THE HIGH COURT

[2021] IEHC 190

RECORD NUMBER: 2020 235 JR

BETWEEN

RAYMOND HEGARTY

APPLICANT

V.

THE COMMISSIONER OF AN GARDA SÍOCHÁNA

RESPONDENT

JUDGMENT of Ms Justice Niamh Hyland of 15 March 2021

Summary

1. This is an application for leave to cross-examine Chief Superintendent Nugent on two affidavits sworn by her in proceedings challenging the respondent's decision to invoke the procedure under s.14 of the Garda Síochána Act 2005 in respect of the applicant. Section 14 permits the Garda Commissioner to dismiss from the Garda Síochána a member not above the rank of inspector if the Commissioner is of the opinion that, because of the member's conduct, his or her continued membership would undermine public confidence in the Garda Síochána and the dismissal of the member is necessary to maintain that confidence.

2. Here, s. 14 was invoked in circumstances where a complaint was made against the applicant, he had been disciplined under the Garda disciplinary regulations, a decision to dismiss him was made by the Board of Inquiry and that decision was overturned by decision of the Appeal Board of 14 January 2020, which instead imposed a financial penalty. Subsequently, on 31 March 2020, the respondent wrote to the applicant identifying his intention to dismiss him under s.14 and submissions were sought on same. No submissions have been made by the applicant to date. These proceedings challenge the respondent's entitlement to invoke the s.14 procedure and the way in which it was invoked. The respondent submits, *inter alia,* that the proceedings are premature given that no final decision has been made to dismiss the applicant.

3. I have decided to grant liberty to cross-examine Chief Superintendent Nugent on a limited basis in respect of one of two identified matters for the reasons set out in this decision.

Background

4. Following a complaint of misbehaviour against the applicant on 15 March 2017, the process under the Garda Síochána (Discipline) Regulations 2007 S.I. 214/2007 (the "Disciplinary Regulations") was invoked. On 12 April 2017 the applicant received notification that Superintendent Christopher Delaney had been appointed to investigate alleged breaches of Garda Discipline. The applicant was informed by notice on 19 July 2018 that a Board of Inquiry had been established pursuant to Regulation 25 of the Disciplinary Regulations. The applicant was later advised by notice on 21 August 2018 of the particulars of the alleged breaches of discipline (discreditable conduct and neglect of duty) pursuant to Regulation 27.

5. On 25 September 2018 the Board of Inquiry sat to hear the allegations made against the applicant. The applicant admitted the alleged breaches of discipline and the Board of

Inquiry recommended that the applicant be required to retire or resign as an alternative to dismissal for the first breach of Garda Discipline, and that he be subjected to a deduction in pay for two weeks for the second breach. On 25 October 2018 the respondent ordered the recommended sanction be imposed.

6. The applicant appealed the decision on 30 October 2018, pursuant to Regulation 33 of the Regulations, having been suspended pending the outcome of the appeal. A Board of Appeal was established on 22 July 2019, opened on 23 September 2019 and a decision was given on 9 January 2020. The Board of Appeal determined that the first penalty imposed by the Board of Inquiry was disproportionate and reduced it to a reduction in pay for four weeks, while leaving the second penalty unchanged. On 20 January that financial penalty was imposed but on 24 January 2020 the applicant was suspended, with the reason for same being "*Consideration by the Garda Commissioner of the position of Garda Raymond Hegarty … pursuant to Section 14 of the Garda Síochána Act 2005 as amended*" (the "January suspension").

7. However, on 28 January 2020, a letter was written on behalf of Margaret Nugent, Chief Superintendent to the Chief Superintendent in Waterford enclosing a further suspension order commencing on 1 February 2020 (the "February suspension") and asking that it be served on the applicant. The suspension order was stated to be based on the respondent's decision to require the applicant to retire from An Garda Síochána as an alternative to dismissal on or before midnight on the 16th of November 2018 and was put in place until 1 May 2020. Both the January and February orders were signed by Assistant Commissioner Sheehan.

8. A further suspension order was put in place dating from 1 May 2020 which gave as the reason for suspension consideration by the Garda Commissioner of the position of the applicant pursuant to Section 14. No challenge arises to that suspension order.

9. On 30 March 2020 an application was brought seeking leave to issue judicial review proceedings challenging, *inter alia,* the February suspension and leave was granted on that date by Order of McDonald J.

