to the murder but was not disseminated to relevant garda personnel including gardaí who had been dealing with the abduction case involving her ... children.*
- Had this information been provided it is possible that the murder would not have happened.*
- Individual investigating officers have been harassed and improper disciplinary proceedings have been taken against them because they raised these issues. No attempt has been made to interview the officers who are subject to these proceedings.*
- The press release that was issued in relation to the murder on 22 November, 2006 contained a number of falsehoods and omissions. These included the fact that senior garda management were aware of numerous threats to Ms. Saulite from her husband and had considered the question of providing protection for her but had decided against this.*
- In addition, it was suggested that Ms. Saulite had expressed her fears of her husband to a number of gardaí prior to her murder and reports on this were submitted to the garda authorities.*

⁴⁴⁴ Tribunal Documents, p. 2654

- *At no stage during the murder investigation was there any attempt at co-ordinating the information obtained by gardai who had been investigating the abduction case.*
- *There was also information relating to the threats to the life and property of solicitor John Hennessy who was acting for Ms. Saulite. Again this information was not acted upon.*
- *There is an attempt by garda management to suppress the facts in this case and to cover up a systems failure in the manner in which the case has been dealt with.*⁴⁴⁵

On 28th October 2008, the Commissioner directed Assistant Commissioner Michael Feehan to carry out an investigation into these eight allegations under the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations, 2007.⁴⁴⁶ This investigation commenced on 7th November 2008.

On 18th November 2008, Sgt Hughes met with Superintendent Gabriel O’Gara and Detective Inspector Peter O’Boyle, who had both been appointed by A/C Feehan to assist with the investigation. It is recorded by D/Insp O’Boyle in his notes of the meeting that Sgt Hughes had concerns that A/C Feehan was leading the investigation as he believed that there was a conflict of interest due to the involvement of the assistant commissioner in the discipline investigation.⁴⁴⁷

Sgt Hughes made a further report to Mr McCarthy in a letter dated 4th December 2008 where he referred to the press release issued by the Garda Press Office in the aftermath of the murder:

*You may also recall that the press release which issued from the Garda Press Office essentially denied that the Gardai were aware of any threat to Baiba’s life before her murder. I have been made aware of information which contradicts this official account and will call into question the actions adopted by senior Garda management both prior to, and since, Baiba’s murder.*⁴⁴⁸

Sgt Hughes outlined this ‘information’ and said that *[i]f the information is correct, and I believe that it is, then it is my view that the disciplinary action taken against me was entirely malicious and deliberately aimed at silencing my claims that there had been a systems failure at the highest level within an Garda [Síochána] which led to the death of Baiba Saulite.*⁴⁴⁹

On 3rd December 2008, the Commissioner requested an update from A/C Feehan and he was informed by reply dated 12th December 2008 that significant progress had been made and that *‘in excess of three hundred jobs have been completed by the investigation team.’*⁴⁵⁰

On 23rd December 2008, Supt O’Gara provided a report to the assistant commissioner detailing the progress of the investigation. He outlined the interviews that had been conducted with garda members and Mr John Hennessy, and interviews that were ongoing with senior management. He referred to Sgt Hughes and Garda Declan Nyhan, confirming that that they had been interviewed by Supt O’Gara and D/Insp O’Boyle. He reported that *‘Sergeant Hughes has stated that he is satisfied that this investigation is proceeding in the correct manner.’*⁴⁵¹ Supt O’Gara continued that:

⁴⁴⁵ Tribunal Documents, p. 2655

⁴⁴⁶ Tribunal Documents, p. 2661

⁴⁴⁷ Tribunal Documents, p. 1016

⁴⁴⁸ Tribunal Documents, p. 558

⁴⁴⁹ Tribunal Documents, pp. 559-560

⁴⁵⁰ Tribunal Documents, p. 2668

⁴⁵¹ Tribunal Documents, p. 2672

Initial investigations in relation to the alleged failure by Garda management to suppress the facts in this case and to cover up a systems failure in the manner in which the case was dealt with show that this did not occur. However each member of An Garda Síochána who were of management level prior to and at the time of Ms. Saulite's murder are in the process of [being] interviewed with a view to establishing if they were in possession of information concerning these facts.

Each investigating member and the associated supervisors attached to each of the four main incidents involving Ms. Saulite and Mr. Hennessy, Abduction of Ms. Saulite's children, Arson of [Ms] Saulite's car, Arson at John Hennessy's dwelling, and the Murder of Ms. Saulite are [being] interviewed to establish if there was any attempt to co-ordinate these incidents.⁴⁵²

By letter dated 20th January 2009, A/C Feehan provided an update to the Commissioner stating that the investigation was well advanced.⁴⁵³

Sgt Hughes made two further extensive reports to the confidential reporting investigation team, on 9th January 2009 (to Supt O'Gara) and on 20th February 2009 (to D/Insp O'Boyle).⁴⁵⁴ He later wrote to the confidential recipient on 24th February 2009 raising concerns about the direction of the investigation:

You will see from my reply to Insp. O'Boyle ... that I have raised a number of concerns at the direction of some of the queries raised.

I wish to inform you that I have received telephone calls from at least three Garda colleagues who have expressed concern at the manner in which some questions have similarly been posed to them. In particular, each has commented that the questions seem to be set in such a way as to elicit a 'desired reply' in a 'Yes/No' fashion.

Please refer to the questions as set out in the correspondence received.

I have taken issue with regard to what I perceive to be matters of irrelevance in some of those questions. In particular, the issue as to whether junior ranking members made 'contact' with, or were contacted by, senior Garda management, up to and including Chief Superintendent, in the investigation of serious crimes. This procedure would be unprecedented and, indeed, contrary to regulation. You will also see that the questions merely apply to Garda management in the DMR Northern Division to the exclusion of other divisions in which some of the serious crimes were committed.

I also have taken issue with what I perceive to be entirely speculative replies which are sought from members arising from questions concerning as to whether the making of a particular entry on the Pulse system of a particular incident could have prevented the murder of Baiba Saulite.

I am by no means attempting to pre-empt the outcome of the investigation currently underway but I feel that it is pertinent to highlight any concerns arising as the matter progresses.

⁴⁵² Tribunal Documents, pp. 2673-2674

⁴⁵³ Tribunal Documents, pp. 2681-2682

⁴⁵⁴ Tribunal Documents, pp. 3178-3248; Tribunal Documents, pp. 3250-3285

I know that we have already discussed the matter of Assistant Commissioner Feehan's involvement in this particular investigation. Please be informed that I have taken legal advice in that regard and the feeling is that the situation would be at variance to proper procedure.

*Please let me know if a meeting would be appropriate in the circumstances.*⁴⁵⁵

A/C Feehan provided a detailed interim report to the Commissioner on 13th March 2009. He outlined the volume of interviews and enquiries carried out into the confidential reporter's eight allegations. He stated that four hundred lines of enquiry were being pursued and that the investigation was nearing completion.⁴⁵⁶ Later, on 9th October 2009, the Commissioner wrote to A/C Feehan requesting that the investigation be completed without further delay.⁴⁵⁷ This was reiterated on 16th March 2010⁴⁵⁸ and 7th April 2010.⁴⁵⁹

By report dated 10th April 2010, A/C Feehan found that the various allegations by the confidential reporter were without foundation and that:

*This investigation has found no evidence to support the allegation that there was an attempt by Garda management to suppress the facts in this case and cover up a systems failure in the manner in which the case had been dealt with. All Senior management involved in the various investigations had been canvassed with this allegation and have stated that there had been no attempt to suppress the facts or cover up a systems failure. In addition no systems failure has been identified by this investigation team after a thorough analysis of all information and documentation available.*⁴⁶⁰

The Feehan Report contained 38 chapters of narrative, analysis and conclusions, supported by 4 further volumes of statements from 104 witnesses and a list of 191 documents.⁴⁶¹

The confidential recipient was notified of the outcome of the investigation on 7th May 2010 by the Commissioner, who informed him that:

This investigation examined a total of eight allegations as outlined in your correspondence on the 14 October 2008. The seriousness with which the Garda Authorities viewed these allegations is reflected within the depth and thoroughness of this investigation. All Garda management personnel, together with all the Garda members identified as having contact with any or all of the principal parties in this matter have been interviewed, and all existing documentation pertaining to the issues raised has also been perused.

As a result of his investigation Assistant Commissioner Feehan is satisfied that all the various allegations in relation to this confidential report are without foundation.

Having studied his report I agree with the findings of Assistant Commissioner Feehan and do not propose to take any further action in this regard.

⁴⁵⁵ Tribunal Documents, pp. 7181-7182

⁴⁵⁶ Tribunal Documents, pp. 2696-2718

⁴⁵⁷ Tribunal Documents, p. 2736

⁴⁵⁸ Tribunal Documents, p. 2737

⁴⁵⁹ Tribunal Documents, p. 2738

⁴⁶⁰ Tribunal Documents, p. 3150

⁴⁶¹ Tribunal Documents, pp. 2752-3868; Tribunal Transcripts, Day 168, p. 51

In the course of his investigation into matters arising from the confidential report, two members of An Garda [Síochána], namely Sergeant William Hughes and Garda Declan Nyhan both attached to Swords Garda Station raised human resource management issues with Assistant Commissioner Feehan. These issues, which relate primarily to allegations of bullying, harassment and victimisation, protracted periods of absence from duty due to sick leave and pay related matters, were not investigated by the Assistant Commissioner on the basis that they were outside the remit of his investigation. These issues are now being addressed separately.⁴⁶²

By letter dated 10th May 2010, the Commissioner informed A/C Feehan that he agreed with the findings and did not propose to take any further action.⁴⁶³

The confidential recipient notified Sgt Hughes of the Commissioner's views on 19th May 2010, and by letter dated 1st July 2010, Sgt Hughes stated that:

Frankly I am disappointed with the outcome of this investigation. At this point I would like to see a copy of the investigation file with a list of all statements taken in the course of this investigation.

I feel that the persons making decisions in relation to such matters should be utterly independent. In this respect, Assistant Commissioner Feehan, when a Chief Superintendent at Store Street station, was nominated to investigate allegations of indiscipline by me arising from the death of Baiba Saulite. This is not a personal attack by any means on Assistant Commissioner Feehan but as a first principle I believe that any investigator should have come to this investigation without any prior knowledge of the parties input.

Finally, I would be obliged to know whether or not you have referred this matter to the Minister under the Act.⁴⁶⁴

Mr McCarthy replied stating that:

The legal advice available to me states that there is nothing in the regulations governing my office to indicate that a Confidential Reporter has a right to see the report on which the Garda Commissioner based his decision to take no further action in a particular case.

I note what you say in relation to the appointment of the investigating officer in this case. I am of the view that such appointments are matters for the Garda Commissioner to decide.

In response to your final query, I have not referred the matter to the Minister under the Regulations, as I am of the view that referral to the Commissioner under regulation 7 was the appropriate course of action.⁴⁶⁵

⁴⁶² Tribunal Documents, pp. 2739-2740

⁴⁶³ Tribunal Documents, p. 2741

⁴⁶⁴ Tribunal Documents, p. 7174

⁴⁶⁵ Tribunal Documents, p. 7176

Complaint made by Sergeant William Hughes

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

I am in a position to provide a chronological account as to how this statutory (Confidential Recipient) process utterly failed as an entity in causing the allegations to be independently investigated.

Instead, the file was simply passed back to the garda commissioner and then to a nominated team – a team who were under the direct supervision of the same senior officers conducting the disciplinary enquiry. The report to the Confidential Recipient (and now to this 'team') contained allegations of malpractice in respect of the disciplinary process and the senior officers and were subject of complaint in the report.

I strongly objected to the senior officer's involvement in the Confidential Recipient investigation but my complaints were disregarded.

This factor exposed me as a 'whistleblower' to further distress, adverse treatment, discomfort and alarm at the hands of the garda authorities.

To me, this very much seemed that the garda authorities were making every effort to limit the investigative processes that would be necessary for the proper investigation of the allegations made. I found this aspect to be deeply troubling.

I believe I can provide evidence to the Tribunal in support of my views that various 'investigations' undertaken by senior garda management arising from my 'whistleblower' allegations were not conducted in a fair, expeditious and full manner – a factor that obviously suited senior management but certainly was much to my disadvantage.⁴⁶⁶

In his interview with tribunal investigators, Sgt Hughes referred to the reports provided to both Supt O'Gara and D/Insp O'Boyle in early 2009 and stated that 'nothing came of that', and that he was not contacted any further in relation to what he had submitted. He said that:

As a result of this process I felt bullied, harassed and scapegoated, I felt there was an abuse of process, cover up, harassment of me, criminal activity and malpractice. The criminal activity I am referring to here is the continued harassment of me by the Garda authorities in failing to properly investigate the serious complaints, which I believe may have constituted a breach of the non fatal offences against the person act. I felt that the investigations failed to uncover if there had been an offence of reckless endangerment committed, in so far as, the alleged failure to properly coordinate serious crimes involving John Hennessy and Baiba Saulite prior to the murder. I felt that the investigation files should have been forwarded to the law officers for their determination in that regard.⁴⁶⁷

Sgt Hughes was requested by the tribunal to explain his complaints in relation to A/C Feehan's investigation and in a letter to the tribunal dated 3rd December 2021, Sgt Hughes, through his solicitor, stated that:

It is Sergeant Hughes submission that there was a failure to properly investigate the systems failures alleged in the above reports as the investigation failed to uncover what he believed to be irrefutable wrongdoings with regard to:

⁴⁶⁶ Tribunal Documents, p. 72

⁴⁶⁷ Tribunal Documents, p. 47

- *The alleged lack of investigation/correlation of crimes/offences prior to the murder (pre-Nov 2006).*

Once the systems failure as above had been established in Chief Inspector Feehan's investigation, then a full and proper investigation of the remaining allegations in the above reports should have uncovered further wrongdoings with regard to:

- *The alleged misinformation published in the Garda Press release (Nov 2006);*
- *The alleged issues in the fact-Find investigation (2006/2007);*
- *The alleged issues in the Disciplinary Investigation;*
- *The alleged lack of response from senior Garda management to his reports of systems failures;*
- *The alleged failure to investigate his sick-leave absences;*
- *The alleged grossly unfair act of reducing his salary without proper process.*

Sergeant Hughes highlighted in previous correspondence a lack of feedback from senior management arising from the (C.R.) investigation along with his perceptions that the file was not forwarded to other entities for investigation/attention. It is his view that this represents further failure in that investigative process.⁴⁶⁸

Sgt Hughes was asked by counsel for the tribunal about his concerns at the appointment of A/C Feehan to conduct this investigation:

A. *The proposed report I was going to furnish to the confidential recipient investigation, which I did in January, the following January, contained concerns and complaints in relation to the conduct of the disciplinary investigation. So from my point of view, I just felt that there was conflict there if Assistant Commissioner Feehan was going to be conducting the investigation, more or less, that was pointing out what I felt were irregularities in the disciplinary investigation.*

...

Q. *So when you were informed that there was an internal investigation in An Garda Síochána, were you satisfied with that at the time?*

A. *I became satisfied with it indeed to the extent that I was happy that there was probably oversight by Brian McCarthy anyway and ... given that this was the only facility available, I decided to partake [in it] then.*

Q. *But you still challenge the role of Assistant Commissioner Feehan in heading up the inquiry, isn't that right?*

A. *Well we looked for clarification on it there in relation to possible conflict.⁴⁶⁹*

Sgt Hughes was asked by counsel for the tribunal about the questionnaires provided by A/C Feehan's investigation team:

Q. *... So, at that time you're highlighting concerns in relation to the questionnaires that were sent out by the Feehan investigation, and the Tribunal have seen those*

⁴⁶⁸ Tribunal Documents, pp. 7931-7932

⁴⁶⁹ Tribunal Transcripts, Day 160, pp. 58-59

questionnaires and the manner in which the questions were framed. But, you thought that they were framed inappropriately, is that right?

A. *That's correct.*

Q. *And had you drawn Superintendent O'Gara or Inspector O'Boyle's attention to that problem?*

A. *I think on the 20th February 2009, I submitted a report to Inspector O'Boyle, and I think it covers most of what is in this correspondence here.*⁴⁷⁰

Sgt Hughes confirmed to the tribunal that he was unhappy with the outcome of A/C Feehan's investigation.⁴⁷¹ He told the tribunal that at this time '*... there was just a complete breakdown of trust of management, and my confidence had eroded considerably*'.⁴⁷² He said that he expressed his dissatisfaction to the confidential recipient.⁴⁷³

He was asked by counsel for the tribunal whether he had been kept updated about the investigation:

A. *No, the last contact I had with the confidential recipient investigation was on the 20th February 2009.*

Q. *... So this result, as it came on the 19th May 2010, was out of the blue, as it were?*

A. *Yes, indeed.*⁴⁷⁴

Sgt Hughes told the tribunal that:

*The confidential recipient process received the most serious allegations that could be made, really, from a member of the Garda Síochána, in relation to matters pertaining to Baiba, and also my treatment as a result of raising the issues of a systems failure. And I think that – I think there's four or five serious issues within that confidential recipient investigation that I had alerted the authorities to, but I had received no feedback other than saying that [they were] without foundation.*⁴⁷⁵

During cross-examination by counsel for An Garda Síochána, Sgt Hughes was asked whether the investigation by A/C Feehan was thorough:

A. *It seems to be quite extensive, yes.*

Q. *And very thorough [and] comprehensive?*

A. *It's thorough and comprehensive in respect of interviewing far more members of the Garda Síochána that had dealings with Baiba Saulite prior to her murder.*

Q. *And very professionally done and very in depth in the approach it took to the whole investigation, you'd agree with that?*

A. *I don't fully agree with that, no.*⁴⁷⁶

⁴⁷⁰ Tribunal Transcripts, Day 160, p. 97

⁴⁷¹ Tribunal Transcripts, Day 160, pp. 128-129

⁴⁷² Tribunal Transcripts, Day 160, p. 83

⁴⁷³ Tribunal Transcripts, Day 160, pp. 129-130

⁴⁷⁴ Tribunal Transcripts, Day 160, p. 131

⁴⁷⁵ Tribunal Transcripts, Day 161, p. 44

⁴⁷⁶ Tribunal Transcripts, Day 162, p. 93

He was asked by counsel for An Garda Síochána how the investigation represented bullying and targeting of him:

A. ... the investigation wasn't conducted in accordance with the regulations that underpinned that particular procedure. I wasn't kept informed of developments. I wasn't given feedback. And when the investigation completed two years later I was merely sent a one page letter from the confidential recipient saying that the allegations I'd made, or had made, were without foundation and I considered that not to be sufficient given the input I had made into this process from the start. In addition, I feel that Chief Superintendent Feehan, with respect, should not have been involved in that investigation because some of the matters that were the subject of complaint in the confidential recipient process were in respect of his handling of the disciplinary investigation and the previous investigation, the fact finding investigation.

Q. Whom do you say targeted you with respect to the CRO investigation? And can you tell – more importantly, can you tell the Chairman what evidence do you have against any of the alleged targeters?

A. Well, I believe that ... the confidential recipient investigation was managed by Chief Superintendent Feehan and Inspector Fergus O'Dwyer, and the people that I say that matters were reported to failed to actually investigate the issues to my satisfaction at the time.

Q. In plain English, that means you weren't happy with the outcome?

A. I wasn't happy with the process, nor the outcome.

Q. Yes. So no matter how in depth, no matter how thorough, no matter how comprehensive the report was, the investigation was, if it didn't reach a conclusion that you agreed with, that was targeting?

A. Well, you see, I didn't know what conclusions it had reached in relation to specific matters that I had complained about. Only that I was told that the matters that I had complained about were without foundation. I don't think that is a sufficient response to the allegations I had made which I categorically included in the reports to the confidential recipient.

Q. In your view, was the decision not to uphold your complaints, was that targeting of you?

A. Well they had not investigated, as far as I could see, the matters that I complained of to the fullest extent.

Q. Was that targeting of you, that they didn't uphold your complaints?

A. Well I felt that ... I had earnestly provided ample information to the confidential recipient process that merited a full investigation. And the failure to actually apply a full investigation to the matters there, what I would see as a targeting of me, and

the fact that there was officers involved who were involved in previous investigations that were complained of in the confidential recipient process, I reckoned it highly irregular.

...

- Q. *So, really doesn't it come down primarily to your grievance with the outcome; they didn't accept your complaint, they didn't uphold your complaint?*
- A. *They didn't, as far as I could see, and on reading the documents now that were provided, they didn't actually highlight areas where there were obvious failures on behalf of Garda management.⁴⁷⁷*

It was put to Sgt Hughes that there was no evidence to support his allegation of targeting:

- Q. *I am suggesting to you your accusation that distinguished officers were involved in targeting you arising from the outcome of this report is illogical, but it is more than illogical, it's very unfair to them, and I am suggesting to you there is not a jot of evidence to support your allegations of targeting.*
- A. *I believe there's a lot of evidence to support the fact that the matters complained of, substantive matters complained of in my report to the confidential recipient's office were not properly investigated in that process.⁴⁷⁸*

Sgt Hughes disagreed with the suggestion from counsel for An Garda Síochána that his allegations were unfounded and unfair to the members against whom they were made:

- Q. *I am suggesting to you in conclusion, sergeant, that your view towards management became so poisoned, particularly perhaps after the instigation of the disciplinary investigation, that no matter what management did for you in terms of finding you an alternative role, with lighter duties, with a weekend allowance, no matter what steps they took to keep you involved, even though you were off sick away from the station, no matter what efforts they made to assist you, you weren't happy and you embarked upon a campaign of actually, of actually making serious, unfounded allegations against them.*
- A. *I don't agree. I think my allegations are well founded.⁴⁷⁹*

Counsel for Sgt Hughes referred him to his correspondence to the confidential recipient dated 4th December 2008 and he confirmed to the tribunal that this complaint was not addressed in A/C Feehan's report. He said that:

- A. *... the individual Garda members referred to in the document at the first instance weren't approached in the fact find investigation and neither were they seemingly approached in the confidential recipient investigation process. And I believe that information in that document there was critical to Garda management's viewpoints in relation to systems failure within the Garda Síochána, in relation to John Hennessy and Baiba Saulite prior to the murder. And I believe, I believe that a proper*

⁴⁷⁷ Tribunal Transcripts, Day 163, pp. 54-57

⁴⁷⁸ Tribunal Transcripts, Day 163, p. 67

⁴⁷⁹ Tribunal Transcripts, Day 164, p. 44

investigation of the document there would have shone the spotlight considerably and substantially towards other members of An Garda Síochána, particularly of senior rank.

Q. And when you review the final report, does it appear to you that this information was engaged with at all?

A. It doesn't appear so.⁴⁸⁰

Responding Statements and Evidence on the Issue

Former Assistant Commissioner Michael Feehan

In his statement to the tribunal, A/C Feehan outlined the extent of the work carried out by the confidential reporting investigation. He stated that:

In order to have this investigation carried out as expeditiously as possible, I appointed a team of investigators which was comprised of Detective Superintendent Gabriel O' Gara and Superintendent Fergus Dwyer as well as two Detective Inspectors, two Detective Sergeants and four Sergeants. This investigation examined a total of eight allegations outlined in the report made by the Confidential Recipient to the Commissioner. Several hundred individual lines of enquiry were investigated by this team in the course of the investigation. All Garda management personnel, together with all the Garda members identified as having contact with any of the principal parties in this matter were interviewed by the investigation team and all existing documentation pertaining to the issues raised were also examined.⁴⁸¹

He continued that:

In an effort to ascertain the identity of all members of an Garda [Síochána] who may have had any involvement with Ms. Saulite or Mr. John Hennessy, the investigation team carried out an in-depth examination of all PULSE computer records associated with Ms. Saulite and Mr. Hennessy. Each member of An Garda [Síochána] who investigated, reported or is associated with any Pulse Incident where Ms. Baiba Saulite and or Mr. John Hennessy, were interviewed with a view to establishing if they had possession of any information relating to a threat on the life of Ms. Saulite. Each member of An Garda [Síochána] who conducted an inquiry or had an entry on the Pulse System on Ms. Baiba Saulite and or Mr. John Hennessy prior to the murder of Ms. Saulite on the 19th of November 2006 were interviewed. All senior personnel who were ... attached to the Dublin North Division were interviewed by the members of the investigation team and were asked if they had any knowledge or intelligence in relation to a threat to the life of Baiba Saulite. These officers included the Detective Superintendent Michael Byrne, the Detective Inspector Walter O'Sullivan and the retired Superintendent Noel McLoughlin. Had there been some intelligence relating to threat to Ms. Saulite's life, one might reasonably expect that these officers would have knowledge of it. All of these officers stated that they did not have any such knowledge or intelligence.⁴⁸²

⁴⁸⁰ Tribunal Transcripts, Day 164, pp. 80-81

⁴⁸¹ Tribunal Documents, pp. 830-831

⁴⁸² Tribunal Documents, p. 836

A/C Feehan outlined in detail the officers interviewed by the investigation team and stated that every member of An Garda Síochána who investigated, reported or was associated with any PULSE incident concerning Ms Baiba Saulite and/or Mr Hennessy, together with senior personnel attached to the Dublin North Division, were interviewed. He said that the investigation team did not uncover any evidence to support an assertion that any member of An Garda Síochána was in possession of any information concerning any threat to Ms Saulite prior to her murder on 19th November 2006.

In respect of information concerning a threat to the life of Ms Saulite, A/C Feehan said that:

The team tasked with investigating matters reported to the Confidential Recipient made comprehensive enquiries in this matter. The investigators sought and examined all items of intelligence concerning [Mr A], Baiba Saulite and John Hennessy that was in the possession of An Garda [Síochána] until the death of Ms, Saulite on the 19th of November 2006. During the course of the enquiry a number of Criminal Intelligence Officers were canvassed to seek out any information, in their records or, any bulletins that were issued in relation to [Mr A], Baiba Saulite or John Hennessy. These included the Criminal Intelligence Officers attached to the Coolock District, Blanchardstown, Balbriggan and Drogheda. In addition enquiries were made with the Collators at the Special Detective Unit, National Bureau of Criminal Investigation and Organised Crime Unit ... Enquiries were also made at [the] Security and Intelligence section at Garda Headquarters. These enquiries did not discover any intelligence suggesting that there was a threat to the life of Baiba Saulite.⁴⁸³

He concluded that:

I wish to assert that the investigation into the allegations contained in the report from the Confidential Recipient was properly conducted in terms of the scope of the investigation and in its scale. Having conducted in-depth investigations into each of the allegations set out in the report from the Confidential Recipient, the investigating team did not find evidence to support the allegations as set out above.⁴⁸⁴

A/C Feehan rejected the suggestion that he acted improperly in conducting his investigations relating to Sgt Hughes.⁴⁸⁵

In his replies to the Memorandum of Questions posed by the tribunal investigator, he reiterated that a full and comprehensive investigation was carried out by a team of very competent investigators.⁴⁸⁶ He was asked whether any guidance was provided to him by senior garda management in respect to dealing with a garda member who had made a confidential report relating to workplace supports and/or dealing with welfare concerns. He said that:

I do not recall receiving guidance on work-place supports or welfare which might be in place specifically concerning Confidential Reporting and which might have been separate to the supports in place for dealing with other welfare matters.⁴⁸⁷

⁴⁸³ Tribunal Documents, p. 835

⁴⁸⁴ Tribunal Documents, p. 836

⁴⁸⁵ Tribunal Documents, p. 838

⁴⁸⁶ Tribunal Documents, p. 8376

⁴⁸⁷ Tribunal Documents, pp. 8368-8369

A/C Feehan was also asked whether he had knowledge of any policies in existence with regard to the administrative process surrounding an investigation of a confidential report in terms of liaison with divisional and district personnel, the location of incident rooms, the welfare management of members centrally affected by the investigation and updates to senior management up to Garda Commissioner level. He stated that these matters were not addressed in the Confidential Reporting Charter for An Garda Síochána and that of '*central importance in the Charter*' was the requirement to protect the anonymity of the person making the report.⁴⁸⁸

He was asked by the tribunal investigator whether he had any concern over his appointment to investigate the report made by Sgt Hughes given his previous involvement in the fact-finding and discipline investigations and any possible conflict of interest. A/C Feehan stated that:

*At the time of my appointment to carry out an investigation into the report received by the Garda Confidential Recipient, I was not informed as to the identity of the person making the Confidential Report. I do not recall the identity of the person making the Confidential Report being made known during that investigation. I was appointed to conduct these investigations by the Garda Commissioner. I believe that the Commissioner knew of my previous involvement in these matters when he appointed me to conduct this investigation. I was satisfied on that basis that I could conduct a proper investigation of these matters as directed.*⁴⁸⁹

A/C Feehan stated that given that the identity of the confidential reporter was not disclosed to him or his team, they would not have communicated with Sgt Hughes the details of what was being investigated.⁴⁹⁰ In further replies to the Memorandum of Questions, A/C Feehan refuted the allegation made by Sgt Hughes that he targeted him in any way.⁴⁹¹

In his evidence to the tribunal, A/C Feehan reiterated that he investigated all the allegations made by Sgt Hughes thoroughly and comprehensively, stating that there were '*a huge number of jobs*' and that '*for all intents and purposes, to me, it was akin to the type of investigation you would instigate in the event of a murder happening*'.⁴⁹²

He told the tribunal that:

*You asked ... as to whether ... we missed people who might have had such information or intelligence. During the course of the confidential recipient investigation ... we discovered that there were 74 different members of An Garda Síochána ... associated on Pulse with Ms. Saulite. Every one of those people was interviewed was part of the confidential recipient investigation, and ... in that investigation, a really comprehensive and thorough investigation, we did not discover anybody who had any intelligence or information in relation to a threat to Ms. Saulite other than what I have mentioned already.*⁴⁹³

He was asked by counsel for An Garda Síochána about the scope of the investigation and he said the following:

⁴⁸⁸ Tribunal Documents, pp. 8369-8370

⁴⁸⁹ Tribunal Documents, pp. 8370-8371

⁴⁹⁰ Tribunal Documents, p. 8373

⁴⁹¹ Tribunal Documents, p. 8376

⁴⁹² Tribunal Transcripts, Day 168, p. 51

⁴⁹³ Tribunal Transcripts, Day 168, p. 67

*... it was a huge investigation. Every one of the complaints to the confidential recipient were investigated fully and the report which I did at the end of that investigation states the facts, they were the facts that we found. So, I would defend, you know, the scope and the depth of that confidential recipient investigation completely; you know, it was carried out by professional, really well experienced investigators, and the task that – I told them the task was to try and find if there was – if any of the allegations, if there was truth in them or if they stood up, basically, and we did that.*⁴⁹⁴

He confirmed to the tribunal that he appointed Supt O’Gara and D/Insp O’Boyle to assist him and that he was *‘certainly looking to have ... the best people that I could possibly have to conduct the investigation.’*⁴⁹⁵

In terms of the methodology of the investigation, A/C Feehan said that it was similar to the approach taken in a murder case or other very serious investigations:

- A. ... Superintendent O’Gara would have been the senior investigating officer, I’d say, in many, many, cases of murder and other very serious investigations. So that was the approach that was taken with a jobs book and tasks being given to various people, and they would come back then and report on the results of, or the outcome of their enquiries.
- Q. Yes. The headings in the report are there for all to see in terms of what you – what topics you looked at, what members you interviewed, and you interviewed all of the senior members of the districts and division, whether serving or retired, who had any dealings at all with any of the issues, isn’t that correct?
- A. That’s correct, yes. Just in addition to that, we also did a trawl on Pulse, and I talked earlier about what I would expect to be available on Pulse, what would be inputted in there. I think there were 74 different members of An Garda Síochána who were linked in some way with Ms. Saulite or Mr. A, and every one of those people were interviewed, you know, to see had they any information about a specific threat to Baiba Saulite.⁴⁹⁶

A/C Feehan was asked by counsel for Sgt Hughes whether he saw a conflict in him being appointed to lead this investigation. A/C Feehan stated that:

- A. I don’t believe there was a conflict. Firstly, I was appointed by the Commissioner. It was not made plain who – or it was not made known who the confidential reporter was and I don’t think any of the eight allegations actually referred to me or pointed towards me, I would say. You could possibly make an argument about, there was a complaint about instigation of discipline, but I did not instigate the discipline, so I don’t believe there was a conflict.
- Q. ... but wasn’t it unavoidable that you would know who the complainant was? ...
- A. It was never divulged. I was never told for a fact who the confidential reporter was, but, of course, you could surmise.

