

THE HIGH COURT**2008 503 JR****Denis Harrington****Applicant****And****Commissioner of An Garda Síochána****Respondent****Judgment of O'Neill J. delivered the 6th day of October 2009.****1. Relief sought**

1.1 Leave was granted by this Court (Peart J.) on the 26th May, 2008, to the applicant to pursue the following reliefs by way of judicial review :-

1. A declaration that the respondent is guilty of inordinate and inexcusable delay in and about the institution and prosecution of the discipline proceedings which have been brought against the applicant pursuant to the provisions of the Garda Síochána (Discipline) Regulations 1989.
2. A declaration that the respondent is *ultra vires* and/or alternatively has acted in excess of power or authority as conferred by the provisions of the Garda Síochána (Discipline) Regulations 1989.
3. An order of *certiorari* quashing the decision of the respondent whereby the respondent held the applicant in breach of discipline and found that the applicant failed to adequately supervise an investigation into a fatal road traffic accident and thereafter the respondent invoked the provisions of regulation 7 of the Garda Disciplinary Scheme which said decision was communicated to the applicant by letter dated the 25th February, 2008.

2. The facts

2.1 The applicant is a member of An Garda Síochána, holding the rank of sergeant and is stationed at Westport Garda Station in County Mayo. On the 14th October, 2004, a serious road traffic accident involving two vehicles (a car and a motorcycle) took place at Knockbrack, Westport. Garda Shane Flynn of the same garda station as the applicant and Garda Jim Corrigan of Newport Garda Station attended the scene and commenced an investigation into the accident. The motorcyclist, Mr. Kevin McAndrew, was seriously injured and was brought to hospital.

2.2 On the date of the accident the applicant was working on a separate investigation into a fatal shooting. However, on the evening of the 14th October, 2004, he directed Garda Flynn to ensure that the road traffic accident was recorded on the pulse system and to liaise with the family of the injured man and with the hospital. He also printed a copy of the road traffic accident report as it appeared on the pulse system together with a form and left them for the attention of Superintendent Patrick Doyle, also of Westport Garda Station. The following day the applicant received directions to continue to assist in the investigation of that shooting at Ballinrobe Garda Station. He spent the following ten days there.

2.3 Regrettably, on the 25th October, 2004, Mr. McAndrew died in hospital from the injuries he sustained in the accident. The applicant learned of Mr. McAndrew's death on the 26th October, 2004. He gave directions to Garda Flynn to complete a fatal traffic accident preliminary report upon receipt of the coroner's report, which he countersigned. He also visited the scene of the accident and advised Garda Flynn as to the appropriate steps to be followed in the conduct of the investigation. The investigation file, once completed, was reviewed by Superintendent Doyle who advised that the driver of the car involved, Mr. Ruairí Comer, be re-interviewed. This was carried out. Mr. Comer's first statement had not been obtained until the 11th February, 2005. The applicant reviewed the file on the 4th April, 2005, for the purpose of forwarding it to the Director of Public Prosecutions ("the D.P.P."). He attached a covering report and recommendations and again forwarded the file to Superintendent Doyle on the 6th April, 2005. The file was sent to the D.P.P. by Superintendent Doyle on the 11th April, 2005.

2.4 On the 13th April, 2005, the D.P.P. gave directions to the gardaí to prosecute Mr. Comer with the offence of careless driving pursuant to s.52 of the Road Traffic Act 1961, as amended and the offence of driving his vehicle unaccompanied while holding a provisional licence. The D.P.P. requested, however, that no summons in respect of those charges be issued until a consideration of other possible charges was undertaken by him. On the 28th April, 2005, the D.P.P. directed that the only prosecution to be brought against Mr. Comer was to be in respect of the offence of driving his vehicle unaccompanied whilst holding a provisional licence.

2.5 In September 2005 the applicant became aware that the McAndrew family had sought a further consideration of the investigation file and a further consideration of the charges that may have been contemplated by the office of the D.P.P. A review of the investigation file was carried out by the Superintendent of the Traffic Corps and the D.P.P. affirmed his original decision in respect of the charges to be preferred against Mr. Comer.

2.6 On the 31st July, 2006, the mother of the late Mr. McAndrew submitted a formal letter of complaint to Chief Superintendent A.C. McNamara of Castlebar Garda Station against Superintendent Doyle and Garda Flynn of Westport Garda Station and Garda Corrigan of Newport Garda Station in respect of the investigation into the death of her son. Her complaint was forwarded to the Chief Executive of the Garda Síochána Complaints Board. A further letter of complaint was sent by Mrs. McAndrew dated the 6th September, 2006, to the Garda Commissioner.

