

REPORT

TO

AN TAOISEACH,
ENDA KENNY TD

ON A

REVIEW OF THE ACTION TAKEN BY AN GARDA
SÍOCHÁNA PERTAINING TO CERTAIN
ALLEGATIONS MADE BY SERGEANT MAURICE
MCCABE

SEÁN GUERIN SC
6 MAY 2014

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Chapter 1: Introduction

1.1 This report is prepared for An Taoiseach further to the decision of the Government announced on 27 February 2014 to hold a review into allegations made by Garda Sergeant Maurice McCabe and related matters. The review was conducted in accordance with the terms of reference agreed by the Government on the advice of the Attorney General. Those terms of reference are as follows:

- “1. To conduct an independent review and undertake a thorough examination of the action taken by An Garda Síochána pertaining to certain allegations of grave deficiencies in the investigation and prosecution of crimes, in the County of Cavan and elsewhere, made by Sergeant Maurice McCabe as specified in:
 - a) the dossier compiled by Sgt Maurice McCabe and furnished to An Taoiseach on the 19th February 2014 and
 - b) the letter understood to be from Sgt Maurice McCabe to the Confidential Recipient, Mr. Oliver Connolly, dated 23rd January 2012, part of which was furnished to An Taoiseach on the 21st day of February 2014.
2. To interview Sgt Maurice McCabe and any other such person as may be considered necessary and capable of providing relevant and material assistance to this Review in relation to the aforesaid allegations and to receive and consider any relevant documentation that may be provided by Sergeant McCabe or such other person.
3. To examine all documentation and data held by An Garda Síochána, the Department of Justice and Equality, and any other entity or public body as is deemed relevant to the allegations set out in the documents at 1 (a) and (b) above.

4. To communicate with An Garda Síochána and any other relevant entity or public body in relation to any relevant documentation and information and to examine what steps, if any, have been taken by them, to investigate and resolve the allegations and complaints contained in the documentation referenced at 1 (a) and (b) above.
 5. To review the adequacy of any investigation or inquiry instigated by An Garda Síochána or any other relevant entity or public body into the incidents and events arising from the papers furnished at 1 (a), 1 (b) and 2 above.
 6. To consider if, taking into account relevant criminal, civil and disciplinary aspects, there is a sufficient basis for concern as to whether all appropriate steps were taken by An Garda Síochána or any other relevant entity or public body to investigate and address the specified complaints.
 7. To advise, arising from this review, what further measures, if any, are warranted in order to address public concerns including whether it is considered desirable in the public interest for the Government to establish a Commission of Investigation pursuant to the Commissions of Investigation Act 2004 and, if so, the matters to be investigated.
 8. At the conclusion of the aforesaid review, within eight weeks of 27th February, 2014 or so soon as may be thereafter, to deliver a Report to An Taoiseach on the matters set out at 1, 5, 6, and 7 above.”
- 1.2 The documents referred to at sub-paragraphs 1(a) and (b) in the terms of reference include reference to 16 individual incidents, events or matters about which complaint was made. Ten of those 16 concern the investigation of crime by An Garda Síochána. Three concern internal matters within An Garda Síochána, including one case of harassment and

sexual harassment of a young probationer female Garda. Two concern allegations of specific misconduct by members of An Garda Síochána, in one case in relation to a civilian, and in the other case following a complaint made by Sergeant McCabe about certain matters. The final matter refers to a report made by Sergeant McCabe in early 2008 concerning the foregoing and other matters.

Procedure

- 1.3 Having received formal notice of my appointment and of the terms of reference on 4 March 2014, on 5 March 2014 I wrote to the Office of the Director of Public Prosecutions, the Commissioner of An Garda Síochána, the Garda Síochána Ombudsman Commission, the Minister for Justice and Equality and the Secretary General of the Department of An Taoiseach seeking any relevant documents in relation to the subject matter of the review and identifying the individual incidents to which the review related. On my request, each of those bodies nominated an individual point of contact to facilitate the review.
- 1.4 On 10 March 2014 I received documentation from the Department of An Taoiseach. Any relevant correspondence to that Department was referred to the Department of Justice and Equality, which had functional responsibility for the issues raised. I wish to acknowledge the assistance provided by Ms. Patricia Walsh and other officials in the Department of An Taoiseach and their courtesy throughout.
- 1.5 On 11 March 2014 I received two archive boxes of documentary material from An Garda Síochána and subsequently, during the course of the review, I received additional material, some of it as a result of specific requests, totalling eventually more than a dozen archive boxes. Assembling all of that material and furnishing it in time required a significant effort on the part of Chief Superintendent James Sheridan and, no doubt, other members of An Garda Síochána, and it was their efforts that delivered the vast majority of the documents relevant to this review. I am satisfied that diligent and thorough efforts were made to locate all relevant documentation and that An Garda Síochána cooperated fully with the review. I wish to acknowledge, in particular, the assistance and courtesy of Chief Superintendent Sheridan and his colleagues.
- 1.6 On 13 March 2014, I received a volume of documentation from the Department of Justice and Equality. This was the first of a number of

volumes of documentation provided by the Department. On 11 April 2014, I sought additional specific documents and that request was complied with promptly and thoroughly. I am satisfied that every effort was made to furnish all relevant documentation to me and that the Department cooperated fully with the review. I wish to acknowledge the assistance and courtesy of Mr Kevin Clarke, Principal Officer, and his colleagues in the Department of Justice and Equality.

1.7 On 31 March 2014, I received two archive boxes of material from the Office of the Director of Public Prosecutions. On 11 April 2014, I made a request for certain additional specific documents which I received on 23 April 2014. I am satisfied that every effort was made to locate and furnish to me all relevant documentation and that the Office of the Director of Public Prosecutions cooperated fully with the review. I wish to acknowledge the assistance and courtesy of Mr Barry Donoghue, Deputy Director, and his colleagues in the Office of the Director of Public Prosecutions.

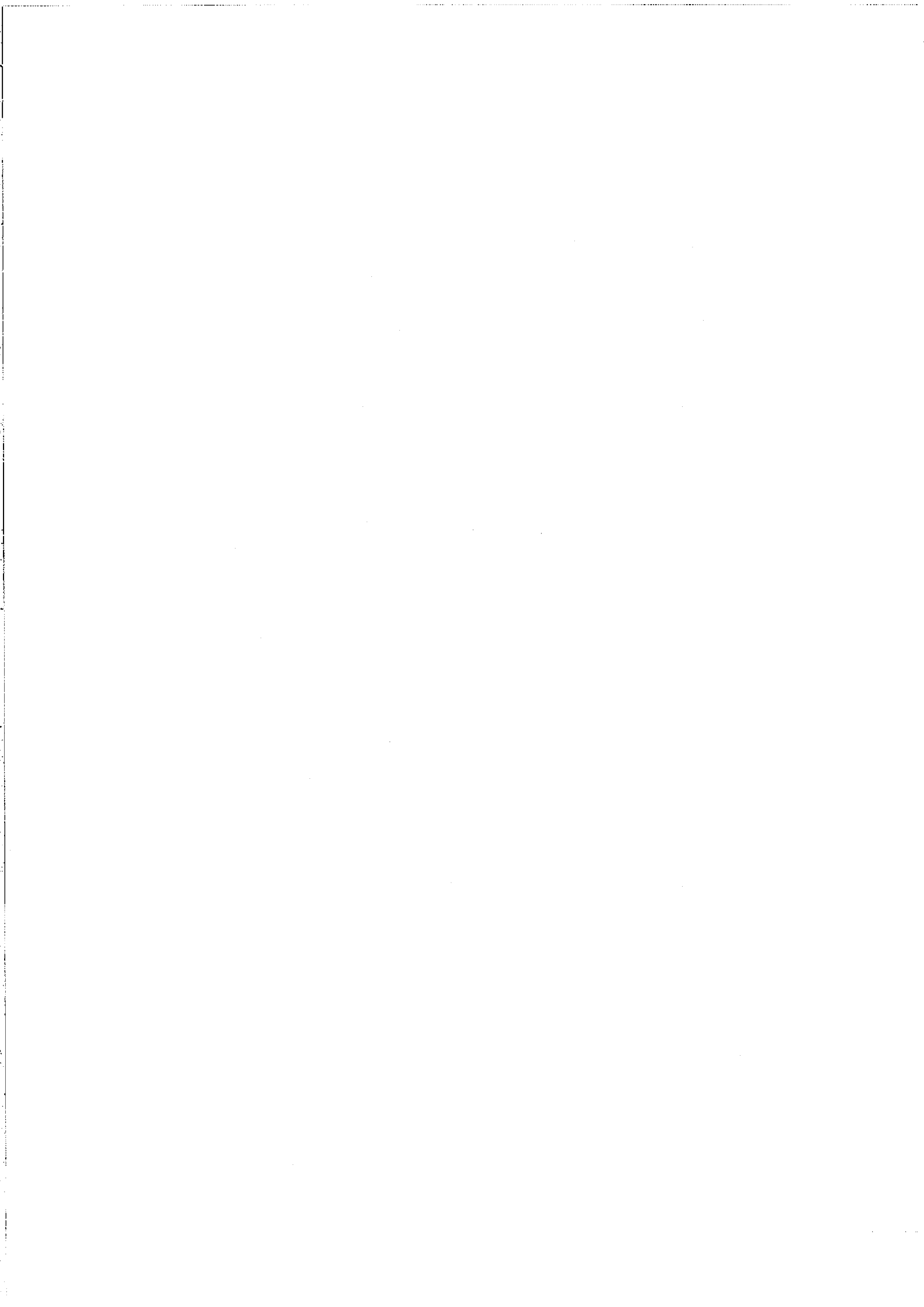
1.8 Unfortunately, I have received no documentation from the Garda Síochána Ombudsman Commission. On 13 March 2014 Mr Simon O'Brien of GSOC wrote to me to indicate that the process of marshalling the relevant material was under way as a priority. On 26 March 2014, I wrote to a reminder to GSOC and referred to the very limited period of time available to complete this review. On 2 April 2014, GSOC wrote to say that the relevant material had been identified and, subject to approval by GSOC, would be forwarded in due course. The tight timescale for the review was acknowledged. A further reminder of the request for documents, and of the very limited time available to review them, was sent to GSOC on 10 April 2014. At 4.48 p.m. on 23 April 2014 I received a letter from Arthur Cox Solicitors on behalf of GSOC raising various preliminary legal and practical issues which might usefully have been raised at an earlier stage. Although the letter expressed an eagerness to co-operate and stated that GSOC had "voluminous" relevant documents, I have not seen any of those documents. I do not

understand why the obstacles to my seeing them were first identified to me in correspondence delivered shortly before close of business on the eve of the date upon which my report was due. Even if GSOC's concerns could have been immediately overcome, there was of course no practical reality to "voluminous" documentation being reviewed at that late stage. I wish to acknowledge the courtesy with which GSOC dealt with my requests for documentation and GSOC's stated willingness to furnish documentation. I regret that the eagerness to cooperate that was communicated on behalf of GSOC by its solicitors did not find practical expression in an ability to make relevant documents available for examination in good time. That has, unfortunately, been an obstacle to any assessment as part of this review of the adequacy of the investigations conducted by GSOC. It did not, however, interfere with the other work of the review.

- 1.9 Having conducted an initial review of documentation as it arrived, I was in a position to interview Sergeant Maurice McCabe. That process began on 1 April 2014. The interview continued on 4 April and 14 April and was finally concluded on 23 April 2014. The total duration of interview with Sergeant McCabe was just under 19 hours. Sergeant McCabe made himself available to me upon request and freely and openly discussed the matters the subject of this review. I wish to acknowledge that he cooperated fully with the review and did so in an unfailingly courteous and obliging manner.
- 1.10 On 16 April 2014, I travelled to the Garda Information Service Centre in Castlebar to examine the relevant PULSE records in relation to the various incidents and also to develop my understanding of the PULSE system for the purpose of the review. I wish to acknowledge the assistance of Chief Superintendent Sheridan in arranging that visit and the assistance of Mr Colm Treanor, Principal Officer, and his colleagues at GISC. They were obliging and helpful in every way and I am particularly indebted to Mr Joseph O'Reilly, Higher Executive Officer, for

his assistance with matters of detail. His assistance was particularly invaluable in relation to the subject matter of chapter 13.

- 1.11 The Office of the Garda Síochána Confidential Recipient is subject to express statutory rules of confidentiality. It is, however, also subject to notification provisions (Regulation 7) in relation to complaints, which require notice to be given either to the Commissioner of An Garda Síochána or to the Minister for Justice and Equality or both. The Confidential Recipient has no investigative function. For those reasons, and as both the Commissioner and the Minister cooperated fully with the review, I saw no need to make any independent request for documentation to the Office of the Confidential Recipient.
- 1.12 I wish to acknowledge the invaluable research assistance I received from Mr John Maher BL.
- 1.13 I also wish to acknowledge the assistance of Gwen Malone Stenography in the preparation of transcripts of interviews, and the secretarial support of Ms Sally King and Ms Helen Jones.



Chapter 2: Background

- 2.1 The two documents the subject matter of the review are documents, or are drawn from documents, that were furnished to the Department of Justice and Equality on different dates in 2012.
- 2.2 The dossier furnished to An Taoiseach on 19 February 2014 by Mr Micheál Martin TD (the “dossier”) contained a note by Sergeant McCabe on each of ten different incidents or sets of circumstances, about which Sergeant McCabe had concerns. Each of those notes was contained within volume 1 of three volumes of material furnished to the Department of Justice and Equality by letter of 4 September 2012 from Sergeant McCabe’s solicitors, Sean Costello & Co. The matters were described in the letter as
- “of an extremely serious nature, they are undoubtedly matters of public concern as defined and as such, it would not be appropriate for An Garda Síochána to carry out an investigation into its own practices”.
- 2.3 The letter understood to be from Sergeant Maurice McCabe to the Confidential Recipient, Mr Oliver Connolly, dated 23 January 2012 (the “January 2012 letter to the Confidential Recipient”), was furnished by the Confidential Recipient to the Minister for Justice on the same date. The Secretary General of the Department of Justice forwarded that letter at that time to the Commissioner of An Garda Síochána for a response.
- 2.4 These documents were not by any means the first occasions on which Sergeant McCabe had made the complaints contained in them and the correspondence referred to above should properly be seen as the culmination of a progressive escalation of Sergeant McCabe’s efforts to draw attention to the matters about which he had concerns.

- 2.5 A short history of the way in which that escalation occurred would probably be of assistance in considering the further contents of this report.
- 2.6 Sergeant McCabe became a member of An Garda Síochána in August 1985. He first served in Bailieboro Garda Station beginning in July 1989 and he remained there until his promotion to the rank of sergeant in January 2000, when he moved to Clones Garda Station. In October 2004 he was successful in his application to be appointed Sergeant-in-charge of Bailieboro Garda Station and he remained in that position until 4 March 2008, when he vacated it. In July 2008 he moved on temporary transfer to Mullingar Garda Station, where he remains today.
- 2.7 At all relevant times, there was no Inspector allocated to Bailieboro Garda station and Sergeant McCabe's immediate supervisor was therefore the District Officer for Bailieboro Garda District, holding the rank of Superintendent. Sergeant McCabe served under five District Officers during his time as Sergeant-in-charge of Bailieboro Garda Station. Three officers served in that role during the periods of greatest interest to this review, the first from March 2006 to August 2007, the second from August 2007 to March 2008, and the third from March 2008 until June 2009. Sergeant McCabe had vacated the position of Sergeant-in-charge very shortly before the third of those officers took up the role of District Officer; but the latter had previously served, from time to time as the need arose, as acting District Officer at Bailieboro.
- 2.8 Bailieboro Garda Station is the District Headquarters of Bailieboro Garda District. The station itself is a relic of policing in a different age. Having had the opportunity to review the accommodation file in relation to the station, it appears that it was widely acknowledged to be too small and in very poor condition. At the relevant times there were seven other Garda stations in the District, i.e. Ballyjamesduff, Cootehill, Mullagh, Shercock, Tullyvin, Virginia and Kingscourt. As those stations did not provide a 24-hour-a-day service, Gardaí stationed at Bailieboro station would routinely find themselves dealing with issues that arose

outside the opening hours of other Garda stations in any part of the District.

- 2.9 In late 2007 and into 2008, Sergeant McCabe became concerned about the way in which a number of incidents were being handled. His concerns were about matters of police practice, primarily related to the effectiveness of investigations of reported crime, although he also expressed concern about compliance with proper internal Garda procedures. On his account, he drew these matters to the attention of the District Officer at the time (who is referred to in this report as Superintendent Foxtrot) and sought his assistance in dealing with them as necessary. It should be recorded at this point that there is a substantial factual dispute between Sergeant McCabe and Superintendent Foxtrot in relation to the extent to which assistance was sought and provided. It is not the purpose of this report to express any view on that question and certainly not to determine it.
- 2.10 What is not in dispute is that on 28 January 2008 a meeting occurred between Sergeant McCabe and Superintendent Foxtrot at which Sergeant McCabe presented a document outlining issues of concern to him. That document did not identify specific incidents by name although there was a discussion about the document which appears to have included reference to individual incidents. Again, it is a matter of dispute how long that meeting continued and what precisely the outcome of it was. It does appear that Superintendent Foxtrot made arrangements, apparently at the request of Sergeant McCabe, to organise a meeting of the sergeants in the station to discuss the matters which Sergeant McCabe had raised. Sergeant McCabe has provided me with a copy of a letter dated 28 January 2008 from Superintendent Foxtrot to the effect that such a meeting would be held on the following day at 12:30pm. That meeting was, however, cancelled shortly after it was arranged and does not appear to have subsequently taken place.
- 2.11 Over the course of the following six weeks Sergeant McCabe became increasingly concerned about the issues which he had raised and which

were, in his view, continuing to arise. Some insight into that aspect of the matter can be gleaned from an examination of the individual files considered later in this report. One incident in particular (the subject of chapter 10), Sergeant McCabe later described as the straw that broke the camel's back, and that matter came to a head with a report from sergeant McCabe to Superintendent Foxtrot dated 3 March 2008.

2.12 On 4 March 2008 Sergeant McCabe vacated the position of Sergeant-in-charge at Bailieboro Garda station. His stated reasons for doing so, as outlined in a letter of that date to Superintendent Foxtrot, were

- “Lack of Management Support
- Lack of Standards
- Lack of Accountability
- Lack of duty to the Public”

2.13 On 2 May 2008 a written complaint was received at the office of Assistant Commissioner, Human Resource Management, Garda Headquarters from Sergeant McCabe. The complaint was in the form of a statement dated 28 April 2008. That complaint was made under the Harassment, Sexual Harassment and Bullying Policy of An Garda Síochána. A decision appears to have been made, however, that an investigation under that policy would be too narrow and inappropriate, having regard to the wide-ranging allegations made by Sergeant McCabe in his complaint. As a result, Chief Superintendent Terry McGinn, Donegal Division, was appointed to investigate the allegations on 13 May 2008. A separate complaint was also received in early May 2008 from another member stationed at Bailieboro Garda station. That complaint was not as wide-ranging; it related to allegations of harassment and sexual harassment of the member concerned by another individual member stationed at Bailieboro Garda station. That is, however, one of the matters to which Sergeant McCabe refers in the documents that are the subject of this review. Chief Superintendent McGinn was also

appointed to investigate the allegation of harassment and sexual harassment received in May 2008.

- 2.14 On 14 October 2008 a report was received at Garda Headquarters from the Garda Síochána Confidential Recipient in accordance with the procedures set down in the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007 (S.I. No. 168 of 2007). Further reports were received from the Confidential Recipient in August, November and December 2009, which related to the treatment of the confidential reporter arising out of the complaints he had made.
- 2.15 Assistant Commissioner Derek Byrne, National Support Services was appointed to investigate the complaints received from the Confidential Recipient. He also took overall direction of Chief Superintendent McGinn's investigation. The investigation conducted by Assistant Commissioner Byrne and Chief Superintendent McGinn included most of the matters in the two documents the subject of this review but also, it should be acknowledged, extensive additional allegations. Their inquiries were substantially complete by the first half of 2010, when they reported on the outcome of their investigations. There were formally two separate reports, but there is no substantial difference in relation to the subject-matter of this review; for convenience, reference is made hereafter to the Byrne-McGinn report. There were a small number of matters that required further investigation.
- 2.16 On 11 October 2010 Sergeant McCabe was formally notified of the outcome of the investigations (subject to the ongoing matters) at a meeting at the Hillgrove Hotel in Monaghan, and he appears to have been provided with a five-page document summarizing the outcome. Events at that meeting are a matter of some controversy and are dealt with in chapter 13 below. What is not disputed is that at that meeting Sergeant McCabe produced two archive boxes of PULSE printouts, which, he said, constituted further evidence of wrongdoing within An Garda Síochána. The manner in which those allegations were subsequently handled by An Garda Síochána has itself become a matter of complaint

by Sergeant McCabe. The investigation of the matters arising out of the PULSE printouts brought to the Hillgrove Hotel by Sergeant McCabe was conducted by Deputy Commissioner WI Rice, who also reviewed the earlier investigation by Assistant Commissioner Byrne and Chief Superintendent McGinn.

- 2.17 It was during the course of the Byrne-McGinn investigation that it appears that Sergeant McCabe first made contact with the Department of Justice and Equality. The history of that correspondence is dealt with elsewhere in this report. Suffice it to say, for present purposes, that Sergeant McCabe's complaints were brought to the attention of the Department of Justice and Equality arising out of his dissatisfaction with the way in which they had been investigated internally in An Garda Síochána.
- 2.18 The Department of Justice and Equality engaged in correspondence with the Commissioner of An Garda Síochána as a result of Sergeant McCabe's complaints, and repeated reference is made in this report to one letter in that course of correspondence. The letter is dated 26 February 2013 and was written by the Commissioner in response to a request from the Secretary General of the Department for clarification of the outcome of the internal Garda investigations into Sergeant McCabe's complaints. In effect, the Commissioner's letter summarises the outcome of the internal Garda processes, whether investigative or disciplinary.
- 2.19 Some time later that letter was itself summarized by an official in the Department of Justice and Equality. The summary appears to date from February 2014. While it did not apparently form part of the Minister's consideration of Sergeant McCabe's complaints, it is nonetheless useful in that it expresses the Department's understanding of the outcome of the Garda investigation of those complaints.

Chapter 3: Structure and Method

- 3.1 The structure of this report involves a detailed examination of each of the individual matters of complaint identified in the two documents referred to in the terms of reference. That required a review, in the first instance, of the original Garda investigation file, where applicable, up to and including the prosecution of any suspect. In some cases, the original investigation file was reviewed either at District or Divisional level, within An Garda Síochána, and those reviews have also been examined. As previously indicated, these matters were subsequently investigated following Sergeant McCabe's complaint by the team led by Chief Superintendent McGinn under the direction of Assistant Commissioner Byrne. In a small number of cases, the Garda Síochána Ombudsman Commission became involved as a result of complaints by members of the public. Owing to the absence of any opportunity to review relevant documents within the possession of GSOC, it has not been possible to gain full insight into those investigations. Some information is available on the Garda files and, where available, it has been reviewed. That is not, of course, a substitute for an examination of GSOC's own files.
- 3.2 In a number of cases, and usually as a result of views expressed in the Byrne-McGinn report, there were disciplinary proceedings pursuant to the Garda Síochána (Discipline) Regulation 2007 (S.I. No. 214 of 2007), as amended. In those cases, the disciplinary files have also been reviewed.
- 3.3 Ultimately, all of these matters were brought to the attention of the Department of Justice and Equality in either one or other of the documents referred to above. What happened as a result has also been reviewed by reference to the files of the Department and the files maintained by An Garda Síochána in relation to the complaints forwarded from the Department.
- 3.4 It is important to emphasise before embarking upon the review of individual incidents, that it is understood that the purpose of this review

is not to make findings of fact or to determine any disputed question either of fact or law. Insofar as any views are expressed on factual matters, those are only facts as they appear from a review of the files that I have received. Any such expression is not an adjudication on any matter affecting the persons named or referred to in this report. It is possible that, with the benefit of an opportunity to interview or hear evidence from the individual members and officers of An Garda Síochána and civilians, including victims of crime, involved in these matters, a different view of the facts would emerge.

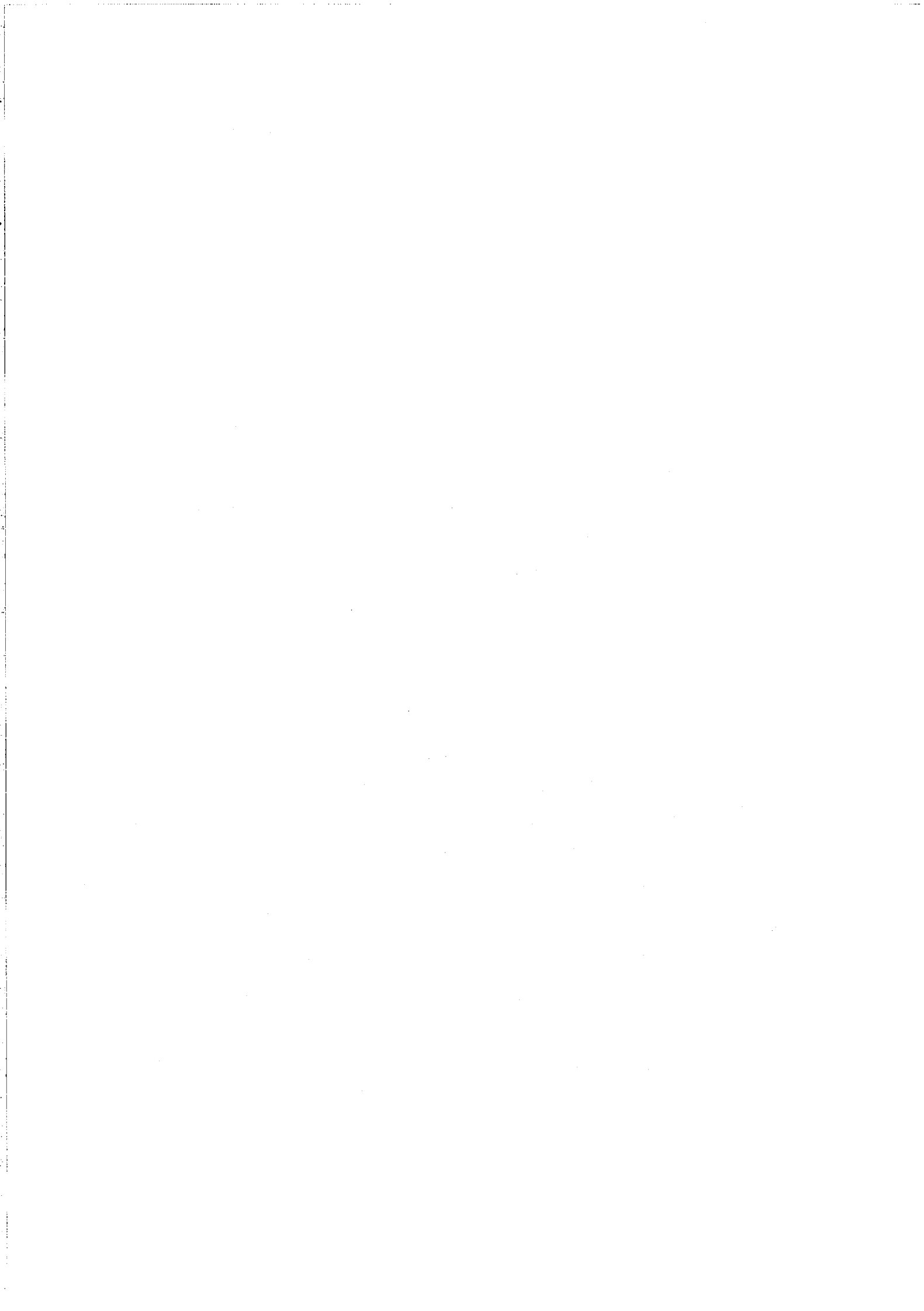
3.5 The approach that has been adopted in the review of the various files generated by the different investigations, reviews and examinations referred to above is the following:

1. To identify the broad outlines of what appear to be the undisputed facts insofar as they can be ascertained from the files;
2. To identify important issues of fact that may need to be resolved;
3. To identify the extent to which previous investigations of these matters succeeded in identifying relevant facts and the important factual questions and, where the factual questions were identified, the extent to which they have been resolved satisfactorily;
4. To identify issues that might be of concern in the public interest arising out of these matters; and
5. To form a view as to the necessity, in the public interest, for any further inquiry in an appropriate forum into these matters.
6. To identify specific issues of procedure and practice that arise.

3.6 For a variety of reasons, real names have not been used in many instances in this report. I have endeavoured to anonymize the victims of crime and other civilians, although in a small number of cases that have attracted publicity already, generally as a result of court proceedings,

anonymity would serve no purpose. Special rules apply, of course, to the identification of children, and every effort has been made to avoid doing so. I have anonymized victims of crime and civilians using colours – Ms Green, Mr White etc. Civilian witnesses are referred to as Witness A, Witness B etc.

- 3.7 I have also endeavoured to anonymize Gardaí who were involved in the criminal investigations that feature in the report. Allegations of misconduct have been made against some Gardaí and those allegations are reviewed here. This review makes no findings of fact, however, and is no substitute for proceedings in a forum applying the ordinary rules of fair procedures that apply in any case in which an allegation of misconduct is made against a person. I have anonymized Gardaí using the phonetic alphabet – Garda Alpha, Sergeant Bravo, etc. Other members of An Garda Síochána, in particular senior officers involved in the investigation of Sergeant McCabe's complaints or in the conduct of disciplinary proceedings, or officers with only a peripheral role, have not been anonymized, nor have officers of GSOC.
- 3.8 Since Sergeant Maurice McCabe is central to the events reviewed in this report, and those events would make much less sense without an understanding of his involvement at various stages, he has not been anonymized. That, of course, is not in any sense an adverse reflection on him. To the extent that a review of the subject matter of this report requires reference to allegations or comments made by other persons about Sergeant McCabe, the fact that his identity has not been disguised should not be understood as an endorsement of those allegations or comments.
- 3.9 Persons suspected of crime have been anonymized using initials, unless the facts alleged against them have been proven in court. It should be understood that the expression of an adverse opinion on the adequacy of any investigation of a reported crime is not a sufficient basis to conclude that any suspect is guilty or, indeed, that a crime was committed.



Chapter 4: Public Order Incident at Kingscourt on 25 February 2007

- 4.1 At 4.30am on 25 February 2007, Ms. Green made contact with Bailieboro Garda Station to complain of the behaviour of a number of youths on a minibus she was driving and to request Garda assistance. At that time the vehicle was stopped at Main Street, Kingscourt, Co. Cavan and Ms Green said that the youths were insisting on being taken to Ardee, Co. Louth.
- 4.2 Although a statement was taken from Ms. Green, an investigation file on this incident was never completed in circumstances discussed further below. An incomplete investigation report by Garda Alpha, dated 14 March 2007, appears to have formed the factual basis of the examination of this incident by the Byrne-McGinn investigation and the disciplinary proceedings which resulted. [REDACTED].
- 4.3 It appears from his incomplete investigation report that, when Gardaí arrived at Kingscourt, Ms Green informed them that she had to leave the minibus she was driving as she was “terrified for her own safety”. She pointed out to the Gardaí four youths standing nearby and Garda Alpha went to speak to them. They appear to have identified themselves to him and they seem to have complained that the driver was refusing to take them home after picking them up. Garda Alpha spoke again to Ms Green who identified one of the youths, one [REDACTED], as the person who was “causing all the trouble”. She reported that “he was going to fight with another passenger on the bus earlier on and also that he was verbally abusive to all other passengers especially females”. She also reported that, having got off the bus to contact Gardaí, on her return she heard a female passenger, who had remained on the bus, scream. In Garda

Alpha's report, ■ is the only one of the four youths identified by name and is the only person identified as a "culprit".

- 4.4 On 10 April 2014 I sought a copy of Ms Green's statement. I received it on 23 April. It contains a much clearer and more detailed account of the incident than is in Garda Alpha's incomplete report. Ms Green described picking up ten to twelve people at Carrickmacross, including the four youths. She said:

"The minute I pulled off the verbal abuse from the biggest lads started. He started verbally abusing the lady passengers that I had on board. Putting women down saying filthy talk and talking about their privates. He was trying to start a row with their partners by saying stuff to them. His mates one of them the smallest lad kept laughing and egging him on. The bald lad was asleep in the bus and the last lad was sitting behind me telling them to stop. About half way to Kingscourt I stopped to let a fella and his girlfriend off and when the girl was getting off, the biggest lad grabbed her arse. . . . When I got to Kingscourt I told the four lads they would have to get off it was the last stop. I still had about six locals on the bus who I was going to drop home because I would always leave them home. The four lads refused to get off when asked. The biggest lad kept saying to ring the Guards that he wasn't moving he wanted to be taken to Ardee. He refused to get off for about half an hour and the other people just got impatient as they wanted to get home so they got off. One girl was still on the bus she didn't get off. When the passengers were getting off the biggest lad groped another girl when she was getting off. The four lads were still on the bus at this stage. I then agreed to take them to Ardee and the lad sitting behind me said out loud to the other lads that 'we'll pay her well if she does it'. The biggest lad then started shouting 'she's getting nothing off me I'll just take the bus and take myself fucking home'. At this stage I was terrified so I told them I wasn't taking them anywhere but I'd ring

them another taxi. I then got off the bus and walked to the middle of the road so they couldn't hear me and rang Bailieboro Garda Station. The minute I got off the phone I heard the girl on the bus screaming. I ran around to the side door and saw the big lad had a grip of the girl holding her by her clothes at the front. She then broke free of him and ran up the town screaming."

- 4.5 The incident report entered on the Garda PULSE system names two other individuals who, along with ■■■, are identified as "suspected offender". These are one ■■■ and one ■■■. The original PULSE description of the incident was:

"three males caused disturbance on mini bus on Main Street, Kingscourt. To proceed by summons."

- 4.6 It seems that the PULSE record was updated on 30 May 2007, again by Garda Alpha. The additional entry reads:

"updated 30/052007 (sic.) – statement of complaint withdrawn. Parties resolved issue amongst themselves. Updated by Garda [Alpha]"

- 4.7 The circumstances in which that entry came to be made in the PULSE system, and the decision which it reflects not to proceed with the prosecution of any of the suspected offenders, later became a cause for concern. The specific concerns were, first, that the incident had not been investigated properly and, secondly, that the investigation had come to an end in circumstances involving a payment of money to the complainant, which payment was facilitated by Garda Alpha.

Complaints about the Handling of the Investigation

- 4.8 In a document entitled "Brief Proven Facts Pertaining to my Complaint", given to Chief Superintendent McGinn in January 2009, Sergeant McCabe complained, amongst other things, of the failure of supervising Gardaí to properly handle a complaint he had made of a failure "to investigate hijacking, false imprisonment and sexual assault". This appears to have

been understood as a reference to the incident on Ms Green's bus on 25 February 2007.

- 4.9 Before Sergeant McCabe's complaint was made in that form, however, the matter came to the attention of the Assistant Commissioner, Human Resource Management. This was as a result of a report completed by Garda Alpha's training sergeant. He had conducted a full audit of Garda Alpha's incidents on PULSE as part of an assessment process and he identified this incident as one which caused concern. As a result of further inquiries, including seeking a report from Garda Alpha, he recommended a disciplinary investigation. In the case of a probationary Garda, such investigation requires the prior consent of the Assistant Commissioner, Human Resource Management.
- 4.10 On 23 July 2008, Assistant Commissioner Clancy wrote to Chief Superintendent CM Rooney, the Chief Superintendent, Cavan/Monaghan Division, granting the necessary consent. On 1 September 2008, Chief Superintendent Rooney appointed Superintendent Karl Heller, Carrickmacross, as Deciding Officer in relation to a disciplinary investigation into probationer Garda Alpha.
- 4.11 The disciplinary investigation which followed was completed before Chief Superintendent McGinn's report was finalised.
- 4.12 In his report recommending disciplinary action against Garda Alpha, his training sergeant also observed that
- "It would appear that P/Garda Alpha received little or no supervision from his supervisory Sergeant when dealing with this incident."
- 4.13 His report was addressed to the Superintendent, Bailieboro (then Superintendent Delta) and forwarded (by an Inspector acting for Superintendent Delta) to the Chief Superintendent, Cavan Monaghan, who forwarded it, in turn, to the Assistant Commissioner, Human

Resources. I have seen no evidence that the want of supervision identified by the training sergeant was seen as meriting comment or action at any of these levels.

The Disciplinary Proceedings

4.14 The breaches of discipline alleged against Garda Alpha were two. The first was an allegation of neglect of duty in failing to fully and expeditiously complete an investigation into the Kingscourt incident. The second was discreditable conduct in acting in a corrupt or improper manner in approaching an injured party with an offer of compensation on behalf of one of the suspects on the condition that she would withdraw her complaint.

4.15 Superintendent Heller arranged to interview Garda Alpha at Carrickmacross Garda station on 19 September 2008. Before doing so, it appears that he spoke to Ms Green. There is a note appended to his report of the disciplinary investigation dated 12 September 2008 which records what are described as “comments of [another name]”. (It is assumed that this other name was used in error and that the comments were those of Ms Green.) Those comments are simply five bullet points as follows:

- “Garda Alpha was polite and courteous.
- Took statements early.
- Disappointed no arrest was made on the night.
- He was good with follow up, spoke to me after three weeks.
- I got no real sense of completion”.

4.16 I have seen a number of copies of the discipline investigation file, one of which was a copy sent to Chief Superintendent McGinn on 26 February 2009. The covering letter of that date addressed to Chief Superintendent McGinn asks her to note the amendment on the final

page of the file. The final page of the file is the note of the comments presumably made by Ms Green. In that copy, the word “completion” has been amended by hand to read “corruption”, so that the final comment reads “I got no real sense of corruption”. That amendment is initialled.

- 4.17 No formal statement appears to have been taken from Ms Green by Superintendent Heller and in his record of her comments there is no account of the incident itself.
- 4.18 Garda Alpha prepared a report dated 19 September 2008 to Superintendent Heller in which he described the incident broadly as previously described above. He also reported that, when he spoke to the four youths (or “lads” as he referred to them in his report), he found them to be “co-operative and [they] posed no threat at this stage”. He also recorded that, prior to the arrival of Gardaí, they had arranged a lift from a family member and they were awaiting his arrival to take them home.
- 4.19 He also noted that the female passenger who was heard to scream by Ms Green had got off the bus and left the scene before the arrival of Gardaí and that Ms Green was unable to identify this person.
- 4.20 He noted that, as he had received identification from “these lads, including contact telephone numbers and due to not having another patrol car readily available for transportation, it was felt these lads could be let go home as opposed to arresting them”. He said that it was his intention to contact them at a later stage to take a statement from them, when a full statement of complaint had been taken from Ms Green and any other passengers. He said that “shortly afterwards the lift arrived for the lads and took them away home”.
- 4.21 He reported that he interviewed Ms Green the following day and “she made a statement of complaint”. He also noted that Ms Green had said that she would try to find out the identity of the female passenger on the bus that night so that a statement could be taken from her. He said

he spoke to Ms Green on a number of occasions after that but she had not been able to find out “who the girl actually was”. She was also unable to identify anyone else who had been on the bus. He noted that the bus did not have any CCTV and that he had sought the assistance of any CCTV in Kingscourt “but there was none available”.

- 4.22 On 10 April 2014 I sought a copy of any entry in a notebook, job book etc. recording efforts to obtain CCTV. The assisting Garda who was with Garda Alpha that night has no record of the incident. Garda Alpha’s notebook entry makes no reference to such efforts.
- 4.23 Garda Alpha stated that he made contact with one of the parties involved on the night, ■■■, for the purpose of taking a cautioned statement from him. He initially made contact by phone with a view to arranging to meet him for the purpose of taking a statement. He said that ■■■ asked for the contact details of the driver and stated that he wished to apologise. Garda Alpha did not give him those details. He stated that ■■■ then asked if Garda Alpha would ask the lady if he could compensate her for any damage or loss of fares and give her a meal voucher. Garda Alpha told ■■■ that he would relay his comments to the injured party. He does not appear to have pursued the taking of a cautioned statement.
- 4.24 Garda Alpha said that he later informed Ms Green of ■■■’s offer. He reported that she said that she would think about what he had said but that she did not want an apology in person. He stated that she later informed him that she would accept a written apology and that her loss in fares was €150. She did not want a meal voucher. According to Garda Alpha,

“She said that on receipt of the foregoing she would let the matter go”.

4.25 According to Garda Alpha, he relayed this message to ■ who later called to Bailieboro Garda Station and handed Garda Alpha a sealed envelope which he told him contained a letter of apology and €150.

4.26 Garda Alpha reported that Ms Green came into Bailieboro Garda Station on 30 May 2007 and that he handed her the sealed envelope. She opened it and read the letter. He continued:

“She told me that he hadn’t said a whole lot in the apology.”

4.27 Garda Alpha said that he could see that there was also cash in the envelope. He said that Ms Green “seemed satisfied and she made a statement of withdrawal” and he later updated the PULSE incident to that effect.

4.28 He also described having a meeting with his training sergeants on 19 June 2008 at which incidents he had attended and dealt with were discussed, including this incident. He told them that he remembered doing a file and that he would have submitted a file in relation to the incident and that he should have a copy of same. When going through his files in his lockers after that, he said he had

“both original statements, and had them typed up, I later also found the report which I had not finished.”

4.29 He therefore accepted that he had not completed a full file in relation to the incident, although he had thought he had done so.

4.30 He reported that he did not know any of the parties involved in the incident and had never met them before or since the incident. He had no knowledge of them and was not at any time trying to do anyone a favour. He said that it would in fact have been simpler for him to investigate the matter fully and that what he did was due to lack of experience with an element of naivety in dealing with the public. He noted that the incident occurred early during his Phase 4 Deep Experiential Learning Development and Training. He denied any

allegation of corruption, saying he merely passed a message on from one party to another. He considered a charge of corruption to be possibly the most serious charge that could be levelled against a Garda and he was deeply disappointed that his character had been called into question like that.

- 4.31 Superintendent Heller also seems to have received a report from Sergeant Bravo, who appears to have been Garda Alpha's Supervisory Sergeant, which was addressed to the Sergeant-in-charge, Bailieboro. Sergeant Bravo said that the matter had first come to his attention during Garda Alpha's final assessment on his Phase 4, at which time Garda Alpha insisted that he believed that he had submitted a file. When he checked through his files on the desktop in the public office, he discovered a partially prepared report which he handed to Sergeant Bravo. Sergeant Bravo expressed the view that Garda Alpha had dealt with the incident

“in the most practical manner possible as he would have been unable to safely affect an arrest with four suspects and just himself and another female Garda in the patrol car and no assistance immediately available”.

- 4.32 He said that it was then that Garda Alpha may have erred in that he failed to follow up properly with preparation of a file though, from the copy of the partially completed report attached, Sergeant Bravo was of the view that “it was his intention to do so”. He also expressed the belief that there was no attempt by Garda Alpha to pervert justice or act in any way improperly. He attributed the incident to Garda Alpha's inexperience.
- 4.33 Sergeant Bravo also expressed the view that he had always found Garda Alpha to be at all times very polite and fair with his dealings with public and fellow members alike and found that his work was of high quality. He said that he

“followed up all the incidents diligently and any requests that were made of him were completed as efficiently as possible”.

- 4.34 It appears that a monthly progress report for August 2008, which recorded Garda Alpha’s activity during that period, was included with Sergeant Bravo’s report.
- 4.35 There was also a report addressed to Superintendent Heller from Sergeant Charlie of Bailieboro Garda Station, who expressed the view that Garda Alpha was a diligent and hardworking Garda whose quality of work and his work return “is very good for a member of his service”. He also noted that Garda Alpha was trusted in handling monies in a proper and professional manner. He expressed the view that he did not believe there was corrupt or inappropriate intent in his dealings with the case and said that he had spoken with him on the issues raised and he said he knew that Garda Alpha had “learned a huge lesson from this incident”.
- 4.36 Superintendent Heller interviewed Garda Alpha on 19 September 2008. In a short note of that interview, it appears that Garda Alpha accepted that he had erred and maintained that he had learned from the experience.
- 4.37 Superintendent Heller’s report dated 26 September 2008 is a short one in which he confirms that he had interviewed the member and had received reports from his sergeants and that he spoke to Ms Green. He continued:

“I have determined that no breach of discipline is disclosed by this probationer. While the probationer Garda erred, I believe it was not with any malice in the case of alleged breach No. 2 and in the case of alleged breach No. 1 it was as a consequence of poor assessment of his duties at an early stage of his career, that is while on Phase 4, the aptly termed ‘deep experimental (sic.) learning phase’.”

4.38 By letter of 6 October 2008 Chief Superintendent Rooney, who had appointed Superintendent Heller as Deciding Officer, furnished two copies of Superintendent Heller's file to the Assistant Commissioner, Human Resource Management. His letter included the following comments:

“On examining the file of Superintendent Heller, I find it difficult to understand the conclusions arrived at by the Deciding Officer in relation to the alleged breach bearing in mind the evidence of the member concerned.

I intend to address the unacceptable practice of facilitating the Civil resolution of a Criminal issue by members of An Garda Síochána as is evidenced in the investigation.

I am issuing a directive on the matter to the Divisional Force.”

4.39 A few days later, Chief Superintendent Rooney issued a directive to the District Officers in the Cavan/Monaghan Division. It referred to “a number of disturbing instances recently in this Division” and stated that the civil resolution of criminal issues, resulting in a complaint being withdrawn, a criminal investigation not proceeding or criminal proceedings not being instituted

“is contrary to good policing practice and will be discontinued forthwith”.

4.40 His directive proceeds to set out the procedure to be followed and states that:

“Members of An Garda Síochána should not engage in any negotiation between injured parties and suspects on the payment of compensation. The issue of compensation is an issue entirely for any alleged culprit in his approach to addressing his wrongdoing and it should in no circumstances be conditional on any actions as to likely proceedings arising except in the explicit

circumstances set down in relation to the Juveniles Diversion Programme.”

4.41 He also directed District Officers to take every opportunity to address members on this issue on an ongoing basis and directed all supervisors to do likewise. He said

“No Supervisors should entertain any such action on the part of a subordinate and should give firm leadership and guidance in this regard.”

4.42 Information provided to me, on request, indicates that Chief Superintendent Rooney’s directive was circulated to every sergeant in the Division.

Findings of the Byrne-McGinn Report

4.43 In this case, somewhat unusually, the incident had led to disciplinary proceedings which had concluded before the Byrne-McGinn report was completed. That report noted that no file had been compiled in the matter and that, although a statement was taken from Ms. Green, it was not submitted by way of an investigation file to Superintendent, Bailieboro. It noted the outcome of the disciplinary investigation and said

“There is no new evidence which would justify another disciplinary investigation.”

4.44 It referred to the relevant HQ Directive which made it clear that Gardaí did not have authority to organise compensation for victims of crime. It also noted that the incident was classified as public order on PULSE, which also recorded

“that the statement of complaint has been withdrawn by the injured party”.

4.45 It then observed:

“Sergeant McCabe’s assertion that the incident involved false imprisonment and sexual assault is a gross exaggeration of the facts and bears little resemblance to the available evidence.

While the investigation was shabby and the investigating member took a short cut in accepting the compensation route, this aspect has already been investigated by Superintendent Heller and a determination made in which circumstances no further disciplinary proceedings are appropriate or warranted.”

Sergeant McCabe’s Complaints

4.46 In his complaint contained in the dossier, Sergeant McCabe does not describe the incident as one involving sexual assault. He does, however, state that, when Garda Alpha met with Ms. Green,

“He told her she had no case, requested a statement of withdrawal and gave her 3 x €50 as compensation from the three suspected offenders.”

4.47 Sergeant McCabe is critical of the failure to complete an investigation file, alleging that there was a serious neglect of duty. He alleges that the PULSE record was falsified and describes Garda Alpha’s actions as disgraceful. He is critical of the finding that there was no breach of discipline. He is also critical of the way the incident was handled by Superintendent Delta, when the matter was brought to his attention by one of Garda Alpha’s training sergeants. The complaint in the January 2012 letter to the Confidential Recipient is to like effect.

4.48 In his letter of 26 February 2013 to the Secretary-General of the Department of Justice and Equality, the Commissioner gave a history of this incident. In his account of the circumstances in which the matter came to be compromised, he said the following:

“During investigations when interviewing the alleged main culprit in the matter, ■■■, Garda Alpha was allegedly asked by him if he

could compensate Ms. Green for his behaviour. Garda Alpha relayed this to the injured party who considered it and allegedly informed Garda Alpha that she would accept a written apology and €150 in compensation. Garda Alpha relayed this to the alleged main culprit, who subsequently handed a sealed envelope to Garda Alpha and informed him that it contained a letter of apology and €150 for Ms. Green.”

- 4.49 The proposal for compensation, on Garda Alpha’s account, did not arise when ■ was being interviewed. It arose when Garda Alpha called him to arrange an interview but, as a result of the proposal being made, Garda Alpha did not proceed to arrange an interview and none took place. The same mistake appears in the Byrne-McGinn report.
- 4.50 The Commissioner noted that Ms. Green, although she apparently accepted the letter of apology and the payment and made a statement withdrawing her complaint, subsequently made a complaint to the Garda Síochána Ombudsman Commission. He said GSOC decided that the matter should be the subject of an unsupervised investigation, i.e. it should be investigated by An Garda Síochána without GSOC supervision. The Commissioner noted that Superintendent Karl Heller was appointed to carry out an investigation and determined that no breach of discipline was disclosed. He said that Superintendent Heller determined that the member was a Phase IV Probationer with six months service and had erred in his investigation, but there was no malice or corruption. The Department does not appear to have been told of Chief Superintendent Rooney’s comments on the outcome of this disciplinary process and, specifically, his view that he found it “difficult to understand the conclusions arrived at by the Deciding Officer”.
- 4.51 I have not seen any papers relating to any involvement by GSOC in this matter.

Analysis

- 4.52 The first and most obvious concern in relation to the handling of the investigations into Sergeant McCabe's complaints is that at no time does it appear that the statement of the victim was considered, notwithstanding that Garda Alpha had said that he took one from her. It does not appear from a reading of the Byrne-McGinn report that a copy of any statement from the victim was considered. This difficulty is compounded by the fact that Superintendent Heller appears to have spoken to the injured party during the course of the disciplinary process but without taking a statement from her. His notes of that conversation are very short and, most importantly, do not contain any account of the incident itself.
- 4.53 It is difficult to understand how the Byrne-McGinn report can have concluded that Sergeant McCabe's account of the incident was "grossly exaggerated" without having seen a statement from the victim. Had that statement, from which I have quoted at some length above, been considered, I do not think that this conclusion could possibly have been reached.
- 4.54 I note that the account of the incident contained in the dossier does not include an allegation of sexual assault, whereas Sergeant McCabe's complaint to Chief Superintendent McGinn did make that allegation. My reading of the statement of Ms Green identifies three separate assaults. Two of them are reasonably capable of being seen as sexual assaults. The third cannot be confidently categorised without a statement from the person involved, which was never obtained, but the surrounding circumstances are strongly suggestive of sexual assault.
- 4.55 The views expressed that this incident received only a "shabby investigation" by a probationary Garda with "little or no supervision from his supervisory Sergeant" are a matter of real concern.

- 4.56 In addition, I am concerned by the reference in Sergeant McCabe's report to the suggestion that the victim was told that "she had no case" when the statement of withdrawal was requested from her. I have seen, on request, a copy of the original handwritten statement of withdrawal. It is a matter of some concern that Garda Alpha should have effectively halted his investigation by not proceeding to interview the suspect. If the victim was later told, simply because the investigation had not been completed, that there was insufficient evidence but was not given any explanation for that insufficiency, that would be quite improper. I can, of course, make no determination as to what exactly Ms Green was told, but it does not appear that Sergeant McCabe's allegation in that regard, as set out in the letter of 23 February 2012, was ever investigated, or that Ms. Green was ever asked about the circumstances in which she came to make her statement of withdrawal.
- 4.57 Some concern arises also about the effectiveness of the disciplinary process arising out of this incident. That concern was expressed even by Chief Superintendent Rooney, who was unable to understand the finding that there was no breach of discipline, having regard to the admissions made by the member concerned. In this case, as with others examined elsewhere in this report, it is not apparent that the probationer member who conducted the investigation received any effective supervision or guidance. While I can make no determination in that regard, I note that this view was expressed in writing by the probationary Garda's training sergeant and that this view was communicated to the District Officer, the Divisional Officer and to Garda Headquarters. I have seen no evidence that it was acted upon. The possibility that a want of supervision or guidance contributed to the improper conduct of the investigation does not seem to have been considered a matter that might have warranted disciplinary proceedings in itself.
- 4.58 In all the circumstances, I am of the opinion that there is cause for concern as to the adequacy of the investigation of the complaints made by Sergeant McCabe in relation to this incident and a sufficient basis for

concern as to whether all appropriate steps were taken by An Garda Síochána to investigate and address the specified complaints.

- 4.59 In my opinion, these matters warrant further inquiry in an appropriate forum in the public interest.
- 4.60 As I have not received any papers from GSOC, I have no insight into the nature of Ms. Green's complaint to that body or the process of reasoning which led to the case being treated as one suitable for unsupervised investigation, as reported by the Commissioner to the Minister (and as previously stated by Chief Superintendent McGinn). In fact, I cannot confirm that there was a complaint to GSOC. There is a possibility that the institution of disciplinary proceedings as a result of the report from Garda Alpha's training sergeant was misunderstood as the result of a complaint to GSOC. In any event, I am of the opinion that, if GSOC did receive a complaint in this matter, the handling and outcome of that complaint would usefully form part of the subject matter of any further inquiry that might occur.



Chapter 5: Assault at the Lakeside Manor Hotel on 14 April 2007

5.1 Mr White of Virginia, Co. Cavan went out on the night of 13 April 2007 to celebrate a neighbour's 21st birthday party in a public house in Virginia. He left there about 12.30am the following morning to go by minibus to the Lakeside Manor Hotel in Virginia, where there was a nightclub. Sometime later, at about 2.15am on 14 April 2007 he went outside and sat on a window sill facing the lake with his sister, Ms White. She went back inside after about five minutes and he remained there alone. He then described hearing some shouting, something about a girlfriend, and he felt a bang on the side of his head. He was unable to say what happened after that. The next thing he remembered was talking to his sister who was going frantic. He recalls being taken by ambulance to Cavan Hospital.

5.2 A medical report prepared by [REDACTED] of Cavan General Hospital noted that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Photographs, which appear to have been taken in the hospital, show Mr White with facial injuries.

The Garda Investigation

5.3 Mr White's statement was taken on 17 April 2007 by Garda Echo, who had attended the scene. He had in fact spoken to Mr White in the ambulance before he was taken away and he also spoke to a number of

other people who were there. He identified one ■ of ■ as a suspect.

- 5.4 Garda Echo also viewed CCTV footage at the Lakeside Manor Hotel. It is not clear exactly when he did this, although it appears to have been within a few days of the incident. In his statement made on 29 November 2007, he described viewing the CCTV footage and reports that he:

“Observed an altercation occur at the side of the entrance of the lakeside manor nightclub. The parties involved were ■ and Mr White and to a lesser extent ■. With Witness A observing.”

- 5.5 Garda Echo appears to have attended the scene with another Garda, but there is no statement from him.

- 5.6 Garda Echo arrested ■ on suspicion of assault on 11 July 2007 and brought him to Bailieboro Garda Station, where he was detained by the member in charge of the station.

- 5.7 ■ was interviewed twice while in custody. During the first interview, when asked whether he had an altercation with Mr White, he gave an account of an earlier incident alleged to have occurred on the dance floor. ■

■ This led to an incident with some pushing and shoving which prompted the intervention of the bouncers. He described going outside thirty or forty minutes later with his friend, ■, and seeing Mr White sitting on a window sill facing the lake as he was returning. He said that Mr White said something to him and that he went over to Mr White “to shake hands about what happened”. He said that as he got to Mr White, the latter put his hand out and struck him on the chest. He said they then started to “tustle” (sic.). He said that ■ was standing behind him. A woman, Witness A, was also there. He was not aware whether they got involved, although he said “they maybe tried to split it up”. He admitted that he and Mr White “probably exchanged one or two boxes”. He also described them wrestling and falling to the

ground and said that he managed to shift his weight in such a way that Mr White hit the ground first with him on top. He said there was a smashed bottle on the ground and he could see that Mr White had “cut his whole face on the glass”. He denied hitting Mr White on the ground.

- 5.8 ■ described being threatened and attacked by other people who were at the scene following the incident and said that the bouncers were trying to get him to go up the road. He described leaving the scene.
- 5.9 In the second interview, he admitted punching Mr White. Asked about ■'s involvement, he said that ■ tried to stop it. ■ also described hiding after the incident. He said it was not to hide from the Gardaí, but because “people in the crowd were chasing us”.
- 5.10 ■ was charged at 22:24 on 11 July 2007 with assault causing harm contrary to Section 3 of the Non-Fatal Offences against the Person Act 1997.
- 5.11 ■'s friend, ■, was arrested by Garda Echo on 19 September 2007 on suspicion of assault and brought to Bailieboro Garda Station, where he was detained. ■ was interviewed on two occasions during the course of his detention. He also referred to the earlier incident on the dance floor. In relation to the later incident outside, he said that he was walking back in when Mr White said something to ■ and ■, ■ and Witness A went over to him. He said that Mr White pulled ■ in and they went head to head. He said they scuffled, wrestling. Asked did ■ throw any punches at Mr White he replied “Yeah when they went on the ground.” He said that ■ “threw 3 punches to the face” when they were on the ground. ■ denied that he himself had punched or kicked Mr White. He did however say that, when the row was finished, he (■) “pulled his [Mr White's] hands off ■ and told ■ to walk away”.
- 5.12 During the course of this interview with ■, the following notable exchange occurred.

Q: "There is CCTV footage which show's (sic.) you striking [Mr White] - what do you say to that?"

A: "I didn't strike him".

- 5.13 ■ was released without charge.
- 5.14 Following the charging of ■ on 11 July 2007, Garda Echo wrote a short report addressed to the "Superintendent, Cavan District", reporting that ■ had admitted striking Mr White and that the latter "was taken to hospital with serious head injuries on the night". He also reported that he needed time to prepare a full file and that there were "a number of other suspected offenders to be questioned". His report also included his suggestions as to conditions of bail for ■
- 5.15 That report was sent on from the District Office to the Sergeant-in-charge, Bailieboro (Sergeant McCabe) on 13 August 2007 with a request for an investigation file to be forwarded in early course. Sergeant McCabe passed it on to the Sergeant-in-charge of Garda Echo's unit, stating "full file required please". The unit sergeant, similarly, forwarded a request for a full investigation file in early course to Garda Echo. Accordingly, it appears that, by mid-August 2007, Garda Echo's unit Sergeant, the Sergeant-in-charge of his station and his District Officer were all aware of the incident and that his investigation into it was ongoing.
- 5.16 An investigation file was forwarded by Garda Echo directly to the Superintendent, Bailieboro, dated 19 September 2007. It is a very short report to the effect that ■ was arrested and questioned and admitted striking Mr White and that the latter had been taken to hospital with serious head injuries. It noted that ■ had been arrested and stated that he observed ■ strike a number of blows to the head of Mr White. It also noted that ■ had been charged and was remanded to appear at Virginia District Court on 20 August 2007 (which probably should have read 20 September 2007) and noted that ■ had no previous convictions.

In addition to the usual formalities appended to the report, the only statements were a witness statement of Mr White, a statement of evidence of Garda Echo, copies of the two memos of interview each with ■ and ■ and a copy of the medical report and photographs of Mr White's injuries. The statement of evidence of Garda Echo is dated 29 November 2007 but appears to be appended to the report of 19 September 2007. Garda Echo is unable to explain that anomaly.

- 5.17 The matter appeared in Virginia District Court on 20 September 2007. The note of the proceedings in court on that date included the following remarks:

“Investigation file should be completed without delay - statements of Garda Echo and members involved in interviews should be attached to file”.

- 5.18 The learned District Judge accepted jurisdiction on 20 September 2007 and the matter was adjourned to 15 November for hearing.

- 5.19 On 7 November 2007 Garda Echo furnished an updated investigation file, again addressed directly to the Superintendent, Bailieboro. In addition to the previous report, it included a note to the effect that

“footage cannot be downloaded due to fault with CCTV system at lakeside manor. Footage observed by Garda Echo shows ■ go out of view with injured party. Footages (sic.) shows only partial view of incident where a scuffle takes place but unable to make out what actually occurred.”