⁴⁹⁴ Tribunal Transcripts, Day 169, p. 21

⁴⁹⁵ Tribunal Transcripts, Day 168, p. 50

⁴⁹⁶ Tribunal Transcripts, Day 168, pp. 54-55

Q. Yes. And did you form the view that, well, this could only be Sergeant Hughes? ...

A. Yeah, yeah. No, I mean, it was plain it was probably Sergeant Hughes or Garda Nyhan.

Q. ... if we look at allegation 3 ... [a]nd you'll see that the allegation is:

"Individual investigating officers have been harassed and improper disciplinary proceedings have been instigated against them because they raised these issues. No attempt has been made to interview the officers who are subject to these proceedings."

...

And where they were alleging harassment and improper disciplinary proceedings, did it not jump out at you that you had carried out the fact find and you then were the investigating officer in the disciplinary investigation, that it was inappropriate for you to review this complaint?

A. ... I did not instigate the discipline; Assistant Commissioner McHugh did. So, yes, you're right, I was involved in the fact finding and in the discipline investigation. I most certainly did not harass anybody. But that is a different matter. So I did not form the opinion that I was conflicted in taking on this work. And as I said, I was appointed by the Commissioner [to] do it.

...

I did not know at the time that Sergeant Hughes was the confidential reporter when I was appointed to do this work, and, if he had – if he did have an objection to me doing the – taking on this task, it was open to him, of course, to go back to the confidential report – or the confidential recipient and to make an objection there.

Q. But I am just asking you your own position. It didn't occur to you that you would be in a situation here where you would be judging your own actions?

A. I did not form that view, no.⁴⁹⁷

A/C Feehan told the tribunal why he did not provide any feedback to Sgt Hughes on the investigation:

I certainly did not give him feedback because it was not made known to me that he was the complainant or the confidential reporter, so, in that case, I wouldn't have. But just in relation to that, I know that Superintendent O'Gara interviewed Mr. Hughes a number of times, I know he asked, and it was in the papers which I received from the Tribunal, he did ask Sergeant Hughes, in one of those interviews, was he happy the way that the investigation was proceeding, and Sergeant Hughes told Superintendent O'Gara, yes, he was happy with the way the investigation was being carried out.⁴⁹⁸

⁴⁹⁷ Tribunal Transcripts, Day 169, pp. 5-8

⁴⁹⁸ Tribunal Transcripts, Day 169, p. 8

He gave evidence that he was unable to recall when he became aware that Sgt Hughes was raising issues of ‘systems failures’:

A. *I am not sure was it in the 25 page report that he gave in the discipline investigation, but I certainly was aware of it when I was conducting the confidential recipient investigation.*

...

Q. *And might you have heard about it before that 25 page report?*

A. *No, I don't believe I did, I don't believe I did.*⁴⁹⁹

A/C Feehan absolutely refuted the allegations of targeting made by Sgt Hughes in his statement to the tribunal.⁵⁰⁰

Retired Superintendent Gabriel O’Gara

In his statement to the tribunal, Supt O’Gara outlined his involvement in the investigation and described how he sought statements from and interviewed members of An Garda Síochána relevant to the issues alleged by Sgt Hughes in his confidential report. He also outlined his participation in the meeting with Sgt Hughes on 18th November 2008 as follows:

I can recall that I was tasked with Detective Inspector Peter O’Boyle to interview Sergeant William Hughes and on the 18th November 2008, I accompanied D/Inspector O Boyle to Bewleys Hotel, Dublin Airport where we met Sergeant Hughes. We outlined to Sergeant Hughes our role in the investigation and he outlined to us various concerns that he had with regards [to] the manner in which he had been dealt with by Senior Garda Management in his Division with regards [to] his involvement in a child abduction case involving Baiba Saulite and another person and the subsequent investigation into the murder of Baiba Saulite. The meeting was introduction only. I did not take notes at this meeting.

...

I can recall that Sergeant Hughes did say he had concerns that the investigation was being conducted by Assistant Commissioner Feehan as Commissioner Feehan was dealing with him in a fact finding investigation regarding a victim impact report provided to him by Baiba Saulite and that Assistant Commissioner Feehan had served Disciplinary Papers on him. He felt that it was inappropriate that Assistant Commissioner Feehan was now heading this investigation.

*Both D/Inspector O Boyle [and I] stated that we would bring his concern to the attention of Assistant Commissioner Feehan, which we did at a later date.*⁵⁰¹

He continued that:

Sergeant Hughes did provide the investigation team with a comprehensive report, which outlined various allegations and human resource issues he had with Garda Management.

...

⁴⁹⁹ Tribunal Transcripts, Day 169, pp. 15-16

⁵⁰⁰ Tribunal Transcripts, Day 169, pp. 21-22

⁵⁰¹ Tribunal Documents, pp. 1019-1020

All concerns that Sergeant Hughes had were included in his various statements to the investigation team and formed part of the report that was subsequently prepared for the Commissioner of An Garda [Síochána].⁵⁰²

Detective Superintendent Peter O’Boyle

In his statement to the tribunal, D/Supt O’Boyle outlined that at the time of the investigation he held the rank of detective inspector and was a trained senior investigating officer.⁵⁰³ He referred to his meeting with Sgt Hughes on 18th November 2008:

I made a note that Sgt Hughes outlined that he had concerns that Assistant Commissioner Michael Feehan was leading the investigation as he believed that there was a conflict of interest due to the involvement of the Assistant Commissioner in the disciplinary investigation. He also outlined the fact that that he had not received visits from supervisory members while he was out sick with stress and that he was now on half pay which was causing financial concerns. I recall that the concerns raised by Sgt Hughes were brought to the attention of Assistant Commissioner Feehan during a conference shortly after this meeting.

...

From my personal involvement with this investigation it is my opinion that it was a thorough and professional investigation which was closely supervised by Assistant Commissioner Feehan and by Superintendent Gabriel O’Gara. The jobs book was run from the incident room at Harcourt Square by Sgt Mark Waters who was an experienced Incident Room Coordinator who allocated various tasks in the normal way and in accordance with best practices. I recall that the other members detailed to the investigation team were all experienced investigators.⁵⁰⁴

Retired Superintendent Fergus Dwyer

In his statement to the tribunal, Supt Dwyer outlined that he had a limited involvement in the confidential reporting investigation.⁵⁰⁵ He confirmed his involvement in the early stages of the investigation to counsel for the tribunal saying that he liaised with witnesses but did not interview them.⁵⁰⁶

Legal Submissions

Retired Sergeant William Hughes submitted as follows:⁵⁰⁷

- that A/C Feehan should not have been appointed to lead the investigation, as there was a clear conflict of interest, with allegation 3 in the confidential complaint referring to the discipline investigation.

⁵⁰² Tribunal Documents, p. 1020

⁵⁰³ Tribunal Documents, p. 1014

⁵⁰⁴ Tribunal Documents, pp. 1014-1015

⁵⁰⁵ Tribunal Documents, p. 897 and p. 905

⁵⁰⁶ Tribunal Transcripts, Day 171, p. 88

⁵⁰⁷ The tribunal has considered all of retired Sergeant William Hughes’s legal submissions on this issue and what follows is a summary of the same. Tribunal Transcripts, Day 173, pp. 6-64

- that it was obvious to A/C Feehan that the confidential recipient investigation related to Sgt Hughes. A/C Feehan had produced the fact-finding report that led to the discipline proceedings. That A/C Feehan gave evidence to the tribunal that, at the time, he was of the view that the discipline proceedings were merited. He was then in charge of the discipline investigation.
- that there was an obvious conflict in A/C Feehan later being asked to determine whether the discipline proceedings were in some way improper and that he was acting as a judge in his own cause.
- that A/C Feehan did not engage with Sgt Hughes in respect of his likely findings, in breach of Regulation 12 of the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations, 2007.
- that the report did not conclude that there was a failure on the part of An Garda Síochána despite noting that Ms Saulite had not in fact received any crime prevention advice.

An Garda Síochána submitted as follows:⁵⁰⁸

- that A/C Feehan put together an experienced team to investigate the matter.
- that A/C Feehan wanted the investigation conducted as '*expeditiously as possible*', that all garda members in contact with the principal parties were interviewed and all existing documentation was examined.
- that the investigation was properly conducted in terms of scope and scale and discovered no evidence to support the allegations.
- that a major part of Sgt Hughes's whole story related to the disputed claim that Detective Inspector Walter O'Sullivan told him in a conversation on the Monday after the murder that the Commissioner's Office were well aware of threats to Ms Saulite and that the Commissioner's Office had been asked to allocate protection for her and had refused. D/Insp O'Sullivan's evidence should be preferred on this issue. The absence of any mention of this '*bombshell*' in the weeks and months that followed was significant. The bombshell information would have switched the spotlight off the sergeant on to the authorities whom he claimed were scapegoating him. It was submitted that the weaknesses of his account on this core issue undermined the credibility of the sergeant's entire narrative.
- that given the length and exhaustive nature of the Feehan Report, the allegations made by Sgt Hughes could not be sustained on any basis whatsoever and he was dissatisfied with its findings because none of his complaints were upheld.

⁵⁰⁸ 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 173, pp. 66-135

Conclusion

Sgt Hughes submitted to the tribunal that A/C Feehan had a conflict of interest in respect of his confidential report, that he should not have been appointed, and that it should have been obvious to him that it was not appropriate for him to investigate.

It was suggested to A/C Feehan that he was going to be judging his own actions. He was referred to the details of the confidential complaint and asked whether it jumped out at him that it was inappropriate for him to review this complaint.

In regard to the conflict of interest issue, A/C Feehan cannot be criticised for the fact that the Commissioner appointed him so the question arises whether it should have been obvious to him that there was a conflict of interest arising from the complaint about the discipline proceedings.

It is true that A/C Feehan was the investigating officer in the discipline investigation. It has to be remembered that the proceedings in respect of Sgt Hughes and Garda Nyhan were discontinued and that neither of them proceeded to the presentation of a disciplinary charge. A/C Feehan as the investigating officer reached the conclusion in Sgt Hughes's case that the matter should proceed no further. The issues concerning the discipline investigation are considered elsewhere in this report and it is true to say that there were delays in the process; however the result ultimately exonerated Sgt Hughes and to that extent it cannot be suggested that the process was manipulated in order to target him. In respect of the delays, the tribunal has found that they resulted from a number of factors and that A/C Feehan did not target or discredit Sgt Hughes. Indeed, Sgt Hughes, as appears from the discipline investigation issue, was reluctant to ascribe delays occasioned by the investigators to targeting.

There is an argument that A/C Feehan's prior engagement with the issues that arose in the fact-finding and discipline investigations should have led him to question whether he was the appropriate person to carry out the confidential recipient investigation. However, the tribunal, while considering that such a concern is reasonable, does not find that there is any clear conflict that compromised A/C Feehan's capacity to do the work. And neither does it consider that it is an obvious impairment by reason of conflict. It considers that it is inappropriate to describe his role as being a judge in his own cause.

The tribunal is satisfied that A/C Feehan cannot be accused of targeting or discrediting Sgt Hughes because he did not perceive that there was or might be a conflict by reason of his previous engagement.

The criticisms that Sgt Hughes made in the details that he furnished in advance of the hearing about A/C Feehan's report to the confidential recipient were essentially directed to the conclusions, suggesting that the report was deficient because the wrong conclusions were reached. This is also reflected in the last submission on behalf of Sgt Hughes as cited above. The report did not uphold the policing criticisms levelled by Sgt Hughes and his criticisms are not matters for this tribunal to adjudicate on.

It is however apparent that the investigation undertaken by A/C Feehan was very detailed and thorough and it is difficult to see how his methodology could reasonably be criticised. He and his investigators appear to have explored every avenue and followed every lead to complete the investigation. It is difficult to see what else the investigators could or might have done.

There is nothing in the conduct of the investigation to suggest prejudice on the part of A/C Feehan towards Sgt Hughes. He was given a task to do and he carried it out. The task consisted of examination of all the allegations that Sgt Hughes made, and that is what he did. Nothing about the process of compiling the report or about the contents of the report is evidence that A/C Feehan was actuated by any prejudicial view or was proceeding otherwise than by addressing the issues for investigation in a professional and careful manner.

The tribunal's mandate does not extend to the correctness of the conclusions of the report but rather to the suggestion that A/C Feehan did not do his job properly in a manner that constituted targeting or discrediting of Sgt Hughes.

The tribunal is satisfied that this was an exceptionally thorough body of work and it is unable to find any legitimate basis on which it may be condemned. The report of A/C Feehan contained 38 chapters of narrative, analysis and conclusions, supported by 4 further volumes of statements from 104 witnesses and a list of 191 documents.⁵⁰⁹ This material, suitably redacted, was circulated by the tribunal to the parties and it may be noted that Sgt Hughes made his allegations without having seen it.

The suggestion that A/C Feehan and his colleagues were actuated by a desire to target Sgt Hughes seems unjustified and without any factual or evidential basis.

⁵⁰⁹ Tribunal Documents, pp. 2752-3868; Tribunal Transcripts, Day 168, pp. 50-51

CHAPTER 9

THE COMPLAINT MADE BY SERGEANT WILLIAM HUGHES IN RELATION TO SUPERINTENDENT MARK CURRAN

Issue 9 of the Schedule of Issues

Did Superintendent Mark Curran target or discredit Sgt Hughes because he made a protected disclosure by being unwilling to deal with the 'systems failure' issues the sergeant wanted to discuss and/or by the nature and content of his meeting with the sergeant dated 17th December 2008?

Background

Sergeant William Hughes remained on extended sick leave during the course of 2008, which was certified by his general practitioner as resulting from work-related stress. The issue of whether Sgt Hughes was suffering from an injury on duty was considered by the Assistant Chief Medical Officer of An Garda Síochána, Dr Richard Quigley, who advised in a report to Assistant Commissioner Catherine Clancy, Human Resource Management (HRM) dated 6th March 2008, that his best sense was that the events described constituted normal policing work, that he did not see evidence of injury being perpetrated upon Sgt Hughes, and that he could not conclude that the work-related events constituted formal injury on duty.⁵¹⁰

In a later report, dated 9th June 2008, to A/C Clancy, Dr Quigley recommended that Sgt Hughes should be medically retired from An Garda Síochána on grounds of ill-health.⁵¹¹ During this period, Sgt Hughes was on reduced pay as he was recorded as absent due to ordinary illness.

In a letter dated 4th July 2008, Sgt Hughes complained that a meeting with local management had not taken place prior to the medical review and stated his intention to appeal the recommendation of the Assistant Chief Medical Officer.⁵¹²

In a letter of response to Sgt Hughes dated 19th September 2008, it was stated by the Assistant Commissioner, HRM, that Sgt Hughes had declined all offers to meet local management to date.⁵¹³

This position arose from a series of reports between May and July 2008. Inspector William Hanrahan had reported to Supt Curran on 27th May 2008 that *'I have on previous occasions offered to meet with Sergeant Hughes, he indicated to me that as I have his mobile number and he has mine that we have an open line of communication. Sergeant Hughes has no issue concerning my communications with him'*.⁵¹⁴ This was summarised by Supt Curran in a report to C/Supt DMR North dated 17th July 2008, who stated that:

⁵¹⁰ Tribunal Documents, p. 8102

⁵¹¹ Tribunal Documents, p. 3978

⁵¹² Tribunal Documents, pp. 3986-3987

⁵¹³ Tribunal Documents, pp. 4018-4019

⁵¹⁴ Tribunal Documents, p. 2143

*Inspector Hanrahan states that he offered to have a meeting with Sergeant Hughes in person but Sergeant Hughes stated his preference to communicate by telephone.*⁵¹⁵

Subsequently, Chief Superintendent Michael O’Sullivan forwarded both reports to Assistant Commissioner, HRM, on 24th July 2008 and stated that:

*All contact with Sergeant Hughes has been conducted through telephone, specifically at his request. He has declined all offers to meet local management to-date. This places local management at a disadvantage in that no face-to-face contact is possible. I stress again this is at the specific request of Sergeant Hughes.*⁵¹⁶

However, Insp Hanrahan submitted a report to Supt Curran, dated 13th October 2008, in which he stated:

With reference to above on Wednesday the 8th day of October 2008 I had a conversation with Sergeant Liam Hughes of Swords Garda station during this conversation he expressed serious concerns pertaining to a letter he had received from Human Resource Management, Garda HQ to the effect that he had refused to meet with local management in the R District he has asked that I rectify this situation. Garda Management in the R district would like to clarify that Sergeant Hughes has not refused to meet with us on any occasion since both Superintendent Curran and I arrived in the District.

*We have agreed to communicate by way of telephone for the convenience of all parties. Sergeant Hughes has my mobile no along with Superintendent Curran’s as we have his there is at all times an open line of communication.*⁵¹⁷

Supt Curran spoke with Sgt Hughes by telephone on 8th October 2008. In his report to his chief superintendent on 7th November 2008, Supt Curran said that Sgt Hughes had made a number of requests during this conversation. He clarified that Sgt Hughes had not refused to meet with local management and that there was an open line of communication with Sgt Hughes. He also stated that Sgt Hughes had said that nobody had formally interviewed him as to the reason why he was out sick. Supt Curran said that he ‘*invited him to return to work at any time and assured him that he would be accommodated within reason*’.⁵¹⁸

During this period, the discipline investigation initiated by Assistant Commissioner Al McHugh and commenced by Chief Superintendent Michael Feehan in 2007, was also continuing and enquiries were outstanding with Dr Quigley as to whether Sgt Hughes could be interviewed in the light of his sickness absence.

In the meantime, Sgt Hughes had made his complaint to the Confidential Recipient of An Garda Síochána on 16th September 2008 and this investigation had commenced on 7th November 2008.

It is against this background that Sgt Hughes was contacted by his district officer, Supt Curran, and requested to attend a meeting in respect of his welfare on 17th December 2008.

Sgt Hughes prepared a written report for Supt Curran, which he handed to him at the meeting. In the report, Sgt Hughes stated that his medical certificates showed that his absence from work was as a result of work-related stress. This report further stated that the assertions made by the

⁵¹⁵ Tribunal Documents, p. 688

⁵¹⁶ Tribunal Documents, p. 4010

⁵¹⁷ Tribunal Documents, p. 4021

⁵¹⁸ Tribunal Documents, p. 4033

Assistant Commissioner, HRM, that he had refused to meet local management and insisted all communication with him in that regard should be by telephone, were untrue. Sgt Hughes referred to the statement that he had declined to meet local management saying that this had added to his stress and that it had not been formally retracted. He also stated that garda management had failed to address the serious workplace matters that he had reported in 2006 and 2007 and that this had led to a deterioration of his general welfare over the previous two years. The report then stated that:

From a welfare point of view, I believe that Garda management has failed to properly conduct a proper investigation into the reason for my absence from work. I have not been formally interviewed to date in that regard by Garda management.

...

I believe that Garda management have failed to properly and professionally tackle issues of workplace bullying, harassment and intimidation which I have been subjected to and which were reported and I believe that this failure is a continuance of such bullying and harassment of me.⁵¹⁹

The report also referred to what Sgt Hughes said was the decision by garda management in September 2007 to reduce his salary by half even though the Chief Medical Officer (CMO) had not properly determined whether his illness was as a result of injury on duty. His letter concluded:

The full investigation of all matters pertaining to this report, and the restoration of full pay and allowances due, would have the effect of somewhat enhancing my situation from a welfare point of view.⁵²⁰

Sgt Hughes outlined details of this meeting to his solicitor in a letter dated 18th December 2008:

I wish to provide you with the responses given by Supt. Curran to various matters arising there from as follows;

My 'refusal' to attend meetings.

Supt. Curran stated that he was sure that I had informed him that I insisted that all communication with him should be by telephone although he did not produce any notes or documents to support his belief.

My reports of serious concerns.

On several occasions throughout the meeting, Supt. Curran emphasised that an investigation is now underway by the Garda 'Whistleblower' into aspects of the conduct of the various investigations surrounding the death of Baiba Saulite and that that investigation should deal with the serious concerns I have [been] raising in the past.

I pressed him on why my concerns were not addressed by Garda management prior to the intervention of the Garda 'Whistleblower' but I could not elicit an adequate response from him other than that he had reported my concerns to the authorities and that the matters referred to were now the subject of enquiry by the Whistleblower'.

I continually pressed him as to why the Garda authorities failed to investigate reports of serious concerns expressed by a member of Sergeant rank. I asked him if there was, prior

⁵¹⁹ Tribunal Documents, pp. 503-504

⁵²⁰ Tribunal Documents, p. 505

to the launching of the Garda Whistleblower' service, any mechanism within the Garda organisation to deal with alleged malpractices on behalf of the authorities. He admitted that he did not know.

He did state, however, that my allegations of a 'systems failure' in the Saulite/Hennessy matters were being rebutted by others, by whom, he would not say. He stated that Walter O'Sullivan (my conversation with him on the morning after Baiba;s [sic] death) is now denying that he made any reference to me about security issues concerning Baiba Saulite and John Hennessy.

No investigation into my absence from work.

No adequate response here other than that his door was always open for me to visit and that he made sufficient telephone calls to me to satisfy the criteria insofar as his responsibilities in that regard were concerned. He refused to be drawn on why he had not properly investigated my absence and why, as required in the Code regulations, I had not been visited on a regular basis by a supervisor.

Issues of workplace bullying, harassment etc.

Supt. Curran stated that these matters occurred before his time in the District and that it now was a matter between the legal profession and the Garda authorities.

Salary reduction.

Supt Curran stated that this was a matter for the Garda authorities in HRM and the C.M.O. to deal with.

Disciplinary Process.

Supt. Curran was not in a position to comment on the progress or otherwise of this investigation. I asked him, as this was now the third Christmas with this matter hanging over me, if he would make enquiries as to what is happening with this enquiry. He stated that he might do that.

Unsafe Workplace.

Supt. Curran gave me assurances that if I returned to work, he would personally ensure that I would not be subject to bullying or intimidation. He stated that he would do all to ensure that I was in a safe working environment. He invited me to return to work even on a phased basis and would even arrange for a clerical position for me if I preferred not to take up operational duties. He sounded very sincere with his offer.

Welfare (General)

In reply to his question as to my general welfare, I informed him that, although I wished to return to work at the earliest opportunity, I felt that the non-resolution of the serious matters which have gone before to be a big factor in preventing my return off sick leave.

Supt Curran was very much of the opinion that the thing to do was to draw a line in the sand, move forward and let the Garda 'Whistleblower' determine the rights and wrongs of the matter.

My strong feeling is that he is stone-walling the real issues and has been instructed not to engage in any enquiry on my behalf that will expose the real truth behind the serious issues at hand.

I feel that the purpose of the above meeting was to allow Supt. Curran the opportunity to submit a report to the authorities stating that he offered me the opportunity to return to work as described but that I declined all offers made. I did not commit myself in that regard either way but stated that I would have to consider all matters with my legal and medical representatives.⁵²¹

In a report to Chief Superintendent Gerard Phillips dated 23rd January 2009, Supt Curran stated that the meeting on 17th December 2008 was convened for the purpose of discussing welfare issues and was attended by both D/Insp Hanrahan and by Sergeant David McCormack, the latter accompanying Sgt Hughes as his Association of Garda Sergeants and Inspectors (AGSI) representative. Supt Curran enclosed the report provided by Sgt Hughes and stated that:

A number of issues are raised by Sergeant Hughes in the attached communication. Regular contact has been made with Sergeant Hughes who continues to assert that he is suffering from work related stress. To this end he outlines a number of points where he believes that Garda Management has not responded to his satisfaction. He refers to his injury on duty which he states was never investigated along with previous allegations relating to bullying and harassment.

He further states he intends to return to work at the earliest opportunity should some of [the] issues raised in this letter be addressed.⁵²²

Complaint made by Sergeant William Hughes

In his interview with tribunal investigators, Sgt Hughes referred to the meeting with Supt Curran:

I now want to refer back to December 2008 when I was summoned for a welfare meeting with Superintendent Mark Curran, I provided him with a report, dated 17 December 2008, which included that I had never refused to meet with local management and that what had been said about me, that I was refusing to meet with local management was untrue and utter fabrication, and that I had brought this to the attention of local management (that was to Inspector Bill Hanrahan ...) I asked for the record [to] be corrected in that regard, but it has not to date been done. I said that Garda management had failed to properly address these serious issues. I said due to the lack of response from Garda management this had affected me personally and financially. I am unaware to this date what action if any, Superintendent Curran took in relation to this report.⁵²³

Sgt Hughes said that he made notes of the meeting, which recorded the following:

Under the heading "No investigation into my absence from work – No adequate response here other than that his door was always open for me to visit ... He refused to be drawn on why he had not properly investigated my absence and why, as required in the Code regulations, I had not been visited on a regular basis by a supervisor.

– Issues of workplace bullying, harassment etc, Supt Curran stated that these matters occurred before his time in the District and that it now was a matter between the legal profession and the Garda authorities." I also raised an issue around my salary reduction, which he said was nothing to do with him, that someone else was dealing with it. I

⁵²¹ Tribunal Documents, pp. 506-509

⁵²² Tribunal Documents, p. 7918

⁵²³ Tribunal Documents, p. 22

mentioned the unsafe workplace, He said that if I returned to work there would be no intimidation or bullying, and offered me a clerical position rather than operational and I believe he was sincere in that.

...

