Garda Síochána Act 2005 (Section 42)

(Special Inquiry relating to the Garda Síochána)

(No. 5)

Order 2017

(S.I. No. 200 of 2017)

Report of Judge Patrick McMahon

District Court - Retired

30th September 2021
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PART ONE
1.1 Background

1.1.1 In 1993 Mr. Mulcahy was one of eight founding members of the Irish Small and Medium Enterprise ("ISME"). Mr. Mulcahy was appointed chief executive and the remaining seven members became non-executive directors of ISME.

1.1.2 On 8th March 1999, one of the founding members of ISME made a complaint to the Garda Bureau of Fraud Investigation ("GBFI") concerning suspected financial irregularities at ISME. He alleged that ISME may have been involved in an attempt to defraud the Department of Enterprise, Trade and Employment in respect of grants and that other financial irregularity had occurred including the unauthorised payment of ISME funds to staff members. This allegation was investigated by the GBFI.

1.1.3 Following the investigation of this allegation, a report was submitted to the DPP on 16th June 1999. The report referred to three core allegations of wrongdoing. Two of these allegations concerned Mr. Mulcahy:

"(b) Direct Debit Mandates on the company I.S.M.E. Limited account, resulting in debits being made for Frank Mulcahy's personal bills and

(c) A cheque in the amount of £26,000 which Frank Mulcahy wrote and paid as a deposit for the purchase of his private house. It is alleged that £26,000 was not owing to Frank Mulcahy."

1.1.4 On 9th August 1999 the DPP directed no prosecution in respect of Mr. Mulcahy and another individual in respect of whom the first allegation related. The direction read as follows:

"It is agreed, following consideration of the well prepared Garda file in the above matter, that a prosecution of either Frank Mulcahy or [individual in respect of whom the first allegation related] would not be justified by the available evidence."

1.1.5 Mr. Mulcahy was informed of the DPP's direction.
1.1.6 On 2nd May 2006 Mr. Mulcahy make a formal statement of complaint to the GBFI alleging criminality on the part of former colleagues at ISME. His first statement of complaint was completed on 8th September 2006 following over 20 interviews. Mr. Mulcahy then requested that a further statement be taken from him. That statement was dated 14th June 2007. Mr. Mulcahy alleged in these statements that:

(i) The allegations made against Mr. Mulcahy concerning an attempt to defraud the Department of Enterprise, Trade and Employment, the issuing of incorrect invoices and unauthorised payments to staff were false. Mr. Mulcahy further stated that these allegations were known by the person who made them to be false at the time of their making;

(ii) The complaint made against Mr. Mulcahy to the GBFI in March 1999 was made with the objective of removing Mr. Mulcahy from office. Mr. Mulcahy further stated that the allegations made to the GBFI were false and known to be false by the persons who made them.

1.1.7 These allegations were investigated by the GBFI who prepared a report for the DPP which was submitted with the investigation file on 22nd December 2009.

1.1.8 Prior to the DPP issuing a direction, Mr. Mulcahy contacted the GBFI and informed them that he wished to provide additional evidence in relation to his complaint. A third statement was taken from Mr. Mulcahy, which was completed on 22nd December 2010. In his third statement Mr. Mulcahy alleged:

(i) ISME knew that their complaint in relation to the 1996 bonus was false;
(ii) ISME knew that the allegation of fraud on the EU was false;
(iii) Subsequent to ISME’s complaints to the GBFI, the ISME accounts were re-audited and subsequent to their allegation of fraud on the EU, ISME fabricated independent support for their complaint.
(iv) In 1999 ISME used the GBFI in their re-audits which involved fraud and theft from Mr. Mulcahy’s current account.

1.1.9 A further report was submitted to the DPP on 21st June 2012 following the investigation of the allegations made in Mr. Mulcahy’s third statement.

1.1.10 In December 2012, the DPP issued a direction of “no prosecution” stating:
"...having considered the further information forwarded on the 21st June 2012 in conjunction with the original file, Mr. Mulcahy has made a number of allegations against ISME it seems to be that the evidence is not sufficient to prove beyond a reasonable doubt that ISME made a false report to the Gardaí."

1.1.11 In June 2009 the Garda Síochána Ombudsman Commission ("GSOC") informed An Garda Síochána that it had admitted a complaint under the Garda Síochána Act 2005 ("the 2005 Act") from Mr. Mulcahy. The complaint related to the investigation conducted by the GBFI into his allegations against ISME Ltd. An additional complaint related to this matter was made by Mr. Mulcahy and was admitted by GSOC in February 2011. On 11th February 2010 Mr. Mulcahy made a third complaint related to this matter to GSOC. In this third complaint five allegations were deemed admissible by GSOC on 23rd November 2012.

1.1.12 On 9th August 2010 Mr. X, another of the founding members of ISME, made a complaint to GSOC. Mr. X's complaint concerned an alleged failure by the GBFI to address written complaints he had made in October 2007 and July 2009 concerning the actions of the auditors and directors of ISME Ltd in 1999.

1.1.13 GSOC investigated Mr. Mulcahy and Mr. X's complaints together. GSOC found that none of Mr. Mulcahy's allegations nor Mr. X's allegation were made out.

1.2 Establishment of the Special Inquiry

1.2.1 By order of the Minister for Justice and Equality dated the 15th May 2017, the Special Inquiry was established pursuant to section 42 of the 2005 Act.¹

1.2.2 The text of the order establishing the Special Inquiry is included at the Appendix to this report. Notice of the order establishing the Special Inquiry was published in Iris Oifigiúil on the 19th of May 2017.

1.2.3 The Minister for Justice and Equality appointed Judge Patrick McMahon, retired Judge of the District Court, to:

¹ S.I. No. 200/2017 - Garda Síochána Act 2005 (Section 42) (Special Inquiry relating to the Garda Síochána) (No. 5) Order 2017.
(a) inquire into a matter of public concern, namely the Garda Síochána investigations into the accusations of financial irregularity made in 1999 against Mr. Frank Mulcahy, formerly of the Irish Small and Medium Enterprises Association ("ISME"), and

(b) make a report to the Minister on the conclusion of the inquiry.

1.3 Terms of Reference

1.3.1 The terms of reference for the Special Inquiry were as follows:

1.3.2 The inquiry should have regard to the following objectives of—

(a) reviewing the written material submitted to the Minister by and on behalf of Mr. Frank Mulcahy with a view to identifying the complaints made against the Garda Síochána;

(b) distinguishing between which complaints have already been investigated, whether by the Garda Síochána or the Garda Síochána Ombudsman Commission or another body, and which have not been investigated;

(c) having regard to objectives at (a) and (b), inquiring into such complaints that have not been investigated to establish whether or not the actions of the Garda Síochána (referred to in those complaints) were appropriate.

1.4 Structure of the Report

1.4.1 Part 1 of this report outlines the methodology and procedures adopted by the Inquiry in discharging its mandate.

1.4.2 Part 2 of the report summarises the information received by the Inquiry in relation to inquiry complaint 4(e). This Part sets out the conclusions of the Inquiry in respect of this Part.
1.4.3 Part 3 of the report summarises the information received by the Inquiry in relation to inquiry complaint 5(a). This Part sets out the conclusions of the Inquiry in respect of this Part.

1.4.4 Part 4 of the report summarises the information received by the Inquiry in relation to inquiry complaint 5(c)(part two). This Part sets out the conclusions of the Inquiry in respect of this Part.

1.4.5 Part 5 of the report summarises the information received by the Inquiry in relation to inquiry complaint 9(e). This Part sets out the conclusions of the Inquiry in respect of this Part.

1.4.5 Part 5 of the report summarises the Inquiry’s findings.

1.5 Methodology of the Inquiry

1.5.1 The Inquiry commenced its work by seeking to identify all appropriate documents and sources of information necessary for the discharge of its mandate.

1.5.2 Upon its establishment, the Inquiry received from the Department of Justice, a large box containing a catalogue of files in respect of Mr. Mulcahy's complaints.

1.5.3 Throughout the Inquiry process, the Inquiry engaged in written correspondence with An Garda Síochána, and subsequently the Chief State’s Solicitors Office (“the CSSO”) on behalf of An Garda Síochána, and KRW Law-LLP, solicitors on behalf of Mr. Mulcahy (“Mr. Mulcahy’s solicitors”), in relation to procedural and preliminary matters. In addition, a number of preliminary meetings were attended by Mr. Mulcahy, An Garda Síochána and their respective legal representatives.

1.5.4 These preliminary matters and in the way they were resolved are set out below.

1.6 Disclosure

1.6.1 An Garda Síochána furnished the Inquiry with a vast amount of documentation in relation to its investigation. The disclosure process was lengthy with the first set of documentation being furnished on 13th October 2017 and the final set being furnished on 6th February 2020.
1.6.2 On 20th July 2017 the Inquiry wrote to the appointed Garda liaison person to the Inquiry, requesting delivery of all files, documents and Garda notebooks in respect of the investigation that was carried out by the Gardaí. The Inquiry further sought the names and addresses of all members of the Gardaí involved in the investigation. By response dated 31st July 2017 the Inquiry was informed that the information sought had been requested and that An Garda Síochána would revert at the earliest opportunity.

1.6.3 There was ongoing correspondence between the Inquiry and the Garda liaison person seeking disclosure until the receipt of a letter by the Inquiry from the CSSO on 21st September 2017. On this date the CSSO corresponded with the Inquiry and indicated that they had been instructed by An Garda Síochána in relation to this matter. This correspondence indicated that documentary counsel had been engaged and that documents would be furnished on a phased basis. The Inquiry was informed that the first set of documents would be ready to be sent within 14 days.

1.6.4 As stated above, the first set of documents were received on 13th October 2017 and the final set was received on 6th February 2020. Between these dates there was ongoing correspondence between the Inquiry and the CSSO in relation to outstanding disclosure.

1.6.5 The following hardcopy disclosure was received from An Garda Síochána:

<table>
<thead>
<tr>
<th>Date</th>
<th>Items Received</th>
</tr>
</thead>
<tbody>
<tr>
<td>13th October 2017</td>
<td>Phase 1</td>
</tr>
<tr>
<td>10th November 2017</td>
<td>Phase 2</td>
</tr>
<tr>
<td>27th November 2017</td>
<td>Table setting out the name, rank and current status of members relevant to the investigation by members of An Garda Síochána concerning Mr. Mulcahy.</td>
</tr>
<tr>
<td>12th March 2018</td>
<td>Phase 3</td>
</tr>
<tr>
<td>20th March 2018</td>
<td>Phase 4</td>
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<tr>
<td>28th June 2019</td>
<td>Phase 5</td>
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<tr>
<td>29th July 2019</td>
<td>Phase 6</td>
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<tr>
<td>20th August 2019</td>
<td>Phase 7</td>
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</tbody>
</table>

1.6.6 On 16th October 2019, the CSSO confirmed by way of letter to the Inquiry that all physical disclosure had been completed. In relation to electronic disclosure, the CSSO stated that a total of 11 email addresses associated with Mr. Mulcahy had been
identified and had previously been furnished to Mr. Mulcahy's solicitors to identify any further email addresses that Mr. Mulcahy used to communicated with An Garda Síochána. Three further email address were furnished to An Garda Síochána in response to that request. An Garda Síochána IT section then sourced all email traffic to and from all 14 email addresses and a search parameter for the term "Frank Mulcahy" was applied. Three documentary counsel then reviewed the materials in order to isolate emails that were relevant. The letter indicated that a further five weeks would be required to complete this review and the material would then be furnished in electronic format.

1.6.7 A USB containing this electronic disclosure was furnished to the Inquiry on 6th February 2020.

1.7 Privilege

1.7.1 Issues surrounding legal professional privilege and public interest privilege arose in the course of the disclosure process.

1.7.2 By letter dated 20th October 2017 the Inquiry wrote to the CSSO seeking two further copies of the files that it had received to date so that Mr. Mulcahy's solicitors could be furnished with this documentation.

