

ALLEGATIONS OF HARASSMENT

Sir, we now turn to allegations made by members of the extended McBrearty family and their associates, that they were subjected to harassment by members of An Garda Síochána in the period after the death of Mr. Richard Barron in October, 1996. Paragraph (c) of the Terms of Reference requires the Tribunal to urgently inquire into:

Allegations of harassment of the McBrearty family of Raphoe, County Donegal and of relatives, associates and agents of that family by members of the Garda Síochána subsequent to the death of Mr. Barron including the issue and prosecution of summonses relating to offences alleged to have occurred between 28th October, 1996 and 28th September, 1998.

In the explanation of the Terms of Reference given by you Sir in public session of this Tribunal on 15th July, 2002, this Term of Reference was defined in the following way:

Under this heading it would appear that members of the McBrearty family of Raphoe, County Donegal have complained that certain Gardai in the Donegal area have singled them and their business out for special attention by conduct which could broadly be described as over-zealous performance of their duties, including the issue of numerous summonses alleging breaches of the Licensing Law in a licensed premises and surveillance of the premises in what is alleged to have been an oppressive manner. The Tribunal will interpret the word “harassment” as meaning a persistent or repeated improper use of power calculated to cause trouble, embarrassment, harm, torment or distress which may be effected and/or continued by acts or omissions on the part of an appropriate person to act when he should have acted. With regard to this paragraph, the Tribunal will interpret the term “the McBrearty family of Raphoe, County Donegal” in such a manner as to encompass persons who are members of the extended McBrearty family who consider that they have been subjected to harassment by members of An Garda Síochána because they have been identified as members of that family. The Tribunal will interpret the words “associates and agents” in the broader sense and will include in this group persons or bodies who appear to have been identified by members of An Garda Síochána as being associates or friends or agents of the family. In relation to this paragraph, the Tribunal will:

- (1) Establish the nature of the complaints of harassment made by the McBrearty family and the persons referred to in the Terms of Reference;**

- (2) Attempt to establish the basic facts in relation to each complaint;**
- (3) Establish the number and nature of summonses relating to offences alleged to have occurred between 28th October, 1996 and 28th September, 1998 issued by members of An Garda Síochána or other prosecuting authorities;**
- (4) Ascertain what is the standard Garda practice and procedure with regard to the issuing and management of summons cases;**
- (5) Ascertain whether there was a departure from the Garda practice and procedure in the making of the complaints leading to the issue of the summonses;**
- (6) Inquire into the alleged basis, evidential or otherwise, upon which members of An Garda Síochána applied for the issue of the summonses or recommended a prosecution or pursued a prosecution in respect of the said offences alleged in such summonses;**
- (7) Inquire into the course of the investigations made by members of An Garda Síochána in respect of each summons issued or applied for and inquire into the origin and basis of the members suspicion and/or conclusions as to whether an offence or offences had been committed;**
- (8) Attempt to identify the members of An Garda Síochána, if any, implicated in the complaint of harassment;**
- (9) Inquire into and determine whether the alleged harassment, the subject matter of the Terms of Reference, by members of An Garda Síochána, took place;**
- (10) If harassment did take place as alleged, identify (if possible) the reasons or motives for such conduct on the part of the person or persons responsible and why such conduct continued;**
- (11) Inquire as to the extent and/or level of knowledge within An Garda Síochána in respect of the facts relevant to the allegations of harassment and the steps, if any, taken in the light of such knowledge;**
- (12) Inquire into the role (if any) of the Director of Public Prosecutions in relation to the prosecution of the summonses or any other fact relevant to this Term of Reference;**

- (13) Inquire into the connection, if any, between this Term of Reference and any other Term of Reference;**
- (14) Consider the use of information in relation to the conduct of which complaint is made. In this regard the same approach outlined in Term of Reference (B)(3) will be applied;**
- (15) Consider whether standard Garda practice and procedure with regard to the initiation and management of prosecutions by summons contains adequate safeguards.**

This is a difficult section because one is not dealing with a single event, but rather with a series of events, which may or may not have been connected with each other, the cumulative effect of which series of actions, either singly or taken together, could be seen as constituting harassment of the McBrearty family, or their associates. We are of opinion that the areas of alleged harassment can best be examined under the following headings:

- (a) Enforcement of the liquor licensing laws and Road Traffic and Public Order legislation by means of inspections of the McBrearty's premises and by mounting checkpoints and other Garda activity, leading to the issuing of numerous summonses against members of the extended McBrearty family;
- (b) Other alleged acts of harassment by members of the Gardaí towards members of the McBrearty family generally;
- (c) The creation and distribution of defamatory leaflets, slogans, posters and business cards concerning the McBrearty family;
- (d) Abusive telephone calls and hoax bomb calls made to the McBrearty family;
- (e) The making of possibly false complaints to the Gardaí by members of the public alleging road traffic and other offences perpetrated by members of the McBrearty family;
- (f) Alleged harassment of Mr. William Flynn and Mr. Thomas Coffey the private investigators employed by the McBrearty family.

While it has been thought wise to break up the areas of alleged harassment into different categories for the purpose of this inquiry, two things should be borne in mind. Firstly, that much of the alleged conduct complained of occurred simultaneously. Therefore in considering whether such conduct constituted harassment, it is suggested that the Tribunal might reasonably take a global view of all the conduct dealt with in this module. Secondly, it should be borne in mind that some of the areas of alleged harassment could be seen as being connected with other matters of inquiry before this Tribunal. For example, it will become apparent that there was a connection between the alleged harassment of the McBrearty's business by means of inspections of the licensed premises and the issue of summonses consequent upon such inspections and the involvement of Mr. Bernard Conlon, which has been dealt with earlier in this preliminary opening statement.

It is the view of the Tribunal legal team that the key questions for determination by you Sir in examining this module are as follows:

- (a) Did the Gardaí by means of overt action in the form of inspections of the McBrearty premises, mounting of vehicle checkpoints and the issuance of summonses, engage in conduct which constituted harassment of the McBrearty family and, if so, by whom and why was such harassment carried out?
- (b) Did any members of An Garda Síochána have any involvement in any of the other types of conduct carried out by other persons, which could be seen as constituting harassment of the McBrearty family? If such involvement is found to have existed, it will be necessary to inquire into the motive for such conduct.
- (c) Did any members of An Garda Síochána attempt to harass Mr. William Flynn or Mr. Thomas Coffey, the private investigators retained by the McBrearty family, in the carrying out of their investigation on behalf of the McBrearty family?

The first area for inquiry is the allegation by Frank McBrearty, Snr., that he and his business were subjected to harassment at the hands of the Gardaí, who, it is alleged, carried out frequent inspections of his licensed premises in Raphoe. He also alleged that the Gardaí harassed his business by mounting frequent vehicle checkpoints in close proximity to his bar and nightclub premises. It is also alleged that the Gardaí harassed him by issuing numerous summonses against him and his family for alleged breaches of the liquor licensing laws and for alleged public order and road traffic offences. In order to properly understand the nature of this complaint, it is necessary to briefly examine the history of Mr. McBrearty's ownership of the licensed premises and nightclub in Raphoe. It would appear that Mr. McBrearty purchased a public house known as "The Parting Glass" in Raphoe in or about 1977. Over time he extended the premises by purchasing land on either side of the original premises. He added a ballroom and also built an extensive car park adjacent to the premises. It appears that he carried out extensive refurbishment of the premises. It has a number of separate bars and a nightclub. This was opened circa 1990. According to an affidavit, in High Court proceedings, sworn by Mr. McBrearty on 30th May, 1997, he stated that as licensee of the premises he had five convictions for liquor licensing offences in the period 1977 to 1997. He gave details of the following offences;

- (1) Conviction on 23rd January, 1986 for permitting intoxicating liquor to be consumed on the premises after hours at 11.35 p.m. on a Sunday night in July, 1985: in the affidavit it is stated that he was fined £10.00, but this is presumed to be a mistake and should read £100.00;
- (2) Conviction on 26th April, 1990 for permitting persons to be on the premises after hours at 3.10 p.m. on a Sunday afternoon in the month of October, 1989: He was fined £100.00;

- (3) Conviction on 25th October, 1990 for permitting intoxicating liquor to be consumed on the premises after hours at 1.15 a.m. on a Saturday morning in the month of May, 1990: He was fined £100.00;
- (4) Conviction on 23rd May, 1991 for permitting persons to be on the premises after hours at 1.15 a.m. on a Saturday morning in February, 1991: he was fined £100.00;
- (5) Conviction on 28th July, 1994 for permitting intoxicating liquor to be consumed on the premises after hours at 12.35 a.m. on 26th December, 1993: He was fined £200.00.

In the course of that affidavit, Mr. McBrearty, Snr., stated that he had maintained an orderly licensed premises and had been co-operative with the Gardaí in relation to the investigation of crime in the Raphoe area. He also stated that he had been particularly active in efforts to eradicate drug abuse in the locality. To an extent this was accepted by C/Supt. Dennis Fitzpatrick in a replying affidavit sworn by him on the 21st of April, 1997. At paragraph 11 of that affidavit he stated;

With regard to the good working relationship with the Gardaí, it is fair to say that the plaintiff (i.e. Mr. McBrearty, Snr.) has been reasonably co-operative in the past, in particular in the area of enforcement of the Misuse of Drugs Act, and in the investigation of assaults, both inside and outside the premises.

He goes on to state in the affidavit that this co-operation ceased after the death of Mr. Barron in October, 1996.

From the documentation available to the Tribunal legal team at present, it would appear that in the 19 years from 1977 to 1996, Mr. McBrearty operated his bars and nightclub in a lawful manner, save for the infrequent and somewhat minor convictions as noted above. It is against this background that one might consider the actions of the Gardaí in the period commencing January, 1997.

The gravamen of Mr. McBrearty's complaint was that the Gardaí, and particularly D/Sgt. John White and Gda. John O' Dowd, were harassing him by carrying out inspections of his premises on a very frequent basis. In a statement made to Supt. Forde on the 3rd of February, 1998, he articulated his complaint in the following manner;

I feel that the Gardaí have harassed myself, my staff and especially my business and customers and in particular in the period January, 1997 to August, 1997. My bar manager kept a record of Gardaí visits to our premises. Our solicitors, V. P. McMullin & Co, told us to do that. I had gone to the solicitors and told them that we were being harassed. I wanted to get an injunction against the Guards to stop undue harassment by the Gardaí. The solicitors said that we had to have evidence. I have been shown by you a copy of the record. It is marked Appendix "C". This book has been put together from notes made

by me and my staff on the nights. It was typed up by Billy Flynn of Zimmerman & Co. International Ltd. My complaint is that the Gardaí are inspecting my premises much earlier than any other similar premises in the county. They would come in and stand in my premises for two hours with two Gardaí at each bar. Sgt. John White and Gda. John O' Dowd are the principal ones. There have been other Gardaí as well. The other Gardaí were only doing what they were told. The Gardaí also performed checkpoints outside my premises and diverted traffic through the terraces. They said they diverted the traffic for public safety. This adversely affected my business. I considered it harassment. The checkpoints didn't go up until 11.30 p.m. or 12 m.n. The buses and taxis couldn't get up the street to collect their customers. Because of this the customers were hanging around on the streets and a certain number of fights and disorder occurred. There were incidents where people were put out of my premises for misbehaviour.

D/Sgt. White would follow them and he would try and get them to make statements against us. Some of them did, there is one girl in particular. He tried to get her to make a statement against the stewards and against me. He said that he would get a lawyer in Dublin for her. She is Catherine Kelly of William Street, Raphoe. My clientele is all over 25 on a Saturday night. Some of the top policemen in Ireland have visited my premises and danced in it, from Garda right up to Superintendent. Supt. Kevin Lennon and his wife have been in my premises on 4 or 5 occasions. This would be a Saturday night on Country & Western nights. Previous Gardaí and senior policemen have recommended me on the way I ran my premises and you can go back as far as you can go. I have always co-operated with the Gardaí.

A record or diary of these visits was kept by staff at the premises for the period January, 1997 to the end of July, 1997. Most of the entries were made by Mr. John Mitchell, the bar manager. A typed transcript of the entries in this diary has been made available to the Tribunal legal team. The diary records a total of 138 inspections by the Gardaí. The inspections were almost exclusively on weekend nights, with often more than one inspection per night. Complaint was also made that on many occasions the Gardaí would remain on the premises for an extended period of time.

