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1921, ON 17 FEBRUARY 2017

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

HELD IN DUBLIN CASTLE
ON THURSDAY, 20TH JULY 2017 - DAY 13

13

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

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SERVICES

APPEARANCES

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

REGISTRAR: MR. PETER KAVANAGH

FOR THE TRIBUNAL: MR. DIARMUID MCGUINNESS SC
MR. PATRICK MARRINAN SC
MS. KATHLEEN LEADER BL
MS. ELIZABETH MULLAN, SOLICITOR

FOR MS. D:
INSTRUCTED BY: MR. THOMAS P HOGAN SC
MR. NIALL BUCKLEY BL
MR. KIERAN KELLY
FANNING & KELLY SOLICITORS
HATCH HALL
HATCH STREET LOWER
SAINT KEVIN'S
DUBLIN

FOR SGT. McCABE:
INSTRUCTED BY: MR. MICHAEL McDOWELL SC
MR. PAUL MCGARRY SC
MR. BREFFNI GORDON BL
SEAN COSTELLO & COMPANY
HALIDAY HOUSE
32 ARRAN QUAY
DUBLIN 7

FOR THE COMMISSIONER:
INSTRUCTED BY: MR. MÍCHEÁL P. O'HIGGINS SC
MR. CONOR DIGNAM SC
MR. DONAL MCGUINNESS BL
MS. KATHY DONALD
CHIEF STATE SOLICITOR'S OFFICE
OSMOND HOUSE
LITTLE SHIP STREET
DUBLIN 8

FOR THE HSE:
INSTRUCTED BY: MR. MICHAEL CUSH SC
MR. JON LEGORBURU
MR. SEAN O'DONNELL
MR. REDMOND SCANLON
BYRNE WALLACE
88 HARCOURT STREET
DUBLIN 2

FOR TUSLA:
INSTRUCTED BY: MR. PAUL ANTHONY McDERMOTT SC
MS. SARAH MCKECHNIE BL
ARTHUR COX
TEN EARLSFORT TERRACE
DUBLIN 2

FOR ALAN SHATTER: MR. BRIAN GALLAGHER
GALLAGHER SHATTER SOLICITORS
4 UPPER ELY PLACE
DUBLIN 2

FOR RTE: MR. SEAN GILLANE SC
MR. EAMON KENNEDY BL
INSTRUCTED BY: MS. PATRICIA HARRINGTON, SOLICITOR

GARDA KEITH HARRISON: MR. MARK HARTY SC
KILFEATHER SOLICITORS

SUPT. DAVID TAYLOR: MR. MICHAEL O'HIGGINS SC
MR. JOHN FERRY BL
INSTRUCTED BY: CARTHAGE CONLON
MICHAEL E HANAOE
SUNLIGHT CHAMBERS
21 PARLIAMENT STREET
DUBLIN 2

MS. YVONNE MARTIN: MR. MICHAEL HEGARTY, SOLICITOR

FOR MR. JOHN MCGUINNESS: MR. DARREN LEHANE BL
INSTRUCTED BY: MR. FINTAN LAWLOR

FOR GARDA MAIRE O'REILLY: MS. CLIONA KIMBER SC
MR. KEVIN BELL BL
INSTRUCTED BY: MS. CAOIMHE RYAN
MORAN & RYAN

FOR THE IRISH TIMES: MR. MARK DUNNE BL
INSTRUCTED BY: HAYES SOLICITORS
LAVERY HOUSE
EARLSFORT TERRACE
DUBLIN 2

FOR INDEPENDENT NEWS
AND MEDIA PLC: MR. KIERAN KELLY, SOLICITOR

FOR MS. Y: MR. PAUL GUNNING BL
INSTRUCTED BY: MS. FIONA BAXTER
JOHN J. QUINN AND COMPANY
SOLICITORS
EARL STREET
LONGFORD

ASSOCIATED NEWSPAPERS: MR. MICHAEL KEALY, SOLICITOR

FOR PAUL WILLIAMS:

INSTRUCTED BY:

MR. ROSSA FANNING SC
MR. JOHN FREEMAN BL
MR. KIERAN KELLY
FANNING & KELLY SOLICITORS
HATCH HALL
HATCH STREET LOWER
SAINT KEVIN'S
DUBLIN

FOR ALISON O'REILLY:

MR. FÍONÁN Ó MUIRCHARTAIGH BL

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1 THE HEARING RESUMED ON THURSDAY, 20TH DAY OF JULY, 2017

2 AS FOLLOWS:

3
4 SUPERINTENDENT CUNNINGHAM WAS CROSS-EXAMINED BY MR.

5 O'HIGGINS:

09:59

6
7 1 Q. **MR. O'HIGGINS:** Now, Superintendent Cunningham, good
8 morning again. May I ask you, first of all, to deal
9 reasonably briefly with the subject matter of the --
10 not the subject matter, but with the fact of the 2006 10:01
11 and 2007 investigation. I think you've indicated to
12 the Tribunal already that you did not put your hand up
13 to be the investigating officer with respect to that
14 investigation, isn't that so?

15 A. That's correct, Judge.

10:01

16 2 Q. And would it be fair to say, you were not, you were not
17 overwhelmingly enthusiastic about taking on that role?

18 A. That's correct, Judge, I didn't believe I should do it.

19 3 Q. All right. Insofar as it's relevant, can you recall
20 did either Sergeant McCabe or Mr. D at the time object 10:01
21 to you doing the investigation?

22 A. No, Judge.

23 4 Q. Now, in February 2008, I understand it to be the case,
24 and perhaps you'd confirm, that Sergeant McCabe made
25 certain allegations against Mr. D, is that right, that 10:02
26 you were subsequently asked to investigate?

27 A. That's correct, Judge.

28 5 Q. Now, we are -- it's not necessary, nor appropriate, I
29 think, to go into those allegations, they haven't been

1 put to Mr. D, but again who gave you the job of
2 investigating those allegations made by Sergeant
3 McCabe?

4 A. Chief Superintendent Rooney, Judge.

5 6 Q. And --

10:02

6 **CHAIRMAN:** Maybe you would just clarify for me, is this
7 part of the O'Higgins Commission, the thing you are
8 talking about there?

9 **MR. O'HIGGINS:** Yes, Judge, I believe this was covered
10 in dispatches in the O'Higgins Commission.

10:02

11 **CHAIRMAN:** And appreciating that we are not covering
12 again, was it to do with the urine in the bottle in the
13 restaurant or what particular bit -- maybe you will
14 remember.

15 **MR. O'HIGGINS:** Well, actually, I can bring the
16 Tribunal to the actual letter.

10:03

17 **CHAIRMAN:** Yeah, without necessarily going into it --

18 **MR. O'HIGGINS:** I understand.

19 **CHAIRMAN:** -- just give me a pointer as to what it is,
20 please.

10:03

21 **MR. O'HIGGINS:** I understand. Well just again, I want
22 to be fair, and I know the Tribunal does as well, to
23 Mr. D and all parties. It's encapsulated in a letter
24 from -- that Sergeant McCabe sent, I understand, to
25 Superintendent Clancy in a letter dated 25th February
26 2008. And I am pretty certain this isn't in the
27 materials unfortunately, and I was provided with it
28 last night, but we might make copies available if that
29 is required.

10:03

1 7 Q. But just, in answer to the Chairman's question:
2 Superintendent, I understand that it is the fact that
3 Sergeant McCabe made certain allegations with respect
4 to his colleague, Mr. D, and directed them to
5 Superintendent Clancy at this time? 10:04

6 A. That's correct, Judge.

7 **MR. HOGAN:** Sorry, Chairman, Mr. O'Higgins has a letter
8 which isn't part of the materials which relates to my
9 client, Mr. D, I wonder could I have sight of that
10 letter. 10:04

11 **CHAIRMAN:** Yes.

12 **MR. O'HIGGINS:** I think that is reasonable, Chairman.

13 **CHAIRMAN:** No, no, I am sure you will, Mr. O'Higgins.
14 But, I mean, what is being done here is not to attack
15 Mr. D, Sergeant D's character, and certainly I am not 10:04
16 re-examining whatever it is, and I am well aware of
17 what is in O'Higgins, I am just trying to identify what
18 particular bit of it was involved. And we are not
19 going to go into it, I am not deciding any facts about
20 it. But I do think, yes, Mr. Hogan, you should have a 10:04
21 copy of that letter.

22 **MR. HOGAN:** Thank you, Chairman.

23 **MR. O'HIGGINS:** And, Chairman, that is being made
24 available now and, needless to say, we have no
25 difficulty with that and it's quite proper that 10:05
26 Mr. Hogan be given that, indeed Mr. McDowell's side as
27 well.

28 **CHAIRMAN:** I am sorry, we are having a bit of a
29 start/stop beginning to this. But I'm not sure I want

1 to go into it. If you'll appreciate that. You are
2 perfectly legitimately putting the point, look, wasn't
3 there an issue, and I only asked the issue, just with a
4 view to refreshing my memory as to what bit of the
5 O'Higgins Commission this particular thing involved and 10:05
6 there is about 12 incidents there, which one of it it
7 was, that is all I wanted to know.

8 **MR. O'HIGGINS:** Yes. Well, just the difficulty is, the
9 letter contains a number of bullet-points which,
10 broadly speaking, carries an allegation in each 10:05
11 bullet-point.

12 **CHAIRMAN:** All right. I am not going to stop you,
13 Mr. O'Higgins.

14 **MR. O'HIGGINS:** I want to emphasise, it's not at all
15 the intention of the cross-examination in any way to 10:05
16 involve the Tribunal in sitting in judgment on that or
17 impugning Mr. D at all or indeed Sergeant McCabe at
18 all. It's just setting in context what this witness
19 had to do as directed to him.

20 **CHAIRMAN:** Exactly. Appreciating there are issues at 10:06
21 one side and the other side. Yes, I understand.

22 **MR. O'HIGGINS:** Yes.

23 8 Q. But in any event, is that correct, and the Tribunal
24 will have the correspondence and Mr. Hogan as well
25 shortly, but is that correct, that the origin of this 10:06
26 was a letter sent by Sergeant McCabe to Superintendent
27 Clancy?

28 A. Yes. It was a piece of correspondence entitled
29 "Complaint" by Sergeant McCabe in relation to

1 activities, alleged activities of Mr. D. It was sent
2 to Superintendent Clancy, who, on seeing the subject of
3 it, obviously decided it required investigation, who
4 forwarded it then, Judge, to Chief Superintendent Colm
5 Rooney, who was the divisional officer at the time. 10:07
6 And Chief Superintendent Rooney then directed me to
7 investigate the complaints by Sergeant McCabe against
8 Mr. D, Judge.

9 Q. All right. And in that context, can I ask you the same
10 question with respect to the earlier investigation: 10:07
11 Were you overwhelmingly enthusiastic to be given that
12 job?

13 A. No, Judge. I didn't think it was appropriate because
14 having investigated a complaint by Ms. D's daughter
15 against Sergeant McCabe, I didn't really believe it was 10:07
16 appropriate, now, that I should investigate a complaint
17 by Sergeant McCabe against Mr. D, but nonetheless, I
18 again endeavoured to carry out the investigation to the
19 best of my ability, Judge.

20 Q. Right. Now, when you were given that task of 10:07
21 investigating that matter, can you assist the Tribunal,
22 who was the main person from whom you needed to take a
23 statement in order to carry out your investigation
24 task?

25 A. Oh, Sergeant McCabe, Judge. He had just bullet-points, 10:08
26 but I -- in relation to matters that he was raising,
27 but I was required to, if I was to initiate an
28 investigation, to get a statement from him in relation
29 to it and, more importantly, to get supporting

1 documents in relation to the particular allegations,
2 Judge, he had made.

3 11 Q. Right. And can you assist the Tribunal then, on foot
4 of that, did you make efforts to obtain a statement
5 from Sergeant McCabe? 10:08

6 A. I did, Judge.

7 12 Q. And broadly speaking, just in summary now, what efforts
8 did you make?

9 A. Well, I tried to contact Sergeant McCabe. I was still
10 an inspector, Judge, at this point, when the -- I 10:08
11 received the complaint first, and as there were
12 sergeants that were involved, it always has to be a
13 rank above a member who is complained of, that carries
14 out the investigation and that is why I was appointed
15 as an inspector. I made efforts, Judge, to contact 10:09
16 Sergeant McCabe when he was in Bailieboro. He went
17 sick for various personal reasons and -- so the
18 meetings didn't take place. One being cancelled
19 literally the morning it was due to occur. He
20 subsequently, Judge, transferred to Mullingar. And I, 10:09
21 again, tried to make appointments and eventually we had
22 an appointment, I think it was August, I don't have the
23 documents in front of me, I think it was about August
24 2008, Judge, that I went to Mullingar and I met with
25 Sergeant McCabe to secure a statement from him in 10:09
26 relation to the complaints he had lodged, Judge.

27 13 Q. When you say August, that is August 2008, is that
28 right?

29 A. 2008, yes. I was now a superintendent actually in

1 Bailieboro.

2 14 Q. Oh, right. Well, prior to that, can I ask you,
3 superintendent, and I am speaking now about perhaps the
4 position, the stage of early summer of 2008, May and so
5 on -- 10:10

6 A. I hope I am right in those dates. I don't have
7 documents, Judge.

8 15 Q. But prior to that, can I ask you, did you have any role
9 in conveying to Sergeant McCabe news of the station or
10 supports that were available to him at the request of 10:10
11 your superior officers?

12 A. Oh, I had kept in touch with Maurice. When a member is
13 off, Judge, there is an obligation on us to keep him
14 informed of developments, of just actually providing a
15 support. And I had rang Maurice, actually, on a couple 10:10
16 of occasions and just talked generally, just generally
17 about what was going on in the station and in fact, I
18 had offered him that I would call to see him in his
19 house if he deemed it appropriate, but Maurice had said
20 no, that he was quite happy with just telephone calls. 10:11
21 I then wrote him a letter -- and again, I am working
22 from memory, Judge, I don't have the letter in front of
23 me.

24 16 Q. Well, I might be able to assist you with that,
25 superintendent, and I think this letter is going to be 10:11
26 made available hopefully when the photocopy --

27 **MR. MARRINAN:** Sorry, sir, to interrupt. First of all,
28 if parties to the Tribunal are going to introduce
29 documentary evidence, it has to go through the Tribunal

1 so that appropriate redactions can be made. Having
2 viewed the documents that have already been handed to
3 the Tribunal, I can see immediately that there are a
4 large number of redactions in relation to the
5 identification of personnel who are not parties to the 10:11
6 Tribunal and some who are parties to the Tribunal. So
7 that's the first observation that I would make, and
8 perhaps the parties could bear that in mind in the
9 future. This has been set down, as Mr. McGuinness
10 reminds me, in the rules of the procedures that was 10:12
11 published on the Tribunal website.

12
13 The second point is the relevancy of these matters that
14 are now being introduced in relation to the interaction
15 between this witness and Sergeant McCabe. It follows 10:12
16 on from a cross-examination by Mr. McDowell that was
17 restricted and focused in relation to the matters that
18 we are currently dealing with in this term of reference
19 and didn't stray into other areas that arose during the
20 Commission of Inquiry chaired by Mr. Justice O'Higgins. 10:12
21 And I would wish that, and I would submit to you, sir,
22 that we are really straying outside the issues that we
23 have to determine in this term of reference.

24 **CHAIRMAN:** Yes. Well, thanks, Mr. Murrinan.
25 Mr. O'Higgins? 10:13

26 **MR. O'HIGGINS:** With respect, Chairman, I do not for a
27 moment accept that the evidence that is being elicited
28 from this witness for me has in any sense strayed
29 beyond the terms of reference. If Mr. Murrinan

1 examines the document of 25th of April 2008, he will
2 see in the first paragraph it has material directly
3 relevant to Mr. McDowell's cross-examination of my
4 client. Directly relevant.

5 **CHAIRMAN:** Is it February or April? 10:13

6 **MR. O'HIGGINS:** 25th of February 2008.

7 **CHAIRMAN:** You said April.

8 **MR. O'HIGGINS:** I beg your pardon. No --

9 **CHAIRMAN:** Sorry, go on.

10 **MR. O'HIGGINS:** That is the first point. I, of course, 10:13
11 accept and I have no difficulty and I acknowledge it is
12 preferable if the materials are to go up, that they be
13 redacted, and I completely acknowledge that. That's
14 sub-optimal in that it was provided only yesterday.

15 Can I -- I wonder would it suit -- I don't wish to hold 10:14
16 things up, would it suit you, Chairman, to facilitate
17 that? Because I just want to very briefly touch on
18 some of these documents in a way that stays within the
19 terms of reference and is fair most -- most
20 particularly, fair to the parties. Could I ask you 10:14
21 perhaps even just to rise for five minutes and we could
22 achieve that?

23 **CHAIRMAN:** well, Mr. O'Higgins, let's do it this way.
24 First of all, I accept you are doing your best.
25 Secondly, I accept in the nature of any court hearing - 10:14
26 okay, it's a tribunal hearing - is that things will
27 come along and that people won't necessarily be
28 completely prepared, and memories are jogged and things
29 suddenly become important. But I do accept

1 Mr. Marrinan's point; there needs to be redaction to
2 this. I think for the moment we should carry on with
3 the unredacted version, which, by the way, I would like
4 to see in the event that someone would give it to me,
5 but if it's to become part of the Tribunal's documents 10:15
6 we do need to do a job on it, Mr. O'Higgins, and we
7 will do that. Appreciating that -- and it's up to us
8 to do that job. As regards the wider issue, are we
9 going and revisiting O'Higgins; well, I think you know
10 my concerns in that regard. 10:15

11 **MR. O'HIGGINS:** It's not my intention to do so,
12 Chairman.

13 **CHAIRMAN:** Yes. I think it's right for Mr. Marrinan to
14 point that out. But secondly, it seems to me that
15 given that the whole point about the letter of the 15th 10:15
16 August 2013 and its non-answering is there as, on the
17 one hand, the possibility or prospect that this was in
18 order to let Sergeant McCabe stew in something that
19 might be coming down the line or was it something by
20 way of a distraction has come up, as to whether the 10:15
21 superintendent was well disposed or fair-minded towards
22 Sergeant McCabe, is actually important.

23 **MR. O'HIGGINS:** Yes. And --

24 **CHAIRMAN:** So that's, I take it, what you are driving
25 at. 10:16

26 **MR. O'HIGGINS:** Indeed, Chairman. You have put your
27 finger on it; that is precisely what the intended
28 object is.

29 **CHAIRMAN:** I understand, Mr. O'Higgins. You please

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carry on.

MR. McDOWELL: I wonder could I see a copy of this?

CHAIRMAN: You certainly should, yes.

MR. O'HIGGINS: Sorry, Chairman, that is why I am just suggesting, in fairness to Mr. McDowell's side --

10:16

CHAIRMAN: well, you are right. I will disappear for five or ten minutes and we will try and do the relevant job.

MR. O'HIGGINS: Obligated.

10:16

**THE HEARING ADJOURNED BRIEFLY AND THEN RESUMED
AS FOLLOWS:**

MR. O'HIGGINS: Thank you, Chairman. I think I have jumped ahead of Mr. Hogan, who in fact has some questions for Superintendent Cunningham.

10:58

**SUPERINTENDANT CUNNINGHAM WAS CROSS-EXAMINED BY MR.
HOGAN:**

10:58

17 Q. **MR. HOGAN:** Superintendant Cunningham, my name is Tom Hogan, I am instructed by Ms. D and her family. And I just have a few questions. I think you are aware, superintendent, obviously, that Ms. D was unhappy in relation to the way in which her complaint was investigated by you, isn't that correct?

10:59

A. That's correct, Judge.

18 Q. And ultimately, it was the subject of a complaint to GSOC that the investigation wasn't handled properly by

1 you?

2 A. That's correct.

3 19 Q. And I suppose one of her principal complaints,
4 superintendent, was that you shouldn't have been
5 involved in the investigation at all, isn't that 10:59
6 correct?

7 A. That's correct, Judge.

8 20 Q. And you have told the Tribunal, I suppose very clearly,
9 that you believed it was inappropriate that you carry
10 out that investigation? 10:59

11 A. That's correct, Judge.

12 21 Q. And why do you believe it was inappropriate?

13 A. I suppose, Judge, for the optics of the thing, I knew
14 the parties. As I said, I didn't know the families at
15 all. I didn't know Ms. D but I knew her dad and I knew 11:00
16 Sergeant Maurice McCabe. So, I just felt it was
17 probably more appropriate that somebody from outside
18 who didn't know them would carry out this
19 investigation. But having been so directed to do, as I
20 said yesterday, Judge, I became blind to the people who 11:00
21 were involved and simply carried out the investigation,
22 I believe, and as it was upheld by GSOC, in a
23 professional and independent manner, Judge.

24 22 Q. You described yesterday to the Tribunal,
25 superintendent, that you knew Sergeant McCabe very 11:00
26 well.

27 A. I knew him. Yes, I knew him. I worked with him. He
28 was in the district that I worked for four years, I
29 think from 2000 to 2004, around that, Judge.

1 23 Q. You worked with him a lot and you described that you
2 knew him very well?

3 A. Yes, I knew him well, yes.

4 24 Q. But yet you didn't know his family?

5 A. Oh, no. No, they are from down a long way from where I 11:01
6 lived, Judge. They are down Mountnugent, I live in
7 Monaghan. It's a long distance.

8 25 Q. Have you ever met his wife?

9 A. I certainly met her as a result of a matter, an
10 allegation which Sergeant McCabe made against Mr. D. 11:01
11 On hearing it, Judge, it was a serious matter, and I
12 travelled to their home to endeavour to secure a
13 statement from Ms. D so that the matter could be
14 investigated -- or sorry, from Mrs. McCabe, but she
15 declined to make a statement, Judge. But I am not 11:02
16 sure, I wouldn't -- certainly I don't believe I would
17 have socialised with them. I just have no memory of
18 it, Judge.

19 26 Q. You wouldn't have socialised with Sergeant McCabe at
20 any stage? 11:02

21 A. Oh, no, Judge. I am a non-drinker, I don't go out
22 much. I'm a bit of a home bird, Judge. I don't tend
23 to socialise very much at all.

24 27 Q. And how well did you know the D family?

25 A. Again, I didn't know any of the family at all. I knew 11:02
26 Mr. D again professionally from the job, Judge, from
27 meeting him when I was on duty. You know, as well as
28 one knows a colleague, that is as well I knew him,
29 Judge.

1 28 Q. Did you know anything about the D family?
2 A. Well, I remember when I commenced the investigation and
3 if you asked me how I know, because I referring to it I
4 think in my covering report, that I had become aware of
5 some incidents which Ms. D had apparently been involved 11:03
6 in, some issues, but I didn't -- I think the word I
7 used was anecdotally, I didn't know it personally,
8 Judge. I didn't know the girl and I didn't know her
9 mum or her brother.

10 29 Q. Because you said in your statement that anecdotally you 11:03
11 said that you knew Ms. D had been having difficulties
12 in 2005, isn't that right?

13 A. Yes, Judge. And I think that is essentially it.

14 30 Q. And because of that, I think your first port of call 11:03
15 was to visit the HSE and to see what was on her file,
16 isn't that right?

17 A. Well, no. It wasn't my first port of all. In my
18 investigation notes, which I have made available to the
19 Tribunal, it would be seen where I spoke at length to
20 Ms. D's mum and dad and they outlined in quite detail 11:04
21 the difficulties they were having with their daughter.
22 And it was them who told me that she had been engaging
23 since 2005 with the HSE and that's what led me to the
24 file. I wouldn't have obviously known that in advance
25 of discussing it with her parents, Judge. 11:04

26 31 Q. But you did know about it, you knew about it
27 anecdotally, isn't that what you said?

28 A. No, I didn't -- yes, but I didn't know she was engaging
29 with the HSE. I couldn't have known that. I only knew

1 that because that's what her mum told me and her dad
2 told me, when I met -- I sat with them for quite some
3 time. They painted a picture of a young child who --
4 and I am working from memory, I think they believed up
5 until first year in secondary school really didn't have 11:05
6 any difficulties or wasn't expressing any problems or
7 issues. I think when I went to the files and when I
8 spoke to Ms. D, she in fact pushed it back a year
9 before that, in sixth class. And that became the
10 subject of my investigation, and some of the materials 11:05
11 that I have provided to the Tribunal, Judge, yesterday
12 shows the investigations I carried out into what was
13 occurring in this young girl's life from essentially
14 sixth class through to first year and the time that I
15 was carrying out the investigation, which was around, 11:05
16 maybe second year, I am not sure. So that's -- that's
17 the only way I became aware of that at that type of
18 level and that type of detail, Judge.

19 32 Q. You are aware, of course, superintendent, of the
20 disciplinary issue that had arisen between Sergeant 11:06
21 McCabe and Mr. D, isn't that correct?

22 A. I was, Judge.

23 33 Q. And did you factor that in at all in relation to your
24 consideration of whether it was appropriate or not for
25 you to carry out the investigation? 11:06

26 A. I didn't factor that in explicitly. I just factored in
27 the fact that I knew the parties well, that I was
28 attached to the division where they worked. And I'm
29 sure Chief Superintendent Rooney would have been well

1 aware of the knowledge I would have had of the parties
2 when he came to his decision.

3 34 Q. well, don't worry about him for a moment.

4 A. I am not -- sorry, Judge, I am only trying to answer
5 the question. 11:07

6 35 Q. what did you know about the disciplinary matter?

7 A. I was aware -- I wasn't aware of the full detail of it
8 but I knew an incident had occurred and I knew that, as
9 a result of that incident, I'm not sure if a formal
10 disciplinary investigation had took place, and I still 11:07
11 don't know if that had taken place, but I know, and I
12 believe I am right in saying, that as a result of the
13 incident, that Mr. D, who was the sergeant in charge of
14 the crime unit at the time, was removed from that
15 position, Judge, and returned to regular sergeant -- 11:07
16 unit sergeant duties, and I believe one of the other
17 members who was also a uniform member on the crime
18 unit, was removed from the crime unit and, Judge,
19 returned to regular duties. I think there was a
20 detective involved, I am not sure what, if any, action 11:08
21 was taken against him. He certainly wasn't reverted,
22 Judge. He remained as a detective, Judge.

23 36 Q. How did you come to know about the incident,
24 superintendent?

25 A. Judge, I don't know. I just came to know about it, I'm 11:08
26 sorry, I don't know when or how. I don't remember,
27 it's a long time ago.

28 37 Q. It was a matter that you --

29 **MR. MARRINAN:** Sorry, sir, I don't like interrupting

1 Mr. Hogan, but again, you made very clear at the
2 sitting in private that we were not reinvestigating
3 Superintendent Cunningham's investigation, that was a
4 task that was undertaken by GSOC, and it appears to me
5 that these questions are directed solely in relation to 11:08
6 the manner in which Superintendent Cunningham went
7 about his investigation in 2006/2007, and it's my
8 respectful submission to the Tribunal that this line of
9 questioning is irrelevant.

10 **MR. HOGAN:** well, can I respond to that? I would 11:09
11 respectfully disagree. I am fully aware of the
12 Tribunal's ruling in relation to what is outside,
13 inside and outside the terms of reference. These
14 questions are directed towards ascertaining what
15 Superintendent Cunningham's state of knowledge was in 11:09
16 relation to the parties, what concerns he had in
17 relation to why or whether it would be inappropriate
18 that he carried out the investigation at all. I am
19 simply inquiring as to how well he knew the parties,
20 what he knew of the parties and in particular this 11:09
21 incident which formed part of his investigation. I
22 don't want to inquire into his investigation but merely
23 what he knew about the parties prior to undertaking his
24 investigation.

25 **CHAIRMAN:** Yes, I am actually getting worried now 11:10
26 because I have had a chance since it has been put on my
27 desk to have a read of this letter and subsequent
28 correspondence in relation to what Sergeant McCabe says
29 about the whole background of the D allegation and what

1 various people are saying. And I note as well, and
2 it's important, I'm sure someone is going to bring it
3 out in any event, that Inspector Cunningham didn't just
4 say to Sergeant McCabe that it was insufficient
5 evidence, was the reason the DPP wasn't going to 11:10
6 prosecute, but instead he records him as saying that
7 there was *"no offence disclosed whatsoever and that I*
8 *was exonerated"*, and I am quoting. Yeah --

9 A. I --

10 **CHAIRMAN:** Don't worry about it, superintendent. I am 11:11
11 just worrying about this, Mr. Hogan, and where it's
12 going. Tangentially you could say it's possibly
13 relevant to whether there was some kind of animus
14 motivating the superintendent. It's pretty far
15 removed, but for the moment can I let you continue and 11:11
16 see where we go with it, just bearing in mind what
17 Mr. Marrinan has said and the ruling of the Tribunal,
18 which, by the way, was not just the ruling of the
19 Tribunal but when the transcript goes up of the private
20 hearing, everybody agreed what was within or without 11:11
21 the terms of reference. I mean, literally everybody.

22 **MR. HOGAN:** Yes, I understand that, Chairman.

23 **CHAIRMAN:** So, you might bear that in mind and continue
24 for a moment, if you wouldn't mind.

25 **MR. MCDOWELL:** Chairman, I don't want to prolong this 11:11
26 or extend it in any way. But it does occur to that --

27 **CHAIRMAN:** You've only got a green light, I am afraid.
28 Not a --

29 **MR. MCDOWELL:** Sorry, the purpose of this module -- the

1 purpose of this module, Chairman, is to investigate
2 what happened with the Rian letter, the Tusla letter
3 and whether -- and this witness, I thought, was being
4 called on the narrow issue of how he dealt with the
5 correspondence thereafter and whether he had some 11:12
6 ulterior motive. And, as I understand this witness,
7 under cross-examination from Mr. Marrinan, he said that
8 by 2013 Sergeant McCabe was a thorn in his side, to
9 some extent, although he claimed he acted properly and
10 impartially at all times. But I don't see how going 11:12
11 back to all of this is really assisting the Tribunal in
12 determining what he did or did not do with the letter,
13 and I am just making the point, we are going to spend a
14 morning on this, Judge --

15 **CHAIRMAN:** Yeah, no, no, I appreciate that. I 11:12
16 appreciate as well that anything can be made relevant
17 to anything else. Unfortunately, bitter experience has
18 taught me that. I am going to let Mr. Hogan continue
19 for the moment and just see where we are at and I have
20 borne in mind what both Mr. Marrinan and yourself have 11:13
21 said, and if necessary I may have to intervene,
22 Mr. Hogan, but just carry on for the moment.

23 **MR. HOGAN:** Just to clarify --

24 **CHAIRMAN:** No, no, don't worry about clarifying it to
25 me, if you just carry on. Yes. 11:13

26 38 Q. **MR. HOGAN:** Superintendent, I have to suggest to you
27 that your belief that it was inappropriate that you
28 carry out that investigation rings as true now as it
29 did then before you carried out the investigation, and

1 that you shouldn't have carried out the investigation,
2 given your position with the parties?

3 A. I don't dispute that, Judge. I don't dispute that,
4 Judge. I believe that I shouldn't have carried out the
5 investigation. I still believe I shouldn't have 11:13
6 carried out the investigation. But I believe, Judge, I
7 did it well. I don't believe there has been any
8 criticism of the type of investigation I have carried
9 out. In fact, the very opposite, Judge; the GSOC was
10 complementary in the manner in which, and felt that the 11:14
11 issues I raised to afford the DPP the best information
12 to come to a decision were very relevant, which I
13 believed they were at the time. I don't believe I was
14 displaying any kind of, I think the word, Judge, you
15 used was animus towards anybody. In fact, I was the 11:14
16 very opposite, I would like to think I was very fair to
17 all parties and very impartial to the manner in which I
18 carried out my investigation and produced my report,
19 Judge. And if I may just say, and I don't like taking
20 the time of the Tribunal, Judge, but Mr. McDowell 11:14
21 referred to thorn in side, that I think was an
22 expression of your own. I have never suggested or nor
23 do I believe that Maurice McCabe was a thorn --

24 **MR. MCDOWELL:** It was Mr. Marrinan's expression.

25 A. Well, my apologies, whoever raised it. It's not an 11:14
26 expression I would use.

27 **CHAIRMAN:** well, it happens. Look, things are
28 reported. I don't think we should worry. I am
29 supposed to have described the incident as horseplay, I

1 didn't in fact ever do that, but the newspapers have
2 reported me as saying that. So we will carry on.

3 A. Thank you, Judge.

4 39 Q. **MR. HOGAN:** There is only one other matter I want to
5 ask you about, superintendant, and this is in relation 11:15
6 to the recording, the fact that the complaint wasn't
7 recorded on the PULSE system. You obviously didn't
8 record it on the PULSE system, isn't that correct?

9 A. It wasn't my function to -- under the PULSE release 1.3
10 Regulations, as I pointed out, at the time, to Tusla -- 11:15
11 or to, sorry, the Ombudsman Commission and they
12 accepted it, it was the duty of Detective Sergeant
13 Fraher, Judge, to do that, who had received the report,
14 and I think he explained the reasons for not doing so,
15 to Tusla -- or to, my apologies, the Garda Síochána 11:15
16 Ombudsman Commission. It wasn't my function. I was
17 given a clear function, Judge, to carry out a criminal
18 investigation and identify if there were disciplinary
19 issues, they were the two functions I had, Judge.

20 40 Q. I have to suggest to you, you are wrong about that, 11:16
21 Superintendent Cunningham, because GSOC in fact found
22 it surprising that you didn't discover or rectify the
23 problem?

24 A. well --

25 **CHAIRMAN:** I am just tending to wonder, Mr. Hogan, in 11:16
26 relation to this whole -- no, if you just hold on one
27 moment. In relation to this whole notion of PULSE, if
28 someone comes along tomorrow and makes an allegation
29 against one of the persons holding any high office in

1 the land, does that automatically mean that it has to
2 go on PULSE and that every single Garda, every single
3 Garda's husband, perhaps, in the country suddenly knows
4 about it? I mean, how sane is that, if that is the
5 point you are making, that there is some breach of duty 11:16
6 here?