1.7.3 By letter dated 1st November 2017 the CSSO wrote inter alia expressing concern that the material which had been and was due to be furnished to the Inquiry may contain sensitive or confidential information, material or data and/or names and information not relevant to the Inquiry and the Terms of Reference and which should only be seen by the Inquiry and members of An Garda Síochána. The letter continued to note that the disclosure had been provided in an unredacted format on the basis that the materials were for the use of the Inquiry only. The letter indicated that the CSSO objected to the disclosure of materials provided to the Inquiry for the purpose of the Inquiry's work being disclosed to Mr. Mulcahy's solicitors.

1.7.4 The Inquiry replied by letter dated 1st November 2017 stating that no mention was made in previous correspondence of a concern that the documentation may contain sensitive or confidential information, material or data and/or names and information, not relevant to the Inquiry. The Inquiry requested written submissions setting out the reasons as to why it was contended that copies of the documents furnished could not
be sent to Mr. Mulcahy’s solicitors. The Inquiry indicated that these submissions would be furnished to Mr. Mulcahy’s solicitors affording them a similar timeframe within which to reply. It was indicated that a preliminary hearing would then be convened so that the matter could be addressed before the Inquiry.

1.7.5 Following extensions of time, these written submissions were received on 27th November 2017. Submissions were received on behalf of Mr. Mulcahy in relation to this issue on 18th December 2017.

1.7.6 An Garda Síochána relied on both legal professional privilege and public interest privilege in their submissions. In summary it was contended on behalf of An Garda Síochána:

(i) The materials were furnished on the basis that they would be for the sole use of the Inquiry;
(ii) Section 42 of the 2005 Act does not provide for the onward disclosure of documentation;
(iii) If there is an implied power which would provide for onward transmission this should be invoked for a legitimate purpose and should take account of any claim of confidentiality and privilege;
(iv) The conduct of the complaint was not under review and therefore the In Re Haughey rights did not apply;
(v) There were ongoing investigations in being and it would not be appropriate to disclosure any related documents;
(vi) It may be appropriate to redact documentation prior to its disclosure.

1.7.7 In summary it was contended on behalf of Mr. Mulcahy:

(i) The Inquiry enjoys an inherent jurisdiction to provide copy documents to third parties if required to assist with the fulfillment of the Inquiry’s designated tasks;
(ii) If any of the material furnished by An Garda Síochána could have an adverse impact on the case that Mr. Mulcahy intended to make regarding the quality of the investigation and if he was not afforded an opportunity to see the documentation and to comment on it, then the Inquiry would be wholly unable to assess the evidential weight or persuasive value of the material when drawing a conclusion;
(iii) The Inquiry was “at large” to decide what procedures should be adopted;
(iv) The Inquiry was in fact somewhat “adversarial” in nature;
(v) If the Inquiry was prohibited from permitting the parties to comment on the material, it would be acting as a mere “collator” and the final report would be worthless;
(vi) If failure to allow full disclosure was permitted, it should only be permitted after fair procedures had been applied regarding the appropriateness of same;
(vii) An acceptance of An Garda Síochána’s arguments regarding legal professional privilege and public interest privilege would result in the statutory powers of the Inquiry being significantly restricted and undermined.

1.7.8 By letter dated 29th November 2017 the Inquiry requested an itemised list of the documents over which privilege was being claimed by An Garda Síochána. Following a number of requests for further time within which to furnish this list, the Inquiry was furnished with a schedule of the documents on the 26th of March 2018. The schedule listed approximately 325 individual documents. Public interest privilege was asserted in respect of the vast majority of these documents. Legal professional privilege was also asserted and reference was made to confidentiality.

1.7.9 On 20th April 2018 the Inquiry held a preliminary hearing wherein oral submissions were heard on the issue of privilege. The hearing concluded with the Inquiry agreeing not to reach a determination on the issue until the parties had an opportunity to review the GSOC report and address the Inquiry on the complaints that remained to be investigated.

1.8 Inquiry Complaints

1.8.1 In light of the terms of reference the Inquiry corresponded with the Chair of the GSOC on the 16th of March 2018. The Inquiry was furnished with a list of the allegations made by Mr. Mulcahy which had been investigated by An Garda Síochána under the supervision of GSOC. The Chair of GSOC also identified at that time certain additional allegations, described by Mr. Mulcahy as “allegations of negligence” against An Garda Síochána. The Inquiry corresponded further with GSOC and was furnished with a copy of the Investigation Report relating to complaints of Mr. Mulcahy and Mr. X.

1.8.2 As required under the Terms of Reference the Inquiry undertook a review of the Report, with reference to the list of “Inquiry Complaints” identified by the Inquiry following its review of the written material submitted to the Minister for Justice and Equality, and with a view to identifying (a) those complaints that have previously been
investigated by either GSOC and/or Garda Síochána and (b) those complaints that have not been previously investigated.

1.8.3 By letter dated 25th April 2018 the Inquiry wrote to the CSSO and Mr. Mulcahy’s solicitors enclosing a list of Mr. Mulcahy’s complaints as furnished by his solicitors to the Inquiry.

1.8.4 The Inquiry identified the following list of "Inquiry Complaints”:

(1) Between March 1999 and 2004 An Garda Síochána failed to carry out a full and proper investigation regarding the charge of fraud made against Frank Mulcahy. In particular An Garda Síochána failed to appreciate that there was never any basis for the charge of fraud.

(2) The investigation undertaken by Mr. A in September 2005 was inadequate. In particular:

a. Mr. A failed to attend meetings and the process took an inordinate amount of time to complete;

b. During this period of time (September 2005 to 2006) An Garda Síochána failed or refused to examine critical evidence.

(3) Inappropriate contact had been made with the Chief Superintendent of the GBFI over the head of investigating officers.

(4) From in or around November 2007 until 2014 An Garda Síochána had "blocked" Frank Mulcahy’s e-mail address which prevented him from contacting "garda" e-mail addresses.

(5) At particular meetings members of An Garda Síochána threatened Frank Mulcahy as to the consequences of pursuing his inquiries and accused Frank Mulcahy of having instructed certain persons to absent themselves from meetings. In particular
a. In or about November 2005 at a meeting in Harcourt Street Mr. B advised that Frank Mulcahy’s private life would be investigated as part of any full review. Frank Mulcahy believed he was being threatened;

b. In or about 2008 Mr. C informed Frank Mulcahy that the investigation was “finished”, that a full explanation would require An Garda Síochána to re-open the original investigation but that would not happen and “there will be no going back”;

c. Mr. D accused Frank Mulcahy of having “instructed” Mr. A to absent himself from the meeting of the 20th December 2007 with Mr. E. At the meeting of the 20th December 2007 Frank Mulcahy was threatened regarding an investigation into his "private life”.

(6) The investigation initially undertaken by Mr. A was terminated unlawfully and/or inappropriately in or about April 2008.

(7) At a meeting on the 5th March 2009 two members of An Garda Síochána (Mr. A and Mr. C) informed Frank Mulcahy and his advisors that if they persisted with their inquiries they would “bury the report” to the DPP in a “mountain of paper”.

(8) Senior Gardaí were misinformed by Garda colleagues as to the existence of an ongoing investigation which culminated in a report to be sent to the DPP in 2009.

(9) An Garda Síochána failed to establish, or to identify, or to appreciate, or to act upon information that demonstrated that corrupt, unlawful or illegal accounting practices had been implemented with regard to ISME accounts. In particular:

a. An Garda Síochána failed to appreciate or to act on the statements made by [a named accountancy firm] and by Mr. X in 1999;

b. An Garda Síochána failed to act (in 2006) when it was disclosed that the 1995 ISME audit had been changed by the directors;

c. Members of An Garda Síochána failed to act on the evidence produced by Mr. Y;
d. In July 2008 the auditors [a named accountancy firm] discovered that the 1997 audit had been changed and when the "reversal out" of Frank Mulcahy's pension contribution was brought to the attention of An Garda Síochána, no action followed;

e. Mr. C in April 2008 promoted the "excuse" that the bonus had been a mere provision and that the directors were entitled to change the accounts;

f. An Garda Síochána failed to investigate the "cumulative theft" of the fraudulent account changes of IR £300,000;

g. An Garda Síochána failed to act on foot of the information contained in the [a named accountancy firm] letter dated the 3rd March 2011.

(10) A number of named members of An Garda Síochána failed, refused or neglected to undertake a full and proper investigation and review between 2009 and 2014 and the report that was finally submitted to the DPP in December 2013 did not contain a statement from Mr. X (which was taken in February 2014).

(11) An Garda Síochána failed to establish, or to identify, or to appreciate, or to act upon information that demonstrated that the Department of Trade, Enterprise and Employment had fully briefed An Garda Síochána as to why the alleged fraud on the EU had no merit. This includes the failure on the part of An Garda Síochána to appreciate or act upon the evidence of named individual.

1.8.5 A preliminary hearing was held on 30th May 2018 wherein these complaints were discussed. The hearing adjourned in order to permit Mr. Mulcahy and An Garda Síochána to acquire a copy of the GSOC report so that submissions could be made to the Inquiry concerning which complaints had previously been investigated.

1.8.6 By letter dated 25th June 2018 the Inquiry wrote to the CSSO and Mr. Mulcahy's solicitors setting out the complaints that it was of the view had and had not been previously investigated by GSOC. The Inquiry suggested that the following complaints had not been investigated:
(i) Inquiry Complaint 4: From in or around November 2007 until 2014 An Garda Síochána had "blocked" Frank Mulcahy's e-mail address which prevented him from contacting "garda" e-mail addresses;

(ii) Inquiry Complaint 5(a): In or about November 2005 at a meeting in Harcourt Street Mr. B advised that Frank Mulcahy's private life would be investigated as part of any full review. Frank Mulcahy believed he was being threatened;

(iii) Inquiry Complaint 5(c) (part two): At the meeting of the 20th December 2007 Frank Mulcahy was threatened regarding an investigation into his "private life";

(iv) Inquiry Complaint 9(e): Mr. C in April 2008 promoted the "excuse" that the bonus had been a mere provision and that the directors were entitled to change the accounts.

1.8.7 In relation to Inquiry Complaint 3: Inappropriate contact had been made with the Chief Superintendent of the GBFI over the head of investigating officers, the Inquiry noted that it was aware of brief reference to this allegation in correspondence furnished to the Inquiry by the Minister for Justice and Equality. The Inquiry noted that the precise nature of the complaint and the identities of person(s) involved was not clear from the correspondence in question. The Inquiry invited Mr. Mulcahy to confirm whether he wished to pursue this complaint and if it was to be pursued to provide additional information to the Inquiry.

1.8.8 A redacted version of the GSOC report was furnished to Mr. Mulcahy's solicitors and the CSSO in October 2018. By letter dated 5th November 2018 the Inquiry wrote to both parties indicating that in light of their having received the GSOC Report a hearing would be convened in order for the parties to make submissions as to what complaints remained to be investigated. A hearing was convened on 9th November 2018.

1.8.9 On 9th November 2018 time was sought in order for written submissions to be furnished to the Inquiry by both parties concerning which complaints had and had not been previously investigated. The further hearing was convened on 10th December 2018 on which date written submissions had been received from both parties. The Inquiry was addressed by the legal representatives for Mr. Mulcahy and An Garda Síochána as to which complaints they were of the view had been previously investigated.
1.8.10 A further supplemental written submission was furnished on behalf of Mr. Mulcahy concerning Inquiry Complaint Number 8 on 12th December 2018.

1.8.11 The Inquiry delivered its ruling on this issue on 13th December 2018. It determined that the following complaints had not yet been investigated:

(i) Inquiry Complaint 4: From in or around November 2007 until 2014 An Garda Síochána had “blocked” Frank Mulcahy’s e-mail address which prevented him from contacting “garda” e-mail addresses;

(ii) Inquiry Complaint 5(a): In or about November 2005 at a meeting in Harcourt Street Mr. B advised that Frank Mulcahy’s private life would be investigated as part of any full review. Frank Mulcahy believed he was being threatened;

(iii) Inquiry Complaint 5(c) (part two): At the meeting of the 20th December 2007 Frank Mulcahy was threatened regarding an investigation into his “private life”;

(iv) Inquiry Complaint 9(e): Mr. C in April 2008 promoted the “excuse” that the bonus had been a mere provision and that the directors were entitled to change the accounts.

