THE HIGH COURT

Record No. 2025 136 JR

[2026] IEHC 366

BETWEEN

JOHN ENGLISH

APPLICANT

AND

COMMISSIONER OF AN GARDA SÍOCHÁNA, MINISTER FOR JUSTICE, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT delivered by Mr. Justice Sean Gillane on 11 June 2026

Introduction

1. The applicant is a serving member of An Garda Síochána ("AGS") and at all material times was attached to Clonmel Garda Station.

2. This case concerns his application for an order quashing the decision of the Commissioner of An Garda Síochána ("the Commissioner") to summarily dismiss the applicant pursuant to Regulation 39 of the Garda Síochána (Discipline) Regulations 2007 ("the 2007 Regulations").

Background

3. On the 18th of May 2023 at Cashel District Court, the applicant was convicted of the offence of driving a mechanically propelled vehicle in a public place while exceeding alcohol limits contrary to section 4(4)(a) and 4(5) of the Road Traffic Act 2010, as amended ("the 2010 Act"). This offence is commonly referred to as 'drink driving.'

4. At the time of the incident, which occurred on the 14th of August 2022, the applicant was four times over the legal limit. The conviction order recorded that the applicant had been driving a mechanically propelled vehicle "*while there was present in your body a quantity of alcohol such that, within 3 hours after so driving, the concentration of alcohol in your breath did exceed a concentration of 22 microgrammes of alcohol per 100 millilitres of breath, to wit 95 microgrammes of alcohol per 100 millilitres of breath.*"

5. Upon conviction, he was fined €500 and disqualified from holding a driving licence for a period of three years. While the District Court hearing was contested, the applicant did not lodge a notice of appeal in respect of the conviction.

6. On the 9th of February 2024, the Commissioner notified the applicant in writing that he proposed, subject to the consent of the Policing Authority and any submissions made on behalf of the applicant, to dismiss him from AGS pursuant to Regulation 39 of the 2007 Regulations on the grounds that he considered the applicant to be unfit for retention.

7. In that letter, the Commissioner, after reciting some of the factual background of the events leading up to the conviction, indicated that he considered the applicant to have lost the trust of both the public and his colleagues, and stated that it was "*wholly inappropriate that a member of An Garda Síochána who has committed a serious breach of discipline should continue to serve as a member of An Garda Síochána.*"

8. The applicant made submissions through his solicitor on the 11th of March 2024. It was noted by his solicitor that the only material provided to the applicant was the letter dated the 9th of February 2024 proposing his dismissal, and a request was made on his behalf to be provided with a copy of all the material upon which the Commissioner intended to rely in making his decision.

9. On that date, a number of substantive submissions were also made on behalf of the applicant in relation to, *inter alia*, the proper approach to Regulation 39, the failure to provide material, the applicant's career in AGS to date and the question of proportionality.

10. It was submitted that summary dismissal was a wholly inappropriate and disproportionate sanction and the Commissioner was called upon to appoint a Board of Inquiry so that matters could be properly and comprehensively considered.

11. A response by email on behalf of the Commissioner dated the 4th of June 2024 stated that:

> "*The material the Commissioner is relying on in his proposal under Regulation 39 of the Garda Síochána (Discipline) Regulations is the Certificate of*

Conviction Order as signed by Judge O'Shea, Judge of the District Court on 28 September 2023, a copy of which is attached."

12. The applicant was given additional time to make further submissions, if he so wished, and it was indicated that the letter dated the 11th of March 2024 and any further submissions would be considered by the Commissioner in making his decision.

13. On the 1st of July 2024, the applicant's solicitor made further written submissions. It was suggested that in circumstances where the only document provided to the applicant was the conviction order, there was no sufficient basis on which the Commissioner could express an opinion in relation to how the applicant was viewed by both the public and his colleagues.

14. The applicant's solicitor also referred to HQ Directive 11/2024 ("the Directive") in relation to aggravating factors that could arise in situations where there is a conviction for drink driving.

15. The Directive provides that the following features of a drink driving incident, if present, would be regarded as aggravating factors to be considered in the context of the 2007 Regulations:

- Whether the member was on duty or off duty at the time of the incident;
- Involvement in a road traffic collision;
- Failure to remain at the scene or to report the collision;
- Damage to State property, including Garda vehicles;
- Instances of dangerous driving;

- Any attempt to frustrate a prosecution;
- Resistance to arrest or use of an official vehicle;
- Carriage of an official firearm at the time of the incident;
- Level of intoxication;
- Non-cooperation with investigating members;
- Personal injury caused to either the member or a third party.

16. It was submitted that none of these aggravating factors were present in the applicant's case.

17. On the 27th of November 2024, the Commissioner wrote to the applicant and indicated that his submissions had been considered and rejected, and that he had decided, subject to the consent of the Policing Authority, to dismiss the applicant from AGS on the grounds that he considered the applicant to be unfit for retention.

18. On the 20th of December 2024, the Policing Authority gave their consent to the dismissal of the applicant. On the 20th of January 2025, the Commissioner notified the applicant of his dismissal from AGS, effective from the 4th of February 2025.

19. On the 31st of January 2025, the applicant sought and obtained leave to apply for the following reliefs:

    (i) An order of certiorari quashing the decision of the Commissioner dated the 20th of January 2025 purporting to dismiss the applicant from AGS;

    (ii) An order directing the Commissioner to provide the applicant with all of the materials considered by him in reaching his decision pursuant to Regulation 39;

(iii) An order directing the Commissioner to provide the applicant with all of the materials provided to the Policing Authority in seeking their consent to the summary dismissal of the applicant;

(iv) A declaration that the Commissioner, in considering the dismissal of a member of AGS, was obliged to have regard to his own policies and directives in respect of same;

(v) A declaration that the Commissioner had acted *ultra vires* and in breach of the principles of natural and constitutional justice.

