

Beart Scóipeála

Arna sheoladh ag an  
mBreitheamh Gerard Haughton



Scoping Exercise

Conducted by  
Judge Gerard Haughton

## **SCOPING INQUIRY**

**BY**

**JUDGE GERARD HAUGHTON**

**Re: MR. SHANE O'FARRELL DECEASED**

**INTERIM REPORT**

**DATED 11<sup>TH</sup>. NOVEMBER 2019**

**TO**

**MR. CHARLIE FLANAGAN T.D.,**

**MINISTER FOR JUSTICE AND EQUALITY,**

**51 ST. STEPHEN'S GREEN,**

**DUBLIN 2.**

An 2<sup>ú</sup> hUrlár, Teach Tom Johnson, Tor an Bhacaigh, Bóthar Haddington,  
Baile Átha Cliath 4, D04 K7X4.

2<sup>nd</sup> Floor, Tom Johnson House, Beggar's Bush, Haddington Road,  
Dublin 4, D04 K7X4.

## SCOPING INQUIRY

BY

JUDGE GERARD HAUGHTON

Re: MR. SHANE O'FARRELL DECEASED

The report below details the developments from my initial appointment on the 11<sup>th</sup>. February 2019, up to and including the 11<sup>th</sup>. November 2019.

Dated the            day of November 2019.

Signed: \_\_\_\_\_  
Judge Gerard Haughton.

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## **1. Background as briefed to me by the Department of Justice and Equality**

### **(a) General background.**

The tragic death of Shane O'Farrell, aged 23, occurred on 2 August 2011. He was riding his bike on the road between Carrickmacross and Castleblaney when he was struck by a car driven by Mr Zigimantas Gridziuska, a Lithuanian national, resident at Carrickmacross, Co. Monaghan.

Mr. Gridziuska had multiple previous convictions, including for theft, drugs and road traffic offences. He was also, at the time of the fatal collision, subject to a suspended four month sentence for theft. It appears he was also on bail on counts of theft and possession of stolen property. According to Shane O'Farrell's mother, Ms Lucia O'Farrell, he also had convictions in Northern Ireland and Lithuania.

The court case in respect of Shane O'Farrell's death did not come to court until 2013. In the meantime, in January, 2012 Mr. Gridziuska received sentences for theft offences and was jailed in Wheatfield Prison. While in prison the Garda authorities made an application for his removal from the State (i.e. the equivalent procedure to deportation for EU nationals) and arrangements to recommend a removal order were put in train.

### **(b) Outcome of criminal prosecution of Mr Gridziuska**

In March 2013 Mr. Gridziuska pleaded guilty to failing to stop/keep his car at/near the scene of the fatal collision, failing to report the accident to the Garda authorities and driving a defective vehicle. Mr. Gridziuska was, by direction the trial Judge, found not guilty of causing the death of Shane O'Farrell by dangerous driving. Dublin Circuit Criminal Court imposed a suspended jail sentence of 8 months on condition that Mr. Gridziuska leave the State within three weeks.

Mr. Gridziuska entered into a bond to leave and remain outside the state for 10 years. He was also disqualified from driving in this country for 10 years. Very shortly afterwards, however, Mr. Gridziuska was convicted for an insurance offence and was sentenced to 5 months imprisonment. While in prison a Removal Order was made. On the expiration of his custodial sentence he was removed from the State to Lithuania on 27 June, 2013. He is required to remain outside the State for a period of 10 years.

### **(c) Inquest into death of Shane O'Farrell**

The inquest returned a narrative verdict, i.e. it simply recorded the circumstances of his death without attributing the cause to a named individual. The jury recommended a reappraisal of road traffic legislation dealing with the failure to stop and remain at the

scene of an accident and the failure to report such incidents to the relevant authorities/emergency services. Arising from campaigning by and on behalf of Ms. Lucia O'Farrell, a legislative amendment has been introduced in section 17 of the Road Traffic Act 2014 creating a new category of indictable offence of leaving the scene of an accident where an injury has occurred with increased penalties, now sometime referred to as 'Shane's Law'. The amendment is as follows:-

***Amendment of section 106 of Principal Act***

***17. Section 106 of the Principal Act is amended—***

*(a) in subsection (1), by inserting after paragraph (a) the following:*

*“(aa) if injury has been caused to any person, or any person appears to require assistance, the driver of the vehicle shall offer assistance;”*

*(b) in subsection (3), by inserting after paragraph (a) the following:*

*“(aa) in a case in which injury is caused to a person, and the person who contravenes subsection (1) or subsection (2) —*

*(i) does so with intent to escape civil or criminal liability, and*

*(ii) knows that injury has been caused to a person of such nature as to require medical assistance for the person at that place or that the person be brought to a hospital for medical assistance,*

*on conviction on indictment to a fine not exceeding €10,000 or, at the discretion of the court, to imprisonment for any term not exceeding 7 years or to both such fine and such imprisonment,*

*(ab) in a case where injury is caused to a person, and the person who contravenes subsection (1) or subsection (2) does so with intent to escape civil or criminal liability, and*

*(i) knows that the person to whom injury has been caused is dead, or*

*(ii) knows that injury has been caused to a person and is reckless as to whether the death of the person injured so results, and the death of the person injured so results,*

*on conviction on indictment to a fine not exceeding €20,000 or, at the discretion of the court, to imprisonment for any term not exceeding 10 years or to both such fine and such imprisonment;”*

*and*



(c) by inserting after subsection (3A) the following:

*“(3B) In a prosecution under subsection (3) (aa) or (ab) evidence that an accused failed to stop his or her vehicle, offer assistance, keep the vehicle at or near the place for a reasonable period, or give the appropriate information is, in the absence of evidence to the contrary, proof of an intent to escape civil or criminal liability.”.*

**(d) Issues raised by Lucia O’Farrell with the Department of Justice and Equality** Over time Ms O’Farrell has raised a wide range of issues in relation to this case. These have included

- (a) Issues related to bail, the prosecution, trial and sentencing of Mr. Gridziuska,
- (b) Garda interactions with Mr. Gridziuska and with the courts in relation to his offending
- (c) Arrangements for Mr. Gridziuska’s removal from the State and the protocols in place to ensure he cannot re-enter the State,
- (d) The prosecution and removal from the State of Brigita Gridziuskienne (wife of Mr. Gridziuska) for not reporting the fatal collision to the relevant authorities.
- (e) Issues regarding the inquest into the death of Shane O’Farrell.
- (f) Matters relating to the GSOC investigation and
- (f) The review of the case under the Independent Review Mechanism.