2.7 Mrs. McAndrew's complaint was referred by the Garda Síochána Complaints Board to the Assistant Commissioner of Human Resource Management, who then referred the complaint to the Assistant Commissioner, Western Region who was then Assistant Commissioner J.G. Kelly, who, in turn, forwarded the correspondence to the Chief Superintendent in Castlebar on the 4th October, 2006, and requested a background report to be prepared together with recommendations in respect of the criminal or disciplinary aspects, if any. The Chief Superintendent in Castlebar, Chief Superintendent McNamara, submitted his report dated the 13th October, 2006. He noted that Mrs. McAndrew's complaint was deemed

inadmissible under s.4 (i) (iv) of the Garda Síochána Complaints Act 1986 as it was out of time. However, he advised that an investigation "from a disciplinary aspect" should be carried out.

2.8 Chief Superintendent Dónall Ó Cualáin was appointed by Assistant Commissioner Kelly to carry out an investigation into the complaint on the 17th November, 2006. He was assisted by Superintendent Enda Walshe and Inspector John Galvin. On the 23rd November, 2006, Garda Flynn, Garda Corrigan and Superintendent Doyle were served with notices of investigation into potential breaches of discipline, pursuant to regulation 9 of the Garda Síochána (Discipline) Regulations 1989 (S.I. 94 of 1989) ("the regulations"). After carrying out his initial investigations Chief Superintendent Ó Cualáin deemed it necessary to investigate the applicant's handling of the investigation. The applicant was furnished with a notice under regulation 9 on the 6th January, 2007, in which it was alleged that the applicant had failed to properly supervise the investigation of the road traffic accident, had failed to preserve the scene, had failed to have forensic and photographic evidence secured, had failed to liaise with the family and had not forwarded a file to the D.P.P. in a timely manner.

2.9 The applicant furnished a statement to Chief Superintendent Ó Cualáin on the 1st February, 2007. Superintendent Walshe wrote to the applicant by letter dated the 27th February, 2007, seeking clarification of a number of points. The applicant, in his letter dated the 1st March, 2007, did not address any of the points raised but instead referred Superintendent Walshe to his statement of the 1st February, 2007. On the 9th May, 2007, the applicant was called to a meeting with Superintendent Walshe and Inspector Galvin. The applicant chose not to add anything to his statement of the 1st February, 2007.

2.10 Assistant Commissioner Noirin O'Sullivan, having replaced Assistant Commissioner Kelly, the original appointing officer under the regulations, on the 2nd August, 2007, considered Chief Superintendent Ó Cualáin's report and formed the view that it was not necessary to invoke the disciplinary procedures under the regulations. She directed Chief Superintendent McNamara of Castebar Garda Station to deal with the applicant's breach of discipline by way of an "advice" in accordance with regulation 7. The applicant requested that the advice be put in writing.

2.11 The other gardaí the subject of Mrs. Andrew's complaint were found not to have acted in breach of the regulations. The advice contained in a letter dated the 25th February, 2008, from Superintendent Doyle, which the applicant challenges in these proceedings, was in the following terms:-

"...

On the directions of Chief Superintendent, Castlebar and in accordance with Regulation 7 of the Garda Síochána (Discipline) Regulations, 1989, I am to inform you that you are being advised under the said Regulation 7 for failing to adequately supervise the investigation into the Fatal Traffic Accident which took place on the 14th October, 2004 investigated by Garda Shane Flynn ... in accordance with Garda Síochána Code 24.5(d) then applicable and H.Q. Directive 161/98 of the 24th August, 1998, also then applicable.

The caution under Regulation 7 is being given by way of advice relative to the need to properly supervise the Investigation by members under your control into files and for strict compliance with H.Q. Directive 67/05 of the 29th March, 2005 and relevant Garda Code instructions.

..."

3. Delay

3.1 The first issue that arises is whether there was an undue and unconscionable delay on the part of the respondent in progressing the investigation into Mrs. McAndrew's complaint, impinging on the ability of the applicant to defend himself.