1.8.12 The Inquiry noted that it was not ruling in respect of Inquiry Complaint Number 3: Inappropriate contact had been made with the Chief Superintendent of the GBFI over the head of investigating officers, at this juncture, as the Inquiry had not yet received an appropriate amount of detail in respect of it.

1.8.13 It was agreed that Mr. Mulcahy would furnish a written statement to the Inquiry by 18th January 2019 and that the next hearing would convene on 25th January 2019.

1.9 Application to Amend the Terms of Reference

1.9.1 By letter dated 3rd January 2019 Mr. Mulcahy’s solicitors wrote to the Inquiry stating that in light of the Inquiry’s findings on 13th December 2018 Mr. Mulcahy had instructed his solicitors to write to the Minister for Justice and Equality asking him to consider making an order amending the terms of reference for the purpose of clarifying, limiting or extending the scope of the Inquiry. The letter provided inter alia:

"Notwithstanding the entirely reasonable position that Mr. Mulcahy believes he adopted, the Inquiry has found that little more than four complaints remain to
be investigated; those being, complaints 4, 5(a), 9(e) and part of 5(c). We respectfully note, having had an opportunity to re-examine the Inquiry’s ruling was sent to this Office on 20 December 2018, that in many instances there are no substantive reasons provided for the conclusions reached.

More importantly, it remains Mr. Mulcahy’s respectful view that any reasonable reading of the GSOC Report would lead to a conclusion that significantly more complaints remain to be investigated than those which the Inquiry has investigated in the Ruling on 20 December 2018.

On behalf of Mr. Mulcahy, we respectfully submit that e.g. it is unsatisfactory to conclude that a complaint has been investigated where no determination has been reached by GSOC in relation to it, and/or simply because there are fleeting references included within the GSOC Report. This is not in line with the spirit of, or indeed, the literal of Statutory Instrument 200 of 2017 which specifically states that you have been appointed to ‘inquire into matters of public concern […]’

1.9.1 By letter dated 29th January 2019 Mr. Mulcahy’s solicitors wrote to the Minister for Justice and Equality seeking an amendment to the Terms of Reference to expand the Inquiry in order to “clarify the Terms of Reference to assist Judge McMahon to complete the task assigned to him under objective (b) of the Schedule”. The Inquiry was furnished with a copy of this letter by Mr. Mulcahy’s solicitors on the same date.

1.9.2 By letter dated 14th February 2019 the Private Secretary to the Minister for Justice and Equality conveyed the Minister for Justice and Equality’s decision not to amend the Terms of Reference to Mr. Mulcahy’s solicitor. A copy of this response was also furnished to the Inquiry.

1.10 Statement of Mr. Mulcahy

1.10.1 A further hearing was convened on 22nd February 2019. Mr. Mulcahy was unable to attend this meeting. Mr. Mulcahy’s statement had not been furnished as had been previously agreed. Mr. Mulcahy’s legal representatives proposed a timetable to deal with the remaining preliminary issues. It was agreed that Mr. Mulcahy’s statement would be furnished by 8th March 2019, that witness statements from An Garda
Síochána would be furnished by 22nd March 2019 and that Mr. Mulcahy’s request for discovery would be served on the CSSO by 29th March 2019.

1.10.2 It was agreed that the next oral hearing would be scheduled in April 2019 at which time the Inquiry would rule on the issue of privilege, the determination of which had previously been deferred pending a determination of the complaints that the Inquiry would be investigating.

1.10.3 Mr. Mulcahy’s statement was furnished on 8th March 2019.

1.10.4 A further hearing was convened on 4th April 2019. By this date Mr. Mulcahy’s statement had been received by the Inquiry. Counsel on behalf of An Garda Síochána sought two weeks to make written submissions on the remit of Mr. Mulcahy’s statement as An Garda Síochána contended that it extended beyond the complaints that the Inquiry was investigating. The witness statements from An Garda Síochána had not been furnished at the time of this hearing. Counsel on behalf of An Garda Síochána indicated that statements could not be made until it was determined whether Mr. Mulcahy’s statement extended beyond the complaints under investigation. It was agreed that Mr. Mulcahy’s legal representatives would have the opportunity to reply to these submissions and the Inquiry would convene again on 8th May 2019.

1.11 Letter of 21st March 2019

1.11.1 On 21st March 2019 the Inquiry received a letter from the offices of a senior political figure dated 5th March 2019 addressed to An Taoiseach. The letter was received by post and was not accompanied by any covering letter or compliments slip.

1.11.2 In the letter the senior political figure wrote to An Taoiseach in relation to Mr. Mulcahy. The Inquiry contacted the senior political figure to enquire if he had sent the letter to the Inquiry. The senior political figure responded by letter dated 26th March 2019 indicating that he was not aware an inquiry under Section 42 of the 2005 Act was being conducted in respect of Mr. Mulcahy. The letter further stated that he did not send the letter dated 5th March 2019 to the Inquiry. He stated that:

"Mr. Mulcahy has been in touch with my office on and off over several years. I met him in March 2014 and again on the 15th February 2019. The details in the recent letter are similar to my letter of 2014, but to a different Taoisigh. Mr.
Mulcahy asked the office for a signed hard copy of my letter which my office felt was strange, but in any event it was passed on."

1.11.3 During the hearing on 4th April 2019 the Inquiry sought clarification from Mr. Mulcahy's legal representatives in relation to this letter. The Inquiry was informed that Mr. Mulcahy had sent the letter in an effort to "show the broader aspects of the case."

1.11.4 By email dated 11th April 2019 Mr. X wrote to the Inquiry and stated that he had sent the letter of 21st March 2019 to the Inquiry.

1.11.5 By letter dated 15th April 2019 the Inquiry wrote to Mr. Mulcahy's solicitors enclosing X's email. The Inquiry expressed its concern at the various pieces of correspondence that it had been receiving otherwise that via Mr. Mulcahy's solicitor. The Inquiry sought clarification as to what the situation was and who was making representations to the Inquiry that were not correct.

1.11.6 By letter dated 2nd May 2019 Mr. Mulcahy's solicitors wrote to the Inquiry referring to its letter of 15th April 2019. The letter indicated that contrary to what the Inquiry had been informed at the hearing on 4th April 2019, Mr. Mulcahy did not send a copy of the letter dated 21st March 2019 addressed to An Taoiseach to the Inquiry as per his previous instructions and as the Inquiry had been informed. Rather, he had sent a copy of this letter to Mr. X for information purposes and had not made any request of Mr. X to furnish same to the Inquiry. Mr. Mulcahy had informed his counsel that he had sent the letter to the Inquiry as he felt that he had to take responsibility given that he had provided a copy of the letter to Mr. X.

1.11.7 A further hearing was held on 8th May 2019. The Inquiry sought an explanation from Mr. Mulcahy's legal representatives in relation to this letter at the commencement of this hearing. Mr. Mulcahy's instructions were conveyed to the Inquiry. In summary, he instructed that he had met with the senior political figure in 2019 and discussed the possibility that he would follow-up on his previous request to have the Dáil record corrected in relation to matters that had arisen before. He instructed that the senior political figure agreed to do this and that Mr. Mulcahy had shared the letter with relevant parties, including Mr. X and his solicitor. The letter had not been shared with his barristers and it was not known by Mr. Mulcahy or his solicitor that the letter had been sent by Mr. X to the Inquiry. Mr. Mulcahy instructed that when the issue arose at the previous hearing he elected in good faith to take responsibility for sending the letter.
to prevent lengthy discussion and to avoid unnecessary questions as to the authenticity of the letter. He instructed that he regretted misleading his lawyers and the Inquiry.

1.12 Mr. Mulcahy's Revised Statement

1.12.1 The Inquiry ruled on the ambit of Mr. Mulcahy's statement at the hearing convened on 8th May 2019. It was agreed that a revised outline statement from Mr. Mulcahy would be furnished to An Garda Síochána.

1.12.2 The Inquiry directed An Garda Síochána to furnish their witness statements by 7th June 2019 and it was determined that Mr. Mulcahy would give his oral statement to the Inquiry on 13th June 2019.

1.13 Mr. Mulcahy's Withdrawal from the Inquiry

1.13.1 By letter dated 27th May 2019 the Inquiry received an email from the Department of Justice and Equality attaching a letter from Mr. Mulcahy to the Minister dated 23rd May 2019 in which Mr. Mulcahy stated that he felt compelled to withdraw his involvement from the Inquiry due to a "lack of progress and ever increasing restrictions."

1.13.2 By letter dated 28th May 2019 the Inquiry received correspondence from Mr. Mulcahy's solicitors indicating that Mr. Mulcahy had instructed that he would no longer participate in the Inquiry and that no amended statement would be furnished. The letter set out in detail the issues that Mr. Mulcahy indicated had resulted in his loss of faith in the process. The Inquiry acknowledged receipt of this correspondence on 30th May 2019.

1.13.3 By letter dated 28th May 2019 the Inquiry received email correspondence from the CSSO referring to Mr. Mulcahy's withdrawal from the Inquiry and indicating that their clients were continuing in their preparations to assist the Inquiry, where possible.

1.13.4 By letter dated 30th May 2019 the Inquiry replied to the Department of Justice and Equality. The Inquiry indicated that it totally rejected the suggestion of any blame being put at the door of the Inquiry in relation to a "lack of progress and ever increasing restrictions." The letter concluded that it was the Inquiry's intention to proceed with the Inquiry in the absence of Mr. Mulcahy and that the CSSO had informed the Inquiry that they were continuing in their preparations to assist the Inquiry where possible.
1.14 Inquiry Complaint Number 3

1.14.1 By letter dated 19th June 2019 the Inquiry wrote to Mr. Mulcahy’s solicitors indicating that while Mr. Mulcahy had indicated that he did not wish to participate in the Inquiry, the Inquiry would permit Mr. Mulcahy and his legal advisors to make submissions to the Inquiry in connection with whether Inquiry Complaint Number 3 had previously been investigated.

1.14.2 The CSSO had written to the Inquiry on 18th June 2019 setting out their basis for contending that this complaint had been previously investigated. This matter had also been addressed in oral submissions on 8th May 2019 on which date Mr. Mulcahy’s legal representatives had sought access to the documents referred to by counsel on behalf of An Garda Síochána in their submission.

1.14.3 By letter dated 20th June 2019 Mr. Mulcahy’s solicitors wrote to the Inquiry and indicated that Mr. Mulcahy did not wish to participate in the Inquiry process in respect of Inquiry Complaint No. 3.

1.14.4 By letter dated 3rd October 2019 the Inquiry wrote to the CSSO stating that it had determined that this complaint had been previously investigated.

1.15 An Garda Síochána Witness Statements

1.15.1 By letter dated 5th June 2019 the Inquiry wrote to the CSSO indicating that no further hearings would be held until the Inquiry had received statements from An Garda Síochána.

1.15.2 By letter dated 24th June 2019 the Inquiry wrote to the CSSO indicating that they had not reverted in relation to the outstanding statements of An Garda Síochána.

1.15.3 An oral hearing was convened on 2nd July 2019. It was decided that the CSSO would be furnished with a list of garda witnesses from whom statements were sought.

1.15.4 Having reviewed all of the disclosure received up until that date the Inquiry wrote to the CSSO on 22nd August 2019 setting out the details and names of the witnesses that the Inquiry wished to hear from and requested these witnesses to furnish the Inquiry with a statement.
1.15.5 By letter dated 24th September 2019 the Inquiry wrote to the CSSO referring to its letter of 22nd August 2019 in which the names of a number of witnesses had been set out. The letter requested that the addresses of each person named in the letter of 22nd August 2019 be furnished to the Inquiry so that it could send a formal notification under section 42 of the 2005 Act to each of them.

1.15.6 By letter dated 3rd October 2019 the Inquiry wrote to the CSSO and indicated that it had not received a concrete reply to its correspondence concerning witness statements. The letter indicated that the Inquiry would be left with no option other than to issue formal notices to the persons named in the Inquiry’s letter of 22nd August 2019 and that the Inquiry would apply to the High Court in accordance with the provisions of the Act if it was required to do so.