Ms. O’Farrell is very understandably aggrieved that this man was at large despite multiple criminal acts, and that, while at liberty on a suspended sentence and on bail, he was responsible for the death of her son. In March 2013 Mr. Gridziuska was found not guilty of dangerous driving causing death by direction of the trial Judge. She feels that had the charge been left to the Jury they would have convicted. She disputes evidence given on Mr. Gridziuska’s behalf.

**(e) Criticism of Garda Interaction with Mr. Gridziuska**

Ms. O’Farrell is also very critical of the Garda investigation into her son’s death, and feels that a better investigation and the provision of other relevant information concerning Garda contact with Mr Gridziuska and the other pending proceedings would have resulted in a conviction or a more serious penalty. This includes criticism of the actions of the Gardaí during the trial and their interaction and advice to the judge and the prosecution.

One of Ms. O’Farrell’s key criticisms is that at the time of her son’s death Mr. Gridziuska was subject, since January 2011, to bail conditions of good behaviour imposed by the Circuit Court

pending the hearing of an appeal from a District Court conviction of the previous year. This appeal did not come on for hearing until January 2012. However, Ms. O'Farrell considers that Mr. Gridziuska's convictions for theft in May 2011 should have prompted the Gardaí to seek a review of that Circuit Court order, which might have resulted in his imprisonment. Instead, he was at liberty at the time of Shane's death.

**(f) GSOC Investigation**

Ms. O'Farrell and other family members made complaints to GSOC which were deemed admissible. Subsequently, in April 2014, the then Minister for Justice and Equality made a referral to GSOC under section 102(5) of the Garda Síochána Act (as being desirable in the public interest) requesting that that it examine all of the matters of concern insofar as they relate to An Garda Síochána. A single GSOC investigation was conducted based on the complaints from the O'Farrell family and the referral by the Minister.

**(g) Request to have case considered by an independent inquiry.**

Ms O'Farrell has sought an independent inquiry. Following the publication of the Guerin Report, the family called for the case to be included in the Commission of Investigation to examine the issues identified in that report or for it to be included in some other statutory inquiry. It was not included in the terms of reference of the O'Higgins Commission of Investigation.

**(h) Review of case under the Independent Review Mechanism**

The complaint was referred to the Independent Review Mechanism. This was a process established for the independent review of certain allegations of Garda misconduct, or inadequacies in the investigation of certain allegations, which were made to the Minister for Justice and Equality, the Taoiseach, and other public representatives. A panel consisting of two Senior and five Junior Counsel was established for the purpose. Selection was on the basis of each counsel's considerable expertise in and experience of the criminal justice system. Every case under the Independent Review Mechanism is reviewed by independent counsel, who makes an objective recommendation. It was open to counsel to make any recommendation that they saw fit, including, if they considered it appropriate, some form of independent inquiry. It was recognised from the establishment of the IRM process that some conflicts of interest might arise as some complaints might disclose persons or factual situations that were known to individual Panel members through their professional engagements. Arrangements were put in place to ensure that if there was any conflict, or potential conflict, the conflicted counsel not only would not be involved in the particular complaint, but also would not be aware of which counsel on the Panel reviewed it. These arrangements were concluded in



consultation with the Office of the Attorney General. Ms O'Farrell's complaint was one of a small number of cases where the need to adopt this approach was required.

In Ms O'Farrell's case, the Panel was provided with a file, prepared by the Department of Justice and Equality, of papers submitted by, or on behalf of Ms O'Farrell, in relation to her complaint. This included a number of documents that Ms O'Farrell submitted requesting that they be forwarded to the Panel.

The Panel was also provided with files maintained by the Department's Crime Division which had dealt with the complaint prior to it being referred to the Review Mechanism.

Following their review of this case, counsel made a recommendation that the Minister should take no further action in this case. Counsel felt that there might be some merit in aspects of the complaint in relation to the various failings alleged by the Gardaí. However, the review concluded that no failing, such as a failing to enter something onto the PULSE system or bring certain information to the attention of the Court, could be elevated into the realms of Garda corruption. Counsel was of the view that the appropriate forum for these matters was GSOC.

Ms O'Farrell criticized the outcome of the review and refuses to accept that the outcome in her case has not resulted in some form of inquiry being recommended. Ms O'Farrell has requested a copy of the Panel's recommendations. She has been advised that the reports provided by counsel and containing recommendations constitute legal advice to the Minister. Accordingly, it was the Department's view that these are subject to legal professional privilege and the request for a copy of the report was for that reason refused.

**(i) GSOC Report**

A report, dated 13 April 2018, concerning the outcome of GSOC's criminal investigation was provided to both the Minister and the O'Farrell family. The Commission referred a number of the complaints for further investigation on disciplinary grounds. The report made a number of recommendations particularly relating to the treatment of victim's families by agents of the state. The O'Farrell family was apparently not informed as to the details of the disciplinary action or the outcome and are aggrieved that this is so.

On 14 June 2018, a Dáil motion was passed calling on the Government to immediately establish a public inquiry into the circumstances leading to Shane O'Farrell's death.

## 2. ESTABLISHMENT OF THIS SCOPING EXERCISE

### (a) General information

By letter dated the 11<sup>th</sup>. February 2019, I was requested by the Minister for Justice, Equality and Law Reform to carry out a "Scoping Exercise" into the matters in issue and furnished with draft terms of reference as contained in **APPENDIX 1** below.

Following receipt of the Minister's letter I contacted Mrs. O'Farrell by email dated the 13<sup>th</sup>. February, 2019, with a view to arranging a meeting, on a date and at a time convenient to the family to progress the matter. This meeting took place on Friday 15<sup>th</sup>. March 2019, in Tom Johnson House and was attended by Mr. Jim O' Farrell and Mrs. Lucia O'Farrell and their daughters, Gemma, Hannah, Pia, and Amy. Although invited the family was not legally represented at the meeting although I was informed that [REDACTED] S.C. instructed by [REDACTED] Solicitors represented the family at that time. . At the commencement of the meeting I had indicated that my first task was to agree the terms of reference and I invited comments and suggestions thereon. During the meeting I was handed a letter of the 15<sup>th</sup>. March 2019 outlining the various complaints, allegations and concerns of the family. I was also supplied with the following documents:-

- (1) Copy letter dated the 7<sup>th</sup>. August 2018 from the O'Farrell family to the Minister for Justice and equality.
- (2) Copy letter dated the 7<sup>th</sup>. August 2018 from the O'Farrell family to Judge M. E. Ring, Chair of GSOC.
- (3) Judgment of the Supreme Court in Shatter v Guerin [2019] IESC 9.
- (4) Judgment of UK Supreme Court 27/02/2019 in Judicial Review [2019] UKSC 7, Geraldine Finucane, Appellant.
- (5) GSOC report relating to complaints by Mrs. O'Farrell and her daughter Gemma, published 29/03/2017.
- (6) Comments (13 pages) from the O'Farrell family on the GSOC report.
- (7) Comments (7 pages) from Professor Dermot Walsh, Kent Law School on the GSOC complaints procedure relative to the O'Farrell case.
- (8) Copy letter of the 15<sup>th</sup>. September 2017, from [REDACTED] and [REDACTED] to Judge Mary Ellen Ring, Chairperson of GSOC.
- (9) Copy letters dated the 14<sup>th</sup>. December 2014, the 22<sup>nd</sup>. August 2016, and the 20<sup>th</sup>. January 2017, [REDACTED], to the Minister for Justice.