3.2 Counsel for the applicant, Mr. Keane S.C., submitted that the language of the regulations required that urgency is to be observed at every stage of the process of investigation into complaints. He relied on the Supreme Court case of *McNeill v. Commissioner of An Garda Síochána* [1997] 1 I.R. 469 and the judgment of this Court in *Kneafsey v. Commissioner of An Garda Síochána* [2009] I.E.H.C. 89 (Unreported, High Court, 20th February, 2009) in support of this. He submitted that in the instant case there had been a six month delay from the time the complaint had been received to the issue of a B33A form (the notice under regulation 9 that the applicant was under investigation for an alleged breach of discipline), a delay of 40 months between the road traffic accident and the issuance of the advice, a delay of 34 months between the direction from the D.P.P. and the advice, a delay of 19 months between the making of a formal complaint and the advice and a delay of 29 months between the advice and the family expressing disquiet in September 2005, as averred by the applicant.

3.3 Mr. Dignam B.L., for the respondent, submitted that the relevant date from which time should run in assessing delay was the date that the cause for investigation first arose, that is the 31st July, 2006, when a formal complaint was first made by Mrs. McAndrew. In addition, he submitted that the reason why the applicant was not served with a notice that he was being investigated at the same time as his colleagues was because he was not named in the original complaint and the decision to investigate his role only arose once Chief Superintendent Ó Cualáin commenced his inquiry into the matter. It was further submitted that all of the necessary steps required by the regulations were carried out in a timely manner and there was no breach of the obligation of expedition under the regulations.

Decision

3.4 It is clear that the language of the regulations underscores the need for expediency when carrying out investigations pursuant to the regulations. The following provisions illustrate this point:-

"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).

...

9. (1) *As soon as practicable* after his appointment, an investigating officer shall inform the member concerned in writing—

(a) that it appears that the member concerned may have been in breach of discipline, and

(b) that he is investigating the matter.

...

10. (1) Upon completion of an investigation under Regulation 8, the investigating officer shall *as soon as may be* submit to the appointing officer a written report of the investigation, together with copies of any statements made.

(2) Upon receipt of a report under this Regulation, the appointing officer shall *without avoidable delay*—

(a) decide whether or not to continue the proceedings under these Regulations, and

(b) if he decides to continue the proceedings, cause to be entered on a form (in these Regulations referred to as a discipline form) such particulars of the breach of discipline alleged as will leave the member concerned in no doubt as to the precise nature of it.

[emphasis added]”

3.5 It is to be observed, however, that there are no express time limits contained in the above provisions. In order to ensure that fair procedures are followed in the application of the regulations, particular steps may be required to be taken. Such steps may create short delays and may add to the overall time it takes to process a complaint. In this case I am satisfied that the appropriate date from which to calculate delay is the 31st July, 2006. That was the date upon which Mrs. McAndrew’s complaint was made to the respondent and it was the catalyst for the investigation which took place under the regulations. Before that date there was no reason for or any basis upon which the respondent could initiate an investigation under the regulations.

3.6 Within three months of the receipt of the complaint, on the 4th October, 2006, following the referral of the complaint to various persons, Assistant Commissioner Kelly of the Western Division requested a background report into the matter from Chief Superintendent McNamara. That report was completed on the 13th October, 2006 and it concluded that there may be a breach of discipline in respect of the gardaí the subject matter of the complaint and in such circumstances, as is required by regulation 8, an investigating officer was appointed. Regulation 8 provides that this be done “*as soon as practicable*”. The appointment was made within a month of the completion of the background report on the 17th November, 2006. On the 20th December, 2006, Chief Superintendent Ó Cualáin concluded that the applicant’s conduct should be investigated. In accordance with regulation 9 the applicant was notified of this on the 6th January, 2007. He was invited to furnish his report or statement on the 22nd January, 2007, which he submitted 1st February, 2007. Further information was requested on the 27th February, 2007, to which the applicant replied on the 1st March, 2007. A meeting with the applicant took place between Superintendent Walshe and Inspector Galvin on the 9th May, 2007. The full investigation file was forwarded to Assistant Commissioner O’Sullivan by Chief Superintendent Ó Cualáin on the 6th July, 2007, as per regulation 10(1). Almost four months after the receipt of the file an instruction from Assistant Commissioner O’Sullivan was issued to Chief Superintendent McNamara to deal with the applicant by way of an advice on the 1st November, 2007. Regulation 10 (2) provides that the appointing officer shall “*without avoidable delay*” make a decision whether to continue the proceedings under the regulations or not. The advice was received in writing by the applicant on the 25th February, 2008. It represented the final step in the process. Therefore, the overall timeframe of the investigation into the matter was approximately 19 months.

