

THE HIGH COURT**[2008 No. 10970 P]****BETWEEN****DECLAN NYHAN****PLAINTIFF****AND****COMMISSIONER OF AN GARDA SIOCHANA AND MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM****DEFENDANTS****JUDGMENT of Mr. Justice Cross delivered on the 26th day of July, 2012****1. Introduction**

1.1 On 19th November, 2006, Ms. Baiba Saulite was murdered at her home at Holly well Square, Swords, Co. Dublin. The suspect for the murder was Ms. Saulite's former spouse, one H.H. who was at the time in prison.

1.2 The plaintiff was born on 30th June, 1970 and was at all material times and remains a member of An Garda Síochána who resides in Dunboyne, Co. Meath. The plaintiff is a married man with children.

1.3 The plaintiff was attested as a member of An Garda Síochána on 13th February, 1991. In the year 2004, the plaintiff, whilst serving in the Community Policing Department of Swords Garda Station, became involved in an investigation into the abduction of Ms. Saulite's children from the State by her spouse, H.H.

1.4 Ms. Saulite's children were removed from the State to a Middle Eastern jurisdiction where the Hague Convention did not apply.

1.5 The abduction was originally investigated by another garda and then the plaintiff's superior, Sergeant Hughes, was asked to get involved in the investigation and then he requisitioned further help from the superintendent which resulted in the plaintiff being allocated to the team.

1.6 This case was, it seems, the first case of child abduction to be processed under the Non-fatal Offences Against the Person Act 1997.

1.7 Mr. H.H. was arrested and remanded in custody and the plaintiff and the other members of the team made extensive inquiries including telephone calls and new technology to ascertain the location of the children.

1.8 It is clear that the plaintiff, Sergeant Hughes and the other members of An Garda Síochána were engaged on a personal level with Ms. Saulite during the investigation and dealt with her distress. It is also clear that the plaintiff and Sergeant Hughes, through excellent police work, achieved what was undoubtedly a very positive outcome in the case.

1.9 Eventually, a judicial colleague, who has not been identified, with remarkable practicality put as a condition of Mr. H.H.'s bail that the children be returned to the jurisdiction.

1.10 The children were returned in the summer of 2005 and Mr. H.H. availed of bail.

1.11 Directions from the DPP to prosecute H.H. in relation to child abduction were received and a trial was set for October 2006. Before the trial came to hearing, a number of distressing incidents occurred. First, on 27th February, 2006, there was an arson attempt on the house of Ms. Saulite's solicitor, Mr. H., who H.H. alleged was too close to Ms. Saulite. The plaintiff was aware of the arson. There was also an investigation into the matter but the plaintiff had no direct contact with the investigation into the arson as he was concentrating on the abduction.

1.12 Subsequently, the plaintiff became aware that another member of An Garda Síochána was informed through intelligence sources of a direct threat to kill Mr. H. In August, 2006, there was an arson attack on Ms. Saulite's car which was parked beside her house. This was being investigated by the gardai in Malahide. The plaintiff was aware of this in general but again had no formal contact with this investigation.

1.13 As a result of the arson attack, Ms. Saulite moved house. Ms. Saulite advised the plaintiff and Sergeant Hughes that she was in fear of her life due to intimidation and phone calls H.H. was making while in prison. H.H. was at this stage in prison on other non related matters. Ms. Saulite, however, declined to make any sort of formal complaint to the plaintiff or any member of An Garda Síochána.

1.14 The abduction case against H.H. proceeded to trial and H.H. pleaded guilty and was remanded in custody awaiting a victim impact report which had been requested by the judge.

1.15 On 14th November, 2006, Ms. Saulite visited Sergeant Hughes and the plaintiff in Swords Garda Station with a prepared handwritten victim impact report. The report was handed to Sergeant Hughes, and he glanced at it. He ascertained that the handwritten document was not a proper victim impact report and would not be allowed to be read in court and Ms. Saulite was advised what ought to be the general contents of a proper victim impact report. Neither Sergeant Hughes nor the plaintiff had read the end of the victim impact report at the time but suffice to say the following sentences occurred at the end of the unread document:-

"In my new house I began to get knocks on my door at night time and no one there. I have found I am being followed by car. [H.H.] has told me he knows my new address and where my son is going to school. If I have any relationship will any

man I will be very sorry and it would be my fault that the man's life would be ruined. He constantly blames my solicitors for ruining his life and he will pay for it.

At the moment I am very scared for my life because [H.H.] is blaming me for everything that has gone wrong in his life. All I want is some peace for my children and myself to live a normal life, safe and happy knowing that this man cannot hurt us anymore. My children are becoming bright, happy, intelligent individuals and this is what I wish to continue like."

1.16 Ms. Saulite gave a copy of this document to Sergeant Hughes who had it photocopied and placed the copy in his locker and Ms. Saulite agreed to write a new report.

1.17 At this meeting, Ms. Saulite also described how she had been visited by an associate of H.H. who advised her that there were threats on her solicitor, Mr. H's, life. Ms. Saulite phoned Mr. H. who contacted the gardai. The gardai called and interviewed Ms. Saulite and the associate.

1.18 Ms. Saulite informed Sergeant Hughes and the plaintiff that the detectives from Swords were dealing with this incident. She was happy about this. She did not want Sergeant Hughes or the plaintiff to get involved.

1.19 Ms. Saulite advised the plaintiff that she had visited her partner in prison and had told him, that she was now going to refuse to have anything more to do with him that she was not going to bring the children to prison. He was very annoyed by this and he blamed the solicitor and the gardai for what happened to him.

1.20 At this meeting Ms. Saulite stated that she feared for Mr. H. and for Sergeant Hughes and the plaintiff.

1.21 However, when the plaintiff and Sergeant Hughes asked Ms. Saulite for specific information, she indicated she had none and in fact the plaintiff gave evidence that this information did not worry him as he was dealing, as he saw it, with a family law matter and Ms. Saulite did not want to make a formal complaint about her concerns.

1.22 This was the last occasion that the plaintiff saw Ms. Saulite and as stated she was murdered on 19th November, 2006.

1.23 As a result of the above events and the aftermath thereof, which is discussed below, the plaintiff has brought the proceedings herein against the defendants.

2. Pleadings

2.1 The plaintiff by personal injury summons dated 19th December, 2008, initiated these proceedings for damages of personal injury caused by reason of the alleged negligence, breach of duty and breach of contract of employment on the part of the defendants. It is alleged that in breach of the terms and conditions of his employment, he was treated in a "highly inappropriate manner and was subject to intolerable working conditions" whereby the defendants allegedly failed to provide suitable working conditions so that on 27th March, 2007, the plaintiff came under the care of a consultant psychiatrist.

2.2 In the particulars relating to the commission of the wrong, the nature of the plaintiff's case becomes clear. It is said that by reason of the plaintiffs acute involvement in the abduction investigation which centred on the activities of someone who is a "leading criminal" and that after the events described, the plaintiff feared for his own life and advised the defendants of the stress of the adverse working conditions to which he had been subjected. But the defendants allegedly ignored and disregarded the plaintiff and they failed to provide any reasonable level of help or support or protection to the plaintiff and accordingly the plaintiff felt he was isolated in An Garda Síochána.

2.3 The plaintiff in the proceedings alleges that the actions of the defendants intensified to the point where he was served with "discipline documents" to inquire as to whether the plaintiff was in possession of information or documents which meant he knew or ought to have known at the time of the existence of a real and immediate threat to the life of Ms. Saulite and failed to take measures that might be expected to avoid that risk.

