APPROVED

THE HIGH COURT

[2026] IEHC 557

Record No. 2025 / 2206 P

BETWEEN:

SHANE GRAY

Plaintiff

AND

COMMISSIONER OF AN GARDA SÍOCHÁNA

Defendant

Judgment of Ms. Justice Emily Farrell delivered the 6th August 2026:

1. The plaintiff is a serving member of An Garda Síochána who claims compensation under section 23 of the Garda Síochána (Compensation) Act, 2022 (as amended) arising from a malicious incident which occurred on 17th February 2021. He is a married father of three children, who were aged 16 years, 14 years and 15 months at the date of the hearing, and has served as a member of An Garda Síochána since 2017. He was 31 years of age when he was assaulted in the course of his duties.

The issue to be decided

2. It is accepted by the defendant that the plaintiff was violently assaulted by a person who was subsequently convicted of offences arising from that malicious incident (hereinafter referred to as the assailant). He pleaded guilty to assaulting the two Gardaí and was sentenced to three years imprisonment. It is not in issue that a malicious incident, within the meaning of section 2 of the 2022 Act, occurred whilst the plaintiff was actually on duty on 17th February 2021, nor is it in dispute that the plaintiff suffered injuries as a result of that malicious

incident. The incident, which lasted approximately ten minutes, was undoubtedly very traumatic for the plaintiff, and would have been very traumatic for any person or any member of An Garda Síochána.

3. The Defence delivered on behalf of the defendant required proof of the personal injuries, loss and damage, including special damage, pleaded in the initiating Summons. No positive plea was made in the Defence, and specifically failure to mitigate loss or damage was not pleaded. The only witness at the trial of the action was the plaintiff. The plaintiff was not cross-examined in relation to the circumstances of the malicious incident.

4. The medical reports were admitted into evidence for interpretation. It is agreed that the reference to the plaintiff having been hit by a mountain bike in the report of Dr. Murphy dated 25th October 2025 is an error and that the plaintiff did not have such an accident.

5. Special damages have been agreed at €3,813 to date so the only matters for determination by this court are the quantum of general damages to be awarded to the plaintiff for his injuries, and any future special damages.

Background

6. The plaintiff attended a private residence for the purposes of carrying out a bail check at a residence where a small quantity of controlled drugs had been found during a search earlier that day. The plaintiff and his colleague were invited to enter the residence. While the plaintiff was sitting down and taking notes of the conversation between himself and his colleague and the assailant, the assailant 'went berserk', stood up and spat into the face of the plaintiff's colleague. When the plaintiff went to his colleague's aid, all three men tumbled onto the couch, and the assailant spat into the plaintiff's eyes and mouth and started to punch and kick the plaintiff and his colleague in an attempt to get them off him.

7. The plaintiff stated that he and his colleague pinned the assailant down on the couch for a long period, during which he continued to assault the plaintiff by kicking him and lashing out. He managed to spin the plaintiff around a number of times, by kicking him in his knees, hips and lower back. At the time the plaintiff weighed 16 stone. Neither the plaintiff nor his colleague were able to draw their batons or pepper spray as they were too close to the

assailant to do so. It was necessary to lie on the assailant and wait until he ran out of steam. The assailant was described as a big man, who was aggressive and wriggly during the incident. He was wearing steel toe yellow CAT boots.

8. Whilst the plaintiff said that it felt like a lifetime, he said that the attempt to restrain the assailant and assault continued for approximately ten minutes. He was terrified that, if he and his colleague did not manage to subdue him, the assailant could reach the knives which were visible on the kitchen counter which was nearby. They were in the living room area of a room which also included the kitchen. The assailant held his hands across his body in a way which prevented the plaintiff and his colleague grabbing his hands or applying handcuffs. The plaintiff was kicked on his hips and legs, and spun around by force of the assailant's kicks, and kicked in the lower back. The plaintiff was also bitten on both hands, drawing blood and his neck was scratched. Despite the fact that the plaintiff was wearing a protective vest he suffered painful kicks to the abdomen.

9. During the incident, the assailant stated his name and said that he was part of a Columbian cartel and made a threat to kill the plaintiff and his colleague. He repeated that threat at the Garda Station after he had been arrested. He also stated that he had Covid, and that the plaintiff would catch it and die from it. The plaintiff's evidence was that he did not think he had been vaccinated when the incident occurred on 17th February 2021, which was during a national level 5 lockdown.

10. Later during the evening of the incident, the plaintiff attended the Emergency Department of Cork University Hospital where his injuries were reviewed, and he received a tetanus injection. A Covid test came back negative, and bloods were taken. PEP (HIV post exposure treatment) was not recommended and none of the blood results were of note.

11. After the plaintiff returned home, he suffered a panic attack as the adrenaline left his body. He could not sleep. He attended his General Practitioner on 18th February 2021 and reported being very stressed and anxious since the assault. His physical injuries were also noted.

12. The plaintiff was out of work for one year, and on his return was assigned to a less busy Garda Station, which was further from his home. He carried out office duties initially, but

resumed normal duties on a phased basis. His sleep has been disturbed and he experiences fatigue. He continues to experience pain particularly in his lower back, and radiating into his legs, particularly his right leg, after sitting or standing for prolonged periods and driving exacerbates his back pain.

The Plaintiff's Injuries

13. It is not in dispute that the plaintiff suffered injuries to his lower back, with pain radiating into his legs, most significantly his right leg, psychological injuries and that he was bitten and scratched, and experienced bruising and soreness on his torso. As of the date of the hearing, it was approximately five years and three months since the date of the incident.

14. The plaintiff described his full body as having been impacted in the assault, but stated that the scratches, cuts and bruising to his wrist resolved over a number of weeks following the incident. The pain and stiffness in his lower back, radiating into his legs, and pain in his shoulder have continued, as have the psychological sequelae which included panic attacks with physical anxiety symptoms and flashbacks. The plaintiff initially experienced significant sleep disturbance, including insomnia, cold sweats and nightmares but his sleep has improved albeit not fully. He attributes some of the continuing difficulty sleeping to the age of his youngest child.

