

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO: EE 11/1997

PARTIES

THE COMMISSIONER, AN GARDA SIOCHANA

MINISTER FOR JUSTICE

AND

GARDA M. FLYNN

FILE NO: EE 29/1995

1. Dispute

- 1.1** This claim concerns an allegation by the claimant that she was unsuccessful in her application for promotion to the rank of sergeant in September, 1994. The claimant alleges that she was more suitable than some of the successful candidates and claims that she has been discriminated against on the grounds of her sex and victimised and denied promotion as a result of pursuing a previous claim under the 1977 Act.

2 Background

- 2.1** The claimant, Garda Mary Flynn, is attached to the staff at Garda Headquarters, Harcourt Square, Dublin. She applied for promotion to the rank of sergeant in September, 1994. She was by the Central Interview Board. She claims that she was discriminated against on the 27th January 1995 when the results of the first round examinations were published. The claimant says that she had the educational qualifications and had passed the promotion examination necessary to compete in this interview competition. She alleges that another female member of the force, who did not have the appropriate qualifications to be eligible as a candidate, was allowed to enter the competition. She also alleges that she has higher qualifications than other successful candidates in the competition.

Further she alleges that she was discriminated against because she had pursued a previous claim through the Equality Legislation.

- 2.2** The claimant submitted a claim to the Labour Court and she nominated the Commissioner, An Garda Siochana, the Minister for Justice and the Secretary,

Department of Justice as respondents, but subsequently withdrew her nomination of the latter from the claim. She referred this case to the Labour Court under the Employment Equality Act 1977 on 17th July 1995, who subsequently referred the case to an Equality Officer for investigation and recommendation. The parties made written submissions and the equality officer held a joint hearing on the 23 Sept 1996. The parties submitted further written submissions subsequent to that hearing.

3 Summary of the Claimant's Submission

- 3.1** The claimant alleges that she was discriminated against on the grounds of her marital status and/or sex within the terms of the Employment Equality Act, 1977 by the respondents in relation to her application for promotion to the rank of sergeant in September, 1994.
- 3.2** The claimant also alleges that she is being victimised in relation to her application for promotion to the rank of sergeant within the terms of the Employment Equality Act, 1977 as a result of taking a case against the Garda Commissioner under that Act. This case, reference number EE 01/1994, was appealed by the Garda Commissioner and cross appealed by Garda Flynn and heard by the Labour Court on 6th September, 1995.
- 3.3** The claimant says that the date of the alleged discrimination is 27th January, 1995 when the names of the candidates who had qualified from the Regional Interview Boards were published.

- 3.4** The claimant alleges that she was more suitable than nine male candidates whose names, numbers and postings are listed at Appendix 1 and two single female candidates who are also listed at Appendix 1.
- 3.5** The claimant says that in the personal application and self assessment form, which all candidates have to complete prior to the promotion competition, information on marital status, date of marriage and number of children is sought. The claimant says this information which she claims discriminates against women with children is then supplied to the interview boards.
- 3.6** The claimant says that in the “Job Description - Sergeant” which is supplied to candidates, the term “he” is used throughout these documents. The claimant says that the personal profile, “Garda to Sergeant” which is supplied to all candidates, outlines the qualities/conditions that should be taken into consideration when selecting members for promotion to the rank of sergeant and in particular takes the following into account; the member’s health record, where the member lives, the age and circumstances of his/her family and the effect of promotion on the member’s family.
- 3.7** The claimant refers to the absence return, supplied to candidates and interview boards outlining absences through illness for the previous five years, and says that

this fails to discount absences due to pregnancy related illnesses. The claimant argues that the findings in the Dekker case are relevant in this issue.

3.8 The claimant also says that to the best of her knowledge all of the interview boards in the competition were comprised of male personnel. She argues that the 1993 Government Report on Equality in the Public Service cites the fact that in 1993 75% of all interview boards in the Public Service had female representation.

