

GARDA COMPLAINTS

This module deals with paragraph (j) of the Terms of Reference which is in the following terms:

The effectiveness of the Garda Síochána Complaints Inquiry Process viz-a-viz the complaints made by Frank McBrearty, Snr., and his family between 1997 and 2001.

In the explanation of the Terms of Reference, Sir, you stated the following in relation to this Term of Reference:

The information available to the Tribunal suggests that complaints were made by Frank McBrearty, Snr., and his family to the Garda Síochána Complaints Board. This may or may not be an effective way of dealing with serious complaints made by citizens against members of An Garda Síochána. It is the task of the Tribunal to consider the effectiveness of this entire procedure. The Tribunal will:

- 1) Establish what complaints were actually made by Mr. McBrearty and his family between the relevant dates.**
- 2) Establish the manner in which these complaints were dealt with by the appropriate parties and identify where any of these complaints may not have been dealt with in a satisfactory manner, if that be the case.**
- 3) Consider the procedures, which exist for dealing with complaints under the Garda Síochána (Complaints) Act, 1986 as amended and the rules made there under.**

Inquire into the effectiveness of these procedures and advise, if it be the case, how these procedures could be improved.

Prior to 1986, complaints by citizens against members of the Gardaí were dealt with by means of the internal disciplinary procedure operated by the Gardaí. In his book entitled "The Irish Police", Dr. Dermot Walsh of the University of Limerick has described the genesis of the Garda Síochána (Complaints) Act, 1986, in the following way. He states that the publication of the Criminal Justice Bill of 1983, with the sweeping powers that were conferred on the Gardaí therein, sparked a major public debate on the whole subject of police powers versus civil liberties. The bill of 1983 provided for some far-reaching and fundamental changes in the balance of the criminal justice system. Dr. Walsh argues that it was in order to assuage public concern about the extent of the powers given to the Gardaí, that the government was forced to postpone the introduction of a number of key provisions in the Criminal Justice Bill until an independent complaints

procedure was in place, along with regulations governing the treatment of suspects in police custody. He noted that although a Criminal Justice Bill became law in 1984, the new complaints procedure and the custody regulations were not in place until 1987.

When introducing the second reading of the legislation which was to become the 1986 Act, the then Minister for Justice, Mr. Michael Noonan, stated as follows:

The main object of any legislation establishing a procedure for dealing with complaints against police is to secure that the handling of complaints should be just, and be seen to be just, both to the complainant and to the police. It must be a system in which the public have confidence – confidence in the integrity and impartiality of the investigation of complaints and of the subsequent adjudication on them.

The 1986 Act established the Garda Síochána Complaints Board. Any member of the public who is directly affected by the conduct of a member of An Garda Síochána, or who witnesses such conduct, and wishes to make a complaint, may do so either directly to the Board, or they may make a complaint at a Garda Station. In the event of a complaint being made at a Garda Station, the Garda who receives it must record it and forward it forthwith to the Chief Executive of the Board and to the Commissioner.

On receipt of a complaint, the Chief Executive must consider if it is admissible. The conditions for admissibility are set out in Section 4 (3)(a) of the Act. This section provides that a complaint shall be admissible if it satisfies the following conditions:

- (1) The complainant was a member of the public;
- (2) The complainant was directly affected by or witnessed the conduct alleged in the complaint;
- (3) The conduct would constitute an offence or the conduct specified in the fourth schedule to the Act (i.e. conduct that would constitute a breach of discipline);
- (4) The date on which the said conduct was alleged to have occurred was on or after the establishment day and within six months before the date on which the complaint was made;
- (5) The application of the Act to the said conduct did not by virtue of Section 15 of the Act, stand excluded on the date on which the complaint was made (Section 15 provides that the Act shall not apply to conduct alleged in a complaint, if before the date on which the complaint was received, the Commissioner or Minister, had appointed someone to hold an enquiry into the alleged conduct, or if the member concerned was dismissed or reduced in rank by the Commissioner or the government in exercise of their respective powers);
- (6) The complaint is not frivolous or vexatious.

If a complaint is deemed inadmissible by the Chief Executive, the complainant is notified in writing. The complainant can appeal this finding to the Garda Síochána Complaints Board. If the complaint is deemed admissible, the Chief Executive writes to the Commissioner seeking the appointment of an Investigating Officer (I.O.) to investigate the complaint. Section 6 of the Act provides that the Commissioner shall appoint a member of An Garda Síochána, not below the rank of Superintendent, or if he considers that the circumstances so warrant the rank of Inspector, to investigate the complaint. Once appointed, the I.O. must endeavour to complete his investigation and submit his report within thirty days of the date of his appointment. In carrying out his investigation, the I.O. first obtains a statement from the complainant, he will then usually obtain statements from any independent witnesses, from the Garda or Gardaí against whom the complaint was made and from any other Gardaí who might be in a position to assist in the investigation. He will also obtain such documentary evidence, e.g. custody records, as may be of relevance. The I.O. must investigate the complaint and consider whether an offence or breach of discipline is disclosed against the member concerned. A description of the conduct, which would constitute a breach of discipline, is set out in the fourth schedule to the 1986 Act. It includes conduct such as discourtesy, neglect of duty, falsehood or prevarication, abuse of authority, corrupt or improper practice, misuse of money or property, intoxication and discreditable conduct. It contains a definition as to what is meant by each of these terms. When the investigation has been completed, the I.O. submits his report to the Chief Executive.

Upon receipt of the report from the I.O., the Chief Executive writes his own report, which is effectively a summary of the report submitted by the I.O., together with his recommendation to the Garda Síochána Complaints Board as to the finding that they might make in relation to the complaint. Such recommendation could be that further representation should be obtained from the Garda concerned, or that the Board should form the opinion that no breach of discipline or offence is disclosed or that the Board should form the opinion that an offence or breach of discipline is disclosed on the part of the Garda concerned. The papers, comprising the investigation file, the I.O.'s report and the report of the Chief Executive, are forwarded to the Board for its consideration. The Garda Síochána Complaints Board consists of a chairman and eight ordinary members appointed by the government. The ordinary members must include at least three Barristers or Solicitors of ten years standing and the Garda Commissioner or his nominee. The chairman must be a Barrister or Solicitor of at least ten years standing. No Gardaí, other than the Commissioner or his nominee, are eligible to sit on the Board.

If the complaint involves an allegation of the commission of an offence, the Board must refer the matter to the Director of Public Prosecutions before making any decision. If the DPP decides not to initiate a prosecution, the Board then considers whether a breach of discipline is disclosed.

If the Board forms the opinion, Sir, that no breach of discipline is disclosed, it gives a ruling to that effect. The complainant is notified and can appeal that

ruling to the Garda Síochána Complaints Appeal Board. If the Board is of opinion that a breach of discipline is disclosed, the Board shall refer the matter to a Tribunal for further investigation. The Tribunal is appointed by the Board under Section 8 of the Act. It is made up of three members, two of whom must be members of the Board who have not been concerned with the investigation of the complaint at an earlier stage and one of them must be a Barrister or Solicitor of at least ten years standing. Neither of them can be a member of An Garda Síochána. The third member must be a member of An Garda Síochána of the rank of Chief Superintendent, or higher rank. In none of those cases, Sir, were there any hearings, as you will hear.

The procedure to be adopted before the Tribunal is set out in Section 9 of the Act. Further procedural rules are set out in S. I. 96/1988.

If a minor breach of discipline is disclosed, the Garda Complaints Board can refer the matter to the Commissioner for him to deal with it in an informal manner. This can only be done with the consent of both the Garda concerned and the complainant.

The Board has power to postpone taking action, or taking any further action, where civil or criminal proceedings involving the same issue have been instituted, but have not been finally determined.

Any party aggrieved by a decision of the Garda Síochána Complaints Board can appeal such decision to the Garda Síochána Complaints Appeal Board. The Appeal Board consists of a chairman, who must be a Judge of the Circuit Court and two ordinary members, at least one of whom must be a Barrister or Solicitor of at least ten years standing. There is no specific requirement in relation to the third member of the Appeal Board. However no past or present member of An Garda Síochána is eligible to sit on the Appeal Board. The procedural rules governing the Appeal Board are set out in Section 11 of the Act and in S. I. 192/1988.

Section 13 of the 1986 Act provides that the Garda Síochána Complaints Board must make an Annual Report to the Minister in relation to its activities during the year. Section 13 (3) provides that the Board must also keep under review the working of the system of investigation and adjudication of complaints and shall report thereon to the Minister at least every three years.

We turn now, Sir, to look at what can conveniently be termed the McBrearty group of complaints. In the period December, 1996 to November, 2001, a total of 61 complaints were made to the Garda Síochána Complaints Board from what can be termed the extended McBrearty family. This includes two complaints from Mr. William Logan and one complaint from Mr. Seán Crossan, who were employees of the McBrearty's. This does not include the complaints lodged by Mr. William Flynn, the private investigator retained by the McBrearty family.

Of the 61 complaints lodged, 19 were held inadmissible, 1 complaint was not investigated and the remaining 41 complaints were withdrawn in October and

November, 2001, before any substantive decision was made by the Board in relation to same. Following the withdrawal of the complaints, these were all marked “No Further Action – Complaints Withdrawn” by the Board at its meeting held on 3rd December, 2001.

The only substantive decisions made by the Board were in respect of two appeals brought against the decision of the Chief Executive in respect of two of the complaints that were deemed inadmissible. The Board upheld the decision on admissibility given by the Chief Executive. Thus, in summary, it can be seen that no actual substantive decision was taken by the Garda Síochána Complaints Board on any of the McBrearty group of complaints.

However, the figures given above, while correct in terms of the decisions actually recorded by the Board, do not give a completely accurate view of what happened to the complaints submitted by the McBrearty family. In some cases the Commissioner appointed as I.O., an officer who the complainants felt was too close to the Gardaí in Donegal against whom complaint had been made. In some of these cases the I.O. was changed, in others the nomination of I.O. was not changed, leading to an impasse in relation to the investigation of the complaint. In total, 10 complaints resulted in a stalemate for one reason or another, such as refusal on the part of the complainants to deal with the appointed I.O., refusal to sign a statement of complaint in the presence of the I.O. or failing to provide sufficient information in relation to the complaint submitted.

A more detailed analysis of the complaints actually submitted now follows.

In 27 of the complaints submitted, a recommendation was made that no offence or breach of discipline was disclosed as a result of the investigation carried out, 19 complaints were deemed inadmissible, 10 complaints resulted in a stalemate for the reasons set out above, in relation to 3 complaints a recommendation was made by the Chief Executive that representations should be obtained from relevant Gardaí and it appears from the papers submitted to date that 2 of the complaints were not investigated.

From an administrative point of view, the Garda Síochána Complaints Board, and more particularly its Chief Executive, Mr. Seán Hurley and Deputy Chief Executive Mr. Brian O’ Brien, were, it would seem, diligent in dealing with the complaints received by the Board. Receipt of each complaint was acknowledged promptly in writing. A decision on admissibility of the complaint was also given quickly. Once deemed admissible, the Chief Executive set about obtaining the appointment of an I.O. by the Commissioner. Once appointed, it appears that the I.O.’s worked diligently in producing their reports. Most of the McBrearty group of complaints was dealt with by C/Supt. Carey from the Mayo Division. He delivered his report to the Deputy Chief Executive on all of the complaints dealt with by him on 18th November, 1998. As well as furnishing reports in relation to the individual complaints, he also gave a general report concerning all of the McBrearty group of complaints dealt with by him and their interaction with the ongoing investigation into the unlawful killing of Mr. Richard Barron.