3.7 Having regard to the time periods in respect of each step of the investigation as outlined above, the overall time the investigation took, and bearing in mind that the investigation encompassed alleged breaches of discipline in respect of four gardaí, I am satisfied that there was no undue delay in the process and hence no breach of the regulations on that ground.

4. Whether there was a misapplication of regulation 7

4.1 Regulation 7 provides:-

“7. Nothing in these Regulations shall affect the right of the Commissioner or any other member whose duties include the supervision of another member to deal informally (whether by advice, admonition or warning as the circumstances may require) with a breach of discipline of a minor nature.”

4.2 Mr. Keane submitted that regulation 7 can only apply in circumstances where an actual finding is made of a minor breach of the regulations. He contended that the evidence did not support the contention that a minor breach took place. In addition, he argued that the applicant was denied fair procedures, in that, regulation 7 was invoked without providing the applicant with an oral hearing in which he could cross-examine his accusers or present his case in response.

4.3 Mr. Dignam contended that it was the right of the respondent to deal informally with the matter under regulation 7 and that it was without prejudice to the application of the regulations.

Decision

4.4 In this case Assistant Commissioner O’Sullivan, the appointing officer, upon receiving the report of the investigation into the alleged breaches of discipline against the four members in question concluded that it was not necessary for the disciplinary procedures prescribed by the regulations to proceed as against the applicant. At para. 12 of her affidavit sworn on the 12th November, 2008, she stated:-

"... I concluded that the investigation file disclosed a minor breach of discipline which could be dealt with informally by way of advice. I decided to proceed in that fashion. I concluded that the applicant had not properly fulfilled his supervisory duties in that he failed to properly supervise the investigation of the said road traffic collision."

4.5 This determination was in accordance with regulation 10 which expressly provides for the appointing officer, upon receipt of the investigation report, to decide whether the disciplinary proceedings should continue or not. Here, the appointing officer made a decision not to continue with the disciplinary proceedings and to deal with the applicant by way of an advice as a minor breach of discipline had been disclosed, in her view.

4.6 Although the issuance of an advice under regulation 7 may have adverse consequences for its recipient, including a negative impact on reputation within the force and within the community and adverse effects on promotional prospects, it is clear that it is a mechanism that expressly allows for superior officers to deal informally with a breach of discipline of a minor nature. It is noteworthy that the applicant has not challenged the *vires* of the regulations in these proceedings. Rather, he has made the case that they were not correctly applied to him. This cannot be the case having regard to what regulation 7 mandates. It is to be observed, that the advice of the 25th February, 2008, was issued in writing, thereby introducing an element of formality into the procedure. This, however, came about at the applicant's request. Superintendent Doyle sought to issue the advice verbally but the applicant asked for the advice to be put in writing.

4.7 As to the argument that the applicant should have been provided with an oral hearing in respect of the decision to invoke regulation 7, I am satisfied that the applicant was not entitled to the full panoply of *In re Haughey* [1971] I.R. 217 rights in circumstances where a breach of discipline of a minor nature was at issue. The applicant, in accordance with the regulations, had been put on notice of the allegations made against him and was given an opportunity to respond to them and to put forward his version of events and to answer further questions put in writing to him, which he declined to expressly answer, preferring instead to simply refer to his original statement. Though he may disagree with the conclusion arrived at, it was within the competence of the respondent to decide to issue an advice. Accordingly, the applicant's case on this point must fail.

5. Irrationality

5.1 The applicant made the case that the respondent acted irrationally in finding the applicant in breach of Directive 67/05, dated the 29th March, 2005, as it was not in force at the time the investigation commenced. He also argued that it was irrational to find the applicant guilty of a breach of discipline in circumstances where the other gardaí against whom the complaint was made were exonerated. Mr. Dignam relied on the third affidavit of Assistant Commissioner O'Sullivan, which, in his submission, illustrated the rational basis for the decision in detail.

5.2 Henchy J. set forth the test for unreasonableness or irrationality in *The State (Keegan) v. The Stardust Victims Compensation Tribunal* [1986] I.R. 642 at p. 658:-

"I would myself consider that the test of unreasonableness or irrationality in judicial review lies in considering whether the impugned decision plainly and unambiguously flies in the face of fundamental reason and common sense. If it does, then the decision-maker should be held to have acted ultra vires, for the necessarily implied constitutional limitation of jurisdiction in all decision-making which affects rights or duties requires, inter alia, that the decision-maker must not flagrantly reject or disregard fundamental reason or common sense in reaching his decision."

