

THE HIGH COURT

Judicial Review

[2015 No: 450 JR]

White J.**Between/****Catherine McGowan****Applicant****and****The Commissioner of An Garda Síochána, Michael Fitzgibbon, Francis Clerkin and Dermot Mann****Respondents****Judgment of Mr. Justice White delivered the 16th November, 2017.**

1. The Applicant has applied by way of judicial review seeking the following reliefs.

1. An order of certiorari quashing the decision of the first named Respondent on the 8th June, 2015 to establish a Board of Inquiry comprising the second, third and fourth Respondents pursuant to regulation 25 of the Garda Síochána (Discipline) Regulations 2007 as amended.
2. An order of prohibition by way of an application for judicial review restraining the Respondents from taking any further step with the said inquiry.
3. An injunction by way of judicial review restraining the Respondents from taking any further step with the said inquiry.
4. A declaration that the first named Respondent acted *ultra vires* the powers conferred on her under the Garda Síochána (Discipline) Regulations 2007 as amended in establishing the said inquiry and in particular in breach of regulation 8 to thereof.

2. The High Court on 27th July, 2015 granted leave to bring the judicial review. The statement required to ground the application for judicial review of the 27th July, 2015 was grounded originally on the affidavit of Sean Costello, solicitor for the Applicant who exhibited a book of evidence in proceedings entitled Bill DU659/13 D.P.P. v. McGowan together with form IA33 establishing the Board of Inquiry and form IAS 35 the notification from the presiding officer to her. Also exhibited was a report of Det. Insp. Frank Keenaghan of the 12th July, 2011.

3. The Applicant's solicitors had before the application for judicial review put the first Respondent on notice by letter the 15th July, 2015 calling on her to discontinue the disciplinary proceedings.

4. The letter stated:

"As appears therefrom it is proposed to investigate a number of alleged breaches of discipline against my client arising from her investigation of allegations made by a Miss M K in February 2007. As I assume you are aware Garda McGowan was prosecuted on foot of Bill No. 659/13 arising from precisely the same set of facts. Following a three week trial she was acquitted by unanimous verdict of the jury on all charges on the 12th March, 2015."

5. The Applicant issued a Notice of Motion of the 17th August 2015 originally returnable for 17th November, 2015. The Statement of Opposition was filed by the Respondents on the 6th February, 2016 together with a grounding affidavit of Matthew Nyland, Superintendent attached to Internal Affairs of An Garda Síochána sworn on the 8th February, 2016. The Applicant filed a further affidavit on the 15th March, 2017 exhibiting media coverage of the criminal trial and referring to the opening speech of counsel for the D.P.P. at the trial and also his closing statement.

6. By motion of the 21st March, 2017 returnable for the same date the Applicant applied pursuant to O.84, r.23(2) of the Rules of the Superior Courts to amend the Statement of Grounds and to file a verifying affidavit. This motion was issued by leave of the Court when the case was opened on the morning of the 21st March, 2017. The Court granted leave to amend the grounds.

7. The amended grounds upon which the reliefs were sought were as follows.

Grounds on which certiorari is sought.

1. The decision of the first named Respondent to establish the Board of Inquiry was made without due regard to the provisions of regulation 8(2) of the 2007 regulations.
2. Further or in the alternative the decision to conduct the disciplinary inquiry into the same matters that were canvassed in the criminal trial was oppressive and contrary to constitutional and natural justice.
3. In the alternative a decision to establish a Board of Inquiry in the instant case is unreasonable and irrational given the degree of overlap between the evidence led during the criminal trial and the proposed Board of Inquiry.

Grounds upon which prohibition is sought.

4. Further to the grounds pleaded in support of certiorari, the establishment of the board of Inquiry is unlawful by reason of the failure to have any adequate regard to the provisions of regulations 8(2) and accordingly it should be prohibited.
5. Holding a Board of Inquiry into the same matter that was canvassed in the criminal trial is oppressive, contrary to law

and contrary to constitutional and natural justice.

Grounds upon which a declaration is sought

6. The failure of the first named Respondent to have any or adequate regard to the provisions of regulation 8(2) of the 2007 regulations has the effect of meaning that a mandatory prerequisite to the commencement of disciplinary proceedings has been ignored as a consequence the establishment of the Board of Inquiry is *ultra vires*.

7. Where the Applicant has been tried and acquitted on indictment and on the merits, and where the first named Respondent decides not to apply the protection of regulation 8(2) of the 2007 Regulations the first named Respondent is required to give reasons for the decision to establish the Board of Inquiry.