1.15.7 By letter dated 10th October 2019 the Inquiry wrote to the CSSO again formally calling upon them to furnish the Inquiry with the name and addresses of all parties mentioned in the Inquiry’s letter of 22nd August 2019. By letter dated 11th October 2019 the Inquiry wrote again to the CSSO stating that the Inquiry wished to receive statements form all parties mentioned in its letter of 22nd August 2019. The letter indicated that all information should be received on or before 5th November 2019.

1.15.8 An oral hearing was convened on 15th November 2019. The CSSO confirmed that telephone contact had been made with the majority of the relevant garda witnesses and that they had all been written to and sent the relevant documentation. It was also confirmed that statements had been requested from all of these garda witnesses. It was estimated that the statements would be available within an additional four weeks.

1.15.9 16 statements were furnished between 2nd October 2020 and 26th April 2021.

1.16 Covid-19

1.16.1 On 12th March 2020 the public health restrictions were imposed as a result of the Covid-19 pandemic. The Inquiry was not in a position to hold in-person hearings between March 2020 and May 2021 as a result of these restrictions.

1.16.2 On 14th May 2021 the Department of Justice\(^2\) set up remote hearing facilities so as to permit the Inquiry to proceed with its hearings.

\(^2\) S.I. No. 452/2020 - Justice and Equality (Alteration of Name of Department and Title of Minister) Order 2020 the Department of Justice and Equality’s name was altered to the Department of Justice
1.16.3 Following liaison between the CSSO and the Inquiry, a timetable was drawn up for the hearing of the various witnesses commencing on 24th May 2021 and concluding on 14th June 2021.

1.17 Oral Hearings

1.17.1 On 11th March 2021, the Inquiry wrote to the CSSO informing them that the Inquiry would be proceeding remotely and asking that the CSSO contact the available witnesses and notify them that the hearings would commence within a number of weeks.

1.17.2 By letter dated 10th March 2021, the Inquiry wrote to Mr. Mulcahy’s solicitor stating that while they had indicated by way of letter dated 28th May 2019 that Mr. Mulcahy no longer wished to participate in the Inquiry, Mr. Mulcahy had continued to correspond with the Inquiry by way of emails addressed to the Inquiry and had also copied the Inquiry on emails to the GSOC and the Legal Services Regulatory Authority. The Inquiry invited Mr. Mulcahy’s solicitors to confirm within 14 days if he wished to participate in the oral hearings which would be conducted remotely.

1.17.3 Mr. Mulcahy’s solicitors responded to the Inquiry’s letter on 19th March 2021. Mr. Mulcahy’s solicitors raised a number of matters for clarification including whether the Inquiry would be looking into complaints of *mala fides* and collusion made by Mr. Mulcahy against An Garda Síochána and the Department of Enterprise, Trade and Employment. The Inquiry replied by letter dated 29th March 2021 referring to its findings of 13th December 2018 as to which matters the Inquiry would be investigating.

1.17.4 By response of 9th April 2021 Mr. Mulcahy’s solicitors wrote to the Inquiry indicating that Mr. Mulcahy would fully intend to participate in the Inquiry but only if it reconsidered the matters for investigation in accordance with the terms of reference to include additional matters raised by Mr. Mulcahy. By letter dated 19th April 2021 the Inquiry wrote to Mr. Mulcahy’s solicitors repeating that it would only look into matters in accordance with its findings from 13th December 2018. Mr. Mulcahy’s position was noted and he was informed that the Inquiry would be proceedings without his participation.

1.17.5 By letter dated 11th March 2021, the Inquiry wrote to Mr. X, who had sent ongoing correspondence to the Inquiry since its establishment, setting out that it had been determined that he was a relevant witness in relation to Inquiry Complaint Number 4.
The letter sought confirmation within 14 days as to whether he wished to participate in the oral hearings in relation to this complaint. By letter dated 6th April 2021 Mr. X replied indicating that he was available to assist the Inquiry concerning areas within his knowledge, namely, "the corruption of the 1996 audit and the Garda dismissal of that corruption since 2000 as "impossible". He indicated that Mr. Y was a more appropriate witness in relation to the alleged email block. The Inquiry replied by letter dated 19th April 2021 indicating that it would be proceeding within the parameters of the terms of reference and that it was inviting Mr. X to participate in relation to Complaint Number 4. A reply was sought within 7 days. No response was received from Mr. X.

1.17.6 The Inquiry wrote to two civilian witnesses, Mr. Y and Mr. Z, inviting them to participate in the Inquiry in relation to Inquiry Complaints Number 4 and 5(c)(part two). Neither responded to the Inquiry's correspondence. It was determined that Mr. W, a further civilian witness of interest was deceased.

1.17.7 21 Garda witnesses participated in the oral hearings. Many of the Garda witnesses changed rank during the period 2005 to 2014 or have subsequently changed rank or retired. For the sake of clarity, the following identifies each relevant Garda witness by reference to his or her rank at points in time which are salient for the purposes of this Inquiry. For the sake of simplicity, the Inquiry refers to all Garda witnesses by the title of "Mr." or "Ms." throughout the report.

1.17.8 The following members of Garda Síochána participated in the oral hearings:

(i) Mr. A - Detective Superintendent GBFI
(ii) Mr. B - Detective Superintendent GBFI
(iii) Mr. C - Detective Sergeant GBFI
(iv) Mr. E - Detective Superintendent, Director of the GBFI
(v) Mr. F - Superintendent, IT Operations
(vi) Mr. G - Superintendent, Office of Deputy Commissioner, Operations,
(vii) Mr. H - Superintendent, IT Operations and Security
(viii) Ms. I - Garda assigned to IT Operations and Security
(ix) Mr. J - Garda, IT Security
(x) Mr. K - Assistant Commissioner, National Support Services
(xi) Mr. L - Regional Inspector, National Support Services
(xii) Mr. M - Inspector, Commissioner's Office
(xiii) Mr. N - Chief Superintendent Internal Affairs
(xiv) Mr. O - Commissioner of An Garda Síochána
1.17.9 The following garda witnesses are mentioned in the report but were not available to attend the oral hearings:

(i) Mr. D - Assistant Commissioner, National Support Services
(ii) Mr. T - Assistant Commissioner, Organisation Development and Strategic Planning

1.17.10 The purpose of the hearings conducted was to inform the Inquiry about matters relevant to its terms of reference.

1.17.11 The Inquiry developed its own procedures for carrying out these interviews.

1.17.12 Those who appeared before the Inquiry were informed that the Inquiry was established pursuant to the 2005 Act. The Terms of Reference for the Inquiry were read out and drawn to the attention of the witnesses.

1.17.13 It was explained to witnesses that their information was being given to the Inquiry by way of unsworn recital and that they were not subject to cross-examination.

1.17.14 The members of An Garda Síochána were accompanied by two state solicitors and senior and junior counsel.

1.17.15 At no stage was it necessary for the Inquiry to invoke the power to compel cooperation under section 42 of the 2005 Act.

1.17.16 The Inquiry had the benefit of written submissions prepared by counsel for An Garda Síochána dated 19th August 2021.
PART TWO
Complaint 4

"From in or around November 2007 until 2014 An Garda Síochána had "blocked" Frank Mulcahy's e-mail address which prevented him from contacting "garda" e-mail addresses."

2.1 Mr. F

2.1.1 Mr. F stated that he was assigned to IT as a Superintendent in 2015. He indicated that he prepared a report addressed to the Chief Superintendent of IT on 14th March 2019 following his inquiry into the investigation of the blocking of Mr. Mulcahy's email accounts. He provided a supplemental report on 17th September 2019 which corrected a clerical error in his first report.

2.1.2 His first report provided that on 13th March 2009, the Executive Director of Information and Communications Technology ("ICT") received a request for information from the Chief Superintendent, Human Resource Management on behalf of the Assistant Commissioner and Human Resource Management on foot of correspondence received from Mr. Mulcahy with regard to the blocking of his e-mails.

2.1.3 Mr. F stated that records within IT showed that Mr. S, responded to the file to advise that the audit records showed e-mails being sent and received from Mulcahy101@eircom.net between the 27th August 2007 and 22nd January 2009. He commented that subsequent to this date all e-mails received from this address were processed based on a blacklisted source. He explained that blacklisted e-mails are deleted subsequent to their receipt without forwarding to the intended recipient.

2.1.4 Mr. F stated that Mr. S advised the following e-mail sources were classified as blacklisted on the directions of Mr. Q, Mulcahy101@eircom.net and MulcahyFM@eircom.net.

2.1.5 He commented that subsequent searches of IT e-mail application located an e-mail trail from 26th April 2007 whereby a member of IT security advised Mr. Q that the e-mail address Mulcahy101@eircom.net had been added to the global blacklist.
2.1.6 Mr. F stated that on 17th September 2014, on foot of correspondence received from the Assistant Commissioner, Organisational Development and Strategic Planning, to examine the claim by Mr. Mulcahy that his e-mail was blocked by the Garda system, both e-mails were unblocked on the request of Mr. G, private secretary to the Commissioner, on 26th November 2014. He stated that it was not possible to provide the number of e-mails that were blocked during the period that the e-mail addresses of Mr. Mulcahy were blocked from reaching the organisation.

2.1.7 He stated that the procedure at the time to deal with spam requests was that requests were forwarded to the IT Section. IT Security then reviewed the request to verify the emails were spam and that email address would then be added to the global blacklist. He stated that this list was maintained by IT Security. He stated that no notification would be sent to the sender that the email address was being blocked as this would validate An Garda Síochána's address and lead to further spam attacks from alternate addresses. He stated that in addition members were informed of the process whereby they could apply local rules through "Rules and Alerts" which was available on their personal email account on their local computer. He stated that this allowed the member to move emails received from a particular source to their junk mail folder automatically within outlook. He stated that this would not globally block the email address from sending emails to other members of the organisation and that this was deemed the recommended approach by IT Operations and Security.

2.1.8 He stated that IT Operations and Security have policy and procedures and a HQ Directive with regard to the use of the Internet and electronic mail within An Garda Síochána. He stated that these include a procedure for dealing with SPAM emails received by members of An Garda Síochána and unsolicited or offensive emails received by members of An Garda Síochána.

2.1.8.1 In his supplementary report which he presented to the Inquiry, Mr. F stated that he had become aware that a clerical error had been made in relation to the reporting of an email address. He stated that on the 24th of March 2009, Mr. S, submitted a report which referred to two email addresses, namely Mulcahyfm101@eircom.net and Mulcahyfm@eircom.net. Mr. F stated that on the 26th of March 2009, Mr. S's report was forwarded with a minute from the IT office. Mr. F stated that it was in this report that he believed the clerical error was made. He commented that one of the email addresses did not correspond with the email addresses reported by Mr. S. He stated that Mulcahyfm101@eircom.net was reported as Mulcahy101@eircom.net.
explained “the ‘fm’ part was omitted.” He stated that this reported error in identifying the email address followed through on all other subsequent reports.

2.1.9 Mr. F told the Inquiry that there were no records within An Garda Síochána’s IT System that indicated that any emails were sent or received by the Garda organisation using the email address MulcahyFM@eircom.net.

2.1.10 When questioned by the Inquiry as to why Mr. Mulcahy’s emails were blocked Mr. F said: “I can’t answer that.” He indicated that any knowledge he had as to these matters was derived from his reports as opposed to first-hand knowledge.

2.1.11 He was asked whether IT Security would review the blacklisted accounts and he answered:

“IT Security would constantly review I would say. There’s such a volume of spam e-mails, like you’re talking thousands coming in on a daily basis. The Mail Marshall system would block I’d say the large percentage of them but, as I stated earlier, some would get through, through to the Garda mail systems and actually be forwarded on to the recipients. But if they were clearly outlined in, I suppose that blacklist, they would not get through on to the Garda e-mail systems. And that, I suppose I’m talking from my particular time as the Superintendent there in IT, I suppose the e-mail system would have evolved over a number of years within An Garda Síochána as well.”

2.2 Mr. G

2.2.1 Mr. G informed the Inquiry that during the period from February 2012 to July 2016 he was the Private Secretary to two Garda Commissioners.