7 **MR. HOGAN:** Very good, Chairman. We can leave it at
8 that then.

9 **CHAIRMAN:** I find it hard to find that even if I was
10 inquiring into it that one could criticise the Gardaí 11:17
11 for approaching this with sensitivity. I just find it
12 hard to think that, Mr. Hogan.

13 **MR. HOGAN:** That is not the explanation, Chairman, but
14 -- I have no more questions.

15 **CHAIRMAN:** Thank you, Mr. Hogan. Mr. O'Higgins, before 11:17
16 you go, can I just repeat that I am extremely worried
17 about us traversing over this whole thing.

18 **MR. O'HIGGINS:** Yes. I propose to keep this tight,
19 Chairman, for the reasons you mentioned.

20 **CHAIRMAN:** Yeah. You know, one of the reasons that I 11:17
21 am worried is, the letter of course says certain things
22 and the person about whom it said was here and nobody
23 asked him about these things, possibly because of the
24 private session.

25 **MR. O'HIGGINS:** That is why I wasn't going to mention 11:17
26 them, Chairman.

27 **CHAIRMAN:** Yeah. Well, I have read this letter before,
28 and I have read all the correspondence, before I saw it
29 now, I am reminded of it --

1 **MR. O'HIGGINS:** I have a few --

2 **CHAIRMAN:** -- but alarm bells are ringing and I am
3 going to trust your good judgement.

4 **MR. O'HIGGINS:** May it please you, Chairman. I do
5 propose to refer to some of the correspondence because 11:18
6 it's relevant to the terms of reference, but I hope I
7 do it in a way that stays within the parameters of what
8 you have outlined.
9

10 **FURTHER CROSS-EXAMINATION BY MR. O'HIGGINS:** 11:18

11 41 Q. **MR. O'HIGGINS:** Superintendent, can I ask you then,
12 bringing us back to 2007, can you assist the Tribunal
13 in indicating whose interests and rights were you
14 seeking to be watchful of or protect when you made the
15 decision to place the file in your press in 2007? 11:18

16 A. Oh, both Sergeant McCabe and Ms. D, Judge. Both of
17 them.

18 42 Q. And whose interests and rights were you seeking to
19 protect when you placed the letter of Keara McGlone of
20 August 2013, with that file, in your press? 11:19

21 A. Again, Judge, the same parties. They were named on it,
22 Judge, or identifiable on it.

23 43 Q. Did you take a decision when you received that letter,
24 you believe in September of 2013, when you came back
25 from leave, did you take a decision to broadcast the 11:19
26 letter or its contents within the Garda station?

27 A. Absolutely not, Judge.

28 44 Q. Did you take a decision to broadcast the letter or its
29 contents to the outside world?

1 A. Absolutely not, Judge.

2 45 Q. why not?

3 A. It just was, again, sensitive. It was part and parcel
4 of what I had dealt with in 2006/2007. I had, I
5 believe, at all times made every effort to preserve the 11:19
6 dignity of the people who were involved in that
7 investigation, and that was the course I took when I
8 received the letter also in 2013, Judge. I clearly put
9 it away with the main file where it wasn't in view of
10 anybody and couldn't be disseminated, couldn't be -- 11:20
11 nobody could be accused of, for the want of a word,
12 leaking any information because they simply didn't have
13 it.

14 46 Q. When you put away the letter in your press with the
15 file, superintendent, did you intend to come back to it 11:20
16 at some point?

17 A. Absolutely, Judge. Absolutely. And that is why I put
18 it with the file because that is why I knew I would
19 have needed it.

20 47 Q. I think you have acknowledged that you should have 11:20
21 responded to the communication?

22 A. Absolutely, Judge. But, as I said yesterday, there was
23 nothing in the letter that suggested that this was
24 anything more than a housekeeping exercise. There was
25 certainly nothing in the letter to suggest that there 11:20
26 was any change. In fact, it was quite the opposite;
27 the letter was suggestive of, that it was the same
28 allegation as I had investigated, Judge, in 2006/2007.
29 There was nothing in the change of the status of that,

1 Judge.

2 48 Q. Superintendent, can I ask you, did you believe that the
3 HSE were aware of the dealings you had had with Rhona
4 Murphy, for instance?

5 A. They should have, Judge, because I had sought 11:21
6 permission to get access to the file and that was
7 through a written letter through the HSE, Judge.

8 49 Q. Did you believe, superintendent, that the HSE were
9 aware of the outcome of Ms. D's meetings with
10 psychologists? 11:21

11 A. Oh, yes, Judge, absolutely. I had access to the
12 initial records. Now, and this was in 2006/2007,
13 nothing after that obviously. But yes, because they
14 had given me access to them, Judge.

15 50 Q. Did you believe that the HSE were aware of the contents 11:21
16 of Ms. D's two statements?

17 A. I did, Judge. Because I sent them to them in
18 accordance with the Children First Guidelines, Judge,
19 in January 2007.

20 51 Q. Did you believe that the HSE were aware of the 11:22
21 inconsistencies you had mentioned to Rhona Murphy
22 concerning Ms. D's complaint as potentially posited by
23 you?

24 A. Well, that was information I had gleaned from their
25 files, Judge. 11:22

26 52 Q. Was it your understanding from the letter that there
27 was any tasks left for An Garda Síochána to do?

28 A. No, Judge. There was no further tasks for us to do.
29 We had complied fully with the protocols, Judge.

1 53 Q. Can I ask you in terms of the context of your leave to
2 the extent that it's relevant and insofar as the
3 Tribunal has to assess the blameworthiness. If any,
4 that applies to your failure to respond to the
5 correspondence. You have indicated this period of 11:22
6 two-month leave, that was unusual for you, was it?
7 A. Very, Judge. And even to this day would still be
8 unusual. I wouldn't have taken so much time, such a
9 long period at any time before or I believe since,
10 Judge. 11:23
11 54 Q. I think it's the case that you were assisting your
12 daughter in setting up an apartment or a home, as it
13 were, in Budapest on her first occasion out from the
14 family home?
15 A. That's correct, Judge. 11:23
16 55 Q. And that is why you had taken longer than you would
17 normally take?
18 A. Absolutely, Judge, yes.
19 56 Q. When you arrived back then in September after the
20 approximate two-month break, did that have any 11:23
21 implications for the backlog of post and emails and
22 general tasks you had to deal with?
23 A. Oh, huge, Judge. There was a lot of work on my desk,
24 there was a lot of things that required immediate
25 attention. I was -- I outlined what my diary clearly 11:23
26 shows, that the length of time -- and I am repeating
27 this, Judge.
28 57 Q. Well, you needn't repeat any evidence, but can I ask
29 you this just by way of summary, just so the Tribunal

1 has a flavour of it: In terms of your role at that
2 time would you, for instance, have had in 2013 a court
3 role?

4 A. Because there was only one inspector, I was still doing
5 some of the courts, Judge, yes. 11:24

6 58 Q. would you have had a role in relation to processing or
7 dealing with inquiries from GSOC?

8 A. Absolutely, Judge. I had GSOC investigations. I would
9 always have at least two or three of those
10 investigations on my desk, Judge, live. 11:24

11 59 Q. would you have had a role in liaising with the Chief
12 Superintendent's office?

13 A. Every day.

14 60 Q. would you have had a role in divisional matters?

15 A. I would have, Judge. I would have -- we would have 11:24
16 divisional management meetings, we would have issues to
17 cover, we would get correspondence down. Sometimes I
18 would get particular things down, Judge, because of my
19 background, maybe, to write on, but -- and of course,
20 then, if there was disciplinary files to be done they 11:24
21 may also be allocated to superintendents and I would
22 get them also.

23 61 Q. would you have had any role in, a supervisory type of
24 role in relation to sergeants and Gardaí underneath
25 your rank? 11:25

26 A. Absolutely, Judge. We had what was called daily PALF
27 meetings, Judge, where we would be reviewing the
28 incidents that were occurring, ensuring the files were
29 being kept up to date, ensuring the proper procedures.

1 And unfortunately at that time, Judge, the IT system to
2 support us wasn't as modernised as it has been of
3 recent times and it's still being worked on, so it
4 meant there was an awful lot of paperwork to be done as
5 opposed to present, a lot more can be done by way of 11:25
6 IT, Judge.

7 62 Q. And the location of your station at that time,
8 superintendent, did that have any implications on the
9 business or workload of a superintendent in 2013?

10 A. Yes, Judge. It's a border station, and the peace 11:25
11 dividend, I have often described it in relation to the
12 reduction of manpower on both sides of the border, has
13 been a very significant increase in crime, Judge. And
14 that takes a lot of our time in relation to obviously
15 to oversight, seeing the investigations, and we also 11:26
16 have joint policing committees, Judge, where we go and
17 we are often questioned by councillors in relation to
18 matters that are occurring in their area and of
19 concerns to them. So one has to be on top of one's
20 game, Judge, in relation to what is going on and be in 11:26
21 a position to often deal with the minutiae of some
22 matters that may be put to you, Judge.

23 63 Q. Now, can I ask you there, hopefully in front of you
24 there is some correspondence and you will have heard
25 the Chairman's cautionary words in relation to the 11:26
26 necessity to just go carefully with this.

27 A. I don't have it, unless it's on the screen. I haven't
28 been given any.

29 64 Q. It might be provided to the witness [SAME HANDED].

1 satisfactory. And that's why there is a requirement on
2 the parties to provide these documents to the Tribunal
3 so this doesn't happen.

4 **CHAIRMAN:** No. And I appreciate what you have said,
5 Mr. Marrinan. 11:28

6 **MR. MARRINAN:** I can see the point that Mr. O'Higgins
7 is attempting to make in relation to the relationship
8 between Superintendent Cunningham and --

9 **CHAIRMAN:** But there is reference to private things,
10 you know. 11:29

11 **MR. MARRINAN:** Yes.

12 **CHAIRMAN:** Where, you know, something happens, let us
13 say at a barbecue, and one person takes a view and
14 another person might take a different view. It's the
15 kind of thing that (a) is not an offence or a tort, and 11:29
16 secondly, it's the kind of thing that is impossible to
17 work out in the aftermath of it. Even if you were
18 standing, even if three people were standing around
19 cooking the sausages or whatever they might all have a
20 different point of view as to what might have occurred. 11:29

21 **MR. MARRINAN:** Well, exactly. I have already made a
22 point in relation to the relevancy of any of this.

23 **CHAIRMAN:** Yeah. So will we redact it further before
24 putting it into the Tribunal material?

25 **MR. MARRINAN:** Yes. 11:29

26 **CHAIRMAN:** I think that is the right thing to do. And
27 that is not with a view to hiding anything, it's with a
28 view to protecting people's privacy in relation to the
29 fact that they are entitled to go to barbecues and to

1 interact with one another without it being made the
2 subject of public comment. So, Mr. O'Higgins, I know
3 you will proceed carefully, so please do.

4 **MR. O'HIGGINS:** May it please you, Chairman.

5 **MR. MCDOWELL:** Can I make one observation in relation 11:30
6 to this matter? And that is, that a lot of this is
7 much more relevant, I would imagine, to the O'Higgins
8 Commission segment of this Tribunal's activities.

9 **CHAIRMAN:** Yeah. No, I agree. And Mr. McDowell, I
10 agree with you totally, but it didn't come up in 11:30
11 O'Higgins, anything to do with a barbecue.

12 **MR. MCDOWELL:** No.

13 **CHAIRMAN:** We've had lots and lots of other things,
14 including urine in a vinegar bottle in a chip shop, but
15 I mean, given the wide range, no, it wasn't there. 11:30

16 **MR. MCDOWELL:** I agree. But I am just wondering why it
17 is relevant now?

18 **CHAIRMAN:** Well, I have to trust Mr. O'Higgins --

19 **MR. MCDOWELL:** I mean, if the point is that
20 Superintendent Cunningham did not have an animus 11:31
21 towards Sergeant McCabe and was not motivated by such
22 an animus at the time that he failed to deal with such
23 a letter, I don't think there is much difference
24 between anybody in this room at this point.

25 **CHAIRMAN:** Do you think -- are you -- 11:31

26 **MR. MCDOWELL:** I have never suggested to Superintendent
27 Cunningham that he filed the letter away out of an
28 animus towards Sergeant McCabe. I have never made that
29 case to him.

1 **CHAIRMAN:** well, it's helpful to have that
2 clarification, Mr. McDowell. So in the light of that
3 you might carry on, Mr. O'Higgins.
4 **MR. O'HIGGINS:** Yes.

5 65 Q. Superintendent, then, the first document in the small 11:31
6 bundle is a letter from Sergeant Maurice McCabe to
7 Superintendent Michael Clancy, I think, of Bailieboro,
8 is that right?
9 A. That's correct, it's a complaint.

10 66 Q. And this is dated 25/2/2008, so we are talking about 11:32
11 February 2008?
12 A. That's correct, Judge.

13 67 Q. And just, very little of this is relevant to the
14 Tribunal but just in the second paragraph down, do you
15 see where it says, and this is Sergeant McCabe who is 11:32
16 writing, there is a reference to you meeting him, five
17 lines down, in May 2007 "*to give me the decision of the*
18 *DPP*", do you see that?
19 A. I do.

20 68 Q. And it said "*I was accompanied by a welfare officer,* 11:32
21 *Sergeant Regina McArdle*", and you agree with that don't
22 you?
23 A. Yes.

24 69 Q. And it says: "*Inspector Cunningham informed me that*
25 *the DPP determined that there was no offence disclosed* 11:32
26 *whatsoever and that I was exonerated.*" And that is
27 given quotation marks, do you see that there?
28 A. I see that.

29 70 Q. And the next sentence reads: "*when asked by myself if*

1 *the other party were given the same as what I was told,*
2 *Inspector Cunningham said 'No, how could he?'"*

3
4 And then he says: *"He would not tell me any other*
5 *details. It did concern me that they were not told* 11:33
6 *that there was no offence disclosed and that I was*
7 *exonerated, but I was willing to let it go."*

8
9 And that is what it says there. So just, insofar as
10 there may have been perhaps imprecision from 11:33
11 Mr. McDowell, unintended imprecision in relation to
12 what was Sergeant McCabe's position, does this assist
13 you? Is it your understanding of his complaint at this
14 time, was not that you weren't telling him that the
15 DPP -- a proper basis of the DPP's decision not to 11:33
16 prosecute, but that you or your colleagues weren't
17 giving him -- weren't ensuring that it got to the D
18 family?

19 A. Correct me if I am not answering the question properly,
20 please, but I don't agree with Sergeant McCabe's 11:34
21 assertion because the word exonerated is something that
22 the Director would never use.

23 71 Q. No, just do your best --

24 A. So, I don't think I would have used it, that is my
25 point. 11:34

26 72 Q. All right. But just insofar as we are seeking to
27 divine what was Sergeant McCabe's complaint at this
28 point in time, am I correct in my understanding, from
29 this document at any rate, his ire was not so much

1 directed at you not telling him what the DPP's actual
2 decision was, but it was more his dissatisfaction with
3 the refusal, as he saw it, of An Garda Síochána to
4 ensure the DPP's direction was given to the D family?
5 A. Well, I think, Judge, the letter at the end of it, that 11:35
6 is exactly what he says; that the purpose of this
7 complaint, Judge, is to, I think the word was used
8 before, to lever Superintendent Chancy to release the
9 DPP's directions.

10 73 Q. Sorry, just if you wouldn't mind just sticking as best 11:35
11 you can to the questions as asked.

12 A. Sorry, Chairman.

13 74 Q. Am I correct in my understanding that subsequent to
14 that -- and perhaps if we turn over to the next
15 document, which is dated 13th of March 2008. 11:35
16 A. Yes.

17 75 Q. There is a communication from Superintendent Clancy,
18 pretty well a response I think to Sergeant McCabe's
19 letter?
20 A. That's correct, Judge. 11:35

21 76 Q. And it says there, and now we are at March '08:
22 *"I refer to the above matter and to your report of 25th*
23 *February 2008 --"* I think that is Sergeant McCabe's
24 report?
25 A. That's correct. 11:36

26 77 Q. *"-- where in the penultimate paragraph you have*
27 *requested full disclosure of the DPP's directions."*
28 And he says: *"while I have noted the motivation of the*
29 *request, and I did convey to you that I would consider*

1 *it, I have now fully examined the issue. I am of the*
2 *view that I should adhere to Chapter 12 of the*
3 *Guidelines for Prosecutors, having regard to the public*
4 *interest in this matter, by meeting of the 11th March*
5 *2008 referrals where I conveyed the directions of the* 11:36
6 *DPP in accordance with the DPP's policy."* [As read]

7 A. That's correct.

8 78 Q. And was that your understanding of Superintendent
9 Clancy's decision in relation to the matter; it was
10 based upon what he understood to be the DPP guidelines? 11:36

11 A. Yes, Judge.

12 79 Q. Now, my understanding of matters is that there was a
13 business case, as it were, made to Superintendent
14 Clancy by Sergeant McCabe for the release of the DPP's
15 directions to the D family, is that right? 11:37

16 A. Well, I think that's what that letter dated 25th of
17 February was to be.

18 80 Q. I see.

19 A. But as you see at the outset, it was a complaint and
20 because the complaint referred to particular issues 11:37
21 which were serious -- I will describe them more than
22 that, very serious, it became the focus of an
23 investigation which, as I said earlier, Judge, I was
24 directed to investigation.

25 81 Q. And that is the investigation that again you were not 11:37
26 enthusiastic to have to carry out?

27 A. Well, Judge, again, I don't want to give the impression
28 I don't want to work. I work extremely hard. But I
29 felt, having carried out the investigation into the

1 complaint by Mr. D's daughter against Sergeant McCabe,
2 I didn't really believe it was appropriate for me now
3 to carry out an investigation that Maurice McCabe was
4 making against Mr. D, Judge. It just didn't strike me
5 as being good a management decision, let's just say. 11:38
6 But I didn't protest at this stage, Judge, I just got
7 on to do my job.

8 82 Q. Can I ask you to turn to the next document, which is a
9 letter from -- or a report perhaps, from yourself to
10 Chief Superintendent Monaghan dated 20th of May 2008. 11:38
11 And we needn't dwell on this letter because -- do you
12 see it there?

13 A. Pardon me. Just excuse me. Yes, 20th of May 2008.

14 83 Q. And it's written in the third person, but I think that
15 is reasonably normal. 11:38

16 A. That is the way we were taught in Templemore, Judge.

17 84 Q. All right. And it outlines, does it not, various steps
18 -- first of all, who is the Chief Superintendent
19 Monaghan? who is that?

20 A. At that time was Colm Rooney, Judge. 11:38

21 85 Q. Right. And you are outlining in this document, are you
22 not, steps that you have taken in the context of your
23 task, the task that was assigned to you of
24 investigating Sergeant McCabe's various allegations?

25 A. That's correct, Judge. 11:39

26 86 Q. And I think within the body of this, and we needn't
27 read it out, you have outlined the various efforts you
28 had made to obtain a statement from Sergeant McCabe for
29 the purpose of that investigation?

1 A. That's correct, Judge.

2 87 Q. And do you see there on page 2 of that document, there
3 is a reference to you advising Sergeant McCabe of
4 welfare supports that were available to him?

5 A. That's correct, Judge. 11:39

6 88 Q. What were those welfare supports and what was the
7 context of you giving him such information?

8 A. Well, Judge, Sergeant McCabe had gone sick. Just if I
9 can put it in some context, Judge. When I took over as
10 sergeant -- or superintendent in Bailieboro, it was the 11:39

11 18th of March, I believe, Judge, and that was the day
12 that Sergeant McCabe was stepping down as a sergeant in
13 charge on his own application, Judge. He had applied
14 to step down from -- which was a very important
15 position, sergeant in charge of a district 11:40

16 headquarters, and his day of standing down was the day
17 I was arriving as the new superintendent. And I
18 actually approached him in his office and I asked him
19 to reconsider his application. I didn't at that stage
20 know of any -- what was the circumstances behind his 11:40

21 request to step down, Judge. But I said, it may be
22 personality difficulties, whatever it may be, but I
23 said that I had no difficulty with him remaining on.
24 In fact, I was quite happy with him to remain on as
25 sergeant in charge and asked him to make an application 11:40

26 to withdraw. Because he had applied to step down, his
27 application had been acceded to at the divisional
28 office level, chief superintendent level and come back
29 to him, and that was the day he was to step down, but I

1 went to him that day in his own office, which was next
2 to my own, and I asked him to reconsider, because I was
3 quite happy to work with Sergeant Maurice McCabe as the
4 sergeant in charge.

5 89 Q. You asked him to crease the half sheet, is that right? 11:41

6 A. That is the term, it's -- it's terminology, Judge, from
7 within the organisation, crease the half sheet means
8 make a report. If you wish me to explain it, Judge,
9 it's a very old -- if you imagine, Judge, that's the
10 old rule, sheets for the want of a better word. When 11:41
11 we were trained to make a written report in Templemore
12 you were advised to bend it in half and then bend that
13 in half again, creating a margin for you on the
14 outside. It's simply an internal Garda expression into
15 write a report, so I asked him to crease the half sheet 11:41
16 and, Judge, apply to rescind his application to step
17 down, but Sergeant McCabe declined to do so. So he
18 then -- when I was endeavouring to investigate, Judge,
19 the complaints that he was making, as I outlined there,
20 Judge, I found that he was -- from our conversation, 11:42
21 that he appeared very stressed, Judge, and under
22 pressure and I did tell him of the welfare supports
23 which are -- they are both at divisional level, Judge,
24 and they are at regional level, at that time. We have
25 a new one now. But those ones were internal, Judge. 11:42
26 welfare officers who were trained, Judge, to give
27 people support if they were suffering stress from,
28 especially organisational stress, Judge.

29 90 Q. Can I ask you then if you turn over to the next

1 document, please, which is a letter to yourself to
2 Sergeant McCabe and this is really just illustrative of
3 something I want to ask you, and this is dated August
4 2008.

5 A. Yes. 11:42

6 91 Q. In the months that followed the making of the complaint
7 that you were told to -- directed to investigate, as it
8 went into the summer of 2008 and into the autumn of
9 2008, did you make efforts to obtain -- did you
10 continue with your efforts to obtain a statement from 11:43
11 Sergeant McCabe?

12 A. I did, yes.

13 92 Q. And I think this particular letter here is further
14 illustrative of that, is that so?

15 A. Yes. And it was also -- it was also keeping him up to 11:43
16 date with what was happening. He had moved, I think,
17 at this stage, Judge, on transfer, temporary transfer
18 to Mullingar, but there was a lot happening in
19 Bailieboro. And Bailieboro was his home station, he
20 had been there as a sergeant and a guard, so I was just 11:43
21 keeping him informed. And essentially, even though he
22 had stepped aside he was still attached to Bailieboro
23 Garda Station. So I was just giving him the update on
24 what was happening in the station. I had, Judge, as I
25 said earlier, been keeping in contact by phone, and 11:43
26 during one of those telephone calls, in fact, and I
27 think I have recorded previously, Sergeant McCabe said
28 that he would have had no difficulty working with me,
29 that he believed, I think the expression he used, and I

1 quoted, was that we would have run a tight ship
2 together. As I said, I had absolutely no animosity
3 towards Maurice McCabe, I never had have had.

4 93 Q. Superintendant, the final document in the small bundle
5 of correspondence is a letter dated the 21st August 11:44
6 2008, which I think you wrote to Sergeant McCabe, is
7 that right?

8 A. Yes, yes.

9 94 Q. And do you see there it says, in the opening paragraph:
10 *"Dear Maurice.* 11:44
11 *Further to our conversation on 16th of May '08 and your*
12 *request that I not call out to your home, here are some*
13 *of the developments in Bailieboro since our last*
14 *conversation."*

15 A. Yes. 11:44

16 95 Q. Just pause there for a moment. What was the context of
17 you saying, you referring to his request that you not
18 call out to his home?

19 A. That was, Judge, you see, as a superintendent I had two
20 functions: I had the job that had been given to me as 11:45
21 an inspector some months previously to carry out the
22 investigation, and that was one side, but I also had a
23 welfare, a responsibility for Sergeant McCabe's
24 welfare, and this was -- that was that element of it.
25 And I had told -- when I had spoken to him in May 2008 11:45
26 I had said, look it, you know what I mean, I will keep
27 in touch with you, let you know what is going on and if
28 you want, you know, I will call out to the house and
29 meet you there or we will go and grab a coffee

1 somewhere, something to that effect, to which Maurice
2 had said no -- Sergeant McCabe had said no, telephone
3 calls are fine or whatever. So as you can see I
4 referred to this, that I had been away from Bailieboro,
5 Judge, I had been acting divisional officer when the 11:45
6 chief was off, which is what occurs, and on return
7 quite a few things were happening. So I put it down in
8 a letter and sent it out to him just to bring him up to
9 speed.

10 96 Q. All right. And I think we needn't read out the entire 11:45
11 letter, but would it be fair to say you imparted the
12 news of the time to him in this letter and it's in
13 friendly terms and you are bringing him up to date with
14 who has been promoted, who has been transferred in, how
15 things are getting on and various pieces of news from 11:46
16 the station?

17 A. Yeah, that's right, Judge.

18 97 Q. I think you say there in the final paragraph of the
19 first page:

20 *"The first seven months' crime figures are out. As a 11:46*
21 *district we are up in burglaries, down in thefts in*
22 *cars, seem to be reflecting divisional trends in most*
23 *things. While August has been quiet so far, the darker*
24 *evenings of September usually bring their own problems.*
25 *Hopefully things will level out by the end of this 11:46*
26 *quarter with the checkpoints and strategies we have*
27 *this place."*

28
29 And these are obviously things that Sergeant McCabe

1 would be concerned about as being a sergeant in An
2 Garda Síochána in this locality?

3 A. Absolutely, yes.

4 98 Q. I think then in the final page of it there, you bring
5 to him the fact -- you say:

11:46

6 *"The biggest news is that we now have a full-time*
7 *inspector. Ray McMahon, whom I am sure you remember*
8 *from his time in Virginia, has been transferred on*
9 *promotion to us having originally been allocated to*
10 *Ballyconnell. This should be a major help to me with*
11 *courts, etcetera. I am aware that you have been*
12 *allocated to traffic in Mullingar. I know you always*
13 *had a liking for that work. I hope you enjoy the*
14 *placement. The promotion forms are all out again.*
15 *Caroline Bradley successfully passed her exam, so we*
16 *have another going up this year."*

11:47

11:47

17
18 And then, what is the final sign off you said in the
19 letter?

20 A. *"Hope this letter finds you and your family well. If I*
21 *can be of any assistance do not hesitate to contact*
22 *me."*

11:47

23 99 Q. Can I ask you, superintendent, to move then to this
24 Keara McGlone letter of 2013? You have told us you did
25 not take a decision to broadcast it far and wide.

11:47

26 However, it's being suggested, superintendent, that you
27 took a deliberate decision, if I understand the thesis
28 correctly, you took a deliberate decision to willfully
29 not respond to Keara McGlone's letter in the knowledge,

1 A. No, Judge, absolutely not.

2 104 Q. Did you do so on the instructions of anybody in senior
3 Garda management?

4 A. Absolutely not.

5 105 Q. Did you participate in any smear campaign against 11:49
6 Sergeant Maurice McCabe?

7 A. Absolutely not.

8 106 Q. Did you participate at the direction of anybody in
9 senior Garda management in any attempt to sully the
10 record or reputation of Sergeant Maurice McCabe? 11:50

11 A. Absolutely not, Judge.

12 107 Q. Thank you.

13

14 **MR. MARRINAN:** There are a few matters, sir.

15 **MR. McDOWELL:** Sorry, before my friend, just one -- 11:50

16 **CHAIRMAN:** Yes. Just in relation to this, Mr. Dockery,
17 Sergeant Fraher has been mentioned, do you want to ask
18 any question in relation to that? I think the issue -
19 sorry, before I come to Mr. McDowell - was as to
20 whether there was anything wrong with not putting the 11:50
21 matter on PULSE. I mean, I think I have expressed the
22 view that I have expressed so far. I don't know if you
23 want to follow that up.

24 **MR. DOCKERY:** Thank you, my solicitors have no
25 instructions from that individual to represent him. 11:50

26 **CHAIRMAN:** Yes. well, I have expressed a view and I
27 don't see --

28 **MR. DOCKERY:** Chairman, I am assuming that being so, he
29 is represented by Mr. O'Higgins' team.

1 **MR. O'HIGGINS:** well, Chairman, I don't think anybody
2 at all is casting any aspersions on Sergeant Fraher or
3 making any suggestion he had anything -- he did
4 anything, less than satisfactory.

5 **CHAIRMAN:** Is it possible within the terms of the PULSE 11:51
6 regulations if someone reports a crime, an alleged
7 crime, let's suppose someone alleges an offence, that
8 the matter does not necessarily have to go up on PULSE?

9 **MR. O'HIGGINS:** Chairman, I wouldn't wish to give a
10 response to that question that would be in any way less 11:51
11 than correct. I might -- you might just give me a
12 small opportunity to just double-check that. But I
13 appreciate the inquiry and I will endeavour to provide
14 a response to that.

15 **CHAIRMAN:** All right. Thank you. 11:51

16
17 **SUPERINTENDENT CUNNINGHAM WAS FURTHER CROSS-EXAMINED BY**
18 **MR. MCDOWELL AS FOLLOWS:**

19
20 108 Q. **MR. MCDOWELL:** I think, Superintendent Cunningham, the 11:51
21 letter you were shown of the 25th February 2008, my
22 instructions are that that letter was written to
23 Superintendent Clancy at Superintendent Clancy's
24 request, and that you were informed of that in a letter
25 dated 22nd October 2008 by Seán Costello & Company, 11:52
26 solicitors?

27 A. I know -- sorry, Judge, I know that when I endeavoured
28 to carry out the investigation, I first met -- when I
29 eventually met Sergeant McCabe in Mullingar, Judge, and

1 Sergeant McCabe didn't engage with me in relation to
2 the inquiries I was making to the complaint he had
3 made, that I subsequently then received correspondence,
4 I was directed to continue with the investigation by
5 Chief Superintendent Rooney. I wrote a report, Judge, 11:52
6 at that time, and I outlined -- I think you have seen
7 it, Mr. McDowell. I outlined that Sergeant McCabe had
8 made clear that the reason that he made this complaint
9 or composed this letter, as we call it, made this
10 complaint, to Superintendent Clancy, was, as I used 11:53
11 that word, to lever, I think that was the word used by
12 yourself, but to make a business case I think is
13 probably let emotive terms, to make a business case for
14 Superintendent Clancy to release the DPP's directions
15 to both himself and to Ms. D's family. And I think he 11:53
16 made that clear, that that was the motivation during
17 the taped conversation in Mullingar where he taped me,
18 Judge. And I subsequently reported that to Chief
19 Superintendent Colm Rooney, who then directed that I
20 continue with the investigation. When I endeavoured to 11:53
21 make a second appointment then with Sergeant McCabe to
22 follow up on these matters Mr. Costello started writing
23 to me essentially informing me that his client wasn't
24 going to cooperate, and et cetera, et cetera. I
25 remember the letter, Judge, I don't have them on hand 11:54
26 but essentially Mr. Costello was saying that.

27 109 Q. You see, I think the letter said: *"Our client's letter*
28 *of 25th February 2008, as you can see, is addressed to*
29 *Superintendent Clancy. This was given at the request*

1 unfortunately I was directed to investigate them.

2 116 Q. But he made it clear he didn't want a prosecution, he
3 just wanted -- he complained in the letter about the
4 difficulties he was having with the station -- in the
5 station, isn't that right? Sorry, he did, didn't he? 11:55
6 Answer the question. You are not arguing with me?

7 A. I am not arguing with you at all, I am just trying to
8 establish my role in this was when Sergeant McCabe --

9 117 Q. Sorry, I am not asking you about your role, I am asking
10 you: Did he make it clear in the letter he wanted no 11:56
11 prosecution against the Ds?

12 A. Well, I believe I am clear in saying those were in
13 relation to the incidents that occurred in the town.

14 118 Q. Yes.

15 A. That is not what is referred to in the letter. 11:56

16 119 Q. Sorry --

17 **CHAIRMAN:** Just forgive me for intervening for a
18 moment. As I understand it, it has not been mentioned
19 but again I don't think it's a matter of controversy,
20 Sergeant McCabe was confronted by two members of the D 11:56
21 family and in fact I think on one occasion retreated to
22 the Garda station and ran upstairs --

23 A. Yes. That was on the second date, yes, Judge.

24 **CHAIRMAN:** -- with a view to avoiding trouble?

25 A. That's correct. 11:56

26 **CHAIRMAN:** I think what Mr. McDowell is asking you
27 about is not the detail of that, but that Sergeant
28 McCabe was saying, look, I don't want anyone to be
29 prosecuted about that.

1 A. Absolutely. But that's -- and I am clear on that
2 element of it, Judge. What I am trying to clarify is,
3 if you can see the letter -- or the complaint in front
4 of you, it raises many other issues, Judge.

5 120 Q. **MR. MCDOWELL:** Exactly. 11:57

6 A. And those were the issues that I was directed to
7 investigate.

8 121 Q. Exactly.

9 A. Pardon me, okay.

10 122 Q. We will come to that in a second. He was telling 11:57
11 Superintendent Clancy about his wish to have the
12 reasons, the DPP's direction, disseminated, isn't that
13 right?

14 A. Yes.

15 123 Q. And he was saying that in the particular circumstances 11:57
16 of the time, there were difficulties in the Garda
17 station, interpersonal difficulties, isn't that right?