Psychological Injury

15. The incident which led to these proceedings was undoubtedly a very traumatic and frightening event. The plaintiff had a panic attack at home on the night of the incident, having been assessed at Cork University Hospital, and he was afraid that he was having a heart attack. He attended his General Practitioner the following day and was reassured that it had been a panic attack. The plaintiff described significant anxiety symptoms during the first year post-incident, including frequent panic attacks, initial and middle insomnia with vivid dreams and ruminations, flashbacks and hypervigilance. Initially panic attacks occurred once or twice per week but reduced over time. They tended to be worse when he sleeps badly. Flashbacks and other symptoms of PTSD were triggered by relatively innocuous stimuli including TV programmes.

16. Over the course of the first year, the plaintiff was prescribed antidepressants and sleep medication, which did provide benefit, but he experienced reduced alertness and a numb feeling whilst on that medication. Initially, he was prescribed Xanax for three weeks and subsequently Quetiapine (50mg) by his GP, who also prescribed Inderal (½ tablet). He commenced counselling. Dr. Dennehy, Consultant Psychiatrist diagnosed him with Post-Traumatic Stress Disorder and prescribed Sertraline (50mg) and Trazodone (75mg). The plaintiff complained of feeling quite sedated on the Quetiapine. On 27th May 2021, Dr. Dennehy increased the dose of Sertraline (100mg) and Trazodone (100mg) and Sertraline was further increased on 10th August 2021 to 125mg. Dr. Dennehy anticipated that assuming the plaintiff's injuries improved, he would improve psychologically, but found that the plaintiff's low mood tended to be maintained by continuing pain and decreased function, which rendered him less able to engage in enjoyable physical activities.

17. Dr. Dennehy retired in 2022. The plaintiff was not referred to a second psychiatrist and weaned himself off this medication after Dr. Dennehy's retirement. He said he had attempted to contact Dr. Dennehy but could not reach him as he had retired. The plaintiff explained that he did this by taking reducing doses of the Sertraline tablets which he retained having been prescribed higher doses. He said that he felt mentally sharper when he came off the medication. He discussed this subsequently with his General Practitioner, Dr. McGillicuddy, who states in his report dated 13th June 2025 that he agreed with the plaintiff's decision to come off the antidepressants and sleeping tablets.

18. The plaintiff has had 36 sessions of counselling, provided as part of the Employee Assistance Programme. Initially he was offered 12 1-hour sessions, and due to the severity of his symptoms, he was offered a further 12 sessions. However, his counsellor suggested that it would suit the plaintiff better to have 24 weekly half-hour sessions, rather than 12 one-hour sessions which Dr. Dennehy described as helpful.

19. He experienced low energy and mood and states that during the first year after the incident, he was like a different man and could not enjoy the things he usually enjoyed. He had no motivation and described himself as very irritable and continually tired during that period. He also reported poor concentration and that he avoided discussing the incident with anyone other than his counsellor. He drank to excess during the first year. He says he drank

a bottle of wine a day to help him relax, forget and to help him sleep. His drinking decreased when he returned to work. Dr. Campbell states that this may have exacerbated his symptoms during the first year.

20. Having returned to work approximately a year after the incident, the plaintiff was and remains anxious going to calls and is concerned to ensure that he wears his protective vest when outside the Garda Station. He feels more comfortable as a passenger in the Garda car, as he is afraid of his reaction if called out to a domestic or violent incident. In those instances, he feels overwhelming anxiety, experiences sweaty palms and envisions a violent incident occurring, his breathing quickens and his right leg shakes. He says that he does not wish to make an issue of it with his colleagues and is very aware of the importance of Gardaí being able to rely on each other in difficult or dangerous situations. He is afraid that he would freeze.

21. He continues to practice techniques which he learned during his counselling sessions and finds this beneficial. He has also benefitted from advice from his wife who is a psychotherapist. The plaintiff considers that he has improved from a psychological perspective but says that he would give anything to go back to his pre-incident mental state. He also states that for a long time he considered himself to be a burden on his family, particularly his wife, and a disappointment to them, due to his back pain, depression and anxiety. He considers that further counselling would benefit him and states that the reason he did not undergo additional counselling sessions, is that he could not afford to pay for any further sessions privately.

22. The symptoms of panic disorder resolved within the first year, but the plaintiff continues to suffer from PTSD. It is anticipated that the plaintiff's psychological symptoms of PTSD will resolve over time and that he will make a full recovery. In 2025 his concentration was described as 'fair'.

Failure to Mitigate – Psychological Injury

23. Whilst the plaintiff was cross-examined as to why he did not undergo further counselling after the 36 sessions which were made available to him under the Employee Assistance Programme provided by An Garda Síochána, and in relation to his decision to

stop taking antidepressant medication, failure to mitigate was not pleaded in the Defence delivered on 3rd September 2025, nor was the plaintiff put on notice that the defendant intended to put mitigation of injury in issue in correspondence prior to the hearing.

24. The plaintiff's objection is not simply that this was not pleaded, but more fundamentally that he did not have notice that this subject was in issue in the proceedings.

25. It was submitted by the plaintiff that, had notice been given of that issue, additional information would have been available for the court relating to the terms of the St Paul's Employee Assistance Scheme and the plaintiff's financial circumstances. The defendant led no evidence.

26. In *Calix v. AG of Trinidad and Tobago* [2013] 1 W.L.R. 3283, the Privy Council endorsed the earlier judgment of the Privy Council in *Geest plc v. Lansiquot (St Lucia)* [2002] 1 W.L.R. 3111, in which it was stated that if a defendant intends to contend that a plaintiff has failed to act reasonably to mitigate his or her damage, "*notice of such contention should be clearly given to the plaintiff long enough before the hearing to enable the plaintiff to prepare to meet it. If there are no pleadings, notice should be given by letter*." In this case, the plaintiff was not given any notice that this issue would be raised.

27. Simons J. also held that failure to mitigate loss should be expressly pleaded in *Molloy v. Tipperary Glass Ltd* [2022] IEHC 263 and stated that "*[a]t the very least, the intention to rely on an alleged failure to mitigate should be raised in correspondence prior to the trial of the action.*" In *Corless v. HSE* [2023] IEHC 622 Bolger J. accept neither the plaintiff's reliance on a pleading point, nor the defendant's contention that the plaintiff had failed to mitigate her loss by not seeking a place on a community employment scheme with a view to securing alternative part-time work. She found that the plaintiff had behaved responsibly and proactively in trying to get back to work and should not be blamed for failing to take up any paid employment since the accident.