2.2.2 He referenced an email that was part of the disclosure furnished by An Garda Síochána dated 27th November 2014 from Mr. J to Mr. H. The email provided:

“Hi Supt

The two email that were blocked on request from the Commissioners office are as follow:
mulcahyfm101@eircom.net
mulcahyfm@eircom.net

We have check (sic) our email archives and we could not find any other such request for non spam email to be blocked. We present (sic) have only one Global Blacklist that all our requests for blacklist go for Spam. We have create (sic) an IR5654 in prelive to create a new Mail Marshall blacklist called 'Inbound Global Blacklist non Spam approved by Supt IT' to deal with any further requested for the blocking of non spam emails."

2.2.3 Mr. G commented "I have checked with the Garda IT Department and understand this reference to the Commissioner's office to refer to the Office of Assistant Commissioner, National Support Services." He stated that he noted from his own email records that he did make contact with the Garda IT Section to have any restrictions lifted. He stated that he believed that this was carried out on the instructions of the then Garda Commissioner.

2.3 Mr. H

2.3.1 Mr. H was asked about an email in 2014 in which he had been enquiring as to whether there was a policy in place to cover blacklisting of e-mail accounts. Mr. H indicated that he recalled from looking at the documents that there were conversations about whether the policy included specific information around blacklisting. He stated that he thought that the result was that the policy document did not specifically refer to how blacklisting was dealt with, other than that it could be done. He stated that it "it came back to, I suppose the technical methods of doing it by IT Security in terms of how, well effectively at the time, I suppose we were referring mainly to spam e-mail that was being blocked, or requests that came in for spam e-mail to be blocked."

2.3.3 He was asked about an email dated 6th November 2014 in which he had written to the Chief Superintendent of the IT Section stating "[a] policy does need to be considered with regard to members of the public contacting An Garda Síochána through email and the process of dealing with same." In response Mr. H stated:

"...I think e-mail came into the organisation in 2010. It was mainly about the use of e-mail and the improper use of e-mail. I suppose then when you were asked a specific question about, is there specific references on how we handle the blocking of e-mails, I suppose it wasn't explicitly called out in the policy. I
suppose that's a question that we were probably being asked. But what I would say, I mean in every instance the way we would have operated within IT is, you know, a request came in to do something and we would review it, see technically is it possible and then go back and say, this is what we can do. And then once we were asked to do it, or it was approved to do it, we would get the people within IT Security to implement that."

2.3.4 Mr. H was asked if he knew the reason why the emails in question had been blocked. He replied:

"Well my understanding was that, I suppose there was mails being sent to the personal accounts of some of the members of the Commissioner's office and the Commissioner himself, I think that's where the request arose from. And again, it wouldn't have been, I suppose it wouldn't be -- it was because it was requested by the office to say, you know, to block a particular e-mail address on the basis that it was spam or unwelcome or not, it wasn't sort of the normal, I suppose channel of communications, I suppose in that respect."

2.3.5 He stated that he did not have specific knowledge of the matter.

2.4 Ms. I

2.4.1 Ms. I told the Inquiry that she was assigned the role and responsibilities of District Clerk, IT Operations and Security by Superintendent IT Operations and Security from February 2010 until June 2016.

2.4.2 She stated that during this period she handled correspondence received by IT Operations and Security relating to Mr. Mulcahy. She stated that this included following up and responding to email queries and the typing of reports in relation to files received by post.

2.4.3 Ms. I was asked if she was aware who had directed the block on Mr. Mulcahy's emails. She stated that she was aware that there was a report that had indicated that Mr. Q requested the blocking of the e-mails. She indicated that she did not know the reason why the emails had been blocked.
2.4.4 There was an email contained within the disclosure furnished by An Garda Síochána dated 24th September 2014 in which Ms. I wrote to Mr. H confirming the history of the email block:

"To Supt,

For review response back re black listed mails

RE: Correspondence to the Commissioner concerning Frank Mulcahy
With reference to the above and attached correspondence please be advised that the following email accounts mulcahy101@eircom.net and mulcahyfm@eircom.net are classified as blacklisted on the direction of [Mr. Q.]
The original requests date back to April 2007. Black listed emails are deleted subsequent to their receipt without forwarding to the intended recipient."

2.5 Mr. N

2.5.1 Mr. N told the Inquiry that he was the Chief Superintendent in charge of Internal Affairs in 2009. He stated that he had been made aware of an email signed for him by Mr. U on 13th March 2009 enquiring of the Executive Director of ICT as to why Mr. Mulcahy was having difficulty in communicating with certain members of An Garda Síochána via email. He stated that he had no recollection of the complaint or Mr. Mulcahy.

2.6 Mr. U

2.6.1 Mr. U told the Inquiry that on the 13th March 2009 he was working as an Inspector at the Internal Affairs section of An Garda Síochána. He stated that one of his duties required him to sign and forward on correspondence on behalf of Mr. N in his absence.

2.6.2 He stated that on the 13th March 2009 he signed a report entitled "complaint received from Mr. Frank Mulcahy regarding emails not reaching intended recipients". He stated that this piece of correspondence was addressed to the Executive Director of ICT, which was the section responsible for IT systems within An Garda Síochána.

2.6.3 He stated that he was not aware of Mr. Mulcahy or any difficulties that he was having with correspondence within An Garda Síochána.
2.7 Ms. R

2.7.1 Ms. R stated that during her service one of her roles was Superintendent in charge of the Garda Central Vetting Unit ("GCVU") from 2013 to 2017. She stated that one of the four core functions of the Garda Central Vetting Unit at that time, was the processing of Section 4 data protection access requests under the Data Protection Acts 1988 and 2003.

2.7.2 She told the Inquiry that her primary dealings with Mr. Mulcahy related to the processing of section 4 data protection access requests submitted by him. She stated that in this context, she had considerable communication with him over the period 2013 to 2017.

2.7.3 She stated that on 16th July 2014 she received a letter from an Investigations Officer, Office of the Data Protection Commissioner ("ODPC"), stating that the ODPC had received a complaint from Mr. Mulcahy concerning the alleged failure of An Garda Síochána to comply with an access request submitted by him on 21st August 2012. She stated that the letter also stated that Mr. Mulcahy had written to Ms. R by email on 6th June 2014.

2.7.4 She stated that she responded to the correspondence from the ODPC stating "this office has received no further correspondence from Mr. Mulcahy since 23rd August 2012."

2.7.5 She stated that she received further correspondence from the ODPC on 19th August 2014, enclosing emails to the GCVU which were provided to the ODPC by Mr. Mulcahy. She stated that she responded to the ODPC indicating that she had examined the emails and was attaching a copy of the search screen which indicated that no emails received from Mr. Mulcahy had been received to her email address. She stated that she would correspond with Mr. Mulcahy directly.

2.7.6 Ms. R stated that on 29th August 2014 she telephoned Mr. Mulcahy and made commitments to commence processing his section 4 data protection access request.

2.7.7 She stated that on 29th August 2014 Mr. Mulcahy forwarded an email to her through the email of Mr. X stating he "now fully accepts that you did not get my emails."
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2.7.6 Ms. R stated that on 29th August 2014 she telephoned Mr. Mulcahy and made commitments to commence processing his section 4 data protection access request.

2.7.7 She stated that on 29th August 2014 Mr. Mulcahy forwarded an email to her through the email of Mr. X stating he "now fully accepts that you did not get my emails."
2.7.8 Ms. R stated that on the morning of 29th August 2014 she telephoned her immediate manager, Mr. T and had a conversation with him regarding the allegation of Mr. Mulcahy that his emails had been blocked. She stated that Mr. T asked her to forward the documentation to him for investigation.

2.7.9 She stated that in response to an email from Mr. Mulcahy via Mr. X’s email address, seeking an update on 8th October 2014 she emailed the Higher Executive Officer of the Data Processing Unit to contact Mr. Mulcahy and give him an update on his file. She stated that on 13th October 2014 she sent correspondence to Mr. Mulcahy informing him that she was awaiting confirmation from relevant garda management.

2.7.10 Ms. R told the Inquiry that she received another email from Mr. Mulcahy on 17th February 2015 seeking an update. She stated that the following day she made phone calls to the office of the Assistant Commissioner’s Office to establish the current situation prior to responding to Mr. Mulcahy’s email. She stated that she also emailed the secretary to Mr. T, forwarding Mr. Mulcahy’s email.

2.7.11 Ms. R told the Inquiry that she emailed Mr. Mulcahy on 12th March 2015 stating that a request had been made to unblock his emails but that she was not in a position to advise as to a timeframe.

2.7.12 She stated that on 20th March 2015 she emailed Mr. Mulcahy, stating “please be advised that my email of the 12th of March 2015 was a response to your query as to whether there was any progress in establishing the situation pertaining to your emails. I provide (sic) such update and was not advised by any person to do so”. She stated that from her recollection, this email was in response to an email from Mr. Mulcahy querying who had advised her to unblock his emails.

2.7.13 Ms. R told the Inquiry that she next received an email from Mr. Mulcahy on 24th April 2015 stating:

“Can you confirm too that you are still investigating who blocked my emails to you and that you have not been told (i) to pass that issue to the GSOC or (ii) that it is being investigated by the GSOC?”

2.7.14 Ms. R said that she emailed Mr. T on 29th April 2015 attaching Mr. Mulcahy’s email from Mr. X’s account asking for his advice as to a suitable response. She stated that
she understood that the email addresses were no longer blocked and queried if Mr. Mulcahy had been informed of this. She stated that she also emailed the secretary to Mr. T, querying whether Mr. Mulcahy had been informed about the result of the investigation into his emails being blocked.

2.7.15 Ms. R stated that she sent a further email to the secretary to Mr. T, on 29th April 2015 seeking assistance in issuing an appropriate response to Mr. Mulcahy. She stated that on 1st May 2015 she received an email from the secretary to Mr. T, which stated: "[s]poke to AC on this. His advice is to respond as follows: Your data protection access request is currently being processed at this office. I am unaware as to the circumstances relating to the blocking of your emails but can confirm that the relevant email addresses have now been unblocked." Ms. R sent an email to this effect to Mr. Mulcahy on 1st May 2015.

2.7.16 Ms. R was asked if she knew the reason why Mr. Mulcahy's emails were blocked. She stated that she did not know.

2.8 Mr. P

2.8.1 Mr. P told the Inquiry that on 11th December 2009 he was appointed as Deciding Officer pursuant to Regulation 14 of the Garda Síochána (Discipline) Regulations, 2007 to investigate alleged breaches of discipline arising from complaints made to the GSOC by Mr. Mulcahy.

2.8.2 He was asked about a letter dated 26th March 2009 from the of Operations and Security to the Chief Superintendent of IT which read:

"See report from [Mr. S]. Subsequent to 27.08.2007 emails received from Mulcahyfm101@eircom.net were processed based on a blacklisted source. The email sources mulcahy101@eircom.net and mulcahyfm@eircorn.net were classified as Blacklisted on direction of [Mr. Q]."

2.8.3 There was a handwritten note on this letter which read: "5th October 2011 [executive director of IT and Telecommunications] asked by [Mr. P] to follow this up. – to discuss with IT." Mr. P stated that he had met Mr. Mulcahy on 29th September 2011 and they reviewed a draft statement. He stated that they had made considerable progress in
distilling his complaints of negligence down to statement form and they were moving towards completion of the statement. He stated:

"You know, we had been through what I could best describe as a cathartic process or exercise for Mr. Mulcahy in the previous 12 months, or there, thereabouts. The blocking of his e-mails continued to be a key issue for him and it was already included in what I would call, we'll say the draft Statement of Complaint. I had explained to him that for the complaint around his, the alleged blocking of his e-mails to be relevant to what I was investigating, it would have to be at least reasonably considered that the blocking of the e-mails contributed to the, I suppose negligent or delay as he saw it in progressing his complaint to GBFI, in other words, to come within the scope of my investigation. But I had explained to him that this would be in his statement as we had put it into it and that it might be for further consideration at a later stage, perhaps with GSOC to see whether they would admit it as a complaint. So I was anxious to keep Frank Mulcahy fully engaged and I decided then to consider giving [the Executive Director of Information] ... a ring. He was the Executive Director of Information and Communications Technology. He was of an equivalent rank to myself as Assistant Commissioner and Executive Directors have the same level of authority basically within the organisation at that point in time. I thought if the matter could be resolved regarding the alleged blocking of his e-mails that, even from a future date and of course, deal with the previous, or historical aspect of the investigation, that it would be something positive to feed back to Mr. Mulcahy to keep him involved in the process."