I informed him that although I wished to return to work at the earliest opportunity I felt that the non-resolution of the matters that had gone before prevented my return off sick leave. I believe this welfare meeting was as a result of me engaging with the confidential recipient.⁵²⁴

Sgt Hughes told tribunal investigators that he found the meeting with Supt Curran 'very narrow in context' and that Supt Curran:

... did not want to deal with the systems failures issues. I felt this was an abuse of process and that I was being isolated. In that regard and in respect to this instance I believe Superintendent Mark Curran was targeting me.⁵²⁵

During his evidence to the tribunal, Sgt Hughes was referred to the report that he prepared for the meeting and Supt Curran's subsequent report to his divisional officer:

- Q. *It does appear that when you raise these matters and raise matters with Superintendent Curran, that he reports them up the line to his superiors, isn't that right?*
- A. *That seems to be the case.*
- Q. *Is there anything else that you would like to highlight in relation to that meeting that you had with Superintendent Curran?*
- A. *Just that Superintendent Curran, in advance of the meeting, said that it was only to deal with welfare issues only, and that was the context of my report then to him.*
- Q. *I suppose there's a problem there, isn't there, in the sense that the superintendent was dealing with your welfare and that was his primary concern?*
- A. *Yes.*
- Q. *The Feehan investigation into your confidential report was confidential and they were about to embark on an investigation in relation to that?*
- A. *That's right.*
- Q. *Dr. Quigley was dealing with your health issues and getting advice from an independent psychiatrist and receiving reports [from] your psychiatrist and was advising on the issue of whether work related stress was an injury on duty. And the disciplinary investigation was also ongoing at that time. So, Superintendent Curran wouldn't have been privy to any of the contents of those investigations and reports, they'd have rested with HRM ... primarily, or the other strands and other investigations, isn't that right?*

⁵²⁴ Tribunal Documents, pp. 22-23

⁵²⁵ Tribunal Documents, pp. 40-41

- A. *Oh, I agree. Towards the end of this year and early 2009, I was getting more upbeat that matters were being attended to through the various processes.*
- Q. *But as far as Superintendent Curran was concerned, I mean he was fairly powerless in that regard; all he could do was report the matters up the line, as it were, isn't that right?*
- A. *Yes. And also, conduct an investigation into my workplace absence.*
- Q. *Well if we just look at the requirement to conduct an investigation in relation to work related stress, and it's something that you refer to on a number of occasions and with frequency in relation to the failure of management, and that this in some way constituted targeting, and we'll see during the course of 2009 and 2010 there were repeated requests from HRM for an investigation to be carried out locally, and the parameters of that investigation weren't set out. I mean what was there to actually inquire into?*
- A. *By Superintendent Curran at the time?*
- Q. *Yes. In terms of what would you anticipate would be inquired into locally?*
- A. *... with respect to the matters that were affecting me and the reasons why I was absent from work.⁵²⁶*

Sgt Hughes was asked by counsel for An Garda Síochána whether Supt Curran encouraged him to return to the workplace:

- Q. *Superintendent Curran does not have a specific recollection of this meeting but he expects that, as with the other occasions on which he had dealings with you, he encouraged you to return to the workplace where you would receive his full support. Is that a fair statement?*
- A. *That's a fair statement, yes.⁵²⁷*

Counsel for An Garda Síochána put it to Sgt Hughes during his cross-examination that he did not treat the meeting as a welfare meeting:

- Q. *I think in the letter that you subsequently sent to ... your solicitor ... you indicate and you assert that you pressed Superintendent Curran, you continually pressed him about particular matters that were on your mind?*
- A. *Yes.*
- ...
- Q. *Assuming that that's correct ... if that occurred, that would tend to indicate you weren't treating the meeting as a welfare meeting, but rather as a meeting where you wanted to confront the superintendent about certain issues in your mind?*
- A. *I was never confrontational with any member of authority, and it shouldn't be suggested that way. I handed him the report. He read through it and we discussed*

⁵²⁶ Tribunal Transcripts, Day 160, pp. 70-72

⁵²⁷ Tribunal Transcripts, Day 163, pp. 128-129

*the contents of the report, and based on that then, I submitted my notes to [my solicitor].*⁵²⁸

Counsel for An Garda Síochána put it to Sgt Hughes that he had introduced other issues at a meeting that was intended to be about his welfare:

Q. *That's what it was intended to have been; that's what he understood it was going to be, isn't that right?*

A. *That's correct. But these matters I was raising directly affected my welfare.*

Q. *So you blind sided him?*

A. *Excuse me?*

Q. *You blind sided him.*

A. *Oh, not at all ... [I] continually asked him why the matters I was raising ... on previous occasions were not being addressed by local management, and Superintendent Curran continued to defer to the confidential recipient process that was underway at the moment and that would actually determine the matter.*⁵²⁹

It was put to Sgt Hughes that the initiation of a face-to-face meeting by Supt Curran was inconsistent with the suggestion that it was Supt Curran's position that all communication should be by telephone. Sgt Hughes said that:

*... HRM had that on record from local management in the months prior, and I had raised it with Inspector Hanrahan prior to this meeting, this welfare meeting, and I raised it again there with him in relation to that assertion, and my purpose in raising it then was to have the record corrected that in no way would I ever insist that local management contact me only by telephone and refuse face to face meetings.*⁵³⁰

Sgt Hughes agreed with counsel for An Garda Síochána that he never submitted a bullying and harassment complaint under the Garda Síochána bullying and harassment policy and that he, Sgt Hughes, had never named any individuals that he wanted to complain about to Supt Curran at this meeting.⁵³¹

Sgt Hughes did not agree with counsel for An Garda Síochána that the issues of salary reduction, discipline and work-related stress were matters outside of Supt Curran's remit:

A. *... the only way, as far as I am concerned, that a decision can be rightly made in relation to my absences from the workplace was through the medical reports, and also reports as to the non medical issues which fell within the remit of Superintendent Curran to actually forward investigative reports to HRM in that regard.*

Q. *Can you not see that the decision relating to a reduction in salary which, under the Code, appears to be somewhat automatic after a number of days, is not something he was involved with?*

⁵²⁸ Tribunal Transcripts, Day 163, p. 130

⁵²⁹ Tribunal Transcripts, Day 163, pp. 132-133

⁵³⁰ Tribunal Transcripts, Day 163, p. 134

⁵³¹ Tribunal Transcripts, Day 163, pp. 134-136

- A. *I disagree with that.*
- Q. *All right. The discipline process that you complained of here, would you accept that was a matter completely outside of his direction and control?*
- A. *I don't accept that.*
- Q. *And in terms of items 1 and 4, which we've looked at, the work related stress issue, his position on that is that it is an issue primarily for determination by a medical professional, and you disagree with that?*
- A. *That work related stress issue?*
- Q. *Yes.*
- A. *Yes, I disagree on that.⁵³²*

It was suggested to Sgt Hughes by counsel for An Garda Síochána that the reason for the meeting was to make genuine enquiries:

- Q. *[Supt Curran's] position in relation to what he anticipated from the meeting was that the purpose of the meeting, as far as he was concerned, was to make a genuine enquiry of a colleague who the superintendent had worked with intermittently throughout his career, as you approached the Christmas 2008 period?*
- A. *Yes, I read that. Yes.*
- Q. *And it's fair, isn't it?*
- A. *That's what he said, yes, in his report. But I think he'd be better served by actually forwarding the investigative files to HRM as required.*

...

CHAIRMAN: *And I am just wondering which investigative files?*

A. *Well the investigation files into my absences from the workplace were required by HRM, but they weren't forthcoming from him.*

CHAIRMAN: *And where were they?*

A. *They weren't carried out, Mr. Chairman.*

CHAIRMAN: *So there weren't any investigative files?*

A. *Precisely, Mr. Chairman.*

CHAIRMAN: *Okay. So we're back to the same thing: he should have investigated the reason for your absence?*

A. *Precisely, Mr. Chairman.*

CHAIRMAN: *And the reason for your absence, i.e. the non medical reasons for your absence –*

⁵³² Tribunal Transcripts, Day 163, pp. 136-137

A. Yes, Mr. Chairman.

CHAIRMAN: – i.e. the systems failure?

A. And the imposition of the disciplinary process which I regarded as a targeting of me in the workplace and mostly unfair ...

CHAIRMAN: Okay. So just to be clear ... the reason for your absence was, number one, the systems failure non investigation and; number two, the unfair disciplinary process?

A. Yes ...⁵³³

The Chairman of the tribunal clarified the complaint against Supt Curran with Sgt Hughes:

CHAIRMAN: And you say you're criticising Superintendent Curran for failing to make investigations into three items that represent the reasons for your absences?

A. Yes, indeed.

CHAIRMAN: Is that correct?

A. And ancillary to that then would be my feelings of isolation, workplace isolation, and bullying and harassment, et cetera.

...

CHAIRMAN: So the fourth one then is feelings of isolation, et cetera, if I can put it that way?

A. Singling out, targeting.

CHAIRMAN: Okay. And what wouldn't be sufficient, if I am understanding where you are coming from, what wouldn't be sufficient was for Superintendent Curran to say: Look, I have medical reports from Dr. Reilly and from his partner and from Dr. Fernandez and so on, and they explain why he's out of work. That wouldn't be sufficient in your view?

A. It wouldn't be, Mr. Chairman, because I don't think Superintendent Curran would have access to those reports anyhow.⁵³⁴

Responding Statements and Evidence on the Issue

Chief Superintendent Mark Curran

At the time of the meeting in December 2008, Supt Curran had been the district officer for the Coolock District since 6th March 2007.⁵³⁵ In his statement to the tribunal, he said that he had *'little recollection of this meeting but I am sure that as in most of my dealings with Sergeant Hughes, I encouraged him to return to the workplace where he would receive my personal support'*.⁵³⁶

⁵³³ Tribunal Transcripts, Day 163, pp. 137-139

⁵³⁴ Tribunal Transcripts, Day 163, pp. 141-142

⁵³⁵ Tribunal Documents, p. 1028

⁵³⁶ Tribunal Documents, p. 1040

C/Supt Curran referred to notes made by Sgt Hughes dated 18th December 2008 relating to his 'serious concerns' and stated that:

I believe that I may have mentioned that an investigation was under way into matters surrounding the Baib[a] Saulite murder investigation. I believe that it would have been appropriate for me to inform him of this development seeing as he mentioned it. In hindsight I don't understand why Sergeant Hughes raised this matter as he had already availed of the Confidential Recipient mechanism and that should have satisfied him that progress was being made into his concerns.⁵³⁷

C/Supt Curran explained why he met with Sgt Hughes:

The purpose of this meeting was to make a genuine enquiry of a colleague whom I had worked with intermittently throughout my career as we approached the Christmas 2008 period. Throughout my dealings with Sergeant Hughes I was consistent in saying to him on many occasions that he should return to work and that I would accommodate him within reason. ... The meeting was convened for the purpose of discussing his welfare.⁵³⁸

In relation to the allegations of targeting made by Sgt Hughes, C/Supt Curran stated:

I believe that the purpose of the meeting was to address welfare matters. I reject the allegations against me in total. Every meeting that I had with Sergeant Hughes was well intentioned and held with the purpose of reaching out to him and offering support. I know that I was determined to ensure that he had an opportunity to return to the workplace. ... I seem to recollect that at the meeting I went through each of the items addressed in the document. I later forwarded a report dated 23rd January 2009 to my Divisional Officer ... As far as I was aware from my conversations with Sergeant Hughes, his allegations of system failures and other matters were provided to Detective Inspector Mangan on 17th December 2006. He would have also referenced the existence of this report in discussions with me on other occasions as having included his allegations pertaining to this matter. I believe that I would have communicated a reference to these earlier discussions to him on the day and in the context that the matter had received [the] attention of the Garda Authorities. As per Sergeant Hughes statement to the Disclosures Tribunal he had availed of the Confidential Reporting Mechanism some three months earlier and that process was in train at that time.⁵³⁹

In his evidence to the tribunal, C/Supt Curran recalled his conversation with Sgt Hughes on 8th October 2008:

... he raised other issues around Baiba, in relation to investigation issues and he wanted somebody to be assigned to him, and this is in the 8th October conversation – he wanted somebody to be assigned to investigate that, all or any of the reports or concerns that he had reported over the previous years.⁵⁴⁰

⁵³⁷ Tribunal Documents, p. 1044

⁵³⁸ Tribunal Documents, p. 1046

⁵³⁹ Tribunal Documents, pp. 1055-1056

⁵⁴⁰ Tribunal Transcripts, Day 170, p. 51

C/Supt Curran explained to the tribunal why he organised the meeting in December 2008:

... having spoken to him in October, and also, the frustration he obviously experienced when hearing that there was somebody saying that he wasn't meeting us, or wasn't available to us, it would be routine enough to make contact with people who were out on long term sick, and he was in my mind at the time, so I asked him to come in and meet me. And he did. And there was a meeting, I think it was Inspector Hanrahan and Sergeant McCormack at it. Sergeant McCormack would be an Association of Garda Sergeants and Inspectors representative and at that meeting he handed a document to me.⁵⁴¹

C/Supt Curran told the tribunal that at the time of the meeting he was not aware that Sgt Hughes had made a report to the confidential recipient. He stated that he did not know that Sgt Hughes was in fact a whistleblower and only became aware of this in the High Court in 2012.⁵⁴²

Counsel for the tribunal referred C/Supt Curran to the contents of the report that Sgt Hughes handed him at the meeting, which stated that '*... I believe that Garda management has failed in the extreme to properly and professionally address the serious issues pertaining to my situation*'. C/Supt Curran told the tribunal that:

A. *... I had really supported anything he had reported to me in April and in July, and also in the November report relating to the 8th October phone call, so I had done that piece. To me, the Mangan/Feehan piece was something that he was dealing with independently of me, and I would take it they had – and they had dealt with it. So, obviously there is a dilemma there. I'm not party to the outcome of these things, so I'm sort of in the hands of the organisation.*

...

Q. *Did you read this then and discuss this at the meeting with him?*

A. *I think the first I had it, at the start of the meeting and went through, you know, I suppose as quickly as I could and efficiently I went through it and picked out the issues of concern, and I addressed each of them as I saw at the time.⁵⁴³*

Counsel for the tribunal referred C/Supt Curran to the last sentence of Sgt Hughes's report, which stated that '*[t]he full investigation of all matters pertaining to this report and the restoration to full pay and allowances due would have the effect of somewhat enhancing my situation from a welfare point of view*' and asked the following:

Q. *... did you think it was your responsibility, or duty, to investigate all or any of the matters that he was raising?*

A. *... I don't think there is anything for me to investigate. My responsibility there is to send it up, and my biggest concern for him was to try and see if I could support him from a welfare point of view, which was the point of that meeting in the first place.⁵⁴⁴*

⁵⁴¹ Tribunal Transcripts, Day 170, p. 52

⁵⁴² Tribunal Transcripts, Day 170, p. 53

⁵⁴³ Tribunal Transcripts, Day 170, pp. 54-56

⁵⁴⁴ Tribunal Transcripts, Day 170, pp. 60-61

C/Supt Curran told the tribunal that he was not *'stonewalling the real issues'* as suggested by Sgt Hughes in his letter to his solicitor and that:

*... if you look at the matters he is raising, a lot of them, they are out of my control. The discipline has nothing to do with me. The matters of the sickness and the pay, it's automatic. So, I mean, like, I was doing what I could and I had reported the issues that he had said to me previously.*⁵⁴⁵

C/Supt Curran was asked if the meeting was a genuine effort on his part to encourage Sgt Hughes to return to duty:

*Yes. I mean this is a man that I would have known throughout my service, and I was his sergeant back in 1990, I think it was, for a couple of years. I was an inspector in the Bridewell when he was a sergeant working in the district office as a district clerk, and we'd have had many conversations, you know. And they were good natured and there was never friction of any way between us. So I would have known this guy – I knew him as a guard. So over my career I would have known him quite a lot and I was just trying to see what I could do for this man who I knew was a colleague from a human point of view.*⁵⁴⁶

He said that he supported Sgt Hughes returning to duty and that:

*I'm of the view that the longer – well, it's not a view, it's actually the science is, the longer you are out the less chance you have of coming back. So, I wanted to do what I could to support him and give him the opportunity to come back into work and I would support him in any way I could.*⁵⁴⁷

C/Supt Curran was cross-examined by counsel for Sgt Hughes in relation to the purpose of the meeting:

Q. Sergeant Hughes feels that ... at this meeting you didn't really engage with what he believes were the serious issues to do with systems coordination failures relating to Ms. Saulite's death?

A. Well, you know, just going back, as I said earlier on, I had reported up in April '07, I had also reported up the issues he [raised] with me in July '08 and – or was it June '08 and the July report. And also just the previous month, the contact I had with him, 8th October, where he mentioned issues of a similar nature. And all of those had gone up previously. So when that meeting came along, I had done my bit and I also sent this report upwards. That report was produced with no advance notice. It was a welfare meeting and I was doing my very best to try and meet Sergeant Hughes and understand how I could help him from a welfare perspective, and where that, in my mind, would have been to try and get him back and integrate him back into the workforce in any way I could. And in that meeting I offered him a position – I asked him to try and come back and try and draw a line in the sand and try and support him in his journey back into the organisation.⁵⁴⁸

⁵⁴⁵ Tribunal Transcripts, Day 170, pp. 62-63

⁵⁴⁶ Tribunal Transcripts, Day 170, p. 64

⁵⁴⁷ Tribunal Transcripts, Day 170, p. 60

⁵⁴⁸ Tribunal Transcripts, Day 170, pp. 120-121

Counsel for Sgt Hughes referred C/Supt Curran to his report of the meeting to his divisional officer dated 23rd January 2009:

Q. ... Now that, with respect, is a very short précis. It doesn't refer to the serious issues that Sergeant Hughes contends he was raising with you.

A. Well, you know, I was doing my best in the meeting, just to try and engage with Sergeant Hughes. That report, I accept, it's short in nature, but the document was sent up, I suppose, to join the other documents that I had sent up.⁵⁴⁹

C/Supt Curran told the tribunal that he tried his best to answer the questions raised by Sgt Hughes at the meeting and that Sgt Hughes was *'throwing questions at me just on the fly more or less, so I'm in a meeting here and my intention is to try and support him back into the workforce here, and I am answering the questions, I'm trying to do my best here'*.⁵⁵⁰

Legal Submissions

Retired Sergeant William Hughes submitted as follows:⁵⁵¹

- that Sgt Hughes detailed the various ways in which he was targeted and/or discredited and in his interview with the tribunal investigators he said that *'[o]n 17 December 2008 as already described in this statement I met with Superintendent Mark Curran on the pretext of a welfare meeting ... I found that interview very narrow in context, and he did not want to deal with the systems failures issues[.] I felt this was an abuse of process and that I was being isolated'*.
- that in relation to Supt Curran, he was targeted as a result of Supt Curran's inaction in addressing or pursuing the allegations he made in his protected disclosure to him in April 2007.

An Garda Síochána submitted as follows:⁵⁵²

- that Sgt Hughes appeared to have refined his complaint against Supt Curran during hearings to the effect that he could have provided more communication. If true, this would not amount to targeting or discrediting.
- that it appeared to be common case that the meeting of 17th December 2008 was convened as a welfare meeting. Supt Curran told the tribunal that he was caught somewhat by surprise when Sgt Hughes produced a detailed document at the meeting, setting out his various workplace grievances. Sgt Hughes then sent a summary of the meeting to his solicitor. Supt Curran forwarded the report to C/Supt Phillips.
- that Sgt Hughes knew the matters complained of were under investigation elsewhere.
- that Sgt Hughes agreed that Supt Curran reported his concerns up the line and that Supt Curran had indicated before the meeting that it was *'only to deal with welfare'*. He agreed that Supt Curran was *'powerless'* as regards the various investigations and that all he could do was report matters up the line (and investigate the cause of his absence).

⁵⁴⁹ Tribunal Transcripts, Day 170, pp. 121-122

⁵⁵⁰ Tribunal Transcripts, Day 170, pp. 123-124

⁵⁵¹ The tribunal has considered all of retired Sergeant William Hughes's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 173, pp. 6-64

⁵⁵² 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 173, pp. 66-135

- that Supt Curran always appeared to have reported Sgt Hughes's concerns in a comprehensive manner.
- that Sgt Hughes agreed with counsel for the tribunal that it would appear from the materials that when he raised issues with Supt Curran, they were reported up the line.
- that Sgt Hughes contended that Supt Curran ought to have enquired into the issues affecting him and the reasons why he was absent from work. That the reasons for his absence were well known to all parties by that stage and the matters which constituted the substance of his complaints were under separate investigation. Supt Curran diligently fulfilled the limited role he had with respect to the matter.
- that Supt Curran used his best endeavours to assist Sgt Hughes: trying to arrange his transfer and facilitating weekend work. That Sgt Hughes accepted that Supt Curran's efforts were genuine in this regard, that he was going to accommodate Sgt Hughes any way he could, that his door was always open, and that they met regularly in Coolock.
- that there was nothing inappropriate about the tone or the content of the meeting of 17th December 2008 and that no evidence of targeting has been put forward in this regard.

Conclusion

Sgt Hughes had made his confidential report to the confidential recipient on 16th September 2008 and the investigation into his allegations was proceeding. Supt Curran arranged this welfare meeting in December 2008 and Sgt Hughes and his AGSI representative attended. The superintendent's concern was about the sergeant's welfare and how he could get him back to work.

Sgt Hughes took the opportunity to present a prepared document setting out a series of grievances. The superintendent and he discussed these matters but Supt Curran's position was that they were not things that he was in a position to deal with. He was not concerned with the investigation of Sgt Hughes's complaints about '*systems failure*'.

The superintendent reported the meeting to the chief superintendent and forwarded Sgt Hughes's document. Sgt Hughes's case is that Supt Curran targeted him by being unwilling to discuss his claims of '*systems failure*', and of being unfairly subjected to discipline proceedings and to previous instances of bullying and harassment that he felt he had experienced, among other complaints. The other complaints included the failure, as Sgt Hughes maintained, to investigate the reasons for his absences from work. But as the transcript excerpts reveal he had in mind that any such investigation would cover '*systems failure*', discipline, and isolation among other complaints.

It is unreasonable in the circumstances to condemn Supt Curran and it is irrational to even suggest that a failure on the superintendent's part to embark on an investigation that he had nothing to do with could have amounted to targeting.

In his statement to the tribunal, C/Supt Curran addressed each of the points that Sgt Hughes raised in his memorandum. There was an issue that loomed large in Sgt Hughes's mind which was a statement in a communication from the Assistant Commissioner, HRM, to the effect that he would only communicate with management by telephone. This was a misunderstanding by

C/Supt O’Sullivan of reports from local management. Both D/Insp Hanrahan and Supt Curran were at pains to point out the nature of that error and to correct it. That is what happened. As C/Supt Curran pointed out, the fact that Sgt Hughes was present in his office was evidence to the contrary and the chief superintendent rejected the suggestion in Sgt Hughes’s statement to the tribunal that he said at the meeting that all communication should be by phone. The chief superintendent was keen to make it clear that this was not Sgt Hughes’s attitude. This was a welfare meeting arranged by Supt Curran. It was not intended to be a discussion of the substantive issues that Sgt Hughes had been complaining about.

The allegation of targeting based on the fact that Supt Curran was unwilling to engage in discussion about matters that he felt had nothing to do with welfare, the specific purpose for which he had arranged the meeting, is misplaced. The tribunal is satisfied that it is quite unreasonable to criticise C/Supt Curran in respect of his handling of this meeting and to suggest that it was an example of targeting or discrediting behaviour is unjust as well as unfounded.

CHAPTER 10

THE COMPLAINT MADE BY
SERGEANT WILLIAM HUGHES
IN RELATION TO THE INVESTIGATION OF THE
ARTICLE PUBLISHED IN THE *IRISH DAILY STAR*
ON 20TH NOVEMBER 2008

Issue 5 of the Schedule of Issues

Did the Garda Commissioner or Assistant Commissioner Michael Feehan target or discredit Sgt Hughes because he made a protected disclosure by failing to carry out a proper investigation into his report about the article published in the Irish Daily Star on 20th November 2008?

Background

As outlined earlier in this report, Sergeant William Hughes made his report to Mr Brian McCarthy, the Confidential Recipient for An Garda Síochána, on 16th September 2008. An investigation was directed by the Garda Commissioner, which commenced on 7th November 2008. Subsequently, on 20th November 2008, an article was published in the *Irish Daily Star* newspaper entitled ‘*cop never looked at tragic Baiba’s warning*’.⁵⁵³ This article was written by the crime correspondent for the *Irish Daily Star*, Mr Michael O’Toole.

The article stated, *inter alia*, that Ms Baiba Saulite warned An Garda Síochána of a threat on her life days before she was killed but that the relevant document was placed in a garda’s locker and was never read. It stated that the garda in question, who was based in north Dublin, was being investigated for alleged neglect of duty over the murder.

Mr O’Toole quoted ‘[s]ources’ as saying that ‘*there was no regulation to say the garda should have read the document – but it would have been expected that he look at it*’.⁵⁵⁴

Mr O’Toole went on to state that ‘*Garda sources*’ said ‘*the document was the first time Ms Saulite ever revealed she felt her life in danger – and they concede it could have proved vital in saving her life. “Nobody knew about any threat to Baiba until the statement was read. We would obviously have re-evaluated her security had we known of the statement’s contents”*’.⁵⁵⁵

Sgt Hughes’s legal representatives at the time contacted the Garda Commissioner by letter dated 12th December 2008 stating that the article was ‘*hugely defamatory*’ and alleged ‘*gross negligence on the part of our client which ultimately led to the murder of Baiba Saulite*’. It outlined a formal complaint about the provision of information by garda sources that led to the article being published:

⁵⁵³ Tribunal Documents, p. 8091

⁵⁵⁴ Tribunal Documents, p. 8092

⁵⁵⁵ Tribunal Documents, p. 8092

Our client was alarmed to read in the 20th November 2008 edition of the Star newspaper, an article with the heading “Cop never looked at tragic Baiba’s warning”. The subheading was “Mum wrote of threat to her life days before her murder”. The headings and contents of the article are hugely defamatory and allege gross negligence on the part of our client which ultimately led to the murder of Baiba Saulite. It can be seen therein that the correspondent, Mr. Michael O’Toole, quotes Garda sources for the article and the information contained therein. Our client is alarmed not only at the content of the interview but that Garda sources are responsible for the source of the information. We formally request that a full account be provided to our office for the source of this information as it was most certainly on any reading provided by a member of An Garda [Siochána] under your control and supervision. Our client formally complains about the provision of information and of the fact that [this] provision serves to undermine our client’s legal rights in or about the preparation of his Defence to the disciplinary proceedings and the prosecution of his own civil proceedings which are pending.⁵⁵⁶

The Irish Daily Star Investigation

Following receipt of the above complaint, the Garda Commissioner directed an investigation into the matter by letter to the Deputy Commissioner, Operations dated 18th December 2008 and requested a report on the outcome as soon as possible.⁵⁵⁷

The Deputy Commissioner, Operations, on 22nd December 2008, requested Assistant Commissioner Al McHugh to carry out the investigation ‘*as a matter of priority*’ and stated that an early report was required. It was stated that ‘*Sergeant Hughes should be contacted and afforded an opportunity to assist in the investigation and provide evidence/information in support of his complaint*’.⁵⁵⁸ By letter of the same date, the assistant commissioner instructed Assistant Commissioner Michael Feehan, Northern Region, to conduct an investigation.⁵⁵⁹

On 16th January 2009, Inspector Fergus Dwyer, who had been appointed by A/C Feehan to assist in the investigation, contacted Sgt Hughes’s legal representatives seeking a meeting with Sgt Hughes ‘*at the earliest opportunity*’ in order to provide him with an opportunity to assist the investigation and provide evidence/information in support of his complaint.⁵⁶⁰

During a meeting on 10th February 2009, between Sgt Hughes, his legal representative and Insp Dwyer, relating to the discipline investigation initiated against Sgt Hughes, concerns were raised by Sgt Hughes and his legal representative about A/C Feehan’s appointment to investigate the *Irish Daily Star* complaint. Insp Dwyer subsequently confirmed by letter to Sgt Hughes’s solicitor on 11th February 2009 that these concerns were noted and would be brought to the attention of the Garda Commissioner.⁵⁶¹

⁵⁵⁶ Tribunal Documents, p. 2450

⁵⁵⁷ Tribunal Documents, p. 2454

⁵⁵⁸ Tribunal Documents, p. 2453

⁵⁵⁹ Tribunal Documents, p. 2457

⁵⁶⁰ Tribunal Documents, p. 972

⁵⁶¹ Tribunal Documents, pp. 966-967

In a letter dated 24th March 2009, Sgt Hughes's legal representative complained to Insp Dwyer about the appointment of A/C Feehan to conduct the investigation citing the following reasons:

*With due respect the allegation which we make alleges that the information which appears to be the basis for the article as pointed out in our letter can only have been provided by a member of An Garda Síochána and it would appear that with due respect to Assistant Commissioner Feehan that as he is in charge of the said investigation that he is effectively investigating his own members and that investigation team. We require a full and independent enquiry and we await hearing from you in this respect.*⁵⁶²

These concerns were rejected by A/C McHugh by letter dated 7th April 2009:

I am awaiting a report on the matter and without prejudging the outcome of the investigation, I am completely satisfied with the conduct of the investigation and the integrity and independence of Assistant Commissioner Feehan. I have no information to hand to suggest otherwise.

If you have specific information to suggest any impropriety on behalf of the investigation or that it is not being conducted in accordance with law and natural justice I would appreciate you giving me this information.