28. I agree with the approach of Simons J. in *Molloy* and the Privy Council in *Geest* and *Calix*, and I am satisfied that the defendant is not entitled to raise the issue of failure to mitigate loss for the first time in cross-examination. Insofar as the *dictum* of Bolger J. appears to be inconsistent with that of Simons J., it was *obiter*.

29. Even if I am wrong in finding that the defendant was not entitled to raise this issue at the trial of the action without providing the plaintiff with notice thereof, the onus of establishing failure to mitigate rests on the party who asserts that. There is no evidence before the court to support the contention that the plaintiff's decision to come off the medication which had been prescribed for him by Dr. Dennehy was unreasonable particularly in light of the side effects which he reports, which are unchallenged, and the fact that none of the medical experts have criticised that decision. While Dr. Fannon (who is not a treating doctor) stated in his first report that the plaintiff's treatment to date had been 'sub-optimal', he stated in his second report, dated 17th April 2026, that it is impossible to comment definitively on the appropriateness of the plaintiff's psychological management. He advised that the plaintiff may benefit from a further course of antidepressant medication at an adequate dosage, for up to six months, or longer if so advised by his General Practitioner. The plaintiff's uncontested evidence is that neither this nor the reasons why the plaintiff had come off the medication were discussed with him by Dr. Fannon.

30. The only expert who addressed the question of the plaintiff coming off the antidepressants and sleeping tablets, or not continuing with counselling after the 36 sessions, is the plaintiff's General Practitioner Dr. McGillicuddy. In his report dated 13th June 2025 he stated:

> "*He no longer takes medication for Anxiety or PTSD type symptoms. He has returned to work and is performing well. He does still get symptoms on occasion however, particularly in triggering situations which he manages himself. He would benefit I feel from maintenance Counselling and Psychotherapy but he is currently limited by financial constraints he says. I agree with his decision to wean off his antidepressants as he did.*"

31. While Dr. Aisling Campbell noted that the plaintiff seemed to be improving with treatment and that the plaintiff had stopped taking the medication prescribed by Dr. Dennehy approximately two years prior to her assessment of the plaintiff, she made no adverse comment in relation thereto. This report is not a basis for countering the plaintiff's evidence that he felt that the medication impeded his ability to do his job properly or that he felt numb and zombie-like whilst on the antidepressants and sleeping tablets and mentally sharper

when he came off them. Neither Dr. McGillicuddy nor Dr. Campbell criticised the manner in which he weaned himself off that medication. The plaintiff's evidence was that he weaned himself off the medication by taking reducing doses of the prescribed medication by using up medication which he had retained when the dose had been increased previously. This was not referred to by Dr. Fannon, which supports the plaintiff's account that the question of whether he should be taking medication was not discussed with him when he was assessed for the purposes of the medical report.

32. Dr. Campbell also noted that the plaintiff had attended counselling, which he found helpful and noted that he uses self-help techniques which he learned through counselling to manage his anxiety. Again, she did not comment further in relation to counselling, nor is there evidence that she questioned the plaintiff about the reason he stopped taking the medication or did not undergo further counselling. Although she is an expert witness rather than a treating doctor, the reasons why the plaintiff stopped taking the medication are relevant to any question regarding the reasonableness of his decision to cease taking it.

33. The plaintiff accepted that he did not contact the St Paul's Employee Assistance Programme to see if he could recoup part or all of the fees which would be incurred or whether EMDR (Eye Movement Desensitisation Reprocessing) therapy would be covered, but he stated that he could not afford to pay for them. The plaintiff was cross-examined in relation to his statement that he could not afford additional counselling sessions. There is no evidence of a reluctance on the plaintiff's part to attend for counselling.

34. In Dr. Dennehy's report dated 3rd September 2021, it was noted that the plaintiff's GP had wondered (in making the referral) whether EMDR might be an option. Dr. Dennehy gave the plaintiff details of a psychologist with whom he might be able to look at EMDR therapy or CBT regarding his experiences, at the first consultation on 13th April 2021. The plaintiff underwent counselling, as provided through the Employee Assistance Programme, but did not do EMDR therapy. Neither Dr. Dennehy nor Dr. Campbell question the reasonableness of the plaintiff's not undergoing EMDR therapy. Dr. Fannon states that the recommended treatment for the plaintiff's complaints of 12th March 2026 includes psychological therapy and that approximately 12 sessions are indicated. He also states that the plaintiff may benefit from a further course of antidepressants. He states that although his psychiatric condition is likely to improve with treatment, he may continue to experience

some degree of anxiety even with treatment given the duration of the symptoms to date, and that his future personal and social functioning may continue to be impaired to a degree. Dr. Fannon did not criticise the plaintiff's previous decisions not to continue with medication or not going for further counselling. The plaintiff remained under the care of his General Practitioner who neither referred him to a second psychiatrist after Dr. Dennehy retired, nor prescribed him antidepressants or sleeping tablets after he had weaned himself off medication.

35. This is not a case, such as *Buckley v. Linehan* [2025] IEHC 101 where there was clear evidence of the plaintiff declining or refusing to undergo treatment which would normally give dramatic benefit. In that case, Egan J. rejected the contention that the plaintiff had failed to mitigate damage as she held that he had not acted unreasonably by refusing to undergo an epidural.

36. The plaintiff is willing to undergo further counselling and has not refused to do so. His explanation for not attending additional counselling is that he could not afford to pay for it privately. He does not have a mortgage, but owes approximately €100,000, having borrowed €84,000 to carry out renovations on his uncle's house to make it habitable and create a separate apartment in which his uncle lives. The loan was topped up for external insulation on the house. He does not pay rent or a mortgage but financed the renovations and looks after his uncle. His monthly loan repayments are stated to be approximately €280 per week (over €1,100 monthly). It was suggested to him that this figure would be significantly lower than average rent or mortgage repayments being made by others. It was put to him in cross-examination that many gardaí would have mortgages of €200,000 – €300,000, and he did not disagree, but no evidence was given regarding the terms or repayment amounts for such mortgages, nor of the typical rent in the area where the plaintiff resides. The general expense of having three children was referred to by the plaintiff but no details were provided. The plaintiff is the main breadwinner in the family, but his wife has also worked part-time as a counsellor. No other evidence was given in relation to the plaintiff's financial position nor as to his ability to pay for additional counselling. He did not seek to ascertain the extent to which he could recoup expenditure for counselling from the Employee Assistance Scheme and said he could not afford to pay for the sessions upfront. While the plaintiff's evidence was that there was a reduction in salary during the year he was on leave due to the incident, by reason of shift allowances and overtime, he agrees that he has been on full salary since

he returned to work in early 2022. The total hypothetical net loss of earnings was quantified at €1,121.78. The only financial evidence for the court was the evidence given by the plaintiff. There was insufficient financial evidence before the court to conclude that the plaintiff's evidence that he could not afford to pay for additional private counselling sessions should be rejected. Therefore, even if the plea of failure to mitigate had been made, I reject the argument that he has failed to mitigate his loss.