2.8.4 He stated that as he was involved in a disciplinary process under Regulation 14 of the Discipline Regulations and he did not want to step outside of that process. He stated that he phoned the executive director of ICT and mentioned to him the complaint that Mr. Mulcahy had made around the blocking of his e-mails and asked him would he have a look at it and see whether or not it could be progressed to a conclusion.

2.8.5 He stated that he took no further steps in relation to this matter:

"No, I didn't take any further steps. I felt that, if I took any further steps -- I had to be fair to everybody in the process and if in the further investigation of Mr. Mulcahy's complaints there may very well have been people then that I would be speaking to in the context of asking could they do something now, but they
may have, very well have been involved in the blocking of the e-mails, or the alleged blocking of the e-mails and that might come within the scope of the disciplinary investigation. Look, I was being very careful to be fair to everybody and not step outside my appointment to investigate the issues."

2.8.6 He stated that he was not aware of the reasons why Mr. Mulcahy's e-mail addresses were blocked.

2.8.7 He stated that he didn't know if Mr. Mulcahy had ever tried to contact him through the two e-mail addresses that were blocked. He stated that Mr. Mulcahy had the use of another email address:

"Yes he had through the use of another e-mail address, williammurphy464, I think it was at hotmail.com. I don't know if he ever tried to contact me through the two Frank Mulcahy e-mail addresses that he claimed or alleged were blocked. Other than any, we might have had one or two technical issues, but other than that there was full communication available to Mr. Mulcahy to me and my office at all times."

2.9 Mr. K

2.9.1 Mr. K told the Inquiry that in his capacity as Assistant Commissioner to National Support Services he had received extensive e-mail communications with Mr. Mulcahy and his associate Mr. X, all of which were conducted on the Garda e-mail system.

2.9.2 He stated that while he was not involved in the original complaint made by Mr. Mulcahy, he had oversight involvement in subsequent supplementary investigations and enquiries relating to associated complaints and issues raised by Mr. Mulcahy and Mr. X.

2.9.3 Mr. K was asked about an email dated 26th July 2010 from Mr. Mulcahy using the email address williammurphy464@hotmail.com to Mr. K stating "as you know I am forced to use this email address as, as the Gardaí have blocked my personal emails. [Mr. O] passed that issue to you over a year ago, but I have had no contact from you in relation to that issue." Mr. K commented:
"I did nothing with the e-mail or made any attempt to unblock e-mails, Judge, at any stage during my dealings with Mr. Mulcahy. He was communicating with me, as you can see, freely."

2.10 Mr. O

2.10.1 Mr. O stated that it was clear from his review of the documentation that Mr. Mulcahy was frequently in contact with his office during the period that he was Garda Commissioner. He stated that his priority in such cases was to ensure that the material from complainants was forwarded for appropriate attention to the operational units charged with investigating and inquiring into such matters.

2.10.2 He stated that from reading the papers he was satisfied that Mr. Mulcahy had appropriate access to his office and that all his correspondence and contact, by email, letter or telephone, was processed, acknowledged and forwarded to the relevant operational units for necessary attention in line with his general instructions in such matters.

2.10.3 He stated that he had no personal information or knowledge as to the circumstances of the blocking or blacklisting of certain email addresses of Mr. Mulcahy.

2.10.4 He was asked if he had done anything about the block on the emails. He responded:

"I have no recollection of doing anything about it. I have no recollection of being conscious of a block on his e-mails. You will appreciate, Judge, that as Commissioner it was a busy, I had a busy desk, so to speak and any e-mails that would come to my personal e-mail, I didn't engage in correspondence with members of the public as such. I couldn't. I had a staff to do that."

2.10.6 He stated that he did not know the reasoning behind the direction to block Mr. Mulcahy's emails.

2.11 Mr. L

2.11.1 Mr. L told the Inquiry that during the period 2007 to 2018 he was the Regional Inspector allocated to the Offices of Assistant Commissioner National Support Services, later
rebranded as Special Crime Operations. He stated that during this time, he received a number of emails from Mr. Mulcahy, who corresponded with him using different email addresses.

2.11.2 He stated that he did not block Mr. Mulcahy’s email address and did not have any information whatsoever regarding the allegation by Mr. Mulcahy that his email address was blocked, thereby preventing him from contacting Garda email addresses.

2.12 Mr. M

2.12.1 Mr. M told the Inquiry that he was the Garda Inspector allocated to the Commissioner’s Office. He stated that in this role he dealt with various pieces of correspondence received at the Commissioner’s office from Mr. Mulcahy until his retirement on 16th October 2011.

2.12.2 He stated that almost all of the correspondence referred to a block of his email address. He stated that other than those references in the correspondence he was not aware of any blocking of his email address and he did not request that the emails be blocked. He stated that he did not undertake the investigation of any of the issues raised by Mr. Mulcahy in his correspondence, including the specific issue of the blocking of his email address.

2.12.3 He stated that in processing correspondence from Mr. Mulcahy he would have forwarded this to the appropriate section or branch within An Garda Síochána which had been dealing with the issues raised by him for their attention and he would also have issued acknowledgements to Mr. Mulcahy as appropriate.

2.12.4 He stated that he was unaware as to why the emails had been blocked.

2.13 Mr. V

2.13.1 Mr. V stated that the events in question related to the time when he was working as an Inspector to the Assistant Commissioner National Support Services. He stated that during his service in National Support Services he worked with three assistant commissioners.
2.13.2 He referred to an email dated 26th April 2007 from the Garda ICT section transmitted to Mr. Q. Mr. V. was copied on this email. He commented:

"It appears that it was a matter in respect of which the then Assistant Commissioner dealt directly and personally with the IT Section. I can only presume that [a member of the IT Section] copied me on the email in my capacity as the Assistant Commissioner’s direct support officer. Copying senior officer assistants on emails was common practice and one could say a ‘habit’ in the organisation."

2.13.3 He stated that he had no recollection of any discussion concerning the email with either Mr. Q or the Garda ICT section.

2.14 Mr. S

2.14.1 Mr. S was asked by the Inquiry about a report dated 24th March 2009 signed by him which read:

"Audit records identify e-mails being sent to and received from Mulcahy101@eircom.net between 27/08/2007 and 22/01/2009. Subsequent to this date all mails received from MulcahyFM101@eircom.net were processed based on a blacklisted source. Blacklisted e-mails are deleted subsequent to their receipt without forwarding to the intended recipient. The mail sources MulcahyFM101@eircom.net and MulcahyFM@eircom.net were classified as blacklisted on direction of [Mr. Q]."

2.14.2 He stated that this report was a response to a question. He stated that based on the correspondence before and after it he thought that he had received a request from the Superintendent of Operations and Security and that his response was based on an examination the audit records. He stated that the two e-mail addresses were processed as blacklist sources and the mechanism at the time was that all blacklist sources were deleted once they were identified as being on the list.

2.14.3 He stated that:

"If they were blacklisted, then the reasons for blacklist are either that they are a source of spam or unwanted e-mail."
2.14.4 He explained the blacklisting process as operating as follows:

"It was a communication made from a senior officer to IT Centre, which then went through, went through to IT Security and added it to the list of, a blacklist on a software listing within the piece of software."

2.14.5 He stated that there was an IT e-mail and internet policy in place at that time which covered the area of spam, internet usage, e-mail and e-mail receipts.

2.14.6 He was asked if there was any type of review on an email block on an annual or other basis. He replied that an email address would be "locked until it was removed."

2.14.7 Mr. S was asked whether Mr. Q, had directed a block to his own address or all An Garda Síochána addresses. He replied:

"If the e-mail is targeted at a source and it's put on a blacklist, then it is for all e-mail coming into the system. It's anything from that source. Anything, the blacklisting is basically done at a level of, that the source is deemed to be the issue, not the recipient. So it targets the source of the e-mail, not the recipient of the e-mail. It doesn't differentiate that the source of the e-mail is coming from A or B, or going to A or B within the organisation, it says that the source is the issue and as such blocks the source."

2.14.8 He stated that the consequence would be that the email would not enter the system:

"So irrespective, when the e-mail arrives it comes to the organisation's e-mail processor. Once it's inside the e-mail processor then it differentiates as to who exactly within the system is going to get that e-mail based on who it is targeted at. The blacklisting process takes one step beyond that and it stops the e-mail entering the system. It doesn't accept the e-mail into the general post office for An Garda Síochána."

2.15 Mr. J

2.15.1 Mr. J told the Inquiry that he was involved in the unblocking of the email accounts. He stated that he was given permission by his Superintendent in 2014 to remove the blocking from Mr. Mulcahy's two accounts.
2.15.2 Mr. J was asked did he know why the accounts were being unblocked and he answered:

“Well the reason I wanted to know, they didn't meet, I suppose the standard spam as you would say…”

2.15.3 He was asked about the policy on blacklisting at the time and he commented:

“At this time, as I said, it might have been more vague in 2000, up to that, the global blacklisting we used was for spam and mails we thought were malicious, or phishing, they could be dangerous to the systems. But after that meeting, after that we reviewed – after 2014 we unblocked these mails. We reviewed what we put into that global blacklist and we'd make sure that no, as we considered genuine mails were included in that, only spam would go in there in the future.”

2.15.4 He stated that Mr. Mulcahy’s email would not have been blocked today based on the current policy in place.

2.16 Mr. Q

2.16.1 Mr. Q was asked about an email dated 26th April 2007 from IT Security to Mr. Q which read:

“mulcahyfm101@eircom.net has been added to our global blacklist. You will not receive any email from this address to your corporate email.”

2.16.2 Mr. Q commented:

“I don’t actually remember ever having contact with the IT Section in relation to this matter, you know. But I do accept -- I saw the thread -- I do accept that it’s there, Judge and, I suppose it is the case that I had moved on, in January of 2007 I had moved on promotion to Garda Headquarters and I was no longer responsible for the National Support Services, which is an oversight of the Garda Bureau of Fraud Investigation that was looking after Mr. Mulcahy’s complaints and I wrote and I told him that, Judge. I’m sure you’ve seen the documentation. I told him that, even before we met way back in September '05,
Judge, I told him that I couldn’t have a hands on role in relation to any investigation and I repeated that in communication with him afterwards.

2.16.3 He continued to state that while it was not clear from the emails why there was an interruption to Mr. Mulcahy’s emails he did not believe that there was an intention to deprive Mr. Mulcahy from communicating with An Garda Síochána. He commented:

“...I don’t believe that any form of communication, either directly or indirectly with the IT Section would, that there would be an intention to deprive Mr. Mulcahy of communicating with any member of the organisation because it was, and I don’t know what the position is now, but it certainly was the case in my time that Mr. Mulcahy used to send voluminous amounts of correspondence, both by e-mail, by hand, courier and also in the ordinary post and he certainly had channels of communication with An Garda Síochána open to him and he availed of all of those quite liberally in my time.”

2.16.4 Mr Q stated further that this email of 26th April 2007 clearly referred to his email and no one else’s:

“The thread I saw, Judge, was the 26th of April of ’07 but it mentions my e-mail specifically. It doesn’t mention any others. And you know, I am confident, Judge, that, if other e-mails were mentioned or there was a hint or a suggestion that other e-mails would be blocked, I would certainly have to question why that would be so because I knew that Mr. Mulcahy sent thousands of e-mails to the organisation and very, very many to the Garda Bureau of Fraud Investigation, who were examining his complaints.”

