



THE COURT OF APPEAL

High Court Record No.: 2024/1012JR
Court of Appeal Record No.: 2025/163
Neutral Citation No.: [2026] IECA 164

**Binchy J.
Allen J.
Owens J.**

BETWEEN/

J.M.

APPLICANT/APPELLANT

- AND -

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

RESPONDENTS

JUDGMENT of Mr. Justice Binchy delivered on the 31st day of July 2026

1. This is an appeal from a judgment of the High Court (Bradley J.) delivered on 1st May 2025 whereby he refused the reliefs claimed by the appellant by way of judicial review arising out of the suspension of the appellant from his duties as a probationer member of An Garda Síochána pending the conclusion of disciplinary proceedings against the appellant. While, as will be seen, the proceedings also challenged the continuation of the disciplinary proceedings themselves, and that relief was also refused by the Judge, that issue does not form part of the within appeal.

2. I have had the opportunity of considering the judgment of my colleague, Owens J., also being delivered today in this appeal, and while I agree with his conclusion as to the outcome of the appeal, as will become apparent we have arrived at that conclusion by a different route.

Background

3. Regulation 7 of the Garda Síochána (Discipline) Regulations 2007 (S.I. No. 214 of 2007) (the “2007 Regulations”) provides that where in the opinion of the first named respondent (whom I shall hereafter refer to as “the Commissioner”) the circumstances render such a course desirable in the interests of the Garda Síochána, he or she may suspend a member from duty. It further provides that a member so suspended remains suspended until the Commissioner decides that the suspension should cease. The Commissioner is required to review the suspension every three months (or at such shorter intervals as he or she considers necessary) although it is provided that any non-compliance with that requirement does not of itself invalidate a suspension.

4. Regulation 5 of the 2007 Regulations provides that any act or conduct by a member which is mentioned in the Schedule to the Regulations constitutes a breach of discipline. Paragraph 1 of the Schedule is in the following terms: -

“Discreditable conduct, that is to say, conducting himself or herself in a manner which the member knows, or ought to know, would be prejudicial to discipline or reasonably likely to bring discredit on the Garda Síochána.”

5. The appellant is a probationer member of An Garda Síochána, who joined the force on 30th November 2019. All going well, he would have concluded his period of probation approximately two years later, but unfortunately, all did not go well.

6. Following an encounter with a 17-year-old female in the early hours of 24th August 2020, when he was off duty, the appellant, who was then 23 years of age, was accused of rape. It appears that the allegation was made within a matter of hours of their encounter. A criminal investigation was commenced immediately and the appellant was twice interviewed under caution on the evening of the same day. In the course of these interviews, he agreed that he had met the complainant and admitted to certain sexual activity, which he said was consensual. He said he stopped the activity because he was concerned the complainant was drunk, and it was “*not the right thing to do*”. He said that she resumed the activity, but he again stopped her because of his concerns. He said that she then ran out the house, and while initially he followed her on foot, he lost sight of her and failed to catch up with her. He said that he then tried contacting mutual friends in whose company they had been earlier, and when he did not succeed in making contact, he got into his car to try and find the complainant, out of concern for her welfare, because it was very dark and she was drunk. He said that he was “*100% over the limit*”, but he took the view her welfare was more important. Eventually he found the complainant in the company of their friends.

7. Following this incident, the appellant was suspended from duty pursuant to Regulation 7 of the 2007 Regulations. He has remained suspended from duty ever since. The Court was not provided with a copy of the first notice served upon the appellant suspending him from duty, but it was provided with copies of all other notices. In the first subsequent notice served upon him dated 3rd September 2020, the reason given for his suspension is in the following terms: “*The suspension from duty arises as a result of An allegation that you engaged in sexual activity with [Ms. XY.], without her consent, on 24th August 2020.*” In the immediately following notice of 23rd October 2020 the reason given was “*An allegation that you engaged in sexual intercourse with [Ms X.Y.] without her consent on the 24th August 2020*”. That same reason was the reason provided for the suspension of the appellant in the

next six notices served upon him at intervals of three months up to and including 25th January 2022.

8. In February 2021, the complaint of rape was withdrawn. On 13th April 2022, the Director of Public Prosecutions (“the DPP”) directed that there should be no prosecution arising out of the incident of 24th August 2020. A further notice continuing his suspension was served on the appellant on 28th April 2022. The reason provided on this occasion, apparently reflecting the withdrawal of the accusation of rape, was in the different terms: *“The suspension from duty arises as a result of: The circumstances surrounding your sexual activity with [Ms. XY] on 24th August 2020.”* That same reason was the reason provided for the suspension of the appellant in the next six notices served upon him at intervals of three months up to and including 23rd October 2023, when the reason provided was again changed to reflect a change in circumstances.

9. On 24th May 2022, the Garda Síochána Ombudsman Commission (“GSOC”) commenced an investigation pursuant to s. 95 of the Garda Síochána Act, 2005. On 16th June 2022, GSOC wrote to the appellant informing him that while the DPP had directed that there should be no prosecution in respect of the allegation of rape, GSOC had decided that a further investigation under s. 95 of An Garda Síochána Act, 2005 (the “Act of 2005”) was required, and that the investigation would focus on potential discreditable conduct on the part of the appellant. On 14th November 2022, following the conclusion of the s. 95 investigation, GSOC issued a report pursuant to s. 97 of the 2005 Act, whereby it was recommended that disciplinary proceedings should be instituted under the 2007 Regulations against the appellant for possible breaches in relation to:

- (i) Discreditable conduct – by engaging in sexual activity with [Ms. X.Y.] after believing her to be too drunk for sexual activity moments earlier, and;

- (ii) Discreditable conduct – by driving his motor car in a public place whilst intoxicated.

10. These matters clearly arise out of the appellant's own statements made at his interviews on 24th August 2020, which I have referred to above.

11. Following upon the issue of the GSOC report of 14th November 2022, there was an unexplained period of inactivity until 16th June 2023, when an Assistant Commissioner of An Garda Síochána established a Board of Inquiry pursuant to Regulation 46 of the 2007 Regulations (the "Board"). The Board initially scheduled a hearing to take place on 4th September 2023, but owing to the unavailability of two members of the Board on that date, that hearing was adjourned and rescheduled to take place in early November 2023. However, a further adjournment was necessitated owing to a bereavement in the family of one of the members of the Board and ultimately the first hearing, which was a preliminary hearing, did not take place until 14th March 2024.

12. On 25th January 2024, the notice of suspension served upon the appellant again changed, and was in the following terms:

"The suspension from duty arises as a result of:

- The circumstances surrounding your sexual activity with an intoxicated minor on 24 August 2020.

- A Board of Inquiry has been established to address the discipline matters arising."

This reason was repeated in the notices of 24th April 2024 and was slightly modified in the notice of 29th July 2024 which added that the Board of Inquiry which had been established to address the discipline matters "*remains ongoing at this time.*" Thus, it can be seen that the notice was amended to reflect the establishment of the Board, but was it also amended to make reference to the sexual activity taking place with an intoxicated minor rather, than the named complainant.

13. At that first hearing before the Board on 14th March 2024, the appellant, through his solicitor, made a number of preliminary submissions. Chief amongst these were that there had been inordinate and inexcusable delay in progressing the disciplinary proceedings against the appellant and that the Commissioner was attempting “*to conduct a rape trial within the context of disciplinary proceedings*”. It was also suggested, albeit in a general way, that there had been a failure on the part of the Commissioner to comply with the provisions of ss. 95 and 97 of the 2005 Act and the 2007 Regulations. The March hearing was adjourned to 15th May 2024 for the purpose of enabling the appellant to put his submissions in writing.

14. On 15th May 2024, the hearing resumed and the Board heard evidence from the main investigating officer appointed by GSOC to investigate the complaints against the appellant, namely Mr. John O’Sullivan. The Board also heard evidence from an Inspector Kenneth Coughlan who gave evidence that he had been appointed by the Commissioner to act as a liaison officer between the Commissioner and the Board. The appellant’s solicitor submitted, *inter alia*, that no proper investigation had been carried out into the allegations made against his client, other than a review of the “*criminal file*”. He submitted, again in a general way, that there had been a failure to comply with the 2005 Act and the 2007 Regulations, as well as GSOC’s own procedures. He also again submitted that there had been inordinate and inexcusable delay in advancing the proceedings and that it was not fair that the allegations had been hanging over the appellant for almost four years. Having heard his submissions, the Board retired to consider the same and having done so, concluded that it would be better to afford the appellant’s solicitor the opportunity to make written submissions with the benefit of the transcript of the hearing. The solicitor was directed to provide those additional submissions by close of business on 12th June 2024, and the

presiding officer indicated that after that a further hearing date would be scheduled to address the issues raised by the submissions.

Letter of 18th July 2024

15. The appellant's suspension was due to be reviewed before the end of July 2024.

16. On 18th July 2024, before the Board had reconvened the disciplinary hearing, the solicitors for the appellant wrote a letter to the Commissioner upon which the appellant places much reliance in these proceedings. In this letter, it was asserted that the continued suspension of the appellant from his duties was unjustified, punitive and disproportionate. It was asserted that the reasons set out in the various suspension notices for the continued suspension of the appellant were inadequate and did not adequately explain why, "*in the round*" his suspension was merited. The letter demanded what was described as "*a full and complete set of reasons*" for the continued suspension of the appellant, "*including reasons as to whether and how the criteria in the Commissioner's Policy Document (including those relating to long-term suspensions) have been met*". The letter requested copies of all documents considered by the Commissioner, including the views of the appellant's divisional officer, in considering whether or not to continue the suspension of the appellant. It also requested an oral hearing on the issue of any further renewal of the suspension of the appellant.

17. By way of submission, it was stated in the letter that the suspension had gone on far too long and was having a serious and detrimental effect on the appellant. The Commissioner was requested to consider alternatives to suspension. He was also asked to discontinue what the solicitor described as the disciplinary investigation immediately. In addition to submitting that the process had gone on for far too long, it was submitted that the

process had been tainted by unlawfulness, and reliance was placed upon the earlier submissions made on behalf of the appellant, to which I have referred above.

18. The letter also made complaint that the appellant's probationary period had continued beyond the maximum period permitted by law, and reliance was placed upon Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union. The letter summarised the demands of the appellant as follows:

- (i) The provision of reasons and materials concerning the appellant's suspension from duties;
- (ii) The lifting of his suspension;
- (iii) The termination of the disciplinary proceedings, and;
- (iv) The bringing to an end of the appellant's probationary period.

