Neutral Citation Number: [2005] IEHC 439

THE HIGH COURT
JUDICIAL REVIEW

[2003 No. 341 JR]

BETWEEN

BRENDAN RUIGROK

APPLICANT

AND
THE COMMISSIONER OF AN GARDA SÍOCHÁNA,
IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

Judgment of Mr. Justice Roderick Murphy dated the 19th day of December, 2005

1. Outline
This application for judicial review of a decision of the Commissioner of An Garda Síochána to hold a sworn inquiry was originally listed for 22nd May, 2003 in respect of an allegation of discreditable conduct by the applicant on 29th November, 1999,. A complaint had been made in respect of an alleged physical assault by the applicant on two sons of the complainant after a public swimming session.

The applicant, in these proceedings, seeks an order of prohibition or alternatively,

> (a) an injunction restraining the Commissioner from holding such inquiry,
>
> (b) a declaration that the failure by the Commissioner to investigate the matter expeditiously breached the applicant's entitlements to fair procedure constituted a breach of statutory duty and/or breach of the applicant's legitimate expectation of the serious allegations of misconduct alleged against him would be dealt with expeditiously.

The grounds on which such relief were sought, and allowed by order of O'Donovan J., granting leave on the 19th of May, 2003, were that the delay was inordinate and inexcusable and breached the applicant's rights; that the Commissioner had acted ultra vires and in breach of statutory duty in failing to investigate the alleged breach of discipline and was contrary to natural and constitutional justice. The applicant also alleged that the Commissioner, in purporting to hold a hearing on 22nd May, 2003, in relation to the alleged breach of discipline on 29th November, 1999, had breached the applicant's legitimate expectation that serious allegations would be dealt with expeditiously. This had given rise to the applicant suffering significant additional distress and had prejudiced his ability to defend himself.

2. Statement of opposition
The respondents said that the first formal complaint, made pursuant to the Garda Síochána Complaints Act, on 28th November, 2000, was found to be inadmissible due to the passage of time. On 17th May, 2001, a fact finding report was requested. The Commissioner relied upon the applicant's representation made in June, 2001 that he intended to adopt a certain course of conduct towards the complainant by apologising unconditionally. For this reason the Commissioner decided not to initiate a formal investigation in the matter. However, the applicant did not do so and that fact was not brought to the attention of the Commissioner until February, 2002.

Pursuant to Regulation 8 of the Garda Síochána (Discipline) Regulations, 1989, an officer was appointed on 8th March, 2002, to formally investigate the allegations. On the completion of his report he attempted to effect service of documents directing that the applicant was to be the subject of a sworn inquiry on 19th August, 2002. The applicant could not be served until 14th January, 2003.

The Commissioner stated that he had not failed to comply with natural or constitutional justice or fair procedures nor had he acted *ultra vires* nor in breach of statutory duty in purporting to hold a sworn inquiry on 14th April, 2003, relating to the alleged incident of 29th November, 1999.

3. Affidavit of applicant
The applicant's affidavit sworn 19th May, 2003, referred to the complaint made by Mr. Declan Kelly in respect of an incident alleging that the applicant physically assaulted two of his sons on 19th November, 1999, at Gormanstown College Swimming Pool. He denied the allegations and said that it was his own son who was the victim of bullying on the occasion in question.

A week afterwards, Garda Denis Ford requested that he meet the Kelly Family in order to discuss the incident, which he did. Both Mr. Kelly and he differed as to what had taken place. He received two solicitor's letters from Mr. Kelly.

Superintendent Meally was appointed to investigate the complaint with the Garda Complaints Board who ruled the complaint was inadmissible as being out of time.

Some short time afterwards, in March, 2001, he was contacted by Superintendent Gallagher and Inspector Galwey informing him that he was under investigation for an alleged assault on the two Kelly children. He was requested by Superintendent Galwey to pay a doctor's bill of £40 and to offer an apology to the Kelly family in order to bring the matter to a conclusion. He said he would meet the family concerned at a neutral venue if a solicitor and an independent member of An Garda Síochána could be present but was not prepared to pay £40 medical expenses for injuries for which he said he was not responsible. As a result, a meeting did not take place.

On or about October, 2001 he was contacted by Inspector Gilcrest who asked him to meet the family to which he agreed, subject to the same conditions as before. This was not agreeable to Inspector Galwey.

