

THE HIGH COURT

JUDICIAL REVIEW

2009 783 JR

BETWEEN

PAUL FANNING

APPLICANT

V.

THE COMMISSIONER OF AN GARDA SÍOCHÁNA

RESPONDENT

Judgment of Mr. Justice Hedigan delivered the 22nd day of February 2011.

1. The applicant is a Garda Sergeant stationed at Cabra Garda Station, Dublin 7. The respondent is the person who enjoys general direction and control of An Garda Síochána, the force established pursuant to the provisions of the Police Forces Amalgamation Act, 1925 and having his principal offices at Garda Headquarters, Phoenix Park, Dublin 7.

2. Until the 10th of June, 2008, the applicant was in charge of Unit B at Ballyfermot Garda Station. The applicant was the direct supervisor of Garda Emma Corcoran who was a member of Unit B. On 10th June, 2008, the applicant was informed that on the 8th June, 2008, Garda Corcoran had made a complaint of harassment on grounds of her sexual orientation against the applicant. An investigation was commenced under the Garda Síochána (Discipline) Regulations. The applicant initiated judicial review proceedings seeking to prohibit the investigation on the basis that the respondent was legally obliged to first exhaust the policy set out in the document entitled "Policy and Procedures Harassment, Sexual Harassment and Bullying of An Garda Síochána" which was adopted by Garda Síochána HQ Directive 164/07.

At the hearing of the judicial review proceedings on the 18th February, 2009, O'Neill J. on consent granted an order of *certiorari* in respect of the decision of the respondent to appoint Superintendent Joseph Gannon as an Investigating Officer under the Garda Síochána (Discipline) Regulations. It was ordered that all records and entries relating to the aforesaid decision be quashed. An order of *prohibition* was also granted prohibiting the respondent from investigating the complaint any further until the policy and procedures adopted by Garda Síochána HQ Directive 164/07 were fully exhausted.

3. The respondent notified the applicant on the 12th March, 2009, that proceedings under the Garda Síochána (Discipline) Regulation had been discontinued. The investigation then started afresh in accordance with the appropriate policy provisions and on the 27th March 2009, the applicant was notified that an investigator had been appointed to investigate the complaints. On the 27th April, 2009, the applicant was contacted by Inspector Duff who informed the applicant that he was to investigate the complaint. The applicant was notified of the complaint made against him on the 8th June, 2008. The complaint was that on the 13th May, 2008, Sergeant Fanning attached a folded paper with the term "FAG 1" onto the private motor car of another member in which Garda Corcoran was travelling as a passenger. The letter to Sergeant Fanning stated that the issue could be resolved by mediation if both parties were agreeable. Sergeant Fanning was agreeable to mediation however Garda Corcoran was not.

On the 14th May 2009, Sergeant Fanning was notified by the respondent that Inspector Patrick O'Sullivan had been appointed to investigate the complaint in place of Inspector Duff. On the 24th May, 2009, the applicant met with Inspector O'Sullivan who gave Sergeant Fanning four examples of the allegations he was investigating, including:

- i) The sending of messages on the command and control system that:- "This is the Fez."
- ii) The sending of messages on the command and control system that:- "This is L151. The Fez is looking for a woman in Ballyfermot."
- iii) That Sergeant Fanning had asked Garda Corcoran after searching a female prisoner whether she enjoyed the search.
- iv) That Sergeant Fanning attached a folded paper with the term "FAG 1" onto the private motor car of another member in which Garda Corcoran was travelling as a passenger.

4. The applicant was also informed that the investigation would not be completed within the 28 day period envisaged under the policy and he was asked whether he had any objection to this. The applicant indicated that he would have to seek legal advice. The applicant asked Inspector O'Sullivan why he had outlined four allegations whereas he had only been informed of one allegation by Chief Superintendent Coburn which was the allegation concerning the number plate. Inspector O'Sullivan informed the applicant that his investigation would cover all four allegations. At the applicants request Inspector O'Sullivan gave him a copy of the statement.

On 2nd June, 2009, the applicant again met Inspector O'Sullivan, he was provided with a lengthy statement taken from the complainant on 2nd June, 2009. The applicant was asked to suggest a date when Inspector O'Sullivan could interview him in relation to the complaints and enquired if there were any witnesses that the applicant wished the Inspector to interview in relation to the investigations.