20. A stay was placed on the Commissioner's decision.

21. The applicant swore an affidavit on the 31st of January 2025 for the purposes of grounding the application for judicial review and verifying the facts as set out in the statement of grounds. The applicant openly acknowledged the fact of his conviction and expressed shame in relation to his actions on the 14th of August 2022, for which he said there was "*no excuse*." He has been suspended from the force since September 2022 and disqualified from driving since his conviction.

22. The statement of grounds sets out a brief history of the applicant's seventeen-year-long career in AGS, which included involvement in a number of successful investigations, commendations and a nomination for a President's Bravery Award.

Discussion

23. The central thrust of the case advanced by the applicant is that the Commissioner acted unfairly and in breach of fair procedures in failing to provide the applicant with all of

the materials relied upon in considering whether to dismiss him. The applicant submits that the relevant material was necessary, not to impugn the decision but to allow for an effective submission on his behalf before the decision was reached.

24. The applicant also submits that the Commissioner acted unfairly and in breach of fair procedures in failing to provide the Policing Authority with all of the relevant material, and a cognate complaint is made in respect of the Commissioner's failure to provide the applicant with the material that was sent to the Policing Authority.

25. It is submitted that the Commissioner fettered his discretion in his approach to the meaning of "*a serious breach of discipline*" and the identification of an appropriate level of sanction and/or that he predetermined the question of sanction.

26. It is submitted that the Commissioner acted *ultra vires*, unreasonably and in breach of fair procedures in failing to have regard to the Directive, which was operative at the time that the impugned decision was reached, and further that he acted disproportionately in reaching the decision to summarily dismiss the applicant.

27. The Commissioner submits that at all times he acted within his powers and lawfully executed his functions under the Garda Síochána Act 2005, as amended ("the 2005 Act") and the 2007 Regulations, and that the applicant was afforded fair procedures at all times.

28. It is submitted that there was no requirement under the 2007 Regulations to provide the documentation sought by the applicant. In any event, it is submitted that all parties were aware of the material facts upon which the Commissioner based his decision.

29. It is submitted that there was no question of the Commissioner fettering his discretion, that his request for submissions on behalf of the applicant was genuine and sincere, and that the submissions received were in fact considered by the Commissioner in making his decision.

30. It is submitted that the Commissioner properly applied the provisions of Regulation 39 and, in circumstances where the requirements of Regulation 39 were met, the Commissioner was entitled to summarily dismiss the applicant without holding an inquiry. It is also argued that in reaching that determination, the Commissioner was entitled to a degree of deference.

31. It is submitted that the offence predated the Directive and therefore the Commissioner was not obliged to have regard to it nor did he err in failing to refer to it.

32. It is submitted that there was no challenge to the consent given by the Policing Authority and that any arguments in that regard are misconceived. Further, it is argued that it is significant that there was no direct challenge to the provisions of Regulation 39 or to the statutory architecture underpinning it.

33. Before turning to the applicable legal provisions and relevant case law, it is necessary to return to the correspondence between the parties to fully understand some of the arguments advanced.

34. As referred to above, the letter dated the 9th of February 2024 proposing to dismiss the applicant contained a detailed narrative of the events leading up to his arrest and prosecution. This included the locus of the incident, the fact that a checkpoint was in place, details of the vehicle being driven by the applicant and its condition (to include a deflated front tyre) and so on.

35. It does not seem to me to be a controversial finding to conclude that this narrative must have derived from the witness statements and/or a report of the members of AGS conducting the checkpoint.

36. The letter recorded the detail of the conviction order, including the reading in relation to the concentration of alcohol, and stated that:

> "*The said Criminal Conduct is a breach of discipline within the meaning of Regulation 5 of the Garda Síochána (Discipline) Regulations 2007, as amended and is described therein at reference number 17 in the Schedule to the said Regulations namely - Criminal Conduct, that is to say, conduct constituting an offence in respect of which there has been a conviction by a court.*"

37. The Commissioner stated that he was in no doubt as to the gravity of the breach of discipline having considered these facts and the provisions of section 7 of the 2005 Act. Section 7 provides:

"*The function of the Garda Síochána is to provide policing and security, including vetting, services for the State with the objective of—*

(a) preserving peace and public order,

(b) protecting life and property,

(c) vindicating the human rights of each individual,

(d) protecting the security of the State,

(e) preventing crime,

(f) bringing criminals to justice, including by detecting and investigating crime, and

(g) regulating and controlling road traffic and improving road safety."

38. The Commissioner went on to say that by virtue of being found guilty of a serious road traffic offence and failing to adhere to the rule of law, trust in the applicant from both his colleagues and members of the public had been undermined and he could no longer be an effective member of AGS because of the "*entire loss of trust*" in him.

39. In the letter dated the 27th of November 2024, both sets of submissions sent by the applicant were acknowledged, set out and rejected. In the course of that letter, the Commissioner stated that each case is to be dealt with "*on its own merits*" and that due regard had been given to the applicant's record of service, previous conduct and individual circumstances.

40. The letter stated that:

"*It is correct that mitigating factors must be taken into account in considering the appropriate disciplinary action to be taken and I have done so. However, I*

am of the view that such consideration cannot remove the emphasis placed on the seriousness of the offence and detract from the imposition of something less than the most severe disciplinary action.

The extent to which mitigation should influence my decision is dependent on the individual circumstances of the case and is at the discretion of the decision maker.

Having considered the aggravating factors including your high level of intoxication and your criminal conviction, I am satisfied that the aforementioned outweigh the mitigating factors proffered by you and therefore the outcome decision is one of dismissal." (Emphasis added.)