Back pain

37. Immediately following the incident, the plaintiff suffered pain in his lower back, which was stiff and sore. Restricted movement in all planes of movement was noted, together with tenderness in his lower back L3 – L5, paravertebrally to the right side, when he attended his General Practitioner on the day following the incident. Some paravertebral muscle spasm was noted, but an initial neurological examination was normal. The plaintiff was prescribed painkillers (initially Vimovo, subsequently Tramadol) and physiotherapy, which he underwent. An MRI performed on 29th April 2021 showed disc herniation at L3/L4 level, and it was noted that the plaintiff had not had pain in his back prior to the assault. Nerve conduction studies and EMG were carried out in or about August 2021. On examination by Dr. McNamara, Consultant Neurophysiologist, in August 2021, he was found to have a pes cavus on his right-hand side. The nerve conduction studies showed reduced motor and sensory responses in the distribution of the right tibial nerve. It was found that there was evidence of a background of a right tibial neuropathy, and no evidence of any other radiculopathy or neuropathy in his right leg.

38. The plaintiff has been diagnosed with a soft tissue injury to his back, with referred pain to his lower limbs. He attended a chiropractor and had acupuncture in 2021, which provided some short-term benefit. In October 2021, the plaintiff was found to suffer from continuing pain in his lower back and right hip, radiating down to his right knee and with occasional tingling or paraesthesia in his right leg as far as his right foot. Movements were uncomfortable but acceptable and paraspinal tenderness, predominately at the right lower lumbar area was noted by Prof. Molloy, Consultant Physician / Rheumatologist. He was referred to Mr. Kamal, Consultant Neurosurgeon who did not recommend surgery but referred the plaintiff to Dr. Damian Murphy, Consultant Anaesthetist and Pain Specialist in

January 2022. Despite opioid pain-relief and physiotherapy, which provided limited relief, the plaintiff's symptoms continued. On examination by Dr. Murphy, the plaintiff was found to have reduced flexion and extension of his lumbar spine, muscle spasm in the left and right paravertebral muscles and point tenderness to palpation along the right paravertebral muscles. There was reduced straight leg raising bilaterally, but more so on the right. Dr. Murphy noted the results of the MRI, which showed degenerative disc disease, facet joint degeneration and disc desiccation at L3/L4. Dr. Murphy diagnosed chronic musculoskeletal pain and/or trauma/strain to the lumbar discs and/or trauma/strain to the lumbar facet joints. The plaintiff was advised to undergo further physiotherapy and to carry out the exercises in addition to a right sided epidural steroid injection which was performed on 1st February 2022. He subsequently received five lumbar facet joint injections, the first of which was administered in April 2022, and most recent in July 2025. He did obtain good relief from the facet joint injections, but the benefit wore off as time progressed.

39. When reviewed by his GP in June 2025, the plaintiff reported that he can manage his pain with his own stretches and physiotherapy and occasional pain relief, but he continues to require occasional facet joint injections. Dr. Campbell noted in September 2025 that he continued to take Vimovo or Tramadol as required. He was reviewed by Dr. Murphy in October 2025, whose opinion as to the plaintiff's injuries was unchanged. Dr. Murphy noted that the plaintiff continues to experience predominantly right sided lumbar pain, but that the intensity had reduced. He advised that further review and physiotherapy may be required in the future. In March 2026, he stated that it was difficult to outline future treatments but it appears that he did not consider further facet joint injections would be required.

40. As of the date of the hearing, the plaintiff continues to suffer from intermittent back pain which radiates into his right leg, and occasionally he experiences left leg discomfort. His ability to sit or stand for long periods without pain is still curtailed, as is his ability to lift or carry heavy objects. His sleep is still disrupted by physical discomfort on occasion. The plaintiff has undergone a course of physiotherapy and is open to doing more. He has been doing Pilates to strengthen his core and uses online HSE videos. The plaintiff had an epidural on 1st February 2022, and facet joint injections on five occasions between 26th April 2022 and 1st July 2025. The facet injections have been successful but the benefit wanes over time. He no longer experiences pain every day, but it can be triggered by something as mundane as picking something up. He performs normal activities such as gardening and

playing football with his children less frequently than he would like due to the fear that he would trigger a painful episode lasting a few days. Prior to the incident he regularly went to the gym and did strength training. He continues with core and muscle strengthening exercises, as recommended, but he remains fearful of performing certain exercises in case that causes an exacerbation of pain. The plaintiff no longer takes painkillers on a regular basis.

41. The prognosis given by Dr. Len Harty, Consultant in Rheumatology & GIM, in February 2026 is that the plaintiff will continue to experience discomfort into the future, given the longevity of the symptoms at that time (five years post incident). He states that it is probable that assault exacerbated the disc prolapse in the plaintiff's lumbar spine and the MRI findings of rotator cuff tendinopathy, causing the plaintiff's symptoms in his back and shoulder.

42. Dr. Alexander J. Stafford, Consultant Radiologist, stated that there was radiological evidence of a disc bulging protrusion associated with posterolateral osteophytosis projecting into the intervertebral foramen on the right side at L3/L4 which has progressed from the initial scan in 2021 to a more significant stenosis of the intervertebral foramen on the right side at the L3-L4 level in June 2024. There is some minor broad-based disc bulging extending into the intervertebral foramina with lesser narrowing of the intervertebral foramina at the L4-L5 level. Narrowed lateral recess on the left with potential for L5 nerve irritation. Bilateral foraminal narrowing was seen at L5-S1 and the minor protrusion at L5-S1 has gradually regressed. Dr. Stafford states that the plaintiff had a degenerative condition particularly in the L3-L4 facet joints, less so at L4-L5 but he states that the absence of back symptomology prior to the assault "strongly favours" that the plaintiff's clinical disability has been caused by the assault.