From the documentation furnished to the Tribunal, it would appear that the Gardaí did not keep any record of inspections of licensed premises in Raphoe prior to January, 1997. However it appears that an Inspection Book was introduced in that month. The Tribunal legal team has seen a copy of the entries in the Inspection Book for the period January, 1997 to July, 1997. It shows a total of 128 inspections of the McBrearty premises, including the nightclub. This can be compared with the number of inspections of other premises in Raphoe. The Inspection Book showed 51 inspections of both the Súile Tavern and the Town and Country Bar, 44 inspections of the Tir Chonaill

Bar, 30 inspections of the Central Hotel, 25 inspections of the Idle Hour pub and 9 inspections of Rafter's pub, for the same period.

The Carty investigation team looked at a more extended period. They noted that between December, 1996 and September, 1998, there were 214 inspections of the McBrearty's premises. They noted that in that period 112 summonses were issued against the McBrearty family, in respect of which 89 summonses related to alleged breaches of the liquor licensing laws, 18 referred to public order offences and 5 concern road traffic offences. They noted that the summonses represented a total of 25 cases. In respect of these D/Sgt. White and Gda. John O' Dowd were witnesses in 18 of the cases. They also noted that on one occasion 3 summonses in respect of alleged public order offences were issued against Frank McBrearty, Jnr., over a 9 minute period. The hearings in respect of these matters were adjourned from time to time, until eventually on 21st June, 2000, all the summonses were withdrawn by direction of the DPP.

The main focus of the McBreartys' complaints, in relation to inspections of their premises, seems to be confined to the period January, 1997 to July, 1997. According to Mr. John Mitchell, the bar manager, the alleged harassment by the Gardaí by means of frequent inspections ceased after July, 1997. In a statement furnished to Supt. Forde on 4th February, 1998, he stated the following in relation to the vehicle checkpoints:

On weekend nights, the Gardaí would set up a checkpoint approximately 100 yards from Mr. McBrearty's premises on the Diamond side of the town, commencing at about 11 p.m. and all traffic coming into the town would be stopped. This would continue to about 12, midnight or afterwards on some occasions. It is my opinion that Mr. McBrearty's premises was affected by these checkpoints. Shortly after 2.00 a.m. the Gardaí would set up two checkpoints, 100 yards on either side of Mr. McBrearty's premises. They would stop all cars coming out of the car parks. All of these cars, the occupants of which would be patrons of Mr. McBrearty's nightclub. It is my opinion that the Gardaí were harassing our customers so that they wouldn't return to our premises again. I wish to state that there have been no checkpoints set up near our premises since 25th/26th July, 1997. The situation has changed drastically with regard to Gardaí visiting our premises since July, 1997, to enforce the licensing laws. We are not getting any undue harassment since July, 1997.

These allegations of harassment have been the subject of comprehensive statements furnished by the Gardaí, both in the course of interlocutory proceedings before the High Court and in statements made to the Garda Síochána Complaints Board. In essence, the Garda case is that from about 1994 onwards, a large public order problem developed in the town of Raphoe. In a statement dated the 15th of April, 1998, Supt. Kevin Lennon stated that after the closure of the Point Inn at Quigleys Point, County Donegal, the "rave" scene transferred to "Frankies" nightclub in Raphoe. He stated that a large

number of young people were coming into the town to attend the disco. He stated that there was a high level of drug abuse, with the commission of numerous assaults and public order offences by persons who had been attending the nightclub. He made the following comments by way of comparison between the level of police activity in Raphoe and in other towns in County Donegal:

It has been suggested by Mr. McBrearty, the complainant, that other towns such as Letterkenny have not got the same policing attention as has his premises. Letterkenny is known generally as the Mecca of social life in the North West. There are a total of 7 nightclubs in the Letterkenny town area, which in total attract on any weekend night between 7,000 and 8,000 patrons. In addition 4 out of the 7 nightclubs referred to trade 5 to 6 nights per week as opposed to Mr. McBrearty's 3 weekend nights. I can advise you in comparison to the crowd capacity of the said 7 nightclubs in Letterkenny, there is at total of 31 assaults reported which can be attributed to nightclub activity. This is in comparison to 31 recorded assaults attributed to Mr. McBrearty's over the same period. In Letterkenny town area arising from the crowd management policy of the Garda and law enforcement in the Letterkenny area a total of 531 prosecutions are recorded for public order offences. Out of a total of 228 inspections of licensed premises in Letterkenny for 1997, 26 prosecutions ensued. This is a measure of the degree of compliance with the law by publicans in Letterkenny. In comparison with Raphoe, I considered Ballybofey, which has two nightclubs trading and for the same period of 1st January, 1997 to 31st March, 1998 there were 18 minor assaults recorded as attributed to nightclub activity. There were 183 Garda inspections of licensed premises for the period of which 17 resulted in prosecution. In reaching these comparisons with the number of venues and population, I conclude that the assault statistics in relation to the sole activities of Frankies Nightclub are far in excess of the average of 4 attributed per club in Letterkenny and 9 in Ballybofey. In reaching this conclusion one must give due regard to the crowd numbers at Letterkenny and Ballybofey which are on average eight times higher in Letterkenny and twice as high in Ballybofey per night social population.

Elsewhere in the statement he stated that Mr. McBrearty had installed a CCTV system, which he used to enable staff to monitor the arrival of Gardaí at the premises. He alleged that the shutters would be pulled down immediately prior to the arrival of the Gardaí and that immediately after the departure of the Gardaí from the premises, the shutters would be raised again. He stated that there was evidence from Sgt. Noleen Griffen who had attended on the premises on dates in April, 1997 and May, 1997 and had taken a video recording of after hours trading in the premises.

In an affidavit sworn on 21st April, 1997, C/Supt. Dennis Fitzpatrick stated that there was a serious public order problem in Raphoe. He also stated that there had been a number of serious assaults on the McBrearty premises. He stated that on 30th December, 1996, Mr. Edward Moss, had been seriously injured by Frank McBrearty, Jnr., during an assault on the premises. He stated that proceedings were pending at that time. Mr. McBrearty, Jnr., was subsequently acquitted of the charge of assaulting Mr. Moss. Chief Superintendent Fitzpatrick went on to state that on 26th January, 1997, a doorman employed at the premises had dragged a patron, Ms. Catherine Kelly from the premises and threw her into the street causing her injury. He also alleged that on 1st March, 1997, a Mr. Rory McCullagh was assaulted on the premises. He alleged that on 10th March, 1997, a Mr. Jonathan Minnock was seriously assaulted by another patron at the premises and that the stewards failed to take any action. He alleged that on 23rd February, 1997, Mr. McBrearty, Snr., had obstructed Gardaí and attempted to prevent them from entering the car park. He also alleged that on 10th February, 1997, a man was questioned in relation to the possession of 4 LSD tablets while on the premises. He stated that on 23rd March, 1997, D/Sgt. White was physically assaulted by a patron on the premises.

In a replying affidavit sworn by Mr. McBrearty on 30th May, 1997, he stated that although Mr. Moss had settled his claim with the McBrearty's and had been paid compensation, that when he tried to withdraw his complaint made to the Gardaí, Sgt. John White prevented him from so doing. He also alleged that Ms. Catherine Kelly was removed from the premises but not in the manner alleged by C/Supt. Fitzpatrick, but was expelled in a dignified manner, and that this was done for her own safety due to the fact that there appeared to be a serious family dispute emerging between her and other members of her family. He stated that D/Sgt. White had subsequently gone to Ms. Kelly and tried to entice her to make a complaint against Mr. McBrearty and the doorman and he alleged that D/Sgt. White had told her that if she did so, he would put her in touch with a firm of solicitors in Dublin who would mount a claim on her behalf and that she would receive money from Mr. McBrearty. Mr. McBrearty exhibited a letter from Ms. Kelly formally withdrawing any complaint that she had made against him. He went on to deal with the other allegations of assault contained in the C/Supt's affidavit. He went on to state the following in relation to the number of vehicle checkpoints:

Checkpoints are set up every weekend outside or approximate to the plaintiffs premises which is completely contrary to the conduct and action of the defendants up until the arrival of D/Sgt. White and furthermore the checkpoints would last for a period of 1 hour at a time and would return and be set up outside the plaintiffs premises on a number of occasions throughout the evening and night.

Sgt. John White swore an affidavit in the proceedings before the High Court. This affidavit is dated 23rd January, 1997 but it is presumed that this is a mistake and should read 23rd June, 1997. In this affidavit, D/Sgt. White states that it was due to the increase in levels of crime and public order offences in

the Raphoe area, that he was transferred to Raphoe as a Sergeant. He stated that on arrival in the area, he met with the publicans in the town and informed them that from that time on, the liquor licensing laws would be strictly enforced. He stated that with the exception of Mr. McBrearty, Snr., all the publicans were positive in their response to this Garda initiative. He stated that Mr. McBrearty received the same treatment as other publicans in the area. He stated that vehicle checkpoints affected all the licensed premises equally. He stated that the checkpoints were usually placed around the Diamond in Raphoe. This was close to other licensed premises as well as being close to Mr. McBrearty's premises. He stated that there were no complaints from other publicans in relation to the checkpoints. He denied that there was any intention to victimise Mr. McBrearty, Snr. In the course of the affidavit he exhibited a letter dated 19 June, 1997 signed by Mr. Jim McGranaghan on behalf of the Raphoe Diamond Traders Association wherein Mr. McGranaghan stated:

The residents of the Diamond and the traders are delighted at the presence of the Gardaí in town, especially at weekends. We look forward to your continued presence in the town and thank you for the help of the local Station.

D/Sgt. White denied that the Gardaí had used the enforcement of liquor licensing laws as an attempt to get Mr. McBrearty to admit the involvement of members of his family in the death of Mr. Richard Barron. He stated that the McBrearty's were harassing members of the Barron family and in this regard he exhibited a letter from Ms. Geraldine McElwee, the daughter of the Late Mr. Barron, dated 19th June, 1997. In this letter she complained of intimidation and rude gestures being made toward her and members of her family by members of the McBrearty family. D/Sgt. White also made reference to the CCTV system and stated that Mr. McBrearty had installed it so as to enable bar staff to be alerted to the imminent arrival of the Gardaí at the premises. He stated that on many occasions the McBrearty's continued to serve alcohol after the Garda raid. In relation to the number of prosecutions which were pending at that time against Mr. McBrearty, Snr., D/Sgt. White stated at paragraph 13, "I made it clear to all publicans in the Raphoe area that I would not tolerate breaches of the liquor licensing laws. Mr. McBrearty refused to accept that he must comply with the liquor licensing laws and that is the reason there are a number of prosecutions pending".

D/Sgt. White denied any desire on his part to destroy Mr. McBrearty's business. He stated that he had not known Mr. McBrearty, or his family, until his arrival in Raphoe. He stated that Mr. McBrearty refused to co-operate in relation to running his premises in accordance with the liquor licensing laws. He denied that he put any pressure on any persons to bring claims against Mr. McBrearty and made particular reference to Mr. Edward Moss. He stated that he had not met Mr. Moss until 21st January, 1997 when he called to Raphoe Garda Station. This was apparently with a view to withdrawing his statement. His solicitor, Mr. Fahy, had already written informing the Gardaí that he wished to withdraw the statement. He stated that when Mr. Moss arrived at the Station, he was somewhat confused as to whether or not he

wished to withdraw the statement. D/Sgt. White denied that he put any pressure on him not to withdraw the statement. D/Sgt. White stated:

I did not prevail on Mr. Moss to repeat his statement of complaint under threat of prosecution if he did not do so. The fact of the matter is that Mr. Moss is the injured party in this case and he is anxious that the matter proceed in the Criminal Court. ...

I emphatically deny the suggestions or inferences that the Gardaí are using the Road Traffic legislation and Licensing Laws in order to investigate the death of Mr. Richard Barron. I and other members of the Gardaí are using that legislation for the purpose for which it was intended. The Gardaí have enforced the law in a reasonable and fair manner to all persons in the Raphoe area, including Mr. McBrearty. However, Mr. McBrearty is a person who wishes to impose his standards and views on all others, and he appears unable to accept the enforcement of, in particular, the liquor licensing laws.

Included in the papers, which have been furnished to the Tribunal, is a draft of a further supplemental affidavit of Mr. McBrearty, which was unsworn. In that draft affidavit, he states that Raphoe was getting a level of Garda activity not seen elsewhere in Donegal. Mr. McBrearty stated that he had always complied with the liquor licensing laws and had applied for extensions for Saturday nights, when this was not done by other publicans, who merely kept their premises open without authority. He stated that the checkpoints were set up approximately 50 meters either side of his premises. He stated that it was therefore untrue to state that the checkpoints applied equally to other licensed premises in Raphoe. He stated that the other six pubs in the town were largely unaffected by the checkpoints. He denied that there were any breaches of the liquor licensing laws at his premises. He stated that D/Sgt. White had put pressure on Mr. Moss to bring a claim against him and he referred to an alleged letter from the solicitor acting for Mr. Moss wherein it was claimed of D/Sgt. White "you have been continually harassing him (i.e. Moss) by telephone".