10. Before the proceedings were served, the applicant received a letter of 31 March 2020 from the respondent, who stated that he was of the opinion that by reason of the applicant's behaviour and conduct between 14 and 17 March 2017 inclusive, including inappropriate sexual conduct at Lismore Garda station on 15 March, his continued membership would undermine public confidence in An Gardai Síochána and his dismissal pursuant to s.14 was necessary to maintain that confidence.

11. The letter set out the reasons that the respondent considered the conduct in question would undermine public confidence and why the applicant's dismissal was necessary to maintain the confidence. The letter included the following paragraph:

"I, Jeremy Andrew Harris, Garda Commissioner, have considered the decision of the Disciplinary Appeal Board and, notwithstanding same, I must take cognisance of my broader responsibilities and duties as Commissioner of An Garda Síochána."

12. Although no other reference is made to the disciplinary proceedings, including the Statement of Facts or the Report of the Presiding Officer, the letter is replete with references to the conduct of the applicant, including the following:

> *"As a member of An Garda Síochána, your behaviour whilst on duty involving inappropriate sexual interaction with a vulnerable young female witness was ethically and morally unacceptable. This is particularly the case, where the female witness attended at the Garda station at your request to deal with a personal family matter".*

13. Later in the letter, it is stated:

> *"I am firmly of the view that you were aware and had knowledge that the female who attended at Lismore Garda Station was vulnerable and you were on duty in a position of authority as a member of An Garda Síochána in a Garda Station alone with this female and your conduct should not have occurred".*

14. The letter concluded by noting that the applicant had the opportunity pursuant to s. 14(2)(b) of the Act to put forward any representations or responses he wished to make, including any reasons why he should not be dismissed on the basis stated. He was invited to submit a response before 29 April 2020.

15. Following receipt of that letter, the proceedings were amended to include a challenge to the letter of 31 March 2020.

The Proceedings

16. For the purposes of this application, the following reliefs in the amended statement of grounds are relevant:

> *(v) A declaration that the suspension of the Applicant between 1st of February 2020 to 1st of May 2020 is* ultra vires *the Respondent;*
>
> *…*
>
> *(ix) An order of certiorari by way of an application for judicial review of the determination of the Respondent that the Applicant's continued membership of An Garda Síochána would undermine public confidence in An Garda Síochána by reason of his conduct, and that it is necessary to dismiss the Applicant to maintain that confidence;*

17. The critical pleas in the Amended Statement of Grounds for the purpose of this application are as follows. In respect of relief (v) identified above, it is pleaded that the suspension of the applicant between 1 February and 1 May 2020 is *ultra vires the* respondent; irrational; an abuse of process; in breach of natural and constitutional justice; a decision

that cannot properly be made; is otherwise than in accordance with law, in particular Regulation 7(4) of the Garda Síochána (Discipline) Regulations 2007 and s.31 of the Garda Síochána Act 2005; and ignores the fact that the decision of the Board of Inquiry was overturned and substituted with that of the Appeal Board. It is further pleaded that the applicant's solicitor wrote on 6 February 2020 stating the reason given for the February suspension was unlawful as the decision of the Commissioner had been overturned on appeal. No substantive response has been received to that letter.

18. In respect of relief (ix) it is pleaded:

"31. This determination [letter of 31 March] subverts the determination of the Appeal Board, made pursuant to Regulation 27 of the Garda Síochána (Discipline) Regulations, 2007 and is therefore:

i. ultra vires *the Respondent;*

ii. irrational;

iii. an abuse of process

iv. in breach of natural and constitutional justice; and

v. a decision that cannot properly be made.

32. By ignoring and/or failing to implement the decision of the Appeal Board the Respondent is in breach of Regulation 37(5) of the Garda Síochána (Discipline) Regulations 2007.

33. The failure of the Respondent to conduct an inquiry into whether the Applicant's continued membership of An Garda Síochána would undermine public confidence in that body, before making this determination was in breach of the Applicant's right to fair procedures and natural justice.

34. The failure of the Respondent to advise the Applicant of his concerns, to appraise him of the basis upon which they arose, and to invite his response, before making this determination, was in breach of the Applicant's constitutional rights to fair procedures and natural justice.