43. Prof. Michael O'Sullivan, Consultant Neurosurgeon, assessed the plaintiff on behalf of the defendant in July 2025, almost 4 ½ years post-incident. He stated that the plaintiff's lower back pain with bilateral lower limb pain is consistent with a diagnosis of a soft tissue injury with referred leg pain on a background of age-appropriate degenerative changes at L3/4 with a small right-sided foraminal disc protrusion of questionable significance. He stated that in the normal course of events, he would expect the symptoms of a soft tissue injury to subside within a period of 6 – 24 months.

Right Shoulder

44. The plaintiff states that he developed pain in his right shoulder (he is right hand dominant). It started one morning some time after the incident and without the occurrence of a triggering event. He has no prior history of a shoulder injury or shoulder symptoms prior to the assault. In the MRI carried out on 30th June 2023, evidence of an old tear was reported and the plaintiff's case is that it was probably injured during the assault. The plaintiff was prescribed, and took strong medication, in the aftermath of the incident, and it is suggested that this may explain why he did not experience shoulder pain in the aftermath of the assault. The plaintiff's shoulder is weaker than it was previously and is less flexible. This affects his ability to grip and lift heavy items.

45. The defendant's expert, Mr. O'Sullivan, simply refers to that injury as being consistent with rotator cuff syndrome. Dr. Len Harty, Consultant in Rheumatology and GIM states that it is probable that the assault exacerbated rotator cuff tendinopathy of the right shoulder and has caused the ongoing symptoms. Dr. Alexander J. Stafford, Consultant Radiologist, states in his report that there is evidence of pre-existing degenerative change but that there is evidence of subacromial oedema at the outer end of the acromion and a suggestion of a very small, 3mm, healing vertical fracture of the outer end of the clavicle at the acromioclavicular joint attributable to the accident. He also noted minor tendinosis of the distal supraspinatus tendon with some downward sloping of the anterior inferior acromion which creates a predisposition to impingement. He states that it is possible for somebody with a type II acromion to be asymptomatic but the trauma of an assault to aggravate the subacromial space. He found no overt tear of or retraction of the rotator muscles cuff tendons or muscles.

Leg / Knee

46. The plaintiff was hit and kicked on his hips and knees during the struggle to subdue the assailant. When he attended his GP on 18th February 2021, the plaintiff complained of discomfort when moving his right hip and knee, but he had a good range of movement.

47. The predominant leg pain is the persistent radiation of pain from his lower back to the right lower limb as far as the ankle and occasional radiation of pain to the left leg as far as the knee. The plaintiff reported that pain varied in severity from 5/10 to 8/10 and that it had reached a plateau (July 2025). He has also suffered from paraesthesia also radiating down right leg.

48. EMG and nerve conduction studies of the right leg carried out on 25th August 2021 showed reduced motor and sensory responses in the distribution of the right tibial nerve and an EMG of the right L2-S2 distribution did not show evidence of radiculopathy. Right tibial neuropathy was confirmed.

49. Having regard to the plaintiff's evidence, and to the expert medical evidence, I do not consider that there was a substantive separate injury to the plaintiff's knees or legs to be assessed in accordance with the Guidelines. He experienced pain in his legs, including his hips and knees during the assault and in the days thereafter, but insofar as there is evidence of continuing symptoms involving the plaintiff's legs, they are part of his lower back injury and will be assessed as such.

Right Ankle / Foot

50. The plaintiff had surgery to correct his gait, by reason of talipes on his right foot as a child and was asymptomatic prior to the incident on 17th February 2021. He underwent further corrective surgery in October 2024. He was on crutches and wore a boot for a period of under four months, during which time he was unable to do Pilates, which he had been advised to do. Prior to that surgery, the plaintiff stated that he had not had difficulties with his right foot or ankle, although that during the two years prior to October 2024, he had 'a small niggle' due to wear and tear. He does not contend that the need for that corrective surgery was linked to the incident the subject of the proceedings. Similarly, there is no evidence to suggest that the problems connected with talipes, or the previous surgery caused or contributed to the injuries of which he complains.

Other injuries

51. During the assault, the plaintiff was bitten on his hands, which broke the skin and left marks, and had scratches to his neck, and bruising, particularly on his torso as a result of the assault. As a result of the bites and scratches, he was given a tetanus shot on the night of the assault. He experienced pain in many parts of his body during the assault, including pain in his hips and knees. On examination on the day after the incident, his range of movement in his right hip and knee was good, but there was discomfort on movement.

52. Each of these other injuries resolved within a number of weeks, leaving no permanent marks or other sequelae.

Assessment of Damages

53. The court is mandated to have regard to the Personal Injury Guidelines by section 23(4) of the Garda Síochána (Compensation) Act, 2022, whilst at all times adhering to the principles for the assessment and award of damages for personal injuries as determined by the Superior Courts. At their core, these principles require the trial judge to arrive at an award that is fair to all parties and proportionate.

54. While reasons are not expressly required by the 2022 Act, I am satisfied that the obligation to ensure that the award made is proportionate to other equivalent cases and to the maximum award, and the need to achieve fairness between the parties, is no different where proceedings are instituted by way of a Garda Síochána Personal Injuries Summons.

55. These proceedings were instituted under the Garda Síochána (Compensation) Act 2022, as amended. Section 23(1) of the 2022 requires the court to "have regard" to the Personal Injury Guidelines, but unlike section 22 of the Civil Liability and Courts Act 2004, as amended by section 99 of the Judicial Council Act, 2019, section 23 does not require the court to give a reason for any departure from the Guidelines.

56. The principle of fairness requires that the court must take full account of the impact of the relevant injury on a plaintiff but only to the extent to which their suffering is properly attributable to the malicious incident the subject of proceedings under the Garda Síochána Compensation Act, 2022. The principle of proportionality requires that the award must be

proportionate to the maximum and equivalent awards available under the Guidelines and to other awards made by the courts where directly comparable.

57. The Guidelines state that it is of "*the utmost importance that the overall award of damages made in a case involving multiple injuries should be proportionate and just when considered in light of the severity of other injuries which attract an equivalent award under the Guidelines*."