However, when one comes to look at how the substance of the complaints was dealt with by the Garda Complaints procedure, a somewhat different picture emerges. The first difficulty was in relation to the delay, which arose in the forwarding of the initial complaints; which happened during and in the aftermath of the arrest and detention of members of the extended McBrearty family in December, 1996. A number of complaints were made around this time by Solicitors on behalf of various members of the extended McBrearty family. These letters of complaint were sent to the Superintendent's office at Letterkenny Garda Station. Supt. John Fitzgerald was the Superintendent in charge at the time. Receipt of the letters was acknowledged by the Superintendent's office by letter, some of which were signed by Supt. Fitzgerald and some were signed on his behalf.

These complaints were not forwarded to the Garda Síochána Complaints Board. They only came to light when they were forwarded by Supt. Lennon to the Board in October, 1997. Supt. Kevin Lennon stated that the complaints only came to his attention when copies of them were handed by Mr. William Flynn, the private investigator retained by the McBrearty family, to Supt. Gallagher of Ballymoate. He immediately forwarded the copy letters to the Board in October, 1997. He stated that he had not been able to locate the originals of the letters among the papers held at Letterkenny Garda Station.

In a statement made on 17th July, 1998, Supt. John Fitzgerald explained the apparent failure to forward the letters to the Board in the following way:

Mr. McMullin's letters were not viewed as complaints to be forwarded to the Garda Complaints Board but as putting down markers should there be future proceedings against his clients. The letters received from McMullin were acknowledged and indeed I recall phone calls from Mr. McMullin, but never was there any reference to the Garda Síochána Complaints Board. These letters and replies would have been placed in the system to be dealt with as part of the investigation file. As stated all letters to my knowledge were acknowledged and if the letters that I dealt with were interpreted as complaints within the incoming of the Act, I would have no hesitation in forwarding same as I had done previously and since then other complaints. During my time as Superintendent I got several letters from Mr. McMullin regarding prisoners other than the McBrearty's case so it was not unusual at all to receive such letters subject of this complaint and these other letters were never meant as complaints under the Garda Síochána Complaints Act. I believe that in connection with the letters in this instance, Mr. McMullin would have clearly indicated if he wished to have them interpreted as complaints for the Garda Síochána Complaints Board.

It should of course be stated, Sir, that any delay, which there may have been in forwarding the initial complaints, received on behalf of the extended McBrearty family, to the Garda Síochána Complaints Board, is not a matter in

respect of which any blame could attach to the Board itself. It will be for you, Sir, to decide whether the excuse given for the non-forwarding of the complaints was sufficient. It may also be necessary to investigate the reasons why the originals of the letters of complaint were mislaid or misfiled and, according to Supt. Kevin Lennon, could not be found by him when the copies of the letters of complaint were first produced to him in or around October, 1997.

The second area of investigation is in relation to the delay in dealing with any of the complaints, which had actually been received by the Board from October, 1997 onwards. In this regard, the documentation which has been supplied to the Tribunal's legal team to date, suggest that while Supt. Carey, the I.O. who dealt with the majority of the McBrearty group of complaints, furnished a comprehensive report to the Chief Executive in November, 1998, following which the Chief Executive prepared his Summary and Recommendation in respect of each complaint, a decision was subsequently made by the Garda Síochána Complaints Board at its meeting held on 18th May, 1999 to defer consideration of all of the McBrearty group of complaints pending;

- (a) Conclusion of the District Court prosecutions against the extended McBrearty family for offences under the Liquor Licensing Laws and for Public Order offences; and
- (b) Until the investigations, which were then being carried out by Assistant Commissioner Carty and his team, had been completed.

Thus, as far as the McBrearty group of complaints was concerned, everything was put on indefinite hold as of from May, 1999.

On reviewing the files, it becomes apparent that nothing of significance happened in relation to any of the files after this date, save for writing a few "holding" letters to the Solicitor then acting for the McBrearty family, Mr. Ken Smyth of Binchys Solicitors. Indeed, as late as 17th May, 2001, letters were being sent to Mr. Smyth stating that the Executive of the Board was arranging for C/Supt. Carey to have discussions with A/C Carty. Mr. Smyth was told that the "Board will give further consideration to the complaints after the discussions referred to above". By further letter dated 3rd July, 2001 the Deputy Chief Executive, again informed Mr. Smyth that the Board would progress its consideration of the complaints as soon as the information had been obtained by the I.O.'s in relation to the matters under investigation by the Gardaí under the Carty and McAndrew investigations. By letter dated 3rd July, 2001, Supt. Gallagher, who had been appointed I.O. in respect of some of the McBrearty complaints, informed the Deputy Chief Executive that there was no overlap between his investigation and the Carty and McAndrew investigation. By letter dated 17th July, 2001 C/Supt. Carey stated that subject to some overlap, on one file involving a complaint concerning Mr. Bernard Conlon, there was no overlap between any of the

complaints which he was investigating and the matters being investigated by the Carty team.

From the papers submitted, it does not appear that anything further happened following upon receipt of these letters by the Chief Executive of the Board. By October, 2001, the McBrearty family and Mr. Smyth had apparently become totally frustrated with the lack of results. Letters were written by Mr. Smyth formally withdrawing all the complaints made by his clients to the Garda Síochána Complaints Board. The level of frustration felt by the complainants and their Solicitor is evident from the content of the letter sent by Mr. Smyth to Mr. John Roycroft of the Garda Síochána Complaints Board on 11th October, 2001. It is in the following terms:

Dear Sir.

As you may be aware our clients are expected to believe that the campfires are still burning in Donegal, that Assistant Commissioner Carty conducts an investigation, devoid of delay, tactical or otherwise, which continues to serve some purpose other than damage limitation.

Ab asino lanam.

As you are well aware our clients have forwarded many complaints against a small number of Garda officers, over the past four and a half years, not one of which has, thus far, been determined.

The delay of the Board is incomprehensible to our clients given the serious, but straight forward nature of the complaints concerned and the evidence that Garda Stations in Raphoe, Letterkenny and perhaps elsewhere became, for a time Garda Síochána Grudge Houses (GSGH), some of the denizens of which are, surely, if rumours of its existence are well founded, members of the esoteric Garda Síochána National Bureau of Underworlders (GSNBU), whose oeuvre, if it exists, has resulted in the obloquy of the Garda force in Donegal and elsewhere, athwart the heroic efforts of decent members of the force to uphold the rule of law and to protect our innocent clients from the vile conspiracy of their corrupt colleagues and other, civilian, members of the GSNBU.

For the existence and honourable conduct of these decent members of the force in Donegal and, thankfully, elsewhere, our clients have offered many a Te Deum. If and when it should become possible to reveal the gniomh gaisce, den chead scoth, of these fine Garda officers, the reputation of the force will be comprehensively restored.

Unfortunately, our clients have lost all confidence in the capacity of the Garda Complaints Board to conduct a competent and independent investigation of their complaints. If the Board had acted in a timely fashion, our clients have no doubt that they would have been spared years of oppression.

Accordingly, our clients will not be pursuing their complaints before the Garda Complaints Board but will, instead, repose their reliance in juries of their peers in the High Court of Justice.

Yours faithfully,

Kenneth Smyth.

Following upon receipt of this letter and a further letter in the month of November, 2001, which merely confirmed that all the complaints and outstanding were being withdrawn, the Garda Síochána Complaints Board met on 3rd December, 2001 and marked all the complaints “No Further Action – Complaint Withdrawn”.

In order to open this module in a comprehensive manner it is necessary, Sir, to give you some idea of the substance of the complaints lodged by the McBrearty group. To this end, we would propose to give a very brief summary of the complaints lodged, together with a statement of the outcome of any investigation carried out into the complaints. It is not proposed to go into any of the complaints in any detail, as the substance of many of them, such as those complaints arising out of the arrest and detention of suspects in December, 1996, have already been opened in detail in earlier parts of this preliminary opening statement, dealing with other modules. Where the Garda against whom a complaint was made, was not given an opportunity to respond to the complaint, his or her name has not been given in the summary.

The first complaint was received by the Board on 12th December, 1996 (Ref. 961171). It was brought on behalf of Frankie and Chantel McBrearty who are the children of Frank McBrearty, Jnr. It was alleged that the children were traumatised as a result of the words and actions on the part of the Gardaí at the time that their father was arrested on the morning of 4th December, 1996. It was alleged that the Gardaí said “we have you now, you murdering bastard” and other words to like effect. Insp. Greg Sullivan was appointed as I.O. He took statements from Patricia McBrearty, the mother of the children and from her sister, Ms. Jackie Gallagher. He also took statements from the Gardaí who were involved in the arrest of Mr. Frank McBrearty, Jnr. They denied that anything insulting or derogatory was said to him at the time of the arrest. They denied that he was mistreated in any way. The I.O. stated that in his opinion the Garda arrest team had anticipated the presence of children and included a female Garda for that purpose. He stated, “in conclusion, if any thing can be considered to be incorrect or insensitive in this matter, perhaps it is the decision to arrest Mr. McBrearty while he had his children with him rather than the conduct of the members complained of”. In his report the Deputy Chief Executive, recommended that the Board should form the opinion that neither an offence, nor a breach of discipline was disclosed against any member. No decision was made by the Board in relation to this complaint prior to the withdrawal of same in October, 2001.

On 12th March, 1997, Michael McConnell made a complaint (Ref. 970238) in which he alleged that Sgt. John White had accused him of intimidating witnesses and told him that this was a serious offence and that he could go to prison. When considering the admissibility of this complaint, the Chief Executive obtained a report from Supt. Kevin Lennon, in which he stated that, from his knowledge, the complaint was a further effort to prevent Sgt. White from performing his legitimate functions in the Raphoe area. By letter dated 30th April, 1997 the Chief Executive wrote to the complainant telling him that the complaint was not admissible as the Chief Executive was not satisfied that

the conduct complained of would constitute an offence or a breach of discipline.

The third complaint arose out of a vehicle checkpoint set up in Raphoe on 10th May, 1997 (Ref. 970506). It was alleged by Frank McBrearty, Snr., that at this checkpoint, Sgt. John White had said to him that the best thing for Frank McBrearty, Jnr., to do was to go to the Garda Station and to admit the murder of Mr. Richard Barron. It was also alleged that Sgt. White tried to take the keys of Mr. McBrearty's car. It was alleged that this happened in the presence of Mr. McBrearty's 11-year old daughter who was upset by the conduct. C/Supt. Carey was appointed I.O. He took statements from the complainant and also from the Garda involved in the checkpoint. They denied that there was any improper conduct on their part. He also obtained a statement from an independent witness, Mr. James McGranaghan, who lived close to the area where the checkpoint had been set up. He stated that Mr. McBrearty had behaved in an aggressive fashion toward the Gardaí. The Gardaí alleged that Mr. McBrearty, Snr., had been very aggressive at the time. 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. This complaint had originally been deemed inadmissible by the Chief Executive. However, this had been appealed to the Garda Complaints Board but the original letter could not be found. In a subsequent report the Chief Executive recommended that the complaint be deemed admissible. On 1st December, 1997, the Board ruled that the complaint was admissible. Following on the investigation carried out by C/Supt. Carey, the Chief Executive issued a second report in which he stated, "I am of the view that the balance of evidence is to the effect that Mr. McBrearty was acting provocatively and aggressively and accordingly I think it is reasonable to accept D/Sgt. White's version of events as being the more credible. I recommend that the Board form the opinion that no offence or breach of discipline is disclosed." The Chief Executive made a further report, in which he gave the same recommendation to the Board. This complaint was withdrawn prior to being determined by the Board.