3.9 The claimant says that of the 180 successful candidates only 7 were female and that this represents 2.7% of the list and she further says that only one female candidate from all the female members in the Dublin Metropolitan Area who applied for promotion to the rank of sergeant was successful. The claimant alleges that taking all of the foregoing into account that she has been discriminated against on the grounds of her sex and/or marital status in her application for promotion to the rank of sergeant in that the employers take into account the marital status, date of marriage and number of children in the family and also the circumstances of his/her family and the effect of promotion on the member's family. The claimant alleges that this places her at an unfair disadvantage in relation to male members of the Garda Síochána in that this is more likely to affect female married members with children than male married members with children and is also more likely to affect female married members with children than single male or female candidates. The claimant further argues that the respondents failed to discount absences due to pregnancy related illnesses in the information supplied to the interview board. The claimant argues that having regard to the findings of the

European Court in the Dekker case, that had the respondents discounted such absences then the information then supplied to the interview board would have been more favourable to her. Furthermore, she contends that as no man can become pregnant, the inclusion of pregnancy related illnesses in the information supplied to the interview board has caused the claimant to suffer a disadvantage as a result of pregnancy in comparison to male candidates both married and single.

3.10 The claimant refers to her previous complaint of discrimination and to the Equality Officer's recommendation EE 1/1995 and refutes the assertions made at that time by Chief Superintendent Diffily who attended that hearing. She claims that she has not been made aware of any complaint in almost 15 years in the Garda Siochana and refutes the allegations made by the Chief Superintendent to the effect that she had no social skills, was not a team player, did not have professional skills, had problems with punctuality and reliability. She further refuted his statement that while he had assessed her for promotion on a number of occasions, he had found her totally unsuitable and as the disputed post of promotion involved supervisory duties of junior clerical assistants that if she was unsuitable for promotion then she was also unsuitable for the disputed post. She maintains that at the time of this claim that she had almost 15 years service in the Garda Siochana and 17 years in the workforce and had never been the subject of any complaint whatsoever and was never spoken to either formally or informally about any such matter.

- 3.11** The claimant says that the Equality Officer issued his recommendation the same day that she did her interview for the promotion to sergeant which is the subject of this claim. She said that the Equality Officer found that on the basis of her qualifications she was the most suitable candidate to fill the post which was the subject of the claim dealt with in Rec EE 1/1995.
- 3.12** The claimant says that the Garda (Garda McCullagh) who was appointed to that post also applied for the same competition for promotion to the rank of sergeant. She was interviewed by the same regional interview board as the claimant. This other Garda was successful and was subsequently interviewed by the Central Interview Board but was not successful at this second interview.
- 3.13** The claimant alleges that Garda McCullagh had not passed the Intelligence Assessment Test which is required for eligibility to enter promotional examinations. The claimant argues that all entrants for the promotion examination should have passed the Intelligence Assessment Test as required by Statutory Instrument No. 39/87 prior to applying for promotion. The claimant says that Garda McCullagh sat the Intelligence Assessment Test conducted by the Garda Authorities in December, 1994 after the date on which the promotion competition was deemed to be held and therefore she alleges that Garda McCullagh did not have the necessary educational qualifications and was not eligible to be a candidate in the competition for promotion.

3.14 The claimant alleges she has been victimised by the respondents directly as a result of her challenging the appointment of Garda McCullagh to the designated post in the area registry and that Garda McCullagh was permitted to apply for promotion and shortlisted for second interview despite the fact that she considers that she (the claimant) is more suitable and more qualified. In this regard she alleges she was refused promotion in favour of less qualified and less suitable candidates as a retribution for challenging the decision made by the Garda Management by pursuing the matter under the Employment Equality Act, 1977.

3.15 The claimant alleges that as a result of the foregoing she has suffered damage to her home and work environment, to her confidence and to her career and promotion prospects as a result of the actions of the respondent.

4 Summary of the Employer's Arguments

4.1 The Commissioner says that under Section 8 of the Police Forces Amalgamation Act, 1925 the general direction and control of the force is vested in the Garda Commissioner. He says that the other named parties in Garda Flynn's claim have no function in the day to day running of the Garda Síochána and they have no responsibility in relation to her allegation. The Commissioner says that he is committed to the principle of Equality of Opportunity and the elimination of discrimination in every form in An Garda Síochána. He further says that a number of circulars have been circulated within the force to ensure that all members are

aware of their rights and responsibilities and also to ensure compliance with the relevant legislation and regulations.

