

TRIBUNAL OF INQUIRY

INTO

COMPLAINTS CONCERNING SOME GARDAÍ IN THE DONEGAL DIVISION

**Appointed by Instrument made by the
Minister for Justice, Equality and Law Reform
on the 24th day of April, 2002 entitled
Tribunals of Inquiry (Evidence) Act, 1921
(Establishment of Tribunal), 2002**

RULING ON APPLICATIONS FOR COSTS

**Concerning Hearings of the Tribunal in respect of Terms of
Reference (b), (d), and (f)**

Ruling of Mr. Justice Frederick Morris on applications for costs concerning Terms of Reference (b), (d) and (f)

Introduction

On the 24th of April 2008, the Tribunal delivered its sixth report to the Minister for Justice, Equality and Law Reform. The report was published by the Minister on the 7th of May 2008. This report dealt with a number of issues connected to the detentions of various persons at Garda stations within the Donegal Division. Term of Reference (b) required the Tribunal to urgently inquire into the following:

Investigations in relation to the death of Mr. Richie Barron of Raphoe, Co. Donegal on 14th October, 1996 with particular reference to the arrest and treatment of persons in custody in connection with that investigation, the progress, management and effectiveness of the Garda investigation with particular reference to the management of informants.

In order to proceed with its work in an efficient and timely manner, this Term of Reference was broken down into two modules. The first module was the Barron Death Investigation module. It examined the methodology used by the Gardaí in carrying out their investigation into the death of the Late Mr. Barron. It was the subject of the Tribunal's second report. The issues arising out of the detentions of

various people, who were arrested and detained as part of that investigation, were left over to be dealt with as a separate module. The Tribunal reported on this aspect in its sixth report.

In addition, an issue arose in connection with the treatment of persons in custody in Letterkenny Garda Station on the 4th December 1996, in particular as to whether their conversations with their solicitors and family, were being secretly recorded by the Gardaí. This issue was dealt with as a separate sub-module known as the Bugging sub-module. The Tribunal reported on this aspect in its sixth report.

Term of Reference (d) required the Tribunal to urgently inquire into the following:

The circumstances surrounding the arrest and detention of Mark McConnell on 1st October, 1998 and Michael Peoples on 6th May, 1999.

This Term of Reference was also broken down into two modules. The first module dealt with the circumstances in which Mr. Bernard Conlon came to make a false allegation and false identifications, leading to the arrests of Mark McConnell and Michael Peoples. The Tribunal reported on this aspect in its third report. The second module arising out of this Term of Reference concerned the treatment of Mr. McConnell and Mr. Peoples whilst in Garda custody following their arrests in October 1998 and May 1999 respectively. This was dealt with as part of the sub-module dealing with the arrests and detentions of the individual persons and formed part of the Tribunal's sixth report.

Term of Reference (f) required the Tribunal to urgently inquire into the following:

The circumstances surrounding the arrest and detention of Frank McBrearty Jnr. on 4th February, 1997 and his subsequent prosecution in the Circuit Criminal Court in relation to an alleged assault in December, 1996 on Edward Moss (sic) with particular reference to the Garda investigation and the management of both the investigation and the role of the Gardaí in the subsequent prosecution.

This module was heard at the same time as the sub-module dealing with the arrest and detention of Frank McBrearty Junior on the 4th December 1996. It also formed part of the sixth report of the Tribunal.

Following upon publication of the sixth report, each of the parties to whom representation had been granted was afforded an opportunity by the Tribunal to seek an Order for Costs from the Tribunal pursuant to Section 6 (as amended) of the Tribunals of Inquiry (Evidence) Acts 1921 to 2004. A number of parties made written submissions to the Tribunal. The Tribunal has already given a number of rulings on costs following upon the publication of its previous reports. In the course of these rulings, the Tribunal has set out a statement of the legal principles which it has applied in exercising its discretion in relation to the awards of costs which have been made. In addition, in Chapter 17 of the sixth report, the Tribunal drew together a clear statement of the principles on which costs are awarded by it. The Tribunal notes that in none of the written submissions received, has it been suggested that heretofore the Tribunal has proceeded on an incorrect legal basis in relation to the

legal principles applicable to its determination of costs issues. That being the case, it is not proposed to restate the general legal principles on which the Tribunal has proceeded in determining the costs issues arising out of the sixth report. These general principles have been fully set out in Chapter 17 of the Tribunal's sixth report.

In order to carry out its work in an efficient manner, the Tribunal broke up the detentions module into sub-modules, with each prisoner's detention constituting a separate sub-module. The reason for this was due to the fact that in many cases there were different sets of interviewing officers dealing with each prisoner. It made sense and saved time to deal with each prisoner one after the other. The costs rulings are set out hereunder on a sub-module by sub-module basis in the sequence that they appear in the Tribunal's sixth report.

Rulings on Individual Costs Applications

Arrests and Detentions of Michael Peoples sub-module

Arising out of the first arrest of Michael Peoples, an application for costs has been lodged on behalf of Detective Inspector Michael Keane. Detective Inspector Keane was one of the officers who interviewed Mr. Peoples in Lifford Garda Station on the 4th December 1996. Mr. Peoples alleged that in the course of his interviews with Detective Sergeant Keane that the detective sergeant shouted and roared at him on a number of occasions. In his evidence to the Tribunal Detective Inspector Keane acknowledged that he was likely to have raised his voice to Mr. Peoples during the course of the interviews. He also acknowledged that it was his habit to walk around the interview room in the course of an interrogation and to address the detainee from a standing position. I am satisfied that Mr. Peoples' account of the interviews that he had with Detective Sergeant Keane and Garda Philip Collins represents an honest and accurate account of what transpired during those interviews. An issue also arose as to whether there was a suggestion that post-mortem photographs might be shown to Mr. Peoples. I accepted the evidence given by Mr. Peoples in this regard. An issue also arose as to whether at some stage Detective Sergeant Keane took the leg of a chair in his hand and brandished it in what Mr. Peoples regarded as an intimidating fashion. I was satisfied that Detective Sergeant Keane at some stage did take the leg of a chair in his hand. However, the Tribunal was not prepared to make a finding that he did so with the intention of actively threatening Mr. Peoples with physical assault. Detective Sergeant Keane had denied that he made any such gesture during his questioning of Mr. Peoples. I did not regard this as an entirely truthful account of his interaction with Mr. Peoples. An issue also arose in relation to the accuracy of interview notes that were allegedly taken at the time and also in relation to whether or not they were read over to Mr. Peoples at that time. The Tribunal was satisfied to accept the evidence of Mr. Peoples in this regard notwithstanding the denial of Detective Inspector Keane that he abruptly told Mr. Peoples to leave the interview room at the conclusion of the fourth interview. In the circumstances, the Tribunal is not satisfied that Detective Inspector Keane gave full co-operation to the Tribunal. It is appropriate that he should receive an order for payment of 75% of his costs in this sub-module. The order will take the form outlined below.

Also represented by the legal team acting for the Association of Garda Sergeants and Inspectors (hereinafter referred to as "the AGSI"), was Inspector Gerard Connolly. His evidence concerned the second arrest of Mr. Peoples on the 6th of May 1999. The Tribunal has accepted his evidence as being a truthful account of his dealings with Mr. Peoples at that time. It is appropriate that he should receive his costs in this sub-module.

Initially a general order allowing representation had been made in favour of the AGSI. While two firms of solicitors acted for the Association, it was made clear that this could not affect the amount of costs that were recoverable by the Association on a party and party basis from the Minister for Finance. Essentially, the fact that different sergeants went with different firms of solicitors both acting on behalf of the Association was an "in-house" matter for the Association. It could not affect the amount of costs recoverable on a party and party basis. As the modules progressed, applications were made from time to time that various serving and retired inspectors and sergeants would be represented by the legal team acting on behalf of the AGSI. It has been the practice of the Tribunal to make a single Order for Costs to cover the joint representation of the Association together with all sergeants and inspectors in respect of whom representation was granted in each module. I do not see any basis for departing from that practice on this occasion.

As Detective Inspector Keane and Inspector Connolly were jointly represented by the legal team acting on behalf of the AGSI, it is appropriate that the Association should get one set of costs to cover this sub-module, save for those days concerned solely and exclusively with the protection of the interests of Detective Inspector Keane, when 75% of the costs can be recovered in respect of those days.

Arrest and Detention of Róisín McConnell sub-module

In the Róisín McConnell sub-module an application for costs was made by the solicitors acting on behalf of retired Garda John Dooley. For a number of years, Mr. Dooley had denied any wrongdoing in respect of this prisoner. However, in October 2005, he decided that he would have to tell the truth. He attended at the offices of his solicitors and there made a lengthy statement admitting to various forms of abuse of two prisoners: Katrina Brolly and Róisín McConnell. Mr. Dooley furnished this statement to the Tribunal. He also appeared before the Tribunal and gave evidence in relation to the detentions of Katrina Brolly and Róisín McConnell. He also gave evidence in relation to the bugging sub-module. I am satisfied that his evidence to the Tribunal was a complete and truthful account of his interaction with Róisín McConnell. In coming forward to tell the truth, he gave full co-operation to the Tribunal. The fact that as a result of his evidence, serious adverse findings were made against Mr. Dooley in the Tribunal's sixth report, does not disentitle him to an Order for Costs. Were it not for his courage in coming forward, others may have persisted with their denials and the truth of what happened to Róisín McConnell might not have emerged. Mr. Dooley co-operated fully with the Tribunal by telling the truth. He is entitled to a full order for his costs in this sub-module.