19. The letter concluded with a warning that any further extension of the appellant's suspension while the above matters remained outstanding might result in an application to the High Court. It further stated that in the event that the concerns raised by the letter were not addressed in a satisfactory and timely manner, then the appellant reserved the right to apply for judicial review. Although dated 18th July, the letter was not received by the office of the Commissioner until 24th July 2024.

20. The Commissioner did not reply to the letter of 18th July, and the appellant's suspension was renewed on 29th July 2024, extending the appellant's suspension for a further period of three months with effect from 1st August 2024, the previous notice having expired on that date.

21. It is worthwhile to pause at this point to observe that the appellant could have been in no doubt as to the reason for his suspension. He was well aware of the criminal complaint which had been made against him and later withdrawn; the direction of the DPP; the GSOC investigation and recommendation; and the establishment of the Board of Inquiry, with

which he was engaging. If the appellant hoped or believed that the withdrawal of the criminal complaint meant that a line had been drawn under the encounter, he well knew that this was not a view that was shared by the Commissioner.

22. It is also worthwhile to point out that the complaints and demands made by the letter of 18th July 2024 were directed not only to his suspension but to his probation and the continuation of the disciplinary investigation, which was in the hands of the Board. As to the continuation of his suspension, the appellant and his solicitor well knew that it was due for review before the end of the month so that whatever about copy documents the prospect of an oral hearing was at best remote.

23. It is also useful to identify at this point the salient points of the Commissioner's Policy Document referred to by the appellant's solicitor. The Policy Document is a document entitled Policy Document on the Suspension from Duty of Members of An Garda Síochána under the Garda Síochána (Discipline) Regulations 2007 as amended, the declared purpose of which was to set out written guidelines on the use of Regulation 7 of the 2007 Regulations, as amended by Regulation 2(a) of the Garda Síochána (Discipline) (Amendment) Regulations 2011. It identifies the statutory authority for the suspension from duty and the circumstances in which a member will normally be suspended.

24. Section 6 of the Policy Document sets out that the Commissioner will review suspensions with a view to renewing them on the first day of every third month, i.e. 1st February, 1st May, 1st August and 1st November, or as soon as possible thereafter. Section 7 provides that in certain cases alternatives to suspension may be considered in consultation with the member's divisional officer, including employment on indoor duties and transfer *in lieu* of suspension. Section 8 acknowledges the member's right to be informed of the reason or reasons for his or her suspension. Section 14 provides for the appointment of a liaison officer.

25. Section 4 of the Policy Document defines a short term suspension as being one for a period not exceeding 10 days, while at Section 5, under the heading “*Long term suspension*” it is stated that the Commissioner may suspend a member for a period exceeding 10 days, and sets out that the views of the member’s divisional officer will be sought on a number of matters when the issue of a member’s long term suspension is being considered. These are:

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“Primary considerations for suspension.

1. *Strength of evidence,*
2. *Seriousness of allegation.*
3. *Risk to members of the public,*
4. *Risk to colleagues.*
5. *Potential to pervert the course of justice/suborn colleagues,*
6. *Options of alternatives to suspension.*

Secondary considerations for suspension

1. *Likely outcome,*
2. *Estimated time to conclude investigation,*
3. *Relevant complaint history,*
4. *Current performance,*
5. *Impact on police/public relations,*
6. *Impact on service/morale,*
7. *Risk to officer/welfare considerations.”*

High Court Proceedings

26. On 8th August 2024, the appellant issued an *ex parte* docket seeking leave to apply for judicial review. Leave was granted by order of the High Court (Farrell J.) by order made on 9th September 2024.

27. In the proceedings, the appellant sought the following orders:

- (i) An order prohibiting the Commissioner from continuing the disciplinary proceedings;
- (ii) A declaration that the continued suspension of the appellant is unlawful;
- (iii) An order of *certiorari* quashing the decision of 1st August 2024 to continue the appellant's suspension, including any and all earlier decisions taken to suspend or extend the appellant's suspension (the reference to the “*decision of 1st August 2024*” is erroneous – the decision was made on 29th July 2024, and continued the suspension from 1st August 2024, but obviously nothing turns on this);
- (iv) A declaration by way of judicial review that the appellant's probationary period has expired, and;
- (v) An order that the Commissioner shall pay to the appellant a sum with respect to back-pay from the period in which his probationary period ended.

28. The legal grounds for the reliefs sought were broken down into three parts: firstly, grounds related to the disciplinary proceedings, secondly, grounds related to the suspension of the appellant and thirdly, grounds related to the probationary period of the appellant.

29. So far as the disciplinary proceedings are concerned, it was contended that they had become tainted by delay, that the allegations made against the appellant were not complex, and that there was no longer an active complainant. It was contended that the investigation pursuant to s. 95 of the 2005 Act was unlawful and *ultra vires*. It was contended that the Commissioner acted unlawfully in failing to consider the representations made by the

appellant by letter dated 18th July 2024 and in failing to provide adequate reasons for the continuation of the disciplinary process.

30. Regarding suspension, it was pleaded that the appellant's suspension was vitiated by delay, was not justified and/or had become disproportionate, oppressive and/or punitive. It was further pleaded that the Commissioner acted in breach of fair procedures in failing to disclose the materials and reasons requested by the letter of 18th July 2024. It was also pleaded that the Commissioner, in failing to evidence the reasons for the suspension of the appellant, had deprived the appellant of his lawful opportunity to challenge the same before the courts and/or to make fulsome submissions in relation to same.

31. It was claimed that the suspension notice dated 1st August 2024 (here again this should refer to the notice of 29th July 2024) was unlawful insofar as it failed to disclose adequate reasons for the ongoing suspension of the appellant, and that the decision to suspend the appellant further on that date was unreasonable and/or disproportionate to the totality of the evidence before the decision maker. It was claimed that the Commissioner erred in law and failed to consider and/or engage with the submissions made on behalf of the appellant on 18th July 2024.

32. Further grounds related to the probationary period of the appellant were also relied upon, but since the claims related to the lawfulness of the probationary period did not form any part of this appeal, it is unnecessary to address them any further in this judgment.

33. In the ordinary way, the statement of grounds was verified by an affidavit of the appellant. An affidavit was also sworn on behalf of the appellant by his solicitor, Mr. Martin Moran, on 29th August 2024. This related to correspondence that he received, subsequent to the filing of the papers, regarding the resumption of the disciplinary proceedings. Specifically, he had received a letter from the presiding officer of the Board of Inquiry dated 7th August 2024, informing him that the hearing would convene again at

Monaghan Garda Station on 19th, 20th and 26th August 2024. Mr. Moran explained that he subsequently agreed with the presiding officer of the Board that the disciplinary proceedings should be adjourned generally with liberty to re-enter, pending the conclusion of these proceedings. At the opening of the appeal before this Court, counsel for the appellant informed the Court that the disciplinary proceedings had resumed following upon the delivery of judgment by Bradley J. in the instant proceedings, and that the disciplinary hearing had concluded just the day before the hearing of this appeal, with a decision from the Board of Inquiry awaited. That decision was delivered recently. While I understand that the Board has recommended the dismissal of the appellant, his current status is unknown to the Court and I consider it appropriate to deliver this judgment in circumstances where there has been no application to the Court arising out of the recommendation of the Board..

34. On 11th September 2024, the appellant swore an affidavit grounding a motion for interlocutory injunctive relief which it appears did not ultimately proceed. However, in this affidavit the appellant gives particulars of the impact of his ongoing suspension upon him. He avers that it is causing “*extreme and serious damage to his reputation and health.*” He says that he has attended counselling as a result. He avers that his suspension is also having a detrimental impact on his immediate family. He also avers that he is suffering financial losses of approximately €5,000 per annum arising from his suspension, because his salary has stagnated and he has missed out on pay increments. He has also been unable to continue with his training and he has missed his target of becoming – as he puts it – a fully attested member of An Garda Síochána and the resulting financial benefits that would have followed.

35. A statement of opposition was delivered on behalf of the Commissioner on 9th December 2024. Insofar as is relevant to the within appeal, it was pleaded that the disciplinary proceedings were not tainted by delay and that any delay that there had been in the process, which was denied, could be justified. It was pleaded that the appellant has not

been prejudiced by any delay in the disciplinary process. It was stated that a suspended member of An Garda Síochána is paid a suspension allowance in lieu of pay which is equivalent to 100% of basic pay, including rent allowance.

36. It was pleaded that the Commissioner had not acted unlawfully in commencing disciplinary proceedings against the appellant on foot of the investigation by GSOC under s. 95 of the 2005 Act, and that the investigation by GSOC under s. 95 of the 2005 Act was not unlawful. It was further pleaded that GSOC was empowered to investigate a complaint about the conduct of a member of An Garda Síochána that appeared to constitute an offence, but had been determined on investigation under s. 98 not to constitute an offence.

37. It was pleaded that the Board of Inquiry had been established in accordance with the 2007 Regulations to determine whether a breach of discipline had been committed by the appellant. The Commissioner pleaded that the appellant had at all times been afforded fair procedures and been permitted to make submissions before the Board of Inquiry. It was pleaded that the Board of Inquiry had provided adequate reasons for the continuation of the disciplinary process and that each review and/or extension of the appellant's suspension had been supported by adequate reasons. It was pleaded that the Commissioner had lawfully suspended the appellant and acted within the powers conferred upon him pursuant to Regulation 7 of the 2007 Regulations, and that the appellant's suspension was lawfully reviewed every three months or at such shorter interval as the Commissioner considered necessary.

38. It was pleaded that the suspension of the appellant was lawful and for a proper purpose in circumstances surrounding the appellant's sexual activity with the individual in question on 24th August 2020 and/or that a Board of Inquiry had been established to address the disciplinary matters arising therefrom, and which enquiry remained ongoing. It was claimed

that the 2007 Regulations do not place any obligation on the Commissioner to grant the appellant an oral hearing when reviewing or continuing the appellant's suspension.