On 14th May, 1997, Patricia McBrearty lodged a complaint that on the previous night, a summons had been served on her husband, Frank McBrearty, Jnr., at her home late at night by Gda. P. Kilcoyne and D/Sgt. John White. She alleged that the Gardaí drove away from her house blowing the car horn. Insp. Greg Sullivan was appointed I.O. He took statements from the complainant in which she alleged that this summons had been served at her house at 22.45 hrs. He also obtained statements from the Gardaí in which they admitted serving the summons at 22.42 hrs. They stated that the lights were on in the house and that there was no evidence that the occupants had gone to bed. They denied that they had acted improperly. In a letter dated 20th March, 1998 the I.O. stated that the summonses, which were in respect of alleged careless driving, became available for service on 13th May, 1997. They could have been served at any time up to 7 days in advance of the Court session on 26th June, 1997. 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 until 23.00 hrs. was permissible. In his report, the Chief Executive stated that it was difficult to determine where the truth lay in relation to this complaint. He stated that it was a case of the word of the complainant and her husband against the two Gardaí. He stated that one may question why Sgt. White decided to serve summonses coming up toward 23.00 hrs. He suggested that the Board might defer consideration of the matter until all investigations into all the McBrearty complaints were complete. If the Board did not wish to adopt this course, he recommended that a finding be made that no offence or breach of discipline was disclosed against Gda. Kilcoyne. He recommended that D/Sgt. White should be invited to make representations under S. 7 (4)(b) in relation to the serving of the summons at a late hour. This complaint was withdrawn before the Board reached a decision on it.

On 14th May, 1997, Mark McConnell lodged a complaint (Ref. 970508) in which he alleged that D/Sgt. White had served a summons on him at his home at 23.45 hrs. on 15th April, 1997. He stated that when he told the Sergeant that he should not be serving summonses at that late hour, as his wife had been in a psychiatric hospital, he alleged that the Sergeant replied that it was guilt, which had put her there. It is alleged that D/ Sgt. White read out the content of the summons in a loud voice. It was alleged that the Sergeant and Gda. O' Dowd drove from the premises, laughing. Mr. McConnell stated that his wife was very upset by the incident. He alleged that she had to spend the night in her mother's house and had to seek medical help. On 28th November, 1997, C/Supt. Carey was appointed I.O. He took a statement from Mr. McConnell and also took a statement from Mrs. Róisín McConnell and Ms. Hannah McConnell. He also took a statement from D/Sgt. White in which he noted that the complaint was made a month after the incident and implied that it was part of a vendetta or conspiracy by the McBrearty family against him. He denied that the incident occurred at 23.45 hrs. and said that it was in fact 22.45 hrs. He stated that the downstairs lights were on and that he could hear the noise of a television from the house. Gda. O' Dowd made a statement agreeing with the content of Sgt. White's statement. The I.O. stated "the complaint was not made until 14th May, 1997. The Station record made on the night supports the Garda version. I believe the Garda version." In his report, the Deputy Chief Executive stated "in my view it was at least inconsiderate and perhaps an abuse of authority to call to the house at that hour of the night. I recommend that the Board form the opinion that a minor breach of discipline on the part of the members may be disclosed. They should be invited to make representations under S. 7 (4) of the Act". It is not clear if this was done as the next correspondence on the file deals with the withdrawal of the complaint.

On 20th May, 1997 Mark McConnell lodged a complaint (Ref. 970511) in which he complained that a named Garda had stared at him in a nightclub and made actions as if hitting someone over the head. He stated that this was done in an attempt to provoke a row. He stated that later on that evening Sgt. White and Gda. O' Dowd stared at him and acted in an intimidatory manner. In deciding on the question of admissibility, the Chief Executive

obtained a report from Insp. P. Hughes. He merely stated that Mr. McConnell was related to the McBrearty's and had been arrested and interviewed in relation to the murder of Mr. Richie Barron. He stated that Mr. McConnell had submitted a number of complaints against the Garda concerned. On 8th September, 1997 the Chief Executive Mr. Sean Hurley, wrote to the complainant stating that he was not satisfied that the conduct complained of constituted an offence or a breach of discipline. By letter dated 9th September, 1997 the complainant indicated that he intended to appeal this decision however, it does not appear that any appeal was actually lodged. The name of the Garda concerned has been omitted as this complaint was never put to him and therefore he has not had an opportunity to respond to it.

On 14th May, 1997, Michael McConnell lodged a complaint (Ref. 970528) in which he alleged that two named Gardaí had called to the house at 23.45 hrs. for the purpose of serving a summons on him. He was not present in the house at the time. He stated that his mother and sister-in-law, Róisín McConnell, were at the house and both had bad health. On 28th May, 1997 the Chief Executive wrote to the complainant informing him that the complaint was deemed inadmissible because the complainant was not present, nor was a witness to the alleged conduct. The Chief Executive was also of opinion that the complaint was inadmissible as it did not appear to constitute an offence or breach of discipline.

On 7th July, 1997, Mr. Willie Logan lodged a complaint (Ref. 970657) in which he alleged that Sgt. White had accused him of staring at him. He stated, Sir, that this occurred outside the McBrearty premises. He alleged that D/Sgt. White had said something about Section 8 and asked if Mr. Logan wanted to go in the van. The Chief Executive obtained a report from Insp. Barry who stated that he was of opinion that there was an orchestrated campaign of making complaints against D/Sgt. White usually from persons in or connected with the McBrearty family. He was of opinion that the allegations were trivial and did not warrant further investigation. Subsequent to this a letter was written to the complainant in relation to informal resolution of the matter. No response was received. On 13th January, 1998, C/Supt. Carey was appointed I.O. He took statements from the complainant, and his witnesses and from the Gardaí involved. He formed the opinion that the version of D/Sgt. White was credible. He was of opinion that there were no grounds to take action against D/Sgt. White. In his report, 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 was of the view that Mr. McConnell and Mr. Logan were the more likely to have been the instigators of the verbal exchanges rather than D/Sgt. White. He recommended that the Board form the opinion that no offence or breach of discipline was disclosed. On 7th July, 1997 Mark McConnell lodged a complaint (Ref. 970659) in which he alleged that upon emerging from the McBrearty nightclub premises with his wife, D/Sgt. White stared at Mr. McConnell and that he stared back at him. He stated that D/Sgt. White then booked him under Section 8 and accused Mr. McConnell of threatening Sgt. White's wife and children. He stated that the Sergeant threatened to arrest Mr. McConnell and that when Willie Logan arrived on the scene, he was booked by the

Garda as well. A report was obtained from Insp. Barry who was of opinion that the allegations made against D/Sgt. White were trivial in nature and did not warrant further investigation. In a letter dated 13th August, 1997, Supt. Lennon stated “they (McConnell and Logan) have used every means available to them in order to frustrate the actions of the Gardaí and in particular Sgt. White who is an extremely active member of the force”. C/Supt. Carey was appointed I.O. He took statements from the complainant, and his witnesses and from D/Sgt. White. He formed the opinion “the complaint lacks any credibility. None of the witnesses agree as to any details. It should be noted that one of the witnesses, Willie Logan, made a similar complaint about an alleged incident earlier in the night”. There does not appear to be any report from the Chief Executive on the file in relation to this complaint. No decision was made by the Board prior to withdrawal of this complaint.

By letter dated 11th December, 1995 Messrs. V. P. McMullin & Son, Solicitors, lodged a complaint on behalf of their client Mr. Seán Crossan (Ref. 971030) to the effect that when they visited the Garda Station at which Mr. Crossan had been detained the member in charge did not know the reasons for the arrest and the Solicitor requested in the letter that he be furnished with reasonable cause for the arrest of his client. He also asked for sight of the custody records and for copies of all statements made by his client. This letter was acknowledged in a letter sent by Supt. John Fitzgerald on 12th December, 1996. However it was not until 17th October, 1997 that this letter was transferred by Supt. Lennon to the Garda Complaints Board. C/Supt. Carey was appointed I.O. He took statements from Mr. Crossan and from the Gardaí concerned. By letter dated February 1998, Messrs. V. P. McMullin & Son stated that they did not wish to make any statement or comment in relation the matter. Having completed his investigation, the I.O. reached the conclusion that Mr. Crossan was properly arrested and detained. He was of opinion that Mr. Crossan did not intend to make a complaint to the Garda Complaints Board arising out of the letter from his Solicitor dated 11th December, 1996. He did not recommend any action be taken against any of the Gardaí involved. The Chief Executive in his report noted that as one of the Gardaí was no longer in the force, the Board had no jurisdiction over him. In relation to the complaint against the other Gardaí he was of opinion that Mr. Crossan did not come across as a credible witness. Accordingly he recommended that the Board should form the opinion that the complaint was vexatious. No decision was reached by the Board prior to withdrawal of the complaint.

By letter dated 10th December, 1996, Messrs. V. P. McMullin & Son, Solicitors, made a number of complaints on behalf of Katriona Brolly (971031) to the effect that she had been grossly mistreated during her detention by the Gardaí. These complaints have been examined in detail earlier in this preliminary opening statement. Having taken statements from the complainant and from the Gardaí involved in her arrest and detention, the I.O. stated:

This like other complaints must be looked at in the context of the overall background as outlined in the main file. There is no independent evidence. The complaint was not made until some days later and Solicitor Mr. J. O' Donnell declines to make a statement. I do not recommend any action against any member of An Garda Síochána.

In his report, the Chief Executive stated "There is nothing to support Ms. Brolley's allegation other than her own statement and the fact that she reported these allegations to her Solicitor. I do not find Ms. Brolley's allegations credible. The Garda version of events seems more plausible." As the complaint included an allegation of an offence, the file had to be sent to the DPP. However, the Chief Executive stated that in the event that no prosecution was directed, he would recommend that the Board form the opinion that neither an offence nor a breach of discipline was disclosed.

By letter dated 23rd December, 1996, Messrs. V. P. McMullin & Son, Solicitors lodged a complaint on behalf of Róisín McConnell (Ref. 971032) alleging that she had been mistreated during her arrest and detention by the Gardaí. The details of her complaints are given elsewhere in this statement. C/Supt. Carey was appointed I.O. He obtained a detailed statement from the complainant and also took statements from each of the Gardaí concerned with her detention. He also had access to the custody records. He stated, "this, like all the other complaints must be viewed in the context of the overall background. This statement of complaint differs from complaint lodged by her Solicitor. The Solicitor declines to make a statement. The complaint was lodged three weeks after alleged incident. There are no independent witnesses. Custody record shows no complaint recorded. I don't recommend any action against any member of An Garda Síochána." The report of the Chief Executive states that the Garda version of events seemed more credible on the basis of the investigation, than that of the complainant. He stated that as an offence was alleged, the file would have to be sent to the DPP. However, in the event that no prosecution was directed, he recommended that the Board form the opinion that neither an offence nor a breach of discipline was disclosed. In May, 1999, the Board decided to defer further consideration of this complaint. No decision was made prior to withdrawal of the complaint.