Garda Tina Fowley was in the position of a whistleblower in this sub-module. She gave evidence concerning requests that were made of her for an original set of notes

of interview with Róisín McConnell. She gave evidence that the notes which were submitted as part of the investigation file did not represent the original of the notes submitted to the incident room. In making this allegation she was required to break ranks from her colleagues in An Garda Síochána. Some of her colleagues denied that her allegation was correct. An innuendo was raised that she was working to a particular agenda in making this allegation. It was to be almost ten years before Garda John Harkin would make an admission supporting her allegation concerning the alteration of the interview notes. The Tribunal is satisfied that in giving her evidence on this aspect, Garda Fowley has given full co-operation to the Tribunal. She is entitled to her costs in this sub-module.

Garda John Harkin was initially represented by the legal team acting on behalf of the Garda Commissioner. After he had given evidence in the course of this sub-module, he had a change of heart. He decided that he would have to tell the truth. Unfortunately this brought him into conflict with Mr. John McGinley who was represented by the same legal team. Accordingly, it was necessary for Garda Harkin to change lawyers. The legal team representing the Garda Representative Association (hereinafter referred to as "the GRA") were willing to take him on as one of their clients. They have applied for the costs of representing Garda Harkin from 17th July 2006 onwards.

In telling the truth, Garda Harkin enabled the Tribunal to get to the bottom of a very confusing and hotly disputed issue concerning the substitution of the original set of interview notes of one of the interviews with Róisín McConnell. Garda Harkin's testimony provided great assistance to the Tribunal in its quest to uncover the truth of this episode. Notwithstanding that adverse findings have been made against Garda Harkin as a result of his telling the truth, the Tribunal is satisfied that it is equitable that he should have his costs paid by the Minister for Finance out of funds provided by the Oireachtas.

A written application for costs was made by the solicitor acting on behalf of the AGSI on behalf of Detective Sergeant Padraic Scanlon and Detective Sergeant Brian McEntee in this sub-module. Detective Sergeant Scanlon had been one of the officers who interviewed Róisín McConnell. The Tribunal is satisfied that he assisted the Tribunal by giving an honest account of his dealings with Róisín McConnell that day. He is entitled to an order for payment of his costs. The order will take the form as outlined below.

Detective Sergeant Brian McEntee had no direct interaction with Róisín McConnell during her detention at Letterkenny Garda Station. His involvement concerned the conspiracy which was entered into between Inspector McGinley, Garda Harkin and him to arrange for an altered set of "original" interview notes to be sent into the incident room by Garda Harkin in respect of one of the interviews carried out with Róisín McConnell. He also had an involvement in a meeting which took place some time after Garda Tina Fowley had made her allegation in relation to the alteration of the notes. The purpose of that meeting was to discuss how best to cover-up what had taken place concerning the substitution of the notes of interview.

Mr. De Blacam S.C. furnished written submissions as to why the Tribunal should exercise its discretion to award Sergeant McEntee his costs. It was submitted on

behalf of the sergeant that he was entitled to his costs on the basis of co-operation furnished by him following the disclosure of his involvement in the conspiracy and the cover-up, which involvement had remained hidden until Garda Harkin had his change of heart and told the truth to the Tribunal. In the course of the written submissions it was stated as follows:

It is respectfully submitted that Sergeant McEntee is entitled to costs on the basis of the co-operation provided by him following the disclosure of his involvement which theretofore had been suppressed.

It is submitted that account should be taken to the legal principles raised in the case of Murphy & Others v Flood & Others (2006 IEHC 75), Smyth, J. This is a case that is currently under appeal, the hearing of which is expected imminently.

In that case the applicants challenged the ruling of the Planning and Payments Tribunal in relation to its costs ruling on the following grounds:

- “(a) The validity of the findings of obstruction and hindrance upon which part of the rationale of the refusal of the Applicants’ costs is based.*
- (b) The entitlement of the Tribunal to take into account its findings of obstruction and hindrance in the exercise of its discretion in relation to costs.*
- (c) The entitlement of the Tribunal to take into account its substantive findings of corruption in the exercise of its discretion in relation to costs.*
- (d) The constitutional validity of the legislation which, contrary to the applicants’ submissions, permit the Tribunal to make findings of obstruction and hindrance or permits the Tribunal to take into account such findings and/or its substantive findings of corruption in the exercise of its discretion as to costs.*
- (e) The specific grounds of constitutionality relied upon in this regard are that if permitted by the legislation, to act in the manner in which it did, the Tribunal has crossed the threshold into the realms of administering justice contrary to Articles 34 and 37 of the Constitution and further that such findings would be contrary to Articles 38, 40.1 and 40.3 of the Constitution.”*

Therefore, relying on the points raised in that case on behalf of the Applicant, it is respectfully submitted that the Tribunal in making its determination in relation to costs should only take account of the level of co-operation that Sergeant McEntee gave to the Tribunal during its investigation and hearing. At no time during the hearing of this module did the Tribunal complain about the level of co-operation provided by Sergeant McEntee.

The case of *Murphy & Others v Flood & Others* (Unreported judgement of Smyth J. delivered on 14th February 2006 [2006 IEHC 75] was cited in support for the legal basis of that proposition. Having carefully considered the judgement of Smyth J. in

that case, I do not agree that that judgement restricts the Tribunal in the scope of matters which it may consider in exercising its discretion in relation to costs. That case primarily dealt with the issue as to whether a Tribunal was entitled to make a finding that a person had obstructed and hindered the Tribunal in its work. On that aspect, the Learned High Court Judge stated as follows:

Objection is also taken to the distinction drawn by the Tribunal which reported that some witnesses had failed to co-operate, whereas the applicants were held to have obstructed or hindered the Tribunal.

As noted, there are degrees of co-operation or non co-operation and the Tribunal was entitled to distinguish such matters of degree. The Tribunal in the exercise of its functions is not a mere listening post for all tendered evidence, it is, subject to the safeguards of the law, obligated to ascertain facts – the discernment applied in that task is concerned very often in trying to reconcile various elements and on occasion, in cases of conflict, determining on the balance of probabilities what are the reliable facts and who are the reliable witnesses.

The task of the Tribunal was to inquire into the meaning and truth of past events, if genuine conflict arises on facts, such inquiries require to be investigated and resolved. In the expression of a finding, view or opinion based on facts, the Tribunal is not to be so circumscribed as to be neutered. A person, even if assisting the Tribunal, is entitled to challenge a fact stated to exist and prove matters to the contrary. A person is not entitled to put the Tribunal to the trouble and expense (of the public) of protractedly or even economically withholding information or only admitting the inevitable when candour could have avoided such trouble and expense. The approach of a person before a Tribunal cannot be - even if there is an accuser - "catch me if you can". The Tribunal was to serve a particular purpose, not to provide an arena such as a Court for a lis inter partes.

The Tribunal did not purport to determine legal liability - but if in the course of its inquiries it was hindered or delayed or put to unnecessary or additional or unreasonable expense or trouble, it was entitled to so report; whether that took the serious form of failure to co-operate, or the more serious form of non co-operation or "obstructing and hindering". To co-operate is to work together or to act in conjunction with another person to an end. It is the opposite to hindrance which means to put at a disadvantage or to obstruct. The ordinary dictionary meaning of obstruction is "to block with obstacles or impediments or to render difficult the progress" in this instance of the Tribunal.

In my judgement, if the Tribunal was of the opinion on the facts before it that its work and inquiries were impeded by want of co-operation and the blocking of its progress in its inquiries, it was entitled to so find such as a fact. It would be invidious to fail to record same in its report and then at a later stage when an application for costs came to be made that such a finding was made for the first time. An applicant for costs in such circumstances could very properly object to any suggestion or ruling of an adverse nature which had not been

found as a fact on the substantive hearings and reports of the Tribunal. (Judgement of Smyth J., p.17/18).

Later in the course of the same judgement, Smyth J., when considering the true interpretation of Section 6 of the Act of 1979 as amended by Section 3 of the Act of 1997, held that the Tribunal was not in any way fettered in relation to the matters to which it may have regard when exercising its discretion in relation to an application for payment of a party's costs. In relation to the wide ambit of the matters to which a Tribunal may have regard, the Learned Judge had the following to say:

In my judgement the non-exhaustive listing of the matters that were embraced in the expression "including" permit the Tribunal to consider "all other relevant matters if ... there are sufficient reasons rendering it equitable to do so" in its opinion and these are to be taken into account in the making of a costs order. In my judgement, it is not permissible under Judicial Review on the material placed before the Court nor is there any warrant on the basis of the evidence tendered at the hearing in Court to displace the opinion of the Tribunal for that of the Court. There is no evidence of failure to exercise discretion within the terms of the Acts or either Terms of Reference. (Judgement of Smyth J, p.19).