39. The statement of opposition was verified by an affidavit sworn by Superintendent Adrian Kelly on 11th December 2024. While Supt. Kelly exhibited each of the forms of notice of suspension served on the appellant between 3rd September 2020 and 29th August 2024, he correctly did not purport in his affidavit to expand upon the reasons provided in each of those notices for the continued suspension of the appellant. Supt. Kelly also exhibited the letter of 18th July 2024 sent by the appellant's solicitors to the Commissioner, but offered no explanation for the fact that this letter was never replied to by the Commissioner; nor did he address any of the queries raised by the solicitors for the appellant in this letter, or provide any of the materials requested by the appellant's solicitors in the same.

Judgment of the High Court

40. In the High Court, the appellant argued that his suspension had been rendered unlawful by reason of the Commissioner's failure to provide the materials requested by his solicitors on his behalf; by the Commissioner's failure to provide adequate reasons for his continued suspension; by reason of the Commissioner's failure to engage with the submissions made on his behalf; and by the Commissioner's failure to consider the effect which the continuing suspension would have on the appellant's probationary period. It was also argued that the suspension of the appellant had been vitiated by delay. In advancing these arguments, the appellant relied upon *Baynham v. Commissioner of An Garda Síochána* [2023] IEHC 735, *McEnery v. Commissioner of An Garda Síochána* [2016] IESC 66, *Canavan v. Commissioner of An Garda Síochána* [2016] IEHC 225 and *Connelly v. An Bord Pleanála* [2018] IESC 31, [2021] 2 I.R. 752.

41. In what is a detailed and comprehensive judgment, Bradley J. rejected all of the appellant's arguments. He conducted a detailed analysis of the reasons given by the Commissioner for the suspension of the appellant. He noted that the appellant had first been suspended from duty on 24th August 2020, and that the appellant's suspension had been ongoing since that date and was periodically reviewed by a delegate of the Commissioner approximately every three months, as required by the 2007 Regulations.

42. The Judge gave consideration to each of the suspension notices served the appellant. At para. 120, he noted that in the first tranche of notices of suspension, the reason given for the suspension of the appellant was that it was as a result of "*an allegation that he had 'engaged in sexual activity with [Ms X.Y.] without her consent on 24th August 2020'*". The Judge said that the same reason was given for the suspension of the appellant in the next seven notices of suspension served between 3rd September 2020 and 25th January 2022. That, as will have been seen, was not strictly correct, but nothing turns on it.

43. The Judge noted that there was then a change in the reason provided for the appellant's suspension in the notice served on him on 28th April 2022, when the reason for the continued suspension from duty was stated to be: "*The circumstances surrounding your sexual activity with [Ms X.Y.] on 24th August 2020.*" The change in the reason given for the ongoing suspension of the appellant was explained by the fact that the complainant had withdrawn her allegations against the appellant. This amended reason for the suspension was then given (in identical terms) for the ongoing suspension of the appellant, every three months, until it was again modified by reason of a further change in circumstances. The notice served on the appellant on 25th January 2024 stated that the appellant was suspended from duty as a result of: -

"The circumstances surrounding your sexual activity with an intoxicated minor on 24th of August 2020.

A Board of Inquiry has been established to address the discipline matters arising.”

44. As is apparent, the change in the reasons given on this occasion arose from the establishment of a Board of Inquiry to investigate the disciplinary matters arising from the conduct of the appellant. That same reason was then provided for the ongoing suspension of the appellant up until the date of the issue of these proceedings, with the addition from 24th April 2024 that the Board of Inquiry remained ongoing.

45. Having thus analysed the periods of suspension of the appellant, the Judge then gave consideration to the judgments of the High Court in *Brannock v. Commissioner of An Garda Síochána* [2023] IEHC 300 (Mulcahy J.), *Baynham v. Commissioner of An Garda Síochána & Others* [2023] IEHC 735 (Phelan J.) and *Canavan v. Commissioner of An Garda Síochána* [2016] IEHC 225 (Baker J.), as well as the decision of the Supreme Court in *Connelly v. An Bord Pleanála* [2018] IESC 31, [2021] 2 I.R. 752. The Judge concluded that these authorities establish that the extent of fair procedures to be applied in a disciplinary and suspension process must be viewed by reference to the totality of the circumstances in each situation. That being so, the Judge opined that the circumstances of the appellant’s situation, including the disciplinary process and the suspension process, should not be examined in isolation or in what he described as “*legal silos*”, but rather that an examination of the entire situation was required. This led the Judge to conclude, at para. 140, as follows:-

“In examining these matters, therefore, it can be observed that the suspension notices paralleled (though not always contemporaneously) the circumstances of the inquiry into the initial allegation, the positions adopted by the DPP and GSOC, the further investigation by GSOC, the ultimate decision by it to recommend a disciplinary investigation, the appointment of a Board of Inquiry and the carrying out by that Board of its disciplinary functions. The Applicant was made aware of developments as they occurred and was offered the opportunity to engage with these processes. As stated,

ultimately, there was, up to the point of the institution of these proceedings, an ongoing disciplinary process where the Board of Inquiry was carrying out its investigation as part of that process and the suspension process recognised contextual developments, i.e., laterally, that there was a disciplinary process being carried out by the Board and, previously (and implicitly) that the DPP had stated there would be no prosecution. In fact, GSOC had expressly informed the Applicant on 16th June 2022 that the DPP had decided on 13th April 2022 that there would be no prosecution.”

46. The Judge noted that it had been submitted on behalf of the appellant that his suspension should have been lifted and his period of probation recommenced in or around the time the DPP had stated that there would be no prosecution. A similar submission was made in relation to the GSOC recommendation of 14th November 2022, i.e. following upon the issue of the GSOC report of that date in which it recommended the commencement of disciplinary proceedings against the appellant. It was argued that even though the appellant's solicitor had not written to the Commissioner at the time, the Commissioner or an official under his control should have “*considered*” as part of a continuing obligation whether or not the appellant's suspension should have been lifted. However, the Judge rejected this argument, holding that it failed to recognise the “*full picture which existed at that time*” and that it also minimised the matters of which the appellant was aware at the time. The Judge identified three matters in particular as follows:

- (1) That the appellant had been expressly informed by GSOC in a letter of 16th June 2022 that on 13th April 2022 the DPP had directed that there would be no prosecution in respect of the initial serious allegation;
- (2) This change of circumstances was recognised in the notice of suspension of 28th April 2022 in that the reference in the previous notices of suspension to engaging in sexual activity with [Ms. X.Y.] without her consent, was changed to

refer instead to the “*circumstances surrounding your sexual activity with [Ms. X.Y.]*”;

- (3) The appellant was informed, also by letter of 16th June 2022, that, following upon the decision of the DPP not to prosecute the appellant, GSOC had decided to launch, of its own initiative, an investigation under s. 95 of the 2005 Act, the focus of which would be on whether or not the appellant's conduct on 24th August 2020 amounted to discreditable conduct.

47. The Judge noted that there then followed a detailed process, together with communications, which afforded the appellant an opportunity to participate meaningfully in the investigation (which he did not avail of) culminating in the GSOC report of 14th November 2022.

48. The Judge noted that in *Baynham* and in *Brannock*, Phelan J. and Mulcahy J. respectively had observed that the suspension of a member of An Garda Síochána is not a sanction available to the Commissioner under the 2007 Regulations, but rather is a measure available when a disciplinary process or criminal or investigation process contemplated by the Regulations is underway, at least for so long as there remains an active process in being. The Judge found that in this case the disciplinary process was not open-ended or protracted, that progress was being made and that the completion of the disciplinary investigation was in sight as of August 2024, when these proceedings were instituted.

49. The Judge had regard to the prejudice asserted by the appellant by reason of the duration of his suspension. He had regard to the appellant's submission that he has been engaged in this process for four and a half years and that his life and career have effectively been on hold during this period of time, but he also noted that as a suspended member of An Garda Síochána he was being paid a suspension allowance in lieu of pay which is equivalent to 100% of basic pay, including rent allowance. The Judge referred to the observations of

O'Donnell C.J. in *O'Sullivan v. HSE* [2023] IESC 11 where, at para. 26, the Chief Justice observed that the suspension on full pay pending determination of disciplinary proceedings is “*in the language of the case law, a holding suspension.*”

50. The Judge referred to the following passage in the judgment of Phelan J. (para. 71) in *Baynham*: -

“Although the suspension in this case is ‘a holding’ suspension as the outcome of a third-party investigation is awaited, a holding suspension loses some of its character as such for the purpose of a consideration of the requirements of fair procedures where there is a failure to progress the process for which the suspension has been triggered. Accordingly, in deciding whether a lower or higher level of procedural fairness is required in deciding to continue or maintain a suspension, consideration needs to be given to whether there has been progress in the process such that it can be concluded quickly.”

51. As already mentioned, the Judge found that in this case there had been progress and that the end of the disciplinary process was in sight at the time the proceedings were instituted by the appellant.

52. The Judge considered that in contrast to *Baynham* and *Canavan*, the appellant was, in the phraseology used in *Connelly v. An Bord Pleanála*, “*a participant*” who was, through his solicitor, engaged in the process and was made aware of developments, including *inter alia* the notices of suspension, the fact that the DPP directed that there would be no prosecution, his engagement with Mr. O’Sullivan in the preparation of a s. 97 report and the fact that he was afforded the opportunity to make submissions before that report was finalised, but did not do so. Subsequently, the appellant was notified of the establishment of the Board of Inquiry and he participated in that process between March 2024 and mid-August 2024, when it was halted owing to the issue of these proceedings.

53. The Judge rejected the contention that, in the words of Baker J. in *Canavan*, the balance had “*tipped*” such that fair procedures required the granting of the reliefs sought in these proceedings. He noted that in *Baynham* Phelan J. had stated that the requirements of fair procedures are always dependent on the facts and circumstances of a given case. In *Canavan*, he noted, the question of suspension and a delay of two years was in the context of a lack of progress in relation to any disciplinary process in circumstances where there was no ongoing criminal investigation. The Judge also distinguished the circumstances in this case with those obtaining in *Baynham* (discussed below) observing that in contrast with this case, the various suspension notices in the case of Mr. Baynham did not change as the contextual narrative changed and made no reference to an ongoing criminal investigation or disciplinary investigation or the requirements of discipline in the force or in the interests of the force.

54. For all of the foregoing reasons, the Judge concluded that the consequences of the suspension in pausing the probationary period did not amount to a delay which warranted an intervention by way of judicial review, and he therefore refused all the reliefs sought.