*In the absence of such specific information, the current investigation will continue.*⁵⁶³

In the interim, Mr O'Toole was interviewed by the investigation team on 28th January 2009, and was asked to disclose the identity of the 'Garda sources' referred to in the article. Mr O'Toole declined to divulge any information concerning the sources that led to the article. His statement recorded his response as follows:

*Inspector Dwyer has sought the identity of the 'Garda Sources' referred to in the said article. I do not wish to comment on any aspect of the article.*⁵⁶⁴

On 29th April 2009, Insp Dwyer wrote again to Sgt Hughes's solicitor advising that A/C Feehan was continuing the investigation into the complaint and that A/C Feehan had been directed to contact Sgt Hughes to provide him with an opportunity to assist the investigation and provide evidence/information in support of his complaint.⁵⁶⁵

At a subsequent meeting between the investigation team and Sgt Hughes on 11th May 2009, it was recorded in the notes made by Insp Dwyer that Sgt Hughes's legal representative '[s]tated that all aspects of the article which were not of public record [were] given to the journalist by persons [who were] involved in the various investigations in which Sgt Hughes is subject [to] or implicated in ... John Hennessy spoke with Michael O'Toole and [Mr] O'Toole stated that he got it from a higher level member of An Garda [Síochána]'. It was also noted that Sgt Hughes was asked to make a statement and that 'Sgt Hughes stated that he would get in contact with Inspector Dwyer in the near future regarding the making of his statement'.⁵⁶⁶

⁵⁶² Tribunal Documents, p. 2478

⁵⁶³ Tribunal Documents, p. 2481

⁵⁶⁴ Tribunal Documents, p. 975

⁵⁶⁵ Tribunal Documents, p. 974

⁵⁶⁶ Tribunal Documents, p. 2487

On 29th May 2009, Insp Dwyer wrote again to Sgt Hughes's solicitor and stated that:

*As stated at our recent meeting I wish to obtain a formal statement of complaint from your client detailing his specific allegations. In this regard I now request a meeting with your client at the earliest opportunity.*⁵⁶⁷

Insp Dwyer did not receive any contact from Sgt Hughes or his solicitor and there the matter stood until A/C Feehan issued a report on the findings of his investigation to the Deputy Commissioner, Operations on 17th May 2010, when he advised:

*With the exception of the reference to the instigation of formal disciplinary proceedings against a 'Garda based in North Dublin' Mr. O'Toole's article contains nothing that appears not to have already been in the public domain. Notwithstanding the fact that Sergeant Hughes has failed to assist in my enquiries into the matters raised by [his solicitor], I can find no basis to his contention that the article written by Michael O'Toole which appeared in the Star newspaper on the 20/11/08 was 'hugely defamatory and alleges gross negligence on the part of our client which ultimately led to the murder of Baiba Saulite'.*⁵⁶⁸

By letter dated 24th May 2010, the Deputy Commissioner, Operations wrote to the Garda Commissioner enclosing A/C Feehan's report of 17th May 2010 and stated, *inter alia*:

*Notwithstanding the fact that Sergeant Hughes has failed to assist in Assistant Commissioner, Dublin Metropolitan Region's enquiries into the matters raised by [his solicitor], there is no basis found to his contention that the article written by Michael O'Toole which appeared in the Star newspaper on the 20/11/08 was 'hugely defamatory and alleges gross negligence on the part of our client which ultimately led to the murder [of] Baiba Saulite'.*⁵⁶⁹

In a response dated 25th May 2010, the Commissioner queried whether Sgt Hughes had been contacted directly with a view to making a statement and further queried:

*... From investigations to date is there any evidence to indicate that the information contained in the article in question was provided by a Garda source?*⁵⁷⁰

By letter dated 7th July 2010, the Deputy Commissioner, Operations informed the Commissioner that:

Sergeant Liam Hughes was not contacted directly on this matter as he had stated that all communications should be conducted through his Solicitor. Two letters were sent to [his solicitor] with no reply being received to either request. (Copies of the two letters are attached). On return of file I will direct that a further minute is sent to [Sgt Hughes's legal representatives] indicating the lack of response to previous letters and that if the investigating officer does not get a written response within seven days of receipt of further correspondence, it is the intention of the investigating officer to seek to make direct contact with their client, Sergeant Hughes in order to progress the investigation, bearing in mind that the first letter is now over twelve months old.

⁵⁶⁷ Tribunal Documents, p. 2488

⁵⁶⁸ Tribunal Documents, p. 2510

⁵⁶⁹ Tribunal Documents, p. 2545

⁵⁷⁰ Tribunal Documents, p. 2543

Assistant Commissioner, Dublin Metropolitan Region reports that “from the investigation to date, there is no evidence available to indicate that the information contained in the article in question was provided by a Garda source”.⁵⁷¹

On 12th July 2010, the Deputy Commissioner, Operations wrote to A/C Feehan and stated:

A further minute should be sent to [Sgt Hughes’s solicitor] indicating the lack of response to previous letters and that if the investigating officer does not get a written response within seven days of receipt of further correspondence, it is the intention of the investigating officer to seek to make direct contact with their client, Sergeant Hughes in order to progress the investigation, bearing in mind that the first letter is now over twelve months old.⁵⁷²

On 27th July 2010, Superintendent Fergus Dwyer, who had been promoted, wrote to Sgt Hughes’s legal representatives:

I wish to advise you that I have been directed by Deputy Commissioner, Operations to correspond with you to afford your client one final opportunity to make a written statement of complaint in respect of the aforementioned newspaper article.

Should you fail to respond to this correspondence within seven days I have been directed to approach your client in person and afford him this final opportunity to make a statement.⁵⁷³

Sgt Hughes’s solicitor replied on 10th August 2010 indicating that they had not received Insp Dwyer’s letter of 29th May 2009 and stated that:

We do have your letter of 29th April, 2009. In that letter you stated that Assistant Commissioner Feehan had been directed to contact our client for an opportunity to assist in the investigation “and provide evidence/information in support of his complaint”. Our client has at all time[s] stated that he wishes his complaint to be fully investigated and he is happy to give a statement at any time. We do not have your letter of 29th May.⁵⁷⁴

Following a number of deferred meetings, Sgt Hughes made a pre-prepared statement to the investigation team on 12th October 2010. He stated, *inter alia*, that:

On the 19th November 2008, John Hennessy informed me that there would be an article appearing in the ‘Star’ newspaper the following day relating to the Baiba Saulite murder. Mr. Hennessy stated that a journalist for the ‘Star’ newspaper, Michael O’Toole, had informed him that the source of his information for the article was a member of an Garda [Síochána] who was ‘high up’ in the force. Mr. Hennessy further stated that the content of the article did not reflect well on me. I read the article on the 20th November 2008 and immediately contacted my solicitor. Although I was not named, I could see that the article clearly referred to me and my dealings with Baiba Saulite in the week prior to her murder.⁵⁷⁵

Mr John Hennessy later made a statement to the investigation on 19th November 2010. He said that:

I recall in the days previous to the printing of the article I was approached by Michael O’Toole and he informed me that he was writing an article in respect of a Garda involved

⁵⁷¹ Tribunal Documents, p. 2551

⁵⁷² Tribunal Documents, p. 2553

⁵⁷³ Tribunal Documents, p. 2559

⁵⁷⁴ Tribunal Documents, p. 2561

⁵⁷⁵ Tribunal Documents, p. 2609

*in Baiba Saulite Children's abduction case. Michael O'Toole was looking for a comment from me in respect of the retention of the Victim Impact Statement. I refused to comment on the article and I asked him his source. Michael O'Toole told me that a high ranking Garda had informed him.*⁵⁷⁶

By report dated 27th January 2011, A/C Feehan advised the Deputy Commissioner, Operations that Mr Hennessy's statement was put to Mr O'Toole on 21st January 2011 and that he 'remained silent'. A/C Feehan concluded that it was not possible to progress the investigation and that at 'this juncture there is no evidence to identify or even confirm that the source was indeed a member of An Garda [Síochána]'.⁵⁷⁷ This was noted by the Garda Commissioner on 2nd February 2011.⁵⁷⁸

By letter dated 7th February 2011, A/C Feehan informed Sgt Hughes and his legal representatives that he could 'find no evidence to substantiate your client's assertion that the information contained in the said article was provided by a member of An Garda Síochána'.⁵⁷⁹

Complaint made by Sergeant William Hughes

In his statement to the tribunal, Sgt Hughes complained that in the aftermath of his disclosure to the confidential recipient, an article appeared in the *Irish Daily Star* alleging that he had 'failed in [his] duty in the Baiba Saulite child abduction case'. He said that he learned that the information had come from 'high up' in the garda organisation.⁵⁸⁰ He referred to the subsequent 'media leaking' investigation and claimed that his complaint was 'not investigated in a professional manner and was carried out over an unnecessarily protracted period. No person was made amenable arising from this investigation'.⁵⁸¹

In his interview with tribunal investigators, Sgt Hughes stated that '... the content of the article was hugely defamatory and it had alleged gross negligence on my behalf in respect to my dealings with Baiba Saulite'.⁵⁸² He referred to his formal complaint to the Garda Commissioner in December 2008 and stated that:

*I understand that this report was sent to the Garda Commissioner, I believe that I was targeted as there was no immediate response by the Garda authorities to this, I was first contacted on 16 January 2009. An investigation was undertaken by Inspector Fergus Dwyer, there was no outcome to the investigation, in that the source of the leak could not be established. I believe I was targeted in this regard due to a failure to interview me promptly and the fact that a proper investigation was not conducted, I believe this was an abuse of process at my expense and a cover up.*⁵⁸³

In his evidence to the tribunal, Sgt Hughes said that he spoke with Mr Hennessy on 19th November 2008, in advance of the publication of the article. He stated that during this

⁵⁷⁶ Tribunal Documents, p. 2625

⁵⁷⁷ Tribunal Documents, p. 2628

⁵⁷⁸ Tribunal Documents, p. 2634

⁵⁷⁹ Tribunal Documents, pp. 2640-2641

⁵⁸⁰ Tribunal Documents, p. 73

⁵⁸¹ Tribunal Documents, p. 73

⁵⁸² Tribunal Documents, pp. 31-32

⁵⁸³ Tribunal Documents, p. 49

conversation, Mr Hennessy warned Sgt Hughes that the article did not portray him in a 'good light'.⁵⁸⁴

Sgt Hughes told the tribunal about his concerns in the aftermath of this conversation:

*John did say to me that Michael O'Toole had informed him that he got the information from high up in the Garda Síochána. So that was my concern, that somebody within An Garda Síochána was leaking information to the press in relation to a matter of which I had just recently gone to the confidential recipient in respect of. And I was concerned that this could be seen as a targeting of me for adopting that process in the first place, and also to undermine my position publicly.*⁵⁸⁵

Sgt Hughes told the tribunal that this article was not simply about the Baiba Saulite case, but also about the victim impact statement, and that it did not reflect what had actually happened:

Q. ... So this wasn't just simply an article about the Baiba Saulite case, it was an article about the failure of you to do something in relation to the information contained in the Victim Impact Report?

A. Yes, indeed. And I remember that John said to me that he told Michael O'Toole not to publish that, that it wasn't fair and it didn't reflect, you know, the actual events, and nevertheless, it was published, as we know.⁵⁸⁶

Sgt Hughes outlined to the Chairman why he believed this matter represented targeting of him:

*... The article itself, I believe, clearly pointed to me in my dealings with Baiba Saulite, and the information I had received from Mr. Hennessy was that it came from a member of the Garda Síochána of high rank. And it's a matter of record that we reported this to the Commissioner for investigation, and as I have alluded to earlier, I would have thought that I would have been interviewed within a week or two of ... my reporting of this to the Garda Commissioner when it was confirmed that they were going to investigate it. I think it's unfortunate that in the conclusion there, they are saying that there is – that Sergeant Hughes has failed to assist in the inquiries. I would never fail to assist in Garda inquiries from management in relation to any matter. I think it's just an unfortunate sequence of events between us objecting to particular protocols and clarifications coming back on the protocols, that there was delays in actually getting this investigation off the ground. I think it's unfortunate that if I had provided a statement within a week or two, or three weeks of the initial complaint that John Hennessy would have been interviewed more expeditiously and indeed there would have been a conclusion brought to the investigation at a very early stage.*⁵⁸⁷

Sgt Hughes was asked by counsel for the tribunal about this allegation of delay:

Q. ... I think that certainly Superintendent Dwyer was of the view that two letters had been sent to your solicitor ... asking you to attend for interview. He had heard nothing back. He was then confronted with a situation where your solicitor was

⁵⁸⁴ Tribunal Transcripts, Day 160, p. 60

⁵⁸⁵ Tribunal Transcripts, Day 160, pp. 60-61

⁵⁸⁶ Tribunal Transcripts, Day 161, p. 81

⁵⁸⁷ Tribunal Transcripts, Day 161, p. 36

making a case that these should have been sent directly to you as opposed to him and that he then said, and pointed out, that in fact you had previously requested that matters would go through your solicitor?

A. *That's correct. I think the two items of correspondence that Superintendent Dwyer is referring to, I think he got an acknowledgment to say we got one but we ... didn't have sight of the second one.*

Q. *All right, well you didn't respond to the one that you got then?*

A. *Yes, indeed.*

Q. *Okay. I mean one of your complaints to the Tribunal is that there was a delay in taking a statement from you and the whole process took too long, isn't that right?*

A. *That's correct.*

Q. *I wonder when, on reflection now, looking at Superintendent Dwyer's statement and his report in relation to what actually transpired, whether that's a matter that you really want to pursue in the circumstances?*

A. *Yes. From my experience within the Garda Síochána investigating matters, if a complaint is made by a complainant, the complainant is the first port of call in relation to obtaining a statement before you proceed further. In this case it seems to be that inquiries were carried out with the journalist first, prior to me being interviewed ...*

... the first efforts that should have been made by the investigation team was to interview the injured party as such – that would be me – and to establish exactly the complaint I was making.

Q. *But that's not – that's not really an answer to what I am pointing out to you. You had been offered the opportunity to make a statement in 2009?*

A. *Oh yes.⁵⁸⁸*

Sgt Hughes maintained his position that he should have been interviewed earlier in the process:

CHAIRMAN: *... you say if they interviewed you before they would have been alerted to Mr. Hennessy's information and the whole chain would have been a bit tighter, and you never know what might have happened.*

A. *That's correct, Mr. Chairman.⁵⁸⁹*

Sgt Hughes was asked by counsel for the tribunal how the investigators were to be faulted. Sgt Hughes replied that:

A. *... I think – not taking on the mantle of the investigators, but obviously there had been telephone communications between Michael O'Toole and a senior – allegedly a senior officer within the organisation, and I was just*

⁵⁸⁸ Tribunal Transcripts, Day 160, pp. 150-151

⁵⁸⁹ Tribunal Transcripts, Day 161, p. 40

wondering, there is no reference in the investigation to following up on telephone records there between a journalist and possibly a senior ranking member of the Garda Síochána. That's just one observation I have to make in relation to the investigation.

Q. So, you are suggesting that they should have got the telephone records of Mick O'Toole, who is a journalist, and examined those and tried to establish whether or not he had been in contact with any senior member of An Garda Síochána, is that right?

A. I think that would have been helpful, to pursue that line of inquiry in the investigation.

CHAIRMAN: Do you think that would have been reasonable or legitimate or legal, to tap his phone – to get his records to see everybody he was in contact? Are we serious about this?

A. Not to tap his phone.

CHAIRMAN: Sorry, not to tap his phone. Are we seriously suggesting that the Guards should have sought to obtain his telephone records for everybody he contacted?

A. ... I just think from the outset, we'd have to assess whether the leak to the press was an offence in itself, and if it was an offence and a criminal offence at that, I think there are avenues for the Gardaí to follow in relation to that. Now I stand corrected, but I would have thought that would be my observation – ⁵⁹⁰

During cross-examination, counsel for An Garda Síochána put it to Sgt Hughes that a thorough investigation had been conducted:

Q. It ... isn't just given to a garda on the beat. Senior investigators are tasked with the role of going to a journalist, interviewing them –

... arranging a meeting with a solicitor present, going to another source, another person who might offer valuable input – the solicitor Mr. Hennessy, chasing things down, they look into it. That was respectful of your complaint and your inquiry, wasn't it?

A. Yes, over the period of the investigation. But the point I am trying to make is that I think you said that they didn't establish who it was, the actual person who provided the information. But I think Michael O'Toole may have indicated in his report that it was – I think he mentioned it wasn't anybody above chief superintendent or assistant commissioner rank, but he was more or less confirming it was a member of the Garda Síochána.

Q. Well that's your slant on matters.

A. No, that's what I read in the documents.

⁵⁹⁰ Tribunal Transcripts, Day 161, pp. 37-38

Q. *So, my question to you is this: Mindful that that was fully investigated, and the Garda management couldn't go any further with it, how is that targeting of you?*

A. *Well, the targeting I thought was initially from the – the article had appeared within a few weeks of me approaching the confidential recipient process, which I was alarmed about, that it came from within the – I was reliably informed that it came from within the Garda Síochána. The motivation, as I believed at the time, was as a result of me taking this action in the confidential recipient process and reporting corruption/ malpractice within the organisation; that was my feeling at the time. And I felt that the matter could have been investigated more promptly and, you know, the lines of inquiry followed up to a conclusion.⁵⁹¹*

Sgt Hughes continued that:

A. *... the initial targeting, I believe, was in relation to the article itself appearing, and I believed it was a member of the Garda Síochána that had leaked this information, and this is confirmed by the journalist more or less.*

...

CHAIRMAN: *... Okay, let's assume that was targeting. In what way was the investigation targeting?*

A. *I think, Mr. Chairman, the length of time it took to actually investigate the matter, I felt, was just ... it was too slow.*

CHAIRMAN: *It was too slow ...*

...

CHAIRMAN: *... Okay, so here there's an investigation, it should have happened faster. What difference did that make?*

A. *Yes, I would have preferred, Mr. Chairman, if probably the matter was referred to GSOC for investigation and I –*

CHAIRMAN: *If what matter was referred to GSOC?*

A. *The leaking of this article to the media. If it had have come from a member of the Garda Síochána, I think that an independent investigation should have been conducted and perhaps it shouldn't have been conducted by the people who were already concerned with matters.*

CHAIRMAN: *... In what way did the investigators of this matter target you? ... You didn't get an independent investigation?*

A. *Yeah.*

CHAIRMAN: *... The question is, there was an investigation, you may be happy or unhappy, but in what way did the investigation, of the investigators, target you?*

⁵⁹¹ Tribunal Transcripts, Day 163, pp. 77-78

A. *Well as I have stated, Mr. Chairman, it was the overly protracted nature of the investigation ...*

CHAIRMAN: *Okay, it took too long?*

A. *Yes ...*

CHAIRMAN: *How did taking too long target you?*

...

A. *It's targeting me in that I felt that the investigators shouldn't have been in charge of that investigation from the outset and that it was overly protracted, and I just felt that it wasn't being taken seriously.*

CHAIRMAN: *How do you say it wasn't being taken seriously?*

A. *Well, in the first course the proper procedure, Mr. Chairman, is to interview the complainant in relation to any complaint, and from that then the investigators then can proceed to interview witnesses, potential witnesses. And if that had been done, rather than waiting for my statement, in the autumn I think it was, and then interviewing John Hennessy and carrying out further interviews of other persons involved, I think it could have been dealt with much more expeditiously if a statement had been obtained from me at the earliest juncture.⁵⁹²*

When cross-examined by counsel for An Garda Síochána, Sgt Hughes was unable to account for the delay in responding to Insp Dwyer:

A. *Well, I said I think that this was raised previously and I can't account for the considerable amount of time between correspondences there, I don't know what was happening, but certainly there was no delay on my part in trying to expedite this investigation. I was available to the investigators there from January, when they first received the complaint officially from the Commissioner.*

Q. *There was a slightly ridiculous situation where you were criticising the guards for making contact – the solicitor hadn't responded to correspondence, and now the guards were being blamed for not contacting you directly. It was mad, it was ridiculous position?*

A. *Yes. There was some sort of breakdown in communication there.*

Q. *Yes. So how can you blame Garda management for that?*

...

... *in relation to this delay that was clearly not the fault of management, how can you blame them for that when it was a mess up between you and your solicitor?*

⁵⁹² Tribunal Transcripts, Day 163, pp. 79-81

- A. *I can't explain, as I said previously, the breakdown in communication there but I was always available to assist this inquiry, after all I initiated it, I wasn't going to stand back from it.*⁵⁹³

Sgt Hughes did not agree with counsel for An Garda Síochána that the content of the article was similar to other articles published around that time:

- Q. *Returning to the 2008 article which I was asking you questions about, Chief Superintendent Feehan indicates that as well as directing that the steps be taken of Inspector Dwyer interviewing you with his colleague, directing that there be an interview with the journalist concerned, there was also interviews with other journalists carried out, and you're aware of that?*

- A. *No, I wasn't, no.*

- Q. *All right. Well, for instance, didn't the investigation look at other articles around this time in their efforts to bottom out on your complaint?*

- A. *Sorry, I think what they did was they found other articles of a similar nature.*

...

*... and I think they're putting forward the argument that there was similar content in those and that this particular article in November 2008 was, the information was garnered from those articles. I think I disagree with that. I think there is more in this article that – and it was agreed by the journalist that it came from a source within the organisation.*⁵⁹⁴

Responding Statements and Evidence on the Issue

Mr John Hennessy

Mr Hennessy made a statement to Detective Sergeant Mark Waters on 19th November 2010 where he outlined his conversation with Mr O'Toole as follows:

*I recall in the days previous to the printing of the article I was approached by Michael O'Toole and he informed me that he was writing an article in respect of a Garda involved in the Baiba Saulite Children's abduction case. Michael O'Toole was looking for a comment from me in respect of the retention of the Victim Impact Statement. I refused to comment on the article and I asked him his source. Michael O'Toole told me that a high ranking Garda had informed him. I asked Michael O'Toole, as a favour, not to go with the story as I believe it was incorrect and out of context. He said that he would keep it off the front pages. In the following hours I rang Liam Hughes and informed him of the position. I am unaware of the name of the high ranking officer and Michael O'Toole did not reveal the name to me.*⁵⁹⁵

In his evidence to the tribunal, Mr Hennessy said that:

... here was Michael O'Toole telephoning me, I think it was – was it two years later? Yeah, two years later, ... looking to put in a red top paper something as dramatic

⁵⁹³ Tribunal Transcripts, Day 163, pp. 82-84

⁵⁹⁴ Tribunal Transcripts, Day 163, pp. 86-87

⁵⁹⁵ Tribunal Documents, p. 990

as that, which could only lead to the conclusion that anyone that knew Sergeant Hughes, that it was him, especially in the context of being out there before. I asked Michael O'Toole, whom I know, please don't go with that story.

Q. ... Can I ask you this: did he tell you the bones of the story or did he tell you exactly what he was going to print or did he just tell you the headline?

A. Well, he didn't go into detail.⁵⁹⁶

He was asked by counsel for the tribunal about his statement and the reference to a *'high ranking garda'*:

Q. And he didn't identify any rank to you, did he?

A. No, he didn't, no specific rank.

Q. And the article refers to, I think, sources in the plural, but did you understand he was referring to one source or more than one source yourself?

A. I think I have said this in a statement, I wasn't being glib but I'll say it again: the dogs in the street know that most information that goes to journalists comes from the ranks of An Garda Síochána. That has always been the position and may well currently be the position. And any suggestion otherwise is ridiculous.

Q. You then go on to say that you asked him not to go with the story as you believed it was incorrect and out of context. What did you mean by that, if you can recall?

A. I mean, as I have said a couple of times, to isolate or shine a light on the failure, or the actions or the non actions of Sergeant Hughes in the context of the last paragraph of a 12 page statement, in the context of all that had gone on in the two years prior to her murder, was completely unfair and a gross distortion of in fact what really happened.⁵⁹⁷

Mr Hennessy told the tribunal that he contacted Sgt Hughes:

Q. ... you rang Sergeant Hughes then and you told him of the position, is that correct?

A. I did, because I was upset for him and I thought I ought to tell him to pre warn him.

Q. And you told him it was somebody high up in the Guards, according to his account, is that right?

A. The phrase used by me in that statement was "high ranking".

Q. You think you probably said that [to] him?

A. I do.⁵⁹⁸

Mr Hennessy was asked by counsel for the tribunal about the reference to garda sources:

Q. ... In the report that was subsequently made by Chief Superintendent Feehan about

⁵⁹⁶ Tribunal Transcripts, Day 165, p. 26

⁵⁹⁷ Tribunal Transcripts, Day 165, p. 30

⁵⁹⁸ Tribunal Transcripts, Day 165, p. 34

this, he said he could find no evidence that there was any garda involved in the matter.

A. *Well, we now know that to be untrue, don't we?*

Q. *And what do you base that comment upon?*

A. *Because I have seen Michael O'Toole's evidence, I read it last night.*

Q. *But did the original article not [in] fact say that it was based on Garda sources?*

A. *Well, it did, yeah.*⁵⁹⁹

He confirmed to the tribunal that he did not ask Mr O'Toole to identify the source.⁶⁰⁰

He was asked by counsel for Sgt Hughes if Mr O'Toole had asked him about the discipline investigation:

A. *... I don't think he mentioned it, but I knew who we were both talking about. We were both talking about two things. One in relation to the draft Victim Impact Statement, what he did or didn't do with that. And two, that he was disciplined, or investigated as a result of that. So, we both knew what we were talking about. Whether ... he expressly stated it, I don't know, I can't recall.*

Q. *... on Chief Inspector Feehan's investigation of it, it appears that ... was a new element that hadn't really appeared before, that there was a disciplinary process. But I am asking you – so, Mr. O'Toole didn't mention that specifically to you?*

A. *I can't recall that. All I know is that he rang me up and I was particularly upset for Sergeant Hughes in the context of they were zeroing in – I mean, look at the headline – they were zeroing in on his action or non action of a Victim Impact Statement. And that was the content of our call. I asked him where the hell did you get this from? High ranking Gardaí.*

Q. *And Mr. O'Toole, did he tell you that he picked up other information from articles that had already appeared about – from a long time before ...*

A. *No, he didn't say that in the conversation, no.*⁶⁰¹

Mr Hennessy was cross-examined by counsel for Mr O'Toole:

Q. *... Mr. O'Toole's evidence is going to be, and he has given his statement, that he rang you about the fact there was a disciplinary investigation ongoing into the retention of the Victim Impact Statement, and that was the primary reason he called you, do you recollect that?*

A. *... no, that's not what the call was about. The call was about the Victim Impact Statement, and the first thing. Secondly, what would I know about anything to do with the disciplinary investigation? It was nothing to do with me. I had no knowledge of it.*

...

⁵⁹⁹ Tribunal Transcripts, Day 165, pp. 34-35

⁶⁰⁰ Tribunal Transcripts, Day 165, p. 61

⁶⁰¹ Tribunal Transcripts, Day 165, pp. 61-62

- Q. You see, at that stage wasn't the retention of the Victim Impact Statement out in the public domain for almost two years?
- A. ... I'd agree that it had been referred to by the media before. Whether that – if you are suggesting that puts the news story in the context 'no big deal', I disagree with that.
- Q. That's not what I was asking you. I am asking you wasn't it out in the public domain two years previously?
- A. You are right, yes.
- ...
- Q. The exclusivity to the story Mr. O'Toole was calling you about was the fact there was a disciplinary investigation, and that's the primary reason he telephoned you, would you accept that?
- A. ... I have already answered that. I don't accept that. My recollection of the call was in relation to the failure of Sergeant Hughes to do something, or his inaction in relation to the Victim Impact Statement.⁶⁰²

Mr Hennessy was also asked by counsel for Mr O'Toole about the designation of the source as a *'high ranking garda'*:

- Q. ... Mr. O'Toole says in relation to the question of his source, he didn't use the expression a "high ranking member" now this may be the semantics that you referred to earlier he said it was "senior enough" were the words that he used, would you accept that that's possibly what he may have said?
- A. ... my recollection, or what I put in the statement was "high ranking."
- ...
- So it's a fairly specific choice of words or quote, and so if you don't mind, I'll stick by that. But if Mr. O'Toole's position is "senior enough" then ...
- Q. Well actually, on page 8307 in the statement you gave to the Tribunal you actually used the expression "a senior Garda"?
- A. Did I?
- Q. Yes. So, Mr. O'Toole, as I said there may not be much between you but he says "senior enough" was the expression that he used.
- A. Yeah ...⁶⁰³

Mr Michael O'Toole

In his interview with the tribunal investigator, Mr O'Toole outlined the *'focus of [his] story'* as follows:

⁶⁰² Tribunal Transcripts, Day 165, pp. 67-69

⁶⁰³ Tribunal Transcripts, Day 165, p. 70

*I believe the issue around the victim impact statement was in the public domain before my story appeared ... The focus of my story was the disciplinary process I do not believe I ever had sight of the victim impact report. To the best of my recollection I was aware that Sergeant Hughes was the member subject of the disciplinary proceedings, and therefore the subject of the article.*⁶⁰⁴

...