In my view, the judgement of Smyth J. in Murphy & Others v Flood & Others does not in any way curtail the Tribunal in relation to the matters to which it might have regard in determining this application for costs. In considering Sergeant McEntee's application for costs, I have not had regard to the findings made in relation to his participation in the conspiracy to substitute the notes of interview, or to his participation in the subsequent attempt at a cover-up of that activity. As with other applicants, I have simply looked to see if the witness has co-operated with the Tribunal. As far back as the first ruling on costs after the hearing of the Explosives module, the Tribunal gave a ruling on costs in which it stated as follows:

I have proceeded on the basis that a substantive finding by me of wrongdoing on the part of a person, would not necessarily deprive that person of the opportunity to have costs awarded in their favour. In respect of each applicant, I have considered whether that person has co-operated fully with the Tribunal by furnishing it with documents, by furnishing it with all the information in their knowledge or procurement, by telling the whole truth to the Tribunal's investigators and by telling the whole truth in the witness box. Where people have done so, they have been deemed to have co-operated with the Tribunal. In such circumstances, I have been prepared to grant them their full costs irrespective of the finding that may have been made as a result of their co-operation and truthful testimony. However, where persons have deliberately withheld giving all the information within their knowledge, or where they have told lies in an attempt to prevent the Tribunal getting to the truth, thereby prolonging the work of the Tribunal, I have refused to award them costs in respect of such evidence.

Unfortunately, Sergeant McEntee gave nothing like full co-operation to the Tribunal. In relation to the initial contact with Garda Harkin, the Tribunal did not accept the sergeant's evidence that he did not ask Garda Harkin to amend the "original" notes

and in particular to amend the preamble to the scenario which was put to Róisín McConnell in the course of the interview. The proximity of the amendment to the preamble to the two questions that Sergeant McEntee acknowledged that he asked Garda Harkin to remove, was sufficient to satisfy the Tribunal that the amendment to the preamble formed part of the request that he made to Garda Harkin. With regard to Sergeant McEntee's assertion that Garda Harkin gave him no undertaking as to whether he would make the amendments or not, the Tribunal was satisfied that that version was incorrect. Furthermore, the Tribunal did not accept Sergeant McEntee's denial that he gave no assurance to Garda Harkin that he would switch the notes of interview, if a new set of interview notes were sent in to the incident room. The Tribunal accepted Garda Harkin's evidence that he was given such an assurance by Sergeant McEntee.

Sergeant McEntee made a statement for the benefit of the Tribunal. The Tribunal found that that statement was consistent with the evasive evidence that he gave to the Tribunal. The Tribunal was satisfied that far from making a full confession as to his involvement in the matter, Sergeant McEntee in that statement, admitted the barest details of what Garda Harkin could have said about him. The Tribunal was satisfied that his evidence was likewise tailored to minimise his own involvement in the matter. The Tribunal was satisfied that in relation to the evidence that Sergeant McEntee gave concerning the subsequent attempt at a cover-up of the conspiracy, and in particular in relation to the meeting that was held between Detective Inspector McGinley, Garda Harkin and Sergeant McEntee, that his evidence in relation to that meeting was "deliberately evasive". The Tribunal found that it was simply incredible that he had no recollection of what was discussed at the meeting in question given that he remained in the car for the duration of the meeting and in particular having regard to the fact that the matters under discussion were clearly of great significance. The Tribunal was satisfied that the witness knew more at the time of the meeting than he was prepared to admit in his subsequent evidence to the Tribunal. For the reasons set out in the report, the Tribunal was satisfied that Sergeant McEntee had not been completely truthful at the Tribunal as to his actual involvement in the events of September 1997. It held further that his involvement in the cover-up in the course of the Carty investigation had to be seen in that light. In these circumstances, I am not prepared to hold that Sergeant McEntee co-operated with the Tribunal. Had he told the full truth, I would have been prepared to consider favourably an application for payment of his costs, irrespective of what findings may have followed from his electing to tell the truth. Orders for payment of costs have been made in similar circumstances by this Tribunal, such as the orders given in favour of Mr. Dooley, Mr. White and Garda Harkin. However, where a person has not told the truth and has been deliberately evasive with the Tribunal, I do not see any reason why an Order for Costs should be made in that person's favour. I refuse the application for payment of costs on behalf of Sergeant McEntee.

As Sergeant McEntee and Sergeant Scanlon were jointly represented by the legal team acting on behalf of the AGSI, and as Sergeant Scanlon has been awarded a full order for his costs, the order will provide that one set of costs is payable solely in respect of those days spent by the legal team in protecting the interests and reputation of Sergeant Scanlon. No costs will be recoverable in respect of the time spent protecting the interests and reputation of Sergeant McEntee.

An application for payment of his costs was also received by the Tribunal by the solicitors acting on behalf of Mr. John White. For a very long time, Mr. White denied that he had abused Róisín McConnell. He made a detailed statement to that effect. When Mr. Dooley had the courage to tell the truth concerning the abuse of Mrs. McConnell, Mr. White found himself in an awkward position. He decided that he would have to tell the truth as well. He admitted a very large portion of her allegations; some small areas of dispute remained. In so doing, he brought to an end almost 10 years during which the Gardaí had branded Róisín McConnell as a liar. Mr. White gave evidence in accordance with his statement to the Tribunal made in 2006. For these acts, he had been given credit in the sixth report. His actions assisted the Tribunal in its work. It enabled it to conclude this sub-module quicker than would otherwise have been the case. It is appropriate that he should receive and order for payment of his costs in this sub-module.

Arrests and Detentions of Mark McConnell sub-module

A written submission was received by the Tribunal seeking payment of the costs incurred by Garda Tina Fowley in this sub-module. On the 11th of November 2006, counsel for Garda Fowley applied for limited representation in this sub-module in respect of two discreet issues. The first issue concerned a dispute between former Sergeant Leheny and Garda Fowley as to whether he had left into the incident room the original of his notes of interview with Mr. Mark McConnell and, if so, whether they had been mislaid by the staff working in the incident room. Part of this issue concerned evidence in relation to a meeting that occurred on the street between Mr. Leheny and Garda Fowley some short time prior to this issue coming on for hearing before the Tribunal, and in particular as to whether any effort was made by Mr. Leheny to use the occasion to "sound out" where Garda Fowley stood on the issue.

The second issue concerned the allegation made by Garda Fowley that she had seen Inspector McGinley practising the signature of Frank McBrearty Junior in the incident room on the 4th of December 1996. I acceded to the application made on behalf of Garda Fowley that she should be represented for the evidence touching upon these two discreet issues.

I am satisfied that Garda Fowley assisted the Tribunal on each of these issues. She gave a truthful account of her dealings with various people on these matters. She acted with considerable courage in making the allegation concerning the practising of the signature by Inspector McGinley. In giving her evidence on this matter, she enabled the Tribunal to ascertain the truth on an important aspect of its work. She is entitled to an order for payment of her costs in this sub-module.

An application was also received for payment of the costs incurred by the following present and former members of the AGSI: Inspector Gerard Connolly, Sergeant Martin Conroy, Sergeant Padraic Scanlon and retired Detective Sergeant James Leheny.

The Tribunal is satisfied that it received full co-operation from Inspector Connolly, Sergeant Conroy and Sergeant Scanlon in relation to this sub-module. Their evidence on the various aspects on which they gave evidence in this sub-module has been accepted as a truthful account of their dealings with the prisoner. They are

entitled to an order for one set of costs to cover their joint representation in this sub-module.

An application for payment of costs was received on behalf of former Detective Sergeant James Leheny. Mr. Leheny gave evidence concerning the arrest of Mr. McConnell and the taking of Mr. McConnell's car by the Gardaí on the morning that he was arrested. The Tribunal did not accept his evidence in relation to the circumstances surrounding the taking of the motor vehicle. However, Mr. Leheny's evidence was of assistance in respect of the general circumstances of the arrest. Mr. McConnell had also alleged that he had been pushed and shoved during his first period of interview at Letterkenny Garda Station. The Gardaí had denied that this occurred. The Tribunal did not accept their evidence. It was satisfied that while there had been some pushing and shoving of Mr. McConnell by Detective Sergeant Leheny and Detective Garda O'Malley, it was minor in nature. The Tribunal is also satisfied that Detective Sergeant Leheny's role in this event was less than that of the other Garda present. Another area of dispute concerned the content of a telephone conversation which occurred between Mr. McConnell and his solicitor, Mr. James O'Donnell, during his period of detention. The Tribunal did not accept Mr. Leheny's evidence concerning the content of that telephone call. It preferred the evidence of Mr. McConnell on this aspect.

Mr. Leheny was one of the Gardaí present during the interview with Mark McConnell which commenced at 19.05 hours on 4th of December 1996. It was during this period of interview that Mark McConnell alleged that he had been shown a bogus statement of admission apparently signed by Frank McBrearty Junior. All the Gardaí denied that that event had occurred. The Tribunal rejected the evidence given by the Garda witnesses on this aspect. For the reasons set out in the sixth report, it preferred Mr. McConnell's account of that interview. It accepted his allegation in relation to being shown the bogus statement. Mr. Leheny also gave evidence in relation to a missing set of notes of his interview with Mark McConnell. His evidence was characterised by the Tribunal as an attempt to blame Garda Fowley for the absence of the notes. The Tribunal preferred the evidence of Garda Fowley on this aspect. Finally, in relation to the meeting on the street between Mr. Leheny and Garda Fowley, the Tribunal found that while it was an unplanned encounter, it did not accept Mr. Leheny's denial that he used the opportunity to sound out Garda Fowley as to her position on the missing notes. The Tribunal preferred Garda Fowley's evidence on this aspect. In the circumstances, the Tribunal is not satisfied that Mr. Leheny has given full co-operation to the Tribunal on the disputed issues. However, in giving his evidence, he did provide some assistance to the Tribunal in its inquiry. In the circumstances, the Tribunal is satisfied that it is equitable that Mr. Leheny should receive 50% of his costs.