(10) Copy letter dated the 15<sup>th</sup>. November 2016, [REDACTED], Information Officer, Dept. of Justice and Equality to Mrs. O'Farrell.

(11) Extract from Transparency International Ireland "News and Events" and letter from Transparency International dated the 18<sup>th</sup>. August 2014, to Minister Francis Fitzgerald, Dept. of Justice and Equality.

(12) Copy memo dated 18/07/2014 [REDACTED], Department of Justice and Equality to [REDACTED] headed "List of files to be reviewed under new mechanism for complaints against Gardai.

(13) Copy memo dated 23/07/2015, [REDACTED] Department of Justice and Equality to [REDACTED], Department of Justice and Equality headed "Fw: re IRM File 163".

The family expressed a wish that I would have regard to Article 2 of the European Convention on Human Rights in interpreting the terms of reference. Concluding the meeting it was agreed that I would meet again with family and their legal advisors as soon as that could be arranged to deal with the terms of reference.

That meeting took place at Tom Johnson House on the 1<sup>st</sup> April 2019. Although the meeting was intended to deal with the matter of the terms of reference I was addressed at length by [REDACTED] about the entire circumstances surrounding the issues raised by the family and about how he would suggest I proceed with my scoping exercise. A memo containing a brief summary of his submissions is attached in **APPENDIX 2**. In concluding this meeting it was agreed that the family would write to me with their proposed amendments to the terms of reference. I subsequently received their letter of the 12<sup>th</sup>. April 2019, a copy of which, at the family's specific request, is set out in **APPENDIX 3**.

Having considered the submissions made by [REDACTED], and the letter of the 12<sup>th</sup>. April 2019, I wrote to [REDACTED] solicitors setting out my response by letter of the 24<sup>th</sup>. April, 2019. A copy of this letter with the proposed amended terms of reference was sent to the family on the same date, and is set out in **APPENDIX 4**. On the same date I also advised the Department of the proposed changes to the terms of reference. [REDACTED]  
[REDACTED]

**(b) Legislation requiring action.**

In the course of my meetings with the family it was apparent that one grave cause for complaint was that the Gardai in coming across Mr Zigimantas Gridziuska on the 6<sup>th</sup>. July 2011 and the 2<sup>nd</sup>. August 2011, did not make any arrests. Arising from the occurrences on those

dates the family in their letter to me of the 12<sup>th</sup>. April 2019 requested the following terms of reference:-

*(f) To ("The" mistakenly used for "To") examine the documentation and interactions by An Garda Síochána and the adequacy of the investigation where no prosecution arose following the stop and search by An Garda Síochána on 6 July 2011 to include a review of the laboratory and all forensic reports/analyses from the laboratory in respect of the substances the subject of the stop and search;*

*(g) To examine all documentation, interactions and communications between An Garda Síochána and Mr Zigimantas Gridziuska and two identified individuals in respect of the "stop and search" of the car by the Garda Síochána on 2 August 2011 to include:*

*i. the adequacy of the conduct, operational practices and procedures of An Garda Síochána;*

*ii. the failure of the Garda Síochána to charge any of the individuals in the car, to include the original driver of the car and Mr Zigimantas Gridziuska.*

It is a fundamental requirement for public support of An Garda Síochána that individual Gardai have a degree of discretion in the carrying out of their duties. This discretion cannot and should not be unfettered. Guidelines in the form of an established code of ethics, including standards of conduct and practice for members of the Garda Síochána are essential for this purpose. This has been accepted by the Oireachtas for many years. The Garda Síochána Act 2005 made specific provision for the Minister for Justice to prepare such a code of ethics. Section 17 of the act provides:-

*17.— (1) The Minister **shall**, by regulation, establish a code of ethics that includes standards of conduct and practice for members of the Garda*

*(2) Before establishing or amending a code of ethics, the Minister shall consult with the Garda Commissioner and may request the Commissioner to prepare and submit to the Minister a draft code of ethics.*

*(3) If requested to prepare a draft code of ethics, the Garda Commissioner shall consult with the following about the content of the draft:*

*(a) the representative associations established under section 18 of this Act or section 13 of the Garda Síochána Act 1924;*

*(b) the Minister for Finance;*

*(c) the Equality Authority;*

*(d) the Human Rights Commission;*

*(e) the Standards in Public Office Commission;*

*(f) the Ombudsman Commission;*

*(g) any other person or body appearing to the Garda Commissioner to have an interest in the matter.*

*(4) In addition, in preparing a draft code of ethics, the Garda Commissioner shall have regard to—*

*(a) the standards, practices and procedures applicable to the conduct of police officers in other member states of the European Union, and*

*(b) any recommendations of the Council of Europe.*

*Síochána.*

It should be noted that the section is mandatory (*"The Minister shall"*). However although Oireachtas considered it necessary to require this to be done it did not specify any time limit within which the Minister should comply. I was concerned to discover during my inquiries that successive Ministers had never prepared a code of ethics as required. It may or may not be that the matter was reviewed from time to time. I have made inquiries as to whether or not formal protocols or systems are in place within the various departments of government to monitor and diary forward for action such legislative requirements and am awaiting clarification.