2.4 As a result of this disciplinary inquiry, the plaintiff believed he was being scapegoated. The plaintiff goes on in the proceedings to allege that the first named defendant was engaged in a "cover up" and the disciplinary proceedings were an attempt to protect more senior or other officers who in truth and in fact had and were in possession of specific threats to Ms. Saulite's life at a much earlier time. The plaintiff characterised the nature of the matters that were being investigated under the disciplinary procedures as an allegation that the plaintiff was guilty of manslaughter.

2.5 The plaintiff alleges that he was not cleared of any wrongdoing until 8th July, 2008, over a year from the commencement of the disciplinary inquiry.

2.6 In 1999 the plaintiff had previously been a victim of a violent attack and had suffered Post Traumatic Stress Disorder (PTSD) and as a result he also suffered other injuries.

2.7 In further, the particulars delivered, the plaintiff lists a number of meetings he had with the various members of An Garda Síochána hierarchy. He alleges that his complaints into his allegations of scapegoating and of being bullied and harassed because these concerns were not properly addressed by the defendants.

2.8 In the further particulars of injuries dated 21st December, 2010, the plaintiff describes four years of "relentless bullying and harassment and isolation by his employers". He states that his predicament was that he was victimised and scapegoated by management in order to cover deficiencies in An Garda Síochána. He further alleges that the disciplinary action was an attempt to frame him on a false charge which could have been construed as manslaughter and that the plaintiff had repeatedly raised issues which he required to be investigated by garda management but they failed to act upon his complaints.

2.9 On 10th June, 2011, the plaintiff by further particulars stated he applied for aggravated, exemplary and punitive damages. The basis for this claim was that the activities of the defendants were, allegedly, wilfully done calculate to cause the plaintiff injury and damage, that the plaintiff was hatched and pursued with the object of a scapegoating scheme and that the steps taken by the defendant were conscious and deliberate and were conducted in reckless disregard of the plaintiff and wanton abuse of authority. Further allegations are made including abuse of process and that the defendant's "actions and activities were corrupt and/or were criminal in character".

2.10 The defendant's Defence is a full denial of all matters together with a plea of contributory negligence against the plaintiff for an

alleged failure to engage with the defendant's attempts to rehabilitate him.

2.11 After the opening of the case, Ms. Bolger proceeded to withdraw the further particulars of claim of 10th June, 2012.

2.12 Accordingly, the case made on behalf of the plaintiff, was a claim for damages for personal injury arising from what is commonly referred to as bullying and harassment.

3 Bullying and Harassment

3.1 This Court in the case of *Kelly v. Bon Secours Health System* [2012] IEHC 21 (Unreported, High Court, Cross J., 26th January, 2012), emphasised that there is no distinctive tort of bullying and harassment. Whether the defendant has a contract of employment with the plaintiff does not alter the situation in that the defendants clearly owe a duty of care not to expose the plaintiff to injury. One of the sub-aspects of this duty may be the question of bullying and harassment.

3.2 In the majority of cases under the heading of "bullying and harassment", the bullying concerned is usually one or more employee of a defendant allegedly bullying the plaintiff.

3.3 In this case, as well as bullying, of course, the plaintiff alleges breach of contract, scapegoating of the plaintiff in order to protect more senior officers and isolating him and ignoring his complaints. In effect, the plaintiff is alleging a conspiracy by the defendants against him.

3.4 In most cases involving bullying and harassment, the key issue to be addressed is whether the employer had or ought to have had knowledge of the activities of employees.

3.5 In *Quigley v. Complex Tooling and Moulding Limited* [2009] 1 I.R. 349 at para. 13, Fennelly J. adopted the definition of "workplace bullying" at para. 5 of the Industrial Relations Act 1990 (Code of Practice detailing Procedures for Addressing Bullying in the Workplace) (Declaration) Order 2002 as being an accurate statement of the employers obligations as follows:-

"Workplace bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but, as a once off incident, is not considered to be bullying."

Fennelly J. went on to state:-

"Counsel for the defendant submitted, and I would accept, that bullying must be:-

- repeated;
- inappropriate;
- undermining of the dignity of the employee at work."

3.6 In the plaintiffs case it is clear that all of the allegations relate not to any of the witnesses or management figures who gave evidence but to the first named defendant himself and his agents who were engaged in the alleged campaign against the plaintiff and also that they failed to address the plaintiffs concerns in this regard.

3.7 If the plaintiff proves such a campaign, unlike most plaintiffs in bullying cases, he does not have to establish that any of the activities complained of were known by the first named defendant as he is alleging that it was the first named defendant who was deliberately orchestrating and organising his bullying. Ms. Bolger on behalf of the plaintiff contended that even if the plaintiff is incorrect in his view that there was an orchestrated campaign or conspiracy by the first named defendant, the defendants were still liable to the plaintiff for the manner they dealt with or rather failed to deal with his complaints.

3.8 As I stated in *Kelly*, in my view, the best summary of the questions to be addressed in a case such as this was set out by Clarke J. in *Maher v. Jabil Services Limited* [2005] 16 ELR 233, as follows:-

- "(a) had the plaintiff suffered an injury to their health as opposed to ordinary occupational stress;
- (b) if so, was that injury attributable to the workplace and;
- (c) if so, was the harm suffered to the particular employee reasonably foreseeable in all the circumstances."

3.9 These three questions, so aptly posed by Clarke J. are, as agreed by Ms. Bolger, subject to the pre-existing requirement that the plaintiff establish an actionable wrong in the form of negligence, breach of contract or breach of duty or in this case the quasi conspiracy which is clearly alleged in what has been described as the cover-up. Whether or not any injury results from an actionable wrong is, of course, measured by the standard of reasonableness.

3.10 Rather than proceed through the entirety of the evidence, I think that this case should be best analysed first by dealing with the issue of whether there was a deliberate conspiracy to scapegoat the plaintiff in order to protect senior members of An Garda Síochána who were allegedly aware of specific threats against Ms. Saulite which they allegedly ignored. Second, irrespective of the answer to the first issue, I will consider whether the responses of the defendants to the plaintiff and his concerns and their relationship with him in dealing with these concerns amounted to a breach of their duty of care so that it is an actionable wrong. Finally, I must consider the nature of any injury suffered by the plaintiff, as the plaintiff contends that the defendants' bullying or negligence or breach of duty included the manner in which they addressed the injuries or illness of the plaintiff. Before I embark upon this analysis I will briefly deal with the plaintiffs past experiences in An Garda Síochána.

4 The Plaintiff's Previous History

4.1 As stated above, the plaintiff joined the force in 1991. He sustained an injury in the course of his duties. In 1999 he was involved in a violent fracas working as a garda in Dundrum. Some eighteen gardai were involved in the arrest of a violent suspect appear to point a gun at the gardai. The suspect indicated that he was HIV positive and then blood was sprayed and an attempt was made to set fire to an aerosol canister fully of gas.

4.2 As a result of this incident, the plaintiff suffered PTSD, was tested for AIDS this was negative, nevertheless he came under psychiatric care. He suffered panic like symptoms, admitted to an increasing alcohol consumption and reported to Dr. Shanley, Psychiatrist, that his superiors were monitoring him closely and his work atmosphere was unfriendly. Subsequently there was an incident in which allegations were made that the plaintiff had used his baton excessively and a file was sent to the DPP in relation to his behaviour. The plaintiff advised Mr. Michael Dempsey, a senior clinical psychologist, that he was aggrieved by this incident and other matters and felt he was being harassed in work by his superiors. He reduced his alcohol consumption and returned to normal duties of his own accord.

4.3 The plaintiff subsequently was transferred to the Swords Garda Station and was on community policing duties which he enjoyed.