The application seeking an interlocutory injunction did not proceed before the High Court. It was withdrawn by Mr. McBrearty on the morning of the hearing. The Tribunal legal team is not aware as to the circumstances which surrounded the withdrawal of this application. It is not known whether any agreement, tacit or otherwise, was reached between the parties. It is noted however that an instruction was issued subsequently by Sergeant Joseph Hannigan which appears to be dated 25th July, 1997 and was in the following terms:

Re: Inspections of Frankie's Nightclub:

I have received instructions from Superintendent Lennon on this date that the premises of Frank McBrearty are to be inspected once each night for the next few weeks. Multiple visits are not to be made. Inspections should be carried out at a time when it is

likely that offences are being committed. Members on visits should note whether food is being served etc. The District Officer states that he is not “going soft” on McBrearty but that members should concentrate for the moment on public order. Sergeants or in their absence the local member should continue to write up a comprehensive report in the Occurrence Book of each night’s events (Friday, Saturday and Sunday nights).

For your information and compliance please.

Sergeant Joseph Hannigan.

It is noted that insofar as Mr. Mitchell was concerned, he had no complaint in relation to Garda inspections of the McBrearty premises after the month of July, 1997. On 30th October, 2002, the Tribunal legal team was furnished with a large volume of documentation by the Garda authorities. Among the papers submitted were a number of statements from Gardaí who had carried out inspections of the McBrearty premises. All of these Gardaí denied that there was any campaign mounted to victimise or harass Mr. McBrearty by means of carrying out inspections of his premises.

There is also a comprehensive statement from D/Sgt. John White in response to a complaint lodged by Mr. McBrearty with the Garda Síochána Complaints Board to the effect that the Gardaí were harassing his business. In the course of this statement D/Sgt. White goes over much of the ground that was already covered in his affidavit sworn in the proceedings before the High Court. In essence, he was putting forward the argument that there was a serious public order problem in Raphoe at the time and that Mr. McBrearty and his staff were un-co-operative with the Gardaí in their efforts to deal with the problem. In addition, he stated that Mr. McBrearty and his staff were consistently flouting the liquor licensing laws. It was for this reason that it was necessary for the Gardaí to take the actions that they did in relation to raids on the premises and the imposition of vehicle checkpoints in the area. He also dealt with the fact that Mr. Edward Moss had accepted compensation from Mr. McBrearty in the sum of £15,000.00 and stated that he was of opinion that the acceptance of this money was not in the best interest of Mr. Moss. He stated that Mr. Moss was anxious that the criminal prosecution should proceed. He denied putting any pressure on Mr. Moss not to withdraw his statement. He also dealt with the occasion when he was assaulted on the premises by a patron. He stated that some time later, when this patron was arrested, he was discovered to have £300.00 in crisp new notes on his person. This man could not account for where he had obtained these notes. He stated that this person was a single unemployed person. He speculated that this person had been paid by Mr. McBrearty to obstruct and assault him on that Sunday morning 22nd March, 1997. He stated that he had encountered numerous difficulties when attempting to inspect the McBrearty premises. He also referred to a covert video taken by Sgt. Noleen Griffen in April, 1997, which showed after hours drinking at the premises. The video had been furnished to the Garda Síochána Complaints Board and a copy thereof has been furnished to the Tribunal. In relation to the number of inspections carried out at the

McBrearty premises, he stated that all inspections were carried out in a legal manner and were included in the Inspection Book. He stated that, as can be seen from the entries in the Inspection Book, all other licensed premises in the Raphoe sub-district received similar attention. He stated that he had not received any complaints from other publicans in relation to the level of Garda activity. He stated that one publican, the owner of "Biddy Friels" pub, had stated in the Donegal People newspaper dated 14th May, 1997 that he did not have a problem with the Gardaí inspecting his premises. D/Sgt White stated that while the arrival of the Gardaí for the purpose of carrying out an inspection of a public house, was not always a welcome sight for the owners of such premises, they were always treated with respect. He stated that in contrast, when inspecting the McBrearty premises they were treated with derision by most but not all of the staff.

There is also a document, which is material to this question, which was drawn up by D/Sgt. White on 2nd July, 1997. This document is headed "Policing of Raphoe on Weekend Nights". A complaint was lodged by Mr. McBrearty, Snr., in relation to the content of this document which was dealt with by the Garda Complaints Board under file reference 990620. In the document D/Sgt. White states that in the month prior to 2nd July, 1997, management at Frankies Nightclub had introduced a special offer on Friday nights whereby the entry fee was reduced from £5.00 to £1.00 and all drinks in the nightclub were £1.00 each. There was also a "Happy Hour" between 20.30/21.30 hrs. in the pub portion of the premises where all drinks were £1.00. It is stated in the document that Mr. McBrearty, Snr., laid on buses to transport people free of charge from Derry, Strabane, Castlederg and Letterkenny. The document states that approximately 1,000 patrons attended on 27th June, 1997. These were mostly aged between 18 and 25 years. In June, D/Sgt. White had decided that extra Gardaí were needed to police the town at these times. He stated that it would be necessary to have one Sergeant and six Gardaí present. However, he states that on 20th June, 1997 there was total confusion in the town at 02.00 hrs. when 1,000 patrons exited the club and taxis were waiting and there were only three Gardaí present. He drew up an operational order so as to ensure that there would be proper Garda levels in the town on future dates. The plan was put into place for the following weekend. He stated that on 28th June, 1997, when the crowd emerged, many were intoxicated and, simultaneously, there were several fights at the entrance to the nightclub. He said prisoners were taken by the Gardaí but, due to a deterioration in the mood of the crowd present, Sgts. Hannigan and White decided to release the prisoners and deal with them by means of summons. He stated that reinforcements were requested and arrived within 30 minutes. However there were innumerable breaches of the Public Order Act. He states his opinion for the reasons as to why the area was so troublesome on the night, as follows,

- (a) The size of the crowd,
- (b) The large number of patrons attending from Northern Ireland,
- (c) The drunken state of patrons due to the availability of cheap alcohol,
and

- (d) The fact that management and staff were criticising Gardaí within the hearing of the crowd.

In the document he stated that Mr. McBrearty, Snr., had said that if the Gardaí did not lay off, he would terminate the Country & Western nights on a Saturday and bus in 1,500 people on a Saturday evening and supply them with cheap drink until the Gardaí relented in their implementation of the liquor licensing laws. He went on to assert that the members inspecting the McBrearty premises found themselves subject to verbal abuse and threats at the hands of management and staff. This was dealt with by the issue of summonses under the Criminal Justice (Public Order) Act, 1994. In the document, he goes on to state that in May, 1997, undercover Gardaí saw frequent breaches of liquor licensing laws in McBrearty's premises with patrons being served alcohol until 01.50 hrs. on a Sunday morning with the shutters being closed moments prior to the arrival of the Gardaí. D/Sgt. White alleged that covert surveillance was the only method of detecting breaches of the liquor licensing laws due to the fact that Mr. McBrearty had installed a CCTV system both inside and outside the premises and therefore knew of the arrival of the Gardaí.

It should be noted that Mr. McBrearty, Snr., through his solicitor at the time, Mr. Ken Smyth of Binchys Solicitors, had attempted to lodge a complaint on 18th March, 1999, in relation to this document drawn up by D/Sgt. White. However, this complaint was deemed inadmissible by the Chief Executive of the Garda Síochána Complaints Board on the grounds that the conduct complained of did not constitute an offence or a breach of discipline. In addition, the Chief Executive was of the opinion that the document referred to in the complaint was internal Garda correspondence and, as such, was not intended for public use. This decision was appealed to the Garda Síochána Complaints Board. However, on 27th August, 1999, the Board confirmed the decision of the Chief Executive and ruled that the complaint was inadmissible.

Agreement with the view put forward by Supt. Lennon and D/Sgt. White is gained from the report made by Insp. Philip Lyons in respect of the offences, which took place in Raphoe on the nights of Friday 4th and Saturday 5th July, 1997. In a document bearing the title "Public Order Policing – Raphoe on the nights of Friday 4th and Saturday 5th July, 1997", dated 8th July, 1997, Insp. Lyons gave a graphic account of a very serious public order problem that ensued when the crowd exited from McBrearty's nightclub on the nights in question. He stated as follows in the conclusion/recommendation section of that report:

Without exaggeration the scene at Raphoe between 2 a.m. and 3.30 a.m. on Friday night/Saturday morning was the most serious I have ever witnessed in relation to a licensed premises. It cannot be denied that all of the trouble emanated from the abuse of the Special Exemption granted to Frankies Nightclub. Two of the five persons arrested were aged 15 and 16 years. (Name of girl), the girl who was injured was only 16 years. All were drunk from drink supplied on the premises. From my observation, drunkenness of

an extreme nature was permitted on the premises. Of the three persons seriously injured, one was assaulted by a staff member, one was denied medical and Garda assistance and spirited away, taken to hospital and the third was a 16 year old girl supplied with brandy at £1.00 a time. As regard Saturday night Mr. Mitchell made no effort to deny that he ignored the licensing laws and was brazen in his attitude.

Overall I feel that the situation in Raphoe on a Friday night needs urgent and high profile attention. If it develops further then anything, including serious injury and death is possible. I recommend that consideration be given to the following remedies:-

- (a) Object to renewal of Mr. McBrearty's liquor licence,**
- (b) Object to any special exemptions for a Friday night,**
- (c) Carry out an inspection on a Friday night for under age admittance, etc. (this would pose problems and require major manpower).**

I further recommend that consideration be given to prosecuting Mr. F. McBrearty for the offences as disclosed in this report in respect of Friday and Saturday night.

Finally I wish to state that Mr. McBrearty spoke with me on Sunday morning the 6th July last and agreed that what transpired outside his premises on the previous Friday would not be tolerated. He said that from next Friday onwards that admission and drinks would return to normal prices and that buses from certain areas that carried troublemakers would be cancelled.

For your information.

Signed: Inspector Philip Lyons.

In summary, the Gardaí concerned make the case that the number of inspections of the premises, the number of vehicle checkpoints and the ensuing number of summonses which were issued against members of the McBrearty family, did not constitute a campaign of harassment against the McBrearty family, but were a necessary Garda response to a serious public order problem that existed in Raphoe at the time. They maintain strongly that the problem was caused or contributed to by virtue of the fact that Mr. McBrearty was consistently flouting the liquor licensing laws. Mr. McBrearty's case is that he was an ordinary, law-abiding publican but that he was singled out for abuse and subjected to harassment through misuse of Garda powers.

In order to resolve this conflict, it will be necessary for you Sir, to hear evidence from all of the relevant parties. It will also be necessary for you to hear evidence for comparative purposes as to Mr. McBrearty's record prior to

1996 in relation to his management of the licensed premises. You will also have to have regard to comparative statistics for other towns in Donegal. It is only with the benefit of such evidence, that you will be able to determine whether there was a public order problem in Raphoe at the time, or a problem in relation to observance of the liquor licensing laws by Mr. McBrearty and his staff, which might be asserted to have justified the level of attention to which the McBrearty premises was subjected in the relevant period.

It is not possible to deal further with the question surrounding the issue of the summonses at the present time. The Tribunal legal team does not have a copy of the summonses or the witness statements grounding same. This aspect will be dealt with after further investigation.

The second area of alleged harassment concerns complaints by members of the McBrearty family that members of the Gardaí were carrying out their duties toward them in a manner that constituted harassment of them. While numerous complaints were lodged by members of the McBrearty family with the Garda Síochána Complaints Board, not all were the subject of investigation by the Board, as some were lodged out of time, i.e. more than six months after the date of the conduct complained of and in others, the complainants refused to co-operate with the Garda officer who was appointed to investigate their complaint. Where the Gardaí against whom a complaint was made were not given the opportunity to respond to an allegation, they will not be identified in this preliminary opening statement. Some of the complaints could be seen as being somewhat minor in nature. However, if established in evidence, it is arguable that they show a pattern of conduct between some Gardaí and some members of the McBrearty family, which cumulatively could amount to harassment. The following is a summary of the complaints lodged, which might be deemed to constitute harassment of certain members of the McBrearty family.

