

**THE HIGH COURT**  
**JUDICIAL REVIEW**

**[2022] IEHC 230**

**[2020 No. 325 JR]**

**BETWEEN**

**TOM QUINN**

**APPLICANT**

**AND**

**THE COMMISSIONER OF AN GARDA SÍOCHÁNA**

**RESPONDENT**

**JUDGMENT of Mr. Justice Charles Meenan delivered on the 11<sup>th</sup> day of April, 2022**

**Introduction**

1. Given the role which An Garda Síochána have in our society, it is essential that there is a system whereby complaints made by the public are considered and determined. Where a complaint is substantiated sanctions may follow, that much is clear. However, where a complaint is not substantiated adverse consequences may still ensue for the member involved. This judgment concerns how such consequences may be addressed at law.

**Background**

2. The applicant has been a member of An Garda Síochána since October 1997. In 2018 he successfully sought further promotion to the rank of Inspector. By letter, dated 2 November 2018, the applicant was informed that he was being put on the list of Sergeants regarded as being suitable for promotion to fill vacancies which might arise up to the period ending 31 December 2019. He was advised that he was placed number 77 on the panel of successful candidates.

### **The complaint**

3. On 3 December 2018 the applicant was involved in a criminal investigation concerning a Mr. Edward Stokes, which required the applicant to attend at property owned by Mr. Stokes. Whilst there an incident occurred in the course of which the applicant discharged his firearm. Mr. Stokes made a complaint to the Garda Síochána Ombudsman Commission (GSOC) claiming that the applicant refused to leave his property and that the applicant drew his *“issued Garda firearm and proceeded to wave it at me and my wife. He then pointed the weapon at my foot and deliberately and calmly discharged it into my foot”*.

4. This is undoubtedly a very serious complaint. The applicant’s account of the events was as follows: -

“I was involved in an incident at Ferriskill, Granard involving Mr. Edward Stokes. During this incident Mr. Stokes attacked me with a slash hook which I disarmed him of. He then assaulted a civilian male who was with me namely Mr. John Casey as did his wife Sharon Stokes and when I tried to intervene Mr. Stokes attacked me with a large dog which I now believe was a Belgium Shephard Malinois. I gave several verbal warnings to Mr. Stokes that I was armed and to control the dog and to stop assaulting Mr. Casey. However Mr. Stokes goaded the dog to attack me and he lunged him at me causing the dog to jump into my face and grab me by the tie. The dog was dragging me to the ground. I was in great fear of my life. I discharged my official firearm hitting the dog in the neck. The bullet travelled through the dog, took a ricochet off the road and injured Mr. Stokes ankle. The entire incident was video recorded by Sharon Stokes, wife of Edward. Later that day a short portion of the video footage which suited Mr. Stokes narrative of the event was released on line and very widely circulated through YouTube, Facebook, WhatsApp and other forums. Images from the video were printed in local and national newspapers in the following days. I personally became the subject

of intense abuse on line and otherwise and was informed by Garda authorities that I and my home were in danger of attack. ...”

5. There is clearly a fundamental dispute on almost every detail of the incident complained of. The complaint was investigated by GSOC. By letter, dated 19 July 2019, GSOC wrote to the applicant as follows: -

“Pursuant to Section 101(7) of the Garda Síochána Act, 2005 the Garda Síochána Ombudsman Commission is of the opinion that it discloses no misbehaviour by yourself in relation to the matters that were investigated.

GSOC is satisfied that the discharge of your firearm was lawful and justified in the circumstances.

Accordingly, the Garda Síochána Ombudsman Commission shall take no further action in relation to the complaint.

The referral made by An Garda Síochána [---] will now be closed. The complaint investigation [---] will remain open pending a file to the DPP to consider potential offences by other parties under Section 110 of the Act.”

6. The reference to the DPP arose as GSOC sent a file to the DPP seeking directions as to whether Mr. Stokes should be prosecuted for making a false statement to GSOC.

7. Whilst the complaint was being investigated, Mr. Stokes, through his Solicitor, made a further complaint to GSOC, as follows: -

“... have been requested to advise you of an alleged incident which took place in Duffy’s Supervalu in Granard, on Sunday 15<sup>th</sup> of April 2019 at around 12.22 pm, our client advises that while in a Supervalu, Garda Tom Quinn, made some jesters (sic) to Mr. Stokes, he instructs this office that Garda Quinn, was winking and laughing at Mr. Stokes.”

This complaint was also investigated. By letter, dated 3 September 2019, GSOC stated that it agreed with the findings of the investigation that there was insufficient evidence to support a breach of discipline.

8. It can be seen from the foregoing that both complaints were dismissed by GSOC. It should also be noted that, arising out of the serious complaint concerning the discharge of the applicant's firearm, GSOC were of the view that the advice of the DPP should be sought as to whether the complainant, Mr. Stokes, should be prosecuted for making a false statement.

### **Consequences of the complaints**

9. The dismissal of the complaints should have been the end of the matter for the applicant. However, this was not the case. By letter of 19 December 2018, from the respondent, to another officer it was stated: -

“Sergeant Quinn was recently involved in an incident in the Granard District where an official Garda Firearm was discharged and the matter is now the subject of a GSOC investigation. A report is awaited on the matter.