The Appeal

55. By his notice of appeal filed on 23rd June 2025, the appellant raised 12 grounds of appeal which, in his written submissions, were helpfully condensed to five broad issues. In large measure the reduction in the number of grounds was attributable to the withdrawal of any grounds related to the lawfulness of the disciplinary process and the extension of the probationary period. The appeal was thus focussed on and confined to the issue of the appellant’s suspension, and the grounds relied upon were as follows:

- (i) That the trial judge ought to have found that the suspension was one to which the full suite of fair procedures applied, and erred in failing to do so.

- (ii) That the Commissioner unlawfully refused to provide to the appellant the materials sought by the appellant's solicitors in their letter dated 18th July 2024, in breach of fair procedures.
- (iii) That the Commissioner, in renewing the appellant's suspension, failed to address or engage with the appellant's submissions dated 18th July 2024 as to why his suspension should be lifted, and the trial judge failed to address this issue.
- (iv) That the reasons set out in the suspension notice dated 29th July 2024 were inadequate in failing to state why the appellant's suspension remained necessary and/or is justified in all the circumstances.
- (v) That the appellant's suspension (which at the time of this appeal would be in excess of five years) was vitiated by delay as it had taken longer than was reasonably necessary to hold an enquiry into the matter.

56. As the appellant's submissions acknowledge, there is some degree of overlap between these points. Moreover, the formulation of the five broad issues betrays a focus on the suspension itself as opposed to a criticism of the Judge's engagement with the arguments advanced in the High Court. It must also be said that the appellant's calculation that by the time the written submissions were filed the suspension had been ongoing for five years failed to take account of the fact that the hearing before the Board of Inquiry, which otherwise would have proceeded in August 2024, had been adjourned at the appellant's request.

Did the “*full suite*” of Fair Procedures Apply?

57. The appellant accepts that the full suite of fair procedures are not required in the case of an urgent holding suspension. This proposition is well established and is uncontroversial. In *McMahon v. Irish Aviation Authority* [2014] IEHC 431), Hogan J. observed at para. 33: -

“The extent to which a person is entitled to fair procedures prior to the imposition of a suspension will generally depend on the overall circumstances and the context in which the action has been taken. The necessity for urgent action, the nature of the suspension, its implications for the good name of the person concerned and, above all, its duration are critical factors. If the suspension is in the nature of a purely ‘holding’ suspension which has been imposed to enable an urgent inquiry to take place, then any obligation to abide by fair procedures prior to its imposition may be attenuated or may not apply at all: see, e.g., the comments of Keane C.J. in Deegan v. Minister for Finance [2000] E.L.R. 190 198-199.”

58. However, Hogan J. later observed in the same judgment at para. 44 as follows: -

“There is clear authority to the effect that a lengthy suspension will be rendered invalid, especially if that delay is prejudicial to the applicant. Thus, in Flynn v. An Post [1987] I.R. 68 the Supreme Court held that a suspension of an employee for a three-year period ceased to be valid after the point when the disciplinary investigation ought to have been ready to proceed, which that Court measured as being some four months after the date of the suspension. It was, of course, important to stress that the employee in that case had been suspected of theft and he had been suspended without pay.”

59. Hogan J. found that the delay in *McMahon* had gone well beyond any period necessary to “get to the bottom of the basic facts of the matter” and he found that the suspension had had adverse financial implications for the plaintiff, as well as seriously affecting his constitutional right to a good name and dashing a cherished ambition. In relation to the reputational damage which might be caused by a suspension, Hogan J. referred to a passage in another judgment of his own (and relied upon by the appellant in these proceedings) in the case of *Wallace v. Irish Aviation Authority* [2012] IEHC 178, [2012] 2 I.L.R.M. 350, 345

wherein he observed (at para. 15) that “*the very fact of suspension is enough, in this valley of squinting windows, to expose the employee to the decidedly unpleasant prospect of calumny and detraction at the hands of the unforgiving and the uncharitable.*”

60. Hogan J. struck down the suspension of Mr. McMahon, which at the time of the trial had been ongoing for 16 months, on the grounds that the defendant in that case had not acted with all due speed to ensure that the complaint against Mr. McMahon was investigated fully, fairly and promptly. In arriving at this conclusion, he took into account what he described as the considerable latitude that the law affords to a regulatory body (such as the defendant in that case) to act speedily and decisively in the interests of public safety.

61. In the case at hand, the appellant submits that even in the case of a holding suspension, some degree of fair procedures still applies and in this regard relies upon the judgment of the High Court (Mulcahy J.) in *Brannock v. Commissioner of An Garda Síochána* [2023] IEHC 300 in which he held, at para. 57: -

“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 the 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.”

62. It is the appellant’s contention that his suspension has long ceased to have the character of a holding suspension, and that by reason of the passage of time “*the balance has tipped*”

such that the “*full suite*” of fair procedures are engaged. The appellant also argues that the trial judge erred in failing to give any or any adequate consideration to the impact of the duration of the suspension on his life, and specifically its impact upon him financially, on his reputation and on his probationary period which was placed on hold by reason of the suspension. He argues that the trial judge erred in placing too much weight on the progression of the disciplinary proceedings, and the appellant’s participation in those proceedings. He submits that the requirements of fair procedures, when they are engaged, provide a right of engagement in the suspension process, and not simply the underlying disciplinary process.

63. The reference to the “*balance has tipped*” would appear to be drawn from the judgment of Baker J. in *Canavan*, where at para. 24, she held: -

“... while a holding suspension may be justified without giving the member the benefit of procedural fairness, the balance is tipped towards a requirement of such fairness when the suspension has been a lengthy one, and when no substantive progress has been made in the investigation.”

64. In *Canavan*, the applicant had been placed on suspension on 23rd May 2014 on the ground that he had failed to prosecute certain cases in the years 2012 and 2013. His initial suspension was renewed by a series of notices of suspension for successive periods of three months continuing up to the date of the trial of the action. Baker J. found that there had been a delay of almost two years during which no substantive progress had been made in the investigation of the matters in respect of which the applicant had been suspended. During this time he had been paid a suspension allowance that was less than his ordinary remuneration and he was also prohibited from engaging in employment outside the force between 9:00am and 5:00pm daily. The applicant had asserted that the suspension should be characterised as a penalty rather than as a holding suspension, and that as a consequence

fair procedures were engaged. Baker J. agreed. Having regard to what she described as the onerous requirements of his suspension, the duration of it, and the fact that there had been almost no progress in the investigation, she was of the view that the balance between employer and employee had “*tilted*” such that the requirements of justice required expedition in the conduct of the inquiry, but more relevantly from the point of view of the matters at issue in these proceedings, that his suspension had ceased to be a holding suspension and that the principles of fairness and due process were engaged.

65. Having reached that conclusion, Baker J. then proceeded to consider the matters that it was claimed vitiated the suspension. Firstly, she referred to the policy document of the Commissioner that was then applicable to suspensions. She noted that it did not envisage an open-ended suspension, but created a need to re-engage with the individual circumstances every three months, for the purposes of ascertaining whether those circumstances continued to provide a basis for suspension. She noted that none of the members of the force who were involved in the decision to suspend the applicant had furnished an affidavit in respect of the suspension. While she accepted the submissions made on behalf of the Commissioner in that case that there is no obligation imposed by the Regulations requiring the Commissioner to give reasons to a member of the force before effecting a suspension, she was of the view that it is clear from the authorities to which she referred (including the judgment of O’Neill J. in *PDP v. The Health Service Executive* [2012] IEHC 591 and the judgment of McDermott J. in *McHugh v. Governor of Portlaoise Prison and ors* [2015] IEHC 641) that the requirements of fairness in the case of a longer suspension which had ceased to have the character of a holding or summary suspension do necessitate the decision maker to justify the suspension, and to give reasons why its continuation is considered necessary. At para. 38 she held that the continued suspension of the applicant had not been shown to be justified. She noted that the decision maker had not sworn an affidavit and there was no evidence

before her which pointed to a “*justifying feature*”. For those reasons, Baker J. granted an order declaring that the continued suspension of the applicant was not valid and that he should be reinstated to his employment on full pay and allowances.

66. The appellant in this case submitted that *Canavan* is on all fours to the circumstances obtaining in these proceedings. While there are some similarities with the circumstances in *Canavan*, it is very far from being in all fours with this case. Firstly, in this case the appellant provided a statement at the very outset of the Garda investigation, in which he admitted sexual activity with Ms. X.Y., and it is the circumstances surrounding that activity that are the subject of the disciplinary inquiry and that are stated to be the reason for his suspension. Secondly, unlike in *Canavan*, the appellant here has been on full pay, including rent allowance, throughout his suspension. Thirdly, the length of the appellant’s suspension was largely accounted for by the time it took for the DPP to give her direction and the time it took for GSOC to carry out its investigations. Fourthly, at the time of the issue of these proceedings, there had been very significant progress in the disciplinary inquiry.

67. Having regard to these distinguishing features, *Canavan* is in my view of limited assistance to the appellant, save that it is clearly authority for the view that in certain circumstances the requirements of fair procedures may be engaged in cases involving holding suspensions that have continued for a protracted period, as has occurred here. However, it is clear from *Canavan* that before a court may conclude that the full panoply of fair procedures should be applied to a holding suspension, all of the relevant circumstances must be considered, and not just the duration of the suspension.

68. That this is so is also clear from the judgment of Phelan J. in *Baynham*, upon which the appellant places considerable reliance. In *Baynham*, the applicant had been suspended from duty for a period in excess of three years by the time the proceedings came on for hearing. At the time that the proceedings had commenced, the applicant’s suspension had

been reviewed on ten different occasions. He was one of several members of the force who had been suspended from duty while directions from the DPP were awaited arising out of two investigations related to the non-prosecution of and/or cancellation of fixed charge penalty notices. These were complex investigations. The applicant challenged his continuing suspension as being unlawful because of, *inter alia*, a refusal to provide him with the materials considered in deciding to extend his suspension and a failure to provide him with the reasons for the suspension. The respondents on the other hand relied on the fact the investigations were ongoing.

69. In the course of a very comprehensive judgment, Phelan J. made the following observations: -

“68.... It is also the case, however, that the fact that a suspension is not intended as punitive, does not have the effect of exempting it from a requirement to be fair in the decision-making process and a range of factors including the length of the suspension may have a bearing.