5 Did the defendants scapegoat the plaintiff in order to hide a prior knowledge of distinctive threats on Ms. Saulite

5.1 The plaintiff heard of the murder on Sunday night when he got a phone call from Sergeant Hughes. He was clearly shocked when he received a further phone call from his local superintendent to advise him that he was being offered garda protection. The plaintiff did not know why he was being given this protection but it since transpired that Sergeant Hughes had indicated that this should be done.

5.2 The next day, the plaintiff went to Swords Garda Station. There was a murder conference going on, however, neither the plaintiff or Sergeant Hughes attended. The plaintiff suggests that he was not invited and was being kept "out of the loop". But it is clear that the plaintiff could have attended but did not. I fully accept that the plaintiff was still in shock as the plaintiff and indeed Sergeant Hughes had clearly been closely involved with Ms. Saulite and were shocked that somebody for whom they rightly believed that they had performed their duty magnificently had been murdered.

5.3 It was on this occasion that the plaintiff heard about Ms. Saulite's concerns as to her safety as contained in the last sentence of the draft victim impact statement when it was read by Sergeant Hughes.

5.4 Sergeant Hughes subsequently advised the plaintiff that Detective Inspector O'Sullivan had told him that protection had previously been sought for Ms. Saulite in view of information that was in possession of An Garda Síochána but that this protection had been refused for Ms. Saulite and her solicitor, Mr. H.

5.5 The now Detective Superintendent O'Sullivan swore, and I accept, that he was concerned for Sergeant Hughes who was upset and stressed. He apparently did indicate that there had been reports in relation to threats to Mr. H. but that he had no specific information in relation to reports of specific threats against Ms. Saulite immediately prior to her murder and did not suggest to Sergeant Hughes that he had any specific information of threats against Ms. Saulite or that protection had been refused for her.

5.6 I accept that Sergeant Hughes believed that he had been told by Inspector O'Sullivan that the gardai were in possession of threats to Ms. Saulite but I believe that Sergeant Hughes is incorrect in his recollection, no doubt due to the extreme stress he was under at the time.

5.7 At a very early stage in the matter, I believe that the plaintiff and Sergeant Hughes both became convinced that because of what had been stated by Ms. Saulite at the end of her draft victim impact report and the fact that it had not been read by either Sergeant Hughes or the plaintiff, that they would be scapegoated by the garda authorities in order to cover up for what they believed to have been a failure by the garda authorities to provide protection to Ms. Saulite in respect of direct threats which the authorities were aware.

5.8 This belief is, in my view, the core of all that has occurred since then. Sergeant Hughes was of similar belief and initiated separate proceedings which have been compromised.

5.9 On 21st November, 2006, the day after the plaintiff first became aware of the content of their draft victim impact report, the plaintiff reported sick and unfit for duty. He had consulted his general practitioner the previous evening. He was very shocked about the contents of the victim impact report and of what he heard and understood, Inspector O'Sullivan had said about protection having been refused to Ms. Saulite. He also said he was shocked in relation to the protection on his house that he was worried for himself and his family and the threat he feared from H.H.

5.10 The plaintiff together with Sergeant Hughes requested through Sergeant Kavanagh, the Sergeant in charge of Swords Garda Station that a threat assessment be made on him.

5.11 On 22nd November, 2006, a press release from An Garda Síochána in relation to the murder of Ms. Saulite referred to threats against Mr. H. and stated that he had been given extensive crime prevention advice and Ms. Saulite had also been given advice regarding her property and personal safety.

5.12 The statement went on to state:-

"At no time, prior to her tragic death were gardai aware of any specific threat against the life of Ms. Baiba Saulite and no complaints were received by gardai for any person in this regard.

As part of the murder investigation inquiries are ongoing in the Hollywell area and the gardai have now learned that Ms. Saulite expressed concerns to friends and neighbours regarding her safety. We have also established that in the course of preparing a document for court use the sentencing of her husband, Ms. Saulite expressed concerns for her safety and appeared to be somewhat in fear of him.

The Garda Commissioner is now examining when and to whom this information was known."

5.13 The plaintiff and Sergeant Hughes were of the view that this statement was an example of them being scapegoated as being the only two members of the force who would have possibly had knowledge of the victim impact report. In view of my findings, I do not believe any scapegoating was involved in the press statement. The only possible reference to direct threats to Ms. Saulite was in the draft victim impact report.

5.14 The plaintiff was then concerned that without notice to him, the protection that had been afforded to his house was removed.

5.15 The plaintiff seems to believe that this was removed as part of a campaign by the authorities against him but there is no evidence to support such a belief.

5.16 I must conclude that the protection was removed after the garda authorities came to the conclusion that there was no significant threat against the plaintiff. It is unfortunate that the plaintiff was not advised of this fact until much later in time.

5.17 Following the press statement, Inspector Mangan was requested to carry out a fact-finding investigation to report the level of knowledge in the possession of the gardai prior to the murder.

5.18 This report concluded that Sergeant Hughes had visited Ms. Saulite at her home in October and found her distressed as she was being intimidated by H.H. from prison but that she did not want to make a formal complaint.

5.19 The report further found that 14th November, 2006, Ms. Saulite met with Sergeant Hughes and the plaintiff to furnish the draft victim impact report with the consequences as outlined above.

5.20 Inspector Mangan concluded that Sergeant Hughes and Detective Sergeant Mangan had submitted a comprehensive report dealing with the deceased, and the plaintiff had also put in a report. Inspector Mangan reported that none of these persons were in possession of specific threats against her and that she had not made a formal complaint to any member. Inspector Mangan also concluded that the handwritten document submitted would not constitute a proper victim impact report and could not have been accepted by the courts. Inspector Mangan concluded that Sergeant Hughes and the plaintiff "completed a complex investigation in a very professional manner". Having made that conclusion, he ended by stating:-

"There certainly was knowledge in existence available to the gardai in relation to threats from (H.H.) to Biaba Saulite. The members of An Garda Síochána involved with Biaba Saulite readily admit this in their reports. To clearly outline the facts in existence, I respectfully suggest that the matter be formally investigated."

5.21 Following from this report, Chief Superintendent Phelan was appointed to investigate possible breaches of discipline on the part of Sergeant Hughes and the plaintiff.

5.22 The plaintiff was then served with a notice under Regulation 9 of An Garda Síochána (Discipline) Regulation 1989, advising that Superintendent Phelan had been appointed investigating officer and investigated the possibilities that he may have been in breach of discipline as follows:-

"It appears that you were in possession of documentation and information as a result of meetings with Ms. Baiba Saulite, and being in possession of same you ought to have known at the time of the existence of a real and immediate risk to the life of Ms. Baiba Saulite, and failed in your duties to take measures that might have been expected to avoid that risk."

5.23 The plaintiff apparently was advised by his legal advisers that this disciplinary investigation was akin to being charged with the manslaughter of Ms. Saulite. The court finds that advice extraordinary as the plaintiff was never charged with any offence. Superintendent Phelan was merely investigating the possibility of an offence as he was obliged to do under An Garda Síochána (Disciplinary) Regulations.

5.24 This investigation followed the Mangan report which while exonerating the plaintiff had also recommended that a formal investigation be made of the extent of knowledge of members concerned.

5.25 The plaintiff states and I accept that he believes that this investigation was again part of the scapegoating of the plaintiff and Sergeant Hughes but in the view of the court the investigation cannot be seen in that light and clearly cannot be seen as a charge of manslaughter or indeed of any charge against the plaintiff.

5.26 The Regulation 9 notice was served on the plaintiff on 18th June, 2007 and on 8th July, 2008, Superintendent Phelan concluded that there was no evidence to suggest that the plaintiff was in possession of documentation or information or that he knew or ought to have known of the existence of a real and immediate risk to the life of Ms. Saulite or had failed in his duty.