58. The Guidelines suggest, in a case such as this where a plaintiff has suffered multiple injuries, that:

> "*The appropriate approach is for the trial judge, where possible, to identify the injury and the bracket of damages within the Guidelines that best resembles the most significant of the claimant's injuries. The trial judge should then value that injury and thereafter uplift the value to ensure that the claimant is fairly and justly compensated for all of the additional pain, discomfort and limitations arising from their lesser injury/injuries*." (page 7)

59. In *Zaganczyk v. John Pettit Wexford Unlimited Company and Another* [2023] IECA 223, Noonan J. emphasised that the trial judge must make an overall award which fairly compensates the plaintiff for "*all the suffering they have endured*". In *Collins v. Parm and Others* [2024] IECA 150, Noonan J. stressed that the court's obligation is to have regard to the assigned values for each injury in the Guidelines, not merely the dominant or most significant one. A plaintiff must be compensated for each injury but must not be overcompensated for the injuries suffered. As Noonan J. acknowledged there may be cases in which the cumulative effect of the injuries is greater than the sum of the parts. Noonan J. emphasised that "*the court must strive to take an holistic view of the plaintiff and endeavour to place the plaintiff's particular constellation of injuries and their cumulative effect on the plaintiff within the spectrum in a way that is proportionate both to the maximum and awards to other plaintiffs*" as stated by him in *Meehan v. Shawcove* [2022] IECA 208. The approach of Coffey J. in *Lipinski (a Minor) v. Whelan* [2022] IEHC 452, [2023] 3 I.R. 243 was referred to with approval in *Zaganczyk*.

60. Ultimately, as Collins J. recognised in *Delaney v. The Personal Injuries Board and Others* [2024] IESC 10, [2024] 1 I.L.R.M. 149, if the application of the Personal Injury

Guidelines would result in an award which is unjust, the court may, and indeed must, depart from them.

61. Before considering the award which should be made in the instant case, I shall consider each injury by reference to the relevant guidelines and assign a value to it applying the principles of fairness and proportionality.

62. Where reasonably possible, the court is obliged to identify the dominant or most significant injury and to assess each injury by reference to the Guidelines. The award in respect of the non-dominant injuries should invariably be reduced. If it is not possible to identify a dominant injury, the discount applied for overlapping injuries will be at a lower level than would occur in situations where there is an identifiable dominant or most significant injury as discussed by Noonan J. in *Collins v. Parm.* The court may not simply add the values assigned to each injury but is required to step back and, if necessary, adjust the overall award to ensure that it is fair and proportionate to the most severe injuries and to other equivalent awards. The award must reflect the overlapping impact of the injuries on a plaintiff's life, ability to work and have regard to the long-term prognosis. The court must ensure that the plaintiff is not over or under-compensated for their injuries. In certain cases, the cumulative effect of multiple injuries is to increase the level of suffering, but in many cases there are overlapping impacts on the plaintiff for which the plaintiff should be compensated only once. The cumulative effect of the plaintiff's injuries must be assessed holistically.

The psychological injuries

63. Having considered the medical evidence, and the evidence given by the plaintiff, I am satisfied that he suffered from moderate to severe PTSD with panic anxiety and low mood for a period of up to one year. He drank to excess during the first year, which may have exacerbated his symptoms, but he did so for reasons connected with the incident. Thereafter, he has continued to suffer from PTSD for a further period of four years, which has not yet resolved. His mood has improved, but he is still not back to his pre-incident state. In September 2025 he reported that he had been irritable at home, and that while his general anxiety had improved, he remained quite anxious with marked anticipatory anxiety about any form of confrontation, particularly when called to a domestic violence or other violent

incident. In March 2026, Dr. Fannon considered that the plaintiff continued to experience psychiatric disability in the form of enduring adjustment disorder. It is anticipated that his psychiatric symptoms will improve further, although Dr. Fannon states, and I accept, the plaintiff is more vulnerable to future psychiatric disability as a result of the incident the subject of the proceedings. He was referred to Dr. Fannon for the purposes of assessment. The point made by the defendant was not that this was inappropriate, but rather that he had not been under the care of a psychiatrist, which it was submitted was inconsistent with suffering from severe PTSD.

64. The plaintiff would benefit from some further counselling, which has been recommended to him, but I accept his evidence that he reasonably considered that he was unable to pay for counselling over and above that which was provided to him by the Employee Assistance Programme. He is willing to have further counselling. It was submitted on behalf of the defendant that a person with serious PTSD would generally be receiving counselling. I accept on the evidence before the court that the reason the plaintiff did not undergo more than the 36 sessions (24 hours) of counselling provided to him was that he considered he could not afford it. He is willing to undergo further counselling, as recommended.

65. I have also considered the judgment of O'Higgins J. in *Somers v. Commissioner of An Garda Síochána* [2025] IEHC 388 in which case the plaintiff's psychological injuries were found to come within the higher end of the moderate bracket as a result of the traumatic incident which occurred whilst she was on duty as a member of An Garda Síochána. The bracket which the plaintiff had submitted her injuries fell into was the Moderate PTSD bracket and it appears that she had not been seen by a psychiatrist, until she attended the psychiatrist who prepared a report three years after the incident. Psychiatric injuries were not referred to by her General Practitioner. She was assessed on behalf of the defendant also. O'Higgins J. held that the continuing effects of PTSD, four years after the event, were not grossly disabling but that it would be a stretch to say that the plaintiff had "largely recovered". She had not been prescribed any medication but had undergone ten counselling sessions and she reported that she did not think about the incident every day.

66. Counsel for the plaintiff submits that the plaintiff's psychological injury comes within Section 4. B (b) Serious PTSD (€35,000 – €80,000) and that an appropriate value would be

€60,000 as the prognosis is good, but that further treatment will be needed. The defendant submits, by reference to *Somers*, that the appropriate bracket is B (c) Moderate PTSD (€10,000 – €35,000) and that, by reason of the failure to mitigate, the value should be €20,000.

67. For the reasons already stated, I will not reduce the amount which is reflective of the plaintiff's psychological injury on the basis of a failure to mitigate the injury.

68. The incident in this case, as in *Somers*, was inherently traumatic even for an experienced member of An Garda Síochána. However, I find that the extent to which the plaintiff has suffered from PTSD, continues to be affected thereby and required and received treatment is greater than was the case in *Somers.* Whilst it is a useful comparator, I do not regard that judgment as persuasive that the injuries in this case fall within bracket 4. B (c) Moderate PTSD rather than (b) Serious PTSD.