69. As identified in Brannock, relevant considerations which inform conclusions as to the requirements of fair procedures include the length of the suspension, whether it is open-ended, whether it is with or without pay, whether it occurs in the context of clearly defined investigative or disciplinary procedures, whether the member has consented to or acquiesced in the disciplinary process being stalled pending conclusion of a criminal investigation, the status of any criminal or other investigation and whether the suspension is intended to be punitive. In this latter regard, it seems that a suspension, even if not intended to be punitive may have to be regarded as such if it continues for a sufficiently long period, especially if there is no progress in an investigation or disciplinary proceedings. Suffice to say that where the circumstance

of each case is different, none of the cases examined in submissions are on all fours with the circumstances of this case.

70. Where the factors which impact on the extent to which a requirement to observe procedural fairness applies are variable and wide-ranging, it seems to me that it is not particularly helpful to identify the extent of the requirements of fair procedures by the category of suspension be it holding, punitive, lengthy, or otherwise. The primary considerations must be the impact on and consequence of the decision for the affected person and the exigencies of the situation for the employer or any identified third-party interest. However, while the label which may be applied to the suspension does not determine the extent to which fair procedures apply, it is helpful in identifying what the suspension represents as an aid to measuring its impact for the suspended person. It is this impact as measured by reference to what the suspension signifies for an individual which in turn informs consideration of what the requirements of fairness involve for the case balanced against other circumstances which may also require to be factored in.

71. Given that the suspension of a member is not a sanction available to the Commissioner under the 2007 Disciplinary Regulations, the suspension in this case must be understood not as a punitive measure but as a measure available when a disciplinary process (see Brannock, para. 53) or criminal investigation process as contemplated under the Regulations is underway, at least for so long as there remains an active process in being. As in O’Sullivan v HSE [2023] IESC 11 and the dictum of O’Donnell CJ. (at para. 26) the suspension on full pay pending determination of disciplinary proceedings is ‘in the language of the case-law a holding suspension’. Although the suspension in this case is a ‘holding’ suspension as the outcome of a third party investigation is awaited, a holding suspension loses some of its character

as such for the purpose of consideration of the requirements of fair procedures where there is a failure to progress the process for which suspension has been triggered. Accordingly, in deciding whether a lower or higher level of procedural fairness is required in deciding to continue or maintain suspension, consideration needs to be given to whether there has been progress in the process such that it can be concluded quickly.”

70. Phelan J. noted that the applicant in that case had been under investigation for in excess of four years, and that while some progress had been made in the criminal investigation, a decision of the DPP was still awaited. No steps had been taken in the disciplinary proceedings, and, Phelan J. observed, if there was a difficulty in progressing the disciplinary process in tandem with the criminal investigation, that had not been expanded upon. She found that the appellant was at a financial loss and she also had regard to the impact upon the applicant’s life, mental health and interpersonal relations arising from the delay. In a passage relied upon by the appellant in these proceedings, she held, at para. 77 : -

“77. Where a suspension has significant implications for the Applicant, is protracted and exceeds three years and is in respect of an even older investigation, as in this case, then notwithstanding that the criminal investigation is ongoing, I am satisfied that there is a requirement to observe fair procedures in any decision to extend or continue suspension made periodically and every three months in the case of the Applicant. 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.....”

71. Later, in another passage relied upon by the appellant, Phelan J. held at paras. 112 and 113: -

“112. I am satisfied that on the facts and circumstances of this case and at a remove of more than three years from first suspension, the Applicant is prima facie entitled, as an incident of his right to fair procedures, to know the material relied upon or the gist of the material relied upon in making the decision to further suspend him in order to enable him to make informed submissions and/or correct any errors of fact and/or challenge the decision in judicial review by reason of factors such as a failure to have regard to relevant considerations, having regard to irrelevant considerations, rationality or proportionality, as appropriate. The proper protection of his constitutional right to a good name and to due expedition in the investigation process demands no less.

113. It seems to me that at this remove the refusal simpliciter to provide this material is a breach of the Applicant’s rights is unlawful. ...”

72. While the decision in *Baynham* was appealed to this Court, no issue seems to have been taken in the appeal by the Commissioner with the general principles articulated by Phelan J. Nor was it argued in this appeal that Phelan J. was in any way in error in her statement of those principles.

73. The case of *O’Sullivan v. HSE* to which Phelan J. referred was one involving the suspension of a hospital consultant. In the course of his judgment, O’Donnell C.J. observed that the decision to suspend was one to be made by the CEO of the Health Service Executive, and did not require a finding that the consultant posed a risk to patients as a matter of

probability. It was sufficient for the purposes of suspension that the CEO was of the view that there may be an immediate and serious risk to patients, and, the Chief Justice noted, this was consistent with the fact that the placing of the applicant on leave was a temporary measure pending the carrying out of an investigation involving a disciplinary process before an independent committee which would be obliged to comply with fair procedures. At para. 26 O'Donnell C.J. held: -

“... This was a suspension on full pay, pending the determination of disciplinary proceedings. It was, in the language of the case law, a holding suspension rather than one which was penal or punitive. Nevertheless, it is the case that it is a decision which has an impact on an individual, may affect their reputation and where that person is engaged in a highly skilled occupation, may have the effect of making it more difficult for them to resume their occupation, even if the disciplinary proceedings do not result in their dismissal if the length of time is such a person becomes deskilled. It is clear, therefore, that the suspension decision does require fair procedures. I respectfully adopt and endorse the statement of Noonan J. in the Governor and Company of the Bank of Ireland v Reilly [2015] IEHC 241 ... that while it may be correct to say that while ‘the full panoply of fair procedures may not have been engaged at [this stage of suspension, [...]] basic fairness [required] at least a rudimentary explanation of the reason for suspension which admitted of the possibility of some exculpatory response.’”

74. The Commissioner submits that the trial judge clearly had regard to the principles arising out of the authorities above, as well as the particular circumstances of this case. It is submitted that the High Court judge was correct in holding that the appellant was the subject of an ongoing disciplinary process, in which he was participating, and which was neither open-ended nor protracted. Therefore, it is said, the High Court judge was correct to

conclude that the suspension of the appellant was a holding suspension which in the circumstances of this case did not justify the grant of the reliefs sought. Contrary to the submissions of the appellant, the Commissioner submitted that the High Court judge did have regard to the effect of suspension on the appellant's probationary period, but nevertheless concluded, and was entitled to conclude, that it did not warrant the granting of the relief sought.

75. The Commissioner relied upon the judgment of O'Donnell J. (as he then was) in *Crayden Fishing Co. Ltd. v. The Sea Fisheries Protection Authority* [2017] 3 I.R. 785, which did not concern a suspension from employment, but rather an unusual statutory scheme whereby provision was made for the proposed imposition of penalty points upon sea fishing licences by reason of the licence holder exceeding a fishing quota, with the opportunity for the licence holder to appeal the proposed imposition of the penalty points afterwards i.e. after the proposal. O'Donnell J. said, at para. 33: -

*“It is also worth considering why the courts have remained slow to require the full panoply of a fair hearing at a preliminary stage. First, it might be observed that even if this is so, any preliminary procedure is not without legal constraint. It must be conducted intra vires, and if for example conducted with actual bias or the appearance of bias, could be restrained and/or quashed. It may be that there are other examples of cases where the procedure will be subject to judicial review. Accordingly, the question is really whether fair procedures require notification and an opportunity for submissions at a preliminary stage, initiating a procedure which itself is obliged to be conducted in accordance with fair procedures. If however fair procedures apply without qualification at the preliminary stage, then as the decision in *Re Haughey* [1971] IR 217 and its progeny show, it is a very short step to requiring that process to be conducted by analogy with the demands of fairness observed in a full criminal trial.*

If for example there is a right to be consulted, then it may be argued that there is a right to be provided with the evidence, a further entitlement to demand disclosure or discovery of additional information, and if a factual dispute is asserted, to confront and cross-examine the accuser. Not only does this create a risk of endlessly self-replicating procedure, but any uncertainty as to what is required may lead to elaborate, costly and time consuming procedures being conducted at an early stage in an inquiry. This may extract a very high price in terms of efficiency, effectiveness and most of all, justice to all the parties concerned and the public. For this reason and others, it is critical to consider if the procedure as a whole has been fair to the individual concerned.”

76. In this instance, the Commissioner submits that the appellant’s argument that the High Court judge fell into error by “*conflating the processes*”, i.e. the suspension process and the disciplinary process, is to ignore the factual and legal reality that the two processes are inextricably linked and to view both processes in isolation would run contrary to the requirement to consider the entire circumstances of the case.

77. In my view the Commissioner must be correct in this submission. There is something quite artificial in the submission that the suspension process should be considered in isolation of the disciplinary process. The Commissioner is empowered under Regulation 7(1) of the 2007 Regulations to suspend a member from duty where in the opinion of the Commissioner, “*...the circumstances render such a course desirable in the interests of the Garda Síochána.*” The current suspension notice is clearly linked to the disciplinary process and as such it is clear that the Commissioner has, in his discretion, formed the opinion that the suspension of the appellant is desirable in the interests of An Garda Síochána for the duration of the disciplinary proceedings. In considering the impact of the duration of the suspension therefore, the High Court judge was correct in having regard to the progress of the

disciplinary proceedings and the fact that the appellant has been an active participant in the same. In my view he was correct in holding, as he did, at para. 139, that: -

“I do not consider, therefore, when assessing this application for relief by way of judicial review, that the circumstances of [Mr. M.’s] situation, including the disciplinary process and suspension process, should be examined in isolation or in ‘legal silos’. To do so would also appear to militate against how the discretionary supervisory jurisdiction of the High Court in an application for judicial review should be exercised, as this requires an examination of the entire situation.”

78. Had the Judge held otherwise, he would surely have led the parties down the path cautioned against by O’Donnell J. in *Crayden*, in the passage cited above, with the possibility of self-replicating, time consuming and expensive procedures.

79. It cannot be gainsaid that the duration of the appellant’s suspension is very significant, and if that were the only consideration any consideration of its renewal would attract a higher degree of fair procedures than would normally apply to a suspension. However, it is clear from the authorities discussed above that the extent of what is required by way of fair procedures is fact specific and depends upon all of the circumstances of any given case. I would endorse what was said by Mulcahy J. in *Brannock*, and applied by Phelan J. in *Baynham*, that it requires consideration of not just the length of the suspension, but other issues also, such as: -

“69. ...whether [the suspension] is open ended, whether it is with or without pay, whether it occurs in the context of clearly defined investigative or disciplinary procedures, whether the member consented to or acquiesced in the disciplinary process being stalled pending conclusion of a criminal investigation, the status of any criminal or other investigation and whether the suspension is intended to be punitive.”