8. In the absence of reasons being given for failing to apply regulation 8(2) the Applicant is incapable of ascertaining what factors led to the decision to establish the Board of Inquiry and is incapable of properly challenging the establishment of same.

History of alleged breach of discipline

8. In 2005 Miss M.K. made a complaint to the Catholic Archdiocese of Dublin that she had been sexually abused in the 1980s by a priest of the diocese. It was formally notified to An Garda Síochána by the archdiocese in October 2005 and was passed to Bray Garda District for investigation. Ms K. then withdrew the complaint but in early 2007 she renewed it. The Applicant was assigned responsibility to investigate the complaint.

9. It is the Applicant's alleged failure to investigate this complaint which is the subject matter of the disciplinary hearing. On the 6th July, 2011 the Chief Superintendent in Wicklow directed Det. Insp. Frank Keenaghan to carry out a fact finding investigation into the circumstances of the complaint of Miss K. On the 14th July, 2011 Chief Supt. Aidan Glacken was appointed pursuant to regulation 23 of the Garda Síochána (Discipline) Regulations 2007 as amended to investigate alleged breaches of discipline. On the 19th July, 2012 the Applicant was put on notice that it appeared that there may have been a breach of discipline and that Supt. Glacken had been appointed to investigate. Brief details of the conduct alleged were set out in the notice. It was alleged the Applicant had provided misleading information to a number of concerned parties in relation to the status of the investigation, that she had presented a statement from another garda officer whose authenticity was in question, that she had failed to record a matter on the garda pulse system, that she had failed to attend to correspondence from McCartan & Burke, Solicitors, that she had failed properly to keep clerical audits in respect of same, and had produced a document purported to be signed by Insp. McBrien whose authenticity was in question. On the 3rd July, 2013 Chief Supt. Glacken submitted a report to the Chief Superintendent in Wicklow pursuant to regulation 24(5) of the Garda Síochána (Discipline) Regulations 2007 as amended.

10. Separately from the disciplinary procedure a criminal investigation was commenced and the Applicant was charged on 10th May, 2013. The matter proceeded by way of indictment and the Applicant's trial commenced at Dublin Circuit Criminal Court on the 23rd February, 2015 when the following charges were preferred on the indictment.

1. Contrary to s.25(1) of the Criminal Justice (Theft and Fraud Offences) Act, 2001 Catherine McGowan within the State on a date unknown between the 15th day of January, 2009 and the 21st June, 2011 (both dates inclusive) made a false instrument, being ostensibly a photocopy of a letter dated 14th January, 2009 from the office of the Director of Public Prosecutions issued by Henry Matthews, which purported to have been made in circumstances in which it was not in fact made, intended that it be used to induce officers of An Garda Síochána to accept it as genuine and by reason of so accepting it to act to their prejudice in connection with the performance of their duty.

Using a false instrument contrary to s.26(1) of the Criminal Justice (Theft and Fraud Offences) Act, 2001.

2. Catherine McGowan on the 21st day of June, 2011 in the County of Wicklow used by showing to an officer of An Garda Síochána an instrument which was false and which she knew and believed to be a false instrument ostensibly a photocopy of a letter dated the 14th January, 2009 ref. no. 2007/1973 from the office of the Director of Public Prosecutions to James Boyle, Solicitor and appearing to be issued by Henry Matthews purporting to have been made in circumstances in which it was not in fact made with the intention of inducing an officer of An Garda Síochána to accept it as genuine and by reason of so accepting it to act to its prejudice in connection with the performance of his duty.

Using a false instrument contrary to s.26(1) of the Criminal Justice (Theft and Fraud Offences) Act, 2001.

3. Catherine McGowan at a time unknown on the 21st or 22nd day of June, 2011 within the State used by causing to be delivered to gardaí at garda offices, Harcourt Square, Harcourt Street an instrument which was and which she knew of believed to be a false instrument being ostensibly a photocopy of a letter dated the 14th January, from the office of the Director of Public Prosecutions to James Boyle, Solicitor under senders reference 2007/1973 and appearing to be issued by Henry Matthews which purported to have been made in circumstances in which it was not in fact made, with the intention of inducing officers of An Garda Síochána to accept it as genuine and by reasons of so accepting it to act to their prejudice in connection with the performance of their duty.