41. It is noteworthy that the phrase "*high level of intoxication*" is repeated numerous times throughout the letter and forms the basis for the Commissioner's conclusion that the holding of an inquiry was unnecessary and dismissal was the only appropriate sanction.

42. The letter confirmed that the Directive did not form part of the Commissioner's decision-making process as the offence had predated it and stated that:

"*The offence of driving whilst intoxicated for which you, Garda English, have been convicted is viewed as a serious breach of the Garda Síochána (Discipline) Regulations 2007, as amended. The conviction, in addition to the high level of intoxication which was in excess of four (4) times the legal limit, has irreparably damaged your credibility for upholding and enforcing the law and maintaining your position to serve in An Garda Síochána.*" (Emphasis added.)

43. In the letter dated the 20th of January 2025 confirming the dismissal of the applicant, the Commissioner said:

> "*I consider it wholly inappropriate that a member of An Garda Síochána who has committed such a serious breach of discipline should continue to serve as a member of An Garda Síochána.*" (Emphasis added.)

44. The applicant submitted that the underlined phrase constituted a "*new reason*" for his dismissal.

Applicable Legal Provisions and Case Law

45. The summary dismissal of a member of AGS at the relevant time was governed by Regulation 39 of the 2007 Regulations which provides:

> "*(1) Notwithstanding anything in these regulations and without prejudice to section 14(2), the Commissioner may, subject to this regulation, dismiss from the Garda Síochána any member (not being above the rank of inspector) whom he or she considers unfit for retention in the Garda Síochána.*
>
> *(2) The power of dismissal conferred by this regulation shall not be exercised except where -*
>
> > *(a) the Commissioner is not in any doubt as to the material facts and the relevant breach of discipline is of such gravity that the Commissioner has decided that the facts and the breach merit dismissal and that the holding of an inquiry under these regulations could not affect his or her decision in the matter…*

(4) The power of dismissal conferred by this regulation shall not be exercised -

(a) where the member concerned has completed his or her period of probation, without the consent of the Authority,

(b) where paragraph 2(a) applies, without the member concerned being informed of the material facts and the relevant breach of discipline, and

(c) ... without the member being given an opportunity of submitting to the Commissioner reasons against the proposed dismissal."

46. Regulation 5 states that:

"*Any act or conduct by a member which is mentioned in the Schedule constitutes a breach of discipline.*"

47. The Schedule outlines a range of acts or conduct that constitute breaches of discipline including discourtesy, discreditable conduct, misconduct, neglect of duty, etc. Of particular relevance to this case is the conduct described at number 17 in the Schedule:

"*Criminal conduct, that is to say, conduct constituting an offence in respect of which there has been a conviction by a court.*"

48. Regulation 9 provides that "*in any disciplinary proceedings proof of a breach of discipline is to be established on the balance of probabilities*." It will be readily observed that any criminal conduct resulting in a conviction by a court will involve the application of the higher standard of proof i.e., beyond a reasonable doubt.

49. The Policing, Security and Community Safety Act 2024 was commenced on the 2nd of April 2025 pursuant to S.I. No. 107/2025 and substantially amended the disciplinary processes. Schedule 1 of the Act provided for the total repeal of the 2005 Act under which the 2007 Regulations were promulgated.

50. It is therefore submitted by the applicant that the Court should be "*wary*" in its approach to the application of Regulation 39, which should be viewed as something of an exceptional jurisdiction outside the ordinary procedures for serious breaches of discipline. These procedures are set out in Regulations 22-37 which provide, *inter alia*, for a fact-finding exercise, the establishment of a Board of Inquiry and appeal mechanism, service of documents and an oral hearing.

51. In this regard, the applicant refers to the judgment of Laffoy J. in *McEnery v. Commissioner of An Garda Síochána* [2016] IESC 66 ("*McEnery*"). In relation to Part 3 of the 2007 Regulations, which governs serious breaches of discipline, Laffoy J. said at paragraph 16:

> "*... That process comprises a multiplicity of stages: an investigation; following the investigation, the possibility of the establishment of a board of inquiry; if appropriate, action by the Commissioner on foot of the report of the board; and an entitlement on the part of the member to appeal to an appeal board against the determination of the board of inquiry or the disciplinary action taken by the Commissioner or both. In contrast the process provided for in Part 4 up to the proposed decision stage only involves the Commissioner.*"

52. However, immediately prior to those remarks, Laffoy J. had acknowledged that Regulation 39 is the only Regulation in Part 4 of the 2007 Regulations, which is titled "*Summary Dismissal.*" The power conferred on the Commissioner is qualified and subject to the limitations contained within Regulation 39 itself.

53. It is correct to say that the structured processes set out in Part 3 of the 2007 Regulations stand in stark contrast to Part 4 and in that regard, the applicant places emphasis on paragraph 36 of *McEnery v. Commissioner of An Garda Síochána* [2015] IECA 217, which was adopted by Laffoy J. at paragraph 25 of her judgment:

> "*Given the very limited recourse which is available to a Garda who is subject to a summary dismissal under Regulation 39, the exceptional nature of the power given to the Commissioner and the very limited scope for the exercise of that power, the courts on judicial review ought to be astute to ensure that the power is exercised properly and in accordance with law.*"

54. In relation to the history and justification for a power of summary dismissal, the Commissioner refers to *The State (Jordan) v. Commissioner of An Garda Siochana* [1987] I.L.R.M. 107 where O'Hanlon J. held:

> "*I am of opinion that special considerations apply in relation to the power of the State to dispense with the services of members of the armed forces, of the Garda Síochána, and of the prison service because it is of vital concern to the community as a whole that the members of these services should be completely trustworthy. For this reason, I take the view that it was permissible to confer on the Commissioner of the Garda Síochána the exceptional powers contained in Reg. 34 of the Discipline Regulations, 1971, but I also accept the contention of*

counsel for the prosecutor that the scope for making use of these powers must be very limited in character."