In the subsequent case of *O'Keefe v. An Bord Pleanála* [1993] 1 I.R. 39 Finlay C.J. formulated the test as follows at p.72, although this test may be more appropriate to expert tribunals:-

"I am satisfied that in order for an applicant for judicial review to satisfy a court that the decision-making authority has acted irrationally in the sense which I have outlined above so that the court can intervene and quash its decision, it is necessary that the applicant should establish to the satisfaction of the court that the decision-making authority had before it no relevant material which would support its decision."

5.3 All of the material Assistant Commissioner O'Sullivan had available to her when reaching her decision is exhibited at "NOS1" in her third affidavit, sworn on the 10th July, 2009. It comprises of the report of Chief Superintendent Ó Cualáin dated the 6th July, 2007 and its appendices. The report sets out the background to the investigation into the alleged breaches of discipline. It details the service of documents and communication with the members complained of and then goes on to outline the alleged breaches of discipline against the individual members and their responses. It does not contain recommendations.

5.4 There are twelve statements or reports and nineteen exhibits attached to the report. The statements of Mr. and Mrs. McAndrew outline their concerns as to the conduct of the investigation into their son's death. The statements of the four gardaí under investigation follow and they set out their respective responses to the allegations of breaches of discipline. Then there are statements of the three investigating gardaí outlining the steps they took in the investigation of the matter. Statements from Mr. McAndrew's school principal and that of another garda who attended at the scene of the accident are also included. The exhibits include notices of the appointment of the investigating officer under regulation 8, notices of the alleged breaches of discipline under regulation 9, correspondence which seeks further information from the gardaí under investigation, an extract from the Garda Code, copies of the letters of complaint from Mrs. McAndrew and a copy of the investigation file. The evidence disclosed that there was a delay of three months and twenty days from the date of the accident in interviewing Mr. Comer. In addition, the file was not submitted by the gardaí to the D.P.P. for directions until the 11th April, 2007.

5.5 It was the applicant's evidence, in his statement of the 1st February, 2007, that he impressed on Garda Flynn the need for expedition in the investigation and that at all times he informed Garda Flynn that investigations involving death should be dealt with as quickly as possible. The applicant stated that he directed Garda Flynn to only interview Mr. Comer when he was fit to be interviewed but in time if he did not make a statement or present himself for interview that he would have to be arrested and formally interviewed. He also stated that Garda Flynn undertook to submit the investigation file and the coroner's file as quickly as possible. A written request was made to the applicant by Superintendent Walshe on the 27th February, 2007, to, *inter alia*, outline the steps the applicant took to ensure the file

was submitted as quickly as possible, the steps he took to ensure that Mr. Comer was interviewed in a timely manner, the details of when he impressed upon Garda Flynn the need for expedition in the investigation, the details of when he informed Garda Flynn to deal with investigations involving death as quickly as possible and Garda Flynn's response. By letter dated the 1st March, 2007, the applicant responded and stated that he felt that he had set out in detail his position in his report of the 1st February, 2007.

5.6 At the meeting of the 9th May, 2007, between the applicant and Superintendent Walshe and Inspector Galvin, the applicant did not add anything to his initial report. The statements of Superintendent Walshe and Inspector Galvin give similar accounts of the meeting of the 9th May, 2007, with the applicant. The relevant section of Superintendent Walshe's statement of the 14th May, 2007, reads as follows:-

"Inspector Galvin and I met Sgt. Denis Harrington. We discussed the investigation and I explained that the reason for meeting him was to ask him if he wished to ask any questions or add anything to what he had already supplied in writing. I mentioned his response to my memo requesting clarification on certain issues and asked why he had not answered them. He told me that he had acted on the advice of his Solicitor. He clarified one issue on his first report stating that a comma was missing which made it read incorrectly, giving the impression that he had stated that he was aware that Garda Flynn had taken various statements including that of Mrs. McAndrew in the week following. What he was actually stating was that he was aware that Garda Flynn had taken various statements including Mrs. McAndrew's, which was taken in the first week. In the course of the meeting he stated that he had discussed the investigation with Garda Flynn and discussed interviewing Ruairi Comer. I asked him why he did not reply to my memo and state what he was telling us and he replied that it was on the advice of his Solicitor."

5.7 Although the wording of the second affidavit of Assistant Commissioner O'Sullivan suggests that the reason the advice was issued was a failure on the part of the applicant to comply with Directive 67/05, a directive not in force at the relevant time, the Assistant Commissioner clarifies in her third affidavit sworn on the 10th July, 2009, that she mistakenly referred to Directive 67/05 in her previous affidavit and that she should have instead referred to Directive 161/98. She noted that the terms of the letter of the advice of the 25th February, 2008, (as quoted above at paragraph 2.11) identifies the breach on the part of the applicant as not acting in accordance with "Garda Siochana Code 24.5(d) then applicable and HQ Directive 161/98 of the 24th August 1998 also then applicable."