18 A. Yes.

19 124 Q. And that he was making the case that if the DPP's 11:57
20 direction was made known, that these difficulties would
21 be at least -- if they didn't disappear they would be
22 reduced in status or intensity if there was a clear
23 indication to the D family what the DPP's directions
24 were?

25 A. But, Judge -- 11:58

26 125 Q. Isn't that it?

27 A. But if I may clarify. If I may --

28 126 Q. Sorry, would you answer the question first before you
29 start clarifying? Isn't that what he was asking for in

1 the letter?

2 A. He was clearly asking for the directions of the DPP to
3 be made available to himself and to the family of
4 Ms. D.

5 127 Q. Yes. 11:58

6 A. Absolutely. However, in doing so, he raised the
7 spectre of very serious allegations against Mr. D. It
8 wasn't within his remit, having raised these issues, to
9 say 'oh, well, I don't want them pursued'. He had made
10 serious allegations, which the organisation, Judge, 11:58
11 would have been duty-bound to pursue, and that's why,
12 Judge, I was subsequently appointed to investigate
13 them, Judge.

14 128 Q. I see.

15 A. The organisation couldn't ignore such serious 11:59
16 allegations, Judge.

17 **CHAIRMAN:** No, no, I appreciate that, but I think the
18 main point that Mr. McDowell is making is simply the
19 following, and indeed in reading the documents prior to
20 coming in here at all, it seemed to me there was an 11:59
21 issue out there, which was that Sergeant McCabe took
22 the view, look, if the DPP's letter was circulated to
23 everybody, well then people wouldn't be thinking or
24 looking at him the way they might be looking at him or
25 thinking about him, but a view was taken that the DPP's 11:59
26 guidelines didn't permit that, and I don't think anyone
27 is saying that view was taken maliciously, but that
28 seems to be the area of controversy here.

29 129 Q. **MR. MCDOWELL:** Is that right?

1 A. I would be very satisfied with that.

2 130 Q. You are happy with that version. And I don't know
3 whether you have been following the evidence here, but
4 it would appear that Ms. D, when she was making her --
5 when she was interacting with Laura Brophy in 2013, 12:00
6 expressed the view to Ms. Brophy that Sergeant McCabe
7 had been forced out of Bailieboro Garda Station as a
8 result of her allegations?

9 A. That is not clear. That's -- Sergeant McCabe left of
10 his own volition. 12:00

11 131 Q. She is noted as having stated that.

12 A. Is that right? I am not aware of that. But my belief
13 is and my understanding is that Sergeant McCabe went to
14 Mullingar because of the investigations that were
15 ongoing in Bailieboro and because the members he was 12:00
16 complaining of at the time were still there. It was
17 probably a senior management decision that it was
18 better to remove him from what was possibly a difficult
19 situation for him.

20 132 Q. I think it was his decision to go to Mullingar, isn't 12:00
21 that right?

22 A. Was it? I am not aware, Judge.

23 133 Q. Didn't you go into his room and ask him to withdraw his
24 decision?

25 A. Oh, yes, but that wasn't in relation, Mr. McDowell -- 12:01
26 at that time, Judge, he was the sergeant in charge
27 stepping down and going on to the units in Bailieboro.
28 It was a subsequent decision by people way above my
29 head that moved him from there to Mullingar.

1 **CHAIRMAN:** You don't believe he was forced out, in any
2 event? It was a question of moving around for
3 operational reasons?
4 A. I think it was to accommodate -- I suppose the best
5 expression would be to accommodate the investigation. 12:01
6 I don't know if that is the correct terminology.
7 134 Q. **MR. MCDOWELL:** I am just making the point to you that
8 Ms. D, five years later, was under the impression he
9 had been forced out and told her counsellor that that
10 was the case. 12:01
11 A. I don't know that, I don't know Ms. D -- I never dealt
12 with Ms. D after 2006/2007, Judge, I never met her
13 after that.
14 **CHAIRMAN:** But you don't believe he was forced out?
15 A. I think, as I said, the words I've used was I 12:01
16 believe -- but more senior officers than me can address
17 that matter because I had no dealings with it. I
18 believe it was to accommodate the investigation, Judge.
19
20 **SUPERINTENDENT CUNNINGHAM WAS RE-EXAMINED BY** 12:02
21 **MR. MARRINAN:**
22
23 135 Q. **MR. MARRINAN:** Superintendent, from August of 2008 when
24 you sent this letter to Maurice McCabe, had you any
25 further contact with him of a personal nature that can 12:02
26 be supported by letters or other documents, emails,
27 indicating you were on friendly terms with him?
28 A. Well, I think he was now in Mullingar, so he was no
29 longer -- he was on a temporary transfer, but he was

1 now working over there and quite happy over there. I
2 had, as I said, a dual function, and the other function
3 was in relation to investigating this matter that I
4 have just discussed with Mr. McDowell, so I think I
5 contacted him subsequent to that in relation to that. 12:02
6 As I said, I had a dual function here: his welfare and
7 then the investigate matter as well, Judge.

8 136 Q. Well, you have referred the Tribunal to a letter that
9 you sent on 21st August 2008, which is of a personal
10 nature -- 12:03

11 A. Yes.

12 137 Q. -- presumably to support the contention that, in fact,
13 Sergeant McCabe was somebody that you were friendly
14 with. That may well have been so in 2008, but are you
15 producing that letter to maintain that you were or 12:03
16 regarded him as a friend in 2013?

17 A. Well, I don't know if I'd ever have regarded Sergeant
18 McCabe as a friend. I certainly would have had a very
19 professional and respectful relationship with him.

20 138 Q. Well, come back to the question that I asked you. Had 12:03
21 you any written communication between 21 August 2013 --
22 of 2008 and August of 2013?

23 A. No, well I transferred in 2009, Judge, to
24 Carrickmacross so Sergeant McCabe would no longer be
25 under my control, Judge. He was now under the new 12:03
26 superintendent, Judge, in Bailieboro.

27 139 Q. So you didn't at any stage write to him to advise him
28 or update him in relation to his personal life as it
29 had transpired or indeed the workings in Bailieboro?

1 A. Judge, as I said, I was gone, I was gone to a different
2 station. I had then responsibilities for the
3 membership in Carrickmacross district, no longer for
4 Bailieboro, Judge.

5 140 Q. If we could just have up on the screen 3059, please. 12:04
6 This is chapter 47 of the Garda Code. Just for the
7 sake of completeness, Superintendent, this deals with
8 the regulations in relation to confidential
9 correspondence.

10 A. Yes. 12:04

11 141 Q. 47.12 is headed "*Secret and Confidential*
12 *Correspondence*". We are not concerned with the special
13 rules in relation to secret correspondence. But you
14 will see at number 4.

15 A. Yes. 12:04

16 142 Q. "*Correspondence marked 'confidential' will receive*
17 *special care but may be entered in the ordinary*
18 *correspondence register.*"

19 A. Yes, that's correct.

20 143 Q. That seems to give a discretion in relation to that 12:05
21 matter?

22 A. That's correct, Judge.

23 144 Q. And then 5: "*Communications marked 'personal' will not*
24 *be opened by anybody other than the person to whom they*
25 *are addressed.*" 12:05

26 A. That's correct.

27 145 Q. And that's quite clear in relation to that. This
28 letter was marked "*Private and Confidential*"?

29 A. Yes.

1 146 Q. And wasn't opened, isn't that right?
2 A. That's correct, Judge.
3 147 Q. And the Tribunal have been advised that it wasn't
4 entered into the correspondence register. You have
5 checked that, and it wasn't, isn't that so? 12:05
6 A. That's correct, Judge.
7 148 Q. And you are happy that when you came upon the letter
8 sometime on the 16th of September or thereafter, that
9 the envelope had not been opened because it had been
10 marked "*Private and Confidential*"? 12:05
11 A. That's correct.
12 149 Q. It was addressed to you, is that so?
13 A. That's correct, Judge.
14 150 Q. If we could just refer to the letter, because you
15 advised the Tribunal that you regarded it as purely a 12:06
16 housekeeping matter. If you just look at paragraph 2.
17 "*The referral states that Ms. D*" -- sorry, this is at
18 page 1699, please. You see:
19
20 "*The referral states that Ms. D, now aged 21, has 12:06*
21 *discussed during counselling sessions that she was*
22 *sexually abused during her childhood by an adult male,*
23 *MMCC.*"
24
25 This is a matter that had arisen in 2013 as a result of 12:06
26 the complainant discussing her original allegation with
27 a counsellor, isn't that right?
28 A. That's correct.
29 151 Q. And it's clear from the letter that that is so. You

1 regarded that as not giving rise to any cause for
2 concern or for reopening the case, isn't that right?

3 A. Well, the heading on it refers back to the matter in
4 2006/2007, so, to me, it was a follow-on on from that,
5 from the original investigation. There was nothing to 12:07
6 suggest there was any change in its status, Judge.

7 152 Q. And you didn't believe there was any reason for a
8 review of the file in circumstances where Ms. D had
9 alerted a professional to the allegation that she had
10 made in 2006 against Sergeant McCabe, is that right? 12:07

11 A. I don't understand. A review of the file, Judge?

12 153 Q. Well, you didn't deem it necessary that there should be
13 a review of the case arising out of the fact that a
14 professional had received a report in 2013 from Ms. D
15 in relation to the allegation back in 2006? 12:08

16 A. Well, there was nothing -- sorry, there was nothing to
17 suggest that the content of the allegation, for the
18 want of a better word, had changed.

19 154 Q. Indeed. It is not a trick question. I am just --

20 A. I am sorry, maybe I am -- 12:08

21 155 Q. All right. Okay. Because I just want to contrast that
22 with a view that was taken in 2014 by a colleague of
23 yours, Superintendent McGinn, do you understand? If I
24 could come to May of 2014. Did anybody discuss with
25 you the referral that had been received from the HSE? 12:08

26 A. No, Judge.

27 156 Q. Looking back on this and the documents, do you find
28 that odd?

29 A. No.

1 157 Q. Well, if you could be shown page 3228, please. This is
2 a report by Superintendent McGinn to the Chief
3 Superintendent for your division, isn't that right?
4 A. Yes.

5 158 Q. You were -- at this time, you were the district officer 12:09
6 in Monaghan?
7 A. That's correct.

8 159 Q. Isn't that right? And Superintendent McGinn was the
9 district officer in Bailieboro?
10 A. That's correct, Judge. 12:09

11 160 Q. You will see there that, there is the introduction,
12 then at paragraph 3:
13
14 *"The referral concerns a disclosure by Ms. D that when*
15 *she was aged six/seven years old she was sexually 12:09*
16 *assaulted by a man she named as Maurice McCabe.*
17 *Maurice McCabe is a serving member of An Garda Síochána*
18 *holding the rank of sergeant and he is currently*
19 *attached to Mullingar Garda Station."*
20 12:09

21 I suppose that would have been generally known within
22 the force in that region at that time, isn't that
23 right?
24 A. Yes, yes, Judge.

25 161 Q. I presume Maurice McCabe would have been somebody who 12:10
26 would have been discussed, the allegations that he was
27 making; would he have been discussed in 2014?
28 A. Well, certainly I wasn't discussing him in 2014.

29 162 Q. But would he have been discussed generally within An

1 Garda Síochána?

2 A. I don't know, Judge, I can't comment on what the guards
3 were talking about. Certainly nobody was talking to me
4 about it or I wasn't talking to anybody about him. In
5 2014 I was busy running Monaghan district and that was 12:10
6 enough to keep me going.

7 163 Q. *"In an unknown date in 2007, Ms. D, with the support of
8 her parents, made a formal complaint of sexual assault
9 to Gardaí and named the perpetrator as Maurice McCabe."*
10 And then there is a reference number there. 12:10

11 A. Mm-hmm.

12 164 Q. *"The allegation was investigated from Monaghan Garda
13 Station by then-Inspector Noel Cunningham, who is now
14 district officer at Monaghan."*

15 A. That's correct. 12:11

16 165 Q. *"The completed investigation file was submitted to the
17 Director of Public Prosecutions, who directed no
18 prosecution."*

19 A. Yes.

20 166 Q. And that relates to the complaint that has now come in 12:11
21 to the Gardaí, isn't that right?

22 A. The completed investigation file was submitted. That
23 relates to the original --

24 167 Q. Yes.

25 A. -- file, the original complaint made in 2006. 12:11

26 168 Q. Yes.

27

28 *"The allegation was investigated from Monaghan Garda
29 Station".*

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That is the allegation that we are referring to here?

A. The 2006 allegation, yes, the statement she gave in 2006.

169 Q. The last paragraph:

12:11

"No copy of the investigation file is held, or was held, at Bailieboro district. On interrogation of the correspondence register here, only records of documentation received here to notify Maurice McCabe of the DPP's directions" -- and then the reference again -- "and a few other similar type items of correspondence were noted. It is believed the investigation file with all subsequent relevant documentation is held at Monaghan Garda Station."

12:11

12:12

A. Yes.

170 Q. And we know it was held by you in a secure location, isn't that right?

A. That is the investigation file, yes.

171 Q. So does it surprise you that Superintendent McGinn, or indeed the Chief Superintendent, didn't contact you to get a copy of the original investigation file?

12:12

A. Well, as I outlined yesterday, Judge, a copy of the file that went to the DPP was held at the Chief Superintendent's office, at the divisional office, from 2007, so there was -- if any clarification was required, the divisional officer, Chief Superintendent at the time simply had to seek out a copy of that file and all questions would be answered, Judge. They

12:12

1 didn't need to speak with me.

2 172 Q. well, bearing in mind that this is -- concerns Sergeant
3 McCabe, who at that time was known extensively in the
4 public domain as a Garda whistleblower and in
5 circumstances where, not directly related but the 12:13
6 Commissioner of An Garda Síochána had retired and there
7 was a huge amount of controversy in the media, do you
8 accept that?

9 A. Absolutely.

10 173 Q. Do you find it in any way strange that Superintendent 12:13
11 McGinn or the Chief Superintendent didn't contact you
12 to clarify any issues that they may have had in
13 relation to the Sergeant McCabe investigation in 2006
14 or 2007?

15 A. No, I don't, because no more than, as I said, 12:14
16 Ms. McGlone, if they had looked at the original
17 statement of Ms. D made in 2006/2007, it was very clear
18 what the substance of the allegation was. It was very
19 clear. This information or this material, as I said
20 yesterday, I didn't even know about any of this until 12:14
21 the Commission, Judge. I didn't know of this -- I
22 think it was the 'Prime Time' programme, or in that
23 time at least, that informed me of the incorrect, as I
24 have referred to it, the cut and paste, so I knew
25 nothing about that, Judge, nothing, absolutely nothing. 12:14

26 174 Q. If we could turn over the page to 3229.

27

28 *"In light of the referral received on foot of Ms. D's*
29 *disclosure to a professional, I feel it is appropriate*

1 *to have the investigation reviewed."*

2
3 And it's clear that Superintendent McGinn regards the
4 notification that he has received as being the matter
5 that was investigated in 2006. Does it surprise you 12:15
6 that he took the view that arising out of the fact that
7 Ms. D had made a disclosure to a professional, that he
8 deemed it appropriate to have the investigation
9 reviewed, whilst you merely regarded it as a
10 housekeeping matter? 12:15

11 A. Well, you see, Judge, I don't know what is in this
12 referral. I never saw this referral, so I don't know
13 what is in it. I don't know what Superintendent McGinn
14 is referring to.

15 175 Q. Well, he is referring to a referral that, and it's a 12:15
16 matter for him, I suppose, but he is referring to a
17 referral and a Garda notification that, in fact, has
18 the incorrect information on it, but he is reporting --
19 **MR. O'HIGGINS:** Judge, I wonder could I just make one
20 observation. 12:16

21 **CHAIRMAN:** Sorry, Mr. O'Higgins, yes.

22 **MR. O'HIGGINS:** Sorry, is it -- I understand that
23 Superintendent McGinn, in fact, is the next witness up,
24 so is it not, in fact, as Mr. Marrinan has just
25 mentioned it there, is it not, in fact, a matter to be 12:16
26 put to him? This officer has already given his answer.

27 **CHAIRMAN:** Well, you could well be right, but I'd still
28 like to know the answer. You are probably right, but
29 let's hear what the answer is from this witness.

1 176 Q. **MR. MARRINAN:** And to make it very clear that
2 Superintendent McGinn is dealing with a referral that
3 contains the incorrect information?
4 A. Which I never saw, Judge.
5 177 Q. Yes. Which you never saw? 12:16
6 A. Never.
7 178 Q. But in circumstances where it's very clear from this
8 report, abundantly clear from this report, that he
9 considers the incorrect information that is in the
10 notification as being, in fact, the matter that was in 12:16
11 investigated in 2006/2007 that went to the Director of
12 Public Prosecutions that you investigated and which no
13 prosecution was directed, do you understand?
14 A. I do.
15 179 Q. It's clear from the body of the report -- 12:17
16 A. And that's what he thinks.
17 180 Q. -- those facts are a given. And he is acting on the
18 basis, and he puts it:
19
20 *"In the light of the referral received on foot of 12:17*
21 *disclosure to a professional, I feel it is appropriate*
22 *to have the investigation reviewed."*
23
24 And I will just continue on:
25 12:17
26 *"I suggest that the file and investigation in its*
27 *entirety be reviewed at officer level within An Garda*
28 *Síochána or that it be referred to the Cold Case Unit,*
29 *NBCI. In any case, if a review of the case is to be*

1 *conducted, I suggest it be conducted external of*
2 *personnel within Cavan-Monaghan division."*

3 A. Yes.

4 181 Q. And just contrasting that against your view of the 12:18
5 matter as being merely a housekeeping matter; in other
6 words, this case has come to light because of a
7 referral in 2013, or here, as it would appear in 2014,
8 to a professional, do you understand?

9 A. But maybe I'm not clear, Judge. The letter of 2013,
10 and in fact I think Ms. McGlone gave evidence to the 12:18
11 effect that when she wrote that letter, she was unaware
12 of the mistake, the cut-and-paste issue. She was
13 simply referring back to the original. Having had the
14 telephone conversation with the Rian counsellor, the
15 Rian counsellor outlined to her the substance of the 12:18
16 allegation being the same as it was in 2006, so that is
17 the manner in which I am addressing that letter. This,
18 however, Judge, is a completely different thing. This
19 is now a referral with completely contrasting

20 information, with a very much more serious allegation 12:19
21 than the original allegation was. Now, clearly, and I
22 can't answer for Superintendent McGinn, but it clearly
23 says he didn't have access to the file, so he wasn't
24 aware of what the substance of the allegation was in
25 2006/2007, so he was referring -- he was sending this 12:19
26 in to the divisional officer, which is the appropriate
27 line of correspondence.

28 182 Q. Yes. Superintendent Cunningham, I don't know if I am
29 making myself clear in relation to the matter.

1 A. Possibly I am not also, so -- I am unsure what I am
2 being asked.

3 183 Q. And we had better resolve it because, as I say, it is a
4 matter for Superintendent McGinn. It may well be that
5 his view could be taken as the extreme one, to refer 12:20
6 the matter to Cold Case in the NBCI. But I thought I
7 had made it abundantly clear in the point that I was
8 making to you, by referring you to the report that was
9 sent by Superintendent McGinn to his Chief
10 Superintendent, he sets out the history of the case, 12:20
11 that this has come to the Gardaí by way of notification
12 from the HSE, it has come in circumstances where it is
13 the same case that was investigated by you in
14 2006/2007, that the file was sent to the Director of
15 Public Prosecutions, that there was a direction from 12:20
16 the DPP that there would be no prosecution, do you
17 understand? So Superintendent McGinn is very clearly
18 operating on the assumption that the matters contained
19 in the Tusla notification, which are in fact incorrect,
20 but that these were the matters that were investigated 12:21
21 by you, leading to a direction in 2007, is that clear?

22 A. And there is the rub.

23 184 Q. No, but is that clear? Am I making it very clear to
24 you?

25 A. Absolutely. That is exactly. 12:21

26 185 Q. So as far as Superintendent McGinn is concerned, the
27 allegation that is now being introduced in 2014 is, in
28 fact, the same allegation that you had investigated in
29 2007, isn't that clear?

1 A. That is what the letter appears to say, absolutely.

2 186 Q. Yes. And that the only reason for a review of the case
3 that is proffered by Superintendent McGinn is the fact
4 that it has now, he believes, in 2014, but you were
5 informed 2013, has been discussed by Ms. D with a 12:21
6 professional, do you understand, namely Laura Brophy?
7 So, in other words, arising out of the fact that Ms. D
8 has discussed this matter with a counsellor years
9 later, is, in itself, a reason to review the case. Am
10 I making my point clear to you? 12:22

11 A. Yes, but I -- I can't -- I can't discuss or I can't
12 speculate on the rationale of Superintendent McGinn. I
13 can only answer questions for my part, Judge, and I
14 wasn't communicated with in relation to this, I wasn't
15 asked about it, I wasn't aware of it. So I am failing 12:22
16 to see what input I can have in relation to it, unless
17 somebody had done that, they had communicated with me
18 or sent me a copy of the referral and said is this the
19 same referral and clearly that would have set off
20 enormous alarm bells because I would have said it 12:23
21 wasn't.

22 187 Q. Well, I suppose in hindsight, and it's -- I suppose, in
23 a way, it's not for you to speak for others, but I
24 would like your comment in relation to it because you
25 are a superintendent in An Garda Síochána. If there 12:23
26 was any ambiguity arising out of the referral and the
27 superintendent was in the neighbouring district who had
28 dealt with it, would you see any difficulty in picking
29 up the phone and discussing it with the investigator?

1 A. No, but I don't understand Superintendent McGinn's
2 rationale, and possibly he was being as careful as I
3 had been in relation to dealing with matters
4 surrounding Maurice McCabe. I don't know, I simply --
5 I cannot answer the question why Superintendent McGinn 12:23
6 didn't, as you said, pick up the phone and ring me. I
7 can't answer that question. He simply didn't.

8 188 Q. So just one matter, finally. When the letter came in
9 to you, you helpfully gave us -- or provided us with
10 the original of the file yesterday. 12:24

11 A. Yes.

12 189 Q. And it's being inspected by the Tribunal.

13 A. Yes.

14 190 Q. It has a number of tabs in it, isn't that right?

15 A. Yes. 12:24

16 191 Q. And is it tab 3 --

17 A. Yes.

18 192 Q. -- from recollection, deals with correspondence from
19 the HSE?

20 A. That's correct. 12:24

21 193 Q. Is that right?

22 A. That's correct.

23 194 Q. And on the outer cover it quite clearly states that tab
24 3 refers to correspondence from the HSE.

25 A. Yes. 12:24

26 195 Q. And my understanding is that there is correspondence in
27 tab 3 from Rhona Murphy and also from Orla Curran and
28 Emer O'Neill, the clinical psychologist, and we opened
29 those letters yesterday, and those letters are

1 contained in that part of the file, isn't that right?

2 A. That's correct.

3 196 Q. And I understand that you are saying that this letter
4 that came in didn't make its way into that section?

5 A. No, I just simply put it in -- obviously into the 12:25
6 folder.

7 197 Q. And you put it into another part of the file?

8 A. I just put it into it, Judge, I just literally put it
9 into it. I clearly wasn't tidy about doing it. I
10 simply just put it into that file -- put it with the 12:25
11 file.

12 198 Q. But otherwise, would it be fair to say that, on
13 examination of the file, that everything is, in fact,
14 in its place and where it ought to be?

15 A. Because the file was closed, Judge, that file was 12:25
16 finished with, do you know what I mean --

17 199 Q. But everything is where it should be, isn't that right?

18 A. Everything -- the file is put together, yes.

19 200 Q. The index system for it clearly indicates where
20 original statements would be, and original statements 12:25
21 are in that part of the file, isn't that right?

22 A. Mm-hmm, that's correct, Judge.

23 201 Q. It indicates where correspondence within An Garda
24 Síochána or to witnesses or otherwise and it -- all
25 that material is in the correct position, isn't that 12:26
26 right?

27 A. Having been filed away at the time of the completion of
28 the investigation, Judge.

29 202 Q. And that the only matter that wasn't in the correct

1 position was this letter from Keara McGlone, isn't that
2 right?

3 A. Possibly reflecting the manner in which I was working
4 on that particular day, I just simply put it with it
5 and got on with the work I was doing in relation to the 12:26
6 current matters on my desk, Judge.

7 203 Q. But it is the only document that hasn't been placed in
8 its proper position in the folder?

9 A. Well, it is the only document that was received
10 subsequent to 2007 from the end of the investigation -- 12:26

11 204 Q. And it is the only document that hasn't been placed in
12 its proper folder?

13 A. It was put in the file, as I said, to deal with it when
14 I contacted Ms. McGlone, Judge.

15 205 Q. Just Mr. McGuinness is asking me to clarify this. The 12:26
16 letter from -- I understand your evidence to be that
17 the letter that came in from Keara McGlone, that you
18 just simply opened the file and you put it in randomly
19 without putting it into any particular section?

20 A. Yeah, I just -- I don't even know if I put it at the 12:27
21 top, in the centre, anyway. I simply put it in.

22 206 Q. And I understand you, that -- your evidence to be, that
23 when this matter arose in February of this year and you
24 were tasked by the Commissioner's office to find this
25 documentation or any documentation between yourself and 12:27
26 Keara McGlone, that initially you answered negatively,
27 that it wasn't there and that you had no contact at all
28 with Keara McGlone, isn't that right?

29 A. I don't believe so. Correct me if I am wrong, sir, I

1 don't believe I said that.

2 207 Q. well, I introduced the emails. I am not going to go
3 back over them.

4 A. well, I think was I not cautious? Did I not say in my
5 evidence that I was cautious not to say that I didn't 12:28
6 receive it because I had no memory of it and I was, I
7 think the word I used yesterday, Judge, I was cautious
8 not to be definitive in relation to anything I said
9 because I simply had no memory of it it? I think that
10 was my evidence yesterday. And that would be my 12:28
11 evidence, I was being cautious not to be definitive
12 because I had no memory of it, and then I discovered it
13 on the day I sent it up.

14 208 Q. well, we need to be clear about this, Superintendent.
15 I understood you yesterday to try and draw a 12:28
16 distinction between a request that had come from Garda
17 Headquarters in relation to a request from Sergeant
18 McCabe in relation to data that was held with An Garda
19 Síochána, on the one hand, isn't that right, and also a
20 request that had come from the Commissioner's office 12:28
21 with six questions that had been asked, and question
22 number 1 related to your dealings with Keara McGlone?

23 A. well, I don't know if I was drawing such -- if I was
24 drawing such a distinction, Judge. I think my answer
25 was that I took the HSE matter straight from the tab, 12:29
26 as identified by counsel there, tab number 3. It's not
27 that I was drawing any distinction between the two,
28 Judge, and I did seek advices in relation to the
29 matters, which I have provided to the Tribunal last

1 night, which I didn't believe fell within the remit of
2 that data protection because it didn't refer
3 specifically to Sergeant McCabe, Judge. So those were
4 the issues I was dealing with under the data protection
5 issue, Judge. 12:29

6 209 Q. I drew your attention to a statement, again we will
7 have it back up on the page, 1989. This is the -- from
8 Sergeant Patricia Maguire?

9 A. Yes.

10 210 Q. A letter that was sent to the -- a report sent to the 12:29
11 Chief Superintendent in Monaghan. And on page 1989:
12
13 *"On Saturday 18th February 2017 I met with*
14 *Superintendent Noel Cunningham at Monaghan in respect*
15 *to email correspondence from your office dated 16th 12:30*
16 *inst. Superintendent Cunningham has a lever-arch*
17 *folder that he states contains a large amount of very*
18 *sensitive and personal data in respect of Ms. D that he*
19 *obtained during the course of his investigation during*
20 *2006 to 2007."* 12:30

21
22 And I asked you about that yesterday and you indicated
23 to me that you didn't permit Sergeant Maguire to take
24 the file, isn't that right?

25 A. That's correct. 12:30

26 211 Q. And you didn't allow her to inspect the file, isn't
27 that right?

28 A. That's correct.

29 212 Q. And you extracted from the file, your evidence

1 yesterday I understand to be, that you had already done
2 this before her arrival, but Superintendent
3 Cunningham --

4 A. I don't remember saying that, but --

5 213 Q. All right. well, then: 12:31

6
7 *"At the time Superintendent Cunningham tendered the*
8 *three documents as detailed above"* -- which are not the
9 letter of Keara McGlone -- *"that he believes maybe had*
10 *relevance to this part of the Section 4 request and 3* 12:31
11 *in relation to original investigation file and 2 in*
12 *relation to the HSE referral."*

13
14 And you had extracted those from the file and given
15 them to Sergeant Maguire? 12:31

16 A. I think in her presence I did it. I was doing other
17 work in the office when she came. I was in Saturday
18 morning, if I remember rightly, just doing some work.

19 214 Q. And it wasn't until the 1st of March that you responded
20 to a number of emails that had come from your 12:31
21 divisional officer - in fact, it's the 3rd of March,
22 which is at page 2100:

23
24 *"Further to your correspondence of the 1st of March, I*
25 *am to report as follows..."* 12:32

26
27 And then you go on to:

28
29 *"I have, of today's date, the 3rd of March, discovered*

1 *in my office the correspondence referred to in your*
2 *communications".*

3 Is that right?

4 A. Yes, that's correct.

5 215 Q. And that was the first time that you made that 12:32
6 available?

7 A. That was the first time I had it in my hand other than
8 obviously the day I received it, Judge.

9 **MR. MARRINAN:** Yes, yes. Thank you very much.

10 A. Thank you, sir. 12:32

11 **CHAIRMAN:** There are just two matters. We might go on
12 until 1:00, considering we have had a break, unless you
13 don't want to. Secondly, did we ever put up the
14 transcript of the private hearing? Because I know we
15 were awaiting responses and some of them weren't coming 12:32
16 in.

17 **MR. MCGUINNESS:** It's in the process of redaction,
18 Chairman.

19 **CHAIRMAN:** So it will go up today?

20 **MR. MCGUINNESS:** We hope so. 12:33

21 **CHAIRMAN:** Yes. Great.

22

23 **THE WITNESS THEN WITHDREW**

24

25 **MR. O'HIGGINS:** Chairman, just before you move to the 12:33
26 next witness, may I return to one matter you raised,
27 Chairman, concerning Sergeant Fraher, and it relates to
28 page 159 of the materials. Just on behalf of Sergeant
29 Fraher, could I simply ask you to note, as I think

1 you've, in fairness, has already been mentioned in
2 dispatches, that the GSOC -- to the extent that this is
3 relevant, and I know, Chairman, you are concerned to
4 ensure that parties who are not present, that their
5 rights are vindicated also, could I just ask you simply 12:33
6 to note that in the GSOC conclusions on page 159, it's
7 confirmed that:

8
9 *"Detective Sergeant Fraher provided a reasonable*
10 *explanation for not putting the incident on the PULSE 12:34*
11 *system. It was a sensitive issue. Both Garda members*
12 *were serving in the same division and there was the*
13 *possibility that the allegation was going to be*
14 *referred to a national unit for investigation."*

15
16 And it seems clear from the GSOC investigation, he was
17 exonerated in full in relation to matters --

18 **CHAIRMAN:** No, no, that was exactly the view that I
19 took, and I think I have said that. But what I was
20 wondering was, was there a particular section of the 12:34
21 Garda regulations which enabled that. That is the only
22 thing I was -- and I have read that, Mr. O'Higgins.

23 **MR. O'HIGGINS:** I am obliged, Chairman.

24 **CHAIRMAN:** I think people are actually voting with
25 their feet. We will take a break for an hour. 12:34

26
27 **THE HEARING ADJOURNED FOR LUNCH**

1 **THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:**

2
3 **MR. MCGUINNESS:** Sir, the next witness is
4 Superintendent McGinn.

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13:42

6 **SUPERINTENDENT PATRICK LEO MCGINN, HAVING BEEN SWORN,**
7 **WAS DIRECTLY EXAMINED BY MR. MCGUINNESS:**

9 **THE WITNESS:** Patrick Leo McGinn, but commonly known as
10 Leo.

13:43

11 216 Q. **MR. MCGUINNESS:** I think you are a superintendent in An
12 Garda Síochána?

13 A. That's right, Mr. Chairman, yes.

14 217 Q. I think you have had a long career to date of some 39
15 years, is that correct?

13:43

16 A. That is the case, 39 years.

17 218 Q. Could you just briefly go through your career and where
18 you were stationed at different periods, if you can
19 recall?

20 A. My first station was Wicklow town in '78, I spent two
21 years on uniform general duties, I spent the following
22 three in detective branch. I transferred to the
23 Special Detective Unit based here in Dublin Castle in
24 1983, and I worked there until promotion in 1986,
25 transferred at the rank of sergeant to Carrigans,
26 Donegal, spent two years there before travelling with
27 the first united Garda contingent to the United Nations
28 who were in Angola at that stage -- sorry, no, Namibia.
29 Returned to Carrigans, transferred to Lifford, and then

13:43

13:43

1 to Hackballscross, and into Dundalk where I remained
2 for a year on the regular unit as a unit sergeant. I
3 then travelled with the second contingent of Gardai on
4 a UN mission, and that was to Angola, returning to
5 Dundalk; in 1992, I was in the crime and drugs unit. I 13:44
6 went back onto the regular unit then and then I became
7 the sergeant in charge of Dundalk station in 1995.
8 Promoted in 2000, transferred to Ballyshannon, spent
9 about seven months in Ballyshannon as inspector,
10 returning to Dundalk, where I spent the following 11 13:44
11 years before being transferred again to Ballyshannon as
12 a superintendent. I spent 15 or 16 months there,
13 returning to Bailieboro on the 27th May 2013, where I
14 have remained serving since.