[Addendum: The Department of Justice and Equality has subsequently responded to Judge Haughton's inquiries on this matter.](#)

### **(c) Development of new Terms of Reference**

Concerns arose in the Department of Justice and Equality regarding the changes in the terms of reference and the matter was referred to the Attorney General for consideration. Eventually, by letter dated the 29<sup>th</sup>. July 2019, I received completely amended terms of reference from the Minister. A copy of the letter and the revised Terms of Reference were furnished to the O'Farrell family on the 30<sup>th</sup>. July. I requested that they would contact me, having considered the position, to arrange a meeting at their convenience. This meeting was arranged for the 14th August, 2019 at 2p.m. and lasted approximately two hours. In attendance were all the members of the O'Farrell family. Each and every one of them expressed annoyance and disappointment at the new Terms of Reference and in particular what they see as the narrowing of these. The meeting concluded with an agreement that the family would take legal advice on the situation and revert to me as soon as possible with a decision as to whether or



not to cooperate with the scoping exercise under the new provisions. As yet up to the 11<sup>th</sup> November 2019 no decision has been communicated to me but I have received an assurance that a decision will be made early this week. If this is available in time I will deal with it as an addendum hereto.

### **3. Developments since issue of new Terms of Reference.**

I have been in communication with the Director of Public Prosecutions, the Commissioner of An Garda Síochána, GSOC, The Court Service, and The Dept. of Justice and Equality seeking documents and/or information. As this scoping exercise does not confer any statutory powers on me I am dependant on the cooperation of the persons and agencies involved and no doubt that will be forthcoming. However issues may arise as to the right to supply me with information and documentation under the General Data Protection Regulation and the rules set out in the Irish Data Protection Act 2018. When I have substantive responses from the various agencies this matter will be clarified.

I am aware from my meetings with the O'Farrell family that individually and collectively they have amassed a very considerable volume of documentation and information. At my request the family has I understand indexed and scheduled this information and documentation. A very great amount of work has been done by the family to make my task easier and I am extremely grateful to them for that. They also deserve great praise for their dedication and persistence in the matter. I have made it clear that I will not restrict or limit the family in their submissions to me or in the nature and extent of the documentation they wish to furnish to me in this scoping exercise. I hope that I do have their collective input and participation as without it this exercise will be greatly diminished and limited.

This exercise will be limited to perusing documents and responses to enquiries arising therefrom, and I trust consultation with the O'Farrell family. With the information currently available to me from my investigations to date and as a consequence of my meetings with the family I anticipate being in a position to conclude this matter within the next six months.

Dated the 11<sup>th</sup> November 2019

Signed: \_\_\_\_\_  
JUDGE GERARD HAUGHTON

To: Mr. Charlie Flanagan T.D.,  
Minister for Justice and Equality,  
51 St. Stephen's Green,  
Dublin 2.



## APPENDIX 1.

### ORIGINAL DRAFT TERMS OF REFERENCE

#### SCOPING EXERCISE IN RELATION TO THE DEATH OF SHANE O'FARRELL

In light of the public controversy surrounding the circumstances of the death of Mr Shane O'Farrell on 2 August 2011, and having regard to the motion passed by Dáil Éireann on 14 June 2018, calling for the establishment of a public inquiry in the matter:

1. **To review the investigations** that have already taken place into the circumstances of the death of Mr O'Farrell, namely the criminal prosecution of Mr Zigimantas Gridziuska; the review by the Independent Review Mechanism (IRM); the criminal investigation by the Garda Síochána Ombudsman Commission (GSOC); and the subsequent disciplinary investigation by GSOC;
2. **To review changes** that have been made to the law and practice in relation to the administration of bail and bench warrants and the extent to which they have or have not addressed gaps in those systems since the death of Mr O'Farrell;
3. Based on the reviews at 1 and 2 above to advise the Minister for Justice and Equality:
  - a. If there are any remaining unanswered questions in relation to the circumstances of Mr O'Farrell's death that should be the subject of further inquiry or investigation; and
  - b. If there are, the most appropriate manner in which they should be investigated, having regard to the statutory independence of bodies such as the courts, the Director of Public Prosecutions and the Garda Síochána Ombudsman Commission.
4. If an investigation or inquiry is recommended to draft terms of reference for said investigation/inquiry;
5. **To make enquiries** with persons or bodies that he/she considers appropriate in relation to the review;
6. To report to the Minister for Justice and Equality within 8 weeks of commencement with an interim report indicating, inter alia, the expected timeframe for completion of the scoping exercise.

## FINAL TERMS OF REFERENCE

### SCOPING EXERCISE IN RELATION TO THE DEATH OF SHANE O'FARRELL

In light of the public controversy surrounding the circumstances of the death of Mr. Shane O'Farrell on the 2nd August 2011 and having regard to the motion passed by Dail Eireann on 14th June 2018 and Seanad Eireann on 13th February 2019, calling for the establishment of a public inquiry into the matter;

#### **Taking into account:**

- the outcome or reports of investigations or inquiries that have already taken place related to the death of Mr. O'Farrell, including the reports of the investigations carried out by the Garda Síochána Ombudsman Commission and the outcome of the Independent Review mechanism;
  - Any changes that have been made to the information sharing systems or procedures operating between An Garda Síochána, the Courts Service and other relevant state bodies, in so far as they are relevant to dealing with persons subject to bench warrants or conditions attaching to the granting of bail and suspended sentences, since the death of Mr. O'Farrell.
1. To advise the Minister for Justice and Equality:
    - a) Whether there are any circumstances surrounding the death of Mr O'Farrell which warrant further investigation or inquiry beyond those already carried out;
    - b) Whether any inquiry is necessary into the systems and procedures for the sharing of information between An Garda Síochána, the Courts Service and other relevant State bodies operating at the time of Shane O'Farrell's death.
    - c) The form of any such investigation or inquiry;
    - d) Its terms of reference; and
    - e) The suggested composition of the investigation or inquiry.
  2. To report to the Minister for Justice and Equality within 8 weeks of commencement with an interim report indicating, inter alia, the expected timeframe for completion of the scoping exercise.

APPENDIX 2

[Redacted text block]

[Redacted text block]

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**APPENDIX 3**

LETTER OF 12<sup>TH</sup>. APRIL FROM FAMILY

*The O'Farrell Family*

[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]

*By email and registered post*

Mr. Justice Haughton,

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

12 April 2019

**Re:           The State investigation of the circumstances of the violent and unlawful killing of Shane O'Farrell, deceased and the proposed scoping exercise in relation to the death of Shane O'Farrell.**

Dear Mr Justice Haughton,

We refer to our recent correspondence and our second meeting of 2 April 2019 in which you invited us for our comments on the terms of reference for the Scoping Inquiry.

**The judgments**

We enclose the judgments referred to during our recent meeting on coroner's inquests and free movement of people respectively, namely:

1. *Murray v Farrell*, [2018] IEHC 707
2. *Georgios Orfanopoulos and Others and Raffaele Oliveri v Land Baden-Württemberg*, Joined Cases C-482/01 and C-493/01



We reserve the right to address you separately in respect of the other public policy issues which we see arising and as set out in the draft terms below however we make the following preliminary submission in respect of the free movement of people issue which is addressed in the Joined Case referred to above.