55. While the Commissioner understandably places emphasis on the underlined portion of the above passage, the paragraph should be read as a whole and was approved in full as a statement of principle in *McEnery*.

56. In my view, it is important to note that O'Hanlon J. also went on to make the following observations before concluding that there was sufficient compliance with the requirements of natural and constitutional justice:

> "*... Presumably, if the Commissioner were to witness a grave breach of discipline committed in his presence he would be justified in dispensing with the holding of an inquiry. Similarly, as was accepted by counsel for the prosecutor, if the member against whom it was proposed to exercise the power of dismissal admitted that he was guilty of a serious breach of discipline, the Commissioner could lawfully act upon the faith of such admission without resorting to the time consuming process of the inquiry machinery which is outlined in the regulations.*
>
> *In such circumstances there could not be said to be a denial of natural or constitutional justice, since the member concerned has an opportunity to deal with the facts which are regarded as constituting a grave breach of discipline and makes it clear by his own admission that these facts do, indeed, apply to his case.*"

57. While recognising that Regulation 34 of the Garda Síochána (Discipline) Regulations 1971 was a precursor to Regulation 39, Laffoy J. pointed out that the factual circumstances in *Jordan* did not align with the factual circumstances in *McEnery*, where the applicant had been convicted of a criminal offence and a suspended sentence had been imposed. At paragraph 52, she said:

> "*... It is not the case, in my view, that the use of Regulation 39 in those circumstances could be considered as exceeding the 'very limited in character' use suggested in Jordan, which is an interpretation with which I agree.*"

58. In rejecting a "*hair-splitting*" approach to the proper interpretation of Regulation 39(2)(a), Laffoy J. identified three essential components:

(i) the Commissioner should not be in any doubt as to the material facts,

(ii) the relevant breach of discipline should be of such gravity as to merit dismissal, and

(iii) the holding of an inquiry under the 2007 Regulations would not affect the Commissioner's decision in the matter.

59. In analysing the interpretation of Regulation 39(2)(a) by reference to the 'criminal conduct' described at number 17 in the Schedule, Laffoy J. said at paragraph 53:

> "*... While, hitherto, the focus has been primarily on the actual wording of those specific provisions, it must be borne in mind that the 2007 Regulations must be interpreted against the background of the Act of 2005, and, in particular, s. 123, from which it is clear that the objective of the 2007 Regulations is the maintenance of discipline in An Garda Síochána. Moreover, while the maintenance of discipline is important in its own terms, it is also crucial for*

maintaining public confidence in An Garda Síochána. A fundamental function of An Garda Síochána is upholding the criminal law. It is important to recall that the proper interpretation of the criminal conduct referred to at Number 17 in the schedule is relevant to the disciplinary processes governed by Part 3 and Part 2 of the 2007 Regulations, not just to Regulation 39."

60. This was said in the context of Laffoy J. rejecting the argument that the Commissioner was obliged to go behind the recorded conviction (which had been arrived at by reference to the standard of beyond all reasonable doubt), the effect of which would be to render the disciplinary process unworkable.

61. At paragraph 56, Laffoy J. went on to say:

"*Having regard to the legislative structure embodied in Regulation 39, the first stage in the process thereby created is the determination by the Commissioner as to whether he or she considers that the member is unfit for retention in An Garda Síochána, which determination, having regard to the facts in this case, requires to be made in accordance with the provisions of Regulation 39(1) and (2)(a). Once that determination is made and it is to the effect that the Commissioner considers the member unfit for retention and proposes to dismiss the member, the Commissioner is obliged to inform the member of the material facts and the relevant breach of discipline in accordance with Regulation 39(4)(b). Up to that point, the summary dismissal process provided for in Regulation 39 is governed by the provisions of Regulation 39. The second stage is that, the member having been given an opportunity of submitting to the Commissioner reasons against the proposed dismissal and having availed of*

that opportunity, the Commissioner conclusively determines whether the member is unfit for retention. Although not expressly provided for in Regulation 39, it is clearly implicit that the Commissioner, before making the conclusive determination as to the proposed decision, will have regard to any submissions made by the member. In any event, clearly the principles of natural and constitutional justice require the Commissioner to do so. The final stage is that, if the Commissioner determines that the member should be dismissed from An Garda Síochána, the consent of the Minister is necessary to the giving effect of such determination."

62. In *McEnery*, the decision of the Commissioner was quashed as a result of a failure to rationalise the conclusions reached, which thereby amounted to a failure to give reasons *after* the opportunity to make submissions and the Commissioner's consideration of same. In this case, the submissions made by the applicant were referred to and rejected *seriatim* in the letter dated the 27th of November 2024.

63. As in *McEnery*, Regulation 39 is not the subject of a direct challenge in this case, nor is it contended that Regulation 39 is itself legally defective or *ultra vires* the powers conferred on the Minister for Justice, Equality and Law Reform by the 2005 Act.

64. It follows, in my view, that the Commissioner is entitled as a matter of law to summarily dismiss a member of AGS without holding an inquiry provided that the requirements of Regulation 39 have been met and the decision itself, in all other respects, is consistent with the principles of natural and constitutional justice. This is so regardless of how

exceptional or draconian the power is said to be. This is the context in which the steps taken by the Commissioner in this case must be analysed.

65. Both parties refer to *Hegarty v. Commissioner of An Garda Síochána* [2025] IESC 36 which concerned the interpretation of the then-applicable power of summary dismissal contained within section 14(2) of the 2005 Act. Section 14(2) enabled the Commissioner to dismiss a member of AGS where the Commissioner had formed the view that by reason of the member's conduct, his or her continued membership of the force would undermine public confidence in AGS and thus the member's dismissal was necessary to maintain that confidence.