11. On the 12th March, 2015 the applicant was acquitted of all charges before the Dublin Circuit Criminal Court.

12. In respect of the additional ground permitted by the Court to be argued Matthew Nyland the Chief Superintendent attached to Internal Affairs deposed a replying affidavit on the 22nd March, 2017.

He stated

9. Following the conclusion of the criminal proceedings, a full review of the disciplinary file relating to the Applicant was carried out by the Internal Affairs division to ensure that there was compliance with regulation 8(2) of the 2007 Regulation and that the matters that were considered by the Court were different to those which would be presented before the Board of Inquiry. Following that review as part of which I reviewed the file myself, it appeared that there were outstanding matters arising from the report of Superintendent Glacken that had not been considered by the criminal trial. Prior to the submission of the file to Assistant Commissioner Nolan, the Internal Affairs division any I, as Superintendent Internal Affairs were satisfied that the issues that arose in the criminal trial were different to those which would be

presented before the Board of Inquiry.

10. Following that review the file was presented to Asst. Commsr. Anthony J. Nolan with proposed candidates to act as members of a Board of Inquiry and also provided details of the remaining allegations of misconduct against the member concerned in compliance with regulation 8(2).

13. On the 8th June, 2015 a Board Inquiry was established pursuant to regulation 25 of the Garda Síochána (Discipline) Regulations Act, 2007 as amended to determine whether the Applicant had committed such a breach and if so to recommend to the Commissioner that disciplinary action be taken in relation to the Applicant. The second, third and fourth Respondents were appointed as members of the board.

14. The particulars of the serious breaches of discipline alleged were

1. Neglect of duty; that is to say that you Detective Catherine McGowan 00671H Bray Garda station in your capacity as a member of An Garda Síochána, without good and sufficient cause, did fail to properly investigate an allegation of defilement of a child between 15 and 17 years of age which was made by M.K. and reported to you in February, 2007 which was your duty to do.

The said neglect of duty is a breach of discipline within the meaning of regulation 5 of the Garda Síochána (Discipline) Regulations 2007 and is described at reference no. 4 in the schedule to the said regulations.

2. Neglect of duty; that is to say that you Detective Catherine McGowan 00671H Bray Garda station, in your capacity as a member of An Garda Síochána, without good and sufficient cause, did fail to submit a complete investigation filed in respect of an allegation of defilement of a child between 15 and 17 years which was made by M.K. and reported to you in February 2007 and in accordance with garda instructions in order to seek directions from the law officer and in accordance with standard investigative practices which was your duty to do.

The said neglect of duty is a breach of discipline within the meaning of regulation 5 of the Garda Síochána (Discipline) Regulations 2007 and is described at reference no. 4 in the schedule to the said regulations.

3. Discreditable Conduct; that is to say that you, Detective Catherine McGowan 00671H Bray Garda station, in your capacity as a member of An Garda Síochána, conducted yourself in a manner which you knew or ought to have known, would be reasonably likely to bring discredit on the Garda Síochána, in that you did, wrongly inform the injured party, M.K. that the Director of Public Prosecutions had given an instruction not to prosecute, knowing that this was not the case.

The said neglect of duty is a breach of discipline within the meaning of regulation 5 of the Garda Síochána (Discipline) Regulations 2007 and is described at reference no. 1 in the schedule to the said regulations.

4. Discreditable Conduct; that is to say that you, Detective Catherine McGowan 00671H Bray Garda station, in your capacity as a member of An Garda Síochána, conducted yourself in a manner which you knew or ought to have known, would be reasonably likely to bring discredit on the Garda Síochána, in that you did, wrongly inform Mr. Gerard Deegan of the Archdiocese of Dublin, that the Director of Public Prosecutions had given an instruction not to prosecute, knowing that this was not the case.

The said neglect of duty is a breach of discipline within the meaning of regulation 5 of the Garda Síochána (Discipline) Regulations 2007 and is described at reference no. 1 in the schedule to the said regulations.

5. Discreditable Conduct; that is to say that you, Detective Catherine McGowan 00671H Bray Garda station, in your capacity as a member of An Garda Síochána, conducted yourself in a manner which you knew or ought to have known, would be reasonably likely to bring discredit on the Garda Síochána, in that you did, wrongly inform the Murphy Report Inquiry Team, that the Director of Public Prosecutions had given an instruction not to prosecute, knowing that this was not the case.

The said neglect of duty is a breach of discipline within the meaning of regulation 5 of the Garda Síochána (Discipline) Regulations 2007 and is described at reference no. 1 in the schedule to the said regulations.

