

TRIBUNAL OF INQUIRY INTO PROTECTED DISCLOSURES MADE UNDER
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MATTERS FOLLOWING RESOLUTIONS PASSED BY DÁIL ÉIREANN AND
SEANAD ÉIREANN ON 16 FEBRUARY 2017

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AND EQUALITY UNDER THE TRIBUNALS OF INQUIRY (EVIDENCE) ACT
1921, ON 17 FEBRUARY 2017

SOLE MEMBER: MR. JUSTICE PETER CHARLETON, JUDGE OF THE
SUPREME COURT

HELD IN DUBLIN CASTLE
ON WEDNESDAY, 19TH JULY 2017 - DAY 12

12

Gwen Malone Stenography
Services certify the
following to be a
verbatim transcript of
their stenographic notes
in the above-named
action.

GWEN MALONE STENOGRAPHY
SERVICES

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1 THE HEARING RESUMED, AS FOLLOWS, ON WEDNESDAY, 19TH
2 JULY 2017:

3
4 **CHAIRMAN:** Ladies and gentlemen, first of all I
5 apologise I am late. We had a hearing all morning in 14:00
6 McDonagh v. Sunday Newspapers. That is not a
7 complaint; it is what I am there to do.

8 **MR. MARRINAN:** Sir, the next witness is Superintendent
9 Noel Cunningham, please.

10
11 SUPERINTENDENT NOEL CUNNINGHAM, HAVING BEEN SWORN, WAS
12 DIRECTLY EXAMINED BY MR. MARRINAN:

13
14 1 Q. **MR. MARRINAN:** Superintendent Cunningham, I think that
15 are you currently attached to Monaghan Garda Station, 14:00
16 is that right?

17 A. That's correct, Judge.

18 2 Q. Will you just outline to the Chairman a brief history
19 of your time within An Garda Síochána?

20 A. I joined An Garda Síochána 31st December 1980. I 14:01
21 passed out on the 4th June 1981 and I went to Emyvale
22 in County Monaghan, north Monaghan. I went from there,
23 Judge, in around July 1982 to Scotstown, again north
24 Monaghan, where I served two years, and in
25 approximately 1984 I went to Monaghan station. I 14:01
26 worked on the units there in general policing until
27 '86, when I joined the Traffic Corps. In 1989 I was
28 promoted to sergeant. I went to Burnfoot in Donegal.
29 I spent a year in Donegal. I then went back to Clones

1 in Monaghan, as a sergeant, a unit sergeant, where I
2 remained for about a year, and then I took up as
3 sergeant in charge of the Divisional Traffic Corps; at
4 that time it covered both Cavan and Monaghan, Judge. I
5 was a sergeant in charge of Traffic Corps until 1996 14:02
6 when I was promoted to inspector. I went to Santry,
7 spent a very short time in Santry, when I was returned
8 to Carrickmacross, in County Monaghan, south Monaghan,
9 as an inspector, where I worked for -- I'm not sure of
10 dates, Judge, but I was several years there, and then 14:02
11 returned to Monaghan as an inspector. I worked in
12 Monaghan then as an inspector, I was inspector
13 altogether for 11 years, and I was promoted to
14 superintendent in 2008, March 2008, when I went to
15 Bailieboro. I spent a year in Bailieboro. I then went 14:03
16 from there to Carrickmacross as superintendent, where I
17 remained for two years, that was about 2012. I went to
18 Monaghan, and I am there ever since, Judge.

19 3 Q. And in December 2006 you held the rank of inspector,
20 and what station were you attached to at that time? 14:03

21 A. I was attached to Monaghan, Judge. But we would have
22 performed duties all round the division, supporting the
23 other superintendents in the other districts if there
24 was no -- for example, in Bailieboro there was no
25 inspector, so I would have done a lot of work there. 14:03
26 Or when superintendents were taking leave or doing
27 other duties, we would have what is called acting
28 district officer, we would have went and worked there,
29 Judge.

1 4 Q. Now, I think on 4th December 2006 the father of Ms. D,
2 Mr. D, made contact with Detective Sergeant James
3 Fraher of Cavan Garda Station, is that right?
4 A. That's correct, Judge.
5 5 Q. And I think that Mr. D and his wife met with Detective 14:04
6 Sergeant Fraher and outlined an allegation which their
7 daughter was making in respect of Sergeant McCabe,
8 isn't that right?
9 A. That's correct, Judge.
10 6 Q. I think that a statement was taken from Ms. D at that 14:04
11 time, is that right?
12 A. That's correct, Judge.
13 7 Q. You knew Sergeant McCabe at that time, did you?
14 A. Oh, I did, Judge. I knew him --
15 8 Q. How long had you known him? 14:04
16 A. Oh, many years. On the Traffic Corps, Judge, as a
17 guard and subsequently as a sergeant. As I said, we
18 had a divisional portfolio, so I would have met him
19 often - not very often, but often, in Bailieboro. But
20 then on his promotion, Judge, to sergeant, he came to 14:05
21 Clones, which was in Monaghan district. So I would
22 have known him very well working in Clones and, in
23 fact, would have worked with him on many occasions
24 during the course of the summer, Judge. When the
25 football season was on, many of the Ulster matches are 14:05
26 played in Clones, Judge, and continue to be. Sergeant
27 Maurice McCabe would have had a central role in
28 relation to those football matches and planning them,
29 and I would have had the duty in relation to policing,

1 ensuring the policing of both inside and outside the
2 match. And as an inspector, I would have been
3 inspecting members to ensure they stayed in their
4 positions, ensuring there were no cars broken into, et
5 cetera, during the course of the match, general 14:05
6 policing duties. And I would have walked the town, as
7 I say, on many occasions with Sergeant Maurice McCabe
8 during those duties.

9 Q. I think you're also acquainted with the father of
10 Ms. D, isn't that right? And if you just wouldn't mind 14:06
11 going into the circumstances in which you knew him.
12 But you knew him because he was a member of An Garda
13 Síochána, isn't that right?

14 A. Yes, Judge. And again, in similar circumstances, I
15 would have met him when I was in the Traffic Corps as a 14:06
16 guard and a sergeant.

17 Q. Well, perhaps I will just ask you not to indicate the
18 circumstances because --

19 A. Oh, I am sorry. Well, I knew him for quite so many
20 years, Judge. Pardon. 14:06

21 Q. Yes. In a similar way to --

22 A. Maybe not as well as Sergeant McCabe, but I certainly
23 knew him quite well, yes.

24 Q. I think that whilst you knew Mr. D and Sergeant McCabe
25 very well, you didn't know their families? 14:06

26 A. Absolutely not, no, Judge.

27 Q. Now, arising out of that, I think that there was a
28 discussion as to who would take over the investigation,
29 is that right?

1 A. Well, there was no discussion with me, Judge. I was
2 directed by my divisional officer at the time to carry
3 out the investigation.

4 14 Q. I think that prior to receiving your direction from
5 your divisional officer, had you discussed the matter 14:07
6 with his clerk?

7 A. No. That was subsequent. When I was directed to do
8 so, Judge. When it came down to me to do, I had a
9 discussion with the divisional officer's clerk and I
10 said I felt it was inappropriate, Judge, as I knew the 14:07
11 two members. Now, I didn't know their families, but as
12 I knew the two members, and it was a very sensitive
13 complaint, I felt it was inappropriate, Judge, for me
14 to carry out the investigation.

15 15 Q. And I think if you could be shown page 129. This is a 14:07
16 letter to you from the Chief Superintendent Rooney:
17
18 *"I attach copy of statement made in above matter made
19 by the complainant. Please --"*

20 14:07

21 Is it not on the screen yet? If you just scroll down
22 there.

23
24 *"I attach copy statement made in above matter made by
25 the complainant. Please undertake a criminal 14:08
26 investigation into the matter. If any issues of a
27 disciplinary nature arises, please communicate with me
28 immediately so that I can consider appropriate action."
29*

1 And then it says:

2
3 *"Please endeavour to complete your investigations in*
4 *two weeks."*

5
6 And it's signed by Chief Superintendent Rooney. So it
7 was after receiving that letter that you raised the
8 issue with his clerk, is that right?

9 A. That's correct, Judge. 14:08

10 16 Q. Who is the clerk? 14:08

11 A. Sergeant Eamonn White at the time. He is well -- long
12 retired now, Judge.

13 17 Q. And despite raising that issue, the direction stood,
14 that right?

15 A. That's correct, Judge. 14:08

16 18 Q. And obviously this was a matter of some considerable
17 importance as far as Chief Superintendent Rooney was
18 concerned, isn't that right?

19 A. It was. It was, absolutely.

20 19 Q. Pardon? 14:09

21 A. Absolutely.

22 20 Q. And I think later, he, in a statement to GSOC, referred
23 to the fact that he was anxious that somebody who was
24 competent would deal with the matter, and, from his
25 dealings with you, he thought very highly of you and
26 thought that you would deal with it despite any
27 concerns that you may have had. 14:09

28 A. Well, Judge, I would always endeavour to do my job
29 professionally, and this file was no different.

1 21 Q. Yes. 14:09

2 A. As I explained when I carried out the investigation, I
3 was blind to the people involved in it; in other words,
4 I was totally neutral, Judge. It was an investigation
5 that I was carrying out. 14:09

6 22 Q. Well, obviously there were two aspects to it. There
7 was the criminal investigation, which was paramount,
8 and then secondary to that was also a disciplinary
9 matter that could potentially arise, isn't that right?

10 A. That's correct, Judge. 14:10

11 23 Q. And the chief superintendent seems to have been
12 desirous of the fact of it being completed within a
13 very short period of time of two weeks. But in any
14 event, that wasn't possible in the circumstances, isn't
15 that right? 14:10

16 A. No, Judge.

17 24 Q. I think that you were happy in the circumstances to
18 talk quite openly with the HSE in relation to your
19 investigation, isn't that so?

20 A. I wouldn't say that, Judge. When I was investigating 14:10
21 the matter, Judge, I established that Ms. D had been in
22 counselling for some considerable time in advance of
23 making the complaint, and, to put it in context, Judge,
24 I had to establish if a criminal offence occurred, and
25 I think in my covering report I refer to this, and I 14:11
26 refer to what criminal offence, in any, may have
27 occurred.

28 25 Q. Yeah, we will come to that.

29 A. Well, it is just to put it in context. That was the

1 reason I wanted to gain access, Judge, to the records
2 in relation to Ms. D's meetings with the HSE. It was
3 not for me to discuss it openly with them; it was the
4 very opposite, Judge: it was for me to gain access to
5 materials which were confidential. 14:11

6 26 Q. Superintendent, I don't think there is any problem in
7 relation to this.

8 A. Yes, Judge.

9 27 Q. I think that you had got Ms. D's consent --

10 A. That's correct, Judge. 14:11

11 28 Q. -- in writing to have access to her records within the
12 HSE, isn't that right?

13 A. That's correct, Judge, yes.

14 29 Q. And I think that you, on the 14th December 2006, if we
15 could have this on the screen, page 189, this is a 14:11
16 record of a conversation that you had with Rhona
17 Murphy, who was the social worker who was dealing with
18 Ms. D at the time. Do you see that? It has come up on
19 the screen there. You see:

20 14:12

21 *"Received telephone call from Inspector Noel*
22 *Cunningham. Inspector Cunningham advised that he*
23 *viewed the Ms. D file and said it was quite a*
24 *comprehensive file."*

25 14:12

26 I think you had reviewed all the file, isn't that
27 right?

28 A. Well, the file that I was given, certainly there was a
29 lot of material in it, Judge.

1 30 Q. *"He feels that one issue is going to be getting to the*
2 *bottom of the situation as there are times it appears*
3 *that Ms. D was spinning different stories."*

4
5 She quotes you. 14:12

6
7 *"He said that the allegation was pertaining to Ms. D*
8 *when she was six years of age."*

9
10 And then she goes on to record: 14:12

11
12 *"Inspector Cunningham asked what I thought in my*
13 *professional opinion, (a) did it happen and (b) Ms. D's*
14 *behaviour. I advised him that I am not in a position*
15 *to comment as I have referred Ms. D to the Child Sexual 14:13*
16 *Abuse Assessment Team, as is procedure in situations*
17 *like this."*

18
19 And then later on she records: 14:13

20
21 *"Inspector Cunningham, that Garda Valerie is becoming*
22 *involved and will want to interview Ms. D eventually."*

23
24 And then she records your mobile number.
25 A. And also, Judge, I think there's an important sentence: 14:13

26
27 *"Inspector Cunningham advised that he has to approach*
28 *this with an open mind and is not making any judgment."*

29

1
2 31 Q. Yeah. There is no --
3 A. I was trying to understand what was going on here,
4 Judge.
5 32 Q. Yeah. Well, the point I am trying to get to really is, 14:13
6 Superintendent Cunningham, is that this telephone
7 conversation that you had with Rhona Murphy, and there
8 doesn't appear to be anything wrong in relation to it,
9 you were talking to her about the Ms. D file, you were
10 trying to ascertain what her view was in relation to -- 14:14
11 A. That's correct.
12 33 Q. -- the allegations, and Ms. D's behaviour in or around
13 about that time?
14 A. That's correct.
15 34 Q. Isn't that right? 14:14
16 A. That's correct, Judge.
17 35 Q. So, I mean, this is what one would might expect in
18 circumstances where you were talking to a social worker
19 in the HSE, that you would talk quite openly about your
20 investigation and where it was going and what you were 14:14
21 interested in, and trying to ascertain from her what
22 her views may be, because she had a lot of experience
23 in the case, isn't that right?
24 A. Absolutely, Judge, yeah.
25 36 Q. So then if we go on to page 207, if you just look 14:14
26 there, you will see there is a notification of
27 suspected child abuse to the Health Board, and it's
28 dated 6th December 2008. But it has received on the
29 2nd January 2007, is that right?

1 A. I think that was sent by Detective Sergeant Jim Fraher,
2 looking at the writing and my memory of it. That was
3 his duty, Judge, having received the complaint, a
4 referral under the Children First Guidelines would be
5 sent to the Health Board, Judge. Guidelines were in 14:15
6 place from 1999, reviewed subsequently, I think, around
7 2011/2010. But one of the things we would do, Judge,
8 we have to do, is send a referral, and this is a
9 referral, to the HSE, informing them, Judge, of the
10 complaint. 14:15

11 37 Q. Now, I think having been advised by Rhona Murphy that
12 the matter had been referred to the Child Sexual
13 Assault Team within the HSE, you received a letter - if
14 we could have 229, please - from Emer O'Neill and Orla
15 Curran? 14:16

16 A. Yes.

17 38 Q. Emer O'Neill being a senior clinical psychologist and
18 then Orla Curran being an assistant senior social work
19 practitioner. And it reads:

20 14:16
21 *"Dear Inspector Cunningham, the above-named is*
22 *presently attending our service in relation to*
23 *assessment/treatment. We are aware that she has made a*
24 *Garda statement. We have obtained permission for the*
25 *release of this statement."* 14:16

26
27 And they attach a copy of that which is on the
28 following page.

29

1 *"We would thus be grateful if you would forward a copy*
2 *of the statement to the above address. If you require*
3 *any further information in relation to this, please do*
4 *not hesitate to contact us."*

5 A. That's correct. 14:16

6 39 Q. And I think that you replied to that on the 24th
7 January, and that's at page 235, and you attach to
8 your -- a short statement to Orla Curran, you attach
9 Ms. D's statement. Now, there may be an issue in
10 relation to that. I think that you may, in fact, have 14:17
11 given it to Ms. D's mother, who was then attending an
12 appointment with Orla Curran and Emer O'Neill. Do you
13 recall that?

14 A. My attention was drawn to that, Judge. This letter is
15 dated, and if you see the copy letter is typed and that 14:17
16 would have been typed by a copy of -- staff and is
17 signed. So, to me, that is when the letter went. Now,
18 I have been referred to that evidence, and while I have
19 no memory of it, Judge, it's probable that I may have
20 been asked, and I have no memory, I may have been asked 14:17
21 by the mother, by the father, for a copy of the
22 statement to help in the child's -- if the child was
23 attending some form of treatment, and may well have
24 given to them. But my records, and I'm only working
25 from my records, Judge, it's ten years ago, is that I 14:18
26 sent the statement on that date, Judge, to Rhona
27 Murphy. It's signed and everything, so there's no
28 reason why it wouldn't have simply gone, Judge.

29 40 Q. Now, I think that you carried out your investigations

1 expeditiously and you prepared a report which is dated
2 19th February 2007. If we could have that up on
3 screen. It's page 4. During the course of your
4 investigation, you had taken a number of statements,
5 isn't that right, or caused to be taken a number of 14:18
6 statements?

7 A. I took most of them, Judge, yes.

8 41 Q. Yes. And I think that again during the course of your
9 investigation, you had met with Sergeant McCabe and had
10 you put the allegations to him, isn't that right? 14:19

11 A. That is correct, Judge.

12 42 Q. And I think that Sergeant McCabe denied the
13 allegations?

14 A. Yes, Judge.

15 43 Q. And you included a statement from Sergeant McCabe in 14:19
16 the papers that you sent to the Director of Public
17 Prosecutions, isn't that so?

18 A. That's correct, Judge, yes.

19 44 Q. I think it also included a number of statements from
20 Ms. D and also statements from her parents, isn't that 14:19
21 right?

22 A. And from other family members when matters arose,
23 Judge, that required follow-up.

24 45 Q. Yes. Now, if we could just have page 4 of your report.
25 As I say, it is dated 19th February 2007. It's 14:19
26 addressed to Mr. Rory Hayden, who is the State
27 solicitor, isn't that right?

28 A. That's correct.

29 46 Q. And it opens:

1
2 *"On 4th December 2006, Mr. D made contact with*
3 *Detective Sergeant James Fraher of Cavan Garda Station.*
4 *They met with Detective Sergeant Fraher and outlined*
5 *the allegation which Ms. D, their daughter, had made to* 14:20
6 *them. Detective Sergeant Fraher made contact with*
7 *Mr. D and Mrs. D and made arrangements to interview*
8 *Ms. D, and later on the 5th December 2006 Detective*
9 *Sergeant Fraher and Sergeant Denise Flynn, Monaghan,*
10 *interviewed Ms. D on the 5th December 2006. As a* 14:20
11 *result of this statement, Chief Superintendent Colm*
12 *Rooney, Monaghan, appointed Inspector Noel Cunningham,*
13 *Monaghan, to investigate the allegation. Inspector*
14 *Cunningham secured the assistance of Garda Valerie*
15 *Campion, Carrickmacross, to investigate the matter."* 14:20

16
17 I think that she was specially trained in relation to
18 taking statements from young persons, is that right?

19 A. Yes, Judge, this was in advance of us having members of
20 An Garda Síochána trained in specialist interviewing of 14:20
21 children. But I was aware that Garda Campion, on her
22 own bat, had undergone a course, I think in Trinity,
23 where she had received training. She had a particular
24 interest in children and she dealt quite a bit with the
25 HSE. So having that skill-base available to me, Judge, 14:21
26 I took her on the investigation.

27 47 Q. Page 5, which is page 2 of the report, you outline the
28 investigation that you had undertaken, isn't that
29 right?

1 A. That's correct.

2 48 Q. And at the bottom of that paragraph you say:

3

4 *"This consent was used to gain access to records held*

5 *by Social Work Department."* 14:21

6

7 Isn't that right?

8 A. Yes.

9 49 Q. Those are the notes that we have already referred to --

10 A. That's correct. 14:21

11 50 Q. -- on the file. And to interview Dr. Finan, consultant

12 pediatrician, who treated Ms. D, is that right?

13 A. That's correct, Judge.

14 51 Q. And then under a paragraph that has been largely

15 redacted and we don't need to go into, you refer to the 14:21

16 Social Work Department Health Service Executive file

17 held in relation to Ms. D, isn't that right?

18 A. That's correct.

19 52 Q. And there you set out, going to page 9 now, in the

20 proceeding pages you set out extracts from the HSE's 14:22

21 file pertaining to Ms. D, isn't that correct?

22 A. That's correct, Judge.

23 53 Q. And then on page 9 we deal with the allegation itself,

24 and you set out that. On page 10 you deal with what

25 you refer to as the game, and that covers page 10 and 14:22

26 page 11. And at page 12 you review the law in relation

27 to sexual assault and to Section 2 assault and also a

28 Section 3 assault, isn't that right?

29 A. That's correct, Judge.

1 54 Q. And then page 13, at the bottom there, you deal with
2 the issue of delay, which you highlight to the Director
3 of Public Prosecutions, isn't that right?