5.27 It is unfortunate that this report which entirely vindicated the plaintiff took over one year to be finalised.

5.28 The plaintiff complains that the one year delay was part of a campaign against him. The court does not accept that fact. The court is aware that investigations do take time and that the gardai have many calls on their resources.

5.29 The court, however, fully accepts that having the possibility of disciplinary charge hanging over the plaintiff for a period such as it was could well have added to any medical distress or depression that the plaintiff was suffering.

5.30 The court could only conclude that the disciplinary investigation was improperly carried out if it concluded that its purpose was in order to protect members of the gardai or senior management who had specific threats to the life of Ms. Saulite which they had failed to act upon. The failure to conclude the investigation until July 2008, while unfortunate, was not a breach of any duty owed to the plaintiff.

5.31 The court is not of the view that any case has been made out that senior garda management or gardai were aware of specific threats against Ms. Saulite prior to her murder.

5.32 At an early stage of the child abduction investigation, Ms. Saulite had expressed fears in relation to H.H. but subsequent to those fears, there had been an apparent reconciliation between the parties, the plaintiff and other members of the force indicated that frequently in matrimonial type disputes, some party may express fears for their safety but if reconciliation is achieved these matters are not in fact problematic. The court also accepts that Ms. Saulite did make reference to fears for her safety in the draft victim impact report. However, neither Sergeant Hughes or the plaintiff are to be blamed for any failure to read victim impact report. Ms. Saulite indicated that she did not want to make formal complaints at that stage.

5.33 The garda authorities were also aware of specific threats to the life of Mr. H. and had initiated protection for him.

5.34 Furthermore, the garda authorities, and indeed the plaintiff and Sergeant Hughes were aware of the arson attack on Ms. Saulite's car and that an individual who was an associate of H.H. had been questioned by the gardai in Ms. Saulite's property but again the focus of the threats were not on Ms. Saulite but on Mr. H.

5.35 It is the court's view that the focus of the plaintiff's belief which is by now unshakable centred around understandable but over scrupulous guilt on his part that he might have done more had he read the victim impact report and also the misunderstanding by

Sergeant Hughes of Inspector O'Sullivan's statement to him on 20th. The plaintiff was also focused on a realisation of the potential for violence from H.H. and the various threats for which H.H. had been responsible, both against Mr. H. and, indeed, against the plaintiff himself.

5.36 The plaintiff's belief in relation to knowledge of specific threats among the higher ranks of the gardai was further strengthened when he returned to work and believes he saw among files in the office, references to various threats to Ms. Saulite. The plaintiff, however, could not be specific in relation to what these matters were and there is no evidence that any files were in existence that have not been made available to the court or that any of the files indicated a specific threats to Ms. Saulite prior to her murder.

5.37 The plaintiff was further undoubtedly strengthened in his belief as a result of a consultation which was attended by Garda Walsh and his solicitor and then senior counsel who were also acting for Sergeant Hughes in his case.

5.38 The court heard evidence from Sergeant Hughes' then senior counsel as well as his solicitor. They attended a consultation with Sergeant Walsh and he stated that he had been made aware from an intelligence source of specific threats against Ms. Saulite from H.H and had conveyed these reports to his superiors.

5.39 Sergeant Walsh in evidence denied that he had made such statements at the consultation and reiterated what he said at a subsequent consultation that he had only been advised by his informant of threats to Mr. H., the solicitor.

5.40 While undoubtedly a statement by Sergeant Walsh that he had been aware from an informant of specific threats to Ms. Saulite and had made this knowledge available to his seniors was precisely the sort of information that the solicitor and counsel for Sergeant Hughes would have been delighted to hear at consultation, I do not believe that they misheard Sergeant Walsh. I believe that at the consultation attended by Sergeant Walsh that he did indeed tell them that he was aware of threats against Ms. Saulite from his informants.

5.41 That, however, does not end the matter because I believe that when Sergeant Walsh advised solicitor and counsel of this fact, he was confused and mistaken. He was not aware of the precise purpose of the consultation and has no notes or file or statement in front of him.

5.42 I believe that he misheard or misunderstood the questions that he was asked and gave the wrong impression that he was in possession of information of specific threats against Ms. Saulite as in fact he was not.

5.43 I have studied the report marked "secret" of Garda Walsh dated 11th October, 2006, in relation to confidential information, given by an informant and it is clear that this secret report which gives specific details of an individual who had been hired to murder Mr. H. and all of the details relate to Mr. H, none of the details and no information in the secret report relate to Ms. Saulite.

5.44 I do not believe that Garda Walsh either perjured himself in evidence or that a top secret report was doctored for the purpose of this trial by senior management in order to give the impression that the only person referred to therein was Mr. H.

5.45 Accordingly, the court does not accept that the gardai were in possession of information of specific threats to the life by Ms. Saulite prior to her murder.

5.46 The only information of a possible threat was of that contained in the victim impact report but this threat was not specific and, as was concluded in the various inquiries, no blame should attach to either Sergeant Hughes or the plaintiff for their failure to read the document.

5.47 It follows from the above that as there was no specific threats known to the gardai at senior level that there were no basis for any cover up or scapegoating of the plaintiff. The plaintiff is fundamentally in error in relation to this belief.

5.48 The court is of the view that it is very unfortunate that the plaintiff came to the fixed idea that there was in fact a conspiracy against him in order to protect senior members of An Garda Siochana. The court accepts that these allegations were made in the pleadings due to the plaintiff's sincere belief and clearly on his instructions. The plaintiff stated in evidence that he came to fear as much the persecution and indeed the criminality (planting evidence in his home etc.) from the defendants as any violence or threats by H.H. This attitude clearly and understandably affected the responses of the defendants to these proceedings and in these proceedings. The court believes that the particulars delivered on 10th June, 2011, escalated the situation. The court is pleased that these particulars were withdrawn prior to any evidence being given. Had the case been conducted merely as to the manner in which the defendants dealt with the plaintiff's concerns, the court is of the view that the issues involved would have been considerably less intractable. The court notes the goodwill towards the plaintiff personally as stated in the case by and on behalf of the defendants and accepts that this goodwill is genuine. The court also notes that whatever about the past, the plaintiff now has expressed a desire to return to the force as soon as possible and again accepts this desire as genuine.

5.49 These conclusions, however, do not end the matter as the plaintiff clearly also makes the case that the manner in which the defendants dealt with his concerns amounted to negligence or bullying and harassment.

6 The manner in which the defendants dealt with the plaintiff's concerns

6.1 In Garda Nyhan's case, I have come to the same conclusion that I came to in the *Kelly* case (above) and that Herbert J. came to in the case of *Sweeney v. Board of Management of Ballinteer Community College* (Unreported, High Court, 24th March, 2011) that the plaintiff came to believe that almost every reaction of the management was directed against him and even developments that seemingly were for his benefit were in fact part of a grand design to bully or harass him and if not part of a grand design to injure the plaintiff, were so carried out that as a matter of fact they contributed to an exacerbated his injuries. Of course, to so conclude is not by any means the end of the matter.

6.2 It is necessary to deal with the plaintiff's main concerns in order to ascertain whether the defendant's response to them either individually or collectively represented a breach of the duty of care the defendants owed to the plaintiff. In taking this approach, I will not, of course, be able to list all the evidence of each interaction between the plaintiff and the defendants.

6.3 On 29th November, 2006, the plaintiff addressed the Commissioner of An Garda Siochana advising him:-

"I now have serious concerns for my personal safety and those around me. I request that something be done in relation to this..."

6.4 Following this letter which the plaintiff accepts was unorthodox, he received a visit from Sergeant Tim Troy in charge of local crime unit of his district.