19. A Statement of Opposition was filed on behalf of the respondent on 18 June 2020. At paragraph 13, it is pleaded, *inter alia*:

"13. The reason for the suspension of the Applicant set out in the Notice dated 28th January 2020 was erroneous in that the correct reason for the suspension was as per the earlier Notice dated 24th January 2020 i.e. "Consideration by the Garda Commissioner of the position of the Applicant] from Tramore Garda Station pursuant to Section 14 of the Garda Síochána Act, 2005, as amended…"

…

19. *The suspension commenced on the 24th January 2020 and continued on the 28th January 2020 is not imposed pursuant to Part 3 of the Garda Síochána (Discipline) Regulations 2007. Rather the Section 14 procedure was initiated by the Respondent independently from the procedure followed pursuant to Part 3 of the 2007 Regulations* [my emphasis]. *Suspension from duty of a member of An Garda Síochána is provided for in accordance with Regulation 7 of the Garda Síochána (Discipline) Regulations 2007, as amended which is listed in Part 1 of said Regulations".*

20. It is admitted that by letter of 31 March 2020 the respondent wrote to the applicant and it is pleaded that the respondent will rely on the terms of the letter for its full meaning and effect. It is then pleaded as follows:

"22. The procedures required by the Garda Síochána (Discipline) Regulations 2007 as amended and by Section 14 of the Garda Síochána Act 2005, as amended, have been fully adhered to throughout this process.

23. The process pursuant to Section 14 of the Garda Síochána Act 2005 is a separate and distinct process to the proceedings which were conducted in accordance with the Garda Síochána (Discipline) Regulations 2007, as amended. The Respondent has lawfully operated the provisions of that section therein."

21. In her grounding affidavit sworn 18 June 2020, Chief Superintendent Nugent verified the facts in the Statement of Opposition.

22. At paragraph 26 she avers as follows:

"… The Applicant was notified that he was being suspended from the 1st February 2020 to the 1st May 2020. The document accompanying said Form 1. A. 71 erroneously stated that the suspension from duty arose as a result of the decision of the Commissioner to require Garda Hegarty to resign from An Garda Síochána as an alternative to dismissal on or before midnight on 16th November 2018. I say and believe that the correct reason for the Applicant's suspension commencing on the 1st February 2020 was as per the earlier Notification dated 24th January 2020 i.e. "Consideration by the Garda Commissioner of the position of Garda Raymond Hegarty 33906G from Tramore Garda Station pursuant to Section 14 of the Garda Síochána Act, 2005, as amended…"

23. On 12 August 2020 a motion was brought by the applicant seeking the following reliefs: (a) leave to deliver interrogatories for the examination of the respondent (b) discovery and (c) leave to amend the Statement of Grounds. I delivered an *ex tempore* decision on 24 November 2020, refusing the applicant liberty to serve certain interrogatories.

24. On 6 January 2021, this motion seeking liberty to cross examine Chief Superintendent Nugent was brought, grounded on the affidavit of Elizabeth Hughes sworn 16 December

2020. That affidavit was replied to by affidavit of Chief Superintendent Nugent sworn 26 January 2021.

Cross-examination of Chief Superintendent Nugent

25. As Kelly J. observed in *IBRC v. Moran* [2013] IEHC 295, where there is no absolute right to cross-examine (as in the instant case), it is incumbent upon an applicant to demonstrate (1) the probable presence of some conflict on the affidavits relevant to the issue to be determined and (2) that such issue cannot justly be decided in the absence of cross-examination.

26. It is uncontroversial that cross-examination, or indeed any oral evidence, is unusual in judicial review (see Barrett J. in *Dunnes Stores v. Dublin City Council* [2016] 3 I.R. 555). However, it is equally well accepted that, at a substantive hearing (as opposed to an interlocutory one), if there is a dispute on affidavit, the resolution of which is necessary to the determination of the proceedings, a court cannot decide between competing averments without hearing the parties (see *RAS Medical Ltd v. The Royal College of Surgeons in Ireland* [2019] 1 I.R. 63). There is no suggestion that this approach is any less applicable in judicial review proceedings than in any other proceedings.

27. Here, counsel for the applicant says that there are two factual disputes that require to be resolved. The first is whether the applicant was suspended from 1 February 2020 for the reasons set out in the February suspension notice or for other reasons. The second is whether the process followed in respect of the invocation of s.14 was independent of the process under the Disciplinary Regulations and/or was a separate and distinct process.

Reason for February suspension

28. I have described above the events leading to the February suspension notice, how it was treated in the Statement of Opposition and averments in that respect in the replying affidavit of Chief Superintendent Nugent.