80. While the suspension in this case is not intended to be punitive, as Phelan J. said in *Baynham*, “*it may have to be regarded as such if it continues for a sufficiently long period, especially if there is no progress in an investigation or disciplinary proceedings.*” Here, while it may be arguable that the suspension has continued for a sufficiently long period to be considered punitive, as this passage makes clear, this is not the only consideration. It is clear that there has been progress in the disciplinary proceedings. The suspension of the appellant is not “*open ended*” (as was the case in *Canavan* and *Baynham*), it is with full pay (including rent allowance) and it is within the context of a clearly defined disciplinary process in which the appellant has participated and which at the time of the judicial review application was at a very advanced stage.

81. As far as prejudice to the appellant is concerned, the Judge addressed this issue at paras. 153-162 of the judgment under appeal. While he did not address the appellant’s claim that he is at a loss of €5,000 per annum by reason of his suspension, this loss is claimed on the basis that but for his suspension, he would have progressed and been eligible to receive increments, and the Judge noted that the fact that the appellant’s probation period has been paused arises by operation of law, pursuant to the Garda Síochána (Admissions and Appointments) Regulations 2013 read together with the 2007 Regulations, and the Judge also had regard to the fact, that during his suspension he has been on full pay with rent allowance.

82. While it is true that the Judge did not refer to the reputational damage relied upon by the appellant, it seems to me that the appellant’s concerns under this heading, while very real, are adequately addressed by the fact that the disciplinary process was nearing conclusion by the time that he issued these proceedings.

83. When, on 18th July 2024, the appellant’s solicitors wrote to the Commissioner they were aware that the Board of Inquiry was due to reconvene very soon, and in the words of

the High Court judge, “*an end was in sight*”. The demands made by the letter of 18th July 2024 could only be understood as a demand for the application of the “*full panoply*” of fair procedures to the ongoing suspension of the appellant. While it might not be surprising that, after almost four years of suspension, the appellant would seek to have some input into any further consideration of his suspension, it was perhaps surprising that the appellant chose to issue these proceedings and bring the disciplinary process to a standstill at the very moment when that process was poised to resume and conclude.

84. That said, the point was made at the hearing of this appeal that even when the disciplinary process is concluded, there is provision in the 2007 Regulations for an appeal from the recommendations of the Board of Inquiry, and of course there is the possibility of further judicial review. In other words, the disciplinary process may yet take some time to come to its final destination. That may well be so, but it does not undermine the key rationale of the judgment of the High Court, that the disciplinary process was progressing steadily to a conclusion.

85. For the foregoing reasons I would reject the proposition that the High Court judge erred in failing to hold that the appellant’s suspension attracted the full suite of fair procedures. However, as has already been observed, the fact that suspension does not attract the fully panoply of fair procedures does not mean that the review of the appellant’s suspension was completely exempt from fair procedures. So, for example, nobody would argue that the appellant was not entitled to know the reason(s) for the continuation of his suspension, but other entitlements may also arise, depending on the circumstances.

Failure to Engage with the Appellant’s Submissions

75. This ground of appeal arises out of the failure on the part of the Commissioner to reply to the letter of the appellant’s solicitors of 18th July 2024. In this letter, it was argued *inter*

alia that the suspension of the appellant had gone on for too long and was having a detrimental effect upon him, and that the Commissioner was requested to consider alternatives to suspension. The letter also sought copies of all documents considered by the Commissioner in extending the suspension and complained that the reasons given in the suspension notices to that point were inadequate.

76. The appellant contends that the law on this issue is not complex, and that there is an obligation on a decision maker to engage with relevant submissions. The appellant relies upon *NECI v. The Labour Court* [2021] 2 I.L.R.M. 1 and *Balz v. An Bord Pleanála* [2020] 1 I.L.R.M. 367. The appellant contends that this issue was not addressed at all by the High Court judge.

77. In *Balz*, O'Donnell J. (as he then was) having referred to the rejection *in limine* by the respondent Board of a submission made to it by the applicant, stated, at para. 58: -

“...It is a basic element of any decision-making affecting the public that relevant submissions should be addressed and an explanation given why they are not accepted, if indeed that is the case. This is fundamental not just to the law, but also to the trust which members of the public are required to have in decision-making institutions if the individuals concerned, and the public more generally, are to be expected to accept decisions with which, in some cases, they may profoundly disagree, and with whose consequences they may have to live. I consider, therefore, that it is necessary to quash the decision of the Board granting permission this case.”

78. In response, it was submitted on behalf of the Commissioner that what was required of him in extending the appellant's suspension was to give the main reasons for the decision, and that there was no obligation on him to provide a discursive, narrative decision, or to “engage with” the submissions in the sense contended for by the appellant, or provide an issue by issue or submission by submission response to the appellant's solicitor. In this

regard the Commissioner referred to the judgment of Humphreys J. in the High Court in *Killegland Estates Ltd. v. Meath County Council* [2022] IEHC 393 (from which the Supreme Court dismissed an appeal [2023] IESC 39), wherein Humphreys J. stated at para. 77 that: -

“ ... [t]here is no obligation to ‘engage with’ submissions in the sense of some sort of discursive, hand-to-hand combat sense, as distinct from the obligation to give reasons.”

The Commissioner also relied upon the observation of Humphreys J. in the same case that “there is no legal requirement to state reasons for what is obvious.”

79. The letter of 18th July 2024 is referred to and summarised by the High Court judge at paras. 77-87 of the judgment. He does not refer to it specifically thereafter. The Commissioner appears to contend that the matters raised by the letter were addressed by the Judge in his general consideration of the Commissioner’s obligations when considering a decision to suspend a member, and in particular his conclusion at para. 138 that “...*the extent of the procedural safeguards which must attend any decision to suspend falls along a spectrum which depends on ‘all of the circumstances’ being considered*”. However, it is clear that this is not a response to the letter of 18th July 2024, or to any of the issues raised by that letter.

80. In each of the cases of *McMahon*, *Canavan* and *Baynham*, the periods of suspension involved were less than the four years of suspension to which the appellant had been subject at the time that he issued these proceedings. In *McMahon*, the period involved was approximately 16 months, in *Canavan* it was of the order of two years and in *Baynham* the period involved was in excess of three years. In *McMahon* and *Canavan*, substantive relief was granted quashing the suspensions, and declaratory relief was afforded in *Baynham*. Of course, I am very mindful of the fact that the circumstances of each case are very different,

and I mention this only to emphasise that the duration of the appellant's suspension is one of the longest in any of the authorities to which the Court was referred.

81. In those circumstances, it is hardly surprising that the appellant would ask the Commissioner to give consideration to alternatives to suspension in circumstances where it was apparent that the work of the Board of Inquiry had some way to go. In discussions with the Court, counsel for the appellant submitted that it is not at all unusual for Gardaí who are under investigation to be assigned to back of house duties for the duration of the investigation rather than be subjected to a suspension. As will have been seen, this is expressly contemplated by the Policy Document as a possible alternative.

82. Moreover, the letter of 18th July 2024 also inquired of the Commissioner as to whether and how the criteria in the Commissioner's Policy Document on the suspension from duty of members of An Garda Síochána, including those relating to long-term suspensions, had been met. The latter required, amongst other things, that the Commissioner should, when considering the issue of a member's long-term suspension, seek the views of the member's Divisional Officer and consider options of alternatives to suspension. In *Brannock*, Mulcahy J. observed of the Policy (at para. 52) that: -

"Although the Policy does not have statutory force, the Commissioner has adopted a policy which provides that particular steps will be taken before suspending a member. It would be difficult for the Commissioner to argue that a decision taken without following the steps set out in that policy was in accordance with fair procedures, nor did he seek so to do."

83. I do not think that requiring the Commissioner to consider alternatives to suspension could reasonably be considered to requiring the Commissioner to engage in the kind of hand-to-hand combat so colourfully described by Humphreys J. Even without reference to the Commissioner's Policy Document, a request to consider alternatives to suspension after so

long on suspension is one deserving of consideration. The Commissioner's Policy merely lends authority to the request. I make that observation because the Commissioner argued that failure to comply with the Policy was not one of the grounds upon which leave was granted. On a very strict view of it, that is correct, although failure to reply to the letter of 18th July 2024 is one of the grounds upon which leave was granted, and so it may not be entirely accurate to say the point is not covered by the order granting leave. But in any case, the point was made in a submission raised by the appellant with which, on any view of it, the Commissioner did not engage.

84. The appellant's solicitor's letter of 18th July 2024 canvassed a number of issues. While the time available between receipt of the letter and the review of the appellant's suspension before the end of July may not have been sufficient to have allowed a comprehensive response, the fact of the matter is that there was never any response. The thrust of the letter was an attack on the Board of Inquiry and the primary relief claimed in the judicial review application was an order prohibiting the continuation of the disciplinary proceedings. That the appellant's hope was stop the disciplinary proceedings in its tracks was evident from the fact that he applied to the Board of Inquiry for an adjournment *sine die* pending the judgment of the High Court on the judicial review application. All that said, there was in the letter and later in the statement of grounds a separate challenge to the continuation of the suspension. If, when the time came for the statement of opposition, the Commissioner was distracted by the challenge to the disciplinary process, that is perhaps understandable. Similarly, the focus of the submissions in the High Court appears to have been the underlying disciplinary process rather than the suspension in aid of that process. But it was, in my view, part of the case. A further distraction, in my view, was the appellant's insistence that he did not understand the reason for his suspension rather than – as was the focus of the appeal – that

having regard to the duration and impact of the suspension the Commissioner had not justified the continuation of the suspension by reference to his own policy.

85. While I have upheld the judgment of the trial judge that the full suite of fair procedures was not engaged in the review of the appellant's suspension, I have also made the point that this does not mean that there are no fair procedures in the process. Clearly a decision was required on the review of the suspension, and the reason or reasons for that decision must be provided. So too the Commissioner should engage, *to whatever extent is reasonable*, with any request to consider alternatives for suspension, not least in circumstances where the member concerned has been suspended for four years, even though the disciplinary process is at an advanced stage.

86. Having regard to Regulation 7(1) of the 2007 Regulations, it is obvious that consideration of any such request is a matter falling entirely within the discretion of the Commissioner, but that does not mean that he is free to ignore the request. On the contrary, *Balz* would suggest that he is obliged to engage with it.