*I did contact Mr Hennessy, my recollection is that I contacted him the day I wrote the article, which would have been the day before it appeared in the paper. I would I believe have contacted him as he was Baiba Saulite's Solicitor and my belief is that I was contacting him about the disciplinary process and not the victim impact statement as to my knowledge and to reiterate I believe that was already in the public domain. In that regard I can refer to an article in the Sunday Independent dated 26 November 2006 by Maeve Sheehan "Baiba knew of hit being planned and gave Garda victim statement". That story makes it clear that the victim impact statement was not read until after her death.*⁶⁰⁵

Mr O'Toole explained his understanding of 'high ranking garda':

*In general terms, I would consider a high ranking Garda as Assistant Commissioner level.*⁶⁰⁶

He was referred to the statement made by Mr Hennessy and he said that:

*My recollection is that Mr Hennessy did become slightly agitated or upset, to the best of my recollection he did ask me, who told me? I did not disclose my source or sources to him. What I recall saying to him, and I suspect he did ask me about the rank although I don't remember that, but my answer betrays the fact that he must have asked me, because my recollection is that I said to Mr Hennessy ... "senior enough". I don't recall using the phrase high ranking. I can confirm that none of the sources for my story ... were Gardai at the rank of Assistant Commissioner or above.*⁶⁰⁷

In his evidence to the tribunal, Mr O'Toole outlined how he obtained the information for his article:

*My job, to use ordinary layman's parlance, is, everyday I shake the trees and hope that a few acorns or coconuts, whatever, will fall down. I know, with my political colleagues they often get what you would call a leak. I rarely get leaks. I am quite good in my own defence at getting information out of people, that people may not necessarily want to give me. So, I got this story, this story was not handed to me on a plate. It came about as part of a general conversation, and it wasn't proactively leaked to me. I am comfortable saying that, Chairman.*⁶⁰⁸

He was asked by counsel for the tribunal about his 'source':

Q. *And in that respect, I think are you in a position to confirm whether or not the source was above the rank of Inspector in this instance?*

⁶⁰⁴ Tribunal Documents, p. 7743

⁶⁰⁵ Tribunal Documents, p. 7744

⁶⁰⁶ Tribunal Documents, p. 7743

⁶⁰⁷ Tribunal Documents, p. 7745

⁶⁰⁸ Tribunal Transcripts, Day 165, p. 76

- A. *Again, this is a difficulty for me, Chairman, because I worry about the pool. I will answer the question but may I say first that it would be a mistake for people to assume that I have a wide panel or a wide area of sources. So, ... I will answer the question but I just need to contextualise this.*

CHAIRMAN: *It's all right. You can just answer your own way.*

- A. *I have had – and this is purely hypothetically – I have had occasion where I have got information about, say, a serious investigation in the Kevin Street area of Dublin and I have got that from – and I'm not saying I have got this but just an example – I have got that from someone who is in Mayo, okay? So, do you know what I'm trying to say there, Chairman? When I answer the question it's not pointing at anyone. I'm keeping it as wide as I can. We get – I get – journalists get, you would be quite surprised to hear where we get our information from. It's not just one discrete unit or one discrete team or any one discrete station. It could be anybody. Paper doesn't refuse ink and beggars can't be choosers; I get my information from where I get it from. But I can confirm that the source was not above the rank of inspector.⁶⁰⁹*

Mr O'Toole was asked by counsel for the tribunal why he had phoned Mr Hennessy:

The reason I rang John was because I thought he was a central character here, that he was Baiba Saulite's solicitor, he was under threat himself, I knew about the incidents. ... I knew he had Garda bodyguards, I knew there was a threat to him.⁶¹⁰

Counsel asked him the following:

- Q. *So obviously you knew who he was and this may or may not be relevant, but did you tell him that you were ringing him in any particular capacity when you phoned him?*

A. *No.*

- Q. *Or was it just clear that you were ringing him because of your journalistic work?*

A. *No, I didn't – no, I told him I was ringing not because of his position, but I told him why I was ringing about the victim – the disciplinary procedure. And I also rang the Garda Press Office ...*

...

I didn't think because of the nature of our relationship I had to ring him – I had to tell him the reason why I was ringing him. In other words, why I was choosing him to ring. But I did explain what the story was.

- Q. *Yes. And in any event, what do you recollect telling him about the article that you were proposing to write?*

A. *The thrust of the story was that there was a disciplinary investigation over the Victim Impact Statement; that was the thrust of my story.*

⁶⁰⁹ Tribunal Transcripts, Day 165, pp. 87-88

⁶¹⁰ Tribunal Transcripts, Day 165, p. 80

Q. *And did you read the headline out to him or did you read any more of the draft article out to him or ...*

A. *No, and I don't write the headlines. The headline would not have been written when I was speaking to John.*⁶¹¹

Mr O'Toole confirmed in his evidence that his 'source' did not mention Sgt Hughes's protected disclosure to him:

Q. *Sergeant Hughes had made a formal protected disclosure to the confidential recipient ... Was there any reference to that in the conversation with your source?*

A. *I don't recall, Chairman, but I was aware that a protected disclosure or a whistleblower had come forward. I did not know who it was.*

Q. *Yes, but when were you aware of that, or do you know? Can you say when you were aware of that?*

A. *Before the article appeared.*

Q. *Okay.*

A. *... I know where I got my information about the disciplinary process. I don't know where I ... became aware of the whistleblowing aspect.*

Q. *Yes. But it would appear that you didn't get it on the same conversation, is that right, and you didn't know who the whistleblower was?*

A. *I did not know who the whistleblower was. And I do not believe I got it in the conversation with the Garda sources. That is my belief.*⁶¹²

Counsel for the tribunal asked Mr O'Toole if he mentioned Sgt Hughes to Mr Hennessy:

*I do not believe I mentioned Sergeant Hughes. I may be wrong. I knew at this stage about Sergeant Hughes, but I don't think I spelled out, I listened to John's evidence, I don't think I spelled out Sergeant Hughes, I don't think I said that is Sergeant Hughes.*⁶¹³

Mr O'Toole recalled Mr Hennessy's reaction to the prospect of the article being published:

*He got slightly upset. He did. Yeah, he got upset. I don't necessarily know if I was aware of the nature of the relationship between John and Mr. Hughes, I have to say, because again, I was ringing because he had been affected by this, and he had been Baiba Saulite's solicitor. But I was slightly taken aback because I thought he did get upset, yes. That's no criticism of him. You know, people get upset. That's fine.*⁶¹⁴

He did not recall Mr Hennessy asking him not to print his story or asking that the story be kept off the front page.⁶¹⁵

Mr O'Toole told the tribunal that he contacted the Garda Press Office after he received the information from the 'source':

⁶¹¹ Tribunal Transcripts, Day 165, p. 81

⁶¹² Tribunal Transcripts, Day 165, pp. 83-84

⁶¹³ Tribunal Transcripts, Day 165, p. 84

⁶¹⁴ Tribunal Transcripts, Day 165, p. 85

Q. *And did they make any comment?*

A. *No. They said, from memory, they do not comment on disciplinary cases.*

Q. *Yes. And Sergeant Hughes, did you think about whether you ought to contact Sergeant Hughes?*

A. *No ... Mr. Hughes wasn't suspended, he was merely under disciplinary investigation, there are a myriad disciplinary investigations happening all the time. And even when I write about gardaí who are suspended, and I have canvassed the views of other journalists about this, but my view is I always put it to the Garda Press Office. There are various things that guards aren't – I do believe under the Garda Code, under the Garda Act they are not allowed to talk to me. So, my route, not just in relation to Mr. Hughes, but any serving member, I go to the Press Office, they are the ones who are authorised to comment.⁶¹⁶*

Mr O'Toole also told the tribunal that there was nothing factually inaccurate in the article.⁶¹⁷

During cross-examination by counsel for Sgt Hughes, Mr O'Toole explained that the story was changed during the production process:

As I said, the story was changed by someone else in the production process. I wrote the story about the disciplinary process. As I said to the Chairman earlier, I was not happy when I saw the story in the paper the next day because that was not the story that I wrote.⁶¹⁸

Counsel for Sgt Hughes also asked Mr O'Toole about his understanding of the phrase 'senior enough':

Look, it was a senior enough source. I can't – I am afraid that I can't – I gave an answer to John. I gave an answer to the investigators. I am a citizen as well a journalist and I do think it's important for Mr. Hughes to know the truth so I have no problem in giving evidence. But this is an area that causes me great difficulty. I answered then to John, I am answering now to you and to the Chairman, my answer was it was senior enough. I can't go further than that I'm afraid.⁶¹⁹

Former Assistant Commissioner Al McHugh

A/C McHugh was asked by counsel for Sgt Hughes whether he was satisfied with the appointment of A/C Feehan to conduct the investigation despite the protestations of Sgt Hughes's legal representatives:

A. *... I appointed Chief Feehan to, I think he was Assistant Commissioner at that stage, to carry out that investigation. I had no other part in that.*

Q. *And did he report to you?*

A. *No. I think I was retired, I'd say, when the report was finished, I think it was in 2010 at least.*

⁶¹⁵ Tribunal Transcripts, Day 165, p. 85

⁶¹⁶ Tribunal Transcripts, Day 165, pp. 85-86

⁶¹⁷ Tribunal Transcripts, Day 165, p. 92

⁶¹⁸ Tribunal Transcripts, Day 165, p. 94

⁶¹⁹ Tribunal Transcripts, Day 165, p. 95

- Q. Right. And were you aware, in appointing him, that what was alleged, the leak – and we have had a lot of evidence about this in the past couple of days – the leak was about the disciplinary investigation itself that he was running?
- A. There was so many – I mean, if I was to get upset over all the articles that were written after every murder in Dublin, I don't think I'd have been able to do my job. I avoided reading the articles on some of the papers, I was more of a broadsheet reader myself, and I had no input into that, absolutely none.
- Q. No, but in terms of the appointment of Chief Superintendent Feehan, I mean you knew what – I mean you must – well sorry, did you know what the article said?
- A. Yeah, I think [Sgt Hughes's] solicitor, did write – I don't know did he write to the Commissioner or to me – anyway, the letter landed on my desk and I think I responded in terms of, that I was satisfied with the integrity of Chief Feehan and that I had no difficulty, that he was a man of the highest standards, that I had no difficulty in appointing him to carry out the investigation. That's, in general terms, now I think. I haven't seen the letter in years.⁶²⁰

Former Assistant Commissioner Michael Feehan

In his statement to the tribunal, A/C Feehan said that:

In my report on the investigation, I stated that with the exception of a reference to disciplinary proceedings against a Garda based in north Dublin, Mr. O'Toole's article did not contain anything that did not appear to have been in the public domain previously. The investigation did not ascertain the source of the information contained in the article which appeared in the Star newspaper and which had been the subject of this complaint.⁶²¹

A/C Feehan was asked by counsel for the tribunal whether he was ever informed that Sgt Hughes was a confidential reporter:

- Q. ... I think we have seen correspondence yesterday, which was a report from Inspector Dwyer in December '08, where he informed Sergeant Hughes that you had now been appointed to do the Daily Star investigation and the confidential reporting investigation. So he seems to have been certainly told, and presumably you learnt that he had been told that and you must have, at that stage, realised, if you hadn't deduced beforehand, that he was the confidential reporter?
- A. I could have deduced that, but ... I was never informed of that.⁶²²

A/C Feehan was asked by counsel for the tribunal if he felt compromised in conducting the investigation:

- A. And so that matter was considered, and Assistant Commissioner McHugh, who had appointed me to carry out the investigation, responded to [Sgt Hughes's solicitor] and he said, basically, that if there was something which Sergeant Hughes or [his solicitor] had which might impugn my professionalism, well then they should give

⁶²⁰ Tribunal Transcripts, Day 167, pp. 127-129

⁶²¹ Tribunal Documents, p. 838

⁶²² Tribunal Transcripts, Day 168, pp. 47-48

that information to Assistant Commissioner McHugh to inform any decision he might take. But in the absence of any such information, that Assistant Commissioner McHugh was satisfied that I should continue with the investigation.

Q. Yes. But you'd obviously done and completed the fact finding which led to the disciplinary. But the disciplinary investigation was continuing to the stage, and remained in being when you were appointed to do the confidential recipient one, and then you were further tasked with this other investigation, which, you know, didn't form part of either of the other two, and you had this triple task resting on your shoulders at that point in time. Were you concerned yourself as to whether you could properly dedicate your effort and impartiality and scrutiny in performing all of those tasks at the same time? Did you see any conflict arising from any of them with each other?

A. I can see how that argument could be made, but ... I certainly didn't ... make any information available or make any comment to the journalist who wrote the article in the Star. I suppose everybody knows An Garda Síochána is a disciplined organisation. So, if I was appointed by the Commissioner, for example, to investigate the confidential recipient allegations, I did that to the best of my ability and fairly, I think, and without any bias.⁶²³

A/C Feehan was asked by counsel for the tribunal if there were any additional steps he could have taken to advance the investigation process:

A. ... what I did do, having, you know, seen the statement from the journalist, I considered well okay, what other actions could we possibly take here? So, potentially, if a member of An Garda Síochána was identified as having disclosed information which they came across in the course of their duties and they disclosed that information in the knowledge that by disclosing that information it could cause harm to an individual, that potentially could have been a breach of the Criminal – under section 62 I believe it is, of the An Garda Síochána Act. So I considered with the information I had, was there a possibility or were we likely to further the investigation, for example, if the journalist was arrested and was interviewed, you know, under caution? ... but the difficulties, you know, in relation to – say, difficulties, from a policing perspective, of trying to ascertain the source of information given to a journalist is extremely unlikely to further an investigation, because their position is and would be, and I would say still is, that they will protect their sources. So I didn't think that arresting Mr. O'Toole was likely to further the investigation in any way.

Q. Yes. You do say in the question and answer document that you did give consideration to it, is that right?

A. Yes, I did.

Q. And you've referred to section 62 there. It's not, it's not, as it were, a simple prohibition on the communication of information which makes it an offence, it is hedged around with these slightly tortuous restrictions or qualifications as to when it is an offence.

⁶²³ Tribunal Transcripts, Day 168, pp. 57-58

A. Yes.

Q. *And when it's done with [that] purpose and it is linked to effects that it is alleged to have resulted as a result of the disclosures, it is not a straightforward arrestable offence in the sense of other offences?*

A. *No, it's not.*⁶²⁴

A/C Feehan also told the tribunal that he had no evidence that the information came from garda sources:

Q. *And you reported back to the Commissioner that ... you had discovered no evidence in the course of your investigation to substantiate the claim that it had come from a garda source?*

A. Yes.

Q. *And presumably you don't see that you could have done anything further, is that right?*

A. *I don't believe we could, no.*⁶²⁵

During cross-examination by counsel for Sgt Hughes, A/C Feehan was asked whether there was a conflict in his leading the investigation:

A. *... I was directed to carry out that investigation. There was a complaint made, I know, to the Garda Commissioner about me taking on or being involved or supervising that investigation from ... the solicitor for Mr. Hughes. That complaint, my understanding of that complaint is, it was considered and Assistant Commissioner McHugh corresponded with [Sgt Hughes's solicitor] to the effect that, if there was a particular complaint about the way the investigation was being conducted by me, that he should forward that, but in the absence of that, he said that ... I would continue with this investigation.*

Q. *Well, I am asking you, did you not see a conflict? You were involved in the disciplinary investigation. Did you not see a conflict in you investigating how information found its way to a journalist at The Star newspaper?*

A. *No, I didn't. And, as I said, I was directed to carry out the investigation. The officer who directed me to do that had knowledge of what had gone before. So ... if that was an issue, well, then, it could be dealt with. There was, as I said, correspondence from [Sgt Hughes's solicitor] objecting to that.*

Q. *But you didn't see any conflict? I am not, for one moment, suggesting that you leaked the information, I am not suggesting that for one moment.*

A. *I understand that.*

Q. *But potentially, you were a person who could have done, in that you had the information that found its way to the paper. Now, is there not a clear conflict then*

⁶²⁴ Tribunal Transcripts, Day 168, pp. 58-59

⁶²⁵ Tribunal Transcripts, Day 168, p. 60

that you would investigate how this information came to find its way to – into The Star newspaper?

A. *So I didn't form that view at the time, I did not form that view. I think I said yesterday, An Garda Síochána is obviously a disciplined organisation. I was directed to carry out this investigation. I did not form the view at the time, or I did not object when I was appointed. The matter was considered as a result of a complaint from [Sgt Hughes's solicitor] on behalf of Sergeant Hughes, so I continued with the investigation.*

Q. *Well, same theme, but a slightly different perspective: Could you not see that Sergeant Hughes would see it as improper and unfair that you would be the man looking into this?*

A. *I did see that, obviously, when the complaint arrived in to the Commissioner about me carrying out the investigation.*

Q. *So you understood that?*

A. *I say I was aware that there was a complaint made on behalf of Sergeant Hughes to me carrying out The Star investigation.*

Q. *And he maintains the view, Assistant Commissioner, that it was improper for you to be the man who would oversee this?*

...

I am asking you what you say to that. That remains his position, that it was unfair and improper. And you may well already have answered it, but, to be fair, that's his position; what do you have to say to that?

A. *So, what I would say is, I carried out or supervised the conducting of a fair and impartial investigation. The investigation was taken as far as it could be taken. And so that is my position.⁶²⁶*

A/C Feehan was cross-examined by counsel for Sgt Hughes about the extent to which the information in the article was already in the public domain:

Q. *So you did recognise that it was the existence of the disciplinary investigation that was the leak?*

A. *That was the only information that we could see that had not been out in the public arena before the article was written.*

Q. *And would you agree with me that it was a leak of some sort?*

A. *I don't know – I don't know where it came from.*

Q. *No. The journalist himself, the report itself said it, referred to Garda sources.*

A. *That's right, it did.*

⁶²⁶ Tribunal Transcripts, Day 169, pp. 9-11

- Q. *And the evidence that you had at the time was that Mr. Hennessy said that the journalist said it came from a high ranking garda?*
- A. *That's correct, that was in Mr. Hennessy's statement. But the point I was making was that the outcome of the investigation was that we were not able to identify where the leak came from was it a member of An Garda Síochána or was it not? So, hence, I don't know where the leak came from like, if there was a leak to this day.*
- Q. *Well, you knew about the disciplinary – you were the investigating officer of the disciplinary process?*
- A. *Yes.*
- Q. *Did you speak to any of the officers who were involved in that or would have known about the disciplinary process?*
- A. *No, I did not.*
- Q. *You didn't enquire of any of them as to whether they may have leaked, whether it be deliberately, inadvertently, or whatever, you didn't speak to any colleagues?*
- A. *No, I did not. And I would say the reason I did not was because you could be into several hundred people who had knowledge of this, of the discipline investigation.⁶²⁷*

He was further cross-examined by counsel for Sgt Hughes about the conclusion in his report that there was no evidence to substantiate the allegation that the information had come from garda sources:

- Q. *Mr. Hennessy had given evidence – what weight one would give to it is not the issue, but he had given evidence that the journalist himself had said that it came from a high ranking Garda source?*
- A. *That's correct.*
- Q. *So there was some evidence?*
- A. *No, sorry, I could find no evidence to substantiate – there was a comment made to Mr. Hennessy by the journalist, that's true, that was in his statement, but I couldn't substantiate that ... I had no evidence to substantiate that, that that was the case.⁶²⁸*

Retired Superintendent Fergus Dwyer

In his statement to the tribunal, Supt Dwyer outlined his attempts to contact Sgt Hughes:

On 16 January 2009 I corresponded with [Sgt Hughes's solicitor] advising that Assistant Commissioner Michael Feehan had been tasked with investigating the issues raised on behalf of Sergeant Hughes and affording Sergeant Hughes an opportunity to assist in our enquiries ... On 24 March 2009 [Sgt Hughes's solicitor] corresponded with me objecting

⁶²⁷ Tribunal Transcripts, Day 169, pp. 13-14

⁶²⁸ Tribunal Transcripts, Day 169, pp. 14-15

to Assistant Commissioner Feehan being tasked to deal with the matter ... On 29 April, 2009, having been informed that Assistant Commissioner, DMR had decided that Assistant Commissioner Feehan was to undertake these enquiries I corresponded with [Sgt Hughes's solicitor] requesting a meeting with Sergeant Hughes with a view to obtaining a formal statement from him ... I received no response.

...

Assistant Commissioner Feehan directed me to meet with Sergeant Hughes and on 27 July, 2010 I again corresponded with [Sgt Hughes's solicitor] affording Sergeant Hughes an opportunity to make a written statement of complaint in respect of the newspaper article ... [Sgt Hughes's solicitor] replied on 10 August, 2010 indicating that Sergeant Hughes was willing to make a statement. We arranged to meet on the 8 September, 2010. The meeting was deferred to 10 September, 2010 and again to 13 September, 2010 each time at the request of Sergeant Hughes. ... I was contacted by phone by Sergeant Hughes' AGSI representative, Inspector Aidan O'Donnell on the 10 September, 2010, who requested a further deferral stating that Sergeant Hughes' legal representative was unavailable. As the meeting had been deferred on a number of occasions I informed Inspector O'Donnell that I was placing the onus on Sergeant Hughes to contact me within the next fourteen days to suggest a suitable date to meet. I subsequently corresponded with Sergeant Hughes reiterating what I had discussed with Inspector O'Donnell ... On 28 September, 2010 [Sgt Hughes's solicitor] contacted me and we arranged to meet with Sergeant Hughes on 4 October, 2010. On 1 October, 2010 the offices of [Sgt Hughes's solicitor] contacted me seeking a further deferral of the meeting and we arranged the meeting for the 12th October, 2010 ... At the meeting on 12th October, 2010 Sergeant Hughes stated that this was the first time he had been invited to make a statement in relation to this matter. In fact he makes a comprehensive allegation in this regard in the pre prepared statement he handed to me at the meeting. In the statement he alleges that he had not been approached about this matter until I corresponded with him personally on 30 July, 2010. Notwithstanding the fact that the meeting had been deferred numerous times at request of Sergeant Hughes, it was explained to him that as he had previously requested that all approaches to him be made through his solicitor correspondence had been forwarded to [his legal representatives] seeking a meeting with him (Sergeant Hughes) as early as 16 January, 2009 ... and on other occasions (ie 29 April, 2009 ... and 27 July, 2010 ...). His legal representative acknowledged that he had received such correspondence but stated that we should still have approached his client directly at an earlier stage. I had assumed that Sergeant Hughes had been kept apprised of all relevant matters in connection with this inquiry, including the concerns raised on his behalf in respect of Assistant Commissioner Feehan being tasked with dealing with the matter and my requests to interview him.⁶²⁹

Supt Dwyer also outlined the enquiries he made with Mr O'Toole:

As part of the enquiries into these matters I along with Detective Sergeant Mark Waters met with the author of the article, Mr. Michael O'Toole, on 28 January, 2008, and took a statement from him ... Mr. O'Toole declined to identify the source he referred to in the article.

*Of particular note to this investigation was the amount of information available from open sources on the internet ... From a perusal of these articles it was apparent that a substantial amount of the information contained in Mr. O'Toole's article was already in the public domain with the exception of the reference to a 'Garda in north Dublin' being the subject of a disciplinary investigation.*⁶³⁰

He said that on receipt of Sgt Hughes's statement, enquiries were made with Mr Hennessy and again with Mr O'Toole:

*In light of some of the issues arising from Sergeant Hughes' statement that were relevant to the inquiry a statement was obtained from Mr. John Hennessy who had previously acted as Baiba Saulite's solicitor ... As Mr. Hennessy referenced a conversation he had had with the author of the newspaper article, Michael O'Toole, Mr. O'Toole was re interviewed. On 21 January, 2011 I, accompanied by Detective Sergeant Mark Waters, met with Mr. O'Toole and his solicitor. Mr. O'Toole declined to comment on any matter relating to the article.*⁶³¹

In his evidence to the tribunal, Supt Dwyer explained that he had previously been advised that all contact with Sgt Hughes should be through his solicitor, and that this had informed his approach.⁶³² He also told the tribunal that following his meeting with Mr O'Toole on 28th January 2009, during which Mr O'Toole had declined to comment on the article, he did not consider bringing the matter any further with Mr O'Toole.⁶³³

Supt Dwyer outlined to the tribunal how the meeting with Sgt Hughes on the 11th May 2009 came about:

Q. ... you wrote two letters to [Sgt Hughes's solicitor] I think in May and in July of 2009, asking that Sergeant Hughes should make himself available to take a statement, and you didn't receive a response?

A. No, on the 29th April, I sent my letter to him asking for to meet up. And then this meeting took place I think on the 11th May ... Which I believe was in response to my letter of the 29th April.⁶³⁴

Supt Dwyer was asked by counsel for the tribunal whether he was at this meeting to take a formal statement from Sgt Hughes in relation to the article:

*No ... I was phoned out of the blue by [Sgt Hughes's solicitor's] office, and, as I said previously, I was anxious to keep things moving. He asked could we meet him in the office. I said we could. And I arranged for Mark Waters to come with me, and that was the conversation, and it culminated in Sergeant Hughes giving me an undertaking that he would provide me with a statement or arrange to meet me to make a statement. I actually subsequently corresponded – when I heard nothing, I corresponded and the correspondence is in the material before the Tribunal.*⁶³⁵

⁶²⁹ Tribunal Documents, pp. 902-904

⁶³⁰ Tribunal Documents, pp. 902-903

⁶³¹ Tribunal Documents, p. 904

⁶³² Tribunal Transcripts, Day 171, pp. 72-73

⁶³³ Tribunal Transcripts, Day 171, p. 75

⁶³⁴ Tribunal Transcripts, Day 171, pp. 78-79

He continued that:

A. *After this meeting, when I had received no response from Sergeant Hughes, or he hadn't been in touch with me about the statement he undertook to provide me with, I corresponded with him I think on the 29th May then following on from the meeting I still hadn't received the statement or words to that effect.*

Q. *And you got no response on the 29th of May?*

A. *I got no response to that correspondence, yes.*⁶³⁶

Supt Dwyer told the tribunal that at the time A/C Feehan submitted his report, the matter could not be advanced any further.⁶³⁷

During cross-examination by counsel for Sgt Hughes, Supt Dwyer was asked whether he considered there was a conflict in A/C Feehan conducting this investigation:

Q. *... moving on to The Star article investigation, and you referred to a meeting in February 2009 in your evidence this afternoon, where this was raised by [Sgt Hughes's solicitor] and Sergeant Hughes – sorry, what was raised was the conflict of Assistant Commissioner Feehan heading that investigation when he was also heading the disciplinary investigation, which was of course the new information, as it were, that The Star published. Can you not see that there was a conflict there?*

A. *I don't believe so.*

Q. *But he was one of the members who was in possession of the information, and we're not suggesting for one moment that he leaked it, but that there was a conflict that somebody – part of the disciplinary investigation would also be involved in The Star article investigation, do you not accept that there was a conflict there?*

A. *No, I don't.*⁶³⁸

He was asked by counsel for Sgt Hughes why no other garda members were interviewed during the course of the investigation:

A. *No Garda members were interviewed in respect of it because there was no evidence pointing at any particular Garda member.*

Q. *Well, the article itself referred to Garda sources, and Mr. Hennessy said that he had been informed by Michael O'Toole that it had come from a garda, so ... And it was information that was within a fairly small set of people, and I suppose all I am asking you to do is confirm that no other Garda members were interviewed about this?*

A. *No other Garda members were interviewed because we had no evidence pointing at a particular Garda member. And just in relation to it, say, like the appointment*

⁶³⁵ Tribunal Transcripts, Day 171, pp. 77-78

⁶³⁶ Tribunal Transcripts, Day 171, p. 79

⁶³⁷ Tribunal Transcripts, Day 171, p. 88

⁶³⁸ Tribunal Transcripts, Day 171, pp. 95-96

document originated from the Assistant Commissioner's office in Harcourt Square, where there is about twelve people employed. It came down to Store Street, where there is about another eight people employed in the office there. There was the team, there was – operations were aware, the Commissioner's office were aware, and this doesn't take into account who Sergeant Hughes and Garda Nyhan informed, because they had informed Mr. Hennessy, and I don't know who else they had informed. So, are you proposing that we draw up a list of all those people and go interviewing them?

- Q. *Well, I'm not making any proposal. I'm just asking to confirm that no one was questioned. No member was questioned about this leak.*
- A. *We did not interview any guard in respect of that leak because we had no evidence to support – to justify such action.⁶³⁹*

Legal Submissions

Retired Sergeant William Hughes submitted as follows:⁶⁴⁰

- that Sgt Hughes's solicitor wrote to the Garda Commissioner on 12th December 2008 complaining about the defamatory article published in the *Irish Daily Star* newspaper on 20th November 2008 and requesting an investigation.
- that on 24th March 2009, Sgt Hughes's solicitor wrote objecting to the appointment of A/C Feehan, as he was involved in the discipline investigation and therefore was a potential source of information. The appointment of Insp Dwyer to investigate also represented a conflict of interest.
- that neither A/C Feehan nor Insp Dwyer questioned any gardaí in relation to the source of the leak.
- that the investigation found that no evidence had been obtained to substantiate the allegation that the information was provided by a member of An Garda Síochána despite the fact that the article itself referred to garda sources, and Mr Hennessy had stated that he had been contacted by the newspaper reporter who had told him it came from a high ranking garda.
- that Mr O'Toole acknowledged that the information was unauthorised. Retired Chief Superintendent Kevin Donohoe said in his evidence that in some instances the Press Office may commence an inquiry and bring it to the attention of the Commissioner, who would then refer it to the Deputy Commissioner, Operations.
- that C/Supt Donohoe confirmed that an unauthorised leak of information to the press by a member of An Garda Síochána was in breach of the Garda Code. It was also an offence under section 62 of the Garda Síochána Act, 2005, which provided for punishment on indictment by way of a fine not exceeding €50,000, or imprisonment for a term not exceeding five years, or both.

⁶³⁹ Tribunal Transcripts, Day 171, pp. 96-97

⁶⁴⁰ The tribunal has considered all of retired Sergeant William Hughes's legal submissions on this issue and what follows is a summary of the same; Tribunal Transcripts, Day 173, pp. 6-64

- that the investigation into the leak of information that gave rise to the article ought to have considered the seriousness of that leak in light of both the provisions of the Garda Síochána Code and the Garda Síochána Act, 2005.
- that the treatment of Sgt Hughes in this regard was unfair and distressing to him, and constituted further targeting and discrediting of him at a time when his differences with An Garda Síochána, and his allegations of institutional failings, had undoubtedly become well known by senior management.