4 A. Correct, Judge.

5 55 Q. And then at page 15 you refer to another incident, 14:23
6 which I will just read from, involving Mr. D and
7 Sergeant McCabe. The report reads:

8
9 *"There was one other incident which must be considered*
10 *when looking at the development of this case. Mr. D,* 14:23
11 *in 2005, was appointed sergeant in charge of the*
12 *district crime unit in Bailieboro. On the 8th January*
13 *2006, a young man who would have been dealt with on*
14 *many occasions by the Gardaí in Bailieboro in relation*
15 *to disputes with his parents, fatally stabbed his* 14:23
16 *father. His father was buried on the 11th January*
17 *2006. The funeral had a huge attendance as he was*
18 *well-known and respected in the area. Mr. D attended*
19 *with other members of the crime unit and members from*
20 *Bailieboro Garda Station. Mr. D and two other members* 14:24
21 *of the crime unit returned to work but on termination*
22 *of duty went to a local licensed premises and consumed*
23 *alcohol. While in the premises, word came of a suicide*
24 *of a young man known to all the members. They*
25 *travelled to the scene and on arrival were highly* 14:24
26 *emotional and intoxicated. An embarrassing situation*
27 *developed when all three had to be removed from the*
28 *scene by the sergeant who was dealing with the suicide.*
29 *The sergeant in charge of the scene was Sergeant*

1 *Maurice McCabe.*"

2
3 If we go over to page 16.

4
5 *"Sergeant McCabe reported the matter to his* 14:24
6 *authorities. As a result, the divisional officer*
7 *removed Mr. D and one other member present from the*
8 *crime unit and reverted them to regular uniform*
9 *duties."*

10
11 Then you have your conclusions:

12
13 *"Taking all matters into consideration, including the*
14 *question of whether the event, if it happened,*
15 *constituted a breach of the criminal law, it is felt* 14:25
16 *there is no ground for a criminal prosecution."*

17
18 And it was then *"forwarded for your favour of*
19 *direction, please."*

20
21 You also include:

22
23 *"This officer would be obliged if all correspondence in*
24 *relation to this investigation could be directed to*
25 *Inspector Noel Cunningham of Monaghan Garda Station."* 14:25
26

27 You give your mobile number.

- 28 A. If I may say, Judge, that's of some significance,
29 because it's the only file that I would ever have

1 written that on, and its context will become clear,
2 Judge, in relation to the level of protection I was
3 trying to afford people who I investigated in this
4 matter, and have done ever since I carried out this
5 investigation, Judge. 14:26

6 56 Q. Prior to sending that report to Mr. Hayden, had you
7 shown it to Chief Superintendent Rooney?

8 A. What happens is, Judge, the -- no, not in advance of
9 it.

10 57 Q. No. 14:26

11 A. The file was my file, my independent file. But the
12 process, Judge, was that I would send two copies of the
13 file to the Director of Public Prosecutions -- to the
14 State solicitor for onward transmission, Judge.

15 58 Q. Yes. 14:26

16 A. And the third copy then would be sent up through my
17 divisional officer, who is Chief Superintendent Rooney,
18 for onward transmission, especially when -- and that
19 was -- at the time, Judge, in our division, that was
20 the practice in relation to all sexual files, because 14:26
21 he reviewed them to ensure they were properly
22 investigated. But this one --

23 59 Q. This file --

24 A. This particular one, Judge, had the other issue in
25 relation to discipline, et cetera, and was members of 14:27
26 the Garda Síochána involved, so it was obviously going
27 to be forwarded on to Garda Headquarters, Judge.

28 60 Q. So there were three reasons why it would go through
29 your divisional office and end up in Garda

1 Headquarters. There was the fact that it was a sexual
2 assault?

3 A. That's right.

4 61 Q. And the policy was, in those circumstances, that Garda
5 Headquarters would have to be notified of it, is that 14:27
6 right?

7 A. Well, in relation to -- I'm not sure if he sent them
8 on. It was certainly divisional policy from the chief
9 superintendent's point of view that those files were
10 sent to him. 14:27

11 62 Q. To him.

12 A. But this particular file, because there were Gardaí
13 involved, would go on to Garda Headquarters, Judge.

14 63 Q. Because it was a sexual assault and --

15 A. Well, because it was Gardaí were involved, Judge. 14:27

16 64 Q. Well, it was a garda who was involved, allegedly?

17 A. Yes, allegedly.

18 65 Q. And the investigation concerned a garda?

19 A. That's correct.

20 66 Q. But there was also an issue that could arise in 14:27
21 relation to disciplinary matters?

22 A. That's correct, yes.

23 67 Q. And therefore would have to be sent to HRM, is that
24 right?

25 A. Absolutely, Judge, yes. 14:28

26 68 Q. So one would have expected, when you were doing your
27 report, that this file would have gone to the Assistant
28 Commissioner in your division and then would have been
29 forwarded on to the Assistant Commissioner HRM?

1 A. The Assistant Commissioner in my region, yes, which, in
2 Northern Region, which is based in Sligo, and then
3 Assistant Commissioner HRM.

4 69 Q. And then if we could have page 3 on. This is the
5 letter that accompanied your report that was sent by 14:28
6 Mr. Hayden. Had you discussed the matter with
7 Mr. Hayden or was he just operating on the basis of the
8 report and the statements that you had sent in?

9 A. Oh, no, I wouldn't discuss it. This is -- my policy is
10 always, Judge, I prepare the file, I forward it, and if 14:28
11 there is anything arises, it comes back in writing to
12 me, but everything is recorded, Judge. So I actually
13 would never see this letter. This letter was sent on.
14 We would normally never see the letter that the State
15 solicitor sends to the Director. That's -- 14:29

16 70 Q. Well, I will just read from the letter.

17 A. Yes.

18 71 Q. From Mr. Hayden to the Director of Public Prosecutions.
19

20 *"Dear sirs, we refer to the above matter. Enclose 14:29*
21 *Garda investigation file herein.*

22

23 *A number of inconsistencies arise on the file and the*
24 *alleged victim's credibility is strained in all of*
25 *these circumstances.* 14:29

26

27 *Ultimately, even the allegation itself is unclear and*
28 *even on the alleged victim's own account amounts to*
29 *horseplay and no more.*

1
2 *This allegedly took place in a house full of children*
3 *with four adults present in close proximity. I do not*
4 *think any case arises for prosecution. I await your*
5 *directions."*

14:29

6
7 And of course the Director of Public Prosecutions is an
8 independent office, and whilst it will receive
9 recommendations from yourself and from the local State
10 solicitor, it's not bound by those recommendations.

14:30

11 A. Absolutely not.

12 72 Q. And if we can just go on to page 1 then, which is the
13 direction that came from the professional officer, Liz
14 Howlin, who was dealing with the case. It reads:

15
16 *"Dear Sir."*

14:30

17
18 It's dated 5th April 2007.

19
20 *"I acknowledge receipt of your letter dated 1st March*
21 *2007 together with copy Garda investigation file. I*
22 *agree with you and the guards that the evidence does*
23 *not warrant prosecution.*

14:30

24
25 *There are no admissions. The incidents as described by*
26 *the injured party is vague. It appears that it was*
27 *only when she was 11/12 that she decided that whatever*
28 *occurred was sexual in nature. Even if there wasn't a*
29 *doubt over her credibility, the incident that she*

14:30

1 *described does not constitute a sexual assault or*
2 *indeed an assault. Further, the account given to her*
3 *cousin differs in a number of respects to which -- to*
4 *that given to her parents and the guards."*

14:31

5
6 And then:

7
8 *"There is no basis for a prosecution."*

9
10 So, as a result of that, there was no prosecution.

14:31

11 When were you alerted to that direction?

12 A. I don't have my diary, Judge, but I know that at the
13 time that it came out I received no phone call to the
14 effect that it came out. I was acting district officer
15 in Bailieboro for, I think, about three weeks, and
16 again I would have to double-check, but around that
17 period, Judge, and it was on my return to Monaghan,
18 Judge, that I discovered that piece of post, and it
19 was, as I requested, addressed to me, Judge. But on
20 finding it, Judge, I immediately went about notifying
21 the parties, which is my duty to do, Judge.

14:31

14:31

22 73 Q. Is there a protocol in place involving sexual abuse
23 cases in terms of who should be notified first of the
24 decision of the Director?

25 A. Well, Judge, you would be notifying the victim. That's
26 the complainant, that's the first person that you would
27 go to. And on that occasion, Judge, my memory is that
28 it was a morning time when I found this, that I
29 contacted Ms. D's parents, believing the child to be at

14:32

1 school, which she was. I informed them that the
2 directions were back and that I could travel either at
3 that time and give them the directions so that they
4 could talk to her, as she was a child, or I could leave
5 it until she was home, and they requested that I travel 14:32
6 over at that time, which I did, Judge, I drove
7 immediately from Monaghan to Virginia, to their home.

8 74 Q. If we could put page 111 on the screen, please. We
9 know, Superintendent, and I will come to this in due
10 course, but we know a complaint was made by Ms. D to 14:33
11 GSOC concerning the investigation of her complaint and
12 how it was handled. This is a statement that you made
13 on the 10th November of 2014. If I could just refer
14 you to page 111, you will see there, midway down, there
15 is a statement: 14:33

16
17 *"The Director of Public Prosecutions in their*
18 *directions dated 5th April 2007 concurred and stated*
19 *the incident Ms. D described does not constitute a*
20 *sexual assault or indeed an assault and directed 'there 14:33*
21 *is no basis for a prosecution'. I, in accordance with*
22 *the regulations, contacted the parents of Ms. D as she*
23 *was a minor at the time and informed them of the DPP's*
24 *directions on the 24th April 2014."*

25 A. Yes, I did. 14:34

26 75 Q. The reason I asked you was there a protocol or was it
27 part of the regulations that she be notified first, is
28 it just the practice or is there actually a regulation?

29 A. Well, I am unsure if there is a regulation but

1 certainly the practice would be you would go to the
2 victim first, you would go to the alleged or the victim
3 or the injured party, whatever you wish to call it,
4 first, that they are obviously the person.

5 76 Q. Well, can we take it that from the statement that 14:34
6 you've made there, that there actually isn't a
7 regulation that deals with the matter, but it is just
8 merely practice that the injured party should be
9 notified?

10 A. That's correct, Judge. 14:34

11 77 Q. And you didn't notify her until the 24th April, even
12 though you had received the directions on the 5th
13 April, or certainly they were dated 5th April. Is
14 there any reason why there was a delay of nearly three
15 weeks? 14:35

16 A. That was what I said earlier, Judge. There was
17 absolutely no delay. The delay of -- the date of the
18 5th April I think is shown as the date of receipt by
19 Rory Hayden's office of the directions from the
20 Director of Public Prosecutions. As I outlined, Judge, 14:35
21 I was on -- working in Bailieboro, at that time acting
22 district officer, so I had no business in Monaghan. My
23 duties were in Bailieboro, covering for the
24 superintendent there. It was on my return to Monaghan
25 that I opened the post and this was in it. And that 14:35
26 was obviously on that date, Judge, the 24th April, and
27 that on the first opportunity, there was absolutely no
28 delay on my part, as soon as I received it I travelled.

29 78 Q. Yeah. Well, could we just go to page 111 again, if it

1 is already there on the screen, because you then
2 continue on and you say:

3
4 *"On leaving the Ms. D family home, I immediately*
5 *contacted Maurice McCabe to meet with him and inform* 14:36
6 *him of the DPP direction."*

7 A. That's correct.

8 79 Q. *"Maurice McCabe initially did not cooperate with me."*

9 A. Yeah.

10 80 Q. *"Or meet me until 8th May 2007."* 14:36

11 A. That's correct Judge.

12 81 Q. You also add then:

13
14 *"I also find it is important to note that when I*
15 *carried out this investigation in 2006 I had 26 years'* 14:36
16 *service in An Garda Síochána, mainly in operational*
17 *policing. In those 26 years, I have never been the*
18 *subject of a complaint from the public or any internal*
19 *disciplinary investigation. However, since I carried*
20 *out the investigation into Maurice McCabe, I have been* 14:36
21 *the subject of several complaints and investigations*
22 *mainly emanating from the Bailieboro district, none of*
23 *which thus far has been upheld."*

24
25 First of all, why are you highlighting or what is this 14:37
26 a reference to, where you refer to Sergeant McCabe not
27 cooperating with you, as you put it?

28 A. On the occasion, Judge, I have a clear memory of it, I
29 left Ms. D's home, which I would only have been in a

1 couple of times during the investigation. I wasn't
2 familiar with the house. I drove down from the home,
3 and there was a new house, or something, being built on
4 the left-hand side of the road and I pulled in there.
5 I rang Maurice McCabe to arrange to meet him to inform 14:37
6 him of the directions. The phone went to message
7 minder and I informed him that I wanted to meet with
8 him in relation to this. I subsequently started
9 driving back and a message came into my phone, and it's
10 slightly intriguing because the message came into my 14:38
11 phone without the phone actually ringing. And when I
12 checked the phone it was actually a message from
13 Maurice to say that, on legal advice, he wasn't going
14 to meet me. What was intriguing in that, Judge, was,
15 that the manner in which the message was received, I 14:38
16 wouldn't be terribly technically minded, but it was
17 actually Maurice himself who had, on a previous
18 occasion, had explained to me how you can put an
19 additional digit in the number that you are ringing and
20 you go straight to their message minder and you can 14:38
21 leave a message. Because my phone certainly didn't
22 ring when I was driving.

23 82 Q. Sorry, Superintendent, are we missing something here?
24 You've investigated Sergeant McCabe?

25 A. Yes. 14:39

26 83 Q. You sent a file to the Director of Public Prosecutions.
27 The file has come back with a direction that there
28 should be no --

29 A. That's correct.

1 84 Q. -- prosecution of Sergeant McCabe. Has there been some
2 falling out between you and he in the intervening
3 period of time?
4 A. I never had a falling out with Maurice McCabe in all my
5 service. I never -- I don't believe I ever said a bad 14:39
6 word to him or about him, Judge. Judge, I am a
7 policeman. I am directed to do duties and I do them
8 will well, I do them professionally. I don't engage in
9 personalities, Judge. It is unprofessional and it is
10 not of any value to me or to anybody else. I have no 14:39
11 difficulty with Maurice McCabe. But I think Maurice
12 may have a difficulty with me as a result of this
13 investigation, Judge, which, as I said, was clearly
14 outlined by --
15 85 Q. If you can just come back to the statement that you've 14:39
16 made at page 111.
17 A. Yes.
18 86 Q. I mean, you're just making a statement to GSOC
19 concerning your investigation of the offence. Why is
20 there a need here to put in "*Maurice McCabe initially* 14:40
21 *did not cooperate with me*"? I mean, you could just
22 simply have said to GSOC, well, I tried to contact
23 Maurice McCabe and he seemed to have a difficulty at
24 the time and he was considering some legal action, but
25 subsequently I contacted him and advised him of the 14:40
26 decision. Why is there a need to highlight this, that
27 he's not cooperating with you?
28 A. Well, maybe it's a poor choice of words, Judge, but it
29 was what I said. It was, he wasn't meeting me.

1 87 Q. Well, it's the kind of expression that guards use in
2 relation to accused persons who don't cooperate with
3 them perhaps during interviews or otherwise. I mean,
4 it just stands out that here you are advising GSOC that
5 Sergeant McCabe had, at that point in time, on the -- 14:40
6 late April 2014, was not cooperating with you?

7 A. Yes.

8 88 Q. And I'm just wondering, because of a matter that we are
9 going to come to shortly, whether or not there was some
10 issue had arisen between you and Sergeant McCabe 14:41
11 whereby the close relationship that you referred to
12 earlier on, the fact that you were good -- you knew him
13 very well and he knew you --

14 A. Mm-hmm.

15 89 Q. -- and you knew him for years, that something, in fact, 14:41
16 had happened between the two of you that had caused him
17 to adopt the stance that he was adopting or caused you
18 to ultimately refer to him as not cooperating further
19 in your dealings with the matter?

20 A. Well, I think, Judge, subsequently on the 8th May, when 14:41
21 I met with Sergeant McCabe to tell him of the
22 directions, Judge, he asked that I not meet him in the
23 Garda station, which I agreed; he asked that I meet him
24 in a local hotel in Bailieboro, which I agreed, and I
25 went and met him. On arrival, Judge, there was a 14:42
26 second sergeant present, which I thought -- you know,
27 this was a sensitive investigation, I didn't believe
28 maybe Maurice wanted everybody to know about it, but
29 there was a second sergeant present. And I asked the

1 question, why was she present, to which the first
2 response was that she was a member of the Association
3 of Garda Sergeants and Inspectors and she was there to
4 represent Maurice.

5 90 Q. Well, Superintendent, it's not really somewhere where 14:42
6 this Tribunal wants to go.

7 A. No, but I am trying to put it -- apologies, Judge. I
8 am trying to put it in context.

9 91 Q. No, but, I mean, can the Tribunal take it that 14:42
10 something had occurred which had caused Sergeant McCabe
11 to take a certain position in relation to you?

12 A. Well, nothing had occurred with me.

13 92 Q. No --

14 A. But I can't answer what happened Maurice McCabe as a 14:43
15 result of this investigation.

16 93 Q. It was evident to you, arising out of that meeting on
17 the 8th May 2007, that he was taking a position in
18 relation to you?

19 A. I felt he was, Judge.

20 94 Q. Yes. And then you go on in your statement to GSOC at 14:43
21 page 111, you say:

22
23 *"Since I carried out the investigation into Maurice*
24 *McCabe, I have been the subject of several complaints*
25 *and investigations, mainly emanating from the* 14:43
26 *Bailieboro district."*

27
28 Is that a reference to complaints that have been made
29 by Sergeant McCabe in relation to the handling of

1 cases?

2 A. Yes, some of it, Judge, and other matters, Judge.
3 Mainly in relation to the handling of cases and
4 complaints to GSOC, et cetera, yes.

5 95 Q. So, as it were, you're highlighting in your statement 14:44
6 to GSOC, in circumstances where they are looking into
7 the handling of the case by you of Ms. D's complaint,
8 you've taken the opportunity there to highlight the
9 fact that, all of a sudden, arising out of your
10 investigation, that there were a number of complaints 14:44
11 that were made against you, is that right?

12 A. And this is some -- this is now, I think, 2014?

13 96 Q. 2014.

14 A. Yes. So from the time in that six- or seven-year
15 period, that was my belief. 14:44

16 97 Q. So from 2007 --

17 A. Yes.

18 98 Q. -- April 2007 onwards, relations between you and
19 Sergeant McCabe, would it be fair to describe them as
20 being strained? 14:45

21 A. Well, certainly not on my behalf, Judge. As I said, I
22 still -- I did the investigation, I did it fairly,
23 professionally, and that was the GSOC's finding. But
24 subsequently things certainly did change with
25 Sergeant McCabe, and I think it's best illustrated in a 14:45
26 comment of his own, Judge, where he said that the
27 investigation had changed him completely, that he
28 trusted nobody, and that obviously included me.

29 99 Q. We're really not concerned as to who is at fault here.

1 A. And I'm not attributing fault, Judge; I am simply
2 saying a change in the way the relationship, as you
3 adverted to.

4 100 Q. Yeah. So, just for the sake of completeness in
5 relation to that aspect of it, because it is a matter 14:46
6 that I think should be highlighted in relation to the
7 GSOC investigation, and, whilst I am dealing with that,
8 if we could have page 1693. I think it was
9 investigated, and on the 25th August 2015 you were
10 advised by the investigations officer with GSOC of the 14:46
11 result, isn't that right?

12 A. That's correct, Judge.

13 101 Q. I think I should read that into the record:
14
15 *"Dear Superintendent Cunningham,* 14:46
16
17 *I refer to the complaint made by the above-named to the*
18 *Garda Ombudsman in accordance with the Garda Síochána*
19 *Act 2005 on the 29th April 2014.*

20 14:46
21 *As you are aware, this matter was investigated in*
22 *accordance with Section 95 of the Garda Síochána Act*
23 *2005 and the investigation was carried out by Declan*
24 *Farrell of the Garda Ombudsman as designated.*

25 14:47
26 *The investigation report, pursuant to Section 97 of the*
27 *Act, was forwarded to the Garda Commissioner on the*
28 *19th May 2015.*
29

1 *On the 25th August 2015 the Garda Síochána Ombudsman*
2 *Commission has been notified by the Garda Commissioner*
3 *that following consideration of the Section 97 report,*
4 *the Commissioner's decision is that no breach of the*
5 *disciplinary regulation has been found in relation to* 14:47
6 *the matter under investigation. Accordingly, the Garda*
7 *Síochána Ombudsman Commission shall take no further*
8 *action in this case.*

9
10 *Should you have any queries, please contact the* 14:47
11 *undersigned."*

12
13 It's signed by Declan Farrell, isn't that right?

14 A. That's correct, Judge.

15 102 Q. And whilst GSOC made some observations to the 14:47
16 Commissioner in relation to the investigation of these
17 type of cases in the future, none of the observations
18 reflected badly on you, isn't that right?

19 A. No, Judge.

20 103 Q. So, in any event, if we could just come back to 2007, 14:48
21 you would have been familiar with liaison between the
22 Gardaí and the HSE, isn't that right?

23 A. That's correct, Judge.

24 104 Q. And you'd have been familiar with the circumstances 14:48
25 where the Gardaí were under an obligation to notify the
26 HSE of any allegations of child abuse, isn't that so?

27 A. That's correct, Judge.

28 105 Q. And you would also have been familiar with the
29 reciprocal duty on the HSE to notify the Gardaí of any

1 allegations that they came across in relation to child
2 sexual abuse, isn't that right?

3 A. That's correct, Judge.

4 106 Q. You'd have also been aware of the fact that the HSE
5 were under an obligation to investigate allegations of 14:49
6 child sexual abuse, isn't that so?

7 A. That's correct, Judge.

8 107 Q. So, as far as you were concerned, the criminal
9 prosecution, or the criminal matter had been dealt
10 with, but it still left a situation where the Gardaí 14:49
11 had notified the HSE of the allegation, isn't that so?

12 A. That's correct, Judge.

13 108 Q. Did you have an expectation at that time that Sergeant
14 McCabe would have been interviewed by the HSE?

15 A. Well, Judge, the guidelines are very clear, and the 14:49
16 Children First Guidelines. The investigative role
17 falls on ours -- on ourselves. The welfare and the
18 decisions relating to that rest with the HSE. They can
19 call what they call, I think, a strategy meeting,
20 Judge. And they may request the investigating member 14:50
21 to attend that meeting, Judge. Now, I wasn't requested
22 to attend any strategy meeting, and I have only
23 learned, Judge, from the documents and from the
24 evidence proffered to this Tribunal, that, in fact, a
25 strategy meeting did take place, chaired, I believe, by 14:50
26 Ms. Mary O'Reilly, Judge, and a decision was made at
27 that strategy meeting not to interview or speak to
28 Sergeant Maurice McCabe other -- in relation to the
29 risk element, other than to inform him that he was at

1 that time under investigation.

2 109 Q. well --

3 A. I am only aware of that now, Judge.

4 110 Q. well, you can take it we have read the papers as well.

5 A. Absolutely, Judge. 14:51

6 111 Q. So I am more concerned about your state of knowledge in

7 2007.

8 A. Yes, Judge.

9 112 Q. Not from reading the papers. would you have a

10 reasonable expectation at that time that Sergeant 14:51

11 McCabe would have been interviewed by the HSE?

12 A. I presume he would, Judge.

13 113 Q. well, were you familiar --

14 A. Familiar, yes.

15 114 Q. -- with the procedures, which unfortunately aren't as 14:51

16 clear as you have perhaps indicated, as we have found

17 out? But would it have been a reasonable expectation

18 in your mind that Sergeant McCabe would have been

19 interviewed by the HSE even though there was to be no

20 criminal prosecution? 14:51

21 A. That would have been their assessment, if they decided

22 that was necessary, Judge, in relation to their risk

23 assessment of the situation, Judge.

24 115 Q. Yeah. so this would have been a live issue in your

25 mind at the time, that whilst that you were advising 14:52

26 Sergeant McCabe that there was going to be no criminal

27 prosecution, but nevertheless the HSE may wish to speak

28 to him at some future juncture in relation to the

29 allegations made by Ms. D?

1 A. I can't say it would have been a live issue, Judge, in
2 my mind. I can't say that I would have even been
3 giving it consideration, Judge, until or unless I was
4 contacted by the HSE, Judge, in relation to the matter.

5 116 Q. Well, did you, for instance, get back on to Rhona 14:52
6 Murphy and advise Rhona Murphy of the decision of the
7 Director of Public Prosecutions?

8 A. I am unsure, Judge. I am unsure. I may well have had,
9 but I am unsure of that. I have no memory of it,
10 Judge, but I may well have. I certainly have no 14:52
11 written record of it.

12 117 Q. No, there isn't any written record of it that the
13 Tribunal has either.

14 A. Yes.

15 118 Q. But I am just wondering, since you don't recall doing 14:52
16 it and we have no record of you having done so, why it
17 is that you wouldn't have got back on to Rhona Murphy
18 and advised her of the decision of the Director of
19 Public Prosecutions and the reasons that have been
20 stated in what is quite a forceful direction? 14:53

21 A. Well, I'm not saying I didn't, Judge. I'm just saying
22 I have no memory of it. I may well have made contact
23 with Rhona Murphy to say, you know, that the results
24 are back, I may well have. I just don't have a memory
25 of it, Judge. Simply, I'm sorry, I just don't have a 14:53
26 memory of doing it.

27 119 Q. Would there have been any difficulty in phoning her and
28 discussing the directions that were given?

29 A. There would have been no absolutely no difficulty

1 phoning her and telling her of the directions, the
2 direction back, no prosecution.

3 120 Q. Because, you see, you had statements -- you had
4 uncovered matters during the course of your
5 investigation that cast some doubt on the credibility 14:54
6 of the story that had been given by Ms. D, isn't that
7 right?

8 A. I was certainly questioning -- what I was doing, Judge,
9 my job was to gather the evidence and to advise the
10 Director in relation to the evidence available, and 14:54
11 that's --

12 121 Q. But you had unearthed matters that could have been of
13 assistance to Rhona Murphy in their assessment?

14 A. Well, I think the matters I had unearthed, Judge, were
15 mainly from their file. I was reading their files, 14:54
16 Judge, and I had found inconsistencies, and I think you
17 referred to the conversation I had with Rhona Murphy
18 where I had discussed those inconsistencies already,
19 Judge.

20 122 Q. Did you consider that perhaps, since it potentially was 14:54
21 not the end of the matter, that the HSE may conduct
22 their own inquiry in relation to the case? There was
23 that potential, was there not?

24 A. That was not a consideration of mine, Judge. My job
25 was clearly outlined by the divisional officer: to 14:55
26 carry out a criminal investigation and establish if
27 there was breach of discipline, and that's what I did,
28 Judge.

29 123 Q. So, in any event, did you report back in relation to

1 all these matters to your divisional officer?

2 A. I sent a report up, Judge, and a copy of the file, as I
3 referred to earlier, Judge.

4 **CHAIRMAN:** Mr. Marrinan, I'm sorry, I just checked back
5 in relation to my note, which may not be completely 14:55
6 accurate, in relation to Rhona Murphy, but I did take
7 her down as saying something like file returned from
8 DPP, no prosecution, and it's in around the April time.

9 **MR. MARRINAN:** Yes.

10 **CHAIRMAN:** As to how that happened or how that note 14:56
11 actually appeared on the file is uncertain, but I
12 presume it had to be from a garda somewhere or did it
13 come from --

14 **MR. MARRINAN:** It is almost in close proximity to a
15 phone call that was received from Ms. D. 14:56

16 **CHAIRMAN:** From Mr. D, was it?

17 **MR. MARRINAN:** Mrs. D, sorry.

18 **CHAIRMAN:** Oh, sorry, the mother, Mrs. D. And what
19 page is that, Mr. Marrinan?

20 **MR. MARRINAN:** Yes, it may well be, sir, that on page 14:56
21 257 --

22 **CHAIRMAN:** Right.

23 **MR. MARRINAN:** -- of the material, you will see "*Date*
24 *of meeting: Tuesday 21st April 2007 at 2:15pm*". And
25 then if you look, "*Reasons for Referral*" -- this may be 14:56
26 of assistance to you, Superintendent, I don't know, but
27 you have no recollection of this. "*File returned from*
28 *the DPP*", and then it states "*no prosecution*".

29 A. I see that, yeah.

1 124 Q. Then, if one then goes to page 256 --
2 **CHAIRMAN:** I'm sorry, you're going to 256,
3 Mr. Murrinan?
4 **MR. MARRINAN:** Yes.
5 **CHAIRMAN:** But the other thing I was confused about, 14:57
6 and again my memory is not getting it, this meeting
7 chaired by Mary O'Reilly, there doesn't seem to have
8 been any Garda involvement in it?
9 **MR. MARRINAN:** No, there was no Garda involvement.
10 **CHAIRMAN:** Yes. But there can be Garda involvement, 14:57
11 apparently.
12 **MR. MARRINAN:** No, this was a child protection meeting,
13 sir, and there wouldn't be involvement. There would be
14 involvement in a conference.
15 **CHAIRMAN:** Okay. And a strategy meeting is a different 14:57
16 thing, is it?
17 **MR. MARRINAN:** Yes.
18 **CHAIRMAN:** I'm sorry, I'm getting confused.
19 **MR. McDOWELL:** Judge, I think the mystery will be
20 explained at 256. 14:57
21 **MR. MARRINAN:** Sorry, sir, if I can just come back.
22 This is a phone call that was received by the senior
23 clinical psychologist, Emer O'Neill.
24 **CHAIRMAN:** Yeah.
25 **MR. MARRINAN:** And it is noted in the -- it's the same 14:58
26 day, but it is noted that the phone call was received
27 at 3:30pm --
28 **CHAIRMAN:** Yes.
29 **MR. MARRINAN:** -- which is after the meeting, and it's

1 a message.

2 **CHAIRMAN:** Yes. No, that is fine, Mr. Marrinan.

3 **MR. MARRINAN:** And the phone call then takes place.

4 **CHAIRMAN:** Thank you for explaining that. It does
5 help. well, in some ways, it may be hard to rely on 14:58
6 the file.

7 **MR. MARRINAN:** I don't know if you want me to open the
8 file, sir?

9 **CHAIRMAN:** well, I think we've possibly had enough of
10 the file at this stage. 14:58

11 125 Q. **MR. MARRINAN:** In any event, if we could just come back
12 then --

13 **CHAIRMAN:** I'm sorry, I shouldn't have asked a question
14 Mr. Marrinan. Mr. McDowell wants to say something now.

15 **MR. MCDOWELL:** The sequence of events appears to be 14:59
16 that she received a message that Ms. D had phoned, at
17 3:30 she phoned Mrs. D and there was a caller waiting
18 service and she left a message. At 4:15 she phoned
19 Mrs. D and Mrs. D said Garda Inspector Noel Cunningham
20 called out to her home today and informed herself and 14:59
21 Mr. D that DPP have come back and said there will be no
22 prosecution in relation to Ms. D's statement made in
23 relation to Maurice McCabe. Reason/explanation,
24 according to Mrs. D: Statement not enough for criminal
25 prosecution. 14:59

26 **CHAIRMAN:** well, the extent to which that intervention
27 by me helped at all, Mr. Marrinan, is debatable but
28 there it is.

29 **MR. O'HIGGINS:** Chairman, at the risk of slowing things

1 up, and I don't intend to slow things up at all. Just
2 in the context of what Mr. McDowell has said, I think
3 it should be noted from the point of view of just
4 assisting the chronology, the previous note referred to
5 on page 257, which is a note dated 21st April 2007, it 15:00
6 is clear that the telephone record that Mr. McDowell
7 has referred to is three days after the HSE had become
8 aware --

9 **MR. MCDOWELL:** Yes.

10 **MR. O'HIGGINS:** -- that the DPP directed no 15:00
11 prosecution.

12 **MR. MCDOWELL:** That is right.

13 **MR. O'HIGGINS:** I think that is important just to note.
14 So, in other words, on the 21st April -- unless that is
15 also the 24th. It is a little bit hard to see from the 15:00
16 page reference.

17 **CHAIRMAN:** I think it is the 24th, not the 21st. But
18 as you say, we're back to the file. In any event, the
19 last answer by the Superintendent, Mr. Murrinan, was,
20 he was unsure if he told Rhona Murphy, but there is 15:00
21 certainly a note on the file on a number of places that
22 the DPP had directed no prosecution.

23 126 Q. **MR. MARRINAN:** Yes. And I am more concerned,
24 Superintendent, whether you had notified or spoke to
25 Rhona Murphy directly yourself, but you have no 15:01
26 recollection of that?

27 A. I can't remember, Judge, I'm sorry.

28 127 Q. And subsequent to April 2007, did you at any time speak
29 to Sergeant McCabe and ask him whether the HSE had

1 pursued the matter against him or what had happened?

2 A. Absolutely not, Judge.

3 128 Q. Pardon?

4 A. Absolutely not.

5 129 Q. And you never made inquiries in relation to the HSE 15:01
6 file in relation to this matter subsequent to April of
7 2007, is that right?

8 A. Pardon me, sorry?

9 130 Q. You never made any inquiries into what had happened to
10 the HSE file in 2007? 15:02

11 A. No, Judge.

12 131 Q. Now, if we could just come forward then to the 13th
13 February 2017, and if we could have page 2054 put on
14 the screen, please. This was a statement made by
15 Maurice and Lorraine McCabe. It is dated 13th February 15:02
16 2017. Do you see that?

17 A. Yes, Judge. It's hard to read, but I see it.

18 132 Q. Sorry?

19 A. Yes, I can see it. It is kind of difficult to read.

20 133 Q. At the time in February of this year? 15:02

21 A. February 2017, yes.

22 134 Q. Yeah. Were you aware of the controversy that had
23 arisen in relation to Maurice McCabe?

24 A. The first time I knew about that, Judge, I think, was
25 on a television programme, an RTÉ programme. That was 15:03
26 the first I'd heard of that.

27 135 Q. Yeah. Well, this actually, I believe, post-dates the
28 RTÉ programme.

29 A. Well, I certainly knew nothing about it until the

1 'Prime Time' programme, Judge.

2 136 Q. That was on the 9th February.

3 A. Okay. That's when I heard about it, Judge.

4 137 Q. This is a statement that was made by Maurice and 15:03
5 Lorraine McCabe that was carried in the media to a very
6 great extent, and I am asking you were you familiar
7 with the statement? I will just highlight two aspects
8 of it.

9 **CHAIRMAN:** I'm sorry, would you just repeat the number,
10 please, Mr. Murrinan. 15:03

11 **MR. MARRINAN:** 2054.

12 **CHAIRMAN:** And is there a particular volume it's in?
13 I'm sorry, I just can't find it. Yes, I have it,
14 volume 8. Thank you very much. If you want to take
15 out volume 8, you can do so. 15:03

16 138 Q. **MR. MARRINAN:** I will read the first paragraph there
17 for you and then we will move on, just to contextualise
18 the matter.

19

20 *"We have endured eight years of great suffering, 15:04
21 private nightmare, public defamation and State
22 vilification, arising solely from the determination of
23 Maurice to ensure that the Garda Síochána adheres to
24 decent and appropriate standards of policing in its
25 dealings with the Irish people."* 15:04

26

27 And then if we go on to page 2055, under *"The Truth
28 Now"*, August 2013:
29

1 *"We are now aware from the Tusla file that when the*
2 *latest version of the false accusation of sexual abuse,*
3 *now including an accusation of a rape offence, was made*
4 *in 2013, the HSE wrote to Superintendent Noel*
5 *Cunningham, who had investigated the false claim in* 15:04
6 *2006 at Monaghan Garda Station on the 15th August 2013,*
7 *seeking a meeting to discuss the matter prior to making*
8 *any contact with the alleged perpetrator. We are*
9 *entitled to know now whether any such meeting or*
10 *discussion took place. If it did, the falsity of the* 15:05
11 *rape offence allegation would have been immediately*
12 *apparent to Superintendent Cunningham and the claimed*
13 *error would have been discovered immediately. Some*
14 *record of any such meeting or phone discussion and some*
15 *record of that discussion, if it occurred, must exist."* 15:05

16
17 Do you recall seeing that in the media?

18 A. I think I may well have, Judge, yes. I certainly had
19 to do responses in relation to it, Judge.

20 139 Q. Well, it focuses on a letter --

21 A. That's correct.

22 140 Q. -- that was sent to you by Keara McGlone, that we will
23 come to shortly, on the 15th August of 2015, isn't that
24 right?

25 A. That's correct, Judge.

26 141 Q. And it was a letter that went unanswered, isn't that
27 right?

28 A. That's correct, Judge.

29 **CHAIRMAN:** 2013?

1 A. 2013.

2 142 Q. **MR. MARRINAN:** 2013. And it was a letter that went
3 unanswered?

4 A. That's correct, Judge.

5 143 Q. And here in the media Sergeant McCabe and his wife are 15:06
6 making reference to this letter that was sent to you,
7 isn't that so?

8 A. That's correct, Judge, yes.

9 144 Q. And you think that you had read it at the time?

10 A. Yes. When this matter arose, Judge, in 2017, initially 15:06
11 I had no memory of the letter at all, and we carried
12 out a very detailed search of my office, being the
13 district office, where the files are kept, and the
14 correspondence register and we couldn't find a record
15 of it, and I really was at great stress and distress to 15:07
16 find this letter, because I had no memory of it, Judge,
17 of its content or anything. And eventually, Judge, I
18 did find the letter and I wrote back, because Garda
19 Headquarters at this stage were seeking it, Judge, I
20 think as a result of a disclosure sought by Costello 15:07
21 solicitors, and I wrote back informing them of the
22 circumstances, Judge, in which the letter had been
23 received and hadn't, as it should have been, dealt with
24 by me, Judge.

25 145 Q. I wonder, Superintendent, whether that can be entirely 15:07
26 correct. The investigation that you carried out in
27 2007 in relation to Sergeant McCabe was a sensitive
28 investigation, isn't that right?

29 A. That's correct, Judge.

1 146 Q. It was one that you weren't entirely happy with being
2 involved with because you knew the parties, isn't that
3 so?

4 A. That's correct, Judge.

5 147 Q. You had drawn the matter to the attention of your chief 15:08
6 superintendent and you were given a written direction
7 to investigate the matter, even though, at the time,
8 you didn't think it was appropriate, is that right?

9 A. That's correct, Judge.

10 148 Q. And you -- thereafter, and probably arising out of that 15:08
11 investigation, relations between you and Sergeant
12 McCabe had deteriorated dramatically?

13 A. Well, I had no involvement with Sergeant McCabe, in the
14 sense I had no conversations with him in that period of
15 time. And what I have said, and what I will always 15:09
16 say, is, that I have no axe to grind, to use that
17 expression, with Sergeant Maurice McCabe, or never had
18 have and never will have, Judge.

19 149 Q. Well, Superintendent --

20 A. But I certainly -- if I may. But I certainly did 15:09
21 believe, I certainly did believe that some of the
22 issues that arose for me subsequent to the
23 investigation, that Maurice may have had some input
24 into it, I'll put it like that, Judge.

25 150 Q. Superintendent, you gave a statement, which I have 15:09
26 referred to --

27 A. Yes.

28 151 Q. -- to GSOC. In that statement that you made in
29 November 2014, you highlighted the fact that subsequent

1 to your investigation of Sergeant McCabe, that you were
2 the subject matter of a number of complaints that came
3 in from Bailieboro?

4 A. That's correct, Judge.

5 152 Q. You've told us that those complaints emanated from 15:10
6 Sergeant McCabe, isn't that right?

7 A. I don't think I said that, Judge. I don't think I have
8 used that word "emanated from Sergeant McCabe", but I
9 stand corrected.

10 153 Q. Well, no, I have used the word. 15:10

11 A. Right.

12 154 Q. Is there any other word that you would like to use?

13 A. Well, I think he certainly -- I think the word I used
14 had an input into some of them. Certainly into -- I
15 believe, I believe, I believe that he had an input into 15:10
16 one serious complaint that was made against me, Judge,
17 and which was subsequently found to be totally
18 unfounded, Judge, and other matters then, Judge, which
19 went into O'Higgins, which was subsequent to that,
20 also, but -- 15:10

21 155 Q. Had he initiated the complaints against you?

22 A. No.

23 156 Q. Right. And insofar as --

24 A. Only in relation to the O'Higgins Commission he had
25 initiated, he had specifically referred to me in some 15:11
26 of the matters, Judge, and I think the language used by
27 Mr. O'Higgins was, Judge, whether, maybe, any inference
28 of any corruption against Superintendent Cunningham is
29 totally and absolutely -- totally unfounded, I think

1 that is the language of Mr. O'Higgins, Judge.

2 157 Q. We are not here, Superintendent Cunningham, to revisit
3 the O'Higgins Commission. I know you may be anxious to
4 make your point in relation to observations that have
5 been made by the Chairman of that Commission. But what 15:11
6 we are concerned about is getting to the heart of how
7 you felt about Sergeant McCabe from April of 2007 up
8 until August 2013, when you received a letter from
9 Keara McGlone. Now, what was your attitude towards
10 Sergeant McCabe during this period of time? 15:12

11 A. I don't think I had an attitude, Judge.

12 158 Q. What complaints had he levelled against you?

13 A. Well, there was the matters that were dealt with in
14 O'Higgins, Judge. There was also another one --

15 159 Q. Sorry -- 15:12

16 A. Pardon me.

17 160 Q. I don't want you to itemise them.

18 A. Sorry.

19 161 Q. Had he made complaints against you?

20 A. He had in -- there was complaints which I believe 15:12
21 Maurice McCabe, as I said, had an input into. That's
22 the language I have always used, Judge.

23 162 Q. All right. And when had those first surfaced?

24 A. The first one, I believe, Judge, was very soon after I
25 left Carrickmacross -- or left Bailieboro, sorry, and 15:12
26 went to Carrickmacross. It was in relation to a fatal
27 hit-and-run accident Judge.

28 163 Q. When had his input into these first surfaced?

29 A. Em, possibly during the Byrne/McGinn investigation.

1 164 Q. Which was when?
2 A. In advance of the O'Higgins Commission, Judge, which I
3 think was probably 2012 -- 2011/'12, maybe earlier.
4 I'm just not that sure of the dates, Judge, I'm just
5 trying to -- 15:13
6 165 Q. So, in 2013, in August 2013 --
7 A. That's correct.
8 166 Q. -- Sergeant McCabe was somebody that you felt had made
9 inappropriate, I will put it this way, inappropriate
10 observations as to how you had conducted yourself -- 15:13
11 A. Yes.
12 167 Q. -- as a member of An Garda Síochána, is that right?
13 A. I believe unfounded and inappropriate, yes, Judge.
14 168 Q. And I suppose the fact that they were unfounded and had
15 no basis whatsoever, would cause you to view 15:14
16 Sergeant McCabe as somebody who had unnecessarily, in
17 an unjustified manner, caused some hardship to you?
18 A. I'm not sure if I'd have given it that level of
19 consideration, Judge. You know, I do my job, my job
20 keeps me extremely busy. I don't allow myself those 15:14
21 type of considerations. You know, if you are thinking
22 badly about somebody or something, it's only
23 diminishing yourself, it's certainly not doing anything
24 for yourself. I don't engage in that, Judge. I just
25 simply wouldn't engage in that. I get on with my day. 15:14
26 **CHAIRMAN:** Sorry, just from the point of view of
27 chronology. It was on the 11th October 2010
28 effectively the Byrne/McGinn thing ended, and then
29 there was a meeting with Sergeant McCabe about that and

1 then there was a review, I think, by Deputy
2 Commissioner Rice, which was a desk review, and that
3 was an affirmation on the 8th March 2011. So that is
4 the background coming up to August 2013.

5 **MR. MARRINAN:** Thank you, sir.

15:15

6 169 Q. I mean, it is apparent that, as of the 15th August
7 2013, Sergeant McCabe had certainly set out his stall
8 in relation to you in the clearest possible terms,
9 isn't that right?

10 A. Well, he had -- yes.

15:15

11 170 Q. And as far as you were concerned, you were the subject
12 of untrue allegations that he had made concerning you?

13 A. Yes, Judge.

14 171 Q. And you believed in some way that the genesis of those
15 allegations lay in your investigation of him in 2007?

15:16

16 A. I can only go on the statement of Maurice McCabe
17 himself.

18 172 Q. No, if you'd deal --

19 A. Judge --

20 173 Q. Sorry, Superintendent --

15:16

21 A. My apologies, I am sorry if I am not answering the
22 question.

23 174 Q. -- if I could just cut you short.

24 A. Yes, absolutely.

25 175 Q. We're not concerned with your interpretation of
26 Sergeant McCabe's; I am talking about your attitude.
27 Did you believe that the genesis of Sergeant McCabe's
28 accusations against you lay in the fact that you had
29 investigated him in 2007?

15:16

1 A. There would have been no other reason, Judge.

2 176 Q. Yes. Right. So, as of 2013, not only is the fact that
3 you had conducted an investigation in relation to a
4 fellow member of An Garda Síochána in 2007, and that in
5 itself was unusual, but that investigation had given 15:17
6 rise to the Byrne -- well, perhaps was the genesis of
7 the Byrne/McGinn investigation, isn't that right?

8 A. Yes, Judge.

9 177 Q. Yes. So all these matters are very much to the fore,
10 they're live issues, as far as you're concerned, going 15:17
11 through 2010, 2011 into 2012, isn't that right?

12 A. Yes, Judge.

13 178 Q. And here on the 15th August of 2013, if we could have
14 page 1699 on the screen, please, a letter --

15 **MR. O'HIGGINS:** Chairman, I wonder could I just make 15:18
16 one matter of context here, which I think, in fairness
17 to the witness, ought be pointed out. The matters that
18 you, Chairman, have listed dealt with a matter which
19 appeared to have ended in March 2011. Now, I don't
20 know where Mr. Marrinan is going with this line of 15:18
21 questioning, but it appears to be an endeavour to link
22 the Byrne/McGinn report and feelings surrounding it
23 with the failure of a garda on some point to not answer
24 a letter sent some years later. I am not clear on the
25 purpose of that, but in fairness to the witness, I 15:18
26 don't think it's fair to suggest that matters dealing
27 with March 2011 somehow provide a bridge to August 2013
28 or could entitle the questioning counsel to suggest
29 these are now live issues and use that as an underlying

1 premise for what appears to be a thesis that it is
2 connected with the acknowledged failure of this guard
3 to send back a letter, to respond to a letter issued in
4 August 2013. In fairness to the witness, I think that
5 is appropriate to point out. 15:19

6 **MR. MARRINAN:** well, sir, I am under an obligation to
7 pursue these matters, to examine and indeed
8 cross-examine where issues arise, and the witness has
9 stated in evidence that as of August 2013 -- sorry, as
10 of January -- sorry, February 2017, that he had no 15:19
11 recollection of ever having received a letter from
12 Keara McGlone. We have now gone back to an earlier
13 period of time to highlight that these matters would
14 very much have been in his mind and to test that, and
15 we're now dealing with August of 2013 when he received 15:20
16 the letter.

17 **CHAIRMAN:** well, I think the inquiry is a correct
18 inquiry to make, Mr. O'Higgins. It's not an accusation
19 against the Superintendent; it's to try and put matters
20 in a proper context and to try and see whether evidence 15:20
21 can be accepted by the Tribunal within this context. I
22 have already mentioned that Byrne/McGinn investigation
23 finished some time around October, and I know that on
24 the 11th October 2010 Sergeant McCabe met those two
25 officers in the Hillgrove Hotel. I also know that 15:20
26 there was a desk study by Commissioner Rice, which
27 issued a report, which didn't find any fault with the
28 Byrne/McGinn investigation, and that was on the 8th
29 March 2011. I also note that Superintendent McGinn

1 informed Sergeant McCabe of that desk study just some
2 time later, and then there's involvement with the
3 private secretary to the Minister for Justice. There
4 is a report on the 9th June 2011 about the 624 PULSE
5 incidents. There's communications that month by 15:21
6 Sergeant McCabe with the Minister for Justice. There
7 is also, coming into September, Sergeant McCabe being
8 interviewed by GSOC in relation to the handling of the
9 ML assault case. There's allegations of corruption
10 against Commissioner Callinan made by Sergeant McCabe 15:21
11 on the 12th January 2012. The Molloy case,
12 disciplinary proceedings were commenced against
13 Sergeant McCabe in relation to the proper custody of a
14 computer on the 10th February 2012. There's a dossier
15 to the leader of the Opposition on the 19th February 15:21
16 2012. There's the McGrath case before GSOC on the 12th
17 August 2012. I could go on, but I have a complete
18 picture in relation to all of the events that were
19 happening. I don't think there is anything wrong with
20 Mr. Marrinan trying to place these in context. 15:22
21 **MR. O'HIGGINS:** Could I say this Chairman: In my
22 submission it would be -- fairness requires that it
23 simply be put and it can be elaborated upon and teased
24 out thereafter, but in my submission it would be fairer
25 if it is put to the witness and if he is bluntly asked 15:22
26 did he or did he not receive -- did he know he
27 received Keara McGlone's letter in 2013, and if not why
28 not. And then his answer can be, if necessary, tested
29 and probed.

1 **CHAIRMAN:** But I think what would be wrong would be if
2 the superintendent was cut off from making any
3 explanation that he wished. But I don't think there is
4 anything wrong with that. And in the event that
5 anything is left out we'll certainly come back to it. 15:22
6 **MR. O'HIGGINS:** May it please you Chairman.

7 179 Q. **MR. MARRINAN:** So as of August of 2013 Sergeant McCabe
8 had publicly made allegations concerning you and
9 investigations that you were involved in, is that
10 right? 15:23

11 A. I'm not sure if publicly, Judge.

12 180 Q. Right.

13 A. I'm not sure if that word is correct, publicly.

14 181 Q. And he was, or were you aware of the fact that he was
15 also complaining through 2012 into 2013 in relation to 15:23
16 the fixed charge penalty notices?

17 A. Oh yeah, I was aware that he raised the issues,
18 concerns regarding the fixed charges notices, yes
19 absolutely.

20 182 Q. So you received this letter from Keara McGlone -- 15:24
21 A. Yes.

22 183 Q. -- on the 15th -- which is dated 15th August 2013, is
23 that right?

24 A. That's correct, Judge.

25 184 Q. Do you know when it was that you received that letter? 15:24
26 A. I can only surmise, Judge, I have given the dates to
27 the Tribunal in relation to, I was on annual leave. It
28 was a kind of unusual time for me because I tended not
29 to take protracted annual leave and certainly not be

1 away from my office. I have an unfortunate habit, as
2 may be described, as going into my office when I am on
3 leave every couple of nights, three or four nights, to
4 establish if there is anything happening. But on this
5 particular occasion, Judge, I didn't, I was away, and 15:24
6 when I returned back, Judge, I can only say I must have
7 opened it on that occasion. I did note in my diary on
8 the date that I returned back, Judge, that I was in my
9 office, Judge, from 8:15am until 12:15am the following
10 morning and back in my office at 9:00am. So I 15:25
11 obviously came back to a huge amount of post, Judge, a
12 huge amount of correspondence and work.

13 185 Q. Can you tell us how long you were away from your post?
14 A. I gave the dates, Judge. I'm not -- off the top of my
15 head, I certainly wouldn't have learned them off by 15:25
16 heart. I certainly gave the dates before. If we have
17 it here, Judge.

18 186 Q. Just a moment.
19 A. On rest days from -- annual leave and rest days, Judge,
20 from 17th July, Judge, until 16th September 2013 and 15:25
21 also from the 8th October 2013 to the 13th October
22 2013, and then subsequently I took some leave, Judge,
23 some time off at the end of the month as well.

24 187 Q. Well, you were absent from 17th July until 16th
25 September? 15:26
26 A. So I can only assume it was on my return, Judge, on the
27 16th September.

28 188 Q. Who had taken up the position? Who was acting
29 superintendent?

1 A. There would have been different inspectors acting
2 during that period of time, Judge, would have come in
3 and acted.

4 189 Q. So had you no --

5 A. At that time, Judge, just for clarification, Monaghan 15:26
6 is a very, very busy district, Judge, there is
7 normally, historically, two inspectors -- a
8 superintendent and two inspectors attached to the
9 district. During these years, because of cutbacks,
10 Judge, and from my time taking up, there was only one 15:26
11 inspector, which left the workload huge. And
12 essentially, Judge, we were managing -- I just checked
13 it, there was two and a half thousand recorded
14 incidents in Monaghan for the first six months of 2013
15 and they have to be reviewed by the inspector, the 15:26
16 superintendent, who is working, Judge. As I say, I
17 gave you the length of my day on that occasion, and I
18 noted even in my diary on that day that I returned,
19 that at 10:00pm on that night I was discussing files
20 with the inspector, who -- my local inspector, my one 15:27
21 inspector, Judge. So I was essentially bringing myself
22 up to speed and dealing with all the matters, which
23 were live matters, Judge. Which were, you know,
24 matters which were current at that time in my district,
25 Judge, which I had responsibility for. 15:27

26 190 Q. Had you been absent for the two, the whole two months
27 from your office?

28 A. I believe I must have been, Judge. I know I was away
29 out of the country during that time. I know I was

1 dealing with a domestic situation at home, a child
2 going away, and I know I was very busy with that. So
3 it was a very different type of annual leave than I
4 would normally have taken, Judge.

5 191 Q. You read the letter, is that right? 15:27

6 A. I must have read the letter, because of where I found
7 the letter, I clearly read the letter, Judge. And
8 there was nothing -- what I can say from its content,
9 if I wish me to go that far?

10 192 Q. If you could have page 1699 on the screen. 15:28

11 A. Yes. As you see, Judge, the letter refers back to the
12 investigation I carried out in 2007. There was nothing
13 in the letter to suggest any level of urgency in it,
14 Judge, or any change in the status of the investigation
15 or the knowledge I might have, Judge. It was, if I may 15:28
16 describe it, and not being in any way disingenuous, as
17 a housekeeping letter, Judge. It was something that
18 was -- that required updating. But there was nothing,
19 certainly nothing to alert me to any level of urgency,
20 Judge, in relation to this matter. 15:28

21 193 Q. Well if we can go through the letter, superintendent.

22
23 *"Re: Criminal investigation into allegations of child*
24 *sexual abuse made by Ms. D against MMCC, an adult, in*
25 *2007."* 15:29

26
27 You would have immediately identified that as referring
28 to Sergeant McCabe, isn't that right?

29 A. Yes, Judge.

1 194 Q. So you must have wondered before you went on to even
2 read the letter how this matter was resurfacing, some
3 six years later?

4 A. I don't know if I'd have afforded it that level of
5 pause, Judge. I'd probably just have read the letter 15:29
6 through.

7 195 Q. Well, one might have expected you to look at it and say
8 'My goodness, what's this doing back?'.
9 A. I may well --

10 196 Q. Was that your reaction? 15:29
11 A. I can't remember, Judge, what reaction I had.

12 197 Q. *"Dear Superintendent Cunningham*
13
14 *Health Service Executive Child and Family Services have*
15 *received a referral from Rian, a therapeutic 15:30*
16 *counselling service for adult survivors of childhood*
17 *abuse. The referral states Ms. D, now aged 21, has*
18 *discussed during counselling sessions that she was*
19 *sexually abused during her childhood by an adult male,*
20 *MMCC." 15:30*
21

22 Do you see that?

23 A. I do.

24 198 Q. *"I note from the social work file that you conducted a 15:30*
25 *criminal investigation into these allegations in 2007.*
26 *However, it appears that the alleged perpetrator was*
27 *not met with by the Health Service Executive at the*
28 *time. I would like to meet you to discuss the case*
29 *prior to making any contact with the alleged*

1 *perpetrator. I would appreciate if you could contact*
2 *me to arrange a date to meet in Monaghan that is*
3 *suitable for you. I can be contacted on --"*
4

5 And she gives her number. "-- or in the Cavan. 15:31
6 Office --" and a number there, "-- or Monaghan" and a
7 number there.

8
9 *"Many thanks for your assistance in this matter.*
10 *Your sincerely.* 15:31

11 *Keara McGlone.*
12 *Social Work Team Leader."*
13

14 And signed on her behalf by Denise Duignan. What is
15 clear from that letter is that this complaint that had 15:31
16 been made by Ms. D was resurfacing, isn't that right?

17 A. It was referring back to the investigation, the 2007 --
18 2006/7 investigation.

19 199 Q. And that it was resurfacing?

20 A. Yes, Judge. 15:31

21 200 Q. In 2013?

22 A. That young girl had gone for counselling, yes.

23 201 Q. Yes.

24 A. The lady now.

25 202 Q. And it's clear that Keara McGlone is indicating that 15:32
26 the HSE feel the need to meet with Sergeant McCabe
27 about this allegation, isn't that right?

28 A. Well, she's saying that they didn't meet. They didn't
29 express that they felt to need, they said "*However, the*

1 *alleged perpetrator was not met and so I would like to*
2 *meet to discuss prior to making any contact," yes.*

3 203 Q. *"I would like to meet with you to discuss the case --"*
4 A. Prior.

5 204 Q. *"-- prior to making any contact with the alleged* 15:32
6 *perpetrator."*

7 A. That's correct.

8 205 Q. So it is clear from that, that she intends --
9 A. To meet him.

10 206 Q. -- contact Sergeant McCabe -- 15:32
11 A. Yes.

12 207 Q. -- about an allegation that was six years old?
13 A. Absolutely.

14 208 Q. Keara McGlone hadn't previously been involved and
15 wasn't one of the social workers that you had any 15:32
16 dealings with, isn't that right?

17 A. No, Judge. But I had complied with the Children First
18 Guidelines and provided them with the information,
19 Judge. It was clearly on their file immediately
20 afterwards, Judge -- or immediately, that they 15:33
21 requested the statement back in, I think it was January
22 2007. So the information was on the file. The
23 information that I could proffer was on the file in
24 relation to the matter.

25 209 Q. Do you regret now not replying to this letter? 15:33
26 A. Oh, absolutely.

27 210 Q. Do you appreciate that had you replied to this letter
28 that the subsequent debacle may not have occurred?
29 A. No, I don't.

1 211 Q. You were in a position where you would have had no
2 difficulty liaising with the HSE, isn't that right?
3 A. That's correct.

4 212 Q. You had done so in the past in relation to probably
5 many cases? 15:33
6 A. Yes, Judge.

7 213 Q. You had in fact in this case spoken quite openly with
8 Rhona Murphy back in 2006, isn't that right?
9 A. And that was clearly on the file. I didn't see that
10 until now. Or until this commission, Judge. 15:34

11 214 Q. You had intimate knowledge in relation to the
12 investigation, isn't that right?
13 A. That's correct.

14 215 Q. You also had intimate knowledge in relation to the
15 Ms. D file from 2005, isn't that right? 15:34
16 A. The part that had been given to me, yes, absolutely.

17 216 Q. You read it extensively and you quoted from it --
18 A. That's correct, Judge.

19 217 Q. -- in the report that you sent to the Director of
20 Public Prosecutions? 15:34
21 A. That's correct, Judge.

22 218 Q. You had dealings with Rhona Murphy, you also knew that
23 Orla Curran and the clinical psychologist, Emer
24 O'Neill, had dealt with Ms. D, isn't that right?
25 A. That's correct. 15:34

26 219 Q. And here, six years later, Keara McGlone who is a
27 social work team leader, is looking to tap in to the
28 knowledge that you may have from your investigation in
29 2007, isn't that right?

1 A. That's correct.

2 220 Q. She is looking for assistance for you -- from you,
3 isn't that right?

4 A. She's looking to discuss with me. Meet with me, yes.

5 221 Q. And the assistance that you could have provided was 15:35
6 quite extensive?

7 A. I certainly could have reiterated the information that
8 I had already given, that was on the file. I didn't
9 know this lady, Ms. McGlone, nor she me, I gather. I
10 don't know how she knew, therefore, I was the 15:35
11 investigating member, because the referral clearly had
12 Sergeant Fraher, Detective Sergeant Fraher as the
13 investigating member. So the only way that I gather
14 that Ms. McGlone would have known to write to me and
15 not to Detective Sergeant Fraher was that she would 15:35
16 have looked at the file. In doing so, Judge, I would
17 have expected that she would have found the information
18 that I had provided in accordance in the Children First
19 Guidelines, Judge. And would have obviated the need to
20 send the letter to me. 15:36

21 222 Q. Superintendent --

22 A. I believe. Maybe I'm incorrect.

23 223 Q. -- you had a professional duty to respond to this
24 letter --

25 A. Absolutely. 15:36

26 224 Q. -- isn't that right?

27 A. Yes, Judge.

28 225 Q. It's not Keara McGlone's fault that you didn't respond
29 to the letter.

1 A. No, Judge. It's not.

2 226 Q. The fault rests entirely with you.

3 A. Yes, Judge. And if I may put it in context. When I
4 carried out the investigation, Judge, years -- the
5 investigation file, which is different than the file 15:36
6 that's sent to the Director, because obviously it has
7 more material, from the very outset, I was very careful
8 in relation to this matter. I was very conscious of
9 the level of sensitivity in relation to this file. And
10 on that basis, Judge, this file was not filed as files 15:37
11 would normally be in the district office, where the
12 investigation files are kept. This file was kept in my
13 possession. Clearly when I found the letter in
14 response to the correspondence the letter was with the
15 file. I had clearly safely put it away with the file 15:37
16 knowing, as outlined by counsel, that the information
17 on the file was what would be requested during the
18 course of a conversation, which I intended to have, I
19 intended -- the intention was never not to respond to
20 the letter, Judge. The intention was to meet 15:37
21 Ms. McGlone and have available to me the file to do
22 that. And that's why I found the letter on the file,
23 Judge. The intention was never -- it was very
24 unfortunate, Judge, that I was ultra careful. Because
25 if I hadn't been, the letters would have simply entered 15:38
26 the normal correspondence register, Judge, and my own
27 office would have reminded me that this hasn't been
28 dealt with and I would have done so, Judge. So it was
29 my misfortune that I was being so careful, that I ended

1 up being the subject of a situation where I didn't
2 answer correspondence, which clearly, Judge, I had a
3 responsibility to do. But it was not in any way to
4 suggest or to imply that it was in any way - I have to
5 choose my words - malicious, I would use, Judge. I 15:38
6 don't like using the word. But it wasn't in any way of
7 that. It was, in fact, the very opposite, Judge; I was
8 just being too careful with the information that was on
9 this file and I matched the letter to the file and I
10 actually clearly forgot about it and that is 15:39
11 unfortunate. But I was dealing with matters as I
12 clearly outlined to you, Judge, live matters. This
13 file was closed, as far as I was concerned, in 2007.
14 It was finished with. The matter -- I moved on. I had
15 lots of other investigations and as a district officer 15:39
16 with responsibility for Monaghan district, Judge, in
17 2013, I had a huge amount of work to do. And
18 unfortunately this matter didn't strike me, and there
19 was nothing in it to suggest to me that there was a
20 level of urgency so required, Judge. I'm not putting 15:39
21 any responsibility on Ms. McGlone, I am putting the
22 responsibility on myself, Judge.

23 227 Q. Can we just break this down, because you've referred to
24 the sensitivity of the file?

25 A. Yes. 15:39

26 228 Q. And what one might have expected, because the file was
27 so sensitive, that when you received this letter from
28 Keara McGlone that you would have had even greater
29 reason to respond to it because of the very sensitivity

1 of the matters that she was highlighting.

2 A. But it was old file for the want of a better word, it
3 was an aged matter.

4 229 Q. Superintendent, I have to ask you these questions --
5 A. No, I appreciate that. 15:40

6 230 Q. -- you understand that?
7 A. I appreciate that, Judge. Absolutely.

8 231 Q. Because, as you have correctly indicated, there is a
9 suggestion there that in actual fact that you just
10 simply ignored this letter and you did so because this 15:40
11 matter would -- and allowed it to remain in the HSE
12 Tusla so that it could fester there, perhaps surface
13 during an appointment that would be made with
14 Sergeant McCabe, and cause him some hardship. Do you
15 understand? I mean, that is the suggestion. 15:41

16 A. Absolutely.

17 232 Q. That is the suggestion that is there.
18 A. But I totally and absolutely refute any suggestion of
19 that, Judge.

20 233 Q. Well, can the Tribunal take it that in terms of the 15:41
21 statement that you made to the Tribunal that you were
22 absent from mid July until mid September, isn't that
23 right?
24 A. That's correct, Judge.

25 234 Q. But that hasn't stopped you from responding to the 15:41
26 letter when ultimately you opened it, isn't that right?
27 A. Excuse me, sorry?

28 235 Q. That hasn't stopped you from responding --
29 A. No.

1 236 Q. -- to the letter when you opened it?
2 A. But it wasn't, it wasn't a priority on my desk. It
3 wasn't a live investigation. It wasn't something which
4 required my attention. Much of the material on my
5 desk, Judge, was live at that time. I was dealing with 15:41
6 lots of issues, missing children, Judge, files of
7 very -- you know, we have several homes in the area,
8 Judge, which have children at risk and they go missing
9 unfortunately often, and we have to deal with them.
10 They are live issues. Any of the files that I was 15:42
11 dealing with were live issues. This file, Judge, from
12 my -- as far as I was concerned, Judge, was closed.
13 This issue had been dealt with. The protocols had been
14 adhered to. My work was done, Judge. And there was
15 nothing to suggest in this letter that there was any 15:42
16 change in the allegation, we'll call it, from Ms. D.
17 Now subsequently, and I know you don't probably, maybe
18 don't want me to go into the evidence that I have read
19 from the Tribunal, but it is very clear, Judge, that
20 even at the time that Ms. McGlone wrote this letter 15:42
21 that as far as she was concerned the allegation was the
22 exact same as the 2000, as a result of her verbal
23 conversation with the Rian counsellor. It was only
24 subsequently that, when the Rian counsellor committed
25 that to writing, Judge, that the false allegation 15:42
26 surfaced. But Ms. McGlone I think, and it was clear in
27 her evidence, and maybe I will stand corrected, that
28 when she'd contacted me that as far as she was
29 concerned it was the original allegation that she

1 wished to speak to me about. And as I said, Judge, I
2 had already provided all that information to the HSE in
3 accordance with the guidelines, Judge.

4 237 Q. Can I come back to the reason as to why you didn't pick
5 up the phone and call Keara McGlone? 15:43

6 A. No other reason than I put it back to do it when I was
7 less busy.

8 238 Q. So it's your contention that because you were too busy
9 and you had other matters to deal with, that this was
10 put on the long finger, is that it? 15:43

11 A. That's correct, Judge.

12 239 Q. And that, having been put on the long finger,
13 eventually you simply forgot about it?

14 A. Unfortunately, Judge, if I had put it on the long
15 finger and left the file on my desk - which was not my 15:44
16 practice with this file - I would have seen it, picked
17 it up and dealt with it. My unfortunate situation was,
18 Judge, that I locked it, I put it away. And it was
19 simply no longer there to remind me to deal with it,
20 Judge. 15:44

21 240 Q. And you forgot about it to such an extent that in
22 February of 2017 when you read the statement that was
23 made by Maurice and Lorraine McCabe, that that didn't
24 jog your memory at all, that you had received such a
25 letter? 15:44

26 A. Well, as I said in relation to the article, I'm unsure
27 if I read it in the newspaper or if it was the subject
28 that was sent to me in relation to -- you know, from
29 headquarters, to secure the letter. I'm unsure exactly

1 what the sequence was there. But in any event, Judge,
2 when I got the correspondence requesting it I actually
3 didn't have a memory of the letter and it caused me to
4 search elsewhere for it, Judge.

5 241 Q. So you received a request from headquarters -- 15:45
6 A. I think it was, yes, Judge.

7 242 Q. -- in relation to a question, and I will come to this,
8 in relation to this particular letter?
9 A. Yes.

10 243 Q. And in mid February you say that even then you had no 15:45
11 memory of having received the letter in August 2013, is
12 that your evidence?
13 A. I couldn't remember it, Judge. I really couldn't
14 remember it.

15 244 Q. And you received a separate request under the Data 15:45
16 Protection Act that had come from headquarters again,
17 and again you couldn't recall this letter of August
18 2013?
19 A. I'm not sure if they were separate, Judge, or if they
20 were the one matter, Judge. But I certainly was 15:46
21 carrying out a search and I was receiving emails
22 constantly to respond and respond. And I literally --
23 we took the office apart and eventually I went back to
24 the original file, found it and, with a sense of
25 relief, Judge, responded straight a away and attached a 15:46
26 copy of the letter.

27 245 Q. And in relation to -- obviously Sergeant McCabe was
28 somebody that you knew.
29 A. Yes.

1 246 Q. Maybe had he been a thorn in your side to some extent?
2 A. No.

3 247 Q. Would that be fair to say?
4 A. No, I don't -- you know, I don't harbour those type of
5 things Judge. 15:46

6 248 Q. No, but had he been a thorn in your side? Had he made
7 you feel uncomfortable over the years with the
8 allegations that he had levelled against you?
9 A. That would be fair, Judge.

10 249 Q. Pardon? 15:46
11 A. That would be a fair assessment.

12 250 Q. Yes.
13 **CHAIRMAN:** Sorry, could I intervene just to clarify a
14 matter? would it be fair that relations were so bad
15 that he tape-recorded a conversation between you and he 15:47
16 on one occasion by having a dictaphone or something up
17 his sleeve?
18 A. That was certainly a shock, surprise, whatever word you
19 would use. It was clear that, not only did -- the tape
20 recording was of itself, Judge, disappointing, 15:47
21 shocking, whatever word I would use, but what he
22 clearly tried to do during the course of the tape
23 recording was more unsettling to me. Because I didn't
24 know, as you know, that I was being taped. I had no
25 idea of this until the O'Higgins Commission. I was 15:47
26 there to investigate a complaint that he had made. I
27 was endeavouring to get him to make a statement and
28 provide the documents in relation to the complaint he
29 had made against a colleague. Maurice wanted to talk

1 about anything but the complaint that I was there to
2 do. And in fact his transcript of the tape shows
3 clearly the question that he said to me, and he said to
4 me: Noel, I want to talk off the record. To which I
5 responded: Maurice, you know me well, you know me a 15:48
6 long time, you know I don't do off the record, I'm
7 black and white, it's the way I was born, straight down
8 the middle. And I didn't even remember giving him that
9 response, Judge, until I saw the tape, but I think it
10 is indicative of the manner in which I deal with 15:48
11 things. I don't do off the record, I don't do the
12 motion in relation to material, I do my job, Judge.
13 **CHAIRMAN:** Mr. Marrinan, again I have interrupted you,
14 but you didn't know about that until Byrne/McGinn came
15 out which would have been October -- 15:48
16 A. No, I didn't about that, Judge, until the O'Higgins
17 Commission.
18 **CHAIRMAN:** O'Higgins, fine. And then the actual
19 conversation you're referring to is about when?
20 A. I have the tapes -- is it August 2008? I think around 15:48
21 August 2008.
22 **CHAIRMAN:** Sorry, there seems to be a lot of Gardaí
23 recording each other's conversations surreptitiously.
24 It certainly surfaced in Donegal as well.
25 A. I never taped anybody in my life, Judge. Nor would I. 15:49
26 **CHAIRMAN:** All right. But it seems to be what the
27 Gardaí do to each other.
28 A. Unfortunate, Judge, when it has to go to that.
29 251 Q. **MR. MARRINAN:** You see, superintendent, one might have

1 thought in circumstances where Keara McGlone was
2 writing to you on the 15th August 20 --

3 **MR. O'HIGGINS:** Actually, Judge, I wonder -- Judge, you
4 just made a comment there, which I mean, that is -- you
5 know, I would ask, Chairman, to have regard to the fact 15:49
6 there are media present and headlines are made from
7 comments that come from the bench particularly. And I
8 know the Chairman is going to be scrupulously fair in
9 this Tribunal, but I would ask that asides like that
10 not be made if it is directed to An Garda Síochána in 15:49
11 circumstances where it --

12 **CHAIRMAN:** Mr. O'Higgins, I am not going to take
13 correction from you. The plain reality is: The Morris
14 Tribunal Report came out and reported a number of those
15 conversations between Gardaí which were taped, here we 15:49
16 have it again. I regard it as highly undesirable. I
17 think you regard it as highly undesirable as well.
18 Insofar as I have ascribed that to the Garda generally,
19 you are right to correct me, I am wrong, but it has
20 happened here and it has happened other places. 15:50
21 Unfortunately.

22 **MR. O'HIGGINS:** well, I am happy what you have said,
23 Chairman, with my response, I am obliged.

24 252 Q. **MR. MARRINAN:** One might have thought,
25 Superintendent Cunningham, that when you read the 15:50
26 letter from Keara McGlone that perhaps a fair-minded
27 approach from you at the time might have been that you
28 would, first of all, have been surprised that the
29 matter had come back in, were you surprised?

1 A. I possibly was, Judge. I didn't put any level of
2 surprise to it that I know. To me, Judge, it was
3 suggestive of, and I'm not being derogatory in my term,
4 a housekeeping exercise, Judge. This was now 15 years
5 after the allegation, six years, Judge, after the 15:51
6 investigation had been closed. I suppose it was
7 difficult for me to establish what value was being put
8 in relation to this matter, Judge. And I'm not sure if
9 I even give it that level of thought. But certainly
10 when I received it, it didn't strike me as something 15:51
11 that there was a level of urgency to it, Judge. As
12 opposed to the material which I was dealing with, which
13 was live, Judge, on my desk.

14 253 Q. Here, let's deal with this square on, you had taken a
15 view in relation to the allegation in 2007 when you 15:51
16 sent in your report to the Director of Public
17 Prosecutions and you express that view, isn't that
18 right?

19 A. That's correct, Judge.

20 254 Q. That was echoed by the state solicitor, Mr. Hayden, 15:51
21 isn't that right?

22 A. That's correct, Judge.

23 255 Q. Very firm direction is given by the Director of Public
24 Prosecutions in relation to the case, isn't that so?

25 A. That's correct, Judge, yes. 15:52

26 256 Q. Here it is resurfacing in 2013, six years later, isn't
27 that right?

28 A. That's correct, Judge.

29 257 Q. Where the social worker who was not familiar with the

1 case or certainly hadn't been involved in the case, to
2 your knowledge, in 2007 was indicating that she was
3 going to meet with Sergeant McCabe to confront him with
4 the allegations, isn't that right?

5 A. That's correct. 15:52

6 258 Q. You were aware of the fact that the HSE had been
7 involved in 2007, isn't that so?

8 A. I was.

9 259 Q. And you were also aware of the fact, because it was you
10 who confronted him, that Sergeant McCabe was fully 15:52
11 aware of the allegations that Ms. D had made against
12 him, isn't that so?

13 A. That's correct.

14 260 Q. Now, it may well be that a fair minded person in those 15:53
15 circumstances might take the view that they should
16 contact Keara McGlone and say all this has been gone
17 through in 2007, your own department dealt with this,
18 and ask why it was that in 2013 Sergeant McCabe was
19 going to be troubled with an allegation that had
20 effectively been put to bed in 2007. Do you 15:53
21 understand?

22 A. I do. I think it might also be accepted that a fair
23 minded person and a professional person like myself,
24 dealing with a professional agency that I believed they
25 were, to be Tusla, would expect that they would have 15:53
26 had examined the material available to them, and if
27 they had done so, Judge, all of the information was
28 there.

29 261 Q. Do you think in any way --

1 A. Pardon, sorry?

2 262 Q. Do you think in any way that the --

3 A. And Judge, sorry, pardon me, I'm sorry for interrupting
4 you, but to clarify on that point: It was never not my
5 intention to deal with this matter. That was never not 15:54
6 my intention. My intention was unfortunately that it -
7 to use an expression I already used here - it went off
8 the radar, Judge. And that is unfortunate.

9 263 Q. Do you think in any way the fact that Sergeant McCabe
10 was a thorn in your side might have contaminated your 15:54
11 attitude towards dealing with the letter?

12 A. No.

13 264 Q. And you're telling the Chairman that you ultimately
14 forgot about this letter completely and even in 2017,
15 when you're asked directly about it, you still had no 15:55
16 recollection of the social worker writing to you in
17 August of 2013, is that right?

18 A. Unfortunately, Judge, that is the case.

19 265 Q. And in actual fact you had a conversation, did you not,
20 with Eugene Corcoran, the Assistant Commissioner, in 15:55
21 relation to the matter?

22 A. I think he was the one that was looking for it, Judge,
23 yes.

24 266 Q. Well, it's a number of conversations you had. If we
25 have 2041 up on the screen. This is a letter that is 15:55
26 sent by the Assistant Commissioner to the Deputy
27 Commissioner of Policing And security?

28 A. Yes.

29 267 Q. And it has a date of the 1st March 2017 on it?

1 A. Yes.

2 268 Q. And you'll see there under paragraph 1 the question is:
3
4 *"Did the requested meeting or phone conversation with*
5 *Superintendent Cunningham, as sought by the HSE in* 15:56
6 *August 2013, take place?"*

7
8 And it records:
9
10 *"A search has been conducted at the district office of* 15:56
11 *Monaghan arising from which no record of any written*
12 *correspondence has been located relating to the injured*
13 *party referred to, Ms. D."*

14
15 Is that so? 15:56

16 A. That's correct, Judge.

17 269 Q. And he says:
18
19 *"In addition I have spoken to superintendent Noel*
20 *Cunningham --"* 15:56

21 A. That's correct.

22 270 Q. *"-- Monaghan district, who has confirmed to me no*
23 *meeting or telephone conversation took place between*
24 *him and staff of the HSE in 2013 or subsequently in*
25 *respect of this matter."* 15:56

26
27 Is that right?

28 A. That is correct, Judge.

29 271 Q. At the time you had that conversation with the

1 Assistant Commissioner is it your case that you still
2 didn't recall having received the letter in August
3 2013?

4 A. I couldn't recall having received a letter. I was
5 carrying out very detailed searches to find it, but I 15:57
6 was very clear in my mind, I was very clear, that I had
7 had no meeting, Judge, in --

8 272 Q. That is not the question that I am asking.

9 A. Pardon me.

10 273 Q. When you were speaking to the Assistant Commissioner -- 15:57
11 A. Yes.

12 274 Q. -- is it the situation that you still had no
13 recollection of having received the letter in August
14 2013 from Keara McGlone?

15 A. I know, Judge, at some stage leading to the finding of 15:57
16 the letter, and it's what probably led me to the file,
17 that something twigged in my mind that there was
18 correspondence and I think that is what possibly led me
19 to finding the letter, but I couldn't tell you exactly
20 when it happened. But I know that that's -- that we 15:57
21 had searched literally everywhere in the office and
22 then I returned to the main file, to the investigation
23 file, Judge. So obviously something twigged that it
24 was there and I went there and went there and found it,
25 Judge, or it may have been there. And that's where I 15:58
26 found it, Judge.

27 275 Q. Are you saying that you advised the Assistant
28 Commissioner Corcoran --

29 A. Yeah.

1 276 Q. -- that you had a recollection?
2 A. No. I'm not saying that. Absolutely not. I'm saying
3 that I informed him exactly as the line there; that I
4 certainly had no meeting, I certainly had no
5 conversation with the HSE/Tusla in relation to the 15:58
6 matter. That's what I advised Superintendent Corcoran.
7 277 Q. Did you tell him that you had received a letter in
8 August 2013 --
9 A. No. No, I didn't.
10 278 Q. -- from Keara McGlone? 15:58
11 A. No, I didn't.
12 279 Q. Did you say that you hadn't received such a letter?
13 A. No, I didn't. I was very careful in that regard,
14 Judge. Extremely careful. Because I was speaking
15 about something unknown and I wasn't going to be 15:58
16 definitive on it, Judge.
17 280 Q. So, did you say to him -- and we can have him here to
18 give evidence in relation to it. Did you say to him,
19 look, I may have received a letter in August 2013 from
20 Keara McGlone, I'd like to go off and search for it, 15:59
21 because I have a vague recollection of receiving such a
22 letter?
23 A. I don't, I don't know if I said that to him, I don't
24 think I would have. As I said, Judge, and I'm unsure,
25 I haven't seen these, I'm unsure of the day times 15:59
26 regarding these, but certainly it was in my head around
27 the time I found the letter, and you'll have the date
28 when I forwarded the letter, that something -- I must
29 have got something, I have to find it and then that's

1 what sent me, Judge, to the file and that's where I
2 found the letter.

3 **CHAIRMAN:** Mr. Marrinan, I'm going to stop you there.
4 Ms. Kelly is obviously working terribly hard, but the
5 stenographers do need a break after two hours, and 15:59
6 whatever Ms. Kelly says we're going to take. Ten or
7 fifteen minutes perhaps.

8
9 **THE HEARING ADJOURNED BRIEFLY AND RESUMED AS FOLLOWS:**

10
11 281 Q. **MR. MARRINAN:** Superintendent, I was -- I had been 16:00
12 dealing with your interaction with the Assistant
13 Commissioner, Eugene Corcoran, and I think that we had
14 established that you didn't advise him in your
15 conversation with him that you had, or may have had, a 16:11
16 letter on file in relation to Keara McGlone, isn't that
17 right?

18 A. I don't believe I did, but I could stand corrected,
19 Judge.

20 282 Q. And these questions arose out of circumstances where 16:11
21 the Secretary General, Mr. Waters, had written to the
22 Garda Commissioner, Nóirín O'Sullivan, on 16th February
23 2017, page 2053, if we could perhaps have that up on
24 the screen. There we see it says:

25
26 *"Dear Commissioner,*

27
28 *At its meeting this morning, the Government, in*
29 *addition to deciding to establish a tribunal of*

1 *inquiry, decided that the questions posed by Sergeant*
2 *Maurice McCabe and his wife Lorraine in their statement*
3 *of the 13th February 2017, a copy of which is*
4 *attached" -- and I have already referred to -- "would*
5 *be asked of the relevant agencies. Accordingly, I am* 16:12
6 *asking you, in accordance with section 40 of the Garda*
7 *Siochana Act 2005, to provide answers to the following*
8 *questions as far as is possible and insofar as they*
9 *relate to members of An Garda Síochána."*

10
11 And the first of those is the relevant one:

12
13 *"Did the requested meeting or phone conversation with*
14 *Superintendent Cunningham as sought by the HSE in*
15 *August 2013 take place?"* 16:13

16
17 And I think that the Garda Commissioner then caused you
18 to be contacted, isn't that right, and you were asked
19 directly about this?

20 A. Yes. 16:13

21 283 Q. And if we could have page 1930. We have -- sorry,
22 1995. We have an email on 15th of February at 17:01
23 from the divisional office to the Assistant
24 Commissioner, Northern Region:

25
26 *"with regard to the above, please find a reply from*
27 *superintendent Noel Cunningham in relation to question*
28 *1. Forward as requested."* 16:14
29

1 And, in fact, you had sent an email indicating -- and
2 at page 1930, there is a response:

3
4 *"Further to attached correspondence and question number*
5 *1, I am to state that Superintendent Noel Cunningham,* 16:15
6 *Monaghan Garda Station, had no meeting or no telephone*
7 *conversation with the health service in 2013 or since*
8 *in relation to Sergeant Maurice McCabe or Ms. D.*
9 *Forward it please,"* and it's Noel Cunningham,
10 superintendent, is that right? 16:15

11 A. That's correct, Judge.

12 284 Q. Again, you haven't alerted anybody to the possibility
13 that you may have a letter from Ms. McGlone in August
14 of 2013, isn't that right?

15 A. That's correct. 16:16

16 285 Q. And are you still -- do you contend that that is
17 because you had no recollection even at that juncture?

18 A. I couldn't remember, Judge, clearly, or I would have
19 referred to it -- or I would have --

20 286 Q. That is followed up then at page 1929, please. This is 16:16
21 from the divisional office on behalf of Chief
22 Superintendent Christopher Mangan, and it reads:

23
24 *"Dear Superintendent Cunningham,*

25
26 *Your reply on 15th February 2017 is noted and, in* 16:16
27 *particular, that no meeting or telephone conversation*
28 *took place with you and the health service in 2013.*
29 *Can you confirm that if Tusla or the health service*

1 *contacted you by any means (letter, email, phone) in*
2 *2013 regarding the Ms. D case/referral? You will note*
3 *from the statement of Maurice and Lorraine McCabe that*
4 *he states they are aware from the Tusla file that the*
5 *HSE wrote to Superintendent Cunningham in August of* 16:17
6 *2013. Please confirm if you received any such*
7 *correspondence or any such correspondence was sent to*
8 *your office. A thorough search should be made of all*
9 *correspondence records and the parameters of such*
10 *search should be included in your report -- your* 16:17
11 *immediate report, please."*

12
13 And that is from the Chief Superintendent.

14 All right?

15 A. Yes. 16:17

16 287 Q. So we are now moved on from dealing with the meeting to
17 dealing with any letters, and your response is above
18 there, on 16th of February at 12:05, and:

19
20 *"Chief Superintendent,* 16:18

21
22 *I wish to note attached correspondence and will revert*
23 *in due course."*

24
25 And you have sent that to the divisional office, is 16:18
26 that right?

27 A. It's not on the page, but I am sure that is what I
28 would have --

29 288 Q. Sorry?

1 A. It's a different page in front of me here.

2 289 Q. Sorry, 1929. It's at the top.

3 A. Yes.

4 290 Q. Yes. You see that?

5 A. I do. 16:18

6 291 Q. And that was your response?

7 A. Yes. If you notice, Judge, why that -- the parameters

8 were very different now. It was -- included emails,

9 et cetera. I had received no mention of email before.

10 So I know that, on receipt of that, we started 16:18

11 searching the archives of my email to establish was

12 there an email, I had certainly no memory of it, but

13 again, that had to be done. The parameter of the

14 search was very different now from that second letter,

15 Judge, because it talked about different things. It 16:19

16 talked about email correspondence, et cetera, you know,

17 which I hadn't considered prior to that.

18 292 Q. I don't understand the point that you are making,

19 Superintendent.

20 A. The point I am making was, initially they were talking 16:19

21 about a letter and now they were talking about possibly

22 an email. I have no memory of this. But to answer the

23 correspondence properly, I had to be sure, and the only

24 thing I could do was then start searching email

25 archives to establish maybe I had received this on an 16:19

26 email, but it wasn't found on the emails.

27 293 Q. No, Superintendent, I've directed your attention to the

28 public statement that was made by Sergeant McCabe and

29 his wife. I have directed you to the concerns that

1 arose and expressed to the Commissioner of An Garda
2 Síochána. I have directed you to correspondence that
3 came from the Commissioner's office to deal with
4 paragraph number 1, which relates to interaction in
5 August of 2013 with the HSE, and that you were asked 16:20
6 directly in relation to this matter and you advised the
7 Chairman that you had no recollection even at that
8 juncture of this letter that had been sent to you by
9 Keara McGlone?

10 A. That's correct, Judge. 16:20

11 294 Q. So I'm just going through the documents with you, and I
12 don't see how a change or a shift in emphasis from a
13 letter to an email assists in any way. You either had
14 a recollection of contact from Keara McGlone, no matter
15 how it came, in August of 2013, or you had no 16:20
16 recollection of it?

17 A. I had no recollection, but then -- pardon me, I was
18 trying to explain it required further searching, Judge,
19 because the emails would be on my archives as opposed
20 to -- 16:21

21 295 Q. And then on page 1989, this is a day later, and this
22 arises in relation to a request that was running
23 parallel to the Commissioner's request in relation to
24 the response to the matters raised by the Government.
25 And if -- this was in relation to a request by Sergeant 16:21
26 McCabe under Section 4 of the Data Protection Acts. If
27 we go to page 1989, this is a report from Sergeant
28 Patricia Maguire, and you will see there, halfway down:
29

1 "On Saturday 18th February 2017 I met with
2 Superintendent Noel Cunningham in Monaghan in respect
3 to email correspondence from your office dated 16th.
4 Superintendent Cunningham has a lever-arch folder that
5 he states contains a large amount of very sensitive and 16:22
6 personal data in respect of Ms. D that he obtained
7 during the course of his investigation during
8 2006/2007. Superintendent Cunningham tendered the
9 three documents as detailed above that he believes may
10 have relevance to this part of Section 4 request. The 16:22
11 three in relation to" -- that should be -- "the
12 original investigation file and two in relation to the
13 HSE referral."

14
15 Do you see that? 16:22

16 A. Yes.

17 296 Q. So you had access to the file --

18 A. Yes.

19 297 Q. -- at that time, is that right?

20 A. That's correct. 16:22

21 298 Q. This letter was on the file?

22 A. It was.

23 299 Q. You made a number of documents available to Sergeant
24 Patricia Maguire at that time?

25 A. That's correct, Judge. 16:23

26 300 Q. You had gone through the file to take those particular
27 documents to provide to Sergeant Maguire because they
28 may be relevant, as she puts it?

29 A. Yes.

1 301 Q. Is that right?
2 A. Yes. I hadn't gone through the file, I had removed
3 them from -- I have the file, and I have the file with
4 me, Judge. The file is tabulated, telling me where
5 various things are. And I took them from the section 16:23
6 which was dealing with interactions with the HSE social
7 workers, and the letter wasn't in that section or I
8 would have seen it, clearly, if I pulled it from it.
9 302 Q. Well, you didn't, in fact, allow Sergeant Maguire to
10 suspect the file, isn't that right? 16:23
11 A. No, absolutely.
12 303 Q. Isn't that right?
13 A. Absolutely.
14 304 Q. You resisted her?
15 A. I wouldn't use that word. 16:24
16 305 Q. Well, I don't mean physically, but you didn't encourage
17 her to look at the file?
18 A. I didn't give this file to her.
19 306 Q. Yes.
20 A. This file is here. 16:24
21 307 Q. You extracted the documents --
22 A. Documents.
23 308 Q. -- from that file?
24 A. Absolutely.
25 309 Q. None of those documents are the letter from Keara 16:24
26 McGlone?
27 A. No, they are these documents here, Judge.
28 310 Q. You had gone through the file?
29 A. No, I hadn't gone through the file. I have clearly

1 said, Judge, the file is tabulated and it shows me
2 where the various documents are, Judge, and I pulled
3 them from -- it clearly shows here interactions with
4 HSE social workers, number 3, so I obviously opened
5 number 3, which is tabulated there, and pulled those 16:24
6 documents, which I gave to Sergeant Maguire from that
7 section, Judge. Unfortunately, Judge, that letter
8 wasn't in that section or I would have pulled it out
9 also.

10 311 Q. So even though at this time there can be no doubt in 16:24
11 your mind that there is a focus, which is urgent, on
12 communication between Keara McGlone and you in August
13 of 2013, that you still --

14 A. Pardon me, I am not sure if those dates -- you will 16:25
15 have to clarify me on the dates, Judge. I am unsure if
16 it was the same. This was requested -- this material
17 was requested from me, but I don't think there was any
18 mention of the letter to Keara McGlone around this
19 time, but correct me if I am wrong, Judge.

20 312 Q. We have already been through it and I brought you 16:25
21 through the documentation --

22 A. Yes.

23 313 Q. -- in relation to -- a cause of concern, and this is,
24 number one:

25 16:25
26 *"Did the requested meeting or phone conversation with*
27 *Superintendent Cunningham, as sought by the HSE in*
28 *August 2013, take place?"*
29

1 That is the focus of your inquiry.

2 A. Correct me if I am wrong, Judge, but I thought that
3 this document here, this search for these documents,
4 was not in relation to that, that this was the data
5 protection disclosure that was sought by Sergeant 16:26
6 McCabe's solicitors. I don't think this was referring
7 to that. I think that came subsequently.

8 314 Q. Ah, now, you are distinguishing, in other words, an
9 inquiry that is being made in relation to the data
10 protection, when, at the same time, and the exact same 16:26
11 time, a letter has come down from the Commissioner of
12 An Garda Síochána asking you to deal with this item
13 number 1 on the list of questions that had come from
14 the Government that emanated from Sergeant McCabe and
15 his wife? 16:26

16 A. Well --

17 315 Q. Are you drawing a distinction between the two?

18 A. I am sorry, I am not drawing a distinction. I am
19 saying, were they the same time? That is the question
20 I have asked. I know specifically that this matter 16:26
21 that I was dealing with with Sergeant Maguire was in
22 relation to disclosure, data protection disclosure
23 requested by Mr. Costello. I don't think it had any
24 reference at all - I know, in fact, it didn't have any
25 reference at all in relation to the Keara McGlone 16:27
26 matter. I thought, but correct me if I am wrong, sir,
27 I thought that arose later.

28 316 Q. You are drawing a distinction on the following day,
29 having been -- this question been asked of you in

1 relation to your interactions with the HSE in August of
2 2013, you are drawing a distinction between that and
3 what the data protection issue and -- because you
4 weren't being asked about the data protection -- about
5 the item number 1 in the list of questions by Sergeant 16:27
6 Mangan --

7 A. Chief Mangan.

8 317 Q. Sorry, by Sergeant Maguire. That, therefore, you
9 wouldn't have been alert to looking for this letter on
10 the file, is that what you are saying? 16:27

11 A. I don't understand the question, sir. Judge, I was --
12 Sergeant Maguire came to me in relation to a Data
13 Protection request that had been received. She was
14 dealing with the matters. She had the investigation
15 file, but the matters that weren't on the investigation 16:28
16 file were the HSE referral matters, which I pulled out
17 and photocopied and gave to her.

18 **CHAIRMAN:** well, the way I am looking at it in terms of
19 what Mr. Marrinan is asking you about, Superintendent,
20 I suppose, is this: at some stage or other we may well 16:28
21 play the 'Prime Time' programme here publically because
22 it's been referred to by a number of people, but I know
23 that you said you saw it and you were shocked.

24 A. I was aware of it, absolutely.

25 **CHAIRMAN:** Yes. But then, of course, we have the 16:28
26 statement from Sergeant and Mrs. McCabe about, you
27 know, none of this would have happened if the letter
28 had been answered, referring to the letter from Keara
29 McGlone of the 15th August 2013. And then you get a

1 whole load of queries in relation to, look, why was
2 there not a meeting with the HSE following the request
3 that is contained in this letter, which was unanswered,
4 and it's hard to draw a distinction and say, well, I
5 wanted to look for documents about a meeting as opposed 16:29
6 to the documents which would have indicated that there
7 was a necessity for the meeting, and I think that's the
8 point that Mr. Marrinan is making to you.

9 A. Well, my apologies if I am answering incorrectly. I
10 wasn't drawing any distinction. I was getting the 16:29
11 documentation that I had and giving over everything I
12 had. I wasn't drawing any distinction between
13 anything.

14 **CHAIRMAN:** Mr. Marrinan, have I summarised correctly
15 your position? 16:29

16 **MR. MARRINAN:** Yes, sir.

17 318 Q. Could we have page 1929 back on the screen, please.
18 This is the email that we have referred to --

19 A. May I write dates, because, I am sorry, I think I have
20 lost some dates. 16:29

21 319 Q. Sorry?

22 A. I just want to write this for myself because I am
23 unclear -- I am trying to be as helpful as possible,
24 but I want to make sure --

25 320 Q. No, of course, Superintendent. This is the email that 16:29
26 we have referred to. Scroll down the page, please.

27 **CHAIRMAN:** So it refers to "*any means (letter, email,*
28 *phone) in 2013*". You'll note the statement of the
29 McCabes, awareness from a Tusla file that the HSE wrote

1 to you, Superintendent, in August 2013. That's the
2 context. And I'm not sure what distinction is being
3 drawn and why it is being drawn and I think that is
4 what Mr. Marrinan is asking you about and perhaps I
5 will just leave it to him. 16:30

6 321 Q. **MR. MARRINAN:** Can you answer that?

7 A. I am -- I don't believe I was drawing any distinction,
8 Judge.

9 **CHAIRMAN:** It's just the letter seems to be sticking
10 out like a sore thumb as being the centre of all of 16:30
11 that. That is what one might think. I am not saying I
12 think that.

13 A. And clearly, Judge, if, at the time that I met with
14 Sergeant Maguire and handed her documents, if I had
15 found the letter, I would have clearly given it to her 16:30
16 and it would have clearly alerted me to the fact I had
17 the letter. I didn't. I didn't find the letter,
18 Judge. I didn't discover the letter. And
19 unfortunately, I didn't discover the letter until the
20 date, and you will have that date, Mr. Marrinan, the 16:31
21 date that I furnished it to the divisional office, and
22 responded immediately, and as I said -- because
23 normally if we get correspondence like this from a
24 solicitor referring to a particular piece of
25 correspondence, so -- and I attach a copy for ease of 16:31
26 reference, I didn't have it, that hadn't happened, so I
27 literally didn't know what was in it.

28 **CHAIRMAN:** I am wondering now, and I am sorry for
29 interrupting, Mr. Marrinan, but was the letter on

1 the -- you have got the file there in front of you.
2 was the letter on the file?

3 A. When I found the letter, Judge --

4 **CHAIRMAN:** It was on the file?

5 A. -- it was in the file, yes. 16:31

6 **CHAIRMAN:** All right. I suppose Mr. Marrinan is
7 wondering as to why it wasn't found --

8 A. Because I clearly didn't search it in detail for that.
9 I went strictly to tab number 3, HSE referrals, took
10 them out and handed them to her, Judge. I didn't go 16:31
11 through the file, because the file has a lot of
12 material in it, as you can see. It's quite a
13 substantial file.

14 **CHAIRMAN:** No, I understand your answer. Thank you.

15 322 Q. **MR. MARRINAN:** You will appreciate, Superintendent, 16:32
16 that unfortunately you have brought the file today --

17 A. Yes.

18 323 Q. -- but the file hasn't actually been disclosed to the
19 Tribunal.

20 A. No, because when I got -- 16:32

21 **CHAIRMAN:** Mr. O'Higgins, I note you are reaching for
22 the microphone, and certainly nobody is saying that the
23 Garda haven't cooperated fully with the Tribunal when
24 it was clear they haven't, but it's clear also that
25 sometimes things get left out and are discovered at a 16:32
26 later day. So there is no issue in relation to this.
27 If you want to say something, I am here to listen.

28 **MR. O'HIGGINS:** And I am obliged for that
29 clarification. Just so far as we are aware, there was

1 no request for the file, but, quite properly, the
2 Superintendent has brought the file with him and it's
3 been made clear if it's required to be copied, that's
4 fine as well.

5 A. In fact, Judge, the correspondence from the Tribunal 16:32
6 that came to me specifically said that the Tribunal had
7 access -- had read the file and didn't require it, so
8 that was actually on a piece of correspondence.

9 **CHAIRMAN:** Yes. And again, let's not get tied up in
10 this, but you will appreciate the Tribunal has tens of 16:33
11 thousands of documents, so whether it's your file or a
12 Garda Headquarters' file, or whatever, I can appreciate
13 this is an ongoing process, no one is being dishonest
14 in relation to this file, and that is for public
15 consumption as well. 16:33

16 324 Q. **MR. MARRINAN:** If we could turn to page 2100, please.
17 This is dated 1st March of 2017 from you to the Chief
18 Superintendent in Monaghan. This is -- "*I refer to*
19 *your correspondence*" --

20 **CHAIRMAN:** Just give him a page number again, please, 16:33
21 Mr. Marrinan.

22 A. I just can't see it on the screen, it doesn't show up.

23 **CHAIRMAN:** well, you can take out the physical thing
24 because it's sometimes easier to look up on that. what
25 volume are you in there, Mr. Marrinan? Are you still 16:33
26 in volume 8?

27 **MR. MARRINAN:** No, it's Volume 11.

28 **CHAIRMAN:** It couldn't be. I don't think we have got
29 there yet.

1 **MR. MARRINAN:** volume 8.

2 **CHAIRMAN:** And you are on page - sorry, say it again,
3 please?

4 **MR. MARRINAN:** 2100.

5 A. Thank you, Judge. 16:34

6 325 Q. **MR. MARRINAN:** You may have it in your own papers,
7 Superintendent. It's the email that you sent to the
8 Chief Superintendent in Monaghan.

9 A. I haven't all my papers with me. I have a huge amount
10 of papers with me, Judge. 16:34

11 326 Q. 2100. It's very faint, even on our copy.

12 A. Yes, I have it now.

13 327 Q. I will just read it out:

14

15 *"Further to your correspondence of 1st March 2017, I am* 16:34
16 *to report as follows:*

17

18 *I have on the afternoon of today's date" -- it's*
19 *actually the 3rd of March, sorry, 2017 -- "discovered*
20 *in my office the correspondence referred to in your* 16:34
21 *communications. The letter dated 15th August 2013 was*
22 *filed with my original investigation file into the*
23 *Ms. D allegation in a separate cabinet in my office" --*

24 A. "Secure".

25 328 Q. "Secure", sorry. *"I have, since my appointment to* 16:35
26 *investigate the allegation in December 2006, kept all*
27 *correspondence secured away to protect the privacy of*
28 *the parties involved. I note the letter is dated 15th*
29 *August 2013. I can state that I was on annual leave*

1 and rest days from 17th of July of 2013 to the 16th of
2 September 2013 inclusive, from the 8th of October 2013
3 to the 13th of October inclusive. My father died on
4 the 26th of October 2013 and I was again absent from my
5 office. It was in these circumstances I did not
6 respond to the correspondence. I was at all times" -- 16:36
7 I can't even read that -- "when working, available to
8 meet with the HSE/Tusla in relation to the matter, but
9 received no further correspondence/telephone calls
10 requesting a meeting." 16:36

11
12 And then:

13
14 "No meeting or telephone conversation, as previously
15 reported, took place. You will note that there is 16:36
16 nothing in the letter alerting me to any change in the
17 status or content" --

18 A. "Of the original complaint".

19 329 Q. "Of the original complaint" -- you have probably a
20 better copy than I have -- "by Ms. D. I note from my 16:37
21 file that I" finished --

22 A. "Furnished".

23 330 Q. -- "I furnished Tusla with copies of Ms. D's statement
24 in 2007 in accordance with the Children's First
25 protocols." 16:37

26
27 And that effectively is -- reflects the statement that
28 you made to the Tribunal and your explanation as to how
29 it was that you didn't deal with the file or the letter

1 of the 15th August of 2013 from Ms. McGlone.
2 Thank you very much. Would you answer any questions.

3 A. Thank you.

4

5 **SUPERINTENDENT CUNNINGHAM WAS CROSS-EXAMINED BY** 16:38

6 **MR. MCDOWELL:**

7

8 331 Q. **MR. MCDOWELL:** Good afternoon, Superintendent. Michael
9 McDowell is my name, as you know, and I am representing
10 Sergeant McCabe here. Could I ask you at the outset in 16:38
11 relation to the investigation that you carried out in
12 2007. while pressure was put on you to do it quickly,
13 you took your time and you did a thorough job, is that
14 right?

15 A. Well, I don't know if I would use the expression took 16:38
16 my time, but I certainly did a thorough job.

17 332 Q. You weren't rushed, in other words?

18 A. I did it to the best of my ability, Judge, and whatever
19 time that took.

20 333 Q. Yes. You also made it your business to discuss the 16:38
21 matter, and I am not criticising you at all in respect
22 of this, rest assured, with the social work team in the
23 HSE at the time?

24 A. Yes.

25 334 Q. Isn't that right? 16:39

26 A. That's correct.

27 335 Q. And the proper procedure had been complied with, the
28 file had been forwarded -- or, sorry, the notification
29 had been forwarded to the HSE, in early January they

1 received it, telling them that this Garda investigation
2 was underway, isn't that right?

3 A. That's correct.

4 336 Q. And you interviewed all the relevant witnesses that you
5 could, is that right? 16:39

6 A. That's correct, Judge.

7 337 Q. And a suggestion was made by Ms. D eventually in 2014
8 that, somehow, Sergeant McCabe should have been
9 arrested at the time rather than interviewed under
10 caution. Would you agree with me that that is a 16:39
11 misconception of what would happen if -- there would be
12 no point in arresting somebody if that person was
13 apparently cooperative and amenable to being
14 interviewed under caution, isn't that right?

15 A. Yes, yes. 16:40

16 338 Q. And you took some pains to set out at length the
17 research you'd carried out and to summarise it for the
18 law officers to consider, isn't that right?

19 A. Yes, Judge.

20 339 Q. And in relation to the report that you forwarded to 16:40
21 Rory Hayden, who is the State solicitor for the County
22 of Cavan, you set out as best you could all the
23 relevant background, is that right?

24 A. Yes, Judge.

25 340 Q. And I know that a fair amount of this has been 16:40
26 redacted, from pages 5 to 8 or 9, part of page 9, that
27 dealt with the background of Ms. D, is that right?

28 A. That's correct, Judge.

29 341 Q. And relatively recent events in her life, is that

1 right?

2 A. That's correct.

3 342 Q. And can we say that it involved a Garda investigation
4 of a different sexual complaint against a totally
5 different person? 16:41

6 A. It referred to that also. There was other matters
7 referred to, but also that, yes.

8 343 Q. Yes. I see. And you believed that it was appropriate
9 that you should mention this to the law officers if
10 they were considering an allegation of retrieved memory 16:41
11 from her which post-dated those events, is that right?

12 A. Yes, Judge.

13 344 Q. And it was your understanding, am I right in saying,
14 that in the investigation of the earlier matter that we
15 have just referred to, that no mention was made of 16:41
16 Sergeant McCabe and no allegation was made against him
17 of any kind whatsoever?

18 A. Absolutely, that's correct.

19 345 Q. And there was intensive -- there was extensive
20 interaction between her and Tusla at the time? 16:42

21 A. I wasn't involved in that investigation, Judge, I just
22 got the file, so I can't say much about it other than
23 what the file contained and then what I saw also in her
24 notes, Judge, Tusla/HSE notes.

25 346 Q. But, I mean, the point I am making is that, from what 16:42
26 you saw, she'd had an opportunity to interact with
27 counsellors from Tusla at the time and had made no
28 reference to Sergeant McCabe, is that right?

29 A. That's correct, Judge.

1 347 Q. And then the next thing that happens is that you also
2 mention what Mr. Marrinan referred to as the one other
3 incident, isn't that right, the circumstance in which
4 her father was reverted to uniform duties, isn't that
5 right? 16:42

6 A. Oh, yeah, correct.

7 348 Q. And again, criticism was levelled at you for mentioning
8 that by Ms. D in her complaint against you to the -- to
9 the Garda Ombudsman, isn't that right?

10 A. Yes, Judge. 16:42

11 349 Q. But you considered that it was appropriate to do, and
12 the Garda Ombudsman service upheld you on that point
13 and said that that was an appropriate matter to put
14 into the balance in looking at this situation in the
15 round? 16:43

16 A. Yes, Judge.

17 350 Q. Is that fair enough?

18 A. In relation to your last questions, just to clarify, I
19 think in the redacted notes, Judge, I may have made
20 reference to a conversation which Rhona Murphy in 16:43
21 December 2006 where Ms. D did make reference to the
22 Maurice McCabe issue, and I actually adverted to it in
23 the file, Judge, and made a reference to the -- the
24 magnitude of importance put on it in relation to the
25 charges that could be considered, Judge. I think 16:43
26 that's -- if I can put it as clearly as I can, Judge.

27 351 Q. Well, I think, though, that in -- December -- let's be
28 clear about this, December 2006 was -- effectively was
29 a year after the --

1 A. Oh, absolutely --

2 352 Q. -- the incident concerning Ms. D's father, isn't that
3 right?

4 A. Oh, the other investigation. That is correct.

5 353 Q. And could I bring you on from there to the direction 16:44
6 that was received from -- from the Director of Public
7 Prosecutions. It was, I think, as Mr. Marrinan has
8 said, a forthright direction in the circumstances?

9 A. That's correct.

10 354 Q. And the views that you -- or the issues or the -- that 16:44
11 you had raised in relation to credibility, were shared
12 not merely by yourself but by Rory Hayden, who sent the
13 file on to the DPP, isn't that right?

14 A. That's correct.

15 355 Q. And by the professional officer in the DPP's office, is 16:44
16 that right?

17 A. I am not sure if Liz Howlin referred to it. She may
18 have referred to it - 'notwithstanding', I think, is
19 the word she may have used.

20 356 Q. I think she said -- yes, "*even if there wasn't a doubt* 16:45
21 *about her credibility*", isn't that right?

22 A. Yes, yes. I used the word 'notwithstanding', but even
23 if there was not a doubt. Paraphrasing.

24 357 Q. So going back -- this was a sensitive matter, and
25 although you were a reluctant investigator in the sense 16:45
26 that you had been appointed, you thought it might be
27 better if somebody else was appointed to do it. You
28 weren't reluctant in following it up once you --

29 A. Absolutely not.

1 358 Q. No. And could I ask you then, at the time,
2 Superintendent, it was sensitive in the sense that here
3 were two sergeants in one station and this situation
4 had arisen effectively between them, isn't that right,
5 or between one of them and the other person's family, 16:45
6 isn't that right?

7 A. That's correct, Judge.

8 359 Q. And particularly if we go on the assumption that
9 Sergeant McCabe had never abused this girl in any shape
10 or form, I think you'd agree with me that it must have 16:46
11 been a deeply distressing allegation for him to have to
12 deal with?

13 A. Well, irrespective of what had occurred, it was clearly
14 a deeply distressing allegation against him, and I
15 think I adverted to that actually in my covering 16:46
16 report, that when I interviewed him, he was very
17 distressed.

18 360 Q. Yes. But on the assumption that, which we have to
19 operate on, that he was an innocent man as well, it
20 must have been a terrible shock to him to be accused of 16:46
21 this, isn't that right?

22 A. It's probably the most -- the worst allegation that
23 could be put to you, child abuse, Judge.

24 361 Q. Because as I think the Judge commented more recently,
25 it's almost undisprovable or -- isn't that right? You 16:46
26 can't disprove allegations of this kind when they are
27 that vague. You can't say, I wasn't there or I was --
28 whatever. If somebody says something took place many,
29 many years ago, it's almost impossible to disprove

1 them, isn't that right?

2 A. Yes. My job was to gather evidence, Judge, to
3 establish and -- to establish if what happened, if it
4 had happened, was a crime, and that was my focus,
5 Judge, and I'd like to think I did that well, Judge. 16:47

6 362 Q. Well, the Director's direction was dated the 5th of
7 April, isn't that right?

8 A. Mm-hmm.

9 363 Q. And Sergeant McCabe would have known that a file had
10 gone to the Director of Public Prosecutions and would 16:47
11 have been waiting for that direction, isn't that right?

12 A. I am not sure if he would have known when it went.

13 364 Q. But he would have known it had gone?

14 A. He would have known the process, Judge. He was a
15 sergeant. 16:47

16 365 Q. Yes. And when it came to -- when it came to the 5th
17 April, you say that circumstances prevented you from
18 dealing with the -- sorry, I had better be careful --
19 yes, dealing with the matter, because you say you
20 were -- it was -- the direction would have been posted 16:48
21 to you at Monaghan and not at Bailieboro, is that
22 right?

23 A. Well, that is where it would go. I was attached to
24 Monaghan, not to Bailieboro, Judge.

25 366 Q. Yes. And so from 5th of April until, what day did you 16:48
26 actually --

27 A. Was it the 24th? It was given here earlier on. To
28 remember dates like that.

29 **CHAIRMAN:** 24 April 2007.

1 A. I can definitively --

2 **CHAIRMAN:** You are putting that as the date you drove
3 to Virginia?

4 A. I can definitively say, Judge, that was the day I
5 opened it. 16:48

6 367 Q. And what date did you inform the -- Mr. and Mrs. D of
7 the matter?

8 A. That date.

9 368 Q. Which date is that?

10 A. The date -- when I said I drove to Virginia, it was a 16:48
11 rainy, wet morning, I can remember it well, and I drove
12 to Virginia that date, the date I gave them. And I
13 rang them in advance of going, as I outlined, to see
14 did they want me to come then or later.

15 369 Q. And you wrote to GSOC when this matter came for -- by 16:49
16 way of complaint to them, that Sergeant McCabe had not
17 cooperated with you in relation to being informed about
18 the outcome?

19 A. He didn't make himself available. I tried to contact
20 him straight away, Judge, and I have given this 16:49
21 evidence. Immediately I left Ms. D's home, I pulled in
22 to the left-hand side, I rang, it went straight to
23 answering machine.

24 370 Q. Yes, you have explained --

25 A. I have explained, pardon me, I have explained it, 16:49
26 Judge. But my intention was to inform him at the same
27 time, or immediately after, sorry, I had informed the
28 family, Judge. That was my intention.

29 371 Q. You see the phrase "*did not cooperate*" had a certain

1 resonance at that time. You will recall that Minister
2 Shatter had misinformed the Dáil and accused him of not
3 cooperating with an inquiry, isn't that right?

4 A. I am sorry, there is no -- to suggest any corollary
5 between those things, that wouldn't have been in my 16:50
6 mind whatsoever. It was a figure of speech, you know.
7 It was exactly that, Judge, it was something I wrote.

8 372 Q. But you now know as a result of the O'Higgins
9 Commission that Sergeant McCabe had informal knowledge
10 of the DPP's direction, isn't that right? 16:50

11 A. I didn't know that until the O'Higgins Commission.

12 373 Q. Yes. Because whatever about -- the delay in your
13 informing of the matter, Mr. Hayden had read him the
14 direction?

15 A. Well, I am not going to comment on that because it 16:50
16 was -- well, it was --

17 **CHAIRMAN:** Yeah, I didn't know until now that he had --
18 but that would make sense to you, would it?

19 A. Pardon?

20 **CHAIRMAN:** would that make sense; that he knew the 16:50
21 state solicitor and the state solicitor had contacted
22 him?

23 A. Well respectfully, and I am not casting aspersions on
24 anybody, it was totally irregular.

25 **CHAIRMAN:** Oh no, don't worry about it. 16:51

26 374 Q. **MR. MCDOWELL:** Regular or irregular, it was a huge
27 relief to Sergeant McCabe to be told?

28 A. I am sure, I am sure it was, but the manner by which it
29 would be done was normally, the directions would be

1 sent to us and we would inform the parties involved,
2 Judge.

3 375 Q. And Sergeant McCabe, I think you'll agree, was
4 wondering when he would be officially informed of this
5 matter, and weeks went by? 16:51

6 A. Well, it's clear that Sergeant McCabe, from what you
7 are referring to, knew the result before I did.

8 376 Q. On your account, yes.

9 A. With respect, Judge, on my sworn evidence in front of
10 this Tribunal, I am telling you now -- 16:51

11 377 Q. Yes.

12 A. -- it was clear, from what you are saying, that Maurice
13 McCabe knew that in advance of me knowing it. It was
14 unfortunate that the person involved, who had my number
15 on the bottom of the file, didn't ring me to the same 16:52
16 effect.

17 378 Q. I see. And would you agree with me that Sergeant
18 McCabe --

19 **CHAIRMAN:** well, I mean, just look, for fear we get
20 into any more hot water, I am sorry Mr. McDowell, I 16:52
21 think I need to say that; the matter of public
22 consumption has been raised earlier on but I don't
23 regard it as being wrong for the state solicitor who
24 works very closely with members of the Gardaí and I
25 suppose sergeants in particular, appreciating that 16:52
26 there are regulations, informing someone as a matter of
27 courtesy that a direction has come in. I don't regard
28 it as wrong at all, so we are not going to drag him
29 into this matter.

1 379 Q. **MR. MCDOWELL:** But Sergeant McCabe wanted an AGSI
2 representative to be present with him when eventually
3 you became aware of the Director of Public
4 Prosecutions's direction and told him you wanted to
5 impart the direction to him, is that right? 16:52

6 A. Well, I have referred to the meeting and, again I stand
7 corrected, I think it was 8th of May when I arrived and
8 this sergeant was present. And when I initially asked,
9 I was told there was an AGSI rep present. I was also a
10 member of AGSI and I didn't know what was happening 16:53
11 here, and I asked did I require an AGSI rep to be
12 present also for me in relation to what was going to
13 be -- because I didn't know -- I was doing a simple
14 task; informing him of the directions. Here now we had
15 a member with an AGSI rep -- sorry, that is Association 16:53
16 of Garda Sergeants and Inspectors, Judge,
17 representative present with him and I didn't know what
18 was going to occur and I asked a question, do I need to
19 be represented? To which the response then changed:
20 well, this person is here from a welfare perspective. 16:53
21 So I said that was fine, because I knew this person was
22 also involved in the welfare aspect of the
23 organisation. So that was that. I moved on then to
24 inform him of the direction, Judge.

25 380 Q. It would appear that Sergeant McCabe wanted the DPP's 16:53
26 direction to be given to him where there would be a
27 witness as to its content, isn't that right?

28 A. I can only assume. I don't know.

29 381 Q. Yes. And am I right in saying that you didn't, in

1 fact, give him the substance of the DPP's direction,
2 you didn't read him the direction that Ms. Howlin had
3 made?

4 A. Absolutely I didn't read it, because that was the clear
5 directions to us at the time. There was a document 16:54
6 came to us, *Instructions for Prosecutors*, came from the
7 Director's office, Judge, and it clearly outlined the
8 manner by which we would convey to persons the
9 instructions or the directions of the DPP, and that was
10 that no prosecution, and I think it was essentially 16:54
11 that. It had -- things have changed since then and
12 there's clearly an appeal process, etcetera, but at
13 that time, Judge, the instructions were very clear.
14 And I complied with the instructions, Judge.

15 382 Q. There is no difference between it, the fact is that you 16:55
16 didn't tell him that he had been -- that the DPP had
17 ruled no offence of any kind whatsoever had been
18 disclosed?

19 A. Mr. McDowell, I wasn't entitled to tell him anything.

20 383 Q. whether you -- 16:55

21 A. I was only entitled to tell him what I was entitled to
22 tell him.

23 384 Q. whether you were or not, I am not arguing about that
24 with you, I am suggesting to you that he knew from Rory
25 Hayden what the substance of the direction was and you 16:55
26 gave it to him in a manner which was very much less
27 explicit than that?

28 A. I gave it to him in a professional manner, in
29 accordance with the guidelines to me.

1 385 Q. And what did you tell him?
2 A. I told him there was no prosecution, I believe it was
3 due to lack of evidence, I didn't actually take a note
4 of it. It was a simple process, Judge, to inform him
5 that. 16:55

6 386 Q. Yes. Now, just stop there. So you conveyed to him
7 that this was a -- that this -- that the DPP had
8 decided that the evidence was not adequate for a
9 criminal investigation?

10 A. I think so. Again, I have no record of the meeting 16:56
11 other than what I wrote later. But I have no written
12 record --

13 387 Q. Without criticising you at all, Superintendent
14 Cunningham --

15 A. Thank you. 16:56

16 388 Q. -- can you imagine that somebody who believed he had
17 been cleared emphatically and that the DPP had ruled
18 that there had been no offence of any kind, even if
19 what was described were correct, that that person might
20 not think that a direction that there was insufficient 16:56
21 evidence for a prosecution dealt fairly with the
22 situation?

23 A. Well, I can only apologise for acting in accordance
24 with my instructions, Judge.

25 389 Q. I see. 16:56

26 A. I didn't go outside them.

27 390 Q. And in particular -- particularly in the context that
28 all of these people were going to have to be working
29 with each other over the successive months, that

1 insufficient evidence left a question-mark over
2 Sergeant McCabe?

3 A. Judge, I'm unsure what I can do there. The deployment
4 of the members wasn't my business, I had no input into
5 that whatsoever. The information I conveyed was in 16:57
6 accordance with the directions of the DPP, the
7 instructions to prosecutors' booklet that we had
8 received. I would have done no different from anybody
9 else. It was unfortunate from the outset that I was
10 dealing with people I knew. It was unfortunate, 16:57
11 Mr. McDowell.

12 391 Q. Even if it had been Mr. Murrinan or Mr. McDowell here,
13 to say insufficient evidence in the circumstance, where
14 these people were going to be working with each other
15 the next day, left a question-mark, a huge 16:57
16 question-mark over Sergeant McCabe.

17 A. I don't see how it did.

18 **CHAIRMAN:** Are your instructions that what was said was
19 insufficient evidence or something?

20 **MR. MCDOWELL:** well, the superintendent has just said 16:57
21 that it was --

22 **CHAIRMAN:** No, no, but I mean, I am just wondering from
23 your point of view what the recollection of Sergeant
24 McCabe is.

25 **MR. MCDOWELL:** Sergeant McCabe, his only recollection 16:58
26 was that he wasn't given the real reasons as he knew
27 them to be.

28 **CHAIRMAN:** I know there was a controversy about the
29 DPP's letter and whether that should be sent around to

1 various Garda stations later, but that might imply to
2 me - forgive my intervention - that perhaps he had been
3 told that by the state solicitor, in other words that
4 the text of the letter had been read out to him or
5 something. 16:58

6 **MR. MCDOWELL:** It had.

7 **CHAIRMAN:** It had. So he knew.

8 **MR. MCDOWELL:** He knew. And he was being informed --
9 when he was being informed officially, and the
10 superintendent agrees with this, he was told it was due 16:58
11 to insufficient evidence.

12 **CHAIRMAN:** But he had, the text of the letter had been
13 read to him by the state solicitor --

14 **MR. MCDOWELL:** Exactly.

15 **CHAIRMAN:** -- as a courtesy. 16:58

16 **MR. MCDOWELL:** Exactly.

17 **CHAIRMAN:** Do you understand that?

18 A. I do, Judge. But as you said, Judge, you have taken
19 into consideration.

20 **CHAIRMAN:** Yeah, so according -- you felt all you could 16:58
21 say was the bland statement and that is what you said,
22 that was your case, in any event.

23 **MR. MCDOWELL:** Yes.

24 392 Q. Now, could I ask to go to page 104 of volume 1, which
25 is a statement of Ms. D in 2014 to GSOC. 16:59

26 **CHAIRMAN:** You can take out the volume,
27 superintendent --

28 A. Actually it's very clear, Judge, on the screen.

29 **CHAIRMAN:** Sometimes it's easier to look up and down,

1 it can be.

2 A. Sorry. It is volume?

3 **MR. MCDOWELL:** volume 1, page 104.

4 393 Q. And could I ask you to go to about line 10 and 11
5 there? 17:00

6 A. 10 and 11.

7 394 Q. Well, maybe if we start at 8.

8

9 *"I gave my statement to Noel Cunningham about the
10 assault in my home. A family friend sat in with me 17:00
11 while I was giving this statement, her name was
12 [blank]. She is now deceased. After I had given my
13 statement my father told me that Noel Cunningham had
14 told him that he could tell I was telling the truth, I
15 hadn't added anything or left anything out."* 17:00

16

17 Now, this is Ms. D in 2014 telling Tusla that her
18 father had told her that you had this conversation with
19 him.

20 A. I have no recollection of it, Judge. 17:01

21 **CHAIRMAN:** Does her father make a statement to the same
22 effect?

23 **MR. MCDOWELL:** I don't know, I don't think so --

24 A. I never saw statement from --

25 **CHAIRMAN:** I don't know, is that the kind of -- do you 17:01
26 say kind of nice things? Obviously you try and be as
27 nice as you can, would you say that kind of thing to
28 people?

29 A. I might have said there was nothing different in the

1 statement, in the first statement and the second
2 statement. I was clarifying the first statement. You
3 see, this was the second statement I was taking, Judge.
4 The first statement was made to Detective Sergeant
5 Fraher, Sergeant Flynn. There was gaps in the 17:01
6 statement that I had identified or at least things I
7 wanted clarify. I am not criticising the statement.
8 But I had gone back to her to seek clarification on
9 matters. Look it, I really don't know if I said
10 something like that, Judge. 17:01

11 395 Q. **MR. MCDOWELL:** Could you have said that you knew she
12 was telling the truth?

13 A. I couldn't see me being something like that -- I mean
14 I'd be sensitive enough in what I'd say.

15 396 Q. Because you will recall that -- I mean, people say nice 17:02
16 things to other people, as the Judge has said, but you
17 will recall that in private, dealing with the Director
18 of Public Prosecutions you were raising issues of
19 credibility and in dealings with the HSE social workers
20 you were, likewise, expressing doubts on credibility, 17:02
21 isn't that right?

22 A. I absolutely was checking all matters to see if they
23 stood up, Judge.

24 397 Q. Yes. And I am just, the reason I ask you is: I
25 presume you wouldn't say 'I know you are telling the 17:02
26 truth', because that would serious -- that would make
27 you look like a very non-neutral investigator, isn't
28 that right?

29 A. That is the point I was trying to make.

1 398 Q. It would be unprofessional to say it, even if you felt
2 disposed to being nice --

3 A. Yes.

4 399 Q. -- vis-à-vis --

5 A. It's not like my language. 17:03

6 400 Q. -- to Ms. D's father?

7 A. It's not like my language. I recognise my own
8 language.

9 401 Q. You can see, can't you, that one way or the other, the
10 decision whether -- again, whether you were obliged to 17:03
11 do it or not, but the decision to withhold from
12 Sergeant McCabe what the DPP had actually ordered was
13 going to create a situation in which all of the
14 difficulty was compounded, because some people felt
15 that they had been believed by the investigating 17:03
16 officer, but that some person up in Dublin had found it
17 was insufficient evidence or something to that effect?

18 A. I can't -- I see what you are saying and I have -- I
19 suppose I can accept something but you have to accept,
20 Judge, that from the outset, as I outlined to GSOC when 17:04
21 they were investigating this, once I took on the
22 investigation, I was blind to the people involved, I
23 was showing no favouritism to anybody, I was simply
24 investigating the facts, Judge. And that came from the
25 very start until the very end, which included the 17:04
26 delivery of the directions. I was sticking very much,
27 Judge, to the guidelines.

28 402 Q. It was a very, very sensitive situation, was it not?

29 A. It was.

1 403 Q. And although a criticism was levelled at Sergeant
2 Fraher that the matter was not put up on PULSE, I
3 presume that that was done in good faith to deal with
4 the sensitivities at the time, is that right?
5 A. That's correct. 17:04

6 404 Q. And to respect the situation that these were colleagues
7 in the same station?
8 A. Indeed.

9 405 Q. And not to have every garda in the country looking at
10 all of this and taking sides or -- 17:05
11 A. The very reason why I retained the file in my personal
12 possession, the exact same reason.

13 406 Q. I see. So may we take it that after the DPP's
14 direction was given, you considered that the matter was
15 closed -- 17:05
16 A. That's correct.

17 407 Q. -- for a short-term anyway?
18 A. I considered the matter was closed, period.

19 408 Q. I see.
20 A. My function was clear; to carry out a criminal 17:05
21 investigation, establish if there was a breach of
22 discipline.

23 409 Q. Yes. But I think others did not accept that it was
24 closed and Ms. D's mother brought her to Bailieboro --
25 or to a District Court, it was in Bailieboro, was it? 17:05
26 A. That's correct. Well, she didn't bring her, no. She
27 came herself, Mrs. D came.

28 410 Q. I think she was driven to the courthouse?
29 A. No, I think there was two separate incidents, Judge.

1 411 Q. Mrs. D herself came?
2 A. In the incident that I was involved in, in the court,
3 it was Mrs. D herself, Judge. I don't believe Ms. D
4 was present. And I dealt with that --
5 412 Q. Yes. 17:06
6 A. -- professionally, Judge.
7 413 Q. I see.
8 A. I was trying to prosecute the court and this issue was
9 arising, Judge.
10 414 Q. But can we take it -- 17:06
11 **CHAIRMAN:** Was it you who were confronted in the court?
12 A. Judge --
13 **CHAIRMAN:** I think it's better not to go into it
14 because -- to be fair.
15 A. It was an effort to actually confront somebody else. 17:06
16 **CHAIRMAN:** No, no, it's part of the background. We
17 know that there were two incidents. Mrs. D wasn't
18 asked about it.
19 415 Q. **MR. MCDOWELL:** By the end of 2007 the matter had
20 subsided, isn't that right? 17:06
21 A. I don't even know if the word subsided is relevant. It
22 was closed. I had done my job, it was over.
23 416 Q. Yes.
24 A. As far as I was concerned, Judge.
25 417 Q. And so, in 2013, when you did read that letter, you 17:06
26 must have wondered what is this about?
27 A. Well, I read it -- I had -- unfortunately, I had no
28 memory of it until I dug it out again. But I know then
29 when I read it, why it didn't probably jump out at me.

1 It was because there was nothing -- I described it,
2 benignly, as a housekeeping letter. There was nothing
3 to suggest anything had changed, there was any urgency.
4 And I suppose that's why I didn't deal with it on the
5 day and I put it away with the intention at all times 17:07
6 of dealing with it. And it was very unfortunate that I
7 didn't.

8 418 Q. But Sergeant McCabe was, for one reason or another, and
9 we are not going into it this afternoon, looming large
10 in your life in 2013, isn't that right? We'd had the 17:07
11 Byrne/McGinn inquiry, isn't that right?

12 A. Mm-hmm.

13 419 Q. Some of the issues that were involved in that concerned
14 you personally?

15 A. That's correct. 17:08

16 420 Q. We know now, but you mightn't have known at the time,
17 that it was the publicity surrounding Sergeant McCabe
18 that led Ms. D to go back into counselling?

19 A. Okay.

20 421 Q. At the suggestion of her mother, is that right? 17:08

21 A. Okay.

22 422 Q. So you knew that Sergeant McCabe was a person of note
23 within An Garda Síochána at this stage?

24 A. Yes.

25 423 Q. And here is the HSE asking you to meet with them to 17:08
26 discuss with Sergeant McCabe -- to discuss with them,
27 this is Keara McGlone, a fresh complaint made by her?

28 A. No. There was no indication of a fresh complaint at
29 all. In fact, it was the very opposite; the letter

1 referred to the 2006/2007 investigation. There was no
2 indication of anything new or fresh. That's -- that is
3 exactly why it didn't alert me, put on red lights,
4 whatever one might say. There was nothing to suggest
5 there was anything different in the situation that 17:09
6 wasn't already available to the HSE/Tusla by virtue of
7 the Children First Guidelines, Judge.

8 424 Q. But if this was a routine inquiry -- you kept the
9 McCabe file for sensitivity reasons in a locked
10 cabinet, is that right? 17:09

11 A. That's correct.

12 425 Q. If this was just a routine piece of housekeeping, why
13 did you go to the same locked cabinet and put it inside
14 in it?

15 A. Because it was exactly that; it was referring to this 17:09
16 file and I knew that this was the file I would need
17 whenever the meeting would take place, whatever answers
18 may be required. If they weren't in my head, which
19 they probably would have been, I would have referred to
20 the file. 17:10

21 426 Q. I see. And it was something you intended to go back
22 to, is that --

23 A. Absolutely, absolutely, Judge.

24 427 Q. But Sergeant McCabe's name can hardly have been out of
25 your mind for the remainder of 2013 and all of 2014? 17:10
26 He was in the news virtually every day or every second
27 day.

28 A. He may well have been, Judge, but the letter wasn't --
29 or, do you know what I mean, the memory of the letter

1 wasn't in my mind. Sergeant McCabe may well have been
2 in the news on numerous occasions but there was nothing
3 that jogged my memory in relation to the letter,
4 unfortunately, until I got the correspondence
5 subsequently. 17:10

6 428 Q. And your evidence is that although he was present in
7 your mind --

8 A. No, that was your evidence, that he was present in my
9 mind, Judge, I didn't say that.

10 429 Q. Well, he was -- he must have been present in your mind? 17:11

11 A. Well, he wasn't taking over my life, Mr. McDowell. I
12 was dealing with a very busy district. I had lots to
13 do. I had family commitments, I had lots to do, Judge.
14 Maurice wasn't in my mind day in, day out, Judge, by
15 any stretch of the imagination. 17:11

16 430 Q. Well, you saw -- you must have seen the events of the
17 Public Accounts Committee and the Commissioner's
18 remarks about the whistleblowers?

19 A. Absolutely.

20 431 Q. You must have been aware that in the lead-up to that, 17:11
21 that he was in the headlines? I am just wondering
22 why -- I mean, even if you were busy on the day you
23 received it, why it never occurred to you again to look
24 at the matter?

25 A. Unfortunately, as I said, the file was locked away and 17:11
26 unfortunately it wasn't something that I was -- there
27 was nothing else in that locker. The file was locked
28 away until subsequently I put other files into it,
29 which were confidential. But, the file, if it had been

1 on my desk, if a copy of the letter had been there, it
2 would have reminded me, God, you must deal with this.
3 But my difficulty was, I was being too careful with all
4 of the material referring to --

5 432 Q. This is the point I am driving at: why, if it was just 17:12
6 a routine matter which just required you to lift the
7 phone and say 'Keara, how can I help you?' why did you
8 take it from your desk and file it away in a secure
9 cabinet?

10 A. Well, clearly when I looked at my day's work on the day 17:12
11 that I must have opened it on my day's return. I was
12 extremely business. I started work -- I have said
13 this, Judge, and don't like repeating myself. I
14 commenced work at 8:15am that morning, I terminated
15 work at 12:15am the following morning and I was back in 17:12
16 my office at 9:00am the following day and working
17 through. It was seriously busy, Judge. And I had been
18 away. So unfortunately, the matters that I was dealing
19 with in those time -- that times, were live matters.
20 This to me was an old case that was closed six years, 17:13
21 and didn't -- in my view there was nothing in the
22 letter to alert me that this required an immediate
23 attention or an immediate response from me.

24 433 Q. Well, it referred back to the 2007 investigation?

25 A. That's correct, which was closed in 2007. 17:13

26 434 Q. And it said they wanted to contact you about the
27 matter?

28 A. Yeah, and that in itself, I can only surmise when
29 reading the letter, and I think I have said this, was

1 strange, because how could Keara McGlone have known to
2 contact me only she went to the original file? And
3 having gone to the original file, the information that
4 she wanted -- and having listened to her evidence here,
5 the reason that she wrote the letter was to secure two 17:14
6 pieces of information. The first one was: was the
7 allegation the same? The allegation that she had
8 received from the Rian counsellor over the phone, which
9 was gyrating, dry humping, that expression humping, the
10 same as the allegation that had been made in 2006. Now 17:14
11 if she had looked at the statement, which we had
12 provided in accordance with the Children First
13 Guidelines, and as a team leader she would be familiar
14 with that, she would have seen yes, it was. And the
15 second matter she wanted to do was, to establish in 17:14
16 relation to whether a meeting should take place with
17 Maurice McCabe or to have a meeting. But it was clear
18 from the evidence given again by Ms. Mary O'Reilly that
19 she had a strategy meeting with her counterparts and
20 they had decided at that time in 2007 that there was no 17:14
21 need to have a meeting. So, if Ms. McGlone had
22 referred to the file, the answer she sought from me
23 were already answered and would have obviated the need
24 to send a letter in the first place.

25 435 Q. And can we take it then that as far as you were 17:15
26 concerned, this is a matter of no real significance at
27 all, this letter?

28 A. Not -- not -- it was a housekeeping exercise for the
29 want of a better word. It was something that I

1 certainly, absolutely should have dealt with. And it's
2 unfortunate that I didn't.

3 436 Q. Even though it referred to a person who at the time was
4 a person of fairly major significance for your force?
5 A. Judge, that's -- this is the HSE/Tusla matter, this 17:15
6 wasn't in relation to the force. And, you know,
7 Maurice's dealings with the force are Maurice's
8 dealings with the force. I am getting on with my job.

9 437 Q. Yes. And tell me, there is just one other topic I just
10 wanted to ask you about: we have heard that 17:15
11 journalists began to arrive at her door in January,
12 February of -- Ms. D's door I am talking about now, of
13 January and February of the following year.

14 A. When was this, in --

15 438 Q. In 2014. 17:16

16 A. Okay.

17 439 Q. Could you assist us in relation to this; were you aware
18 of any gossip or discussions or growing public interest
19 in the 2007 allegation made by Ms. D in the second half
20 of 2013 or the early half of 2014? 17:16

21 A. No. No. No, nobody -- I don't believe, I don't
22 believe anybody contacted me in relation to the
23 investigation afterwards, after I finished it. I don't
24 believe so, no. I could stand corrected but I don't
25 think so. I have no memory. I certainly, if anybody 17:16
26 had, I certainly wouldn't have discussed it with them,
27 under no circumstances.

28 440 Q. Can you think of -- I mean, we had Mr. Williams
29 yesterday saying he had heard certain rumours about it.

1 Can you think of any discussion in your division in
2 Cavan-Monaghan on the ground in relation to this issue?

3 A. Well certainly I didn't hear it and I would probably be
4 the last one to hear it. I have been described as lots
5 of things, but pedantic or righteous or various words 17:17
6 have been used I heard to describe me. Nobody would
7 endeavour to establish any kind of a conversation with
8 me. And that file was locked away, as I said, to
9 protect the people involved, both parties, all parties.
10 So nobody would have engaged in that level of 17:17
11 conversation with me because they would have got short
12 shift.

13 441 Q. And is it your evidence then that despite the fact that
14 Maurice McCabe was making serious criticisms in the
15 Byrne/McGinn process and the like, in respect of the 17:18
16 governance of the Cavan-Monaghan division, that nobody,
17 to your knowledge, was ever referring back to the 2007
18 allegation?

19 A. Well, I can't say what anybody else was doing. I know
20 in a particular -- and you were present when -- during 17:18
21 it happened, I know I made reference to it in relation
22 to the previous tribunal. I made a reference,
23 because -- but it was only in reference to the fact
24 that I had never spoken about it. I made reference
25 that, you know, there was questions going on at that 17:18
26 time in relation to investigations, what was happening
27 in Bailieboro, what was behind all of this, and I made
28 reference to it at the last tribunal and I say it here
29 again, that I never mentioned the fact that I had

1 investigated Maurice to anybody, because that was
2 nobody's business.

3 442 Q. And if, and there are statements to the effect that it
4 is the case, that if senior Gardaí adverted to this
5 incident in early 2014 in conversations with public 17:19
6 persons, you never heard of any groundswell which would
7 have brought that information up through the Garda
8 tree, if I may use that phrase?

9 A. The investigation file was provided by me in 2007 in
10 accordance with the regulations, I had no further 17:19
11 dealings with it.

12 443 Q. And if Mr. Williams informed Ms. D that senior members
13 of government and senior people in the Phoenix Park
14 were aware of her allegations in 2014, none of that
15 means anything to you? You weren't aware of any 17:19
16 rumours circulating?

17 A. I don't work in the Phoenix Park, I work very far away
18 from Monaghan, Judge.

19 **CHAIRMAN:** That is supposed to have come from
20 detective -- sorry, Superintendent David Taylor, but he 17:20
21 denies ever saying such a thing, to Mr. Williams
22 obviously.

23 **MR. MCDOWELL:** No, but somebody said something to Ms. D
24 because she recounts it.

25 **CHAIRMAN:** Yeah. 17:20

26 A. I can certainly categorically say I didn't say it to
27 anybody.

28 444 Q. **MR. MCDOWELL:** Just one last thing, Mr. Costello
29 reminds me to say to you: Ms. McGlone's letter

1 referred to a recent referral, isn't that right?

2 A. Pardon?

3 445 Q. Ms. McGlone's letter referred to a recent referral?

4 A. Recent referral, yeah.

5 446 Q. From a counselling service, isn't that right? 17:20

6 A. Yes.

7 447 Q. And in the circumstance, it couldn't have just been the

8 2007 referral she was referring to?

9 A. I don't know what she was referring to, but if there

10 was a new -- 17:21

11 448 Q. You couldn't have assumed it was -- that they were just

12 seven years later, getting around to dealing with

13 the --

14 A. Well, isn't that what exactly they said in the letter?

15 That she had noted from the file that they hadn't met 17:21

16 with Sergeant McCabe in 2007, that is exactly what she

17 said. There was no indication of any new information

18 or anything new.

19 449 Q. And she said that before she contacted Sergeant McCabe,

20 she wanted to have a conversation with you about the 17:21

21 matter because of a recent referral?

22 A. Yes. But there was nothing -- Ms. McGlone was a team

23 leader, if there was a new referral, if there was new

24 information, Judge, a new referral should have been

25 prepared and sent -- pardon me -- and sent to the 17:21

26 appropriate station. A letter to me or a meeting with

27 me wasn't the appropriate way to deal with that. The

28 appropriate way to deal with that was in the Guidelines

29 and it was prepare a new referral and send it on to the

1 relevant superintendent.

2 450 Q. And could I ask you this: In 2014, did anybody come to
3 you and ask you what was in the file that you held?

4 A. No.

5 451 Q. We know that Superintendent McGinn, for instance, wrote 17:22
6 to Chief Superintendent Sheridan saying the matter
7 might have to be reinvestigated or sent to the cold
8 cases unit in the National Bureau of Criminal
9 Investigation?

10 A. I didn't know that at that time. 17:22

11 452 Q. Did anybody at that stage feel that it was appropriate
12 to ask you to say, what originally was alleged here?

13 A. Well, I can't answer for what they felt, but nobody
14 asked me. I knew nothing about the 2014 correspondence
15 and the incorrect referral until now, until this 17:22
16 Tribunal, Judge.

17 453 Q. So throughout 2014, with all of this error and all the
18 rest of it, nobody ever said, where is the original
19 file?

20 A. Well, the original file would have been -- Chief 17:23
21 Superintendent Sheridan at that time, Judge, would have
22 had access to the investigation file. As I outlined at
23 the outset of my evidence, the correspondence, two
24 copies of the file were sent to the Director of Public
25 Prosecutions and one to the divisional officer, which 17:23
26 at that time was Colm Rooney but in 2014, as you say,
27 was Jim Sheridan.

28 454 Q. So that if this file was locked up in your cabinet --

29 A. This is the investigation file now, as opposed to the

1 DPP file which are two different elements, two
2 different things.

3 455 Q. The investigation file, let's deal with that.
4 A. Yes, that's here.

5 456 Q. Yes. Was there a copy of it anywhere else? 17:23
6 A. No. Not of the full investigation file. Only of the
7 file that is on the -- that is here, Judge. That is
8 the file I sent to the Director.

9 457 Q. And are they very different?
10 A. Well, no. There is additional information, as you have 17:23
11 referred to. The notes that I took in -- when I went
12 to Tusla.

13 458 Q. Oh, I see.
14 A. That type of material.

15 459 Q. Your own kind of notes? 17:24
16 A. My own -- that informed me in my investigation, Judge,
17 and informed me in my report to the Director, Judge.

18 460 Q. Yes. And the DPP's file would have been available at
19 regional level, is that right?
20 A. Divisional level, regional level and HR level, that 17:24
21 would be the practice.

22 461 Q. So the contents -- the DPP's direction and that kind of
23 material would have been available and known --
24 available up the line, so to speak, within An Garda
25 Síochána? 17:24
26 A. If you see the correspondence, Judge, provided by the
27 Commissioner here you can see where I sent it on up,
28 sent the directions up and I subsequently got a
29 question in relation to this --

1 **CHAIRMAN:** And as I am understanding, and my
2 understanding is growing, I suppose, because there was
3 a question of discipline, just because the DPP decides
4 not to take a prosecution doesn't mean there can't be a
5 discipline, and that would have had to go to B branch 17:24
6 and you would assume the district officer would have
7 sent it to B branch in Garda Headquarters. I am not
8 trying to implicate B branch at all, but all I am
9 saying is, as a matter of course it would go up to
10 headquarters. I think that is correct. 17:25

11 A. Yes.

12 462 Q. **MR. MCDOWELL:** Just to be clear, there is no sense in
13 which this information was sealed in your office in
14 Monaghan, the DPP's file?

15 A. Oh absolutely not, no. 17:25

16 463 Q. And there is no sense in which it was known only to you
17 and the DPP and the State solicitor?

18 A. No, absolutely not. I was obliged to report it, Judge.

19 464 Q. Thank you very much.

20 **CHAIRMAN:** Ladies and gentlemen, I am going to have to 17:25
21 call time on this, or if we are in a position to finish
22 within five or ten minutes. And I appreciate that some
23 people may have some important questions to ask. I
24 think everything has been covered personally, but then
25 again I am not looking at it from other people's 17:25
26 perspectives. So what do you want to do?

27 **MR. MCDOWELL:** well, I am finished.

28 **CHAIRMAN:** Yeah, no, I appreciate that and thank you,
29 Mr. McDowell. Mr. O'Higgins, you will clearly want to

1 ask some questions, but will you be a while? And I am
2 not trying to rush you.

3 **MR. O'HIGGINS:** I have no difficulty, Judge, if
4 Superintendent Cunningham doesn't mind, we might leave
5 it over until the morning. 17:26

6 **CHAIRMAN:** No, I am sorry, it is just difficulties are
7 arising from time to time. We will have to leave it
8 over until the morning. So we will at least have a
9 full day tomorrow. So we will try and sit maybe a bit
10 longer. 17:26

11 **MR. O'HIGGINS:** It will also shorten my questions as
12 well.

13 **MR. MARRINAN:** Sorry, sir, there is just one matter
14 before you rise. The Tribunal hasn't seen the original
15 file and we are anxious to have sight of it. So -- 17:26

16 **MR. O'HIGGINS:** No difficulty at all, it can be
17 provided immediately.

18 **CHAIRMAN:** Would you mind just leaving it overnight in
19 the custody of the Tribunal?

20 **MR. MARRINAN:** If we have it overnight, we will return 17:26
21 it in the morning.

22 **CHAIRMAN:** Yeah.

23 A. I think there might be one set of notes not here, I
24 didn't bring them, and they were the notes I wrote
25 in -- when I got access to the file. I think they are 17:26
26 back in my office, but I can have them for tomorrow.
27 It's the only piece that is not here. Everything else
28 is here.

29 **CHAIRMAN:** You are going back home?

1 A. I am not, Judge. I will stay here tonight, but I will
2 arrange for it to be here in the morning.

3 **CHAIRMAN:** Even if somebody could copy it, put it on an
4 attachment and send it to you, I doubt anything turns
5 on it, but just to have it for the sake of
6 completeness, that would be perfectly adequate unless
7 something else transpires. So I think we are 10:00 in
8 the morning.

17:27

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10 THE HEARING WAS THEN ADJOURNED TO THURSDAY, 20TH JULY
11 2017 AT 10:00AM

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