29. The applicant criticises the averments by Chief Superintendent Nugent to the effect that the reason given for the February suspension was not in fact the real reason and was a mistake, identifying that she has not identified her means of knowledge in this regard and it is unclear whether this is her opinion borne out of an examination of the papers or whether Assistant Commissioner Sheehan told her of his error and his actual intention in suspending the applicant. However, neither in the affidavit sworn by Ms. Hughes grounding the motion nor in any affidavit filed by the applicant in the substantive case, is there a contradiction of the averments of Chief Superintendent Nugent in this regard.

30. The respondent says that the facts are clear from the affidavit of Chief Superintendent Nugent, that there is no conflict on the affidavits, and in any case the February suspension is now spent, having regard to the fact that it was replaced by the May suspension, and is therefore no longer an issue in the proceedings.

31. At this point in the proceedings, I do not think I can necessarily conclude that the reason for the February suspension may not require to be determined in the proceedings, despite

that suspension being spent, although it may not have any relevance to the core issue in this case, i.e. the relationship between the disciplinary proceedings and s.14.

32. However, the applicant is faced with the difficulty that the issue on which he seeks to cross-examine arises, not from conflicting averments from the parties but rather from the documents before the court on the one hand, and an averment from Chief Superintendent Nugent on the other. In such a situation, where the applicant has not put up any evidence controverting the explanation given and has not even indicated on affidavit what he believes the correct factual position to be, or identified any competing position, the court is not faced with the difficulty identified in *RAS Medical Ltd* i.e. the necessity of resolving conflicting evidence in affidavits or documentation. The applicant has not challenged the respondent's indication that a mistake was made in respect of the reason given for the February suspension. Essentially the applicant is asking for leave to cross examine simply so an inquiry can be conducted into the mistaken reason given for the suspension. That is not a reason to permit cross-examination and I therefore refuse leave to cross-examine on this issue.

Section 14

33. The second matter upon which cross-examination is sought relates to the interaction between the procedures followed in respect of the s.14 letter and those followed in the disciplinary process. As identified above, the respondent has pleaded that "*the Section 14 procedure was initiated by the Respondent independently from the procedure followed pursuant to Part 3 of the 2007 Regulations*" (paragraph 19). He further pleads that the procedures required by the Disciplinary Regulations and by s.14 of the 2005 Act as amended "*have been fully adhered to throughout this process" (*paragraph 22), that the process pursuant to s.14 is a separate and distinct process to the proceedings conducted under the Garda Disciplinary Regulations and that the respondent has lawfully operated s.14 (para 23). Those averments have been verified by the affidavit of Chief Superintendent Nugent sworn 18 June 2020.

34. The applicant contests this, pleading at paragraph 33 of the Amended Statement of Grounds that the respondent failed to conduct an inquiry into whether the applicant's continued membership would undermine public confidence and at paragraph 34 that the respondent unlawfully failed to advise the applicant of his concerns and to invite a response before making the determination.

35. In the affidavit of Ms. Hughes, solicitor for the applicant, sworn 16 December 2020 grounding the application to cross-examine, she avers as follows:

> *"9. The Applicant herein sought by way of interrogatories to elucidate the matters considered by the Respondent in invoking Section 14 however this honourable court refused to direct same. The Applicant herein does not accept that "the Section 14 procedure was initiated by the Respondent independently from the procedure followed pursuant to part 3 of the 2007 Regulations". Furthermore, the Applicant does not accept that that "the procedures required by the Garda Síochána*

(Discipline) Regulations as amended and by section 14 of the Garda Síochána Act 2005, as amended have been fully adhered to throughout this process".

10. In light of the aforementioned I say that it is incumbent on the Applicant, where he does not accept the facts contained in the statement of opposition and does not have the requisite means of knowledge necessary to contest those facts, to cross-examine the deponent deposing to those facts. I say that the case herein expressly relates to the interaction between the disciplinary proceedings and the decision to invoke Section 14 of the Act. I say this court cannot be required to determine the matters in relation to same on the basis of hearsay evidence. In all the circumstances I say that it is necessary for the Applicant herein to establish that the matters contained in the statement of opposition are not facts upon which the court has evidence upon which it can reply. In all the circumstances, where the Respondent seeks to rely on facts set out in the statement of opposition, it is necessary to cross-examine Chief Superintendent Nugent to establish on oath whether she had the requisite means of knowledge or not".