The applicant was provided with witness statements on 8th June, 2009, the inspector read out the complaints; the applicant made no response to the complaints and informed the Inspector that he needed time in order to seek legal advice. The applicant had previously been advised that if he did not seek an extension of time on or before the 10th June, 2009, Inspector O'Sullivan would submit the investigation file to Chief Superintendent Coburn, as required under the policy. The applicant did not make any statement

or submissions in relation to the investigation.

5. On the 10th of June 2009, Chief Superintendent Coburn wrote to the applicant stating:

" I am to inform you that this investigation is now complete and that Inspector O'Sullivan has submitted an investigation file to me for consideration...On the 8th of June at a meeting with Inspector O'Sullivan ... you were asked if you wished to make a written response. You stated you were awaiting legal advice in this regard.

Having received the completed investigation file from Inspector O'Sullivan and having received no such written submission from you at this time, I have decided therefore to extend the period by a further 5 days in order to allow you seek legal advice and make a written submission in this matter, should you wish to do so.

In any event I propose to submit the complete investigation file, along with my findings in this matter to Assistant Commissioner D.M.R and Assistant Commissioner Human Resource Management & Research, no later than 19th June 2009."

By letter dated the 15th June, 2009, the applicant's solicitor wrote to the Garda Commissioner and complained that the witness statements provided to him could not have been from 2009. The solicitor further complained that there had been an inexcusable delay on behalf of the respondents following the Court Order of the 19th February, 2009, and that the paucity of detail provided to the applicant meant that the investigation was unfair and his right to fair procedures and natural justice had been undermined.

In response the respondents confirmed that they had no objection to the extension of time sought, and that the issues raised by the applicant's solicitor would be examined. The applicant's solicitor again wrote to the respondent on 10th July, 2009, reiterating his concerns and seeking an undertaking that the investigation would be discontinued, no such undertaking was given. The applicant sought and was granted leave to apply for judicial review and interim relief staying the investigation of the complaint.

6. The applicant seeks the following reliefs:-

- i) An Order of *certiorari* quashing the decision of the respondent to appoint Inspector O'Sullivan to investigate the complaint(s) made by Garda Emma Corcoran against the applicant under the Policy & Procedures of Harassment, Sexual Harassment and Bullying of An Garda Síochána.
- ii) An Order of *certiorari* quashing the completed investigation file of Inspector Pat O'Sullivan in relation to the complaints of Garda Emma Corcoran against the applicant.
- iii) An Order of *prohibition* prohibiting any action being taken in relation to the investigation file of Inspector Patrick O'Sullivan in relation to the complaints of Garda Emma Corcoran against the applicant.
- iv) An Order of *certiorari* quashing all records and entries in relation to the investigation of the complaints made by Garda Emma Corcoran against the applicant under the Policy & Procedures of Harassment, Sexual Harassment and Bullying of An Garda Síochána.
- v) An Order of *prohibition* prohibiting the respondent from relying upon any statements that were made in the course of Superintendent Gannon's investigation into the complaint(s) of Garda Emma Corcoran against the applicant under the Garda Síochána (Discipline) Regulations 2007 in any current or future investigation into the complaint(s) of Garda Emma Corcoran.
- vi) An order of *certiorari* quashing all records and entries in relation to the investigation by Superintendent Gannon of the complaint(s) made by Garda Emma Corcoran against the applicant under the Garda Síochána (Discipline) Regulations.
- vii) A declaration that the respondent his servants or agent are out of time under the Policy & Procedure of Harassment, Sexual Harassment and Bullying of An Garda Síochána to investigate the complaint(s) of Garda Emma Corcoran against the applicant.
- viii) An Order of *prohibition* prohibiting the Respondent his servants or agents from investigating the complaint(s) made by Garda Emma Corcoran against the applicant under the Policy & Procedures of Harassment, Sexual Harassment and Bullying of An Garda Síochána.
- ix) An Order of *prohibition* prohibiting the respondent his servants or agents from permitting Inspector Patrick O'Sullivan or any other member of An Garda Síochána from taking any further steps investigating the complaint(s) of Garda Emma Corcoran made against the applicant under the Policy & Procedures of Harassment, Sexual Harassment and Bullying of An Garda Síochána.
- x) An Order of *prohibition* prohibiting the respondent his servants or agents from requiring the applicant to partake in any investigation of the complaint(s) of Garda Emma Corcoran under the Policy & Procedures of Harassment, Sexual Harassment and Bullying of An Garda Síochána.