6. Falsehood; that is to say that you, Detective Catherine McGowan 00671H Bray Garda station, in your capacity as a member of An Garda Síochána, without good and sufficient cause, made or procured to be made a document purporting to be a minute dated 25th April, 2009 headed D.P.P. (Det. Gda. Donna McGowan v. Patrick McGowan) signed Noreen McBrien Inspector for Superintendent which to your knowledge was false or misleading.

The said prevarication is a breach of discipline with the meaning of regulation 5 the Garda Síochána (Discipline) Regulations 2007 and is described at reference no. 6 in the schedule to the said regulations.

7. Falsehood; that is to say that you, Detective Catherine McGowan 00671H Bray Garda station, in your capacity as a member of An Garda Síochána, without good and sufficient cause, made or procured to be made a document purporting to be a statement of Det. Sgt. Eamon O'Neill of Bray garda station which to your knowledge was false or misleading.

The said prevarication is a breach of discipline with the meaning of regulation 5 the Garda Síochána (Discipline) Regulations 2007 and is described at reference no. 6 in the schedule to the said regulations.

8. Discreditable Conduct; that is to say that you, Detective Catherine McGowan 00671H Bray Garda station, in your capacity as a member of An Garda Síochána, conducted yourself in a manner which you knew or ought to have known, would be reasonably likely to bring discredit on the Garda Síochána, in that you did, produce to the Murphy investigation team at Harcourt Square, Dublin 2, a document purporting to be a minute dated 25th April, 2009 headed D.P.P. (D. Gda. Donna McGowan v. Patrick McGowan) signed Inspector for Superintendent.

The said neglect of duty is a breach of discipline within the meaning of regulation 5 of the Garda Síochána (Discipline) Regulations 2007 and is described at reference no. 1 in the schedule to the said regulations.

9. Neglect of Duty; that is to say that you, Detective Catherine McGowan 00671H Bray Garda station, in your capacity as

a member of An Garda Síochána, without good and sufficient cause did fail to record on PULSE a report of an allegation of defilement of a child between 15 and 17 years of age which was made by M.K. and reported to you in February 2007 which was your duty to do.

The said neglect of duty is a breach of discipline within the meaning of regulation 5 of the Garda Síochána (Discipline) Regulations 2007 and is described at reference no. 4 in the schedule to the said regulations.

10. Neglect of Duty; that is to say that you, Detective Catherine McGowan 00671H Bray Garda station, in your capacity as a member of An Garda Síochána, without good and sufficient cause did fail to attend to correspondence dated 14th June, 2007 from McCartan & Burke, Solicitors which was your duty to do.

The said neglect of duty is a breach of discipline within the meaning of regulation 5 of the Garda Síochána (Discipline) Regulations 2007 and is described at reference no. 4 in the schedule to the said regulations.

11. Neglect of Duty; that is to say that you, Detective Catherine McGowan 00671H Bray Garda station, in your capacity as a member of An Garda Síochána, without good and sufficient cause did fail to attend to correspondence dated 19th July, 2007 from McCartan & Burke, Solicitors which was your duty to do.

The said neglect of duty is a breach of discipline within the meaning of regulation 5 of the Garda Síochána (Discipline) Regulations 2007 and is described at reference no. 4 in the schedule to the said regulations.

12. Neglect of Duty; that is to say that you, Detective Catherine McGowan 00671H Bray Garda station, in your capacity as a member of An Garda Síochána, without good and sufficient cause did fail to attend to correspondence dated 16th August, 2007 from McCartan & Burke, Solicitors which was your duty to do.

The said neglect of duty is a breach of discipline within the meaning of regulation 5 of the Garda Síochána (Discipline) Regulations 2007 and is described at reference no. 4 in the schedule to the said regulations.

Alleged Breach of Regulation 8(2) of the Garda Síochána (Discipline) Regulations 2007.

Article 8(2) states Where a member has been acquitted on the merits of an offence, proceedings under these regulations for an alleged breach of discipline shall not be commenced or, if already commenced, continued if –

(a) the proceedings would involve conducting an inquiry into the same issues in respect of which the member was so acquitted, and

(b) in all the circumstances of the particular case and their cumulative effect, it would be unfair and oppressive to commence or continue the proceedings.