87. In this respect, I respectfully differ from the views expressed by Owens J., who considers that there are cases of such a serious character that there is no obligation on the Commissioner to engage with the Policy, and that in this instance the Commissioner was not obliged to reply to the letter of 18th July 2024 because it did not contain any new factual information. While I agree with the views expressed by Owens J. that those who engage with administrative decision makers should do so constructively, I have great difficulty in accepting the proposition that the Commissioner did not have sufficient time to consider and reply to the letter of 18th July 2024, when he was considering the renewal of the suspension of the appellant on 29th July 2024. Although the letter of 18th July 2024 was long, it does not follow that it required an item by item reply, and in my view it would not have been onerous for the Commissioner, when making the decision to renew the appellant's

suspension, to engage with the letter at least so as explain why, in his opinion, an alternative to suspension was not appropriate, and also to address the request for provision of materials taken into account. I address the latter issue in more detail below.

88. While it was submitted on behalf of the Commissioner that the appellant's request to the Commissioner that he should consider alternatives to suspension was "*clearly*" rejected in the suspension notice dated 29th July 2024, this is manifestly not so. All that can be known from that notice is that the Commissioner decided to continue the suspension of the appellant. There is nothing at all to indicate that he considered, and rejected, the request that he should give consideration to alternatives. While, for the reasons already explained, the suspension of the appellant remained a holding suspension, and did not therefore attract the full panoply of fair procedures, this did not obviate the obligation of the Commissioner to engage in a manner appropriate to the circumstances with the appellant's solicitor's letter of 18th July 2024, and in particular so as to demonstrate compliance with his own Policy on long term suspensions, an issue specifically raised by that letter. If there was insufficient time available between receipt of the appellant's solicitor's letter of 18th July 2024 and the renewal of the suspension on 29th July 2024, the likelihood was that the suspension would need to be further reviewed and I see no reason why these matters were not addressed later.

Failure to Provide Materials

89. As regards the appellant's complaint that the Commissioner failed to provide him with the material requested in the letter of 18th July 2024, being those materials to which the Commissioner had regard when renewing the suspension of the appellant, the Commissioner contends that those materials had already been provided to the appellant in the context of the disciplinary process. The appellant acknowledges having received materials in connection with the disciplinary process but claims that he does not have sufficient information as to

the Commissioner's decision to extend his suspension from duties, which he submits is a different process, including the materials relied upon by the Commissioner in making that decision..

90. While I consider it highly unsatisfactory that the Commissioner did not respond to the letter of 18th July 2024 and choose not to swear an affidavit in these proceedings in which he might have clarified the specific materials relied upon him in suspending the appellant from duty, nonetheless it is important to bear in mind that the factual background giving rise to the suspension of the appellant is not complex. To recap, the appellant was first suspended following an allegation of rape. When that was withdrawn, there was a change in the reason given for the appellant's suspension, and the reason was changed again following the report of GSOC which recommended the institution of disciplinary proceedings against the appellant. The suspension notices at all times reflected the current state of play, and following upon the establishment of the Board of Inquiry it was obvious that the ongoing suspension of the appellant was deemed necessary by the Commissioner while the Board conducted its work. The notice of suspension of 29th July 2024 expressly states that "*A Board of Inquiry has been established to address the discipline matters arising and remains ongoing at this time.*"

91. During the course of the appeal hearing before this Court, counsel for the appellant was asked what other materials might have been available to the Commissioner other than those generated in the course of the GSOC investigation. Counsel responded that this is not like a planning matter where the contents of a file are both predictable and the file itself is accessible. In other words, he could not be sure what materials were considered by the Commissioner, even if it is very likely that the appellant in fact has most of the materials that were considered by the Commissioner, or at least all relevant materials. As I observed at the outset, the appellant well knew the reason for his suspension and well knew of the

modifications of the reason as matters progressed. What he did not know was what additional materials were considered in reviewing his suspension by reference to the factors set out in the Policy Document, not least the views expressed by his Divisional Officer from time to time.

92. This is not a case in which the materials relied upon by the Commissioner in continuing the suspension of the appellant could have any special sensitivity or give rise to any security concerns in the context of a wider investigation. If, as was submitted on behalf of the Commissioner, no materials other than those of which the appellant is already aware were taken into account by the Commissioner, then it would have been very easy for the Commissioner to have said so had he taken the trouble to reply to the letter of 18th July 2024. To that extent the issue may be seen as part of the failure on the part of the Commissioner to engage with the submissions of the appellant, which I have addressed above.

93. If, on the other hand there were additional materials taken into account by the Commissioner, which had not previously been made available to the appellant, then, in the absence of any explanation as to why they were not made available to the appellant (which again could be considered as a failure to engage with submissions) it is difficult to see why they were not made available to the appellant having regard to the very lengthy duration of his suspension. This is especially so if there was a report available from the appellant's Divisional Officer addressing the matters required to be addressed by the Policy Document, in particular the options of alternatives to suspension.

94. In the circumstances of this case therefore, I am of the view that it should either have been explained to the appellant that the Commissioner did not rely on any documentation other than that already made available to the appellant as part of the investigation of the Board of Inquiry, or alternatively, if the Commissioner did in fact rely on additional documentation, then it should have been made available to the appellant. In the particular

circumstances of this case – not least because it was likely that the appellant’s suspension would likely be revisited in the future – fair procedures required that the Commissioner should have addressed the request. If that could not have been done in the very limited time before the suspension needed to be reviewed, there was no reason why it could not have been done later. However, for the reasons to which I will come, the failure to do so did not vitiate the suspension.

Adequacy of Reasons

95. The appellant argues that the reason given by the Commissioner for the suspension of the appellant is inadequate in that it fails to say why, in the round, the suspension of the appellant was considered to be necessary in the interests of An Garda Síochána, having regard to the length of the suspension and the requirements of the Policy Document.

96. The appellant relies upon the well-known authorities in this area, but most especially the judgment of Clarke C.J. in *Connelly v. An Board Pleanála* [2018] IESC 31, and in particular the following passage: -

“One of the matters which administrative law requires of any decision maker is that all relevant factors are taken into account and all irrelevant factors are excluded from the consideration. It is useful, therefore, for the decision maker to clearly identify the factors taken into account so that an assessment can be made, if necessary, by a court in which the decision is challenged, as whether those requirements were met. But it will rarely be sufficient simply to indicate the factors taken into account and assert that, as a result of those factors, the decision goes one way or the other. That does not enlighten any interested party as to why the decision went the way it did. It may be appropriate, and perhaps even necessary, that the decision makes clear that the appropriate factors were taken into account, but it will rarely be the case that a

statement to that effect will be sufficient to demonstrate the reasoning behind the conclusion to the degree necessary to meet the obligation to give reasons.”

97. The appellant also relies upon the decision of Faherty J. in this Court in *S.R. and L.A. v. Minister for Justice* [2023] IECA 227. That was an immigration case, in the context of an administrative, non-statutory scheme which Faherty J. observed did not require the full panoply of the applicant’s rights to be invoked. The applicants in that case had been refused immigration permission under the scheme, both at first instance and on review. The applicants were found to have submitted false and misleading documentation in connection with earlier immigration applications, and their applications under the scheme in question were refused on the basis that they did not meet one of the criteria in the scheme, specifically that they had not been of good character since arriving in the State. Each of the applicants made submissions to address this issue, including character references. One of the issues for consideration in the proceedings was whether the decision maker on review considered all the materials furnished by the applicants with the review applications. The appellant relies upon the following passage in the judgment of Faherty J.: -

“I agree with the applicants’ submission that what was required on the face of the Review Decisions, was unambiguous evidence that the review decision-maker had engaged in a real way with the arguments and materials advanced by the applicants in their review applications, together with some indication that the review decision-maker had engaged in the requisite weighing exercise. That does not mean that there had to be an overly discursive analysis. Indeed, given the nature of the submissions made on behalf of each of the applicants in their respective review applications, I would venture to suggest that an overly discursive analysis was not required once there was clear and unambiguous evidence that the merits of their submissions and the material the applicants relied on were considered. In my view, however, no such

sufficiently unambiguous indication of the requisite engagement with the merits appears on the face of the Review Decisions.”

98. For his part, the Commissioner also relies upon the judgment of Clarke C.J. in *Connelly* and refers to the following passage of his judgment: -

“Just as, at one extreme, the modern law on reasons does not permit a decision maker to engage in a simple box ticking exercise so also, at the other extreme, the law does not require a level of reasoning which goes beyond that required to afford an interested party reasonable information as to why the Decision was made and whether it can be challenged.”

99. The Commissioner also relies upon the following statement made by Humphreys J. in *Friends of Killymooney Lough v. An Coimisiún Pleanála* [2025] IEHC 407: -

“A decision should not be quashed for lack of reasons if nobody could be in any real doubt as to what the reasons were: Killegland Estates v. Meath County Council [2023] IESC 39, [2023] 12 JIC 2019 (Unreported, Supreme Court, 21 December 2023) per Hogan J.”

100. The Commissioner submits that the appellant has at all times known the precise allegations against him i.e., the circumstances surrounding his sexual activity with a 17-year-old female on 24th August 2020, and that a Board of Inquiry was established to address the discipline matters therefrom arising. He also knows that a decision was made pursuant to Regulation 7 of the 2007 Regulations to continue his suspension pending the conclusion of the disciplinary process. Therefore, the Commissioner submits, the appellant knows why his original suspension was merited, and why “*in the round*” the further extension of his suspension in July 2024 was, in the opinion of the Commissioner, justified.

101. The Commissioner also refers to the fact that it is stated on the face of the suspension notice that the appellant was suspended pursuant to Regulation 7 of the 2007 Regulations.

It follows, therefore that the Commissioner must have formed the view that the suspension was in the interests of An Garda Síochána.

102. The law does not require decision makers to provide complex explanations where there is no complexity, or as Humphreys J. put it, also in *Killegland*, at para. 83: “*there is no legal requirement to state reasons for what is obvious*”. In this case counsel for the appellant submitted that there is a distinction between providing a reason and the reasoning behind that reason, and while he appeared to acknowledge that the Commissioner had provided a reason for the decision of 29th July 2024, he submitted that the Commissioner had failed to provide the reasoning underpinning the broad general reason for the renewal of the suspension, having regard in particular to the requirements of the Policy Document.