6.5 The plaintiff outlined his concerns to Sergeant Troy but believes that nothing was done about it and some days later he noticed the protection of his house was withdrawn.

6.6 On 3rd December, 2006, the plaintiff gave a written report of a suspicious telephone call made to his old family home in Blackrock, Co. Dublin which was answered by his mother and the plaintiff stated "the caller asked my mother 'do you know Declan'. My mother replied 'Declan who'. The caller then asked 'Declan Nyhan, does he live here, is this his home?' the reply was given as no and the caller then hung up". The plaintiff indicated that his mother was concerned about this and so was he and requested that the matter be investigated.

6.7 The plaintiff made a number of requests that this matter be dealt with over the coming months and indeed years and it was not until February 2009 when Inspector Hanrahan who had been reminded about the matter at a meeting with the plaintiff and his solicitor in the solicitor's office towards the end of 2008, advised the plaintiff that the phone number had been traced and gave certain details to the plaintiff indicating that there was nothing to worry about. It should be noted that Inspector Hanrahan's attempted reassurance did not in fact reassure the plaintiff and there is some, I think not very significant, difference between Inspector Hanrahan's and the plaintiffs recall as to the precise details of the caller to the plaintiffs mother which were given to the plaintiff.

6.8 It is clear that Inspector Hanrahan once he got involved was able to quickly trace the number and attempt to put the plaintiff at his ease. I am advised by Inspector Hanrahan that there is always a long delay in relation to obtaining such information from the telephone companies even in murder cases but I do conclude that the delay in this case was unacceptable.

6.9 I believe that, in fact, the defendants who had clearly concluded very early on in the matter that there was no threat to the plaintiff from H.H. did not pay sufficient heed to the plaintiffs concerns about the telephone call.

6.10 This failure though regrettable does not, in my view, amount to a breach of any duty of care of the defendants to the plaintiff nor could it be said to be an incident of bullying and harassment or negligence. The defendants were aware of the plaintiffs stress and injury but I hold that they reasonably believed that they had sufficiently reassured the plaintiff.

6.11 The plaintiff, also at his request had a meeting of a reasonably short duration with the garda welfare officer. The plaintiff had limited further engagement from the garda welfare office, with the exception being a contact around one Christmas in relation to financial difficulties. The plaintiff feels that he was ignored by the welfare office but the welfare officer indicated that it was, in effect, up to the plaintiff to request assistance.

6.12 Nevertheless, certain suggestions to the welfare officer from his seniors that he contact the plaintiff were not followed through. Again, I do not believe that this constituted a breach of duty on the part of the defendants or any manifestation of bullying and harassment by them. If the plaintiff wanted to engage with the Garda Welfare Officer, this service was available to him.

6.13 The plaintiff made repeated requests that a threat assessment be made for him. Subsequently, he stated that he required a written threat assessment but clearly was orally advised at a meeting with Superintendent Curran on 10th May, 2007 that there was no intelligence relating to any threats against him emanating from H.H. Chief Superintendent Curran stated in evidence, and I accept, that he viewed the plaintiffs position was becoming entrenched and that nothing Chief Superintendent Curran could say would change that perception.

6.14 It was submitted on behalf of the plaintiff that he was entitled to what is described as a "risk assessment" under the provisions of s. 19 of the Safety, Health and Welfare at Work Act 2005.

6.15 Section 19 provides:-

"(1) Every employer shall identify the hazards in the place of work under his or her control, assess the risks presented by those hazards and be in possession of a written assessment (to be known and referred to in this Act as a 'risk assessment') of the risks to the safety, health and welfare at work of his or her employees, including the safety, health and welfare of any single employee or group or groups of employees who may be exposed to any unusual or other risks under the relevant statutory provisions."

6.16 It is the view of the court that the plaintiff insistence on a written safety assessment in this regard is misconceived. Risk assessments as required by s. 19 are applicable to An Garda Síochána as well as other employers.

6.17 The requirement for a "risk assessment" in writing relates to perceived hazards in the workplace. "Risk assessments" have no relevance to the ascertaining by the members of An Garda Síochána of risks of a particular threat of violence to the plaintiff in operational terms. Members of An Garda Síochána are frequently "at risk" as a result of their dealings with dangerous criminals. The concept of a health and safety requirement for a "risk assessment" plays no part in any ascertaining of such operational risks or hazards to the members of the force. It would be to do violence to the language of the statute and indeed to commonsense to hold that s. 19 had any application to the plaintiff's situation.

6.18 In this case, the plaintiff was given repeated assurances on behalf of the defendants that there was no risk to him. This represents the defendants' proper response to the plaintiff's requests that any threat to him be ascertained. The plaintiff declined to accept these assurances. The court does not believe that had any of these statements been conveyed to the plaintiff in writing that he would have been any more reassured by them.

6.19 On 2nd April, 2007, the plaintiff returned to work having been advised by a security report immediately after the murder that he should vary his route to and from work and comply with other security considerations.

6.20 He returned to normal duty but after a few weeks his anxiety levels built up and took sick leave on 15th May, 2007. It should be noted that this was some five days after the above meeting with Superintendent Curran when he had tried to reassure the plaintiff that he was not under any threat.

6.21 It was subsequent to the plaintiff going off work on this occasion that the disciplinary process discussed above was served on him.

6.22 On 25th March, 2008, the plaintiff lodged a formal complaint of bullying and harassment under the defendants' procedure.

6.23 This complaint firstly was on the basis that the investigation into what information was known to the gardai prior to the murder of Ms. Saulite focused solely on the meeting that Ms. Saulite had with the plaintiff and Sergeant Hughes on 14th November, 2006 and as a result of that focusing the plaintiff believed he that he was being victimised. The plaintiff also complained in relation to the nature of the disciplinary inquiry and the questions he was being asked.

6.24 The plaintiff specifically notified the defendants of his concerns:-

(a) that prior to the murder the gardai had gathered intelligence and forward the same to garda authorities relating to the threats to the life of Ms. Saulite;

(b) that members of An Garda Síochána had visited Ms. Saulite in weeks prior to her murder and advised her regarding threats and personal safety;

(c) that these members recommended that protection be placed on Ms. Saulite and forward same to garda authorities;

(d) that on 16th November, 2006, a member of An Garda Síochána took a written report detailing the concerns of Ms. Saulite which was forwarded to garda authorities; and

(e) that based on all of this information, members of senior rank within the garda authorities knew or ought to have known at the time of the existence of real immediate risk to the life of Ms. Saulite and failed in a duty to take measures that might have been expected to avoid that risk.

6.25 The court has already dealt with the knowledge of An Garda Síochána in particular the plaintiff is incorrect that members of An Garda Síochána had visited Ms. Saulite, recommended that protection be placed upon her.

6.26 The plaintiff also complained that none of the above information was at his disposal prior to her murder. In fact the plaintiff was generally aware of the situation concerning Ms. Saulite during his dealings with the child abduction issue and any failure to make him more informed or to better coordinate the various matters being investigated, while probably regrettable in hindsight from the point of view of the cohesion of the investigations, do not represent any breach of any duty of care by the defendants owing to the plaintiff.

6.27 The plaintiff's second general complaint was that he had reported sick and unfit due to work related stress on 21st November, 2006 and since that date he had reported his concerns to member of garda management, including the Commissioner and did not receive a satisfactory reply. He then said that he was cut off and that no determination had been made by management in relation to his illness been attributable to the execution of his duty and that this delay is added to his concerns. The treatment by the defendant of the plaintiff's illnesses and medical issues will be dealt with in a later section.