- 5.20 Statements of Gardai involved in the detention and interview of ■ were now also appended to this report.

- 5.21 Although the report was addressed to the Superintendent, it appears to have been forwarded, in the usual way, by Garda Echo's unit Sergeant to the Sergeant-in-charge at Bailieboro, Sergeant McCabe on 10 November 2007. On 13 November 2007 Sergeant McCabe submitted a report to the

Superintendent stating that there were shortcomings in the investigation and identifying ten separate matters that required to be dealt with, including the need to produce the CCTV footage and to interview and take statements from a number of people who were at the scene. He reported that he had sent all of those requests for further investigative steps to be taken to Garda Echo and had agreed a final adjournment of the proceedings with the solicitor for the defence.

5.22 It appears, from the statement later made by Superintendent Foxtrot, that he did not see the file at the time as he was attending a murder trial in Dublin where he was the senior investigating officer. Inspector Delta was acting District Officer. This appears to be confirmed by a hand written note on Sergeant McCabe's report addressed to Inspector Brendan Cadden in Cavan in relation to seeking an adjournment of the hearing. Inspector Cadden noted that the proceedings were adjourned to 3 December 2007. On the same date as the matter was listed in court, 15 November 2007, Sergeant McCabe drew the matter to the attention of the Superintendent, Bailieboro stating that defects had been discovered in the file prior to the District Court hearing and "it is lucky that we were not embarrassed in court". He expressed the view that the "lack of investigation carried out in the case can only be one of two things:

- "Neglect of duty or
- Inexperienced."

5.23 On 27 November 2007 Superintendent Foxtrot replied to Sergeant McCabe expressing his agreement that the investigation had not been satisfactorily completed.

5.24 He stated:

"This was a very serious incident. It is listed for contested hearing peremptory against the State. I presume that all the enquiries have now been completed."

- 5.25 He directed Sergeant McCabe to arrange a conference attended by the investigating members, Sergeant McCabe and Superintendent Foxtrot himself. Sergeant McCabe responded in writing on the same date to say that a meeting had been arranged for the following day at 5.30pm and that Garda Echo and himself would attend.
- 5.26 In his statement Superintendent Foxtrot said that Garda Echo gave a detailed account of his conduct of the investigation at that meeting on 28 November 2007. Superintendent Foxtrot noted that Garda Echo said he viewed CCTV footage at the Lakeside Manor:
- “Garda Echo stated that he observed the recorded incident taking place between ■■■, Mr White and another man which he knew to be ■■■.”
- 5.27 Superintendent Foxtrot also noted that Garda Echo was “experiencing difficulties in obtaining the CCTV footage”. The latter was “of the view that it was not technically possible to download it from the computer hard drive retained by the Lakeside Manor Hotel”. Superintendent Foxtrot said he directed Sergeant McCabe to assist Garda Echo by arranging technical assistance to obtain the CCTV footage. He also stated that he directed Sergeant McCabe and Garda Echo to complete the investigation immediately and directed that certain additional statements and interviews take place. These included interviewing and recording a statement from four civilians, including Ms White and ■■■. Those and other relevant civilian statements do appear to have been taken. Superintendent Foxtrot also states that he had directed that Mr White be re-interviewed. It is not apparent that this was done. Superintendent Foxtrot also directed that a full statement of evidence from Garda Echo be provided. This is, presumably, the statement of 29 November 2007.
- 5.28 Superintendent Foxtrot also directed that CCTV evidence be obtained.

5.29 On 10 April 2014 I sought any notes, minutes or record of the meeting of 28 November and on 23 April 2014 I received Superintendent Foxtrot's rough notes of the meeting. These were not intended to be a record of the meeting, but to assist Superintendent Foxtrot to tease out the facts and to assist in progressing the matters. The notes record the following account (in part) of what was seen on CCTV:

“■ and Mr White exchange of words

All moved around corner could not see them on CCTV.

Could see Witness A + ■ standing aside + ■ + [Mr White] out of view.

■ then went in to get involved Witness A stood aside

The 3 left – [Mr White] left behind”

5.30 I can find no note that there had been any difficulty in obtaining CCTV footage or that Garda Echo expressed the view that it was technically impossible. On the contrary, the notes appear to include the words

“CCTV saved on hard drive”.

5.31 Superintendent Foxtrot stated that a further conference to update progress in the investigation occurred on 29 November 2007. He also stated that at a further conference Garda Echo reported that he had obtained technical assistance, but was unable to download the footage as the hard drive had not stored the footage. There is a statement from Witness B, whose occupation is described as Technical Services Manager, and who stated that he installed the CCTV system for the Lakeside Manor Hotel. He stated:

“I have attempted to download the footage that was required. The footage was no longer stored on the hard drive. There was a problem previously to download the incident on to CD.”

5.32 It is not clear what is meant by this reference by Witness B to a problem previously in downloading the incident. Since it appears that his assistance was only sought following the conference on 28 November 2007 and his statement was taken the following day, it seems unlikely that he would have any direct personal knowledge of previous attempts to download the footage of the incident.

5.33 A statement was also taken from Witness C. This statement was taken on 16 January 2008 and he stated:

“I remember viewing footage of the incident of the 14th April 2007. I first viewed the footage with [a named Garda]. I was unable to download the footage on this occasion. I also viewed the footage with Garda Echo on a separate occasion, again there was a problem with the system. I was unable to download the incident onto the CD. This is an ongoing problem. The footage was saved onto hard drive. However there is ongoing difficulties with the system and it has been cleared of (sic.) the hard drive. This is an on going problem. The system has been removed from the hotel and is been (sic.) repaired at McAlarms. I am the only person able to operate the system at the Lakeside Manor.”

5.34 There is no indication what dates Witness C is referring to in his statement. When the same Witness C was asked to download footage of another incident at the same premises on 28 December 2007 (after this incident, but before that statement), he appears to have been able to do so without difficulty (see Chapter 9).

5.35 On 10 April 2014 I sought copies of any notebook entries made by Garda Echo, the other Garda who attended the scene, or the Garda named in Witness C's statement, in relation to efforts to obtain or download CCTV footage of this incident. The first two have notebook entries of the incident, but no note relating to CCTV. The third has no notebook entries related to this incident.

The Trial of ■■■

5.36 The case was heard in Virginia District Court on 17 January 2008. The solicitors for the defence were notified on 14 January 2008 by Superintendent Foxtrot that Gardai had been unable to download the CCTV footage “due to technical difficulties”. It was explained that the prosecution would therefore not be able to introduce CCTV evidence. It was also explained that Garda Echo had been able to view the CCTV shortly after the incident while it was on the system, but the footage was no longer available.

5.37 Inspector Delta prosecuted the case and he made a note of the proceedings for the Garda file. It records that the District Judge could not rely on the evidence of ■■■ and that he said “I believe ■■■ did strike [Mr White]”. It also reported:

“The only evidence State can depend upon is ■■■ whom I am not happy with. The evidence here is contrary to what he said after caution.”

5.38 The note also recorded that the District Judge was disappointed that CCTV was not retrieved and said that it was in the public interest and in the interest of victims that CCTV must be retained up to six months.

5.39 There is also a note to the following effect:

“Comment Garda that he should answer questions more direct. CCTV did or did not state [Mr White].” (sic.)

5.40 The learned District Judge dismissed the charge.

The Byrne-McGinn Investigation

5.41 In a statement made on 15 October 2008, Sergeant McCabe stated that Inspector Delta was the prosecuting officer in court and that the latter informed him of what had happened and that he would be forwarding a file to the Divisional Officer to initiate disciplinary proceedings against

Garda Echo. Sergeant McCabe said that he informed Inspector Delta that he may not be able to do that because

“Superintendent Foxtrot had told Garda Echo on the day at our urgent meeting that he would not be disciplined. Inspector Delta was astonished. With all the urgent time and work I had put into the case I was aggrieved that no sanction whatsoever was handed out for this total neglect of duty which left an injured party with injuries and no satisfactory outcome. The injured party in this case was never contacted by the Gardaí for us to explain our behaviour and manner of the non-investigation of his complaint. It showed that Gardaí were allowed to run wild under Superintendent Foxtrot with no sanctions whatsoever. The lack of investigation in this case and its disturbing manner of interviewing was appalling.”

- 5.42 Superintendent Foxtrot said (in his report to Chief Superintendent McGinn) that he understood that Sergeant McCabe had made an allegation that District Judge McBride “struck out the case because of ‘non-investigation’ by Garda Echo and that the judge had to apologise to Mr White because of Garda Echo’s alleged behaviour”. Superintendent Foxtrot said that version of what occurred in court is not what was reported by the prosecuting officer, Inspector Delta, as shown in the court file. He said that he was aware that Sergeant McCabe was not in court on that date.
- 5.43 Superintendent Foxtrot stated that he enquired of Sergeant McCabe and Garda Echo about the inordinate delay in completing the investigation at the conference in late November. Garda Echo told him [REDACTED]
[REDACTED]
[REDACTED] he was “experiencing difficulties in getting all the enquiries done”. He said that Garda Echo acknowledged his responsibility to ensure that investigations are completed

expeditiously and also that Garda Echo apologised and stated that he had made mistakes and had learned from the experience.

5.44 Superintendent Foxtrot said that he formed the view that Garda Echo was “a junior and inexperienced member”. He also said that he took account of Sergeant McCabe’s report which attributed Garda Echo’s lack of investigation either to neglect of duty or inexperience.

5.45 He then said:

“I cautioned Garda Echo that I took a serious view of delays in completion of investigation files. I informed Garda Echo that I was not going to report him for disciplinary investigation in this instance but if there was a repeat I would do so. Garda Echo stated that there would be no repetition.”

5.46 Superintendent Foxtrot noted that, in his report of 15 November 2007, Sergeant McCabe “made no recommendation that Garda Echo should be disciplined.” He also stated that at the meeting, Sergeant McCabe “made no issue to me about my decision or at any time after that”.

5.47 He recalled that after the meeting with Garda Echo, he advised Sergeant McCabe to

“coach Garda Echo with his self-management of his investigation files and to continue to monitor his progress. Sergeant McCabe agreed and undertook to monitor Garda Echo’s future progress.

I thanked Sergeant McCabe for his assistance in the matter. I got the impression from him that he was satisfied with the outcome.”

5.48 In interview for the purpose of this report, Sergeant McCabe denied this account of events. It does not appear that he had the opportunity to comment on Superintendent Foxtrot’s account prior to the conclusion of the Byrne-McGinn investigation.

- 5.49 The Byrne-McGinn report expressed the view that the investigation “was not carried out in a timely and professional manner”. It also noted that Superintendent Foxtrot considered that “the junior member’s inexperience gave rise to the problems”. It recorded that Superintendent Foxtrot verbally and informally cautioned the member and informed him that in the event of a repetition he would be subject to a disciplinary investigation. It also noted that Sergeant McCabe was advised accordingly and “he in turn agreed to monitor Garda Echo’s future progress”.
- 5.50 Chief Superintendent McGinn also expressed the view that Sergeant McCabe’s “assertion that the judge criticised Garda Echo’s investigation is inaccurate”, having noted that Sergeant McCabe had not been in court on the date in question. The report continues, “in fact, the lack of the availability of the CCTV evidence in court and the fact that evidence of the main prosecution witness was unreliable caused the case to be dismissed.” Superintendent Foxtrot had commented, in his statement to the Byrne-McGinn investigation, on Sergeant McCabe’s not being in court on the day of the hearing. Of course, he was not there either. The only officer who was there, Superintendent Delta, had also made a statement to the Byrne-McGinn investigation. In that statement he did not deny that the judge had criticized Garda Echo. He offered no explanation of his note of the judge’s comment about Garda Echo’s evidence.
- 5.51 The report concludes in relation to this incident that the incident is correctly recorded on PULSE and states that no further action is required.

Complaints by Sergeant McCabe

5.52 In the dossier, Sergeant McCabe alleged:

“Assistant Commissioner Derek Byrne investigated it and did not uphold my complaint. He stated “Investigating member verbally cautioned. Case dismissed for reasons other than as described in complaint”. This was a cover up by Assistant Commissioner Derek Byrne and he reported a false finding in this case.”

5.53 In the letter to the Confidential Recipient dated 23 February 2012 he said:

“A Serious matter were (sic.) reported to Superintendent Foxtrot in writing involving a case of assault causing harm with serious injuries where potential witnesses were never interviewed, criminal conduct by Gardai in the investigation and no evidence against the person charged with the assault. He ignored what was reported to him and praised the Garda in question. When the case came to trial Judge Mc Bride devoured the Garda in question in the witness box, [REDACTED] and told the injured party that he had to dismiss the case due to the behaviour of the Garda.”

5.54 In his letter of 26 February 2013 to the Secretary-General of the Department of Justice and Equality, the Commissioner commented:

“The case was heard on the 17th January 2008. From the notes taken by the Prosecuting Officer, (Inspector Delta), it would appear that the reliability of witnesses was an issue as was the absence of CCTV footage. Superintendent Delta’s report does not deal with any criticisms levelled against the investigating garda by Judge McBride”.

5.55 The letter includes a very lengthy extract from the report of Superintendent Foxtrot. There is no response from Sergeant McCabe recorded.

5.56 The Commissioner commented that the original investigation carried out by Garda Echo was not carried out in a timely and professional manner and that there were delays in interviewing witnesses which required explanation. He said that those matters were highlighted by Sergeant McCabe to Superintendent Foxtrot when he reported that the shortcomings were either “neglect of duty or inexperience” by the junior investigating member. He said that Superintendent Foxtrot considered that report and

“believed that the junior member’s inexperience gave rise to the problems as stated. As a result, he verbally and informally cautioned the member and informed him that in the event of a repetition he would be subject to a disciplinary investigation. Sergeant McCabe was advised accordingly and he in turn agreed to monitor Garda Echo’s future progress”.

5.57 The Commissioner said:

“It appears that Sergeant McCabe was not in court on the date in question and his assertion that the Judge criticised Garda Echo’s evidence is inaccurate. In fact, the lack of the availability of the CCTV evidence in court and the fact that evidence of the main prosecution witness was unreliable caused the case to be dismissed.”

5.58 By way of update, the Commissioner commented that Superintendent Foxtrot was not the District Officer on the date the incident occurred, his tenure commencing four months later. He said “There are no issues in this matter for Superintendent Foxtrot”.

Analysis

- 5.59 The crucial evidence in this case was the CCTV evidence. Whether or not it showed exactly what happened during the assault, it was bound to be of some value. On the account of the CCTV footage recorded in Superintendent Foxtrot's notes, it appears that the footage showed that the main prosecution witness was initially standing aside while the victim and the accused were off-camera at the time of the assault. That footage, had it been available, would have supported the evidence of the prosecution.
- 5.60 Statements were taken, albeit some considerable time after the incident, to the effect that there were technical difficulties in obtaining the CCTV footage. The available papers do not clearly establish that it would not have been possible to obtain the footage had diligent efforts been made to do so in a timely manner. The absence of any notebook entry by the Gardaí involved in the investigation relating to efforts to obtain and download CCTV is capable of undermining any case the prosecution might wish to make that such efforts had been made. That difficulty is compounded by the fact that the statements taken from the technical witnesses to establish that there was a technical issue with the footage do not mention any date on which the efforts to download the footage were made.
- 5.61 Insofar as the real issue in the case was the credibility of the main prosecution witness (and the learned District Judge appears to have commented to that effect), his credibility cannot have been unaffected by the fact that he was accused by Gardaí in interview of having been seen on CCTV striking the victim himself. It is difficult to understand how that suggestion could legitimately have been made to ■■■, given Garda Echo's account at the conference with Superintendent Foxtrot of what he had seen on the CCTV footage. It is a matter of concern that such a suggestion might have been put to a person in custody in those circumstances. It is also a matter of concern that the fact of that

suggestion having been made may have affected the credibility of a prosecution witness in a criminal trial.

- 5.62 The difficulty for the learned District Judge is obvious. If Garda Echo had been telling the truth about what he saw on the CCTV when he was interviewing ■■■, then ■■■'s evidence that it was ■■■, and not he, who had hit Mr White was unreliable. On the other hand, if ■■■ was telling the truth, then Garda Echo misled ■■■ in interview. In either case, one or other prosecution witness (and perhaps both) had a serious credibility issue and that issue turned on what Garda Echo saw on the CCTV. Inspector Delta's note of the hearing, and in particular of the learned District Judge's comment about Garda Echo's evidence of what he saw on the CCTV, suggests that the judge was troubled by that evidence.
- 5.63 The comment made by the Commissioner in his letter of February 2013, to the effect that Sergeant McCabe's assertion that the learned District Judge had criticised Garda Echo's evidence was inaccurate, is open to question. Inspector Delta's note of the decision of the Court clearly includes reference to a comment by the Judge as to how Garda Echo was answering questions, and that comment related to the important issue of credibility identified above. The possibility exists that, in passing comment to that effect, District Judge McBride was able to express himself with more vigour and colour than Inspector Delta was able to record. Quite apart from that possibility, it must also be noted that Sergeant McCabe's account of the judge's critical remarks was not contradicted by Superintendent Delta's statement to the Byrne-McGinn investigation. The latter seems to have acted on Superintendent Foxtrot's account of the proceedings in court, even though he had not been present either.
- 5.64 The investigation of Sergeant McCabe's allegation seems ultimately to have been resolved, at least in part, on the basis of Superintendent Foxtrot's account of his meeting with Sergeant McCabe, in particular the suggestion that the meeting ended with Sergeant McCabe agreeing to

monitor the future performance of Garda Echo and to “coach” him. That account appears to have been accepted and acted upon by the investigation team, and ultimately to have been communicated to the Minister by the Commissioner. It is not apparent that any effort was made to establish whether Sergeant McCabe accepted that account. He has informed me that he does not accept it and that he did not have an opportunity to comment on it.

- 5.65 Sergeant McCabe’s initial complaint was made under the Garda Síochána Policy on Harassment, Sexual Harassment and Bullying in the Workplace. Section 8.6 of that document includes the following text under the heading “The investigation and the complainant”:

“The complainant will be provided with a copy of the statement of the person against whom a complaint has been made. The complainant will be given an opportunity to comment on the statements.”

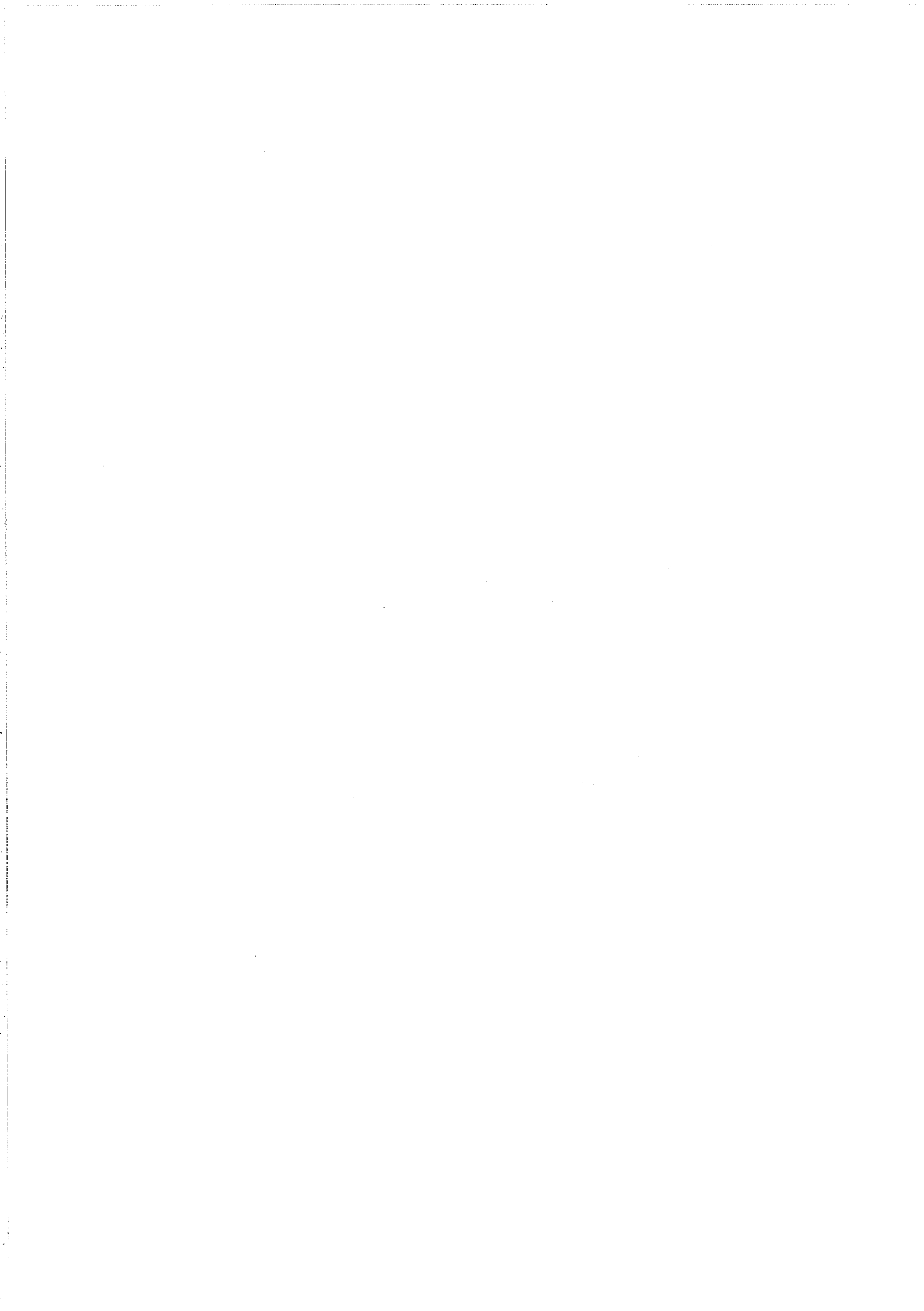
- 5.66 The decision of An Garda Síochána that the complaint made by Sergeant McCabe warranted a wider investigation than would be appropriate under the Bullying Policy ought not to have deprived Sergeant McCabe of this important procedural right. In any event, it appears that he was told that he would not be deprived of that right. He has provided me with a copy of a letter dated 2 October 2008 from Chief Superintendent McGinn in which she stated that

“When all statements have been taken and evidence gathered, [Sergeant McCabe] will then be given an opportunity to comment on the content of witness statements and other evidence in accordance with the Policy document”.

- 5.67 The statement of methodology contained in the Byrne-McGinn report makes no mention of this procedure and the content and layout of the report tends to confirm Sergeant McCabe’s assertion that he did not have

the opportunity to comment on the evidence uncovered by the investigation.

- 5.68 If Sergeant McCabe was denied that opportunity, and I have seen no evidence to contradict his assertion that he was, I am of the opinion that there was a fundamental procedural flaw in the investigation.
- 5.69 Superintendent Foxtrot did have the authority to resolve a disciplinary matter informally in accordance with Regulation 10 of the Garda Síochána (Discipline) Regulations 2007. It must be open to doubt, however, whether, in all the circumstances of this case, that was the appropriate course. It appears that no written report of the breach of discipline was made. The suggestion that Superintendent Foxtrot had said he would take a different approach if there was a repetition is one which might not have been a source of enormous concern to a junior member, given the relatively short periods of service that were usual for District Officers in Bailieboro.
- 5.70 In all the circumstances, I am of the opinion that there is cause for concern as to the adequacy of the investigation of the complaints made by Sergeant McCabe in relation to this incident and a sufficient basis for concern as to whether all appropriate steps were taken by An Garda Síochána to investigate and address the specified complaints.
- 5.71 In my opinion, these matters warrant further inquiry in an appropriate forum in the public interest.



Chapter 6: Offences Committed by Jerry McGrath

6.1 On Friday 7 December 2007, [REDACTED] left Sixmilebridge in County Clare to celebrate her birthday in Limerick City with her sister and a friend. [REDACTED]

6.2 The exact circumstances of her death are unknown in that the only account of what happened in the hotel room is that which was later provided to Gardaí by Mr McGrath. He was charged with the murder of Ms [REDACTED] and pleaded guilty before the Central Criminal Court. He was sentenced to life imprisonment.

6.3 The evidence against him included admissions he had made in interview while in detention in Henry Street Garda Station on 11 and 12 December 2007. During the course of those interviews he admitted assaulting Ms [REDACTED] and said that he did so when she became agitated upon learning that he “had broke into a house and [been] charged with the assault on a minor”. In Mr McGrath’s account of his assault on Ms [REDACTED], she accused him of being a paedophile and a creep upon hearing of these events, and he became angry and began to assault her as a result.

6.4 On the only available account, therefore, of the death of Ms [REDACTED], the fact of her killer’s having been involved in that previous offence was an important factor. It is important also for another reason, in that Mr McGrath was on bail for that other offence at the time of the murder. He was also on separate bail arising out of an incident in April 2007 in Virginia, Co Cavan. Indeed, he was on bail for the Cavan incident both

at the time of the murder and at the time of the earlier offence involving a child.

Assault on [REDACTED]

[REDACTED] was working as a taxi driver in Kells, Co. Meath in the early hours of 30 April 2007. At around 2:15am she was approached by a man who asked her if she would take him to Virginia, Co Cavan. She accepted the fare and on the way to Virginia they had a conversation in which he told her of some unhappy events in his personal life. On arrival in Virginia, he gave her directions which appear to have brought them to a quite isolated location. He said something about staying at his sister's house, but seemed unsure where he wanted to go. Ms [REDACTED] pulled up at a house in the area to which he had given directions. He got out of the car and Ms [REDACTED] told him the fare was approximately €32. He walked around the back of the car towards the driver's side, opened the car door, and told Ms [REDACTED] he had no money. She told him she would have to report this to the Guards and he leaned in and tried to take the keys. He appeared to succeed in taking the keys out of the ignition (although he may in fact only have succeeded in taking the key-ring) and then he started pulling her hair and telling her to get out of the car. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6.6 [Details of assault]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] He calmed down and Ms [REDACTED] said that if he returned her car key to her that she would take him to his sister's. He got into the car and Ms [REDACTED] drove into Virginia. On that journey, she was contacted on her phone by Gardaí who were trying to locate her as a result of a complaint made to them by her husband. She pretended to be speaking to her husband so that she

would not upset her passenger. He apologised during the journey for his behaviour. Two other men approached the taxi and asked if they could get a lift and Ms [REDACTED] took them as well.

6.7 She managed to bring her vehicle to a hotel in Virginia and was able to wait there until her husband and the Gardaí arrived.

6.8 The injuries she complained of as a result of the assault were [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The Garda Investigation

6.9 Ms [REDACTED] was met in Virginia by Garda Golf, a probationary Garda with one year's experience, and Sergeant Hotel. Ms [REDACTED] pointed out to the Gardaí the man who had assaulted her and he identified himself as Jerry McGrath of Cashel, Co Tipperary. Garda Golf noted that he was very intoxicated and unsteady on his feet. Garda Golf cautioned him and arrested him for an offence under the Non-Fatal Offences against the Person Act 1997. He was brought to Bailieboro Garda Station where he was detained by the member in charge. Ms [REDACTED] had been advised to go to Navan General Hospital for a full medical examination.

6.10 Mr McGrath was interviewed twice while in custody at Bailieboro Garda Station. In the first interview, conducted by Garda Golf and Sergeant Hotel, he admitted verbally abusing the taxi driver but denied assaulting her. He admitted taking his anger out on the taxi driver but then said that he could not remember assaulting her and that he had been drinking. In a second interview conducted by Garda Golf and Garda Zulu he admitted that he physically assaulted Ms [REDACTED]. He gave an account that was broadly consistent with her complaint and described how he got out of the taxi, went round to the driver's door, opened that door and began to assault her. He admitted pulling her hair and kicking her and taking her keys.

- 6.11 After making that admission, Mr McGrath proceeded to make a cautioned statement to Gardaí Golf and Zulu in which he repeated the admissions. At 1:10pm he was charged with an offence of assault contrary to section 2 of the Non-Fatal Offences against the Person Act 1997. He was released on station bail in his own bond of €300 to appear at Virginia District Court on 17 May 2007. The Garda files do not indicate who made the decision to charge him with that offence, as opposed to assault causing harm contrary to Section 3 of the 1997 Act, or who made the decision to release him on station bail.
- 6.12 According to a report made by Garda Golf on 24 March 2011 (almost 4 years later), when Mr McGrath appeared at Virginia District Court on 17 May 2007, he was admitted to bail by District Judge McBride on condition that he reside at his parents' address [REDACTED] Co Tipperary and also that he not interfere with any witnesses in the case. There is no power to impose such conditions on station bail so, if there were any such conditions, they must have been imposed by the District Court. I have specifically sought a copy of any bail bond entered into by Mr McGrath on 17 May and a copy of any return on the Garda court file in relation to the proceedings before Virginia District Court on that date. I have been told that there is no such document in either case and I have been referred to the original station bail bond. Garda Golf's report dated 25 September 2007 makes reference to Mr McGrath's court appearance on 17 May and states only, in respect of bail, that Mr McGrath was "released on his own cash recognisance". The copy of the station bail bond I have seen has notation on it which indicates that the bail money was refunded on 15 January 2008. This suggests that the only bail was, in fact, the original station bail bond and that there were, therefore, no conditions attached to it, other than the requirement to attend court. I cannot, however, resolve this factual issue.
- 6.13 Mr McGrath was remanded on bail to 21 June 2007 and then to 18 October 2007 and again to 9 November 2007.

- 6.14 In the interim an investigation file was prepared. A statement was taken from Ms [REDACTED] on 30 April 2007, the day of the offence, and a statement was taken from her husband, [REDACTED], on 10 May 2007. He gave an account of what he could hear on the phone while speaking to his wife, of his contacting the Gardaí, and of his finding his wife in Virginia with her passenger still in the car. A file was prepared dated 25 September 2007. Apart from the statements of Ms [REDACTED] and Mr [REDACTED], all other statements were from members of An Garda Síochána. Given the gravity of the offence and the fact that the suspect had been arrested and had made admissions in a formal cautioned statement on the day of the offence, it is not apparent why five months passed before that file was prepared. The report requested that the file be forwarded to the Director of Public Prosecutions for directions as to additional charges.
- 6.15 On 3 October 2007, Superintendent Foxtrot returned the file with a memo addressed to the Sergeant-in-charge, Bailieboro commending Garda Golf for his intention to present the case in the most professional manner, but identifying matters that required correction in the presentation of the report. He also requested that the file be returned as soon as possible, “preferably within 2 days” in order to get directions. Sergeant McCabe appears to have forwarded that memo to the Sergeant-in-charge, Unit B for urgent attention.
- 6.16 The file appears to have been completed by 13 October 2007 when Sergeant India forwarded the completed investigation file and reported that Garda Golf had made the various amendments directed by Superintendent Foxtrot. Sergeant India also reported that he had “impressed upon Garda Golf the importance of the proofreading of a file and overall professional impression that can be achieved by the proper presentation and layout of an investigation file”. Sergeant India also noted that the matter stood remanded to 18 October 2007 and that Judge McBride was to be furnished with a medical report on that date in order to enable him to determine jurisdiction. Sergeant India’s recommendation was that a charge of assault causing harm contrary to

section 3 of the Non-Fatal Offences against the Person Act 1997 and a charge of threatening abusive and insulting behaviour contrary to section 6 of the Criminal Justice (Public Order) Act 1994 be preferred.

6.17 While the file was being corrected in Bailieboro, Jerry McGrath committed another very serious offence in County Tipperary.

Abduction of a child in County Tipperary

6.18 [Details of a child's abduction] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Ms Orange phoned 999. As it happened, a member of An Garda Síochána lived nearby. Contact was made with him by Tipperary Garda Station and he came to the house and arrested Jerry McGrath on suspicion of burglary. He brought him to Tipperary Town Garda Station, where he was detained by the member in charge of the station.

6.19 [Details of a child's condition] [REDACTED]
[REDACTED] [REDACTED]. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

6.20 [REDACTED]
[REDACTED]. In the immediate aftermath of the incident, the Garda who lived nearby secured the arrest and detention of the suspect, arranged promptly for medical attention for the victim, secured her clothing as possible evidence, [REDACTED]. He also secured digital copies of photographs that were taken by medical staff of the child's injuries.

The Garda Investigation

- 6.21 The investigation was conducted by Detective Sergeant Juliatt who had completed a thorough investigation with 23 statements attached by 28 October 2007, when he forwarded his report to the Superintendent, Tipperary. Part of the investigation file included five memorandums of interview with Jerry McGrath in which he admitted [Details of a child's abduction] [REDACTED]
[REDACTED]
[REDACTED]
- 6.22 During the first interview in Garda custody, Mr McGrath was asked whether he lived at home with his parents (page 3). He responded
- “Mainly with friends, I try not to live with my parents, mainly with friends.”
- 6.23 This admission would be significant if conditions (and, specifically, a residence condition) had been imposed on Mr McGrath’s bail in Virginia District Court on 17 May 2007. As stated above, it is not clear whether that did happen.
- 6.24 Meanwhile in Cavan, the fact of this other incident, if not necessarily all the details of it, became known to the Gardaí at Bailieboro Garda Station within days of the incident. On 14 October 2007 Sergeant Kilo addressed a handwritten note to the Superintendent, Bailieboro noting that the case against Mr McGrath stood adjourned to Virginia District Court on 18 October 2007 for the directions of the DPP and that the file had not yet been forwarded. He also noted that Ms [REDACTED], solicitor for Mr McGrath, had informed him that Mr McGrath had been remanded in custody to Limerick prison in relation to “sec 3 assault + burglary in Tipperary 9/10/07”. He noted that Mr McGrath was remanded to Thurles District Court on 23 October 2007 in relation to that matter and he also recorded

“Pulse checks confirm.”

6.25 It may be a cause for some concern that it appears that Gardaí in Cavan cite Mr. McGrath’s solicitor as the primary source of information in relation to the events in Tipperary. Nonetheless, Sergeant Kilo’s note does state that PULSE was checked. The initial entry in the narrative section on PULSE for the incident in Tipperary reads:

“youth discovered in house arrested at scene. nothing taken or damaged.”

6.26 It need hardly be said that this narrative does not capture the gravity of the incident and would not have been sufficient to alert anyone reading the record to its true nature. That appears, however, to have been only the initial entry and it is unclear what information was available to Gardaí at the time it was made. The narrative on PULSE was updated with a full and detailed account of the incident in Tipperary later on 9 October 2007. That update contained the following text:

“updated - 9/10/07 - offender disturbed by injured party at 3.15am. offender had a hold of injured parties 5 yr old daughter around the neck and was leading her downstairs. he was cornered in the kitchen and tackled by the injured party. [A named] garda , who lives [nearby], arrived on the scene and arrested the offender on suspicion of burglary. suspect currently detained at tipperary garda station and child being medically examined at waterford hospital. scene is being examined by divisional scenes of crime unit and entry seems to have been gained via unlocked rear door. offender may have had possession of hurley during the incident and this aspect is being investigated. incident may be re-classified at a later date.”

6.27 The narrative was again updated later on 9 October and twice more on 10 October. When Sergeant Kilo spoke to Ms. [REDACTED], Mr McGrath had been remanded to 23 October. That conversation cannot have occurred before 12 October, since it was only on that date that Mr McGrath was remanded to appear at Thurles District Court on 23 October. By the time of that conversation, therefore, the PULSE record was abundantly clear as to the gravity of the Tipperary incident.

6.28 Indeed it is clear that the Gardai in Tipperary realised at an early stage how serious this incident was, and treated it accordingly. Superintendent Gerard Redmond of Tipperary made a written report on the date of the offence to the Chief Superintendent, Thurles containing a narrative account of the incident which included the essential details. It also included a note on the suspect, Jerry McGrath. It referred to his parents' address in [REDACTED], Co Tipperary and stated:

“It is believed that he has not resided there for some time and is presently NFA and residing from time to time with friends in the [area of the burglary]. He has previous history on Pulse for minor assault, public order, criminal damage and most recently was the suspect for the UT of a telescopic handler on 7/9/2007 - Pulse ID [REDACTED] refers - this incident is currently under active investigation.”

6.29 That report was prepared at a time when Mr McGrath was still detained at Tipperary Garda Station and included an update on the status of the victims and noted that the Divisional Scenes of Crime Unit were examining the scene and that the suspect was being interviewed.

6.30 The account of the circumstances of the suspect contained in this report suggests, first, that Gardaí at Tipperary had checked the PULSE system for information in relation to Mr McGrath, and, secondly, that they had made some assessment of his character as disclosed by previous incidents insofar as they were known to them as a result of that check. The reference to a “minor assault” is an accurate description, in a formal legal sense, of the only charge that was pending against Mr McGrath in Cavan at that time. That is also the category of offence under which the Cavan incident was entered on PULSE, i.e. “Assault Minor”. The narrative of that entry read:

“i/p (taxi driver) assaulted by passenger while bringing him home, s/o subsequently arrested and detained in station. i/p had bruising on neck, and lower abdomen and black eye. also had some hair pulled out”

6.31 In a report prepared much later, on 5 August 2009, D/Sergeant Juliatt reported that

“When I initially checked with Cavan regarding their case they informed me that this was a dispute over a taxi fare”.

6.32 As an account of the attack on Ms [REDACTED], this is plainly inadequate. It is possible that, as a result of the conversation D/Sergeant Juliatt said that he had with Cavan, he was misled as to the gravity of the Cavan incident. I have been informed that there was no system for audio recording of phone calls at Bailieboro Garda Station, although there is a call logger system which records the date, time and duration of calls and the telephone number. I understand that this system has been checked, but no relevant telephone call data has been located. This cannot be taken as definitive, as it is not certain that the relevant data, if any, could be readily identified at this stage without further information.

6.33 It must also be said, however, that regardless of what, if anything, D/Sergeant Juliatt was told by phone, the fact that Jerry McGrath was not charged with a section 3 assault (i.e. assault causing harm) was itself misleading. The evidence had been clear from the outset to warrant such a charge. It had not been preferred for two reasons: (1) the initial decision to charge Mr McGrath only with assault contrary to section 2 despite the evidence to justify the more serious charge and (2) the delay in submitting a file to the DPP.

6.34 The Chief Superintendent’s office in Thurles also brought the matter to the attention of the Assistant Commissioner, South Eastern Region on 9 October 2007 on foot of the report received from Tipperary. The contents of that report reflect the contents of the report from Tipperary, including in relation to the background and previous history of Mr McGrath.

6.35 It appears from these reports that the Gardaí in Tipperary did not appreciate that the fact that Mr McGrath had not been residing with his

parents might have been a breach of a condition of his bail in Cavan. That said, I have not been able to establish that there was such a condition and there is some evidence to suggest that there was not.

- 6.36 I have not identified any evidence of these formal reports of the incident in Tipperary being communicated to the investigating Gardaí in Cavan. It must also be said, however, that, apart from the reference in Sergeant Kilo's handwritten report of 14 October 2007 to having checked PULSE, there is no evidence in the files that Gardaí in Cavan made any enquiries with Gardaí in Tipperary as to the nature or gravity of the incident that had occurred there on 9 October.

Directions of the DPP in relation to the Assault on [REDACTED] [REDACTED]

- 6.37 Sergeant Kilo's memo of 14 October 2007, having dealt with arrangements for the production of Mr McGrath to an appropriate court in Cavan, concluded that the file for the assault on Ms. [REDACTED] should now be forwarded to the DPP for directions "as a matter of urgency".
- 6.38 The investigation file was forwarded by Superintendent Foxtrot's office to the Office of the State Solicitor, Mr Rory Hayden, on 17 October 2007. Superintendent Foxtrot's letter stated that the facts "are fully outlined in the enclosed reports" of Sergeant India and Garda Golf, noted that Mr McGrath had already been charged with section 2 assault, and recommended further charges as set out at page 2 of Sergeant India's report. He also recommended summary disposal. The investigation file made no reference to the Tipperary incident. Nor did the covering report of Sergeant India or the letter from Superintendent Foxtrot to the State Solicitor.
- 6.39 Mr McGrath was remanded from Virginia District Court on 18 October 2007 to the same court on 3 December 2007 pending final directions from the DPP. It appears that he may have been remanded in his absence owing to his being in custody in relation to the child abduction case.

- 6.40 The directions of the DPP issued on 8 November 2007. The directing officer directed a prosecution for assault causing harm contrary to section 3 of the Non-Fatal Offences Against the Person Act 1997 and a charge of making off without payment contrary to section 8 of the Criminal Justice (Theft and Fraud Offences) Act 2001. The DPP did not accept the recommendation for summary disposal in the event that the charges were to be contested, but did agree to summary disposal on a plea of guilty only. It is apparent from the direction issued that, in making that decision, the directing officer balanced “the savagery of the attack and the fact that he took advantage of a lone taxi driver” against the absence of previous convictions and the fact that “he calmed down after the initial attack”.
- 6.41 It is not possible to say definitively whether a different direction would have issued in this respect had the incident in Tipperary been made known to the Office of the Director of Public Prosecutions. However, since the direction was for summary trial on a plea of guilty only and, even at that, it appears to have been a decision made with some reservations, there is a possibility that, had the Director been made aware of the Tipperary incident, trial on indictment would have been directed.
- 6.42 The direction of the Office of the Director of Public Prosecutions was communicated to the Superintendent’s office in Bailieboro by letter of 12 November 2007 from the office of Rory Hayden & Company Solicitors. On 15 November 2007, the Sergeant-in-charge of Unit B, Sergeant India, directed Garda Golf to prefer the two fresh charges when the matter was next before Virginia District Court on 3 December 2007 and, at that time, to withdraw the section 2 charge. It does not appear that Garda Golf’s attention was drawn to the Tipperary incident, or that he was given any direction or guidance by either Sergeant India or Superintendent Foxtrot.

- 6.43 On 3 December 2007, it appears that the fresh charges were preferred and that District Judge McBride accepted jurisdiction in the matter having considered a medical report on Ms [REDACTED]. That was a report from [REDACTED] dated 22 June 2007, from the Emergency Medicine Department at Our Lady's Hospital in Navan. Superintendent Foxtrot's report to the Sergeant-in-charge, Bailieboro notes that the accused was remanded on continuing bail to the same court on 7 January 2008.
- 6.44 Mr McGrath now stood charged with serious offences (within the meaning of the Bail Act, 1997) in both Cavan and Tipperary. He had made admissions after caution in relation to both and the Tipperary offences had been committed while on bail for the Cavan offence. I have found no indication that Gardaí in Cavan considered the question of seeking a remand in custody or the imposition of any bail conditions in those circumstances on 3 December 2007.

Admission to Bail in the Child Abduction Case

- 6.45 In Tipperary, Mr McGrath had been charged on 9 October 2007 with the offences of burglary and assault causing harm and taken to Limerick District Court where he appeared on the morning of 10 October 2007. He was remanded in custody to Thurles District Court on 12 October 2007 and no application for bail was made on his behalf. On that date District Judge O'Donnell ordered that a psychiatric report be prepared on Mr McGrath and made available to the Court. He remanded the accused to Thurles District Court on 23 October 2007. On that date Mr McGrath was further remanded in custody to Limerick District Court on 30 October 2007 for the purpose of a bail application and for the psychiatric report to be produced.
- 6.46 On 30 October 2007 an application for bail was made on behalf of Mr McGrath by his solicitor, Mr [REDACTED]. Detective Sergeant Juliatt gave evidence in opposition to that application and, it appears from his report of 23 October 2009, that he based his objections to bail on the following matters:

- The serious nature of the charges before the court.
- The weight of evidence against the accused.
- The length of sentence on conviction.
- The DPP was considering more serious charges.
- The fact the defendant gave his address on arrest as NFA and said he was living rough.
- The fact the defendant lives in the same neighbourhood as the family. The family were terrified.
- The possibility that the defendant would commit further crimes of a similar nature.

6.47 The prosecution was represented at the hearing of the application by Inspector Thomas O'Brien of Henry Street Garda Station. Although the possibility of Mr McGrath committing a serious offence, as contemplated by section 2 of the Bail Act 1997, appears to have been raised as one of the grounds of objection, it should be noted that there were no previous convictions for serious offences which could be brought to the attention of the court. Similarly, although the offences committed in Tipperary were committed while on bail in relation to the Cavan offences, Mr McGrath was entitled to the benefit of the presumption of innocence for the purpose of the application that was then before the court. On the other hand, the court, in assessing the application for bail was entitled to consider the weight of the evidence against the accused. The fact of the accused having made a voluntary cautioned statement of admission necessarily added substantial weight to the prosecution case.

6.48 Notwithstanding the objections of the prosecution, Mr McGrath was admitted to bail on his own bond in the amount of €200 with one independent cash surety of €2,000, which sum was put up by his father. Bail was subject to conditions in that he was required to reside with his

parents, sign on daily at Cashel Garda Station, not to go within two miles of the location of the incident, not to interfere with any witnesses in the case, and observe a curfew between 9.00 p.m. and 8.00 a.m.

- 6.49 In a report dated 22 July 2009 to the Superintendent, Tipperary, D/Sergeant Juliatt stated that a psychiatric report which had previously been ordered was available to District Judge O'Donnell at the hearing of the bail application. He stated that he did not specifically refer to the Cavan incident while he was giving his grounds for objecting to bail. He reported that he gave evidence of his belief that Mr McGrath would commit further serious offences if given bail and reported that

“If I had been questioned by either the defence or the judge why I believed he would commit further offences I would have used the Cavan incident. But once the Judge read the psychiatric report the Judge immediately granted McGrath bail.”

- 6.50 Unfortunately, D/Sergeant Juliatt was not an officer of sufficient seniority to enable his belief as to the possibility of a serious offence being committed by Mr McGrath, if granted bail, being admitted in evidence for the purpose of the bail application in accordance with Section 2A of the Bail Act 1997, as inserted by Section 7 of the Criminal Justice Act 2007. The psychiatric report does not appear to have been made available at any stage to the Gardaí. I specifically sought a copy of that report, but have not received it. I understand that it may now be held at the Courts Service Repository in Dublin.

Directions of the DPP in relation to the Child Abduction Case

- 6.51 The investigation file in relation to the Tipperary incident had been completed shortly before the bail application on 30 October 2007. The file is dated 28 October 2007, less than three weeks after the incident occurred. It includes a full account of the incident and of the injuries suffered by the child. It also includes a short account of the background to Jerry McGrath. The description of his previous involvement with the

criminal law was consistent with the information contained in the report prepared for the Chief Superintendent in Thurles on the day of the incident. The investigation file stated as follows:

“He has no previous convictions but is known to the gardai as he is suspect for a number of minor incidents such as U/t and public order offence which occurred in the last few months”.

6.52 The file also made clear that Mr McGrath had in fact entered the house in possession of a hurley which he had obtained outside the back door of a neighbouring property. On that basis a charge of aggravated burglary was recommended along with section 3 assault, abduction of a child contrary to section 17 of the Non-Fatal Offences against the Person Act 1997 and endangerment contrary to section 13 of the same Act. In his conclusion, D/Sergeant Juliett made the following observations:

“This incident is extremely serious as it is. But I believe if the mother had not woken up when she did McGrath would have taken the child from the house. If that happened I firmly believe that the child would never have been seen again alive.”

6.53 The direction issued from the Office of the Director of Public Prosecutions on 23 November 2007. The charges directed were aggravated burglary, assault causing harm and abduction, as recommended. Consent to summary disposal was refused and prosecution on indictment was directed. A direction issued not to prosecute for endangerment for stated legal reasons.

6.54 The directions were forwarded to the Office of the Superintendent, Tipperary by the State Solicitor for County Tipperary (South Riding), Mr Paul Fitzpatrick, by letter dated 26 November 2007 and were received the following day.

6.55 In the meantime, following the admission of Mr McGrath to bail, the case had been adjourned to 9 November 2007 for the DPP's directions and

adjourned again on that date to Thurles District Court on 14 December 2007.

- 6.56 It appears that the intention was to charge Mr McGrath with the additional offences directed by the Director of Public Prosecutions when the matter was next before the court on 14 December 2007. Before that happened, Mr McGrath murdered [REDACTED].

Compliance with Bail Conditions by Jerry McGrath

- 6.57 Prior to the murder of [REDACTED], it does not appear that Gardai in Tipperary became aware of any breach of the conditions of his bail by Mr McGrath. I sought but have not seen a copy of the sign-on record at Cashel Garda Station between 1 and 10 November 2007; I have been informed that the relevant bail book cannot be located. I have reviewed the sign-on records thereafter. Mr McGrath failed to sign on at the Garda station on 1 December 2007. That apparently single incident of failure to comply with his sign-on condition does not appear to have attracted attention at the time. I have been informed that there was only one member on duty at any time in Cashel Garda Station that day and that it is possible that the member may have had to attend a call and therefore close the station for a period of time. I have been informed that no enquiries were carried out to ascertain why Mr McGrath did not sign-on that day.

- 6.58 After the murder of [REDACTED], Mr McGrath left Limerick and travelled home by taxi. A statement taken from the taxi driver established that he stopped off in Cashel Garda Station on his way home to sign the bail book. The bail book records his having signed it that day at 12:40pm. He had left the Clarion Hotel in Limerick less than two hours earlier just before 11:00am. After signing-on he went home and then on to Waterford, where he boarded a bus for London Victoria, from where he travelled to Edinburgh.

6.59 D/Sergeant Juliett, who had investigated the incident in Tipperary, made application to Limerick District Court on 10 December 2007 for the revocation of Mr McGrath's bail and for a warrant for his arrest. That warrant was obtained and executed by D/Sergeant Juliett on 14 December 2007, by which time Mr McGrath had returned to the jurisdiction and made himself available to Gardaí.

The Prosecution of Jerry McGrath in Cavan

6.60 In a statement made on 14 January 2010 to Superintendent Eugene McGovern and Sergeant Angela Cummins, ██████ gave an account of her interaction with the Gardaí following the assault on her on 30 April 2007. She said that she became aware, she believes while at the Garda station in Bailieboro that day, that Mr McGrath had been charged and released from Garda custody. She immediately became concerned about his release as she believed he

“had something about women and [she] was concerned that he would come back and attack me or some other woman”.

6.61 She stated that she was not aware when he was to appear in court and she kept ringing Bailieboro Garda Station. She was given dates, but they were all adjourned dates and she never got to speak with any Garda member that she knew of who was carrying out the investigation.

6.62 Ms ██████ stated that she became aware of the incident in Tipperary and that it had involved a young girl. She stated that she found this

“extremely hard to believe bearing in mind that he was on bail for the attack on me”.

6.63 She said she was still ringing Bailieboro Garda Station at the time about her case and was being told that nothing had come back from the DPP.

6.64 She stated that when she learned of the murder of ██████ in Limerick she knew straight away that the culprit was Jerry McGrath and

that she made a number of phone calls to try to establish if this was the case, including to Bailieboro Garda Station. That information was not confirmed to her although she later learned of the identity of Ms ██████'s murderer. She stated that following the murder of Ms ██████, a liaison Garda from Bailieboro rang her and asked if he could call to her home to meet her. He did, and she said she discussed her case and the murder in Limerick with this Garda. She said that, when leaving, he told her that he would

“keep in touch with me and keep me up to date in general terms relevant to my own case and Jerry McGrath”.

- 6.65 She stated that she did not hear from this member until January 2008. She had been phoning Bailieboro Garda Station enquiring about a hearing date in relation to her own case. She stated that the liaison officer phoned her on the Saturday prior to a Monday in January when she had been told that her case was definitely going ahead. The liaison Garda told her on the Saturday that her case would not now be going ahead and not to bother going to the court in Virginia. As a result of that phone call she did not attend. The next she heard of the matter was when she received a phone call around 4:00pm on the Monday evening from Inspector Delta who told her:

“That man of yours got nine months”.

- 6.66 She said she got very upset because she had wanted to be in court and had been told not to attend. She stated that Inspector Delta told her that he didn't know anything about this but he said:

“He's still here in the station if you want to see him”.

- 6.67 She declined that unappealing invitation. She stated that Inspector Delta told her that she should phone the Superintendent at Bailieboro Garda Station. She did that and phoned again the following day but did not get put through to the Superintendent and her calls were not returned. On

the Wednesday she phoned the Garda Síochána Ombudsman Commission Office. She indicated that she did not want to lodge a complaint but she wanted it noted. She said that on Thursday she again rang Bailieboro Garda Station without success. On Friday she rang again and, on this occasion, told the Gardaí that she had been in contact with GSOC. She stated that Superintendent Foxtrot phoned her back within 15 to 20 minutes. She explained the situation to him and said that he undertook to phone her back. He did that about 7:00pm that night and said that he had been unable to get in contact with the liaison Garda and was unable to explain why she had been told not to attend court. He and Inspector Delta called to her home at her request the following Monday and were there for about two hours. She stated that

“They apologised for what had happened but could still not explain why I was told not to attend court. Inspector [Delta] indicated that all the evidence had been presented to the judge but I was not satisfied with this as I had not been present to see what had happened. I said to the superintendent that I didn’t wish to see what happened to me happen to another victim. I had not been kept up to date relevant to my case or provided with the opportunity to see the culprit in court. They further apologised and left. I decided to leave it at that.”

6.68 The liaison officer who had been in contact with Ms [REDACTED] was Garda Zulu, who had participated in the second interview with Mr McGrath when he was detained in relation to the assault on her, during which interview a cautioned statement of admission was taken from him. He was therefore, presumably, entirely familiar with the nature and gravity of the offences. He was also an experienced member of An Garda Síochána, with over ten years’ service. He reported to the Sergeant-in-charge, Bailieboro on 16 December 2007 on his meeting with Ms [REDACTED] and her husband. He reported that he called to the home of Ms [REDACTED] on Saturday 15 December 2007. He reported that Ms [REDACTED] had been under stress since the incident in April but that she was beginning to get her

life back together. He reported that “this all changed however when she read and saw the matter in the news media relating to Jerry McGrath.”

- 6.69 He reported that Ms [REDACTED] had “a number of questions in relation to bail and Jerry McGrath”. He said that he explained to her that bail was ultimately a matter for the courts. He continued:

“At this time both [REDACTED] and [REDACTED] (sic.) [REDACTED] have no issues in regard to the handling of [REDACTED]’s case by An Garda Síochána. Mrs [REDACTED] wants her ‘pound of flesh’ and her day in court to see Jerry McGrath convicted.

I have given her an undertaking to keep her informed of all developments in relation to her case. I will also be getting her in contact with Victim Support as a matter of urgency”.

- 6.70 That report appears to have been forwarded to the Superintendent, Bailieboro by Sergeant McCabe, with a note to the effect that it related to an assault on [REDACTED] by Jerry McGrath, as they had discussed.
- 6.71 It should be noted that the report of the proceedings before Virginia District Court on 3 December 2007, addressed to the Sergeant-in-charge, Bailieboro from Superintendent Foxtrot and dated 4 December 2007 indicated that the matter was to be listed on 7 January 2008 “for mention, to indicate plea or contest”. In those circumstances, it would not ordinarily be expected that the matter would have proceeded on 7 January 2008, although that indication could and presumably should have been given to Ms [REDACTED] on 15 December 2007. It appears that did not happen.
- 6.72 The expectation that a case will not proceed or that nothing of substance will happen is something that victims of crime would rightly expect to be notified of in advance of a particular court date. Therefore, unless Gardaí had received information from the defence to suggest that a plea of guilty would be entered on 7 January 2008, it was

not unreasonable or improper to notify Ms. [REDACTED] that she was not required to attend on that date. I have seen no indication on the files to suggest the Gardaí did receive advance notice of Mr. McGrath's guilty plea.

- 6.73 The note of the proceedings in Virginia District Court on 7 January 2008 records that the accused entered a plea (i.e. a plea of guilty), the facts were given, and the Court was informed of the "enormous impact of case on injured party". The Court classed the offence as the "worst aggravated assault" the Court had dealt with and noted that the accused was not in a position to pay compensation to the victim. The Court also noted the effect that this type of crime has on the public and that the Court must protect taxi drivers. The Court noted, in mitigation, the plea of guilty and a report to the effect that the accused had psychological/behavioural difficulties. The Court recommended that programmes be put in place to address those issues and imposed a nine month prison sentence on each charge to run concurrently.
- 6.74 On 3 April 2008 Rory Hayden & Company, the State Solicitor for Cavan, wrote to the Superintendent's Office at Bailieboro Garda Station requesting a formal report on the outcome of the case because "this defendant has come to adverse notice for serious crimes in the interim". A report issued from Superintendent Delta, [REDACTED] [REDACTED] [REDACTED] dated 2 May 2008. The report of the case was consistent with the handwritten note on the file.
- 6.75 There is no indication on the Garda file of the liaison Garda, Garda Zulu, having any other contact with Ms [REDACTED] apart from the meeting in her home on 15 December and the phone call to her on the Saturday before the case was dealt with in Virginia District Court. There is no formal report or record of the latter contact from the relevant time. Nor is there any record from that time of why the latter contact came to occur or what information was available to Garda Zulu and from what source

before making that call. On 10 April 2014, I made a specific request for information on this issue. As a result, I have recently been provided with a copy of a report made by Garda Zulu dated 8 September 2011 and addressed to [REDACTED] GSOC. In that report, Garda Zulu states that Sergeant Maurice McCabe phoned him after he met Ms. [REDACTED] (on 15 December 2007) and before the court date of 7 January 2008. He stated that Sergeant McCabe directed him

“to phone [REDACTED] [REDACTED] and to inform her that she would not be required in court because her case was not going ahead and that he Sergeant McCabe was going to have this case brought before the Circuit Court in Cavan at a later date.”

- 6.76 This account of events was made available to me after I had completed my interview with Sergeant McCabe and cannot, accordingly, be confirmed.
- 6.77 It does not appear that a formal victim impact statement was recorded at any time from Ms [REDACTED] or that the issue was specifically addressed in court on 7 January 2008 or at any stage in the investigation. Although there is no mention in Garda Zulu’s report of 16 December 2007 of Ms [REDACTED]’s expressly stating that she wished to make a victim impact statement, the court dealing with sentence in the case was obliged by the provisions of section 5 of the Criminal Justice Act 1993 to receive her evidence in respect of the effect of the offence on her on being requested to do so. Having regard to Garda Zulu’s account of the effect of the offence on Ms [REDACTED], she should have been asked to make a victim impact statement and she should have been informed of her right to give victim impact evidence if she wished to do so. While it would be common, and quite proper, not to seek a victim impact statement before a plea of guilty has been entered, the knowledge that such a step is required should lead to an application to the court to adjourn sentence, following a plea of guilty, to enable the necessary statement to be made.

Complaint by ██████████

6.78 In her statement of 14 January 2010, Ms ██████████ said that after meeting with Superintendent Foxtrot and Inspector Delta she subsequently read articles in the *Cavan Post* relevant to her case and “there was more in this article than had been told to me by the gardai”. A copy of the report in the *Cavan Post* of Tuesday 8 January 2008 is available. It confirms that Mr McGrath received nine month sentences for assault and refusing to pay his taxi fare after pleading guilty. It reported that Ms ██████████ “was kicked in the stomach, punched in the face and head and had lumps of hair pulled from her scalp”. The further factual detail of the incident recorded in the newspaper report is consistent with Ms ██████████’s original statement. The report also notes that Ms ██████████, solicitor for Mr McGrath, provided the court with a psychiatric report and said that when defendant had drink he would “lose it”. The report went on to record the remarks made by the learned District Judge in passing sentence, in a manner consistent with the report on the Garda file from Inspector Delta. That said, the report in the newspaper does not record that the court was told anything about the effect of the offence on Ms ██████████, apart from the account of the assault itself. At the end of her statement of 14 January 2010, Ms ██████████ summarised her complaint as follows:

“I was very upset about how my case was presented and remain to date. I don’t know if all the evidence was placed before the courts and in particular if the hair that Jerry McGrath had pulled from my head was shown to the judge. I don’t have a complaint against any particular Garda member but I believe that the superintendent in charge of Bailieboro should have managed my case to the extent that I was kept informed and facilitated to attend court on the date that Jerry McGrath was convicted of my attack”.