15. The core complaint made on behalf of the Applicant is that the disciplinary inquiry is based on the same subject matter as her trial in February and March, 2015. The Applicant submits that because pursuant to s.4(b) of the Criminal Procedure Act, 1967 an amended book of evidence and documents were served on her that reflected all of the issues touching on the performance of her duties, and alleged failure to investigate the complaint which were considered in the course of the criminal trial, it would be unfair and a breach of regulation 8(2) to put her through the process of a disciplinary inquiry once she had been acquitted of the criminal charges.

16. The Applicant also argues that reasons should have been advanced as to why regulation 8(2) was not being implemented in her favour. The Applicant relies on two judgments; that of *Kelly v. The Commissioner of An Garda Síochána* (unreported Supreme Court judgment of the 5th November, 2013, 2013 IESC 47) and *Mc Enery v Commissioner of An Garda Síochána* (No. 2) decision of the Supreme Court 2016 IESC 66. In *Kelly*, O'Donnell J stated,

36 "In my view, therefore, a proper interpretation of the Regulations requires that reasons be given for any determination made by the Board of Inquiry unless it can be said that the issue is so self-evident and narrow that the mere fact of the decision discloses the reason. That cannot be said to be the case here."

In *McEnery*, Laffoy J stated,

64."It follows that the point in time at which the Commissioner must, in order to comply with the principles of natural and constitutional justice, give reasons for his decision is when, after giving the member an opportunity to submit to the Commissioner reasons against the proposed dismissal and, if he receives such submissions, after he has considered them, he makes a conclusive decision to dismiss"

These cases both related to dismissal subsequent to a recommendation of a Board of Inquiry.

The law.

The legal principles governing the application of s.8 of the regulations and its precursor the Garda Síochána Discipline Regulations 1989 S.I. 94/1989 were considered in a recent judgment of this Court *Naughton and Kenny v. Commissioner of An Garda Síochána*, a judgment of the 3rd March, 2017.

Paras 19 to 23 stated,

19."The impact of an acquittal in a previous criminal prosecution on subsequent disciplinary proceedings has been the subject of a number of Superior Court decisions.

20. In *McGrath v. The Commissioner of An Garda Síochána* [1991] I.R. 69, a decision of the Supreme Court, McCarthy J. at p. 75 stated:-

"Lest it be considered that acquittal on a criminal charge necessarily precludes a disciplinary investigation into the facts arising out of which a criminal charge was brought I reject such a proposition. The argument in support of such view is one of estoppel. The vital features of issue estoppel are that the fact and the parties in dispute are

essentially the same. Where one organ of State has been a contestant in the first trial of the issue, then, in my view, another organ of State has the necessary privity. What is an organ of State? Certainly, the Attorney General, Ireland, the Director of Public Prosecutions, and the Commissioner of the Garda Síochána come within that category. The core question is whether or not the issue was the same. The issue in a criminal trial is the guilt or innocence of the accused; such depends upon a wide variety of circumstances the existence of which has to be proved by the prosecution. As pointed out by Henchy J. in *Dublin Corporation v. Flynn* [1980] I.R. 157, for a variety of reasons an accused person may have been prepared to accept a wrong decision in an earlier prosecution to the effect that he had committed an act of assault or had driven a motor car dangerously. In such circumstances, estoppel would be repugnant to the fair administration of justice. In the instant case the claim of estoppel is made by the accused but the legal principle is the same. Acquitting a garda of assault would not preclude a garda investigation into a breach of discipline such as abuse of authority in failing to behave with due courtesy towards a member of the public. In *Kelly v. Ireland* [1986] I.L.R.M. 318, O'Hanlon J. elaborated on this topic, including in his judgment a consideration of issue estoppel and he concluded, at p. 328:—

'In the rare case where a clearly identifiable issue has been raised in the course of a criminal trial and has been decided against a party to those proceedings by means of a judgment explaining how the issue has been decided, I would be prepared to hold that such decision may give rise to issue estoppel in later civil proceedings in which that party is also involved. Such estoppel would arise, not only in relation to the specific issue determined (in this case, whether the statement was made freely and voluntarily) but also to findings which were fundamental to the court's decision on such issue.'

21. In *Walsh v. The Commissioner of an Garda Síochána & Ors*, a decision of the High Court of 5th July, 2010, Kearns P. approving of the principles in McGrath reiterated in *Garvey v. The Minister for Justice, Equality and Law Reform* [2006] 1 I.R. a decision of Geoghegan J., stated at p. 17 of his judgment:—

"I am satisfied that in the present case the circumstances are not such that to allow the disciplinary process to proceed would be unfair or oppressive. The allegations in the disciplinary proceedings are not even the same as the charge before the District Court, let alone identical. Nor do the disciplinary proceedings involve any determination on the issue of possession or create the risk of unravelling the District Court verdict.