103. I agree with the Commissioner that the appellant can have been in no doubt as to why he was suspended initially. The appellant may not agree with the reason provided by the Commissioner, but the reason is perfectly obvious on its face and requires no elaboration.

104. However, if the reason for the initial suspension of the appellant is clear, it is equally clear that the reasons provided for the renewal of the appellant’s suspension every three months give no information at all as to whether or not the requirements of the Policy Document have been considered and complied with by the Commissioner. To that extent, it may be said that the reason provided by the Commissioner in the notice for the renewal of the suspension of the appellant dated 29th July 2024 was deficient. However, this inadequacy in the reason provided has to be considered in the context that, as already said, the appellant could have been in no doubt about the reason for his suspension in the first place, that the Commissioner was of the view that it should continue until the conclusion of the disciplinary process, and that that process was well underway and set to conclude within a matter of weeks.

Suspension Vitiating by Delay

105. In submitting that his suspension has been vitiated by delay, the appellant relies upon the comments of Hogan J. in *McMahon*, cited above, and also the *dicta* of Baker J. in *Canavan*, as well as the fact that in each case both suspensions were declared to be invalid very simply – he would say – because they had gone on too long. The appellant also relies upon the comment made by Phelan J. in *Baynham* that “*It is undoubtedly the case that as a matter of law a suspension should in all fairness be disposed of, either by raising the suspension or by dismissing the employee, as soon as is reasonably practicable.*”

106. The appellant has also referred the Court to the judgment of the High Court in *Morgan v. Trinity College* [2003] 3 I.R. 157 in which it was stated that “*a power of suspension must be construed as permitting a suspension to continue only for the period of time during which it would not be reasonably practicable to hold a full hearing into the matter.*”

107. On the facts of this case, the appellant submits that the High Court judge was wrong to accept what was an unexplained delay of seven months in the setting up the Board of Inquiry, which it will be recalled he said should be seen in the round of the overall duration of the disciplinary proceedings. The appellant submits that the delay overall in progressing the disciplinary proceedings is incomprehensible in circumstances where the only material evidence against the appellant’s own statement and CCTV footage which is not in dispute. The appellant also refers to the following passage from the judgment of Henchy J. in *Flynn v. An Post* [1987] I.R. 68: -

“In a bilateral situation, such as existed here between an employer and employee in regard to the right to suspend and dismiss for disciplinary reasons, justice cannot be treated as a one-way street. The rights of both parties must be taken into account for the purpose of determining which of the claimed rights should prevail so as to achieve a compliance with the fundamental requirements of justice.”

108. The appellant contends that what has happened in this case to date is a “one way street” in the Commissioner’s favour and that justice requires the suspension to be brought to an end having regard to what he contends has an excessive delay in the establishment and conduct of the Board of Inquiry.

109. The Commissioner also relies upon *dicta* of Phelan J in *Baynham* wherein she stated, at paras. 129 and 130: -

“129. Applying the principles which emerge from the case-law in deciding whether the suspension is vitiated by delay in this case, it seems to me that it cannot be ignored that the suspension was imposed to allow for the investigation of serious allegations in circumstances where it is recognised and accepted in the case law (recalling most particularly the decision of the Supreme Court in Gillen v. Commissioner of An Garda Síochána) that there is a clear public interest that allegations of garda misconduct be investigated. ...

130. It is clearly material to a balancing of interests that the Applicant has not been suspended without pay as occurred in Flynn and nor has he pressed for a disciplinary process to be progressed as also occurred in that case.”

110. The Commissioner also relies upon comments made by O’Moore J. in this Court on appeal in *Baynham* in which he expressed the view that the evidence in the case did explain the length of the suspension, and said that given the seriousness of the allegations the suspension, albeit a lengthy one, was justified. It will be recalled that in *Baynham* the appellant had been under investigation for in excess of four years and that there had been no steps whatsoever taken in the disciplinary process for almost three years.

111. While the Commissioner accepts that the appellant did complain of delay in concluding the disciplinary process, he did so at a time when there was a reasonable prospect that it would shortly be concluded i.e., he did so in making submissions to the Board of

Inquiry in March and June 2024. The Commissioner refers to the judgment of Simons J. in *Harrison v. Commissioner of An Garda Síochána* [2025] IEHC 303 in which there was also a complaint about the delay in the duration of the suspension, which Simons J. addressed at para. 40 as follows: -

“It is correct to say that the Applicant has been suspended for a significant period of time: he had first been suspended in March 2021. The length of the suspension has, however, to be seen in the context of the progression of the disciplinary process. It is apparent from the correspondence in April and May 2022 that the Applicant did not object to the disciplinary process being deferred pending the outcome of the criminal investigations. The disciplinary process resumed thereafter, and a Board of Inquiry was established on 4 May 2023. The Board of Inquiry, through its presiding officer, served particulars of the serious breaches of discipline alleged by notice dated 7 July 2023. The Board of Inquiry held a preliminary hearing on 21 July 2023 and the substantive hearing commenced in November 2023. But for the intervention of these judicial review proceedings, the disciplinary process would likely have already concluded.”

112. The Commissioner places heavy reliance on the progression of the proceedings of the Board of Inquiry between 14th March 2024 and 19th of August 2024 and notes that a full hearing involving six witnesses had been scheduled to take place on that date, and that it was the appellant applied for and was granted an adjournment of the hearing pending the outcome of the within proceedings. The Commissioner submits that the Court should bear in mind that the suspension in this case was imposed to allow the investigation of very serious allegations made against a probationer member of An Garda Síochána and that there is a clear public interest that the allegations against the appellant be investigated.

113. The complete and unexplained failure on the part of the Commissioner to do anything about establishing the Board of Inquiry for a period of seven months is a matter of great concern and shows no regard at all the entitlement of a suspended member to have the allegations made against him investigated promptly. Thereafter, once the Board of Inquiry was established, the matter was out of the hands of the Commissioner and there was a further period of delay which is explained by the unavailability of two members of the board for personal reasons in late 2023. However, throughout this time it does not appear the appellant made any complaint about the delay, and he did so for the first time at the first hearing convened by the Board in March 2024. There can be no complaint about the conduct of the proceedings of the Board of Inquiry thereafter and, as the Commissioner has submitted, it was the appellant himself brought the proceedings to a standstill by applying to adjourn the inquiry upon the issue of these proceedings.

114. Having regard to the fact that, as the High Court judge put it, the end was in sight at the time of the issue of these proceedings and the nature of the matters being investigated I am not persuaded that the High Court judge erred in his conclusion that the suspension of the appellant has not been vitiated by delay.

Conclusion

115. The appellant has been wholly unsuccessful in respect of the issues raised by two of his five grounds of appeal, and has been successful, in varying degrees, in respect of the arguments canvassed in support of the remaining three. Specifically:

- (i) He has been unsuccessful in his claim that the trial judge ought to have found that the renewal of his suspension from duties on 29th July 2024 was one to which the full suite of fair procedures applied;

- (ii) He has been unsuccessful in his claim that his suspension from duties has been vitiated by delay;
- (iii) He has been successful in his claim that the Commissioner failed to address or engage with his submissions dated 18th July 2024 as to why his suspension should be lifted, and in his grounds of appeal relating to this issue that the High Court judge erred in failing to address the same;
- (iv) While he has not been successful in his claim that the Commissioner should have provided him with the materials sought by him in his solicitor's letter dated 18th July 2024, he has been successful in establishing that fair procedures required that the Commissioner should have considered his request, and;
- (v) He has been successful in his claim that the High Court judge erred in failing to find that the reasons given by the Commissioner for the renewal of his suspension on 29th July 2024 were, to the extent described above at para. 104, inadequate.

116. While the appellant seeks an order of *certiorari* quashing the renewal of his suspension on 29th July 2024, it is apparent that, since that suspension was for a period of three months, and since the suspension of the appellant would have been renewed on several occasions before the proceedings came on for hearing in the High Court, the validity of the decision made by the Commissioner on 29th July 2024 is moot. However, the appellant also seeks certain declaratory reliefs, including a declaration that his continued suspension is unlawful. This too is problematic for the appellant, as it is apparent that his continued suspension arises from later decisions, not impugned in the proceedings for obvious reasons. Moreover, such relief would be inconsistent with my conclusion that the appellant's suspension has not been vitiated by delay.

117. Thus, it is apparent that this is one of those situations where the issue raised by the challenge to the order impugned by the proceedings will invariably have become moot by the time any proceedings to challenge it come on for hearing. In such situations the courts have in the past accepted jurisdiction and determined the issue, notwithstanding its mootness, in order to avoid the possibility that the issue will always escape scrutiny because of the duration of the measure under the challenge, and the time it takes to bring the challenge on for hearing. See, for example, the judgment of Clarke J. (as he then was) in *Okunade v. Minister for Justice*, at para. 5.3.

118. In this case, the appellant has achieved some success in several of his grounds of appeal, and the question arises as to what relief, if any, the Court should grant in the very unusual circumstances pertaining. By “*unusual*”, I mean that these proceedings were issued almost immediately upon the issuance of the decision impugned by the proceedings, and less than three weeks before the resumption of the disciplinary process which was the *raison d’être* of the suspension. Moreover, the foundation of the proceedings was a letter which was written very shortly before the then anticipated impugned decision which, while it raised the issue of the appellant’s suspension, was primarily focussed on the continuation of the disciplinary proceedings. As the High Court judge said, the “*end was in sight*”, and the appellant issued these proceedings in the knowledge that they could only have the effect of significantly protracting the conclusion of the disciplinary proceedings, and, almost inevitably therefore, also protracting his suspension from duty, which was a holding suspension pending the conclusion of the disciplinary proceedings.

119. For these reasons I consider that, notwithstanding the success that he has had in elements of this appeal, the proceedings were misguided and counterproductive. All of the above leads me to the conclusion that it is not appropriate for the Court to engage in an exercise of trying to fashion some remedy in his favour so as to reflect the successful

outcomes that he has had in some of his grounds of appeal. I would therefore dismiss the appeal and affirm the order of the High Court.

120. As to costs, I consider that it is appropriate in this case that the parties should make oral submissions once they had an opportunity to consider this judgment, and the matter will therefore be listed for this purpose early in the new term.

121. As this judgment is being delivered remotely, Allen J. has authorised me to confirm his agreement with the same.