6.79 The statement of 14 January 2010 was taken from Ms [REDACTED] after she made contact with the Divisional Office in Letterkenny, where Chief Superintendent McGinn was based, on 6 January 2010 following media reports in relation to a Garda investigation into alleged wrongdoing by Gardaí in Bailieboro. The Byrne-McGinn report identified a number of concerns arising out of Ms [REDACTED]'s January 2010 statement and its review of the investigation file. These were:

- The fact that the original statement of complaint from Ms [REDACTED] was taken solely by a young female probationer garda who “clearly lacked the necessary experience required for such a (sic) investigation”. There was a concern that there was the possibility of an intention to commit a sexual assault on Ms [REDACTED] and that that aspect of the investigation had not been addressed.
- The failure of the liaison Garda to maintain contact with Ms [REDACTED] added to her distress.
- The fact that Mr McGrath had received bail following the assault on Ms [REDACTED] should have been taken into account when he later made an application for bail following the Tipperary incident.
- Chief Superintendent McGinn also noted that there was a possibility of a civil action being taken against An Garda Síochána by the husband of the late [REDACTED] relating to the grant of bail to Mr McGrath.

6.80 Chief Superintendent McGinn also set out her concerns in a report dated 26 July 2010 to the Assistant Commissioner, Northern Region. In addition to the matters set out above, she also expressly raised the following two issues

- “Was the judge properly informed of the seriousness of the case based on the notes provided?”

- “Should [REDACTED] have been given the opportunity of making a victim impact statement to the court?”

6.81 Chief Superintendent McGinn noted the fact that the Garda Síochána Ombudsman Commission was examining the circumstances surrounding the case but recommended that an officer be appointed to monitor the investigation into the complaints and to communicate directly with Ms [REDACTED].

Investigation by GSOC

6.82 It does not appear that Ms [REDACTED] had in fact made a complaint to the Garda Síochána Ombudsman Commission at that time although she later did so on 23 December 2010. The pending complaint in July 2010 was that of Mr [REDACTED], the husband of the late Ms [REDACTED]. He made a complaint on 30 June 2009. That complaint alleged

- “Neglect of duty on the part of the gardai in Thurles and Cavan/Monaghan whom [Mr [REDACTED]] believes failed to liaise properly in order to ensure that the relevant District Courts in their areas were suitably advised that Mr Jerry McGrath was on bail for other very serious offences when he appeared before these courts on a number of occasions in October, November and December 2007;
- That the Garda authorities in Cavan/Monaghan and Tipperary have refused since February 2009 to respond appropriately to the complainant’s requests for specific information in relation to the Garda submissions provided to the District Courts concerning Mr Jerry McGrath’s bail status at the time that he was remanded by these courts in October, November and December 2007”.

6.83 The perceived significance of these matters is plainly stated in the GSOC record of the admitted complaint in the following terms:

“The complainant believes that if Mr McGrath’s bail from Cavan had been revoked, and had he been held in custody, he would not then have been free on 8 December 2007 to murder the complainant’s wife”.

6.84 I should note that I am aware of the existence of proceedings issued by Mr. [REDACTED] arising out of the death of his wife, which I understand include similar allegations. I express no view on those proceedings, although it is necessary to review to some extent the GSOC investigation into these matters to make sense of subsequent events. In doing so, however, it should be noted that I have not had the benefit of considering GSOC’s files.

6.85 GSOC notified Garda Headquarters by letter dated 30 June 2009 of the making of the complaint. By letter dated 21 October 2009 GSOC informed Garda Headquarters that the Garda Ombudsman had determined that the complaint was admissible under section 87 of the Garda Síochána Act 2005. That letter also stated:

“On the basis of the information available at this time, the Ombudsman Commission considers it appropriate, in accordance with its functions under section 92(a) of the Act, to refer the complaint to the Garda Commissioner to be dealt with in accordance with section 94(5)”.

6.86 In effect, GSOC had decided not to investigate the complaint itself, but to refer it to the Garda Commissioner for investigation. That letter was received on 23 October 2009 and on 28 October 2009 the Assistant Commissioner, South Eastern Region was notified of the decision of the Garda Ombudsman and advised to make an appointment in accordance with the provisions of Regulation 42 of the Garda Síochána (Discipline) Regulations 2007.

6.87 The Assistant Commissioner, South Eastern Region replied on 5 November 2009 noting that the allegations may involve the Divisional Officer,

Tipperary Division and/or senior officers in Cavan/Monaghan Division. He therefore recommended that an Assistant Commissioner outside the South Eastern and Northern Region be appointed to investigate the matter. On 29 December 2009 Assistant Commissioner William Keane, Southern Region, was appointed as Deciding Officer pursuant to the provisions of Regulation 14 of the Garda Síochána (Discipline) Regulations 2007.

6.88 Assistant Commissioner Keane was furnished with copy correspondence from [REDACTED] Solicitors dated 17 February and 4 March 2009. [REDACTED] were instructed by [REDACTED], the husband of the late [REDACTED]. Their letter of 17 February 2009 referred to the history of the three prosecutions of Mr McGrath and noted that he had, on 12 January 2009, received a life sentence for the murder of Ms [REDACTED]. It also noted that, on the Friday before their letter of 17 February 2009 (i.e. 13 February 2009), Mr McGrath was convicted at Clonmel Circuit Court on the Tipperary charges and that he received sentences of ten years, four years and eight years. They noted that, as a life sentence was already in place, those sentences would be served concurrently. They observed that Clonmel Circuit Court had been told that Mr McGrath was not on bail at the time of the offences in Tipperary, but that it was understood that he was in fact on bail in relation to the assault on Ms [REDACTED]. The letter continued by noting that Ms [REDACTED] was murdered at a time when Mr McGrath was on bail for two very serious offences and, in those circumstances, Messrs [REDACTED] & Co sought the following information

- “Please confirm that Mr McGrath was on bail at the date of the incident in [Tipperary] and if this was the case why was the court not made aware of same last Friday?
- Please confirm whether Jerry McGrath was on remand and confirm what incident this remand related to and when and by whom his release was ordered?”

- 6.89 The letter also stated that it was understood that Gardai objected to bail in relation to the Tipperary incident. (The letter of 4 March 2009 was a reminder seeking a response to the earlier letter of 17 February.)
- 6.90 On 17 December 2009 the Deputy Commissioner, Strategy and Change Management (Deputy Commissioner W.I. Rice) wrote to [REDACTED] Solicitors, setting out what he said was the Garda response to the issues raised in their correspondence. This letter gave an account of the arrest of Mr McGrath by Bailieboro Gardaí and his subsequent court appearances in relation to that matter. There was no specific reference to any conditions of bail following Mr McGrath's first appearance before Virginia District Court. The letter also stated:
- “Virginia District Court subsequently remanded this case on a number of occasions for investigating gardai to obtain directions from the Director of Public Prosecutions. Gardai received these directions on 12 November 2007”.
- 6.91 It should perhaps be observed that the time between Mr McGrath's first appearance in Virginia District Court on 17 May 2007 and the receipt of directions on 12 November 2007 was largely attributable, not to any delay on the part of the Director of Public Prosecutions in issuing directions, but to delay on the part of the Gardaí in submitting the file for directions. The letter noted that Mr McGrath was, on 3 December 2007, charged with the more serious offences directed and that he pleaded guilty on 7 January 2008, receiving a nine month prison sentence.
- 6.92 Deputy Commissioner Rice also referred to the incident in Tipperary and stated that Mr McGrath had been granted bail in respect of that matter “despite strenuous garda objections”. It was noted that bail conditions were imposed.
- 6.93 Deputy Commissioner Rice stated:

“An Garda Síochána is satisfied that the investigating members involved in the bail hearing, on 30 October 2007, exhausted the statutory avenues available to them by objecting to Jerry McGrath’s bail pursuant to the provisions of section 2 of the Bail Act 1997 as amended”.

6.94 It is not strictly true that all statutory avenues had been exhausted, in that section 2A of the Bail Act 1997 as inserted by section 7 of the Criminal Justice Act 2007, was not availed of. That provision, which was commenced on 18 May 2007 by the Criminal Justice Act 2007 (Commencement) Order 2007 (S.I. No. 236 of 2007) permits evidence of belief that a refusal of bail is reasonably necessary to prevent the commission of a serious offence by an accused person to be given by a member of An Garda Síochána not below the rank of Chief Superintendent, and to be admitted as evidence that the refusal of bail is reasonably necessary for that purpose. That statutory avenue was not availed of at the hearing on 30 October 2007 and it is not clear whether or not consideration was given to it.

6.95 Deputy Commissioner Rice in his letter to [REDACTED] of 17 December 2009 acknowledged that Gardaí in Tipperary were aware of the Cavan offence but said that the investigating Garda was of the opinion that the learned District Judge in Limerick “decided to grant bail after reading a psychiatric report which was tendered to the court before he had been given an opportunity to address the court on the Cavan matter”. He asserted that, as Mr McGrath had only been charged with a summary offence in Cavan on the date of the bail hearing, and bearing in mind the other evidence that had been given in Limerick, An Garda Síochána is satisfied “that details of the Cavan offence would have had no impact on the decision of the judge to grant bail”.

6.96 It became apparent in early January 2010 that Assistant Commissioner Keane had in fact been the Divisional Officer in Limerick at the time of the murder of [REDACTED] and that he was involved in the

subsequent prosecution of Mr McGrath. As a result, an alternative appointment was made on 9 March 2010 when Assistant Commissioner Dermot Jennings, Eastern Region, was appointed as Deciding Officer pursuant to the provisions of Regulation 14 of the Garda Síochána (Discipline) Regulations, 2007. GSOC was notified of the difficulty and of that new appointment on the same date.

- 6.97 On 31 May 2010, GSOC wrote to Assistant Commissioner Jennings and to Garda Headquarters notifying them that pursuant to section 103 of the Garda Síochána Act 2005 the Commission had decided in accordance with section 94(12) of the same Act to take over the investigation and to commence an investigation pursuant to section 98 of the Act. In effect, having initially decided not to investigate the matter, but instead refer it to the Commissioner for investigation by Gardaí, GSOC changed its mind.
- 6.98 Before they did so, a statement was taken from Mr [REDACTED] at the offices of his solicitors in [REDACTED], by Detective Inspector Frank Keenaghan and Chief Superintendent Thomas Conway. Although the statement is undated (both the handwritten original and the typed copy), it appears to have been made on 30 April 2010. In that statement Mr [REDACTED] made detailed complaints about the Garda handling of both the Cavan case and the Tipperary case. It appears that on the same occasion, Ms [REDACTED] provided a list of witnesses whom she wished to have interviewed by the investigation team.
- 6.99 Apart from the letter of 17 February 2009 from [REDACTED] Solicitors, there was another letter of 18 February 2009 addressed to Chief Superintendent CM Rooney at Monaghan Garda Station along similar lines, making enquiries about the progress of the two non-fatal cases against Mr McGrath and seeking details as to why he was not in custody on 8 December 2007. That correspondence was forwarded to the Superintendent, Bailieboro also on 18 February 2009 seeking a report within seven days. A report to Chief Superintendent, Monaghan dated 3

March 2009 from Inspector R McMahon appears to have been the reply to Chief Superintendent Rooney's request. This report described the incident in the following terms

"At 3.35 a.m. on 30/4/07 Gerry McGrath was arrested by gardai in Bailieboro for assaulting a female Taxi driver, [REDACTED], in Virginia that morning."

6.100 The report continued by stating that Mr McGrath was charged with assault contrary to section 2 of the Non-Fatal Offences against the Person Act and bailed on his own €300 cash bail to appear before Virginia District Court on 17 May 2007. It noted that the case was subsequently adjourned pending the submission of a file to the DPP for "further directions", although, of course, there was only ever one direction in the case.

6.101 The report stated that on 12 November 2007 Gardai received the DPP's directions for further charges and that Mr McGrath was charged accordingly at the next sitting on 3 December 2007. It is noted that evidence of arrest charge and caution was given in relation to the new charges and the report then continues:

"The initial bail of 30/4/07 was then transferred on to these charge sheets and the original Sec 2 charge then withdrawn".

6.102 Inspector McMahon's report stated that the case was adjourned from 3 December 2007 to 7 January 2008, "where Mr McGrath pleaded guilty and was sentenced by Judge McBride to nine months imprisonment in Castlerea prison on both charges".

6.103 Inspector McMahon's report concluded as follows:

"In effect Mr McGrath was on bail on these charges [the offences against Ms [REDACTED]] on the original Bail that he entered on 30/4/07, before any of the other offences as outlined occurred. The only condition of Station Bail is that the defended (sic.) appear at the

appointed District Court sitting and subsequent sittings as directed by the judge. Mr McGrath honoured his condition and so was not in Breach of his Bail”.

6.104 I cannot say what steps were taken in the GSOC investigation in 2010, only that there are letters on the Garda files from GSOC to the effect that the investigation by the Commission into the complaint of Mr [REDACTED] [REDACTED] was continuing.

6.105 [REDACTED] GSOC, again notified the Gardai on 19 January 2011 pursuant to section 103 of the Garda Síochána Act 2005 that the investigation into Mr [REDACTED] complaint was continuing. He said the investigation file had been submitted to the Senior Investigation Officer for a case review. On 18 March 2011, Chief Superintendent Cloonan, Internal Affairs sought an update from GSOC. He was notified by a letter from [REDACTED] that the investigation file had been submitted to the Senior Investigation Officer for a case review, and that following the case review the investigation under section 98 was concluded and the matter “is now being investigation under section 95 of the Act)”. That means that GSOC were by that time treating the complaint as one relating to “conduct that does not appear to constitute an offence”.

6.106 During the period when the complaint of Mr [REDACTED] remained under investigation by GSOC, the complaint made by [REDACTED] to Chief Superintendent McGinn was also referred to GSOC. This was done by Assistant Commissioner Kenny, Northern Region, by letter dated 23 November 2010. Assistant Commissioner Kenny stated in that letter:

“As the circumstances surrounding the complaint made by [REDACTED] [REDACTED] are an integral part of the investigation being carried out by your office and in light of the provisions of section 85(1)(c) of the Garda Síochána Act 2005, I am referring the attached file to you for investigation.”

6.107 It appears to be as a result of that referral that Ms [REDACTED] is recorded as having made a complaint to GSOC on 23 December 2010. By letter dated 12 April 2011, Garda Headquarters was notified by [REDACTED], Senior Investigating Officer, that the Garda Ombudsman had determined that the complaint was admissible under section 87 of the Act and had decided that it should be investigated in accordance with section 98 of the Act. The complaint alleged

- That the gardai did not carry out the investigation into the assault on her person to the required standards.
- That there was failure in supervision of the investigation.
- That Ms [REDACTED] was not facilitated to attend and give evidence at court on the date Mr McGrath was convicted for the assault.
- That she doesn't know whether all the evidence was put before the court.
- That she was not kept properly updated by Gardai nor by the Superintendent.

6.108 By letter dated 15 April 2011 [REDACTED] clarified that the reference to the investigation being in accordance with section 98 of the Garda Síochána Act 2005 was an error and in fact Ms [REDACTED]'s complaint had been designated for investigation under section 95. It appears that the following individual officers were notified that they were the subject of the complaint: Superintendent Foxtrot, Superintendent Lima, Superintendent Delta, Sergeant McCabe, Sergeant India, Sergeant Kilo, Garda Golf, Garda Zulu and another member.

6.109 The GSOC investigation into Ms [REDACTED]'s complaint was ultimately discontinued in accordance with section 93(1)(c) of the Garda Síochána Act 2005 and Garda Headquarters was so notified by letter of 25 October 2011 from [REDACTED]. The stated reasons for the discontinuance of the investigation were as follows:

“Mrs ██████ originally complained to the Gardaí and this complaint was subsequently forwarded to GSOC. Initially it was considered that the complaint related to behaviour occurring within the prescribed six month period. It is now accepted, however, that the complaint related to behaviour occurring outside this period and consideration should have been given to extending time for good reason in accordance with section 84 of the Garda Síochána Act 2005. As this was not done GSOC considers that, in the interests of fairness, the GSOC investigation into Ms ██████’s complaint should be discontinued and the matter returned to the Gardaí”.

6.110 ██████ referred to the report of Chief Superintendent McGinn and stated that it was evident that Gardai were investigating the incident prior to informing the Garda Ombudsman of Ms ██████’s complaint. He continued:

“As the Garda Ombudsman can take no further action in relation to her specific complaint, and should An Garda Síochána continue investigating the matter, the Garda Ombudsman will assist An Garda Síochána in providing relevant documentation, if so requested”.

6.111 ██████ concluded that GSOC would take no further action in relation to the complaint but noted that the investigation into the complaint of Mr ██████ was still ongoing. It appears that the individual officers and members identified as being subject to the complaint of Ms ██████ were notified of the decision of the Ombudsman Commission to discontinue the investigation.

6.112 Notwithstanding the decision of GSOC to discontinue its investigation, the Chief Superintendent, Internal Affairs referred the matter to the Chief Superintendent, Monaghan by letter dated 16 November 2011 for consideration as to whether Ms ██████’s complaint should be investigated in accordance with the Garda Síochána (Discipline) Regulations 2007.

Chief Superintendent Rooney, Cavan/Monaghan directed Superintendent Thomas Maguire, Ballyconnell, to review the Garda investigation in respect of the allegation made by Ms ██████ to establish if any breach of discipline occurred. Superintendent Maguire was asked to examine the partial investigation file arising from Assistant Commissioner Jennings' investigation and the investigation conducted by the Garda Síochána Ombudsman Commission when they took over the investigation in accordance with section 95 of the Garda Síochána Act 2005 on 22 June 2010. He was also asked, in conducting his review to consider the issues raised by Chief Superintendent McGinn in her report dated 26 July 2010, insofar as they relate to the alleged assault on Ms ██████. Chief Superintendent Rooney noted "you will be conscious that there was no allegation of a sexual nature made by the complainant".

6.113 On 7 March 2012 Chief Superintendent McPartlin, Internal Affairs, enquired of the Chief Superintendent, Monaghan, as to the progress of Superintendent Maguire's enquiries.

6.114 It is not apparent that Superintendent Maguire ever furnished a report. However, on 14 March 2012, Chief Superintendent James Sheridan furnished a report to the Chief Superintendent, Internal Affairs. (Chief Superintendent Sheridan was by that time the Divisional Officer in Cavan/Monaghan.) He referred to the complaint made by Ms ██████ and the manner in which the investigation of that complaint by GSOC came to be discontinued. He noted the request to consider whether the matter required investigation under the Garda Síochána (Discipline) Regulations 2007 and he noted that the complaint referred to one member who was then of Chief Superintendent rank and two of Superintendent rank and a number of other Sergeants and Gardaí. His report gave a detailed background to the case and how the investigation was progressed and he outlined the court proceedings. He said:

"It is unfortunate that ██████ was not in the court for the conviction and sentencing of Jerry McGrath but the Gardai were of

the view that it was only for mention on that date and that it would not go ahead and it was on that basis that she was informed not to attend the court.

Ultimately it was the District Court Judge who made the decision to deal with the matter on that date without any influence from the gardaí.

While it is regrettable that Ms [REDACTED] was not in the court, in the circumstances I don't believe any blame can be apportioned to the gardai in the circumstances".

6.115 Chief Superintendent Sheridan engaged in a detailed assessment of the possible shortcomings in the investigation identified by Chief Superintendent McGinn.

- In relation to the suggestion that the possible sexual nature of the assault was not identified as a result of the inexperience of the junior member taking the original statement of complaint from Ms [REDACTED], he said he did not see any issue in relation to the statement. He was satisfied that all of the details were recorded and that the medical report was also made available to the Office of the DPP, who had, he said, "all of the facts". He saw the comments of the directing officer as evidence of the gravity she attributed to the case. He noted also that, when Ms [REDACTED] made the later statement to Superintendent McGovern and Sergeant Cummins, no new evidence emerged and her complaint at that time was that the superintendent had not managed the case in terms of keeping her informed in facilitating her attendance in court.
- In relation to the complaint that Ms [REDACTED] was not kept fully informed, Chief Superintendent Sheridan observed that it would be necessary to obtain relevant reports from the Gardaí concerned. He expressed the view that, if Ms [REDACTED]'s version of

what happened is accurate (and he said that he had no reason to doubt her), then the Gardaí failed between May and December to keep her properly updated.

- Chief Superintendent Sheridan's analysis of the circumstances which led to Ms ██████ not being in court was that the Gardaí were of the view that the case was only for mention and that when a plea was offered the judge decided he would deal with it.
- Chief Superintendent Sheridan expressed the view that there "are no issues surrounding Bail for the gardai in Bailieboro".

6.116 Chief Superintendent Sheridan described the attack on ██████ as a terrible ordeal and said that she showed "exceptional courage and presence of mind in dealing with McGrath on the night of the attack on her". He noted that she has continually stated that there are many questions surrounding the whole matter to which she has not had answers from An Garda Síochána. He reported that, with a view to trying to address those matters, he met with Ms ██████ and her husband, ██████, at their home on 3 February 2012 with Superintendent Maguire for almost three hours. He gives a detailed account of his discussions with her and outlined how she continued to have major problems with the fact that she was not in court when the matter was disposed of on 7 January 2008 and that she had been told by Garda India not to attend court on that date. He said that she has repeatedly asked the question as to who told Garda Zulu to contact her and tell her not to attend. Chief Superintendent Sheridan reported:

"I informed her that [Garda Zulu] states that he got a phone call from Sergeant Maurice McCabe directing him to contact her and to inform her that she would not be required in court as her case was not going ahead and that Sergeant McCabe was going to have her case brought before the Circuit Court".

6.117 It was apparently the case, according to Chief Superintendent Sheridan's report, that Ms [REDACTED] was expressing concerns about various aspects of the matter, including the failure to keep her updated on how the investigation was progressing, the time it took to submit the file, the issues in relation to bail and how those issues contributed to the commission of later offences by Mr McGrath. He stated towards the end of his report:

"It is clear from my meeting with [REDACTED] that she is still looking for disciplinary proceedings be taken (sic) against members of An Garda Síochána who are involved in the management and investigation of this matter. It also appears she may be communicating with others in this regard.

It appears to me having looked at all the documentation and spoken with [REDACTED] in this matter that there was a failure to keep her updated between May and December 2007 on the progress of the investigation. I acknowledged that to [REDACTED] during the course of my meeting with her.

However I have met and explained all matters to her as set out in this report.

I don't see the necessity for pursuing further disciplinary matters at this remove from the time of this incident.

The members concerned could be given advice on this matter.

It must also be acknowledged that An Garda Síochána have introduced many new protocols procedures and management tools in regard to these type of investigation's since 2007 which address the issues raised by Ms [REDACTED].

As this matter occurred in 2007, it is imperative that these matters are concluded at the earliest possible date."

- 6.118 By letter of 27 March 2011 the Chief Superintendent, Internal Affairs inquired whether the giving of advice would be facilitated by making an appointment under the Garda Síochána (Discipline) Regulations 2007/11 or whether the matter would be disposed of by way of informal resolution of minor breaches in accordance with Regulation 10 of those Regulations.
- 6.119 Chief Superintendent Sheridan reported on 13 April 2012 that he had disposed of the matter by having Superintendent Sean Farrell, Ballyconnell “give appropriate counselling to Garda Golf of the necessity of keeping victims of crime properly updated on the progress of investigations referring to them”. Garda Golf was stationed at Ballyconnell Garda Station and the counselling was given on 12 April 2012.
- 6.120 On 14 September 2011, Mr [REDACTED], GSOC notified Garda Headquarters that the GSOC investigation into the complaint by [REDACTED] was continuing and that documentation had been served on a number of Garda members, from whom a response was awaited. By 6 December 2011 Mr [REDACTED] was able to notify Garda Headquarters that the investigation was nearing completion and that the completed file would be forwarded to the senior investigator for review shortly.
- 6.121 On 22 June 2012 Mr [REDACTED] notified Garda Headquarters that the investigation was continuing but that, following a review of the data available to the investigation, it had been decided that any breach of discipline if proven would amount to a less serious breach and the members concerned had been notified accordingly. Two Garda members had requested additional time to make submissions and appointment dates had been allocated in July for that purpose. He said that the GSOC investigation was nearing completion at that time. He also requested any further documentation that might be in the possession of

the Gardaí that would assist the investigation and he followed up with a further letter in that respect in early July.

6.122 It appears that a report pursuant to section 97 of the Garda Síochána Act 2005 was submitted to Garda Headquarters by GSOC on 14 August 2012. That report notified the Gardaí that the GSOC investigation had concluded. The report recommended that disciplinary proceedings be initiated in accordance with Regulation 45 of the Garda Síochána (Discipline) Regulations 2007 against Garda Golf and Detective Sergeant Juliett.

6.123 In this report detailed consideration was given to the possibility of instituting disciplinary proceedings against Garda Golf's supervisors, including his supervising sergeant, the Sergeant-in-charge of Bailieboro Garda Station and the District Officer. It was noted that no enquiry was launched by Bailieboro Gardaí to establish the details of the incident in Tipperary and it was said that this should have been done, certainly after the DPP directed a Section 3 charge. The view expressed by GSOC was that "the responsibility for this must ultimately lie with the investigating officer, Garda Golf" and that the District Officer cannot be held responsible for that failure, even though he knew of the Tipperary incident. It was said that

"Although nothing would have prevented Superintendent Foxtrot or any other member from making enquiries with Tipperary, they could rightly expect that the investigating member would carry out such an enquiry."

6.124 GSOC also said that there appeared to have been a systemic breakdown which prevented information that was known to some Gardaí from being put before the Court.

6.125 On 24 September 2012, Superintendent Gerard Wall, Kilrush, was appointed by Assistant Commissioner Fintan Fanning, Human Resource Management, to decide whether the two named members were in breach

of discipline on the basis of the statement of facts established by the investigation and contained in the section 97 report and whether any disciplinary sanction was required.

6.126 Superintendent Wall reported on 8 November 2012. He identified the kernel of the allegation against each of the members as

- Garda Golf did not apprise the prosecuting inspector or the court on 3 December 2007 of the serious charge preferred against Mr McGrath on 9 October 2007.
- Detective Sergeant Juliatt did not provide any information in respect of the Cavan assault charge preferred against Mr McGrath when objecting to Mr McGrath's bail application on 30 October 2007 and he gave incorrect information at the sentencing stage on 13 February 2009.

6.127 Superintendent Wall conducted a detailed analysis of the report and the files. His conclusion in respect of D/Sergeant Juliatt was that that officer "made a calculated decision not to include the Cavan incident in his objections as he had very strong objections available". This view of the matter is difficult to understand given that Detective Sergeant Juliatt had reported that he did intend to mention the matter had he been questioned on the basis of his belief that Mr McGrath would commit a serious offence if admitted to bail by either the prosecution or the court. That said, Superintendent Wall does note that D/Sergeant Juliatt had other substantial grounds for his objection to bail and that what he knew of the Cavan offence at the time would not have significantly strengthened his hand in that respect. He expressed the view that the error made on 13 February 2009 at the sentence hearing was an omission on the evidence and "there is no substantial reason not (sic) to believe Sergeant Juliatt was reckless or indifferent deliberate or attempt not to give the best evidence". (There may be one more negative in that sentence than Superintendent Wall intended.)

6.128 In relation to Garda Golf, Superintendent Wall's analysis merits quotation at length. He said:

“Garda Golf had less than one year's service at the time of this occurrence and was still under probation. He had little crime investigative experience and would have required supervision in all aspects of his work in accordance with code instructions on Probationer Education Training and Development. From that initial assistance to his submission of the investigation file on 25 September 2007 there is no evidence of supervisory intervention or tracking of this file's progress. Garda Golf contends he asked nobody for assistance and did the file by himself. I am not convinced by that explanation but I am satisfied he was not assisted by any supervisor in any constructive manner. I note that each supervisor's report ignores the key question as to why none enquired into the progress of a serious assault being investigated by a probationer garda. The preferment of the charge on the 30th April showed poor judgment HQ Directive 109/11. It lacked appropriate supervisory guidance created a protracted investigation file which should have been before the courts at least four months earlier.

For the reasons outlined the question of whether Garda Golf should have checked pulse and advised the court on the 3rd December is inextricably linked to the absence of supervision and his inexperience”.

6.129 The result of the disciplinary process was, therefore, that no breach of discipline was found.

6.130 In January 2013, GSOC notified Garda Headquarters that a complaint was received from [REDACTED] on 11 January 2013. Allegations were made against Chief Superintendent Foxtrot, Superintendent Delta, Garda Golf, and another officer. I do not know the current status of the investigation into this complaint.

Analysis

- 6.131 In the dossier furnished to An Taoiseach by Deputy Martin on 19 February 2014, Sergeant McCabe alleges that Superintendent Foxtrot had the full details of the two serious incidents but did nothing. It is alleged that he failed to notify the DPP of the Tipperary charges when seeking a direction on the Cavan matter. It is also alleged that he failed to make contact with Gardaí in Tipperary and failed to make any application to revoke Mr McGrath's bail in Cavan. The papers I have seen offer support for those allegations, although it should be stated that there is no clear evidence in the papers that Superintendent Foxtrot knew the "full details" of the Tipperary incident.
- 6.132 The letter of 23 February 2012 to the Confidential Recipient makes similar complaints. It also alleges that, when Superintendent Foxtrot became aware of Ms ██████ murder, "there was an urgent attempt to dispose of ██████ case as quickly as possible and at all costs".
- 6.133 The issues arising in this case have now been investigated or reviewed, at least to some extent, the Byrne-McGinn investigation, Chief Superintendent Sheridan, Assistant Commissioner Jennings, GSOC (perhaps as many as three times - ██████ initial complaint, ██████'s complaint, and ██████'s most recent complaint), and Superintendent Wall. There are also legal proceedings in being issued by Mr ██████ and I understand that GSOC's decision to admit Ms ██████'s recent complaint may itself be the subject of judicial review proceedings.
- 6.134 In the Commissioner's letter of 26 February 2013, he referred to the direction of the DPP in relation to the Cavan case for summary trial in the event of a guilty plea. No reference was made to the delay in submitting the investigation file and the issue of the appropriateness of the original Section 2 assault charge was not discussed. Nor was the Secretary-General told that the DPP's direction consenting to summary

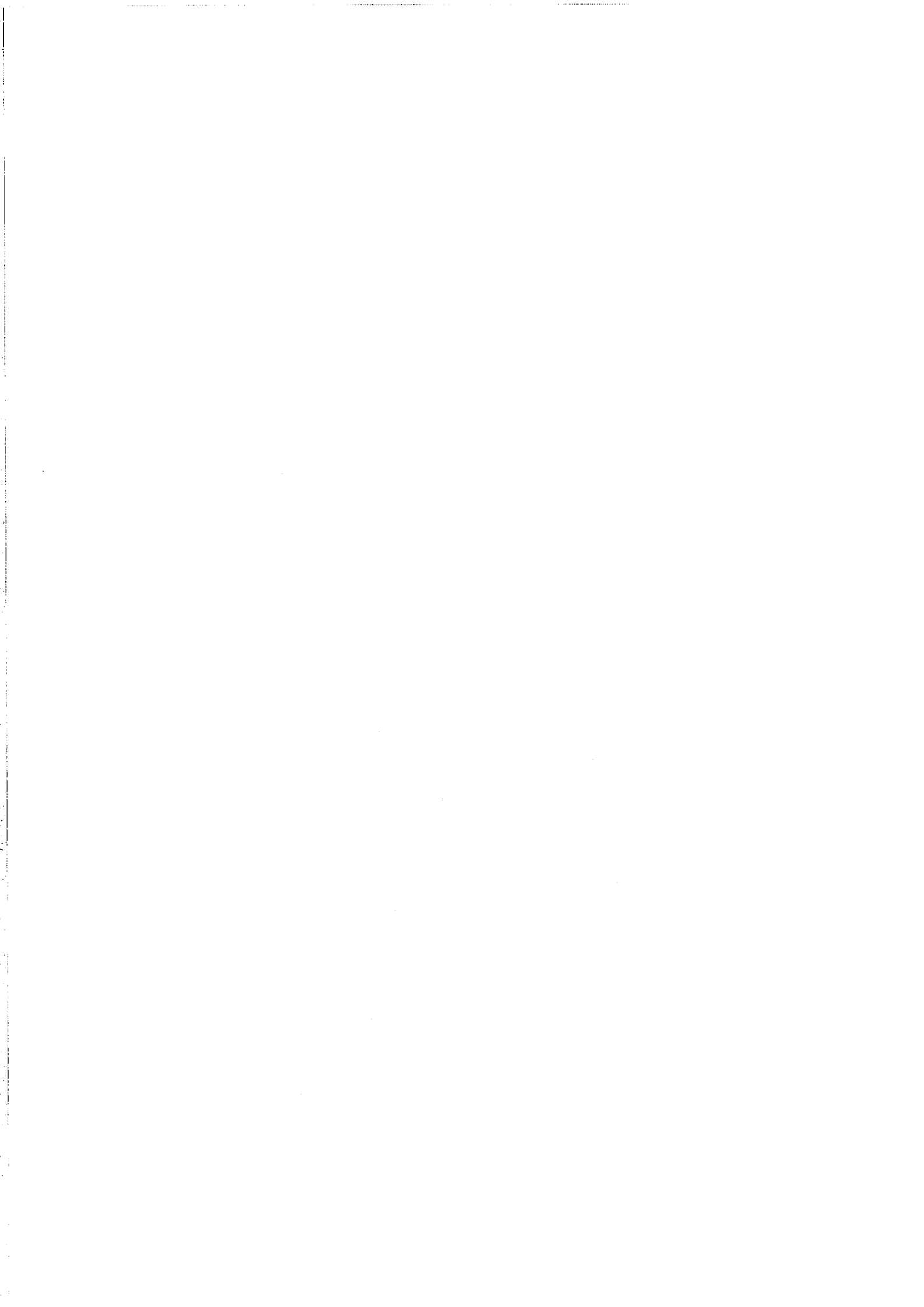
disposal on a plea of guilty was based, in part, on the express understanding that the accused had no previous convictions. While that remained true, the impression that that information might give of a person's character could not be justified in Mr. McGrath's case in circumstances where he had admitted his involvement in the very serious offences in Tipperary.

- 6.135 The Commissioner included in his letter reference to an "updated outcome", which dealt with the discontinuance of the GSOC investigation into [REDACTED] complaint and Chief Superintendent Sheridan's arrangements for Garda Golf to receive advice. No reference was made to the Section 97 report by GSOC into Mr [REDACTED]'s complaint or to Superintendent Wall's findings on foot of that report, which were highly critical of the want of supervision of Garda Golf. Superintendent Wall's report was more "up-to-date" information at the time of the Commissioner's letter. It is not understood why the outcome of that process was not shared with the Department.
- 6.136 The multiplicity of investigative effort is not proof of the adequacy of all or any one of the investigations. In fact, it is likely to prove quite the opposite. The circumstances of the offences committed by Jerry McGrath may have been unique, but the practical policing and procedural issues that arose in those circumstances can be expected to arise again. The issue of primary concern is the effectiveness of communication between Garda Districts in different parts of the country that have an interest in one suspected offender. Their interest may relate to progress in their respective investigations, the preparation of a file seeking directions from the DPP, objection to bail, and/or to the imposition and monitoring of bail conditions. Other important issues include the choice of the appropriate charge in cases where contact is not initially made with the Office of the DPP to obtain a preliminary direction, and the use of the power to grant station bail.

- 6.137 It is a matter of some concern that the GSOC investigation and the Garda disciplinary deciding officer (for the purpose of Regulation 45) reached radically opposed views as to where responsibility lay for ensuring effective communication. In saying that, I think it is important to emphasise that I do not suggest that that difference of views reflects any reluctance on the part of An Garda Síochána to give effect to a recommendation from GSOC or in any way to ignore or disregard the outcome of their investigation. Superintendent Wall's decision, in particular in relation to the more contentious position in Cavan, is a cogently, even trenchantly, argued one. In my opinion it was a decision that was legitimately open to him to make. The deciding factor in his decision, i.e. the want of effective supervision of a probationary Garda conducting an investigation into a serious offence alone, is itself a serious matter. That being so, the additional concern arises that that view of the matter has not led to the initiation of any disciplinary proceedings.
- 6.138 Sergeant McCabe also alleges that he was notified by Mr [REDACTED], GSOC, on 28 October 2010, that Garda Zulu had said in interview that it was Sergeant McCabe who had directed the release of Mr McGrath on 30 April 2007. Sergeant McCabe denies that, and says that Garda Zulu later retracted that statement. He also says that the investigating Garda, Garda Golf, not only confirmed that it was not Sergeant McCabe who directed Mr McGrath's release, but named another officer who directed his release and said that he did not mention that other officer to Mr [REDACTED] of GSOC because he "was trying not to get other people involved". I specifically requested any record at Bailieboro Garda Station, whether in any Occurrence Book, Journal, Diary etc., of the decision to charge and release Mr McGrath. In reply, I have been informed that there are "nil" such documents.
- 6.139 As stated above, I have seen a report Garda Zulu made to GSOC dated 8 September 2011, stating that it was Sergeant McCabe who directed him to tell [REDACTED] not to attend court on 7 January 2008 and Chief

Superintendent Sheridan reported that he notified Ms. [REDACTED] accordingly.

- 6.140 I have not seen GSOC's investigation files and cannot therefore offer any views in relation to the significance of the above matters. However, the possibility that Sergeant McCabe, who by 2010 appears to have been widely known as a member who had made complaints about other members, was being described as being involved in significant aspects of the case that he may not have been involved in is a matter of some concern. Having reviewed the Section 97 report, it is not apparent that GSOC has dealt with this issue or taken appropriate steps to establish exactly how these events came to occur and taken action accordingly. It may be, of course, that GSOC has other files or papers in the matter. If so, I have not seen them. Unless, on further inquiry being made of GSOC, additional information comes to light, some concern must remain about these matters.
- 6.141 In all the circumstances, I am of the opinion that there is cause for concern as to the adequacy of the investigation of the complaints made by Sergeant McCabe in relation to these incidents and a sufficient basis for concern as to whether all appropriate steps were taken by An Garda Síochána and/or the Garda Síochána Ombudsman Commission to investigate and address the specified complaints.
- 6.142 In my opinion, these matters warrant further inquiry in an appropriate forum in the public interest.



Chapter 7: Public Order Incident at a Restaurant in

Bailieboro on 5 August 2007

- 7.1 On 5 August 2007, shortly after 3:00pm, three men entered [REDACTED] [REDACTED] Bailieboro, which is owned by Ms [REDACTED] [REDACTED]. Her attention was drawn by their behaviour. She noticed one of the men, whom she knows as [REDACTED], leave the table at which they were seated, go to the bathroom, and return. After that she noticed the men laughing and joking and shouting at her, including references to "taken (sic.) the piss" and "pissed off". They were laughing hysterically and, as they were leaving, she went to the table where they had been to see what they had done. She noticed liquid spilt on the ground which turned out to be vinegar. Another man and his child arrived into the restaurant and sat at a nearby table, which provoked much laughter from the original three males who were now outside the restaurant, looking in. She then examined the vinegar bottle on this second table and noticed that the liquid it contained had a "urine colour", unlike her vinegar, which was clear. Ms [REDACTED] then examined the CCTV footage and noted that one of the men at the first table had taken a vinegar bottle off another table and spilt the contents on the floor before giving the bottle to one of the other men, [REDACTED]. He put the empty bottle down his trousers before going to the bathroom. On his return from the bathroom, it was full with a yellow coloured liquid. He looked around him before placing it on the table at which the other man and his son later sat down.
- 7.2 Ms [REDACTED] then left her restaurant and went to a nearby public house, knowing that the three men drank there. She walked up to Mr [REDACTED], who was sitting at the bar, put the bottle on the bar in front of him and "told him he was a dirty despicable bastard urinating in a bottle in my restaurant". She turned and left, telling him that she had him on camera and was going to the guards.

7.3 She made contact with Gardaí and the scene was attended by Garda Alpha and Garda Mike. They accompanied her to a nearby public house where she pointed the three men out to the Gardaí. She returned to her restaurant.

The Investigation of the Offence and Subsequent Prosecution

7.4 According to Garda Alpha, in a statement he made on 22 March 2008, he asked ██████████ to go outside and talk with him, which he did. He then cautioned ██████████ in the usual terms, i.e. that he was not obliged to say anything unless he wished to do so but that anything he did say would be taken down in writing and might be given in evidence. According to Garda Alpha's statement, Mr ██████████ said:

"I apologise for pissin (sic.) into the vinegar bottle".

7.5 Garda Mike made a statement on 29 October 2007 in similar terms.

7.6 Ms ██████████ made a statement to another Garda on 8 August 2007 at Bailieboro Garda Station, in which she outlined her account of the incident, as stated above. She also referred to a development which is not adverted to in either of the Garda statements. She said that five minutes after she left the local pub for the second time, having pointed Mr ██████████ out to the Gardaí, "the two guards came up to my restaurant with Mr ██████████, he asked if he could talk to me alone but I said no".

7.7 On 29 October 2007, Sergeant Bravo made a report of the incident addressed to the Sergeant-in-charge, Bailieboro. He reported that Ms ██████████ called to Bailieboro Garda Station in an irate state on 5 August 2007 to report the incident and then gave an account of the incident in accordance with Ms ██████████'s statement, although without mentioning Mr ██████████ being brought to her restaurant by Gardaí. Under the heading "Garda Action" he reported that Gardaí Alpha and Mike accompanied Ms ██████████ to the licenced premises where she identified Mr ██████████ to them. He reported that Mr. ██████████ admitted to the Gardaí, after

caution, what he had done and said, "the Gardaí cautioned him as to his behaviour for the rest of the evening". There is no reference to that in either Garda statement. On 10 April 2014 I sought copies of any notebook entries made by Gardaí Alpha and Mike. I have been informed that Garda Mike was the assisting Garda and did not make any entry in his notebook. I have examined a copy of Garda Alpha's notebook. It includes a note of his having cautioned Mr. [REDACTED] as to his right to silence and of Mr. [REDACTED]'s reply after caution. That reply has not been signed by Mr. [REDACTED]. There is no note of Mr. [REDACTED] being cautioned as to his future behaviour.

- 7.8 Having noted that a statement was made by Ms [REDACTED], the report then continued that she was not happy with Mr [REDACTED] being cautioned and would like him prosecuted. The report contains a discussion as to the difficulty in coming up with an appropriate offence. After discounting the possibility of a public order charge or criminal damage, Sergeant Bravo suggested an offence of theft contrary to Section 4 of the Criminal Justice (Theft and Fraud Offences) Act 2001. There is a brief statement of the personal circumstances of Mr [REDACTED] and an indication that the file was being forwarded for a direction and that the only recommendations available were that Mr [REDACTED] be summonsed for an offence of theft or that no proceedings be taken. Attached to the report were the statement of Ms. [REDACTED], the statement of Garda Mike, previous convictions of Mr [REDACTED], and a PULSE print out. The report concludes with an apology for the delay in submission of the file, which was explained by the fact that Garda Alpha is the investigating member and is currently off sick.
- 7.9 It is not clear from the papers what the response to that report from Sergeant Bravo was. Sergeant McCabe has no recollection of receiving that report. I have examined the correspondence file furnished to me. The entries on that record are very sparse in 2007 and do not correlate to the dates of the reports and other actions found in the investigation file.

7.10 Sergeant Bravo made a further report on 21 December 2007, by which time the investigation had been advanced by the taking of cautioned statements from Mr [REDACTED] and the other two men who had been with him, [REDACTED] and [REDACTED]. Two of those statements were taken on 13 December 2007 and the third on 21 December 2007. All three men admitted involvement in the incident, but all three maintained that the bottle had been filled with water rather than urine. In his statement Mr [REDACTED] said that the Gardaí told him to go home and that he did.

7.11 Sergeant Bravo's report included an update about the taking of those statements and some background on the two men who had not been mentioned by name in his previous report, [REDACTED] and [REDACTED]. He also reported that Ms [REDACTED] was adamant that it was urine in the bottle and noted that Mr [REDACTED] had made an admission to that effect on the night of the incident. This report contained further discussion of the appropriate offence to be charged, with a recommendation that the charge be for theft with a possible charge also of criminal damage. There was a brief discussion also of the respective responsibility of the three individual suspects. The cautioned statements were appended to the report along with the material which had accompanied the first report and, in addition, a list of previous convictions for [REDACTED].

7.12 There is a formal report from Sergeant McCabe to the Superintendent, Bailieboro dated 21 January 2008. There seems to have been some discussion of the matter before the formal report in that there appears to be a hand written note attached to the front of the report in the following terms:

"Ann,

Can you let Supt. have a look at this. I have faxed it to State Solicitor as requested.

Maurice”

- 7.13 The report referred to a conversation with the State Solicitor “earlier today”, i.e. on 21 January 2008, and stated that there was strong evidence and excellent CCTV footage of the incident. The incident was then described, including a statement to the effect that Ms ██████ was “able to say it is urine by its colour, its smell and its warmth”. The report noted that, although Ms ██████ gave the bottle of urine to Mr ██████ and “he takes it away”, the CCTV was “of excellent quality and clarity”.
- 7.14 The report also observed that “Ms ██████ is very disappointed with the Garda investigation and how she was treated and I would agree with her. I am carrying out a full investigation into this incident as the file submitted to me on 21 December 2007 needs major attention.” The report noted that the State Solicitor, Mr Rory Hayden, had requested a preliminary report for transmission to the DPP for their “urgent views on the case”.
- 7.15 The report noted that possible offences to be charged were assault causing harm, endangerment, criminal damage, theft and possibly an offence contrary to Section 6(3)(b) of the Non-Fatal Offences Against the Person Act 1997. (The latter offence relates to spraying or pouring bodily fluids onto a person during the course of a syringe attack. Although it is a rare statutory reference to the use of bodily fluids to commit crime, it was never a likely charge in the absence of a syringe.) Direction was then sought as to an appropriate offence with an indication that upon receipt of directions a full investigation file would be forwarded to the DPP.
- 7.16 On 31 January 2008 Superintendent Foxtrot, replied, requesting a completed investigation file “in course”.
- 7.17 A direction issued from the Office of the Director of Public Prosecutions on 31 January 2008. Although the directing officer expressed a

preference to have dealt with the matter by way of adult caution, he noted that the accused had previous convictions and would not be a suitable candidate for that scheme. He said that none of the charges recommended adequately fit the situation. He directed that the accused be charged contrary to Section 6 of the Criminal Justice (Public Order) Act 1994 and included the appropriate wording of the charge in his direction.

- 7.18 It appears from a stamp on the copy letter on the file that the direction was received in Mr. Hayden's office on 1 February 2008. Although it was formally sent to the Superintendent's office at Bailieboro Garda Station under cover of a letter dated 4 February 2008, the summonses were applied for on 1 February 2008, the day the direction was received in the office of the State Solicitor. Sergeant McCabe maintains that he applied for the summonses before receiving the direction because he was conscious of the impending deadline for application. The wording of the charge contained in the summonses does not exactly reflect the direction issued by the DPP's office.
- 7.19 The summonses were returnable for 4 April 2008 and the matter appears to have been finalised in Bailieboro District Court on 6 June 2008. The return from Superintendent Delta of the court hearing on that date noted that all three accused pleaded guilty and each was ordered to pay €500 to Ms. [REDACTED]. It is also noted that she gave evidence. The two accused most actively involved in the incident, Mr. [REDACTED], who had filled the bottle with urine, and Mr [REDACTED], who had emptied the vinegar on the floor, both received three month suspended sentences on conditions, including that they stay away from the restaurant. The other accused, Mr [REDACTED], was dealt with under Section 1(1) of the Probation of Offenders Act on the basis that he did not actively participate in the offence. The note also records that Ms [REDACTED] requested that the €1,500 in aggregate that the accused were ordered to pay to her be paid instead to the Garda Benevolent Trust Fund. The file includes correspondence dated 18 June 2008 from the secretary of the Garda Benevolent Trust

Fund acknowledging receipt of the €1,500 and enclosing a receipt addressed to Ms. [REDACTED] for that sum.

The Byrne-McGinn Investigation

7.20 In a statement made by Sergeant McCabe on 28 April 2008, he gave an account of this incident, including the following remarks:

“Two Gardai arrived and laughed and ridiculed the injured party despite one of the culprits admitting that he urinated into the vinegar container and placed it back on the table. The injured party was furious and disgusted with the way she was treated by the Gardai. Nothing was done about the incident until the owner made numerous calls to the Garda Station and eventually I became aware of it. I reported the inactions and behaviour of the Gardai to Superintendent Foxtrot on 21 January 2008 and on 28 January 2008 and requested help to sanction the Gardai involved for the inappropriate way they dealt with the case. He refused to take any action against the Gardai concerned.”

7.21 The matter was investigated by Chief Superintendent Mc Ginn. A statement was taken from Ms [REDACTED] on 23 January 2009 by Detective Inspector Michael Finan and Detective Garda John Jones. In that statement Ms [REDACTED] expresses herself to have been “dissatisfied with the manner in which the case was dealt with and investigated by the police”. The first problem she identified was that the Gardaí brought the main culprit back to her premises after she had identified him to them. As she put it, “I felt I had handed the problem over to the Gardai and now they had brought it back to me and I felt this to be intimidating.” She appears to have felt under some pressure from Gardai to meet with the suspect on the basis that if she did so and he apologised to her “this would help the case”. She attributed this remark to Garda Mike.

7.22 Her second concern related to the conduct of the subsequent investigation. She said the other Garda (who must have been Garda Alpha) came to her premises a couple of days after the incident and asked if she had CCTV footage of the incident. She said she did and he asked her to download it and said he would come back in a day or two to collect it. He did not come back for the footage so she brought the disc to the Garda Station, where she was told that the Garda was off sick. Another Garda agreed to take the disc and said he would put it in the locker of the Garda that was dealing with it. She called the Garda Station two to three weeks later [REDACTED]

[REDACTED] She was told that another Garda would be dealing with the matter. She said she enquired about the disc she had given and the officer to whom she was speaking told her that he checked the locker of the Garda who was dealing with the case but there was no disc there. She said she was asked to make another copy to give to the new Garda, who she was told would be in contact with her. She said she heard nothing for another two or three weeks. One night she stopped Garda Mike, at the takeaway hatch to her restaurant, and asked him what was the story. She said that he told her that the file had been sent to the DPP "because they were finding it hard to figure out what category to charge them with". She stated that she was told it normally takes two weeks to get a reply. She said she contacted Bailieboro station about two weeks after that to speak to Garda Mike and when she did she learned he was off sick. She was told to ring back and ask for a man called [T.] "who [she] took to be higher than a Garda". She said that he said he knew nothing about the case, but would pass it on to whoever his boss was. The following day she received a phone call from Sergeant McCabe who apologised on behalf of the Gardaí and asked if he could call to see her. He did that and when she mentioned that the file had gone to the DPP he told her that it had not and he "apologised profusely about the way the case had been dealt with". He also told her that she could make a complaint about the matter.

- 7.23 She said that Sergeant McCabe called back later to say that he had a file back from the DPP and they discussed the charges. It appears that at this time there was some discussion also of her concerns about the way the investigation had been handled and she said that she asked Sergeant McCabe to talk to Garda Mike and to “tell him he shouldn’t have told lies”. Her account of Sergeant McCabe’s response was that “if we wanted this done we would have to go over to the station and make a statement”.
- 7.24 In a report made on 30 November 2009 addressed to Assistant Commissioner Byrne, Superintendent Foxtrot dealt with this incident, among others. He referred to a meeting with Sergeant McCabe on 28 January 2008 and also to a report on the same date from Sergeant McCabe. It should be noted that the incident was not mentioned specifically in Sergeant McCabe’s report, although there were elements of the complaint being made by Sergeant McCabe in the report that could be considered to arise in relation to this incident. Later in the statement, Superintendent Foxtrot gave his account of the incident. He referred to the file submitted by Sergeant McCabe on 21 January 2008 and stated that the file was submitted to the DPP for his consideration of the appropriate charge, in accordance with Sergeant McCabe’s recommendation. He gave an account of the DPP’s direction and the charging of the suspects and of the conduct of the prosecution. He concluded “Sergeant McCabe did not report to me any issue of impropriety against the investigating Gardaí in the investigation of this summary case”.
- 7.25 Chief Superintendent McGinn expressed the view that “the investigating Gardaí did not act professionally or appropriately which caused Ms ██████ some distress. Garda Mike, Bailieboro misled Ms ██████ into believing that the file had been forwarded to the DPP when clearly this was not the case. While Sergeant McCabe was aware that the investigating Gardaí behaved inappropriately towards the injured party,

he did not take any immediate action himself or bring this matter to the attention of his District Officer.”

7.26 Chief Superintendent McGinn concluded:

“The investigation of this matter fell well short of the required standard and the injured party was not truthfully kept informed of the progress of the investigation.”

7.27 It is stated that the file was forwarded to the Divisional Officer, Cavan/Monaghan Division for commencement of disciplinary proceedings against the members concerned in this investigation.

The Disciplinary Proceedings

7.28 It appears that the matter was brought to the attention of the Assistant Commissioner, Northern Region by Chief Superintendent McGinn by letter dated 25 May 2010 with a recommendation that a disciplinary investigation should be commenced. Chief Superintendent McGinn noted that Sergeant McCabe had made allegations of mismanagement, victimisation, bullying and harassment against named Garda Officers in the Cavan/Monaghan Division and that arising from an investigation into those matters, certain disciplinary matters had come to light. The view was therefore expressed that

“good practice would suggest that these matters should be investigated independently. I, therefore, recommend that any disciplinary investigation be carried out by an officer from outside the Northern Region.”

7.29 The latter recommendation was not followed, in that on 21 June 2010, Assistant Commissioner Kenny appointed Superintendent Noel Carolan, Carrick-on-Shannon, as deciding officer for the purpose of a disciplinary investigation under the Garda Síochána (Discipline Regulations) 2007 into the conduct of both Garda Mike and Garda Alpha. In answer to a specific query I raised on this issue, Assistant Commissioner Kenny explained that

“It is good and established practice that an Appointing Officer would first establish if there were any Officers from within his/her Region who were independent from the matter under investigation and the personnel being investigated. This would eliminate the necessity to apply to Human Resource Management for permission to appoint Personnel from outside the Region.”

7.30 He also advised that Superintendent Carolan was transferred on promotion to the Northern Region from Dublin. I have been informed that his promotion and transfer took place in January 2010, only five months before his appointment as Deciding Officer. He had not previously served in the region.

7.31 As part of that investigation, Superintendent Carolan took a further (third) statement from Ms [REDACTED]. This in fact appears to be exactly the same statement that was taken by Detective Inspector Finan and Detective Garda Jones in January 2009 (with the exception of a note in the middle of the statement about taking a break). In other words, Ms. [REDACTED] appears to have been asked to confirm the content of her previous statement and, having done so, it appears to have been re-dated 7 September 2010.

7.32 A statement was taken from Sergeant Maurice McCabe on 9 September 2010. In that statement he said that he first became aware of the incident when Sergeant Kilo telephoned him one day in November or December 2007 when he was off-duty and reported the facts to him. He said that he was also told that the owner of the restaurant was complaining that the two Gardaí who attended did nothing about it. He described meeting Ms [REDACTED] and her husband shortly afterwards (he thinks the following day) and receiving an account of the incident from them and seeing the CCTV footage. He said:

“[REDACTED] complained about the way she was treated by the Gardaí who arrived at the scene. She stated that her complaint was not taken seriously by the Gardaí on the day and that every

time she enquired about the case she was told by the 2 Gardai that the file was with the DPP. I knew that no file had gone to the DPP in this case”.

- 7.33 He said he discussed the option of making a complaint against the two Gardai but said “she was nervous and afraid to do so for fear of retaliation and she declined to do so”. Sergeant McCabe in his statement said:

“I reported the facts of the case and the manner in which the Gardaí treated [REDACTED] to Superintendent Foxtrot but I am not sure of the date. He showed no interest in dealing with the incident or the Gardai involved, Garda Mike and Garda Alpha. The conversation went in one ear and out the other ear with him.”

- 7.34 He said that he compiled a file on the facts of the case and submitted it to the State Solicitors Office for forwarding to the DPP and said he thought he contacted the State Solicitor by phone prior to sending the file. He said the file was typed in his office as was the minute Superintendent Foxtrot was to sign. He said that he asked Superintendent Foxtrot to sign that minute, which he did. He said that he had never ever had to resort to this type of practice before and that he kept an eye on the file in relation to the six month limitation for proceedings.
- 7.35 Shortly before the six months was up, he said he felt that he should issue a summons. He said that Superintendent Foxtrot should have contacted the DPP before this.
- 7.36 Sergeant McCabe said that on 1 February he issued or directed to be issued a summons for an offence contrary to Section 6 of the Criminal Justice (Public Order) Act 1994 for each of the three defendants and he referred to the subsequent course of proceedings.

- 7.37 He stated that Superintendent Foxtrot took no action against the two Gardai who let Mr and Mrs ██████ down by not properly investigating their complaints and he expressed the view that "it is very unfair to commence or contemplate disciplinary proceedings against any Gardai when the Superintendent in charge of the area at the time, Superintendent Foxtrot, did not want to nor had no will to have this case investigated or send the file to the DPP".
- 7.38 Garda Mike made a report on 16 November 2010 to Superintendent Carolan in which he denied telling Ms ██████ that a file had gone to the DPP saying that as he was not investigating the incident, he did not have any information on the file, therefore he would not have informed the injured party as to where it was located because he simply did not know.
- 7.39 He also denied the allegation that he told the injured party it would take two to three weeks to get the file from the DPP on the basis that he had said nothing about the file having gone to the DPP in the first place.
- 7.40 Garda Alpha made a report dated 30 October 2010 to Superintendent Carolan in which he gave an account of the incident.
- 7.41 He described speaking to Mr ██████ after meeting him in a licenced premises and said that he cautioned him and that Mr ██████ apologised after caution. He then said he accompanied Garda Mike back to the restaurant and informed Ms ██████ that ██████ had admitted the offence following caution and that "following obtaining a statement from herself I would be prosecuting for the same". He also asked her for CCTV and said that she said she would have to download it for him. He said that Ms ██████ attended Bailieboro Garda Station the following day upon his request and "gave me a statement in relation to the incident".
- 7.42 There is no reference in Garda Alpha's report to bringing Mr ██████ back to the restaurant. Nor is there any reference to promising to return to Ms ██████ to obtain the CCTV footage from her. Ms. ██████'s statement

was not made by her the following day and does not appear of its face to have been made to Garda Alpha.

- 7.43 Garda Alpha said that he consulted with his Unit Sergeant, Sergeant Bravo, as to what offence or offences could be prosecuted and that he also consulted with legal training staff in Monaghan.
- 7.44 He said that on 7 September 2007 he was involved [REDACTED], as a result of which he was unfit for duty for a period of five to six months and, on returning to duty, he was assigned to light duties for a period of almost two months. He said that, upon returning to work, he successfully prosecuted the three males for the offences of public order.
- 7.45 He also noted that these incidents occurred during his probation phase.
- 7.46 In his disciplinary report dated 11 November 2010 addressed to the Assistant Commissioner, Northern Region, Superintendent Carolan appears to have accepted Ms [REDACTED]'s account of the Gardaí returning to her premises with the suspect, "who she was told wanted to apologise to her". He noted that she felt this to be intimidating. He also noted that the suspect "went to the restaurant with Garda Alpha, but he was not requested to do so. He was not under arrest or acting under the instruction of Garda Alpha". I cannot find a factual basis for this finding in the materials to which Superintendent Carolan referred in his report, in that those issues are not specifically addressed.
- 7.47 Superintendent Carolan accepted Ms [REDACTED]'s account of being told that Garda Alpha would return to collect CCTV footage and that he did not do so. Superintendent Carolan determined that Garda Alpha was in breach of discipline (neglect of duty) and the disciplinary action that he decided should be taken was advice. He stated that he administered the advice and informed Garda Alpha that he had

“statutory obligations to secure all available evidence when investigating a criminal offence, that he should have secured the CCTV at the earliest opportunity and that all investigations must be conducted thoroughly and in accordance with the Human Rights of all parties involved”.

- 7.48 In his report dated 16 November 2010 to the Assistant Commissioner, Northern Region, in relation to the disciplinary investigation concerning Garda Mike, Superintendent Carolan noted the complaint of Ms [REDACTED] in relation to her having being told by Garda Mike that a file had been sent to the DPP when it had not. He noted also that Garda Mike denied this allegation. He decided that Garda Mike was in breach of discipline (neglect of duty) and the disciplinary action that he decided should be taken was advice. He administered the advice and “informed Garda Mike of his obligations and responsibilities to truthfully inform an injured party of the progress of the relevant investigations.”