- 4.2** The Commissioner says that the claimant's allegation that she was discriminated against on the grounds of her marital status and/or sex within the terms of the Employment Equality Act, 1977, in relation to her application for promotion to the rank of sergeant in September, 1994 or any of her other applications for promotion to the rank of sergeant is rejected. He also rejects the claimant's allegation of victimisation in relation to her statement "as a result of successfully taking a case against the Garda Commissioner under the said act".
- 4.3** The Commissioner says that the case concerning the appointment to a previous post and referred to by the claimant has been appealed by An Garda Síochána to the Labour Court and in a judgement dated 21st November, 1995 ref no Labour Court DEE895, it held that the claimant "was not discriminated against within the meaning of the Employment Equality Act, 1977".
- 4.4** The Commissioner argues that the claimant is not more suitable for promotion to the rank of sergeant than any member, regardless of sex or marital status, who has been promoted to that rank to date, or placed on the current promotion list to fill vacancies that will arise up to the 31st December, 1996, since she first competed at interview for promotion in 1991. He argues that this fact has been decided by successive interview boards which have been appointed and conducted in

accordance with the Legislation, Regulations and Conciliation Council Agreement No 349.

4.5 The Commissioner says that promotion in An Garda Siochana is governed by the Garda Siochana Promotions Regulations 1987 as amended. Promotion to the rank of Sergeant was provided for at Regulation 5 of these, however, Regulation 5 was substituted by Regulation 6 of the Garda Siochana Promotion (Amendment) Regulations 1993 which provides for Regional Interview Boards and a Central Interview Board. The Central Interview Board's function is to interview candidates who are successful at interviews held by the Regional Interview Boards and prepare a list of the most suitable candidates in order of merit to fill vacancies for a predetermined specified period, usually a calendar year.

4.6 The Commissioner says in accordance with these regulations, the Garda Siochana Promotion Advisory Council oversee and regulate competitions for promotion and keep under review and advise the Commissioner in relation to promotions and competitions for promotions. Therefore he argues the promotion system is well defined in legislation and regulations, which are strictly adhered to.

4.7 The Commissioner also says that the current system of promotion has resulted from recommendations of the Ryan Committee of enquiry which was appointed in 1978. This committee reported in 1979 and among other matters recommended a single system of promotion.

4.8 The Commissioner says that the committee's recommendations were discussed at a meeting of the Garda Conciliation Council on 21st January, 1980, which was attended by representatives of the Representative Body for Chief Superintendents, the Association of Garda Sergeants and Inspectors and the Garda Representative Association and it was decided that a working party, comprising of representatives from the A.G.S.I., the G.R.A. and the Garda Commissioner and the Department of Justice should be set up

“to consider the systems of promotion in the force in the light of the Ryan Committee and to make recommendations”.

4.9 The Commissioner says that the Committee's recommendations formed the basis for Report No. 349. This report specified the constitution and function of the Promotion Advisory Council. It also specified the documentation that this council should provide interview boards in respect of each future competition. It also specified the documents that should be supplied to each candidate. These are -

- 1.** An agreed job description of the promotion post(s)
- 2.** An agreed personnel specification/profile of the type of person to be sought to fill the post(s) containing details of the characteristics, qualities, aptitudes, education, work experience etc. considered necessary
and
- 3.** An agreed marking sheet indicating the relative weightings to be given to the various elements referred to at (2) above.

4.10 The Commissioner argues that the claimant's lack of success to date at promotion interviews has led her to identify and object to aspects of two of these documents even though the documents were drawn up in consultation with the staff association to which she belongs (the G.R.A.) and approved by the Promotion Advisory Council of which the General Secretary of the G.R.A. is a member.