On 8th March, 2002, Inspector Galwey was appointed as investigating officer to investigate a breach of discipline. He met Inspector Galwey on 21st March, 2002. A report was submitted by Inspector Galwey to Chief Superintendent Finnegan on 29th July, 2002. He said he was not served with the documents until 14th January, 2003, when he signed and returned the same promptly.

He said that he had previously received a phone call from Inspector Galwey in mid August, 2002 requesting that he call into Balbriggan Garda Station to collect a copy of the book of evidence and form B30 with regard to disciplinary action being taken against him. He replied that he would not be calling into that Garda Station but that he could be served with the papers at his home address and his place of work. He duly attended work on 26th August, 2002. On 6th September, 2002, he was diagnosed with high blood pressure as a result of anxiety and was absent from work on that date until 15th November, 2002.

On 11th March, 2003, he was notified that the Commissioner had directed a sworn inquiry be held in respect of disciplinary breach to take place on 14th April, 2003. He contacted his solicitor who asked why it had taken so long for the matter to be determined. He said that no reason had been given for the inordinate delay from November, 1999 to March, 2002 when the investigating officer was appointed and the further period of inordinate, unexplained and significant delay from that date to 14th April, 2003, when the sworn inquiry was scheduled to take place. He said it was now forty-two months since the alleged incident took place and that the matter had adversely affected his feeling of security in his employment for an unduly protracted length of time which had greatly enhanced his stress levels and caused worry to his family.

4. Breaches of discipline
The discipline form (B30) gives particulars of the breaches as follows:

> 1. Discreditable conduct; that is to say conducing yourself in a manner which you knew or ought to have known, would be prejudicial to discipline or reasonably likely to bring discredit upon An Garda Síochána in that on 29th November, 1999, at Gormanstown College, Co. Meath you caught hold of Shane Kelly's finger and bent it backwards causing his finger to swell.
>
> The said discreditable conduct is a breach of discipline within the meaning of Regulation 6 of the Garda Síochána (Discipline) Regulations, 1989 and is described at reference No. 1 in the schedule of the said regulations.
>
> 2. Discreditable conduct: that is to say conducting yourself in a manner which you knew or ought to have known would be prejudicial to discipline or reasonably likely to bring discredit upon the Garda Síochána in that on 29th November, 1999, at Gormanstown College, Co. Meath, you slapped Feargal Kelly across the face with a folder.
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> The said disagreeable conduct is a breach of discipline within the meaning of Regulation 6 of the Garda Síochána (Discipline) Regulations, 1989 and is described as reference No. 1 in the schedule of the said regulations.

5. Affidavit of investigator
Sean Galwey referred to his appointment on 17th May, 2001, and his report of the following 20th June. He believed the applicant intimated in June, 2001, that he would be taking a certain course of action and that the matter would be resolved to the complainant's satisfaction. In the circumstances it was decided not to pursue the matter further. This did not happen.

He said that he was appointed on 8th March to investigate the matter. On 9th August, 2002, the requisite form together with the book of statements and relevant documents were forwarded to him for service on the applicant to be contacted on 19th August. He tried to make contact with the applicant from that date to 5th September, 2002, with no success. He was informed that on 6th September, 2002, the applicant had been reported sick and that he did not wish, on doctor's advice, to have anything to do with An Garda Síochána when he was on sick leave. On 2nd October he telephoned the applicant to arrange service of documents. The applicant told him he was unwell and that he would revert the following Friday. On 11th October, 2002, he telephoned the applicant who asked him to defer the serving of the documents until after seeing his doctor's report. The report was never forwarded to the deponent.

On 30th and 31st October, 2002, he telephoned the applicant and spoke with him and was advised that his doctors had told him not to have any contact with An Garda Síochána due to his health condition. The applicant failed to contact him for the purpose of service of documents. Later the applicant's mobile phone was turned off.

The applicant was off duty until 14th January, 2003, and indicated that he would not facilitate the deponent with service of the documents. The documents were served on the applicant on 14th January, 2003.

The investigating officers denied the applicant's assertion that there had been excessive or inordinate delay of on the part of the Commissioner. If, which was denied, there had been any delay, this had been caused by the applicant or contributed to by him. Any delay had not prejudiced the applicant.

6. Chief Superintendent Finnegan's affidavit
Chief Superintendent Michael Finnegan's affidavit, filed 14th January, 2004, recited the facts from his point of view and said that there was no inordinate delay from the period of 29th November, 1999, to the period of 8th March, 2002, when the Commissioner appointed an investigating officer. The Commissioner received and relied upon a representation made by the applicant in June, 2001, that he would apologise unconditionally to the complainant. In June, 2001, the applicant did not complain of any inordinate delay in investigating matters between November, 1999 and June, 2001. The first complaint that was made was contained in the applicant's application for leave to apply for judicial review.