On the 10th of May, 1997, Frank McBrearty, Snr., lodged a complaint that at 00.55 hrs. on that date, at a vehicle checkpoint in Raphoe, D/Sgt. White had said to him that the best thing for his son to do was to go to the station and to admit the murder of Mr. Richie Barron. It was alleged that D/Sgt. White had also tried to take the keys of the car. It was alleged that this happened in the presence of Mr. McBrearty's 11-year old daughter who was upset by the incident. It was alleged that Gda. O' Dowd was with D/Sgt. White at the time of the incident. D/Sgt. White and Gda. O' Dowd both made statements to the Investigating Officer (I.O.), C/Supt. Carey denying the conduct alleged against them. They stated that Mr. McBrearty drove through the checkpoint a number of times and was very aggressive and was swearing at the Gardaí. The I.O. interviewed Mr. James McGranaghan who said that he saw Mr. McBrearty passing through the checkpoint a number of times and swearing loudly at D/Sgt. White. The I.O. stated that there were conflicting versions of what transpired. He stated that the independent evidence, in so far as it went, supported the Garda version. He did not believe that there was any evidence to support any action against D/Sgt. White. In his report, the Chief Executive stated that he was of opinion that on the balance of the evidence Mr. McBrearty was acting provocatively and aggressively and he thought it was reasonable to accept D/Sgt. White's version of events as being the more credible. He recommended that the Garda Síochána Complaints Board should form the opinion that no offence or breach of discipline was disclosed. This complaint was withdrawn from the Board prior to any final determination being made thereon. The withdrawal of complaints is considered fully under paragraph (j) of the Terms of Reference.

On 14th May, 1997, Mrs. Patricia McBrearty made a complaint that Gda. P. Kilcoyne and D/Sgt. John White had come to her house late at night at 22.45 hrs., for the purpose of serving a summons on her husband, Frank McBrearty, Jnr. She stated that when she refused to take the summons, they threw same into the hallway and then drove away blowing the car horn loudly. She stated that D/Sgt. White pushed the summons into her

face and said "you take these summonses now or I'll sort you out, just like I am going to sort your husband out". D/Sgt. White made a report to the I.O. in which he stated that he had gone to the complainant's house at 22.42 hrs. for the purpose of serving the summonses. He stated that the downstairs lights were on at the time. He stated that he had told Gda. Kilcoyne to serve the summons. He states that he only partially got out of the car and put one foot onto the driveway and told Gda. Kilcoyne to leave the summonses with Mrs. McBrearty. He stated that he then sat back into the driver's seat of the car. He denied that either he or Gda. Kilcoyne behaved improperly at the time. He denied that he had any conversation with either of the McBrearty's on that visit. Gda. Kilcoyne also made a statement to the I.O. in similar terms to that given by D/Sgt. White. He stated that he had carried out his duties with the greatest respect and courtesy toward Mr. and Mrs. McBrearty. The I.O. in his report, noted that the summons only became available for service earlier that day. He stated, that given D/Sgt. White's "efficiency and professionalism", it was not surprising that he elected to serve the summonses as soon as possible. He was of opinion that service of a summons up to 23.00 hrs. was permissible. In his report the Chief Executive stated that it was very difficult to determine where the truth lay in relation to this complaint. He questioned why D/Sgt. White decided to serve summonses coming up toward 23.00 hrs. He suggested that the Board should defer consideration of the matter until all investigations into the complaints were complete. He recommended that D/Sgt. White should be invited to make representations to the Board as to why he had chosen to serve the summons at a late hour. This complaint was withdrawn before any determination thereon was made by the Board.

Mark McConnell lodged a similar complaint with the Garda Síochána Complaints Board alleging that D/Sgt. White had served a summons on him at 23.45 hrs. at his home on 15th April, 1997. He stated that when he told D/Sgt. White that he should not be serving summonses at that late hour as his wife had been in a psychiatric hospital, he alleged that D/Sgt. White replied that it was guilt which had put her there. Mr. McConnell stated that he said to D/Sgt. White that it would be proven that they had no part in the murder of Richard Barron, at which D/Sgt. White is alleged to have replied "I don't think so but I'll shake your hand if you prove me wrong". It was alleged that D/Sgt. White and Gda. O' Dowd drove off the property laughing. Mr. McConnell alleged that his wife was very upset by this incident. The I.O. took statements from the complainant and also from his wife and from her mother. These corroborated the account given by the complainant. A statement was also obtained from D/Sgt. White in which he claimed that the complaint was made a month after the date of the alleged incident. He implied that it was part of a vendetta or conspiracy by the McBrearty family and others against him. He denied that the incident occurred at 23.45 hrs. and said that it had in fact occurred at 22.45 hrs. He said that the downstairs lights were on at the time and that he could hear the noise of the television playing. He denied that he banged loudly on the door. He stated that Mr. McConnell was somewhat of a "night person" who played in a band and would often be up late at night. Gda. O' Dowd made a statement in which he corroborated D/Sgt. White's statement in relation to the time and the fact that lights were on downstairs in

the house. He stated that no complaint was made at the time by Mr. McConnell in relation to the hour at which the summons had been served. The I.O. stated that the complaint was not made until 14th May, 1997. He noted that the Station record made on the night supported the Garda version. He believed the Garda version of events. The Deputy Chief Executive stated that in his view it was at least inconsiderate and perhaps an abuse of authority to call to the house at that hour of the night. He recommended that the Board should form the opinion that a minor breach of discipline on the part of the members may be disclosed. He recommended that they should be invited to make representations to the Board under Section 7 (4) of the Act. It is not clear if this was ever done as the next correspondence on the file deals with the withdrawal of the complaint.

On 20th May, 1997, Mark McConnell made a complaint that on 16th March, 1997, a named Garda had stared at him in a nightclub and made actions as if hitting someone over the head. It was alleged that this was done in an attempt to provoke a row. It was further alleged that two named Gardaí later stared at the complainant and acted in an intimidatory manner toward him. Sir, the Gardaí against whom complaint was made have not been named in this statement due to the fact that this complaint was deemed inadmissible and therefore the actual content of the complaint was never put to the Gardaí concerned.

On 14th May, 1997, Michael McConnell made a complaint that on the previous day at 23.45 hrs. a named Garda had called to the house for the purpose of serving a summons on him. He stated that he was not in at the time. However, his mother and sister-in-law, Roisín McConnell were there and both were in a state of bad health. He complained about the late hour at which service had been attempted. Again, the Garda against whom the complaint was made has not been identified due to the fact that this complaint was deemed inadmissible by the Chief Executive and accordingly the content of the complaint was never put to the Garda concerned.

On 7th July, 1997, both Willie Logan and Mark McConnell lodged complaints concerning the conduct of D/Sgt. White toward them as they left the nightclub earlier that day. Mark McConnell alleged that D/Sgt. White stared at him and that when he stared back D/Sgt. White then booked him under Section 8 of some Act and accused Mr. McConnell of threatening D/Sgt. White's wife and children. He stated that D/Sgt. White threatened to arrest him. It was alleged that when Willie Logan arrived on the scene, D/Sgt. White had stared at him and then said something about Section 8 and asked Mr. Logan if he wanted to go in the van. The I.O. took statements from the relevant witnesses and from D/Sgt. White, who denied that conduct alleged against him. In relation to Mark McConnell's complaint, the I.O. was of opinion that the complaint lacked any credibility. In relation to the complaint of Mr. Willie Logan, the Chief Executive, stated that it was clear that there was an exchange of words between the parties. He was inclined to view the Garda version as the more credible. He recommended that the Board form the opinion that there was no offence or breach of discipline disclosed.

Frank McBrearty, Snr., lodged a complaint in relation to an alleged incident, which occurred on 19/20th July, 1997 in his nightclub, when it was alleged that D/Sgt. White made an allegation that he, Frank McBrearty, Snr., was bribing witnesses. He is alleged to have said to Mr. McBrearty, Snr., that he would have to increase the amount on offer from £500.00 to £1,000.00 like the Dublin criminals. The I.O. took statements from the complainant and from other witnesses in the nightclub. A statement was also obtained from D/Sgt. White who denied making any such allegation about Mr. McBrearty. In his first report, the Chief Executive, noted that there were two conflicting versions of events and it was difficult to decide which version was true. He recommended that the Board should await the decision of the District Court prosecutions before deciding the matter. On 18th May, 1999, the Garda Síochána Complaints Board decided to defer further consideration of this complaint. In a second report the Chief Executive recommended that the Board should form the opinion that no offence or breach of discipline was disclosed. The complaint was withdrawn before any final determination was made thereon by the Board.

On 14th June, 1997, Frank McBrearty, Jnr., made a complaint that earlier that day in the nightclub, a named Garda had called him a “murderer” and said to him “come on Frank, come clean and confess to everything”. Insp. Greg Sullivan was appointed as I.O. to deal with this complaint. The complainant objected to his appointment and refused to deal with him. Accordingly a stalemate ensued and further investigation of the complaint did not take place.

On 26th November, 1997, Frank McBrearty, Jnr., made a complaint alleging that on 22nd October, 1997, while he had been sitting in his car in Letterkenny, D/Sgt. White stopped his car and came across the road and alleged that he, Frank McBrearty, Jnr., had been shouting at him. It was alleged that D/Sgt. White then commenced writing in his notebook. Mr. McBrearty alleged that this was harassment, or an attempt to provoke Mr. McBrearty into committing an assault against D/Sgt. White. C/Supt. Carey was appointed I.O. He took statements from the complainant and also from his wife. D/Sgt. White furnished a statement in which he denied the allegations made by Mr. and Mrs. McBrearty. He stated that Mr. McBrearty had been shouting abuse at him and that he had been illegally parked blocking the entrance to a fire station. He stated that Mr. McBrearty was very aggressive. In reaching his decision, the I.O. also had the benefit of a statement from an apparently independent witness, Mr. Colin Ferry, who had made a statement to the Gardaí on the day of the incident. It lent some support to the version given by D/Sgt. White. He had stated that Mr. McBrearty was very aggressive. However, he did not hear any of the conversation between the parties. The I.O. stated that he had spoken to this witness, but that the witness could not remember very much. He was not able to get a statement from him. He concluded by stating that there was a conflict of evidence and that he was inclined to believe D/Sgt. White’s evidence. The Chief Executive in his report stated that D/Sgt. White’s version of events seemed more credible. He recommended that the Board form the opinion that no offence or breach of discipline was involved. This complaint was withdrawn, along with all the

other McBrearty group of complaints, prior to any final determination thereon by the Board.

On 25th November, 1997, Ms. Katriona Brolly lodged a complaint that senior Gardaí had asked the RUC (as it then was) to make enquiries about the complainant at her place of work. A report was obtained from Supt. Kevin Lennon in which he stated that Sgt. Joe Hannigan was detailed to enquire via the RUC from the complainant's employer whether she was at work on 14th October, 1996. The complaint was held not to be admissible by the Chief Executive because it did not constitute an offence or a breach of discipline against the member complained of.

On 3rd December, 1997, Mr. Willie Logan lodged a complaint that on 25th November, 1997, D/Sgt. White had pulled his car in front of Mr. Logan's van and said "do you usually drive without your lights on?" Mr. Logan stated that he said that he did not want to talk to D/Sgt. White. He stated that he went to the Garda Station and requested a copy of what D/Sgt. White had written in his notebook. This was refused. Mr. Logan had then refused to leave the Garda Station. He alleged that Gda. Barrett then twisted his arm behind his back. The I.O. obtained statements from the complainant and also from his wife, who stated that he was driving with the lights on at the relevant time, which was 21.15 hrs. A statement was obtained from D/Sgt. White in which he stated that Mr. Logan had been driving the van at the relevant time without the lights on. Gda. Barrett denied twisting the complainant's arm. The I.O. was of the opinion that undoubtedly there was an altercation. He was not convinced that any breach of discipline had occurred. He recommended that no action be taken against the Gardaí concerned. The Chief Executive found the Garda version of events more credible. He recommended that in the event that no prosecution was directed by the DPP, the Board should form the opinion that neither an offence nor a breach of discipline was disclosed.

A complaint was lodged on 16th January, 1998, by Frank McBrearty, Jnr., that on 8th January, 1998, a named Garda had followed him in his car at 22.30 hrs. flashing his lights and driving close behind him. It was alleged that this was done in an effort to intimidate Mr. McBrearty. This complaint was not investigated because the complainant refused to deal with the officer appointed as I.O.

Mrs. Patricia McBrearty lodged a complaint on 26th January, 1998, that on 23rd January, 1998, Sgt. Roche, Gda. Fowley and another Garda had driven the patrol car onto her property for the purpose of speaking to her husband. When they were told to leave the property, Mrs. McBrearty alleged that they took a long time to leave. She thought that this was done in an effort to harass the family. A report on the matter was obtained from Supt. Kevin Lennon who merely stated that Sgt. Roche had gone to the house for the purpose of serving the summons but that he had left the property when told to do so. This complaint was deemed inadmissible by the Deputy Chief Executive.