4.11 The Commissioner points out that the most important of the three documents outlined at para 4.9 above is the Interview Assessment Form (Appendix 2) . He says there is no provision on that document for any of the issues which the claimant has complained of. He says that the personal application and self assessment form (Appendix 2) has been in use since 1994 and was approved by the Promotion Advisory Council. It was designed in accordance with the Conciliation Council agreement and provides an opportunity for each individual candidate to express in his/her view why s/he is suitable for the post applied for. The Commissioner says that the details on that form which the claimant has complained of does not discriminate against any member because it is a requirement that applies equally to all members. He also says that both for record purposes and for participation in competitions of this nature, all members have to supply these details on Form D6.

4.12 The Commissioner says that the use of the designation "he" in the job description form for the rank of Sergeant which the claimant considers discriminatory was taken from the relevant statutory instruments which only refers to "he".

He points out that the Interpretation Act 1937 (No. 38/1937) applies to these regulations. He argues that general discrimination was never intended or resulted from the use of the current forms. He says that the circular of 12th September, 1994 which invited applications for the particular competition made it clear that the competition was open to all “eligible candidates”.

4.13 The Commissioner says that the “Personnel/Specification Profile” which is supplied to all candidates is not discriminatory because the implications of promotion to the rank of sergeant, can have serious disruption to member’s lives which can impinge on an individual’s performance. Personal circumstances can effect performance and the “questions” complained of are deemed necessary and are asked equally of male and female, single and married applicants and the circumstances are evaluated on the same basis for all applicants.

4.14 The Commissioner says that Paragraph 12.10 of Chapter 12 of the Garda Code places an obligation on the District Officer of a candidate for promotion to report on each candidate objectively under various headings. One heading refers to health. The Commissioner says that the claimant appears to be confusing this with reported illnesses over the five year period preceding the application. The Commissioner points out that no member of An Garda Siochana is disadvantaged because of sick leave availed of through genuine illness or injuries. All such illnesses are discounted. The Commissioner says he cannot understand how the claimant feels at a disadvantage under that procedure because a check of the relevant record (form D5) indicates that Garda Flynn did not report sick with a

pregnancy related illness during any of her pregnancies. This record is available to District Officers when reporting on candidates.

4.15 The Commissioner argues that the policy in relation to interview boards for promotion to the rank of sergeant was complied with. Each interview board consisted of a chief superintendent, a superintendent and thirdly a person having knowledge of and experience in personnel management in an organisation other than An Garda Síochána. He says that there were seven interview boards constituted for the competition and that the claimant presented before one of these boards which did not have female representation because of the unavailability of appropriate personnel. He says it is difficult to see the relevance of the composition of the remaining six interview boards to Garda Flynn's chances of success or otherwise.

4.16 The Commissioner points out that in the 1995/96 interviews that 9% of the total male applicants were successful and 7.5% of the female applicants were successful. The figures for the competitions since 1993 are at Appendix 3.

4.17 The Commissioner points out that all members are eligible to sit the sergeant's promotion examination after 3 years service but that the average service on promotion to the rank of sergeant is 15 years for males and 11 years for females.

He says the average age on promotion to the rank of sergeant is 35 years for males and 32 years for females. He says that since the implementation of the Walsh Report recommendations in the late 80's the intake of females to An Garda Síochána has increased significantly and that at present in excess of 60% of female members have less than 10 years service while 20% of male members have less than 10 years service. He also says that approximately 1% of male sergeants have less than 10 years service while 15% of female sergeants have less than 10 years service.

4.18 The Commissioner it is a well established fact that the probability of success at the first interview for either male or female candidates is extremely low. He also says that while the success rate for females in the 1994 interview appears low, it is necessary to take into account the fact that there was 130% increase in the number of female applicants over the previous competition. He says that between June 1993 and June 1995, 100 female candidates became eligible to apply to the interview board for promotion to sergeant as 14 qualified in 1993, 52 qualified in 1994 and a further 34 qualified in 1995. He says it should be noted, that there was only 107 female applicants in total for the 1995/96 promotion competition. He says therefore, if the number of successful candidates in the 1994/95 competition is taken as a percentage of the unsuccessful candidates from the previous competition i.e. seven over fifty one would be a similar percentage success rate as males in that competition.