On that basis, the Commissioner is not satisfied to sign Sergeant Quinn's promotion warrant at this time.”

The letter was not sent to the applicant.

10. As mentioned, the applicant was placed number 77 in the list of Sergeants to be promoted to the rank of Inspector. Such promotions took place on 7 January 2019 and the applicant was clearly within that cohort. Following the letter from GSOC of 19 July 2019 (referred to at para. 5 above) the applicant was promoted to the rank of Inspector on 28 August 2019. The reason for this delay in promotion was set out in a letter from the respondent in response to a letter from the applicant's Solicitor of 10 March 2020: -

“It is noted that the deferral of Inspector Quinn's promotion from 7<sup>th</sup> January 2019 to 28<sup>th</sup> August 2019, was owing to an incident that occurred on 3<sup>rd</sup> December 2018, which

was subsequently investigated by the Garda Síochána Ombudsman Commission (GSOC). These allegations were found to be false and the member was subsequently promoted.”

It appears to be the case that the second complaint (referred to at para. 7 above) was not relevant and, indeed, the GSOC letter clearing the applicant of this complaint arrived after his promotion.

11. It is clear that the effect of the false allegation made by Mr. Stokes was to delay the applicant’s promotion for a period in excess of seven months. This had serious and ongoing consequences for the applicant. Firstly, there was a loss of pay and pension rights for that period. Secondly, in order for the applicant to be eligible for further promotion he must have spent at least two years at the rank of Inspector. These two years, on the respondent’s case, will now run from 28 August 2019 rather than 7 January 2019.

12. The applicant attempted to resolve the situation through his representative body (AGSI) and his Solicitor by seeking to have his promotion backdated to 7 January 2019, which would have been the date of his promotion had the false allegation never been made. These attempts were to no avail and judicial review proceedings followed.

### **Judicial review**

13. By Order of this Court, of 18 May 2020, the applicant was granted leave to seek the following reliefs by way of judicial review: -

“(i) An order of *mandamus* by way of application for judicial review, compelling the Respondent to backdate the Applicant’s promotion to Inspector to the 7<sup>th</sup> January 2019.

(ii) An order of *certiorari* by way of way of application for judicial review, quashing the refusal of the Respondent dated the 10<sup>th</sup> March 2020 to backdate the Applicant’s promotion to Inspector to the 7<sup>th</sup> January 2019.

(iii) A declaration, by way of judicial review, that the failure to backdate the Applicant's promotion to the 7<sup>th</sup> January 2019 is contrary to the principles of natural and constitutional justice.”

### **Submissions**

14. The principal submission made by the applicant was that he was entitled to be treated equally with those who were promoted on 7 January 2019. The applicant submits that the only distinction between him and those who were promoted on that date was the existence of a false complaint made against him by Mr. Stokes. It was submitted the failure to put the applicant into the position which he would have been had that false complaint not been made was a breach of his right to equality of treatment as per Article 40.1 of the Constitution.

15. The applicant relied upon a number of authorities on the issue of equality, in particular: *McMahon v. Leahy* [1984] I.R. 525. In this case the plaintiff, together with four other persons, escaped from lawful custody in Northern Ireland in March 1975. The plaintiff was subsequently arrested within the State on foot of a warrant issued in Northern Ireland for his extradition. In the High Court the applicant unsuccessfully contested the application on the basis that it related to a political offence or an offence connected with a political offence. The plaintiff appealed to the Supreme Court. After the hearing in the High Court it emerged that the four other escapees had successfully contested the applications to extradite them on the basis that their offences were political offences or connected with political offences. The plaintiff submitted to the Supreme Court that, given this, there was no distinction between his position and that of the four others and that he was entitled to be treated equal with them. Henchy J. stated at p. 540: -

“This submission requires to be considered in the light of the provisions of Article 40, s. 1, of the Constitution. That section provides:

‘All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.’

No question arises in the present proceedings of any inequality of treatment stemming from an enactment made pursuant to the second sentence of that section. But if the order of extradition sought against the plaintiff were to be made, it would patently result in unequal treatment, at the hands of the Courts, of citizens who, as human beings, are in equal condition in the context of the law involved. That unequal treatment would mean that the four fellow-escapers would have been judicially held (with at least the tacit approval of the State) to be entitled to escape extradition on the ground of the political exemption while the plaintiff, whose entitlement to that exemption cannot be differentiated on the basis of any relevant consideration, would have been invidiously chosen (at the instance of the State in the person of the defendant) for extradition to Northern Ireland where he would be liable to resumption of his imprisonment and to further prosecution. I am unable to see how such inequality of treatment could be said to be in conformity with the implicit guarantee in Article 40, s. 1, that like persons must be treated alike by the law.”

**16.** In opposing the application, the respondent submits the application for judicial review is out of time in that the reason for the applicant not being promoted was known to him well in excess of three months prior to seeking leave.