6.28 On 9th April, 2008, the plaintiff was again informed, this time by Inspector Hanrahan that as a result of a detailed examination of the murder file that there was no threat to him but again the plaintiff did not accept this.

6.29 On 15th July, 2008, the plaintiff attended a meeting with Superintendent Curran and was advised that his complaints did not come within the ambit of the bullying and harassment policy. The court is of the view that the decision by the defendants in this regard was not unreasonable as the plaintiffs complaint, as recounted above, relates to concerns of a conspiracy or a "cover-up" and did not tie in with the conventional view of bullying which in the Garda procedures seems to relate to the bullying of one member of the force by another or others and not to the activities of which the plaintiff complains.

6.30 As stated two days later on 17th July, 2008, the plaintiff was advised by Inspector Hanrahan that the Assistant Commissioner was satisfied that there had been no breach of discipline disclosed against him and that in accordance with Regulation 10(2)(a) of the 1989 Regulations the proceedings against him were discontinued.

6.31 Subsequently there were a number of meetings between the plaintiff and various senior members of An Garda Síochána up to the rank of Chief Superintendent, in which the plaintiff either alone or in conjunction with members of the Garda Representative Association (GRA) brought his concerns to the defendants. These concerns were similar to what had gone before. In all of the various meetings between the plaintiff and the defendant the plaintiff generally, if not invariably, brought these concerns to the attention of his superiors by a written statement. The defendants took the view that the plaintiff should put the matter behind him and he would be accommodated in order to facilitate his return to work. The plaintiff makes a number of points which will be discussed in the section dealing with the plaintiffs medical situation to the effect that the defendants were wrong to have this focus on the future and ought to have addressed the plaintiffs past concerns.

6.32 The court is of the view that the defendants' attitude was that the plaintiffs concerns had been dealt with. The disciplinary investigation had been discontinued and the plaintiff had been exonerated. Indeed, the plaintiff had been repeatedly advised that there was no threat against him. The plaintiff was also advised that senior gardai were not aware of any specific threats against Ms. Saulite. The plaintiff was not prepared to accept the defendant's contentions in this regard.

6.33 In November 2009, the plaintiff agreed to return to work. He had been offered the option of a "easy" job or a posting elsewhere but he chose to go back to his former position of community policing. On the plaintiffs first day back he went about collecting his uniform with his senior officer and on second day he was put to office work. He says that at this stage he came across a number of files in the offices of the garda station relating to the murder which reinforced his belief that members of An Garda Síochána of a senior rank had prior knowledge of specific threats to Ms. Saulite. The plaintiff did not state the nature of these files.

6.34 The plaintiff states that his superior officer advised him that he would be required to drive a "riot van" that Friday evening.

6.35 The court had heard the evidence from the plaintiff and from his superior officer, and the court accepts, that the plaintiff was not asked to drive "a riot van". He was asked to drive a van. This was a normal part of community policing. It may have involved the plaintiff interacting with intoxicated young members of the public and may have involved him working late into the night. However, the court also accepts that the plaintiff never made any concerns in this regard known to his superiors. However, the plaintiff did report sick and unfit for duty and has remained out of work since that time.

6.36 The plaintiff's attempts to invoke the bullying and harassment procedure were resisted by the defendants on the basis that the complaints did not amount to bullying and harassment. The plaintiff then made written complaints invoking the grievance procedure

and made further written complaints at various meetings as described above.

6.37 As previously stated, the court is not of the view that any of the actions by the defendants in dealing with the plaintiff's various complaints amounted to a breach of duty by the defendants to the plaintiff. It is, of course, possible that the defendants could have come to an operational conclusion that protection ought to have been given to Ms. Saulite. Even if there may have been a lack of coordination in the defendants dealing with the matter, this Court is not of the view that any of this represented a breach of duty to the plaintiff or that it amounted to bullying and harassment of the plaintiff or that the manner by which the defendants dealt with the plaintiff's complaints was not adequate in the circumstances.

6.38 In the view of the court, the defendants dealt with the plaintiff's complaints by attempting again and again to reassure him that there were no threats against him and that there was no prior knowledge among the gardai of direct threats to Ms. Saulite.

6.39 Again, as previously stated, to come to this conclusion, is not to end the matter as the plaintiff also has specific concerns and objections to the manner in which the plaintiff's medical situation was dealt with and in particular alleges that the defendants acted in breach of their own medical advice in the way that they dealt with the plaintiff and also failed to apply proper procedures when they judged that the plaintiff was not entitled to any further sick pay.

7 The issue of the plaintiff's illnesses

7.1 As has already been stated, the plaintiff sustained significant post-traumatic stress injury after a upsetting potentially life-threatening event in July 1999. In that instance, the plaintiff was treated by Dr. David Shanley, psychiatrist; his GP, Dr. Bent, who continued to treat him as a result of the accident the matter of these proceedings, and Mr. Michael Dempsey, senior clinical psychologist. It is clear that the plaintiff suffered a significant post-traumatic stress disorder, anxiety and depression with some views of resentment against his superiors in relation to the manner that they handled his injury. The plaintiff reported to Mr. Dempsey that he consumed up to four bottles of wine a night and Mr. Dempsey was of the view that his alcohol consumption could account for the symptoms of anxiety and depression. He reduced his alcohol consumption and was encouraged back to work. In March 2003, his GP described him as fully recovered. There is no basis to suggest that as a result of the 1999 incident that the plaintiff ought not to have been given the duties that he was given after his return to work. The plaintiff was, on all the evidence, fully fit. It is indeed possible that as a result of the 1999 incident he became and remained more vulnerable to stress however, he reported fully fit for work and it is on that basis that he must be assessed.

7.2 The best evidence from the medical experts in relation to the incidents that form the subject matter of these proceedings is that the plaintiff suffered panic attacks, depression, what was described by Dr. McCormack "over valued ideas" which are not uncommon in severe depression, and/or possibly, as suggested by Professor Casey, paranoia and maybe a full-blown psychotic disorder known as 'Persistent Delusional Disorder'. The plaintiff was referred by Dr. Bent initially to Dr. Ian Daly, psychiatrist, but because of some delay in Dr. Daly being able to see the plaintiff, the plaintiff, was referred through the offices of his solicitor, to Dr. Michael Corry, psychiatrist, immediately after Ms. Saulite's death.

7.3 Dr. Corry has since died, his reports have been agreed. Dr. Daly has not been called to give evidence. However, his reports have been put into evidence.

7.4 The plaintiff was also initially examined on behalf of the Chief Medical Officer (CMO) of the An Garda Síochána by Professor Anthony Clare and after the death of Professor Clare, by Dr. Cian Denihan. The court has had the benefit of the reports from these individuals. The plaintiff was also examined on behalf of the defendant for these proceedings by Professor Patricia Casey. Professor Clare and Dr. Denihan were reporting to the CMO from the point of view of the plaintiff's ability to work. Professor Casey was the expert retained by the defendants for the purpose of defending the case.

7.5 Dr. Daly stated that the plaintiff had had a previous post-traumatic stress disorder in July 1999, and that it was difficult to state to what degree he suffered a recurrence of this following the incident in November 2006, or "alternatively, to what degree his concerns for his safety and those of his family were more reality based". Dr. Daly went on to say that based on the plaintiff's account, his concerns did not seem to have been clearly or properly responded to by his employers, and that if they believe his fears to have been exaggerated, it would have been "appropriate to inform him and to ensure that he received some form of care or counselling for a subjectively experienced fear state which extended to fears for his life, for the wellbeing of his family". Dr. Denihan, when he examined the plaintiff on behalf of the CMO in April 2008, stated that the plaintiff was at that stage at a major risk of full-blown relapse of his PTSD and that while he initially received antidepressants and tranquilisers from his GP, this had been discontinued. Dr. Denihan also noted that the plaintiff was prone to self-medicating with alcohol at night, particularly when under stress, but that this was not a serious problem.