Submissions of the Applicant

7.1 On 8th June, 2009, the applicant was provided with all the witness statements by Inspector O'Sullivan, six of the seven statements were taken by Sergeant Paul Curtis. Upon examination of the content of the witness statements it appears that some and possibly all of the statements were taken prior to Inspector O'Sullivan's appointment to investigate the matter on the 14th May, 2009. This is clearly in breach of fair procedures in circumstances where any new investigation into the complaints should have been properly started afresh in compliance with the order of O'Neill J. to quash the decision of the respondent to appoint Superintendent Gannon to investigate the complaints and to quash all records in relation to this decision.

7.2 In the witness statement of Garda O'Malley made to Sergeant Paul Curtis on the 28th of May, 2009, he states

"I can recall the end of last year or early this year, when I was speaking to Emma and she told me that she couldn't handle work, she told me that she was being picked on by Sergeant Fanning and she was going sick."

This statement suggests that Garda Corcoran complained at the end of 2008. The applicant was not working with Garda Corcoran at that time. There are similar inconsistencies in four other witness statements which indicate that these statements were made in the course of the previous investigation by Superintendent Gannon. Sergeant Paul Curtis in his affidavit sworn on 24th June, 2010, averred that the five witness statements were taken by him during the course of the second investigation.

Under examination Sergeant Curtis gave evidence that the witness statements from the first investigation were used in the second investigation. Sergeant Curtis gave evidence that he used a memory stick which contained the original statements, he met with the relevant witnesses, he read out their statements to them and asked them to make whatever changes they felt were necessary. The applicant submits that the use of these statements is in fact a breach of the court order of O'Neill J and renders the second investigation void.

7.3 The applicant was informed in the minute of 29th April, 2009, that he was facing more than one allegation. The applicant was not made aware until 24th May, 2009, of the entirety of the allegations he faced despite the fact that the Order in relation to the earlier judicial review proceedings was made on the 19th February, 2009. It is submitted on behalf of the respondent that this is a breach of fair procedures and natural justice. Furthermore while the respondent argues that the court is being asked to intervene in an investigation and it is premature to complain of a lack of fair procedures at this stage, the applicant argues that this is more than a mere investigation. In paragraph 8.10 at p 39 it states that where a complaint is upheld:-

"The Chief Superintendent... may issue advice, admonition or warning as necessary and monitor the situation for a period thereafter"

It is clear therefore that this procedure could have a significant effect on the future promotional prospects of the applicant, hence the absolute requirement that fair procedures be followed and the policy be strictly complied with.

7.4 There has been inexcusable delay in dealing with the complaint made on the 8th of June, 2008, by Garda Corcoran. The settlement in relation to the previous High Court proceedings was made on the 19th February, 2009. The applicant submits that the "clock began to tick again" from this date and that the complaint should have been investigated and a file submitted to the Chief Superintendent within 28 days of this date. Instead the applicant was contacted by Inspector Duff on the 27th April, 2009, and the applicant was not provided with the original statement until 24th May, 2009. These time frames are in breach of the time limit set out in the policy for dealing with such complaints. The booklet provides at paragraph 8.4 page 33:-

"The investigator will report their findings within 28 days of the complaint being received at the Chief Superintendent."

The booklet provides at paragraph 8.5 page 35:-

"Extensions to the time limits outlined are acceptable once there is clear justification and both the complainant and the person complained of have indicated that they have no objection to the extension."

The applicant did not consent to an extension of time when Inspector O'Sullivan raised the issue of time on the 24th May, & 8th June, 2009. The applicant instead stated that he needed to take legal advice on the matter. It is logical that the 28 days should commence from the 19th February, 2009, and the respondents do not have the right to pick and choose what date to start the investigation.

7.5 The issue of delay in the context of garda disciplinary procedures was addressed by the Supreme Court in the case of *McNeill v The Commissioner of An Garda Síochána* [1997] 469 Hamilton C.J. held at 480:-

"The proceedings instituted against the applicant by the respondent have been instituted pursuant to the provisions of the Garda Síochána (Discipline) Regulations 1989 (the Discipline Regulations) and alleged breaches of discipline on the part of the applicant. The provisions of the said regulations are binding not only on the applicant but on the respondents and the entire question of delay must be considered in the context of such regulations and the requirements thereof.

In these proceedings, the court is not really concerned with the principals established with regard to the effect of delay on either civil or criminal proceedings because the proceedings instituted by the respondent against the applicant are neither civil nor criminal. They are in respect of breaches of discipline alleged to have been committed by the applicant as a member of the Garda Síochána and must be dealt with in accordance with the provisions of the Discipline Regulations which set forth in detail the procedure for dealing with alleged breaches of regulations by a member of An Garda Síochána. If the procedures set forth in the Discipline Regulations are followed and the principle of fair procedures applied then the court should not intervene...The use in the regulation of the phrases "as soon as practicable", "as soon as may be" and "without avoidable delay" clearly indicate the intention of the Minister of Justice, as expressed in the said regulations, that the alleged breach of discipline members of the Garda Síochána be dealt with expeditiously and as a matter of urgency."

The applicant submits that the Policy & Procedures of Harassment, Sexual Harassment and Bullying of An Garda Síochána sets down strict time limits and because these time limits were not observed the applicants right to fair procedures have not been protected and the investigation should therefore be quashed.

7.6 The applicant was only provided with the witness statements on the 8th June, 2009. The completed investigation file was submitted on the 10th June, 2009. The booklet provides at paragraph 8.6 page 38:-

"Both parties will be given an opportunity to comment on the content of the witness statements (if any)."

The applicant submits that he was given an insufficient amount of time to allow him to properly consider the statements so that he could prepare a response. A similar failure by Garda Authorities to allow sufficient time within which to properly consider statements was evident in the case *Healy v Commissioner of An Garda Síochána*, (Unreported, High Court, 7th November, 2000), Herbert J held at 20:-

"In my judgment the Garda Síochána Authorities could not, by reason of their own failure to act with sufficient promptness, create a situation where by reason of the danger of overreaching the probationary period and thereby voiding the rights of the Commissioner of An Garda Síochána under Regulation 16 of the Garda Síochána (Admissions and Appointments) Regulations 1988, the Applicant should be denied a sufficient time within which to properly consider, prepare, and present a "comprehensive response". It was utterly futile ensuring in compliance with the decision of McGuinness J. in *Duffy v. The Commissioner of An Garda Síochána* (10th July 1998 unreported/Judgment available), that

the applicant was furnished with all relevant statements documents and records when he was not afforded a sufficient time within which to properly consider and respond to that information.”

The applicant submits he wanted to take legal advice in relation to the witness statements but was not given a sufficient opportunity to do so.

Respondents Submissions

8.1 The policy, the subject matter of these judicial review proceedings is designed to ensure compliance with employment legislation. It was introduced as a guide and is described in the preface as such. The policy seeks to deal with complaints in a manner which protects the interests of the complainant and the person against whom the complaint is made. Chapter 8 of the policy provides that all complaints of harassment or bullying must be dealt with under the procedure outlined in that chapter. The purpose of the investigation process is to establish the credibility of the complaint with due regard to fair procedures. The process is not a criminal process and should not be equated with such. The booklet provides at paragraph 8.6 page 37, that the person complained of will:-

- i) be advised in sufficient detail of the allegations made against them and be given a copy of the complainant’s written statement in advance of the interview.
- ii) be given a reasonable period of time to consider the allegations.
- iii) be given an opportunity to comment on the alleged incidents.
- iv) be given an opportunity to answer the allegations in writing.
- v) be asked whether there are any witnesses or evidence available in relation to the alleged event.

The respondent submits that they complied with the provisions of the policy as to the manner in which the investigation was to be conducted.

8.2 The applicant alleges that it was a breach of fair procedures and natural justice that Inspector O’Sullivan completed and submitted his investigation file without the applicant’s submissions in circumstances where he knew the applicant was seeking legal advice. The respondent points out that the time for the applicant to make submissions was extended from the 10th to 15th of June, 2009, in order to allow the applicant to seek legal advice. On the 15th June 2009, the applicant’s Solicitor sought an extension of time to permit the applicant to seek further advice in relation to the investigation, the extension of time was granted. It is submitted that the applicant was afforded ample opportunity to seek legal advice and that in these circumstances there is no breach of fair procedures or natural justice.

8.3 The applicant alleges that the use of witness statements taken prior to Inspector O’Sullivan’s appointment amounts to a breach of fair procedures as any new investigation into the complaints should have started afresh. This is denied by the respondent who submits that there has been no breach of fair procedures in the manner in which the statements were taken. In his evidence to the Court, Sergeant Paul Curtis explained that he was given a memory stick which contained the original witness statements and that he read over these statements to the witnesses and they made whatever changes were necessary, therefore these statements were taken in the course of the second investigation and were not identical to the statements taken in the first investigation.

The applicant states that there has been a breach of the order of O’Neill J. in the manner in which the statements were taken. O’Neill J. ordered that the decision to appoint Superintendent Gannon as investigating officer under the Garda Síochána (Discipline) regulations 2007 to investigate the complaint(s) made by Garda Emma Corcoran against the applicant and all records and entries relating thereto (namely the decision to appoint the Investigating officer) be quashed. This order did not require the destruction of all records of the investigation, including statements taken during the course of the investigation.

8.4 The applicant was given every opportunity to engage in the investigation, but choose not to give any indication of his position. If the interim relief is vacated it will be open to the applicant to participate in the investigation so that a decision can be reached. In *Conway v. An Taoiseach*, (12th April, 2006 *ex tempore*), Feeney J. held that an application to prevent an investigation in a disciplinary matter concluding was premature as there was no prejudice to the applicant because what was being conducted at that point was an investigation. It is submitted that the same applies in this case. Feeney J. stated:-

“The disciplinary process contained in the code is a broad and non technical process. It is not and must not be equated with a criminal process... the procedures which are permitted must allow flexibility, provided the central tenets of natural justice are followed...Courts should be reluctant to interfere with an ongoing disciplinary process in the absence of strong and compelling evidence to support such intervention.”

It is submitted on behalf of the respondents that there is no breach of fair procedures and natural and constitutional justice in the conduct of the investigation herein. The applicant has an appeal from the findings of the investigation. It is submitted that the Court should exercise its discretion and decline to interfere with the investigation of the complaint.

8.5 The applicant complains of delay on the part of the respondent as he did not receive confirmation of the complaint in writing until 24th May, 2009, despite the fact that the Order in the previous judicial review proceedings had been made on 19th February, 2009. The respondent points out that the complaint was made on 8th June, 2008, two days later the applicant was informed that a complaint of harassment on grounds of sexual orientation had been made against him. The time frame outlined by the applicant is misleading as the respondent contacted the applicant a number of times between with the 19th February, 2009 and the 24th May, 2009.

On 12th March, 2009, the applicant was informed that the investigation undertaken by Superintendent Gannon had been discontinued. On 27th March, 2009, the applicant was informed that Inspector Duff was appointed to take over the investigation. On 14th May, 2009, the applicant was informed that Inspector O’Sullivan was appointed to investigate the matter in place of Inspector Duff. It is clear therefore that matters were not at a standstill between February and May 2009. The applicant argues that there has been an unfair and prejudicial delay however he does not set out any actual prejudice he has suffered due to the manner in which the matter has been investigated.

9. Decision of the Court

9.1 The Policy

The Garda Síochána booklet entitled "Policy and Procedures Harassment, Sexual Harassment and Bullying of An Garda Síochána" is designed to deal with the resolution of difficulties and disputes which may arise from time to time between members of An Garda Síochána. The booklet provides at paragraph 1.5, page 14:-

"This policy is intended to provide general guidance for members of the Garda Síochána on the salient provisions of the law and should not be regarded as a definitive legal interpretation."

This document is clearly a guide and not a piece of disciplinary legislation.

The booklet sets out the formal process for dealing with complaint's such as that made by Garda Emma Corcoran against the applicant herein. The process is set out from p.33-27 of the booklet which provides:-

- i) The investigator will report their findings within 28 days of the complaint being received at the Divisional Office.
- ii) Extensions of time limits are acceptable once there is clear justification and both the complainant and the person complained of have indicated that they have no objections to the extension.
- iii) The person complained of will
 - Be advised in sufficient detail of the allegations made against them and be given a copy of the complainants written statement in advance of the interview
 - Be given a reasonable period of time to consider the allegations which may vary depending on the nature and type of incident
 - Be given an opportunity to comment on the alleged incident(s) from their perspective and to comment on the detailed statement of the complainant
 - Be given an opportunity to answer the allegations in writing and
 - Be asked whether there were any witnesses or evidence available in relation to the alleged events.

The complaint had been made in 2008 and it was envisaged when O'Neill J. made his consent order in 2009 that the investigation would continue albeit under the policy provisions rather than the Garda Síochána (Discipline) Regulations.

9.2 Delay

When O'Neill J. made his order on the 19th February, 2009 it was incumbent on the respondents to conclude the previous proceedings. The respondents ended the investigation and notified the applicant of this on 12th March, 2009. The applicant was informed that Inspector Duff was appointed to take over the investigation on March 27th, 2009. The applicant was then informed on 14th May, 2009, that Inspector O'Sullivan was appointed to investigate the matter in place of Inspector Duff. At this stage the applicant was engaging with the procedure. He met with Inspector O'Sullivan on the 24th May, 2nd June and 8th June, 2009. On the 10th June, 2009, Inspector O'Sullivan submitted the investigation file to Chief Superintendent Coburn.

It is clear that the policy imposes definite guidelines and time limits; however the time limits do not take into account the possibility of judicial review proceedings being instituted. Once judicial review proceedings were instituted in the case and the order granted on consent, the time limits could no longer be regarded as being applicable. I do not therefore accept the applicant's complaint of delay. Moreover the applicant has not demonstrated to the Court that he has suffered any prejudice due to the time frame involved in investigating the complaint for a second time. I would consider that following the order of 19th February, 2009, the respondents moved with reasonable expedition to end the disciplinary investigation and commence the inquiry.

9.3 Insufficient time to respond

Inspector O'Sullivan took over the investigation on 14th May 2008, it is clear that he was trying to conclude matters as expeditiously as possible. He was conscious of time constraints. Inspector O'Sullivan informed the applicant that the investigation would not be complete within the 28 day time period. The applicant was asked if he had any objections and responded that he would have to seek legal advice. The applicant was informed that if he did not seek an extension of time before the 10th June, 2009, Inspector O'Sullivan would submit the investigation file to Chief Superintendent Coburn, as required under the policy. The applicant did not seek an extension. However when the investigation file was handed over to Chief Superintendent Coburn the applicant was given 5 days to seek legal advice and to make a written submission in the matter should he wish to do so. The applicant complains that he was prejudiced by not receiving a sufficient opportunity to respond to the allegations. However the applicant had been advised that he could seek an extension but he chose not to do so. The applicant did in fact seek a further extension through his solicitors on 15th June 2009. It seems to me therefore that the applicant's complaint of not receiving an opportunity to respond to the statements is without substance. Furthermore it seems to me that following the order of 19th February, 2009, the parties by their conduct in effect waived the strict time tables set down in the policy. Moreover whilst every effort should be made to adhere to the time limits set out in the policy document, it should be remembered that it is a guide and not a statutory instrument.

9.4 Witness Statements

It was clear from the evidence given by Sergeant Paul Curtis, that witness statements which were taken as part of the original investigation conducted by Superintendent Gannon were used again in the subsequent investigation. The applicant submits that firstly this is in breach of the order of O'Neill J. and secondly it amounts to a breach of fair procedures as the new investigation should have started afresh.

Taking the first of these grounds, in his order dated the 19th February, 2009, O'Neill J. ordered that the decision to appoint Superintendent Gannon as investigating officer and all records and entries relating to the decision to appoint Superintendent Gannon be quashed. This order does not refer to quashing statements taken during the course of the investigation. I do not accept the argument that an order which quashed records and statements relating to the decision to appoint Superintendent Gannon implies that statements taken from witnesses were to be destroyed.

9.5 As to the question of whether the use of these statements breached fair procedures, I think the issue is not whether the statements formalistically follow typical protocol but whether it was fair to use them in an overall sense. The subject matter of the within proceedings is not a criminal trial but an internal inquiry. Such inquiries may proceed on a less formal basis and the Court should look at the inquiry in the round in assessing whether fair procedures were followed. To quote the frequently cited dictum of Tucker L.J. in *Russell v. Duke of Norfolk* [1949] 1 All E.R. at 109:-

"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."

Sergeant Curtis explained how the original statements were read over to the witnesses and amendments were made. It is unsurprising that what was said in the 2009 statements was similar to what was said in the 2008 statements, given the statements are about the same events. The makers of the statements were given the opportunity to make any amendments they wished. Some apparently did so. The fact the 2009 statements read as if they were given in 2008 is not of crucial importance. What is important is the content of the statements themselves. I am satisfied that it was not a breach of fair procedures for Sergeant Curtis to use the old statements as a basis for the second investigation. The requirements of natural justice were satisfied in this case; the applicant was given clearly to understand the complaint and was given an opportunity to answer it.

9.6 In light of the foregoing, I am satisfied that the applicant is not entitled to the relief sought. This application is therefore refused.