15 219 Q. Had you served in Bailieboro before in any capacity? 13:44

16 A. Never, and I had little or no association with it. In
17 fact, when I arrived in Bailieboro, there were only two
18 Gardaí attached to that district that I had met before
19 and both of those had been student gardaí in Dundalk.

20 220 Q. During your time in Dublin or elsewhere, did you know 13:45
21 former Commissioner Callinan?

22 A. I can tell you, I didn't -- I met Commissioner Callinan
23 for the first time during the investigation into the
24 investigation for the disappeared. He was heading up
25 that investigation. I was based in Dundalk. Somebody 13:45
26 came to me with information where somebody may have
27 been buried. I communicated that to Commissioner
28 Callinan. That was my first interaction with him. I
29 met him once further, and that was in an interview

1 board from inspector to superintendent, I was
2 unsuccessful that year, and I met him twice
3 subsequently: once was at a funeral in Donegal which I
4 was taking part of the guard of honour; and the second
5 time, when I was in charge of the guard of honour for 13:46
6 Adrian Donohoe's funeral. But had we ever spoken? No.
7 221 Q. Okay. And Commissioner O'Sullivan, did you ever serve
8 with Commissioner O'Sullivan?
9 A. I never served with her, had little or no knowledge of
10 her, in fact, until she became high-ranking chief 13:46
11 superintendent. I met her, she was either chief
12 superintendent or an assistant commissioner, on a
13 course that I completed at DCU, and she was over to
14 talk to us prior to the certificates being awarded.
15 Never spoke one-to-one; it was general conversation, 13:46
16 any time I had either with ex-Commissioner Callinan, or
17 indeed, for that matter, for the present Commissioner,
18 Commissioner O'Sullivan.
19 222 Q. And just to complete the picture of who you are
20 acquainted with or not, did you know or have you met 13:46
21 Sergeant McCabe or served with him anywhere in any --
22 A. I have never served with Sergeant McCabe, and, to the
23 best of my knowledge, I have never met the man. Now,
24 we have may have worked, for example, at a Slane
25 concert, maybe the G8, policing of that. But 13:47
26 certainly, I have no knowledge of ever meeting Sergeant
27 McCabe, either professionally or in a private capacity.
28 223 Q. So you wouldn't have had --
29 A. He did serve in Dundalk and he did serve in Bailieboro,

1 but I didn't meet him. He was gone out of Dundalk
2 before I arrived, and in Bailieboro he was gone again
3 before I arrived.

4 224 Q. So certainly you never had an opportunity to assess him
5 as a professional guard that you were working with in 13:47
6 any capacity or to form any opinion of him, personally
7 or professionally?

8 A. That is the case, Mr. Chairman.

9 225 Q. And did you know any of his family at all?

10 A. No, I knew nothing of them, and that remained the case. 13:47
11 I was, I suppose, quite some time in Bailieboro until I
12 even discovered or found out where Sergeant McCabe
13 lived.

14 226 Q. Okay.

15 A. I didn't even know that he lived in the Cavan Garda 13:47
16 district.

17 227 Q. Okay. Did you know Mrs. D or did you ever meet Ms. D?

18 A. I have never met either.

19 228 Q. Okay. And without going into where Mr. D served or is
20 serving, did you know Mr. D? 13:48

21 A. Not until I arrived to Bailieboro station.

22 229 Q. Okay. Did you have any knowledge of the fact that a
23 criminal investigation had taken place in relation to
24 an allegation against Sergeant McCabe?

25 A. I may have learned of it in Ballyshannon, and I say 13:48
26 that because there had been a review of policing in
27 Bailieboro district, conducted by Assistant
28 Commissioner Derek Byrne, now retired, and Chief
29 Superintendent Terry McGinn, who is no relation. But

1 that was conducted from Ballyshannon station. And some
2 of the Gardaí that I subsequently served with there,
3 one, who has since deceased, the sergeant, had been in
4 Bailieboro on that investigation and had interviewed
5 some of them. Who, I don't know. 13:49

6 230 Q. Right.

7 A. But I knew there had been a review done there, a
8 disciplinary investigation, and I don't know when I
9 found out that there had been an allegation of sexual
10 assault, but I was aware of it by the time the Tusla 13:49
11 referral arrived to me. Whether I picked that up in
12 Ballyshannon or in Bailieboro, I don't know.

13 Probably -- possibly Bailieboro, probably Bailieboro.

14 231 Q. Perhaps it is often difficult to know when you learned
15 something, but did you know that it had been the 13:49
16 subject of a file submitted to the DPP and that no
17 prosecution had been directed?

18 A. I don't know when I found that out, but I certainly did
19 the day I compiled and submitted that report. That is
20 on the 8th May 2014. I imagine, if it was a sexual 13:49
21 assault, I know on the general directive that those
22 files must be submitted to the DPP.

23 232 Q. Right. Well, just in terms of moving from Donegal,
24 where you had been, down to Bailieboro in 2013, were
25 you briefed by anyone on your arrival in Bailieboro or 13:50
26 before you got there?

27 A. I didn't meet the superintendent I replaced in
28 Bailieboro. I met him maybe a year or more later,
29 Gerry O'Brien. Certainly, he didn't meet me and give

1 me a briefing. Was I briefed before arriving to
2 Bailieboro? I remember the chief superintendent then,
3 now retired, Jim Sheridan, meeting him, and he was
4 telling me that -- or I learned that a vacancy was
5 arising in Bailieboro, Carrickmacross, around there, 13:50
6 would I be interested. And with the knowledge, as I
7 told the Tribunal, that there had been a review of
8 policing methods, and so on, in Bailieboro, I asked him
9 would it be advisable to go or to avoid it.

10 233 Q. Yeah. I'm not suggesting this in any improper way, 13:51
11 but --

12 A. But also there was Superintendent James Cone, who is
13 now stationed in Cavan, and both of them told me that
14 it was fine.

15 234 Q. Yes. But was Chief Superintendent Sheridan, you knew 13:51
16 him personally, obviously?

17 A. I know him since 1990.

18 235 Q. And I am not suggesting there's anything improper in
19 this, but was he tipping you off that there would be a
20 vacancy in Bailieboro, Carrickmacross? 13:51

21 A. Tipping me off in as much as the then-superintendent in
22 Bailieboro had been promoted out of Dublin, he was
23 living in Dublin and he wanted to return there, so a
24 vacancy could be arising, so I made application to
25 transfer down to the Cavan-Monaghan division if a 13:51
26 vacancy arose.

27 236 Q. And there was no chief superintendent in Bailieboro,
28 isn't that right?

29 A. No, the chief superintendent for Bailieboro, that area,

1 is based in Monaghan, the division of Cavan-Monaghan,
2 based in Monaghan town.

3 237 Q. And did you know Superintendent Cunningham?
4 A. Briefly. I had met Superintendent Cunningham on a
5 Children First course in the early days. He was an 13:52
6 inspector then. I heard him say that he was promoted
7 in 2008. It would be probably 2002 to 2006 or 2007.

8 238 Q. Okay.
9 A. But did I know him? Other than just meeting him, I
10 knew of his existence and where he was stationed, but I 13:52
11 have never met the man, either socially or
12 professionally, other than on that course.

13 239 Q. And was that after the first set of child protection
14 guidelines had come out? Was that the purpose of the
15 course? 13:52
16 A. It would be -- I don't know, but I know we were on a
17 residential course in the Nuremore Hotel in
18 Carrickmacross.

19 240 Q. Right.
20 A. I remember it was a two-day course and what -- the 13:52
21 lectures we were getting, and so on, but I have no
22 great details of it.

23 241 Q. Okay.
24 A. My knowledge of Superintendent Cunningham was limited.

25 242 Q. Okay. And on your transfer in May 2013, did you become 13:53
26 aware or were you aware of how the liaison system
27 worked with the HSE?
28 A. Well, I knew from my time as an inspector in Dundalk
29 how the liaison system worked with the HSE, and the

1 same obtained in Donegal and indeed in Bailieboro in
2 County Cavan where Sergeant Tony Byrne was the liaison
3 Garda member.

4 243 Q. We have seen letters written by Sergeant Byrne. He
5 seemed to have been quite au fait with the comings and 13:53
6 goings of the team leaders in the HSE district, because
7 we have seen letters that he wrote to Carmel McAulay,
8 referring to Eileen Argue's departure and Keara McGlone
9 arrival, suggesting meetings, providing them with his
10 phone number, etcetera, etcetera. Did you ever hear, 13:53
11 in 2013, of any proposal either to meet in relation to
12 anything to do with Sergeant McCabe?

13 A. Absolutely not. I requested, through Sergeant Byrne,
14 that at some stage if I could meet the team leader, the
15 social work team in that part of east Cavan, just 13:54
16 informally, meet and greet. But never -- Sergeant
17 McCabe's name was never mentioned.

18 244 Q. Did you yourself know who the team leader was at the
19 different stages in 2013?

20 A. No, Mr. Chairman. The names, I would have heard them 13:54
21 coming and going, but did I know, no.

22 245 Q. Yes. We know that there was a meeting before Christmas
23 that Keara McGlone attended, apparently. Were you ever
24 made aware as to whether anything appeared on an agenda
25 or anything was discussed at any meeting relating to 13:54
26 Sergeant McCabe?

27 A. No.

28 246 Q. Would you expect to be briefed by Sergeant Byrne about
29 any cases that had been either formally or informally

1 discussed at any meeting?

2 A. If issues arose, only. But I can tell you, for 2014,
3 94 referrals made their way through Bailieboro station.
4 Some of those, most of them were referred by the
5 Gardaí, some were referred by Tusla, and in some cases 13:55
6 individual referrals on those, there could be three or
7 four individuals named, being referred. But no, I
8 didn't.

9 247 Q. And was it part of your function to either authorise
10 the referral or sign off on it or to scrutinise any 13:55
11 that came in from the HSE to the Garda station?

12 A. Yes, I would say that they would cross my desk.

13 248 Q. I think you did receive, by ordinary post, a standard
14 notification form for use by the Child and Family
15 Agency on the 7th May 2014, is that correct? 13:55

16 A. That is the case, Chairman.

17 249 Q. Perhaps we will just look at that. It's at page 1716.
18 That's got the heading on it, and then there's a file
19 number put on that. Who would have put that on it, on
20 the top left-hand corner? 13:56

21 A. I think that is the handwriting of Ms. Bridget Kenny,
22 now, but I won't swear to that effect.

23 250 Q. Okay.

24 A. But Ms. Bridget Kenny handles Tusla referrals in and
25 out of Bailieboro station. 13:56

26 251 Q. Now, it's dated itself 2nd May, but it has got a sort
27 of received stamp on the 7th May, that appears to have
28 been a Wednesday?

29 A. I will -- I have notes here, if I am permitted to

1 consult them?

2 252 Q. Yes, please. You might just identify what you are
3 consulting, if you don't mind. Is it a station book?

4 A. It is my Officers and Inspectors Journal.

5 253 Q. All right. Is that on a day-by-day diary basis? 13:57

6 A. I must keep it, as to what my duties on a particular
7 day were.

8 254 Q. Yes.

9 A. What -- for example, perhaps meetings I attended.

10 255 Q. All right. 13:57

11 A. Meetings I chaired. If I had important phone calls to
12 my office and stuff like that. The 7th May, I have it
13 down here as a Thursday.

14 256 Q. Do you? Okay. All right. Well, we will check that,
15 perhaps. 13:58

16 A. Sorry, I have misled you, I have the wrong -- that is
17 the current journal. The previous one I will refer to.

18 257 Q. All right.

19 A. 7th May was a Wednesday, yes.

20 258 Q. Okay. And you read that, I take it? 13:58

21 A. I read it, yes.

22 259 Q. And it was signed by Mr. Deeney and dated by him on the
23 2nd May also?

24 A. Mr. Deeney was based in Cavan and I see it was headed
25 from Monaghan office. 13:58

26 260 Q. Yes.

27 A. I don't know if it went to -- look at, the five days, I
28 can't explain why it took that length to come over to
29 me.

1 261 Q. Yes. No problem. But you saw on it that it came, as
2 it were, from Laura Brophy, counsellor with Rian
3 counselling service?
4 A. Yes.

5 262 Q. Did you know of that service? 13:59
6 A. I didn't know of Rian, no.

7 263 Q. And did you know where they were based?
8 A. No, Chairman.

9 264 Q. Okay. And did you have a phone number for them?
10 A. Not for Rian, Chairman. 13:59

11 265 Q. Not for Rian, okay. And you seemed to take very swift
12 and decisive action. You probably hardly remember the
13 time of the day you got that, but we see it, a letter,
14 whether it is a draft or not, dated 7th May from your
15 office? 13:59
16 A. I think it's in the forenoon, for the simple reason I
17 have a note here 4pm to 6pm. At that stage there was
18 an investigation ongoing in the district into the
19 disappearance of two men, subsequently found murdered
20 in the Kells district, so it was best to get the paper 13:59
21 out of the way early in the morning, best to process
22 what you have to do.

23 266 Q. Okay. So you think you did the draft letter or the
24 letter early in the morning on the 7th May?
25 A. Certainly before, look at, before 4pm. 14:00

26 267 Q. All right.
27 A. And it probably travelling, we will say before 3:30.

28 268 Q. Okay. Can we just look at that letter? It's 1714.
29 It's two pages back in volume 7. Is this a copy kept

1 for your files in normal circumstances?
2 A. There was a copy kept on the files at Bailieboro
3 station.
4 269 Q. Obviously the first paragraph is self-explanatory, a 14:00
5 referral was received. It gives the details of Ms. D
6 there. It says:
7
8 *"The referral concerns a disclosure made by Ms. D that*
9 *when she was aged six to seven years old she was*
10 *sexually assaulted by a man who she named as Maurice 14:01*
11 *McCabe. Maurice McCabe is a serving member of An Garda*
12 *Síochána holding the rank of sergeant and is currently*
13 *attached to Mullingar Garda Station."*
14
15 Now, I take it that, certainly in your consciousness, 14:01
16 Sergeant McCabe was well-known in a public way?
17 A. At that stage, very much so, yes. There was very
18 considerable coverage of Sergeant McCabe and the
19 attendant circumstances surrounding him.
20 270 Q. And was the fact that it was Sergeant McCabe who was 14:01
21 named in this made it necessary to deal so quickly with
22 it?
23 A. Not necessarily, for the simple reason any Tusla
24 referral or any item of correspondence, if not dealt
25 with appropriately and properly early on, it can have 14:01
26 consequences, far-reaching consequences. This was
27 2014, here we are today, I think it is best to deal
28 with it as you see best fit on a particular day.
29 271 Q. Okay.

1 A. But certainly when I saw Sergeant McCabe's name, but
2 perhaps, equally importantly, I saw that the name of
3 the sergeant, my sergeant in charge at Bailieboro, he
4 too was named on it.

5 272 Q. All right. You see you say then in the fourth 14:02
6 paragraph:

7
8 *"In an unknown date in 2007 Ms. D, with the support of*
9 *her parents, made a formal complaint of sexual assault*
10 *to Gardai and named the perpetrator as Maurice McCabe,* 14:02
11 *reference BB 26/307."*

12
13 Now, that reference isn't in the referral, obviously?

14 A. No. I have a couple of references, a couple of small 14:02
15 items of written correspondence. That reference was
16 extracted from that correspondence.

17 273 Q. Okay.

18 A. And it was on the correspondence register at Bailieboro
19 station. That's where I did that.

20 274 Q. So that is what I am anxious to understand, what 14:02
21 information you had available to you when you composed
22 the letter.

23 A. I think I had two -- well, first of all, the
24 information available to me, I had the correspondence
25 register, two items at the time. 14:03

26 275 Q. Is that the register that Superintendent Cunningham was
27 asked about, the ordinary correspondence register?

28 A. Correspondence register, yes. I will be able to -- I
29 might have those two items of correspondence with me.

1 But while I look for them, just, that's where I found
2 that.

3 276 Q. Yes.

4 A. It would be held on the correspondence register.

5 277 Q. But who was it correspondence to or from or what did it 14:03
6 say, if you could assist in that?

7 A. Again, the correspondence would be addressed either to
8 the superintendent of Bailieboro or it would be going
9 out to, we'll say, the chief superintendent or an
10 outside agency, or whatever the case may be. In this 14:04
11 case, I think it was correspondence from Commissioner
12 just noting -- going back to 2006 or '7, noting that
13 the DPP had directed no prosecution.

14 278 Q. From the Commissioner's office?

15 A. From the Commissioner's office. wait 'til we see. 14:04
16 That's the chief superintendent's office, allegation
17 made by Ms. D on the 26/3, so on:
18
19 *"I attach a copy of correspondence 24/8/'07 in the
20 above matter from Assistant Commissioner Human Resource 14:04
21 Management for your information and all concerned."*
22
23 And a copy of that minute then.
24
25 *"I note that the DPP has directed no prosecution in the 14:04
26 case. I also note that your correspondence dated 26th
27 February '07, you stated that you did not propose to
28 initiate a discipline investigation in this case.
29 Accordingly, I am closing the matter out."*

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They were the only items of correspondence held at Bailieboro on that.

279 Q. All right. Just in relation to the second letter, could you just identify who that is from and who it is signed by? 14:05

A. That is from then-Assistant Commissioner Catherine Clancy, dated 24th August 2007.

280 Q. And it's addressed to the Chief?

A. It's addressed to Chief Superintendent Monaghan. 14:05

281 Q. Monaghan. And was that copied to you or to the superintendent in Bailieboro at the time?

A. It was -- it was addressed to the Superintendent, Bailieboro, and to Inspector Noel Cunningham, Monaghan.

CHAIRMAN: Can I just get details of that, Mr. McGuinness? 14:05

MR. MCGUINNESS: Of that first letter?

CHAIRMAN: If you don't mind. I presume that's B Branch, is it?

282 Q. **MR. MCGUINNESS:** Well, is it B Branch? 14:05

A. Yes, it came from B Branch. That is Assistant Commissioner retired, Catherine Clancy.

283 Q. Yes.

A. And the other one then is from the chief superintendent's office at Monaghan. 14:05

CHAIRMAN: And the date of it again, if you wouldn't mind?

MR. MCGUINNESS: The first one is --

A. That's from Monaghan to Bailieboro. It's dated --

1 **CHAIRMAN:** The one from Headquarters, if you wouldn't
2 mind?

3 A. It's dated 24th August '07 and from Monaghan to
4 Bailieboro on the 29th August '07.

5 **CHAIRMAN:** Okay. And what it says from Headquarters 14:06
6 is, no discipline is to be taken?

7 A. Yes. No disciplinary measures are being taken, yes.
8 And also written on the bottom of that is "*Sergeant*
9 *McCabe informed 31/8/07*". I am only reading out what
10 is on the correspondence. 14:06

11 284 Q. **MR. MCGUINNESS:** Yes. So it's, as it were, formal
12 notification closing off any issue of discipline as far
13 as Sergeant McCabe is concerned and noting that he had
14 been informed of it?

15 A. And that HRM have been noted of the DPP's decision and 14:06
16 that it was proposed not to take discipline -- well,
17 yes.

18 285 Q. Now, those letters don't, obviously, deal with the
19 content of the allegation that Ms. D had originally
20 made, isn't that correct? 14:07

21 A. Absolutely, Chairman.

22 286 Q. Now, just going back to the letter we have been looking
23 at then.

24 **MR. MCDOWELL:** Chairman. The transcript is saying it's
25 1716, but that is not right. 14:07

26 **MR. MCGUINNESS:** well, there are different -- it occurs
27 in different places. I am looking at 1714, the letter.

28 **MR. MCDOWELL:** Sorry, 1714.

29 **CHAIRMAN:** If you go back two pages, that is what we

1 are looking at. In other words, the letter came after
2 1716, but it's before it in the book.

3 **MR. MCGUINNESS:** Yes.

4 **MR. MCDOWELL:** It's the letter about no further
5 disciplinary. 14:07

6 **MR. MCGUINNESS:** No, no, that's not in that book.

7 **MR. MCDOWELL:** No. I am entitled to know where it is.

8 A. Amended letter. The letter of the 7th was amended the
9 following day with a typographical mistake and
10 corrected. 14:07

11 **MR. MCGUINNESS:** Yes, I will come to that in a minute.

12 **MR. MCDOWELL:** I am trying to get the page number for
13 the letter.

14 **CHAIRMAN:** The letter from B Branch is what you are
15 referring to? 14:07

16 **MR. MCDOWELL:** Yes.

17 **CHAIRMAN:** B Branch now is being called something else,
18 like people --

19 **MR. MCDOWELL:** I am trying to get the page reference to
20 it. 14:08

21 **MR. MCGUINNESS:** It is not in the material that we are
22 dealing with there.

23 **MR. MCDOWELL:** So it's not available to me?

24 **MR. MCGUINNESS:** well...

25 **CHAIRMAN:** I'd say it's around somewhere, Mr. McDowell. 14:08
26 We will try and find it.

27 **MR. MCDOWELL:** It doesn't matter. It's just that I'm
28 lost.

29 287 Q. **MR. MCGUINNESS:** In any event, Superintendent, just to

1 continue, thank you. The reference that you give there
2 in the letter, I mean, you obviously saw the
3 correspondence having looked at the register?
4 A. The register is electronic.
5 288 Q. It's electronic? 14:08
6 A. Yeah. So I would have asked one of the correspondence
7 register keepers what have we on it and what's the
8 reference number. And the reason for that is, it's in
9 ease of the person, the next office will be able to say
10 here's the reference number, would be able to extract 14:08
11 the file more easily.
12 289 Q. Yes. Now, you didn't have a file in relation to the
13 investigation?
14 A. That is the case, Chairman.
15 290 Q. And you didn't have the DPP file that had been 14:08
16 submitted either?
17 A. That is the case, Chairman.
18 291 Q. Which came out of that, obviously. And what you say in
19 the paragraph there is:
20 14:09
21 *"The allegation was investigated from Monaghan Garda*
22 *Station by the then-Inspector Noel Cunningham, who is*
23 *now district officer at Monaghan."*
24
25 And what was your understanding then of what had been 14:09
26 investigated?
27 A. Nothing other than a sexual assault. I didn't know the
28 gravity of it, the extent of the investigation. I knew
29 that an allegation had been made that it had been

1 investigated by Noel Cunningham, a file to the DPP, no
2 prosecution, and I took it that was it.

3 292 Q. Yeah. But obviously the reason for writing the letter
4 is the notification that you received on the 7th?

5 A. Yes. 14:09

6 293 Q. And that said that the sexual abuse involved digital
7 penetration, isn't that correct?

8 A. That's right. But I relied on -- that's a referral.

9 294 Q. Yes.

10 A. In point of fact, that wouldn't be evidence if we went 14:10
11 to the criminal courts.

12 295 Q. Oh, no, I understand that. But it's just the extent of
13 your knowledge, I just want to suggest to you that you
14 could only have concluded that the sexual abuse that
15 was notified to you was the one that had been 14:10
16 investigated back in 2006?

17 A. That was my firm mind, that it was -- we were referring
18 to the 2006 allegation and the investigation.

19 296 Q. Yes. So that where you use the phrase there "*the*
20 *allegation*", you must have taken it that the allegation 14:10
21 that was investigated was the one in the notification?

22 A. Yes.

23 297 Q. All right. And I am not suggesting that you ought to
24 have concluded differently, because you had no access
25 to materials that could have allowed you to conclude 14:10
26 differently at that point, isn't that right?

27 A. That is the case, Chairman.

28 298 Q. But you could, however, have perhaps lifted the phone
29 before writing this letter and consulted with

1 Superintendent Cunningham. Would there be anything
2 unusual in doing that?

3 A. It wouldn't be a practice for me. And why is that?
4 First of all, it was five or six years previously. The
5 DPP had spoken. What more could Superintendent 14:11
6 Cunningham tell me? I felt it was best. There were
7 two aspects to this: first of all, that the referral
8 and notification of its making had to be, in my
9 opinion, and indeed in accordance with regulations,
10 referred to Commissioner HRM. I dealt with one 14:11
11 previously on that, and the Commissioner HRM
12 correspondence used to come to my office from there,
13 seeking information, and I'd return it to HRM. But
14 also, in light of what, I suppose, was out there in the
15 press at that time. 14:12

16 299 Q. Well, what do you mean by that now?

17 A. I mean that, by that, firstly, that there was quite an
18 amount of media coverage written and indeed broadcast
19 devoted to Sergeant Maurice McCabe, and the arrival of
20 this referral, I think it was best notified to my 14:12
21 authorities.

22 300 Q. Okay. Well, obviously it didn't -- it didn't stay on
23 your desk for hardly a day before you had sent it on to
24 Chief Superintendent Sheridan, and you conceived that
25 it was proper to do that and proper to do it speedily, 14:12
26 having regard to the notification and the issue of
27 publicity?

28 A. It's not only the notification, but if today's post is
29 not moved, it's there tomorrow, so -- and I have the

1 old expression -- my own expression, you don't go home
2 until you see timber. That means when you start
3 working from the left-hand side to the right-hand side
4 and when you can see the table, you go home then, all
5 the post is dealt with. 14:13

6 301 Q. So anything in the in-tray has to go to the out-tray?
7 A. Unless there is a very good reason, out it goes, yes,
8 finished. Don't let it build up.

9 302 Q. You say in the final paragraph of this page:
10 14:13
11 *"No copy of the investigation file is held or was held*
12 *at Bailieboro district. On the interrogation of the*
13 *correspondence register here only records documentation*
14 *received here to Maurice McCabe of the DPP's*
15 *directions, ref number BB 84/607, and a few other* 14:13
16 *similar types of correspondence. It is believed that*
17 *the investigation file with all subsequent relevant*
18 *documentation is held at Monaghan Garda Station."*
19

20 Now, that reference there, is that a reference to other 14:13
21 documents in the correspondence register?

22 A. The BB number is certainly a Bailieboro number.

23 303 Q. Yeah. And what do you think the reference numbers
24 themselves then refer to?

25 A. Which? 14:14

26 304 Q. Can you see that on the screen, third-last line from
27 the bottom?

28 A. BB 84/607. That was the file number given to the
29 investigation file, I presume, in 2006 and '7.

1 305 Q. Okay. Did you take that from the other correspondence?

2 A. From the other correspondence, the correspondence
3 register, which is electronic, as I have earlier
4 stated.

5 306 Q. Okay. On the next page you say:

14:14

6

7 *"In the light of the referral received on foot of*
8 *Ms. D's disclosure to a professional, I feel it is*
9 *appropriate to have the investigation reviewed. I*
10 *suggest that the file and investigation in its entirety* 14:14
11 *be reviewed at officer level within An Garda Síochána*
12 *or that it be referred to the Cold Case Unit NBCI. In*
13 *any case, if a review of the case is to be conducted, I*
14 *suggest it be conducted external of personnel within*
15 *Cavan-Monaghan division."* 14:15

16

17 Now, could I just question the logic of referring it?

18 Because you've discovered that, according to your
19 understanding of the notification, the matter had been
20 investigated?

14:15

21 A. That's right.

22 307 Q. The investigation had concluded. So what are you
23 bringing it up again for? Why do you want it reviewed?

24 A. Two reasons. The first, the matter was investigated by
25 Superintendent Noel Cunningham, then an inspector.

14:15

26 308 Q. Yes.

27 A. He had been, on and off, based at Bailieboro. He was
28 actually a district officer some years later, I
29 believe, there. He knew Sergeant McCabe and he knew

1 Mr. D.

2 309 Q. well, did you know that at the time you wrote this
3 letter?

4 A. At the time I wrote this, yes. My experience and my
5 firm opinion is that matters such as this, indeed even 14:16
6 less sensitive, should be investigated, criminal
7 matters should be investigated by guards, perhaps at
8 superintendent level or above, from outside the
9 division wherein the allegation is made or where the
10 parties live. 14:16

11 310 Q. I mean, it might be considered --

12 A. That's one reason.

13 311 Q. -- to be a reason why you didn't contact
14 Superintendent Cunningham, because what you are telling
15 the Tribunal is, you had a very clear view, perhaps, 14:16
16 that it was wholly inappropriate for him to have done
17 the investigation. Was that your view?

18 A. I wasn't aware of the rationale or the decision-making
19 in appointing him as investigating officer.

20 312 Q. Yes. 14:16

21 A. But, number one, there was, it came to my ears in
22 Bailieboro that it had been investigated by a local
23 officer.

24 313 Q. Was that your view and you knew that on the day --

25 A. Yes. 14:16

26 314 Q. -- you were writing this letter?

27 A. Even what came to my ears was, it would have been
28 better had it been investigated by somebody totally
29 independent of the division.

1 315 Q. Well, who was putting it to your ears in that respect?
2 A. Just, look, around Bailieboro station. Some said -- I
3 was told Noel Cunningham was investigating it. Who --
4 I don't know who told me that, or who mentioned it to
5 me. Even the commonly-held view in Bailieboro was, by 14:17
6 Bailieboro Gardaí, it should have been investigated
7 from outside the division or to speak of the district.
8 316 Q. Your final sentence or final phrase there seems to be
9 pregnant then with that motivation, that you thought it
10 was inappropriate for Superintendent Cunningham to have 14:17
11 investigated it?
12 A. I was of that mind, and I still am of that mind.
13 317 Q. Right. And is that the reason perhaps why you didn't
14 speak to him about his concluded --
15 A. No. 14:17
16 318 Q. -- investigation before you wrote this letter
17 recommending a review?
18 A. It's not, Chairman, for the simple reason if there was
19 to be a review, it should be kept external of him, and
20 secondly, for him to brief me fully, you have to go 14:18
21 back and retrieve the file. Rather, frankly, if I was
22 to conduct a review, had the file been in Bailieboro,
23 had that file been in Bailieboro I would have reviewed
24 it myself. What conclusion I would have reached, I
25 don't know. But for me to conduct a review, I would 14:18
26 have to ask Noel Cunningham to provide me with a copy
27 of that file.
28 319 Q. We know you didn't do so, actually, obviously, isn't
29 that right?

1 A. That's right. But which or whether, I wouldn't
2 undertake further investigations or reviews. I would
3 prefer them to be conducted outside my office or
4 outside the division.

5 320 Q. Yes. Now, leaving aside whether you or your district 14:18
6 or division might be involved in any investigation,
7 were you not a bit premature in concluding that it was
8 inappropriate for Superintendent Cunningham to have
9 done it, without knowing that he had been directed to
10 do it and without knowing what was in his investigation 14:18
11 file?

12 A. I didn't know that. I made my decision based on the
13 evidence available to me at the particular day. It was
14 a recommendation, it wasn't a direction.

15 321 Q. Right. 14:19

16 A. It was a suggestion, a strong suggestion, that Chief
17 Superintendent Sheridan certainly consider the
18 possibility of having the file reviewed, the
19 investigation reviewed.

20 322 Q. Yeah. But coming at it from a different perspective, 14:19
21 obviously in the light of your letter and the amount of
22 information you had, you knew there had been a
23 concluded investigation with a decisive decision that
24 there should be no prosecution?

25 A. That's correct, Chairman. 14:19

26 323 Q. Why were you then suggesting that that needed a review
27 or ought to be reviewed?

28 A. I have outlined my first reason. The second reason
29 was, at that time, the media, Sergeant McCabe was being

1 mentioned, and the Guerin, I don't know if he had
2 completed it at that stage, but the Guerin Inquiry was
3 ongoing, files were being reviewed. I thought, if that
4 be the case, it was attracting so much attention, if we
5 were going to a tribunal down the road, to have all 14:20
6 matters concerning the Gardaí reviewed.

7 324 Q. Okay. Had you foreseen the possibility of a tribunal
8 at that point, that we are talking about here?

9 A. I knew that the Guerin Inquiry was ongoing.

10 325 Q. Yeah. 14:20

11 A. I didn't, no. I honestly didn't.

12 326 Q. Okay.

13 A. I don't know if I did or not, but I don't recalling
14 that this is going to end up in a tribunal.

15 327 Q. Well, you seem to have believed that it might lead to 14:20
16 that, because it was indeed a scoping exercise being
17 asked of Mr. Guerin as to what he might recommend, and
18 he recommended a Commission in the end?

19 A. That's right.

20 328 Q. So you were certainly alive to that? 14:20

21 A. Alive to it and looking to the future for the probity
22 of matters. If it has been investigated, we are going
23 to the future, it would possibly be looked at again.

24 329 Q. Yes.

25 A. If it is looked at by Cold Case, Cold Case Unit or by 14:20
26 somebody else outside the division, at least the
27 Cavan-Monaghan division will be able to say eyes, other
28 than those within this division, have examined this; we
29 found defects or we found it to be in keeping with best

1 practice.

2 330 Q. Right. And had Mr. Guerin reported, in fact, on the
3 6th May?

4 A. I don't know.

5 331 Q. Right. 14:21

6 A. I may have known at that stage. I don't know.

7 332 Q. Okay.

8 A. As of today, I don't know.

9 333 Q. Okay. But, I mean, you were reporting to Chief
10 Superintendent Sheridan since you came to Bailieboro in 14:21
11 May 2013, and I take it obviously Bailieboro centred
12 large in the complaints that were being scoped, if I
13 can put it that way, but you knew that Chief
14 Superintendent Sheridan was, and had been, assembling
15 and reviewing files for submission to Mr. Guerin from 14:21
16 early 2014, isn't that correct?

17 **CHAIRMAN:** Just in relation to the chronology. The 6th
18 May 2014, Mr. Guerin provided a report recommending the
19 establishment of a Commission of Investigation under
20 the 2014 Act to inquire into Sergeant McCabe's 14:22
21 complaints. The report was critical of previous
22 investigations carried out into Sergeant McCabe's
23 complaints. So that is the context.

24 334 Q. **MR. MCGUINNESS:** You see, I am just wondering,
25 obviously -- 14:22

26 A. Can I ask, Chairman, when did that --

27 **MR. MCDOWELL:** Chairman, there might be a difference
28 between the date on which he provided it and the date
29 made public.