66. The applicant places emphasis on the finding that any feared or apprehended lack of confidence must be "*rationally grounded*." That phrase appears in paragraph 36 of the majority judgment of Murray J., where he held:

> "*... The power must be exercised rationally and for its proper purpose. That demands that the conduct giving rise to the exercise of the power be of sufficient gravity to reasonably justify dismissal, and the apprehended lack of confidence be itself rationally grounded. It is also true, of course, that the discretion must not be exercised in such a manner that violates the tenets of constitutional justice and, for that reason, the section mandates that the member be afforded an opportunity to respond to the expressed basis for the Commissioner's opinion, and that the Commissioner be required to consider that response before dismissing the member.*"

67. The Commissioner submits that the true purpose of the disciplinary process was identified at paragraph 40, where Murray J. said:

> "*... While the Regulations and s. 14(2) share a purpose, they do not have the same purpose. A disciplinary process seeks to impose a sanction on a person for misconduct for a number of different reasons. These may be gathered together under the general umbrella of maintaining discipline. Disciplinary rules envisage the imposition of a sanction upon a person for breaching some term of their employment or office. By imposing such a punishment, they seek to deter others from doing likewise. In extreme cases they protect the employer or appointor from being exposed to future risk by removing from their undertaking a person whose past conduct has shown them to be liable to disregard important rules. <u>And, of course, in the context of public offices of the kind in issue here, they reassure the community that those who have engaged in misconduct will be punished, deterred from acting in defiance of the behavioural norms expected of them, and that organisations in whom the public must invest trust function in a properly regulated way.</u> Thus, and clearly, the primary purpose of the disciplinary regulations is, as the description suggests, disciplinary. All disciplinary processes have as their effect, and very often as part of their objective, the enhancement of confidence – the confidence of the employer in their workforce, the confidence of the workforce in each other and the confidence of the public in the undertaking as a whole. That does not render them anything other than disciplinary, and it does not make the sanction imposed at the conclusion of such a process anything other than an action taken consequent upon identified misconduct, albeit one designed to achieve a number of different objectives.*" (Emphasis added.)

68. At paragraph 42, Murray J. continued:

> "*... Thus, public trust and confidence in An Garda Síochána is critical to the stability of the State and its institutions; alongside the armed forces and prison service 'it is of vital concern to the community as a whole that members of these services should be completely trustworthy' (The State (Jordan) v. Commissioner of An Garda Síochána at p. 113 per O'Hanlon J.). The power vested in the Commissioner by s. 14(2) is thus of crucial importance, and the responsibility invested in the Commissioner when exercising it, immense. An Garda Síochána is a unitary disciplined force with a hierarchical command structure. The Commissioner cannot be compared to a CEO or chairman of a board of directors. He has direct personal powers and responsibilities. In making a decision under the section, the Commissioner is not concerned with the internal, disciplinary or punitive aspect, but with the broader, external question of the maintenance of public confidence.*"

69. As can be seen, the maintenance of public confidence in members of AGS is critical to the interests of the State and public trust in members of AGS is a vital community concern. It is for those very reasons that the Commissioner is conferred with this disciplinary power and responsibility.

70. The applicant argues that the tenets of constitutional justice have in fact been violated by the Commissioner in the exercise of this power in circumstances where it is submitted that he did not receive all of the materials "*comprising the evidence against*

him" but even if he did, there was no evidence for the conclusions drawn by the Commissioner.

71. On the 19th of May 2025, Superintendent Brian J. Hoey swore an affidavit to verify the statement of opposition and referred to his familiarity with the "*relevant investigation file in respect of the Applicant.*" The affidavit was merely descriptive of what is contained within the exhibited documents, which were essentially the conviction order and the correspondence referred to above, and did not contain any specific averment as to exactly what materials were before the Commissioner for his consideration.

72. In this regard, the applicant refers to *Elsharkawy v. The Minister for Transport* [2024] IECA 258 in relation to the "*duty of candour*" as it applies to decision-making bodies where a decision is impugned in public law litigation.

73. Superintendent Hoey also confirmed that when the consent of the Policing Authority was sought on the 27th of November 2024, the following documents were provided:

    (i) The conviction order;

    (ii) The letter sent by the Commissioner to the applicant dated the 9th of February 2024;

    (iii) A copy of the applicant's written submissions furnished on the 11th of March 2024;

    (iv) A copy of the letter sent by the Commissioner to the applicant's solicitors dated the 4th of June 2024;

    (v) A copy of the email sent by the applicant's solicitors to the Commissioner dated the 1st of July 2024 attaching additional submissions;

(vi) A copy of the additional submissions furnished on the 1st of July 2024;

(vii) A copy of the letter sent by the Commissioner to the applicant dated the 27th of November 2024.

74. The applicant submits that the "*full suite*" of *Re Haughey* [1971] I.R. 217 rights have been engaged in this case.

75. The applicant relies on the judgments of the High Court and the Court of Appeal in *Baynham v. Commissioner of An Garda Síochána* [2023] IEHC 735; [2025] IECA 194.

76. There is a brief reference to *Baynham* in the applicant's written submissions as authority for the proposition that where a member is subject to a long-term suspension, they are entitled to copies of the material on which the Commissioner relies in extending that suspension. It is submitted, therefore, that it follows that "*a member facing an even more draconian sanction - summary dismissal - ought to be entitled to same.*" I am unconvinced that *Baynham* is authority for such a broad proposition applicable to this case.

77. *Baynham* was a case with a complicated factual and procedural background. The applicant in that case was a member of AGS who was subject to a 'rolling' suspension for a number of years pending a criminal investigation into allegations of perverting the course of justice and the submission of files to the office of the DPP.