A joint order for costs will be made covering Inspector Connolly, Sergeant Conroy, Sergeant Scanlon and Mr. Leheny. In respect of the days on which the legal team were engaged to protect the interests and reputation of Inspector Connolly, Sergeant Conroy and Sergeant Scanlon, they are entitled to a single full set of costs for each of those days. In respect of the days spent solely and exclusively protecting the interests and reputation of Mr. Leheny, they are entitled to receive 50% of their costs for those days.

Arrest and Detention of Edel Quinn sub-module

A grant of representation was made by the Tribunal in favour of Sergeant Desmond Sheridan for this sub-module. No allegations were made against him and no adverse comments or findings were made against him in the Tribunal's sixth report. It is appropriate that he should receive an order for payment of his costs in this sub-module. It will be in the same terms as the usual order in favour of the AGSI.

Arrest and Detention of Charlotte Peoples sub-module

An application for payment of the costs incurred by Sergeant Sylvester Henry was received by the Tribunal. In his statements and in his evidence to the Tribunal, Sergeant Henry gave a truthful account of his dealings with Mrs. Peoples during her period of detention at Letterkenny Garda Station on the 4th of December 1996. He assisted the Tribunal in its work. It is appropriate that he should receive an order for payment of his costs in this sub-module. It will be in the same terms as the usual order in favour of the AGSI.

Arrests and Detentions of Frank McBrearty Junior sub-module

Garda Tina Fowley was one of the persons on the arrest party which set out on the morning of the 4th of December 1996 to arrest Frank McBrearty Junior. It was anticipated by the Gardaí that Mr. McBrearty Junior would have his children with him that morning. It was Garda Fowley's duty to take care of the two young children and return them to their home as soon as possible. Over the years, Mr. McBrearty Junior made a number of serious allegations about the manner of his arrest that morning. He alleged that many abusive comments were made to him by the arresting Gardaí. He also alleged that the arresting Garda had made derogatory comments to his children. The Tribunal accepted the evidence given by Garda Fowley that none of this abuse occurred that morning at the time of the arrest. The Tribunal was satisfied that she gave a truthful account of the arrest and of how she looked after the children and returned them to the care of their mother. The Tribunal was satisfied that she had acted entirely appropriately throughout this episode. She is entitled to an order for payment of her costs in this sub-module.

An application for payment of costs was also made on behalf of Mr. John Fitzpatrick. He was one of the four Gardaí who interviewed Frank McBrearty Junior on the 4th of December 1996. It was he and former Detective Sergeant John Melody who obtained from Mr. McBrearty Junior a false confession to the effect that he had assaulted the Late Mr. Barron on the night that he died. Over the years, Frank McBrearty Junior made a large and varied number of allegations against all the Gardaí who interviewed him that day. He alleged that he had been grossly mistreated by those Gardaí. He also alleged that his signature had been forged on a number of documents, including on the false confession. These were serious allegations. They were denied in their entirety by Mr. Fitzpatrick and the other Gardaí against whom they were made. Mr. Fitzpatrick maintained that he had at all times treated Mr. McBrearty Junior properly and in accordance with the custody regulations. He denied that he or anyone else, had forged Mr. McBrearty Junior's signature on any documentation. He maintained that Mr. McBrearty Junior had

voluntarily dictated to him and to Sergeant Melody the statement which contained the false admissions.

Mr. Fitzpatrick co-operated with the Tribunal by furnishing statements in respect of the various allegations, by attending for interview with the Tribunal's investigators and by appearing before the Tribunal to give evidence and to undergo cross-examination by any party who wanted to put questions to him. He also assisted the Tribunal by agreeing to wait outside the hearing chamber while Mr. McBrearty Junior gave his evidence to the Tribunal. This was necessary because Mr. McBrearty Junior had insisted that none of the Gardaí who had interviewed him, should be present while he gave his evidence. Mr. Fitzpatrick, Mr. Melody, Detective Inspector O'Grady and Detective Sergeant McGrath agreed to withdraw so that the work of the Tribunal could proceed. The Tribunal has acknowledged its gratitude to these men for their actions in its sixth report. By so doing, they gave valuable assistance to the Tribunal.

In relation to the evidence given by Mr. Fitzpatrick, the Tribunal accepted that for the greater part of his evidence, Mr. Fitzpatrick told the truth concerning his interaction with Mr. McBrearty Junior. The Tribunal accepted his evidence that he had not abused or mistreated Mr. McBrearty Junior in the earlier interviews. It accepted that Mr. McBrearty Junior had voluntarily signed a permission to search his house which was given at 13.25 hours on the 4th of December 1996. The Tribunal found that for the most part the allegations made by Mr. McBrearty Junior against Mr. Fitzpatrick were without substance.

However, in one critical area, the Tribunal did not accept that Mr. Fitzpatrick gave a full and frank account of his dealings with Mr. McBrearty Junior. That was in relation to the interview which commenced at 19.05 hours on the 4th of December 1996. It was during this interview that the false confession was obtained. While the Tribunal found that the document had been signed by Mr. McBrearty Junior and had not been obtained by means of a trick, it was equally satisfied that it had not come about in the manner described by Mr. Fitzpatrick and Mr. Melody. The Tribunal rejected their evidence on this important topic. In giving that evidence, the witnesses concerned could not have been said to have co-operated with, or assisted, the Tribunal.

Furthermore, allegations had been made by Mr. McBrearty Junior that he had been verbally abused throughout the day. He also alleged that post-mortem photographs had been shown to him during his period in detention. These allegations were denied by Mr. Fitzpatrick and Mr. Melody. The Tribunal did not accept their evidence on these issues. For the reasons set out in its report, the Tribunal was satisfied that post-mortem photographs had been shown to Mr. McBrearty Junior and that, while he had exaggerated the amount of verbal abuse directed at him, that he did receive some abuse during the course of his detention. For the reasons set out in its sixth report, the Tribunal was satisfied that the showing of the post-mortem photographs and the verbal abuse took place during the interview with Mr. Fitzpatrick and Mr. Melody which commenced at 19.05 hours.

The question arises as to whether the rejection of the evidence of Mr. Fitzpatrick in relation to what happened during this critical period leading to the making of the false confession, should be regarded as being of such importance to the Tribunal's inquiry,

that it should disentitle him to any costs. I think that it would be unfair to adopt such a strict approach. To do so, would be to ignore the facts that a substantial portion of his evidence was regarded as truthful and that he gave valuable assistance to the Tribunal by removing himself from the hearing room in the manner already outlined. Nevertheless, one cannot ignore the fact that he did not co-operate with the Tribunal on this critical issue. Taking all of these factors into account, I am satisfied that it is equitable that Mr. Fitzpatrick should receive a portion of his costs. I award him 80% of his costs in this sub-module.

An application for payment of costs was also received from the solicitors acting on behalf of the AGSI, for payment of the costs in respect of Sergeant Hannigan, Detective Inspector O'Grady, Detective Sergeant McGrath and former Detective Sergeant Melody. Sergeant Hannigan was the person who arrested Mr. McBrearty Junior. As already noted, serious allegations of misconduct were made by Frank McBrearty Junior against Sergeant Hannigan in relation to this arrest. The Tribunal heard a large amount of evidence from persons present at the time of the arrest. For the reasons set out in its sixth report, the Tribunal was satisfied that the allegations against Sergeant Hannigan were entirely without foundation. The Tribunal accepted the evidence given by Sergeant Hannigan. I am satisfied that he has fully co-operated with the Tribunal and that in the circumstances it is appropriate that he should receive an order for payment of his costs. As he was jointly represented by the legal team acting for the AGSI, this will be a joint order for a single set of costs subject to the qualifications set out below.

Detective Inspector O'Grady and Detective Sergeant McGrath were two officers who interviewed Frank McBrearty Junior on the 4th of December 1996. As with the other set of interviewers, they faced a large number of serious accusations made by Frank McBrearty Junior. He alleged that he had been physically assaulted and verbally abused during his interviews with these officers. He alleged that his signature on the second statement taken by these men, was a forgery. He also advanced the proposition that he had made a different statement to these men which had been destroyed by them and substituted with the false confession and the second shorter statement.

Detective Inspector O'Grady and Detective Sergeant McGrath made a number of statements and attended for interview with the Tribunal's investigators. They absented themselves from the hearing room at the request of Frank McBrearty Junior. They gave their evidence in a clear and frank fashion. The Tribunal was satisfied that they had told the truth in relation to their dealings with Frank McBrearty Junior on the 4th of December 1996. The Tribunal found that they did not abuse Frank McBrearty Junior physically or verbally during their interviews with him. The Tribunal rejected all the allegations made by Mr. McBrearty Junior against these two men. In giving truthful evidence to the Tribunal, they assisted it greatly in its work. It is appropriate that they should have their costs paid by the Minister for Finance. The form of the order will be that set out below.