7.6 In August 2008, Dr. Daly indicated that the plaintiff's perception of his employer's indifference to him was relevant. The fact that he felt abandoned by his employers and that it was important that his concerns be properly addressed. He went on to say that it was important that the plaintiff be provided with "sufficient opportunity to describe his experiences and seek appropriate understanding and reassurances. The issue is not about whether his response is disproportionate or not. The fact is that he has so reacted and he will benefit clinically if his superiors can accept this as a matter of fact and express due concern for any stress suffered. All of this can be done without judging the substantive issues in the case ..."

7.7 It should be pointed out that by this stage, the plaintiff had already been advised by Inspector Hanrahan that there was no threat to him, but that this advice was not accepted. In July 2008, the plaintiff had been further advised that the disciplinary investigation had exonerated him. Dr. Denihan and Dr. Daly were reporting to the CMO and subsequent to these reports in September 2008, the plaintiff together with a representative from the GRA met with Superintendent Curran with a view to easing the plaintiff's concerns. The first such meeting with Superintendent Curran was somewhat fractious, but as previously described, there were many meetings in which the defendants attempted to reassure the plaintiff that there were no threats to him and wanted to accommodate him by getting back to work.

7.8 It is submitted on behalf of the plaintiff that these meetings were too focused upon getting the plaintiff back to work and not focused enough upon the plaintiff's past concerns. The court does not accept that point of view. The court has already concluded that the plaintiff at this stage had a fixed view that the defendants were scapegoating him. Furthermore, after this series of meetings, as previously stated, Inspector Hanrahan took in charge the issue of the worrying telephone call to the plaintiff's mother and this was dealt with in February 2009.

7.9 In his report dated 8th March, 2009, which was, in all probability actually written on 8th April, 2009, Dr. Daly stated that the plaintiff was at that stage "clinically well with few symptoms of anxiety".

7.10 Dr. Daly went on to state:

"Mr. Nyhan is currently fairly well and in normal circumstances, fit enough for work. Return to this job, in this context, however, is a different matter. Whether he would compensate clinically is another matter and one about which I would not feel able to confidently predict - so much would depend on how events unfolded and how relationships and supports were established and maintained. It seems clear to me, however, that Mr. Nyhan does not wish to attempt to return to his former employment, whatever the consequences this decision might entail for him. His wife broadly concurs and it is my opinion that these decisions are being taken reasonably and not in response to any psychiatric disorders or clinical anxiety. While this attitude may seem entrenched, especially to his management, this derives mainly from his perception of their handling of the situation rather than from his own anxieties.

There may be an element of fear on his part that his mental state will deteriorate and that his anxiety may reassert itself upon a return to work, but, if so, this is only one element of a larger complex and, in the ultimate analysis, not the deciding one since he has also refused to consider a return to work and transfer elsewhere."

7.10 Garda Management, on the advice of the CMO and with the support of Dr. Denihan following this opinion from Dr. Daly concluded that the plaintiff was fit to return to work.

7.11 The plaintiff himself was interviewed by the CMO, and was informed by the CMO that he was medically fit for work. He was not happy with this and disputed the CMO's belief that Garda management were treating him fairly and could be trusted by him and that he was at no greater risk than other member of the force from any serious injury from a criminal.

7.12 At this stage, the CMO was also furnished with a report from Dr. Michael Corry, the plaintiff's other treating psychiatrist, which indicated in July 2009 that the plaintiff had developed a serious 'Post Traumatic Disorder'. It seems that the CMO was dealing with Dr. Daly and proceeded on the basis that what Dr. Daly was reporting was correct as Dr. Daly was the plaintiff's main treating psychiatrist.

7.13 In any event, the plaintiff did return to work on 2nd November, 2009. He reported on sick leave on 6th November, 2009, and has remained off work since then has been certified as unfit by his doctors.

7.14 After the plaintiff reported sick on 6th November, the CMO requested the plaintiff's GP to give details of any further illness the plaintiff has suffered since he had previously had been found fit for work by his doctors, but Dr. Bent does not seem to have responded to the CMO's request in this regard.

7.15 As a result of receiving the opinion of Dr. Daly and as a result of the endorsement of this opinion by their own psychiatrist, Dr. Denihan, the defendants have persisted in the view that the plaintiff was and is fit for work.

7.16 Analysing the various medical reports, the court has come to the view that the plaintiff did indeed suffer from a depression and a probable reactivation of his previous PTSD symptoms and either the paranoia as posited by Professor Casey or the "suspicious thoughts and over valued ideas" as posited by Dr. McCormack.

7.17 The court is of the view that these symptoms eased so the plaintiff was as stated by Dr. Daly in April, 2009 fit for work. After his return to work, for whatever reason the plaintiff has suffered a relapse of those injuries. It is unfortunate that Dr. Bent did not respond to the query from the CMO as to whether the plaintiff was suffering from any new injury. It is noted that the plaintiff has in recent days been reassured, not just by some of the evidence given in the court proceedings, but also by a helpful meeting with his present superior. The plaintiff has expressed a desire to get back into the force. It is outside the scope of this case to comment upon whether this is possible or not, but certainly the court hopes that this can be achieved.

7.18 I accept that the plaintiff has suffered a reactive depressive-type injury from the various factors involved in the death of Ms. Saulite. After the misunderstanding of what Detective Superintendent O'Sullivan had said to Sergeant Hughes, the plaintiff's initial, perhaps, understandable belief, was that he may have been scapegoated. This belief was part of his depression and has persisted.

7.19 I note the views of Professor Casey who states that in her first examination of the plaintiff in December 2010, he presented in a dishevelled manner, with noticeable beard growth. Professor Casey stated that the plaintiff admitted to drinking up to four bottles of wine *per* day or ten to twelve cans of beer. The plaintiff described his daily routine and that he spends most of the time at home, he takes the child to school, does not go out, goes to bed for a few hours mid-morning and collects his daughter in the afternoon.

7.20 This account of the plaintiff's alcohol intake was essentially corroborated by an interview Professor Casey had with the plaintiff's wife, though she stated the quantity at two bottles of wine *per* night plus vodka.

7.21 It is not unimportant that the quantity of four bottles of wine a night was the same quantity as mentioned by Mr. Dempsey, the psychologist, after the 1999 incident.

7.22 Professor Casey was of the view that the plaintiff did suffer an adverse result to the events following death of Ms. Saulite, as a result of this, he drank in excess and has developed "a mental health condition of such severity that it borders on the psychotic, and indeed may be a full-blow psychotic disorder known as Persistent Delusional Disorder. It resembles his response to a traumatic incident a number of years earlier which was diagnosed as Post Traumatic Stress Disorder. That condition resolved when he stopped drinking. In my opinion, Mr. Nyhan should cease drinking, and if necessary, receive professional help with this. In that way it will be possible to evaluate whether he suffered from underlying Post Traumatic Stress Disorder. In the presence of severe alcohol misuse and possibly a psychotic disorder, it is impossible to make a diagnosis of Post Traumatic Stress Disorder. Once he is alcohol-free, he should be re-evaluated psychiatrically".

7.23 The plaintiff and his wife both deny that the plaintiff drank up to four bottles of wine a night. The plaintiff did say and his wife confirmed that he did drink to excess before important meetings of which indeed there were many. The plaintiff denied drinking beer from cans but agreed that he drank wine but not to the extent as stated by Professor Casey.