78. The case involved an analysis of the detailed procedural requirements under the 2007 Regulations and the Policy Document on Suspension from Duty of Members of the

Garda Síochána under the Garda Síochána (Discipline) Regulations 2007 as amended ("the Suspension Policy"). The High Court was critical of the way in which both sides presented their cases and the selective manner in which information was presented to the court.

79. At paragraph 77, Phelan J. held:

> "*... What precisely respect for fair procedures entails in terms of an obligation to provide information and how that obligation may be discharged varies and is always dependent on the circumstances of the given case. In my view the decision to continue suspension over such a protracted period with an apparent intention to do so indefinitely requires steps to be taken to ensure the process is fair in terms of the information available to the Applicant so that they can know the considerations informing the decision to suspend not least to enable advice to be taken, to be heard in respect of the decision and to challenge decisions within the process as unlawful as appropriate.*"

80. Phelan J. found, at paragraph 85, that as a matter of principle in that context:

> "*Given that the Applicant is suspended in reliance on the 2007 Disciplinary Regulations which envisage that fair procedures apply in the investigation and determination of a disciplinary matter, he is, in my view, entitled to have the basis for his suspension spelt out to the extent that the investigation of specific allegations have been relied upon in the decision to suspend taken under the same Regulations.*"

81. In finding that the applicant knew why he stood suspended, Phelan J. went on to say that the adequacy of the reasons given falls to be tested by reference to the material considered by the decision maker. In other words, has the decision maker adequately addressed his or her mind to the matters that they are required to consider? At paragraph 101, she also found that, in the specific factual context of the case:

> "*... While it may not be necessary to furnish this material either as a matter of course or in every case, the length of the suspension in this case is such that, as in Canavan, the balance has 'tipped' such that fair procedures require that the material considered in deciding to make further suspension orders notwithstanding significant delays in the process be disclosed, at least once it was requested.*"

82. Phelan J. stated that the applicant's solicitors had not sought further particulars of the reasons for his suspension but did seek disclosure of the material relied upon in the Commissioner's decision to extend the suspension. At paragraph 157, she held that, in those circumstances, a complaint in relation to the refusal to provide that material was now out of time.

83. However, she went on to say, at paragraphs 158 and 159, that the applicant was entitled, where possible, to information that would allow him to be satisfied that the relevant matters have been considered in respect of the decision to extend his suspension, and this material should be disclosed absent a proper basis for withholding it.

84. Phelan J.'s finding that the applicant was aware that his suspension arose as a result of his suspected involvement in attempts to pervert the course of justice was upheld by the

Court of Appeal. O'Moore J., who was very critical of the lack of analysis in the Commissioner's decision, particularly having regard to the existence of the Suspension Policy, stated at paragraph 54 that:

> "*... The obligation to give reasons is separate to any requirement to give information, though they are clearly linked.*"

85. O'Moore J. upheld the decision of Phelan J. in finding that the applicant was entitled to the requested information in 2022 but was out of time to complain about the Commissioner's refusal to provide him with it. O'Moore J. also upheld Phelan J.'s ultimate declaration that the applicant was entitled to the requested information to allow him to consider whether to challenge the suspension decision.

86. I have also been referred to the decision of Mulcahy J. in *Brannock v. Commissioner of An Garda Síochána* [2023] IEHC 300. While this was another suspension case that concerned an allegation of drink driving, it is relevant to note that the applicant in that case had been suspended *before* he was convicted.

87. The original complaint in *Brannock* was that the suspension was *ultra vires.* The gravamen of the complaint at hearing was a failure to give any adequate reasons for the decision to suspend the applicant in circumstances where the applicant had amended his statement of grounds following receipt of the respondent's replying affidavit.

88. Much of the analysis related to Regulation 7, which provides for the power to suspend a member of AGS, the Suspension Policy and the distinction between a "*holding suspension*" and a "*long term suspension.*"

89. Mulcahy J. reviewed the authorities on the duty of administrative bodies to give reasons for their decisions at paragraphs 33-40.

90. He restated the two separate but related requirements in relation to the adequacy of reasons given as identified in *Connelly v. An Bord Pleanala* [2021] 2 I.R. 752 i.e., that a person is entitled to know, at least in general terms, why a decision was made and to have enough information to assess whether the decision can or should be appealed or reviewed.

91. At paragraph 38, Mulcahy J. said:

> "*As made clear in Connelly, not all administrative decisions impose equivalent obligations regarding the extent to which the reasons for a decision need to be explained.*"

92. He also stated, at paragraph 52, that in the context of suspension, regard must be had to the Suspension Policy in determining the fair procedures to which a member of AGS is entitled. It was significant that the applicant in *Brannock* had only been suspended for a period of five weeks at the time proceedings were initiated.

93. At paragraph 57, Mulcahy J. held:

> "*In the circumstances, therefore, in my view, no heightened obligation was imposed on the Commissioner in respect of the procedural fairness which he was required to afford the Applicant. That is not to say, however, that the Respondent was not required to afford any fair procedures at all. The decision*

to suspend involves the exercise by the Commissioner of an important discretion. The exercise of that discretion cannot be capricious, arbitrary, or irrational. It must, therefore, be reasoned. As a corollary, the Respondent must, in my view, as a matter of fair procedures state what that reason is. The Suspension Policy put in place regarding the imposition of suspensions over ten days in length which requires the giving of a reason is merely a recognition of this requirement."

94. In *Brannock*, the reasons for the suspension were set out in a letter from the Assistant Commissioner, to whom the decision was lawfully delegated, which predated the suspension decision but were not communicated to the applicant at the time of the decision.