On 10th December, 1996, the Solicitors acting for Mark McConnell lodged a complaint on his behalf in relation to his treatment during his arrest and detention by the Gardaí. (Ref. 971033) As with the other complaints made at around this time it was not forwarded to the Garda Complaints Board until October, 1997. On 28th November, 1997 C/Supt. Carey was appointed I.O. He took statements from the complainant and from the Gardaí concerned with his arrest and detention. He stated as follows "there is a direct and irreconcilable conflict of evidence. There is no corroboration for the allegations. The seizure of property and vehicle is covered in D/Sgt. Leheny's statement. I do not recommend any action against any member of An Garda

Síochána". The report of the Chief Executive stated, "there is only McConnell's word for the allegations which he makes. All of the members

who had dealings with him strongly deny the allegations. As the allegations concern an offence they must be forwarded to the DPP. If no prosecutions come I recommend that the Board decide that neither an offence nor a breach of discipline is disclosed". The complaint was withdrawn prior to any decision by the Board.

On 11th December, 1996, a letter was written by Messrs. V. P. McMullin & Son, Solicitors on behalf of Frank McBrearty, Jnr., (Ref. 971034). It was alleged that Frank McBrearty, Jnr., was assaulted by Gardaí while being brought to the Garda Station and also during his periods of interrogation. This complaint was not forwarded to the Complaints Board until 17th October, 1997. C/Supt. Carey was appointed I.O. He took a detailed statement from Frank McBrearty, Jnr., and took statements from all the Gardaí who were involved in his arrest and detention. They denied that he had been mistreated in any way. He was not able to obtain a statement from Messrs. V. P. McMullin & Son as they had indicated by letter dated 12th February, 1998, that they did not wish to make any statement or comment regarding the complaint. In his report, the I.O. quoted from the custody record and noted that the complaint, which had been recorded therein at the request of the complainant's Solicitor was different to the account given by the Gardaí. The I.O. stated "we deny the complaints" and stated that Mr. McBrearty, Jnr., was "probably treated in accordance with the custody regulations". He noted that Mr. McBrearty signed the custody records without complaint. The I.O. went on to state that there was a complete conflict of evidence without any independent or corroborative evidence other than the note in the custody record. He stated that if there was physical abuse, it was, as he put it, very minor. He stated that the complainant was not likely to have been perturbed by verbal or minor physical abuse. He did not recommend any action against any member of the Gardaí. The Chief Executive in his report stated that there was only Mr. McBrearty's own word for it that he was ill-treated. He noted that there was no medical evidence to back up the claim. On the basis of the investigation he concluded that there did not appear to be any evidence against any of the members complained of. He stated that in the event that the DPP did not direct that a prosecution be taken, he recommended that the Board should form the opinion that there was neither an offence nor a breach of discipline disclosed. On 18th May, 1999, the Board decided to defer further consideration. The complaint was withdrawn prior to the Board reaching any decision in the matter.

By letter dated 10th December, 1996, a complaint was made by Messrs. V. P. McMullin & Son, Solicitors on behalf of Frank McBrearty Snr. (Ref. 971035). It was alleged that Mr. O' Donnell, Solicitor, asked the member in charge, Gda. John Rousse, to get a Doctor for his client who was then in custody. It was alleged that the Garda refused to get a Doctor. The Solicitor asked that the request and the refusal should be noted in the custody record. It was also alleged that Mr. McBrearty, Snr., was harassed and verbally abused by the Gardaí while in custody. C/Supt. Carey investigated this complaint. When he approached Mr. McBrearty, Snr., for a statement, he directed him to the Solicitor who had acted for him at the time, Messrs. V. P. McMullin & Son. They did not wish to make any comment or statement

regarding the complaint. C/Supt. Carey obtained statements from the Gardaí against whom complaint has been made. In his conclusion he stated that it was his opinion that neither Mr. McBrearty nor his Solicitor intended the letter dated 10th December, 1996, to be a complaint, which should be forwarded to the Garda Complaints Board. He stated that there was no evidence against the Gardaí in relation to this complaint. In his report, the Chief Executive stated that it was not clear to what extent the Solicitor was making a complaint and to what extent he was merely making points for the record. He stated that on the basis of statements furnished by the Gardaí, he was of opinion that there were grounds for the arrest of Mr. McBrearty, Snr. He stated that due to lack of supporting evidence from the complainant, in relation to the verbal abuse or harassment, he did not recommend that any inquiry forms be served on the members who dealt with Mr. McBrearty while in custody. There, being no evidence he recommended that the Board should form the opinion that there was no offence or breach of discipline involved.

By letter dated 16th December, 1996, Messrs. V. P. McMullin & Son lodged a further complaint on behalf of their client, Mr. Frank McBrearty, Snr., (Ref. 971036) alleging that despite a letter dated 11th December, 1996 from Dr. Brian Callaghan, which advised against further interrogation of Mr. McBrearty, Snr., he was further interrogated by the Gardaí which resulted in his being hospitalised on 13th December, 1996. On 28th November, 1997, C/Supt. Carey was appointed I.O. He took a statement from Frank McBrearty, Snr., in which the complainant simply referred him to his Solicitors on this aspect of complaint. However, by letter dated 12th February, 1998 the Solicitors indicated that they did not propose to make any comment or statement in relation to the complaint. The I.O. also took statements from the relevant Gardaí. The I.O. appeared to concentrate his investigation into the question as to whether the complainant was in fact in Garda custody while he was in hospital. He did not appear to carry out any investigation into the second limb of the complaint, to the effect that the interrogation was continued contrary to the advice of Dr. Brian Callaghan. He concluded as follows in relation to the letter of complaint, "I also believe that this letter was a legal one dealing with legal issues surrounding the arrest and detention of Mr. McBrearty. I doubt that either Mr. McBrearty or the writer of the letter had intended it as a complaint for investigation by the Garda Complaints Board at the time of writing. Subsequent events seem to confirm this. There is no evidence here". The Chief Executive noted that neither Mr. McBrearty, Snr., nor his Solicitor, was willing to make a further statement. He recommended that no further action be taken by the Board.

In complaint bearing reference number 971037, Frank McBrearty, Snr., complained that from approximately December, 1996 onwards the Gardaí were acting in a coordinated and deliberate way by visiting his premises so as to harm his business and give people the impression that he was a suspect in the unlawful killing of Mr. Richard Barron. The I.O., C/Supt. Carey, took a statement from the complainant, who referred him to a Solicitor. However, neither of the partners in the firm of V. P. McMullin & Son were willing to make any comment or statement in relation to the complaint. He also obtained a statement from Supt. Kevin Lennon, which dealt at length with the background

to policing difficulties in the town of Raphoe in 1996 and 1997. He denied that there was any undue harassment of Mr. McBrearty or his business. Supt. John Fitzgerald also made a statement outlining the difficulties faced by Gardaí in policing the town of Raphoe. In his opinion the I.O. stated that both Supt. Lennon and Supt. Fitzgerald had outlined in detail the difficulty they had with Mr. McBrearty in regard to the Licensing Laws. He stated that there was no evidence that Mr. McBrearty was unfairly treated in this regard. Also on the Garda Complaints Board file is a comprehensive statement from Supt. Kevin Lennon as well as supporting documentation from Insp. Philip Lyons in relation to events on 5th/6th July, 1997. There is also a 26-page statement from Mr. William Flynn, the private investigator retained by the McBrearty family. There does not appear to be a report from the Chief Executive in relation to this complaint. At its meeting on 18th May, 1999, the Board made a decision to defer further consideration of this complaint. The complaint was withdrawn prior to any final decision on the matter.

On 31st October, 1997, Sir, Frank McBrearty, Jnr., lodged a complaint concerning his treatment at the hands of the Gardaí following on his arrest on the 4th February, 1997. He alleged that he was verbally abused and physically assaulted by D/Sgt. White and Gda. John O' Dowd. The details in relation to this complaint have already been looked at earlier in this statement. The I.O., C/Supt. Carey, took a detailed statement from the complainant. He also obtained statements from two Doctors who had examined the complainant during his period in custody. He also obtained statements from all of the Gardaí involved in interrogating the complainant, who denied any mistreatment of him. The I.O. noted that there were differences in the accounts as to how the injuries occurred. He stated that Gda. Rousse gave clear evidence of self-inflicted injuries. He also referred to a covert video which had been taken by the Gardaí of Mr. McBrearty, Jnr., while in custody. He somehow regarded the video as being supportive of the Gardaí. He noted that Mr. McBrearty was a boxer and therefore would know about head injuries. He stated that there was a conflict, which may only be resolved before a Tribunal. He stated that there was no evidence to support the allegation of wrongful detention. He stated that overall, he personally believed the injuries were self-inflicted. The Chief Executive furnished a report in which he set out how the complaint first came to the attention of the Board by way of a telephone conversation between the Deputy Chief Executive, Mr. O'Brien and Mr. Frank McBrearty, Jnr., on 28th October, 1997. In relation to causation of the injuries he stated as follows, "it comes down to the credibility of the individuals involved. On the basis of the investigation I regard the Garda version of events as being the more credible". As the complaint involved an allegation of an offence, the file had to be referred to the DPP. In the event that no prosecution was directed, he recommended that Board should decide that neither an offence nor a breach of discipline was disclosed.

On 28th October, 1997, Mr. McBrearty, Snr., submitted a document to the Garda Complaints Board headed "Points of View". This document contained a number of complaints against the Gardaí. They were dealt with under separate files by the Garda Complaints Board (Ref. 971120). The first complaint was that nothing was done by Sgt. Joseph Hannigan in relation to a

report made by Frank McBrearty, Snr., concerning threatening telephone calls made to the McBrearty's on 5/6th November, 1996. It was alleged that no contact was made by the Gardaí with Telecom Éireann (now Eircom) to try and trace the calls. C/Supt. Carey obtained statements from the complainant and his wife and also from Sgt. Joseph Hannigan who stated that he forwarded details of the report to the Superintendent at Letterkenny and that thereafter D/Sgt. Hugh Smith was appointed to investigate the matter. A statement was obtained from D/Sgt. Hugh Smith outlining the investigation that he had carried out in relation to these threatening telephone calls. The I.O. stated that the subject matter of the complaint had been dealt with. He stated that this investigation was inextricably linked to the overall investigation. Speed or urgency of this investigation was a moot point, according to him. He stated that there were a number of factors contributing to the time factor. These were dealt with in his main report. The Chief Executive stated that investigations were carried out. It was not clear whether these were done promptly. Any delay there may have been was due to the Garda investigation into the death of Mr. Richard Barron. He recommended that the I.O. be directed to make further enquiries. On 19th May, 1999 the Board decided to defer further consideration of this complaint. In a second report, the Chief Executive noted that the criminal investigation had concluded and had established that the calls made on 5/6th November, 1996 were made from Northern Ireland. He noted that a suspect maybe charged in relation to these calls. He noted that the statements made by Sgts. Hannigan and Smith indicated that matters were dealt with at the time. He recommended that the Board should form the opinion that neither an offence nor a breach of discipline was disclosed on the part of the members complained of.

The second complaint in the document headed "Points of View" concerned the delay which had occurred in forwarding the letters of complaint sent by the Solicitors acting for Mr. Frank McBrearty, Snr., to the Garda Complaints Board. The letters had been sent in December, 1996 and were only forwarded to the Board in October, 1997 (Ref. 971121). D/Supt. Carey, the I.O., took a statement from the complainant and also from the Superintendent concerned, Supt. John Fitzgerald. His response has been outlined earlier in this statement. The I.O. accepted the explanation of Supt. Fitzgerald as being, what he termed, a reasonable one. He stated that many such letters were received at District Offices. He noted that while some allegations of abuse were made, many of the letters requested information on legal issues. He believed that the Solicitors did not pursue the matter because they did not intend the letters as formal complaints. It was his belief that this complaint was brought by Mr. McBrearty when he believed that he had the Gardaí in some trouble. In his first report, the Chief Executive did not agree with Supt. Fitzgerald's reading of the situation. He regarded the letters as containing complaints, which should have been forwarded to the Board. He was of a view that the non-forwarding of the letters was a serious matter. He recommended that further enquiries be made. On 18th May, 1999, the Board decided to defer any further consideration of this complaint. The Chief Executive in his second report noted that upon receipt of the report from the I.O. in November, 1998, he had recommended that further enquiries be made. As nothing was done in the interim, he felt that it would be inadvisable to

resume the investigation at that juncture, due to the delay that had arisen in dealing with the matter. He therefore recommended that no further action be taken. The complaint was withdrawn prior to the Board making any further decision in the matter.