1 **CHAIRMAN:** Yes, sure. There often is. Yes. I didn't
2 actually note going through the stuff when that
3 happened. Do we know? I don't know.

4 **MR. MCDOWELL:** I am just pointing out that the date
5 Minister Shatter resigned, was a date before it had 14:22
6 been made public.

7 335 Q. **MR. MCGUINNESS:** Certainly, Mr. Shatter resigned on the
8 7th May, and were you aware of that on the day you were
9 writing the letter or reviewing it the next day when
10 you corrected the typo? 14:23

11 A. I am sure I would have watched the nine o'clock news.
12 But when I was writing that, was I aware of Mr. Shatter
13 resigning? I don't know. Possibly unlikely, for the
14 simple reason I don't have a radio in my office.

15 336 Q. Yes. Rowing back from the date of the publication of 14:23
16 the Guerin Report or Mr. Shatter's resignation, you
17 certainly knew well before May that there was a review
18 going on about the adequacy, or otherwise, of
19 Bailieboro investigations?

20 A. I was. 14:23

21 **CHAIRMAN:** That had been announced and set up on 27th
22 February 2014.

23 337 Q. **MR. MCGUINNESS:** Yes. And you had your own view about
24 the propriety, if I use that word, of Inspector
25 Cunningham having conducted the investigation, because 14:23
26 of the reason that he knew the parties. Did both of
27 those features cause you to write this concluding
28 paragraph to your letter?

29 A. The feature of the appointment of Inspector Cunningham

1 and the maelstrom of media activity at that time
2 influenced me to conclude all matters with potential
3 for questions are better looked at.

4 338 Q. Okay. So, I mean, that answers the question really,
5 that the issue of referring something that had already 14:24
6 been investigated and concluded, you weren't doing
7 something for nothing, as it were, you weren't doing it
8 without a purpose, and the purpose was to have it
9 reviewed?

10 A. Reviewed, yes, Chairman. 14:24

11 339 Q. And does that mean a reinvestigation?

12 A. Very, very different. A reinvestigation means setting
13 up a team to reinvestigate it. It may have led to a
14 reinvestigation, but certainly what I was considering
15 was that somebody from outside the division of 14:24
16 Cavan-Monaghan, with a forensic policeman's mind or
17 police-person's mind, could look at it and say we
18 should have done such and such, that's fine, or perhaps
19 we need to do extra jobs, extra inquiries, and then we
20 will resubmit to the DPP, but somebody at Cold Case 14:25
21 level or an experienced investigator to look at it and
22 see if there's anything left undone.

23 340 Q. Yes.

24 A. I have seen that -- I wouldn't say many. I have seen a
25 few reviews and been involved in a few reviews. 14:25

26 341 Q. On one interpretation, it might be suggested that this
27 is a very swift and decisive step to re-open the
28 investigation into Sergeant McCabe's, the allegation
29 against him, without, in fact, having considered the

1 material that led to the conclusion of the
2 investigation and it being closed for six years?

3 A. Six years. Well, firstly, the decision to re-open or
4 review wouldn't rest with me; it would rest with, I
5 would say, Commissioner level. So I can make my 14:26
6 recommendation, somebody above me can decide or agree
7 with my recommendations or disagree. But what I -- the
8 information available to me on that particular day, I
9 completed my report and made my recommendation.

10 342 Q. And was there an element of, as it were, getting it off 14:26
11 your desk and bringing it to the attention of your
12 senior officer for him to take the responsibility as to
13 what happened next, or did you just feel it was your
14 duty yourself to do that and push it up the line, if I
15 can put it that way? 14:26

16 A. Well, it can be viewed perhaps that way, but that
17 wasn't my intention. My intention was, notify for the
18 eyes of the chief superintendent and setting out my
19 rationale for doing that.

20 343 Q. Okay. But certainly as far as your personal position 14:26
21 is concerned, had you any axe to grind in relation to
22 Maurice McCabe?

23 A. Absolutely none, Mr. Chairman. Because I had never met
24 the man. I knew little -- as I say, I didn't even know
25 that he lived outside the Bailieboro district, other 14:27
26 than what I had heard circulating in the media, and
27 indeed what I had heard about the investigations,
28 internal and then the criminal investigation, I knew
29 nothing about the matter.

1 344 Q. Okay.

2 A. And no axe to grind.

3 345 Q. And did you consult with anyone or take any direction
4 from anyone before you wrote this letter or sent it up
5 to Chief Superintendent Sheridan? 14:27

6 A. The answer is no, Chairman. I collated some of the
7 information from the district office, as to file
8 numbers and so on, looked to see what was there,
9 composed my thoughts and committed those thoughts to
10 writing. 14:27

11 346 Q. I have done a bit of questioning, obviously, in
12 relation to the final paragraph of your letter, but on
13 another reading of it, it simply appears to give one
14 reason for referring it on, which is -- because it's
15 stated to be: 14:27

16

17 *"In light of the referral received on foot of Ms. D's
18 disclosure to a professional, I feel it appropriate to
19 have the investigation reviewed."*

20 14:28

21 So that wasn't really the reason why you were seeking
22 the review of it?

23 A. Could you --

24 347 Q. Were you seeking the review --

25 **CHAIRMAN:** It is page 1715. 14:28

26 348 Q. **MR. MCGUINNESS:** 1715.

27 A. Yes, I have it here.

28 349 Q. Were you seeking it simply because it was a disclosure
29 to a professional?

1 A. I suppose it was a further disclosure.

2 350 Q. A further disclosure?

3 A. Just to have what was out there reviewed.

4 351 Q. Okay. Certainly, the remainder of it doesn't disclose
5 in any substantive way your view about the 14:28
6 appropriateness of the original investigation or any --

7 A. No, and it couldn't, because I had no knowledge of it.

8 352 Q. Yeah. But would it not be premature, again just
9 perhaps finishing on this topic, this question, would
10 it not be premature to suggest any review without 14:29
11 knowing anything, effectively, about the original
12 investigation?

13 A. Not abdicating responsibility, but the decision on
14 review wouldn't rest with me. And seeing that this had
15 come in and seeing what was going on in the outside 14:29
16 world, I thought it was best to get the whole matter
17 reviewed.

18 353 Q. Could we look at notification then? 1716. Unlike the
19 Tusla copy, this has got line struck across it,
20 "withdrawn"? 14:29

21 **CHAIRMAN:** Is that your handwriting?

22 A. No, it's not. I think that's Chief Superintendent -- I
23 can see Chief Superintendent Sheridan, perhaps.
24 Certainly, that's not my handwriting.

25 354 Q. **MR. MCGUINNESS:** Okay. Now, just to be clear, the 14:29
26 typographical error in the draft there, which
27 apparently was put on the copy, what was the error in
28 the letter that caused you to re-date it and send it?

29 A. I drafted my minute by hand.

1 355 Q. Yes.

2 A. There is, and Mr. O'Higgins has it, I believe,
3 unredacted, I've "*Acting Sergeant in Charge*", but it
4 was typed "*Acton*", A-C-T-O-N. So I stroked out the O-N
5 and put in I-N-G. That was the sole reason why it was 14:30
6 delayed the one day.

7 356 Q. And by the way, just knowing of chief superintendent's
8 involvement in processing files for Mr. Guerin, did you
9 consult with him on the phone when you sent the letter
10 up to him? 14:30

11 A. I have no recollection of it. Mr. Chairman, I am
12 somebody that, if I feel strongly about something, I
13 feel to put it on paper. It's better on paper and I do
14 it formally. The chief superintendent might be
15 available, he might not be available. Look at, 14:31
16 correspondence must be processed. It's not processed
17 on a phone; it's processed properly with an appropriate
18 minute.

19 357 Q. Okay. But may I take it that the letter of the 7th
20 hadn't gone up, it was -- 14:31

21 A. Didn't leave the office until the 8th, and I don't
22 think the 7th went to Chief Superintendent Sheridan.
23 It was the letter of the -- in essence, it's the same
24 letter.

25 358 Q. Yes, I understand that. 14:31

26 A. But it went on the 8th.

27 359 Q. Yeah. By post?

28 A. By ordinary post, I'm sure. Post, yes.

29 360 Q. Is that right? Is that the normal --

1 A. The normal method of written communication is by post.
2 361 Q. Okay.
3 A. Or sometimes hand delivery.
4 362 Q. Okay. Just --
5 A. By dispatch. 14:31
6 363 Q. -- turning to the position of Mr. D. He has given
7 evidence that you called him into your office --
8 A. I called him into my office --
9 364 Q. -- at some stage in May?
10 A. I don't think it was the 7th, it may have been the 8th. 14:31
11 And in preparation for today, I've obtained a copy of
12 his duty -- duties, and I can dovetail what days he and
13 I were in the station together.
14 365 Q. Okay. Well, could you tell us what days you were in
15 the station together? 14:32
16 A. Well, we were there --
17 366 Q. And just identify the source from which you are taking
18 this.
19 A. First of all, I'm referring to my journal.
20 367 Q. Yes. 14:32
21 A. And the duties that I was performing on those days. On
22 the 7th, I was in and out of the station, because I was
23 carrying out inspections of some of the sub-district
24 stations. That was on the 7th. And if I look here for
25 the 7th for Sergeant D, he was an annual leave. The 14:32
26 8th and the 9th, he was in Bailieboro station, he was
27 IC, he has written down here, in audit. The 8th, I was
28 carrying out the audit, so I was there at the station.
29 Most likely, the conversation took place that day. And

1 the 9th I was files and correspondence for the entire
2 tour. 8th and 9th. Sergeant D is on rest days on the
3 10th and 11th. On the 12th he is back, and on the
4 12th, it's the Monday, I am in the station all day, I
5 have my weekly accountability meeting in which Sergeant 14:33
6 D attended, and there would be an opportunity to meet
7 that day but specifically at that meeting. And then
8 the following days I was in Monaghan and in Merville in
9 County Donegal on duty. And then on the 15th --

10 368 Q. Yes. 14:33

11 A. -- if I look at, Sergeant D was on duty as IC, and
12 searching, as I mentioned, for the two disappeared men,
13 in -- I think it's over the Mounthugent area or
14 Kilnaleck. Actually, it's Kilnaleck. When I look at
15 it here, it's Kilnaleck area. 14:34

16 **CHAIRMAN:** It's hard to pinpoint, but it's sometime in
17 May, probably mid-May.

18 369 Q. **MR. MCGUINNESS:** Yes. But I am particularly interested
19 now also in the next question and the answer. Were you
20 both there on the 16th May in the station? 14:34

21 A. I was there for the 16th, I was certainly for the 16th
22 May. 16th May, I see Sergeant D was there for at
23 least part --

24 **CHAIRMAN:** Sorry, just -- anyway, I'm sure the media
25 are not going to report that name, so thank you. 14:34

26 **MR. McDOWELL:** Judge, I think the witness said it was
27 most likely the conversation took place on the 8th.

28 **CHAIRMAN:** On the what?

29 A. And again, I stress most likely.

1 **CHAIRMAN:** Again, can we just get the --
2 **MR. MCDOWELL:** Before we go into Kilnaleck or anywhere
3 else --
4 **CHAIRMAN:** Ms. Kelly, in due course, we will just
5 remove the name from the transcript. 14:35
6 370 Q. **MR. MCGUINNESS:** Can I just be clear about the answer
7 to the question. Were you both there on the 16th?
8 A. According to the time sheet for Sergeant D on the 16th,
9 he commenced duty at 12 midday and he worked at 12
10 midnight. It's down here "*Search and IC*", so he's on 14:35
11 the search, some part of that day.
12 371 Q. Yeah.
13 A. And he was performing duties as sergeant in charge in
14 the station. Whether I met him or not, I don't -- on
15 the 16th. I'll -- 14:35
16 372 Q. I just want to get your account, first of all, of when
17 you called in him, according to the best of your
18 recollection, and what you said to him?
19 A. I called him in -- one of the days I mentioned,
20 probably the 8th. 14:35
21 373 Q. Yeah.
22 A. And I showed him the referral and he read it, and
23 although I think he says he remained mute, my
24 recollection, and it's my recollection, he said, "*I*
25 *will have to check this*". 14:36
26 374 Q. He says that you, as it were, proffered it to him --
27 A. Yes.
28 375 Q. -- and sort of asked the question, 'is this your
29 lassie?'

1 A. Well, 'lassie' isn't a word I use in
2 normal pronounce -- it's not the part of south Ulster
3 where I hail from. But it's used, surely, but it's --
4 probably I would say, is that your young one? But it
5 means the same. 14:36

6 376 Q. And you think he said nothing except, I'll have to
7 check?

8 A. Yes.

9 377 Q. And you didn't, obviously, give him a copy of it or --
10 A. No, Chairman. 14:36

11 378 Q. Did he take any notes from it, that you saw, or not?

12 A. No, he did not take notes, Chairman.

13 379 Q. And did you show him the letter that you were sending
14 that day or had sent to Chief Superintendent Sheridan,
15 or say anything about it? 14:37

16 A. I don't know if it was attached to that statement.
17 Look at, it would have been the one file, we'll call
18 it, referral, plus my minute would be on it, probably
19 stapled to it at that stage. I have absolutely no
20 difficulty in him seeing what I had set out in my 14:37
21 minute.

22 380 Q. Yeah. But, I mean, in terms of propriety, or
23 otherwise, I'm not clear; he had responsibility for
24 dealing with correspondence as part of his duties,
25 isn't that right? 14:37

26 A. Yes, as the sergeant in charge of a sub-district
27 station, he has responsibility for the administration
28 of the correspondence within his station and the
29 conduct of investigations. So perhaps the Tribunal has

1 not been enlightened on it, but as district officer, in
2 this case seven stations, I write to the sergeant in
3 charge or to the member in charge of a specific
4 station, not to a guard. So in this case, it would go
5 to Sergeant D, who is sergeant in charge. He, in turn, 14:38
6 would write to, we call them unit sergeants, and that
7 would go out to an individual guard and back, and
8 that's the channel of communication.

9 381 Q. But I'm not clear, one of the reasons, it seems to be
10 apparent from your statement, as to why you showed him 14:38
11 the correspondence was because he had responsibility
12 for the correspondence and in that capacity he might
13 have come across the notification or would have had
14 some duties?

15 A. There's a very, very strong possibility, Chairman, that 14:38
16 he would, because, look at, it's in the station, it's
17 under -- look, there would be correspondence passing,
18 there was -- not in this case, but in another case,
19 there was correspondence passing through his office,
20 I'd say on an almost daily basis, on Tusla referrals. 14:38

21 382 Q. Was his office next to yours?

22 A. Next to me.

23 383 Q. But would he have had some responsibility in relation
24 to the correspondence that you were sending out to
25 Chief Superintendent Sheridan? 14:38

26 A. He hadn't. But the correspondence I was writing to
27 Chief Superintendent Sheridan and the Tusla referral
28 was to be filed at the office of Ms. Kenny -- not
29 filed, but dealt with there. But correspondence

1 flowing from that would be up and down through Sergeant
2 D's office.

3 384 Q. Okay. You see, you do say in your statement:

4
5 *"Rather than having Mr. D see the referral in the* 14:39
6 *normal course of correspondence handling, I brought*
7 *him up to my office and showed him the report."*

8
9 Now, you're perhaps -- you've used two different, very
10 different words there, "*correspondence*" and "*report*". 14:39
11 would he have been given the report in order to file it
12 or would you be showing him both the report and the
13 correspondence?

14 A. He would, I believe, have access to it. It would have
15 been correspondence on it. While he mightn't have 14:39
16 the -- the referral, yes, could pulse its way down
17 through his office, down to an assigned guard or an
18 assigned sergeant. That'd be sergeant Byrne.

19 385 Q. Okay.

20 A. In this case, yes, it would go through sergeant in 14:40
21 charge, sergeant in charge to Sergeant Byrne.

22 386 Q. Okay. Well, when do you recollect him coming back to
23 you and saying anything about the report?

24 A. I'm not sure of specific day or date, but he returned
25 to me and said, what I remember was, he said spoken to 14:40
26 Ms. D, and that -- I don't know his exact words, but
27 certainly there was a dispute that, perhaps we could
28 call it the inflated version, was wholly incorrect.

29 387 Q. Okay. Well, did he make it absolutely clear or not

1 that the allegation of digital penetration, however
2 committed, was wholly incorrect?

3 A. That's my recollection of it. He told me what he had
4 learned from Ms. D, that the vaginal or anal
5 penetration did not happen. 14:41

6 388 Q. Okay. Well, did he ask you to do anything about it?

7 A. No. I think before he had a chance to ask me, I used
8 an expletive and said I would ring them.

9 389 Q. You will what?

10 A. I will ring; in other words, ring Tusla or the HSE. I 14:41
11 was somewhat shocked as well.

12 390 Q. And did you ring?

13 A. I did, yes.

14 391 Q. And who did you ring?

15 A. I don't know to this day who I rang, but I certainly 14:41
16 picked up the phone and made a phone call, I don't know
17 who I spoke to, and spoke briefly about, it appears
18 this referral is incorrect.

19 392 Q. You see, I just want to ask you about the timing,
20 because there seems to be something that's difficult to 14:42
21 understand. How many days after first speaking to
22 Mr. D did he come back to you, do you think?

23 A. I don't know, but I will rely on my notes and his work
24 time-sheets.

25 393 Q. Okay. Now, have you got a note of when you spoke to 14:42
26 him on either occasion?

27 A. I don't, Chairman.

28 394 Q. All right. Have you got a note of your phone call that
29 you made?

1 A. I don't, Chairman.

2 395 Q. Okay. Could I ask you to look at a couple of documents
3 just to help us try and pin it down. The first set of
4 documents relate to notes made by Ms. Brophy at 978,
5 page 978. And just so that we understand the sequence, 14:42
6 the first note is the 14/5, it says "10:40am":
7
8 *"Client contacted me to inform me that there was an
9 error on the retrospective report I had submitted to
10 the social services in Cavan. I saw the error and 14:43
11 agreed to contact social service to resolve the error."*
12
13 Then that is signed. Then there is another phone call
14 later back, the same day, 2pm. We don't need to go
15 into that. But just to go down to the bottom of that 14:43
16 page, there is another phone call. It says:
17
18 *"Ms. D. Client contacted me to inform me that the
19 superintendent in Bailieboro had not yet been informed
20 of the error and requested I contact him." 14:43*
21 A. What --
22 396 Q. That seems to be referring to you?
23 A. Yeah, well, I was the then, and am, the superintendent
24 at Bailieboro.
25 397 Q. Yes. 14:43
26 A. Have we a note of what date that --
27 398 Q. It says 16/5 in the side there.
28 A. I don't know the evidence that Mr. D gave to the
29 Tribunal, but certainly, before I received the phone

1 call from Ms. Laura Brophy, I was aware that an error
2 had been made.

3 399 Q. Okay.

4 A. And that it may be the case that, I again stress may,
5 that Ms. Brophy had been told that I wasn't aware of 14:44
6 the nature of the sexual assault that had been alleged
7 or that had been investigated.

8 400 Q. Okay. well, could I ask you to look a couple of emails
9 then just in sequence.

10 **MR. MCDOWELL:** Chairman -- 14:44

11 **CHAIRMAN:** Perhaps I misheard, but did you say you got
12 a phone call from Laura Brophy?

13 A. I did, on the 16th.

14 **CHAIRMAN:** Right, okay.

15 401 Q. **MR. MCGUINNESS:** There's an email at page 867. It's an 14:44
16 email from Ms. Brophy to her supervisor, Ms. Ward, and
17 she says:

18
19 *"I just wanted to update you of my contact with Eileen*
20 *Argue, team leader of the Cavan social work service. I 14:44*
21 *had some difficulty getting hold of Ms. Argue, so it*
22 *was just minutes ago I was able to speak with her*
23 *directly. Ms. Argue informed me that she contacted the*
24 *chief superintendent in charge of this investigation*
25 *and he informed her that the alleged had not been 14:45*
26 *contacted in relation to this case as there was just*
27 *beginning to look into the report from social services*
28 *yesterday. Ms. Argue informed him of the error on the*
29 *report and has told him that she will issue him with*

1 *the new amended report and a copy of my letter to the*
2 *social work explaining the administrative error. I*
3 *requested that we get the original copy back with the*
4 *errors on it, back to be destroyed, and she said they*
5 *were doing that on their end but could not guarantee* 14:45
6 *that the chief superintendent will return it but she*
7 *will request this. Ms. Argue informed me that he*
8 *mentioned something about keeping the original along*
9 *with the updated report. If you have any questions*
10 *about this, I am on the mobile after 4:30pm today."* 14:45

11
12 There's a reference to the chief superintendent. But
13 do you recollect discussing anything with Ms. Argue
14 yourself?

15 A. I think I had a phone call from her, I'm not sure. But 14:45
16 as far as I know, can recollect, in my conversation
17 with Laura Brophy, or it may even have been Ms. Argue,
18 I was asked for the original of the referral back and I
19 said it was gone to Monaghan. I didn't have the
20 original. 14:46

21 402 Q. Okay. well, if we look at the next page, 868. This is
22 another email from Ms. Brophy to Ms. Ward, dated 16/5
23 at 15:46. It says:

24
25 *"Just a quick update, I tried Eileen Argue again but* 14:46
26 *unfortunately she's out of the office today so I sent*
27 *her an email to update her. I received a call back*
28 *from the superintendent and he informed me that he had*
29 *not been told about the error. So I explained the*

1 *issue to him. He told me that the matter is now being*
2 *given over to the Commissioner and a separate team to*
3 *investigate the case outside the region. However, I*
4 *agreed to send him a copy of the amended report by*
5 *registered post today and he will contact those with a* 14:46
6 *current copy of the erroneous report to inform them. I*
7 *have sent the amended report and he will have it by*
8 *Monday morning and will copy it to the relevant*
9 *parties."*

10
11 Now, does that reflect a conversation with you?

12 A. Well, firstly, I was aware of the inflated allegation,
13 and secondly, I received a call back from the
14 superintendent. *"Very possibly, she rang, I rang*
15 *back."* That may be the case. *"He informed me... he* 14:47
16 *had not been told"*. well, I was aware of the error at
17 that stage. *"And explained the issue to him... he told*
18 *me the matter has now been given over to the*
19 *Commissioner"*. well, the Commissioner may be -- I
20 don't know what her interpretation was, but 14:47
21 Commissioner HRM. *"And a separate team to*
22 *investigate"*, they were my recommendations. I was
23 unaware, to this day a separate team has not been
24 appointed.

25 403 Q. Okay. It's just one thing concerns me to try and 14:47
26 establish it, whether it is relevant or not. If
27 Ms. Brophy's note of her phone call with Ms. D is
28 correct, she, Ms. D, has learned that at that point in
29 time you hadn't -- the error hadn't been brought to

1 your attention by the person who brought it to her
2 attention, which was her father?

3 A. That is the case.

4 404 Q. And if Ms. Brophy's email recording the conversation 14:48
5 with you is correct, he mustn't have brought it to your
6 attention until after the phone call with the 16th?

7 A. When I spoke to Laura Brophy, I was aware of the error.

8 405 Q. It's just I am at a loss to understand how she could be
9 recording the fact that you hadn't been told about the
10 error if you're clear in your recollection and in your 14:48
11 statement that Mr. D told you about it and you phoned
12 Tusla?

13 A. It may be, again I can only say it may be, that
14 misunderstanding either on her part or perhaps my part,
15 that I was unaware of the original allegation, that I 14:49
16 think I said, possibly my words would be, I know
17 nothing about it. I think has that arisen at some
18 stage in the Tribunal here? In other words, that I was
19 unaware of the original allegation, but that the second
20 allegation, or that the referral contained an inflation 14:49
21 of what had earlier been alleged.

22 406 Q. Okay. Well, you see, she did write to you in
23 accordance with what this email apparently documents
24 her intention to do so, because you got a letter dated
25 16th? 14:49

26 A. That's right.

27 407 Q. Sent by registered post at your request, which came in
28 on the Monday, isn't that correct?

29 A. I don't -- I don't have the correspondence register.

1 408 Q. Yes.

2 A. But I have a letter from Ms. Brophy dated 16th.

3 409 Q. Yes. And perhaps we will just look at that, at 1718:

4

5 *"Following our telephone conversation today, I am* 14:49
6 *writing to confirm that a report I made to the social*
7 *work service in Cavan on the 9th August contained an*
8 *administrative error which I wish to address."*

9

10 And she then continues on. She doesn't seem to thank 14:50
11 you for either correcting the error which you believe
12 you had been told of by Mr. D at that point.

13 A. Certainly, it speaks for itself, but where I come from
14 on that is --

15 410 Q. Yes. 14:50

16 A. -- I was unaware of the gravity of the original
17 allegation.

18 411 Q. All right.

19 A. What I was aware of was, that what was set out in the
20 referral was incorrect as far as Mr. D was concerned, 14:50
21 having spoken to his daughter.

22 412 Q. Okay. Well, did you ring Chief Superintendent Sheridan
23 then immediately when you got that?

24 A. I have -- I don't know, I've no recollection of ringing
25 him. Perhaps I did, or I rang his office. 14:51

26 413 Q. Okay. It's just, you seem to have identified Chief
27 Superintendent Sheridan's handwriting?

28 A. Yeah.

29 414 Q. On the notification as *"withdrawn 16/5/14"*?

1 A. It appears to be Chief Superintendent Sheridan's
2 handwriting.

3 415 Q. Do you have the original of that there?

4 A. I don't have the original of it, no.

5 416 Q. All right. Okay. But if we just look at that at 1716 14:51
6 again, perhaps.

7 A. Perhaps, in time, Chief Sheridan, the ex-chief can be
8 asked about that.

9 417 Q. Yes.

10 A. It looks like it. 14:52

11 418 Q. He's up next. But obviously if he did it on that date,
12 you had only learned of it on that date yourself, so
13 you must have spoken to him, perhaps?

14 A. Or had that conveyed to him, yes.

15 419 Q. Yes. Well, that's what I am wondering then. What is 14:52
16 your next communication with Chief Superintendent
17 Sheridan?

18 A. My next recorded communication with Chief
19 Superintendent Sheridan was on, I think it's 20th May.
20 When the amended referral comes in, came in, I actually 14:52
21 put a minute on it, a short minute, and I forwarded
22 that referral and my minute by fax to the divisional
23 office, and that was on the 20th May, I see, at 12:54,
24 that is pm.

25 420 Q. That is what I am just slightly puzzled about. You 14:53
26 certainly knew from your communication with Mr. D, and
27 obviously had it confirmed by Ms. Brophy, whether in
28 the phone call or the letter, but you knew conclusively
29 that they were both saying this was an error and you

1 obviously appreciated the significance of it. But you
2 don't appear to have communicated with Chief
3 Superintendent Sheridan, and in your record we have
4 seen, alerting to him to that fact and saying, look,
5 put my suggested review on hold because --

14:53

6 A. I may have communicated with him, but at no stage did I
7 ask him or suggest to him that the review be put on
8 hold. I may have communicated with him, I don't know,
9 by phone or in person. I don't know if he attended
10 those conference, the conferences on missing persons.
11 But when the correspondence came in, as I saw fit, not
12 so much saw fit, but as soon as it came in, I dealt
13 with it and forwarded it on.

14:53

14 421 Q. Do you think you told Ms. Brophy in the conversation on
15 the 16th --

14:54

16 **CHAIRMAN:** Laura Brophy.

17 **MR. MCGUINNESS:** Yes.

18 422 Q. Do you think you told Ms. Laura Brophy in your
19 conversation on the 16th that you had sent the
20 notification on to Chief Superintendent Sheridan?

14:54

21 A. Well, if we go back to -- it says it's gone to the
22 Commissioner for review, yes. I don't know if I said
23 it to Chief Superintendent Sheridan, but certainly
24 through the channels, if the word "Commissioner" is
25 mentioned there, but my -- the Commissioner I am
26 speaking about is Commissioner HRM, Human Resource
27 Management, that I had in mind, because -- and I say
28 that, Chairman, because I had dealt with one of these
29 previously and it was the chief superintendent HRM was

14:54

1 dealing with it, from that point of view, with the HR
2 aspect. But again, with Chief Superintendent Sheridan,
3 he could send it to Operations to have it reviewed.
4 The review would not be conducted from HRM.

5 **CHAIRMAN:** HRM is B Branch, right? 14:55

6 A. B Branch.

7 **CHAIRMAN:** Yes. So did it actually -- we know it went
8 to B Branch in 2007, which is HRM, but did it go again
9 some time in 2014?

10 A. I don't know. 14:55

11 **CHAIRMAN:** You don't actually know.

12 A. But I think it would be appropriate that it should go.

13 **CHAIRMAN:** So again, it would go up to Headquarters
14 again in 2014, do you think, or is --

15 A. Well, the further conversation, the further written 14:55
16 correspondence should go and be placed in a file, in my
17 opinion.

18 423 Q. **MR. MCGUINNESS:** well, could I ask you to look at page
19 1728. This is a letter to the chief superintendent
20 from you, and you say: 14:56

21
22 *"Reference above. The formal retrospective referral*
23 *was received from Tusla Child and Family Agency on the*
24 *24/6. Previous referral documentation on this matter*
25 *was forwarded to your office for consideration. I* 14:56
26 *forward the original copy of the most recent referral*
27 *to your office for consideration."*

28
29 Had you sent Ms. Brophy's report onwards?

1 A. Unless the Tribunal has copies of correspondence that
2 I've sent on -- I don't -- held at Bailieboro, whether
3 I put it in the fax or not, I don't know. Whether the
4 chief superintendent or perhaps his then-clerk can
5 enlighten us on that, I don't know. 14:56

6 424 Q. Yeah. Obviously, in her letter to you of the 16th she
7 had said:
8
9 *"I have enclosed the correct report with this letter."*
10 14:56

11 And I am just trying to clarify, do you remember what
12 you did then with the amended report or the correct
13 report?

14 A. I don't, unless I consult the correspondence register,
15 or perhaps a copy of it has been disclosed to the 14:57
16 Tribunal and my name or the stamp from Bailieboro Garda
17 Station is on it.

18 425 Q. Okay.

19 A. Well, I am only dealing with what I retained --

20 426 Q. Yes, all right. 14:57
21 A. -- in Bailieboro.

22 427 Q. Okay. Well, in any event, the notification that you
23 forwarded with this letter at page 1728 that appears to
24 be on the next page, 1729 and 1730, is that correct?

25 A. That's the amended referral. 14:57

26 428 Q. Yes. Well, it's the amended notification. It's signed
27 by Mr. Deeney on the 20/6 there.

28 A. Yes, Chairman.

29 429 Q. And there appears to be a faint date-stamp at the top

1 of page 1.

2 **CHAIRMAN:** Can you make it out?

3 **MR. MCGUINNESS:** I think it's the 24th.

4 **CHAIRMAN:** Where is that? Oh, yes, 24.

5 430 Q. **MR. MCGUINNESS:** Your letter refers to it being 14:58
6 received on the 24th. So it actually appears to be the
7 24th.

8 A. Yes, and I think is that the one I forwarded by fax,
9 the letter of the 20th. It may have been -- the 20th,
10 if I can go back to -- the 20th was a Tuesday. 14:58

11 431 Q. You see, there is another unsigned copy of it at page
12 1791, which doesn't bear the heading "*Amended*
13 *Notification*", and it doesn't appear to have a
14 signature. Do you remember receiving one by email and
15 one by post, or have you any explanation for the two? 14:59

16 A. I don't, Chairman. It may have happened. But I have
17 no recollection of it.

18 432 Q. Okay. Because at page 1795 there appears to be another
19 copy of your letter of the 24th June, 1795, with, on
20 the succeeding page, 1796, another copy of the 14:59
21 unsigned, undated Garda notification.

22 A. I won't offer an explanation for that.

23 433 Q. Right. But did you attend a meeting at any stage with
24 Superintendent Sheridan about this in May?

25 A. I don't actually remember, and I certainly have no note 15:00
26 of meeting specifically about this in May. If I
27 continue on from my notes.

28 434 Q. Yes.

29 A. Until 30th May, I have no record of meeting the

1 then-chief superintendent or being at a meeting, his
2 weekly account -- weekly PALF meetings.

3 **CHAIRMAN:** His weekly, did you say coffee meetings?

4 A. No, PALF meetings, performance meetings; in other
5 words, for confer how I was running my district. 15:01

6 435 Q. **MR. MCGUINNESS:** Could we look at 1776. That is a
7 letter from you to the Chief Superintendent
8 date-stamped 20th May, where you appear to be
9 forwarding on Ms. Brophy's report?

10 A. That appears to be the case, yes. 15:01

11 436 Q. Now, you may not have been in the office, perhaps, when
12 it was received on the 16th, but is there any
13 particular reason you can recollect for a four-day
14 delay in sending that on, or --

15 A. The 16th May was a Friday and it arrived the 20th, is 15:02
16 it, arrived -- 16th is a Friday, and Monday was the
17 19th, therefore.

18 437 Q. Okay.

19 A. So that may explain it. Post, what time it was posted
20 Friday? I don't know. 15:02

21 438 Q. All right. Okay. In any event, you got a letter back
22 from Chief Superintendent Sheridan, 1781. Perhaps we
23 could just look at that.

24 A. This is dated 22nd May.

25 439 Q. It is dated 22nd May. It is to the Assistant 15:02
26 Commissioner but it's cc'd to you at the bottom?

27 A. Yes, Chairman.

28 440 Q. And do you recall getting that?