**17.** The respondent relies on the discretionary nature of the promotion process. Section 14 of the Garda Síochána Act, 2005 provides that the respondent may appoint, subject to and in accordance with the Regulations, such number of persons as he or she sees fit to the rank of Garda Sergeant, and Inspector. Further, reliance is also placed on para. 9.17, Chapter 9 (Promotion) of the Garda Code: -

### **“Misconduct by Members on Promotion List**

If a member on a promotion list is guilty of or is suspected of any conduct that would render the member unsuitable for promotion, it will be the duty of the superiors to report the matter at once. It will be the duty of the Divisional Officer to make a full report on the facts of the case to the Commissioner, Human Resources Management as soon as possible. Where there is likely to be a delay in ascertaining all the facts, an interim report will be furnished.”

- 18.** The respondent submits that the applicant is requesting the Court to usurp his function. The respondent relies on the following passage of Charleton J. in *McCarron v. Superintendent Kearney* [2008] IEHC 195, which concerned the dismissal of a challenge to a refusal to grant a firearm certificate: -

“16. It is to be expected that officials engaged in administrative and quasi-judicial business on behalf of the State are reasonable. A decision which is unreasonable cannot be within the jurisdiction that is conferred on such an official by legislation. The High Court, on judicial review, is not entitled to substitute its own view as to whether a decision should, or should not, have been made. In reviewing such a decision, I remind myself that a judgment should never be framed so as to suggest what the right course may be on a particular application or so as to so fetter the authority vested in an official that, in practical effect, the matter can only be decided one way upon the matter being reverted after judicial review. ...

...

18. I am satisfied that, in this case, the ordinary test for judicial review applies; of only upsetting an administrative decision where it is unreasonable in the sense of flying in the face of fundamental reason and common sense. ... To interfere on any lesser test



would cause this Court to trespass on an executive function and so infringe the separation of powers doctrine. ...”

**19.** The respondent further submitted that were the applicant’s promotion to be backdated it would mean that the applicant would be remunerated as an Inspector, a rank he did not hold between January and August 2019. Further, it would, in effect, be contrary to the Regulation that an Inspector must hold that rank for a period of at least two years before seeking further promotion.

### **Consideration of submissions**

**20.** It is very clear that the reason why the applicant was not promoted in January 2019 was because of the complaint made by Mr. Edward Stokes arising from the events of 3 December 2018. This was clearly stated in a letter from the respondent dated 10 March 2020, referred to above. It is therefore clear that the respondent, in not promoting the applicant, was not relying upon any general discretion but, rather, the existence of an ongoing investigation by GSOC. I am therefore satisfied that time, for the purposes of these judicial review proceedings, commenced on 10 March 2020. It follows that these proceedings were brought in time.

**21.** It is reasonable that if a member of An Garda Síochána on a promotion list is facing a complaint, which, if sustained, would render the member unsuitable for promotion, that the promotion should not proceed until the truth of the complaint is ascertained. In the instant case the complaint made by Mr. Stokes was such a complaint. On investigation by GSOC the complaint was found to be false but, notwithstanding this, the applicant still faced a penalty in that his promotion was delayed by some seven months, resulting in loss in terms of salary, a delay in seeking further promotion and general loss of standing.

**22.** The fact that the applicant is facing a penalty arising out of a false complaint is because of the decision by the respondent not to backdate the applicant’s promotion. Such a decision,

in my view, is “*unreasonable in the sense of flying in the face of fundamental reason and common sense*”, as per Charleton J. in *McCarron v. Superintendent Kearney*, referred to above.

23. The applicant has a right to equality under Article 40, s. 1 of the Constitution. The exercise of such a right was well illustrated in *McMahon v. Leahy*, referred to above. In this case the applicant’s right to equality, if it is to mean anything, must enable the applicant to be put into the position he would have been in had the false complaint not been made. This can be achieved by backdating his promotion to the date in which it should have taken effect, being: 7 January 2019.

24. No rational reason or legal hurdle has been identified by the respondent as to why the backdating cannot take place. The respondent did submit that backdating would result in the applicant being remunerated as an Inspector for a period when he was a Sergeant. On the face of it, this is correct. However, I am of the view that it would be a greater wrong to penalise the applicant for being the subject of a false complaint. This would similarly apply to the loss of time for the purposes of future promotion. In this context, I note that the applicant was not suspended, as he could have been, pending the investigation of the complaint.

25. I would also like to add the following observation. If the applicant’s promotion is not backdated, it would have the perverse effect that the date when a fully qualified sergeant would be promoted to the rank of inspector and, possibly, seek further promotion would be determined not by legislation, the Garda Code or the Garda Commission but, rather, by Mr. Edward Stokes. Mr. Stokes is in this position by reason of him making a false complaint.

### **Conclusion**

26. By reason of the foregoing, the applicant is entitled to the reliefs sought herein. I will list this matter for mention on Monday, 25 April 2022 to make final orders. As for the issue of costs, in my provisional view, as the applicant has been in “*entirely successful*” I would propose making an order that the applicant be paid his costs (to include reserved costs) to be

adjudicated in default of agreement. Should either party wish to make submissions on this, I would ask that submissions be filed no later than Thursday, 21 April 2022.