The third complaint contained in the document headed “Points of View” concerned an allegation that no action had been taken by the Gardaí to investigate the complaint made by Frank McBrearty, Snr., to D/Sgt. John White in March, 1997 about defamatory flyers which had been circulated in the Raphoe area. C/Supt. Carey took a statement from the complainant and also from D/Sgt. White and Supt. Kevin Lennon. They denied that the Gardaí had failed to properly investigate the origin of the leaflets. They stated that the investigation was hampered by the refusal of Mr. McBrearty or Mr. William Flynn to co-operate with the investigation by handing over the original of the documents, which they had found for forensic testing. D/Sgt. White stated that he believed that Mr. McBrearty or his associates were behind the distribution of the defamatory leaflets. The I.O. noted that the Garda file on the matter disclosed that the Gardaí had serious suspicions in relation to the authorship of the flyers. He noted that an investigation had been carried out by the Gardaí. He was of opinion that there was no case to answer by any of the Gardaí. The Chief Executive in his first report recommended that further enquiry should be made as to whether the criminal investigation was ever finalised and/or if the results of same were ever communicated to Mr. McBrearty. In May, 1999, the Board decided to defer any further consideration of the complaint. In a second report, the Chief Executive stated that the matter had been investigated by the Gardaí and it must be assumed that the author was not found as nobody had been prosecuted. He recommended that the Board form the opinion that no offence or breach of discipline was disclosed.

The fourth complaint in the document headed “Points of View” concerned a complaint by Frank McBrearty, Snr., that the Gardaí had harassed him in relation to the number of raids on his licensed premises and also by placing vehicle checkpoints close to his premises. He stated that this had been done with such frequency as to constitute harassment, (Ref. 971123). Statements were furnished by the complainant and by the manager of his premises, Mr. John Mitchell. A diary kept by Mr. Mitchell in relation to the number of raids on the premises was also submitted. Statements were furnished by Supt. Kevin Lennon, D/Sgt. John White and Gda. John O’ Dowd, who all denied that they had harassed Mr. McBrearty, or his business premises, in the manner alleged. The I.O. stated, “it is difficult to show or prove that Gardaí were acting even-handedly in situations like this. What is clear is that Mr. McBrearty’s premises was badly run. Drug abuse, breaches of Public Order, and breaches of the Licensing Laws were common”. There is no report from the Chief Executive on this file. The complaint was withdrawn before any decision thereon was made by the Board.

In the fifth item of the document “Points of View” Mr. McBrearty, Snr., wanted to know the names, of the Garda or Gardaí who had gone to the family of Mr. Richard Barron and told them that the McBrearty’s were the murderers of

their father. By letter dated 18th November, 1997, the Chief Executive wrote to Mr. McBrearty requesting the date of the alleged incident. In a subsequent telephone conversation the complainant stated that the statement had been made by Gardaí to members of the Barron family more than six months prior to that date. A further fax was sent by the complainant stating that Gardaí had gone to the Barron family in early 1997 in either February or March of that year at which time the statements were made. By letter dated 6th February, 1998 the Chief Executive wrote to the complainant informing him that the complaint was not admissible under the six month admissibility rule.

The sixth item, Sir, in the document “Points of View” which was furnished on 28th October, 1997, concerned a request by Mr. McBrearty, Snr., to be told such facts such as where were the Gardaí on the night of the accident, why did it take them so long to reach the scene, why was the scene not preserved, what Gardaí were at the scene, were the deceased clothes forensically examined, why was he buried so quickly, why did Sgt. Hannigan take a statement from Mr. McBrearty on the day after the incident? (Ref. 971125) This complaint was deemed inadmissible because it was not made within six months of the date of the alleged conduct.

Item number seven in the document “Points of View” concerned a complaint by Mr. McBrearty, Snr., that a telephone call from the Town and Country Bar to Frankies Tudor Bar at 23.00 hrs. on 13th October, 1996, was never investigated properly. Mr. McBrearty claimed that this call was made by Ms. Charlotte Peoples to Frankies Tudor Bar looking for her sister Ms. Paula Ayton. He said that the call was answered by the bar manager, Mr. John Mitchell. Initially, Insp. Greg Sullivan of Buncrana was appointed I.O. The complainant objected to the selection of I.O. Subsequently, C/Supt. Carey was appointed as I.O. A statement was obtained from Frank McBrearty, Snr., in which he stated that the Gardaí had accused Mark McConnell of phoning Frank McBrearty, Jnr., at the Tudor Bar from the Town and Country Bar at 23.00 hrs. on 13th October, 1996. Mr. McConnell made a statement confirming that the question of making the telephone call had been put to him by the Gardaí. Mr. McBrearty stated that the private investigator, Mr. Flynn had found out that this call was in fact made by Ms. Charlotte Peoples to her sister Ms. Paula Ayton. A statement was obtained from Supt. Fitzgerald in which he stated that if the issue of the telephone call arose, it would have been thoroughly investigated and patrons would have been asked about it during questioning. He stated that the particular phone call had no bearing on the decision to arrest any of the suspects. A statement was also obtained from Sgt. Sylvie Henry who stated that the phone call was not significant. The I.O. stated that Mark McConnell mentioned the telephone call to Mr. McBrearty when he was being “debriefed” after the second arrest. He stated that Mr. McBrearty gave it much greater significance than it merited. The I.O. stated “this file should be read in conjunction with the main file”. In his report, the Chief Executive stated “the investigation shows that there is no substance in the complaint”. He recommended that the Board should form the opinion that no offence or breach of discipline was disclosed.

The eight item in the document headed “Points of View” concerned an allegation by Frank McBrearty, Snr., that D/Sgt. John White had made allegations concerning Frank McBrearty, Snr., that he was bribing witnesses. (Ref. 971127). Statements were obtained by the I.O. from persons who were in the public house premises and who were alleged to have heard the allegation being made by D/Sgt. White. However, the independent witnesses who supplied statements did not hear the alleged statement by D/Sgt. White. A statement was also obtained from D/Sgt. White who denied making any such allegation. Statements were also obtained from the other Gardaí who denied hearing any such allegation being made. The I.O. did not give any opinion in the matter. In his first report, the Chief Executive stated that there were two conflicting versions of the events in relation to what had happened on the night of 19/20th July, 1998. He stated that it was difficult to decide which version was true. He recommended that the Board should await the decision of the District Court in relation to the prosecution arising out of the incident on that night. On 18th May, 1999 the 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.

In the ninth matter raised in the document “Points of View”, Mr. Frank McBrearty, Snr., wanted to know where the Gardaí got evidence to justify all the arrests on 4th December, 1996 and why nobody was charged (Ref. 971128). This complaint was deemed inadmissible because the complainant was not directly affected by the conduct, nor was he a witness to the incident complained of. It was also inadmissible because the complaint was not made within six months of the alleged conduct.

On 25th June, 1997, Mark McConnell made a complaint that while in Garda custody, he was offered a “deal” by the Gardaí if he would help them. He also alleged that he was told by the Gardaí that a member of the Barron family would be “coming to get him” and that there would be no Garda protection available for him (Ref. 971136). It is not clear when the complaint was submitted to the Board. On 28th November, 1997, C/Supt. Carey was appointed I.O. He took a statement from the complainant and also from Mr. Cathal Quinn, Solicitor. He also took statements from Gda. John Nicholson, D/Gda. McGuire and D/Gda. McHale, who all denied that any such deal or statement was made to Mr. McConnell while he was in custody. In his report the I.O. concluded that if the allegation of being offered a “deal” were true, this would mean that any confession obtained would be inadmissible, but this, he opined, did not constitute a breach of discipline. He stated, however, that the threat could constitute a breach of discipline. He noted that the evidence of the complainant in relation to this aspect seemed credible having regard to the evidence given by his Solicitor and the entry in the custody record. He noted however that the Gardaí vehemently denied the making of any such threat. He then stated, “The question to be decided is whether this was a breach of discipline”. He did not say any thing further on the matter. In his report the Chief Executive stated, “It seems incredible that four experienced Garda interrogators would make the type of comments complained of by Mr. McConnell. His story does not ring true”. He

recommended that the Board form the opinion that neither an offence nor a breach of discipline was involved.

On 6th November, 1997, Frank McBrearty, Snr., made a complaint that there had been delay by Supt. Kevin Lennon in communicating to him the fact that the DPP had decided that no prosecution was to be brought against him. He alleged that this decision had been communicated by the DPP to Supt. Lennon some months earlier. The complainant alleged that he had made enquiry of Supt. Lennon during the summer of 1997 as to whether he was to be prosecuted. He stated that he only learnt that no prosecution was to be brought when a letter was sent to him by Supt. Lennon dated 15th September, 1997. It transpired that the direction from the office of the DPP had issued on 19th May, 1997. A statement was obtained from Supt. Kevin Lennon in which he stated that through courtesy he had advised the complainant that no prosecution was to be instituted. He stated that if there was some “minor delay” in communicating this information it was due to pressure of work in the Letterkenny Garda District at the time. The I.O. stated “having considered all aspects of Mr. McBrearty’s complaint the writer is of the view that this complaint is frivolous”. He stated that it was good practice to tell a suspect of the directions of the DPP but noted that there was, what he termed, no binding obligation on the Gardaí to do this. He noted that Supt. Lennon had stated that if there was a minor delay this was due to pressure of work in the Letterkenny Garda District. In his first report, the Chief Executive stated that in view of the Board’s decision of May, 1999, to defer decisions in the McBrearty group of complaints pending further enquiries, he recommended that they defer any decision on this complaint. On 12th February, 2000 the Board decided to defer further consideration of this complaint. In his second report, the Chief Executive recommended that the Board should form the opinion that neither an offence nor a breach of discipline was disclosed (Ref. 971144).

On 6th November, 1997, Frank McBrearty, Snr., lodged a complaint (Ref. 971145) to the effect that there had been delay on the part of Supt. Kevin Lennon in furnishing a copy of the custody records to his Solicitor at the time, Mr. Ken Smyth. It appears that the custody records had been furnished in January, 1998. The I.O. concluded “the records were supplied, but there may have been a delay. I have been unable to establish relevant dates because Mr. Smyth has not come back to me. I called him on two occasions. Supt. Lennon says he cannot address the matter more fully with relevant dates, etc. I don’t recommend any action against Supt. Lennon”. The Chief Executive in his report stated that it was not possible for the I.O. to pinpoint when exactly the request for the records had been made. He was of the view that the custody records should have been provided more quickly. On this account, he concluded that there may have been a minor breach of discipline by Supt. Lennon. He recommended that the Superintendent should be invited to make representations. This complaint was withdrawn before any decision was taken on it by the Board.