Mrs. Patricia McBrearty and Frank McBrearty, Jnr., lodged a joint complaint on 12th February, 1998 that on 10th February, 1998, two named Gardaí had followed the complainants in their car and then overtook them and set up a roadblock further down the road. When the McBrearty's vehicle came to a halt at the roadblock, the Gardaí were alleged to have thrown a summons into the car and then laughed at them. The complainants stated that they were on their way to consult a doctor at the time and that their young children aged 7 and 8 years were in the car. The complainants refused to deal with the person who was appointed as I.O. and this complaint was accordingly not investigated.

In complaint bearing reference number 981199, Frank McBrearty, Jnr., alleged that a named Garda had spoken to him in a very loud voice in the foyer of Letterkenny Court House with a view to causing him much embarrassment. This complaint was not investigated as it was deemed inadmissible.

On 30th October, 1998, Frank McBrearty, Snr., lodged a complaint to the effect that while he had been socialising in Ballybofey at approximately 00.50 hrs. and while sitting in his car with members of his family, D/Sgt. White stared at them and then proceeded to follow the car from Ballybofey first to Convoy and then to Raphoe. D/Sgt. White made a statement in which he stated that he had been on duty in Ballybofey on the night in question. He stated that he observed Mr. McBrearty acting in a way that he thought suspicious. He admitted that he did follow the car in Ballybofey and subsequently at Convoy. The I.O. stated that there was no evidence to support the complaint made by Mr. McBrearty and he recommended that no further action be taken. The Chief Executive recommended that the Board should form the opinion that no offence or breach of discipline was involved.

On 30th June, 2000, Frank McBrearty, Jnr., lodged a complaint that on 24th June, 2000, a named Garda had driven in front of his car and parked and then got out and after some discussion had asked him in front of his children if he had threatened to kill Mr. Paul Barron. This complaint resulted in a stalemate as Mr. McBrearty refused to deal with the person appointed as I.O.

On 16th May, 2001, Frank McBrearty, Jnr., lodged a complaint that at a vehicle checkpoint on 5th May, 2001, a named Garda had behaved in an abusive and insulting manner toward him. This complaint was not investigated by the Garda Síochána Complaints Board. It is not clear why no investigation was carried out.

Complaints were also lodged by Frank McBrearty, Snr., in relation to circulars, which had been written by Chief Supt. Denis Fitzpatrick and Supt. Kevin Lennon, alleging that Mr. McBrearty and Mr. William Flynn were involved in a campaign to discredit the Gardaí. The Chief Executive ruled that the circulars were internal Garda memoranda and accordingly the complaint was deemed inadmissible. This decision was upheld by the Garda Síochána Complaints Board on appeal.

As already noted, Mr. McBrearty also lodged a complaint in relation to the document "Policing in Raphoe on Weekend Nights" drawn up by Sgt. John White. However, this complaint was not investigated as it was deemed inadmissible.

As can be seen from the summary which we have presented to you, Sir, while some of the complaints were investigated by I.O.'s appointed by the Garda Síochána Complaints Board, none of the complaints were actually ruled upon by the Board save for the two appealed in relation to admissibility, as all the McBrearty group of complaints were withdrawn before the Board made a determination on them. At the hearing of this module, because all of those matters are factually in dispute, it will be necessary for you Sir to hear the relevant complainants as well as the Gardaí concerned, in order to decide firstly whether the complaints were well founded and secondly whether such conduct on the part of the Gardaí constituted harassment of the extended McBrearty family.

The third area for investigation concerns harassment by means of the circulation of defamatory leaflets, posters and cards concerning the McBrearty family. This, as you will recall, Sir, occurred in or about the month of March, 1997. At the same time, slogans concerning the McBrearty family were painted on the roads in Raphoe. The leaflets or flyers stated the following about the McBrearty's:

The murdering McBrearty's, see them live, father and son, at Frankies Nightclub, on 15th March, 1997, with Eamonn McCann. "Daddy I think they are onto us". "Don't worry son, I have all the witnesses paid off. I got away with murder in Scotland. You'll get away with it here, just keep your mouth shut like the rest of us in the club". As Billy Flynn says: "when money speaks the truth keeps silent", Russian proverb.

The posters stated, "Murderers house for sale. No offers refused. Owner for Mountjoy." The slogans, which were painted on the road, stated "Murdering McBreartys" with arrows painted on the road and elsewhere the slogan was painted "Murdering McConnells" also with arrows painted beneath it on the road.

It would also appear that business cards were produced which made reference in some way to the McBrearty's being murderers. The key issue for you, Sir, is to determine insofar as it may be possible, by whom was this campaign undertaken and more importantly, whether there was any Garda involvement in the planning or carrying out of any aspect of this campaign.

In a note of an interview between D/Gda Richard Caplice of the Carty investigation team and Mr. William Doherty on 21st October, 1999, Mr. Doherty is noted as having said the following, "John White gave me a bundle of leaflets which said come and see live on stage father and son, the murdering McBrearty's etc. and the bit from Billy Flynn's back (this I think should read "book"). I spread them around Raphoe". In a subsequent statement furnished on 3rd March, 2000, Mr. Doherty stated

About March, 1997, I think roughly, I was asked by John White would I do a job. I said what, he said distribute these leaflets around Raphoe. He handed me a bundle of leaflets and told me not to leave my prints on them, this was at my house at Doorable. The leaflets read the murdering McBrearty's, see them live on stage with Joe Dolan at 12 m.n. father and son, Oh Daddy I killed a man, don't worry son I did too, keep your mouth shut and say nothing I'll look after it, where money talks the truth stays silent old Russian proverb Billy Flynn's (or words like that). I distributed them that night around the streets of Raphoe. I had a hat on me as there is a camera at the P.O. It was around 3 a.m. I spread them all over town and the people got them next morning. Frankie went mad. It was the talk of the town next day. I can't say who printed them only they were given to my by John White and he gave me £100 the night he handed them to me to put around.

Subsequent investigation by the Carty investigation team ascertained that there was a camera on the post office, but that it was a dummy camera, which had no film in it. In undated handwritten notes furnished by Mr. Doherty, he stated:

John White gave leaflets to put around Raphoe for him. He told me at first to put them in the newspaper outside the paper shop. I just put them along the street. The leaflets read murdering McBrearty's see them live father and son, live with Joe Dolan. Dad I killed a man, father don't worry son I'll pay them off I got away with it in Scotland when money talks the truth stays silent Russian proverb.

In an undated statement of evidence prepared by D/Sgt. John White he denied any involvement in the production or circulation of the leaflets. He stated as follows:

I am aware that Mr. Flynn has since forwarded letters to members of An Garda Síochána of higher rank than myself, to members of the Dail and Senate and to the local paper circulating in County Donegal in which he states that Gda. O' Dowd and myself were responsible for the distribution of these aforementioned documents. I was not so involved at any time and while I was on duty in Raphoe up until 5.00 a.m. on Saturday morning 8. 3. 1997, I did not observe anything unusual or suspicious in the town. To the best of my recollection the only person driving around Raphoe or indeed visible on the street was Mr. Frank McBrearty, Snr., whose premises had closed at approximately 3.00 a.m. and who would not have any clear reason for remaining on the deserted streets up until that time. Mr. McBrearty was sitting in his car at the entrance to his nightclub at 5.05 a.m. in what was a completely deserted town at that time for no apparent reason. I personally own two computers and printers and would be willing to make both available for any examination necessary to prove that neither were used for the production of the aforementioned documents.

On 28th October, 1997, Mr. McBrearty, Snr., lodged a complaint with the Garda Síochána Complaints Board to the effect that although he had made a complaint to Sgt. John White in relation to the flyers on 8th March, 1997 and furnished him with a copy of one of the flyers, he believed that D/Sgt. White had not investigated this complaint properly. In a statement made on 2nd June, 1998, D/Sgt. White stated that he had investigated the matter thoroughly. He stated that his investigation had been hampered due to the refusal by Mr. McBrearty and Mr. Flynn to furnish an original of the leaflet. They would only furnish a photocopy of same. They stated that they wished to carry out their own forensic tests on the original. He stated that he interviewed several people in relation to the documents but nobody was in a position to throw any light on their creation or distribution. He stated that he suspected that either Mr. McBrearty, Snr., or Mr. Flynn were behind the

distribution of the documents. He gave the following as what he considered were the reasons for this belief:

No. 1 I was present on duty with Gda. O' Dowd in Raphoe on that night and I observed that Mr. McBrearty, Snr., was the last person present in the town on that morning and he was sitting in his car at the entrance to his nightclub at 5.05 a.m. as I drove past in my private car. The lights in his nightclub were not on and the place was deserted. His club had been closed since 3.00 a.m.

No. 2 Both Mr. McBrearty Snr., and Mr. Flynn had each several original documents in their possession by their own admission. Yet neither would supply me with one in order to have it forensically tested.

No. 3 Part of the flyer/document contained an extract from Mr. Flynn's book, "Gibgate" and while he, Mr. Flynn had posted out some books to persons in County Donegal he had only done so on 5. 3. 1997.

No. 4 In his book Mr. Flynn makes a comment regarding flyers being sent out about him on a previous occasion.

No. 5 Mr. McBrearty Snr., at one stage offered a reward of £10,000.00 for information leading to the arrest of Mr. Barron's killer and later offered a reward of £50,000.00 for information leading to the prosecution of the persons responsible for distribution of these flyers. It appears that Mr. McBrearty was well aware that nobody could come forward with the desired information and collect the aforementioned reward. I certainly investigated the manner of the distribution of these flyers/documents to the best of my ability, keeping in mind the fact that not only did I not receive any assistance from Mr. McBrearty or Mr. Flynn but that I was actually hindered by the fact that neither would furnish me with one original document in order to proceed with my investigation. I refute Mr. McBrearty's allegation that this matter was not properly dealt with and I believe that this complaint is vexatious and malicious.

It should be noted that it had been alleged by Mr. McBrearty, Snr., that when the leaflets had been found by people in Raphoe, there had also been a Garda document found among some of the leaflets. This was apparently some form of notice of rights, which would be given to persons in custody. However, Mr. McBrearty, Snr., did not furnish a copy of this document, which was allegedly found among the leaflets.

Supt. Lennon also furnished a statement in relation to this complaint, in which he denied that he had failed to have a proper investigation of the origin of the leaflets carried out. He referred particularly to the fact that Mr. McBrearty and Mr. Flynn both refused to hand over an original of the leaflets which they had found and stated that that refusal hindered the Garda investigation. A

statement was also furnished by Sgt. Hugh Smith who had also been deputed to investigate the matter. He stated that their investigation was hindered by reason of the fact that no original of the document could be forensically tested. It is clear that the Gardaí regarded this absence of an original document as being a serious impediment to their investigation. It is for you to judge, Sir, if this was a serious reason.

In the diary kept by Mr. John Mitchell, already referred to in relation to the inspections of the McBrearty's licensed premises, the following entry appears for the date 15th March, 1997, concerning an inspection of the licensed premises carried out by Sgt. John White and Gda. O' Dowd:

I then gave him one of the poison pen letters and said, here you look after that it might give you something to do. I said that it was handed in to the bar this evening but they can be found in any town around the area. He looked at it and handed it to Gda. O'Dowd and said, here John look after that it might be important.

In this extract Mr. Mitchell is referring to handing the document to Sgt. John White. If the reference to a "poison pen letters" in that entry was in fact a reference to one of the defamatory leaflets, and if it accurately sets out what happened on that date, it would mean that what was perceived by the Gardaí as a serious impediment to their investigation of the matter, had been removed. It will be necessary for you Sir to hear oral testimony to ascertain the correctness of this entry and to determine the implications, if any, that may arise there from.

In relation to the slogans written on the road, in a statement made by Mr. Paul Roulston to the Carty investigation team on 25th February, 2000, he stated that on one occasion he had attended the court in Letterkenny for the purpose of giving evidence against members of the McBrearty family in connection with alleged road traffic offences. He stated that he went for lunch with a number of people in the nearby shopping centre. He described what he claims happened at that lunch:

At lunch time during the court hearings one day in Letterkenny myself, Darcy Connolly and William Doherty and Pat Doherty went to a café in the shopping centre in Letterkenny and William Doherty was bragging and bumming about writing slogans or graffiti on the road and on a bridge wall or somewhere close to young Frank McBrearty's and Mark McConnell's houses. William was bumming that himself and Darcy Connolly, Gavin Gillen, Noel McBride and the wee boy that died William Huet were involved in the writing on the roads. William said he wrote something like "the murdering something". The impression given to me at that time was that Darcy Connolly provided the transport for the boys that night they wrote on the road. I believed what William Doherty was saying Pat Doherty was joking about it as well.