69. The most recent medical evidence is that of Dr. Fannon who states, in his report dated 12th March 2026, that the plaintiff's psychiatric disability is likely to improve with appropriate treatment and that he has improved significantly to date. He links the plaintiff's continued anxiety and psychological stress to the presence of persistent physical symptoms. Dr. Campbell, stated in her report dated 25th September 2025 that the plaintiff continues to suffer from PTSD, but that the symptoms are resolving.

70. Having regard to the expert medical evidence, and the evidence of the plaintiff, I do not consider that the plaintiff has largely recovered from the psychiatric injury which he has suffered. He is managing to work, without the need for restricted duties, and has not been set back by obviously stressful events in his personal and professional life, including the death of his older children's mother in 2023 and a particularly difficult domestic incident which he attended in the course of his duties, which demonstrates a degree of fortitude. His work and personal life are still impacted by psychological symptoms stemming from PTSD arising from the incident on 17th February 2021. He continues to feel significant anxiety when going into potentially violent situations and his evidence was that he preferred to be the passenger and use the APR rather than drive when in the Garda car due to the physical manifestation of anxiety which he can experience if required to attend at a violent incident. He ensures that he wears his protective vest when he leaves the station, or returns to get it

if he finds himself outside without it, as he would be too anxious without it. On occasions, he gets overwhelmingly anxious, particularly on a call to a violent incident, and his leg shakes because of the anxiety. He continues to use breathing techniques to calm himself in stressful situations although it is difficult to do this while manning the radio, dealing with updates and taking in surroundings. He explained that this was one of the reasons why he stopped taking antidepressants, as they made him feel numb or zombie-like and reduced his ability to think clearly, which is important for his work as a Garda. Further counselling is recommended. The plaintiff's psychological injury continues to have a significant impact on him, more than five years after the incident. The plaintiff's fears continue to pervade every callout and whilst he does not confront a stressful situation daily, this risk is present every working day.

71. Dr. Fannon states that he is more vulnerable to a future psychological injury than he would otherwise be.

72. There is no history of prior psychiatric injury or illness.

73. I consider that the plaintiff's injury has features of both bracket (b) Serious PTSD and (c) Moderate PTSD, but is more closely reflected by bracket (b). While he has improved from a level of more severe PTSD, he has not "largely recovered" and there is a continuing significant impact on him, albeit it is not grossly disabling. It is expected that he will continue to improve. I consider that this injury is reflected by €45,000.

Back injury

74. Whilst the plaintiff states that he is still affected by the pain in his back, which radiates into his legs, particularly his right leg, he is able to carry out his duties. He states that he cannot sit or stand for very long and needs to stretch regularly. The plaintiff has been treated with painkillers, NSAIDs, an epidural and five facet joint injections, the most recent of which was administered on 1st July 2025. He has also attended a physiotherapist, a chiropractor and received acupuncture. He does Pilates and exercises recommended either by a physiotherapist or in videos on the HSE website. Surgery has not been advised for the plaintiff. I do not accept that the report of Dr. Harty should be read as indicating that the facet joint injections provided minimal benefit, but rather I have interpreted his report as

stating that the pain returned as time elapsed after the previous injection. The plaintiff has improved significantly and does not have pain every day. He is generally successful at managing his pain by stretching and continuing his exercises, but he is unable to sit or stand for protracted periods without pain. Driving can exacerbate his pain. However, he remains cautious in relation to his movements or activities to avoid triggering a painful episode, and still limits his activities including lifting, carrying, what he does with his family and while gardening lest he triggers a painful episode which may last a number of days. He has expressed concern regarding his ability to play with his youngest child. On examination on 29th July 2025, one month after his last facet injection, he had a full range of movement in his lumbar spine and there was no tenderness. Straight leg raising was free. When examined by Dr. Len Harty on 11th February 2026, he found slightly limited lumbar spine flexion, the plaintiff was only able to reach his mid shins, and he was quite limited in straight leg raises bilaterally.

75. While failure to mitigate was referred to by the defendant in submissions, it was not pressed, and I am not satisfied that it could be established on the evidence. Furthermore, the plaintiff was not on notice of such a point being raised.

76. It is submitted that the plaintiff's back injury falls into the B. (c) Moderate back injuries bracket (€20,000 – €55,000), but the plaintiff submits it is sub-bracket (i) (€35,000 – €55,000) by reason of the disc and nerve involvement, whereas the defendant submits it falls within sub-bracket (ii) (€20,000 – €35,000) but states it is not at the lower end.

77. The medical evidence demonstrates that the plaintiff's back pain was caused by the assault and that he suffers residual disability, which is much less significant than it had been. Prior to the assault he was asymptomatic, although age-appropriate degenerative changes were noted on the MRIs carried out in April 2021 and 2024.

78. I consider that although surgery has neither been recommended, nor performed, there is disc and nerve involvement, and the plaintiff was treated with an epidural and five facet joint injections between 2022 – 2025, which brings the plaintiff's injury within bracket B.(c)(i), which applies to

> " *a wide variety of injuries where the claimant will have residual disability albeit of less severity than in the higher brackets. Examples include:*

• A compression/crush fracture of the lumbar vertebrae with a substantial risk of osteoarthritis and a significant level of ongoing pain and discomfort;

• Traumatic spondylolisthesis with continuous pain and a probability that spinal fusion will be necessary;

• Prolapsed intervertebral disc requiring surgery;

• Damage to an intervertebral disc with nerve root irritation and reduced mobility."

79. I consider that the injury suffered by the plaintiff is greater than is covered by B. (c)(ii), although the level of pain suffered by the plaintiff has reduced significantly and his ability to manage it has increased. I consider that this injury is reflected by €40,000.

Shoulder

80. The plaintiff states that he started experiencing pain in his right shoulder (he is right hand dominant) quite some time after the incident and without the occurrence of a triggering event. He has no prior history of a shoulder injury or shoulder symptoms prior to the assault. In the MRI carried out on 30th June 2023, evidence of an old tear was reported and the plaintiff's case is that it was probably injured during the assault. The plaintiff was prescribed, and took strong medication, in the aftermath of the incident, and it is suggested that this may explain why he did not experience shoulder pain in the aftermath of the assault, or that the more severe pain in his back overshadowed it. He was not challenged on that evidence. The plaintiff's shoulder is weaker than it was previously and is less flexible. The defendant's expert, Mr. O'Sullivan, simply refers to that injury as being consistent with rotator cuff syndrome. Both Dr. Len Harty, Consultant in Rheumatology and GIM, and Dr. Alexander J. Stafford, Consultant Radiologist, state that it is probable that the assault exacerbated the plaintiff's right shoulder, the symptoms of which are ongoing.