The final applicant coming under the rubric of the legal team representing the AGSI, was former Detective Sergeant John Melody. The allegations made against him by Frank McBrearty Junior were almost exactly the same as those made by him against Mr. Fitzpatrick. His evidence also mirrored that given by Mr. Fitzpatrick on all of the

relevant issues. The reasons for the ruling set out above in relation to Mr. Fitzpatrick's application, applied mutatis mutandis to the application made on behalf of Mr. Melody. For these reasons, I am satisfied that Mr. Melody is entitled to 80% of his costs on this sub-module.

As these four applicants were jointly represented by the AGSI legal team, it is appropriate that they should receive one single set of costs. In respect of the days on which the legal team were engaged in protecting the interests and reputations of Inspector O'Grady, Detective Sergeant McGrath or Sergeant Hannigan, they can receive one set of costs for those days. However, for any days where the legal team were engaged solely in the protection of the good name or reputation of Mr. Melody they will receive 80% of their costs in respect of those days.

The Edmond Moss sub-module

An application for payment of costs was received on behalf of Mr. Edmond Moss. Mr. Moss resides in Northern Ireland. In these circumstances, the Tribunal would not have been in a position to force Mr. Moss to come before it to give evidence. However, Mr. Moss voluntarily made himself available to the Tribunal on the days requested. The Tribunal is satisfied that in giving his evidence to the Tribunal, Mr. Moss did his best to recall the events which had occurred over ten years previously. The Tribunal is satisfied that Mr. Moss did his best to tell the truth on all of the issues put to him. The Tribunal was assisted by his evidence on this sub-module. In the circumstances it is appropriate that he should receive an order for payment of his costs on this sub-module.

An application for payment of costs was also received from the legal team representing Sergeant Joseph Hannigan and former Detective Sergeant Hugh Smith. Sergeant Hannigan had been present at the time that Frank McBrearty Junior had been arrested just outside Raphoe Garda Station in relation to the alleged assault on Mr. Moss. He gave evidence in relation to the manner in which that arrest was carried out. His evidence was accepted in relation to this matter. He was also able to assist the Tribunal in relation to the way in which the matter was investigated generally by Sergeant White and Garda John O'Dowd in Raphoe Garda Station. The Tribunal is satisfied that he is entitled to an order for his costs on this sub-module. Former Detective Sergeant Hugh Smith was one of the officers who carried out a brief interview with Frank McBrearty Junior during the period that he was detained at Letterkenny Garda Station on the 4th of February 1997. Unknown to Detective Sergeant Smith, his interaction with Frank McBrearty Junior was being recorded on a camcorder owned by Sergeant White. In the course of his interaction with the prisoner Detective Sergeant Smith used language that was inappropriate. He accepted this fact and apologised for his conduct when he gave evidence before the Tribunal. The Tribunal is satisfied that Mr. Smith gave an honest account of his dealings with Frank McBrearty Junior at Letterkenny Garda Station that day. In so doing he co-operated with the Tribunal in its work. He is entitled to an order for payment of his costs. As in the previous cases where members were jointly represented by the legal team acting for the AGSI the order will provide for the payment of a single set of costs in respect of their joint representation on this sub-module.

An application was also received on behalf of Mr. John O'Dowd. He had played a pivotal role in relation to this sub-module in a number of different respects. It was he who took the initial statement of complaint from Mr. Moss and also from other witnesses who had been with Mr. Moss in the nightclub on the night in question. He had also been present in Raphoe Garda Station on a number of subsequent occasions when Mr. Moss had interaction with Sergeant White. Garda O'Dowd had arrested Frank McBrearty Junior on the 4th of February 1997. Perhaps most importantly, an allegation was made by Frank McBrearty Junior in the course of his period of detention that he had been seriously assaulted by Garda O'Dowd at Letterkenny Garda Station. Mr. McBrearty Junior maintained and repeated this allegation a number of times in subsequent years. It was not until he had an interview with the Tribunal investigator, Mr. Brian Garvie, that Frank McBrearty Junior eventually admitted that he had in fact assaulted himself. He continued however to make an allegation that while he had punched himself in the face, there had been an assault at the hands of Garda O'Dowd, whereby Garda O'Dowd had banged his head against a desk. The Tribunal did not accept his evidence on this allegation. Mr. McBrearty Junior stormed out of the witness box before the solicitor acting for Mr. O'Dowd had an opportunity to fully cross-examine him in relation to his allegations concerning the 4th of February 1997. In these circumstances Mr. O'Dowd could not be compelled to give evidence on that issue. However, Mr. O'Dowd did not stand on his rights and was prepared to give his evidence in chief and to be cross-examined by anyone who wished to put questions to him. The Tribunal is satisfied that Mr. O'Dowd gave a truthful account not only of his dealing with the Moss investigation file but also of his interaction with Mr. McBrearty Junior at Letterkenny Garda Station on the 4th of February 1997. In the circumstances he has provided co-operation and assistance to the Tribunal and it is appropriate that he should receive an order for payment of his costs on this sub-module.

Sergeant White, along with Garda O'Dowd, were responsible for the investigation into the complaint made by Mr. Moss. The Tribunal was satisfied that Mr. White's evidence in relation to the steps that he took to bring that matter before the Court, was a truthful and comprehensive account of his actions in that investigation. In the course of that investigation, Mr. McBrearty Junior was arrested and detained at Letterkenny Garda Station on the 4th of February 1997. Mr. White gave evidence in relation to the arrest and of his interviews with Mr. McBrearty Junior on that occasion. The Tribunal accepted that he did not assault Mr. McBrearty Junior, as had been alleged. Mr White also furnished to the Tribunal a video recording covering the arrest of Mr. McBrearty Junior and portion of the interviews with him. While the Tribunal found that some of the questioning conducted by Mr. White was inappropriate, it was satisfied that he had done his best to give an accurate account of the events of that day. In the circumstances, the Tribunal is satisfied that it is appropriate to make an order for the payment of Mr. White's costs in this sub-module.

Arrest and Detention of Mark Quinn sub-module

A central issue in this sub-module was as to whether Mr. Quinn was shown post-mortem photographs of the Late Mr. Barron during his period of detention at Letterkenny Garda Station on the 4th of December 1996. Mr. John O'Dowd told the truth as the earliest opportunity. He admitted to the Tribunal investigator, Mr. Brian

Garvie, that post-mortem photographs had indeed been shown to the prisoner. This was denied by others for a long time. However, at a late stage, Mr. Martin Moylan accepted that this had happened. An allegation was also made by Mr. Quinn that he had been assaulted by Garda O'Dowd during one of his periods of interview. This was denied by Mr. O'Dowd. The Tribunal accepted Mr. O'Dowd's evidence and held that he did not assault Mr. Quinn. The Tribunal is satisfied that Mr. O'Dowd told the truth in this sub-module. In so doing, he co-operated with the Tribunal. He is entitled to an order for payment of his costs.

An application was received from the solicitor acting on behalf of the AGSI in respect of Sergeant Joseph Hannigan, Sergeant Padraic Scanlon, and former Sergeant Martin Moylan. Sergeant Hannigan had accompanied Detective Garda Keating at the arrest of Mr. Quinn. While the Tribunal found that Mr. Quinn's allegation that he was manhandled at the time of his arrest by Detective Garda Keating, was partially accurate, it was also satisfied that Mr. Quinn's allegations concerning the manner of his arrest, were exaggerated. The Tribunal found that the initial approach by Detective Garda Keating to Mr. Quinn was unnecessarily robust. However, the Tribunal accepted the evidence given by Sergeant Hannigan of the arrest, as being his best recollection of that event. An allegation was also made by Mr. Quinn of certain comments allegedly made by Sergeant Scanlon in the presence of Sergeant Hannigan, when Mr. Quinn was leaving the Garda station. Having heard evidence from Mr. Quinn, Sergeant Hannigan and Sergeant Scanlon, the Tribunal was not prepared to make a finding as a matter of probability that that event occurred.

Mr. Quinn also alleged that Sergeant Hannigan made remarks to him while giving him a lift home in his car on the evening of his release. The Tribunal was not satisfied that Sergeant Hannigan made the remarks alleged. While Sergeant Hannigan was criticised for his failure to ensure that proper notes of interview with Mr. Quinn were made, this would not constitute a sufficient ground to deprive him of an Order for Costs in respect of this sub-module. I award Sergeant Hannigan his costs.

I am also satisfied that Sergeant Scanlon had told the truth to the Tribunal concerning his dealings with the Mr. Quinn that day. He is entitled to an order for costs. Mr. Martin Moylan had denied that he showed any post-mortem photographs to Mark Quinn. However, somewhat at the eleventh hour, he did indicate to the Tribunal that this had in fact happened in the manner described by Mr. O'Dowd. In coming to make this admission, Mr. Moylan belatedly gave assistance to the Tribunal in its work. Another allegation made by Mr. Quinn was to the effect that certain comments were made to him at the time that a takeaway meal was provided to him during his period of detention. This was denied by the Gardaí. While a finding was made by the Tribunal to the effect that either Mr. Moylan, Mr. Leonard or Mr. O'Dowd made a certain comment when giving Mr. Quinn his evening meal, and while the Tribunal did not accept their evidence on this aspect, the Tribunal does not regard this finding on the evidence as sufficiently grave to justify depriving Mr. Moylan or Mr. O'Dowd of any of their costs on this occasion. Mr. Moylan is entitled to an order for payment of his costs on this sub-module.