An Garda Síochána submitted as follows:⁶⁴¹

- that Garda Commissioner Fachtna Murphy referred the matter to the Deputy Commissioner, Operations for attention. A/C Feehan was tasked with enquiring into the matter and he appointed Insp Dwyer to investigate.
- that both Supt Dwyer and A/C Feehan outlined a number of attempts made to contact Sgt Hughes and/or his legal representatives with a view to obtaining a statement for the investigation. That Sgt Hughes's solicitor was contacted on 16th January 2009, 29th April 2009, 29th May 2009, 27th July 2010 and there was no response.
- that on 10th August 2010, Sgt Hughes's solicitor replied to say that Sgt Hughes would meet Supt Dwyer, and on 8th September 2010, they were due to meet but Sgt Hughes's solicitor was not available.
- that on 10th September 2010, Supt Dwyer wrote to Sgt Hughes reiterating the number of attempts to take a statement. On 28th September 2010, Sgt Hughes's solicitor contacted Supt Dwyer agreeing a meeting with Sgt Hughes on 4th October 2010. A further deferral was sought by Sgt Hughes on 1st October 2010.
- that on 12th October 2010, Supt Dwyer and Sgt Hughes met. Sgt Hughes incorrectly stated that this was the first time he had been requested to make a statement, and presented a pre-prepared statement.
- that on 28th January 2009, Supt Dwyer interviewed Mr O'Toole, who declined to comment or disclose his source.
- that on 24th March 2009, Sgt Hughes's solicitor objected to A/C Feehan's involvement and on 27th April 2009, A/C McHugh requested that any specific information suggesting impropriety or that the investigation was not being conducted in accordance with law and natural justice should be forwarded. Nothing was received and the investigation continued.
- that on 19th November 2010, Mr Hennessy was asked for comment on the issue.
- that Mr O'Toole was re-interviewed on 21st January 2011 and Mr Hennessy's statement was put to him. He remained silent.

⁶⁴¹ 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 173, pp. 66-135

- that A/C Feehan concluded that it was not possible to progress the investigation and stated that at *'this juncture there is no evidence to identify or even confirm that the source was indeed a member of An Garda Síochána'*. A/C Feehan concluded that with the exception of the fact of the discipline investigation, the article did not contain anything that had not been reported on already.
- that in all the circumstances, all avenues were exhausted and any suggestion by Sgt Hughes that further steps could have been taken were wholly untenable.
- that there was no basis whatsoever for maintaining the allegation that there was any targeting and/or discrediting of Sgt Hughes by virtue of this process.

Conclusion

Sgt Hughes submitted:

- that on 24th March 2009, Sgt Hughes's solicitor wrote objecting to the appointment of A/C Feehan, as he was involved in the discipline investigation and therefore was a potential source of information. The appointment of Insp Dwyer to investigate also represented a conflict of interest.

Whilst it is understandable that the case was made by Sgt Hughes that the appointment of A/C Feehan, who then deputed Insp Dwyer to conduct the investigation, represented a conflict of interest, given their involvement in the discipline proceedings, no evidence was provided by Sgt Hughes or his legal representatives to suggest such a concern was warranted.

Sgt Hughes submitted:

- that neither A/C Feehan nor Insp Dwyer questioned any gardaí in relation to the source of the leak.
- that the investigation found that no evidence had been obtained to substantiate the allegation that the information was provided by a member of An Garda Síochána and this was despite the fact that the article itself referred to garda sources, and Mr Hennessy had stated that he had been contacted by the newspaper reporter who had told him it came from a high ranking garda.
- that Mr O'Toole acknowledged that the information was unauthorised. C/Supt Donohoe gave evidence that in some instances the Press Office may commence an inquiry and bring it to the attention of the Commissioner, who would then refer it to the Deputy Commissioner, Operations.

This matter was investigated by Supt Dwyer, deputed by A/C Feehan, who had yet again been assigned the task of investigation. The gardaí found, unsurprisingly, that Mr O'Toole was not willing to reveal his source.

It is unfortunate that the investigation was not as expeditious as it should have been. An Garda Síochána submitted that there was a lack of engagement by Sgt Hughes. They said that Insp Dwyer contacted Sgt Hughes's solicitor on 16th January 2009, 29th April 2009, 29th May 2009 and 27th July 2010 with a view to obtaining a statement and that he received no response. Supt Dwyer, gave evidence that a meeting took place on 11th May 2009 with Sgt Hughes and his solicitor which, in his belief, was in response to his letter of 29th April 2009. A statement was not obtained at that meeting. Thereafter, further correspondence issued to Sgt Hughes's solicitor on 29th May 2009 seeking a meeting with Sgt Hughes for the purpose of making a statement; this was not responded to. To complicate this matter further, Sgt Hughes's solicitor did not apparently receive this letter.

It is also noted that during the course of the meeting on 11th May 2009, information was imparted to Insp Dwyer that Mr Hennessy had been told by Mr O'Toole that the information that led to the article came from a *'high level member of An Garda Síochána'*. It is perhaps surprising that on being told of this information Insp Dwyer did not act promptly and seek a statement from Mr Hennessy, a legitimate and necessary line of enquiry that was not dependent on a statement from Sgt Hughes on the matter.

Notwithstanding the non-pursuance of seeking a statement from Mr Hennessy at that stage, and no further efforts to contact Sgt Hughes with regard to the making of a statement from 29th May 2009 to 27th July 2010, it must also be acknowledged that Sgt Hughes and his legal representatives also contributed to the non-expeditious nature of the investigation by failing to respond to Insp Dwyer's correspondence of the 29th May 2009.

It is also acknowledged that following the directions by the Deputy Commissioner, Operations in his correspondence to A/C Feehan on 12th July 2010, follow-up enquiries including an interview with Mr Hennessy and a second interview with Mr O'Toole took place and it is therefore concluded that all reasonable efforts were made by the investigation team to investigate the source of the leak.

The evidence established that the investigation of leaks by members of An Garda Síochána to journalists are notoriously difficult to bring to a successful resolution. In every case, the hurdle of the journalist invoking their right to protect sources and invoke journalistic privilege is to all intents and purposes insurmountable and lends itself to such investigations predictably running into the sand.

The criticism made that A/C Feehan and Supt Dwyer failed to interview any garda members about the source of the leaks is not a valid criticism. Both A/C Feehan and Supt Dwyer pointed out that a large number of garda personnel would have been aware of the discipline proceedings. That was not to take account of anybody whom Sgt Hughes or Garda Declan Nyhan might have informed. The interviewing of these personnel would have been a pointless exercise because in reality the only way the source of the leak could be identified was through a disclosure by the journalist.

To his credit, the journalist, Mr O'Toole, was extremely helpful, insofar as he could be, in assisting the tribunal with its enquiries.

In his evidence to the tribunal, Mr O’Toole was as forthcoming as he could be within the limits of journalistic privilege about his source, stating that it was a member of An Garda Síochána ‘*not above the rank of Inspector*’.⁶⁴² He also said that he gleaned the information from the source, who inadvertently and indirectly revealed the discipline process, which was the main point of the article as submitted by Mr O’Toole. Assuming this is correct it means that the source did not intend to disclose the information to the journalist and that he is of a rank below that comprised in the interpretation of the tribunal’s terms of reference.

The tribunal is of the view that there is no reason to disbelieve Mr O’Toole and indeed is satisfied that he has gone as far as he can consistent with the protection of his source to assist the investigation. Put another way, this is the only direct information that the tribunal has been furnished with and no reason has been suggested, and neither does it appear that there is any reason, to disbelieve the evidence of this witness.

As previously referred to, investigations into alleged leaks by members of An Garda Síochána to journalists are rarely if ever brought to a satisfactory conclusion. The investigation conducted by A/C Feehan and Supt Dwyer was professional and ultimately thorough with regard to the enquiries undertaken. Whilst comment has been made that the pace of conducting enquiries could have been more expeditious, and in so much as deficiencies can be attributed in this regard, the responsibility lies with both An Garda Síochána and Sgt Hughes and his legal representatives.

The tribunal finds no connection between the matters considered under this issue and Sgt Hughes’s protected disclosures. This case does not reveal targeting or discrediting of Sgt Hughes by senior officers of An Garda Síochána.

⁶⁴² Tribunal Transcripts, Day 165, pp. 87-88

CHAPTER 11

THE COMPLAINT MADE BY
SERGEANT WILLIAM HUGHES
IN RELATION TO THE ALLEGED FAILURE
TO REFER HIS CASE TO THE GARDA SÍOCHÁNA
OMBUDSMAN COMMISSION

Issue 6 of the Schedule of Issues

Did the Garda Commissioner target or discredit Sgt Hughes because he made a protected disclosure by failing to refer his complaint to the Garda Síochána Ombudsman Commission?

Background

Sergeant William Hughes returned to work on 3rd March 2007 following a period of sick leave. He met with Superintendent Mark Curran on 23rd April 2007 and in a report to the Chief Superintendent, DMR (North), Supt Curran stated that:

Sergeant Hughes raised a number of issues which he believed are outstanding and requested [that] he receives communication regarding same.

They are as follows:

- (1) Since the murder of Baiba Saulite he is still in fear for both himself and his family. He states that he has not been informed of any assessment of information regarding his or his family's situations.*
- (2) The second issue relates to the investigation into certain matters – some of which relate to the first point above – by C/Superintendent Feehan and Superintendent Mangan. No communication of status on outcome of investigation.*
- (3) Investigation into article in The Sun newspaper in November 2006 conducted by D/Inspector Dennedy (now Superintendent) – no communication of status on outcome of investigation.*
- (4) He believes that he may be the subject of a discipline regarding the allegations of a Garda [Redacted] which was reported approximately two years ago. He wishes for clarification on this issue in addition to an update regarding his own complaint against D/Inspector [Redacted]. He further stated that these and other issues are in the hands of his solicitor.*

(5) *He believes that discipline proceedings may be contemplated against him but is not aware of what they might be. He has suffered considerably from stress since the murder of Baiba Saulite. He is currently employed as Sergeant I/C, Community Police in Swords and believes that he is fully able to perform these tasks. He is under the care of a medical professional who has certified his ability to perform tasks.*

I read over this list of issues with Sergeant Hughes. He requests some communication regarding each matter raised.⁶⁴³

In a reply dated 25th April 2007, Chief Superintendent Gerard Phillips said that:

1. *There is no evidence from any quarter that Sgt. Hughes or his family is or was under threat in relation to the B. Saulite murder.*
2. *This issue will be raised with Chief Supt. Feehan.*
3. *Supt. Denny carried out a thorough investigation in relation to the article in the Sun newspaper the result of which was exaggerated by the author of the newspaper item.*
4. *Sgt. Hughes is not the subject of discipline in relation to Garda [Redacted] allegations.*
5. *Has medical advice been sought from the Chief Medical Officer Garda HQ in relation to the stress Sgt. Hughes has suffered since the murder of Ms. Saulite? Has the Welfare Officer been contacted in relation to Sgt. Hughes?*

Supt. Curran should review the current duties being performed by Sgt. Hughes to ascertain are his current responsibilities particularly in the area of community policing ... suitable and can be facilitated in his District or in the Division accordingly to avoid such stressful responsibilities.⁶⁴⁴

Complaint made by Sergeant William Hughes

In his interview with tribunal investigators, Sgt Hughes stated that he told Supt Curran about the 'systems failure' concerning the murder of Ms Baiba Saulite and that:

In April 2007 I had a conversation with Sergeant Camillus Fitzpatrick I told him how I was feeling in relation to the entire matter. I told him about the systems failure and about how I was being treated by management in respect to the isolation I was experiencing. I mentioned the press release and that I was aware that relevant witnesses (Garda members) that were aware of the levels of threats against Baiba [Saulite] were not spoken to as part of the fact find investigation. The fact that they were not spoken to was I believe targeting of me. No notes were taken by Camillus Fitzpatrick during this conversation. He was a Staff Sergeant at the time, without hesitation he picked up the phone and contacted Mark Curran recently appointed Superintendent in Swords.

...

⁶⁴³ Tribunal Documents, pp. 3871-3872

⁶⁴⁴ Tribunal Documents, p. 3873

That afternoon I got a phone call from Mark Curran I went to meet him in Swords Garda Station. There was no one else present at this meeting. I told him of the systems failure, what struck me was that he just had a pen and envelope on which to make notes, and it appeared he wasn't going to take a full report from me and he didn't request one either. I directly told him of my concerns (systems failures) and I warned him that if the matters were not fully investigated it would have serious implications for the murder investigation and upcoming coroner's inquest. I told him that these were very serious allegations I was making and one would expect that senior management would act on this.

...

He took some notes, very few, on a brown envelope, I felt at the time this was not sufficient given the serious concerns I was raising. I heard no more from Superintendent Mark Curran.⁶⁴⁵

He continued in his interview that:

It is my belief that in May 2007 the Garda Commissioner should have referred the entire matter of contact by Garda members with Baiba Saulite prior to her murder to GSOC for an independent investigation. By not doing so I believe that this meant that this was a scapegoating of me, it was an abuse of process and investigations were suppressed. The fact is that these matters were not properly investigated independently by an agency like GSOC meant the truth could not come out about the systems failure and therefore I could not be vindicated. The person I believe responsible for the non referral was the Garda Commissioner, who was Noel Conroy at the time.⁶⁴⁶

Sgt Hughes was asked to detail the basis of his complaint under this issue and by letter to the tribunal dated 3rd December 2021, he stated that:

- *Pursuant to the provisions of S.10 of the Garda [Síochána] (Confidential Reporting of Corruption and Malpractice) Regulations 2007, there is an onus placed on the Garda Commissioner to report certain matters to G.S.O.C. It is Sergeant Hughes's submission that his case satisfied those requirements.*
- *In addition, Section 102(1) of the Garda [Síochána] Act 2005 requires that the Garda Commissioner shall refer to GSOC any matter that appears to the Garda Commissioner to indicate that the conduct of a member of An Garda Síochána may have resulted in the death of, or serious harm to, a person. Again, Sergeant Hughes's case satisfied those requirements.*

To date, Sergeant Hughes has not been made aware of any such reports having been made by the Garda Commissioner.⁶⁴⁷

⁶⁴⁵ Tribunal Documents, pp. 14-16

⁶⁴⁶ Tribunal Documents, p. 51

⁶⁴⁷ Tribunal Documents, pp. 7932-7933

Sgt Hughes was asked by counsel for the tribunal about his conversation with Supt Curran in April 2007:

- Q. Well, first of all, did you refer to it as a systems failure to Superintendent Curran?
- A. Yes, I did.
- Q. And did you expand on that to him?
- A. Yes, I informed him that there was matters to be looked in, and if they are not looked into I sort of, not warned him, but I advised him strongly that these matters would have to be looked into because it could affect the outcome of the murder investigation or the coroner's inquest would need to know in relation to the systems failure.⁶⁴⁸

Sgt Hughes was asked by the Chairman to outline what precisely he said to Supt Curran. Sgt Hughes told the tribunal that:

*Superintendent, I believe that there was a systems failure in relation to the handling of the investigations surrounding Baiba Saulite and John Hennessy prior to her murder and I am of the belief that if these matters are not investigated, we will face problems with regard to the successful murder investigation and also have problems in relation to the coroner's inquest.*⁶⁴⁹

Responding Statements and Evidence on the Issue

Chief Superintendent Mark Curran

C/Supt Curran made a statement to the tribunal about his recollection of his conversation with Sgt Hughes in April 2007 and said that:

*... I cannot recall if the words "system failure" were used by him in that conversation. I believe that he mentioned that he had supplied a report, which contained his concerns to Detective Inspector Christopher Mangan ... I believe that an outline of the content of the report was communicated to me by Sergeant Hughes at that meeting.*⁶⁵⁰

He also said that he provided a report of the meeting to his divisional officer and that:

*... I reported his concerns in my report to the Divisional Officer on the 24th April 2007 ... I spoke to Sergeant Hughes when completing this report and informed him at the time that I would be forwarding his concerns for the attention of my authorities. I recorded the fact that the report was read over to him in the report itself.*⁶⁵¹

⁶⁴⁸ Tribunal Transcripts, Day 161, p. 77

⁶⁴⁹ Tribunal Transcripts, Day 161, p. 79

⁶⁵⁰ Tribunal Documents, p. 1033

⁶⁵¹ Tribunal Documents, pp. 1054-1055

In his replies to questions posed by the tribunal investigator, C/Supt Curran said:

Firstly, in respect of my meeting with Sgt Hughes in April of 2007, from my memory I recall that a meeting occurred, in the first two weeks of April. I may have also met him on the 23rd April 2007, but this was not my first meeting with him. I do recall that in preparation of the report dated the 24th April, I spoke to Sgt Hughes on the phone several times on the 23rd April 2007. In respect of the above four incidents, I believe that Sgt Hughes gave me an outline of each one. Sgt Hughes told me directly that all of his concerns in respect of these matters had been reported by him to Detective Inspector Christy Mangan of DMR North Central Division. Sgt Hughes at no stage ever told me that he had made a protected disclosure.⁶⁵²

In his evidence to the tribunal, C/Supt Curran again reiterated that he did not recollect the use of the term 'systems failure':

Q. Sergeant Hughes's account to the Tribunal and in his evidence said that, you know, he communicated, you know, quite different, more extensive concerns to you about matters, including what's been referred to in a general way as systems failures issues.

A. Yes.

Q. Have you any recollection of that in any shape or form, or with that appellation on it, as it were?

A. No, I don't. And no, I just can't remember the meeting ... I'd also say that if he did say something as pronounced as that I would have acted in a different way. I mean, it would have been in the report. He had control of that report, first of all, but if something is said the way he said it to it me it may have generated a separate report. And I think I also would have asked him quite a few questions about what he meant by that. And also, I think it's a striking term actually. It's not a term that would have been used in anyway in management terms or management language at the time. So, I think it would have stuck with me. That's my own real memory.

And also, I suppose, one of the reasons I don't have a memory of this is because it was captured, and we say 'the job was done' and there weren't any, say, trailing wires in it.⁶⁵³

He was asked by counsel for the tribunal whether he understood Sgt Hughes to be making a complaint that had to be passed on:

No. And that's my point. I would have felt obliged if he had said something so pronounced. But also, the fact that ... the investigation piece was being covered by Insp Mangan meant I had nothing further to do, other than to go off and deal with the other issues. And primarily was the threat to his life, which I set off and made a lot of enquiries into relation to.⁶⁵⁴

⁶⁵² Tribunal Documents, pp. 7830-7831

⁶⁵³ Tribunal Transcripts, Day 170, pp. 24-25

⁶⁵⁴ Tribunal Transcripts, Day 170, p. 30

During cross-examination by counsel for Sgt Hughes, it was put to C/Supt Curran that Sgt Hughes distinctly recalled referring to ‘systems failure’ at the meeting. C/Supt Curran told the tribunal that:

No, I accept what he said. And I can't – all I can say is I can't remember. But here is what I would say: is that if he did say it to me in the way he said that he said it, in those words, those pronounced words here, I would have taken a different action. Either I would have included it in the document – he said I wrote it down, it would have been in the document. He had this document, he had total editorial control of that document as far as I was concerned. And if it wasn't within that document, I would imagine I would have reported it differently.⁶⁵⁵

He stated that his first recollection of the term ‘systems failure’ was sometime in late 2007 or 2008:

... if you are talking about at any time, I'd say the first time I heard him say that, I am only speculating because again I don't remember it that well, it's 15 years ago, is sometime towards late '07, '08 is the first time I heard the term. I am not even sure it was him said it to me, someone else may have said it to me.⁶⁵⁶

...

I can only say this: if he said something as formal as that to me, he said I wrote it down and yet it didn't appear in the document, and I would have felt obliged to do something and report it up, as I did with all the other documents.⁶⁵⁷

Former Garda Commissioner Noel Conroy

In his reply to a question posed by the tribunal investigator, the former Commissioner stated that:

Q. *I have been asked did I consider referring the matter of contact by Garda members with Baba Saulite [sic] prior to her murder to GSOC for an independent investigation under the relevant provisions of the Garda Síochána Act 2005.*

A. *From memory, I have no knowledge of receiving an investigation file, prior to or after the murder of Baibe Saulite, during my period as Commissioner of An Garda Síochána. I had no knowledge of a threat to the life of Baibe Saulite. I would have had no reason to make contact with GSOC as indicated by Retired Sergeant William Hughes. The referral process for GSOC, which met the criteria as circulated by a directive, was delegated to District Officers/ Superintendents. I had confidence in the officers to make the right decisions ... It was then the responsibility of Assistant Commissioner for Human Resource Management to ensure that complaints were forwarded to GSOC if appropriate.⁶⁵⁸*

⁶⁵⁵ Tribunal Transcripts, Day 170, p. 98

⁶⁵⁶ Tribunal Transcripts, Day 170, p. 103

⁶⁵⁷ Tribunal Transcripts, Day 170, p. 137

⁶⁵⁸ Tribunal Documents, pp. 8119-8120

Former Garda Commissioner Fachtna Murphy

In his statement to the tribunal, former Garda Commissioner Fachtna Murphy stated that:

On the 28th October 2008, I referred the confidential report to Assistant Commissioner Michael Feehan, Northern Region for investigation and report ... On the same date, I also provided notification by letter of the receipt of the confidential report to Mr Justice Kevin Haugh, then Chairperson of the Garda Síochána Ombudsman Commission (GSOC), in accordance with the provisions of Section 10(1) of the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007 ... I enclosed a copy of the confidential report with my letter and also notified Mr Justice Haugh that the matter had been referred to Assistant Commissioner Michael Feehan for investigation and report.

By letter dated 17th November 2008, I received a reply from Mr Paul Buschini, then Director of Operations, GSOC acknowledging receipt and confirming that the Garda Ombudsman did not have any live files under investigation in relation to the particular matters referred to in my letter to Mr Justice Haugh ...⁶⁵⁹

...

As outlined at (a) above, in accordance with the provisions of the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007, I notified the then Chairman of GSOC of the eight issues raised by the Confidential Reporter. I have no other recollection or information to assist further on any consideration or contemplation of a referral to GSOC of the specific matters referenced in this allegation.⁶⁶⁰

Legal Submissions

Retired Sergeant William Hughes submitted as follows:⁶⁶¹

- that the complaints he made ought to have been referred to the Garda Síochána Ombudsman Commission (GSOC) in May 2007 and that the failure to refer the matter to GSOC amounted to a further incident of targeting of him by senior members of An Garda Síochána.
- that section 102 of the Garda Síochána Act, 2005 placed an obligation on the Garda Commissioner to refer a matter to GSOC where the actions of An Garda Síochána may have resulted in the death of a person.
- that while it was not accepted that the discipline investigation was appropriate, nor was it warranted, it was submitted that if Chief Superintendent Michael Feehan and Assistant Commissioner Al McHugh had formed the view that there was sufficient evidence for an allegation of this seriousness to form the basis of a discipline

⁶⁵⁹ Tribunal Documents, p. 8122

⁶⁶⁰ Tribunal Documents, p. 8124

⁶⁶¹ The tribunal has considered all of William Hughes's legal submissions on this issue and what follows is a summary of the same. Tribunal Transcripts, Day 173, pp. 6-64

investigation (specifically in light of the *Osman* case), then the same evidence ought properly to have been brought to the attention of the Garda Commissioner and in turn GSOC.

An Garda Síochána submitted as follows:⁶⁶²

- that the confidential report made by Sgt Hughes on 16th September 2008 was notified to GSOC by then Commissioner Murphy on 28th October 2008. More specifically, on 28th October 2008, Commissioner Murphy wrote to the then Chair of GSOC (Mr Justice Kevin Haugh) notifying him pursuant to Regulation 10(1) of the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations, 2007.
- that in a letter to the tribunal dated 19th January 2022, Sgt Hughes stated that former Commissioner Conroy was retired when the confidential recipient investigation was commenced and was not in office when he submitted his report to the investigation in October 2008. Sgt Hughes then withdrew his allegation against the former Commissioner.
- that the vague ‘*systems failure*’ allegation did not fall within the scope of section 102(1) of the Garda Síochána Act, 2005, as it was not an allegation to indicate that the conduct of a member of An Garda Síochána may have resulted in the death of a person.
- that it was abundantly clear that there was no basis whatsoever for the allegation that Sgt Hughes was targeted and/or discredited in the circumstances.

Conclusion

The requirement on the Garda Commissioner under the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations, 2007 to notify the chairperson of GSOC applies to a confidential report made to a confidential recipient appointed by the Minister for Justice.

Regulation 3 of the Statutory Instrument provides that ‘*confidential report*’ means a report made in accordance with Regulation 5, which is as follows:

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

Regulation 10 provides:

- (1) *The Commissioner shall, as soon as practicable and in accordance with arrangements agreed with the Ombudsman Commission –*
- (a) *notify the chairperson of the Commission of each confidential report received by him or her and of the action that he or she proposes to take or is taking in relation to it, and*

⁶⁶² 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 173, pp. 66-135

- (b) *give the chairperson any further information (except the identity of the confidential reporter) that he or she may request in relation to the matter.*

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

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

The Commissioner has delegated his function under section 102(1) of the Garda Síochána Act, 2005 to members of superintendent rank in accordance with HQ Directive 101/2007 *Provisions of Section 102 (1) of the Garda Síochána Act, 2005-Duty to Refer*.⁶⁶³ The Directive outlines the factors to be taken into account including guidelines on the application of the statutory provision. These guidelines are also addressed in the *Memorandum of Understanding, Protocols and Agreement on Operational Matters between The Garda Síochána Ombudsman Commission and The Garda Síochána*.⁶⁶⁴

At the meeting between Sgt Hughes and Supt Curran it is agreed by the two men that Sgt Hughes raised a number of issues and that the superintendent took notes. The tribunal accepts the sergeant's evidence that among the matters that he raised with the superintendent was a *'systems failure'*.

Sgt Hughes told tribunal investigators that after the meeting he heard no more from Supt Curran, but that statement is not correct because Sgt Hughes does not dispute that Supt Curran phoned him and read his draft report of the meeting and that the sergeant approved the contents. The superintendent recalled having had a number of phone conversations before the report was finalised. The report does not contain any reference to *'systems failure'*.

Supt Curran's report to C/Supt Phillips detailed five specific issues that Sgt Hughes had raised and that required attention. The tribunal is satisfied that Supt Curran dealt with the matters that were within his own sphere and he did not regard the assertion made by Sgt Hughes with regard to a *'systems failure'* as being something for him to deal with or to pursue.

The tribunal is satisfied that what Sgt Hughes said to Supt Curran did not suggest that the conduct of a member of An Garda Síochána may have resulted in the death of, or serious harm to, a person. This observation did not furnish a basis for a reference by the Commissioner under section 102 of the Garda Síochána Act, 2005. The tribunal accepts the submission by An Garda Síochána that the vague *'systems failure'* allegation did not fall within the scope of the section. The Commissioner and garda management cannot be criticised for not interpreting the situation in the way Sgt Hughes did.

The *Osman* case and section 102 are different: one is concerned with avoidance of risk in terms of a *real and immediate* threat; the other refers to conduct that may have resulted in death. Sgt Hughes's complaint of a *'systems failure'* is not an allegation of conduct under section 102.

⁶⁶³ Tribunal Documents, p. 7756

⁶⁶⁴ Tribunal Documents, p. 7765

C/Supt Curran told the tribunal that he read his report of the meeting of 23rd April 2007 to Sgt Hughes to get his approval of what was going to the chief superintendent. This was not disputed by Sgt Hughes. There is no reference in the report to a *'systems failure'*, or indeed any hint of wrongdoing, in the Baiba Saulite case. Outside the report, there is no evidence or suggestion that Supt Curran communicated the contents of his discussion with Sgt Hughes to anyone in senior management.

The tribunal accepts that Sgt Hughes made reference to what he described as a *'systems failure'* in circumstances that support his contention that his complaint was a protected disclosure. However, at the time Supt Curran did not understand this to be the case and, accordingly, did not refer the matter up the line for investigation. The result was that the Garda Commissioner was unaware of any complaint made by Sgt Hughes that might form the basis of a referral to GSOC and such failure cannot amount to targeting or discrediting Sgt Hughes because he made a protected disclosure.

The Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations, 2007 did not apply to anything that Sgt Hughes said to Supt Curran so even if his remarks had come to the Commissioner's attention an obligation to report would not have arisen. The confidential report that Sgt Hughes made on 16th September 2008 was notified to GSOC by Commissioner Murphy on 28th October 2008 in accordance with regulation 10.

The tribunal finds no connection between the matters considered under this issue and Sgt Hughes's protected disclosures. This case does not reveal targeting or discrediting of Sgt Hughes by Supt Curran.

CHAPTER 12

THE COMPLAINT MADE BY SERGEANT WILLIAM HUGHES THAT STATEMENTS/EVIDENCE WERE DISREGARDED DURING THE INVESTIGATION OF HIS CONFIDENTIAL REPORT

Issue 7 of the Schedule of Issues

Did the Garda Commissioner or Assistant Commissioner Al McHugh or Assistant Commissioner Michael Feehan target or discredit Sgt Hughes because he made a protected disclosure by suppressing or disregarding information or statements provided by Superintendent Noel McLoughlin or Inspector Robert Melvin?