The Chief Inspector said that despite his best efforts that the applicant had, by his conduct, frustrated his effort to effect service of documents. The Commissioner had moved with all reasonable dispatch after the applicant's failure to apologise to the complaints which became known to the Commissioner in February, 2002. He said that any delay that might have occurred was caused substantially by the applicant's own conduct. At all times the respondents have dealt with the applicant fairly and courteously and with due regard for his right to due process and fair procedures.

7. Supplemental affidavit of applicant
The applicant, in reply to the above two affidavits, stated that the contention of the alleged agreed apology and the evading of service between August, 2002 and 14th January, 2003, was untrue.

He said he never intimated to Sean Galwey in June, 2001 that he would apologise to the complainant, rather that he would meet him at his home and that he had nothing further to add to that. He made it explicitly clear that he was not willing to pay medical expenses for something which he had not done. He made no representation that he would be making an unconditional apology to the complainant.

It was not true that he had frustrated attempts of service of documents. He was working between 26th August, 2002, and 6th September, 2002, and between 15th November, 2002, and 17th December, 2002.

He said that he could be served with papers at his home or at his place of work. He denies that he requested that the service of documents be deferred. He did not deliberately avoid calls and exhibits the relevant telephone bills in relation to his mobile telephone which indicated his usage of the same from 8th December, 2002, to 7th January, 2003. The Vodafone call details are in respect of

Feltrim Developments of 19 Richmond Estate, Fairview, Dublin 3 and number some 130 calls. No explanation was given in relation to Feltrim Developments.

8. Affidavit of Inspector Neill
Inspector Neill was Inspector in Charge of Specialist School in Garda Headquarters from July, 1997 to July, 2001 where the applicant was a member of the firearms training unit during this period and worked as a firearms instructor. The deponent was informed by the applicant that a complaint was being investigated in relation to an alleged assault or incident that occurred some time in Gormanstown College. The applicant had informed him that no assault had taken place and that he was not going to accept responsibility or apologise for an incident that he said never took place.

9. Second affidavit of Inspector Galwey
Inspector Galwey referred to the averment regarding the mobile telephone of the applicant which he believes to be 087-2427007, which accords with the Feltrim Developments' number. He said that he personally attempted to contact the applicant at the said number on a number of occasions between October, 2002 and December, 2002.

He said that he phoned the applicant on five occasions, on three occasions in October and on two occasions in December, one of which was cut off after twenty-four seconds. In addition, he contacted the applicant's mobile number from his office phone and possibly on another occasion. He had also contacted the applicant's superior, Inspector Gilchrest, on three occasions from his [office] extension number in September and October, 2002 and on two further occasions through his mobile number in June, 2002 and October, 2002.

He was again in contact with Inspector Gilchrist, asking him to instruct the applicant to make himself available for service. That contact was on September 5th. The following day, in contact with Inspector Gilchrist, he was informed that the applicant was on sick leave.

10. Submissions on behalf of the applicant
Having referred to the relevant dates for analysing delay and the reasons given by the respondent for the delay, the applicant said that the triggering of the Disciplinary Regulations of 1989 was not contingent on a formal complaint. No investigation was initiated until 8th March, 2002, in excess of twenty months after the incident and in excess of fifteen months after the formal complaint.

The applicant submitted that the alleged representation of the apology was hearsay and was inadmissible. The applicant clearly contended no such representation was ever made. Moreover, the attitude of the respondents could not have affected the mandatory statutory duty to investigate. The applicant could not be responsible for that delay.

In relation to the service of documents, it was not the function of the applicant to collect the documents but was an obligation on the Commissioner to serve same, pursuant to article 11 of the Regulations, at the home address of the applicant.

The Garda Síochána Regulations require urgency. The phrases "as soon as practicable", "as soon as may be" and "without avoidable delay" occur in articles 8 to 10. Reference was made to the decision of Budd J. in *Re Butler* [1970] I.R. 45, to *McNeill* v. An Garda Commissioner [1997] 1 I.R. 469 and to *McCarthy and Dennedy v. Garda Síochána Complaints Board* [2002] 2 I.L.R.M. 341.

It was submitted that the applicant was responsible for the delay.

It was submitted that there had been substantial delay in the case and that the tenor of the Act was directed towards speedy processing of complaints. There was no justification for the delay, which must be regarded as inordinate and inexcusable and in breach of the obligations of the Commissioner.