7.24 The plaintiff's GP, Dr. Bent, stated, and I accept that the plaintiff is not suffering from an alcoholic dependency problem. The plaintiff did not present to me in such a condition and I observed him carefully throughout the proceedings, including the significant number of days that he spent in the witness box. I accept that the plaintiff and his wife did confirm consumption of up to four bottles of wine on some days, but I do not believe that they meant that this excessive consumption was every day or anything like it. I accept the plaintiff's own doctor's evidence that he did not and does not display the traits of someone who is dependent upon

alcohol.

7.25 I accept that if someone suffers depression or symptoms of PTSD he may increase his alcohol consumption to an excessive quantity. I do not believe that it is the core of the plaintiff's problem.

7.26 The plaintiff complains that the defendants, as part of their bullying or neglect or breach of duty towards him, failed to properly address his medical concerns. It is clear that the CMO advised the senior management of An Garda Síochána that the plaintiff should be interviewed and his fears allayed by senior garda management, this advice was not followed. However, the defendants did provide significantly senior members up to the rank of Chief Superintendent to meet and speak with the plaintiff and attempted to persuade him that his fears were groundless. I am not convinced that a meeting or meetings with anybody of the rank of Assistant Commissioner or Commissioner would have achieved any better results.

7.27 I am particularly of this view in that the plaintiff's core belief is that the Commissioner, and indeed, his immediate agents, were those responsible for the bullying and harassment that are the subject of these proceedings. I believe that the defendants were reasonable in the circumstances in their dealings with the plaintiff.

7.28 The court also heard evidence from Professor Mona O'Moore of the Anti Bullying and Research Centre from TCD.

7.29 Professor O'Moore listed the plaintiff's complaints including the plaintiff's analysis of the "negative behaviours towards him". Having listed the plaintiff's concerns, she concluded, "The above behaviours which extended over a [considerable] period of time can be defined as bullying".

7.30 Professor O'Moore then utilised a number of psychological tests "to confirm the behaviours reported by Mr. Nyhan". It is the view of the court that these tests and Professor O'Moore's conclusions merely establish that the plaintiff believed that he was being bullied and that he was experiencing intense levels of anxiety, etc. Professor O'Moore concluded that the psychological behavioural problems that he suffers from are "consistent with those well-documented in the literature on bullying and harassment at work ... as resulting from workplace bullying". In her evidence to the court, it transpired that Professor O'Moore's view was, in effect, that if an employee had any concerns about his or her workplace, and if those concerns were not addressed by the management to the satisfaction of the worker, that that, in itself, would amount to bullying.

7.31 That is a conclusion that the court cannot accept. The fact of bullying is an objective one. Clearly, what may not be bullying to a robust employee may be bullying to somebody who is vulnerable. The failure of the defendants to give the plaintiff what he concluded to be a satisfactory resolution of his complaints is not and cannot of itself always amount to bullying. The test is as stated by the Supreme Court in *B.R. v. Dunnes Stores Ltd.* [2009] 20 ELR at pp. 75 to 76:

"(i) The test is objective;

(ii) The test requires that the conduct of both employer and employee be considered:

(iii) the conduct of the parties as a whole and the cumulative effect must be looked at;

(iv) the conduct of the employer complained of must be unreasonable and without proper cause and its effects on the employee must be judged objectively, reasonably and sensibly in order to determine if it is such that the employee cannot be expected to put up with it."

7.32 The other issue in this case is the fact that the plaintiff has not been paid any salary for a considerable period of time. The defendants indicate that this is because the plaintiff has been judged as fit for work by his doctor, Dr. Daly, and that this opinion has been accepted by Dr. Denihan and, accordingly, the plaintiff is not absent as a result of any unfitness for work. Further, when the CMO asked Dr. Bent whether the plaintiff was suffering from any new illness after he was certified sick in November 2009, Dr. Bent did not reply to the CMO.

7.33 The plaintiff objects that the defendants have failed to comply with their own obligations under Chapter 11 of the Garda Code dealing with sick leave and under the defendants' Management of Sickness Absence Directive (1st December, 2010). The latter relates to whether an injury is to be considered injury on duty.

7.34 It is agreed by the parties that it is not within the scope of this case to analyse whether or not the defendants owe the plaintiff his wages since the time that they were stopped. Were the court to so decide, on the evidence before me, I would be likely to hold that as the plaintiff went off sick in November 2009 after his return to work for a few days, that he has suffered a relapse and that his absence from work results from an injury or disability relating to his work.

7.35 It may be that in the threatened action in relation to his loss of earnings that different evidence will be available and that court would decide the issue differently. It is to be hoped that no such action is necessary and that the matter can be satisfactorily resolved between the parties.

7.36 For the purposes of this action, however, the court is not of the view that a failure to make assessments required under the defendants' own procedures represented an actionable breach of duty or an example of bullying of the plaintiff.

7.37 The defendants, not unreasonably, and on the evidence open to them at the time concluded that the plaintiff was, in fact, fit for work and had chosen not to return to work because of his disagreements with the Defendants. Accordingly, the defendants concluded, again not unreasonably, that the plaintiff was not entitled to his earnings as a guard having been given the appropriate warning.

8. Conclusion

8.1 The plaintiff is a vulnerable individual who suffered great stress in an incident in 1999. In 2006, having carried out excellent police work on behalf of Ms. Saulite, he was then understandably shocked and indeed horrified by her murder. When the plaintiff discovered that he, together with Sergeant Hughes, had been given a draft victim impact statement in which Ms. Saulite had expressed fears in relation to H.H., the plaintiff was again naturally shocked. When the plaintiff believed, through a misunderstanding from Superintendent O'Sullivan, that the gardai were in possession of direct threats against Ms. Saulite's life from H.H., which they chose to ignore, and that he and Sergeant Hughes were apparently the only focus of disciplinary investigation, the plaintiff feared being scapegoated.

8.2 The plaintiff then also feared for his life and the life of his family from H.H. He was given garda protection and then this was withdrawn. He sought reassurances from the Commissioner initially as to the level of threat against him. Reassurances were given time and time again. The plaintiff did not accept these reassurances. The plaintiff went on to fear persecution from the first defendant as much, if not more so, than any physical threats from H.H.

8.3 This idea of persecution became fixed in his mind and nothing that was said could shake him from this conviction.

8.4 I believe at some stage the plaintiff's depression and anxiety and panic symptom eased but unfortunately they have returned.

8.5 As stated previously, I do not believe that the complaints the plaintiff makes amount to bullying or harassment or breach of duty or negligence by the defendants. I believe that it is clear that there was no scapegoating of the plaintiff or Sergeant Hughes because the garda authorities were never attempting to cover up senior management as there was nothing to cover up.

8.6 While some of the plaintiff's grievances might have been dealt with differently, and while the initial investigation into Ms. Saulite's death might with hindsight have been better co-ordinated, none of these factors give the plaintiff an actionable case against the defendants.

8.7 The issue of contributory negligence does not arise as I do not believe that there is any liability of the defendants to the plaintiff, but were I to decide that issue, I do not believe that in any way the plaintiff should be faulted due to the level of his engagement with the defendants. The plaintiff was I believe at all times and still is sincere in his convictions, misplaced though they may be. He fully engaged with the defendants as much as the defendants fully engaged with the plaintiff.

8.8 It is not the function of this Court to decide the issue of the plaintiff's stopped pay and the court has already made comments in this regard.

8.9 My judgment in this case is influenced by the stated ongoing goodwill to the plaintiff from the defendant.

8.10 It is not within the function of this judgment to decide on the future of the plaintiff in An Garda Síochána. It is to be hoped that the plaintiff does have such a future as he now himself also hopes and has been stated to him by his new superior officer.

8.11 For the reasons outlined above, the plaintiff must fail in this case and I dismiss same.