On 6th November, 1997, Frank McBrearty, Jnr., lodged a complaint (Ref. 971146) in relation to the extension of his period of detention in Garda

custody on 4th December, 1996 and 4th February, 1997. He also lodged a complaint in relation to the impounding of his motor vehicle. The Board decided to split this complaint into three separate complaints dealing with the two periods of detention and also the impounding of the car. This complaint was in relation to the impounding of the car. It was deemed inadmissible because the complaint was made more than six months after the date of the conduct complained of.

On 14th June, 1997, Frank McBrearty, Jnr., alleged that a named Garda called him a “murderer” and allegedly said to him “come on Frank, come clean and confess to everything”. It was alleged that this had been said in the McBrearty’s nightclub in Raphoe. (Ref. 971153). Insp. Greg Sullivan was appointed I.O. The McBrearty’s refused to deal with him. The I.O. submitted a letter to the Board stating that he could make no progress in the matter as the complainants were refusing to meet with him. In his first report, the Chief Executive stated that in view of the stalemate a letter should be written to the complainants stating that unless they co-operated the Board would take no further action. On 18th May, 1999, the Board decided to defer any further consideration of this complaint. In a second report, the Chief Executive made a recommendation that a letter be sent to the complainant seeking their co-operation. There are no further developments on this file prior to the withdrawal of the complaints in October 2001. The name of the Garda has been deleted because this complaint was never put to him.

In complaint bearing reference number 971192, Frank McBrearty, Jnr., alleged that on 22nd October, 1997, he had been harassed while sitting in a car in Letterkenny by Sgt. John White, who came across the road and alleged that he had been shouting at him and then the Garda Sergeant commenced writing in his notebook. He alleged that this was harassment, or an attempt to provoke the complainant into committing an offence. Statements were obtained from the complainant and also from his wife. A statement was also obtained from Sgt. John White and from an independent witness to the incident. The I.O. noted that Sgt. White contradicted a number of details in the complainant’s statement. He noted that the complaint was made on 26th November, 1997 (in fact a complaint had been made by the complainant by telephone directly to Supt. Lennon on the day of the incident). The I.O. stated that the complaint must be viewed with the knowledge of the background as outlined on the main file. He stated that Mrs. McBrearty’s credibility was open to question. A statement had been obtained from the independent witness on the day of the incident however, when the I.O. spoke to him, he could not remember very much. The I.O. could not get a statement from him. The I.O. stated that there was a conflict of evidence and that he was inclined to believe Sgt. White’s evidence. In his report, the Chief Executive stated that Sgt. White’s version of events, supported as it was by the statement of the independent witness, seemed more credible. He recommended that the Board should form the opinion that no offence or breach of discipline was involved.

On 25th November, 1997, Ms. Katriona Brolly lodged a complaint (Ref. 971193) that in May, 1997, senior Gardaí had to ask members of the

RUC (as it then was) to make enquiries about the complainant at her place of work. In order to decide on admissibility, a report was obtained from Supt. Kevin Lennon, who stated that such enquiries were in fact made by the RUC at the request of the Gardaí. This was in the course of the investigation into the unlawful killing of Mr. Richard Barron. The complaint was held not to be admissible by the Chief Executive because it did not constitute an offence or breach of discipline against a member complained of.

On 3rd December, 1997, Mr. Willie Logan lodged a complaint (Ref. 971227) to the effect that on 25th November, 1997, Sgt. John White had pulled his car in front of his van and accused him of driving without his lights on. He stated that when he subsequently went to the Garda Station requesting a copy of what had been written by Sgt. White in his notebook, this was refused and it was further alleged that another Garda twisted his arm behind his back while he was in the Garda Station. C/Supt. Carey was appointed I.O. He took statements from the complaint and from the complainant's wife. He also took statements from the relevant Gardaí. Sgt. White outlined the circumstances in which the van had been stopped for driving at 21.15 hrs. without the lights on. Gda. Barrett denied twisting the complainant's arm. In her statement, Ms. Bríd Logan stated that the lights had been on, on the van at the relevant time. The I.O. stated that undoubtedly there was an altercation. He was not convinced that any breach of discipline had occurred. He recommended no action be taken against the Gardaí concerned. The Chief Executive in his report, stated "this complaint comes down to the credibility of Mr. and Mrs. Logan versus the credibility of the Gardaí. I find the Garda version of events the more credible". The Chief Executive 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. The complaint was withdrawn before any decision thereon was made by the Board.

In December, 1997, Frank McBrearty, Snr., lodged a complaint (Ref. 971253) to the effect that Gda. Barrett did not act properly in dealing with a bomb scare at his nightclub premises on 22nd November, 1997. C/Supt. Carey was appointed I.O. He took statements from the complainant and also from the bar manager and from Mr. Andy McBrearty. He also obtained statements from Gda. Barrett and from other Gardaí involved in dealing with the bomb scare. He was of opinion that the Gardaí acted reasonably on the night. In his first report the Chief Executive recommended that the Board form the opinion that no offence or breach of discipline was disclosed. On 18th May, 1999 the Board decided to defer further consideration of this complaint. In his second report, the Chief Executive gave the same recommendation.

On 17th December, 1997, Frank McBrearty, Jnr., lodged a complaint (Ref. 980044) that at the time of his arrest, he was punched in the back by one of two-named Gardaí, while being put into the patrol car. There was no investigation of this complaint as it was deemed inadmissible under the six-month rule.

On 12th January, 1998, Frank McBrearty, Jnr., made a complaint (Ref. 980046) that on 8th January, 1998 a named Garda had followed Mr. McBrearty in his car and flashed his headlights at him and that later on that night the same Garda and another Garda had again followed his car “bumper to bumper” flashing the headlights and that they then drove slowly past the entrance to Mr. McBrearty Snr’s, house while the complainant was visiting there. This complaint had been made by the wife of Frank McBrearty, Jnr., on his behalf. The Deputy Chief Executive ruled that this complaint was inadmissible as a complaint could only be made by a person on behalf of another person if that person was mentally ill. However, a complaint which had been lodged by Binchys, Solicitors on behalf of Mr. McBrearty, Jnr., in relation to the same events was deemed admissible. That complaint was dealt with under file reference 980073. There is no report from the I.O. on that file. This is due to the fact that Insp. Greg Sullivan had been appointed as I.O., but the McBrearty’s refused to deal with him, as they felt that he was too close to the Gardaí in Donegal. The Chief Executive stated that in view of the stalemate, which existed, he suggested that a letter should be sent to the complainant advising him that the Board would take no further action unless they co-operate with the investigation. No such letter is apparent on the file. The names of the Gardaí have been deleted, as the complaint was never put to them.

On 16th January, 1998, Frank McBrearty, Snr., lodged a complaint (Ref. 980074) concerning the Garda handling of a bomb scare at his premises on 11/12th January, 1998 and in particular the fact that the dance hall was cleared. This complaint was deemed inadmissible because, according to the opinion furnished, the conduct did not constitute an offence or a breach of discipline.

In complaint bearing reference number 980094, Patricia McBrearty complained that a Garda patrol car with three Gardaí in it came onto her property for the purpose of enabling the Gardaí to speak to her husband and that when she told them to leave, they took a long time to leave. She thought that this conduct was done to harass the family. This complaint was deemed inadmissible as the Deputy Chief Executive stated that he was not satisfied that the conduct complained of constituted an offence or a breach of discipline.

On 12th February, 1998, Frank McBrearty, Jnr., and Patricia McBrearty complained that two days earlier, two Gardaí had followed their car and overtook them and then set up a roadblock for the purpose of serving a summons on them. They stated that the Gardaí threw the summons into the car and then laughed at them. Insp. Greg Sullivan was appointed I.O. However, the McBrearty’s refused to deal with him. The Chief Executive stated that in view of the stalemate he suggested that a letter should be sent to the complainants advising that the Board would take no further action unless they co-operated. No such letter is apparent on the file. (Ref. 980163)

In complaint bearing reference number 980914, Andy McBrearty, complained that Gda. Barrett was abusive to him when visiting the licensed premises on

4/5th July, 1998. Insp. Greg Sullivan was appointed I.O. He took a statement from Andy McBrearty and also from the bar manager, Mr. John Mitchell. Statements were obtained from Gda. Barrett and Gda. McCann. They denied that Gda. Barrett had acted in any discourteous manner toward Andy McBrearty on the night in question. The I.O. stated “in conclusion, the I.O. is not at all convinced that Gda. Barrett was abusive or discourteous on the night. He was particularly impressed with Gda. McCann in his forthright and uninhibited interview, unlike some of the other witnesses”. The I.O. believed that the complaint emanated as a result of pressure on the complainant from Frank McBrearty, Snr. The Chief Executive furnished two reports in the matter and on both occasions recommended that the Board should find that no offence or breach of discipline was disclosed.

In complaint bearing reference number 981199, Frank McBrearty, Jnr., complained that a named Garda spoke to him in a very loud voice in the foyer of Letterkenny Court House causing him much embarrassment. The Chief Executive ruled that the complaint was inadmissible as it was not shown that the conduct complained of would constitute an offence or a breach of discipline.

On 30th October, 1998, Frank McBrearty, Snr., lodged a complaint (Ref. 981265) that while socialising in Ballybofey, D/Sgt. White stared at him and his wife while they were sitting in their car. He further alleged that Sgt. White followed him in his car from Ballybofey first to Convoy and then to Raphoe. Supt. M. Keane (RIP) of Ballyshannon was appointed I.O. He took statements from the complainant, and from his wife and his sister, which all supported the complaint. A statement was also furnished by the fortune-teller, who the McBrearty's were meeting on the night in question. She stated that she didn't see any other car following them and she felt that there was a grudge between Mr. McBrearty and D/Sgt. White. D/Sgt. White made a statement in which he stated that he observed Mr. McBrearty acting in a suspicious manner in Ballybofey on the night in question (although it is accepted that other than buying a take away meal they were in fact sitting in their car). D/Sgt. White stated that he did follow the McBrearty car first in Ballybofey and subsequently at Convoy. He stated that he suspected that Mr. McBrearty was involved in the burning of his car on 19th October, 1998 and in the entry of persons onto his driveway on 26th October, 1998. 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 submitted two reports in both of which he recommended that the Board should form the opinion that no offence or breach of discipline was disclosed.

In complaint bearing reference number 981322, Frank McBrearty, Jnr., alleged that Gda. McCann had committed perjury when swearing that he was unable to serve a summons on the complainant on 18th November, 1998 because the complainant stated that he was in the house at the time but would not open the door and that Gda. McCann was aware of his presence in the house. This complaint was ruled inadmissible due to the fact that evidence had been given by Gda. McCann in court and a ruling had been

made on the hearing of the “ex-parte” application at which in fact Mr. McBrearty had been represented. The Chief Executive stated that it was not the function of the Complaints Board to review a decision of the court. Furthermore, the complaint was held inadmissible because it had not been shown that the conduct constituted an offence or a breach of discipline. Mr. Mark McConnell lodged a complaint in February, 1999 (Ref. 990128) complaining that various named members of the Gardaí had “set him up” in relation to fire-arm offences involving Bernard Conlon. He alleged that a high ranking officer was involved in this “fit up” by authorising payment for Mr. Conlon. On 25th January, 1999, the complainant had furnished a detailed handwritten statement, which had been furnished to the Board by his Solicitor on 4th February, 1999. On 12th November, 1999 C/Supt. Carey, who had been appointed I.O., wrote to the Chief Executive stating that the complainant had made a statement to him, but that on the advice of his Solicitor, the complainant had refused to sign it. He asked as to whether he should continue to investigate the complaint. In his first report, the Chief Executive noted that it was the normal practice in Garda investigation not to commence an investigation without a signed statement from the complainant. He recommended that the Board should write to the complainant requesting that he sign a statement so that the investigation could proceed. A letter was written to the complainant on 14th December, 1999 requesting his co-operation. A further letter was sent to the complainant on 21st December, 1999. By letter dated 21st January, 2000 C/Supt. Carey informed the Board that he had had no contact from the complainant. In his second report the Chief Executive stated that as there had been no further contact between the complainant and the I.O., he recommended that the Board should decide to, what he termed, constructively withdraw the complaint and that no further action should be taken. On 10th April, 2000 the complainant telephoned the Board and was told that he must sign the statement in the presence of the I.O. He was told that he could have his lawyer present if he wished. The complainant stated that he would await further contact from C/Supt. Carey. There does not, Sir, appear to have been any further development on the file in this matter.