95. The applicant only became aware of these reasons after issuing proceedings. Mulcahy J. held that the respondent could rely on the letter to argue for the adequacy of the reasons and, in the circumstances of the case, he was "*quite satisfied*" that the reasons were adequate. He also said at paragraph 66:

"*... Of course, he is entitled to the presumption of innocence in relation to the criminal offence which he has been charged, but I do not see how it can seriously be contended that the Notice of Suspension was not sufficient notice to the Applicant that the Commissioner considered that his arrest and prosecution for being drunk in charge of a vehicle rendered it desirable in the interests of An Garda Siochána that he be suspended.*"

96. Mulcahy J. found that the respondent had given reasons for not following the recommendations of two Chief Superintendents in relation to the question of suspension and that this was by reference to factors expressly referred to in the Suspension Policy.

97. The Commissioner relies on *Harrison v. Commissioner of An Garda Síochána* [2025] IEHC 303. The applicant in *Harrison* was the subject of a disciplinary process wherein his suspension was being continuously reviewed and extended every three months. The alleged breach of discipline was that the applicant had entered into a sexual relationship with an individual that had made a complaint of domestic abuse to him.

98. Simons J. was satisfied that the applicant had at all times been provided with an adequate explanation of the reasons for his suspension. He said that while the applicant might disagree with the view taken by the Assistant Commissioner, "*he cannot sensibly say*" that he does not understand why the Assistant Commissioner has continued his suspension pending the determination of the disciplinary process.

99. In relation to the decision in *Baynham*, Simons J. held at paragraph 39:

> "*The judgment in Baynham v. Commissioner of An Garda Síochána (cited above) suggests that the subject of a suspension may be entitled to know the material relied upon, or at least the gist of the material relied upon, in making the decision to further suspend him. For completeness, it should be recorded that this court is satisfied that the Applicant has been aware at all times of the gist of the material relied upon. The circumstances surrounding the alleged breach of discipline are known to the Applicant: he had recorded a complaint*

of domestic abuse and subsequently entered into a sexual relationship with the Complainant. Whereas the Applicant is entitled to dispute whether these circumstances comprise a breach of discipline, he cannot realistically say that he is unaware of the nature of the allegations against him. More recently, the Applicant, through the Board of Inquiry, has been provided with a detailed bundle including various witness statements." (Emphasis added.)

100. The Commissioner submits that the underlined remarks have a particular resonance in this case. He submits that the applicant was furnished with the conviction order and given the opportunity to make two sets of submissions, which were duly considered in advance of the Commissioner's decision.

101. The applicant submits that an analysis of the steps taken by the Commissioner, as outlined in the correspondence he received, reveals that the Commissioner made a serious error in effectively equating a "*serious breach of discipline*" with dismissal and the application of Regulation 39. It is submitted that this amounts to a fettering of his discretion and that the Commissioner acted "*contrary*" to Regulation 22.

102. The applicant submits that it was simply unlawful to start from the proposition that it was "*wholly inappropriate that a member of An Garda Síochána who has committed a serious breach of discipline should continue to serve as a member of An Garda Síochána.*"

103. It is certainly true to say that a serious breach of discipline can be subject to a range of possible sanctions. Regulation 22 of the 2007 Regulations sets out the definition of a serious breach of discipline:

> "*... a breach of discipline which, in the opinion of the Commissioner, may be subject to one of the following disciplinary actions:*
>
> *(a) dismissal;*
>
> *(b) requirement to retire or resign as an alternative to dismissal;*
>
> *(c) reduction in rank;*
>
> *(d) reduction in pay not exceeding 4 weeks' pay.*"

104. Thereafter, the 2007 Regulations provide for a variety of procedural steps in relation to investigation, Board of Inquiry, appeal board, etc.

105. It is important to note that Regulation 39, which is in a separate part of the 2007 Regulations, commences as follows:

> "*Notwithstanding anything in these regulations and without prejudice to section 14(2), the Commissioner may, subject to this regulation, dismiss from the Garda Síochána any member.*" (Emphasis added.)

106. The Commissioner submits that when Regulation 39 is invoked, the Commissioner is required to properly apply its provisions, which has been done in this case so there can be no question of a fettering of discretion. Nothing was predetermined or prejudged.

107. It is submitted that when the remarks of Murray J. in *Hegarty* (as quoted above) are considered, it is clear that the Oireachtas vested this power and discretion in the

Commissioner and it is not for this Court to substitute its view of the merits of the decision in those circumstances.

108. The applicant suggests that the failure to apply the Directive in the disciplinary proceedings without explanation is *ultra vires* by reason of its unreasonableness. He further suggests that the "*sweeping aside*" of the Directive is a "*textbook example of both failing to have regard to a relevant consideration and an arbitrary exercise of power*." It is submitted that the Directive was in force at the time of the decision and that by failing to have regard to it, the Commissioner had abandoned a framework that he himself promulgated and replaced it with an arbitrary and unreasoned approach.

109. The Commissioner submits that there could be no error in failing to refer to the Directive in circumstances where he was not obliged to have regard to it as the incident predated its publication. It is submitted that if the Commissioner did have regard to the Directive, the complaint would be that a retrospective application was irrational, unreasonable and arbitrary. This may well be so, albeit, perhaps, less likely where the applicant actually called for the application of the Directive in writing.

110. The Commissioner also submits that it is completely unclear what the applicant is saying in relation to how the Directive could affect the outcome in any event.

Decision

111. I am of the view that, in the words of Simons J., the applicant cannot "*sensibly say*" that he does not know the basis for the Commissioner's proposal to dismiss him pursuant to Regulation 39 nor is he in a position where he has not been provided with sufficient

information to challenge the reasoning which ultimately led to the Commissioner's decision.