When this allegation was put to Mr. William Doherty in the course of questioning by D/Sgt. Fox and Sgt. Flannery on 13th April, 2000, he made no reply. Messrs Gillen and McBride denied to the Carty investigation team that they had any involvement in the writing of the slogans. In his statement to the Carty team, Mr. Derek (otherwise Darcy) Connolly made a statement in which he stated that he saw the slogans but had nothing to do with them. He stated the rumour was that William Doherty had written them.

Turning to the production of the business cards, in his statement to the Carty investigation team on 25th February, 2000, Paul Roulston, having referred to lunch at the shopping centre in Letterkenny, where Mr. Doherty was alleged to have bragged about writing the slogans on the road, he continued as follows:

I think it was that day as well, we split up after the dinner and myself and William Doherty and my brother Mark went to the Courtyard and William and me went to the card printing machine and William made up to 100 to 150 cards with the following writing on them. I think it was “murdering McBrearty’s live at Frankies Nightclub this Saturday night” at whatever time it was “Admission...” or something to that effect. The machine printed out these cards immediately and William Doherty took the cards and threw a few of them around the street and asked me to take a few and hand them out. I wouldn’t do it. Mark, my brother was with us all the time. William Doherty put these cards in Darcy Connolly’s van that day before he went back into the court. I saw them in Darcy Connolly’s van later that evening and did not see them again. William Doherty said he was going to post some of them to McBrearty’s as far as I can think.

In a statement made on 7th March, 2000, Mark Roulston dealt with this event as follows:

I met Paul at the court house around dinner time. William Doherty was with Paul. The three of us Paul, William and me intended to go to the Letterkenny shopping centre but we ended up in Mr. Chippies restaurant. We had food and the three of us left there and went up to the Courtyard shopping centre in Main Street. Paul, William Doherty and myself walked around the shopping centre for a wee while and William Doherty went over to a card-printing machine beside the car simulation game now positioned. William Doherty called Paul and myself over to the machine to show us what he was doing. He asked us to look at what he was doing. He was typing information into the machine and the machine started producing small caller type cards with writing on them. The writing on the cards was something like “the murdering McBrearty’s” or something like that. I think there was a phone number on it as well. He must have printed maybe 50 of them, there was a wee pile of them. William Doherty asked me to pass them around. I refused to do it. He may have asked Paul to pass them around. I think he left a few of them lying around the arcade. I knew what William Doherty

had printed on the cards related to Frank McBrearty's family in Raphoe and the death of Richie Barron. I can't remember what William said he was going to do with these cards. I can't remember if he threw any cards on the street in Letterkenny. These were small ID type cards. I'm not sure when this incident took place but I have a wild notion it was spring 1998. I have heard this statement read over and it is true.

Ms. Maureen Gibbons the manager of the Courtyard shopping centre at Lower Main Street Letterkenny, made a statement to the Carty investigation on 18th April, 2000, in which she described finding a card on the ground. It was the size of a business card. She recalled that it had the words "nightclub" and words "murder" printed on it. It also contained other words, but she couldn't recall what these were. She stated that this occurred a few months after the death of Mr. Barron. She stated that she tore up the card and threw it in the bin.

Mr. Derek (otherwise Darcy) Connolly denied any knowledge of the business cards to the Carty investigation team. He denied that they were left in his van. He denied ever seeing the cards.

There is no material in the papers in the possession of the Tribunal at present, in relation to who might have been responsible for placing the posters on the lampposts on the Convoy road. One of the posters was furnished to the Gardaí for forensic examination. An examination thereof was carried out by D/Sgt. John P. Lynch of the Garda Technical Bureau. He was given samples of the handwriting of Derek (otherwise Darcy) Connolly. He found that there was no handwriting evidence to link the writing on the posters with the handwriting of Mr. Connolly. It may be necessary for the Tribunal legal team to carry out further investigations on this matter prior to the oral hearing on this module.

In this area of alleged harassment, Sir, there are a number of conflicts of evidence. As regards the leaflets or flyers, there is the evidence of Mr. Doherty that he received them from D/Sgt. White and distributed them on his instructions. D/Sgt. White has denied any involvement in the production or distribution of the leaflets. He has stated it as his belief that they were manufactured by Mr. McBrearty and/or Mr. Flynn. If this was in fact the case, that would leave it to you, Sir, to attempt to fathom the motive for such alleged conduct on their parts. It would also leave unexplained the admission by Mr. Doherty that he distributed the leaflets. The Tribunal legal team is of opinion that it will only be at the conclusion of the oral evidence that you Sir will be in a position to determine this conflict of evidence.

It will also be necessary for you to consider carefully the content of the leaflets. The Tribunal legal team is of opinion that the leaflets were drafted in a sophisticated manner, which would suggest that the author was a cunning person of average intelligence. It is also noteworthy that the leaflets contain a quotation from Mr. Flynn's book. He had told D/Sgt. John White that he had sent copies of the book to Supt. Lennon, James McGranaghan,

Patsy McGranaghan, Gerard Quinn, Robert Allen, William Bogle, Mr. and Mrs. Peoples, Sean Crossan, Phonsie Crawford, Darcy Connolly and William Huet (RIP). These persons were interviewed by the investigating Gardaí, D/Sgt. White and Sgt. Smith. They denied any knowledge of the distribution of the leaflets. The Tribunal will have to consider the possibility that as the book was sent to Mr. Derek (otherwise Darcy) Connolly, that through him it could have come into the hands of others. Alternatively, any other person, including D/Sgt. White could have received the book from Supt. Lennon, for an entirely innocent purpose. Supt. Lennon has denied giving it to anyone. It will be necessary to consider what credence can be given to the evidence of Messrs. Doherty, Connolly and Roulston having regard to the fact that Messrs. Doherty, and Roulston have admitted telling lies on previous occasions and having regard to the entirety of their evidence both to the Gardaí and to the Carty investigation team.

It is only fair to point out at this stage that the Tribunal legal team has not seen any evidence suggesting that any members of the Gardaí were involved in any way in the painting of slogans or the production or distribution of the business cards, or the placing of posters concerning the McBrearty's house on lampposts on the Convoy road.

We turn now, Sir, to the fourth area of alleged harassment, being the receipt of abusive telephone calls and hoax bomb calls by Mr. and Mrs. McBrearty, Snr., at their home and also at their business premises, where some of the calls were taken by members of their staff. Brief reference has been made of this already, but more detail is now required. In the period 5th November, 1996 to 12th January, 1998, 23 calls in total were allegedly made. 12 of these were abusive telephone calls received by Frank McBrearty, Snr., his family or staff. There were 11 hoax bomb calls. Enquiries by the Gardaí through Eircom established that the calls were made from the following locations;

10 from public telephones in Raphoe, Letterkenny, Mannorcunningham and Carndonagh,

2 calls from the Adria factory in Strabane,

1 call was made from the home of Mr. William Doherty and

10 of the calls remain untraced.

The following is a brief outline of the telephone calls:-

- (1) 5th November, 1996 12.00 m.n. – nuisance call made to Frank McBrearty's home the caller stated that he saw him, young Frankie, Mark McConnell, punching and kicking him referring to Mr. Richard Barron, and stating that he had 72 hours to come up with £10,000.00;
- (2) 6th November, 1996 2.30 a.m. – nuisance call to Frank McBrearty's home, same caller as in call no. 1 and repeated the same things;
- (3) 24th February, 1997 10.20 a.m. – nuisance call to Frank McBrearty's home, his wife Rosalind received the calls from a male caller who asked for Frankie, said something about changing a bad keg of beer: she informed the caller that her husband was at the pub;
- (4) 24th February, 1997 10.23 a.m. – nuisance call to Frank McBrearty's pub, the caller said "this is P. J." and called Mr. McBrearty "a big fat bastard" and a murderer, repeated this a number of times and then hung up;
- (5) 24th February, 1997 10.26 a.m. – nuisance call to Frankies pub, same details as in call number 4 above;
- (6) 24th February, 1997 10.30 a.m. – nuisance call to Frank McBrearty's home. His wife Rosalind received the call: the male caller was abusive: he asked if she was the murderer's wife and said "I'll wipe you out in one go": the caller called her a Scottish bastard: Mrs. McBrearty hung up;
- (7) 24th February, 1997 2.55 p.m. – nuisance call to Frank McBrearty's pub: the call was taken by Martina Gibbons, a barmaid: the caller asked if the fat murdering bastard was there;
- (8) 24th February, 1997 3.10 p.m. – nuisance call to Frank McBrearty's pub: the call was taken by Martina Gibbons: the caller stated the same as in the previous phone call;

- (9) 24th February, 1997 3.33 p.m. – nuisance call to Frank McBrearty's home: the call was answered by Mr. McBrearty: the caller just said "murdering bastard" and then hung up;
- (10) 20th April, 1997 9.02 p.m. – nuisance call to Frank McBrearty's home: the call was answered by Mr. McBrearty: the caller accused him of murdering Mr. Richard Barron and stated that he, Mr. McBrearty, would be murdered on Monday;
- (11) 21st April, 1997 9.48 p.m. – nuisance call to Frank McBrearty's home: Mr. McBrearty took the call: the caller stated "you murdered Mr. Richard Barron, see how you got on in court today: I'll get your little daughter at school": the caller repeated this several times;
- (12) 4th May, 1997 12.25 p.m. – hoax bomb call to the house of Cannon Deegan of Raphoe: the caller stated that two devices were planted in Frankies Nightclub;
- (13) 4th May, 1997 2.50 p.m. – hoax bomb call to Letterkenny General Hospital: caller stated that two devices had been planted in Frankies Nightclub;
- (14) 18th May, 1997 11.30 p.m. – hoax bomb call to Letterkenny General Hospital: caller stated "bomb in Frankies, code Grey Eagle";
- (15) 6th June, 1997 10.32 p.m. – nuisance call to Frank McBrearty's pub: call taken by Mr. John Mitchell, bar manager: the caller stated "tell Frankie he is going to be shot";
- (16) 7th June, 1997 12.58 a.m. – hoax bomb call to Highland Radio: caller stated that "there was a bomb in Frankies Nightclub": caller said he was from the LVF: no code word given;
- (17) 7th June, 1997 1.02 a.m. hoax bomb call to Highland Radio: caller stated that bomb was outside and not inside Frankies Nightclub;
- (18) 24th September, 1997 6.15 p.m. – hoax bomb call to Highland Radio: caller stated that there was a bomb in the Parting Glass: the caller sounded drunk.
- (19) 23rd November, 1997 12.51 a.m. – hoax bomb call to Telecom Éireann, Sligo: caller stated that there was a bomb in Frankies Nightclub, Raphoe;
- (20) 27th December, 1997 10.43 p.m. – hoax bomb call to Letterkenny General Hospital: caller stated that there were two bombs to go off in Frankies Nightclub, one in the car park and one inside;
- (21) 28th December, 1997 12.18 a.m. – hoax bomb to Divisional Communications, Letterkenny: caller stated that there was a bomb in Frankies Nightclub, Raphoe;
- (22) 31st December, 1997 10.50 p.m. – hoax bomb call to Altnagalvin Hospital: caller stated that he was from LVF and that there was a bomb in Frankies Nightclub due to go off at 12.00 m.n. Code "Red Hand Commando";
- (23) Finally, on the 12th January, 1998 1.10 a.m. – hoax bomb call to Highland Radio: caller stated that he was in a house in Raphoe

and he was being forced to make the call: he stated that there was a bomb in Frankies Nightclub: no code given;

D/Sgt. Hugh Smith was directed to carry out an investigation into the source of the telephone calls. He made a report to Supt. Lennon on 20th February, 1998. In this report he gave a detailed analysis of each call. It is noteworthy that after the first two calls in November, 1996, Frank McBrearty, Snr., had his home telephone number changed. It was thereafter ex-directory. He received no further calls until February, 1997. D/Sgt. Smith obtained the telephone records. Somewhat curiously, calls numbers 3, 4, 5 and 6 which were made to Mr. McBrearty at his house on the morning of 24th February, 1997, did not appear on the print out from Telecom Éireann showing all calls to the McBrearty household in February, 1997. Sgt. Smith stated that when this was brought to the attention of Mr. McBrearty, he replied "the Guards are covering up".

At the time of Sgt. Smith's report he noted that in total 8 calls were unaccounted for. The rest were made from public telephone boxes around Donegal, save for one call, which was made at 21.02 hr. on 20th April, from the home of Mr. William Doherty. Sir, as you already know, Mr. Doherty was arrested by D/Sgt. Henry and D/Sgt. Smith on 20th September, 1997 and detained for 12 hours at Millford Garda Station. He denied making any of the calls. D/Sgt. Smith noted that since the time of arrest of Mr. William Doherty, the abusive calls ceased, but the hoax bomb calls continued. D/Sgt. Smith stated that Frank McBrearty, Snr., was hostile toward him and was un-co-operative as regard the investigation, which he was carrying out. He stated that despite his efforts and those of D/I. McGinley and D/Supt. Shelly, he had not been able to obtain records showing the origins of the calls made in November, 1996. He stated that while his investigation was continuing, he was not optimistic of obtaining sufficient evidence to charge Mr. Doherty in the matter. That report was compiled in February, 1998. We do not know why he was so pessimistic.