Analysis

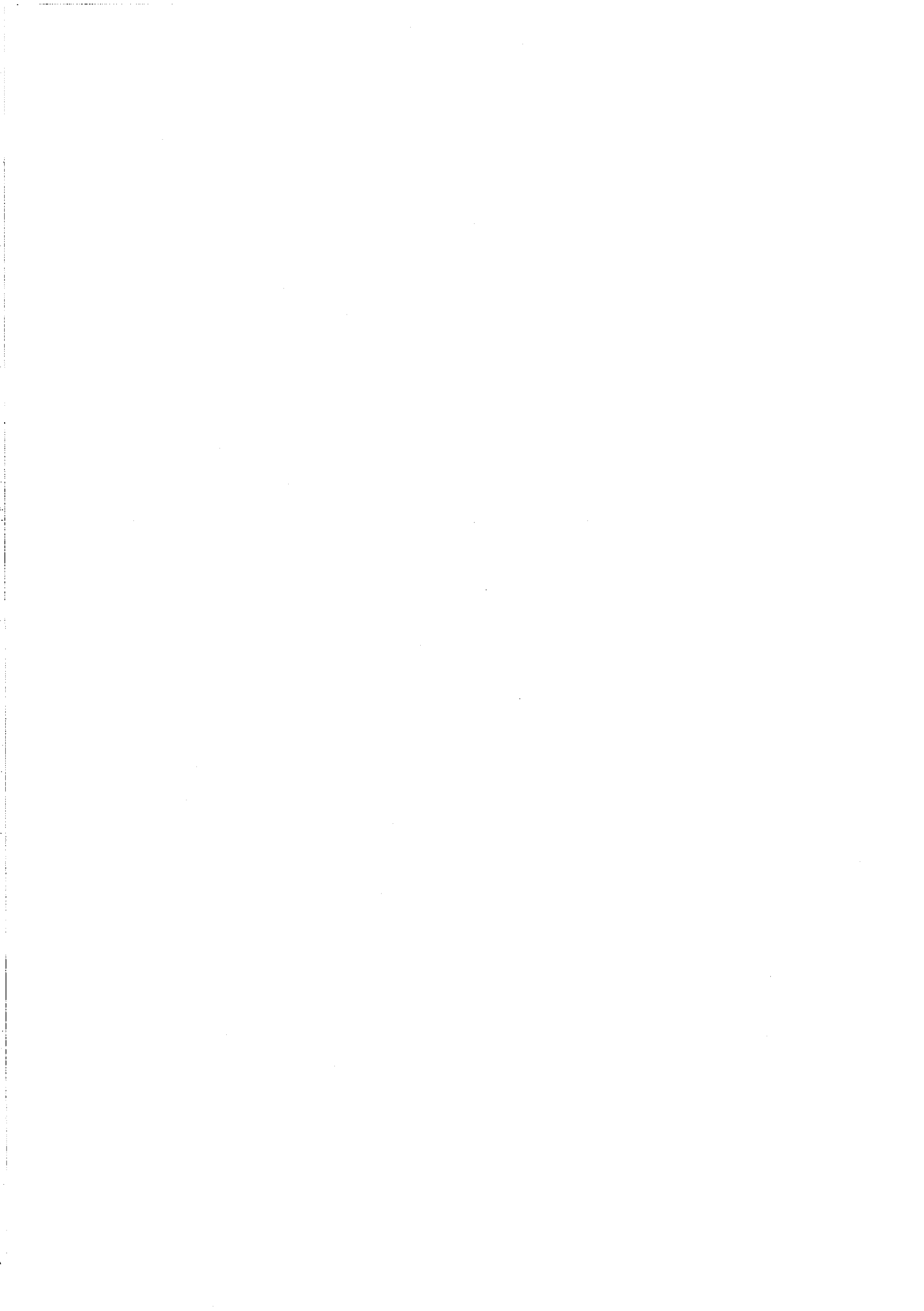
- 7.49 In the dossier, Sergeant McCabe complained that Ms. [REDACTED] was treated with “ridicule and fun” by two Gardaí and a Sergeant and that she was very annoyed with the behaviour of the Gardaí. In interview, Sergeant McCabe accepted that he had made an error in suggesting that the named sergeant attended the scene. He apologised for that error and asked to correct the record. I have considered Ms. [REDACTED]’s statements. While she did complain about the suspect being brought back to her restaurant by Gardaí and about how the investigation was conducted thereafter, I have not found any complaint by her that she was treated with “ridicule and fun” by Gardaí.
- 7.50 Her complaints in respect of the decision of the Gardaí to bring the suspect back to her restaurant and to, in effect, confront her with him, were not clearly and explicitly dealt with in Chief Superintendent McGinn’s report. Although there is a finding that the Gardaí “did not act professionally or appropriately which caused Ms. [REDACTED] some distress”

the following text relates to the conduct of the investigation, rather than their conduct on the day of the incident. The latter did not feature in the recommendation for disciplinary proceedings.

- 7.51 A practice of confronting a complainant with a suspect in the unstructured and uninvited way that Ms ██████ described, even for the purpose of an apology, is undesirable and may indeed intimidate a complainant, as Ms ██████ said it did in this instance. The fact that the Gardaí gave no account of this event, while not denying it either, was a matter that, in my opinion, called for further inquiry as part of the investigation of Sergeant McCabe's complaint. That did not happen.
- 7.52 Chief Superintendent McGinn's conclusions, that the investigation fell well short of the required standard and that the complainant was not kept truthfully informed of the progress of the investigation, are supported by Ms. ██████'s statements and by an examination of the available papers. Disciplinary proceedings were initiated and pursued to a conclusion. Although Chief Superintendent McGinn recommended that a Deciding Officer be appointed from outside the Northern Region, Assistant Commissioner Kenny has explained his reasons for not doing so. He appointed an officer who had recently arrived on transfer in the Region and who did not have a history of serving there. In circumstances where the Deciding Officer made findings of breaches of discipline and imposed disciplinary sanctions within the range of his discretion, it is my opinion that no further inquiry is warranted either into the process of appointment of the Deciding Officer or the outcome of the disciplinary investigation.
- 7.53 Sergeant McCabe complains in the dossier that the matter was reported to Superintendent Foxtrot but that he would take no action. Chief Superintendent McGinn concluded that Sergeant McCabe, although aware that Gardaí were behaving inappropriately, took no immediate action himself and did not bring the matter to the attention of his District

Officer. I have a number of concerns about how this conclusion was arrived at.

- 7.54 First, the file suggests that the incident itself was brought to the District Officer's attention by Sergeant McCabe and, indeed, that Sergeant McCabe was proactive in ensuring that a file was produced, that the file was sent to the DPP, and that summonses were applied for before time expired. Secondly, concerns that were expressed in writing by Sergeant McCabe to Superintendent Foxtrot in his confidential report of 28 January 2008 include issues that arise in the conduct of the investigation of this incident. Thirdly, although there was some dispute between Sergeant McCabe and Superintendent Foxtrot about whether the incident was discussed at the meeting on 28 January 2008, Sergeant McCabe does not appear to have been made aware of the dispute or to have been given an opportunity to respond to Superintendent Foxtrot's account. Fourthly, the papers I have examined do not demonstrate that this incident was the subject of effective supervision or monitoring, particularly bearing in mind the fact that it was being investigated by a probationer Garda.
- 7.55 In all the circumstances, I am of the opinion that there is cause for concern as to the adequacy of the investigation of the complaint made by Sergeant McCabe of inaction by the District Officer in relation to this incident and there is a sufficient basis for concern as to whether all appropriate steps were taken by An Garda Síochána to investigate and address the specified complaints.
- 7.56 In my opinion, these matters warrant further inquiry in an appropriate forum in the public interest.



Chapter 8: Assault and False Imprisonment of a Girl on 2 September 2007

- 8.1 On 2 September 2007, a 17 year old girl, Ms Red, made a statement of complaint to Garda November. According to Garda November, in a statement she made on 5 February 2008, she was on duty as observer on 2 September 2007 in the District patrol car accompanying Sergeant Bravo. They received a call to go to an alleged assault in the Cootehill area. When they arrived in Cootehill they went to the home of Ms Red and obtained a statement from her.
- 8.2 In her statement Ms Red said that she had been out the previous night with two of her friends and was walking home at around 6.00 a.m. on the morning of 2 September 2007. Her two friends, both male, walked her near home. She started to walk the rest of the way home by herself. She said,

“As I was walking down the road, I met a male walking towards me. He was stumbling along the path. I walked past him. [She then gives a detailed description of the physical appearance of this man]. I know him from around the town. As I walked past, I turned around and looked back and he was coming walking after me. I started walking faster and I could hear him getting faster. He grabbed my shoulder; I had started running at this stage. He put my hand his hand (sic.) over my mouth. I struggled to get away and I screamed out the lads names. Then I fell and I got up and I ran up towards the town. I met the lads I know he is a foreign national because as he walked past me he was stumbling so he said sorry. I think I know him from the school maybe picking up kids. [REDACTED]

[REDACTED]. I did not receive any injuries from this just in shock. When he grabbed me, he had a

tight grip on myself, I was trying to shout but couldn't really when his hand was over my mouth."

- 8.3 Garda November and Sergeant Bravo were attached to Bailieboro Garda Station. The incident occurred in Cootehill Garda sub-district. Another Sergeant was in charge of that sub-district.

The Garda Investigation

- 8.4 The only formal statement from any member of An Garda Síochána concerning the conduct of the investigation in the original investigation file is that of Garda November. Her statement contains a summary of the incident as described by Ms Red and later refers to the arrest of a suspect, ■■■, on 21 January 2008. Her account of the conduct of the investigation between those dates is as follows:

"I liaised with Cootehill Gardai with this incident to try and verify any suspects for this attack. I checked all CCTV in the area but to no avail".

- 8.5 On 10 April 2014 I sought a copy of any notebook entry or job book entry or memorandum or record of these or any other investigative steps taken between 2 September 2007 and 21 January 2008. No such note or record is available, with the exception of some notes made by Superintendent Foxtrot.
- 8.6 Superintendent Foxtrot made a note on 2 September 2007 of his being notified of the incident by Sergeant McCabe. He also recorded the briefing in his journal in which he noted "I directed investigation". The matter appears to have been discussed at a meeting on 5 September 2007. There is a reference in the note of that meeting to having a photo fit compiled. I have seen no evidence that this was done. There is also reference to the Sergeant-in-charge, Cootehill arranging a checkpoint "between 5 am and 6 am in order to gather information on the crime". There is no reference to CCTV in the notes of this meeting.

8.7 The note also records that members present were informed, under “Any Other Business” that Superintendent Foxtrot had noted files being sent in late, when nearly statute-barred. He said that was not to occur “as it will not be accepted”. The meeting was also advised:

“Gardai to tune into what crime is being committed in the District.”

8.8 Superintendent Foxtrot made a note of a further discussion of the incident on either 11 or 12 September. This note appears to include a reference to “suspect - surveillance” and “C/P at same time as - nil return”. The note also includes an address, which matches that recorded in the custody record for ■ following his arrest in January 2008. I have seen no further note or record of steps taken in the investigation.

8.9 Garda November stated that on 21 January 2008 at 10:15am she arrested one ■ for an offence contrary to section 3 of the Non-Fatal Offences Against the Person Act 1997. (PULSE records the arrest as having occurred on 14 January 2008, but the original custody record suggests that 21 January is the correct date.) It should be noted that her statement does not contain any indication of her grounds for suspecting that individual of the offence for which he was arrested. She cautioned ■ and he was conveyed to Bailieboro Garda Station, where Garda November introduced him to the member in charge, Garda Mike. Garda Mike contacted an interpreter.

8.10 It appears from the custody record maintained in respect of this arrest that ■ was arrested at 10:15am and arrived at the station at 10:40am. The custody record states that at 10:45am the prisoner was sitting in the day room, awaiting the arrival of ■. At 10:47am he was handed a copy of Form C72(s) (Notice of Rights) ■ to read. At 11:16am another attempt was made to contact ■ but the custody record states “couldn’t get through to her”. The ■ arrived at 11:44am and it appears that at 11:55am the member in

charge, Garda Mike, made a decision to detain ■ for the proper investigation of the offence in respect of which he had been arrested. I have not seen a statement from Garda Mike. On 10 April 2014 I sought a copy of any statement, note or memo from Garda Mike in which the reasons for the detention of ■ are recorded. I have been informed that Garda Mike “cannot recollect taking any notes or statements regarding [that] detention”. I am told that he has searched for notes and cannot find any.

- 8.11 Garda November’s statement does not contain a record of the content of her conversation with Garda Mike prior to the decision to detain ■ except that she said:

“I had a conversation with Garda Mike where I felt it necessary that he detain ■ under section 4 of the Criminal Justice Act 1984 for the proper investigation of the offence.”

- 8.12 At 11:57am the prisoner was taken by a Detective Garda Doyle to get fingerprints and a photograph taken.

- 8.13 At 12:10pm the prisoner was taken to an interview room with Garda November and Garda Oscar. A memorandum was made of that interview. (The original hand-written copy is not available.) The typed copy of the memorandum does not record the commencement or conclusion times but it appears from the custody record that the interview cannot have begun any earlier than 12:10pm nor concluded any later than 12:41pm, at which time the prisoner was taken from the interview room to the day room. He was released two minutes later at 12:43pm.

- 8.14 The memorandum of interview runs to two typed pages and, after the usual introductory matters, the incident was described to the prisoner and he was asked “do you recall this?”. His answer was that he was always with his wife and family and he hadn’t been out without his wife. When he asserted that he would be with his family and wife even at 2, 3,

4:00 o'clock in the morning, it was put to him that he had been "prosecuted for public order at that time of the morning in Cootehill". He confirmed that he had been and then confirmed that his wife and family were not with him then, saying they were not in Ireland at that stage, only his son, and it appears that he was saying that he was looking for his son on that occasion.

- 8.15 Asked then where he had been at the time of the offence, he said he was at home getting up at 8:00 to 8.30. There then followed some discussion of where he was living and whether he knew the location of the offence, local schools and other local landmarks. He was also asked about going to a party in the estate near where the offence occurred. Nothing of any probative value emerged from this line of questioning.
- 8.16 It was then put to him that a man fitting his description had committed the offence and he was asked had he any recollection of it. He answered "Never in my life" and denied that it was possible that it could have happened when he was drunk. He was then asked were his family living with him at that time and he confirmed that they were, his wife and daughter having come "last April".
- 8.17 The interview concluded with the question "Have you anything to add against the allegation made?" He replied, "Its nonsense".
- 8.18 It appears, from a report dated 12 February 2008 by Sergeant McCabe, that the arrest of ■ had been preceded, the day before, by formal correspondence from Sergeant McCabe to Garda November requesting an investigation file and report on the case. I have not been able to confirm that and there is no reference in the correspondence register for the Sergeant-in-charge's office to any such correspondence at that time.
- 8.19 A report was prepared by Garda November dated 5 February 2008 and addressed to the Sergeant in Charge, Unit A, Bailieboro. The account given by Garda November of the investigation prior to the arrest of ■

corresponds closely with that in her statement but with some additional elements. She stated as follows:

“After [taking the statement of complaint on 2 September 2007] Garda November liaised with Cootehill Gardai in relation to the description of the attacker to verify any suspects in the area.

I checked for CCTV footage in the area of the incident but to no avail.

I also checked with her friends who were with her that night but no one had seen anything.

From my investigations with Garda Oscar I nominated a suspect, a foreign national in the Cootehill area fitting the description of Ms Red’s attacker”.

8.20 This report contains a short account of the conversation between Garda November and Garda Mike prior to the latter’s decision to detain the suspect. The report states that

“Garda November informed Garda Mike that she had obtained a statement of complaint of Ms Red giving a good description of her attacker. Also informed him that he was [REDACTED] and she knew him from the Cootehill area”.

8.21 The conclusion of the report notes that Garda November contacted “the collator [REDACTED] in Cavan and retrieved 11 photography’s of [REDACTED] [REDACTED] fitting as near a description of [REDACTED]” (sic.). She states that she brought those photographs, along with the photograph of [REDACTED] taken following his arrest, to Ms Red on the night of 5 February “to identify the suspect through an informal identification parade but unfortunately she could not identify the suspect”. (I sought a copy of the album of photographs used for the purpose of this informal identification procedure, but I have been informed that it is not available.) The report continues that Ms Red had not seen the man in the

Cootehill area since the attack and stated that Garda November informed her and her parents of “all our lines of enquiry into the investigation”.

8.22 It is unclear whether Ms Red’s inability to identify the suspect was in any way related to the fact that he had a “light moustache” (as it is described in the custody record), which is visible in the photograph taken of him in custody. Ms Red did not mention a moustache in her description of her attacker in her statement. ■ was not asked about it in interview.

8.23 The report concluded,

“I will continue my efforts in this matter. I do feel that ■ is our suspect for this attack in Cootehill on the 2/9/07 but unfortunately Ms Red was unable to identify him as same and she stated she would contact gardai if she comes in contact with the male again.”

8.24 The attachments to the report were:

- the statement of the complainant,
- the statement of Garda November,
- the memo of interview with ■,
- PULSE Incident ■ printout, and
- copy of the custody record.

8.25 It appears that Garda November’s report was forwarded to Sergeant McCabe by Sergeant Bravo on 8 February 2008. His letter noted that ■

“still remains the main suspect but [Ms Red] was unable to identify him in a photo id on the 5.2.2008. Considerable investigation has been carried out by Gdai November and Oscar in

linking ■ to this incident but there is insufficient evidence to put any charges against him.”

8.26 His letter continues that the suspect is still living in the Cootehill area and observes:

“Ms Red still believes that if she sees him in person she may be able to identify him and as such has been asked to keep it in mind when she is around town. However, he seems to rarely leave the house at the moment and is currently unemployed which gives no opportunity to do an informal id. The suspect’s unusual appearance and short stature ■ leaves a formal id of an almost impossible task.

The delay in arresting the suspect was to allow the ip to carry out an informal id but no chance to do so arose.

However efforts will continue and updates reported.”

8.27 Although the height of the offender as described by Ms Red was about ■, it is noted in the custody record that ■ was ■. Ms Red also said the offender “had really round eye”.

Internal Criticism of the Garda Investigation

8.28 The investigation file was brought to the attention of the Superintendent at Bailieboro by Sergeant McCabe by letter dated 12 February 2008. The letter identifies five causes for concern in relation to the investigation. They are as follows.

- The file was very late.
- The arrest occurred the day after a reminder to submit the investigation file and a photo ID was carried out shortly after that. Why was an informal ID not done before then?
- It did not appear that any CCTV had been seized from any premises in the town which might identify the suspect.
- It was “amazing” that ■■■ remained the main suspect as he was only interviewed for 31 minutes and then released.
- The injured party’s statement described this incident as possibly an attempted rape but the Garda investigation did not reflect that.

8.29 The matter was dealt with by Inspector Delta (presumably as acting District Officer). In a handwritten note dated 28 February 2008, he said:

“This is a poor investigation into a serious incident and reflects as much on the supervision as the investigation.”

8.30 He raised specific issues with the conduct of the investigation, including the failure to prepare a briefing document, why two members were left to investigate this serious crime, why there was no ID parade, why the suspect was not asked to stand on an ID parade when being questioned, and who was consulted before he was released.

8.31 The correspondence from both the District Office and the Sergeant-in-charge was responded to by letter dated 21 March 2008 from Sergeant Bravo as follows:

- He did not accept there was an issue in regard to the time of submission of the file. He said that an interim report was initially submitted and both he and Garda November liaised with the District Officer and the Sergeant-in-charge in Cootehill. It was decided to give as much time as possible to allow Ms Red an opportunity for an informal ID. He also said that the suspect's house was monitored by Garda Oscar to identify a possible time to do that but the only method would have been through a contrived situation which would not have adhered to good practice and "any id would have been of poor evidential value". He said that when no opportunity arose, the District Officer was again liaised with and it was decided to proceed with an arrest and the difficulties in relation to an ID parade were outlined.
- He did not agree with the comment of the Sergeant-in-charge in relation to the arrest following the request for a report. He said that he had not received that request prior to the arrest as he was on leave on 21 January 2008 and the request for a report issued from Sergeant McCabe's office on 20 January 2008. He said that the arrest was organised the previous week between Garda November and Garda Oscar. He explained that "the id ... was carried out at this stage as we did not have a picture prior to the arrest". The reason for an ID parade not having been carried out is explained elsewhere in his report.
- He reported that CCTV in the vicinity was checked but there was nothing of evidential value and the only camera which may have given a good picture of the suspect was in a residential area and was "operated by the construction company but this was not recording on the night/morning in question".

- He accepted that the interview was short but explained this by saying that the members had very little to put to the man other than to continually repeat themselves “which is not accepted as good practice”. He said he was on leave but was consulted by phone later as to the lack of progress.
- He stated that the motive might have been sexual or it might have been robbery, but there was nothing in Ms Red’s statement to suggest that it was sexual and there were no actions of a sexual nature carried out which might have given evidence sometimes available in the case of a sexual assault.

8.32 Sergeant Bravo’s letter then referred to the issues raised by the District Officer and said he noted the comments regarding supervision. In relation to a briefing document, Sergeant Bravo said he had discussed the matter with the District Officer and with the Sergeant-in-charge in Cootehill who was co-operative with advice and manpower. He also said that all three of them met on one occasion and discussed the investigation. He said that, while Gardaí November and Oscar did take the leading roles in the investigation, help was provided by other members in Cootehill and Garda November’s own unit. He also suggested that because the suspect had what he described as a “very distinguished” (presumably intending to mean “distinctive”) appearance it would have “bordered on impossible to get a suitable line-up” for an identification parade. This was stated to be because he has “bulging eyes and ... a strong [REDACTED] appearance”.

8.33 In relation to the progress of the investigation, Sergeant Bravo noted that the injured party had been encouraged to “keep a lookout for this man in town” and she had been provided with contact numbers in the event that she saw him. The suspect’s movements were being monitored by Garda Oscar to establish an opportunity to hold an informal ID parade. Contact had also been made with Social Welfare to see if the suspect attended their offices, which might have afforded an

opportunity to hold an informal ID. He also said that the option could be considered of asking the suspect to volunteer for an ID parade, but said this would be of limited evidential value given the failure of Ms Red to identify the suspect in the photo ID and also because of the difficulty in carrying out the parade. He said that he was also open to other suggestions.

8.34 On 8 April 2008 Superintendent Delta addressed a note to the Sergeant-in-charge, Bailieboro. Sergeant. McCabe had vacated that position a few days earlier.

8.35 Superintendent Delta was the District Officer at this stage and he made a number of criticisms of the conduct of the investigation. He observed that because Ms Red saw the suspect in person, as Sergeant Bravo observed in his report of 8 February 2008, "She may be able to identify him". Accordingly, he expressed the view that

"It is not understood why anything other than formal id parade would therefore be used."

8.36 Superintendent Delta also observed that the decision in *DPP v. Reilly* (presumably *People (DPP) v. O'Reilly* [1990] 2 IR 415) "enshrines to principles of formal id parades in such circumstances (sic)". He continued,

"to suggest, with a number on ethnic minority groups residing in our district that a parade could not be constructed in fanciful in the extreme" (sic).

8.37 He directed the members to secure and familiarise themselves with that case. I do not know whether that was done.

8.38 He also observed that the preparation of a proper briefing document would have obviated the suggestion that only repetitive questioning was the line that could be taken. He noted that there was clearly no development of the questions asked, in particular the suggestion that he

only went out with his family when he had in fact been prosecuted for a public order offence in the early hours when no family member was present. He concluded, “continue with your investigation”.

- 8.39 On 10 April 2014 I sought information on any further steps taken in the investigation following Superintendent Delta’s direction, including anything added to the investigation file, any notebook entry etc. The only document with which I have been provided is a copy of the correspondence register showing the last entry dated 10 April 2008, apparently from the Sergeant-in-charge, Bailieboro to the Sergeant-in-charge of Unit A. In all likelihood that was merely the forwarding of Superintendent Delta’s direction of 8 April 2008. There is, therefore, no evidence available to me that any further step has been taken in the investigation since that direction.

The Byrne-McGinn investigation

- 8.40 The allegation being investigated by Chief Superintendent McGinn was the following note of the case made by Sergeant McCabe:

“Cootehill rape investigation suspect only arrested days after I looked for the file and interviewed for “20” minutes which I highlighted and no action taken”.

- 8.41 The Byrne-McGinn report includes an account of the incident as appears from the statement of Ms Red. A number of criticisms are made of the investigation. It is stated that the matter was “poorly investigated initially by Garda November”. The following criticisms in particular were made.

- “There was a delay in obtaining relevant CCTV footage”.
- “No medical examination of injured party took place”.
- “No formal identification parade was held in an effort to have the suspect identified”.

- “There was a delay of four months in effecting arrest of the suspect”.
- “An inadequate interview of suspect took place while in custody”.
- “The investigation file was not submitted for five months after the incident”.

8.42 The overlap between these criticisms and those made by Sergeant McCabe is evident. I am, however, unclear as to how it was determined that there was a delay in obtaining CCTV footage. None was obtained, there was no note made of any efforts to obtain such footage, and Garda November’s statement and report are unclear as to when she made such efforts as she described.

8.43 The Byrne-McGinn report continues that in April 2008 Superintendent Delta had directed further enquiries be carried out and noted that “the matter is still under investigation”.

8.44 The report includes extracts from statements made by Superintendent Delta and Superintendent Foxtrot.

8.45 Superintendent Delta observed that he was critical of the investigation but “gave pointers as to how to progress it”. He said there was no evidence to support the assertion of a sexual motivation in the incident which Sergeant McCabe had made. He noted that, as appears from Sergeant Bravo’s report, no independent CCTV was available. He also noted that he had returned the file to have the investigation completed. His concluding comment on this investigation was:

“It was, at the very most, a Section 2 Non Fatal Offence against the Person (minor assault) not an assault causing harm.”

8.46 The extract from the statement of Superintendent Foxtrot is more detailed.

8.47 He noted that the incident was first reported to him by Sergeant McCabe on 2 September 2007, when he was told that two members of the station party, Sergeant Bravo and Garda November, were investigating. He said that progress in the case was reviewed during conferences attended by investigating members, including reviews at “Management Accountability meetings” attended by Sergeant-in-charge, Bailieboro, and Sergeant-in-charge, Cootehill. His account of the conduct of the investigation was as follows:

“The initial investigation focused on interviewing Ms Red and all other available witnesses. Local enquiries, viewing all available CCTV and taking possession of all relevant footage was a priority. A special checkpoint was arranged to be carried near the scene at the same time on the same night of the weekend in order to establish what persons would likely travel at that time of the morning.”

8.48 This account of the investigation differs to some extent from that of Garda November herself. In her statement she made no reference to interviewing other available witnesses. Although there is some reference to having contact with Ms Red’s friends in her report of 5 February 2008, it does not appear that a statement was taken from any of them. Similarly, it is not apparent that there was any CCTV to view and the reference to taking possession of all relevant footage is difficult to understand in that context. There was no mention of CCTV footage in Superintendent Foxtrot’s contemporaneous meeting notes. Furthermore, Garda November made no reference to the special checkpoint, although that did feature in Superintendent Foxtrot’s notes.

8.49 Superintendent Foxtrot said that both Sergeant McCabe and Sergeant-in-charge, Cootehill, kept him up to date with developments and that a motive for the assault was not established. He observed that a sexual or a robbery motive seemed unlikely as

“the suspect did have the opportunity to carryout either without interference (sic)”.

8.50 He also stated that Garda November was assigned to and did liaise with the injured party and that the injured party was

“satisfied that the gardai were doing everything they could to progress the investigation”.

8.51 The injured party does not appear to have been interviewed or contacted to confirm this suggestion.

8.52 He stated that ■ emerged as a possible suspect. The investigation team generated a profile of him and local surveillance was carried out. He stated that Gardaí did not have a photograph to assist with the investigation. He then noted the arrest of ■, the conduct of an interview during which he denied involvement, and that he was photographed while in custody, but that on 5 February 2008 the injured party failed to identify the suspect using a collage of photographs. He stated:

“the investigation team did consider holding a formal ID parade, but for operational reasons it was not feasible”.

8.53 The report of Chief Superintendent McGinn noted:

“this investigation is ongoing and no definitive suspect has been identified in the case. The shortcomings in the investigation were addressed by Superintendent Delta who ensured that all matters were properly investigated.”

8.54 The report also observed that

“Sexual assault was almost certainly a factor in this case”

but described Sergeant McCabe’s assertion that the incident was an “alleged rape” as “grossly exaggerated”.

8.55 The report also observed that the classification of the incident on PULSE as “detected” did not seem to be correct in that ■■■ was shown as a “suspected offender”, rather than a “suspect”. It was observed that the current status required to be re-classified and updated and, specifically, that the detection status should be “undetected”. Finally, it was observed that the file was returned to the Divisional Officer, Cavan/Monaghan to review the circumstances in which the incident was marked detected and suspect offender recorded. The report concluded

“Divisional Officer, Cavan/Monaghan to deal with any discipline issues that might arise and ensure that investigations are pursued to a conclusion.”

8.56 Chief Superintendent McGinn wrote to the Assistant Commissioner, Northern Region on 25 May 2010 stating that the investigation into this incident

“did not meet the required standards and that a disciplinary investigation should be initiated.”

8.57 That letter then recited the facts uncovered by the investigation as a synopsis and repeated the criticisms made in the report of the investigation. It recommended that a disciplinary investigation be commenced and the incorrect classification of the incident on PULSE was also noted.

8.58 Chief Superintendent McGinn’s letter of 25 May 2010 went on to note that Sergeant McCabe had made allegations against named Garda officers in the Cavan/Monaghan Division and that, as a result of an investigation into those matters, certain disciplinary matters had come to light. The letter continued,

“Good practice would suggest that these matters should be investigated independently. I, therefore, recommend that any

disciplinary investigation be carried out by an officer from outside the Northern Region.”

The Disciplinary Proceedings

- 8.59 On 21 June 2010 Assistant Commissioner Kenny, Northern Region, appointed Superintendent J A McFadden of Sligo as Deciding Officer in accordance with Regulation 14 of the Garda Síochána (Discipline) Regulations 2007. That appointment appears to have related only to an allegation against Garda November and it reflected the criticisms made in the Byrne-McGinn report and in Chief Superintendent McGinn’s letter of 25 May 2010.
- 8.60 It appears that no allegation of indiscipline was made against any supervisor of Garda November, notwithstanding Inspector Delta’s criticisms in that respect in his note of 28 February 2008. Equally, the references in Superintendent Foxtrot’s statement to the investigation having been supervised by him in conjunction with the Sergeant-in-charge, Bailieboro, and the Sergeant-in-charge, Cootehill, which are supported by his notes, at least in the early stages of the investigation, do not appear to have led to any allegation of indiscipline against him or either of those two officers.
- 8.61 Superintendent McFadden, being the Superintendent at Sligo station at the time of his appointment, was stationed in the Northern Region. His involvement in the disciplinary investigation would therefore appear to have been contrary to the recommendation of Chief Superintendent McGinn. Assistant Commissioner Kenny has stated that Superintendent McFadden had responsibility for Roads Policing and was based in Ballyshannon, Co. Donegal. From information provided to me, he does not appear to have served in Cavan/Monaghan at any time.
- 8.62 Superintendent McFadden reported on the conduct of his disciplinary investigation on 4 October 2010. He stated that he interviewed Sergeant McCabe on 8 July 2010 and obtained a statement in writing from him.

Sergeant McCabe described the incident as one “where a young girl ... was attached (sic.) and grabbed by a male suspect and was attempted to be dragged up an alleyway in Cootehill”. It appears from that statement that Sergeant McCabe was of the

“belief that there was no case conference ever held on this incident by Supt Foxtrot nor was there any advice or directions given to anybody in the case.”

- 8.63 Sergeant McCabe said that he had noted the poor procedures in the case in his report in early February 2008 and in his statement he “put this down solely to poor guidance and leadership by Superintendent Foxtrot”. He said that he believed it

“is very unfair to hold Garda November in any way responsible for failure in this investigation. I submitted the file on 12 February 2008, Garda Management in Bailieboro saw no issues in it.”

- 8.64 Superintendent McFadden’s report continued with an extract from the statement of Ms Red and notes that there was no allegation of a sexual assault as outlined in Sergeant McCabe’s report of 12 February 2008, nor any reference to an attempt to drag the injured party up an alleyway in Cootehill as outlined in his statement of 8 July 2010.

- 8.65 Superintendent McFadden’s report continued with a detailed note of what is contained in Sergeant Bravo’s report of 21 March 2008.

- 8.66 He then stated:

“It appears from the attached copy of the investigation file that both Sergeants and gardai at Bailiboro and Cootehill and the District Officer in Bailiboro were informed of developments in this investigation.

It is my view as deciding officer in this case that no further action is taken against Garda November in this investigation”.

- 8.67 Superintendent McFadden did not refer to the views expressed by Superintendent Delta on 8 April 2008. He did not deal specifically with the criticisms identified by Chief Superintendent McGinn, nor with the comments made by Superintendent Foxtrot or Superintendent Delta to Chief Superintendent McGinn's investigation. Superintendent McFadden's report of 4 October 2010 was addressed to the Assistant Commissioner, Northern Region. It appears to have been furnished by letter dated 18 October 2010 to the Chief Superintendent, Internal Affairs, which letter stated that the Assistant Commissioner had decided to "discontinue the investigation to the alleged breaches of discipline in respect of Garda November".
- 8.68 The Chief Superintendent, Internal Affairs, replied on 29 October 2010 to the Assistant Commissioner noting the decision but requesting clarification as to whether an interview with the member concerned had been conducted and stating that no notice of interview form, IA(L)12 was attached to the documentation received. That letter also noted that Regulation 14(1) of the Garda Síochána (Discipline) Regulations 2007 states that a Deciding Officer

"shall be appointed to investigate the alleged breach and interview the member concerned" [Original emphasis]. The letter also notes that "the option not to hold an interview with the member is not provided for under the Discipline Regulations".

- 8.69 That note from Internal Affairs to the Assistant Commissioner was forwarded to Superintendent McFadden on 4 November 2010 with the following instruction:

"Please ensure that this matter is concluded and the member is then advised that you have decided to discontinue the investigation or that you find the member not in breach of discipline.

Please confirm to this office when same has been done".

8.70 Superintendent McFadden replied by letter of 23 December 2010 reporting that he contacted Garda November on 10 December 2010 and explained that he wished to speak to her in respect of the alleged breach of discipline. He said that he informed her that he had made a decision that no further action be taken against her, but that he required her to acknowledge same in writing. He met her for that purpose on 13 December 2010 and “discussed the original investigation”. He informed her that

“having read the attached copy of the original investigation file an (sic.) having obtained a statement from Sergeant Morris (sic.) McCabe, Mullingar Garda Station that I, as Deciding Officer was satisfied that no further Action would be taken against the member.”

8.71 He also reported that Garda November acknowledged Form IA(L)12 Regulation 15 and his decision per Regulation 17 in his presence and he attached copies of same.

8.72 The Assistant Commissioner, Northern Region, wrote to Chief Superintendent, Internal Affairs on 13 January 2011 with reference to the latter’s correspondence of 29 October 2010 and forwarding the correspondence from Superintendent McFadden (apparently the letter from the latter dated 23 December 2010). Assistant Commissioner Kenny’s letter states:

“Superintendent McFadden has completed his investigation and found Garda November not in breach of discipline. The member has acknowledged receipt of the decision of the Deciding Officer.”

Analysis

- 8.73 Sergeant McCabe's complaint in this matter was that a rape investigation suspect was arrested only after Sergeant McCabe had looked for the file and that the suspect was then interviewed for only twenty minutes and no action was taken. He described the investigation as shoddy, saying that it showed "gross dereliction of duty". He was critical of the supervision of the investigation, in particular what he described as the failure to hold case conferences or have a Jobs Book.
- 8.74 The suggestion that this was a rape case or investigation cannot be justified. Even an allegation of attempted rape would be very difficult to prove in the circumstances. That said, when a seventeen-year-old girl walking on a public street at 6:00am is grabbed from behind by a lone male in his late thirties or forties, has a hand put over her mouth, falls to the ground and has to struggle to escape, any reasonable person would rightly be very concerned by the thought of what that man might have done, or would be willing to do if he had a chance again. The issue in those circumstances is not whether Sergeant McCabe's identification of any offence committed or attempted is accurate; the issue is whether the manner in which that incident was investigated causes any concern about the effectiveness of the policing service provided by An Garda Síochána.
- 8.75 It would be surprising to think that a matter of that gravity would be left entirely in the hands of an inexperienced probationer Garda. The defects in the investigation, which have been identified by Sergeant McCabe, by Superintendent Delta, by Chief Superintendent McGinn and by the Commissioner (in his letter of 26 February 2013 to the Secretary General of the Department of Justice and Equality), suggest that the investigation lacked the direction of an appropriately experienced and attentive officer. This is surprising in circumstances where the District Officer formally reported to Chief Superintendent McGinn that progress in the case was reviewed during conferences, including Management

Accountability meetings. Superintendent Foxtrot has notes which show that the matter was reviewed in meetings between 5 and 12 September. It is not apparent whether the investigation was kept under review thereafter. At least one of the investigative steps directed (to arrange a photo fit) does not appear to have been taken, and there is a lack of evidence to suggest other steps were taken. There is no note of any discussion of the necessity to seek out CCTV. There are no Garda notebook entries relating to CCTV or to the surveillance of the suspect.

8.76 One significant and abiding concern in relation to this investigation is that I have seen no document which identifies any grounds for suspecting that the person who was arrested for this offence may have committed it. Although the notes made in September 2007 by Superintendent Foxtrot suggest that he may have been identified as a suspect at an early stage, the basis for the suspicion remains unclear. I have seen the photograph taken of him in Garda custody. While visual impressions can be somewhat subjective, I would not describe him as having “bulging eyes” in that photograph. The fact that the interview with the suspect took no more than thirty one minutes, including time for [REDACTED] the formalities associated with video recording, lends weight to the concern that there was either no real evidence against the suspect or inadequate preparation for the interview.

8.77 The papers I have seen do not allow any conclusion to be drawn on whether Sergeant McCabe’s request for a file had been received by anyone associated with the investigation prior to the arrest of the suspect. Whether or not the arrest was prompted by such correspondence, very limited and ineffective use was made of the suspect’s detention. Indeed, by taking a custody photograph and showing it to the injured party as part of a photo album identification procedure, notwithstanding the existence of a definite suspect, investigating Gardaí may have rendered the entire process counterproductive. This also suggests a want of direction from an experienced officer.

- 8.78 Given these various issues and the positive assertions made by Superintendent Foxtrot that he was reviewing progress in the investigation, it is surprising that the only disciplinary proceedings were against an inexperienced probationer Garda.
- 8.79 It is understandable, in all the circumstances, that she was not found to be in breach of discipline. What is not understood, or readily understandable, is how the logical consequence of that, that her supervising officers were responsible for the defects in the investigation, does not appear to have been identified as a conclusion or acted upon in any way. Equally, it is difficult to understand how the Commissioner could assure the Minister, in his letter of 27 February 2012, that this was one of the 11 incidents “thoroughly examined” by Assistant Commissioner Byrne and Chief Superintendent McGinn and that he was “satisfied that no adverse findings . . . were discovered on the part of Superintendent Foxtrot.”
- 8.80 In all the circumstances, the conduct of an investigation which was found by an experienced officer (Inspector Delta) and an internal Garda investigation to be defective and the failure to hold to account in any way the District Officer who reported that he was personally reviewing progress in the investigation, give cause for concern as to the adequacy of the investigation of the complaint made by Sergeant McCabe of inaction by the District Officer in relation to this incident, and there is a sufficient basis for concern as to whether all appropriate steps were taken by An Garda Síochána to investigate and address the specified complaints.
- 8.81 In my opinion, these matters warrant further inquiry in an appropriate forum in the public interest.

Chapter 9: Dangerous Driving, Lakeside Manor Hotel, St. Stephen's Night 2007

- 9.1 At around 2:30am on the morning of 27 December 2007 the nightclub at the Lakeside Manor Hotel was coming to an end for the night. Shortly before it did, security staff at the nightclub had cause to eject three males who had arrived at the premises earlier with one other male and two females. They were put out through the fire exit door but succeeded in gaining entry again. Security staff removed them again from the premises, this time through the front door. One of the girls in the group left with them and was protesting on their behalf. They went to a BMW car parked near the front of the hotel and got in. The car was seen starting and manoeuvring slowly at first, but then without warning it sped back and reversed towards the doors of the premises. One man, Mr Black, was knocked to the ground and had to be pulled from the side of the front wheel by a member of the security staff at the premises. The car then drove forward and struck another person, Mr Blue, who went up on to the bonnet of the car and, again, had to be pulled off by a member of security staff. Other people seem to have been struck by the car as well, including Mr Purple who had to jump out of the way of the car which brushed against his leg and knocked him to the ground. Mr Black had the impression that the car was driven at the bouncers at the front door and said he was very shocked. He lost a front tooth. He said that a Garda arrived at the scene and took his details. Mr Purple was shocked but was not injured, just a bit sore on the legs where the car hit him. Mr Blue was very shocked and his legs were sore and bruised.
- 9.2 Witness D, a member of the security staff at the hotel who helped to save both Mr Black and Mr Blue from more serious harm, said that he remembered giving the registration number on the night to Sergeant Kilo. The car had driven away at speed before the arrival of Gardaí.

The Garda Investigation

- 9.3 Although Sergeant Kilo attended the scene of the incident on the night, no real investigation took place for some considerable time. Sergeant Kilo entered the incident on the Garda PULSE system as a traffic incident and described it as a traffic collision non-serious injury. The narrative, however, described a vehicle reversing towards the disco door and hitting a pedestrian and knocking him to the ground and then driving forward and hitting another pedestrian. The narrative also noted the availability of CCTV footage.
- 9.4 Sergeant Kilo commenced three days annual leave later on 27 December 2007. What happened to the investigation thereafter calls for some explanation.
- 9.5 On 14 November 2008 Chief Superintendent McGinn, who had been directed to investigate the complaints of Sergeant Maurice McCabe, requested the investigation file in relation to this incident for the purposes of her investigation. It seems likely that it was as a result of that request from Chief Superintendent McGinn that Superintendent Delta (the Superintendent, Bailieboro) requested the Sergeant-in-charge, Traffic Unit, Bailieboro for an investigation file in relation to the incident, which he did by letter dated 24 November 2008. His request was for Sergeant Kilo to forward a copy of the investigation file. Sergeant Kilo furnished a report in writing dated 3 December 2008 addressed directly to the Superintendent, Bailieboro. In this document he confirmed that he attended the scene and took a report from a doorman of the incident. He obtained details "which were circulated" and carried out a search of the area for the offending vehicle. He reported also that he contacted GISC and created the incident on PULSE. He stated also that he commenced three days annual leave at 6:00am on the day of the incident and was not due to resume duty until 2 January 2008:

“On the afternoon of the 27/12/2007 Sergeant Kilo contacted and notified members of Virginia Garda station of the incident, and instructed that the matter required immediate attention and investigation by members there.

Sergeant Kilo was aware of and is satisfied that investigations into this incident were conducted from Virginia Garda station.”

- 9.6 A copy of that report appears to have been addressed to Garda Romeo with a request to submit an investigation file by return. That note appears to be dated 18 December 2008.
- 9.7 Garda Romeo replied with a note of 20 December 2008 stating that he had no investigation file on the incident as he was not the investigating member. His Sergeant furnished that note to the Superintendent with his own note dated 21 December 2008 stating that he had spoken to the members in Virginia Garda station and said that none of them appeared to have any file in the matter. He therefore suggested that Sergeant Kilo elaborate on who he contacted or who was to follow up on the investigation.
- 9.8 The Superintendent then addressed a request in writing to the Sergeant-in-charge, Traffic Unit dated 5 January 2009 asking Sergeant Kilo to identify what member at Virginia he briefed in relation to the incident. Sergeant Kilo replied with a note of 11 January 2009, stating:
- “On 27/12/2007 Sgt Kilo briefed Sgt Sierra, Gda Romeo, [another named Garda], Virginia Garda station, and Sgt M McCabe, Bailieboro Garda station in relation to this incident.”
- 9.9 As a result of that, Superintendent Delta requested the Sergeant-in-charge in Virginia, by note dated 19 January 2009, to request that Garda Romeo should submit a comprehensive report on his involvement in the case by return.

- 9.10 Garda Romeo's report is dated 3 March 2009. He reported that on 28 December 2007, commencing duty at 6:00pm, he was briefed by Garda [B] of the incident, which Garda [B] informed him that Sergeant Kilo was investigating. Garda [B] told him that Sergeant Kilo requested that they carry out enquiries in relation to the vehicle. He stated that Garda [B] had contacted Laytown Gardaí to check the address of the registered owner of the vehicle. He stated that on the following day Sergeant Charlie contacted him by phone when he was on annual leave and they discussed the incident. He told Sergeant Charlie that they were waiting for Laytown Gardaí to get back to them about the address of the registered owner and that he and Sergeant Charlie discussed how to approach the vehicle and the individuals connected with it. Sergeant Charlie told him that the assistance of the Crime Unit would be available if needed.
- 9.11 Garda Romeo said that on 31 December 2007 he accompanied Garda Papa and two other named Gardaí to Laytown where they visited a particular address. There was no BMW vehicle at that address and they patrolled the town for a period before checking the address again but with no result. They returned to Bailieboro. Garda Romeo stated that, after the trip to Laytown, Sergeant Kilo informed him that he had information connecting the vehicle to a named person at a specific address in Skerries, Co. Dublin over the Christmas period. Garda Romeo stated that he could not get a member to accompany him to Skerries to carry out the necessary enquiry. He said that he telephoned Sergeant Maurice McCabe on 1 January 2008. Sergeant McCabe was off duty but agreed to accompany him to Skerries to carry out the enquiry. They went to the address and found a vehicle parked outside. They interviewed the person whose name they had been given and inspected the vehicle, as a result of which they were satisfied that it was not the vehicle involved in the incident. He stated that he and Sergeant McCabe returned to the Lakeside Manor where they viewed the footage for the first time. He said that Sergeant McCabe described it as a "disturbing incident and more

serious than he had believed". Sergeant McCabe told him that he was going to inform Superintendent Foxtrot about the matter and a conference would be required. Garda Romeo stated that he had not been asked or directed to investigate the incident. On 5 March 2009 Garda Romeo's report was forwarded to the Superintendent.

9.12 On 4 March 2009 the Superintendent also received correspondence from Chief Superintendent Rooney attaching correspondence from Chief Superintendent McGinn, stating that the investigation file into the Lakeside Manor incident was still outstanding and was required as a matter of urgency.

9.13 Superintendent Delta replied to Chief Superintendent, Monaghan, stating that an investigation file was not available. He also furnished the reports from officers which had been sought by his office and stated that he believed the matter required a full investigation.

9.14 Chief Superintendent Rooney replied on 23 March 2009 stating:

"As District Officer, Bailieboro, it is your responsibility to thoroughly investigate the incident recorded under PID [REDACTED] in accordance with procedure.

From a perusal of the file, it is obvious to me that this serious incident was not investigated. Proceed with full and proper investigation of the incident.

Identify the member(s) whose responsibility it was to investigate the matter and submit their names within one week [original emphasis].

I will then appoint a Superintendent to conduct a Disciplinary Investigation."

9.15 Chief Superintendent Rooney replied to Chief Superintendent McGinn by letter dated 23 March 2009 in which he stated:

“It appears clear to me that no attempt was made to properly investigate the incident.”

- 9.16 He noted that he had written to the Superintendent at Bailieboro directing him to address certain matters and concluded:

“Unless you have any good reason to take over the Disciplinary Investigation which I propose to direct, I will proceed with it.”

- 9.17 Chief Superintendent McGinn replied on 30 March 2009, stating that she had discussed the matter with Assistant Commissioner Byrne, National Support Services,

“who is of the view that any disciplinary matters arising out of the complaints of Sergeant McCabe will be dealt with in their entirety on completion of the current investigation and after the Commissioner has had an opportunity to make a decision on all the matters.

In that regard I recommend disciplinary proceedings should not commence at this time.”

- 9.18 It appears that on 26 March 2009 Garda Romeo was formally directed to investigate the incident. Statements were taken from the victims, the security staff of the Lakeside Manor Hotel and other witnesses in late June and early July 2009. An arrest was made on 2 July 2009 of a person who was suspected of involvement in the incident, but who was not the driver of the vehicle. That person was interviewed by Gardai apparently on two occasions during the course of detention at Bailieboro Garda station.

- 9.19 Shortly after that, Garda Romeo was injured on duty and as a result was unable to work between August 2009 and June 2010. As a result, on 10 September 2009 Garda Papa was assigned to complete the investigation. By that stage a suspect had been nominated as the driver of the vehicle. Garda Papa furnished an investigation file and report dated 24 November

2009 to the Sergeant-in-charge, Crime Unit, Bailieboro Garda station. He reported that he had tried unsuccessfully to locate the suspect, who had multiple addresses listed on the PULSE system. He stated that he and a colleague had travelled to various locations on various dates in October and November but were unable to locate the suspect. Enquiries, he said, had been carried out at a number of Garda stations and details of the suspect had been forwarded for inclusion in Fógra Tóra, the Garda bulletin. Enquiries had also been made of the Social Welfare Services and a request had been made for a warning to be placed on PULSE. Garda Papa reported that he was actively pursuing the investigation and that as soon as the suspect was located, he would be arrested and detained. His report was forwarded, via the usual channels, to the Superintendent, Bailieboro. The Superintendent also furnished the report to the Chief Superintendent, Monaghan, who copied it also to Chief Superintendent McGinn and the Assistant Commissioner, Northern Region.

- 9.20 On 12 February 2010, Superintendent Featherstone, [REDACTED] [REDACTED] reported to the Chief Superintendent, Monaghan that a warning had been created on PULSE and details circulated in Fógra Tóra but that the suspect had not been located.

The Disciplinary Investigation

- 9.21 Chief Superintendent McGinn's investigation had concluded by May 2010 and on 26 May she wrote to the Assistant Commissioner, Northern Region, expressing the opinion that the investigation of the Lakeside Manor incident "did not meet the required standards and that a disciplinary investigation should be initiated". She stated:

"It is apparent that there was no proper management to this investigation and that a proper criminal investigation was not commenced for a period of time.

A suspect has now been identified by the ongoing investigation. However, Pulse needs to be updated to reflect this fact.

The initial investigation of this matter fell well short of the required standard. I am of the view that a disciplinary investigation should be commenced into this matter.”

- 9.22 She noted that Chief Superintendent Rooney had “prepared the way” for the initiation of a disciplinary investigation by requiring the Superintendent, Bailieboro, to identify the member(s) whose responsibility it was to investigate the matter. It was noted that a decision had been made not to proceed with any disciplinary investigation until all of Sergeant McCabe’s allegations had been examined. It would be necessary to interview him in the course of any disciplinary investigation as he had been involved in the investigation. She said that, arising out of Sergeant McCabe’s allegations, good practice would suggest that the disciplinary investigation of the incident should be investigated independently and therefore recommended that it be carried out by an officer from outside the Northern Region.
- 9.23 On 12 July 2010 Assistant Commissioner Kenny who was Assistant Commissioner, Northern Region, wrote to the Chief Superintendent, Monaghan stating that the PULSE record did not appear to reflect the current position and that this needed to be attended to immediately. He also sought an update on the progress of the investigation and the particulars of the members identified as being responsible for the investigation.
- 9.24 It appears that Chief Superintendent Rooney’s letter of 23 March 2009 had in fact been responded to on 13 May 2009. Certainly, by letter of 15 July 2010 addressed to the Assistant Commissioner, Northern Region, reference was made to a report of Superintendent Delta dated 13 May 2009 detailing who had responsibility for the investigation of the incident at that time. The letter of 15 July 2010 was signed by Superintendent Foxtrot as acting Chief Superintendent. The copy report of 13 May 2009 does not have a name or signature at the end of it but it is on the headed paper of the Superintendent, Bailieboro (a position occupied at

that time by Superintendent Delta). It reports that the author directed a full investigation of the matter on 26 March 2009, which direction was stated to be the culmination of efforts to establish the facts surrounding the incident, which efforts commenced on 24 November 2008.

9.25 It was then stated:

“Responsibility to investigate the incident I believe lay at Virginia Garda station. Sergeant Kilo attended the scene on the 27th of December 2007 and having made initial enquiries created the incident on Pulse. From his report of the 3rd of December 2008 he states that he informed members attached to Virginia Garda station of the incident and instructed that the matter required immediate attention and investigation.

Garda Romeo in his report of the 4th of March 2009 highlights how he became aware of the incident. He acknowledges in that report that he was proffered and received the assistance of the Crime Unit at Bailieboro to investigate the incident. It would appear that he travelled to Laytown on the 31st of December 2007 and to Skerries on the 1st of January 2008 in follow up enquiries. It also appears that he viewed the CCTV footage of the incident at the Lakeside Manor in the company of Sergeant McCabe, Bailieboro Garda station on the same date.

In answer to your question of the 23rd of March 2009 I believe the responsibility to investigate this incident lay with Garda Romeo of Virginia Garda station.”

9.26 When, on 15 July 2010, Superintendent Foxtrot forwarded that report, asserting that Garda Romeo had responsibility for the investigation, to the Assistant Commissioner, Northern Region, Superintendent Foxtrot did not furnish any details of his own knowledge of the conduct of the investigation, although he had been District Officer in Bailieboro at the time of the incident and for the following two-and-a-half months.

9.27 In his initial statement of complaint dated 31 May 2008 and made to Chief Superintendent McGinn and Inspector Michael Finan, Sergeant McCabe had made the following allegations:

“I asked Superintendent Foxtrot to hold a conference on the incident as it was very serious and needed guidance and help. He refused on three occasions to hold a conference and showed no interest at all in the case despite it being so serious. No conference has ever been held on the incident and offender/s have not been interviewed to date 28/4/2008.”

9.28 Superintendent Foxtrot responded to this and other allegations in a detailed and lengthy report dated 30 November 2009 to Assistant Commissioner Derek Byrne. In that report he stated, in relation to this incident, that, while a motor car had allegedly struck two pedestrians, “no person was injured as a result of the incident”. (This is not consistent with the statements of the victims.) He stated that he was aware that Sergeant Kilo had attended the scene and that the incident had occurred in Virginia sub-district. He said that he was aware that Sergeant Kilo had forwarded details of the incident to the Sergeant-in-charge, Virginia later on that same date for follow up investigation. He then said:

“I recall having a conference with Sergeant Sierra, Sergeant in charge, Virginia to review progress in the investigation. I recall from that meeting that there were a number of tasks identified which required attention. I directed Sergeant Sierra to ensure that these actions were acted upon. I was aware that members from Bailieborough station gave assistance to the Gardai in Virginia in the investigation. Progress in the ongoing investigation was kept under review.”

9.29 On 10 April 2014, I sought notes of these meetings. On 17 April 2014, Sergeant Sierra stated that he does not have a note of any meeting in relation to this incident. I have been furnished with copy hand-written

notes by Superintendent Foxtrot of various meetings in the relevant period. I can find no reference to this incident in those notes.

- 9.30 It is difficult to understand how an incident which appears to have received minimal investigative attention and apparently no other attention than as was described in Garda Romeo's report of 3 March 2009 to the Sergeant-in-charge, Virginia, can also have been the subject of a conference between the District Officer and the Sergeant-in-charge, Virginia. Equally, it is difficult to understand how it could be said by the District Officer that progress in the ongoing investigation was kept under review. I have seen no evidence of any such progress and no evidence of any action taken to ensure that there was progress. Indeed, when the file eventually came to be submitted to the Director of Public Prosecutions, Inspector Martin Beggy, who sent the file to the State Solicitor, Mr. Hayden, on behalf of the Superintendent, Bailieboro, said:

“This incident occurred on the 27/12/07 and was attended to by Sgt Kilo on the night and details were forwarded to Virginia Gardaí the next day as Sgt Kilo was not working for a number of days. It was believed that Gardaí were to continue the investigation which did not apparently happen. This serious breach of procedures is currently the subject of an internal investigation by C/Supt. McGinn of Donegal.

It was not until 26th March 2009 that an actual investigation of the incident was conducted.”

- 9.31 Notwithstanding those obvious issues, and notwithstanding the conclusion of Chief Superintendent McGinn that “no proper management of this investigation took place” [emphasis added], no effective disciplinary action appears to have been taken.

Progress in the Criminal Investigation

- 9.32 On 3 August 2010 an Inspector, acting for the Superintendent, Bailieboro, forwarded to the Chief Superintendent, Monaghan, an updated report from the Sergeant-in-charge, Virginia. The Inspector stated that the progress of the investigation “will be subject of the weekly district accountability meetings”.
- 9.33 A breakthrough finally occurred on 30 August 2010 when Gardaí arrested ■■■ on suspicion of endangerment contrary to Section 13 of the Non-Fatal Offences against the Person Act 1997. ■■■ was taken to Harcourt Terrace Garda station and detained there. He was interviewed and, although he initially denied any knowledge of the incident, he later admitted driving the car. The admission was limited in the sense that ■■■ stated that he drove it at the door staff unintentionally as he put the vehicle into reverse when he meant to select first gear. Having had the opportunity to read the witness statements, and to confirm their accuracy by viewing the CCTV footage, I found his account of the incident unconvincing.
- 9.34 Garda Romeo initially completed a file on 4 October 2010. Further inquiries had to be made, however, to prove the CCTV footage. A statement was obtained from Witness C, who said that he was asked to download the footage by Sergeant Kilo. He said he did so the following night and dropped it into the Garda station on his way home. The file was not submitted to the State Solicitor until 13 December 2010.
- 9.35 Directions were received from the DPP by letter dated 4 January 2011. The directing officer stated that a charge under Section 53 of the Road Traffic Act, i.e. dangerous driving, would have met the case, but that such a charge was “long statute barred”. He noted that because the injuries were not serious, a dangerous driving charge to proceed on indictment could not be considered.
- 9.36 He noted the recommendation of a charge of endangerment but said that, because of the Supreme Court judgment in *People (DPP) v Cagney*

& *McGrath* [2008] 2 IR 111, “endangerment charges should not be brought as a default charge when more appropriate charges are not available”. Accordingly he directed that there be no prosecution. In short, the charge considered appropriate by the Director of Public Prosecutions had become statute-barred before the investigation had effectively begun, even though Gardaí had attended the scene on the night of the incident.

The Outcome of the Disciplinary Investigation

- 9.37 It is not apparent that any further step was taken after Superintendent Foxtrot, acting for the Chief Superintendent, Cavan/Monaghan, notified the Assistant Commissioner, Northern Region that Superintendent Delta had identified Garda Romeo as the officer with responsibility for the investigation.
- 9.38 On 2 December 2010, shortly before the file was submitted to the DPP, Superintendent G. O'Brien (Superintendent, Bailieboro) wrote to the Chief Superintendent, Cavan/Monaghan, about what he identified as “a **fifteen month delay** in starting an investigation in to this incident” (original emphasis). He wrote:

“Ordinarily I would view this as a very serious breach of discipline, however I am aware that Sergeant Maurice McCabe investigated this incident for some days after the 27th December 2007. Therefore, before an investigation begins into the reasons for the delay I am to enquire if this matter forms part of the investigations being conducted by Chief Superintendent McGinn into allegations about certain Gardaí attached to Bailieboro Garda Station and if so can her investigation team supply me with material so that I can explain to the DPP the reason for the delay.

Without pre-empting the response of the investigation team, if they have not investigated it, then this is a serious breach of discipline and should be investigated as such.”

- 9.39 It will be recalled that Chief Superintendent McGinn had, on 26 May 2010, already expressed the view that a disciplinary investigation should be commenced.
- 9.40 The Assistant Commissioner, Northern Region was notified by Superintendent Delta, acting for the Chief Superintendent, Cavan/Monaghan Division, of the DPP's directions and a copy was provided by letter of 17 February 2011. It must therefore have been clear from that point that there would be no prosecution and that this was, at least in part, attributable to the failure to conduct a timely investigation.
- 9.41 It appears that the next communication in relation to the matter between the office of the Assistant Commissioner, Northern Region, and that of the Chief Superintendent, Cavan/Monaghan, was a request for an update on the current status of any disciplinary action from Chief Superintendent Sheridan to the Assistant Commissioner on 7 March 2014 following the commencement of this review.
- 9.42 Assistant Commissioner Kenny's reply, dated 13 March 2014 was as follows:

"To date disciplinary proceedings have not yet commenced regarding this matter. As Sergeant M McCabe is alleged to have been involved in the investigation of this incident it may be the case that the complainant, Sergeant McCabe could also be subject to the disciplinary process.