In our view, the circumstances of the unlawful killing of Shane appear to include at least three European Union ‘cross-border’ elements. The first relates to his criminal activity in the jurisdiction of Northern Ireland while resident in the Republic of Ireland. The second relates his prior criminal convictions in his EU country of origin. The third relates to a suggestion that the decision of the Circuit Criminal Court in Dublin included a requirement that upon conviction and as part of the sentencing phase of a criminal trial the accused had an expectation of a greater degree of leniency in the sentence to be imposed in return for an “undertaking” to depart this jurisdiction on or before a particular date.

There are exceptions to the right under European law of ‘freedom of movement of persons’ enshrined in Article 39 EC. This legal issue as to whether the State properly considered, or addressed, the threat to the public of the continuing presence in this State of the person said to be the driver of the motor car which struck and killed Shane (and, possibly, the other occupants of that car on the same day) prior to the time of the collision, is in our view an area of appropriate factual inquiry for you in your ‘Scoping Inquiry’. We have detailed this below as a policy matter which you might consider. Shane’s case also concerns the use of multiple pulse numbers and name variations used by Mr Zigimantas Gridziuska, which leads to public policy concerns. In our view, the EU treaties do not go so far as to create a ‘freedom of movement’ for criminal activity and there is in our view a public interest in inquiring into the issue as to whether there is a failure of public administration in Ireland by not establishing, and operating, an effective administrative (and with a possible judicial aspect) system to repatriate EU citizens whose involvement in criminal activity constitutes an abuse, objectively and independently established, of the general EU right of ‘freedom of movement of persons’. There are threat assessments issued by the Garda Siochana, the Garda Siochana in conjunction with the PSNI, and Europol among many of which point to the problem of cross-border movement of persons associated, in one way or another, with continuing criminal activity.

### **Comments on the draft Terms of Reference for the ‘Scoping Inquiry’**

You have asked us to comment on the draft terms prepared by the Department of Justice. We note your comment that you do not need approval of the terms from the Department as it is for you to consider what the terms should be.

There seems to be limited precedent and guidance in relation to the proper approach to scoping inquiries in Ireland. This is partly because scoping inquiries do not have a statutory basis. It appears that the judge (or senior counsel, or other decision maker) that is appointed by the State is given limited assistance as to the precise nature of the task that he or she is to perform. A consequence of this is that the extent of the remit, and the extent of the powers and duties of the decision maker, may not be precisely clear to the people intimately affected by the decision or to the decision maker himself. However, in this somewhat uncertain context, the recent decision of the Supreme Court in *Shatter v Guerin* [2019] IESC 9 is very helpful because it makes clear that a right to fair procedures under the Constitution arises in relation to a scoping inquiry. We are deeply affected by the decisions that will be made in this process and we agree that it is important and appropriate that families in our circumstances should be treated fairly by the State. Furthermore, for reasons that we hope were set out on our behalf at our meetings, we think that Article 2 of the ECHR is also engaged where a scoping inquiry forms part of the process put in place by the State for investigating unlawful deaths.

As stated at our meetings, we are concerned that the terms proposed by the department would lead to a far too narrow and unfair consideration of the complex legal and public policy issues that are at play in Shane's case. We also think that the department's proposed terms of reference are not specific or detailed enough. On a practical level, it is hard to see what it is you actually have to decide.

As far as we know, there are limited precedents for terms of reference for scoping inquiries available to the public. We do however attach with this letter the terms of reference for the Sargent McCabe/ Guerin scoping Inquiry. That precedent suggests that a much more detailed approach to terms of reference is appropriate than that proposed by the Department of Justice.

As suggested above, we feel that this is a complex process and area of law that we as a family must navigate as best we can. In the broadest sense, it seems to us that you will have to consider or decide whether there are issues that arise from the terms that warrant public or further investigation. That being so, we believe that at this point a useful and fair way to proceed is that we propose issues arising in Shane's case that we feel require public investigation. We hope that this will assist you in identifying with precision the issues that need to be considered by you as potentially warranting further investigation by way of a public inquiry. Accordingly, we have set out proposed terms or individual issues that, in our view, ought to be the terms of reference or issues for a public inquiry. We think a fair way to approach this scoping inquiry is for you to assess whether the issues raised by these proposed terms warrant further investigation. On the other hand, if you disagree with this approach we are, of course, open to proceeding on a different basis.



Please note that the below suggested terms are not exhaustive and we reserve the right to raise other matters and make submissions/add to the terms. We wish to engage in a constructive, practical and open manner in this process but we do not think it is fair that we might later be found to have technically waived any rights by doing so.

You will note that we have numbered the terms below and that the terms are more voluminous than those proposed by the Department of Justice. However, we have tried to identify with particularity the issues that we believe require further consideration. We think this approach is more useful, fairer and more consistent with the approach taken in other scoping inquiries. In a practical sense, it makes it clear what it is we think you have to decide.

By way of comparison, you will note that the attached Guerin Scoping Inquiry into the complaints of Maurice McCabe has 8 terms. However term 1(a) includes a dossier of material which had been provided to Mr Guerin and which contained a number of complaints in respect of 16 incidents. While we could include a list of our complaints in a schedule similar to the approach in Guerin, we think that the below is a clearer and more helpful approach. If you disagree please let us know and we are open to another approach.

By way of conclusion, please see below the suggested amendments to the Terms of Reference. We note your proposed changes in blue, which you provided us with at the meeting and which we welcome. The families suggested changes are in red. You will note that your amendments refer to a Schedule of the Convention articles and for completeness we have included them below. We have also added Article 8 which we think is also relevant.

We are of course more than willing to engage or correspond as you see fit in relation to the issues that arise and if you have any questions or comments on the below, or if you would like to discuss these matters further please let us know. We would be grateful to hear from you before the terms are finalised.

As mentioned previously, we have documentation which may assist you in determining whether the below terms should be investigated further and we propose arranging a time to meet you to go through the documentation which we feel is relevant.