Background

Sergeant William Hughes wrote to the Confidential Recipient for An Garda Síochána, Mr Brian McCarthy, on 24th February 2009 setting out his concerns about the conduct of the confidential recipient investigation. In his interview with tribunal investigators, he said that:

I was completely dissatisfied with the quality of the answers I was receiving from the whistleblowers office, I felt that his office was simply a conduit for sending reports on to the Garda Commissioner. I am aware that Noel McLoughlin retired Superintendent and retired Inspector Bob Melvin they relayed to that inquiry that there had been a systems failure in respect to the Baiba [Saulite] murder. The systems failure was the root cause of the issues I was raising. In March 2009 these reports (McLoughlin and Melvin) had been received by that inquiry team.⁶⁶⁵

Inspector Robert Melvin was the inspector in charge at Swords Garda Station before he retired on 2nd November 2006. He made the following response to a question posed to him in September 2009 during the confidential reporting investigation:

Q. *Is it your opinion that there was a failure to coordinate the various investigations/enquiries relating to Ms. Saulite and/or her husband?*

A. *In hindsight, yes.⁶⁶⁶*

Superintendent Noel McLoughlin was the district officer in the R District before his retirement on 11th November 2006. He made a statement to the confidential reporting investigation and said that *'[m]y view on this assertion is that I was fully satisfied with the personnel and co-ordinated systems for investigating incidents relating to the case'.⁶⁶⁷*

⁶⁶⁵ Tribunal Documents, p. 21

⁶⁶⁶ Tribunal Documents, p. 1010 and p. 3747

⁶⁶⁷ Tribunal Documents, p. 3683

In his report to the Garda Commissioner, Assistant Commissioner Michael Feehan stated that:

Ex-Inspector Melvin stated to this investigation team that now after the murder of Ms. Saulite, in hindsight it was his opinion that there was a failure to co-ordinate the various investigations/enquiries relating to Ms. Saulite and/or her husband. He stated that he was aware of the incidents as they occurred, and that he would have obtained the information from Pulse or from reading the occurrence book and the members of the station party. No other Senior members has expressed this opinion and it must be pointed out that Ex-Inspector Melvin is commenting on hindsight and not from judgements made at the time.

... When the assertions of Ex-Inspector Melvin, that there was a failure to co-ordinate the various investigations relating to Ms. Saulite and [Mr A], were put to Ex-Superintendent McLoughlin he asserted that he was fully satisfied with the personnel and co-ordinated systems for investigating the incidents relating to the case of Ms. Saulite and [Mr A] when he was District Officer.⁶⁶⁸

Complaint made by Sergeant William Hughes

In his statement to the tribunal investigators, Sgt Hughes said that:

On 02 February 2010 I am aware correspondence went from Chief Superintendent Michael Feehan to retired Superintendent Noel McLoughlin under the ambit of the whistleblower investigation, I had received an indication from retired Inspector Bob Melvin that he had reported to that investigation that there had been a systems failure as I had been alleging. Anecdotally from conversations I had with retired Superintendent Noel McLoughlin he was in agreement that there was a systems failure and he was going to make a report to that effect to the whistleblower investigation. I felt that this information could have been discovered at a very early stage of the murder investigation by the Garda authorities, and that such information crucially would have cleared me of any wrongdoing from the outset. That correspondence displayed for me the lack of action by senior management in procuring relevant information at my expense. The evidence that retired Superintendent Noel McLoughlin and retired Inspector [B]ob Melvin could offer in relation to the confidential recipient investigation was not discovered during the fact fin[d] investigation; the disciplinary investigation and to my knowledge the murder investigation inquiry. I believe this to be another example of targeting of me by the Commissioner of the day Noel Conroy, Chief Superintendent Michael Feehan and Assistant Commissioner Al McHugh along with successive Commissioners in the respective offices who knew or ought to have known of the systems failure from the outset.⁶⁶⁹

Responding Statements and Evidence on the Issue

Retired Superintendent Noel McLoughlin

In an email statement to the tribunal dated 17th April 2021, Supt McLoughlin said that:

I have read the Witness Statements ... as documented by Sergeant William Hughes ... I cannot recall ever stating verbally or in writing that there was a systems failure in respect of

⁶⁶⁸ Tribunal Documents, p. 2967

⁶⁶⁹ Tribunal Documents, pp. 50-51

the Baiba Saulite matter ... I was never aware during my tenure at Coolock, that there was a cover up underway in relation to events involving Baiba Saulite prior to her Murder ... I have no recollection of conversations with William Hughes that I agreed with his views that there was a systems failure ... I do not recall reporting to the investigating members that there was a systems failure ... I wish to state that all of my above statements are qualified by being made in so far as I can recall in consideration of the passage of time.⁶⁷⁰

Retired Inspector Robert Melvin

Insp Melvin did not provide a statement to the tribunal, despite repeated requests to do so.

Former Assistant Commissioner Michael Feehan

In reply to the Memorandum of Questions provided by the tribunal investigator, A/C Feehan said that:

During the investigation of the allegations made to the Confidential Recipient, questions were put to retired Superintendent Noel McLoughlin. In response to questions put to him by the investigation team, Ex-Superintendent McLoughlin stated that he was aware of all the various threats and assaults on Ms. Saulite and her property prior to her murder and was also aware of the threats made against her solicitor. Ex-Superintendent McLoughlin stated that in his opinion, he was satisfied with the investigations of the child abduction case, the arson at John Hennessy's home, and the arson of Ms. Saulite's car. Ex-Superintendent McLoughlin did not state to the team investigating the allegations made to the Confidential Recipient, that there had been a systems failure in relation to matters concerning Ms. Saulite. Given that no such statement was made by Ex-Superintendent McLoughlin to the investigating team, evidence that he had made such a statement could not have been discovered in either the Fact-Finding enquiry, or in the investigation under the Garda [Síochána] Disciplinary Regulations.

Ex-Inspector Robert Melvin was the Inspector in Charge of Swords Garda station and retired from An Garda [Síochána] on the 2nd of November 2006. In that role, I would have expected that an Inspector would keep himself apprised of progress in any investigation of any crime of a serious nature being conducted by members attached to that station. Mr. Melvin was asked to answer a number of questions put to him by the team investigating the complaints made to the Confidential Recipient. Mr. Melvin stated that he had no input into the investigation of the Child Abduction case, but stated that he was aware that the investigation was being conducted by Sergeant Liam Hughes and Gardai Nyhan, McNally and Campbell. This assertion by ex-Inspector Melvin is contrary to the information provided by Garda Nyhan, who stated that he attended a case conference on the Child Abduction Investigation which was chaired by Inspector Melvin. Ex-Inspector Melvin stated in relation to co-ordinating the Abduction case with the other incidents involving Ms. Saulite and Mr. Hennessy, he felt that it was a matter for the District Officer or Detective Inspector.

Ex-Inspector Melvin stated to the investigation team that now after the murder of Ms. Saulite, in hindsight, it was his opinion that there was a failure to co-ordinate the various investigations/enquiries relating to Ms. Saulite and her husband.

⁶⁷⁰ Tribunal Documents, p. 7141

Responsibility for the management of the various investigations in the district rested with the Superintendent of the day, Mr. Noel McLoughlin. When the assertions of Ex-Inspector Melvin, that there was a failure to co-ordinate the various investigations relating to Ms. Saulite and [Mr A] were put to Ex- Superintendent McLoughlin, he asserted that he was fully satisfied with the personnel and coordinated systems for investigating the incidents relating to the case of Ms. Saulite and [Mr A], when he was District Officer.

Mr. Melvin was not interviewed during the fact-finding enquiry so the opinion he had formed in hindsight after the murder of Ms. Saulite was not discovered in the fact-finding enquiry. Mr. Hughes in his statement to the tribunal asserts that had this information (the alleged assertion that retired Superintendent McLoughlin had reported that he believed there had been a systems failure, and the assertion by retired Inspector Melvin that in his opinion there had been a systems failure) been discovered at a very early stage of the murder investigation by the Garda authorities, that such information crucially would have cleared him of any wrongdoing from the outset. I fail to see how the discovery of this “information” would have changed the fact that Sergeant Hughes did have information in relation to a threat to Ms. Saulite’s safety, which was what the disciplinary enquiry was established to enquire into.⁶⁷¹

Former Assistant Commissioner Al McHugh

In his statement to the tribunal, Assistant Commissioner Al McHugh said that:

Sergeant Hughes in his statement makes reference that he is aware that Retired Superintendent Noel Mc Loughlin and Retired Inspector Bob Melvin relayed to the Confidential Recipient Investigation that there had been a systems failure in respect of the Baiba [Saulite] murder. I was not involved in this Confidential Recipient Investigation nor have I had sight of the report. However I would find it difficult to accept that proposition given local managements' obligations (role and function) in the various investigations, if there were such utterances as "a systems failure" for the following reason. Inspector Bob Melvin was Inspector in Charge of Swords Station and the senior middle ranking officer in Swords sub-district ultimately carrying the responsibility of overseeing and coordinating events and occurrences in the Swords sub district and liaising and reporting to his District Officer Noel Mc Loughlin.⁶⁷²

Legal Submissions

Retired Sergeant William Hughes submitted as follows:⁶⁷³

- that there was correspondence from retired Insp Melvin and retired Supt McLoughlin to the effect that they had also raised concerns over ‘systems failure’ at an early stage and that a failure to uncover this correspondence amounted to targeting.

⁶⁷¹ Tribunal Documents, pp. 8388-8390

⁶⁷² Tribunal Documents, p. 807

⁶⁷³ The tribunal has considered all of retired Sergeant William Hughes’s legal submissions on this issue and what follows is a summary of the same. Tribunal Transcripts, Day 173, pp. 6-64

An Garda Síochána submitted as follows:⁶⁷⁴

- that Supt McLoughlin and Insp Melvin were contacted as part of A/C Feehan's investigation and any matters arising from these contacts were fully considered and explored by A/C Feehan in the course of his comprehensive and thorough investigation.
- that Supt McLoughlin and Insp Melvin in fact had a significant role in the abduction investigation themselves. Insp Melvin was inspector in charge at Swords Garda Station and a senior middle-ranking officer in the Swords Sub-District, ultimately carrying the responsibility for overseeing and coordinating events and occurrences in the Swords Sub-District and liaising with and reporting to Supt McLoughlin. He retired on 2nd November 2006. That Sgt Hughes stated in evidence during Garda Declan Nyhan's High Court proceedings that Supt McLoughlin assigned three gardaí to assist him in the abduction investigation.⁶⁷⁵ Insp Melvin was also involved in the investigation at that stage.
- that Insp Melvin was interviewed by the investigation team and he stated that the coordination of investigations was a matter for the superintendent or detective inspector. His opinion of a failure to coordinate was one of hindsight as opposed to views held at the time.
- that when Insp Melvin was interviewed by the investigation team, he stated that he had no input into the child abduction investigation. However, Garda Declan Nyhan in his statement to the investigation team stated that Insp Melvin had chaired a case conference in the early stages of the investigation.
- that Insp Melvin also stated to the investigation team that he was aware of the various incidents regarding Ms Baiba Saulite as they occurred at the time.
- that no other senior member expressed this opinion, including Supt McLoughlin. For example, Detective Inspector Michael Cryan did not accept that there was a '*systems failure*'.
- that Supt McLoughlin did not corroborate Sgt Hughes, and Sgt Hughes only referred to anecdotal conversations with Supt McLoughlin to support his position.
- that Supt McLoughlin stated that An Garda Síochána did not have information in its possession that Ms Saulite's life was under threat. He believed that providing protection to Ms Saulite was not warranted.
- that in all the circumstances, it was apparent that these allegations were without foundation and did not amount to the targeting and/or discrediting of Sgt Hughes because he made a protected disclosure.

⁶⁷⁴ 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 173, pp. 66-135

⁶⁷⁵ Tribunal Documents, pp. 5325-5326; Tribunal Documents, pp. 5500-5501

Conclusion

The evidence available to the tribunal in respect of these allegations is as follows. In the course of the investigation by A/C Feehan, Supt McLoughlin did not support the suggestion that there were deficiencies in the investigation of the incidents and information that came to the attention of gardai in the period before the murder. As for Insp Melvin, he gave his opinion to the investigation conducted by A/C Feehan that there had been a lack of coordination but he qualified that by declaring that it was in hindsight.

Supt McLoughlin's response to the tribunal offered no support for the case made by Sgt Hughes. He did not recall communicating verbally or in writing that there had been a *'systems failure'*, nor was he aware at any time of a cover-up. Furthermore, he did not recall agreeing in conversation with Sgt Hughes that there was a *'systems failure'*.

Insp Melvin provided no further information than his hindsight view outlined during the confidential reporting investigation.

In submissions on behalf of Sgt Hughes, it was stated that there was correspondence from Insp Melvin and Supt McLoughlin that they had also raised concerns over *'systems failure'* at an early stage and that failure to uncover this amounted to targeting. There is nothing in the evidence to support this proposition. It is inconsistent with what Supt McLoughlin reported to A/C Feehan and to this tribunal. It is also implicitly in conflict with the only information the tribunal has from Insp Melvin because he gave the view in hindsight. If he had raised concerns earlier as alleged, there would be no need for the qualification.

A/C Feehan obtained and recorded the information supplied by Supt McLoughlin and Insp Melvin. It transpired that Sgt Hughes was wrong about the superintendent; and that he was wrong in claiming that they both had expressed criticism at an early stage. The fact is that on examination of this allegation it proved to be not just without foundation but actually contradicted by the relevant parties either directly or by implication.

These claims do not reveal any basis for Sgt Hughes's allegations of targeting.

CHAPTER 13

ISSUES WITHDRAWN BY SERGEANT WILLIAM HUGHES

As previously noted in this report, the tribunal identified a comprehensive list of issues or complaints by Sergeant William Hughes and prepared a Schedule of Issues for consideration and examination under term of reference [p].

This Schedule of Issues was agreed between the parties and served as a framework for the public hearings, but some issues were ultimately withdrawn or not pursued by Sgt Hughes. They are the following:

a. Issue 4: The Complaint made by Sergeant William Hughes that the Garda Commissioner failed to refer his case to the Director of Public Prosecutions or to the Attorney General

The legal submissions of Sgt Hughes did not address this issue and An Garda Síochána submitted as follows:

- that in a letter of response from the Garda Commissioner to the Minister for Justice and Equality dated 20th February 2018, it was stated, *inter alia*, that a comprehensive and detailed investigation was conducted. The findings were accepted by the Commissioner and the confidential recipient was notified of the outcome.
- that there was no case to answer and Sgt Hughes was not targeted or discredited under term of reference [p] by an alleged failure to refer his allegations to the Director of Public Prosecutions or to the Attorney General.
- that there was no evidence of targeting or discrediting and it might be said that the very fact that Sgt Hughes maintained this allegation was revealing in itself.⁶⁷⁶

It is clear to the tribunal that there was no evidence of targeting or discrediting by the Commissioner under this heading and the tribunal accepts the submissions of An Garda Síochána on the issue.

b. Issue 2: The Complaint made by Sergeant William Hughes that Assistant Commissioner, HRM, failed *inter alia* to investigate his work-related stress and/or classify his absence as an injury on duty

This issue is dealt with in detail in chapter 7 of this report. Sgt Hughes withdrew the allegation against former Assistant Commissioner Catherine Clancy, who was the head of Human Resource Management (HRM) at the relevant time, in a letter from his solicitor to the tribunal dated 14th February 2022, which said:

⁶⁷⁶ 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 173, pp. 66-135

Sgt Hughes accepts that she did not herself deliberately target or attempt to discredit him by failing to carry out an investigation into the underlying reasons for his work-related stress and consequent absence from work as required by the Garda Code. A.C. Clancy tried to get reports on these issues from local management but was unsuccessful. Sgt Hughes did not know this at the time.

Sgt. Hughes' position now, given what he has read and heard at the Tribunal in recent weeks, is that the H.R. system, which A.C. Clancy was presiding over, was (in his case anyway) quite dysfunctional. A.C. Clancy was unable to get the required sickness absence/ reports and, as a consequence, failed to establish whether his work-related stress and psychiatric condition (PTSD) was due to an 'injury on duty' as she should have done. Furthermore, A.C. Clancy directed that his pay be cut in September of 2007 even though he had requested a determination of the issue whether he had suffered an 'injury on duty' by letter dated 7th May 2007 ... and this application had not been determined, and also allowed the medical discharge process in 2008 to reach a conclusion without sight of the sickness/absence reports which may have pointed to an alternative resolution in his case.

However, in all of the circumstances that arise, Sgt. Hughes now believes that these were administrative failings and that A.C. Clancy did not bear ill-will against him and most likely did not intend to target or to discredit him because of any protected disclosure he had made.⁶⁷⁷

Counsel for Sgt Hughes later confirmed during oral submissions to the tribunal on 30th March 2022 that the allegations of targeting and discrediting in respect of A/C Clancy's successor as Assistant Commissioner, HRM, former Assistant Commissioner Fintan Fanning, were also withdrawn.⁶⁷⁸

c. Issue 8: The Complaint made by Sergeant William Hughes in respect of the letter issued by HRM dated 19th September 2008

In a letter to Sgt Hughes's solicitor on 19th September 2008, A/C Clancy addressed Dr Richard Quigley's recommendation of retirement on medical grounds and during the course of the letter she said that:

The Divisional Officer advises me that all contact with Sergeant Hughes has been conducted through telephone specifically at his request. Sergeant Hughes has declined all offers to meet local management to date.⁶⁷⁹

This position arose from a series of reports between May and July 2008. Inspector William Hanrahan had reported to Supt Curran on 27th May 2008 that *'I have on previous occasions offered to meet with Sergeant Hughes, he indicated to me that as I have his mobile number and he has mine that we have an open line of communication. Sergeant Hughes has no issue concerning my communications with him'*.⁶⁸⁰ This was summarised by Supt Curran in a report to C/Supt DMR North dated 17th July 2008 who stated that:

⁶⁷⁷ Tribunal Documents, p. 8483

⁶⁷⁸ Tribunal Transcripts, Day 173, pp. 58-59; Tribunal Transcripts, Day 173, pp. 62-64

⁶⁷⁹ Tribunal Documents, pp. 4018-4019

⁶⁸⁰ Tribunal Documents, p. 2143

*Inspector Hanrahan states that he offered to have a meeting with Sergeant Hughes in person but Sergeant Hughes stated his preference to communicate by telephone.*⁶⁸¹

Subsequently, Chief Superintendent Michael O’Sullivan forwarded both reports to Assistant Commissioner, HRM, on 24th July 2008 and stated that:

*All contact with Sergeant Hughes has been conducted through telephone, specifically at his request. He has declined all offers to meet local management to-date. This places local management at a disadvantage in that no face-to-face contact is possible. I stress again this is at the specific request of Sergeant Hughes.*⁶⁸²

In a report to his superintendent dated 13th October 2008, Insp Hanrahan said that he had spoken with Sgt Hughes and that ‘*Garda Management in the ‘R’ District would like to clarify that Sergeant Hughes has not refused to meet with us on any occasion since both Superintendent Curran and I arrived in the District.*’⁶⁸³ This was confirmed by Supt Curran in his report to the Chief Superintendent, Santry dated 7th November 2008.⁶⁸⁴

In his statement to the tribunal investigators, Sgt Hughes said that:

*On 19 September 2008 a report ... issued from Assistant Commissioner HRM to my solicitor which contained many inaccuracies, again arising from this report I felt that this was an abuse of process and harassment, as it made me out to be non cooperative with the Garda authorities. This report set out allegations which stated that I had failed to meet with local management from 2006 to that time and that all contact was to be by telephone at my request. This I believe was what local management had conveyed to HRM. I felt that the issuing of this report was part of the ongoing scapegoating of me, as it painted me as being an uncooperative member which was simply not true. It was very worrying that such reporting of me by local management was being made to HRM. This report was issued by HRM but local management may have had an input into the content of the report and this I would like to say was in the context of local management knowing that I was never interviewed in respect to my absence from work.*⁶⁸⁵

Referring to the letter dated 19th September 2008 during his evidence to the tribunal, Sgt Hughes stated:

*Well the most prominent element of that letter is the fact that it's been reported to the HRM that I was declining to meet with local management and insisting that all the communication with me would be by telephone, and that is simply not correct – was simply not correct.*⁶⁸⁶

Counsel for Sgt Hughes confirmed during oral submissions to the tribunal on 30th March 2022 that the allegations of targeting and discrediting against A/C Clancy were withdrawn.⁶⁸⁷

⁶⁸¹ Tribunal Documents, p. 688

⁶⁸² Tribunal Documents, p. 4010

⁶⁸³ Tribunal Documents, p. 4021

⁶⁸⁴ Tribunal Documents, pp. 4032-4033

⁶⁸⁵ Tribunal Documents, p. 40

⁶⁸⁶ Tribunal Transcripts, Day 160, p. 36

⁶⁸⁷ Tribunal Transcripts, Day 173, pp. 58-59; Tribunal Transcripts, Day 173, pp. 62-64

The objection by Sgt Hughes to the statement that he was unwilling to meet local management was correct. On investigation it transpired that it was based on a misunderstanding by C/Supt O’Sullivan of reports from local management. When Sgt Hughes raised it, both Insp Hanrahan and Supt Curran clarified the situation and corrected it. There the matter rested and targeting or discrediting did not arise.

This chapter, referring briefly to withdrawn or not pursued issues, completes the tribunal’s consideration of Sgt Hughes’s allegations that he was targeted or discredited by senior officers subsequent to his making protected disclosures.

CHAPTER 14

SUMMARY AND CONCLUSIONS

Introduction

Two events that are pivotal to the issues in this case are the murder of Ms Saulite on 19th November 2006, and a meeting that Sgt Hughes and his colleague Garda Declan Nyhan had with her five days previously, on 14th November 2006.

The two gardaí had secured the return of Ms Saulite's children, who had been abducted and taken to the Middle East. The abductor had pleaded guilty and the meeting had been arranged to discuss the victim impact statement that Ms Saulite would provide at the sentence hearing in December. Ms Saulite produced a twelve-page handwritten document, in the final pages of which she wrote that she feared for her life. Sgt Hughes did not read that part of the draft statement because he had observed after a somewhat cursory examination that it was not suitable for use in court as a victim impact statement. He so informed Ms Saulite and advised her about what was required. He did nevertheless take a copy of the draft statement and lock it in his desk. On the morning after the murder he read the document in full and was very concerned about its contents.

Sgt Hughes was convinced from soon after he learned of the murder that An Garda Síochána had failed Ms Saulite. He complained to the tribunal that in the aftermath of the murder, and subsequently, he made known to senior officers that the force had made grave errors in the period before the murder in investigating arson attacks against the property of Ms Saulite and her solicitor Mr John Hennessy, and in responding to confidential information about threats to Mr Hennessy's life. Sgt Hughes maintained that these occurrences should have been dealt with in a coordinated manner by a specific team so that the whole picture of threats to the two people would have been apparent; and that if this had been done Ms Saulite's life would have been saved. He claimed that his criticisms were grave and needed to be urgently investigated but that did not happen. Instead, the focus turned to him and his colleague Garda Nyhan, in the form of a fact-finding investigation in the first place, which was followed by a discipline investigation in respect of a very serious charge of acting in a manner that exposed Ms Saulite to the risk of being murdered.

Sgt Hughes alleged that the failure to conduct the required investigations into his allegations had an adverse effect on his health in the form of work-related stress. This condition kept him out of work for long periods, but An Garda Síochána refused to certify his condition as an injury on duty with the result that his long-term absences led to severe reductions in pay that would not have applied if the force had accepted that his condition was an injury on duty. His request that he should get injury on duty status gave rise to a seemingly endless series of psychiatric examinations, which did not bring him the confirmation he required but instead resulted in a decision that he should be retired on medical grounds.

He was eventually driven back to work by sheer financial necessity and he managed for a time to perform an administrative job that was created for him by his superiors, but ultimately he was unable to keep going.

He alleged that senior officers targeted and/or discredited him in many different ways including:

1. They failed to investigate his complaints as to policing failures prior to the murder.
2. They ordered unjustified and unfair investigations that focused unreasonably on him and Garda Nyhan: he was subjected first to the fact-finding investigation and thereafter to the discipline process, both of which were unjustified and unfairly focused on him and his colleague in respect of a meeting with Ms Saulite five days before she was murdered.
3. They exposed him to public opprobrium for failing to report an encounter with Ms Saulite that happened five days before she was killed.
4. They refused him injury on duty status for his absence on sick leave.
5. They failed to make proper investigations of a detailed formal confidential complaint that he made and also of one concerning a leak to a newspaper.
6. They refused to follow up on other complaints he had made.

Sgt Hughes claimed that the way that officers treated him brought about a radical alteration of his situation from being in a good place in An Garda Síochána to the position where he was thought to be no longer suitable to do his work.

There is no doubt that Sgt Hughes experienced a very difficult time in his last six and a half years in An Garda Síochána. However sympathetic the tribunal may be to Sgt Hughes because of that painful history, its function is to apply the criteria specified in its mandate in term of reference [p]. Having done that, the tribunal has concluded for reasons that are set out in the various chapters dealing with the issues that senior officers of An Garda Síochána did not target or discredit Sgt Hughes because he had made a protected disclosure or disclosures as he alleged.

This chapter seeks to draw together some of the principal issues that Sgt Hughes raised in his complaint and to explain in summary form how the tribunal came to reject his claims of having been targeted and/or discredited because he made a protected disclosure.

Mandate

A key feature of this Inquiry is its mandate, which is contained in term of reference [p] 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.

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

The Fourth Interim Report of the tribunal published on 8th July 2021, spoke of the background to this particular term:

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

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

The conditions of admissibility of a complaint under term of reference [p] are:

- (1) that the garda concerned had made a protected disclosure prior to 16th February 2017, the date when the tribunal was established;
- (2) that the garda alleged that he or she was targeted or discredited following the making of the protected disclosure;
- (3) that the garda was targeted or discredited with the knowledge or acquiescence of senior members of An Garda Síochána, defined by the tribunal as officers of superintendent rank or higher.

Point (2) above implies that the victimisation in question arose because the garda exposed wrongdoing in his or her disclosure; targeting or discrediting alone does not meet the specifications of term of reference [p].

In this case, knowledge or acquiescence as stated in point (3) does not arise because Sgt Hughes complained about the conduct of officers themselves, of ranks ranging from superintendent to commissioner.

Protected Disclosures

The tribunal accepts that Sgt Hughes made comments to Inspector Michael Cryan shortly after the murder, and that he also made observations to Superintendent Mark Curran when they spoke on 23rd April 2007. On these occasions he expressed concern or criticism about the way that events that had happened before the murder were handled. The tribunal is satisfied that these assertions by Sgt Hughes, whether or not they included the expression ‘*systems failure*’, were protected disclosures within the meaning of the Protected Disclosures Act, 2014, as interpreted by the Supreme Court in *Baranya v Rosderra Irish Meats Group Ltd.*⁶⁸⁸

⁶⁸⁸ [2021] IESC 77

This case is not concerned with a refusal by a recipient of information about alleged wrongdoing to follow it up, but rather with a situation where the recipients of the complaint did not understand that the discloser was revealing information as to wrongdoing and that it required investigation. Sgt Hughes's position was that his revelations, contained in his references to 'systems failures', required immediate investigation.

The existence of a protected disclosure prior to conduct that is alleged to be targeting or discrediting does not, without more, establish the necessary connection but the absence of a protected disclosure is obviously and by definition fatal to a claim under term of reference [p].

There is no dispute that Sgt Hughes made a protected disclosure with his application to the Confidential Recipient for An Garda Síochána, Mr Brian McCarthy, on 16th September 2008.

Failure by An Garda Síochána to Investigate 'Systems Failure'

Sgt Hughes believed that the observations he made to senior officers in the days following the murder, and later in April 2007 to Supt Curran, described serious failings in the investigation of previous incidents and intelligence by gardaí that called for immediate investigation. However, the officers to whom he spoke did not understand him to be making a serious complaint that needed to be followed up, believing instead that he was upset and/or was venting his feelings.

Insp Cryan thought that he was venting or letting off steam in circumstances of being shocked, upset, angry, blaming himself and An Garda Síochána and unable to write. After his meeting on 23rd April 2007, Supt Curran prepared a report, not including a reference to 'systems failure' or similar, for his superior and read it to Sgt Hughes over the phone for approval before sending it up.

Supt Curran had no connection with the investigation of any of the crimes or events prior to the murder and so had no reason to be personally concerned about criticisms.

Sgt Hughes deliberately put nothing in writing about these matters, except for a strictly confidential report to the Welfare Officer, Inspector Della Murray, in mid-March 2007, until he made his formal complaint to the confidential recipient in September 2008. He told the tribunal:

To be quite honest, I was in fear of reporting to that extent to the superintendent, because, you know, I had to really be sure of what I'm saying and I didn't actually furnish him with that report, and I can't recollect why, but I know there was fear back then of actually reporting matters that I couldn't substantiate or stand over. So I decided to give this to Della Murray in the form of, you know, from a welfare point of view for her to see the trauma I was going through at the time.⁶⁸⁹

The tribunal concludes that Insp Cryan and Supt Curran were not aware that Sgt Hughes was making a serious complaint about improper conduct or gross negligence or some other grave dereliction that needed to be investigated. And neither did they understand that that was what he was seeking.

Insp Cryan and Supt Curran did not do anything about what Sgt Hughes said and, specifically, they did not report his comments to anyone else.

⁶⁸⁹ Tribunal Transcripts, Day 159, p. 91

An important point is that a mistake or misunderstanding by a garda recipient of Sgt Hughes's comments whereby he did not realise that the sergeant was making a report about wrongdoing in the force could not be targeting or discrediting *because he made a protected disclosure about wrongdoing in the force.*

His conviction that he had reported these alleged investigative failures is the context of Sgt Hughes's response to all that followed. The tribunal is satisfied that the verbal observations constituted protected disclosures within the meaning of the relevant legislation and case law but they did not impact on the recipients as reports that required to be followed up. Most of the central events in the case happened before Sgt Hughes made his formal complaint on 16th September 2008.