Sergeant McCabe and [another person] have also commenced civil legal proceedings in respect of their complaints. I am of the opinion that it would not be appropriate at this time to commence disciplinary proceedings in respect of this or other cases involving either Sergeant McCabe or [the other person], where they may also be implicated.

The situation can again be reviewed at the conclusion of legal proceedings.”

Analysis

- 9.43 It is difficult to see how Sergeant McCabe could possibly be implicated in respect of the matter. His only apparent involvement was to assist a more junior member while he (Sergeant McCabe) was on annual leave, because that member could not obtain assistance from any other member. He also went to view the CCTV footage with that other more junior member. Having seen it, he appreciated the gravity of the incident and brought the matter to the attention of his District Officer. His District Officer acknowledged in his report to Chief Superintendent McGinn that he was aware of the incident; indeed he said that he kept the investigation under review. Yet when the file was submitted to the DPP, it was frankly acknowledged that there was no investigation at that time. The brief, and creditable, involvement of Sergeant McCabe in this matter is a most unconvincing explanation for the failure to commence disciplinary proceedings. No such reticence was evident when it came to instituting disciplinary proceedings against Sergeant McCabe in February 2012 in another matter (see Chapter 12).
- 9.44 Sergeant McCabe's complaint in this matter concerned the failure of Superintendent Foxtrot to take an interest in the case and have it investigated, as well as a failure to notify his successor as District Officer of the incident. He also complained about the outcome of the Byrne/McGinn investigation, in particular the suggestion that he was part of the problem. Sergeant McCabe's concerns about the lack of investigation appear to have been shared by every senior officer who expressed a view on this investigation. Disciplinary proceedings were recommended by Chief Superintendent McGinn in May 2010. None have commenced and I have seen no credible explanation for the failure to do so.

- 9.45 The Commissioner's letter of 26 February 2013 to the Secretary-General of the Department of Justice and Equality fails to mention that there was no investigation of the offence until well over a year after it was committed. The letter stated:

"This incident occurred on 27th December 2007 [REDACTED]

[REDACTED].
The suspect in this matter, [REDACTED] was recorded on PULSE with 12 different addresses and could not easily be located. Efforts were made to locate him using direct contact, circulation through Fogra Tora and a general alert via the Criminal Intelligence System. He was not arrested until 30th August 2010."

- 9.46 The Commissioner thereby gave the impression that the cause for the delay in the matter was the difficulty in locating the suspect. That, however, had not been an issue until he was identified in mid-2009. The Commissioner further stated:

"No issues arise for Superintendent Foxtrot in this matter, which was fully and properly investigated."

- 9.47 It was, eventually, but not until a year after Superintendent Foxtrot's departure and only then after Chief Superintendent McGinn sought the investigation file. The Commissioner's letter made no reference to Chief Superintendent McGinn's conclusion that there was "no proper management" of the investigation. It is difficult to know why the Commissioner would not mention this important conclusion.
- 9.48 The Commissioner's letter also mentioned that the DPP had directed no prosecution, without reference to the reason for that decision, i.e. that the appropriate charge was statute barred. Again, that would appear to be important information and it is difficult to know why it was not included in the letter.

- 9.49 The failure to conduct a timely investigation in this matter resulted in the appropriate charge becoming statute barred before an effective investigation had even begun. No disciplinary proceedings were instituted despite recommendations from a number of senior officers that this be done.
- 9.50 In all the circumstances, there is cause for concern as to the adequacy of the investigation of the complaint made by Sergeant McCabe, and there is a sufficient basis for concern as to whether all appropriate steps were taken by An Garda Síochána to investigate and address the specified complaints.
- 9.51 In my opinion, these matters warrant further inquiry in an appropriate forum in the public interest.



Chapter 10: Assault in a Public House, Bailieboro on 23

May 2007

10.1 On 23 May 2007 Mr Grey was assaulted in C's Public House, Bailieboro, County Cavan. It is not entirely clear what happened or how it came to happen. The Champions League final was being shown in the pub that night and there appears to have been a crowd present. At some point, relatively late in the night and certainly after 11:00pm, the attention of customers was drawn to an incident developing in the pub. Mr Grey suffered injuries to his head and face during that incident and he was assisted from the premises by a friend, Witness E, who took Mr. Grey back to his own flat. From there he was collected by his wife, Ms Grey, with whom Witness E had made contact.

10.2 When Ms Grey collected her husband she found his face swollen and covered in blood and she took him home. He later went to Cavan General Hospital, not the following day, but the day after that. According to a medical report [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. [Details of medical condition

and treatment]

10.3 According to the medical report, Mr Grey was "allegedly punched in the face" but the report noted that he was "unsure about the details of the incident".

The Garda Investigation

- 10.4 Although it was two days after the incident before Mr Grey attended hospital, it was another two days before contact was made with Gardaí. The initial contact appears to have been made by his wife, who called to Bailieboro Garda Station on 27 May 2007. As a result of that contact, Garda Tango called to the home of Mr Grey. Garda Tango is referred to as a probationary Garda, although he had a little more than two years' service. It may be that his probation had been extended.
- 10.5 Garda Tango later made a statement about his involvement in the investigation. The statement is undated. In that statement Garda Tango said that, when he visited the home of Mr Grey on 27 May 2007, Mr Grey "was not forthcoming with information about the assault" and Mr Grey does not appear to have made a statement at that time. Mr Grey did, however, call to the Garda Station later that day and made what Garda Tango described as a "very vague statement about what happened".
- 10.6 That statement, which is dated 27 May 2007, records that Mr Grey watched the first half of the match, which was the Champions League Final between Liverpool and AC Milan, in another public house before going to C's Bar at around half-time. He watched the second half there and, as far as he could remember, the game was over before the incident. He was not sure how long after the end of the match the incident occurred. He said he had "drink on me" and was going to the toilet. He got a bang to the back of the head, fell to the ground and remembered "getting kicked in the head and body. I couldn't see who was hitting me. I'm not sure how long it went on for. After it was over I got off the ground. I couldn't see who was after assaulting me. I left the pub. My face was covered in blood. When I left the pub I went home."
- 10.7 Garda Tango has stated that he pointed out to Mr Grey that he would need a detailed statement to assist him. A further statement was taken

from Mr Grey the following day, 28 May 2007. In that statement he said that he had been thinking about the whole incident and he remembered a few things about the assault. He said:

“I remember ■■■ standing over me and hitting me boxes to the face. The whole incident happened at the front door of the pub.”

10.8 He gave the names of a number of individuals who he says were in the pub at the time. He also mentioned that another individual, ■■■, had called to his house on the Thursday after the assault, i.e. the following day. He was in bed due to his injuries at the time and he says that ■■■ spoke to his wife and told her that he had never laid a finger on Mr Grey. In the statement of 28 May 2007 Mr Grey stated that he had heard that ■■■ was involved in assaulting him. He also stated that he had heard that on the Friday after the assault, i.e. 25 May 2007, the day that Mr Grey went to hospital, CCTV of his assault was played in C's Public House and he named a number of people who he had heard were in the bar on that occasion watching the footage.

10.9 Garda Tango took statements from three other individuals. All are undated but appear to have been taken following the statement of Mr Grey. Two of them give a different date for the assault on Mr Grey. One was from Mr Grey's friend, Witness E, who said that he saw Mr Grey in the pub on the night with ■■■ and ■■■ and said that Mr Grey was drinking with them. Sometime after 11:00pm he heard someone saying there was a row and he got up and went over to it. There was a crowd of people around the fight. He said:

“When I got through the crowd ■■■ was standing over Mr Grey who was on the ground with ■■■ on him. I did not see ■■■ hit Mr Grey in anyway. I pulled ■■■ to one side. ■■■ was on top of Mr Grey hitting him in the face. ■■■ got 5 to 6 boxes into Mr Grey face. ■■■ went to come back again, I stopped him when I turned back again ■■■ had been pulled off Mr Grey. I think by Witness F. I took Mr Grey

out of the pub and back to my flat. His face was covered in blood.”

10.10 A statement was also taken from Witness F who said he saw a row break out over in the corner at the front bar. He said

“I notice Mr Grey fallen to the ground. I went to help him, as I know him from around the town. There was a big crowd around him, I did not see who hit him. I pulled ■ off Mr Grey, as he was standing over Mr Grey. As far as I can remember ■ was on Mr Grey I am not sure. I took ■ and ■ to one side to see what was going on. They said to me that it was none of my business. Witness E took Mr Grey out of the pub. Mr Grey’s face was covered in blood as he was been taken out.”

10.11 A statement was also taken from Witness G, who was working in C’s Bar on 23 May 2007. He said there was a big crowd in the pub that night. He said he heard noise coming from the front bar and went over to see what was going on. He saw six or eight men trying to separate an argument but it was hard to make out exactly what was going on with all of the bodies in the way. He said he saw Mr Grey being taken out of the pub and remembers him walking out. He said that he did not see any blood on Mr Grey’s face. He remembered a few words being exchanged between ■ and Witness F but nothing much. He later checked the CCTV footage to see what happened and he stated:

“From looking at CCTV I saw Mr Grey and ■ falling to the ground there were then surround (sic.) by a group of lads. I did not see any hits or kick being thrown. I have heard a rumor that the CCTV was played in the Pub the next evening. To my knowledge this did not happened (sic.)”

10.12 In his undated statement Garda Tango stated that he went to C’s Bar to view the CCTV of the incident but that it was no longer available. Garda Tango’s statement is silent as to when he visited the premises for that

purpose. In a statement made over a year later (which is discussed further below), he said that this visit occurred on 28 May 2007. None of the members involved have any contemporaneous notebook entries of the efforts to obtain CCTV.

10.13 It appears that the necessity to confirm the absence of CCTV footage was identified and acted upon some time after the initial incident. This led to the hard drive from the CCTV unit at C's Public House later being seized by a Garda Quebec. Garda Quebec made two statements in April 2008 relating to his involvement in the investigation of the offence. Each statement deals with his involvement in the arrest and questioning of the two suspects in the investigation in March 2008. Neither statement deals with the seizure of the CCTV footage. There is, however, a report dated 13 March 2008 from Garda Quebec to the Sergeant in charge, Bailieboro dealing with that matter. He stated that on 7 July 2007 Superintendent Lima obtained a warrant under Section 10 Criminal Justice Act 1984 to obtain the CCTV footage. He executed that warrant on 12 July 2007 at 15:40 and seized the CCTV hard drive for examination.

10.14 It would be a relatively unusual matter to have to obtain a warrant for the purpose of obtaining CCTV footage from a licensed premises. It should be noted, however, that Sergeant McCabe states in the dossier that he applied for the search warrant on PULSE. On 10 April 2014 I sought a copy of the search warrant. I have been provided with a copy printed from PULSE of the search warrant and the sworn information (for swearing by Superintendent Lima) to ground the application to court for the warrant. I take these to be draft documents and, while such documents are usually executed in the form in which I have seen them, I cannot exclude the possibility that the executed documents contain amendments or additions. The grounds upon which the application for the search warrant was made were as follows:

“Garda Tango requested CCTV evidence in relation to an alleged assault. Garda Tango was told by Witness J that there was no

CCTV available, However information recieved from a reliable source states that the Alleged inciedent was played on the big screen to a large congriation of the public after the request was made from Garda Tango (sic.).”

- 10.15 It is not entirely clear what happened after the apparent seizure of the CCTV unit hard drive on 12 July 2007. It appears from the Correspondence Register for the Sergeant-in-charge of Bailieboro Station that a paper file was opened on 1 August 2007 and that the necessity to have the CCTV footage analysed was identified at that time. There appears to have been correspondence to Garda Tango at that time and subsequently, in the form of a number of reminders to him of the necessity for progress in relation to this matter. It should be made clear, however, that it does not appear that a file as such had been received from Garda Tango and, equally, he does not appear to have made a detailed report on his investigation. In fact, some effort appears to have been made to have the CCTV analysed, in that there is a letter from Detective Sergeant Michael Gubbins of the Garda Bureau of Fraud Investigation addressed to Garda Quebec, Bailieboro Garda Station in relation to “application for examination of CCTV hard drive unit from C’s Public House Bailieboro by the Computer Crime Unit, Harcourt Square, Dublin 1”. His letter acknowledges receipt of an application dated 23 July 2007 and outlines the procedure in relation to such applications to the Computer Crime Investigation Unit. The stated procedure is that the application is received and entered on to a database and a letter of acknowledgment issued to the member requesting assistance. The case is then assigned to a member within the CCIU. The member requesting the assistance of the CCIU will be contacted and arrangements made for the delivery of media. The media is then examined and a report issued by CCIU. The examined media is then collected by the requesting member. In his letter, Detective Sergeant Gubbins noted that it is not possible to provide an approximate timeframe for the delivery of exhibits in relation to the matter. I have not seen any evidence of Bailieboro Gardaí having

received contact from the CCIU to make arrangements for delivery of the hard drive.

10.16 On 13 November 2007 Sergeant McCabe, the Sergeant-in-charge, Bailieboro, wrote to the Superintendent, Bailieboro, indicating his wish to “make an urgent application to have the CCTV hard drive in question examined as a matter of urgency as proceedings will be issued in this case shortly”. He described the assault as vicious and stated that “it is believed by the Gardai that the assault was captured on video and replayed the following night to persons in the pub. When CCTV was sought from the owner, he refused to hand it over.”

10.17 The request of Sergeant McCabe was acted on promptly, at least in Bailieboro, in that on 15 November 2007 a request issued from Inspector Delta, acting for the Superintendent, to the Superintendent at the Garda Bureau of Fraud Investigation requesting an early report on the examination of the CCTV unit. On the same date, Inspector Delta sought a report from the Sergeant-in-charge on the matter. He sought a file and wanted to know what injuries were sustained and whether medical reports had been obtained. He also expressed concern in relation to the non-cooperation of the licensee and sought a report in that regard. The Correspondence Register of the Sergeant-in-charge at Bailieboro indicates that the request for a full investigation file as soon as possible was forwarded to the Sergeant-in-charge, Unit C on the same date that the report from Inspector Delta was received. I have not seen a copy of that. The matter was, however, clearly receiving attention in the office of the Sergeant-in-charge because he reported on the same day to the Superintendent, Bailieboro that no investigation file had been received, despite the assault happening in May 2007. As a result, on 30 November 2007, Superintendent Foxtrot wrote to the Sergeant-in-charge stating that he required a report from the investigating member for the delay in completing the investigation and the submission of the file. That request was forwarded to the Sergeant-in-charge, Unit C for urgent attention. He in turn forwarded the request to Garda Tango stating that a report was

required by return. On 14 December 2007 Sergeant McCabe again reported to the Superintendent that despite repeated reminders he had received no investigation file to date and that he was bringing the matter to the Superintendent's attention as a matter of urgency. On 28 December 2007 Superintendent Foxtrot issued a letter stating simply that he required an immediate explanation from Garda Tango and his Unit Sergeant. This was addressed to the Sergeant-in-charge at Bailieboro who forwarded it to the Sergeant-in-charge Unit C, who in turn forwarded the request to Garda Tango. It is not apparent from the papers I have seen that this requirement for an immediate explanation was met or, for that matter, insisted upon.

10.18 Garda Tango prepared an investigation file, dated 1 January 2008. It should be noted, however, that it does not appear to have been submitted at that time and there is subsequent correspondence after that date seeking an investigation file. Nonetheless, the file prepared by Garda Tango notes that when he first interacted with Mr Grey at his home on 27 May 2007 "Mr Grey refused to make a complaint, refused to discuss the matter and told Gardai to leave. He appeared to be under pressure from his wife to make a statement yet refused." He then described how Mr Grey later called to Bailieboro Garda Station the same day to make a statement of complaint but said that he was unable to identify his assailants. Garda Tango then stated that he interviewed a number of persons who were on the premises the night of the assault. Although the text of his report is a little confusing, it does appear that he referred to the content of the statements of the three witnesses whom he interviewed, i.e. Witness E, Witness F and Witness G. In his report he then stated that he "re-interviewed the injured party, Mr Grey, who states, in an additional statement of evidence, that he remembers ■■■ standing over him hitting him boxes to the face".

10.19 The report therefore gives the impression that Mr Grey did not name ■■■ as the person who assaulted him until after Garda Tango had taken a statement from another person who named ■■■. It is doubtful whether

that was the sequence. The statements from the three witnesses are undated, but the second statement from Mr Grey is dated 28 May 2007. On balance, it appears unlikely that Garda Tango could have interviewed those three individuals before taking that second statement and the undated statement of Garda Tango does not suggest that he did. Indeed, it seems to have been Mr Grey's statement of 28 May 2007 which gave the names of the three witnesses to Garda Tango.

Withdrawal of Statement of Complaint

10.20 In his investigation file dated 1 January 2008 Garda Tango stated that he went to the pub to inspect the CCTV footage. He reported "Witness H, the proprietor, informed Garda Tango that the footage was no longer contained on the system." He then described the obtaining of a search warrant and the execution of that search warrant resulting in the seizure of the hard disc.

10.21 The next matter referred to in Garda Tango's report appears under the heading "Withdrawal of Complaint - Mr Grey". The report reads:

"On 28/11/2007 Mr Grey made to Garda Tango a statement of withdrawal of complaint. He states that he is not under any pressure or duress to do so. Mr Grey has verbally informed Garda Tango that he never wanted to make a complaint in the first place but was placed under pressure to do so [REDACTED]."

not wish to make a complaint but felt compelled to do so as a result of pressure [REDACTED]. Sergeant Kilo stated that on 27 May 2007 when Ms Grey made the complaint, he had instructed Garda Tango to go to the home of Mr Grey and take a statement from him, and he noted that Mr Grey made a statement later that day. Sergeant Kilo did not mention Mr Grey's statement of 28 May 2007. He also reported that examination of the hard disc was still awaited and that the disc remained in the custody of Bailieboro Garda Station pending an appointment from Technical Support. Sergeant Kilo also reported:

“On 28/11/2007 Mr Grey made to Garda Tango a statement in which he stated that he was withdrawing his complaint.

As a result of Mr. Grey's statement of withdrawal and absence of CCTV footage the required evidence to proceed is absent. I therefore recommend no further Garda action in the matter, that PULSE be updated and that the seized CCTV hard disc is returned to its owner.”

- 10.24 The reference to updating PULSE is a little unclear. I have been furnished with a copy printout of the PULSE entry for this incident, which appears to suggest that the matter was first entered on the PULSE System on 2 March 2008. Inquiries made at the Garda Information Service Centre in Castlebar confirm this. It may be that the reference to PULSE being updated was intended to mean that it was about time that the incident was entered on PULSE.
- 10.25 Sergeant Kilo's report makes no comment on the circumstances in which Mr Grey made the statement withdrawing his complaint.
- 10.26 Some account of those circumstances is given in a report from Sergeant McCabe to the Superintendent, Bailieboro dated 3 March 2008. That report attached the file which had been submitted via Sergeant Kilo. It is clear, however, that Sergeant McCabe had very serious concerns at this stage. He refers in his report to a meeting with the injured parties and

said that Mr Grey was assaulted in May 2007 and was removed to hospital with “severe head injuries”. [REDACTED]

[REDACTED] He stated that Mr Grey had collapsed the previous month, i.e. February 2008, “from head injuries from the assault”.

10.27 Sergeant McCabe reported that, according to the Greys,

“Garda Tango visited the family in November 2007 stating ‘they had no case’ and sought a statement of withdrawal from Mr Grey.”

10.28 He reported that the whole family had sought legal advice and were considering their options. He also reported that they had spoken to GSOC and that a complaint was imminent against the Superintendent, the Sergeant-in-charge and Garda Tango. Sergeant McCabe reported that he himself had sought advice from AGSI because “I feel that I have been brought into this complaint through no fault of my own”.

10.29 Sergeant McCabe was later to describe this incident as the straw that broke the camel’s back. He sees it as indicative of the issues at Bailieboro station, in particular because of what he sees as the absence of an appropriate supervisory and managerial response to delay in obtaining evidence, delay in completing an investigation and submitting a file and, most importantly, what appeared to him to be an improper attempt to procure the withdrawal by a victim of a criminal complaint properly made. He communicated his intention to vacate the position of Sergeant-in-charge to Superintendent Foxtrot on 4 March 2008.

10.30 On 6 March 2008 Superintendent Foxtrot addressed another letter to the Superintendent, Garda Bureau of Fraud Investigation, expressing anxiety to bring closure to the investigation and stating that it was dependent on the successful examination of the CCTV computer hard drive. He sought an early outcome to the examination of the hard drive. On the same date he addressed a letter to the Sergeant-in-charge, Bailieboro noting

the report of 3 March and directing that Sergeant Kilo “personally take charge of this investigation from here on”. He also gave directions to obtain a medical report, a statement from the licensee or person in charge of the pub on the night, and a statement from Superintendent Lima, and to arrest and to detain the suspects. It was noted that “it would be a distinct advantage if the CCTV footage from the hard drive was available” for the latter purpose. He noted that the statements taken to date were lacking in detail and were undated. He also noted that no report had been received accounting for the delay in completing the investigation and submitting the file. He noted also that the family had been told that they had no case and that a statement of withdrawal was sought from Mr Grey and he required an immediate report from Garda Tango to respond to that. He also sought the original search warrant and statements regarding the continuity of transfer of exhibits.

10.31 In a report dated 13 March 2008, Garda Quebec stated:

“On the 11/03/08 Garda Quebec brought the hard drive to [a named Garda] of the Computer Crime Unit. In Garda Quebec’s presence he examined the hard drive and found that the unit only had three days memory. The images started at 10:57am on the 09/07/07 and ended at 15:45 on the 12/07/07, the day and time the unit was seized. There was also footage saved from December 2006. This was viewed and there is no evidence of any kind forthcoming from this.

Conclusion:

The CCTV unit only has approx four days memory. This means that the footage from the 23/05/2007 is not available.”

10.32 There is no statement from Superintendent Lima and I have not seen the warrant, although, as previously mentioned, I have seen a copy of an unsigned (draft) warrant printed from PULSE. Nor is there a statement from the named Garda of the Computer Crime Investigation Unit. I have

been informed that he has now retired. One of his former colleagues at the Computer Crime Investigation Unit has established that no report or statement by that named Garda in relation to this case is available at that Unit.

10.33 On 29 April 2008 Garda Tango prepared a report addressed to the Sergeant-in-charge, Bailieboro. He stated that he visited the home of Mr Grey on 28 November 2007 and spoke to him about the assault and asked him had he any more information that would be of benefit to the investigation. He reported that Mr Grey had no additional information and that he stated to Mr Grey that there was a lack of “additional evidence at this time”, there were no results from CCTV as yet and that the only evidence was his statement and that of Witness E. He further reported:

“Mr Grey stated that he does not go near any of the pubs in Bailieboro Town any more and he wanted to forget about the whole thing. I took this as an indication that Mr Grey wanted to withdraw his complaint. I informed him that if he wished to withdraw his complaint I would require from him a statement to that effect. He made a statement.”

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10.34 A quite different account of that meeting was later given by Mr Grey in a statement made on 19 May 2008 to Inspector Pat McMorrow.

10.35 Inspector McMorrow was appointed on 16 May 2008 by Chief Superintendent Rooney to “investigate the issues arising in the manner of the investigation conducted into the assault on Mr Grey”. He was directed to report in one month. Chief Superintendent Rooney appointed Inspector McMorrow on foot of a report from Superintendent Delta dated 6 May 2008, which is examined in more detail below.

10.36 Mr Grey stated to Inspector McMorrow that he had made a statement to the Gardaí and there were photographs taken of his injuries as well. He continued:

“A number of months later Garda Tango called to my home and basically said to me that there was no evidence to bring a case to Court. Garda Tango had something written out and asked me to sign it, basically saying that the case was closed because there was insufficient evidence.”

10.37 He said that his wife was present for a short while while Garda Tango was in the house, but not that she was present when he made the statement of withdrawal. Her account of the meeting was as follows:

“I was present when Garda Tango called to our home and told us that there was insufficient evidence to bring a case to court. I felt very upset about this. I told Mr Grey and he said ‘I knew this was going to happen’. After Garda Tango left our home Mr Grey told me that he signed a statement that there was no case to answer and the investigation was finished.”

10.38 The actual statement of withdrawal of Mr Grey, which is undated, is in the following terms:

“My name is Mr Grey of the above address. On the 27th May I made a statement to Garda Tango in relation to an assault on me on the 23/02/07 at C’s Bar in Bailieboro I now wish to withdraw this statement and an additional statement I made in relation to incident. I am doing so of my own free will and I am not under pressure or I have not been threaten to do so. This statement has been read over to me and is correct.”

10.39 I have not seen the original or a copy of the original of that statement, only the typed version. On 10 April 2014 I sought confirmation that the original documents are available. I have not received such confirmation.

10.40 In a statement made on 23 January 2009 to Detective Inspector Michael Finan and Detective Garda Noel Jones, as part of the Byrne-McGinn investigation, Mr Grey was more precise about what he meant when he said he was told that there was insufficient evidence to bring a case to court. He stated:

“I had no contact with Gardaí until three to four months [after making his statement of complaint] or even longer when the Guard who had taken the first statement off me called to my house. He said to me that there wasn’t enough evidence to go ahead with the case, nothing had shown up on the CCTV and nobody in the pub said they had seen anything.”

10.41 The possibility that Garda Tango made that final comment (and of course that is not a matter upon which any determination could be made as part of this review), is a serious cause for concern. Witness E had made a statement to Garda Tango in which he said:

“█ was on top of Mr Grey hitting him in the face. █ got 5 to 6 boxes into Mr Grey face.”

10.42 Garda Tango made a statement to Inspector McMorrow on 21 May 2008 in which he amplified the account of the meeting that he had given in his report dated 1 January 2008 and in his statement of 29 April 2008. He said:

“Some time after that, I don’t have the date or I can’t remember exactly how long after it, but I went to Mr Grey and met him at his house. I explained to him that in the statements there wasn’t much evidence in order to bring a case to court and that we were awaiting examination of the hard drive of the CCTV in the pub. I asked him if there was anything else he could assist us with. He said that he couldn’t help us any further. He didn’t seem to be too bothered about the whole incident. I took it from his attitude and his dismissive reactions that he wasn’t anxious to pursue the

complaint. I told him and explained to him that if he didn't wish to proceed any further that I would have to take a statement of withdrawal from him. He agreed to withdraw the complaint. I wrote out the statement of withdrawal, read it over to him and he signed it. I don't know if I dated this statement as I don't have the original."

10.43 There is an important issue of fact as to whether the statement of withdrawal was written out by Garda Tango in the presence of Mr Grey, as Garda Tango asserts, or whether it was something that had been prepared in advance and was presented to Mr Grey, as he asserts. On 10 April 2014 I sought confirmation that the originals of Mr Grey's statements are available. This has not been confirmed. It is a concern that the unavailability of original statements may be an impediment to the determination of the question of fact that arises in relation to the taking of the statement withdrawing Mr Grey's complaint.

10.44 Quite apart from that, it must be a matter of concern that the case was being presented as one in which there was insufficient evidence "to bring a case to court". Even allowing for doubts about the reliability of Mr Grey's purported identification of his attacker, there was a witness who saw Mr Grey being struck five or six times about the head while he was on the ground and who identified the person who he saw doing that. There was other evidence to show that that person was in the company of Mr Grey on the night and there was the evidence of the member of staff who observed the CCTV footage after the incident who said he saw Mr Grey and that person fall to the ground. The fact that the DPP later directed no prosecution does not support Garda Tango's view of the evidence. The DPP's view, as will be seen, was influenced by the statement of withdrawal of the complaint that Garda Tango was about to take from Mr Grey, but the DPP does not appear to have been told the full circumstances in which that statement came to be made. The DPP's view was also influenced by the failure to obtain CCTV footage but, again, the DPP was not told that Garda Tango had, apparently, sought

such footage on 28 May 2007, the day after Mr Grey's complaint had first been made. Garda Tango did not make a statement to that effect until 4 June 2008, after the DPP had issued a direction withdraw the charge and it does not appear that his statement to that effect was ever provided to the DPP.

10.45 That existing evidence was of some value. It might have been capable of being supplemented by other evidence had the matter been fully investigated.

10.46 Following the directions given by Superintendent Foxtrot on 6 March 2008, it appears that the matter was then investigated by Sergeant Kilo. A statement was taken from each of seven other individuals who were in C's Bar on the night. There was little of probative value in these additional statements, although one individual described seeing ■■■ and ■■■ "being pulled away" and that Mr Grey was on the floor being lifted up. Another witness said that he saw Mr Grey "saying something to a [■■■■■■] and [■■■■■■] fella". He said, "I don't know what was being said, but it appeared to me that it was smart talk."

10.47 The two suspects were arrested on 13 March 2008 by Sergeant Kilo. ■■■, broadly speaking, availed of his constitutional right to silence and neither answered nor reacted to the vast majority of the questions he was asked in interview. The only thing he responded to was the suggestion that he had called to Mr Grey's house the day after the incident and that he might have done so for the purpose of intimidating him into not making a complaint. He said that his father is good friends with Mr Grey and his father told him to go up to the house and talk to him after he told his father that he was accused of assaulting Mr Grey. He denied intimidating Ms Grey and said she brought him into the house and asked Mr Grey if he wanted to talk to him. He said that Mr Grey said he was too sick to talk to him and that Ms Grey said that "six lads jumped Mr Grey in [C's Bar]". He said that he saw Mr Grey about a week later and jumped into the van with him for about two minutes and told

Mr Grey that he hoped that Mr Grey didn't think that he had anything to do with the other night. He said that Mr Grey said "I don't even know who hit me" and that they shook hands and that Mr Grey said "forget about it".

10.48 [REDACTED] said in interview that he did not remember the night in question but denied that he had fought with Mr Grey and said that he would remember that if it had happened.

10.49 Sergeant Kilo reported on the investigation to the Superintendent, Bailieboro in a report dated 28 April 2008. He reported that [REDACTED] had been charged on 14 March 2008 with an offence of assault causing harm contrary to Section 3 of the Non-Fatal Offences Against the Person Act 1997. He said that there was no doubt that Mr Grey was assaulted by [REDACTED]

"[REDACTED]."

10.50 These comments reflected the content of an earlier report from Sergeant Kilo dated 10 March 2008, but stamped 29 April 2008. That report included reference to Mr Grey making his complaint reluctantly due to pressures [REDACTED]. In relation to the report of 3 March from Sergeant McCabe, it stated that Ms. Grey had indicated that she did not wish to make a statement of complaint [REDACTED]

[REDACTED]. In relation to the report of Mr Grey collapsing in January/February 2008, Sergeant Kilo observed that

"such collapse may be as a result of any ailment or abuse of personal health. Medical report states that Mr Grey suffered concussion as a result of a minor head injury. [REDACTED]

[REDACTED]"

10.51 That report was forwarded by Superintendent Delta to the Chief Superintendent in Monaghan on 2 May 2008. He noted that ■ had been charged with a Section 3 assault and observed that there was no evidence to link ■ with the assault. He reported:

“While there is no doubt that Garda Tango has been found wanting in the past in relation to his work, it is felt by this office that Mr Grey contributed largely to the failures in this investigation.”

10.52 He gave a history of Mr Grey’s statements and stated that the very first statement created a difficulty.

“Four days after the incident he admits he got a bang on the head, did not know who hit him and, having got up, couldn’t see who had assaulted him. Even in the absence of the statement of withdrawal, the defence will make a significant inroad’s (sic.) in relation to the credibility of Mr Grey’s evidence.”

10.53 He stated that Witness E was the only witness who can clearly identify ■ as assaulting Mr Grey. He noted that Garda Tango had failed to deal with the correspondence in an expeditious manner and that this issue would be dealt with in the Superintendent’s office. He noted that no formal complaint had been received about Ms Grey’s medical difficulties. He noted that the attached medical report did not support the assertion that Mr Grey received “severe head injuries” as suggested by Sergeant McCabe in his report of 3 March. Superintendent Delta continued:

“Sergt. Kilo has made contact with Mr Grey as part of the investigation and no such information was proffered. ■
■.”

10.54 Superintendent Delta’s report concluded with the following remark

“The lack of cooperation by Mr Grey may well prove fatal to the persecution (sic).”

10.55 It must be understood that the reference to a medical report appears to have been a reference to the report of [REDACTED]. That report is dated 14 March 2008 and is addressed to Sergeant Kilo. It therefore appears to have been obtained as part of the efforts by Sergeant Kilo to address the deficiencies in the investigation having been directed to do so by Superintendent Foxtrot on 6 March 2008. It is clear, however, that the report deals only with Mr Grey's attendance at Cavan General Hospital on 25 May 2007 and, factually, the report ends with Mr Grey's discharge to the care of his general practitioner following that attendance. There does not appear to have been any effort to obtain an updated medical report or any report from his GP. Equally, it does not appear that any further statement was taken from Mr Grey by the investigation team to follow up on the suggestion made in Sergeant McCabe's report that he was suffering continuing symptoms.

Prosecution

10.56 [REDACTED] appeared before Bailieboro District Court on 2 May 2008 on the assault charge. According to a letter of 7 May 2008 from Superintendent Delta to Mr. Rory Hayden, State Solicitor, District Judge McBride, on reading the medical report and seeing the photographs of Mr Grey, refused jurisdiction. Superintendent Delta described Mr Grey as "a reluctant participant in this investigation". He noted also that the first statement of Mr Grey would create prosecutorial problems, although he did also refer to Witness E giving a clear account of observing [REDACTED] punching Mr Grey in the face five or six times. He also noted that there was no CCTV footage available and explained that the hard drive had been examined by a named Garda from the Computer Crime Unit whose examination showed that the computer had only a three day memory, as a result of which the incident was lost before it was reported.

10.57 Superintendent Delta also commented that "the investigation was poor and was only pulled together with Sergeant Kilo's intervention. Mr Grey however, contributed little to furthering same. [REDACTED]"

10.59 Mr. Hayden brought the direction from the DPP to the attention of the Superintendent at Bailieboro by letter dated 23 May 2008. That was forwarded to the Sergeant-in-charge, Bailieboro on 28 May 2008 and on 30 May 2008 Sergeant Charlie brought it to the attention of Sergeant Kilo.

10.60 On 4 June 2008 Garda Tango made a further statement. He stated that he and Garda Victor went to C's Public House on 28 May 2007 to view CCTV and that he met with the licensee, Witness J, and explained the reason for their visit. He stated that Witness J took them upstairs to view CCTV of the alleged assault and that Witness J was given the date and he put the CCTV hard drive through search mode to locate the footage. He then stated:

“However he was unable to locate the footage as there was no recording of it on the system. The search for the footage strictly supervised by Garda Victor and I (sic).”

10.61 A statement was made on 3 June 2008 by Garda Victor who stated that shortly after 2:00pm on 28 May 2007 Garda Tango informed her that he had to call to C's Public House to view CCTV and that she went down with him where they met “a young man who identified himself as the Bar Manager”. She then gave a similar account to that given by Garda Tango of the effort to search for the footage, except that she stated that the manager had said “he wasn't too familiar with how long footage would be stored for”.

10.62 The statements of Garda Tango and Garda Victor give a different impression of what happened when they sought the footage at C's Bar than does the (draft) information for swearing by Superintendent Lima in support of the application for the search warrant. The suggestion that the search for the footage was “strictly supervised” by the Gardaí suggests that they were satisfied that the footage was not available. The draft sworn information gives the impression that they had to rely

on what Witness J told them and that there was reason to believe he had not told them the truth.

10.63 On 9 June 2008, Sergeant Kilo made a further report to the Superintendent at Bailieboro referring to the directions from the Office of the DPP. He stated that he had requested statements of evidence from Garda Tango and Garda Victor in relation to the examination of the CCTV system and that they had been supplied. He referred to their statements and to the “Garda forensic examination of the CCTV hard drive”. He made the point that “anything of evidential value contained thereon was lost/erased by the system itself, before the injured party made his complaint and before the Gardai conducted their initial examination of that system on 28th May 2007” (original emphasis). He referred to the DPP’s conclusion that the Defence would raise a legitimate argument about the failure of the Prosecution to provide the relevant CCTV footage and he observed that Garda Tango had made efforts to seek out and preserve all evidence having a bearing or potential bearing on the issue of guilt or innocence and referred to the relevant legal authorities. He concluded that while this additional information might not vary the decision of the Director, he felt it should be brought to his attention.

10.64 I can find no evidence that this was done. On 17 July 2008 the Solicitors for the Defence were notified that the case, which was adjourned to 19 September 2008, would be withdrawn on that date on the directions of the DPP. The charge was accordingly withdrawn on 19 September 2008.

10.65 As previously stated, Chief Superintendent Rooney had directed Inspector Pat McMorrow to conduct an investigation into the issues arising in relation to the investigation of the assault on Mr Grey. Chief Superintendent Rooney had sought a report within one month and his direction issued on 16 May 2008. Inspector McMorrow took a statement from Mr Grey on 19 May 2008. Mr Grey said that he had been “severely assaulted and received several kicks to my head”. He stated that after

coming out of hospital he went to a named doctor because he was still suffering with a twitch to his eye and the right side of his face but said that he did not get any blackouts as a result of the assault. He stated that he was now happy with the way the Gardaí handled the investigation, in particular the way it was handled by Sergeant Kilo, and said that Sergeant Kilo kept him up to date with the progress of the investigation. He also said that Sergeant Maurice McCabe kept in contact with them. Ms Grey made a statement to Inspector McMorrow on the same date. She said that Sergeant McCabe rang the house inquiring about Mr Grey some time after the statement withdrawing the complaint was made by Mr Grey and that she told him she was not happy with how things had gone. She said that she told Sergeant McCabe she was very upset and “nobody cared about what had happened”. She said she told him that if they had done something they would have to answer for it and that she felt it was unfair to think that nobody was made to answer for what happened to Mr Grey. She said the whole incident was very stressful upon them. She described how Mr Grey had gone to the hospital on the Friday and was kept overnight. She said that on the following Monday she felt very unwell and Mr Grey took her to the doctor. She was taken into hospital on the following Thursday with medical difficulties. She said there was a lot of stress upon her as a result of this incident and it was raw at all times. She said she was very happy with the way the investigation progressed when Sergeant Kilo took over and that he dealt with it very professionally and listened to how they felt about it.

10.66 Garda Tango made a statement to Inspector McMorrow on 21 May 2008. Apart from an account of the initial investigation and of the taking of the statement of withdrawal of the complaint, which is dealt with above, he said that he knew the file was almost out of date. He said:

“This was due to some problems I was having at work and at home. My mind was not fully focused as I was finding it hard to cope. I felt I was under pressure. Some of those problems are personal, which I do not wish to disclose.”

- 10.67 Inspector McMorrow also took a statement from Sergeant Kilo. It was taken on 31 May 2008 and he described repeated efforts to obtain a completed file from Garda Tango.
- 10.68 Notwithstanding the request for a report within a month and the fact that statements had been taken from Mr and Ms Grey, from Garda Tango and from Sergeant Kilo by 31 May 2008, Inspector McMorrow did not in fact report to the Chief Superintendent at Monaghan until 23 February 2009. That report appears to have followed and may well have been prompted by a letter from Chief Superintendent McGinn dated 18 February 2009 to the Chief Superintendent at Monaghan. She stated that she had learned that Mr and Ms Grey had been interviewed by an Inspector, whom they believed to be from the Cavan/Monaghan Division, in relation to the manner in which the Garda investigation was carried out. She sought confirmation of this and asked what the nature and current status of the investigation was.
- 10.69 Inspector McMorrow's report refers to the withdrawal of Mr Grey's complaint. He reported:
- "It has transpired that during the course of the investigation Garda Tango interviewed the injured party on a third occasion to ascertain if he could assist further in the investigation. In the course of this interview it is alleged that the injured party indicated that he did not wish to pursue the complaint any further and signed a statement of retraction to this effect. The investigating member could not recollect the date in which this occurred (sic.). He has stated in a separate report that it occurred on the 28th November 2007."
- 10.70 Inspector McMorrow makes no reference to the suggestion that Mr Grey had been unhappy with the situation or to the important difference in the account given by Mr Grey and Garda Tango as to how the statement of withdrawal came to be made, i.e. whether it was recorded and taken

from Mr Grey in his house that day or whether it was something presented to Mr Grey for signature by Garda Tango.

10.71 Inspector McMorrow went on to outline the chronology of events following Sergeant McCabe's report of 3 March 2008 and he commented:

"The delay in submission of File was initially caused by the lack of initiative displayed by the investigating member Garda Tango in not pursuing the obvious lines of enquiry. The member lacked confidence and did not seek guidance. Furthermore he ignored a number of written reminders and failed to address ongoing correspondence."

10.72 He noted that the evidential lines of inquiry were vigorously pursued after the file was submitted and that an appropriate charge was laid within the statutory time limits. He referred to Sergeant McCabe making contact with the Greys and meeting them at their home. He stated that Ms Grey had stated that the episode caused some stress and had been raw at all times but said:

"On being further pursued on this issue she assured me that this did not however contribute to her subsequent [medical difficulties]. She stated this was a separate personal and private matter which she did not wish to discuss further."

10.73 Inspector McMorrow stated that "despite numerous requests for a meeting Sergeant M. McCabe indicated that he was unwilling to be formally interviewed." He stated that he had been in contact with the Chief Superintendent T. McGinn who was appointed to conduct an investigation. Inspector McMorrow concluded:

"In conclusion it can be stated that Garda Tango was somewhat negligent in not pursuing obvious lines of inquiry and in not responding to numerous reminders which were addressed to him. The Member has stated that he was encountering some problems

at the time and that his mind was not fully focused. The problems encountered were deemed to be personal which he would not elaborate upon. The injured party, Mr Grey also contributed to the difficulties which arose and was at all times a reluctant witness. He was appeasing his wife [Ms Grey] by lodging a complaint to the Gardai. It appears that he did indicate that he did not wish to pursue the matter and signed a statement of retraction in this effect. Nevertheless the investigation continued and all avenues were explored to have criminal proceedings taken before the District Court.”

10.74 On foot of that report Chief Superintendent Rooney reported to Chief Superintendent McGinn on 24 February 2009 and stated that Inspector McMorrow had been appointed to investigate the issues arising in the manner in which the investigation of the assault on Mr Grey was conducted. He stated that in the course of his investigation Inspector McMorrow sought to interview Sergeant McCabe, who indicated that he was unwilling to be formally interviewed and who stated that he had been in contact with Chief Superintendent McGinn. Chief Superintendent Rooney stated:

“As a consequence Inspector McMorrow investigation has not been concluded (sic).”

10.75 He attached a copy of Inspector McMorrow’s report with the documents secured in his investigation and a copy of the original investigation court file.

10.76 I discussed with Sergeant McCabe in interview the suggestion that he was unwilling to be formally interviewed by Inspector McMorrow. He said that Inspector McMorrow rang him on three occasions wanting to meet him. Sergeant McCabe said that he told Inspector McMorrow to “leave it to Terry McGinn”. In other words, Sergeant McCabe’s position was the matter was already being investigated by Chief Superintendent McGinn and that the matter should be left in her hands. He viewed the

involvement of Superintendent *McMorrow* as an interference in Chief Superintendent *McGinn*'s investigation.

Sergeant McCabe's Complaints

10.77 In the dossier Sergeant McCabe alleges neglect of duty in failing to seize the hard drive from the public house and delay in submitting an investigation file. He said that Superintendent Foxtrot ignored his reports of this inaction. He became suspicious when a statement withdrawing the complaint was taken from Mr Grey and reported the matter to Superintendent Foxtrot. He said he could see that the case was never investigated. He alleges that the position later adopted, in particular in Superintendent Delta's report, which involved blaming the injured party for the failures in the investigation, was a disgrace and it was "covering up" for Superintendent Foxtrot. His complaint in the letter of February 2012 to the Confidential Recipient is similar in substance. He complains of a failure to investigate the case and of a cover-up. He said his reports were "sidelined" and the assault was not recorded on PULSE for 11 months.

10.78 His original complaint to the Byrne-McGinn investigation was in similar terms. The Byrne-McGinn report accepted, as Inspector McMorrow had done, that the original investigation was defective. The report stated:

"The original investigation carried out by Probationer Garda Tango, Bailieboro, was not carried out in a timely and professional manner and falls below the minimum expected standard. Notwithstanding the fact that Probationer Garda Tango approached Mr Grey in relation to withdrawing his complaint, (which could be considered to be a dubious practice in the circumstances of the case and having regard to the fact that a summary prosecution would become statute barred imminently), the fact that the C.C.T.V. system operated on a three day relay made a prosecution against the offender unsustainable."

10.79 Those words were repeated verbatim in the Commissioner's letter of 26 February 2013 to the Secretary-General of the Department of Justice and Equality. That letter initially dealt with the unusual circumstances in

which Mr Grey came to make a statement withdrawing his complaint in the following succinct terms:

“On the 28th November 2007, Mr Grey made a statement withdrawing the complaints he made on the 27th and 28th May 2007.”

10.80 It did go on, however, to set out the account of the withdrawal of the complaint that Mr Grey gave to the Byrne-McGinn investigation, including his account of having been told that “nobody in the pub had seen anything”. Unfortunately, the letter did not mention the statement that had been taken from Witness E, which was plainly inconsistent with what Mr Grey said he was told.

10.81 The Byrne-McGinn report also stated that Inspector McMorrow was appointed to establish if there was a breach of discipline and stated:

“Following investigation no breach of discipline was established.”

10.82 The Commissioner’s letter to the Secretary-General of the Department of Justice and Equality on 26 February 2013, repeated that assertion.

Analysis

10.83 Mr Grey was on his own account “severely assaulted and received several kicks to [his head]”. The decision of the learned District Judge to refuse jurisdiction on seeing the photographs of Mr Grey’s injuries and on reading the medical report establishes the gravity of the matter.

10.84 When the file was referred to the DPP it was decided that a prosecution was unsustainable because Mr Grey withdrew his complaint. The circumstances in which that occurred were not established. Mr Grey stated that he was told there was insufficient evidence, in particular that “nobody in the pub had seen anything”, and a statement of withdrawal was presented to him to sign. Given the content of the statement made by Witness E to Garda Tango, Mr Grey’s statement to

the Byrne-McGinn investigation team amounted to an allegation that a statement of withdrawal was obtained from him by deception. I cannot express a view as to whether Mr Grey's account is true, but it is apparent that neither the Byrne-McGinn investigation nor Inspector McMorrow's investigation established the truth of the matter and neither recommended disciplinary proceedings in relation to this important issue.

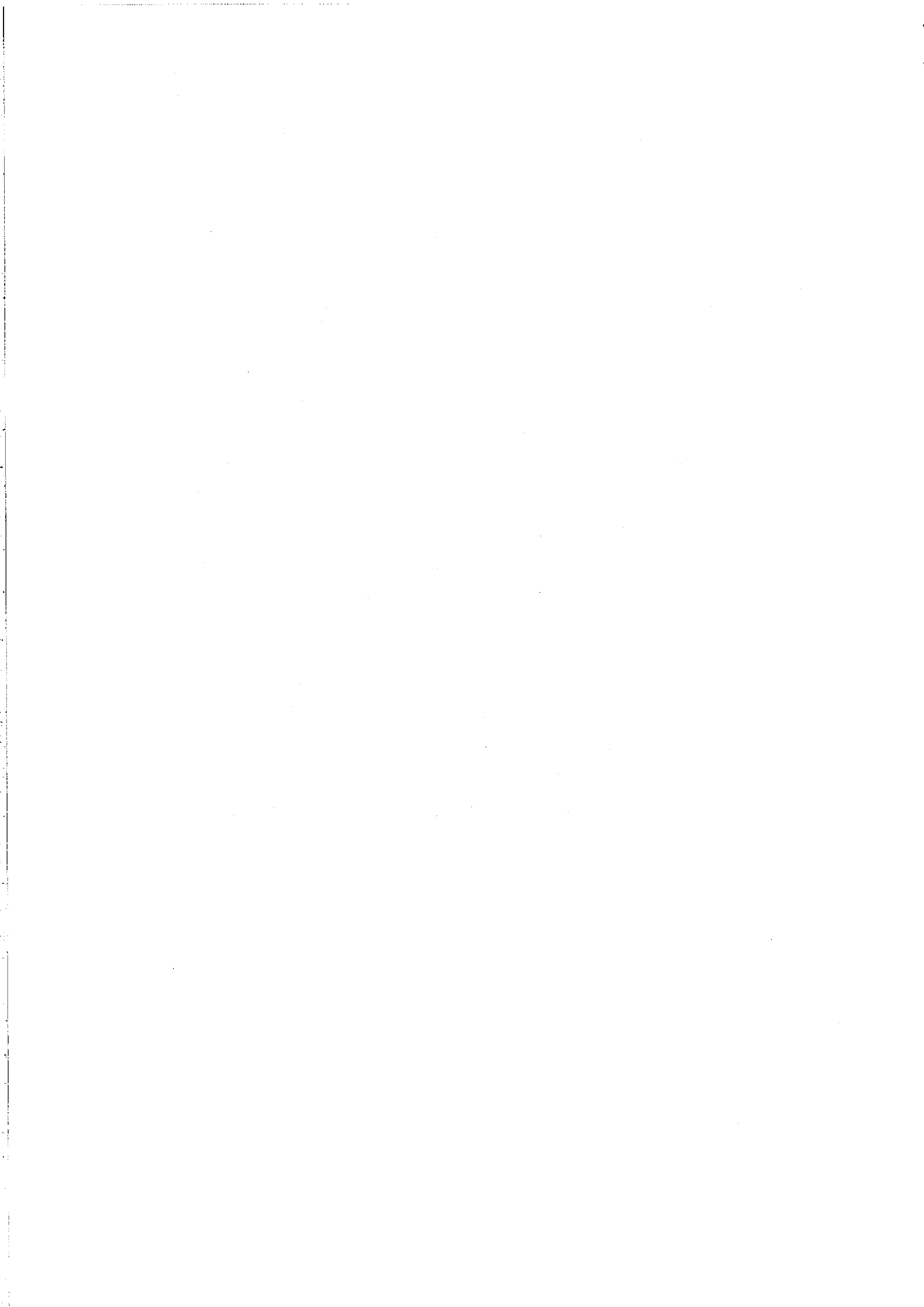
10.85 In both the Byrne-McGinn report and in the Commissioner's letter to the Department it is stated that, following investigation by Inspector McMorrow "no breach of discipline was established". It is difficult to understand this conclusion. First, Inspector McMorrow said that Garda Tango was "somewhat negligent in not pursuing obvious lines of inquiry and in not responding to numerous reminders". Garda Tango gave no explanation other than unspecified problems, some of which were "personal", and which he did not want to disclose, as a result of which "his mind was not fully focussed". Secondly, Chief Superintendent McGinn was told by Chief Superintendent Rooney that Inspector McMorrow's investigation "has not been concluded". It is therefore not clear why the Byrne-McGinn report relies on that inconclusive investigation to establish that there was no breach of discipline, rather than reach its own conclusion on the matter. Thirdly, Inspector McMorrow had explicit evidence in the form of a statement from Mr Grey to the effect that, before he made the statement of withdrawal, he was told there was insufficient evidence and that his statement of withdrawal was already "written out" by Garda Tango and he was simply asked to sign it. Inspector McMorrow's report doesn't mention that evidence, much less assess it from a disciplinary perspective. Finally, the account Mr Grey gave to the Byrne-McGinn investigation of what Garda Tango told him suggests that he was deceived as to the strength of the evidence available to the investigation.

10.86 In both the Byrne-McGinn report and in the Commissioner's letter to the Department it is stated that "the fact that the CCTV system was on a

three day relay made a prosecution against the offender unsustainable”. This reasoning is questionable. The absence of CCTV footage does not, per se, render a prosecution unsustainable and the DPP did not express that view in this case. The difficulty identified by the DPP was not the absence of CCTV footage, but the “delay in retrieving the footage”. If the Gardaí had made diligent efforts to obtain relevant CCTV footage, and there was other reliable evidence available, the absence of the footage would not be fatal to the case. Garda Tango and Garda Victor made statements, after the DPP’s direction, which suggest there was no delay at all in attempting to retrieve footage. I do not know why those statements were not made closer to the time of examination of the footage or why they were not brought to the attention of the DPP, even at the late stage at which they were made. Furthermore, there is no statement or report from the officer who is said to have examined the hard drive to establish that the system operated on a short relay. I do not understand why not.

10.87 In all the circumstances, I am of the opinion that there is cause for concern as to the adequacy of the investigation of the complaints made by Sergeant McCabe in relation to this incident and a sufficient basis for concern as to whether all appropriate steps were taken by An Garda Síochána to investigate and address the specified complaints.

10.88 In my opinion, these matters warrant further inquiry in an appropriate forum in the public interest.



Chapter 11: Allegation of Threats made by Gardaí at Bailieboro

11.1 On 14 January 2009 Sergeant Maurice McCabe provided to Chief Superintendent Terry McGinn a document entitled “brief proven facts pertaining to my complaint”. This two page document contained a summary account of Sergeant McCabe’s complaints and included at the end a note of “evidence and list of witnesses supporting my complaint”. This note included reference to 70 voice recordings.

11.2 On 25 March 2009 a statement was taken from Sergeant McCabe by Assistant Commissioner Derek Byrne and Chief Superintendent Terry McGinn. During the taking of that statement, it appears that Sergeant McCabe was asked about these voice recordings. He said, amongst other things,

“There is one voice message that I feel is important to the investigation. It’s a conversation, between myself and [Ms. Brown] employed at Bailieboro. On the 23rd September 2008 I met her at Virginia, Co Cavan.... I had a brief conversation with her. During that conversation she told me that she was threatened by the Gardaí at Bailieboro. I was careful with the conversation and I advised her to go to the Ombudsman Commission. She stated that she had spoken to the Ombudsman Commission. I went home and half an hour later I rang her. She more or less repeated that conversation on the digital device. She was unaware that I had taped her and that I made a recording on the hard drive. I will hand over the recording.”

11.1 Chief Superintendent McGinn made enquiry by letter dated 31 March 2009 to the Chief Superintendent, Internal Affairs at Garda Headquarters as to whether there was any record on file of a complaint made by Ms

Brown to GSOC. She was informed by reply dated 27 April 2009 that was no record of any such complaint.

11.2 It appears that a Sergeant Angela Cummins met with Sergeant McCabe at Garda Headquarters on 28 April 2009 for the purpose of examining his mobile phone and to “capture all the recordings stored thereon”. She reported that Sergeant McCabe informed her that he was not making available the tape recording of the conversation that took place between himself and Ms Brown on 23 September 2008. She reported that he had discussed that with Assistant Commissioner Byrne and Chief Superintendent McGinn previously and that that particular voice recording was not stored on his mobile phone. She reported that Sergeant McCabe stated that the conversation was available for only Chief Superintendent McGinn and Assistant Commissioner Byrne to listen to.

11.3 On 16 June 2009 Chief Superintendent McGinn wrote to Sergeant McCabe formally requesting that she be given access to that recording “so that it can be examined by the investigation team”. On 13 July 2009 Sergeant McCabe replied. He said:

“I wish to state that there is nothing of evidential value in the recording which would add to my complaint.”

11.4 On 17 September 2009 Sergeant Cummins and Sergeant Michael Galvin met Ms Brown in Bailieboro, Co. Cavan. They explained that they were part of an investigation team into “irregularities in the Bailieboro District which had been brought to the attention of the Garda Commissioner”. Sergeant Galvin reported that Ms Brown spoke in a “very frank and open way, but was unwilling to make a statement”. She explained that she has had problems with new members from Bailieboro Garda Station. These arise out of her having to deal with them in the course of her work. She said that she was informed on a number of occasions that “her paperwork had better be correct”, which she felt was an attempt to intimidate her.

- 11.5 She also said that she had been threatened by “a small black haired Garda who she thinks is now stationed in [a named station], who allegedly said to Ms Brown that ‘if she was done, she would get her’”.
- 11.6 Asked about her conversation with Sergeant McCabe on 23 September 2008, she said that she had not spoken to the Garda Ombudsman Commission but to the Insurance Ombudsman in relation to a traffic accident that a member of her family had been involved in. She said that she did tell Sergeant McCabe that she was threatened by Gardaí. She also said that she had no contact with any Garda members in Bailieboro and that she had a poor working relationship with them. She said that there was a general feeling amongst the community in Bailieboro that “the guards do what they like, even when they are off duty”. She also complained that Gardaí didn’t respond to calls and that the people in Bailieboro ring the 999 line to ensure that their calls are recorded. She mentioned a specific incident in which there was delay in responding to a call and she also said that she felt that “the public will get done if they complain about younger guards”. Ms Brown also said that one of her children had been in trouble with the guards and that she felt that he is “harassed by junior members of Bailieboro Station”.
- 11.7 Sergeant Galvin expressed a view that it would be
- “very unusual that a [person in Ms Brown’s occupation] would have such a poor relationship with local Gardai. In my opinion she has a grievance which she would not expand on. However, she appears to be an honest and sincere person and her allegations must be treated seriously and are not without foundation.”
- 11.8 It seems that Ms Brown was met again by Gardai a week later and a statement was taken from her on 24 September 2009 by Superintendent Eugene McGovern in the presence of Chief Superintendent McGinn. She said that she lived in Bailieboro and had known Sergeant McCabe for some years. She said that she first came to know him due to an investigation he was carrying out. She said she developed a passing

relationship with him and would have had contact with him through her work. She said she developed a trust and respect for Sergeant McCabe.

- 11.9 She recalled meeting him on 23 September 2008. She said that he was very upset and that she could see that he was clearly under a lot of stress. During their conversation she said they spoke about an accident in which a family member of hers had been involved and that she had been unhappy with the report forwarded by the Garda member who investigated the accident, as she felt the information supplied was not correct. She said she had taken that issue up with the Insurance Ombudsman and didn't wish any other enquiries to be carried out.
- 11.10 She said the conversation then led into a discussion about Gardaí in general and her work. She said they spoke about her interaction with Gardaí and about "the general bad attitude of Garda members to [her] which was threatening and intimidating in nature". She told Superintendent McGovern that she did not wish to discuss any particular incident or individual case because she felt that she or some members of her family would be "targeted" if she did.
- 11.11 This was one of a number of matters brought to the attention of the Assistant Commissioner, Northern Region by Chief Superintendent McGinn by letter dated 19 October 2009. Chief Superintendent McGinn referred to Ms Brown being verbally abused by a member of An Garda Síochána and noted that Ms Brown was adamant that she did not want the matter investigated formally. Chief Superintendent McGinn referred to and specifically quoted from the statement of Ms Brown in relation to her fear of being "targeted", but noted that it was not possible to further investigate the matter or identify the member involved and that to do so would be a breach of trust given the wishes of Ms Brown. She did however state that it was

"unacceptable that any member of An Garda Síochána would verbally assault a [person in Ms Brown's occupation] if the facts are as outlined by Ms Brown. It is further unacceptable that a

[person in that occupation] while performing his/her duties should feel intimidated by members of An Garda Síochána. [People who do that work] can be an invaluable source of information for An Garda Síochána and every effort should be made to nurture those relationships.”

11.12 Chief Superintendent McGinn identified this incident and another matter to which she referred in the same letter as pointing towards “a breakdown in community engagement in Bailieboro and may well be symptomatic of a deeper malaise.”

11.13 In a further letter dated 25 May 2010, Chief Superintendent McGinn recommended that the District Officer in Bailieboro call personally on Ms Brown to allay any fears she may have in her dealings with An Garda Síochána, so that she could

“feel reassured that she can perform her duties without fear of recrimination.”

11.14 On 25 July 2010 Superintendent G O’Brien reported that he met Ms Brown on 30 June 2010 and:

“I apologised to her on behalf of An Garda Síochána for the incident in question and [he] allayed in the strongest possible terms that she should have no fears in her dealings with An Garda Síochána in the Bailieboro District.”

11.15 Superintendent O’Brien reported that he emphasised the partnership approach between An Garda Síochána and [people in Ms Brown’s occupation] and provided Ms Brown with his mobile number and requested that she contact him immediately if she had any issues with any member of the Gardaí or in relation to her work.

11.16 He reported that Ms Brown was surprised by that meeting, as she had assumed that her previous meeting with Gardaí the previous year last year was the end of the matter. He reported that she

“appeared appreciative of the support that was offered to her, especially having direct access to the local District Officer”.