## Terms of Reference

### Scoping exercise in relation to the death of Shane O'Farrell

In light of the public controversy surrounding the circumstances of the death of Mr Shane O'Farrell on 2 August 2011, and having regard to the motion passed by Dáil Éireann on 14 June 2018 and Seanad Éireann on 13 February 2019, calling for the establishment of a public inquiry into the matter and having regard to the State's obligations pursuant to Article 40.3 of the Constitution and the European Convention of Human Rights and in particular Articles 1, 2, 5, 6, 8 and 13 thereof as set out in the schedule below:

1. To conduct an independent review and undertake a thorough examination of the investigations, reviews and interactions with the State (and any other relevant entity, person or public body) that have already taken place into the circumstances of the death of Mr O'Farrell as set out below, namely:
  - (a) The criminal prosecution of Mr Zigimantas Gridziuska in respect of the fatality on the 2 August 2011 and the collapsed criminal trial in the Circuit Criminal Court in February 2013;
  - (b) The criminal prosecution of Mr Zigimantas Gridziuska in respect of all insurance fraud to include that which was dealt with by Carrickmacross District Court on 6 March 2013;
  - (c) The statutory Inquest into the death of Mr Shane O'Farrell including a review of all communications in written and electronic form between the Coroner and the Garda Síochána (and vice versa) and the completeness of said documentation provided, and all communications between the Office of the Director of Public Prosecutions/Local State Solicitor/Office of Chief State Solicitor and the Gardai in respect of the inquest;
  - (d) the ad hoc review by the Independent Review Mechanism (IRM);
  - (e) the criminal investigation by the Garda Síochána Ombudsman Commission (GSOC);
  - (f) the subsequent disciplinary investigation by GSOC.
2. To conduct an independent review and undertake a thorough examination of the interaction of An Garda Síochána (and any other relevant entity, person or public body) with Mr

Zigimantas Gridziuska, from when he entered the country, until he was removed from the country on 27 June 2013, including the adequacy each investigation into and/or prosecution of each report, act or offence in relation to Mr Zigimantas Gridziuska to include:

- (a) the adequacy of all the previous prosecutions of Mr Zigimantas Gridziuska and all interactions with An Garda Siochana and of Mr Zigimantas Gridziuska insofar as the same are relevant to that what information about Mr Zigimantas Gridziuska was provided or not provided to courts since he arrived in Ireland, including his previous convictions such that the said Mr Zigimantas Gridziuska was in multiple breaches of bail and serving a suspended sentence at the time of the death of Mr Shane O'Farrell on 2 August 2011;
- (b) To examine the conduct of and operational aspects of policing by Garda Siochana and their interaction with Mr Zigimantas Gridziuska to examine all documentation to include all interactions and communications by An Garda Siochana regarding Mr Zigimantas Gridziuska, and communications between the An Garda Siochana and Mr Mr Zigimantas Gridziuska in written or electronic format, including the PULSE System, court reports and files, probation reports, memoranda, minutes of meetings, emails, signing-on books, job books, notes etc and all other documentation held by An Garda Siochana with regard to Mr Zigimantas Gridziuska.
- (c) To examine all documentation in respect of the interactions and operational practices and procedures within An Garda Siochana and to examine all documentation to include the exchange of security and intelligence information within District, Divisional and National levels of an Garda Siochana in respect of Mr Zigimantas Gridziuska;
- (d) To review of the nature and extent of Mr Zigimantas Gridziuska's relationship with members of An Garda Siochana and to examine all documentation in respect of this relationship;
- (e) The examine all documentation and interactions by An Garda Siochana and the relevant laboratory and/or laboratories used to test samples of potential illegal substances obtained from Mr Zigimantas Gridziuska to include the adequacy of all laboratory reports and analyses, for all dates on which samples were provided for analysis and analysed regarding Mr Zigimantas Gridziuska from when he entered the country, the footprint of these and the processes involved in the process;

- (f) To examine the documentation and interactions by An Garda Síochána and the adequacy of the investigation where no prosecution arose following the stop and search by An Garda Síochána on 6 July 2011 to include a review of the laboratory and all forensic reports/analyses from the laboratory in respect of the substances the subject of the stop and search;
  - (g) To examine all documentation, interactions and communications between An Garda Síochána and Mr Zigimantas Gridziuska and two identified individuals in respect of the “stop and search” of the car by the Garda Síochána on 2 August 2011 to include:
    - i. the adequacy of the conduct, operational practices and procedures of An Garda Síochána;
    - ii. the failure of the Garda Síochána to charge any of the individuals in the car, to include the original driver of the car and Mr Zigimantas Gridziuska.
  - (h) To examine all documentation, interactions and communications by An Garda Síochána with the PSNI (and vice versa) to include the interactions in July 2011 regarding Mr Zigimantas Gridziuska’s arrest and subsequent release;
  - (i) To examine all documentation, interactions and communications by An Garda Síochána, with the PSNI and staff at Maghaberry prison (and vice versa), in September 2011 in respect of Mr Zigimantas Gridziuska;
3. To examine all documentation held by An Garda Síochána, the Department of Justice and any other entity or public bodies as is deemed relevant to investigate the matters at issue in paragraph 1 and 2, including public policy issues arising from these matters to include:
- (a) To review and examine all processes, interactions, documentation and communications, reports in written or electronic documents, that the Probation Services had with Mr Zigimantas Gridziuska from his entry into the country until he was removed from the country on 27 June 2013.
  - (b) To review and examine all processes, communications, documentation and interactions between An Garda Síochána, and the Probation Service (and vice versa) to include what information was exchanged regarding Mr Zigimantas Gridziuska’s re-offending while on bail from his entry into the country until he was removed from the country on 27 June 2013.
  - (c) To review and examine all processes, communications, documentation and



interactions between An Garda Síochána and the Prison Service (and vice versa), with regard to Mr Zigimantas Gridziuska from his entry into the country until he was removed from the country on 27 June 2013.

- (d) To review and examine all processes, communications, documentation and interactions between An Garda Síochána and the Courts Service (and vice versa) with regard to Mr Zigimantas Gridziuska from his entry into the country until he was removed from the country on 27 June 2013.
- (e) To review all processes, communications, documentation and interactions between the Courts Service and the Prison Service (and vice versa), with regard to Mr Zigimantas Gridziuska from his entry into the country until he was removed from the country on 27 June 2013.
- (f) To review all processes, communications, documentation and interactions between the Courts Service and the Probation Service (and vice versa), with regard to Mr Zigimantas Gridziuska from his entry into the country until he was removed from the country on 27 June 2013.
- (g) The review all processes, interactions, documentation and the interactions between the Gardai and the Office of the Director of Public Prosecution//Local State Solicitor/Office of Chief State Solicitor in respect of Mr Zigimantas Gridziuska from when he entered the country until he was deported, including but not limited to:
  - i. the prosecution arising from the hit and run on 2 August 2011;
  - ii. the interactions in respect of the decision by the Gardai not to prosecute Mr Zigimantas Gridziuska's wife Brigita Gridziuskine;
  - iii. the interactions in respect of the decision by the Gardai not to prosecute two names individuals who were present with Mr Zigimantas Gridziuska in the vehicle following the "stop and search" an hour before the fatality;
- (h) the prosecution of Mr Zigimantas Gridziuska in respect of charges arising from all insurance fraud to include that which was dealt with by Carrickmacross District Court on 6 March 2013;
- (i) To review the processes, interactions, documentation and communication between An Garda Síochána and the Department of Justice, regarding Mr Zigimantas Gridziuska and the O'Farrell family;