81. The plaintiff submits that the injury to the shoulder is within the moderate shoulder injuries bracket D. (c), at the lower end and that an appropriate value would be €20,000. It was submitted on behalf of the defendant that the injury to the shoulder should come within minor injuries, D (d) (i) (€6,000 – €12,000). I consider that the entry does not fit exactly into either of those brackets. There is no evidence that the plaintiff will experience

permanent intrusive symptoms, but similarly it is not the case that there has been an almost complete recovery, nor that there was substantial recovery within a period of two years. This symptomology is more closely aligned with a frozen shoulder with limitation of movement and discomfort, but the degree of limitation of movement described by the plaintiff is less than would usually occur for a frozen shoulder, although it is continuing. Whilst I have accepted that the plaintiff' injury to his shoulder was caused by the incident, he was not conscious of suffering from it for some time after the incident. However, he continues to experience pain, but not every day, and says that he cannot lift and hold things as easily as he once did. Limitation on internal rotation was observed in February 2026, and in July 2025, when pain in the middle and upper third of abduction was noted on examination by Prof. O'Sullivan. I consider that the injury to the plaintiff's shoulder is represented by €16,000.

Knees

82. Having regard to the plaintiff's evidence, and to the expert medical evidence, I accept the submission on behalf of the defendant that the medical evidence does not support an award of damages under the Guidelines for an injury to the plaintiff's knees. The only medical report which refers to the plaintiff's knees is Dr. McGillicuddy's report, save that his reference to the day after the incident is repeated in other reports. The plaintiff had good range of movement, but discomfort on movement in his right knee. There was no bruising or swelling.

83. I include the pain experienced by the trauma to his knees under the heading 'Additional Minor Injuries' below.

84. As indicated above, insofar as the plaintiff suffers referred pain in his legs, that is assessed as part of the injury to his lower back.

Additional Minor Injuries

85. The plaintiff was bitten on his hands, scratched on his neck, and hit and kicked repeatedly, which caused pain and bruising, particularly on his torso. It was considered appropriate to administer a tetanus shot on the night of the assault because of the wounds

caused by the bites and scratches. The assault, which lasted approximately ten minutes, was undoubtedly traumatic and painful. The fact that these cuts were caused by intentional bites and scratches by an aggressor as part of a sustained assault is material. On examination on the day after the incident, the plaintiff's range of movement in his right hip and knee was good, but discomfort on movement was noted.

86. The Guidelines state that the court should value any injury not covered by the Guidelines "*by reference to the damages guided for equally significant injuries in the Guidelines to ensure that the award made will be fair, just and proportionate within the scheme of damages therein provided for*."

87. It was submitted on behalf of the plaintiff that the minor injuries should be reflected by €5,000, although it was submitted that a separate (and higher) award should be made in respect of the plaintiff's knees, which I do not accept. Counsel for the defendant submitted that any damages awarded under this heading should be insubstantial.

88. I am satisfied that the sum of €5,000 reflects the additional minor injuries, each of which resolved within a number of weeks.

Award for general damages

89. It is not reasonable possible to identify the plaintiff's psychiatric injury or his back pain as a dominant injury. Neither the plaintiff nor defendant submitted that either of these injuries was clearly the dominant injury.

90. As considered above, the overarching duty of the trial judge is to "fairly and justly" compensate the plaintiff for all of their suffering and to arrive at an overall award that is "just and proportionate" and fair to both parties. In order to achieve fairness and proportionality, I must have regard to the overlap of injuries which arises from the fact that all of the plaintiff's suffering has arisen from the trauma of one incident and involved treatment, convalescence and recovery over the same period of time. The prognosis for recovery from his psychological injuries has been linked to his physical pain.

91. The plaintiff was 31 years of age when the malicious and traumatic incident occurred. The plaintiff was subjected to an assault which lasted approximately ten minutes, during

which he was bitten, scratched, kicked, hit and threatened that he would be killed by members of a Columbian cartel, and infected with Covid. This occurred during a period of a national level 5 lockdown. The fear that he and his colleague may be attacked with knives which were visible in the kitchen if it was not possible to subdue the assailant was not realised. It was a very traumatic incident, and one which it is impossible to ensure will not recur over the course of the plaintiff's career as a member of An Garda Síochána, particularly if he remains assigned to a Garda Station.

92. The plaintiff was certified unfit for work as a result of the incident for a full year, after which he was reassigned to a less busy station. He returned to normal duties after an initial period of being on desk duty. The prospect of having to retire on health grounds was raised prior to his return to work, but did not prove necessary. He continues to have symptoms in his lower back, which include the radiation of pain and occasional paraesthesia into his legs, and psychological symptoms, but both have improved over the five years and three months since the incident. The shoulder injury was not appreciated for some time, but has continued alongside the main injuries. Each of the minor injuries had resolved completely within a number of weeks, during which period the plaintiff was suffering from the more significant injuries which have persisted to date.

93. Simply adding the figures which I have found would reflect the various injuries would not be fair to the defendant, nor proportionate to the overall injury profile. I consider that it is appropriate to apply a discount of €20,000 to take account of the overlapping effects of the injuries on the plaintiff and that an award of €86,000 is both fair to the parties and proportionate to cases, having regard to the Guidelines, which proposes a maximum award of €550,000 for the most devastating and catastrophic injuries. I consider that an overall award of €86,000 for general damages for pain and suffering and loss of amenity in the past and into the future represents an outcome which is fair and proportionate in all the circumstances.

Special damages:

94. The figure of €3,813 has been agreed for special damages to date.

95. Further counselling sessions are recommended by Dr. Fannon and Dr. Campbell agrees that counselling had helped him. The dispute centred on the fact that the plaintiff only attended for counselling which was provided to him free of charge under the Employee Assistance Programme. No evidence was given regarding the number or cost of future counselling sessions, but on the basis of the evidence which was given, and the contents of the medical reports, I consider it reasonable to award the plaintiff €1,000 in respect of future counselling.

Order

96. There will be judgment for €90,813, being €86,000 for general damages, and €4,813 for special damages, arising from the malicious incident which occurred on 17th February 2021.

Emily Farrell