In a statement made to D/Gda. Caplice on 3rd March, 2000, Mr. William Doherty stated that:

(A named Garda) gave Frankies private telephone number to me, to Daryl Doherty, to John Doherty, to ring him and give him abuse. We did this on several occasions at about 3 or 4 a.m. from Adria in Strabane. I called him a murderer and gave him serious abuse, this was a campaign to break up the McBrearty's.

The name of the Garda has been omitted from this statement because it would not appear that this particular allegation was ever put to him. The Tribunal legal team will investigate this aspect further prior to the hearing of the module. It should be noted that from the report of the telephone calls received from Eircom, it appears that none were actually made at 3 or 4 a.m. as alleged by Mr. Doherty. The latest calls were at 12.00 m.n. and 02.30 hrs. in November, 1996. Investigations by the Carty investigation team, established that the calls made on 5th and 6th November, 1996, were made

from the Adria factory in Strabane, Co. Tyrone. Inquiries made of the personnel manager at the factory confirmed that Mr. William Doherty was working in Adria at the time that the phone calls were made. A request has been made by the Carty investigation team to British Telecom seeking details of all calls made from the Adria factory in Strabane at the relevant time. A response to this request has not yet been furnished.

In the course of an interview between Noel McBride and D/Gda. Maloney and D/Gda. Flynn on 10th June, 1999, Mr. McBride was asked whether he was ever present with William Doherty when he made any telephone calls, to which he replied "Yes. When he made the calls to Frank McBrearty." He went on to describe that incident as follows:

I'm not sure who he said it to but he said on the phone "you're nothing but a murdering bastard go on back to Scotland". I assumed that those calls were made to Frankie McBrearty. Those calls were made from a phone box in Killygordon and I was standing beside William Doherty when he made the calls. William Doherty said it was Frank McBrearty he rang when he finished the call and he laughed after it.

Noel McBride also dealt with the making of this telephone call in a statement made to D/Sgts. George Kyne and Fergus Traynor on 7th March, 2000, where he stated:

I have already mentioned the phone call from Killygordon to McBrearty's in February or around that time. I didn't know who he was going to ring until he stopped the truck and said he was going to ring Frank McBrearty's for the crack. He told me that Frank McBrearty had changed his phone number but that he had contacts in Telecom Eireann and he was able to get the new number.

Mr. McBride denied ever taking any part in the phone calls. He stated that one phone call was made that day in the morning time.

We now turn to the hoax bomb calls, Sir. The first of these was the 12th call, which was received on 4th May, 1997. It was made to the home of Cannon Deegan. This call was made from the public phone box in Lifford. A report has been furnished by Gda. Pauline Goldin which states that at 12.28 a.m. on that date she was the Station orderly at Lifford Garda Station. She states that she received a telephone call from Cannon Deegan who informed her that he had received a telephone call approximately 10 minutes previously from a male caller stating that he was from the 'Blackhand gang' in Derry. The caller stated that there was a device placed at the front and back of the Parting Glass in Raphoe. She states that Cannon Deegan stated that he informed the caller that he was a retired priest and that he had no interest in that kind of carry on. The caller then hung up. Gda. Goldin stated that she informed B/Alpha of the phone call, she also informed the members in Raphoe, B.55, B.65 and B.62 and Insp. Griffen who all went to Raphoe. She stated that a short time later Letterkenny General Hospital received a similar type phone

call, which stated that the device would go off in 25 minutes. There were no codes given. She stated that the area was patrolled and it would seem that these phone calls were hoaxes. The second call made on 4th May, 1997 which was the call to Letterkenny General Hospital, had been made from a public phone box in Ballindrait. The next hoax bomb call was on 18th May, 1997 to Letterkenny General Hospital. It was made from a public phone box in Mannorcunningham. On 7th June, 1997, 2 hoax bomb calls were made to Highland Radio. The first was at 12.58 a.m. and was made from a public phone box at St. Eunan's Terrace in Raphoe. The second phone call was made at 1.02 a.m. from a phone box in the Diamond, Raphoe. On 24th September, 1997, a hoax bomb call was made to Highland Radio. The source of this phone call was not identified in the report furnished by Sgt. Smith. On 23rd November, 1997, a hoax bomb call was made on a 999 line to Eircom in Sligo. This call was made from a phone box in the Diamond, Raphoe. At the time of furnishing his report in February, 1998, Sgt. Smith had been unable to find the source of the remaining 4 hoax bomb calls. There is no doubt that the making of these hoax bomb calls was designed to cause maximum disruption to Mr. McBrearty and his business. On many occasions the nightclub premises had to be evacuated. On one occasion a band, which was retained to play at the premises, had to be cancelled.

Prior to the hearing of this module, Sir, it will be necessary for the Tribunal legal team to put the specific allegation made by Mr. Doherty to the Garda concerned. Having done that, you will be in a position to hear evidence from the relevant witnesses in relation to the making of the abusive telephone calls. You will also hear evidence from a witness from Eircom concerning the procedure for releasing ex-directory telephone numbers to persons other than the subscriber. It will be necessary to hear evidence from Mr. McBrearty, Snr., as to the persons who would have had access to his ex-directory home telephone number, after it had been changed in the wake of the abusive phone calls received in November, 1996. In relation to the hoax bomb calls, the Tribunal legal team will carry out further enquiries to ascertain how the Garda investigation into this matter has proceeded since February, 1998. Evidence will be obtained in relation to the persons who received the bomb calls initially and from the persons who dealt with the report of same at the Communication Centre at Letterkenny Garda Station. Having heard all the evidence that will be presented, it is hoped that you will be in a position to determine by whom some if not all of the calls were made and, more importantly, whether there was any Garda involvement in the making of such calls. On this aspect, the inquiries of the Tribunal are continuing.

The fifth area for inquiry, concerns alleged harassment by means of the making of false complaints by Derek (otherwise Darcy) Connolly and others concerning road traffic and other offences by members of the McBrearty family. On 30th January, 1997 Derek Connolly made a written complaint of dangerous driving on the part of Frank McBrearty, Jnr., on 25th January, 1997 at William Street, Raphoe and also on 29th January, 1997 at the roundabout outside Letterkenny. This complaint was made to Gda. John O' Dowd. It appears that as a result of this complaint charges were brought against Frank McBrearty, Jnr., which came before Donegal District Court on 10th March, 1999. It would appear that Gda. Joe Foley took a note of the evidence given at that prosecution. The Tribunal legal team is not at present aware of the outcome of these proceedings.

In an interview with the Carty investigation team on 24th March, 2000, Derek (otherwise Darcy) Connolly was asked about the complaint that he made concerning the dangerous driving on 30th January, 1997. He confirmed that the statement was correct. When asked if he was prepared to stand over the statement he said, "well I am not prepared to go to court. If I say it is not true (a named Garda) will get into bother". As in previous instances, the name of the Garda concerned has been deleted from this statement, due to the fact that this allegation has not yet been specifically put to the Garda concerned. Mr. Connolly goes on in the course of that interview to refer to a meeting in the house of Ms. Nora Barron, which was attended by Sgt. John White and a Superintendent whose name he couldn't recall. He stated that the Superintendent was in Letterkenny and was in Millford at the time of the interview. He said that the Superintendent told him to report all complaints that he had about the McBrearty's to the Gardaí at Raphoe. He went on to say that in relation to all the complaints he made them to Gda. John O'Dowd. When asked if they were of a frivolous nature, he said, "Aye it would be the kind of stuff wains would be at, at school that was between us and the McBrearty's". He later said, "it was stupidity, its still stupid". He said that he did not know what became of the complaints other than the dangerous driving complaint. He confirmed that he and Paul Roulston made complaints to the Gardaí "about these childish things". He said that if Paul Roulston was with him when any incident arose with the McBrearty's, they would make a statement about it. He said their conduct in making complaints was "like what women would be at". He said that it happened because things were dragging on and the Guards were doing nothing about it. He said that it all got out of control. He said "if I had to do it now, I'd have nothing to do with it". In relation to the statement made by him on 30th January, 1997, he said "I'd rather it wouldn't be there".

When it was put to Mr. Connolly that a passenger in his vehicle, Mr. Michael Brown had stated that no dangerous driving incident happened on 21st January, 1997, as alleged, he stated that Mr. Brown was lying. Similarly, he maintained that Mr. Roulston was lying when he stated that he was not present with him at the time of the Letterkenny dangerous driving incident on 29th January 1997. In his statement dated 20th May, 2000, Mr. Connolly insisted that the two dangerous driving incidents did happen and that Michael Brown and Paul Roulston were with him on the respective dates. He

stated that he had already given evidence on oath on these matters. On 24th May, 2000, Derek (otherwise Darcy) Connolly made a further statement to the Carthy Investigation Team wherein he stated that the initials "DC", which appear below the insertion of the registration number of the car driven by Frank McBrearty, Jnr., in the original hand written statement dated 30th January, 1997, were not put there by him.

A number of the matters stated by Mr. Connolly in these interviews and statements are supported by the statements made by Paul Roulston to the Carthy investigation team. In his detailed statement made on 25th February, 2000, Paul Roulston outlined how he was working with Mr. Connolly in October, 1996. He stated that after the death of Mr. Barron, the town of Raphoe became divided between those who thought the McBrearty's were involved in the death of Mr. Barron and those who supported the McBrearty's. He also stated that around that time a charge of dangerous driving was pending against him in relation to an incident where he forced a Garda car off the road. He stated that Darcy Connolly told him that he could get the charge dropped if he could get Roderick Donnelly and his brother to make statements as to what they had seen in Raphoe in the night of 13/14th October, 1996. This is the genesis of the statements made by them to the original Investigation Team. This has already been outlined to you, Sir. He describes how he came to make his statement to Garda P. Flynn. He admitted that this statement was lies. He goes on to deal with the making of numerous complaints against the McBrearty's, in particular against Hugo McBrearty. He stated that Darcy Connolly asked him to go to the Gardaí in Raphoe and make false allegations against the McBrearty's. He stated that he did this on 10 or 11 occasions. He admitted that the statements were false. He said that they were made up by Darcy Connolly or William Doherty. He said Darcy Connolly would note in his diary any time that he saw Hugo McBrearty and would use this in making statements to the Gardaí. In relation to the complaint of dangerous driving at Letterkenny, he said that he was not there on that occasion, but that he had agreed with Darcy Connolly to make a statement to a particular Garda, stating that he was there. He stated that he made a statement to this Garda in the Courthouse at Letterkenny. He stated that it was all lies. He then stated, "I believe that (the named Garda) knew I was not in Letterkenny in a van that day". He does not give any reason for holding this belief. The name of the Garda has been deleted because this allegation has not yet been put to him. Mr. Roulston stated that on one occasion he spoke to Sgt. Hannigan at the Courthouse in Letterkenny and told him that he, Roulston, was finished going to courts to give evidence against the McBrearty's. He stated that he told Sgt. Hannigan that all that he had said was lies. He stated that he had decided to tell the truth because his girlfriend was pregnant at the time and that he had decided to go straight.

In a statement made to the Carthy investigation team on 28th March, 2000, Sgt. Joseph Hannigan stated as follows,

It has been put to me by Insp. Coll that Paul Roulston approached me and informed me "that he was finished going to court against the McBrearty's" and also informed me that statements he made

to the Gardaí were “all lies”. This alleged conversation referred to Paul Roulston being a State witness in cases against the McBrearty family in the District Court. I wish to state that I never had any conversation with Paul Roulston in the matter and the conversation as described by Insp. Coll did not occur. If Paul Roulston had informed me that he had made false statements to the Gardaí I would have reported the matter immediately. I did not have any cases before the District Court in which Paul Roulston was a witness for the State and any of the McBrearty family were defendants.

Mr. Michael Brown was interviewed by the Carty investigation team on 15th March, 2000. He stated that Mr. Connolly asked him to make a statement about the incident on 25th January, 1997. He went to the Garda Station with his mother but refused to make a statement because, as he said: “I have no reason to make a statement, because there was nothing to make a statement about”.