As Sergeant Hannigan, Sergeant Scanlon and Mr. Moylan were jointly represented by the legal team acting on behalf of the AGSI, it is appropriate that the order should

be for one single set of costs in favour of the AGSI in respect of their joint representation for this sub-module.

Arrest and Detention of Katrina Brolly sub-module

Garda Tina Fowley had a limited involvement in this sub-module. She attended at the home of Katrina Brolly on the evening of the 4th of December 1996 when a statement was taken from Mr. Eunan Brolly concerning his and his wife's movements in the early hours of the 14th of October 1996. Garda Fowley also gave evidence in relation to the circumstances surrounding the arrest of Katrina Brolly in the car park of Letterkenny Garda Station on the evening of the 4th of December 1996. In this regard, her evidence differed from that of Detective Garda Pat Teague. He said that he had been asked by Garda Fowley to effect the arrest, whereas Garda Fowley maintained that she had no knowledge of any impending arrest when she asked Ms. Brolly to step out of the car. All were agreed that an arrest took place at that time. In the circumstances, the Tribunal did not find it necessary to resolve the dispute between Garda Fowley and Detective Garda Teague. Garda Fowley's last area of evidence concerned the introduction of Garda Joan Gallagher to Katrina Brolly during her period of detention at Letterkenny Garda Station.

The Tribunal is satisfied that Garda Fowley has given her best recollection of the various events that night. She has co-operated with the Tribunal and is entitled to an order for payment of her costs in this sub-module.

Mr. John Dooley had made statements denying any abuse of Katrina Brolly. Sergeant White had done the same. By so doing they were effectively branding her as a liar in respect of the allegations of misconduct that she had made against her interrogators. In October 2005, Mr. Dooley made a comprehensive statement wherein he admitted the allegations made by Ms. Brolly. When this statement was furnished to Mr. White he too admitted that she had been telling the truth all along. In his evidence to the Tribunal, Mr. Dooley did not attempt to draw back from any of the admissions he had made in his statement. He gave a full and frank account of his wrongdoing. He expressed remorse to Ms. Brolly for the manner in which she had been mistreated by the Gardaí and by him. The Tribunal is grateful to Mr. Dooley for the courageous stand that he took. It is appropriate that he should have an order for payment of his costs in this sub-module.

An application was also received on behalf of Sergeant Paul Heffernan, who was part of one of the other interviewing teams, who interviewed Ms. Brolly in Letterkenny Garda Station. While Katrina Brolly did not make any direct allegations against Sergeant Heffernan, she alleged that he had not done anything when she complained of abuse to him, nor had he ensured that she was allowed to make a telephone call to her family. The Tribunal accepted the evidence given by Sergeant Heffernan to the effect that while he did recall some remark having been made by Ms. Brolly about abuse, he did not take it as a complaint that she had in fact been abused by other Gardaí. He assured her that he was not going to abuse her. All were agreed that he had not abused her at any stage. He accepted that he probably forgot about the telephone call but said that she was not making any great fuss or demand in that regard. Again the Tribunal accepted that he had given a truthful

account of his dealing with Ms. Brolly. It is appropriate that he should receive an order for payment of his costs in this sub-module.

As in the Róisín McConnell sub-module, it took some time for Mr. White to come forward and tell the truth. However, the Tribunal is satisfied that he did ultimately do that. The fact that adverse findings have been made against Mr. White on account of his truthful testimony is not something, which would justify withholding from him any costs to which he might otherwise be entitled. In the circumstances, the Tribunal considers it equitable that he receive an order for payment of his costs in this sub-module.

Arrest and Detention of Frank McBrearty Senior sub-module

Mr. John O'Dowd, Mr. John Fitzpatrick and Mr. Sean Herraghty were represented by the legal team acting on behalf of the GRA, Messrs Hughes Murphy & Company, solicitors. In respect of Mr. John O'Dowd, they noted in their submissions that serious findings had been made against Mr. O'Dowd in relation to information, which was furnished by him to the investigation team. In particular, the Tribunal had found in reference to this sub-module that the statement by Robert Noel McBride on the 4th December 1996 was a false statement in which Garda O'Dowd was involved. In these circumstances they did not seek any costs on behalf of Mr. O'Dowd in relation to this aspect of the sub-module.

The solicitors do however seek costs on behalf of Mr. O'Dowd in respect of two areas on which they maintain that his evidence was accepted without criticism. The first of these areas was in relation to the search of the house of Frank McBrearty Senior carried out on the 5th December 1996. The Tribunal accepted Mr. O'Dowd's evidence on this topic. The Tribunal was satisfied that the search of Mr. McBrearty Senior's home was carried out by Gardaí in an appropriate fashion. There was also a dispute concerning the date on which the second statement from Robert Noel McBride was brought into the incident room. Mr. O'Dowd said that it had been submitted by him on the day that he took it, being the 4th of December 1996. Whereas, Mr. Moylan's recollection was that it had come into the system some time later. The Tribunal found that the statement was taken on the 4th of December 1996. The Tribunal held that it was not necessary to determine exactly when the statement was submitted in circumstances where it was admitted that the information in the statement was known to both Detective Superintendent Shelley and Sergeant Moylan. Accordingly, on this topic, while the evidence of Mr. O'Dowd was not expressly accepted, neither was it expressly rejected. Doing the best that I can to be fair to Mr. O'Dowd in the circumstances, having regard to the concessions which I think were correctly made by his solicitors in their written submissions, I will make an Order allowing Mr. O'Dowd his costs in this sub-module, save for those days or time spent dealing with the taking of the statement from Robert Noel McBride on the 4th December 1996. He is not entitled to any costs in respect of that aspect.

The legal team acting on behalf of the GRA also represented Mr. John Fitzpatrick in this sub-module. Frank McBrearty Senior had for a long time challenged the account given by Mr. Melody and Mr. Fitzpatrick of their interview with him. In fact he denied that he had had any meaningful interview with them at all. He maintained that having been examined by a doctor, he was removed to hospital before any questions could

be put to him by these detectives. He expressly denied that Detective Garda Fitzpatrick and Detective Sergeant Melody mentioned to him that his son had made a written statement confessing to an assault on the Late Mr. Barron. His evidence in this regard was rejected. The Tribunal found that the account of that interview given by Mr. Melody and Mr. Fitzpatrick was truthful. Their account was supported by a memorandum of a consultation between Mr. Frank McBrearty Senior and his solicitor, which occurred some days later, wherein Mr. McBrearty Senior had told his solicitor that the detectives had alleged that they had a signed confession from his son. In these circumstances, where the evidence of the Garda witnesses had been accepted as truthful, it is appropriate for an Order for costs to be made. Mr. Fitzpatrick is entitled to his costs in this sub-module.

Frank McBrearty Senior alleged that during an interview on the 5th December 1996 with Detective Garda Keating and Detective Garda Herraghty, he had been verbally abused. He also alleged that Detective Garda Herraghty had engaged in "shadow boxing" with him at that time and had banged the table. He also alleged that the interviewing Gardaí had pulled at his chair a number of times. The Tribunal was satisfied that neither of the interviewing Gardaí behaved in the manner complained of by Mr. McBrearty Senior. It accepted their evidence as a truthful account of their interview with Frank McBrearty Senior. Detective Garda Herraghty also supervised Mr McBrearty Senior for part of his time detained in hospitals in Letterkenny and in Dublin. The Tribunal was satisfied that in carrying out the supervisory duties, Mr. Herraghty acted appropriately and indeed considerately at all times towards Mr. McBrearty Senior. In the circumstances it is appropriate that Mr. Herraghty should receive his costs.

As the three gentlemen were jointly represented by the legal team acting on behalf of the GRA, it is appropriate that a single Order for costs should be made giving them one set of costs for any of the days on which the legal team were engaged in protecting the good name or reputation of any or all of the three gentlemen, subject only to the qualification that no costs are recoverable in respect of the time spent dealing solely with the protection of Mr. O'Dowd's reputation concerning the taking of the statement from Robert Noel McBride on the 4th December 1996.

A number of applications for costs were received on behalf of present and former members of the AGSI, being Sergeant Heffernan, Sergeant Hannigan, Detective Inspector Keane, Inspector Henry and former Detective Sergeant Melody. Sergeant Heffernan was on the search party, which had searched Frank McBrearty Senior's house on the 5th December 1996. He had also arrested Mr. McBrearty Senior at that time. The Tribunal accepted the accounts given by the various members of the search party, including Sergeant Heffernan and concluded that the Gardaí had acted appropriately in the manner in which they had carried out that search. Having considered the evidence given by Doctor Martin Coyne, the Tribunal was also satisfied that Sergeant Heffernan did not wilfully disregard Mr. McBrearty Senior's health in deciding to proceed with the arrest at that time. It was also satisfied that Mr. McBrearty Senior was not abused by the Gardaí on the journey to Letterkenny Garda Station. Mr. McBrearty Senior had also alleged that Sergeant Heffernan had at one stage come into the interview room and commenced roaring and shouting abuse at him. The Tribunal rejected this allegation. The Tribunal is satisfied that Sergeant Heffernan is entitled to his costs on this sub-module.