36. Contrary to what is submitted by the respondent, the matters not accepted by Ms. Nugent are not exclusively matters of law. As is clear from the extracts from the pleadings set out above, the applicant makes two distinct criticisms in relation to s.14. Of course, these criticisms will only be addressed if the court rejects the respondent's preliminary plea of prematurity.

37. The first is a jurisdictional one i.e. that s.14 may not be employed at all where the process under the Disciplinary Regulations has been invoked and completed. The respondent argues that this is exclusively a question of law rather than fact, and accordingly no requirement for cross examination arises. I agree that this question is very likely one of pure law that will not involve factual controversies. If the applicant is correct in that assertion, no further issues will require to be determined in the proceedings.

38. However, on the assumption that recourse to s.14 is permissible, the applicant makes a separate argument that the way in which the s.14 process and procedures were carried out in this case was unlawful. The Amended Statement of Grounds clearly put this matter in issue in the proceedings. The determination of that question will require the court to have before it the relevant facts in relation to the making of the letter of 31 March 2020 and, specifically, the interaction between the procedures under the Disciplinary Regulations and those relied upon in the s.14 process.

39. However, the process leading to the formation of the conclusions contained in the letter of 31 March 2020 (such conclusions admittedly being preliminary, pending consideration of submissions, if any, by the applicant) is opaque. It is clear from the extracts from the letter of 31 March 2020 quoted above that the respondent was familiar with the events the subject of the disciplinary process and may have relied upon facts found in the course of the disciplinary process. It is unclear how he knew of those matters: whether for example it was based solely on the conclusions of the Board of Inquiry and the Appeal Board, or from a perusal of the underlying documents, or from interviews with persons

involved in the disciplinary hearings or through some other means. In my *ex tempore* decision refusing leave for interrogatories to be served on the respondent, I observed as follows in respect of the letter of 31 March:

> *"The respondent has pinned his colours to the mast. He has not referenced any of the Board of Inquiry documents or appeal documents, he has not identified any other documents relied upon by him, he has not referred to the legal effect of the finding of the Board of Appeal under regulation 37(5), he has not referred to the docking of the applicant's wages on 20 January and he makes no reference to any material considered by him in respect of the applicant."*

40. Nonetheless, the respondent has chosen to explicitly to plead that the s.14 procedure was initiated independently from the disciplinary procedure, and that the procedures are separate and distinct. Chief Superintendent Nugent has verified this in her affidavit sworn 18 June 2020. These issues are very likely to require adjudication by the trial judge, particularly in circumstances where it appears there is no decided case on the interaction between the Disciplinary Regulations and s.14. The answers to those issues are likely to involve mixed questions of fact and law, whereby the trial judge will have to, *inter alia,* identify the appropriate process to be followed by the respondent when invoking s.14, including the necessity or otherwise for that process to be independent of the disciplinary process, and then consider whether, as a matter of fact, those legal requirements were complied with.

41. It will be difficult for a court to adjudicate upon the applicant's plea that the respondent failed to conduct an inquiry, or to adjudicate upon the respondent's plea that the s.14 procedure was initiated independently from the process under the Disciplinary Regulations, without understanding the inter-relationship, if any, between the two sets of procedures.

42. The respondent argues that the procedure followed by him was set out as a sequence of facts by Chief Superintendent Nugent in her affidavit of 18 June 2020, and that the question as to whether those undisputed facts amount to compliance with the procedures required by the Regulations and/or by s.14 is a matter of law. But the documents referred to by Chief Superintendent Nugent were all generated in the course of the disciplinary procedure with the exception of the letter of 31 March 2020. It is not clear how the respondent obtained the facts necessary to permit him to arrive at the conclusions identified in the letter of 31 March. Those conclusions give rise to an implication that there was a link between the disciplinary process and the s.14 investigation. That implication may be incorrect: but it is a matter that may require to be addressed by the trial judge. The interaction between the two processes cannot be ascertained by what is described in the written legal submissions of the respondent as the relevant "paper trail".

43. Accordingly, it appears to me, as identified by Kelly J. in *IBRC*, referred to above, that (a) there is an extant factual controversy between the parties relevant to the issues requiring to be determined i.e. whether as a matter of fact the s.14 process was separate and distinct from the disciplinary process, and (b) that issue cannot justly be decided in the

absence of cross-examination. Additionally, as identified in *Director of Corporate Enforcement v. Seymour* [2006] IEHC 369, in the circumstances set out above, it seems that cross-examination is desirable to test the competing positions of the parties in respect of the issue identified above. I am accordingly satisfied that cross-examination is necessary to resolve this controversy.