Gda. John O’ Dowd was arrested on 10th June, 1999, in relation to the alleged extortion telephone calls to Michael and Charlotte Peoples in November, 1996. He was subsequently questioned by the Carty investigation team. On 17th May, 2000, he was contacted by telephone by D/I. O’ Loughlin and asked whether he had taken an original statement from Darcy Connolly in relation to the dangerous driving complaint. He stated that he had taken such a statement and that he thought that he had it in Convoy Garda Station. He stated that he would produce it on the following day. On 18th May, 2000, he handed over the original statement from Darcy Connolly to D/I O’ Loughlin and D/Sgt. Healy at the car park of the Kentucky Fried Chicken in Letterkenny. The Carty investigation team had a number of questions written out which they wished to put to Garda O’ Dowd concerning this and other matters. These questions were furnished to Garda O’ Dowd but on apparent legal advice, he refused to answer same.

At present, there is no clear indication whether the making of numerous false allegations against members of the McBrearty family by other persons in Raphoe, was simply a campaign mounted by the persons concerned acting on their own account, or whether there was any Garda involvement in this aspect. This could, after all, be an instance of individual action or kind of mass hysteria. The only evidence of such input, at present, is the statement by Mr. Paul Roulston to the effect that he believed that the Garda to whom he gave a statement concerning dangerous driving by Mr. Frank McBrearty at the roundabout in Letterkenny on the 29th January, 1997, knew that he was not in fact in Mr. Connolly’s van on the date in question. Mr. Roulston has not produced any explanation as to why he held such belief. It should be noted that Mr. Connolly has insisted that both Mr. Brown and Mr. Roulston were with him at the time of the respective alleged dangerous driving incidents. It is not clear as to what became of the other complaints made against members of the McBrearty family. Further investigation will be carried out to ascertain the exact nature of the complaints, to whom such complaints were made and

what action, if any, was taken on foot of them. It is not possible to put this matter any further at this stage.

The last area of investigation concerns an inquiry as to whether there was any harassment by the Gardaí of any agents or associates of the McBrearty family. From the documentation available to the Tribunal legal team at present, it would appear that after the death of Mr. Barron in October, 1996, Mr. McBrearty, Snr., became concerned at what he perceived as being an unsatisfactory Garda investigation into the circumstances surrounding the death of Mr. Barron. He became particularly concerned by what he saw, rightly or wrongly, as a desire on the part of the Gardaí to establish that his son and nephew had been responsible for that death. He felt, he claims, that the Garda investigation was not being carried out in a fair manner. He also felt that he and his family were being victimised by the Gardaí on account of a complaint that he had made some years earlier in respect of a Garda then stationed in Raphoe, which had set in motion a train of events leading ultimately to that member taking early retirement from the force. Due to what he perceived as the shortcomings in the Garda investigation of the matter, he retained a private investigator, Mr. William Flynn to carry out an investigation into the circumstances surrounding the death of Mr. Barron. Mr. Flynn was also retained to investigate the extortion telephone calls made to Michael and Charlotte Peoples in November 1996.

Mr. Flynn has made a number of complaints to the Garda Síochána Complaints Board, which, if substantiated, could be seen as harassment by the Gardaí. Mr. Flynn withdrew many of his complaints from the Board before any investigation was carried out. In these cases, statements were not obtained from the Gardaí against whom the complaint was made. Accordingly, in such cases it is not appropriate to identify the particular Gardaí at this stage. It is possible, at this stage, to briefly outline the nature of the complaints lodged by Mr. Flynn. In complaint reference number 981035, it was alleged that on 15th January, 1998, Supt. Kevin Lennon said at a meeting with Frank McBrearty, Snr. and Andy McBrearty that "that Billy Flynn would not be around when the trial came on for hearing". Mr. Flynn took this to be a threat that something would be done to him which would prevent him giving evidence at a subsequent trial of the matter before the High Court. The Garda Síochána Complaints Board appointed an Investigating Officer who took statements from Frank McBrearty, Snr., and Andy McBrearty and also from Supt. Lennon. He denied making the alleged statement. He furnished his notes of the meeting. The I.O. preferred the recollection of Supt. Lennon because he was working from notes rather than from memory. He also thought that the complaint was not admissible because the actual complaint had been furnished by Mr. Flynn's son who was not present at the meeting and therefore did not witness the conduct complained of. The Chief Executive wrote a report in which he held that the complaint was not admissible on the grounds that it was frivolous. On 26th March, 1999, the Garda Síochána Complaints Board ruled that the complaint was not admissible as being what it deemed to be frivolous.

In file reference 980975 Mr. Flynn complained that at a sitting of Letterkenny District Court on 7th July, 1998 Inspector T. O' Brien had maliciously given false information to the presiding Judge when asked as to whether Mr. Flynn had any previous convictions. Having obtained a statement from the relevant witnesses, including Insp. O' Brien, the I.O. concluded that there was no evidence that he had made any malicious or false allegations against Mr. Flynn. The Chief Executive agreed with the findings of the I.O. and recommended that the Board should find neither an offence nor a breach of discipline was disclosed. On 26th March, 1999, The Garda Síochána Complaints Board reached the same conclusion. In an affidavit, which was proffered on behalf of Mr. Flynn to the hearing of the criminal matter, he also alleged that a Garda had told people in Raphoe that he had convictions for stealing cars and that his book "Gibgate" was banned. He also alleged that the Gardaí had a vendetta against him because he had referred the McBrearty's to the firm of Binchys, Solicitors, in Dublin who had issued civil proceedings against the various Gardaí.

Mr. Flynn also lodged a complaint that a named Garda serving in Raphoe, had tried to discredit him by spreading malicious stories about him among Mr. Flynn's friends and associates at Enfield and Kilcock. He also alleged that the Garda was carrying out surveillance of him at his home. He alleged that the Garda had made nuisance telephone calls to him at his home. Supt. Thomas Gallagher was appointed I.O. However, before he could start his investigation of the complaint, Mr. Flynn informed the Board that he had set up a body styling itself the 'Garda Victims Association' and was withdrawing his complaints from the Board.

In complaint bearing file reference number 990273, he alleged that a named Garda had made allegations that in the course of his investigation, that he (Flynn) had tapped the telephone lines of Garda Stations. He also alleged that the Garda had interfered with his private and business telephone. Mr. Flynn also made complaints about a circular issued by C/Supt. Denis Fitzpatrick on 27th February, 1998, which was in the following terms:

Re: Campaign to discredit Gardaí in Donegal Division. I refer to the attempt to discredit Gardaí from this division and other members involved in the Barron Investigation. There is information to hand, which suggests that Frank McBrearty (Snr) from Raphoe is financing a campaign to discredit members of the force. The campaign is being operated mostly by Mr. Billy Flynn and sometimes trading as Zimmermann & Co from Enfield, County Meath. Members of your District Force and Gardaí who assisted in the investigation into the Richard Barron death should be notified of this matter and directed to report any incidents or unusual contact that may occur either with Mr. McBrearty and his extended family or Mr. Flynn and his employees. This document is for Garda use only and is confidential.

Mr. Flynn also complained about an earlier circular apparently issued by Supt. Kevin Lennon, dated 18th March, 1997, which was in the following terms:

Re: Letters received from Zimmermann & Co. that Private Investigator, Richard (Sic) Flynn employed by Frank McBrearty, Raphoe. Reference to the above, it has come to notice that individual members are receiving personal letters from Richard Flynn, Private Investigator, hired by Frank McBrearty; these letters contain many disgraceful comments. Under no circumstances should members respond directly to these letters. Please forward any such letters to the District Office. Forwarded for attention and compliance please.

By letter dated 12th March, 1999, Mr. Flynn alleged in the course of the same complaint that either one or both of two named Gardaí were responsible for the leaflets or flyers concerning the McBrearty's which were distributed in March, 1997. He also alleged that a named Garda had suggested in correspondence that the McBrearty's had retained him to obstruct the Garda investigation and pervert the course of justice. This complaint was not investigated as Mr. Flynn withdrew his complaint by letter dated 4th May, 1999.

There is also a reference in correspondence to an occasion when Mr. Flynn drove to Raphoe to conduct enquiries. He alleged that a Garda car stopped behind the parked car in which he and his family were then sitting. He stated that when he drove out of the town the Garda car followed them for some distance. He alleged that this was done in an effort to harass or intimidate him.

By letter dated 8th July, 2002 Messrs. McCartan & Hogan, Solicitors, wrote to the Tribunal regarding an application for representation which they proposed to make on behalf of their clients, who were members of the Flynn family. They stated the following in relation to alleged Garda harassment:

During the course of their investigations as agents for the persons named in paragraph 1 herein, our clients were subjected to an unwarranted level of Garda surveillance and intimidation. Our clients will be in a position to give detailed evidence of this surveillance and intimidation at the Tribunal hearing. In addition our clients believe that a number of circulars were prepared by the Gardaí and distributed to all Garda Stations in Donegal indicating that Mr. William Flynn was operating a campaign on behalf of Frank McBrearty to discredit members of the Gardaí. Mr. William Flynn is in possession of a copy of this circular and a copy thereof is attached to this letter. Furthermore, Mr. Flynn believes and has evidence in his possession that he was the subject of a Garda investigation solely because he had been retained by the McBrearty and other families to assist them firstly in relation to the allegations made against them arising out of the death of Mr. Richard Barron and secondly in relation to the defence of numerous prosecutions brought against the McBrearty family under the Licensing Act. Our clients believe that the

investigation of them by the Gardai merely because they had been retained as investigators was an abuse of Garda powers and the conclusions of that investigation amount to a personal attack on Mr. William Flynn and are unwarranted and unjustified in any circumstances. For these reasons, our clients believe that they were the subject of harassment as agents of the McBrearty family by members of the Gardai subsequent to the death of Mr. Richard Barron and therefore, seek representation in relation to the definite matter detailed in paragraph (c) of the Terms of Reference of the Tribunal of Inquiry.

In order to give a balanced view, Sir, it should be noted that the Gardai were of the opinion that in fact it was Mr. Flynn who was harassing them while they were attempting to carry out their investigation into the death of Mr. Barron. In an affidavit sworn on 21st April, 1997 by C/Supt. Denis Fitzpatrick, he stated as follows:

Nor does he state that he has employed Mr. William (Billy) Flynn of Zimmermann & Co. International Ltd., to apparently investigate the circumstances surrounding the death of the deceased. Mr. Flynn rang me on 6th February, 1997, requesting copies of the pathologist report and witness statements and I politely informed him that he was not entitled to the same. Thereafter, he has attempted to contact witnesses and has written various letters to members of the force some of it grossly offensive and I beg to refer to a bundle of such correspondence upon which have been together marked with the letter B I have endorsed my name prior to the swearing hereof.

In respect of phone calls made to Mrs. Rosaleen White, Mr. Flynn was convicted of offences under the telecommunications legislation. In an affidavit sworn by Mr. Flynn which was proffered to the court, he stated as follows at paragraph 18 thereof

I admit to this honourable court that I made these telephone calls, I do sincerely apologise again to Mrs. White for any anxiety or distress caused.

Thus, all one can say at this stage is that there have been allegations and counter allegations of harassment passing between Mr. Flynn and members of the Gardai. It is only when you, Sir, have had the opportunity of hearing all of the relevant witnesses give evidence before you, that you will be in a position to form any opinion on the conflicts of evidence that arise on this aspect.

The Tribunal will also have to consider whether there was any Garda harassment of Mr. Thomas Coffey, who was employed by Mr. Flynn to assist in his investigation on behalf of the McBrearty's. In a letter to the Tribunal dated 8th July, 2002, he alleged inter alia, that he had been subjected to unspecified types of intimidation and harassment culminating in an

unspecified document issued by the Gardaí which he alleged seriously defamed his good name. By letter dated 9th July, 2002, the Solicitor to the Tribunal, noted that he intended to apply for representation and said that the Tribunal would be grateful to receive a full statement from him concerning the matters referred to in his correspondence. When applying for representation before you Sir on 15th July, 2002, Mr. Coffey stated that he had been seriously assaulted by a person in the course of carrying out his investigations on behalf of his employer, Mr. William Flynn. He stated that it was his belief that that assault was perpetrated against him due to false information given to his assailant by the Gardaí. Mr. Coffey was granted representation before this Tribunal. To date, he has not furnished any statement concerning his allegations of intimidation or harassment by the Gardaí.

The enquiries undertaken by the Tribunal legal team in relation to the harassment of agents and associates of the McBrearty family are at a preliminary stage. It will be necessary to obtain comprehensive statements from Mr. Flynn and Mr. Coffey. The content of these statements will have to be put to the Gardaí concerned to enable them to respond to any allegations made against them. The Tribunal legal team will then consider whether there is evidence, which would suggest that there was harassment by the Gardaí of any agents or associates of the McBrearty family. If so, this aspect will become the subject of an oral hearing before you in due course.