- (j) The review the processes, interactions, documentation and communication between An Garda Síochána and the Office of the Director of Public Prosecutions//Local State Solicitor/Office of Chief State Solicitor in their dealings with the O'Farrell family;
4. To interview any person as may be considered necessary and capable of providing relevant and material assistance to this Review in relation to the aforesaid allegations and to receive and consider any relevant documentation that may be provided by the O'Farrell family, An Garda Síochána, the Office of the Director of Public Prosecutions, Local State Solicitor, Office of Chief State Solicitor, the Courts Service, the Department of Justice, the Probation Service, the PSNI, the Coroner and any other person, entity, public body or office holder who may be considered relevant.
  5. To examine all documentation and data held by the O'Farrell family, An Garda Síochána, the Office of the Director of Public Prosecutions, Local State Solicitor, Office of Chief State Solicitor, the Courts Service, the Department of Justice, the Probation Service, the PSNI, the Coroner and any other person, entity, public body or office holder as is deemed relevant to the issues set out above.
  6. To consider if, taking into account the State's obligations under the Constitution and the ECHR, there is a basis of concern as to whether the unlawful death has been properly investigated;
  7. To review public policy issues arising from ~~that have been made to the law and practice in relation to the administration of bail and bench warrants and the extent to which they have or have not addressed gaps in those systems since the death of Mr O'Farrell to include as follows;~~
    - (a) A culture in the State that regards compliance with the Road Traffic Acts, statutory offences contrary to the Road Traffic Acts, and violent and unlawful killings arising out of the circumstances of road traffic offences as being crimes of a lesser significance in the criminal law,
    - (b) A State policy of unlawfully approving the existence of and operating an imprecise and undisclosed executive discretion in State authorities and State officials to dis-apply the provisions of the criminal law where to respect for, and the application of, the criminal law may conflict with other unspecified State policies, priorities, or practices,
    - (c) A State policy of an inappropriately narrow approach to the criminal and civil investigations of violent and unlawful killings arising out of the circumstances of road traffic offences,

- (d) A State policy of a fixed model of investigation of violent and unlawful killings arising out of the circumstances of road traffic offences that fails to take due account of the individual circumstances of such killings,
- (e) A State policy of refusing to review, and appropriately adapt, its fixed model of investigation of violent and unlawful killings arising out of the circumstances of road traffic offences where objective evidence independently supports the suggestion that its investigation is defective,
- (f) A State policy of limiting its investigation of violent and unlawful killings arising out of the circumstances of road traffic offences where to properly investigate such killings would lead to an investigation of matters connected with other imprecise and undisclosed but connected State policies, priorities or practices,
- (g) A State policy of undermining the victims of violent and unlawful killings entitlement to an efficient, effective and fair investigation of such killings, and an entitlement to appropriate openness, transparency and accountability, by excessive delays, limited and misleading provision of information, and suggestions that the distress of the victims in relation to the violent and unlawful killing of their family member invalidates,
- (h) A system of State investigation of violent and unlawful killings arising out of the circumstances of road traffic offences where relevant data, documentation and information within the possession and control of the State concerning criminal investigations, prosecutions in the criminal courts, and the execution of court orders is unavailable to State agencies and State officials, or not sought by or inquired into by those State agencies and State officials, because of other State policies, priorities or practices,
- (i) A State policy of permitting the Garda Síochána to inappropriately limit the information and evidence disclosed to statutory or other civil investigations or proceedings arising out of a criminal investigation of the circumstances of suspected road traffic related unlawful killings,
- (j) The continued absence in the State of an appropriate and effective administrative or legal mechanism whether criminal or civil to independently investigate, verify, assess and report upon confidential or privileged data, documentation and information in the possession or power of State agencies and State officials, including the known



deficiencies in the multi-layered administrative system of access to and appropriate use of security and intelligence information in the Garda Síochána.

- (k) The deficiencies in the Coroners Act 1962 including the practice and procedure in which information, evidence or statements are provided by An Garda Síochána to the Coroner, and the Act's compliance with the ECHR;
  - (l) The compliance of the State, in light of its obligations including its Constitutional and ECHR obligations, with Directive 64/221/EEC in respect of free movement of people and the power to dispel individuals on the grounds of criminal offences;
  - (m) The continued absence in the State of an appropriate and effective administrative system to deal with the known deficiencies in respect of the availability of data to the courts and Gardai on defendants including previous convictions, Interpol reports, bench warrants, bail, probation reports, as a result of multi-layered administrative system of recording and access to information held by An Garda Síochána and the Courts Service.
8. To advise, arising from this review, what further measures, if any, are warranted in order to address the State's obligations under ECHR, including public concern on the issues arising including public confidence in the administration of justice, whether it is desirable in the public interest for a public inquiry to be established and the matters to be investigated.
9. To speak with any person or academic as may be considered of assistance and capable of providing relevant and material assistance to this Review in relation to the aforesaid allegations and the public policy issues arising above.
10. ~~Based on the reviews 1 and 2 above to advise the Minister for Justice and Equality:~~
- ~~• If there are any remaining unanswered questions in relation to the circumstances of Mr O'Farrell's death that should be the subject of further inquiry or investigation; and~~
  - ~~• If there are, to direct a public inquiry the most appropriate manner in which they should be investigated, having regard to the statutory independence of bodies such as the courts, the Director of Public Prosecutions and the Garda Síochána Ombudsman Commission.~~

11. If an investigation or inquiry is recommended to draft terms of reference for said investigation/inquiry and the suggested composition of the inquiry which may include a District Court judge, a High or Supreme Court judge and an expert on policing from outside the jurisdiction;

~~To make enquiries with persons or bodies that he/she considers appropriate in relation to the review;~~

12. To provide the family with a draft interim report on the outcome of the scoping inquiry, and allow the family to make comments where necessary, prior to its circulation to the Minister for Justice;
13. To report to the Minister for Justice and Equality within 8 weeks of commencement with an interim report indicating, inter alia, the expected timeframe for completion of the scoping exercise.