29 A. I do.

1 441 Q. This says:
2
3 *"Tusla referral, Ms. D. Reference above and further to*
4 *previous correspondence of this office dated 14th*
5 *inst."* 15:03
6
7 And That could only have been sending on your original
8 report, isn't that correct?
9 A. I take it that it is the case.
10 442 Q. Okay. *"The previous referral contained incorrect* 15:03
11 *information and should therefore be withdrawn and*
12 *replaced with the attached."*
13
14 And that was the new notification that you had sent in,
15 isn't that correct? 15:03
16 A. That is the case, Chairman, or certainly appears to be
17 the case when Jim Sheridan was writing that.
18 443 Q. Or perhaps Ms. Brophy's report only, but this is a
19 referral --
20 A. Ms. Brophy's report only. I have no -- retained at 15:03
21 Bailieboro, I have no record of sending Ms. Brophy's
22 report on, but I did -- I've retained a copy of that
23 report at Bailieboro.
24 444 Q. Yes.
25 A. But I am quite sure, again, that if Ms. Brophy's report 15:03
26 came in, in light of what was set out in it, that I
27 sent it on to my chief superintendent.
28 445 Q. Yes. But it says:
29

1 *"This is a referral made by Tusla" -- it says --*
2 *"relating to an incident which was reported to and*
3 *investigated by An Garda Síochána in 2006/7. The*
4 *Director of Public Prosecutions directed there should*
5 *not be a prosecution in the case. The attached* 15:04
6 *referral does not disclose any new information/evidence*
7 *in regard to these matters and therefore at this time*
8 *does not require any further action by An Garda*
9 *Síochána. It is my understanding that Ms. D has made a*
10 *complaint based on the allegations set out in the* 15:04
11 *attached referral form to the following parties:*
12 *Micheál Martin TD, and that he subsequently referred*
13 *the matter to An Taoiseach Enda Kenny TD and An Garda*
14 *Síochána Ombudsman Commission. A full copy of the*
15 *Garda investigation file is available at this office.* 15:04
16 *I also wish to advise that a complete copy of the Garda*
17 *investigation file was disclosed to the Guerin inquiry.*
18 *Forward it please."*

19
20 And then it is cc'd to you. 15:04

21 A. That's right.

22 446 Q. Was that the first occasion on which you concluded that
23 the matter had been fully investigated previously and
24 didn't need to be investigated, or did you ever come to
25 that conclusion yourself? 15:05

26 A. I accepted the findings of Chief Superintendent
27 Sheridan. I didn't dwell on it further, that I
28 remember. I still would have liked to have it
29 reviewed, maybe not to this day, now I know as much as

1 I do, but I still would have liked to have it reviewed
2 from outside the division, but I had never seen it.

3 447 Q. All right. So, I mean, your position is, therefore,
4 both logical and clear. You thought the original
5 referral that you got, even if it had been the subject 15:05
6 matter of an investigation and a conclusion, it ought
7 to be reviewed, and you held the same position even if
8 the allegation was less serious?

9 A. The allegation remained the same. It was an alleged
10 sexual assault -- 15:06

11 448 Q. All right.

12 A. -- which was investigated from within the division. As
13 far as I was concerned, that should have been looked at
14 from outside, even for the probity of matters heading
15 into what we subsequently know it headed into, at least 15:06
16 we could say that An Garda Síochána could say that
17 investigation was reviewed by a fresh pair of eyes.

18 449 Q. Okay.

19 A. And again, if needs be, the DPP spoke again, if needs
20 be. 15:06

21 450 Q. Okay. Now, you got another, I don't know whether you'd
22 call it an instruction or not, from the chief
23 superintendent, at page 1784. And he is referring
24 there to correspondence from the HSE dated 22nd inst.
25 and he says: 15:06
26

27 *"The report in question is dated 13th August 2013 and*
28 *if you could confirm that all copies of same have been*
29 *retracted or destroyed. If an original copy is on*

1 *hand, please forward same to this office so it could be*
2 *returned to the HSE. I would be obliged if you would*
3 *be -- revert to this office with your inclusion in*
4 *early course."*

15:07

6 And did you see the letter that came in with that from
7 Ms. Ward from the HSE?

8 A. I did.

9 451 Q. It's at page 1785. Now, did you pick up on the fact
10 that there was an error in the date in Chief
11 Superintendent Sheridan's email to you?

15:07

12 A. I didn't.

13 452 Q. Okay.

14 A. That's the first time I have noticed it.

15 453 Q. All right. Okay. And the report had actually been
16 dated 9th August, isn't that correct?

15:07

17 A. If we scroll back, perhaps we can see. Sent by chief
18 superintendent, Monaghan, 29th --

19 454 Q. Well, Ms. Brophy had referred to her report of the 9th
20 August in her letter to you of the 16th May, isn't that
21 correct?

15:07

22 A. 16th May was Ms. Brophy's letter, yes.

23 455 Q. Yes. But in that letter she referred to her original
24 report being as of the 9th August, isn't that right?

25 A. I would have to examine it. I don't -- but I will
26 accept if you have it before the Tribunal.

15:08

27 456 Q. Well, perhaps we will look at 1718. Do you see the
28 heading on that?

29 A. "*9th August 2013.*"

1 457 Q. I am just wondering, can you confirm, going back to
2 Chief Superintendent Sheridan's email at page 1784, can
3 you confirm that you never received a report dated 13th
4 August 2013?
5 A. I didn't receive a report dated -- 15:08
6 458 Q. All right.
7 A. The first I -- the first report arrived to me on the
8 7th May.
9 459 Q. Okay.
10 **CHAIRMAN:** The report? 15:09
11 A. Yeah, the report, but the actual referral.
12 460 Q. **MR. MCGUINNESS:** Okay. Where did matters stand then as
13 far as your proposed review was concerned at this point
14 in time in late May after Chief Superintendent
15 Sheridan's letter to you? 15:09
16 A. I was satisfied that, having worked with Chief
17 Superintendent Sheridan for many years in Dundalk and
18 indeed while based in Donegal, that if he was --
19 committed something to paper it was authoritative and
20 he would stand over it. I didn't question it further. 15:09
21 I didn't see the need to question it further, knowing
22 the man, because he was in the detective branch for
23 years and had been involved in many, many
24 investigations and compiled -- was the bookman on many,
25 many investigations. 15:09
26 461 Q. Okay. Well, you did attend a meeting with him and
27 Assistant Commissioner Kenny in July of 2014 in
28 Mullingar, isn't that correct?
29 A. I did. That's correct, Chairman.

1 462 Q. And just to be clear, had you any other involvement in
2 relation to this issue between that letter you received
3 and email you received from Chief Superintendent
4 Sheridan at the end of May until July?
5 A. Not that I recollect. I would answer that, no. 15:10
6 463 Q. Okay. Have you seen minutes of the meeting held in
7 Mullingar on the 16th July?
8 A. I think they are notes, but yes, I have seen them.
9 464 Q. All right. Okay. And at page 1835, they commence over
10 a number of pages. Assistant Commissioner Kenny was 15:10
11 there, Chief Superintendent Sheridan, Superintendent
12 McGinn and Sergeant Karen Duffy, who was, I think,
13 taking the notes, amongst other duties. But were you
14 surprised that Superintendent Cunningham wasn't there?
15 A. No. And I never -- that actually never entered my 15:11
16 mind, Chairman.
17 465 Q. Okay. It's just obviously the issue as to whether he
18 ought to have investigated it or not or whether anyone
19 knew more than him, might have been considered
20 relevant. Did you not consider consulting with him at 15:11
21 this stage, knowing that you were going to this
22 conference, about whether he was going?
23 A. I didn't, I didn't. I'm sure had the Commissioner
24 Kieran Kenny wanted him to attend, he would have made
25 that decision. 15:11
26 466 Q. Right.
27 A. I was told there was a meeting, I was to attend it. It
28 was following on from an earlier meeting in Mullingar
29 that morning. I wasn't told the agenda, I wasn't told

1 if I needed to prepare in any way for it or even what
2 we would be discussing.

3 467 Q. Well, that's what I am wondering. Had you done any
4 preparation or had you been asked to read anything?
5 A. Absolutely nothing. 15:12

6 468 Q. Okay. Is it your evidence then that you went into this
7 meeting not knowing the purpose of the meeting?
8 A. That is the case.

9 469 Q. Okay. And when it started then and when you realised
10 it all related to the Tusla referral and the original 15:12
11 investigation, did it not strike you as odd that
12 Superintendent Cunningham wasn't there and suggest,
13 look, perhaps we should get him in on this, he's the
14 one who knows most about it?
15 A. Firstly, I did know, when I was going to that meeting, 15:12
16 it was about the referrals, but what we were to
17 discuss, I had no idea, and I was not asked to bring
18 anything with me. Now, just to answer your question,
19 did I not think it was strange that Superintendent
20 Cunningham was not there, at that stage it appeared 15:12
21 that the matter was now being handled by Chief
22 Superintendent Sheridan and by Commissioner Kenny and
23 by myself. In fact, we had moved on, this is July, on
24 the 16th July. We have now moved on over -- nearly two
25 months. 15:13

26 470 Q. Well, the first paragraph there records Assistant
27 Commissioner Kenny as outlining:
28
29 *"We need to deal with this matter given the people*

1 *involved. It is unbelievable that the HSE completed*
2 *the referral via copy and paste. He outlined that he*
3 *doesn't accept that the referral passed through three*
4 *different people in the HSE and it was not noticed."*

15:13

6 what did you understand by him outlining that they
7 needed to deal with it?

8 A. Further down -- I actually wondered why there was a
9 meeting that particular day, but, further down, you
10 will see there were two issues discussed. One was
11 failure to place the record or the allegation on PULSE,
12 and the second thing was: has this matter been
13 referred to Tusla in 2006? And I couldn't answer
14 either. But my understanding leaving there was it had
15 not been referred in 2006 or 2007.

15:14

15:14

16 471 Q. Okay.

17 A. And that would be a consideration. And actually, I
18 picked up on it some time later, if we hadn't, if we
19 had not referred that in 2006, certainly there was a
20 risk to the organisation if somebody, in this case
21 Sergeant McCabe, had reoffended, or when I say -- had
22 another allegation made against him and found to be --
23 that the State were found to be liable, the Garda
24 Síochána did not notify Tusla --

15:14

25 472 Q. Yeah.

15:14

26 A. -- at the time. That is my input into it.

27 473 Q. Well, can I ask you this. Being the superintendent in
28 charge at Bailieboro, did you not understand when you
29 were writing your letter of the 7th or 8th May that the

1 matter had gone to the HSE already?
2 A. But not -- we hadn't notified -- well, for the meeting,
3 my concern was what had happened between 2006 and 2014,
4 had we complied with our statutory obligation to
5 notify. 15:15
6 474 Q. Well, we've seen, and you've probably seen it, Sergeant
7 Fraher's original notification?
8 A. I haven't seen it and I was unaware that it did exist
9 at that stage. There were concerns at that meeting in
10 July that we didn't. 15:15
11 475 Q. And is that not kept on a correspondence register or is
12 there a separate notifications register?
13 A. Not held at Bailieboro, none of that was held at
14 Bailieboro.
15 476 Q. Okay. So as far as you're concerned, there was nothing 15:15
16 to check if had you gone to check in Bailieboro?
17 A. I produced all that I found in relation to that file,
18 which was two pieces of paper with very little written
19 on them, recorded on them, held at Bailieboro.
20 477 Q. The next paragraph records: 15:16
21
22 *"Superintendent J. Sheridan outlined that the*
23 *counsellor completed the referral and that the names*
24 *were only changed by the HSE and the details of the*
25 *incident were forgotten/overlooked and had passed a few 15:16*
26 *hands before it was picked up."*
27
28 was it your understanding that there had been a
29 misidentification of parties in any material that came

1 to the Gardaí from Tusla?

2 A. Misidentification?

3 478 Q. Yeah.

4 A. Not that there was misidentification, no.

5 479 Q. Did you understand what he was referring to about names 15:16
6 being changed by the HSE?

7 A. Mr. Chairman, no.

8 480 Q. Okay.

9 A. I didn't know what --

10 481 Q. Okay. 15:16

11 A. Which paragraph is that contained in?

12 482 Q. Well, it's the second paragraph there. "*Chief*
13 *superintendent J. Sheridan...*"

14

15 And that the names were only changed by the HSE. Did 15:17
16 you know what he was talking about?

17 A. I can't say on the day, but what I imagine I would have
18 deduced was, we were talking about the D family and
19 Sergeant Maurice McCabe. But that didn't strike me the
20 particular day. 15:17

21 483 Q. Okay.

22 A. I didn't keep any notes of that day, and it's only the
23 recent past that I have seen actually the typed copy.

24 **CHAIRMAN:** Actually, in fact, it is Ms. Y's name being
25 changed in D. 15:17

26 A. That may well be the case.

27 **CHAIRMAN:** In other words, two inconsistent names on
28 the same form.

29 A. It didn't strike me, Chairman.

1 *the HSE."*

2

3 And were you asked to, as it were, verify that, or did
4 you verify at the meeting that there was no referral to
5 the HSE made by the Gardaí? 15:19

6 A. I didn't, and I couldn't, because, as I said earlier,
7 there was no copy of a referral held at Bailieboro
8 station, and unless I had confirmation, physical
9 confirmation, I can't speak it adequately.

10 **CHAIRMAN:** We know there was a referral to the HSE. 15:19

11 487 Q. **MR. MCGUINNESS:** I understand that, but what I am
12 trying to grasp towards is, did you tell the meeting,
13 look, there is no referral to the HSE?

14 A. I didn't know that. It was actually -- that was the
15 first time that I was informed that there was no 15:19
16 referral.

17 488 Q. Well, that is what I am wondering. Who brought that
18 piece of information?

19 A. To the best of my recollection, Chief Superintendent
20 Sheridan. 15:19

21 489 Q. Okay. So it wasn't you who volunteered that?

22 A. It wasn't me who volunteered that, no. I wasn't privy
23 to that.

24 490 Q. Okay. Chief Superintendent Sheridan then outlines
25 matters in relation to injured party in the next 15:20
26 paragraph, and he appears to have a different view
27 there. In the fourth line he says:

28

29 *"If there had been a referral made on the matter in*

1 2006/2007 we would not be getting the referral now.
2 Chief Superintendent Sheridan raised the issue of do we
3 need to have a meeting with the HSE now."
4

5 Is that correct? 15:20

6 A. If it's recorded there, I accept it in full.

7 491 Q. Do you recall a discussion about whether the matter
8 needed to be referred?

9 A. Oh, that was discussed and the consensus was even at
10 this late stage if we haven't referred it, we should 15:20
11 refer it. I mean we, being An Garda Síochána.
12 Although it's been brought to our attention -- in other
13 words, complete the standard, the standard referral
14 form.

15 492 Q. Standard procedure? 15:20

16 A. Yes.

17 493 Q. And was that, as it were, the spirit of the meeting
18 that things had to be done properly or things had to be
19 done because you were dealing with Maurice McCabe?

20 A. We happened to be at a meeting in which the name 15:21
21 Maurice McCabe featured and in which there had been an
22 erroneous referral and then retracted. But in any
23 case, I would say the same diligence would be applied
24 if a referral, even if somebody, a sergeant came to me
25 at this stage and said a referral wasn't made about a 15:21
26 case in 2006, my direction would be make a referral on
27 that, even at this stage, for the simple reason we're
28 complying, albeit late, with the protocols, and if
29 there's a risk there, at least we will be able to

1 mitigate it from today.

2 494 Q. Okay.

3 A. But comply with the protocols.

4 495 Q. Well, you see, Assistant Commissioner Kenny is recorded 15:21
5 at this point in the meeting as outlining that he had
6 *"concerns that the injured party went for counselling*
7 *and a referral was made to the HSE and a referral was*
8 *then made to An Garda Síochána. He outlined that he*
9 *was of the view that this referral should be dealt with*
10 *as a new referral, that we can't just take it as the* 15:22
11 *same incident."*

12

13 Now, was that from the point of view of the Gardaí
14 reinvestigating it or simply the Gardaí referring it on
15 to the HSE in the belief that it hadn't been so 15:22
16 referred?

17 A. I don't know where then-Assistant Commissioner Kenny
18 was coming from with that. But I can only speak from
19 my own opinion. If it had -- as far as we were
20 concerned on that day, this -- a Tusla referral had not 15:22
21 been submitted. It was still, even at that late
22 juncture, incumbent on us to submit that referral.

23 496 Q. Okay. *"Chief Superintendent Sheridan outlined"* -- on
24 the next page -- *"that referral does state the matter*
25 *was investigated and there was no prosecution. He* 15:23
26 *raised the issue about it, when An Garda Síochána meets*
27 *with the HSE, would social services and the suspect*
28 *family need to be informed as he has children.*
29 *Assistant Commissioner Kenny outlined that safety*

1 *issues don't appear to be on the HSE's radar/agenda.*
2 *Chief Superintendent Sheridan outlined that if there*
3 *are safety issues, An Garda Síochána didn't do anything*
4 *for the last six to seven years."*

5 A. I would be of the same mind as that. 15:23

6 497 Q. But is all this solely in the context of getting the
7 HSE involved because you believed they hadn't been
8 involved up to that date?

9 A. It's in the context of, the knowledge on the day that
10 an allegation had been made to the Gardaí and that we 15:23
11 didn't comply with protocols, notify the HSE, but that
12 allegation had been made and had been investigated.

13 498 Q. Okay. You see, you're quoted here then:

14
15 *"Superintendent McGinn raised the issue that the* 15:23
16 *suspect has access to kids in relation to his job,*
17 *etcetera. Is there a risk? Assistant Commissioner*
18 *Kenny stated that he agreed and this matter needed to*
19 *be dealt with properly. Superintendent L. McGinn*
20 *outlined that the Garda investigation has been* 15:24
21 *completed."*

22
23 Now, you don't appear to be urging at the meeting a
24 review of the investigation?

25 A. That is the case, yes. 15:24

26 499 Q. And you don't appear to be urging an alternative to a
27 review, which is a cold case external team to
28 reinvestigate it?

29 A. The decision was made and submitted -- I received in

1 writing from Chief Superintendent Sheridan that there
2 was no need to review this. I may have been aware at
3 this stage that he had sight of a file, that he made
4 his decision. At the end of the day, I can only, as a
5 Superintendent, recommend somebody above me makes the 15:24
6 decision. A sergeant can recommend to me what he or
7 she thinks should be conducted or carried out. I will
8 make the decision insofar as I am entitled to do so.

9 500 Q. Okay. You seem to be pointing out that the Garda
10 investigation had been completed, and was it therefore 15:25
11 over, from your point of view?

12 A. I accepted Chief Superintendent Sheridan's minute in
13 full, that there was no need for a further action,
14 investigative action or review action on it.

15 501 Q. Okay. The discussion is recorded as then continuing in 15:25
16 relation to possibly liaising with the injured party to
17 establish if the referral is the same as her complaint
18 in 2006 or '7, a discussion as to what would be done if
19 it was a new referral, and you outlined that a criminal
20 investigation would commence and An Garda Síochána 15:25
21 would meet with the HSE. So is that inconsistent with
22 what you have been telling us there at the bottom of
23 the page?

24 A. It was my thinking at the time. If that -- had what
25 was alleged or set out in the first referral differed 15:26
26 from what we subsequently knew or learned, yes, it
27 would have to be relooked at, for the simple reason
28 it's more serious, there's new evidence there, we would
29 have to lay that before the DPP, the new evidence, if

1 Ms. D at that stage said this went further than what I
2 told investigators in 2006 and 2007.

3 502 Q. You see, you're recorded at the top of the next page,
4 1837, as:

5
6 *"Superintendent L. McGinn outlined that the suspected*
7 *offender was not arrested at the time of the*
8 *investigation and this may be an issue, and also the*
9 *fact that the matter was investigated by members with*
10 *the Cavan-Monaghan division."*

15:26

15:26

11 A. An issue insofar as, maybe an issue -- might be an
12 issue to consider that if the matter, if it were a
13 fresh complaint, a power of arrest has not been used.
14 That is a consideration. But I -- at that stage, I had
15 picked up somewhere, I don't know, that Ms. D had
16 expressed the view that Sergeant McCabe should have
17 been arrested. Now, you'll make a decision on an
18 arrest case-by-case for the simple reason, depending on
19 the circumstances and the need for it.

15:27

20 503 Q. Just the discussion, obviously, it is a discussion, it
21 seems to be going back and forth and different options
22 are being tossed around, but had you abandoned -- is
23 this not inconsistent with you abandoning the notion of
24 a new Garda investigation and maybe an arrest of
25 Sergeant McCabe?

15:27

15:27

26 A. I, at that stage I had, as far as I was concerned
27 matters were over, but Commissioner Kenny asked if it
28 was a new referral, I said we'll have to meet with the
29 HSE, even for the purpose of taking statements from

1 whoever recorded the information in the referral, as
2 the person first complained to. That is quite
3 fundamental in any investigation of a sexual nature.
4 And we would work from there.

5 504 Q. Okay. 15:28

6 A. But if it came to the further investigation of a new or
7 related sexual assault, a power of arrest has not been
8 used up if one wants to consider such an option at a
9 future date.

10 505 Q. All right. 15:28

11 A. And Sergeant McCabe had not been arrested.

12 506 Q. All right.

13 A. But certainly at that stage I saw -- in my mind, I saw
14 no need for opening and re-opening an investigation and
15 starting to arrest people, or whatever. I felt -- my 15:28
16 primary concern there was, have we complied with
17 protocols to the HSE/Tusla.

18 507 Q. Well, the minute goes on to say:

19

20 *"Assistant Commissioner Kenny suggested a meeting needs 15:28*
21 *to be arranged with Ken Ruane, Head of Legal Affairs.*
22 *Chief Superintendent Sheridan was in agreement.*
23 *Assistant Commissioner Kenny outlined that An Garda*
24 *Síochána has accepted that it was an error on the part*
25 *of the HSE. Chief Superintendent Sheridan outlined 15:29*
26 *that he would liaise with the HSE to establish what*
27 *their intention/strategy is. Assistant Commissioner*
28 *outlined that advice needed -- the matter needed to be*
29 *dealt with correctly."*

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why did Chief Superintendent Sheridan want to establish what the HSE's intentions or strategy were?

A. I honestly don't know, Chairman, where they were going to go -- I will allow Mr. Sheridan to answer that. I don't know. 15:29

508 Q. Okay. You're recorded then as outlining that the matter had been published in the newspapers. And when you refer to the matter there, what had you got in mind or what were you saying? 15:29

A. There was reference in some of the -- I don't know some of the national papers, earlier editions, reference to this case, to the allegation of 2006.

509 Q. Yes.
CHAIRMAN: well, by that stage the two williams' articles were out. 15:30

A. Okay.

510 Q. **MR. MCGUINNESS:** Yes. *"Chief Superintendent Sheridan outlined that the injured party reported the matter to GSOC so the matter would be reinvestigated and the suspected offender may be exposed."* 15:30

Now, I am wondering, do you think Chief Superintendent Sheridan, in fact, expected a reinvestigation or just a review of the original investigation? 15:30

A. By GSOC?

511 Q. Yes.

A. I don't think -- knowing the man, I don't think -- GSOC would work independently of the guards, and whatever

1 their findings stood, were standalone findings. I
2 don't think he was expecting them to do our job or --
3 512 Q. Okay.

4
5 *"Superintendent L. McGinn outlined that the injured* 15:30
6 *party has had meeting with Mr. Micheál Martin, TD, and*
7 *he wrote to the Taoiseach."*

8
9 Now, is that something you gleaned from the newspapers?

10 A. No, I gleaned that -- I didn't know that until I read 15:31
11 Chief Superintendent Sheridan's cc'd minute to me on
12 the 22nd April -- of May.

13 513 Q. All right.

14 A. I didn't know that because I --

15 514 Q. So you hadn't reported that to Chief Superintendent 15:31
16 Sheridan and you hadn't heard it from the injured
17 party?

18 A. I hadn't heard it, nor from Mr. D. I learned of that
19 from Chief Superintendent Sheridan.

20 **CHAIRMAN:** That would have been one of the -- that's 15:31
21 definitely one of the Williams' articles as well by
22 that stage. We're in the 14th -- 16th July, now, so
23 that would have been published.

24 **MR. MCGUINNESS:** It's possible.

25 **CHAIRMAN:** Oh, I think no, it was. 15:31

26 **MR. MCGUINNESS:** No, the articles are published,
27 Chairman.

28 **CHAIRMAN:** Yes. Which was the one about Micheál
29 Martin, etcetera.

1 **MR. MCGUINNESS:** Yes.

2 **CHAIRMAN:** Yes.

3 **MR. MCGUINNESS:** They discussed the possibility of a
4 meeting. This records the fact that the injured party
5 has had a meeting. 15:31

6 **CHAIRMAN:** Yes. I think it was followed up, I am not
7 sure, by another article. There was four articles. I
8 think we were only aware of two before Mr. Williams
9 gave evidence.

10 **MR. MCGUINNESS:** Yes, and just dealing with the source 15:31
11 of his knowledge for saying this.

12 **CHAIRMAN:** Sure. Yes. That is important.

13 515 Q. **MR. MCGUINNESS:** It goes on:

14

15 *"Assistant Commissioner Kenny outlined that he will 15:32*
16 *make contact with Mr. Ken Ruane, Head of Legal Affairs,*
17 *and that Chief Superintendent Sheridan will liaise with*
18 *the HSE to establish what their intention/strategy is.*
19 *The correspondence will have to be acknowledged. We*
20 *need to deal with the situation and the matter 15:32*
21 *correctly. He outlined that we might also need to deal*
22 *with what was done with the matter since 2006/2007.*
23 *The meeting terminated at 3:10."*

24

25 Now, what did you understand the conclusions of the 15:32
26 meeting were or who was to do what?

27 A. Well, my understanding of it was, leaving there, I had
28 no job. I mean, I wasn't given a job to do. I
29 think --

1 516 Q. I thought you were going to say that.
2 A. Well, I'd better clarify. Where I am coming from is,
3 Assistant Commissioner Kenny said he was going to
4 liaise with -- he didn't actually say Ken Ruane. He
5 actually said I will talk to Ken. 15:32
6 517 Q. All right.
7 A. And I think who Ken was, was the head of legal affairs.
8 And that Chief Superintendent Sheridan was going to
9 liaise with the Tusla, the HSE. But I wasn't tasked at
10 that meeting to do anything else. 15:33
11 518 Q. Did you know what they did, in fact?
12 A. I didn't, or even if they did anything.
13 519 Q. Were you told anything about any outcome of any further
14 action?
15 A. No, Chairman. 15:33
16 520 Q. Did you not inquire, as the person to whom the
17 notification had been sent, the person who had written
18 to your chief superintendent, what is now happening
19 with our big problem here?
20 A. I didn't, Chairman. As far as I'm concerned, to the 15:33
21 limit of my capability I had reported to those in
22 charge of me, and that included up the along the line
23 to, I mention it again, Commissioner HRM. But no, I
24 didn't inquire, on foot of that meeting, if anything
25 further had been done. 15:33
26 521 Q. Okay. Well, we know Assistant Commissioner Kenny sent
27 a letter on the 28th July to the Commissioner's office,
28 to the Commissioner's private secretary, referring to
29 the fact that he held a meeting with Chief

1 Superintendent Sheridan and you in relation to the
2 matter.

3 A. I am not familiar with the letter. I am not familiar
4 with the letter or its content.

5 **CHAIRMAN:** Have you got a page number for that? 15:34

6 **MR. MCGUINNESS:** Yes, I am sorry. It's page 1839. It
7 appears to have been noted by the private secretary to
8 the Commissioner by letter dated 31st July at 18:40.
9 But do you know of anything that was done?

10 A. I don't, Chairman. 15:35

11 522 Q. And you were never curious enough to find out or ask
12 your chief superintendent what had happened, is that
13 right?

14 A. That's my evidence to the Tribunal.

15 523 Q. All right. 15:35

16 A. I didn't ask, I have no recollection of asking the
17 chief superintendent or anybody else what had happened.

18 **MR. MCGUINNESS:** would you answer any questions anyone
19 else might have.

20 **CHAIRMAN:** Does anybody else actually have any 15:35
21 questions?

22 **MR. MCDOWELL:** I do, yes.

23 **CHAIRMAN:** I appreciate -- I'm sorry, difficulties are
24 continually arising and the stenographers need to take
25 a break, but I think we should take a break and maybe 15:35
26 go on for another hour just to try and see if we can
27 get through this witness and the next witness, if
28 possible, because, I'm sorry, I have difficulties
29 tomorrow and other difficulties are coming up. I

1 apologise, but they are happening. So I will rise for
2 ten minutes.

3
4 Just two things, please:

5
6 The private sitting was on the 1st June 2017. Insofar
7 as it has been necessary to make a redaction in
8 relation to names, that has been done and it is now on
9 the website. That's the meeting in relation to what
10 are the Terms of Reference, what do people say the
11 Tribunal is inquiring into. It's been referenced a
12 number of times. Its importance is up there.

13
14 The second thing is, I think our legal team and the
15 Garda legal team are going to have a quick chat about a
16 protocol, or something like that.

17
18 **THE HEARING ADJOURNED BRIEFLY AND THEN RESUMED**

19 **AS FOLLOWS:**

20
21 **SUPERINTENDENT MCGINN WAS CROSS-EXAMINED BY MR.**

22 **MCDOWELL AS FOLLOWS:**

23
24 524 Q. **MR. MCDOWELL:** Superintendent McGinn, Michael McDowell
25 is my name. I am one of the barristers representing
26 Sergeant McCabe here. When precisely do you think that
27 you received the Garda referral form with the wrong
28 information on it?

29 A. 7th.

1 525 Q. The 7th?
2 A. That's the referral coming from Tusla.
3 526 Q. Yes.
4 A. The 7th.
5 527 Q. I see. And when you received it, did it occur to you 15:47
6 that Bailieboro had no function in it whatsoever, and
7 that you had no function in this matter whatsoever?
8 A. Unfortunately, Chairman, no. For the simple reason, as
9 outlined earlier, I didn't know where Sergeant McCabe
10 lived. I thought he actually lived in the Bailieboro 15:47
11 Garda district; and secondly, I produced to the
12 Tribunal the two pieces of paper only that were held at
13 Bailieboro, on matters relating to the investigation
14 from '6 and '7.
15 528 Q. Well, for instance, you knew, did you not, that the 15:48
16 matter had not been investigated in Bailieboro?
17 A. I did.
18 529 Q. And you thought at the time that Sergeant McCabe lived
19 in the Bailieboro district?
20 A. It had -- he had been a sergeant in charge in 15:48
21 Bailieboro. I didn't know -- I knew he was a Cavan
22 man, but I didn't know where he lived. His address is
23 not stated on the referral. Not blaming that. But I
24 didn't know whether he lived in my district or whether
25 he lived in the adjoining district of town. 15:48
26 530 Q. And did it ever, did it ever strike you that an error
27 had been made in sending this to Bailieboro in the
28 first place?
29 A. Not until much later, very much later.

1 531 Q. I see. So you thought that it was being sent to you on
2 the basis that he lived in your area, is that right?
3 A. And that it was my responsibility to now deal with
4 this, that he was living in the Bailieboro district.
5 As I outlined to the Tribunal previously, I have dealt 15:49
6 with one previous to what we are here today about,
7 where something inappropriate was alleged against a
8 guard here in Dublin, I don't know if it led to a
9 conviction or not, and that guard lived in east Cavan,
10 in my district, and I handled the, I suppose, the HRM 15:49
11 stuff at Bailieboro. Although, whatever alleged, was
12 alleged, occurred here, but that man resided in east
13 Cavan. And I was using that as an example of what I
14 knew before. In the Sergeant McCabe case, I genuinely
15 thought he was -- that he was living in the Bailieboro 15:49
16 district. I didn't know. I was there a year, but be
17 that as it may, I didn't know, and I don't know when I
18 found out, perhaps maybe another year or so later, I
19 don't know.

20 532 Q. If you were -- if you were going to deal with it on 15:49
21 that basis, you were going to open a file on it, isn't
22 that right?
23 A. There was a file open on it. Certainly, it went over
24 to Ms. Kenny.

25 533 Q. Sorry, which was the file that was opened on it? 15:49
26 A. The referrals were held, both referrals were held --
27 oh --

28 534 Q. Sorry, we are talking about a referral that you
29 received on the 7th May 2014. Now, you would have to

1 open a file in respect of that, isn't that right?

2 A. That was the file, the referral.

3 535 Q. Well, did you open a file in your office on this issue?

4 A. I didn't, nor I didn't retain the actual referral in
5 the office, as is the case with all referrals coming to 15:50
6 me. They are managed for me on my behalf by Ms. Kenny.

7 536 Q. Well, whether it's Ms. Kenny or yourself, somewhere in
8 Bailieboro was a file to open on Sergeant McCabe on
9 foot of this referral, is that what you were proposing
10 to do? 15:50

11 A. I was proposing to deal with it the same as the 93
12 other referrals came through Bailieboro that year.
13 Because they would be handled by Sergeant Byrne, or, if
14 needs be, I would intervene and I would deal with them.
15 If my attention was required to deal with them, 15:51
16 certainly I would deal with them, deal with -- in this
17 case, with the referral on Sergeant McCabe.

18 537 Q. So you thought that -- you sent it to Sergeant Byrne,
19 is that right?

20 A. I don't remember specifically sending it to Sergeant 15:51
21 Byrne, but it went back to Ms. Kenny and was filed with
22 her. She left the handling of it then.

23 538 Q. Sergeant Byrne has given evidence to this Tribunal that
24 nobody ever mentioned this matter to him at the time?

25 A. That may well be the case. 15:51

26 539 Q. And that it was never sent to him?

27 A. That may well be the case, but certainly, because I can
28 tell you it was retained --

29 540 Q. Just stop there for a second. If it wasn't sent to

1 him, why wasn't it sent to him? He was the man whose
2 job it was to deal with referrals and to liaise with
3 the HSE?

4 A. I dealt with this referral no differently than I dealt
5 with the other 93 that came in. 15:51

6 541 Q. I didn't ask you about how you dealt with it or whether
7 it differs from other matters. I am asking you why it
8 was the case that Sergeant Byrne was not sent this
9 referral?

10 A. I don't know why Sergeant Byrne did not receive the 15:52
11 referral.

12 542 Q. Well, whose job was it to make sure he got it?

13 A. Ultimately, the superintendent at Bailieboro, which is
14 me.

15 543 Q. And how do you expect it to get to Sergeant Byrne? 15:52

16 A. The same as the others that were coming in on matters
17 not related to Sergeant McCabe, that Ms. Kenny
18 acknowledges it and deals with it and --

19 544 Q. Have you any explanation why your secretary, Ms. Kenny,
20 wouldn't send it to Sergeant Byrne on this occasion? 15:52
21 why was it dealt with differently?

22 A. I honestly don't know, Chairman. Two referrals came
23 in, and I suppose the question may have arisen,
24 although I don't remember it being discussed, as, is
25 this still a live investigation? At the end of the 15:52
26 day, Tusla made this referral, they had the carriage of
27 it. If the Gardaí were investigating a criminal
28 matter, we have carriage on that until the conclusion
29 of it. A criminal matter, Tusla may have an input for

1 many years subsequently.

2 545 Q. Sorry, we're wandering here, if you don't mind me
3 saying so. I am trying to work out why, when you get a
4 referral of this kind, it was brought to your office,
5 was it? 15:53

6 A. In the normal course of post.

7 546 Q. Yes. By Ms. Kenny, is that right? who would bring it
8 to you?

9 A. It would come across -- look, it could have been
10 addressed directly to -- they're all addressed to 15:53
11 Superintendent, Bailieboro, but it could come through
12 the district office or come through Ms. Kenny's office.
13 While they're all working in the district office, they
14 are two separate offices.

15 547 Q. And you say that you sent on the original to Chief 15:53
16 Superintendent Sheridan, is that right?

17 A. That is the case. I kept a copy.

18 548 Q. Yeah. And you must have directed that it be
19 photocopied and a copy kept in the station, is that
20 right? 15:53

21 A. If I didn't direct it, I photocopied it myself.

22 549 Q. Yes. And what did you do? what happened to the
23 photocopy you took? How was it to move on?

24 A. I have it here to this day, Judge.

25 550 Q. Sorry, what was to happen to it? 15:54

26 A. It was held, and I can tell you how I know it was held,
27 the morning after the 'Prime Time' programme --

28 551 Q. Sorry, what was to happen to it? You photocopied it --

29 A. It was to be handled by Sergeant Byrne in the normal

1 course of interactions with Tusla --

2 552 Q. I see.

3 A. -- on --

4 553 Q. And that didn't happen?

5 A. I don't know that. 15:54

6 554 Q. Well, you do know that. The man is in your station and

7 he has come here and he has sworn that he was never

8 told about this reference and had never heard of it at

9 all.

10 A. I haven't discussed it with Sergeant Byrne and I 15:54

11 haven't seen his evidence to the Tribunal, but I

12 will -- if he has given evidence to the Tribunal on

13 oath, I will accept it.

14 **CHAIRMAN:** Has he given evidence to the Tribunal?

15 **MR. MCDOWELL:** Yes. He was the man, Judge, do you 15:54

16 remember, to whom the HSE person raised the issue at

17 a -- or a Tusla person raised the issue and he said it

18 was inappropriate, he felt it was inappropriate that it

19 was being raised with him.

20 **CHAIRMAN:** Yes. There was also evidence that, in the 15:55

21 normal course, it might have filtered down to him.

22 **MR. MCDOWELL:** Sorry?

23 **CHAIRMAN:** Was there not also evidence from

24 Superintendent McGinn that, in the normal course, this

25 might have filtered down to him because -- over the 15:55

26 issue as to how did Mr. D see it?

27 **MR. MCDOWELL:** Sorry, the evidence, I asked him --

28 **CHAIRMAN:** No, no, I am sure you asked him the right

29 questions.

1 **MR. MCDOWELL:** I asked him specifically did this come
2 to him since it would have been his duty to have it,
3 and he said it didn't.

4 **CHAIRMAN:** Okay, that is fine.

5 **MR. MCDOWELL:** And he said he never heard of it. 15:55

6 A. If that is his evidence, I accept his evidence.

7 555 Q. Well, do you see, I am a bit mystified by this, because
8 you photocopy it and send one off to Superintendent
9 Sheridan, is that right?

10 A. Off to Chief Superintendent Sheridan, yes. 15:55

11 556 Q. That is with your letter of the 7th or 8th, whichever
12 version it is, is that right?

13 A. Accompanied by, yes.

14 557 Q. And you kept the other because you showed it, did you
15 not, on the 8th to Sergeant D, isn't that right? 15:56

16 A. It could have been between the 8th and 16th or even
17 subsequent to it, yes. I certainly retained custody of
18 it --

19 558 Q. Sorry, before you go away again, you have said in
20 evidence that it's most likely that it was on the 8th 15:56
21 that you showed it to Sergeant D, isn't that right?

22 A. I will couch that by saying most likely. I don't know.

23 559 Q. Yes. So you must have kept it to show it to him or did
24 you make another photocopy to show to Sergeant D?

25 A. Well, I certainly didn't provide a copy to Sergeant D. 15:56
26 I kept a copy of it -- I did not retain it in my office
27 for any length of time. And if I am allowed answer the
28 question I was going to answer earlier, after the
29 'Prime Time' programme, this year, the next morning,

1 the first inquiry I made is, where are those referrals?
2 And I got them from Ms. Kenny.

3 560 Q. I see.

4 **CHAIRMAN:** well, I am sorry, I am going back to
5 Sergeant Tony Byrne. I stand corrected by you, 15:57
6 Mr. McDowell, of course.

7 **MR. MCDOWELL:** No, sorry, I am not --

8 **CHAIRMAN:** Don't worry about it. He said there was a
9 meeting at Bailieboro and he was now aware that the HSE
10 notification arrived 7th May 2014, that is 1750, but he 15:57
11 had never seen it before and any such notification
12 would normally be on what he called the chart.

13 A. That's right.

14 **CHAIRMAN:** Yeah.

15 561 Q. **MR. MCDOWELL:** So you say you recovered the photocopy 15:57
16 that you showed to Sergeant D from Ms. D after the
17 'Prime Time' programme?

18 A. No, I showed it to him after -- sorry, yes.

19 562 Q. After the 'Prime Time' programme you recovered from
20 Ms. Kenny the photocopy which you showed to Sergeant D? 15:57

21 A. Chairman, I have a photocopy of what I recovered from
22 or from retrieved from Ms. Kenny here.

23 563 Q. And for some reason it did not go to Sergeant Byrne,
24 who is the man who would normally deal with it and
25 write it up and keep in contact with the HSE, is that 15:58
26 right?

27 A. If Sergeant Byrne swears that, I accept that.

28 564 Q. Now, when you decided to write your letter to Chief
29 Superintendent Sheridan, you also decided to make a

1 recommendation to him as to how this matter should be
2 dealt with, isn't that right?

3 A. That is the case, Chairman.

4 565 Q. And that was a strong recommendation?

5 A. I agree with you -- well, it's a strong recommendation. 15:58
6 well, it's a recommendation, yes.

7 566 Q. And the strong recommendation was that if this matter
8 was to be -- if the original investigation was to be
9 reviewed, that that should be conducted outside of the
10 Cavan-Monaghan division? 15:59

11 A. That is the case, Chairman.

12 567 Q. Could that view explain the fact that it didn't find
13 its way down through the system to Sergeant Byrne?

14 A. I don't think so. They're two totally separate issues.

15 568 Q. I see. 15:59

16 A. Which or whether there was a review, the referral to
17 Tusla would take its place with the Tusla Garda
18 interaction meetings.

19 569 Q. Now, you've told Mr. McGuinness that you didn't
20 consider it would be proper to contact Noel Cunningham 15:59
21 when this document came your way?

22 A. Not only proper, but I didn't see any probative reason
23 for doing so.

24 570 Q. Yes.

25 A. He was the superintendent. It was over and done, he 15:59
26 put it away. At the end of the day, he would have to
27 go back through his records, retrieve a file, provide
28 it to me. And I was notifying my chief superintendent
29 about this. I added the bit in about the review, and

1 so on. No, I did not at any stage consider contacting
2 Superintendent Cunningham.

3 571 Q. You could have lifted the phone to him, could you not?

4 A. I certainly could, but I saw no reason to do so,
5 Chairman.

16:00

6 572 Q. You could, that day, have lifted the phone to Chief
7 Superintendent Sheridan to discuss the matter with him
8 before you wrote him your recommendations?

9 A. I could have. It's not my style. If I feel
10 sufficiently strong about something, I will commit it
11 to paper. Had I wanted advice, perhaps the Tribunal
12 may be of the view I should have sought advice. I
13 didn't believe I needed advice at that stage. I set
14 out my thinking in that minute to my chief
15 superintendent.

16:00

16:01

16 573 Q. I am asking you why you didn't lift the phone to
17 discuss the matter with your chief superintendent when
18 you received this notification?

19 A. I didn't see the need, Mr. Chairman. I set out my
20 mindset on paper as I thought it was appropriate.

16:01

21 574 Q. Well, can the Tribunal be sure then that you didn't
22 phone Chief Superintendent Sheridan to discuss the
23 matter?

24 A. Unless Chief Superintendent Sheridan, retired, gives
25 evidence to the contrary, I have no recollection of
26 lifting the phone and saying what should I do, because
27 Chief Superintendent, because it's here in the minute
28 he sent, cc'ed to me, he was aware of the content of
29 that file. Seemingly, he was aware that he had seen

16:01

1 it. And I am sure he would have advised me there's no
2 need for that. I don't know what he would have advised
3 me, but I didn't see fit that day --

4 575 Q. Yes.

5 A. I didn't see the reason. And if I feel strongly enough 16:01
6 about something, I will commit it to paper. I didn't
7 see the need to seek advice. At the end of the day, I
8 am responsible for my district. I was appointed to run
9 it as I saw fit, and that's the way I was acting on
10 that particular day. 16:02

11 576 Q. Now, could I ask the witness to be shown page 3117,
12 please, and this is the part of the statement of
13 retired Chief Superintendent James Sheridan. Could I
14 ask you to go to line 64, where you are asked:

15 16:02
16 *"I have been asked when I was first informed of the*
17 *Tusla Garda notification of suspected child abuse*
18 *relating to allegations made by Ms. D, who informed me*
19 *of this notification and what immediate action I took,*
20 *if any."* 16:02

21
22 And he says, his answer is:

23
24 *"I was first informed verbally by superintendent Leo*
25 *McGinn in relation to this. He then subsequently* 16:03
26 *forwarded on the correspondence to my office."*

27
28 And he gives references there.

29

1 *"I should say at this stage in March/April 2014 I had*
2 *responsibility for the Garda Síochána disclosure to the*
3 *Guerin Inquiry and was looking at issues in Bailieboro*
4 *in 2006 to 2008."*

16:03

5
6 So --

7 A. I have no recollection.

8 577 Q. Who is right about this? Did you inform him verbally
9 about this when you received it and then write to him,
10 or is it the other way round?

16:03

11 A. Chairman, I have no recollection of that phone call.
12 But what I come from is, if I had got advice from Chief
13 Superintendent Sheridan that he had seen the file,
14 there was no need for a review, why would I commit it
15 to paper? Maybe I had the minute drawn up, rang him to
16 say this is on the way, don't be surprised.

16:03

17 578 Q. I see.

18 A. But I have no recollection of that.

19 579 Q. Let's just examine that. You have a journal there in
20 which you told the Tribunal you note all the phone
21 calls you made?

16:04

22 A. Not phone calls.

23 580 Q. I thought you said you put important phone calls into
24 it?

25 A. No, I don't. Very rarely have I phone calls recorded
26 here, unless there are -- but certainly, and I have no
27 difficulty with the Tribunal inspecting my journal.

16:04

28 581 Q. Are you saying there's nothing in your journal about
29 ringing up Chief Superintendent Sheridan?

1 A. I am saying there is nothing in my journal about
2 contacting -- speaking to Chief Superintendent Sheridan
3 during those days. I have nothing recorded.

4 582 Q. Well, if he says, and you have said it yourself, if he 16:04
5 says that you informed him verbally of this, and you
6 say you may have said that this is coming, it's on the
7 way to you, you defer to his memory, is that what you
8 are saying?

9 A. I have no written record, and I will certainly -- as we
10 know, written evidence will trump best recollect and 16:04
11 memory. I have no recollection of making that phone
12 call to Chief Superintendent Sheridan. But, Chairman,
13 it's like something like -- I possibly would do, say
14 this is coming over.

15 583 Q. Because Chief Superintendent Sheridan says that he was, 16:05
16 just at that time arising out of the Guerin Inquiry, it
17 was his business to have re-read the investigation file
18 at the time?

19 A. I'd accept that. I didn't know that until many years
20 later, or until a few years later, that he had -- 16:05
21 well --

22 584 Q. You didn't know what until a few years later?
23 A. Discussing it with him, talking to him. I think he has
24 it set out here.

25 585 Q. I am finding it difficult to follow you. You didn't 16:05
26 know what until some years later?

27 A. I knew he was in charge of disclosure, or was involved
28 in disclosure. I don't think it is set out here in his
29 minute of the 22nd May. It's a different --

1 586 Q. Are you saying that Chief Superintendent Sheridan never
2 told you that he was up to date with the investigation
3 file?

4 A. I don't recall having that conversation with him.

5 587 Q. I see. 16:06

6 A. Certainly then, certainly those early stages.

7 588 Q. Yes. And he says:

8
9 *"Superintendent McGinn then forwarded me a letter he*
10 *received from Laura Brophy of the HSE dated 16th May* 16:06
11 *2014. It was forwarded to me by Superintendent McGinn*
12 *on the 20th by fax and by letter. That HSE letter set*
13 *out that an error had occurred in relation to the*
14 *referral that was made to An Garda Síochána dated 2nd*
15 *May 2014. On the 22nd May 2014, I wrote again to* 16:07
16 *Assistant Commissioner Kenny. In that correspondence,*
17 *I stated the following: The previous referral*
18 *contained incorrect information and should therefore be*
19 *withdrawn and be replaced with the attached. This is a*
20 *referral made by Tusla relating to an incident which* 16:07
21 *was reported to and investigated by An Garda Síochána*
22 *in 2006/2007. The Director of Public Prosecutions*
23 *directed that there should not be a prosecution on the*
24 *issue. The attached referral does not contain any new*
25 *information/evidence in regard to these matters.* 16:07
26 *Therefore, at this time it does not require any further*
27 *action by An Garda Síochána."*

28
29 A. I have that here now, yes.

1 589 Q. And was that the attitude that he demonstrated when you
2 met in Mullingar in July?

3 A. He was still of that mind, Chairman.

4 590 Q. This was all old hat, it had been investigated. The
5 DPP had said no prosecution, no further action required 16:08
6 by An Garda Síochána?

7 A. The question had arisen: is there anything new in
8 this? Are we talking about the same allegation?

9 591 Q. Yes. And do I understand your replies to
10 Mr. McGuinness as saying that even if it was the same 16:08
11 allegation you wanted -- your attitude was that the
12 original investigation should be reviewed?

13 A. When I penned my minute of the 7th, corrected on the
14 8th, that was my view. I would submit to the Tribunal
15 that I had that minute penned before I lifted the phone 16:08
16 to Chief Superintendent Sheridan.

17 592 Q. I see.

18 A. Because I was unaware that Chief Superintendent
19 Sheridan had read the file, even. He had been a
20 divisional officer, he been with me in Dundalk, he had 16:09
21 been a divisional officer in Sligo, covering Donegal as
22 well, I would have worked with him while based in
23 Donegal. I was unaware, when I penned my minute, that
24 he read the Ms. D file.

25 593 Q. Well, if you had a phone conversation with him before 16:09
26 or after you penned your letter of the 7th or 8th, he'd
27 have to -- he surely would have told you, sure I'm well
28 aware of that file, I have been reading it recently,
29 wouldn't he?

1 A. I have no recollection of him saying that, absolutely
2 no recollection of him saying that to me. But at the
3 end of the day, my recommendation is my recommendation,
4 and it's no more than a recommendation.

5 594 Q. But you called it a strong recommendation? 16:09

6 A. Did I call it a strong recommendation? I did.

7 595 Q. I think you said in evidence it was a strong
8 recommendation?

9 A. Well, I was asked was it a strong recommendation. It's
10 a recommendation. I often, when I am forwarding post, 16:10
11 frequently, "I strongly recommend," I use those words.

12 596 Q. Now --

13 A. But certainly "strongly recommend" is not included
14 here.

15 597 Q. No. Now, you told the Tribunal -- 16:10

16 A. It's a firm recommendation, I'd describe it as.

17 598 Q. Your firm recommendation, I see, yes. You told the
18 Tribunal -- by the way, at that stage you did not know
19 what was the original allegation at all?

20 A. Absolutely no knowledge of it. 16:10

21 599 Q. Yes.

22 A. Other than an allegation had been made, investigated,
23 and that the DPP directed no prosecution.

24 600 Q. And you told -- you told the Tribunal that it had come
25 to your ears that there was a view, was there, in 16:10
26 Bailieboro Garda Station that Superintendent Cunningham
27 should not have been the original investigating
28 officer?

29 A. That had reached my ears, and it was my opinion, even

1 if it hadn't reached my ears, learning that it had been
2 investigated from within the Garda division of
3 Cavan-Monaghan.

4 601 Q. Can you help us a little bit about that evidence? You
5 must have discussed the original allegation with people 16:11
6 who expressed that view about how it was investigated
7 to you?

8 A. Discussed, I was told. Now, that conversation or
9 indeed conversation, I would have heard in the currency
10 of conversation around the station perhaps, but it was 16:11
11 not discussed at any length. For example, I have told
12 the Tribunal, I had no idea the gravity of the sexual
13 assault alleged, and that's when the referral came in
14 with the first one of the -- from Ms. Brophy arriving
15 on the 7th. I didn't know if that was factual or I 16:11
16 didn't know -- which I found out later that it was
17 greatly, greatly inflated.

18 602 Q. The sergeant in charge at this stage was Mr. D?

19 A. That is the case, Chairman.

20 603 Q. And could you have -- could it have reached your ears 16:12
21 from his mouth, do you think?

22 A. Possibly. But certainly if Sergeant D, if we are
23 having a conversation, the gravity of an assault, you
24 wouldn't discuss that in a normal conversation, what
25 was the gravity of an assault upon your daughter? No. 16:12
26 I don't know where it came from, Judge. But I don't
27 think -- I don't believe it came from Sergeant D.

28 604 Q. No, the suggestion I am asking you, that it was wrong
29 in some way that Inspector Cunningham, as he then was,

1 now Superintendent Cunningham, should have been the man
2 to carry out the investigation. How did that reach
3 your ears?

4 A. Again, the currency of conversation that I picked up
5 around Bailieboro station. 16:13

6 605 Q. Well, it's refreshing to hear that at least one witness
7 who had -- who heard this discussed at any stage in
8 relation to Bailieboro.

9 A. A discussion -- whichever way you --

10 606 Q. That you say that a currency of conversation on the 16:13
11 subject --

12 A. Somebody mentioned it to me, but certainly I can tell
13 you, Chairman, even at that stage Bailieboro and the
14 policing of it was not all consumed by Sergeant Maurice
15 McCabe and what was out there. Work was going on. 16:13
16 Most of the guards there had no connection with the
17 matters under investigation by Guerin and subsequently
18 O'Higgins. They just got on with life.

19 607 Q. Byrne/McGinn had happened?

20 A. It had. 16:13

21 608 Q. And the Government had asked Séan Guerin, Senior
22 Counsel, to carry out a scoping exercise, and surely,
23 in that context, you, as the officer in charge of the
24 station, and your sergeant in charge, must have
25 discussed what was going on? 16:14

26 A. I can't say we didn't. But certainly, it would be
27 discussed at a very superficial level, for the simple
28 reason, while I know Sergeant D, I know him
29 professionally, I met the man at one retirement

1 function, I have never had a drink with him, never
2 attended a race meeting, a football match, or whatever,
3 with him. It's a professional relationship. I'm not
4 just bringing that out here for the Tribunal. But no,
5 and at the end of the day I would certainly, if 16:14
6 something happened to a member of my family, and it had
7 happened six or seven years earlier, I don't think I'd
8 be going around talking to many about it. That's
9 subjectively. But did Sergeant D mention that to me?
10 I think I learned it elsewhere than from Sergeant D. 16:14

11 609 Q. I see. And the dissatisfaction with the fact that
12 Superintendent Cunningham had carried out this
13 investigation that was never discussed with Sergeant D
14 ever?

15 A. No recollection of discussing that with Sergeant D. 16:15

16 610 Q. Because you know at this time Mr. Williams had
17 published in the Irish Independent statements of
18 dissatisfaction on that count, do you remember that?

19 A. I don't. Actually I didn't read the Williams articles.

20 611 Q. They weren't discussed in the newspaper, that Sergeant 16:15
21 D's daughter was going to go to GSOC?

22 A. Not discussed with me or by me. And actually, the
23 first I knew of going to GSOC was in the minute from,
24 the cc'd minute from Chief Superintendent Sheridan.

25 612 Q. I just want to be clear about this: You are saying 16:15
26 that the Williams articles weren't current conversation
27 in the station to which they related in 2014?

28 A. They may well have been, but not in the district
29 office. At the end of the day, as district officer,

1 first of all, I'm a floor away from the operational
2 area, and there is a distance or an aloofness between
3 those on the ground and a district officer. We have it
4 in, I suppose, management and all facets of life. But
5 that's the reality of it. 16:16

6 613 Q. I suggest to you there has to be a close working
7 relationship between the district officer and the
8 sergeant in charge --

9 A. There certainly --

10 614 Q. -- of his main station? 16:16

11 A. There certainly is. But that doesn't mean, and I put
12 out a reason for it, that the sergeant in charge is
13 going to come in and start discussing personal details,
14 because it's personal to him and his family, with the
15 now superintendent who knows little or nothing about 16:16
16 this, and frankly, the now superintendent who wants to
17 steer a steady ship and take it from what he took over,
18 and manage the position he's now assigned.

19 **CHAIRMAN:** I suppose what Mr. McDowell is really asking
20 you is this: There's two articles in April by -- 16:16

21 A. April?

22 **CHAIRMAN:** It is, yeah. By Paul Williams, who is a
23 highly respected crime correspondent --

24 A. Yes.

25 **CHAIRMAN:** -- and then that is followed up by two more 16:17
26 in relation to the issue of, will the young lady in
27 question go to Micheál Martin, will Micheál Martin do
28 anything, etcetera. So that is the gist of it
29 basically. And what she is saying is, look, there's

1 loads of talk about investigations that have gone wrong
2 or not been followed through properly, and I have one,
3 so why is everyone ignoring my one? And what
4 Mr. McDowell is saying to you is: Look, that directly
5 impacts on the work of the station, so why would it not 16:17
6 be discussed? That is the basic point he is making.

7 A. Not between Sergeant D and I. But I did, I will agree
8 with you, Chairman, that that was around the station,
9 that I picked up on that around the station.

10 **CHAIRMAN:** Yeah. 16:17

11 615 Q. **MR. MCDOWELL:** well, you see she was saying in these
12 articles that she was going to bring the matter to GSOC
13 and she was going to have it dealt with by the Guerin
14 Report if she could. And I am just asking you in that
15 context - and that she was going to the leader of the 16:18
16 opposition with it, and then we knew that Mr. Williams
17 was writing articles saying that the Taoiseach was
18 going to, was expected to look at it - this spelt
19 trouble for the division and in particular for
20 Bailieboro station, didn't it? 16:18

21 A. Perhaps. But at the end of the day, I arrived many
22 years after the initial investigation.

23 616 Q. Yeah.

24 A. I was dealing there from the 27th May. It would
25 probably mean more work. But what it did mean to me at 16:18
26 the time was providing support for those who were
27 serving there, support that whatever we could do for
28 them. But not discussing -- I can tell you, and indeed
29 those who went through the O'Higgins Commission will

1 say that I used to talk to them individually and say 'I
2 don't know what went on or what your involvement was,
3 but what I want to know is how are you feeling and can
4 I do anything for you.' I was dealing with it
5 professionally as far as I was concerned, on a 16:19
6 subjective level --

7 617 Q. I see.

8 A. -- as well as objective in as much as keep the work
9 first right. But had I any interest, any particular --
10 had I a great interest in what happened in 2006 and 16:19
11 2007? Not particularly.

12 618 Q. Now you know that Chief Superintendent Sheridan on the
13 14th May sent on the correspondence from you to the
14 assistance commissioner, that is Assistant Commissioner
15 Kenny, by letter which appears at page 1722. 16:19

16 A. cc'd that to me.

17 619 Q. Yes. *"It is my understanding that Ms. D has made a
18 complaint based on the allegation set out in the
19 attached referral form to the following parties:
20 Mr. Micheál Martin and that he subsequently referred 16:20
21 the matter to An Taoiseach Enda Kenny TD and to An
22 Garda Síochána Ombudsman Commission."*

23

24 So you knew --

25 A. I knew as of that, whenever that was cc'd to me. 16:20

26 620 Q. Yes. You knew that this referral form was now going
27 into the public domain in two ways, or in the public
28 domain in one way, and was going to be sent to GSOC for
29 investigation, isn't that right?

1 A. My understanding was that it may form -- certainly the
2 complaint from 2006 and the conduct of that
3 investigation, that that is what was being referred to
4 GSOC.

5 621 Q. Yes. Exactly. And at the time you anticipated that 16:20
6 there could be trouble arising out of the fact that
7 Noel Cunningham, then an inspector, now a
8 superintendent, had carried out the investigation?

9 A. I wouldn't say trouble. I am sure Noel Cunningham
10 carried that out to the best of his ability. I was 16:21
11 aware that the DPP directed no prosecution. The DPP in
12 many files I have written and indeed any serving
13 member, inspector upwards, will ask further questions.
14 If the DPP -- I don't know if they asked further
15 questions on the file, but the DPP was satisfied to 16:21
16 give a direction, so I took it as that is a genuine
17 investigation.

18 622 Q. As of the 7th May you took the view that because of the
19 background dissatisfaction that it was Noel Cunningham
20 who had done this investigation, it should be reviewed 16:21
21 either at officer level, which you say is
22 superintendent level or chief superintendent?

23 A. An officer from superintendent upwards.

24 623 Q. Yes. Or by the cold cases group, is that right?

25 A. That's one of the reasons I -- in my mind formulating 16:21
26 that paragraph, and secondly facing into what I
27 believed we were facing into at the time with Guerin
28 and what subsequently transpired from that, that for
29 the probity of matters that any -- particularly

1 something as sensitive as this, should be reviewed.

2 624 Q. And I think you also mentioned earlier that the media
3 attention was another reason why it should be seen --

4 A. I mentioned that and I will stand by that.

5 625 Q. I see. 16:22

6 A. In other words, we can go out -- what I am saying is:
7 Not only have we looked at it once, we have looked at
8 it with a clear set of eyes, pair of eyes, and were of
9 the same opinion or we carried out additional
10 investigations, whatever -- sorry inquiries, or 16:22
11 whatever, whatever the case may be. But it's quite
12 frequent -- and indeed I have been involved in reviews,
13 it's quite frequent that files are reviewed. Even
14 though the DPP has directed.

15 626 Q. Well, we know from Chief Superintendent Sheridan's 16:22
16 statement that he came quickly to the conclusion that
17 there had been an error and that this all was the same
18 allegation, isn't that right?

19 A. He reached that conclusion, Chairman.

20 627 Q. Yes. And at page 1723 he makes it very clear that in 16:23
21 his view there was no new information in the matters
22 and therefore it didn't require any further action by
23 An Garda Síochána?

24 A. I see that set out here.

25 628 Q. Yes. Now could I ask you to go to page 444 for a 16:23
26 moment please? There are two emails on this page. The
27 one at the bottom of the page is sent to Eileen Argue
28 by Laura Brophy on the 16th May 2014, and she says:
29

1 *"Hi Eileen*
2 *Following our telephone conversation yesterday I am*
3 *contacting you to say that I have had another call in*
4 *relation to the retrospective report which, as you are*
5 *aware, contains a clerical error. I was informed that* 16:24
6 *the superintendent in the jurisdiction referred to in*
7 *the report was not yet aware of the clerical error and*
8 *has been asked to meet with the Garda Commissioner in*
9 *relation to the case. I have agreed to send the*
10 *superintendent the amended and correct report by* 16:25
11 *registered post today. If you have any queries*
12 *relating to this, please don't hesitate to contact me."*

13

14 On her telephone number.

15 A. The date on that first of all? 16:25

16 629 Q. The date on that is 16th May.

17 A. 16th, yes. I was aware of it, Mr. Chairman. And
18 secondly, there was no arrangement to meet the
19 commissioner at that stage.

20 630 Q. I see. 16:25

21 **CHAIRMAN:** The commissioner meaning northern regional.

22 A. Assistant commissioner or indeed maybe the commissioner
23 HRM. Assistant Commissioner Kenny who was then
24 responsible for our region, which he was based in
25 Sligo. 16:25

26 631 Q. **MR. MCDOWELL:** And by that stage do you think that you
27 had spoken to Laura Brophy?

28 A. No. The 15th?

29 632 Q. The 16th.

1 A. Yes. Before or after that I don't know. But she has
2 penned a letter to me saying "*I refer to our*
3 *conversation of the 16th*".

4 633 Q. Yes. And have you any, can you throw any light as to 16:26
5 how somebody talking to Laura Brophy would be under the
6 apprehension/misapprehension that firstly you didn't
7 know about the matter, the error at that stage and,
8 secondly, that you were due to meet the assistant
9 commissioner to discuss it?

10 A. I can only make a supposition when I say I didn't know. 16:26
11 I know it has been put before the Tribunal that Ms. D
12 contacted Ms. Brophy. Perhaps it was said that the
13 superintendent, that's me at Bailieboro, is unaware,
14 but unaware of the sexual assault or the gravity of it
15 or the nature of it. And that's only a supposition. I 16:27
16 don't know. I was aware -- I showed it to the Sergeant
17 D, Sergeant D came back to me some days later and it
18 was then I made my phone calls to the HSE, or Tusla, I
19 don't know which it is.

20 634 Q. You see, it's highly unlikely that Ms. D would say, 16:27
21 would you mind sending a corrected version by
22 registered post to you, isn't it?

23 A. I would agree in full with that.

24 635 Q. And she said she wouldn't have done that?

25 A. I'm unaware. 16:27

26 636 Q. Yes. well, she told us she did, on the transcript she
27 said she would not have stipulated registered post.

28 A. well, then that goes to the point that I must have been
29 in contact with somebody prior to that in Tusla/HSE,

1 but I didn't have Laura Brophy's phone number.

2 637 Q. well, why would the information that you were due to
3 have a meeting with the commissioner be given to
4 Ms. Brophy?

5 A. I have no idea. Because I certainly can't convene a 16:28
6 meeting with the commissioner unless the commissioner
7 seeks that meeting, and I hadn't looked for a meeting
8 at that stage with any of the commissioners.

9 **CHAIRMAN:** But I thought that was referring to a
10 commissioner northern region. 16:28

11 **MR. MCDOWELL:** Yes.

12 **CHAIRMAN:** And that HSE got it wrong, they heard
13 commissioner --

14 **MR. MCDOWELL:** Yes.

15 **CHAIRMAN:** -- and jumped to the conclusion Phoenix 16:28
16 Park.

17 **MR. MCDOWELL:** Yes. They are very inclined to mix up
18 their superintendents and chief superintendents.

19 A. well, Chairman, even at that stage.

20 638 Q. Sorry, I'm just wondering why -- she says she couldn't 16:28
21 have stipulated registered post, so that couldn't be a
22 reference to a conversation with her. And her father,
23 Mr. D, when I asked him about it, said he certainly had
24 not had that conversation with Ms. Brophy. So I am
25 just wondering who could have put that information into 16:28
26 Ms. Brophy's mind twofold; that you still remained
27 unaware and that the way to remedy this was to send you
28 a registered letter, and that she had agreed to do
29 that?

1 A. I don't know, Chairman. But I was aware at that stage
2 of what had been brought to my attention by Mr. D. And
3 the mention of Commissioner, the only thing I can say,
4 perhaps might shine some light on it, is that when I
5 spoke to Ms. Brophy I told her of what I had done with 16:29
6 the original referral. And I did mention that.

7 639 Q. Did she send you a registered letter?

8 A. I don't know if it was registered. But certainly the
9 amended referral came in. I don't know if she did send
10 me a registered post or not. 16:29

11 640 Q. You see, there were two things: There was a Garda
12 referral form from Tusla and there was her, she
13 apparently put into the post an amended version of her
14 report to Tusla from Rian. And did you receive an
15 amended form which she had originally forwarded to 16:30
16 Tusla?

17 A. The only correspondence that I have a record of
18 receiving it, that I believe that I received from Laura
19 Brophy, is a letter dated 16th May '14.

20 641 Q. Yes? 16:30

21 A. And perhaps, you have it in your --

22 642 Q. Did it have an attachment on it?

23 A. Sorry?

24 643 Q. Did it have an attachment?

25 A. I think this looks like the attachment to it, yes. 16:30
26 Laura Brophy, yes.

27 644 Q. And that attachment was not a standard form standard
28 Garda referral at all, was it?

29 A. That's not a standard referral, no.

1 645 Q. So can we take it that you received that from
2 Ms. Brophy and it was at a much later stage that you
3 received an amended --
4 A. I will accept that, Chairman.
5 646 Q. An amended document from Tusla, isn't that right? 16:31
6 A. I'll accept that.
7 **CHAIRMAN:** well, that is the 20th May, it seems, 2014.
8 **MR. MCDOWELL:** Yes.
9 647 Q. You received a letter, which is at page 1786, from
10 Monaghan division? 16:31
11 A. I see it here on the screen.
12 648 Q. Marked "*Confidential*", do you see that?
13 A. "*Assistant Commissioner Sligo, Superintendent*
14 *Bailieboro.*"
15 649 Q. Yes. 16:32
16
17 *"Reference above and attached correspondence from HSE*
18 *dated 22nd inst. The report in question is dated 13th*
19 *August 2013 and if you could confirm that all copies of*
20 *same have been retracted and destroyed. If an original* 16:32
21 *copy is on hand please forward same to this office so*
22 *that it can be returned to the HSE. I would be obliged*
23 *if you would revert to this office in early course."*
24
25 Did you comply with that? 16:32
26 **CHAIRMAN:** would you give me the page number, please?
27 **MR. MCDOWELL:** 1786, Judge.
28 **CHAIRMAN:** And the date of that is?
29 **MR. MCDOWELL:** And it is dated --

1 **CHAIRMAN:** I'm sorry for asking.

2 **MR. MCDOWELL:** -- 29th May.

3 **CHAIRMAN:** My computer has gone blank, but we will sort
4 it out.

5 **MR. MCDOWELL:** 29th May. 16:32

6 A. The answer is I didn't comply with that, I didn't
7 destroy, the originals were gone to the divisional
8 office in Monaghan, I did not destroy the copy held at
9 Bailieboro.

10 650 Q. I see. Now you have told us that you were summoned to 16:33
11 a meeting in Mullingar on the 16th July?

12 A. Two meetings, in fact, Chairman; I was at a meeting
13 that morning again chaired by an assistant
14 commissioner, and in the afternoon the meeting that has
15 relevance here. 16:33

16 651 Q. And by this stage was it your understanding that Chief
17 Superintendent Sheridan's statement that there should
18 be no further action -- no further action was required
19 by An Garda Síochána because the document you received
20 on the 7th May was erroneous and all of the material or 16:33
21 all of the -- there was nothing new and the
22 investigation was the same one that had been dealt with
23 in 2007, did you understand that to be the situation
24 when you went to that meeting?

25 A. I don't know, but certainly -- I may have and I may 16:34
26 not. But certainly it was laid out for me that
27 particular day.

28 652 Q. I see.

29 A. I don't know.

1 653 Q. And chief superintendent -- sorry, Assistant
2 Commissioner Kenny begins the meeting or he is noted as
3 beginning the meeting as saying that: *"We need to deal
4 with this matter given the people involved."*

5 A. That's correct. 16:34

6 654 Q. And to whom did you think that was a reference? Was it
7 the politicians or GSOC or Sergeant McCabe? What did
8 you think -- or was it all of them that he was
9 referring to?

10 A. Again, I can only make a supposition. In the main, I 16:34
11 would say the McCabe family and indeed the politicians.
12 GSOC work independently of us and as far as I know it
13 was confidential. Certainly I wouldn't have a great
14 concern about GSOC.

15 655 Q. I see. 16:35

16 A. But I would ask that that question be addressed to
17 retired Assistant Commissioner Kenny.

18 656 Q. And: *"He expressed his view that he couldn't accept
19 that the referral form had passed through three
20 different people in the HSE and that the error was not 16:35
21 noticed."*

22 A. He expressed that view.

23 657 Q. Indeed. *"And Chief Superintendent Sheridan said that
24 the counsellor completed the referral and that the
25 names were only changed by the HSE, not the counsellor 16:35
26 and the details of the incident were
27 forgotten/overlooked and had passed through a few hands
28 before it was picked up."*

29 A. Again, it's recorded and I will accept it.

1 658 Q. I see. And that was the first you knew about Ms. Y or
2 Ms. D, any such problem, is that right?

3 A. Ms. Y and Ms. D didn't really resonate with me at that
4 stage. The referrals coming to me, names in full were
5 included.

16:36

6 659 Q. Now, could I bring you then to the next paragraph:

7
8 *"Assistant Commissioner Kenny outlined that no*
9 *correspondence will be destroyed and nothing will be*
10 *retracted. He outlined that he accepts that the HSE*
11 *made a mistake and that they have amended it. He*
12 *outlined that he was aware that GSOC are now carrying*
13 *out an investigation into the original investigation*
14 *file and how the matter was investigated. There are a*
15 *few issues."*

16:36

16:36

16
17 And then he says:

18
19 *"Chief Superintendent Rooney, Cavan-Monaghan division,*
20 *appointed Superintendent N Cunningham to investigate*
21 *the matter. Superintendent Cunningham informed Chief*
22 *Superintendent Rooney that he was of the view that the*
23 *matter should be investigated by members outside the*
24 *Cavan-Monaghan division. However, Chief Superintendent*
25 *Rooney directed Superintendent Cunningham to complete*
26 *the investigation."*

16:36

16:36

27
28 we will stop there. On what basis was that said; that
29 Chief Superintendent Cunningham - we are dealing now

1 with July 2014 - had objected to being the
2 investigating officer?

3 A. I didn't -- I didn't know that at that stage, that
4 Superintendent Cunningham had expressed reservations on
5 his appointment as investigating officer for the matter 16:37
6 then at issue in Bailieboro.

7 660 Q. Because looking at the file that went to GSOC and the
8 statements on it, they are all made after this
9 conversation in Mullingar?

10 A. I haven't seen the file that went to GSOC. 16:37

11 661 Q. You see, the point I am putting to you is that if it
12 were known to the Assistant Commissioner Kenny and to
13 the other people at that meeting that
14 Superintendent Cunningham had objected to carrying out
15 the inquiry in the first place, it could only have been 16:38
16 as a result of a conversation with them?

17 A. Perhaps with Superintendent Cunningham or perhaps on
18 the file or whatever, but I was not privy to that
19 information.

20 662 Q. You see, what I am putting to you is that that 16:38
21 information was not available in written form at that
22 time?

23 A. I will accept that. Nor was it available orally to me.

24 663 Q. And I am suggesting to you, therefore, that
25 Superintendent Cunningham must have been approached and 16:38
26 asked about his attitude to having been the
27 investigating officer?

28 A. That may well be the case, but at that stage I was
29 based in Dundalk, he was based in Monaghan, and it had

1 little or no relevance to us what was going on in
2 Monaghan.

3 **CHAIRMAN:** I know that every question obviously can't
4 be covered, it would take far too much time, but I'm in
5 the sure that Superintendent Cunningham was asked did 16:39
6 he say to anybody in 2014 --

7 **MR. MCDOWELL:** No.

8 **CHAIRMAN:** -- that I objected right from the word go to
9 being involved in this. And besides, one has to bear
10 in mind, and I am bearing in mind certainly, that GSOC 16:39
11 gave him a ringing endorsement in relation to the
12 quality of the investigation he conducted.

13 **MR. MCDOWELL:** I'm not criticising at all.

14 **CHAIRMAN:** No, no, I'm just wondering.

15 **MR. MCDOWELL:** I'm making a different point, Judge, and 16:39
16 maybe I'm not making it so clearly, that
17 Superintendent Cunningham must have been asked about
18 this before the July meeting because he hadn't made a
19 written statement about it at the time.

20 **CHAIRMAN:** Yeah. Somebody had to have to have told 16:39
21 somebody --

22 **MR. MCDOWELL:** Yes.

23 **CHAIRMAN:** -- but whether it was the person he objected
24 to, maybe that's where it came from, I don't know. Who
25 was his district officer at the time when he was an 16:39
26 inspector? I agree with you, it looks more likely that
27 someone spoke about it then, it would have to be.

28 **MR. MCDOWELL:** Because the Tribunal will remember that
29 Chief Superintendent Rooney in his statement to GSOC

1 said that he was surprised that Superintendent
2 Cunningham was now claiming to have had an objection --

3 **CHAIRMAN:** Yeah.

4 **MR. MCDOWELL:** -- to being appointed.

5 **CHAIRMAN:** He might not have remembered. So somebody 16:40
6 seems to have spoken to Superintendent Cunningham,
7 because did he have a view, that look, these were two
8 policemen that he was --

9 A. Working with.

10 **CHAIRMAN:** -- yes, working with, and also looking after 16:40
11 as an inspector. So I don't know whether anyone came
12 back to him in July 2014, hence the source of that
13 information.

14 **MR. MCDOWELL:** That is the point I am making, Judge.

15 **CHAIRMAN:** Yes. No, I see it. Yes. So, do you know? 16:40

16 A. I didn't, no. That was the first that I learned,
17 Superintendent Cunningham just raised disquiet about
18 his appointment at that stage to investigate back in
19 2006.

20 664 Q. **MR. MCDOWELL:** In your letter of recommendation at 1714 16:40
21 you say:

22

23 *"No copy of the investigation file is held at*
24 *Bailieboro district. On interrogation of the*
25 *correspondence register here, only* 16:41
26 *records/documentation received here to Maurice McCabe*
27 *of the DPP's direction --"* [as read]

28

29 And a reference is given then.

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" -- and few other similar types of correspondence --"

And you then say, and this is what you wrote and composed on the 7th or 8th May:

16:41

"It is believed that the investigation file with all subsequent relevant documentation is held at Monaghan Garda Station."

16:41

A. That's right.

665 Q. Where did you get that belief from?

A. I got that, to the best of my recollection, when I looked for -- this referral came in, I wanted to review the file myself, I asked the district clerk, that is Garda Maria Glennon, could she find me a copy of the file. And it was from her, I believe, that I was told that no copy of the file was held at Bailieboro, that it was held -- investigated from and held at Monaghan.

16:41

16:42

666 Q. So she would had to have made an inquiry of Monaghan to confirm that to you?

A. She possibly knew that at no stage was it handed from Bailieboro. She had been there from about the early, mid 90s probably.

16:42

667 Q. You see the point is this: That the offence was originally investigated in Cavan Garda Station, isn't that right?

A. Detective Sergeant Fraher, who has since retired, was

1 based in Cavan.

2 668 Q. Yes.

3 A. I don't know whether -- perhaps the investigation was
4 centred in Cavan, I don't know.

5 669 Q. Yes. But I am just wondering how -- you are saying 16:42
6 that some inquiry led you to believe that the file was
7 now in Monaghan Garda Station?

8 A. That is the case.

9 670 Q. And we know or it seems to be the case that somebody by
10 three months later had spoken to 16:42
11 Superintendent Cunningham about this matter?

12 A. It certainly wasn't me, Chairman.

13 671 Q. Now you've already dealt with the general view that day
14 held by Assistant Commissioner Kenny and others that
15 the HSE had never been informed on the 2nd January 2007 16:43
16 of the Sergeant Fraher investigation, isn't that right?

17 A. Again, that's what I learned at that meeting in
18 Mullingar.

19 672 Q. I see. And prior to that, did you think -- did you
20 assume they had been informed? 16:43

21 A. I didn't consider it, but --

22 673 Q. Can you imagine any reason why they wouldn't have been
23 informed?

24 A. Well, there's no good reason that I know of. Even in
25 cases of sexual assault, where the file has been 16:43
26 forwarded to the DPP, often times my experience is that
27 there's a copy of the HSE/Tusla referral on the file of
28 the DPP.

29 674 Q. Surely it was standard procedure to do it?

1 A. It's very much standard procedure to do it, I would
2 submit, Chairman.

3 675 Q. You have no idea where the notion came from that it
4 hadn't been done?

5 A. It came from Assistant Commissioner Kenny or Chief
6 Superintendent Sheridan. But where they got the
7 information I don't know.

8 676 Q. I see.

9

10 *"Assistant Commissioner Kenny outlined that he had*
11 *concerns that the injured party went for counselling*
12 *and a referral was made and the HSE --"*

13

14 And a referral was probably not made.

15

16 *"-- and a referral was then made to An Garda Síochána.*
17 *He outlines that he was of the view that this referral*
18 *should be dealt with as a new referral, 'that we can't*
19 *just take it as the same incident'."*

20

21 Do you remember him saying that?

22 A. This is the meeting in Mullingar?

23 677 Q. Yes.

24 A. That we can't take it --

25 678 Q. Yes. We're at page 1835, by the way.

26 A. 1835. And could we put it to the appropriate
27 paragraph?

28 679 Q. Down at the last paragraph on page 1835.

29 A. Yes.

1 680 Q. *"He outlined he was of the view that this referral*
2 *should be dealt with as a new referral, 'that we can't*
3 *just take it as the same incident'."*

4 A. Again, that was his mind on that particular day. But a
5 contrary view was held by Chief Superintendent Sheridan 16:46
6 from a very early stage --

7 **CHAIRMAN:** Yeah.

8 A. -- that the same -- the facts elucidated by the
9 investigation were the same. There were no new facts.

10 **CHAIRMAN:** I see. Some of this, Mr. McDowell, at the 16:46
11 moment - I mean, I may be convinced to the contrary - I
12 am taking as people talking out loud or thinking
13 through their thoughts.

14 **MR. MCDOWELL:** I can appreciate that.

15 **CHAIRMAN:** Yes. 16:46

16 681 Q. **MR. MCDOWELL:** If we go on to the next paragraph:
17
18 *"Chief Superintendent Sheridan outlined that referral*
19 *does state that the matter was investigated and there*
20 *was no prosecution. He raised the issue that if An 16:46*
21 *Garda Síochána meets with the HSE would social services*
22 *and the suspect's family need to be informed as he has*
23 *children."*

24
25 Now two things there: On a number occasions the phrase 16:46
26 *"suspect"* is used in respect of Sergeant McCabe.

27 A. Yes. I don't think it is recorded after any of my
28 utterances.

29 682 Q. It's used on three occasions in this document.

1 **CHAIRMAN:** No. And again, I did note that at the time,
2 Mr. McDowell, but the question that came into my mind
3 was: I wonder was there somebody neutral, like a garda
4 or something, taking a note and taking this note?
5 Nobody has told me who actually took the note or 16:47
6 recorded it.

7 **MR. DIGNAM:** Chairman, I can assist with that. In
8 fact, it was garda -- sorry, Inspector Karen Duffy who
9 sat in as a notetaker at that meeting.

10 **CHAIRMAN:** Inspector Karen Duffy. 16:47

11 **MR. DIGNAM:** Sorry, sergeant Karen Duffy.

12 **MR. MCDOWELL:** I assumed she would get the task of
13 taking a note.

14 **CHAIRMAN:** Yes. Well, you're right, but again --

15 **MR. MCDOWELL:** If I continue, Judge. These comments, I 16:47
16 can see where the Chair is coming from.

17 **CHAIRMAN:** People tend to put things into their own
18 language as opposed to using what --

19 683 Q. **MR. MCDOWELL:** *"Assistant Commissioner Kenny outlined*
20 *that safety issues don't appear to be on the HSE's* 16:48
21 *radar/agenda."*

22 A. Again, they are the words of Assistant Commissioner
23 Kenny.

24 684 Q. Can you recall why such a remark would be made?

25 A. I can't. 16:48

26 685 Q. *"Chief Superintendent Sheridan outlined that if there*
27 *are safety issues An Garda Síochána didn't do anything*
28 *for the last six or seven years."*

29 A. That's right. I have spoken --

1 686 Q. That was a comment that if there are safety issues what
2 have we been doing --

3 A. Absolutely.

4 687 Q. -- since we heard about this?

5 A. I mentioned that in my evidence, direct evidence 16:48
6 earlier.

7 688 Q. Then you are recorded as saying that:
8
9 *"The suspect has access to kids in relation to his job,*
10 *is there a risk?"* 16:48

11 A. Yes.

12 689 Q. Even if you didn't use the word "suspect", you are at
13 this stage raising the question whether Sergeant McCabe
14 posed a risk to children?

15 A. I will deal, first of all, with the word suspect. I 16:49
16 have no recollection using that -- or, it's attributed
17 to me but I have no recollection of using that word and
18 I don't think it should be used, because whatever else
19 happened, the case had been investigated, the DPP found
20 no grounds for prosecution, so the man was no longer a 16:49
21 suspect in this case. And the next, where I am coming
22 from then -- does that satisfactorily answer the issue
23 with "suspect" and I will move on then about the risk?

24 690 Q. You yourself used the phrase "re-offending" this
25 afternoon? 16:49

26 A. Yes. But again that's --

27 **CHAIRMAN:** All right. It's getting terribly hard to
28 be -- as you know, Mr. McDowell, it's terribly hard to
29 keep saying "the accused".

1 **MR. MCDOWELL:** Yes.

2 **CHAIRMAN:** Or the whatever. Indeed, I referred to --

3 **MR. MCDOWELL:** The alleged.

4 **CHAIRMAN:** -- one defendant in a civil case on one
5 occasion as "the accused", much to my embarrassment. 16:49

6 691 Q. **MR. MCDOWELL:** And when you made that remark Assistant
7 Commissioner Kenny is recorded as saying that he agreed
8 and that this matter needs to be dealt with properly?

9 A. But where I was coming from, from my -- looking back on
10 it now, where I am coming from with that is: This had 16:50
11 been brought to the attention of the Gardaí in 2006 and
12 that we hadn't complied with our statutory provisions
13 to notify the HSE at the time and that if something had
14 happened in the interim it couldn't be defended, I
15 would submit it couldn't be defended. Something 16:50
16 untoward towards children. And I will go a bit further
17 than that to say that, what about the future? Is there
18 a risk? I hadn't met -- knew nothing about Sergeant
19 McCabe, but this allegation had been made. It was out
20 there for Tusla to conduct a risk assessment and reach 16:50
21 their conclusions. It wasn't a job for the Gardaí. It
22 was a job for the Gardaí to provide whatever
23 information they had relevant to it, but the assessment
24 would be taken up and retained carriage of by Tusla or
25 whatever agency they decided to get to conduct that 16:51
26 risk assessment going back dated 2006, 7 or whatever
27 year.

28 692 Q. It then appears that later on Chief Superintendent
29 Sheridan suggested that *"we should liaise with the HSE*

1 to establish what their intentions are --" I presume
2 "-- regarding this referral."

3 A. Again I think that is best left for Chief
4 Superintendent, retired, Sheridan to answer.

5 693 Q. And Assistant Commissioner Kenny said, raised the 16:51
6 question:

7
8 *"what would we do if this was a new referral?"*

9
10 And you're supposed to have said: 16:51

11
12 *"That a criminal investigation would commence and An*
13 *Garda Síochána would meet with the HSE."*

14 A. And I agree that I said that, if this was a new
15 referral. And by new referral I'm saying if there 16:52
16 was -- if - which I knew at that stage to be factually
17 incorrect - the information contained in the first
18 referral from Ms. Brophy arrived to us, I would be
19 advocating strongly, in fact, I'd be saying we must
20 conduct a further criminal investigation for the simple 16:52
21 reason it differs from the first allegation, differs
22 from what was investigated in 2006. That's where I am
23 coming from there. It would have to be, it's past --
24 it then would be a further investigation as opposed to
25 a review. 16:52

26 694 Q. So, I mean, if I could then -- could I just ask you
27 then, you are recorded as saying, again you may not
28 have used the exact phrase but you are recorded as
29 saying that:

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"The suspected offender was not arrested at the time of the investigation and this may be an issue."

- A. I don't recall using that phrase, but --
- 695 Q. No, forget about whether -- you might have said Sergeant McCabe? 16:53
- A. I may have indeed.
- 696 Q. But just let's come to the second point, that it could be an issue that he wasn't arrested at the time?
- A. It could be an issue. As I explained earlier, if there was a continuation of this investigation predicated upon what had been reported in 2006 and then further developed in the referral of 2014 an investigation recommenced. 16:53
- 697 Q. Then you raised the issue that the -- 16:53
- A. An arrest could be considered.
- 698 Q. Sorry?
- A. An arrest could be considered.
- 699 Q. In what context?
- A. In the context of it was looked at -- I will stress considered. 16:53
- 700 Q. Yes.
- A. In the context of, if the weight of evidence was so substantial in light of the referral in 2014, then consideration will, and all investigations be considered and discussed. It doesn't mean that we will move to an arrest. It's an option. In other words, the power of arrest hadn't been used up in 2006. 16:54
- 701 Q. I just want to understand that. So you are saying that

1 if on a review of the 2014 referral -- I presume the
2 correct one, is that right, not the error? You knew at
3 this stage there had been an error, isn't that right?

4 A. Yes.

5 702 Q. You knew the error was -- 16:54

6 A. Debunked.

7 703 Q. -- nothing to do with An Garda Síochána?

8 A. Yeah. But if there was fresh, and there came fresh
9 information into the investigation domain, yeah.
10 That's where I am coming from here. But not for minute 16:54
11 was I advocating an arrest.

12 **CHAIRMAN:** were you all panicking is what I am
13 wondering about?

14 A. Pardon?

15 **CHAIRMAN:** were you all panicking? 16:55

16 A. I don't remember an air of panic that particular day.
17 I don't. It seems to be fairly logicked out. In fact,
18 I even said it since, I was wondering what the need for
19 the meeting was. I felt I had fulfilled my role.

20 **CHAIRMAN:** That's fine, yes. 16:55

21 704 Q. **MR. MCDOWELL:** well, you see the point I am making is:
22 Here you are throwing out, well, since he wasn't
23 arrested we could re-arrest him --

24 A. Oh, absolutely not.

25 705 Q. Oh, it could be contemplating, is that what you were 16:55
26 suggesting?

27 A. It could certainly, if there was fresh information and
28 fresh evidence. But certainly on that particular day,
29 no, it would be wholly inappropriate and found to be

1 constitutionally illegal, no. Not with what was
2 available, not with what was available in my mind.

3 706 Q. It was who was addressing the possibility of his being
4 re-arrested. The possibility. The possibility.

5 A. But sure, he never was arrested. But you see, there 16:55
6 was actually mention at some stage made to me, I don't
7 know where it came from, it may have come from Ms. D,
8 that others in sexual assault cases are arrested and
9 why wasn't the man she alleged assault the against
10 arrested in her case. 16:56

11 707 Q. She was alleging that to Mr. Williams and he was
12 pumping it out into the media?

13 A. That may be the case. That may be -- come back to me,
14 that may be the issue, yeah.

15 708 Q. And you were saying that if the weight of the evidence 16:56
16 on a review of this matter warranted it, there could be
17 a re-arrest of Sergeant McCabe, is that right?

18 A. If the weight of evidence --

19 709 Q. Sorry, arrest of Sergeant McCabe?

20 A. If the weight of the evidence measured it, yes. But 16:56
21 fresh evidence and very substantial fresh evidence
22 would have to come into Garda possession prior to that.

23 710 Q. How was this substantial fresh evidence to come into
24 existence?

25 A. I don't believe it could at that stage. Chairman, I 16:56
26 don't believe -- as far as I was concerned it was over
27 and done here.

28 711 Q. I want to be clear about this: There you are
29 discussing the possibility of an arrest and you're

1 saying now to the Tribunal that that would only come
2 into effect if there were substantial new material
3 available.

4 A. I don't think --

5 712 Q. I am suggesting to you that everybody had agreed before 16:57
6 this meeting started that the matter was closed --

7 A. Yes.

8 713 Q. -- and there was no fresh evidence and there would be
9 no fresh evidence.

10 A. I'm of that, certainly that mind as well. That, as we 16:57
11 stood on that particular day with the information
12 available to us, the matter was closed.

13 714 Q. So why were you talking about the possibility of
14 arrest?

15 A. Could I just -- which paragraph is it in? 16:57

16 **CHAIRMAN:** No, it is in there, all right.

17 A. Oh, it's mentioned there, I have seen it, but I think
18 it has moved on.

19 715 Q. **MR. MCDOWELL:** You said, it was you who said that if
20 new material came to light -- 16:57

21 A. No, Assistant Commissioner --

22 716 Q. -- there could be an arrest. This is what you said in
23 oral evidence.

24 A. Here is what I am probably -- if we go back down to the
25 previous page. Go back down. *"Assistant Commissioner 16:58
26 Kenny raised the question what will we do if this was a
27 new referral?"* And it's recorded I said outlined that
28 a criminal investigation would commence and that An
29 Garda Síochána would meet the HSE. That is again

1 predicated on what came in on the first -- I'm
2 answering what came in, in the first referral.

3 717 Q. **MR. MCDOWELL:** I am asking you why you have thrown out
4 just now in evidence even the possibility that an
5 arrest of Sergeant McCabe might have been contemplated 16:58
6 if new evidence came to light.

7 A. If new evidence, but there was no new evidence on that
8 day, Chairman.

9 718 Q. And there was going to be no investigation?

10 A. I went to that meeting with the mind that there would 16:58
11 be no new investigation and left it with the same mind.

12 719 Q. Was your mind changed during the course of the meeting?

13 A. Absolutely not, Chairman.

14 720 Q. So we're to take it that talk about an arrest was
15 entirely theoretical, speculative and had no reality at 16:59
16 all, is that right?

17 A. What was available to the meeting that day, no reality
18 of that happening.

19 721 Q. I mean, just a few moments hence you had a different
20 view, but you are now saying that there was no reality 16:59
21 at all of new material coming to light, an arrest
22 following?

23 A. That's right, unless new material came.

24 722 Q. And how would new material come unless the matter was
25 reopened? 16:59

26 A. If we step back to the first referral and its arrival.
27 Had that been a genuine referral, Ms. D would have to
28 be re-interviewed as to why she hadn't set out in
29 her -- in the criminal investigation that such and such

1 had happened to her. And as Ms. Brophy appears to have
2 been the first person complained to, she would have to
3 be interviewed. And perhaps extending out from that,
4 relevant evidence would have to be sought, accumulated,
5 decided upon what course of action would be taken on 17:00
6 foot of that evidence and then the file, inclusive of
7 the original file, would have to be submitted to the
8 DPP for directions.

9 **CHAIRMAN:** I don't mean to stop anybody now, but it's
10 after five. 17:00

11 **MR. MCDOWELL:** I will be very, very quick now, Judge.

12 **CHAIRMAN:** I appreciate that, but I have other
13 responsibilities.

14 **MR. MCDOWELL:** I see, Judge.

15 **CHAIRMAN:** No, no, please, if it is going to take you a 17:00
16 minute or two. Does anybody else have any questions?

17 **MR. DIGNAM:** Chairman, I can indicate our position: At
18 this moment I don't have questions, I have two points
19 that may be of assistance to the Tribunal, but no
20 questions. 17:01

21 **CHAIRMAN:** If you want to make them now prior to
22 Mr. McDowell finishing it might help.

23 723 Q. **MR. MCDOWELL:** I am just asking you, further down in
24 the discussion -- I am trying to work out what the
25 character of the discussion was at all, and I'm 17:01
26 suggesting to you further down you have:
27
28 *"Chief Superintendent Sheridan outlined that the*
29 *injured party reported the matter to GSOC so that the*

1 *matter would be re-investigated and that the suspected*
2 *offender may be exposed."*

3
4 Was that said in your presence?

5 A. If it's recorded there most likely or a variation of 17:01
6 it. But I don't recall Chief Superintendent Sheridan
7 saying that. But I think, it would appear, where he's
8 coming from there is: She had exhausted the Garda
9 avenue, it had been looked at by the Garda and the DPP,
10 now we are going to GSOC to see what can they bring 17:01
11 out. It's not infrequent.

12 724 Q. Now, can I just go back again to the best of your
13 recollection of your conversation with Mr. D? When you
14 showed him the referral form, did he indicate to you
15 that he believed it was wrong? 17:02

16 A. Yes. He indicated, he said -- No, he didn't indicate,
17 what he said was, I will have to have this checked out.
18 But I got the impression that he believed it was wrong.

19 725 Q. And you see retired Chief Superintendent Sheridan said
20 in his statement at page 3118: 17:02

21
22 *"In the intervening period, between receiving the Tusla*
23 *Garda notification dated 2nd May 2014 and speaking to*
24 *me, Superintendent McGinn told me that he had spoken to*
25 *Mr. D and he had established that Ms. D had not made 17:03*
26 *the incorrect allegation that was included in the*
27 *referral dated 2nd May 2014, which was not included in*
28 *the original allegation made by her in 2006."*
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A. Again, Chairman, I have no recollection of conducting that inquiry on behalf of Chief Superintendent Sheridan, but I accept if he has it there, knowing the man it's like something he would do, he would say go back and talk to Mr. D and see. But I have no recollection of him tasking me with that or indeed conducting the inquiry or ringing him back.

17:03

726 Q. Could I ask you one other thing about this meeting in Mullingar: Sergeant McCabe was stationed in Mullingar?

17:03

A. I knew that, Chairman.

727 Q. Did any of that you at that meeting in July consider him as a victim of this terrible catastrophic mistake?

A. At that stage frankly, Judge, I did.

728 Q. You did?

17:04

A. A victim in as much as I thought that when his home had been -- I believe, what I had seen on the Prime Time, I thought this is an awful injustice to be visited on anybody. And that was my feeling about it.

729 Q. And did any of you think, how do we inform Sergeant McCabe of a monumental error which we now accept has been made in respect of him and stop this from gathering legs?

17:04

A. I didn't -- I only speak personally, I didn't consider ringing or making contact with Sergeant McCabe. Firstly, I never met the man, never spoken to the man, but secondly, whatever mistake, as far as I was concerned at that stage, was made on the part of an agency or agencies other than An Garda Síochána, and I

17:04

1 didn't see that I should go personally or on behalf of
2 An Garda Síochána, to Sergeant McCabe.

3 730 Q. I am just wondering, was there a general consensus or
4 was there any discussion as to whether he should be
5 informed of this appalling injustice? 17:05

6 A. I don't recall such a conversation taking place.

7 731 Q. As years went by and it rolled up to the Prime Time
8 programme of 2017 did you ever wonder to yourself
9 whether Sergeant McCabe should be informed that this
10 massive error had been made in respect of him by Tusla? 17:05

11 A. And that the Gardaí should do something on foot of
12 that?

13 732 Q. Yeah. The Gardaí had received this material, it had
14 been disconsidered in the Garda station, it had been
15 referred to various people, it was -- as far as you 17:06
16 were concerned it had been sent down to sergeant Byrne,
17 you didn't know it hadn't arrived in sergeant Byrne's
18 desk, did you at any point say to you yourself, you
19 know, we better do the right thing by this man and tell
20 him that something has gone seriously wrong? 17:06

21 A. I never considered lifting the phone to Sergeant McCabe
22 or indeed to meeting him in person.

23 733 Q. Thank you.

24

25 **CHAIRMAN:** Did you want to make two points? 17:06

26 **MR. DIGNAM:** Chairman, I have no questions for this
27 witness but there are just two issues which may be of
28 assistance to the Tribunal. There was some question
29 about the date of receipt of the amended notification

1 and you will recall that the copy we were looking at
2 during the course of the questioning had an illegible
3 date stamp. In fact, there is one with a legible date
4 stamp at page 1799 and it's dated 24th June 2014, it
5 having been received in the superintendent's office. 17:07

6 The second point, Judge --

7 **CHAIRMAN:** Just tell me about that. The amended
8 notification, which is dated 20th May 2014 is
9 date-stamped 24th May 2014 in the chief

10 superintendent's office? In the superintendent's
11 office? 17:07

12 **MR. DIGNAM:** The 24th June, Judge. This is the one
13 that is headed up -- or sorry, the one that is headed
14 up "*Notification of Suspected Abuse*" and carries a date
15 of the 10th June 2014 on the face of it, but is in fact 17:07
16 signed by Mr. Deeney on the 20th June, is date-stamped
17 as having been received on the 24th June.

18 **CHAIRMAN:** Okay.

19 **MR. DIGNAM:** And the second point, Judge --

20 **CHAIRMAN:** And it's date-stamped where? 17:07

21 **MR. DIGNAM:** As I read it, Judge, it's the
22 superintendent's office on page 1799 of the booklet.

23 A. Perhaps Chairman my copy may be more legible.

24 **CHAIRMAN:** What is your page reference?

25 A. It says: "*Superintendent's office received 24th June*
26 *'14 Bailieboro.*" 17:08

27 **CHAIRMAN:** No, but your page number for that?

28 **MR. DIGNAM:** 1799, sorry, Judge.

29 **CHAIRMAN:** Okay, thanks. And there was a second point?

1 **MR. DIGNAM:** Yes, Judge. There was some questioning in
2 relation to the date of receipt of the letter from
3 Ms. Brophy. You will see at page 315 that the
4 registered post slip is there and it was posted on the
5 16th May, which I think is accepted by everybody. 17:08
6 **CHAIRMAN:** Yes. The letter from Ms. Brophy dated the
7 what?
8 **MR. DIGNAM:** Sorry, dated 16th May, Judge.
9 **MR. MCDOWELL:** The registered letter.
10 **CHAIRMAN:** The registered letter. 17:08
11 **MR. DIGNAM:** The registered post slip is at page 315
12 and the letter is at page 314. It was posted on the
13 16th May. So I think that was a Friday. It's likely
14 to have been received on the following Monday.
15 **CHAIRMAN:** Just if you wouldn't mind, I am sorry, the 17:09
16 computer has gone down and I am depending on Ms. Kelly
17 for --
18 **MR. DIGNAM:** It's pages 314 and 315, Judge.
19 **CHAIRMAN:** And you think it was received on the?
20 **MR. DIGNAM:** It's likely to have been received on the 17:09
21 19th, which is the following Monday.
22 **CHAIRMAN:** So that is a Friday.
23 **MR. DIGNAM:** Yeah.
24 **CHAIRMAN:** Monday. You have no questions,
25 Mr. McGuinness? 17:09
26 **MR. MCGUINNESS:** No further questions.
27 **CHAIRMAN:** All right. I am sorry about again tomorrow,
28 I am somewhere else at ten o'clock, a meeting in
29 relation to other things at 10:30, I will sit at 12:00.

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I am just worried about us falling behind, so we will do our best to catch up tomorrow.

THE HEARING THEN ADJOURNED UNTIL FRIDAY, 21ST JULY 2017
AT 12:00PM

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