5.8 Directive 161/98 regulated the preparation of files for submission to the D.P.P. It imposed a deadline of three months in the following terms:-

*"All Garda files that require to be submitted to the Chief State Solicitor's Office / the office of the local State Solicitor for prosecution or for the obtaining of directions should, unless the matters to which they relate are of a complex nature requiring time consuming investigations be submitted to those offices **within three months** of the matter coming to the attention of the Gardaí."*

5.9 Having regard to the precise terms of the letter of advice and the clarification offered in her third affidavit to the effect that Directive 67/05 was not relied on by Assistant Commissioner O'Sullivan in reaching her decision that the applicant committed a minor breach of discipline, it cannot be concluded that her decision can be vitiated on the irrationality ground.

5.10 The principal reason that a finding of a breach of discipline was made against the applicant related to the late submission of the investigation file to the D.P.P. In this case the investigation commenced on the 14th October, 2004, the date of the accident. The file was ultimately submitted to the D.P.P. on the 11th April, 2005. This was clearly well outside deadline provided for in Directive 161/98. In her third affidavit sworn on the 10th July, 2009, Assistant Commissioner O'Sullivan outlined in precise terms the basis for her decision to find a breach of discipline in respect of the applicant in relation to the late submission of the file at para. 9:-

"9. It was Sergeant Harrington's duty as supervising member with responsibility for supervising the investigation to take steps to ensure that the file was indeed submitted in a timely fashion. On the basis of the evidence that was before me at the relevant time I was not satisfied that Sergeant Harrington had performed that duty and there was no information given amounting to an explanation as to why he did not perform this duty. There were some references in the disciplinary file to Sergeant Harrington having spoken to Garda Flynn and to him having given directions to Garda Flynn but I was not satisfied that they disclosed adequate performance by Sergeant Harrington of his supervisory functions."

5.11 The applicant made the case that the reason for the delay in submitting the file emanated from the delay (of over three months) in obtaining a statement from Mr. Comer owing to his state of health and as this was well known to the respondent, the decision taken was irrational in those circumstances. Assistant Commissioner O'Sullivan at para. 11 of her third affidavit addressed this issue:-

"...

I was aware from the papers which were before me that there had been an issue about Mr. Comer's mental state and that there had been a concern that he was suicidal. I was also aware that Garda Flynn had been told by Superintendent Doyle and Sergeant Harrington that this was no excuse and that if necessary Mr. Comer would have to be arrested for the purpose of taking a statement. The taking of statements as soon as possible after an incident is an important ingredient of an investigation. What I was concerned to know was what steps Sergeant Harrington had taken to ensure that Garda Flynn carried out this essential step in a timely fashion. On the basis of the information which was before me I was not satisfied that Sergeant Harrington had in fact taken adequate steps."

5.12 It is clear that in the disciplinary investigation that there were three separate roles in the investigation of the fatal

road traffic accident under investigation and each necessitated an examination by Assistant Commissioner O'Sullivan. The roles were that of the investigating garda, Garda Flynn, that of the Superintendent or District Officer, Superintendent Doyle and that of the sergeant in charge of the unit of which the investigating garda was a member, the applicant. The direct and immediate supervision of Garda Flynn was what the applicant was concerned with. Notwithstanding the fact that Garda Flynn and Superintendent Doyle were held not to be culpable of a breach of discipline, I am satisfied that this fact does not on the irrationality ground preclude a finding that the applicant, in his own supervisory role, failed in that supervisory capacity. Within the information before the decision-maker, there was ample material to support a conclusion that the applicant had not taken adequate steps to properly discharge his supervisory duties, ergo the conclusion reached cannot be held to be irrational. Furthermore, the reason for delay in taking Mr. Comer's statement was known to the decision-maker, and although the applicant's explanation of the delay relating to Mr. Comer's health may have been a satisfactory justification of the delay in the applicant's mind, it did not preclude a consideration by Assistant Commissioner O'Sullivan of whether in the management or supervision of that situation the applicant had taken such steps that would be expected of him in his supervisory role.

6. Conclusion

6.1 For the reasons set above, I have come to the conclusion that I must refuse the relief sought in these proceedings.