In complaint bearing reference number 990300, Frank McBrearty, Snr., alleged that members of the Gardaí had committed perjury at hearings in the District Court in Donegal, when they allegedly denied the existence of documents referring to the “Extended McBrearty Family” and “The Policing of Raphoe on Weekend Nights”. C/Supt. Carey was appointed I.O. He obtained a statement from the complainant who alleged that a large number of Gardaí had given evidence on oath denying the existence of the documents. A statement was obtained from Sup. Lennon, who denied committing perjury, as he stated that he never gave evidence on oath he had merely addressed the court in his position as the prosecuting Garda. He stated that he had told the court that to his knowledge no circular “targeting the extended McBrearty family” existed. He stated “and I am satisfied that it does not exist”. He stated that when the Judge ordered production of all circulars, he stated that what was produced was a memorandum and not a circular and it was not “targeting the extended McBrearty family”. He stated that it was merely an information document for the force in order to protect themselves from the campaign by

Mr. McBrearty and Mr. William Flynn, a private detective, in an effort to discredit the Gardaí. He stated that the document headed “Policing in Raphoe on Weekend Nights” was an information document sent to him as District Officer and was handed in to the court. He did not deal with the alleged denial of its existence. The I.O. sent a letter dated 30th March, 2000 to the Board stating that he did not feel that Supt. Lennon or any other Gardaí had committed perjury. He stated “I don’t feel any further investigation under the Garda Complaints Act is warranted or justified in the circumstances of this case”. A letter from the complainants Solicitors identifying the Gardaí by whom the alleged perjured evidence had been given, was furnished to the I.O. He merely stated that such letter showed that Supt. Lennon did not commit perjury as alleged as he was not named in the letter. He did not propose that any further investigation should be carried out unless directed otherwise. It does not appear that any such direction was given.

A complaint was made by Mark McConnell on 30th March, 1999 (Ref. 990352) to the effect that in the course of a prosecution against Mr. McConnell in relation to a public order offence in the District Court, the prosecuting Garda had produced in the court a copy of a complaint made by Mr. McConnell to the Garda Síochána Complaints Board. C/Supt. Carey was appointed I.O. The complainant made a statement, but on the advice of his Solicitor refused to sign it. The Chief Executive then wrote to the complainant requesting that he furnish a signed statement to the I.O. This letter was written on the 21st December, 1999. On 21st January, 2000 the I.O. wrote to the Board indicating that no contact had been made by the complainant. On 4th April, 2000 the complainant was told that the statement must be signed in the presence of the I.O. but that he could have his lawyer present. On 10th April, 2000, the complainant was told the same information on the telephone. It does not appear that this was done nor were there any further developments in relation to this complaint.

In complaint bearing reference number 990619, Frank McBrearty, Snr., lodged a complaint concerning circulars written by C/Supt. Fitzpatrick and Supt. Lennon in relation to him and Mr. William Flynn and an allegation that they were engaged in a campaign to discredit the Gardaí. The Chief Executive ruled that this complaint was inadmissible as he was not satisfied that the conduct complained of would constitute an offence or a breach of discipline. He was also of opinion that the documents were internal Garda memoranda and as such were not intended for public use. The decision of the Chief Executive was appealed by the Solicitors acting on behalf of the complainant to the Garda Síochána Complaints Board. The Chief Executive wrote a report for the Board in which he noted that the documents were internal memoranda and were not intended to be in the public domain. The Board issued a formal ruling on 27th August, 1999 confirming the decision of the Chief Executive that the complaint was inadmissible.

A similar decision was reached by the Garda Síochána Complaints Board on appeal from a decision of the Chief Executive in relation to complaint number 990620 which concerned a complaint in relation to the document entitled

“Policing in Raphoe on Weekend Nights” drawn up by D/Sgt. John White. This complaint was ruled inadmissible.

On 15th September, 1999, Frank McBrearty, Jnr., lodged a complaint (Ref. 990924) complaining that D/Sgt. Melody and Gda. Fitzpatrick and two other named Gardaí had produced a false confession allegedly signed by the complainant while he was in custody in December, 1996. The Gardaí concerned had denied the allegation. The complainant alleged that he had not put his signature to the confession and was not aware of its existence until it was exhibited in an affidavit sworn by C/Supt. Dennis Fitzpatrick on 21st April, 1997. There was no investigation of this complaint as it was deemed inadmissible under the six-month rule.

On 17th September, 1999, Frank McBrearty, Snr., through his Solicitors requested C/Supt. McNally to investigate Bernard Conlon and his status vis-à-vis the Gardaí and in particular his relationship with Sgt. John White. C/Supt. McNally forwarded the Solicitors letter to the Board. The Chief Executive requested the complainant to state the conduct about which the complaint was made and to state whether he was directly affected by such conduct and to state the date of the conduct. Despite further correspondence, no response was received from the complainant. Accordingly, this complaint was not investigated.

On 2nd December, 1998, Frank McBrearty, Jnr., lodged a complaint (Ref. 990973) to the effect that summonses, in respect of which an application for substituted service was to be made, could have been served by means of registered post. This complaint had originally emanated from a handwritten fax sent along with a Solicitors letter dated 2nd December, 1998. It was not clear what points the complainant wished to have treated as complaints. Correspondence passed between the Executive of the Board and the complainant and his Solicitor in an effort to clarify this aspect. There does not appear to have been any decision on the admissibility of the complaint, no I.O. was appointed. There is no report on the file. No decision was made by the Board in respect of this complaint.

In December, 1998, Frank McBrearty, Jnr., made a complaint that when his wife went to the Garda Station to collect a summons for him, a named Garda refused to give the summons to her (Ref. 990975). Supt. McLoughlin was appointed I.O. The complainant refused to deal with this I.O. In view of the stalemate, the Chief Executive suggested that a letter should be sent to the complainant stating that no further action would be taken unless there was co-operation with the appointed I.O. It is not clear on the file whether such a letter was written prior to the withdrawal of the complaints. There was certainly no investigation of this complaint.

Frank McBrearty, Jnr., lodged a complaint to the effect that Supt. Lennon and Insp. O’ Brien were going to apply ex-parte for substituted service of summonses knowing that this evidence was perjury. This complaint was made in respect of an application that was due to be made on the following day and although it was headed “ex-parte”, it was in fact being made on notice

to him. A letter was sent to the complainant enquiring as to what exact complaint was being made by him against the Gardaí concerned. In a handwritten response, the complainant stated that in making the ex-parte application, the Gardaí were going to commit perjury in relation to the inability to serve the summons. This complaint was deemed inadmissible as in the opinion of the Chief Executive it was deemed that the conduct complained of did not constitute an offence or a breach of discipline.

In complaint bearing reference number 991013, Frank McBrearty, Jnr., lodged a complaint in relation to the swearing of the document to ground an ex-parte application in the District Court seeking liberty to serve a summons by post on him. He stated that it was untrue for the Garda to say that he was unable to serve the summons personally on the complainant. He stated that this was an attempt to blacken his name before the Judge. The complainant objected to the identity of the I.O. appointed to deal with this complaint and refused to have any dealings with him. Accordingly, no investigation was carried out into the complaint.

In complaint number 00132, Frank McBrearty, Snr., complained that certain named Gardaí had laughed at the complainant when he came down from the witness box after he had made a mistake when giving his evidence in court. A letter was sent from the Chief Executive to the complainant requesting more details of the complaint so as to enable him to decide on the admissibility of the complaint. No response was received to this letter. Accordingly no decision was made as to its admissibility, nor was it investigated.

On 30th June, 2000, Frank McBrearty, Jnr., made a complaint (Ref. 000698) that on 24th June, 2000, a named Garda had asked him in front of his children whether he had threatened to kill Mr. Paul Barron. Supt. E. McLoughlin (Buncrana) was appointed I.O. He wrote a number of letters to the complainant, but they refused to have any dealings with him. He then wrote to the Board stating that as no response had been forthcoming from the complainant, in such circumstances he recommended that no further action be taken on this complaint.

On 16th May, 2001, Frank McBrearty, Jnr., lodged a complaint (Ref. 010511) to the effect that a Garda had accused him of threatening to kill Mr. Paul Barron, nephew of the deceased. He alleged that this accusation had been made in front of his three children. Supt. E. McLoughlin was appointed I.O. Despite requests, the complainant would not contact the I.O. In such circumstances the I.O. wrote to the Board recommending that no further action should be taken on this complaint.

In complaint numbers 010511, Frank McBrearty, Jnr., alleged that a Garda had behaved in an abusive and insulting manner toward him and his family at a Garda checkpoint. Supt. E. Gallagher (Millford) was appointed I.O. Despite letters from the Chief Executive no report was furnished by the I.O., nor was there any communication from him. There does not appear to have been any investigation of this complaint.

On 22nd June, 2001, Frank McBrearty, Snr., complained (Ref. 010613) that a Garda had submitted a false report to the Garda Síochána Complaints Board alleging that Mr. McBrearty had tried to put pressure on an individual to make a complaint of assault against another Garda. It was alleged that this incident occurred on 23rd October, 1997. This complaint was deemed inadmissible by the Deputy Chief Executive on the grounds that conduct complained of had occurred more than six months prior to the date of the complaint.

In November, 1998, C/Supt. Carey also produced a covering report as a general overview of the 22 complaints submitted by the extended McBrearty family, that he had investigated up to that time. With the report he also furnished a large number of appendices, which were essentially documents and other materials, such as videotapes, which had been submitted to the Garda Síochána Complaints Board by both the complainants and the Gardaí.

In the covering report, Sir, he set out a background report of each of the complainants, as well as a report on Mr. William Flynn, the private investigator retained by the McBrearty's. The conclusions given in this report are worth noting because they show the general opinion, which C/Supt. Carey had formed, of the persons in respect of whose complaints he had been appointed to carry out an investigation. In setting out the Conclusion portion of the report, We have deleted the name of one ex-Garda who served in Raphoe and whose discipline file is referred to in the report. We have done this because he has not been given an opportunity to put in any statement or defence to what has been said about him in C/Supt. Carey's report. Accordingly it would be unfair to name him at this time. C/Supt. Carey had stated as follows at the Conclusion section of his report:

The complainants – Frank McBrearty and others through the various complaints are making the point that the Gardaí picked on the extended family and arrested them wrongly, abused them and also harassed the licensee through the enforcement of the Licensing Laws. I believe that I have dealt adequately with those matters in the individual files.

I would make the following points however:-

- (1) Policing in Raphoe – over the years policing in Raphoe left a lot to be desired. Appendix 7 – discipline file (name of ex-Garda deleted) refers. It appears that Frank McBrearty, Snr., policed his own premises. Assaults and disturbances were dealt with by him in his own way. Very few were processed through the courts.**
- (2) Change in Policing – in recent times, I believe the policy has changed but not for the reasons alleged by Frank McBrearty. Extra resources and more diligent workers were assigned to Raphoe. This was done because of the increased incidences of violence. Because much of this arose out of abuse of alcohol the Licensing Laws received**

particular attention. All licensed premises received the same attention.