11.17 Superintendent O’Brien also reported that he had highlighted through Accountability Meetings, personal meetings with Sergeants and meetings with probationers the benefits of positive working relationships with outside agencies and organisations and “that any negativity or discourtesy shown to anybody irrespective of who they are will be taken seriously and dealt with under the Disciplinary Regulations”.

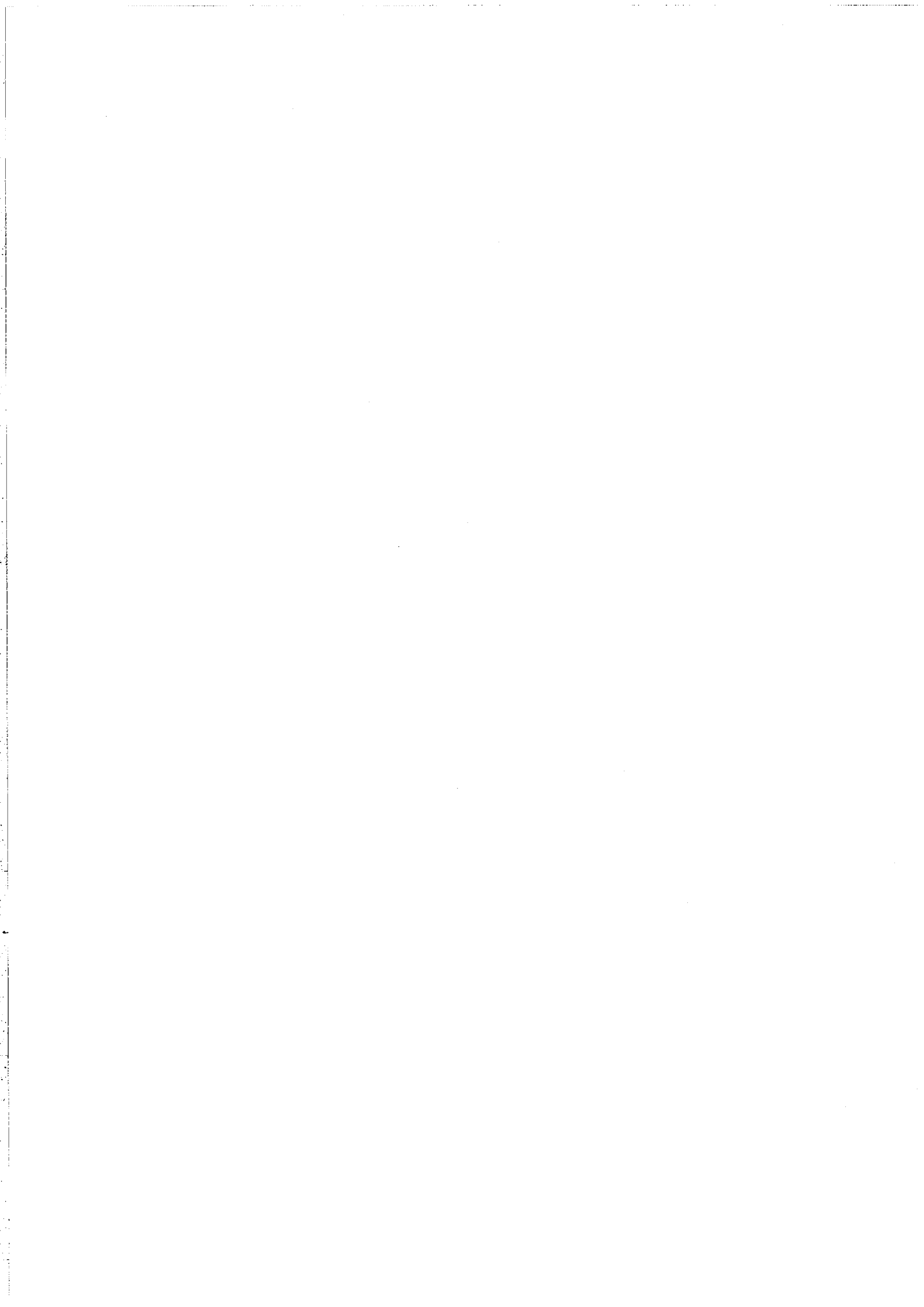
11.18 The Byrne-McGinn report noted that the matter had been forwarded to Assistant Commissioner, Northern Region for necessary attention. It appears that Superintendent O’Brien’s meeting with Ms Brown had yet to take place at that point in time. The report advised that the Superintendent at Bailieboro “should speak to Ms Brown to alleviate her fears and assure her of his full support in the performance of her duties”. Superintendent O’Brien appears to have done that.

11.19 In the dossier Sergeant McCabe complains that the threats reported by Ms Brown were not reported to the Commissioner and that his report “showed he found no evidence whatsoever”.

Analysis

11.20 A statement was taken from Ms Brown despite her initial reluctance to make one. She appears to be adamant that she does not want the matter further investigated. Notwithstanding that, the Byrne-McGinn report demonstrates an appreciation of the significance of the matters stated by Ms Brown. The steps taken on foot of that report appear to be a genuine effort to reassure Ms Brown that the behaviour she describes is considered unacceptable to An Garda Síochána and to provide her with ready means to raise any concerns she might have in future at a senior level within the force.

11.21 In all the circumstances I am of the opinion that the investigation of this complaint could not have been taken any further and that all appropriate steps were taken to investigate and address the specified complaint. The matter does not call for any further inquiry.



Chapter 12: Investigation of Sexual Offences and Loss of an Exhibit

- 12.1 On 11 September 2007 a complaint was made at Bailieboro Garda Station by a man that his son, ██████████, had been sexually abused by a priest, ██████████. The Garda who received the complaint notified Sergeant Charlie, and they met with Superintendent Foxtrot.
- 12.2 Statements were taken that day from the victim (“the youth”), his father, and his mother, who had transcribed certain relevant text messages received on her son’s phone. The phone itself was obtained by Gardaí along with the note the youth’s mother had made of the text messages. The phone was later technically examined.
- 12.3 Two days after the complaint was made, Gardaí obtained search warrants for two addresses associated with Fr ██████████ ██████████. The searches took place the following day. ██████████ a trained crime scene examiner from the Divisional Scenes of Crime Unit (the “Scene of Crime Examiner”) and a member attached to a Garda Telecommunications Unit, Garda Whiskey, participated in the search.
- 12.4 At the time of the searches, Fr ██████████ was at a different location, to which he admitted the Gardaí. He was arrested and brought to Bailieboro Garda Station, where he was detained. A mobile phone was seized from him at the time of his arrest, which was later technically examined.
- 12.5 In the statement the youth made on 11 September 2007 he described repeated sexual assaults by Fr ██████████ between July 2006 and early September 2007. The assaults were preceded by grooming activity in May and June 2006, including the playing of a pornographic DVD. As is common in cases of that nature, the youth had difficulty connecting the offences to any specific dates or events. There was one exception. He

recalled that in March or April 2007 he installed anti-virus software on a computer in [REDACTED] after evening Mass. He described the computer, its operating system and the software he installed. He was subjected to a serious sexual offence afterwards.

- 12.6 Investigating Gardai seem to have been alive to the significance of evidence which might establish a specific date for an offence. Garda Whiskey, in a statement made on 19 September 2007, said that he was asked to assist in the search of [REDACTED] for any electronic equipment or digital media that might be present. The Scene of Crime Examiner, in an additional statement made on 8 November 2010 explained Garda Whiskey's presence by saying "there were allegations which were dated by the installation of a programme on a computer". Garda Whiskey found a personal computer and noted the properties of an installed antivirus software program. Although the setup file for the software was created in early June 2007, he noted that that date could be either the date of first installation or the date of an upgrade. The name of the software matched that given in his statement by the youth. Garda Whiskey asked the Scene of Crime Examiner to photograph the "properties screen" for the antivirus software. He then seized the computer as an exhibit, employing appropriate forensic procedures.
- 12.7 In interview at Bailieboro Garda station, Fr [REDACTED] admitted possessing a pornographic DVD and that he had conversations and exchanged text messages with the youth that had a sexually explicit content. He denied sexual activity with the youth. Gardaí had examined the phone seized from Fr [REDACTED] and found on it a video of the youth engaged in sexual activity with a male. Fr [REDACTED] made no comment on that evidence when it was shown to him. Fr [REDACTED] was released from Garda custody without charge following four interviews and after his photograph, fingerprints, and a saliva sample had been taken. Some months later, in March 2008, he again attended Bailieboro Garda station, accompanied by his solicitor. On this occasion he made a statement after caution in

which he admitted certain sexual activity with the youth and admitted that he made a video recording on his phone of one sexual encounter.

12.8 The file for the Director of Public Prosecutions in this case was prepared by Superintendent Delta. It is undated. It had not yet been sent by 4 June 2008 as, on that date, the Superintendent, Bailieboro, forwarded a minute to the Chief Superintendent, Monaghan, explaining that matters arising from Fr [REDACTED]'s last statement needed to be clarified and that the victim had to be interviewed further. That minute was sent in response to a letter from Chief Superintendent Rooney dated 26 May 2008 and headed "3rd Reminder". Chief Superintendent Rooney's letter referred to a previous reminder sent on 24 January 2008 to which, it was stated, no reply had been received.

12.9 In any event, in the completed file, under the heading "Evidence in Case", Superintendent Delta made the following remarks:

"Evidence in this case comes from a variety of sources including Statements made by [the youth], admissions made by [Fr [REDACTED]].

The evidence is strongly supported by evidence gleaned from [Fr [REDACTED]'s] mobile phone and evidence from [the youth's] mobile phone, supported by forensic examination. [The youth] states that [Fr [REDACTED]] engaged in sexual activity with him on about 35 different occasions from May 2006 to 5 September 2007."

12.10 This account of the evidence makes no mention of the computer found at [REDACTED] and there is no indication that it was technically examined. Indeed it is not mentioned at all in the report of Superintendent Delta. It is referred to in the statements of the youth (Statement 1) and Garda Whiskey (Statement 15), which were part of the file to the DPP. Garda Whiskey stated that he marked the computer as an exhibit (with his initials) and brought it, with eight other exhibits, to Bailieboro Garda Station, where he gave it to Garda Xray, the designated

exhibits officer, later that day. There was no statement from Garda Xray in the file to the DPP.

- 12.11 The file to the DPP did make reference to one other important feature of the case. That is that the search warrants obtained were unlawful. Warrants were obtained, in error, pursuant to a statutory provision that had no application to the facts of the case. Superintendent Delta expressly identified this difficulty in his report to the DPP.
- 12.12 On 2 December 2008 the DPP directed that Fr [REDACTED] be prosecuted on multiple counts of defilement of a child, a count of sexual assault, a count of production of child pornography and a separate count of possession of child pornography. The directing officer acknowledged that the issue with the search warrants “could put at risk significant evidence”, but directed a prosecution in light of the other available evidence. He made no reference to the computer.
- 12.13 Fr [REDACTED] was charged on 19 December 2008 in accordance with the DPP’s directions. He pleaded guilty to three counts before Cavan Circuit Court on 22 July 2009. On 23 November 2009 he was sentenced to five years imprisonment on one of the defilement charges and lesser, concurrent sentences on the other counts.
- 12.14 Prior to his entering the plea, there had been some correspondence concerning the making of arrangements to facilitate the examination of exhibits by the defence. Since Garda Xray had, by this time, left Bailieboro station, it was necessary for her to transfer the exhibits to another officer and this was arranged at the request of Sergeant Charlie. The handover of the exhibits occurred on 1 July 2009 and was recorded in a statement made by Garda Xray on that date and in a hand-written receipt signed by her and the officer to whom she transferred the exhibits. The computer did not feature either in her statement or on the signed receipt. Its absence does not appear to have been remarked upon.

The Investigation into the Loss of the Computer

- 12.15 On 21 September 2010 the Bishop of ██████ sent a letter to Cootehill Garda station requesting that the computer be located and returned as a matter of urgency. He said that it contained many valuable parish records and said that it had not been returned “despite repeated efforts” by another priest. The Sergeant-in-charge, Cootehill forwarded that letter to the Superintendent, Bailieboro, stating that some of the parish records on the computer were of interest in the context of an ongoing fraud investigation. (Ultimately, a conviction was also obtained as a result of that investigation and a statement taken at a later date suggests that there were, in fact, no relevant records on the computer.)
- 12.16 Superintendent G O’Brien, who was the Superintendent at Bailieboro at this stage, began an investigation into the whereabouts of the computer. His first inquiry seems to have been of Sergeant Charlie, who investigated the sexual offences committed on the youth. He reported on 6 October 2010 that Garda Whiskey stated that he had given the computer to the exhibits officer, Garda Xray, on 14 September 2007, but that the computer was the only item not on Garda Xray’s handover list on 1 July 2009. Sergeant Charlie made no comment on whether any effort had been made to have the computer examined as part of the investigation.
- 12.17 An inquiry seems also to have been made of Garda Whiskey. He reported to Superintendent O’Brien that he did not retain any exhibits, having handed them all over to the exhibits officer. He said that he
- “understood that [the computer] was to be subject to a forensic examination at the Computer Forensic Section, located at the fraud office, Harcourt Square.”
- 12.18 On 24 October 2010 Garda Xray reported that she had supplied a statement of evidence to Sergeant Charlie “a number of days after [Fr ██████’s] arrest” along with a “table of contents” (i.e. an exhibits chart)

regarding the items she received. She said the computer was one of two items that were too big for her locker and they were handed over to Sergeant McCabe, the Sergeant-in-charge, to be placed in the property store along with four other items. She furnished a copy of her statement of evidence, a certified copy of her official notebook for 14 September 2007 and a copy of the exhibits chart. She commented that her statement did not mention the handover of the computer but said she had recorded it in her notebook and in the exhibits chart. She also said that she recalled “updating” her statement when a receipt was left in her locker by another officer for an unrelated item.

12.19 In fact, her notebook entry initially did not record her handing over the computer to Sergeant McCabe. Instead it recorded only the handover of the other four items, which were of no probative value in the investigation. The note read:

“@ 2:25pm 3PC, 4PC & 5PC & 6PC [i.e. the four items of no probative value] handed to Sgt McCabe to be placed in the property record”

12.20 Several pages later in her notebook there was a further note. The later note read:

“[computer] - property room,
3PC, 4PC, 5PC, 6PC -> Sgt McCabe at 2:25pm”

12.21 Even this note is, at best, ambiguous about whether the computer was given to Sergeant McCabe. On balance, it seems more likely to suggest that the computer was placed directly in the property room, as opposed to the other four items, which were given to Sergeant McCabe.

12.22 On 22 November 2010 Sergeant Charlie made a further report to the Superintendent. He said he had never received a statement of evidence or exhibits chart from Garda Xray and mentioned that neither were in

the book of evidence, which he supplied. He said he had no record of Garda Xray handing any exhibits to Sergeant McCabe.

- 12.23 Sergeant McCabe furnished a report on 9 January 2011 stating that he could not assist as he had no knowledge of the whereabouts of the computer and noting that Garda Xray's notebook entry recorded that it had been placed in the property room. He said that he presumed that the computer would have required forensic examination and suggested that the Jobs Book for the investigation should shed some light on the matter.
- 12.24 Superintendent O'Brien notified the Bishop of ██████ in April 2011 that the computer had not been located and he apologised for that.
- 12.25 Superintendent O'Brien prepared a report for the Chief Superintendent, Cavan/Monaghan dated 13 July 2011. He set out Garda Xray's position that she had handed the computer to Sergeant McCabe at about 2:25pm on 14 September 2007 along with four other items. He said she recorded that in her notebook and in the tracking form (i.e. the exhibits chart, or table of contents as Garda Xray described it) but not in her statement. As stated above, that is a doubtful reading of the contents of Garda Xray's notebook.
- 12.26 According to Superintendent O'Brien, his predecessor, Superintendent Featherstone, arranged a clear out of the property store in 2009 and there is a record of the other four items (which were recorded in Garda Xray's notebook as having been handed directly to Sergeant McCabe) in the property book at that time. He said he spoke to Sergeant McCabe in June 2011 and he could give no explanation for the missing computer, although he did remember the other four items as another Sergeant had commented on them at the time.
- 12.27 Superintendent O'Brien concluded that there was nothing of evidential value on the computer in relation to the sexual assault case. I can find no basis for this conclusion, as it was never forensically examined. What

examination it had received, at the time of its seizure by Garda Whiskey, suggested that there was in fact material of evidential value on it. He also expressed the view that Sergeant McCabe was in breach of discipline in that it was a neglect of duty to fail to properly record an exhibit which he received. He made no comment on the failure of the investigation team to ensure that it was forensically examined.

The Disciplinary Proceedings

12.28 Following Superintendent O'Brien's report to Chief Superintendent Rooney, Cavan/Monaghan, the latter appointed Superintendent T. Maguire, Ballyconnell (subsequently Detective Superintendent Maguire, Special Detective Unit) in accordance with Regulation 14 of the Garda Síochána (Discipline) Regulations 2007 as Deciding Officer "to examine the full facts surrounding the loss of [the computer]". His appointment did not allege a breach of duty by any named member. Instead, it alleged a breach of duty by "unidentified member(s)" in that "members of An Garda Síochána failed to exercise proper custodial care of [the computer]". Superintendent Maguire was asked to revert with recommendations concerning any member who might be in breach of discipline so that the necessary forms could be issued. It is unclear why a further investigation was necessary, given that Superintendent O'Brien had just completed one.

12.29 Nor is it clear what steps were taken by Superintendent Maguire on foot of his appointment. On 1 November 2011 he reported

"Investigations are ongoing. Developments will be reported."

12.30 His first substantive report appears to have been dated 3 February 2012. This was ten days after the report sent by the Confidential Recipient to the Minister, which accused Superintendent Foxtrot of lacking interest in the sexual assault case and stated that the computer had gone missing on his watch resulting in the loss of "potential victims and evidence".

12.31 Superintendent Maguire's report stated that he had received a complete investigation file from Superintendent O'Brien on 22 September 2011 and that, as a result, he had sought reports on 5 October 2011 from Gardai Whiskey and Xray and Sergeant McCabe. He does not say that he received any such report and all three had, of course, already reported to Superintendent O'Brien. He said that he had examined the investigation file and from his own enquiries he was of the opinion that Sergeant McCabe was in breach of discipline in that he failed to exercise proper custodial care over the computer which, he said, Sergeant McCabe had received from Garda Xray on 14 September 2007.

12.32 As a result, on 10 February 2012, disciplinary proceedings were commenced against Sergeant McCabe. Chief Superintendent Sheridan, Cavan/Monaghan, issued form I.A.11 appointing Superintendent Maguire as Deciding Officer to investigate an alleged breach by Sergeant McCabe, i.e.

“That Sergeant Maurice McCabe . . . failed to exercise proper custodial care over the computer ... which he received from Garda Xray on 14th September 2007.”

12.33 There are two concerns about this development. First, Superintendent Maguire's report of 3 February 2012 contained no new evidence, apart from a very vague reference to his “own inquiries”, the fruits of which were not elucidated. There was, therefore, nothing to add to the position in August 2011 when Chief Superintendent Rooney had not commenced disciplinary proceedings against Sergeant McCabe in spite of having Superintendent O'Brien's report and his recommendation to do so, which, it will be recalled, was based on a doubtful reading of the second entry in Garda Xray's notebook. It is, therefore, not clear why disciplinary proceedings were commenced against Sergeant McCabe in February 2012. The proceedings commenced within ten days of a complaint having been received from the Confidential Recipient, which blamed Superintendent Foxtrot for the loss of the computer. The

complaint had been identified by the Commissioner, in his letter to the Secretary-General of the Department of Justice on 27 January 2012, as bearing “remarkable similarities” with a previous complaint to the Confidential Recipient which, according to the Commissioner, Sergeant McCabe had “unsolicited and repeatedly” divulged that he was the author of.

- 12.34 The second concern, of course, is that Superintendent Maguire was appointed Deciding Officer in respect of an allegation of misconduct on which he had already expressed his opinion, that Sergeant McCabe was in breach of discipline, in writing. He had reached that conclusion prior to the commencement of the formal disciplinary process against Sergeant McCabe and without having conducted a disciplinary interview with him.
- 12.35 The formal disciplinary process proved to be protracted. Having commenced with Superintendent Maguire’s appointment as Deciding officer on 10 February 2012, it did not conclude until he reported on 6 August 2013 that “finding Sergeant McCabe be (sic.) in breach of discipline would be unsafe”. (Sergeant McCabe had been formally notified of this finding on 24 July 2013.) It is not necessary for present purposes to review the conduct of that disciplinary process in detail, but there are a number of matters which call for some examination.
- 12.36 It appears from Detective Superintendent Maguire’s final report that his inquiries were confined to conducting a formal interview with Sergeant McCabe. He said that statements were sought from Garda Whiskey, the Scene of Crime Examiner and Garda Xray, but said that they were obtained by Superintendent O’Brien in his initial investigation. It will be recalled that in his initial report of 3 February 2012 he said that he had received the complete investigation file from Superintendent O’Brien and, “as a result” had sought reports from Garda Whiskey, Garda Xray and Sergeant McCabe. There is no indication in his final report that any such report was received or pursued. In particular, his account of Garda

Xray's position does not go beyond the material that was available as a result of Superintendent O'Brien's investigation.

12.37 It should be acknowledged that the process of interviewing Sergeant McCabe gave rise to a certain amount of work for Detective Superintendent Maguire. Sergeant McCabe sought, both by himself and through his solicitor, access to a substantial volume of documentation to assist in his defence of the allegation of breach of discipline. The question of disclosure of such material seems to have accounted for much of the delay in the conduct of the disciplinary process, in that Detective Superintendent Maguire sought and received legal advice as to what should be disclosed. Detective Superintendent Maguire received from Sergeant McCabe on 11 April 2012 a letter (dated 14 March 2012) seeking twelve specific categories of documents. Ultimately, some, but not all, of the material sought was disclosed in early January 2013. There was further correspondence concerning disclosure thereafter and, apparently, some delay arising out of the fact that Sergeant McCabe was on sick leave for a time.

12.38 The formal disciplinary interview finally took place on 21 June 2013. Sergeant McCabe made extensive submissions in his defence at that interview and provided a written submission. That document outlined his concerns about the fairness of the disciplinary process but stated that it was nonetheless his intention to fully co-operate with the investigation. He said that he had nothing to do with the investigation of the sexual assaults on the youth and had never had the computer in his possession. He argued, therefore, that there could not have been any breach of duty on his part. He went further, however, in observing that the computer was never forensically examined, that it had been seized under a defective warrant and that there was no further official reference to the computer after Garda Xray's notebook entry on 14 September 2007. He also stated that "the defective nature of the warrants does not appear to have been revealed". This latter observation was not correct, insofar as that difficulty was disclosed in

the report prepared for submission with the file to the DPP, but Sergeant McCabe may well have been unaware of that.

12.39 His submission continued by observing that a Garda Headquarters directive placed responsibility for seized property on the member in charge of the investigation, who he said was Sergeant Charlie, and also placed the onus on the first line supervisor of that member to ensure that all property is properly recorded and accounted for. This officer, he said, was Superintendent Foxtrot.

12.40 He expressed his belief that there was no reference to the computer in the file to the DPP or in court, which he described as highly irregular, and requested that it be investigated. There is some weight in this observation, in that the covering report of Superintendent Delta made no reference to the computer, although it will be recalled that the computer was referred to in the statements of the youth, Garda Whiskey and the Scene of Crime Examiner, which were in the file to the DPP. Sergeant McCabe also observed that

“No person noted that the computer was not the subject matter of any forensic examination.”

12.41 Following the interview at which Sergeant McCabe made those (and other) submissions, he was notified on 24 July 2013 that he was found not to be in breach of discipline. The central stated reason for this decision was

“the obvious inconsistency in the evidence of Garda Xray, the only evidence against Sergeant McCabe”.

12.42 That inconsistency cannot have come as a surprise to anyone familiar with the contents of Garda Xray’s report of 24 October 2010.

Analysis

12.43 This matter did not feature in the dossier but was mentioned in the January 2012 complaint to the Confidential Recipient, in which it was alleged:

“[Superintendent Foxtrot] failed to have a case conference, jobs book, regular meetings and interest in a case of Child Pornography and rape of a minor in September 2007 where the offender was a priest [REDACTED]. A computer, which was seized during a search with warrant, went missing on his watch and was never located. He did not report this matter to his superiors, the DPP, the victim’s family or the defence. Potential victims and evidence was lost as a result.”

12.44 The offences alleged against Fr [REDACTED] by the youth were very serious. The initial Garda reaction seems to have reflected an appreciation of just how serious. Superintendent Foxtrot was notified immediately and met with the Sergeant and the Garda who were to conduct the investigation. Statements were taken promptly from the victim and his family and exhibits were secured from them for later technical examination. A number of properties were identified as locations that should be searched for evidence and warrants were sought and obtained. The fact that the wrong statutory provision was invoked in the application for those search warrants is obviously to be regretted, but there is no reason to think that this was anything other than a *bona fide* error. The fact of that error was, in due course, properly disclosed to the Director of Public Prosecutions by the investigation team. It should be noted that the error in obtaining the search warrant would not necessarily have excluded any evidence seized from [REDACTED]; Fr [REDACTED] does not appear to have been residing there at the time of the search.

12.45 Arrangements were made to conduct the searches within three days of the offences being first reported. That shows commendable expedition

on the part of the investigation team. It should also be said that the making of arrangements to have technically competent officers available as part of the search team shows that the investigation team had carefully considered the statement of complaint, had identified the importance of the computer, and were anxious to secure the important evidence that it might contain. As it happened, it is clear that Garda Whiskey found that evidence and seized the computer as a result. Other exhibits seized, in particular mobile phones belonging to the victim and to Fr [REDACTED], were technically examined, as a result of which highly probative evidence was obtained.

12.46 That, however, makes it all the more difficult to understand what happened thereafter. Garda Whiskey expected that the computer would be forensically examined. That was necessary because his examination of the computer at the scene, while helpful in identifying the presence of evidence, was no substitute for the full technical examination necessary to prove the evidence. Not only was it necessary, it was important. The youth was only able to identify with any precision the date of one of the sexual offences, and he could only do that by reference to the date of installation of the antivirus software on the computer. Establishing that date, through a technical examination of the computer, was therefore an essential investigative task and was capable of being of significant probative value. It must be borne in mind that such examination might have helped or hindered the prosecution. For example, it could have been the case that the particular date of installation of the software was a date on which the suspect could prove he was elsewhere. That possibility, however remote it might seem now following a plea of guilty by the suspect, illustrates the need that existed at the time, in the interests of justice, for a full technical examination of the computer.

12.47 There is no evidence that I have seen that any member of the investigation team took any further notice of the computer after it was seized, at least until Bishop [REDACTED] wrote to ask for its return, and, in

particular, there is no evidence I have seen of any effort having been made to have it technically examined. The failure to technically examine the computer meant that evidence was lost which might either have supported or contradicted an important feature of the evidence of the complainant. It also meant that the opportunity was lost to establish whether the computer had been used for the possession or distribution of child pornography. Given the evidence obtained elsewhere in the investigation of the production of child pornography by the suspect, using an electronic device, the failure to conduct such an examination is a matter of concern. While the loss of the computer was an interference with private property which had been entrusted to the Gardaí and resulted in the loss of important information (parish records), the fact that the loss had either not been noticed or had been ignored by the investigation team was in itself a serious policing issue.

- 12.48 It must be borne in mind as well that, in early 2008, it appears that the Divisional Officer had to send repeated reminders to the District Officer in relation to the investigation. At no stage does it appear that these issues led Superintendent O'Brien, Detective Superintendent Maguire, Chief Superintendent Rooney, or Chief Superintendent Sheridan to recommend, or perhaps even consider, disciplinary proceedings for neglect of duty against any member of the investigation team.
- 12.49 Instead, it appears that, although Superintendent O'Brien's investigation found evidence at an early stage that Garda Xray's records of what she did with the computer were at best ambiguous and certainly unreliable, it appears that a number of senior officers nonetheless considered that there was a case for breach of discipline against Sergeant Maurice McCabe. The investigation into the loss of the computer began in September 2010 and was completed by 13 July 2011. Superintendent O'Brien did, at that, time express the view that Sergeant McCabe was in breach of discipline. However, it was not until almost seven months later, and only ten days after a complaint was received from the Confidential Recipient, which was effectively attributed at the highest

level of An Garda Síochána to Sergeant McCabe, that formal disciplinary proceedings were commenced against him.

12.50 The failure to initiate disciplinary action against any member of the investigation team arising out of the failure to arrange technical examination of the computer, and the circumstances and conduct of the disciplinary proceedings against Sergeant McCabe are matters that call for explanation.

12.51 In all the circumstances, I am of the opinion that there is cause for concern as to the adequacy of the investigation of the complaints made by Sergeant McCabe in relation to this incident and a sufficient basis for concern as to whether all appropriate steps were taken by An Garda Síochána to investigate and address the specified complaints.

12.52 In my opinion, these matters warrant further inquiry in an appropriate forum in the public interest.

Chapter 13: Complaint of Assault and Interference with Garda Records

- 13.1 On 11 October 2010 Sergeant McCabe met with Chief Superintendent McGinn and Assistant Commissioner Byrne at the Hillgrove Hotel Monaghan. He was accompanied by Sergeant Dominic Flynn, a representative of the Association of Garda Sergeants and Inspectors. The purpose of the meeting was for Sergeant McCabe to be informed of the outcome of the Byrne-McGinn investigations. The findings were summarised in a five-page document which identified 46 separate allegations that had been identified in the various statements made by Sergeant McCabe. Eleven allegations were upheld, five were the subject of ongoing investigation, five related to a total of 212 incidents of which issues had been identified with 136, and the rest of the allegations were not upheld. A very short comment by way of explanation was included in relation to each allegation.
- 13.2 After the findings had been read over to Sergeant McCabe there was some discussion among the four officers present. During that discussion Assistant Commissioner Byrne said that Sergeant McCabe was partly to blame for some of the issues at Bailieboro Garda station in his capacity as Sergeant-in-charge. He also told Sergeant McCabe that he had not recommended that Sergeant McCabe be allowed to return to Bailieboro Garda station. Sergeant McCabe did not accept this criticism. He said that he had other evidence of serious wrongdoing.
- 13.3 He left the room and returned with two archive boxes which he said contained this evidence. As he took papers from the boxes and began to comment on them, it became apparent that the papers were printouts from the Garda PULSE computer system. Assistant Commissioner Byrne became very concerned about Sergeant McCabe's having these documents. He called on Sergeant McCabe to explain how he came to have them and directed Sergeant McCabe to give him the boxes. There

is some dispute as to how both Assistant Commissioner Byrne and Sergeant McCabe were behaving at this point. In any event, Sergeant McCabe gathered up the papers and put them back into the boxes to take them away again.

- 13.4 Assistant Commissioner Byrne left the room briefly to call another officer to satisfy himself that he was taking the correct approach. (There is some evidence to suggest that Sergeant McCabe also made a phone call, in his case to his solicitor.) Having so satisfied himself, Assistant Commissioner Byrne returned to the room and, as Sergeant McCabe made for the door with the boxes, Assistant Commissioner Byrne blocked his path and there was a physical confrontation between the two men. Voices were raised. The outcome of this was that Assistant Commissioner Byrne secured possession of the boxes. Sergeant McCabe later stated that he handed over the boxes

“for fear of being assaulted and aggravating the situation more”.

- 13.5 The situation seems to have been very tense at that point. Sergeant Flynn and Chief Superintendent McGinn intervened to calm the situation down. Sergeant McCabe became upset and Chief Superintendent McGinn called for tea. Before the meeting broke up, Assistant Commissioner Byrne and Sergeant McCabe shook hands. Assistant Commissioner Byrne took the two boxes to Dublin.
- 13.6 The following day Assistant Commissioner Byrne wrote to Sergeant McCabe requiring him to give a detailed report accounting for his possession of the two boxes of official documents. On 13 October he wrote to the Deputy Commissioner, Operations giving him an account of the meeting. He made recommendations for matters that required attending to or consideration as a result of what had happened.
- 13.7 Assistant Commissioner Byrne received a reply to his letter of 12 October from Sergeant McCabe’s solicitors, Sean Costello & Co., who said that their client “intends to make a full and detailed account of this to his

authorities”. That letter also contained a complaint that Assistant Commissioner Byrne had assaulted and falsely imprisoned Sergeant McCabe. In light of that complaint it was said to be inappropriate for Assistant Commissioner Byrne to seek a report from Sergeant McCabe and that their client would be seeking “a full independent and transparent investigation”.

- 13.8 Sergeant McCabe’s solicitors also wrote to the Commissioner in an undated letter that seems to have been received on 22 October 2010. The letter complained of the delay in completing the investigation and expressed dissatisfaction both with the findings and the way in which they were communicated. A “full and detailed review by another investigation team” was requested. The letter included a formal complaint of assault and false imprisonment at the Hillgrove Hotel. Reference was made to “documents [produced by Sergeant McCabe at the Hillgrove Hotel] showing evidence of malpractice, wrongdoing and gross derelictions of duty which occurred under the management and supervision of Superintendent Foxtrot and Superintendent Delta”. The letter stated that Sergeant McCabe was “available at any reasonable time to provide a full and detailed statement setting out these matters”. The letter ended by stating that Sergeant McCabe wished

“to make a full statement so as to set out the importance and context of the documents contained in the boxes now held by Assistant Commissioner Byrne”.

Investigation by Deputy Commissioner Rice

- 13.9 On 2 November 2010 the Commissioner appointed Deputy Commissioner Rice to investigate the criminal allegations and related matters that arose from the meeting at the Hillgrove Hotel, to review the existing investigation, to complete any matters listed as ongoing and determine what further investigations were required. Both Assistant Commissioner Byrne and Sergeant McCabe were formally notified of the appointment, as were the Confidential Recipient, Mr. Brian McCarthy, and GSOC.

- 13.10 On 11 November 2010 the Commissioner was notified by the Confidential Recipient that he had received a complaint alleging assault and false imprisonment of a Garda who had made a confidential report and of the seizure of documents containing evidence of malpractice, which clearly related to the same matter. The Confidential Recipient sought access to the documents seized.
- 13.11 Deputy Commissioner Rice sought the two boxes from Assistant Commissioner Byrne on 19 November 2010 and asked him to certify that they had not been interfered with, which he duly did. Deputy Commissioner Rice gave the Commissioner a summary account of what the documents were by letter of 23 November. The Commissioner notified the Confidential Recipient on 30 November 2010 that he could examine the documents at Garda Headquarters.
- 13.12 From that point on, there were effectively three strands to the work of Deputy Commissioner Rice. First, he conducted an investigation into the allegations of assault and false imprisonment. Secondly, he dealt with the PULSE printouts seized from Sergeant McCabe. Thirdly, he reviewed and attended to the completion of outstanding matters in the original investigation. The first two matters are of greater importance for present purposes.

Investigation of the allegations of Assault and False Imprisonment

- 13.13 On 26 November 2010 Sergeant McCabe furnished a prepared statement to Deputy Commissioner Rice and Chief Superintendent Sheridan at the offices of his solicitors in Dublin. Sergeant Flynn made a statement on 8 December 2010. Chief Superintendent McGinn made a statement on 21 December and a cautioned statement was taken from Assistant Commissioner Byrne on 23 December. Statements were also taken from Detective Chief Superintendent Eugene Corcoran, to whom Assistant Commissioner Byrne had spoken by phone from the Hillgrove Hotel, and another Sergeant, who was stationed at Mullingar with Sergeant McCabe and whose PULSE identification appeared to have been used to access

some of the PULSE records contained in the boxes seized from Sergeant McCabe.

13.14 These statements formed the bulk of the file submitted to the DPP for directions by Deputy Commissioner Rice on 13 January 2011. His report recommended that there be no prosecution. He said that there was no false imprisonment as Assistant Commissioner Byrne had no interest in interfering with Sergeant McCabe's movements, only in seizing the boxes. Similarly there was no assault, he suggested, as the only physical contact had arisen as a result of Assistant Commissioner Byrne's attempts to seize the boxes after he had issued a direction to Sergeant McCabe to account for his possession of the records and made repeated requests to him to hand them over.

13.15 On 31 January the Director of Public Prosecutions directed that there be no criminal prosecution arising out of the events at the Hillgrove Hotel.

Investigation of allegations relating to the PULSE documents

13.16 On 13 January 2011 Deputy Commissioner Rice wrote to Sergeant McCabe's solicitors. Amongst other things, he said that he was seeking assistance in relation to the two boxes of PULSE printouts and, in particular, an early meeting with Sergeant McCabe to discuss the management of that aspect of the investigation.

13.17 A few days later the Commissioner sought Deputy Commissioner Rice's views and recommendations on the possible institution of disciplinary proceedings relating to the PULSE records, a matter to which Deputy Commissioner Rice had adverted in a report to the Commissioner on 13 January. Deputy Commissioner Rice sought the views of the Garda Síochána Head of Legal Affairs in that regard, in particular bearing in mind the prohibition contained in Regulation 14(1) of the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007 on disciplinary action against a member for reporting allegations of corruption or malpractice in good faith. In light of advice received on

that issue, and having consulted with the Chief Superintendent, Internal Affairs, Deputy Commissioner Rice advised the Commissioner that

“there is no obstacle in carrying out an investigation into the alleged misuse of PULSE access in this case”

but cautioned about the sensitivity that exists in the distinction between the protection of confidential reporting and an investigation into how the information reported was gathered. It does not appear that a formal investigation was commenced.

13.18 What did continue, however, was an analysis of the PULSE records contained in the boxes. On 17 February 2011 the Garda Commissioner (a position by then occupied by Martin Callinan, previously Deputy Commissioner, Operations) sought an up-to-date report from Deputy Commissioner Rice on the investigation and specifically, whether an examination of the documents revealed evidence of malpractice at Bailieboro Garda station, as alleged.

13.19 A few days earlier, Sergeant McCabe’s solicitors had replied to Deputy Commissioner Rice’s letter of 13 January and said that contact could be made directly with their client to arrange the meeting Deputy Commissioner Rice had sought.

13.20 It appears that Deputy Commissioner Rice arranged to have the individual PULSE printouts sorted and catalogued. As a result, on 25 March 2011, Deputy Commissioner Rice sent to the Chief Superintendent, Monaghan, a 27-page letter containing a spreadsheet or table of hundreds of individual PULSE incident numbers and brief details of each incident. The letter stated that these details were being forwarded “for your attention and report” and that the report should “set out the final outcome for each of the PULSE incidents referred to”, with the exception of any incidents that had already been dealt with by the “Byrne/McGinn Enquiry”. A report was requested no later than 9 May 2011.

- 13.21 Some light is shed on the purpose of that exercise by a report to Deputy Commissioner Rice from Chief Superintendent Sheridan, Sligo, dated three days later, 28 March 2011, but which refers to a conversation with Deputy Commissioner Rice on 25 March. Chief Superintendent Sheridan stated that he had examined all the documentation taken from Sergeant McCabe at the Hillgrove Hotel on 11 October 2010. He had identified 1,153 individual PULSE printouts relating to incidents in Bailieboro, Carrickmacross and Monaghan Garda districts. He recommended that they be dealt with by referring 624 of them to the Divisional Officer, Cavan/Monaghan “to advise on the final outcome of the incidents referred to”. He noted that the “vast majority” of the incidents referred to were road traffic and minor public order matters. He recommended a further interview with Sergeant McCabe in relation to the remaining 529 incidents “as it is unclear what the issues are relating to many of these matters”. Notwithstanding the chronology of the letters, it appears that this is the advice that was followed in sending the 27-page table of incidents to the Chief Superintendent, Monaghan on 25 March.
- 13.22 On 6 April 2011 Superintendent John Keegan was asked by Deputy Commissioner Rice to arrange a meeting with Sergeant McCabe. In fact, Sergeant McCabe called him the same day about another matter and Superintendent Keegan made that request during their telephone conversation. Sergeant McCabe said he would have to contact his solicitor first. Other difficulties had arisen by this time. On the same date, Sergeant McCabe’s wife sent an e-mail to the Minister for Justice and Equality expressing concern, amongst other things, about her husband’s treatment as a result of the complaints he had made. She also mentioned that Sergeant McCabe had received a death threat from a member of the force. (The Minister reported this serious matter to the Commissioner and an investigation later took place.) Also on that date, Sergeant McCabe’s father made contact with the Commissioner’s office and he also reported the death threat. When Superintendent Keegan

next spoke to Sergeant McCabe on 12 April 2011, Sergeant McCabe, although he may initially have been willing to contemplate a meeting, declined to attend. He said that he had received a death threat and his family had to live with that without any protection. He also mentioned that the 'Whistle Blower's' term of office had expired and that "he was unaware as to what more he could do".

13.23 Deputy Commissioner Rice reported to the Commissioner the following day. He provided an update on the examination of the PULSE documents in accordance with Chief Superintendent Sheridan's report to him and his letter of 25 March to the Chief Superintendent, Monaghan. He also reported on Superintendent Keegan's efforts to arrange a meeting with Sergeant McCabe and said that he would make contact with Sergeant McCabe's solicitor to try to re-arrange a meeting "as without his cooperation it will be difficult to progress this investigation".

13.24 On 28 April 2011, Deputy Commissioner Rice wrote both to Sergeant McCabe and to his solicitor seeking to arrange a meeting. In his letter to Sergeant McCabe, he said that 624 printouts had been referred to the Divisional Officer "to advise on final outcomes of incidents referred to". In relation to the remaining 529 incidents, he said:

"it is imperative that I interview you in relation to what particular issues you are making allegations about".

13.25 He also referred to the alleged death threat and asked for Sergeant McCabe's assistance with that investigation. He said:

"None of these investigations can be advanced without your support. I urge you to reconsider your position and assist in these investigations. I believe you have a moral, as well as a legal obligation under the Garda Síochána Act to do so."

13.26 Sergeant. McCabe made a statement in relation to the death threat and, as stated above, that matter was investigated. He wrote to Deputy

Commissioner Rice on 10 May to say that he was consulting with his solicitor. On 19 May he wrote:

“You stated that I was not prepared to assist in the investigations of the alleged threats. I stated I could not assist for reasons I outlined to Chief Superintendent Sheridan and Superintendent Coen. I never stated that I was not prepared to assist? My legal and moral obligation was also to report wrongdoing and look what happened to me?

I will make a statement in relation to the alleged threat but my reasons still stand.”

13.27 Although his letter of 19 May 2011 did not say so, it appears to be the case that by this point Sergeant McCabe had lost all confidence in any internal Garda investigation. The immediate reason for that loss of confidence was his perception that the referral of these PULSE incidents to Cavan/Monaghan was not in any sense an investigation of his complaints. Rather, as he saw it, the evidence of wrongdoing was sent back to those responsible, which enabled them to attempt to interfere with it or conceal it.

13.28 Meanwhile, in Cavan/Monaghan, Deputy Commissioner Rice’s request of 25 March was being dealt with. On 7 April an email was sent to each of the District Officers (including Superintendent Foxtrot and Superintendent Delta) with the subject heading “Allegations made by Sergeant Maurice McCabe Bailieboro Bailieboro Garda Station (sic.)”. The email stated that an attached list of Pulse Incidents was being forwarded “for your attention and report in so far as your District is concerned.” It continued:

“Your report should set out the final outcome for each of the Pulse incidents referred to. The outcome of the incidents should be incorporated in the word table for your District attached to this email. [Original emphasis.]

If any incident requires a more substantive report a separate report may be appended to your District return and duly referenced.”

13.29 It appears that reminders were sent to the District Officers on 9 and 17 May 2011. On 1 June Chief Superintendent Rooney, Cavan/Monaghan informed Deputy Commissioner Rice that he had received replies from three District Officers but that he was still awaiting a reply from Bailieboro. He forwarded an email from Bailieboro which adverted to the reasons for the delay, which included the fact that, because of previous PULSE investigations at Bailieboro and resulting disciplinary proceedings, some members were “seeking advice on matters”. On 9 June, Chief Superintendent Rooney wrote again to Deputy Commissioner Rice stating

“The attached table outlines the final outcome of the ‘Pulse’ incidents as listed in your correspondence [of 25 March].”

13.30 The attachment consisted of 37 pages corresponding to the original table but with an additional column labelled “Outcome”. On 13 June Deputy Commissioner Rice sent the table to Chief Superintendent Sheridan, Sligo, stating “I attach, for your information and attention, replies to PULSE enquiries addressed to Chief Superintendent Monaghan”.

13.31 Sean Costello & Co., Sergeant McCabe’s solicitors, wrote to Deputy Commissioner Rice on 7 July 2011 to say that they had “sought that the Minister for Justice, Equality & Defence would establish an Inquiry into the matter raised by [their] client”. Deputy Commissioner Rice replied on 8 August that he was “personally disappointed that ... Sergeant Maurice McCabe has decided not to cooperate with this investigation”. He said, “In these circumstances I cannot progress this matter any further”.

13.32 Deputy Commissioner Rice completed his investigation with a report to the Commissioner on 17 August 2011 which concluded:

“In relation to the 624 printouts sent to the Divisional Officer Monaghan a report on each entry has been received. Nothing of a serious nature has been found and it is my intention that these printouts be returned to the Divisional Officer Monaghan to deal with any minor issues as he sees fit.

I am not in a position to progress matters in relation to the remaining 529 incidents, as it is unclear, without the input from Sergeant McCabe what the issues are relating to with these matters.”

13.33 As indicated, Deputy Commissioner Rice then returned the final outcomes to the Divisional Officer with the direction

“Please ensure that any outstanding issues, or issues arising, relating to the recording and management of these PULSE incidents are immediately addressed.”

Specific PULSE Incidents

- 13.34 The Byrne/McGinn report dealt with 212 individual incidents and how they were recorded (or not, in some cases) on PULSE. Issues were identified with a substantial number of those incidents. The two archive boxes produced by Sergeant McCabe at the Hillgrove Hotel in October 2010 contained, according to the subsequent Garda examination, 1,153 individual incidents. It has not been possible in the time available to conduct a thorough examination of that number of records. Instead, the approach I have adopted is the following.
- 13.35 In the dossier, the relevant page referred to “a sample of 10 cases out of approximately 600 incidents of gross malpractice and corruption which occurred in Bailieboro Garda District”.
- 13.36 Although the sample incidents were not identified in that document and the PULSE printouts were not attached, I sought details of those 10 incidents from Sergeant McCabe. He provided me with details of the relevant PULSE numbers and copy PULSE printouts insofar as they were available to him. I should clarify that it cannot be confirmed that printouts of all 10 incidents to which he referred me were in the boxes seized at the Hillgrove Hotel. In particular, it will be noted that a small number of the records were created after the date of the meeting there, and that some others cannot be found on the lists of those incidents produced by the Garda investigation.
- 13.37 On 16 April 2014, by prior arrangement with Mr. Colm Treanor, Principal Officer, and Chief Superintendent James Sheridan, I travelled to the Garda Information Service Centre (“GISC”) in Castlebar. Mr. Joe O’Reilly, Higher Executive Officer at GISC, facilitated an examination of the relevant entries on the PULSE system and also, very helpfully, prepared a spreadsheet setting out relevant details as requested. With that information, and with the returns made to Deputy Commissioner Rice from Cavan/Monaghan Division in June 2011, it was possible to

conduct an analysis in some detail of the 10 incidents with a view to assessing Sergeant McCabe's concerns.

13.38 The records to which I had access through GISC did not permit an audit of the history of entries and alterations on the PULSE records. As a result, it was not possible to confirm, in a number of cases, that alterations alleged by Sergeant McCabe had in fact been made or, if so, when and by whom they were made. I was informed that an audit of the records could be conducted in Garda Headquarters. On 21 April 2014, I sought audit logs relating to defined parameters of the PULSE records for those 10 incidents. Those records were received on 24 April 2014 in the form of spreadsheets displaying entries for the parameters sought in relation to each individual record. I have examined the records carefully, but I have found them to be unhelpful in determining exactly when and by whom individual entries in the system were made, probably because they are not original source records but rather data exported from the original source to a spreadsheet. The spreadsheets are inconsistent with the earlier PULSE printouts and are internally contradictory. On the whole, I am of the opinion that the PULSE records would be better examined, where necessary, using the original source and with the assistance of appropriate technical expertise.

13.39 Apart from those 10 incidents which were looked at in detail, a further 50 incidents were examined in a less detailed fashion. When, in September 2012 Sergeant McCabe's solicitors sent three booklets of documents to the Minister, one of them contained a note on each of approximately 180 PULSE incidents about which Sergeant McCabe had concerns. On the basis that the sample of 10 incidents to which reference is made in the dossier were all to be found within the first 60 of those incidents, I decided to review the balance of the first 60 to see whether any specific issues that arose from an examination of the 10 appeared to be of more general application.

- 13.40 Sergeant McCabe's concerns in relation to the PULSE records fall into two categories. The first category relates to the original PULSE records which he printed and which he said were evidence of serious incidents not being investigated. He had other concerns in relation to the PULSE records, including the recording of children as suspects and suspected offenders, the recording of innocent members of the public as suspects, and breaches of the Data Protection Acts. The 10 sample incidents, however, were all said to be cases of non-investigation or non-prosecution of offences which were marked as "detected" in PULSE and where a suspected offender was identified.
- 13.41 The second category of Sergeant McCabe's concerns relates to what was done with the PULSE records after the printouts were seized from him. In expressing those concerns Sergeant McCabe has used strong language, including allegations of destruction, alteration, falsification and erasure of Garda records, perversion of the course of justice, and gross malpractice and corruption.
- 13.42 The following examination of the ten specific incidents is intended to summarise the information available to me in relation to both categories of concern.

Specific PULSE Records

PULSE Incidents [REDACTED] and [REDACTED]

According to Sergeant McCabe's note on these incidents,

"At 15.20hrs on [a date in January] 2010 [a named Garda] was on duty at [a location], Carrickmacross, Co. Monaghan when a vehicle Reg. No. [given] fails to stop for her. She states the vehicle was being driven by [name and address given]. [The named Garda] visits his house the following day and demands his documents. She creates an incident of Pulse for No insurance and marks it 'detected' and puts herself down as the Investigating Garda. [The named person] is inputted as a 'suspected offender'. She also states summonses to be issued."

There are in fact two PULSE incidents arising out of this detection, one for "Insurance" and one for "General Road Offences". The narrative record for each incident contains a cross-reference to the other. The narrative for [REDACTED] (Insurance) reads:

"above driver failed to stop for gardai. demand made the following day at his house, summonses to be issued. refer to pid: [REDACTED]."

The narrative for the incident was later updated as follows:

"updated 11.4.2011, insurance subsequently produced to [named Garda] which covered the driver on the date in question"

It also appears to have been updated as follows:

"Per Garda [number given] - To Marked Invalid As Insurance Subsequently Produced."

The record is now marked "Invalid". It should also be noted that the person who, according to Sergeant McCabe, was originally listed as a "suspected offender" is now listed as "Questioned in relation to" and the record no longer contains a date of detection, indicating that it is now recorded as an undetected incident.

Specific PULSE Records

Those updates occurred after Sergeant McCabe's printouts were sent to the Chief Superintendent, Cavan/Monaghan "for your attention and report". If the driver had indeed produced insurance, as the updated record suggests, there might be no cause for concern, apart from the failure to update the record in a more timely fashion. The cause for concern, however, is in the content of the other PULSE record arising out of the same detection. That record, [REDACTED] (General Road Offences) has not been updated. It reads:

"above vehicle failed to stop for gardai, demand made for insurance and admitted to having none. file to follow for direction and summonses to be issued. refer to pid: [REDACTED] and [REDACTED]"

The named individual remains listed as a "suspected offender" on this PULSE record.

If this record is correct, and the driver, who remains listed as a suspected offender, admitted to having no insurance when the demand was made, it is difficult to see how the 'update' to the first record, which states that the driver later produced insurance, could possibly be correct.

Both these records were on the list sent to Cavan/Monaghan on 25 March 2011 (ref.: [REDACTED] and [REDACTED]). When the list was returned to Deputy Commissioner Rice on 9 June 2011, the outcome for incident [REDACTED] read:

"Insurance subsequently produced to [named Garda] and covered driving."

No comment was made on the fact that the details contained in the original request for an outcome included reference to the admission by the suspect that he had no insurance.

The outcome for incident [REDACTED] was blank. The detail contained in the original request was simply a cross-reference to [REDACTED].

Sergeant McCabe alleges that there was dereliction of duty in failing to prosecute the suspect for no insurance, even though he had admitted the

Specific PULSE Records

offence, and corruption or malpractice in altering the record for incident no. [REDACTED] in April 2011.

Specific PULSE Records

PULSE Incident [REDACTED]

According to Sergeant McCabe's note on this incident,

"At 18.35hrs on [a date in March] 2010 [a named Garda] observed a disqualified driver, [name and address given] driving a vehicle Reg. No. [given] at [a location], Inniskeen, Monaghan. The vehicle was seized for no insurance and taken to Carrickmacross Garda Station. An incident was created on Pulse for Vehicle Detained and it was marked detected. [The named Garda] was put down as the investigating member and [the named person] was inputted as the 'suspected offender'. The narrative read 'observed [named person] driving motor car [reg. given] known to be disqualified from driving. Vehicle seized for no insurance and taken to Carrickmacross gs'. [The named person] was never prosecuted for no insurance, driving while disqualified and no driving licence."

The narrative recorded for this incident is:

"Observed [named person] driving motor car [reg given] known to be disqualified from driving. Vehicle seized for no insurance and taken to Carrickmacross gs."

The PULSE record now shows the named individual not as a suspected offender but as a person "Questioned in relation to" the offence. There is no date of detection recorded.

I cannot find this incident on the list of PULSE incidents referred to the Chief Superintendent, Cavan/Monaghan or on the list of records found in the boxes seized from Sergeant McCabe.

Sergeant McCabe alleges that there was dereliction of duty in failing to prosecute the suspect for multiple road traffic offences and that an official Garda record was altered.

Specific PULSE Records

PULSE Incident [REDACTED]

According to Sergeant McCabe's note on this incident,

"At 02.15hrs on [a date in March] 2010 [2 named Gardai], Cootehill Garda Station inspected the licensed premises known as [name given], Cootehill, Co. Cavan after they had seen persons leaving the pub. The spoke with the person in charge, [name given], and they found 10 people on the premises. They created an incident on Pulse for the breach of the Liquor Licensing, marked it as 'detected' and listed [the named person] as the 'suspected offender' as a prosecution was pending. [1 named Garda] inputted himself as the Investigating Garda and the detection status box showed 'pending'."

The narrative recorded for this incident is:

"While on mobile patrol observed persons leaving the [named] licensed premises, [named person] cautioned by [named garda]. no further action required"

There is also an "update" to the narrative which reads:

"updated s.o. cautioned at the time of offence, no further garda action required"

Sergeant McCabe alleges that the narrative originally read:

"While on mobile patrol observed persons leaving the [named] licensed premises, inspected the premises and found 10 people on same"

and that the references to inspecting the premises and finding 10 people there have been deleted and replaced with text stating that the suspect was cautioned and no further Garda action was required. He has provided me with a printout from PULSE dated 22 September 2010 which supports this allegation. He has also provided me with a printout dated 28 February 2012 which suggests that the changes had been made by that date.

Specific PULSE Records

The PULSE record now shows the named individual not as a suspected offender but as a person "Questioned in relation to" the offence. There is no date of detection recorded.

This record was on the list sent to Cavan/Monaghan on 25 March 2011 (ref.: ■). When the list was returned to Deputy Commissioner Rice on 9 June 2011, the outcome for this incident read:

"SO- Changed to questioned in relation to.

No complaint- No proceedings"

It is not clear why a complaint might have been necessary to prosecute a liquor licensing offence detected by Gardaí, unless the reference is intended to mean that there were no proceedings because the Gardaí failed to make the complaint necessary for a summons to issue. If so, no explanation is given for that failure.

Sergeant McCabe alleges that an official Garda record was "destroyed and falsified to hide a gross dereliction of duty". He also alleges perversion of the course of justice.

Specific PULSE Records

PULSE Incident [REDACTED]

According to Sergeant McCabe's note on this incident,

"At 3.15a.m. on [a date in March] 2010 [2 named Gardaí] Monaghan Garda Station inspected the licensed premises known as [name and address given], Monaghan. They had observed persons smoking outside the licensed premises the [name given]. They inspected inside and observed 9 persons drinking alcohol and music being played. They spoke with the person in charge, [name given] and he could not give an explanation to Gardaí as to why the persons were inside drinking. The persons observed in the premises had been observed by Gardaí leaving [a named] nightclub a short time earlier. An incident was created on Pulse as a Liquor Licensing detection and [a named person] was inputted as a 'suspected offender'. The Gardaí inputted on the Pulse Narrative the following: 'file to be forwarded for directions'. The Detection Status box stated 'Proceedings Commenced'."

The narrative recorded on PULSE for this incident is:

"observed persons smoking outside licensed premises [name given], inspected inside and observed 9 persons drinking alcohol and music being played. spoke with person in charge [name given], the persons observed in the premises had been observed by gardai, leaving [a named] nightclub a short time earlier."

There is also a further entry in the narrative section which reads:

"offender was cautioned by Gardaí, no prosecution as pub was closing down that night."

Sergeant McCabe alleges that the narrative originally read:

"observed persons smoking outside licensed premises [name given], inspected inside and observed 9 persons drinking alcohol and music being played. spoke with person in charge [name given] and he could not give an explanation to gardai as to why the persons were inside drinking. the persons observed in the premises had been observed by gardai leaving [a named] nightclub a short time earlier. file to be forwarded for directions." [emphasis added]

Specific PULSE Records

He alleges that the text underlined has been deleted and replaced with text stating that the suspect was cautioned and that there was a reason for not prosecuting. He has provided me with a printout from PULSE dated 22 September 2010 which supports this allegation. He has also provided me with a printout dated 18 September 2011 which suggests that the changes had been made by that date.

The PULSE record still shows the named individual as a suspected offender and the date of detection is recorded.

Although I can find this incident (twice - [REDACTED] and [REDACTED]) on the list of PULSE incidents referred to Chief Superintendent, Cavan/Monaghan, I can find no relevant response from the Division.

Sergeant McCabe alleges that the record was "altered, falsified, erased and destroyed", which he describes as corruption and malpractice.

Specific PULSE Records

PULSE Incident [REDACTED]

According to Sergeant McCabe's note on this incident,

"At 08.40hrs on [a date in April] 2010 [a named Garda], Carrickmacross Garda Station stopped a vehicle, Reg. No. [given] at [a location], Castleblaney, Co. Monaghan. Driver was [name and address], Co. Monaghan. He was driving without insurance. The vehicle was seized and brought to Carrickmacross Garda Station. An incident was created on PULSE for No Insurance and was marked 'detected' and [named Garda] was the Investigating Garda. [The named person] was inputted as the 'suspected offender. No proceedings were issued in this case."

The narrative recorded for this incident is:

"s/o has no insurance. vehicle seized and brought to carrickmacross gda station - pid no : [REDACTED] also refers. sheet [REDACTED]"

The reference "pid no: [REDACTED]" refers to another PULSE incident properly created to record the seizure of the vehicle as opposed to the offence committed. Sheet [REDACTED] refers to a summons with that record number.

Sergeant McCabe alleges that the reference to the summons was added to the narrative after the seizure of the boxes of printouts from him and he alleges that the summons

"was created on Pulse on the 12/02/2011, ten and a half months [after the incident], four and a half months outside the time limit. The summons was only saved on Pulse, not printed off or not ready. This meant that the summons was created just to fool anyone looking at the incident."

GISC provided the following information to me in relation to the summons:

"Summons [REDACTED] created 12/02/2011. but never issued (no offences added)"

Specific PULSE Records

This information supports the allegation made by Sergeant McCabe.

The PULSE record still shows the named individual as a suspected offender and the date of detection is recorded.

This record was on the list sent to Cavan/Monaghan on 25 March 2011 (ref.: [REDACTED]). When the list was returned to Deputy Commissioner Rice on 9 June 2011, the outcome for this incident read:

“Vehicle seized and taken to CMX Stn. Susp charged - no insurance [REDACTED]”

If, as I have been informed by GISC, the summons never issued, it is difficult to understand how this report could be accurate.

Sergeant McCabe alleges that the addition of the summons to the PULSE record was “inputted to deceive and it did just that”. He alleges that this is “another incident of falsification and alteration”.

Specific PULSE Records

PULSE Incident [REDACTED]

According to Sergeant McCabe's note on this incident,

"At 00.15hrs on [a date in February] 2010 [a named Garda] Ballybay Garda Station detected a disqualified driver driving a car Reg. No. [given] at [a location], Ballybay, Co. Monaghan. The driver was [name and address], Co. Monaghan. He was banned from driving for 20 years. An incident was created on Pulse for General Road Offences and marked 'detected'. [The named Garda] was the Investigating Garda and [the named person] was inputted as the 'suspected offender'. There was no follow up to this case and no prosecution was taken".

The narrative originally recorded for this incident was:

"suspect detected driving while disqualified (banned for 20 years)."

It appears that the narrative was updated on 22 November 2010 by the addition of the following:

"offender given caution due to special circumstances. matter closed"

Sergeant McCabe alleges that the detection status of the incident was altered to "adult caution" and he observes:

"this person is a hardened criminal and has been caught driving again twice since this incident. He was banned again from driving for 20 years on [a date in early] 2011 and is again in court [in early] 2012 in [a place] for similar charges. This is a very serious neglect of duty? How can this person receive an adult caution for this offence? There is no law to cover it! And then to falsify the narrative is unjustified."

The PULSE record still shows the named individual as a suspected offender and the date of detection is recorded.

Specific PULSE Records

This record was on the list sent to Cavan/Monaghan on 25 March 2011 (ref.: [REDACTED]). When the list was returned to Deputy Commissioner Rice on 9 June 2011, the outcome for this incident read:

“Caution due to special circumstances.”

Sergeant McCabe alleges dereliction of duty and falsification of the Garda record.

Specific PULSE Records

PULSE Incidents [REDACTED], [REDACTED], and [REDACTED]

According to Sergeant McCabe's note on this incident,

"At 17.05hrs on [a date in March] 2011 [a named Garda], Monaghan Garda Station attended the scene of a traffic accident at [a location], Monaghan. One of the persons involved in the accident, [name and address], Co. Cavan admitted to the Garda that he had no insurance on his vehicle Reg. No. [given]. The vehicle was seized and brought to Monaghan Garda Station. Three incidents were created on Pulse, one being the No Insurance incident. It was marked 'detected' and the 'suspected offender' was [the named person]. No prosecution was ever taken in this case and the 6 months time limit is well past."

There are different narratives recorded for the three incidents (Insurance, Collision (material damage), and Vehicle Detained) although there is no difference of substance. They show that there was a road traffic accident resulting in "minor damage" to both cars. All three incidents record that one driver had no insurance and in two of the records it is recorded that one driver admitted having no insurance.

The PULSE record relating to the insurance offence still shows the named individual as a suspected offender and the date of detection is recorded.

I cannot find these incidents on the list of PULSE incidents referred to the Chief Superintendent, Cavan/Monaghan. Obviously, these incidents post-date the meeting in the Hillgrove Hotel.

Sergeant McCabe observes that

"It is very unfair that when innocent persons are involved in traffic accidents where the other party admits having No Insurance, nothing is done with it."

Specific PULSE Records

PULSE Incident [REDACTED]

According to Sergeant McCabe's note on this incident,

"At 23.25hrs on [a date in June] 2009 [2 named Gardai], Monaghan Garda Station stopped a vehicle Reg. No. [given] at a checkpoint at [a location] Smithboro, Co. Monaghan. The driver gave his name as [name and address], Monaghan. He admitted having no insurance on the car and the car was seized. An incident was created on Pulse as a vehicle seized and the narrative reported that the driver had admitted having no insurance to drive on the date in question. The 6 month time limit for proceedings passed and no prosecution was taken against the driver for driving without insurance."

The narrative recorded for this incident is:

"property book [REDACTED] vehicle stopped at checkpoint, driver had no insurance or tax and admitted same, vehicle seized and taken to monaghan garda station"

There is also an "update" to the narrative which reads:

"updated on 08/04/2011 by [Garda no.]. section 41 notice forwarded to [named officer] and owner"

The PULSE record now shows the named individual not as a suspected offender but as a person "Questioned in relation to" the offence. There is no date of detection recorded.

I cannot find this incident on the list of PULSE incidents referred to the Chief Superintendent, Cavan/Monaghan or on the list of records found in the boxes seized from Sergeant McCabe.

Sergeant McCabe alleges that this case highlights

"the fact that hundreds of motorists were caught in Bailieboro Garda District, Monaghan Garda District and Carrickmacross Garda District

Specific PULSE Records

driving without insurance and the cases were never followed up or prosecuted.”

Specific PULSE Records

PULSE Incident [REDACTED]

According to Sergeant McCabe's note on this incident,

"At 03.50hrs on [a date in May] 2010 [a named Sergeant and two named Gardai], of Bailieboro Garda Station inspected the licensed premises in [a location] known as [name and address], Co. Cavan. When they inspected the premises they found 10 patrons in the bar, fresh drink on counter and the bar staff had no reasonable excuse. An incident was created on Pulse as a 'detected' incident and was classified as a 'Liquor Licensing' incident. [The named Sergeant] was inputted as the Investigating Garda and [name and address] was put down on Pulse as the 'suspected offender'. Two persons, found on's, were listed as witnesses or staff. They were [names given]. The Pulse incident also reported-garda believed alcohol consumed. The incident was detected and the detecting status was listed as 'pending'."

The narrative recorded for this incident is:

"gardai inspect licensed premises, 10 patrons in bar, fresh drink on counter, no reasonable excuse cautioned as to future behaviour"

Sergeant McCabe alleges that the narrative originally read:

"gardai inspect licensed premises, 10 patrons in bar, fresh drink on counter, no reasonable excuse"

and that the words "cautioned as to future behaviour" were added at a later date. He has provided me with a printout from PULSE dated 27 September 2010 which supports this allegation. He has also provided me with a printout dated 18 September 2011 which suggests that the change had been made by that date.

The PULSE record now shows the named individual not as a suspected offender but as a person "Questioned in relation to" the offence. There is no date of detection recorded. The records printed in September 2010 and September 2011 differ in both these respects.

Specific PULSE Records

This record was on the list sent to Cavan/Monaghan on 25 March 2011 (ref.: ■). When the list was returned to Deputy Commissioner Rice on 9 June 2011, the outcome for this incident read:

“SO- Changed to questioned in relation to.
No complaint- No proceedings”

It is not clear why a complaint might have been necessary to prosecute a liquor licensing offence detected by Gardaí, unless the reference is intended to mean that there were no proceedings because the Gardaí failed to make the complaint necessary for a summons to issue. If so, no explanation is given for that failure.

Sergeant McCabe alleges that this incident shows gross dereliction of duty, altering an official record, falsification of an official record and perverting the course of justice. He describes this as “shocking”.

Specific PULSE Records

PULSE Incident [REDACTED]

According to Sergeant McCabe's note on this incident,

"At 2.40hrs on [a date in May] 2010 [a Sergeant and two named Gardai], Bailieboro Garda Station inspected the licensed premises in [a location] known as [name and address], Co. Cavan. They inspected the premises and found a breach of the liquor licensing laws, like the previous night, and found at least 40 persons on the premises, fresh drink still being served, night in full flow and found the proprietor on the premises but very intoxicated. An incident was created on Pulse as a 'detected' incident and was classified as a 'Liquor Licensing' incident. [The named Sergeant] was inputted as the investigating member and [name and address], Co. Cavan was put down on Pulse as the 'suspected offender'. The narrative reads as follows 'pub checked and being found in breach of the liquor lic laws the previous night (incident no [REDACTED] at least 40 persons on premises, fresh drink still being served, night in full flow, proprietor on premises but very intoxicated'. 'Garda Believed Alcohol Consumed' was also on the incident. The status detection box was listed as 'pending' which meant a file was being prepared."

This incident relates to the same premises as incident no. [REDACTED] and it occurred the following night. The same person is now listed as a person questioned in relation to the offence for both incidents. The same Garda Sergeant is listed as the investigating officer for both incidents.

The narrative recorded for this incident is:

"premises checked, all in order"

Sergeant McCabe alleges that the narrative originally read:

"pub checked after being found in breach of the liquor lic laws the previous night (incident no [REDACTED]). at least 40 persons on premises, fresh drink still being served, night in full flow. proprietor on premises but very intoxicated"

Specific PULSE Records

and that the entire narrative was deleted and replaced with the current entry at a later date. He has provided me with a printout from PULSE dated 27 September 2010 which supports this allegation. He has also provided me with a printout dated 18 September 2011 which suggests that the change had been made by that date.

The PULSE record now shows the named individual not as a suspected offender but as a person "Questioned in relation to" the offence. There is no date of detection recorded. The records printed in September 2010 and September 2011 differ in both these respects.

This record was on the list sent to Cavan/Monaghan on 25 March 2011 (ref.: ■■■). When the list was returned to Deputy Commissioner Rice on 9 June 2011, the outcome for this incident read:

"SO- Changed to questioned in relation to.

No complaint- No proceedings"

It is not clear why a complaint might have been necessary to prosecute a liquor licensing offence detected by Gardaí, unless the reference is intended to mean that there were no proceedings because the Gardaí failed to make the complaint necessary for a summons to issue. If so, no explanation is given for that failure. No mention is made of any change in the narrative recorded.

Sergeant McCabe alleges that this incident amounts to perverting the course of justice. He comments:

"Whoever erased this record and then added false information is not a fit and proper person to be a member of An Garda Síochána. How could any court believe this Garda when giving evidence?"

Other Specific Cases

13.43 I have examined in less detail the allegations made by Sergeant McCabe in relation to 50 other individual PULSE incidents. They can be categorized as follows:

- One assault case apparently not prosecuted. The PULSE narrative contains a detailed account of an assault on a member of An Garda Síochána in the course of duty. This involved being punched twice in the chest and having a car door slammed on his leg. It is recorded that the member suffered no injuries. The record was later updated to read “Offender apologised, no proceedings”.
- Two liquor licensing matters apparently not prosecuted. One is a case of people “found on”. The narrative was updated to read: “All persons were cautioned and left the premises, no further garda action required”. In the second, underage drinking was detected on a licensed premises in a pre-planned operation involving six members of An Garda Síochána. PULSE was updated to the effect that the offender was spoken to, informed of the breaches and discussed the importance of preventing underage drinking. He agreed to enforce the law more strictly in future. Caution to be issued.
- Three Misuse of Drugs incidents. In fact all were searches where no drugs were found. Notwithstanding the negative search results, a total of six young adults and six children are listed on PULSE as suspects for drugs offences.
- Four public order incidents not prosecuted. All originally listed as detected with suspected offenders, but three apparently later changed to undetected offences with suspects listed as “Questioned in relation to”. In some cases, the decision not to prosecute may be understandable. For example, in one case a

“suspect” is recorded as having had to be directed a number of times to leave a place under section 8 Criminal Justice (Public Order) Act 1994, but eventually did so. In two other cases the suspect is recorded as having apologised for his behavior. In another case, however, the narrative records a fight outside a nightclub witnessed by Gardaí which resulted in one male being taken to hospital by ambulance with a leg injury. An update recorded “all questioned in relation to incident. No proceedings.” Why that would be so if the incident was witnessed by Gardaí is unclear.

- Thirty-three road traffic cases apparently not prosecuted. Of these the majority were cases where drivers were detected driving uninsured. In twenty-one cases, the narrative records the driver admitting to driving without insurance. In four of those cases, the narrative records that insurance was later produced. In the vast majority of cases no reason is recorded for not prosecuting. In one case it is recorded that the driver was transporting a disabled child to hospital and later rectified the insurance position. In only one case is it recorded “summons not issued in error”. In approximately half of the cases there appears to have been a change in the detection status and the role of the suspect.
- Four road traffic dangerous driving cases apparently not prosecuted. In only one case is a reason given for not prosecuting, i.e. that the entry was created in error because there was an error in the townland. In one case it is recorded that there was a collision which resulted in 5 people being taken to hospital with minor injuries. Three cases were recorded as detected with a suspected offender but appear to have been changed to undetected. The suspected offenders appear to be listed now as persons “Questioned in relation to” the offence in 2 cases and as a witness in the third.

- Three road traffic accidents involving material damage apparently not prosecuted, with the detection status and role of the offender apparently changed in 2 cases.
- One theft case involving shoplifting where the suspect was apprehended by security staff. Apparently no prosecution. Detection status and role of offender apparently changed.

13.44 A number of issues arise from this review. First, there appears to be a specific issue as to whether significant numbers of detected road traffic offences, even cases where the suspect makes an admission, are being prosecuted. Secondly, there appears to be a more general issue as to whether detected offences of any type are simply being neglected. If so, an issue arises as to whether PULSE is being used effectively to identify such cases so that they can be acted upon before the time for prosecution expires. Thirdly, an issue arises as to whether PULSE records of incidents that should have resulted in prosecution, but did not, are being altered at a later date to disguise the failure to prosecute.

13.45 Finally, a discrete but nonetheless important issue arises as to whether individuals, in particular young people, are being entered improperly in PULSE as suspects in relation to the use of controlled drugs, where no such offence has been detected. A review by Gardaí of the PULSE records that were seized from Sergeant McCabe identified some 500 cases in which persons were entered on the PULSE system following searches that were, for the most part, negative.

13.46 It is beyond the scope of this review to address these issues. It suffices to say that the material I have examined, which is only a sample of the available material, gives cause for concern in relation to these issues and suggests that the patterns identified in the material examined in more depth may be more widely replicated.

Investigation of allegations relating to the PULSE documents

- 13.47 In the dossier Sergeant McCabe described the PULSE records that were seized from him as evidence of “gross malpractice and corruption”, including falsification, alteration, erasure and destruction of official Garda records, gross dereliction of duty on a massive scale, innocent children listed as suspects, innocent members of the public “stitched up for incidents they did not commit”, and hundreds of breaches of the Data Protection Act. He also complained of the return of the records to the Chief Superintendent, Cavan/Monaghan, who, he said, was still under investigation.
- 13.48 In the January 2012 letter to the Confidential Recipient, it was alleged that Superintendent Foxtrot “supervised the alterations, erasure and falsification of official Garda records to hide malpractice”.
- 13.49 It appears, from the Commissioner’s letter of 26 February 2013 that the latter reference was misunderstood as a reference to specific issues with records of rostering and overtime at Bailieboro Garda Station.

Analysis

- 13.50 The investigation by Deputy Commissioner Rice of the allegations of assault and false imprisonment against Assistant Commissioner Byrne was completed in a timely fashion. Statements were obtained from all four persons in the room and from two other relevant witnesses. Sergeant McCabe was facilitated in providing a prepared statement at the offices of his solicitor. Assistant Commissioner Byrne’s statement was, properly, taken after caution.
- 13.51 While there is no doubt that the meeting at the Hillgrove Hotel was a tense and fraught affair, Assistant Commissioner Byrne was placed in a very difficult position. In the first instance, having just presented the findings of a lengthy investigation into a large number of serious allegations of malpractice, he was now being presented with two

additional archive boxes containing what were effectively hundreds of fresh complaints. More significantly, it was immediately apparent that the material consisted of confidential Garda records containing personal data about victims of crime and suspects which had been extracted from a confidential Garda computer system. It is understandable that, having had that material produced to him in those circumstances, he was unwilling to allow it to be taken from the room. He made a full report of the events promptly to his superior officer, before a complaint was made against him, and he delivered the material on request and certified in writing that he had not interfered with it.

13.52 That is not to say, however, that Sergeant McCabe's position was without difficulty. Although there was some discussion of individual findings, the document with which he was presented provided very little, if any, detail of the factual basis of the findings made. Furthermore, I understand that he had not been provided with copies of the statements obtained during the Byrne-McGinn investigations. To be told that he was partly responsible for the issues of which he had complained, without ever having had evidence to that effect put to him to allow him to comment upon it, was quite unsatisfactory. It is understandable, in those circumstances, that he became frustrated with the internal Garda investigation and that may well have contributed to the manner in which events unfolded.

13.53 Taking all of the circumstances into consideration, I believe that the position adopted by Deputy Commissioner Rice, that no prosecution should be recommended, was one which was reasonably open to an officer conducting a proper, independent investigation. His position was, of course, only a recommendation, and a complete file was sent promptly to the Director of Public Prosecutions for a direction. The DPP directed no prosecution.

13.54 In my opinion there is no reasonable cause for concern as to the adequacy of the investigation of the complaints made by Sergeant

McCabe of assault and false imprisonment at the Hillgrove Hotel on 11 October 2010 and no sufficient basis for concern as to whether all appropriate steps were taken by An Garda Síochána to investigate and address the specified complaints. In my opinion those allegations do not warrant further inquiry.

- 13.55 What happened thereafter, with the documents seized from Sergeant McCabe at the Hillgrove Hotel, is a different matter. The limited analysis of the PULSE records which I have conducted suggests that detected offences in Cavan/Monaghan Garda Division were not prosecuted. While the offences all appear to be minor offences in the sense in which that phrase is used in Article 38.2 of the Constitution, the possibility that substantial numbers of such detected offences were not prosecuted is a cause for concern. That is all the more so as many of the PULSE incidents relate to road traffic offences, bearing in mind the toll, measured in life and limb, that road traffic accidents exact on the community.
- 13.56 There may have been reason not to prosecute in some or even many of the incidents. The mere fact of non-prosecution in any particular case is not necessarily evidence of neglect of duty. However, the possibility or perception that large numbers of detected offences go unprosecuted and therefore unpunished would be corrosive of public confidence in the criminal justice system and an encouragement to lawlessness.
- 13.57 The manner in which the incidents that I have reviewed were dealt with internally in An Garda Síochána following the seizure of the boxes from Sergeant McCabe, as it appears from the papers I have seen, does not engender confidence that reasons for non-prosecution were clearly established or carefully scrutinised.
- 13.58 A further concern arises in relation to the process adopted by An Garda Síochána in dealing with the individual PULSE incidents that Sergeant McCabe had identified as matters which should have led to prosecution, but did not. The detailed examination I have made of a small number of

records has revealed information which supports the allegations made by Sergeant McCabe that records were altered or falsified to destroy or conceal evidence of neglect of duty. The less detailed examination I have conducted of 50 other incidents suggests that this issue may have a wider application. I cannot and do not make any determination as to whether such alteration or falsification occurred or, if so, for what reason; nor can I or do I make any determination that there was neglect of duty. It is however, impossible to consider the information available at this stage without considerable concern.

- 13.59 In all the circumstances, I am of the opinion that there is cause for concern as to the adequacy of the investigation of the complaints made by Sergeant McCabe relating to the investigation of the incidents recorded in the PULSE records seized from him on 11 October 2010 and relating to his allegations of erasure, destruction, alteration and falsification of records on the PULSE system. There is a sufficient basis for concern as to whether all appropriate steps were taken by An Garda Síochána to investigate and address the specified complaints.
- 13.60 In my opinion, these matters warrant further inquiry in an appropriate forum in the public interest.

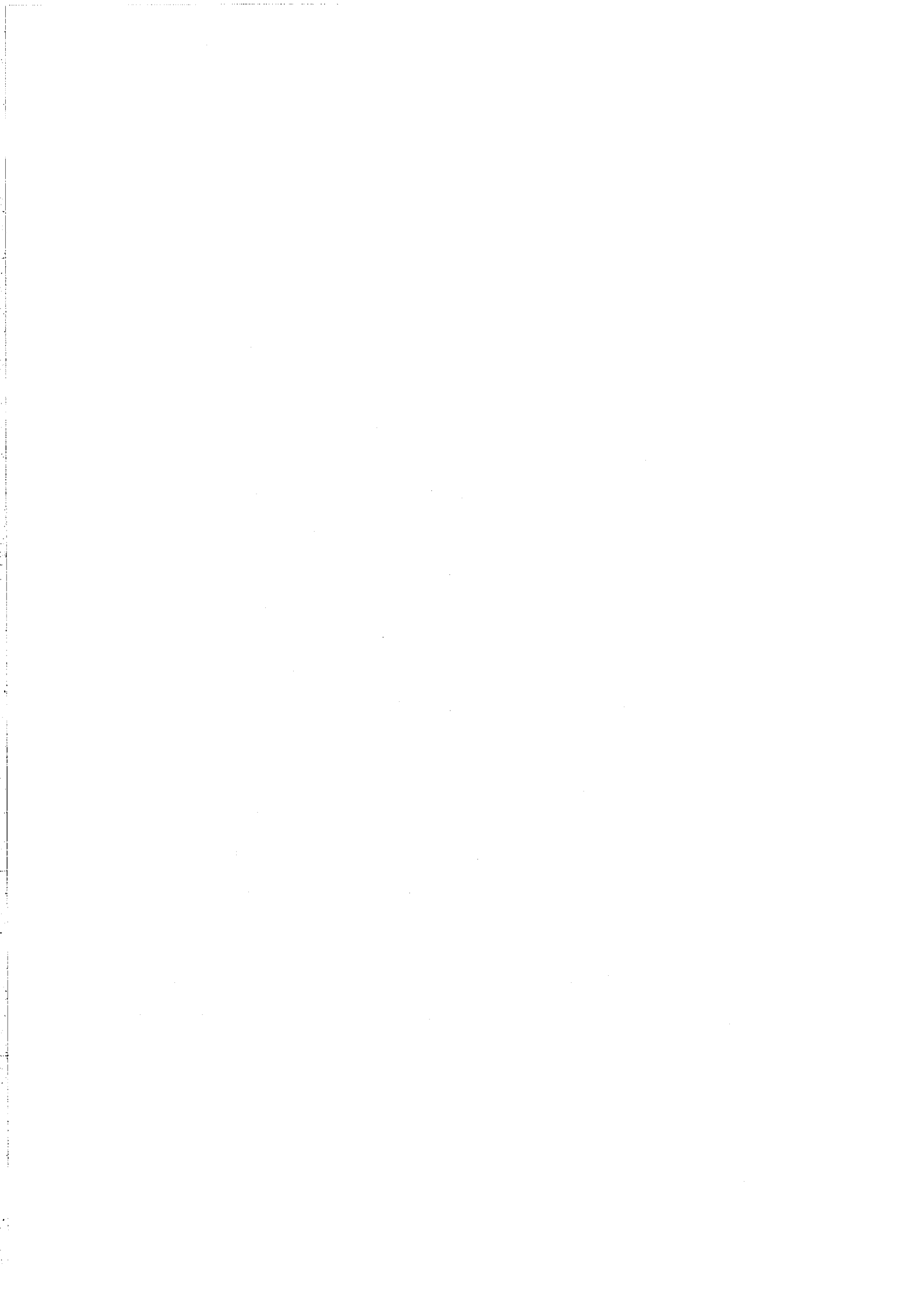
Chapter 14: Allegation of Harassment at Bailieboro Garda Station

- 14.1 This allegation did not feature in the dossier. It was, however, mentioned in the report to the Confidential Recipient on 23 January 2012.
- 14.2 The complaint related to allegations of harassment and sexual harassment of a young female probationary Garda by a male colleague at Bailieboro Garda Station. Sergeant McCabe complained that the harassment and sexual harassment were reported to Superintendent Foxtrot, then District Officer in Bailieboro Garda District, [REDACTED], but that he refused and failed to deal with the matter. Sergeant McCabe also said that Superintendent Foxtrot wanted to put the two Gardaí working together and said that Superintendent Foxtrot's inaction resulted in further sexual harassment. He said that the female probationary Garda had to leave Bailieboro station [REDACTED] and he said that the matter was upheld following an internal Garda investigation.
- 14.3 The internal investigation, led by Chief Superintendent Terry McGinn, was extensive. The investigation followed a written complaint received on [REDACTED] from the female probationary Garda concerned. The complaint was dated [REDACTED] and it made a substantial number of allegations against a young male Garda who was serving with the complainant in Bailieboro Garda Station.
- 14.4 The investigation team identified 27 separate incidents the subject of the complaint, of which 12 were upheld. Two were found to be outside the scope of an investigation under the Policy Document on Harassment, Sexual Harassment and Bullying. Those findings were the result of a comprehensive investigation involving, *inter alia*, the taking of statement from as many as 63 individual witnesses, from some of whom multiple statements were taken.

- 14.5 The complete investigation file was referred to the Director of Public Prosecutions who directed no prosecution. That direction issued on 19 January 2010.
- 14.6 Both the complainant and the member in respect of whom the complaint was made were notified in August 2010 of the outcome of the investigation. Prior to that, in September 2009 an application for assessment of damages under Section 11 of the Personal Injuries Assessment Board Act 2003 was received by the Injuries Board from the female Garda who had made the complaint. An authorisation to bring proceedings in respect of that claim issued from the Injuries Board on 19 November 2009. Personal injuries proceedings issued in the High Court on 7 May 2010. As far as I am aware, those proceedings have not yet been concluded, and, as a result, I am constrained in what I might say about the subject matter of those proceedings. I understand the proceedings to include an allegation of failing “to have any or any reasonable regard to the complaints by [the female probationer Garda] concerning her work”.
- 14.7 It is clear from the complaint made in the letter of 23 January 2012 to the Confidential Recipient that it is alleged that the existence of the harassment and/or sexual harassment was made known to Superintendent Foxtrot and he does not dispute that. The circumstances in which that occurred appear to be the following. The female Garda complainant made Sergeant McCabe aware of the issues she had with her colleague in late [REDACTED]. He acted promptly in the matter and moved the person in respect of whom the complaint was made to a different unit so that the two members would not have to work together.
- 14.8 He raised the matter with Superintendent Foxtrot a few days later and, during the course of their discussion, Superintendent Foxtrot drew Sergeant McCabe’s attention to the contents of what was then the newly issued policy document on the subject. There is some dispute between Sergeant McCabe and Superintendent Foxtrot as to what precisely the

outcome of that discussion was, and whether there was any further discussion between them on the subject thereafter.

- 14.9 It should be noted that disciplinary proceedings were commenced against the member in respect of whom the complaint was made. There were seven allegations of breach of discipline and the member was found in breach of five of the seven allegations. Sanctions, including reductions of pay, were imposed and the matter was brought a conclusion in early 2012.
- 14.10 I am conscious that the terms of reference of this review relate to “allegations of grave deficiencies in the investigation and prosecution of crimes”. This complaint was treated at all stages not as an investigation of crime but as an investigation of breach of discipline.
- 14.11 I should also state that the allegations which were the subject of the original complaint by the female probationary Garda in this case are not reflective of any broader trend visible in the papers that I have received. Similarly, there is nothing to suggest that there was any more general failure on the part of Superintendent Foxtrot to deal in an appropriate way with allegations of that nature.
- 14.12 In my opinion there is no reasonable cause for concern as to the adequacy of the investigation of the complaints made by Sergeant McCabe in relation to the harassment and sexual harassment of a young probationer female Garda and no sufficient basis for concern as to whether all appropriate steps were taken by An Garda Síochána to investigate and address the specified complaints. In my opinion, and bearing in mind the existence of civil proceedings which offer a potential remedy for any outstanding civil issues, those allegations do not warrant further inquiry.



Chapter 15: Monitoring of Probationary Gardai

- 15.1 This matter was not one of the issues contained in the dossier. It was, however, referred to in the January 2012 letter to the Confidential Recipient.
- 15.2 The terms of the complaint were that Superintendent Foxtrot had directed Sergeant McCabe to cease assessing and monitoring probationary Gardai. He said that the Superintendent made reference to the possibility of the GRA having “him and me in the High Court” for monitoring them. Sergeant McCabe said he had a practice of forwarding monthly evaluation reports on each probationary Garda to previous Superintendents but that they stopped when Superintendent Foxtrot arrived. He alleged that, as a result, there were no assessments of probationary Gardai during Superintendent Foxtrot’s term as District Officer in Bailieboro.
- 15.3 This matter was originally raised by Sergeant McCabe in his statement made on 28 April 2008. Having referred to the direction he said Superintendent Foxtrot gave him, he then stated:
- “I was very taken aback with his remarks and I asked him how was I to monitor probationer’s work and performance and he repeated that we could not do a work return on them. I again asked him how was I to monitor their work and he just brushed me aside and did not listen. From that date I stopped doing the work return on the 18 Probationer Gardai in the station as instructed by him. I then started noticing that any issue or problem I brought to his attention he did not listen to me or take in what I was saying or addressing to him.”
- 15.4 The matter was therefore one of the allegations examined by the Byrne-McGinn investigation. The Byrne-McGinn report observed that:

“The investigation has established that, the work return of Probationer Gardaí is assessed through their ‘competency based tasks’ and ‘learning outcomes’. There are agreements reached at the Conciliation Council between the GRA and Garda management regarding the use of Pulse for obtaining work returns on members. The monitoring of Probationers must be carried out in accordance with Code 4.13.”

- 15.5 I have had the opportunity to consider the contents of Chapter 4 of the Garda Code “Recruitment, Training, Probation and Continuous Professional Development”, and in particular Section 4.13. I can find there no provision for the routine monitoring of the performance of probationers by supervisors using records contained in the PULSE computer system.
- 15.6 I have also considered the terms of HQ Directive 37/99 of 1 April 1999. That document relates only to the procedures to be applied in the event that a Divisional Officer is concerned about a Probationer Garda’s suitability for retention. It makes no provision for routine work returns in a case where the Divisional Officer does not have those concerns in respect of an individual Probationary Garda.
- 15.7 In interview with Sergeant McCabe, he maintained that the completion of a work return of the nature of that to which Superintendent Foxtrot objected was in fact a requirement. He was, however, unable to say what the source of that requirement was. The particular form for making the work returns that he used is one which Sergeant McCabe told me he generated himself. That would appear to be inconsistent with an organisation-wide requirement to complete such a return.
- 15.8 There is no doubt that the monitoring and supervision of individual Probationary Gardaí, including by use of the PULSE system, is an important part of the supervisory function, particularly for the District Officer and the Training Sergeants. In that regard, I note in particular the contents of the statement made by Sergeant Regina McArdle on 25

May 2009 to Chief Superintendent McGinn. Sergeant McArdle was the Training Sergeant for Cavan/Monaghan Division and, at the time of her statement, had performed that role for nine years. She explained that Probationary Gardaí were required to submit their diary (presumably the Experiential Learning Diary to which reference is made in Garda Code 4.13(7)) on a fortnightly basis to the training staff, prior to an assessment. She said she would have a fair idea of the progress of the Probationer from an examination of the diary and by liaising with their Unit Sergeant. She would also review that progress on PULSE

“in general to see exactly what they are doing in order to achieve their learning outcomes and to see if they are encountering a variety of police work”.

- 15.9 The existence of those arrangements, in accordance with the relevant provisions of the Garda Code, means that it cannot be concluded, simply because Superintendent Foxtrot did not wish Sergeant McCabe to continue with the particular procedure that he had devised, that there was no monitoring or supervision of Probationary Gardaí.
- 15.10 What role precisely Superintendent Foxtrot performed in relation to that ongoing monitoring and supervision it is not for me to say. I am of the opinion, however, that any direction he issued to Sergeant McCabe in relation to routine monthly work returns on Probationary Gardaí is not a matter that warrants further inquiry in the public interest.
- 15.11 That said, however, one of the remarkable features of the specific incidents examined elsewhere in this report is that many of them were investigated by very junior and relatively inexperienced Gardaí, frequently while still in the course of their probation as members of An Garda Síochána. That practice, and the absence of evidence of effective supervision and monitoring of individual investigation files, cannot be allowed to pass without further comment. In a note made by Chief Superintendent McGinn’s investigation team of an interview with retired Superintendent Liam Hogan, who had served as District Officer in

Bailieboro in 2005, he was asked how many Probationary Gardaí were attached to Bailieboro during his time as District Officer. His response was:

“My impression is that there were too many and that they were constantly changing with no hope of developing a strong team to meet the needs of professional policing in the area.”

15.12 His predecessor as District Officer, Chief Superintendent Eugene Corcoran, made a statement to Chief Superintendent McGinn on 9 October 2009. He said:

“The supervision of Probationer Gardaí required considerable attention during my time as District Officer. I drew attention to this matter in applications which I made for the appointment of an Inspector and for additional Sergeant Posts”.

15.13 I have had the opportunity of reviewing an application made by Chief Superintendent Rooney, Cavan/Monaghan in October 2006 for the allocation of an Inspector to Bailieboro District. While that application was not made during Chief Superintendent Corcoran’s time as District Officer, it nonetheless provides a useful insight into the type of management issue to which he adverted in his statement.

15.14 Chief Superintendent Rooney stated, in that application, that there was no Inspector allocated to the Bailieboro District, which contained a number of busy rural towns which all attract large crowds to socialise at weekends. The District comprised three hundred and forty nine square miles and had a population of 26,546 in the 2002 census. Chief Superintendent Rooney expressed the view that the population figures would be likely to have considerably increased by the time of his correspondence.

15.15 He noted that the District had a policing strength of 9 Sergeants and 50 Gardaí and that, as of 30 September 2006 there were 11 Probationary Gardaí allocated to the District.

15.16 His observations on the management of the District by the District Officer are worthy of quotation at length. He said:

“For successive District Officers who have been appointed to Bailieboro District that deployment has been their first appointment on promotion. All of the District Officers so appointed have been in receipt of lodging allowance and have not taken up permanent residence in the District. Their tenure has varied from a few months to a maximum of approximately two years.

It has been part and parcel of the placement of newly promoted Superintendents in Bailieboro District that they complete their Superintendent’s Development Course and also many of them have engaged in degree courses during their tenure. In conjunction with annual leave entitlements, this inevitably results in extended absences of the Superintendent from the District. One of the Inspectors from within the Division is appointed to take charge of the District in the absence of the Superintendent. For a variety of reasons the five Inspectors in the Division are deployed as Acting District Officer, Bailieboro, at various times during the year depending on the other commitments which the Inspectors have.”

15.17 He set out a table showing that in 2004 and 2005 there were acting District Officers on temporary transfer at Bailieboro for not less than ninety nights in the year. By the date of his letter in early October 2006, that figure already stood at over one hundred for that year. He continued:

“Bailieboro is a busy rural District which requires careful and uniform management to give continuity and policy in the implementation of policing strategies. It is essential, given that it is likely that Superintendents appointed to the District will continue to have the range of commitments which necessitates

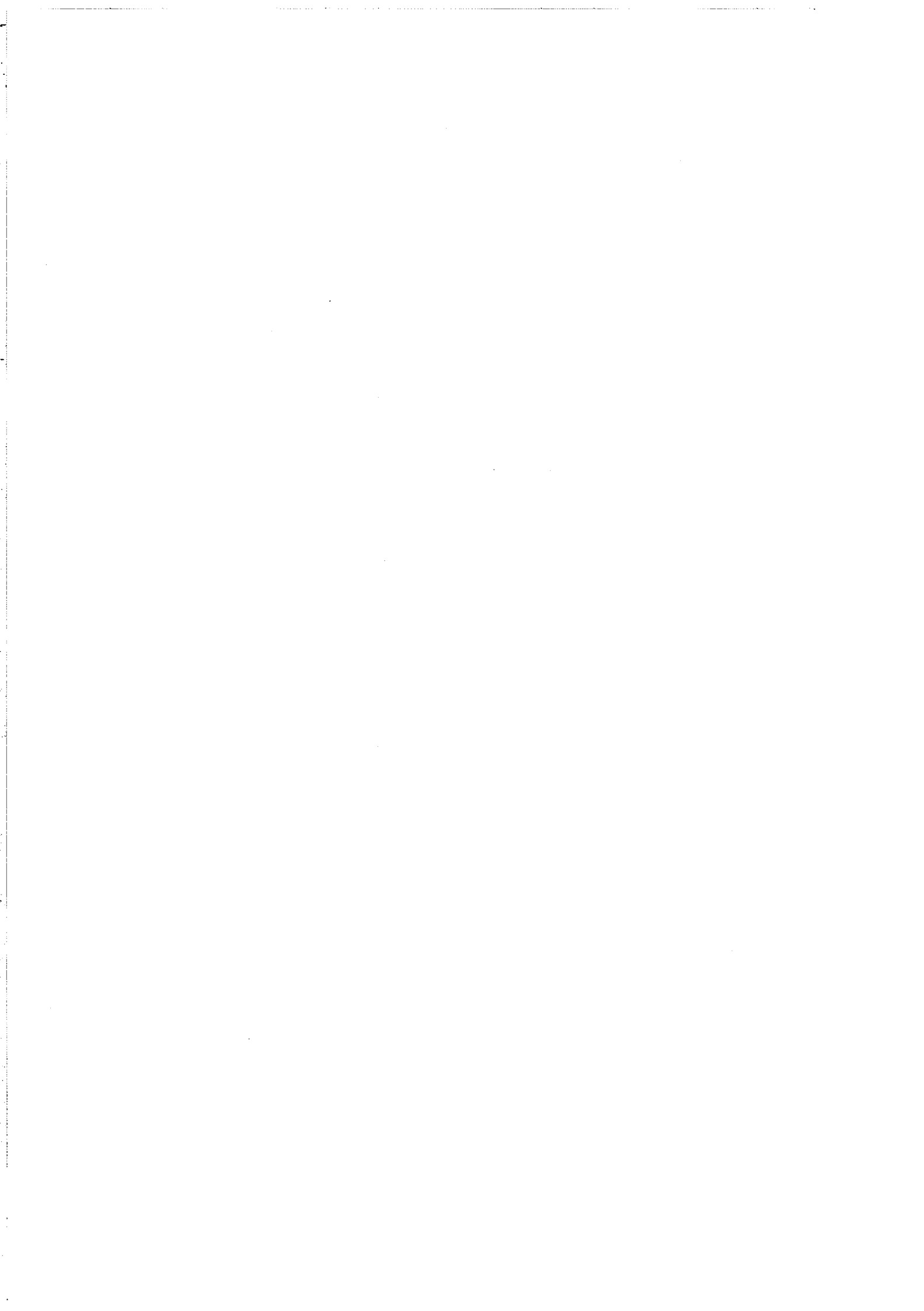
their absence so much from the District, that a permanent District Inspector will be appointed. The appointment of such an Inspector who would be in a position to assume the responsibility of the District in the absence of the Superintendent would give stability and continuity in the management of the District. The presence of a permanent Inspector would enhance the level of performance management generally and specifically support leadership and guidance in the development of Probationer Gardai going forward.”

15.18 Those comments speak eloquently of important issues that may have had a bearing on the conduct of the individual investigation files examined in this report. Indeed, when Superintendent Foxtrot assumed responsibility as District Officer in August 2007 the number of probationary Gardai allocated to the District had increased to 18, a 63% increase on the previous September.

15.19 While, as I said, I am of the opinion that the specific direction which Sergeant McCabe said that Superintendent Foxtrot gave him in relation to the monitoring of Probationer Gardai does not warrant further inquiry, I am of the opinion that it would be prudent for any inquiry that may be established to examine any of the matters dealt with in this report, to inquire also into the following:

- The number of Probationary Gardaí assigned to Bailieboro District at the relevant times;
- The number and experience of Sergeants available to supervise and monitor on a daily basis the work of those Probationer Gardaí;
- The significance, if any, of the absence of an Inspector permanently allocated to Baileboro Garda Station;
- The stability, continuity, and experience available at District Officer level in Bailieboro District at the relevant times; and

- The arrangements in operation for the supervision and monitoring of probationary Gardaí in relation to their operational and, specifically, investigative duties.



Chapter 16: Report on Accommodation at Bailieboro

Garda Station

16.1 Bailieboro Garda station was, it seems, universally regarded as unsuited to the needs of a modern policing service. In a statement made on 3 December 2009 for the purpose of the Byrne-McGinn investigation, Superintendent Delta said the following of conditions in the station.

“They were, in my opinion, simply not fit for purpose. There were health risks in relation to the constant stench from the ground floor toilets and there are no fire escapes on the first floor. The offices are cramped. There are no storage facilities. The only exit from the first floor is a wooden staircase with no fire retardant. There were no secure facilities for processing prisoners and the processing took place in full view of the public.”

16.2 On 2 March 2007 Noel Harraghy, Crime Prevention Officer, carried out a survey of Bailieboro Garda station in the context of proposed emergency works at that time. In his report, dated 15 March 2007, he stated

“Bailieboro station is not a properly designed building for Garda purposes. Existing accommodation is too small for the amount of units working there.”

16.3 When forwarding an application for emergency works to be undertaken at Bailieboro Garda station on foot of Mr Harraghy’s report, Chief Superintendent Rooney described the inadequacy of the station as “well documented at [Housing Section]”.

16.4 The Chief Superintendent was acting on a report he had received from Superintendent Maura Lernihan, then District Officer at Bailieboro, dated 21 February 2007 in which she said that the “critical lack of adequate accommodation at Bailieboro Garda station has been highlighted and

acknowledged” and she referred to “an accommodation crisis at Bailieboro”.

- 16.5 It was in that context that, on 11 October 2007, Garda Owen Connell, Chairman, Accommodation Sub-committee, Garda Representative Association wrote to the Housing Section at Garda Headquarters stating that Bailieboro Garda station was “in very bad condition and [was] in need of immediate replacement”. He said that sites were scarce in the Bailieboro town area and the town continued to grow. He stated that the members had identified a site as a suitable one and he attached a location sketch.
- 16.6 Mr Gearóid Maguire, the Accommodation Manager, Housing Section, Garda Headquarters wrote to the Chief Superintendent, Monaghan on 22 October 2007 attaching Garda Connell’s correspondence for views and observations. Chief Superintendent Rooney forwarded that correspondence to the Superintendent, Bailieboro seeking his views on the property “in early course”. It appears that the correspondence addressed to the Superintendent at Bailieboro was initially dealt with by Inspector Delta, as Acting Superintendent. Superintendent Foxtrot has stated that he was attending the Central Criminal Court in Dublin between 5 and 19 November 2007 as Senior Investigating Officer on a murder trial. Inspector Delta’s letter appears to be dated 14 November 2007. (The date stamp on the letter is unclear.) He gives a description of the building which is succinct and unsparing. Having identified various issues with the accommodation, he observes:

“The conditions that members are expected to provide a professional service in, can only be described as appalling. It is embarrassing to host multi-agency meetings with HSE, county engineers etc.

The station clearly reflects the ambivalence of transient District Officers over a protracted period.”

16.7 His concluding comment was “replacement is the only realistic alternative. The site identified in the attached documents is deemed suitable.”

16.8 In a statement in the form of a letter addressed to Assistant Commissioner Derek Byrne and dated 23 November 2009, Chief Superintendent Rooney said that the report submitted by Inspector Delta was submitted without consultation with Superintendent Foxtrot. He said:

“I discussed the matter with Superintendent Foxtrot on his return from leave as I was concerned that this report may have been out of context with the efforts Superintendent Foxtrot was making through the Accommodation Manager. I was also concerned about the comment of Inspector Delta that the accommodation deficits in Bailieboro Station arose due to the ‘transience nature’ (sic.) of District Officers. Superintendent Foxtrot undertook to examine issues contained in the report and he requested that it be returned to him so that he could consider the works outlined in the totality of his deliberations and discussions with the Accommodation Manager.”

16.9 Superintendent Foxtrot said in his report to the Byrne-McGinn investigation that he asked that the correspondence be returned to him so that he could examine it. He said that he carefully considered the comment of Inspector Delta in regard to the lack of permanent Superintendents and that he consulted with the Sergeant-in-Charge, Sergeant McCabe, as to his views on the issue. According to Superintendent Foxtrot, Sergeant McCabe stated “that there had been frequent changes in Superintendents in recent years and that the Acting District Officer may have a point”. He said that he thanked Sergeant McCabe for his observations and made no further comment to him.

- 16.10 Sergeant McCabe said, however, that Superintendent Foxtrot made a comment to the effect that “he was not letting Garda Headquarters know that issues existed”.
- 16.11 Superintendent Foxtrot said that he decided, ultimately, that the “issue raised by the Acting District Officer was not appropriate in the circumstances”. He said he was actively dealing directly with the Accommodation Manager and OPW on accommodation issues and he did not forward the report back to the Divisional Office as there was no necessity.
- 16.12 In fact, although Superintendent Foxtrot may have been dealing directly with the Accommodation Section, he was not dealing directly with them in relation to this correspondence. On 11 December 2007 he wrote to Chief Superintendent, Monaghan in which he made specific reference to the correspondence of 22 October 2007 from the Accommodation Manager. He said:
- “I apologise for the delay in replying to this important matter. I was attending on murder trial and the matter was left for my personal attention when I returned”.
- 16.13 That does not appear to be what had happened. The matter had, in fact, been dealt with in his absence, although evidently not to his satisfaction. It is not understood why Superintendent Foxtrot wrote in those terms, or indeed why Chief Superintendent Rooney accepted a letter in those terms, given the history of the matter outlined in their respective statements to the Byrne-McGinn investigation. The issue does not appear to have been raised.
- 16.14 Superintendent Foxtrot continued in his letter by referring to the proposed location for a new Garda station and said he considered the site to be suitable in terms of location and size. He made a number of further comments in support of the view he had expressed and concluded by recommending favourable consideration of the location.

16.15 On 19 December 2007 Chief Superintendent Rooney replied to the Accommodation Manager and referred to the correspondence of 22 October. He said:

“Having reviewed the proposed site in this case I am satisfied that it is very suitable both in size and location for the construction of a new District Headquarters Section in Bailieboro and I recommend that progress be made in the matter at the earliest opportunity”.

Sergeant McCabe’s complaint about the handling of Inspector Delta’s report

16.16 In his initial complaint, Sergeant McCabe saw this incident as evidence of an unwillingness on Superintendent Foxtrot’s part to highlight problems. He expressed the opinion that the minute from Inspector Delta was “destroyed, never to be brought up again”.

16.17 The Byrne-McGinn investigation was satisfied that management in Cavan/Monaghan were aware of the serious accommodation problems at Bailieboro and that efforts were being made to address the issue. No view is expressed as to whether management at divisional level or, more importantly, higher levels were aware that an experienced officer in the division had concerns about the impact on the management of the District of the District Officer appointment policy. No view is expressed either about the handling of the letter itself except that “[Superintendent Foxtrot’s] reason for retaining the document is credible”.

16.18 In the letter of 23 January 2012 to the Confidential Recipient, Sergeant McCabe alleged that Superintendent Foxtrot hid the document prepared by Inspector Delta. He said that, when he reported the issue to the investigation team (presumably Chief Superintendent McGinn’s team),

“They asked him for it on two occasions and on both occasions he gave them documents on housing and accommodation but not the

one in question. Inspector Delta handed over the correct document. A/Commissioner Byrne produced false findings on this matter.”

16.19 In his letter of 26 February 2013 to the Secretary General of the Department of Justice and Equality, the Commissioner stated that the matter was pursued with accommodation section by the Divisional Officer at Monaghan with a recommendation that accommodation receive priority attention and that a strategic plan be put in place to refurbish the existing accommodation or find a suitable alternative site. He said that there are no disciplinary issues arising and “all accommodation issues at Bailieboro are being pursued at accommodation section”.

16.20 The fact that the accommodation issue was being pursued with accommodation section by the Divisional Officer at Monaghan is not an answer to the suggestion that a specific report was not forwarded by Superintendent Foxtrot.

Analysis

16.21 I have examined what appears to be the accommodation file for Bailieboro Garda station for the relevant period. I cannot find Inspector Delta’s minute on the file and, as noted above, Superintendent Foxtrot’s response to the letter from Chief Superintendent Rooney expressly stated that this matter had been left for him to deal with personally. The document prepared by Inspector Delta, and the statement later made by Superintendent Foxtrot, cannot be reconciled with that remark in Superintendent Foxtrot’s letter of 11 December 2007.

16.22 According to the Byrne-McGinn report, Superintendent Foxtrot supplied a copy of the document in question on 1 July 2008 to the investigation team. I cannot determine whether or not there was any reluctance on the part of Superintendent Foxtrot to make this document available upon request to Chief Superintendent McGinn’s investigation team. I note

that the copy of the document which was available to the Byrne-McGinn investigation (Appendix 41 to that report) appears to have on it a fax heading which suggests that on 12 June 2008 at 9:38am it was faxed from the District Office at Bailieboro to Monaghan Garda station. At that time, Superintendent Delta was the District Officer in Bailieboro and Superintendent Foxtrot the District Officer in Monaghan.

16.23 Having regard to the willingness of Chief Superintendent Rooney to advert to the issues associated with the short assignments of Superintendents to Bailieboro when making application for the assignment of a permanent inspector there, the papers that I have reviewed do not necessarily demonstrate a reluctance in Cavan Monaghan at divisional level to make known to higher authorities within An Garda Síochána the issues arising out of that practice.

16.24 That said, the content of Superintendent Foxtrot's letter of 11 December 2007, and the express statement contained in it that the matter had been left for his personal attention in his absence is a matter of some concern having regard to the inconsistency of that statement with the fact of Inspector Delta's letter, and the difficulty in reconciling that statement with Superintendent Foxtrot's later report to the Byrne-McGinn investigation. It is also a matter of some concern that this issue does not appear to have been considered at all by the Byrne-McGinn investigation. While it is clear that the minute was not actually destroyed, as alleged by Sergeant McCabe, it has not been determined whether an effort was made to hide it or what was done with the minute on Superintendent Foxtrot's return.

16.25 While it is apparent that the deficiencies in the accommodation at Bailieboro were widely recognised and were being acted upon, what causes concern in relation to this particular incident is whether it is reflective of the way in which criticism of Garda management was handled within the force. Inspector Delta was effectively saying that a particular problem was not being dealt with because no-one served long

enough as District Officer to be committed to solving it. That is an implicit criticism of the policy or practice of allocating newly appointed Superintendents to Bailieboro for short periods of time, as outlined in the previous chapter. Inspector Delta's letter was not merely returned to Bailieboro; the subsequent correspondence from the District Officer gives the impression that his letter had never been written. At that time Inspector Delta had served as Inspector within the division for more than ten years. It would be a matter of concern that the critical voice of an experienced officer would be silenced; it would be a matter of altogether greater concern if an effort were made to pretend that he had never spoken.

- 16.26 That specific issue was not adequately investigated and there is a sufficient basis for concern as to whether all appropriate steps were taken by An Garda Síochána or any other relevant entity or public body to investigate and address the specified complaints. I am of the opinion that, if an inquiry into other matters discussed in the present report is to be established, such inquiry might usefully include in its consideration the issues raised in relation to the handling of Inspector Delta's letter of 14 November 2007.
- 16.27 Quite apart from the specific issues arising in relation to the handling of Inspector Delta's letter, the standard of accommodation at Bailieboro Garda station and its possible impact on the performance of the policing function are matters which warrant consideration as part of any inquiry that might be established into the matters considered in this report.

Chapter 17: Overview of the Garda Investigations

- 17.1 An analysis of the original Garda investigations in Bailieboro District reveals information which supports the allegation that there were significant deficiencies in the conduct of those investigations. Delay, for whatever reason, is a feature of many of the cases. It is a striking feature, and one common to almost all of these cases, that the original investigations were conducted by inexperienced probationary Gardaí. There is little, and in some cases no, evidence in the papers I have seen of appropriate supervisory and management guidance and, in almost all cases, no clear sense that investigations were being kept under review on an ongoing basis. Even in those cases where there was, at the outset, some guidance or direction given, that direction was not necessarily complied with and the failure to so comply appears either not to have been noticed or, for some reason, not to have led to any consequences internally.
- 17.2 That overall assessment of the conduct of those original Garda investigations is necessarily an important matter of public concern. Confidence in the effectiveness of the policing service is important not just to encourage a necessary sense of security amongst the public, but also to ensure that there is a measure of public confidence in the likelihood of detection, prosecution and conviction where offences have been committed. The deficiencies identified in the investigations considered in this review, if they were widely replicated, would be a challenge to public confidence in the criminal justice system itself.
- 17.3 It is beyond the scope of this review to determine what caused those apparent deficiencies to arise. It must be understood that the opinion that I have arrived at, that the complaints of Sergeant McCabe were not adequately investigated, is not a determination that the allegations he has made are true or that the explanations he identifies for the deficiencies apparent in the investigations are correct. In particular, I wish to emphasise that in expressing the opinion that there were

deficiencies in the individual investigations reviewed herein, no finding of fault is made on the part of any individual officer and no criticism is made in that respect.

- 17.4 There are a number of different reasons why these deficiencies might have occurred. It is possible that there were professional failings at an individual level by investigating officers, their supervisors, and/or at management level within the station, district, or division. There may equally have been systemic issues. It is remarkable that, when Superintendent Foxtrot assumed responsibility for Bailieboro Garda District, the number of probationary Gardaí allocated to the District had increased by 63% increase in the previous twelve months. That cohort of inexperience necessarily presented a significant supervisory and management challenge. Previous District Officers had already found the number of probationers in the District a challenge before that increase.
- 17.5 There is also reason to believe, and this view was expressed in writing by the Divisional Officer in Cavan/Monaghan, that the absence of an officer of Inspector rank within Bailieboro Garda station was a significant management issue. That issue was, in Chief Superintendent Rooney's mind, connected to the absence of continuity and stability at District Officer level. In the three-and-a-half years that Sergeant McCabe served as Sergeant-in-charge, Bailieboro, he served under five District Officers. It is hard to see how that level of turnover at District Officer level could be consistent with the proper management of the policing service within a District. There is, of course, also the possibility that the management systems that operated within the District, and which may be replicated throughout the country, are themselves defective in some way. In particular, it is not clear that the potential supervisory and management benefits of the PULSE computer system were routinely and effectively exploited.
- 17.6 Given the large number of probationary Gardaí in Bailieboro Garda station, and given the issues in relation to the continuity and stability of

management there, the question of supervision was properly identified within An Garda Síochána as a significant issue in the conduct of a number of these investigations. It is striking that although that issue was identified, in particular as an exculpatory factor in disciplinary proceedings against junior members, in no case did it lead to the institution of disciplinary proceedings for neglect of duty in the supervisory or management function. The consistent approach to the assessment of whether disciplinary proceedings were warranted was one which focused entirely on the responsibility of the individual Garda member to whom the investigation was assigned. That approach is capable of giving the impression that discipline is for members of Garda rank only and that there is a want of effective means of ensuring discipline, in particular, attention to the duty to guide and supervise junior members, at higher ranks.

- 17.7 The conduct of the internal Garda investigation under the direction of Assistant Commissioner Byrne cannot pass without comment. The first and most obvious concern is that, although statements were taken from the individuals in respect of whom Sergeant McCabe had made complaints (and others of course), those statements and the other evidence assembled during the investigation do not appear to have been made available to Sergeant McCabe for comment before the conclusion of the investigation. That appears to be a breach of the policy document under which Sergeant McCabe's complaint was originally made. It appears, equally, to be a breach of the commitment made to him at the outset of the investigation that he would have an opportunity to comment on the evidence assembled.
- 17.8 The concern that arises from that approach is aggravated by the impression given by the report which emerged from the investigation that there was, if not an instinctive, at least a routine preference for the evidence of the senior officers in respect of whom complaints had been made. This approach was replicated at the highest level. The Commissioner, when accounting for the investigation to the Minister,

described allegations as having been “answered”, in such a way as to suggest that the mere fact that an answer had been given was in some way a substitute for a careful assessment of the reliability of that answer having regard to all the available evidence. Ultimately, it appears that conclusions were arrived at as a result of the investigative process without there ever having been a thorough and searching testing of the evidence.

17.9 That approach, as previously stated, is reflected in the way in which the outcome of the investigation was communicated to the Minister. It is also reflected in the way in which the outcome of the investigation was communicated to other members of the force by the Divisional Officer. While the letter he wrote is the subject of legal proceedings and, for that reason, is not appropriately the subject of comment in relation to the issues arising in those proceedings, I think it is sufficient to say for present purposes that the issues identified by this review as arising, both in relation to the original Garda investigations and the investigation of the complaints made by Sergeant McCabe about those investigations, were not effectively communicated to members of the Divisional force by the Divisional Officer.

17.10 The Byrne-McGinn investigation was reviewed by Deputy Commissioner Rice following his appointment to deal with a number of aspects of Sergeant McCabe’s complaints after the incident at the Hillgrove Hotel on 11 October 2010. He completed a number of reports reviewing different aspects of the investigation. The report of primary interest is that of 8 March 2011, which reviewed the investigation of most of the incidents considered for the purpose of this review. Deputy Commissioner Rice expressed the view that the Byrne-McGinn investigation was professional, impartial and was carried out with propriety. He was satisfied, in respect of the investigation of most of the specific incidents considered herein, that “all matters were fully enquired into”. Given the various outstanding issues identified during my review, I cannot share the view that all matters were fully enquired

into. Having regard to the apparent failure to give Sergeant McCabe an opportunity to comment on the evidence, and the manner in which the “answers” of superior officers were accepted without either testing them too rigorously against other available evidence or giving Sergeant McCabe an opportunity to respond to them, I cannot share the generally approving conclusions of Deputy Commissioner Rice’s review.

17.11 He expressed the view that “some of the blame must rest with Sergeant McCabe” and that many of the issues should have been dealt with by a member of Sergeant rank but he could find no evidence that this occurred.

17.12 It is a matter of some concern that this conclusion was arrived at in circumstances where I have seen no evidence that it was ever put to Sergeant McCabe to allow him to respond to it. The suggestion was made to Sergeant McCabe at the Hillgrove Hotel on 10 October 2010 but, as previously outlined, it was presented to him at that stage as an outcome of the investigation, not as an allegation to which he had an opportunity to respond. Here again, in Deputy Commissioner Rice’s review report, the same view was being presented as a finding, without a response from Sergeant McCabe.

17.13 An additional concern is the suggestion that many of the issues could have been dealt with at Sergeant rank. Many of the incidents considered in this report were investigated by inexperienced junior members of An Garda Síochána who were allocated to units under the supervision of a Sergeant other than Sergeant McCabe. Neither the Byrne-McGinn report, nor Deputy Commissioner Rice’s review of it, really addressed in detail the extent to which such supervisory Sergeants bore responsibility for the issues that arose in the handling of investigations by members under their supervision or the extent to which the District Officer ensured that the members in the District were being effectively supervised by their unit Sergeants.

- 17.14 The overall impression given by the internal Garda investigative process was that complaints or matters of concern were put through a process of filtration or distillation so that, by the end of the process, any matter of concern had been removed as a form of impurity, and only what was good was found to remain.
- 17.15 I should note that, following the completion of the Byrne-McGinn report, a number of recommendations were made for action under a variety of headings, ranging from the development of case studies for future training purposes, to a review of the use of a “caution” status on PULSE and other matters. I have been furnished with an up-to-date report (as of 21 February 2014) of progress on the various recommendations. There are two broad observations and one specific comment that I would make. First, because, in my opinion, there are important outstanding concerns that were not fully addressed in the original investigation, as outlined elsewhere in this report, it follows that the recommendations previously made cannot be seen as necessarily sufficient. If the recommendation made in this report for further inquiry into important matters of public concern is accepted, then additional recommendations can be anticipated. Secondly, I am not convinced that the recommendations previously made meet the concerns already identified. Thus, for example, it was recommended that Divisional Officers should endeavor to achieve a balance of younger less experienced members with more experienced members. That recommendation, while admirable, fails to address the specific issue that arises from this review about the more particular need to ensure adequate supervision and guidance for probationary members.
- 17.16 There more comment relates to one important recommendation previously made. It was recommended that Bailieboro Garda station be reviewed by “Professional Standards”. I have seen the report arising from a review by the Garda Professional Standards Unit (“GPSU”) of Bailieboro District during June, July and August of 2010. While the report covers a range of subject headings, of particular interest, bearing

in mind the concerns identified in this report, is the subject heading “Policing Processes”. The analysis contained in the report under that heading consists (excluding headings and sub-headings) of seven and a half lines of text on a single page. The report states, under the heading, “Strengths”:

“There are clear guidelines in place in relation to policing processes.”

17.17 The only “Area for Improvement” identified under the heading “Policing Processes” related to the sub-heading “Employee Management Process” where the following recommendation was made:

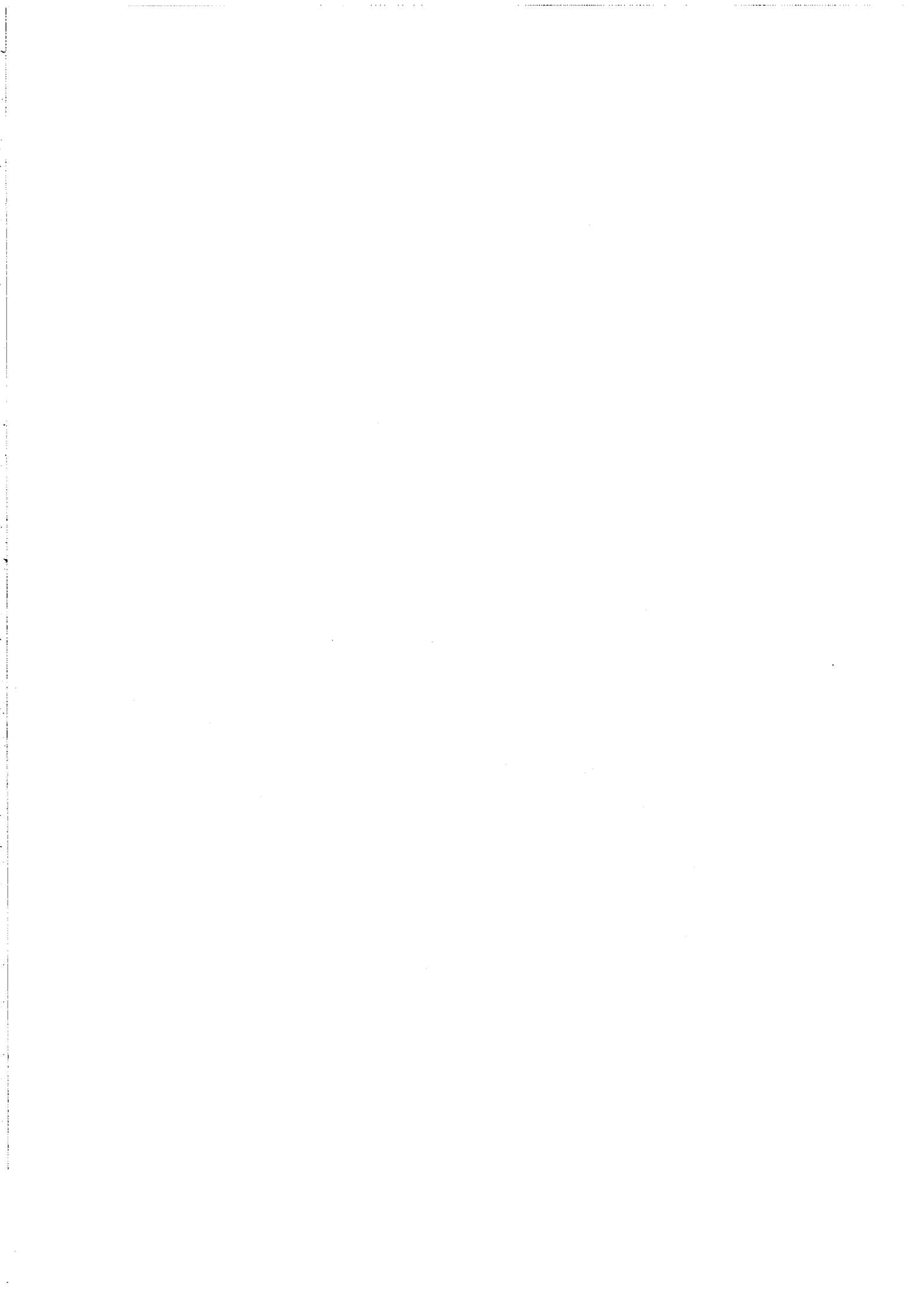
“The District Officer should consider developing an employee management process that specifically documents the communication process, the involvement opportunities for staff at all levels in preparing local policing plans and strategies, how recognition and reward are being managed and how the process is going to be regularly assessed and reviewed for its effectiveness.”

17.18 The GPSU review was specifically referred to in the Commissioner’s letter of 26 February 2013 to the Secretary-General of the Department of Justice. He said that “no systemic failures were found”. It is not apparent, however, that there was any review by GPSU of whether the “clear guidelines” in place in relation to policing processes were actually being implemented. Bearing in mind the deficiencies identified in the various investigations reviewed in this report, many of which were identified internally in An Garda Síochána before the GPSU review, that analysis does not inspire confidence that all significant issues concerning the policing processes that operated in Bailieboro have been fully assessed and reviewed.



Chapter 18: Role of GSOC

- 18.1 I have not had an opportunity to form a considered overall view of the conduct of its investigative function by GSOC. I regret that GSOC was unable to provide papers for the purposes of this review and that, as a result, important documentary material was unavailable to me. As this report was being completed, GSOC communicated to me, through its solicitors, a willingness to furnish relevant documentation, subject to appropriate safeguards being in place. While that position was communicated to me too late to be of any practical value for the purpose of this review, no doubt the objective of reviewing such documentation is something that could be achieved by other means.
- 18.2 What is striking, however, is that in the one case in which it is clear that a GSOC investigation was pursued to a conclusion, the papers I have seen suggest that the approach adopted by GSOC was ultimately broadly similar to that of An Garda Síochána. GSOC did give express consideration to the possibility that disciplinary proceedings might be warranted against supervisory and management officers for neglect of their respective duties in those capacities, in a way which An Garda Síochána does not seem to have been inclined to do. The final disciplinary recommendation, however, was consistent with the Garda approach, i.e. that individual members of An Garda Síochána should bear responsibility for the conduct of their own investigations, regardless of their inexperience or the apparent want of direction or guidance from supervisors or management. While the independent investigative function that GSOC exercises is an important one in the public interest, it appears to be no guarantee of a different disciplinary outcome.



Chapter 19: Role of the Department of Justice and Equality

- 19.1 On 23 March 2009, while the Byrne-McGinn investigation remained underway, Sergeant McCabe communicated by email to the Minister for Justice, Equality and Law Reform (then Mr Dermot Ahern TD), referring to a complaint he had made “in relation to malpractice and corruption in Bailieboro Garda District, Cavan/Monaghan” and he said those issues were being investigated. He said that a preliminary report had been forwarded to Garda headquarters by the investigation team, which he said had uncovered bad practices and bad procedure.
- 19.2 He complained about comments reported on the front page of the *Anglo Celt* newspaper of 12 March 2009, and attributed to the Chief Superintendent for Cavan/Monaghan, Colm Rooney. Sergeant McCabe said that the report stated that Chief Superintendent Rooney had made comments in a public forum to elected representatives that the issues in Bailieboro “were ABSOLUTE RUBBISH and that HE HAD BEEN BRIEFED ON A NUMBER OF ISSUES AND THERE WAS NO CRIMINALITY INVOLVED” [Sergeant McCabe’s emphasis].
- 19.3 Sergeant McCabe said that it was appalling that the Chief Superintendent would speak publicly in that way while the investigation was ongoing. He said it was “Donegal all over again”.
- 19.4 He stated that the purpose of his email was to ask for “an independent person to oversee the investigation because the whole investigation has been tainted and undermined by his comments”. He said that the comments of Chief Superintendent Rooney would severely hamper potential Garda witnesses coming forward to tell the truth “as they are afraid to do so”.
- 19.5 That email was replied to on 11 May 2009 by a letter from the Minister’s private secretary, stating:

“The conduct of an investigation is a matter for the Commissioner in accordance with the Garda Síochána Act 2005, and the Minister has no role in directing him in such operational matters.

The Minister believes that in the circumstances, the most appropriate action for now is to allow the Commissioner to complete his work and let due process take its course.”

19.6 It does not appear that the matter was taken any further at that time, notwithstanding that Sergeant McCabe’s complaint was, effectively, that there was a want of due process.

19.7 Following the meeting at the Hillgrove Hotel, Monaghan, on 11 October 2010, a complaint was made to the Confidential Recipient. On 11 November 2010 the Confidential Recipient notified the Minister that he had forwarded a report to the Garda Commissioner relating to allegations made against Assistant Commissioner Derek Byrne by a confidential reporter. The notification was made in accordance with paragraph 7(3) of the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007.

19.8 On 15 November 2010, a copy of that letter was forwarded to the Garda Commissioner (then Mr Fachtna Murphy) from the Secretary General’s office in the Department of Justice, Equality and Law Reform. The Commissioner replied on 18 November 2010, to say the report had been noted. The Commissioner stated:

“The matter is being addressed in accordance with the Regulations. Deputy Commissioner Rice is also carrying out investigations into related complaints received through legal channels.”

19.9 On 19 November 2010, the private secretary to the Minister wrote to the Confidential Recipient to acknowledge receipt of the correspondence dated 11 November 2010, which it was stated would be brought to the Minister’s attention.

- 19.10 On 6 April 2011 a complaint was made to the Minister for Justice and Equality (a position by then occupied by Mr Alan Shatter TD) by Ms. Lorraine McCabe, the wife of Sergeant Maurice McCabe. She said that she was writing to express her disgust at the “conduct of certain Gardaí in Mayo”, a matter which attracted some public attention at the time. She said that her husband had reported similar and worse conduct by certain Gardaí in Co. Cavan three years earlier. She gave some detail of the complaints he had made and complained that “all matters were covered up”. She referred in particular to what had happened between Sergeant McCabe and Assistant Commissioner Byrne when they met in October 2010. She stated that she wished to make a formal complaint against Assistant Commissioner Byrne. She referred to what she described as the “hurt, stress, annoyance, severe damage and sheer hell on our family and our family life”. She said that wrongdoing had been covered up and hidden.
- 19.11 She also said that they had recently received a death threat from a certain member of the force but that she would not let her husband report it because she was afraid of the repercussions. She asked for the Minister’s help.
- 19.12 That email was replied to by a letter dated 14 April 2007 from the Minister’s private secretary. The letter referred to the establishment of an independent Garda Síochána Ombudsman Commission by the Garda Síochána Act, 2005, and referred to the time limit for making a complaint and the possibility of the extension of the time limit. The letter went on to state how a complaint might be made and gave the contact details of GSOC. The letter also stated that, given the extreme seriousness of the allegation of a death threat, that was being brought to the attention of the Garda Commissioner. (There is a handwritten note attached to the Department’s file copy of the letter of 14 April which states “sent by email on 15/4”.)
- 19.13 Ms McCabe sent another email on 5 May 2011, referring to her earlier email and referring also to reminders of 13 and 25 April. She said:

“I had asked the Minister and your office for some help and received none at all. I did expect someone from your office to make contact with me and this has not happened. You acknowledge that the allegation is extremely serious?”

19.14 The Minister’s private secretary replied the following day, 6 May 2011, acknowledging receipt of the letter of 5 May 2011 and stating that it would be brought to the Minister’s attention.

Sergeant McCabe's Solicitors Request the Establishment of a Commission of Investigation

19.15 Sergeant McCabe's solicitors, Sean Costello & Co., wrote to the Minister on 16 June 2011. The letter stated that Sergeant McCabe had made several complaints which were contained in a statement of 15 October 2008 which was enclosed with their letter. That statement was a 22-page typed statement made by Sergeant McCabe in the presence of Chief Superintendent Terry McGinn and Superintendent McGovern at the offices of his solicitors. The statement detailed Sergeant McCabe's concerns about the performance of the functions of District Officer by Superintendent Foxtrot. He complained that he did not get the help and support he needed from the District Officer when he brought forward issues in relation to non-performance by Garda members, members not turning out for duty, and incidents related to the proper investigation of crime. He said that the lack of support

“brought increasing pressure and problems upon me and I felt ostracised by both him and my colleagues as a result of the action I had undertaken”.

19.16 He also complained that indiscipline escalated in Bailieboro District under Superintendent Foxtrot. The statement of 15 October 2008 included an account of many of the incidents and investigations considered in this report.

19.17 The letter of 16 June 2011 from Seán Costello & Company, Solicitors, to the Minister also referred to the meeting on 11 October 2010 at the Hillgrove Hotel, Monaghan. The letter enclosed a copy of the statement Sergeant McCabe made to Deputy Commissioner Rice on 26 November 2010. In addition, the letter from Deputy Commissioner Rice addressed to Sergeant McCabe, dated 28 April 2011 was also enclosed. That letter said that the investigations into allegations made by Sergeant McCabe in the statement of 26 November 2010 and the allegation of a threat to Sergeant McCabe's life

could not be advanced without Sergeant McCabe's support and urged him to reconsider his position and assist in the investigations.

19.18 The letter from Seán Costello & Company, Solicitors of 16 June 2011 stated that Sergeant McCabe:

“has lost all faith in An Garda Síochána to properly investigate matters about which he complains and which are obviously of huge public concern”.

19.19 The letter referred to the existence of civil proceedings and stated that the purpose of the letter was to call upon the Minister, pursuant to the Commissions of Investigation Act 2004, to establish a commission to investigate and report upon the matters raised by Sergeant McCabe. It was stated that Sergeant McCabe was of the view that there had been and continued to be serious malpractice, wrongdoing and gross dereliction of duty in the Bailieboro District and added:

“the investigations undertaken thus far have not sought to nor did they deal with these either appropriately or satisfactorily. Only an independent, fair and transparent investigation would suffice.”

19.20 It was stated that Sergeant McCabe would cooperate fully with any such inquiry. There does not appear to have been any reply to that letter at the time, although the copy I have seen bears a stamp from the Minister's office dated 17 June 2011.

19.21 There was further correspondence from Seán Costello & Company, Solicitors, on behalf of Sergeant McCabe, on 9 August 2011. The subject of that correspondence was a letter dated 4 July 2011 from the Chief Superintendent Cavan/Monaghan division, Chief Superintendent Rooney, addressed to the Assistant Commissioner, Northern Region and each District office, Cavan/Monaghan division, and headed “RE: Allegations made by Sergeant Maurice McCabe, Bailieboro Garda Station”. That letter is the subject of legal proceedings and, in those circumstances, I do not intend to

include the full text of the letter in this report. The letter purported to inform members of An Garda Síochána stationed in Cavan/Monaghan division of the outcome of the investigations into Sergeant McCabe's complaints and did so in the following terms:

“The investigation concluded that there were no systemic failures identified in the management and administration of Bailieboro Garda District. A number of minor procedural issues were identified. On further investigation at local level no evidence was found to substantiate the alleged breach of procedures. The Assistant Commissioner further concluded that there was no criminal conduct identified on the part of any member of the District force.”

19.22 Having so described the findings of the investigations, the letter went on to congratulate members who served in Bailieboro District and to say that “the high standards and professionalism of the District force in Bailieboro” had been vindicated. The letter concluded:

“Please inform all concerned.”

19.23 Chief Superintendent Rooney's letter did not advert to the many complaints by Sergeant McCabe that were upheld, nor to any of the issues identified in this report as remaining unresolved.

19.24 Sean Costello & Co's letter to the Minister of 9 August 2011 stated that they were writing “with even greater concern” having regard to that letter and their concerns were spelled out. They stated that the activities about which Sergeant McCabe complained had been referred to in the Dáil and enclosed a copy of a newspaper article referring to the matter. The letter stated that the matter had now become urgent and respectfully asked for an immediate reply.

19.25 There was a reply the following day acknowledging receipt of the letter of 9 August 2011 and stating that it was “receiving attention”. On 29 August 2011 the Minister's private secretary responded further, stating that the

contents of the correspondence of 16 June and 9 August 2011 had been noted and stating that it was understood that Sergeant McCabe's complaints were under investigation "by the Garda Síochána and the Garda Síochána Ombudsman Commission. In the circumstances it would be inappropriate for the Minister to intervene".

19.26 I do not know what was meant by the reference to a complaint of Sergeant McCabe's being investigated by GSOC. I am not aware of any such investigation and, bearing in mind the provisions of Sections 82 and 83 of the Garda Síochána Act 2005, which do not permit complaints to be made to GSOC by a member of An Garda Síochána, it seems unlikely that there was any such investigation. In the absence of any documentation from GSOC, I can put the matter no further.

19.27 A year elapsed before Sergeant McCabe's solicitors sent a direct reply to the Department's letter of 29 August 2011 but other steps were taken in the interim.

Complaint to the Minister via the Confidential Recipient

19.28 On 23 January 2012 the Office of the Confidential Recipient (by then occupied by Mr Oliver J Connolly) wrote to the Minister for Justice and Equality enclosing a confidential report received in relation to a complaint against the Commissioner of An Garda Síochána, Martin Callinan. Mr Connolly referred to Regulation 7(2) of the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations, 2007, which required the Confidential Recipient to transmit the report to the Minister. The letter noted that the report was being brought to the personal attention of the Minister but that the personal details appearing on the report had been redacted to protect the identity of the confidential reporter.

19.29 The report accompanying that letter was also dated 23 January 2012 and it is the letter to which reference is made in paragraph 1(b) of the terms of reference of this review.

19.30 The report stated that the reporter was very fearful of revenge and harassment against himself and his family. It stated that, further to meetings with the Confidential Recipient, a list of numerous incidents and cases pertaining to Superintendent Foxtrot was being provided. It stated that Superintendent Foxtrot was on a promotional list for Chief Superintendent and referred to Garda Code 9.17 which relates to unsuitable members on promotion lists.

19.31 Regulation 8(2) of the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007 provides as follows in relation to a confidential report sent to the Minister:

“On receipt of such a report, the Minister, unless he or she has reason to believe that the allegation contained in it was not made in good faith or is false, frivolous or vexatious, shall cause the allegation to be investigated or take such other action as he or she considers appropriate in the circumstances.”

19.32 The report stated that Superintendent Foxtrot was superintendent in charge of Bailieboro Garda District [REDACTED]

[REDACTED] The matters listed about which the reporter had concerns were:

- The three incidents involving Jerry McGrath (chapter 6 of this report);
- The assault and false imprisonment of a girl in Cootehill on 2 September 2007 (chapter 8 of this report);
- The public order incident on a bus at Kingscourt on 25 February 2007 (chapter 4 of this report);
- The alleged concealment of the document compiled by Inspector Delta outlining problems at Bailieboro (chapter 16 of this report);
- The dangerous driving incident at the Lakeside Manor Hotel on St. Stephen's night 2007 (chapter 9 of this report);

- The Father █████ investigation and the loss of the computer seized (chapter 12 of this report);
- The alleged alteration, erasure and falsification of official Garda records to hide malpractice (chapter 13 of this report);
- The assault in a public house in Bailieboro on 23 May 2007 (chapter 10 of this report);
- The harassment and sexual harassment of a female probationer Garda (chapter 14 of this report);
- The public order incident in █████'s restaurant, Bailieboro on 5 August 2007 (chapter 7 of this report);
- The assault at the Lakeside Manor Hotel on 14 April 2007 (chapter 5 of this report); and
- The monitoring of probationary Gardaí (chapter 15 of this report).

19.33 The confidential reporter went on to state that these incidents and many others were investigated by Assistant Commissioner Byrne, who upheld the serious ones, but decided that the complaints against Superintendent Foxtrot were not substantiated. He stated that Commissioner Callinan and Deputy Commissioner Rice agreed with Assistant Commissioner Byrne. He continued:

“I find it hard to understand that the Commissioner of An Garda Síochána has rewarded Superintendent Foxtrot and placed him on a promotion list for the rank of Chief Superintendent. One of the incidents alone is enough to question Superintendent Foxtrot's suitability for his present rank let alone promotion. It has sent out a message to the force that if you ignore your duty, are grossly negligent, hide and cover up, you will be deemed suitable for promotions.”

- 19.34 After further comment on the gravity of the incidents, reference was made to certain of the findings of the Morris Tribunal, in particular in relation to the responsibility of a Superintendent for all of the activities of the officers under his/her control in a district.
- 19.35 The report then stated that the reporter wished to make a complaint against Commissioner Callinan under the charter of the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations, 2007. The reporter stated his belief that Commissioner Callinan should have known of the malpractice and had made a serious error of judgment by placing Superintendent Foxtrot on a promotion list.
- 19.36 The reporter also stated that he wished to make a complaint against Assistant Commissioner Byrne for failing to uncover and report serious derelictions of duty, falsification of Garda records and serious incidents not being investigated. It was alleged that he also failed to deal with and report innocent persons listed on the PULSE system as suspects and criminals. Complaint was also made about an apparent meeting between Assistant Commissioner Byrne and Chief Superintendent Rooney on 24 June 2011. (Reference was made to that meeting in Chief Superintendent Rooney's letter of 4 July 2011 - see para. 19.21 above.) A number of supporting documents were attached to the letter.
- 19.37 The report was forwarded to the Garda Commissioner by the Secretary General of the Department of Justice and Equality, Mr. Brian Purcell, on 24 January 2012. His letter states:
- “As you will see, the report contains certain allegations and under regulation 8(2) of the regulations, on receipt of such a report, the Minister, unless he or she has reason to believe that the allegations contained in it were not made in good faith or are false, frivolous or vexatious, must cause the allegations to be investigated or take such other action as he or she considers appropriate in the circumstances.”

- 19.38 The Commissioner was asked to make any comments he might wish to make on the report before the Minister decided on his course of action. Such comments were sought as a matter of urgency.
- 19.39 The Commissioner replied by letter dated 27 January 2012, which appears to have been received in the Secretary General's office on 30 January 2012. This letter stated that, although the Commissioner did not know the identity of the confidential reporter, there were "remarkable similarities" with a previous complaint made under the same scheme which was extensively investigated by Assistant Commissioner Byrne and Chief Superintendent McGinn. It was stated that the substance of the complaints referred in the main to the management of Bailieboro and Monaghan Garda Stations and that the file had been forwarded to the Director of Public Prosecutions, who had directed no prosecutions in the matter.
- 19.40 The letter then set out a history of the complaints made by Sergeant McCabe who, it was stated in the letter, had "exposed his position as the confidential reporter". The complaints referred to were his original written complaint of 28 April 2008 to Garda Headquarters and complaints to the Confidential Recipient in 2008 and 2009. It was stated that Chief Superintendent McGinn was appointed to investigate the original allegations on 13 May 2008, that Assistant Commissioner Byrne was appointed to investigate the complaints to the Confidential Recipient, and that both investigations ran in parallel from an incident room established at Ballyshannon Garda station. It was stated that Sergeant McCabe had "unsolicited and repeatedly" divulged to those officers the fact that he was the confidential reporter.
- 19.41 It was stated that six District Officers had served in Bailieboro Garda District during the relevant periods (although in fact seven officers were listed). It was stated that the Assistant Commissioner's extensive investigation and supporting documentation was presented in a ten volume file. It was also stated that Assistant Commissioner Byrne had forwarded all the investigated complaints, in modular format, to the Director of Public Prosecutions, who

directed no prosecution on the basis that no criminality was disclosed against any member.

19.42 The Commissioner's letter went on to state that, from an examination of the letter of 23 January 2012, he had extracted 12 individual complaints. He reported that 11 of them had been "thoroughly examined in the above mentioned investigation by Assistant Commissioner Byrne and Chief Superintendent McGinn". He stated:

"I am satisfied that no adverse findings, or no evidence of corruption or malpractice, were discovered on the part of Superintendent Foxtrot."

19.43 He stated that the twelfth case referred to a case of child pornography and rape of a minor in September 2007. He stated that the investigation commenced in September 2007 and was efficiently and speedily carried out and resulted in November 2009 in a priest being sentenced to five year concurrent sentences at Cavan District Court.

19.44 The letter went on to refer to the meeting on 11 October 2010 between Assistant Commissioner Byrne and Sergeant McCabe at the Hillgrove Hotel, Monaghan, which was also attended by Chief Superintendent McGinn and a representative of the Association of Garda Sergeant and Inspectors. It was stated that Sergeant McCabe left the room and returned with two file storage boxes containing Garda PULSE printouts, which Sergeant McCabe "generally alleged was further evidence of malpractice by Gardaí stationed in Bailieboro Garda Station". It was stated that Sergeant McCabe made no specific allegations with regard to the documentation.

19.45 The Commissioner stated that Sergeant McCabe had made a complaint through his solicitor of assault and false imprisonment at the meeting, which complaint had been investigated by Deputy Commissioner Rice, who had forwarded a file for directions from the Director of Public Prosecutions. The latter had directed no prosecution. The Commissioner stated that Deputy Commissioner Rice commenced a separate investigation into the

contents of the two file storage boxes and found that they contained 1,153 PULSE printouts. He stated:

“Following a review of the printouts it was identified that the majority of issues related to administrative and ‘housekeeping’ oversights by individual Gardaí and accordingly it was decided that 624 of the documents be referred to Chief Superintendent Cavan/Monaghan for him to advise on the final outcome of the incidents.

On 09/11/2011 a tabulated report was received from Chief Superintendent Cavan/Monaghan detailing the outcome of the 624 incidents referred to him for clarification. The majority of the incidents related to Road Traffic and minor Public Order offences and reflected no impropriety by Superintendent Foxtrot.”

19.46 The Commissioner stated that it had proved problematic to identify issues or defects in procedures in the other 529 documents and that, to date, Sergeant McCabe had declined to assist the investigation of those printouts despite a number of items of correspondence to Sergeant McCabe and his legal representatives. He also stated:

“On the face of it the investigating officers, who are experienced investigators, cannot find any obvious issue for Superintendent Foxtrot.”

19.47 It was noted that the Confidential Recipient had been facilitated with access to the documents.

19.48 The Commissioner also noted that the Deputy Commissioner had been directed by him to review the investigation of Assistant Commissioner Byrne and Chief Superintendent McGinn and that he had reviewed all modules of the investigation and concluded that they were carried out professionally, impartially and with propriety. It was stated that seven Superintendents served as District Officer of Bailieboro District during the period the subject

of the investigation and that it was notable that there was a “specific focus on [Superintendent Foxtrot’s] tenure in office as distinct from the other six officers” even though he had only served in the District for approximately [REDACTED].

19.49 The Commissioner then stated:

“The Assistant Commissioner found that the complaints made by Sergeant McCabe were not substantiated in any way and no adverse findings are made against Superintendent Foxtrot who had answered all allegations levelled against him by Sergeant McCabe.”

19.50 It may be observed at this point that one of the issues with the conduct of the investigation by Assistant Commissioner Byrne and Chief Superintendent McGinn is whether Superintendent Foxtrot’s answers were ever made known to Sergeant McCabe and whether he had any opportunity to comment on them or deal with them in any way. As previously stated in this report, he maintains that he had no such opportunity and I have seen nothing to contradict him.

19.51 The Commissioner’s letter also referred to the complaint that had been made by Sergeant McCabe’s wife of a threat to her husband’s life and stated that Sergeant McCabe had made a prepared statement in relation to that matter on 26 May 2011. It was stated that a full investigation was undertaken and a file forwarded to seek the directions of the Director of Public Prosecutions. It was stated that directions were received on 19 January 2012 indicating that no prosecutions were warranted.

19.52 The Commissioner stated:

“I am satisfied that the substantial content of the complaints have (sic.) in fact already been fully explored in Assistant Commissioner Byrne’s extensive investigation under the confidential reporting structures.”

- 19.53 He also noted that the report had been reviewed by Deputy Commissioner Rice who was satisfied that the investigation had been conducted in a proper manner. He noted that Assistant Commissioner Byrne found no evidence of wrongdoing by Superintendent Foxtrot and stated that, since the investigation, Superintendent Foxtrot had continued to discharge his duties in an exemplary manner, resulting in his placement on a promotion list to Chief Superintendent, following an independent competitive interview process.
- 19.54 A letter issued from the Minister to the Confidential Recipient shortly after the response was received from the Commissioner. The Department of Justice does not have a copy of the signed letter but they believe that it issued on 7 February 2012. There is an internal email from the Minister's private secretary to Assistant Secretary Michael P Flahive on 3 February 2012 stating that the Minister had read the letter and approved it. The assistant secretary, Mr. Flahive, replied a few minutes later to the Minister's private secretary stating "no problem".
- 19.55 The letter from the Minister addressed to the Confidential Recipient stated:
- "any question of the Garda Commissioner having a case to answer arises only in the event that the Superintendent has been found to have committed the alleged malpractices."
- 19.56 The letter noted that a report had been sought from the Garda Commissioner and that the Commissioner had stated that there were remarkable similarities with the previous confidential report, which it was stated had been extensively investigated by Assistant Commissioner Byrne and Chief Superintendent McGinn.
- 19.57 It was noted that of the 12 individual complaints identified by the Commissioner, 11 had already been thoroughly examined by the Byrne-McGinn investigation and that no adverse findings were made and there was no evidence of corruption or malpractice discovered in relation to the named Superintendent. It was stated that the Commissioner advised that

the twelfth complaint related to a child sexual abuse case where the investigation was “efficiently and speedily carried out, resulting in a person being convicted and sentenced to five years imprisonment”.

19.58 It was also stated that the Minister had been informed by the Commissioner that the investigation had itself been reviewed by Deputy Commissioner Rice because of a related complaint made against Assistant Commissioner Byrne and that Deputy Commissioner Rice was satisfied that the investigation was conducted in a proper manner.

19.59 The letter then concluded:

“The Garda Commissioner advises me that, having regard to the outcome of the investigation and review, he is of the view that no evidence was found of any wrongdoing (corruption or malpractice) on the part of the named Superintendent, or Assistant Commissioner Byrne. On the basis of these findings, there is no evidence to support any further action by me in relation to the allegation made in the confidential report against the Garda Commissioner.”

19.60 This letter is, in effect, a communication of the decision of the Minister on the complaint transmitted to him by the Confidential Recipient. The files that I have received from the Department of Justice, insofar as they relate to the handling of that complaint, consist of the relevant correspondence outlined above. I have not seen any memorandum or submission to the Minister from his departmental staff, to assist him in the exercise of his function under Regulation 8(2) of the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations, 2007. Nor have I seen any internal departmental minute or memorandum of the Minister’s decision. On 11 April 2014 I specifically sought internal departmental documents related to the exercise of this function (and other matters). None have been produced relating to this exercise of the Minister’s specific function under the Regulations.

- 19.61 On 9 May 2012 Sergeant McCabe wrote to the Confidential Recipient attaching a report which he had prepared. He complained that the action of the Minister in going to the Commissioner to ask him to account on his own complaint was “alarming” and that he had “dented the whole Whistleblowing Charter resulting in no Garda being able, in confidence, to make an honest complaint against the Commissioner or an Assistant Commissioner”. He said that this demonstrated that the legislation was flawed. He complained that he was still being targeted and harassed for making his complaint.
- 19.62 The report Sergeant McCabe attached referred to the action taken by the Minister on foot of the letter of 23 January 2012 and the views expressed by the Commissioner to the Minister as a result. He stated that the version of events given was incorrect and that he and his legal team had never been informed that the investigation had been completed. He stated that Deputy Commissioner Rice had been appointed, not to review the investigation, but to take it over and investigate the issues and complete any outstanding matters. He said that he and his solicitor had met with Deputy Commissioner Rice in November 2010 and that he had not spoken to them or met them since and had not told them that the investigation was over or given them the outcome of his investigation.
- 19.63 He stated that a number of serious matters were still ongoing. He complained that the Minister had acted in an inappropriate way and that it was wrong of him to request a report from the persons that Sergeant McCabe had complained about. Sergeant McCabe said that it defied logic and was not fair or in keeping with natural justice and fair procedures. He asked that the Minister or his officials take a look at the evidence and the investigation files and said that the Minister was “being fed false and misleading information” and he offered to make a sworn statement to that effect.
- 19.64 He said that his allegations were of “serious corruption, malpractice, gross dereliction of duty and perverting the course of justice” and that “it

involves senior Garda management and involves cover up by senior Garda Management”. He sought a meeting with the Minister or his officials and asked that his report be given to the Minister.

Sergeant McCabe's Solicitor resumes direct contact with the Department

19.65 Sergeant McCabe's solicitors wrote directly to the Minister again on 4 September 2012, referring to earlier correspondence and, specifically, the Minister's letter of 29 August 2011, the last direct contact before the use of the confidential reporting procedure. His solicitors asserted that it did not appear that the Minister had given proper consideration to the provisions of Section 42 of the Criminal Justice Act, 2007. That statutory provision inserted by substitution an amended Section 42 of the Garda Síochána Act 2005, dealing with the appointment by the Minister of a person to conduct a special inquiry relating to An Garda Síochána. The significance of the amendment was that it extended the possible scope of such an inquiry from "any aspect of the administration, practice or procedure of the Garda Síochána", to include the operation of An Garda Síochána or the conduct of its members.

19.66 They referred to the Minister's power to direct the holding of a special inquiry and quoted from Section 42(1), as substituted. The letter continued:

"The matters as reported by Sgt. McCabe are of an extremely serious nature, they are undoubtedly matters of public concern as defined and as such, it would not be appropriate for An Garda Síochána to carry out an investigation into its own practices."

19.67 The letter enclosed three booklets of documents provided by Sergeant McCabe "relating to Malpractice and Corruption within An Garda Síochána in the Cavan/Monaghan division". (The content of these booklets is discussed further below.) It was stated that the incidents documented in the booklets were extremely serious and "unquestionably involve corrupt practices". It was stated that they were very much outside the scope of any inquiry or investigation that "might be ordinarily conducted by the An Garda Síochána and/or by the Garda Síochána Ombudsman's Commission".

19.68 It was also stated that Sergeant McCabe's solicitors wished to highlight the fact that allegations were being brought to the attention of the Minister by a serving member of An Garda Síochána,

“As the Minister for Justice and Equality has overall responsibility for the supervision of the police force of the State”.

19.69 The Minister was therefore asked to revise his position as stated in the letter of 29 August 2011. In other words, having apparently exhausted the possibilities of the confidential reporting scheme, Sergeant McCabe's solicitors were now revisiting the question of a statutory investigation, although this time as envisaged by Section 42 of the Garda Síochána Act 2005, rather than the Commissions of Investigation Act 2004.

19.70 On this occasion, there was a submission prepared within the Department. It is a three-page document written by Mr Kevin Clarke, Principal Officer, Garda Division and addressed to Mr Flahive, Assistant Secretary. It appears to be dated 18 September 2012. Mr Flahive, in turn, appears to have written a note at the top of the document addressed to the Secretary-General with a request to discuss the submission. That note is dated 22 September 2012. The submission referred to the correspondence in 2011 and stated that, in the letter recently received,

“the solicitors are claiming that the serious nature of the incidents as alleged by Sgt McCabe are a matter for public concern and are such that they warrant the Minister to direct the holding of a special enquiry as provided for under s.42(1) of the Criminal Justice Act 2007”

19.71 Reference was also made to the three booklets enclosed with the letter from Sergeant McCabe's solicitors. The submission continued with some background information in relation to Sergeant McCabe's complaints and the stated outcome of the Garda investigation, some detail of the allegations made separately by Sergeant McCabe in relation to the fixed-charge penalty system and reference to legal proceedings issued by Sergeant McCabe. It

concluded with a note of the correspondence received. The only course of action suggested in relation to the allegations contained in the three volumes, it seems, was the following:

“in view of the fact 3 volumes of incidents were enclosed with the letter it might be appropriate to refer to the Commissioner for his comments in the event that further incidents are referred to not already covered by previous investigations and inform Costello & Co accordingly.”

19.72 That course was not, however, immediately followed. The file of the Department contains a copy of a letter addressed to Sergeant McCabe’s solicitors, but which is undated. There is a handwritten note on the copy letter stating “issued 18/10/12”. In short the letter stated that, as the Minister had been asked to establish a special inquiry under Section 42 of the Garda Síochána Act, 2005, it would be important for him to take into account the observations of the Garda Commissioner on the allegations “to come to a rounded view on that request”. The letter noted that the correspondence received from Sergeant McCabe’s solicitors was marked “strictly private and confidential” and “addressee only”. His solicitors were asked to confirm that they would have no objection to the correspondence and the enclosures being forwarded to the Garda Commissioner for his views. The letter also noted the PULSE records referred to as attached in some of the documents in the enclosures were not in fact included.

19.73 A further letter was addressed to Sergeant McCabe’s solicitors from the Minister’s private secretary on 22 November 2012, referring to the letter of 18 October and asking for a response to the two points raised therein. The Minister’s private secretary wrote a reminder on 3 January 2013, asking for a response so that the matter might be progressed. Before there was any progress in that chain of correspondence, however, Sergeant McCabe made direct contact again with the Department.

Sergeant McCabe Contacts the Department

19.74 On 12 December 2012 Sergeant McCabe wrote an email addressed to the Minister, referring to public comment that had been made by the Minister and the Garda Commissioner about “ticket fixing” issues. He said that, as he did not have the privilege of being able to comment publicly, he felt he must respond by email. The email also included comment about his earlier complaints.

19.75 Sergeant McCabe said that the Minister had relayed back to him through the Confidential Recipient that there was “no evidence to the matters which are now in the media”. He said that it had also been reported to him that there was a comprehensive investigation carried out by Assistant Commissioner Byrne and that there was no evidence of a number of his complaints, which he itemised, including serious incidents never investigated, serious incidents not investigated properly, and other matters. He said:

“Mr Oliver Connolly [the Confidential Recipient] viewed the evidence and agreed it needed investigation”.

19.76 Sergeant McCabe sent a reminder seeking an acknowledgement of his email on 14 December 2012. He received a reply by email on 17 December 2012 from Mr Flahive. The letter emailed to Sergeant McCabe related mainly to the alleged improper cancellation of fixed charge notices. It did, however, refer briefly to the other issues, the subject of this report. The letter stated:

“As you know, of the 12 individual allegations made in the report to the Confidential Recipient, the Commissioner advised that 11 had already been thoroughly investigated by an Assistant Commissioner and a Chief Superintendent, that this investigation had been reviewed by a Deputy Commissioner (because of a related complaint made against the Assistant Commissioner) and that no evidence of corruption or malpractice had been discovered. You will also recall

that the Commissioner, as regards the other case, was of the view that the investigation complained of was in fact efficiently and speedily carried out”.

- 19.77 Those comments, obviously, mirror the contents of the Commissioner’s letter of 27 January 2012.
- 19.78 The Secretary General of the Department of Justice wrote again to the Garda Commissioner on 20 December 2012 asking for “additional details of the outcome of the investigation in relation to the 11 cases mentioned” in the Commissioner’s letter of 27 January 2012.
- 19.79 Although I cannot say definitively why the Minister was, at this time, re-opening the substance of the complaint made, and apparently disposed of, under the confidential reporting scheme, it must be a reasonable possibility that this course of action was prompted by Sergeant McCabe’s email of 12 December 2012.
- 19.80 On 26 February 2013, the Commissioner replied to the Secretary-General’s letter of 20 December. The Commissioner’s letter was received in the Secretary General’s office the following day. That letter provided a detailed account of the outcome of the Garda investigations into the 12 incidents which had been identified in the confidential report of 23 January 2012. Those detailed accounts are summarised in the relevant chapters of this report.
- 19.81 It is not apparent what, if any, further steps were taken on foot of the letter from the Commissioner. A summary of the allegations was later prepared by Mr Flahive and submitted to the Secretary-General of the Department, although it appears that the summary was not submitted (and perhaps not prepared) until late February 2014. It was submitted at that time, it seems, as part of the preparations for the Minister’s speech to the Dáil on 26 February 2014. Accordingly, the document cannot necessarily be said to have formed part of the Minister’s consideration of Sergeant McCabe’s complaint under the confidential reporting mechanism, nor of his

consideration of Sergeant McCabe's solicitor's request that he establish a special inquiry under Section 42 of the Garda Síochána Act 2005 (although no decision seems to have been finally made in relation to this latter request, for reasons set out hereunder). It is nonetheless a useful expression of the Department's understanding of the available information in relation to the twelve complaints that features in the confidential report of 23 January 2012.

The conclusion of the Minister's correspondence with Sergeant McCabe's solicitors

- 19.82 Sergeant McCabe's solicitors wrote again to the Minister on 16 January 2013. They noted that the Minister had "referred matters and correspondence to An Garda Síochána for investigation" and that it was "reported that the outcome of that investigation was that there was no evidence of wrongdoing". They referred to previous correspondence in which they had explained that Sergeant McCabe had no faith in such investigations and that he had not been contacted by any investigator on behalf of An Garda Síochána. It was stated this was most unusual where he had brought the information to the attention of the authorities. They also stated that they had not received the letter of 18 October. Finally, a meeting with the Minister was requested.
- 19.83 That letter was acknowledged by the Minister's private secretary on 18 January 2013 and it was stated that he would bring the matter to the Minister's attention.
- 19.84 The private secretary to the Minister again wrote to Sergeant McCabe's solicitors on 11 March 2013. This letter dealt with another matter (relating to the enforcement of road traffic legislation) and then went on to raise the two issues that had been raised in the letter of 18 October, i.e. whether there was any objection to the enclosures with the letter of 4 September being forwarded to the Garda Commissioner for his views and also the absence of PULSE records which were referred to as being enclosed in the booklet supplied with the letter of 4 September. A response was requested

on those two issues as soon as possible. It was then stated that bearing in mind the need for clarification and resolution of those issues, and having regard to the existence of civil proceedings against the Minister, the question of a meeting did not arise.

19.85 Sergeant McCabe's solicitors wrote again to the Minister on 1 May 2013 acknowledging the letter of 11 March. There was some comment about the investigation into the enforcement of traffic legislation. It was stated in relation to the PULSE records that they had already been provided to the Garda authorities to form part of the investigation concerning the enforcement of traffic legislation. The letter also stated that it was not understood why it was believed that the question of a meeting did not arise concerning the very serious matters raised by Sergeant McCabe.

19.86 A further letter issued from the Minister's private secretary on 22 May 2013, which stated that Sergeant McCabe's solicitors had still not answered the main question put in the letters of 18 October 2012 and 11 March 2013. They were again asked to confirm that they had no objection to the documentation enclosed with their letter of 4 September 2012 being forwarded to the Garda Commissioner for his views. It was stated that the documentation was not the same as that which was subject to the inquiry by Assistant Commissioner O'Mahony in relation to road traffic legislation. It was again stated that it would be important for the Minister to have the Garda Commissioner's views as well as Sergeant McCabe's before coming to a decision on their request for an inquiry under Section 42 of the Garda Síochána Act, 2005. In relation to the request for a meeting, the letter referred to the position expressed in the letter of 11 March 2013.

19.87 Shortly afterwards, a short submission was made to the Minister's office by Mr Flahive, Assistant Secretary. It was an email with two attachments; the first a chronology of the correspondence between the Department and Sergeant McCabe, the second a summary of the contents of the three booklets furnished to the Department by Sergeant McCabe's solicitors the previous September.

19.88 The correspondence seems to have effectively come to an end with the letter of 22 May 2013. The conclusion was something of an impasse. The Minister had not refused to exercise his power under Section 42 of the 2005 Act to establish a special inquiry; he had merely sought agreement to his sending the three booklets to the Garda Commissioner for his observations, as a preliminary step before deciding whether to establish such an inquiry. Sergeant McCabe's solicitors, on the other hand, had not objected to the booklets being sent to the Commissioner, but they had not expressly consented either and, of course, they had previously signalled very clearly a loss of confidence in any internal Garda investigations. The impasse, such as it was, was resolved by advice from the Office of the Attorney-General, but not until December 2013.

19.89 At that time, advice was received from the Attorney General. I do not have a copy of any letter seeking advice, nor of any memo of the advice sought, but I do have a copy of the letter furnished by the office of the Attorney General, advising the Minister in relation to the matter. The substance of the advice related to the three booklets of allegations that were received by the Minister under cover of the letter of 4 September 2012 from Sergeant McCabe's solicitors. The advice was to forward the two booklets relating to complaints of malpractice and corruption to the Minister "without further ado". It was said that, if there was any issue with such a course of action, it was for Sergeant McCabe's solicitors to say so earlier in the correspondence. The advice in relation to the third booklet was that it be returned to Sergeant McCabe's solicitors, in light of the existing proceedings in relation to alleged harassment.

19.90 It is unclear whether or not the documents were ultimately forwarded to the Commissioner.

Analysis

19.91 The Minister for Justice and Equality has an important and independent investigative function in relation to An Garda Síochána. In the papers that I have reviewed it is apparent that the Minister was invited to exercise two

specific statutory functions. They are: the power to establish a special inquiry pursuant to Section 42 of the Garda Síochána Act 2005, as amended, and the function provided for in Regulation 8(2) of the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007 (S.I. No. 168 of 2007). (There was also a request to establish a Commission of Investigation under the Commissions of Investigations Act 2004. Although there may be cases in which that approach is called for, it is not a specific statutory function arising in relation to the Minister's functional responsibility for An Garda Síochána.) What is important about these specific Ministerial functions is that they enable the Minister to ensure that an investigation, in the true sense, independent of An Garda Síochána, can be conducted into matters that might be the subject of a complaint made to the Minister.

- 19.92 Section 42 of the Garda Síochána Act 2005 empowers the Minister to appoint a person to conduct a special inquiry "with respect to any matter considered by [the Minister] to be of public concern". The Act contains no specific criteria for the exercise of that power but, presumably, it requires some assessment by the Minister of whether or not any particular complaint is a matter "of public concern" which might warrant such an inquiry.
- 19.93 The options open to the Minister upon receipt of a report under the Confidential Reporting scheme which makes an allegation against the Commissioner are set out in Regulation 8(2) and were, in fact, stated in the Secretary-General's letter of 24 January 2012 to the Commissioner. The first option open to the Minister was to determine that "he has reason to believe that the allegation ... was not made in good faith or is false, frivolous or vexatious". If the Minister does not have such reason, he has two options. The first is to "cause the allegation to be investigated". The second is, instead of an investigation, to "take such other action as he considers appropriate in the circumstances", which appears to allow the Minister a broad discretion as to how to deal with the matter. There appears to be no question of the allegations having been investigated at the

instigation of the Minister. It is not clear, however, which of the other options the Minister adopted.

19.94 In this case substantial and reasonably detailed allegations of significant misconduct were made in 2011 and 2012. In January 2012, those allegations included an allegation of misconduct by the Commissioner, through the statutory confidential reporting mechanism, for listing a Superintendent for promotion despite it being alleged that he was unsuitable for promotion by reason of his alleged involvement in the matters complained of. By September 2012, those allegations included all of the allegations contained in the dossier (although the supporting documentation, including PULSE printouts, had not been and, as far as I can tell, never were furnished to the Minister, despite requests to do so). There was also a complaint about the conduct of the existing internal Garda investigation, in a number of respects, and an assertion of a loss of confidence in such an internal investigation.

19.95 From the papers I have seen, I have had difficulty finding material which demonstrates that the Department identified and understood the significant independent statutory role which the Minister had to perform in respect of those matters. The practice adopted when matters were brought to the Department's attention was invariably to refer the issues that had been raised to An Garda Síochána. While it would, of course, be entirely reasonable to expect that, where a complaint is made, opportunity will be given to the person the subject of the complaint to respond to it, it is a different matter altogether to be entirely satisfied by that response.

19.96 The initial response of the Commissioner in January 2012 was almost entirely lacking in any detailed account of the substance of the allegations or the conduct and findings of the internal investigation. The only exception concerned the allegations arising out of the events in the Hillgrove Hotel in October 2010, which received a somewhat more detailed treatment. The twelve complaints identified in the confidential report of 23 January 2012 were disposed of in a single paragraph.

- 19.97 There is no record that I have seen of that response from the Commissioner having been the subject of any submission to the Minister by his officials and there is no record of what decision the Minister made on foot of that information, apart from the contents of the letter to the Confidential Recipient which appears to have been sent on 7 February 2012. That letter is unclear as to whether the Minister had decided that there was reason to believe that the allegation was “not made in good faith or is false, frivolous or vexatious” or whether the Minister was not of that view but was satisfied that he had taken such action “as he consider[ed] appropriate in the circumstances”. Whichever course the Minister was taking, it is clear that the only action taken on foot of the confidential report was to seek a response from the Commissioner.
- 19.98 That response appears to have been accepted without question (at least until further correspondence from Sergeant McCabe the following December) and the Minister’s response to the Confidential Recipient included express reference to the Commissioner’s having advised the Minister of the findings of the internal investigation. In effect, the process of determining Sergeant McCabe’s complaints went no further than the Minister receiving and acting upon the advice of the person who was the subject of the complaint.
- 19.99 A more detailed response was sought almost a year later after further correspondence from Sergeant McCabe and his solicitors. That response was contained in the letter of 26 February 2013.
- 19.100 Again, as had occurred when the Commissioner’s initial response was received in January 2012, there does not appear to have been any written submission to the Minister by his officials in relation to the Commissioner’s response, and there is no record I have seen of the Minister making any decision or forming any view in relation to that response. Had it been probed and tested in any reasonable way, further important questions would have come to light. (The specific issues arising are considered in detail in the relevant chapters of this report.) It is surprising that, having been

informed that complaints had been investigated internally by An Garda Síochána, the Minister appears to have been satisfied by a brief summary of the conclusions of the investigation, rather than seeking a copy of the investigation report for review. Indeed, in all the papers furnished by the Department, I can find no evidence of any detailed assessment within the Department of any of the allegations made by Sergeant McCabe or of the responses received from the Commissioner.

19.101 There is a near-total absence in the papers I have seen of written records of any submissions made or advice given to the Minister by his officials, in particular at the times when the exercise of specific statutory functions by the Minister arose. Similarly, I have seen no written internal records of decisions made by the Minister (in particular between 23 January and 7 February 2012). As a result, this review is unable to shed any light on the reasons for the approach adopted by the Minister to the exercise of those functions. For whatever reason, the approach adopted had the result that there was no independent investigation of Sergeant McCabe's complaints. The absence of the records that one would expect of a careful and reasoned exercise of an important statutory function is a matter of some concern. Insofar as the letter of 7 February 2012 records reasons that are not otherwise apparent, it appears that the Minister acted as he did on foot of advice received from the Commissioner, without that advice being questioned or analysed.

19.102 The advice of the Commissioner was to the effect that no evidence of wrongdoing was found on the part of the named Superintendent. The analysis in this report of the allegations made by Sergeant McCabe and of their investigation by An Garda Síochána suggests that there are important issues concerning the conduct of criminal investigations under the direction and management of that named Superintendent which remain unresolved.

19.103 In all the circumstances, I am of the opinion that there is cause for concern as to the adequacy of the investigation of the complaints made by Sergeant McCabe to the Minister for Justice and Equality and a sufficient basis for

concern as to whether all appropriate steps were taken by the Minister for Justice and Equality to investigate and address the specified complaints.

19.104 In my opinion, these matters warrant further inquiry in an appropriate forum in the public interest.

Chapter 20: Conclusion and Recommendations

- 20.1 In any organization whose members face the significant daily challenges and pressures that must be borne by those whose duty it is to ensure the security of the State and the safety of its citizens, a critical voice is in danger of being heard as a contrary voice. The paradigm of the whistle-blower is an unattractive one. The whistle-blower, like the referee from whom he gets his name, is seen as someone who is not on the team. The challenge of accommodating and learning from legitimate criticism is always going to be a difficult one, especially in a disciplined force.
- 20.2 But discipline is not merely the absence of insubordination. Discipline is application to the task at hand. The complaints made by Sergeant McCabe all have their origin in what he perceived to be a failure of An Garda Síochána in Bailieboro District to apply itself with discipline and determination to the investigation and prosecution of crime.
- 20.3 While it is beyond the scope of this review to make any determination of the complaints Sergeant McCabe has made, the documentation examined gives cause to share the concern expressed in them and, for the reasons outlined in this report, there is cause for concern as to the adequacy of the investigations that have taken place into those complaints and as to whether all appropriate steps have been taken.
- 20.4 I should also advert briefly at this point to an issue which has featured extensively in the documents I have examined, but which is beyond the scope of my terms of reference. That is the experience that Sergeant McCabe has had within An Garda Síochána since making his complaints. I have seen extensive documentation, including the third volume of the three booklets furnished to the Minister for Justice and Equality by Sergeant McCabe's solicitors in September 2012, which gives cause for concern about the personal and professional consequences for Sergeant McCabe of his having made the complaints examined in this report and other similar complaints. It is not for me to express any view on those matters, except to say that Sergeant McCabe's experience calls for examination.

20.5 It should be recorded here that the Byrne-McGinn report found that:

“No malice on the part of Sergeant McCabe is established in the making of his various complaints.”

20.6 The time I have spent with Sergeant McCabe in the course of extensive interviews has led me to no different conclusion. That said, the better view, in any event, is likely to be the testimony of the men and women who worked with Sergeant McCabe in the years before he made the complaints that have been examined in this report.

20.7 The Byrne-McGinn investigation received statements from all of the District Officers who had responsibility for Bailieboro District between 2003 and 2010. Chief Superintendent Gabriel McIntyre said:

“I found Sergeant McCabe to be very positive and energetic in his position. He displayed a strong work ethic with a strong emphasis in community policing and to providing a high standard of policing to the community.”

20.8 Detective Superintendent Eugene Corcoran said:

“I found Sergeant McCabe to be capable and enthusiastic in his approach to his duties. At all times I found him to be efficient. . . . I would assess his performance very positively. In my experience he was hard working and efficient. He understood the need to keep the District Officer advised of all matters requiring attention at Superintendent level. . . . I found him to be very interested in his work and in ensuring that matters were attended to promptly.”

20.9 Retired Superintendent Liam Hogan said:

“I considered Sergeant McCabe to be an excellent Sergeant and member of An Garda Síochána. He offered 200% commitment and was my one of my most reliable members in the District. I relied on him, I trusted him implicitly and I listened to his advice. . . . He was full of enthusiasm with a very positive attitude. I was aware that he worked

hard and long hours displaying absolute loyalty and commitment to An Garda Síochána, to the management team in the District, to his colleagues and to the people of Balieboro. He took a particular interest in the work progress and welfare of junior members in the District HQ.”

20.10 Superintendent M Lernihán said:

“I found [Sergeant McCabe] to be efficient, flexible and committed. He was diligent in the performance of his duties. He encouraged and directed those under his supervision and had a good working relationship with the other Sergeants.”

20.11 No complex organization can expect to succeed in its task if it cannot find the means of heeding the voice of a member whose immediate supervisors hold him in the high regard in which Sergeant McCabe was held. Ultimately, An Garda Síochána does not seem to have been able to do that. Nor does the Minister for Justice and Equality, despite his having an independent supervisory and investigative function with specific statutory powers. The same appears to be true of GSOC, although this review is hampered in making any assessment in that regard by the fact that GSOC has not made documentation available.

20.12 In my opinion, having regard to the number, range and importance of the issues arising, it is desirable in the public interest that a comprehensive Commission of Investigation be established pursuant to the Commissions of Investigation Act 2004 to investigate the issues that remain unresolved arising out of the complaints made by Sergeant Maurice McCabe and examined in this report. Such a Commission is, in my opinion, desirable in the public interest to ensure continuing confidence in the institution of An Garda Síochána and the criminal justice system.

20.13 If that recommendation is accepted, I suggest that the terms of reference might usefully include the following definite matters of urgent public importance:

- a. The investigation by An Garda Síochána of a public order incident and possible sexual assault on a bus at Kingscourt on 25 February 2007;
- b. The investigation by An Garda Síochána of an assault at the Lakeside Manor Hotel on 14 April 2007;
- c. The investigation by An Garda Síochána of two incidents involving Jerry McGrath, i.e. the assault on ██████████ and the abduction of a child during the burglary of a house in Tipperary, and the management and coordination by An Garda Síochána of those investigations, in particular in relation to the question of bail;
- d. The investigation by An Garda Síochána of a public order incident in ██████████'s restaurant, Bailieboro on 5 August 2007;
- e. The investigation by An Garda Síochána of an incident of assault and false imprisonment of a girl in Cootehill on 2 September 2007;
- f. The investigation by An Garda Síochána of a dangerous driving incident at the Lakeside Manor Hotel on 27 December 2007;
- g. The investigation by An Garda Síochána of an assault in a public house in Bailieboro on 23 May 2007;
- h. The investigation by An Garda Síochána of sexual offences and child pornography offences by Father ██████████, having particular regard to the loss of a computer seized during the course of that investigation;
- i. The investigation by An Garda Síochána of the allegations made by Sergeant Maurice McCabe of malpractice and corruption in relation to PULSE records seized from him on 11 October 2010 at the Hillgrove Hotel, Monaghan;
- j. The investigation by An Garda Síochána and the Minister for Justice and Equality of the complaints made by Sergeant Maurice McCabe in

relation to the above matters, and such other like matters as may seem appropriate;

- k. The investigation by An Garda Síochána and the Garda Síochána Ombudsman Commission of Garda disciplinary issues arising out of the above matters.
- l. The general conduct of policing at Bailieboro Garda District in 2007/2008;
- m. The management and operational structure and resource allocation for Bailieboro Garda District, including:
 - The number of probationary Gardaí assigned to Bailieboro Garda District at the relevant times;
 - The number and experience of Sergeants available to supervise and monitor on a daily basis the work of those probationary Gardaí;
 - The significance, if any, of the absence of an Inspector permanently allocated to Baileboro Garda Station;
 - The stability, continuity, and experience available at District Officer level in Bailieboro District at the relevant times; and
 - The arrangements in operation for the supervision and monitoring of probationary Gardaí in relation to their operational and, specifically, investigative duties.
- n. The standard of accommodation at Bailieboro Garda station and its possible impact on the performance of the policing function.

20.14 In addition, I recommend that the following specific legal and procedural issues be the subject of further review by the appropriate bodies:

- a. An Garda Síochána should review the procedures for the taking of a statement amounting to the withdrawal of a complaint of criminal

wrongdoing. The circumstances in which such a statement of withdrawal might be made are varied. However, such a statement should not be taken and should not be recorded as the withdrawal of a complaint, merely because the complainant has been told that there was insufficient evidence to prosecute. Consideration should be given to requiring approval for the taking of such a statement by the District Officer and only on a formal written report of the circumstances being made to him/her.

- b. In any case in which disciplinary proceedings are recommended against a probationary Garda, a report should be obtained on the adequacy and effectiveness of the supervision of the probationary Garda. Such report should contain a recommendation as to whether there are grounds for disciplinary proceedings for neglect of duty in the supervision or management of the probationary Garda.
- c. An Garda Síochána should review its procedures and its guidance to members on the steps to be taken to ensure both that any CCTV footage relevant to an incident is obtained, if possible, and that the efforts of members to do so should be carefully and fully recorded. The failure to make such a record, especially in cases where CCTV footage is not available, imperils the successful prosecution of any offence detected.
- d. An Garda Síochána should review the effectiveness of the PULSE computer system as a means for recording and supervising compliance with conditions of bail, including the ability of that system to communicate automatically with the information technology systems of the Courts Service in relation to bail conditions.
- e. The operation of the system of station bail requires review. There is a legal issue as to whether the provision now made in the relevant recognisance form (Form 17.2, Schedule B of the District Court Rules, 1997, as inserted by the District Court (Criminal Justice Act 2007)

Rules 2008 (S.I. No. 41 of 2008)), requiring good behaviour as a condition of station bail, is effective having regard to the terms of Section 31 of the Criminal Procedure Act 1967, as amended. More broadly, the question whether the system of station bail is being properly applied as an alternative to bringing an accused person before a court for the determination of bail by a judge requires consideration. Mr Thomas O'Malley has recommended "an empirical investigation of its operation" (The Criminal Process (Round Hall, Dublin 2009) p.419). I agree.

- f. An Garda Síochána should review the direction and guidance available to its members concerning the use of Section 2A of the Bail Act 1997 and the arrangements that are in place to enable members to avail of that provision in appropriate cases.
- g. An Garda Síochána should review the direction and guidance available to its members concerning the taking of victim impact statements and the conduct of summary prosecutions in such a way as to ensure that victim impact evidence is available to the District Court in appropriate cases.
- h. The arrangements for the provision of psychiatric reports to courts require review. The provision of such a report to a court without a copy being made available to prosecuting Gardaí gives rise to a possibility that a court might be misled as to factual matters, on which the psychiatrist is dependent upon the account given by his/her patient, who may be more or less truthful. In particular, the possibility that a court might be moved to grant bail on foot of such a report, without the Gardaí having an opportunity to consider the veracity of the factual basis of the report, is a cause for concern.
- i. An Garda Síochána should review the guidance and instructions given to Gardaí, in particular probationary Gardaí, about their dealings with complainants / injured parties at or around the time of a reported incident, with a particular concern to ensure that there is

clear guidance to avoid conduct that may be perceived by a complainant / injured party as intimidating by reason of the presence of a suspect.

- j. An Garda Síochána should review its procedures and any directions or guidance available to members in relation to the recording of contemporaneous notes of the steps taken in an investigation, including by those members who perform a statutory role (such as member in charge for the purpose of the Custody Regulations), so that important events, and the reasons for them, should be properly recorded.
 - k. An Garda Síochána should review its procedures and any directions or guidance available to members in relation to the formal production, dating and signature by members of statements of evidence. Such practice as producing undated statements, or “updating” statements at a later date after they were initially made, are capable of undermining the credibility of Garda evidence.
 - l. The Department of Justice and Equality should review its procedures for the assessment of complaints made to the Minister in relation to any aspect of the administration, operation, practice or procedure of An Garda Síochána or the conduct of its members and for the determination by the Minister of applications for the exercise of the specific statutory and regulatory functions available to the Minister in that regard.
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