4.19 The Commissioner says in relation to the claimant's allegation of discrimination because of her marital status, that there were 180 successful candidates, 7 of whom were female. Five of those females had reported their marriage and 159 of the successful male candidates had reported their marriages, therefore 91% of the successful candidates in that competition were married.

4.20 With regard to the allegations of victimisation made by the claimant in relation to her previous allegation of discrimination, the Commissioner says that this was decided by the Labour Court and it is not relevant or appropriate that it should be re-opened again before an Equality Officer. The Commissioner points out that the Equality Officer in that case did not find that Garda Flynn was the most suitable candidate for the disputed post and this was pointed out in the Commissioner's submission to the Labour Court on August, 1995 (Appendix 4).

4.21 The Commissioner says that the educational and professional requirements for eligibility for promotion are laid down in Paragraph 7(1) (a) (i) and (ii) of the regulations referred to at Para 4.5 above. He says that Paragraph 7 1(a) (i) specifies the professional qualifications which are necessary and that Paragraph 7 1(a) (ii) deals with the educational requirements for promotion to the rank of Sergeant and states;

"he is shown by intelligence assessment to have such level of intelligence as, in the opinion of the relevant interview board, is satisfactory

or

he has passed or been exempted under Regulation 13 of the Regulations of 1966 from passing the Class 111 Promotion Examination in educational subjects provided for in the regulation of 1960”.

4.22 The Commissioner says it must be clear to the claimant that section 7 1(a) provides for individual members who qualify under either educational systems and it must also be clear that if a member has undergone the Intelligence Assessment Test before interview, the regulations are complied with. He says it is the relevant interview board that must be satisfied that the applicant has a satisfactory level of intelligence and that this has always been Garda management’s interpretation of this section. He points out that the regulation does not specify pass or failure level so irrespective of the grade obtained in the Intelligence Assessment Test, a candidate is entitled to present for interview.

4.23 The Commissioner says that no member has ever been allowed to go for interview in breach of the provision relating to qualifications prevailing at the relevant times. Therefore he says that Garda McCullagh was not interviewed by either board in contravention of promotion regulations or H.Q. circulars. He says that she had applied for the Intelligence Assessment Test in response to circular 147/94 which preceded her application for promotion. He says it is the responsibility of Garda management to have candidates assessed on behalf of the Garda Commissioner and she had undergone the Intelligence Assessment Test before she presented at interview.

4.24 The Commissioner says there is no relationship between the issue of the Equality Recommendation No. EE 01/1995 and the decision of the interview boards in respect of the claimant. He says that this allegation implies interference by Garda management with interview boards which is viewed by the Garda Commissioner as a very serious matter and impugns the honesty, honour, integrity and reputation of very senior officers in An Garda Síochána. He says that this allegation cannot be substantiated and should be retracted.

4.25 The Commissioner says that the matter contained in the Equality Officer's Recommendation appeared in the national media on at least three occasions since that report issued, the most recent in January, 1996. He points out that this was not published by or on behalf of An Garda Commissioner, however, he also points out that the success of the Commissioner with the appeal to the Labour Court has not appeared in the national media at all.

4.26 The Commissioner says Garda Flynn has not been victimised because of her challenging the appointment of Garda McCullagh. He says the appropriate action was taken and the decision of Garda Management was vindicated. He says that Garda Flynn was not discriminated against in her application for promotion, she was one of 1,271 Gardai who were unsuccessful in the 1993/94 competition. Further, she was one of 1,216 who were unsuccessful in the 1994/95 competition and one of 1,203 who were unsuccessful in the 1995/96 competition.

4.27 The Commissioner says that there is no basis to the claimant's assessment of the successful candidates which she feels superior to. He also says that she appears to have particular difficulty with Garda McCullagh to whom she also feels superior. He says that the claimant fails to understand that the promotion system in An Garda Siochana is based on interview. He says she feels the system puts her at an unfair disadvantage to male members of An Garda Siochana in that she claims that the requirements are more likely to affect female married members with children than male married members with children and is also more likely to affect female married members with children than single male or female candidates, even though the same system applies to all. He says that it is difficult to envisage the claimant's interpretation of equality.