The relevant article of the Disciplinary Regulation 1989, provides as follows:

> "8(1) Subject to Regulation 7, where it appears that there may have been a breach of discipline, the matter shall be investigated as soon as practicable by a member not below the rank of inspector (in these Regulations referred to as an investigating officer)."

11. Submissions on behalf of the respondents
Having outlined the chronology of events, counsel for the respondents noted that the first formal complaint was made on 20th November, 2000 under the aegis of the Garda Síochána (Complaints) Act, 1986. A decision of the board that the matter was inadmissible pursuant to s. 4(3)(a)(iv) of the 1986 Act was made on 17th May, 2001, as the formal complaint was inadmissible, being more than six months after the date on which the alleged incidents took place.

Superintendent Finnegan acted *intra vires* by requesting a fact-finding report from Inspector Galwey, following the conclusion of the disciplinary process. The report was submitted on 20th June, 2001, just a month after the decision of the board. The applicant, on the evidence of the respondents, intimated that he would apologise. By February, 2002 it became apparent that no apology had been received and Inspector Galwey was appointed to investigate the matters under the Garda Síochána (Discipline) Regulations, 1989. The forms were served on 21st March, 2002, and the investigation file was received on 29th July, 2002.

It was submitted that in the months that followed from July, 2002 the applicant was wholly or substantially responsible for the inability of Inspector Galwey to secure personal service of documents on the applicant. Following the service of documents in January, 2003 and the notification of 11th March, 2003, the applicant did not seek to challenge the continuation of the investigative process at any stage up to 19th May, 2003, which was fourteen months after the applicant was served with the discipline form B30 on 21st March, 2002. It was submitted that there was no evidence to suggest that the applicant had suffered any real risk of prejudice in the conduct of the disciplinary proceedings by virtue of the alleged or any delay on the part of the respondents.

The Disciplinary Regulations do not prescribe any specific time limit within which enquiries must be initiated or completed. In the particular factual circumstances of the case and by the applicant's own conduct which induced the respondents to believe that he would act in a manner which would resolve the complaint without the need for any further action pursuant to the Disciplinary Regulations, any delay was reasonable.

Reference was made to *Re Butler* [1970] I.R. 25 with regard to the word "practicable". It was submitted that it was not practicable to justify the initiation or continuation of a disciplinary procedure under the 1989 Regulations in the circumstances.

The respondents submit that the delay in relation to judicial review proceedings was in breach of O. 84, r. 21. In *De Roiste v. Minister for Defence* [2001] 1 I.R. 190 at 221, Fennelly J. held that:

> "The complaint made by the applicant is one which, if it was established in a timely fashion, would (if not successfully controverted by the respondents) entitle him to relief *ex debito justitiae*. He was bound, however, to act 'promptly'."

In *Carr v. The Minister for Education* [2001] 2 I.L.R.M. 275, Geoghegan J. observed that there are circumstances where the unreasonable behaviour of an applicant could justify a court in refusing an order by way of judicial review as a matter of discretion. Reference was also made to *The State (Abenglen Properties Limited) v. Dublin Corporation* [1984] I.R. 381 where O'Higgins C.J. noted that the court retains its discretion to refuse an application if the conduct has been such as to disentitle the applicant to relief.

In *O'Flynn v. Mid-Western Health Board* [1991] 2 I.R. 223, the applicant waited for more than eight months before applying for judicial review two days before a disciplinary committee was due to sit. Hederman J. deprecated eleventh-hour attempts to render nugatory the efforts of administrative bodies.

It was submitted that the cases of *McNeill v. The Commissioner of An Garda Síochána and McCarthy & Dennedy v. The Garda Síochána Complaints Tribunal & Ors*. did not involve circumstances in which the applicants in those cases had caused or, in the alternative, had contributed to substantial delays in the initiation and/or conduct of the investigative process prescribed by the Garda Síochána (Discipline) Regulations, 1989. The circumstances of this case are such as ought to disentitle the applicant from obtaining the reliefs sought in these proceedings. Reference was made to *Connors v. District Justice Delap* [1989] I.L.R.M. 93 and *White v. District Justice Hussey* [1989] I.L.R.M. 109.

12. Decision of the Court

12.1 The disciplinary procedures the subject of the judicial review application of 19th May, 2003, arose in relation to an incident which arose between young boys at a swimming pool on 29th November, 1999. On the applicant's evidence, the incident arose after his son had been bullied. The complaint was that the applicant physically assaulted the two sons of the complainant. It is not for this court to determine the credibility of either account other than to state that the reaction of the applicant caused the complainant to make a formal complaint.