The various appendices show this particularly 1, 2 and 10. Indeed the paper supplied by Frank McBrearty, appendix 16, also supports this.

- (3) With regard to the investigation into the death of Richie Barron, I did not find any compelling evidence of abuse of the McBrearty family. I have read the file and I believe there is evidence on the file to show that the Gardaí were on the right track. Whether there is sufficient to charge anyone in respect of the death of Richie Barron is another matter. I don't believe there is. The file is with the DPP.**

The file is forwarded for your information.

I am available to brief the Board on detail or any matter they wish to clarify in this investigation.

J. T. Carey, Chief Superintendent.

As the Garda Síochána Complaints Board had not been given an opportunity to furnish any statement as to its own view of the effectiveness of its handling of the McBrearty group of complaints, nor to respond to the criticisms contained in the letter from Mr. Ken Smyth on behalf of the McBrearty family, the Tribunal legal team wrote to the Garda Síochána Complaints Board on 10th September, 2002, offering it the opportunity to furnish a statement dealing with these matters.

In its statement dated the 25th October, 2002, the Garda Síochána Complaints Board noted that in the period December, 1996 to December, 2001, it had received 71 complaints from the extended McBrearty family and its associates. In arriving at this number, the Board would appear to have included the complaints received from Mr. William Flynn. The Board noted that one complaint was registered by it in 1996. There were 36 complaints in 1997, 14 complaints in 1998, 16 complaints in 1999 and 2 complaints in 2001 and also in 2002. The Tribunal has not yet been furnished with any complaints registered by the Board in the year 2002.

In its statement, the Board had the following to say in relation to its handling of the complaints which it received from the extended McBrearty family:

“At the outset the complaints from the McBrearty family were dealt with on an individual basis. When it became clear, however, that a large number of complaints would be involved and that, to a significant extent, they were linked by common allegations of Garda misconduct it was decided that the complaints should, insofar as possible, be pursued together as a specific group for

investigation and other purposes. This approach was adopted to enable the Board to obtain a full and proper appreciation of all the events underpinning the complaints.

The Board and its staff recognised that the complaints made by the McBrearty family were of a serious nature and in that context, within the office of the Board they were largely dealt with on a personal basis by the Deputy Chief Executive. This was a departure from normal procedure and an important step which must be viewed, in particular, in the light of the fact that, as outlined in the Board's annual reports for the years in question, the senior staff of the Board was under strength and the amount of other work requiring attention at that level was very significant. The Deputy Chief Executive also devoted a considerable amount of time to communications with the complainants. In addition, he met with a number of them in Co. Donegal and responded to the many concerns and queries they raised with him."

The Board has stated that in keeping with the coordinated approach adopted by it in relation to the McBrearty group of complaints, arrangements were made to have 26 of the complaints dealt with by a single Chief Superintendent. The Tribunal legal team notes that members of the McBrearty family appear to have had a good working relationship with this officer, because when they indicated that they had difficulty with the appointment of other officers as Investigating Officers, they indicated at the same time that they had no such difficulty with the appointment of Chief/Superintendent John Carey as an Investigating Officer in respect of their complaints. The Board stated that the investigations carried out into the McBrearty group of complaints were complex and time-consuming. It noted that a large number of statements had to be taken from all interested parties. The Board dealt with the progress of the investigation of the complaints and the decision taken in May, 1999 to defer further consideration thereof, in the following way:

"Following receipt of the reports from the Garda Chief Superintendent and other investigating officers on a large number of the complaints, the documentation was examined in the office of the Board and summaries for each complaint were prepared containing, inter alia, the Chief Executive's comments and recommendation as required by Section 6(4) of the 1986 Act. The relevant material was circulated to Board members and a special meeting of the Board was arranged for May, 1999 to consider the complaints. In addition, the Board had been made aware that prosecutions were taking place in the District Court in respect of summonses taken out against members of the extended McBrearty family for mainly licensing and public order offences. In that regard the Deputy Chief Executive had been informed by some of the complainants that matters of importance in relation to the complaints generally would emerge during the District Court hearings. He was also requested to attend the hearings and he

attended a number of them. Furthermore, the Board understood that a major internal Garda investigation into matters in Co. Donegal, including certain matters linked to the McBrearty family, had commenced and was being headed by Assistant Commissioner Carty.

At its meeting on 18th May, 1999, the Board decided that it would not make decisions on the complaints from the McBrearty family pending the outcome of (i) the District Court hearings and (ii) the Garda investigation under the direction of Assistant Commissioner Carty into allegations against Garda members in Co. Donegal. The Board also decided that the Deputy Chief Executive and the investigating Garda Chief Superintendent should attend a sitting of the District Court concerned with licensing summonses against Mr. Frank McBrearty, Snr. and they did so attend.

In that general regard the Board considered that because of the limitations on its investigative capacity imposed by the 1986 Act, it should have available to it as much information as possible before making definitive decisions on the complaints. In particular, it was the view of the Board that it should be in a position to determine whether or not for the purpose of the 1986 Act, a sufficient case had been made out in respect of each of the complaints.”

The Board goes on to note that no additional relevant information came to light in the course of the District Court hearings prior to the withdrawal of all charges against members of the McBrearty family by the D.P.P. in June, 2000. Subsequently, the Board understood that the inquiry of A/C Carty was close to completion. They requested the Investigating Officers to establish the extent of any overlap that may have existed between the internal Garda investigation and the matters which were being addressed by the Board. They stated that it was only after some time that that issue was finalised. The Board was satisfied that no significant overlap had arisen. The Board stated that work then commenced in relation to the re-submission of relevant papers to the Board in respect of the McBrearty complaints. However, it has stated that due to staff shortages, coupled with the retirement of the Deputy Chief Executive, this work was delayed. The papers were in the course of preparation for re-submission to the Board, when all complaints were withdrawn by Messrs. Binchys on behalf of the extended McBrearty family.

The Board concludes its statement by making the following observations in relation to the handling of the McBrearty group of complaints:

“As indicated above, the Board sought to deal with the complaints received from the McBrearty family as fully as possible and devoted a considerable amount of time and its limited resources to the complaints. Given the volume of complaints in question, this was, inevitably, a very demanding task for such a small body.

In addition, it must be borne in mind that the Board was required to operate within the confines of the 1986 Act. The shortcomings of that Act, which is very restrictive and limits the Board's ability to conduct investigations as it would like, have been the subject of comments and recommendations in successive reports of the Board which have already been made available to the Tribunal.

In particular, every effort was made to provide the Board with the maximum amount of relevant information to enable it to consider the complaints properly. While this undoubtedly gave rise to delays it was considered necessary to adopt that course due to the overall complexity of the complaints and the need to address them effectively. Moreover, the position of the Board was made more difficult because it did not have the staff it required to deal with the complaints as expeditiously as it would have wished. Throughout the process, however, on-going communication was maintained between the Board and the complainants, particularly through the Deputy Chief Executive.

The Board is aware that the complaints made to it by the McBrearty family and in particular the manner in which they were dealt with, will be the subject of examination by the Tribunal. In that context the Board recognises that specific issues relevant to the complaints are likely to be raised in the course of the proceedings of the Tribunal and it will ensure that the maximum level of cooperation will be extended to the Tribunal through the provision of documents and statements and by making the appropriate personnel available to give evidence, as required.

Dated this 25th day of October, 2002.”

The Tribunal legal team notes that in the Annual Reports published by the Board in recent years, the Board has highlighted what it perceived as the shortcomings of the 1986 Act. It has also complained of lack of sufficient funding and manpower so as to enable it to deal with complaints in a prompt manner. In the Annual Report for 2000, the Board had the following to say in relation to the changes required to the system for dealing with complaints against members of the Gardaí:

“The Board considers that the current system for dealing with complaints should be replaced with a system which is based on the principle that it, the civilian body charged with oversight of Garda conduct, be granted the independence, the powers and the resources necessary to enable it to deal effectively with complaints made to it. As already repeatedly outlined in its published reports to date, the independence sought by the Board includes:

- ♦ The right to decide how each complaint should be dealt with;**

- ♦ **The establishment of an independent civilian unit to conduct investigations where the Board considers this appropriate;**
- ♦ **The right to appoint Investigating Officers;**
- ♦ **The right to decide on the level of supervision of investigations;**
- ♦ **The right to refer a matter to the Attorney General where no complaint has been received and the right for the Attorney General to request the Board to conduct an investigation;**
- ♦ **The need for the Board staff to be independent of and to be perceived as being independent of, the Department of Justice, Equality and Law Reform;**
- ♦ **The need for the Board to be provided with sufficient resources to fulfil all of its responsibilities.**

By the end of the year under review, the Board was strongly of the view that, given the pervasive nature of the changes required, the most practical approach is to replace the Garda Síochána (Complaints) Act, 1986, rather than to seek to amend it.”

In the most recent Annual Report, being for the year 2001, the Board welcomed the publication by the Minister for Justice, Equality and Law Reform of proposals for a new system for dealing with complaints against members of the Gardaí.

Having regard, Sir, to the history of the McBrearty group of complaints, the criticisms of the procedure articulated by the Solicitor then acting for the extended McBrearty family and the statement furnished by the Garda Síochána Complaints Board, it would appear that the following questions will arise for determination by you, Sir, on the hearing of this module:

1. Was the excuse put forward by Supt. John Fitzgerald for the failure to forward the initial complaints received by the Superintendent's office in Letterkenny in or around December, 1996, good and sufficient excuse? Consider further whether there is any adequate explanation for the delay in forwarding same until the month of October, 1997.
2. It would appear from the papers furnished to the Tribunal's legal team to date, that of the 61 complaints lodged, 2 were not investigated at all, 10 could not be investigated because of an impasse between the parties or due to lack of co-operation from the complainants, and 19 were ruled inadmissible at the outset. This left 30 complaints in respect of which an investigation was undertaken. In none of these did the I.O. find that there was any offence or breach of discipline disclosed as a result of the conduct the subject matter of the complaint. Where there was a conflict between the complainant's version and that of the Gardaí, the I.O. invariably preferred that put forward by the Gardaí.

The Chief Executive agreed with the I.O. in nearly all of these cases, save for 3 cases where he recommended that further representations

be taken from the Gardaí and 1 case, where he recommended that the Board should make a finding of a minor breach of discipline on the part of the Garda against whom the complaint had been lodged. In these circumstances, you Sir will have to hear evidence and decide as to whether the complaints submitted by the extended McBrearty family in the period 1996 to 2001 were investigated by the I.O.'s in a fair and proper manner. Does this aspect say anything as to the overall effectiveness of the Garda complaints procedure generally?

3. You will also have to consider whether in the circumstances, the Chief Executive carried out any critical analysis of the I.O.'s reports when drafting his summaries and recommendations to the Board in each case.
4. It would also appear necessary for you to examine the reasons for the delay in dealing with the complaints, including consideration as to whether the reasons put forward by the Board in May, 1999, for deferring giving a decision on any of the complaints, were good and sufficient reasons at that time, and consider whether such reasons remained valid until the withdrawal of the complaints en bloc in October and November, 2001.
5. In the light of the conclusions reached on the foregoing, you Sir will have to consider whether the current system for dealing with complaints against the Gardaí could be improved, or whether same needs to be replaced altogether.