112. The alleged breach of discipline and the material facts could not have been set out in clearer terms in the letter dated the 9th of February 2024. It is manifest that what was alleged was criminal conduct for the purposes of the Schedule to the 2007 Regulations.

113. It is of central relevance that, notwithstanding the ingenuity of some of the arguments advanced, there is, in my view, no dispute whatsoever about the primary fact in this case i.e., that the applicant was detected driving in a public place with a reading of 95 microgrammes of alcohol per 100 millilitres of breath and convicted on the criminal standard of proof.

114. The material facts as set out were facts that the applicant was clearly aware of in circumstances where the prosecution of the matter was contested by him in the District Court.

115. It is accepted that the conviction has not been appealed and, to his credit, the applicant has sworn an affidavit accepting the fact of his conviction and admitting that there was "*no excuse*" for the underlying conduct.

116. There is no basis to suggest that there was some hidden or ulterior basis for the Commissioner's proposal to dismiss the applicant.

117. The fact that the Commissioner must have been made aware of the underlying facts by way of a garda witness statement or a report does not change this finding. It would be very surprising to me if the Commissioner was not so aware. It might have avoided some of the difficulty if it had been frankly stated on behalf of the Commissioner that this was the position. However, it was clear that what he was "*relying on*" in his proposal was the conviction order, which contained the relevant alcohol reading.

118. The applicant was afforded two opportunities to provide written submissions and both of these were clearly considered. It must be said that the one topic that was understandably not addressed by the applicant in those submissions was the level of the alcohol reading.

119. Having considered the submissions, the Commissioner clearly set out his reasoning in the letter dated the 27th of November 2024. He indicated that each case had to be looked at on its merits and that the mitigating factors had been taken into account. He made a number of references to the "*high level of intoxication*" which he determined to "*outweigh*" the mitigating factors. While one might take a different view, it is not for me to substitute my view for that of the Commissioner.

120. In addressing the question of whether a member of AGS is unfit for retention, it is for the Commissioner to assess and draw an appropriate inference from the established facts as to whether public confidence has or would be undermined. The Commissioner had regard to road and public safety and the responsibility of members of AGS in relation to that area, and to the credibility of a convicted member in upholding and enforcing the law.

121. Reference was made to the principle of policing by consent, upon which the system rests, and to the fact that public confidence is dependent on members conducting themselves to the highest standards, which is inconsistent with a recorded conviction. The Commissioner also referred to his "*absolutely essential*" duty to protect public confidence in AGS and his "*pivotal*" role in promoting road safety.

122. As indicated above, the Commissioner also took into account section 7 of the 2005 Act in relation to the functions of AGS.

123. In my view, the approach taken cannot be said to be unreasonable or irrational and the careful treatment of the written submissions does not support any suggestion of predetermination or the fettering of discretion. It seems to me that the applicant was, in fact, afforded appropriate fair procedures in the consideration of this matter.

124. It is for the Commissioner to decide whether to invoke Part 4 of the 2007 Regulations and he cannot be compelled to invoke Part 3. The three essential components identified by Laffoy J. in *McEnery* and noted above are established and were communicated to the applicant.

125. Noonan J. put the matter succinctly at paragraph 34 of *Ivers v. Commissioner of An Garda Síochána* [2022] IECA 206:

> "*Clearly the power exercisable under Regulation 39 is limited to very specific circumstances which appear to include that there can be no real dispute as to the facts concerned, e.g. where the member concerned has been convicted of an*

offence involving the same facts which are alleged to constitute the breach of discipline. One can readily appreciate how, in such circumstances, the holding of a Board of Inquiry would be entirely otiose, there being no room for dispute about the facts. Similarly, where those facts are expressly admitted by the member concerned, there will be nothing to be gained by the holding of a Board of Inquiry so that it could not be said in either instance that there had been any denial of fair procedures in all the circumstances."

126. I am unconvinced that there is any merit to the argument concerning the failure to have regard to the Directive. I can understand that the counsel of prudence for the Commissioner was not to have regard to it in circumstances where it post-dated the offence. It should also be said that this reasoning was explained to the applicant.

127. Quite apart from the fact that the absence of an aggravating factor does not necessarily equate with the presence of a mitigating factor (and it is not entirely accurate to say that no aggravating factors were present when the level of intoxication was specifically identified in the Directive as an aggravating factor), it seems to me that the Directive is no more than a statement of common sense, itemising a taxonomy of factors which can render a drink driving incident more serious.

128. These are factors which any decision maker would take into account *if* they were present. Having regard to the view that the Commissioner took in relation to the level of the alcohol reading, I do not see how the Directive could have influenced the result in this case had it been applied.

129. While the arguments in relation to the failure to provide the material sent to the Policing Authority were not heavily pressed during the hearing, I am satisfied that the 2007 Regulations do not contemplate affording members a right to seek to influence the Policing Authority on the question of consent when it is requested.

130. The applicant's previous record of service and good conduct is not in dispute in this case and it is difficult not to have a degree of sympathy for him. However, AGS is a disciplined force with the Commissioner at its head, and the Oireachtas has charged him with the responsibility of making decisions as to whether a member is fit for retention in these circumstances. While a different view might have been taken as to the sanction imposed, that is not the test, and it is not for me to second guess the decision reached by the Commissioner.

131. For all the above reasons, I am refusing the reliefs sought by the applicant.

132. Having regard to the provisions of section 169 of the Legal Services Regulation Act 2015, it seems appropriate to make an order for costs in favour of the respondents. I propose to make such an order in this case and will place a stay on it for a period of seven days from the date of this judgment. If either party wishes to contend for a different order, the registrar should be contacted within seven days of the delivery of this judgment, in which circumstances the stay will continue until a date can be fixed for a hearing on that issue.