It is also clear from the evidence that an attempt was made to resolve the issue between the parties and, indeed, that the Garda Síochána had been led to believe that an apology would be made which would resolve the issue.

Unfortunately no apology was made which resulted in a solicitor's letter being sent by the complainant. A further meeting arranged did not take place as the applicant maintained that he had done no wrong and was not prepared to pay the medical expenses of one of the complainant's children which allegedly resulted from an injury to that child's finger. The Gardaí were led to believe on the applicant's representation made in June, 2001 that the applicant intended to adopt a certain course of conduct towards the complainant by apologising unconditionally. The fact that the applicant did not do so was not brought to the attention of the Commissioner until February, 2002.

The first formal complaint made pursuant to the Garda Síochána Complaints Act on 28th November, 2000, almost one year after the incident was found to be inadmissible due to the passage of time. Quite properly, the Commissioner pursued an internal inquiry pursuant to the Garda Síochána (Discipline) Regulations of 1989. An investigating officer was appointed on 8th March, 2002, the month after the Commissioner became aware that the applicant had not apologised unconditionally. The officer completed his report and directed that the applicant was to be subject to a sworn inquiry on 9th August, 2002, five months after his appointment.

However the applicant was not served until 14th January, 2003.

I have no doubt that the reason for the non service was a combination of the applicant's illness, his insistence that he would not be served in the named Garda Station, a degree of non co-operation in relation to telephone calls but also due to the latitude or consideration given by the authorities to the applicant by not serving him at his home address when he was ill. No explanation was given however, for non service when the applicant was well.

Such delay seems to this court to have disregarded the rights of the complainant to have the matter dealt under the internal discipline procedure of the Garda Siochana (Discipline) Regulations with as soon as practicable even when his complaint under the Garda Complaints, Act had been ruled inadmissible.

The court has no doubt that the applicant contributed to the delay. No formal complaint had been made by the applicant in relation to the delay until the judicial proceedings issued on 19th May, 2003, one month after the date for the inquiry had been originally notified.

12.2 The phrase "as soon as practicable" used in the regulations at paragraph 8(1) provides that where it appears that there may have been a breach of discipline, the matter should be investigated as soon as practicable by an investigating officer does not define that term. It is, accordingly necessary to refer to words and phrases judicially defined.

Budd J., in the application of *Butler, In the Matter of Equitable Insurance Co London* (1970) I.R. 45 at 55:

> "In accordance with the views I have just expressed, the words in the condition 'as soon as practicable' shall be construed in the sense of 'capable of being … carried out in action … feasible'. In deciding whether or not the applicant has complied with condition 1, account can only be taken of such difficulties as make the giving of the notice not feasible or not capable of being carried out in action.
>
> …
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> There were no difficulties of the kind that it would be legitimate to consider in the construction of the condition which make it impracticable for the applicant to give the necessary notice to the company immediately, or within a very short time, after the occurrence of the accident."

12.3 In relation to delay the following decision is relevant. In *McNeill v. Garda Commissioner* [1997] 1 I.R. 469 at 479, Hamilton C.J. stated:

> "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 principles 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 An Garda Síochána and must be dealt with in accordance with the provisions of the disciplinary regulations, which set forth in detail the procedure for dealing with alleged breaches of discipline by a member of an Garda Síochána.

If the procedures set forth in the discipline regulations are followed and the principles of fair procedure applied, then the court should not interfere."

It had been submitted by the applicant that the Regulations were mandatory. They referred to the judgment at p.484 where Hamilton C.J. stated:

> "The obligation placed on the Garda authorities by reg. 8(1) of the Disciplinary Regulations to investigate breaches of discipline as soon as practicable is mandatory."

O'Flaherty J., in his judgment referred to the members of An Garda Síochána having special privileges as well as special responsibilities not shared by ordinary citizens. Therefore:

> "If suspicion descends on a member of An Garda Síochána it is important from a public policy point of view that the matter should be investigated and dealt with quickly. The air should be cleared one way or the other. I am talking of matters of substance, needless to say, and not with every idle word that may be uttered in a locality from time to time. Similarly, from the perspective of members of An Garda Síochána: they are entitled to hold their heads up in the community in which they serve; they are entitled to expect that if a charge is contemplated that it should be brought forward by way of expedition and that they should be given a chance to meet it: it may be, in certain circumstances, by admitting a breach of discipline but, in other circumstances by disputing the allegations on which the charge is based."