4.28 The Commissioner says that if the claimant had read the promotion regulations or sought clarification in relation to Section 7(1) (a) (ii) she would have no basis for her allegation of victimisation. He argues that no unsuccessful candidate can attribute their lack of success to discrimination on the basis of sex and or marital status because neither is a consideration when assessing the suitability of candidates for promotion to any rank in An Garda Siochana.

5. Equality Officer's Conclusions.

- 5.1** The matter for consideration in this dispute is the claim made by the claimant that she was discriminated against by her employer, on the 27th January 1995 when she was not short listed for the second round interviews for promotion to the grade of sergeant Garda Siochana.
- 5.2** The parties to this claim have made detailed and extensive submissions both written and oral and I have taken all these submissions into account in reaching my conclusions. In summary the claimant argued that
- she should have been promoted because she was better qualified than nine male Gardai and more highly qualified than two single female Gardai who were promoted, as a result of this interview competition
 - she is senior to a female Garda who was promoted
 - her pregnancy related illnesses which should have been discounted were taken into account by the interview board and this amounted to indirect discrimination against her
 - she was discriminated against because she took a previous case concerning a designated post to which she was not appointed in 1993
 - there was a deterioration in her treatment at work, subsequent to that case
 - she received very favourable reports on her work performance prior to this time and at the hearing held in relation to that claim a previous good reference she had received was withdrawn
 - she was selected to undertake third level education and stringent criteria were applied to the selection procedures for this nomination

- the information sought by management on marital status, date of marriage, number of children with the application form, puts married women at a disadvantage
- another Garda (Garda McCullagh) was allowed to compete in this competition although she did not have the qualifications for inclusion in the competition prior to its closing date.

5.3 The employer denied that it had discriminated against the claimant and rejected any allegations of discrimination. In summary the employer argued that

- the Commissioner is committed to a policy of equality
- the interview boards seek to appoint the most suitable candidates
- the criteria applied by all the boards are free of sexual bias and have an unbiased agenda
- all applicants are treated equally in relation to their applications and assessment and 9% of male applicants and 7.5% of female applicants were successful
- other applicants with similar qualifications were also unsuccessful in this and other competitions
- many applicants do not get the interview on the first occasion
- no member of an Garda Síochána is disadvantaged because of sick leave in relation to genuine illness or injuries
- the previous case taken by the claimant is not related to this one and to suggest that the decision of the interview board was influenced by the recommendation in that case is a very serious allegation against senior members of the force
- the claimant did not mention a deterioration in her working conditions subsequent to her last claim until the hearing in this case

- there is an internal grievance procedure designed to alleviate problems at local level in relation to any form of discrimination, but the claimant did not use it and made no complaint about her working conditions
- all competitions are carried out in accordance with the regulations
- in relation to discrimination based on marital status, 91% of the successful candidates were married
- the findings in the previous case were publicised when the claimant was successful but not when they were overturned by the Labour Court
- there were 1,000 plus candidates unsuccessful in each competition held in 1993/94, 1994/95, and 1995/96
- the claimant was one of in excess of 1000 applicants suitable for promotion, but only one in three get to the second interview
- Garda McCullagh had undergone the Intelligence Assessment Test before she presented at interview and was not interviewed in contravention of promotion regulations.

5.4 The claimant says that because she was not short listed for the second round interviews, she was discriminated against by her employer. She has based her claim on comparisons with other successful candidates and on the fact that she took a previous unsuccessful claim against her employers and now claims that she is being victimised because of the first claim. (Recommendation No EE 01/1995 refers)

- 5.5** I note that many other applicants were unsuccessful in this interview. I also note that both the total numbers entering for this competition and the male/female success rate is fairly constant. I accept that given the entry standard required of applicants for these vacancies that the majority of the applicants meet with the promotional requirements and the number of vacancies determine the number of appointments made.
- 5.6** The claimant says she was more suitable than nine of the male Gardai who were promoted. I note that the claimant says that she has wider range of experience than these appointees and has worked on a wide range of investigative cases and has administrative experience. However, I note that each of these appointees prior to their promotion, were also employed in the same service and at the same level, although in different environments. I note that the claimant has argued that she has experience in detaining prisoners under “Section 4” but this has to be taken in the context of her overall experience. I note that the appointees that she refers to have mainly been stationed in large city stations which leads to a different but equally (if not more) demanding work experience. I also note that the claimant has been engaged in clerical duties since 1989.
- 5.7** I have examined how this competition is carried out. I note that the successful candidates are selected by regional interview boards, on the basis of competitive interview as well as their application forms and the reports made on them made by a Senior Officer. The procedures were set up following negotiations involving the social partners and a report from the Conciliation Council No. 359. The enactments

from this council have been passed into law and are governed by a statutory instrument.

The interview board takes into account the performance of the candidates at the competition and also makes use of the written report supplied by the immediate supervisor of the candidate and countersigned by two supervisory officers. This includes the work experience of the applicant. There were approximately 1300 candidates for interview and approximately one in three were successful in being selected to go forward for a second interview.

When investigating this claim, it was not possible to examine these reports made on either the claimant or the successful candidates at this competition. Neither was it possible to examine the marking sheets used by the interview boards. These papers were not available as it is Garda Síochána practice to destroy them prior to holding a further competition.

I further note that the records relating to this competition, including these reports, had been destroyed before the claimant lodged her claim.

5.8 The claimant has compared herself with the overall number of candidates in the competition and more specifically with nine named members of staff. I consider that the experience gained “on the job” together with performance at interview in addition to the reports on the applicants are the deciding factors in this competition. The fact that all records have been destroyed in relation to the competition makes it impossible to examine how the various candidates were marked and placed in the competition and whether or not the claimant was discriminated against on grounds of her sex in relation to the reports made on or the marks received in the interview

by the nine Gardai, named by the claimant, who were successful in the competition. However I have examined the overall numbers of women vis a vis men promoted to Garda sergeant to decide whether or not the overall results are biased.

5.9 I have examined the overall statistics relating to the promotion of female and male Gardai to Sergeant and in the competition complained of.

I note that the average service on promotion is 11 years for females and 15 years for males and that the average age on promotion is thirty two years for women and thirty five years for men. I note that 1% of male Sergeants have less than 10 years service while 15% of female Sergeants have less than 10 years service. I consider that these facts do not indicate a discriminatory policy against women.

I also note that due to an increase in the late 1980's in the intake of female recruits into an Garda Siochana more females became eligible for promotion between 1993 and 1995 and so there was an increase of approximately 130% of first time female applications for promotion in this examination. I accept that there is a low success rate for first time applicants in this exam and this taken with the increased number of first time female applicants for promotion gave a success rate of 6% for females in the 1994/95 competition, down from a success rate of 17% in 1993/1994.

However there was a success rate of 7.5% for females and approx 9% for males in the competition under examination the following year. I note that due to the lower number of females competing, less than 10% of the total male entry, that one extra successful female candidate would increase this percentage (of 7.5%) to that of the

male success rate. From an examination of these facts I do not find that there is a discriminatory policy with regard to the promotion of female candidates within An Garda Siochana at this level.

5.10 The claimant also argues that she was directly and indirectly discriminated against because her sick leave which related to her various pregnancies was not deducted from the total of her sick leave as presented to the interview board. She said that this discriminated against her and referred to the Dekker recommendation. The employer pointed out at the hearing that if the claimant were employed in the Public Service her sick leave would be assessed over the previous 4 years and if it were in excess of 56 days she would not be eligible for promotion. He went on to say that Garda Siochana do not operate this system.

I have considered these arguments and I find that while her pregnancy related illnesses should not have featured in her aggregate sick leave report without being identified as such, I note that no member of an Garda Siochana is disadvantaged because of sick leave related to genuine illness or injuries. Consequently I consider that this did not contribute to the fact that she was unsuccessful in the interview.

5.11 The claimant in her arguments refers twice to Garda McCullagh. She argues that Garda McCullagh was allowed to apply for this competition without the full qualifications for entry to it. She also argued that she has broadly similar qualifications to Garda McCullagh. I note that Garda McCullagh had applied for the Intelligence Assessment Test prior to applying for this competition and had undergone this assessment prior to the interview for the sergeants examination. I

consider that as both she and the claimant are of the same sex and of a similar marital status that a case does not arise in relation to the claimant and Garda McCullagh. I further note that Garda McCullagh was also unsuccessful in the promotion competition, consequently I consider that this is not relevant to the claim made by the claimant that she was discriminated against when she was not appointed to the post of sergeant. I consider that the claimant was not discriminated against in relation to Garda McCullagh.

5.12 The claimant argues that she was discriminated against on grounds of her marital status because two single female Gardai were promoted one of whom was junior to her. This allegation was otherwise unsupported. I note that while one of these appointees was senior to the claimant the other had only one year less service than her. Otherwise these applicants met the very same entry qualifications as the claimant. Consequently without any evidence to show that either of them were not as well qualified as the claimant on grounds of experience and training I do not consider that the claimant has established her claim of discrimination on grounds of marital status vis a vis Section 2(b) of the 1977 Act.

5.13 The claimant alleges that she was discriminated against because she took a previous case concerning a designated post to which she was not appointed in 1993. The claimant also says that at hearings in this case i.e. the Equality Officer's hearing and a subsequent appeal of his recommendation to the Labour Court, that assertions and accusations were levelled against her which have not been

proven. These allegations were in relation to her overall work performance. She has also alleged that following her initiation of that claim that her working conditions were worsened, that her Superior Officer withdrew a previous good report on her work performance and that her work load was changed because of the claim. She further alleges that she has not been successful in other promotional competitions or applications for lateral transfers to work that would give her a greater work experience. She alleges that all of the foregoing arise from her instigation of the original claim and thereby invokes Section 2(d) of the Act.

5.14 I note that none of these issues were raised by the claimant until the hearing in this case and that consequently the management were not given an opportunity to examine these matters and investigate/rectify them. There is an internal grievance procedure available to staff members that the claimant did not utilise. I note however that at the time of the hearing in this case, she said that there was no longer a problem and she was quite satisfied with the quality of the work that she was being assigned. I consider that the difficulties that she encountered in her workplace may or may not have arisen because of her original claim but more than likely arose for different reasons as despite the current claim and the fact that this problem was not raised with management it is now resolved.

5.15 The claimant claimed that the fact that marital status, number of children, date of marriage is requested on the application form for the promotional examination put her at a disadvantage. I note that this information was sought of all applicants male and female. I further note that the Garda management say that this information was

used in the past for the allocation of suitable housing when it was available. I note that this information is no longer sought, however, at the time of this competition it was required. She has argued that a smaller number of married women have been promoted to sergeant but in the overall statistics I note that less than 10% of the total candidature for any one examination is female, therefore the numbers of females qualifying is proportionately small in the overall numbers. I note that recently two female Gardai who were promoted to sergeant were transferred to the country on promotion. I am satisfied that there have been other female Gardai married with children promoted to sergeant who did not have to accept a transfer on promotion. Therefore I consider that the requirement to provide this information did not put the claimant at a disadvantage in this competition.

5.16 I note that the claimant nominated three respondents when she referred her claim to the Labour Court. She subsequently withdrew her nomination of the Secretary of the Department of Justice as a respondent. I note that the Minister for Justice argues that she has no function in the day to day running of the force and that the Commissioner is fully responsible for the staff of An Garda Síochána. I accept that the Minister has no role in the day to day running of the force. However as I have found that the claimant has not established her claim of discrimination against the Garda Commissioner, vis-a-vis the Employment Equality Act 1977 in relation to the results of the interview held in late 1994 and published on the 27th Jan, 1995 I find that it follows that the Minister for Justice did not discriminate against the claimant.

6 Recommendation

- 6.1** In view of my conclusions at paragraph 5 above I find that the claimant was not discriminated against when she was not short listed for promotion in January 1995.

M.Solan Avison,
Equality Officer.

7th May, 1997