44. As to the suitability of Chief Superintendent Nugent to be cross-examined on these issues, in her affidavit sworn 18 June 2020 grounding the statement of opposition, she verifies the facts contained therein, including those contested pleas that I have referenced above. In her replying affidavit to the motion sworn 26 January 2021, Chief Superintendent Nugent averred that as head of internal affairs, she is responsible for the administration of disciplinary proceedings in accordance with the Discipline Regulations and that she can verify the facts contained in her affidavit grounding the opposition papers. She further avers that her affidavit of 18 June 2020 does not purport to give evidence on the respondent's state of mind in issuing his letter of 31 March 2020.

45. Chief Superintendent Nugent can of course only be cross-examined on matters within her own knowledge. However, given that she is responsible for disciplinary proceedings, and is the only deponent in these proceedings put forward by the respondent, as such her evidence is potentially relevant to the issue identified above. I therefore give liberty to cross-examine Chief Superintendent Nugent on the averments in her affidavits of 18 June 2020 and 26 January 2021 in respect of the following matter:

    - The interaction between the s.14 procedure and the procedure followed pursuant to the Disciplinary Regulations.

46. Finally, I should observe that there was considerable debate at the hearing about whether the document of 31 March 2020 was a letter, a notice, an opinion, a determination or a decision. The characterisation of same is a legal issue (to the extent that it is even relevant to the issues that must be determined) and therefore cannot be the subject of cross-examination.

Hearsay as a ground to cross-examine

47. From paragraph 13 onwards of its written submissions, and at the oral hearing, the applicant seeks to invoke a separate and distinct basis for cross-examination, being that Chief Superintendent Nugent's affidavit contains hearsay, that such evidence is inadmissible save in the limited circumstances provided for in Order 40, rule 4 of the RSC, and that Chief Superintendent Nugent has not provided adequate evidence of her means of knowledge for the two assertions in controversy to be admissible.

48. That cannot be the basis of an application to cross-examine: in fact, it tends to mitigate against cross-examination, as the purpose of same is to resolve issues of fact and if the witness sought to be cross-examined cannot do so, then it would be pointless ordering cross-examination of that witness. I should add that no case law justifying cross-examination on this ground was identified by the applicant.

49. However, I am satisfied for the reasons set out above that Chief Superintendent Nugent may be able to give relevant evidence on the matter upon which I have given leave to cross-examine and, in those circumstances, I have directed that she be cross-examined.

Delay

50. The respondent objects to the motion being brought at this point, given that the affidavit of Chief Superintendent Nugent was sworn on 18 June 2020 and the motion was only brought on 6 January 2021. He says that the court has a discretion to refuse the relief sought where there has been delay and that I should exercise my discretion here to refuse the relief.

51. However, this is not a case where there were no steps taken during the relevant period. A motion for interrogatories was brought on 12 August 2020 which I heard on 23 November 2020 and refused on 24 November 2020. A consent order for discovery was also made on 24 November 2020, as was liberty to amend the statement of grounds. The intention to bring the motion to cross-examine was flagged when I gave my judgment on 24 November.

52. The respondent criticises the applicant for not bringing the motion until 6 January 2021. However, during that same period the respondent was given 3 weeks to make discovery from 24 November 2020 and yet did not make it until 18 February 2021. There has been delay on both sides in these proceedings.

53. Moreover, I accept that the applicant was hoping to resolve disputed matters by way of interrogatories and it was only when that relief was refused, that the applicant considered it necessary to bring a motion to cross-examine. The period from 24 November to 6 January when the motion was brought was not excessive.

54. Having regard to the above circumstances, I do not consider the delay is such as would justify a refusal of this application.

Conclusion

55. For the reasons identified above, I will give liberty to the applicant to cross-examine Chief Superintendent Nugent on the averments in her affidavits of 18 June 2020 and 26 January 2021 in respect of the following matter:

- The interaction between the s.14 procedure and the procedure followed pursuant to the Disciplinary Regulations.

Costs

56. I propose that the costs of this motion should be borne by the respondent given that he has been unsuccessful in his objection. I propose to stay those costs in the normal fashion pending the trial of the action. If either party wishes to argue for a different decision on costs, submissions should be filed within two weeks of the date of delivery of this judgement. If no submissions are received I will make an order in the terms proposed.