Sergeant Hannigan and Detective Sergeant Keane were both on the search party that searched Mr. McBrearty's home on the 5th December 1996. The Tribunal rejected the allegations made by Mr. McBrearty Senior concerning that search. It found that the search had been carried out in an appropriate manner. The Tribunal is satisfied that both Detective Inspector Keane and Sergeant Hannigan are entitled to their costs in this sub-module.

Mr John Melody conducted an interview with Mr. McBrearty Senior. He was accompanied by Mr. John Fitzpatrick. The complaints arising out of that interview have been set out in the ruling in respect of the application on behalf of Mr. Fitzpatrick above. They need not be repeated. Suffice to say that the Tribunal found that Mr. Melody gave a truthful account of his interview with Mr. Frank McBrearty Senior. It is appropriate that he should receive his costs in this sub-module.

Mr. McBrearty Senior was interviewed by Detective Sergeant Sylvester Henry and Detective Garda Michael Jennings on the 13th December 1996. He alleged that he had been verbally abused during his period of interview. In particular, he complained that he had been questioned in a disparaging fashion about being the Lord Mayor of Raphoe, about collecting money for football and boxing clubs and was accused of being a bully boy and being a tough man in Raphoe and asked about the manner in which he was running the village of Raphoe. Both Detective Sergeant Henry and Detective Garda Jennings denied that they were abusive to Mr. McBrearty Senior during this period of interview. The Tribunal did not accept that Mr. McBrearty Senior was subjected to verbal abuse as described by him during that interview. The Tribunal accepted the evidence given by Inspector Henry on this aspect. In the circumstances he is entitled to an Order for his costs in this sub-module. As in previous sub-modules, as Inspector Henry, Detective Inspector Keane, Sergeant Heffernan, Sergeant Hannigan and former Detective Sergeant Melody were jointly represented by the legal team acting on behalf of the AGSI; it is appropriate that a single Order for costs should be given to cover their representation in this sub-module.

Arrest and Detention of Martin McCallion sub-module

Garda Martin McDonnell had a very limited role in this sub-module. He was a member in charge during the period of time that Mr. McCallion was detained in Garda custody. No allegations were made by Mr. McCallion against this witness. In the circumstances, his legal team withdrew from the hearing at an early stage. It is appropriate that they should be paid for their brief period of attendance before the Tribunal.

Sergeant Padraic Scanlon had conducted an interview with Mr. McCallion during which it was alleged by the prisoner that he had been shown post-mortem photographs. This was denied by Sergeant Scanlon and Mr. Anderson. While the Tribunal held that Mr. McCallion had been shown such photographs during his detention in Garda custody, it was not satisfied on the balance of probabilities that these photographs were shown to him by Detective Garda Anderson in the presence of Detective Garda Scanlon. The Tribunal was unable to conclude that either Detective Garda Anderson or Detective Garda Scanlon behaved in any improper way during the course of their interviews with Mr. McCallion. The Tribunal found that Mr.

McCallion was mistaken in originally attributing these acts to the members named by him. In the circumstances, it is appropriate that Sergeant Scanlon should receive his costs.

Sergeant John O'Toole had carried out one interview with Mr. McCallion accompanied by Detective Garda Carroll. Mr. McCallion, in his evidence, stated that he was treated fairly and properly by the two Gardaí. He accepted that the interview notes were accurate. No adverse finding whatsoever was made against Sergeant O'Toole. It is appropriate that he should receive an order for payment of his costs in this sub-module. As Sergeant Scanlon and Sergeant O'Toole were jointly represented by the legal team acting on behalf of the AGSI, the normal order in respect of one set of costs will issue in respect of the joint representation of these gentlemen in this sub-module.

Arrest and Detention of Sean Crossan sub-module

As in the previous sub-module, Garda Martin McDonnell had a very limited role in this sub-module. He was the member in charge during the period that this prisoner was detained in Garda custody. No allegations were made by Mr. Crossan against him. In the circumstances, his legal team withdrew from the hearing at an early stage. It is appropriate that they should be paid for their brief period of attendance at the Tribunal.

An application was received on behalf of Inspector Henry, Sergeant Scanlon and former Sergeant Moylan. Mr. Crossan had alleged that post mortem photographs had been shown to him during his detention in Garda custody. This was denied by the Garda witnesses. For the reasons set out in the sixth report, the Tribunal was not in a position to be satisfied that Detective Sergeant Henry, or any other Garda showed Mr. Crossan any post mortem photographs. While the Tribunal found that Detective Sergeant Henry and Sergeant Scanlon had questioned Mr. Crossan robustly, it also found that Detective Sergeant Henry and Sergeant Scanlon gave honest evidence to the Tribunal on this sub-module. It did not accept the allegations made against Detective Sergeant Henry and Sergeant Scanlon. In the circumstances, Inspector Henry and Sergeant Scanlon are entitled to an order for payment of their costs.

Between 22.35 hours and 23.05 hours on the 11th December 1996, Sergeant Moylan and Sergeant White conducted an interview with Mr. Crossan. While Mr. Crossan had complaints to make against Sergeant White in relation to an earlier period of interview, he made no complaints against either Sergeant in respect of this period of interview. In the circumstances, it is appropriate that Sergeant Moylan should have his costs on this sub-module. As Inspector Henry, Sergeant Scanlon and Sergeant Moylan were jointly represented by the legal team acting on behalf of the AGSI, this will be a single order for costs in their favour.

Mr. Crossan made a number of serious allegations against Mr. White. He alleged that Sergeant White had deliberately spat into his mouth, that he struck him on the chest and that he struck him in the genital area. These matters were denied by Mr. White. The Tribunal found that Mr. Crossan was not assaulted by Sergeant White in the manner alleged. Insofar as spittle may have gone from Sergeant White's mouth

towards Mr. Crossan, the Tribunal was satisfied that this was not done deliberately, but may have happened due to the fact that Sergeant White became enraged during the interview. The Tribunal rejected the allegation that Mr. Crossan was struck in the genital area. It also found that while Sergeant White prodded Mr. Crossan in the chest with his finger, this was not in the nature of an assault as described by Mr. Crossan. Mr. Crossan also alleged that he was pushed around by Sergeant White while sitting on a chair with wheels on it during the interview. He alleged that this was done in an attempt to intimidate him. Mr. White denied that any such action had been taken by him. The Tribunal did not accept this denial. It found that Mr. Crossan was pushed around the room by Sergeant White in an attempt to intimidate the prisoner. The Tribunal also held that certain comments were made by Sergeant White to Mr. Crossan during the interview as had been alleged by Mr. Crossan. In exercising its discretion, the Tribunal also noted that there were no complaints arising out of Sergeant White's second period of interview with Mr. Crossan, when he was accompanied by Sergeant Moylan.

In the circumstances, the Tribunal is not satisfied that Mr. White has given full co-operation to the Tribunal. In such circumstances, it would not be equitable to award him a full order for payment of his costs. However, the Tribunal is of the opinion that it is equitable that he should be awarded a portion of his costs, which I assess at 75% of his costs for this sub-module.

Arrest and Detention of Damien McDaid sub-module

In the sixth report, the Tribunal found that the decision to arrest Mr. McDaid was made haphazardly by an investigation team that had completely lost its capacity to objectively analyse the information before it. It was grounded on an unsigned memorandum of interview with Mr. McDaid, combined with the fraudulently forced statement of Robert Noel McBride, which placed the comings and goings in the car park behind Frankies nightclub at the centre of the investigation. Even those on the investigation team who were unaware of the fraudulent nature of that statement, should have recognised that to arrest Damien McDaid without any attempt to provide him with the opportunity to affirm, deny or clarify the contents of his memorandum of interview, was entirely inappropriate. The responsibility of this was found by the Tribunal to have rested with the senior officers on the investigation team.

Mr. McDaid gave an amount of evidence, which was accepted as reasonably accurate by the Tribunal. However, he also made a large number of allegations against various members of An Garda Síochána, which were completely unfounded. Mr. McDaid has applied for payment of his costs. Taking a broad view of his evidence, one could not accede to this application in full. Even allowing for the fact that Mr. McDaid did make himself available to give evidenced over a number of days, one cannot ignore that fact that his evidence was not truthful on a number of important matters. In all the circumstances, the Tribunal is of the view that that it would only be equitable to allow 50% of his costs to Mr. McDaid for this sub-module. The Tribunal directs that 50% of his costs should be paid by the Minister for Finance when taxed and ascertained.

In the course of written submissions filed on behalf of Mr. McDaid, it was argued by his legal representatives that because they had taken him on as a client at short

notice and had done so as a means of facilitating the Tribunal to proceed with its work, that in such circumstances, if the Tribunal having regard to its findings concerning Mr. McDaid's evidence could not give him all of his costs, they submitted that the remainder should be paid by the Tribunal as part of its own expenses. This submission seems to be based on a misunderstanding of the factual position. Where a lawyer agrees to act for a particular client, their only contract is with the client. The basis on which the client may ultimately obtain from the Tribunal an order directing that the Minister for Finance should pay his legal costs when taxed and ascertained, has already been outlined by the Tribunal in its previous rulings and in the body of the sixth report. There is no basis whereby the legal costs incurred by a particular party can be paid by the Tribunal as part of its own expenses. Accordingly, I decline to make any order other than that already indicated in respect of Mr. McDaid's application.