2.16.5 When he was asked if he knew why the emails were blocked he stated:

“No. No. I mean, from my perspective, Judge and knowing the history of Mr. Mulcahy and the many channels of communication that he had at his disposal, as I outlined, you know, materials coming in the post, ordinary post, registered post; materials coming by courier and of course, e-mails, all of those channels were there. So it wouldn’t make sense to me that there would be an attempt to stop his e-mails being received by other members.”
2.16.5 Mr. Q was asked about his understanding of an email dated 26th November 2014, sent by Mr. G to Mr. H which read:

"Any restrictions on e-mails to this office, or any other addresses, should be removed as soon as possible. The request … was in relation to mails to [Mr. Q's] personal account and this has been addressed at this office."

2.16.6 Mr. Q indicated that he understood this to mean that it was only his personal email that was to be blocked. He stated:

"… I don't have a memory of any communication, but certainly I wouldn't be dealing with anyone else's e-mails, you know. The concerns, if there were concerns there, and it would seem reasonable from the discussion we had previously with the Liaison and the State solicitors, that if there was that contact, which there was clearly from my office to the IT Section, that it was in relation to my e-mails and my e-mails only."

2.16.7 He clarified that his reference to "my e-mails" meant his personal emails.

2.17 Mr. E

2.17.1 Mr. E told the Inquiry that he did not know why the emails were blocked.

2.18 Mr. A

2.18.1 Mr. A stated that he had no direct knowledge of the blocking of the emails from Mr. Mulcahy to An Garda Síochána email accounts and did not request that any emails from Mr. Mulcahy to Garda Síochána be blocked. He commented:

"Well, I think in parts of his correspondence he had contact with individual members using alternative e-mail addresses and it appears that he was in a position to communicate with them in that way. And, I suppose from the point of view of those of us involved directly in the investigation, he communicated to us in multiple ways, for the most part the delivery of documentation quite frequently."

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2.19 Written Submissions on behalf of An Garda Síochána dated 19th August 2021

2.19.2 In summary, An Garda Síochána submitted that Mr. Mulcahy was not prejudiced by the blocking of the two email addresses as he continued to maintain high volumes of frequent contact with the organisation via multiple other avenues such as ordinary, registered, hand-delivered and couriered post, fax, telephone, face to face meetings and by email from ten different email accounts he had in operation at the time.

2.19.3 An Garda Síochána submitted that the request to IT made by Mr. Q was not made with any intention whatsoever of preventing Mr. Mulcahy from contacting the organisation. They contended that the procedure adopted appeared to have evolved as a means to deal with "the unique, exceptional and voluminous pattern of communication adopted by Mr. Mulcahy, whereby vast amounts of email correspondence were sent from multiple email addresses to [Mr. Q], in addition to multiple other addressees within An Garda Síochána."

2.20 Findings

2.20.1 It was accepted by An Garda Síochána that audit records within IT section showed e-mails being sent and received from Mulcahy101@eircom.net between the 27th August 2007 and 22nd January 2009. It was accepted by An Garda Síochána that subsequent to this date all e-mails received from this address were processed based on a blacklisted source. It was explained by Mr. F that blacklisted e-mails are deleted subsequent to their receipt without forwarding to the intended recipient.

2.20.2 Subsequently, it was also shown that Mulcahyfm@eircom.net had also been added to the global blacklist. However, Mr. F confirmed the fact that there were no records within an Garda Síochána’s IT System that indicated that any emails were sent or received by the Garda organisation using the email address Mulcahyfm@eircom.net.

2.20.3 An Garda Síochána submitted that Mr. Mulcahy was not prejudiced by the blocking of the two email addresses as he continued to maintain high volumes of frequent contact with the organisation via multiple other avenues such as ordinary, registered, hand-delivered and couriered post, fax, telephone, face to face meetings and by email from ten different email accounts he had in operation at the time.
2.20.4 It is clear from the disclosure furnished by An Garda Síochána that Mr. Mulcahy did succeed in making contact with An Garda Síochána via 12 other email addresses during the period that the accounts Mulcahy101@eircom.net and Mulcahyfm@eircom.net were blocked.

2.20.5 There was a suggestion that it may have been intended that the block be placed on Mr. Q’s personal email account only.

2.20.6 An Garda Síochána submitted that the procedure adopted by the IT team was most likely intended to ensure that Mr. Mulcahy’s communications were directed to the most appropriate division within the organisation. Mr. Q further told the Inquiry that his understanding of the blocking was that it referred to his own personal email address.

2.20.7 Mr. J told the Inquiry that these email addresses would not be blacklisted based on the policy in place within An Garda Síochána today.

2.20.8 The Inquiry finds as a matter of fact that the email addresses Mulcahy101@eircom.net and Mulcahyfm101@eircom.net were blocked from 26th April 2007 until 20th November 2014. The Inquiry finds that as a consequence of this, Mr. Mulcahy could not contact garda email addresses using these two email addresses.

2.20.9 The Inquiry finds that Mr. Mulcahy did succeed in making contact with An Garda Síochána through the use of 12 other email accounts during this time as well as by other means.

2.20.10 The Inquiry finds that the email addresses were blocked owing to the lack of any policy in operation within An Garda Síochána to address the issue at the time. The Inquiry is satisfied that these email addresses would not be blocked today and that there is now an appropriate policy in place.

2.20.11 The Inquiry finds this complaint is founded.
PART THREE
Complaint 5(a)

"Complaint 5(a) - In or about November 2005 at a meeting in Harcourt Street Mr. B advised that Frank Mulcahy's private life would be investigated as part of any full review. Frank Mulcahy believed he was being threatened."

3.1 Mr. B

3.1.1 Mr. B told the Inquiry that he was transferred back to the GBFI around mid-2005, where he was responsible for the Commercial Fraud Investigation units of the Bureau.

3.1.2 He stated that towards the end of 2005, he became aware that a Mr. Frank Mulcahy had been the subject of a fraud complaint to the Bureau made by his employers ISME, and that the DPP had directed no prosecution in his case some years previously. He stated that he also became aware that Mr. Mulcahy had made allegations to the Assistant Commissioner of National Support Services that the original ISME allegations against him were false and, therefore, should not have been investigated by the GBFI.

3.1.3 He stated that as he received correspondence through the Detective Superintendent in the GBFI, from the Assistant Commissioner of National Support Services to investigate Mr. Mulcahy's allegations. He stated that he allocated the case for investigation to Mr. AA. He confirmed that he did meet with Mr. Mulcahy on the 21st December 2005 with Mr. AA at Harcourt Square. He stated that he kept a contemporaneous note of that meeting in his Garda journal on that date. The note read as follows:

"Met with Frank Mulcahy for 2 hours with [Mr. AA], in regard to his most recent correspondence to [Mr. Q] on 04/10/06 (he indicated that this should have read 05). He alleged [Mr. W]??? - who had made a witness statement in the original investigation has now confided to a third party by email that he interfered with the original GBFI enquiry and that he ([Mr. W]) knew better than anybody else that there was no fraud committed by Mr. Mulcahy. He attended meeting with no -documents and kept scribbling on a solitary piece of paper. Made it clear to him that we are not in the business of 'clearing people's names', only in the investigation and prosecution of breaches of the criminal law. He is basically
alleging a conspiracy by former colleagues in ISME to frame him with fraud offences and that in doing so they were guilty of wasting police time as they knew there was no basis to their complaint. I asked Mr. Mulcahy to provide a chronology of events which will prove his version of the story and if he is in possession of 'new' evidence as he alleges, to produce that evidence. He undertook to produce that evidence in the near future."

3.1.4 In relation to the complaint made by Mr. Mulcahy concerning Mr. B, Mr. B told the Inquiry that the allegation was an untruth. He indicated that same could be corroborated by Mr. AA. He stated that he believed that he had met Mr. Mulcahy on only two occasions but never on his own. He stated that the second time he met him was on 17th April 2007 when he accompanied Mr. A and Mr. C and no such comment was made on that occasion either. He stated that he was an experienced investigator at that time and would never threaten anyone that their private life would be investigated as alleged by Mr. Mulcahy. He stated that he had no reason to make such a threat and nothing could be gained from making such a threat.

3.1.5 He stated that he was aware from meeting with Mr. Mulcahy that he was consumed with "clearing his name" and that he may have been annoyed when Mr. B pointed out to him that it was not the role of either the Gardaí or the DPP to clear his name but rather it was to investigate the matter, adjudicate on the evidence and proceed accordingly.

3.1.6 He referred to a garda report that he had sent to Mr. A on 22nd December 2005 in respect of his meeting with Mr. Mulcahy on 21st December 2005. He stated that there was no mention in the report of Mr. Mulcahy's perceived threats to his private life or of the allegation that he was told by Mr. B that there would be no "going back." He commented that neither was there mention that Mr. Mulcahy terminated the meeting because of what he perceived as threats to his private life.

3.1.7 He stated that if he had been aware of any of these matters at the time of writing this report he would have had no issue with recording those matters in the report. He commented:

"It is my belief that Mr. Mulcahy made up these matters at a later date for reasons of his own."
3.1.8 He noted that Mr. Mulcahy appeared to have also indicated at times that both Mr. E and Mr. C had made similar threats. He commented:

"I can say that GBFI did not conduct its business on the basis of threats or trade-offs as put forward by Mr. Mulcahy."

3.1.9 He further stated:

"No, I mean there was no threats made to Mr. Mulcahy during the course of that. It's just not how we do things. No, I always maintain you get more with honey than you do with vinegar and you can't elicit information from somebody if they're being threatened, if you threaten them, and whatever, it just doesn't work, to my mind anyway it doesn't work. It's alien to me. But listen, if he perceived something there, something that was said because there was a wide ranging discussion and as I say some of it, he was disgruntled about some of what he was told. But I mean, I can't really get into his mind as regards why he perceived this. And the other thing that I've said in my statement is, if he believed that, he would have complained about that either that evening or the following day. According to my looking at the documentation that was served on me it looks like it was two and a half years later from what I've read there that he brought up this about the perceived threats. So that does not ring true to me as being credible. If it had happened at that time, as he said it did, we would have known about it from him because he was more than capable of complaining."

3.2 Mr. AA

3.2.1 Mr. AA was asked whether he recalled there having been any question or suggestion at the meeting on 21st December 2005 that Mr. Mulcahy's private life would be investigated or that any threats were made to Mr. Mulcahy in relation to possible investigation of his private life, or issues in his private life that he might not like to be enquired into or investigated into. He replied:

"No, absolutely not. It was an opportunity for Mr. Mulcahy to bring forward his concerns that he had put forward to [Mr. Q] and for us to assess that in regards to any possible criminality that may be linked to that. But that was certainly not, from Mr. Mulcahy's point of view we didn't get a sense of that from him. It seemed to be more in the realms of his understanding around comments,
possible comments or alleged comments that were being put forward by colleagues. But certainly there was no indication to us, at that time, that there was any criminality. But he was afforded an opportunity, I remember him being afforded an opportunity to produce any evidence he may have because he did not bring any, he certainly brought nothing on the day of the meeting to us to support any of the allegations he was making, but he was afforded that opportunity."

3.2.2 He further characterised the meeting as a "very professional meeting" and commented "we were there purely to gauge from Mr. Mulcahy if there was any criminality being alleged in any of the allegations he was making."

3.3 Written Submissions on behalf of An Garda Síochána dated 19th August 2021

3.3.1 It was submitted on behalf of An Garda Síochána that no threats were made to Mr. Mulcahy at the meeting held on 21st December 2005 or at the subsequent meeting held on 17th April 2007. An Garda Síochána contended that the denial of Mr. Mulcahy's allegation was corroborated by members of An Garda Síochána who were present at these meetings.

3.3.2 An Garda Síochána submitted that it was significant that at the meeting on 17th April 2007 Mr. B was accompanied by Mr. A and Mr. C. They placed emphasis on the fact that on this occasion Mr. Mulcahy made no reference to the meeting of 21st December 2005 and therefore made no reference to either the issue of perceived threats or the suggestion that "there will be no going back" in the investigation.

3.4 Findings

3.4.1 The Inquiry found Mr. B to be a reliable witness who provided a credible account of his recollection of the meeting on 21st December 2005.