## Schedule

### ARTICLE 1

Obligation to respect Human Rights The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

### ARTICLE 2

Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
  - (a) in defence of any person from unlawful violence;
  - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

## ARTICLE 5

### Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  - (a) the lawful detention of a person after conviction by a competent court;
  - (b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
  - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
  - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
  - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
  - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court



and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

## ARTICLE 6

### Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
14. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
15. Everyone charged with a criminal offence has the following minimum rights:
  - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - (b) to have adequate time and facilities for the preparation of his defence;
  - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
  - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

## ARTICLE 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

## ARTICLE 13

Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Kind regards

The O'Farrell Family

## APPENDIX 4

MY LETTER OF 24<sup>TH</sup> APRIL TO [REDACTED] SOLICITORS[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
24<sup>th</sup>. April, 2019.

RE: Scoping exercise in relation to the death of Shane O'Farrell.

For attention [REDACTED]

Dear [REDACTED]

As you are aware, I met with members of the O'Farrell family on the 15<sup>th</sup> March 2019 and with you, the O'Farrell family and [REDACTED] SC on the 1<sup>st</sup> April 2019. I asked for the family's views on the terms of reference as amended in light of our meeting on the 15<sup>th</sup> March 2019, in which the rights pursuant to the European Convention of Human Rights were discussed.

Further to those meetings, I received a letter from Ms Gemma O'Farrell by email on 12<sup>th</sup> April 2019 outlining further views of the O'Farrell family on the terms of reference and their suggestions in that regard. I acknowledged receipt of that correspondence by email on the 12<sup>th</sup> April 2019.

I am pleased that the O'Farrell family are open and willing to engage with the process for which I am now responsible and I welcome that engagement. I am ultimately responsible for settling the terms of reference already proposed by the Minister for Justice and Equality. In that regard, I have received a comprehensive list of suggested terms of reference by letter dated 12<sup>th</sup> April 2019 from the O'Farrell family. I have considered them carefully in the context of my role, the purpose of this scoping exercise and the particular concerns already raised by the O'Farrell family during our meetings.

The O'Farrell family have suggested a number of terms which may become pertinent if a recommendation is ultimately made for an investigation or inquiry to be established. However, in the context of this scoping exercise, they are more appropriate as part of the



submissions which may be made during this process rather than the terms of reference setting the parameters of my role. The terms of reference must be broad enough so that all concerns and allegations made by the family can be reviewed in light of the documents received but focussed enough so that, *inter alia*, a decision can be made effectively and efficiently as to whether a further investigation or inquiry is warranted, and to set the terms of reference for such a recommendation. The various issues raised are properly a matter for submissions by the family, if they choose, as to their beliefs. However, to include them in the terms of reference, as suggested by the family, would constitute a *de facto* acceptance that those allegations are found as a matter of fact, whereas that is entirely a matter for an inquiry, if such is deemed necessary following this scoping exercise. Furthermore to refer in the terms of reference to the trial in the Circuit Court as having "collapsed" would be both legally and factually incorrect. The trial concluded albeit with an unsatisfactory result from the family's point of view and of course that will be an issue for me to review.

I can assure the O'Farrell family that all occurrences of the 2nd of August 2011 are relevant to this investigation and are encapsulated in the Terms of Reference. Further to that, all information impacting on the question of bail and the 2<sup>nd</sup> August 2011 will be considered and reviewed.

I have enclosed the final Terms of Reference for your file. As outlined above, some of the suggestions made are more pertinent for consideration if a recommendation is made for a further investigation or inquiry, other suggestions I welcome as part of any submissions the family may wish to make to me during this process. I wish to assure the family that I am satisfied that I can hear and consider those submissions and the concerns raised by the family within the Terms of Reference I have now finalised.

I will contact you in due course regarding documentation which might be within the possession of the O'Farrell family and which may be of assistance to my task.

Yours sincerely,

---

Gerard Haughton.

## TERMS OF REFERENCE

### SCOPING EXERCISE IN RELATION TO THE DEATH OF SHANE O'FARRELL

In light of the public controversy surrounding the circumstances of the death of Mr Shane O'Farrell on 2 August 2011, and having regard to the motion passed by Dáil Éireann on 14 June 2018, calling for the establishment of a public inquiry in the matter and having regard to the European Convention on Human rights and in particular Articles 1, 2, 5, 6, and 13 thereof, as set out in the schedule below:

1. To review the investigations that have already taken place into the circumstances of the death of Mr O'Farrell, namely
  - (a) the criminal prosecution of Mr Zigimantas Gridziuska;
  - (b) the previous prosecutions of Mr.Zigimantas Gridziuska in so far as the same are relevant to the fact that the said Mr.Zigimantas Gridziuska was on bail at the time of the death of Mr Shane O'Farrell on 2 August 2011
  - (c) the review by the Independent Review Mechanism (IRM);
  - (d) the criminal investigation by the Garda Síochána Ombudsman Commission (GSOC); and
  - (e) the subsequent disciplinary investigation by GSOC;
  - (f) To have regard to the documentation gathered for the Statutory Inquest into the death of Mr Shane O'Farrell;
  
2. To review changes that have been made to the law and practice in relation to the administration of bail and bench warrants and the extent to which they have or have not addressed gaps in those systems since the death of Mr O'Farrell;
  
3. Based on the reviews at 1. and 2. above to advise the Minister for Justice and Equality:
  - a. If there are any remaining unanswered questions in relation to the circumstances of Mr O'Farrell's death that should be the subject of further inquiry or investigation; and
  - b. If there are, the most appropriate manner in which they should be investigated, having regard to the statutory independence of bodies such as the courts, the Director of Public Prosecutions and the Garda Síochána Ombudsman Commission.
  
4. If an investigation or inquiry is recommended to draft terms of reference for said investigation/inquiry;

5. To make enquiries with persons or bodies that he/she considers appropriate in relation to the review;
6. To report to the Minister for Justice and Equality within 8 weeks of commencement with an interim report indicating, inter alia, the expected timeframe for completion of the scoping exercise.

## **SCHEDULE TO TERMS OF REFERENCE**

### **European Convention on Human Rights**

As amended by Protocols Nos. 11 and 14  
supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16

#### **ARTICLE 1**

##### **Obligation to respect Human Rights**

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

#### **ARTICLE 2**

##### **Right to life**

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
  - (a) in defence of any person from unlawful violence;
  - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.



## ARTICLE 5

### Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  - (a) the lawful detention of a person after conviction by a competent court;
  - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
  - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
  - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
  - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
  - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

## ARTICLE 6

### Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and

public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

## **ARTICLE 13**

### **Right to an effective remedy**

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