Summary of Conclusions

Having set out some of the important background and contextual matters, the tribunal now outlines briefly its conclusions on the issues in the case made by Sgt Hughes. It is important to stress that the complete chapters dealing with the different allegations should be read in order to understand the complaints and the evidence and how the tribunal reached its conclusions.

Two issues are dealt with more extensively than the others, reflecting their importance in the account of Sgt Hughes's relationship with An Garda Síochána in the crucial period between the murder of Ms Saulite on 19th November 2006 and when he made his formal protected disclosure to the confidential recipient on 16th September 2008. First, there are the successive investigations in relation to fact-finding and discipline that were directed by Assistant Commissioner Al McHugh. Secondly, there is the issue concerning the injury on duty status that Sgt Hughes sought for his incapacity for duty.

Investigation – Fact-Finding

The events with which the tribunal is concerned occurred in the midst of a massive criminal investigation into a shocking murder that was the subject of enormous media and public interest. A document from a victim expressing fears for her life that was presented to gardaí five days before she was murdered and that went unreported was always likely to give rise to an investigation.

Sgt Hughes ultimately produced the victim impact statement as something relevant to the murder investigation and he thought that he might be disciplined because of how he had dealt with it, presumably thinking that he would be criticised for not having read it in full or reported it.

Sgt Hughes cooperated fully with the fact-finding inquiry conducted by Detective Inspector Christopher Mangan. He provided a chronology of his dealings with the victim and he also gave a candid account of the conversation that he and Garda Nyhan had with her on 14th November 2006. This included information not previously revealed as to her life circumstances and how she saw them at that time.

It was practically inevitable that there would be an investigation, as A/C McHugh ordered, although Chief Superintendent Gerard Phillips had a different view. Having heard the evidence, the tribunal is satisfied that the matter was destined for a discipline investigation in light of Chief

Superintendent Michael Feehan's fact-finding report. In regard to knowledge of the complaint to the confidential recipient, A/C McHugh testified that the first he knew of it was when he got papers from the tribunal in 2020. There is nothing to contradict this evidence and the tribunal accepts it.

It was objectively reasonable for A/C McHugh to order a fact-finding investigation and the decision by A/C McHugh was made within his jurisdiction. C/Supt Feehan obeyed the instruction to undertake the fact-finding investigation and he cannot be faulted for that. It was inevitable that the fact-finding reports would focus and even concentrate on the victim impact statement. C/Supt Feehan received D/Insp Mangan's report and went further – going back to the beginning of Ms Saulite's dealings with gardaí. His conclusion is based on the facts as he saw them and there is no connection with anything Sgt Hughes said to officers. Even if some criticism of these processes was valid, that does not support a case of targeting by reference to any protected disclosure.

Investigation – Discipline

The fact-finding investigation was followed by a discipline investigation that Sgt Hughes learned about when he was served with papers on 15th June 2007. Although this stage of the discipline process did not contain a formal accusation against Sgt Hughes, there could be no doubt about the seriousness of the allegation that was being investigated. The sergeant discussed the case with Mr Hennessy, Ms Saulite's solicitor, who confirmed the gravity of the matter being investigated.

The discipline process did not proceed smoothly and expeditiously to a conclusion. It is one of the issues in the case and is considered in detail elsewhere, but it may be noted that Sgt Hughes was interviewed at his solicitor's office on 29th October 2008 and the process came to a conclusion with a decision by A/C McHugh on 21st July 2009, having regard to the report of Assistant Commissioner Feehan, to discontinue the proceedings. This meant according to A/C McHugh that Sgt Hughes '*was completely exonerated in the matter with absolutely no blemish on his character or history*'.⁶⁹⁰

Sgt Hughes maintained that the discipline investigation was unjustifiable because it was directed only against him and Garda Nyhan, it took an excessive time to complete and the information that was gathered in the course of the investigation did nothing to add to the information on which the ultimate decision was based. In effect, he maintained that the whole process could have been finalised at the time when the fact-finding investigation was completed and it should never have been commenced.

Although the discipline investigation resulted in a decision in favour of Sgt Hughes that did not assuage his feelings of having been wronged and targeted.

The tribunal concluded that in respect of delay there was no targeting or discrediting, as Sgt Hughes more or less acknowledged; it was not open to A/C Feehan to terminate the investigation before embarking on the task; and there was no evidence and no basis for suggesting a connection between the actions of the relevant officers and disclosure of alleged policing failures by Sgt Hughes.

The various criticisms of this process are considered in detail in the report, to which reference should be made, as indeed is the case with all of the matters mentioned in this brief outline.

⁶⁹⁰ Tribunal Documents, p. 806

Investigation – Injury on Duty

There was uncertainty at the highest level of An Garda Síochána as to whose decision it was to classify an illness as an injury on duty in a case like this: was it local management or Human Resource Management (HRM) or the Chief Medical Officer (CMO)?

Dr Richard Quigley as Assistant CMO is not a garda officer and therefore any actions on his part do not come within the remit of the tribunal in term of reference [p]. While that is a fundamental obstacle that Sgt Hughes cannot overcome, the evidence actually discloses that there is no basis for impugning the conduct of this expert. He detailed his involvement in the case and his engagement with outside independent consultants openly and comprehensively in his statement to the tribunal and in his evidence.

Dr Quigley kept Sgt Hughes's general practitioner and specialists informed about his consultations and specialist reports as they came to him. He also notified HRM of developments. There is no question of the doctor being in any way affected in his judgement by anything Sgt Hughes might have said in a protected disclosure. The suggestion made in cross-examination that he was medicalising the problems presented to him by Sgt Hughes is misguided and unfair. The tribunal is satisfied that Dr Quigley behaved in a careful and conscientious manner in accordance with his function as Assistant CMO and that criticism of his conduct in this matter is wholly unjustified.

C/Supt Phillips and Supt Curran did not have any reason to be hostile to Sgt Hughes. Supt Curran had known him from years before and they got on well. He was concerned from the first meeting on 23rd April 2007 to deal with the complaints that the sergeant was making and that the officer could do something about. He was keen to get Sgt Hughes back to work and to facilitate him in doing so and between Supt Curran and C/Supt Phillips they accommodated him even in regard to weekend work and extra pay.

C/Supt Phillips and Supt Curran believed and still maintain that they were not qualified to investigate stress and were not the proper people to do so; it was a medical issue for the CMO, or in this case the Assistant CMO.

The question here is not whether these two officers can be criticised for that failing: the more fundamental question is whether their inactivity in regard to investigation of Sgt Hughes's absences can be ascribed to a reaction to his complaints about '*systems failure*', and it does not appear that there is any evidence of such a connection.

During the period with which the tribunal is concerned the position of Assistant Commissioner, HRM was held by Assistant Commissioner Catherine Clancy and subsequently by Assistant Commissioner Fintan Fanning. In the course of the hearings, Sgt Hughes by his counsel abandoned his allegations that they targeted and discredited him.

Sgt Hughes went back to work because of financial necessity. His pay had been severely reduced because he was subject to the ordinary public service rules and was unable to avail himself of the injury on duty exemption from those provisions. However, despite the efforts of his superintendent and chief superintendent to make allowances and adjustments for him, he had lost faith in the organisation and the reality is that he was never going to be happy. In the end, the doctors,

including his own general practitioner, were in agreement that Sgt Hughes had no future in An Garda Síochána and that retirement on medical grounds was the only realistically available option.

The tribunal's investigation of these issues does not reveal targeting or discrediting of Sgt Hughes by senior officers.

Investigation – Press Release

An Garda Síochána issued a press release on 22nd November 2006 stating that crime prevention advice was given to Ms Saulite's solicitor Mr Hennessy, which was correct, but it also incorrectly stated that *'[d]ue to the links between Ms. Saulite and the solicitor in question, Ms. Saulite was also given crime prevention advice regarding her property and personal safety'*.⁶⁹¹

The release made a reference to the draft victim impact statement that Ms Saulite handed to Sgt Hughes at their meeting on 14th November 2006.

The tribunal concluded that the press release had nothing to do with Sgt Hughes's complaints and it was not concerned with the garda conduct of investigations. It was focused on a specific allegation and was endeavouring to disclose the situation as it had occurred. The purpose of the press release was defensive of the position of the gardaí and not designed to victimise Sgt Hughes or Garda Nyhan.

Accordingly, it did not constitute targeting or discrediting of Sgt Hughes.

Investigation – Complaint to the Confidential Recipient

In regard to the suggestion that A/C Feehan's prior engagement with the issues that arose in the fact-finding and discipline investigations should have led him to question whether he was the appropriate person to carry out the confidential reporting investigation, the tribunal considers that such a concern is reasonable but does not find that there is any clear conflict that compromised A/C Feehan's capacity to do the work. Neither does it consider that it is an obvious impairment by reason of conflict. It considers that it is inappropriate to describe A/C Feehan's role as being a judge in his own cause.

The tribunal is satisfied that A/C Feehan cannot be accused of targeting or discrediting Sgt Hughes because he did not perceive that there was or might be a conflict by reason of his previous engagement.

The tribunal is satisfied that this was an exceptionally thorough body of work and it is unable to find any legitimate basis on which it may be condemned. The report of A/C Feehan contained 38 chapters of narrative, analysis and conclusions, supported by 4 further volumes of statements from 104 witnesses and a list of 191 documents. This material, suitably redacted, was circulated by the tribunal to the parties and it may be noted that Sgt Hughes made his allegations without having seen it.

⁶⁹¹ Tribunal Documents, p. 795

In respect of allegations of delay during this investigation, the tribunal found that it resulted from a number of factors and that A/C Feehan did not target or discredit Sgt Hughes. The suggestion that A/C Feehan and his colleagues were actuated by a desire to target Sgt Hughes seems unjustified and without any factual or evidential basis.

Superintendent Mark Curran and the Meeting of 17th December 2008

Supt Curran arranged this welfare meeting and Sgt Hughes and his Association of Garda Sergeants and Inspectors (AGSI) representative attended. The superintendent's concern was about the sergeant's welfare and how he could get him back to work.

Sgt Hughes took the opportunity to present a prepared document setting out a series of grievances. The superintendent and he discussed these matters but Supt Curran's position was that they were not things that he was in a position to deal with. He was not concerned with Sgt Hughes's complaints about *'systems failure'*.

The allegation of targeting based on the fact that Supt Curran was unwilling to engage in discussion about matters that he felt had nothing to do with welfare, the specific purpose for which he had arranged the meeting, is misplaced. The tribunal is satisfied that it is quite unreasonable to criticise Supt Curran in respect of his handling of this meeting and to suggest that it is an example of targeting or discrediting behaviour is unjust as well as unfounded.

Investigation – Irish Daily Star Article

The case that was made by Sgt Hughes that the appointment of A/C Feehan, who then deputed Inspector Fergus Dwyer to conduct the investigation, represented a conflict of interest, is understandable. However, there was no evidence of any actual conflict.

It is unfortunate that the investigation was not as expeditious as it should have been. An Garda Síochána submitted that there was a lack of engagement by Sgt Hughes.

In his evidence to the tribunal, the journalist Mr Michael O'Toole was as forthcoming as he could be within the limits of journalistic privilege about his source, stating that it was a member of An Garda Síochána *'not above the rank of Inspector'*. He also said that he gleaned the information when the source inadvertently and indirectly revealed the discipline process. That was the main point of the article as submitted by Mr O'Toole. On this account, the source did not intend to disclose the information to the journalist and he is of a rank below that comprised in the interpretation of the tribunal's terms of reference.

The tribunal accepted the evidence of Mr O'Toole. His evidence is the only direct information that the tribunal has in this matter and there is no reason to disbelieve him.

The tribunal finds no connection between the matters considered under this issue and Sgt Hughes's protected disclosures. This case does not reveal targeting or discrediting of Sgt Hughes by senior officers of An Garda Síochána.

Overall Conclusion

It is not necessary to summarise all the issues that the tribunal considered and that are discussed in detail in the preceding chapters. This review of the above issues serves to illustrate many of the features of the case as a whole.

In summary the tribunal concluded as follows:

1. Sgt Hughes had a prolonged difficult experience over a period of more than six years from the murder of Ms Saulite on 19th November 2006 until he retired from the force on medical grounds in February 2013.
2. The tribunal is satisfied that the concerns that motivated Sgt Hughes were genuine and real and that his mental health issues were genuine.
3. The report sets out in the various chapters the detailed investigation that the tribunal carried out into Sgt Hughes's allegations.
4. The tribunal's function under term of reference [p] is mandatory and specific in that each element had to be established before a finding of targeting or discrediting could be made.
5. The tribunal's conclusions are that senior officers of An Garda Síochána did not target or discredit Sgt Hughes because he made a protected disclosure or disclosures alleging wrongdoing in the force.
6. The tribunal is not required to endorse the actions of senior officers in each case, although in some instances the position did seem clear. In others, the reasons were so sufficiently established as to exclude victimisation as a cause.
7. In every case the tribunal was satisfied that there was no sufficient or realistic basis for inferring a connection between the impugned conduct and any protected disclosure.

CHAPTER 15

GENERAL NOTE AND APPROACH TO RECOMMENDATIONS

Complaints under Term of Reference [p]

Following the publication of reports in respect of terms of reference [a] to [o] and the appointment of a Chairperson to the division of the tribunal dealing with term of reference [p], substantive enquiries commenced in respect of fifteen complaints received by the tribunal.

Six complaints were either withdrawn or not pursued by the complainant. Five were withdrawn at a relatively early stage of the tribunal's enquiries but one was only withdrawn following extensive preliminary enquiries.

Six further complaints were rejected by the tribunal as not admissible in accordance with its interpretation of term of reference [p]. These complaints were the subject of varying degrees of preliminary enquiries with some involving extensive discovery orders, investigator interviews and private preliminary hearings.

Thus, of the fifteen complaints to the tribunal, three proceeded to public hearings. These are the cases of Garda Nicholas Keogh, retired Sergeant William Hughes and Mr Paul Barry.

Difference between Terms of Reference [a] to [o] and Term of Reference [p]

The terms of reference contain marked distinctions between the fifteen subjects listed in paragraphs [a] to [o] and the contents of the final paragraph, which is [p]. The first tranche is couched in quite specific directions, by contrast with the general nature of [p]. It is clear that the legislature considered that it was prescribing an inquiry to be conducted in two separate and distinct phases, if not in effect two inquiries. The terms of reference specified that Mr Justice Peter Charleton was to conduct the first one as sole member and when that was done he was given the option of handing over the conduct of the mandate under term [p] to another judge. That is actually what happened, but not precisely or technically as originally provided.

Following amendments made to the original terms of reference, a retired judge – the former president of the Court of Appeal Mr Justice Sean Ryan – was appointed to the tribunal and thereafter Mr Justice Charleton appointed him to deal with term of reference [p]. It is quite clear therefore that the Oireachtas envisaged a different process for dealing with the sixteenth term of reference.

Whereas the first phase of the Inquiry refers to identified persons, term of reference [p] contains an implicit invitation to any member of a defined cohort of gardaí who considered themselves to be comprised in the specified category. That is, that they alleged they were targeted or discredited with the knowledge or acquiescence of senior members of An Garda Síochána following the making by them of protected disclosures alleging wrongdoing within the force.

The open nature of the category of members to whom term of reference [p] was available contrasted with the narrowness of the specific concern of the Oireachtas, which was directed to the treatment of whistleblowers after they made revelations or allegations of wrongdoing in the force. In the result, complaints of targeting or discrediting in general were inadmissible unless they were causally related to a protected disclosure. This very significant confinement obviously limited the jurisdiction of the tribunal under this term of reference. However, despite the specificity of the question, as the detailed chapters of the report demonstrate, the nature of the inquiry process leading to the answer to the question was very extensive.

The fact that the tribunal did not uphold allegations of targeting or discrediting that happened after, and by implication because, the member made a protected disclosure limits the opportunity for making recommendations based on the findings of the investigations. This was not an inquiry into something that went wrong, seeking explanations and possibly assigning responsibility to persons or bodies. The mandate specified the particular set of conditions to be investigated in each case.

The Specific Question

The tribunal in this phase was directed to a very specific question in each case, namely: did named senior officers in the particular circumstances target or discredit the member in the manner alleged because of the making of a protected disclosure outlining wrongdoing in the force?

In the light of Sergeant Maurice McCabe's allegations the Oireachtas was concerned that Garda whistleblowers might have been victimised because they revealed wrongdoing in the force, and that such mistreatment might have been condoned by senior officers. That is the focus of term of reference [p].

Conduct that might be considered questionable or unreasonable or unfair was not within the tribunal's remit unless it could be causally related to a protected disclosure.

The complaint made by Sgt Hughes was not that colleagues of his own rank or garda rank victimised him; he made his allegations against members of more senior rank and principally concerning specific superior officers, alleging that they targeted or discredited him because he made a protected disclosure or disclosures.

The tribunal was confined by its terms of reference to the specific question set out above.

The tribunal was satisfied that the concerns about policing that motivated Sgt Hughes were entirely genuine and that he experienced a very difficult time in his last years of service in An Garda Síochána. However, like the case of Mr Barry, the examination of this underlying complaint was outside the jurisdiction of the tribunal.

As a result of its detailed investigation, the tribunal was not satisfied that the officers accused of targeting and discrediting Sgt Hughes behaved in a manner defined by the Oireachtas in term of reference [p].

In light of the findings on the specific complaints made by Sgt Hughes, the question of preventing similar happenings recurring does not arise.

Recommendations

Some suggestions based on the tribunal's experience are nevertheless put forward, as matters that arose in the course of the proceedings, for consideration by An Garda Síochána and other appropriate relevant bodies. But it should be remembered that these proposals are essentially advanced for the purposes of consideration.

The tribunal has absolved the senior officers from the charges that Sgt Hughes made, as appears from the chapters where his detailed allegations are reviewed in light of the evidence. It follows that the tribunal does not come to the question of recommendations with condemnations of conduct and suggested measures as to how to eradicate misconduct.

But some issues have emerged that the tribunal considers merit consideration. For the most part, the tribunal does not go further than raising matters to be considered because it has not had evidence in respect of proposals that might guide conduct in the future.

In the earlier report of the case of Garda Keogh, the tribunal set out recommendations that appeared to arise from the hearings in that investigation. The tribunal refers back to them by way of reminder and now sets out its suggestions bearing the above reservations in mind.

Work-Related Stress

It is apparent that the existing regime in respect of work-related stress is in need of clarification.

Consideration should be given to providing clarity as to who is the final decision maker when a member cites work-related stress as constituting an injury on duty. Clear criteria should be established to enable the decision maker to make prompt, consistent and transparent determinations. In particular, the role of the Chief Medical Officer (CMO) should be clarified.

Consideration should be given to requiring all applications for a certificate pursuant to Code 11.37 to be considered centrally by Human Resources and People Development, with HRPD outlining what precisely is to be investigated in a particular work-related stress investigation.

Consideration should also be given to such work-related stress investigations being carried out by personnel from Human Resource Management (HRM) or under their direction and independent of divisional/district management where local stressors are alleged.

A point that arises clearly from this Inquiry is the importance of keeping relevant parties informed of the progress of a work-related stress investigation. This can operate to generate confidence in the process and to dispel unwarranted suspicion and unease in what can be a difficult process for the member.

Delay

The series of garda investigations in Sgt Hughes's case took a long time to complete. It is true that the delays were explained and the tribunal did not find any targeting or discrediting as alleged by Sgt Hughes. It is also true that the sergeant contributed in significant measure to delays in two of the investigations. Nonetheless, the tribunal is of opinion that this is an area requiring

reform. It is important that investigations be brought to expeditious conclusions. Long delays are unsatisfactory, potentially prejudicial and distressing for persons concerned.

One way to improve the situation may be to reduce the burden of ordinary, routine work that investigators have to contend with in addition to internal processes by redistributing their usual tasks. Whether there should be a separate internal affairs division to investigate criminal and disciplinary matters is a matter of policy for the garda authorities and the tribunal is not in a position to advise on it.

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 Sergeant 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 the 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 term of reference [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 1998,¹ 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,

¹ Haughey v Moriarty [1999] 3 IR 1

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 the hearing of an admissible complaint 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 co-operation 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 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 An 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 16th 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 time frame 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 thirteen 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 when it was not authorised to do so.

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 the 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 IN THE CASE OF RETIRED SERGEANT WILLIAM HUGHES

1. Did Assistant Commissioner Al McHugh or Chief Superintendent Michael Feehan target or discredit Sergeant William Hughes because he made a protected disclosure to Superintendent Mark Curran –
 - (a) by initiating disciplinary proceedings against him in June 2007?
 - (b) by continuing the investigation from 2008 onwards?
 - (c) by unreasonably protracting the investigation?

2. Did Assistant Commissioner HRM or Chief Superintendent Gerard Phillips or Superintendent Mark Curran target or discredit Sgt Hughes because he made a protected disclosure –
 - (a) by failing to carry out an investigation into his condition of work related stress as required by the Garda Code?
 - (b) by failing to establish whether his work related stress was an injury on duty?
 - (c) by treating his absences, or allowing them to be treated, as due to ordinary illness so that his pay was subject to severe reduction?

3. Did Assistant Commissioner Michael Feehan target or discredit Sgt Hughes because he made a protected disclosure by failing to carry out a proper investigation into his reports to the Confidential Recipient as to *'systems failure'* in An Garda Síochána?

4. Did the Garda Commissioner target or discredit Sgt Hughes because he made a protected disclosure by failing to refer the investigation file as to his complaints to the Confidential Recipient in respect of the disciplinary investigation to the Director of Public Prosecutions or to the Attorney General?

5. Did the Garda Commissioner or Assistant Commissioner Michael Feehan target or discredit Sgt Hughes because he made a protected disclosure by failing to carry out a proper investigation into his report about the article published in the *Irish Daily Star* on 20th November 2008?

6. Did the Garda Commissioner target or discredit Sgt Hughes because he made a protected disclosure by failing to refer his complaint to the Garda Síochána Ombudsman Commission?
7. Did the Garda Commissioner or Assistant Commissioner Al McHugh or Assistant Commissioner Feehan target or discredit Sgt Hughes because he made a protected disclosure by suppressing or disregarding information or statements provided by Superintendent Noel McLoughlin or Inspector Robert Melvin?
8. Did the Assistant Commissioner HRM target or discredit Sgt Hughes because he made a protected disclosure by writing the letter dated 19th September 2008 containing '*numerous inaccuracies amounting to an abuse of process/harassment of Sergeant Hughes*'?
9. Did Superintendent Mark Curran target or discredit Sgt Hughes because he made a protected disclosure by being unwilling to deal with the '*systems failure*' issues the sergeant wanted to discuss and/or by the nature and content of his meeting with the sergeant dated 17th December 2008?
10. Did the Garda Commissioner or Assistant Commissioner HRM target or discredit Sgt Hughes as he alleges by reason of the recommendation dated 11th July 2008 by An Garda Síochána that Sergeant Hughes be medically discharged?

Appendix 3

Disclosures Tribunal Personnel

Sean Ryan, Tribunal Chairman

Diarmaid McGuinness, Senior Counsel

Patrick Marrinan, Senior Counsel

Sinéad McGrath, Senior Counsel

Ciara Walsh, Solicitor

Emma Toal, Barrister-At-Law, Documentary Counsel

Lalita Pillay, Barrister-At-Law, Documentary Counsel

Peter Kavanagh, Registrar

Ian Murphy, Office Manager

Carl Ryan, Investigator (courtesy of the Garda Síochána Ombudsman Commission)

Orla Doolin, Legal Researcher

Susan McCormack, Administration

Stenographers to the Tribunal:

Gwen Malone Stenography Services

Niamh Kelly

Aoife Downes

Proofreader to the tribunal:

Pat Neville

The tribunal also expresses its gratitude to all former staff:

John Davis, former Solicitor

Phillip Barnes, former Office Manager

Joanne O'Donohue, former Investigator

Retired Detective Inspector Maura Walsh, former Investigator

Ella Woolfson, former Legal Researcher

Brenda Byrne, former Administrator

Appendix 4

Parties represented before the tribunal

For Sergeant William Hughes:

Michael Lynn, Senior Counsel

Colm O'Dwyer, Senior Counsel

Nóra Ní Loinsigh, Barrister-at-Law

Finn Keyes, Barrister-at-Law

Instructed by Sheehan & Partners 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

Donal McGuinness, Barrister-at-Law

Shelley Horan, Barrister-at-Law

Kate Egan, Barrister-at-Law

Instructed by the Chief State Solicitor's Office

For Assistant Commissioner Fintan Fanning:

Paul McGarry, Senior Counsel

John Ferry, Barrister-at-Law

Instructed by Seán Costello & Company Solicitors

For Garda Nyhan:

James Kane, Barrister-at-Law

Instructed by Hughes Murphy Solicitors

For Mr. Michael O'Toole:

Kieran Kelly, Solicitor

Appendix 5

Witnesses who appeared before the tribunal:

1, 2, 3, 4, 7, 8, 9 February 2022

Retired Sergeant William Hughes

14 February 2022

Mr John Hennessy

Mr Michael O'Toole

Detective Chief Superintendent Walter O'Sullivan

15 February 2022

Detective Superintendent Michael Cryan

Retired Detective Chief Superintendent Kevin Donohoe

16 February 2022

Former Assistant Commissioner Al McHugh

17 February 2022

Former Assistant Commissioner Michael Feehan

18 February 2022

Former Assistant Commissioner Michael Feehan

Former Assistant Commissioner Gerard Phillips

21 February 2022

Chief Superintendent Mark Curran

24 February 2022

Chief Superintendent Christopher Mangan

Retired Superintendent Fergus Dwyer

1 March 2022

Dr Richard Quigley

Appendix 6

Tribunal timeline in the case of Retired Sergeant William Hughes

| | |
|-----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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. |
| 19th May 2017 | First interim report. |
| 4th July 2017 | Tribunal commenced hearing evidence on terms of reference [n] to [o]. |
| 24th November 2017 | Tribunal issued public notice seeking complaints under term of reference [p]. |
| 30th November 2017 | Second interim report of the tribunal on terms of reference [n] and [o]. |
| 22nd June 2018 | Tribunal concluded hearing evidence on terms of reference [a] to [m]. |
| 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. |

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|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11th December 2018 | Mr Justice Peter Charleton 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 published 'Procedures of the Tribunal in relation to Term of Reference [p]' on its website. |
| 11th April 2019 | Opening statement of the tribunal in respect of term of reference [p]. |
| 14th October 2019 | The tribunal commenced hearing evidence for the first complaint considered under term of reference [p] in a public hearing concerning Garda Nicholas Keogh of Athlone Garda Station. |
| 8th July 2021 | Fourth interim report of the tribunal in the case of Garda Nicholas Keogh. |
| 5th November 2021 | Private case management hearing in respect of the case of retired Sergeant William Hughes, formerly Swords Garda Station. |
| 20th December 2021 | Private case management hearing in respect of the case of Mr Paul Barry, formerly Mitchelstown Garda Station. |
| 1st February 2022 | The tribunal commenced hearing evidence for the second complaint considered under term of reference [p] in a public hearing concerning retired Sergeant William Hughes. Day 158 of tribunal hearings: Retired Sergeant William Hughes gave evidence. |
| 2nd February 2022 | Day 159 of tribunal hearings: Retired Sergeant William Hughes gave evidence. |
| 3rd February 2022 | Day 160 of tribunal hearings: Retired Sergeant William Hughes gave evidence. |

| | |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| 4th February 2022 | Day 161 of tribunal hearings: Retired Sergeant William Hughes gave evidence. |
| 7th February 2022 | Day 162 of tribunal hearings: Retired Sergeant William Hughes gave evidence. |
| 8th February 2022 | Day 163 of tribunal hearings: Retired Sergeant William Hughes gave evidence. |
| 9th February 2022 | Day 164 of tribunal hearings: Retired Sergeant William Hughes gave evidence. |
| 14th February 2022 | Day 165 of tribunal hearings: Mr John Hennessy, Mr Michael O'Toole and Detective Chief Superintendent Walter O'Sullivan gave evidence. |
| 15th February 2022 | Day 166 of tribunal hearings: Detective Superintendent Michael Cryan and Retired Detective Chief Superintendent Kevin Donohoe gave evidence. |
| 16th February 2022 | Day 167 of tribunal hearings: Former Assistant Commissioner Al McHugh gave evidence. |
| 17th February 2022 | Day 168 of tribunal hearings: Former Assistant Commissioner Michael Feehan gave evidence. |
| 18th February 2022 | Day 169 of tribunal hearings: Former Assistant Commissioner Michael Feehan and Former Assistant Commissioner Gerard Phillips gave evidence. |
| 21st February 2022 | Day 170 of tribunal hearings: Chief Superintendent Mark Curran gave evidence. |
| 24th February 2022 | Day 171 of tribunal hearings: Chief Superintendent Christopher Mangan and Retired Superintendent Fergus Dwyer gave evidence. |

1st March 2022

Day 172 of tribunal hearings:
Dr Richard Quigley gave evidence.

30th March 2022

Final submissions from parties were heard by the tribunal.

23rd March 2023

Fifth interim report of the tribunal in the case of Mr Paul Barry.

20th April 2023

Sixth and final report of the tribunal in the case of Retired Sergeant William Hughes.