12.4 The applicants had also referred to *McCarthy and Dennedy v. Garda Síochána Complaints Tribunal* [2002] 2 I.L.R.M. 341. There Geoghegan J., giving the judgment of the Supreme Court, considered the period of delay where the board decided to postpone further consideration of the matter for a period of four years to await the civil proceedings instituted by the complainant. There was a further delay of seven to eight months as a new investigating officer had to be appointed and carry out an investigation. The matter was referred to the DPP who decided to take no action. Almost a year later the board decided to refer the matter to the Garda Síochána Complaints Tribunal. The Supreme Court held that the one serious delay was that relating to the postponement of the consideration pending civil proceedings. It was held:

> "… A disciplinary complaint against a member of the force is a serious matter and under any reasonable interpretation of the legislation it would have been intended that the expedition was also in the interests of those members. Accordingly, a reasonable balance must be struck between what could be conflicting interests in demanding whether, in any given circumstances, there was a delay which offended the time provisions of the Act irrespective of whether the time provisions are to be regarded as mandatory or directory."

Geoghegan J. referred to the interests of the complainants as well as that of the member being disciplined:

> "[I]n interpreting the statutory provisions it must be borne in mind that the Oireachtas clearly intended expedition both in the interests of the complainant and in the interests of the members complained about. It could never have been intended that if there was some small delay in the proceedings and possibly indeed delay engineered by the garda authorities themselves, the matter could never be proceeded further as this would be grossly unfair to a complainant not in any way responsible for the delay."

12.5 Having considered the regulations and the above mentioned authorities it seems to this Court that it is mandatory for the respondents to investigate the appearance of a breach of discipline as soon as the investigation is feasible or doable, as provided for in Regulation 8(1).

"Practicable" is defined as feasible, capable of being done and derives from the Greek *praktikos*, from *prassein*, to do. "Feasible", in turn derives from OE *faisable,* from *fais*, stem of faire from the Latin *facere*, to do.

It seems to me that in computing the feasibility of such investigation, the Commissioner is entitled to take into account the understanding given to the Commissioner that the applicant would apologise unconditionally to the complainant.

The parties differ in relation to whether such an apology would or would not be given. However, the Court has to take into account the fact that the applicant did go to the complainant's home. The applicant does not controvert the evidence of Chief Superintendent Finnegan that the Commissioner had received and relied upon a representation made by the applicant in June, 2001 that he go to the complainant and apologise. It seems to the Court that the Commissioner did have grounds for such an impression.

Having so found, it seems to this Court that the delay complained of can only be from the time that the failure to comply with that impression became known to the Commissioner which was in February, 2002.

The Court has carefully examined the delay from that date to the notification of the date for the inquiry on 14th April, 2003.

On 8th March, 2002, Chief Superintendent Finnegan appointed Inspector Galwey to inspect a breach of discipline. On 29th July, 2002, Inspector Galwey reported the matter to Chief Superintendent Finnegan. The period of four months and three weeks does seem to this court to be somewhat lengthy in terms of the provision of a report but does not seem to constitute an inordinate delay.

The attempt to serve the applicant from the date of the completion of form B30 two weeks later on 12th August, 2002 to the 14th January, 2003 is, as has already been referred to, a delay by the Commissioner partly arising from the conduct of the applicant. There is no denial by the applicant that he asked for a deferral because of his health condition and that he was out of work from 26th August to the 6th September, 2002 and from 15th November to 17th December, 2002. There was an opportunity during the five weeks from 6th September to 15th November to serve him at work. While some attempts had been made to contact him by telephone and through his superior officer it does not seem to me that this part of the investigation was dealt with as soon as practicable.

12.6 However, to the extent that the delay was inordinate it does to me, to a certain extent, to have been excusable. Even if this were not so, it seems to me that the conduct of the applicant is such that disentitles him to rely on this further delay. The Court, as already noted, is aware that no complaint in relation to delay had been made until after he was on 11th March, 2003, notified of the date of the sworn inquiry on 14th April, 2003.

It is the duty of the Commissioner to proceed with the investigation as soon as practicable. The court can take into account the reluctance of the applicant to be served, and the reasons thereafter, to be relevant. Disciplinary procedures are not criminal charges where the accused has no obligation to co-operate with the criminal process.

The applicant has not shown any specific prejudice in relation to the delay such as would entitle him to the order of prohibition or, alternatively, the injunction which he seeks.

In the circumstances the Court refuses the application.