3.4.2 The Inquiry also had regard to Mr. B's contemporaneous note of the meeting.

3.4.3 The Inquiry considered the report Mr. B made to Mr. A dated 22nd December 2005. There was no reference in this report to any allegations made by Mr. Mulcahy in
respect of threats to his private life or that he was informed by Mr. B that "there will be no 'going back'".

3.4.4 The Inquiry also found Mr. AA to be a reliable witness. He provided a credible account that corroborated the information Mr. B provided to the Inquiry.

3.4.5 Mr. Mulcahy declined to participate in the hearings scheduled by the Inquiry.

3.4.6 Based on the information provided to the Inquiry in the form of the interviews of Mr. B and Mr. AA, the contemporaneous note of the meeting on 21st December 2005 taken by Mr. B and the report forwarded by Mr. B to Mr. C dated 22nd December 2005, the Inquiry does not find complaint 5(a) to be founded.
PART FOUR
Complaint 5(c) (part two)

"At the meeting of the 20th December 2007 Frank Mulcahy was threatened regarding an investigation into his 'private life'"

4.1 Mr. E

4.1.1 Inquiry Complaint 5(c) (part two) concerned an allegation that at a meeting on 20th December 2007 Mr. E threatened to investigate Mr. Mulcahy's private life.

4.1.2 In response to this allegation Mr. E stated to the Inquiry:

"I totally refute these nonsensical, outlandish, illogical and insulting accusations. I had 39 years garda service at that time, much of which involved complex criminal investigations. I considered myself to be a professional, impartial and highly competent investigator. Threats or trade-offs were not the way GBFI conducted their business. I again note that Mr. Mulcahy attributed this perceived threat to another member of GBFI investigation team at an earlier meeting in December 2005. He alleged that the member stated that his (Mr. Mulcahy's) private life would be open to investigation if he insisted on a full investigation. He stated the threat consisted of a trade-off."

4.1.3 He further commented:

"The meeting of the 20th December 2007, took place within a few weeks of my deployment to GBFI, as far as I can recall, it was held at the request of Mr. Mulcahy. The meeting was conducted in a professional, courteous and non hostile manner, as is the normal way of treating any member of the public. I am not aware of any aspect of Mr. Mulcahy's private life. I would like to add that the golden thread running through the entire documentation is that Mr. Mulcahy is continually striving to clear his name against the "fraudulent activity" reported to the gardaí on the 5th March 1999, by his former ISME directors. The gardaí function was to carry out an impartial criminal investigation, gather all available evidence and submit the completed investigation file to the DPP, seeking directions as to what criminal charge if any should be preferred. The clearing of Mr. Mulcahy's name was not part of that process."
4.1.4 Mr. E further stated when questioned by the Inquiry:

"But to me it's insulting because I spent all of life doing high level investigations and I never, ever had anything, any complaint and that to me is ludicrous. Wherever he's coming up with this 'trade-off' business, that doesn't make any sense to me, Judge and I can categorically state it didn't happen. I didn't say that because I wouldn't. I'd be very fair with people. I'd be straight with people. That particular meeting on the 20th of the twelfth, I was just barely in the Fraud Bureau, I had my feet under the desk and I went to the meeting at the behest of [Mr. D]. My knowledge of that investigation -- I went there to listen -- my knowledge, I wouldn't have all the minutiae of that investigation. Certainly I knew nothing about the '99 investigation and the 2005 investigation or, yeah it started years before I went in there to Fraud. So I wouldn't have knowledge of Mr. Mulcahy, or anything about his personal life and I never would have any knowledge of anybody's personal life. It wouldn't make any sense to me. And I was quite annoyed when I saw that written down by him and so much so that he said that I challenged him on it on the meeting of 5th March 2009 and he said, 'Oh', he said, 'that was said', that I was offering him a trade-off. The reason I challenged him was leading up to that meeting in 2009 he had put it into several e-mails. He was listing his complaints, he was blaming me one day and blaming [Mr. D] another day about things and that was one of the complaints he had. He listed it in several e-mails. So I had to, I challenged him on it, that that was an untruthful statement and document that he made and that was the height of it."

4.2 Other relevant witnesses

4.2.1 Mr. E's notebook entry from 20th December 2007 was furnished to Inquiry. It provided that in addition to Mr. Mulcahy being at this meeting, two civilian witnesses also attended at this meeting, Mr. W and Mr. Y.

4.2.2 As noted above. Mr. W is now deceased. The other civilian witness did not respond to the Inquiry's correspondence inviting them to attend an oral hearing in order to give any information that they might have.

4.2.3 As part of the disclosure furnished to the Inquiry from the CSSO the Inquiry had sight of an email dated 31st June 2008 from Mr. Mulcahy to Mr. C which referred to a meeting
between Mr. Mulcahy, senior Gardaí and the two civilian witnesses referred to in the preceding paragraph as well as one additional civilian witness, Mr. Z. As noted above the Inquiry wrote to Mr. Z inviting him to attend to give any information that he might have to the Inquiry. No reply was received to this letter.

4.3 Written Submissions on behalf of An Garda Síochána dated 19th August 2021

4.3.1 In their written submissions An Garda Síochána submitted that no threat was made to investigate Mr. Mulcahy’s private life at the meeting on 20th December 2007 and that Mr. E’s account should be accepted in full regarding this complaint.

4.3.2 It was further submitted that no member of An Garda Síochána took part in any unprofessional or unethical behaviour in their dealings with Mr. Mulcahy.

4.3.3 Finally, it was contended that there was no evidence of An Garda Síochána having any knowledge of the private affairs of Mr. Mulcahy and even if members of An Garda Síochána had such knowledge, such information would be of no relevance to the complaints under investigation.

4.4 Findings

4.4.1 The Inquiry found Mr. E to provide a credible account of his recollection of this meeting. He presented as having a clear recollection of events.

4.4.2 As is noted above, Mr. Mulcahy declined to participate in the hearings scheduled by the Inquiry.

4.4.3 The Inquiry did not have the benefit of the account the Mr. W, who is now deceased. Neither did the Inquiry have the benefit of the accounts of Mr. Y and Mr. Z.

4.4.4 Based on the information provided to the Inquiry in the form of the interview of Mr. E and the answers provided by him in response to the Inquiry's questions, the Inquiry does not find complaint 5(c) part two to be founded.
PART FIVE
Complaint 9(e)

"[Mr. C] in April 2008 promoted the 'excuse' that the bonus had been a mere provision and that the directors were entitled to change the accounts."

5.1 Mr. C

5.1.1 Mr. C told the Inquiry that in 2007 – 2008 he was a Detective Sergeant attached to the GBFI. He stated that one of the many files he investigated around that time was a complaint made by Mr. Mulcahy. He stated that he engaged the services of a forensic accountant attached to the GBFI.

5.1.2 He stated that a forensic accountant carried out an examination of the accounts and issued his findings. He stated that one of the conclusions drawn by the forensic accountant was that as the bonus was a provision, the directors were entitled to change the accounts accordingly. He stated that he relied on the expertise of the forensic accountant as a highly qualified accountant in coming to any conclusion in relating to accountancy matters. He commented:

"In one of my many meetings with Frank Mulcahy during the investigation I would have discussed [the forensic accountant's] finding and offered them as an explanation and not as an excuse for the director's behaviour."

5.1.3 In response to the Inquiry's questions Mr. C commented:

"I was very particular with Mr. Mulcahy because it was clear from the start that he had his own mindset in relation to how he felt, so I would have been very conscious of what I was saying to Mr. Mulcahy at all times and I promoted that as what I believe was the evidence from our sources, or my investigation. And my investigation, as I said before, I wouldn't have an accountancy background so I would have relied on [the forensic accountant]."
5.2  **Written Submissions on behalf of An Garda Síochána dated 19th August 2021**

5.2.1  An Garda Síochána submitted that Mr. C was entirely in order in relying on the forensic accountant in coming to a conclusion that the accounts as presented by the directors were in order.

5.2.2  An Garda Síochána submitted that the forensic accountant was the financial expert on such matters and it was absolutely correct and appropriate for Mr. C to rely on his expertise in this regard.

5.3  **Findings**

5.3.1  The Inquiry found Mr. C to be a credible witness. He gave a comprehensive account to the Inquiry at the hearing based on his recollection of events.

5.3.2  As is noted above, Mr. Mulcahy declined to participate in the hearings scheduled by the Inquiry.

5.3.3  The Inquiry finds that Mr. C acted appropriately in relying on the expertise of the forensic accountant in relation to this matter.

5.3.4  Based on the information provided to the Inquiry in the form of the interview of Mr. C and the explanations provided by him in response to the Inquiry’s questions, the Inquiry finds complaint 9(e) is not founded.
6.1 Conclusion

6.1.1 The Inquiry finds as a matter of fact that the email addresses Mulcahy101@eircom.net and Mulcahyfm101@eircom.net were blocked from 26th April 2007 until 28th November 2014. The Inquiry finds that as a consequence of this, Mr. Mulcahy could not contact garda email addresses using these two email addresses. The Inquiry finds complaint 4 is founded.

6.1.2 The Inquiry finds that complaint 5(a) wherein Mr. Mulcahy contended that in or about November 2005 at a meeting in Harcourt Street Mr. B advised that Mr. Mulcahy’s private life would be investigated as part of any full review, is not founded.

6.1.3 The Inquiry finds that complaint 5(c)(part two) wherein Mr. Mulcahy contended that at the meeting of the 20th December 2007 Mr. Mulcahy was threatened regarding an investigation into his “private life”, is not founded.

6.1.4 The Inquiry finds that complaint 9(e) wherein Mr. Mulcahy contended that Mr. C in April 2008 promoted the “excuse” that the bonus had been a mere provision and that the directors were entitled to change the accounts, is not founded.
APPENDIX

Garda Síochána Act 2005 (Section 42) (Special Inquiry relating to the Garda Síochána) (No. 5) Order 2017.

S.I. No. 200/2017

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 19th May, 2017.

WHEREAS I, FRANCES FITZGERALD, Minister for Justice and Equality, consider the matter specified in Article 2 of the following Order to be of public concern;

AND WHEREAS I have, in accordance with subsections (1) and (3A) of section 42 (amended by section 35 of the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015 (No. 49 of 2015)) of the Garda Síochána Act 2005 (No. 20 of 2005), consulted with the Policing Authority in relation to that matter;

AND WHEREAS I am of the opinion that the person specified in the said Article 2 has appropriate experience, qualifications, training and expertise for the purposes of the said section 42 to conduct an inquiry into the said matter of public concern:

NOW, I, FRANCES FITZGERALD, Minister for Justice and Equality, in exercise of the powers conferred on me by section 42 (amended by section 35 of the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015 (No. 49 of 2015)) of the Garda Síochána Act 2005 (No. 20 of 2005) (adapted by the Justice and Law Reform (Alteration of Name of Department and Title of Minister) Order 2011 (S.I. No.138 of 2011 )), and having consulted the Policing Authority, hereby order as follows:

1. (1) This Order may be cited as the Garda Síochána Act 2005 (Section 42) (Special Inquiry relating to the Garda Síochána) (No. 5) Order 2017.

(2) This Order shall come into operation on 15 May 2017.

2. Judge Patrick McMahon, retired judge of the District Court, is hereby appointed to—

(a) inquire into a matter of public concern, namely the Garda Síochána investigations into the accusations of financial irregularity made in 1999 against Mr. Frank Mulcahy, formerly of the Irish Small and Medium Enterprises Association (ISME), and

(b) make a report to the Minister on the conclusion of the inquiry.

3. The terms of reference of the inquiry are specified in the Schedule.

SCHEDULE

Terms of Reference
The inquiry should have regard to the following objectives of—

(a) reviewing the written material submitted to the Minister by and on behalf of Mr. Frank Mulcahy with a view to identifying the complaints made against the Garda Síochána;

(b) distinguishing between which complaints have already been investigated, whether by the Garda Síochána or the Garda Síochána Ombudsman Commission or another body, and which have not been investigated;

(c) having regard to objectives at (a) and (b), inquiring into such complaints that have not been investigated to establish whether or not the actions of the Garda Síochána (referred to in those complaints) were appropriate.

GIVEN under my Official Seal,


FRANCES FITZGERALD,

Minister for Justice and Equality.