As already noted, Mr. McDaid made a number of serious allegations against various Gardaí. One of those against whom allegations were made was former Detective Garda Sean Herraghty. Mr. McDaid alleged that Detective Garda Herraghty had spat into his food, had stamped on his feet and had placed a gun in his mouth with a view to forcing him to sign a statement. The Tribunal found that the inconsistencies in Mr. McDaid's account of who was present in the interview room at the time, made it impossible to conclude that the spitting incident occurred. The Tribunal did not accept Mr. McDaid's evidence on this matter and was satisfied that Detective Garda Herraghty did not spit on Mr. McDaid's food. The Tribunal was not satisfied on the evidence that a gun was forced into Mr. McDaid's mouth by Detective Garda Herraghty. While the Tribunal was satisfied that something happened to Mr. McDaid's feet while he was in custody, it was not prepared to make a finding that that action was attributable to Detective Garda Herraghty. In these circumstances, it is appropriate that Mr. Herraghty should receive a full order for his costs in this sub-module.

Former Detective Sergeant Hugh Smith and former Sergeant Martin Moylan were part of the team that arrested Damien McDaid on the 17th of December 1996. Mr. McDaid made a number of allegations concerning his arrest. The Tribunal accepted the evidence given by Mr. McDaid's brother, Gavin McDaid, as representing the most accurate account of the arrest. For the reasons set out in the sixth report, the Tribunal found that the arresting party introduced unnecessary tension into the incident.ⁱⁱⁱ Nevertheless, the evidence offered by the applicants was not so diametrically opposed to the ultimate findings on this incident as to disentitle them to all or any of their costs. It is appropriate that they should be awarded their costs. As they were jointly represented by the legal team acting on behalf of the AGSI, an order providing for the payment of one set of costs will issue in respect of their joint representation on this sub-module.

The Bugging sub-module

Mr John Dooley gave evidence in relation various conversations, which he had with and concerning Sergeant Joseph Costello in Letterkenny Garda Station on the 4th of December 1996. I am satisfied that he has given his best re-collection of what

occurred in the course of a long day at Letterkenny Garda Station. He is entitled to his costs on this sub-module.

An application has been received on behalf of former Sergeant Joseph Costello and former Sergeant Martin Moylan. The evidence given by Mr. Costello, on this sub-module, was challenged strongly by the legal team acting on behalf of Mr. John White. With the exception of his evidence concerning the date and time of a meeting with Mr. White in a car park in Ballybofey, which evidence was not regarded by the Tribunal as being accurate, the remainder of Mr. Costello's evidence was accepted by the Tribunal. In particular, the Tribunal accepted that he did not engage in covert taping of visits between prisoners and their solicitors or members of their family in Letterkenny Garda Station on the 4th of December 1996 and subsequent days. I am satisfied that Mr. Costello has given co-operation to the Tribunal in this sub-module. He is entitled to an order for payment of his costs.

Mr. Martin Moylan only gave evidence on a small aspect concerning his impression as to reason for the presence of Sergeant Costello in Letterkenny Garda Station at the relevant time. While this evidence was somewhat speculative on the part of Mr. Moylan and was not found helpful by the Tribunal, the Tribunal is nevertheless satisfied that he has done his best to assist the Tribunal in this sub-module. In the circumstances, it is appropriate that he should be awarded his costs. Again, a joint order for costs will issue awarding one set of costs to cover the joint representation of Mr. Costello and Mr. Moylan by the legal team acting on behalf of the AGSI in this sub-module.

Garda Tina Fowley gave evidence on a number of matters concerning the bugging sub-module. These included an allegation that a comment was made in the course of a conversation between Detective Superintendent Shelley and Inspector McGinley, she gave evidence on a conversation which she alleged that she had with Sergeant John Costello concerning the preparation of the visitors' room at Letterkenny Garda Station and her account of a meeting held on the 28th March 2002 with Inspector Jim Sheridan. On all of these matters, her evidence was found to be totally unreliable. The Tribunal found that there was no conversation between Garda Fowley, Detective Superintendent Shelley and Inspector McGinley from which it could have been inferred that information was to be gleaned from conversations held between visitors and prisoners. The Tribunal also accepted the evidence given by Sergeant John Costello that he was not present in Letterkenny Garda Station at the time that Garda Fowley alleged that she had had her conversation with him at the conclusion of the conference held in the Garda Station that evening. The Tribunal reached the conclusion that Garda Fowley's presentation of these events and other meetings with the Gardaí investigating the allegation of bugging was somewhat contrived and constituted a form of confabulation on her part. As regards the meeting with Inspector Sheridan, the Tribunal had no hesitation in preferring his account of what transpired in the course of that meeting, to the account given in evidence by Garda Fowley. Her evidence in relation to that meeting gave rise to an allegation that Inspector Sheridan had acted improperly in the course of that meeting. The Tribunal rejected any suggestion that he had acted in an improper manner on that occasion. In these circumstances, the Tribunal can see no basis for awarding Garda Fowley her costs on this sub-module. Her application for payment of her costs is refused.

Almost all of the evidence given by Mr. White in this sub-module was rejected by the Tribunal. With the exception of his evidence concerning the fact (though not the true interpretation of the content) of a brief meeting in the corridor with Sergeant Joseph Costello, the Tribunal regarded the testimony given by Mr. White as part of an elaborate self-serving lie, which was told by Mr. White to distract from other areas of wrongdoing on his behalf. The Tribunal rejected the entirety of his evidence concerning the alleged occasion on which he encountered Inspector McGinley listening to the playing of tapes in the Detective Inspector's office in Letterkenny Garda Station on the 4th December 1996. After a painstaking inquiry and for the reasons set out in the sixth report, the Tribunal was entirely satisfied that Mr. White's allegation, that there had been bugging of prisoners' conversations with their solicitors and members of their family in Letterkenny Garda Station on the 4th December 1996, was utterly false. In these circumstances, the Tribunal is not prepared to award Mr. White any of his costs in this sub-module. His application is refused.

General Orders in respect of AGSI and GRA

At the outset of the Tribunal's hearings, the AGSI and the GRA each applied for limited representation for the purpose of reporting back on the content of the hearings to their relevant associations, so that each association would be in a position to formulate submissions and otherwise assist the Tribunal in its work. The Tribunal made a limited order for representation on the basis outlined, as it seemed sensible to have the views of each association available to the Tribunal at the conclusion of each module. In particular, it was felt that the views of the two associations would be helpful in formulating recommendations, which might be made to the Minister for Justice, Equality and Law Reform in relation to procedural and other reforms, which might be made to improve the service provided by An Garda Síochána.

In the detentions sub-modules, the legal teams acting for the GRA and AGSI, also acted on behalf of a number of present and former members of their respective associations. Where this happened and where it was appropriate to make an award of costs, I have done so on the basis that there should be one single set of costs recoverable to cover the joint representation of each association, together with their respective members in the relevant sub-modules. It would be unrealistic and inequitable to allow the same legal team to recover costs twice, or three times over, where they have represented their respective associations and particular named members of the associations in the course of a single sub-module. In reality, the associations and the members were jointly represented by the same legal team. In such circumstances, I am satisfied that a single set of costs is the appropriate measure of recoverable costs. It would be illogical and inequitable to allow the same legal team to recover one set of costs in respect of their protection of the interests of each association, together with a further set or sets of costs in respect of their protection of the interests of named members in each sub-module. In such cases, it is appropriate that only a single set of costs should issue.

There were no sub-modules where the AGSI did not represent a number of present and former members of their association. However, there were a number of sub-

modules where the GRA was present solely on the basis of the limited grant of representation given to the association on the 22nd of November 2002. The association was allowed such representation for the purpose of reporting back to the association to enable it to formulate submissions on matters of policy and otherwise assisting the Tribunal in its work. I am satisfied that it is appropriate to allow the association its limited representation in respect of those sub-modules where the legal team was not engaged in protecting the interests of named present and former members of the association. Accordingly, orders allowing costs on the basis of this limited representation before the Tribunal will be made in favour of the GRA in the following sub-modules: Mark McConnell, Michael Peoples, Edel Quinn, Seán Crossan, Martin McCallion and the Bugging sub-modules, together with the Katrina Brolly sub-module, where the only application for costs was made on behalf of the association itself.

Finally, in the course of the hearings into the various detentions sub-modules, there was an amount of evidence given which was of a very general nature in relation to interviewing techniques and other related matters. This general evidence did not fall into any of the specific sub-modules dealing with the arrest and detention of a particular prisoner; but was relevant to all the sub-modules. It is appropriate that an Order for costs should be made in favour of the AGSI and the GRA covering their limited representation for the purpose of hearing this evidence so that they would be in a position to formulate submissions to the Tribunal at the conclusion of its hearings. Accordingly, general orders will issue giving the two associations limited costs in respect of those areas of evidence which did not directly touch upon the detentions of the individuals named above but concerned general evidence applicable to all the detentions. It is appropriate that the associations should receive their costs of having their lawyers present to hear this general evidence.

Signed:



**The Hon Mr. Justice Frederick Morris
Sole Member of the Tribunal**

Date:

