THE HIGH COURT

[2017 No. 8121 P.]

[2021] IEHC 470

BETWEEN

JOHN WARD

PLAINTIFF

AND

AN POST

DEFENDANT

JUDGMENT of Mr. Justice Mark Heslin delivered on the 11th day of June, 2021

1. The Plaintiff is a postman who is employed by the Defendant, having commenced his employment straight after he left school, in 1980. The Plaintiff issued a personal injuries summons on 08 September 2017. Having regard to the pleaded case which refers to events going back to 1996 and the 11 days of witness testimony, it has been necessary in this judgment to analyse evidence given in respect of events covering well over two decades, much of which evidence was contentious, and to make findings of fact, where appropriate. This has resulted in an extremely lengthy judgement but, in order to do justice to the pleaded case and the issues in dispute, I have seen no alternative. For ease of reference, I have employed appropriate headings and I have tried to set out this court's analysis of the evidence in chronological order.

The period 1996 – 2016

2. In the said personal injuries summons (hereinafter "the Summons") the following is pleaded under the heading of "particulars of wrong alleged against the Defendant":-

"*5. The Defendant, its servants or agents, were guilty of negligence, breach of contract, breach of duty and breach of statutory duty in causing, permitting or allowing the Plaintiff to be the subject of bullying and harassment by a number of the Defendant's over a the (sic) lengthy period from August 1996 to December 2016. During this period the Plaintiff was unlawfully targeted in a campaign of intimidation, accusations, bullying, harassment, inappropriate commentary, personal remarks, taunting and insults, mismanagement, false promises, and psychological trauma in his workplaces which resulted in acute stress/serious personal injury and hospitalisation and subsequent medical incapacity in December 2016;*

6. The Defendant, its servants or agents, were guilty of negligence, breach of contract, breach of duty and breach of statutory duty and breach of the Employment Equality Acts 1998 – 2015 in treating the Plaintiff as if he were guilty of absenteeism, while he was on certified sick leave due to a certified medical condition, namely severe stress and depression, and placing the Plaintiff on and escalating him through those sections of a workplace policy designed to deal with absenteeism, and failing to take account of his certified medical leave, the communications of his treating doctor, and failing to refer the Plaintiff to the Chief Medical Officer or other qualified medical doctor for a medical report and assessment;

7. The aforesaid was occasioned by reason of breach of duty (including statutory duty), breach of contract, vicarious liability, and/or nuisance on part (sic) of the Defendant, its servants and agents and by reason of which the Plaintiff suffered severe personal injury, loss, damage and expense;

8. The Defendant, its servants or agents, has been guilty of further negligence, further breach of contract, further breach of duty and breach of statutory duty in failing to take any or any adequate steps properly to support the Plaintiff in his employment and to

prevent the aforesaid bullying and harassment occurring in circumstances where it knew or ought to have known of his vulnerability to same on foot of various reports of same to his line manager".

As is clear from the pleadings aforesaid, a period of time beginning some 25 years ago is said to be relevant to the Plaintiff's claim. Pages 3 to 7 inclusive, of the Summons set out details under the heading "*The circumstances relating to the commission of the wrongs by the Defendant, its servants or agents".* The case made by the Plaintiff includes the following pleas, beginning on p. 3 of the Summons: -

"*9. Since approximately 1996, the Plaintiff has been the subject of ridicule and vicious rumours promulgated by a number of colleagues as well as bullying and harassment and this has had a significant and lingering effect on his mental health. The Plaintiff has felt undermined and unsupported in particular by his line manager who refused to deal with his issues at all and indeed denied that there were any workplace issues for over twenty years, only admitting to same some weeks before his own retirement as well as HR who has dismissed and refused to deal with his complaints continuously;*

10. Soon after the Plaintiff got married he attended a social work event in or around July/August 1996 and shortly after this event a rumour was circulated within the workplace that accused the Plaintiff of sleeping with the girlfriend of a colleague that night. These rumours were shared in the depot by a Mr. Eddie Baker, on several occasions in front of other colleagues. The rumours continued for a number of years and were expressly and directly repeated to the Plaintiff by Mr. Justin Cullen in or around December 2000;

11. Following the Christmas break, in January 2001, the Plaintiff, who could not tolerate the promulgation of the rumour further, raised the issue with his inspector/line manager, Mr. Leo Kearns, who was the Delivery Services Manager (DSM) at that time,

and confirmed that it was Mr. Baker who was continuing to spread the distressing rumour. Mr. Kearns outlined that he would invite Mr. Cullen to his office and ask him not to repeat these rumours. However, no further action was taken;

12. Bullying of the Plaintiff, which took the form of constant jibes, comments, derision and repeated attempts to make him the butt of jokes in the section took place. The Plaintiff continued to raise issues with his manager in respect of his treatment by colleagues and the continuing comments and harassment of foregoing (sic) nature to which he was subject with Mr. Kearns both in and outside of work and informally again on a golf outing in 2005 as the situation had not been resolved. However, yet again no action was taken by the Plaintiff's inspector to ameliorate the situation;

13. In May 2005 the Plaintiff was delivering post in Stillorgan when he discovered opened post in the back of driver's seat (sic). He contacted his inspector Leo Kearns immediately and was told to return to the depot. The Plaintiff told no third parties about finding the letters. When the Plaintiff arrived at the depot he was immediately asked by John Walsh, postal sorter, as to how many letters did he find.

14. A third party driver admitted to opening the letters. However, it was the Plaintiff whom was (sic) constantly interrogated by his colleagues in that regard. The Plaintiff was very upset and distressed that he had been named as the person who was viewed as getting another colleague into trouble and that the fact it was he who had found the letters had become common knowledge at work. The Plaintiff contacted the third party driver, who by that stage was on leave, and this driver informed the Plaintiff that it was his inspector who had disclosed who had found the letters. As expected, this cause caused great stress to the Plaintiff who at this juncture came to realise it was unlikely that his inspector would ever resolve his ongoing workplace issues in circumstances where he was in fact part of and exacerbating same.

15. In 2006 a second issue arose involving a bag of letters when Mr. John Hennessey (Inspector) DSM Dun Laoghaire, called the Plaintiff into his office and asked the Plaintiff to bring a sack full of letters that had been opened back to Mr. Kearns in Blackrock as they were found in Blackrock but handed into Dun Laoghaire by a member of the public. The Plaintiff dropped the letters to Mr. Kearns and again did not mention anything about the incident to any third parties.

16. The next morning an informal meeting was called, one (sic) of the Plaintiffs' colleagues Mr. Kieran Downer (Driver), in the driver section of the sorting office and he who outlined (sic) that Mr. Kearns had informed him that letters had been found and that people should 'keep an eye out'. The Plaintiff was shocked that such information would be suppressed and then circulated among the drivers in a manner that he did not perceive to be for the benefit of anyone other than those who might be careless enough to lose and/or open letters.

17. Following this unofficial meeting, the Plaintiff was again subject to questioning from the other drivers and had his van searched on occasion with the intimation being made clear to him that he was responsible for the letters being found and that this was not a positive find as it should have been considered. The Plaintiff found this atmosphere in which he was working to be utterly oppressive and intimidating and untenable.

18. Over the course of the next number of years the Plaintiff was bullied on a constant basis in work by Mr. Eddie Baker, John Cassoni and Mr. Kieran Downer, who would should derogatory comments to each other about the Plaintiff whilst pointing and jeering at him in full view of other colleagues. In particular, the Plaintiff was habitually accused of setting his work colleagues up to be sacked, stealing post and packages, sleeping with his colleague's girlfriend.

19. Unfortunately he had no recourse in the workplace in circumstances where his direct line manager had made it clear he was not going to do anything to ameliorate the situation, and the next manager in the hierarchy, the Area Manager, was a friend of the same line manager and had worked closely for many years as a postman with the two main perpetrators of the harassment.

20. In 2009, at the end of his tether, the Plaintiff of his own volition contacted Mr. Peter Maher of occupational support who called out to the Plaintiff's home. However, this appointment merely resulted in the Plaintiff being asked to consider a transfer rather than suggesting any resolution or investigation into the issues he was facing in the workplace.

21. Upon the retirement of Mr. Maher in February 2010, Mr. John O'Sullivan in occupational health advised the Plaintiff to seek counselling but again there was no reference to ameliorating the bullying issues which continued in the workplace. At this time, it also became apparent that the perpetrators of the harassment had widened their circle of contempt to another colleague as well which, although it upset the Plaintiff hugely as the atmosphere in work remained dire and intimidating, he admits that to some extent that he experienced some relief as the perpetrators were now at least temporarily distracted from tormenting the Plaintiff alone.

22. Notwithstanding the aforementioned apparent dilution of the harassment received by the Plaintiff, it persisted to the point where he was required to take sick leave from 25 January 2010 to 29 January 2010 due to severe work – related stress and again from 30 August to 24 September 2010.

23. In October 2010 the Plaintiff wrote Mr. Kearns to request a meeting with Mr. Pat Cunningham (Area Manager) or Mr. Damien Hunter to discuss the continued and persistent stresses and harassment to which he was being subjected. Upon receipt of

the said request, Mr. Kearns approached the Plaintiff at his desk and in full view of another colleague, Mr. Eamonn McGough, threw the contact number for Mr. Cunningham on his desk.

24. When the Plaintiff met with Mr. Cunningham in and around November 2010, he was asked to write out all of the issues and send them to Mr. Cunningham who confirmed he would discuss the matter with HR and revert. A further meeting took place in February 2011 during which Mr. Cunningham indicated that he had spoken to Mr. Hunter and that the Plaintiff's issues were 'Going back too far' and could not be dealt with.

25. On 30 May 2011 the Plaintiff wrote to HR in a further attempt to have his grievances dealt with. This letter set out that he had met with 9 different people on separate occasions and nothing had been done. The Plaintiff indicated that he was currently on sick leave and that it was having an effect on his health and his family and sought a meeting to discuss the matters. HR relied (sic) on 3 June 2011 that they would arrange a meeting to discuss the matters raised.

26. The Plaintiff continued on in work labouring under the hope that the Defendant would eventually address his issues appropriately and in a meaningful way. However, it eventually became apparent that the Defendant had no such intention and as such the Plaintiff was once again obliged to write and seek a meeting with HR on 20 February 2016.

27. The Defendant finally organised a meeting on 23 June 2016 where the Plaintiff met with Mr. Kevin Cullen, HR, and Sean O'Donnell (Union Branch Rep) to again bring his difficulties in work to their attention. Unfortunately, the Plaintiff's issues were dismissed on the basis that there was nothing said or done in the previous six months

that warranted investigation and that in fact he was told by Mr. Cullen that he should 'get this historical stuff' out of his head.

28. At the beginning of October 2016, over the course of a number of conversations, Mr. Kearns, who was very close to retirement at that time, admitted to the Plaintiff that he had breached confidentiality in respect of the two letter incidents as well as other matters and apologised to the Plaintiff in that regard. On foot of these admissions the Plaintiff attempted to contact his union representatives and having received no appropriate response wrote again to HR on 25 October 2016 to bring to the attention of Mr. Cullen the conversations with Mr. Kearns. The Plaintiff sought an urgent appointment as Mr. Leo Kearns was retiring in the next few weeks and he wished for the admissions to be recorded before Mr. Leo Kearns's (sic) retirement.

29. Again, having received no formal response the Plaintiff rang Mr. Noel Kennedy of HR on 16 November 2016 seeking an urgent appointment but was informed unless something had happened in the previous six months that he could not raise it with them. The Plaintiff indicated that the admissions arose on 4, 5 and 6 October 2016 and was informed that HR would contact him in due course. Unfortunately, the Plaintiff received no response from HR and Mr. Kearns retired.

30. The Plaintiff commenced sick leave for stress on 25 October 2016. A letter issued from An Post on 8 November 2016 referring Mr. Ward to Occupational Health and Support due to stress. Following a meeting with Occupational Health on 12 October 2016 a memorandum was prepared by Mr. O'Sullivan to management advising that the Plaintiff had expressed concerns about his own and other safety at Blackrock DSU and setting out that his doctor was sufficiently concerned that he wrote to the Chief Medical Officer outlining his concerns and saying 'it would be of benefit if management were make [sic] some type of assessment of his concerns'.

31. As a result of the Defendant's consistent and endemic failure to address the Plaintiff's concerns in any meaningful way or at all over the course of twenty years, the aforementioned final refusals in 2016 caused the Plaintiff to be extremely distressed and upset and culminated in a hospitalisation in December 2016. The Plaintiff remains unfit to work to date due to the personal injuries he has suffered caused by the negligence, breach of contract, breach of duty and breach of statutory duty on the part of the Defendant, their servants and/or agents.

32. In addition to the totality of the foregoing, during the course of the Plaintiff's certified sick leave, the Defendant has persisted in contacting him directly, and in breach of his contract of employment requesting his attendance at attendance review meetings and escalating him through its Attendance Support Management Policy in his absence. The Defendant failed to refer the Plaintiff to the Chief Medical Officer for review and report as provided for in its own policies but treated the Plaintiff as if he were absent without cause even though the Plaintiff was on certified sick leave and even though the Plaintiffs (sic) treating GP informed the Defendant of the serious mental state of the Plaintiff and that it was not safe for him to return to work. The Defendant has written to the Plaintiff no less than 7 times in this regard and escalated him two stages (sic) through the five – stage policy to date. Further, the Defendant has explicitly confirmed in a number of these letters that should the Plaintiff not reach a satisfactory level of attendance then he could be disciplined and ultimately could have his employment terminated. These communications and relentless escalation through the Defendant's process in his absence have caused the Plaintiff significant distress and have served only to exacerbate his condition.

33. The aforesaid bullying and harassment and assault were caused as a result of the negligence and breach of duty, including breach of statutory duty on the part of the Defendant, its servants or agents.

34. In consequence of the foregoing, the Plaintiff was thus caused to sustain serious personal injuries, loss and damage".

3. The foregoing is followed, in the Summons, by *"Particulars of negligence and breach of duty (including breach of statutory duty)",* as alleged by the Plaintiff. Thereafter, the Summons contains "*Particulars of personal injuries".* The Plaintiff makes the following claims in terms of the reliefs sought:-

"*A. Damages for severe Personal Injuries occasioned to the Plaintiff as a result of the negligence and/or breach of contract and/or breach of duty (including statutory duty) of the Defendant, its servants or agents;*

B. Damages for breach of contract;

C. Damages for breach of the Employment Equality Acts 1998 – 2015;

D. A Declaration that the purported process instituted by the Defendant under its ASMP policy against the Plaintiff was applied in breach of contract, in breach of the Employment Equality Acts 1998 – 2015 and is further in breach of his Constitutional and Convention rights to livelihood;

E. A Declaration that a purported escalations (sic) of the Plaintiff through the ASMP policy instituted by the Defendant against the Plaintiff has been embarked upon contrary to that policy, in breach of contract and in bad faith and accordingly a nullity;

F. A Declaration that the purported placing of the Plaintiff on any escalation process through the ASMP process has been unlawful, in breach of the terms of that policy, in breach of contract, in breach of the Employment Equality Acts 1998 – 2015 and accordingly is a nullity and of no effect;

G. An injunction restraining the Defendant from escalating the status of the Plaintiff under the An Post Company Attendance Support Management Process (ASMP) to a status higher than Status 3 at the next scheduled review meeting whilst he remains on certified medical leave other than in accordance with the Plaintiff's contractual entitlements, following full assessment by the Chief Medical Officer and only on the recommendation of the Chief Medical Officer as provided for in the ASMP;

H. An injunction restraining the Defendant from embarking on any procedure, disciplinary or otherwise, against the Plaintiff other than in accordance with the Plaintiff's contractual entitlements and with the tenet of fair procedures and natural justice, while the Plaintiff remains on certified medical leave.

I. An injunction restraining the Defendant from continuing with on (sic) any procedure of escalation, disciplinary or otherwise the ASMP procedure, the validity of which application is disputed, against the Plaintiff in his absence during a period of certified medical leave;

J. An order rescinding each status escalation by the Defendant of the Plaintiff through the ASMP from the date the Plaintiff went on sick/stress leave in October 2016, the validity of which escalation is disputed and the erasure of these escalations from his personal file;

K. An injunction, if necessary restraining the Defendant from terminating the Plaintiff's employment with the Defendant;

L. Interest pursuant to statute;

M. The costs of these proceedings; and,

N. Such further orders as this honourable Court shall deem fit".

4. On 08 November 2019, the Plaintiff's solicitors served additional Particulars of Negligence. But for a small number of admissions in respect of what might be called

uncontroversial matters, the Defendant takes issue with the entire claim as pleaded by the Plaintiff and has filed a full defence. Among other things, the Defendant pleads that the Plaintiff's claim is statute barred.

The period 1996 – 2016 and the first aspect of the Plaintiff's claim

5. As can be seen from the contents of the Summons, a core element of the Plaintiff's pleaded claim is that, since 1996, he has been the subject of ridicule and vicious rumours and has suffered bullying and harassment. It is claimed that the Plaintiff has been the subject of such bullying and harassment from August 1996 to December 2016. It is also alleged that over the course of the last 20 years the Plaintiff has suffered with work related stress for which the Defendant is responsible. Thus, it is clear that the pleaded case made by the Plaintiff is that there was a continuing course of conduct for which the Defendant is said to be liable. Given the undoubted fact that a continuing course of conduct is pleaded, the Plaintiff is alleging that the circumstances giving rise to the present claim were present in each and every year of, and throughout the entire period which is pleaded, namely the period since 1996. In light of the foregoing, evidence spanning two decades, from August 1996 to December 2016, was given during the trial and is examined in this judgment.

2016 onwards and the second aspect of the Plaintiff's claim

6. Evidence was also given in relation to the period from December 2016 onwards, in circumstances where a second core element of the Plaintiff's claim concerns his treatment by the Defendant during the period from late 2016 onwards and the Plaintiff's claim that such treatment was also unlawful. In particular, it is alleged that the manner in which the Plaintiff was treated under the Defendant's "ASMP" (i.e. Attendance Support and Management Process) policy from October 2016, when the Plaintiff went on sick leave, was, *inter alia,* in breach of contractual, statutory, constitutional and Convention rights.

The progress of the trial

7. The trial commenced on Tuesday 25th February 2020 and continued on the 26th, 27th and 28th of February and on 3rd, 4th, 5th, 6th March 2020. The trial was specially-fixed and took place in Drogheda, having been originally set down for 7 days. Day 8 of the trial was Friday 6th March. Unfortunately, the Covid 19 crisis interrupted the timely completion of the hearing. The hearing of evidence resumed on Wednesday 16th September 2020 and continued on Thursday 17th September, with oral evidence concluding on Friday 18th September 2020. Thereafter, both parties prepared written legal submissions, following which certain oral submissions were made to the court by counsel for the Plaintiff on 27 November 2020. On that date during the course of legal submissions by the Plaintiff's counsel, an issue arose concerning what counsel for the Plaintiff submitted was an error in the "*Discharge Summary*" document prepared by St. Vincent's University Hospital. Later in this judgment, I will examine the contents of this Discharge Summary but, insofar as the alleged error in its contents is concerned, the following is the position. Given the dispute between the parties which arose on 27 November, legal submissions were halted. Instead, the Plaintiff's solicitors issued a Motion, initially returnable for 18 December 2020, seeking, *inter alia*, (1) and order pursuant to Order 39/Rule 4 and/or 6 and/or 20 and/or 21 of the Rules of the Superior Courts granting leave to adduce evidence of Mr. Sandeep Quadros, Grade V Officer, Release of Information Section, Medical Records Dept., St Vincent's University Hospital or other qualified person; (2) such orders as are required for the purpose of compliance with Order 39, Rule 25 of the Rules of the Superior Courts; (3) An order pursuant to Order 39, Rules 20 and 21 of the Rules of the Superior Courts giving directions in respect of any evidence to be adduced by Mr Quadros or other qualified person be it *viva voce* or documentary; (4) and order pursuant to the inherent jurisdiction of the Court and Order 39, Rule 4 to permit the Plaintiff to be recalled in evidence if necessary; (5) Further and in the alternative an order pursuant to both the inherent jurisdiction of the court and the totality of Order 39 to admit the affidavit of Mr Andrew Murnaghan, sworn

on 25 November 2020 and the letter from Mr Quadros exhibited thereto which is also exhibited to the grounding affidavit of Mr Murnaghan as well as (6) such further or other order as the court deemed fit. Mr Murnaghan swore affidavits on 25 November, 4 December and 17 December, 2020. For the Defendant, Mr Paul Carroll, solicitor, swore an affidavit on 11 December 2020 in opposition to the relief sought by the Plaintiff. After the matter had come before the court again, for the purposes of obtaining a hearing date for the motion, the court was informed that, as a result of discussions between the parties, it was no longer necessary that the motion proceed. Rather, the parties agreed that a letter dated 25 November 2020 from Mr Sandeep Quadros of St. Vincent's University Hospital could be admitted *de bene esse* on its own and the Affidavits of both parties shall not form part of the consideration of that document, save to the extent that they may be necessary in the consideration of the costs of the application which, by agreement between the parties, were reserved. I have not had regard to the contents of any of the aforesaid affidavits but, later in this judgment, I will refer to the 25 November 2020 letter in the context of a consideration of the plaintiff's admission to and discharge from St Vincent's hospital in December 2016. In circumstances where the Plaintiff's motion was dealt with on the foregoing basis, legal submissions were made by both sides on 24 February 2021 at the conclusion of which, the Court reserved its judgment.

Analysis of evidence and findings of fact

8. In this judgment, I have examined the evidence in chronological order and I have set out, throughout this judgment, my findings of fact, having regard to the evidence given. Where verbatim quotes are included in this judgment in relation to sworn evidence given by witnesses, I have tried to include a reference to where such quotes can be found in the Stenographer's Transcript, citing the relevant numbers in respect of the day ("D"), page ("P") and line ("L").

September 1980 - 1994

9. The Plaintiff started work with the Defendant as a junior postman on 01 September 1980 in what was then the Department of Posts and Telegraphs. The Plaintiff's role was a junior civil service position at the time. In 1994, he moved from Glenageary sorting office to Blackrock post office as a driver.

1994 – Driving licence issue

10. Uncontroverted evidence was given by the Plaintiff that, when he moved to Blackrock in 1994, he argued that he did not have the correct driving licence. The Plaintiff's evidence is that he made a complaint to his line manager, Mr. Leo Kearns. The Plaintiff's evidence is that:- "*I argued and argued and went into the postmaster in Dun Laoghaire and I said 'I haven't got the licence for the truck'. He says 'Yes, you have'".* (D 3, P 85, L 1).

This position was resolved in 1997 and the Plaintiff credits Mr. Leo Kearns for addressing the issue. As the Plaintiff put it:- "…*1997 that is when I was stopped and Mr. Leo Kearns is the one that stopped us driving, in fairness to him because he followed the complaint".* (D3, P84, L27). It is clear from his evidence that the Plaintiff was very concerned, from 1994 onwards, that he lacked the correct licence for driving a truck and raised it with the postmaster in Dun Laoghaire. It is also clear from the Plaintiff's evidence that Mr. Leo Kearns was instrumental in resolving matters in 1997 in Blackrock, to the satisfaction of the Plaintiff. As the Plaintiff put it:- "*Leo, in fairness to him, was the manager there that stopped this and turned it around and Pat Cunningham I think stopped in '96 and Leo stopped it in Blackrock in '97".* (D3, P26, L9).

May and August 1996

11. The Plaintiff gave evidence that he got married in May 1996 and that there was a social event held in August 1996, described by the Plaintiff as "*A Lord Mayor's do for Mr. Eddie Baker who was a colleague in Blackrock*". (D2, P25, L9). The Plaintiff's uncontroverted evidence is that he missed the last bus home and that he could not get a taxi. He was living in

Bray at the time and his evidence is that a colleague of the Plaintiff's, a Mr. Phillip Barry, invited the Plaintiff to stay in his apartment with Mr. Barry's girlfriend. According to the Plaintiff, rumours started that the Plaintiff had slept with Mr. Barry's girlfriend. The Plaintiff was adamant that nothing could be further from the truth. Of the rumour, the Plaintiff's evidence is that "*It went on for years*". (D2, P25, L19). His evidence to the court was that matters in the workplace, in and around 1996, were "*Terrible*" (D2, P25, L8). At this juncture it is important to say that the aforesaid rumour is a very significant feature of the Plaintiff's case and, that being so, it is necessary to examine the evidence closely insofar as this rumour is concerned.

Christmas 2000

12. When giving his direct evidence the Plaintiff was very clear about the fact that it was not until Christmas 2000 when a work colleague informed the Plaintiff of the rumour. In direct examination the Plaintiff stated:- "*Justin Cullen said it to me and I said 'Who told you that?' And he says 'I can't tell you'. That was Christmas"* (D2, P25, L25). Under cross-examination, the Plaintiff gave the very same account, stating:-"*…at Christmas 2000 I was out and I had a social drink with Mr. Justin Cullen and Justin Cullen told me that he had heard that I was having an affair or I had an affair with Phillip Barry's girlfriend*" (D3, P80, L2). Mr. Justin Cullen did not give evidence. The court only has the Plaintiff's evidence that the foregoing rumour circulated, but what can be said with certainty is that, based on the Plaintiff's evidence, he was not told about the rumour until Christmas 2000. I am satisfied, that as a matter of fact, the Plaintiff first learned about the rumour in December 2000.

Certain inconsistencies in the Plaintiff's evidence

13. There was no evidence from which this court could find that the Plaintiff was being treated unfairly in the workplace, or by the Defendant, in 1996. If it was supposedly due to the aforementioned rumour, the Plaintiff's evidence that matters in his workplace were "*Terrible*"

in 1996 is impossible to reconcile with his evidence that it was not until Christmas 2000 that he was told of the rumour by Mr. Cullen. Furthermore, when asked, in his direct examination, about how he felt when he learned, at Christmas 2000, of the rumour, the Plaintiff said that he felt:- "*Sick, angry, annoyed. I felt very disappointed for my wife that we were only three months married and this accusation was made"* (D2, P26, L9). I am satisfied that neither the Plaintiff nor, through him, his wife, learned about the rumour when they were only three months into their marriage. On the Plaintiff's own evidence, he and his wife had been married for four and a half years by the time the Plaintiff first learned of the rumour. The Plaintiff and his wife got married in May 1996 and, according to his own evidence, the Plaintiff first heard the rumour at Christmas 2000. There was no evidence from which the Court could reach a finding of fact that the said rumour circulated in 1996, 1997, 1998, 1999 or prior to December 2000. I am satisfied that, if it was repeated in the Plaintiff's workplace at any time prior to Christmas 2000, the Plaintiff was unaware of it and consequently it did not cause and could not have caused any upset to the Plaintiff, being unaware of any rumour.

No complaint about the rumour in 1996, 1997, 1998, 1999 or 2000

14. It is clear from the pleaded case and from the Plaintiff's evidence that one of his central complaints concerns the aforesaid rumour that he had slept with a colleague's girlfriend in 1996. I am satisfied that, as a matter of fact, the Plaintiff did not make any complaint of any sort in relation to the said rumour at any stage in 1996, 1997, 1998, 1999 or 2000. This is entirely consistent with the Plaintiff's evidence, and my finding of fact, that he first learned of the said rumour at Christmas 2000. The fact that the Plaintiff was not aware of the rumour in 1996, 1997, 1998, 1999 and throughout the majority of 2000, until December of that year, is also supported by the objective medical evidence, by way of contemporaneous medical records which were before the court. These medical records indicate that the Plaintiff's health was not adversely affected during the aforesaid period as a result of any alleged rumour or due to any

other issue in the workplace. I now turn to an examination of those records in light of the evidence given by the Plaintiff.

The Plaintiff's medical records, 1996 - 2001

15. As I observed earlier in this judgment, during his examination in chief, the Plaintiff was asked about the period of time in and around 1996 and how matters were, at that stage, in the workplace. The Plaintiff responded by saying: "*Terrible*". The court has been furnished with a full copy of the Plaintiff's medical records, from 31 July 1996 to 04 April 2017, inclusive, from the Carlton Clinic, Bray, Co. Wicklow, where the Plaintiff has been a patient for many years under the care of Dr. John McManus, general medical practitioner. The medical records confirm that the Plaintiff attended his GP on 12 occasions between 1996 and 2001. If, at any time during that period, the Plaintiff found the atmosphere at work to be "*Terrible*", and/or to be causing him stress, I am satisfied that, as a matter of fact, this is not something he ever mentioned to his GP, Dr. McManus or to any other doctor from whom he received treatment at the Carlton Clinic.

16. I am also satisfied, that as a matter of fact, the Plaintiff had a very good relationship with Dr. McManus and found Dr. McManus to be extremely supportive. Indeed, during the course of his evidence, the Plaintiff described his GP in the following terms: "*Dr. McManus was a rock behind me*" (D2, P44, L7). In light of the evidence, I am satisfied that, had the Plaintiff been suffering from stress at work which was adversely affecting his health, as a result of the aforesaid rumour or as a consequence of any other workplace issue, at any time during the period 1996 to 2001, the Plaintiff could and would have raised this with Dr. McManus. It is a matter of fact that the Plaintiff did not do so, despite 12 separate visits to the Carlton Clinic for treatment for a variety of issues. It is a fact that, at no stage during the period 1996 to 2001, inclusive, did the Plaintiff suggest to his GP that the rumour, or any other workplace issue, was causing him any upset or stress and/or was adversely affecting his health in any way. I am

satisfied that this is because there was no adverse effect on the Plaintiff's health caused by any rumour during the said period and I am satisfied that, as a matter of fact, the Plaintiff did not require any treatment for stress or any other issue arising from any rumour or any other workplace issue during the period 1996 to 2001, inclusive. The Plaintiff did raise work-related stress with his GP in subsequent years and this is examined later in this judgment. The fact that he did so in subsequent years supports my finding that, had he been suffering from any stress in the period from 1996 to 2001 said to be related to any rumour or treatment at work, the Plaintiff would have informed his GP of same. He did not do so.

12 GP visits from 1996 – 2001 inclusive

17. With regard to the period from 1996 to 2001, inclusive, the Plaintiff's medical records maintained by his GP practice at the Carlton Clinic show the 12 instances when he attended his GP as well as the treatment which he received on each occasion. The following is a summary of same which is taken from the Plaintiff's medical records:

- 31/07/1996 – Back pain.
- 10/02/1997 – Low back pain, injury while playing golf.
- 29/07/1997 – Knee injury.
- 01/09/1997 – Rib injury.
- 06/05/1998 – Cough.
- 25/08/1998 – Cert.
- 31/18/1998 – Pain L/Scapular area.
- 20/09/1999 – Viral URTI chest clear.
- 22/09/1999 – Cough &Weakness &Aches & Pains, back still paining.
- 24/09/1999 – T/S nad.
- 22/09/2000 – Back pain.
- 22/11/2001 – Nocturnal cough.

18. During the course of his evidence in chief, the Plaintiff said that he felt *"sick, angry, annoyed*" (D2, P26, L9) about the rumour concerning the alleged affair. If this was so, I am satisfied that these are not feelings the Plaintiff had, or could have had, during the period August 1996 to November 2000, inclusive. This is because, on his own evidence, the Plaintiff was not aware of the rumour until Christmas 2000. Furthermore, as the foregoing records illustrate, at no stage between 1996 and 2001 did the Plaintiff report to his GP that he felt "*sick*" or *"angry*" or "*annoyed"* arising out of any alleged rumour or any other workplace issue. The Plaintiff's medical records, as summarised above, makes no reference to any alleged rumour and contain no reference to any alleged difficulties at work causing stress or adversely affecting the Plaintiff's health in any way, nor is there any reference in the medical records to any medical treatment in respect of any work-related issue.

Findings of fact regarding the period 19996 – 2000, in light of the Plaintiff's claim

19. The evidence in this case does not support a finding that the Plaintiff was the subject of bullying or harassment prior to August 1996 or at any stage between August 1996 and December 2000, inclusive. I am satisfied that, as a matter of fact, the Plaintiff was not the subject of bullying or harassment during the aforesaid period. The Plaintiff raised no such complaint or issue with anyone in the Defendant during that period. Nor did the Plaintiff raise any such issue with his GP whom he found to be very supportive. There is no evidence of any adverse effect on the Plaintiff's health during that period, whether attributed to any rumour, any alleged bullying or alleged harassment or any alleged wrongful treatment of the Plaintiff by any party. Evidence concerning subsequent periods is examined later in this judgment but, insofar as it is pleaded that since 1996 the Plaintiff has been subject to ridicule, vicious rumours, bullying and harassment, I am satisfied that the facts which emerge from an examination of the evidence does not support such a claim as regards the period from 1996 to 2000, inclusive. I

now proceed to examine the evidence, in chronological order, the next events being those described by the Plaintiff as having taken place in January 2001.

January 2001 and the offer by Mr. Kearns to speak to Mr Justin Cullen

20. The Plaintiff's evidence is that, in January 2001, he informed his line manager, Mr. Leo Kearns, about what Mr. Cullen had told him. The Plaintiff's evidence was as follows: -

> "*And straight after the Christmas in January I went into Leo and I think Mr. Pierce was on holidays and Leo was in charge. And I said to him what Justin Cullen had said. And he said 'I will get Justin Cullen in here to – I'll get Justin Cullen in to say not to be saying it any more'. And I said 'it is not Justin Cullen that is saying it – I appreciate him saying it to me but it is someone else that is spreading the rumour'"* (D3, P80, L6).

Having carefully considered the evidence, I am satisfied on the balance of probabilities that the Plaintiff did, as a matter of fact, tell his line manager, Mr. Leo Kearns, in January 2001, what Mr. Cullen had told him at Christmas 2000.

The Plaintiff's evidence that he *"mentioned"* the matter

21. I am satisfied that the Plaintiff did not raise the issue with Mr. Kearns by way of a formal complaint and the Plaintiff did not call for any investigation to be commenced. I am satisfied that the Plaintiff did no more than mention the matter to Mr Kearns in a conversation. Elsewhere in his evidence, the Plaintiff described the manner in which he raised the issue with Mr. Kearns in the following terms:-

> "*Well, I mentioned something to him in 2001 . . .* (D3, P79, L14)
>
> *...About being accused of having an affair."* (D3, P79, L17).

22. It is clear from the Plaintiff's evidence, which I have quoted above, that the immediate response of Mr. Kearns was to offer to call Mr. Cullen in to meet with Mr. Kearns. It will be recalled that, according to the Plaintiff's account of the conversation between the Plaintiff and Mr. Cullen which took place at Christmas 2000, Mr. Cullen declined to tell the Plaintiff the

name of the person(s) from whom Mr. Cullen had heard the rumour. Having regard to the foregoing, I am satisfied, that as a matter of fact, the Plaintiff did not tell Mr. Kearns, in January 2001, the identity of the person or persons from whom Mr. Cullen had heard the aforesaid rumour. Based on the Plaintiff's evidence, he could not have told Mr. Kearns, because Mr. Cullen had refused to tell him. Nor did the Plaintiff claim in his evidence that he had identified to Mr. Kearns in January 2001 the person or persons responsible for the rumour. The evidence is that the Plaintiff didn't know.

23. I am also satisfied that, having dissuaded Mr. Kearns from calling in Mr. Cullen, the Plaintiff did not go on to make any request of Mr. Kearns in relation to any further action which the Plaintiff wanted the Defendant to take. I am satisfied that there was nothing which prevented the Plaintiff from calling upon Mr. Kearns to take further action, had the Plaintiff wished Mr Kearns to do anything further. As a matter of fact, the Plaintiff did not ask for any assistance from Mr. Kearns or ask Mr. Kearns to take any further step in respect of the aforesaid rumour.

The Plaintiff's evidence that the rumour was never said to him directly

24. I am also satisfied that, as a matter of fact, the rumour in respect of the alleged affair was never said to the Plaintiff directly. This is something the Plaintiff was very clear about in his evidence. During cross-examination, when the Plaintiff was asked why he had not made a formal report in relation to his concerns, despite the fact that there were a range of parties whom the Plaintiff could have contacted (including Mr. Kearns, Occupational Health and Support Services within the Defendant and the Plaintiff's Trade Union), the Plaintiff's evidence was to say:- "*First of all, I would say, how could I go to somebody and report them, report them as I was supposed to be having an affair and yet they never said it to me. It was never said to me…"* (D3, P88, L9).

Why the Plaintiff told Mr. Kearns not to call in Mr. Justin Cullen

25. The Plaintiff was very clear in his evidence as to the reason why he told Mr. Kearns not to call in Mr Cullen when Mr. Kearns offered to speak to Mr Cullen. According to the Plaintiff: "*…I felt that he was bringing in Justin Cullen to punish Justin but it wasn't him that was the problem"* (D3, P80, L21). There is no evidence from which the court could conclude that Mr. Kearns intended to *"punish*" Justin Cullen or had any animus towards him. There was no evidence put before the court which would provide any basis for what the Plaintiff says were the concerns which prompted him to dissuade Mr Kearns from speaking to Mr Cullen. I am satisfied that, as a matter of fact, Mr. Kearns was willing to assist the Plaintiff and there is no evidence that Mr. Kearns was anything other than helpful to the Plaintiff and willing to speak to Mr Cullen out of a genuine desire to assist, after the Plaintiff spoke to Mr. Kearns in January 2001 and mentioned the rumour which he had heard about from Mr Cullen at Christmas 2000.

The relevant facts as of January 2001

26. On the evidence, what the Plaintiff brought to Mr. Kearns in January 2001 was a report that Mr. Cullen had heard a rumour concerning the Plaintiff which Mr. Cullen had told the Plaintiff about in December 2000, but which the Plaintiff had not heard first - hand. On the Plaintiff's evidence, I am satisfied that, as a matter of fact, the Plaintiff did not know who had started or who repeated the rumour. It will be recalled that the Plaintiff gave clear evidence that he asked Mr. Cullen to tell him "*who told you that*", but Mr. Cullen's response to the Plaintiff was "*I can't tell you*" (D2, P25, L26). The foregoing exchange, on the Plaintiff's evidence, took place at Christmas 2000. Having regard to the Plaintiff's evidence, the following were the relevant facts, as of January 2001, when the Plaintiff spoke to Mr. Leo Kearns: -

1. Mr. Justin Cullen had told the Plaintiff, at Christmas 2000, about a rumour that the Plaintiff had slept with a colleague's girlfriend in 1996, which rumour Mr Cullen had heard;

2. The Plaintiff had asked Mr. Cullen to tell him from whom he had heard the rumour, but Mr. Cullen declined to say;

3. The Plaintiff was unaware of the rumour until Christmas 2000;

4. The Plaintiff did not know who started the rumour;

5. The Plaintiff did not know when the rumour started;

6. The Plaintiff did not know who repeated the rumour;

7. The Plaintiff did not know how many occasion(s) it was repeated;

27. On the Plaintiff's evidence, the reaction of Mr. Kearns was to offer to speak to Mr. Justin Cullen. Having regard to the factual situation which pertained in January 2001, I am satisfied that this was entirely reasonable. Based on the Plaintiff's evidence, the only individual identified as having heard the rumour was Mr. Justin Cullen and, according to the Plaintiff, Mr. Cullen had declined to tell the Plaintiff from whom he had heard the rumour.

The consequences of the Plaintiff persuading Mr Kearns not to speak to Mr Cullen

28. The Plaintiff's evidence is that he persuaded Mr. Kearns not to speak to Mr. Cullen. By taking that decision the Plaintiff ruled out the possibility that, by calling Mr. Cullen in to speak to him, Mr. Kearns might be able to get some more specific information concerning the rumour, such as the identity of the person or persons from whom Mr. Cullen heard it, when it started or how widely it circulated etc. Even though Mr. Cullen had declined to tell the Plaintiff this information, the Plaintiff knew well that Mr. Kearns was a line manager and it is not in dispute that Mr. Kearns was Mr. Cullen's superior. That being so, there was at least the possibility that, if the Plaintiff had permitted Mr. Kearns to call in Mr. Cullen and to speak to him about the rumour and the importance of not repeating it, some relevant information might have emerged. There is no evidence from which this court could conclude that, had further relevant information emerged as a result of the meeting which Mr. Kearns offered to have with Mr Cullen, any appropriate follow-up action would not have been taken on foot of same by Mr.

Kearns. What can be said with certainty is that the possibility of Mr. Kearns finding out any additional information was closed off by the Plaintiff's decision to persuade Mr. Kearns not to call in Mr Cullen to speak to him.

Mr. Leo Kearns

29. The court heard evidence from Mr. Leo Kearns, who started work with the Defendant in 1975 as a postman/driver. By in or about 1992, Mr. Kearns was on an "acting list" meaning that he provided cover for a manager when the manager was on leave or out sick. In 1996 Mr. Kearns was appointed Inspector of Postmen. In or about 2000 Inspector 2 and Inspector 1 grades were integrated and, in or about 2004/2005, all Inspectors had to do interviews for the role of Delivery Service Manager ('DSM'). Mr. Kearns was successful and took up a DSM position in Blackrock Post Office which he held until his retirement on 25 November 2016. Apart from relatively short periods working in the Central Sorting Office in Sherriff Street and as Inspector in Glenageary delivery office between 1998 and 2000 as well as a short period working in the GPO in 2004, Mr. Kearns spent the majority of his career in Blackrock. I accept the uncontroverted evidence given by Mr. Kearns that, up to 2000, a Mr. Leslie Pierce was the senior Inspector in the Blackrock office and Mr. Kearns was his number two, until Mr. Pierce retired in 2001 when Mr. Kearns took over as DSM for Blackrock in 2001. I also accept his uncontroverted evidence that he was not the only manager in Blackrock. Mr. Kearns had two managers who reported to him. Their title was initially that of Inspector and when the DSM role was introduced, their title changed to Working Leader. One worked with Mr. Kearns in daytime and the other worked at night, looking after the night crew. During the course of the hearing, Mr. Kearns was referred to, variously, as both a DSM and 'Line Manager'. There were also other managers who were more senior to Mr. Kearns, including Mr. Pat Cunningham, Mails Operation Manager, to whom Mr. Kearns reported. Apart from the foregoing, Messrs Damien Hunter and Kevin Cullen were HR managers, whom staff in Blackrock could contact.

In addition, a Mr. John Dandy was a senior HR Manager and, even more senior to him, was a Mr. Mark Graham, Head of Employee Relations.

30. Mr. Kearns gave uncontested evidence that he has known the Plaintiff for most of his life, since the Plaintiff was approximately ten years old. Mr. Kearns was a very good friend of the Plaintiff's brother, Anthony, going back to the late 1960's and Anthony also joined the Post Office. Mr. Kearns also knew the Plaintiff's older brother, Arthur, who worked in the Post Office. I accept the evidence of Mr. Kearns, which is entirely consistent with the Plaintiff's evidence, that Mr. Kearns and the Plaintiff had a good personal and professional relationship. In his evidence, Mr. Kearns was very complimentary in relation to the Plaintiff as a worker and colleague, describing the Plaintiff as *"a very good worker, very diligent, very clean. His bench was always perfect. He got on great with, he never got a complaint in from wherever he delivered. I had no issues with Mr. Ward whatsoever."* (D6, P52, L 28). I also accept the uncontroverted evidence of Mr. Kearns that he and the Plaintiff played golf together, Mr. Kearns having taken up golf in or around 1994/1995. Both the Plaintiff and Mr. Kearns were in the An Post Golf Society and interacted socially outside of work, including taking turns driving to and from golf in Arklow.

Very good friends

31. I accept the uncontroverted evidence given by Mr. Kearns that he and the Plaintiff *"were very good friends"* (D6, P136, L29), and that there was no difficulty with the Plaintiff and Mr. Kearns having a conversation, be that about work- related issues or about issues outside of work. This is entirely consistent with the Plaintiff's evidence that Mr. Kearns was *"...a close friend of the family for years"* (D2, P69, L25), and that *"...Mr. Leo Kearns is a close friend of mine"* (D2, P71, L4), and a *"... close friend to my family"* (D2, P72, L11). During his evidence the Plaintiff also confirmed that he had a good working relationship with Mr. Kearns. The Plaintiff also acknowledged that the nature of the workplace was not one where supervisors

or managers stood over employees. Rather, the Plaintiff acknowledged that managers allowed employees to get on with their work and that the relationship between the Plaintiff and Mr. Kearns was one of colleagues, notwithstanding the fact that Mr. Kearns was the Plaintiff's manager. The Plaintiff was also absolutely clear in his confirmation that Mr. Kearns did not have any bent or persuasion against the Plaintiff in the workplace.

32. Turning to the evidence of Mr. Kearns concerning the rumour that the Plaintiff allegedly had an affair with a colleague's girlfriend, Mr. Kearns was clear that he had no recollection of either hearing the rumour or of the Plaintiff raising it with him. Mr. Kearns was in court and heard the Plaintiff's account of the conversation alleged to have taken place in January 2001. Although having no recollection of the conversation, Mr. Kearns gave evidence that, in such a situation, he would have *"...said to John if you have a name tell me the name and I will call him in"* (D6, P54, L14). That evidence, which I accept, is entirely consistent with the Plaintiff's account. Weighing up all the evidence, I am satisfied, on the balance of probabilities, that, having first learned about the rumour in December, 2000 the Plaintiff told Mr. Kearns, in January 2001, that the Plaintiff had been informed of the rumour by Mr. Justin Cullen. I am satisfied that Mr. Kearns offered to call in Justin Cullen to speak with him. I am satisfied that this was to try and assist the Plaintiff, including by trying to ascertain further details. I am satisfied that the Plaintiff persuaded Mr. Kearns not to take that action and that the Plaintiff neither asked Mr. Kearns to take any other action, nor did the Plaintiff take any further action himself.

"Dignity at Work - Anti – Bullying & Harassment Policy for An Post"

33. It is not in dispute that the Defendant has a policy entitled "*Dignity at work – anti – bullying & harassment policy for An Post*". During the hearing, the court heard evidence from Mr. Kevin Cullen. Mr. Cullen joined An Post in August 1980, and, having worked on a post office counter for five years, Mr. Cullen subsequently worked in payroll, HR, finance, line

manager and superintendent roles, prior to moving to HR management in 2001. Since January 2014, Mr. Cullen has been in his current role of HR manager for mails, operations and retail in Dublin. Mails operations in Dublin consists of the collection and delivery of post, involving the Dublin delivery service units ("DSUs") formerly known as sorting offices. In total, that involves 1,600 staff, 27 DSU's and seven post offices. Mr. Cullen gave evidence that all policies within An Post are developed through a joint conciliation council with full union participation in the finalisation and implementation of any policy and I accept Mr Cullen's uncontroverted evidence in relation to the foregoing.

34. The court also heard evidence from Mr. Damien Hunter who is currently human resources manager for Dublin mail centre, north east collection, delivery and retail, covering Dublin and seven counties outside Dublin. Mr. Hunter gave uncontroverted evidence that the Defendant is a highly unionised organisation. Mr. Hunter's evidence was that the Communication Workers' Union (CWU) represents in excess of 8,000 of the Defendant's employees, being the vast majority of the Defendant's staff. Mr. Hunter's uncontroverted evidence, which I accept, was also that all the Defendant's policies are negotiated and ultimately agreed as part of the collective agreement between the Defendant and the trade unions which represent the Defendant's staff. Mr. Hunter's uncontroverted evidence is that the "Dignity at work" policy was negotiated through the joint conciliation council ("JCC") where extensive discussions took place between unions representing employees and representatives of the Defendant as a result of which the final policy was agreed and implemented. The Plaintiff is a member of a Union and it is not in dispute that his Union was, as a matter of fact, involved in the finalisation and implementation of the policies affecting employees, including the Dignity at Work policy.

35. I accept Mr. Hunter's evidence that the Dignity at Work policy was agreed in 2000 and that, in 2000, every employee of the Defendant was sent a copy of the Dignity at Work policy

to the payroll address for each employee i.e. to the address nominated by each employee where correspondence and payslips would normally be sent to each employee. Mr. Hunter also gave evidence that updates to the Defendant's policies are discussed and agreed through the JCC with full Union involvement in the process. The copy provided to the court was the 2008 version of the Dignity at Work policy and Mr. Hunter's evidence was that updates in respect of the policy are sent to employees, in booklet form, to the offices where employees are located. Mr. Hunter explained that when an update occurs, the Defendant does not necessarily send a copy of every agreed update to the payroll or payslip address for each employee, but a copy for each employee would go to the office where each employee works.

Findings of fact concerning the availability to the Plaintiff of the Dignity at Work policy

36. I accept the foregoing evidence given by Mr. Cullen and by Mr. Hunter and I am satisfied that, as a matter of fact, the Plaintiff received a copy of the Dignity at Work policy in 2000, by post to his address, and that the Plaintiff also received an update of that policy in 2008. In his evidence the Plaintiff confirmed that a copy of the dignity at work policy *"was handed out in the office to everybody"* (D3, P19, L15) and the Plaintiff's evidence was "…*2008 that was the last time I got one"* (D3, P19, L17). I am satisfied that this is a reference to the Plaintiff receiving the updated Dignity at Work policy. On the evidence I am satisfied that as a matter of fact the Plaintiff already had a copy of the previous version of the policy from 2000. The Plaintiff is a member of a trade union and, in light of the evidence, I am satisfied that as a matter of fact the Plaintiff's Union played a very active part in negotiating the terms of the dignity at work policy.

The Plaintiff's access to the Dignity at Work Policy

37. In light of the evidence I am satisfied that at all material times, from 2000 onwards, the Plaintiff has had a copy of and/or ready access to a copy of the then current Dignity at Work policy. It is not seriously suggested by the Plaintiff he was unaware of the existence of the said

policy or that he had any difficulty obtaining a copy or that the Plaintiff was unaware of the terms of the policy and their meaning and, having carefully considered all the evidence, I am satisfied that as a matter of fact he was aware of the policy and had a copy of the policy or ready access to a copy. I am also satisfied, on the evidence, that at all material times, the Plaintiff has had access to such assistance from his trade union as the Plaintiff might require, including assistance with getting a copy of the dignity at work policy, were that needed, as well as the ability to discuss its terms with and get any necessary advice from a representative of the Union which negotiated the final version of the dignity at work policy, if the Plaintiff was unclear as to the terms of the policy or wanted any advice concerning same.

An "*excellent dignity at work policy*"

38. During the trial, the court heard evidence from Mr. Steven Tweed. One of the documents provided to the court in a "Booklet of expert reports" was a report by Mr. Tweed entitled "*Report of the Independent HR and employee relations consultant for Reddy Charlton, solicitors*". The latter are the solicitors representing the Plaintiff. The first paragraph of Mr. Tweed's report begins as follows: "*I am an independent HR, employee relations and industrial relations consultant with over 25 years' experience in the public, private and not for profit sectors across Ireland and the UK*". Later in this judgment I will examine the circumstances in which "expert" evidence is admissible, but for present purposes it is appropriate to observe that, during his oral testimony, Mr. Tweed offered the following view in relation to an issue on which there was no dispute between the parties, when he described the Defendant's Dignity at Work policy in the following terms:- "*It is actually a very good dignity at work policy. There has obviously been a lot of thought put into it and it is well thought out. It deals with a number of issues which other Dignity at work policies tend to omit. It was an excellent dignity at work policy*" (D5, P29, L2).

Contents of the Dignity at work policy

39. The Defendant's Dignity at Work policy is a 27 – page document which sets out information under the following headings: -

"Dignity at work charter";

"Introduction";

"Statement of policy";

"Obtaining information on bullying or harassment";

"What is bullying and harassment?";

"Bullying – definition";

"Distinguishing bullying from other workplace behaviour";

"Distinguishing bullying from harassment";

"Harassment – definition"

"Sexual harassment – definition";

"Rights and responsibilities";

"Victimisation";

"Communications";

"Support services";

"Complaints procedure";

"Support services contact numbers"

And

"Appendix 1. /indicative time frames".

Page 4 of the policy under the heading "*Introduction*" makes it clear that:-

"*The revision of company's Dignity at Work Policy has been carried out on a partnership basis and has been agreed with the Trade Union representatives of employees, thus reflecting the very best practice in employments generally. The*

procedures for dealing with complaints are considered to be the most practical and suitable for An Post".

On p. 7 of the policy under the heading "*Obtaining information on bullying or harassment*", the policy states inter alia the following:-

"*An employee who considers that they have been the subject of bullying or harassment can seek information in the strictest confidence from any of the following contact persons who will be available to provide information and support to the employee:*

- *Line Manager/Supervisor;*
- *Trade Union Representative;*
- *HR Manager;*
- *The Occupation Support Service;*
- *Any other Manager/Supervisor . . .. . "*

Page 9 of the policy under the heading "*Bullying – definition"* states, inter alia, the following:

"*For the purpose of this policy the definition of bullying is as follows:*

Workplace Bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work, but, as a one – off incident, it is not considered to be bullying".

The policy goes on to give examples of bullying, and distinguishes bullying from other workplace behaviour, following which it distinguishes bullying from harassment and sets out a definition of harassment as outlined in the Employment Equality Act, 2004, namely: -

"*Harassment is any form of unwanted contact related to any of the nine discriminatory grounds, and being conduct which has the purpose or effect of violating a person's*

dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person".

Under the heading "*Rights and responsibilities*" the policy provides inter alia the following: -

"*Employees have rights and duties as regards safety, health and welfare at work under the 2005 Act and under the Employment Equality Acts.*

They have rights to be treated with dignity and respect at work and not to have their safety, health or welfare put at risk through bullying by the employer, by other employees, or other persons. They have a right to complain to the employer if bullied and not to be victimised for so doing. They have a right under safety and laws to be represented in raising this with the employer . . ."

On p. 16 of the policy under the heading "*Trade Unions*", the following is stated in the policy:-

"*The policy recognises the contribution to be made by the Trade Union/s in An Post in the prevention of bullying in the workplace through their participation in the development and implementation of policies and procedures, through their information and training services, and through the collective bargaining process.*

The Trade Union/s in An Post also play a role in providing information, advice and representation to employees who have been bullied at work, and to employees against whom allegations of bullying at work have been made".

Also on p. 16 of the policy under the heading "*Communication"* reference is made to the Defendant's commitment ". . . *to bring the policy to the attention of management, employees, clients and other business contacts*". Reference is then made, inter alia, to the following: -

"*a copy of the document Dignity at Work: Anti – Bullying and Harassment Policy for An Post to be circulated to all staff members".*

The foregoing reference in the policy is consistent with the evidence in the present cases and which I have referred to above. Under the heading "*Support Services*", p. 17 of the policy states, inter alia, the following:-

> "*Given the often personal nature of bullying or harassment, the recipient may need to discuss his/her concerns in total confidence with someone else, in a safe environment. An Occupational Support Officer can be contacted directly at any stage for counselling, support and guidance throughout the process. A list of useful telephone numbers is included at the back of this document.*
>
> *The Occupational Support Service is available to all parties, at all stages. Where both parties to a complaint make contact with the Occupational Support Service, a different Occupational Support Officer will be allocated to each party.*
>
> *If you believe that you are being or have been bullied or harassed, you can seek information or assistance in strictest confidence from any of the following* ***Contact Persons****:*
>
> - *Line Manager/Supervisor;*
> - *Trade Union Representative;*
> - *HR Manager;*
> - *The Occupation Support Service;*
> - *Any other Manager/Supervisor . . .."*

Under the heading "*Complaints Procedure*" the policy provides inter alia as follows: -

"*An Post advocates a problem – solving approach to ensure that the behaviour complained of, if established in fact, is eliminated and that working relationships are restored. This process aims to: -*

- *Assess the allegation and address them;*
- *Use agreed procedures;*

- *Be consistent, systematic, transparent and unbiased;*
- *Ideally have an intervention addressing the issue in place within three weeks or an agreed indicative time frame (Appendix 1);*
- *Promote the restoration of harmony over the medium to long term.*

A complaint must be made, ***within six months*** *of the latest incident(s) of alleged bullying, harassment or sexual harassment behaviour……"*

Pages 17 – 26 of the Policy sets out the "*Complaints Procedure*" and information is given under headings including "*Informal Resolution*"; "*Informal Process*"; "*Mediation Process*"; "*Invoking the mediation process*"; "*Formal Process*"; "*Investigation*"; "*Appeals*", "Records"; "*Monitoring*"; and "*General*".

Page 19 of the Policy states inter alia that:-

"*Any employee who believes he or she is being bullied should, where possible, indicate directly to the person complained of that the behaviour in question is unacceptable. In circumstances where the complainant finds it difficult to approach the person complained of directly, he or she should seek help and advice, from one of the "****contact persons****" identified previously in this policy".*

The policy names four individuals and provides their contact details on p. 26 of the policy as follows:-

"***Support Services Contact Numbers: -***

Peter Mohan, Dublin, Mullingar, Dundalk & Athlone 01 – 705 8568

Josephine Smyth, Dublin, Portlaoise & Naas 01 – 705 8576

Pat O'Sullivan, Limerick & Waterford are offices. 021 – 485 1262.

Noel Keaveney, Western Regional Office, 071 – 9151 989".

Page 20 of the policy states inter alia that:-

"If the behaviour complained of does not concern bullying as defined, the matter will be dealt with through the Company's Grievance Procedures. If there are no concrete examples given, it must be deemed that there is no complaint to be answered by the person complained of as they have no recourse to repudiating an accusation that doesn't give any specifics".

Page 21 of the policy states inter alia the following:-"*If the issue is not or cannot be resolved through the informal process, or through mediation, or if the bullying/harassment persists, the formal process should be invoked".*

The foregoing statement on p. 21 of the policy is immediately followed by information under the heading "***Formal Process"*** as follows: -

"The process includes a formal complaint, and a formal investigation. The purpose of an investigation is to determine the facts and the credibility or otherwise of a complaint of bullying. Where an investigation is to be carried out, the procedures below will be followed.

The complainant should make a formal complaint, which must be in written form and signed and dated. The complaint should be confined to precise details of alleged incidents of bullying, including their dates, and names of witnesses where possible.

The complainant will be advised of the aims and objectives of the formal process, the procedures and timeframe involved, and the possible outcomes. He/she will be assured of support as required throughout the process. He/she will again be given a copy of this Policy.

The person complained against will be notified in writing that an allegation of bullying has been made against him/her. He or she will be assured of the organisation's presumption or his or her innocence of any wrongdoing at this juncture. He/she will be advised of the aims and objections of the formal process and procedures and time

frames involved and the possible outcomes. He/she will be assured of support as required throughout the process.

A meeting will be organised at which he/she is given a copy of the complaint in full and any relevant documentation including this policy".

Page 24 of the policy contains inter alia, the following statements: -

"*Where a complaint is upheld, the matter will be dealt with under the company's Disciplinary Procedures.*

Where a complaint is not upheld, it will be made clear to both parties that the complaint is not upheld, and no wrongdoing has been found . . .

If the internal procedures do not lead to the resolution of the complaint, then the case may be referred to an independent third party as provided for in agreed Grievance and Disciplinary Procedures. However, this should only happen once the internal procedures have been exhausted".

Page 25 of the policy provides inter alia that:- "*This policy will be reviewed on a regular basis in line with changes in the law, relevant case law and other developments. This policy is a collective agreement registered with the JCC and any amendments will be made through that forum".*

40. The foregoing is entirely consistent with the evidence given by Mr. Cullen and Mr. Hunter to which I have referred earlier and which I accept. Page 27 of the policy comprises an appendix which sets out information under the heading "***Indicative Time Frames***" beginning with the statement:- "*Prompt action must be taken by the relevant HR manager to ensure that investigations are initiated within two weeks of receiving a formal complaint . . ."*

The response by Mr Kearns in January 2001 in light of the Dignity at Work Policy

41. Having regard to the contents of the Defendant's "Dignity at Work Policy", I am satisfied that, as a matter of fact, the response suggested by Mr. Kearns, being as the Plaintiff

put it: "*he said he would get Justin Cullen in*" (D2, P26, L19), was consistent with the terms of the said policy. It is clear from the Plaintiff's evidence that he did not raise the issue in January 2001 in a formal manner. The Plaintiff did not, for example, request a meeting or put anything in writing to Mr. Kearns. Rather, the Plaintiff's evidence is that he "*mentioned*" the matter to Mr. Kearns (D3, P79, L14). The response of Mr Kearns to this amounted, as a matter of fact, to the Plaintiff's line manager offering to assist, notwithstanding the lack of specifics, by offering to take the first step in an informal process, i.e. to get Mr Justin Cullen in and to talk to him. Earlier in this judgment I identified what little information the Plaintiff had, according to his own testimony, when the conversation took place with Mr. Kearns in 2001. Nevertheless, and despite the lack of information, I am satisfied that the immediate response by Mr Kearns was a reasonable one and was consistent with the terms of the Dignity at Work policy. I am also satisfied that, by preventing Mr. Kearns from calling Mr. Cullen in to speak with him, it was impossible for Mr. Kearns to take any further action to investigate the matter. Based on the Plaintiff's evidence, I am satisfied that, as a matter of fact, the Plaintiff did not ask Mr. Kearns to do anything further to assist him, after telling Mr. Kearns not to call Mr. Justin Cullen in. I am satisfied that, as a matter of fact, the Plaintiff did not call for any investigation, formal or informal to be commenced.

42. I am also satisfied, on the evidence, that, if the Plaintiff was dissatisfied, in any way, with the response of Mr. Kearns, the Plaintiff did not contact any other line manager or other manager within the Defendant and neither voiced any dissatisfaction, nor sought any assistance from them. Furthermore, the Plaintiff did not contact his Trade Union to seek any assistance or to voice any dissatisfaction. In addition, the Plaintiff did not contact any HR manager to seek assistance. Moreover, the Plaintiff did not contact the Occupational Support Service. The Plaintiff did not contact any of the numerous individuals whose names and phone numbers are given on p. 26 of the Dignity at Work Policy under the heading "*Support services contact*

numbers", to seek any further assistance, despite having the option to. Based on the Plaintiff's evidence, I find as a fact that, if the Plaintiff was in any way dissatisfied with the response offered by Mr. Kearns in January 2001, the Plaintiff did not make this known, either verbally or in writing, to any other person within the Defendant or in the Plaintiff's Trade Union.

43. Based on the Plaintiff's evidence I am also satisfied that, as a matter of fact, if the Plaintiff had a complaint, as of January 2001, which he wished the Defendant to investigate and if the Plaintiff was unhappy with the response provided by Mr. Kearns, the Plaintiff could have invoked the "*Formal Process"* which is detailed from para. 21 onwards of the Dignity at Work policy, from which I have quoted above, however the Plaintiff did not do so.

Plaintiff's Medical Records – 2001

44. The only record of the Plaintiff attending his doctor for any treatment at any stage in 2001 is an entry for 06 November 2001. In the manner examined above, the Plaintiff's evidence is that it was in January 2001 that he told Mr. Leo Kearns about Justin Cullen telling him about the rumour concerning the affair alleged to have occurred in 1996. In light of the medical records, I am satisfied that there is no evidence that the said rumour adversely affected the Plaintiff's health in January 2001. Furthermore, if the Plaintiff was unhappy with the response provided by Mr. Kearns in January 2001, there is no evidence that it adversely affected the Plaintiff's health such as to require any medical treatment whatsoever.

Findings of fact in relation to 2001

45. It is pleaded that the Plaintiff has felt unsupported and undermined by his line manager and the Plaintiff claims that Mr Kearns refused to deal with the Plaintiff's issues. Insofar as the period 1996 to 2001, inclusive, is concerned, the facts emerging from a careful examination of the evidence do not support those claims. Furthermore, having regard to the Plaintiff's medical records for 2001, there is no evidence of any adverse effect on the Plaintiff's health, or of any medical treatment being necessary, arising from any workplace issue or alleged

treatment at work, including both the rumour and the response by Mr Kearns, in January 2001, after the Plaintiff mentioned the rumour to Mr Kearns and the latter offered to call in and to speak with Mr Justin Cullen. If the Plaintiff was subject to bullying and harassment in 2001 in the manner pleaded, no evidence was put before this court which would allow me to reach such a finding. Nor did the Plaintiff make any such claim, at the time, to anyone within the Defendant or to anyone within the Plaintiff's Trade Union. In the event that he had any complaint of bullying or harassment or any other form of allegedly unfair treatment at work, the Plaintiff could have invoked the "Formal Process" which is detailed from page 21 onwards in the Dignity at Work policy but, as a matter of fact, the Plaintiff did not do so. Furthermore, there is no evidence of any adverse effect on the Plaintiff's health and no evidence of medical treatment, at any stage in 2001, being necessary due to any alleged bullying or harassment. Nor did the Plaintiff even mention alleged bullying or harassment at any point in 2001 to his GP, whom the Plaintiff always found to be very supportive.

46. I have already examined the evidence and have made certain findings of fact in relation to the period from 1996 to 2000 inclusive. Insofar as the year 2001 is concerned, I am satisfied that an examination of the evidence does not support a finding by this court that the Plaintiff was subject to ridicule, vicious rumours, bullying and harassment in 2001, despite the pleaded case to that effect. Later in this judgment I will continue to examine the evidence in chronological order but before moving to an analysis of the evidence in relation to 2002 and subsequent years, I now turn to an examination of certain contents of the experts' medical reports insofar as they contain statements made by the Plaintiff concerning the events of 2000 and 2001.

Medical Reports provided to the Court

47. The court was provided with several reports by medical experts. One report was provided by the Plaintiff's GP, Dr. John McManus, being a medical report dated 18 June 2019.

At the request of the Plaintiff's solicitors, the Plaintiff was referred to Dr. Ann Leader, consultant psychiatrist, Bon Secours Consultant's Clinic, Glasnevin and Dr. Leader provided seven medical reports dated between 07 September 2017 and 09 July 2019, inclusive. At the request of the Defendant's solicitor, the Plaintiff was examined on 22 January 2019 by Prof. Damian Mohan, consultant forensic psychiatrist and clinical associate professor in forensic psychiatry, TCD. Prof. Mohan provided a very detailed report running to 36 pages.

48. It is clear that, when meeting with these medical professionals, the Plaintiff provided each of them, in 2019, with an account of events which the Plaintiff subsequently describe in his sworn evidence at the trial, in 2020. I am satisfied that, insofar as the medical reports prepared by Dr. McManus, Dr. Leader, and Prof. Mohan contain accounts of events between 1996 and 2016, these accounts record accurately what the Plaintiff told the doctor in question.

Inconsistencies between the Plaintiff's evidence to the court and the account given by the Plaintiff to Professor Mohan

49. On p. 7 of Prof. Mohan's report under the heading "Workplace difficulties", Prof. Mohan sets out an account of events between 1996 and 2001. I am satisfied, that as a matter of fact, Prof. Mohan has accurately recorded what the Plaintiff told him, when Prof. Mohan interviewed the Plaintiff on 22 January 2019. At para. 9.4 on p. 7 of his report, Prof. Mohan records the following:- "*Mr. Ward heard about the rumour for the first time some four years later in 2000 from Justin Cullen . . .*"

The foregoing information given by the Plaintiff to Prof. Mohan in January 2019 is entirely consistent with the Plaintiff's sworn evidence given at the trial in February 2020 and with my finding of fact that the Plaintiff was unaware of any rumour concerning the alleged affair in 1996 until he heard it for the first time in December 2000. Prof. Mohan's record of what the Plaintiff told him goes on to state that Mr. Justin Cullen: -

"*. . . said to Mr. Ward, 'How could you do that to Karen and Emma and Glen (born in 2000)?' Mr. Ward was fuming. He spoke to his inspector, Mr. Leo Kearns. It is claimed by Mr. Ward that Mr. Kearns gave him an undertaking that he would deal with the matter. Mr. Ward informed his wife about the rumour in 2000. About this time, Mr. Ward's father was dying of cancer and Mr. Ward was caring for him. As his attention was taken up by his father's illness and subsequent death in 2001, he did not follow it up and decided 'to let it go'. He added "The children were very young and we pushed the rumour to the back*"".

50. The foregoing account, which was provided by the Plaintiff to Prof. Mohan, is utterly at variance, in a number of key respects, with the sworn evidence given by the Plaintiff at trial. Firstly, in his sworn testimony, the Plaintiff made no reference to Mr. Justin Cullen allegedly saying to him "*How could you do that to Karen and Emma and Glen?".* Such a statement would be significant and would suggest that Mr. Justin Cullen believed the rumour. In his evidence, the Plaintiff made no reference whatsoever to the foregoing. Secondly, at no stage during his evidence to the court did the Plaintiff claim that Mr. Kearns gave him an "*undertaking*" that he would deal with the matter. I am satisfied that what the Plaintiff told Prof. Mohan in January 2019 is materially different to what the Plaintiff told the court in February 2020 in this regard. There is no evidence whatsoever before the court that Mr. Kearns gave the Plaintiff an undertaking that he would deal with the matter. Rather, the Plaintiff's sworn testimony is that Mr. Kearns offered to call in Mr. Justin Cullen to speak with him, but the Plaintiff dissuaded him from doing so. Thirdly, in his sworn evidence, the Plaintiff made no reference to the unfortunate illness and subsequent passing of his father in 2001 and, more significantly, the Plaintiff did not say in his evidence that, with regard to the rumour, he decided "*to let it go*", or that he and his wife "*pushed the rumour to the back*" given the age of his children. Fourthly, p. 7 of Prof. Mohan's report records what the Plaintiff told Prof. Mohan in

January 2019 about the identity of an individual who, according to the Plaintiff, spread the rumour concerning the alleged affair, in that, in relation to what the Plaintiff told Prof. Mohan, the professor records the following at para. 9.3 of his report: -

> *"He said a rumour was then spread by Eddie Baker (colleague) that Mr. Ward had slept with Philip Barry's girlfriend. Mr. Ward indicated to me that there was no obvious motivating factor as to why Eddie Baker would want to spread such a rumour, except he added 'Eddie Baker is a loudmouth"*".

51. The foregoing account, as given by the Plaintiff to Prof. Mohan in 2019, is materially different to the Plaintiff's evidence as given to the court in 2020. The Plaintiff was very clear in his sworn testimony that he asked Mr. Justin Cullen to identify the party from whom Mr. Cullen had heard the rumour, and, according to the Plaintiff, Mr. Cullen refused. The Plaintiff's evidence to this court, regarding the position which pertained in January 2001, is that the Plaintiff did not know the party from whom Mr Justin Cullen heard the rumour, nor that he was aware that a Mr. Eddie Baker had spread the rumour and the Plaintiff did not give any evidence that, in January 2001, the Plaintiff gave Mr. Eddie Baker's name to Mr. Kearns. Nor did Mr. Baker appear as a witness at the trial. In summary, the account which the Plaintiff gave to Prof. Mohan, in 2019, concerning the aforementioned rumour and the events of December 2000/January 2001, is very different, in at least four material respects, to the account which the Plaintiff gave to this court under oath in 2020.

Inconsistencies between the Plaintiff's evidence to the court and the account given by the Plaintiff to Dr. Anne Leader

52. In Dr. Leader's first report, dated 07 September 2017, following her assessment of the Plaintiff on 23 August 2017, Dr. Leader records that the Plaintiff *"provided me with an account of the alleged bullying".* Dr. Leader goes on to state the following:

"It was rumoured that he had slept with his colleague's girlfriend. John was informed of these rumours by a Mr. Cullen. John raised the subject with his Inspector Leo Kearns. He was given reassurance that those responsible for the rumours would be silenced".

The foregoing record of what the Plaintiff told Dr. Leader in August 2017 is materially different to the Plaintiff's evidence at trial in two respects. Firstly, under oath, the Plaintiff gave no evidence that, having raised the subject of the rumour with Mr. Kearns, he was reassured that "*those responsible…would be silenced"*. On the contrary, the Plaintiff's sworn testimony is that he did not know who was responsible for the rumours because, although the Plaintiff asked Justin Cullen, Mr. Cullen declined to tell him. Secondly, the Plaintiff did not say, in his evidence, that any such reassurance was given by Mr. Kearns. Indeed, based on the Plaintiff's evidence, it would have been impossible for Mr. Kearns to provide any such reassurance, given that the Plaintiff did not know who was responsible for the rumours, because, on the Plaintiff's evidence, Mr. Justin Cullen declined to tell him. Furthermore, the Plaintiff dissuaded Mr. Kearns from getting Mr. Cullen in to speak to him. The Plaintiff did not give any evidence that Mr. Cullen informed the Plaintiff in January 2001 of the identity of those responsible for the rumours. Rather, the Plaintiff was clear that Mr. Cullen declined to tell him. I am satisfied that, as a matter of fact, the Plaintiff did not tell Mr. Kearns in January 2001 who was allegedly spreading the rumour and I am also satisfied that, as a matter of fact, Mr. Kearns gave no reassurance to the Plaintiff that those responsible or that any named individual would be silenced. In the manner explained, certain information which was given to Dr. Leader by the Plaintiff was inconsistent with the Plaintiff's sworn evidence and was incorrect in light of the facts as found from a careful examination of the evidence. The foregoing is not the only example of Dr. Leader having been given incorrect information by the Plaintiff, which Dr.

Leader relied upon as "fact", in the context of her medical reports and, later in this judgment, I will deal with further instances of this.

2002, 2003 and 2004 and the Plaintiff's evidence that the rumour "*stopped*"

53. I am satisfied that, after the conversation which took place between the Plaintiff and Mr. Kearns in January 2001 concerning the rumour, the Plaintiff was not waiting to hear back from Mr. Kearns and had not called upon Mr. Kearns to take any action. The conversation which took place in January 2001 cannot reasonably be considered to be the making of a complaint by the Plaintiff, requiring any further action on the part of the Defendant, especially in light of the offer by Mr. Kearns to speak with Mr. Cullen, something the Plaintiff persuaded him not to do. I am also satisfied that, although there was nothing to prevent the Plaintiff from invoking the "Formal Process" under the Dignity at Work policy in 2001, had he so wished, the fact is that the Plaintiff did not do so. This is entirely consistent with the Plaintiff having no outstanding complaint and requiring no assistance. There is no evidence of there being any impediment which prevented the Plaintiff from making a formal complaint under the relevant policy, had he wished to do so.

54. I am equally satisfied that the Plaintiff made no complaint to any representative of the Defendant at any point during 2002, 2003 or 2004 concerning the aforesaid rumour or in relation to any workplace issue. Just as was the case in relation to 2001, the evidence demonstrates that the Plaintiff did not call upon Mr. Kearns, or upon anyone else within the Defendant, to take any action in 2002, 2003 or 2004. The evidence also demonstrates that, throughout those years, the Plaintiff was not waiting for Mr. Kearns, or for any other party within the Defendant, to revert to him. There is no evidence whatsoever of the Plaintiff following - up on the January 2001 conversation in any way, whether to request an update on any alleged complaint - if it was the case that the Plaintiff regarded "mentioning" the matter to Mr. Kearns in January 2001 as making a complaint - or to ask for specific action to be taken.

The reality is that there was silence on the part of the Plaintiff and this is entirely consistent with my finding of fact that the Plaintiff did not make any complaint or grievance in January 2001 which required the Defendant to revert to him about, nor did the Plaintiff make any complaint or grievance in 2002, 2003 or 2004. I have to conclude on the evidence that this is because the Plaintiff had no complaint or grievance. It is also clear from the Plaintiff's evidence that the rumour which he first heard about at Christmas 2000 stopped for a period of years. The Plaintiff's evidence regarding the rumour was clear, namely:-*"Well this started in '96' and it was said to me in 2001, right. Then it stopped and came back in 2005 and 2006 regularly when the drivers were put back into that corner".* (D3, P88, L27)

Having carefully considered all the evidence, I am satisfied that, as a matter of fact, having heard the aforesaid rumour for the first time at Christmas 2000 and having "*mentioned*" the matter to his line manager in January 2001, the Plaintiff did not hear anything more concerning the rumour at any point during 2002, 2003 and 2004. It is not the case that the Defendant failed to do anything during the aforesaid period, in response to a complaint made by the Plaintiff. Rather, the fact is that there was no issue which required to be addressed.

The Plaintiff's medical records 2002, 2003, 2004

55. The Plaintiff's medical records in respect of the period 2001 to 2004, inclusive, are entirely consistent with the Plaintiff's evidence that the rumour concerning the alleged affair stopped in the manner he explained in his testimony and with my findings of fact, as referred to above. With regard to the period from 2001 to 2004, inclusive, the Plaintiff's medical records show that he attended the Carlton Clinic on the following dates and received the following treatment from his GP:

06/11/2001 nocturnal cough.

02/07/2002 LRTI Klacid allergy to penicillin.

07/03/2003 blocked nose & vertigo.

12/02/2004 URTI chest clear L foot meta tarsalgia.

25/05/2004 two episodes of frank haematuria.

26/05/2004 let to D. mulvinopdsmh as per JMM – trish.

As can be seen from the foregoing, there was no mention in the GP's notes of any rumour or any dissatisfaction or issue at work. If, at any stage, up to and including December 2004, the rumour or any other workplace issue was affecting him, I am satisfied that the Plaintiff did not report the matter to his doctor, did not complain of any adverse effect on his health and did not receive any medical treatment whatsoever in respect of same. Furthermore, on the Plaintiff's evidence, apart from the January 2001 conversation with Mr. Kearns, the Plaintiff raised no issue with Mr. Leo Kearns or with his Trade Union or with any other representative of the Defendant at any stage during the following 4 years. In the foregoing manner, the contemporaneous medical evidence is consistent with the balance of the evidence in this case with regard to the years 2002, 2003 and 2004 and, taken together, demonstrates that the Plaintiff did not raise any workplace complaint during that period, be that the rumour or any alleged shortcomings on the part of Mr. Kearns in addressing same. I am also satisfied that this is because the Plaintiff did not have any workplace complaint and, hence, Mr. Kearns and the Defendant did not fail to address same.

56. The Plaintiff's evidence is that the next time he mentioned the rumour to Mr. Kearns was during a conversation which, according to the Plaintiff, took place in 2005 when the Plaintiff was golfing with Mr. Kearns. This conversation will be examined later in this judgment. At this point, I wish to make further observations in relation to the period up to and including 2004, in light of extracts from the report by Dr. McManus and to the evidence given by Dr. McManus at the trial.

The period "*2005-2016*" which is referred to in the medical report by Dr. McManus

57. In the report by Dr. McManus, which is dated 18 June 2019, Dr. McManus states *inter alia*: *"John's difficulty relates to events surrounding his work in 2005-2016, which caused him great distress…".* It is a matter of fact that, neither in his medical report nor in his evidence, did Dr. McManus suggest that the Plaintiff reported to him any alleged bullying or harassment or unfair treatment of the Plaintiff in respect of the period 1996 to 2004, inclusive. Furthermore, Dr. McManus acknowledged that the medical records concerning his treatment of the Plaintiff during that period make no reference to work place difficulties or stress. As such, and looking for present purposes at only the period from 1996 to 2004 inclusive, the contents of the report by and the evidence of Dr. McManus do not support the Plaintiff's pleaded claim, which is that the Plaintiff suffered bullying and harassment by the Defendant over a lengthy period, namely, from August 1996 to December 2016. The evidence, including the written report by Dr McManus, does not support any claim by the Plaintiff that, during the period 1996 to 2004, inclusive, the Plaintiff was subject to a campaign of intimidation, accusations, bullying, harassment, inappropriate commentary, personal remarks, taunting and insults, mismanagement, false promises, and / or psychological trauma, which is what the Plaintiff has pleaded. In short, the evidence by the Plaintiff's GP, Dr. McManus, and the medical records dating from 1996 to 2004 as maintained by the practice of Dr. McManus do not support the aforesaid claims in relation to the 9-year period from 1996 to 2004, inclusive.

Findings of fact in relation to 2002, 2003 and 2004

58. As illustrated by the Plaintiff's medical records for 2002, 2003 and 2004, there is no evidence of any adverse effect on the Plaintiff's health, or of any medical treatment being necessary, arising from any rumour, any alleged ridicule, any alleged bullying, any alleged harassment, or any alleged issue in the Plaintiff's workplace, including any response or alleged lack of same on the part of the Defendant. Nor did the Plaintiff even mention alleged ridicule, bullying or harassment at any point in 2002, 2003 or 2004 to his GP, notwithstanding the very

good relationship between the Plaintiff and his doctor, whom the Plaintiff found to be very supportive and regarded as "*a rock"* (D2, P44, L7), behind the Plaintiff. If the Plaintiff was subject to rumour, ridicule, bullying and harassment in the manner pleaded during 2002, 2003 and/or 2004, there is no evidence of the Plaintiff making any such claims, at the time, to anyone within the Defendant or to anyone within the Plaintiff's Trade Union. In the event that he had any complaint arising out of alleged rumour, ridicule bullying or harassment, the Plaintiff could have invoked the "*Formal Process*" which is detailed from page 21 onwards in the Dignity at Work policy. As a matter of fact, the Plaintiff did not do so. I have already examined the evidence and have made certain findings of fact in relation to the period from 1996 to 2001, inclusive, namely that the evidence does not allow the court to reach findings of fact which support the Plaintiff's pleaded claim. Insofar as the years 2002, 2003 and 2004 are concerned, I am satisfied that, following a careful examination of all the evidence, this court could not safely reach a finding that the Plaintiff was subject to vicious rumours, ridicule, bullying and/or harassment in 2002, 2003 or 2004. I am satisfied that the evidence does not support the pleas to that effect in the Plaintiff's claim in respect of the 9-year period 1996 -2004, inclusive. I now turn to the year 2005.

The 2005 conversation while "*golfing*"

59. The Plaintiff's evidence is that, having mentioned to Mr. Leo Kearns in January 2001 the rumour about allegedly sleeping with a colleague's girlfriend, the second time the Plaintiff mentioned this to Mr. Kearns was four years later in 2005. The Plaintiff's evidence was that:-

"I was going golfing with Leo and I mentioned that the drivers were still accusing me of sleeping with Philip Barry's girlfriend. That was in 2005." (D3, P81, L15).

The Plaintiff's description of the 2005 conversation as "*a verbal complaint*"

60. During the course of cross-examination, the Plaintiff was asked if he made a complaint to Mr Kearns who didn't act upon it and, in response, the Plaintiff's evidence regarding his

conversation with Mr. Kearns, while golfing in 2005, was as follows: *"It was a verbal complaint, yeah"* (D3, P81, L21). When his Counsel put to the Plaintiff that Mr. Kearns did not act upon this complaint, the Plaintiff agreed, saying "*Yeah*" (D3, P81, L24). It should be emphasised that Mr Kearns disputes the Plaintiff's evidence in relation to the conversation which the Plaintiff alleges to have taken place while he was golfing with Mr. Kearns in 2005. Even if the conversation occurred in the manner claimed by the Plaintiff, it could not reasonably be found by this court to constitute a "complaint" to Mr Kearns which required any action on the part of Mr. Kearns or the Defendant. I reach this finding in light of the following.

61. The height of the Plaintiff's evidence, with regard to the 2005 conversation, is that the Plaintiff "*mentioned that the drivers were still accusing me of sleeping with Philip Barry's girlfriend"*. If such a conversation took place during a golf outing in 2005, there was no evidence given by the Plaintiff that the Plaintiff asked the latter to take any action whatsoever. Nor is there any evidence that the Plaintiff told Mr. Kearns that he wished to make a complaint or to raise a grievance, despite the existence of detailed policies, in particular the Dignity at Work policy, the terms of which were known to the Plaintiff. In addition, there is no evidence that the Plaintiff told Mr. Kearns that the rumour concerning the alleged affair was affecting the Plaintiff adversely in any way. There is no evidence given by the Plaintiff that, during the conversation while the pair were golfing in 2005, the Plaintiff said or suggested that he was feeling upset, stressed, demeaned or undermined. Nor did the Plaintiff give any evidence to the Court that, during the alleged conversation in 2005, the Plaintiff provided Mr. Kearns with any details, such when he heard the rumour, or the names of any of the drivers said to be repeating the rumour. If mentioning the rumour to Mr. Kearns during a golf outing in 2005 was considered by the Plaintiff to have been the making of a verbal complaint, one would expect the Plaintiff to have followed – up with Mr. Kearns in some manner, be that to ask for an update on steps taken or to complain if Mr. Kearns had failed to address the complaint. Even if it took

place precisely as claimed by the Plaintiff, it is a conversation which the Plaintiff did not follow-up on, in any way. There was no follow- up by the Plaintiff, in writing or otherwise, in the aftermath of the meeting, nor does the Plaintiff claim to have followed – up on it. Given the Plaintiff's access, at all material times, to Union support and representation, it would be surprising not to see something in writing from either the Plaintiff or from the Plaintiff's Union sent to Mr. Kearns and / or to others in the Defendant if, as the Plaintiff alleges, a verbal complaint was made to, but ignored by, Mr. Kearns. It is also clear that the Plaintiff put nothing in writing in 2005, either to Mr. Kearns or to any other party in the Defendant.

62. It is clear, too, that the Plaintiff did not raise the matter with his Union in 2005, not did the Plaintiff's Union write to Mr. Kearns or to anyone else within the Defendant to say that a complaint, verbal or otherwise, had been made by the Plaintiff to Mr. Kearns which the latter had failed to act upon. A careful consideration of the evidence confirms that no complaint, verbal or written, was made by or on behalf of the Plaintiff in 2005. In short, I must reject the Plaintiff's assertion that he made "*a verbal complaint*" while he was golfing with Mr. Kearns in 2005. This finding of fact is given further support by the Plaintiff's evidence that he did *not* make any complaint or grievance, including arising out of any alleged failure on the part of Mr. Kearns to take action. I will examine this element of the Plaintiff's testimony presently.

The *"Formal Process"* in the "Dignity at Work" policy

63. I am satisfied that if the Plaintiff had, at the time of the alleged conversation in 2005 while out golfing with Mr. Kearns, any grievance or complaint regarding the rumour which the Plaintiff wished the Defendant to investigate, or if the Plaintiff was dissatisfied with the response provided by Mr Kearns in the aftermath of the alleged conversation while out golfing, the Plaintiff could have invoked the *"Formal Process*" which is detailed from page 21 onwards in the "Dignity at Work" policy. I am satisfied that, as a matter of fact, the Plaintiff did not do so. Indeed, during the course of his testimony, the Plaintiff acknowledged the fact that he did

not do so and acknowledged that he did not contact his Union to say that he had a complaint which he wished to make.

The Plaintiff's evidence that he was aware of the Dignity at Work procedure and the 6-month time limit for complaints

64. It was put to the Plaintiff during cross-examination that, in a big employer like a Post, if people have complaints they must bring them forward properly and must do so in time. The Plaintiff agreed, saying "*Yeah*" (Day 3, P83, L3). The Plaintiff also agreed that he was well aware of the procedures. In the context of discussing the position which pertained in 2005, it was also put to the Plaintiff that the "Dignity at Work" policy in place and that this policy provides clearly that complaints must be brought within six months. Again, the Plaintiff agreed with the foregoing and it is appropriate to set out the following question which was put to and answered by the Plaintiff on the 3rd day of the Trial:

> *"Q. As I understand it the Dignity-at-Work procedure was well in place at that stage and that provides clearly, it is in the booklet, that provides clearly that complaints must be brought within six months; isn't that right?*
>
> *A. Yeah."* (D 3, P83, L22)

Reasons offered by the Plaintiff for not making any complaint in 2005

65. During cross-examination, the Plaintiff was specifically asked why, if Mr. Kearns took no action, the Plaintiff did not go to his Union representative and say that he had a complaint or grievance which he wanted to pursue. The Plaintiff's sworn testimony in response was to say *"I was only new in Blackrock because I moved from Glenageary"* (D3, P82, L6). When questioned further as to why he did not pursue a complaint, particularly as a long-standing employee and member of a Union, the Plaintiff's sworn evidence was again to say: *"Because I was a new member in Blackrock and I didn't want…problems, I just wanted stop what was said because I knew it wasn't true."* (D3, P82, L19). The foregoing comprises two reasons

proffered by the Plaintiff in an effort to explain the fact that he did not go to his Union, in 2005, and say that he had a complaint or grievance which he wanted to pursue or, for that matter, did not tell his Union that he had made a verbal complaint to Mr. Kearns which the latter had failed to deal with. I will presently examine those two reasons, firstly, the Plaintiff's claim that he was "*new*" to the relevant office and, secondly, that the Plaintiff did not want "*problems*".

The Plaintiff's evidence that he was "*only new in Blackrock*"

66. The following observations can be made in relation to the first reason offered by the Plaintiff for not making a complaint in 2005. The Plaintiff was, as a matter of fact, a very long-standing employee of An Post by the year 2005, having joined the Defendant in 1980. Mr. Ward was also a long-standing member of a Trade Union. In his evidence, the Plaintiff offered, as a reason or explanation for his failure to pursue a complaint or grievance, via his Union, the fact that he was *"only new in Blackrock"* (D3, P82, L6). I must reject that evidence. The Plaintiff moved to Blackrock in 1994, over a decade before the conversation which, according to the Plaintiff, took place while he and Mr. Kearns were out golfing in 2005. On the facts, the Plaintiff's move from Glenageary to Blackrock in 1994 cannot explain the Plaintiff's failure, in 2005, to raise a complaint or grievance and to pursue this, via his Union or with any number of a wide range of persons within the Defendant, in 2005, in accordance with the terms of the Dignity at Work policy, of which he was aware, if the Plaintiff had any grievance or complaint. This is particularly so, given the fact that the Defendant then had, and still has, in place a written policy which was introduced as a result of significant Trade Union involvement, which sets out in great detail the methodology in relation to the bringing of complaints and which, inter alia, specifies a range of different parties whom employees can contact in the event of needing support.

67. As of the time of the alleged conversation while out golfing with Mr. Kearns in 2005, the Plaintiff was aware of, inter alia, the following: (1) the existence and contents of the

"Dignity at Work" policy, (2) his entitlement to invoke the "*Formal Process*" which is detailed on page 21 of same, (3) those various "*contact persons*" available to provide support to the Plaintiff, whose details were and are set out in the said policy and (4) the obligation on every employee, including upon the Plaintiff, to bring complaints promptly and certainly within 6 months of the matter complained of, as also stated clearly in the said policy.

The Plaintiff's evidence that he "*didn't want problems*"

68. The second reason proffered by the Plaintiff, in his evidence, as to why he did not pursue any complaint or grievance in 2005 with the involvement of his Union was that *"I didn't want problems, I just wanted stop what was said because I knew it wasn't true"* (D3, P82, L20). Having carefully considered all the evidence, I am satisfied as to a number of relevant facts, as follows. The Plaintiff had a choice to raise, or not, any complaint which he had. The Plaintiff had a choice to enlist, or not, his Union's help to pursue any such complaint. There is no evidence that, in 2005, the Plaintiff told anyone that he was feeling bullied, harassed, upset or distressed by any rumour allegedly circulating. The Plaintiff did not, as a matter of fact, pursue any complaint, with or without his Union's help, in 2005. The Plaintiff could have invoked the "*Formal Process*" on page 21 of the "Dignity at Work" policy, but the Plaintiff did not do so. A stated reason given by the Plaintiff for his decision not to pursue a complaint was because he *"didn't want problems"*. The Plaintiff did not explain what he meant by that, but he gave no evidence whatsoever that he was fearful of making any complaint. The Plaintiff gave no evidence whatsoever that he feared any adverse reaction from his line manager, who was then his good friend, Mr. Kearns. The Plaintiff gave no evidence that he was fearful of any adverse reaction from any other member of management within the Defendant and the Plaintiff's evidence was that relationships with management, including Mr. Kearns, were good. The Plaintiff gave no evidence that he was fearful of any reaction from colleagues in the event of making a complaint. On the contrary, the Plaintiff repeated, during the course of his

evidence, that he was not afraid of anyone at work. There is no evidence whatsoever from which this court could reach a finding that the Plaintiff had anything to fear from invoking his rights under the Dignity at Work Policy or by enlisting his Union's help in raising and pursuing any formal complaint or grievance which he wished to raise. The overwhelming evidence before the court is that An Post had and has sophisticated procedures in place to support employees, including the Plaintiff, and that the Defendant encourages the raising of grievances at the earliest opportunity with a view to resolving workplace issues as soon as possible.

69. In light of the foregoing I must reject any suggestion made by the Plaintiff that there was anything to prevent him from raising a grievance in 2005, or at any other time, if he had a complaint which he wished to pursue. Having carefully considered the evidence, I must reject any suggestion by the Plaintiff that a fear of "*problems*" (be they in the form of unspecified adverse consequences, or otherwise) prevented him from pursuing a complaint in 2005, with or without his Union's help. The simple fact is that the Plaintiff could have invoked the Formal Process under the aforesaid policy if he had a complaint to make, including in particular regarding the rumour and / or that the Plaintiff was dissatisfied with the response of Mr. Kearns, but the Plaintiff did not do so.

70. The fact is that the Plaintiff made no complaint in 2005 about the supposed rumour or about anything else, including any alleged failure on the part of Mr Kearns to deal with a complaint concerning the said rumour. That was his choice and the two reasons proffered by the Plaintiff in an attempt to excuse the fact that the Plaintiff did not pursue a complaint in 2005, assuming he had a complaint and wished to pursue same, do not stand up to analysis and I must reject them both. I am forced to conclude on the evidence that, regardless of what the Plaintiff may or may not have heard at the time in question, the Plaintiff did not actually have any complaint in 2005 which he wished to pursue, did not make any complaint and there is no

basis for any allegation that there was a failure on the Defendant's part to support the Plaintiff or to treat the Plaintiff fairly.

The Plaintiff's 2005 Medical Records

71. The contemporaneous medical records dating from 2005 are also of considerable relevance. If the rumour concerning the affair, which the Plaintiff says he mentioned to Mr. Kearns while golfing in 2005, was adversely affecting the Plaintiff's health, one would certainly expect to see some record of that in the Plaintiff's medical records. There is no such record. With regard to the year 2005, the Plaintiff's medical records also show that he attended his GP on the following half dozen separate occasions, with regard to the following matters, none of which concern any workplace issue:

- *07/03/2005 small umbilical hernia.*
- *29/03/2005 cholesterol 7.6mmol/L pain L knee 2 operations on same, lipid lower diet.*
- *13/05/2005 re results tci to discuss options with JMCM.*
- *18/05/2005 OA L knee plan to Bill Quinlan PtBQ.*
- *20/05/2005 let to Mr. B. Quinlan OPD SMH as per JMM.*
- *07/09/2005 truck licence bp = 130/80 fully fit for licence.*

Cholesterol/diet

72. The first thing to note about the foregoing records is that they evidence high cholesterol and refer to the Plaintiff's diet, specifically to a lipid lower (ie lower fat) diet. It need hardly be said that the Plaintiff's diet and his cholesterol levels can have nothing to do with his employment by the Defendant or workplace situation at any point, yet when it comes to the Plaintiff's admission to St. Vincent's Hospital over a decade later, on 21 December 2016 (something he seeks to blame the Defendant for) it will be seen that high cholesterol is very relevant.

73. Furthermore, there is no evidence that the Plaintiff mentioned the rumour to his GP at any point in 2005, otherwise I am satisfied that a record of same would have been made by the Plaintiff's doctor. If it was the case that the Plaintiff was unhappy or suffered any upset or stress as a result of any allegedly inadequate response by Mr. Kearns flowing from the alleged conversation in 2005 while the Plaintiff was golfing with him, there is no evidence that the Plaintiff mentioned any such upset or stress to his GP at any stage in 2005. It will be recalled that the Plaintiff had a very good relationship with his GP, whom he had attended for many years, and always found his doctor to be very supportive. If the Plaintiff regarded himself as being bullied or harassed or unfairly treated at work in 2005 impacting on his health in any way, one would certainly expect the Plaintiff to have said so to his GP, but at no stage did the Plaintiff say so to his GP in 2005. There is no evidence that the Plaintiff was suffering any adverse effect on his health due to the rumour or arising from any workplace issue in 2005, whether before or after the conversation which the Plaintiff says took place with Mr Kearns while they were both golfing in 2005, including anything Mr. Kearns did or failed to do. I am satisfied that, as a matter of fact, there was no adverse effect on the Plaintiff's health arising from any workplace issue in 2005.

Certain findings of fact in relation to 2005

74. Weighing up the evidence, I am satisfied that, if the Plaintiff did mention, while golfing with Mr. Kearns in 2005, that the rumour concerning the alleged affair was being repeated by drivers at that point, the Plaintiff did no more than mention this. I am satisfied that, as a matter of fact, even if the Plaintiff made mention of a rumour, he did not tell Mr. Kearns that he was feeling bullied or harassed or that there was any adverse effect on the Plaintiff as a result of same. I am also satisfied that the Plaintiff did not ask Mr. Kearns for any support or assistance or ask that Mr. Kearns to take any step, whatsoever. On the evidence I am also satisfied that, as a matter of fact, the Plaintiff did not, in 2005, invoke the "Dignity at Work" policy by making

any complaint. A consideration of the Plaintiff's own evidence, confirms that he expressed no dissatisfaction to Mr. Kearns, in 2005, concerning the latter's response after the Plaintiff allegedly mentioned the matter while golfing. I am also satisfied, on the evidence, that as a matter of fact the Plaintiff did not make a complaint to any Trade Union representative, to any HR manager, to An Post's Occupational Support service or to any other manager within the Defendant, despite being fully aware that all the foregoing were available to him to speak to or to assist with any complaint he might wish to bring. I am also satisfied that, as of 2005, the Plaintiff was aware that, should he so wish, he was entitled to invoke the formal process under the Dignity at Work Policy in order to resolve any issue which had not been resolved informally or to Plaintiff's satisfaction. I am also satisfied that at all material times from the year 2000 onwards, the Plaintiff was aware of the following term in the said policy, namely "*A complaint must be made,* ***within six months*** *of the latest incident(s) of alleged bullying, harassment or sexual harassment behaviour……".* It is a matter of fact that the Plaintiff did not invoke the formal process under the Dignity at Work Policy in 2005. Furthermore, if the Plaintiff wished to make any complaint under the Dignity at Work policy in 2005, I am satisfied that there was no impediment to the Plaintiff doing so.

2005 – the opened post incident

75. During his evidence in chief the Plaintiff said that, in May 2005 he was out delivering post, on overtime, using a colleague's van when the following occurred:-

> *"I put my hand behind the seat of the van and I took out a load of letters that were opened. I rang up Mr. Leo Kearns and I was talking to a postal sorter, John Walsh, and I said 'can I speak to Leo?' Leo came on the phone and I said 'Leo, I am after finding a load of letters'; he said 'bring them back to me immediately'. I brought them back to him and as soon as I walked in the door John Walsh said to me 'how many did you find?' I never even mentioned it to John Walsh".* (D2, P27, L2).

It is not in dispute that opening post is a most serious matter, being both a criminal offence as well as a sackable offence within An Post. It is not disputed that employees within An Post are well aware that it is an offence to open post. Upon taking up employment with the Defendant, the Plaintiff signed a confirmation to the effect that he understood that *"Under the Post Office Act 1908 it is an offence for any Post Office servant to open or delay, or cause or suffer to be opened or delayed except under property authority, or to secrete or destroy any letter or other postal packet which may come into his custody by reason of his employment in the Post Office".* There is no suggestion whatsoever that the Plaintiff opened the post or did anything wrong after finding the opened letters in 2005. The Plaintiff's evidence was that there was no protocol to deal with the situation, other than to give the opened post to the line manager. This is precisely what the Plaintiff did and his Line Manager, Mr. Kearns, acknowledged in his evidence that the Plaintiff acted entirely appropriately, having found the opened post in the van. In relation to the day the Plaintiff found the opened post, Mr. Kearns gave the following evidence:-

> *"I have no recollection of him phoning me up. I do remember him coming into me with the mail and telling me he found open mail in the van. At that stage it was up to me to start an investigation on it so I would have got in touch with my Operations Manager and I would have got in touch with the investigation branch which is the IB as we call them locally. I accepted that John found the mail in the van. I had the mail in my office so it was securely stored…I have no recollection of John Walsh. Mr. Ward's interpretation was that he rang the office. I am not disputing that, I just have no recollection of it. If he did ring the office and nine times out of ten JW was the postal sorter on duty so, he would be the indoor man in the office so he would take the phone call if I was out on the office floor or somewhere else. He would take the phone call and he would call me in. So the conversation would have went something along the*

lines of Mr. Ward wants you on the phone. I would have spoken to John on the phone. He would have told me what happened and I would have said yes, we will bring the mail back here. Mr. Ward is alluding or is saying that I told Mr. Walsh. I certainly didn't say anything to Mr. Walsh. I have no recollection of even having a conversation. But it is quite likely that Mr. Walsh overhead my conversation on the phone." (D6, P59, L8)

76. Mr. Kearns' recollection of the day in question was that the Plaintiff was going out to start his duty and found the opened letters in the van in the car park before starting to make deliveries. I am satisfied that nothing turns on that issue. Weighing all the evidence, I am satisfied, on the balance of probabilities that, upon discovering the opened post, the Plaintiff did make a phone call and that the Plaintiff initially spoke to John Walsh postal sorter who, at the Plaintiff's request, called Leo Kearns into the office so that the Plaintiff could speak to him. Having carefully considered all the evidence, I am also satisfied of the following facts.

77. When the Plaintiff telephoned the office, immediately after finding the opened post, he did not say to Mr. Kearns that the Plaintiff had any concerns arising out of the fact that it was he who found the opened post. I am satisfied that, as a matter of fact, the Plaintiff did not ask Mr. Kearns to keep his name confidential or secret. I am satisfied that, as a matter of fact, Mr. Kearns was neither asked for nor gave any assurance that the Plaintiff's name would be kept confidential. The foregoing is also consistent with the indisputable fact that the Plaintiff had done nothing wrong, but had discovered opened post which was a very serious matter within An Post and was a matter which required immediate attention. Having regard to the evidence, I am satisfied that Mr. Kearns did not say anything directly to Mr. Walsh, but it is not unlikely that Mr. Walsh overheard the conversation between the Plaintiff and Mr. Kearns. I am satisfied, on the evidence, that, having been alerted to such a serious matter, Mr. Kearns' focus was on taking the appropriate steps immediately, including to ensure that the Plaintiff brought

the opened post to him as quickly as possible and to contact the investigation branch so that an investigation into the matter could begin without delay. In relation to the investigation which ensued, Mr. Kearns gave evidence to the effect that, in circumstances where the Plaintiff found the opened post *"…you would have to check back on who was the driver prior to that…"* (D6, P61, L12). It is not in dispute that the logbook indicated that the driver who used the van, prior to the Plaintiff, was a named individual, who was referred to during the course of the trial as 'KF'. Mr. Kearns gave uncontroverted evidence that the investigation branch took over and that Mr. Kearns called KF at home to tell him that opened post had been found in his van and said to KF *"…you better seek union assistance and the Operations Manager and the Investigation Branch will be here to see you tomorrow"* (D6, P61, L21). Mr. Kearns also gave uncontroverted evidence that, during his career in An Post, he had to deal with three major thefts where people were sacked for violation of mail. Mr. Kearns was very clear in his evidence that, when he spoke to KF to advise him to get union assistance and to notify him that the Investigation Branch would want to speak to him, he did not identify the Plaintiff as the person who found the opened post in KF's van.

78. As well as being clear in his evidence that he did not name Mr. Ward to KF, Mr. Kearns gave very clear evidence as to the limited role he had to play in any investigation once the opened post was found. The evidence given by Mr. Kearns was that: *"…once I reported it to the Investigation Branch the Investigation Branch take over the full role after that. They would interview KF and they would deal with all of the issues of whether he was going to be suspended or what role it was going to take then"* (D6, P63, L10). Mr. Kearns also gave clear and compelling evidence to the effect that staff in the Blackrock office understand the seriousness of opened post being found and know that if opened post is found, the right thing to do is hand it up, just as the Plaintiff did. Mr. Kearns also explained that *"There could have been a situation there that if John had not found that mail and the next driver got into the office well*

then John would be getting that phone call in the first instance because he would have been the driver in the van before the next driver…" (D6, P64, L9). KF was the driver of the van immediately before the Plaintiff used it and, upon the Plaintiff finding the opened post, KF was the first person to be asked questions but, had the Plaintiff not found the opened post, the logbook would have recorded the fact that the Plaintiff used the van last and, had the next driver found the opened post, the Plaintiff would have been asked questions concerning it. There was no evidence of the Plaintiff being under any suspicion. In short, the Plaintiff found the opened letters and promptly did precisely the right thing by alerting Mr. Kearns and then bringing the opened post to him as requested. It is not disputed that, following an investigation, KF lost his job with the Defendant. I accept the evidence given my Mr. Kearns, the vast majority of which concerns matters which are not in dispute.

The Plaintiff's evidence that he told KF: "*I am letting you know that I was the one that found them"*

79. In his evidence, the Plaintiff repeatedly maintained that Mr. Kearns should have kept the Plaintiff's name entirely confidential, that Mr. Kearns failed to do so and, specifically, that Mr. Kearns told KF that it was the Plaintiff who had found the opened post in his van in May 2005. It is very clear from his testimony that the Plaintiff regards it as a breach of confidentiality for Mr Kearns to have identified the Plaintiff to KF as the person who found the opened post in the van. It should be emphasised that Mr. Kearns denies that he told KF that it was the Plaintiff who found the opened post. However, in his evidence, the Plaintiff was also very clear about the fact that *"I decided to ring up [KF] and tell him that I found them"* (D2, P79, L2). In his examination in chief, the Plaintiff described in the following terms his phone call with KF concerning the letters which the Plaintiff had found in the van: "*I rang [KF] and he said to me 'John, I don't know what I was doing, my head is all over the place'. I said '[K], I don't care, I am letting you know that I found them…'"* (D2, P91, L4).

Certain findings based on the Plaintiff's evidence regarding his phonecall to KF

80. The foregoing account was given by the Plaintiff, verbatim, on two occasions during the course of his evidence (See D2, P31, L12 and also D2, P91, L4) and the Plaintiff never deviated from that account of a telephone conversation which the Plaintiff says he had with KF. Based on the foregoing evidence by the Plaintiff I am satisfied, that as a matter of fact, it was the Plaintiff who told KF that it was the Plaintiff who found the opened post in his van. The Plaintiff did not suggest in his evidence that he felt in any way pressurised by any third party into contacting KF and identifying himself to KF. Nor did the Plaintiff give evidence that he phoned KF because he anticipated the latter finding out from someone else that it was the Plaintiff who found the opened post in the van which KF had been driving. The Plaintiff did not explain why made the decision to phone KF but, having regard to the Plaintiff's clear and consistent evidence, it is incontrovertible that the Plaintiff wanted KF to know that it was he who had found the opened post in the van and, as a matter of fact, the Plaintiff telephoned KF and told him this.

The Plaintiff's concerns about his name becoming known

81. If the Plaintiff was concerned about his name becoming known as the person who found the opened post in the van, it is surprising to say the least that the Plaintiff identified himself to KF as that person. Nevertheless, this was the Plaintiff's very clear evidence. If the Plaintiff was anxious to ensure that his name was kept confidential, one would not expect the Plaintiff to have phoned KF to identify himself, yet this is exactly what the Plaintiff did. If, when deciding to speak to KF and to identify himself, the Plaintiff was concerned that nobody else know that it was the Plaintiff who found the opened post, one would expect at the very least for the Plaintiff to have, firstly, to have told KF that he had concerns about confidentiality and that the Plaintiff did not want his name to become known and, secondly, to have asked KF not to tell anyone else that it was he who had found the opened post. Based on the Plaintiff's

account of his conversation with KF, the Plaintiff said neither. There is no evidence that, when speaking to KF, the Plaintiff expressed any concerned whatsoever about keeping his name confidential. The Plaintiff gave no evidence that he asked KF to keep his name confidential when he told KF that it was he who had found the opened post. Indeed, the Plaintiff gave no evidence that he asked KF not to tell anyone else, be that within An Post or without, that it was the Plaintiff who found the opened post in KF's van. Nor did the Plaintiff give any evidence that, without the Plaintiff raising it, KF agreed not to tell anyone else that it was the Plaintiff who had found the opened post in KF's van. Moreover, on the Plaintiff's own evidence, the Plaintiff had no way of controlling whether KF shared the information which the Plaintiff told him, nor any way of knowing how widely that information might be shared.

No breach of confidentiality by Mr Kearns

82. There is a major dispute between the sworn evidence of the Plaintiff and Mr. Kearns, in that Mr. Kearns is adamant that he did not identify the Plaintiff to KF, whereas the Plaintiff claims he did. There is no dispute, however, about the fact that the Plaintiff identified himself to KF and this is consistent with a finding of fact that the Plaintiff wanted KF to know that it was he who had found the opened post. A central complaint by the Plaintiff is that his name became known as the person who found the opened post in KF's van in 2005 but, on the sworn testimony of the Plaintiff, it is indisputable that the Plaintiff informed KF of that fact.

83. It is indisputable that, having done so in 2005, the Plaintiff had no control whatsoever over whether and if so how widely that information might circulate. In light of the fact that the Plaintiff wanted KF to know that it was he who had found the opened post in the van, and phoned him to tell him so, it is impossible to understand the Plaintiff's claim that Mr. Kearns allegedly breached confidentiality by allegedly telling KF that it was the Plaintiff who found the opened post. It would be unsafe for this court to reach a finding in 2020, in the teeth of a denial by Mr. Kearns, that he told KF that it was the Plaintiff who found the opened post in

2005, particularly when it is not in doubt that the Plaintiff identified himself to KF and I prefer the evidence of Mr Kearns on that issue. Furthermore, given that the Plaintiff is crystal clear about the fact that he told KF that it was he who had found the opened post and, that being the factual position, it could not have amounted to a breach of confidentiality on the part of Mr. Kearns, to have told KF the very same information which the Plaintiff himself told KF, even if it was safe (and it is not) for this court to reach a finding that Mr. Kearns identified the Plaintiff to KF.

The Plaintiff's evidence about what KF supposedly said to him in 2005

84. In his evidence the Plaintiff says that, having told KF that it was he who had found the opened post, KF replied: "*I know, Leo Kearns told me."* (D2, P31, L17). This is an assertion made by the Plaintiff upon which he placed considerable reliance during his testimony. Mr. Kearns disputes that he told KF that it was the Plaintiff who found the opened post, but the fact that the Plaintiff revealed the self-same information to KF is not in dispute. The Plaintiff is entitled to give evidence that the conversation took place in 2005 with KF. It has to be pointed out, however, that KF was not called as witness. Notwithstanding the foregoing, the Plaintiff gave evidence to the court in 2020, concerning what KF is supposed to have told him during a phone call in 2005, and the Plaintiff tendered that evidence in an attempt to prove the truth of the statement supposedly made in 2005 by KF, namely, that Leo Kearns allegedly told KF that it was the Plaintiff who found the opened post. This is not permissible, in light of the rule against hearsay, and it need hardly be pointed out that what was or was not said by KF in 2005 has not been tested by cross-examination of KF, who did not appear at the trial.

Unreliable testimony by the Plaintiff

85. Weighing up all the evidence, I am satisfied that it would be entirely unsafe to conclude that Mr. Kearns told KF that it was the Plaintiff who found the opened post in KF's van, but it is entirely safe to conclude that the Plaintiff wanted KF to know this information and, in a

telephone call made by the Plaintiff to KF at the time in 2005, the Plaintiff told KF that it was he who found the opened post in the van. These findings of fact are based on the Plaintiff's sworn testimony concerning his conversation in 2005 with KF, which testimony the Plaintiff repeated verbatim during the trial. In short, as well as being inadmissible, I am satisfied that the evidence given by the Plaintiff regarding what he says KF told him is unreliable evidence which this court cannot accept.

The alleged threat posed by KF / the claim that KF should not have known the Plaintiff's name

86. In his evidence the Plaintiff also gave the following evidence with regard to KF:- "*I was afraid that I could go out some night and he could pull a knife, glass or something on me because I reported him and he shouldn't have known that, my name was mentioned*" (D2, P31, L20). With regard to the foregoing assertion by Plaintiff, there are several fundamental points which emerge from a consideration of the totality of the evidence given to the court and which render this evidence by the Plaintiff wholly unreliable. I propose to examine this evidence now.

Unreliable testimony by the Plaintiff in relation to his supposed fear of KF

87. There was no evidence that, in 2005 or at any other time, the Plaintiff ever reported to anyone, be that (1) his Doctor, (2) his wife, his (3) Trade Union representative, (4) any colleague within An Post, (5) anyone within HR, (6) any member of Occupational Support or (7) anyone within management, that KF had threatened the Plaintiff or that the Plaintiff was fearful of any action by KF, much less a violent action. Furthermore, the Plaintiff's evidence that KF "*shouldn't have known*" the Plaintiff's name is wholly undermined by the Plaintiff's clear evidence that the Plaintiff identified himself to KF as the person who found the opened letter in KF's van. There was absolutely no evidence before the court of any threat made by KF or any risk to the Plaintiff posed by KF. Nor was there any evidence that the Plaintiff

identified himself to KF out of any fear of KF. It should also be noted that the Plaintiff was very clear in his evidence that he decided to identify himself to KF, and did so, *before* KF supposedly said to KF that Mr. Kearns told him the same thing. In other words, the Plaintiff was clear in his testimony as to the sequence of events, namely, that first in time came the fact of the Plaintiff identifying himself to KF. Leaving aside for a moment the fact that what the Plaintiff says KF said to him, in response, is both unreliable and hearsay testimony, it is indisputable that what KF is supposed to have said in reply to the Plaintiff is, on the Plaintiff's account, something which came *after* the Plaintiff identified himself as the person who found the opened post. The foregoing also renders this aspect of the Plaintiff's evidence, concerning the Plaintiff's supposed fear of KF, impossible to reconcile with the Plaintiff's repeated evidence that he identified himself to KF as the person who found the opened post and I am satisfied that this aspect of the Plaintiff's evidence is simply not reliable and must be discounted.

The Plaintiff's claim that he handed in the opened post "*in secrecy*"

88. As to why the Plaintiff says that KF should not have known that it was the Plaintiff who found the opened letters in his van, the Plaintiff's evidence is that "*I handed them in secrecy or whatever, you know. I don't think my name should have been let out there*". I am satisfied that, as a matter of fact, the Plaintiff made no reference to secrecy or confidentiality or any such issue or concern when he informed Mr. Kearns that he had found the opened letters or when he handed them in, nor did Mr. Kearns given the Plaintiff to understand that he was receiving the opened post from the Plaintiff on the basis that his name was confidential and would or should not be disclosed. The Plaintiff's suggestion that his identity should have been protected is also undermined by his own evidence that he phoned KF to identify himself as the person who had found the opened post in the van.

Investigation

89. I am also satisfied, having considered all the evidence, that when something so serious as opened post arose, giving rise to an immediate investigation within An Post, those carrying out the investigation would have to establish certain basic facts, including matters as basic as the fact that open post was found, where it was found, and who found it. The foregoing is plainly relevant information to any investigation. Indeed, it is only by establishing very basic facts such as who found the opened post, where the opened post was found and when it was found, that the investigators within An Post could begin, using the foregoing basic facts as a starting-point, in order to try and identify the person responsible for opening the post. Given the nature of an investigation which would inevitably have to take place within An Post into such a serious issue as opened post having been found, it was inevitable that, in addition to Mr. Leo Kearns, to whom the Plaintiff quite properly reported the matter, those investigating the matter would know – indeed would have to know - that it was the Plaintiff who found the opened post, as well as where and when it was found. The Plaintiff knew how serious the issue was and that if an employee opened post, it could result in dismissal. In light of the evidence, including how serious an issue it is within the Defendant for opened post to be found, triggering an immediate investigation, the Plaintiff could have no expectation that his name would be entirely "secret" in the context of the investigation. Weighing all the evidence, I am satisfied that, as a matter of fact, Mr. Kearns did not reveal the Plaintiff's name other than appropriately in the context of the investigation which ensued and there is no evidence that the investigators improperly revealed the Plaintiff's identity to any of his work colleagues, including KF, who was subsequently dismissed. There is however, in the manner explained, very clear evidence that the Plaintiff revealed his name to KF and, having done so, the Plaintiff could neither control, nor know whether and how widely that information would be shared.

What was allegedly said about the Plaintiff in 2005

90. The Plaintiff's evidence is that things were said about him in the workplace after KF was dismissed. The Plaintiff's evidence was that the driver's section, comprising five or six individuals, was isolated in the corner of the Blackrock office. The Plaintiff gave evidence that:-

> "*One fella came over, JC, who was on the post end of it and walked over and shouted up kind of, what did he say, 'Imagine trying to set up your workmate to be sacked' and that was aimed at me. . . that was aimed at me and everybody burst out laughing and I looked beside me and there was a chap beside me, TM, that was bursting laughing, in tears. There was a stool beside me and I was going to pick it up and hit him with it, I was so annoyed"* (D2, P32, L10).

Having given that evidence in his examination in chief, the Plaintiff was asked how he felt and replied that he felt "*Very angry, very annoyed"* (D2, P32, L21). As to what he was annoyed about, the Plaintiff's evidence was "*The accusation and that my name was out there, it shouldn't have been told"* (D2, P32, L23). The foregoing is as much detail as the Plaintiff provided. He was not specific about when the comment was supposedly made, the context in which it was supposedly made and who is supposed to have heard the comment and what if anything was said by anyone who is said to have heard the comment. Nor did any witness, other than the plaintiff, give evidence in relation to the comment.

91. It is clear from the Plaintiff's evidence in 2020 that he regarded the comment as having been directed at him and his evidence is that it made him very angry. It is a matter of fact, however, that if such a comment was made, the Plaintiff did not say that he objected to the comment at the time it was supposedly made. It is also a fact that the Plaintiff made no complaint about it at the time.

<u>What was allegedly said about the Plaintiff in 2005 - the Plaintiff's medical records</u>

92. I have already made reference to the Plaintiff's medical records, including the records of six separate visits by the Plaintiff to his GP during 2005. If the Plaintiff felt "*very angry*" or *"very annoyed*", in 2005, regarding what was allegedly said about him at work, I am satisfied that he did not mention this to his doctor during any of the half a dozen visits in 2005, which visits took place in March, May and September 2005. Furthermore, if any comments, allegedly aimed at the Plaintiff in the workplace, were causing the Plaintiff stress or were adversely affecting his health in any way, I am satisfied, that as a matter of fact, he did not raise this with his doctor at any point in 2005 and received no medical treatment for same in 2005. In short, there is no evidence of any adverse effect on the Plaintiff's health in 2005 arising out of the comment which the Plaintiff described in his evidence, or any other work related matter.

No complaint made in 2005

93. In his evidence, Mr. Kearns was satisfied that the Plaintiff did not come to him in 2005 to complain that any other worker in the office was treating him inappropriately or making any comment to which he objected arising out of the dismissal of KF. Having carefully considered all the evidence, I am satisfied that the Plaintiff did not make a complaint, verbal or written, in 2005, to Mr. Kearns. It is also a matter of fact that, at no stage during 2005, did the Plaintiff put any complaint, in writing, to either Mr. Kearns, to the Plaintiff's trade union representative, to any HR manager, to any member of the occupational support service or to any other manager, regarding any alleged comments in the workplace, allegedly directed at the Plaintiff. If, in 2005, the Plaintiff had a complain to the effect that "JC", or any other(s), accused him of being the one responsible for the dismissal of KF, the Plaintiff could have invoked the "*Formal Process*" in the Dignity at Work policy. The Plaintiff did not do so and there is no evidence that anything prevented the Plaintiff from doing so. Furthermore, the Plaintiff did not claim in his evidence that he invoked the Dignity at Work policy but was unhappy with the response by anyone representing the Defendant.

Inconsistency between what the Plaintiff told Dr. Leader and the Plaintiff's evidence at trial regarding events of 2005

94. In the second paragraph of the first medical report prepared by Dr. Ann Leader, dated 07 September 2017, following her assessment of the Plaintiff on 23 August 2017, Dr. Leader states the following:-

> "*In May 2005, John discovered open post when delivering post in Stillorgan. He again contacted his supervisor. A third party admitted to opening the letters. This individual then went on sick leave. It became widespread knowledge that John had discovered the open letters".*

There was no evidence before the court that it "*became widespread knowledge*" that the Plaintiff discovered the opened post. The evidence given during the trial does not permit this court to conclude that this was so. The statement which appears in Dr. Leader's report reflects, no doubt, what the Plaintiff told Dr. Leader. However, evidence has not been adduced by the Plaintiff to prove that it became widely known that the Plaintiff discovered the opened letters.

2006 – Bag of opened letters

95. Having given evidence in relation to the incident in 2005, when the Plaintiff found opened letters in the van, most recently driven by KF, the Plaintiff went on, in his evidence in chief, to speak about a second incident involving opened post, this time concerning a bag of letters found by a member of the public. The Plaintiff did not specify when this incident arose but, in para. 15 of the Personal Injuries Summons, it is pleaded that it arose in 2006. The Plaintiff gave evidence that he used to go to Dun Laoghaire and Blackrock post offices on night driving duty and that, when in Dun Laoghaire, the inspector, a Mr. John Hennessy, called the Plaintiff into the office and asked him to take a bag of letters to Mr. Kearns, the inspector in Blackrock Post office. It appears that this was a bag of opened post which had been found by a member of the public in Fintan's Park, Blackrock. As such, the bag needed to be returned to

Blackrock, rather than Dun Laoighaire post office. Mr. Kearns gave the following uncontroverted evidence in relation to the matter, stating that: -

> "*John Hennessy outlined to me that the mail was handed in during the night from Kill O' The Grange Garda Station, which would have been a Garda station fairly adjacent to where the mail was found, but they probably wouldn't be familiar with that it should have went to Blackrock because the postal boundaries didn't necessarily follow the Garda boundaries. They dropped the mail into Glenageary and John was asked to bring the mail from Glenageary back to Blackrock. That is what John done and once he did that, that was his job finished".* (D6, P56, L2)

The Plaintiff's evidence is that he went straight to the office in Blackrock and delivered the bag to Mr. Kearns and this is not in dispute. Nor is there any suggestion that the Plaintiff did anything wrong.

Announcement to staff made by Mr. Kearns

96. Mr. Kearns gave evidence that he made a statement to the wider staff on the office floor, in the aftermath of the bag of post having been found. There is no evidence that, when making his announcement to staff, Mr. Kearns mentioned the Plaintiff. Mr. Kearns gave the following evidence: "*All I did was went out to the staff and told them that bags of mail were being robbed off the bikes"* (D6, P58, L10). Mr. Kearns also gave evidence that:- "*the statement I was making to the office at the time was more specific to the cycle duties as opposed to the driving duties . . .. a post office van is never going to have a bag of mail robbed off it like a bike would have"* (D7, P64, L25).

I accept the foregoing evidence given by Mr. Kearns. Having regard to the evidence I am satisfied that the relevant audience for the statement made by Mr. Kearns was those who delivered bags of post using bicycles. I accept the evidence of Mr. Kearns that he may have made a passing comment to another staff member, namely "KD", suggesting that the latter tell

the drivers to be careful with the vans. I accept that KD made a short statement to the half a dozen or so employees in the driver's section, telling them that letters had been found and reminding drivers to be careful with the vans. I also accept the uncontroverted evidence of Mr. Kearns that "PM" was the main union representative for the office but did not do any driving, whereas KD was a driver and Mr. Kearns would sometimes give a message to KD for the latter to pass on to the drivers, if Mr. Kearns did not deliver the message personally.

Statement to drivers made by KD

97. According to the Plaintiff, the morning after the Plaintiff brought the bag of opened post to Blackrock, as instructed, KD called all the drivers together in the drivers' section and said "*Listen lads, I want to tell you a load of letters were found in the Blackrock area up in Fintan's Park"* (D2, P33, L21). In his evidence to the court, the Plaintiff stated that he could not believe this and went on to say "*It is confidential. It was my name mentioned again. Then other things carried on from that*" (D2, P33, L26). A number of points require emphasis in light of the foregoing assertion by the Plaintiff. Firstly, for a bag of opened post to have been found by a member of the public is a serious matter and one which would have been of legitimate interest to staff in order that staff could be extra vigilant. Secondly, there is no evidence that bringing a bag of opened post from Glenageary to Blackrock, as instructed, was in any way controversial or that the fact of doing so and/or the identity of the employee who did so would or should attract confidentiality. Thirdly, during his evidence, the Plaintiff did not say that Mr. Kearns told KD that it was the Plaintiff who brought the bag of opened post from Dun Laoghaire to Blackrock. Fourthly, in his evidence regarding what KD is said to have told the drivers, the Plaintiff did not claim that KD told the drivers that it was the Plaintiff who brought the bag of opened post from Dun Laoighaire to Blackrock. Having carefully considered all the evidence, it cannot be concluded that Mr. Kearns informed KD or anyone else that it was the Plaintiff who brought the bag of opened post to Blackrock.

98. There is no fundamental conflict between the evidence given by Mr. Kearns and the evidence given by the Plaintiff concerning the announcement made by Mr. Kearns to the general office floor and what KD said to the drivers, following the discovery of the bag of post in 2006, which the Plaintiff brought back to Blackrock. I am satisfied that, as a matter of fact, neither Mr. Kearns nor KD mentioned, during their respective announcements, that it was the Plaintiff who had been asked to drive the bag of letters from Dun Laoghaire / Glenageary to Blackrock the previous night. Mr. Kearns was very clear in his evidence that the Plaintiff's role was very limited and was confined to taking the bag of letters from Mr. Hennessy in Dun Laoghaire to Mr. Kearns in Blackrock, as the Plaintiff had been requested to do. Mr. Kearns was very clear that the Plaintiff did his job properly. Unlike the first incident concerning opened post, there was no evidence put before the court to the effect that an investigation took place which resulted in the dismissal of any member of the Defendant's staff. Rather, the bag of post appears to have been stolen, most likely from a bicycle. There was no evidence given to the court regarding from whom the bag of post had been stolen, and there was no evidence of any member of An Post being responsible for the fact that the bag of post had been taken from a bicycle and handed in by a member of the public.

The Plaintiff's working day

99. The Plaintiff gave evidence that, although the Blackrock office was very large, the drivers section was in the top left-hand corner of the office, the middle being a section for sorting letters and on the right-hand side being an area for postmen, which is where the office of Mr. Kearns was located. The Plaintiff's evidence was that there was a bench, approximately four-foot-wide for each person and none of the foregoing evidence was controverted. I also accept the Plaintiff's evidence that, given his role as a driver, the majority of his day was spent out of the office, in his van, doing his work. There was no evidence given that the Plaintiff was required to work alongside any colleague in the van during the majority of his working

day. Rather, the primary contact time with other drivers occurred in the mornings between 6am and 7:30am, after which point the Plaintiff was out on the road in his van, delivering post.

100. The Plaintiff gave the following evidence in relation to the situation at work subsequent to the incidents involving the opened post being found:

> "*...we would be in the office from 6:00 to 7:30. After 7:30 in the morning we would be out on the road. I used to love my job out on the road but I used to hate it indoors because on a Monday they would start this banter, no matter what it would be about something they would find funny and they would latch on to that for the week and keep it going and rolling, rolling. [EB] used to turn around, let's try and get a reaction of him because that is what happened to another driver with me, see if he can get a reaction for something to happen."* (D2, P36, L18).

100. In his evidence to the court, the Plaintiff was not specific about how often things were said, by whom such things were said, whether comments were directed to a range of people or whether he alone was, or felt, singled out. Furthermore, the Plaintiff gave no evidence as to what reaction, if any, he made to such comments as he found objectionable. The Plaintiff gave no evidence of having asked the relevant person or persons to cease making any comments, nor did he give evidence that anyone refused to discontinue the comments or "*banter*", upon being asked. Having carefully considered the totality of the Plaintiff's evidence, it is not known whether those who engaged in banter or made comments were ever asked by the Plaintiff to cease or whether the Plaintiff ever mentioned to them that he did not find the comments funny. Furthermore, no evidence was given by any colleague of the Plaintiff's who is said to have either made or witnessed the comments at the time. Not only did the Plaintiff fail to give specifics in terms of the dates on which comments were made, he did not identify with any particularity the weeks or months during which comments were said to have been made and/or by whom.

"*Absolutely toxic*" at work

101. During his examination in chief, counsel for the Plaintiff asked him to explain how things were at work after the incidents involving the opened post which the Plaintiff had found in the van and the bag of letters which the Plaintiff had brought back to Blackrock. The first of those events occurred in 2005 and the second in 2006. The Plaintiff described things in work in the following terms:

> "*Absolutely toxic. I would get accusations all the time. They wouldn't be said to me, about the affair was never said to my face. I[t] was always 'imagine having an affair with your work colleague' and they would be pointing and as soon as I was turned around they would all turn back and this happened on numerous occasions. It was banter for them. It was like, I always said it was like the Bee Gees song ... it started as a joke and made the whole world cry and that is the way I always looked at that... that is the way that felt for me. Again I was only shortly married and I thought it was a lot of pressure on myself and the wife."* (D2, P35, L7).

"only shortly married"

102. As to the Plaintiff's evidence concerning the effect on himself and his wife in 2006, namely "*I was only shortly married and I thought it was a lot of pressure on myself and the wife",* this cannot be correct. The Plaintiff and his wife married in May 1996. The bag of post found in St. Fintan's Park was handed in a decade later in 2006. The fallout, insofar as the Plaintiff describes it, from events in 2006 could not have affected people who were *"only shortly married".* This confusion on the Plaintiff's is perhaps understandable, because one of the features of this case is that the court is being presented, in 2020, with accounts of events, the majority being alleged verbal statements, going back almost two decades and there is an obvious risk that memories fade or become unreliable, particularly given the absence of

contemporaneous documentary evidence and the absence of any evidence from individuals named by the Plaintiff at the trial, as having made certain statements decades ago.

"banter"

103. According to the Plaintiff, what was said in the workplace *"was banter for them"* and the Plaintiff was clear in his evidence that those making comments regarded them as joke. Despite repeatedly describing the comments as *"banter",* the Plaintiff gave no evidence that he ever said, at the time, that he did not find the banter funny or took exception to it or felt hurt by it or wanted the banter to stop. If work colleagues were engaging in any banter or making any joke which the Plaintiff did not find funny, one would expect that the Plaintiff would at least mention to those who made the comments that the Plaintiff did not find it funny, unless the Plaintiff felt inhibited from so doing. In his evidence the Plaintiff never suggested that at any point in 2005 or in 2006 he mentioned to anyone engaged in banter that he did not find it funny. Nor did the Plaintiff give any evidence that he felt in any way inhibited at the time in voicing his feelings about the banter. Furthermore, the Plaintiff gave no evidence that he ever approached Mr. Kearns or any other representative of the Defendant, or his union representative, and told them that work colleagues were engaging in banter which he wanted them to discontinue and or that the Plaintiff told Mr Kearns or any other manager of his Union that he felt unable to speak directly to those who were making comments. Nor did the Plaintiff give any evidence that in 2005 and/or 2006 he told Mr. Kearns, his Union or any representative of the Defendant the name of any person engaging in any banter or making any comments to which the Plaintiff objected. It is also clear that at no point in 2005 or 2006 did the Plaintiff put anything in writing to anyone in relation to any concerns he had. There is no evidence that there was anything which inhibited the plaintiff from voicing his concerns, if he had any, or from eliciting support from Management or from his Trade Union or from Occupational Health if it was truly the case that he ever heard anything in the workplace to which he wished to make

an objection. The simple fact is that the Plaintiff made no complaint to anyone who is alleged to have made any remark, nor did he ask for any support from any of the many parties available to him at the time and in the manner analysed below, the Plaintiff did not make any complaint, informal or formal.

The "*complaint*" which the Plaintiff says he made to Mr. Kearns

104. The Plaintiff also gave the following evidence in relation to the aftermath of the 2006 incident involving the bag of opened post which he brought to Blackrock: -

> *". . over the next week and a half [JC] was asking questions, what way do I cycle home, there is two ways I can go, up Stradbrook Road or Deansgrange Road and he said 'this might sound stupid, would you not go up through Fintan's Park'. I said 'you are right, it is stupid, I wouldn't do that'. That was leading up to me with the letters at Fintan's Park. So I wasn't happy with that again, right".* (D2, P34, L5).

In addition, the Plaintiff said that he drove his van in to Blackrock post office one day at which point two named colleagues were there. According to the Plaintiff:-

> *"JC was talking to me quick and EB came along, opened my side door and pulled down the glove compartment and started looking under the seat. I said 'what the hell are you doing'. He said 'I left the book here, I am looking for a book'. I looked in the log book to see when the last time he drove that van and it was about three months previous that he drove that van. Again I couldn't believe this is coming down from the information going from the office out on two floors. ... I presume he was looking for letters thinking I was the one in Fintan's Park that opened the letters… that is what I got the impression… because he was asking me every day what way do I cycle home, would you not go this way, not go that way, leading up to where the letters were found."* (D2, P34, L14).

105. According to his evidence, the Plaintiff interpreted the foregoing, namely being asked about what route he cycled home plus the single incident of a colleague searching the van he was driving, as constituting some form of accusation that the Plaintiff was in some way responsible for opening the bag of letters which had been found in Fintan's Park, Blackrock. Despite his evidence the foregoing evidence, I am satisfied that Mr. Ward did not, in fact, go to Mr. Kearns and complain to him that he was being accused of wrongdoing, or say that he believed that he was being accused of same, in relation to either the 2005 incident when the Plaintiff found the opened post in the van or in relation to the 2006 incident when a bag of post was found. As to whether Mr. Kearns had any recollection of the Plaintiff ever coming to him to complain about the way people were treating him, Mr. Kearns was very clear in his evidence as follows:- "*No, there was no reason to mistreat him, all he done was carry out procedure, he brought the mail from Glenageary to Blackrock*" (D5, P56, L18).

During his evidence in chief, counsel asked the Plaintiff "*how were those years for you?"* and the Plaintiff's evidence was "*depressing… I dreaded going into work. Just hard .. .. it wasn't 'fair that I went to work and listened to this crap… about accused of an affair, accused of sending lads to be sacked. I can't believe I left it for so long to fight it."* (D2, P37, L1).

106. The Plaintiff was not specific in relation to what days, weeks, months or years such accusations were being made, but the impression was given that it included the 2005/2006 period. Counsel for the Plaintiff asked him a very direct question namely "*did you complain about it?"* to which the Plaintiff responded "*yeah, absolutely to Mr. Leo Kearns".* His counsel then asked "*what did you say to him?"* to which the Plaintiff replied "*I said 'everything I say to you is going back out to that floor'.*" (D2, P37, L19). Mr. Kearns disputes the foregoing but, taking the Plaintiff's evidence at its height, the following can be said: (1) it is not a complaint by the Plaintiff that he was the target of rumour that he supposedly had an affair in 1996; (2) nor is it a complaint by the Plaintiff that someone is suggesting that the he was responsible for

having a colleague dismissed in 2005; (3) and it is not a complaint by Plaintiff that someone is suggesting that he was in some way responsible for the bag of opened post found in 2006. (1), (2) and (3) are the key issues with feature in the pleaded case and comprise the key issues which the Plaintiff referred to in his sworn testimony and I am satisfied, having carefully considered all the evidence, that the Plaintiff did not make any complaint to Mr. Kearns concerning any of them in 2005 or 2006. The foregoing finding is entirely consistent with the evidence of Mr. Kearns whom I found to be a clear and compelling witness without any agenda other than to assist the court and whose concern for the Plaintiff remained apparent. This finding is also consistent with the Plaintiff's own evidence in that, when asked whether he made a complaint to Mr Kearns, the Plaintiff did not claim to have told Mr Kearns about issues (1), (2) or (3). Rather the Plaintiff claims that his "complaint" comprised telling Mr. Kearns that "*everything I say to you is going back out to that floor".* I am also satisfied, as a matter of fact, the Plaintiff did not raise complaints (1), (2), or (3) with his union representative, with HR, with the Occupational Support Service or with any other manager within the Defendant.

107. The Plaintiff's evidence is that he said to Mr Kearns: "*I said 'everything I say to you is going back out to that floor'.*" The foregoing is not accepted by Mr Kearns who was very clear in his denial that he ever breached any duty of confidentiality. Weighing all the evidence up, it is not safe for this court to conclude, in 2020, even on the balance of probabilities that the foregoing statement was made by the Plaintiff to Mr Kearns in 2006. As a matter of fact, any alleged breach of confidence on the part of Mr. Kearns, which is said by the Plaintiff to have occurred in 2005, and again in 2006, could have nothing to do, even on the Plaintiff's evidence, with a rumour that the Plaintiff had had an affair with a colleague in 1996.

108. Even if this court were to find that the Plaintiff did say to Mr. Kearns, at some point in 2006, that "*everything I say to you is going back out to that floor*", and such a finding of fact cannot be made safely in light of the evidence, I am satisfied that the Defendant did not fail to

investigate a complaint raised by the Plaintiff. I say for a number of reasons as follows. I do not consider that the words "*everything I say to you is going back out to that floor"* constitutes the making of a complaint. The foregoing statement is entirely lacking in detail and is no more than a generalised assertion that what the Plaintiff said to Mr. Kearns finds its way to the office floor. No detail is given by the Plaintiff in relation to when or where or the context in which he supposedly said these words to Mr Kearns. Those words do not amount to a claim by the Plaintiff that the Plaintiff had furnished confidential or secret information, nor is any detail given in relation to the information itself which supposedly made its way to the office floor. No specifics are given about the what the Plaintiff alleges to be the consequences for him of information being shared. No dates or instances are given of the alleged sharing of information. The quoted words represent the totality of the statement which the Plaintiff says he made to Mr. Kearns, yet the statement is not a request to do anything. In short, and taking the Plaintiff's sworn evidence at its height, he did not make any complaint to Mr Kearns about the remarks allegedly made. Nor did he make any complaint to anyone else or elicit the help of any of the numerous parties available to provide assistance.

109. Even if I am wrong in relation to the foregoing, and even if this court was to accept that it constituted a complaint which required the recipient of same, namely Mr. Kearns, to conduct an appropriate investigation or to otherwise resolve the complaint to the Plaintiff's satisfaction, the Plaintiff gave no evidence about what response Mr. Kearns made. The Plaintiff gave no evidence that he was dissatisfied with any such response and even if this court were to be satisfied that the words were said in 2006 by the Plaintiff, I cannot safely conclude that there was an unsatisfactory response by Mr. Kearns. Furthermore, if the comment by the Plaintiff to Mr. Kearns can be considered a complaint which was required to be addressed, either it was addressed satisfactorily at the time or it was not. If it was not, and if the Plaintiff was dissatisfied at the time, it is a matter of fact that the Plaintiff could have contacted a range of

persons, including one of his trade union representatives, a HR manager within the Defendant, somebody from the Defendant's Occupational Support Service, another line manager or a more senior manager with the Defendant. Indeed, having regard to the contents of the Dignity at Work policy, this is what the Defendant should have done. I am satisfied, that as a matter of fact, the Plaintiff did not do so at any stage in 2006. Not having raised any issue with any of those parties in 2006, verbally or in writing, I reach a finding of fact that there was not complaint which the Defendant failed to address. As I say, the Plaintiff most certainly had the entitlement to invoke the "Formal Process" which is set out in the Dignity at Work policy, but if it is the case that the Plaintiff was not entirely satisfied with the response given by Mr. Kearns at the relevant time - and based on his evidence, the relevant time was certainly 2005 and 2006 - the Plaintiff did not make a complaint under the said policy at the relevant time. Indeed, the Plaintiff confirmed in his evidence the fact that he did *not* put any complaint on the record in 2006 and he also gave a reason, being that he did not want to get Mr Kearns into trouble and I will return to this element of the Plaintiff's evidence later in this judgment.

Written reports submitted by the Plaintiff to the Defendant concerning accidents

110. It is also undoubtedly true to say that if, in 2006, the Plaintiff found the atmosphere in his workplace to be *"toxic"* he at no stage put any complaint in writing to any party to that effect. This failure to put anything in writing in relation to what the Plaintiff claims was a toxic atmosphere in 2006 can be contrasted with the fact that the Plaintiff did put things in writing, both prior and subsequent to 2006, insofar as his involvement in accidents at work was concerned. It is a matter of fact that the Plaintiff had completed written reports and wrote letters directed to the Defendant, prior to 2006, in relation to reporting accidents at work. In particular, and as the Plaintiff acknowledged in his testimony, in 2003 he had an accident at work requiring stitches and he wrote a letter in relation to reporting that. Furthermore, he had another accident on duty on or about the 17 May, 2004 while in a car park and, again, the Plaintiff prepared a

written report concerning that matter. Subsequent to 2005 and 2006, the Plaintiff sustained an injury during the course of his employment in 2012 and, again, filled out a form of complaint. In contrast to the manner in which the Plaintiff provided his employer with written details, following accidents, I am satisfied that at no point did the Plaintiff write a note to Mr. Kearns, as his line manager, or to any other representative of the Defendant, setting out specific details of complaints in 2005 or in 2006, at a time when the atmosphere at work was toxic, according to the Plaintiff, asking for help or calling for an investigation into the issues complained of.

The concern for the Plaintiff on the part of Mr. Kearns

111. I am satisfied that Mr. Kearns was, at all material times, a good friend of the Plaintiff and was regarded as such by the Plaintiff. I am satisfied that Mr. Kearns bore the Plaintiff no ill will. I am satisfied that there was no impediment which prevented the Plaintiff, should he have wanted to, from giving Mr. Kearns sufficient detail of the Plaintiff's complaints and from making a request that Mr. Kearns assist the Plaintiff in dealing with them, but I am satisfied that the Plaintiff never did so. I accept the evidence given by Mr. Kearns that "*if John was talking about people in the office saying things, if John had put something in writing at any given time or he would name names, then a procedure would start and a procedure could be followed. But no names were ever given*." (D7, P35, L19). I am entirely satisfied, on the evidence, that Mr. Kearns had no vested interest in failing to support the Plaintiff at any stage during the very many years when the Plaintiff and he both worked in the Defendant. The evidence demonstrates that the contrary is the position. Mr. Kearns was not only the Plaintiff's line manager, but also his friend. During the course of his evidence, the concern which Mr. Kearns still has for the Plaintiff was obvious. That concern persists to this day, despite the events from 2016 onwards which will be analysed later in this judgment. There is no evidence whatsoever that, as of 2005/2006, relations between the Plaintiff and Mr. Kearns were other than very friendly, supportive, collegiate and professional. Despite this, and having carefully

reviewed the evidence, I am satisfied that the Plaintiff never brought to Mr. Kearns sufficient information as could reasonably be said to constitute a complaint in respect of issues (1), (2) or (3) or any other issue.

Two other line managers

112. I also accept the evidence given by Mr. Kearns as follows: -

> *"There ... were two other line managers in the office at the time, if John wasn't happy with the way I was dealing with it, if he wanted to bring a formal complaint or he wanted to bring it further, he could have went to either of them. He also had the option to go, bypass the office and go to HR or to the union. It wasn't about if I didn't deal with the matter that it all rested because I decided not to deal with the matter. John had numerous avenues to go if he wasn't happy."* (D7, P36, L17).

On the evidence, the foregoing is undoubtedly true. I say this for several reasons as follows. Firstly, at all material times the Plaintiff was aware of and has had the right to invoke the Defendant's Dignity at Work Policy which plainly states that an employee has the right to invoke a "Formal Process" whereby a formal complaint would result in a formal investigation the purpose of which will be to determine the facts and the credibility, or otherwise, of a complaint of bullying. The Plaintiff at no stage exercised his right to invoke the formal process, despite his entitlement. Secondly, at all material times, the Plaintiff has been a member of a trade union, which union actively negotiated and agreed the terms of all policies in force within the Defendant including the Dignity at Work Policy. There is no evidence that the Plaintiff ever expressed unhappiness to any union representative about any alleged bullying or harassment which he was allegedly suffering from in 2005 or 2006. Nor did the Plaintiff raise with his union any alleged failure on the part of Mr. Kearns to deal with any issue which the Plaintiff claimed to have raised with him. Furthermore, there is no evidence that the Plaintiff

informed his union that any other party within the Defendant had failed or refused to assist the Plaintiff regarding a complaint. Thirdly, having regard to the Plaintiff's evidence, I am satisfied that, as a matter of fact, the Plaintiff never went to anyone to put a formal complaint on the record and the Plaintiff also gave an explanation for this fact. I now turn to this element of the Plaintiff's evidence.

The reason the Plaintiff did not *"put it on record, put a complaint in"*

113. During cross-examination on day 3 of the trial, the Plaintiff sworn evidence was as follows: *"you are saying why didn't I go to people and put it on record, put a complaint in? I didn't want to put Leo into trouble because he has been a close friend".* (D3, P97, L29). The Plaintiff gave the foregoing evidence immediately after criticising the handling, by Mr. Kearns, of the situation after the bag of post had been found in 2006, which bag the Plaintiff was asked to take back to Blackrock. According to the Plaintiff "*Mr. Kearns didn't handle it right as far as I am concerned"* (D3, P97, L3). At the same point in the Plaintiff's evidence, he repeated his criticism of the way in which, according to the Plaintiff, Mr. Kearns had made it known that the Plaintiff was the one who found the opened letters in the van in 2005. According to the Plaintiff: - "*That is unprofessional".* (D3, P94, L11). Notwithstanding the Plaintiff's criticisms of Mr. Kearns during the trial, it is indisputable, according to the Plaintiff's own evidence, that he did not approach anyone else within the Defendant *"and put it on record, put a complaint in".* The reason proffered by the Plaintiff is that he didn't want to get Mr. Kearns "*into trouble".*

Not wanting to get Mr Leo Kearns "*into trouble*"

114. There is nothing in the evidence which would allow this court to conclude that Mr. Kearns would have gotten into trouble, had the Plaintiff either (a) put a complaint in writing on the record to Mr. Kearns about any alleged remarks in his workplace by any party, or had the Plaintiff (b) bypassed Mr. Kearns and made a formal complaint to someone else within the

Defendant, concerning any workplace issue which he was having, between 1996 and 2006. Nor is there any evidence which would allow the court to conclude that Mr. Kearns would have gotten into trouble, had the Plaintiff chosen to (c) make a complaint to any other person within the Defendant, or to the his union representative, in relation to the manner in which, according to the Plaintiff, Mr. Kearns was dealing with - or allegedly failing to deal with - any workplace issue allegedly raised by the Plaintiff with Mr. Kearns. It is also incontrovertible that, at all material times, the Plaintiff had an entitlement to commence the "*Formal Process"* under the Dignity at Work policy and also had access to a range of supports, including Union representation, had he wished to pursue a complaint. The fact is that the Plaintiff chose not to make any complaint in 2005 or in 2006. Indeed, the Plaintiff himself confirmed that he did not put his concerns "*on record*" and did not "*put a complaint in*" of any sort. This is despite the Plaintiff's evidence to the court that his workplace atmosphere was "*toxic*".

115. The explanation proffered by the Plaintiff, namely not wanting to get Mr. Kearns into trouble, is simply not credible if it was the case that the Plaintiff genuinely had a complaint regarding any alleged treatment at work which he found objectionable. If it was truly the case that the Plaintiff had any complaint which he wished to make an any stage, in particular between 1996 and 2006, there was no impediment to the Plaintiff making same to any one or more of a range of parties, including via his own Trade Union representative. The suggestion that the Plaintiff did not want to get Mr Kerns "into trouble" does not in my view provide a credible explanation or excuse for what was, without a doubt, the Plaintiff's failure to invoke the complaints procedure which the Plaintiff was at all times entitled to invoke pursuant to the Dignity at Work policy. There is simply no evidence that Mr Kearns would have gotten into trouble. If the Plaintiff genuinely had any complaint, including in the period from 1996-2006, he could and should have made it. He did not. I am forced on the evidence to conclude that this is because he had no complaint which he wished to make. Even if I am entirely wrong, it

is an incontrovertible fact (on the Plaintiff's own testimony) that no complaint was made in 2005 or in 2006 and, that being so, the Defendant was not aware of any issue at work adversely affecting the Plaintiff and the Defendant did not fail to investigate a complaint in 2005 or 2006, none having been made.

Dignity at Work policy – page 18

116. The Dignity at Work policy, from which I have quoted extensively earlier in this judgment, is a detailed and sophisticated policy. It is self-evident that it will only be effective insofar as it is invoked by those who believe that they are being subjected to bullying and or harassment. It is clear from the evidence given by the representatives of an Post that the Defendant is not merely paying "lip service" to the objective of ensuring that staff enjoy a workplace environment free of bullying or harassment and the evidence of the significant involvement on behalf of the Unions in the development and implementation of the Dignity at Work policy supports this view. The said policy makes it clear that, not only do employees have the right to call for an investigation, they also have a responsibility to make any complaint *"…**within six months** of the latest incidents(s) of alleged bullying, harassment or sexual harassment behaviour".* The foregoing provision is set out on page 18 of the Dignity at Work policy. Insofar as the Plaintiff claims to have suffered from bullying and or harassment, in 2005 and in 2006, I am satisfied that, as a matter of fact, he did not comply with the aforesaid provision.

The Plaintiff's evidence that he was *"suicidal"* in 2005 and 2006

117. The Plaintiff gave evidence that he was seriously thinking about committing suicide in 2006 and his sworn testimony was that, in 2011, he told Mr. Pat Cunningham of the Defendant that he felt suicidal in 2006. The alleged meeting in 2011 between the Plaintiff and Mr. Cunningham will be dealt with later in this judgment, but insofar as the chronology of events

is concerned, it is necessary to consider the Plaintiff's evidence that he seriously contemplated suicide in 2006. It was clear from the Plaintiff's testimony that he attributed what he says were his suicidal thoughts in 2006 to the workplace situation at that point. The thrust of the Plaintiff's evidence was that he was seriously contemplating suicide in 2006 because of the comments being made to or about him, namely a rumour of an affair alleged to have taken place in 1996, the suggestion that the Plaintiff was responsible for a colleague getting sacked in 2005 and the implication that he did something wrong regarding the bag of opened post found in 2006. Having given the evidence, during his examination in chief, that he was suicidal in 2006, the Plaintiff repeated under cross-examination that in *"…2005, 2006 I was thinking of committing suicide…"* (D4, P27, L28) also saying "*In 2005/2006 I was seriously thinking about committing suicide…*" (D4, P29, L16). The import of the Plaintiff's evidence was certainly that the workplace situation in 2005 and 2006 was the cause.

118. It is impossible to contemplate how difficult it must be for someone suffering from suicidal thoughts. It is impossible for this court to know, with certainty, what thoughts affected anyone, or when. It would be inappropriate and disrespectful to dismiss, out of hand, sworn testimony by the Plaintiff that his health was so seriously affected in 2005 and 2006 that he seriously contemplated ending his own life. If that was truly the position, the court could have nothing but sympathy for the Plaintiff. That is not, however, the end of the analysis, insofar as this court is required to make findings of fact, based on the evidence presented to it. As such, the court has to weigh in the balance what the Plaintiff says, in 2020, regarding his state of mind as it was in 2005 and 2006, but also to consider such other evidence as touches on the issue. That evidence comes from a number of sources, as follows.

The Plaintiff's written medical records for 2005 and 2006

119. The court was furnished with the Plaintiff's entire medical records for the relevant period. Earlier in this judgment, extracts from those records were set out. Those

contemporaneous records evidence the fact that at no stage in 2005 or in 2006 did the Plaintiff raise the issue of suicidal thoughts with his GP and no treatment for the foregoing was either sought or provided. The medical records evidence the fact that the Plaintiff saw his GP on several occasions during the years 2005 and 2006, inclusive. There are 6 separate entries for 2005 and a single entry for 2006. The records maintained by the Plaintiff's GP make reference, *inter alia*, to a "*small umbilical hernia*", to raised "*Cholesterol*", to a "*L knee*" operation, to tests regarding the Plaintiff's "*bloods"*, to blood pressure "*Bp*" and to "*lipids"*. No reference is ever made to "*suicidal thoughts*" or to any treatment in respect of same. I am entitled to find that this is because the Plaintiff never mentioned suicidal thoughts to his GP at any point in 2005, or 2006. Furthermore, having regard to the contents of the written records dating from the time, as well as to the oral testimony by Dr. McManus, I am satisfied that, at no stage during 2005 or 2006, did the Plaintiff tell his Doctor that he was suffering from bullying, or harassment, or stress at work, or that any issue at work was causing him concern. It is also a fact that the Plaintiff received no treatment, at any point during 2005 or during 2006, for any illness or condition said to be attributed to his workplace. Thus, insofar as the Plaintiff suggests that such suicidal thoughts as he had in 2005 and 2006 were as a result of unfair treatment in his workplace, this suggestion is wholly unsupported by the contemporaneous medical evidence.

Sworn evidence from Dr. McManus

120. The court also had the benefit of oral testimony from Dr. McManus who confirmed that there was no reference to suicidal thoughts in the records maintained by his medical practice during 2005 or 2006 and I am satisfied, as a matter of fact, that the Plaintiff never mentioned any suicidal thoughts to Dr. McManus in 2005 or 2006 which the Doctor, whom the Plaintiff regarded as a great support to him, failed to record in the medical records at the relevant time.

The Plaintiff's wife

121. The court also heard evidence from the Plaintiff's wife who confirmed that the Plaintiff did not say to her, in 2005 or 2006, that he had suicidal thoughts. The evidence from Mrs. Ward is that the first time the Plaintiff mentioned suicidal thoughts was in November 2016 and this accords with the medical records, in a manner I will return to when the records dating from 2016 are examined later in this judgment. I am satisfied that, as a matter of fact, the Plaintiff did not tell his wife that he had suicidal thoughts in 2005 or 2006.

Work colleagues, Trade Union representatives, HR and Occupational Support

122. There is no evidence that the Plaintiff told any work colleague or trade union representative, in 2005 or 2006, that he had suicidal thoughts. Nor is there any evidence that the Plaintiff told his line manager, Leo Kearns or any HR manager or anyone within the Occupational Support Service or any more senior manager within the Defendant, in 2005 or 2006, that he harboured suicidal thoughts. On the evidence, I am satisfied that, as a matter of fact, the Plaintiff did not tell anyone, in 2005 or 2006 that he had suicidal thoughts.

Absence record during 2005 / 2006

123. In addition to the foregoing, the court heard evidence of all the periods when the Plaintiff was absent from work in the Defendant company due to illness. It is a matter of fact that the Plaintiff was not absent from work during 2005 or 2006. Weighing all the evidence up, I am satisfied that it would be unsafe for this court to conclude, even on the balance of probabilities, that the Plaintiff's testimony is reliable when he says under oath that "*In 2005/2006 I was seriously thinking about committing suicide…*" and equally unsafe for this court to hold that such thoughts were due to any unfair treatment which the Plaintiff received at work. That is not, for a moment, to undermine any genuinely held subjective belief on the part of the Plaintiff or to underestimate the seriousness of suicidal thoughts for anyone unlucky enough to labour under them. It is, however, necessary to point out that there is no objective evidence whatsoever, dating from either 2005 or 2006, to support the Plaintiff's oral testimony,

given in 2020, to the effect that he felt suicidal in 2005 and 2006 and the proposition that such thoughts were attributable to any unfair treatment of the Plaintiff at work is entirely unsupported by the evidence.

124. It is also important to say that, during the course of his evidence, the Plaintiff did not suggest that, as of 2020, he felt suicidal. Thankfully, insofar as any such thoughts beset the Plaintiff, he no longer suffers from them and this was also confirmed by expert testimony, both written and oral, from three doctors. It does, however, have to be pointed out that a feature of this case is that the court is being asked to make findings of fact, in 2020, regarding a state of affairs said to pertain, on this particular issue, a decade and a half ago and, in having to reach findings based on the evidence, I have been compelled to find that certain aspects of the Plaintiff's testimony are not reliable.

The Plaintiff's witness statement

125. In advance of the trial, witness statements were prepared and exchanged. This case is not one which was admitted to the Commercial List and it is important to observe that the procedures laid down by O. 63A of the Rules of the Superior Courts did not apply. That being so, witness statements were not admitted into evidence as formal proof and, as I made clear to counsel for both sides during the trial, I did not read any witness statement before the relevant witness gave their sworn evidence, *viva voce*. It is, however, of some relevance to refer to the rather short, 1and ½ page unsigned written statement provided by the Plaintiff in advance of the trial, insofar as the 2005 to 2006 period is referred to in the following terms: -

> "*In 2005 and 2006 I reported a couple of incidents to my line manager one involving post been discovered open in my van, I was I believe conscientious about my job.*
>
> *Throughout my time in An Post I experienced ongoing incidents of bullying and harassment from some fellow employees and I was the subject of a lot of ridicule and vicious rumours by certain colleagues in An Post. I was constantly being accused of*

having had an affair with a colleague's girlfriend. I was accused of setting my work colleagues up to being sacked and of stealing post and packages. As a result of me reporting these incidents, I was treated differently by colleagues who seemed to believe that I was making reports about other colleagues to such an extent that my van was even searched on occasion by colleagues and I was treated in a hostile manner…"

A number of comments can be made in relation to the foregoing. Firstly, the evidence given to the court does not support the contention that the Plaintiff was "*constantly being accused of having had an affair*". On the Plaintiff's own evidence, he was wholly unaware of any such rumour between August 1996 and December 2000. On his evidence, the rumour went away in 2001 and there is no evidence that the Plaintiff heard it in 2002, 2003 or 2004. Furthermore, the evidence given to the court does not support the contention that the Plaintiff was "*treated differently by colleagues*" or that he was "*treated in a hostile manner*". On the contrary, the Plaintiff repeatedly described what, on his account, was said in the workplace as being "*banter*" insofar as those making the comments were concerned. It was clear from the Plaintiff's evidence that he accepted that his colleagues considered it to be "*banter*" even if he regarded it as more serious. There is, however, no evidence that the Plaintiff, at any stage, disabused his colleagues of their wrongly-held view that they were simply engaging in "*banter*". Nor was there any evidence given by the Plaintiff that those work colleagues who allegedly engaged in "*banter*" knew that it was causing hurt or harm to the Plaintiff and/or refused to amend their behaviour. Finally, the above section from the Plaintiff's witness statement makes no reference whatsoever to the Plaintiff contemplating suicide in 2005 and 2006. The court's role is to consider carefully the sworn testimony and such documentation as is properly before the court by way of evidence. The Plaintiff's witness statement is not evidence and not to be regarded as such. However, it is appropriate to point out that the findings of fact which emerge from the evidence given during the trial do not support the assertions made in the Plaintiff's witness

statement. I would also observe that certain issues which the Plaintiff laid considerable emphasis upon in his sworn testimony are not mentioned at all in his witness statement.

The Plaintiff's claim that he did not know how to report bullying

126. During the course of his evidence the Plaintiff acknowledged that he had completed written reports in respect of accidents in which he was involved at work, and I referred to those reports earlier in this judgment, but he contrasted the foregoing with his failure to put anything in writing concerning what he described as *"bullying"* because, according to the Plaintiff, he did not know how to report it. The Plaintiff's sworn testimony was as follows:- *"what you are talking about is actually accidents that happened me in work and I done the reports but I never knew how to deal with the bullying. How do you report that?"* (D3,P71,L3).

Unreliable testimony by the Plaintiff

127. With regard to the Plaintiff's claim that he never knew how to deal with bullying or how to report it, I am bound to reject that evidence, as wholly unreliable and I do so for several reasons, as follows. (1) There are written policies within the Defendant, including the "Dignity at Work" policy and the "Grievance" policy which, on the Plaintiff's evidence, he was aware of. (2) I am satisfied that, at all material times, the Plaintiff has had a copy of the then most up-to-date Dignity at Work policy which gives extremely detailed guidance as to how to report an allegation of bullying at work. (3) There is no evidence that the Plaintiff could not read it or understand it. (4) The Plaintiff was a member of a Union at all material times and had access to Trade Union representation. If, for example, the Plaintiff could not locate his copy of the Dignity at Work policy or had difficulty interpreting it or required assistance from his Union with regard to reporting an allegation of bullying, I am entirely satisfied that, as a matter of fact he had such assistance readily available. (5) In his evidence, the Plaintiff acknowledged that he was free at any time to raise any grievance with his Union and I am satisfied that, had he chosen to do so, the Plaintiff could have enlisted his Union's help in order to make a complaint

of alleged bullying, or a complaint in respect of any alleged deficiencies in the manner in which Mr. Kearns was dealing with allegations of bullying, or a complaint by the Plaintiff to Mr. Kearns to the effect that the latter had breached confidentiality, or a complaint to another Manager or to HR about any alleged breach of confidentiality on the part of Mr. Kearns, or to make any other complaint which the Plaintiff wished to make. The fact is that the Dignity at Work policy was not invoked by the Plaintiff to make any complaint. The same can be said with certainty in respect of the Grievance Policy. (6) The Plaintiff was also very clear in his evidence that he and Mr. Kearns were good friends and good colleagues. (7) Moreover, the Plaintiff confirmed in evidence that there were other managers accessible to him and there was no evidence given that any other manager, or Mr. Kearns, had any animosity towards the Plaintiff. (8) Finally, there is no evidence whatsoever to suggest that the Plaintiff made any approach either to his Union, to H.R., to Occupational Support or to any other member of management within the Defendant, at any time between 1996 and 2016, inclusive, indicating that the Plaintiff wanted to, but did not know how to, report bullying or did not know how to report any other complaints (be they in relation to the alleged rumour said to go back to 1996, or relating to the opened post found in the van in 2005, or the bag of post found in 2006, or arising out of any allegation that Mr. Kearns breached confidentiality, or that Mr. Kearns or the Defendant failed to deal with any issue of any sort).

The Plaintiff's ability to report bullying and/or any other complaint

128. Having carefully considered the totality of the evidence, I am satisfied that it is not the case that the Plaintiff never knew, or at any stage did not know, how to report alleged bullying. On the evidence, I am satisfied that at all material times the Plaintiff did know that he *could* report alleged bullying and I am also satisfied that he knew, at all material times, *how* to report alleged bullying. The same is true in relation to each and every complaint of any nature which the Plaintiff may at any stage have wished to raise. In particular, I am satisfied that, as a matter

of fact, there was no impediment to the Plaintiff invoking the formal process under the Dignity at Work policy by making a formal written complaint if he was ever dissatisfied with the way in which any issue had been addressed. I am satisfied, on the evidence, that the Plaintiff could have done so at the time the alleged bullying occurred and I am satisfied that there was no impediment to the Plaintiff invoking the said policy to make a report of alleged bullying at the relevant time. Furthermore, I am satisfied that the Plaintiff was, at all material times aware of the responsibility, placed upon every employee by virtue of the provisions which is found on page 18 of the said policy, to report bullying within 6 months of the last incident of alleged bullying or harassment behaviour but the Plaintiff did not do so.

Findings of fact – 2005 and 2006

129. For the reasons detailed above, I am satisfied that an examination of the evidence, insofar as the years 2005 and 2006 are concerned, does not permit this court to finding that the Plaintiff was: -

> "*…subject to ridicule, vicious rumours promulgated by a number of colleagues as well as bullying and harassment and this has had a significant and lingering effect on his mental health. The Plaintiff has felt undermined and unsupported in particular by his line manager who refused to deal with his issues at all and indeed denied that there were any workplace issues…"*

The foregoing being an extract from the case as pleaded in paragraph 9 on page 3 of the Personal Injuries Summons. The 2005-2006 period is plainly a decade and a half ago. With the passing of such a long period of time, memories fade or can be rendered unreliable. A subjective view, held in 2020, as to what was the position in 2005 or 2006 may be a genuinely held view on the part of the Plaintiff, but the objective evidence is insufficient to support the pleaded claim and in many respects undermines it. The reasons are detailed above but, by way of several examples:

(a) the contemporaneous medical records dating from 2005 and 2006 confirm that the Plaintiff never mentioned to his GP - with whom the Plaintiff plainly had and has a very good relationship - that there was any issue in the workplace, be that bullying or harassment or otherwise;

(b) the Plaintiff neither sought nor was provided with any medical treatment in 2005 or 2006 for any illness or complaint said to arise due to the Plaintiff's workplace environment or situation

(c) the oral testimony of Dr. McManus confirms the foregoing and both his testimony and the medical records also undermine the Plaintiff's claim that he had suicidal thoughts in 2005 and 2006, which thoughts he attributes to the work situation at the time;

(d) the Plaintiff took no time off work during 2005 or 2006 due to any alleged workplace issue;

(e) the Plaintiff's claim that he did not know how to report bullying is not supported by the evidence and there is overwhelming evidence to the contrary (f) the Plaintiff knew he could make a complaint under the Dignity at Work policy and also knew that a complaint must be made within six months of the last incident of alleged bullying or harassment but no such complaint was made (g) the Plaintiff's assertion that he did not make a complaint because he did not want to get Mr. Kearns "*into trouble*" is not supported by the evidence. In terms of the chronological analysis of evidence, I now turn to the year 2007.

The year 2007

130. The Plaintiff did not claim at any point during his evidence that, in 2007, he made any complaint to any party regarding his treatment at work and I am satisfied that, as a matter of fact, the Plaintiff made no complaint in 2005, to Mr. Leo Kearns or, for that matter, about Mr. Leo Kearns. I am also satisfied that, as a matter of fact, in 2007 the Plaintiff did not make any

complaint in relation to any workplace issue to his trade union representative or to any HR Manager or to any member of the occupational support service or to any other more senior manager within the Defendant. Having carefully considered the evidence, I am satisfied that there was no impediment to the Plaintiff making a formal complaint under the Defendant's Dignity at Work policy or, for that matter, under the Defendant's Grievance policy, if it was the case that the Plaintiff had a complaint to make, in particular of bullying or harassment. I am satisfied that, as a matter of fact, the Plaintiff made no complaint whatsoever in 2007 concerning any workplace issues.

The Plaintiff's 2007 Medical Records

131. I have also examined the Plaintiff's medical records which confirm that the Plaintiff made one visit to his GP in 2007. The relevant entry from the Plaintiff's medical records as maintained by the Carlton clinic is as follows:-

> *"sore r si pain also ? Verruca l foot/oe pain on flexion refer back clinic Tallaght - 14/02/2007".*

I am satisfied that, as a matter of fact, the Plaintiff did not raise any work-related matter with his GP at any stage in 2007. There is no evidence of any damage to the Plaintiff's health, in 2007, arising from any workplace related issue. It is also a matter of fact that the Plaintiff neither sought nor received any medical treatment in 2007 in respect of any issue said to be associated with his workplace. Evidence given by the Plaintiff which was specifically in relation to 2007 was that he travelled to England with his son, Glen, to a football match on St. Stephen's day, 2007 to watch "Spurs" play. Later in this judgment I will deal with a conversation which took place in October 2016 between the Plaintiff and Mr Leo Kearns. In his testimony regarding that conversation, Mr. Kearns gave evidence that the Plaintiff told him, in October 2016, that in the days prior to the Spurs match, the Plaintiff contemplated suicide. I am satisfied that the evidence of Mr. Kearns is accurate in respect of what the Plaintiff told

him in October 2016. At this juncture, I would simply observe that there is no evidence whatsoever to support any claim that, in 2007, the Plaintiff ever mentioned suicidal thoughts to his GP, with whom he had an excellent relationship, or ever received treatment in respect of same. Nor is there any evidence that the Plaintiff told his wife that he had such thoughts. There is no evidence of the Plaintiff ever telling his Union representative or anyone within An Post's Occupational Support team of such thoughts. There is no evidence that the Plaintiff sought any time off work due to such thoughts, be that in the early part of 2007 in the days and weeks following the Spurs match, or at any point in 2007 or, for that matter, in the years before or after. If the Plaintiff had such thoughts in 2007, there is no evidence whatsoever of any causal link between same and any unfair treatment of the Plaintiff in his workplace at that time.

Findings of fact 2007

132. Insofar as the years 2007 is concerned, I am satisfied that an examination of the evidence does not permit this court to reach a finding that the Plaintiff was subject to ridicule, vicious rumours, bullying or harassment, or any unfair treatment in 2007, despite the case pleaded to that effect. The Plaintiff made no such complaint at any time in 2007 to any party, be that any Manager, any member of HR, any member of Occupational Support or to his Union representative. I am entirely satisfied that the Plaintiff did not invoke the Dignity at Work policy in 2007. Furthermore, if it was the case that the Plaintiff had previously made complaints which, by 2007, had not been dealt with to the Plaintiff's satisfaction, one would expect the Plaintiff to raise that with the Defendant in 2007. On the evidence, I am satisfied that he did not do so at any point in 2007. The evidence is consistent with the following findings of fact: firstly, as of 2007, there were no outstanding complaints from prior years which had not been dealt with and, secondly, no new issue arose in 2007 which comprised the basis for a complaint and none was made. In short, the evidence with regard to the year 2007

does not support the pleaded claim and, insofar as objective records exist in the form of the contemporaneous Medical Records, they undermine it. I now turn to the year 2008.

The year 2008

133. It is not in dispute that the current version of the Defendant's Dignity at Work policy dates from 2008 and, in the manner explained earlier in this judgment I am satisfied that there was an earlier version which the Plaintiff was also aware of and had access to. The evidence was that the said policy was updated in 2008 but there was no evidence that the earlier version was materially different. As dealt with earlier in this judgment, I accept the evidence that the 2008 version of the Dignity at Work policy was finalised and implemented by agreement between An Post and the Trade Union representatives of the Defendant's employees. Indeed, this fact is explicit in the Dignity at Work policy itself, page 4 of which states inter alia:-

> "*the revision of Company's Dignity at Work Policy has been carried out on a partnership basis and has been agreed with the Trade Union representatives of employees, thus reflecting the very best practice in employments generally. The procedures for dealing with complaints are considered to be the most practical and suitable for An Post.*
>
> *The purpose of this policy is to assure members of staff who are subjected to sexual harassment, harassment or bullying, that action will be taken to end such abusive and offensive behaviour.*
>
> *This policy advocates dealing with cases internally through the following processes which are explained in the policy:*
>
> - *informal resolution;*
> - *formal complaints procedure;*
> - *mediation.*

Only if the internal processes fail, should it be necessary to refer matters to an independent third party."

I am satisfied that, as a matter of fact, the Plaintiff was provided with a copy of the updated version of the Dignity at Work policy in 2008. This is not disputed by the Plaintiff who acknowledges that he received a copy in 2008. That being so, I am satisfied that, as a matter of fact, in 2008, the Plaintiff was aware of the contents of the Dignity at Work policy including the statement at p.4 of the policy which appeared under the heading "*Introduction*" which I have quoted above. I am satisfied that, as a matter of fact, in 2008 the Plaintiff was aware that the updated Dignity at Work policy reflected full participation by his trade union and that there was a commitment in the policy to assure employees who regarded themselves as being subject to bullying, that action would be taken to end it. I am satisfied that, as a matter of fact, the Plaintiff was aware in 2008 that there were four possible routes which the Plaintiff could take, should he so wish, in respect of any issue concerning alleged bullying which the Plaintiff wished to raise and/or any issue concerning alleged wrongdoing by Mr. Leo Kearns, which, according to the Plaintiff, gave rise to or contributed to any bullying he was allegedly suffering from and/or any issue which the Plaintiff wished to raise concerning any alleged failure on the part of Mr. Kearns to deal properly with any complaint previously raised by the Plaintiff with his line manager. This is because the four-fold approach was set out plainly in the revised version of the Dignity at Work policy which the Plaintiff acknowledges that he received in 2008. The four possible routes were, firstly, "informal resolution", secondly, a "formal complaints procedure", thirdly, "mediation" and fourthly, referral of the matter to an "independent third party" should the matter not be resolved within the Defendant. It is clear from the contents of the policy that a referral to an independent third party would come after an investigation and an appeal against the findings of that investigation.

Receipt by the Plaintiff of the up to date Dignity at Work policy in 2008

134. The fact that the Plaintiff received, in 2008, the revised Dignity at Work policy is of some significance. At the very least, it constituted a very clear reminder to the Plaintiff that, if he was unhappy about any work place issue which he regarded as bullying or which he regarded as a failure to address bullying properly, he was entitled to make a formal complaint in writing and had a right to expect a formal investigation to be conducted. Receipt in 2008 of the most up to date version of the Dignity at Work policy also constituted a reminder of the active role played within An Post by the Plaintiff's Trade Union and constituted a written reminder that help was available from the Plaintiff's union should he have a workplace issue which he regarded as bullying or a failure to address bullying adequately. Furthermore, the receipt by the Plaintiff in 2008 of the updated Dignity at Work policy evidences the fact that the Plaintiff was given in 2008, specific names and contact telephone numbers of a range of people upon whom the Plaintiff could call for help, being those names and numbers contained on page 26 of the policy under the heading "*Support Services Contact Numbers".*

Page 21 of the Dignity at Work policy

135. There is no evidence that the Plaintiff made any complaint to, or about, Mr. Kearns in 2008 be that verbal or written. I am satisfied that the Plaintiff made no complaint in 2008 of any sort. I am also satisfied that, following the receipt of the updated Dignity at Work policy in 2008, there was no impediment to the Plaintiff invoking the formal process which was plainly set out from p.21 onwards of the Dignity at Work policy and I am satisfied that, as a matter of fact, the Plaintiff did not invoke the form of process. This is despite the fact that p.21 of the 2008 version of the Dignity at Work policy states inter alia the following:

> "***If the issue is not or cannot be resolved through the informal process*** *or through mediation, or if the bullying/ harassment persists,* ***the formal process should be invoked****…"*
>
> *Formal Process*

*The process includes a **formal complaint** and a **formal investigation**. The purpose of an investigation is to determine the facts and the credibility or otherwise of a complaint of bullying. Where an investigation is to be carried out, the procedures below will be followed.*

***The complainant should make a formal complaint, which must be in written form and signed and dated.** The complaint should be confined to precise details of alleged incidents of bullying, including their dates, and names of witnesses where possible…"*

(emphasis added)

The Plaintiff's Medical Records for 2008

136. The Plaintiff attended the Carlton Clinic to see his GP on four occasions in the year 2008. The contemporaneous medical records for 2008 show the following visits by the Plaintiff to his GP in respect of the following matters:

14/04/2008 - Vertigo. No vomiting. Denies any earache of sinus.

23/10/2008 – Wants referral for bld tests for arthritis soreness knee back of neck middle finger or hand which he fractured before ref. for blds.

25/11/2008 - rh factor 186-ref to rheumatology svh

25/11/2008 - new patient GP referral posted to svuh. per cs

08/12/2008 – L RTI 36.8 Plan Clavanel.

There is nothing in his GP's records to suggest that the Plaintiff raised any workplace issue with his doctor during 2008, be that alleged bullying or alleged harassment or an alleged rumour or an alleged breach of confidentiality. During his evidence, the Plaintiff did not claim that he raised any work-related concerns of any sort with his doctor, in 2008, and I am satisfied that, as a matter of fact, he did not. The foregoing finding is also consistent with the evidence of Dr. McManus. There is no evidence that any work- related issue adversely impacted on the

Plaintiff's health in 2008. There is no evidence that the Plaintiff was suffering from work-related stress in 2008.

Absence from work in 2008

137. Evidence was given in relation to the Plaintiff's absences from work due to illness. It is a matter of fact that there were no medically certified absences from work during 2008.

Findings of fact – 2008

138. If, in 2008, the Plaintiff's health, including his mental health, was adversely affected as a result of what, according to the pleaded case, included vicious rumour, bullying and harassment, one would expect the Plaintiff to have (a) informed his doctor of this; (b) received appropriate medical treatment; (c) taken such time off work as was necessary for his treatment and (d) used the newly updated Dignity at Work policy to make a formal complaint, certainly within six months of the last occurrence of the alleged bullying or harassment. The Plaintiff did not inform his GP, whom he clearly had a good relationship with, did not seek or receive any medical treatment and did not need to take any time off work. Nor did he make any complaint, of any sort, under the Dignity at Work policy at any point in 2008, with or without support from any party named in the said policy as a party whom an employee could contact for support. For reasons detailed earlier in this judgment I reject the Plaintiff's testimony that he did not know how to report bullying. I am also satisfied that there was nothing which prevented the Plaintiff from making, in 2008, any complaint he wished to make under the Dignity at Work policy. Insofar as the year 2008 is concerned, I am satisfied that an examination of the evidence does not allow this court to reach a finding that the Plaintiff was "*…subject to ridicule, vicious rumours promulgated by a number of colleagues as well as bullying and harassment and this has had a significant and lingering effect on his mental health. The Plaintiff has felt undermined and unsupported in particular by his line manager who refused to deal with his issues at all and indeed denied that there were any workplace*

issues…", the foregoing being an extract from the pleaded case. Furthermore, if, by 2008, there were any issues which the Plaintiff had raised in prior years, and which had not been resolved to the Plaintiff's satisfaction, one would certainly expect the Plaintiff to have pressed the Defendant to address them properly by calling for a formal investigation. It is a fact that the Plaintiff did not do so in respect of any issue which arose in 2008 or in respect of any issue said by the Plaintiff to have arisen prior to 2008. Having carefully considered all the evidence, I am satisfied that, as a matter of fact, no workplace issues arose in 2008 which adversely affected the Plaintiff and I am equally satisfied that, as of 2008, there were no outstanding issues which had arisen in previous years which had not been dealt with satisfactorily. In short, the evidence insofar as 2008 is concerned does not support the Plaintiff's claim.

The Plaintiff's medical records for 2009

139. There are only two entries in the Plaintiff's medical records, as maintained by his GP, in relation to 2009 and these are as follows:

"19/05/2009 - chest pain darts, i/ii lipids up ++ f hx ihd i/ii sr to a/e

26/10/2009 - Letter to insurance co dictated"

Neither of those two entries make any reference to any issue said by the Plaintiff to relate to any issue or unfair treatment at work. The Plaintiff took no time off work in 2009 which was said to be related to any issue at work. If there was any workplace issue in 2009, I am satisfied, having carefully considered all the evidence, that it did not adversely affect the Plaintiff's health. I am also satisfied that, as a matter of fact, the Plaintiff did not make any complaint under the Dignity at Work policy at any stage in 2009 in relation to any workplace issue, be that an issue said to have arisen in 2009 or any issue said to have arisen in a prior year. I am satisfied that the Plaintiff did not raise any workplace issue with his Doctor, his immediate line Manager, any other Manager, any member of HR, any healthcare professional in Occupational Support or with his Union. The evidence insofar as the year 2009 is concerned simply does

not support the pleaded case. On the evidence I am satisfied that in 2009, the Plaintiff was not suffering from ridicule, vicious rumour, bullying or harassment or that his concerns were ignored or that he was undermined by or not supported by any member of the Defendant's management. There is no evidence from which the court could reach such findings insofar the evidence tendered with regard to 2009 is concerned.

January 2010 – Plaintiff's medical records

140. There is a single entry for January 2010 in the Plaintiff's medical records as maintained at the time by his GP in the Carlton Clinic and that entry states the following:

"25/01/2010 - Severe work stress Plan 1 week on certs"

Having carefully considered all the evidence, I am satisfied that the Plaintiff did attend his GP on 25 January and complained of suffering from stress at work, following which he took some time out of work as certified by his doctor. I am, however, equally satisfied that there is no evidence which would allow this court to reach a finding that the Plaintiff was, at the time, being subjected to bullying or harassment or unfair treatment of any sort in his workplace. For the avoidance of doubt, the court was not given any evidence from which it could safely conclude that fact the Plaintiff saw his GP and was and took time off work, from 25 January onwards, for "*Severe work stress*", was caused by any ill-treatment which he was suffering in work at the time or preceding the commencement of this sick leave. It is possible that the Plaintiff's doctor formed the impression on 25 January 2010 that there were then current issues in the Plaintiff's workplace involving ill-treatment of the Plaintiff but there is no evidence from which this court could find that there were any such issues which were current as of January 2010.

First offer of a transfer in January 2010

141. On the evidence, I am satisfied that, as a matter of fact, Mr. Mohan an Occupational Support Specialist with the Defendant, made it clear to the Plaintiff, when they met in January

2010, that a transfer could be arranged if the Plaintiff so wished. The Court also heard evidence from Mr. Kevin Cullen, H.R. Manager, which I accept, to the effect that, in Dublin, An Post employs 1,600 staff in 27 Delivery Service Units ("DSUs") Mr. Cullen also gave uncontroverted evidence that Dublin is considered to be one office for recruitment purposes and that staff movement between DSUs is not uncommon. I accept Mr. Cullen's evidence that the Defendant does not force employees to move but, with the consent of the individual employee, a transfer can be made for a wide range of reasons, including welfare or medical reasons. I also accept his evidence that "*Dublin's mail operation is probably different than most other jobs in that there is so many Delivery Services Units, there is one in every District so you don't have to go very far to find one.".* (D7, P132, L25). I also accept his uncontroverted evidence that if an employee of the Defendant transfers from one DSU to another, An Post *"can usually mirror their work exactly in another office that is not very far away."* (D7, P133, L2). Furthermore, I accept Mr. Cullen's uncontroverted evidence that, when a transfer is arranged, the Defendant: -

> *"....would try and at least match the conditions they have and often we would move people closer to whether they live. There is 27 Delivery Services Units in Dublin and the operations and the work practices in each one of them is pretty much identical. So, if you had somebody on a cycle-walk or driving a van you can mirror that somewhere else not that far away."* (D7, P133, L10).

142. I am satisfied that, as a matter of fact, in January 2010, the Plaintiff had the option to make a transfer within the Defendant and there is no evidence to suggest that such a transfer would have involved any change to the nature of the Plaintiff's work or to his terms and conditions or relevant work practices. I am also satisfied, on the evidence, that such a transfer, which was on offer to the Plaintiff, would not have involved having to travel to an office very far from the Plaintiff's home. The Plaintiff rejected the offer of a transfer and his evidence is

that he would not consider it. That was a choice which the Plaintiff was perfectly entitled to make. I am, however, satisfied that the offer of a transfer made by Mr. Mohan was an entirely reasonable and appropriate suggestion. I also note the fact that the Plaintiff had transferred within the Defendant on two previous occasions during his career up to the meeting with Mr. Mohan in January 2010. After leaving school, the Plaintiff worked as a junior postman in Blackrock where he worked for a year-and-a-half before transferring to Glenageary. The Plaintiff's evidence is that, in 1994, he transferred from Glenageary to Blackrock post office. The Plaintiff's home address is 95 Beech Wood Lawn, Dun Laoghaire, County Dublin. It is a matter of fact that Glenageary and Blackrock post offices are both within a relatively short distance of Dun Laoighaire. There is no evidence to suggest that, had the Plaintiff being willing to consider a transfer back to Glenageary post office from Blackrock in 2010, that this could not have been arranged or that a transfer to another DSU, relatively close to the Plaintiff's home, could not have been organised. Furthermore, when considering the evidence in respect of a potential transfer, it is of some relevance to note that the Plaintiff's job is not, in the main, office based. The Plaintiff's evidence is that he typically attends the office for just ninety minutes each morning, following which he is on the road, as a driver, making deliveries for the majority of his day. Travel, therefore, is an intrinsic part of the Plaintiff's daily routine, meaning that, as a matter of fact, a transfer from one DSU to another would involve relatively little change and minimal upheaval.

The Plaintiff's unwillingness to consider a transfer

143. The Plaintiff's evidence is that he was unwilling to consider a transfer when Mr. Mohan offered it to him. He gave evidence as to why, namely he did not think he should be the one to move because, from his perspective, he was not the problem. Elsewhere in his evidence the Plaintiff explained the reason why he would not consider moving, in the following terms:- *"it is like moving the problem on, or moving me out of the situation but I wasn't the problem"*

(D2, P39, L26). The Plaintiff did not, however, give any evidence that this is what he said to Mr. Mohan. There is no evidence that, in response to the offer of a transfer, the Plaintiff told Mr. Mohan why he would not consider this option. There is no evidence that the Plaintiff took the foregoing stance with Mr. Mohan and no evidence that Mr. Mohan was given an opportunity to respond. There is, however, evidence that transfers are commonplace within the Defendant and happen for a wide variety of reasons. Furthermore, I am satisfied on the evidence that, as a matter of fact, when an employee is transferred within the Defendant, it neither implies any wrongdoing on the party transferred, nor exculpates any party not being transferred. I am also satisfied that, as a matter of fact, it was open to the Plaintiff to accept the offer of a transfer, and, simultaneously make a formal complaint under the Dignity at Work policy had the Plaintiff so wished. Having rejected the offer of a transfer and having assured Mr. Mohan that the Plaintiff had no difficulty returning to work, he did return to work after one week of certified sick leave. The Plaintiff did not make any formal complaint under the Dignity at Work policy.

09 February 2010 Letter from Peter Mohan

144. Mr. Mohan, Occupational Support Specialist, wrote to the Plaintiff shortly after their meeting. The letter was addressed to the Plaintiff at his home and stated the following:

> *"Dear John,*
>
> *I hope you are keeping well. I was glad to hear that you were back at work. Unfortunately, I have mislaid your phone number, please call me 705 8568, and if I am out of the office when you call please leave a number that I can reach you on.*
>
> *Many thanks*
>
> *Yours sincerely*
>
> *Peter Mohan*
>
> *Occupational Support Specialist"*

145. I am satisfied that this letter was sent to the Plaintiff after his meeting with Mr. Mohan because, during the meeting, the Plaintiff made it clear to Mr. Mohan that he had no problem going back to work the following Monday. The letter was obviously sent after Mr. Mohan learned that the Plaintiff had returned to work. It is also clear from the contents of the letter that Mr. Mohan was available to the Plaintiff should the Plaintiff wish to contact him. Furthermore, the phone number quoted by Mr. Mohan in his letter is the same number which appears opposite Mr. Mohan's name under the heading "*Support Services Contact Numbers"* in the Defendant's Dignity at Work policy. Therefore, there was no impediment to the Plaintiff contacting Mr. Mohan again should he have wished to do so. There is no evidence that the Plaintiff contacted Mr. Mohan again. There is no evidence from which this Court could conclude that Mr. Mohan dealt with the Plaintiff other than in an appropriate manner. There is no evidence that Mr. Mohan was notified by the Plaintiff about any complaint which Mr. Mohan failed to address.

The Plaintiff's meeting with Mr John O'Sullivan in 2010

146. The Plaintiff gave the following evidence to the court regarding his return to work in February 2010:

> "*Actually, I wasn't happy coming back. I wasn't happy that it was still going on. I rang up Occupational Health and they told me that Peter Mohan was retiring and JC O'Sullivan was taking over his position and JC O'Sullivan called out to the house*". (D2, P42, L28).

Other than the foregoing assertion by the Plaintiff made during the trial, there is no other evidence that he was not happy to go back to work in February 2010. No evidence was given that, for example, the Plaintiff told any work colleague or any manager or anyone in HR or in Occupational Support or within his Union that he was unhappy about returning to work. Nor was there any evidence given that the Plaintiff told his Doctor or his wife that he was not happy

to go back to work. Furthermore, the Plaintiff never said so in writing to any party nor does his GP's notes record any such thing. Nor was there evidence before the court which would allow me to find that, as of the point in time when the Plaintiff returned to work in February 2010, he was suffering from any bullying or any harassment or any unfair treatment of any kind. In his evidence in chief, the Plaintiff says that he met Mr. John O'Sullivan "*probably in March of that year*" (D2, P42, L22), being 2010. When asked by his counsel to say what he told Mr. O'Sullivan, the Plaintiff's evidence was that: -

> "*I told him the exact same thing. I told him what was going on. That it is not right. I says: 'it is in the office when it is more or less on a Monday and then it starts that for the week and it could go on for two hours. It depends on how long we're in the office for'"* (D2, P43, L5).

The court was given wholly insufficient evidence as to what the Plaintiff meant by the word "*It*" in the phrases "*<u>It</u> is in the office*"; "*<u>it</u> is more or less on a Monday*"; "*<u>it</u> starts*" and "*<u>it</u> could go on for two hours*". The Plaintiff did not give any specifics as to what he did or did not say to Mr. O'Sullivan. It is not clear from the Plaintiff's evidence what issues he claims to have raised with Mr. O'Sullivan specifically. It is unknown whether the Plaintiff told Mr. O'Sullivan that comments were being made and if the Plaintiff supposedly said so to Mr. O'Sullivan it is unknown whether he described this as "*banter*" which the Plaintiff knew to be considered as harmless by those engaging in it, but which the Plaintiff found to be hurtful or objectionable, in the manner he referred to *"banter*" during the trial. It is unknown whether the Plaintiff allegedly told Mr. O'Sullivan that the party or parties supposed to be making any comments were doing so knowing that it was hurtful or ignorant of the effect of the comments. It unknown whether the Plaintiff suggested to Mr O'Sullivan that any comments were directed at the Plaintiff specifically, or whether the Plaintiff took exception to comment which were directed at others. It is unknown whether the Plaintiff told Mr. O'Sullivan that he had spoken to those

allegedly making comments. It is unknown what response, if any, the Plaintiff told Mr. O'Sullivan that he received from any party whom the Plaintiff may have spoken to. This lack of detail is a feature of the Plaintiff's evidence regarding this meeting between the Plaintiff and Mr. O'Sullivan. When asked what advice Mr. O'Sullivan provided, the Plaintiff's evidence was "*I honestly don't know to be honest. I can't remember"* (D2, P43, L13).

Findings in relation to the meeting between the Plaintiff and Mr O'Sullivan

147. The Plaintiff's evidence is that he cannot remember what advice he was given by Mr. O'Sullivan whom, I note, was a member of the Defendant's Occupational Health team. There is no evidence at all to suggest that Mr. O'Sullivan was motivated other than by a desire to assist the Plaintiff. There is no evidence of any animus on the part of Mr. O'Sullivan towards the Plaintiff. There is no evidence that Mr. O'Sullivan did not act properly and reasonably and no evidence from which this court could conclude that Mr. O'Sullivan ignored any concern or complaint raised by the Plaintiff especially any complaint said to by the Plaintiff to have been adversely affecting his health in any way. The Plaintiff's evidence about what he may have said to Mr O'Sullivan is lacking in detail. What is clear, however, is that the objective and contemporaneous medical records dating from the time of the meeting in March 2010 confirm that the Plaintiff was not being treated for any illness whatsoever. There is no entry in the medical records maintained by the Plaintiff's GP for March 2010 and there is no entry for April, May, June, July or August 2010. The Plaintiff was, by March 2010, back at work. Had the Plaintiff's health been suffering in any way as a result of any issue said to have been caused by or in the Plaintiff's workplace, I am satisfied that he would have attended his GP, informed his GP of the workplace issue and received appropriate treatment for any illness. I am also satisfied that the foregoing would have been reflected in the medical records. He did not attend his GP in March for any reason, nor is there any record of the Plaintiff receiving, in March, any ongoing treatment which commenced prior to March.

148. What can also be said with certainty is that Mr. O'Sullivan called to the Plaintiff's home to meet with the Plaintiff. Given that the meeting took place in March 2010, by which time the Plaintiff was back at work, I am satisfied that the Plaintiff was not out sick and was not suffering from any stress when that meeting took place. It is also a matter of fact that the meeting took place in the familiar surroundings of the Plaintiff's own home. The Plaintiff gives no evidence to suggest the meeting itself was stressful or rushed. I am satisfied that, as a matter of fact, the meeting provided the Plaintiff with another opportunity to make a formal complaint under the Dignity at Work policy, should he have wished to make one. I am also satisfied, on the evidence, that the Plaintiff did not raise a formal complaint under the Dignity at Work policy at the meeting with Mr O'Sullivan. Furthermore, there is no evidence whatsoever of the Plaintiff writing any letter to Mr. O'Sullivan to invoke the formal process under the Dignity at Work policy prior to or in the weeks or months after the March 2010 meeting. During his evidence in chief, the Plaintiff was asked whether Mr. O'Sullivan started any investigation of the Plaintiff's complaints to which the Plaintiff replied "*Not that I know of*" (D2, P43, L15). Having carefully considered the evidence, I am satisfied that, as a matter of fact, the Plaintiff did not put to Mr. O'Sullivan anything which could properly be regarded as a formal complaint under the Dignity at Work policy or, indeed, under the Defendant's Grievance policy. I reached these conclusions in light of the paucity of evidence as to what the Plaintiff supposedly told Mr. O'Sullivan and the lack of any specific detail in relation to any complaint, as well as the complete lack of evidence as to what Mr. O'Sullivan supposedly advised the Plaintiff to do or said to the Plaintiff. Nowhere in his evidence does the Plaintiff say that he called upon Mr. O'Sullivan to commence an investigation. In addition, there is no evidence that the Plaintiff ever followed up with Mr. O'Sullivan in relation to anything the Plaintiff expected Mr. O'Sullivan to do. If the outcome of the March 2010 meeting between the Plaintiff and Mr. O'Sullivan was that the Plaintiff expected an investigation under the Dignity at Work policy to

take place, one would expect the Plaintiff to have taken at least some step following the meeting, be it to supply specific details in writing, or to call upon Mr. O'Sullivan to take such action as had been agreed if the Plaintiff was unhappy in any way with what was or was not being done. The Plaintiff does not say in his evidence that he ever contacted Mr. O'Sullivan again by phone or in writing or face to face, with regard to the outcome of the March 2010 meeting or that the Plaintiff had any need to.

The second offer of a transfer

149. The Plaintiff was very clear in his evidence that Mr. O'Sullivan offered him a transfer. He was equally clear that he refused to consider it. As to the reason, the Plaintiff's evidence was "*Again, I wasn't the problem and I don't think I should have been moved on"* (D2, P43, L25). The Plaintiff did not give any evidence of saying the foregoing to Mr. O'Sullivan and there was no evidence given to the effect that Mr. O'Sullivan had an opportunity to respond to the Plaintiff's view that he was not the problem. Nor was there any specific evidence given as to precisely what the problem was, or who was creating it. Furthermore, the court did not hear from any witnesses alleged to have been the cause of the problem and the court is unaware as to what response those persons would have to make, insofar as accusations about their behaviour in 2010 and prior to it, is concerned. There is no evidence to suggest that the offer by Mr. O'Sullivan to the Plaintiff of a transfer was unreasonable. Nor is there any evidence to suggest that Mr. O'Sullivan dealt inappropriately with the Plaintiff.

The Plaintiff's Medical records – February to December 2010

150. I have already referred to, above, the entry from the Carlton Clinic's medical records in respect of the Plaintiff which records one week's certified sick leave as of 25 January 2010. After the Plaintiff returned to work in early February 2010, there is no record of him attending his doctor for seven months, until September 2010. The following are the entire of the Plaintiff's recorded visits to his GP from February to December 2010, inclusive: -

01/09/2010 – R middle finger painful (following injury five years ago) + CTS plan X – Ray R Hand /Stress in job, Plan 2 weeks off work + referral re hand;

03/09/2010 – Referral letter typed to Mr. S. Carroll, Hand Clinic SVUH as per JMM;

22/09/2010 – To return to work on 27/9/2010.

"Sick leave" – September 2010

151. During his evidence in chief the Plaintiff was asked whether he was out on sick leave again in 2010 and he gave the following evidence: -

"*I think I was out for three weeks. I felt when John O'Sullivan called I had to go sick to make it realistically that I was bringing points up. It wasn't just going back to work quick again. I think I was gone for three weeks maybe"* (D2, P43, L28).

A number of points arise in respect of the foregoing evidence. Firstly, it very strongly suggests that the Plaintiff was prepared to use the fact and/or duration of his sick leave in what might be described as a strategic fashion. Based on the Plaintiff's sworn testimony, the duration of his period off work did not necessarily reflect a poor state of health. Rather, it reflected – at least in this particular instance – the Plaintiff's desire to add weight, as he saw it, to points which he says he wished was making. Secondly, having carefully considered the entirety of the evidence, I am satisfied that this court could not reach any finding that the Plaintiff's decision to see his doctor on 01 September 2010 was due to any bullying or harassment or unfair treatment of any sort in the workplace. There is simply no evidence which would permit such a finding. It is undoubtedly a fact that the Plaintiff did see his doctor on or about 10 September and it is a fact that the Plaintiff's doctor recorded "*Stress in job"*, following which the Plaintiff took time off work. It may well be the case that the Plaintiff's doctor believed that the said "*stress"* was due to then-current issues in the Plaintiff's workplace but the evidence is not there to support any conclusion that as of September 2010 there were current or "live" issues of unfair treatment of the Plaintiff at work. I also find as a fact that the Plaintiff did not invoke the

Dignity at Work policy as of September 2010 when going on sick leave, nor did he invoke it to make any complaint after his return to work.

5th October 2010 letter from Nurse Maggie Smith

152. On 05 October 2010, a letter was written to the Plaintiff at his home by "*Maggie Smith, BSc (Hons) RGN DOHN Occupational Health Adviser*" with the Defendant. The letter stated the following: -

> "*Dear Mr. Ward,*
>
> *I am sorry to learn that you are unwell and on sick leave. Your management had asked for my professional advice regarding your sickness absence, and likely date of return to work.*
>
> *Therefore, I have made the following appointment for you to see me:*
>
> *DATE: - Tuesday 12th October 2010.*
>
> *TIME: - 10.00*
>
> *LOCATION: - Room 3 – 159B, GPO, O'Connell Street, Dublin 1.*
>
> *Access to the building may be gained by the "B" Hall entrance in Henry Street, which is opposite the Permanent TSB bank. Please report to reception on arrival.*
>
> *All consultations with Occupational Health & Support are on a confidential basis. Any advice given to management is strictly in terms of fitness for work. No confidential medical details will be divulged.*
>
> *If this appointment is not convenient, or if you require further information, please don't hesitate to contact me.*
>
> *I look forward to meeting you".*

October 2010 – meeting between the Plaintiff and Ms Maggie Smith RGN

153. The Plaintiff's evidence is that he was back at work when he received the aforementioned letter. The Plaintiff also gave evidence that he met with Ms. Smith and that she

expressed surprise about why the Plaintiff was going to see her, given the fact that he was already back at work. I accept this evidence. It is clear from the body of Ms. Smith's letter that the purpose of the meeting was so that Ms. Smith, a qualified nurse, could meet with someone whom she understood to be on sick leave in order to discuss the employee's health on a confidential basis, the feedback to management from such meeting being with regard to the employee's fitness for work. The Plaintiff gave evidence that a discussion took place between himself and Ms. Smith. According to the Plaintiff "*I told her the whole thing, what was going on*" (D2, P46, L18). The Plaintiff says that Ms. Smith made reference to *"a male environment*" (L20), and supposedly said to the Plaintiff that "*some can be like that, intimidating kind of. Like a pack of 'aul ones', she said, you know what I mean. She said that's kind of just the way they go on; silly things*" (L24), Ms. Smith was not called as a witness. The Plaintiff gave no evidence as to what details he did or did not give when he claims that he told Ms. Smith "*the whole thing, what was going on*" (D2, P46, L18). The Plaintiff gave no evidence as to whether what he says was going on at the time was directed at him, or was directed at others but constituted something to which he took exception. The Plaintiff gave no evidence as to what form of behaviour was taking place. The Plaintiff gave no evidence that he informed Ms. Smith of the identity of those said to be engaging in the behaviour in question. The Plaintiff gave no evidence as to whether what was said to be going on constituted "*banter"* which those engaging in it believed to be funny but which he took exception to. The Plaintiff gave no evidence that he had spoken to those allegedly engaging in the behaviour objected to. There is no evidence as to what their reaction was to any conversation which may or may not have taken place between the Plaintiff and those engaging in the behaviour he objected to. To the extent that any behaviour which the Plaintiff objected to, as of October 2010 when he met with Ms. Smith, is alleged to have constituted statements by co-workers, the Plaintiff has given no evidence as to what those statements were.

Findings in relation to the Plaintiff's meeting with Nurse Maggie Smith

154. I am satisfied, that as a matter of fact, the October 2010 meeting between the Plaintiff and a qualified health professional was an opportunity available to the Plaintiff to provide Ms. Smith with the specifics of each and every complaint which, according to him, adversely affected his health in any way and to call upon Ms. Smith to ensure that an investigation of those complaints took place, if that is what the Plaintiff wanted. I am satisfied that, as a matter of fact, the Plaintiff did not take this opportunity. I come to this view for the following reasons. Firstly, had the Plaintiff done so, I am satisfied that Ms. Smith would have made a record of the complaints and would have taken some action. There is no evidence of either. There is no evidence from which the court could conclude that Ms. Smith, a qualified healthcare professional, had any vested interest in failing to assist the Plaintiff or any Plaintiff who had been on sick leave, particularly if that sick leave was said to relate to a workplace complaint. There is no evidence whatsoever that Ms. Smith had any animus towards the Plaintiff. On the contrary, Ms. Smith was a qualified nurse and an occupational health adviser and was part of the Occupational Support Service provided by the Defendant. I am entitled to conclude that she was there to assist the Plaintiff if he needed assistance. It is a matter of fact that p. 17 of the Dignity at Work policy makes the following clear: -

> "*If you believe that you are being or have been bullied or harassed, you can seek information or assistance in strictest confidence from any of the following Contact Persons . . . The Occupational Support Service".*

Ms. Smith was a member of the Occupational Support Service and was available to the Plaintiff to assist the Plaintiff in having a complaint of bullying or harassment investigated and addressed, had he made such a complaint to her. I am satisfied, after carefully considered the evidence, that the Plaintiff did not seek her assistance to institute an investigation into any complaints. Indeed, in his evidence in chief, the Plaintiff was asked whether he had asked Ms.

Smith "*for any investigation or to do anything?"*(D2, P47, L4). It is clear from the Plaintiff's answer that, as a matter of fact, he did not. As to the reason, the Plaintiff's evidence was: "*Well, I was going there for help, you know. It was whatever she done after that was up to her, you know"* (D2, P47, L6).

155. I am satisfied that, as a matter of fact, there was no impediment which prevented the Plaintiff from calling upon Ms. Smith to ensure that an investigation under the Dignity at Work policy was commenced into allegations of bullying or harassment, subject only to providing Ms. Smith with a complaint that the Plaintiff was allegedly the victim of same, together with sufficient details of all complaints which the Plaintiff wished to investigate. I am satisfied that the Plaintiff did not make an allegation that he was being bullied or harassed and did not provide sufficient details of any such complaint and did not call for an investigation. I am also satisfied that the Plaintiff did not give sufficient information to Ms. Smith as would have enabled her to commence any investigation, even without a request from the Plaintiff that one commence. The thrust of the Plaintiff's evidence in respect of his meeting with Ms. Smith is that it was entirely up to others, not up to him, to commence an investigation. I do not accept that this is the position and I take this view for the following reasons. It is certainly not the position which is set out in the Dignity at Work Policy, being the relevant policy finalised by agreement between the Defendant and the Plaintiff's union. I am satisfied that, as a matter of fact, no investigation by anyone within the Defendant could begin unless and until the Plaintiff took the essential first step of providing sufficient facts concerning the alleged complaint including the specific issued complained of, when they were alleged to have occurred and who was involved and calling for an investigation into those complaints. In light of the evidence I am entirely satisfied that the Plaintiff did not take that necessary first step at his meeting with Ms. Smith. By the time of the meeting between the Plaintiff and Ms. Smith, in October 2010, the Plaintiff was back at work. There is no evidence that in October, November or December

2010, the Plaintiff sought or required any treatment for any health issue said to be linked to his treatment at work and this is borne out by the contemporaneous medical records which I have already quoted in full. If there was any issue at work which was adversely affecting the Plaintiff's health in October 2010, I am satisfied that the Plaintiff would have informed his GP. He did not do so. There is no entry for October or November or December 2010.

22 October 2010 letter from Plaintiff to Mr. Leo Kearns

156. On 22 October 2010 the Plaintiff wrote to Mr. Leo Kearns as follows: -

"*Mr. Kearns*

I would be very grateful if you could arrange a meeting for myself with Mr. Cunningham or Mr. Hunter to discuss some personal issues.

Many thanks,

John Ward,

Postman."

The Plaintiff's claim that he "*wanted the toxic environment to stop*"

157. The Plaintiff's evidence is that he wrote this letter because he *"wanted the toxic environment to stop in Blackrock*" (D2, P48, L12). The foregoing is an assertion made by the Plaintiff under oath in February 2020 in relation to what he says was the workplace atmosphere as of October 2010. For any employee to consider that their workplace environment is "*toxic"* is a very serious matter. If the letter was genuinely sent because that was the Plaintiff's experience of his workplace, as of October 2010, one would expect him to make some mention of that in the letter itself. There is no hint of that in the letter. The Plaintiff's letter does not identify any workplace issues, difficulties or complaints which were said to be *current* as of the time the letter was written. Nor does the letter name any person or persons said to be causing any work difficulties for the Plaintiff. Furthermore if, in October 2010, the Plaintiff considered the workplace environment to be "*toxic",* one would expect the Plaintiff to have said so, at the

time, to his doctor, or to some Manager in the Defendant or to someone in the Defendant's HR or Occupational Support teams or to his Union representative or to his wife. He did not do so. If the workplace atmosphere as of October 2010 was truly "*toxic"* as the Plaintiff states in his sworn testimony, one would expect it to have affected his health in some manner. There is no evidence of the Plaintiff seeking or requiring any treatment for any health- related issue at the time. If the atmosphere at work was genuinely toxic, as of October 2010, one would expect the Plaintiff to have made a complaint to that effect under the Dignity at Work policy. He did not do so. The Plaintiff plainly did write a letter on 22 October 2010 and I am satisfied that, had he wished to do so, he could also have written a letter reporting any alleged unfair treatment, be that alleged bullying or harassment or any alleged failure to support him and setting out full details of any current complaint. The fact is that he wrote no such letter. Having carefully considered all the evidence, I am satisfied that the Plaintiff's evidence that the workplace environment in Blackrock was "*toxic"* as of October 2010 is not reliable. The Plaintiff may well have had issues which he wished to discuss and which prompted him to write his 22 October 2010 letter. I am satisfied, however, that the suggestion by the Plaintiff that his then current treatment at work, as of October 2010, was unfair in any way is not a finding borne out by the evidence.

The incident concerning Mr Cunningham's phone number

158. The Plaintiff also gave evidence that he asked Mr. Kearns to give him a phone number for Mr. Cunningham. In his evidence Mr. Kearns expressed surprise that anyone would ask him for Mr. Cunningham's number because Mr. Cunningham was the operations manager for the area which included Blackrock Post Office and his phone number was on the board in the Blackrock office freely available to all members of staff. This does not appear to be disputed and I accept that, as a matter of fact, Mr. Cunningham's phone number was on a notice board

in the Blackrock office and was readily available to all staff who wished to contact him, including the Plaintiff.

The Plaintiff's allegation that Mr Kearns *"threw"* the phone number on the bench

159. In his evidence in chief, the Plaintiff claimed that Mr. Kearns threw Mr. Cunningham's phone number on the bench, as opposed to handing it to the Plaintiff. The Plaintiff's evidence with regard to what he says Mr. Kearns did concerning the number was to say: "*It was his style, that is what he done. There was a chap, Eamon Goff in front of me and he couldn't believe. I went to put my hand out for his number and he threw it on the bench*" (D2, P61, L21). Mr. Goff was not called as a witness. Mr. Kearns vigorously disputed the Plaintiff's account, gave evidence that this was certainly not his style, that this was not what occurred and that there was no reason for him to throw Mr. Cunningham's number onto the bench.

The Plaintiff's allegation that Mr. Kearns was *"annoyed"* and told him "*there is no need to get Cunningham involved*"

160. During cross-examination the Plaintiff repeated that Mr. Kearns had "*thrown*" the number at him but the Plaintiff also went further in his evidence under cross examination, in two material respects. Firstly, as regards Mr. Kearns, the Plaintiff's evidence under cross-examination was - "*I think he was annoyed that I was going outside his office to see Mr. Cunningham*." (D3, P100, L13). The Plaintiff then went on to say:

> "*I asked him for Pat Cunningham's number and he says 'you don't need to get him involved'... I went in to the office and asked Leo for Pat Cunningham's number and Leo was annoyed and he said 'there is no need to get Cunningham involved'. I says 'I want it and I want to have the meeting outside of this office because everything in this office goes back on the floor'. And my bench is over where the driver section is which is about, I don't know, could be 50 yards away from Leo's office*." (D3, P100, L19).

161. The foregoing account by the Plaintiff concerning a conversation which supposedly took place between the Plaintiff and Mr. Kearns was not given during his examination in chief. No mention of that conversation was made in the Plaintiff's witness statement. No mention of the conversation appears in any of the pleadings, including the detailed Personal Injuries Summons or Replies to Particulars. Weighing all the evidence in the balance, including the Plaintiff's demeanour, I am satisfied that this element of the Plaintiff's evidence is not reliable. It also runs counter to the evidence repeatedly given by the Plaintiff and by Mr. Kearns, to the effect that Mr. Kearns was a good friend and a good colleague.

Findings in relation to the incident concerning Mr Cunningham's phone number – Unreliable evidence by the Plaintiff

162. Taking all the evidence into consideration, my findings of fact are as follows. It is not in dispute that Mr. Cunningham's number was freely available to any employee in the Blackrock office, being on a notice board. The only explanation proffered by the Plaintiff as to why he asked Mr. Kearns to provide a phone number which was readily accessible to the Plaintiff was to say "*I don't think it would be my job to go into the office, I don't think it would be my place to go into the office and start taking down names off the board so I just asked him for i*t." (D3, P62, L6). I do not find this explanation convincing. I am satisfied that, on the balance of probabilities, the Plaintiff did not ask Mr. Kearns for Mr. Cunningham's number. The evidence clearly establishes that there was no need for the Plaintiff to ask Mr. Kearns for a number which was, as a matter of fact, readily accessible to him. It is also incontrovertible that the 22 October 2010 letter from the Plaintiff to Mr. Kearns does not ask for Mr. Cunningham's number and I accept the uncontroverted evidence given by Mr. Kearns that "*Mr. Cunningham's number and my number would all be displayed where people come in to sign on so Mr. Cunningham's number was there for everyone to get"* (D6, P74, L13). I do not accept the Plaintiff's evidence that Mr. Kearns "*threw"* Mr. Cunningham's number at the Plaintiff or

onto a bench near the Plaintiff and I am satisfied that the foregoing testimony by the Plaintiff cannot be relied upon.

Unreliable evidence by the Plaintiff that Mr. Kearns was "annoyed" at him

163. I also reject as unreliable, the Plaintiff's account, which was given for the first time under cross-examination and appears nowhere else in the pleaded case or in the Plaintiff's witness statement or in the Plaintiff's direct evidence, that Mr. Kearns was "*annoyed*" at him for seeking a meeting with Mr. Cunningham. Furthermore, I do not accept the Plaintiff's evidence that Mr. Kearns told him that there was "*no need to get Cunningham involved".* The foregoing was also evidence given by the Plaintiff for the first time, under cross-examination, and appears nowhere else in the pleaded case, in the Plaintiff's witness statement or in the Plaintiff's direct evidence. I am satisfied it is unreliable testimony. The foregoing assertions by the Plaintiff are also undermined by the weight of evidence that the relationship between the Plaintiff and Mr. Kearns in 2010 was a very good one. In addition, is the fact that Mr. Cunningham's number was on a notice board in the workplace and, thus, the Plaintiff had no need to ask the Mr. Kearns for it. Furthermore, it is a fact that nothing in the short letter by the Plaintiff to Mr. Kearns dated 22 October 2010, in which the Plaintiff states that he wishes to meet Mr. Cunningham or Mr. Hunter, contains any complaint about Mr. Kearns or suggests any reason for the latter to be concerned or annoyed about anything the Plaintiff might have to say to Mr. Cunningham. has to say. Moreover, the fact that the Mr. Cunningham's phone number was on a noticeboard in the Plaintiff's workplace and, therefore, freely available to any employee who wished to contact him suggests that for an employee to wish to speak to him was not at all controversial. Hence, there is no reason why Mr Kearns should be annoyed about an employee wanting to speak to a Manager whose phone number is there for any employee to use should they wish to speak to him. Weighing up all the evidence, I prefer and accept the testimony of Mr. Kearns who stated: "*I can categorically say John was a good friend of mine*

and we were able to have a conversation. There was no reason whatsoever to throw Mr. Cunningham's number to him. There was no reason even for John to ask me for Mr. Cunningham's number." (D6, P74, L50). I reject, as unreliable, the Plaintiff's evidence that Mr. Kearns was annoyed with him, or that he threw Mr. Cunningham's number, or that he told the Plaintiff that there was no reason to get Mr. Cunningham involved. It also has to be said that the foregoing elements of the Plaintiff's sworn evidence which I have found to be unreliable cannot be explained as a result of poor memory caused by the passage of time. Rather, I am forced to the conclusion that the Plaintiff described events which simply did not occur.

The Plaintiff's suggestion that the Defendant ignored his concerns

164. An element of the Plaintiff's case is that his concerns were ignored by the Defendant. This is not borne out by the evidence. Having said in his 22 October 2010 letter to Mr. Kearns that the Plaintiff wanted to meet with either Mr. Cunningham or Mr. Hunter in order to discuss *"some personal issues",* I am satisfied that Mr. Cunningham met the Plaintiff in November 2010. I am satisfied that the meeting took place in Mr. Cunningham's Ballymount office.

November 2010 meeting between Plaintiff and Mr. Pat Cunningham

165. Mr. Cunningham, the Defendant's Mails Operations Manager and a superior of Mr. Kearns, knew the Plaintiff from when Mr. Cunningham was a postman in Blackrock and had played football with him and I am satisfied the meeting was a friendly and informal one. I am satisfied that the pair had a conversation about old times following which the Plaintiff told Mr. Cunningham that the issues of concern to him were (1) an allegation that he had an affair in 1996 (2) an allegation that he was to blame for KF's dismissal in 2005 and (3) a suggestion that he had something to do with the stolen mail which the Plaintiff transferred from Glenageary to Blackrock in 2006. There were no notes taken at the meeting which lasted approximately half an hour. I am satisfied that the Plaintiff did not supply specifics in terms

of these 3 allegations, such as names of individuals said to have made the allegations, dates when allegations were said by the Plaintiff to have been made, details of any response as the Plaintiff claimed to have made etc. I am satisfied, however, that the reaction on the part of Mr. Cunningham to such information as the Plaintiff gave him was to observe that the issues which the Plaintiff was referring to during their meeting were *"historical"* (D7, P87, L12).

What Mr. Cunningham advised the Plaintiff to do

166. I am equally satisfied that Mr. Cunningham did not ignore the Plaintiff's concerns. On the contrary, the outcome of the meeting was that Mr. Cunningham advised the Plaintiff as to what he should do by way of a practical next step, namely Mr. Cunningham told the Plaintiff that he should write down all his concerns in some kind of chronological order. I am also satisfied that the Plaintiff agreed to do this and that, during the meeting, the Plaintiff told Mr. Cunningham that he had a "*fair idea"* (D7, P87, L15) as to dates, but did not know exact ones. The foregoing is consistent with the issues being in the past, rather than current as of 2010. Indeed, this is borne out by the contents of the letter which the Plaintiff subsequently wrote, at Mr. Cunningham's suggestion, dated 22 November 2010, which letter is discussed below. There is no evidence that the meeting was stressful for either party or was rushed. There is no evidence that the Plaintiff informed Mr. Cunningham that the Plaintiff found his work situation toxic or unbearable or that the Plaintiff informed Mr. Cunningham that the workplace atmosphere was adversely affecting his health in any way. This is consistent with the objective medical records dating from the time, regarding the Plaintiff, who was back at work by the time the meeting took place. Having carefully considered the evidence regarding this meeting, there is nothing which would allow this court to conclude that Mr. Cunningham acted in any way unreasonably or unfairly towards the Plaintiff or that he failed to take any step he should have taken. Nor is there any evidence that the Plaintiff was being bullied or harassed or unfairly treated at that time of the meeting.

The Plaintiff's 22 November 2010 letter to Mr. Cunningham.

167. The outcome of the foregoing meeting with Mr. Cunningham was that the Plaintiff agreed to set out his concerns in writing. After the meeting, the Plaintiff wrote a letter to Mr. Cunningham, which is dated 22 November 2010, which letter states the following:-

"*Mr. Cunningham*

I wrote down a few pointers after our recent conversation which I will go into more detail with you.

The accusations made about me are as follows:

Sleeping with a work colleague's girlfriend

Setting up a work colleague to be sacked.

Accuse of robbing.

I must add the dates maybe out a bit as I am only going on memory.

Many thanks

John Ward".

The foregoing letter is very clear about the 3 issues of concern to the Plaintiff, namely what the Plaintiff describes as "*accusations made about me*". These are the same 3 issues which the Plaintiff referred to, verbally, at his first meeting with Mr. Cunningham. It is not in dispute when the events occurred giving rise to what the Plaintiff described as the *"accusations"* about him, i.e. 1996, 2005 and 2006, respectively.

The Plaintiff's 22 November 2010 statement that *"I am only going on memory"*

168. The Plaintiff also prepared a 2-page handwritten document which, it is clear, accompanied his 22 November 20120 letter, the contents of which were as follows:

"*1994 – driving without licence*

1996 – Lord Mayor charity day. EB/PB

2000 – 2001 Christmas. JC.

2005 KF letters. Leo Kearns.

2005 my hand 4/5 stitches

2006 – JH letters

2006 – KD (the frame)

2006 – JC, EB accuse me of robbing. JC accuses me of setting up KF. (JM).

What way do I cycle home?

EG

Maurice O'Callaghan (Solicitor)

BN:NR

MC

2005 / 2006 DC / LM BD

2007A O'D. EM (he's not a bully)

2008 Leo Kearns

2010 Peter Mohan, John O'Sullivan, Maggie Smyth".

169. There is nothing in the Plaintiff's letter, dated 22 November 2010, to suggest that the Plaintiff was, at that time, being bullied or harassed or that rumours about him were circulating at that point in time. I am satisfied that, as a matter of fact, the "*accusations"* to which the Plaintiff referred to in his letter were not then current. Indeed, when referring to the "*accusations*", the Plaintiff is specific about the fact that the dates may not be correct, i.e. *"the dates may be out a bit"* and he also gives the reason for this, namely "*as I am only going on memory"* (D2, P49, L21). The foregoing is consistent with the *"accusations*" being issues which date back some time and which were not then current. The reference by the Plaintiff to reliance "*on memory*", insofar as a highly relevant details such as dates are concerned, is wholly inconsistent with the "*accusations"* being current or "live" issues in the Plaintiff's workplace and utterly inconsistent with any rumours allegedly circulating, as of the date this letter was

written by the Plaintiff, in November 2010 or, for that matter, in the 3 years prior to that. Later in this judgment I will return to the contents of this letter and accompanying 2-page document which in the context of a meeting which took place on 19 July 2011 during which same were discussed.

The first time the Plaintiff put any concerns in writing – 22 November 2010

170. I am entirely satisfied that, as a matter of fact, the Plaintiff's 22 November 2010 letter is the very first time he wrote to any representative of the Defendant and provided, in writing, any details whatsoever of any concerns. This is also clear from the evidence in chief given by the Plaintiff in relation to that letter in which he confirmed *"It was the first time I actually put it down in writing"* (D2, P49, L28). On receipt of the said letter, the Defendant did not ignore the Plaintiff's concerns. I am satisfied that Mr. Cunningham, the Defendant's Mails Operations Manager, considered its contents and formed the view that this was a Human Resources issue and referred the letter to Mr. Damien Hunter, HR Manager. This was a reasonable reaction on the part of Mr. Cunningham. By that stage, the Plaintiff had been back at work for some weeks performing his normal duties fully and the issues raised were not current. At that point in time, Mr. Hunter was Human Resources Manager for Dublin Collections and Deliveries, Mr. Hunter's current role being Human Resources Manager for Dublin Mail Centre, Northeast Collection, Delivery and Retail, covering Dublin and seven counties. Where it arises in the chronology, I will refer below to Mr. Hunter's contact with the Plaintiff.

20 December 2010 letter to Mr. Leo Kearns

171. In his evidence the Plaintiff referred to a letter dated 20 December 2010. The Plaintiff made reference to both a handwritten and a typed copy of the letter. The text of the typed version of the letter was as follows:-

"*Dear Mr. Kearns,*

We, as a group of postal operators in Blackrock P.O., would like to raise our concerns regarding our working situation with a fellow employee, Mr. [OD] to your attention. Over the last year, Mr. D has had several issues with certain issues in the workplace. We, the undersigned postal operators, believe that it is in the best interests of all concerned not to engage personally with Mr. D. This has been done in a respectful manner, without rudeness or malice. Over the last weeks, it has become particularly awkward and tense working with Mr. D. in particular, his attitude in the workplace has become extremely irritating, and we feel that this could lead to future problems in the workplace. As a group, we have to work in a small, confined area for approximately 15 – 30 minutes each day, and close contact with colleagues is inevitable. Mr. D's behaviour in these situations has been unacceptable, with many examples of pushing and rubbing against colleagues, sneering, whispering and examples of blocking access. In the current situation of bad weather and heavy mail over the Christmas period, this has become quite inconvenient and trying to say the least. We are a genuine group of colleagues who enjoy our work and the camaraderie in the workplace at Blackrock P.O. and we are concerned that this exhibition of aggression, awkwardness and cockiness could lead to an innocent member of staff becoming agitated unnecessarily. We have reluctantly put this in writing but feel that this is the best thing to do for all concerned. We would appreciate if you could consider this as a matter of urgency.

Regards".

172. The Plaintiff's evidence is that, in or about December 2010, he was asked by a work colleague to read this letter. According to the Plaintiff, the drivers had a meeting on the floor and EB suggested that the drivers write a letter "*against*" OD and that, as he was no good at writing letters, KD was asked to write it. EB, OD and KD were not called as witnesses. The account given by the Plaintiff as to what EB supposedly said has not been tested by way of

cross-examination of EB. The court has only hearsay evidence with regard to the truth or otherwise of what the Plaintiff says others said. The court has inadequate evidence of the context in which this letter was written. The Plaintiff's evidence is that the drivers "*wanted to write this letter against OD*" (D2, P58, L28). The court has had no evidence from the drivers themselves. What is clear is that, without the court having any objective evidence that it was so, the Plaintiff believes that (a) the writing of the letter was inappropriate and (b) that the letter was directed at OD in an unfair manner. The Plaintiff's evidence is that he refused to sign the letter. The Plaintiff's testimony is that he photocopied the letter and handed both the handwritten and typed versions to Damian Hunter in 2011. Later in this judgment I will examine the evidence in relation to that 2011 meeting between the Plaintiff and Mr. Hunter. The only significant difference between the handwritten and typed versions of the letter is that the handwritten version includes the sentence "*This resulted with his being absent for a while*", which sentence is missing from the typed version. Furthermore, the final sentence of the typed version reads "*We would appreciate if you could consider this as a matter of urgency*", which sentence is absent from the handwritten version.

The 20 December 2010 letter in light of the Plaintiff's claim

173. At no stage during his evidence did the Plaintiff claim that the 20 December 2010 letter amounted to any bullying of him by any other party. I should state for the sake of clarity that there is no evidence from which this court could conclude that any other party was being bullied or harassed by means of this letter, although the Plaintiff's evidence is that he was asked to but refused to sign the letter, he gave no evidence that there were any repercussions arising from his refusal to sign it. He did not give evidence that he was treated unfairly or in any way differently as a result of refusing to sign the letter.

The Plaintiff's health as of December 2010

174. There is no evidence that any work-related issue was adversely affecting the Plaintiff's health as of October, November or December 2010 and this is confirmed by the Plaintiff's medical records, to which I have referred earlier in this judgment. The only absences from work attributed to stress in the Plaintiff's job during 2010 was one week of sick leave in January and three weeks of sick leave in September. In the manner examined earlier in this judgment, the Plaintiff's testimony suggests that he was being somewhat strategic in relation to the duration of sick leave taken by him in September 2010. It is clear that it was following the Plaintiff's return to work that he met with Mr. Cunningham and then wrote to Mr. Cunningham at the latter's suggestion.

Certain findings in relation to the year 2010 in light of the Plaintiff's pleaded case

175. In the manner explained a careful consideration of the entirety of the evidence in relation to 2010 does not allow the court to hold that the Plaintiff was suffering from bullying harassment or any unfair treatment in 2010. The evidence simply does not support the Plaintiff's pleaded claim. It also has to be said that the Plaintiff tendered certain evidence in relation to matters said to have occurred in 2010 which I am satisfied cannot be relied upon.

The Plaintiff's claim that he met Mr. Cunningham in February 2011

176. In direct evidence, the Plaintiff claimed that he met Mr Pat Cunningham outside Blackrock Hospice in or about February 2011. The Plaintiff's account of the meeting is that he asked Mr. Cunningham about the 22 November 2010 letter and he alleges that Mr. Cunningham said "*I meant to get back on to you. I spoke to Damien Hunter and he told me you're going back too far. Over six months*." (D2, P54, L27). The Plaintiff's evidence is that he responded to Mr. Cunningham as follows: "*I said to him: 'are you serious?' I says: 'I was seriously thinking about committing suicide in 2006", and he said to me: 'that's the first time I heard that', and I said: 'I'm telling you the truth'*." (D2, P55, L3). The Plaintiff's evidence is that Mr. Cunningham made no response to this. When the foregoing account was put to him,

Mr. Cunningham gave clear and compelling evidence that such a conversation never took place between the Plaintiff and himself at any time. Mr. Cunningham's testimony was as follows:

> "*No, if somebody mentioned that to me, the word 'suicide' I would certainly have taken some action, to, you know, to delve into it further to see what help we could, what support we could offer somebody in that situation. In terms of referring to our OHS, definitely I would not have, that is a fairly stark thing to say to anybody, I would recall that*." (D7, P90, L17).

Unreliable evidence by the Plaintiff in relation to the alleged meeting of February 2011

177. Mr. Cunningham's evidence was that the meeting did not happen. Weighing the evidence carefully, I prefer Mr. Cunningham's evidence and I am satisfied that the Plaintiff's evidence on this issue is not reliable. I say this for several reasons. Firstly, the Plaintiff's claim that he was suicidal in 2005 and 2006 has been examined earlier in this judgment and I am satisfied that there is no evidence to support that contention from the Plaintiff's contemporaneous medical records dating from 2005 and 2006 or from the Plaintiff's doctor or the Plaintiff's wife or from any other party. This is not to diminish the seriousness of suicidal thoughts or the enormous burden upon those suffering from such thoughts. If the Plaintiff was suffering from such thoughts in 2005 and/or 2006, the court could have nothing but sympathy for him but there is a complete lack of any objective evidence to support the particular claim. Secondly, Mr. Cunningham is someone with 34 years' service in the Defendant and is a senior manager within the Defendant and I accept entirely that any mention to him of the word *"suicide"* by an employee would have triggered action on his part. In particular, I accept Mr. Cunningham's evidence that any mention of the word *"suicide*" would have prompted him to delve into the issue further, with a view to seeing what help and support could be offered to the employee in question. Thirdly, there is no evidence that Mr. Cunningham had any animus towards the Plaintiff and, as a senior manager, there was every reason for Mr. Cunningham to

offer support to an employee who mentioned that they had been suicidal at any point. I am satisfied that there was no vested interest in Mr. Cunningham ignoring a reference to suicide. The Plaintiff's account, including the suggestion that a senior manager essentially said nothing, and subsequently did nothing, when an employee assured him that he was seriously thinking about committing suicide in 2006, is not credible in my view**.** Having carefully considered all the evidence, I am satisfied that, had the meeting and conversation taken place in the manner the Plaintiff alleges, Mr. Cunningham would have, at the very least, recorded the fact that an employee mentioned to him that he was suicidal in 2006 and would have referred the Plaintiff to a member of the Occupational Support Service which is staffed by medical professionals. Furthermore, when the Plaintiff met with and was assessed by Professor Damian Mohan on 22 January 2019, just over a year prior to the commencement of the trial, the Plaintiff gave Prof. Mohan an account of the alleged meeting with Mr. Cunningham which made no mention of the Plaintiff having told Mr. Cunningham that he had been suffering from suicidal thoughts in 2006. I am satisfied that Prof. Mohan's 11 March 2019 report records faithfully what the Plaintiff told him, but what is said, at para 12.6 of Prof. Mohan's report is as follows:-

> *"Mr. Ward said that he did not hear anything back until sometime later when he met Mr. Cunningham in 2011 outside the Blackrock Hospital. Mr. Ward asked Mr. Cunningham, "if there was any word?" In response, Mr. Cunningham said that the matter was dating back greater than six months, therefore it would not be dealt with."*

178. Carefully weighing up all the evidence I am satisfied that the Plaintiff's evidence is not simply not reliable regarding the alleged meeting and conversation with Mr. Cunningham outside Blackrock Hospice and I must reject it. It also must be said that, even though the alleged meeting is said to have occurred over a decade ago, this evidence by the Plaintiff, which I am satisfied is unreliable, cannot simply be explained by poor memory as a result of the

passage of time. Weighing all the evidence carefully, I am satisfied that the Plaintiff has given an account of a conversation which never took place.

The Plaintiff's medical records for 2011

179. The following are the entire of the Plaintiff's medical records for 2011 as maintained by his GP at the Carlton Clinic:-

28/01/2011 - ? Gout, rt hallux form for bloods given.

15/02/2011 – John Ward is covered under An Post scheme from today 22nd Sept 2010 as per Liam Boylan An Post (6394133) – letter of confirmation received – MD.

10/05/2011 – Accused of sleeping with a colleague's girlfriend, accused him of robbing and also of setting up a colleague for disciplinary procedure for stealing. Intimidation from several colleagues frequently. Reported this to An Post in 2006 and 2007. Has seen 4 different social workers in work. Advised to go for counselling but never went. Has made several complaints and feels he has not been listened to. Stress as a result of intimidation. Has been offered an alternative job in another depot but not keen to move. Going to solicitor. Has affected his sleep and mood. Work related certs. Work notes form 9/5/11.

27/06/2011 – Stress ++ Anger issues. Advised needs counselling/anger management. Numbers for several psychologists given.

09/08/2011 – 1. Plantar fasciitis – o/e mild R X = full LT insoles 2. Pains in elbows and lower back on and off x mths o/e elbows tender lat epicondyle but not typical of tennis elbow, also tender mid – antecubital fossae, mild tender Rt side L3, good RO n lower back, plan – check bloods including urate and CRP and ESR.

31/08/2011 – ADMIN: SMS sent to call re bloods.

07/09/2011 – Discussed bloods. Advice re diet exercise etc. Maybeedstatin, mood improving, went back to work 1/12 ago and is doing well. Feels is being taken seriously re his complaint now. Advice. Plantar fasciitis a little better. Advice. Vertigo.

180. In the manner set out above, the Plaintiff's contemporaneous medical records refer, inter alia, to the Plaintiff going on sick leave from 10 May 2011. That entry dated 10/05/2011 by his GP refers to what can fairly be described as the Plaintiff's core complaints. I am satisfied that, as a matter of fact, the Plaintiff did go on sick leave commencing 10 May 2011. In his evidence to the court, the Plaintiff at no stage suggested that his going on sick leave, from 10 May 2011, was precipitated by any specific event said to have occurred at that point in 2011 or at any point in 2011. The Plaintiff did not, for example, give the details of any individual or individuals whom the Plaintiff claimed to have said anything specific at any specified date in 2010 or at any point during that year which caused the Plaintiff to go to see his doctor. The medical records contain a record of the account given, in May 2011, by the Plaintiff to his doctor but the Plaintiff's account to the court gave no details of any act said to constitute bullying or harassment or unfair treatment of the Plaintiff, in 2011. Having carefully considered the entirety of the evidence, I am satisfied that the Plaintiff's doctor may well have been under the impression, in May 2011, that the Plaintiff was, at that point in time, suffering from bullying or unfair treatment at work but the evidence before the court does not support any such finding. The Plaintiff may well have suggested to his doctor, in May 2011, that his complaints were current but the evidence does not support any finding by the court that the Plaintiff was being bullied or in any way treated unfairly in 2011 or that his going on sick leave was caused by bullying or unfair treatment. In short the evidence does not support any finding that, as of 2011, there was any unfair treatment of the Plaintiff at work which was then *current*.

Plaintiff advised to go for counselling

181. I am also satisfied that, as a matter of fact, by 10 May 2011 the Plaintiff had been advised to go for counselling but did not take that advice. This is clear from the doctor's note which states "*Advised go for counselling but never went*".

One counselling session

182. During his evidence, the Plaintiff denied that he was offered counselling. For the reasons set out in this judgment I am satisfied this is not correct and I find as a fact that the Defendant recommended that the Plaintiff avail of counselling and advised that the Plaintiff speak to his GP in relation to making appropriate arrangements. Furthermore, in cross-examination the Plaintiff confirmed that he did attend a counselling session and the Plaintiff's evidence was as follows:

"*I went to one counselling session I think in 2010. Her name was Ellen Fitzgerald and she was no good for me. She said work related things wasn't what she dealt with and I didn't know who to turn to".* (D3, P118, L27).

The Plaintiff's evidence that he "*didn't know who to turn to"*

183. I do not accept the Plaintiff's evidence that he did not know "*who to turn to*" (D2, P119, L1). By that stage in 2010, the Plaintiff was a very longstanding patient of Dr. McManus and the court has seen the Plaintiff's medical records concerning the treatment he received in the practice of Dr. McManus during a 14-year period, going back to 1996. The Plaintiff's evidence that he did not know who to turn to is also entirely inconsistent with the contemporaneous medical records maintained by his GP, specifically the 10 May 2011 entry which states "*advised go for counselling but never went*". I am satisfied that, as a matter of fact, had the Plaintiff been willing to avail of counselling at any point and, specifically, from 2010 onwards, his GP, whom the Plaintiff referred to in his evidence as "*a rock behind me*" (D2, P44, L7), could and would have made the necessary arrangements. If, as the Plaintiff suggests, Ms. Fitzgerald was not suitable, there is no evidence whatsoever that the Plaintiff asked his GP to

arrange for him to see a different counsellor in 2010 or thereafter. Nor is there any evidence that the Plaintiff informed anyone within the Defendant, including any health professional within the Defendant's Occupational Support service, that he wished to attend counselling but was having difficulty finding a suitable counsellor or, for that matter, that he wished to attend counselling but could not afford it. In short, the Plaintiff was given advice both by his own doctor and by professionals in the Defendant that he should avail of counselling. I am satisfied that this advice was given out of concern for the Plaintiff. The Plaintiff did not avail of counselling despite that advice and it is not the case that the Plaintiff had nobody to turn to with regard to recommending a suitable counsellor or assisting him to arrange appropriate counselling.

When the Plaintiff first consulted a solicitor – 2010 and 2011

184. The entries in the Plaintiff's medical records for 10 May 2011, also record the Plaintiff "*Going to solicitor*". The Plaintiff gave sworn evidence that in 2010 and again in 2011, he consulted with a solicitor Mr. Maurice O'Callaghan of McGuire O'Callaghan solicitors. The Plaintiff's evidence included*: "I went to see Maurice O'Callaghan a solicitor to see where I'm fixed in going."* (D2, P50, L9). I am satisfied that the first consultation between the Plaintiff and his solicitor took place in October 2010 and the second took place in May 2011. In her evidence, the Plaintiff's wife also confirmed that the Plaintiff consulted a solicitor in 2010 and again in 2011 and that she accompanied the Plaintiff. Clearly the legal advice which was provided to the Plaintiff by his solicitor in 2010 and in 2011 is privileged. I am, however, satisfied in light of the Plaintiff's evidence, that the following is the factual position. Prior to consulting with his solicitor, the Plaintiff was unhappy about: (1) An allegation that he had had an affair with a colleague's girlfriend in 1996, (2) An allegation that he was responsible for getting a colleague sacked in 2005, (3) An allegation that he had something to do with stolen post found in 2006 which he brought back to Blackrock, (4) The Plaintiff's belief that Mr. Leo

Kearns had breached confidentiality and (5) The Plaintiff's dissatisfaction with what he saw as the Defendant's failure to address his concerns despite his contention that he had brought them to his employer's attention. Based on his evidence to the court, I am satisfied that as a matter of fact the foregoing concerns, (1) to (5), were the Plaintiff's concerns when the Plaintiff sought legal advice from a solicitor in 2010, and again in 2011. The Plaintiff confirmed this in his evidence. It is a matter of fact that the foregoing concerns, which the Plaintiff had in 2010 and in 2011 when he first consulted with a solicitor and obtained legal advice, are the very same concerns which the Plaintiff raised in his evidence to this Court in February 2020.

Legal advice provided to the Plaintiff

185. The Plaintiff described his solicitor as being a close friend of his and someone the Plaintiff had played football with, but I am satisfied, as a matter of fact, the Plaintiff and his wife attended the solicitor for the purposes of obtaining legal advice, and did so in 2010 and in 2011 and I am also satisfied that the Plaintiff did, in fact, obtain legal advice from the solicitor in question. This is clear from the evidence given by the Plaintiff and his wife. Counsel for the Defendant was careful not to ask what advice the Plaintiff had received but, during the course of cross-examination, the Plaintiff volunteered what his solicitor had advised, namely: "*He recommended that I go through HR instead of going down the legal route. . .".*(D3, P116, L4). Counsel for the Defendant then put to the Plaintiff: "*I don't wish to pry into legal advice that was given to you at the time but you had a discussion with him about these matters and the alternatives of bringing proceedings, yes?"* to which the Plaintiff replied "*Yes*". (D3, P116, L4). During the course of his evidence, the Plaintiff also confirmed that he consulted with his solicitor before going to see Mr. Hunter. The meeting between the Plaintiff and Mr. Hunter is examined later in this judgment. Given the foregoing facts, an obvious issue arises in relation to the Statute of Limitations.

The Plaintiff's 30 May 2011 letter – written after he consulted a solicitor

186. On 30 May 2011, the Plaintiff wrote a letter to the Defendant as follows: -

"*To whom it may concern,*

I have been an employee of An Post for the last thirty years, in which I have been in Blackrock DO since 1994.

I have had a lot of bullying, harassment and slander accusations made at me over some time. I have met nine different people on separate occasions to try and explain myself which I feel I got little satisfaction.

I am presently out sick with work stress and which I have done so on two previous occasions. I find my health and the stress on my family have been affected.

I would appreciate a meeting in person to discuss these matters.

Many thanks,

John Ward".

In his evidence, the Plaintiff confirmed that he had already consulted with his solicitor before writing his 30 May 2011 letter which the Plaintiff sent by way of "tracked" post. Although I am satisfied that there is no evidence that the Plaintiff was not treated seriously prior to sending his 30 May 2011 letter, I accept the Plaintiff's evidence that he sent it by "tracked" delivery because he wanted to be treated seriously and wanted to have a record of the letter. In the manner which will be explored later in this judgment, the foregoing raises a clear issue as regards the Statute of Limitations, insofar as the Plaintiff's case is concerned.

<u>03 June 2011 letter from Mark Graham to the Plaintiff</u>

187. On 03 June 2011, Mr. Mark Graham, head of Employee Relations in the Defendant, wrote to the Plaintiff as follows: -

"*Dear Mr. Ward,*

I refer to your letter dated 30th May 2011.

I have asked Mr. Damien Hunter, HR Manager, C&D Operations to contact you directly in order to arrange a meeting to discuss the matters you have raised.

Yours sincerely".

Mr. Graham was Mr. Damien Hunter's superior. I am satisfied that a meeting was arranged and took place between the Plaintiff and Mr. Hunter. I am also satisfied that, as a matter of fact, it provided the Plaintiff with an opportunity to raise with Mr. Hunter such issues as were of concern to the Plaintiff. That meeting took place on 19 July 2011 and will be discussed later in this judgment where it appears in the chronology. Before that meeting took place, the Plaintiff met with Mr O'Sullivan of Occupational Health on 07 June 2011.

07 June 2011 – Meeting in the GPO between Mr. John C. O'Sullivan and the Plaintiff

188. The Plaintiff confirmed that, on 07 June 2011, he met with Mr. John O'Sullivan of the Defendant's Occupational Health Support team in the GPO. The discovery documentation in this case contains what I am satisfied is a contemporaneous memorandum which refers to the said meeting. It is a "private & confidential" memo addressed to Maggie Smith, OHA, from John C. O'Sullivan, OSS, dated 07 June 2011 the text of which reads as follows: -

"***Background***

Mr. Ward was referred by his DSM Leo Kearns as he is currently absent certified as suffering with work related stress. I did previously meet Mr. Ward last year in order to discuss some ongoing difficulties he is experiencing with some of his colleagues in the office.

Current Position

I met with Mr. Ward today in the GPO and he outlined the difficulties as he sees them. He has sent a letter to the Employee Relations Officer in the GPO and he is awaiting a reply. Mr. Ward said he is experiencing difficulty sleeping as a result of the situation. I

informed him of the benefits of counselling and advised him to see his GP with a view to being recommended a local counsellor in his area.

Future Plans

I will keep in touch with Mr. Ward in order to offer any support he may require".

The Plaintiff's claim that he was never offered counselling

189. During the course of the Plaintiff's evidence he suggested that he was never offered counselling. I am satisfied that this is not factually correct. I say this for two reasons. Firstly, this 07 June 2011 memorandum was sent by Mr. O'Sullivan of Occupational Health Support to Maggie Smith, an occupational health advisor and qualified nurse and states: "*I informed him of the benefits of counselling and advised him to see his GP with a view to being recommended a local counsellor in his area".*

Furthermore, the Plaintiff's own medical records as maintained by his GP contain an entry dated 10 May 2011, to which I have referred above, which entry states: "*advised go for counselling but never went*".

The consequences of not having gone to counselling

190. As will become clear later in this judgment when we reach the period from late 2016 onwards, counselling has been extremely important for the Plaintiff. I am satisfied that, as a matter of fact, from as early as June 2011, and motivated exclusively by concern for the Plaintiff's health, a representative of the Defendant's occupational health team advised the Plaintiff to seek counselling and to make the necessary arrangements through his GP. I am satisfied that this was reasonable and appropriate advice for the Defendant to have given. Based on his own Doctor's records, I am also satisfied that the Plaintiff was advised of the benefits of counselling by his GP, but "*never went*". I am satisfied that, as matter of fact, the Plaintiff's failure to attend counselling, despite being advised by his GP and by the Defendant to avail of counselling, subsequently contributed in no small part to the Plaintiff's difficulties. A careful

consideration of the totality of the relevant evidence, causes me to conclude that, had the Plaintiff taken the advice given to him as early as 2011, and had the Plaintiff availed of counselling from mid – 2011 onwards, certain health difficulties of which he complaints might not have arisen at all, or might not have affected the Plaintiff in the same manner.

09 June 2011 memorandum from John C. O'Sullivan to Damien Hunter

191. The discovery in this case also contains another document which I am satisfied is a contemporaneous memorandum dating from June 2011. It was sent by John C. O'Sullivan, Occupational Health Support, to Mr. Damien Hunter, HR manager, and is dated 09 June 2011. It was cc'd to Leo Kearns and Pat Cunningham and the text of the document is as follows: -

> "***Background***
>
> *Mr. Ward was referred by his DSM Leo Kearns as he is currently absent certified as suffering with work related stress. I did previously meet Mr. Ward last year in order to discuss some ongoing difficulties he is experiencing with some of his colleagues in the office.*
>
> ***Current Position***
>
> *I met with Mr. Ward on Tuesday last in the GPO and he outlined the difficulties as he sees them. He has sent a letter outlining his issues to the Employee Relations Officer in the GPO and he is awaiting a reply. Mr. Ward subsequently rang and informed me he had received an acknowledgement from Mark Graham. I did mention the possibility of re – locating to a neighbouring office but Mr. Ward was not keen on the idea until such time as the current situation is resolved.*
>
> *It may be helpful if management were to arrange a meeting with Mr. Ward to see if a solution can be reached in order to enable a resumption to duty.*
>
> ***Future Plans***
>
> *I will keep in touch with Mr. Ward in order to offer any support he may require".*

June 2011 - Further offer to the Plaintiff of a Transfer

192. I am satisfied that on or about 07 June 2011 the Plaintiff was again offered the possibility of a transfer. That offer of a transfer was made to the Plaintiff during a meeting between the Plaintiff and Mr. John O'Sullivan. The reference by Mr. O'Sullivan in the foregoing memorandum, dated 09 June 2001, to "*the possibility of re–locating to a neighbouring office*" is entirely consistent with the evidence that the Defendant has such a large workforce within Dublin and has so many offices that it is relatively easy, should an employee be willing, to make arrangements for them to relocate to a nearby office where their job, terms and conditions and work practices would be virtually identical. I am satisfied that this latest offer to the Plaintiff of a transfer was made in good faith by the Defendant out of a desire to assist the Plaintiff. In cross-examination, the Plaintiff confirmed that he was unwilling to consider this offer. The Plaintiff was asked whether he discussed the possible benefits of moving to a different office with his wife or his General Practitioner. The Plaintiff's response was to say the following: - "*I was quite happy in the office outside of the office. I was quite happy on the delivery and the people I was dealing with*" (D3, P124, L4). The Plaintiff gave no evidence that he had had any such discussion and I am satisfied that he did not discuss the possible benefits of a transfer with his doctor, with his wife or with anyone else. The foregoing was the Plaintiff's evidence as to why he was not willing to consider an offer of relocation made to him in early June 2011, namely that he was "*quite happy*" in the manner the Plaintiff explained. This is evidence in which the Plaintiff confirmed that, as of June 2011, he was quite happy with the majority of his working day. It also indicates that such issues as the Plaintiff had, were not so significant as to make relocation to a nearby office doing an identical job, attractive to the Plaintiff or something he would even consider. It is certainly not evidence which is consistent with the atmosphere in the Plaintiff's work being *"toxic"* or causing him harm or being an atmosphere he needed to escape from. As a matter of fact, it would have been

relatively simple for the Plaintiff, had he wished, to retain his job, his working terms and conditions, and work practices, by relocating to another office relatively close to his home, had he wished. He did not take that offer. Indeed, his evidence is that he did not even consider it. The offer was a reasonable one and there is no evidence that it was made other than *bona fide* out of a desire to support or assist the Plaintiff. The fact he did not even consider it, and plainly did not take up the offer, suggests to this court that the workplace atmosphere as of the time the offer was made, in June 2011, was not one which the Plaintiff wanted or needed to escape.

12 July 2011 letter by the Plaintiff to Mark Graham

193. On 12 July 2011 the Plaintiff wrote to Mark Graham as follows: -

"*Dear Mark,*

I refer to your letter dated 3rd June 2011.

I would just like to let you know that I have not received any response from Mr. Damien Hunter, HR Manager as yet to discuss the matters I have raised.

Yours sincerely,

John Ward".

15 July 2011 letter from Noel Kennedy, HR, to the Plaintiff

194. By letter dated 15 July 2011, Noel Kennedy of the Defendant's HR department wrote to the Plaintiff as follows: -

"*Dear Mr. Ward,*

You are required to attend a meeting with Regional Office Management on Tuesday ***19th July 2011 at 12:00 noon*** *in Room 2-173 G.P.O. O'Connell Street, Dublin 1.*

The purpose of the meeting is to discuss your continued absence from duty. You may be accompanied at the meeting by a colleague or Trade Union Representative if you wish.

Access to the G.P.O can be made via A Hall, first door on Henry Street.

Please contact Noel Kennedy at 705 7850 to confirm your attendance.

Yours sincerely".

Mr. Noel Kennedy is a HR support manager within the HR function, Mr. Damien Hunter and Mr. Kevin Cullen being his superiors.

Meeting on 19 July 2011 in response to the Plaintiff's 30 May 2011 letter

195. In his evidence the Plaintiff accepted that the meeting arranged for Tuesday 19 July 2011 was in response to his letter dated 30 May 2011. I am satisfied that the meeting which did, in fact, take place on 19 July 2011 provided the opportunity for the Plaintiff to discuss the reasons why he was absent from work, namely each and every issue or complaint which he wished to raise, being the issues which the Plaintiff referred to in his 30 May 2011 letter or any other issues of concern to the Plaintiff. Clearly, if there were, as of May, June or July 2011 any current complaints which the Plaintiff had in relation to his treatment in the workplace, he could have raised them at the 19 July 2011 meeting.

19 July 2011 meeting – the Plaintiff, D. Hunter and G. Sexton (CWU)

196. A meeting took place on 19 July 2011 between the Plaintiff, Mr. Damian Hunter and Mr. Gerry Sexton. Mr. Hunter attended the meeting in his capacity as Regional Human Resources Manager for the Dublin Collections and Delivery area. Mr. Gerry Sexton was the "Welfare Officer" for the Communication Workers Union ("CWU") and he attended the meeting as the Plaintiff's Union Representative. The discovery in this case includes manuscript notes made by Mr. Hunter which, I am satisfied, constitutes a contemporaneous record of matters discussed at the meeting. I am satisfied that, as a matter of fact, this was the meeting which the Plaintiff wanted, being the meeting which the Plaintiff called for in the Plaintiff's letters dated 30 May 2011 and 12 July 2011. The Plaintiff confirmed this during his evidence, saying that the meeting with Mr. Hunter was "*what I was waiting for"* (D2, P69, L24). There is no evidence that there was any delay in this meeting taking place. The Plaintiff did not suggest in his evidence that any delay in the meeting taking place caused any damage to his

health. At the time of this meeting on 19 July 2011, the Plaintiff had been out of work on medically certified sick leave since May 2011.

What is alleged by the Plaintiff to have been said by Mr. Hunter

197. There is a fundamental conflict between the Plaintiff's evidence as to what occurred at the start of this meeting and Mr. Hunter's account. With regard to the very beginning, the Plaintiff's evidence is as follows: -

> "*I opened up and I kind of said: 'to be honest, I don't know where to start. It's been going on so long and Mr. Leo Kearns is a close friend of mine. I don't know where to start'. Mr. Hunter turned around and said: 'I'll start it for you'. I said: 'Okay', and he turned around and said: 'You've problems at home with your young lad', which is me son... Me young lad has special needs and I don't know why he should bring that up. This has nothing got to do with my son and I'll never forgive him for that"* (D2, P71, L2).

The Plaintiff went on to suggest that the Plaintiff had previously spoken about his son to Mr. John O'Sullivan of Occupational Health Support and the Plaintiff's evidence was that: - "*John O'Sullivan re-laid"* [the information to Mr. Hunter] (D2, P71, L15).

Unreliable evidence by the Plaintiff

198. Having carefully considered all of the evidence, including the demeanour of all witnesses who gave oral testimony, I am satisfied that the Plaintiff's account is unreliable. I have come to this view for a number of reasons, as follows:

1) There is no objective evidence to support the assertion made by the Plaintiff that he told Mr. O'Sullivan what was plainly very sensitive personal information about his son or that Mr. O'Sullivan, without the Plaintiff's consent or knowledge, "*relaid"* the information to Mr. Hunter;

2) It is not in dispute that Mr. O'Sullivan is a professional occupational support specialist, and for any such professional to divulge sensitive personal information to a third party would be an extremely serious, and potentially career – ending, matter if substantiated;

3) Mr. O'Sullivan was not called to give evidence and the Plaintiff's claim was neither put to him nor was Mr. O'Sullivan given the opportunity to respond to it. The court cannot assume that such a serious breach of confidence was committed by Mr. O'Sullivan in the absence of any evidence to support that;

4) Mr. Hunter's sworn testimony is that he knew nothing about Mr. Ward's family or personal circumstances in advance of the meeting. There is no evidence to support the proposition that Mr. Ward had any such knowledge and I accept Mr. Hunter's evidence which is wholly inconsistent with the assertion made by the Plaintiff;

5) The Plaintiff was accompanied by a senior Union member of the CWU whose sole purpose for being at the meeting was to assist the Plaintiff and there is no evidence whatsoever that Mr. Gerry Sexton objected to the manner in which Mr. Hunter is alleged by the Plaintiff to have opened the meeting. I am satisfied that if Mr. Hunter made the comments about the Plaintiff's son, as alleged by the Plaintiff, Mr. Sexton would inevitably have voiced an objection;

6) I am also satisfied that if Mr. Hunter said what the Plaintiff alleges he said, the CWU representative would inevitably have written to Mr. Hunter and/or the Defendant to make an objection on the record. There is no letter, note, email or any document whatsoever in which the Plaintiff's Union voiced any objection to the manner in which Mr. Hunter opened the meeting or to anything Mr. Hunter said during it, be that about the Plaintiff's son or otherwise;

7) I am also satisfied that if Mr. Hunter truly made the statements, in July 2011, attributed to him by the Plaintiff in the latter's sworn testimony in 2020, the Plaintiff would have put an objection in writing to the Defendant immediately after the meeting. I say this because the Plaintiff was trenchant in his evidence that "*I'll never forgive him for that*" (D2, P71, L12) and, elsewhere the Plaintiff also said: "*I will never forget that to the day I die*" (D3, P126, L16).

8) The Plaintiff's evidence was that Mr. Hunter's reference to his son was shocking and inappropriate and something the Plaintiff will neither forget nor forgive for the rest of his life. Yet, on the Plaintiff's evidence, he made no move to terminate the meeting, nor did the Welfare Officer of his trade union and no mention at all was made of the matter in the aftermath of the meeting itself, by either the Plaintiff or his union;

9) Furthermore, nowhere in the pleadings in the case, including the Replies to Particulars, does the Plaintiff give this account of the meeting with Mr. Hunter, nor does the Plaintiff give this account in his witness statement.

10) Finally, Mr. Hunter made comprehensive handwritten notes of the meeting and these run to just over three pages. No reference whatsoever appears in those contemporaneous handwritten notes, either to the Plaintiff's son or to any objection made during the meeting by the Plaintiff or by his trade union representative, concerning any comments by Mr Hunter with regard to the Plaintiff's son or otherwise.

For the reasons I have detailed above I am satisfied that this element of the Plaintiff's sworn testimony is wholly unreliable. It also must be said that, once again, this is not something which can readily be explained by poor memory due to the passage of time. Having carefully

considered all the evidence, I am forced to conclude that the Plaintiff has, under oath, given an account of something which simply did not happen.

What occurred at the 19 July 2011 meeting

199. The Plaintiff's evidence is that during the meeting *"I went through…"* what the Plaintiff described as "…*the minutes that I wrote to Pat Cunningham about…*" and the Plaintiff went on to say that "…*I rattled off a few things and I handed him the letters about Ollie Doyle…*" (D2, P71, L26). Among the discovery documents in this case is a two - page handwritten note which, I am satisfied, was prepared by the Plaintiff after the Plaintiff met with Mr. Cunningham in November 2010 and the latter asked the Plaintiff to set out as much detail as possible in relation to the issues of concern to him, including names and dates. Earlier in this judgment, I referred to the Plaintiff's 22 November 2010 letter and to an accompanying 2-page handwritten document prepared by the Plaintiff. These were prepared by the Plaintiff after his meeting with Mr Cunningham. I am satisfied, that as a matter of fact, the Plaintiff brought, to the 19 July 2011 meeting with Mr. Hunter, the aforesaid two – page handwritten note which accompanied his 22 November 2010 letter. Although I quoted it earlier in this judgment, it is appropriate to do so again, given that it comprises the "*minutes"* which the Plaintiff "*went through*" at the 19 July 20100 meeting. The following is what the Plaintiff's handwritten note contained: -

"*1994 – driving without licence*

1996 – Lord Mayor charity day. EB/PB

2000 – 2001 Christmas. JC.

2005 KF letters. Leo Kearns.

2005 my hand 4/5 stitches

2006 – JH letters

2006 – KD (the frame)

2006 – JC, EB accuse me of robbing. JC accuses me of setting up KF. (JM).

What way do I cycle home?

EG

Maurice O'Callaghan (Solicitor)

BN:NR

MC

2005 / 2006 DC / LM BD

2007A O'D. EM (he's not a bully)

2008 Leo Kearns

2010 Peter Mohan, John O'Sullivan, Maggie Smyth".

200. It is fair to observe that the details set out in the Plaintiff's handwritten note are scant. The obvious explanation for this is that the Plaintiff's complaints or concerns were not current at the point when he prepared the documents. Indeed, they dated back several years. It will be recalled that the very first time the Plaintiff wrote down his concerns at all, was in his 22 November 2010 letter to Mr. Cunningham which stated inter alia: -

"*The accusations made about me are as follows:*

(1) Sleeping with a work colleague's girlfriend;

(2) Setting up a work colleague to be sacked;

(3) Accuse of robbing…"

The two - page handwritten document which I have quoted verbatim above (persons not before the court being identified by their initials), constituted the entire details provided by the Plaintiff in relation to these issues of concern to the Plaintiff. I am satisfied, that as a matter of fact, between 22 November 2010 (when the Plaintiff first put his issues in writing to Mr. Cunningham) and 19 July 2011, (when the Plaintiff and his union representative met with Mr. Hunter), the Plaintiff had not raised any other issues. I accept the Plaintiff's evidence that,

during the 19 July 2011 meeting, he raised the entirety of the issues which were of concern to the Plaintiff and I am satisfied that the Plaintiff did so with reference to the aforesaid two-page handwritten document which the Plaintiff prepared on or about 22 November 2010.

The two-page handwritten note prepared by the Plaintiff

201. If one looks at the Plaintiff's two – page handwritten note, one can see that the latest entry, which is for 2010, refers to Peter Mohan, John O'Sullivan and Maggie Smyth. These three individuals are all employed by the Defendant and I am satisfied, that as a matter of fact, there was no complaint made by the Plaintiff against any of those individuals, either in 2010, or at the 19 July 2011 meeting. I am satisfied that, as a matter of fact, they appear on the Plaintiff's handwritten note because of his interactions with them and I have dealt, earlier in this judgment, with the facts of same. If one looks at the previous entry, it states "*2008 – Leo Kearns*". During his direct evidence, counsel for the Plaintiff asked him what he meant by that entry and the Plaintiff's evidence was "*Leo Kearns, that's when I went in asked him to withdraw the statement about Damien Clarke's car"* (D2, P50, L21). Other than the foregoing, the court was given no evidence in relation to the significance of the "*car*" or any statement concerning it and it would not appear to be relevant to the present proceedings. The Plaintiff certainly gave no evidence that what he allegedly said to Mr. Kearns in 2008 concerning a third party's car amounted to bullying by Mr. Kearns of the Plaintiff or any allegedly unfair treatment of any kind. I am satisfied that the 2008 entry in the Plaintiff's handwritten notes and his testimony concerning that entry does not evidence any unfair treatment of the Plaintiff in 2008. The previous entry dates from 2007 and, when asked about it in direct evidence, the Plaintiff's testimony was that "*Yeah, A O'D and EM the lads were shouting about me being a bully and they turned around and said he is not a bully".* (D2, P50, L17). Far from being evidence that the Plaintiff was being bullied in 2007, the foregoing is the Plaintiff's testimony that, in 2007,

two named colleagues said the Plaintiff was not a bully. Neither Messrs AO'D or EM were called as witnesses.

The Plaintiff's handwritten note – complaints dating from 1996 to 2006

202. Having carefully considered all the evidence, I am satisfied that, as a matter of fact, when the Plaintiff (by letter dated 22 November 2011) wrote down, for the first time, the issues of concern to him and, at Mr. Cunningham's suggestion, provided as much detail as possible concerning same (in the Plaintiff's two - page handwritten note), those issues of concern to the Plaintiff, as reported by the Plaintiff to the Defendant during the meeting which took place on 19 July 2011, dated back several years, the then most recent being in 2006 and the earliest being 1996.

203. I am satisfied that the 19 July 2011 meeting between the Plaintiff, his union representative and Mr. Hunter provided an opportunity for the Plaintiff to raise with the Defendant each and every complaint or issue which he had and I am also satisfied that, as a matter of fact, the Plaintiff took that opportunity by going through every issue of concern to the Plaintiff and doing so with reference to his two – page handwritten note. The contemporaneous handwritten note of the meeting which was made by Mr. Hunter is entirely consistent with the foregoing, as is Mr. Hunter's evidence. Mr. Hunter's contemporaneous note, made during the 19 July 2011 meeting, reflects the contents of the Plaintiff's two-page handwritten note which the Plaintiff prepared in November 2010, Mr. Hunter's note reflecting what the Plaintiff told him in relation to his concerns. I am satisfied that, just as in the Plaintiff's handwritten note, the most recent of the Plaintiff's complaints, as raised with Mr. Hunter, went back to 2006. This is clear from both his oral evidence and from the contents of Mr Hunter's contemporaneous note of the meeting.

204. There is no evidence to suggest that the meeting was rushed. There is no evidence to suggest that the meeting was stressful for the Plaintiff, who was accompanied at all times by

his union representative. There is no evidence to suggest that Mr. Hunter did not listen attentively and give careful consideration to each of the issues raised by the Plaintiff and I am satisfied that, as a matter of fact, he did so. I am also satisfied that, as a matter of fact, Mr. Hunter formed the view, having listened to all of the issues raised by the Plaintiff, that there was no scope to commence an investigation into those matters because they went back so far in time. I am satisfied that, as a matter of fact, there were only three issues, concerning the Plaintiff himself, which the Plaintiff raised with Mr. Hunter during the meeting and those three issues mirror precisely the three "*accusations*" referred to by the Plaintiff in his letter dated 22 November 2010 to Mr. Cunningham. I accept Mr. Hunter's evidence that the following are the issues, and the entirety of the issues, which the Plaintiff raised with him: -

> "*he made a remark about somebody suggesting that he had slept with a work colleague's girlfriend, after some event, some social event, and that he had stayed over. And somebody had alleged that he had slept with his work colleague's girlfriend. And he spoke about the mail that was violated and his role in transferring the mail back to the office and that he felt that people had believed that he was responsible for the dismissal of the individual involved".* (D4, P113, L9).

I accept Mr. Hunter's sworn testimony that during the July 2011 meeting, the Plaintiff was not complaining about any current difficulties. Indeed, the fact that the Plaintiff did not raise, at that meeting, any current difficulties, alleged to have been affecting him, is entirely consistent with, firstly, the Plaintiff's sworn evidence in relation to the 19 July 2011 meeting, secondly, the contents of the Plaintiff's 22 November 2010 letter to Mr. Cunningham, and thirdly, the two – page handwritten document prepared by the Plaintiff which he brought to the 19 July 2011 meeting and which he went through at that meeting. None of the items listed by the Plaintiff on that two-page handwritten document refer to any complaint which was said by the Plaintiff to be current. This is of some significance, particularly given the fact that the

preparation by the Plaintiff of his two-page handwritten note is the very first time the Plaintiff sets out details, such as dates, in relation to his complaints. If there were any other complaints, including any current complaints, this was the perfect opportunity for the Plaintiff to tell the Defendant about them. He did not do so and I am satisfied that this is because, as a matter of fact, there were no other complaints and there were no current complaints. I am satisfied that this was true in November 2010 and was still true in July 2011 when the meeting took place between the Plaintiff, Mr. Hunter and the CWU welfare officer.

The outcome of the 19 July 2011 meeting

205. I am also satisfied that, as a matter of fact, the 19 July 2011 meeting was a cordial one where the Plaintiff received a full hearing in relation to his concerns. I am satisfied that, when Mr. Hunter explained that the Plaintiff's issues went back so far that it would not be possible to start an investigation, neither the Plaintiff nor his union representative raised any objection to that stance. It is not possible for this Court to know how the Plaintiff felt about the Defendant's decision, communicated by Mr. Hunter to the effect that the investigation into matters, some dating back to 1996, could not be commenced as of 2011. I am, however, entirely satisfied having carefully considered all the evidence, that neither the Plaintiff nor his union representative voiced any objection to this stance at the time or in the months and years which followed. I am also satisfied that, as a matter of fact, there was an agreed outcome to the meeting which involved the Plaintiff returning to work.

The Plaintiff's claims that he handed Mr Hunter a copy of the 20 December 2010 letter

206. There is another issue upon which there is a fundamental conflict of evidence insofar as the 19 July 2011 meeting is concerned. This involves the 20 December 2010 letter regarding Mr. OD which the Plaintiff says he declined to sign at the time it was shown to him. The Plaintiff's evidence is that, on 19 July 2011, he handed both the handwritten and typed versions of the letter concerning OD to Mr. Hunter who repeatedly quizzed him as to how the Plaintiff

obtained the letters. According to the Plaintiff, he informed Mr. Hunter that Leo Kearns suggested the removal, from the first version, of the reference to sick leave. The Plaintiff's evidence is that Mr. Hunter responded by saying "*if he done that… I'll kick his arse from one end of this room to the other end of the room"* (D2, P72, L8), to which the Plaintiff says he replied as follows to Mr. Kearns: "*I don't want Leo Kearns sacked because he is a close friend to my family*". (D2, P72, L10). The Plaintiff's evidence was that he then made what he described as a "*stupid mistake*" (D2, P72, L12) by supposedly saying the following to Mr. Hunter "*I put it down to Leo's inexperience*" (D2, P72, L12). The Plaintiff's evidence was also that Mr. Hunter photocopied the 20 December 2010 letter.

Unreliable evidence by the Plaintiff

207. Having carefully considered the totality of the evidence, I have come to the view that the foregoing account by the Plaintiff in relation to his alleged exchange with Mr. Hunter concerning the 20 December 2010 letter is not credible and not reliable. I have come to that view for several reasons as follows: -

1) The comment attributed to Mr. Hunter, a senior HR professional, namely that he would "*kick"* a particular employee's "*arse from one end of this room to the other*", is on any analysis, wholly unprofessional.

2) There was a senior trade union representative present at the meeting throughout and I am satisfied that if a HR manager made such an unprofessional comment about another employee who was not present at the meeting, it is inevitable that there would be some form of objection to the comment made by the union. There is no evidence that the union representative objected, either during the meeting or at any point after the meeting.

3) The comments attributed to Mr. Hunter amount to a very pointed criticism of Mr. Kearns, yet there is no evidence whatsoever to suggest that the Plaintiff ever

made a note or a record of such criticism. Nor is there any evidence that the Plaintiff informed Mr. Kearns of the alleged criticism by Mr. Hunter, despite the Plaintiff's evidence that Mr. Kearns was a close friend;

4) The account given by the Plaintiff suggests that a senior HR manager would immediately form a conclusion, and express it in most unprofessional terms, without having afforded Mr. Kearns any right to respond. This would be a flagrant breach of fair procedures and there is no evidence from which this Court can safely conclude that Mr. Hunter ignored basic fairness and rushed to a conclusion about Mr. Kearns (who was then the Plaintiff's line-manager and, as such, the Plaintiff's superior) or that Mr. Hunter expressed same, not having heard anything from Mr Kearns, in front of a trade union representative and in front of somebody Mr. Kearns worked with and, indeed supervised;

5) Mr. Hunter denies that he made the comments attributed to him and, having carefully considered the evidence by both the Plaintiff and Mr. Hunter, including their demeanour, I prefer Mr. Hunter's evidence;

6) I accept Mr. Hunter's evidence that, during the meeting, the Plaintiff mentioned OD but there was no discussion around anything involving OD and this is supported by the fact that in Mr. Hunter's contemporaneous note, the only relevant entry states "*2010 – OD's case*" and the note of the meeting makes no reference to the 20 December 2010 letter, or how the Plaintiff obtained it, or any involvement by Mr. Kearns in directing that a reference to sick leave in the letter be removed from it;

7) If, as the Plaintiff suggests, Mr. Hunter was both shocked and irate at the involvement of Mr. Kearns with the letter, and if, as the Plaintiff suggests, Mr. Hunter made a photocopy, the court is entitled to conclude that Mr. Hunter

would have taken some further action after the meeting, by way of follow up with Mr. Kearns or otherwise, yet there is no evidence whatsoever of any such follow up by Mr. Hunter, be it in the form of a conversation with Mr. Kearns or with any other party, nor is there any documentary evidence of any such follow up.

8) Mr. Hunter's evidence is also that "*I have never had a photocopier in my office in 20 years. For me to photocopy something I would have to go from the Princess Street side of the GPO to the Henry Street side of the GPO, and that's not something I would do during the course of a meeting*" (D4, P114, L6). I accept that evidence by Mr. Hunter and I am satisfied that he did not photocopy the letter and I am satisfied that as a matter of fact he was not shown it nor was its contents or the involvement of Mr. Kearns discussed as alleged by the Plaintiff.

9) The Plaintiff's account does not appear anywhere in the pleaded case, including in the replies to particulars, nor does it appear anywhere in the Plaintiff's witness statement.

Once more, it has to be said that an element of the Plaintiff's sworn testimony, which I am satisfied is wholly unreliable, cannot easily be explained by the passage of time or poor memory on the Plaintiff's part. It seems to me that, again, the Plaintiff has given evidence under oath of matters which simply did not happen.

Damien Hunter's typed note of 19 July 2011 meeting

208. The discovery documents included a one-page typed note prepared by Mr. Hunter following the meeting which took place on 19 July 2011. I accept Mr. Hunter's evidence that it was not uncommon for him to take handwritten notes during a meeting and to type up a minute afterwards. I am satisfied that, as a matter of fact, the typed note is consistent with both

Mr. Hunter's evidence in relation to the meeting and the contents of Mr. Hunter's manuscript notes which he made during the meeting. Mr. Hunter's typed note states the following:

"*Meeting with Mr. John Ward, Postal Operative Blackrock DSU on 19 July 2011*".

Mr. Ward was accompanied to the meeting by Mr. Gerry Sexton, CWU representative. The meeting was arranged to discuss his letter of complaint dated 30 May 2011 and his continued absence from work.

Mr. Ward referred to some difficulties that he had had with work colleagues in Blackrock Delivery Office following his arrival there in 1994. He referred to an allegation made locally that he had slept with a work colleague's girlfriend in 1996. He said that the allegation was made after he had slept in PB's house following a fundraiser for the Lord Mayor. Mr. Ward said that he was only three months married at the time. He stated that at Christmas 2000 he was having a drink with JC and that JC had said to him, how could you sleep with PB's girlfriend? He said that Mr. Cullen said he couldn't tell him who told him but that everyone knows. He confirmed that he didn't speak to anyone about the allegation.

Mr. Ward referred to mail irregularities which had taken place in 2005 and 2006 and claimed that he was accused of trying to get a work colleague sacked.

He stated that in the summer of 2007 that EB said to him, how could you do that to your wife and a work colleague.

He referred to a further difficulty in 2008 with a D. Clark.

He referred to a workplace difficulty with OD in 2010 and that he was visited by Peter Mohan, An Post Operation Support Specialist. He indicated that he was annoyed with Mr. Mohan following his visit. He had a subsequent visit from John O'Sullivan, An Post OSS.

Mr. Ward acknowledged that he had not previously communicated his allegations of bullying and harassment dating back to 1996 to Regional Office management. He was advised that in light of the time which had elapsed that it would be difficult to address his allegations of harassment in the workplace. He was informed that he could contact Regional Office management should (sic) wish to discuss any further issues which might impact on his ability to attend for work.

Mr. Ward indicated that he would return to work.

Damien Hunter"

I am satisfied that Mr. Hunter's typed note of the meeting accurately records what took place. I am satisfied that, had Mr. Sexton, the CWU representative or the Plaintiff objected to anything Mr. Hunter said at the meeting, such objection would have been recorded. The contents of Mr. Hunter's typed note are consistent with my findings of fact set out above, including my findings of fact that (1) Mr. Hunter was unaware of and did not make any reference to the Plaintiff's son, (2) Mr. Hunter did not make disparaging comments about Mr. Kearns, and (3) Mr. Hunter was not given a copy of the 20 December 2010 letter concerning OD and Mr. Hunter did not photocopy same. Mr. Hunter's note of the meeting also records that during the meeting the Plaintiff *"acknowledged that he had not previously communicated his allegations of bullying and harassment dating back to 1996 to Regional Office management*". Having carefully considered the entirety of the evidence leading up to July 2011, I am satisfied that the foregoing statement in Mr. Hunter's note is factually correct. During his evidence the Plaintiff acknowledged that he was aware of the relevant provision in the Dignity at Work Policy which makes it clear that a complaint must be made within six months of the latest incident of alleged bullying or harassment. I am satisfied that, as a matter of fact, the Plaintiff did not comply with the foregoing provision. In his evidence the Plaintiff also acknowledged that, at the 19 July 2011 meeting, he was being told by the Defendant that in relation to all of the issues which he

had raised, the Defendant company decided that they could not be pursued further, due to the age of the complaints. Having carefully considered the evidence, I am satisfied that, as a matter of fact, the Plaintiff accepted, at the conclusion of the 19 July 2011 meeting, that all the issues that he had raised could not be investigated by the Defendant under the Dignity at Work policy by reason of how many years had elapsed since the matters complained of. I am satisfied that the Plaintiff's subsequent return to work in 2011 was on the basis that he understood and accepted that there would and could be no investigation by the Defendant into any of the complaints raised, given that they went so far back in time.

The claim that the Plaintiff's complaints were ignored

209. Insofar as the Plaintiff claims that the Defendant ignored his concerns or complaints, the evidence is to the contrary. The meeting of 19 July 2011 provided an opportunity for the Plaintiff to outline each and every concern or complaint he might have had. There is no evidence from which this court could conclude that there were then *current* issues in the Plaintiff's workplace, as of July 2011. Nor is there evidence which would allow the court to conclude that, had there been any current issues raised by the Plaintiff with Mr. Hunter in the presence of the Plaintiff's trade union welfare officer in July 2011, the Defendant would have ignored them. The fact that the Defendant decided it could not commence, in July 2011, an investigation into complaints dating back several years is not evidence that the Plaintiff's complaints were ignored. Moreover, the stance taken by the Defendant in the presence of the Plaintiff and the welfare officer of the Plaintiff's trade union was, on the evidence, a stance the Plaintiff accepted.

The Plaintiff's agreement on 19 July 2011 to return to work

210. There is no dispute that, at the conclusion of the 19 July 2011 meeting, it was agreed that the Plaintiff would return to work. The Plaintiff confirmed this in his evidence. The Plaintiff did not suggest in his evidence that he was anything other than willing and able to

return to work at the time he agreed, on 19 July 2011, to do so. Nor did the Plaintiff suggest in his evidence that he was publicly agreeing to return to work but privately considered that his complaints had not been adequately dealt with or that he had not been listened to properly by the Defendant or that the Defendant's response was unsatisfactory insofar as the Plaintiff was concerned. Furthermore, there is no evidence whatsoever that the Plaintiff, when he agreed to return to work, had any issues in the workplace which were *current*, as opposed to what might be called *historic.*

All past and current issues dealt with

211. Taking all the evidence into account, I am satisfied that the Plaintiff's agreement to return to work is consistent with a finding of fact that, as of 19 July 2011, (a) the Plaintiff was willing and able to do so and (b) the Plaintiff was both satisfied that all *past* issues had been dealt with and (c) the Plaintiff had no issues or complaints in relation to his workplace which were *current*. The fact that the Plaintiff confirmed that he would return to work is the last item recorded on the typed note prepared by Mr. Hunter and I am entirely satisfied that this accurately reflects the factual position and accords with the Plaintiff's own evidence. The Plaintiff had already had two consultations with his solicitor by the time the 19 July 2011 meeting took place and the Plaintiff confirmed in evidence that he did not go back to see Mr. O'Callaghan, solicitor after the 19 July 2011 meeting. Instead, he returned to work by agreement with the Defendant, following a relatively short meeting which took place on 04 August 2011, which meeting is dealt with later in this judgment.

No legal proceedings issued by the Plaintiff in 2011

212. I am satisfied that the factual position which pertained in 2011 when the Plaintiff confirmed that he would return to work is that the Plaintiff and his wife already had the benefit of two consultations with a solicitor at which, on the Plaintiff's evidence, all his concerns were raised and the Plaintiff had the benefit of legal advice which included a consideration of legal

proceedings. It is also a matter of fact that, as of 2011, the Plaintiff was on an extended period of medically certified sick leave, having reported work – related stress to his doctor. Furthermore, this was the third period of absence from work attributed to work – related stress, the first being from 25 January 2010 (the Plaintiff's medical records stating "*Severe work stress*"), the second being from 01 September 2010 (the Plaintiff's medical records stating "*Stress in job*") and the third period of certified sick – leave having commenced on 10 May 2011 ("*Stress*" being referred to in the Plaintiff's medical records of that date and again in an entry dated 27 June 2011). In short, after the 19 July 2011 meeting had concluded, there was no doubt about (1) the Plaintiff's issues insofar as he was concerned, (2) their effect on the Plaintiff's health insofar as he was concerned, (3) the fact and content of legal advice which the Plaintiff had availed of, (4) the response of the Defendant. It was in the foregoing context that the Plaintiff, as a matter of fact, decided to return to work and self – evidently made a decision not to institute legal proceedings. There was a further relatively short meeting which the Plaintiff attended on 04 August 2011 shortly before his return to work and it did not alter the factual position aforesaid which pertained when the Plaintiff resumed his job, namely that all past issues had been resolved to the Plaintiff's satisfaction and there were no current issues.

02 August 2011 letter to the Plaintiff

213. On 02 August 2011 Noel Kennedy of the Defendant's HR Regional Office Dublin wrote to the Plaintiff as follows: -

> "*Dear Mr Ward*
>
> *You are required to attend a meeting with Regional Office Management on Thursday 4th August 2011 at 11.30am in room 2-173 G.P.O. O'Connell Street, Dublin 1. The purpose of the meeting is to discuss your present absence from duty. You may be accompanied at the meeting by a colleague or Trade Union Representative if you wish. Access to the G.P.O. can be made via A Hall, first door on Henry Street.*

Please contact Noel Kennedy at 7057850 to confirm your attendance.

Yours sincerely"

What the Plaintiff told a close friend after the meeting with Mr. Hunter

214. The Plaintiff gave evidence that, after the meeting with Damien Hunter and his union representative, he met a Mr. Terry Moran in Kilkenny and told Mr. Moran about the meeting with Mr. Hunter. The Plaintiff's evidence was as follows: "*Terry Moran was a close friend of mine but he's very close to KD and EB and I told him everything that was said in that meeting. I said: 'Terry, you can go home, or go back to work and tell them lads, them drivers about it, because I'm not afraid of them'."* (D2, P76, L21). There is no evidence that, when he met Mr. Moran, the Plaintiff identified the *"lads"* by name. Nor did the Plaintiff tell the court whom he was referring to. The Plaintiff gave no evidence as to what he did or did not tell Mr. Moran about the "*lads*". Moran did not appear as a witness and this Court cannot speculate as to what might have been said. What is certain, however, is that the Plaintiff gave no evidence that he informed Mr. Moran of any complaints or concerns. The one matter which the Plaintiff was very specific about is that he had no fear about going back to work. On two separate occasions in his evidence, the Plaintiff quoted the very words which he says he used when speaking to Mr. Moran, elsewhere saying that he told Mr. Moran: *"I have no problem going back to work next Monday. I am not afraid of these lads."* (D2, P39, L5). Based on the Plaintiff's testimony, whatever issues the Plaintiff may have had, which caused him to be at home due to stress at work in May and June 2011, those issues were not such as prevented the Plaintiff from returning to work willingly, nor did they cause the Plaintiff any fears about returning to work alongside his then colleagues. Mr. Moran was a close friend of the Plaintiff and if the Plaintiff felt, at the time, that he was being bullied or that there was a situation in the workplace which he was finding difficult, one would expect the Plaintiff to have told a close friend. The Plaintiff said no such thing. Similarly, given the fact that this was a meeting between the Plaintiff and a

close friend of his which took place after the meeting between the Plaintiff and Mr. Hunter, if it was the case that the Plaintiff felt in any way unhappy with the conduct or outcome of the meeting, one would expect the Plaintiff to have said so to his friend Mr Moran. The Plaintiff said nothing of the sort. If it had reflected the Plaintiff's then view, he could have said to Mr. Moran: "I have a problem about going back to work" or "I can't face going back to work" or "the lads are bullying me" or "the lads think that they are engaging in banter but it is upsetting me" or "I have told the lads to stop the banter but they won't stop" or "the lads think it is banter but it is a serious matter for me and I haven't been able to face telling them" or "I feel unsupported by management" or "I am not happy about the way Mr. Hunter dealt with the meeting" or "I am not happy about the outcome of the meeting" or "Even though I am going back to work, things haven't been sorted out to my satisfaction". The Plaintiff did not claim to have made any such or similar statements in 2011 to his close friend, Mr Moran. I am satisfied that none of the foregoing or similar statements were made by the Plaintiff because they did not reflect the then factual position. During his evidence, the Plaintiff said on more than one occasion that he was not afraid of anyone and not afraid to go back to work. As of July 2011, the Plaintiff did not tell any representative of the Defendant that there were current workplace issues which meant that he was in any way afraid of going back to work or in any way fearful about damage to his health. On the contrary, I am satisfied that the factual position as of the end of the 19 July 2011 meeting was that the Plaintiff was happy to return to work, had no current issues, expressed no fears about returning to work and confirmed himself happy to return to work and the Plaintiff did so knowing that Defendant's attitude and satisfied with same. Specifically, having given the Plaintiff an opportunity, which the Plaintiff took, to outline each and every one of his issues during the 19 July 2011 meeting, the Defendant's attitude was that no investigation could or would be commenced, due to the fact that the Plaintiff's concerns went back so many years. The evidence demonstrates that the Plaintiff

accepted that. Thus, all past issues had been resolved to the Plaintiff's satisfaction and there were no current issues in his workplace about which he had any complaint. The Plaintiff's evidence regarding his meeting with his friend, Mr Moran, does not in any way undermine those findings of fact.

04 August 2011 meeting – the Plaintiff, Mr. Hunter and Mr. Cunningham

215. The meeting which took place on 04 August 2011 was a follow-up meeting after the 19 July 2011 meeting and I am satisfied that its purpose was to put in place arrangements for the Plaintiff's return to work. It was attended by the Plaintiff and by Damien Hunter HR Manager as well as Pat Cunningham, Mails Operations Manager. It is unclear as to whether Mr. Frank Donoghue who was then the Secretary of the Plaintiff's union or if Mr. Gerry Sexton, CWU Welfare Officer also attended. Nothing turns on this. I am satisfied that it was a relatively brief meeting, focused exclusively on practical arrangements for the Plaintiff's agreed return to work. I accept the uncontroverted evidence given by the Defendant that it operates a return to work programme and that, depending on an individual's circumstances, their return to work will be organised on a phased basis. I accept the Defendant's evidence that, depending on the individual employee concerned, the return to work arrangements might involve somebody resuming work on reduced hours or restricted capacity for a period of days or weeks. The 04 August meeting was referred to in two contemporaneous documents as follows.

08 August 2011 letter from Mark Graham to the Plaintiff

216. On 08 August 2011 Mark Graham, head of employee relations, wrote to the Plaintiff as follows: -

> "*Dear Mr. Ward*
>
> *I refer to your letter dated 12th July 2011.*
>
> *I am aware that Mr. Damien Hunter, HR Manager, met with you on two occasions on19th July and 4th August 2011.*

I understand discussions are ongoing in relation to your return to work.

Yours sincerely"

09 August 2011 email from Pat Cunningham

217. On 09 August 2011 Pat Cunningham sent an email to Sinead Maher and Margaret Smith. Both Ms. Maher and Ms. Smith were members of the Defendant's occupational health support service, being qualified health professionals. The email was cc'd to both Damien Hunter and Leo Kearns, the subject being "John Ward Blackrock". **All the issues raised by the Plaintiff have been dealt with**

218. Mr. Cunningham's 09 August 2011 email stated the following: -

"*Sinead/Maggie*

Damien and I met with John Ward Postal Operative Blackrock regarding a return to work. As you know he has been absent for some time citing work related difficulties with some staff in Blackrock.

All the issues he raised have been dealt with and he indicated to me by phone call that he will return to work in Blackrock next Monday. Perhaps given the extended period of absence you may advise of a suitable rehabilitation period

to enable Mr. Ward gain fitness for the full range of duties as soon as possible.

Kind regards

Pat"

Having carefully considered all the evidence I am satisfied that Mr. Cunningham's statement "*All the issues he raised have been dealt with…"* is a statement of fact and correctly reflected the position which pertained as of August 2011. In other words, all past issues had been addressed to the Plaintiff's satisfaction and there were no current issues. The court also heard evidence from Mr. Cunningham to the effect that all the issues which the Plaintiff initially raised with Mr. Cunningham in 2010 and which were discussed with Mr. Hunter in July 2011

had, as a matter of fact, been dealt with and the outcome was that the Plaintiff had agreed to come back to work. I accept that evidence. I am also satisfied that, at the 04 August 2011 meeting, both Mr. Hunter and Mr. Cunningham made it very clear to the Plaintiff that he could contact either of them with any issue no matter what it was, big or small. It is a matter of fact that the Plaintiff returned to work in the Defendant shortly thereafter.

The Plaintiff's account of a conversation with Mr. Kearns upon his return to work in August 2011

219. In his evidence, the Plaintiff confirmed that he returned to work relatively soon after the August 2011 meeting with Mr. Cunningham and Mr. Hunter. The Plaintiff claims that, upon going back to work, he met with Mr. Leo Kearns and the Plaintiff gave the following evidence in relation to his conversation with Mr. Kearns at that point in August 2011:

> "*During the meeting he turned around and said to me: 'I told Damien Hunter that I never released or never said anything confidential outside these four walls.' I said to meself, I said: 'Well, you didn't tell them outside the four walls you told them inside the four walls because the stuff got back out onto the floor'*." (D2, P77, L4).

This is the Plaintiff's evidence, given in 2020, in relation to a conversation which he says occurred almost nine years earlier, in 2011. The Plaintiff's evidence is, in effect, that he silently noted to himself that the Plaintiff had breached confidentiality in the past. The Plaintiff gave no evidence that he responded to the comment which Mr. Kearns is alleged to have made. It was very clear from the Plaintiff's account that he said nothing to Mr. Kearns in response. It will be recalled that, according to the Plaintiff, he has known since 2005 that Mr. Kearns breached confidentiality as the Plaintiff sees it. This is in circumstances where the Plaintiff's evidence is that the Plaintiff informed KF that it was the Plaintiff who found opened post in the van which KF had been driving last, in response to which the Plaintiff claims that KF told

the Plaintiff that Mr. Kearns informed him of this also. I have examined this evidence closely earlier in this judgment.

220. Taking, at face value, the Plaintiff's evidence in relation to the alleged exchange with Mr. Kearns in August 2011, it is a matter of fact that the Plaintiff could have taken the opportunity to challenge Mr. Kearns when, according to the Plaintiff, Mr. Kearns told him that he had told Damien Hunter that Mr. Kearns "*never said anything confidential outside these four walls*" (D2, P77, L6). Based on the Plaintiff's evidence, this was an obvious time for the Plaintiff to put to Mr. Kearns the Plaintiff's belief - a belief he had had for six years - that Mr. Kearns had breached confidentiality. This is particularly so, in light of the Plaintiff's evidence that he, in effect, silently drew a distinction between what Mr. Kearns was saying about not disclosing anything *"outside"* the four walls, whereas the Plaintiff had a conviction that Mr. Kearns disclosed information "*inside*" the four walls of the office. On the Plaintiff's evidence I am satisfied that, as a matter of fact, the Plaintiff plainly could have challenged, but did not challenge, Mr. Kearns in relation to the Plaintiff's belief that Mr. Kearns had breached confidentiality. I am also satisfied that, as a matter of fact, the Plaintiff could have, but did not, make a complaint to the Defendant, in August 2011, to the effect that Mr. Kearns had breached confidentiality. Having carefully analysed the evidence in the manner as set out above, I am also satisfied that the Plaintiff had the ideal opportunity, presented by the 19 July 2011 meeting, to make a complaint to his employer that Mr. Kearns had breached confidentiality. I am satisfied that, as a matter of fact, the Plaintiff made no such complaint either at the 19 July 2011 meeting or at the 04 August 2011 follow-up meeting. I am also satisfied that, notwithstanding the Plaintiff's evidence about what he noted silently to himself during the August 2011 conversation with Mr. Kearns, the Plaintiff did not subsequently contact anyone within the Defendant to make a complaint that Mr. Kearns had breached confidentiality. It should also be noted that even the Plaintiff's account of what Mr Kearns is supposed to have said to him

upon the Plaintiff's return to work in August 2011 is consistent with Mr. Kearns making no admission that he ever breached confidentiality. So called admissions by Mr Kearns are discussed later in this judgment in relation to conversations which took place in October 2016.

221. The Plaintiff's decision not to raise the allegation that Mr. Kearns breached confidentiality at (1) the 19 July 2011 meeting or (2) the 04 August 2011 meeting or (3) subsequent to the Plaintiff's conversation with Mr. Kearns following his return to work later in August 2011, was a decision taken by the Plaintiff after he had had the benefit of legal advice. It is clear from the Plaintiff's evidence that he had the second of his consultations with a solicitor prior to the meeting on 19 July 2011 with Mr. Hunter. The Plaintiff's evidence is also that he made his solicitor aware of all the issues of concern to him, when he sought legal advice. Therefore, I conclude as a fact that the Plaintiff's long-held conviction that Mr. Kearns breached confidentiality, going back to 2005, was one of the issues which the Plaintiff made his solicitor aware of when he sought legal advice. The Plaintiff's evidence concerning his conversation with Mr. Kearns in August 2011, and what the Plaintiff says he noted silently to himself, underlines the Plaintiff's long-standing belief that Mr. Kearns was guilty of breaching confidentiality, something which featured at the trial in 2020, yet it is also an indisputable fact that the Plaintiff did not issue legal proceedings in 2011 for that or any other alleged breach, the present proceedings having been instituted on 08 September 2017.

222. In light of the foregoing, even if, following the Plaintiff's return to work in August 2011, he silently noted to himself that Mr. Kearns had, as the Plaintiff saw it, breached confidentiality in the past, the Plaintiff did absolutely nothing in relation to that issue other than resume his work and perform his job happily for the next 5 years. The Plaintiff's complete inaction in respect of that issue - inaction which followed meetings with the Defendant in July and August 2011 as well as meetings between the Plaintiff and his solicitor in October 2010 and in May 2011 - supports my findings of fact that all past issues, including this one, were

dealt with to the Plaintiff's satisfaction and that he returned to work on the basis that there were no past or current issues whatsoever which required to be addressed, including any belief on the part of the Plaintiff that Mr. Kearns had breached confidentiality at any stage in the years prior to 2011.

223. It also has to be said that the Plaintiff's evidence about what he supposedly noted to himself upon returning to work in August 2011 in relation to a belief that Mr. Kearns breached confidentiality in the past does not sit easily with the balance of the evidence in relation to what were then very recent events. At no stage during the Plaintiff's evidence did he say that, during his meeting with Mr. Hunter and his union representative, Mr. Gerry Sexton, in July 2011 did the Plaintiff make any complaint that Mr. Kearns had breached confidentiality. The Plaintiff was clear in his evidence about what he raised, saying that he "*went through the minutes that I wrote to Pat Cunningham*" (D2, P71, L26). It is clear that what the Plaintiff describes as "*minutes*" comprises the two-page handwritten document which the Plaintiff prepared at Mr. Cunningham's suggestion, that document being intended to set out as much detail as the Plaintiff had in relation to what he describes as the "*accusations*", of which there are three, set out in the Plaintiff's 22 November 2010 letter to Mr. Cunningham. As a matter of fact, there is no accusation in that letter concerning Mr. Kearns, nor does the Plaintiff's two - page handwritten document - which comprises a list of years as well as certain names and brief notes - state anywhere the Plaintiff's contention that Mr. Kearns breached confidentiality.

224. If the Plaintiff raised, during the 19 July 2011 meeting, his belief that Leo Kearns breached confidentiality, it is indisputable that, on the Plaintiff's own evidence, that breach went back to 2005, specifically the Plaintiff's belief that Leo Kearns, as well as the Plaintiff, told KF that it was the Plaintiff who found the opened letters in a van KF had recently driven. It is not in dispute that, in 2005, the Plaintiff identified himself to KF as the person who found the opened post in the van, because the Plaintiff said so repeatedly in his sworn testimony. The

Plaintiff also asserts that Mr. Kearns identified him to KF, but the court only has hearsay evidence on that issue, whereas Mr. Kearns denies any breach of confidentiality. What is clear, however, is that the alleged breach occurred in 2005 according to the Plaintiff.

225. The Plaintiff's evidence that, immediately upon his return to work in August 2011, Mr. Kearns supposedly told the Plaintiff that "*I told Damien Hunter that I never released or never said anything confidential outside these four walls*" (D2, P77, L6) is also curious given the totality of the evidence before the court. I take this view because (1) not only did the Plaintiff give no evidence that he told Damien Hunter, during the 19 July 2011 meeting, that Leo Kearns had breached confidentiality, (2) there is no evidence that Damien Hunter challenged Leo Kearns, subsequent to the 19 July 2011 meeting, and ever put to Leo Kearns an allegation that Mr. Kearns had breached confidentiality, (3) there is no evidence before the court that Leo Kearns told Damien Hunter that he had not breached confidentiality, other than what the Plaintiff says Leo Kearns said to him about what Leo Kearns supposedly said to Damien Hunter. Against the foregoing background, it is unusual to say the least for Mr. Kearns to have supposedly volunteered to the Plaintiff, in effect "out of the blue" that he, Mr. Kearns, never said anything confidential outside the four walls of the Blackrock office. The evidence given by Mr. Kearns does not corroborate the Plaintiff's account, but taking the Plaintiff's evidence entirely at face value, what can be said with certainty is that, as a matter of fact, the Plaintiff kept his thoughts to himself in August 2011 and said nothing to Leo Kearns, despite the Plaintiff's absolute conviction, at that time and since 2005, that Leo Kearns had breached confidentiality, in particular regarding KF and despite the Plaintiff having every opportunity to raise this issue with Mr Hunter in July and in August 2011 but not doing so. It is also a fact that the Plaintiff did not make a complaint to his union representative, to any member of the occupational health team, to any other line manager, to any other senior manager in 2011, despite what the Plaintiff claims to have silently noted to himself in August 2011. If it was the

case, as of August 2011, that the Plaintiff had a complaint which he wished to pursue against Mr. Kearns arising from the Plaintiff's conviction that Mr. Kearns breached confidentiality, going back to 2005, the Plaintiff, on his own evidence, took no action whatsoever to pursue that complaint. On the Plaintiff's own evidence, he kept his thoughts on the matter to himself in 2011 and continued to do so until October 2016, specifically until the Plaintiff wrote a letter dated 25 October 2016 which will be examined later in this judgment.

The position as of August 2011

226. Taking all the evidence into account, I am entirely satisfied that, regardless of whether the Plaintiff's account is credible, or not, in relation to what he claims Mr Kearns said in August 2011 and what the Plaintiff claims he silently noted to himself (and for the reasons detailed above, the credibility of the Plaintiff's account must be doubted), either version of events is wholly consistent with the following (1) the Plaintiff was happy to go back to work in August 2011 and did so; (2) the Plaintiff resumed his work having had every opportunity to raise any issue he wished to raise and having taken that opportunity, as evidenced by the meeting of 19 July 2011; (3) all the foregoing took place against a backdrop of the Plaintiff having obtained legal advice in October 2010 and in May 2011; (4) armed with that legal advice, the Plaintiff neither commenced legal proceedings nor made any complaint; (5) as of August 2011, the Plaintiff had no past or current issue which had not been dealt with satisfactorily by the Defendant (otherwise he would not have returned to work from "sick leave" and/or would have made a complaint, whereas the indisputable facts are that he did resume his job and did not make any complaint or issue proceedings).

The Plaintiff's evidence that "*I couldn't believe there wasn't an investigation*"

227. During his evidence, the Plaintiff suggested that, because Leo Kearns told him, upon his return to work in August 2011, that Leo Kearns had told Damien Hunter that he had not

said anything confidential outside the four walls of the office, the Plaintiff could not believe that an investigation was not commenced. His evidence was as follows:

> "*I couldn't believe there wasn't an investigation because if Leo Kearns told Damien Hunter that he never said them things, why didn't Damien Hunter not come back to me and say: 'how can you make these accusations and you didn't say them?' Like I can't believe there wasn't an investigation after it.*" (D2, P79, L12).

The Plaintiff was clear in his evidence that, despite hearing what Mr. Kearns supposedly said, the Plaintiff neither said anything to Mr. Kearns, nor to Mr. Hunter, nor to his union rep, nor to anyone else in the Defendant. That being so, there was no complaint to investigate and, having regard to the facts, the Plaintiff could have no expectation that any investigation would be undertaken. Furthermore, the Plaintiff was given the ideal forum, mere weeks earlier, to make a complaint in relation to an alleged breach of confidentiality on the part of Mr Kearns, namely at the 19 July 2011 meeting but did not take that opportunity. This can only be because the Plaintiff had no complaint to make. It will also be recalled that the Plaintiff's decision to raise no such complaint at or after the 19 July 2011 meeting was a decision taken by the Plaintiff after he had received legal advice from a solicitor (whom he met in October 2010 and in May 2011 and I am entitled to conclude that in seeking legal advice the Plaintiff told his solicitor about every issue of concern to the Plaintiff, including a belief on the Plaintiff's part that Mr Kearns breached confidentiality. At the 19 July 2011 meeting it was explained to the Plaintiff, in the presence of his union representative, that the Defendant could not investigate complaints which went back so far and the evidence demonstrates that the Plaintiff accepted that position. I am satisfied, on the facts, that any complaint concerning an alleged breach of confidence on the part of Leo Kearns went back to 2005 (in respect of the KF matter involving the opened post found in the van) and 2006 (in respect of what the Plaintiff believes occurred concerning announcements to staff following the discovery of a bag of opened mail in Fintan's Park which

the Plaintiff brought back to the Blackrock Office). I am satisfied, therefore, that the Plaintiff knew, as of August 2011, that any complaint - if he had one to make at that point - concerning an alleged breach of confidence by Leo Kearns, was a complaint going back to 2005 and 2006 and, as such, was something the Defendant could not and would not commence an investigation in respect of. I am also satisfied, that, as a matter of fact, this is a position which the Plaintiff accepted at the time. It is also a position which, as a matter of fact, the Plaintiff's union representative accepted and I am satisfied that the Plaintiff returned to work on the foregoing basis, namely that all past issues of each and every type had been dealt with satisfactorily and the Plaintiff had no current issues.

Unreliable testimony by the Plaintiff

228. Having carefully considered all the evidence, I am satisfied that, following the conversation which the Plaintiff says took place with Leo Kearns upon his return to work, it is not the case that the Plaintiff was *expecting* an investigation to commence. The evidence demonstrates conclusively that he could have had no such expectation and did not have any such expectation. His testimony in 2020 that he could not believe there was no investigation in 2011 is not reliable. I am satisfied that, as a matter of fact, the Plaintiff knew full well, as of August 2011, that there would be no investigation in relation to any historic issues, including any claim that Mr. Kearns breached confidentiality in 2005 or 2006, and he knew and accepted the reasons for same. I do not accept that, as of 2011, the Plaintiff truly believed there should or would be an investigation in relation to any concern on his part that Mr Kearns ever breached confidentiality (a concern which, on his own evidence, he kept silently to himself and neither raised at the July 2011 meeting, nor mentioned to Mr Kearns in August 2011 when they spoke, and a concern which the Plaintiff said to nobody else at the time or, for that matter, mentioned at any stage during the next 5 years). The position, I am satisfied, is that the Plaintiff was happy to go back to work, had no outstanding complaints of any sort which had not been addressed,

knew there would be no investigation of any issues, was satisfied with that position, had recovered from the health difficulties on foot of which he had had periods of absence from work, no longer had health difficulties, expressed himself afraid of no one, and had received assurances from two senior representatives of the Defendant that if any new issue arose, big or small, the Plaintiff could and should contact them. In addition, the Plaintiff had by this point, had the benefit of legal advice, having informed his solicitor of all his complaints and, against that backdrop, had decided not to institute any legal proceedings. The Plaintiff also had medical advice from a doctor with whom the Plaintiff had a long-standing relationship. The Plaintiff also knew the company's attitude, as per the outcome of the 19 July 2011 meeting and was, in short, fully satisfied with it, as evidenced by his return to work in August 2011 and what occurred in the 4 to 5 years thereafter .

The Plaintiff's claim that workplace issues were *current* as of July/ August 2011

229. The Plaintiff did not call upon the Defendant to carry out any investigation in 2011, but returned to work by agreement. Despite the foregoing facts, the Plaintiff claimed at one point during his direct evidence that his workplace issues were current or ongoing as of 2011. He did not go into the specifics of what those complaints were, but the clear import of his evidence was that he was suffering unacceptable behaviour in the workplace and that it was current as of July/August 2011, yet according to the Plaintiff, the Defendant failed to investigate it.

Unreliable evidence by the Plaintiff

230. Having carefully considered the totality of the evidence, I am satisfied that the Plaintiff's sworn testimony, given to this Court in February 2010, in which he claimed that there were *current* issues in his workplace, as of July/August 2011, is wholly unreliable. I have come to that conclusion for a number of reasons as follows:

(1) In his evidence to the court, the Plaintiff gave no details of what he says were the current or ongoing complaints adversely affecting him in work as of 2011.

(2) The contemporaneous records of the 19 July 2011 meeting record that the Plaintiff did not have any current complaints;

(3) The Plaintiff, as a matter of fact, did not call for any investigation into any complaints which were said to be current as of 2011;

(4) The Plaintiff saw Mr. Hunter, a HR professional, for the first time on 19 July 2011 and I am satisfied that Mr. Hunter had no vested interest in failing or refusing to investigate any complaints raised by the Plaintiff which were then current, if there were any. There was no benefit to Mr. Hunter ignoring or refusing to investigate any current complaints and there was an obvious "downside", were Mr. Hunter to ignore or refuse to investigate complaints which were then current. Mr Hunter's evidence was to the effect that there were no current issues raised by the Plaintiff and I accept that evidence;

(5) The Plaintiff was accompanied to the 19 July 2011 meeting by his union representative and the court is entitled to conclude that the Plaintiff's union had no vested interest in permitting current complaints by an employee to be ignored by the employer. On the contrary, the court is entitled to conclude that if the Plaintiff had raised any issues during the 19 July 2011 meeting which were then current, and if the employer failed or refused to investigate such current issues, the Plaintiff's union would have followed up with Mr. Hunter to call for the investigation of current issues;

(6) There is no evidence whatsoever of any follow up by the Union, be that to call for the investigation of issues, current as of 2011, or to complain that Mr. Hunter refused to or failed to investigate issues which were then current and which had been raised by the Plaintiff at the July meeting;

(7) The Plaintiff did, in fact, return to work in August 2011, as he had agreed to do, and made no complaint, upon his return to work or in the years which followed, that there were any complaints which were then current and/or that there had been a failure to investigate same;

(8) There is no reference in the Plaintiff's medical records, following his return to work in August 2011, to any complaints which were then current;

(9) The contemporaneous medical records maintained by the Plaintiff's GP, dated 07/09/2011, records the fact that the Plaintiff felt that he was "*being taken seriously re his complaint now*". This was a record which was made after the Plaintiff's return to work.

231. I am satisfied that if the Plaintiff genuinely had any *current* issues which he raised with the Defendant during the meetings in July and/or in August 2011 and which the Defendant failed or refused to investigate, I am satisfied that the Plaintiff would not have indicated to his GP, after his return to work, that he was being listened to i.e. that he was being taken seriously. On the contrary, if, in the wake of the Plaintiff's return to work in August 2011, he genuinely had workplace issues or complaints which were then *current* and which were being ignored and were adversely affecting the Plaintiff's health in any way, I am satisfied that this fact would be requested in the contemporaneous medical records. It is not. I am satisfied that, as a matter of fact, the Plaintiff had no current issues with his workplace as of 19th of July/August/September 2011. The Plaintiff agreed to return to work on the basis that there were no current complaints, that there would be no investigation into what were issues going back several years and that everything had been dealt with to the Plaintiff's satisfaction and the Plaintiff did in fact return to work on that basis. I am satisfied that the Plaintiff's evidence, given in February 2020, that his workplace issues or complaints were ongoing as of July and

August 2011 is simply not credible and not reliable. It is difficult to see that this evidence by the Plaintiff can be explained by poor memory caused by the passage of time.

The period between October 2010 to August 2011 in light of written documents prepared by the Plaintiff

232. If the Plaintiff had been suffering from bullying or subject to behaviour which he regarded as unacceptable, as of 22 October 2010, the Plaintiff could have said so in his letter of that date, or in his letter dated 22 November 2010, or in the 2-page handwritten document prepared by the Plaintiff which is referred to in the 22 November 2010 letter, and could have provided details of the specific dates of what was said to be current bullying, as well as names, details, locations, witnesses etc. No such detail appears either in the Plaintiff's 22 October 2010 letter or in the Plaintiff's 22 November 2010 letter or in the two - page handwritten document which the Plaintiff has referred to as a "*minute"* which, on the left of the document, comprises a list of years and, on the right, some brief details. It is a matter of fact that none of those documents which the Plaintiff took the trouble to write, provide any details of what is alleged to have been *current* complaints as of October 2010. Nor do they claim that the Plaintiff suffered any unfair treatment in the prior months. The Plaintiff's evidence is that, during the 19 July 2011 meeting, he went through his two – page "*minute*" when providing details of his complaints. This is of some significance. The Plaintiff's evidence that, at the 19 July 2011 meeting, he went through the contents of a handwritten document which he had prepared approximately 9 months earlier, is evidence that no new issue arose in the intervening period. The Plaintiff had taken the trouble to put pen to paper on 3 occasions prior to the 19 July 2011 meeting (i.e. his 22 October 2010 letter, his 22 November 2010 letter which referred to the "*accusations*" and listed the 3 of them, and the Plaintiff's accompanying two-page handwritten note setting out details). If a new or current complaint had arisen after October 2010, I am entitled to conclude that the Plaintiff would have written this down and would have referred to

it in advance of and at the 19 July 2011 meeting. The Plaintiff wrote nothing of the sort. The Plaintiff gave no evidence that any new or fresh issues had arisen between 22 October 2010 and the 19 July 2011 meeting. He gave no evidence that, during the July 2011 meeting, he informed Mr. Hunter of what was alleged by him to be *current* bullying. He gave no evidence that he had supplied, for example, any dates, any names, any specifics in relation to what was allegedly said, any details as to what his supposed response had been, any details of the identity of any witnesses, or any such details in relation to any matters to which the Plaintiff objected. It is a matter of fact that if the Plaintiff was, as of July 2011, being subject to bullying which was current, he would readily have had all those details. The fact that he gave no evidence whatsoever of having supplied details of allegedly current bullying to Mr. Hunter at the July 2011 meeting, together with the fact that no details of allegedly current bullying are set out in his 22 November 2010 letter or in the Plaintiff's two-page hand written "minute" and the fact that he Plaintiff did not put anything else in writing in the lead up to the 19 July 2011 meeting, along with the reasons detailed earlier in this judgment, convinces me that the Plaintiff was not, as a matter of fact, the subject of treatment in work which he regarded as unfair, at any stage between October 2010 and July 2011, inclusive. Rather than providing specific details of what was said to be current bullying, the Plaintiff's 22nd October, 2010 letter makes a specific reference to the fact that dates may be incorrect, because the Plaintiff is going on memory. This is in circumstances where the details supplied by the Plaintiff went back so far. The foregoing is not something the Plaintiff would have had to say, had the issues or complaints being current because he would have readily had comprehensive details of allegedly current events. He provided none because, I am satisfied, there were no current issues or complaints and that is as true, when the Plaintiff wrote his 22 October 2010 and 22 November letters, as when an agreed outcome was reached at the 19 July 2011 meeting.

The 19 July 2011 meeting and the terms of the "Dignity at Work" Policy

233. I am satisfied, having carefully considered the entirety of the evidence, that the 19 July 2011 meeting, at which the Plaintiff was accompanied by the Welfare Officer of his trade union, was a meeting which took place in accordance with An Post's Dignity at Work Policy and what happened at that meetings was, as a matter of fact, what the said policy envisages as a first step when issues or complaints are raised. Central to the said policy is the importance of as much detail concerning a complaint being put forward. The 19 July 2011 meeting provided the Plaintiff - with support and assistance from his union representative – an opportunity to put forward the entire details of all complaints. I am satisfied that, as a matter of fact, the Plaintiff took that opportunity. I am satisfied that, as a matter of fact, the meeting was neither rushed nor is there any evidence that the Defendant's representative, Mr. Hunter, did not give the Plaintiff and his union representative a full and fair opportunity to put forward all details. I am satisfied that, as a matter of fact, the Defendant's representatives considered the details of all complaints which the Plaintiff put forward and concluded that none of those complaints were *current* and that all complaints dated back several years, something the Plaintiff also accepted. I am satisfied that, as a matter of fact, this was an assessment of the complaints which the Dignity at Work Policy envisages and, indeed, requires before it would be appropriate for any investigation to take place, be that under the informal or formal process set out in the said policy. I am satisfied that, as a matter of fact, it is not the case that the Dignity at Work policy is engaged only from the point at which an investigation commences. On the contrary, the policy makes it clear what must happen prior to the commencement of any investigation, informal or formal, and it is clear from the terms of the policy that not every issue or complaint will, of necessity, give rise to an investigation. The policy makes it clear that not all issues or complaints will be investigated because it will not always be appropriate to do so. This is because the policy, as agreed between the unions and An Post, is informed by principles of natural justice. As a matter of fact, the policy makes it clear that complaints must be brought

to the Defendant's attention within six months of the occurrence of the last issue complained of. This is not only to encourage those who claim to be suffering from treatment which they regard as unacceptable to raise issues promptly but also to protect those against whom complaints may be made. There is an obvious risk of unfairness if an employee or employees are accused, for the first time, of behaviour said to have occurred several years earlier. In the present case, there is no evidence that the Defendant's attitude, at the 19 July 2011 meeting was to slavishly follow a "six-month rule" with regard to complaints and no evidence that the Defendants were unduly inflexible. The evidence demonstrates that there was simply no current complaint and that several years had passed since the events and complaints raised by the Plaintiff. I am satisfied, therefore, that the manner in which the Defendant's representatives dealt with the issues raised by the Plaintiff was, as a matter of fact, entirely consistent with the terms of the Dignity at Work Policy and I am also satisfied that the Plaintiff accepted this fact, as did his trade union representative.

Certain findings in relation to 2011

234. Insofar as the year 2011 is concerned, I am satisfied that an examination of the evidence does not allow this court to reach a finding that the Plaintiff was "…*subject to ridicule, vicious rumours promulgated by a number of colleagues as well as bullying and harassment and this has had a significant and lingering effect on his mental health. The Plaintiff has felt undermined and unsupported in particular by his line manager who refused to deal with his issues at all and indeed denied that there were any workplace issues…"* being an extract from the pleaded case. Having carefully considered all the evidence, I am satisfied that, as a matter of fact, the Plaintiff did not suffer any unfair treatment at work which was *current* as of 2011. To the extent that the Plaintiff felt anger and stress and required medical treatment in 2011, I am satisfied that this was not caused by any unfair treatment of the Plaintiff in his workplace. Indeed, the Plaintiff's 2011 medical records examined alongside the Defendant's records,

including of the 19 July 2011 meeting, paint a consistent picture, namely of an employee who raised issues being taken seriously and being supported but, due to the entirely historic nature of the issues raised, a decision being taken that it would be inappropriate to commence an investigation, something the Plaintiff accepted before returning to work by agreement, following which no issue was raised. In short, the evidence, insofar as 2011 is concerned, does not support the Plaintiff's claim.

The Plaintiff's medical records for 2012

235. The Plaintiff's medical records as maintained by his GP at the Carlton Clinic contain the following entries for 2012:

> *17/05/2012 - 6 days post inversion injury rt ankle. Seen in SMH. Sprain.++swollen. Advice re nsaid, RICE. Note to 28th.*
>
> *29/05/2012 - Still not resolved. Certs back dated to 11/5/12. Note to 6/6/12. Will need final cert. from 31st.*

The foregoing entries relate to an ankle sprain. There are no other entries for 2012.

Certain findings in relation to 2012

236. There are no entries in the Plaintiff's 2012 medical records which show the Plaintiff having informed his GP of any complaints in relation to his workplace. Nor did the Plaintiff seek or require any medical treatment for any matter said to be attributed to the way in which he was treated at work. If, in 2012, the Plaintiff felt that his health was in any way adversely affected by any matter, then current, in his workplace, I am satisfied that he would have consulted his GP with whom he had a very positive and longstanding relationship. He did not do so. In addition, the Plaintiff made no complaint in 2012 to any manager in the Defendant or to any member of the Defendant's Occupational Support team or to his Trade Union representative to the effect that any accusations were being made about him or suggesting that any rumours were circulating in relation to him or that he was suffering from bullying or

harassment or any form of unfair treatment. Nor did the Plaintiff claim, at any stage in 2012, that any complaint which he had previously raised had not been dealt with satisfactorily or that any issue was being ignored. There was no evidence given to the court to support any finding that in 2012 the Plaintiff had any workplace issues or complaints of any nature. The Plaintiff did not invoke the Dignity at Work policy in 2012. Nor did the Plaintiff write any letter in which he claimed that he had any complaints or concerns which were then current. In essence, the evidence insofar as the year 2012 is concerned, does not support the pleaded case.

The Plaintiff's medical records for 2013

237. The following comprises the entire of the entries in the Plaintiff's medical records for 2013 as maintained by the Carlton Clinic:

"22/04/2013 – Raised cholesterol + Urate Levels

22/04/2013 – T92-GOUT/M10-Gout

01/05/2013 – High urate. No overt gout. Cholesterol 7.1 Bp 128/77 FH of MI RxZocor

01/05/2013 – For repeat bloods in 6 weeks

19/08/2013 – r/l knees, hand pain – nb started zocor 2/12 ago hold zocor add neurofen, ph 7/7

30/08/2013 – improved but still sore in knees mstay off zocar, add neurofen, ph 7/7

18/09/2013 – pain R knee/other pains have abated since discontinuing statin O/E tender over medial ligament line and on springing of medial ligament/pain on rotation of tibia on femur. Gives away occasionally Dia? Medial cartilage tear. Planned physio 6/52+ review re referral and MRI ACHES + PAINS ON STATINS Plan Esatrol"

238. The Plaintiff had no absence from work on sick leave at any stage in the year 2013 which was said to be attributed to any unfair treatment of the Plaintiff at work. Nor is there any reference to any work - related stress, or to any complaint made by the Plaintiff in respect of his treatment at work, anywhere to be found in the Plaintiff's medical records for 2013. It will

be recalled that, in May 2011, the Plaintiff's GP made a very detailed note, not only of the fact that the Plaintiff had issues with the workplace, but Dr. McManus also went to the trouble of setting those out in detail in the manner reported to him by the Plaintiff. I am satisfied that if, in 2013, the Plaintiff had any complaint or issue in relation to his work which was in any way adversely affecting his health, he would have informed his GP and a reference to same would appear in the Plaintiff's medical records. There is no such reference. The Plaintiff neither sought nor received any treatment in 2013 in relation to any adverse effect on his health which was said to be related in any way to his treatment at work.

239. It is also clear from the Plaintiff's medical records that the Plaintiff had high cholesterol and this is one of the conditions referred to in the Plaintiff's medical records dating from 2013, quoted *verbatim* above (raised cholesterol having also been noted in the Plaintiff's medical records going back to 2005) . High cholesterol will be referred to later in this judgment insofar as the events of December 2016 are concerned and, in the manner analysed later in this judgment, is very relevant to the Plaintiff's admission to St Vincent's Hospital on 21 December 2016 (something he blames the Defendant for) and to the findings set out in the "Discharge Summary" document which was prepared by the Hospital, dated 22 December 2016. I am satisfied that, as a matter of fact, this condition, ie high cholesterol, was, and is, wholly unconnected to the Plaintiff's work.

Certain findings in relation to 2013

240. I am satisfied that, as a matter of fact, the Plaintiff made no complaint, verbal or in writing at any stage during 2013 in respect of any work-related issue whatsoever, under the Dignity at Work Policy or under An Post's Grievance Policy. Based on the Plaintiff's evidence, I am satisfied that he had no work-related issue whatsoever in 2013. This is also entirely consistent with the contemporaneous medical records maintained by the Plaintiff's GP. Insofar as the year 2013 is concerned, I am satisfied that an examination of the evidence does not

support the Plaintiff's case which includes, inter alia, the plea that the Plaintiff was "…*subject to ridicule, vicious rumours promulgated by a number of colleagues as well as bullying and harassment and this has had a significant and lingering effect on his mental health. The Plaintiff has felt undermined and unsupported in particular by his line manager who refused to deal with his issues at all and indeed denied that there were any workplace issues…"*. If, by 2013, there was any issue which the Plaintiff had raised in prior years, and which had not been resolved to the Plaintiff's satisfaction, one would expect the Plaintiff to have pressed the Defendant to address same by calling for a formal investigation in 2013. It is a fact that the Plaintiff did not call, in 2013, for any investigation or make any complaint in respect of any issue which was said to have arisen in 2013 or in respect of any issue said by the Plaintiff to have arisen prior to 2013. Having carefully considered all the evidence, I am satisfied that, as a matter of fact, the Plaintiff was not the subjected to any accusation, rumour, bullying, harassment or unfair treatment in his workplace at any stage in 2013. As of 2013, there were no, then current, workplace issues and I am equally satisfied that, as of 2013, there were no outstanding issues which had arisen in previous years which had not been dealt with satisfactorily. In short, the evidence insofar as 2013 is concerned does not support the Plaintiff's claim.

The Plaintiff's medical records for 2014

241. The following is a verbatim copy of the Plaintiff's 2014 medical records:

"03/11/2014 – Pain R knee L knee is fine had lateral +cruciate repair Plan referral + X-ray X ray referral faxed to SCC as per JMN. Mcl

04/11/2014 – Letter typed + posted to Mr. Hurson OPD SVUH as per JMN-trish".

The Plaintiff's medical records make no reference whatsoever to any issue or complaint raised by the Plaintiff with his doctor, at any point in 2014, in relation to his workplace. The Plaintiff was not off work at any stage during 2014 as a result of any issue said to have been related to

his work or to treatment of the Plaintiff at work. There is no reference whatsoever to "*stress*" in the Plaintiff's 2014 records. If the Plaintiff had any workplace issue or complaint in 2014 said to have been impacting adversely on the Plaintiff's health, I am satisfied that he would have mentioned it to his GP and there would be a contemporaneous record of same. There is no evidence that the Plaintiff said anything of the sort to his doctor in 2014.

Certain findings in relation to 2014

242. I am satisfied, based on the Plaintiff's evidence, that he did not have any issue or complaint in the workplace at any stage during 2014. I am also satisfied that, as a matter of fact, the Plaintiff did not raise any issue or complaint either verbally or in writing with his Trade Union or with any representative of the Defendant and did not pursue any complaint under the Defendant's Dignity at Work Policy and did not raise any grievance under An Post's Grievance Policy. Having carefully considered all the evidence, I am satisfied that, as a matter of fact, no workplace issues arose in 2014 which adversely affected the Plaintiff in any way. I am equally satisfied that, as of 2014, there were no outstanding issues which had arisen in previous years which had not been dealt with satisfactorily. There is no record of the Plaintiff seeking or receiving any medical treatment in 2014 for any issue which was said to be in any way related to the Plaintiff's workplace or his treatment at work. That is clear from the contemporaneous medical records from the year 2014, for which there are just two entries. I am satisfied that, as of 2014, the Plaintiff had no issues or complaints in relation to his treatment at work which were then current. In short, the evidence insofar as 2014 is concerned does not support the Plaintiff's claim.

The Plaintiff's 2015 medical records

243. The following is what the Plaintiff's GP recorded, with regard to all treatment provided to the Plaintiff in 2015:

02/03/2015 – Letter to Conor Hurson. For repeat lipids.

03/03/2015 – Letter typed to Mr. Hurson OPD SVUH as per JMM/4.3.15 letter posted – Trish.

05/05/2015 - Copy x-ray printed off and left for collection - Cathy.

27/07/2015 - Driver's licence renewal. Group 2 renewal VA 6/6/BILAT normal fields. Fit to drive for 5 years.

If, in 2015, the Plaintiff felt that he was being unfairly treated at work and that any such treatment was adversely affecting his health, I am satisfied that he would have told his GP and that there would be a record of same and of the medical treatment provided. There is no such record. Nor did either the Plaintiff or his GP suggest in their oral evidence that the Plaintiff was suffering, in 2015, from any health issue said to be connected in any way with his treatment at work.

Certain findings in relation to 2015

244. I am satisfied that as a matter of fact, the Plaintiff had no workplace issues or complaints in 2015 which were then current. There is no evidence that the Plaintiff made any complaint to his trade union representative, to occupational health or to any member of management within the Defendant at any point in 2015. The Plaintiff's medical records are consistent with the foregoing Having carefully considered all the evidence, I am satisfied that, as a matter of fact, no workplace issues arose in 2015 which adversely affected the Plaintiff in any way. There is no evidence that, in 2015, the Plaintiff was subject to "*ridicule"* or *"vicious rumours"* or *"bullying and harassment",* nor is there any evidence of any damage to the Plaintiff's mental health. There is no evidence that, in 2015, the Plaintiff was "*undermined and unsupported",* nor is there any evidence that anyone, including his line manager, *"refused to deal with his issues at all and indeed denied that there were any workplace issues…"*. Furthermore, if, by 2015, there was any issue which the Plaintiff had raised in prior years, and which had not been resolved to the Plaintiff's satisfaction, one would certainly expect the Plaintiff to have called

on the Defendant to address same. It is a fact that the Plaintiff did not call, in 2015, for any such investigation or make any complaint whatsoever– be that in relation to any workplace issue said to have arisen in 2015 or in respect of any issue said by the Plaintiff to have arisen prior to 2015. On the evidence, I am satisfied that, as of 2015, there were no outstanding issues which had arisen in previous years which had not been dealt with satisfactorily. In short, the evidence insofar as 2015 is concerned does not support the Plaintiff's claim.

Documents dating from 2012, 2013, 2014, 2015

245. During the course of the hearing, the parties used a "core" book of documents. The only documents in the core book dating from 2012, 2013, 2014 or 2015 comprise the reports and letter completed by the Plaintiff in 2012 concerning an accident in which the Plaintiff sustained a sprain to his right ankle and a letter, dated 06 May 2015, from a clinical specialist physiotherapist in St. Vincent's Hospital to the Plaintiff's GP, Dr. McManus, following a referral in relation to the patient's left knee. If the Plaintiff felt, in 2012, 2013, 2014 or 2015, that he was suffering from bullying or harassment or unfair treatment at work, he could have written a letter to a member of the Defendant's management, just as he had written a letters, dated 22 October 2010 and 22 November 2010. The Plaintiff wrote no such letter, nor did anyone on his behalf, be that his Trade Union representative or anyone else. The complete lack of any documentary evidence, by or on behalf of the Plaintiff, of any complaint is consistent with my findings of fact as detailed above to the effect that there were no current issues or complaints at work in 2012, 2013, 2014 or 2015 and the Plaintiff made no complaint to anyone during any of those years to the effect that he was then suffering from any unfair treatment at work. I now turn to an examination of evidence in relation to the year 2016, in particular, to see if unfair treatment of the Plaintiff *commenced* at any point during that year, given that there had certainly been no unfair treatment of the plaintiff in the preceding years.

22 February 2016 – letter from the Plaintiff to Mr. Hunter

246. On 22 February 2016 the Plaintiff wrote a letter as follows:

"Mr. Hunter,

(Human Resources).

I would much appreciate if you would organise another meeting with me regarding my situation in Blackrock Delivery Office, Co. Dublin.

Many thanks,

John Ward."

In light of the evidence, I am satisfied that, as a matter of fact, the Plaintiff was not suffering from any treatment to which he objected when he sent the 22 February 2016 letter to Mr. Hunter. There is no evidence from which the court could conclude that, as of 22 February 2016, the Plaintiff was being bullied or harassed or ill-treated in any way at work. There is no evidence from which the court could conclude that, what the Plaintiff described in his 22 November 2010 letter as *"the accusations made about me"* were circulating in February 2016. In his evidence, the Plaintiff did not claim, for example, that as of February 2016, work colleagues began accusing him of having had an affair in 1996 or of being responsible for someone being dismissed in 2005 or of having had something to do with opened post found in 2006. What emerges from the evidence is that the Plaintiff's day-to-day working environment did not *change* in any way, so as to precipitate the writing of the 22 February 2016 letter. It is clear from the Plaintiff's evidence that the reason he wrote the 22 February 2016 letter is not because work colleagues started to say things to or about him which he objected to or began to treat him in a way he regarded as unfair or hurtful. He gave no such evidence and gave no details whatsoever of any such alleged treatment, which was supposedly *current* as of February 2016. Rather, what precipitated the 22 February 2016 letter was, on the Plaintiff's evidence, the fact that he learned that Mr. Leo Kearns was going to retire. At the risk of stating the

obvious, I am satisfied that the decision by Mr. Kearns to retire is not something capable of constituting a wrongful act, by the Defendant, insofar as the Plaintiff is concerned.

The reason the Plaintiff wrote his 22 February 2016 letter

247. When asked why he wrote the letter, the Plaintiff's evidence was that he wrote it because he *"wanted the truth to come out"* (D2, P84, L4). The Plaintiff's evidence was that, if Mr. Kearns was retiring, the Plaintiff did not have much time and the Plaintiff wanted Mr. Kearns to be asked what the Plaintiff described as the questions he had been asking. It is fair to say that a central theme in the Plaintiff's evidence was that he had been asking questions of and seeking answers from Mr. Kearns, for 20 years, between 1996 and 2016. During his examination in chief, the Plaintiff was asked why he wrote his letter in February 2016 and his reply was to say that, in relation to Mr. Kearns *"...I wanted him to be asked the questions that I was asking all my life, well since '96, 2006.*" (D2, P84, L9).

Unreliable evidence by the Plaintiff

248. I am satisfied that, as a matter of fact, the Plaintiff had not been asking *any* questions whatsoever of Mr. Kearns or raising any questions within the Defendant be that since 1996, or from 2006 onwards, or since his return to work in August 2011. There is simply no evidence to support a finding by this court that the Plaintiff *ever* asked any questions of Mr Kearns, much less evidence that any efforts by the Plaintiff to question Mr Kearns (there were no efforts) were ever frustrated by anyone. The Plaintiff's evidence that he had been asking questions all his working life in the Defendant, or since 2006, is neither credible nor reliable testimony and I must reject it.

249. Later in this judgment I will examine the evidence in relation to conversations, in October 2016, between the Plaintiff and Mr Kearns. Insofar as those conversations could be characterised as the Plaintiff asking any questions of Mr. Kearns, it is clear that the answers did not include any admission of wrongdoing by the latter. This is because there was never any

wrongdoing. The evidence simply does not support any finding of an alleged breach of confidentiality or otherwise. As to what the Plaintiff wanted, his evidence was that he wanted the *"truth"* to emerge, namely that Mr. Kearns had let confidential information out to the office floor and then denied it. Based on the evidence before this court, the foregoing is not the "*truth*". The evidence simply does not support any finding that Mr Kearns breached confidentiality. The Plaintiff's evidence was that he felt stress at this point in time and felt that if Mr. Kearns retired, there was nobody to answer the questions which, according to the Plaintiff, he was asking. It will be recalled that the Plaintiff returned to work as of August 2011 and the evidence supports a finding that the Plaintiff was happy to do so, and remained so in the years that followed. Given the Plaintiff's evidence in relation to asking questions and wanting the truth to come out, as being the motivation for his February 2016 letter, the following is a fair summary of the status as of February 2016:- (1) There is no evidence that the Plaintiff was asking any questions whatsoever from August 2011 onwards and I am satisfied that he was not asking any questions of any party with regard to the Plaintiff's long-held belief, going back to 2005, that Mr. Kearns had breached confidentiality; (2) I am satisfied that, as a matter of fact, the stress to which the Plaintiff refers, was not caused by any act of any employee of the Defendant; (3) On the contrary, the Plaintiff is clear in his evidence that he felt stress because of an agenda which he had, namely to ensure that the *"truth"* as he saw it would emerge before Mr. Kearns retired; (4) I am satisfied that there was no then - current workplace issue or complaint in relation to the manner in which the Plaintiff was being treated at work; (5) Based on his evidence, I am satisfied that, as a matter of fact, the Plaintiff's unhappiness, as of February 2016, was exclusively due to his concerns about the impending retirement of Leo Kearns and nothing else; (6) I am also satisfied that, as a matter of fact, the Plaintiff was otherwise happy at work and had been happy at work since returning to his normal

duties in August 2011. Indeed, this is clear from the evidence given by the Plaintiff when asked why there was not a single complaint made by the Plaintiff from August 2011 onwards.

A "*happier camp*"

250. When acknowledging that there had been no complaint by him at any point from August 2011 until 2016, the Plaintiff confirmed *"I actually went off the driving and was on a delivery and I was in a different part of the office which was a happier camp than the one that was isolated over in the corner"* (D3, P105, L13). The Plaintiff did not give any evidence that, as of February 2016, he *changed* roles or duties or that he changed location within the office or that he had to return to a part of the office which, in his view, was isolated or unhappy as a working environment. The Plaintiff gave no evidence that there was any change whatsoever in his day-to-day working conditions, in February 2016, or that his treatment by work colleagues changed in any way at that point or that he ceased to be in what he described in his evidence as a "*happier camp"*. Rather, his evidence focussed exclusively on the fact that Mr. Leo Kearns was going to retire and what that meant, insofar as he was concerned. The foregoing is entirely consistent with the complete lack of documentation from the years 2012, 2013, 2014 and 2015 in relation to any complaint by or on behalf of the Plaintiff. There was no complaint made during those years by or on behalf of the Plaintiff. It is also entirely consistent with this court's findings of fact, detailed above, insofar as those years are concerned, namely, that the Plaintiff had no then-current complaints in 2012, 2013, 2014 or 2015, arising from any treatment of him at work and the Court's findings that, as of August 2011 when the plaintiff went back to work after a period of "sick leave", all past issues had been dealt with by the Defendant to the Plaintiff's satisfaction and there were no current issues in the workplace. In short, all the evidence points to the Plaintiff being happy at work from the latter half of 2011 onwards and having no complaints of any sort. As such, the evidence does not support, and wholly undermines, the Plaintiff's pleaded case, raising also, a clear issue in respect of the

Statute of Limitations. Elsewhere in this judgment, I will discuss the Statute of Limitations aspect, particularly in light of what the Plaintiff stated in his May 2011 letter in which he refers to bullying and harassment and to the effect on his health (a letter written *prior* to his return to work in 2011) and also in light of the Plaintiff's evidence that he took legal advice in 2010 and 2011.

251. It is a matter of fact that the Plaintiff went on sick leave in 2016 and has not returned to work since then. Given the fact that, from August 2011 until February 2016 all the evidence supports the finding of fact that the Plaintiff was happy at work, had no complaints of any nature and had no health issues said to be attributed in any way to unfair treatment in his workplace, it will be necessary to examine the evidence closely, as the year 2016 unfolded, in order to see what, if anything, *changed* insofar as the way the Plaintiff was treated in the workplace – in other words to see whether by act or omission the Defendant committed any legal wrong *after* February 2016.

February 2016 – Plaintiff's medical records

252. The Plaintiff saw his GP on 08 February 2016 and the following is the relevant entry, being the very first entry from the Plaintiff's medical records for the year 2016:

> *08/02/2016 stressors in work Accused of robbing + having an affair + getting another person worker into trouble. Very angry very stressed.*

The foregoing is a reference to the three central issues which the Plaintiff put in writing, for the very first time, in his 22 November 2010 letter to Mr. Cunningham. It will be recalled that in his 22 November 2010 letter the Plaintiff wrote the following:

> "*Mr. Cunningham*
>
> *I wrote down a few pointers after our recent conversation which I will go into more detail with you.*
>
> *The accusations made about me are as follows:*

Sleeping with a work colleague's girlfriend

Setting up a work colleague to be sacked.

Accused of robbing.

I must add the dates may be out a bit as I am only going on memory.

Many thanks

John Ward".

The three issues which Dr. McManus refers to on 08 February 2016, and which the Plaintiff refers to on 22 November 2010, are the very same issues which the Plaintiff, accompanied by his union representative, Mr. Gerry Sexton, discussed at the 19 July 2011 meeting with Damien Hunter, HR Manager. They are the same issues which went back so many years that the agreed outcome of the 19 July 2011 meeting was that there would be no investigation into them. They are the same three issues, the only specific details of which the Plaintiff furnished in writing by way of his two-page handwritten note which the Plaintiff prepared in or about November 2010 at Mr. Cunningham's request. They were not current as of 2011. They were not current as of 2016. There had been no change in the interim.

253. The 08 February 2016 medical records indicate that the Plaintiff was, at that point in time, very angry and very stressed but, having carefully considered all the evidence, I am satisfied that the reason for the Plaintiff's anger and stress was not because any work colleague had started to make any accusations against, or circulate any rumours concerning, the Plaintiff, as of February 2016. On the contrary, there is no evidence from which this court could safely conclude that the Plaintiff was being accused of anything in February 2016 or that the Plaintiff was the subject of any rumour or was being bullied or harassed or treated in any way unfairly by anyone at work at any point in 2016. I entirely accept that the Plaintiff may have felt very angry and very stressed in February 2016 but, as a matter of fact, the reason for the Plaintiff feeling angry and stressed was not due to any bullying or harassment or rumour or accusation

or unfair treatment of the Plaintiff anyone. The Plaintiff was happy at work throughout 2012, 2013, 2014 and 2015 and confirmed as much in his sworn evidence. There was no evidence given from which this court could reach a finding that the Plaintiff's day to day experience changed in any material way, between the end of 2015 and the start of 2016. I am satisfied that nothing changed other than the Plaintiff learned in early 2016 about the impending retirement of Leo Kearns. It is clear from the Plaintiff's evidence that hearing this news resulted in the Plaintiff thinking about what he referred to in his 22 November 2010 letter as "*the accusations made about me*", even though no such accusations were being made about him as of February 2016. Indeed, there is no evidence whatsoever that any such accusations had been made about him in the period since he wrote his 22 October and 22 November 2010 letters or, for that matter, in at least 3 years prior to those letters being written. In short, having carefully considered all the evidence, I am satisfied that, as a matter of fact, what the Plaintiff calls the "*accusations"* were not *current*, as of February 2016. I am satisfied that, as a matter of fact, the Plaintiff was not being bullied or harassed or subjected to any unfair treatment or the subject of any rumours or accusations as of February 2016. The "*accusations*" were not even current as of 22 November 2010. It will be recalled that, in the last sentence of the Plaintiff's 22 November 2010 letter, he makes it clear that "*the dates may be out a bit as I am only going on memory*". The Plaintiff stated the foregoing because nowhere in his 22 November 2010 letter or in the two-page document in which the Plaintiff set out details including dates, did the Plaintiff give any information which was then *current*. There is no evidence from which this court could conclude that in the years that followed there was any "resumption" of what the Plaintiff described as the *"accusations"*.

Findings in relation to the 08 February 2016 entry in the Plaintiff's medical records

254. Having carefully considered the entirety of the evidence, I am satisfied that the 08 February 2016 entry in the Plaintiff's medical records does not evidence that any accusations

against the Plaintiff were *current* as of February 2016. I am also satisfied that the reference to "*stressors in work*" is not a reference to any unfair treatment of the Plaintiff at work, as of February 2016. There is no evidence that the Plaintiff experienced any such treatment or complained of any such treatment. Rather, the evidence before the court is that the Plaintiff was stressed in work because he had recently learned that Mr. Kearns was going to retire and this knowledge triggered a resurfacing of the Plaintiff's long-held conviction that Mr. Kearns breached confidentiality a decade or more earlier. Based on his evidence, the Plaintiff was, as of February 2016, very anxious in case what he was convinced that Mr. Kearns had done - namely breach confidentiality in 2005 and 2006 - might not become known within the office prior to the retirement of Mr. Kearns. I am satisfied that, as a matter of fact, the foregoing is what prompted the Plaintiff to attend his GP on 08 February and to write the 22 February 2016 letter. None of this, however, is clear from the contents of the letter itself. The letter did not, as a matter of fact, inform Mr. Hunter that the Plaintiff was very angry or very stressed at the time. It did not make any complaint against Mr. Kearns. The letter did not explain what the Plaintiff's concerns were. The letter did not give any specifics as to why the Plaintiff wanted another meeting, the previous meeting with Mr. Hunter having been four and a half years earlier and having reached an agreed outcome. What can also be said with certainty, however, is that nowhere in the letter does the Plaintiff claim that he is being subject to any current treatment at work which he believes is in any way unfair. If, in February 2016, the Plaintiff had heard any rumour or accusation or felt he was being bullied or harassed, I am satisfied that he would have said so in his 22 February 2016 letter. He did not say so because there was no, then current, treatment to which he objected, as there had been no change in his day to day experience in the workplace since his return to work in October 2011.

23 June 2016 meeting in the GPO

255. When the Plaintiff wrote his 22 February 2016 letter, he was not aware of the fact that Mr. Kevin Cullen, rather than Mr. Damien Hunter, was the appropriate HR Manager and there was some delay before a meeting took place on 23 June 2016. I am, however, satisfied that there is no evidence of alleged bullying or harassment of the Plaintiff and no evidence of any accusations being made about the Plaintiff by any employee of the Defendant during the period from 22 February 2016, when the Plaintiff wrote his letter, to 23 June 2016, when a meeting took place in the GPO. It is a matter of fact that it was the 22 February 2016 letter which gave rise to the meeting which took place on 23 June 2016. In his evidence, Mr. Cullen was clear that he would have preferred to have seen the 22 February 2016 letter far sooner (it was addressed to Mr. Hunter and subsequently passed to Mr. Cullen) but it is a matter of fact that the delay between the letter and the meeting did not result in any adverse effect on the Plaintiff's health. Nor was that suggested. There is nothing in the terms of the letter which suggest that there are any urgent issues requiring attention and, while the delay was regretted by the Defendant as Mr. Cullen made clear, it is equally clear that there was nothing sinister in the delay. In short, nothing turns on the 4-month period which elapsed between the letter and the meeting.

256. The 23 June 2016 meeting was attended by the Plaintiff, by Mr. Kevin Cullen, the Defendant's HR Manager and by Mr. Sean O'Donnell, Welfare Officer of the Plaintiff's Trade Union. The discovery in this case contains a typed record of that meeting. I am satisfied that this typed record, which was signed by both Mr. Cullen and by Mr. O'Donnell, was prepared shortly after the meeting and is both a contemporaneous and accurate record of what was discussed. It states the following:

> "*Record of a meeting held with John Ward Postal Operative in Room 2 – 153 GPO on Thursday 23rd June 2016*
>
> *In attendance:*

Company: Kevin Cullen (KC) HR Manager

Staff: John Ward (JW) Sean O'Donnell (SO'D) DPDB

Purpose of Meeting

Mr. Ward attended a meeting to discuss difficulties in work.

Meeting 23/06/2016

JW outlined difficulties that he had experienced in work between 1996 and 2007.

He believed a colleague had made an untrue allegation about him in 1996 and that it had been spoken about in work throughout the period 1996 to 2007 and it had come to the attention of his wife.

The previous HR Manager Mr. Damien Hunter had undertaken some enquiries into the matter in 2011. KC asked was anything happening in work now or recently, was anything said or done in the last six months that is causing him difficulty.

JW confirmed that there wasn't but he wanted the truth to come out. He had seen the Occupational Support Specialist and he was advised to seek counselling.

KC stated that under the Company Procedures there had to be an instance in the last six months for the company to carry out enquiries, the company has to establish the facts of what occurred and the context in which events occurred. A historical back story is only relevant in how it relates to something that happened recently and that can be investigated.

KC suggested that if the company had carried out enquiries previously it may be that it had the result of ceasing any unwanted activity that was taking place then, it has to be a positive that this activity is not happening now and it may be worthwhile to consider the Occupational Support Specialist's advice as a way to come to terms with historical issues that happened in the past.

KC stated that it is important to address any problems in work at the time they occur and that if any problems should re-emerge JW should contact KC straight away. KC said that he will talk to the Delivery Services Manager in the meantime and get his perspective about the matter in general and how things are in the office currently.

Sean O'Donnell 30/6/16

Kevin Cullen 30/6/2016"

257. I am satisfied that, in advance of the meeting, Mr. Cullen did not know what it was going to be about. I am satisfied that, prior to the meeting, Mr. Cullen had had no dealing with the Plaintiff. As part of his role, Mr. Cullen regularly has meetings with staff in the GPO. Many such meetings take place under the Defendant's Attendance Policy entitled "Attendance Support & Management Process" ("ASMP") which is a policy finalised between An Post and the unions representing staff, the purpose of which is to support employees, in particular those absent from work, with a view to achieving high levels of attendance on an ongoing basis by staff. Later in this judgment, I will refer to the ASMP and specific provisions in the said policy. I accept the uncontroverted evidence that Mr. Cullen schedules meetings in advance. The meeting with the Plaintiff was not an ASMP meeting but it was included on the schedule of meetings for that week, in circumstances where the Plaintiff wanted a meeting and Mr. Cullen did not know the specifics of what the Plaintiff wished to discuss. I accept the evidence by Mr. Cullen that the role he and Mr. Hunter performed were essentially interchangeable and this explains why it was Mr. Cullen whom the Plaintiff met with. I am also satisfied that, in advance of a meeting with Mr. Cullen, each employee has the opportunity to meet with their union representative. I am satisfied that this, in fact, occurred with regard to the 23 June 2016 meeting which Mr. Sean O'Donnell attended as the Plaintiff's union representative. Mr. Cullen has been an employee of the Defendant for 38 years, having commenced work with An Post in August 1980. Since 1985 he worked in the administrative stream within the Defendant, working in

payroll, HR, finance, through clerical grades, line manager and superintendent level and, from 2001, Mr. Cullen has worked in HR management. Mr. Cullen gave evidence in relation to what occurred during the 23 June 2016 meeting which including the following sworn testimony:-

> "*My memory of that particular meeting was that Mr. Ward started at 1996, and he proceeded, he told me about the issue in 1996 where he believed that people were making remarks because they felt that he had slept with a colleague's girlfriend, he told me all about that. He proceeded then to go into the 2000's. What I normally do in these situations, if I am meeting someone with a grievance or a problem in work without putting a label on it, a set of problems in work, I would start them from the most recent one and work backwards. Because often you might not have to go back too far to get an understanding of what the problems are. If you start back in 1996 you don't know where you are going so I would turn it around the other way and say what is the most recent thing that happened, and we star there. Mr. Ward said, it was 2007 and he was talking about remarks in work. So the question I asked him, as regards the remarks, was when the last time these remarks were made, and it was 2007"* (D7, P142, L12).

258. The foregoing evidence, which I accept, is entirely consistent with the Plaintiff's testimony at the trial. The Plaintiff did not suggest that, as of June 2016, any work colleague or colleagues were spreading rumours about him or saying things to him which he regarded as unacceptable. Nor did the Plaintiff suggest that he told Mr. Cullen in June 2016, in the presence of his union representative, that any individual or individuals were allegedly accusing him of anything or making any comments to or about him. Had it been the case, as of 23 June 2016, that accusations were being made to or about the Plaintiff in his workplace, I am satisfied that the Plaintiff would have given details including the names of those alleged to be making inappropriate comments, the dates when those comments were alleged to have been made, the names of any witnesses and any other relevant details. The Plaintiff did not claim in his

testimony that he had given any such details to Mr. Cullen during the 23 June 2016 meeting, nor did he claim in his evidence that there were any then current issues at work the details of which he did not reveal to Mr Cullen on 23 June 2016 when invited to. I am satisfied that this is because, as a matter of fact, there was no behaviour whatsoever in the workplace to which the Plaintiff objected, which was current as of 23 June 2016 or which had occurred in the weeks, months or years prior to the meeting. The foregoing is also entirely consistent with the typed record of the meeting, which I am satisfied is both contemporaneous and accurate, and which records the fact that – insofar as the Plaintiff had issues of concern – these issues all related to the period 1996 to 2007.

259. The typed record of the 23 June, 2016 meeting records, inter alia, that Mr. Cullen *"asked was anything happening in work now or recently, was anything said or done in the last six months that is causing him difficulty. JW confirmed that there wasn't but he wanted the truth to come out."* The foregoing is entirely consistent with the findings detailed earlier in this judgment to the effect that there were no, then current, issues of concern to the Plaintiff at the point when he wrote his 22 February 2016 letter asking for a meeting. It is clear and I find as a fact that there were no issues of concern to the Plaintiff, as of 23 June 2016, with regard to his, then current, treatment at work. The foregoing entry from the record of the meeting indicates, however, where the Plaintiff's focus lay, i.e. the Plaintiff did not have concerns in relation to any current matter, rather he wanted what he saw as "*the truth to come out*" and this "*truth*" concerned issues which went back between 20 and 10 years. It was clear from the evidence which this court heard from both the Plaintiff and Mr Cullen that what the Plaintiff wanted, as of June 2016, was for Mr Cullen to do the following: (1) to open an investigation in to what the Plaintiff claimed, in 2016, was said between 1996 and 2007; (2) for that investigation to reach definitive findings; (3) for the outcome to be in the Plaintiff's favour (ie to hold that such comments as the Plaintiff said, in 2016, were made between 1996 and 2007,

were as matter of fact made insofar as the investigation's findings were concerned). Having regard to the evidence, it is fair to say that the foregoing (1), (2) and (3) was what the Plaintiff meant by his use of the phrase that he "*wanted the truth to come out*". Mr Cullen's evidence is that he could not do what the Plaintiff wanted him to do. Mr. Cullen's evidence was that he formed the view that he did not have the authority under the Defendant's "Dignity at Work" policy or otherwise to try and open an investigation in 2016 into comments said to have been made between 1996 and 2007. That was, in my view, entirely consistent with the terms of the aforesaid policy which applied in the Defendant and which was introduced with the full cooperation of the Plaintiff's Union. It was also, in my view, an entirely reasonable attitude for Mr Cullen to take. It also reflected, precisely, the agreed outcome of the 19 July 2011 meeting, with regard to the self-same issues which, even at that stage, were historic. The stance adopted by the Defendant in July 2011 was, of course, one the Plaintiff both understood and accepted, evidenced by his return to work, in August 2011, following which he worked happily in his job for almost 5 years, raising no complaint whatsoever. As well as being understood and accepted by the Plaintiff in July/August 2011, the Defendant's decision that an investigation could not be held then, in respect of what was allegedly said years earlier was reasonable. If it was reasonable and accepted as such in 2011 (and it was) it was all the more so in 2016, there having been no question of any rumour or accusation arising *after* the Plaintiff returned to work in August 2011.

260. During the 23 June 2016 meeting, the Plaintiff outlined to Mr. Cullen, in the presence of the Plaintiff's Union representative, all issues which were of concern to him and, as Mr Cullen's sworn evidence makes clear and the contemporaneous record of the meeting makes verifies, these issues concerned "*the period 1996 to 2007".* During the meeting, these issues were referred to by Mr. Cullen as being "*historical*" and, in light of the facts, that is an accurate and reasonable description. I also accept the following evidence given by Mr. Cullen:-

"*I was quite surprised . . . because normally when people come in to you with problems in work they are reflecting they are happening now or pretty recently. So I confirmed with him that there was nothing happening in work recently, there was no issues in work now. I was very, very clear, two things were very, very clear there. One was that it was 2007 since the last remarks were made and there was no difficultly since then. The other thing that struck me was what he was asking me to do. He wanted the truth to come out so he wanted me to go back and look at these issues and investigate these issues and come to a finding on them. That just wasn't something I felt I could do. I explained that to him. I did make reference to the policy, that, you know, the policy states that the most recent incident has to have happened in the last six months. The last six months' part of it is in bold and it must have taken place in the last six months. It is quite a strict timeline. I didn't make that comment just to you know, put a strict timeline on it. We were talking about the difference between six months and nine years and I don't have the remit to go back and investigate something that happened nine years ago. What I tried to do was I tried to put a positive spin on it as much as I could, highlight the positives and say to him if there is nothing happening since 2007 that must be a good thing. If the HR manager looked at these issues in 2011, maybe that ceased whatever was happening before that. It turned out the HR manager is looking at it in 2011, it had already ceased since 2007, so we had a situation where there was no stresses in the workplace since 2007 and I was being asked to go back past that, to discount the fact the workplace 2007 to 2016 there is no problems in it. I was being asked to go back past that, carry out an investigation to find out the truth of what happened in 2005 and 2006. The difficulty with that was these were remarks as well. They weren't events, they were remarks, they were what people would say to each other".* (D7, P143, L4).

The foregoing evidence by Mr. Cullen is not disputed by the Plaintiff, in that the Plaintiff accepts that this is what was said at the meeting. The Plaintiff does not suggest that there were then any *current* issues and the Plaintiff's account of the meeting is entirely consistent with the oral evidence given by Mr. Cullen as well as consistent with the typed record of the 23 June 2016 meeting. During his evidence to this Court, Mr Cullen also gave evidence, which is not disputed, as to his thinking when he formed the view that matters said by the Plaintiff, during the June 2016 meeting, to go back to 1996 – 2007 could not be investigated in 2016. Mr Cullen's evidence was to say that if you put remarks before employees which were said to have been made by them between 10 and 20 years earlier, those accused of having made the remarks in question would not have had an opportunity to repudiate the comments at the time they were said to have been made. In these circumstances, definitive findings could not be made as to what was or wasn't said so long ago. Whereas the Plaintiff wanted, as he put it, "the truth to come out", Mr. Cullen's was clearly of the view that the outcome of any investigation in 2016 would not be a definitive finding as to what or was not was said between 10 and 20 years earlier. Therefore, from the Plaintiff's perspective, there was no possibility of a positive outcome. In other words, there was there is no realistic possibility of reaching a definitive conclusion and the foregoing was his reasoning when he explained to the Plaintiff during the 23 June 2016 meeting that he could not commence an investigation. I am satisfied that by taking the foregoing attitude, Mr Cullen was neither being unreasonable or unfair to the Plaintiff, nor was the Defendant breaching any term of the Dignity at Work policy or any other policy in force within the Defendant. In fact, Mr. Cullen was acting entirely in accordance with the terms of the said policy and, in my view, with basic principles of natural justice. It should also be recalled that the issues raised by the Plaintiff during the June 2016 meeting were the self-same issues raised by the Plaintiff in 2010 (at a time when they were already historic and not then current) and which were addressed to the Plaintiff's satisfaction in 2011, with the

agreed outcome of the Plaintiff's meeting with Mr. Hunter which saw the Plaintiff return to work and continue at work for years afterwards as he did from 2011 and throughout 2012, 2013, 2014, 2015 and into 2016, without incident or complaint. Indeed, the Plaintiff's very clear evidence is that he was happy at work throughout this period and there is simply no evidence whatsoever that this situation changed in 2016 by reason of any unfair treatment of the Plaintiff whatsoever. The Plaintiff may have ceased to be happy at work in 2016, and the evidence suggests that this may have been because the Plaintiff learned that Mr Kearns was due to retire later that year, but it is beyond doubt that nobody was bullying, harassing, intimidating or treating the Plaintiff in any way unfairly in his work in 2016 or in the years preceding that. Against that backdrop, Mr. Cullen's decision not to open up, in 2016, an investigation into remarks allegedly made between 1996 and 2007 was not an act of bullying, harassment, intimidation or unfair treatment of the Plaintiff. Nor was it at all unreasonable. Mr. Cullen's decision not to commence an investigation did not breach any contractual or common law rights owed by the Defendant to the Plaintiff. Indeed, it seems uncontroversial to suggest that, had Mr. Cullen decided to open such an investigation, and had other employees been called upon, for the first time, in 2016, to account for remarks said to have been made by them between 1996 and 2007, it would have constituted a breach of the terms of the Dignity at Work policy which, on the evidence before this court, would seem to comprise an element of the contractual relationship between each employee of An Post and the Defendant. Such an investigation would, in my view, also run contrary to fundamental principles of natural justice. Given that the issues were, in truth, the very same as those discussed at the 19 July 2011 meeting with Mr. Hunter (i.e. remarks allegedly made between 1996 and 2007) and given that the agreed outcome of the 19 July 2011 meeting was that there would be no investigation into what were, even then, historic matters (an outcome the Plaintiff accepted, in circumstances where he returned to work in August 2011 and worked happily thereafter for almost 5 years) it

is impossible to see how Mr Cullen could reasonably have decided to commence an investigation, some 5 years later, in 2016 and, on the evidence before this court, it is impossible to conceive of the outcome of any such investigation being reliable.

Certain facts in relation to the 23 June 2016 meeting

261. With regard to the 23 June 2016 meeting, I am satisfied that the factual position which emerges from a careful consideration of all the evidence, includes the following:-

(1) During the meeting, the only issues the Plaintiff raised were the self-same issues he had raised in his 2010 letter and in his July 2011 meeting with Mr. Hunter;

(2) The Plaintiff confirmed to Mr. Cullen that the most recent incident complained of was in 2007;

(3) There was no current workplace issue;

(4) The Plaintiff's issues concerned allegations which, according to the Plaintiff, went back to 1996 and there was no issue which was said by the Plaintiff to have arisen after 2007;

(5) The entire of the Plaintiff's issues concerned verbal remarks allegedly made between a decade and two decades earlier, rather than being anything for which, say, contemporaneous objective written records might exist;

(6) Before going to the meeting, the Plaintiff was already aware of the provisions in the Dignity at Work policy, including the provision on internal page 18 of the policy which states, inter alia, that: "***A complaint must be made within six months*** *of the latest incidents(s) of alleged bullying, harassment or sexual harassment behaviour";*

(7) The Plaintiff did not make a complaint within six months of any of the issues which were of concern to him;

(8) It was explained to the Plaintiff that the company could not carry out an investigation into remarks said to have been made so long ago and the reason for this was also explained;

(9) The Plaintiff acknowledged the foregoing and made no objection;

(10) Nor did the Plaintiff's union representative make any objection on the Plaintiff's behalf to the fact that no investigation could be undertaken and/or the reason for this;

(11) The Plaintiff acknowledged that his current workplace environment was a positive one;

(12) Mr. Cullen encouraged the Plaintiff to see, as a positive, the fact that, on the Plaintiff's account of matters, there had been no unwanted activity in the workplace since 2007;

(13) Mr. Cullen stressed the importance of reporting any problems in work at the time they arose and encouraged the Plaintiff to contact him in the event of any workplace difficulty arising in the future;

(14) The outcome of the 23 June 2016 meeting was, in reality, precisely the same as the outcome of the 19 July 2011 meeting which, in truth, concerned the very same issues;

(15) It was entirely reasonable, in July 2011, for the Defendant (in the form of Mr. Hunter) to form the view that an investigation could not then be commenced into remarks allegedly made between 1996 and 2007 and for the Defendant (in the form of Mr. Cullen) to reach the same decision in June 2016, in respect of the self-same issue, was equally, if not more reasonable, given the passage of a further 5 years and the complete absence, in the intervening period, of any remarks allegedly having been made which the Plaintiff objected to.

There is no evidence from which this Court could conclude that Mr. Cullen dealt with the Plaintiff inappropriately. There is no evidence that the meeting was rushed. There is no evidence that the Plaintiff found the meeting stressful or had any difficulty in expressing himself. There is no evidence that the Plaintiff, accompanied by his union representative, was not given a proper opportunity to outline the entirety of his concerns or that these were not listened to. The decision by Mr. Cullen which was communicated to the Plaintiff and his trade union representative at the meeting, to the effect that the Defendant could not commence an investigation, in 2016, to try and establish what was or was not said between 1996 and 2007 was a decision which is entirely consistent with the explicit terms of the Dignity at Work policy. There is no evidence that, in declining to commence an investigation and in explaining the reasons why, that Mr. Cullen slavishly applied a "six-month rule" or applied it in an overly - rigid manner. Nor did Mr. Cullen make what might be called a "marginal call" or a decision which was unreasonable in any way. It was not as if the Plaintiff was raising issues said to have occurred, say, 10 *months* earlier. Rather the most recent complaint dated back 10 *years*, whereas the alleged rumour was said to date back to 1996, i.e. 20 years earlier. Furthermore, there is no evidence that the Plaintiff or his trade union representative suggested, during the 23 June 2016 meeting, that the stance taken by Mr. Cullen was unreasonable having regard to the terms of the Dignity at Work Policy. On the contrary, in his evidence, the Plaintiff acknowledged the following:- (1) coming into the 23 June 2016 meeting, the Plaintiff's position was that he wanted to re-open the matters which had previously been dealt with in 2011; (2) he was told by Mr. Cullen that this could not happen, and why this could not happen; (3) the Plaintiff understood and acknowledged the position as outlined by Mr. Cullen.

Agreed conclusion in relation to the 23 June 2016 meeting

262. Having carefully considered all the evidence, I am entirely satisfied that there was an agreed conclusion to the 23 June 2016 meeting, namely that the Plaintiff understood and

accepted the fact that there would be no investigation into the issues raised by him, and, although he may not necessarily have been very happy about that, he understood and accepted this to be the case. Having regard to the evidence, I am satisfied that Mr. Cullen was entitled to believe, following the end of the meeting that there were no current workplace issues adversely affecting the Plaintiff and that, insofar as the Plaintiff had raised, again, issues which can fairly be described as "historic", such issues going back to a period between 1996 and no later than 2007, those issues had been dealt with, inasmuch as the Plaintiff had received a full hearing and it had been explained to him why an investigation was inappropriate and he accepted that.

Plaintiff is advised to seek counselling

263. It was suggested during the 23 June 2016 meeting that counselling might help the Plaintiff and the Plaintiff acknowledged in his evidence that counselling was discussed as a way to assist him, going forward. Insofar as counselling is concerned, the Plaintiff's evidence was that, during the 23 June 2016 meeting, the Plaintiff told Mr. Cullen that he had attended for one counselling session. This evidence by the Plaintiff is consistent with a finding of fact that Mr. Cullen advised the Plaintiff to seek counselling. The written record includes the words: "*..he was advised to seek counselling".* Insofar as the Plaintiff gave evidence that the counsellor whom he saw was not the most appropriate for him, I am satisfied that, as a matter of fact, the Plaintiff did not mention any such difficulties to Mr. Cullen during the 23 June 2016 meeting, or at any other time.

The Plaintiff's claim that he told Mr Cullen, on 23 June 2016, about a conversation between the Plaintiff and Mr Kearns in 2011 concerning Mr. Hunter

264. During the course of his evidence concerning the 23 June 2016 meeting, the Plaintiff gave the following testimony:-

"*I said to Mr. Cullen at that meeting that after the last meeting I had with Mr. Hunter I went back to see Leo Kearns, and he told me that he told Damien Hunter that he never said anything confidential to the people on the floor. So to me that meeting was never sorted in 2011"* (D4, P13, L2).

Unreliable evidence by the Plaintiff

265. Weighing up all the evidence given by the Plaintiff and by Mr. Cullen as well as the written record of the meeting, I am satisfied that this element of the Plaintiff's testimony is not reliable. I say this for several reasons, as follows:

- The Plaintiff's evidence, given under oath in February 2020, that he regarded the 2011 meeting as not having resolved or *"sorted"* matters at that time, is wholly inconsistent with the indisputable fact that the Plaintiff returned to work, by agreement with the Defendant, in August 2011, and raised no complaint whatsoever for some 5 years, i.e. between August 2011 and June 2016.
- If the Plaintiff genuinely regarded the 2011 meetings as not having sorted out all his issues, he did absolutely nothing about it, following his return to work in 2011 or at any stage in 2012, 2013, 2014, 2015 and into 2016.
- The Plaintiff never went back to Mr. Hunter after the 2011 meetings to say that, from the Plaintiff's perspective, matters were not fully and finally sorted in 2011.
- The Plaintiff said nothing to Mr. Kearns to the effect that he did not regard the meetings with Mr Hunter as having sorted all issues and either upon the Plaintiff's return to work in August 2011 or in the years that followed.
- The written record of the 23 June 2016 meeting makes no reference to the Plaintiff telling Mr. Cullen about the conversation which allegedly took place

between the Plaintiff and Mr. Kearns, which conversation is said to have been in relation to a 2011 conversation between Mr. Kearns and Mr. Hunter.

- If, at the 23 June 2016 meeting, the Plaintiff had taken the stance that matters were not properly dealt with in 2011, I am satisfied that this would have been reflected in the written record of the 23 June 2016 meeting and it is not.
- The Plaintiff confirmed during the 23 June 2016 meeting, in the presence of and with the support of his Trade Union representative, that there were no *current* issues in the workplace and confirmed that the last instance of behaviour he objected to allegedly occurred in 2007 and if, as the Plaintiff claimed in his testimony, he regarded matters as not having been "*sorted"* in 2011, I am satisfied that the Plaintiff would not have said during the 23 June 2016 meeting that he had no current issues of concern;
- There is a written record of the meeting, signed by Mr Cullen on behalf of the Defendant and by Mr O'Donnell, the Plaintiff's Trade Union representative which, for reasons set out later in this judgment, I am satisfied constitutes a contemporaneous, comprehensive and accurate record of the meeting. This record makes no reference to what the Plaintiff claims to have told Mr Cullen. The record does refer to the 2011 involvement of Mr Hunter but it makes no reference to any suggestion by the Plaintiff that matters were not sorted in 2011 when the Plaintiff met with Mr Hunter.

For these reasons, I am satisfied that this element of the Plaintiff's testimony is simply not reliable.

The written record of the 23 June 2016 meeting

266. I accept the evidence by Mr. Cullen that a record of the meeting was typed up after it and that, in circumstances where Mr. O'Donnell, the trade union welfare officer and Mr. Cullen

had meetings scheduled for the following Thursday 30 June 2016, that date provided the opportunity for both individuals to sign and date the record. I am satisfied that the written record was signed by both Mr. Cullen and by Mr. O'Donnell no later than 30 June 2016. By signing same, both individuals confirmed that it constituted a comprehensive and accurate contemporaneous record of what had been discussed during as well as the agreed outcome of the 23 June 2016 meeting.

267. Having carefully considered all the evidence concerning this meeting, I am satisfied that, far from ignoring the Plaintiff, this meeting provided a forum to raise any and all complaints or concerns which the Plaintiff had at the time. I am equally satisfied that the only issues of concern to the Plaintiff were issues going back between 10 and 20 years. It is very clear that Mr. Cullen was anxious to find out if there were any complaints or concerns which were then *current*. Indeed the reference to the period of "*six months*", referred to in the written record of the meeting, was plainly in anticipation of the possibility of commencing an investigation into the Plaintiff's concerns under the Dignity at Work policy, had the Plaintiff's concerns been current. They were not at all current and I am satisfied that the terms of the Dignity at Work policy agreed between the Defendant and the Plaintiff' Trade Union did not require the Defendant to commence any investigation into complaints going back so many years.

Phone call between Mr Cullen and Mr Kearns

268. It is also clear that, out of concern for the Plaintiff, one of the agreed outcomes of the meeting was that Mr. Cullen would contact the delivery services manager, namely Mr. Kearns, in order to get his perspective and to see how things were in the office currently. Despite there being no record of the phone call, I am satisfied, having heard the evidence from Mr. Cullen and Mr. Kearns, that Mr. Cullen did in fact telephone him and did so in order to make sure that there were no current issues in the workplace which might be adversely affecting the Plaintiff,

notwithstanding the Plaintiff's confirmation at the 23 June 2016 meeting that this was so. I am satisfied that, subsequent to the said meeting, Mr. Cullen and Mr. Kearns had a conversation concerning the Plaintiff and the then situation in the workplace, during which conversation, Mr. Cullen was informed that there were no current workplace issues. That is entirely consistent with both the Plaintiff's evidence to the court concerning the then position in June 2016 in his workplace, as well as the Plaintiff's evidence concerning what was discussed at the 23 June, 2016 meeting and the foregoing is also consistent with the written record of the meeting itself. In short, there were no current workplace issues, and the Plaintiff raised no current issues, during the 23 June 2016 meeting. Nor did the Plaintiff raise, in that meeting in June 2016, any issue or complaints said to date from 2015, 2014, 2013, 2012 or 2011 or suggest that any issue or complaint had been raised during any of those years but had not been dealt with. Moreover, Mr Kearns confirmed to Mr Cullen that there were no current issues.

269. Mr. Cullen's evidence, which is not disputed, is that during his phone call with Mr Kearns after the 23 June 2016 meeting, Mr. Cullen did not mention the rumour said by the Plaintiff to go back to 1996 in relation to alleged infidelity on the Plaintiff's part (being the main issue which the Plaintiff raised at the 23 June 2016 meeting). Mr Cullen's evidence was that, having decided that he could not commence an investigation, in 2016, into remarks said to go back to 1996, and having explained the reason to the Plaintiff and the Plaintiff knowing that no such investigation would be commenced, Mr Cullen did not think it would be appropriate to raise the alleged remarks and, in those circumstances, regarded what the Plaintiff had said to him in relation concerning same as being confidential. This could hardly be said to have been an unreasonable stance for Mr. Cullen to have taken, Mr Cullen's focus having been, as was clear from his testimony, on ensuring there were no current issues in the workplace affecting the Plaintiff.

270. Having carefully considered all of the evidence in relation to the 23 June 2016 meeting I am satisfied that, out of concern for the Plaintiff, Mr Cullen also made clear to the him the importance of raising any problems in work at the time they occur and also stressed that if any problems should arise in his workplace, the Plaintiff should contact him directly and immediately. There is no evidence which would allow this court to conclude that Mr. Cullen acted in any way inappropriately or unreasonable vis a vis the Plaintiff insofar as the conduct and outcome of the meeting was concerned. There is no evidence that Mr. Cullen (who had had no dealings with the Plaintiff prior to June 2016) had any agenda other than to find out what issues were of concern to the Plaintiff and to try and assist him to the extent that this was possible. This is evidenced by, inter alia, Mr. Cullen's suggestion the Plaintiff that it could be helpful to the Plaintiff to avail of support from Occupational Support Specialists within the Defendant. The evidence also demonstrates that, prior to going into the meeting on 23 June 2016, Mr Cullen did not have advance knowledge of what it would be about. It is clear from the evidence that he went in to the meeting in his role as an experienced and senior HR professional wanting only to try and identify such concerns as the Plaintiff might have and to try to assist insofar as possible.

The Plaintiff's medical records - March, April, May, June, July, August, September 2016

271. Earlier in this judgment I quoted verbatim the first entry from the Plaintiff's medical records for 2016, being an entry dated 08 February 2016. That is the single entry from the Plaintiff's medical records for the month of February 2016 and there are no entries for the months of March, April, May, June, July, August or September 2016. If it was the case that the Plaintiff was suffering treatment at work during those months which he regarded as unfair and which impacted in any way on his health, I am satisfied that he would have attended his GP and there would be a record of same. He did not and there is not. This supports my findings of fact that there was no unfair treatment of the Plaintiff which was then current. Nor did the

Plaintiff even suggest in his oral evidence that there was any change, at any point in 2016, in relation to his day to day experience at work or the manner in which his colleagues or anyone else treated him. Furthermore, at no stage in his evidence did the Plaintiff claim that Mr. Cullen's decision at the 23 June 2016 meeting, not to commence an investigation, had any adverse effect on the Plaintiff's health. This is entirely consistent with the Plaintiff's contemporaneous medical records. If the outcome of the 23 June 2016 meeting caused stress or illness of any kind to the Plaintiff, one would expect the Plaintiff to have attended his GP. In fact, the Plaintiff did not attend his GP in June, July, August or September 2016. In short, the Plaintiff was neither treated unfairly in relation to the 23 June 2016 meeting and the evidence does not support any breach by the Defendant of any statutory, contractual or common law right as regards that meeting, nor is there any evidence of any damage to the Plaintiff's health insofar as that meeting and its outcome was concerned.

12 October 2016 meeting between the Plaintiff and Mr. John O'Sullivan

272. The Plaintiff's evidence is that, on or about 12 October 2016, he went to see Mr. John O'Sullivan. It will be recalled that Mr. O'Sullivan was part of An Post's Occupational Health Support team. According to the Plaintiff: -

> "*I went in and told John O'Sullivan and I said to him 'I can't believe, John, that between Ollie Byrne and myself all the jigsaw puzzles weren't put together. He turned around and said to me 'John, unfortunately HR rely on the manager in the office ... and the manager in the office is the problem' ... Leo Kearns and that is what John O'Sullivan in Occupational Health said*". (D2, P102, L11).

Unreliable evidence given by the Plaintiff

273. Mr. O'Sullivan did not give evidence but in weighing up the foregoing testimony given by the Plaintiff, a number of matters arise, as follows (1) It would be entirely unprofessional, to say the least, for an occupational health professional to volunteer a statement which seriously

impugns the reputation of a manager within An Post, without having afforded that manager even the chance to comment on what the Plaintiff was saying, yet that is what the Plaintiff is suggesting was said by Mr O'Sullivan. (2) It is also a matter of fact that Mr. Kearns was not the only manager in the Blackrock office. That being so, it is curious to say the least that Mr. O'Sullivan is alleged by the Plaintiff to have said that HR rely on *"the manager*" in the office when there are, as a matter of fact, multiple managers in Blackrock. There are two other line managers in the Blackrock office and there is no evidence whatsoever that either or both were unavailable to the Plaintiff, had he wished to raise any issue with them and there is no evidence whatsoever that the Plaintiff ever mentioned any matter to either of those managers. (3) Furthermore, Mr. Kearns has superiors and there are other more senior managers, all of whom are available to staff and it has to be assumed that HR rely on these too. (4) Insofar as the Plaintiff tendered evidence of what Mr O'Sullivan supposedly said to him, in order to establish the truth of what Mr. O'Sullivan is claimed to have said (namely that Mr. Kearns was "*the problem*" or that Mr. O'Sullivan regarded Mr Kearns as such, or that the Human Resources function within the Defendant regarded Mr. Kearns as "*the problem*"), the evidence is hearsay and inadmissible for the foregoing purpose. (5) Weighing up the evidence, including the Plaintiff's demeanour, I do not regard this element of his testimony as reliable and I am not satisfied, on the balance of probabilities, that this account by the Plaintiff of a conversation with Mr. O'Sullivan can be relied upon.

The Plaintiff's evidence that "*I was fighting it all my life…all my working days…*"

274. With regard to his meeting with Mr. O'Sullivan on 12 October 2016, the Plaintiff also gave evidence that he was crying and that he was mentally drained and he gave the following reason:

> "*I had enough. I was fighting it all my life, well basically all my working days down in Blackrock."* (D2, P103, L3).

One can only have sympathy for someone who feels and upset and mentally drained. That said, the Plaintiff sought to give impression, in his testimony, that he was fighting from 1996 to 2016, to get a satisfactory resolution to issues of concern to him. The evidence simply does not support that assertion. The evidence does not support a claim by the plaintiff that he was "fighting", be that to reveal some hidden "truth" or to have any particular complaint investigated. The Plaintiff, subjectively, may genuinely believe that this is an accurate description but, having regard to a careful analysis of the entirety of the evidence in this case, the Plaintiff's belief is wholly mistaken and is unsupported by objective evidence. The Plaintiff's evidence is that, after the 12 October 2016 meeting which he had with Mr. O'Sullivan: "*I went back to work. I wasn't afraid to go back to work."* (D2, P103, L4). The Plaintiff did not say that, as of 12 October 2016, he felt that he could not go back to work for any reason or that he was afraid to go back to work because of any alleged rumours or allegations. There was no evidence put before the court that there were any issues with work colleagues which were current as of October 2016. The Plaintiff's evidence that he went back to work and was not afraid of going back to work is entirely consistent with the fact that there were no current issues in the workplace. When describing the 12 October 2016 meeting, the Plaintiff gave no evidence that he raised any current workplace issue with Mr. O'Sullivan or that the Plaintiff objected to any treatment which he was then experiencing at work. The Plaintiff gave evidence that, at that point in October 2016, he had trouble sleeping and felt depressed and angry. If so, what the Plaintiff was experiencing was not due to any ill-treatment of the Plaintiff by any colleague in his workplace at the time. Nor did the Plaintiff claim in his evidence that any effect on his sleep or mental health was because of any, then current, rumour or accusation or bullying or harassment.

Conversations between the Plaintiff and Mr Kearns in early October 2016

275. The discovery in this case included a two-page hand written document prepared by the Plaintiff beginning "*Tuesday 4/10/16"* which, according to the Plaintiff, was his note of conversations between himself and Mr. Kearns said to have taken place on 04, 05, and 06 October 2016. In his oral evidence, the Plaintiff maintained that the conversations took place on those three dates. It is, however, a fact that in a letter sent by the Plaintiff to Mr. Kevin Cullen on 25 October 2016 – dealt with later in this judgment - the Plaintiff refers to those conversations having taken place on *different* dates namely, 05, 06 and 07 October 2016. Weighting all the evidence, I am satisfied that there was neither a formal meeting, nor a series of planned meetings between the Plaintiff and Mr. Kearns but that a conversation or conversations did take place in early October which were, at the time, between two longstanding colleagues and friends. I am also satisfied, for the reasons detailed in this judgment, that the Plaintiff's notes are not an accurate record of what was said between the Plaintiff and Mr. Kearns. The fact that the dates on the note differs from the dates when, according to the Plaintiff, the conversations took place, causes me to conclude that the notes were not made contemporaneously by the Plaintiff and it is not in dispute that the Plaintiff never showed his notes to Mr Kearns.

276. The Plaintiff claims in his sworn testimony that, in a series of conversations which took place on 04, 05 and 06 October 2016, Mr. Kearns agreed with him that he had breached confidentiality and apologised to the Plaintiff for this. In his evidence to the court, Mr. Kearns was adamant, firstly, that he never did anything wrong and never breached confidentiality; Secondly, that he did not confirm to the Plaintiff that he had breached confidentiality and; Thirdly, that he did not apologise to the Plaintiff for having breached confidentiality. Having examined evidence going back to the 1990's concerning interactions between Mr. Kearns and the Plaintiff, this court could not legitimately reach a finding that Mr. Kearns ever treated the Plaintiff unfairly, or ever breached confidentiality in respect of the Plaintiff. The evidence is

simply not there to support such a finding. Thus, for Mr. Kearns to stress in his testimony that he did nothing wrong, that he did not breach confidentiality, that he did not tell the Plaintiff that he had breached confidentiality and that he did not apologise to the Plaintiff for breaching confidentiality, is entirely in accordance with the evidence before the court concerning Mr. Kearns' actions vis a vis the Plaintiff in the years prior to the October 2016 conversation in question. I accept this evidence given by Mr. Kearns. Having carefully examined the entirely of the evidence, it is clear that Mr Kearns never breached confidentiality. Thus, there was nothing to "admit" and I am satisfied that there was never any "admission" made by Mr Kearns.

What Mr. Kearns said in October 2016

277. Having carefully weighed up the evidence given by both Mr Kearns and by the Plaintiff, including their demeanours, I prefer the evidence by Mr. Kearns in relation to such conversations as took place between himself and the Plaintiff in early October 2016, the following evidence by Mr. Kearns being of particular relevance to what the Plaintiff claims to be "admissions" by Mr. Kearns:

> *"As the conversation went on I can distinctly remember, I will never forget it, this changed the dynamics of the whole conversation, he told me that he went to a Spurs match, went to London to a Spurs match. He said his son had a great time and he said 'Dad, that was the best weekend we ever had'. He told me then that just before he went to that Spurs match, I think it might have been on the Friday, that he was thinking of committing suicide. I knew John had something going on in his head. I think it was near the end of the day I think. I went home, I think I spoke to my wife about it and I said 'this is not right, John Ward has this thing going on in his head and it is not going to go out of his head'. I said 'I am going to tell him whatever he wants to hear, if it makes him happy and it gets him into a better place I will say whatever he wants me to hear'. I had a conversation with him. More or less, he asked me about KF and I more or less*

said to him 'if that is what you think, John, that is what I said'. I said 'if I said anything I apologise'. I wasn't making an admission of anything there, I was just getting it into his head that if this was going to be the catalyst that fixed everything for John Ward over all the years, I didn't mind getting a bad name in An Post. If he went down on to the office floor and he started telling the staff I have finally got Leo Kearns to admit whatever I had to admit, I didn't mind that. I was leaving the office and I could take it. I was willing to get a bad name even though I had 40 years exemplary service there." (D6, P137, L20 to P139, L23).

I accept the foregoing evidence given by Mr. Kearns. I am satisfied that, as a matter of fact, the Plaintiff did not admit that he had breached confidentiality and did not apologise to the Plaintiff for having breached confidentiality. It is not simply that I prefer the evidence given by Mr. Kearns, (although I do), the account given by Mr. Kearns as to what he said to the Plaintiff in October 2016 reflects the findings of this court regarding the two decades which preceded to the conversation in question, whereas the account of the conversation given by the Plaintiff does not. In short, I am satisfied on the evidence that there was not in fact any admission made by Mr Kearns in October 2016. Two other comments are appropriate to make at this juncture, as follows. I accept that in October 2016, the Plaintiff told Mr Kearns that, in the manner Mr Kearns explained in his testimony, the Plaintiff told him that he had had suicidal thoughts in the past. It is important to stress that no evidence was given to the Court that the Plaintiff told Mr Kearns that he was, at that point, feeling suicidal. Rather, the Plaintiff made it clear to Mr. Kearns that those thoughts went back many years, with specific reference to the "Spurs match". The Plaintiff gave the following evidence, when asked about when he went to London with his son to watch Spurs play: "*that would have been St. Stephen's Day 2007 that match."* (D4, P27, L20). Thus, even on the Plaintiff's evidence, the reference to suicidal thoughts which he made to Mr. Kearns in October 2016 was a reference to almost a decade

earlier. Even though, there was no question of the Plaintiff telling Mr Kearns that he was currently having such thoughts, I wholly accept that hearing the word "suicide" at all, caused Mr. Kearns to be willing, unselfishly and purely out of concern, to decide that he would be willing to say something the Plaintiff appeared to want to hear. It is also appropriate to point out that the Plaintiff certainly did not tell Mr Kearns in 2007 that he was feeling suicidal. Nor does the evidence support the proposition that, if the Plaintiff was feeling suicidal in 2007, this was due to any unfair treatment of the Plaintiff in his workplace or that there was a causal link between any such thoughts and any act or omission on the part of the Defendant. Nor did the Plaintiff tell his GP, his wife, his Union representative or anyone else this at the time. It will be recalled that the Plaintiff said that in *"…2005, 2006 I was thinking of committing suicide…"*(D4,P27,L28). I have looked at that evidence earlier in this judgment and it is not necessary to repeat that analysis here. It is appropriate, however simply to say that, insofar as the Plaintiff suggests that suicidal thoughts in 2005 or 2006 resulted from unfair treatment at work, there is simply no evidence to support such a finding.

278. In these proceedings the Plaintiff has pleaded, inter alia, that: "*At the beginning of October 2016, over the course of a number of conversations, Mr. Kearns, who was very close to retirement at that time, admitted to the Plaintiff that he had breached confidentiality in respect of the two letter incidents as well as other matters and apologised to the Plaintiff in that regard."* I am entirely satisfied that the evidence before this Court does not support this plea. There is an important distinction which must be drawn between an admission of wrongdoing, where wrongdoing had occurred, and the use of the word "apologise", where no wrongdoing ever occurred and none is admitted. I accept the evidence given by Mr. Kearns that, upon hearing the Plaintiff make reference to having had suicidal thoughts or intentions in the past, Mr. Kearns, out of concern for the Plaintiff, decided during their conversation to allow the Plaintiff to believe he was right, even at the cost of Mr. Kearns' own reputation, in the hope

that this would help the Plaintiff. It was in that context, Mr. Kearns said to the Plaintiff "*If I said anything I apologise*" (D6, P138, L13 and D7, P25, L14). Doing so was not an admission that Mr Kearns had, in fact, breached confidentiality. There is simply no evidence on which this Court could conclude that Mr Kearns ever breached confidentiality or ever treated the Plaintiff unfairly or ever allowed the Plaintiff to be treated unfairly. The evidence demonstrates that when Mr. Kearns used the words "*If I said anything I apologise*", he did so (1) without, as a matter of fact, having anything to apologise for, (2) without making any admission of wrongdoing and (3) that Mr Kearns used those words exclusively out of concern for the Plaintiff and in order to let the Plaintiff hear what Mr. Kearns felt that the Plaintiff seemed to need to hear and (4) Mr Kearns did so regardless of any cost to his own reputation.

279. This was, in truth, a selfless act by Mr. Kearns who was shortly due to retire, who was a friend of the Plaintiff for many years and who, unselfishly, was willing to have the Plaintiff think less of him, if that would help the Plaintiff. In other words, the evidence reveals that Mr. Kearns had nothing to apologise for, but apologised to the Plaintiff, simply to try and assist the Plaintiff. It is equally clear that such an apology was most certainly not an admission of wrongdoing. No wrong had been done. Furthermore, it was not an apology tendered on the basis that Mr. Kearns accepted or admitted any wrongdoing on his part at all.

280. At this juncture, three things should be said. Firstly, the evidence demonstrates that Mr. Kearns never breached confidentiality, be that in 2005 or in 2006 or otherwise, and did not "admit" to breaching confidentiality in October 2016, but it should also be pointed out that nothing said by Mr. Kearns in October 2016, out of genuine concern for the Plaintiff, constituted, of itself, a wrongful act on his part, or on the part of the Defendant. Secondly, it should be said that the evidence does not support any suggestion that anything Mr Kearns said in October 2016, out of genuine concern for his friend, caused any harm to the latter. On the contrary, it is clear from the Plaintiff's evidence that what Mr. Kearns hoped for happened, in

that the Plaintiff said in his evidence: "*I left that day and I kind of floated out of the office".* I accept the Plaintiff's evidence as to how he felt after the conversation or conversations with Mr. Kearns in early October 2016 and it was clear from the Plaintiff's evidence that the relevant conversation helped him and had a positive effect. Indeed, how the Plaintiff felt is precisely what Mr. Kearns, who was concerned for his friend, hoped for. Thirdly, it is clear from the evidence that, when the Plaintiff spoke with Mr Kearns in October 2016, he understood the conversations to be private ones between two longstanding and friendly colleagues, as opposed to a formal meeting or discussion between an employee and a representative of his employer, and Mr Kearns was perfectly entitled to regard the conversations as such. That is not to suggest for a moment that Mr Kearns said anything inappropriate, nor did he attempt at any stage in his evidence to resile from anything he said in October 2016. He did however, with justification, express both surprise and disappointment at the fact that things he said to the Plaintiff out of a desire to provide comfort and support, on a personal level, to the Plaintiff during private conversations in October 2016 have since been characterised, wrongly, as admissions made (which they were not) in support of a legal claim (which, this Court is satisfied, they do not support).

The Plaintiff's evidence that "*I got the answers I had been waiting for years".*

281. In relation to his view of the October 2016 conversation with Mr Kearns, the Plaintiff stated that *"I got the answers I had been waiting for, for years, It was just the feeling I got, just the weight of my shoulders*." (D2, P101, L10). Insofar as the Plaintiff has given evidence that he felt a weight off his shoulders as a result of the conversation with Mr. Kearns, it has to be pointed out that there is no evidence whatsoever to suggest that the Plaintiff's name or reputation was under a cloud, as of October 2016. Nor is there evidence from which this court could reach a finding that the Plaintiff was being bullied, harassed or subjected to any unfair treatment of any nature in his workplace as of October 2016, whether rumour or otherwise. In

other words, if there was a weight on the plaintiff's shoulders, there is simply no objective evidence to support the proposition that this was caused by any treatment the Plaintiff was receiving at work. This may have been the way the plaintiff felt privately but there is no evidence that his standing within An Post was other than positive. Indeed, any evidence given to the Court was that the Plaintiff was regarded as an excellent employee. No evidence whatsoever was given to the effect that, as of October 2016, the Plaintiff's name or reputation within An Post needed to be cleared or vindicated. Nor is there a shred of evidence that anyone within An Post was spreading rumours in October 2016 about the Plaintiff, be they going back to alleged events of 1996, 2005, 2006 or otherwise, and there is simply no evidence that the Plaintiff was suffering any ill treatment at work whatsoever.

282. Even though there is no objective evidence that the Plaintiff was being bullied, or was under suspicion, or that any rumours or allegations were being made about him, the Plaintiff's evidence as that he felt a need to, as he described it, clear his name. If so, this was an entirely subjective feeling, and was neither caused by any act or omission on the part of the Defendant. Furthermore, given the total lack of any evidence that the Plaintiff's name was under a cloud, the desired objective, on the part of the Plaintiff, however sincere, to clear his name, was neither a reasonable objective, nor one which the Defendant could be expected to know or, to the extent informed of it, could be expected to understand or regard as reasonable.

283. It must also be pointed out that when the Plaintiff says that he had been waiting for years to get *"answers",* this is simply not borne out by the evidence. There is no evidence whatsoever of the Plaintiff even putting a single question to Mr. Kearns concerning any alleged breach of confidentiality by Mr. Kearns at any stage in the period from 2005 to September 2016 inclusive. Nor did the Plaintiff, at any point from 2005 onwards, make a complaint to the effect that Mr Kearns allegedly breached confidentiality and call upon anyone in the Defendant's management to put questions to Mr Kearns. For the Plaintiff to characterise that

period of more than a decade as one in which he was asking questions of Mr. Kearns or of any other person concerning the alleged breach of confidentiality by Mr. Kearns, but was not receiving answers, is utterly at variance with the evidence in this case.

284. The incident involving the finding of opened post in a van in 2005 has been examined earlier in this judgment and it is not necessary to repeat the entirety of that analysis. Suffice to say that it is clear from the Plaintiff's testimony that he wanted KF to know that it was the Plaintiff who found the opened post in the van in 2005, because it was the Plaintiff who phoned K.F. in 2005 and told him so. At the same time, the Plaintiff appears to believe that Mr. Kearns breached confidentiality. The nature of this claim is far from clear, because it seems to be based on the Plaintiff's belief that Mr Kearns told KF the very same information which the Plaintiff freely told KF, namely that it was the Plaintiff who found the opened post in the van which KF had been driving. The Plaintiff has not called any witness to confirm that Mr. Kearns told them that it was the Plaintiff who found the opened post in the van and, for the reasons detailed earlier in this judgment, that element of the Plaintiff's testimony is both unreliable as well as being hearsay.

285. Similar comments apply in relation to the alleged breach of confidentiality by Mr. Kearns in 2006, with regard to the bag of opened post found in the park which the Plaintiff brought back to the Blackrock office. The Plaintiff believes that Mr. Kearns breached confidentiality. Leaving aside the question as to whether the name of someone who, in the relevant circumstances, brought a bag of post from one office to another in 2006, as instructed, is or could be covered by a duty of confidentiality which applied to Mr Kearns, the Plaintiff has called no witness to tell the court that Mr. Kearns informed them that it was the Plaintiff who brought the bag of post back to Blackrock. The Plaintiff did not even claim in his evidence that any named individual told him that Mr. Kearns informed them that it was the Plaintiff who brought the bag of post back to Blackrock in 2006. Furthermore, the uncontroverted evidence

is that the Blackrock office was a large and busy one and any number of employees could, and I am entitled to conclude, would, have seen the Plaintiff bring the bag of post to Blackrock. Furthermore, at no stage during his evidence did the Plaintiff claim that, at any point from 2005 to 2016, the Plaintiff ever contacted his union representative or any manager within the Defendant and say to them: *I believe Mr. Leo Kearns breached confidentiality in the following manner and I have the following details and I want the matter investigated.* The Plaintiff plainly could have done so, but did not do so. Had he done so in 2005 and in 2006 when, on his evidence, the alleged breaches of confidentiality by Mr. Kearns occurred and were known to him at the time, there is some prospect that accurate "answers" could have been given as a result of a process of investigation, with the opportunity for all relevant parties to make a contribution, consistent with natural justice principles and the provisions of the Dignity at Work policy. The foregoing is not to suggest that, had an investigation been commenced in 2005 or in 2006, when the alleged breaches of confidentiality allegedly occurred, any finding averse to Mr. Kearns would have been reached. On the contrary, there is no evidence before this court on which any such finding could be based. Indeed, based on the evidence before this court, the "answer" to the question of whether Mr. Kearns had ever breached confidentiality in relation to the Plaintiff, had that question been posed in 2005 or 2006, would have been in the negative. What can also be said with absolute certainty is that the very first time the Plaintiff even put a single question to Mr. Kearns in relation to the topic was in October 2016, which is over a decade after the alleged breach of confidentiality in 2005 and 2006.

286. I am also satisfied that any "*answers*" which the Plaintiff went away with, after his conversations in early October 2016 with Mr. Kearns, constituted (1) neither *new* information, nor (2) any *admission* of wrongdoing on the part of Mr. Kearns. There is simply no evidence before this court which would allow for a finding that Mr Kearns ever did anything wrong, by act or omission, insofar as the Plaintiff is concerned. There was nothing to admit and no

admissions were made or could have been made. A careful consideration of the evidence demonstrates that, in October 2016, Mr. Kearns was, however, prepared for the Plaintiff to believe what the Plaintiff wanted to believe, even if it reflected poorly on Mr. Kearns and Mr. Kearns took this approach motivated purely out of concern for the Plaintiff's health, with which he was then concerned. This was clear from the evidence given by Mr Kearns. For this court to hold that this act of kindness and concern by Mr Kearns, who was on the point of retirement, for his long - standing colleague and friend could constitute bullying or harassment or unfair treatment of the Plaintiff of any kind would be a perverse finding running entirely against the overwhelming evidence to the contrary.

287. Having regard to his own evidence, the Plaintiff already had the *"answers*" prior to the October 2016 conversation, namely, the Plaintiff was very clear in his testimony that he has "known" since 2005 that Mr. Kearns breached confidentiality, as the Plaintiff saw it. This is in circumstances where, having told the court very clearly that he, the Plaintiff, phoned KF and told him that it was the Plaintiff who found the opened post in the van, the Plaintiff went on to say that KF's response to him, during the phone call in 2005, was to say that Mr. Kearns had told him. The fact that the Plaintiff identified himself to KF is a fact as found from an examination of the evidence and is consistent and only consistent with the Plaintiff wanting KF to know that it was he who found the opened post in the van. The hearsay evidence that KF supposedly told the Plaintiff that Mr. Kearns identified the Plaintiff to KF is an assertion which does not provide a basis for a finding to that effect and there is simply no evidence to support a finding that Mr. Kearns ever breached confidentiality or treated the Plaintiff unfairly. Furthermore, it is an assertion that Mr. Kearns told KF no more than what the Plaintiff freely told KF, so it is very difficult to understand the Plaintiff's firmly held belief that Mr. Kearns wronged him. Nor, for the reasons explained elsewhere in this judgment, was the Plaintiff's identity as the person who found the opened post, confidential information.

The proposition that "everything changed" in October 2016

288. During cross-examination, it was put to Mr Cullen that "everything changed" in October 2016 and that the story as the Plaintiff had understood it up to that point "changed utterly" as a consequence of what were described as revelations and which are pleaded as admissions by Mr Kearns. The evidence wholly undermines that proposition. Firstly, the evidence discloses that at all material times, Mr Ward has, on his account of things, always "know" that Mr Kearns breached confidentiality in 2005 and 2006. It will also be recalled that earlier in this judgement I examined the evidence and made findings concerning the Plaintiff's return to work in 2011 and a conversation which the Plaintiff says he had with Mr Kearns at that point. It is abundantly clear that, without saying it to Mr Kearns or to anyone else, be that his Union, any Manager in the Defendant or anyone in Occupational Support, the Plaintiff was convinced at that point, namely in 2011, that Mr Kearns had breached confidentiality years earlier. Secondly, Mr Kearns denies ever breaching confidentiality and, not only do I prefer his evidence on this issue, there is simply no evidence to support the proposition that he ever breached confidentiality. Thirdly, the information itself was not, as matter of fact, confidential. Fourthly, the Plaintiff did not treat the information as confidential himself. It will be recalled that the Plaintiff's evidence is that he identified himself to KF as the person who found the opened post and having identified himself, had no way to control whom KF might inform. Nor did the Plaintiff even ask KF not to mention his name. Moreover, as will be discussed later in this judgment, there is uncontroverted evidence that the Plaintiff was readily identifiable as the person who found the opened post in circumstances where a log book is kept in every van recording every driver who used it. It is not in dispute that KF was dismissed as a result of an investigation and an open transparent record of who used the van after KF would show any driver who got into the van that it was the Plaintiff who drove it after KF.

Nothing changed

289. In short, the proposition that everything changed in October 2016 is utterly unsupported, and is wholly undermined, by the evidence in this case. The reality is that nothing changed due to his conversation, or conversations, with Mr Kearns in October 2016, even on the Plaintiff's sworn testimony. No facts were revealed. The factual position *after* the Plaintiff spoke to Mr Kearns in October 2016 was the same as the factual position *before* October 2016, insofar as the history of relevant events was concerned. It also has to be said that there was no change, brought about by the October 2016 conversation, insofar as the Plaintiff's *understanding* of that history was concerned. In short, according to his testimony, the Plaintiff always "known" that Mr Kearns had breached confidentiality. That so-called knowledge was not gained in October 2016, even on the basis of the Plaintiff's evidence. He has known it for many years, indeed, gave the court the example of what he privately said to himself in 2011 about the supposed breach of confidentiality on the part of Mr. Kearns, years before. An analysis of that evidence relating to August 2011 appears earlier in this judgment. That is not to say that the Plaintiff was not exercised about historic events as a result of his conversation with Mr Kearns in October 2016. Plainly he was and he wrote to the Defendant later in October 2016 and it is to that letter I now turn.

25 October 2016 letter from the Plaintiff to Mr. Kevin Cullen

290. On 25 October 2016, the Plaintiff wrote a letter to Mr. Kevin Cullen, HR Manager of An Post in the following terms:

> "*Mr. K Cullen*
>
> *I would like to bring your attention to some conversations that Mr. Leo Kearns DSM Blackrock PO had with myself on the 5-10-16, 6-10-16, 7-10-16.*
>
> *Regarding the allegations about me from 3 of the staff. Over the last 20 years which I have brought up on numerous occasions with no satisfaction.*

For the first time over the years Mr. Kearns agreed with me that he had mention things to the drivers and I would like you to make appointment with me so I can discuss these important matters with you.

As Mr. Kearns is retiring over the next few weeks I would like if the matter could be treated with some urgency.

Many thanks"

A number of observations can be made in relation to this letter, as follows:-

(1) It is clear from the contents of the 25 October 2016 letter that the Plaintiff did not ask Mr. Cullen to arrange for Mr. Kearns to be present at the meeting. The Plaintiff could have made such a request and, plainly, a meeting between the Plaintiff Mr. Kearns and Mr. Cullen would have provided a forum for Mr. Kearns to be asked to say, in front of Mr. Cullen, what the Plaintiff claims that Mr. Kearns admitted earlier in October. Furthermore, the Plaintiff was at all material times aware of the Trade Union representation and support available to him. In that context, if the Plaintiff wanted to put anything to Mr. Kearns (be that any alleged admissions by Mr Kearns or any questions which the Plaintiff wanted Mr Kearns to answer but, for whatever reason, the Plaintiff did not want to put to Mr Kearns directly) the Plaintiff could have asked either his Trade Union representative, or Mr Cullen, to do this. The plaintiff did not make any such request of either Mr Cullen or of his Trade Union representative or anyone else. It is a matter of fact that the Plaintiff did not even ask for Mr. Kearns to be at the meeting.

(2) The Plaintiff's use of the phrase "*Mr. Kearns agreed with me that he had mention[ed] things to the drivers"* (D2, P117, L14), is entirely consistent with the Plaintiff's evidence that the Plaintiff already knew, indeed has known since

2005 and 2006, that Mr. Kearns breached confidentiality, as the Plaintiff saw it. The 25 October 2016 letter is also consistent with the Plaintiff having obtained no *new* information in early October 2016. On the Plaintiff's case, Mr. Kearns didn't reveal any new information in October 2016, he simply "*agreed"* with what the Plaintiff has long known.

(3) There is no reference whatsoever in the aforesaid letter to the rumour that the Plaintiff allegedly slept with a colleague's girlfriend in 1996. Even on the Plaintiff's evidence, any alleged breach of confidentiality by Mr. Kearns has nothing to do with the accusation of infidelity, yet the aforesaid rumour is one of the central complaints in the Plaintiff's pleaded case.

(4) It is clear from the letter that what the Plaintiff refers to as *"the allegations about me*" are the same matters which he has previously "*brought up on numerous occasions…*". In this judgment I have carefully examined each and every occasion when, according to the Plaintiff, he raised any work-related issues and my findings are detailed above. I am satisfied that the reference to "*the allegations about me"* in this letter is a reference to what the Plaintiff described in his 22 November 2010 letter to Mr Cunningham as "*The accusations made about me*" i.e. concerning (i) the rumour of alleged infidelity said to have occurred in 1996, (ii) the suggestion that the Plaintiff was responsible for having a colleague sacked in 2005 after the Plaintiff found opened post in a van and (iii) the suggestion that the Plaintiff acted in some way inappropriately with regard to a bag of opened post which was found in 2006, which bag the Plaintiff brought to Blackrock as instructed.

(5) Nowhere in this 25 October 2016 letter does the Plaintiff claim that, as of October 2016, he was being subjected to any allegations, accusations, rumours,

bullying, harassment or unfair treatment at work. If there were any such issues which were *current* as of October 2016 or which had arisen in the months prior to that, I am satisfied that the Plaintiff would have referred to them, given that he went to the trouble to write a letter. He made no such reference to any allegedly current complaints and I am satisfied that this is because as a matter of fact there were none.

27 October conversation between Mr Cullen and Mr Kearns

291. Although, in his sworn evidence, Mr Cullen could not be definitive as to the date when he first saw the Plaintiff's 25 October 2016 letter, he gave clear evidence which I accept and which is not in dispute that, on 27 October 2016, Mr Cullen had a conversation with Mr Kearns in which the latter explained that he, Mr Kearns, had had a conversation with the Plaintiff and that this conversation related to issues said to have occurred in the past. This was clearly a reference to the early October conversations between the Plaintiff and Mr Kearns, which I have referred to earlier in this judgment. It is a matter of fact that the substance of all issues which the Plaintiff raised in the conversation or conversations with Mr Kearns in early October related to past events. Thus, as of 27 October 2016, Mr. Cullen was aware that there was no new issue and no question of any bullying or harassment or unfair treatment of the Plaintiff in the workplace which was current. In other words, the position as outlined to Mr Cullen by the Plaintiff during their 23 June 2016 meeting continued to represent the factual position, namely, that the Plaintiff's concerns related to issues going back between 10 and 20 years. Mr Cullen's evidence is also entirely consistent with the evidence given by Mr. Kearns to the effect that Mr Kearns was concerned about the Plaintiff and, for that reason, spoke to Mr Cullen after the October conversation which Mr Kearns had had with the Plaintiff.

The Plaintiff's medical records – 25 October 2016

292. Earlier in this judgment I set out verbatim the first entry, being one dated 08 February 2016, from the Plaintiff's medical records in relation to the year 2016. The second entry for that year is dated 25 October 2016, being the very same day as the Plaintiff sent his letter to Mr. Kevin Cullen. The 25 October 2016 entry reads as follows: *25/10/2016 - Very distressed about "bullying" at work by other workers. Plan rest from work. Letter to CMO*

I have no doubt about the fact that Dr. McManus faithfully recorded what the Plaintiff told him when the Plaintiff attended him for treatment on 25 October 2016. It is clear that the Plaintiff was, at that time, very distressed. Dr. McManus may well have formed the view, based on what the Plaintiff told him, that the Plaintiff was then suffering from bullying at work which was *current* as of October 2016. There is, however, no evidence which would allow this court to reach any such finding. Having carefully considered the entirety of the evidence, I am entirely satisfied that, as of 25 October 2016 when the Plaintiff met with his GP, and during the months running up to that meeting, the Plaintiff was not subjected to any unfair treatment at work which was then current. I take this view in light of the evidence before the court. For instance, it is abundantly clear from the contemporaneous record of the 23 June 2016 meeting, which record was signed by the Plaintiff's trade union representative, that there were no, then current, issues or complaints in relation to the Plaintiff's workplace. The Plaintiff also confirmed on 23 June 2016 in the presence of his Union representative and Mr Cullen, that there were no complaints or concerns within the previous six months. Indeed, the Plaintiff made it clear that his issues related to the period from 1996 – 2007. That being so, a key question is whether there was any change with regard to the Plaintiff's workplace situation between 23 June 2016, when the meeting ended, and 25 October 2015, when the Plaintiff attended his GP for treatment and also wrote his letter to Mr. Cullen. Having carefully considered all the evidence, I am entirely satisfied that there was no such change. Nor did the Plaintiff ever claim in his testimony that his day to day treatment in the workplace changed at all during the period,

from 23 June 2016 to 25 October 2016, inclusive. The court was given no evidence from which it court reach any finding that, in the period between 23 June and 25 October 2016, the Plaintiff heard any rumours or accusations or was bullied or harassed or was treated unfairly in any way at work. I am satisfied that he was not. Nor is there any evidence from which the court could conclude that, at the 23 June 2016 meeting or at any point between that meeting and the 25 October 2016, the Defendant ignored or dismissed the Plaintiff's concerns or dealt in any way inappropriately with the Plaintiff. In short, if Dr. McManus believed that, as of 25 October 2016, the Plaintiff was then suffering *"'bullying' at work by other workers",* I am entirely satisfied that this did not reflect the then reality. Plainly, Dr. McManus could only report what the Plaintiff told him, but insofar as the Plaintiff gave his GP to understand that he was being bullied by other workers, as of 25 October 2016, he did not provide his GP with accurate information. In short, the evidence forces me to conclude the following (1) the Plaintiff told one thing to Mr. Cullen and his Union representative in June 2016, namely, that there were no current issues of concern to the Plaintiff and his only concerns dated back to 1996-2007; (2) that there were, as a matter of fact, no issues of bullying harassment or any unfair treatment of the Plaintiff as of June 2016 and none arose thereafter; (3) that the plaintiff told a different story to his GP, namely, that he was being bullied at work when this was not the truth, as the Plaintiff was well aware.

8th November, 2016 letter from the Defendant to the Plaintiff

293. On 8th November, 2016, An Post's HR Dublin Regional Office wrote to the Plaintiff in the following terms: -

> *"Dear John,*
>
> *I am writing to you in relation to your absence on sick leave since 25/10/2016.*
>
> *It is Company policy to refer employees who are absent from work for more than two weeks to the Company Occupational Health Service.*

As a result of the referral, you will be contacted by a Company Occupational Health Advisor to allow you the opportunity to provide information relating to your absence in the strictest confidence.

The Occupational Health Advisor will advise Management on the likely duration of your absence and likely impact on your future attendance and performance.

If you have any queries relating to the referral process, you can contact me at 01-7057848.

Yours sincerely,

Irene M. Hoban

HR Dublin Regional Office"

294. It will be remembered that the Plaintiff's 25th October, 2016 letter was sent to Mr. Kevin Cullen, HR Manager. Ms. Hoban is a member of Mr. Cullen's support staff. I am satisfied that Mr. Cullen returned from holidays on 8th November, 2016 and, upon his return to work, caused the forgoing letter to be sent to the Plaintiff. I also accept Mr Cullen's evidence that, on 8th November, 2016, Mr. Cullen referred the Plaintiff to the Defendant's Occupational Health and Support team. I am satisfied that Mr. Cullen did so, knowing that the Plaintiff was out on sick leave and also knowing that the Plaintiff wished to meet with him. There is no evidence from which the court could conclude that the 8th November, 2016 letter to the Plaintiff or the referral, on the same date, of the Plaintiff to Occupational Health was in any way unreasonable or inappropriate. In short

8th November, 2016 Employee Referral to Occupational Health & Support

295. Having regard to the meeting in June and its outcome, it was entirely reasonable for Mr Cullen of the Defendant to conclude that there were no then - current issues in the Plaintiff's workplace and that all his concerns could properly be described as historic. Nevertheless, as well as agreeing to meet with the Plaintiff, Mr Cullen decided to refer the Plaintiff for review

by professionals within the Defendant's Occupational Health and Support team and to hold the meeting with the Plaintiff *after* Mr Cullen had been provided with their report. This was a reasonable and appropriate approach to take and I am satisfied that it was an approach taken exclusively out of concern for the Plaintiff and to support him. The discovery documentation before the court included a two-page *"Employee referral to Occupational Health & Support"* in respect of the Plaintiff. The *"Referring Managers"* were listed as Kevin Cullen, Pat Cunningham and Paul Clarke. The referral form stated, *inter alia*, that: *"Mr. Ward has been absent on sick leave since 25/10/2016. We believe he is suffering with stress."*. The form sets out a number of possible reasons for the referral and the word *"yes"* is given opposite the first two reasons for this particular referral concerning the Plaintiff, namely, the referral is required in order to assess and advise on (1) *"Impact of health on capacity to give regular attendance/expected return to work"* and (2) *"Impact of health on capacity to give satisfactory performance"*. The referral form was marked as received by the Chief Medical Officer ("CMO") as of 8th November, 2016.

The Plaintiff's Medical Records for November, 2016

296. The following comprise the entire of the Plaintiff's medical records for November, 2016 as maintained by his GP:-

09/11/2016 *Still very stressed.*

23/11/2016 *Wife attended. Very Stressed [concerned about violence]. Plan to be seen as soon as possible.*

24/11/2016 *Very angry about work situation. Plan Citrol+ Anger Management*

28/11/2016 *Letters typed + left for collection as per jmm.*

I am satisfied that the Plaintiff was, as of 09 November 2016, very stressed, just as his GP recorded at the time. I am equally satisfied, however, that such stress was not due to any unfair treatment of the Plaintiff on the part of anyone in the Defendant which the Plaintiff was

experiencing at the time. Nor did it relate to any act or omission on the part of the Defendant within the previous decade. The next entry is for 23 November 2016 and I now turn to the evidence given in relation to what occurred on that date.

The "*Punchbowl*" incident - 23 November 2016

297. It is not in dispute that Mr. Kearns planned to have a retirement function in a premises called the "Punchbowl" on 25 November 2016. The Plaintiff gave evidence that, two days before the event, he and his wife were driving past the premises and were stopped at traffic lights when the Plaintiff turned to his wife and said that he was going to turn up at the event with a can of petrol and was going to set himself on fire. As to why the Plaintiff intended to do this, his evidence was as follows:

> "*I was going to turn up at Leo Kearns' do… with a can of petrol and show the lads that have caused me the problems, to set myself on fire in front of them to show them what they have done to me*." (D2, P119, L6).

The Plaintiff did not identify those he meant by "*the lads*", nor did he say what he meant by "*what they have done to me*". The Plaintiff gave no evidence that what these unnamed individuals allegedly did to him was anything alleged to have taken place at any point during the 9 years from 2008 up to and including 2016. There was no evidence from which the court could safely reach any finding that the Plaintiff was subject to any unfair treatment in the 9 years from 2008 to 2016, inclusive.

298. The court heard evidence from Mrs. Kearns and I am satisfied that the Plaintiff did indeed have the foregoing conversation with his wife on or about 23 November 2016. I am also satisfied that, in light of what the Plaintiff said, his wife was understandably extremely upset and concerned, as a result of which she contacted the Plaintiff's GP. This is corroborated by the contemporaneous medical record which I have cited above and which shows that the Plaintiff's *"wife attended very stressed. Concerned about violence."* For the sake of clarity,

however, there is no evidence that there had been any change in the Plaintiff's work situation in the days, weeks months or, indeed, years preceding the conversation between the Plaintiff and his wife which took place outside The Punchbowl on 23 November 2016. To put it another way, that conversation, which must have been extremely distressing for the Plaintiff's wife, was not precipitated by any bullying of the Plaintiff in his workplace, or by any rumour or accusation which the Plaintiff alleges that he heard on that date, or in the days, weeks, months or years prior to 23 November 2016. There is simply no evidence of any alleged accusations or rumours concerning the Plaintiff circulating in November 2016 or, for that matter, at any point since the Plaintiff returned to work, by agreement with the Defendant, in August 2011. That is not to detract from how upsetting the events of 23 November 2016 must have been for the Plaintiff's wife, nor is it to suggest that the Plaintiff's feelings were not genuinely held. I am entirely satisfied that the Plaintiff felt angry and upset and expressed to his wife an intention to self-harm and, subjectively, the Plaintiff clearly felt badly treated by his employer. However, the evidence before the court does not support the proposition that, objectively, the Plaintiff's employer or the Plaintiff's colleagues had done anything wrong such as to cause this subjective reaction on the Plaintiff's part. It also has to be noted that, whereas the Plaintiff's wife attended Dr. McManus on 23 November 2016, the Plaintiff did not. It is also a matter of fact that, despite what the Plaintiff said to his wife on 23 November 2016 about what he says was his intention to self-harm, he did not go to his Doctor in respect of any suicidal thoughts and the Plaintiff's medical notes does not record any suicidal ideation.

No evidence of any self-harm at any point

299. Thankfully, despite what the Plaintiff said to his wife on 23 November 2016, there is no evidence that the Plaintiff ever attempted to take his own life at any point in time from 1996 right up to the date of the trial. Nor was there any evidence before the Court that the Plaintiff ever self-harmed, or attempted to self-harm. It is also clear that the Plaintiff received

appropriate treatment and a great deal of support from his GP, who referred to the Plaintiff to a counsellor, as is evident from the contents of the letter by Dr. McManus dated 28 November 2016, which I will presently examine. The GP's records in respect of the Plaintiff, quoted verbatim above, also demonstrate that, as of 24 November 2016, being the very day after the Plaintiff had the conversation with his wife outside The Punchbowl, Dr. McManus prescribed an anti-depressant for the Plaintiff, being the reference to *"Citrol*" in the GP's notes. Dr McManus did not note, on 28 November, any suicidal ideation

28 November 2016 letter by Dr. McManus

300. It is clear that the letter to which the GP's notes refer is a letter from Dr. McManus dated 28 November, 2016 which begins *"Dear Counsellor"*. A copy the said letter appears in the "core" book of discovery documents and the text reads as follows: -

> *"I am grateful to you for seeing John.*
>
> *John suffered events with serious psychological bullying in work over many years. He is extremely angry about this and he has got very little satisfaction from his employers, An Post, to date. I have encouraged him to pursue this with the Human Resources Department in his employers. I have written to the Chief Medical Officer of An Post outlining my concerns about his particular situation, which John finds himself in. I might say that he is not the only employee suffering from the same type of activities.*
>
> *However, his anger has become quite severe and is having an effect both on himself and his family. He is not able to go to work. He is ruminating almost continuously about the injustice that he suffered and I would be grateful for your opinion and advice as to what interventions would give John more tranquillity while he pursues this problem through the normal channels.*
>
> *Thank you in anticipation."*

Factual inaccuracies in the letter from Dr McManus

301. The above letter was sent by the Plaintiff's GP to a counsellor. It was doubtless written in very good faith but it contains several factual inaccuracies, having regard to the evidence in this case. The material part of the letter begins with a statement of fact, namely, *"John suffered events with serious psychological bullying in work over many years"*. The evidence before the court simply does not support the foregoing statement. Having regard to the evidence put before the court, it is impossible for this court to conclude that the Plaintiff suffered, what his GP refers to as, *"serious psychological bullying"* at any specific point or at all. This Court has examined the evidence, insofar as it is said to relate to matters going back as far as 1996 but is unable to conclude, even on the balance of probabilities, that the Plaintiff suffered bullying. The reasons for this view emerge from the court's careful analysis of the evidence on a chronological basis in this judgment but, by way of a non-exhaustive summary of certain facts, the following are relevant.

302. Even on the Plaintiff's sworn testimony, the very first time he writes a letter, namely on 22 November 2010, in which he specifies what he refers to as *"The accusations made about me"*, those accusations were not current, being several years old at that point. When the Plaintiff and his trade union representative met with the Defendant's HR manager, Mr. Hunter, on 19 July 2011, the Plaintiff again confirmed that he had no current workplace difficulties and his then most recent complaint went back to 2007. The Plaintiff acknowledged, on 19 July 2011, in the presence of his union representative, that the Defendant would not be carrying out an investigation and the Plaintiff understood why this was so, given the time which had elapsed. The Plaintiff returned to work on that basis. The evidence also demonstrates that, having returned to work in or about August, 2011, the Plaintiff made no complaint of any sort in 2011, 2012, 2013, 2014, 2015. The evidence, insofar as 2016 is concerned, do not support any finding that the Plaintiff was then suffering from any unfair treatment at work, much less what Dr. McManus describes as "*serious psychological bullying"*. Moreover, in his meeting with Mr

Cullen and the Plaintiff's Union representative on 23 June 2016, the Plaintiff confirmed very clearly that there were no current workplace issues and that all his concerns went back to 1996 – 2007. Furthermore, those concerns related to remarks allegedly made between 10 and 20 years earlier, those who allegedly made the remarks not having been challenged about them or asked to explain them at the time in circumstances where the Plaintiff could have but did not call for a formal investigation at the relevant time. In short, the evidence simply does not support the assertion made by Dr. McManus, in his 28 November 2016 letter to the counsellor, that the Plaintiff suffered serious psychological bullying in work or that he suffered same *"over many years"*. I am forced to conclude on the evidence that the reason for the statements made by Dr. McManus is that the Plaintiff told Mr. Cullen one thing (which was correct) but told his GP something else (which was not). In essence, the Plaintiff claimed to his GP that he was being bullied, when this was not the case as the Plaintiff well knew.

303. I fully accept that the Plaintiff may well have been *"extremely angry"* as of November, 2016. This may have been due to a genuinely held perception that he *"got very little satisfaction from his employers"*, as his GP puts it. However, the Plaintiff's subjective perception, and the objective reality as disclosed by the evidence, are two very different things. Based on the evidence, this Court cannot conclude that An Post dealt with the Plaintiff unreasonably, unfairly or in an unsatisfactory manner. The genuine concern which Dr. McManus has for the Plaintiff is obvious from this letter, but it is equally clear that the facts, as Dr. McManus understood them, and the facts which emerge from the evidence before this Court, are markedly different. For example, Dr. McManus states that the Plaintiff *"is not the only employee suffering from the same type of activities"*. It seems that the doctor's interaction with a separate individual who has nothing to do with the present proceedings caused him to believe that everything the Plaintiff reported to him was factually accurate. The court did not hear from any other employee within the Defendant, said to have suffered from bullying and the court does

not have information whatsoever about the individual to whom Dr. McManus referred. However, to the extent that the doctor's phrase *"the same type of activities"* is a reference to bullying of the Plaintiff within An Post, the evidence in this case wholly and fatally undermines such an assertion. I fully accept that the Plaintiff's anger, as of November, 2016, may well have been severe and effecting himself and his family. The evidence does not, however, establish that this anger was caused by any unfair treatment of the Plaintiff by the Defendant. I accept that the Plaintiff was *"ruminating almost continually"* about what, from his perspective, was *"the injustice that he suffered"*. Dr. McManus uses the latter phrase as if it is a statement of fact. It is not. The evidence in this case undermines the proposition that the Plaintiff is the victim of an injustice or that the Plaintiff suffered any unfair or unjust treatment by the Defendant.

Conflicting testimony given by the Plaintiff

304. It has to be said that the Plaintiff has given conflicting testimony in relation to the event. As discussed above, the Plaintiff was clear in his evidence as to the reason why he intended to go to the retirement event for Mr. Kearns, to pour a can of petrol on himself and to set himself alight. He explicitly stated that the reason was to "…*show the lads that have caused me the problems, to set myself on fire in front of them to show them what they have done to me"* (D2, P119, L8). Despite the foregoing evidence, the Plaintiff also gave an utterly different reason as to why he told his wife that he was going to set himself on fire. In direct examination the following exchange took place between the Plaintiff's senior counsel and the Plaintiff:

"*Q. What were you saying to Karen?*

A. I said 'I am going to set myself on fire'.

Q. Did she say why you are doing that or what did she say?

A. She knew why because I was sitting around waiting for an appointment off HR which I didn't get and that was the reason. Because to me they wanted Leo Kearns to retire

and then I would go to a meeting and fall back into place at work and that was not my answer to solving the problems." (D2, P120, L17).

Earlier in his evidence, the Plaintiff was adamant that the reason he was contemplating committing suicide in a very public fashion at a retirement event for Leo Kearns was because of what work colleagues had allegedly done to him, without specifying what was allegedly done. Later in his evidence, that was not the reason. Rather, the reason he contemplated setting himself on fire was because he was waiting for an appointment from HR which had not yet come, and then the Plaintiff went further in his evidence, namely to say that, from the Plaintiff's perspective, his employer was deliberately trying to engineer a situation whereby Mr. Kearns would retire before any meeting could take place. Some observations need to be made having regard to the Plaintiff's testimony. Firstly, there is no evidence from which the Defendant could reasonably infer that any delay with regard to setting up a meeting between the Plaintiff and Mr. Cullen would damage the Plaintiff's health, much less have the potential to cause the Plaintiff to take his own life. Secondly, there is no evidence that the Plaintiff was trying to engineer a situation whereby Mr. Kearns would retire before the Plaintiff met with Mr. Cullen, HR manager. Thankfully, and regardless of the inconsistencies in the Plaintiff's evidence as to the reason he says he contemplated setting himself on fire, it is clear that the Plaintiff never made any attempt on his own life. It should also be said that there is simply no evidence before this court of any causal connection between any unlawful act or omission on the Defendant's part, and any suicidal ideation on the Plaintiff's part, nor could it reasonably be said to be foreseeable that anything the Defendant did, or declined to do, prior to November 2016, would or could result in the Plaintiff contemplating suicide, if it is the case that the Plaintiff was suffering from suicidal ideation at that point.

30 November 2016 Memo from Occupational Health regarding the Plaintiff

305. On 30 November 2016 John C. O'Sullivan of the Defendant's Occupational Health Support team sent an internal memorandum to Kevin Cullen, HR Manager, which was also cc-d to Mr. Pat Cunningham and Mr. Paul Clarke. The court heard evidence from Mr. Cunningham, Mails Operation Manager. Paul Clarke was an assistant HR Manager working on Mr. Cullen's team. This internal memorandum was, I am satisfied, a written report which was being furnished by Occupational Health Support to HR in response to the 08 November 2016 referral which had been submitted by Mr. Cullen. That referral was prompted by the receipt of the Plaintiff's 25 October 2016 letter, the Plaintiff having gone on sick leave that same day. The 30 November 2016 memorandum stated the following:

"*Thank you for your recent referral in respect of Mr. Ward.*

Background

Mr. Ward has been on sick absence since 25 October 2016.

Current Position

Mr. Ward attended my office on 12th October, 2016 by appointment. During our meeting Mr. Ward expressed concern about his own and other's safety in Blackrock DSU due to dignity at work issues. His doctor was sufficiently concerned about the situation at the office that, he wrote to Chief Medical Officer outlining his concerns. It would be of benefit if management were make some type of assessment of his concerns.

Future Plans

Mr. Ward has my contact details should he wish to contact me at any time in the future.

John C. O'Sullivan

Occupational Health Support"

306. When Mr. Cullen referred the Plaintiff to Occupational Health on 08 November 2016, it was a fact that the Plaintiff had met with Mr. O'Sullivan of the Occupational Health Support team as recently as 12 October. I am satisfied that this explains why an Occupational Health

Advisor did not contact Mr. Ward, following the letter from Ms. Hoban of the HR Dublin Regional Office to the Plaintiff, which was sent on 08 November 2016, being the same date as Mr. Cullen referred the Plaintiff to Occupational Health. There is no evidence that, as of 30 November 2016, anyone within the Defendant was aware of the conversation between the Plaintiff and his wife outside the "Punchbowl" on 23 November 2016, nor was anyone within the Defendant aware of the specific treatment which Dr. McManus felt was appropriate for the Plaintiff, in terms of prescribing an anti-depressant as well as treatment for anger management in the form of counselling.

307. In the memorandum of 30 November to Mr Cullen, Mr O'Sullivan refers to the Plaintiff having attended his office, by appointment, on 12 October 2016. That meeting between the Plaintiff and an Occupational Health professional within the Defendant clearly took place after the 23 June 2016 meeting which Mr Cullen (but not Mr O'Sullivan) had had with the Plaintiff, who was accompanied by his Union representative. During the 23 June 2016 meeting the Plaintiff confirmed that there were no current issues in relation to any bullying or ill treatment of him, nor did the Plaintiff that anyone else was then being subjected to bullying in the Plaintiff's workplace. I am satisfied that the foregoing reflected the factual position, yet is clear from Mr O' Sullivan's memo that, when he met with the Plaintiff on 12 October, the Plaintiff "*expressed concerns about his own and other's safety in Blackrock DSU due to Dignity at Work issues. His doctor was sufficiently concerned about the situation at the office that, he wrote to Chief Medical Officer outlining his concerns."* The foregoing strongly suggests that the Plaintiff told Mr Cullen that there were *no* current issues, but told his own GP and Mr O'Sullivan that there *were*. This is the impression which Mr Cullen formed when he read Mr. O'Sullivan's memorandum. I am satisfied, having carefully considered all the evidence that Mr Cullen's impression was correct and that the Plaintiff did, in fact, tell Mr Cullen that there were no current issues (which was the reality), but told his GP and other health professionals

that there *were* current issues and that he was currently suffering from bullying and harassment which had been ongoing for years (which was not the case). No other finding explains the contents of the letter from Dr McManus dated 28 November 2016 which was self-evidently based on what the Plaintiff told his GP, compared to what the Plaintiff had told Mr Cullen in June in the presence of his Union representative.

Counselling

308. At this juncture, it must be recalled that, as far back as 10 May 2011, the Plaintiff's GP recorded the following in his notes with regard to the Plaintiff: "*Advised go for counselling but never went".* Given the evidence in relation to 23 November 2016 and the necessity for the Plaintiff to be prescribed anti-depressant medication and counselling for anger management, it is difficult to regard the doctor's advice to the Plaintiff which was given in May 2011, namely to attend counselling, as other than as a lost opportunity to deal with the Plaintiff's health difficulties. Based on the evidence, the court is entitled to conclude that the opportunity was lost because the Plaintiff was resistant to his doctor's advice that he attend counselling at that point in time. It is incontrovertible that the Plaintiff required counselling over five years later and it is also incontrovertible that his doctor's view was that the Plaintiff was, as of late November 2016 "*ruminating almost continually"* about what the Plaintiff saw as an injustice perpetrated upon him in the workplace, for which counselling was essential. Had the Plaintiff undergone counselling from 2011 onwards, as per his doctor's advice, it is at least possible, if not likely, that the issues which affected the Plaintiff in November 2016 could have been avoided. The Plaintiff's failure to avail of such counselling as the Plaintiff's doctor recommended, cannot be any fault of the Defendant.

02 December 2016 – Letter from Kevin Cullen to the Plaintiff

309. I am satisfied that, as a matter of fact, Mr. Cullen made arrangements to meet with the Plaintiff as soon as Mr. Cullen had received the 30 November 2016 report from Occupational

Health. Mr. Cullen's letter to the Plaintiff, which was sent on 02 December 2016, stated the following:

"*Re: attendance review meeting under the company's attendance support & management process*

Dear John

I am writing to invite you to attend a meeting with me at 12.30pm on Thursday, the 08/12/2016 in room 2-153 GPO O'Connell Street, Dublin 1, entrance via Princes Street, to discuss your attendance record in the past six months.

If you have difficulty in attending the meeting at the date/time advised above you should notify Noel Kennedy at 705 7850 as soon as possible. I will, if appropriate, reschedule the meeting to an alternative date/time.

Absenteeism is a major cost issue for our company and initiatives are ongoing to reduce and minimise these costs. It is recognised that absence is unavoidable in certain circumstances and the company is committed to supporting employees achieve regular attendance at work where a significant medical condition impacts on their ability to do so. Apart from cost implications, however, absence also causes significant disruption in the workplace and has a negative impact on our ability to meet targets and deadlines in delivering world class quality of service to our customers. So attendance at work really matters in An Post.

For this reason, employee attendance is monitored on an ongoing basis. As has happened in your case where, an employee incurs 3 or more incidents and/or 8 or more days of unscheduled absence in a six-month period (i.e. sick or unauthorised absence) a review of the employee's attendance under the company's attendance support & management process is initiated.

The meeting you are invited to attend is an opportunity for me to review and have an initial discussion with you regarding your recent attendance record. Importantly, however, the meeting is also an opportunity for you to share with me any relevant information. In this regard while issues impacting upon your ability to give regular attendance may be raised you can be assured that personal medical details or any other matter of a sensitive personal nature will not be discussed at the meeting. The content of the meeting is confidential.

Should you decide, however, not to attend the meeting I will advance matters based on the information currently available to me and will write to you subsequently to advise you of any decision I make regarding how your case is to be progressed and the date of the next Review Meeting.

You may be accompanied to the meeting by a Trade Union representative or a work colleague if you so wish.

Yours sincerely

Kevin Cullen

HR Manager"

The ASMP

310. This letter was sent in accordance with the provisions of An Post's "Attendance Support & Management Process (hereinafter "ASMP")". The ASMP is a written policy and I am satisfied that the Plaintiff had a copy of and was aware of the contents of the ASMP. Just like the Dignity at Work Policy, the ASMP policy was introduced into An Post following negotiations between the Defendant and the Unions representing employees, including the Plaintiff. I am entirely satisfied that, as a matter of fact, the ASMP is not a disciplinary process. This is entirely clear from the contents of the ASMP which comprises a 45-page policy document, in booklet form. It is not in dispute that the ASMP is not the first of such policies

to operate within An Post. The predecessor to the ASMP being the "Local Attendance Management Process" or "LAMP". It is not in dispute that the difference between the two policies is that, unlike LAMP, the ASMP applies to employee absence, regardless of the cause, be that for medical reasons or for non-medical.

311. I accept the uncontroverted evidence given by Mr. Cullen that if, within a six-month period, an employee has three incidents or eight days of absence, they are automatically included within the ASMP. It is not in dispute that the Plaintiff's absence record, as of 02 December 2016 when Mr. Cullen wrote to him, was such that the Plaintiff's absence from work came within the terms of the ASMP policy. I accept Mr. Cullen's uncontroverted evidence in relation to the ASMP as follows:

> "*Following inclusion into the process where you are identified as being in the ASMP, there is an initial review meeting. In that initial review meeting there will be a conversation with the employee and at that stage the manager who is conducting the meeting will establish whether there are any factors affecting attendance. Those factors can be an underlying medical issue. It can be a welfare issue or it can be a work related issue. So it is a very beneficial process to employees as well as because it gives them the opportunity to have their circumstances understood*." (D7, P126, L22).

312. I am satisfied that the foregoing is the context in which Mr. Cullen wrote to the Plaintiff on 02 December 2016, namely to set up the initial review meeting which would provide the Plaintiff with an opportunity to share with Mr. Cullen any and all relevant information touching on the Plaintiff's absence from work, with the contents of the meeting being confidential. It was also clear from Mr Cullen's uncontroverted evidence that if the Plaintiff had disclosed, at the meeting scheduled for 08 December, 2016, information which suggested any unfair treatment of the Plaintiff or of any employee in the Defendant's Blackrock office, which was alleged to be current or recent, Mr Cullen would have ensured that an appropriate investigation

commenced under the Dignity at Work or Grievance policy. Having regard to the evidence before the Court, there was no question of Mr Cullen having any vested interest in there not being any workplace issues. It was abundantly clear from the evidence that Mr Cullen was focussed simply on trying to find out relevant information whatever that might be and to take appropriate steps in response to such information as emerged.

Extracts from An Post's ASMP policy

313. It is not in dispute that the ASMP, like all policies within An Post, was developed through a joint conciliation council involving the employee's unions and An Post, before the policy was finalised and implemented. It is not in dispute that the ASMP has been implemented within the Defendants since January 2013. I am satisfied that, as a matter of fact, the Plaintiff was aware, at all material times, of the existence of the ASMP and was given a copy of the ASMP. Furthermore, at all material times, the Plaintiff has had access to advice and representation from his Trade Union, including in relation to the provisions of the ASMP. There is no evidence before the court that the Plaintiff was unaware of or did not understand the provisions of the ASMP. At the trial, the court was provided with a booklet which contains An Post's "Attendance Policy" and the company's "Attendance Support & Management Process". The following are a number of verbatim quotes from same:

> *"Attendance Policy*
>
> *1. Purpose of the Company's Attendance Policy*
>
> *1.1 The purpose of the Company's Attendance Policy is to support employee well-being and, in doing so, achieve high levels of regular, punctual attendance on an ongoing basis.*"
>
> "*2.4 In applying this Policy, and any attendance management process operated in conjunction with it, the focus of management will be on assisting employees with an*

irregular attendance record to achieve an acceptable pattern and level of attendance at work as early as possible;

2.5 In instances of irregular employee attendance management will, in the normal course, meet with the employee concerned at regular intervals. The purpose of these Review Meetings will be to:

(i) review the employee's past pattern and level of attendance, outline expected standards of attendance and review progress in returning to regular attendance;

(ii) identify if there is any medical issue(s) impacting upon the employee's ability to give regular attendance, and if there is, whether there are any welfare or workplace matters contributing to the medial issue(s);

(iii) establish any appropriate support the Company can give to the employee in addressing issues identified as impacting upon his/her ability to attend regularly and ensure such support is provided;

(iv) commit to review the employee's attendance again after a defined period of time;

(v) outline and discuss the possible outcomes if irregular attendance persists."

"2.7 While in accordance with 2.4 the emphasis will be on supporting employees achieve regular attendance. This may not happen, or be possible, in all cases. In circumstances where irregular employee attendance persists, despite:

(i) the employee having been provided with an opportunity, over a reasonable period of time, to demonstrate that he/she can attend work regularly;

(ii) all other reasonable alternatives to dismissal, including work adjustments, redeployment etc. <u>where appropriate,</u> having been explored and proven unsuccessful, or having been ruled out;

(iii) the employee having had prior notice of termination of employment as being a possible outcome should irregular attendance persist;

the Company may terminate the employment utilising appropriate procedures operated in accordance with the principles of natural justice. In this regard the grounds for termination associated with irregular employee attendance, and the processes which the Company will adhere to prior to terminating any employee's employment on these grounds, will be specified in the Attendance Management Procedure operated in conjunction with this policy.

2.8 An appropriate process of independent medical review will be operated where:

- *management intend taking action which has significant consequences for an employee on foot of an assessment of his/her fitness for work by OHS, and*
- *where this assessment is disputed by the employee on the basis of evidence provided by a treating medical specialist (i.e. excluding a General Practitioner).*"

"2.11 An employee's right to union representation, where issues related to irregular attendance are being addressed with him/her by management, will be respected and appropriately reflected in the attendance management procedure operated in conjunction with this Policy."

"*<u>Attendance Support and Management Process</u>*

Introduction

1.1 In conjunction with the company's attendance policy, the purpose of the Attendance Support and Management Process is to support employee well being while achieving high levels of regular employee attendance on an ongoing basis… "

"*1.3 Absence data will be monitored on an ongoing basis to identify instances of irregular employee attendance.*

Irregular employee attendance refers to instances where an employee incurs a period, or periods of sick absence above threshold levels (see 3.1), which are related, or not, to an underlying medical issue. It includes instances where an employee is absent from

work on sick absence on a continuous ongoing basis due to such an issue. Reference to absence associated with an underlying medical issue in this document refers to instances where there is a significant recognised medical condition that is directly related to the employee's absence."

"*3. Absence Thresholds*

3.1 Should an employee incur a level of unscheduled absence which breaches the following thresholds his/her attendance will be formally reviewed with him/her by management through the Attendance Support & Management Process:

Absence Thresholds:

(i) 3 or more incidents of unscheduled absence in any 6-month period and/or

(ii) 8 or more days unscheduled absence in any six-month period."

"*4.1 Where an employee is identified as having breached the absence thresholds set out at section 3, for whatever reason, a process of review, involving periodic face to face meetings between the employee and management, will commence.*

4.2 The focus of Review meetings held under the Attendance Support & Management Process will be on:

(i) reviewing the employees past pattern and level of attendance, outline expected standards of attendance and review progress in returning to regular attendance;

(ii) identifying if there is any underlying medical issue(s) impacting upon the employee's ability to give regular attendance, and if there is, whether there are any welfare or workplace matters contributing to the medical issues;

(iii) establishing any appropriate support the Company can give to the employee in addressing issues identified as impacting upon his/her ability to attend regularly and ensuring such support is provided;

(iv) committing to review the employee's attendance again after a defined period of time;

(v) outlining and discussing the possible outcomes if irregular attendance persists."

314. The ASMP goes on to provide details in relation to what would normally happen in respect of an "*initial review meeting*", a "*second review meeting*" and at "*subsequent review meetings*" and the foregoing is dealt with between section 4.5.1 and 4.5.3. Section 4.6 provides that, in the normal course, review meetings will be scheduled at three-monthly intervals but also provides that reviews after lesser periods may be decided upon by the appropriate level of management in exceptional cases. Section 4.7 of the ASMP makes it clear that "*an employee will only exit the formal Review process where regular attendance has been achieved in three consecutive review periods*". Section 5 of the policy under the heading "*Employee Support*" provides for the referral to Occupational Health and Support to assess an employee's fitness (capacity) for work. Section 5.4 deals with what occurs if the Occupational Health and Support assessment of an employee's fitness for work is disputed based on medical opinion from a medical specialist who is treating the employee and section 5.4 goes on to provide that:-

"*Where, in such circumstances, any intended management action on foot of the disputed Occupational Health and Support assessment has significant consequences for the employee (Redeployment or Termination of Employment on any of the grounds cited at 6.3 below) he/she will be afforded the opportunity of undergoing an independent medical assessment the employee's request for an independent medical assessment should be referred by the manager to Occupational Health and Support who will make the appropriate arrangements.*"

Section 6 under the heading "*Escalation Process*" provides that each case which is being managed through the ASMP will be assigned a designated status by the manager who is managing the attendance issue at the time of the initial review meeting, the designated status

will be "*status 5*" which reflects a concern about the employee's attendance record and the need to achieve a satisfactory level of attendance in the future. It is made clear that the primary aim of the ASMP is to assist employees returning to regular attendance. The ASMP envisages that most employees will respond positively to the review of their attendance through the process and will achieve regular attendance, but it is made clear that "*as termination of employment is, ultimately, a possible outcome where irregular attendance persists, employees will be given appropriate notice of this fact in the course of the review meetings conducted*" under the ASMP. With regard to escalation, clause 6.2.2 states the following:

> "*6.2.2 The status can be escalated from status 5 through status 4, 3 and 2 to status 1 over the course of Review meetings held under the Attendance Support & Management Process. Status 1 applies where a final review period is being allowed to the employee to achieve a satisfactory level of attendance, otherwise proceedings to terminate the employment on the appropriate grounds will be commenced. The Status that can be assigned to a case being managed through the Attendance Support & Management Process (i.e. 5, 4, 3, 2 or 1) and its significance in relation to the circumstances of irregular attendance, is set out in detail at Appendix B.*"

315. Clause 6.2.4 makes it clear that all management decisions to escalate the status of a case under the ASMP may be appealed by way of a written submission setting out the basis upon which the decision is being appealed and such submission must be made within five working days. Under the ASMP the status designation of any particular case may also be adjusted to a lower level by a HR manager, should that be reasonable in light of change to circumstances. Section 6.3 under the heading "*Grounds for Termination of Employment*" provides as follows:

> "*6.3.1 Where the Attendance Support & Management Process has been exhausted and irregular employee attendance persists, termination of the employment will generally arise as a consideration on one of the following grounds:*

(i) persistent irregular attendance;

(ii) Permanent incapacitation (where the employee has been assessed by the Chief Medical Officer as being permanently incapacitated…

6.3.2 … Where management are considering termination of employment on the grounds of persistent irregular attendance they will address the matter with the employee through the company's disciplinary procedures, where the normal decision making authorities and appeals mechanism will apply. Termination of employment in such instances will only arise where the employee has incurred 6 or more instances and/or 16 or more days' absence in the 12 months prior to the disciplinary process being initiated."

Section 7 of the ASMP makes it clear that an employee is entitled to be accompanied by a recognised Trade Union representative or work colleague at any review meeting held under the ASMP. The policy is also explicit about the obligation on employees to cooperate and this is made clear in section 8.2 which provides as follows:-

"*8.2 While the management of an employee's attendance through this Process is ongoing, the employee will be expected to co-operate and engage in any action necessary to resolve medical, welfare or workplace issues, if any, impacting on his/her ability to give regular attendance. If an employee fails to co-operate (e.g. does not attend meetings with management under this Process, refuses consent for referral to Occupational Health & Support, fails to provide medical reports, etc., or fails to do so in a timely manner) management will advance matters through the Attendance Support & Management Process based upon all the information available at the time.*"

Appendix A to the ASMP provides detail under the heading "*Occupational Health & Support*" including the following:

"*1. Background*

In conjunction with the Company's Attendance Policy the purpose of the Attendance Support & Management Process is to support employee well-being and in doing so achieve high levels of regular, punctual, attendance at work on an ongoing basis.

The Company's Occupational Health & Support Service is a key resource in achieving these aims. The following professionals comprise the Company's Occupational Health & Support Service, the Chief Medical Officer (CMO), Occupational Health Advisors (OHA) and Occupational Support Specialists (OSS) – (formerly Welfare Officers).

2. General Responsibilities of the Occupational Health & Support Staff

Where employees are referred by management to Occupational Health & Support for an assessment of their fitness (capacity) for work it is important that employees understand the role and general responsibilities of Occupational Health Support staff. In this regard it is important to appreciate that the role and responsibilities of the employee's own caring doctor (GP) are quite different to those of the Company's Chief Medical Officer (CMO) and those of his team. The role and general responsibilities of Occupational Health & Support are to:

(i) provide direct support to employees regarding the management of medical issues or related welfare matters impacting upon their ability to give regular attendance at work;

(ii) provide professional opinion to management regarding employee fitness (capacity to work);

(iii) advise management regarding the appropriateness of possible alternative work arrangements as a response to changes in an employee's fitness (capacity) to work;

(iv) advise management as to whether an employee is permanently incapacitated on medical grounds – Chief Medical Officer only."

Appendix B of the ASMP provides information with regard to status 5, status 4, status 3, status 2 and status 1 cases, both where the absence is and is not associated with an underlying medical

issue. Appendix C sets out the procedures applicable where management intend terminating an employee's employment as a result of an assessment by the CMO that the employee is permanently incapacitated.

Appendix D summarises the main roles and responsibilities, under the ASMP, of employees, line management, local HR management, central HR management and occupational health and support. The following are specified with regard to an employee's role and responsibilities under the ASMP:

"*1. Employees*

(i) co-operate fully with management in relation to the review of their attendance through the Attendance Support & Management process;

(ii) attend meetings/appointments with line management, representatives of the Occupational Health & Support Service and/or wit the Chief Medical Officer, as required;

(iii) provide additional information relating to medical/welfare circumstances to Occupational Health & Support in a timely manner where required as part of any assessment of their fitness for work;

(iv) co-operate with any investigation or review under Company procedures where workplace matters may be impacting upon the employee's ability to give regular attendance;

(iv) maintain ongoing contact with management and update management on any developments during a period of ongoing absence;

(vi) do everything necessary to enhance full recovery and return to full fitness for work, if absent."

"*Attendance Policy*

1. Purpose of the Company's Attendance Policy

1.1 The purpose of the Company's Attendance Policy is to support employee well-being and, in doing so, achieve high levels of regular, punctual attendance on an ongoing basis."

"*2.4 In applying this Policy, and any attendance management process operated in conjunction with it, the focus of management will be on assisting employees with an irregular attendance record to achieve an acceptable pattern and level of attendance at work as early as possible;*

2.5 In instances of irregular employee attendance management will, in the normal course, meet with the employee concerned at regular intervals. The purpose of these Review Meetings will be to:

(i) review the employee's past pattern and level of attendance, outline expected standards of attendance and review progress in returning to regular attendance;

(ii) identify if there is any medical issue(s) impacting upon the employee's ability to give regular attendance, and if there is, whether there are any welfare or workplace matters contributing to the medial issue(s);

(iii) establish any appropriate support the Company can give to the employee in addressing issues identified as impacting upon his/her ability to attend regularly and ensure such support is provided;

(iv) commit to review the employee's attendance again after a defined period of time;

(v) outline and discuss the possible outcomes if irregular attendance persists."

"2.7 While in accordance with 2.4 the emphasis will be on supporting employees achieve regular attendance. This may not happen, or be possible, in all cases. In circumstances where irregular employee attendance persists, despite:

(i) the employee having been provided with an opportunity, over a reasonable period of time, to demonstrate that he/she can attend work regularly;

(ii) all other reasonable alternatives to dismissal, including work adjustments, redeployment etc. where appropriate, having been explored and proven unsuccessful, or having been ruled out;

(iii) the employee having had prior notice of termination of employment as being a possible outcome should irregular attendance persist;

the Company may terminate the employment utilising appropriate procedures operated in accordance with the principles of natural justice. In this regard the grounds for termination associated with irregular employee attendance, and the processes which the Company will adhere to prior to terminating any employee's employment on these grounds, will be specified in the Attendance Management Procedure operated in conjunction with this policy.

2.8 An appropriate process of independent medical review will be operated where:

- *management intend taking action which has significant consequences for an employee on foot of an assessment of his/her fitness for work by OHS, and*
- *where this assessment is disputed by the employee on the basis of evidence provided by a treating medical specialist (i.e. excluding a General Practitioner).*"

"2.11 An employee's right to union representation, where issues related to irregular attendance are being addressed with him/her by management, will be respected and appropriately reflected in the attendance management procedure operated in conjunction with this Policy."

"*Attendance Support and Management Process*

Introduction

1.1 In conjunction with the company's attendance policy, the purpose of the Attendance Support and Management Process is to support employee well being while achieving high levels of regular employee attendance on an ongoing basis… "

"*1.3 Absence data will be monitored on an ongoing basis to identify instances of irregular employee attendance.*

Irregular employee attendance refers to instances where an employee incurs a period, or periods of sick absence above threshold levels (see 3.1), which are related, or not, to an underlying medical issue. It includes instances where an employee is absent from work on sick absence on a continuous ongoing basis due to such an issue. Reference to absence associated with an underlying medical issue in this document refers to instances where there is a significant recognised medical condition that is directly related to the employee's absence."

"*3. Absence Thresholds*

3.1 Should an employee incur a level of unscheduled absence which breaches the following thresholds his/her attendance will be formally reviewed with him/her by management through the Attendance Support & Management Process:

Absence Thresholds:

(i) 3 or more incidents of unscheduled absence in any 6-month period and/or

(ii) 8 or more days unscheduled absence in any six-month period."

"*4.1 Where an employee is identified as having breached the absence thresholds set out at section 3, for whatever reason, a process of review, involving periodic face to face meetings between the employee and management, will commence.*

4.2 The focus of Review meetings held under the Attendance Support & Management Process will be on:

(i) reviewing the employees past pattern and level of attendance, outline expected standards of attendance and review progress in returning to regular attendance;

(ii) identifying if there is any underlying medical issue(s) impacting upon the employee's ability to give regular attendance, and if there is, whether there are any welfare or workplace matters contributing to the medical issues;

(iii) establishing any appropriate support the Company can give to the employee in addressing issues identified as impacting upon his/her ability to attend regularly and ensuring such support is provided;

(iv) committing to review the employee's attendance again after a defined period of time;

(v) outlining and discussing the possible outcomes if irregular attendance persists.

The designated "*status*" of each case under the ASMP

316. Section 6 of the said policy, under the heading "*Escalation Process*", provides that each case which is being managed through the ASMP will be assigned a designated status by the manager who is managing the attendance issue at the time of the initial review meeting, the designated status will be "*status 5*" which reflects a concern about the employee's attendance record and the need to achieve a satisfactory level of attendance in the future. It is made clear that the primary aim of the ASMP is to assist employees returning to regular attendance. The ASMP envisages that most employees will respond positively to the review of their attendance through the process and will achieve regular attendance, but it is made clear that "*as termination of employment is, ultimately, a possible outcome where irregular attendance persists, employees will be given appropriate notice of this fact in the course of the review meetings conducted*" under the ASMP. With regard to escalation, clause 6.2.2 states the following:

"*6.2.2 The status can be escalated from status 5 through status 4, 3 and 2 to status 1 over the course of Review meetings held under the Attendance Support & Management Process. Status 1 applies where a final review period is being allowed to the employee*

to achieve a satisfactory level of attendance, otherwise proceedings to terminate the employment on the appropriate grounds will be commenced. The Status that can be assigned to a case being managed through the Attendance Support & Management Process (i.e. 5, 4, 3, 2 or 1) and its significance in relation to the circumstances of irregular attendance, is set out in detail at Appendix B."

317. Clause 6.2.4 makes it clear that all management decisions to escalate the status of a case under the ASMP may be appealed by way of a written submission setting out the basis upon which the decision is being appealed and such submission must be made within five working days. Under the ASMP the status designation of any particular case may also be adjusted to a lower level by a HR manager, should that be reasonable in light of change to circumstances.

318. Section 6.3 under the heading "*Grounds for Termination of Employment*" provides as follows:

"*6.3.1 Where the Attendance Support & Management Process has been exhausted and irregular employee attendance persists, termination of the employment will generally arise as a consideration on one of the following grounds:*

(i) persistent irregular attendance;

(ii) Permanent incapacitation (where the employee has been assessed by the Chief Medical Officer as being permanently incapacitated…

6.3.2 … Where management are considering termination of employment on the grounds of persistent irregular attendance they will address the matter with the employee through the company's disciplinary procedures, where the normal decision making authorities and appeals mechanism will apply. Termination of employment in such instances will only arise where the employee has incurred 6 or more instances and/or 16 or more days' absence in the 12 months prior to the disciplinary process being initiated."

Section 7 of the ASMP makes it clear that an employee is entitled to be accompanied by a recognised Trade Union representative or work colleague at any review meeting held under the ASMP.

Employee cooperation under the ASMP

319. The policy is also explicit about the obligation on employees to cooperate and this is made clear in section 8.2 which provides as follows:

> "*8.2 While the management of an employee's attendance through this Process is ongoing, the employee will be expected to co-operate and engage in any action necessary to resolve medical, welfare or workplace issues, if any, impacting on his/her ability to give regular attendance. If an employee fails to co-operate (e.g. does not attend meetings with management under this Process, refuses consent for referral to Occupational Health & Support, fails to provide medical reports, etc., or fails to do so in a timely manner) management will advance matters through the Attendance Support & Management Process based upon all the information available at the time.*"

Appendix A to the ASMP provides detail under the heading "*Occupational Health & Support*" including the following:

> "*1. Background*
>
> *In conjunction with the Company's Attendance Policy the purpose of the Attendance Support & Management Process is to support employee well-being and in doing so achieve high levels of regular, punctual, attendance at work on an ongoing basis.*
>
> *The Company's Occupational Health & Support Service is a key resource in achieving these aims. The following professionals comprise the Company's Occupational Health & Support Service, the Chief Medical Officer (CMO), Occupational Health Advisors (OHA) and Occupational Support Specialists (OSS) – (formerly Welfare Officers).*
>
> *2. General Responsibilities of the Occupational Health & Support Staff*

Where employees are referred by management to Occupational Health & Support for an assessment of their fitness (capacity) for work it is important that employees understand the role and general responsibilities of Occupational Health Support staff. In this regard it is important to appreciate that the role and responsibilities of the employee's own caring doctor (GP) are quite different to those of the Company's Chief Medical Officer (CMO) and those of his team. The role and general responsibilities of Occupational Health & Support are to:

(i) provide direct support to employees regarding the management of medical issues or related welfare matters impacting upon their ability to give regular attendance at work;

(ii) provide professional opinion to management regarding employee fitness (capacity to work);

(iii) advise management regarding the appropriateness of possible alternative work arrangements as a response to changes in an employee's fitness (capacity) to work;

(iv) advise management as to whether an employee is permanently incapacitated on medical grounds – Chief Medical Officer only."

Appendix B of the ASMP provides information with regard to status 5, status 4, status 3, status 2 and status 1 cases, both where the absence is and is not associated with an underlying medical issue. Appendix C sets out the procedures applicable where management intend terminating an employee's employment as a result of an assessment by the CMO that the employee is permanently incapacitated.

The employee's role and responsibilities under the ASMP

320. Appendix D summarises the main roles and responsibilities, under the ASMP, of employees, line management, local HR management, central HR management and occupational health and support. The following are specified with regard to an employee's role and responsibilities under the ASMP:

"*1. Employees*

(i) co-operate fully with management in relation to the review of their attendance through the Attendance Support & Management process;

(ii) attend meetings/appointments with line management, representatives of the Occupational Health & Support Service and/or wit the Chief Medical Officer, as required;

(iii) provide additional information relating to medical/welfare circumstances to Occupational Health & Support in a timely manner where required as part of any assessment of their fitness for work;

(iv) co-operate with any investigation or review under Company procedures where workplace matters may be impacting upon the employee's ability to give regular attendance;

(iv) maintain ongoing contact with management and update management on any developments during a period of ongoing absence;

(vi) do everything necessary to enhance full recovery and return to full fitness for work, if absent."

08 December 2016 – ASMP Initial Review Meeting Record

321. A meeting took place on 08 December 2016 and I am satisfied that it took place in accordance with the terms of the ASMP. The written record of the 08 December 2016 meeting was one of the documents included in discovery. It confirms that there were three people present, namely Kevin Cullen, H.R. Manager, Sean O'Donnell, CWU, being the Plaintiff's Union representative and the Plaintiff. I am satisfied that this written record is contemporaneous and accurately sets out what took place at the meeting. The meeting took place at 12.30 in the GPO. The Plaintiff is recorded as having had 45 days of absence during the review period, namely between 19 May 2016 and 18 November 2016. Being an initial

review meeting, the status level at the time of the review meeting was a 5, which is the entry level status. Section 4 of the 2-page record states the following: -

> ***"Section 4: Record of:***
>
> ***Matters addressed at the review meeting.***
>
> ***Issues, if any, identified by the employee as impacting upon his/her ability to give regular attendance.***
>
> ***Actions, if any, agreed.***
>
> *John described some concerns in work. Some were historical and were discussed with John previously. He is advised that it may be best to access appropriate support/counselling to help him come to terms with those concerns. The company will arrange to communicate Dignity at Work best practice to the office in January so that all employees in the office will understand their rights and responsibilities within the process and a process will also be communicated to help people have concerns addressed early and with as little impact on the people involved. John is certified until 07 January 2017 and he is encouraged to achieve a return to work as soon as possible. John is aware that it is his responsibility to attend regularly."*

322. In his evidence, the Plaintiff did not suggest that, during the 08 December 2016 meeting, he raised any *current* complaint. During the course of his evidence he did not suggest that, as of 08 December 2016, he was experiencing what he regarded as bullying or harassment. Nor did he give any evidence that, as of 08 December 2016, or in the months leading up to that point, he had experienced any treatment or heard any comments to which he objected. There is no evidence from which this Court could conclude that the Plaintiff was been treated unfairly at work as of 08 December 2016 or, for that matter, at any point in the years prior to that including, in particular, the period from August 2011 onwards, after the Plaintiff returned to work by agreement with An Post, following meetings which took place in July and in August

2011. In the manner explained earlier in this judgment, at those meetings in 2011, the Plaintiff did not have any current work place issues or complaints and I am satisfied that, as a matter of fact, at the July 2011 meeting, the then most recent issue raised by the Plaintiff went back to 2007. In the manner explained earlier in this judgment, I am satisfied that, as of August 2011, the factual position is that all past issues had been dealt with to the Plaintiff's satisfaction and he returned to work on that basis and on the basis that there were, in fact, no current issues. It will be recalled that the Plaintiff did so after having had the benefit of meetings with the Defendant, in particular the meeting of 19 July 2011 as well as legal advice from a solicitor, the second of two meetings having taken place in May 2011. A fundamental question arises therefore, namely, did any new issue arise after August 2011 which had not already been dealt with to the satisfaction of the Plaintiff? In the manner explained in this judgment, the answer is in the negative. In short, no new issue whatsoever arose after August 2011 which had not already been dealt with to the Plaintiff's satisfaction by the time he returned to work at that stage. To see why this is so, however, requires a careful analysis of all the evidence, in the manner I propose to continue to do, as follows.

323. The 2-page record of the 08 December 2016 meeting makes no reference whatsoever to any current treatment of the Plaintiff to which he objected, nor does it make any reference to the Plaintiff's call for an investigation into current complaints. I am satisfied that this is because, as a matter of fact, there were no current work place issues as of 08 December 2016. At the bottom of the second page of the 2-page form the Plaintiff has placed his signature and the date under the statement:-

> *"I accept this accept as being an accurate reflection of the matters which were raised with me, and any matters raised by me, at the Review Meeting held to discuss my attendance record."*

I accept Mr. Cullen's evidence that, having listened carefully to the Plaintiff during the meeting which took place on 08 December 2016 and having found out that the issues he wished to raise were materially the same as those raised by the Plaintiff during the previous 23 June 2016 meeting, and having established that there was no current workplace issue or complaint and nothing which the Plaintiff wished to raise about work at that point in time, Mr. Cullen's reaction was to ask the Plaintiff what he needed. I am satisfied that, as a matter of fact, the Plaintiff made a number of suggestions, the most significant being that staff be reminded of the terms of the Dignity at Work policy with a view to any concerns being addressed early.

324. There is no evidence that the meeting on 08 December 2016 was rushed and the Plaintiff makes no such claim. Having regard to Mr. Cullen's evidence, the meeting took at least 45 minutes and perhaps an hour. There is no evidence that there was any pressure brought to bear on the Plaintiff or that he found the meeting unduly stressful or was unable to articulate any concerns, the assistance of his Trade Union representative also being available to the Plaintiff. On the contrary, I am satisfied that the meeting was professional and convivial in tone and that a conversation took place between Mr. Cullen, the Union Welfare Officer and the Plaintiff concerning issues including bullying in general, the line between banter and bullying, where some people can be affected by behaviour whereas others won't, the importance of early identification and reporting of issues and the importance of fairness to the people complained of as well as to the complainant. I am also satisfied that, as a matter of fact, Mr. Cullen discussed with the Plaintiff and his Trade Union representative the rights and responsibilities of all parties under the Dignity At Work policy and the importance of raising complaints early in order to provide an opportunity to encourage people to change behaviour if it is affected others, particularly in circumstances where people may be unaware that their behaviour is affecting someone else until it is pointed out to them and they are given the opportunity to be part of the solution by altering behaviour. I accept Mr. Cullen's evidence that the foregoing

was all discussed on 08 December 2016 in the context which Mr Cullen described in his evidence as follows: -

> *"In the context of trying to go back in time to try and address issues where there was no real possibility of being able to establish or to corroborate something that happened so long ago. I did place it in the context that it is unfair on the people that are complained about because in our Dignity at Work policy if there aren't concrete examples it is deemed that the person complained of has no case to answer because they don't have an opportunity to repudiate the claims because they are not specific, it is impossible to corroborate them if the remarks are made so long ago. In those circumstances it is just impossible to come to a positive conclusion."* (D8, P91, L12).

325. I accept Mr. Cullen's evidence that, during the 08 December 2016 meeting, the Plaintiff raised the conversation which the Plaintiff had had in early October 2016 with Mr. Kearns. I also accept Mr Cullen's evidence that, during the 08 December 2016 meeting, the Plaintiff was more focussed on Mr. Kearns and on the conversation which the Plaintiff had had in October and suggested that, because the conversation with Mr. Kearns occurred within the previous six months, it was something An Post should investigate. I also accept the following evidence by Mr. Cullen: -

> *"It was clear from Mr. Ward's account that the conversation with Mr. Kearns was a conversation about what happened in 2005 and 2006. The approach I was taken on this meeting was to let Mr. Ward go through his story from start to finish. This was his experience, I needed to understand where he was coming from…It was his story and I let him tell it. I did not interject or give an opinion on it. I may have pointed out the emphasis was different. I would have pointed out that the conversation related to 2005/2006 but as regards the substantive issues he was discussing I let him tell his story because I thought that was important."* (D8, P92, L28)

It is plain that a meeting in December is less than 6 months after a conversation in October which is referred to at the December meeting. It is abundantly clear, however, that the subject matter of the October conversation between the Plaintiff and Mr Kearns, even taking everything the Plaintiff says at face value, related exclusively to alleged breaches of confidentiality said to have occurred in 2005 and 2006 over a decade earlier and in respect of which the Plaintiff never called for any investigation at the time or, for that matter, in the following decade. This was the factual situation which Mr Cullen was presented with on 08 December at a meeting during which the Plaintiff also made clear, just as he had done in June 2016, that he was not claiming to be bullied at work or making any claim of unfair treatment which was then current. On the contrary, the Plaintiff was making clear, just as he had done in the presence of his Union representative on 23 June 2016, that he had no current issues. Based on a very careful consideration of the evidence I am absolutely satisfied that the Plaintiff was not being subjected to bullying or harassment or any unfair treatment whatsoever at work as of 08 December 2016 and the Plaintiff made no such claim during the meeting. Indeed, it should be pointed out that at no stage during his evidence did the Plaintiff give a single example of what he claimed to be bullying or harassment or intimidation or any unfair treatment of him in work, which was alleged to have taken place in 2016 or at any time since he returned to work from "sick leave" in August 2011 or, for that matter, during the previous decade. The Plaintiff simply gave no evidence of anything said by him to constitute bullying in 2016, or at any point in the prior 10 and more years. The Plaintiff gave no instance of behaviour to which he objected, gave no date, no location, no supposed witness and no information whatsoever. Nor did the Plaintiff give any such details to Mr Cullen or to his Union representative at either the 23 June or 08 December 2016 meetings.

326. Against a factual background of no bullying, no harassment, and no unfair treatment of the Plaintiff, as of December 2016, it is also clear from Mr Cullen's evidence that he personally

was of the view, having heard the Plaintiff's account of the October conversation between the Plaintiff and Mr Kearns, that the information in respect of which Mr Kearns supposedly acknowledged a breach of confidentiality, could not have been confidential information. Mr Cullen explained in his evidence that if opened post is found in a van it will give rise to an investigation and the identity of who found the post will be readily apparent, not least because there is an open and transparent record of every employee who has been in a particular van which and this is not confidential information. That view which, it is clear from his evidence, Mr Cullen formed on 08 December 2016 and still holds, is a view which accords entirely with the evidence before this court. In short, the identity of the Plaintiff as the person who got into one of the Defendant's post vans and, innocently found opened post which he very properly alerted his employer to, that van having been driven by a previous driver, is not confidential information. Mr Cullen gave uncontroverted evidence that a log book is maintained, which each driver signs in sequence, and any driver who gets into a van can see exactly who has driven it previously. The log book is kept in each van. Thus, if opened post was found in a van, there is an open and transparent record of who drove the van most recently and who drove it subsequently.

327. In cross-examination it was put to Mr Cullen that, if, on 08 December 2016, he had taken the Plaintiff's account of the October conversation between the Plaintiff and Mr Kearns at face value, this is something which would have come as a "bombshell" to the Plaintiff and was something the Defendant was required to investigate. Having regard to the evidence, I do not accept such a proposition and I say this for several reasons, as follows. Mr Cullen explained in his evidence that the information which, according to the Plaintiff, Mr Kearns supposedly disclosed, could not have been confidential. I have already referred above to Mr Cullen's evidence regarding the opened post giving rise to the 2005 investigation and to a transparent and open record of each driver who uses each van. As regards the bag of post which had been

found in 2006 by a member of the public and which the Plaintiff brought to Blackrock, as he was requested to do, Mr Cullen's uncontroverted evidence was that the Blackrock office was a busy place and anybody could have witnessed that. More fundamentally, the supposed breaches of confidentiality related exclusively to events of 2005 and 2006 and, according to the Plaintiff, gave rise to remarks, but taking the Plaintiff's account at its height, all remarks were made in the period 1996 – 2007. It is clear from a consideration of all the evidence that Mr Cullen was careful to try and find out if there were any current, as opposed to historic, issues which might be of concern to the Plaintiff. I am satisfied that if there were any issues which could properly be considered to be current as of 2016, Mr Cullen would certainly have ensured that they were investigated. The reality is that there were none. As regards the use of the term "bombshell", the evidence in this case proves that the Plaintiff, even on his own case, did not learn anything *new* in October 2016. From the Plaintiff's perspective, he has according to his sworn testimony, always "*known*" that Mr Kearns breached confidentiality as the Plaintiff sees it. There was, on the facts of this case no revelation whatsoever and no "bombshell" in October 2016.

328. In light of the facts, I am entirely satisfied that there was no onus on the Defendant to commence an investigation, in late 2016, into issues (ie things allegedly said) which, on the plaintiff's account, went back at least a decade and, according to the Plaintiff, as much as 20 years. I also accept Mr Cullen's uncontroverted evidence that, because the 08 December 2016 meeting covered a lot of the same ground which had been discussed at the 23 June 2016 meeting, with regard to the Plaintiff's concerns going back to 1996 – 2007, the note prepared by Mr Cullen did not repeat the same material and the words which appear in the 08 December 2016 meeting "Record" about issues "*discussed with John previously*" comprises a reference to the 23 June 2016 meeting. I also accept his evidence that, for the foregoing reason, the 08 December 2016 meeting record needed and needs to be read in conjunction with the record of the 23 June 2016 meeting. Furthermore, I accept his uncontroverted evidence that, when the

Plaintiff was sent a copy of the 08 December 2016 meeting record, it was accompanied by a copy of the written record of the 23 June 2016 meeting.

329. I am satisfied also that, as a matter of fact, counselling and its benefits were discussed during the meeting on 08 December 2016. In an effort to assist the Plaintiff to move beyond the issues he had raised, Mr. Cullen suggested to the Plaintiff that he was probably the only person in the office thinking about these issues at all because they happened so long ago and that if the issues were sought to be raised now, it would bring a focus onto the Plaintiff and I accept that Mr. Cullen, out of concern for the Plaintiff, did not think this would be helpful. In particular, I accept the following evidence by Mr. Cullen: -

> *"I did see that danger, if you raise these issues in any formal way with the people that he was referring to, the remarks happened nine years to whatever it was, fifteen years before. There was no possibility of corroborating what was said in what context it was said. Even if I did that I was acting out of procedures, I would be shut down straight away, but then the focus would be on Mr. Ward and I didn't want that."* (D8, P95, L18)

The agreed outcome of the 08 December 2016 meeting

330. I am satisfied that there was an agreed outcome to the 08 December 2016 meeting. Among other things, Mr. Cullen, the Plaintiff and the Plaintiff's Union representative, Mr. O'Donnell, agreed that there would be no investigation and could be no investigation into any of the issues raised by the Plaintiff during the meeting. I am satisfied that all three were in agreement as to the reason why there would be no investigation. This was because, even though the conversation between the Plaintiff and Mr. Kearns took place in early October 2016, the substance of the conversation concerned events going back to 2005 and 2006. This is indisputably a matter of fact, in circumstances where the Plaintiff's evidence makes it clear that his conversations with Mr. Kearns - said by him to have taken place on 04, 05 and 06 October 2006 - related to the Plaintiff's long-held conviction that Mr. Kearns breached

confidentiality in 2005 by allegedly telling KF that it was the Plaintiff who found opened post in the van, as well as the Plaintiff's conviction that Mr. Kearns breached confidentiality again in 2006 regarding the bag of opened post which the Plaintiff brought back to Blackrock. I accept Mr Cullen's evidence that if one were to commence an investigation into what the Plaintiff regarded as an admission by Mr Kearns, in October 2016, that the latter had breached confidentiality in 2005 and or 2006, it would be an investigation into events of 2005 and 2006. That is undoubtedly so.

331. I am also satisfied that the 08 December 2016 meeting concluded on the basis that there was no *current* work place issue which would prevent the Plaintiff from returning to work as of 07 January 2017. Having carefully considered all the evidence, am satisfied that, as of 08 December 2016, the Plaintiff was not being bullied or harassed and was not the subject of rumour or allegation. The evidence demonstrates that there had been no material *change* whatsoever, in the Plaintiff's day to day experience in his workplace, ever since he returned to work, by agreement with the Defendant, in August 2011.

332. The Plaintiff also accepted in his evidence that there was an agreed outcome to the 08 December 2016 meeting and that this agreed outcome included the following: (1) the company suggested that the Plaintiff avail of counselling to deal with any issue causing him angst (2) Mr. Cullen would ensure that the company would communicate Dignity at Work best practice to the office in January 2017 so that (3) all employees would be reminded of both their rights and their responsibilities within the Dignity at Work policy in order to help people raise, and have their concerns addressed, early and with as little impact on the people involved as possible and (4) it was expected that the Plaintiff would return to work as of 07 January 2017 and would continue to attend for work regularly thereafter.

The accuracy of the 08 December 2016 ASMP Initial Review Meeting Record

333. In his evidence, the Plaintiff confirmed that the meeting record which he signed on 08 December 2016 was accurate (being the 2-page document entitled "Attendance Support & Management Process Initial Review Meeting Record"). I also accept Mr Cullen's very clear and uncontroverted evidence in relation to when, where and how this record was created i.e. at the end of the meeting and in the presence of the Plaintiff and the Plaintiff's Union representative, Mr Cullen spent some minutes writing a note of what had occurred at the meeting which Mr Cullen then read out to the Plaintiff in the presence of the Plaintiff's Union representative. The Plaintiff satisfied himself that it was an accurate record and then signed it in the presence of his Union representative. Mr Cullen's signature is at the end of the documents under the words *"I accept this record as being an accurate reflection of the matters which were raised with me, and any matters raised by me, at the Review Meeting held to discuss my attendance record."* In this contemporaneous record, the Plaintiff confirms that there were no *current* issues in his workplace as of 08 December 2016. There was no reference in the record to any claim that the Plaintiff was being bullied or that there was any bullying in the office and this is for the simple reason that he was not being bullied and did not claim during the meeting that he was being bullied or that there was bullying in the office which was happening in 2016. If the plaintiff had claimed, during the 08 December 2016 meeting that he was being bullied or that bullying in the Plaintiff's workplace was taking place, it is inconceivable that the Plaintiff would have confirmed as accurate and would have signed his name to a record which made no mention of bullying. It is also simply not credible that if bullying in the office was said by the Plaintiff to be taking place, that the Plaintiff's Trade Union representative would permit the Plaintiff to sign a record which ignored an allegation of current bullying in the workplace. I make these observations for a very particular reason and, unfortunately, it will be necessary to repeat them later in this judgment in circumstances where I am forced to conclude that the Plaintiff has put before the Court a handwritten documents purporting to be an accurate record

of the same meeting which is plainly not so. This is a documents bearing a date of "9/12/16" and I will discuss it presently.

The Plaintiff's claim that Mr Cullen told him "I only half read your letter"

334. At this juncture it is appropriate to say that in his evidence, the Plaintiff claimed that, during the 08 December 2016 meeting, Mr Cullen said that "*I only half read your letter"*. This is something which Mr. Cullen denies. The Plaintiff's evidence was to suggest that Mr Cullen had not given the Plaintiff's letter sufficient attention, and Mr Cullen took serious issue with the comment attributed to him by the Plaintiff.

Unreliable evidence by the Plaintiff

335. Weighing the evidence on this issue, I prefer that given by Mr Cullen and I take this view for several reasons, as follows. (1) Mr Cullen a HR Manager of many years' experience and there is no objective evidence of Mr Cullen being anything other than professional, including in his approach to the Plaintiff; (2) Mr Cullen had had no prior dealings with the Plaintiff before the 23 June 2016 meeting and there is no evidence whatsoever of any animus towards the Plaintiff; (3) It would clearly have been a very unprofessional and disrespectful to tell an employee, who was at a meeting due to issues of concern to them, that the HR Manager only "half read" the letter raising the issues, yet the Plaintiff did not follow up the meeting by making any complaint in relation to Mr Cullen's conduct of it or the words which the Plaintiff has attributed to Mr Cullen; (4) I am also entirely satisfied having regard to his testimony that, as a matter of fact, Mr Cullen did not half read any letter of the Plaintiff's but read their entire contents attentively; (5) Furthermore, I take the view that if a senior HR Manager said to an employee, in front of their Trade Union representative, that they had only half read the employee's letter, it would indicate a lax attitude to the employee and their concerns which, it seems to me, would inevitably result in the Union representative ensuring that the issue was raised, be that in the record of the meeting itself or in subsequent correspondence; (6) As a

matter of fact, the Plaintiff's Trade Union representative did not raise any such issue during or after the meeting and no such issue was referred to in the contemporaneous minutes, which the Plaintiff signed, confirming their accuracy.

The *status quo* as of the conclusion of the 08 December 2016 meeting

336. It is a matter of fact that the foregoing outcome to the 08 December 2016 meeting was agreed two months *after* the Plaintiff's conversations with Mr. Kearns which conversations took place in early October 2016. It is also a fact that this agreed outcome was reached a fortnight *after* the Plaintiff's conversation with his wife of 23 November and the Plaintiff's attendance with his doctor the following day, when he was placed on anti-depressant medication and advised to get counselling, which he availed of and which assisted him. Early in this judgment I referred to the very significant dispute between Mr. Kearns and the Plaintiff as to what was said during their early October 2016 conversations. However, regardless of what was or was not said during those conversations, it is indisputable that, two months later, matters had moved on very considerably. The status quo was that the meeting which the Plaintiff wanted, and which he called for in his 25 October 2016 letter, had taken place and, in the presence of his Union representative, there was an agreed outcome as to what would happen, going forward. As of the conclusion of the 08 December 2016 meeting, everything had been dealt with satisfactorily. Among other things, the Plaintiff was aware, and accepted, that there would be no investigation because there were no current issues and the Plaintiff envisaged returning to work as of 07 January 2016, whereas An Post had taken on board the suggestions which the Plaintiff made in relation to reminding employees of the provisions of the Dignity at Work policy.

August 2011 to December 2016

337. It also has to be said that, in substance, the issues which the Plaintiff raised in 2016 were exactly the same as the issues which he had raised in 2010. It is also a matter of fact that

the agreed outcome, as of 08 December 2016, was exactly the same as the agreed outcome reached in July and August 2011 in relation to the self-same issues. As of 08 December 2016, just as had been the case as of August 2011, all past issues had been dealt with to the Defendant's satisfaction, that there were no current issues and that the Plaintiff would be returning to his job. Nor had the Plaintiff been unfairly treated at any point between. The evidence does not allow this court to find that at any point, between August 2011 and 08 December 2016, the Plaintiff was ever bullied, harassed, undermined, unsupported or treated unfairly in any way at work. Thus, the factual position, as of August 2011, remained entirely unchanged up to and including 08 December 2016, in that there is simply no evidence to support the pleaded claim made by the Plaintiff in these proceedings, because the Plaintiff was not wronged at any stage between those dates. A key question is to ask whether the Plaintiff suffered bullying or harassment or unfair treatment of any kind *after* 08 December 2016. The answer which emerges from the evidence is a very clear "no". To see why this is so, it is necessary to continue to examine the entirety of the evidence which I propose to do, as follows.

The Plaintiff's health as of 08 December 2016

338. Although Mr. Cullen was not aware of confidential medical advice or treatment which the Plaintiff had received by the time the 08 December 2016 meeting took place, the evidence discloses that the Plaintiff was receiving appropriate treatment and was benefiting from same at that time. There is no evidence that, during the 08 December 2016 meeting, which was a meeting conducted under the ASMP policy, the Plaintiff informed his Trade Union representative or Mr. Cullen of the conversation with his wife which occurred a fortnight earlier or of the specifics of any medical treatment he was receiving. I am satisfied that the 08 December 2016 meeting itself did not cause any undue stress for the Plaintiff and support for this finding can be seen from the Plaintiff's contemporaneous medical records. For instance, there was no record of the Plaintiff attending his GP in the days immediately after the 08

December 2016 meeting to report any symptoms of increased stress or to suggest that he was in any way treated unfairly at the meeting or that he found the meeting itself stressful. Having carefully considered the evidence, there is nothing which would allow this Court to conclude that the Plaintiff was treated unfairly or unreasonably with regards to the setting up of, conduct of or outcome of the 08 December 2016 meeting. Nor was there evidence which would allow the court to conclude that, upon the conclusion of the meeting the Defendant had any basis for commencing any investigation under the Dignity at Work policy or otherwise. There was nothing to investigate. The Plaintiff had made that clear to the Defendant's representative in the presence of the Plaintiff's Union representative. All parties were also clear on next steps. In short, all matters had been dealt with fully and to everyone's satisfaction.

The Defendant's record of the 08 December 2016 meeting and inconsistencies regarding same

339. Part of the Discovery in this case was the Plaintiff's hand-written document beginning *"GPO 8–12–16 1 hr, 15 mins*". The bottom of the third page of the documents is signed by the Plaintiff who has written the date *"9/12/16*". It clearly purports to be a record of the 08 December 2016 meeting which took place the previous day. A typed version of the foregoing document also appears in the Discovery. For reasons which will be apparent, I have no way of knowing when the Plaintiff hand wrote the document which is dated 09 December 2016. It is clear, however, that the typed version was made some 2 ½ years later, in that it comprises a "File Note" from the Plaintiff's solicitor, dated 3 July 2019, which begins with the words: "*Typed memo of a meeting taken by John Ward in the GPO on 8 Dec 2016".* There are significant inconsistencies between the contemporaneous meeting record, as signed by the Plaintiff on 08 December 2016, at the end of the meeting in the presence of the Plaintiff's union representative, and the document bearing the date 09 December 2016, which the Plaintiff wrote and signed and which is tendered in support of the Plaintiff's claim. The Plaintiff's note, and

the typed version of same, were put to Mr Cullen in cross-examination. Mr Cullen did not accept that the contents of the Plaintiff's note were accurate. In light of the facts which have emerged from an analysis of the evidence before the Court, I agree with Mr. Cullen. The following is the position.

(1) The contemporaneous record dated 08 December 2016, which the plaintiff signed in the presence of his Union representative, makes reference to no current issues in the Plaintiff's workplace, as of 08 December 2016;

(2) On the evidence, there were, in fact. no current issues in the Plaintiff's workplace and the Plaintiff was not suffering bullying in December 2016;

(3) The Plaintiff did not claim, in his evidence, and did not claim during the 08 December 2016 meeting, that he was then suffering bullying or that bullying was current, or ongoing, in his workplace;

(4) There was no reference in the record signed by the Plaintiff at the end of the meeting on 08 December 2016 to any claim that the Plaintiff was being bullied, or that there was any bullying in the office (and this is for the simple reason that he was not being bullied and did not claim during the meeting that he was being bullied or that there was bullying in the office which was happening in 2016);

(5) If the plaintiff had claimed, during the 08 December 2016 meeting that he was being bullied or that bullying in the Plaintiff's workplace was taking place, it is inconceivable that the Plaintiff would have confirmed, as accurate, and would have signed his name to a record which made no mention whatsoever of bullying.

(6) It is also simply not credible that if bullying in the office was said by the Plaintiff to be taking place as of December 2016, that the Plaintiff's Trade Union representative would permit the Plaintiff to sign a record which ignored an allegation of current bullying in the workplace;

(7) Despite all the foregoing, the Plaintiff's handwritten note, bearing the date 9/12/16, states inter alia "…*bullying would not have happened to the staff if my problems were sorted then. KC agreed with me, he asked what do I want done, to sort bullying* (sic) *the office."*

(8) The foregoing attributes to Mr Cullen a statement in which he acknowledges that bullying is occurring in the office. There is simply no evidence that this was so. Furthermore, it is a statement which runs entirely contrary to (a) Mr Cullen's sworn evidence, (b) to the contents of the contemporaneous 08 December 2016 record which the Plaintiff signed confirming its accuracy. It is also (c) inconsistent with the Plaintiff's sworn testimony wherein he confirmed, under oath, that the 08 December 2016 record was accurate and (d) it is inconsistent with the Plaintiff's evidence, in that he did not give this Court a single example of anything said by him to amount to bullying in his workplace, in 2016, or, for that matter, in the previous decade or more;

(9) In the Plaintiff's note, it is claimed that, in a discussion between the Plaintiff and Mr Sean O'Donnell, Union representative which allegedly took place immediately after the meeting, the Plaintiff said, inter alia, that *"I was not happy that KC said during the meeting that this was a different story that I had told him in the last meeting in June*" and that "*Sean O'Donnell agreed with me that it was the same story."* The foregoing suggests that, during the meeting, Mr Cullen challenged the Plaintiff over what the Plaintiff was saying and suggested that the Plaintiff had changed his story since the June 2016 meeting, and that Mr Cullen did so in the presence of a Union representative, and that this occurred without the Union representative saying anything about this *during* the meeting and, instead, reserving his support for the Plaintiff until a private discussion *after* the meeting ended. There is no evidence from which this Court could reach such

a finding and it is simply not credible having regard to the balance of the evidence in the case.

(10) Unlike Mr Cullen's contemporaneous record which he prepared at the end of the meeting, and in the presence of the Plaintiff and the Plaintiff's Union representative, the document bearing the date 9/12/16 was certainly *not* prepared during the meeting.

(11) It is also a fact that, despite supposedly having been prepared on 09 December 2016, the Plaintiff did not send it to Mr Cullen at the time or at any time prior to the present proceedings being instituted.

(12) Mr Cullen was very clear in his evidence that the first time he saw this document was late in the proceedings.

(13) The overwhelming evidence in this case is that 07 January 2017 was a significant date, being the date when, on the Plaintiff's sworn evidence, he had agreed to return to work. The Plaintiff's documents makes no mention of the 07 January or to the Plaintiff's return to the office.

(14) It was a fact that, as of the 08 December 2016, the Plaintiff had been certified as sick only up to 07 January 2017 at which point he was expected back to work. The final sentence on the first page of the contemporaneous record of the 08 December 2016 meeting states *"John is certified until 7th January 2017 and he is encouraged to achieve a return to work as soon as possible. John is aware that it his responsibility to attend regularly".* The evidence before the Court also demonstrates that a key outcome of the 08 December 2016 meeting was that the Plaintiff agreed that he would be returning to work on 07 January 2017, but no mention of this fact that date or appears in the Plaintiff's note which bears the date 9/12/16.

Unreliable record prepared by the Plaintiff

340. How then can the contents of the document, bearing the date 09/12/16, be explained? In my view the only explanation is that it is neither a contemporaneous nor an accurate record of the meeting which took place on 08 December 2016 and is simply not reliable. I am forced to the view that the Plaintiff has put before the Court, and has attempted to rely upon, a handwritten document which purports to be an accurate record of the 08 December 2016 meeting, but which is neither, as the Plaintiff is aware.

The Plaintiff's planned return to work on 07 January 2017

341. During the course of his evidence, the Plaintiff was clear about the fact that, at the conclusion of the 08 December 2016 meeting, he told Mr. Cullen that he would be returning to work on 07 January 2017. This accords with Mr. Cullen's evidence and is consistent with the contemporaneous written record of the 08 December 2016 meeting. I am satisfied that it further confirms the fact that the 08 December 2016 meeting reached an agreed conclusion, that there were no outstanding issues which had not been satisfactorily addressed, and that a key element of the agreed outcome of the said meeting involved the Plaintiff committing to return to work as of 07 January 2017. I am also satisfied that, as a matter of fact, this is when the then current period of medically certified leave would have expired. The Plaintiff's confirmation that he would be returning to work as of 07 January 2017 was given in the full knowledge that there would be no investigation of any workplace issue, because there was no current workplace issue. It underlines the fact that, as of the conclusion of the 08 December 2016 meeting, the Defendant was entitled to conclude that all issues had been sorted to the Plaintiff's satisfaction, and there was no impediment to the Plaintiff returning to work. That being so, it is important to look at what events occurred *after* 08 December 2016 (when the Plaintiff committed to returning to work on 07 January 2017).

The period from 08 December to 21/22 December 2016

342. There was no evidence from which the court could conclude that there was any material *change* in the Plaintiff's work situation or conditions, between 08 December 2016 (when the Plaintiff confirmed that he would be returning to work) and 21/22 December 2016 (when the Plaintiff attended St. Vincent's hospital). There was no evidence of bullying or harassment of the Plaintiff, or of any rumour or accusation or allegation concerning the Plaintiff, in that period, being, of course, a period during which the Plaintiff continued to remain out of work, as certified by his GP.

St. Vincent's University Hospital December 2016

343. The Plaintiff gave evidence that, on about the 17th or 18th December, he was making breakfast and talking to his family, but they could not understand what he was saying. The Plaintiff's family were laughing at him, and his wife suggested that he go to the doctor. The Plaintiff's evidence is that he did nothing about it until the following Monday. The Plaintiff also gave evidence that he was vomiting on Saturday and Sunday prior to going to hospital, and that he "*broke down in the house*" (D2, P147, L10) and was crying. He also described symptoms of dizziness. The Plaintiff went to his GP on Monday and his evidence is that the doctor sent him straight to St. Vincent's Hospital. The Plaintiff's evidence is that the doctors in St. Vincent's told him: *"You should have come straight in, you are after having a stress stroke"* (D2, P146, L12).

The "Discharge Summary" from St. Vincent's hospital

344. The Plaintiff's evidence is that he was taken into St. Vincent's, that he was on a corridor for 36 hours, following which he was moved up to a room, shortly after which he was told that he could go home. No doctor from St. Vincent's was called to give evidence. But, as will be discussed below, the "Discharge Summary" from St. Vincent's was before the Court. The author of this document did not appear as a witness but formal proof was not required, by either party to the proceedings, insofar as the Plaintiff's medical records were concerned and the

Discharge Summary was plainly part of the Plaintiff's medical records, as included in the Plaintiff's discovery. No objection was taken during the trial to the fact that it was not formally proved in evidence by the author. Similar comments apply in relation to numerous documents opened to the Court without formal proof by the relevant author.

345. The Plaintiff's records show that he attended his GP on 21 December 2016. The "Discharge Summary" document prepared by St. Vincent's Hospital records the plaintiff's "Date of admission" as being "22/12/2016", and his "Date of Discharge" as also being "22/12/2016". In a letter dated 25 November 2020 which, by agreement between the parties, this court admitted *de bene esse,* Mr. Sandeep Quadros (Grade V Officer, Release of Information, St Vincent's Hospital) stated, in response to a letter dated 20.11.20 from the Plaintiff's solicitor, that "*As requested, I can confirm the following: 1. Your client attended the Emergency Department on 21.12.2016 and was admitted at 18:43 hours; 2. He was then admitted to the Acute Medicine Assessment Unit on 22.12.2016 at 14:45 hours and subsequently discharge* (sic) *home on the same day at 17:00. Please note that the discharge summary is made only for patient* (sic) *who are admitted to a ward in the Hospital and not for patients who are admitted in the Emergency department and discharged from there. We trust that this information is of assistance to you.*" For the purposes of this judgment, I am going to take it that the information provided by Mr. Quadros is correct, i.e. that the Plaintiff was, in fact, admitted to St. Vincent's Hospital at 18:43, on 21st December 2016, and was discharged just over 22 hours later, at 17:00 on 22nd December 2016.

Letter from Dr. Pierce dated 21 December 2016

346. The relevant entry from the Carlton Clinic's records, dated 21 December 2016, which confirms the Plaintiff's attendance at his GP's clinic on that date, is mirrored in a letter of referral, also dated 21 December 2016, which was written by Dr. Melanie Pierce, a colleague of Dr. McManus. Dr. Pierce did not give evidence, but no issue was taken in relation to formal

proof of her letter, being part of the Plaintiff's medical records and included in the discovery. The said letter was addressed to the Emergency Department of St. Vincent's Hospital, and states the following:

"Dr.

Please can you see this man? CVA

CO speech problems started at weekend says speaking rubbish with some word finding difficulties/ Dysarthria. Has headache left side in eye and through to back of occiput. Gradually built up. 2 episodes of vomiting on Sunday. No visual symptoms. No weakness in arms. Legs generally tired, though no Memory issues.

NB. Took Citrol for 12 days ONY.

PMHX

High cholesterol

SHX lives with wife not working due to work related stress

Non smoker Alcohol once week 3 units

FHX mother died Ml aged 66 yrs

OE anxious facial flushing alert and orientated CNS NAD fundi not examined. difficulty saying baby hippopotamus.

BP 161/99 p 60 Reg HS 1+2+0 No Bruits

IMP? possible TIA/neurological event

Date 31/01/2017

Drug 28 x Citrol 20mg tablets once daily

Type Repeat

Script Private

Yours sincerely

Melanie Pierce".

It is clear from the foregoing letter that, as well as recording, inter alia, the Plaintiff's *"High cholesterol"* and blood pressure, Dr. Pierce suspected a *"possible TIA"* (meaning Transient Ischemic Attack).

St Vincent's Hospital Discharge Summary dated 22 December 2016

347. The Discharge Summary from St. Vincent's Hospital contains, *inter alia*, the following:

"Findings: No acute inter-cranial haemorrhage, masses or territorial infraction. The cortical sulci, ventricles, and basal cisterns are normal. The paranasal sinuses and mastoid air cells are well-aerated. The skull vault is intact with no expansive lytic or blastic lesions.

Conclusion: No acute inter-cranial findings.

Findings: The right, carotid artery is patent. There is plaque at the origin of the right internal carotid artery, with less than 50% stenosis. The right vertebral artery is patent and demonstrates anti-grade flow.

The left common carotid artery is patent. No plaque or stenosis of the left internal carotid artery. The left vertical artery is patent and demonstrates anti-grade flow.

Conclusion: Less than 50% stenosis of the right internal carotid artery. Normal left internal carotid artery. …

Progress: Had no further symptoms during admission. Reported immense amounts of emotional stress associated with leaving his job and a possible law suit. Associated insomnia and lack of appetite, feels it is affecting his mental health. Commenced in low dose aspirin and advised to discuss and mood with GP and the possible benefits of anti-depressant medications. Referred to dietician for high cholesterol, as was unwilling to commence statin due to previous episodes of myalgia …

Medical/Nutritional Supplements on Discharge:

Aspirin 75 mg ODPO …

Other recommendations on discharge:

Reduce fat intake in diet, and return to GP to discuss options for stress relief. …"

Findings in relation to the Plaintiff's admission to St. Vincent's Hospital

348. The foregoing record confirms, inter alia, that "*high cholesterol"* was diagnosed in St. Vincent's Hospital, just as Dr. Piercy's 21 December 2016 letter had reported, inter alia "*High cholesterol*". The discharge summary prepared by staff in St. Vincent's hospital does not state that the Plaintiff sustained a "*stroke".* In her evidence, Dr Leader confirmed, inter alia, that *"…a transient ischemic attack is not a stroke*." (D8, P53, L4). I accept that uncontroverted evidence. I also accept the evidence given by Professor Mohan that a *"stroke*" is the appropriate description where damage is caused to the brain which is visible on a scan, where brain cells have been killed, and where the event lasts longer than 24 hours. It is a matter of fact that the tests carried out on the Plaintiff in St. Vincent's on 22 December 2016 showed, thankfully, no damage to the Plaintiff's brain. The tests confirmed that the Plaintiff suffered no permanent damage whether to movement, speech or otherwise.

349. It confirms, inter alia, that the CT scan carried out on the Plaintiff did not show any damage to his brain. The foregoing Discharge Summary also confirms the fact that the only treatment prescribed by St. Vincent's, when the Plaintiff was discharged on 22 December 2016, was "*Aspirin"* which, I understand from the medical evidence, is commonly prescribed for blood thinning.

The Plaintiff suffered a T.I.A.

347. Carefully considering and weighing up all the medical evidence, I am satisfied that, on the balance of probabilities, the Plaintiff experienced what, in her referral letter dated 21 December 2016, the Plaintiff's GP suspected and specifically referred to in her referral letter, namely, a "*TIA*", which is a transient ischemic attack. "Transient" refers to the fact that it is passing or temporary. "Ischemic" refers to cutting off the blood supply for a short-term.

348. The Court had the benefit of extensive written reports from the Plaintiff's GP, Dr. McManus as well as from Professor Damien Mohan, and Dr. Anne Leader. All three medical professionals had access to the Plaintiff's medical records, including the Discharge Summary dated 22 December 2016 from St. Vincent's Hospital. There is no significant dispute between the expert evidence and, having carefully considered the contents of all medical reports provided to the Court, as well as the oral testimony by Dr. McManus, Dr. Leader, and Professor Mohan, I am satisfied that, as a matter of fact, there were a number of underlying factors regarding the Plaintiff and his health, which contributed to his attendance at St. Vincent's Hospital in December 2016. Those factors include the fact that the Plaintiff is a male, the fact that he is middle-aged, the fact that he has high cholesterol and has had high cholesterol for a significant number of years as well as the Plaintiff's blood pressure. Several of those factors, including the Plaintiff's gender, age and high cholesterol, could never have had anything to do with the Plaintiff's job or to any alleged treatment in his job, yet were factors which contributed to his attendance at St. Vincent's. The evidence discloses that the Plaintiff was put on a statin in the past but was intolerant of same. The Plaintiff's blood pressure was high when he sought medical advice in December 2016 but his medical records show that, over the years, the Plaintiff's blood pressure has fluctuated. Whereas Dr. McManus felt that the proximate cause for the Plaintiff's admission to hospital was high blood pressure due to stress, I am satisfied that the consensus among the doctors is that there are also organic findings and factors which predispose Mr. Ward to a TIA, such as his diet, his age, his high cholesterol, the narrowing of his artery and his blood pressure which fluctuated over the years. Even if stress was the sole cause of his admission (and the evidence most certainly does not allow for such a finding) there is no basis which would allow this court to hold that any stress suffered by the Plaintiff at the time was caused due to any unfair treatment by the Defendant of the Plaintiff. ***"Stroke", "mini stroke", "stress stroke", "nervous breakdown", "brain damage"***

349. It is a matter of fact that the Discharge Summary makes no reference to a *"stroke*", or to a "*mini stroke*", or to a "*stress stroke*", or to a "*nervous breakdown*", or to any "*brain damage*", all being descriptions used by the Plaintiff regarding his admission to St. Vincent's. Despite how sincerely the Plaintiff may believe those to be accurate descriptions of what occurred, they are not. The hospital record does, however, refer to "*plaque*" on the Plaintiff's "*right internal carotid artery, with less than 50% stenosis*", the foregoing being a finding of narrowing of the passage for blood flow. This is an organic or physical finding which, like high cholesterol, is relevant in terms of explaining the TIA which the Plaintiff suffered. In light of the evidence, I am satisfied that the accurate description of what the Plaintiff sustained was a TIA from which, thankfully, the Plaintiff made a full recovery, leaving no long-term damage.

Inconsistencies in the plaintiff's evidence

350. Despite what he said in evidence, the Plaintiff did not suffer "*brain damage*", or a "*stroke*", or a "*mini stroke*", or a "*stress stroke*". I am satisfied that, as a matter of fact, the Plaintiff did not suffer a "*stroke*" of any kind, but a TIA. Furthermore, given the fact that the Plaintiff did not suffer a "*stroke*", I do not find to be credible his claim that doctors in St. Vincent's Hospital told the plaintiff *"you are after having a stress stroke"* and, weighing up all the evidence, I am satisfied that this element of the Plaintiff's testimony is not reliable. Nor was the Plaintiff accurate when he referred to being in a hospital corridor for 36 hours, following which he was moved to a room. As the letter from Mr Quadros, dated 25 November 2020, confirms, the Plaintiff was in hospital for a total of less than 22 hours, from initial admission to discharge. It must be acknowledged, however, that any period spent in hospital, particularly involving an overnight stay, could well seem much longer and the Plaintiff could not fairly be criticised for believing that he was in St Vincent's for over 36 hours, rather than being there for less than 22. Describing what occurred to him as "*brain damage*" or a "*stroke*" or a "*stress stroke*" is, however, a different matter. The evidence wholly undermines the

foregoing claims by the Plaintiff, which can fairly be considered to be examples of the Plaintiff either misremembering or misunderstanding things to a material extent or deliberately exaggerating what occurred.

Blaming the Defendant for the Plaintiff's TIA

351. It is clear from his evidence that the Plaintiff blames the Defendant for his admission to St. Vincent's. The medical evidence does not support any such finding. Taking all the medical evidence into consideration, the Plaintiff sustained a TIA and it is impossible to attribute the Plaintiff's admission to St. Vincent's with a TIA to one single cause. This is because, on the medical evidence, the Plaintiff suffered from numerous risk factors, in particular, the Plaintiff's high cholesterol, the plaque found in the Plaintiff's his right internal carotid artery, and the Plaintiff's elevated blood pressure, the Plaintiff's diet, age and gender also being relevant to his risk profile, all the foregoing being relevant to the TIA he experienced. I accept that the Plaintiff was, at the time, suffering from stress and the Plaintiff undoubtedly reported to those who saw him in St Vincent's hospital that he was suffering from stress, in that the Discharge Summary states, inter alia: *"Reported immense amounts of emotional stress associated with leaving his job and a possible law suit."* At the top of the first page of the Discharge Summary *"Stress induced dysphasia*" is referred to (dysphasia being a condition affecting the ability to produce spoken language) and it will be recalled that Dr. Piercy's letter made reference to the Plaintiff's "*difficulty saying baby hippopotamus".* Even if the Plaintiff was suffering from very considerable amounts of stress on or about 21 / 22 December 2016, just as the Plaintiff reported in St Vincent's, the evidence most certainly does not support a finding that any such stress was caused by any wrongful act or omission on the part of the Defendant.

352. Furthermore, this Court could not reasonably conclude that the exclusive or even the primary cause of the admission to St Vincent's hospital on 21 December 2016 was "stress".

This is because of the organic, or physical, factors found when the Plaintiff was examined in St Vincent's, coupled with the evidence from the various Doctors who appeared at the trial. "Stress" is not referred to in the relevant section in the discharge note prepared by St. Vincent's which records the *"Abnormal Test Results"*, all of which relate to "*Cholesterol*". Nor is "stress" referenced in the *"Findings"* section of the hospital discharge note, which begins "*The right common carotid artery is patent. There is plaque at the origin of the right internal carotid artery, with less than 50% stenosis*", the "*Conclusion*" section of which starts with the words "*Less than 50% stenosis of the right internal carotid artery."* Raised cholesterol and a narrowing of an artery through which blood flows are both physical symptoms. Both were found when the Plaintiff was examined. These physical symptoms relate to other risk factors such as diet, gender and age and none of these can be said to be caused by any treatment of the Plaintiff at work, yet all were, on the evidence, of significance to the TIA which the Plaintiff sustained and which, thankfully, he made a prompt and full recovery from.

Inaccurate information in the Plaintiff's PIAB Application Form

347. In light of the medical evidence which was put before this court and the findings of fact to which I have referred, it is clear that certain statements which were made in the Plaintiff's Application Form, as received by the Personal Injuries Assessment Board ("PIAB") on 03 July 2017, and on foot of which the PIAB issued a Notice under section 13 of the PIAB Act 2003 on 04 July 2017, were not accurate. In the said Application Form, it is claimed that the Plaintiff has been subject to ongoing work-related stress and harassment "…*which resulted in a stress related stroke".* The evidence does not support a finding that the Plaintiff was subject to harassment or any unfair treatment work and I am satisfied that, as a matter of fact, the Plaintiff did not sustain a "*stroke*", whether stress-related or otherwise. The PIAB Application Form also states, inter alia, *"St. Vincent's Hospital admitted John for two days and he was diagnosed as having suffered an acute stress related stroke".* In fact, St. Vincent's Hospital did not admit

the Plaintiff for two days. He was in St. Vincent's for just shy of 22 hours in total. More importantly, the Plaintiff did not suffer an "*acute stress related stroke*". The evidence simply does not support such a finding, regardless of how genuinely the Plaintiff may believe this to be so. I am entitled to conclude that the information included in the Plaintiff's PIAB application form reflected precisely the Plaintiff's instructions to his solicitors. The information in the said PIAB application cannot be said to be entirely accurate. Again, it entitles me to conclude that either there has been an element of exaggeration by the Plaintiff or that the Plaintiff misremembered or misunderstood what had occurred in a material respect.

What the Plaintiff described as the "*wrong minutes*"

348. In mid-December 2016, the written records of the two most recent meetings which had taken place between Mr. Cullen, the Plaintiff, and the Plaintiff's Trade Union representative, Mr. Sean O'Donnell, were sent to the Plaintiff. Both of those meetings and the written record in respect of each, have been discussed earlier in this judgment, being the meetings held on 23 June and 08 December 2016, respectively. In the manner explained earlier in this judgment, both meetings covered similar issues and the written record of the December 2016 meeting was to be read in conjunction with the written record of the June meeting. I am satisfied that, as a matter of fact, the Plaintiff was provided with a copy of both documents. This was entirely reasonable.

349. It is a matter of fact that both documents are dated. The top of each document clearly sets out what they refer to. Notwithstanding the foregoing, the thrust of the Plaintiff's evidence was that he received a copy of one of the documents, expecting it to be the other and this caused him shock and distress. It was the foregoing that the Plaintiff characterised as being sent the "*wrong minutes*". That is not a fair characterisation, given the following facts (1) the Plaintiff attended both meetings and, therefore, knew well what had taken place at each; (2) the Plaintiff also had the benefit of Trade Union representation at both meetings; (3) a written record was

produced in relation to each of the two meetings and the top of each record is dated and is very clear about when the meeting took place; (4) the top of each document is different, in that the 23 June 2016 document begins with the words; "*Record of a meeting held with John Ward Postal Operative in room 2 – 153 GPO on Thursday 23rd June 2016*", whereas the other document begins with the words: "*Attendance Support & Management Process – Initial Review Meeting Record"* and, a few lines from the top, states: "*Review Meeting Date: 8/12/16; Time: 12:30; Location: 2.153 GPO"*; (5) it is clear from the evidence that both documents are accurate, comprehensive and contemporaneous; (6) the Plaintiff signed the second document, being the record of the 08 December 2016 ASMP meeting and he did so at the conclusion of that meeting, whereas his Union representative signed the first document; (6) by reading even the first few lines of either document, it would be readily apparent which meeting it referred to. Notwithstanding the foregoing, the Plaintiff gave evidence that he received the "*wrong minutes*" and he also gave evidence that this resulted in his admission to hospital in St Vincent's.

Receipt of the *"wrong minutes"* and the Plaintiff's admission to St. Vincent's

350. The Plaintiff suggested in his evidence that the receipt of the "*wrong minutes*" caused him to suffer what he described in a variety of ways including the description "*stress stroke*" and the Plaintiff also described the effect, on him, of receiving the June 2016 minutes in the following terms: *"I went off the wall, had a breakdown, and I got massive counselling over the Christmas and since then".* When it was put to him that there was no medical record of the Plaintiff having suffered "*a breakdown*", the Plaintiff's evidence was to say: *"I had a nervous breakdown in my house".* Elsewhere, in his evidence the Plaintiff described himself as having suffered a "*mini stroke*", and he repeatedly described the same event as "*a nervous breakdown*". It is clear from the Plaintiff's evidence that he used a variety of terms, interchangeably, including "*nervous breakdown*", "*mental breakdown*", "*stroke*", "*mini*

stroke", "*stress stroke*". The Plaintiff used those various terms to describe the effect on his health of receiving what he regarded as the "*wrong*" minutes. His testimony was very clear that being sent the "*wrong*" minutes was the cause of his admission to St. Vincent's Hospital in December 2016, stating that *"Well it put me in hospital"* (D2, P142, L17) and also saying *"That broke me"* (D2, P142, L19). That evidence was given repeatedly and the Plaintiff also referred to "*…the wrong minutes that put me in hospital, that I ended up in hospital because of that. That was my breaking point, I couldn't take any more*" (D3, P21, L26).

Findings in relation to the Plaintiff's assertion that he was sent the "*wrong minutes"*

353. I am entirely satisfied that the Plaintiff was not sent the "*wrong minutes*" in mid-December 2016, despite the Plaintiff's claim to this effect. The documents he was sent are perfectly clear as to what they relate to. Furthermore, the evidence before this court does not support any causative link between the receipt, by the Plaintiff, of what described as the "*wrong minutes*" (D2, P142, L4) and his admission to hospital with a TIA. It is also a matter of fact that Mr. Cullen and the Defendant's manager did not know, and could not have known, of the Plaintiff's high cholesterol, the plaque in his right internal carotid artery, or his elevated blood pressure when sending him, in mid-December 2016, the minutes of the two most-recent meetings which had taken place between Mr. Cullen, the Plaintiff, and the Plaintiff's Trade Union representative. Furthermore, even if the Defendant had had that information, I am satisfied that it was not foreseeable that sending the Plaintiff the written record, or "*minutes",* of both meetings, which I accept was done for the sake of completeness would, or indeed could, cause the Plaintiff to be hospitalised. In short, the facts which emerge from an examination of the evidence do not support the Plaintiff's assertion that he was ever sent the "*wrong minutes*", nor does the evidence support the Plaintiff's claim that same caused an adverse effect on his health. That aspect of the Plaintiff's evidence is, for these reasons, wholly unreliable.

The Plaintiff's decision on 22 December 2016 that he would never go back to work in An Post

354. It is clear from his evidence that, when the Plaintiff refers to having had a *"stress stroke*", he is referring to his admission to St. Vincent's hospital on 21 December 2016 and his discharge on 22 December 2016, following assessment. The Plaintiff gave very clear evidence that he made a significant decision at that point, stating that *"—when I had a stress stroke, I, myself and Karen, we agreed I'm finished with the post office. I had enough."* (D4, P74, L27). Thus, the Plaintiff's evidence is that, on 22 December 2016, (being the date of the Plaintiff's admission to the Acute Medicine Assessment Unit in St Vincent's hospital, with what he described as a "*stress stroke*"), the Plaintiff reached a decision that he would never to return to work in An Post. A number of things can be said about the foregoing, as follows.

(1) There is no evidence whatsoever that this was a decision made by the Plaintiff and his wife on the basis of any medical advice given to either of them;

(2) The evidence demonstrates that this was a very firm decision the Plaintiff came to;

(3) It is also clear from the evidence that the Plaintiff did not contact his employer to discuss any matter whatsoever before coming to this firm decision;

(4) It will be recalled that the *status quo*, when the Plaintiff took this firm decision never to go back to work in the Defendant, was that a meeting had taken place on 08 December 2016 (which the Plaintiff had called for after his October 2016 conversations with Mr. Kearns), at which meeting the Plaintiff was accompanied by his Union Representative and the outcome of the meeting included that there were neither any outstanding *past* or *current* workplace issues and the Plaintiff had agreed to return to work knowing that there would be no investigation of issues relating to remarks allegedly made between 20 and 10 years earlier (an outcome exactly the same as had been reached at the meeting on 19 July 2011, regarding the self-same issues, which saw the Plaintiff come back

from "sick leave" in August 2011 and resume his job, performing it happily thereafter for some 5 years);

(5) When the Plaintiff took the decision, on 22 December 2016, never to return to work in An Post, there had been no change to the Plaintiff's working conditions since 08 December 2016 (when he had agreed to come back to work);

(6) There is no evidence whatsoever of any unfair treatment of the Plaintiff which took place between the end of the 08 December 2016 meeting (or, for that matter, since August 2011) and the Plaintiff's unilateral decision of 22 December that he was "*finished with the post office*";

(7) The evidence demonstrates that, had the Plaintiff provided the Defendant with information which suggested that there were any *current* issues in the workplace, an investigation could and would have been instigated;

(8) The Plaintiff at no stage provided the Defendant with any further information whatsoever, after the conclusion of the 08 December 2016 meeting and that remains the position to this day;

(9) Prior to taking a firm decision on 22 December that he would never return to work in the Defendant, the Plaintiff never informed the Defendant that, unless the Defendant agreed to investigate a particular issue or issues, he would refuse to return to work in An Post.

(10) For the sake of clarity, the evidence does not allow this Court to hold that the foregoing would have been a reasonable stance for the Plaintiff to have adopted prior to taking his 22 December 2016 decision, but the evidence shows incontrovertibly that the Plaintiff took a unilateral decision without even giving the Defendant the opportunity to respond or to comment in any way on that decision;

(11) There is no evidence that the Plaintiff or his wife discussed, with the Plaintiff's GP, his decision not to return to work in An Post, be that prior to making that decision on 22 December 2016 or at any time thereafter;

(12) Despite the fact that the Plaintiff made the said decision, on 22 December 2016, the Plaintiff did not, at any point afterwards, inform An Post that he had decided that he was never going to return to work in the Defendant, until he gave this evidence during the trial, specifically on 28 February 2020;

(13) As will be dealt with later in this judgment, the Plaintiff was referred by his GP to a psychiatrist in Cluain Mhuire on or about 23 March 2017, namely, some 3 months after his admission to St. Vincent's, and it is clear from the Plaintiff's evidence that, between 22 December 2016 and 23 March 2017, he remained fixed in his view that he would never return to work in the Defendant;

(14) It is also clear from the Plaintiff's evidence that, despite such advice as he received as a result of counselling in Cluain Mhuire – including advice not to make any rushed decisions – the Plaintiff remained fixed in his decision, which he took on 22 December 2016, that he would never go back to An Post, stating in evidence that "*I was told not to make any decisions in a rush. Don't panic into anything. I could never go back to the post office."* (D4, P74, L29) and also stating "…*I said in Cluain Mhuire that I couldn't go back*" (D4, P75, L1).

(15) It is also clear from his testimony that the Plaintiff has never wavered from the decision taken on 22 December 2016 at any point since then and remains, to this day, fixed in his view that he will not go back to work in the Defendant.

(16) Leaving aside any difference of opinion between the Plaintiff and the Defendant as to the Plaintiff's capacity or ability to work, or to work in An Post, there is no doubt about the fact that, from 22 December 2016 to date, the Plaintiff has been firmly of the view,

from which he has never wavered, that he will not go back to An Post, stating during his direct examination on day 3 that "…*under no circumstances would I be able to walk back in through them doors again. I'm finished, done*." (D3, P59, L7) and giving the following evidence during the course of his cross-examination on Day 4 "*I could never go through them doors again of the post office. I could never return to work."* (D4, P76, L3).

(17) The plaintiff also confirmed to the Defendant's Counsel that this has been the plaintiff's position for *"quite a long time"* (D4, P76, L8) and there is no evidence that the plaintiff's position has changed, at all, since he reached a firm decision, on 22 December 2016, never to return to work in the Defendant, (i.e. that he was "*finished"* with the Defendant).

(18) The contents of the St Vincent's Hospital Discharge Summary, dated 22 December 2016, are entirely consistent with the Plaintiff's evidence that he took a firm decision never to return to work in An Post, in that the said documents refers inter alia to the Plaintiff *"…leaving his job and a possible law suit"*.

(19) The foregoing reference could only appear in the Discharge Summary because that is what the Plaintiff said to the relevant St. Vincent's hospital staff member(s) who prepared the Discharge Summary at that point in time;

(20) Despite contemplating litigation against the Defendant as of 22 December 2016, the Plaintiff did not inform the Defendant of this at that point.

The Plaintiff's objective of securing ill health retirement from the Defendant

355. Given the fact that, since 22 December 2016, the Plaintiff has set his face against ever returning to work in An Post, the question arises as to what he has wanted, since then, by way of an alternative. This was clarified in the Plaintiff's evidence on Day 4 during the following exchange with Counsel for the Defendant:

Q. *"—from An Post what did you want to get? You wanted to get retirement on ill-health grounds. Isn't that right?"*

A. "*Yeah. Yeah. Yeah."*

Q. "*Thank you. That is all I wanted to ask you. Very simple. That was your objective?"*

A. "*Judge, I'll never be able to go back to work for An Post*." (D4, P72, L264)

I am satisfied, in light of the Plaintiff's evidence that, from 22 December 2016 onwards, his objective has been, and remains to this day, not to return to his job with the Defendant under any circumstances, but, instead, to secure retirement on ill-health grounds. A number of comments can be made in relation to the foregoing, as follows:

(1) I am satisfied that the Plaintiff's decision that he wanted to secure retirement from An Post on ill health grounds was not one taken on the basis of any medical advice, much less any view from any Doctor that the Plaintiff was, and/or would remain, too ill ever to return to work and resume his job in An Post. In particular, there was no such medical advice provided to the Plaintiff on 22 December 2016 when he made a firm decision never to return to work in An Post, a decision from which he has never wavered;

(2) I am also satisfied that the Plaintiff never told his wife, at any stage between 22 December 2016 (when he decided that he was *"finished"* with the Defendant) and 28 February 2020 (when the Plaintiff confirmed in evidence that his aim was to secure retirement on ill health grounds), that his objective was to secure ill health retirement from An Post, as opposed to a return to his job. During her direct evidence, Ms. Karen Ward stated the following in relation to ill health retirement:

A. *"We never discussed that. John wanted to get his name cleared and the lads that had been bullying him in the workplace, he wanted their names out*."

Q. "Had you ever heard John mention the phrase ill health retirement?"

A. "Never, never heard it."

Q. *"Do you recall approximately….when the first time you heard that phrase ill health retirement was?"*

A. *"In here".* (D5, P10, lines 23 – 33 and page 11, lines 1 – 4).

(3) There is no evidence that the Plaintiff ever told his GP, or any other doctor, that his objective was not to return to work in An Post but, instead, to secure ill health retirement from the Defendant;

(4) The plaintiff's twin aims of never returning to his job in An Post and, instead, obtaining ill-heath retirement are materially relevant in relation to how the Plaintiff participated (or not) in the ASMP, a key aim of which process, it is not in dispute, is to support employees to *return* to work in the Defendant, as soon as they are fit enough to do so;

(5) The injury or illness for which the Plaintiff remained on certified sick leave is not a physical one. Therefore, unlike, say, a broken limb, where objective x-ray and such evidence will be readily available and of fundamental importance when assessing an employee's fitness, including their fitness to attend meetings, Doctors examining the Plaintiff will inevitably rely, to a material extent, on what the Plaintiff tells them;

(6) Given the Plaintiff's sworn evidence as to his aims of never returning to work in An Post and of securing ill health retirement instead, I am satisfied that these twin objectives had a material bearing on both the Plaintiff's unwillingness to participate in ASMP meetings and his Doctors' perception of the Plaintiff's ability to attend such meetings, specifics of which will be examined later in this judgment in chronological order.

28 December 2016 – Plaintiff's letter to Mr. Cullen

356. The Plaintiff gave evidence was that on 22 or 23 December, with assistance from his daughter, he prepared a letter to Mr. Cullen which he dated 28 December 2016. His evidence was that he dated it 28 December because the Post Office would not be open until that date and

that he prepared the letter in advance because he could not "*switch off*" (D2, P149, L27) until the letter was prepared and he wanted it drafted in order that he and his family could enjoy Christmas. The text of the letter read as follows:

"Dear Mr. Cullen,

I am writing this letter in relation to the last letter I received from you on the 13/12/16 which I expected to include the minutes 08/12/16 but instead it included a photocopy of the minutes of the previous meeting 30/06/16 which had already been sent out to me.

I have since discussed this complication with Sean O'Donnell (DPDB) and I also spoke about the situation regarding my absenteeism and my recent attendance records; considering I wrote to Human Resources requesting a meeting on the 25/10/16 which I got no reply until you arranged an ASMP meeting on the 08/12/16.

During this meeting, I had the opportunity to discuss the conversation I had with Mr. Leo Kearns (DSM) on the 05/10/16 which he admitted to transferring confidential information to members of staff. I was also told at this meeting that I should 'get this historical stuff out of my head'. I agreed with this statement. However, it frustrates me that it has taken this many years for the situation to be clarified.

Finally, I would like to emphasise that it is not at my leisure to be absent from work, however, I feel that a number of circumstances caused by some members of staff and my DSM has forced me to be absent. I am extremely disappointed that I haven't received the necessary support and as a result of this, it has greatly affected my mental health which I have been hospitalised and has caused enormous stress to my family.

Yours sincerely,

John Ward

Post Person"

357. I accept Mr Cullen's evidence, which is not contested, that when he read this letter from the Plaintiff in or about the second week of January 2016, he was perplexed by its contents, because it was inconsistent with contents of the June 2016 and December 2016 meetings which Mr Cullen and the Plaintiff's Trade Union representative had had with the Plaintiff, during which it was made very clear that there were no current issues and that the Plaintiff's complaints related to remarks said to have been made in the period 1996 -2007. The Plaintiff's letter suggested to Mr Cullen that, whereas the reality was that there were no current workplace issues, the Plaintiff appeared to have told a different story to the Occupational Support professionals within the Defendant. Based on the evidence, I am bound to find this as a fact. The *status quo*, as of early 2017 was that the Plaintiff had told management (and his Union) that there were *no* current issues, but had told medical professionals (his treating GP and Occupational Support within the Defendant) that there *were* current issues. The former position was true, the latter was not, as the Plaintiff well knew.

358. At the trial, the Plaintiff's counsel took him through the contents of his 28 December 2016 letter and the Plaintiff gave evidence in relation to each paragraph of it. Notwithstanding the fact that the Plaintiff was adamant in his evidence that it was his receipt of what he described as the "*wrong minutes*" that caused him to be hospitalised in December 2016, that is not suggested in his letter which, according to his evidence, was drafted either the very same evening of his discharge from St. Vincent's, on 22 December 2016, or the next day. If, at the time, the Plaintiff felt that his hospitalisation was due to the receipt of what he described in his testimony as the "*wrong minutes*", one would expect the Plaintiff to mention this in a letter drafted on the very day of or the very day after his discharge from hospital. The fact that the Plaintiff made no such mention further underlines the findings of fact, detailed earlier in this judgment, that there was no causal link between the Plaintiff's receipt of any written records

(which he describes as the "wrong minutes") and his admission to hospital and the Plaintiff's sworn evidence on this issue is unreliable.

359. Regarding the second paragraph of the Plaintiff's letter dated 28 December 2016, I accept the Plaintiff's evidence that he telephoned his trade union representative, Mr. O'Donnell and that, during this conversation, the Plaintiff realised that he was looking at the record of the 23 June 2016 meeting (as signed by both Mr. Cullen and Mr. O'Donnell on or about 30 June 2016) instead of looking at the record of the 08 December 2016 meeting and I also accept the Plaintiff's evidence that he only noticed the date on the minutes during the course of his conversation with Mr. O'Donnell. It is a matter of fact, however, that nowhere in the Plaintiff's 28 December 2016 letter does he suggest that the minutes of either the June or the December 2016 meetings are inadequate in any way, or are incorrect, or that they do not record what was agreed at the relevant meetings to which they refer. In the third paragraph of his 28 December 2016 letter, the Plaintiff makes clear that he agreed with the statement that he should "*get this historical stuff out of my head*". When this particular statement was put to the Plaintiff by his counsel during the trial, the Plaintiff's evidence was to confirm that he agreed "*Because I need to get it out of my head . . . and I still need to get it out of my head, I've too much stuff in my head about the Post Office, and I can't get it out of my head 'till all this is gone*." (D2, P153, L19).

360. At the end of the third paragraph of this letter, the Plaintiff expresses what he refers to as frustration "*that it has taken this many years for the situation to be clarified*". However, the Plaintiff's letter does not suggest that matters have *not* been clarified and the Plaintiff does not suggest that matters have not been dealt with fully and finally. The evidence is consistent with the fact that all matters had, in fact, been clarified and all issues were dealt with fully and finally. The evidence also demonstrates that at no stage in December 2016, or in the months and years leading up to that, were there any instances of, or complaints by the Plaintiff of,

bullying or harassment or rumours or accusations, whatsoever. In short, and for the reasons detailed earlier in this judgement, there were simply no *current* issues in 2016. That was as true on 28 December 2016 (when the Plaintiff sent this letter) as it was on 08 December 2016 (when the Plaintiff and his Trade Union representative had their then most-recent meeting with Mr Cullen, and the Plaintiff had agreed to return to work, as of 07 January 2017). Indeed, the very same can be said with certainty in relation to the entire period from August 2011 onwards (when the Plaintiff agreed to return to work after raising the issues he wished to raise then, namely those 3 issues in his 22 November 2010 letter, each of which went back several years) ie there were no current issues of concern to the Plaintiff.

361. In the final paragraph of his letter, the Plaintiff says that he is not out of work by choice and feels that a lack of support has greatly affected his mental health, resulting in hospitalisation and stress to him and his family. This, I have no doubt, was and remains a very genuinely held conviction on the Plaintiff's part, even though I am satisfied that the evidence is not there to support the Plaintiff's view that his employer, by any act or omission, treated him unfairly or unreasonably, or that anything An Post did, or failed to do, caused injury to his health.

362. Several further observation needs to be made in relation to this 28 December 2016 letter, as follows. Despite the fact that this letter was drafted within twenty-four hours of the Plaintiff making a firm and irrevocable decision never to return to work in An Post, the Plaintiff makes no mention of that in his letter to Mr. Cullen. Nor does the Plaintiff say that he has any new or other information which is relevant and which was not discussed during the 08 December 2016 meeting, the agreed outcome of which was that the Plaintiff would be returning to his job on 07 January 2017. I am satisfied that this is because there was none. The Plaintiff neither furnished new information in relation to any *historic* issues, nor did he provide any information suggesting that there were any new or *current* issues. The Plaintiff did not call, in his letter, for any investigation in relation to any new information and, as a matter of fact, there

was no information whatsoever provided to the Defendant after the 08 December 2016 meeting, which it could investigate. Nor does the Plaintiff refer in this letter to the fact that he wants retirement on ill-health grounds, instead of his job, yet it is very clear from his sworn testimony that this was, and remains, his objective. It is also appropriate to observe that in this letter, the Plaintiff does not make any reference to the fact that he is contemplating litigation against An Post, yet it is also clear from the evidence that this is something he was contemplating at the time (as evidenced by the 22 December 2016 Discharge Summary prepared by St Vincent's, the bottom of page 2 of which document refers, inter alia, to the Plaintiff "*…leaving his job and a possible law suit"*).

28 December 2016 – medical records

363. After being discharged from St. Vincent's Hospital on 22/12/2016, the Plaintiff did not attend his G.P. until 28 December. The only record made by his G.P. in respect of that attendance is as follows: *28/12/2016 – Note for work.* The foregoing was consistent with the Plaintiff's G.P. providing him with a further medical certificate. It is also consistent with the Plaintiff's decision that he was never going to return to work in An Post, despite the fact that, as recently as 08 December 2016, the Plaintiff in the presence of his Trade Union representative had agreed to return to work, as of 07 January 2017, and confirmed this in the meeting with Mr Cullen of the Defendant. 07 January 2017 was, of course, the date when the Plaintiff's medical certificate was due to expire. Had the Plaintiff made good on the commitment given by him in the presence of his Union representative on 08 December 2016, that he would return to work on 07 January 2017, there would have been no question of the Plaintiff obtaining another medical certificate from his GP. In fact, the Plaintiff did obtain another certificate regarding his continued absence from work. The evidence does not, however, support the proposition that the Defendant did anything wrong, so as to cause the Plaintiff to seek and obtain such a certificate.

January 2017

364. It is a matter of fact that the Plaintiff did not return to work on 07 January 2017, despite agreeing to do so on 08 December 2016. Indeed the Plaintiff has never returned to work in the Defendant. The foregoing is consistent with the Plaintiff's evidence that, when in St.Vincent's on 22 December 2016, the Plaintiff decided that he would never return to work in An Post i.e. that he was *"finished"* with the Defendant. There is no evidence that, between 22 December 2016 (the day the Plaintiff was discharged from the St Vincent's Hospital Acute Medicine Assessment Unit) and 07 January 2017 (the date the Plaintiff had agreed to come back to work in the Defendant), there was any bullying or harassment, or unfair treatment of the Plaintiff, whatsoever. I am satisfied that as a matter of fact there was none. There were no entries made by the Plaintiff's G.P. in relation to any visit by the Plaintiff or any specific treatment provided to the Plaintiff in January 2017, yet the Plaintiff remained out of work on certified sick leave.

Enquires made by Mr Kevin Cullen after the Plaintiff did not return to work

365. It will be recalled that the agreed outcome of the 08 December 2016 meeting was that the Plaintiff confirmed that he would be returning to work as of 07 January 2017. I accept Mr Cullen's uncontroverted evidence that, after the 08 December 2016 meeting, and prior to the Plaintiff's expected return to work date, Mr Cullen spoke to Mr Joe Ruddock, a very experienced manager who took over after Mr Kearns retired. I accept Mr Cullen's uncontroverted evidence is that the reason for the conversation was so that Mr Cullen could be assured that there were no issues in the workplace to which the Plaintiff would be returning. It was clear from Mr Cullen's evidence that, notwithstanding the fact that all of the Plaintiff's concerns could fairly be described as historic and went back between 10 and 20 years, Mr Cullen was keen to ensure that the working environment in Blackrock was a positive one without any issues and it is equally clear that he was reassured on that point by Mr Ruddock

whom Mr Cullen trusted. I should also emphasise that there was no evidence put before the Court that the working environment in Blackrock was other than positive as of 2016 and no evidence that anything changed in the period beginning with the Plaintiff's latest absence on sick leave and the date of his expected return to work in January 2017.

366. It will be recalled that when, during the 08 December 2016 meeting, the Plaintiff gave Mr Cullen his account of the conversation or conversations which took place between the Plaintiff and Mr Kearns in October 2016, Mr Cullen's view was that the information (namely the Plaintiff's identity) which, according to the Plaintiff, Mr Kearns admitted to disclosing, was not confidential information. I accept Mr Cullen's uncontroverted evidence that, as of the end of the 08 December 2016 meeting, the agreed outcome of which was that the Plaintiff expressed himself happy to return to work in January 2017, there was no need for Mr Cullen to make any further enquires in relation to the foregoing view he had formed. I also accept his uncontroverted evidence that, after Mr Cullen learned that the Plaintiff had not returned to work and after receipt of the Plaintiff's 28 December 2016 letter, Mr Cullen felt it appropriate to check to make sure that his understanding of certain records was correct. Mr Cullen checked and found that, as he understood, there was in fact a log book for every van and the log book was signed by each driver, one after another, who used the van. The log book was kept in the glove box of each van. Accordingly, every driver could readily see who had used a van and in what order they had driven it. Thus, if opened post was found in a van, it was clear from the log book who had driven the van at the time and who had used the van after that. I accept Mr Cullen's uncontroverted evidence that he knew this to be the case prior to checking and that he made this check, after the Plaintiff failed to return to work in January 2017, in order to satisfy himself that the identity of every driver who used a van was freely available. Mr Cullen's uncontroverted evidence in relation to the checks he made was as follows:

"I just made sure that there was a logbook in all the vans and that the way that I interpreted it was correct, that there should be no reason why it would be a secret, or it would be confidential, that a logbook has to be signed by every driver who steps into the van. We need it for traffic violations, you know, road accidents. We need to know who is driving the vans at every time. So if Employee A has left mail in the van, the next employee to step into the van is the person that is going to bring the mail in, and by a process of elimination, it couldn't have been anybody else. Anybody who uses that log would see who was in the van after KF." (D10, P107, L27)

367. It is not in dispute that KF was dismissed from his job as a result of an investigation into opened post. There is no evidence to suggest that either the investigation or the dismissal were not widely known amongst the employees in the Defendants' Blackrock office. It is not in dispute that the Plaintiff used the van immediately after KF. Given the undisputed evidence concerning the log book in respect of each van which each driver must sign, it cannot be the case that the identity of the Plaintiff, as the driver who used the van after KF and, thus, the driver who found the post and very properly handed it in, was confidential information. The evidence demonstrates that the Plaintiff's identity was neither confidential information in fact or in nature and the Plaintiff could not have had a reasonable expectation that the identity of someone who found opened post would or could remain confidential in the context of the seriousness of the matter, the need for an investigation, and the contents of the log book. As to the supposed confidentiality of the identity of the Plaintiff as the person who transported a bag of post to Blackrock, I have referred elsewhere to Mr Cullen's uncontroverted evidence that the Blackrock depot was a busy one and it is a fact that any number of employees could have witnessed that.

368. Mr Cullen clearly made enquires touching on the question of confidentiality, which supported Mr Cullen's initial view that the information, alleged by the Plaintiff to have been

disclosed by Mr Kearns in 2005/2006, was not confidential. The evidence reveals that Mr. Cullen was ever dismissive of the Plaintiff's concerns at any point. On the contrary, the evidence reveals a very professional approach by Mr Cullen and an understanding that the factual situation was one matter, whereas an employee might have a genuinely-held but different perception of the facts. It was equally clear from the evidence that, from January 2017 onwards, i.e. once the Plaintiff failed to return to work, Mr Cullen and the Defendant's sole motivation was to try and obtain relevant information from the Plaintiff to better understand his perception of matters and why, from his perspective, he was unable to return to work, notwithstanding the fact that he was not suffering from ill treatment at work prior to his departure on sick leave, nor were there as a matter of fact any issues in the workplace in Blackrock which might adversely impact him or prevent his return to work.

Plaintiff's medical records - February 2017

369. There is a single record made by the Plaintiff's G.P. for February 2017 as follows: *16/02/2017 copy discharge notes posted to Carmel Kavanagh in pre-assess in Cappagh as per Jmm Cathy.*

01 March 2017 – letter Kevin Cullen to the Plaintiff

370. On 01 March 2017 Mr. Cullen wrote to the Plaintiff in the following terms:

> *"Dear John,*
>
> *Your continuing absence from work since 25th October 2016 refers.*
>
> *I am concerned that you did not return to work on 7th January 2017 as we had discussed at our last meeting. I have to advise you that the circumstances of your absence from work and the reasons you have provided for your absence in your letter of 28th December 2016 are a serious concern at this stage.*

I first met you on the 23rd June 2016 at your request to discuss concerns in work that you wished to have addressed. It transpired that your concerns related to historical events that occurred over 20 years earlier. You confirmed at that meeting that there were no issues currently affecting you in work and I advised you that you should contact me straight away if any problems did emerge. I also advised you that it may be worthwhile to consider the Occupational Support Specialist's advice as a way to come to terms with historical issues that happened in the past.

I then received a further report from the Occupational Support Specialist on 30th November 2016 relating to an assessment that was carried out on 12th October 2016. The report stated that you expressed concern about your own and others' safety in Blackrock DSU due to Dignity at Work issues. It stated that your doctor wrote to the Chief Medical Officer outlining your concerns.

I met you again on 8th December 2016 and you raised the historical issues once more and again it transpired that there were no issues taking place currently that were affecting you in work. In fact, it is clear from your correspondence that you are attributing your sick absence commencing 25th October 2016 entirely to remarks that you allege were made about you in work between 1996 and 2007. You were aware from our meetings that the Company cannot carry out inquiries into remarks some people may have made twenty years previously. Yet you appear to have taken the stand that you will remain absent from work until the Company does so.

Furthermore, you appear to have advised the Occupational Support Specialist that you are concerned for your safety in work when there is no apparent basis for making such a statement. Your statement in this regard is contrary to what you told me at the earlier meeting on 23rd June 2016 and the later meeting on 8th December 2016.

I have discussed the work environment in Blackrock DSU with Mr. Joe Ruddock who has taken over the management of the Delivery Services Unit recently. I am satisfied that there are no difficulties in the work environment that should prevent you from attending work and Mr. Ruddock has assured me that he will address any emerging problems immediately that they are brought to his attention. It is imperative that issues of concern are reported at the time they occur so that the Company can address the concerns effectively and achieve the best outcome for all the employees involved.

It has to be a serious concern that you are out of work in these circumstances and that there is no indication that you intend to return. I have informed the Occupation Health Services that there are no current work related issues that should prevent you from returning to work and I have requested that they assess your capacity to return to work on that basis and also on the basis that you have the option to resume work in another office if you wish.

I will arrange to meet you on Thursday 9th March 2017 to carry out the latest review in ASMP and I will discuss these matters with you at that meeting. An invitation to that meeting will be sent you separately.

You are urged in the meantime to reflect on the content of this letter and to make every effort to achieve a return to work as soon as possible.

Copies of the meeting records of 23rd June 2016 and 8th December 2016 are enclosed for your information.

Yours sincerely,

Kevin Cullen

H.R. Manager"

371. I am satisfied that the contents of Mr. Cullen's 01 March 2017 letter accurately reflected what had been discussed and agreed during the meetings held on 23 June and 08 December 2016 between Mr. Cullen, the Plaintiff and the Plaintiff's Trade Union representative. I am also satisfied that, by sending this letter, Mr. Cullen was not disciplining the Plaintiff or evidencing any desire on the part of the Defendant to terminate the Plaintiff's employment. On the contrary, the letter was a reasonable response by the Defendant, particularly having regard to three central facts. Firstly, as of 08 December 2016 the Plaintiff committed to returning to work on 07 January 2017, the backdrop being two meetings in June and December 2016 during which the Plaintiff confirmed that there were no current workplace issues and that all his concerns related to remarks said to have been made in between 1996 - 2007. Secondly, there was no question of any alleged bullying or any unfair treatment of the Plaintiff between 08 December 2016 and 01 March 2017 or, for that matter, in the previous decade even on the Plaintiff's own version of events. There was no evidence of any bullying or harassment or rumour whatsoever and no evidence of any change to his workplace terms or conditions which could have adversely affected the Plaintiff during the period between 08 December and 01 March. Thirdly, despite the agreed outcome to the 08 December 2016, and the fact that there were no current work-related issues, the Plaintiff's 28 December 2016 letter stated, inter alia that *"a number of circumstances caused by some members of staff and my DSM has forced me to be absent",* indicated that, insofar as the Plaintiff was concerned, his failure to come back to work and his ongoing absence *was* related to workplace issues. In uncontroverted evidence to the Court, Mr Cullen explained the position as follows, in the context of the meeting which Mr Cullen arranged for the Plaintiff to attend in March 2017: -

"…there was two different issues here; there was one where the day to day activities in work, was there anything happening in work that should cause John to be concerned going into work in Blackrock? What was happening in the office? There was nothing happening in the office

because John told me that…The second issue was how John was interpreting things that happened years before…And that was something that I could continue talking to him about in the March Meeting." (D10, P104, L24)

372. The ASMP is based around 3-monthly review meetings and it will be noted that the last meeting was held on 08 December 2016, and it was in this context that Mr Cullen's letter invited the Plaintiff to attend a review meeting three months after the last meeting, ie on 09 March 2017. Based on the evidence, once the Plaintiff failed to return to work and, instead, sent the aforementioned 28 December 2016 letter, there was no further contact between the Plaintiff and Mr Cullen, until the latter sent the 01 March 2017 letter. As will be seen later in this judgment, a letter inviting an employee to an ASMP review meeting is one which tends to be in quite a standard form and I will presently examine such a letter, dated 03 March 2017. The 01 March 2017 letter which Mr Cullen wrote to the Plaintiff was not a standard form letter, but one which took account of the specifics of the case and, having regard to the evidence, it was both accurate and reasonable and consistent with the contents of the ASMP policy.

<u>03 March 2017 – letter Kevin Cullen to Plaintiff re; ASMP review meeting</u>

373. On 03 March 2017 Mr. Cullen wrote to the Plaintiff in the following terms:

> *"Re: ASMP Review Meeting*
>
> *Dear John,*
>
> *I refer to the letter issued to you on 08/12/2016 relating to the review of your attendance record under the Company's Attendance Support & Management Process at that time.*
>
> *You were advised that a further review of your attendance would be undertaken in three months' time and that you would be contacted to set up a meeting for this purpose. Accordingly, you are now invited to attend a review meeting with me at 12.30pm on*

Thursday, the 9th March 2017 in Room 2/153 GPO O'Connell Street, Dublin 1. Entrance via Princes Street.

You are reminded that you may be accompanied to a meeting by a Trade Union representative or a work colleague. If you have difficulty in attending the meeting at the date/time advised above you should notify me as soon as possible. I will, if appropriate, reschedule the meeting to an alternative date/time.

You are encouraged to attend this meeting as it is an opportunity for you to advise me of any matter(s) that may have a bearing on the decision I make at that time as to how matters should be progressed.

Should you decided, however, not to attend the meeting I will advance matters based on the information available to me at that time. I will also write to you subsequently to advise you of any decision I make regarding how your case is to be progressed and the timing of any future review, if a further review of your case is necessary.

I look forward to seeing you. If, in the interim, you have any query relating to the above arrangements please contact Noel Kennedy at 7057850 and to confirm your attendance.

Yours sincerely,

Kevin Cullen

H.R. Manager

Regional Office Dublin"

I am satisfied that, as a matter of fact, the foregoing letter dated 03 March 2017 was sent in accordance with the provisions of the ASMP policy. There was nothing inappropriate about the Defendant sending such a letter to the Plaintiff, having regard to the fact that the Plaintiff had been on sick leave since 25 October 2016 and, despite agreeing on 08 December 2016 to

return to work on 07 January 2017, the Plaintiff remained absent from work. There is no evidence that, in advance of this letter, the Plaintiff or his doctor furnished any medical report or provided details as to why, from a medical perspective, the Plaintiff was not well enough to return to work. By sending this letter, Mr. Cullen was not disciplining the Plaintiff in any way. Nor did this letter evidence any intention on the Defendant's part to terminate the Plaintiff's employment. On the contrary, this letter was self-evidently an encouragement to the Plaintiff to meet with Mr. Cullen and provide all information that may be relevant to the Plaintiff's ongoing absence from work.

374. I also accept Mr Cullen's uncontroverted evidence that he was anxious to meet with the Plaintiff at the ASMP meeting scheduled for March because Mr Cullen was anxious for the Plaintiff to furnish as much further information as possible in order that Mr Cullen could try to understand the Plaintiff's concerns and what, if any, workplace issue was preventing the Plaintiff from returning to work. This was against a backdrop of the Plaintiff having made clear to Mr Cullen, in the presence of the Plaintiff's Union representative, in June 2016 and again in December 2016, that there were no current issues and that the Plaintiff's concerns related to 1996 – 2007, yet the Plaintiff had obviously told his own GP as well as Mr O'Sullivan of the Defendant's Occupational Health team that there were current issues. It is clear from the evidence that, as a matter of fact, the Plaintiff was not suffering from bullying in 2016, but it is equally clear that he told his GP and others that he was.

375. I also accept Mr Cullen's uncontroverted evidence as to the importance of ASMP meetings including the opportunity they provide for An Post to get an understanding of the employee's perspective. As Mr Cullen put it:

> *"…there can be a difference between what an employee things and what the actual circumstances are. That's why we meet, that's why we talk. Sometimes by talking*

through issues, we change perspective. Sometimes we get an understanding of how the employee feels about things…" (D10, P143, L18)

That was Mr Cullen's mindset as of March 2017, motivated by a genuine desire to get all relevant information, to understand the Plaintiff's perspective and to assist the Plaintiff in any way possible with a view to the Plaintiff returning to work. However, and to Mr Cullen's obvious regret, the Plaintiff did not engage with the ASMP. The Plaintiff failed to attend the March ASMP meeting and the same can be said for a series of many more ASMP meetings which will be referred to in this judgment. It is fair to say, having regard to a careful consideration of the entirety of the evidence, that the Plaintiff simply did not engage with the ASMP in any way.

06 March 2017

376. I am satisfied that, on 06 March 2017, the Plaintiff telephoned to say that he was unwell and would not be able to attend the meeting scheduled for 09 March 2017 with Mr. Cullen.

08 March 2017, the Plaintiff's medical records

377. The records maintained by the Plaintiff's GP contain the following in relation to 08 March 2017:- *08/03/2017 Cert x 2 arbitration process ongoing.*

The reference to "*arbitration process ongoing*" is not understood and no evidence was given in relation to the foregoing during the trial. Nothing would appear to turn on this and it seems clear, however, that the Plaintiff received a further certificate or certificates in respect of his sick leave, as of 08 March 2017.

09 March 2017 – ASMP "Subsequent review meeting – Summary Record"

378. In circumstances where the Plaintiff did not attend the ASMP review meeting scheduled for Thursday 09 March 2017, a standard form entitled "*Attendance Support & Management Process – Subsequent Review Meeting – Summary Record*" was completed on 09 March 2017

in respect of the Plaintiff. It recorded the fact that he had not attended the meeting. It also recorded that the status level of his case had moved from "*Status 05*" to "*Status 04*". It also recorded a referral of the Plaintiff "*to OHS*". Finally, the form recorded the fact that the Plaintiff was not exited from the ASMP at that point in time. I am satisfied that the foregoing action on the part of the Defendant was entirely consistent with the provisions of the ASMP policy as agreed between the Plaintiff and the Unions. It was a reasonable response on the part of the Defendant, taken in accordance with the terms of the ASMP policy, having regard to the information then available to it and the Plaintiff's failure to attend the review meeting.

379. It was clear from his uncontested evidence that Mr Cullen genuinely regretted the Plaintiff's non-attendance at the 09 March 2017 meeting in circumstances where it was an opportunity for the employee to explain his perspective and to provide as much information as possible in relation to why, from the Plaintiff's point of view, he had not returned to work on 07 January 2017, despite the agreement on 08 December 2016, that he would do so. It was also clear from his uncontested evidence that Mr Cullen and An Post were faced with a dilemma which was caused by the fact that the Plaintiff had given two versions of events to two sets of professionals. The Plaintiff had made clear to Mr Cullen, in the presence of the Plaintiff's Union representative, on two separate occasions that there were no current workplace issues and Mr Cullen knew (based on what the Plaintiff told him and on his discussion with Mr Ruddock) that there was no bullying in the Blackrock office, yet the Plaintiff's GP, Dr McManus, had been told that the Plaintiff was suffering from ongoing bullying which had continued for year and the Plaintiff had given Mr O'Sullivan to understand that his absence related to current issues at work. Mr Cullen explained the effect of this in uncontroverted evidence, as follows: *"Doctors will send the workplace issues to Management and if there is a different version with the doctor, a different version with Management, it will just keep going around in a circle"* (D10, P175, L16).

380. Mr Cullen also gave uncontroverted evidence as to what was necessary to progress things satisfactorily, namely, for the employee to meet the Defendant and to provide information in relation to any issue that affected his attendance at work, in order that the Defendant could understand same and, as was clear from the totality of Mr Cullen's evidence, and from the terms of the ASMP policy itself, to try and assist. Mr Cullen's uncontroverted evidence was as follows:-

> *"The missing issue here is that there was a meeting to take place in March, and then every three months after that, and all of those meetings were opportunities for Mr. Ward to sit down with me and to go through issues that affected his attendance at work. Whatever issues were still live and that affected his attendance at work, we would have discussed them, we would have discussed that with him, because I needed to understand why he saw things the way he did."(*D10, P109, L12)

It is not in dispute that the Plaintiff has not attended ASMP meetings, notwithstanding the obligation on employees to cooperate with the ASMP, and has not provided the information to the Defendant which Mr Cullen needs to understand what issues, from the Plaintiff's perspective prevented him from returning to work.

381. It should also be said that Mr Cullen gave uncontroverted evidence, which I accept, that if the Plaintiff had disclosed, at the meeting scheduled for 09 March 2017, information which suggested any unfair treatment of the Plaintiff which was current, it was not too late for appropriate investigation to be commenced under the Dignity at Work or Grievance policy. Indeed, it was very clear from his uncontested evidence that Mr Cullen would have ensured that such an investigation had commenced if, that is, the Plaintiff had furnished information which provided grounds for same. The Plaintiff neither attended the ASMP meeting nor provided any such information.

10 March 2017, Kevin Cullen HR to John C. O'Sullivan, occupational health

382. On 10 March 2017, Mr. Cullen sent the following email, concerning the Plaintiff, to John C. O'Sullivan of An Post's Occupational Health Support team: -

"*JC,*

You reviewed this employee last November 2016 when you suggested that the Company carried out an assessment of his concerns.

Mr. Ward has advised the Company that his difficulties related to remarks he believes people made about him between 1997 and 2007 and he confirmed in two meetings with me in June 2016 and in December 2016 that there are no issues currently affecting him in work. His remarks about concerns for his safety in work that you mention in the attached report would appear to have no basis and are contrary to what he told me in June 2016 and also in December 2016.

Mr. Ward currently remains out of work. I wrote to him recently to explain that the company cannot undertake enquiries into remarks that were allegedly made many years before. I have told him this also in the meeting in June and December 2016. He was advised that I would inform the Occupational Health Service that the information he provided to me and the observations of his manager confirm that there are no current work related issues that should prevent him from returning to work and that I would request an assessment of his capacity for work on that basis and also on the basis that he has the option to resume work in another office if he wishes.

He has also been advised that the new Delivery Services Manager has been advised of the situation and that he will be available to Mr. Ward at any time should problems emerge in the future. I invited Mr. Ward to a meeting that was due to take place yesterday to discuss the recent letter. Mr. Ward informed that he was not well enough to attend.

Would you reassess Mr. Ward's capacity to return to work in either Blackrock or an adjacent office?

I will have this case included on the case conference list for next Thursday.

Regards,

Kevin Cullen

HR Manager".

383. I am satisfied that Mr. Cullen's 10 March 2017 email accurately reflects the factual position. It was not at all unreasonable to send this email. It is clear that Mr. Cullen's focus was with a view to the Plaintiff returning to work, be that to the Blackrock office or to an alternative office. There was no question of the Plaintiff being forced to return to work in a different office, but it is clear from Mr. Cullen's email that the option of facilitating the Plaintiff with a transfer was still "live" just as it had been for many years, as evidenced by several offers made to the Plaintiff which have been discussed earlier in this judgment. An analysis of this email confirms that there was no question of the Defendant seeking to dismiss the Plaintiff or, for that matter, attempting to apply any disciplinary sanction against the Plaintiff. It was clear from this referral and from Mr Cullen's evidence that he maintained an open mind in relation to the cause of the Plaintiff's ongoing absence from work and failure to return to work on 07 January despite the Plaintiff having agreed to do so and despite the fact that, based on what the Plaintiff had told him, as well as his conversation with Mr Ruddock, there were no current workplace issues. Mr Cullen's 10 March 2017 request that the Plaintiff's capacity to return to work be assessed was entirely reasonable, having regard to the then facts as known to Mr Cullen and to the contents of the ASMP policy.

13 March 2017 letter from Kevin Cullen to the Plaintiff

384. On 13 March 2017, Mr. Cullen wrote again to the Plaintiff as follows: -

"*Re: ASMP review meeting due to be held on 09/03/2017*

Dear John,

As previously notified, a meeting to review your attendance record under the Attendance Support and Management Process was due to take place on 09/03/2017.

Absenteeism is a major cost issue for our company and initiatives are ongoing to reduce and minimise these costs. It is recognised that absence is unavoidable in certain circumstances, and the Company is committed to supporting employees achieve regular attendance at work where a significant medical condition impacts upon their ability to do so. Apart from cost implications, however, absence also causes significant disruption in the workplace and has a negative impact on our ability to meet targets and deadlines in delivering world class quality of service to our customers. So attendance at work really matters in An Post.

As you did not attend the recently scheduled Review Meeting, it was not possible for me to discuss your attendance record or my recent letter of 1st March 2017 with you. Therefore, it has been necessary for me to undertake a review of your attendance based upon the information currently available to me.

Having reviewed your record, I have decided that the status of your case under the Attendance Support & Management Process should be escalated to Status 4. The decision to escalate the status of your case may be appealed and should you intend doing so, you must, as advised, submit an appeal within five working days of the Review Meeting. A form for use in appealing the decision can be obtained from me, if required, at which time I will confirm who your appeal should be submitted to. The status assigned to your case reflects a continuing concern with your attendance record and an expectation that you will achieve a satisfactory level of attendance as soon as possible. Ultimately, if a satisfactory level of attendance is not achieved by you it could

result in the matter being addressed with you through the Company's disciplinary procedures at which time dismissal could be a consideration.

Reviews are normally conducted to a three – monthly schedule however on occasion delays may occur which may necessitate that the Review be conducted in less than three months. Your next review will be scheduled accordingly. You will be contacted in advance of the next review to advise you of the specific date and time for the meeting. You are encouraged to attend this meeting and avail of the opportunity to share any information that may be of relevance to any decision made at that time as to how matters should be progressed.

In the meantime, I have referred your case to the Occupational Health Support Specialists to assess your capacity for work. If there are any issues arising from that assessment that I need to discuss with you, I will be in touch separately.

A copy of your attendance record, which I relied upon in recently reviewing your attendance, is enclosed for your records.

I very much hope that at the time of the next review, you will have achieved and maintained a satisfactory level of attendance.

In the meantime, if you have any queries relating to the above please raise them directly.

Yours sincerely,

Kevin Cullen,

HR Manager".

I am satisfied that, as a matter of fact, the foregoing letter was sent in accordance with the terms of An Post's ASMP policy and the letter is consistent with the terms of same. I am satisfied that, as a matter of fact, prior to sending this 13 March 2017 letter to the Plaintiff, Mr. Cullen was not contacted by any doctor treating the Plaintiff to inform Mr. Cullen that the Plaintiff was unfit, on medical grounds, to attend the ASMP review meeting scheduled for 09 March

2017. The ASMP policy is explicit about the obligation on every employee to "*co – operate fully with management in relation to the review of their attendance through the Attendance Support & Management Process*". Cooperation self–evidently includes attendance at a review meeting. The Plaintiff did not attend the review meeting and, although he telephoned Mr. Cullen to say he was unwell, I am satisfied that it was not unreasonable to alter the status of the Plaintiff's case from Status 05 to Status 04, based on the information then available to Mr. Cullen. The Plaintiff had been out of work for almost six months at this stage. There was no current workplace issue. As part of the agreed outcome the 08 December 2016 meeting between Mr. Cullen, the Plaintiff and his trade union representative, the Plaintiff agreed that he would be returning to work as of 07 January 2017. The Plaintiff did not return to work. I am satisfied that there is nothing in this letter which evidences that the Plaintiff was treated unfairly or in breach of any of the provisions in the ASMP policy.

The Plaintiff's evidence that he was *"shocked to see the word 'dismissal'"*

385. In his evidence, the Plaintiff says that he was "*shocked"* to see the word 'dismissal' (D3, P12, L15), in this letter. However, it is clear from the Plaintiff's evidence that he had already decided, two and a half months earlier, that he was never going to go back to work in An Post. Furthermore, whereas the fourth paragraph of the letter makes reference to "*disciplinary procedures*" and refers to the word "*dismissal*", it is clear that the 13 March 2017 letter was not part of any disciplinary process and did not impose any disciplinary sanction. Rather, the last sentence in the fourth paragraph pointed out that if, ultimately, satisfactory attendance was not achieved, it could result in the matter being dealt with through an alternative process, namely the company's disciplinary procedures and dismissal could be the ultimate outcome. For Mr. Cullen to state that in his 13 March 2017 letter was not at all unreasonable and is entirely consistent with the provisions in the ASMP policy itself. I am also satisfied based on the Plaintiff's sworn testimony that, by March 2017, he did not want his job back,

rather he wanted ill – health retirement and I am equally satisfied that his aim of never returning to work in An Post but of being given retirement on ill – health grounds remained his objective from that point onwards and continues to be his objective according to his evidence at trial. It should be recalled that on 22 December 2016, the Plaintiff told staff in St. Vincent's hospital that he was "leaving his job" and the Plaintiff also referred to "a possible law suit", a reference which can only have been in relation to legal proceedings which the Plaintiff was then contemplating against An Post. For the foregoing reasons, the Plaintiff's claim that he was "shocked" to see the word "dismissal" is not credible when one takes into account the entirety of the relevant evidence, including the Plaintiff's own.

22 March 2017 GP medical records

386. It is clear that the Plaintiff saw his GP on 22 March 2017. At that point, the Plaintiff's doctor recorded the Plaintiff as being "*very depressed*". The relevant entry from the records maintained by the Carlton Clinic in respect of the Plaintiff states the following:-

"*22/02/2017 Very depressed. Plan to Psychiatrist*"

23 March 2017 letter by Dr. McManus

387. On Thursday 23 March 2017 the Plaintiff's GP, Dr. McManus, wrote to the Defendant's CMO as follows: -

> "*Dear Doctor,*
>
> *Just a note about John who has been attending me for some time. He is an extremely stressed man and is now suffering from significant depression. I have referred him today to see the psychiatrists at Cluain Mhuire in Blackrock. I have put him on citalopram 20mg for this depression. John has had a number of ongoing serious issues in regard to his workplace which is affecting his mental health and is causing this depression. I understand that An Post are putting great pressure on him to return to work but at present I don't think it would be safe for him to return to work.*

Hoping this is of some assistance to you.

Yours sincerely.

John McManus

Carlton Clinic".

Factual inaccuracies in the letter sent by the Plaintiff's GP

388. The Plaintiff's evidence is that Dr. McManus dictated this letter in the presence of the Plaintiff. Thus, the Plaintiff was in an ideal position to correct any inaccuracies which might have made their way into the letter. The concern for the Plaintiff on the part of Dr. McManus, and the care as well as support which he has given the Plaintiff over the years, cannot be in doubt. However, the assertion that the Defendant was putting "*great pressure"* on the Plaintiff "*to return to work"* is simply not borne out by the evidence. On the contrary, by agreement between the Plaintiff's Union and An Post, there was a very detailed ASMP policy in place within the Defendant which, I am satisfied, was focused on supporting an employee and enabling them to return to work as soon as they were fit to do so, and no sooner. An element of that policy required cooperation from the employee. An Post had not departed from the policy with regard to the Plaintiff. By contrast, the Plaintiff was not providing the cooperation which an employee was expected to give under the policy. The evidence demonstrates that An Post were simply following the policy properly and in accordance with its terms and were reacting, in a reasonable fashion, to the facts such as were available to An Post. From the Defendant's perspective, neither the Occupational Health Service nor HR management had been given any evidence, in advance of 09 March 2017, to the effect that the Plaintiff was unfit to attend the ASMP review meeting and the change in status from 05 to 04 was the result. However, the 09 March 2017 meeting was simply a review meeting, a central element of which was to provide an opportunity for the Plaintiff to give information to the Defendant relevant to the ongoing absence from work. The 09 March 2017 meeting most certainly did not constitute

a deadline imposed by the Defendant by which the Plaintiff had to return to work. Nor could it fairly be construed as such. On the contrary, the 13 March 2017 letter sent by Mr. Cullen to the Plaintiff makes it clear that the next scheduled review meeting would be in another three months. Nor was that next review meeting date a deadline by which the Plaintiff was told that he must return to work or that he would necessarily lose his job if he did not return to work by that date. It was simply a review meeting, as provided for in the terms of the ASMP policy negotiated between the relevant Unions and An Post. In light of the foregoing, it was factually incorrect for Dr. McManus to suggest, in his 23 March 2017 letter to the CMO "…*that An Post are putting great pressure on him to return to work".* Dr. McManus understood the foregoing to be the factual position, as of 23 March 2017, because of what the Plaintiff told him. The evidence demonstrates, therefore, that the Plaintiff did not accurately convey the facts to Dr McManus. Furthermore, given that the Plaintiff was present when Dr McManus dictated this letter, there was a further opportunity for the Plaintiff to set Dr McManus straight on the facts. The Plaintiff did not take this opportunity and, as a result of the Plaintiff giving inaccurate information to Dr McManus and failing to correct inaccurate information in the letter which the Plaintiff witnessed Dr McManus dictate, the letter is materially inaccurate.

389. The same comments apply in relation to Dr McManus's statement that there were "…*a number of ongoing serious issues in regard to his workplace…"* That statement is wholly undermined by the evidence in this case. There were no "*ongoing"* or "*serious"* issues. It is a matter of fact that all issues of concern to the Plaintiff related to issues which the Plaintiff made clear to Mr Cullen, in the presence of his Union representative, went back to 1996 – 2007 (ie things allegedly said then). This was made clear by the Plaintiff in the 23 June 2016 meeting. It was made clear again in the 08 December 2016 meeting, at which the Plaintiff agreed to return to work on 07 January 2017, there being, as a matter of fact no current, or serious, or ongoing issues at work. Indeed, the evidence also demonstrates conclusively that there were

no "*ongoing*" or "*serious*" issues when the Plaintiff returned to work in August 2011 on the basis that there all *past* issues had been resolved satisfactorily and there were no *current* issues (a position which remained entirely unchanged from that point onwards, as the Plaintiff was well aware). A careful consideration of the evidence results in a finding that what the Plaintiff told his GP was not accurate and the Plaintiff knew it to be inaccurate.

390. It is also appropriate to point out that, during the course of his evidence to this court, the Plaintiff acknowledged that there was never any risk to the Plaintiff's safety in the workplace. The Plaintiff explained that his anger was such that he was afraid he might take it out on an "*innocent*" person in the workplace, the suggestion made by the Plaintiff during the trial being that others might not be safe. Notwithstanding that clarification given at the Trial in 2020, the wording of the letter from Dr. McManus suggests that the Plaintiff's workplace situation was not safe for *him.* That was never the case and the evidence demonstrates, beyond doubt, that the Plaintiff gave his GP to understand that there were current workplace issues and that the Plaintiff was currently suffering from bullying as of 2016, when this was not the case, as the Plaintiff well knew. The fact that the Plaintiff was giving his GP a version of events which did not reflect the objective reality explains the contents of the letter from Dr McManus dated 23 March 2017.

27 March 2017 Letter by Dr. McManus to psychiatrist

391. On 27 March 2017 the Plaintiff's GP wrote a letter of referral addressed to the "*Psychiatrist, Cluan Mhuire St. John of Gods*" in Blackrock, County Dublin. The text of the letter was as follows:

> *"Dear Doctor,*
>
> *I would be grateful if you could see this man. He has been out of work for over a year, and stated that he is very concerned about bullying in work. These issues have been investigated thoroughly and while there still may be some outstanding issues, Mr.*

Ward's emotional and mental health has deteriorated over the 6 months. He is very depressed; his wife is concerned about anger outbursts, and he generally is not able to cope.

At present he has poor sleep, poor appetite, no pleasure from life, has had some suicidal thoughts, but does not think he could act on them, as he has not planned to harm himself. He is presently on 20 mg. Citalopram. I would be grateful for your opinion and advice.

Thanking you in anticipation

Your sincerely

John McManus"

Cluan Mhuire

392. Cluan Mhuire is part of St. John of Gods, and provides specialist care for those suffering from mental ill health. The Plaintiff's evidence is that he did a course there of some 2 weeks, Monday to Friday. The relevant entry in the Plaintiff's GP records refers to the foregoing letter and states: *27/03/2017 Letter posted Cluan Mhuire*

April 2017 GP records

393. There was a single entry for April 2017 in the medical records maintained by the Plaintiff's GP, which states: *"04/04/2017 Feeling better. Attending Cluan Mhuire. To continue on Citrol 20 mgs. BP 152/85 P62"* The foregoing is the final entry from the GP's records which were before the Court.

04 April 2017 review

394. It is not in dispute that the Plaintiff was reviewed by Dr. Lukasz Kowalewski of the Crisis Assessment Team, St. John of God, Community and Mental Health Services, "Centre for Living" on 04 April 2017. Although Dr Kowalewski did not give evidence, the clinical notes from the initial review comprise part of the Plaintiff's medical records which were included in the discovery and I do not understand there to be any issue taken with the contents

of the Plaintiff's contemporaneous medical records. The 04 April 2017 review begins as follows:

"First referral of 53 years old married gentleman by GP with work related stress. John presented on time, bright and reactive. He described long standing difficulties at Blackrock Post Office where he has been working since 1994 as driver. Works for Post Office for 37 years. On sick leave since 2016. Described accusations, significant according to him, at Post Office:

- *Stayed with friend's girlfriend in 1996, sleeping on the couch as taxi wouldn't go to Bray in the evening so was waiting for bus in the morning – was accused afterwards of having sex with her;*
- *In 2005 found opened letters in the van and gave it to inspector, friend – K was sacked but Investigator informed everybody who brought this to his attention;*
- *Got a bag of the inspector in Glenageary with opened letters in 2006 and he passed that bag to Leo, his manager, and again everybody were aware that John exposed this information.*

John described feeling bullied by 3 other drivers (main – E). "It was slagging once a week, sometimes more often". Was advised to discuss with HR. In 2010 decided to inform supervisor about the bullying. Had several meetings and investigations with no outcome. Does not find Union helpful – several meetings. "E is Union boy". Last year when old inspector was retiring he admitted that what had happened to John was true. John felt happy on that day, "but nothing has really changed".

"I was thinking about suicide for years but I wanted to bring my son (G) to England to watch football and that's what stopped me". Went to London in 2008. Noticing being more irritable – "can snap so easily and that's not me".

Decided in November 2016 to take a can of petrol and put himself on fire "to show them how they treat me unfairly" on the day of Inspector's (Leo) retirement day. Did not process with it "my wife stopped me".

Was planning to go back to work 7 January but due to episode of "stress stroke" decided to postpone his return – got sick cert. Recently received a letter from HR that he did not turn for HR meeting on 9th March "and we take it really seriously". Decided to look for legal advice in February from Citizenship Bureau. Denies any pending court cases.

"I am totally exhausted of the situation"; "I feel like banging a head against the wall"; "It's taking on my life".

Described his mood as "very low". Self-rated 24/10. Preoccupied with work. Recollect all dates from the disputes. Denies any TSHR SI PEW fleeting in the context of work related stress. No intent or plan. Crying more recently out of blue. Denies any anxiety SX. Day structure – drops kids to school, wife to work, cleaning the house, lost interest in VIY. Sleep – EMW, from 11 go 4/4 am, appetite – stable."

The issues which the Plaintiff reported to Dr Kowalewski of Cluain Mhuire

395. The contents of the review are entirely consistent with the oral and documentary evidence in this case insofar as the Plaintiff's issues are concerned. The issues of concern to the Plaintiff, on 04 April 2017, were the very same issues which the Plaintiff committed to writing in his letter dated 22 November 2010 to Mr. Cunningham, in which letter he described them as "*The accusations made about me*". The three *"accusations*" numbered in the Plaintiff's letter dated 22 November 2010 are precisely the same three issues, in precisely the same order, as the Plaintiff reported to Dr. Kowalewski during the assessment which took place on 04 April 2017. They were not current issues.

396. I am satisfied that, what Dr. Kowalewski records as "*In 2010 decided to inform supervisor about the bullying*", refers to the initial meeting between the Plaintiff and Mr. Cunningham, following which the Plaintiff, at Mr. Cunningham's suggestion, wrote down, in his 22 November 2010 letter, the issues which were concerning him, and these are the same issues which were discussed at the meeting, on 19 July 2011, attended by the Plaintiff, Mr. Damien Hunter, HR Manager, and the Plaintiff's trade union representative, Mr. Gerry Sexton, the agreed outcome of that meeting being that the Plaintiff would return to work, which he subsequently did in August 2011, after a brief return to work meeting. The evidence demonstrates that the Plaintiff returned to work in August 2011 satisfied that all *past* issues had been addressed and having no *current* issues whatsoever. He then, as the evidence establishes, worked away happily in his job for some 5 years before raising the self -same issues again, in 2016, apparently prompted by the prospect of Mr Leo Kearns retiring, issues which were entirely historic and which were, once again, dealt with satisfactorily, as is clear from the evidence regarding the June 2016 and December 2016 meetings between the Plaintiff and the Defendant, the Plaintiff being again accompanied by his Union representative.

397. I am satisfied that, if the Plaintiff believed that he had been subjected to bullying from 2011 onwards, or at any time after his return to work in August 2011, he could and would have provided Dr. Kowalewski with specific details of such alleged bullying. No such details are included in the 04 April 2017 assessment and this is entirely consistent with the balance of the evidence in this case, both contemporaneous documentation and evidence from witnesses, including the Plaintiff, to the effect that there were no workplace issues whatsoever. In short, the assessment by Dr. Kowalewski further illustrates that there were no difficulties or issues with the Plaintiff's workplace atmosphere or conditions which could reasonably be described as current at any stage from 2011 onwards. It is also clear from the review of the evidence set out earlier in this judgment that, insofar as 2011 is concerned, even then the Plaintiff had no

current issues. In the manner analysed earlier in this judgment, when the Plaintiff and his Union representative met with a representative of the Defendant on 23 June 2016, the Plaintiff's concerns related to the period 1997 to 2007.

398. The medical evidence suggests that the Plaintiff was suffering from stress and experienced a period of depression for which he received treatment under the care of Cluain Mhuire. I am satisfied, however, that the Plaintiff's medical condition was not caused by any failing on the part of the Defendant to address bullying of the Plaintiff in his workplace, nor was it caused by any unfair or unreasonable act or omission on the part of the Defendant. I am satisfied that, as a matter of fact, the Plaintiff was not bullied in his workplace at any point from 2011 onwards and I say so in light of the Plaintiff's evidence. That is not to say that the Plaintiff sustained bullying or harassment or unfair treatment in the period beforehand. Having carefully considered the evidence, it would be entirely unsafe for this court to reach such a conclusion. It can certainly be said with confidence, however, that the Plaintiff's testimony is consistent with there being no current issue at work from at least 2007 onwards and that, from August 2011 onwards, all issues had been ventilated and addressed. It will be recalled that August 2011 was when the Plaintiff returned to work, by agreement with Mr Hunter and the Plaintiff's union representative, knowing that there would be no investigation into any issue and also knowing the reason, namely because the issues he raised for the first time in writing in a letter dated 22 November 2010, all went back such a long time and there were then no current issues. Nothing in the 04 April 2017 review carried out by Dr. Kowalewski is at all inconsistent with the foregoing findings.

06 April 2017 – Letter from Plaintiff's Solicitors to An Post

399. On 06 April 2017 Reddy Charlton, solicitors for the Plaintiff, wrote to An Post, for the attention of Mr. Kevin Cullen. That letter stated, *inter alia*:

"Please see enclosed medical certificates provided to our client's line manager and the Union representatives in this regard. We also understand that Dr. McManus has written to the Chief Medical Officer of An Post to express his concerns over the emotional and psychological health of our client. Dr. McManus sets out in this letter that the bullying incidents which have taken place over a long number of years have been reported to the Inspector, HR, and to the Union, and nothing has been done about the situation."

400. With regard to the reference to "*the bullying incidents which have taken place over a long number of years*", there is no evidence which would allow this Court to conclude that any bullying of the Plaintiff took place between August 2011, when the Plaintiff returned to work after a period of sick leave, having had two meetings with An Post, and the date of the letter sent by the Plaintiff's solicitors. Furthermore, the evidence in this case does not allow this court to conclude that the Plaintiff was bullied in prior years. When the Plaintiff wrote down dates and details concerning what the Plaintiff described, in his 22 November 2010 letter, as the three "*accusations*" against him, the following significant matters of fact are of relevance. (1) there is no evidence whatsoever of any alleged bullying of the Plaintiff which was said by the Plaintiff to be *current* as of November 2010; (2) the Plaintiff was relying on his memory insofar as telling An Post in November 2010 about the "*accusations".* It was clear that the issues or events which he was raising in November 2010 went back several years, and the Plaintiff was explicit about the fact that he could be wrong in relation to dates because he was relying on memory. His 22 November 2010 letter contained the explicit statement "*I must add the dates may be out a bit as I am only going on memory*". (3) insofar as the Plaintiff wrote down in November 2010 dates and details of the "accusations" made against him, the then most recent date supplied by the Plaintiff was 2008. Even then, when furnishing details in writing, the Plaintiff simply wrote down the year 2008. There were no specifics in relation to the month, much less the date or dates, nor was there any detail given of any particular allegation of

bullying in 2008. The nature of any such allegation is wholly unclear from the Plaintiff's handwritten document.

401. In light of the foregoing, and having regard to the evidence in this case as analysed above, it can be said with confidence that Messrs. Reddy Charlton, solicitors for the Plaintiff, were factually incorrect to suggest that there had been bullying of the Plaintiff within the decade prior to their letter (and that is not to hold that the Plaintiff was bullied in the years prior to that). Furthermore, Reddy Charlton, solicitors, were factually incorrect to claim that "*nothing has been done about the situation*". This can be said with confidence, having regard to the evidence analysed above concerning the responses made, at various points in time, by the Defendant, and the agreed outcome of various meetings, including meetings between the Defendant, the Plaintiff, and the Plaintiff's Union representative. The letter from Reddy Charlton also states, *inter alia*, the following:

> *"To threaten disciplinary action for sick leave is a blatant breach of the Employment Equality Acts. We hereby put you on notice of our complaint in this regard, and any further threats will be taken as penalisation for opposing discrimination. In addition, correspondence and requests for meetings in circumstances where my client is absent from work due to stress as a result due to the actions of your employees, for which An Post is liable, is highly inappropriate. It is also causing significant distress to our client, and exacerbating his illness. We also put you on formal notice of the effect of your actions in exacerbating our client's injuries by your harassment of him in this manner while he is on certified sick leave."*

402. I am satisfied that, as a matter of fact, the Defendant did not threaten the Plaintiff with "*disciplinary action for sick leave*". The Defendant's letter dated 13 March 2017 cannot fairly be characterised as such. The 13 March 2017 letter reflects the provisions of the ASMP policy which had been agreed between the Plaintiff's trade union and the Defendant, with regard to

the treatment of absence from work. I am also satisfied that it was not inappropriate for the Defendant to invite the Plaintiff to attend meetings, accompanied by his trade union representative, in order to discuss his ongoing absence from work. I take this view particularly in light of the following: (1) Such meetings were explicitly provided for in the terms of the ASMP policy agreed between the Plaintiff's Union and the Defendant; (2) Such a meeting provided an opportunity for the Plaintiff to furnish the Defendant with information relevant to the Plaintiff's ongoing absence from work; (3) The contents of the meetings were confidential. (4) Employees of the Defendant, including the Plaintiff, had a responsibility to co-operate fully with the Defendant in relation to the review of their absence from work, and attendance and review meetings was a necessary element of discharging the Plaintiff's responsibility, having regard to the provisions of the ASMP policy as agreed between An Post and the Plaintiff's Union; (5) The proposition advanced by the Plaintiff's solicitor that it was "*highly inappropriate*" for An Post to request the Plaintiff's attendance at meetings was based on their statement that the Plaintiff was absent from work "*due to the actions of your employees*". The evidence does not support the latter claim. In short, there is evidence that the Plaintiff was suffering from stress, but there is no evidence that such stress was caused by any bullying or harassment or unfair treatment of the Plaintiff of any kind, within the decade prior to the Reddy Charlton, solicitors, letter.

403. Having carefully considered the evidence, the allegation made by Reddy Charlton, to the effect that An Post was subjecting the Plaintiff to "*harassment*" while the Plaintiff was on certified sick leave, is not supported by the facts. The Defendant replied to Reddy Charlton, solicitors, by means of An Post's 21 April 2017 letter. Further correspondence was exchanged between Reddy Charlton, solicitors, and An Post on 04 and 09 May 2017, during which both sides set out their respective positions.

08 May 2017 – Discharge from Cluan Mhuire

404. It is not in dispute that, after his initial assessment on 04 April 2017, the Plaintiff underwent a treatment programme provided by Cluan Mhuire, St. John of Gods, which, thankfully, the Plaintiff found helpful. A "Discharge Summary" dated 08 May 2017 was sent by Aine Murphy, Nurse, to the Plaintiff's GP, Dr. McManus, recording the fact that the Plaintiff had been discharged from the Centre for Living.

10 May, 2017 – Critical Illness Application

405. On 10 May 2017 the Plaintiff signed a "Critical Illness: Application Form", being a form used to make an application for extended paid sick leave under the Defendant's critical illness protocol. That form names the Plaintiff's consultant as Dr. Cummings of Carysfort Avenue, Blackrock. I note that Dr. Elizabeth Cummings provided treatment to the Plaintiff at Cluan Mhuire. The application form also named the Plaintiff's GP, Dr. McManus, and the form stated, *inter alia:*

> *"I apply to have the extended sick pay provisions associated with Critical Illness applied to sick absence referred to above. I understand my application will result in a referral to the company's occupational health service to assess if the medical criteria associated with critical illness are met. I understand that as part of the assessment process I may be required to provide consent to Occupational Health to contact my GP or treating specialist/consultant for information to enable them complete their assessment. I also undertake to supply in a timely manner any medical reports requested of me by Occupational Health to enable them complete their assessment".*

18 May 2017 memorandum by Dr. O'Reilly, CMO

406. On 18 May, 2017 Dr. Frank O'Reilly, Chief Medical Officer, sent an internal memorandum to a Morgan Finn which stated the following: *"Further to your referral of John Ward for assessment against the CIP criteria in relation to absence commencing 25/10/2016 I can advise that, having reviewed his file, his medical condition in relation to this absence does*

not meet the CIP criteria. Dr. Frank O'Reilly". It is not in dispute that the Plaintiff did not receive extended sick pay under the Defendant's Critical Illness policy.

30 May 2017 – Email John C. O'Sullivan to Kevin Cullen

407. On 30 May 2017 Mr. John C. O'Sullivan of An Post Occupational Support Service emailed Kevin Cullen, HR Manager, as follows:

> *"Background*
>
> *Mr. Ward has been absent on sick leave since 25th October, 2016 certified as suffering with stress.*
>
> *Current Position*
>
> *I met with Mr. Ward on 10th May in the GPO by appointment. I had received phone contact from a representative of his. We had met in the past and Mr. Ward raised some workplace concerns most of which were of a historical nature. I advised him of the protocol involved around raising these concerns with management previously, and I understand he did so. During our meeting it was apparent that he was quite agitated and upset. He mentioned a discussion he had with his previous DSM, who has now retired, as being the trigger behind his current absence. I would advise that a conciliatory tone be adopted in any future management contact. Mr. Ward also informed me that he is scheduled to have knee surgery at Cappagh Hospital in June of this year.*
>
> *Future Plans*
>
> *We have no future plans to meet. Mr. Ward has my contact details.*
>
> *John C. O'Sullivan*
>
> *OSS"*

The ASMP has what can be called medical and non-medical streams. These are set out in "Appendix B", on internal page 39 of the ASMP document. The very left had side refers to the

"Status" under the ASMP with two columns to the right of that. The first deals with irregular attendance where there is "no underlying medical issue" whereas the column on the far right of Appendix B deals with cases of irregular attendance "associated with an underlying medical issue". Prior to June 2017, the Plaintiff's case was not being dealt with in the medical stream. Mr Cullen gave uncontroverted evidence that, once he received the aforementioned Occupational Health report, he made a decision insofar as the Plaintiff's case under the ASMP policy was concerned and why, namely: "…*to move to the medical stream was a discretionary and a precautionary one, because the report still didn't say he was unfit for work."* (D10, P131, L28). Thus, it is not in dispute that the Plaintiff's case, insofar as the ASMP is concerned, has, since June 2017, been dealt with in the medical stream, i.e. in accordance with the process set out on the far right hand side of Appendix B. At this juncture, it is appropriate to say, for the sake of clarity, that the Plaintiff's case is at "Status 2" of the medical stream, which begins as follows: *"The Company remains committed to supporting the employee deal with issues impacting upon his/her attendance at work but has no definite indication that a return to work and/or regular attendance, in any capacity will be achieved in the foreseeable future…."*

06 June 2017 – Letter to Plaintiff re ASMP Review Meeting

408. On 06 June 2017 Mr. Kevin Cullen wrote to the Plaintiff in the following terms:

"Dear John

I refer to the letter issued to you on 03/03/2017 relating to the review of your attendance record under the Company's Attendance Support Management process at that time.

You were advised that a further review of your attendance would be undertaken in 3 months' time, and that you would be contacted to set up a meeting for this from 45 a.m. on Friday the 09th June 2017 in Room 2/153 GPO, O'Connell Street, Dublin 1, entrance via Princess Street.

You are reminded that you may be accompanied to the meeting by a Trade Union representative, or a work colleague. If you have difficulty in attending the meeting at the date/time advised above, you should notify me as soon as possible. I will, if appropriate, reschedule the meeting to an alternative date/time.

You are encouraged to attend this meeting as it is an opportunity for you to advise me of any matter(s) that may have a bearing on the decision I make at that time as to how matters should be progressed.

Should you decide, however, not to attend the meeting I will advance matters based on the information available to me at that time. I will also write to you subsequently to advise you of any decision I make regarding how your case is to be progressed, and the timing of any future review, if a further review of your case is necessary.

I look forward to seeing you. If, in the interim, you have any query relating to the above arrangements, please contact Morgan Finn at 7057850, and to confirm your attendance.

Yours sincerely

Kevin Cullen

HR Manager

Regional Office Dublin"

Plaintiff's failure to attend 09 June 2017 ASMP review meeting

409. In his direct evidence, the Plaintiff acknowledged that he received the Defendant's letter, dated 06 June 2017, inviting him to attend a meeting on 09 June 2017. The Plaintiff confirmed that he did not go to that meeting, and when his counsel asked him why, the Plaintiff's evidence was: *"I wasn't able, I wasn't fit. I was out sick. I was on medication. My head was all muddled up. I had a nervous breakdown, I am still trying to get over it"* (D3, P25, L17). There is self-evidently a difference between being certified as unfit to *work* and being

certified as unfit to attend a *meeting* to discuss absence from work. As of 09 June 2017, the former, but not the latter, was true in relation to the Plaintiff.

410. The Plaintiff did not attend the review meeting on 09 June 2017. The evidence does not support the suggestion that the Plaintiff suffered a "*nervous breakdown*" or that same excused his failure to attend the June 2017 meeting. Insofar as the Plaintiff underwent treatment for depression at Cluan Mhuire, it is a fact that the two-week course of treatment finished a month *before* the ASMP review meeting scheduled for 09 June 2017 and it is a fact that the Plaintiff was no longer receiving treatment at Cluan Mhuire, having been discharged on 08 May 2017. There is no evidence that either the Plaintiff's GP, Dr. McManus, or Dr. Cummings, who had provided treatment to the Plaintiff at Cluan Mhuire, were of the view, as of 09 June 2017, that the Plaintiff was medically unable or unfit to attend the review meeting on 09 June 2017. It is also a matter of fact that no medical practitioner advised An Post, either in writing or by phone, in advance of the review meeting, that the Plaintiff was incapable on medical grounds of attending the 09 June 2017 meeting. Immediately after the 09 June 2017 meeting which the Plaintiff failed to attend, he was reviewed by Dr. Elizabeth Cummings of Cluan Mhuire and her 12 June 2017 written review comprises part of the Plaintiff's medical records, which were included in the discovery.

Review dated 12 June 2017 – Dr Elizabeth Cummings

411. Having undergone a treatment programme provided by Cluan Mhuire, St. John of Gods, the Plaintiff was discharged on or about 08 May 2017. The Plaintiff's medical records include a review, dated 12 June 2017, by Dr. Elizabeth Cummings of Cluan Mhuire, which records the following:

> *"Background*
>
> *Work stress. Off work since November secondary to alleged bullying over many years. Presented in crisis in context of this not having moved towards any resolution in April*

2017. Attended CfM 2/52 to good effect especially recognised importance of activation, structure, routine. No evidence of a pervasive low mood during the period he attended. GP prescribing Citalopram 20 mg.

Subjective

Back from a holiday in Tenerife. Had a fantastic time, felt relaxed. Really enjoyed himself. "It was what we needed".

"I feel a lot better".

Has kept busy since d/c from CfL. Went to a solicitor in relation to his workplace complaint. Wrote four or six pages detailing all the events. Feels like there is a weight off him now. "I can't believe how long I let it go".

Was into occupational health last month and discussed his difficulties in that setting. Feels relief generally. Able to tolerate the multiple financial demands being made of him. Sees a good future for himself. Due to undergo a knee replacement this week, feels positive about this.

Considering ultimately looking for a job elsewhere, but plans to pursue his complaint with An Post via the courts.

Mood is good. Hopeful for the future. No AMHED or NIA. Appetite, sleep, motivation are good. Noticed his concentration is a little off sometimes.

Objective

Kempt.

Pleasant

Smiling appropriately

Mood SUBJ and OBJ EUTHYMIC

Coherent relevant speech

No ephemeral thought disorder

Hopeful

Assessment of Risk

No current clinical evidence of elevated risk of harm to self, or others.

Analysis

No mental disorder

Care Plan

1. Suggest no further indication for secondary mental health care.

2. Can discuss making decrements to Citalopram with GP.

3. D/C go GP, see again at GP request.

Authorised by Ab

GR Elizabeth Cummings"

No mental disorder

412. I am satisfied that, as of 12 June 2017, which was a month after the Plaintiff completed the Cluain Mhuire programme, the Plaintiff had no mental disorder. This is entirely consistent with the evidence provided to the court by the three doctors who appeared as witnesses, as well as being consistent with the contents of the aforesaid review. The 12 June 2017 review does not refer to any advice given by Dr. Cummings to the Plaintiff that he was unable to attend a meeting to discuss a return to work, but records the Plaintiff as then feeling a lot better, feeling hopeful for the future, and relaxed after a recent holiday. At no stage in his evidence did the Plaintiff claim that he told Dr. Cummings in June 2017 that he was unfit to attend a meeting to discuss a possible return to work. Nor is anything of the sort recorded in the 12 June 2017 review. On the contrary, Dr. Cummings records the Plaintiff as explicitly considering the prospect of returning to work, albeit not in the Defendant. The reference to the Plaintiff: - "*considering ultimately looking for a job elsewhere, but plans to pursue his complaint with An Post via the courts"* is also consistent with the Plaintiff's oral testimony to the effect that he

made a decision on 22 December 2016 that he would never return to work in An Post. The foregoing entry from the 12 June 2017 review is also consistent with the fact that the Plaintiff contemplated litigation against An Post from at least 22 December 2016, as is clear from the reference to "a possible law suit" in the St Vincent's Hospital Discharge Summary of that date. The contents of the review are also consistent with the Plaintiff's evidence that he wanted ill-health retirement from An Post, instead of wanting to return to work. The content of the review is, however, inconsistent with the Plaintiff's evidence to the court that, in June 2017, he was incapable of attending a meeting.

413. In his sworn evidence the Plaintiff claimed that he "*wasn't fit*" to attended the 09 June 2017 review meeting and stated that "*my head was all muddled up, I had a nervous breakdown, I am still trying to get over it*" (D2, P25, L19), whereas the review by Dr. Cummings, dated 12 June 2017, records both an objective and a subjective assessment of the Plaintiff's then state of health which undermines the Plaintiff's evidence. As to the "objective" assessment, in the 12 June 2017 review, Dr. Cummings records the Plaintiff as: - "*kempt, pleasant, smiling appropriately, mood SUBJ and OBJ euthymic, coherent relevant speech, no form of thought disorder, hopeful*", and the doctor's analysis confirmed "*no mental disorder".* Furthermore, Dr. Cummings was satisfied that there was "*no current clinical evidence of elevated risk of harm to self or others*". The 12 June 2017 review includes the following in relation to the Plaintiff's "subjective" assessment of his then health, as reported by Dr. Cummings:

> *"Back from a holiday in Tenerife. Had a fantastic time, felt relaxed. Really enjoyed himself "It was what we needed. I feel a lot better." Has kept busy since d/c from fL. Went to a solicitor in relation to his workplace complaint. Wrote 46 pages detailing all the events. Feels like there is a weight off him now. "I can't believe how long I let it go". Was into occupational health last month and discussed his difficulties in that setting. Feels relief generally. Able to tolerate the multiple financial demands being*

made of him. Sees a good future for himself. Due to undergo a knee replacement this week, feels positive about this. Considering ultimately looking for a job elsewhere, but plans to pursue his complaint with An Post via the courts. Mood is good. Hopeful for the future. …"

The contents of the 12 June 2017 review wholly undermine the Plaintiff's claim to the court that he was unfit to attend the meeting on 09 June 2017, bearing in mind that the meeting was one at which the Plaintiff had access to Trade Union representation and support, just as he had availed of for the June 2016 meeting and the December 2016 ASMP meeting. It could fairly be concluded that the contents of the review dated 12 June 2017 are consistent with the Plaintiff being fit enough to return to work, if not immediately, then in the reasonably foreseeable future. What can be said with certainty is that the contents of the said review are entirely consistent with a finding that the Plaintiff was at least fit enough to go to a meeting to discuss his ongoing absence from work. Indeed, having regard to the express purpose of the ASMP policy, the type of information which the Plaintiff reported to Dr. Cummings was precisely the type of information which ASMP meetings were designed to facilitate the sharing of. In other words, the objective evidence is that, as of 12 June 2017, the Plaintiff's health was good, he was feeling relaxed and positive and he was plainly able to envisage a resumption of paid employment in the future. Yet the Plaintiff failed, indeed refused, to meet his current employer and gave them no such information. The reason is clear from the evidence. The plaintiff had decided he was never going to return to work in An Post, being a decision he made on 22 December 2017. From a careful consideration of all the evidence, I am entitled to conclude that the Plaintiff decided that he could not pursue his twin objectives (of never going back to An Post and of securing ill health retirement instead) and also meet with the Defendant and tell them what was the truth (both as to those twin objectives and his then improved state of heath and positive outlook). The evidenced entitles me to conclude that it is in the foreoging context that the

Plaintiff decided that he would not to meet the Defendant at all. Hence he refused to attend ASMP meetings.

Unreliable testimony by the Plaintiff in relation to his fitness to attend an ASMP review meeting in June 2017

414. Having carefully considered all the relevant evidence, I reject as unreliable the Plaintiff's claim that he was unfit to attend the 09 June 2017 review meeting. I take this view in circumstances where (a) no doctor advised, as of 09 June 2017, that the Plaintiff was incapable on medical grounds of attending review meeting scheduled for 09 June 2017; (b) nor is there contemporaneous evidence dating from June 2017 which demonstrates that the Plaintiff was then unfit on medical grounds to attend a review meeting; (c) it is a matter of fact that, over a month earlier, the Plaintiff attended a meeting in the GPO, by appointment with Mr. O'Sullivan of the Defendant, on 10 May and was self-evidently capable of attending that meeting; (d) by 09 June 2017, the Plaintiff had completed the Cluan Mhuire programme and had been discharged from the programme a month earlier; (e) there is no evidence that, as of June 2017, there were any fears for the Plaintiff's mental health and the contemporaneous objective evidence is that the Plaintiff had "no mental disorder" and there was no clinical evidence of elevated risk of harm "to self or others"; (f) the Plaintiff's sworn evidence is that he benefited from the Cluan Mhuire programme, from which he was discharged on 08 May 2017; (g) by 09 June 2017, the Plaintiff had already taken a firm decision that he was never going to return to work in An Post, being a decision he reached in St Vincent's hospital on 22 December 2016, although he had not told his employer about that decision; (h) by that point in June 2017, the Plaintiff's goal was to secure ill health retirement, not a return to work, although he had not told his employer or his wife about this decision; (i) my finding that, as a matter of fact, the Plaintiff was not unfit on medical grounds of attending the 09 June 2017 ASMP review meeting is also entirely consistent with the contents of the review by Dr. Cummings, dated 12

June 2017, which comprises part of the Plaintiff's medical records and from which I have quoted earlier in this judgment; (j)both a subjective assessment by the Plaintiff himself and an objective assessment by Dr. Cummings are consistent with the Plaintiff being fit enough to attend an ASMP meeting; (k) the Plaintiff could avail of Trade Union representation at every such meeting, just as the Plaintiff had availed of Union support for the June and December 2016 meetings; (l) there is no evidence from which the Court could conclude that the Plaintiff was treated unfairly or with anything other than courtesy, professionalism, respect and dignity at any meeting up to this point, including at the most recent ASMP meeting held on 08 December 2016; (m) there was no evidence which would provide any reasonable basis for the Plaintiff to believe that he would be treated with other than respect and professionalism at the ASMP meeting scheduled for June 2017 or that the Defendant had any agenda other than to hear all relevant information the Plaintiff had to impart with a view to better understand the Plaintiff's absence from work and to support his return to work; (n) there was no evidence put before the court to suggest that the Plaintiff's mental health situation deteriorated at any time after he completed the Cluain Mhuire programme and the objective contemporaneous medical record as to the plaintiff's mental health state, both objectively and subjectively which is dated 12 June 2017 therefore accurately sets out the position as of 09 June 2017 (there being no evidence whatsoever of any deterioration in the Plaintiff's health in those three days) .

An analysis of the Plaintiff's refusal to engage with the Defendant's ASMP

415. In light of the evidence, I am entitled to find that, as a matter of fact, the Plaintiff failed and refused to engage with the Defendant despite the obligations on the Plaintiff under the ASMP policy - the Plaintiff's failure to attend the 09 June 2017 ASMP meeting to which I have recently referred, being a prime example. In the manner explained later in this judgment, the Plaintiff was invited to numerous further ASMP meetings but failed or refused to attend same. It is beyond doubt that the Plaintiff's current absence from work commenced in October 2016

and the Plaintiff has never returned to work since then. The evidence demonstrates that, at all material times, the Defendant was willing, indeed anxious, for the Plaintiff to provide as much detail as possible in relation to any issue which was said by the Plaintiff to relate to his absence from work. It was for this reason that meetings took place in June and again in December 2016 at which, in the presence of his Union representative, the Plaintiff made clear that the substance of his concerns related to events said by him to go back between 10 and 20 years earlier (in the period 1996 – 2007). Given the historic nature of the Plaintiff's concerns, no investigation was commenced by the Defendant as a consequence of either the June or December 2016 and this is an outcome which the Plaintiff accepted at the time, in circumstances where the Plaintiff made clear that there were no current issues at work. In other words, the evidence demonstrates and the Plaintiff also accepted that the Plaintiff was not suffering, in 2016, any bullying or harassment at work. I conclude on the evidence that, had the Plaintiff given the Defendant information in relation to any alleged bullying or harassment or unfair treatment which the Plaintiff claimed to have been suffering from, the Defendant would have investigated it fully and would have taken all appropriate action to support the Plaintiff. That is finding flows from the uncontroverted evidence given by Mr Cullen on behalf of the Plaintiff. As we know, there was no investigation in the immediate aftermath of either the June 2016 or the June 2016 meetings and this is for the simple reason that there was no bullying, harassment or unfair treatment of the Plaintiff in his workplace which was current or which was claimed by the Plaintiff to be current. It should also be noted that agreed outcome of the December 2016 meeting was that the Plaintiff would return to work on 07 January 2017. That agreed outcome further underlines the fact that there were no current issues of unfair treatment of the Plaintiff in his workplace at the time, and no reason the Plaintiff could not come back to work or had anything to fear from resuming his job in January 2017.

416. It is a matter of fact that the Plaintiff did not return to work at the start of January. Instead, he sent a letter to the Plaintiff, dated 28 December which contained, inter alia, the following words "*...I feel that a number of circumstances caused by some members of staff and my DSM has forced me to be absent."* The evidence in this case does not support any finding that there were, in fact, any then current "*circumstance*" caused by anyone which forced the Plaintiff's absence. There is simply no evidence to support any finding that, as of late December 2016 (or at any time in the previous decade) the Plaintiff was bullied, harassed, undermined, unsupported or treated in any way unfairly by any colleague at work or by his DSM. Quite apart from the foregoing factual position, to the extent that the contents of the Plaintiff's 28 December 2016 letter suggested that there *were* current issues, the evidence demonstrates conclusively that the Defendant was at all material times willing and anxious to get full information from the Plaintiff in relation to same, to investigate same and to support the Plaintiff. This is, of course, why the Defendant invited the Plaintiff to the ASMP meeting which was scheduled for 09 March 2017, but which the Plaintiff failed to attend.

417. The Defendant's genuine wish to get as much information from the Plaintiff in relation to any issue which was said by the Plaintiff to be connected to his ongoing absence from work is reflected in the numerous ASMP meetings which were arranged from the start of 2017, the second of which was due to take place on 09 June 2017, but which the Plaintiff also failed to attend, despite being fit enough to attend same as the evidence examined earlier in this judgment demonstrates. Similar comments can be made in relation to each and every one of the many more ASMP meetings which were arranged by the Defendant, but which the Plaintiff did not attend (one exception being the Plaintiff's attendance at a meeting in October 2018 which meeting post-dated the institution of legal proceedings and which meeting was held under the auspices of the ASMP). How, it might be asked, can an employer analyse information and decide if further investigation or action is needed, if the employee who says they have

concerns, fails or refuses to provide the relevant information? The answer is, of course, that the failure on the part of an employee to provide information renders it wholly impossible for their employer to examine this information and to carry out any further investigations or to take any further action insofar as that may be appropriate having regard to the nature of the information provided. In essence, this is what occurred in the present case.

418. It can fairly be said that the Plaintiff provided no specific information whatsoever in his 28 December 2016 letter and failed or refused to provide any further information to the Defendant thereafter. Not only did the Plaintiff fail to attend a series of numerous ASMP meetings, at no stage did the Plaintiff put pen to paper and set out with any specificity the concerns he had and how they were said by him to prevent his return to work. Rather, no information whatsoever was produced. It could have been but it was not. This is of course for the very simple reason that the Plaintiff was not suffering from bullying or harassment or unfair treatment of any kind in his workplace. Thus, he had no information to provide, despite his 28 December 2016 letter suggesting, on one reading of it, that there were current or "live" issues which caused the Plaintiff to absent himself from work and which prevented him from returning to his job. The evidence demonstrates that it was the Plaintiff's actions which utterly frustrated any further investigation on the part of the Defendant into the issues raised in his 28 December 2016 letter. That is *not* to say that there were, as a matter of fact, any issues which were then current or any issues which were less than at least a decade old, but it *is* to say that any criticism levelled at the Defendant for failing to investigate issues or, for that matter, treating the Plaintiff unfairly after he went "out sick" in October 2016, including insofar as the operation of the ASMP was concerned, are wholly undermined by the evidence in this case. It was the Plaintiff who failed to provide any information and it was the Plaintiff who failed to engage and, in response to the foregoing, the Defendants acted properly, reasonably, fairly and with no little patience and understanding, motivated, the evidence demonstrates, by genuine

concern for the Plaintiff and the objective of supporting his return to a job which, to this day, remains open for the Plaintiff despite his 4 years of absence.

419. As will be dealt with later in this judgment where it arises in the chronology of relevant events, the Plaintiff attended only one meeting which was held under the ASMP framework and that was a meeting in October 2018, some two years into his absence from work and, at that meeting, the Plaintiff refused to discuss any issues relating to the past.

An active refusal on the part of the Plaintiff to engage with the Defendant

420. In short, the evidence does not merely show a failure in the passive sense to provide information, despite being repeatedly invited to meetings, a key purpose of which was to provide a forum for the employee, supported by their Trade Union representative, to provide all information touching on their ongoing absence. Rather, the evidence in this case reveals an active refusal to furnish information to the Defendant and a conscious refusal to attend meetings with the Defendant. The reasons for the foregoing are twofold and are clear from the evidence. Firstly, there were no current or "live" issues which adversely affected the Plaintiff in work and/or which explained the Plaintiff's ongoing absence from work and/or which required any investigation whatsoever. The second was the Plaintiff's stated desire never to return to his job but, instead, to try and achieve ill health retirement. In light of the forgoing, I accept as entirely fair and accurate the evidence given by Mr. Cullen of the Defendant, when he stated: *"...it is a feature of this case that whenever we try to look behind what Mr. Ward was saying, Mr. Ward would not engage."* (D10, P141, L14) In light of the Plaintiff's twin aims of never returning to work in An Post and securing ill health retirement instead, it is unsurprising that the Plaintiff neither attended the ASMP meetings to which he was invited, despite being fit enough to attend.

08 June 2017 "Letter before action" served by the Plaintiff's solicitors

421. Reddy Charlton, solicitors for the Plaintiff, served a "letter before action" on the Defendant which was dated 08 June 2017 and correspondence passed between the parties on 09 June, 14 June and 16 June 2017.

16 June 2017 Letter from Mr. Kevin Cullen to the Plaintiff – *"Status 3"*

422. Arising out of the Plaintiff's failure to attend the 09 June 2017 meeting, Mr. Kevin Cullen, HR Manager, wrote to the Plaintiff on 16 June 2017 in a letter which stated, *inter alia*:

> *"I understand that you were unable to attend the recently scheduled Review Meeting. As stated in previous correspondence these meetings are an opportunity for you to discuss your circumstances with me from your perspective. If you wish to meet with me separately from the scheduled reviews in ASMP you can contact me at 7057193 or Mr. Paul Clarke at 7058841. Alternatively, you can contact the company support services at any time at 7058576 or 7058568.*
>
> *As you did not attend the meeting on 6th* (sic) *June 2017 it has been necessary for me to undertake a review of your attendance record based upon information available to me. It is the level of absence that has prompted a review of your attendance under the Process and in accordance with the ASMP a status is designated to every case being reviewed through the Process.*
>
> *Having reviewed your record, I have decided that the status of your case under the Attendance Support & Management Process should be escalated to Status 3. The decision to escalate the status of your case may be appealed and should you intend doing so you must submit an appeal within five working days of the date of this letter.*
>
> *...*
>
> *Review Meetings are normally held to a three-month schedule however on occasion delays may occur which may necessitate that the next meeting be held in less than three months. Accordingly, your next review meeting will be scheduled as advised at the*

recent meeting. You will be contacted in advance of the next review to advise you of the specific date and time for the meeting. ...

I very much hope that progress can be made towards you achieving a return to work and regular attendance in the coming review period and beyond. ..."

423. I am satisfied that, as a matter of fact, the foregoing letter reflects the terms of the ASMP policy as agreed between An Post and the Plaintiff's Union. I am satisfied that the escalation of the status of the Plaintiff's case, from status 4 to status 3, was not a disciplinary sanction. It was something provided for under the terms of the ASMP policy which is not a disciplinary policy. The change from status 4 to 3 reflected the relevant facts, including the fact that the Plaintiff, who had been on sick leave since 25 October 2016, had been invited to attend a review meeting but had failed to attend it and, therefore, had not availed of the opportunity to provide the Defendant with any information relevant to the Plaintiff's ongoing absence from work. The Defendant had not been furnished with any medical opinion to the effect that the Plaintiff was unfit, on medical grounds, to attend the 09 June 2017 review meeting. There is no evidence that, by sending the Plaintiff the 16 June 2017 letter, An Post treated the Plaintiff unreasonably or unfairly or otherwise than in accordance with the provisions in the ASMP policy. There is evidence, however, in the form of the Plaintiff's sworn testimony, that, unknown to the Defendant, the Plaintiff had already decided that he would never come back to work in An Post and, instead, wanted ill health retirement.

The Plaintiff's claim that this is a *"smokescreen"*

424. During his direct evidence, the Plaintiff was shown a copy of the 16 June 2017 letter from An Post. He acknowledged that he had received it. The Plaintiff's evidence was to make two points in relation to the letter. Firstly, the Plaintiff claimed that, had the Defendant met with him within one, two or three weeks of 25 October 2016, he would not have been out sick and would not have come under the ASMP at all. Secondly, the Plaintiff claimed that "*this is*

a smokescreen, it is covering up what happened me in the job. They are blaming me for my sick record but the sick record is caused by what happened in the job" (D3, P29, L2). On the evidence I am bound to reject both claims made by the Plaintiff. A careful consideration of the evidence does not support the proposition that, had a meeting taken place within 1 to 3 weeks of 25 October 2016, the Plaintiff would not have been on sick leave. The Plaintiff's claims also ignore the fact that a meeting took place on 08 December 2016, which was attended by the Plaintiff and his trade union representative and which had an agreed outcome. That agreed outcome included the Plaintiff's commitment to return to work as of 07 January 2017. As part of the agreed outcome, the Defendant committed to reminding employees of certain key elements of the Dignity at Work policy, including the importance of raising grievances as soon as they arise, so that they can be properly addressed. As regards the claim of a "*smokescreen*", the Plaintiff well knew that part of the agreed outcome of the 08 December meeting was that no investigation would commence and the Plaintiff knew why this was the case, specifically, given the fact that there were no current workplace issues and the issues he raised went back so many years. Indeed, the outcome on 08 December 2016 was the same as the outcome in July and August 2011 in respect of the self-same issues. The fact that the Plaintiff did not return to work on 07 January 2017, despite agreeing to do so, cannot be explained by any alleged delay in the meeting taking place at which the Plaintiff committed to return to work as part of the meeting's agreed outcome. There is no evidence whatsoever that the Defendant is "*covering up*" anything. There is no evidence from which this Court can safely conclude that the Plaintiff suffered bullying or harassment at work or any unreasonable or unfair treatment in the decade prior to these proceedings being instituted. There is no evidence from which this Court can conclude that the Defendant is guilty of any wrong, insofar as the Plaintiff is concerned and, that being so, there is nothing to be "*covered up*". Nor is there any evidence that the Defendant is "*blaming*" the Plaintiff for his absence record. The contemporaneous evidence demonstrates

that the Defendant was properly applying the provisions of the ASMP policy and was focussed on trying to support the Plaintiff in returning to work, whereas the Plaintiff failed to attend pre-arranged meetings, the purpose of which was to discuss the Plaintiff's ongoing absence from work and to enable the Plaintiff to provide any all relevant information concerning that ongoing absence.

July 2017 correspondence

425. Correspondence passed between Reddy Charlton, Solicitors for the Plaintiff and An Post, dated 03 July 2017 and 13 July 2017. It is unnecessary to quote from that correspondence.

01 September 2017 invitation to ASMP review meeting

426. By letter dated 01 September 2017, Mr. Kevin Cullen wrote to the Plaintiff to invite him to attend another Review Meeting, scheduled for 07 September 2017 in the GPO. The Plaintiff was again reminded that he could be accompanied by a Trade Union representative or a work colleague, and that if he had any difficulty attending the meeting, he should notify Mr. Cullen as soon as possible and, if appropriate, the meeting could be rescheduled. The letter, which was similar in format to the Defendant's 06 June 2017 and 03 March 2017 letters inviting the Plaintiff to previous review meetings, stated inter alia:-

> "*You are encouraged to attend the meeting as it is an opportunity for you to advise me of any matter(s) that may have a bearing on the decision I make at that time as to how matters should be progressed.*
>
> *Should you decide, however, not to attend the meeting, I will advance matters based on the information available to me at that time. I will also write to you subsequently to advise you of any decision I make regarding how your case is to be progressed and the timing of any future review, if a further review of your case is necessary".*

06 September 2017 letter from the Plaintiff's solicitors

427. Reddy Charlton, Solicitors for the Plaintiff, replied to this letter by means of a letter dated 06 September 2017. Among other things, the letter from Reddy Charlton Solicitors stated the following: -

> "*Our client has experienced longstanding bullying, taunting, aggressive behaviour and intimidation at Blackrock Post Office where he has been working since 1994 as a driver. Indeed, we are instructed that there has been a continuous culture of bullying, harassment, intimidation, taunts and indignity to which our client has been subjected and that this environment has been facilitated and worsened by the failure of An Post to thoroughly investigate, address, restrain or control these behaviours of which it has been on continued and express notice of from 1996 to date".*

The foregoing assertions of fact are simply not borne out by the evidence before the court. Reddy Charlton Solicitors also suggested, inter alia, that the Plaintiff was being progressed through what was, in essence, a disciplinary procedure. I am satisfied that, as a matter of fact, this is not so. The Plaintiff's solicitors objected to the escalation of the status of his case and suggested that any escalation from Stage 3 to Stage 2 of the ASMP during the Plaintiff's medically certified absence would be "*untenable*". It was suggested by the Plaintiff's solicitors that "*An Post has continued to send threatening and inappropriate correspondence directly to Mr. Ward . . .*" I am satisfied that, as a matter of fact, the correspondence sent to Mr. Ward was neither threatening, nor inappropriate. Reddy Charlton Solicitors referred to a prior request that all correspondence be directed to their office and the Plaintiff's solicitors referred to "*the fact that it had been clearly expressed that our client was labouring under a mental incapacity . . .*". I am satisfied that the Plaintiff was not, as a matter of fact, labouring under a mental incapacity in September 2017. The evidence in this case does not support any such finding. The fact is that the Plaintiff underwent a treatment programme in Cluan Mhuire from which he was discharged in early May 2017, four months prior to the letter sent by Reddy Charlton in

September. Moreover, the 12 June 2017 review of the Plaintiff by Dr. Elizabeth Cummings, which comprises part of the Plaintiff's medical records stated, inter alia: "*no mental disorder*" under the heading "*Analysis*". Under the heading "*Care Plan*", Dr. Cummings stated: "*1. Suggest no further indication for secondary mental health care*". Quite apart from the contents of the 12 June 2017 review, the evidence given by the three Doctors who appeared as witnesses does not allow the court to find that, as of September 2017, the Plaintiff was labouring under a mental incapacity. An Post responded to Reddy Charlton Solicitors in a letter dated 07 September 2017 to which the Plaintiff's solicitors replied on that date.

Dr. Ann Leader – consultant psychiatrist – 07 September 2017 Report

428. The court was furnished with a copy of a medical report dated 07 September 2017 prepared by Dr. Ann Leader, consultant psychiatrist. The Plaintiff was seen by Dr. Leader at the request of his solicitors. This was Dr. Leader's first report in respect of the Plaintiff, whom she saw on 23 August 2017. Having carefully considered the evidence in this case, it is clear that numerous statements in Dr. Leader's report are incorrect and not supported by the facts which emerge from an analysis of the evidence given to this court. These inaccuracies are as follows:

(1) Dr. Leader's two – page report began with an account of what the Plaintiff had told her and contains, inter alia, the following:- "*It was rumoured that he had slept with his colleague's girlfriend. John was informed of these rumours by a Mr. C. John raised the subject with his inspector, Leo Kearns. He was given reassurance that those responsible for the rumours would be silenced".* It is a matter of fact that, at no stage during the trial, did the Plaintiff claim in his testimony that Mr. Kearns gave him "*reassurance that those responsible for the rumours would be silenced".* I am satisfied that Dr. Leader's report accurately reflects what the Plaintiff told her on 23 August 2017 but what the Plaintiff told Dr. Leader conflicts with what the Plaintiff

told this Court. Far from telling this Court that Mr. Kearns reassured the Plaintiff that those responsible for the rumours would be silenced, the Plaintiff was very clear in his evidence that Mr Justin Cullen, being the colleague who, according to the Plaintiff, told him about the rumour in December 2000, declined to tell the Plaintiff the person or persons from whom Mr Cullen had heard the rumour. Furthermore, the Plaintiff's evidence was that when the Plaintiff informed Mr. Kearns, the latter wished to call Mr Cullen in to speak with him and the Plaintiff refused to allow this;

(2) Dr. Leader's report says the following in relation to events of 2005: "*In May 2005, John discovered opened post when delivering post in Stillorgan. He again contacted his supervisor. A third party admitted to opening the letters. This individual then went on sick leave. It became widespread knowledge that John had discovered the opened letters".* There is no evidence before this Court that it became widespread knowledge that the Plaintiff had discovered the opened post. There is no evidence from which this Court can safely reach that conclusion. None of the Plaintiff's work colleagues were called to give evidence;

(3) Dr. Leader's report also contains the following statement: - "*There are many references to stress related to work issues in the records".* As a matter of fact, in the 20 – year period between 31 July 1996 and 08 February 2016, there are only four references to stress related to work issues, according to the medical records maintained by the Plaintiff's GP at the Carlton Clinic, and earlier in this judgment, I examined the context in which each entry arose, being the following entries:

25/01/2010 – Severe work stress. Plan 1 week on certs;

01/09/2010 – Stress in job. Plan 2 weeks off work;

10/05/2011 – Stress . . . Work related certs;

26/06/2011 – Stress + + Anger issues;

(4) Dr. Leader's report also states inter alia: - "*He told me that there is a culture of bullying in the area where he works. He identified the many culprits. He told me that there are other victims of bullying in the workplace. He told me that his Inspector told him that he [the inspector] told him that he [the inspector] had protected employees who were bullying John".* Dr. Leader's report no doubt accurately records what the Plaintiff told her in 2017, but this is different from the evidence given to the court by the Plaintiff in 2020. With regard to the foregoing extract from Dr. Leader's report, at no stage did the Plaintiff claim, during his evidence, that Mr. Leo Kearns told the Plaintiff that he had protected employees who were bullying the Plaintiff. Nor was that suggestion ever put to Mr. Kearns. To the extent that Dr. Leader reported what the Plaintiff described as "*a culture of bullying in the area where he works*", the evidence does not support any finding that the Plaintiff experienced bullying in his workplace at any stage in the decade prior to his review by Dr. Leader, nor has this court been presented with evidence to justify any conclusion there was a culture of bullying in the Plaintiff's workplace. With regard to the reference to "*other victims of bullying in the workplace*" it is a fact that the Plaintiff did not call any other witnesses alleged to have been victims of bullying and it is fair to say that, as well as being entirely historic and being claims made by the Plaintiff as to remarks allegedly made, the Plaintiff's evidence was lacking in detail even of those historic verbal remarks;

(5) Dr. Leader's report also contains the following: -"*In summary, John suffered years of chronic stress and dysthymia which he relates directly to work related events".* The evidence does not allow this court to conclude that the Plaintiff "*suffered years of chronic stress*". I say this having regard to the contemporaneous medical records maintained by the Plaintiff's GP at

the Carlton Clinic and the fact that there are only four references to work related stress in a 20 – year period. Furthermore, the very first reference to work related stress does not appear in the Plaintiff's medical records until 25 January 2010, at which point the Plaintiff has a relatively short period of time off work, but no medication was prescribed. The same is true in relation to the next reference to work related stress which appears as of 01 September 2010. Again, the Plaintiff took a period off work but no medication was prescribed. Furthermore, based on the Plaintiff's sworn evidence, it is clear that, as of 2010, there were no then *current* issues at work at all. Those issues he raised for the first time in writing by means of his 22 November 2010 letter, went back several years. The evidence also discloses that the Plaintiff used sick leave somewhat "strategically", in 2010. During his direct evidence concerning his second period of sick leave in 2010, it will be recalled that the Plaintiff stated: -"*I think I was out for three weeks. I felt when John O'Sullivan called I had to go sick to make it realistically that I was bringing points up. It wasn't going back to work quick again. I think I was gone for three weeks maybe*" (D2, P43, L28). The only two other references to work related stress, prior to February 2016, appear in May and in June 2011. Again, no medication was prescribed and it is also clear from the contemporaneous record maintained by the Plaintiff's GP, as of 10 May 2011, that the Plaintiff was "*Advised go for counselling but never went*".

Furthermore, the evidence demonstrates that, as of the Plaintiff's agreed return to work in August 2011, all past issues had been dealt with satisfactorily and the Plaintiff had no *current* issues whatsoever. The Plaintiff then proceeded to work happily in the Defendant for some 5 years prior to raising the self-same (i.e. past) issues in 2016 which had been raised in 2010 and 2011 and which had been dealt with satisfactorily at that stage. Having regard to the foregoing, the statement made by Dr. Leader that the Plaintiff *"suffered years of chronic stress and dysthymia"* is not borne out by the contemporaneous medical records prior to February 2016. Furthermore, although it is clear that the Plaintiff attributes stress directly to work – related

events, as reported by Dr. Leader, the evidence does not support any causal link between any mistreatment of the Plaintiff at work (there was none) and the stress complained of.

Dysthymia, depression and the expert's views on the Plaintiff's presentation

429. Regarding Dr. Leader's reference to "*dysthymia*" and "*depression*", there is no reference in the Plaintiff's GP records to "*dysthymia*". There is a single reference to "*depression*" in the medical records maintained by the Plaintiff's GP and that reference appears on 22 March 2017, namely "*Very depressed. Plan to psychiatrist*". The foregoing entry is reflected in the final paragraph of Dr. Leader's report wherein she states: -"*I would like to review his treating psychiatrist's report if this is to hand. I note that his GP felt that John was 'very depressed' in March 2017. His GP wrote to the CMO of An Post and referred John to the Cluan Mhuire psychiatric services. John continues to take antidepressants*". By the time Dr. Leader examined the Plaintiff for the first time, he had already been discharged from Cluan Mhuire for a number of months. In this regard, I have previously referred to the contents of the post – discharge review of the Plaintiff, dated 12 June 2017, as carried out by Dr. Elizabeth Cummings of Cluan Mhuire. With regard to the meaning of the term "*dysthymia*", Dr. Leader's oral evidence was that: "*A person who is suffering with dysthymia has low mood, negative thinking, they feel sad, their concentration might be impaired. Their sleep and appetite might be impaired and it usually goes on for a prolonged period*" (D8, P11, L29). Elsewhere in her oral testimony, Dr. Leader explained that "*Dysthymia waxes and wanes*", (D8, P23, L22), and my understanding of her evidence is that dysthymia is less serious than depression. Dr. Leader's view, with regard to the Plaintiff's mental health as of December 2016 was "*that he had slipped from dysthymia then into a more serious depression*" (D8, P23, L20). Although this Court could have nothing but sympathy for someone suffering from any physical or mental health complaint, it has to be said that the evidence does not support any causal link between the Plaintiff's depression or dysthymia and any wrong on the part of the Defendant, through

act or omission, and the evidence simply does not support the Plaintiff's claim that he suffered bullying or harassment or unfair treatment in his workplace which caused him to sustain injury of any kind, physical or mental, and be that depression or dysthymia.

430. It is clear from Prof. Mohan's report, dated 11 March 2019, based on his assessment of the Plaintiff on 22 January 2019, that he takes no issue with the fact that the Plaintiff experienced depression. Prof. Mohan describes the Plaintiff's presentation as "…*consistent with a diagnosis of a depressive disorder, single episode, which was moderate in degree*…" (para 25.9) and Prof. Mohan goes on (at para. 25.11) to refer to the anti-depressant medication prescribed and to the counselling from April 2017, to which the Plaintiff "*made a good response*". Prof. Mohan states (at para. 25.18) that *"Mr Ward had returned to his previous level of functioning. Notwithstanding, he does not envisage returning to work with An Post, as their professional relationship has irretrievably broken down*." At para. 25.19, Prof. Mohan stated that "*Mr Ward's recovery is such that he could be considered well enough to apply for employment in an alternative setting, should he choose to do so. He has indicated to his therapist in St John of God Hospital that he does envisage himself returning to work*". Elsewhere in his report, Prof. Mohan states inter alia (at para. 25. 16) that "*Whether the alleged harassment and bullying behaviours as described by Mr. Ward were real or perceived is not a matter for the author of this report to adjudicate upon"*.

431. In her July 2019 Report, Dr, Leader states, *inter alia*, *"I have read Professor Mohan's very detailed report. I broadly agree with the conclusions expressed in this report. If legalities are settled to John's satisfaction, I believe he is capable of moving on in his life. However, there is no realistic possibility that he could return to work in any capacity with An Post*". In the manner explored in this judgment, the evidence in this case, carefully examined, does not support findings that the Plaintiff was bullied or harassed or treated in any way unfairly or unlawfully by the Defendant. Thus, while there is no major disagreement between the medical

experts as to the Plaintiff's symptoms, the evidence does not establish any causal link between any legal wrong on the part of the Defendant and any symptoms experienced by the Plaintiff at any point.

08 September 2017 – personal injuries summons

432. On 08 September 2017, the Plaintiff's solicitors issued the personal injuries summons which is before the court. 12 noon on 07 September 2017 was a deadline contained in the letter from the Plaintiff's solicitors dated 06 September 2017 by which certain undertakings were sought, in default of which injunctive relief would be applied for.

11 October 2017 letter from the Defendant to the Plaintiff's solicitors

433. In a letter dated 11 October 2017, An Post wrote to the Plaintiff's solicitors, in circumstances where the proceedings had come before Gilligan J. that day. Among other things, the Defendant's letter stated inter alia:-

> "*In the ordinary course, during sick leave, including certified sick leave, employees may be requested to attend meetings with appropriate staff to consider how a return to work might be facilitated. Your client appears reluctant to comply with his obligation in this regard".*

The foregoing is factually correct. There was an obligation on employees in the Plaintiff's position to cooperate with the ASMP and that included attending meetings which were specifically designed under the ASMP to provide an opportunity for the employee to provide all relevant information touching on why they could not return to work as well as an opportunity for the employer to better understand the employee's position and to support them in relation to a return to work. At all such meetings the employee had the support of a Trade Union representative. The Plaintiff failed to attend such meetings. The evidence before this Court has also established the reason for his reluctance, namely, the fact that the Plaintiff did not intend return to work in An Post and, instead, wanted ill-health retirement from An Post. The evidence

also demonstrates that, objectively and subjectively, the Plaintiff's health was good as confirmed in the 12 June 2017 review which has been referred to above and which *pre-dated* the 11 October 2017 letter by some 4 months.

The Plaintiff's evidence that "*I never wanted to see Kevin Cullen again*"

434. During his evidence in chief, the Plaintiff acknowledged that he was, as a matter of fact, "*reluctant*" to attend review meetings. The reason he gave under oath was *not* because he felt incapable on health grounds of attending any review meeting. Rather, his evidence was as follows:- "*I was reluctant because I told my doctor I never wanted to see Kevin Cullen again because he refused to see me. And he gave me no help and I felt every time I got this letter, it was stress*" (D3, P33, L23). There is no evidence that Mr. Cullen ever refused to see the Plaintiff or that Mr Cullen was in a position to provide help to the Plaintiff which he failed or refused to provide. There is overwhelming evidence, however, of the Plaintiff's refusal to attend ASMP meetings. The foregoing evidence by the Plaintiff is, however, of some significance and it is entirely consistent with my findings, explained in detail elsewhere in this judgment, that: (1) certain information given by the Plaintiff to Dr. Leader, which the doctor relied upon in coming to the view that the Plaintiff was not fit to attend review meetings with Mr Cullen, was factually incorrect; (2) the Plaintiff was not unfit to attend review meetings; (3) the Plaintiff was fit to attend review meetings with Mr Cullen, but did not want to attend same, and declined to attend same, and the Plaintiff did so for reasons *other than* his fitness or health; (4) the Plaintiff's objective of never returning to work in An Post and, instead, to secure ill health retirement was material to the Plaintiff's decision not to attend any ASMP review meeting with Mr Cullen.

19 October 2017 letter from the Plaintiff's solicitors

435. Reddy Charlton Solicitors responded to the Defendant's 11 October 2017 correspondence by means of a letter dated 19 October 2017 in which they stated, inter alia, the following:-

> "*From the outset it has been made clear to various agents within your client that our client is unable to attend the ASMP review meetings due to his significant psychiatric injury. To suggest that our client is 'reluctant to comply' with his obligations is wholly disingenuous*"

A careful consideration of the evidence does not support any finding that, as of October 2017, the Plaintiff was suffering from a "*significant psychiatric injury*". The evidence, however, does support the proposition that the Plaintiff was reluctant to comply with his obligations, specifically his obligation to attend review meetings, which obligation flows from the responsibility of every employee to co-operate with the operation of the ASMP policy.

20 October 2017

436. By letter dated 20 October 2017, Kevin Cullen, HR Manager, wrote to the Plaintiff in view of the Plaintiff's failure to attend review meetings under the ASMP. Mr. Cullen's letter stated the following: -

> "*Dear John,*
>
> *I refer to previous correspondence in which you were invited to attend review meetings as part of the attendance support and management process.*
>
> *I understand, from information provided by your legal representatives that your position is that you are unable to attend review meetings held under the process as you are unfit to do, because of an underlying medical condition.*
>
> *Since the commencement of ASMP in 2013 it has been the general norm that employees have attended review meetings with management, even in circumstances where they are medically certified as unfit for work on an ongoing basis. From the company's*

perspective, its preference is to conduct reviews with the involvement of the employee, but it accepts there may be legitimate circumstances where this is not feasible. Where an employee asserts they are not only unfit for work, but unfit to meet with management to discuss matters related to their attendance under the ASMP, the company reserves the right to seek input from its Occupational Health Service in this regard.

In the circumstances that now apply in your case, I have referred the matter to the Chief Medical Officer and asked that he assess your capacity to attend meetings with management and to participate in management processes.

I have enclosed a guide to the referral process for your information and I would be happy to discuss any aspect of this letter with you if you wish. You may contact me at 01- 7057 193.

Yours sincerely,

Kevin Cullen,

HR Manager"

The Plaintiff's solicitors wrote to An Post on 08 November 2017 and again on 14 November 2017. The latter correspondence attached a report from the Plaintiff's consultant psychiatrist and a letter from the Plaintiff's GP, both of which were stated to have been furnished previously by way of affidavit. The Defendant was requested to place these on the Plaintiff's medical file.

Report by Dr. Leader dated 05 October 2017- advising that the Plaintiff "*is not well enough to attend a meeting with HR*"

437. Dr. Leader's 05 October 2017 report is relatively short, comprising a single page with three paragraphs. It refers to the date of assessment of the Plaintiff, namely 23 August 2017. The report goes on to state the following: -

"*I was requested by John's solicitor to offer an opinion on whether John is capable of attending a review meeting with HR to deal with his capacity to attend work. The following factors are relevant in making this determination.*

John attended a meeting with HR on the 8th December, 2016.

He found the meeting very stressful. He felt that HR were minimising his symptoms and trying to discover inconsistencies in his history. He felt that what took place at this meeting was inappropriate and stressful. He felt very threatened after this meeting. He felt that he had been quizzed in an inappropriate fashion and that management did not take his symptoms seriously. He wrote to Kevin Cullen on the 28th December, 2016, outlining his concerns about what took place at the meeting.

He was requested to attend a meeting on the 9th March, 2017. He did not attend this meeting as it was expressed that he was to be questioned again about his absence. I therefore believe that John is not well enough to attend a meeting with HR. He would be fit to attend a doctor attached to occupational health provided the meeting was conducted in a neutral fair manner and that confidentiality could be guaranteed.

Dr. Anne Leader.

Consultant Psychiatrist".

Inaccuracies in the "*factors*" relied upon by Dr. Leader for her opinion

438. The conclusion Dr. Leader reaches in the third paragraph of her report is explicitly based on the "*factors"* which she sets out in the remainder of her report, after her statement that "*The following factors are relevant in making this determination"*. Having carefully considered the evidence, I am satisfied that there are numerous inaccuracies in the factors relied upon by Dr. Leader, upon which she based her view that the Plaintiff was not well enough to attend a meeting with HR. These are as follows:

(a) Dr. Leader states, in her 05 October 2017 report, that the Plaintiff found the meeting held on 08 December 2016 *"very stressful"*. That was a meeting at which the Plaintiff was accompanied by his trade union representative and earlier in this judgment I looked at the evidence concerning that meeting in some detail. It will be recalled that there is a contemporaneous written record of that meeting which, I am satisfied, was comprehensive and accurate. I have referred to that document earlier in this judgment. It makes no reference whatsoever to the Plaintiff finding the meeting stressful. In his testimony, the Plaintiff did not claim that he found that meeting very stressful. Nor is there any evidence that the Plaintiff expressed to his Union representative, during the meeting or after it, that he found the meeting in any way stressful. There was an agreed outcome to the meeting, reflected in a contemporaneous written record which the Plaintiff signed at the conclusion of the meeting on 08 December 2016 and the Plaintiff signed that record without making any reference whatsoever to finding the meeting stressful. Nor did the Plaintiff say verbally or in writing, in the days after the meeting, that he found it stressful. There is, however, clear evidence that the Plaintiff felt that the meeting went well. Furthermore, I accept the uncontroverted evidence given by Mr Cullen that *"…the meeting that we had in December, it was a convivial meeting. Mr Ward was forthright, he was articulate. He wasn't distressed or anguished in any way and he seemed to be satisfied with the outcome"* (D10, P142, L3). In short, the evidence in this case wholly undermines the "fact" relied upon by Dr. Leader that the Plaintiff found the 08 December 2016 meeting very stressful;

(b) Dr. Leader reports, *inter alia*, that the Plaintiff felt *"HR were minimising his symptoms*". There is no evidence which would allow the court to conclude that

this was so, either at the 08 December 2016 meeting or at any other time. The contemporaneous written record of the 08 December 2016 meeting, which the Plaintiff signed, makes no reference whatsoever to any such claim. I am satisfied that had the Plaintiff felt, on 08 December 2016, that Mr. Cullen was *"minimising his symptoms"*, the Plaintiff could and would have said so. The fact is that he did not. Given the fact that at all times the Plaintiff was accompanied by his trade union representative, I am satisfied that, if Mr. Cullen was saying or doing anything during the meeting which could reasonably have been construed as minimising the Plaintiff's symptoms, the Plaintiff's union representative could and would have said so during the meeting. As a matter of fact, he did not. In short, the suggestion that HR were minimizing the Plaintiff's symptoms is factually incorrect. Thus a second factor upon which Dr. Leader relied for her opinion is wholly undermined by the evidence given to this Court;

(c) According to the contents of contemporaneous medical records dating from December 2016, the *status quo* at the time of the 08 December 2016 meeting was that the Plaintiff was receiving appropriate medical treatment, was responding well to that treatment and there is no evidence of the Plaintiff being in the middle of any crisis insofar as either his mental or physical health was concerned. The records maintained by the Plaintiff's GP record the fact that, as of 06 December 2016, the Plaintiff was *"much improved"*. The same also records *"Counselling helping",* as well as recording the fact that the Plaintiff had been prescribed an anti-depressant. Hence, the Plaintiff was, at the time of the 08 December 2016 meeting, receiving appropriate medical treatment for his symptoms and the Plaintiff's medical condition was, at the time, described by his GP as much improved. This evidence in relation to the Plaintiff's state of

health as of the time of the meeting in December 2016 is also inconsistent with the claim in Dr Leader's 05 October 2017 report that any attempt was made during the 08 December 2016 meeting to minimise the Plaintiff's symptoms;

(d) Dr. Leader also reports *inter alia* that the Plaintiff felt that what *"took place at this meeting was inappropriate and stressful"*. There is no evidence which would allow this Court to conclude that what took place at the 08 December 2016 meeting was either *"inappropriate"* or *"stressful"*. The Plaintiff had the benefit of representation from his Trade Union's Welfare Officer throughout the 08 December 2016 meeting and I am entirely satisfied that, had Mr. Cullen attempted to say anything or do anything inappropriate during the meeting, the Plaintiff's union representative and/or the Plaintiff could and would have objected. Neither made any objection either at or in the days after the meeting. There is simply no evidence to support the proposition that anything inappropriate took place during the 08 December 2016 meeting and the overwhelming evidence, including the contents of a contemporaneous, comprehensive and accurate record of the meeting which the Plaintiff signed on the very day of the meeting, wholly undermines the suggestion that what took place at it was either inappropriate or stressful. This is a further inaccuracy in the factors set out by Dr. Leader, upon which she relied for her opinion;

(e) Similar comments apply in relation to the statement made by Dr. Leader that *"He felt very threatened after this meeting"*. The foregoing is proffered as a statement of "fact" and it is another one of the factors which, it is clear from Dr. Leader's report, were relevant to her opinion that the Plaintiff was not well enough to review meetings with HR. It has to be pointed out, however, that the foregoing is not a statement of "fact". It is a statement which is wholly

unsupported, but undermined, by the evidence. There is simply no evidence to suggest that the Plaintiff felt threatened during or after the 08 December 2016 meeting. The contemporaneous evidence, in the form of the written record of the meeting, signed by the Plaintiff on 08 December 2016, wholly undermines the proposition that the Plaintiff felt threatened. The court is entitled to conclude that if, during the meeting, anything was said or done which the Plaintiff could reasonably have considered to be threatening, the Plaintiff's Union representative, who was present throughout, could and would have intervened. He did not. Nor did the Plaintiff suggest, during the meeting, that he felt threatened in any way. Furthermore, if it had been the case that, in the days following the meeting, the Plaintiff formed the view that he had been unfairly treated or that anything which took place at the meeting caused him to feel threatened, he could have said so. He did not say so. At all material times, the Plaintiff had access to union representation and I am satisfied that, if this is how the Plaintiff felt, he could and would have contacted his union to express the foregoing in clear terms. The Plaintiff did not do so via his union, just as he did not make any such suggestion to the Defendant, directly. It is a fact that neither the Plaintiff, nor his union representative contacted Mr. Cullen at any point between the end of the meeting of 08 December 2016 and the Plaintiff's attendance at St. Vincent's Hospital on 21/22 December 2016, to say anything at all. In short, the evidence wholly undermines any claim that the Plaintiff felt threatened at or after the 08 December 2016 meeting. Again, this is an example of a factual inaccuracy in Dr. Leader's report which is relied upon for the opinion expressed in it. That is not to criticise Dr. Leader. Doubtless, she relied

upon the information which she was furnished by the Plaintiff, but I am satisfied that she was not given factually accurate information by the Plaintiff;

(f) There is no evidence to support the claim that the Plaintiff was *"quizzed in an inappropriate fashion and that management did not take his symptoms seriously"*. The evidence, including the contemporaneous written record of the 08 December 2016 meeting, also wholly undermines such a proposition. There is simply no evidence which would allow this Court to conclude that the Plaintiff was quizzed inappropriately, or that his Union representative allowed this, or that management did not take his symptoms seriously;

(g) It is true, as Dr. Leader states, that the Plaintiff wrote to Mr. Cullen on 28th December 2016 (having written that letter, with the assistance of his daughter on 22 December 2016 or the following day). The contents of that letter and the context in which it was written have already been examined in this judgment. Based on the Plaintiff's sworn testimony, 22 December 2016 was also the date on which he made a firm decision from which he has never resiled, namely never to return to work in An Post again. Instead of wanting to return his job, the Plaintiff's evidence is that he wants ill-health retirement. In my view, the Plaintiff's decision that he will never return to work in An Post and, instead, wants ill health retirement, is of very considerable relevance to an assessment by a Doctor as to the Plaintiff's fitness to attend a meeting concerning his ongoing absence from work, an aim of which meeting – it is not in dispute – is so that an employee can provide their employer with all relevant information touching on their ongoing absence, the fundamental objective being to support the employee's *return* to their job as soon as this is possible (a return to work the Plaintiff was then, and remains, implacably opposed to). There is no

evidence, however, that the Plaintiff every told Dr. Leader about the foregoing decisions which he made, on 22 December 2016, long before seeing her;

(h) It is true, as Dr. Leader states, that the Plaintiff was requested to attend a meeting on 09 March 2017. Dr. Leader goes on to say that the Plaintiff *"did not attend this meeting as it was expressed that he was to be questioned again about his absence".* The foregoing statement ignores the fact that the Plaintiff's trade union and the Defendant have an agreed policy insofar as dealing with absence from work is concerned. The invitation to the 09 March 2017 meeting was no more and no less than a request made in accordance with the terms of that agreed policy, namely the ASMP. It is also incorrect to characterise the 09 March 2017 meeting as merely a forum to permit the Defendant to question the Plaintiff about his absence. As a matter of fact, and as the Defendant's 03 March 2017 letter inviting the Plaintiff to the meeting makes clear, the meeting was to provide an opportunity for the Plaintiff to advise Mr. Cullen of any matter or matters which were relevant to the Plaintiff's ongoing absence, so that he could make an informed decision as to how to progress matters. In reality, it also gave the Plaintiff the forum to furnish any and all relevant information so that if, for example, a new issue had arisen suggesting any unfair treatment of the Plaintiff at work which the Plaintiff wanted to have investigated, such an investigation could be undertaken.

Findings in relation to Dr. Leader's 05 October 2017 opinion that the Plaintiff was unfit to attend meetings with HR

439. When Dr. Leader stated in her 05 October 2017 report: *"I therefore believe that John is not well enough to attend a meeting with HR",* it is abundantly clear that she based her opinion on what she described as the *"factors"* relevant to her determination and, for the

reasons set out above, I am entirely satisfied that there are numerous factual inaccuracies in those factors.

440. It is also of significance that Dr. Leader expressed the view that the Plaintiff would be fit to attend a meeting, albeit with a doctor *"providing the meeting was conducted in a neutral fair manner and that confidentiality could be guaranteed".* There is no evidence whatsoever that the meeting held on 08 December 2016, or that any prior meeting between the Plaintiff and the Defendant, was held in other than a neutral and fair manner. Nor is there any evidence that confidentiality was not respected. Furthermore, there is no evidence that the review that the ASMP review meetings, to which the Plaintiff was invited in March, and again in June, and again in September 2017, were to be conducted otherwise than in a neutral fair and confidential manner. Based on the evidence, this court cannot take the view that those ASMP review meetings were going to be conducted otherwise than in a fair, neutral and confidential manner. I take that view for several reasons, including: (1) it is a matter of fact that the Plaintiff was entitled to bring his trade union representative to any review meeting in order to receive support and representation; (2) in the manner detailed earlier in this judgment, the Plaintiff did avail of trade union representation at several meetings; (3) it was the Trade Union Welfare Officer who represented the Plaintiff at previous meetings and, based on the evidence, I am entitled to conclude that the Welfare Officer was well versed in employee rights as well as all relevant provisions contained in policies in force within the Defendant, including the ASMP policy, the Dignity at Work policy and the Grievance policy, all of which contained protections for employees; (4) the ASMP policy, and Mr. Cullen's letters inviting the Plaintiff to review meetings in accordance with that policy, are explicit about the issue of trade union representation and the issue of confidentiality; (5) there is no evidence from which the court could conclude that Mr. Cullen was acting in other than a neutral and fair manner towards the Plaintiff; (6) I am satisfied that Mr. Cullen's motivation, in seeking to have the Plaintiff,

accompanied by his Union representative, attend a review meeting under the ASMP policy, was simply to try and ascertain relevant information concerning his ongoing absence from work with a view to both supporting the Plaintiff and encouraging his return to regular attendance at work as soon as the Plaintiff was fit enough to do so, but no sooner than he was fit to do so; (7) It is also clear from his uncontested evidence that, had the Plaintiff provided Mr Cullen with information suggesting that there was any unfair treatment of the Plaintiff in his workplace or, for that matter any issues affecting any employee in Blackrock, Mr Cullen would have caused appropriate investigations to be commenced under the Dignity at Work or Grievance procedures, (8) The Plaintiff, however, failed to attend the ASMP meetings designed to provide him with a forum to provide any and all information relevant to his ongoing absence from work.

441. Furthermore, unknown to (1) Mr. Cullen, (2) the Plaintiff's trade union representative, (3) the Plaintiff's wife and (4) Dr. Leader, the Plaintiff had already set his face against ever returning to work in An Post and his objective was, instead, to secure ill-health retirement. It is clear that for a doctor to express the view that the Plaintiff was unfit, even to attend a review meeting, was consistent with the objective which the Plaintiff had at the time (of never returning to work in An Post but of securing ill health retirement instead). That being so, I am satisfied that the Plaintiff's objective is likely to have had and did have a material bearing on the information he gave to Dr. Leader concerning his fitness to attend a review meeting.

442. For the reasons detailed above, I am satisfied that the information which the Plaintiff gave Dr. Leader - and which she described as the relevant *"factors"* upon which she based her view as to the Plaintiff's unfitness to attend a review meeting - was factually incorrect. In light of all the foregoing, I am satisfied that Dr. Leader's opinion, dated 05 October 2016 was unreliable, being based on inaccurate information. Based on a careful consideration of all the evidence, I am satisfied that the Plaintiff was *not* unfit to attend a review meeting concerning

his ongoing absence from work. I am satisfied that, as a matter of fact, the Plaintiff was fit and well enough to attend review meetings with HR, (in particular, the meetings scheduled to take place on 09 June 2017 and on 07 September 2017, both of which meetings the Plaintiff failed to attend, as well as all ASMP meetings scheduled to take place thereafter). My finding of fact that the Plaintiff was fit to attend review meetings scheduled for 09 June and 07 September 2017 is also entirely consistent with the contents of the 12 June 2017 review of the Plaintiff by Dr. Cummings which is included in the Plaintiff's discovery of medical records, the contents of which – including an objective and subjective assessment of the Plaintiff's health as of 12 June 2017 - I have referred to earlier in this judgment. It is also a matter of fact that Mr Cullen made a referral to the CMO and the CMO also issued an opinion on the Plaintiff's fitness to attend meetings, to which I now turn.

23 November 2017 Memorandum from CMO

347. Mr. Kevin Cullen referred the Plaintiff to the CMO, Dr. Frank O'Reilly, and the CMO saw the Plaintiff on 23 November 2017, following which the CMO sent an internal memorandum to Mr. Cullen in which Dr. O'Reilly gave his opinion with regard to the Plaintiff's fitness to attend management meetings. The CMO's memorandum of 23 November 2017 stated the following:

> *"Kevin*
>
> *BACKGROUND*
>
> *Further to your referral this 53-year old postal operative attended Occupation Health today. You advised that he has been absent from work for one year and has been referred for assessment to attend Management meetings.*
>
> *CURRENT POSITION*
>
> *He describes some stress symptoms. He relates to the workplace that you are already fully aware of. Based on assessment today he is fit to attend Management meetings.*

Given that these are potentially distressing for individuals you may wish to ensure that he has appropriate support through these, if necessary as discussed with him today, he can avail of support from Occupational Support if he wishes.

FUTURE PLANS

There is no plans for further review.

Dr. Frank O'Reilly".

Findings re: the CMO's opinion that the Plaintiff was fit to attend meetings

348. Both the Plaintiff and his wife were critical of the manner in which, according to them, the CMO conducted the assessment. However, there was no evidence put before the court from which I could conclude that the CMO's assessment was not made *bona fide.* It should be remembered that the purpose of the assessment was *not* to determine whether the Plaintiff was fit to return to work. Rather, the assessment was as to the Plaintiff's fitness to attend management meetings, specifically the review meetings provided for in the ASMP policy, the terms of which policy were agreed between the Defendant and the Plaintiff's union. Nor is there evidence before the court to the effect that the CMO's assessment was wrong. It is true that Dr. Leader issued a one-page *"Medical Report"*, addressed to the Plaintiff's solicitors dated 05 October 2017 in which Dr. Leader expressed her belief that the Plaintiff was not well enough to attend a meeting with HR but, as examined earlier in this judgment, the view expressed by Dr. Leader was expressly based on *"factors"* which are factually incorrect.

349. Furthermore, Dr. Leader's opinion, as expressed six weeks prior to Dr. O'Reilly's, made it clear that the Plaintiff would be fit to attend a meeting with a doctor attached to the Defendant's Occupational Health so long as such meeting was conducted *"in a neutral and fair manner and that confidentiality could be guaranteed".* There is no evidence that any meeting which the Plaintiff attended was conducted in a manner which was *not* neutral, fair and confidential, nor is there any evidence that any ASMP review meeting, to which the

Plaintiff was invited, but failed to attend, was to be conducted in a manner which was not neutral, fair and confidential.

350. Carefully weighing all the evidence, I am satisfied that there is no basis for the court disregarding the CMO's 23 November 2017 opinion and I am satisfied, as a matter of fact, the Plaintiff was, in fact, fit to attend management meetings, including ASMP review meetings, as per the views expressed by the CMO on 23 November 2017.

11 December 2017 letter from Kevin Cullen to the Plaintiff

351. On 11 December 2017 Mr. Kevin Cullen, HR Manager wrote to the Plaintiff in the following terms:

> *"Dear John,*
>
> *My letter to you of 20th October, 2017 refers.*
>
> *In my letter I advised you that I was referring you to the Chief Medical Officer to assess your fitness to attend meetings with management. I have received a report from the Chief Medical Officer in the meantime that states that you have been assessed as fit to attend meetings with management.*
>
> *I wish to invite you to attend an ASMP review meeting with me at 10.30am on Friday 15th December, 2017 in room 2-153 GPO. You may be accompanied to the meeting by a Trade Union representative or a work colleague if you wish. If you have difficulty in attending the meeting at the date/time advised you should notify me as soon as possible. I will, if appropriate, reschedule the meeting to an alternative date/time.*
>
> *I look forward to seeing you. If, in the interim, you have any query relating to the above arrangements please contact me at 7057193 or alternatively you can avail of the support of the Occupational Support Specialist in confidence by contacting 7058568.*
>
> *I have enclosed a copy of the employee's guide to the Attendance Support and Management process for your information.*

Yours sincerely,

Kevin Cullen,

HR Manager."

13 December 2017 letter from the Plaintiff's solicitors

352. On 13th December, 2017 the Plaintiff's solicitors wrote to the Defendant, by way of a response to Mr. Cullen's 11 December letter, in which they stated *inter alia: "Our client has been medically assessed as unfit to attend meetings with HR by his consultant psychiatrist and attending GP."* For the reasons set out in this judgment I am satisfied that the foregoing was not, in fact, the case and I am satisfied that the Plaintiff was not medically unfit to attend meetings with HR and, specifically, I am satisfied that the Plaintiff was medical fit to attend the then latest meeting with Mr. Kevin Cullen, scheduled for 15 December 2017, at which the Plaintiff was entitled to have Trade Union representation. Among other things, the 13 December 2017 letter from the Plaintiff's solicitors suggested that the request that the Plaintiff attend the ASMP review meeting on 15 December 2017 was *inter alia "inappropriate and threatening".* On the evidence, I am satisfied that the request to attend the meeting was neither inappropriate nor threatening. The Plaintiff did not attend the meeting proposed for 15 December 2017. This was not reasonable. This was a further example of a failure by the Plaintiff to co-operate.

January 10 2018

353. On 10 January 2018, Mr. Cullen wrote to the Plaintiff's solicitors pointing out that the purpose of the referral to the CMO was to assess the Plaintiff's capacity to attend ASMP *meetings* with management, as opposed to an assessment of the Plaintiff's capacity to return to *work*. In circumstances where the Plaintiff's solicitors had suggested an independent review of the Plaintiff's capacity, Mr. Cullen stated *inter alia* the following:

"An independent review only takes place in circumstances where there are potentially serious implications for the employee such as redeployment or termination of employment. In these circumstances the matter does not arise as the Company is currently not considering such matters".

I am satisfied that, as a matter of fact, the foregoing statement by Mr. Cullen accords with the terms of the ASMP policy. Mr. Cullen went on, in his letter, to quote from certain sections of the ASMP policy including s.1.3 and s.4.5.1. Among other things, Mr. Cullen also stated the following in his letter:

"You should note that the Company does not necessarily accept that John is not well enough to attend work at this time. The fact is that an assessment of John's fitness for work has not taken place as he has not met with management as part of the ASMP process since attending the meeting on 8 th December, 2016. Where an employee chooses not to attend ASMP meetings with management, the Company does not generally refer employees to the Occupational Health Service for assessment of their capacity for work.

In these circumstances, where the policy specifically sets out that the meeting affords an employee the opportunity to discuss any issue affecting attendance, I find difficult to understand how you could view my letters to John inviting him to attend meetings as an attempt to harass him, especially in circumstances where, as set out above, the meetings are designed as a support to him. As with all employees who attend such meetings, ASMP meetings are intended to provide a significant support to employees and our experience to date has been that this is very much the case.

In conclusion I have set out the arrangements whereby you and John may access the Chief Medical Officer's report. I will rearrange the ASMP meeting for later in the month as requested and I will write to John separately in that regard."

The status quo as of January 2018

354. It is a matter of fact that, by the time Mr. Cullen sent his 10 January 2018 letter, thirteen months had elapsed since the meeting between Mr. Cullen, the Plaintiff and the Plaintiff's Trade Union representative, on 08 December 2016, which concluded on the basis that the Plaintiff agreed to return to work on 07 January 2017. Over a year had passed since the date of the Plaintiff's expected return to work and, throughout the year 2017, the Plaintiff had been invited to several ASMP review meetings to discuss his ongoing absence from work, but failed to attend any of them. It is a matter of fact that such review meetings were arranged by the Defendant in accordance with the terms of the ASMP policy, the terms of which were agreed between An Post and the Plaintiff's Trade Union and it is also a fact that, pursuant to the ASMP policy, the Plaintiff had a duty to co-operate fully with management in relation to the review of their attendance through the ASMP. In circumstances where I am satisfied that, as a matter of fact, the Plaintiff was not unfit to attend review meetings, specifically all review meetings scheduled to take place from June 2017 onwards, I am satisfied that the Plaintiff's failure to attend such review meetings amounted to a breach of his responsibilities under the ASMP policy and constituted wholly unreasonable actions by the Plaintiff.

The suggestion that the Defendant failed to carry out an "*independent review*" of the Plaintiff's capacity to attend ASMP meetings

355. During cross-examination it was put to Mr Cullen that the Defendant was obliged to obtain, and failed to obtain and independent opinion on the Plaintiff's fitness to attend ASMP meetings with the Defendant. In my view, that proposition is undermined by the evidence in this case, including the following:

(1) Having been specifically asked to advise on the issue and having met the Plaintiff, the Defendant's Chief Medical Officer, Dr. Frank O'Reilly, provided

his opinion on 23 November 2017 that the Plaintiff was fit to attend ASMP meetings;

(2) There is no evidence whatsoever to suggest that Dr. O'Reilly had any vested interest in the outcome of his assessment, or had any animus towards the Plaintiff, or was other than appropriately qualified and professional, or that Dr. O'Reilly did other than exercise his independent judgment as medical practitioner as regards the view he formed and communicated;

(3) It is not in dispute that HR Managers are not privy to discussions as between medical professionals within the Defendant's Occupational Health team, nor is there any evidence that Management could influence, or attempted in any way to influence, the independent assessment carried out by the CMO;

(4) In the manner examined earlier in this Judgment, the basis upon which Dr Leader expressed her view in her 05 October 2017 report, was fundamentally flawed in that the information supplied to Dr Leader (comprising the "factors" Dr Leader explicitly relied upon in order to reach her view) was factually inaccurate in numerous material respects, all being information furnished to Dr Leader by the Plaintiff, who must have known the information to be inaccurate;

(5) On the evidence before this Court, the Plaintiff was, as a matter of fact, fit to attend ASMP meetings, for the reasons I have outlined earlier, and this finding accords fully with the Plaintiff's subjective assessment of his health given to Dr. Elizabeth Cummings of Cluan Mhuire, as well as the objective assessment of the Plaintiff by Dr Cummings, both of which appear in a review, dated 12 June 2017;

(6) The evidence also demonstrates that, regardless of any question of fitness, and without the decision having been based on any medical advice whatsoever, on

22 December 2016, and without informing the Defendant, the Plaintiff unilaterally decided that he would never return to work in the Defendant. The Plaintiff has never deviated from that decision. Furthermore, his sworn evidence is that he wants, not to return to work, but to get ill-health retirement form An Post;

(7) The fact that the Plaintiff, as of 22 December 2016, set his face against ever returning to work is materially relevant to the Plaintiff's refusal to attend all but one of the ASMP meetings, specifically designed to facilitate the Plaintiff's return to work and, on the one occasion the Plaintiff did attend a meeting (in October 2018, which the Plaintiff was self-evidently fit enough to attend) the Plaintiff refused to discuss past events;

(8) From November 2016, the Plaintiff gave his GP, Dr McManus, to understand that he was the victim of a serious and ongoing campaign of bullying at work and Dr McManus was plainly under the incorrect impression that the Plaintiff was currently experiencing unfair treatment, whereas the Plaintiff had informed Mr Cullen, in the presence of his Union representative, at the meeting in June 2016 and again in December 2016, that all his concerns went back to 1996 – 2007. In short, the Plaintiff knowingly gave incorrect information to his GP. Dr. Leader had also been given incorrect information by the Plaintiff who knew that information to be incorrect.

(9) The foregoing (namely the provision of incorrect information by the Plaintiff to medical professionals) created an insurmountable obstacle in the way of obtaining an "independent review" or independent opinion of the type it is suggested should have been sought. This is because any further medical professional who carried out a review of the Plaintiff would plainly have to rely

on such information as the Plaintiff provided. The evidence discloses that, by this point in time, the Plaintiff had provided incorrect information to a range of people including to his GP, to Mr O'Sullivan in Occupational Health, to his solicitors and to Dr Leader (i.e. suggesting that his workplace difficulties were *current* and suggesting that he was being bullied or unfairly treated at work and that there had been a sustained and ongoing campaign of bullying in his workplace, when the reality was that all his concerns went back between 10 and 20 years).

(10) In light of the fact that the Plaintiff had told Management one thing and had told at least two Doctors and his solicitors a very different story, I am satisfied that there was, as a matter of fact, no possibility of obtaining any "independent" review or opinion from a third-party clinician of the type the Plaintiff's solicitors wanted;

(11) Nowhere in the ASMP policy is there any obligation on the Defendant to arrange for an independent review of the fitness of an employee to attend a *meeting*. By contrast, it is explicitly stated in the ASM that cooperation is required of employees and this is for good reason. Put simply, if an employee says that they are out sick due to workplace issues, common sense and basic fairness require that they explain what those issues are, not only so that their employer can take appropriate action in a formal sense, but also so that the employer can try to understand the employee's perspective and can try to assist the employee with a return to work when they are well enough and, if any investigation is merited as a result of information conveyed by the employee to the employer at an ASMP meeting, to enable the commencement of such an investigation .

(12) In the present case, however, the Plaintiff never had any intention of returning to work and was very clear in his evidence that this remains his position.

Certain findings in relation to the proposition that the Defendant should have disregarded or looked behind the CMO's opinion or sought an "independent" view

356. For these reasons, I am satisfied that there was no obligation on the Defendant to disregard or to look behind the CMO's opinion and no obligation to seek an independent opinion, nor was there any prospect of an independent review being obtainable, given the facts which emerge from the evidence in this case. It is also relevant to point out, with regard to the Plaintiff's fitness to attend meetings, that he, as a matter of fact, attended three meetings which post-date his failure to return to work on 07 January 2017, namely a meeting on 10 May 2017 with Mr O'Sullivan of the Defendant's Occupational Support service as well as a meeting with the Defendant's Chief Medical Officer on 23 November 2017 and a meeting in October 2018 held under the auspices of the ASMP. Plainly the first two of these were not meetings with the Defendant's HR Manager, Mr Cullen, but the third was a meeting which Mr Cullen attended.

357. There is no evidence to suggest that the Plaintiff was treated, at the October 2018 ASMP meeting, with other than professionalism and respect. Furthermore, the conclusive evidence is that at all ASMP meetings, the Plaintiff could avail of support from a Trade Union representative and it will be recalled that this is precisely what occurred during the 23 June and 08 December 2016 meetings, the latter being a meeting under the ASMP and a meeting which, the evidence demonstrates, the Plaintiff thought went well at the time, no concerns whatsoever having been expressed by the Union representative or by the Plaintiff as to how it was conducted.

358. The Plaintiff was self-evidently fit enough to attend all three of the aforementioned meetings and the October 2018 ASMP meeting will be referred to again, where it arises in the chronology of events. It is to the chronology that I now return.

16 February 2018 letter from Kevin Cullen to the Plaintiff

359. Further correspondence was exchanged, including a 24 January 2018 letter from the Plaintiff's solicitors to the Defendant, a 12 February 2018 letter from the Plaintiff's solicitors to the Defendant and a 16 February 2018 letter from the Defendant to the Plaintiff. On 16 February 2018 Kevin Cullen wrote to the Plaintiff as follows:

> *"Dear John*
>
> *My letter of 11th December, 2017 refers.*
>
> *In my letter I invited you to attend an ASMP review meeting with me on 15th December, 2017. The meeting was deferred at the request of your legal representative. As an appropriate period of time has now elapsed I have rearranged the meeting for 10am on Friday 23rd February, 2018 in room 2-153 GPO.*
>
> *The meeting will be a valuable opportunity for you to identify and describe in detail any workplace matters which may have impacted on your ability to attend work and that may be impacting on your ability to return to work. Paragraphs 4.5.1.3, 4.5.1.4 and 4.5.2.5 of the enclosed ASMP booklet will provide you with more information in that regard.*
>
> *You may have a Union representative or a colleague attend the meeting with you if you wish. I look forward to seeing you on the day. If, in the interim, you have any query relating to the above arrangements please contact me at 7057193 or alternatively you can avail of the support of the Occupational Support Specialist in confidence by contacting 7058568.*
>
> *Yours sincerely,*
>
> *Kevin Cullen,*
>
> *HR Manager".*

Review proposed for 23 February 2018

360. I am satisfied that it was not unreasonable for the Defendant to send the 16 February 2018 letter to the Plaintiff. The request that the Plaintiff attend the review meeting proposed for 23 February 2018 was consistent with the terms of the ASMP. As with every invitation sent to the Plaintiff with regard to every proposed meeting, it was made clear that he was entitled to have a Trade Union representative present. There is no evidence from which I could conclude that the Plaintiff was ever treated unfairly at meetings. Furthermore, I am entitled to conclude that the right to Trade Union representation at every meeting ensured that such meetings would be conducted in a manner which was fair to the Plaintiff. That is equally true for the meeting proposed to take place on 23 February 2018. For the reasons detailed earlier in this judgment, I am satisfied that the Plaintiff was fit and well enough to attend the proposed meeting.

16 February 2018 letter from Mr. Cullen to the plaintiff's solicitors

361. On 16 February 2018 Mr. Cullen also wrote to the Plaintiff's solicitors in relation to their request for an independent review of the Plaintiff's capacity to attend meetings with management and the reason why the Defendant took the stance that the circumstances in respect of the Plaintiff's situation did not currently meet the criteria for an independent review. The letter also pointed out that the Plaintiff had been invited to an ASMP review meeting scheduled for 23 February 2018.

Correspondence dated 21 and 22 February 2018

362. The Plaintiff's solicitors responded by letter of 21 February 2018 stating *inter alia,* that Dr. Leader had *"certified that our client is not fit to attend the meetings of the nature sought by you"* and pointing out that the Plaintiff would not be attending the meeting. The Defendant responded by letter of 22 February 2018 and Mr. Cullen's letter stated *inter alia* the following:

> *"I can confirm that ASMP sets an expectation that an employee will attend meetings with management that are an integral part of a process that was agreed with the Trade Unions within An Post.*

Also contrary to the statement in your letter I should also point out that the purpose of this meeting is not to assess John's fitness for work. It is a meeting to facilitate John setting out his difficulties in work. It needs to be remembered that the entire purpose of the Policy is to assist employees who are absent through sick leave to return to work. It sets out an integrated approach and it is frustrating to say the least that your client does not appear willing to fully engage…"

Having regard to my analysis of the evidence, as set out earlier in this judgment, I am satisfied that the foregoing statements by Mr Cullen were factually correct.

20 April 2018 letter from Mr Cullen to the Plaintiff – "*Status 2*"

363. On 20 April 2018 Mr. Kevin Cullen wrote to the Plaintiff in circumstances where the Plaintiff did not attend the ASMP review meeting scheduled for 23 February 2018. Mr. Cullen's letter stated *inter alia* the following:

"As you did not attend the meeting on 23rd February, 2018 it has been necessary for me to undertake a review of your attendance record based upon information available to me. It is the level of absence that has prompted a review of your attendance under the Process and in accordance with ASMP a status is designated to every case being review through the Process.

Having reviewed your record, I have decided that the status of your case under the Attendance Support & Management Process should be escalated to status 2. The decision to escalate the status of your case may be appealed and should you intend doing so you must submit an appeal within five working days of the date of this letter…"

The 20 April 2018 letter went on to state that the Plaintiff would be contacted in advance of the next ASMP review meeting and the letter concluded with an expression of hope that progress could be made towards achieving a return to work and regular attendance in the coming review period and beyond. I am satisfied that the 20 April 2018 letter reflected the

terms of the ASMP policy. On the evidence, I am unable to conclude that the actions taken by the Defendant, as set out in the letter, were in any way unreasonable or unfair. By this point, the Plaintiff had been absent from work for approximately eighteen months. Furthermore, nearly sixteen months had elapsed since the date of the Plaintiff's expected return to work and, throughout that entire period, the Plaintiff had failed to attend a single one of the several review meetings to which he had been invited, all such meetings being provided for in the ASMP policy. I am also satisfied that, as a matter of fact, the 20 April 2018 letter did not constitute or communicate any disciplinary action against the Plaintiff on the part of the Defendant. On the contrary, the letter is explicit about the fact that the Plaintiff is entitled to return to his job and makes clear the Defendant's hope that the Plaintiff will do just that. However, unknown to the Defendant, the Plaintiff had long since decided that he was never going back to work in the Defendant. Furthermore, I am satisfied that the Plaintiff was well enough to attend review meetings, in particular all review meetings proposed to take place from June 2017 onwards and his failure to attend same was breach of the explicit obligation of cooperation set out in the ASMP policy. Also of relevance is that the Plaintiff wanted to obtain ill health retirement from the Defendant, not a return to work, and it is difficult to see the Plaintiff's failure to attend ASMP review meetings other than as being consistent with his aim of never returning to work in An Post but of achieving ill health retirement from An Post instead.

05 July 2018 examination of Plaintiff by Dr. Anne Leader

364. Dr. Leader's 12 July 2018 medical report confirms that she saw the Plaintiff on 05 July 2018. I am satisfied that Dr. Leader's report accurately reflects what she was told by the Plaintiff. Having carefully considered all the evidence, I am satisfied that there are numerous inaccuracies with regard to the information given to Dr. Leader by the Plaintiff. These are as follows:

(1) Among other things, Dr. Leader records in her 12 July 2018 report: "*He told me that the harassment continues".* Such an allegation of harassment is not supported by any evidence and I am satisfied that, as a matter of fact, there was no harassment of the Plaintiff in the manner reported to Dr. Leader by the Plaintiff and recorded in her 12 July 2018 report. This evidences that the Plaintiff gave incorrect information to Dr Leader which, it must be said, he must have known to be incorrect;

(2) Dr. Leader's report goes on to state that the Plaintiff felt unable to attend meetings with HR because of anxiety and states: *"When he did not do so, he was disciplined".* The foregoing claim made by the Plaintiff is unsupported by, but undermined by, the evidence. I am satisfied that as a matter of fact the Plaintiff was not disciplined and, again, it comprises incorrect information given to the Doctor by the Plaintiff;

(3) Dr. Leader's report also records the following with regard to the Plaintiff: *"He believes that the company management is trying to have him dismissed".* The foregoing is not supported by the evidence and I am satisfied that, as a matter of fact, the Defendant company was not trying to have the Plaintiff dismissed. Far from it, the Plaintiff's job remained, and remains to this day, open to him. In light of the actions and statements by the Defendant, it could not reasonably be believed that An Post was trying to have the Plaintiff dismissed. The contrary is borne out by the evidence, including numerous statements made over a protracted period to the effect that An Post hoped to see the Plaintiff *return* to work. Those statements were made in a series of letters by Mr. Kevin Cullen, in the context of inviting the Plaintiff, together with his Union representative, to attend ASMP review meetings, none of which the Plaintiff attended. Those

were not disciplinary meetings. They were opportunities, as the Plaintiff well knew, for him to provide the Defendant with all information relevant to his ongoing absence from work. They were meetings which were plainly necessary if the Defendant was to make informed decisions under the ASMP policy, which policy was not a disciplinary one. It also has to be pointed out that when the Plaintiff informed Dr. Leader, on 05 July 2018, of the Plaintiff's belief that An Post was trying to have him dismissed, the Plaintiff neglected to inform Dr. Leader that he had no intention of ever going back to work in An Post and that, instead, he wanted to secure ill-health retirement. Once again, the evidence demonstrates that the Plaintiff mis-informed Dr. Leader.

(4) Dr. Leader's report also includes the following: "*He described the working atmosphere in the driver's section where he worked as toxic and hostile".* There is no evidence which would allow this Court to conclude that the atmosphere in the driver's section was toxic or hostile in 2018, or at any point during the decade and more prior to the Plaintiff's meeting with Dr. Leader on 05 July 2018 (and that is not to say that the evidence allows for a finding that it was toxic beforehand). Insofar as the Plaintiff suggested to Dr. Leader, on 05 July 2018, that there were any current workplace issues, his own evidence wholly undermines this claim. Had there been any current issues in the workplace, the Plaintiff had two separate opportunities to raise those issues, namely at the two meetings which took place in June and in December 2016, both of which meetings were attended by the Plaintiff, his Trade Union representative and Mr. Cullen. During those meetings, held on 23 June 2016 and 08 December 2016, respectively, the Plaintiff referred to historic issues only. There is a contemporaneous written record in respect of both meetings. The 23 June 2016

meeting record was signed by both Mr. Cullen and by the Plaintiff's Trade Union representative, Seán O'Donnell. It makes clear that the Plaintiff *"outlined difficulties that he had experienced in work between 1996 and 2007".* No current issues were raised and there was no suggestion that, as of 23 June 2016, the workplace atmosphere was toxic or hostile. The Plaintiff signed the contemporaneous written record in respect of the 08 December 2016 meeting and, again, the written record refers to some concerns at work which *"were historical and were discussed with John previously"* (the "previously" being a reference to the 23 June 2016 meeting). There were no current issues in the workplace, much less any suggestions by the Plaintiff that the then working atmosphere was toxic and hostile. Again, this is an example of the Plaintiff having given incorrect information to Dr Leader which he must have known to be incorrect.

In light of the foregoing, I am forced to conclude that what the Plaintiff was telling Dr. Leader, as of 05 July 2018, is not borne out by the evidence and was incorrect information which the Plaintiff knew to be incorrect.

Findings regarding Dr Leader's opinion in her 12 July 2018 report

365. In the final paragraph of her 12 July 2018 report, Dr. Leader stated:-

"I believe that John remains unfit to return to work in An Post. He is very threatened and fearful of any contact with his employers. I feel that he remains medically unfit to meet with them. Any face to face meeting with HR would be deleterious to his mental health. He should continue to attend Dr. McManus on a regular basis."

It is clear that the view to which Dr. Leader came was based, to a material extent, on what the Plaintiff reported to her. It is equally clear that what the Plaintiff reported to Dr. Leader is not reflective of the factual position. If the Plaintiff felt threatened and fearful of any contact with

his employers, the evidence demonstrates that there was no basis, in fact, for that stance on the part of the Plaintiff. There is simply no evidence that the Plaintiff was threatened and there was no reasonable basis for the Plaintiff feeling threatened. Nor does the evidence reveal any facts which could reasonably give rise to any fears on the Plaintiff's part. Despite what the Plaintiff told Dr. Leader, there was no harassment of the Plaintiff and the Plaintiff had not been disciplined for failing to attend a meeting with HR, the Defendant was not trying to have him dismissed and the working atmosphere was not toxic or hostile. Yet the foregoing was Dr. Leader's understanding at the time of her opinion. By contrast, the evidence demonstrates that An Post was acting reasonably and entirely in accordance with the provisions of the ASMP, focussed on trying to understand the Plaintiff's ongoing absence from work and to assist his return. The evidence illustrates that the Defendant's goal was to try and secure the Plaintiff's return to work whereas the Plaintiff, unknown to Dr. Leader, had decided he was never going back to work in An Post and his goal was to achieve, instead, retirement from An Post on ill-health grounds. In circumstances where the views formed by Dr. Leader as to the Plaintiff's fitness to attend meetings were views based, to a material extent, on numerous factual inaccuracies detailed above, and having regard to the Plaintiff's evidence that he had objectives which Dr. Leader was plainly unaware of, I am satisfied that, as a matter of fact, the Plaintiff was not medically unfit to meet with HR as of July 2018. No criticism of Dr. Leader is intended. She acted *bona fide* and furnished an opinion in July 2018, which was based on the information given to her by the Plaintiff. I am satisfied, however, that the Plaintiff did not give Dr. Leader accurate information and, thus, the Doctor's view that the Plaintiff was unfit to meet the Defendant is not reliable.

October 2018 meeting between the Plaintiff and the Defendant's HR managers

366. During the trial, uncontroverted evidence was given by Mr. Cullen that, in October 2018, a meeting took place between the Plaintiff and the Defendant which was held within the

framework of the ASMP. Mr Cullen attended that meeting which was conducted by the Defendant's Employee Relations HR manager. The Plaintiff was accompanied by his brother. It is not in dispute that both sides agreed that there would be no escalation of the status of the Plaintiff's case under the ASMP with reference to this meeting. Mr Cullen's uncontroverted evidence concerning that meeting included the following:

> *"Mr. Ward chose not to talk about the issues leading up to his absence. And where anybody is absent from work because of work-related issue, it's the issues that existed in work at the time of the absence that the company is interested in. So he was asked specifically what happened between June 2016 where he attended a meeting with me and he seemed to be satisfied, and there was no record of sick absence at that stage. What happened between June and October that would require him to be out of work for so long. He said he didn't want to discuss that. He just wanted to discuss the future…It's actually the opposite to the meeting that I had him (sic) in the December where he wanted to discuss the past and I wanted to discuss the future. It was a kind of an about turn."* (Day 9, P78, L8)

In light of the foregoing evidence which was not disputed, I am entitled to draw a number of conclusions in relation to this meeting and regarding the status of matters, as of October 2018, as follows:

(1) it is a matter of fact that the Plaintiff did attend this meeting with members of the Defendant's management and was self-evidently fit enough to attend it;

(2) there is no evidence to suggest that, had he been accompanied by his Trade Union representative, he would have been *unfit* and unable to attend this meeting, and/or that his fitness to attend it is only explained by his brother's presence;

(3) there is no evidence that the Plaintiff was treated in any way inappropriately during the meeting or that he found it unduly stressful or that the meeting was conducted in anything other than a professional manner;

(4) the foregoing findings entirely support the finding of fact, detailed earlier in this judgment, that the Plaintiff was fit enough to attend ASMP meetings with the Defendant from at least June 2017 onwards;

(5) despite being fit to attend all ASMP meetings, from June 2017 onwards, the Plaintiff refused to attend each and every ASMP meeting, bar this one, and this refusal cannot be explained on medical grounds;

(6) the Plaintiff's refusal to attend ASMP meetings was unreasonable and amounted to a breach of the obligations which are placed on every employee pursuant to the terms of the ASMP, which process requires employees to cooperate;

(7) there is no evidence that, at any stage, the Defendant acted other than professionally, in accordance with the duties owed to the Plaintiff and motivated by the desire to obtain from the employee all relevant information touching on the Plaintiff's ongoing absence from work;

(8) it is a fact that, by refusing to attend any ASMP meetings, the Plaintiff refused to provide any information to his employer relevant to his ongoing absence from work and that has been the position from 08 December 2016 to date;

(9) insofar as the Plaintiff suggested, in his 28 December 2016 letter, that his absence from work was due to any workplace issues which were said by the Plaintiff to be current (as opposed to dating back to the period 1996 – 2007) the Plaintiff failed to provide his employer with any details whatsoever in respect of any allegedly current issues (the evidence in this case demonstrating that there were no current issues);

(10) the foregoing complete unwillingness to meet and to provide any information was wholly unreasonable on the part of the Plaintiff and constituted a breach of his obligations under the ASMP policy, but also had the practical effect of entirely frustrating the Plaintiff's legitimate desire to obtain, from the Plaintiff, all information said by the Plaintiff to relate to his alleged inability to return to work as well as the Plaintiff's ability to support the Plaintiff's return to work;

(11) it is clear from the evidence that the Defendant remained willing, at all material times, to carry out any necessary investigations arising from such information as the Plaintiff might furnish (e.g. if the Plaintiff had provided any information which suggested that there was any inappropriate behaviour in the workplace which *could* be investigated, e.g. current or relatively current, the Plaintiff was at all times willing to do so);

(12) by failing and refusing to provide his employer with any detail of any issue which, according to the Plaintiff, prevented him from returning to work, the Plaintiff prevented the Defendant from investigating *anything* and the Plaintiff's criticism, in the present proceedings, of an alleged failure on the Defendant's part to carry out investigations is entirely undermined by the evidence;

(13) it is a matter of fact that, on 08 December 2016, the Plaintiff expressed himself willing to return to work from 07 January 2017, but failed to return to work and has never returned to work since;

(14) there were no current workplace issues adversely affecting the Plaintiff as of 08 December, nor had there been any such issues, even on the Plaintiff's evidence, for at least a decade (the substance of the Plaintiff's concerns, as he articulated them in two separate meetings in December 2016 and June 2016, respectively, being said by the Plaintiff to relate to a period between 20 and 10 years earlier ie 1996 – 2007);

(15) no new workplace issue arose at any stage after 08 December 2016 and at no stage since that point has the Plaintiff been subject to any bullying, harassment or unfair treatment whatsoever, nor is there any evidence of same in the previous decade;

(16) the Plaintiff's refusal to attend ASMP meetings, despite being fit to attend same, is explained by the Plaintiff's decision, made on 22 December 2016, never to return to work in the Defendant but, instead, to secure ill health retirement from the Defendant;

(17) the foregoing decision and objective explain why, when the Plaintiff eventually agreed to attend a meeting with senior members of the Defendant's HR management team, in October 2018, by which time the Plaintiff had been out sick for two years, the Plaintiff refused to provide any details touching on his absence from work;

(18) this failure and refusal on the part of the Plaintiff, even two years into an absence which is said by him to be illness-related, to provide any details as to how his absence relates to workplace issues, underlines and supports this Court's findings of fact that there were no workplace issues which caused the Plaintiff to be absent from work in October 2016 and to remain absent from work to this day;

(19) insofar as the Plaintiff was only willing to discuss the "future" at the October 2018 meeting, I am satisfied that the Plaintiff did not contemplate a future *return* to his job, despite the fact that at all material times the Defendant has been anxious to support the Plaintiff with a return to his job as soon as possible. The Plaintiff's sworn evidence at the trial was that he will never go back to work in the Plaintiff in the future;

(20) the Plaintiff's steadfast refusal ever to return to work in the Defendant is not because of any unfair or unlawful treatment of the Plaintiff by the Defendant. The evidence simply does not support the case pleaded by the Plaintiff.

(21) the Plaintiff's continued absence from work, to this day, is consistent with the firm decision he took on 22 December 2016 never to return to work in An Post and what the

Plaintiff wants instead and, according to the evidence, has wanted since early 2017, is to get ill health retirement from An Post, not to return to his job.

Other communication between the parties since the proceedings were instituted

367. Although, there have been exchanges between the parties, in particular since the present proceedings were instituted, including in the context of injunctive relief which was sought by the Plaintiff, it is not necessary to examine any more of the exchanges than have already been looked at in this Judgment. Suffice to say that no other evidence supports the proposition that the Plaintiff bullied or harassed or treated in any way unfairly including with regard to the Defendant's operation of the ASMP. No alleged injury on the part of the Plaintiff is attributable to any legal wrong on the part of the Defendant. The evidence simply does not support the Plaintiff's case and, in truth, wholly undermines it. I now propose to look at the evidence of an expert who appeared for the Plaintiff.

The role of expert evidence

368. During the Trial, the Court heard evidence from a Mr. Tweed who was called as an expert witness on behalf of the Plaintiff. Mr Tweed had no involvement in the events which are at the heart of the present proceedings and cannot assist the Court as a witness as to fact. The question, therefore, arises as to what assistance he can be as expert and to examine this issue it is first necessary to comment briefly on the role of an expert witness. Testimony from experts is not permissible in every circumstance. The rationale for the admissibility of expert evidence was explained as follows by Mr. Justice Kingsmill Moore in *A.G. (Ruddy) v. Kenny [1951] 94 ILTR 185:*

> *"The nature of the issue may be such that even if the tribunal of fact had been able to make the observations in person he or they would not have been possessed of the experience or the specialised knowledge necessary to observe the significant facts, or to evaluate the matters observed and to draw the correct inferences of fact."*

In light of the foregoing, it is uncontroversial to say that expert evidence is only admissible if two essential conditions are met, firstly, the particular issue in respect of which the expert evidence is tendered must be outside the knowledge of the Court, rendering the expert's evidence *necessary.* In other words, the expert's role is to furnish the Court with the necessary scientific or technical assistance, based on their specialist skills and experience, to enable the Court to interpret the factual evidence. Secondly, the expert evidence must be *relevant* in the sense of having a probative value, being evidence tendered by an appropriately qualified and experienced expert. Aside from those two conditions, an expert who assists the court must be mindful of their fundamental duty of independence and impartiality in that their primary duty is always owed to the court, not to the client or party who retained them.

The evidence given by Mr Tweed and its value

369. In his 03 July 2019 report, Mr. Tweed describes himself as *"an independent HR, Employee Relations and Industrial Relations Consultant with over 25 years' experience in the public, private and not for profit sectors across Ireland and in the UK".* In the course of his evidence Mr. Tweed acknowledged that, although he has a master's degree in Human Resources management he stated: *"I have no direct HR experience, no"* (D5, P87, L21). It is not in dispute, that Mr. Tweed is a gentleman of significant expertise, nor are his *bona fides* in any doubt whatsoever. What is in doubt, in my view, is the *necessity* of his evidence, in circumstances where it does not seem to me that it is necessary to have testimony from Mr. Tweed in order for the Court to be capable of understanding the issues in this case. To put it another way, this Court, as the finder of fact, can readily understand all evidence in relation to all relevant matters and issues and can do so in the absence of Mr Tweed's testimony. I am satisfied, therefore, that Mr Tweed's views are not *necessary* to this Court's determination of factual issues. There is nothing which could be regarded as specialist, scientific or technical evidence in this case which could not safely be understood or interpreted without the assistance

of an expert. I am also satisfied that Mr Tweed has, in his report, expressed opinions on what are *legal* issues. Furthermore, I am satisfied that, in his report, Mr Tweed has expressed views in a form which suggests that certain "facts" have been established when, firstly, that is not the case and, secondly, it is this Court's role to establish the facts based on a careful consideration of the evidence. With no disrespect whatsoever intended towards Mr Tweed, he can offer no assistance to the Court with regard to the task of determining facts which are in contention, yet it is fair to say that his report purports to do so. That is not for a moment to direct any criticism at Mr. Tweed or to call into question his skill, experience of professionalism. It is, however, necessary to point out the foregoing in order to highlight the proper limits on the role which can be played by an "expert" witness in the present case.

370. It is equally fair to say that in Mr Tweed's report, views are proffered in relation to the ultimate issue in the case, rather than Mr Tweed confining himself to providing information in order to enable the Court to reach a more informed conclusion. It is not appropriate for an "expert witness" to give evidence on what are the ultimate issues a court is required to decide. That this has been done in Mr. Tweed's report is, perhaps, unsurprising, in circumstances where the issues are not so complex and do not involve such specialist knowledge that the Court needs any assistance from an expert to safely reach conclusions.

371. In short, all of the factual evidence is capable of being understood without any specialist skill or expertise and without the necessity for any expert to enable the Court to interpret the factual evidence. Mr Tweed did not witness any of the events in question and the Court has heard from those who did and can readily understand their testimony which does not involve specialised terms or issues. Having said the foregoing, and being clear in my view that Mr Tweed's "expert" evidence fails the test of necessity, and is therefore inadmissible, I think it appropriate to make certain further comments in relation to both Mr Tweed's report and his

oral testimony, which fortifies me in the view that all evidence given by him which touches on any facts which are in dispute constitutes inadmissible evidence.

372. In preparing his report, Mr Tweed read certain documents, but did not speak with anyone on behalf of the Defendant. Nor did Mr Tweed meet with or interview the Plaintiff. As Mr. Tweed stated in his oral testimony "*I didn't interview anybody in the preparation of the report"* (D5, P77, L3). Thus, it is a matter of fact that in preparing his report and in giving his testimony, Mr. Tweed made no effort to verify any of the "facts" on foot of which his views were based, nor did he make any allowance for an alternative version of events, in the form of facts supplied by the Defendant. In short, Mr. Tweed proceeded to offer an expert view which was based, to a material extent, on factual inaccuracies (which inaccuracies are outlined in this judgment) and was, therefore, partial, rather than truly independent. Again, I want to stress in the clearest terms that no criticism of Mr Tweed is intended. No doubt he performed his role, consistent with the brief he was given and did so professionally, *bona fide,* and to the best of his ability. That does not, however, mean that his evidence is admissible and to the extent that it is unnecessary in order for this court safely to interpret the evidence and to the extent that Mr Tweed offers views touching on the facts in dispute, I am satisfied that his evidence is not admissible.

373. In addition to being satisfied that Mr Tweed's evidence fails the test of "necessity" in the manner detailed above, I am also satisfied that it must be rejected as unsafe evidence in that it cannot be said to be truly independent in circumstances where Mr Tweed's views are premised on factual inaccuracies. It is to examples of those I now turn.

374. I have carefully examined the entirety of the evidence given to this Court and, in the manner detailed in this judgment, I am satisfied that it does not support the pleaded case. Yet it is clear that, to a material extent, Mr Tweed relied upon, *inter alia*, the case *as pleaded* by the Plaintiff, as a basis for the conclusions which he reached in his reports. This is clear from

statements such as the following, which appears at paragraph 4 of his 03 July 2019 report, where Mr Tweed states: *"It is not for me in providing this report to repeat the detail of all the interactions between Mr Ward and the Defendant, its servants or agents, regarding his complaints. A comprehensive account is set out in the Personal Injury Summons dated 8 September 2017, in particular paragraphs 9 through 32*".

375. It will be recalled that paragraph 9 of the Personal Injuries Summons begin with the words *"Since approximately 1996 the Plaintiff has been the subject of ridicule and vicious rumours promulgated by a number of colleagues as well as bullying and harassment…"* The foregoing is not established by the evidence. Paragraph 9 continues by pleading that the Plaintiff's line manager *"…refused to deal with his issues at all and indeed denied that there were any workplace issues for over twenty years, only admitting to same some weeks before his own retirement as well as HR who has dismissed and refused to deal with his complaints continuously."* The foregoing is not established by the evidence. For the reasons explained in this judgment I am satisfied that paragraphs 9 through 32 of the Personal Injuries Summons contain neither a comprehensive, nor an accurate account of all the interactions between the Plaintiff and the Defendant. As a consequence, I am satisfied that the information which Mr Tweed relied upon as a basis for his views was incomplete and incorrect to a material extent.

347. Thus, even if the evidence in this case was so technical or specialist or complex as to require testimony from an expert in order for the Court to interpret it correctly (and I am entirely satisfied that this is not the case), the views expressed by Mr. Tweed in his written reports are based, to a material extent, on erroneous information and are, as a consequence, not truly independent or truly expert and are unreliable. Again, that is not to criticise Mr Tweed, personally.

348. By way of further example, Mr. Tweed states, inter alia, that *"It is unusual for bullying allegations not to be investigated by an employer, especially when the complaints have been*

highlighted over a significant period of time" (paragraph 7 of his 03 July 2019 report), yet the evidence does not establish that *"complaints have been highlighted over a significant period of time*". Furthermore, Mr Tweed's reports fail to deal with very important events, such as the meetings which took place between the Plaintiff and the Defendant, in November 2010, in July 2011 and in August 2011, which meetings I have examined in detail earlier in this judgment. Not having dealt with these crucial events, including the agreed outcome of the meetings in 2011 (which saw the Plaintiff return to work, knowing and accepting that there would be no investigation into what were already historic issues, following which he worked happily in his job for some 5 years), Mr Tweed's reports are materially flawed and his assertions, such as the foregoing, are not supported by, but are undermined by, the evidence.

349. It is also clear that the erroneous information underpinning the views expressed by Mr. Tweed in his reports is reflected in his oral evidence. For example, Mr Tweed asserted, inter alia, that "…*Mr. Ward had brought forward a number of complaints over a period of time and nothing was done about that*." (D5, P60, L4). The foregoing is an assertion of fact which is made by Mr Tweed who had no first-hand involvement in any of the relevant matters. It is an assertion which goes to the heart of the case and is an assertion which is wholly undermined by the evidence.

350. In paragraph 9 of his first report, Mr. Tweed states that *"The lack of response from the Defendant to Mr Ward's complaints is shocking, with a failure to demonstrate any meaningful action that was taken to ensure its duty of care towards him was put in place."* The view expressed by Mr. Tweed that there was a lack of response on the Defendant's part, or a failure to take any meaningful action, is simply not supported by the evidence, and is wholly undermined by it, rendering his views neither expert nor independent. Once more, this is not do direct any criticism whatsoever at Mr Tweed in a personal sense. It is, however, appropriate to point out again that Mr Tweed is not a witness as to fact. He can give no assistance to the

court whatsoever as to the facts in dispute, not having been involved at the relevant time. His views are clearly based on the *pleaded* case alone. Those views, no doubt sincerely held, are views which are based on propositions wholly undermined by the evidence given this court. They are also views which touch on the issues in dispute in these proceedings, indeed views as to legal obligations and the Defendant's supposed failure in a duty of care. They are, with all due respect to Mr Tweed, not admissible views, and views which are undermined by the facts which emerged from an analysis of the evidence.

351. It is fair to say that, to a material extent, Mr Tweed's conclusions and views are premised on the position articulated by and on behalf of the Plaintiff alone and are not based on a consideration of all relevant information. Thus, this evidence must be rejected, insofar as it is unnecessary or touches on the facts in dispute or on the core issues for this court to decide. By way of a further example, in paragraph 17 of his first report, Mr Tweed states that *"Mr. Ward's line manager, Mr. Leo Kearns, subsequently acknowledged that he had breached confidentiality about him to some of his work colleagues in respect of two instances as well as other matters".* Mr. Tweed states the foregoing as if it is a matter of "fact". It is not. The evidence does not support any finding to that effect. The foregoing is, of course, the Plaintiff's view, as reflected in the pleaded case, but it is a position wholly contested by Mr. Kearns and, for the reasons detailed in this judgment, no such finding of fact emerges from a careful consideration of the evidence.

352. Thus, Mr. Tweed's views are partial, rather than independent, as well as not truly being expert views. By that I mean, the foregoing views expressed by Mr Tweed are views as to "facts" which are in dispute and are at the heart of the Plaintiff's claim. The true, ie factual, position emerges from an analysis of evidence, which is neither of a particularly technical or specialist nature such as would require an "expert" to demystify it for the Court, in order to enable the Court, as the finder of fact, safely to draw conclusions. It runs contrary to the pleaded

case upon which Mr Tweed based his views. Thus, the foregoing evidence by Mr Tweed cannot fairly be said to be "expert".

353. In paragraph 24 of his report, Mr. Tweed states: "*I note that the perpetrators eventually shifted the primary focus of their activity away from Mr. Ward to another member of staff".* Again, the foregoing is stated as if an objective and established fact. It is not. It may represent the case made by the Plaintiff as it appeared in the documentation briefed to Mr Tweed, and Mr. Tweed plainly offers views which are based on it and other assertions of fact but, in the manner explained in this judgment, when the evidence is examined closely, the foregoing is not established as a matter of fact.

354. There are other examples where Mr. Tweed makes statements which purport to be "facts", but which are not supported by the evidence before this Court. For example, in paragraph 48 of his first report, Mr. Tweed states (with regard to the period after the retirement of Mr. Kearns in 2016) that: *"At this point the Defendant was clearly aware that Mr Ward was subjected to bullying behaviour and that it had been ignored and/or tolerated for a number of years".* None of the foregoing has been established as a result of a careful analysis of all the evidence.

355. Commenting, in his oral testimony, on the aforesaid paragraph 48 of his report, Mr Tweed's evidence was to say *"Well Mr. Ward had raised his concerns with the employer over a period of time and nothing was actually done about that is the point I am making there."* (D5, P100, L11). I have carefully set out the ways in which Mr. Ward did (and did not) raise concerns and the points in time at which his occurred and I have carefully set out the response made by An Post on each relevant occasion. The assertion by Mr. Tweed that *"nothing was actually done"* is, firstly, an assertion as to the factual position and, secondly, wholly undermined by the evidence, and thirdly, not a view required in order for this court to safely interpret evidence as to fact. It is plain that the basis for the views expressed by Mr. Tweed is

the version of events as understood by him based on the brief he was given and based, in particular, on the pleaded case. Once again, Mr Tweed's view cannot truly be said to constitute "expert" evidence and the pleaded case is undermined by and unsupported by the evidence.

356. Mr Tweed's report contains other views which go beyond his area of expertise. For example, in paragraph 14 of Mr Tweed's supplemental report dated 09 July 2019, under the heading *"Conclusions*", he states that: "*The CMO, as I understand, is not a qualified psychiatrist and therefore would not have the necessary qualification to make an assessment on Mr. Ward's mental health.*" Mr. Tweed has no medical qualification. Nor did Mr. Tweed make contact with Dr. O'Reilly, the Defendant's CMO, to discuss the latter's qualifications or experience, before expressing the foregoing view in his supplemental report.

357. Furthermore, in paragraph 15 of his supplemental report, Mr Tweed states that: "*With the obvious medical conflicts in play with mechanisms to address the conflicts through the 'Attendance Policy: Attendance Support and Management Process', it is difficult to understand why the Defendant persisted in taking Mr. Ward through a potentially damaging process"*. The foregoing is a criticism of the Defendant's continued use of the ASMP policy because, according to Mr. Tweed, it is "*a potentially damaging process*" insofar as the Plaintiff is concerned. Three comments arise in relation to the foregoing. Firstly, there is no evidence from which this Court could form the view that it was in any way impermissible for the Defendant to use, in the case of ongoing absence from work, the very Policy, agreed between employer and the Unions representing employees, which was specifically designed to deal with such situations. Secondly, Mr. Tweed's view is one which is unsupported by evidence and is given by someone who was not involved in the events themselves and can give no evidence as to fact. Thirdly, it is a view offered by someone without any medical qualification who makes assertions as to likely damage to the Plaintiff's health.

358. The latter point was expanded upon by Mr Tweed in his oral evidence when he said, with regard to paragraph 15: *"Yes, I believe I based that on the medical evidence where attending the meeting that Mr. Ward was being asked to attend would cause further damage to his well-being and that is why I made that comment. So it is potentially damaging process*". (Day 5, page 105, line 12). Mr Tweed is not a medical expert and his evidence in relation to potential damage to the Plaintiff's well-being cannot be considered to be expert opinion. Moreover, a careful consideration of the evidence before this court establishes that the plaintiff was, in fact, fit to attend ASMP meetings and the evidence does not establish that participation in the ASMP caused, or had the potential to cause, any damage to the Plaintiff.

Conclusions in relation to Mr. Tweed's evidence

347. I am satisfied that Mr. Tweed's views in relation to the fundamental facts in dispute in the present case are unnecessary in order for this Court to interpret the evidence in this case and to safely reach findings of fact. On that basis, those views are not admissible. In addition, in light of the erroneous and incomplete information upon which Mr. Tweed's views are based, I am also satisfied that they are, to a material extent, flawed and, therefore, of no probative value. To the extent that Mr. Tweed's views were based on erroneous information (namely "facts" which have been wholly undermined by the evidence in this case, examples of which I have given) Mr. Tweed's evidence can fairly be said to be partial, and not truly independent evidence and I must reject same. In so doing, I emphasise again that no criticism is directed towards Mr Tweed, who plainly formed views based on what he read, and what he understood to be the case. His understanding does not, however, accord with the findings of this court based on a careful consideration of all the evidence (evidence which was not available to Mr Tweed when he prepared his report).

348. In *R. v. Turner* [1975] 1 AER 70, Lawton L.J. explained the rationale for the rejection of expert evidence, in the following terms:

"If, on the proven facts, a Judge or jury can form their own conclusions without (expert) help, then the opinion of an expert is unnecessary. In such a case if it is given dressed up in scientific jargon it may make Judgment more difficult. The fact that an expert witness has impressive scientific qualifications does not by that fact alone make his opinion on matters of human nature and behaviour within the limits of normality any more helpful than that of the jurors themselves; but there is a danger that they may think it does."

347. The foregoing proposition was approved by Mr. Justice O'Flaherty in *DPP -v- Kehoe* 1992 ILRM 481 and it is a passage which is apposite in the present case, as regards Mr. Tweed's evidence. In short, Mr. Tweed's opinion was not necessary for the Court to make findings of fact based on a careful consideration of the evidence or to form its own conclusions on the proven facts.

348. In submissions, Counsel for the Defendant took issue with the value of Mr. Tweed's evidence to the court. The Plaintiff's Counsel described the submissions made on behalf of the Defendant as regards Mr Tweed's evidence as being, in the words of Alexander Pope (quoted by MacMenamin J at para. 45 in *O'Leary v. Mercy University Hospital Cork Ltd.* [2019] IESC 480) as being "*willing to wound and yet afraid to strike*". That is not, in my view, an accurate characterisation. The gravamen of the Defendant's submission was that Mr. Tweed's evidence could be of no use or value to this Court in reaching its determinations. For the reasons explained in this decision, there was undoubtedly merit in the Defendant's submissions. This is not because this was the first time Mr. Tweed had given evidence as an expert. Nor was there any suggestion whatsoever that Mr. Tweed acted other than *bona fide*. Rather, and for the reasons given in this judgment, the views expressed by Mr Tweed were based on fundamental inaccuracies. This is not to criticise Mr. Tweed in any personal sense but he clearly based his views on what he believed to be "facts", but which were not facts. Thus, those

views cannot truly be considered to be either expert, or independent. Furthermore, and importantly, much of Mr. Tweed's evidence failed the test of *necessity* insofar as the admissibility of expert testimony is concerned in that Mr. Tweed offered opinion evidence touching on the very facts and issues which it is this court's role to determine.

349. Having said the foregoing, it is important to make clear that, for the purposes of deciding this case, I have had careful regard to so much of Mr Tweed's evidence as was admissible and was not based on a, no doubt entirely *bona fide*, but materially flawed, understanding of the relevant facts.

Mr Tweed's evidence in relation to time limits

350. One issue in respect of which there was no dispute between the parties, and an issue which Mr. Tweed is qualified to offer a view on, concerned the appropriateness of time-limits in policies. Those views were expressed without any reliance on information specific to the present case and, therefore, drawing on Mr. Tweed's qualifications and experience. Mr Tweed's view was that *"…in normal circumstances, a time limit would apply…*" in relation to the investigation by an employer of complaints by an employee (Day 5, Page 89, line 3). The relevant time limit in this case is six months and it was clear from his testimony that Mr. Tweed did not regard this as either an unusual or an unreasonable time limit. I am satisfied that as a matter of fact it was neither. Mr Tweed also stated that *"I have accepted that having a time limit in policies is correct but it cannot be set in stone."* (Day 5, Page 88, line 6). The evidence does not demonstrate that the Defendant took the attitude that the six-month time limit in this case was "set in stone" or could not be departed from under any circumstances. Carefully considering all the evidence, including Mr. Tweed's, I am satisfied that the circumstances in the present case were circumstances where a time limit would and should apply. In other words, the facts which emerge from an analysis of all the relevant evidence does not allow me to hold that these were abnormal circumstances where the six-month time limit should *not* apply. Nor

does the evidence demonstrate that the Defendant ever took an overly rigid or inflexible approach to the application of the six-month time limit. To decide, in 2011, that it would not be appropriate to commence an investigation in relation to things which were allegedly said between 1996 and 2007 is not to apply, slavishly but unfairly, a six-month time limit. To take a similar view 5 years later in respect of the self-same matter is not to apply a six-month time limit in an overly-rigid manner. Nothing of the sort arises. There was never any narrow margin (eg a question of investigating, or not, remarks said to have been made, say, nine months or even twelve months earlier, as opposed to within the previous six months).

The proposition that An Post should have commenced an investigation in 2016

351. It was suggested on behalf of the Plaintiff, including by Mr. Tweed that, in late 2016, the 6-month time limit in the Defendant's Dignity at Work Policy should have been set aside and that a fresh investigation into matters (in particular things allegedly said, going back to between 1996 and 2005 / 2006) should have been commenced at that point. It is clear that Mr Tweed's view on this issue was one formed on the basis of a mistaken belief as to the relevant facts, including the proposition that the Defendant did nothing at any point to address concerns raised by the Plaintiff. I have already examined a number of examples of what Mr Tweed believed to be "facts" but which were not facts and it is unnecessary to repeat that analysis again here. Given that Mr. Tweed's views are based on a materially flawed understanding of the factual position, his opinion that the Defendant should have commenced a fresh investigation in late 2016 and should have disregarded the 6-month time limit and should have commenced a fresh investigation, then, into statements said to have been made, from 1996, and in respect of events of 2005 and 2006, is a view which is fundamentally flawed for numerous reasons including the following.

352. The first reason flows from the facts which emerge from an analysis of the evidence and which comprise facts not known to Mr Tweed when he was briefed to act as expert witness.

Suffice to say that meetings took place in 2010 and in 2011 after the Plaintiff raised those self-same issues in 2010, for the first time, at which point they were already "historic" and the outcome of those meetings was that the Plaintiff was happy to return to work and did so in August 2011, satisfied that no investigation could or would take place.

353. Secondly, the evidence also demonstrates that the Plaintiff took legal advice in 2010 and in 2011 and, thus, his decision to go back to work and his decision not to institute any legal proceedings, despite having obtained legal advice, and full in the knowledge that there would be no investigation given the historic nature of the alleged remarks, evidences his satisfaction that matters had been addressed properly, fully and finally as a consequence of the meetings with the Defendant in 2010 and 2011 against the backdrop of legal advice.

354. Thirdly, the Plaintiff then worked happily in his job for some 5 years, again demonstrating that these very same issues had been dealt with to the Plaintiff's satisfaction in 2011 and, thus, could not be re-opened, having regard to the Plaintiff's own decisions and actions.

355. Fourthly, the proposition that the Defendant should have instigated an investigation at the end of 2016 into matters said to go back to 1996, 2005 and 2006 is an argument which ignores, and in my view offends, basic principles of natural justice, in that it envisages an investigation into what was, or was not, said up to two decades earlier with no realistic prospect of any such investigation ascertaining with any degree of reliability whether remarks were made, or not, or the context in which they were or were not made (having regard to the passage of time and failing memories, in particular concerning verbal remarks of which no record was ever said to exist) and with an obvious risk of reaching a wholly unreliable outcome. Such an investigation would also involve a fundamental unfairness to anyone against whom it was proposed to investigate, in 2016, verbal statements said to have been made by them years,

indeed decades, before, which verbal statements were never put to them at the time the remarks were alleged to have been made.

356. A fifth reason is that the evidence demonstrates that the Plaintiff accepted that there would be no investigation in 2016 into remarks allegedly made years earlier. That is clear from the analysis of the June and December 2016 meetings. Knowing that there would be no such investigation, the agreed outcome of the December 2016 meeting was that the Plaintiff would be returning to work as of 07 January 2017.

357. A sixth reason is that the evidence demonstrates that at no stage in 2016 or, for that matter in the 5 years preceding that, did the Plaintiff provide to the Defendant, or offer to provide, anything like such specific detail of what was said to constitute his complaint as would enable the Defendant to commence any or any meaningful or fair investigation. It was, for example, not the case that the Plaintiff identified, during either the June or the December 2016 meeting, the specific person or persons said to have made remarks, what date or dates the remarks were said to have been made, who was alleged to have hear them, where they were alleged to have been uttered, the context in which the remarks were allegedly made, what the Plaintiff claims to have said in response, whether and to what extent the Plaintiff objected at the time, what response, if any was, made to any such objection if, for example, those who uttered the alleged remarks regarded them as "*banter*", and why it was that the Plaintiff had not provided such details to his employer at the time the remarks were allegedly made and why the Plaintiff had not called, at that time and when memories were fresh, for any investigation if it was the case that he was unhappy at the time.

358. That is not to say that the Plaintiff *ever* provided such detail and I am satisfied that he never did. Indeed, the very first time the Plaintiff referred to matters in writing was on 22 November 2010 at the Defendant's suggestion. This was several years after the alleged remarks had been made and the details set out in writing by the Plaintiff in the letter and in a two-page

handwritten document prepared in November 2010 wholly lacked anything like sufficient detail to enable any meaningful investigation even at that point. Earlier in this judgment I looked at those documents and at the meetings of November 2010 and July 2011, subsequent to which the Plaintiff to return to work in 2011 and performed their role happily for the following 5 years in the context of knowing full well that no investigation had been or would be commenced.

359. For these reasons, I am also entirely satisfied that, for the Defendant *not* to have instigated an investigation, in 2016, in relation to whether verbal comments were made, or not, from 1996 and regarding what was said to have occurred in 2005 and 2006, was not at all unreasonable and did *not* constitute any breach of any legal obligation to the Plaintiff, particularly in circumstances where the evidence demonstrates that the Plaintiff knew there would be no such investigation, understood the reasons why this was so, agreed to return to work notwithstanding, and did return to work in 2011, after which the Plaintiff was happy at work for the next 5 years.

360. Whether the Defendant's failure to commence, in 2016, an investigation into what was, or was not, said from 1996 and in relation to events of 2005 and 2006, constituted a breach of a *legal* duty is a decision for this court alone. For the reasons detailed in this judgment, I am satisfied that Mr Tweed's evidence to the effect that the Defendant *should* have commenced such an investigation and should have set aside the 6-month time limit with regard to complaints, is not evidence which assists this Court. For the Defendant *not* to have commenced an investigation in 2016 was *not* unreasonable. It was, in my view, entirely reasonable and was, on the evidence, in ease of the Plaintiff and comprised a decision made with the Plaintiff's best interests in mind, as well as being a decision consistent with the principles of natural justice and fair procedures. By acting in the manner it did, in 2016 and thereafter, the Defendant did

not beach any legal obligation owing to the Plaintiff, whether by act or omission. Nor does the evidence prove that the Defendant ever breached any legal obligation owed to the Plaintiff.

The Plaintiff's Motion to strike out the Defence

361. It will be recalled that the trial of this matter commenced on Tuesday 25 February 2020. On 18 February 2020, the Plaintiff's solicitors issued a Motion in which an order was sought, pursuant to Order 31, Rule 21 of the Superior Court Rules "*striking out the Defendant's Defence for failure to make discovery in accordance with the Order of the High Court dated the 24th Day of September 2018"*. This Motion was made returnable to the first day of the trial. The trial took its course and at the end of the evidence, Counsel for the Plaintiff indicated that written submissions would be made in relation to the said Motion, in circumstances where the Plaintiff had not abandoned same and continued to seek the relief set out therein.

362. The aforesaid Motion was grounded on a short affidavit sworn on 18 February 2020 by Mr. Andrew Murnaghan solicitor. It explained that a consent Order for Discovery was made on 24 September 2016 and that the Plaintiff had furnished Affidavits of Discovery on 9 November and 28 November 2018 and on 05 November 2019. Reference is then made to a Data Access Request which was submitted to the Defendant on behalf of the Plaintiff and it is averred that, by cover letters dated 6 and 24 June 2019, the Defendant forwarded documentation to the office of the Plaintiff's solicitors pursuant to this Data Access request. The averments in the said Affidavit upon which the relief in the Motion is sought are as follows:

> *"7. On examination of the documentation I realised that the Defendant had provided documentation that should have been previously provided in compliance with the order for discovery.*
>
> *8. I say that the documentation furnished by the Defendant to the Plaintiff by way of discovery is incomplete and not in accordance with the Order for Discovery made by this Honourable Court on the 24th September 2018.*

9. The Defendant has failed to comply with the said Order for discovery of the 24 September 2018 and the time of the swearing hereof of the Affidavit herein and I therefore pray this Honourable Court for an Order in terms of the Notice of Motion issued and served herein."

363. The foregoing is the extent of the averments made in respect of the relief sought. The first of the two exhibits to the said Affidavit comprises the 24 September 2018 Order, which specifies 6 numbered categories (category 1 having sub-categories i–v, and category 2 having sub-categories i–x). The second of the exhibits comprises a copy of the documentation furnished by the Plaintiff in response to the Defendant's Data Access request, running to 178 pages. This is the extent of the Plaintiff's motion which seeks to strike out the Defence. No replying affidavit was delivered and a trial, which involved 11 days of evidence, took place. It is not in dispute that, following receipt by the Defendant of the Plaintiff's Motion, the Defendant provided a supplemental affidavit of discovery. It is not disputed that the documents which the Plaintiff says the Defendant did not make discovery of, were documents which the Plaintiff already had in his possession, having obtained same through his Data Access request. Before referring to relevant legal principles, it is appropriate to set out the following relevant facts:

- It is not claimed that the Defendant ever contacted the Plaintiff to make the point that, insofar as the Plaintiff saw it, the Data Access response contained documents which the Plaintiff expected to be included in the Discovery as made by the Plaintiff;
- As such, the Defendant was never asked for an explanation in respect of any concerns which the Plaintiff had in relation to discovery and was never given the opportunity to provide same, prior to the strike out motion being issued;

- Given the obligation to seek specific categories of documentation in the context of a Discovery request, the fact that a response to a Data Access request may differ from a response to a Discovery request does not prove, of itself, that material included in the latter should have been provided in the former;
- It is explicitly acknowledged by the Plaintiff that the Defendant furnished both the aforesaid Affidavits of Discovery and the response to the Data Access request and nowhere is it said that any specific documents or categories of documents are missing;
- There is no evidence before the court, in Mr. Murnaghan's Affidavit or in the two exhibits thereto, from which I could hold that the discovery made by the Plaintiff was deficient;
- When making discovery, the Defendant claimed privilege in relation to a certain number of documents and that claim of privilege was never challenged during the trial;
- It is also the case that the trial proceeded without any issue arising at any point in respect of which the Court could conclude that any relevant documentation existed in relation to that issue which had not been furnished on discovery as originally made;
- The discovery, as furnished, was voluminous, comprising a number of lever arch folders of documentation and. throughout the trial, both sides examined and cross-examined witnesses with reference to two large folders of documentation which comprised, in effect, the "core" documents, being a subset of the overall discovery as originally made;
- During the trial, it was very rare that reference was made to documents which were not included in either of the two folders of "core" discovery documents;

- There is no basis upon which this court could take the view that the Plaintiff's case as a whole, or any aspect of the plaintiff's case in respect of any specific issue; was prejudiced in any way as a result of the absence of any document which was relevant but had not been furnished to the Defendant by way of discovery;
- During the trial, infrequent reference was made to a book of documentation entitled "Data Access Requests" and, on the relatively small number of occasions this book was referred to, the vast majority of the documents contained therein were not referred to at all;
- On the relatively rare occasions when the Defendant's Counsel made reference to any particular document contained in the book of documents entitled "Data Access Requests", I am satisfied of the following: firstly, the Plaintiff had access to the document and was able to deploy it during the course of the trial; secondly, no issue in dispute in this case hinged on the contents of any document found in the booklet entitled "Data Access Requests"; thirdly, there was no evidence which would allow this court to hold that other documents, not furnished in response to the Plaintiffs Data Access requests existed and ought to have been available; fourthly, no document contained in the book entitled "Data Access Requests" was relevant or necessary, insofar as any finding or decision this court was required to make;
- At no point during the giving of evidence over the course of 11 days and at no point during legal submissions thereafter was it claimed on behalf of the Plaintiff that he had suffered any identifiable prejudice;
- Insofar as the Plaintiff's Motion is concerned, no "warning letter" was exhibited and I am entitled to conclude that, in fact, no warning whatsoever was ever sent

by the Plaintiff to the Defendant prior to the former's decision to issue the Motion;

- No explanation was proffered on behalf of the Plaintiff to explain the delay of approximately 8 months from the receipt by the Plaintiff of the Defendant's response to the Plaintiff's Data Access request and the issuing, without warning, of the said Motion;
- There is no evidence before the court of any wilful attempt by the Defendant to evade discovery obligations and or to conceal relevant documents and no such assertion is made by the Plaintiff.

364. Order 31, r. 21 of the Rules of the Superior Courts 1986 provides as follows: *"If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating may apply to the Court for an order to that effect, and an order may be made accordingly."*

365. This court's power to strike out a defence is a discretionary one. It is not an obligatory power. At the risk of oversimplifying the principles which emerge from the relevant authorities, the following is a summary of the proper approach to the exercise by this court of its power to strike out a Defence under Order 31, Rule 21. It should not be exercised unless at least the following is established: firstly, the court must be satisfied that there has been a failure to comply with an order for discovery and, secondly, that such failure is culpable in the sense of being deliberate and wilful having regard to all the circumstances and, thirdly, that the interests of justice require it.

366. In submissions made to the court on 24 February 2021, Counsel for the Defendant acknowledged the failure to include, in the discovery as originally made by the Defendant,

those documents which the Defendant had furnished to the Plaintiff by way of the former's response to the latter's Data Access Request. The evidence before this court does not, however, justify a finding that there was a failure on the part of the Defendant to comply with its discovery obligations. Even if I am wrong in that view, and even if the Plaintiff had established in the context of its Motion that there had been some failure to make discovery (and with the benefit of an 11-day trial, this has not been established) the relevant authorities also demonstrate a willingness on the part of the courts to permit a trial to proceed, so long as a fair trial can be ensured, and to penalise a litigant failing to make discovery in accordance with an order, by awarding costs or some costs against that litigant (See Mr Justice Kelly as he then was in *Geaney v. Elan Corporation Plc* [2005] IEHC 111 and see the judgment of the then Chief Justice Hamilton in *Mercantile Credit Company of Ireland Ltd v. Heelan and Ors* 1998 1 IR 81).

367. It is clear from the authorities that the proper approach, where a fair trial is possible and where the Court took the view that a party had failed to meet its discovery obligations adequately, was to give strict directions with regard to the making of an affidavit of supplemental discovery and to signal the court's displeasure by making appropriate costs orders, *not* by striking out a defence or a statement of claim. It must be stressed that this simply does not arise in the present case. Despite a very lengthy trail, there was no evidence before the Court which would necessitate the giving of a direction that any document or documents, not already furnished by the Plaintiff in discovery, should be discovered by way of any supplemental affidavit. That simply did not arise.

368. The authorities also recognise that a party will not always be culpable even where there has been a failure to make discovery of a document or documents. At "one end of the scale" the omission may be entirely innocent. In the present case, it would be unsafe for this Court to hold that there was a failure to make discovery by the Defendant. Even if I am wrong in that

view, I am entirely satisfied that any failure was entirely innocent, particularly in circumstances where the documents in question were already in the possession of the Plaintiff, by virtue of the response to his Data Access request, being documents which featured little in the trial and in respect of which nothing turned, insofar as the determination of any matter was concerned. The fact that, even where there has been a failure to make discovery, such a failure may be entirely innocent, underlines the need, from the perspective of basic fairness as well as with a view to avoiding unnecessary legal costs and unnecessary demands on what are limited court resources, for the party which has a complaint in relation to the discovery received by it to, at the very least, detail that complaint in writing and provide the other side with an opportunity to respond. This was not done in the present case.

369. At the "other end of the scale" and moving in the direction of culpability, an omission of a document or documents could be deliberate and, in certain cases, culpable. Culpability will depend on the specific facts, not least the extent to which the relevant Discovery Order was, or was not, clear insofar as the category or categories specified. Other factors may, of course, include the interpretation by one side of the extent of a category and the legal advice provided to that party in respect of that issue. In short, there can be differing views, including as between experienced legal professionals, as to the extent of a discovery obligation and even where a view, indeed legal advice underpinning such a view, may be ultimately found to be wrong, that will not necessarily mean that the original failure to make discovery, although deliberate, was culpable. Each case must turn on its individual facts and, given the fundamental principle of doing justice to the issue, it could hardly be otherwise. In the present case, I am satisfied that there was certainly no culpable failure to make discovery and it would be to utterly subvert the interests of justice to grant the relief sought by the Plaintiff in its Motion.

370. To strike out a party's Defence for failure to make discovery is a measure which could only be taken in cases considered to be "extreme" or at the extreme end of the scale in terms

of wilful and culpable refusal to make discovery was concerned and, even then, only if the court was satisfied that a plaintiff would not be able to have a fair trial or where the evidence allowed the court to conclude that there was a realistic prospect of a fair trial being impossible, due to the other party's wilful refusal. Even if I were entirely wrong in my finding that the evidence does not allow me to hold that there has been any failure by the Defendant to make discovery, there is simply no evidence whatsoever from which this court could conclude that any such failure was deliberate or wilful or culpable in the sense used in the relevant authorities. In fairness to the Plaintiff, it was not asserted, either on affidavit or in submissions by his Counsel, that there had been any wilful or deliberate attempt to prevent relevant documents from being made available to the Plaintiff. In short, there is simply no question of any adverse impact on a fair trial. A fair trial was entirely possible and took place, without, it has to be said, the documents comprised in the Data Access response being relevant insofar as any determination of any issue by this court was concerned. The Data Access documents were, of course, the documents said to constitute the failure on the part of the Defendant to make proper discovery.

371. Even where a court found that a party failed, wilfully, to make discovery, natural justice requires that such a party be provided an opportunity to make further and better discovery, so as to remedy the failure, with appropriate costs orders being made in that context. In the manner explained, there is no evidence, be that in the Plaintiff's Motion or which emerged during a lengthy and keenly-contested trial, to suggest that there were any documents in respect of which the Defendant ought to have been directed to make further and better discovery. There is simply no evidence of any lack of documentation which is of significance to the issues which were for this Court to decide at the trial.

372. As Clarke J. (as he then was) put it in *Dunnes Stores (Ilac Centre) Ltd v. Irish Life Assurance Plc and Anor* [2010] 4 I.R. 1, at paras. 20 and 21:

"20. I should emphasise that a court has no business in seeking to punish a party who has failed to make proper discovery by interfering with what would otherwise be the proper and fair result of the proceedings. The proper way to deal with a culpable failure of discovery is to direct the consequences to the wrongdoing concerned. If it remains, nonetheless, possible that there be a fair trial, then the court should conduct that fair trial and come to a just conclusion on the evidence and the law. The consequence of any failure to make proper discovery should be in costs or other matters directly flowing from the failure concerned.

21. It is only if it is proper and appropriate to conclude or infer from the failure to make proper discovery in the first place, that the failure concerned was designed for the purposes of not giving access to the other central relevant information, and where it will be appropriate to infer, in turn, from such a finding, a particular view on the issues to which that information refers, that it would be appropriate to allow a failure to make proper discovery to influence the court's decision on the merits of the case."

In the case before this court, there is simply no question of the court concluding or inferring that there was ever any intention or effort on the part of the Defendant to deprive the Plaintiff of access to any relevant information. At the risk of repeating the central points, two deserve emphasis. Firstly, the Plaintiff had the documents by way of the Data Access requests. Secondly and more importantly in my view, those Data Access request documents did not contain information of central relevance to the issues in the case which this court had to decide upon, and has decided upon in this judgment. Other authorities provide further guidance. *Hansfield Developments -v- Irish Asphalt Ltd* [2010] IEHC 32 was a case in which deficiencies in discovery emerged mid-way through a very long trial. Mr Justice Gilligan made it clear that the court had, as part of its inherent jurisdiction, the power to direct a retrial after a hearing had commenced where there had been a failure by a party to make proper discovery and where

discovery is only achieved during the trial. That jurisdiction was to be exercised sparingly and in "*exceptional circumstances*". Gilligan J. decided that it remained possible to have a fair trial and that the appropriate course was to bring about a situation "…*where after some 50 days of evidence the plaintiffs will have complied with their discovery obligations,,,"*. Unlike *Hansfield*, no deficiencies in discovery whatsoever emerged during the trial of this matter.

373. In light of the principles emerging from the authorities, it is appropriate to summarise the position in the present case, which can fairly be put as follows: (1) The evidence does not support any finding that the Defendant failed to make proper discovery; (2) Even if I were to be entirely wrong in that view, there is no question of any alleged failure to make discovery being deliberate or wilful, much less culpable, and there is no evidence that any alleged failure on the part of the Defendant to make discovery was as a result of any negligence on their part; (3) There was, and is, no risk of injustice; (4) A full and fair trial took place; (5) There is no evidence of any prejudice to the Plaintiff having arisen; (6) Throughout the trial, there was never a suggestion that any documentation which was relevant and necessary to a proper determination by the Court of any issue in dispute was missing; (7) By the time the case commenced, there was no necessity for any order whatsoever to be made to "remedy" any alleged deficiency and there was, in fact, no deficiency insofar as discovery made by the Defendant was concerned; (8) Nor did the delivery by the Defendant of a supplemental affidavit of Discovery cause any prejudice whatsoever to the Plaintiff, who already had the documents described therein before the said Motion was issued, in circumstances where the documents in question comprised the Defendant's response to a Data Access request; (9) the Motion was issued by the Plaintiff without the Defendant having been given details of any concerns on the Plaintiff's part and without any opportunity having been given to address same; (10) the documents in question were not central to any issue which the court was required to decide and as such they were, at best, of peripheral relevance only; (11) having had the benefit

of a full trial, I am entirely satisfied that the Plaintiff suffered no disadvantage; and (12) given the fact that the documents themselves were not of central relevance to any issue this court had to decide, I am also satisfied that, even if the Plaintiff was never furnished with these documents (and the Plaintiff received them *both* by way of a Data Access response and by way of supplemental discovery prior to the trial) the Plaintiff could not have suffered any disadvantage, had those documents not been available.

374. The power of this court to secure compliance with discovery obligations should not be exercised in order to punish a party (See *Murphy v. J. Donohoe Ltd (No. 2)* [1996] 1 I.R. 123). Order 31, Rule 21 exists to ensure compliance with discovery obligations. Its aim and its proper use cannot be to deliver, in a short-circuited fashion, a result in disputed proceedings. Rather, the result should, and must in the interests of justice, flow from an examination of the evidence at a fair trial, where such a trial is possible. Even if I am entirely wrong in the view that there was no deficiency in the discovery as originally made by the Defendant, it is incontrovertible that any such deficiency had no detrimental effect whatsoever on the conduct of the Plaintiff's case. Nor was any such alleged deficiency drawn to the attention of the Defendant, prior to the relevant motion, such that an opportunity could be afforded to the Defendant to take steps and the costs of a motion thereby avoided. In short, it would be bizarre and unjust for the court to supplant the result which flows from a careful analysis of all the relevant evidence during the course of a trial which was fair to both sides, with an order which the Plaintiff seeks in the motion, being a motion issued without a warning letter against a backdrop of the Plaintiff already having in his possession the document in question.

375. In light of the foregoing, I am satisfied that it is necessary in the interests of justice to refuse the relief sought by the Plaintiff in the Motion. Having carefully considered the matter, I am also satisfied that the justice of the situation is met by making no order for costs in respect of the Plaintiff's Motion. This is a decision made in for the reasons I have detailed and it reflects

the basic principle that costs follow the event the event being the failure on the Plaintiff's part to establish that he is entitled to the relief sought in the Motion.

376. For the reasons detailed above, I am also bound to reject the submission that the documents in question are, or were, of any relevance whatsoever to the injunctive relief which the Plaintiff was granted on an interlocutory application.

An analysis of relevant Legal Principles in light of the facts in the present case

377. On 08 September 2017, the plaintiff caused a Personal Injuries Summons to be issued against his employer and the primary cause of action in the present proceedings is a claim for personal injuries. The obligations imposed by the law, upon an employer, in the context of personal injury proceedings are well known. A particularly useful authority is the recent decision of the Supreme Court in *Ruffley v. Board of Management of St. Anne's School* [2017] 2 IR 596, extracts from which I will refer to presently. Even where it is proved that a plaintiff has suffered an injury to their health which is attributable to the workplace, the evidence must demonstrate that the harm suffered by the particular employee was reasonably foreseeable in all the circumstances. It is also clear from the authorities that it is appropriate for the court to examine the conduct of *both* parties to the relationship, namely the conduct of the employee as well as that of the employer, the Supreme Court's decision in *Berber v. Dunne's Stores* [2009] IESC 10 being a particularly relevant authority. It is also appropriate to observe that the law does not impose strict or absolute liability on an employer. The duty imposed on the employer is to take reasonable measures in respect of the safety health and welfare at work of their employees.

378. It is uncontroversial to say that the employee is obliged to co-operate with their employer in this regard. Indeed, in the present case, there is an explicit obligation which, it seems uncontroversial to say, comprises part of the relevant contract of employment as between the plaintiff and the defendant, and I have referred on a number of occasions to the relevant

provisions in the ASMP policy which require employee co-operation. Other relevant provisions include, in the present case, the requirement that complaints are made within six months. In the manner explained in this decision, it is a matter of fact that, following the meeting which took place on 08 December 2016, an agreed outcome of which was that the plaintiff would return to work as of 07 January 2017, the plaintiff has refused to meet with the defendant to address any concerns, nor has he provided any further details of any concerns, thereby rendering it wholly impossible for the defendant to carry out any further investigations, if same were merited.

379. It also has to be said that, on the evidence before the court, the need for further investigation does not arise, given that the evidence proves conclusively that there were no *current* issues in the plaintiff's workplace as of 2016 and all *past* issues had previously been dealt with, as of July 2011 and that remained the unchanged position. It is also a matter of fact that during the only meeting the plaintiff was willing to attend after December 2016, namely a meeting which took place on 10 October 2018, the plaintiff refused to discuss the past and, by this refusal, refused to take the opportunity presented by the meeting, to raise any grievances or to provide any information whatsoever concerning any treatment to which he objected, had he any new information to impart. In the manner examined in detail in this judgment, it is fair to say that there has been a failure on the part of the Plaintiff to comply with the terms of the ASMP and a failure to cooperate with his employer.

380. In the *Ruffley* decision, the Supreme Court (O'Donnell J.) approved the definition of workplace bullying which is found in the 2002 Code of Practice detailing procedures for addressing bullying in the workplace (Declaration) Order 2002 (S.I. No: 17/2002). Analysing the components of the said definition, O'Donnell J. stated the following: -

> "*I agree with Finlay Geoghegan J. in particular that this issue involves a careful focus on at least three terms used in the 2002 Order:*
>
> *(i) Repeated behaviour;*

(ii) Inappropriate behaviour; and

(iii) Behaviour reasonably capable of undermining dignity at work.

I also agree that each component can usefully be considered separately and sequentially. However, I would caution against viewing these three matters as separate and self-standing issues as if in a statutory definition. To some extent these terms take their colour from each other and the concepts are incremental. It is, in my view, important for example to recognise that in considering the question of repeated conduct, it is necessary to remember that what is required to be repeated is inappropriate conduct undermining the individual's dignity at work and not merely that the plaintiff be able to point to more than one incident of which he or she complains. Ultimately, while analysis may be facilitated by looking at the separate elements, it must be remembered that it is a single definition and a single test: was the defendant guilty of repeated inappropriate behaviour against the plaintiff which could reasonably be regarded as undermining the individual's right to dignity at work?"

381. In light of the foregoing, and the contents of the plaintiff's personal injuries summons, it is essential for this Court to pose the question: *Was An Post guilty of repeated inappropriate behaviour against Mr. Ward which could reasonably be regarded as undermining the individual's right to dignity at work?* Having regard to the evidence before this Court, the answer is undoubtedly in the negative. The Defendant neither engaged in such behaviour, nor was ever aware of, or ever tolerated, repeated inappropriate behaviour against the plaintiff which could reasonably be regarded as undermining his right to dignity at work.

382. Charlton J. pointed out in his judgment in *Ruffley* ". . . *that men and women are to be judged with the appropriate measure of appreciation for human nature and that, hence, conduct is to be judged according to the standard of human beings, and not of angels*". It is uncontroversial to say that banter within a workplace, and even rumour or gossip, is not

uncommon and is a feature of human interaction. I have examined, with care, all the evidence in this case, including in relation to the *"rumours*" the plaintiff referred to and what he repeatedly described as "*banter".* Having done so, I am satisfied that the incidents as described by the plaintiff falls well short of the threshold set out by the Supreme Court in *Ruffley*. I am satisfied that the plaintiff has not established the fact that "*inappropriate*" behaviour, coming within the definition of bullying in S.I. no: 17/2002, as analysed by the Supreme Court in *Ruffley*, took place. Nor does the evidence establish a *pattern* of inappropriate behaviour.

383. It is also fair to say that the only evidence proffered is the subjective evidence of the plaintiff and no objective evidence has been put before the court in relation to any of the matters complained of. Not a single witness appeared before the court to say they witnessed anything inappropriate, nor did any representative of the plaintiff's Trade Union give evidence that anything inappropriate occurred at any stage, much less that the plaintiff endured a pattern of inappropriate behaviour. The evidence also establishes that the plaintiff failed to make complaints at the time of, or reasonably soon after, any of the incidents of which he complains at the trial.

384. At this juncture, two further passages from the Supreme Court's decision in *Ruffley* are appropriate to reference. Firstly, regarding what may amount to inappropriate behaviour in the workplace and, secondly, that conduct undermining dignity is an essential component of the definition of bullying. The evidence in this case neither establishes that a pattern of inappropriate behaviour occurred, nor does it establish that any conduct on the part of the defendant undermined the plaintiff's dignity at work. As O'Donnell J. stated (at paras. 63 and 66) in *Ruffley*: -

> *"There may be individual and occasional incidents of a superior speaking aggressively, losing his or her temper, or making jokes or comments which are hurtful or offensive. This in itself does not give rise to a claim of bullying. It is when a pattern of behaviour*

emerges that it can be said that the behaviour is repeated for the purposes of a definition. What must be repeated is the behaviour which is inappropriate and which undermines personal dignity"

. . . .

"*In my view for the reasons already set out, it seems to me that the requirement of conduct undermining dignity at work is a separate, distinct and important component of the definition of bullying which identifies the interests sought to be protected by the law, and just as importantly limits the claims which may be made to those which can be described as outrageous, unacceptable, and exceeding all bounds tolerated by decent society"*.

Given the fact that the plaintiff did not, at the time of the alleged incidents, make a complaint of bullying, I am entitled to conclude that, at the relevant time, the plaintiff did not consider the incident in question as undermining his personal dignity such that the incident merited complaint. Given the facts which emerged from a careful analysis of the evidence, it is simply impossible for this Court to make a finding that the plaintiff's dignity was undermined.

385. At a trial which took place in 2020, the plaintiff appeared to have a genuine belief that he had been wronged by the defendant, specifically in relation to (a) a rumour said to go back to 1996 and (b) an incident in 2005 when the plaintiff found opened post in a van as well as (c) an incident in 2006 when the plaintiff brought a bag of post to Blackrock, as he had been instructed to do, the plaintiff's belief being that Mr. Leo Kearns had breached confidentiality insofar as the incidents of 2005 and 2006 were concerned. What is equally clear, however, is that the plaintiff could have made a formal complaint at the time of the foregoing incidents. He did not do so. He had, at all material times, Trade Union support and assistance available to him. If the plaintiff truly regarded any incident in the workplace as constituting bullying or as amounting to unacceptable behaviour in any respect, at the time of or relatively soon after any

incident was said to have occurred, one would expect the plaintiff to have invoked his right to make a formal complaint, be that in relation to the incident itself or in relation to any alleged failure on the part of the defendant to address such concerns as the plaintiff claimed to have made outside of the formal complaints process. The evidence demonstrates beyond doubt that the plaintiff simply did not make any formal complaint about anything at any stage. In my view this supports the court's finding that the plaintiff was not bullied and did not suffer unfair treatment.

386. A careful consideration of the entirety of the evidence causes me to conclude that, many years after the incidents are said to have occurred, the plaintiff has come to a genuinely held view which simply does not accord with the relevant facts. In short, the Plaintiff seems, in subjective terms, to regard as very serious *now*, certain events which, the evidence demonstrates, he did not regard as serious *then* and where there is a complete lack of objective evidence before this Court to support the plaintiff's subjective belief and where the objective evidence wholly undermines the plaintiff's subjective belief.

387. The evidence also proves beyond doubt that, as soon as the plaintiff raised any issues with the defendant, the latter made every reasonable effort to try and address the plaintiff's concerns. Far from ever ignoring the plaintiff, and quite apart from the fact that there is no objective evidence to support a finding that the plaintiff was bullied or unfairly treated, the defendant convened numerous meetings, the express purpose of which was to try and assist the plaintiff by providing him with a forum to raise any and all concerns, at which meetings the defendant made every reasonable effort to understand and address the plaintiff's concerns, even if they were entirely subjective and could fairly be described as historic.

388. I have looked at these meetings in great detail, in sequence, earlier in this judgment and they include the following: -

- November 2010 meeting with Mr. Pat Cunningham;

- 07 June 2011 meeting with occupational health;
- 09 June 2011 meeting with occupational health;
- 19 July 2011 meeting with Mr. Damien Hunter;
- 04 August 2011 meeting with Mr. Damien Hunter;
- 23 June 2016 meeting with Mr. Kevin Cullen;
- 12 October 2016 meeting with Mr. John C. O'Sullivan;
- 08 December 2016 ASMP meeting with Mr Kevin Cullen.

The foregoing comprised reasonable, and in my view entirely sufficient, efforts which were made, *bona fide* by the Defendant, to try and assist the plaintiff. In the manner examined earlier in this judgment, the plaintiff availed of trade union representation and support in respect of many of the aforesaid meetings. Nor is there any evidence before the court by the plaintiff's trade union to suggest that any meeting or interaction with the plaintiff was unfair or inappropriate in any way.

389. I have very carefully examined the evidence in relation to the events of October 2016 in this judgment. A central claim is that, in October 2016, Mr Kearns is alleged to have made certain "admissions" to the Plaintiff regarding events going back to 2005 and 2006, principal among them being the alleged "admission" on the part of Mr Kearns that he breached confidentiality in 2005 by telling KF that it was the Plaintiff who found the opened post in the van. The evidence demonstrates that Mr. Kearns had, as a matter of fact, nothing to "admit" in October 2016 or at any other time. It will be recalled, however, that the Plaintiff's evidence is that *he,* (the Plaintiff) told KF in 2005 that it was the Plaintiff who found the opened post in the van which KF had been driving. The Plaintiff's evidence is that during this conversation, KF *then* told the Plaintiff that Mr Kearns had identified the Plaintiff to KF as the person who found the opened post. Thus, according to the Plaintiff's testimony, the Plaintiff has known

since 2005 that Mr. Kearns breached confidentiality, as the Plaintiff sees it, by telling KF that it was the Plaintiff who found the opened post in the van. On the Plaintiff's stated evidence, the Plaintiff did *not* learn this in 2016. He had known it for 11 years. The Plaintiff claims that Mr Kearns acknowledged in 2016 that it was he who told KF that the Plaintiff found the opened post and I have examined that issue in detail earlier in this judgment and have reached findings of fact for stated reasons. In short, it would be entirely unsafe for this court to conclude that Mr Kearns made any such acknowledgement or admission in 2016, not least because I am satisfied, for the reasons explained in this judgment, that (1) the identity of the Plaintiff as the van driver who found the opened post was never confidential information, (2) nor was it ever treated as such even by the Plaintiff, (3) nor could there ever have been any realistic expectation that it would remain confidential, having regard to the existence of an open and transparent record of all drivers of all vans, in the form of a log book kept in the glove box of each van. (4) What is not in dispute, however, is that the Plaintiff identified himself to KF in 2005 as the person who found the opened post. (5) leaving aside for a moment that, on this issue, the Plaintiff had given certain evidence which I am satisfied is both unreliable and hearsay, how can the plaintiff suggest, be that in 2005 or in 2016 or at the trial in 2020, that Mr Kearns breached confidentiality by identifying the plaintiff to KF, when it is not in dispute that the plaintiff identified himself to KF in 2005 and had absolutely no way of controlling how widely that information circulated after the Plaintiff identified himself to KF? The answer is, of course, that neither was the information, on the plaintiff's own testimony, truly confidential, nor did Mr. Kearns breach confidentiality.

390. Even if Mr Kearns had, in October 2016, "admitted" to having breached confidentiality in 2005 in the manner claimed by the Plaintiff (and the evidence most certainly does not allow for such a finding of fact) it would have amounted to no more than a confirmation by Mr Kearns of what the Plaintiff has repeatedly said in his evidence that he already knew, indeed had known

for a decade and more. Indeed, on the Plaintiff's evidence, the Plaintiff "knew" this at the time he consulted a solicitor (which occurred in 2010 and again in 2011, well over 5 years prior to October 2016).

391. In addition to the reasons, which are detailed earlier in this judgment, for reaching a finding of fact that Mr. Kearns made no "admissions" in October 2016, and had nothing to admit, I very carefully listened to and observed the evidence given by both Mr Kearns and the Plaintiff and I prefer the evidence of Mr Kearns in relation to what occurred in October 2016. Mr Kearns disputes the Plaintiff's claim that he made any acknowledgment or admission in October 2016 that he ever breached confidentiality and I regard his testimony on this issue as, firstly, reliable and secondly, being entirely consistent with the findings of fact which emerge from a careful analysis of the evidence regarding the preceding two decades, whereas I regard the Plaintiff's testimony on this issue as being both unreliable and inconsistent with the findings which emerge from an analysis of the evidence.

392. I am also satisfied that the handwritten notes prepared by the Plaintiff, and never shown to Mr. Kearns by the Plaintiff, do not represent an accurate record of what was said by Mr. Kearns in October 2016. This Court cannot be certain when the Plaintiff produced these notes, but it is entirely clear from the evidence that they are not an accurate record.

393. It will also be recalled that events of December 2016 overtook those of October 2016 and it is clear that, as of the conclusion of a meeting on 08 December 2016, some two months after events of October 2016, the *status quo* was that the Plaintiff had no current workplace issues and agreed that he would be returning to work as of 07 January 2016. He remained on "sick leave" between 08 December 2016 and the date of his expected return to work. There was absolutely no question of the Plaintiff being treated in any way unfairly between those two dates. Was it foreseeable, given the *status quo* as of 08 December 2016, that the Plaintiff would be hospitalised less than 3 weeks later? It was not. Was it foreseeable, given the agreed outcome

reached as at the conclusion of the 08 December 2016 meeting, which the Plaintiff and his Union representative had with the Defendant, that the Plaintiff would subsequently react in any negative fashion and/or suffer any injury to his health? It was not. The evidence does not establish that the Defendant, by any act or omission committed any legal wrong. Nor does the evidence establish any causal link between any act or omission on the part of the Defendant and any damage to the Plaintiff's healthy, physical or mental. Nor does the evidence establish that any such injury was foreseeable.

394. The issue of foreseeability was also addressed by Charleton J. in *Ruffley* wherein he noted at para. 13: -

> "*As Hayne J put it in Vairy v Wyong Shire Council [2005] HCA 62 at paragraph 126, when a plaintiff makes a claim for damages for personal injury caused by the defendant's negligence, the court becomes engaged in an inquiry into 'breach of duty', hence the court 'must attempt to identify the reasonable person's response to foresight of the risk of occurrence of the injury which the plaintiff suffered.' What this involves is an 'attempt, after the event, to judge what the reasonable person would have done to avoid what is now known to have occurred.' Conduct giving rise to liability in that jurisdiction seems to be of an extreme kind".*

395. The foregoing suggests that conduct resulting in an award of damages against an employer in negligence is conduct of an "*extreme kind*". A careful analysis of the evidence in this case simply does not allow the court to find that any act of or omission by the defendant amounted to conduct which was of an extreme kind. Nor does the evidence allow this court to find that the Plaintiff experienced conduct which was in any way unfair or unreasonable.

396. Insofar as An Post, like all employers, has a duty to take reasonable steps to ensure its employees are provided with a safe place of work and a safe system of work, the facts which emerge from a careful analysis of all the evidence in this case simply do not support the

proposition that the defendant failed to take such reasonable steps. On the contrary, the evidence demonstrates that the defendant took all steps which could reasonably be expected of An Post in order to provide employees, including the plaintiff, with a safe place of work. A prime example is the Dignity at Work policy which was fully compliant with best practice and was available, at all material times, to all staff, including the plaintiff. The evidence demonstrates conclusively that the plaintiff did not invoke the procedures available to him under the Dignity at Work policy, notwithstanding the fact that he was aware of it, had access to it and was also a member of a Trade Union and had, at all material times, access to support and advice from his Union.

397. The evidence also demonstrates that the plaintiff availed of legal advice in 2010 and 2011. Despite the foregoing, the plaintiff neither made a formal complaint under the Dignity at Work policy, nor did the plaintiff commence legal proceedings at the time he sought, and was given legal, advice. In the manner examined earlier in this judgment, the issues which concerned the plaintiff when he consulted with a solicitor in 2010 and 2011 were the self – same issues which were of concern to him during the trial, including the rumour said to go back to 1996 as well as the incidents involving post in 2005 and 2006 and the plaintiff's belief that Mr. Leo Kearns breached confidentiality regarding the foregoing. This failure of the Plaintiff to institute proceedings in 2011 after he had obtained legal advice, when, on his evidence, he regarded the Defendant as having wronged him and regarded those alleged wrongs as having impacted on his health, gives rise to an obvious statute of limitations issue which I have examined elsewhere in this judgment but which underlines the infirmities in the Plaintiff's present case.

398. The evidence in this case demonstrates that the defendant fulfilled its statutory and common law obligations with regard to the safety of, and the provision of support to, the Plaintiff. One example is the offer made by Mr. Kearns to speak with another employee in

2001. That offer was made by Mr Kearns immediately upon being informed by the Plaintiff, for the first time, about an alleged rumour. The evidence is that Mr Kearns did not speak with the employee in question because the plaintiff dissuaded Mr. Kearns from doing. Further examples comprise the numerous meetings held with the Plaintiff and which are referred to and examined in this judgment. The plaintiff was also supported with extended periods of sick leave during which his salary was paid in accordance with his terms and conditions of employment. Other examples include the offer of a transfer of employment, being an offer made at various stages in, what I am satisfied was, a very genuine attempt to try and assist and support the plaintiff, despite the absence of any evidence that the plaintiff was being bullied or harassed or treated unfairly. Other examples of reasonable steps taken by the defendant to ensure that employees, including the Plaintiff, were provided with a safe place and safe system of work include the Occupational Support facility which was, at all material times, available to the plaintiff. It will also be recalled that the evidence demonstrates that the plaintiff was advised at various stages of the benefits of counselling and the evidence demonstrates that this was not something the plaintiff availed of until years after it was first suggested. The ASMP policy is also evidence of concrete action taken by An Post in support of its employees and consistent with the defendant's duties towards employees, including the Plaintiff. The ASMP is designed to be of assistance to employees on long term absence. Assuming the employee in question cooperates with the process, the ASMP policy ensures that the employee and employer keep in contact and that, during pre-arranged meetings at which the employee can avail of Trade Union support and assistance, the employee has a forum to raise any issue which they say may present a barrier to their return to work. It is a very detailed process which comprises the result of engagement between An Post and the relevant Unions and it is uncontroversial to say that both the plaintiff and the defendant are bound by the terms of the ASMP policy.

399. The evidence demonstrates that the defendant fulfilled its obligations under the ASMP policy, whereas the plaintiff failed to cooperate with the process, thereby frustrating the defendant's *bona fide* efforts to support the Plaintiff and to obtain any further information from the plaintiff which was said by him to relate to his ongoing absence from work and to take any further step consequent on being furnished with any further information. Far from there being inaction on the part of the Defendant, as alleged, An Post continually evidenced a willingness to meet with and to try and assist the plaintiff. The reality is that meetings between the plaintiff and the defendant ceased exclusively because the plaintiff refused to meet with the plaintiff, a refusal which was not reasonable, and on the evidence, not justifiable.

400. Quite apart from the fact that the evidence does not establish inappropriate behaviour or any pattern of same, or behaviour which could reasonably be considered to undermine the Plaintiff's dignity, I am also satisfied that the reaction which the plaintiff claims to have suffered was not reasonably foreseeable by the defendant. It will be recalled that, in his evidence, the plaintiff claimed that he ended up in hospital as a result of being sent the "*wrong minutes*", following the meeting which took place on 08 December 2016. I have already examined the evidence in respect of that allegation made by the plaintiff and it is not necessary to repeat it here. Suffice to say that the Plaintiff was not sent the "*wrong minutes*" Even if one were to take the plaintiff's claim entirely at face value, it must be asked whether such a dramatic reaction and such a negative response is something which was reasonably foreseeable? In my view the answer is undoubtedly in the negative, quite apart from the crucial fact that the Plaintiff was never sent the wrong minutes.

401. The same question can be asked, and a similar answer is inevitable, insofar as any suggestion is made that the Plaintiff reacted negatively to conversations which he had with Mr. Kearns in early October 2016. A crucial fact is that Mr Kearns never breached confidentiality and had nothing to admit and did not admit breaching confidentiality but, even if one were to

take the Plaintiff's evidence entirely at face value, an admission of a breach of confidentiality relating to events of 2005 and 2006 was nothing more than the Plaintiff says he has already known for many years. In my view a negative reaction to something the Plaintiff, on his case, already knows and has known for many years without this negatively affecting him throughout those years, cannot be considered to be foreseeable. Crucially, however, the evidence makes clear that there was no breach of confidentiality and no admission of same in October 2016. Far from hearing any revelation, still less any damaging "thunderbolt", the Plaintiff walked away from the relevant conversations with Mr. Kearns very happy. That he did so, was a testament to the concern and kindness shown to the Plaintiff by Mr Kearns who felt that the Plaintiff would benefit from hearing an apology, even though Mr Kearns had nothing to apologise for. In my view, a negative reaction to an apology is entirely unforeseeable.

402. Given the findings of fact which emerge from an analysis of the entirety of the evidence, any dispute with regard to the plaintiff's medical position is not a dispute in respect of which liability hinges. Even if a plaintiff is found to have suffered an injury arising out of matters which are attributable to workplace events (and the evidence in this case certainly does not allow any such finding) it does not follow that a plaintiff will automatically be entitled to an award of damages. As O'Donnell J. stated in *Ruffley*: -

> "*However, it does not follow from the fact that the plaintiff was wronged by the defendant in some sense, that therefore the plaintiff should recover in excess of €200,000 damages. That is so, even if it is accepted that the plaintiff's depression, anxiety and stress were caused in whole or in part by the treatment she received"*.

403. In the present case, the evidence most certainly does not establish that any depression, anxiety, stress or any other injury or adverse impact on the Plaintiff's health, were caused, be that in whole or in part, by any unfair treatment which the plaintiff received from the defendant, much less any extreme conduct on the Defendant's part which was unlawful. In the present

case, the evidence is simply not there of repeated behaviour which, objectively viewed, can be considered to be inappropriate behaviour and which can reasonably be considered to be undermining of the Plaintiff's dignity. The foregoing test is simply not met on the evidence in this case. Nor does the evidence support the second aspect of the Plaintiff's claim, namely the proposition that he was treated unfairly in relation to the operation of the ASMP. The evidence does not establish anything of the kind. The Defendant treated the Plaintiff reasonably, fairly and lawfully at all times and this is as true in respect of the period commencing on 08 December 2016 (the date of the very first ASMP meeting) as it is in relation to the period up to that point. The evidence also establishes, however, a complete failure on the part of the Plaintiff to co-operate with the Defendant insofar as the ASMP was concerned and a failure to act reasonably. In the manner analysed in this judgment, the Plaintiff's failure to co-operate with a process, specifically designed to understand his ongoing absence from work and to support his *return* to work, can be explained by what was revealed for the first time during the trial, namely, that, following his decision, reached on 22 December 2016, that he would *never* return to work in the Defendant (something he never informed the Defendant of), the Plaintiff's aim has been to achieve, instead, ill-health retirement (something he never informed the Defendant of or, for that matter, ever told his wife about).

Statute of Limitations

404. It will also be recalled that the plaintiff claimed, in his evidence, that he was seriously thinking about committing suicide in 2006. I have also looked at that evidence in detail and it will also be recalled that all the issues of concern to the Plaintiff had taken place by 2006 (including the rumour said to go back to 1996, the incident involving opened post in the van in 2005, the incident involving post in 2006 and the alleged breach of confidentiality on the part of Mr Kearns). Insofar as the plaintiff claims that his alleged suicidal ideation in 2006 was caused by acts or omissions on the part of the defendant, "time" could be said to have started

"running", in 2006, for the purposes of the statute of limitations. If one genuinely felt suicidal as a result of conduct alleged to have occurred in the workplace, the expectation is that legal proceedings would be brought at that time, in 2006, or reasonably soon thereafter and certainly prior to the expiry of the statutory period. No such proceedings were brought. That is not, however, the end of the analysis insofar as the statute of limitations issue is concerned.

405. Earlier in this judgment, I looked at the evidence in relation to the meetings, in October 2010 and in May 2011, between the plaintiff, accompanied by his wife, and Mr. Maurice O'Callaghan, solicitor. It was clear from the plaintiff's evidence that the Plaintiff sought legal advice at that stage in relation to his situation. It was also clear from his evidence that, at that time, the plaintiff regarded himself as having been wronged by the defendant. The issues and incidents of concern to the plaintiff were the same then as they were at the trial which took place almost a decade later, namely the alleged rumour, said to go back to 1996; the incidents involving post, which allegedly occurred in 2005 and 2006; as well as the plaintiff's belief that Mr. Kearns breached confidentiality in respect of the foregoing.

406. The fact that, at the time of seeking legal advice, the plaintiff regarded the defendant as having wronged him and that the Plaintiff regarded the alleged wrongs as having injured his "*health*", is also perfectly clear from the contents of the Plaintiff's letter dated 30 May 2011 wherein he stated, inter alia: - "*I have been an employee of An Post for the last 30 years in which I have been in Blackrock DO since 1994. I have had a lot of bullying, harassment and slander accusations made at me over some time . . .I am presently out sick with work stress and which I have done so on two previous occasions. I find my health and the stress on my family have been affected . . .*". It will be recalled that the plaintiff was absent from work during various periods in 2010 and 2011 and the grounds for these absences were said to be work-related stress. I have examined that evidence in detail earlier in this judgment. A consideration of the evidence shows that the phrase "*slander accusations*" related to verbal comments which

the Plaintiff alleges were made about him. In the manner examined in this judgment, these comprised the rumour said to go back to 1996, remarks said to relate to the opened post incident in 2005, and remarks said to have been made after the Plaintiff took a bag of post to Blackrock in 2006 (the Plaintiff's belief being that information became public regarding the incidents in 2005 and 2006 because Mr Kearns allegedly breached confidentiality in relation to those incidents, resulting in remarks allegedly being made about him).

407. By 2011, the alleged rumour which is said by the Plaintiff to date back to 1996 was some 15 years old, whereas 6 years had elapsed since the Plaintiff had found opened in the relevant van and 5 years had passed since the Plaintiff had brought the bag of post to Blackrock, as instructed at the time. On the Plaintiff's case, any breach of confidentiality by Mr Kearns which resulted in "slander accusations" regarding the Plaintiff, was an alleged breach of confidentiality which was at least 5 years old by the time the Plaintiff wrote his letter in May 2011.

408. In summary, the evidence demonstrates beyond doubt that, as of May 2011, the Plaintiff alleged that he had been injured and that the injury in question was significant and that the injury was attributable to an act or omission on the part of the defendant. The plaintiff had, by that stage, consulted with a solicitor and had received legal advice. Having regard to the provisions of s. 2 of the Statute of Limitations (Amendment) Act, 1991, the Plaintiff's date of knowledge for the purposes of the said Act can certainly be said to be the date of the aforesaid letter, namely 30 May 2011, if not earlier. Section 3 of the same Act makes it clear that an action claiming damages in respect of personal injuries to a person caused by negligence, nuisance or breach of duty: "*…shall not be brought after the expiration of two years from the date on which the cause of action accrued or the date of knowledge (if later) of the person injured*". Even if time did not begin to run in 2006, what can be said with certainty is that the plaintiff's claim in respect of what the Plaintiff described, in his 30 May 2011, as being *"...a*

lot of bullying, harassment and slander accusations…" (which letter, sent while the Plaintiff was "*out sick"* referred *inter alia* to the effect on his "*health"*) is entirely statute barred.

409. An analysis of the evidence also reveals that, from August 2011 until February 2016, a period of 4 and a half years, the Plaintiff was happy at work, had no complaints of any nature and had no health issues said to be attributed in any way to unfair treatment in his workplace. These are facts established by the evidence and also illustrate that the Plaintiff's claim is statute barred in the manner discussed.

410. In skilled oral submissions, Senior Counsel for the plaintiff made reference to the Supreme Court's decision in *Cantrell v. AIB*, wherein Mr. Justice O'Donnell stated, at para. 2: "*While in most cases, the negligent act (or omission) and the damage will occur at the same time, the requirement that there be both a negligent act/omission and damage raises the possibility that, in some cases, damage may not occur until some time after the negligent act, with the result that the cause of action does not accrue, and consequently that time does not run under s. 11(2) until that later date."* Counsel for the plaintiff also drew this Court's attention to the Supreme Court's analysis, from page 27 (para. 50) onwards, in *Cantrell*, in relation to the "*Accrual of a Cause of Action"*, also referring to para. 54. of Cantrell, where the O'Donnell J. referred to an earlier decision by the Supreme Court in *Hegarty v. O'Loughran* [1990] 1 I.R. 148, stating: *"On the question of interpretation of the Act, he considered that he postponement of the running of the limitation period in cases of fraud or concealed fraud under s. 71 of the 1957 Act meant that that Act had to be interpreted as providing that a cause of action accrued when damage occurred, even if not reasonably discoverable. The judgment of Griffin J was to similar effect, adopting, with approval, the approach of Finlay C.J. that "[u]ntil and unless the plaintiff is in a position to establish by evidence that damage has been caused to him, his cause of action [in negligence] is not complete"."* In oral submissions, the Plaintiff's counsel suggested that the wrongs committed by the Defendant brought about a

situation which "*builds like a wave until Mr Ward is overwhelmed*" resulting in his hospitalisation, on 21st to 22nd December 2016, for what the Plaintiff's counsel described as a "*psychiatric injury*". This, according to the Plaintiff's Counsel, was "*the time that the damage has been caused and the cause of action was complete*".

411. It is uncontroversial to say that the *Cantrell* case was concerned primarily with the question of financial loss in relation to investments in particular types of financial instrument. That aside, reliance on *Cantrell* cannot avail the plaintiff in the present case, nor can the submission made with such skill by the Plaintiff's counsel. I say this for several reasons. Crucially, the evidence does not establish any negligent act or omission or any breach of any legal duty on the part of the Defendant at any time. Thus, a critical element of the tort is missing, regardless of when any damage to the plaintiff's health was or was not suffered. Similarly, there can have been no breach of contract or of statue in the absence of any wrongful act on the Defendant's part. That being so, there is simply no question of the completion of a tort being delayed, as Counsel submits, until the events of the end of 2016.

412. Furthermore, the evidence establishes that the Plaintiff was admitted to St. Vincent's Hospital on 21st December 2016 due to a TIA and that he was discharged on the 22nd December with no treatment required other than aspirin. A transient ischemic attack is not a psychiatric injury and, elsewhere in this judgment, I examined the evidence relating to the nature and causes of same, which undoubtedly included organic findings in respect of the Plaintiff, factors such as the Plaintiff's gender, age, diet, history of high cholesterol and blood pressure all being relevant. Stress is likely to have been a factor insofar as the TIA was concerned, but the evidence demonstrates several important things regarding the stress suffered by the Plaintiff, as follows.

413. Firstly, the Defendant committed no legal wrong and, therefore, even if the Plaintiff was suffering from stress, the Defendant has no liability to the Plaintiff in respect of that stress

or for any injury to the Plaintiff's health in respect of which stress may have played a part. Furthermore, 2016 was not the first time the Plaintiff was absent from work as a result of what was said to be the adverse effect on his health due to the workplace. Thus, the proposition that damage to the Plaintiff arose for the first time at the end of 2016, thereby representing the "completion" of a tort at that stage (thereby curing any statute of limitations issue), is wholly unsupported by the evidence. There was no legal wrong at any point but, in the manner explained in this judgment, the evidence reveals that, not only was the Plaintiff not diagnosed in St Vincent's hospital with a psychiatric injury in December 2016, the Plaintiff certainly regarded himself as having been wronged and as having suffered damage to his health many years before. Quite apart from claiming in his evidence to have suffered suicidal thoughts in 2006 (which evidence I have examined elsewhere in this judgment), the Plaintiff referred, in writing, in May 2011, to allegations of, inter alia, bullying and harassment and the effect of same on his health and the Plaintiff sought legal advice, both in 2010 and 2011, in that context. This further undermines the submissions made to the effect that there is no statute of limitations issue. At the risk of some repetition, the statute of limitations issue, which most certainly does, in my view, arise in this case, can be summarised as follows.

The statute of limitations issue – findings summarised

414. Wholly unlike Cantrell, this case is not concerned with a claim of financial loss in respect of particular types of financial instrument. Nor is it a case where latent defects are said to have existed undiscovered for years as in cases involving the construction of buildings. The question of discoverability insofar as the present case is concerned is addressed in the relevant statutory provisions. Section 2 (1) of the Statute of Limitations (Amendment) Act of 1991 states that *"For the purposes of any provision in this Act whereby the time within which an action in respect of an injury may be brought depends on a person's date of knowledge (whether he is the person injured…) references to that person's date of knowledge are references to the date*

on which he first had knowledge of the following facts: (a) that the person alleged to have been injured had been injured; (b) that the injury in question was significant; (c) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty…" whereas s. 3 (1), as amended, goes on to provide that "*An action…claiming damages in respect of personal injuries to a person caused by negligence, nuisance or breach of duty…shall not be brought after the expiration of two years from the date on which the cause of action accrued or the date of knowledge (if later) of the person injured*." It is clear from the contents of the Plaintiff's 30 May 2011 letter (in which the plaintiff claimed to have *"…had a lot of bullying, harassment and slander accusations made at…"* him over some time), that he regarded himself as having suffered injury to his health, so significant that the Plaintiff was unable to work and had had to go on sick leave and that he regarded his employer as responsible, the plaintiff's letter stating inter alia "*I am presently out sick with work stress and which I have done so on two previous occasions. I find my health and the stress on my family have been affected."* Two years after 30 May 2011 is 30 May 2013. The Plaintiff plainly did not issue legal proceedings prior to 30 May 2013. Indeed, as the evidence demonstrates, he raised no issue whatsoever in relation to his treatment at work, be that past or present, during the entire of 2012, the entire of 2013, the entire of 2014 and the entire of 2015. In his evidence, the Plaintiff also referred to "*seriously thinking about committing suicide in 2006*" (being some 4 years *prior to* his 30 May 2011 letter) and it was clear from his testimony that the plaintiff attributed this suicidal ideation to wrongful acts on the part of the Defendant up to that point. The Plaintiff also gave evidence that he consulted with a solicitor in 2010 and in 2011. In light of the evidence before this court I am satisfied that, insofar as the Plaintiff's claims in tort are concerned, they are statute barred and were statute barred as of 01 June 2013 which is over 4 years *before* the Personal Injuries Summons was issued in September 2017.

415. It will also be recalled that in the Personal Injuries summons, it is explicitly pleaded that the Plaintiff suffered bullying in 2010 and in 2011. In para. 21 of the Personal Injuries Summons, a plea is made that, in February 2010 *"Mr John O'Sullivan in occupational health advised the Plaintiff to seek counselling but again there was no reference to ameliorating the bullying issues which continued in the workplace*", with reference in that para. to the atmosphere in the Plaintiff's workplace allegedly being "*dire and intimidating",* whereas in para. 25 of the Personal Injuries Summons, the following is pleaded in relation to the position as of 30 May 2011: "*On 30 May 2011 the Plaintiff wrote to HR in a further attempt to have his grievances dealt with….The Plaintiff indicated that he was currently on sick leave and that it was having an effect on his health and his family…."*

416. Insofar as the statute of limitations issue is concerned, this court has taken the course of action suggested by Mr Justice Meenan in *Fennell. Minister for Defence & Anor* [2020] IEHC 236 wherein he stated: *"I do not think that a court could reach a conclusion either in favour of the plaintiff or the defendants without having heard oral evidence on the matter. The plaintiff will have to give evidence as to what his state of knowledge was at the relevant time and, should he so wish, all other evidence. As against this, the defendants are entitled to have an opportunity to cross-examine the plaintiff and any other witnesses the plaintiff may choose to rely upon and also to call their own evidence which, in turn, may be subject to cross-examination by the plaintiff. It is only after this process has been gone through that the Court may validly reach a conclusion*". The outcome of the foregoing exercise in the present case is for this court to come to the view that the Plaintiff's claim in respect of personal injuries (undoubtedly pleaded to have been sustained as a result of a continuing course of conduct) is statute barred and became so as of 01 June 2013, being two years after the Plaintiff's 30 May 2011 letter which has been referred to earlier in this judgment, which letter is referred to in para. 25 of the Personal Injuries Summons. Having regard to the evidence, this seems to me to

be the latest date when the Plaintiff's claim in negligence was "live" and, having regard to the oral evidence given by the Plaintiff at the trial, his claim may well have been statute barred far earlier. I am entirely satisfied that the Plaintiff has not demonstrated that he only acquired the requisite knowledge no earlier than two years prior to the commencement of the proceedings. It is clear from his evidence that he regards events, in particular statements allegedly made, going back to 1996, 2001, 2005 and 2006 as having caused injury to his health for which he holds, and has long held, the Plaintiff responsible, the Plaintiff's evidence that he was seriously thinking about committing suicide in 2006 being relevant in this regard.

417. To say under oath that one was suffering from suicidal thoughts is to assert that the damage to one's health was suffered which well beyond what might be called "normal" work-related stress. That is what the Plaintiff claimed in his testimony as regards the situation in 2006, yet he plainly issued no legal proceedings within a 2 - year period expiring in 2008. Even if one ignores that aspect of the Plaintiff's testimony, in circumstances where, for the reasons explained in this judgment, there is no objective evidence which offers any support for the Plaintiff's claim under oath, in 2020, that he was seriously considering committing suicide, in 2006, and, weighing up all evidence, I believe it would be unsafe to find as a fact that the Plaintiff was suicidal, in 2006, it cannot be disputed that, 5 years later, the Plaintiff wrote to his employer. In that letter dated 30 May 2011, which was sent a decade ago, the Plaintiff complains of the very conduct which is said, in a Personal Injuries Summons issued over 6 years later, to be relevant to damage to his health which he now seeks to hold the Defendant liable for. The evidence does not support the Plaintiff's case, but the evidence also reveals that a decade ago the Plaintiff referred in his 30 May 2011 letter to the self-same complaints which as are said to form the basis for the alleged liability on the Defendant's part in these proceedings, as per the Personal Injuries Summons issued on 8 September 2017. In other words, the Plaintiff had both knowledge of the alleged wrongs and knowledge of damage to

his health, insofar as he saw it, as of May 2011 at the latest. Indeed, the Plaintiff regarded matters as sufficiently serious that he consulted a solicitor a decade ago. Twice. What he did not do, however, was to institute any legal proceedings until over 6 years after his 30 May 2011 letter.

Other relevant principles

418. The decisions of Clarke J. (as he then was) in *Maher v. Jabil* [2008] 1 IR 25 and Laffoy J. in *McGrath v. Trintech Technologies Ltd* [2004] IEHC 342, reviewed relevant authorities in relation to an employer's liability for psychiatric illness induced as a consequence of stress. The courts in this jurisdiction (see Laffoy J. in *McGrath*) have cited with approval sixteen "practical propositions" set out by Hale L.J. in *Hatton v Sutherland* [2002] EWCA Civ 76 which are designed to assist in the assessment of such cases. It is important to observe, however, that those sixteen points do not displace or replace the general principles which determine an employer's liability. Rather they constitute practical illustrations of same. I have had regard to all sixteen practical propositions in the context of this decision and, even if I am entirely wrong in my view as regards the Statute of Limitations, I am entirely satisfied that the evidence does not support any finding of any legal wrong on the part of the Defendant at any point, when the evidence is considered against the backdrop of the sixteen practical propositions identified by Hale L.J.

419. In other words, even if there was no Statute of Limitations to be considered, the Plaintiff has not proved his case on the merits and the evidence wholly undermines the pleas made of legal wrongs on the Defendant's part. I take this view having also done what Senior Counsel for the plaintiff urged this Court to do, namely to look at the position from "first principles" and to recall the "neighbour principle" as established in *Donoghue v. Stephenson* [1932] AC 562.

420. There is no dispute in relation to the principle that one must take reasonable care to avoid acts or omissions which one can reasonably foresee would be likely to injure one's neighbour. The difficulty for the Plaintiff is that the facts which emerge from an analysis of the evidence demonstrate that the Defendant did *not* fail to take reasonable care, nor did the Defendant by any act or omission cause any injury, still less foreseeable injury, to the Defendant. In short, the evidence does not establish that the defendant fell below the standard to be properly expected of a reasonable and prudent employer. For these reasons, the observations of Lady Justice Hale in *Sutherland v. Hatton,* upon which Senior Counsel for the Plaintiff placed considerable emphasis in oral submissions, simply cannot avail the Plaintiff. The difficulty is not with any principle. The plaintiff's difficulty is lacking the evidence to support the pleaded case even if it is a case which is not statute barred.

421. There is no dispute that (per. para. 18 in *Sutherland*): *"Liability in negligence depends on three inter-related requirements: the existence of a duty of care; a failure to take the care which can reasonably be expected in the circumstances; and damage suffered as a result of that failure*." The foregoing is no more than a re-statement of what might be called "first principles". In the present case, however, and leaving aside the Statute of Limitations issue for the purposes of the present analysis, the evidence simply does not establish any failure on the part of the Defendant to take reasonable care, nor does the evidence establish that damage resulted from any act or omission of the Defendant. Each of these issues constitute insurmountable difficulties for the Plaintiff's case and these difficulties flow from the *facts*, not from any dispute in relation to applicable legal *principles*. In *Sutherland* the Court of Appeal also emphasised the issue of foreseeability and, in the manner examined in the judgment of this court, no damage of the type suffered by the Plaintiff could fairly be said to have been foreseeable as a consequence of any act or omission on the part of the Defendant, thereby creating another insurmountable difficulty for the plaintiff's case.

422. In short, regardless of the enormous commitment on the part of Counsel to the Plaintiff's case and the skill and ingenuity with which a range of arguments are deployed, the evidence is simply not there to support the case pleaded.

423. In submissions by counsel for the Plaintiff, it was also argued that the Plaintiff is someone who might reasonably be regarded as having an "egg-shell skull" in the sense explained in the authorities such as *Burke v. John Paul & Co Ltd* [1967] IR 277, the Plaintiff's counsel also referring to the decision by Clarke J. (as he then was) in *Walsh v. Tipperary County Council* [2011] IEHC 131, wherein the court stated (at para. 5.6) "… *in the oft quoted case of the injured party with the so-called "eggshell skull" it can, on occasion, turn out that, due to some weakness or predisposition, a particular injured party suffers much more severe consequences from a relatively innocuous incident than might be expected. However, it again remains the case that, if personal injury is a foreseeable consequence of whatever wrongdoing is concerned (say the negligent driving of a motor vehicle), then the fact that those injuries may, in the peculiar circumstance of the case, be much more severe than might have been expected, does not deprive the injured party from an entitlement to recover whatever may be appropriate for those injuries.*" The foregoing submission cannot avail the Plaintiff, given that the evidence does not establish any breach of any legal duty on the part of the Defendant, nor does the evidence establish any causal link between the injury to the Plaintiff's health and any act or omission on the part of the Defendant, nor was any injury a foreseeable consequence of anything the Defendant did or failed to do. There was simply no legal "wrong" committed by the Defendant, so the argument made with such skill by Counsel lacks a factual basis, having regard to the evidence given to this court and which I have examined in this judgment.

424. During the course of oral submissions, counsel for the Plaintiff also referred to the judgment of Herbert J. in *Sweeney v. Board of Management of Ballinteer Community School* [2011] IEHC 131, wherein the learned judge stated, at para. 43: "*It is well established in this*

jurisdiction, both at common law and now by s. 15 of the Employment Equality Act 1998, that even if the Board of Management of B.C.C. did not know or could not reasonably have known (which was not the situation in the present case) that the plaintiff was being bullied and harassed by Dr. C in the course of her work, it is still vicariously liable for the wrongful acts of Dr. C once those acts were committed by him within the scope of his employment." Relying on the foregoing, Counsel for the Plaintiff submits that the Employment Equality Act informs the value judgments to be made at common law as to what is reasonable and what the scope of an employer's duties are. The fundamental difficulty with the foregoing submission is that the evidence does not establish that the Plaintiff suffered any bullying or harassment. On the contrary, the Plaintiff was very clear that there were no current issues in his workplace. He made that clear in June 2016 and again in December 2016. Moreover, the evidence demonstrates that the Plaintiff was, in fact, happy at work from August 2011 onwards, a point at which there were no then-current issues in his workplace to which he objected, and it is incontrovertible that the Plaintiff made no complaint whatsoever of bullying, harassment or any treatment to which he objected, following his return to work from sick leave, in August 2011, or at any point during 2012, 2013, 2014 or 2015.

425. It is also clear from the evidence that no new legal "wrong" occurred in 2016, or thereafter, which gave rise to any "fresh" or new cause of action, be that in tort, contract, statute, or otherwise. Insofar as the plaintiff alleges that the defendant caused him a tortious wrong, the tort as alleged by the plaintiff, was completed, at the latest, in 2011 and I am entirely satisfied that no new issue arose at any point *after* 2011 which could be considered to amount to bullying or harassment or unfair treatment of the plaintiff or a breach by the Defendant of any legal duty to the Plaintiff, in contract, statute or otherwise. When the Plaintiff raised concerns again, in 2016, he was very clear about the fact that there were no new or current issues. Rather, the substance of all his concerns, as a matter of fact, related to issues said to

have occurred between 1996 and 2007, all the foregoing being remarks allegedly made, in respect of which no complaint was ever made by the Plaintiff at the relevant time. Nor – on the evidence before this court - was anyone alleged to have made any remarks *ever* challenged over them at the relevant time or otherwise or ever asked to respond to a complaint instigated by the Plaintiff (no complaint was instigated). Furthermore, the evidence demonstrates that the Plaintiff undoubtedly knew of his rights to make a complaint and had, at all material times, support, advice and representation available to him, not least from his Union which had played an active role in introducing all relevant policies within the Defendant. Despite all this, no formal complaint and no legal proceedings were issued in 2011, 2012, 2013, 2014, 2015 or 2016. That is not, for a moment, to suggest that legal proceedings, had they been instituted in, say, 2011 would have had merit. The evidence in this case undermines that proposition. It is beyond doubt, however, that time began to run against the Plaintiff, in May 2011, regarding any claim for bullying, harassment and/or relating to what the Plaintiff called "slander accusations". As such, any claim in respect of the foregoing is well out of time and has been out of time since, at the latest, June 2013, which is over 4 years before the Plaintiff's Personal Injuries Summons was issued in September 2017.

426. It also has to be pointed out that, at no stage since going on sick leave in 2016, did the plaintiff indicate that he was fit to return to work. That being so, there is no basis for any allegation that the defendant failed to provide reasonable accommodation to the plaintiff in the context of Employment Equality legislation. It is also the case that no claim was ever maintained at first instance by the plaintiff under the Employment Equality acts. Insofar as the plaintiff claims to be entitled to a remedy under those Acts, it is uncontroversial to say that same must be pursued at first instance before the Workplace Relations Commission, with access to the Courts by way of appeal on a point of law only, not by way of an initial claim. It must be emphasised, however, that the evidence before this Court does not support the

proposition that there has been any discrimination, be that disability discrimination or otherwise, insofar as the plaintiff was, or is, concerned.

427. For the defendant to have followed the ASMP was not an infringement of the plaintiff's contractual, statutory or common law rights. Nor was it negligent or in breach of any duty owed to the plaintiff for the defendant to rely on the assessment of the Chief Medical Officer as to the plaintiff's fitness to attend meetings in the context of the ASMP. It is also appropriate to point out that the evidence demonstrates that the plaintiff was, in fact, fit to attend ASMP meetings. It will also be recalled that the plaintiff was entitled to avail of representation and support from his trade union at any and all proposed ASMP meetings. The reality is the plaintiff refused to attend same and the evidence also demonstrates that his refusal was entirely consistent with his privately held aims of never returning to work in the defendant but, instead, of trying to secure ill – health retirement.

428. The evidence in this case simply does not support the proposition that the Plaintiff has been bullied harassed or treated in any way unfairly *after* the Plaintiff went on sick leave in October 2016. Rather, the evidence demonstrates that the Plaintiff has been dealt with fairly and reasonably and in accordance with the provisions of the ASMP policy which – it will be recalled - was negotiated between the Plaintiff's Trade Union and the Defendant. The evidence does not allow this Court to find that An Post have, by any act or omission, breached any term in the ASMP policy or acted in any way unfairly or unreasonably towards the Plaintiff as regards its implementation. Nor could this Court conclude that the Defendant acted in breach of the principles underpinning the ASMP policy, such as support for the well-being of employees.

429. For the defendant to have repeatedly, reasonably, and in good faith, invited the plaintiff - who was, as each invitation made clear, entitled to be accompanied by his trade union representative - to meet to discuss his situation and to explain what was preventing him from

returning to work and what steps might be taken to assist with his return to work was not an unlawful act on the part of the defendant. Nor was the ASMP a disciplinary one. The evidence demonstrates conclusively that the plaintiff has not been disciplined. I must reject any suggestion that the manner in which the defendant operated the ASMP constituted bullying or harassment or unlawful or unfair conduct which caused injury to the plaintiff or entitles the plaintiff to damages.

430. Even in the context of disciplinary procedures (and the ASMP is *not* a disciplinary procedure) the Supreme Court made it clear in *Ruffley* that a flawed disciplinary process is not bullying or unlawful in the sense that damages are awarded. The ASMP was neither a disciplinary, nor was it flawed or operated in a flawed manner. Guidance given by Mr Justice Charleton in *Ruffley* also highlights that, not only can an employer expect an employee to cooperate, an employer is entitled to expect a degree of robustness from its employees. Charleton J. put matters as follows:-

> "*An employer is entitled to expect ordinary robustness from its employees; Croft v Broadstairs and St Peter's Town Council [2003] EWCA Civ 676. Correction and instruction are necessary in the functioning of any workplace and these are required to avoid accidents and to ensure that productive work is engaged in. It may be necessary to point to faults. It may be necessary to bring home a point by requesting engagement in an unusual task or longer or unsocial hours. It is a kindness to attempt to instil a work ethic or to save a job or a career by an early intervention. Bullying is not about being tough on employees. Appropriate interventions may not be pleasant and must simply be taken in the right spirit. Sometimes a disciplinary intervention may be necessary. In Yapp v Foreign and Commonwealth Office [2014] EWCA Civ 1512, the Court of Appeal in England and Wales considered a disciplinary procedure which was*

alleged to have resulted in the plaintiff suffering from depression. Underhill LJ noted at paragraph 104: -

'It is a normal characteristic of the employment relationship that employees may be criticised by the employer and sometimes face disciplinary action or other such procedures. And in an imperfect world it is not uncommon for such criticism or disciplinary process to be flawed to some extent: there will be a spectrum from minor procedural flaws to gross unfairness. The message of Croft is that it is not usually foreseeable that even disciplinary action which is quite seriously unfair will lead the employee to develop a psychiatric illness unless there are signs of pre-existing vulnerability'".

There were no flaws with regard to the manner in which the defendant utilised the ASMP, nor was it operated in a seriously unfair manner. I am entirely satisfied that the way An Post operated the ASMP neither caused injury to the plaintiff nor was it at all foreseeable that the manner in which An Post operated the ASMP, on the facts of the present case, would or could cause any injury to the plaintiff. Thus, what the plaintiff has described as the second aspect of his claim, namely the manner in which the plaintiff was treated from December 2016 onwards, is a claim which fails. Not only is it a claim which runs contrary to the principles derived from the Supreme Court's decision in *Ruffley*, the plaintiff's claim is wholly unsupported by the evidence in this case.

431. The evidence demonstrates that the Defendant's aim has been to encourage the Plaintiff's return to work once the Plaintiff was fit enough to do so. That aim has been frustrated by the Plaintiff's actions. It is clear from the evidence that, in June 2016 and again in December 2016, the Plaintiff, in the presence of his Union representative, told Mr. Cullen, a senior HR manager, that there were no current issues of concern to the Plaintiff. The Plaintiff made clear that the substance of his concerns related to remarks said to have been made

between 1996 and 2007. In 2016, there were, as a matter of fact, no new or current issues in relation to any alleged bullying or harassment or unfair treatment of the Plaintiff at work and, as matter of fact, all the Plaintiff's concerns went back to a period between some 10 and 20 years earlier. Despite this, the evidence reveals that the Plaintiff gave a very different version of events to his GP and to Occupational Health professionals within the Defendant who were given to understand that the Plaintiff *was* suffering from current and ongoing bullying, when this was not the case. It is beyond doubt that, when he mis-informed the relevant doctors and Occupational Health professionals, the Plaintiff must have done so knowingly.

432. Furthermore, the Plaintiff refused to participate in the ASMP, and essential feature of which is information sharing. With the exception of one meeting which was held under the ASMP framework in October 2018, and which the Plaintiff attended accompanied by his brother, the Plaintiff has failed and refused to attend each and every ASMP meeting to which he was invited and this has entirely frustrated the Defendant's legitimate aim of obtaining relevant information concerning the Plaintiff's ongoing absence from work, with a view to understanding his ongoing absence and supporting his return to work. During the one ASMP meeting the Plaintiff did attend since December 2016, namely the October 2018 meeting, the Plaintiff refused to provide any information in relation to his absence from work and the reasons for it. He simply refused to discuss the past. Thus, at all material times, the Plaintiff's actions (in refusing to attend ASMP meetings and refusing to provide information) frustrated any possibility of the Defendant carrying out such investigations, if any, as might arise from information tendered by the plaintiff and said by the plaintiff to be relevant his ongoing absence from work. The evidence demonstrates that the plaintiff has failed and refused, both to attend ASMP meetings and to furnish any information. The foregoing has been the position from 07 January 2017 to date, despite an agreed outcome of the 08 December 2016 meeting which was that the Plaintiff would be returning to work in as of 07 January 2017. He did not do so then.

Nor has he returned to work since. The Defendant did nothing, after the 08 December 2016, which prevented the Plaintiff from returning to his job, nor was there any material change in any relevant circumstances caused due to any act or omission on the part of the Defendant. What changed, of course, was the Plaintiff's attitude to returning to work.

433. Despite the foregoing, as matters stand the Plaintiff's job remains open to him to return to and the Plaintiff remains an employee of the Defendant. He has not been dismissed. The ASMP is not a disciplinary one and the Plaintiff has not been disciplined. Of considerable significance, however, is the fact that on 22 December 2016, the Plaintiff made a firm decision never to return to work in An Post. There is no evidence that the Plaintiff ever changed his mind in the months and years since making that decision, a decision which was not based on medical advice and a decision which the Plaintiff did not communicate to the Defendant. Instead of wanting to return to his job, the Plaintiff's objective has long been, and remains, to obtain ill-health retirement from An Post, instead, something the Plaintiff's wife was not aware of until that phrase was mentioned during the trial. Nor is there evidence that the Plaintiff ever told his GP or any other Doctor of his decision never to return to An Post, but to seek, instead, ill-health retirement

434. There is a distinction between being fit enough to return to *work* and fit to attend an ASMP *meeting* to discuss ongoing absence from work and, for the reasons set out in this judgment, the evidence does not show that the Plaintiff was unfit to attend ASMP meetings. In the manner explained in this judgment, the evidence demonstrates that he Plaintiff was fit enough to attend ASMP meetings, which he failed and refused to attend. I am entitled to conclude that the Plaintiff decided against attending ASMP meetings by reason of his twin aims of never returning to work in An Post and, instead, trying to obtain ill-health retirement, objectives that were equally relevant in terms of explaining why the Plaintiff knowingly gave

incorrect information to professionals (including to all 3 of the doctors who gave evidence) in the manner examined in this judgment.

435. It is clear that under the ASMP policy, every employee, including the Plaintiff, has a duty to co-operate with the process and the evidence demonstrates a failure on the part of the Plaintiff to co-operate fully with the ASMP, there being no evidence that any such meetings were, or would be, carried out unfairly and ample evidence that at all material times the Plaintiff could rely on Union representation including at any ASMP meeting which was scheduled to discuss the Plaintiff's ongoing absence from work. The Plaintiff failed to attend numerous such meetings. I am entitled on the evidence to conclude that this is because the aim of the ASMP is to get employees back to work as quickly as they are fit to *return* to their duties, whereas the Plaintiff has set his face against *ever* returning to work in An Post and, instead, wanted and wants ill-health retirement.

436. The Plaintiff's pleaded claim is that he has been the subject of bullying and harassment over a lengthy period from August 1996 to December 2016. This court could not, on the evidence before it, reach a finding that the Plaintiff ever suffered from bullying or harassment in An Post. The evidence demonstrates that the Defendant committed no legal wrong whether by act or omission. That being so, the submissions made by Counsel for the Plaintiff with reference to *Hurley v. An Post* [2017] IEHC 568 and *McCarthy v. ISS Ireland Ltd and the HSE* [2018] IECA 287 cannot avail the Plaintiff. In the former, the Court found a failure to investigate and a failure to assist, no such findings being made on the evidence before this court. In the latter case, the plaintiff was unsuccessful in the High Court, and argued in the Court of Appeal that the focus, by the trial judge, on the indicia of workplace bullying was inappropriate, in circumstances where workplace bullying was not pleaded. In the present case, workplace bullying is undoubtedly pleaded but is not established on the facts which emerge from an analysis of the evidence. There is simply no evidence to support the

proposition that, at any stage, including in the last decade, the Plaintiff has ever suffered from bullying or harassment or unfair treatment of any kind within the Defendant.

437. Even on his own case, there is a complete absence of evidence of any complaints whatsoever having been made by the Plaintiff in respect of the entire period of some 5 years, commencing in August 2011 being the point at which the Plaintiff returned to work after a period of sick leave. On the contrary, the evidence is that the Plaintiff was happy at work from August 2011 onwards. In the manner explained in this judgment, the evidence also demonstrates that the Plaintiff did not suffer bullying or harassment or unfair treatment, in 2016, or at any time in the months or years that followed the commencement of his "sick leave" in October 2016. The evidence also demonstrates, at all material times, the defendant was focused on securing the plaintiff's return to work and on trying to understand the Plaintiff's absence from work and on providing support to the plaintiff in respect of any issue affecting his ability to work.

438. With the legitimate objective of supporting the Plaintiff's return to work, the Defendant operated the ASMP and did so properly, with care and without breaching any contractual, common law or statutory rights on the part of the Plaintiff. By contrast, the Plaintiff failed and refused to cooperate with the ASMP. The Plaintiff repeatedly refused to attend ASMP meetings and provided no information relating to his ongoing absence from work. The evidence demonstrates that this was because there were, in fact, no current workplace issues which prevented him from returning to his job but the Plaintiff had an agenda which was other than to return to his job in An Post.

439. This judgment has examined to the extent necessary both the Plaintiff's medical records and views expressed by a number of medical experts. The outcome of this case does not, however, turn on, or concern in any way, any difference of opinion which may exist between Doctors. Rather, the outcome of the case hinges on whether the evidence establishes a breach

of any legal duty on the part of the Defendant and I am entirely satisfied that it does not. Nor does the evidence establish any causal link between any act or omission on the part of the Defendant and any foreseeable injury to the Plaintiff.

440. In short, the Plaintiff has not established on the balance of probabilities that he suffered any personal injury, loss or damage for which the Defendant is liable. In the context of authorities such as *Maher v. Jabil* [2005] IEHC 130, even if the Plaintiff suffered an injury to his health outside of occupational stress, such injury cannot, on the evidence before this court, be attributed to any wrongful act by the Defendant or any unlawful treatment of the Defendant in the workplace, nor was such injury reasonably foreseeable in the circumstances.

In Summary

441. I have very carefully considered the entirety of the evidence which was before the Court and I have very carefully considered the legal submissions, both written and oral, made by Counsel on both sides. Regardless of the undoubted skill with which they are made by eminent Counsel for the Plaintiff, the evidence in this case simply does not support the legal submissions which are made on behalf of Mr. Ward or the pleaded case brought by the Plaintiff.

442. For the reasons set out in this judgment, I am obliged to refuse the relief sought by the Plaintiff in the Motion which was issued on 18 February 2020. Thus, the outcome of the Plaintiff's claim falls to be determined by the evidence before this Court and, specifically, flows from the findings which emerge from the careful analysis of the evidence on the part of the Court. It is important to emphasise that the reasons for this decision comprise the numerous findings of fact which are detailed throughout this judgment. It is not appropriate, or possible, to set all of these out again. For the sake of clarity and economy certain findings can be summarised. The following summary of the Court's conclusions is not, however, exhaustive and is no substitute for the findings of fact, and the reasons for same, which are carefully set out in the context of a chronological examination of over two decades of evidence, as will be

seen throughout this judgment. Having made the foregoing clear, this Court's findings include the following:-

(1) There was no failure on the part of the defendant to deal with such issues as the plaintiff raised over the years and I have examined in detail and in chronological order the extent to which the plaintiff ever raised issues and what occurred when he did. In short, the evidence does not support, indeed wholly undermines the proposition that the plaintiff made complaints of bullying and harassment in the workplace over many years;

(2) The evidence does not support a finding of fact that, in 2016, Mr. Kearns made admissions to the plaintiff to the effect that the plaintiff had been bullied or harassed, nor did Mr. Kearns make any admissions consistent with past bullying or harassment or unfair treatment of the plaintiff in any respect. The evidence demonstrates that Mr. Kearns never breached confidentiality or did anything wrong insofar as the Plaintiff was concerned. Mr. Kearns had, as a matter of fact, nothing to admit, in October 2016, or at any other time and I am satisfied that as a matter of fact Mr Kearns made no admissions in 2016;

(3) The evidence demonstrates that there was no failure to act adequately on the part of An Post, be that in 2016 or at any point during the previous 20 year period, which, on the plaintiff's case is the relevant period;

(4) There is no evidence to support the proposition that dealing with the plaintiff through the ASMP caused or prolonged any injury to the plaintiff;

(5) The evidence supports neither a liability on the part of the defendant in tort, contract, statute or otherwise;

(6) There was no failure in 2016 on the part of the defendant to adequately consider or investigate any issue;

(7) Insofar as the plaintiff suffered any physical or psychiatric injury or condition, there is no evidence to support a causal link between any act or omission on the part of An Post and any such injury or condition and no evidence to establish a breach of any legal duty owed by the Defendant to the Plaintiff at any point, be that by way of act or omission;

(8) Insofar as it is claimed that the Plaintiff suffered from a condition which constituted or constitutes a disability in the context of Employment Equality legislation, the evidence does not support the proposition that the Plaintiff was treated less favourably than any person without any such condition (and the forgoing is not to say that the Plaintiff had any entitlement to make a claim under Employment Equality legislation at first instance to this Court, an employee's entitlement to make claims under that regime, being in the manner prescribed by the said legislation itself);

(9) The terms of the ASMP policy comprise part of the contract as between the Plaintiff and the Defendant, and for the Defendant to progress the Plaintiff's case through the ASMP was entirely consistent with the contractual relations between the plaintiff and the defendant and did not amount to negligence or breach of contract or breach of statutory duty, be that under Health and Safety or Equality legislation, or principles derived from same, or otherwise;

(10) The evidence does not support the proposition that the plaintiff could not attend meetings with management under the ASMP;

(11) The evidence undermines the proposition that the defendant failed to support the plaintiff;

(12) The evidence does not support the claim that the defendant failed to comply with the ASMP or that the defendant applied the ASMP in an unfair or overly strict or inflexible manner contrary to any duty owned by the defendant to the plaintiff;

(13) The evidence does not support the proposition that the defendant moved the plaintiff towards termination on disciplinary grounds and, as a matter of fact, the plaintiff remains employed by the defendant and is not the subject of disciplinary action;

(14) The evidence, however, proves that the plaintiff decided as far back as December 2016 that he would never return to An Post. The evidence is also that the Plaintiff decided that he wanted, and still wants, ill-health retirement instead of ever returning to his job. The evidence demonstrates that the Plaintiff has pursued those twin-objective from at least 07 January 2017 (being the date the Defendant expected the Plaintiff to resume his job as per the agreed outcome of the 08 December 2016 meeting), including by making a deliberate decision not to attend ASMP meetings, despite the evidence establishing that, as a matter of fact, he was fit to attend such meetings;

(15) The evidence also demonstrates that, since December 2016, not only has the plaintiff failed and refused to attend a series of numerous ASMP meetings to discuss his ongoing absence from work (the defendant's objective in convening such meetings being with a view to supporting the plaintiff's return to work), the plaintiff has failed to furnish any details to the Defendant in relation to such concerns as the Plaintiff regarded as preventing him from attending work and that failure to furnish any information whatsoever has been ongoing for some 4 years;

(16) The evidence also proves that, on the one occasion he did attend a meeting which was held under the auspices of the ASMP in October 2018, the plaintiff refused to provide any information touching on the past, thereby continuing to frustrate any investigation whatsoever by the defendant of any issues which were said by the plaintiff to prevent his return to work. In short, the Plaintiff failed and refused to say what, if any, issues prevented his return to work, despite having been repeatedly invited to

ASMP meetings which provided an ideal forum for the Plaintiff, supported by his Union representative, to provide such information and outline such issues, if any, as were said by him to prevent his return to work;

(17) The reality, as demonstrated by the evidence, is that the plaintiff did not wish to return to work and, on 22 December 2016, set his face firmly against ever returning to work in the defendant, being a decision he has never wavered from;

(18) Having regard to the evidence, the Plaintiff has been proven to be a poor historian and the plaintiff has given, on several occasions, testimony which is not reliable;

(19) The evidence also demonstrates that the plaintiff has given incorrect information to medical professionals, who referred to and relied on this incorrect information in the context of medical reports furnished by them, including reports in which the view was offered that the Plaintiff was not fit to attend a meeting with the Defendant under the ASMP. The evidence also demonstrates that the Plaintiff did this knowingly;

(20) The reason why the Plaintiff knowingly gave incorrect information to Doctors is explained, to a material extent, by his twin objectives of never going back to work in the Defendant and, instead, trying to secure ill health retirement;

(21) The evidence does not support the proposition that the defendant failed to provide a safe working environment for the plaintiff or that same caused the plaintiff to sustain any injury;

(22) The evidence does not support the proposition that the defendant failed, at any point in time, to take seriously such concerns or issues as were raised by the plaintiff;

(23) The evidence demonstrates that the defendant, at all material times, gave the plaintiff time and space to regain his health and return to work and operated the ASMP

fairly and in good faith, motivated by a genuine desire to support the plaintiff and to see him return to work as soon as he was able to do so;

(24) The evidence does not support the proposition that the plaintiff was treated other than with respect, dignity and concern by the defendant;

(25) The defendant did not cause the plaintiff a severe psychiatric injury, or any injury;

(26) The defendant did not display indifference to the plaintiff in 2016, or at any other time;

(27) The defendant did not depart from the standards of a reasonable employer:

(28) The defendant did not breach the plaintiff's contract of employment;

(29) The defendant did not breach any statutory duties owed to the Plaintiff;

(30) The defendant did not act negligently;

(31) the defendant did not, by act or omission, breach any legal duty of any sort owed to the Plaintiff.

443. In short, the evidence simply does not support the pleaded case. I say this quite apart from my view that the Plaintiff's claim in negligence was statute barred as of June 2013, at the latest, and also clear in my view that no new cause of action arose in 2016 or, for that matter, in the 5 years prior to 2016, or at any time thereafter.

444. In *Berber v. Dunnes Stores*, reference was made to the "*reciprocal*" duties on the employee and employer and it is settled law that there are *mutual* obligations owed as between employer and employee, insofar as any employment contract is concerned. A consideration of the evidence before this court reveals that the Defendant has met, to a reasonable and sufficient standard, all its duties to the Plaintiff, but the Plaintiff has not met his. By way of example, the Plaintiff could reasonably be expected to have invoked at the relevant time (i.e. when remarks were made to which he objected), the formal complaints procedure which was available to him at all material times, if it was the case that he had complaints which he felt had not been

addressed satisfactorily outside of the formal complaints mechanism. He did not do so. The evidence demonstrates that as a result of significant effort a sophisticated Dignity at Work policy was put in place to assist employees and to facilitate the bringing of complaints and the dealing with same in a proper and timely fashion, yet despite being aware of this policy at all material times and having Trade Union assistance available at all material times, the Plaintiff did not avail of the complaints procedure. He could have, but he chose not to. Years passed without the plaintiff ever taking anything like reasonable or sufficient action if it was truly the case that things had been said to which he objected. When the Plaintiff eventually did "put pen to paper" for the first time in 2010, this was already years *after* the remarks had been allegedly uttered and at a time when the Plaintiff had no *current* complaints in respect of his workplace situation and the Plaintiff at no stage gave anything like sufficient detail such as would enable any fair or meaningful investigation to be commenced. Similarly, the Plaintiff owed his employer the duty to co-operate insofar as the implementation of the ASMP policy was concerned, a policy designed to assist employees with returning to work, but the Plaintiff fell well short of reasonable co-operation in that regard. The evidence not only demonstrates that the Defendant did not fail in any duty to the Plaintiff, it is also appropriate to point out that the evidence establishes beyond doubt that the Defendant adopted and displayed an attitude of patience and concern for the Plaintiff at all material times.

445. As previously stated, the Plaintiff has proven to be a poor historian. In the manner explained in this judgment, I have found the Plaintiff's evidence to be unreliable in relation to certain issues, each of which is explored in detail in this judgment. Whether any one, or more, of the instances of unreliable testimony given by the Plaintiff can be explained by the passage of time and by failing memory cannot be known with certainty. Regardless of the explanation, if there be one, I have given extensive reasons as to why, where relevant, I have not found the Plaintiff's evidence to be accurate or reliable and it also must be said that poor memory is

difficult to understand or accept as an explanation in respect of certain unreliable testimony given by the Plaintiff.

446. It is appropriate to say, however, that the Plaintiff presents as someone who appears to believe, sincerely, that he has been wronged by the Defendant. This belief is also shared by his GP. The Plaintiff is clearly a member of a loving and supportive family who attended the trial with him and who, no doubt, also share the Plaintiff's view and sincerely believe him to have been wronged. The Plaintiff has also had the benefit of a very experienced legal team who conducted his case with great skill, care and an obvious - and at times passionate - commitment.

447. It has to be emphasised, however, that this case does not hinge on the degree to which someone believes, no matter how genuinely, fervently and sincerely, that they have been wronged. Nor can the outcome of legal proceedings depend on the presentation of a case, however skilfully, and this was undoubtedly a case presented with great skill by two eminent Senior Counsel representing the Plaintiff, as well as an experienced junior counsel and a firm of most reputable and experienced solicitors. Similarly, the decision by this court does not depend on legal submissions, be they written or oral, regardless of the skill and sophistication with which they are made. This case, like every case, can only be decided on the basis of the *evidence* before the court. I have very carefully examined the entirety of the evidence and have set out my findings in granular detail and these findings demonstrate that, to the extent the Plaintiff, his G.P. and his family sincerely believe that he Plaintiff was wronged by An Post, that view is not supported (but is fatally undermined) by the facts which emerge from an analysis of the evidence in this case.

448. It is also important to point out that this is not a case which "breaks new ground" in terms of legal principle or involves the application of existing principles in any novel way. The principles and their proper application were known before this case and remain entirely unchanged as a result of this decision. In short, this was a claim made the outcome of which

hinged exclusively on the analysis by this Court of the evidence given and the facts which emerge from that analysis simply do not support the pleaded case. This was not a case of wider public importance. It was not a case which raised far-reaching or fundamental questions of principle. It was a claim brought by a particular employee, against a particular employer, in which specific pleas were made, which claim must be dismissed having regard to the specific facts which emerge from the analysis of the totality of the evidence, which facts offer no support for the pleaded case.

In conclusion

449. In conclusion, I would wish to add just the following words. The Plaintiff is, in relative terms, still a young man. The love he has for his family was clear to anyone who was present in court during the trial and the desire on the part of the Plaintiff to support his family was also wholly apparent and is to the Plaintiff's great credit. Clear, too, was the Plaintiff's unblemished record of service in the Defendant, prior to his absence, and this is something the Plaintiff can feel justifiably proud of. During the course of the evidence in this case, there were nothing but positive reports given in relation to the standard of the Plaintiff's work as an employee in the Defendant when he was at work. Again, the Plaintiff can "hold his head high" in relation to the foregoing aspect. As matters stand, the Plaintiff has not been dismissed and remains in the ASMP. It is not for this Court to tell either party what to do in the future. This Court must simply decide on the issues before it as this court has done. I would, however, express the hope that the Plaintiff might consider re-visiting his decision never to return to work in a company for whom he has worked for all his adult life and which company has, on the evidence before this court, made very sustained and very genuine attempts to support his return to work to an important job which, for many years, the Plaintiff was happy to perform and performed very well, including – the evidence illustrates – repeatedly offering that the Plaintiff consider

performing his job on the same terms and conditions but in a different location, still relatively close to his home.

450. The foregoing are merely observations which seem to me to be appropriate to make, particularly in circumstances where the impression this court has taken from the totality of the evidence given to it, is that An Post, despite being a major organisation, is one in which a positive working environment is valued and actively promoted, including by sophisticated policies negotiated as between the organisation and Trade Unions representing the employees, with employees having access to Trade Union assistance and support on a day to day basis insofar as that may be needed. It also appears to be an organisation which supports employees in terms of career development and an organisation in which employees can and do "rise through the ranks". It is also an organisation which, based on the evidence given to this court, seeks to support an employee in difficulty, both as regards efforts to understand those difficulties and to assist the employee in overcoming them and returning to work as a valued staff member.

451. These final comments as regards what may happen in the future are, however, nothing more and it will be for the parties themselves to decide what to do, or not to do, going forward. In circumstances where this Court's obligation is to decide the matter before it, and having regard to the evidence before the court, I am satisfied that the Plaintiff's claim is unsupported by the evidence in this case and, therefore, I am bound to dismiss the plaintiff's claim.

452. On 24 March 2020 the following statement issued in respect of the delivery of judgments electronically:

> *"The parties will be invited to communicate electronically with the Court on issues arising (if any) out of the judgment such as the precise form of order which requires to be made or questions concerning costs. If there are such issues and the parties do not agree in this regard concise written submissions should be filed electronically with the*

Office of the Court within 14 days of delivery subject to any other direction given in the judgment. Unless the interests of justice require an oral hearing to resolve such matters then any issues thereby arising will be dealt with remotely and any ruling which the Court is required to make will also be published on the website and will include a synopsis of the relevant submissions made, where appropriate."

Having regard to the fact that, in light of this judgment, the Plaintiff's claim falls to be dismissed, the parties should correspond with each other, forthwith, as regards the appropriate costs order to be made. A period of 7 days should be sufficient in that regard. In default of agreement between the parties on that issue, short written submissions should be filed in the Central Office within a further 14 days (ie within 21 days of the date of this judgment).