While the remaining matters before the inquiry arise out of the same set of events as the possession allegation, they are quite different in character. During the course of the hearing I invited counsel for the applicant to consider whether the instant case was any different from the situation which might arise where a garda, stopped at a road checkpoint, is charged with drunken driving in circumstances where a criminal charge to that effect is later unsuccessful but where, at the time of being stopped, the garda in question had identified himself as a member of the Garda Síochána with a view to avoiding a breath test and had used abusive and insulting language. Could it be said that a disciplinary inquiry into those latter events would be either unfair or oppressive? It seems to me that to ask the question is to know the answer. It would not."

22. Kearns P. was interpreting the 2007 Regulations.

23. In *McKenna v. Commissioner of an Garda Síochána*, a recent decision on garda disciplinary regulations of Baker J. of 18th March, 2016, the judgments in *McGrath*, *Garvey* and *Walsh* were approved in the context of the 2007 Regulations. At paras. 31, 32, 33 and 34, she stated:—

"31. The balance of Regulation 8 provides for and entitles a Board of Inquiry or an appeal board to treat as conclusive findings of fact in a criminal charge.

32. Regulation 8 therefore permits the commencement or continuation of disciplinary proceedings where a member has been acquitted even if those proceedings involve an inquiry into the same issues in respect of which the member was so acquitted but only if, in all the circumstances of the particular case, and their cumulative effects means that it would not be unfair and oppressive to continue the proceedings.

33. Thus, as Regulation 8 expressly provides for the circumstances that have arisen in the present case, I reject the argument of counsel for the applicant that there is no statutory or other basis on which the disciplinary inquiry may be continued, merely on account of the fact that he has been acquitted of criminal charges arising from the same or broadly the same set of facts and circumstances. The proceedings may be continued, unless fairness or injustice would result, but there is no absolute statutory or other provision that supports the argument of the applicant that the conduct of the enquiry is ultra vires the respondent.

34. The same set of facts can give rise to concerns of a criminal or disciplinary concern, and there is nothing intrinsically unfair or illogical in this. In matters not involving members of An Garda Síochána, a set of circumstances can give rise to civil liability and criminal prosecution. In either case the outcome of the criminal trial may well create an issue estoppel, but absent such argument there is no legal or evidential impediment to the prosecution of a civil and criminal trial out of the same factual nexus."

17. A member of An Garda Síochána the subject of disciplinary procedure when a Board of Inquiry has been established receives detailed notice of the alleged breaches of discipline. These have already been recited in the judgment.

18. It is self evident from the initial notice to the Applicant of the 19th July, 2012 and the notice served on her by way of form I.A. 33 that there are many issues in the allegations of neglect of duty and discreditable conduct that could never be the subject of a criminal allegation against the Applicant but could be regarded as a serious failure to discharge her duties as a member of An Garda Síochána.

19. It is essential that the procedures are fair and that a member of An Garda Síochána the subject of disciplinary allegations knows exactly what has been alleged. Once that is done, the Court does not consider it necessary that detailed reasons are given why a decision was made to proceed notwithstanding regulation 8(2).

20. In *Naughton and Kenny* the Court referred to the possibility of unfairness where the subject matter of the previous criminal trial closely resembles or mirrors the disciplinary allegation. That is not the situation here. There is a much wider allegation of breach of discipline against the Applicant alleging she did not do her job properly as a member of an Garda Síochána and neglected to properly

pursue a complaint which was serious in nature and to overcome her failure to pursue the complaint she attempted to deflect it by covering up her mismanagement of the file. Those issues go to the heart of responsible policing.

21. The Court accepts that the criminal trial and the attendant publicity was a severe ordeal for the Applicant. Ultimately as is reflected in the legislation and the regulations the conduct of individual members of An Garda Síochána can be scrutinised legally in a disciplinary hearing.. In the Court's opinion there is no question of double jeopardy as the issues go much wider than the narrow focus of the criminal trial, when her innocence was established

22. The disciplinary allegations are serious in this case and go way beyond the issues in the criminal trial.

23. In summary there was no obligation on the First Respondent in this case to explain why Section 8(2) did not apply. The Court finds that the Regulation did not apply. The reliefs are therefore refused.